

FILED  
BILLINGS DIV.

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF MONTANA**

2010 OCT 18 AM 11 22  
PATRICK E. CLAFF, CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

**BILLINGS DIVISION**

|                          |   |                                |
|--------------------------|---|--------------------------------|
| <b>JAMES B. COX,</b>     | ) | <b>CV-10-65-BLG-RFC-CSO</b>    |
|                          | ) |                                |
| <b>Plaintiff,</b>        | ) |                                |
|                          | ) |                                |
| <b>vs.</b>               | ) |                                |
|                          | ) | <b>ORDER ADOPTING FINDINGS</b> |
|                          | ) | <b>AND RECOMMENDATIONS OF</b>  |
| <b>SHERIFF JAY BELL,</b> | ) | <b>U.S. MAGISTRATE JUDGE</b>   |
|                          | ) |                                |
| <b>Defendant.</b>        | ) |                                |
| _____                    | ) |                                |

United States Magistrate Judge Carolyn Ostby has entered Findings and Recommendation on Sheriff Bell’s Motion to Dismiss (*Doc. 5*) and Sheriff Bell’s Motion to Substitute Defendant (*Doc. 13*). Magistrate Judge Ostby recommends the motion to dismiss be denied because Cox has stated a claim against Sheriff Bell in his official capacity upon which relief may be granted. Magistrate Judge Ostby recommends Sheriff Bell’s motion to substitute Yellowstone County as the Defendant be granted because Yellowstone County is the real party in interest and an injunction against Sheriff Bell would be effective against him.

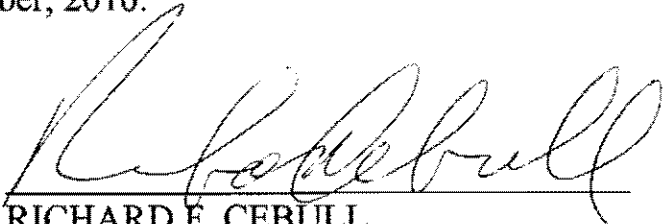
Upon service of a magistrate judge’s findings and recommendation, a party has 14 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no

party filed objections to either of Magistrate Judge Ostby's Findings and Recommendations. This failure to object waives all objections to the findings of fact, *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999), but this Court must still review de novo the conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

After reviewing the record and the applicable law, the Court concludes that both of Magistrate Judge Ostby's Findings and Recommendations (*Docs. 11 & 17*) are well grounded in law and fact. **IT IS HEREBY ORDERED** they be adopted in their entirety:

- (1) Sheriff Bell's Motion to Dismiss (*Doc. 5*) is **DENIED**; and
- (2) Sheriff Bell's Motion to Substitute Defendant (*Doc. 13*) is **GRANTED**: Sheriff Bell is dismissed from this action and Yellowstone County, Montana is substituted in his place.

DATED the 19<sup>th</sup> day of October, 2010.

  
RICHARD F. CEBULL  
UNITED STATES DISTRICT JUDGE