

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 18-cv-01461-REB-NRN

LOGAN BALL,  
ELIZABETH BALL,  
HANG SIK KIM,  
HYUN AH KIM,  
ESTATE OF SARAH BALL, and  
ESTATE OF PETER KIM,

Plaintiffs,

v.

UNITED STATES OF AMERICA, and  
COLORADO DIVISION OF RECLAMATION, MINING, AND SAFETY,

Defendants.

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**REPORT AND RECOMMENDATION ON  
DEFENDANT COLORADO DIVISION OF RECLAMATION, MINING AND SAFETY'S  
MOTION TO DISMISS UNDER FED. R. CIV. P. 12(b)(1) AND 12(b)(6)  
(DOCKET NO. 24)**

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**N. Reid Neureiter  
United States Magistrate Judge**

Presently before the Court is Defendant Colorado Division of Reclamation, Mining and Safety's Motion to Dismiss Under Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (Docket No. 42), which Judge Robert E. Blackburn referred to the undersigned magistrate judge on August 25, 2018 (Docket No. 24). On September 17, 2018, Plaintiffs Logan Ball, Elizabeth Ball and the Estate of Sarah Ball (the "Plaintiffs") filed a Response (Docket No. 35) in which they confessed the subject motion (Docket No. 24). Plaintiffs represent that, after conferral with CDRMS's counsel, the parties agree that Plaintiffs and CDRMS will each bear their own fees and costs related to this matter and the Motion to Dismiss.

Accordingly, it is

**RECOMMENDED** that Defendant Colorado Division of Reclamation, Mining and Safety's Motion to Dismiss Under Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (Docket No. 42) be **GRANTED**; it is further

**RECOMMENDED** that Plaintiffs' First, Third, and Fourth Claims for Relief against Defendant Colorado Division of Reclamation, Mining and Safety be **DISMISSED**, with each party to bear its own fees and costs.

**IT IS ORDERED** that pursuant to Fed. R. Civ. P. 72, the parties shall have fourteen (14) days after service of this Recommendation to serve and file any written objections in order to obtain reconsideration by the District Judge to whom this case is assigned. A party's failure to serve and file specific, written objections waives de novo review of the Recommendation by the District Judge, Fed. R. Civ. P. 72(b); *Thomas v. Arn*, 474 U.S. 140, 147-48 (1985), and also waives appellate review of both factual and legal questions. *Makin v. Colo. Dep't of Corr.*, 183 F.3d 1205, 1210 (10th Cir. 1999); *Talley v. Hesse*, 91 F.3d 1411, 1412-13 (10th Cir. 1996). A party's objections to this Recommendation must be both timely and specific to preserve an issue for de novo review by the District Court or for appellate review. *United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996).

Dated: October 1, 2018  
Denver, Colorado

/s/ N. Reid Neureiter  
N. Reid. Neureiter  
United States Magistrate Judge