2 3 4 5 6 7 8	MARRA, EVENSON & LEVINE, P.C. 2 Railroad Square, Suite C P. O. Box 1525 Great Falls, Montana 59403-1525 Telephone: (406) 268-1000 Facsimile: (406) 761-2610 Direct e-mail: kevenson@marralawfirm.com (Attorneys for Plaintiff) MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY
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11	NICKY PUTNAM, Cause No. ADV-20-0356
12	Plaintiff, (
13	vs.
14	CASCADE COUNTY, a Political Subdivision of the STATE OF
15	MONTANA, and WEST GREAT) FALLS FLOOD CONTROL AND)
16	DRAINAGE DISTRICT, a Political Subdivision of Cascade County,
	Defendants.
17 18	Defendants.
	DI AINTELETTE DI LEE INI ODDOCTETONI TO MOTIONI TO DICAGO
19	PLAINTIFF'S BRIEF IN OPPOSITION TO MOTION TO DISMISS OF WEST GREAT FALLS FLOOD CONTROL AND DRAINAGE DISTRICT
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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	ARGUMENT
25	Defendant West Great Falls Flood Control and Drainage District ("District")
26	has already affirmed that it should not be dismissed from this action by virtue of its
27	acknowledgment that it "has no objection to the Court granting Plaintiff's Requests
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for Relief One and Two." *Motion to Dismiss of West Great Falls Flood Control and Drainage District*, ¶12. Further, District admits "[t]herefore, the election as conducted was not proper in that it did not follow the requirements of the Statute."

Id ¶6

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

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

It is a well established precedent that the bylaws of a corporation, together with the articles of incorporation, the statute under which it was incorporated, and the member's application, constitute a contract between the member and the corporation. When duly enacted, the bylaws are binding upon all members of the corporation or association 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.

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Eastgate concerned a water and sewer district, the same type of association as District in this case. Accordingly, the District is bound by its own Bylaws, and Putnam should be continuing as a Commissioner, until the County properly conducts a new election. For those reasons the District is a necessary party and should not be dismissed, as it is ignoring its own Bylaws.

As to Request for Relief Number Four, District's other basis for its motion to dismiss, it states that it should not have to pay any costs. Motion to Dismiss ¶14. However, because this is a "special proceeding", Putnam is entitled to her costs. Mont. Code Ann. §27-10-101(4). Under that statute, Putnam is entitled to her costs "as a matter of course to the prevailing party."

This matter is a "special proceeding." Under Mont. Code Ann. §27-1-102 a special proceeding is defined as any proceeding which is not an "action" which is defined as "an ordinary proceeding in a court of justice by which one party prosecutes another for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense. Every other remedy is a special proceeding." *Id.* at subsection (2). By way of example, in *In re Estate of Lande*, the District Court "concluded that a will contest is a special proceeding under §27-1-102". 1999 MT 179, 2019, 295 Mont. 277, 983 P.3d 316. Here, Putnam's Petition to have another election properly conducted is a "special proceeding", as that term is defined by Montana Code. For that reason as well, District's Motion to Dismiss should not be granted.

CONCLUSION

For the foregoing reasons, District's Motion to Dismiss should be summarily denied.

DATED this 27th day of August, 2020.

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Attorneys for Plaintiff

CERTIFICATE OF MAILING

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

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