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# Memorandum

**DATE:** February 1, 2010

**TO:** MRGCD Board of Directors

**FROM:** Charles T. DuMars, Patrick Redmond

**RE:** District Voting and Apportionment: Constitutional Issues

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We were requested to have a discussion prepared to address concerns that might arise during the January 25, 2010 Board meeting regarding the District's limitation of voting to property owners.

## SUMMARY

Questions have been raised in the past regarding the New Mexico Statutes' limitation of "qualified elector" status, outside of tribal lands, to "an individual who owns real property within the benefited area of the conservancy district," NMSA 1978 § 73-14-20(G), as well as the manner in which Board seats are apportioned as three from Bernalillo County, one each from Sandoval, Valencia and Socorro Counties, and one from the District at large. NMSA 1978 § 73-14-22. Some have tried to suggest that these statutes present a conflict with accepted principles of democratic or proportional representation, as announced by the U.S. Supreme Court in its landmark decision *Reynolds v. Sims*, 377 U.S. 533 (1964). As the following discussion shows, there is no basis for these suggestions. In the cases *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719 (1973), *Ball v. James*, 451 U.S. 355 (1981), and *Wilson v. Denver*, 1998-NMSC-016, 125 N.M. 380, both the U.S. Supreme Court and the New Mexico Supreme Court, respectively, have recognized that exceptions to

standard proportionality and voter qualification rules exist in the case of “special districts” not exercising general governmental powers, such as the MRGCD, and these cases have expressly endorsed the validity of property-based voter qualifications for special district elections.

## DISCUSSION

The United States Supreme Court long ago considered the question of whether a special district, such as a conservancy district or irrigation district, must adhere to the “one man, one vote” dictates of the Equal Protection clause of the Fourteenth Amendment to the United States Constitution. Because these types of districts are special-purpose units of government that affect definable groups of constituents, they are not subject to the same constraints on apportionment as other general purpose governmental units. *Salyer Land Company v. Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973).

In *Salyer*, the United States Supreme Court considered whether a water storage district in California whose statutory authority was to plan and execute projects for the “acquisition, appropriation, diversion, storage, conservation, and distribution of water” could constitutionally limit voting in the district to landowners. The precise question answered by the Supreme Court was whether the legislature had violated the “one man, one vote” tenets of the Fourteenth Amendment by limiting voting to specified persons, even though the actions of the district affected other persons in the district in addition to the landowning voters. The Court determined that the statutory framework did no violence to the United States Constitution due to the special nature of the district’s activities and its disproportionate effect on the populace.

The *Salyer* court reasoned that while the water storage district was vested with some typical governmental powers, it had relatively limited authority. *Id.* at 728. The primary purpose of the district, indeed the reason for its existence, was to deal with water-related matters. It had no other general governmental powers. Not only was its authority limited by statute, but its actions disproportionately affected landowners. All of the costs associated with the district “are assessed against land by assessors in proportion to the benefits received.” *Id.* Under these circumstances, the *Salyer* court held that it was quite understandable that the statutory framework for the election of the board of directors focused not on people per se, but on landowners as those who reaped the primary benefits of the district and who shouldered the costs involved. The statutory provisions for electing directors recognized that the very existence of the district was likely dependent upon those with the most at stake having the greatest voice in the control of the organization. *Id.* at 731.

While the *Salyer* Court acknowledged that the apportionment might have been done differently if the Court had been enacting the statute in question, it held that the question before it was whether “any state of facts reasonably may be conceived to justify” the method by which the voting franchise was allocated. *Id.* Because landowners have such a stake in the operation and financing of the district, it was appropriate to give those landowners a voice in the operation of the district.

The Court further held that it was appropriate to give landowners with larger amounts of land an even greater say in choosing the board of directors, based upon their land ownership. The statutory voting scheme enacted by the California legislature afforded those landowners with more land a larger say in the organization, based upon the assessed value of their land holdings. While some small landowners had only one vote in the election, wealthier landowners, based upon land values, had the equivalent of 37,825 votes. Again, the *Salyer* court held that this passed constitutional muster due to the nature of the organization. Each acre of land had the same assessed value, such that the smallest landowner paid at the same rate as the largest. Because the large landowners had the greatest liability for payment for the benefits provided by the district, their votes carried the most weight in the election of the board.

On the same day that the *Salyer* opinion was announced, the Supreme Court also issued its opinion in *Associated Enterprises, Inc. v. Toltec District*, 410 U.S. 743 (1973). In that opinion, the Court considered whether the establishment by referendum of a watershed improvement district was constitutionally valid when the vote was limited to owners and occupiers of lands. In holding that there were no violations of the Due Process clause, the Court observed that the statute allowing the creation of the improvement districts “was enacted by a legislature in which all of the State’s electors have the unquestioned right to be fairly represented.” Having been so elected, the legislature then enacted a statute that allowed the creation of the districts by specified voters. The Supreme Court opined that “the State could rationally conclude that landowners are primarily burdened and benefited by the establishment and operation of watershed districts and that it may condition the vote accordingly.” *Id.*

Less than ten years later, the Supreme Court decided *Ball v. James*, 451 U.S. 355 (1981), wherein the Court considered whether it was constitutional to limit voters and to apportion their voting power according to the number of acres owned when electing directors of an agriculture improvement and power district. Employing the same reasoning used in *Salyer*, the Court allowed the statutory method of limiting voters and apportioning voting power. The Court noted that in *Salyer*, it had been confronted with the question of “whether the statutory voting scheme based on land valuation at least bore some relevancy to the statute’s objectives.” *Id.* at 364. Concluding that there was a reasonable relationship between the voting mechanisms and the statutory objectives of the district, the Court found that the method chosen by the legislature did no violence to the Fourteenth Amendment. As in *Salyer*, the Court found that the district might not exist if the subscribing landowners had not been assured a special voice in the conduct of the organization. *Id.* at 371.

In the case of the MRGCD, the legislature clearly tried to accommodate the most populous county in the District by granting Bernalillo County three Directors on the Board. On the other hand, it is clear that at least two of the other counties, while less populated, have more benefited acres and more acres under irrigation than does Bernalillo County. Under the statutory framework, each of the remaining three counties elects one director, while all four counties participate in the electing of a seventh, at large, director. Here, the legislature chose not to take the more radical step presented in *Salyer*, *Associated Enterprises*, and *Ball* of granting electors weighted votes based on acreage owned. Instead, it took the more

egalitarian approach of giving each land owner one vote, regardless of the size of the parcel owned.

Under *Salyer* and later cases, the scheme selected by the legislature for voting for special districts such as the MRGCD is only unconstitutional if wholly irrational. Because all of the MRGCD's receipts come from assessments based on amounts of land and land values, the legislature's choice in apportioning districts bears some relevancy to the statute's objectives, particularly given that irrigation and population patterns will shift over time. There is a reasonable relationship between the voting system and the objectives of the district. There is no constitutional violation arising from the method that the legislature has chosen to apportion the vote.

The New Mexico Supreme Court has considered a similar question in the context of electing board members of acequia districts. In *Wilson v. Denver*, 1998-NMSC-016, 125 N.M. 380, the Court considered whether voting proportionately based upon numbers of water rights, rather than giving each person on the acequia one vote, violated the Equal Protection Clause of the Fourteenth Amendment. Finding that the ditch associations exercise narrow functions, the Court concluded that voting was not constrained by the one-person, one-vote mandate of the Fourteenth Amendment. Quoting *Lower Valley Water and Sanitation Dist. v. Public Serv. Co. (In re Lower Valley Water and Sanitation Dist.)*, 96 N.M. 532, 537, 632 P.2d 1170, 1175 (1981), the Court stated that “[S]torage and delivery of water, without a concurrent power to control the use of such water, is not such a governmental function, even where the entity possesses a nominal public character.” Similar to ditch associations, the powers of the MRGCD are limited to flood control, irrigation, construction of works, and drainage. The narrow functions of the MRGCD do not arise to the level of a central government, and thus the Equal Protection protections afforded voters in elections for general government offices do not apply. See also *In re Proposed MRGCD*, 31 N.M. 188, 242 P. 638, 688 (1923). (“The Fourteenth Amendment to the federal Constitution does not deprive the state of the power of determining whether the officers of the conservancy district shall be appointed or be elected by the people. . .”).

## CONCLUSION

As made clear in the above discussion of the *Salyer* case, *Ball v. James*, and *Wilson v. Denver*, both the U.S. Supreme Court and the New Mexico Supreme Court have recognized that exceptions to standard proportionality and voter qualification rules exist in the case of “special districts” not exercising general governmental powers, such as the MRGCD. These cases have expressly endorsed the validity of property-based voter qualifications for special district elections. There are thus no constitutional concerns raised by the apportionment and property-based voting of District Board elections.