

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
JUDITH RIVER BASIN (41S)
PRELIMINARY DECREE

CLAIMANT: Delva B. Gibson

CASE 41S-0921-R-2024

41S 119086-00

41S 119087-00

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, 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

FINDINGS OF FACT

1. Delva B. Gibson (Gibson) is the record owner of claims 41S 119086-00 and 41S 119087-00.
2. Claims 41S 119086-00 and 41S 119087-00 were decreed with DNRC issue remarks:

Claim 41S 119086-00:

- THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

Claim 41S 119087-00:

- THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS 83.00 ACRES. THE DNRC'S RE-EXAMINATION WAS OF THESE ORIGINAL CLAIMED ACRES.
- THE CLAIMED MEANS OF DIVERSION CANNOT BE IDENTIFIED FROM AVAILABLE DATA.
- FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
- THE FERGUS COUNTY WATER RESOURCES SURVEY (1970) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- USDA AERIAL PHOTOGRAPH NO(S). 30027-178-216 , DATED 09/25/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.
- THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

3. Gibson was ordered to meet with a DNRC employee to address the unresolved issue remarks.

4. DNRC Water Resource Specialist Carli Bluhm filed a Memorandum stating the Claimant failed to contact the DNRC. (Doc.¹ 4.00). Ms. Bluhm indicated that she reviewed aerial photos and the Fergus County Water Resource Survey to prepare the Memorandum.

5. **41S 119086-00:** Ms. Bluhm explained that based on the information available to her, including the claimant map in the file, she could identify the point of diversion in the SENWNW of Section 14, Township 16 North, Range 19 East. Ms. Bluhm recommended the following modification to claim 41S 119086-00 to resolve the issue remark:

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	SENWNW	NWSE	14	16N	19E	FERGUS

6. **41S 119087-00:** Ms. Bluhm indicated that she could not confirm historical irrigation for claim 41S 119087-00 and recommended the claim be dismissed.

7. An Order was issued to determine if Claimant Delva B. Gibson agreed or disagreed with the recommendations made by Ms. Bluhm. (Doc. 5.00). The Order indicated that if nothing were filed by the deadline, this Water Master would conclude Gibson agreed with the recommended modification for claim 41S 119086-00 and the

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

proposed dismissal for claim 41S 119087-00. The following language was included in the Order:

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.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks decreed on a claim. Section 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. Claim 41S 119086-00 should be modified as follows:
Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	SENWNW	NWSE	14	18N	19E	FERGUS
2. Claim 41S 119087-00 should be dismissed.
3. The multiple use remark should be removed from claim 41S 119086-00, as dismissal of multiple use claim 41S 119087-00 is recommended in this Master's Report.
4. The issue remarks should be removed from claim 41S 119086-00. Abstracts are attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Delva B. Gibson
1387 New Year Gulch
Lewistown, MT 59457

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S**

Water Right Number: 41S 119086-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DELVA B GIBSON
1387 NEW YEAR GULCH
LEWISTOWN, MT 59457

Priority Date: AUGUST 29, 1924

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 30.00 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 MUSKRAT 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		SENWNW	14	16N	19E	FERGUS

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			SESE	10	16N	19E	FERGUS
2			NENE	15	16N	19E	FERGUS
3			NWNW	14	16N	19E	FERGUS

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S**

Water Right Number: 41S 119087-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: DELVA B GIBSON
1387 NEW YEAR GULCH
LEWISTOWN, MT 59457

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: SPRING, UNNAMED TRIBUTARY OF MUSKRAT CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.