

Montana Water Court  
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**FILED**  
01/15/2025  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
42C-0013-I-2024  
Lambert, Kathryn  
8.00

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

\*\*\*\*\*

CLAIMANT: Coffee Nefsy LP

OBJECTOR: United States of America (Bureau of Land  
Management)

**CASE 42C-0013-I-2024**  
42C 30137104

**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 United States of America (Bureau of Land Management) objected to this claim. On December 9, 2024 the claimant filed a Motion To Amend Claim 42C 30137104. This is a settlement document rather than a motion to amend filed pursuant to section 85-2-233(6),

MCA. On December 13, 2024 the United States’ Notice Of Resolution Of Objections was filed. These settlement documents are viewable in the Court’s FullCourt Enterprise case management system.

APPLICABLE LAW

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. The Interlocutory Decree includes multiple entries for the point of diversion and place of use. One of the entries is section 28, T1N, R44E, ROSEBUD. This entry for the entire section should be removed and the following should be added to the point of diversion and place of use:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
N2N2	28	1N	44E	ROSEBUD
SENW	28	1N	44E	ROSEBUD
S2NE	28	1N	44E	ROSEBUD
NESE	28	1N	44E	ROSEBUD

2. This claim appeared in the Interlocutory Decree for this Basin with the following remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41E DECREE ISSUED 02/28/2008. This remark provides notice that the claim was not included in the Preliminary Decree. The remark does not raise an unresolved issue which needs to be addressed. There are no proceedings required for this remark. The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The settlement filed by the parties is sufficient to contradict and overcome the prima facie claim.

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

**Water Right Number:** 42C 30137104 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

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

**Priority Date:** JANUARY 1, 1882

**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:** JOE LEG CREEK

**Source Type:** SURFACE WATER

THE SOURCE INCLUDES UNNAMED TRIBUTARIES OF JOE LEG CREEK.

**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		W2	27	1N	44E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		N2N2	28	1N	44E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3		SW	21	1N	44E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4			29	1N	44E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
5			20	1N	44E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
6			30	1N	44E	ROSEBUD
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
 7 19 1N 44E ROSEBUD  
**Period of Diversion:** JANUARY 1 TO DECEMBER 31  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
 8 25 1N 43E ROSEBUD  
**Period of Diversion:** JANUARY 1 TO DECEMBER 31  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
 9 24 1N 43E ROSEBUD  
**Period of Diversion:** JANUARY 1 TO DECEMBER 31  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
 10 E2NW 32 1N 44E ROSEBUD  
**Period of Diversion:** JANUARY 1 TO DECEMBER 31  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
 11 N2N2 31 1N 44E ROSEBUD  
**Period of Diversion:** JANUARY 1 TO DECEMBER 31  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
 12 S2 13 1N 43E ROSEBUD  
**Period of Diversion:** JANUARY 1 TO DECEMBER 31  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
 13 SENW 28 1N 44E ROSEBUD  
**Period of Diversion:** JANUARY 1 TO DECEMBER 31  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
 14 S2NE 28 1N 44E ROSEBUD  
**Period of Diversion:** JANUARY 1 TO DECEMBER 31  
**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
 15 NESE 28 1N 44E 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			W2	27	1N	44E	ROSEBUD
2			N2N2	28	1N	44E	ROSEBUD
3			SW	21	1N	44E	ROSEBUD
4				29	1N	44E	ROSEBUD
5				20	1N	44E	ROSEBUD
6				30	1N	44E	ROSEBUD
7				19	1N	44E	ROSEBUD
8				25	1N	43E	ROSEBUD
9				24	1N	43E	ROSEBUD
10			E2NW	32	1N	44E	ROSEBUD
11			N2N2	31	1N	44E	ROSEBUD
12			S2	13	1N	43E	ROSEBUD
13			SENW	28	1N	44E	ROSEBUD

14	S2NE	28	1N	44E	ROSEBUD
15	NESE	28	1N	44E	ROSEBUD