

Montana Water Court
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FILED
06/25/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41G-0024-R-2019
Weisz, Madeleine
44.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Highland Gold Properties Inc.; Dave Stratton;
Mark E. Stratton

OBJECTOR: United States of America (USDA Forest Service)

COUNTEROBJECTORS: Highland Gold Properties Inc.; Dave
Stratton; Mark E. Stratton

CASE 41G-0024-R-2019

41G 95775-00
41G 95776-00
41G 106718-00
41G 106719-00
41G 106720-00
41G 106721-00
41G 106722-00

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. Case 41G-0024-R-2019 was consolidated to address the issue remarks and the objections related to the claims in this case.

2. A lengthy settlement period was provided. Senior Water Master Melissa Lockman was appointed Mediator to facilitate settlement discussions.

3. On May 13, 2025 the parties filed a Stipulation to Resolve Objections. In the Stipulation, the parties agree that claims 41G 106718-00, 41G 106719-00, and 41G 106720-00 should be dismissed from the adjudication. The Stipulation requests modifications to claims 41G 95775-00, 41G 95776-00, 41G 106721-00, and 41G 106722-00 to address the objections.

Claim 41G 95775-00

4. The parties request that an information remark is added to claim 41G 95775-00 stating, "the place of use is limited to MS 395 and MS 8634."

Claims 41G 95776-00 and 41G 106721-00

5. The parties request that an information remark is added to claims 41G 95776-00 and 41G 106721-00 stating, "the use of water appears to be largely non-consumptive."

Claim 41G 106722-00

6. The parties request that an information remark is added to claim 41G 106722-00 stating, "the use of this water appears to be largely non-consumptive."

7. In addition, the parties request that the place of use be slightly refined as follows:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u> <u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		<u>S2SW</u> S2	35	1N	7W	SILVER BOW
2		<u>N2SE</u>	34	1N	7W	SILVER BOW
<u>3</u>		<u>N2SE</u>	<u>35</u>	<u>1N</u>	<u>7W</u>	<u>SILVER BOW</u>

Issue Remarks

8. Claims 41G 95775-00, 41G 95776-00, and 41G 106721-00 appeared in the 41G Preliminary Decree with issue remarks. Each of the claims received a remark noting that either the ditch name or the means of diversion were modified during claims examination. The remarks state that if no objections are received to those elements, the remarks would be removed. No objections were filed to contest the modifications made by DNRC during claims examination. The issue remarks have served their notice purpose and should be removed from the claim abstracts as resolved.

9. Claim 41G 95775-00 received an additional issue remark indicating the priority date may be questionable because the claim is for a use right on Fish Creek with a priority date predating Case No. 2221, Jefferson County. There are no outstanding objections to claim 41G 95775-00 regarding priority date. There is no evidence before the Court to indicate that the claimed priority date is inaccurate. The issue remark does not overcome the prima facie status of the claim and should be removed from the claim abstract.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. The claimant of a water right claim may waive the advantage of § 85-2-227, MCA by requesting a reduction or limitation of an element of a water right claim. The water court may accept a claimant's requested reduction or limitation without further presentation of evidence unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R. The requested addition of the information remarks serves to limit the place of use for claims 41G 95775-00 and 41G 106722-00 and to explain that the water use appears to be largely non-consumptive. The requested information remarks may be added to the claims without further presentation of additional evidence.

3. Settlement agreements are subject to review and approval of the Water Court. Rule 17(a), W.R.Adj.R. The settlement documentation in this Case should be accepted by the Court.

4. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA. The issue remarks appearing on the claims in this case have been addressed above and may be removed from the claim abstracts.

RECOMMENDATIONS

1. Claims 41G 106718-00, 41G 106719-00, and 41G 106720-00 should be dismissed from the adjudication.

2. Claims 41G 95775-00, 41G 95776-00, 41G 106721-00, and 41G 106722-00 should be modified as provided above.

3. The issue remarks should be removed from claims 41G 95775-00, 41G 95776-00, and 41G 106721-00.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Highland Gold Properties Inc.
1502 Highway 2 West
Whitehall, MT 59759

Service via Electronic Mail:

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Dave Stratton
Mark E. Stratton
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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G

Water Right Number: 41G 95775-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: DAVE STRATTON
2205 OREGON AVE
BUTTE, MT 59701-5848

MARK R STRATTON
2205 OREGON AVE
BUTTE, MT 59701-5848

HIGHLAND GOLD PROPERTIES INC
1502 HIGHWAY 2 WEST
WHITEHALL, MT 59759-9788

Priority Date: DECEMBER 31, 1866
Type of Historical Right: USE
Purpose (Use): MINING
Flow Rate: 1.11 CFS
Volume: THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.
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		NENENE	32	1N	7W	SILVER BOW

Period of Diversion: APRIL 1 TO DECEMBER 31
Diversion Means: HEADGATE
Ditch Name: SECTION 32 DITCH
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			S2SE	28	1N	7W	SILVER BOW

THE PLACE OF USE IS LIMITED TO MS 395 AND MS 8634.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G

Water Right Number: 41G 95776-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: DAVE STRATTON
2205 OREGON AVE
BUTTE, MT 59701-5848

MARK R STRATTON
2205 OREGON AVE
BUTTE, MT 59701-5848

Priority Date: DECEMBER 31, 1866
Type of Historical Right: USE
Purpose (Use): MINING
Flow Rate: 1.11 CFS
Volume: THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.
THE USE OF WATER APPEARS TO BE LARGELY NON-CONSUMPTIVE.

Source Name: HORSE 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		E2SW	28	1N	7W	SILVER BOW
Period of Diversion:		APRIL 1 TO DECEMBER 31				
Diversion Means:		INSTREAM				
2		W2SE	28	1N	7W	SILVER BOW
Period of Diversion:		APRIL 1 TO DECEMBER 31				
Diversion Means:		INSTREAM				

MEANS OF DIVERSION INCLUDES A PUMP, PAN AND SLUICE BOX.

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			E2SW	28	1N	7W	SILVER BOW
2			W2SE	28	1N	7W	SILVER BOW

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: **41G 106718-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: DAVE STRATTON
 2205 OREGON AVE
 BUTTE, MT 59701-5848

 MARK R STRATTON
 2205 OREGON AVE
 BUTTE, MT 59701-5848

Priority Date:

Type of Historical Right:

Purpose (Use): DOMESTIC

Flow Rate:

Volume:

Source Name: ROARING BROOK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G

Water Right Number: **41G 106719-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: DAVE STRATTON
 2205 OREGON AVE
 BUTTE, MT 59701-5848

 MARK R STRATTON
 2205 OREGON AVE
 BUTTE, MT 59701-5848

Priority Date:

Type of Historical Right:

Purpose (Use): POWER GENERATION

Flow Rate:

Volume:

Source Name: ROARING BROOK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: **41G 106720-00** STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: **DISMISSED**

Owners: DAVE STRATTON
 2205 OREGON AVE
 BUTTE, MT 59701-5848

 MARK R STRATTON
 2205 OREGON AVE
 BUTTE, MT 59701-5848

Priority Date:

Type of Historical Right:

Purpose (Use): MINING

Flow Rate:

Volume:

Source Name: ROARING BROOK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 106721-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: DAVE STRATTON
2205 OREGON AVE
BUTTE, MT 59701-5848

MARK R STRATTON
2205 OREGON AVE
BUTTE, MT 59701-5848

Priority Date: JULY 21, 1954

Type of Historical Right: FILED

Purpose (Use): MINING

***Flow Rate:** 2.36 CFS

Volume: THIS WATER RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED
FOR MINING PURPOSES.
THE USE OF WATER APPEARS TO BE LARGELY NON-CONSUMPTIVE.

Source Name: MAMMOTH 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		SESE	34	1N	7W	SILVER BOW

***Period of Diversion:** MAY 1 TO NOVEMBER 30

Diversion Means: HEADGATE

Ditch Name: ROARING BROOK RIDGE DITCH

***Period of Use:** MAY 1 TO NOVEMBER 30

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			S2SW	35	1N	7W	SILVER BOW
2			SESE	34	1N	7W	SILVER BOW
3			NW	2	1S	7W	SILVER BOW

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 106722-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: DAVE STRATTON
2205 OREGON AVE
BUTTE, MT 59701-5848

MARK R STRATTON
2205 OREGON AVE
BUTTE, MT 59701-5848

Priority Date: JULY 21, 1954

Type of Historical Right: FILED

Purpose (Use): MINING

***Flow Rate:** 2.36 CFS

Volume: THIS WATER RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED
FOR MINING PURPOSES.
THE USE OF WATER APPEARS TO BE LARGELY NON-CONSUMPTIVE.

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>Tw</u>	<u>Rge</u>	<u>County</u>
1		SE	34	1N	7W	SILVER BOW

***Period of Diversion:** MAY 1 TO NOVEMBER 30

Diversion Means: MULTIPLE

MEANS OF DIVERSION INCLUDES A HEADGATE WITH DITCH OR PIPELINE.

***Period of Use:** MAY 1 TO NOVEMBER 30

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Tw</u>	<u>Rge</u>	<u>County</u>
1			S2SW	35	1N	7W	SILVER BOW
2			N2SE	34	1N	7W	SILVER BOW
3			N2SE	35	1N	7W	SILVER BOW

PLACE OF USE ID NO. 2 IS LIMITED TO MS 8634 AND MS 9908.