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8 MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY
9

10 NICKY PUTNAM,

11 Plaintiff,

12 vs.

13 CASCADE COUNTY, a Political
14 Subdivision of the STATE OF
15 MONTANA, and WEST GREAT
16 FALLS FLOOD CONTROL AND
DRAINAGE DISTRICT, a Political
Subdivision of Cascade County,

17 Defendants.

Cause No. ADV-20-0356

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19 PLAINTIFF'S BRIEF IN OPPOSITION TO MOTION TO DISMISS
20 OF WEST GREAT FALLS FLOOD CONTROL AND DRAINAGE DISTRICT

21 COMES NOW, Nicky Putnam ("Putnam"), and for her *Brief in Opposition to*
22 *Motion to Dismiss of West Great Falls Flood Control and Drainage District*, states as
23 follows:
24

25 **ARGUMENT**

26 Defendant West Great Falls Flood Control and Drainage District ("District")
27 has already affirmed that it should not be dismissed from this action by virtue of its
28 acknowledgment that it "has no objection to the Court granting Plaintiff's Requests

1 for Relief One and Two.” *Motion to Dismiss of West Great Falls Flood Control and*
2 *Drainage District*, ¶12. Further, District admits “[t]herefore, the election as
3 conducted was not proper in that it did not follow the requirements of the Statute.”
4 *Id.* ¶16.

5 As to the other two basis for its Motion to Dismiss, District cites no authority
6 for a dismissal for failure to state a claim. On Request for Relief Number Three,
7 District only states “[t]he District cannot comment since the remaining
8 Commissioners are divided on this issue.” That is precisely why Putnam requested
9 the Court make the determination that Putnam remain a Commissioner of the
10 District, until the election is properly conducted. Putnam’s allegation is that
11 “Commissioners’ elected term is three years, ‘or until a successor is elected or
12 appointed.’ *By-Laws*, Article IV, Section 2.” *Petition for New Election*, ¶10.
13 Because the District has admitted “the election as conducted was not proper”, it
14 follows that Putnam should continue in her capacity as Commissioner in accordance
15 with the District’s Bylaws, until a proper election is conducted. District’s only
16 authority in opposition to Putnam’s Request for Relief Number Three, is “it is the
17 opinion of the District’s legal counsel that the District did not have the power or
18 authority to either grant or deny Plaintiff’s request at the time the Petition was filed
19 or currently.” It is respectfully submitted that more than counsel’s opinion is
20 necessary to support a motion to dismiss.


21 That the Bylaws of the District control this matter is common law in
22 Montana:

23 It is a well established precedent that the bylaws of a corporation,
24 together with the articles of incorporation, the statute under which it
25 was incorporated, and the member's application, constitute a contract
26 between the member and the corporation. When duly enacted, the
27 bylaws are binding upon all members of the corporation or association
28 who are presumed to know them and contract in reference to them.
Two Crow Ranch, 159 Mont. at 23, 494 P.2d at 919 (citing 18
Am.Jur.2d, Corporations § 168).

Eastgate Vill. Water & Sewer Ass'n v. Davis, 2008 MT 141, ¶ 26, 343 Mont. 108,
183 P.3d 873.

1 DATED this 27th day of August, 2020.

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6 By 
7 Kirk D. Evenson
8 Attorneys for Plaintiff


9 **CERTIFICATE OF MAILING**

10 I, the undersigned, do hereby certify that a copy of the within and foregoing
11 PETITIONER'S BRIEF IN OPPOSITION TO MOTION TO DISMISS OF WEST
12 GREAT FALLS FLOOD CONTROL AND DRAINAGE DISTRICT was mailed on
13 the 27th day of August, 2020, at Great Falls, Montana, and directed to the following:

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