

Law Office Of

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May 18, 2023

Mr. Joe Briggs
Mr. James Larson
Ms. Rae Grulkowski
Cascade County Commissioners
Courthouse Annex 325 2nd Avenue North, Room 111
Great Falls, MT 59401

Re: Fort Shaw Irrigation District
Election held May 2, 2023

Dear Commissioners Briggs, Larson and Grulkowski:

I represent Elliot Merja and Riley Denning, long-time property owners of property located within the Fort Shaw Irrigation District. It is my understanding you are scheduled to canvass the results of the election held May 2, 2023. My clients and I urge you not to certify the election but rather to direct that another election be held in compliance with law.

Several elections were conducted by the Cascade County Elections Office on May 2, 2023, and numerous failures and irregularities have been made apparent in correspondence from and a lawsuit filed by the Great Falls Library Board and in the press. The Fort Shaw Irrigation District (the "District") election was also held that day.

The most glaring irregularities are (1) that each landowner was instructed he must submit a "Notice of Designation of Special District Agent" regardless if one was already on file; (2) although new Notices of Designation of Special District Agent were required to be provided to the county election office not less than 60 days before the election, the District not only failed to notify landowners or provide the forms to them until after that time had expired, but it also incorrectly informed them they must submit such forms at least 25 days before the election; (3) the District unlawfully voted to exclude change documents submitted by landowners who had previously submitted Notices of Designation of Special District Agent forms; (4) the Elections Office sent ballots without return envelopes, secrecy envelopes, and inadequate instructions; and (5) ballots were not sent to the electors sufficiently in advance of the election.

On February 14, 2023, the District sent an undated letter and a form entitled “Notice of Designation of Special District Agent” in which it stated in relevant part, “If you are a resident of the district . . . you do not need to complete this form and may vote . . .” (See Exhibit A attached). We do not know whether residents who were not owners or designated as agents by owners subsequently received ballots and voted. This should be ascertained during the canvass.

The District’s letter incorrectly stated in relevant part, “Although you may have completed this form in the past for the Fort Shaw Irrigation District, you **MUST** complete a new form and return it to the Fort Shaw Irrigation District office in order to receive a ballot for this election.” The correct procedure is provided by § 85-7-1710(3)(c), as follows:

When an irrigation district provides notice of an election, the notice must indicate that, if there is a change in a designated agent, a new signed document must be presented to the district indicating the change. . . .

Mr. Denning’s experience with this election serves as a good example. He had already submitted written designations prior to this election. It was unnecessary for him to submit new designations unless he wanted to make changes. He did not. Yet he was prevented from voting all of the votes to which he is entitled based upon the number of acres of land that he owns. Mr. Denning eventually did submit additional designation forms on April 14, 2023. I do not believe these designations changed his prior designations, but if they somehow did, they would constitute change documents and it was proper for him to submit them up to 13 days prior to and including election day, in other words, by April 19, 2023. Mont. Code Ann. § 85-7-1710(5)(b), (e). Either way, Mr. Denning properly had designation forms on file with the District in time to cast votes based upon his entire land ownership. Contrary to law, a majority of the District board voted not to accept Mr. Denning’s designation forms and forms submitted by other owners. (Exhibit B) This violated § 85-7-1710(5)(c), which, instead of disallowing change documents, required the District to provide the information regarding the change to the “election office within 4 days of receiving [the] change document.” Again, the forms Mr. Denning submitted were timely as change documents, but even if those forms were not considered, the designation forms Mr. Denning had submitted prior to this election entitled him to vote the number of votes to which his ownership entitled him, i.e., 819 votes rather than the 197 votes shown on the ballot sent to him (Exhibit C). We believe other owners were also improperly disenfranchised similar to Mr. Denning.

I have been informed that the Elections Office has records of the previous designations, so Mr. Denning and other electors should have been sent the ballots to which they were entitled.

Contrary to the District’s letter and the Notice of Designation of Special District Agent, any designations by owners who had not previously designated agents for voting should have been provided to the District at least 60 days in advance of the election. Mont. Code Ann. § 85-7-1710(5)(a). If they were not, then they should not have entitled the landowner to receive a

ballot. During the canvass, it will be necessary to exclude any such ballots.

Ballots were sent by the Elections Office on April 20 and 21, 2023. Sections 13-1-404(2) and 13-19-207(1) require that “ballots be mailed no sooner than the 20th day and no later than the 15th day before election day.” In other words, ballots should have been mailed no later than April 17, 2023. Further, when the ballots are mailed, they are to be mailed all on the same day, not over a two-day period as was the case here. Mont. Code Ann. § 13-19-207(2). Without mailing to electors sufficiently in advance of an election, electors did not have sufficient time to return their ballots.

This problem was compounded by no legitimate attempt to comply with the statutes governing mail ballot elections, which are governed by Title 13, Chapter 19, M.C.A. Section 13-19-106 provides for signature envelopes, secrecy envelopes, and a form that is the same as the form for absentee ballot signature envelopes (prescribed by the secretary of state for the elector to verify the accuracy of the elector’s address or notify the election administrator of the elector’s correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306). None of this was complied with.

Section 13-19-301(1) specifies the steps by which an elector may vote. The only way electors here could have complied with the statute would be to find and read the statute and follow the steps set forth in the statute as best as they could, because the Elections Office provided literally nothing that an elector should use to vote. The top of the ballot may have complied with subsection (a) of this statute. But electors could not comply with subsection (b) because no secrecy envelope was provided and the ballots had stickers with the elector’s name and address on the back of the ballot (apparently the stickers were attached to the back of the ballots such that when the ballots were folded and placed in envelopes to be mailed to the electors, the sticker showed names and addresses of electors through window envelopes for mailing to the electors). The stickers obviously destroyed any secrecy and amounted to identifying marks which are prohibited by § 13-19-301(1)(b).

Section 13-19-301(1)(c) could not be complied with either. It requires the elector “to plac[e] the secrecy envelope containing one ballot for each election being held in the signature envelope.” But neither type of envelope was provided. Likewise, there was no affirmation provided as required by § 13-19-302(1)(d). Finally, there was no way for an elector to comply with the requirement of “returning the signature envelope with all appropriate enclosures” because none were provided. Mont. Code Ann. § 13-19-302(1)(e). The statute further provides that “an official ballot is voted when the marked ballot is received at a place of deposit.” Mont. Code Ann. § 13-19-302(2). Electors were not informed of where the places of deposit were.

The service provided to the public in this election may be described using words such as “abhorrent”, “atrocious”, “contemptible” and “despicable”. Maybe it is better simply to describe this election as a complete failure. Your duties as county commissioners require you to supervise

the official conduct of all county officers and to see that the officers faithfully perform their duties. Mont. Code Ann. § 7-4-2110(1) and (2). There was nothing “faithful” here. The District and the Elections Office did not make even a colorable attempt to serve the electors as required and contemplated by law. Public officials and offices exist to serve the public, and there literally was no service here. Not even one statute described above was followed.


With all due respect to you, there should be no declaration of election of any individual in the District’s election. I would ask that you send this election back to the District and the Elections Office, but I have no confidence that either of them is able to conduct an appropriate election. Please send it back with such other action as you best determine to protect the public.

We have also heard that one of you commissioners worked in the Elections Office during or related to the May 2, 2023, elections. If this is the case, you should recuse yourself and not be involved in the canvass. Canvassing involves auditing the tally books or other records of votes cast and other audit-type reviews. See Mont. Code Ann. § 13-15-403(1). An audit should always be independent; it would be a conflict to be involved in any audit of one’s own work.

If you have any questions or comments which I may address, please contact me.

Very truly yours,

STEVEN T. POTTS, P.L.L.C.

By 

encls. As noted

cc: Cascade County Attorney Josh Racki
Austin James, Chief Legal Counsel
to the Montana Secretary of State

Exhibit A

**(Fort Shaw Irrigation District Letter and
Notice of Designation of Special District
Agent)**

Fort Shaw Irrigation District
P O Box 154
Fort Shaw, MT 59443

Dear Elector of Fort Shaw Irrigation District:

An election is scheduled to be held in your irrigation district on May 2, 2023. This election is for the purpose of electing 1 commissioner; in district #1 (2-year term), 1 commissioner in district #2 (3-year term), 1 commissioner in district #4 (3-year term), and 1 commissioner in district #5 (1-year term). The election will be conducted solely as a mail ballot election and Cascade County Election Department will mail out the ballots on April 17, 2023. In order to have a ballot mailed out, Cascade County Election Department needs some information.

Per MCA 85-7-1710 (3), Whenever land is owned by co-owners, the owners shall designate one of their number or an agent to cast the vote for the owners. Whenever the land is owned by a single owner, the owner at the owner's discretion may designate an agent to cast the vote. Only one vote may be cast for each acre of irrigable land or major fraction of an acre by the voting individual. Whenever land is under contract of sale to a purchaser, the purchaser may vote on behalf of the owner of the land. When voting, the agent of a corporation, of a single owner or co-owners, of the co-owner designated for the purpose of voting, or of the purchaser of land under contract of sale shall file with the secretary of the district a written instrument of the agent's authority, executed and acknowledged by the proper officers of the corporation, by the single owner or co-owners, or by the owner of land under contract of sale, and upon filing, the agent or co-owner or purchaser is an elector within the meaning of this part.

Per MCA 13-19-304, Voting by nonregistered electors. (1) For any election being conducted under this chapter by a political subdivision that allows individuals to vote who are not registered electors, such an individual may vote by appearing in person at the election administrator's office and demonstrating that he possesses the qualifications which entitle him to vote.

(2) An individual complying with subsection (1) before official ballots are available may leave a card with the election administrator containing his signature and the address to which his ballot is to be mailed. The signature provided must then be used for verification when the mail ballot is returned.

(3) An individual complying with subsection (1) after official ballots are available and before the close of the polls on election day must be permitted to vote at that time.

If the designated agent is a registered elector of Cascade County, the following form can be returned to the Fort Shaw Irrigation District office, either by mail, email or in person, and the ballot(s) will be mailed directly to the agent on April 17, 2023.

If the designated agent is **not** a registered elector of Cascade County, the following form must be completed and returned, **in person**, to the Election Administrator's office.

If a property is owned by a company, the following form must be completed and returned to the District Office.

Although you may have completed this form in the past for the Fort Shaw Irrigation District, you **MUST** complete a new form and return it to the Fort Shaw Irrigation District office in order to receive a ballot for this election. When completing this form, **EVERY** co-owner of the property **MUST** sign off on the form. The Cascade County Election Department will verify this information using the last legally recorded deed from the Cascade County Clerk and Recorder's records.

Please do not hesitate to contact the Election Department if you have any questions.

Sincerely,


Charla Merja, Secretary

Fort Shaw Irrigation District

P O Box 154

Fort Shaw, MT 59443

406-264-5751

NOTICE OF DESIGNATION OF SPECIAL DISTRICT AGENT

Please complete the following form if you own taxable real property within the boundaries of the Fort Shaw Irrigation District, a County Special District, and the property is: (1) owned by more than one person, (2) owned by a corporation or company, or (3) held in trust. If you have questions, please contact the Cascade County Election Office, at 406-454-6803.

This designation is valid for the following election date:

May 2, 2023

This designation is valid for the following Special District:

Fort Shaw Irrigation

Montana Code Annotated § 7-13-2212(2) (2017) provides that the designation shall be sent at least **25 days** before the election:

Fort Shaw Irrigation District

P O Box 154

5 North Fort Shaw Road

Fort Shaw, MT 59443

email: fsidsecretary@3rivers.net

If you are a resident of the district or the sole owner of the property you do not need to complete this form and may vote without designating an agent.

DESIGNATION OF AGENT OR REPRESENTATIVE

Please select the following category of ownership and identify the designated agent.

☐ (1) ***Agent Designated by Owners of Property Owned by More than One Person.***

_____ is the designated agent of landowners with taxable real property within the boundaries of the proposed or existing district that is owned by more than one person. Below are the signatures from the property owners.

☐ (2) ***Representative of Corporation or Company.***

_____ is the designated agent of a corporation or company with taxable real property within the boundaries of the proposed or existing district. Below are the signatures of the corporate officers or company members with requisite authority to designate an agent to act on its behalf.

☐ (3) ***Designated Agent for Property Held in Trust.***

_____ is the designated agent of a property held in trust within the boundaries of the proposed or existing district. Below are the signature(s) from the Trustee(s).

Fort Shaw Irrigation District
P O Box 154
Fort Shaw, MT 59443
406-264-5751

IDENTIFICATION OF DESIGNEE:

Designated Agent Name: _____

Designated Agent **Mailing** Address: _____
(address which ballot should be sent)

IDENTIFICATION OF PROPERTY:

Taxable Real Property Owner Name(s): _____

Taxable Real Property **Physical** Address: _____

VERIFICATION OF OWNERS:

By signing below, I verify that I am an owner of taxable real property within the boundaries of the proposed or existing district, a corporate officer or company member that owns taxable real property within the boundaries of the proposed or existing district with requisite authority to designate an agent to act on the corporation or company's behalf, or a Trustee for a property held in trust within the boundaries of the proposed or existing district. Furthermore, I verify that the above-named agent or representative has requisite authority to vote in this election for the proposed or existing district.

If executed within the state:

I declare under penalty of perjury that the foregoing is true and correct.

If executed in any place outside the state:

I declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true and correct.

Signatures of Taxable Property Owners/Officers of Corporation/Officers of Company/Trustees: (use additional sheets if needed)

Name on Deed/Officer Name/Trustee Date

Name on Deed/Officer Name/Trustee Date

Name on Deed/Officer Name/Trustee Date

Name on Deed/Officer Name/Trustee Date

Name on Deed/Officer Name/Trustee Date

Name on Deed/Officer Name/Trustee Date

Exhibit B

**(Fort Shaw Irrigation District Meeting April
27, 2023 – Special Meeting)**

From: Elliot Merja emerja@3rivers.net
Subject: Fwd: April 27, 2023 Draft Minutes
Date: May 7, 2023 at 10:20 PM
To: dennings@3rivers.net

----- Forwarded Message -----

Subject: April 27, 2023 Draft Minutes
Date: Sun, 07 May 2023 18:39:32 -0600
From: FORT SHAW IRRIGATION DISTRICT fsidsecretary@3rivers.net
To: Elliot Merja emerja@3rivers.net

Here are the draft minutes.

Charla Merja, Secretary
Fort Shaw Irrigation District
406-231-0199

Virus-free www.avast.com

**FORT SHAW IRRIGATION DISTRICT MEETING
APRIL 27, 2023
SPECIAL MEETING**

Present: Jay Skoog, Elliot Merja (phone), Jason Campbell, Ken Steinke, John Myers (phone),
Secretary, Charla Merja

Absent:

Visitors: Lee Signalness, Keith Rohrer, Rich Boyle, Aaron Griffen, Todd Klick, DeeDee Rains

CALL TO ORDER: Elliot Merja called the meeting to order at the District Office.

ACTION ITEMS:

Certify Designation of Agents Forms The list of additional forms received was presented. Elliot Merja noted MCA 85-7-1710 indicates landowners can submit forms up until the election. Ken Steinke is not in agreement with certifying the additional forms due to the forms not being received prior to the date stated. Elliot Merja stated the County Attorney notified him the forms needed to be picked up and the board needed to certify. Jason Campbell spoke with the County Attorney and was told it was up to the board whether or not they certified the additional forms. John Myers noted it is up to the board to certify the forms and allow last minute votes for the election. Jason Campbell is not in favor of certifying the acres.

Todd Klick asked if other landowners were notified the board was accepting forms that were not returned in time and if there was a plan.

Charla Merja outlined the process they followed: The list of landowners was provided to the County Election office after the February 9, 2023 board Meeting. The Notice of Designation of Special District Agent forms were mailed on February 14, 2023. She met with the Cascade County Election Administrator on April 5 to discuss the election process. It was noted 25 days prior to the election was April 7 and she offered to deliver the forms that had been received by Monday, April 10 so the election office could start working on them. She also let them know the April board meeting was April 13 and the board would certify the list of received forms at that time and she would deliver the certified list and forms to the office on Friday, April 14.

Jay Skoog stated the board needs to follow the rules and we did what we were directed to do. The Board reviewed MCA 85-7-1710 and there is some confusion regarding MCA 85-7-1710 (5b). It states those who turn in a valid change document regarding ... a designated agent at least

14 days prior to the election ... is eligible to vote. What is a "change document"?

Motion to not certify the additional Designation of Special District Agent forms by Ken Steinke. Jason Campbell second. Motion Carried.

2023 Election Charla Merja outlined some of the issues that have come up with the 2023 election. Ballots were sent without a secrecy envelope, return envelope or instructions. Ballots were not sent out on April 17 as planned. The Election Office is now stating that ballots need to be in a secrecy envelope and a return envelope with the voter's signature, etc. even though they didn't include those items with the ballot. Charla will send out email letting those who haven't returned their ballots to take them to the election office.

ADJOURNMENT: Motion to adjourn the meeting by Jay Skoog. Ken Steinke second. Motion Carried.

Minutes submitted by Charla Merja

Exhibit C

**(Ballot sent to Riley V. Denning, front and
back, with envelope)**

THIS BALLOT SHOULD BE MARKED WITH AN "X" IN THE SQUARE BEFORE THE NAME OF EACH INDIVIDUAL OR CANDIDATE FOR WHOM THE ELECTOR INTENDS TO VOTE. THE ELECTOR MAY WRITE IN OR AFFIX A PREPRINTED LABEL IN THE BLANK SPACES OR PASTE OVER ANY OTHER NAME, THE NAME OF THE INDIVIDUAL FOR WHOM HE/SHE WISHES TO VOTE AND VOTE BY MARKING AN "X" IN THE SQUARE BEFORE THE NAME.

OFFICIAL BALLOT

FORT SHAW IRRIGATION DISTRICT

May 2, 2023

FOR COMMISSIONER DISTRICT #2

THREE-YEAR TERM

VOTE FOR ONE

☐

COLE NELSON

☐

FOR COMMISSIONER DISTRICT #4

THREE-YEAR TERM

VOTE FOR ONE

☐

RILEY V. DENNING

☐

KENNARD STEINKE

☐

FOR COMMISSIONER DISTRICT #5

ONE-YEAR TERM

VOTE FOR ONE

☐

JASON CAMPBELL

☐

ELLIOT MERJA

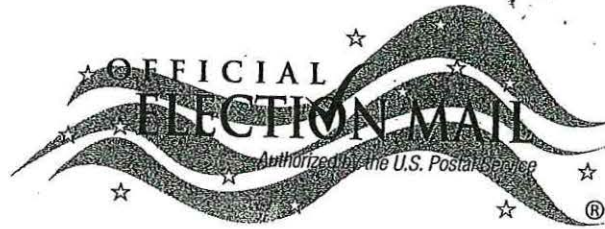
☐

Number of Votes Cast _____

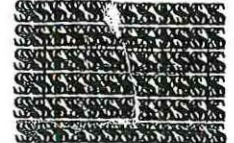
Number of Irrigable Acres Owned 197.096

RILEY DENNING V
50 FLEMMING ROAD
SUN RIVER, MT 59483

Cascade County Election Administrator
PO BOX 2305
Great Falls, MT 59403-2305



Profit Org
ge Paid
MT
Permit # 122



RETURN SERVICE REQUESTED

OFFICIAL BALLOT – DO NOT DELAY

**BALLOT
ENCLOSED**

5948389720 R004

