

Montana Water Court
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40A-0171-R-2021

September 16, 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; Leta
Cooney Nash; Rachael L Nash

CASE 40A-0171-R-2021
40A 113138-00
40A 113141-00
40A 113142-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully. You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within 10 days of the date of the Master's Report. Because this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

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 this 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. Claims 40A 113138-00 and 40A 113141-00 were decreed with the following DNRC issue remark:

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

Claim 40A 113142-00 was decreed with the following issue remark:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON LEBO CREEK WITH A PRIORITY DATE PREDATING CASE NO. 1591, MEAGHER COUNTY.

2. No objections or notices or intent to appear were filed.

PRINCIPLES AND CONCLUSIONS OF LAW

1. 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.

2. With respect to the priority date of claim 40A 113142-00, the only evidence before the Court is the existence of Case 1591 and the resulting issue remark that appeared on the claim. While historical decrees provide some evidence of existing water rights on a given source, they are not conclusive. Decrees were often the result of a specific controversy between water users; thus, rights were adjudicated on a piecemeal basis by the district courts. Further, decrees were usually limited in scope, and often multiple decrees were issued on the same stream. *See Albert Stone, Are There Any Adjudicated Streams in Montana?* 19 Mont. L. Rev. 19 (1957).

In short, there are numerous reasons why claim 40A 113142-00 may not have appeared in the earlier District Court decree, but objectors bear the burden of establishing that the priority date should be something other than what was claimed. In this Case, the *prima facie* proof of priority date has not been overcome.

RECOMMENDATION

1. The issue remarks should be removed from the claims with no changes to the elements of the claims.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended changes have been made in the state's centralized record system.

Anika M. Stern
Senior Water Master

Service via USPS Mail:

Cooney Brothers Family Partnership
PO Box 1905
Harlowton, MT 59036-1905

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

Leta Cooney Nash
PO Box 267
Harlowton, MT 59036-0267

Rachael L Nash
PO Box 267
Harlowton, MT 59036-0267

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

Water Right Number: **40A 113138-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
LETA COONEY NASH
PO BOX 267
HARLOWTON, MT 59036 0267

RACHAEL L NASH
PO BOX 267
HARLOWTON, MT 59036 0267

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

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

Priority Date: MAY 15, 1884

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.00 CFS

Volume: 863.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 242.00

Source Name: FISH CREEK

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		SWSESW	27	6N	15E	WHEATLAND

Period of Diversion: APRIL 15 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO OCTOBER 1

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	30.00		S2SE	23	6N	15E	WHEATLAND
2	31.00		NW	25	6N	15E	WHEATLAND
3	162.00			26	6N	15E	WHEATLAND
4	19.00		S2SE	27	6N	15E	WHEATLAND
Total:	242.00						

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

Water Right Number: **40A 113141-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

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

Priority Date: MAY 15, 1884

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.00 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 78.00

Source Name: FISH CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SWSESW	27	6N	15E	WHEATLAND

Period of Diversion: APRIL 15 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO OCTOBER 1

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	37.00		N2NE	34	6N	15E	WHEATLAND
2	41.00		N2NW	35	6N	15E	WHEATLAND
Total:	78.00						

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

Water Right Number: 40A 113142-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

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

Priority Date: MAY 14, 1882

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 3.00 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 215.00

***Source Name:** LEBO CREEK

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		NWNENE	15	7N	15E	WHEATLAND
	Period of Diversion:	APRIL 15 TO OCTOBER 1				
	Diversion Means:	HEADGATE				
2		NWSWNE	15	7N	15E	WHEATLAND
	Period of Diversion:	APRIL 15 TO OCTOBER 1				
	Diversion Means:	HEADGATE				
3		SWSENW	15	7N	15E	WHEATLAND
	Period of Diversion:	APRIL 15 TO OCTOBER 1				
	Diversion Means:	HEADGATE				
4		NWNESE	16	7N	15E	WHEATLAND
	Period of Diversion:	APRIL 15 TO OCTOBER 1				
	Diversion Means:	HEADGATE				
	Period of Use:	APRIL 15 TO OCTOBER 1				

***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	11.00		NE	11	7N	15E	WHEATLAND
2	31.00		SE	11	7N	15E	WHEATLAND
3	56.00		SW	11	7N	15E	WHEATLAND

4	10.00	NWNW	14	7N	15E	WHEATLAND
5	37.00	NE	15	7N	15E	WHEATLAND
6	70.00	NW	15	7N	15E	WHEATLAND
Total:	215.00					

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

113132-00

113133-00

113135-00

113136-00

113142-00