IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

GREAT FALLS DIVISION

SCOTT PATRICK HEDDINGS,	)	**CV-11-76-GF-RFC**
	)	
Petitioner,	)	
	)	
vs.	)	
	)	**ORDER ADOPTING FINDINGS**
	)	**AND RECOMMENDATIONS OF**
WARDEN RENE GARCIA;	)	**U.S. MAGISTRATE JUDGE**
ATTORNEY GENERAL OF	)	
THE STATE OF MONTANA,	)	
	)	
Respondents.	)	
	)	

On February 2, 2012, United States Magistrate Judge Keith Strong entered Findings and Recommendation. Magistrate Judge Strong recommends this Court dismiss the Petition in this case.

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 the February 2, 2012 Findings and Recommendation. Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to

review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

The petition should be dismissed as mixed. A petition is "mixed" when it contains one exhausted claim and one unexhausted claim. Generally, a mixed petition should be dismissed, *Rhines v. Weber*, 544 U.S. 269 (2005), unless the petitioner can show good cause for his failure to exhaust his state remedies before he filed his federal petition, *Rhines*, 544 U.S. at 278, or unless there is undue risk that dismissal of the mixed petition may cause the petitioner to lose his opportunity to have his exhausted claims heard in federal court, *King v. Ryan*, 564 F.3d 1133, 1141 (9th Cir. 2009).

Dismissal is plainly appropriate here. Petitioner has one year, or until September 14, 2012, to file a federal habeas petition. *See Lawrence v. Florida*, 549 U.S. 327, 332 (2007). Dismissal at this time will leave Petitioner ample remaining opportunity to file a timely and exhausted federal petition. There is no good cause for a stay under *Rhines*, and no undue risk to warrant a stay under *King*.

A certificate of appealability is denied because there is no question about the vitality or application of the exhaustion requirement, about Petitioner's failure to exhaust, or about the lack of any justification for any stay of the federal petition.

Miller-El v. Cockrell, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

After an extensive review of the record and applicable law, this Court finds Magistrate Judge Strong's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

Accordingly, **IT IS HEREBY ORDERED** that the Petition is **DISMISSED** for failure to exhaust state remedies. The Clerk of Court is directed to enter by separate document a judgment of dismissal. A certificate of appealability is **DENIED**.

The Clerk of Court shall notify the parties of the entry of this Order.

DATED the 15th day of March, 2012.

RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE