

Montana Water Court
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40A-0169-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

OBJECTOR: Cooney Brothers Family Partnership

CASE 40A-0169-R-2021

- 40A 109350-00
- 40A 109358-00
- 40A 109363-00
- 40A 109364-00
- 40A 113105-00
- 40A 113119-00
- 40A 113126-00
- 40A 113131-00
- 40A 146710-00

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 or claims 40A 109350-00 and 40A 113105-00. Cavan Spencer Cooney, LLC is the record owner of claims 40A 109358-00, 40A 109363-00, 40A 109364-00 40A 113119-00, 40A 113126-00, 40A 113131-00, and 40A 146710-00.

2. Claims 40A 109350-00, 40A 109358-00, 40A 109363-00, 40A 109364-00, 40A 113105-00, 40A 113126-00, and 40A 113131-00 were decreed without DNRC issue remarks.

3. Stock claim 40A 113119-00 was decreed with the following place of use:

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		12		4	6N	16E	WHEATLAND

and the following issue remark:

THE PLACE OF USE APPEARS TO BE INCORRECT. THE PLACE OF USE APPEARS TO BE IN GOV'T LOT 12 IN THE SWNW SEC 4 TWP 6N RGE 16E WHEATLAND CO.

The remark suggests the following change should be made to claim 40A 113119-00:

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		12	SWNW	4	6N	16E	WHEATLAND

Notice-type issue remarks were decreed on claim 40A 113119-00, 40A 146710-00.

4. Cooney Brothers objected to claims 40A 109350-00, 40A 109358-00, 40A 109363-00, 40A 109364-00, 40A 113105-00, 40A 113119-00, 40A 113126-00, 40A 113131-00 and 40A 146710-00.

5. An Order was issued setting a deadline for Cavan Spencer Cooney LLC to file a statement agreeing or disagreeing that claim 40A 113119-00 be modified as described above by December 3, 2021. The Order indicated that if nothing was filed by the deadline, this Master would conclude Cavan Spencer Cooney LLC agrees the proposed change should be made to the claim, resolving the issue remark. A deadline

was also 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.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address 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.
4. The point of diversion issue remark (40A 113119-00) and source issue remark (40A 146710-00) decreed on certain claims are notice-type issue remarks. As the objections have not been prosecuted, no further proceedings are required.

RECOMMENDATIONS

1. Cooney Brothers' Objections to claims 40A 109350-00, 40A 109358-00, 40A 109363-00, 40A 109364-00, 40A 113105-00, 40A 113119-00, 40A 113126-00, 40A 113131-00, and 40A 146710-00 should be dismissed.

2. The following change should be made to claim 40A 113119-00:

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		12	SWNW	4	6N	16E	WHEATLAND

3. The issue remarks should be removed from claims 40A 113119-00 and 40A 146710-00.

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

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Service via USPS Mail:

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Harlowton, MT 59036-0626

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

Water Right Number: 40A 109350-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

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

Priority Date: SEPTEMBER 17, 1906

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 5.00 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 MUD 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		NENWSE	8	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			NENWSE	8	6N	16E	WHEATLAND

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

Water Right Number: 40A 109358-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

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

Priority Date: JANUARY 6, 1964

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 5.00 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 FORK OF MUD 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		NENESW	11	6N	16E	WHEATLAND

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: FLOWING

Period of Use: MAY 1 TO OCTOBER 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			NENESW	11	6N	16E	WHEATLAND

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

Water Right Number: 40A 109363-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

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

Priority Date: NOVEMBER 25, 1914

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 FORK OF MUD 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		SWSENE	10	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			SWSENE	10	6N	16E	WHEATLAND

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

Water Right Number: 40A 109364-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

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

Priority Date: OCTOBER 25, 1899

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 MUD 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		NWNESW	9	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			NWNESW	9	6N	16E	WHEATLAND

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

Water Right Number: 40A 113105-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

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

Priority Date: FEBRUARY 14, 1901

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 MUD 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		SEWNE	13	6N	15E	WHEATLAND

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

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			SEWNE	13	6N	15E	WHEATLAND

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

Water Right Number: 40A 113119-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

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

Priority Date: DECEMBER 31, 1949

Type of Historical Right: FILED

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 FORK OF MUD 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	12	SWNW	4	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		12	SWNW	4	6N	16E	WHEATLAND

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

Water Right Number: 40A 113126-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

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

Priority Date: APRIL 12, 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 FORK OF MUD 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		NWNESW	4	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			NWNESW	4	6N	16E	WHEATLAND

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

Water Right Number: 40A 113131-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

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

Priority Date: DECEMBER 1, 1908

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 8.00 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 MUD 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	16		5	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		16		5	6N	16E	WHEATLAND

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

Water Right Number: 40A 146710-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: 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: UNNAMED TRIBUTARY OF MUD CREEK

Source Type: SURFACE WATER

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		SWSE	4	6N	16E	WHEATLAND
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		W2	4	6N	16E	WHEATLAND
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		N2	5	6N	16E	WHEATLAND
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		N2	10	6N	16E	WHEATLAND
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		N2SE	10	6N	16E	WHEATLAND
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

6 S2 11 6N 16E WHEATLAND

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

7 S2 12 6N 16E WHEATLAND

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

8 N2NE 13 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 Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSE	4	6N	16E	WHEATLAND
2			W2	4	6N	16E	WHEATLAND
3			N2	5	6N	16E	WHEATLAND
4			N2	10	6N	16E	WHEATLAND
5			N2SE	10	6N	16E	WHEATLAND
6			S2	11	6N	16E	WHEATLAND
7			S2	12	6N	16E	WHEATLAND
8			N2NE	13	6N	16E	WHEATLAND