

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

IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
BIG DRY CREEK - BASIN (40D)  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANTS: James W. Gibbs; Karen Q. Gibbs; Lee L. Gibbs; Michelle Gibbs; Philip J. Gibbs; Mary Lynn Wittmayer

OBJECTOR: Lee L. Gibbs

**CASE 40D-0009-R-2023**

40D 101345-00

**40D 30160052**

**40D 30160053**

**40D 30160054**

**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, conclusions 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

The claim in this case appeared in the Preliminary Decree for Basin 40D with Montana Department of Natural Resources and Conservation (DNRC) issue remarks. The claim received an objection from Claimant Lee Gibbs. The Case was consolidated into Case 40D-0009-R-2023.

### FINDINGS OF FACT#

1. A Status Conference took place June 1, 2023, by telephone conference call. Water Master Julia Nordlund presided. All parties were present except for James Gibbs who was unable to make the call. Lee Gibbs stated James gave permission to speak on James' behalf.

2. Lee Gibbs stated the reason for his objection was that the point of diversion on this direct from source stock claim should match the place of use including POD ID2 which should be Sec. 22, not Sec. 15.

3. The parties initially requested to split this claim on March 24, 2020. At the status conference, parties stated they no longer wished to pursue the split. However, on June 21, 2023, Lee and Michelle Gibbs submitted evidence to support the requested changes to the points of diversion and stated they do wish to split the claim.

4. Based on the information submitted in the March 24, 2020 split request and the June 21, 2023 filing, water right claims 40D 30160052, 40D 30160053, and 40D 30160054 should be created from parent claim 40D 101345-00 as follows:

5. The elements for claim 40D 101345-00 that changed after the split are:

OWNER: Lee Gibbs and Michelle Gibbs

PLACE OF USE/POINT OF DIVERSION:

<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			W2	15	18N	42E	GARFIELD
2			N2	22 <del>15</del>	18N	42E	GARFIELD
3			SW	23	18N	42E	GARFIELD
4				26	18N	42E	GARFIELD
5				25	18N	42E	GARFIELD
6				35	18N	42E	GARFIELD
7			N2	4	17N	42E	GARFIELD
8			SW	17	17N	43E	GARFIELD
9			SW	21	17N	43E	GARFIELD

6. The elements of new claim 40D 30160052 are the exact same as parent claim 40D 101345-00 except the following elements:

OWNER: Karen Gibbs and Philip Gibbs

PLACE OF USE/POINT OF DIVERSION:

<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			W2	15	18N	42E	GARFIELD
2			N2	15	18N	42E	GARFIELD
3			SW	23	18N	42E	GARFIELD
4				26	18N	42E	GARFIELD
5				25	18N	42E	GARFIELD
6			N2	35	18N	42E	GARFIELD
7			N2	4	17N	42E	GARFIELD
8			SW	17	17N	43E	GARFIELD
9			SW	21	17N	43E	GARFIELD

7. The elements of new claim 40D 30160053 are the exact same as parent claim 40D 101345-00 except the following elements:

OWNER: James Gibbs

PLACE OF USE/POINT OF DIVERSION:

<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			W2	15	18N	42E	GARFIELD
2			N2	15	18N	42E	GARFIELD
3			SW	23	18N	42E	GARFIELD
4				26	18N	42E	GARFIELD
5				25	18N	42E	GARFIELD
6			SE	35	18N	42E	GARFIELD
7			N2	1	17N	42E	GARFIELD
8			SW	17	17N	43E	GARFIELD
9			SW	21	17N	43E	GARFIELD

8. The elements of new claim 40D 30160054 are the exact same as parent claim 40D 101345-00 except the following elements:

OWNER: Mary Lynn Wittmayer

<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			W2	15	18N	42E	GARFIELD
2			N2	15	18N	42E	GARFIELD
3			SW	23	18N	42E	GARFIELD
4				26	18N	42E	GARFIELD
5				25	18N	42E	GARFIELD
6				35	18N	42E	GARFIELD
7			N2	1	17N	42E	GARFIELD
8			SW	17	17N	43E	GARFIELD
9			SW	21	17N	43E	GARFIELD

### CONCLUSIONS OF LAW

1. The Montana Water Court has jurisdiction over all matters relating to the determination of existing water rights and may consider any matter within the Court's jurisdiction on its own motion, or on the motion of an interested party. Section 3-7-224, MCA.

2. Montana law allows claimants to amend their statements of claim, and objectors to amend their timely filed objections after the objection period in a basin has closed. Motions to amend a claim or objection are governed by Section 85-2-233(6), MCA:

(6) After the issuance of a temporary preliminary decree or preliminary decree,

notice of any motion to amend a statement of claim or a timely filed objection that may adversely affect other water rights must be published for 3 consecutive weeks in two newspapers of general circulation in the basin where the statement of claim or objection was filed. The notice must specify that any response or objection to the proposed amendment must be filed within 45 days of the date of the last notice. The water judge may order any additional notice of the motion as the water judge considers necessary. The cost of notice required pursuant to this subsection must be borne by the moving party.

3. The splitting of the above claim does not constitute an increase to any of the claims' elements. The split and changes to point of diversion and place of use only serves to reflect, more accurately, the claim. As a result, the notice requirements found in Section 85-2-233(6), MCA do not apply.

4. A properly filed Statement of Claim for Existing Water Right is *prima facie* proof of its content. Section 85-2-227, MCA. This *prima facie* proof may be contradicted and overcome by other evidence that proves an element of the *prima facie* proof is incorrect. This is the standard of proof for every assertion that a claim is incorrect including claimants objecting to their own claims. Rule 19, W.R.Adj.R.

5. The parties agree that these changes resolve all objections.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above to correct the Preliminary Decree for this Basin.

New Post Decree Abstracts of Water Right Claims 40D 30160052, 40D 30160053, and 40D 30160054 shall be created. All updated Post Decree Abstracts of Water Right Claims are served with this Report to confirm the recommended changes have been made in the state's centralized water right record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

James W. Gibbs  
3032 MT Highway 528  
Fort Peck, 59223-7004

Philip J. Gibbs  
Karen Q. Gibbs  
PO Box 94  
Jordan, MT 59337-0094

Lee L. Gibbs  
Michelle Gibbs  
2913 Horse Creek Rd  
Circle, MT 59215

Mary Lynn Wittmayer  
2210 County Rd 261  
Glendive, MT 59330-9441

\\JUDHLNSRV-DATA\\Share\\JUDGALH2OSRV (Datavol)\\Share\\WC-BASIN FOLDERS\\40D PD\\40D Cases\\40D-0009-R-2023\\40d-9 split MR 9-21-23  
ld.docx

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**BIG DRY CREEK**  
**BASIN 40D**

**Water Right Number:** **40D 101345-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**  
LEE L GIBBS  
2913 HORSE CREEK RD  
CIRCLE, MT 59215

MICHELLE GIBBS  
2913 HORSE CREEK RD  
CIRCLE, MT 59215

**Priority Date:** OCTOBER 1, 1884

**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:** LITTLE DRY CREEK

**Source Type:** SURFACE WATER

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

<b>ID</b>	<b>Govt Lot</b>	<b>Qtr</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1		W2	15	18N	42E	GARFIELD

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		N2	22	18N	42E	GARFIELD
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

3		SW	23	18N	42E	GARFIELD
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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:**

<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>	<b>Qtr</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1			W2	15	18N	42E	GARFIELD
2			N2	22	18N	42E	GARFIELD
3			SW	23	18N	42E	GARFIELD

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**Remarks:**

THE SPLIT CLAIMS LISTED FOLLOWING THIS STATEMENT WERE AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM. 40D 30160052, 40D 30160053, 40D 30160054.

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**BIG DRY CREEK**  
**BASIN 40D**

**Water Right Number:** **40D 30160052** STATEMENT OF CLAIM

**Version:** 1 -- ORIGINAL RIGHT

**Status:** ACTIVE

**Owners:**  
PHILIP J GIBBS  
PO BOX 94  
JORDAN, MT 59337

KAREN Q GIBBS  
PO BOX 94  
JORDAN, MT 59337 0094

**Priority Date:** OCTOBER 1, 1884

**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:** LITTLE DRY CREEK

**Source Type:** SURFACE WATER

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

<b>ID</b>	<b>Govt Lot</b>	<b>Otr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1			26	18N	42E	GARFIELD

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		25	18N	42E	GARFIELD
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

3		N2	35	18N	42E	GARFIELD
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Place of Use:**

<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>	<b>Otr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1				26	18N	42E	GARFIELD
2				25	18N	42E	GARFIELD
3			N2	35	18N	42E	GARFIELD

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**Remarks:**

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 40D 101345-00.

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**BIG DRY CREEK**  
**BASIN 40D**

**Water Right Number:** **40D 30160053** STATEMENT OF CLAIM

**Version:** 1 -- ORIGINAL RIGHT

**Status:** ACTIVE

**Owners:**  
JAMES W GIBBS  
3032 MT HIGHWAY 528  
FORT PECK, MT 59223 7004

**Priority Date:** OCTOBER 1, 1884

**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 WATER 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:** LITTLE DRY 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		SE	35	18N	42E	GARFIELD

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		N2	1	17N	42E	GARFIELD
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

3		SW	17	17N	43E	GARFIELD
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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			SE	35	18N	42E	GARFIELD
2			N2	1	17N	42E	GARFIELD
3			SW	17	17N	43E	GARFIELD

**Remarks:**

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 40D 101345-00.

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**BIG DRY CREEK**  
**BASIN 40D**

**Water Right Number:** **40D 30160054** STATEMENT OF CLAIM

**Version:** 1 -- ORIGINAL RIGHT

**Status:** ACTIVE

**Owners:**  
MARY LYNN WITTMAYER  
2210 COUNTY RD 261  
GLENDALE, MT 59330 9441

**Priority Date:** OCTOBER 1, 1884

**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.

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**Source Name:** LITTLE DRY 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		SW	21	17N	43E	GARFIELD

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**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	21	17N	43E	GARFIELD

**Remarks:**

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 40D 101345-00.