

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 25-0668

CITIZENS FOR A BETTER FLATHEAD & BRUCE YOUNG,

Petitioners,

v.

**ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY,
HON. PAUL SULLIVAN,**

Respondent.

**LAKESIDE COUNTY WATER & SEWER DISTRICT'S RESPONSE TO
PETITION FOR WRIT OF SUPERVISORY CONTROL**

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INTRODUCTION

Lakeside County Water & Sewer District (“LCWSD”) submits this brief pursuant to this Court’s Order directing a response to Petitioner, Citizens for a Better Flathead and Bruce Young’s (collectively “Citizens”), Petition for a Writ of Supervisory Control (“the Petition”). The Petition fails to set forth any mistake of law by the District Court regarding Citizens Application for Writs of Mandamus and improperly sets forth arguments challenging the District Court’s Order Denying Injunctive Relief.

BACKGROUND FACTS

Since 2021, LCWSD has worked to expand its septage capabilities by building a Septage Receiving and Treatment Facility (“SRFT”) to ensure it had sufficient capacity to serve its ratepayers. Exhibit B, Ex. 1, ¶4.¹ After LCWSD entered an Interlocal Agreement with Flathead County to accommodate this expansion, LCWSD considered an agreement to provide services to an entity known as Discovery Land. Exhibit B, Ex. 1, ¶¶5-6, Ex. 2, ¶¶6-7.

LCWSD first discussed a potential agreement with this entity at its April 16, 2024, board meeting. *Id.* Later, the parameters of what an agreement with Discovery

¹ Consistent with M.R.App.P. 14(7)(a), Exhibits A-I referenced herein refer to the exhibits submitted by Citizens simultaneously with their Petition.

Land would look like were discussed at LCWSD’s November 19 and December 17, 2024, board meetings. *Id.*, Ex. 1, ¶¶8-9, Ex. 2, ¶¶8-9.

After LCWSD’s December 2024, meeting, LCWSD received a request for public information (“December 2024 Request”) from Citizens seeking, in relevant part, a copy of the Discovery Land agreement. *Id.*, Ex. 1, ¶10. LCWSD responded by informing Citizens Discovery Land was drafting the agreement and LCWSD did not have a copy of the proposed agreement in its possession and control. *Id.* LCWSD did not receive any further communications from Citizens regarding this request. *Id.*

On March 18, 2025, LCWSD held a board meeting (“March Meeting”). *Id.*, Ex. 1, ¶¶11, 14. At the March Meeting, LCWSD discussed and voted to enter an agreement titled “Territory 1889 Agreement” (“Discovery Land Agreement”) with Discovery Land, which permitted Discovery Land to connect to LCWSD’s existing water system and to dispose of septage, but Discovery Land was responsible for building and installing its own septage collection systems and infrastructure to connect to LCWSD’s water systems. *Id.*, Ex. 1, ¶14, Ex. F.

The following day, Citizens submitted a request for information seeking “[c]opies of the business and/or contractors who submitted bids for [LCWSD’s] proposed expansion project who were awarded the bid for this work” including “the signed contract(s) for this work and the work schedule(s) or timeline(s).” *Id.*, Ex. 1, ¶19. LCWSD responded that “bids had not been issued.”

On April 4, 2025, LCWSD published notice of its April 9, 2025, meeting (“April Meeting”) to its website and emailed the notice to the Daily Interlake newspaper to publish the notice. *Id.*, Ex. 2, ¶¶11-13. At the April Meeting, LCWSD’s general manager presented the Phase I SRTF construction bids submitted to LCWSD’s engineer and the engineer’s recommendation that LCWSD approve Swank Enterprises’ bid. After public comment, LCWSD approved the bid award to Swank Enterprises by motion. *Id.*, Ex. 1, ¶17, Ex. 2, ¶14.

PROCEDURAL HISTORY

Citizens filed their Complaint on April 16, 2025, and an Amended Complaint on April 23, 2025. The following day, Citizens filed their Application for Writs of Mandamus (“Mandamus Application”) along with their brief and affidavits in support. Exhibit A. LCWSD submitted its answer to Citizens’ Brief in Opposition to Citizens’ Application for Writs of Mandamus (Exhibit B) on June 4, 2025.

Oral argument on Citizens’ Mandamus Application was held on June 11, 2025 and the matter was taken under advisement. Twenty days later, on July 1, 2025, Citizens filed their Application for Temporary Restraining Order, Preliminary Injunction, and Show Cause Order. Exhibit G. This matter was fully briefed by July 22, 2025, with LCWSD filing its brief in opposition on July 15, 2025, (Exhibit I) and Citizens filing their Reply Brief one week later. Exhibit H. On July 24, 2025,

the Court set a show cause hearing on Citizens’ petition for injunctive relief for August 18, 2025. Exhibit F.

At the August 18 show cause hearing, Citizens requested the District Court issue an order on its motion for injunctive relief no later than August 20, 2025. On August 20, 2025, the District Court issued its order (“the Order”) finding Citizens failed to establish a single element set forth under §27-19-201(1), MCA. Exhibit C.

STANDARD OF REVIEW

Supervisory control is an extraordinary remedy reserved for extraordinary circumstances. *Stokes v. Mont. Thirteenth Jud. Dist. Ct.*, 2011 MT 182, ¶5, 361 Mont. 279, 259 P.3d 754 (internal citation omitted). Supervisory control is appropriate where the “district court is proceeding based on a mistake of law, which if uncorrected, would cause significant injustice for which an appeal is an inadequate remedy.” *Simms v. Mont. Eighteenth Jud. Dist. Ct.*, 2003 MT 89, ¶18, 315 Mont. 135, 68 P.3d 678 (internal citation omitted). The decision to exercise supervisory control must be made on a case-by-case basis. *Id.*

The exercise of supervisory control is appropriate only “(1) when urgency or emergency factors exist making the normal appeal process inadequate, (2) when the case involves purely legal questions, and (3) when one or more of the following circumstances exist: (a) the other court is proceeding under a mistake of law and is causing a gross injustice, (b) constitutional issues of state-wide importance are

involved, or (c) the other court has granted or denied a motion for substitution of a judge in a criminal case.” *Lamb v. Dist. Ct. of Fourth Jud. Dist.*, 2010 MT 141, ¶10, 356 Mont. 534, 234 P.3d 893 (internal citations omitted).

ARGUMENT

I. CITIZENS’ PETITION IS IMPROPER.

A. Citizens’ Petition Seeks to Challenge the District Court’s Order Denying Injunctive Relief.

Although Citizens categorize their petition as seeking supervisory control over their Mandamus Application, Citizens only address arguments concerning their motion for injunctive relief. The bulk of the alleged mistakes of law set forth in the Petition concern the District Court’s August 20 Order. Pet. For Writ of Supervisory Control [hereinafter “Pet.”] Pet., pp. 14-19. With respect to their Mandamus Application, the only mistake of law Citizens allege is that the District Court did not timely issue an order.

More explicitly, Citizens contend because the District Court has not issued an order on their motion for writs of mandamus but denied their motion for preliminary injunction, the District Court “has all but adjudged the mandamus action denied” without providing Citizens with an adequate procedure to “vindicate their constitutionally protected rights to meaningful public participation.” Pet., pp. 13-14. This is untrue.

The Montana Rules of Appellate Procedure provide a mechanism through which an aggrieved party may seek an appeal from an order “refusing to grant... an injunction[.]” M.R.App.P. 6(3)(e). Citizens thus have a remedy available outside of M.R.App.P. 14(3) and one which they are actively pursuing. *See* DA 25-0665.² Therefore, Citizens’ contention that they lack any readily available remedy stemming from the Order lacks any basis in law. *See Lamb*, ¶11.

Further, Citizens cannot rely on an analysis of a motion for preliminary injunction to establish that the District Court would make or has made a mistake of law in considering their application for writs of mandamus. An application for a writ of mandate seeks substantially different relief than a motion for preliminary injunction. Where mandamus relief compels the performance of a clear legal duty (§27-16-102(1), MCA), a preliminary injunction seeks to preserve the status quo pending trial. *Planned Parenthood of Mont. v. State by & through Knudsen*, 2022 MT 157, ¶6, 409 Mont. 478, 515 P.3d 301 (internal quotation omitted).

Additionally, each form of relief requires different elements. With respect to mandamus, a movant must establish: (1) the party against whom relief is sought owed a clear legal duty and (2) there is no speedy and adequate remedy available in the ordinary course of law. *Kageco Orchards, LLC v. Mont. Dep’t of Trans.*, 2023

² Citizens filed their Opening Brief on October 29, 2025.

MT 71, ¶21, 412 Mont. 45, 528 P.3d 1097 (internal; citation omitted). By contrast, a party is entitled to preliminary injunctive relief where they can establish:

- (a) the movant is likely to succeed on the merits of the action;
- (b) the movant is likely to suffer irreparable harm if injunctive relief is not issued;
- (c) the balance of equities favors injunctive relief; and
- (d) the injunction is in the public's interest.

§27-19-201(1), MCA. Accordingly, where a court has issued a finding that the elements for injunctive relief have not been satisfied, such a finding cannot be imputed to mean that a movant cannot prevail on an application for writs of mandamus. For this reason, Citizens cannot raise the Order as a stand-in for an order as to their Mandamus Application.

Even if Citizens could conflate the Order with an order denying mandamus relief, this conflation would render Citizens' Petition improper as any error in the Order could be addressed in an appeal pursuant to M.R.App.P. 6(3)(e). Therefore, the only issue before this Court as to whether the District Court has operated under a mistake of law concerns whether the District Court did not timely issue an order on Citizens' Mandamus Application.

B. Citizens Fail to Establish the District Court is Proceeding Under a Mistake of Law.

Citizens' present stance before this Court marks a stark departure from representations they made before the District Court. In their initial brief in support of their motion for preliminary injunction, Citizens themselves recognized "the [District] Court's discretion in the timing of issuing an order regarding the application for writs of mandamus." Exhibit G, p. 10. Despite this acknowledgment, Citizens now repudiate this contention.

To the extent Citizens argue the District Court has been derelict in its duties to issue a ruling on their motion prior to this Petition, Citizens provide no statute or citation to case law establishing a district court must issue an order granting or denying mandamus relief within a specified period. They cannot do so as such a statute does not exist.

The only citation to Montana law Citizens provide regarding any time limits is a quotation of §27-26-202, MCA, and citations to §27-26-102(2), MCA, *MEIC et al v. Office of the Governor for the State of Mont.*, 2025 MT 112, ¶12, 422 Mont. 136, 569 P.3d 555, and *Smith v. Cty of Missoula*, 1999 MT 330, ¶28, 297 Mont. 368, 992 P.2d 834. Pet., pp. 7, 12-13. These citations, however, do not establish any time limit within which a district court must issue an order regarding an application for writs of mandamus.

Specifically, §27-26-202, MCA, requires that "notice of the application, when given, must be at least 10 days or a shorter time, in the discretion of the court or

judge.” Notice that an application has been filed cannot be conflated with an order granting or denying an alternative writ. Similarly, the cited language set forth in §27-26-102(2), MCA, *MEIC* and *Smith* only stand for the requirement mandamus is only appropriate where a movant establishes that no speedy and adequate remedy is available in the ordinary course of law.

Further, the local rules for the Eleventh Judicial District provided Citizens a mechanism to obtain an order on their application for writs of mandamus. The rules state that where “a Judge has under advisement any matter for more than sixty days, each party affected thereby may file with the Clerk of Court a Notice of Issue particularly describing the matter under advisement, and stating the date the matter was taken under advisement.” L.R. 3(C). Citizens could have submitted a notice of issue on August 10, 2025.

To date, Citizens have not filed any such notice. Rather, before the District Court issued any order on this motion, Citizens submitted their motion for preliminary injunction on July 1, 2025, and then demanded an order by August 20.

Despite their initial deference, Citizens now contend the twenty-day gap between June 11, 2025, and July 1, 2025, constituted an “unnatural delay” which “precipitated an application for injunctive relief[.]” Pet., p. 13. Further complicating this timeline of events, Citizens urged the Court to prioritize their motion for preliminary injunction. Exhibit G, p. 18; Excerpts from Tr., 26:22-25; 52:20-22

attached hereto as **Exhibit 1**.³ The District Court acquiesced to this request by issuing the Order on August 20, 2025.

After the Order, Citizens took no further action until submitting their Petition and appeal of the District Court's order denying their motion for preliminary injunction on September 18, 2025. Between August 10 and September 18, 2025, 39 days followed within which Citizens could have submitted a notice of issue pursuant to L.R. 3(C). Citizens elected not to do so.

Citizens substantially contributed to the delay in the District Court issuing an order as to their motion for writs of mandamus. Rather than allowing the District Court to deliberate on the briefing and oral argument presented to it, Citizens complicated the procedural history of their claim. Accordingly, Citizens, not the District Court, have left themselves "in a procedural no man's land[.]"

II. THE DISTRICT COURT DID NOT PROCEED UNDER A MISTAKE OF LAW.

Setting aside whether Citizens have properly sought a writ of supervisory control pursuant to M.R.App.P. 14(3), Citizens cannot establish the District Court proceeded under a mistake of law as set forth below.

A. Citizens Fail to Establish the District Court Severed the Right to Know from the Right to Participate.

³ Consistent with M.R.App.P. 14(7)(a), LCWSD submits **Exhibit 1**, which was not included in the Petition as necessary for the Court's consideration in this matter.

With respect to the right to know and right to participate, the District Court correctly compared the present matter to the chief case relied upon by Citizens in their briefing, *Bryan v. Yellowstone Cty. Elementary Sch. Dist. No. 2*, 2022 MT 264, 312 Mont. 257, 60 P.3d 381. Exhibit C, pp. 9-17. Specifically, the District Court noted whether LCWSD “violated Citizen’s constitutional rights to know and participate depends on whether it adequately responded to the requests under the precedent set forth in *Bryan*.” *Id.*, p. 11. Thus, the District Court’s analysis of this matter explicitly examined the interchange between the public rights to know and to participate and correctly found that *Bryan* was distinguishable from Citizens’ claim.

Bryan analyzed a request for information regarding a head-to-head comparison between schools which were candidates to be closed by the school district. *Bryan*, ¶39. Central to this holding was the school district’s concerted efforts to undermine the plaintiffs’ clear requests for documents. *Bryan*, ¶¶38-39. Namely, this Court found the school district’s hyper-technical interpretation of the plaintiffs’ requests “frustrate[d] the maxim of liberal interpretation and subvert[ed] the constitutional mandate on open government” and the plaintiffs’ request for the spreadsheet at issue was “not so unintelligible that it justifies nondisclosure.” *Id.*, ¶39.

Central to Citizens’ claims are LCWSD’s responses to Citizens’ December 2024 and March 2025 requests, which they allege prevented them from meaningfully

participating in LCWSD’s March and April Meetings. With respect to the December 2024 request, LCWSD timely notified Citizens that Discovery Land was drafting the Discovery Land Agreement and that LCWSD did not have a draft within its possession or control. Exhibit B, Ex. 1, ¶11. LCWSD’s response to the March 2025 request informed Citizens it did not award any bids with respect to the proposed expansion project and therefore did not have any signed contracts, work schedules, or timelines. *Id.*, Ex. 1, ¶19.

The District Court found these facts do not constitute the same sort of conduct examined in *Bryan*. Exhibit C, pp. 13-17. Namely, the District Court held that Citizens failed to establish that LCWSD improperly responded to their December 2024 and March 2025 requests, that LCWSD had a duty to supplement these responses, or to establish that Citizens did not have an opportunity to obtain the requested information.

First, with respect to both the December 2024 and March 2025 requests, LCWSD did not engage in the hyper-technical interpretation of Citizens’ requests condemned in *Bryan*. Rather, LCWSD’s responses were based upon the temporal reality that existed at the time of each request. Given LCWSD was not the party responsible for drafting the Discovery Land Agreement in December 2024 and no bids had been awarded in March 2025, LCWSD could not produce what it did not have. §2-6-1002(10), MCA (defining “public information” as information

“prepared, owned, used, or retained by any public agency”). Thus, where *Bryan* concerned a spreadsheet generated by the school district that existed at the time the plaintiffs submitted their request, the documents sought by Citizens here did not exist at the time of their requests. Further, Citizens’ December 2024 request sought a document not generated by LCWSD. Given these facts, the District Court found LCWSD properly responded to Citizens’ documents requests based upon the reality at the time of the requests. This finding is consistent with *Bryan*.

Next, Citizens failed to provide any Montana authority requiring prospective supplementation of a previously accurate response. Again, that is because no such authority exists.

Despite Citizens’ insistence to the contrary, *Bryan* provides no analysis regarding a duty to supplement responses where a document does not exist at the time of the request. Rather, *Bryan* concerned a document that existed at the time of the plaintiff’s requests. Further, under the rules of statutory construction, a plain reading of §2-6-1006, MCA, only contemplates circumstances at the time a request is submitted. *Egan Slough Comm’ty v. Flathead Cty. Bd. Of Cty. Comm’rs*, 2022 MT 57, ¶22, 408 Mont. 81, 506 P.3d 996 (requiring statutes must be applied as written and prohibiting the insertion of language omitted from the statute) (quoting §1-2-101, MCA). The language of §2-6-1006 directs public agencies to make public information available to the public but does not establish that a request for a non-

existent document creates a continuing duty to produce it if it comes into existence later, let alone documents generated by another entity. Accordingly, the District Court's finding LCWSD did not have a duty to supplement its responses is not a mistake of law.

Finally, Citizens had opportunities to obtain information they claim was necessary for meaningful participation in advance of the March and April meetings. Although stating confusion at "Territory 1889 Agreement" listed under old business in the agenda for the March Meeting, Citizens had notice of this agenda item four days before this meeting. Exhibit B, Ex. 2, ¶¶3-4. Citizens had availed themselves numerous times to LCWSD's public documents request process between September 2023, and March 2025. *Id.*, Ex. 1, ¶19. Given their knowledge and advance notice, Citizens had an opportunity to request a copy of the Territory 1889 Agreement in advance of the March meeting to dispel their confusion arising from their review of this agenda item but chose not to do so until after the meeting.

Similarly, the bid in question was awarded two weeks after LCWSD responded to Citizens' March 2025 request. Citizens did not submit any additional requests or otherwise communicate a request to include bid information during this time. Again, Citizens chose not to. Therefore, the District Court properly found Citizens' failure to avail themselves of LCWSD's document request process did not constitute a violation of their right to know or subsequently right to participate.

Because the District Court found LCWSD's responses to Citizens' December 2024 and March 2025 requests were proper, LCWSD had no duty to supplement those responses, and that Citizens had opportunities to obtain the information sought but elected not to do so until after an action was taken, the District Court correctly found that LCWSD did not violate the right to know or to meaningfully participate in the March and April meetings.

B. LCWSD Does Not Have an Affirmative Duty to Publish All Documentation Supporting Proposed Action Items Alongside its Meeting Agendas.

Citizens contend the District Court operated under a mistake of law claiming §2-3-103(1), §2-3-111, MCA, and *Bryan* create an obligation to publish documents supporting proposed action items alongside meeting agendas. Pet., p. 15.⁴ This argument has no legal basis.

Under §2-3-111(1), an agency must afford "interest persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision[.]" This statute, as written, only requires agencies to permit the public to submit information of their own to an agency. The rules of statutory

⁴ Citizens also contend without any basis that "every other Montana local government provides full documentation supporting any agenda action times. Online, several days before business meetings." Pet., p. 15. The undersigned represents numerous local government entities throughout the state lacking the technological capacity to make such publications. A non-exhaustive list of such communities include, Judith Gap, Fort Benton, and Cascade.

construction do not permit any insertion of any publication requirement as such requirement was omitted. *Egan Slough*, ¶22.

Next, §2-3-103(1), MCA, requires agencies to “publish an agenda for a meeting” in either a newspaper of general circulation in the county where the agency is located provided such a publication is free of charge to the agency on the newspaper’s website or by posting a link to the agenda on the agency’s primary website. §2-3-103(1)(b)(i)-(ii)(A), MCA.

Because §2-3-103 only requires agencies to publish agendas, it must be determined whether supporting documents are considered a component of an agenda. “Agenda” is not defined by §2-3-101 *et seq.*, so the dictionary definition of “agenda” may be applied to determine the plain and ordinary meaning of the word. *Giacomelli v. Scottsdale Ins. Co.*, 2009 MT 418, ¶18, 345 Mont. 15, 221 P.3d 666 (internal citations omitted).

An “agenda” is “[a] list of things to be done, as items to be considered at a meeting, usu. arranged in order of consideration.” *Agenda*, Black’s Law Dictionary, Deluxe Tenth Ed., 2014. Because this definition makes no reference to supporting documents, the requirement to publish agendas does not include any requirement to publish supporting documents. *Egan Slough*, ¶22.

This interpretation is consistent with Montana case law recognizing the propriety of making documents related to the agenda available upon request. *See*

Mont. Health Care Assoc. v. Mont. Bd. of Directors of the State Compensation Mut. Ins. Fund [hereinafter “*MHCA*”], 256 Mont. 146, 156, 845 P.2d 113, 119 (1993) (rejecting movant’s assertion that “by refusing to mail Board packets to members of the public who request them, State Fund denies the public a reasonable opportunity for meaningful public participation before final decisions are made” as the packets were available upon request and no one other than the movant’s had requested the information).

Further, *Bryan* is inapposite here as it offers no analysis of any publication requirements under §2-3-101 *et seq. Id.*, ¶¶37-39, 45-56. At most, *Bryan*, in conjunction with *MHCA*, provides that where documents supporting action items on an agenda are made available upon request, the agency has satisfied its burden under the public right to know.

Therefore, the District Court properly found that LCWSD did not have an obligation to post supporting documents along with its agendas. Further, Citizens’ failure to engage in LCWSD’s procedures for obtaining documents supporting action items does not give rise to a violation of either §2-3-103(1) or -111, MCA.

CONCLUSION

Citizens submit their Petition in an effort to cure their own obligations under the Eleventh District’s local rules to obtain an order with respect to their Application for Writs of Mandamus. Additionally, Citizens improperly analyze the District

Court's Order on their motion for preliminary injunction as a denial of their Application for Writs of Mandamus. If this Court were to accept Citizens' position, such a finding would render this Petition inappropriate as Citizens' appeal in DA 25-0665 of the Order would address any alleged mistakes of law.

Alternatively, Citizens' arguments with respect to the District Court's findings in the Order have no legal basis. Citizens have failed to establish that LCWSD improperly responded to Citizens' documents requests, that LCWSD violated the public rights to know or participate, or that LCWSD had a duty to publish documentation supporting proposed action items along with meeting agendas. For the foregoing reasons, Citizens' Petition should be denied.

DATED this 3rd day of November, 2025.

UGRIN ALEXANDER ZADICK, P.C.

/s/ Seth T. Bonilla

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Sewer District*

CERTIFICATE OF COMPLIANCE

I hereby certify, using proportionately spaced 14-point of Times New Roman font, is double-spaced except for footnotes and quoted materials as required by M.R.App.P. 11(4)(a), and pursuant to M.R.App.P. 14(9)(b) that the foregoing brief contains 3, 990 words excluding the caption, certificates, tables and Certificate of Compliance .

DATED this 3rd day of November, 2025.

UGRIN ALEXANDER ZADICK, P.C.

/s/ Seth T. Bonilla _____

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CERTIFICATE OF SERVICE

I, Seth T. Bonilla, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to the following on 11-03-2025:

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