

Montana Water Court  
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**FILED**  
03/13/2025  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: Connor Cottingham  
42C-0046-I-2024  
Lambert, Kathryn  
6.00

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

\* \* \* \* \*

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

**CASE 42C-0046-I-2024**

42C 30142691

OBJECTORS: United States of America (Bureau of Land  
Management); Northern Cheyenne Tribe

42C 30142693

**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) and the Northern Cheyenne Tribe each objected to each of these claims. On February 18, 2025 the United States' Unopposed Motion To Amend was filed stating that it is unopposed and it resolves both

objections. This is a settlement document, not a motion to amend filed pursuant to section 85-2-233(6), MCA. This settlement document is 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. For claim 42C 30142691, the Interlocutory Decree states that the point of diversion and place of use legal descriptions are:

<u>GOVT LOT</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
1		3	3S	44E	ROSEBUD
2		3	3S	44E	ROSEBUD

The point of diversion and place of use legal descriptions should be:

<u>GOVT LOT</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
1	N2NE	3	3S	44E	ROSEBUD

In addition, the following clarification remark should be added as requested:

USE OF THIS RIGHT IS LIMITED TO THE FEDERAL LAND MANAGED BY THE BUREAU OF LAND MANAGEMENT NORTH AND EAST OF TONGUE RIVER WITHIN N2NE SECTION 3 TOWNSHIP 3S RANGE 44E.

2. For claim 42C 30142693, the Interlocutory Decree states that the point of diversion and place of use legal descriptions are:

<u>GOVT LOT</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
3		23	4S	43E	ROSEBUD
6		26	4S	43E	ROSEBUD
7		26	4S	43E	ROSEBUD

The point of diversion and place of use legal descriptions should be:

<u>GOVT LOT</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
3	SWNESE	23	4S	43E	ROSEBUD

6	S2NWNW	26	4S	43E	ROSEBUD
7	N2NWSW	26	4S	43E	ROSEBUD

In addition, the following clarification remark should be added as requested:

USE IS LIMITED TO THE FEDERAL LAND MANAGED BY THE BUREAU OF LAND MANAGEMENT SOUTH AND WEST OF TONGUE RIVER WITHIN SWNESE SECTION 23; SOUTH AND WEST OF TONGUE RIVER WITHIN S2NWNW SECTION 26, AND NORTH OF TONGUE RIVER WITHIN N2NWSW SECTION 26, ALL IN TOWNSHIP 4S RANGE 43E.

3. For both claims, 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. There are no proceedings required for the 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 grant the motion and 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 Electronic Mail:**

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POST DECREE

ABSTRACT OF WATER RIGHT CLAIM

TONGUE RIVER, BELOW HANGING WOMAN CREEK

BASIN 42C

Water Right Number: 42C 30142691 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)  
5001 SOUTHGATE DR  
BILLINGS, MT 59101-4669

Priority Date: MARCH 16, 1938

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 Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		N2NE	3	3S	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			N2NE	3	3S	44E	ROSEBUD

Remarks:

USE OF THIS RIGHT IS LIMITED TO THE FEDERAL LAND MANAGED BY THE BUREAU OF LAND MANAGEMENT NORTH AND EAST OF TONGUE RIVER WITHIN N2NE SECTION 3 TOWNSHIP 3S RANGE 44E.

BLM FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES BLM CLAIM ID BLM3333 AND GRAZING ALLOTMENT MT00073.

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

**Water Right Number:** 42C 30142693 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)  
5001 SOUTHGATE DR  
BILLINGS, MT 59101-4669

**Priority Date:** MARCH 16, 1938

**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 Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	3	SWNESE	23	4S	43E	ROSEBUD

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2	6	S2NWNW	26	4S	43E	ROSEBUD
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

3	7	N2NWSW	26	4S	43E	ROSEBUD
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**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		3	SWNESE	23	4S	43E	ROSEBUD
2		6	S2NWNW	26	4S	43E	ROSEBUD
3		7	N2NWSW	26	4S	43E	ROSEBUD

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**Remarks:**

USE IS LIMITED TO THE FEDERAL LAND MANAGED BY THE BUREAU OF LAND MANAGEMENT SOUTH AND WEST OF TONGUE RIVER WITHIN SWNESE SECTION 23; SOUTH AND WEST OF TONGUE RIVER WITHIN S2NWNW SECTION 26, AND NORTH OF TONGUE RIVER WITHIN N2NWSW SECTION 26, ALL IN TOWNSHIP 4S RANGE 43E.

BLM FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES BLM CLAIM ID BLM3335 AND GRAZING ALLOTMENT MT10067.