

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

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CLAIMANTS: Charles F. Carson; Nancy F. Carson

CASE 42C-0008-I-2024
42C 30145039
42C 30145040

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

Charles F. Carson and Nancy F. Carson claims 42C 30145039 and 42C 30145040 appeared in the Interlocutory Decree with issue remarks questioning the validity of each 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.

The October 15, 2024 Order Consolidating Case and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA ["October 15, 2024 Order"] set filing deadlines for the Montana Department of Natural Resources and Conservation ["DNRC"] and the claimants. On October 22, 2024 the DNRC filed a Memorandum stating that it is necessary for the claimants to contact the DNRC to resolve the issue remarks.

On January 29, 2025 a second DNRC Memorandum was filed stating the claimants did not contact to the DNRC to resolve the issue remarks and detailing the additional research it undertook to resolve the issue remarks. This Memorandum recommends dismissing each claim. The October 15, 2024 Order states:

ORDERED that the deadline is **February 28, 2025** for the claimant to file a written response to the memorandum *if it disagrees with any recommendation in the memorandum*. If no written response is filed by this deadline, the Court will conclude that the claimant agrees with the memorandum recommendations.

Nothing was filed by either claimant; therefore, the Court concludes claimants Charles F. Carson and Nancy F. Carson agree with the recommendation to dismiss claims 42C 30145039 and 42C 30145040. These documents are viewable in the Court's FullCourt Enterprise case management system.

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.

"'Existing right' or 'existing water right' means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973." Section 85-2-102(13), 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. Claim 42C 30145039 appeared in the Interlocutory Decree with the following issue remarks:

A SPECIFIC PRIORITY DATE HAS NOT BEEN IDENTIFIED. PRIORITY DATE WAS CLAIMED AS 1965-1975.

THE CLAIMED PRIORITY DATE INDICATES AN APPROPRIATION OF WATER AFTER JUNE 30, 1973.

The Interlocutory Decree states the priority date is December 31, 1975.

The second DNRC Memorandum states that its research indicates the claimed well was dug on October 9, 1980 and recommends the claim be dismissed as it is not for an existing water right.

This claim should be dismissed as it does not claim an existing water right.

2. Claim 42C 30145040 appeared in the Interlocutory Decree with the following issue remarks:

THE CLAIMED PLACE OF USE COULD NOT BE IDENTIFIED FROM DATA SUBMITTED WITH THE CLAIM.

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE WELL CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

NO PRIORITY DATE WAS CLAIMED.

The second DNRC Memorandum states that its research found no well as claimed within the place of use and point of diversion legal description and recommends the claim be dismissed as the claimed well does not exist.

This claim should be dismissed as it does not claim an existing water right.

CONCLUSION OF LAW

The information provided by the second DNRC Memorandum is sufficient to resolve the issue remarks without evidentiary hearing and sufficient to dismiss each claim. 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 dismiss these claims. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the claims are dismissed in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Charles F. Carson
Nancy F. Carson
PO Box 8
Otter, MT 59062

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

Water Right Number: 42C 30145039 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: DISMISSED

Owners: CHARLES F CARSON
PO BOX 8
OTTER, MT 59062-0008

NANCY F CARSON
PO BOX 8
OTTER, MT 59062-0008

***Priority Date:**

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 42C 30145040 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: DISMISSED

Owners: CHARLES F CARSON
PO BOX 8
OTTER, MT 59062-0008

NANCY F CARSON
PO BOX 8
OTTER, MT 59062-0008

Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.