



STATE OF NEW MEXICO
SECOND JUDICIAL DISTRICT

CLAY CAMPBELL
DISTRICT JUDGE

September 10, 2007

**DECISION LETTER
BY FAX & MAIL**

Mark Jarmie
Jarmie & Assocs.
P.O. Box 26416
Albuquerque, NM 87125-6416
Fax: 243-6735

Tanya L. Scott
Charles T. DuMars
201 Third NW, Ste. 1750
Albuquerque, NM 87102
Fax: 346-0997

Lopez v. MRGCD, CV 2007-04228

Dear Counsel:

Upon review of the Conservancy Act of New Mexico, NMSA §§ 73-14-1 *et seq.*, and applicable caselaw, the Court finds that the referenced statutory scheme created the Middle Rio Grande Conservancy District as a "special district." Respondents' Motion to Dismiss is therefore granted to the extent it relied upon such a finding. As factual issues were raised and argued regarding application of the "rational basis test," which arguments are not properly decided under a motion brought pursuant to Rule 1-012(B)(6), the Respondents' Motion is also denied in part.

Both parties relied predominantly on three United States Supreme Court cases, with Respondents relying heavily on Ball v. James, 451 U.S. 355 (1981) and Salyer Land Co. v. TLBWSD, 410 U.S. 719 (1973), and Petitioners placing most of their emphasis on Hadley v. JCDMKC, 397 U.S. 50 (1970). The more recent Supreme Court cases support this Court's conclusion that the MRGCD is a "special district," whose voting structure will not be overturned unless there is no rational nexus between the structure and the legislative purposes of the MRGCD.

Ball and Salyer are most closely on point factually to the case before this Court. Furthermore, the Supreme Court in Salyer distinguished its decision in Hadley as resting on the fact that Hadley involved a school district. "Education has traditionally been a

ENDORSED
FILED IN MY OFFICE
SEP 10 2007
OF ENVELOPE SMITH
CLERK DISTRICT COURT

POST OFFICE BOX 488
ALBUQUERQUE, NEW MEXICO 87103
505-841-7434
FAX 505-841-5457
Email: albdpc@nmcourts.com

vital governmental function,” the Court said in extending the “one person, one vote” principle to school districts. Salyer, at 727.

The MRGCD exists for the limited purposes of acquiring, storing and maintaining water supplies, ensuring the adequate flow of water and implementing protections from flooding, which were the same general functions performed by the defendant in Salyer. See, generally, *id.* and NMSA § 73-14-39. As in Salyer, the statutory scheme creating the MRGCD “provides no other general public services such as schools, housing, transportation, utilities, roads or anything else of the type ordinarily financed by a municipal body. There are no towns, shops, hospitals, or other facilities designed to improve the quality of life within the district boundaries, and it does not have a fire department, police, buses or trains.” *Id.* at 728-29; see, also, NMSA §§ 73-14-1 *et seq.*

All of the specific powers granted to the MRGCD by the New Mexico Legislature are to be directed solely at furthering the MRGCD’s limited purposes. See, NMSA § 73-14-39, and, *e.g.s.*, §§ 73-14-41, -43, -44, -46 & -48. Even the residual clause discussed at our hearing, NMSA §73-14-4(A), limits the District’s powers to those necessary to effectuate its limited purposes. The purposes granted to the District have been found to be consistent with the purposes of a “special district” by the U.S. Supreme Court, and the District’s voting structure is therefore entitled to the judicial deference embodied in the “rational basis test.”

Ms. Scott, please prepare a form of Order reflecting the Court’s conclusions contained above in the first paragraph of this letter and consistent with the other rulings made and instructions given to you during our hearing on September 7, 2007. Present the draft Order to Mr. Jarmie for his approval within five days and, within ten days of the date of this letter, present any and all competing forms of Order to the Court for consideration and entry. A copy of this letter will be placed in the Court file.

Sincerely,

CLAY CAMPBELL

CLAY CAMPBELL
District Court Judge

CC/rg

CC: Court File No. CV 2007-04228