

**IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MISSOURI RIVER ABOVE HOLTER DAM BASIN (41I)
PRELIMINARY DECREE**

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CLAIMANT: Marie A. Austin Regan

OBJECTOR: United States of America Department of
Agriculture Forest Service

CASE 41I-0155-R-2025

41I 1190-00

41I 1191-00

ORDER CORRECTING SERVICE LIST AND CLOSING ORDER

The claims in this case, owned by Marie A. Austin Regan (“Regan”), were included in the Preliminary Decree for the Missouri River above Holter Dam, Basin 41I, issued on June 24, 2022. The United States Department of Agriculture – Forest Service objected to the claims. In a May 12, 2025 Order, the Water Court incorrectly identified the objector as the Bureau of Reclamation rather than the Forest Service. Thus, this order corrects the record to reflect the Forest Service.

Claim 41I 1191-00 was also subject to an issue remark questioning the claimed volume. The issue remark resulted from examination by the Department of Natural Resources and Conservation (“DNRC”). Claim 41I 1190-00 was included in the Preliminary Decree for stock drinking from Prickly Pear Creek in the SWSENW of Section 15, Township 7 North, Range 3 West. Claim 41I 1191-00 was included in the Preliminary Decree as a domestic claim, diverted via bucket from Prickly Pear Creek in the SWSENW of Section 15, Township 7 North, Range 3 West. The issue remark on claim 41I 1191-00 indicated that the claimed 10.00 GPM volume meant diverting 890 gallons per day, year-round.

On April 23, 2025, the Court held a status conference to address resolution of the objections and issue remarks. A representative of the Forest Service appeared. Regan did not appear.

At the status conference, the legal description of the point of diversion of the claims was addressed. The statements of claim originally listed the point of diversion as located in the SWSWNW of Section 15. During examination, DNRC modified the point of diversion to the SWSENW of Section 15. According to information in the claim file and information provided by the Forest Service, the claimed spring is located in the NENESW of Section 15, also owned by Regan, and the point of diversion and place of use for both claims should be modified as follows:¹

<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		NENESW	SWSWNW	15	7N	3W	JEFFERSON
Remarks:	Add CMPU: THE PLACE OF USE IS LOCATED ENTIRELY WITHIN CERTIFICATE OF SURVEY NO. 137175 F2833b, JEFFERSON COUNTY.						

On May 12, 2025, an order was issued requiring Regan to show cause why the point of diversion and place of use of the claims should not be modified as shown above and why the volume of claim 41I 1191-00 should not be modified based on the issue remark. The order stated that if Regan failed to file evidence, the points of diversion and places of use would be modified as described above and the volume of claim 41I 1191-00 would be modified. Regan failed to appear at the initial status conference and did not respond to the show cause order.

A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Mont. Code Ann. § 85-2-227; Rule 10, W.R.Adj.R. The prima facie status may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. §§ 85-2-227, -231(2), MCA.

¹ The correct number for the certificate of survey is “137175 F283B,” not 137175 F2833B.

If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R. Sanctions applied against a claimant may include modification of a claim to conform with data provided by the DNRC, information obtained by the Court, or information included in an objection, or the entry of default and termination of a water right claim. Rule 11, W.R.Adj.R.

Regan did not attend the initial status conference and did not provide any evidence in response to the show cause order. The show cause order specified that if no response was filed, the claims would be corrected as provided in the order. The information provided in the claim files and by the United States is sufficient to correct the point of diversion and place of use. As no evidence has been provided to support the claimed volume, the volume will be reduced to the DNRC guideline.

Therefore, it is

ORDERED that the point of diversion and place of use for claims 41I 1190-00 and 41I 1191-00 are corrected to the NENESW of Section 15, Township 15 North, Range 3 West. An information remark specifying that the place of use is located within Certificate of Survey NO. 137175f283b, Jefferson County is added to the abstract of both claims.

ORDERED that the volume of claim 41I 1191-00 is corrected to reflect a remark stating:

VOLUME IS LIMITED TO THE AMOUNT HISTORICALLY USED
INTERMITTENTLY DURING THE YEAR FOR DOMESTIC USE.

ORDERED that proceedings in this case are CLOSED and abstracts reflecting these modifications are provided with this order.

ELECTRONICALLY SIGNED AND DATED BELOW.

SERVICE VIA USPS MAIL

Marie A Austin Regan
3230 Wharton St
Butte, MT 59701

SERVICE VIA ELECTRONIC MAIL

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, ABOVE HOLTER DAM
BASIN 41I**

Water Right Number: 411 1190-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MARIE A AUSTIN REGAN
3230 WHARTON ST
BUTTE, MT 59701-4534

Priority Date: DECEMBER 31, 1955

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 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: PRICKLY PEAR 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		NENESW	15	7N	3W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

THE POINT OF DIVERSION IS LOCATED IN CERTIFICATE OF SURVEY NO. 137175 F283B , JEFFERSON COUNTY.

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			NENESW	15	7N	3W	JEFFERSON

THE PLACE OF USE IS LOCATED ENTIRELY WITHIN CERTIFICATE OF SURVEY NO. 137175 F283B, JEFFERSON COUNTY.

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

1190-00

1191-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, ABOVE HOLTER DAM
BASIN 41I

Water Right Number: 41I 1191-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: MARIE A AUSTIN REGAN
3230 WHARTON ST
BUTTE, MT 59701-4534

Priority Date: DECEMBER 31, 1955

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 10.00 GPM

Volume:

THE VOLUME IS LIMITED TO THE AMOUNT HISTORICALLY USED INTERMITTENTLY DURING THE YEAR FOR DOMESTIC USE.

Households: 1

Source Name: PRICKLY PEAR 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		NENESW	15	7N	3W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: BUCKET

THE POINT OF DIVERSION IS LOCATED IN CERTIFICATE OF SURVEY NO. 137175 F283B , JEFFERSON COUNTY.

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			NENESW	15	7N	3W	JEFFERSON

THE PLACE OF USE IS LOCATED ENTIRELY WITHIN CERTIFICATE OF SURVEY NO. 137175 F283B, JEFFERSON COUNTY.

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

1190-001191-00