

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

\* \* \* \* \*

CLAIMANTS: Jesse T. Merritt; Cooney Brothers Family  
Partnership

OBJECTOR: Cooney Brothers Family Partnership

**CASE 40A-0170-R-2021**

40A 109345-00  
40A 109349-00  
40A 109359-00  
40A 109371-00  
40A 113121-00  
40A 113122-00  
40A 113128-00  
40A 113139-00

**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. Jesse T. Merritt is the record owner of claims 40A 109345-00 and 40A 113122-00. Cooney Brothers Family Partnership (Cooney Brothers) is the record owner of claims 40A 109349-00, 40A 109359-00, 40A 109371-00, and 40A 113128-00. Jesse T. Merritt and Cooney Brothers are the record-co-owners of claims 40A 113121-00 and 40A 113139-00.

2. Claims 40A 109345-00, 40A 109349-00, 40A 109359-00, 40A 109371-00, 40A 113121-00, 40A 113122-00, and 40A 113128-00 were decreed without DNRC issue remarks. Stock claim 40A 113139-00 was decreed with an issue remark indicating the means of diversion should be standardized as follows:

Point of Diversion and Means of Diversion:							
ID	Govt Lot	Qtr	Sec	Trp	Rge	County	
1		SW	2	5N	15E	SWEET GRASS	
*Period of Diversion:		JANUARY 1 TO DECEMBER 31					
Diversion Means:		<del>DEVELOPED SPRING</del> LIVESTOCK DIRECT FROM SOURCE					
2		NW	11	5N	15E	SWEET GRASS	
*Period of Diversion:		JANUARY 1 TO DECEMBER 31					
Diversion Means:		<del>DEVELOPED SPRING</del> LIVESTOCK DIRECT FROM SOURCE					

3. Cooney Brothers objected to claims 40A 109345-00, 40A 109349-00, 40A 109359-00, 40A 109371-00, 40A 113121-00, 40A 113122-00, 40A 113128-00, and 40A 113139-00.

4. A 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 3, 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.

### RECOMMENDATIONS

1. Cooney Brothers' Objections to claims 40A 109345-00, 40A 109349-00, 40A 109359-00, 40A 109371-00, 40A 113121-00, 40A 113122-00, 40A 113128-00, and 40A 113139-00 should be dismissed.

2. The means of diversion for claim 40A 113139-00 should be changed as follows:

**Point of Diversion and Means of Diversion:**

ID	Govt Lot	Qtr	Sec	Typ	Rge	County
1		SW	2	5N	15E	SWEET GRASS
<b>*Period of Diversion:</b>		JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>		<del>DEVELOPED SPRING</del> <span style="border: 1px solid red; padding: 2px;">LIVESTOCK DIRECT FROM SOURCE</span>				
2		NW	11	5N	15E	SWEET GRASS
<b>*Period of Diversion:</b>		JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>		<del>DEVELOPED SPRING</del> <span style="border: 1px solid red; padding: 2px;">LIVESTOCK DIRECT FROM SOURCE</span>				

The issue remark should be removed from claim 40A 113139-00.

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.

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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](mailto:colleen@coylelawmt.com)

**Service via USPS Mail:**

Jesse T. Merritt  
104 Mountain Brook Rd  
Livingston, MT 59047-8941

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

**Water Right Number:** **40A 109345-00** STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** JESSE T MERRITT  
104 MOUNTAIN BROOK RD  
LIVINGSTON, MT 59047 8941

**Priority Date:** MAY 1, 1908

**Type of Historical Right:** FILED

**\*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.

**Climatic Area:** 3 - MODERATE

**\*Source Name:** GOUGLEY CREEK

**Source Type:** SURFACE WATER

**\*Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Otr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NW	2	5N	15E	SWEET GRASS

**\*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>Otr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NW	2	5N	15E	SWEET GRASS

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

**Water Right Number:** **40A 109349-00 STATEMENT OF CLAIM**

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

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

**Priority Date:** MAY 2, 1898

**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 LEBO 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		SWSENW		11	7N	15E 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			SWSENW	11	7N	15E	WHEATLAND

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

**Water Right Number:** **40A 109359-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

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

**Priority Date:** MARCH 14, 1898

**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, UNNAMED TRIBUTARY OF MUSSELSHELL RIVER

**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		SESWNE	33	8N	15E	WHEATLAND

**Period of Diversion:** APRIL 1 TO DECEMBER 1

**Diversion Means:** FLOWING

**Period of Use:** APRIL 1 TO DECEMBER 1

**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			SESWNE	33	8N	15E	WHEATLAND

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

**Water Right Number:** **40A 109371-00 STATEMENT OF CLAIM**

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

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

**Priority Date:** MARCH 14, 1903

**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 GOUGLEY 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		SWSWSW		1	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			SWSWSW	1	5N	15E	SWEET GRASS

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

**Water Right Number:** **40A 113121-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**  
JESSE T MERRITT  
104 MOUNTAIN BROOK RD  
LIVINGSTON, MT 59047 8941

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

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT  
MAY BE SPLIT INTO SEPARATE WATER RIGHTS UPON REQUEST OF THE  
OWNERS.

**Priority Date:** APRIL 4, 1910

**Type of Historical Right:** FILED

**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:** GOUGLEY 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		W2	2	5N	15E	SWEET GRASS

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

**Diversion Means:** FLOWING

2	N2	11	5N	15E	SWEET GRASS
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**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>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			W2	2	5N	15E	SWEET GRASS
2			N2	11	5N	15E	SWEET GRASS

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

**Water Right Number:** **40A 113122-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** JESSE T MERRITT  
104 MOUNTAIN BROOK RD  
LIVINGSTON, MT 59047 8941

**Priority Date:** MAY 1, 1908

**Type of Historical Right:** FILED

**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:** GOUGLEY 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		SWSENW	2	5N	15E	SWEET GRASS

**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>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSENW	2	5N	15E	SWEET GRASS

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

**Water Right Number:** **40A 113128-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

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

**Priority Date:** NOVEMBER 21, 1914

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 7.00 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 LEBO 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		NENENW	9	7N	15E	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>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENENW	9	7N	15E	WHEATLAND

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

**Water Right Number:** **40A 113139-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**  
JESSE T MERRITT  
104 MOUNTAIN BROOK RD  
LIVINGSTON, MT 59047 8941

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

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT  
MAY BE SPLIT INTO SEPARATE WATER RIGHTS UPON REQUEST OF THE  
OWNERS.

**Priority Date:** JUNE 1, 1910

**Type of Historical Right:** FILED

**\*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.

**Climatic Area:** 3 - MODERATE

**Source Name:** GOUGLEY 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		SW	2	5N	15E	SWEET GRASS

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		NW	11	5N	15E	SWEET GRASS
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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>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SW	2	5N	15E	SWEET GRASS
2			NW	11	5N	15E	SWEET GRASS