Quasi-Municipal Water Districts in Arizona: A Review of Statutory Formulae

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To meet the high demand for water in Arizona,[1] the state government has become increasingly involved in the financial structure of local water delivery operations through the use of quasi-municipal "special districts." These special districts, designed to provide specialized services by concentration of effort and capital in limited areas,[2] are political subdivisions of state created by legislative enactment. Used effectively, they provide a sound financial base for the construction of large water works.[3] But in many instances, their use has drawn substantial criticism.[4]

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1. For a historical view of the increasing need for water in Arizona, *see* E. MEAD, IRRIGATION INSTITUTIONS 2-3 (2d ed. 1903). For a more modern view, *see* Uhlmann v. Wren, 97 Ariz. 366, 374 n.1, 401 P.2d 113, 118 n.1 (1965) (quoting A. GOLZE, RECLAMATION IN THE UNITED STATES 77-79 (1961)). Both authors make the point that reclamation brings agricultural wealth, which in turn supports a variety of other economic enterprises and fosters the development of an industrialized society.

2. Special districts are created when there is a failure of local government or private industry in supplying the needs of an area. [1977] DEPT. OF COMMERCE, BUREAU OF CENSUS, 4 CENSUS ON GOVERNMENTS, No. 2, at 1. In Arizona, a constitutional provision declares them to be full scale political subdivisions of state, entitled to all the privileges and rights of municipal governments. ARIZ. CONST. art. 13, § 7. Arizona statutes provide for school districts, ARIZ. REV. STAT. ANN. §§ 15-401 to -479, 15-491 to -498, 15-501 to -561 (1975); hospital districts, §§ 36-1231 to -1248 (1974); county improvement districts, §§ 11-701 to -771.45 (1977) (including provisions for water improvement districts, §§ 11-769 to -769.05); and seven different forms of special water districts: (1) agricultural improvement districts to provide for irrigation, water storage, and electrical production, ARIZ. REV. STAT. ANN. §§ 45-901 to -1075 (Supp. 1980-81); (2) drainage districts to promote efficiency in reclaiming drainage water, §§ 45-1201 to -1396 (1956); (3) electrical districts to obtain power for irrigation pumping, §§ 30-501 to -696 (Supp. 1980-81); (4) flood control districts to protect lands so menaced, §§ 45-2301 to -2370 (Supp. 1980-81); (5) irrigation districts to supply agricultural water, §§ 45-1501 to -1866 (1956); (6) irrigation water delivery districts to construct delivery works, §§ 45-1901 to -1956 (1956); and (7) the multicounty water conservation district created especially for the Central Arizona Project, §§ 45-2601 to -2634 (Supp. 1980-81).

3. For an explanation of special district financing, see F. TRELEASE, WATER LAW 630-58 (2d ed. 1974).

4. Critics of the special district approach to water delivery management charge that such districts detrimentally affect long range planning by contributing to the fragmentation of government. Fox & Craine, *Organizational Arrangements for Water Development*, 2 NAT. RESOURCE J. 1, 25 (1962); Comment, *The Water Control and Improvement District: Concept, Creation and Critique*, 8 HOUS. L. REV. 712, 736-37 (1971). Others charge that the special districts are economically inefficient. Craine & Zarkoohi, *A Test of the Property Rights Theory of the Firm: Water Utilities in the United States*, 21 J.L. & ECON. 395, 406 (1978). Still others argue that the use of

In Arizona, disenchantment with the Salt River Project, the state's largest special water district, was recently expressed in federal litigation.[5] Although the Supreme Court of the United States upheld the statutory format of the district against constitutional attack, it did not resolve the basic conflicts that gave rise to the litigation. Rather, the Court simply confirmed that if change is desired, it must come from the state legislature, not the federal judiciary.[6]

The purpose of this Note is to examine the nature of these special districts of Arizona and assess their performance in light of the goals sought to be achieved by their creation. From this analysis, proposals will be advanced on how the statutory format of districts such as the Salt River Project might be modified to better serve the needs of the current population.

The Evolution of Special Water Districts in Arizona

Quasi-municipal water districts began in California, most notably under the Wright Act of 1887.[7] After the constitutionality of the Wright Act was established,[8] it became the prototype for similar legislation throughout the West, including Arizona.[9] Arizona's first version appeared in 1912 with the creation of a statutory format for drainage districts.[10] The permissible functions of a drainage district were quite limited,[11] however, and in 1915, the irrigation district was created to provide a wider variety of services to district landowners.[12] In 1921,

special districts promotes urban sprawl and protects projects unable to survive the competitive money market. Willoughby, *The Quiet Alliance*, 38 S. CAL. L. REV. 72, 78 (1965).

5. Ball v. James, 101 S. Ct. 1811 (1981), *rev'g*, 613 F.2d 180 (9th Cir. 1979). In *Ball*, the Ninth Circuit declared two sections of the Salt River District enabling legislation to be unconstitutional. 613 F.2d at 185. One offending statute limited the franchise in district elections to landowners within the district. ARIZ. REV. STAT. ANN. § 45-909 (Supp. 1980-81). The other statute allotted the district's electoral votes by the elector's total district acreage. *Id.* § 45-983. According to the Ninth Circuit, these statutes allowed large agricultural interests to control district elections, thereby denying other district residents their constitutional right to equal participation. 613 F.2d at 185. The United States Supreme Court reversed. 101 S. Ct. 1811, 1821 (1981). The Court held that the functions of the District were strictly of a nongovernmental nature and concluded that the voting scheme of the District was constitutional because it bore a reasonable relationship to the legislature's statutory objectives. *Id.* at 1820-21.

6. 101 S. Ct. at 1821, n.20. *See also*, Ball v. James, 101 S. Ct. at 1821-22 (Powell, J., concurring).

7. 1887 Cal. Stat. 29 (repealed 1943 Cal. Stat. 1894).

8. *See* Fallbrook Irrigation Dist. v. Bradley, 164 U.S. 112, 178 (1896), wherein the plaintiff sought a permanent injunction against the sale of her property for the nonpayment of the Fallbrook District taxes. *Id.* at 154. Mrs. Bradley contended that the assessment of district taxes was the equivalent of taking property without due process of law. *Id.* The court, however, held that the district assessments did not run counter to any provision of the federal constitution. *Id.* at 178.

9. *See In re* Auxiliary E. Canal Irrigation Dist., 24 Ariz. 163, 168, 207 P. 614, 615 (1922).

10. 1912 Ariz. Sess. Laws 151 (current version at ARIZ. REV. STAT. ANN. §§ 45-1201 to -1396 (1956)).

11. District functions were, and still are, limited to providing drainage works for district lands. ARIZ. REV. STAT. ANN. § 45-1264 (1956).

12. 1915 Ariz. Sess. Laws 62 (repealed 1921). Irrigation districts were and are empowered to engage in a variety of functions from the acquisition of water rights to the sale of hydroelectric

the Irrigation District Act was amended[13] to clarify and increase the ability of the districts to raise revenue through bonding.[14] District operations were thereafter financed either through the outright sale of bonds[15] or by borrowing money from the federal government under the Reclamation Act of 1902.[16] Under the latter program, district bonds secured the debt to the federal government, and district lands secured the bonds.[17]

Also in 1921, the Flood Control District Act was passed.[18] Flood control districts, like drainage districts, were very limited in their permissible functions.[19] In 1922, however, the Agricultural Improvement District Act was passed.[20] This act was a departure from the previous legislation in that the district's permissible functions were defined in the broad, general terms.[21] Rather than creating a district that would service a particular need, the agricultural improvement district was capable of servicing all the needs of the typical rural constituency.

Nevertheless, all of the above described districts were treated as "limited function" special districts. They were described as "corporations having a public purpose"[22] because they were created for the general improvement of district lands. But they were distinguished from

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power. ARIZ. REV. STAT. ANN. § 45-1578 (Supp. 1980-81). Still, their main function is to provide for the irrigation of district lands. *Id.* § 45-1503 (1956).

13. 1921 Ariz. Sess. Laws 323 (current version at ARIZ. REV. STAT. ANN. §§ 45-1501 to -1866 (1956)).

14. *Id.* at 324. The new legislation created a State Certification Board which was to examine the bonding plan proposed by the district and certify its legality. *Id.* The effect of such certification was to allow the bonds to be used as security for obtaining public funds. *Id.* at 361.

15. *Id.* at 337.

16. 43 U.S.C. §§ 371-620 (1976).

17. 1921 Ariz. Sess. Laws 356-57. The districts were empowered to contract with the federal government and to transfer water rights and other property owned by the district in consideration for the advantages obtained by such contracts. *Id.* at 356. Furthermore, the district was empowered to transfer its bonds to the federal government as security on the contract. *Id.* The revenue to pay the debt was to be derived from the district's annual assessments against the district lands, such lands being liable as security for the assessments. *Id.* at 357-58.

18. 1921 Ariz. Sess. Laws 364 (current version at ARIZ. REV. STAT. ANN. §§ 45-2301 to -2370 (1956)).

19. The original flood control district act was brief and provided for the creation of districts very similar to the drainage districts. 1921 Ariz. Sess. Laws 364-65. The act was later amended to allow the districts to cooperate with federal flood control projects. ARIZ. REV. STAT. ANN. §§ 45-2321 to -2322 (1956). Since that time, the act has been amended to vest flood control authority in certain specified towns and counties. *Id.* §§ 45-2331 to -2336 (1956). Finally, in 1978, the statutory scheme was revised, but the finished district plan is still relatively limited in its functions. *Id.* § 45-2360 (Supp. 1979).

20. 1922 Ariz. Sess. Laws 59 (current version at ARIZ. REV. STAT. ANN. §§ 45-901 to -1075 (Supp. 1979)).

21. Even more than irrigation districts, these new districts are given broad authority to provide for the welfare of the agricultural communities that comprise them. *See* ARIZ. REV. STAT. ANN. §§ 45-903, 45-935 to -937 (1956). An important provision allows the district to produce excess water and electricity for sale to the general public; the proceeds are used to offset the costs of irrigation, drainage, and power to the owners of district lands. *Id.* § 45-903.

22. Maricopa County Mun. Water Conservation Dist. v. La Prade, 45 Ariz. 61, 76, 40 P.2d 94, 100 (1935).

true "municipal corporations"[23] in that their functions were purely business and economic, not political and governmental.[24] Other states concurred in the view that districts created under the Wright Act prototype were not municipal corporations because they were organized only for narrow, proprietary functions.[25]

Due to this early characterization, the special water districts of Arizona have always been allowed to operate as private corporations. They are declared exempt from many of the constitutional limitations placed on general governmental entities,[26] and their management is held accountable only to district landowners through limited franchise elections.[27] Their boards of directors are chosen exclusively from among the district landowners.[28] The landowners, by agreeing to include their land within the district and thereby subjecting their land to district debts, become the equivalent of shareholders in the district organization.[29]

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23. A municipal corporation is a corporate body created to provide local government in a designated area. BLACK'S LAW DICTIONARY 917 (5th ed. 1979). In Arizona, municipal corporations are governed by the terms of ARIZ. CONST. art. 13, §§ 1 to 7, and are allowed to operate independently in governmental matters of purely local concern. City of Tucson v. Walker, 60 Ariz. 232, 238, 135 P.2d 223, 226 (1943).

24. Day v. Buckeye Water Conservation & Drainage Dist., 28 Ariz. 466, 474, 237 P. 636, 638 (1925). "They are formed in each case by the direct act of those whose business and property will be affected, and for the express purpose of engaging in some form of business, and not of government." *Id.*

25. *See* People *ex rel.* Rogers v. Letford, 102 Colo. 284, 297, 79 P.2d 274, 281 (1938); Lehi City v. Meiling, 87 Utah 237, 261, 48 P.2d 530, 541 (1935); *In re* Riverside Irrigation Dist., 129 Wash. 627, 629-30, 225 P. 636, 637 (1924). Hence, the districts were given the name "quasi-municipal" corporations. Shumway v. Fleishman, 66 Ariz. 290, 292, 187 P.2d 636, 637 (1947); Lehi City v. Meiling, *supra id.*

26. In Maricopa County Mun. Water Conservation Dist. v. La Prade, 45 Ariz. 61, 40 P.2d 94 (1935), Arthur La Prade, the state attorney general, refused to certify a proposed bond issue by the irrigation district. *Id.* at 64, 40 P.2d at 95. He claimed that the enabling statutes allowing the transaction were unconstitutional. *Id.* The court declared the provisions of ARIZ. CONST. art. 9, § 8 (debt limitations on governmental entities) to be inapplicable to irrigation districts. 45 Ariz. at 76, 40 P.2d at 100. By holding the provisions of ARIZ. CONST. art. 9, § 7 (limiting the ability of political subdivisions of state to own stock in private corporations) and ARIZ. CONST. art. 9, § 1 (prohibiting the surrender of the taxing power) to be inapplicable as well, the court established the constitutionality of the special district legislation. 45 Ariz. at 78, 40 P.2d at 101.

27. Landowner franchises were part of the standard statutory format and still are an integral part of most special districts. *See* ARIZ. REV. STAT. ANN. § 45-909 (Supp. 1980-81) (agricultural improvement districts); § 45-1209 (1956) (drainage districts); § 45-1517 (Supp. 1980-81) (irrigation districts); § 45-1934 (1956) (irrigation water delivery districts). Because they were governed by the provisions relating to drainage districts, flood control districts originally employed the landowner franchise. *See id.* § 45-2301 (1956). The new flood control enabling act of 1978, however, provides for general election balloting in accordance with state and county laws by naming the county's board of supervisors as the district's board of directors. *Id.* § 45-2301 (Supp. 1980-81). *See also* the special flood control district act of 1959, *id.* § 45-2351 to -2370 (Supp. 1980-81). Nevertheless, the provisions for the creation of the old style flood control district still exist, complete with the landowner franchise, as governed by the drainage district act. *See id.* § 45-2311 (Supp. 1980-81).

28. *Id.* § 45-981 (1956) (agricultural improvement districts); § 45-1207 (1956) (drainage districts); § 45-1514, 1517 (Supp. 1980-81) (irrigation districts).

29. Although the landholders of the districts are not entitled to direct cash dividends from the District, members of the Salt River Project participate in the earnings and profits of the district by using the excess operating revenues to offset the cost of their agricultural water. See note 21 *supra*.

Despite their similarity to private corporations, the districts are given some of the most powerful attributes of sovereignty, such as the taxing power,[30] the power of emminent domain,[31] the power to compel unwilling landowners to become part of the district,[32] the power to issue bonds,[33] and the privilege of tax exempt status for their property.[34]

The results of the water districts' favorable position have been dramatic. By 1977, Arizona had a total of fifty-seven special districts devoted to irrigation and water conservation,[35] with revenues and expenditures running into the many millions of dollars.[36] Over the course of the last half century, however, the needs of the state's population have changed and have come into conflict with the policies underlying the past approaches to water control—policies more concerned with agricultural water than municipal or industrial water. Nowhere is this more apparent than in the Salt River Valley.

Development of the Salt River Project District

The Salt River Valley has been an ongoing development for more than one hundred years. Beginning with private capital, the Salt River Valley Canal Company formed in 1875.[37] In 1903, the project was reorganized as the Salt River Valley Water Users' Association in order to take advantage of federal financing.[38]

As a private corporation, the Water Users' Association had been a qualified success. By 1936, it had built up an extensive irrigation and

30. ARIZ. REV. STAT. ANN. § 45-1014 (1956) (agricultural improvement districts); § 45-1014 (1956) (agricultural improvement districts); § 45-1304 (1956) (drainage districts); § 45-1714 (Supp. 1980-81) (irrigation districts).

31. *Id.* § 45-939 (1956) (agricultural improvement districts); § 45-1267 (1956) (drainage districts); § 45-1581 (1956) (irrigation districts).

32. Unwilling landowners must petition for exclusion from a proposed district, and such petition may be denied under the statutory formation procedures. *Id.* § 45-907 (1956) (agricultural improvement districts); § 45-1206 (drainage districts); § 45-1512 (irrigation districts).

33. *Id.* § 45-1041 (1956) (agricultural improvement districts); § 45-1351 (Supp. 1979) (drainage districts); § 45-1799 (1956) (irrigation districts).

34. *Id.* § 45-902 (1956) (agricultural improvement districts); § 45-1317 (drainage districts); § 45-1591 (irrigation districts). This privilege was declared unconstitutional in State v. Yuma Irrigation Dist., 55 Ariz. 178, 184, 99 P.2d 704, 706 (1940). Because the districts were not, strictly speaking, municipal corporations, their property did not fall within the exceptions to state taxation enumerated in ARIZ. CONST. art. 9, § 2. 55 Ariz. at 184, 99 P.2d at 706. The *Yuma Irrigation District* decision prompted the adoption of ARIZ. CONST. art. 13, § 7. This constitutional amendment declared all of the special districts to be full scale political subdivisions of state, vested with all the rights, privileges, benefits, and immunities granted municipalities.

35. BUREAU OF CENSUS, *supra* note 2, at 77.

36. For the 57 districts, total revenues were $18,166,000 in 1977, total expenditures were $17,686,000, and total outstanding debts were $80,514,000. *Id.* at 25. The Salt River Agricultural Improvement and Power District, had total revenues of $231,963,000, total expenditures of $412,624,000, and a total outstanding debt of $1,198,458,000. *Id.* at 58.

37. Slosser v. Salt River Valley Canal Co., 7 Ariz. 376, 380, 65 P. 332, 334 (1901).

38. The Water Users' Association was formed in compliance with the federal Reclamation Act, 43 U.S.C. §§ 371-620 (1976), to receive federal funding for construction of the Roosevelt Reservior on the Salt River. Uhlmann v. Wren, 97 Ariz. 366, 375, 401 P.2d 113, 119 (1965).

hydroelectric power system[39] and had taken over operations of smaller special districts in the surrounding area.[40] But the association was also deeply in debt and was having difficulty paying the high interest on its outstanding bonds.[41]

To reduce the interest payments on the outstanding debt, the officers of the Association considered reorganization as a special district of the state. In cooperation with the state and federal legislatures, they produced a plan whereby the Salt River Project incorporated itself as an agricultural improvement district and the district was elevated by way of statutory amendment to the status of a municipal corporation.[42] Since the Arizona Constitution provides that municipal bonds and property are not subject to taxation in any form,[43] and since municipal bonds are exempt from federal income taxation,[44] it was reasoned that investors would purchase the new district's bonds at a lower rate of interest than the bonds already issued by the Water Users' Association.[45] If enough bonds were sold at the lower rates, the entire debt of the Association could be refinanced and landowner assessments could be reduced.[46]

The officers of the Water Users' Association selected the agricultural improvement and power district because it aligned most readily with the circumstances of the Salt River Project.[47] A request was made of the legislature to amend the Agricultural Improvement District Act to facilitate the desired purposes of refinancing the debt of the Association;[48] an emergency act was passed in 1936 making the requested

39. Reichenberger v. Salt River Project Agricultural Improvement & Power Dist., 50 Ariz. 144, 147-51, 70 P.2d 452, 453-55 (1937).

40. Bethune v. Salt River Valley Water Users' Ass'n, 26 Ariz. 525, 540, 227 P. 989, 994 (1924).

41. Reichenberger v. Salt River Project Agricultural Improvement & Power Dist., 50 Ariz. 144, 148, 70 P.2d 452, 453 (1937).

42. *See id.* at 150, 70 P.2d at 454 (1937).

43. ARIZ. CONST. art. 9, § 2 (1956, as amended, 1964, 1980).

44. I.R.C. § 103.

45. If the interest payments made by the district were tax free income to the creditor, the bonds could be offered at a lower rate of interest than ordinary corporate bonds and yet still be attractive to the purchaser.

46. Reichenberger v. Salt River Project Agricultural Improvement & Power Dist., 50 Ariz. 144, 150, 70 P.2d 452, 454 (1937).

47. The agricultural improvement district was selected because it specifically accomodated land already within a federal reclamation project. *See* ARIZ. REV. STAT. ANN. § 45-903 (1956). Furthermore, the act contemplated the production and sale of electric power, a commodity in which the Salt River Project traded heavily. *See id.* § 45-936 (Supp. 1980-81); Reichenberger v. Salt River Project Agricultural Improvement & Power Dist., 50 Ariz. 144, 147-48, 70 P.2d 452, 453-54 (1937).

48. Reichenberger v. Salt River Project Agricultural Improvement & Power Dist., 50 Ariz. 144, 150-51, 70 P.2d 452, 454 (1937). The Association requested that the list of purposes for which such a district may be formed be expanded to include refinancing of an existing operation. *Id.* Also, the Association requested that the District be denominated a municipal corporation, and that its bonds and property be immune from taxation. *Id.*

amendments effective immediately.[49]

Thus, the Salt River Project, once a private corporation, became the virtual equivalent of a municipal government.[50] Yet control of the new district remained in the same hands as before through the system of limited franchises and acreage voting provided for in the enabling legislation.[51] In essence, the project remained a private corporation but gained funding by the state via the taxing power and tax exemption.[52]

Today, the District supplies not only irrigation water but municipal water as well for the greater Phoenix area.[53] It owns five hydroelectric plants, four steam generating plants, and participatory interests in three coal fired plants and the Palo Verde Nuclear plant.[54] Disatisfaction with some of the policies set forth by the District's board of directors has brought about occasional state court challenges to the District's authority, but Arizona courts have allowed the board of directors broad discretion in their endeavors.[55]

Furthermore, the Supreme Court of the United States has upheld the constitutionality of the exclusive landowner franchises of special water districts in *Salyer Land Co. v. Tulare Lake Basin Water Storage District*,[56] and the companion case of *Associated Enterprises, Inc. v. Toltec Watershed Improvement District*.[57] The Court concluded that these

49. 1936 Ariz. Sess. Laws 29. The districts were for the first time expressly declared to be public, political, taxing subdivisions of state and municipal corporations. *See* ARIZ. REV. STAT. ANN. § 45-902 (1956). The section enumerating the purposes for which the district may be formed was enlarged to include the refinancing of a private agency's existing debt. *See id.* § 45-903(8). The act was declared an emergency measure and became effective immediately. 1936 Ariz. Sess. Laws 48. Thereafter, the Salt River Valley Agricultural Improvement and Power District was formed, and the refinancing was undertaken. Reichenberger v. Salt River Project Agricultural Improvement & Power Dist., 50 Ariz. 144, 151, 70 P.2d 452, 455 (1937).

50. *See* ARIZ. REV. STAT. ANN. § 45-902 (1956).

51. *Id.* §§ 45-909, 45-983 (Supp. 1979). Prior to the 1936 amendments, agricultural improvement districts had limited franchises, but each landowner was entitled to only one vote. 1922 Ariz. Sess. Laws 64 (repealed 1936). Acreage systems of voting, used mostly by privately owned irrigation works and corporate canals, allow the landholder one vote for each acre of district land owned. *See* E. MEAD, *supra* note 1, at 98. By amending the statutes to provide for acreage voting, the legislature insured that the control of the Salt River Project remained in the same hands.

52. See text & notes 30, 34 *supra*.

53. James v. Ball, 613 F.2d 180, 183 (9th Cir. 1979), *rev'd*, 101 S. Ct. 1811 (1980). 25% of the District's water goes to eight municipalities in the Phoenix area; 15% goes to parks and schools in the area. *Id.*

54. *Id.*

55. *See* Uhlmann v. Wren, 97 Ariz. 366, 391-92, 401 P.2d 113, 130 (1965) (upholding the District's authority to sell surplus power and apply the profits to the cost of irrigation water); City of Mesa v. Salt River Project Agricultural Improvement & Power Dist., 92 Ariz. 91, 99-100, 373 P.2d 722, 728 (1962) (upholding the District's rights in electrical production over the competing claim of a municipal producer); Rubenstein Constr. Co. v. Salt River Project Agricultural Improvement & Power Dist., 76 Ariz. 402, 404, 265 P.2d 455, 456 (1953) (allowing the District to operate as a utility without being subject to the laws controlling other electrical suppliers). For a critique of the Arizona Supreme Court's deference to the needs of the Salt River Project, *see* Casenote, *State Action and Employment in the Agricultural Improvement District*, 22 ARIZ. L. REV. 157 (1980).

56. 410 U.S. 719 (1973).

57. 410 U.S. 743 (1973) (per curiam).

districts had very limited governmental authority and, therefore, were an exception to the general rule of one person, one vote.[58]

Thus, it appeared that the authority of the District's exclusive board of directors was unfettered by either state law or constitutional principles.[59] Nevertheless, the effect of the District on the general population finally gave rise to federal litigation challenging the limited franchise system of voting.[60]

The Constitutionality of Limited Franchise Voting

The *Ball v. James* litigation was instigated by residents of the Salt River District who either rented land or owned less than one acre.[61] Collectively, they challenged the statutes that excluded them from voting in District elections.[62] The District Court of Arizona granted summary judgment in favor of the Salt River Project, but the Ninth Circuit reversed.[63]

Before the Ninth Circuit, the District maintained its argument that it was comparable to a private corporation that allowed only shareholders to vote.[64] The court rejected this argument, however, noting that the District was in fact a political subdivision of the State of Arizona, possessing the legal status of a municipality.[65] The court further held that the District was simply too large and diverse to fit within the *Salyer* exception.[66] Instead, the court applied the general strict scrutiny rule of *Reynolds v. Sims*[67] and held that the voting system could not be restricted on a shareholder basis in a state entity the size of the Salt River Project.[68]

The Supreme Court reversed the Ninth Circuit.[69] Four Justices

58. *Id.* at 729.

59. Despite the wide variety of District functions, the Salt River Project was still arguably within the *Salyer* exception because it was organized to operate in a proprietary capacity, primarily for the improvement of agricultural lands within its boundaries. *See* City of Mesa v. Salt River Project Agricultural Improvement & Power Dist., 92 Ariz. 91, 103-04, 373 P.2d 722, 731 (1962).

60. *See* James v. Ball, 613 F.2d 180 (9th Cir. 1979), *rev'd.*, 101 S. Ct. 1811 (1981).

61. 613 F.2d at 181; 101 S. Ct. at 1815.

62. 613 F.2d at 181; 101 S. Ct. at 1814-15; see note 5 *supra*. The action was brought under 42 U.S.C. § 1983 (1976), alleging that the Arizona statutes denied the parties their right to equal protection under the fourteenth amendment. 613 F.2d at 182; 101 S. Ct. at 1815.

63. 613 F.2d at 182; 101 S. Ct. at 1815.

64. 613 F.2d at 184.

65. *Id. See* ARIZ. CONST. art. 13, § 7.

66. 613 F.2d at 185; see text & notes 56-58 *supra*.

67. 377 U.S. 533. The court also relied on the many cases following the *Reynolds* doctrine, *e.g.*, Hill v. Stone, 421 U.S. 289 (1975); City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970); Hadley v. Junior College Dist., 397 U.S. 50 (1970); Cipriano v. City of Houma, 395 U.S. 701 (1969); Kramer v. Union Free School Dist., 395 U.S. 621 (1969).

68. 613 F.2d at 185.

69. Ball v. James, 101 S. Ct. 1811, 1821 (1981).

joined in the opinion of the Court,[70] stating that the District was essentially a private enterprise with a nominal public character.[71] The Court drew a distinction between state entities that exercise true governmental prerogatives and those that merely operate a business[72] and held that the Salt River Project was of the latter category.[73]

Four Justices dissented,[74] reasoning along the same lines as the Ninth Circuit that the proprietary aspects of the District were too pervasive to be characterized as "non-governmental" when they affected such a large segment of the population.[75] The basic distinction between the two opinions centered on the issue of whether the provision of utility services was a sovereign action. The Court held that it was not, despite the size or extent of those operations.[76] The dissent argued that it was when the population at large was forced to purchase their services from the particular state entity in question.[77]

Justice Powell concurred separately in the Court's analysis, creating the five person majority.[78] The consideration which appeared decisive to him, however, was the fact that the Arizona legislature was a popularly elected body, and it had complete authority to change the voting structure of the District if the citizens of Arizona so desired.[79]

Thus, the voting structure of the Salt River Project came down to an issue of states' rights and was upheld upon sound judicial reluctance to intervene in matters of purely local concern.[80] The question that now must be raised, however, is whether the voting system of the Salt River Project does in fact reflect the current popular thought of the citizens of Arizona. If it does not, it is apparent that change must come through legislative proposals.

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70. Justice Stewart wrote the opinion of the Court and was joined by Justices Rehnquist, Stevens, and Chief Justice Burger.

71. 101 S. Ct. at 1819.

72. *Id.* at 1816.

73. *Id.* at 1820. In arriving at this conclusion, the Court stressed the fact that the District was bound to deliver the water to the landholders, and that it had no authority to control or regulate the use to which the water was put. *Id.* at 1819. The Court also relied on the fact that the power operations of the District were stipulated to be incidental to the water functions. Id. at 1819-20.

74. *Id.* at 1822 (White, J., dissenting, joined by Justices Brennan, Marshall and Blackmun).

75. *Id.* at 1826-27 (White, J., dissenting).

76. *Id.* at 1820. The Court reasoned that the nonvoting purchasers of electricity were simply consumers of a business enterprise. *Id.*

77. *Id.* at 1826-28 (White, J., dissenting).

78. *Id.* at 1821.

79. Justice Powell noted that the Arizona legislature had amended the statutes to give the residential landowner a greater voice, and stated, "For this Court to dictate how the Board of the District must be elected would detract from the democratic process we profess to protect." *Id.* at 1822 (Powell, J., concurring).

80. The opinion of the Court also noted the statutory amendments and the power of the legislature to control the district. *See id.* at 1814 n.2, 1821 n.20. Implicit throughout the opinion is the belief that states have the right to deal with matters of purely local concern as they see fit. *See id.* at 1819-21.

The Future of the Salt River Project

The Agricultural Improvement District Act was designed to facilitate the delivery of needed irrigation water. It did not contemplate the municipal supply problems of today's rapidly expanding population; nor did it contemplate the diverse and controversial electrical activities available to the modern district. Today, total community and governmental involvement would be preferable in large projects to insure that district functions are in fact serving the public interest.[81]

Water is a publicly owned commodity in Arizona,[82] and state sponsored water projects should recognize the needs of all those who contribute to the costs of construction and operation.[83] The role of the general public in water administration has been recognized in other states,[84] and can be recognized in Arizona by statutory provision for general election balloting.[85]

Simply amending the current Agricultural Improvement Act to provide for general elections would, however, be inadequate. For example, if the Salt River District were held responsible to the entire local population, the inevitable result would be a shift in District control from agricultural to municipal interests.[86] This would present an ultra vires problem when the District, organized under statute for agricultural improvement, begins to operate for municipal improvement instead.[87]

Furthermore, the agricultural landowners built the Salt River Project by borrowing funds from the federal government under the Reclamation Act.[88] District lands stand as security for District

81. *See* Craine, *The Muskingum Watershed Conservancy District: A Study of Local Control*, 22 LAW & CONT. PROB. J. 378, 402 (1957).

82. ARIZ. REV. STAT. ANN. § 45-131 (Supp. 1980-81).

83. *See* Ayers & Beck, *Water Management Districts in North Dakota*, 48 N.D. L. REV. 361, 370 (1972).

84. *See* Teclaff, *The Influence of Recent Trends in Water Legislation on the Structure and Functions of Water Administration*, 9 LAND & WATER L. REV. 1, 10 (1974).

85. Another alternative is to turn control of the district over to a popularly elected body, such as a county government, as provided for in the new Flood Control District Act, ARIZ. REV. STAT. ANN. §§ 45-2301 to -2370 (1979).

86. District elections would preferably be placed on the general county ballot and the election conducted under the normal procedure for local governments. *See* ARIZ. REV. STAT. ANN. §§ 16-701 to -1038 (1975). This would allow the apartment dweller an equal vote with the largest agricultural landowner. *See id.* §§ 16-101, 16-104. Since there are many more municipal voters than agricultural voters, and since the municipal voters presumably would vote their own interests, the municipal population would obtain control over the District's functions by electing municipally minded directors.

87. An action is ultra vires when it is in excess of permissible authority. In this instance, the District would be acting outside the scope of the enabling legislation. The District, by statute, exists only for the benefit of the agricultural landowners; its major purpose is to benefit agricultural land. ARIZ. REV. STAT. ANN. § 45-903 (1956). Although the board of directors is given broad authority to carry out the purposes of the District, *see id.* § 45-934, those purposes do not include improvement of municipal services. *Id.* § 45-903.

88. *See* Ball v. James, 101 S. Ct. 1811, 1814 (1981).

indebtedness,[89] and the landowners' funds, in the nature of land assessments,[90] formed the initial investment in an enterprise which can finally support itself.

Clearly, it is unfair to have only agricultural land standing as security for the debt of a district controlled by municipal interests. In the event of mismanagement, the landowners could be forced to pay unwarranted assessments or lose their land to existing liens.[91] If general elections are imposed, the liens against District lands must be extinguished,[92] and the property tax system currently embodied in the statutory scheme[93] removed so that deficiencies in District operations will not be taxed solely to agricultural landowners.[94]

Rather than attempting to amend the Agricultural Improvement Act, the preferable course would be to draft new legislation providing for general elections yet protecting the investment of the agricultural interests and maintaining the status quo. A model of such a statutory scheme is the Multi-County Water Conservation District Act, created especially for the Central Arizona Project.[95]

The Central Arizona Project, like the Salt River Project, is a multifunction operation serving the needs of a much broader segment of the population than did the limited function districts authorized under prior Arizona law. The tax base of the District includes all taxable property within the boundaries, and a system of ad valorem taxing is used.[96] The District is permitted to establish its own rules for governing the board of directors and functions of the District, allowing

89. ARIZ. REV. STAT. ANN. § 45-1047 (1956).

90. *Id.* § 45-1014.

91. The Salt River District, as it exists today, covers only agricultural land and land specially benefitted by the District's operations. *Id.* § 45-906. District taxes are computed by dividing the amount of money needed by the number of acres within the District. *Id.* § 45-1014. This system places the burden of land assessments entirely upon the agricultural landowners; if they fail to pay the assessments, their land is subject to execution sale. *Id.* § 45-1047.

92. The land liens and taxing provisions of the Agricultural Improvement Act were designed to conform to the provisions of the Federal Reclamation Act. See 43 U.S.C. §§ 511 to -526 (1964). Specifically, § 512 requires that district lands stand as security and be subject to assessment and levy for the amount of the contract obligation. Therefore, the liens are not removable by simple statutory amendment because that would unilaterally abrogate the rights of the federal government as a secured creditor. The liens would have to be extinguished by payment and refinancing.

93. ARIZ. REV. STAT. ANN. § 45-1014 (1956); see note 91 *supra*.

94. Care must also be taken in redrafting the Agricultural Improvement Act to avoid the problem presented in Collins v. Town of Goshen, 635 F.2d 954 (2d Cir. 1980). In that case, the agricultural interests were complaining that the residents of the town were controlling the Arcadia Hills Water District by virtue of general elections and using that control to charge disproportionately high prices for agricultural water. *Id.* at 955. Although the court held that the system of voting in the district was constitutional, *id.* at 960, the case effectively illustrates the problems that may arise if a popularly elected board is given unbridled discretion in providing for municipal needs. The board must be constrained to provide adequate water for all needs and to provide that water at economically feasible rates.

95. ARIZ. REV. STAT. ANN. §§ 45-2601 to -2634 (Supp. 1979).

96. *Id.* §§ 45-2613, 45-2614.

more flexibility in operation than that granted under prior legislation.[97] Finally, its board of directors is a popularly elected body chosen on a general ballot.[98]

Many considerations militate in favor of updating the Salt River Project's statutory format to resemble that of the Central Arizona Project. Allowing an outdated enabling act to continue as a viable statutory device for a large and complex operation, as the Agricultural Improvement Act is now doing, defeats a major goal of water basin development. It tends to encourage the development of unintegrated units and stifles coordination of effort.[99] The economies of scale[100] and the more efficient hydrological planning[101] that attach to coordinated works make a strong case for the legal recognition of multifunction districts wherever they exist. They would receive broader financial support, and would be receptive to the needs of the entire population, rather than a small segment.

After the *Ball v. James* litigation,[102] the ability to change the structure of the Salt River Project rests solely in the hands of the legislature. It is the task of the legislators to consult their constituents and determine if change is, in fact, in their best interests. If it is, the legislature should act to create a new statutory format suitable to the needs of all resident consumers, such as the Multi-County Water Conservation District.

Conclusion

Arizona's system of water control has, for many years, been the result of continuous deference to the needs of agriculture. As the demand for municipal water and electric power has dramatically increased, the statutory scheme of water management has for the most part remained unchanged. Franchises in water management districts have been restricted to landowners since the inception of these special districts and have allowed agricultural interests to pursue policies in

97. *See* Egbert, *The Central Arizona Project and Water Management*, 14 ARIZ. L. REV. 159, 161 (1972); *compare* ARIZ. REV. STAT. ANN. § 45-2612(A)(3) (Supp. 1980) *with* § 45-934(6) (1956).

98. ARIZ. REV. STAT. ANN. § 45-2609(B) (Supp. 1980). This subsection provides: "The names of candidates for election to the board of directors shall be included on the general election ballot of the county in which the condidate resides. . . . The manner of voting and conducting election for directors shall conform to the provisions of the law relating to the general election of county officers."

99. Small water services operations often contribute to increased expenditures and duplication of effort by adjoining districts when each try to provide the same services. Schroer, *supra* note 4, at 737. "The significant point, even when a large investment is made in a hydroelectric plant, is that the developing agency has no economic motivation to take into account the external consequences of its actions." Fox & Craine, *supra* note 4, at 25.

100. See Fox & Craine, *supra* note 4, at 1.

101. *Id.* at 8.

102. 101 S. Ct. 1811 (1981); see text & notes 61-80 *supra*.

their own interests even though their decisions affect large segments of the nonagricultural population.

A significant departure from this pattern, however, is the Multi-County Water Conservation District created for the Central Arizona Project. This Act has several advantages over former legislation, and could be used as a model for updating the particularly obsolete enabling legislation of the Salt River Project.

The time is right for the Arizona Legislature to critically examine the modern needs of the state. Small, specialized works, where economically efficient and hydrologically productive, should be allowed to continue under the current statutes; but the problem of the Salt River Project should be dealt with by a comprehensive new statutory formula. Such new legislation should provide for equal participation by all who depend on this vital state entity.