

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
YELLOWSTONE RIVER BETWEEN THE CLARKS FORK YELLOWSTONE
AND BIGHORN RIVERS BASIN (43Q)

CLAIMANT: Michael E. Ervin

CASE 43Q-6007-A-2023
43Q 114753-00

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 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 to 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

Water right claim 43Q 114753-00 is a claim to a domestic well filed by Michael Ervin on January 20, 1982. On August 25, 2023, Michael and Gloria Ervin filed a Verified Motion to Amend the water right. The Motion seeks to correct the description of the well so that it identifies the well on property owned by Michael Ervin, not adjacent property owned by William Reiter.

The Court informed Mr. Reiter of the Ervins' motion and ordered Mr. Reiter to inform the Court if he opposes the Ervins' motion. Doc. 2.00.¹ Mr. Reiter did not file anything or otherwise contact the Court by the deadline. The Ervins' Motion is supported by an aerial photo showing the location of the house served by the well.

FINDINGS OF FACT

1. The point of diversion and place of use of claim 43Q 114753-00 should be corrected as follows:

<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			SESENE <u>SWSWNE</u>	21	2N	27E	Yellowstone

PRINCIPLES OF LAW

1. 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.

CONCLUSIONS OF LAW

1. The Findings of Fact above are supported by a preponderance of the evidence.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court modify the claim as described above.

A Post Decree Abstract of Water Right Claim reflecting the recommended changes is attached to this Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

¹ "Doc" refers to the docket number of the document in the Water Court's Full Court Enterprise case management system.

Service via USPS Mail

Michael E Ervin
4411 Chicago Rd
Billings, MT 59105

Copy

William E Reiter
4619 Chicago R
Billings, MT 59105-5012

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM**

**YELLOWSTONE RIVER, BETWEEN CLARKS FORK YELLOWSTONE & BIGHORN RIVER
BASIN 43Q**

Water Right Number: 43Q 114753-00 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: MICHAEL E ERVIN
4411 CHICAGO RD
BILLINGS, MT 59105-5013

Priority Date: DECEMBER 31, 1945

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 20.00 GPM

Volume: 1.50 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		SWSWNE	21	2N	27E	YELLOWSTONE

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		SWSWNE	21	2N	27E	YELLOWSTONE

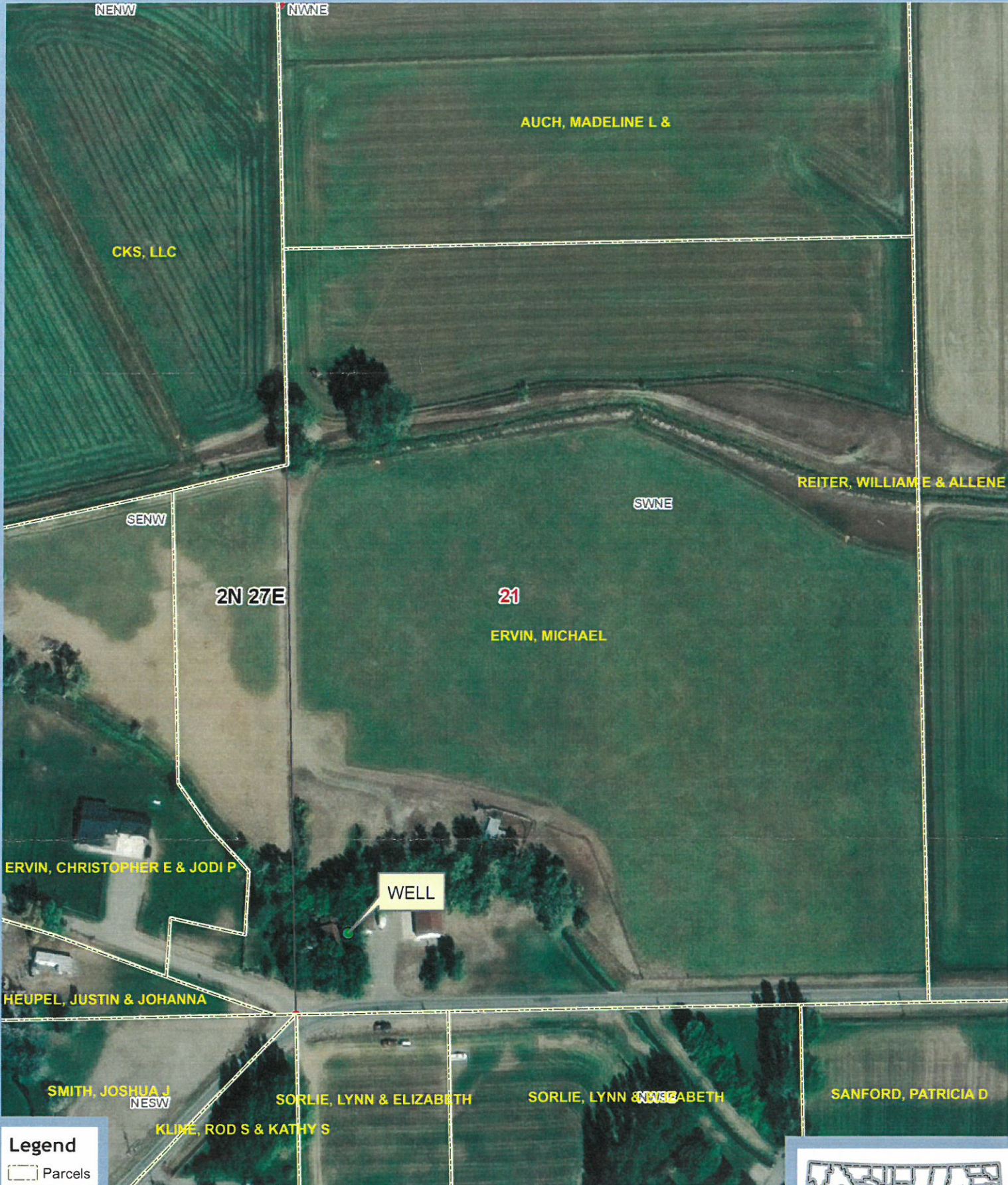
Total: 0.25

Remarks:

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 07/12/91: MAXIMUM ACRES, FLOW RATE, VOLUME.

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

Ervin Section 21 T2N R28E Statement of Claim: 43Q 114753-00



N 1:2,000
0 0.01 0.02 0.04 Miles

Map Created: 8/21/2023



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