

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

40A-0168-R-2021
December 9, 2021

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MUSSELSHELL RIVER ABOVE ROUNDUP BASIN (40A)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Cooney Brothers Family Partnership; Cavan
Spencer Cooney, LLC

CASE 40A-0168-R-2021

40A 109351-00

40A 109370-00

40A 146711 -00

OBJECTOR: Cooney Brothers Family Partnership

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 be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve 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

FINDINGS OF FACT

1. Cooney Brothers Family Partnership (Cooney Brothers) is the record owner of claims 40A 109351-00 and 40A 109370-00. Cooney Brothers and Cavan Spencer Cooney, LLC are the record co-owners of claim 40A 146711-00.

2. Cooney Brothers objected to claims 40A 109351-00, 40A 109370-00, and 40A 146711-00.

3. A December 3, 2021 deadline was set for Cooney Brothers to file documentation addressing the Objections to the claims in this Case with specificity. The Order Setting Filing Deadline stated:

If documentation addressing the Objections is not filed by the deadline, this Master will conclude Cooney Brothers Family Partnership has decided not to prosecute the Objections and a Master's Report will be issued recommending the Objections be dismissed. [emphasis in original]

The following language was included in the September 2, 2021 Order Setting Filing Deadline:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

4. This Master began drafting this Master's Report on December 4, 2021. The abstracts were sent for correction on the morning of December 6, 2021.

5. On December 6, 2021, Colleen A. Coyle, counsel Cooney Brothers, filed a Filing to Address Issue Remarks and Objections. The December 6, 2021 filing is late.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address any issue remarks that appear on claims as well as all objections claims receive. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is *prima facie* proof of its content. Section 85-2-227, MCA. This *prima facie* validity may be

overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just. The Objector failed to meet the December 3, 2021 deadline set in the Order Consolidating and Order Setting Filing Deadline.

RECOMMENDATIONS

1. Cooney Brothers' Objections to claims 40A 109351-00, 40A 109370-00, and 40A 146711-00 should be dismissed.
2. No changes should be made to the elements of the claims in this Case.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm the terms of the claims in the DNRC's water rights database.

Anika M. Stern
Senior Water Master

Service Via Electronic Mail:

Colleen Coyle
Coyle Law Firm, PLLC
PO Box 1326
Bozeman, MT 59771
(406) 551-4868
(406) 570-2740
colleen@coylelawmt.com

Service via USPS Mail:

Cavan Spencer Cooney, LLC
PO Box 626
Harlowton, MT 59036-0626

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: **40A 109351-00 STATEMENT OF CLAIM**

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: COONEY BROTHERS FAMILY PARTNERSHIP
PO BOX 1905
HARLOWTON, MT 59036 1905

Priority Date: JUNE 25, 1920

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 6.00 GPM

Volume: THIS 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: SPRING, UNNAMED TRIBUTARY OF SPRING CREEK

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		SESENW	28	6N	16E	WHEATLAND

Period of Diversion: APRIL 1 TO DECEMBER 31

Diversion Means: FLOWING

Period of Use: APRIL 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			SESENW	28	6N	16E	WHEATLAND

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: **40A 109370-00 STATEMENT OF CLAIM**

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: COONEY BROTHERS FAMILY PARTNERSHIP
PO BOX 1905
HARLOWTON, MT 59036 1905

Priority Date: APRIL 29, 1939

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 6.00 GPM

Volume: THIS 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: SPRING, UNNAMED TRIBUTARY OF SPRING CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESE		12	5N	15E SWEET GRASS

Period of Diversion: APRIL 1 TO DECEMBER 31

Diversion Means: FLOWING

Period of Use: APRIL 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSESE		12	5N	15E SWEET GRASS

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 146711-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: COONEY BROTHERS FAMILY PARTNERSHIP
PO BOX 1905
HARLOWTON, MT 59036 1905

COONEY, CAVAN SPENCER LLC
PO BOX 626
HARLOWTON, MT 59036 0626

Priority Date: DECEMBER 31, 1935

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 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: SPRING CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		W2NW	4	5N	16E	SWEET GRASS
	Period of Diversion:	JANUARY 1 TO DECEMBER 31				
	Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
2			5	5N	16E	SWEET GRASS
	Period of Diversion:	JANUARY 1 TO DECEMBER 31				
	Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
3		NW	8	5N	16E	SWEET GRASS
	Period of Diversion:	JANUARY 1 TO DECEMBER 31				
	Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
4		W2	27	6N	16E	WHEATLAND
	Period of Diversion:	JANUARY 1 TO DECEMBER 31				
	Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				

5 SE 28 6N 16E WHEATLAND

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

6 33 6N 16E WHEATLAND

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</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			W2NW	4	5N	16E	SWEET GRASS
2				5	5N	16E	SWEET GRASS
3			NW	8	5N	16E	SWEET GRASS
4			W2	27	6N	16E	WHEATLAND
5			SE	28	6N	16E	WHEATLAND
6				33	6N	16E	WHEATLAND