

Montana Water Court
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FILED
03/17/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
42C-0038-I-2024
Lambert, Kathryn
4.00

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

* * * * *

CLAIMANTS: Frank E. Nelson; Jane Nelson

CASE 42C-0038-I-2024
42C 30114396

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

Frank E. Nelson and Jane Nelson claim 42C 30114396 appeared in the Interlocutory Decree with the following issue remarks:

THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS 1.5 ACRE-FEET PER YEAR.

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 claimants 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, 2025 Order”] set filing deadlines for the Montana Department of Natural Resources and Conservation [“DNRC”] and the claimants. On January 29, 2025 the DNRC Memorandum was filed making recommendations based on meeting with the claimants. 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 the claimants; therefore, the Court concludes claimants Frank E. Nelson and Jane Nelson agree with the recommendations. 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.

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 states the point of diversion and place of use legal description for this well is the SWSE section 11, T7N, R47E, CUSTER. The legal description

should be the SESWSE section 11, T7N, R47E, CUSTER. The point of diversion issue remark should be removed as addressed and resolved.

2. The Interlocutory Decree does not include a volume. The volume should be 1.00 AC-FT. The volume issue remark should be removed as addressed and resolved.

3. The Interlocutory decree also includes the following notice remark:

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

This remark does not raise an unresolved issue which needs to be addressed. The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The information provided by the DNRC Memorandum is sufficient to resolve the issue remarks without evidentiary hearing. 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 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:

Frank E. Nelson
Jane Nelson
PO Box 396
Miles City, MT 59301

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

Water Right Number: 42C 30114396 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: FRANK E NELSON
PO BOX 396
MILES CITY, MT 59301-0396

JANE NELSON
PO BOX 396
MILES CITY, MT 59301-0396

***Priority Date:** DECEMBER 31, 1930

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 8.00 GPM

Volume: 1.00 AC-FT

Source Name: GROUNDWATER

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		SESWSE	11	7N	47E	CUSTER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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			SESWSE	11	7N	47E	CUSTER