

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

**FILED**

JAN - 6 2016

Clerk, U.S. District Court  
District Of Montana  
Billings

ESTATE OF WILLIAM and ARLEIN  
HEIN,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,  
DEPARTMENT OF THE INTERIOR,  
STATE OF MONTANA, and all other  
Persons, unknown, claiming or who  
might claim any right, title, estate, or  
interest in or lien or encumbrance upon  
the real property described in the  
complaint adverse to Plaintiff's title,  
whether the claim or possible claim is  
present or contingent,

Respondents.

CV 14-55-BLG-SPW

OPINION and ORDER

Before the Court are United States Magistrate Judge Carolyn Ostby's Findings and Recommendations filed on November 18, 2015. In the Findings and Recommendations, Judge Ostby recommends that this Court deny the United States' motion to dismiss (doc. 36) to the extent it seeks dismissal based on Rule 12(b)(1) but grant the motion to the extent it seeks dismissal based on Rule 12(b)(6) with leave to amend.

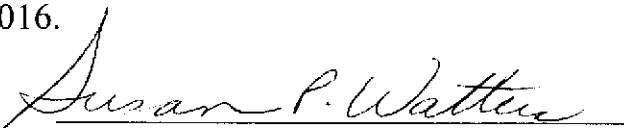
Pursuant to 28 U.S.C. § 636(b)(1), the parties were required to file written objections within 14 days of the filing of Judge Ostby's Findings and Recommendations. No objections were filed. When neither party objects, this Court must still review Judge Ostby's conclusions for clear error. Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000). After reviewing the Findings and Recommendations, this Court does not find that Judge Ostby committed clear error.

Accordingly, IT IS HEREBY ORDERED:

1. Judge Ostby's Findings and Recommendations (Doc. 44) are ADOPTED IN FULL.

2. The United States' Motion to Dismiss (doc. 36) is DENIED to the extent it seeks dismissal based on Rule 12(b)(1) but GRANTED to the extent it seeks dismissal based on Rule 12(b)(6), with leave to amend.

DATED this 5<sup>th</sup> day of January 2016.

  
SUSAN P. WATTERS  
United States District Judge