

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
BIGHORN RIVER, BELOW GREYBULL RIVER (43P)  
INTERLOCUTORY DECREE

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CLAIMANT: Dudis Inc.

OBJECTOR: Dudis Inc.

CASE 43P-0011-I-2024

43P 30114950

43P 30114952

**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

Claims 43P 30114950 and 43P 30114952 appeared in the Interlocutory Decree for the Big Horn River, Below Greybull River (Basin 43P). The claims received Montana Department of Natural Resources and Conservation ("DNRC") issue remarks and Claimant self-objected to the claims. The claims did not receive any counterobjections or notices of intent to appear. To address the issue remark and self-objections, the Water Court consolidated the claims into Water Court Case 43P-0011-I-2024.

### FINDINGS OF FACT

1. Claims 43P 30114950 and 43P 30114952 are domestic groundwater claims.
2. Claimant objected to the maximum acres/place of use of claim 43P 30114950. The claim also received the following issue remarks:

THE CLAIMED PLACE OF USE AND ACRES IRRIGATED MAY BE QUESTIONABLE. REVIEW OF THE AVAILABLE.

DATA APPEARS TO INDICATE 1.30 ACRES IRRIGATED.

VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

3. Claimant also objected to the maximum acres/place of use of claim 43P 30114952. The claim also received the following issue remarks:

ONLY 0.25 ACRES OF THE CLAIMED PLACE OF USE APPEAR IRRIGATED FOR DOMESTIC PURPOSES.

VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

4. Claimant claimed a volume of 2.13 acre-feet for both claims.
5. The volume guideline for a domestic water right claim is  $(1.5 \text{ acre-feet} \times \text{Households}) + (2.5 \text{ acre-feet} \times \text{Acres}) = \text{Volume (acre-feet)}$ . Rule 19(b)(2), W.R.C.E.R.
6. The Interlocutory Decree abstracts for both claims do not identify a Household count. However, Claimant accounted for five people (1 household) on the statement of claim for both claims. The omission of the Household element is a clerical error.

7. If the maximum acres for claim 43P 30114950 is 1.30 acres and the household count is 1, the volume guideline is 4.75 acre-feet. The claimed volume is less than the guideline and does not require modification. If the maximum acres for claim 43P 30114952 is 0.25 acres and the household count is 1, the volume guideline is 2.13 acre-feet, so the volume does not require modification.

8. The Court set a filing deadline of October 7, 2024, for Claimant to file evidence to resolve its objections and the issue remarks placed on the claims. (Doc.<sup>1</sup> 1.00). The Water Court stated that “If nothing is filed by the deadline, the Court will assume Claimant agrees with the DNRC’s determinations for the place of use for both claims” and will modify the place of use accordingly. *Id.*

9. The Court set an additional deadline for Claimant to “show cause why the places of use should be modified in accordance with the DNRC’s issue remarks.” (Doc. 2.00).

10. Nothing was filed by the deadline.

11. The remaining issue remarks placed on the claims are for notice purposes only. In the order setting the filing deadline, the Court stated the remarks would be removed at the close of these proceedings.

#### CONCLUSIONS OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298.

2. 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.

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<sup>1</sup> “Doc.” Numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

3. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

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.

5. Under Rule 60(a), M.R.Civ.P. “The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.” The court may correct a clerical mistake at any time, with or without a motion from a party. *In re N.K.O.*, 277 Mont. 122, 124, 919 P.2d 394, 395 (1996).

6. The missing Household element on each claim is a clerical error. The Household element should be added to each claim with a count of 1, as claimed on the statement of claim, under Rule 60(a), M.R.Civ.P.

7. The DNRC determined the maximum acres for claim 43P 30114950 is 1.30 acres. Likewise, the DNRC determined the maximum acres for claim 43P 30114952 is 0.25 acres.

8. If a claimant fails to comply with an Order issued by the Water Court in its review of issue remarks, including an Order issued by a Water Master appointed by the Court, the Court on its own initiative may amend or dismiss the claim to conform with information in the claim file or information obtained as part of the adjudication process. Section 85-2-248(9) MCA.

9. Claimant did not file a response to the Court’s deadlines. The Court assumes Claimant agrees with the DNRC’s determinations for the places of use for both claims and that the volume for both claims does not require modification.

10. The remaining issue remark placed on the claim is for notice purposes only. In the order setting the filing deadline, the Court stated it should be removed at the close of these proceedings.

### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above.

Post Decree Abstracts of Water Right Claim for claims 43P 30114950 and 43P 30114952 are served with this Master's Report to confirm the recommendations have been made in the state's centralized record system

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Dudis Inc.  
C/O Dolly Ann Willcutt  
PO Box 410  
Malta, MT 59538-0410

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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
BIGHORN RIVER, BELOW GREYBULL RIVER  
BASIN 43P**

**Water Right Number:** 43P 30114950 STATEMENT OF CLAIM  
**Version:** 2 -- POST DECREE  
**Status:** ACTIVE

**Owners:** DUDIS INC  
% DOLLY ANN WILLCUTT  
PO BOX 410  
MALTA, MT 59538-0410

**\*Priority Date:** JUNE 18, 1973

**\*Type of Historical Right:** FILED

**Purpose (Use):** DOMESTIC

**Flow Rate:** 20.00 GPM

**Volume:** 2.13 AC-FT

**Households:** 1

**Maximum Acres:** 1.30

**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		SESESW	23	2N	33E	BIG HORN

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** WELL

**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	0.20		SWSWSE	23	2N	33E	BIG HORN
2	1.10		SESESW	23	2N	33E	BIG HORN
<b>Total:</b>	<b>1.30</b>						

**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.

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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
BIGHORN RIVER, BELOW GREYBULL RIVER  
BASIN 43P**

**Water Right Number:** 43P 30114952 STATEMENT OF CLAIM  
**Version:** 2 -- POST DECREE  
**Status:** ACTIVE

**Owners:** DUDIS INC  
% DOLLY ANN WILLCUTT  
PO BOX 410  
MALTA, MT 59538-0410

**Priority Date:** AUGUST 1, 1952

**\*Type of Historical Right:** FILED

**Purpose (Use):** DOMESTIC

**Flow Rate:** 20.00 GPM

**Volume:** 2.13 AC-FT

**Households:** 1

**Maximum Acres:** 0.25

**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		NWNWNW	27	2N	33E	BIG HORN

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** WELL

**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	0.25		W2NWNW	27	2N	33E	BIG HORN

**Total:** 0.25

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**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.

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