

Montana Water Court  
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ELECTRONICALLY FILED

41G-0472-R-2021

October 7, 2022

Montana Water Court

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

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CLAIMANTS: Jerry L. Ward; Golden Sunlight Mines Inc.

OBJECTOR: Golden Sunlight Mines Inc.

**CASE 41G-0472-R-2021**

41G 120826-00

41G 133667-00

**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. Claims 41G 120826-00 and 41G 133667-00 appeared in the 41G Preliminary Decree with DNRC issue remarks. Claim 41G 133667-00 received an objection from Golden Sunlight Mines (GSM).

2. Claim 41G 120826-00 is owned by Jerry L. Ward. Claim 41G 133667-00 is owned by GSM. The issue remark appearing on the claims states:

THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 41G 120826-00, 41G 133667-00, 41G 133668-00.<sup>1</sup>

Claims 41G 120826-00 and 41G 133667-00 are both based on an appropriation filed by Richard L. Hansen with an August 12, 1952 priority date, recorded in Book 5, Page 293, Jefferson County, Montana. The filed notice of appropriation claimed a 5.0 cfs right to water from Boggy Slough (Piedmont Swamp). Claim 41G 120826-00 appeared in the 41G Preliminary Decree with a 1.66 cfs flow rate and claim 41G 133667-00 appeared in the 41G Preliminary Decree with a 5.00 cfs flow rate. Accordingly, the combined flow rate of the two water rights overclaimed the original appropriation they are both based on by 1.66 cfs.

3. On May 4, 2022, GSM filed a Notice of Settlement. GSM indicated that the parties had reached an agreement on how to resolve the overfiled notice of appropriation issue remark. GSM reported that the parties agreed to a proportional reduction of each claim’s flow rate based on the claimed acres associated with each claim. The reductions result in the following flow rates for each claim.

Claim 41G 120826-00	<del>1.66 cfs</del>	1.05 cfs
Claim 41G 133667-00	<del>5.00 cfs</del>	3.95 cfs
Total Flow Rate:	<del>6.66 cfs</del>	5.00 cfs

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<sup>1</sup> Claim 41G 133668-00 was originally consolidated in this case as well, but it was determined that claim 41G 133668-00 is based on a separate appropriation than the one claims 41G 120826-00 and 41G 133667-00 are based on. Accordingly, claim 41G 133668-00 was removed from the case and addressed separately in Case 41G-0479-R-2022.

4. The Notice of Settlement did not include a signature from the owner of claim 41G 120826-00, Jerry L. Ward. A show cause order was issued setting a filing deadline for Mr. Ward to indicate whether he agrees to reduce the flow rate of claim 41G 120826-00 to 1.05 cfs. The order stated that if nothing was filed by the deadline the flow rate of claim 41G 120826-00 would be reduced to 1.05 cfs to resolve the issue remarks appearing on claims 41G 120826-00 and 41G 133667-00. Nothing was filed by the deadline. The flow rates of claims 41G 120826-00 and 41G 133667-00 should be reduced as proposed in GSM's Notice of Settlement.

5. GSM objected to claim 41G 1133667-00 to correct the legal land description of points of diversion. The corrections to the points of diversion are minor modifications to better describe where the water is being diverted from the dike/ditch. The requested modifications are supported by the map attached to the statement of claim filing and the updated map provided by GSM as part of these proceedings (attached). The modifications do not substantively change the water right, but merely provide a more accurate description of the points of diversion. The corrections sought for the points of diversion should be accepted by the court.

#### 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.

GSM successfully overcame the prima facie status of claim 41G 133667-00 regarding the legal land descriptions for the points of diversion.

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 Notice of Settlement filed May 4, 2022 requests proportional reductions to the flow rate for claims 41G 120826-00 and 41G 133667-00 based on the place of use identified by each claim. The reductions to flow rate resolve the issue remarks appearing on the claims and may be accepted by the Court without further presentation of evidence.

3. 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 claims 41G 120826-00 and 41G 133667-00 have been resolved by the reduction to the flow rates for each claim.

4. If a claimant 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. Sanctions applied against claimants may include termination of the claim, or modification of the claim to conform with data provided by the department, information obtained by the court, or information included in an objection.

A show cause order was issued by the court setting a filing deadline for Jerry L. Ward to indicate whether he agreed with the proposed reduction to the flow rate of claim 41G 120826-00. The order stated that failure to respond would result in the reduction of the flow rate for claim 41G 120826-00 from 1.66 cfs to 1.05 cfs to resolve the issue remarks appearing on claims 41G 120826-00 and 41G 133667-00. Jerry L. Ward failed to respond to the court's show cause order. The flow rate for claim 41G 120826-00 should be reduced to 1.05 cfs.

#### RECOMMENDATIONS

1. Claims 41G 120826-00 and 41G 133667-00 should be modified as provided above.

2. The issue remarks should be removed from claims 41G 120826-00 and 41G 133667-00.

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.

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Madeleine Weisz  
Senior Water Master

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**Service via Electronic Mail:**

***Last Order:***

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**Note: Service List Updated 9-30-2022**





# GOLDEN SUNLIGHT MINES INC

Case 41G-0472-R-2021  
Proposed Point of Diversion  
41G 133667 00

-  Property Boundary
-  Proposed Point of Diversion
-  Dike/Ditch
- Place of Use**
-  250 Acres Irrigation

07

08

1N 4W

13

17

16



LOC: Jefferson County      PROJ MGR: KM  
TR: Multiple                  DRAWN BY: PSD  
BASE: 2017 Aerial          PROJ: 200928  
FILE: 08\_case472\_amend      DATE: 9/20/2022

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PODs:	1/4	1/4	1/4	Section	Township	Range
	S2	NE	NE	17	1N	4W
	NW	SE	NE	17	1N	4W
		SW	NE	17	1N	4W
	SE	SE	NW	17	1N	4W
	W2	W2	NW	17	1N	4W
		NW	SW	17	1N	4W

20

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

**Water Right Number:** 41G 120826-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** JERRY L WARD  
PO BOX 162  
WHITEHALL, MT 59759 0162

**Priority Date:** AUGUST 12, 1952

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 1.05 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:** 65.00

**Source Name:** PIEDMONT SWAMP

**Source Type:** SURFACE WATER  
ALSO KNOWN AS BOGGY SLOUGH

**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		SWNWSW	17	1N	4W	JEFFERSON

**Period of Diversion:** APRIL 15 TO NOVEMBER 1

**Diversion Means:** HEADGATE

**Period of Use:** APRIL 15 TO NOVEMBER 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	65.00		S2SE	9	1N	4W	JEFFERSON

**Total:** 65.00



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

**Water Right Number:** 41G 133667-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** GOLDEN SUNLIGHT MINES INC  
453 MT HIGHWAY 2 E  
WHITEHALL, MT 59759 9612

**Priority Date:** AUGUST 12, 1952

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 3.95 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:** 250.00

**Source Name:** PIEDMONT SWAMP

**Source Type:** GROUNDWATER  
ALSO KNOWN AS BOGGY SLOUGH

**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		S2NENE	17	1N	4W	JEFFERSON
<b>Period of Diversion:</b>	APRIL 15 TO OCTOBER 15					
<b>Diversion Means:</b>	DIKE					
2		NWSENE	17	1N	4W	JEFFERSON
<b>Period of Diversion:</b>	APRIL 15 TO OCTOBER 15					
<b>Diversion Means:</b>	DIKE					
3		SWNE	17	1N	4W	JEFFERSON
<b>Period of Diversion:</b>	APRIL 15 TO OCTOBER 15					
<b>Diversion Means:</b>	DIKE					
4		SESENW	17	1N	4W	JEFFERSON
<b>Period of Diversion:</b>	APRIL 15 TO OCTOBER 15					
<b>Diversion Means:</b>	DIKE					
5		W2W2NW	17	1N	4W	JEFFERSON
<b>Period of Diversion:</b>	APRIL 15 TO OCTOBER 15					
<b>Diversion Means:</b>	DIKE					
6		NWSW	17	1N	4W	JEFFERSON
<b>Period of Diversion:</b>	APRIL 15 TO OCTOBER 15					

**Diversion Means:**

DIKE

MEANS OF DIVERSION INCLUDES WATER COLLECTED IN BOGGY SLOUGH DITCH.

**Period of Use:**

APRIL 15 TO OCTOBER 15

**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	250.00		N2	17	1N	4W	JEFFERSON
<b>Total:</b>	250.00						