

Montana Water Court  
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Bozeman, MT 59771-1389  
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(406) 586-4364  
watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
TONGUE RIVER BELOW HANGING WOMAN CREEK - BASIN 42C  
INTERLOCUTORY DECREE

\*\*\*\*\*

CLAIMANTS: Coffee Nefsy LP; Coffee Ranch, LLC

**CASE 42C-0012-I-2024**  
42C 30144881  
42C 30144883

**NOTICE OF FILING OF MASTER'S REPORT**

This Master’s Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master’s Report within **10 days** of the stamped date if you disagree or find errors with the Master’s findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master’s Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master’s Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master’s Report.

**MASTER’S REPORT**

These two claims appeared in the Interlocutory Decree with issue remarks and notice remarks. Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claim examination. Claim examination confirms the historical use of a water right claim and identifies issues with a claim. If claim examination cannot confirm some aspect of a claim, an issue remark is added to the claim. The issue remarks were not addressed through

the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence. In this instance, a review of the claim files reveals no rationale articulated by the DNRC claim examiner for adding the issue remarks, and otherwise, no apparent basis for adding the issue remarks. No additional proceedings are needed to address and resolve the issue remarks.

#### APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

#### FINDINGS OF FACT

1. Coffee Nefsy LP stockwater claim 42C 30144881 is for a December 31, 1950 3.00 GPM use right from a developed spring located in the SESESE section 21, T1N, 45E, Custer. It appeared in the Interlocutory Decree with the following remarks:

THIS CLAIM AND WATER RIGHT NO. 42C 30144883 APPEAR TO BE REDUNDANT FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 42C DECREE ISSUED 02/28/2008.

2. Coffee Ranch, LLC stockwater claim 42C 30144883 is for a December 31, 1931 5.00 GPM use right from a developed spring located in the SESESE section 21, T1N, 45E, Custer. It appeared in the Interlocutory Decree with the following remarks:

THIS CLAIM AND WATER RIGHT NO. 30144881 APPEAR TO BE REDUNDANT FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 42C DECREE ISSUED 02/28/2008.

3. It appears from the marked topographic map copy attached to each Statement of Claim, that the claims are for appropriations from the same developed spring. However, the claimants are different ranch entities, the appropriations are twenty years apart, and the flow rates are not the same. It is entirely plausible that these are two different appropriations made at different times by different ranches. The examination notes provide no information from the claim examiner explaining the conclusion that these are redundant claims for the same appropriation. The remarks concerning redundant claims should be removed as unfounded.

4. The other remarks provide notice of that these claims were not in the prior Preliminary Decree. These remarks should be removed as having served their notice purposes.

#### CONCLUSION OF LAW

The Statements of Claim are sufficient to determine the issue remarks are unfounded. Sections 85-2-248(3) and (11), MCA.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Interlocutory Decree for this Basin. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

#### **ELECTRONICALLY SIGNED AND DATED BELOW**

#### **Service via USPS Mail:**

Coffee Nefsy LP  
Coffee Ranch, LLC  
PO Box 575  
Miles City, MT 59301

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**TONGUE RIVER, BELOW HANGING WOMAN CREEK**  
**BASIN 42C**

**Water Right Number:** 42C 30144881 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** COFFEE NEFSY LP  
PO BOX 575  
MILES CITY, MT 59301-0575

**Priority Date:** DECEMBER 31, 1950

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 3.00 GPM

**\*Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**\*Source Name:** SPRING, UNNAMED TRIBUTARY OF LISCOM CREEK

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESESE	21	1N	45E	CUSTER

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DEVELOPED SPRING

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESESE	21	1N	45E	CUSTER

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**TONGUE RIVER, BELOW HANGING WOMAN CREEK**  
**BASIN 42C**

**Water Right Number:** 42C 30144883 STATEMENT OF CLAIM  
**Version:** 2 -- POST DECREE  
**Status:** ACTIVE

**Owners:** COFFEE RANCH, LLC  
PO BOX 575  
MILES CITY, MT 59301-0575

**Priority Date:** DECEMBER 31, 1931

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 5.00 GPM

**\*Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

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1			SESESE	21	1N	45E	CUSTER

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME POINT OF DIVERSION.

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