

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

\*\*\*\*\*

CLAIMANT: Nance Cattle Co.

OBJECTOR: Northern Cheyenne Tribe

**CASE 42C-0037-I-2024**  
42C 30121404  
**42C 30160126**

**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, conclusion 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**

The Northern Cheyenne Tribe objected to this claim. On January 13, 2025 the parties filed a Stipulation For Resolution Of Objection [“Stipulation”]. The Stipulation states that this claim includes two use right appropriations and should be divided into two separate claims. The Stipulation is viewable in the Court’s FullCourt Enterprise case management system.

## APPLICABLE LAW

“‘Implied Claim’ means a claim authorized by the water court to be separated and individually identified when a statement of claim includes multiple rights.” Rule 2(a)(33), W.R.C.E.R.

From 41P-108 “Circle S Ranch, Inc.” Order On Motion To Modify Claims 5-16-19, at 2019 Mont. Water LEXIS 8, page 5:

The Water Court recognizes implied claims in certain circumstances *In re Musselshell River below Roundup*, Case 40C-47, 1994 Mont. Water LEXIS 18, \*78 (July 14, 1994). However, before the Court will recognize an implied claim, the claimant must prove that several factors exist. These include: (1) proof of two or more water rights in the original claim form or the material submitted with the claim form; (2) proof of historic use corroborating the implied claim; and (3) proof that recognizing the implied claim(s) will avoid causing a change to historic water use or increase the historic burden to other water users. *In re Foss*, Case 76HF-580, 2013 Mont. Water LEXIS 17, \*32 (Jan. 31, 2013); *In re Martinell*, Case 41A-148, 2018 Mont. Water LEXIS 3, \*6 (June 14, 2018). These standards assure that implied claims are not used to revive a claim that was forfeited as a matter of law by missing the filing deadline. Mont. Code Ann. § 85-2-226 (establishing conclusive presumption of abandonment of for claims not timely filed); *In re Climbing Arrow Ranch*, Case 41F-A19, 2019 Mont. Water LEXIS 1 (Mar. 6, 2019). The implied claim process also cannot be used to expand the elements of a statement of claim. *In re Eliasson Ranch Company*, Order Amending and Adopting Master’s Report, Case 40A-115, 2004 Mont. Water LEXIS 2, \*6 (Jun. 28, 2004) (“*Eliasson*”).

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. A review of the Statement of Claim and the Stipulation shows that this claim includes two different Tongue River use right appropriations, one on July 6, 1886 as claimed and the other on April 28, 1913. An implied claim should be generated for the April 28, 1913 appropriation. The points of diversion and place of use should be apportioned between these

two rights as requested in the Stipulation.

2. Claim 42C 30121404 should continue to be used for the July 6, 1886 right. Implied claim 42C 30160126 should be used for the April 28, 1913 right.

3. Claim 42C 30121404 includes 25 points of diversion and places of use. The first 17 points of diversion and places of use, variously located in sections 23, 26, and 34 in T4S, R43E and in section 4, T5S, R43E, should remain on the abstract for this claim. The last eight points of diversion and places of use which appeared on the Interlocutory Decree abstract for this claim, all variously located in sections 8 and 17, T5S, R43E, should be removed.

The abstract of this claim appeared in the Interlocutory Decree with the following notice remark:

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

This remark should be removed as having served its notice purpose.

4. The elements of implied claim 42C 30160126 should be the same as 42C 30121404 except the priority date should be APRIL 28, 1913, and the point of diversion and place of use should be the last eight points of diversion and places of use which appeared on the Interlocutory Decree abstract for 42C 30121404, all variously located in sections 8 and 17, T5S, R43E.

#### CONCLUSION OF LAW

Statement of Claim 42C 30121404 and the Stipulation are sufficient to generate an implied claim.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court generate implied claim 42C 30160126 and make the changes specified in the Findings of Fact to correct the Preliminary 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**

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**Note: Caption Updated 2-3-25**

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

**Water Right Number:** 42C 30121404 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** NANCE CATTLE CO  
67 U CROSS LN  
BIRNEY, MT 59012-9510

**Priority Date:** JULY 6, 1886

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**\*Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**\*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:** TONGUE RIVER

**Source Type:** SURFACE WATER

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

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	2	SE	23	4S	43E	ROSEBUD
<b>Period of Diversion:</b>		JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>		LIVESTOCK DIRECT FROM SOURCE				
2		SESE	23	4S	43E	ROSEBUD
<b>Period of Diversion:</b>		JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>		LIVESTOCK DIRECT FROM SOURCE				
3		N2NE	26	4S	43E	ROSEBUD
<b>Period of Diversion:</b>		JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>		LIVESTOCK DIRECT FROM SOURCE				
4		NENW	26	4S	43E	ROSEBUD
<b>Period of Diversion:</b>		JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>		LIVESTOCK DIRECT FROM SOURCE				
5		S2NW	26	4S	43E	ROSEBUD
<b>Period of Diversion:</b>		JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>		LIVESTOCK DIRECT FROM SOURCE				
6		SWSWNE	26	4S	43E	ROSEBUD
<b>Period of Diversion:</b>		JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>		LIVESTOCK DIRECT FROM SOURCE				

7		W2NWSE	26	4S	43E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
8		E2SW	26	4S	43E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
9	1	N2	34	4S	43E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
10	2	N2	34	4S	43E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
11	9	N2	34	4S	43E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
12		S2NE	34	4S	43E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
13		SW	34	4S	43E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
14	5	N2	4	5S	43E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
15	6		4	5S	43E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
16	7		4	5S	43E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
17	8	S2	4	5S	43E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
<b>Period of Use:</b>	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		2	SE	23	4S	43E	ROSEBUD
2			SESE	23	4S	43E	ROSEBUD
3			N2NE	26	4S	43E	ROSEBUD
4			SWSWNE	26	4S	43E	ROSEBUD
5			NENW	26	4S	43E	ROSEBUD
6			S2NW	26	4S	43E	ROSEBUD
7			W2NWSE	26	4S	43E	ROSEBUD

8		E2SW	26	4S	43E	ROSEBUD
9	1	N2	34	4S	43E	ROSEBUD
10	2	N2	34	4S	43E	ROSEBUD
11	9	N2	34	4S	43E	ROSEBUD
12		S2NE	34	4S	43E	ROSEBUD
13		SW	34	4S	43E	ROSEBUD
14	5	N2	4	5S	43E	ROSEBUD
15	8	S2	4	5S	43E	ROSEBUD
16	6		4	5S	43E	ROSEBUD
17	7		4	5S	43E	ROSEBUD

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

**Water Right Number:** 42C 30160126 STATEMENT OF CLAIM

**Version:** 1 -- ORIGINAL RIGHT

**Status:** ACTIVE

**Owners:** NANCE CATTLE CO  
67 U CROSS LN  
BIRNEY, MT 59012-9510

**Priority Date:** APRIL 28, 1913

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING 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:** TONGUE RIVER

**Source Type:** SURFACE WATER

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

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1		8	5S	43E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2	2		8	5S	43E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3	3		8	5S	43E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4	4		8	5S	43E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
5	5		8	5S	43E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
6	6		8	5S	43E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					



7    7    8      5S      43E      ROSEBUD

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

**Diversion Means:**                      LIVESTOCK DIRECT FROM SOURCE

8    4    NW      17      5S      43E      ROSEBUD

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

**Diversion Means:**                      LIVESTOCK DIRECT FROM SOURCE

**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		1		8	5S	43E	ROSEBUD
2		2		8	5S	43E	ROSEBUD
3		3		8	5S	43E	ROSEBUD
4		4		8	5S	43E	ROSEBUD
5		5		8	5S	43E	ROSEBUD
6		6		8	5S	43E	ROSEBUD
7		7		8	5S	43E	ROSEBUD
8		4	NW	17	5S	43E	ROSEBUD