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**MONTANA FOURTH JUDICIAL DISTRICT COURT,
MISSOULA COUNTY**

Seeley Lake Sewer District, Plaintiff, v. Thomas Morris and Jason Gilpin, Defendants,	Cause No. _____ Dept. No. _____ VERIFIED COMPLAINT
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COMES NOW Plaintiff Seeley Lake Sewer District (hereinafter, the "District"), by and through its counsel of record, Jon G. Beal of Beal Law Firm, PLLC and for its Verified Complaint against Defendants Thomas ("Tom") Morris and Jason Gilpin (collectively, "Defendants"), states and alleges as follows:

PARTIES

1. The District is a county sewer district formed under the provisions of the laws of the State of Montana, MCA Title 7, Chapter 13, Parts 22 and 23.

2. The District is governed by its Board of Directors ("Board") pursuant to MCA § 7-13-2231.

3. Defendant Tom Morris is a resident of Seeley Lake.

1 4. Defendant Jason Gilpin is a resident of Seeley Lake.

2 5. Defendant Jason Gilpin is Defendant Tom Morris' son-in-law.

3 **FACTS COMMON TO ALL COUNTS**

4 6. Many issues of fact and law at issue in the instant case are
5 derived from the related litigation against the District in Cause No. DV-18-913,
6 presently before the Fourth Judicial District Court, Missoula County, Judge
7 Leslie Halligan presiding, and against the Missoula Count Elections
8 Administrator in Cause No. DV-20-135, presently before the Fourth Judicial
9 District Court, Judge Robert L. Deschamps III presiding. Defendant Tom
10 Morris is a plaintiff in each of the aforementioned cases. The District
11 respectfully requests that the Court take judicial notice of the record and filings
12 in these cases.

13 7. Many of the following allegations are taken from the District's April
14 30, 2020 Statement of Undisputed Facts and Exhibits attached hereto
15 (hereinafter, collectively "SUF") in the related litigation DV-18-913. *DV-18-*
16 *913, Exh. 1 to Dkt. 74.* These allegations have been deemed well-taken by
17 the plaintiffs in that litigation, including Defendant Tom Morris in the instant
18 case, by operation of Uniform District Court Local Rule 2(c) pursuant to the
19 Court's May 21, 2020 Order Granting the District's Rule 37 Motion for
20 Sanctions and Dismissing Case. *DV-18-913, Dkt. 82.* The District respectfully
21 requests that the following SUF allegations be deemed admitted and
22 conclusively established against Defendants for the purpose of this litigation
23 under the Law of the Case Doctrine, collateral estoppel, and/or other
24 applicable law. *See Houden v. Todd*, 2014 MT 113, ¶ 45, 375 Mont. 1, 324

P.3d 1157 (“The law of the case doctrine is the practice of courts ‘generally to refuse to reopen what has been decided.’”); *LeMond v. Yellowstone Dev., Ltd. Liab. Co.*, 334 P.3d 366, 367 (Mont. 2014) (“[t]he law of the case doctrine applies to coordinate courts, including federal court decisions in related litigation.”); *Haines Pipeline Constr. v. Mont. Power Co.*, 265 Mont. 282, 288, 876 P.2d 632, 636 (1994) (“collateral estoppel bars the party against whom the claim is asserted, or a party in privity with the earlier party, from relitigating issues which have been decided with respect to a different cause of action The collateral estoppel bar extends to all questions essential to the judgment which were determined by a prior judgment.”).

8. The doctrine of judicial estoppel binds a party to their judicial declarations and precludes a party from taking a position inconsistent with previously made declarations in a subsequent action or proceeding. *Kauffman-Harmon v. Kauffman*, 2001 MT 238, ¶ 15, 307 Mont. 45, 36 P.3d 408.

9. “The doctrine of equitable estoppel is designed to prevent on party from unconscionably taking advantage of a wrong while asserting a strict legal right, and will be invoked where ‘justice, honesty, and fair dealing’ are promoted.” *Selley v. Liberty Northwest Ins. Corp.*, ¶ 11, 2000 MT 76, 299 Mont. 127, 998 P.2d 156.

10. MCA § 26-1-601(1) provides in relevant part that “[t]he following presumptions are conclusive . . . the truth of a declaration, act, or omission of a party, as against that party in any litigation arising out of the declaration, act, or omission, whenever the party has, by the declaration, act, or omission,

intentionally led another to believe a particular thing true and to act upon that belief[.]”

11. Defendants are judicially and/or equitably estopped from taking positions contrary to the law and facts deemed well-taken and conclusively established in DV-18-913 and/or DV-20-135.

12. The District was organized in 1992 for the purpose of determining “if a sewer system is needed in all or part of the district, and if so, to construct, purchase, lease, or otherwise acquire [sic] and operate and maintain sanitary sewerworks as provided for in M.C.A. 7-13-2218.” SUF ¶ 14

13. Currently, there are approximately 400 individual wastewater treatment systems, comprised of on-site septic tanks and drain fields, within the District boundaries in Seeley Lake. SUF ¶ 1

14. Replacement of these existing systems is nearly impossible due to the small lot size of the properties utilizing them. SUF ¶ 2

15. The Missoula City-County Health Board (“Health Board”) discovered elevated nitrate levels in Seeley Lake groundwater in late 2010 and early 2011. SUF ¶ 3

16. The Montana Board of Environmental Review has adopted a human health based maximum allowable standard of 10 mg/L for nitrate in ground water pursuant to Admin. Mont. R. 17.38.203(1)(b) and 40 CFR 141.62(b). SUF ¶ 24

17. The Health Board had already been monitoring test wells and surface water for several years and the data showed, and continues to show, an upward trend in nitrate levels. SUF ¶ 4

1 18. One of the monitored wells exceeded the 10 mg/L nitrate standard
2 for groundwater. SUF ¶ 5

3 19. Groundwater monitoring conducted by the Montana Bureau of
4 Mines and Geology has also revealed a decline in groundwater quality that
5 exceeds human health standards. SUF ¶ 6

6 20. The Missoula City-County Health Department and Board of Health
7 have classified the Seeley Lake area as a Special Management Area (“SMA”)
8 due to the presence of nitrates in the groundwater. SUF ¶ 7

9 21. Nitrates are regulated in ground and surface water under State
10 and Federal law because, at elevated concentrations, they pose a risk to
11 human and environmental health. SUF ¶ 8

12 22. High concentration of nitrates in drinking water can cause
13 methemoglobinemia, known as “blue baby syndrome”, in infants, a potentially
14 fatal disease that restricts the blood’s ability to transport oxygen throughout
15 the body. SUF ¶ 9

16 23. Recent studies indicate potential links between nitrate
17 consumption and certain types of cancer and organ disease. SUF ¶ 10

18 24. High levels of nitrates in lakes, rivers, and other surface waters
19 lead to excessive plant growth, including algal blooms, which drive down
20 oxygen levels, drive up water temperatures, all of which may contribute to
21 massive deaths of fish in a process known as “eutrophication”. Once
22 eutrophication occurs, it is difficult to reverse. SUF ¶ 11

23 25. The decline in groundwater quality in Seeley Lake poses a human
24 health hazard not only to Seeley Lake residents who utilize domestic wells,

1 but also poses a risk to the community drinking water system that draws from
2 Seeley Lake due to near-shore groundwater and surface water interaction.

3 SUF ¶ 12

4 26. The effects of Seeley Lake’s contaminated groundwater and its
5 influence on the surface water can be observed as far downstream as Salmon
6 Lake, which is experiencing algal blooms due to excessive nutrients caused
7 by the elevated nitrate levels. SUF ¶ 13

8 27. The District is expressly authorized by MCA § 7-13-2218 to
9 “construct, purchase, lease, or otherwise acquire and operate and maintain
10 . . . sanitary sewerworks . . .” for the purpose of “pollution abatement”, and for
11 other purposes prescribed by statute. SUF ¶ 15

12 28. MCA § 7-13-2274(3) provides that the Board “act only by
13 ordinance or resolution.” SUF ¶ 17

14 29. The Board is legally and ethically obligated to act according to its
15 adopted resolutions. *See Martinell v. Bd. of Cty. Comm’rs*, 2016 MT 136, ¶
16 20, 383 Mont. 486, 373 P.3d 34 (board of directors acted arbitrarily by waiving
17 zoning requirements established by duly adopted resolution). SUF ¶ 18

18 30. As elected officials of a unit of local government pursuant to MCA
19 § 7-13-2201(3), the Board holds a “public trust, created by the confidence that
20 the electorate reposes in [their] integrity” and to “carry out [their] duties for the
21 benefit of the people of the state.” MCA § 2-2-103(1). *See also Sheehy v.*
22 *Comm’r of Political Practices for Mont.*, 2020 MT 37, ¶ 60, 399 Mont. 26
23 (Justice McKinnon, concurrence) (describing public trust set forth in MCA §
24 2-2-103(1) as requiring “a duty of loyalty and responsibility to act in the best

interests of . . . the public.”). SUF ¶ 19

31. This public trust also creates a fiduciary relationship between the District and the public that it serves, with “attendant fiduciary duties of loyalty, trust, and competence”. *Anderson v. ReconTrust Co., N.A.*, 2017 MT 313, ¶ 11, 390 Mont. 12, 407 P.3d 692; *Garrow v. Elizabeth Gen. Hosp. & Dispensary*, 79 N.J. 549, 557, 401 A.2d 533, 537 (1979). SUF ¶ 20

32. MCA § 7-13-2271(2) provides that the “board shall establish rules for its proceedings.

33. Article IV, Section 1 of the District’s April 20, 2020 Amended Bylaws provides:

Purpose. It is the purpose of the District to maintain and provide a healthful environment for present and future generations and to supervise wastewater treatment within the District.

34. Article VII, Section 13 of the District’s April 20, 2020 Amended Bylaws provides:

Conflicts. In order to avoid conflicts of interest and potential conflicts of interest, directors of the Board, advisors to the Board, staff members (whether employed directly or retained on an independent contractor basis), volunteers, legal tenants, and any immediate family members of the aforementioned shall exercise good faith in all transactions associated with their duties to the District. They shall not use their positions or knowledge gained therefrom, so that a conflict of interest might arise between the interests of the District and that of the individual.

SUF ¶ 22

35. Article VII, Section 14 of the District’s April 20, 2020 Amended Bylaws provides, in relevant part:

Duties. Board directors, staff members, volunteers, and any individuals appointed to committees of the Board owe attendant duties of loyalty, trust and competence to the District and the

Board in carrying out the purpose and intent of the Board's duly adopted resolutions and/or ordinances pursuant to M.C.A. § 2-2-103(1) and other applicable law. All persons must comply with the laws of Montana pursuant to M.C.A. §§ 1-1-101 through 1-1-109, as may be amended, including but not limited to Mont. Const. Art. II § 9 and related case law. No person may use their own rights so as to infringe on the rights of another, pursuant to M.C.A. § 1-3-205, as may be amended.

"The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees. A public officer, legislator, or public employee shall carry out the individual's duties for the benefit of the people of the state. "M.C.A. § 2-2-103 (1). The Montana Supreme Court has held that a fiduciary relationship has "attendant fiduciary duties of loyalty, trust, and competence". *Anderson v. ReconTrust Co., N.A.*, 2017 MT 313, ¶11, 390 Mont. 12, 407 P.3d 692. Likewise, the public trust set forth in M.C.A. § 2-2-103 (1) has been described as requiring "a duty of loyalty and responsibility to act in the best interests of...the public" *Sheehy v. Comm'r of Political Practices for Mont.*, 2020 MT 37, ¶ 60, 399 Mont. 26 (Justice McKinnon, concurrence). Thus, board directors, staff members, volunteers, and any individuals appointed to committees of the Board must place the best interests of the District and the Board above their own competing interests and personal beliefs when carrying out the purpose and intent of resolutions and/or ordinances that have been duly adopted by the Board. Any action taken by an individual to interfere with, delay, or otherwise prevent the Board from pursuing its duly adopted resolutions and/or ordinances may constitute a conflict of interest and breach of the individual's attendant duties of loyalty, trust, and competence to the District and the Board.

SUF ¶ 23

36. Each Board director, prior to taking office, takes the following Oath in accordance with Mont. Const. Art. III, § 3:

I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the State of Montana, and that I will discharge the duties of my office. Seeley Lake Sewer District Trustee, with fidelity (so help me God).

37. On November 8, 2017, the Board adopted Resolution No. 11082017, giving real property owners within the District an opportunity to protest the proposed levy of assessments used to pay for special assessment bonds for funding a public sewer system. SUF ¶ 25

38. On December 21, 2017, the Board adopted Resolution No. 12212017, approving levies of special assessments to pay for the bonded indebtedness after a majority of the property owners in the District chose not to protest. SUF ¶ 26

39. The public sewer system, as planned, encompasses the design, construction, and installation of a sewage treatment plant, force mains, lift stations, sewer collection lines, service connections, and other appurtenances, with the collection system to be constructed in four phases. SUF ¶ 27

40. Resolution No. 12212017 authorizes the District to levy special assessments to finance the project through one or more series of special assessment bonds, which are currently estimated to provide \$5,790,000 in funding, including: one bond of approximately \$1,488,000 to pay a portion of the cost of the collection system, and two bonds of approximately \$3,000,000 and \$1,302,000 to pay a portion of the cost of a sewage treatment plant. SUF ¶ 28

41. Resolution No. 12212017 was adopted pursuant to MCA § 7-13-2333, which authorizes the District to incur indebtedness through special assessment bonds “without need for authorization through an election.”

42. Specifically, MCA § 7-13-2333(1) provides:

1 The board of directors of the district may authorize the issuance
2 of bonds payable from all or a portion of the revenue of the district
3 or from special assessments levied against benefited property in
4 the district to finance the acquisition, construction, improvement,
5 or extension of any facilities of the district benefiting all or any
6 portion of the district for other authorized corporate purposes of
7 the district, to refund bonds issued for those purposes, to fund a
8 debt service refund for the security of the bonds, to pay interest
9 on the bonds during the estimated period of construction or
improvement of facilities, and to pay costs of the bond issuance.
Revenue or special assessment bonds issued under this section
may be authorized by a resolution adopted by the board of
directors of the district without need for authorization through an
election. Bonded indebtedness incurred pursuant to this section
may not be secured by the levy of the deficiency tax provided in
7-13-2302 if not submitted to and approved by the qualified
electors of the district.

10 43. Resolution No. 12212017 was also adopted pursuant to MCA § 7-
11 13-2282, which authorizes the method of assessment set forth therein if the
12 property owners comprising not more than 50% of the cost of improvements
13 do not protest the assessment.

14 44. Specifically, MCA § 7-13-2282(4) provides:

15 If the board of directors finds that a protest with respect to the
16 method or methods of assessment described in the resolution is
17 made by the owners of property in the district to be assessed for
18 more than 50% of the cost of improvements, the board of
19 directors may not use the method or methods of assessment
20 described in the resolution. A protest does not bar the board of
21 directors from adopting subsequent resolutions pursuant to
7-13-2280, using a different method of assessment, and levying
the assessments following notice and hearing as provided in
7-13-2281 and this section or, not less than 6 months after the
receipt of sufficient protests, instituting proceedings under
7-13-2280, 7-13-2281, and this section proposing the same
method of assessment.

22 45. On August 15, 2019, the Board adopted Resolution No.
23 08152019A, which requires each and every owner of developed property
24 within the District to connect to the sewer system within 180 days of its

1 completion, at the expense of the District, as allowing continued use of on-site
2 septic systems is not adequate to resolve the nitrate pollution problem. SUF
3 ¶ 38.

4 46. Mandatory public sewer system hookups are required because
5 allowing developed properties to continue to use on-site septic systems is not
6 an adequate resolution to the nitrate pollution problem in Seeley Lake.

7 47. Initial estimates by the Missoula City-County Health Board
8 approximate that completion of all stages of the public sewer system will
9 reduce nitrates entering the Seeley Lake groundwater by at least 85%. SUF
10 ¶ 32

11 48. The public sewer system will improve groundwater quality by
12 reducing the input of nutrients caused by the elevated nitrate levels as existing
13 septic tanks are replaced with service connections to the community treatment
14 system from Phase 1 of the project. SUF ¶ 33

15 49. The public sewer system project will protect the quality of
16 groundwater, surface water, and aquatic life in Seeley Lake, will benefit the
17 health and safety of Seeley Lake citizens and recreationists, and will benefit
18 the local economy by improving wastewater management. SUF ¶ 34

19 50. Debbie Johnston, Vice Chair of the Missoula City-County Board
20 of Health, has likewise explained the public sewer system “is an excellent way
21 to deal with the high nitrate levels in the groundwater, and public sewer has
22 proven to be effective at improving groundwater quality in other areas in
23 Missoula County.” SUF ¶ 35

24 51. The District currently has \$9.6 million in grants available to help

1 pay for the Phase 1 Collection System and Treatment Plant, which will serve
2 all phases of the project, which is estimated to cost approximately \$15.9
3 million. These grants do not have to be repaid by users of the public sewer
4 system. If the grants are lost, the project costs will need to be funded by
5 loans repaid by the public sewer system users. SUF ¶ 36

6 52. Approximately \$5,790,000 in funding will come from one or more
7 series of bonds will be issued by the United States Department of Agriculture
8 (“USDA”) Rural Development, for which the District is currently authorized to
9 levy assessments to repay pursuant to District Resolution No. 12212017.
10 SUF ¶ 37

11 53. These bonds, once authorized by District resolution, will include:

- 12 a. one bond of approximately \$1,488,000 to pay a portion of
13 the cost of the collection system, with an interest on
14 assessments estimated to be 2.75%;
- 15 b. one bond of approximately \$3,000,000 to pay a portion of
16 the cost of the sewage treatment plant, with interest on
17 assessments estimated to be 2.75%; and
- 18 c. one bond of approximately \$1,302,000 to pay a portion of
19 the cost of the sewage treatment plant, with interest on
20 assessments estimated to be 3.125%. SUF ¶ 38

21 54. Authorization for these bonds will be made by subsequent
22 resolutions of the District when the exact form, amounts, and details of the
23 bonds are known, as reflected in Resolution No. 12212017. SUF ¶ 39

24 55. The low interest rate of these bonds are intended to benefit the

property owners of the District responsible for repaying the bonds through levied assessments. SUF ¶ 40

56. The District has already drawn \$336,295.95 in grants for the research and development phase of the public sewer project. These grants include:

- a. a 2012 Renewable Resource Grant and Loan (“RRGL”) grant of \$91,119.41;
- b. a Treasure State Endowment Program (“TSEP”) planning grant of \$15,000;
- c. a Missoula County grant of \$21,912;
- d. an Environmental Protection Agency (“EPA”) State and Tribal Assistance Grant (“STAG”) of \$65,756.37;
- e. a Water Resources Development Act (“WRDA”) grant of \$123,508.17;
- f. a Seeley Lake Community Foundation (“SLCF”) grant of \$19,000.

SUF ¶ 41

57. The grants available for the treatment facility and phase 1 collection system include:

- a. a 2012 RRGL grant of \$8,880.59, which the District has already fully drawn;
- b. a TSEP grant of \$750,000;
- c. a LOR Foundation grant of \$500,000, of which the District has already drawn \$191,736.63;

- d. a EPA STAG of \$667,576.63, of which the District has already drawn \$153,736.57;
- e. a 2010 WRDA grant of \$277,491.83, which the District has already fully drawn;
- f. a 2017 WRDA grant of \$571,999.62, of which the District has already drawn \$401,854.21;
- g. a 2018 WRDA grant of \$479,000; and
- h. a USDA Rural Development grant of \$6,702,000.

SUF ¶ 43

58. The District has already expended \$1,221,236.48 of the grant funding available for Phase 1 of the project. SUF ¶ 45.

59. The Department of Environmental Quality (“DEQ”) Water Pollution Control State Revolving Fund (“WPCSRF”) program is currently administering both an EPA STAG of \$500,000 and short term loan funds for the construction phase of the public sewer system project. SUF ¶ 46.

60. These grants and funding are not available for individual replacement systems, which the District has inquired about as alternative to the public sewer system. They are only authorized under Federal law for Publically Owned Treatment Works (“POTW”) systems. SUF ¶ 47.

61. The Department of Natural Resources and Conservation (“DNRC”) administers interim financing for the sewer system project through a short-term loan or several loans for up to three years. These loans would be paid off by USDA Rural Development. SUF ¶ 48.

62. The loan(s) used to fund construction of the sewer system project

1 with short-term financing would be funded from the SRF Program, which is
2 administered by the State of Montana through the DNRC. SUF ¶ 49.

3 63. The combined estimated \$12,492,000 in USDA Rural
4 Development grant and bonded loan funding is for the sewer system project
5 as it is currently designed. *Curtiss Affidavit (Exh. 1)*, ¶ 26. SUF ¶ 157.

6 64. The USDA grant funding for this project represents the maximum
7 possible grant percentage the USDA is authorized to award by law. SUF ¶
8 158.

9 65. The amount of USDA grant funding awarded to the District to date
10 equals almost two years allocation for the entire State of Montana, of which
11 the annual allocation of grant funding is between \$3.5 million to \$3.7 million.
12 SUF ¶ 159.

13 66. On April 14, 2018, campaign ads for election to the Board were
14 published in the Seeley Swan Pathfinder for Juli Cole, Troy Spence, and Beth
15 Hutchinson. These ads were paid for by Citizens for Sensible Water
16 Solutions, with Donald Larson as its treasurer. SUF ¶ 50.

17 67. Juli Cole, Troy Spence, and Beth Hutchinson were subsequently
18 elected to the Board in May 2018. SUF ¶ 51.

19 68. On June 26, 2018, Don Larson filed a Complaint in the Fourth
20 Judicial District Court, Missoula County, Cause No. DV-18-913, against the
21 District and Missoula County challenging the Board's decisions with respect
22 to the public sewer system and to incur bonded indebtedness under a
23 multitude of claims, including requests for a preliminary and permanent
24 injunction to stop the sewer system project from proceeding. SUF ¶ 52.

1 69. Don Larson generally alleged that the Board had failed to allow
2 meaningful participation by unidentified “members of the public”, but failed to
3 set forth a single allegation of fact regarding how he, individually, had been
4 deprived of meaningful participation. SUF ¶ 53.

5 70. Don Larson also sought damages against the District in DV-18-
6 913, including punitive damages and his attorney fees and costs. *DV-18-913*,
7 *Dkt. 1*.

8 71. On July 20, 2018, without serving the District with the original
9 Complaint, Don Larson moved the Court for a preliminary injunction to enjoin
10 the District from, among other things, “[t]aking any action to advance the
11 sewer project as currently designed, presented and planned, pending the
12 outcome of these proceedings.” SUF ¶ 54.

13 72. On July 26, 2018, the Court ordered that a hearing be held for Don
14 Larson to show cause for entry of the preliminary injunction on August 7,
15 2018. SUF ¶ 55.

16 73. On August 1, 2018, the District’s counsel contacted Plaintiff’s
17 counsel, notifying her that he represented the District with respect to business
18 matters for the project, but had not yet been retained to represent it in
19 litigation. The District’s counsel requested a meeting with officials from the
20 District and Missoula County to attempt to resolve Don Larson’s concerns,
21 and whether his counsel would be willing to vacate the August 7, 2018
22 hearing. SUF ¶ 56.

23 74. Don Larson’s counsel responded the same day, stating that a
24 “meeting with the board is a possibility but we have to have an agreement in

1 place. We are currently looking for another hearing date because I am not
2 available on the 7th. We have asked for another hearing date in the next two
3 weeks. A stipulation before Tuesday would be ideal.” SUF ¶ 57.

4 75. The show cause hearing in DV-18-913 was rescheduled for
5 August 14, 2018. SUF ¶ 58.

6 76. On August 9, 2018, the District’s counsel again asked Don
7 Larson’s counsel if her client would be willing to vacate the hearing and meet
8 with the District and Missoula County on August 22, 2018 to get a better
9 understanding of Mr. Larson’s concerns, in order to resolve them without
10 prolix and expensive litigation and to ensure a clean and healthful
11 environment for the Seeley Lake area community. SUF ¶ 59.

12 77. On August 10, 2018, Don Larson’s counsel informed the District’s
13 counsel that she had discussed vacating the hearing with her client, and that
14 he was adamant that it depend upon a stipulation to enter into a preliminary
15 injunction. She stated that she would prepare a stipulation for consideration
16 by the District and Missoula County and that “if they stipulate to not taking
17 action until this matter is resolved, we can avoid the August 14 hearing,” and
18 that “this cannot be resolved in a meeting among the lawyers and my client
19 on August 22nd”. SUF ¶ 60.

20 78. On August 12, 2018, Don Larson’s counsel forwarded a proposed
21 stipulation for preliminary injunction to counsel for the District and Missoula
22 County, stating that “the stipulation merely parrots my motion for an injunction.
23 I am willing to look at other ways to say this but I am either preparing for the
24 hearing or stipulating”. SUF ¶ 61.

1 79. Don Larson’s counsel’s proposed stipulation also mandated that
2 the Board would proceed to the election of new officers, after three of the new
3 directors had their campaigns financed by Don Larson, and that it “not accept
4 funds from any group or agency for the purpose of continued planning,
5 designing, advertising, or providing public education regarding the sewer
6 project pending the outcome of these proceedings.” SUF ¶ 62.

7 80. On August 13, 2018, the District’s counsel sent a letter to Plaintiffs’
8 counsel with several questions related to the proposed stipulation, including
9 whether Plaintiff Larson would be willing and able to post an undertaking or
10 bond for the project amount to ensure that the community was protected and
11 that the millions of dollars in funding would not be lost if the project were
12 stalled. SUF ¶ 63.

13 81. Don Larson’s counsel responded the same day, stating “I would
14 recommend you consider the stipulation which you appear to have returned
15 to me without any requested amendments. As I told you before, in order to
16 discuss the solution to these issues, we need a stand-still agreement. I am
17 sure the funding sources would understand that.” SUF ¶ 64.

18 82. On August 14, 2018, the District’s counsel notified Don Larson’s
19 counsel informing that he had been retained by the District to represent it in
20 the litigation at approximately 9:30 PM the night before, requested responses
21 to the questions he had raised regarding the proposed stipulation, and again
22 requested that the hearing be vacated or rescheduled it to another date. SUF
23 ¶ 65.

24 83. Don Larson’s counsel responded approximately four hours prior
25

1 to the hearing, stating that the District's questions were "unrelated to the
2 preliminary injunction or are part of the evidence that will be presented today"
3 and stated that "if you are conducting discovering [sic] through email a few
4 hours before the hearing on the injunction, I am not available for that right
5 now". SUF ¶ 66.

6 84. During the August 14, 2018 hearing, following Don Larson's
7 testimony, the Court stated that "[t]he basis for an injunction is that there's
8 going to be an irreparable harm. I haven't heard one word about that." SUF
9 ¶ 67.

10 85. During the hearing, Don Larson referred to the Missoula City-
11 County Health Department as the "gestapo of Missoula County." SUF ¶ 68.

12 86. Don Larson failed to meet his burden and the Court entered an
13 Order denying the injunction on October 2, 2018 concluding that "Mr. Larson
14 has not made a showing of any irreparable harm he will suffer pending
15 adjudication on the merits." The Order states in relevant part that "Mr. Larson
16 does not represent persons who do not appear as litigants in this lawsuit" and,
17 under the "Applicable Legal Principals", that:

18 Prudential limits of standing require a plaintiff must assert her own
19 legal rights and interests. *Heffernan v. Missoula City Council*,
20 2011 MT 91, ¶ 32. Associational standing is an exception to the
general prohibition no a litigant's raising a third party's legal rights
but the exception is not applicable here. *Heffernan*, ¶ 44.

21 SUF ¶ 69.

22 87. On August 17, 2018, a Facebook post by now-Plaintiff Michael
23 Triplet called on supporters of Plaintiff Larson to "speak up... Call Don and tell
24 him you support him and he can put your name on the paperwork as a Plaintiff

1 and you can help fight this in court as well.” Later that same day, Board
2 director Juli Cole provided her notice of resignation. SUF ¶ 70.

3 88. On August 30, 2018, Don Larson filed a motion to withdraw his
4 request for a preliminary injunction and “allowing Plaintiff to bring the motion
5 at another time”, incorrectly stating that “[b]oth Counsel for the Defendants
6 were contacted and they do not object to this motion.” After the District’s
7 counsel informed the Court of this fact and of the District’s opposition, the
8 Court denied the motion. SUF ¶ 71.

9 89. On August 31, 2018, the Complaint in DV-18-913 was amended
10 to add an additional 54 named plaintiffs, including former Board director Julie
11 Cole, but the allegations are virtually identical to those in the original
12 Complaint. SUF ¶ 72.

13 90. Defendant Tom Morris was among the additional 54 named
14 plaintiffs added to the August 31, 2018 Amended Complaint.

15 91. As a plaintiff in DV-18-913, Defendant Tom Morris likewise sought
16 recovery of damages against the District, including punitive damages and his
17 attorney fees and costs. *DV-18-913, Dkt. 10*.

18 92. On September 13, 2018, Patrick Caffrey, one of the 54 new
19 plaintiffs in DV-18-913, was voluntarily dismissed from that case. On
20 September 27, 2018, fourteen days later, Caffrey submitted his resume to the
21 District's secretary to be considered by the Board as a potential new member.
22 SUF ¶ 74.

23 93. On October 12, 2018, the District moved to dismiss the Amended
24 Complaint in DV-18-913 on several grounds, including the plaintiffs’ lack of

1 standing to bring claims on behalf of unidentified members of the “public”.
2 SUF ¶ 82.

3 94. On November 26, 2018, Missoula County moved to dismiss the
4 Amended Complaint in DV-18-913 case as well. SUF ¶ 83.

5 95. On March 21, 2019, the plaintiffs’ counsel in DV-18-913 requested
6 a copy of an incomplete working draft of the District’s Sewer User Agreement
7 that had not yet been approved by the Board for public review and comment.
8 The District’s counsel responded the same day, requesting the plaintiffs’ legal
9 and factual bases for requesting public disclosure of incomplete drafts of
10 documents. The District’s counsel also explained that the draft had been
11 submitted to him for his legal review and revision, and that input was needed
12 from the District and other agencies and entities before it was approved by the
13 Board for public review and comment. SUF ¶ 84.

14 96. The District’s counsel provided the plaintiffs’ counsel with a copy
15 of the draft Agreement on March 27, 2019, explaining that he was doing so
16 without waiver of the attorney-client or work-product privilege with respect to
17 future draft documents of the District. SUF ¶ 85.

18 97. On July 25, 2019, the District was notified by the Seeley Swan
19 Pathfinder that the plaintiffs’ counsel had filed a form Petition with the
20 Missoula County Elections Office (“Elections Office”) to place an initiative on
21 the election ballot for an ordinance repealing Resolution No. 12212017, and
22 to prohibit the District from assessing levies unless authorized by a vote of the
23 electors in the District. SUF ¶ 86.

24 98. On July 26, 2019, the District filed a Notice of Issue and Request

1 for Status Conference regarding the status of the litigation, the pending
2 motions to dismiss, and informing the Court of the Petition filed by the
3 plaintiffs' counsel to repeal Resolution No. 12212017, the Resolution at issue
4 in DV-18-913. SUF ¶ 87.

5 99. On July 29, 2019, the District was notified that the sample Petition
6 had been rejected by the Elections Office. Among other reasons, the
7 proposed initiative was prohibited by MCA § 7-5-131(2)(d) and interpretive
8 case law. SUF ¶ 88.

9 100. On August 26, 2019, the plaintiffs' counsel demanded production
10 of all communication between the District's and Missoula County's counsel,
11 the District, any department of the County, and the Elections Administrator
12 regarding the Petition. SUF ¶ 89.

13 101. The District's and County's respective counsel provided the
14 plaintiffs' counsel with the requested communications on September 13, 2019
15 and August 28, 2019, respectively, again objecting to the plaintiffs' request for
16 any future draft documents and correspondence that are protected from public
17 disclosure by the attorney-client, work-product, and other privileges. SUF ¶
18 90.

19 102. On September 9, 2019, the District's counsel was informed by the
20 Missoula County Attorney's Office that a second sample petition had been
21 filed by Frances Trexler, who sought to place a referendum on the election
22 ballot to repeal Resolution No. 08152019A. SUF ¶ 91.

23 103. On September 19, 2019, the District was notified by the Elections
24 Office that Ms. Trexler's sample Petition had been rejected as to form and that

1 the Elections Administrator would await a ruling from this Court before
2 proceeding further on this matter. The District filed a notice with the Court
3 apprising it of this sample Petition. SUF ¶ 92.

4 104. On October 1, 2019, the plaintiffs in DV-18-913 filed a motion to
5 strike the aforementioned notices, and requested an order compelling “the
6 Seeley Lake Sewer District and Missoula County to release all public
7 documents to the Plaintiffs, related to the Seeley Lake Sewer District in each
8 of their possession for a period of seven years”, despite never having
9 requested these documents prior to filing their motion. Later that same day,
10 the Court issued an Order setting a status conference on October 9, 2019.
11 SUF ¶ 93.

12 105. At the October 9, 2019 status conference in DV-18-913, the
13 plaintiffs’ counsel stated that she would provide the District’s counsel with a
14 list of public documents she requested for his review, and that the parties’
15 counsel work out a stipulation regarding the documents requested. The
16 plaintiffs’ counsel never provided the list of documents requested, as she
17 represented to the Court she would do, despite multiple follow-up requests
18 from the District’s counsel and a proposed stipulated order the District
19 prepared for handling public information requests. SUF ¶ 94.

20 106. Beth Hutchinson (current Board director), whose election
21 campaign was paid for by Citizens for Sensible Water Solutions with Don
22 Larson as Treasurer, made the following statement at the October 17, 2019
23 District board meeting:

24 **“I find that this proposed sewer project is not appropriate for**

1 **many, many reasons.** I haven't done anything in terms of voting
2 to hold it back. When I was elected people wanted me to
3 immediately sacrifice the sewer. **Get rid of it. Frankly I wish I**
4 **had.** but it wasn't a responsible position. I held forth and slowed
down the newly elected people to try to model listening to
everybody, to try to model moving to consensus, and to make
sure that we weren't throwing out a project that maybe we didn't
completely understand well enough.

5 That's the kind of responsibility that Dan's talking about. This
6 responsibility, if you read it and read it carefully, and think about
7 its implications is what let Nazi Germany bring about World War
II."

8 *DV-18-913, Dkt. 74.5, ¶ 43 (emphasis added).*

9 107. On November 1, 2019, the plaintiffs' counsel filed her second
10 sample Petition with the Elections Office to place an initiative on the elections
11 ballot repealing District Resolution No. 12212017, which was the subject of
12 DV-18-913. On November 22, 2019, the District's counsel advised the
13 Elections Office administrator that the plaintiffs' counsel's petition should be
14 rejected for failure to comply with Montana law, and was notified the same day
15 of its rejection by the Elections Office. The District notified the Court of this
16 third sample Petition and rejection on November 25, 2019. *SUF ¶ 95.*

17 108. On November 4, 2019, the Court in DV-18-913 entered an order
18 dismissing several of the plaintiffs' claims and consolidated the rest into single
19 declaratory judgment claim. *SUF ¶ 96.*

20 109. On January 23, 2020, the District served comprehensive and
21 surgical discovery requests on the plaintiffs in DV-18-913 addressing each
22 factual allegation in their Amended Complaint, with reference to the operative
23 paragraph of the Complaint. *SUF ¶ 107.*

24 110. In order to narrow the issues for adjudication, and in accordance

1 with the Court's November 4, 2019 directive (*Dkt. 51*), the District's discovery
2 requests include Requests for Admission asking that Plaintiffs admit the
3 alleged acts of the District or its Board were not in violation of any law;
4 Interrogatories asking that, if Plaintiff denied the request for admission, that
5 they identify the law(s) they claim were violated, the date the alleged
6 violation(s) occurred, and the individual(s) involved; and Requests for
7 Production asking for documentation supporting each of Plaintiffs' allegations.
8 SUF ¶ 108.

9 111. On February 13, 2020, the parties in DV-18-913 filed a stipulation
10 for an extension for the plaintiffs to respond to the District's discovery requests
11 until March 31, 2020. The plaintiffs never requested an additional extension,
12 nor was one granted. SUF ¶ 114-115.

13 112. Plaintiffs did not provide the completed responses by the March
14 31, 2020 deadline. Plaintiffs' counsel did not produce the untimely "responses"
15 to the District's Requests for Admission until April 2, 2020, two days after the
16 stipulated deadline, doing so by email only and not by U.S. mail. Plaintiffs
17 produced only a single set of "responses" to the District's Requests for
18 Admission, which were not segregated by Plaintiff, with no explanation or
19 objection as to why they had failed to do so. Plaintiffs produced identical
20 responses to 37 of the 58 Requests for Admission. Three of the Requests for
21 Admission were not responded to at all. Plaintiffs' deficient April 2nd
22 responses also included responses to three of the 69 Interrogatories and two
23 of the 66 Requests for Production. Plaintiffs responses to these
24 Interrogatories were not signed by Plaintiffs—either physically or through an

1 electronic signature—as required by Mont. R. Civ. P. 33(b)(5). Plaintiffs
2 responses and objections to the Requests for Admission were not signed by
3 Plaintiffs or their counsel—either physically or through an electronic
4 signature—as required by Mont. R. Civ. P. 36(a)(3). The District's counsel has
5 not consented to electronic service pursuant to Mont. R. Civ. P. 6(b)(e).
6 Regardless, Plaintiffs' counsel produced the responses through email alone,
7 with no service by U.S. mail. Plaintiffs' responses and objections to the
8 District's requests for admission are deemed admitted pursuant to Mont. R.
9 Civ. P. 36(a)(3) because they were not timely served, and are not signed by
10 Plaintiffs or their counsel. SUF ¶ 130-147.

11 113. As a result of the delays created by the plaintiffs' litigation in DV-
12 18-913, the District was forced to expend \$31,157.36 toward the research and
13 development phase of the project from the reserves set aside by the District
14 to subsidize the operations and maintenance of the public sewer system for
15 the first 3 years, when there are fewer properties sharing the cost of
16 operations and maintenance. SUF ¶ 42

17 114. As a result of the delays created by the plaintiffs' litigation in DV-
18 18-913, the District was forced to expend \$120,236.65 toward Phase 1 of the
19 project from the reserves set aside by the District to subsidize the operations
20 and maintenance of the public sewer system for the first 3 years, when there
21 are fewer properties sharing the cost of operations and maintenance. SUF ¶
22 44

23 115. The USDA bond and grant funding was premised on the final
24 construction inspection and closeout of the sewer system project occurring on

1 March 30, 2020. SUF ¶ 160

2 116. The project has not been authorized to bid because of the
3 plaintiffs' ongoing litigation in DV-18-913. SUF ¶ 161.

4 117. Resolution of the litigation in DV-18-913 is required so that the
5 District's bond counsel can issue the no litigation certification required by the
6 USDA on the bonds. SUF ¶ 162

7 118. USDA funds are only available for 60 months. While a project
8 schedule beyond 60 months can be requested, approval is not guaranteed,
9 requires authority from the Agency Administrator, and a request for extension
10 cannot be made unless a definitive timeline for construction can be provided.
11 SUF ¶ 163

12 119. The failure to construct the public sewer system as scheduled has
13 caused an escalation in project costs of approximately 4%.SUF ¶ 164

14 120. Currently, the plan is to move grant funds from Phase 2 of the
15 project into Phase 1 to maintain the affordability of Phase 1. However, this
16 will make funding Phase 2 much more difficult, and leave Phase 2 with a
17 projected funding shortfall. SUF ¶ 165

18 121. Had the original project timeline been met, and had the USDA
19 bonds been closed this quarter, the District would have received an interest
20 rate of 1.375%, resulting in savings of \$56,194.00/year, and \$2,247,760.00
21 over the life of the USDA bonds. SUF ¶ 166

22 122. The USDA is also unable to provide additional funding while the
23 plaintiffs' litigation in DV-18-913 is pending, as it must fund projects that can
24 go into construction within a reasonable time. SUF ¶ 167

1 123. While the District may reapply for USDA funding in the future after
2 the litigation has been resolved, it will need to provide a new project budget
3 with the cost estimate indexed to the proposed construction timeline.

4 **However, loan rates may not be at the 1.375% previously available to the**
5 **District, which was the lowest rate in the history of the USDA.** SUF ¶ 168

6 124. USDA Rural Development is under no obligation to provide the
7 District more time to re-plan treatment plant and Phase 1 collection. SUF ¶
8 169

9 125. There is no guaranty that if current grants and funding for the
10 public sewer system (as designed) are lost that a similar funding would be
11 available in the future. SUF ¶ 170

12 126. Large projects like the public sewer system sometimes require
13 interim financing from USDA to get the final costs on the project. However,
14 the interim financing cannot move forward until the USDA financing is secure
15 and the ongoing litigation in DV-18-913 is resolved in the District's favor. SUF
16 ¶ 171

17 127. The pending lawsuit against the District in DV-18-913 adversely
18 impacts its ability to obtain interim financing from the DNRC necessary for the
19 public sewer system project to go to bid. SUF ¶ 172

20 128. The EPA has been patient with the STAG, but already rescinded
21 and re-allocated one \$1,000,000 grant from sewer system project in 2009 due
22 to it not being used by District. SUF ¶ 173

23 129. There is no assurance that the EPA will not pull remaining
24 \$500,000 in funding available if project stalls yet again. SUF ¶ 174

1 130. There is currently a historically high demand for WCPSRF
2 financing, and no guarantee that the EPA will be able to finance all project
3 requests in the future. SUF ¶ 175

4 131. The District has been informed by its bond counsel that, in order
5 for funds to be issued to the District for the sewer system project from the
6 special assessment bonds, the bond counsel must render an unqualified
7 opinion that no substantial basis exists for questioning the validity or
8 enforceability of security for the repayment of the bonds. SUF ¶ 176

9 132. The District has been informed by its bond counsel that it is unable
10 to deliver an unqualified opinion if there is pending litigation that, if decided in
11 favor of the plaintiffs in DV-18-913 against the interests of the District, it would
12 adversely effect the validity or enforceability of, or security for, the repayment
13 of the bonds. SUF ¶ 177

14 133. The District has been informed by its bond counsel that it is unable
15 to issue an unqualified opinion needed to obtain funding from the special
16 assessment bonds due to the pending litigation in DV-18-913. SUF ¶ 178

17 134. The District has been informed that the TSEP funds for Phase 2
18 of the public sewer system project are no longer available because all of the
19 available funds have been allocated to other projects in the State. SUF ¶ 179

20 135. There was approximately \$80 million in projects that were applied
21 for under the TSEP program and only \$21 million in available funding, so it
22 was a first-come, first-serve situation. SUF ¶ 180

23 136. The TSEP funding was allocated to projects as they met their
24 start-up conditions, which the District had not been able to accomplish for the

1 public sewer system project as a result of the ongoing litigation in DV-18-913.

2 SUF ¶ 181

3 137. It is possible but unlikely that the TSEP funds may be available for
4 Phase 2 of the project if other projects terminate, and the Board has voted to
5 pay its engineer \$5,000 to reapply for funds that may be made available
6 during the 2021 legislative session. SUF ¶ 182

7 138. TSEP is a highly competitive program. Of the projects submitted,
8 evaluated and ranked, the District's public sewer system project, in the
9 opinion of the TSEP staff, is the program's highest priority as demonstrated
10 by its number one ranking.

11 139. In order for funds to be issued to the District for the sewer system
12 project from the special assessment bonds, the bond counsel must render an
13 unqualified opinion that no substantial basis exists for questioning the validity
14 or enforceability of security for the repayment of the bonds. SUF ¶ 184

15 140. The bond counsel is unable to deliver an unqualified opinion if
16 there is pending litigation that, if decided in favor of the plaintiffs in DV-18-913
17 against the interests of the District, it would adversely effect the validity or
18 enforceability of, or security for, the repayment of the bonds. SUF ¶ 185

19 141. The District is irreparably harmed due to the impact on the
20 District's ability to obtain an unqualified opinion needed to obtain funding from
21 the special assessment bonds given the pending litigation in DV-18-913. SUF
22 ¶ 186

23 142. If the litigation in DV-18-913 proceeds, the District's ability to
24 obtain the required DNRC funding will be impaired and the public sewer

1 system project will be irreparably harmed. SUF ¶ 192

2 143. If the litigation in DV-18-913 proceeds and is not resolved in the
3 District's favor, the District will be unable to utilize the grant and bonded loan
4 funding available to obtain bids for the construction work. SUF ¶ 193

5 144. The estimated monthly cost of the delay caused by the plaintiffs'
6 litigation in DV-18-913 on the sewer system project is \$40,000. SUF ¶ 194

7 145. On April 28, 2020, the District was informed by its engineer, Great
8 West Engineering, Inc., that its professional services rates had been adjusted
9 by 4% for 2020, which reflected "increases in employee salary, health
10 insurance cost, and other benefits" and that "[g]iven the current uncertainty
11 associated with the COVID-19 pandemic, it is difficult to project future rate
12 adjustments. At this time, we are anticipating a 4% adjustment to our 2021
13 Professional Services rates." SUF ¶ 195

14 146. Due to the ongoing COVID-19 virus pandemic, the District has
15 seen increased bidding interest for construction work related to the public
16 sewer system from contractors who are in need of work. SUF ¶ 196

17 147. During the May 21, 2020 public Board meeting, Amy Deitchler of
18 Great West Engineering, Inc., the District's engineer for the project, stated
19 "[a]nd so, bids right now we've seen come in at 40% below an engineer's
20 estimate, two years ago we were seeing them the opposite way, they were
21 coming in at 40% over the engineer's estimate."

22 148. On April 21, 2020, the District was informed that the plans and
23 specifications for the Phase 1 wastewater collection system prepared by
24 Great West Engineering, Inc., were approved by the DEQ. SUF ¶ 197

1 149. On April 21, 2020, the District was informed that the plans and
2 specifications for the wastewater treatment facility prepared by Great West
3 Engineering, Inc. were approved by the DEQ. SUF ¶ 198

4 150. The DEQ's approval for the wastewater collection system and
5 wastewater treatment facility are both "given with the understanding that any
6 major modification from the approved plans and specifications will be
7 submitted to the department for reappraisal and approval prior to construction"
8 and that "[u]nauthorized modifications of approved sets of plans and
9 specifications may result in suspension of State Revolving Fund (SRF) Loan
10 Program funding of the project." SUF ¶ 199

11 151. The DEQ informed the District that "[c]onstruction of this project
12 must be completed within three years of this date. If more than three years
13 elapse before completing construction, plans and specifications must be
14 resubmitted and approved prior to continuation of construction." SUF ¶ 200

15 152. The DEQ further stated that, "[w]hen the District is able to move
16 forward and bid the project, we encourage that step." SUF ¶ 201

17 153. On April 24, 2020, the District was informed that the bid package
18 prepared by Great West Engineering, Inc. meets the requirements of USDA
19 Rural Development necessary to issue authorization for advertising bids. SUF
20 ¶ 202

21 154. With the DEQ and USDA Rural Development approval,
22 construction of the Phase 1 wastewater collection system and wastewater
23 treatment facility are now ready to go to bid. SUF ¶ 203

24 155. Construction of the Phase 1 wastewater collection system and

1 wastewater treatment facility cannot go to bid until funding for these items is
2 issued. SUF ¶ 204

3 156. The funding for these items will not be issued until the pending
4 litigation in DV-18-913 against the District is resolved. SUF ¶ 205

5 157. The District is irreparably harmed by the litigation in DV-18-913
6 due to the impact on the District's ability to obtain funding for the construction
7 of the Phase 1 wastewater collection system and wastewater treatment
8 facility. SUF ¶ 206

9 158. Defendant Tom Morris, who is also a plaintiff in DV-18-913,
10 submitted his Declaration for Nomination and Oath of Candidacy (Special
11 District) for the Seeley Lake Sewer District, attached hereto as **Exhibit 1**, on
12 January 30, 2020.

13 159. On January 31, 2020, one day later, two of the plaintiffs in DV-18-
14 913, Don Larson and Defendant Tom Morris, filed a separate Petition for Writ
15 of Mandamus against the Missoula County Elections Administrator in the
16 Fourth Judicial District Court before Judge Robert Deschamps, III. *DV-32-*
17 *2020-0000135, Dkt. 1*. Larson and Morris were both represented by the same
18 counsel as in DV-18-913.

19 160. Petitioners Larson and Morris sought a writ from the Court in DV-
20 32-135 requiring the Elections Administrator to immediately approve for the
21 purpose of obtaining signatures, three petitions to place initiatives on the
22 ballot repealing Resolutions of the District, and for their attorney fees. *DV-32-*
23 *2020-0000135, Dkt. 4*. Petitioners Larson and Morris did not author any of the
24 petitions, which were instead authored by their counsel, Colleen Dowdall, and

1 Frances Trexler, who was not a party to Petitioners' litigation.

2 161. The Resolutions Petitioners sought to repeal in DV-32-135
3 included Resolution No. 12212017, the subject of the litigation in DV-18-913,
4 and Resolution No. 08152019A. SUF ¶ 129.

5 162. Petitioners' counsel in DV-20-135 stated in her June 3, 2020
6 correspondence to the District's counsel, attached hereto as **Exhibit 2**, that
7 Defendant Tom Morris was the "spokesperson" in the mandamus action.

8 163. On February 20, 2020, an article authored by Don Larson was
9 published in the Seeley Swan Pathfinder, in which Mr. Larson states in
10 relevant part that:

11 Missoula County officials have spent more than a half-million
12 taxpayer dollars in the past decade trying to sell a community
13 sewer here in Seeley Lake. Unfortunately, the proposal the sewer
14 board settled on stinks. It does not clean up the shore dwellers'
15 waste effluent (less than 25 percent of the waterfront properties
16 on the lake and the Clearwater are in the sewer district). It does
not protect the watershed. It is REALLY expensive. And it may
very well pollute nearly 100 drinking water wells up near the
airport where the treatment plan is to be located. The current
board continues to plod on with its plan, despite widespread
public DISAPPROVAL.

17 SUF ¶ 150.

18 164. Don Larson authored another article on April 16, 2020, in which
19 he recommends Defendant Tom Morris—a plaintiff in DV-18-913—and Jason
20 Gilpin—Mr. Morris' son-in-law—for election to the Board. Don Larson also
21 states that his organization, Citizens for Sensible Water Solutions', "legal
22 costs to date total nearly \$70,000, a cost that will be passed on to the District
23 if they prevail. Residents will be forced to pay these legal bills that have
24 resulted because of the board's refusal to listen to the residents." SUF ¶ 151.

1 165. On April 16, 2020, Defendant Tom Morris stated in an article
2 published by the Seeley Swan Pathfinder, in relevant part:

3 We are now at a point that the proposed project will financially
4 break many of those that are on fixed and low incomes, and even
5 those who are not. The current proposed plan is fiscally and
6 environmentally irresponsible and needs to be put on hold until a
7 system can be designed and funded properly.

8 *DV-18-913, Exh. 1 to Dkt. 86.* Defendant Tom Morris will challenge the public
9 sewer system project as it is currently designed and approved pursuant to the
10 District's duly adopted Resolutions.

11 166. On April 16, 2020, Defendant Gilpin stated in an article published
12 by the Seeley Swan Pathfinder, in relevant part:

13 I will challenge the current system that is being pursued because
14 it [sic] not an affordable option for most of the residents in the
15 district and thus it will cause many people to lose their long-time
16 homes. If indeed a sewer system is needed for our district, I will
17 fight to find an affordable option – at most \$50 per month for a
18 single-family residence (including debt services and
19 operations/maintenance costs).

20 If we cannot find a system within that budget (which I believe we
21 can) I would vote against moving forward. The system that is
22 currently on the table is definitely not our best option and I believe
23 there are alternative systems and engineering firms to explore.

24 *DV-18-913, Exh. 1 to Dkt. 86.* Defendant Jason Gilpin will challenge the
25 public sewer system project as it is currently designed and approved pursuant
to the District's duly adopted Resolutions.

167. On April 30, 2020, after the plaintiffs in DV-18-913 failed and
refused to produce timely and complete responses to the District's January
23, 2020 discovery requests, the District moved the Court for Rule 37
sanctions dismissing the plaintiffs' case with prejudice or, alternatively,

1 requiring plaintiffs to file a surety bond securing the costs to the sewer system
2 project caused by their litigation. *DV-18-913, Dkts. 73 - 74.*

3 168. On May 15, 2020, the District filed a Notice of Issue in DV-18-913
4 regarding its pending Rule 37 Motion, informing the Court that the plaintiffs
5 had failed to respond to its Motion by the May 14, 2020 deadline, and that the
6 plaintiffs' failure to do so was deemed an admission that the District's Motion
7 was well taken pursuant to Uniform District Court Local Rule 2(c). *DV-18-913,*
8 *Dkt. 77.*

9 169. On May 21, 2020, the plaintiffs' counsel in DV-18-913 filed a
10 Motion for Voluntary Dismissal as a result of Defendant Tom Morris' election
11 to the Board. The Motion states, in relevant part:

12 The defendant has not pleaded a counterclaim before being
13 served with the plaintiff's motion to dismiss. allowing the action
14 may be dismissed without prejudice to the defendant. The
15 dismissal of the plaintiff is not for the purpose of obtaining an
16 unfair advantage for other plaintiffs over the Defendant. Further,
17 this individual plaintiff is not indispensable to the full adjudication
18 of the action.

19 Failure to allow the Plaintiff Tom Morris to withdraw as a plaintiff
20 in this case **will subject him to accusations of conflict of**
21 **interest and efforts to prevent his participation in board**
22 **decisions.** This will invalidate the wish of the electors who
23 overwhelmingly voted in favor of Tom Morris as a member of the
24 Seeley Lake Sewer District Board.

25 *DV-18-913, Dkt. 81, pp. 2 - 3 (emphasis added).*

170. On May 21, 2020 the Court in DV-18-913 entered an Order
granting the District's Rule 37 Motion for Sanctions and Dismissing Case. *DV-*
18-913, Dkt. 82.

171. In its May 21, 2020 Order, the Court in DV-18-913 held:

1 Plaintiffs did not respond to the Motion or timely ask for an
2 extension of the deadline to respond. Pursuant to Rule 2(c) of the
Uniform District Court Rules, the Court must deem Plaintiffs'
3 omission as an admission that the Motion is well taken.

4 *DV-18-913, Dkt. 82, p. 6.*

5 172. In its May 21, 2020 Order, the Court in DV-18-913 deemed the
6 facts and legal conclusions set forth in the District's Requests for Admission
7 (*DV-18-913, Dkt. 74.6, pp. 244 - 324*) as admitted and conclusively
8 established pursuant Mont. R. Civ. P. 36(a). *DV-18-913, Dkt. 82, p. 10.*

9 173. In its May 21, 2020 Order, the Court in DV-18-913 held:

10 Reviewing the substance of the now-admitted facts and legal
11 conclusions, the Court is compelled to find, as requested in the
12 Motion, that Plaintiffs may no longer maintain their case against
13 the District. The RFAs were tailored and methodical in that they
14 checked all possible legal avenues of relief available to Plaintiffs
based on their pleading. Now that they are admitted in favor of
the District – that is, conclusively established by operation of Rule
36 – there is no relief available to Plaintiffs through their Amended
Complaint. Given that the Court is already required to deem the
Motion as well taken, the Court is comfortable applying its
conclusion here to compel dismissal of the Amended Complaint.

15 *DV-18-913, Dkt. 82, p. 10.*

16 174. In its May 21, 2020 Order, the Court in DV-18-913 held:

17 The District has repeatedly emphasized the need for a quick
18 resolution of this matter because there is a lot of time, effort,
19 taxpayer money, and public health at stake in the outcome. Every
day of delay in the case hurts the District and advances the
objective of the Plaintiffs.

20 *DV-18-913, Dkt. 82, p. 13.* Time is of the essence in this project, and
21 Defendant Tom Morris has already attempted to prevent it through delay by
22 litigation.

23 175. In its May 21, 2020 Order, the Court in DV-18-913 held:

1 The Motion makes a well-supported argument in favor of imposing
2 a surety bond on Plaintiffs if the Court does not dismiss the case
3 outright. Because the Court is dismissing the case, it need not
rule on the surety bond question. However, if Plaintiffs elect to file
anew, they should be prepared to provide a such a bond.

4 *DV-18-913, Dkt. 82, pp. 14 - 15.*

5 176. In its May 21, 2020 Order, the Court in DV-18-913 dismissed the
6 plaintiffs' case without prejudice, stating:

7 The Court shall not prohibit a new filing by Plaintiffs but believes
8 that any such new filing may be contested under a number of
legal doctrines and be subject to a surety bond requirement.

9 *DV-18-913, Dkt. 82, p. 15.*

10 177. On May 29, 2020, the District moved for its attorney fees and
11 costs against the plaintiffs in DV-18-913, jointly and severally, including
12 Defendant Tom Morris, pursuant to *Foy v. Anderson*, 176 Mont. 507, 580 P.2d
13 114 (1978), Mont. R. Civ. P. 37, MCA § 37-61-421, MCA § 27-8-313, and
14 other applicable law. *DV-18-913, Dkt. 85.* That Motion is still pending at the
15 time this Complaint is being filed.

16 178. In his February 2, 2020 Affidavit in DV-20-135 (*Dkt. 7*), Defendant
17 Tom Morris referred to the Notice and Protest conducted by the Board that
18 resulted in its adoption of Resolution No. 12212017 as a "scheme" and that
19 it required "a myriad of details that confused the best of us."

20 179. On April 27, 2020, Petitioners in DV-20-135, including Don Larson
21 and Defendant Tom Morris, filed a Witness List in advance of a May 11, 2020
22 hearing, disclosing as witnesses, among others, the District's counsel Jon
23 Beal, former Board President Mike Boltz, former District Manager Greg
24 Robertson, current District Manager Jean Curtiss, and current Board

1 Secretary Felicity Derry. *DV-20-035, Dkt. 18*. The only current Board director
2 disclosed was Beth Hutchinson, whose campaign was financed by Don
3 Larson. *Id.*

4 180. On April 30, 2020, the Petitioners' counsel in DV-20-135 stated:

5 Now, for your comment about the request for the writ of
6 mandamus as work I did instead of answering all of the discovery;
7 that action had been in the works since November when you
8 rejected the initiative petition.

9 *2020-04-30 Email, Dowdall to Beal, attached hereto as **Exhibit 3**.*

10 181. On May 4, 2020, the District's counsel informed Petitioners'
11 counsel in DV-32-135 that he had not received a subpoena to appear, and
12 requested copies of any subpoenas issued to current and former Board
13 personnel. *DV-18-913, Exh. 2 to Dkt. 86*. This request was ignored.

14 182. During the May 11, 2020 hearing in DV-20-135, Petitioners'
15 attorney judicially admitted, under questioning by Judge Deschamps, that the
16 procedure utilized by the District to adopt Resolution No. 12212017 was
17 **lawful**:

18 MS. DOWDALL: And it wasn't voters who approved it the second
19 time: it was property owners who had a right to protest. There
20 was not a vote. You had to return a document that was signed by
21 everybody –

22 THE COURT: **Well, it was done legally, correct?**

23 MS. DOWDALL: It was done -- **it was done according to state**
24 **law, yes**. But it was not a vote of the people. And what we want
25 is -

DV-18-913, Exh. 3 to Dkt. 86 (emphasis added).

183. Defendants are judicially and/or equitably estopped from taking
positions contrary to the admission in DV-20-135 that the procedure utilized

1 by the District to adopt Resolution No. 12212017 was lawful.

2 184. During the May 11, 2020 hearing in DV-20-135, Judge
3 Deschamps stated in relevant part:

4 THE COURT: And so the board goes ahead to start implementing
5 what the voters narrowly but by a majority approved, and things
6 are going forward. And now, all this time later, you want to
7 basically put the whole thing up for another vote, a second vote
8 to again decide: Are we going to move forward with the sewer
9 district or not? I think that vote was taken and people are moving
10 ahead. And it seems to me like it's -- it's, again, just too late to
11 come back and say, Hey, you get a second vote.

12 If the board that's elected decides they -- they don't want to
13 proceed, that's a whole separate question. And I'm --
14 MS. DOWDALL: Judge, I –

15 THE COURT: And I'm not sure at this juncture that the board even
16 has the authority to override the will of the voters, but that's not an
17 issue before me.

18 *2020-05-11 DV-20-135 Hearing Transcript, 32:9 - 25, attached hereto as*
19 ***Exhibit 4.***

20 185. On June 4, 2020, the Court in DV-20-135 entered an Order
21 Denying Petition for Writ of Mandamus. *DV-20-135, Dkt. 22.*

22 186. In its June 4, 2020 Order, the Court in DV-20-135 denied
23 Petitioners', including Defendant Tom Morris', initiative petition to repeal
24 Resolution No. 12212017 as barred by the Doctrine of Laches because
25 Resolution No. 12212017 was "passed within legal confines in December
2017" and "Petitioners chose a different legal course of action to address their
concerns and knowingly waited almost two years before acting in this
capacity." *DV-20-135, Dkt. 22, p. 19.*

187. In its June 4, 2020 Order, the Court in DV-20-135 denied

1 Petitioners', including Defendant Tom Morris', initiative petition to repeal
2 Resolution No. 08152019A because it concluded the Resolution was an
3 administrative, not legislative, action and was not subject to the initiative or
4 referendum process. *DV-20-135, Dkt. 22, p. 15.*

5 188. The Court in DV-20-135 held that Resolution No. 08152019A was
6 an administrative act pursuant to *Town of Whitehall v. Preece*, 1998 MT 53,
7 ¶ 28, 288 Mont. 55, 66, 956 P.2d 743, 749, and that "the history outlined in
8 Resolution No. 08152019A is replete with analyses and recommendations
9 from an environmental health specialist as well as environmental and health
10 agencies who studied and analyzed the nitrate problem." *DV-20-135, Dkt. 22,*
11 *pp. 13 - 15.*

12 189. In its June 4, 2020 Order, the Court in DV-20-135 also denied
13 Petitioners', including Defendant Tom Morris', initiative petition to repeal
14 Resolution No. 08152019A because:

15 . . . while Petitioners may disagree with the conclusions of the
16 local attorney, the decision to recommend rejection of the petition
was based on sound legal reasoning which was not an abuse of
discretion.

17 *DV-20-135, Dkt. 22, p. 15.*

18 190. On or about May 14, 2020, Defendants Tom Morris and Jason
19 Gilpin were elected as directors to the Board.

20 191. Don Larson advocated for the election of Board
21 directors—including Defendant Tom Morris—adverse to the public sewer
22 system project and the Board's legal and ethical obligations to pursue the
23 project pursuant to its duly adopted Regulations. The interests of these
24

1 adverse directors conflict with the interests of the Board in pursuing DV-18-
2 913 to uphold the validity and enforceability of its duly adopted Resolutions,
3 and to dismiss the plaintiffs' claims in DV-18-913 for—among other things—their
4 attorney fees and costs. SUF ¶ 153.

5 192. The interests of Defendants Tom Morris and Jason Gilpin conflict
6 with the interests of the property owners comprising more than 50% of the
7 cost of improvements who did not protest the assessment during the statutory
8 Notice and Protest procedure conducted by the District in order to obtain
9 financing for the design, construction, and installation of the public sewer
10 system as it is currently designed.

11 193. When asked at the May 21, 2020 Board Meeting his opinion on
12 moving forward with the sewer system, Defendant Tom Morris stated “I
13 absolutely believe it should be put to a vote of the electorate. I think they have
14 the right.”

15 194. On May 29, 2020, the plaintiffs', including Defendant Tom Morris',
16 counsel in DV-18-913 contacted the District's counsel, informed him that she
17 was considering her clients' options for refiling the case, and that she would
18 get him a proposal with respect to the District's pending Motion for attorney
19 fees and costs by June 1, 2020. *See also 2020-05-29 email, Dowdall to Beal,*
20 *attached hereto as **Exhibit 6**.*

21 195. On June 2, 2020, the District's counsel requested the plaintiffs'
22 counsel's proposal, as she had not provided him with one by June 1, 2020 as
23 promised. *2020-06-02 Letter, Beal to Dowdall, attached hereto as **Exhibit 5**.*

24 196. On June 3, 2020, the plaintiffs' counsel responded, stating:

1 I met with my client yesterday. We discussed all possible ways to
2 proceed. I am researching those possibilities. If you have a
proposal, please feel free to communicate it. I will let you know if
we have something to propose.

3 I will hold off on the request to waive service by mail in the event
4 we are able to resolve the matter.

5 *Exh. 2.*

6 197. Defendants Tom Morris and Jason Gilpin have not yet been
7 seated as directors on the Board, and will be seated during the next regular
8 public Board meeting on June 15, 2020.

9 198. Defendants Tom Morris and Jason Gilpin, by their words and
10 actions, have declared their intention not to pursue the design, construction,
11 and installation of the public sewer system pursuant to the District's duly
12 adopted Resolutions.

13 199. Defendants Tom Morris and Jason Gilpin, by their words and
14 actions, have declared their intention to interfere with the design, construction,
15 and installation of the public sewer system pursuant to the District's duly
16 adopted Resolutions.

17 200. Defendants Tom Morris and Jason Gilpin, by their words and
18 actions, have declared their intention to violate the lawful statutory notice and
19 protest procedure conducted by the District in adopting Resolution No.
20 12212017 in order to incur indebtedness through special assessment bonds.

21 201. Defendants Tom Morris and Jason Gilpin, by their words and
22 actions, have declared their intention to resubmit the question of incurring
23 bonded indebtedness to fund a public sewer system to a vote of the electors
24 in the District, which include residents who do not own property and who are

1 not subject to the levy of special assessments authorized pursuant to
2 Resolution No. 12212017.

3 202. It is Defendant Tom Morris' intent as a Board director to prevent
4 the design, construction, and installation of the public sewer system as it is
5 currently designed and approved pursuant to the District's duly adopted
6 Resolutions.

7 203. It is Defendant Tom Morris' intent as a Board director to hinder the
8 design, construction, and installation of the public sewer system as it is
9 currently designed and approved pursuant to the District's duly adopted
10 Resolutions.

11 204. It is Defendant Tom Morris' intent as a Board director to delay the
12 design, construction, and installation of the public sewer system as it is
13 currently designed and approved pursuant to the District's duly adopted
14 Resolutions.

15 205. It is Defendant Jason Gilpin's intent as a Board director to prevent
16 the design, construction, and installation of the public sewer system as it is
17 currently designed and approved pursuant to the District's duly adopted
18 Resolutions.

19 206. It is Defendant Jason Gilpin's intent as a Board director to hinder
20 the design, construction, and installation of the public sewer system as it is
21 currently designed and approved pursuant to the District's duly adopted
22 Resolutions.

23 207. It is Defendant Jason Gilpin's intent as a Board director to delay
24 the design, construction, and installation of the public sewer system as it is

1 currently designed and approved pursuant to the District's duly adopted
2 Resolutions.

3 208. Putting the decision of whether to incur bonded indebtedness for
4 the design, construction, and installation of a public sewer system to a vote
5 of all electors in the District is contrary to the already-completed statutory
6 Notice and Protest procedure utilized by the District in accordance with its
7 duly adopted Resolutions.

8 209. The Notice and Protest procedure conducted by the District
9 pursuant to its duly adopted Resolutions, authorizing it to levy assessments
10 against real property owners to finance the public sewer system project as it
11 is currently designed and approved through one or more series of special
12 assessment bonds, is not subject to repeal by Defendants.

13 210. Defendants are judicially and/or equitably estopped from taking
14 action to prevent, hinder, and/or delay the design, construction, and
15 installation of the public sewer system as it is currently designed and
16 approved pursuant to the District's duly adopted Resolutions.

17 211. Defendants have and intend to intentionally disregard the
18 established and duly adopted Resolutions of the District for the design,
19 construction, and installation of the public sewer system necessary to abate
20 the ongoing nitrate pollution problem, creating a high probability of injury to
21 the District and to the public that will benefit from the public sewer system
22 project as it is currently designed and approved.

23 212. Defendants further intend to intentionally prevent, delay, and/or
24 hinder the established and duly adopted Resolutions of the District for the

1 design, construction, and installation of the public sewer system necessary to
2 abate the ongoing nitrate pollution problem, creating a high probability of
3 injury to the District and to the public that will benefit from the public sewer
4 system project as it is currently designed and approved.

5 213. Defendant Tom Morris has already, through his prior litigation
6 against the District, caused the District to incur substantial additional
7 expenses pursuing the public sewer system project, including expending
8 \$31,157.36 toward the research and development phase of the project and
9 \$120,236.65 toward Phase 1 of the project from the reserves set aside by the
10 District to subsidize the operations and maintenance of the public sewer
11 system for the first 3 years. Defendant Tom Morris' actions constitute
12 breaches of his duties of loyalty, trust, and competence as a Board director.

13 214. Defendant Tom Morris is currently subject to a claim by the District
14 in DV-18-913 for its attorney fees and costs incurred in defending against
15 claims alleged by Defendant Tom Morris in that litigation.

16 215. Defendants' intentional prevention, delay, and/or hindrance of the
17 design, construction, and installation of the public sewer system as it is
18 currently designed and approved pursuant to the District's duly adopted
19 Resolutions will result in a waste of the time and money already expended on
20 the project, including but not limited to the \$1,221,236.48 of the grant funding
21 already expended for Phase 1 of the project. Defendants actions constitute
22 breaches of their duties of loyalty, trust, and competence as Board directors.

23 216. Allowing public projects, such as the public sewer system in this
24 case, to be continually delayed by individuals adverse to the project, after the

1 projects have been authorized and implemented in accordance with Montana
2 law, would subject all public projects to the possibility of continual and
3 perpetual challenge after substantial time and money has already been
4 expended toward their completion. The time to jettison the public sewer
5 system project as it is currently designed and approved pursuant to the
6 District's duly adopted Resolutions has passed.

7 **COUNT I - DECLARATORY JUDGMENT**

8 217. The District re-alleges the allegations in Paragraphs 1 through 216
9 above.

10 218. MCA § 27-8-104 of the Uniform Declaratory Judgments Act
11 defines a "person" within the context of Act, as "any person, partnership,
12 joint-stock company, unincorporated association, or society or municipal or
13 other corporation of any character whatsoever."

14 219. The District qualifies as a "person" under the Uniform Declaratory
15 Judgments Act, MCA §§ 27-8-101 *et seq.*

16 220. MCA § 27-8-102 of the Uniform Declaratory Judgments Act
17 provides that "[t]his chapter is declared to be remedial; its purpose is to settle
18 and to afford relief from uncertainty and insecurity with respect to rights,
19 status, and other legal relations; and it is to be liberally construed and
20 administered."

21 221. MCA § 27-8-201 of the Uniform Declaratory Judgments Act
22 provides:

23 Courts of record within their respective jurisdictions shall have
24 power to declare rights, status, and other legal relations whether
or not further relief is or could be claimed. No action or

1 proceeding shall be open to objection on the ground that a
2 declaratory judgment or decree is prayed for. The declaration may
3 be either affirmative or negative in form and effect, and such
4 declarations shall have the force and effect of a final judgment or
5 decree.

6 222. MCA § 27-8-202 of the Uniform Declaratory Judgments Act
7 provides that “[a]ny person interested under a deed, will, written contract, or
8 other writings constituting a contract or whose rights, status, or other legal
9 relations are affected by a statute, municipal ordinance, contract, or franchise
10 may have determined any question of construction or validity arising under the
11 instrument, statute, ordinance, contract, or franchise and obtain a declaration
12 of rights, status, or other legal relations thereunder.”

13 223. MCA § 27-8-205 of the Uniform Declaratory Judgments Act
14 provides that “[t]he enumeration in 27-8-202 through 27-8-204 does not limit
15 or restrict the exercise of the general powers conferred in 27-8-201 in any
16 proceeding where declaratory relief is sought in which a judgment or decree
17 will terminate the controversy or remove an uncertainty.”

18 224. Mont. Const. Art. II, § 3 provides in relevant part that “[a]ll
19 persons are born free and have certain inalienable rights. They include the
20 right to a clean and healthful environment . . . and seeking their safety, health
21 and happiness in all lawful ways. In enjoying these rights, all persons
22 recognize corresponding responsibilities.”

23 225. The “right to a clean and healthful environment is a fundamental
24 right[.]” *Mont. Env'tl. Info. Ctr. v. Dep't of Env'tl. Quality*, 1999 MT 248, ¶ 63,
25 296 Mont. 207, 988 P.2d 1236.

1 226. Public officials, including Board directors, take an oath to defend
2 the constitution, which imposes an inherent and self-executing duty to protect
3 individual constitutional rights. See Mont. Const. Art. III, § 3; *State ex rel.*
4 *Scollard v. Bd. of Exam'rs for Nurses*, 52 Mont. 91, 96, 156 P. 124, 125
5 (1916); *In re Clark's Estate*, 105 Mont. 401, 411, 74 P.2d 401, 406 (1937);
6 *State v. Guillaume*, 1999 MT 29, ¶ 14, 293 Mont. 224, 975 P.2d 312; *State v.*
7 *Lawrence*, 2016 MT 346, ¶ 6, 386 Mont. 86, 385 P.3d 968.

8 227. Defendants Tom Morris and Jason Gilpin, by their words and
9 actions, have declared their intention to violate the Constitutional rights of the
10 citizens of Seeley Lake to a clean and healthful environment by not pursuing
11 the design, construction, and installation of the public sewer system pursuant
12 to the District's duly adopted Resolutions.

13 228. Defendants Tom Morris and Jason Gilpin, by their words and
14 actions, have declared their intention to violate the Constitutional rights of the
15 citizens of Seeley Lake to a clean and healthful environment by interfering
16 with the design, construction, and installation of the public sewer system
17 pursuant to the District's duly adopted Resolutions.

18 229. MCA § 75-1-102(1) provides in relevant part that "[t]he legislature,
19 mindful of its constitutional obligations under Article II, section 3, and Article
20 IX of the Montana constitution, has enacted the Montana Environmental
21 Policy Act."

22 230. MCA § 75-5-605(1)(a) of the Montana Environmental Policy Act
23 provides in relevant part that "[i]t is unlawful to . . . cause pollution, as defined
24 in 75-5-103, of any state waters or to place or cause to be placed any wastes

1 where they will cause pollution of any state waters.”

2 231. MCA § 75-5-103(30)(a) states that “‘Pollution’ means:

3 (i) contamination or other alteration of the physical, chemical, or
4 biological properties of state waters that exceeds that permitted
5 by Montana water quality standards, including but not limited to
standards relating to change in temperature, taste, color, turbidity,
or odor; or

6 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid,
7 gaseous, solid, radioactive, or other substance into state water
8 that will or is likely to create a nuisance or render the waters
harmful, detrimental, or injurious to public health, recreation,
safety, or welfare, to livestock, or to wild animals, birds, fish, or
other wildlife.

9 232. Pursuant to Admin. Mont. R. 17.38.203(c), the Montana Board of
10 Environmental Review “adopts and incorporates by reference . . . 40 CFR
11 141.11 and 141.62(b), which set forth maximum contaminant levels for
12 inorganic contaminants[.]”

13 233. 40 CFR § 141.62(b)(7) provides in relevant part that the
14 “maximum contaminant level” for nitrate is 10 mg/L.

15 234. Nitrates are pollution under Montana law.

16 235. Under Montana law, it is unlawful to cause nitrate pollution of any
17 state waters or to place or cause to be placed any wastes where they will
18 cause pollution of any state waters.

19 236. Defendants Tom Morris and Jason Gilpin, by their words and
20 actions, have declared their intention to violate the Montana Environmental
21 Policy Act by not pursuing the design, construction, and installation of the
22 public sewer system pursuant to the District’s duly adopted Resolutions.

23 237. Defendants Tom Morris and Jason Gilpin, by their words and
24

1 actions, have declared their intention to violate the Montana Environmental
2 Policy Act by interfering with the design, construction, and installation of the
3 public sewer system pursuant to the District's duly adopted Resolutions.

4 238. MCA § 1-3-218 provides that "[t]he law helps the vigilant before
5 those who sleep on their rights."

6 239. "Laches exists 'where there has been an unexplainable delay of
7 such duration or character as to render the enforcement of an asserted right
8 inequitable, and is appropriate when a party is actually or presumptively
9 aware of his rights but fails to act.'" *Cole v. State ex rel. Brown*, 2002 MT 32,
10 ¶ 24, 308 Mont. 265, 42 P.3d 760 (internal citations omitted).

11 240. "Laches is not a mere matter of elapsed time, but rather, it is
12 principally a question of the inequity of permitting a claim to be enforced."
13 *Cole*, ¶ 24.

14 241. "Hence, the doctrine of laches is the practical application of the
15 maxim, 'Equity aids only the vigilant.'" *Cole*, ¶ 24.

16 242. "In order to apply the doctrine of laches, a showing must be made
17 that the passage of time has prejudiced the party asserting laches or has
18 rendered the enforcement of a right inequitable." *Kelleher v. Bd. of Soc. Work*
19 *Exam'r & Licensed Prof'l Counselors*, 283 Mont. 188, 191, 939 P.2d 1003,
20 1005 (1997) (internal citations omitted).

21 243. Defendants Tom Morris and Jason Gilpin are prohibited by MCA
22 § 1-3-218, the Doctrine of Laches, and other applicable law from taking action
23 as directors of the Board not to pursue the design, construction, and
24 installation of the public sewer system pursuant to the District's duly adopted

1 Resolutions.

2 244. Defendants Tom Morris and Jason Gilpin are prohibited by MCA
3 § 1-3-218, the Doctrine of Laches, and other applicable law from taking action
4 as directors of the Board to interfere with the design, construction, and
5 installation of the public sewer system pursuant to the District's duly adopted
6 Resolutions.

7 245. Defendants Tom Morris and Jason Gilpin are prohibited by MCA
8 § 1-3-218, the Doctrine of Laches, and other applicable law from violating the
9 lawful statutory notice and protest procedure conducted by the District in
10 adopting Resolution No. 12212017 in order to incur indebtedness through
11 special assessment bonds.

12 246. Defendants Tom Morris and Jason Gilpin are prohibited by MCA
13 § 1-3-218, the Doctrine of Laches, and other applicable law from resubmitting
14 the question of incurring bonded indebtedness to fund a public sewer system
15 to a vote of all electors in the District.

16 247. MCA § 7-13-2274(3) provides that "[t]he board may act only by
17 ordinance or resolution."

18 248. A governing body of a unit of local government acts arbitrarily and
19 capriciously when it fails to comply with its adopted resolutions. *See Martinell*
20 *v. Bd. of Cty. Comm'rs*, 2016 MT 136, ¶¶ 20 - 21, 383 Mont. 486, 373 P.3d 34.

21 249. Defendants Tom Morris and Jason Gilpin, by their words and
22 actions, have declared their intention not to comply with the District's duly
23 adopted Resolutions for the design, construction, and installation of the public
24 sewer system.

1 250. Defendants Tom Morris and Jason Gilpin, by their words and
2 actions, have declared their intention to act arbitrarily and capriciously as
3 directors of the Board by not complying with the District's duly adopted
4 Resolutions for the design, construction, and installation of the public sewer
5 system.

6 251. MCA § 7-13-2271(2) provides that "[t]he board shall establish rules
7 for its proceedings."

8 252. Article IV, Section 1 of the District's April 20, 2020 Amended
9 Bylaws imposes a duty on Board directors to "maintain and provide a healthful
10 environment for present and future generations and to supervise wastewater
11 treatment within the District."

12 253. Article VII, Section 13 of the District's April 20, 2020 Amended
13 Bylaws imposes a duty on Board directors to "avoid conflicts of interest and
14 potential conflicts of interest" and to "exercise good faith in all transactions
15 associated with their duties to the District."

16 254. Article VII, Section 13 of the District's April 20, 2020 Amended
17 Bylaws imposes a duty on Board directors to "not use their positions or
18 knowledge gained therefrom, so that a conflict of interest might arise between
19 the interests of the District and that of the individual."

20 255. Article VII, Section 14 of the District's April 20, 2020 Amended
21 Bylaws imposes a duty on Board directors to "carry[] out the purpose and
22 intent of the Board's duly adopted resolutions and/or ordinances".

23 256. Article VII, Section 14 of the District's April 20, 2020 Amended
24 Bylaws imposes a duty on Board directors to "place the best interests of the

1 District and the Board above their own competing interests and personal
2 beliefs when carrying out the purpose and intent of resolutions and/or
3 ordinances that have been duly adopted by the Board.”

4 257. Article VII, Section 14 of the District’s April 20, 2020 Amended
5 Bylaws imposes a duty on Board directors not to “interfere with, delay, or
6 otherwise prevent the Board from pursuing its duly adopted resolutions and/or
7 ordinances”.

8 258. Defendants Tom Morris and Jason Gilpin, by their words and
9 actions, have declared their intention to violate their duty pursuant to Article
10 IV, Section 1 of the District’s April 20, 2020 Amended Bylaws to “maintain and
11 provide a healthful environment for present and future generations and to
12 supervise wastewater treatment within the District.”

13 259. Defendants Tom Morris and Jason Gilpin, by their words and
14 actions, have declared their intention to violate their duty pursuant to Article
15 VII, Section 13 of the District’s April 20, 2020 Amended Bylaws to “avoid
16 conflicts of interest and potential conflicts of interest” and to “exercise good
17 faith in all transactions associated with their duties to the District.”

18 260. Defendants Tom Morris and Jason Gilpin, by their words and
19 actions, have declared their intention to violate their duty pursuant to Article
20 VII, Section 13 of the District’s April 20, 2020 Amended Bylaws to “not use
21 their positions or knowledge gained therefrom, so that a conflict of interest
22 might arise between the interests of the District and that of the individual.”

23 261. Defendants Tom Morris and Jason Gilpin, by their words and
24 actions, have declared their intention to violate their duty pursuant to Article

1 VII, Section 14 of the District's April 20, 2020 Amended Bylaws to "carry[] out
2 the purpose and intent of the Board's duly adopted resolutions and/or
3 ordinances".

4 262. Defendants Tom Morris and Jason Gilpin, by their words and
5 actions, have declared their intention to violate their duty pursuant to Article
6 VII, Section 14 of the District's April 20, 2020 Amended Bylaws to "place the
7 best interests of the District and the Board above their own competing
8 interests and personal beliefs when carrying out the purpose and intent of
9 resolutions and/or ordinances that have been duly adopted by the Board."

10 263. Defendants Tom Morris and Jason Gilpin, by their words and
11 actions, have declared their intention to violate their duty pursuant to Article
12 VII, Section 14 of the District's April 20, 2020 Amended Bylaws not to
13 "interfere with, delay, or otherwise prevent the Board from pursuing its duly
14 adopted resolutions and/or ordinances".

15 264. MCA § 2-2-103(1) provides that "The holding of public office or
16 employment is a public trust, created by the confidence that the electorate
17 reposes in the integrity of public officers, legislators, and public employees.
18 A public officer, legislator, or public employee shall carry out the individual's
19 duties for the benefit of the people of the state."

20 265. The Montana Supreme Court has described MCA § 2-2-103(1) as
21 requiring a "a duty of loyalty and responsibility to act in the best interests of .
22 . . the public." *Sheehy v. Comm'r of Political Practices for Mont.*, 2020 MT 37,
23 ¶ 60, 399 Mont. 26 (Justice McKinnon, concurrence).

24 266. Board directors hold a public office.

1 267. MCA § 2-2-103(1) imposes a duty of loyalty and responsibility on
2 Board directors to act in the best interests of the public.

3 268. Defendants Tom Morris and Jason Gilpin, by their words and
4 actions, have declared their intention to violate their duties of loyalty and
5 responsibility to act in the best interests of the public, pursuant to MCA § 2-2-
6 103(1), by not pursuing the design, construction, and installation of the public
7 sewer system pursuant to the District's duly adopted Resolutions.

8 269. Defendants Tom Morris and Jason Gilpin, by their words and
9 actions, have declared their intention to violate their duties of loyalty and
10 responsibility to act in the best interests of the public, pursuant to MCA § 2-2-
11 103(1), by interfering with the design, construction, and installation of the
12 public sewer system pursuant to the District's duly adopted Resolutions.

13 270. The Montana Supreme Court has held that a fiduciary relationship
14 has "attendant fiduciary duties of loyalty, trust, and competence". *Anderson*
15 *v. ReconTrust Co., N.A.*, 2017 MT 313, ¶11, 390 Mont. 12, 407 P.3d 692.

16 271. Board directors owe attendant fiduciary duties of loyalty, trust, and
17 competence to the public.

18 272. Defendants Tom Morris and Jason Gilpin, by their words and
19 actions, have declared their intention to violate their attendant fiduciary duties
20 of loyalty, trust, and competence by not pursuing the design, construction, and
21 installation of the public sewer system pursuant to the District's duly adopted
22 Resolutions.

23 273. Defendants Tom Morris and Jason Gilpin, by their words and
24 actions, have declared their intention to violate their attendant fiduciary duties

1 of loyalty, trust, and competence by interfering with the design, construction,
2 and installation of the public sewer system pursuant to the District's duly
3 adopted Resolutions.

4 274. The Montana Legislature has enacted a code of ethics for public
5 officers and employees at MCA §§ 2-2-101 to 2-2-145. The purpose of this
6 code "is to prohibit conflict between public duty and private interests' for 'other
7 officers and employees of state government.'" *Sheehy v. Comm'r of Political*
8 *Practices for Mont.*, 2020 MT 37, ¶ 16, 399 Mont. 26, 458 P.3d 309.

9 275. MCA § 2-2-105(4) provides:

10 When a public employee who is a member of a quasi-judicial
11 board or commission or of a board, commission, or committee
12 with rulemaking authority is required to take official action on a
13 matter as to which the public employee has a conflict created by
14 a personal or private interest that would directly give rise to an
appearance of impropriety as to the public employee's influence,
benefit, or detriment in regard to the matter, the public employee
shall disclose the interest creating the conflict prior to participating
in the official action.

15 276. MCA § 2-2-121(5)(b) provides that "[a] public officer or public
16 employee may not participate in a proceeding when an organization, other
17 than an organization or association of local government officials, of which the
18 public officer or public employee is an officer or director is . . . attempting to
19 influence a local, state, or federal proceeding in which the public officer or
20 public employee represents the state or local government."

21 277. Defendant Tom Morris is an adverse party in state litigation
22 proceedings against the District and challenging District's actions with respect
23 to the design, construction, and installation of the public sewer system
24

1 pursuant to the District's duly adopted Resolutions, in which Defendant Tom
2 Morris seeks recovery of damages, punitive damages, and attorney fees
3 against the District.

4 278. Defendant Tom Morris, by his involvement as an adverse party in
5 state litigation proceedings against the District has created a conflict between
6 his personal interests in the litigation and his duties as a Board director giving
7 rise to an appearance of impropriety as to his influence, benefit, or detriment
8 in regard to the design, construction, and installation of the public sewer
9 system.

10 279. Defendant Tom Morris has declared by his words and actions his
11 intentions as a Board director to influence the District's actions with respect
12 the design, construction, and installation of the public sewer system .

13 280. Defendant Tom Morris is also a "spokesperson" in DV-20-135,
14 challenging the District's actions with respect to the design, construction, and
15 installation of the public sewer system pursuant to the District's duly adopted
16 Resolutions.

17 281. Defendant Tom Morris is required by MCA § 2-2-105 to disclose
18 his personal interest in the litigation involving himself and the District creating
19 the conflict of interest prior to participating in any official action related to his
20 duties as a Board director.

21 282. Defendant Tom Morris is prohibited by MCA § 2-2-121(5)(b) from
22 participating in Board proceedings and decisions related to the design,
23 construction, and installation of the public sewer system.

24 283. MCA § 2-9-305(1) provides "[i]t is the purpose of this section to

1 provide for the immunization, defense, and indemnification of public officers
2 and employees civilly sued for their actions taken within the course and scope
3 of their employment.”

4 284. MCA § 2-9-305(5) provides:

5 Recovery against a governmental entity under the provisions of
6 parts 1 through 3 of this chapter constitutes a complete bar to any
7 action or recovery of damages by the claimant, by reason of the
8 same subject matter, against the employee whose negligence or
9 wrongful act, error, omission, or other actionable conduct gave
10 rise to the claim. **In an action against a governmental entity,
11 the employee whose conduct gave rise to the suit is immune
12 from liability by reasons of the same subject matter if the
13 governmental entity acknowledges or is bound by a judicial
14 determination that the conduct upon which the claim is
15 brought arises out of the course and scope of the employee’s
16 employment,** unless the claim constitutes an exclusion provided
17 in subsections (6)(b) through (6)(d).

18 (emphasis added).

19 285. MCA § 2-9-111(5)(b) provides in relevant part that “[t]he immunity
20 provided for in this section does not extend to . . . any act or omission that
21 results in or contributes to personal injury or property damage caused by
22 contamination or other alteration of the physical, chemical, or biological
23 properties of surface water or ground water, for which a cause of action exists
24 in statutory or common law or at equity. This subsection (b) does not create
25 a separate or new cause of action.”

26 286. A public officer or employee who performs an “ultra vires” act, one
27 without authority conferred by law and the governing body, is subject to
28 personal liability. See *Lurie v. Blackwell*, 285 Mont. 404, 409, 948 P.2d 1161,
29 1163 (1997) (“the doctrine of ultra vires applies when a trustee is without
30 authority to perform an act in any circumstances or for *any* purpose.”)

1 (emphasis in original); *Sibert v. Cmty. Coll. of Flathead Cty.*, 179 Mont. 188,
2 191, 587 P.2d 26, 28 (1978) (labeling statutorily unauthorized act performed
3 by public body as ultra vires).

4 287. Defendants Tom Morris and Jason Gilpin, as directors of the
5 Board, are not authorized by law or the District to take actions preventing the
6 District from pursuing the design, construction, and installation of the public
7 sewer system pursuant to the District's duly adopted Resolutions.

8 288. Defendants Tom Morris and Jason Gilpin, as directors of the
9 Board, are not authorized by law or the District to take actions interfering with
10 the design, construction, and installation of the public sewer system pursuant
11 to the District's duly adopted Resolutions.

12 289. Defendants Tom Morris and Jason Gilpin, by their words and
13 actions, have declared their intention to perform ultra vires acts by acting
14 without authority conferred by law or the District to take actions preventing the
15 District from pursuing the design, construction, and installation of the public
16 sewer system pursuant to the District's duly adopted Resolutions.

17 290. Defendants Tom Morris and Jason Gilpin, by their words and
18 actions, have declared their intention to perform ultra vires acts by acting
19 without authority conferred by law or the District to interfere with the design,
20 construction, and installation of the public sewer system pursuant to the
21 District's duly adopted Resolutions.

22 291. Defendants Tom Morris and Jason Gilpin, by their words and
23 actions, have declared their intention to perform ultra vires acts by contributing
24 to the nitrate contamination of surface and/or groundwater in Seeley Lake by

1 taking actions preventing the District from pursuing the design, construction,
2 and installation of the public sewer system pursuant to the District's duly
3 adopted Resolutions.

4 292. Defendants Tom Morris and Jason Gilpin, by their words and
5 actions, have declared their intention to perform ultra vires acts by contributing
6 to the nitrate contamination of surface and/or groundwater in Seeley Lake by
7 interfering with the design, construction, and installation of the public sewer
8 system pursuant to the District's duly adopted Resolutions.

9 293. Defendants Tom Morris and Jason Gilpin are personally liable for
10 any and all ultra vires acts performed as Board directors.

11 294. Mont. R. Prof. Cond. 1.7(a) provides that "[e]xcept as provided in
12 paragraph (b), a lawyer shall not represent a client if the representation
13 involves a concurrent conflict of interest. A concurrent conflict of interest
14 exists if:

15 (1) the representation of one client will be directly adverse to
another client; or

16 (2) there is a significant risk that the representation of one or more
17 clients will be materially limited by the lawyer's responsibilities to
18 another client, a former client or a third person or by a personal
interest of the lawyer."

19 295. Mont. R. Prof. Cond. 1.7(b)(3) provides in relevant part that
20 "[n]otwithstanding the existence of a concurrent conflict of interest under
21 paragraph (a), a lawyer may represent a client if . . . the representation does
22 not involve the assertion of a claim by one client against another client
23 represented by the lawyer in the same litigation or other proceeding before a
24 tribunal[.]"

1 296. Mont. R. Prof. Cond. 1.7(a), (b)(3) prohibits counsel from
2 representing a client where the representation involves the “assertion of a
3 claim by one client against another client represented by the lawyer in the
4 same litigation or other proceeding before a tribunal[.]”

5 297. Defendant Tom Morris is an adverse party in litigation against the
6 District in DV-18-913.

7 298. Defendant Tom Morris is an adverse party in litigation challenging
8 actions of the District in DV-20-135.

9 299. By running for and obtaining election as a director of the Board,
10 Defendant Tom Morris has created a concurrent conflict of interest prohibiting
11 his representation by the District’s counsel pursuant to Mont. R. Prof. Cond.
12 1.7(a) and (b)(3).

13 300. By running for and obtaining election as a director of the Board,
14 Defendant Tom Morris has intentionally deprived the District of its right to
15 representation by counsel.

16 301. MCA § 26-1-803 provides:

17 (1) An attorney cannot, without the consent of his client, be
18 examined as to any communication made by the client to him or
19 his advice given to the client in the course of professional
20 employment. (2) A client cannot, except voluntarily, be examined
as to any communication made by him to his attorney or the
advice given to him by his attorney in the course of the attorney's
professional employment.

21 302. “The fundamental purpose of the attorney-client privilege is to
22 enable the attorney to provide the best possible legal advice and encourage
23 clients to act within the law.” *Palmer by Diacon v. Farmers Ins. Exch.*, 261
24 Mont. 91, 105, 861 P.2d 895, 904 (1993). “The privilege furthers this purpose

1 by freeing clients from the consequences or the apprehension of disclosing
2 confidential information, thus encouraging them to be open and forthright with
3 their attorneys.” *Id.*

4 303. “[T]he attorney-client privilege belongs to the client and an
5 attorney cannot waive it without consent of the client.” *Palmer*, 861 P.2d at
6 906 (citing MCA § 26-1-803; Mont. R. Evid. 503).

7 304. Mont. R. Evid. 803 provides:

8 A person upon whom these rules confer a privilege against
9 disclosure waives the privilege if the person or the person's
10 predecessor while the holder of the privilege voluntarily discloses
11 or consents to disclosure of any significant part of the privileged
12 matter. This rule does not apply if the disclosure itself is
13 privileged.

14 305. The District has not waived its attorney-client privilege.

15 306. Intentional disclosure of attorney-client privileged materials by the
16 District to Defendant Tom Morris, an adverse party to the District in DV-18-913
17 and DV-20-135, will result in waiver of the District’s attorney-client privilege.

18 307. Defendant Tom Morris is prohibited by law from viewing, receiving,
19 and/or disclosing the District’s attorney-client privileged materials related to
20 DV-18-913 and/or DV-20-135.

21 308. Defendant Tom Morris is prohibited by law from viewing, receiving,
22 and/or disclosing the District’s attorney-client privileged materials related to
23 the design, construction, and installation of the public sewer system, which is
24 the subject of DV-18-913 and DV-20-135.

25 309. Defendant Tom Morris is prohibited by law from participating in
Board decisions regarding the disclosure of the District’s attorney-client

1 privileged materials related to DV-18-913 and/or DV-20-135.

2 310. Defendant Tom Morris is prohibited by law from participating in
3 Board decisions regarding the attorney-client privileged materials related to
4 the design, construction, and installation of the public sewer system, which is
5 the subject of DV-18-913 and DV-20-135.

6 311. Defendant Jason Gilpin is prohibited by law from distributing or
7 discussing the District's attorney-client privileged materials related to DV-18-
8 913 and/or DV-20-135 with Defendant Tom Morris.

9 312. Defendant Jason Gilpin is prohibited by law from distributing or
10 discussing the District's attorney-client privileged materials related to the
11 design, construction, and installation of the public sewer system, which is the
12 subject of DV-18-913 and DV-20-135, with Defendant Tom Morris.

13 313. Resolution No. 12212017 was enacted following a Notice and
14 Protest procedure conducted by the District pursuant to MCA § 7-13-2333,
15 which provides in relevant part that the Board "may authorize the issuance of
16 bonds . . . by a resolution adopted by the board of directors of the district
17 without need for authorization through an election" and MCA § 7-13-2282,
18 which authorizes the Board to levy special assessments to repay those bonds
19 following a notice and protest if the property owners comprising not more than
20 50% of the total costs of improvement do not protest the methods of
21 assessment.

22 314. Defendant Tom Morris' judicially admitted that "[t]he Notice was
23 narrowly approved" in DV-18-913. *DV-18-913, Dkt. 10, ¶ 52.*

24 315. Defendant Tom Morris' counsel in DV-20-135 judicially admitted

1 that the Notice and Protest procedure utilized by the District to adopt
2 Resolution No. 12212017 was done according to state law. *DV-18-913, Exh.*
3 *3 to Dkt. 86.*

4 316. Defendant Tom Morris participated in litigation challenging
5 Resolution No. 12212017 in order to prohibit the District from incurring bonded
6 indebtedness without a vote of all electors in the District, referring to the
7 Notice and Protest procedure that was utilized by the District as a “scheme”.

8 317. Defendants Tom Morris and Jason Giplin, by their words and
9 actions, have expressed their intention to put the issue of incurring bonded
10 indebtedness to pay for a public sewer system to a vote of all electors in the
11 District.

12 318. Resolution No. 12212017, which has already been adopted by the
13 District, is enforceable and authorizes the District to levy assessments in order
14 to pay for special assessment bonds for the purpose of designing,
15 constructing, and installing the public sewer system without a vote of all
16 electors in the District.

17 319. The District’s rights and status in regards to the authority of
18 Defendants Tom Morris and Jason Gilpin to take actions as Board directors
19 preventing the District from pursuing the design, construction, and installation
20 of the public sewer system pursuant to its duly adopted Resolutions are
21 appropriate subjects for declaratory judgment under the Uniform Declaratory
22 Judgments Act.

23 320. The District’s rights and status in regards to the authority of
24 Defendants Tom Morris and Jason Gilpin to take actions as Board directors

1 interfering with the design, construction, and installation of the public sewer
2 system pursuant to the District's duly adopted Resolutions are appropriate
3 subjects for declaratory judgment under the Uniform Declaratory Judgments
4 Act.

5 321. The District's rights and status in regards to the concurrent conflict
6 of interest created by Defendant Tom Morris' election to the governing Board
7 of the District in which he is involved as an adverse litigant are appropriate
8 subjects for declaratory judgment under the Uniform Declaratory Judgments
9 Act.

10 322. The District's rights and status in regards to the waiver of its
11 attorney-client privilege by Defendant Tom Morris are appropriate subjects for
12 declaratory judgment under the Uniform Declaratory Judgments Act.

13 323. There exists a current and real controversy between the District
14 and Defendants concerning the authority of Defendants Tom Morris and
15 Jason Gilpin to take actions as Board directors preventing the District from
16 pursuing the design, construction, and installation of the public sewer system
17 pursuant to its duly adopted Resolutions.

18 324. There exists a current and real controversy between the District
19 and Defendants concerning the authority of Defendants Tom Morris and
20 Jason Gilpin to take actions as Board directors interfering with the design,
21 construction, and installation of the public sewer system pursuant to the
22 District's duly adopted Resolutions.

23 325. There exists a current and real controversy between the District
24 and Defendant Tom Morris concerning the concurrent conflict of interest

1 created by Defendant Tom Morris' election to the governing Board of the
2 District in which he is involved as an adverse litigant.

3 326. There exists a current and real controversy between the District
4 and Defendant Tom Morris concerning the waiver of the District's attorney-
5 client privilege by Defendant Tom Morris.

6 327. The District therefore requests that the Court enter a declaratory
7 judgment and issue supplementary relief as follows:

8 (1) Declare that Defendants Tom Morris and Jason Gilpin are
9 prohibited from violating the Constitutional rights of the citizens of Seeley Lake
10 to a clean and healthful environment by not pursuing the design, construction,
11 and installation of the public sewer system as it is currently designed and
12 approved pursuant to the District's duly adopted Resolutions;

13 (2) Declare that Defendants Tom Morris and Jason Gilpin are
14 prohibited from violating the Constitutional rights of the citizens of Seeley Lake
15 to a clean and healthful environment by interfering with the design,
16 construction, and installation of the public sewer system as it is currently
17 designed and approved pursuant to the District's duly adopted Resolutions;

18 (3) Declare that Defendants Tom Morris and Jason Gilpin are
19 prohibited from violating the Montana Environmental Policy Act by not
20 pursuing the design, construction, and installation of the public sewer system
21 as it is currently designed and approved pursuant to the District's duly
22 adopted Resolutions;

23 (4) Declare that Defendants Tom Morris and Jason Gilpin are
24 prohibited from violating the Montana Environmental Policy Act by interfering

1 with the design, construction, and installation of the public sewer system as
2 it is currently designed and approved pursuant to the District's duly adopted
3 Resolutions;

4 (5) Declare that Defendants Tom Morris and Jason Gilpin are
5 prohibited by MCA § 1-3-218, the Doctrine of Laches, and other applicable
6 law from taking action as directors of the Board not to pursue the design,
7 construction, and installation of the public sewer system as it is currently
8 designed and approved pursuant to the District's duly adopted Resolutions.

9 (6) Declare that Defendants Tom Morris and Jason Gilpin are
10 prohibited by MCA § 1-3-218, the Doctrine of Laches, and other applicable
11 law from taking action as directors of the Board interfering with the design,
12 construction, and installation of the public sewer system as it is currently
13 designed and approved pursuant to the District's duly adopted Resolutions;

14 (7) Declare that Defendants Tom Morris and Jason Gilpin are
15 prohibited by MCA § 1-3-218, the Doctrine of Laches, and other applicable
16 law from violating the lawful statutory notice and protest procedure conducted
17 by the District in adopting Resolution No. 12212017 in order to incur
18 indebtedness through special assessment bonds;

19 (8) Declare that Defendants Tom Morris and Jason Gilpin are
20 prohibited by MCA § 1-3-218, the Doctrine of Laches, and other applicable
21 law from resubmitting the question of incurring bonded indebtedness to fund
22 a public sewer system to a vote of all electors in the District;

23 (9) Declare that Defendants Tom Morris and Jason Gilpin shall
24 comply with the District's duly adopted Resolutions for the design,

1 construction, and installation of the public sewer system as it is currently
2 designed and approved;

3 (10) Declare that any actions by Defendants Tom Morris and
4 Jason Gilpin not in compliance with the District's duly adopted Resolutions for
5 the design, construction, and installation of the public sewer system as it is
6 currently designed and approved are arbitrary and capricious, and therefore
7 void.

8 (11) Declare that any actions by Defendants Tom Morris and
9 Jason Gilpin not to pursue and/or to interfere with the District's duly adopted
10 Resolutions for the design, construction, and installation of the public sewer
11 system as it is currently designed and approved are in violation of their duty
12 pursuant to Article IV, Section 1 of the District's April 20, 2020 Amended
13 Bylaws to "maintain and provide a healthful environment for present and
14 future generations and to supervise wastewater treatment within the District."

15 (12) Declare that any actions by Defendants Tom Morris and
16 Jason Gilpin not to pursue and/or to interfere with the District's duly adopted
17 Resolutions for the design, construction, and installation of the public sewer
18 system as it is currently designed and approved are in violation of their duty
19 pursuant to Article VII, Section 13 of the District's April 20, 2020 Amended
20 Bylaws to "avoid conflicts of interest and potential conflicts of interest" and to
21 "exercise good faith in all transactions associated with their duties to the
22 District."

23 (13) Declare that any actions by Defendants Tom Morris and
24 Jason Gilpin not to pursue and/or to interfere with District's duly adopted

1 Resolutions for the design, construction, and installation of the public sewer
2 system as it is currently designed and approved are in violation of their duty
3 pursuant to Article VII, Section 13 of the District's April 20, 2020 Amended
4 Bylaws to "not use their positions or knowledge gained therefrom, so that a
5 conflict of interest might arise between the interests of the District and that of
6 the individual."

7 (14) Declare that any actions by Defendants Tom Morris and
8 Jason Gilpin not to pursue and/or to interfere with District's duly adopted
9 Resolutions for the design, construction, and installation of the public sewer
10 system as it is currently designed and approved are in violation of their duty
11 pursuant to Article VII, Section 14 of the District's April 20, 2020 Amended
12 Bylaws to "carry[] out the purpose and intent of the Board's duly adopted
13 resolutions and/or ordinances".

14 (15) Declare that any actions by Defendants Tom Morris and
15 Jason Gilpin not to pursue and/or to interfere with the District's duly adopted
16 Resolutions for the design, construction, and installation of the public sewer
17 system as it is currently designed and approved are in violation of their duty
18 pursuant to Article VII, Section 14 of the District's April 20, 2020 Amended
19 Bylaws to "place the best interests of the District and the Board above their
20 own competing interests and personal beliefs when carrying out the purpose
21 and intent of resolutions and/or ordinances that have been duly adopted by
22 the Board."

23 (16) Declare that any actions by Defendants Tom Morris and
24 Jason Gilpin not to pursue and/or to interfere with the District's duly adopted

1 Resolutions for the design, construction, and installation of the public sewer
2 system as it is currently designed and approved are in violation of their duty
3 pursuant to Article VII, Section 14 of the District's April 20, 2020 Amended
4 Bylaws not to "interfere with, delay, or otherwise prevent the Board from
5 pursuing its duly adopted resolutions and/or ordinances".

6 (17) Declare that any actions by Defendants Tom Morris and
7 Jason Gilpin not to pursue and/or to interfere with the District's duly adopted
8 Resolutions for the design, construction, and installation of the public sewer
9 system as it is currently designed and approved are in violation of their duties
10 of loyalty and responsibility to act in the best interests of the public, pursuant
11 to MCA § 2-2-103(1).

12 (18) Declare that any actions by Defendants Tom Morris and
13 Jason Gilpin not to pursue and/or to interfere with the District's duly adopted
14 Resolutions for the design, construction, and installation of the public sewer
15 system as it is currently designed and approved are in violation of their
16 attendant fiduciary duties of loyalty, trust, and competence.

17 (19) Declare that Defendant Tom Morris shall disclose his
18 personal interest in the litigation involving himself and the District prior to
19 participating in any official action related to his duties as a Board director
20 pursuant to MCA § 2-2-105(4).

21 (20) Declare that Defendant Tom Morris is prohibited by MCA §
22 2-2-121(5)(b) from participating in Board proceedings and decisions related
23 to the design, construction, and installation of the public sewer system.

24 (21) Declare that Defendants Tom Morris and Jason Gilpin, as

1 directors of the Board, are not authorized by law or the District to take actions
2 preventing the District from pursuing the design, construction, and installation
3 of the public sewer system as it is currently designed and approved pursuant
4 to the District's duly adopted Resolutions.

5 (22) Declare that Defendants Tom Morris and Jason Gilpin, as
6 directors of the Board, are not authorized by law or the District to take actions
7 interfering with the design, construction, and installation of the public sewer
8 system as it is currently designed and approved pursuant to the District's duly
9 adopted Resolutions.

10 (23) Declare that Defendants Tom Morris and Jason Gilpin, as
11 directors of the Board, are not authorized by law or the District to take actions
12 contributing to the nitrate contamination of surface and/or groundwater in
13 Seeley Lake by preventing the District from pursuing the design, construction,
14 and installation of the public sewer system as it is currently designed and
15 approved pursuant to the District's duly adopted Resolutions.

16 (24) Declare that Defendants Tom Morris and Jason Gilpin, as
17 directors of the Board, are not authorized by law or the District to take actions
18 contributing to the nitrate contamination of surface and/or groundwater in
19 Seeley Lake by interfering with the design, construction, and installation of the
20 public sewer system as it is currently designed and approved pursuant to the
21 District's duly adopted Resolutions.

22 (25) Declare that any actions by Defendants Tom Morris and
23 Jason Gilpin, as directors of the Board, preventing the District from pursuing
24 the design, construction, and installation of the public sewer system as it is

1 currently designed and approved pursuant to the District's duly adopted
2 Resolutions are ultra vires acts for which Defendants Tom Morris and Jason
3 Gilpin are personally liable.

4 (26) Declare that any actions by Defendants Tom Morris and
5 Jason Gilpin, as directors of the Board, interfering with the design,
6 construction, and installation of the public sewer system as it is currently
7 designed and approved pursuant to the District's duly adopted Resolutions
8 are ultra vires acts for which Defendants Tom Morris and Jason Gilpin are
9 personally liable.

10 (27) Declare that any actions by Defendants Tom Morris and
11 Jason Gilpin, as directors of the Board, contributing to the nitrate
12 contamination of surface and/or groundwater in Seeley Lake by preventing the
13 District from pursuing the design, construction, and installation of the public
14 sewer system as it is currently designed and approved pursuant to the
15 District's duly adopted Resolutions are ultra vires acts for which Defendants
16 Tom Morris and Jason Gilpin are personally liable.

17 (28) Declare that any actions by Defendants Tom Morris and
18 Jason Gilpin, as directors of the Board, contributing to the nitrate
19 contamination of surface and/or groundwater in Seeley Lake by interfering
20 with the design, construction, and installation of the public sewer system as
21 it is currently designed and approved pursuant to the District's duly adopted
22 Resolutions are ultra vires acts for which Defendants Tom Morris and Jason
23 Gilpin are personally liable.

24 (29) Declare that Defendant Tom Morris shall not participate in,

1 and shall be sequestered from, any and all actions by the Board taken with
2 respect to litigation in which Tom Morris is or has been involved against the
3 District and/or challenging actions of the District, including but not limited to
4 DV-18-913 and DV-20-135.

5 (30) Declare that Defendant Tom Morris shall not participate in,
6 and shall be sequestered from, any and all actions by the Board taken with
7 respect to the subject of litigation in which Tom Morris is or has been involved
8 against the District and/or challenging actions of the District, including but not
9 limited to District actions pertaining to the design, construction, and installation
10 of the public sewer system as it is currently designed and approved pursuant
11 to the District's duly adopted Resolutions.

12 (31) Declare that Defendant Tom Morris is prohibited from
13 viewing, receiving, and/or disclosing the District's attorney-client privileged
14 materials related to DV-18-913 and/or DV-20-135;

15 (32) Defendant Tom Morris is prohibited from viewing, receiving,
16 and/or disclosing the District's attorney-client privileged materials related to
17 the design, construction, and installation of the public sewer system, which is
18 the subject of DV-18-913 and DV-20-135;

19 (33) Declare that Defendant Tom Morris is prohibited by law from
20 participating in Board decisions regarding the disclosure of the District's
21 attorney-client privileged materials related to DV-18-913 and/or DV-20-135;

22 (34) Declare that Defendant Tom Morris is prohibited from
23 participating in Board decisions regarding the attorney-client privileged
24 materials related to the design, construction, and installation of the public

1 sewer system, which is the subject of DV-18-913 and DV-20-135;

2 (35) Declare that Defendant Jason Gilpin is prohibited by law
3 from distributing or discussing the District's attorney-client privileged materials
4 related to DV-18-913 and/or DV-20-135 with Defendant Tom Morris;

5 (36) Declare that Defendant Jason Gilpin is prohibited by law
6 from distributing or discussing the District's attorney-client privileged materials
7 related to the design, construction, and installation of the public sewer system,
8 which is the subject of DV-18-913 and DV-20-135, with Defendant Tom
9 Morris.

10 (37) Declare that Defendants are judicially and/or equitably
11 estopped from taking positions contrary to the law and facts deemed well-
12 taken and conclusively established in DV-18-913 and/or DV-20-135.

13 (38) Declare that Defendants are judicially and/or equitably
14 estopped from taking positions contrary to the admission in DV-20-135 that
15 the procedure utilized by the District to adopt Resolution No. 1221 was lawful.

16 (39) Declare that Defendants are judicially and/or equitably
17 estopped from taking action to prevent, hinder, and/or delay the design,
18 construction, and installation of the public sewer system as it is currently
19 designed and approved pursuant to the District's duly adopted Resolutions.

20 (40) Declare that the Notice and Protest procedure conducted by
21 the District pursuant to its duly adopted Resolutions, authorizing it to levy
22 assessments against real property owners to finance the public sewer system
23 project as it is currently designed and approved through one or more series
24 of special assessment bonds, is not subject to repeal by Defendants.

1 (41) Declare that Defendants' duties of loyalty, trust, and
2 competence as Board directors require them to pursue the design,
3 construction, and installation of the public sewer system project as it is
4 currently designed and approved pursuant to the District's duly adopted
5 Resolutions.

6 The District respectfully reserves the right to allege additional claims as
7 facts may warrant pending discovery and/or further factual and/or legal
8 research and/or motions in this matter. Claims not found warranted by the
9 facts and law pending completion of discovery and/or further factual and/or
10 legal research and/or motions will be dismissed.

11 WHEREFORE, the District prays for judgment in its favor and against
12 the Defendants as follows:

- 13 a. That the Court enter a declaratory judgment and issue
14 supplemental relief as requested in ¶ 327, 1 - 41.
- 15 b. For interest, costs and attorneys' fees as provided by law,
16 including but not limited to supplemental relief under MCA
17 § 27-8-313 and costs under MCA § 27-8-311; and
- 18 c. For such other and further relief as the Court deems just
19 and proper.

20
21
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24 //

1 RESPECTFULLY SUBMITTED this 12th day of June, 2020.

2
3 BEAL LAW FIRM, PLLC
4 Attorneys for Seeley Lake Sewer
5 District

6 By: /s/ Jon G. Beal
7 Jon G. Beal
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1 VERIFICATION

2 STATE OF MONTANA)
3 County of ~~Missoula~~ ^{CASCADE}) ss.

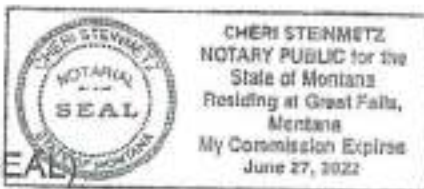
4 Pat Goodover, Director and President of the Seeley Lake Sewer District
5 Board of Directors, being first duly sworn upon his oath, deposes and states:
6 That I have read the foregoing Complaint, know the contents thereof, and that
the facts, matters and things contained therein are true and correct to the best
of my belief and knowledge.

7
8 Pat Goodover June 11, 2020
9 Pat Goodover Date

10 State of Montana)
11 County of ~~Missoula~~ ^{CASCADE}) ss.

12 On this 11th day of June, 2020, before me, a Notary Public for the State
13 of Montana, personally appeared before me Pat Goodover, known to me to
14 be the person whose name is subscribed to the within instrument, who
15 signed, swore to and acknowledged before me that he executed the same,
individually and on behalf of the Seeley Lake Sewer District, as Director and
President of the Board of Directors thereof.

16 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my
official seal the day and year first above written.



Cheri Steinmetz
Name of Notary Cheri Steinmetz
Notary Public for the State of Montana
Residing at Great Falls
My commission expires: June 27, 2022

Complaint

Verified Complaint

Exhibit 1

BEAL LAW FIRM, PLLC



Declaration for Nomination and Oath of Candidacy (Special District)

FOR FILING
OFFICE ONLY

Filed this _____ day of _____, 20____

Document # _____

Fee paid: ☐ cash ☐ check ☐ credit

By: _____

Deputy or Filing Officer

JAN 27 2020

DECLARATION AND OATH OF CANDIDACY TO BE FILED WITH SECRETARY OF STATE OR COUNTY ELECTION ADMINISTRATOR AS APPLICABLE

Filing for
office of:

Director Seeley Lake Missoula Sewer District
Full name of office including district and/or department numbers if applicable

4 year Director
Term & Position (i.e. 3yr term for trustee)

Candidate Name (printed exactly as it should appear on the ballot):

Thomas P. Morris

Mailing Address

Box 232

City and State

Seeley Lake, Montana

Zip Code

59808

Residence Address

770 Pine Drive

City and State

Seeley Lake, Montana

Zip Code

59808

County of Residence

Missoula

Contact Phone

406-677-4199

Email Address

tomree82@gmail.com

Website Address

IF THIS DECLARATION IS FOR THE OFFICE OF GOVERNOR, YOU MUST COMPLETE THE FOLLOWING INFORMATION:

Lieutenant Governor Name (printed exactly as it should appear on the ballot):

Mailing Address:

Residence Address:

Phone:

Email Address:

Website Address:

Section Not Required

OATH OF CANDIDACY - CANDIDATE MUST SIGN IN THE PRESENCE OF A NOTARY PUBLIC OR AN OFFICER OF THE OFFICE WHERE THIS FORM IS FILED:

I hereby affirm that I possess, or will possess within constitutional and statutory deadlines, the qualifications prescribed by the Constitution and laws of the United States and the State of Montana.

Signature of Candidate

[Signature]

Date

1-30-2020

NOTARY PUBLIC OR AUTHORIZED OFFICER

State of Montana

County of Missoula

Signed and sworn to before me this 30 day of January, 20 20 by Tom P. Morris

Printed Name of Candidate

[Signature]
Signature of Notary or Public Official

Printed Name of Notary Public

Notary Public for the State of Montana

Residing at: Seeley Lake

My commission expires: May 23, 2021

Where to file for Federal, Statewide, State District and Legislative offices:

Montana Secretary of State
State Capitol, 2nd Floor, Room 260
PO Box 202801

Helena, MT 59620-2801

Online: sos.mt.gov

By Fax: 406-444-2023

Where to file for County, City and most Local District offices:

County Election Office

A list of county election offices may
be found at: sos.mt.gov/elections



PAMELA R. PITMAN
NOTARY PUBLIC for the
STATE OF MONTANA
Residing in Seeley Lake, Montana
My Commission Expires
May 23, 2021

Verified Complaint

Exhibit 2

BEAL LAW FIRM, PLLC

Renee Roragen

From: Colleen Dowdall <colleen@dowdall-law.com>
Sent: Wednesday, June 3, 2020 11:57 AM
To: Jon Beal
Cc: Jacob Anderson; Shaelynn Neel; Renee Roragen
Subject: Re: SLS 18-01 -- Stipulation and settlement

I apologize for not including everyone. Don Larson is the spokesperson for this lawsuit. That is who I spoke to. He is awaiting my research and advice to share with others. Mr. Morris has not been a spokesperson in this lawsuit - only the mandamus action.

Colleen

Colleen M. Dowdall
Dowdall Law
120 West Broadway, Suite B
Missoula, Montana 59802
(406) 493-1817
colleen@dowdall-law.com

On Wed, Jun 3, 2020 at 11:22 AM Jon Beal <jonbeal@beallawfirm.com> wrote:

Colleen:

I just realized that you have stopped copying our team (Mr. Anderson, Ms. Neel and Ms. Roragen set forth above) on your communications, please continue to do so from here on out again, just as you have done in the past. Thank you.

Jon

Jon G. Beal
BEAL LAW FIRM, PLLC
121 Hickory St., Suite 4
P.O. Box 8898
Missoula, MT 59807-8898
Ph: 406-728-2911
Fax: 406-728-2912
jonbeal@beallawfirm.com

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From: Jon Beal

Sent: Wednesday, June 3, 2020 11:16 AM

To: Colleen Dowdall <colleen@dowdall-law.com>

Cc: Jacob Anderson <janderson@beallawfirm.com>; Shaelynn Neel <sneel@beallawfirm.com>; Renee Roragen <rroragen@beallawfirm.com>; Jon Beal <jonbeal@beallawfirm.com>

Subject: SLS 18-01 -- Stipulation and settlement

Colleen:

Thank you for the response. You state that you met with your "client". Please let me know if this is the position of all of your clients, or just Mr. Larson and Mr. Morris, so that I can advise my client accordingly.

Jon

Jon G. Beal

BEAL LAW FIRM, PLLC

121 Hickory St., Suite 4

P.O. Box 8898

Missoula, MT 59807-8898

Ph: 406-728-2911

Fax: 406-728-2912

jonbeal@beallawfirm.com

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From: Colleen Dowdall <colleen@dowdall-law.com>

Sent: Wednesday, June 3, 2020 11:11 AM

To: Jon Beal <jonbeal@beallawfirm.com>

Subject: Stipulation and settlement

Dear Jon:

I met with my client yesterday. We discussed all possible ways to proceed. I am researching those possibilities. If you have a proposal, please feel free to communicate it. I will let you know if we have something to propose.

I will hold off on the request to waive service by mail in the event we are able to resolve the matter.

Sincerely,

Colleen

Colleen M. Dowdall
Dowdall Law
120 West Broadway, Suite B
Missoula, Montana 59802
(406) 493-1817
colleen@dowdall-law.com

Verified Complaint

Exhibit 3

BEAL LAW FIRM, PLLC

From: Shaelynn Neel
Sent: Friday, May 1, 2020 10:29 AM
To: Shaelynn Neel
Subject: FW: Your brief

From: Colleen Dowdall <colleen@dowdall-law.com>
Date: April 30, 2020 at 5:56:50 PM MDT
To: Jon Beal <jonbeal@beallawfirm.com>
Subject: Your brief

Dear Jon:

Thank you for including my grandchildren in your brief. For your information, Missoula County Schools closed on March 16, 2020. By way of introduction, my youngest grandchild is three. She has had a feeding tube since she was about six months old. At about that time she also suffered an incident of complete loss of immunity to bacteria, fungus, and viruses. She had a lengthy hospitalization and has recovered nicely. However, out of an abundance of caution, she had nursing care that came to our home each day, seven days a week, to care for her tube site, ensure that she was gaining weight and to keep her out of daycare. At the beginning of March, we lost nursing care because she is improving. She is not a good candidate for day care during a pandemic.

My seven year old granddaughter is a first grader at Franklin School. She has been devastated by this shut down. She receives all sorts of services at Franklin that she has been without for six weeks.

The mother of these two children suffers from bipolar disorder. She also suffers from physical limitations associated with her spinal cord. She is doing the best she can under a lockdown order with two young kids at home. I am with them a lot.

Now I am sure that this email will end up attached to a brief. Although I am very open about the condition of my daughter and grandchildren, your inclusion of my statement to you in a brief was ridiculous. Many of my colleagues are aware of my family's needs. Your cavalier description in your brief required a response.

Now, for your comment about the request for the writ of mandamus as work I did instead of answering all of the discovery; that action had been in the works since November when you rejected the initiative petition. It was submitted to the Judge in January. It was not until February that the judge decided he would not issue a mandamus writ without notice. It was not my work on other files that prevented me from completing discovery. Your discovery, that I agreed to without knowing the extent or length of what you had asked for, is abusive. That's on me. I will also remind you that we don't have a scheduling order in this case. I will be asking the judge for relief from your demands regarding signatures, etc. given the order of the Supreme Court that allows attorney signatures instead of client signatures.

I will be objecting to your demands in the responses to the discovery. I will be working on them. I won't have signatures, etc. My client, Don Larson's return to this country has been delayed until at least June 1.

I did receive a hand delivered version of the brief and motion. Your assistant was not wearing a mask. I have my door locked so that I do not have unscheduled visitors. She knocked so I was able to receive the documents for the second time in ten minutes.

Sincerely,

Colleen M. Dowdall
Dowdall Law
120 West Broadway, Suite B

Missoula, Montana 59802
(406) 493-1817
colleen@dowdall-law.com

Verified Complaint

Exhibit 4

BEAL LAW FIRM, PLLC

1 MONTANA FOURTH JUDICIAL DISTRICT COURT

2 MISSOULA COUNTY

3 TOM MORRIS and DON LARSON,

4 Petitioners,

5 vs.

Dept. No. 2

Cause No. DV-20-135

6 MISSOULA COUNTY ELECTION ADMINISTRATOR,

7 Respondent.

8
9 Missoula County Courthouse
10 200 W. Broadway
11 Missoula, Montana
1213 MONDAY, MAY 11, 2020
1415 TRANSCRIPT OF PROCEEDINGS
16 Before the Honorable Robert L. Deschamps, III
17
18
19
20
21
2223 Stephanie A. Morrow, RPR
24 Official Court Reporter
(406)258-4733
25

1 not analyze the very reason why that analysis was done.

2 But the attorney was --

3 THE COURT: Let me stop you for a minute.

4 Apparently, back in 2000 -- by what you just said, back
5 in 2017, I guess, there was some kind of a vote put to
6 the people in Seeley Lake to approve a sewer system, and
7 it passed.

8 MS. DOWDALL: It was -- no, it wasn't --

9 THE COURT: And so the board goes ahead to
10 start implementing what the voters narrowly but by a
11 majority approved, and things are going forward. And
12 now, all this time later, you want to basically put the
13 whole thing up for another vote, a second vote to again
14 decide: Are we going to move forward with the sewer
15 district or not? I think that vote was taken and people
16 are moving ahead. And it seems to me like it's -- it's,
17 again, just too late to come back and say, Hey, you get
18 a second vote.

19 If the board that's elected decides they --
20 they don't want to proceed, that's a whole separate
21 question. And I'm --

22 MS. DOWDALL: Judge, I --

23 THE COURT: And I'm not sure at this juncture
24 that the board even has the authority to override the
25 will of the voters, but that's not an issue before me.

C E R T I F I C A T E

STATE OF MONTANA }
County of Missoula } ss.

I, Stephanie A. Morrow, RPR, Official Court Reporter for the State of Montana, residing in Missoula, Montana do hereby certify:

That I was duly authorized to and did report the proceedings in the above-entitled cause;

That due to the difficulty in hearing and understanding telephonic or video conferenced proceedings, these proceedings were reported to the best of my ability;

That the foregoing pages of this transcript constitute a true and accurate transcription of my stenotype notes of said proceedings;

I further certify that I am not an attorney nor counsel of any of the parties; nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this, the 13th day of May, 2020.

/s/ Stephanie A. Morrow

Stephanie A. Morrow, RPR
Official Court Reporter

Verified Complaint

Exhibit 5

BEAL LAW FIRM, PLLC

BEAL LAW FIRM, PLLC



Jon G. Beal
jonbeal@beallawfirm.com

Kristine J. Beal
kbeal@beallawfirm.com

Jacob Anderson
janderson@beallawfirm.com

June 2, 2020

Via Email and U.S. Mail:

Colleen M. Dowdall
Colleen M. Dowdall Law
120 West Broadway, Ste B
Missoula, MT 59802
colleen@dowdall-law.com

**Re: Follow-Up Regarding Stipulation for Electronic Service and Plaintiffs'
Proposal Regarding Dismissal of Case
SLS 18-01**

Dear Colleen:

Pursuant to our telephone conversation on May 29, 2020, I am writing to follow up with you regarding your stipulation for consenting to electronic service and your clients' proposal with respect to the Court's dismissal of their case without prejudice and the District's pending Motion for attorney fees and costs. You stated during our call that you would provide me with these matters for my client's consideration by yesterday, June 1, 2020, but we have not yet heard from you.

Please provide us with your proposed stipulation for accepting service electronically as soon as possible for my review so that it can be filed with the Court. As I informed you over the phone, the District will not consent to electronic service. Please also provide me with your clients' proposal with respect to this case in advance of June 12, 2020—the deadline for your response to the District's May 29, 2020 Motion—so I can discuss it with my client.

Thank you.

Kindest Personal Regards,
Beal Law Firm, PLLC

/s/ Jon G. Beal

Jon G. Beal

JGB/sn

cc: Client (via Email Only)

Verified Complaint

Exhibit 6

BEAL LAW FIRM, PLLC

From: [Colleen Dowdall](#)
To: [Jon Beal](#)
Subject: motion
Date: Friday, May 29, 2020 11:31:06 AM

Dear Jon:

I called back immediately after we spoke to discuss your motion. I left that message and that it was imperative that we talk prior to your filing the motion. I was hoping to discuss attorney's fees and the prospect of our refiling the lawsuit in the context of negotiating those items. You filed the motion anyway. A call back would have been at least courteous. Instead I was told you were not available.

Sincerely,

Colleen

Colleen M. Dowdall
Dowdall Law
120 West Broadway, Suite B
Missoula, Montana 59802
(406) 493-1817
colleen@dowdall-law.com