

**UNITED STATES DEPARTMENT OF INTERIOR, FISH AND WILDLIFE SERVICE,
CHARLES M. RUSSELL NATIONAL WILDLIFE REFUGE—MONTANA COMPACT**

CASE WC-2015-05

**ORDER GRANTING MOTION TO REQUIRE OBJECTOR HAZELTON TO
OBTAIN COUNSEL AND ORDER GRANTING MOTIONS FOR DISMISSAL OF
OBJECTORS SINGLETON BROS. AND SINGLETON FARMS**

INTRODUCTION

This case involves the review of the Charles M. Russell National Wildlife Refuge—Montana Compact (Compact). The Compact settled the reserved water right claims of the United States for the Charles M. Russell National Wildlife Refuge.

The parties are the State of Montana and the United States (Settling Parties) and several objectors to the Compact. Among the objectors are Montana Hazelton Ranch Corp. (Hazelton), Singleton Bros. Inc., and Singleton Farms. The United States requests the Court enter an order requiring objector Hazelton to obtain counsel. The United States further requests the Court enter orders dismissing objectors Singleton Bros. Inc. and Singleton Farms. The Court addresses all three motions in this Order.

STATEMENT OF THE CASE

On July 29, 2015, the Court entered the Preliminary Decree (Decree), along with Findings of Fact and Conclusions of Law and Order for Special Proceedings, and an Order directing the Department of Natural Resources and Conservation (DNRC) to mail Notice of Entry of the Decree and Notice of Availability to water users in Basins 40C, 40D, 40E, 40EJ, 40O, and 40S. After issuance of the Decree and Notice of Entry the Settling Parties discovered omissions and mistakes in the abstracts for the federal

reserved rights. On September 8, 2015, pursuant to Court order, the Settling Parties filed a Joint Motion for Issuance of Supplemental Notice of Entry of Preliminary Decree that provided the Court with corrected abstracts, which the Court granted.

All interested parties were given until January 26, 2016 to file their objections to the Compact. The Court received timely objections from Singleton Bros. Inc. and Singleton Farms, and issued an Order Setting Settlement Deadline and Scheduling Order. The order set a June 1, 2016 deadline for a report on settlement efforts, and a June 15, 2016 deadline for appearances by counsel for artificial entities Singleton Bros. Inc. and Singleton Farms. The deadline for appearance of counsel was set pursuant to Rule 16(c), W.R.Adj.R., which requires all parties other than natural persons to be represented by counsel.

The Court also received an objection filed by Hazelton. Hazelton did not file this objection with the Court. It was filed with the Court by the Settling Parties. The United States filed a Status Report indicating that it had spoken with Hazelton and Singleton, and that continued settlement efforts might be fruitful. It requested an extension until August 1, 2016 to continue informal settlement discussions, which was granted.

On June 6, 2016, the Court issued a First Amended Scheduling Order, which set an August 1, 2016 deadline for the parties to file a status report regarding settlement, and an August 15, 2016 deadline for Singleton Bros. Inc. and Singleton Farms to obtain counsel if settlement was not reached. The order did not provide a deadline for counsel to appear on behalf of Hazelton, as Hazelton was not yet included on the service list.

On July 19, 2016, the Court issued an Order Updating Service List, which added Hazelton to the official service list. In this order the Court addressed Hazelton's misfiling of its objection to the Compact in an unrelated case (42M-47), and the late filing of Hazelton's objection on May 23, 2016.

On August 1, 2016, the United States filed its Report Regarding Status of Settlement. In the report the United States indicated it did not believe settlement would be possible, and therefore the case should move forward per the First Amended Scheduling Order. On October 24, 2016, the United States filed a motion to require

objector Hazelton to retain counsel. In it, the United States asked for a Court order requiring Hazelton to obtain counsel within 60 days.

The United States also filed two separate motions to dismiss both objectors Singleton Bros. Inc. and Singleton Farms pursuant to Rule 22, W.R.Adj.R. The basis for these motions is that Singleton Bros. Inc. and Singleton Farms failed to comply with the Court's order requiring them to obtain counsel by August 15, 2016. Hazelton, Singleton Bros. Inc., and Singleton Farms did not file responses to the United States' motions.

PRINCIPLES OF LAW

The Montana Supreme Court has held that "the practice of law is not an inherent right but a privilege, subject entirely to state control." *In Re Bailey*, 50 Mont. 365, 368, 146 P. 1101, 1103 (1915). Under Montana law, artificial entities are generally not permitted to appear in courts through an agent other than an attorney. *H & H Dev., LLC v. Ramlow*, 2012 MT 51, ¶ 18, 364 Mont. 283, 270 P.3d 657. This rule of law applies to corporations, partnerships, limited liability companies, and other similar entities. *H & H Dev., LLC*, ¶ 18. Specific Montana rules also prohibit the practice of law by an entity's non-attorney agent during certain stages of proceedings in all administrative courts as well as in the Water Court. ARM 1.3.231; Rules 16(c), 33, W.R.Adj.R. ("A corporation appearing before an agency is considered a separate legal entity and may not appear on its own behalf through an agent other than an attorney." ARM 1.3.231(2)).

The Water Right Adjudication Rules, promulgated by the Montana Supreme Court, allow an individual to represent himself throughout case proceedings, but as a case progresses a non-natural person (or artificial entity) must be represented by counsel. Rule 16(c) and Rule 33, W.R.Adj.R. require that all parties other than natural persons must be represented by an attorney licensed to practice law in Montana once a case is set for a hearing track. A non-lawyer who attempts to represent an artificial entity in court, except a justice's court or city court, is guilty of contempt of court. *H & H Dev., LLC*, ¶ 18; § 37-61-210, MCA.

Rule 22, W.R.Adj.R., provides that if an objector fails to comply with an order issued by the Court then the Court may issue such sanctions as are just, including the

dismissal of the objector from the proceeding. Although dismissal is a harsh remedy, “a party displaying an attitude of unresponsiveness to judicial process warrants imposition of sanctions, including dismissal.” *Nystrom v. Melcher*, 262 Mont. 151, 159, 864 P.2d 754, 759 (1993).

ISSUES

1. *Should Hazelton be required to obtain an attorney within 60 days or risk dismissal as an objector?*
2. *Should Singleton Bros. Inc. and Singleton Farms be dismissed as objectors?*

DISCUSSION

1. *Should Hazelton be required to obtain an attorney within 60 days or risk dismissal as an objector?*

While Hazelton came late to this case, and the Court acknowledged and allowed the filing of its late objection, it remains subject to this Court’s orders. The initial scheduling order and subsequent amended scheduling order set forth specific deadlines. As the United States indicated in its August 1, 2016, settlement status report, the parties were unable to reach a settlement by the deadline set by the Court. Therefore, the remaining deadlines were triggered, sending this case to a hearing track.

Hazelton is an artificial entity, and is therefore subject to Rules 16(c) and 33, W.R.Adj.R. While Hazelton was not specifically listed as a party required to obtain counsel by the deadline set in the First Amended Scheduling Order, counsel is nonetheless required for Hazelton to participate in the remaining portions of this case. Therefore, Hazelton must retain counsel or risk dismissal as an objector under Rule 22, W.R.Adj.R.

2. *Should Singleton Bros. Inc. and Singleton Farms be dismissed as objectors?*

Singleton Bros. Inc. and Singleton Farms are artificial entities, and therefore subject to Rules 16(c) and 33, W.R.Adj.R. Both entities were provided with the Court’s initial scheduling order, which set forth a deadline to retain counsel. The initial scheduling order further provided notice to Singleton Bros. Inc., and Singleton Farms that they were subject to sanctions, including dismissal of their objections, for failure to

comply with this Court's orders. *Ord. Setting Settlement Deadline and Scheduling Ord.*, 2, 4 (Feb. 2, 2016).

Due to possible settlement, the deadline to retain counsel was extended until August 15, 2016. The parties were reminded again that a failure to comply with this Court's orders subjected them to sanctions, including the dismissal of objections. *First Am. Scheduling Ord.*, 3 (June 6, 2016). As previously discussed, the parties were unable to reach settlement, thus requiring counsel to appear on behalf of both entities for the remainder of this proceeding. The parties have failed to meet this deadline, and to-date counsel has not appeared on behalf of either entity.¹ Because counsel is required for both Singleton Bros. Inc. and Singleton Farms, and both entities were provided ample notice that a failure to comply with this Court's orders could result in sanctions, this Court finds that their dismissal is warranted pursuant to Rule 22, W.R.Adj.R.

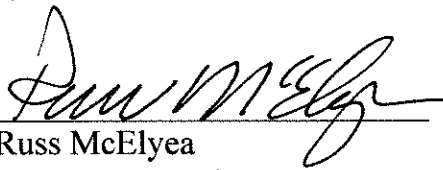
ORDER

The United States' Motion for Order Requiring Objector [Hazelton] to Retain Counsel is **GRANTED**. Counsel must appear on behalf of Hazelton by **December 19, 2016**, or Hazelton risks dismissal as an objector pursuant to Rule 22, W.R.Adj.R.

The United States' Motion for Order Dismissing Objector [Singleton Bros. Inc.] Pursuant to Rule 22, W.R.Adj.R. is **GRANTED**. Singleton Bros. Inc. is therefore **DISMISSED** as a party to this action. This dismissal is without prejudice.

The United States' Motion for Order Dismissing Objector [Singleton Farms] Pursuant to Rule 22, W.R.Adj.R. is **GRANTED**. Singleton Farms is therefore **DISMISSED** as a party to this action. This dismissal is without prejudice.

DATED this 17th day of November, 2016.


Russ McElyea
Chief Water Judge

¹ It should also be noted that neither Singleton Bros. Inc. nor Singleton Farms have filed a response to the United States' motions seeking their dismissal as objectors, and therefore it "shall be deemed an admission that the motion[s] [are] well taken." Rule 2, M.U.D.C.R.

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Note: Service List Updated 11/16/2016