

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

* * * * *

CLAIMANTS: Margaret C. Tatarka; William J. Tatarka

OBJECTOR: Farmers Canal Co.

NOTICE OF INTENT TO APPEAR: State of Montana
University System (MSU)

CASE 41H-0516-R-2022
41H 9296-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Pursuant to Water Right Adjudication Rule 23, written objections to a Master's Report must be filed within **10 days** of the date the Report was filed. If this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

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 this 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

Water right claim 41H 9296-00 is an irrigation water right claim owned by Margaret C. Tatarka and William J. Tatarka (Claimants). The claim appeared in the Preliminary Decree for the Gallatin River (Basin 41H) without issue remarks. Farmers Canal Company (Farmers) filed an objection to the flow rate, period of diversion, and period of use claim elements. State of Montana University System (MSU) filed a notice of intent to appear (NOIA). To address the objection and NOIA, the claim is consolidated into Water Court case 41H-0516-R-2022.

FINDINGS OF FACT

1. On May 9, 2019, Farmers filed a Notice of Objection and Request for Hearing objecting to the flow rate, period of diversion, and period of use of claim 41H 9296-00.
2. On October 4, 2019, Claimants and Objector Farmers filed a Stipulation to resolve the objection.¹
3. Claimants and Objector Farmers stipulate that the parties agree to the period of diversion and period of use as the elements appear on the Preliminary Decree abstract, subject to a private conveyance agreement on the terms of water distribution.
4. The period of diversion and period of use of claim 41H 9296-00 can remain as they appear on the claim abstract.
5. The following information remark can be added to claim 41H 9296-00:

THIS WATER RIGHT IS SUBJECT TO A PRIVATE AGREEMENT LOCATED IN
THE CASE AND CLAIM FILES.

¹ MSU, the NOIA party in this case, was not a party to the Stipulation. Because the Stipulation did not make any changes to the elements of the claim, the Court did not set a deadline for MSU to comment. However, subject to Rule 6, M.R.Civ.P., if MSU objects to the stipulated changes, MSU may file a written objection with the Water Court within 10-days after the service date of the notice of filing of this Master's Report. Rule 23, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The Water Court has exclusive jurisdiction to determine the extent of all water rights in Montana as they existed prior to July 1, 1973. *In re Deadman's Basin Water Users Ass'n*, 2002 MT 15, ¶ 15; Section 3-7-501, MCA.
2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie status may be overcome by a preponderance of the evidence showing that an element of the claim is incorrect. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33.
3. The Water Court promotes and will facilitate the resolution of objections through settlement or mediation. Parties may file settlement documents with the Court during initial settlement proceedings. Rule 16(a), W.R.Adj.R.
4. The Water Court is not bound by settlement agreements. Any settlement reached by the parties is subject to review and approval by the Court. Rule 17(a), W.R.Adj.R.
5. The parties agree that the changes in the Stipulation resolve the objection to claim 41H 9296-00.

RECOMMENDATIONS

Based on the Findings of Fact and Conclusions of Law in this Report, this Master recommends the Water Court make the changes specified above to claim 41H 9296-00. A post-decree abstract of the claim is served with this Report to confirm the changes have been made in the State's centralized water right record system.

Julia J. Nordlund
Senior Water Master

Service via USPS Mail:

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WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H

Water Right Number: 41H 9296-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: MARGARET C TATARKA
19 LAKE RD
BOZEMAN, MT 59715

WILLIAM J TATARKA
19 LAKE RD
BOZEMAN, MT 59715

Priority Date: JUNE 10, 1882
Type of Historical Right: DECREED
Purpose (use): IRRIGATION
Irrigation Type: SPRINKLER/FLOOD
Flow Rate: 2.50 CFS
***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: 381.00
Source Name: WEST GALLATIN RIVER
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		SWNWNW	11	3S	4E	GALLATIN

Period of Diversion: MAY 1 TO OCTOBER 1
Diversion Means: HEADGATE
Ditch Name: FARMERS CANAL
Period of Use: MAY 1 TO OCTOBER 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	123.00		NE	25	2S	4E	GALLATIN
2	60.00		NW	25	2S	4E	GALLATIN
3	120.00		SW	25	2S	4E	GALLATIN
4	70.00		SE	25	2S	4E	GALLATIN
5	8.00		NWNWNW	30	2S	5E	GALLATIN
Total:	381.00						

Remarks:

THIS WATER RIGHT IS SUBJECT TO A PRIVATE AGREEMENT LOCATED IN THE CASE AND CLAIM FILES.

AUTHORIZATION TO CHANGE THE PLACE OF USE AND TO ADD A POINT OF DIVERSION IN THE NWNESE, SEC 10 TWP 03S RGE 04E (FARMER'S EMERGENCY SUPPLY DITCH), COMPLETED 03/07/1991. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE. SEE 41H 9296-01.

AUTHORIZATION TO CHANGE THE PLACE OF USE COMPLETED 10/16/1987. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE. SEE 41H 9296-00.

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Counsel for Farmers Canal Company

**IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER- BASIN 41H
PRELIMINARY DECREE**

**CLAIMANT: TATARKA MARGARET C &
WILLIAM J**

41H 9296 00

OBJECTOR: Farmers Canal Company

STIPULATION

Claimant, TATARKA MARGARET C & WILLIAM J, and Objector Farmers Canal Company (FCC), stipulate as set forth below.

1. Pursuant to Mont. Code Ann. § 85-2-221, a valid Statement of Claim was filed for the water right claim number identified above.
2. Pursuant to Mont. Code Ann. § 85-2-227, the Statement of Claim for this water right constitutes prima facie evidence of its content.
3. Pursuant to Mont. Code Ann. § 85-2-233, FCC timely filed Notice(s) of Objection to this water right based on the element of period of use/period of diversion.
4. The parties further agree that:
 - a. The period of use/period of diversion for this claim is as claimed. Terms of water distribution during this period of use/period of diversion is provided in the Conveyance Agreement referenced herein.
 - b. The period of use/period of diversion for this water right is subject to a private agreement between the parties, in the form of a Conveyance Agreement, and the following information remark shall be added to the Statement of Claim:

THIS WATER RIGHT IS SUBJECT TO A PRIVATE
AGREEMENT LOCATED IN THE CASE AND CLAIM
FILES.

5. The parties agree that upon the Court's acceptance of this Stipulation in a Master's Report and Order Adopting Master's Report, FCC's objection, and any objections, counterobjections and notices of intent to appear between the parties are resolved and thus deemed withdrawn.

6. A copy of this Stipulation may be executed by each party separately, and when each has executed a copy thereof, the copies, taken together shall be deemed a full and complete document. A facsimile or scanned signature shall be treated as an original.

7. The parties agree that this document embodies their entire agreement.

I/We declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true and correct.

Claimant/Owner: Margaret Tatarka 9-6-19
William J. Tatarka Date: 9-6-19

Printed Name: William J. Tatarka, Margaret Tatarka

Title: Owners

Farmers Canal: Dan Triemstra Date: 9/6/2019
Authorized Representative

Printed Name: Dan Triemstra

Title: Secretary

**WATER CONVEYANCE AGREEMENT
FARMERS CANAL COMPANY OF GALLATIN COUNTY AND
TATARKA MARGARET C & WILLIAM J
41H 9296 00**

This Water Conveyance Agreement ("Agreement") is entered into this 6 day of September, 2019, (the "Effective Date") by and between Farmers Canal Company of Gallatin County, a Montana non-profit corporation and TATARKA MARGARET C & WILLIAM J (collectively the "Parties").

RECITALS

WHEREAS Farmers Canal Company operates and maintains an irrigation delivery system known as the Farmers Canal, which diverts and distributes water from the West Gallatin River and other sources in Gallatin County, Montana, and

WHEREAS the Farmers Canal is the historical and contemporary means of water conveyance for Farmers Canal Company water rights which are diverted from the West Gallatin River and delivered to Farmers Canal Company shareholders and other rights not owned by Farmers Canal Company, including but not limited to rights decreed to individual water users which are also diverted from the West Gallatin River at the Farmers Canal headgate located in the SWNWNW Section 11, Township 3 South, Range 4 East, and

WHEREAS the Farmers Canal intersects with and is able to divert water from Hyalite Creek (aka Middle Creek) at a point located in the NW₁/₄ Section 20, Township 2 South, Range 5 East, Gallatin County, Montana, and

NOW THEREFORE the Parties agree as follows:

• **PURPOSE**

The purpose of this Agreement is to provide for the conveyance and delivery of water through the Farmers Canal.

- TERM

The initial term of this Agreement shall run from the Effective Date through December 31, 2025. Thereafter the Agreement shall renew automatically on a year-to-year basis unless terminated in accordance with this Agreement. Water may not be diverted at the FCC headgate or delivered by FCC absent a signed agreement.

- WATER MEASUREMENT AND ADMINISTRATION

Water diverted from the West Gallatin River for use at the decreed place of use under this Agreement shall be measured at the Farmers Canal headgate and delivered to the turnout with losses subtracted and net amounts delivered. Water turned out of Middle Creek will be delivered pursuant to the Middle Creek district court enforcement. Losses will be subtracted from the point where Middle Creek and Farmers Canal intersect. Farmers Canal determines the water delivery season for any water diverted at the FCC headgate and delivered through FCC infrastructure. The water delivery season includes turn on and turn off dates.

Diversion of water may be curtailed in the lawful discretion of FCC, including the curtailment by priority date for water distribution in the West Gallatin River. This Agreement shall be construed only as Farmers Canal Company's consent to divert TATARKA MARGARET C & WILLIAM J water right 41H 9296 00 which lists Farmers Canal as a legal point of diversion into the Farmers Canal conveyance system but does not guarantee delivery of water. Nothing in this Agreement creates a water right where one does not otherwise exist.

- BYLAWS

TATARKA MARGARET C & WILLIAM J agrees to be bound by the bylaws of the Farmers Canal Company.

- COMPENSATION AND INVOICE

TATARKA MARGARET C & WILLIAM J shall pay Farmers Canal Company a fee per owner or per miner's inch (mi) at the applicable point(s) of measurement and in accordance with the delivery requests made pursuant to the Farmers Canal

Company Bylaws and protocols set forth in the approved Conveyance Agreement. Said payment to be made for the conveyance cost for Farmers Canal Company to divert and deliver this water. It is agreed that such conveyance costs are subject to periodic adjustment. Fees rates shall be adopted at the annual meeting and included in the Farmers Canal Company Bylaws. Costs shall be assessed annually.

- INDEMNIFICATION / HOLD HARMLESS

TATARKA MARGARET C & WILLIAM J agrees to indemnify and hold Farmers Canal Company, its officers, directors and employees harmless from any claim or claims of any third party claiming injury or damage by reason of diversion and conveyance, or non-delivery of the water right pursuant to this Agreement, including attorneys' fees, and to further indemnify Farmers Canal Company for any costs, penalties, fees or other charges, including attorneys' fees, incurred by or assessed against Farmers Canal Company by reason of the water delivered pursuant to this Agreement, or the diversion of same, to meet or comply with any and all applicable federal, state, or local laws, rules or regulations.

- CHOICE OF LAW AND DISPUTE RESOLUTION

This Agreement shall be construed under the laws of the State of Montana. If a dispute arises as to the terms or conditions of this Agreement, the dispute shall be submitted to the Board of Directors of Farmers Canal Company in writing at the address provided in the most current bylaws. The Board shall place issues raised in this form on the next Board meeting agenda and provide notice to the parties in the dispute. The Parties agree to pursue mediation of any dispute that cannot be resolved through informal negotiations.

- TERMINATION

Farmers Canal Company may terminate this Agreement if water delivery costs are delinquent for 120 days after billing or for an uncured violation of any other provision of this Agreement subsequent to providing 30 days written notice. Farmers Canal Company may further terminate this Agreement in the event the

place of use or the Farmers Canal Company delivery system is rendered inoperable, if it threatens Farmers Canal Company deliveries to its shareholders, or if it poses a risk to Farmers Canal Company delivery system. Farmers Canal Company may make a determination not to terminate this Agreement if TATARKA MARGARET C & WILLIAM J can show full compliance or a time schedule for compliance that is satisfactory to Farmers Canal Company within the 30-day notice period. TATARKA MARGARET C & WILLIAM J may terminate this Agreement, if the water rights described above are terminated, withdrawn, changed, or for other lawful reason, upon 30 days written notice to the Board of Directors of Farmers Canal Company. Any disagreements with decisions to terminate may be brought to the Board of Directors of Farmers Canal Company.

THIS AGREEMENT is entered into this 6 day of September, 2019, by and between TATARKA MARGARET C & WILLIAM J and FARMERS CANAL COMPANY OF GALLATIN COUNTY.

Farmers Canal Company

Don Triemöller

Date: 9/6/2019

Water Right Owner(s):

William J Tatarka

Date: 9-6-19

Margaret Tatarka

Date: 9-6-19

Printed:

William J Tatarka

Margaret Tatarka

Title:

Owner