

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
SHIELDS RIVER BASIN 43A  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANTS: Vanessa Biddle; Jamie Reilly; Arthur B  
Bohleen; Hedgerow North, LLC.; Debra A  
Lamm; Joseph D Lamm; Adair Bullrun LLC;  
Nancy B. Danaher

**CASE 43A-0494-R-2021**

43A 191878-00

43A 191874-00

ON MOTION OF THE MONTANA WATER COURT

**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**

All water right claims that appeared in the Preliminary Decree for this Basin were subject to issue remarks resulting from pre-decree examination by the DNRC, objections,

counterobjections, and on motion concerns of the Court. To address the Court's on motion concerns, claim 43A 191878-00 was consolidated into Water Court Case 43A-0494-R-2021.

### FINDINGS OF FACT

1. Stock water claim 43A 191878-00 was claimed as a decreed right with July 1, 1882, priority date. However, the Claimants failed to attach complete information to the Statements of Claim regarding which decreed right they were claiming. The current record owners of claim 43A 191878-00 are Hedgerow North, LLC, Joseph D. Lamm, Debra A. Lamm, and Adair Bullrun, LLC.

2. The DNRC may have failed to place the following issue remark on claim 43A 191878-00:

THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

3. Because more information was needed to support the claimed priority date and type of historical right for claims 43A 191878-00, the claim was called in on motion of the Court.

4. An Order Setting Filing Deadline was issued for the Claimants to provide evidence supporting the type of historical right and priority date associated with claim 43A 191878-00.

5. A Status Conference for Case 43A-0494-R-2021 took place on January 12, 2022, by telephone conference call. Water Master Eugene C. White presided; the then-record owners of claim 43A 191878-00 did not appear for the conference. During the conference, the Court intended to discuss the on-motion concerns that lead to claim 43A 191878-00 to be called in on-motion by the Water Court.

6. Claimant Lois B. Olmstead, in a telephone call with the Court on February 16, 2021, addressed the ownership of the claim. According to Ms. Olmstead, claimants Arthur B. Bohleen and Robert L. Olmstead are now deceased, and the property owned by herself and claimant Ronald A. Bohleen was recently sold to Jamie Reilly and Vanessa Biddle.

7. On August 10, 2022, Claimants Jamie Reilly and Vanessa Biddle, having recently filed ownership updates to claim 191878-00, filed a *Response*. The *Response* states that, “it appears the person completing the Statement of Claim filing form made an error and the priority date should be changed from the claimed July 1, 1882, priority date to the date found in the decree of April 18, 1885.” Attached with the *Response* is the relevant portion of Decree 2717, found in the claim file, showing that claim 43A 191878-00 is based on the April 18, 1885, J.E. Kiehl right.

8. On December 6, 2022, the Court set a new filing deadline for Claimants Jamie Reilly and Vanessa Biddle to file a statement of whether they desired to maintain their assertion that claim 43A 191878-00 was based on the April 18, 1885, J.E. Kiehl right in light of the fact that it would potentially create a decree exceeded situation with claim 43A 191874-00.

9. On January 4, 2023, Claimants Jamie Reilly and Vanessa Biddle filed a *Response* in which they maintain their assertion that claim 43A 191878-00 was based on the April 18, 1885, J.E. Keihl right and requested the addition of a multiple use information remark with claim 43A 191874-00 which would resolve the potential decree exceeded issue.

10. Claimants Hedgerow North, LLC and Adair Bullrun, LLC filed a *Response* on March 14, 2023, which included a *Memorandum* from water right consultant Julie Merritt, a water resource specialist from WGM Group, Inc. In her *Memorandum*, Ms. Merritt concurs with the assertion that claim 43A 191878-00 was based on the April 18, 1885, J.E. Keihl right and that claims 43A 191878-00 and 43A 191874-00 are multiple uses as stock water and irrigation rights, respectively. Ms. Merritt’s *Memorandum* goes on to suggest the addition of the below-listed multiple use information remark to denote the multiple use of the rights:

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.  
43A 191874 00, 43A 191878 00

11. Claim 43A 191874-00 was added to Case 43A-0494-R-2021 in an Order issued May 2, 2023, by the Water Court.

12. On July 26, 2023, the Water Court issued an Order Setting Filing Deadline for the remaining parties to file a statement if they disagreed with the proposed change to the priority date for claim 43A 191878-00 and the addition of the multiple use remark to both claims. Nothing was filed by the ordered deadline.

#### PRINCIPLES OF LAW

1. 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.

2. 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. Sections 85-2-227, -231(2), MCA.

#### CONCLUSIONS OF LAW

1. Based on the claimants Jamie Reilly and Vanessa Biddle's filed *Response*, the *Response* and attached *Memorandum* filed by claimants Adair Bullrun, LLC and Hedgerow North, LLC, and the lack of response filed to the Courts July 26, 2023 Order Setting Filing Deadline, the priority date of claim 43A 191878-00 should be modified from July 1, 1882, priority date to the date found in the decree of April 18, 1885, as described in Finding of Fact No. 7. The type of right element appearing on claim 43A 191878-00 should remain as listed on the Statement of Claim and the multiple use information remark, listed in Finding of Fact No. 10 should be added to the abstract of claims 43A 191878-00 and 43A 191874-00.

2. The on-motion status of the claims is resolved.

#### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, the priority date for claim 43A 191878-00 should be modified from July 1, 1882, priority date to the date found in the decree of April 18, 1885, and a multiple use information remark added to the abstract of each claim.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Hedgerow North, LLC.  
Adair Bullrun LLC  
Nancy B Danaher  
46 Adair Creek Rd  
Livingston, MT 59047-9308

Debra A Lamm  
Joseph D Lamm  
PO Box 1390  
Livingston, MT 59047-1390

Vanessa Biddle  
Jamie Reilly  
1321 Appleton Way  
Venice, CA 90291

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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SHIELDS RIVER  
BASIN 43A**

**Water Right Number:** 43A 191874-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:**

HEDGEROW NORTH LLC  
46 ADAIR CREEK RD  
LIVINGSTON, MT 59047 9308

JOSEPH D LAMM  
PO BOX 1390  
LIVINGSTON, MT 59047 1390

DEBRA A LAMM  
PO BOX 1390  
LIVINGSTON, MT 59047 1390

ADAIR BULLRUN LLC  
46 ADAIR CREEK RD  
LIVINGSTON, MT 59047

**Priority Date:** APRIL 18, 1885

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 1.25 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:** 73.50

**Source Name:** ADAIR 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		SWSWNE	3	1S	10E	PARK
<b>*Period of Diversion:</b> APRIL 1 TO OCTOBER 15						
<b>Diversion Means:</b> HEADGATE W/DITCH OR PIPELINE/FLOOD AND DIKE						
2		N2NENW	10	1S	10E	PARK
<b>*Period of Diversion:</b> APRIL 1 TO OCTOBER 15						
<b>Diversion Means:</b> HEADGATE W/DITCH OR PIPELINE/FLOOD AND DIKE						
<b>*Period of Use:</b> APRIL 1 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	0.50		SWSWNE	3	1S	10E	PARK
2	9.00		E2E2SW	3	1S	10E	PARK
3	30.00		W2SE	3	1S	10E	PARK
4	27.00		E2NW	10	1S	10E	PARK
5	2.00		SESWNW	10	1S	10E	PARK
6	5.00		N2NESW	10	1S	10E	PARK
<b>Total:</b>		73.50					

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**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.

191873-00          191874-00

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.

191874-00          191878-00

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SHIELDS RIVER  
BASIN 43A**

**Water Right Number:** 43A 191878-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**

ARTHUR B BOHLEEN

PO BOX 94

BIG PINEY, WY 83113

HEDGEROW NORTH LLC

46 ADAIR CREEK RD

LIVINGSTON, MT 59047 9308

JOSEPH D LAMM

PO BOX 1390

LIVINGSTON, MT 59047 1390

DEBRA A LAMM

PO BOX 1390

LIVINGSTON, MT 59047 1390

JAMIE REILLY

1321 APPLETON WAY

VENICE, CA 90291

VANESSA BIDDLE

1321 APPLETON WAY

VENICE, CA 90291

ADAIR BULLRUN LLC

46 ADAIR CREEK RD

LIVINGSTON, MT 59047

**Priority Date:** APRIL 18, 1885

**Type of Historical Right:** DECREED

**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:** ADAIR 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		NE	3	1S	10E	PARK



**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			NE	3	1S	10E	PARK
2			NWNWSE	3	1S	10E	PARK
3			E2E2SW	3	1S	10E	PARK
4			NW	10	1S	10E	PARK
5			NWSW	10	1S	10E	PARK

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.

191874-00                      191878-00