

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
BOULDER RIVER—TRIBUTARY OF THE JEFFERSON RIVER (BASIN 41E)  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANT: Fred L. Bell

CASE 41E-0225-R-2024  
41E 1180-00

**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 finding of fact, conclusion 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 to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. 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 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**

Fred L. Bell claim 41E 1180-00 appeared in the Preliminary Decree with the following issue remark:

THE PLACE OF USE NO. 2 APPEARS INCORRECT. PLACE OF USE NO. 2 APPEARS TO BE NENW SEC 32 TWP 6N, RGE 4W, JEFFERSON COUNTY.

The issue remark was not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence. The January 9, 2024 Order Consolidating Case And Setting Filing Deadline states:

The point of diversion legal description and place of use #1 legal description include T6N. It appears T4N in place of use #2 legal description may be a clerical error. Pursuant to 85-2-248(3), MCA, it is

ORDERED that the deadline for the claimant to file documentation resolving the issue remark is **February 9, 2024**.

(**Emphasis** in original.) Nothing was filed by the claimant.

#### APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 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 including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

#### FINDING OF FACT

The Preliminary Decree states that the legal description for place of use No. 2 is NENW section 32, T4N, R4W, JEFFERSON. The legal description should be NENW section 32, T6N, R4W, JEFFERSON. The issue remark should be removed as addressed and resolved.

#### CONCLUSION OF LAW

The information contained in the claim file is sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

#### RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Finding of Fact to correct the Preliminary

Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW**

**Service via USPS Mail:**

Fred L. Bell  
PO Box 249  
Jefferson City, MT 59638

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER**  
**BASIN 41E**

**Water Right Number:** 41E 1180-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** FRED L BELL  
PO BOX 249  
JEFFERSON CITY, MT 59638-0249

**Priority Date:** MARCH 23, 1972

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER

**Flow Rate:** 400.00 GPM

**\*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:** 40.00

**Source Name:** GROUNDWATER

**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		NENW	32	6N	4W	JEFFERSON

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

**Diversion Means:** WELL

**Period of Use:** MAY 1 TO SEPTEMBER 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	20.00		NWNW	32	6N	4W	JEFFERSON
2	20.00		NENW	32	6N	4W	JEFFERSON

**Total:** 40.00

**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.

1179-00                      1180-00