

The MRGCD is a conservancy district, duly established pursuant to the laws of the State of New Mexico and declared as a conservancy district by the Bernalillo County District Court sitting as the Conservancy Court. NMSA 1978, § 73-14-13 (1965). It is a political subdivision of the State of New Mexico. “[T]he district shall be a political subdivision of the state and a body corporate with all the powers of a public or municipal corporation.” The MRGCD is

governed by a seven member Board of Directors, elected for staggered four-year terms. NMSA 1978, § 72-14-19 (1996); NMSA 1978, § 72-14-21 (1975).

### **ARGUMENT**

Petitioners' Verified Petition for a Writ of Mandamus ("Petition") is improperly before this Court, and, having failed to follow the statutory requirements for writ pleading, has not invoked the jurisdiction of any court, and furthermore, even if it were properly filed in the proper venue, the Petition fails to state a claim upon which relief can be granted. Therefore, the Petition must be dismissed as a matter of law.

#### **I. PETITIONERS HAVE FILED IN THE IMPROPER VENUE.**

In accordance with NMSA 1978, § 73-14-4, the Conservancy Court, not the District Court, has "original and exclusive jurisdiction" over matters involving the operation of the MRGCD. Therefore, Petitioners have filed in the improper venue despite being well aware of the jurisdiction of the Conservancy Court. Petition at 4. Fully recognizing that provisions of the Conservancy Act would conflict with other statutory provisions, the Legislature enacted Sec. 73-17-23, stating in full as follows:

- C. *All other acts or parts of acts conflicting in any way with any of the provisions of this act, in regard to improvements of the character contemplated by this act, or regulating or limiting the power of taxation or assessment or otherwise interfering with the execution of this act according to its terms, are hereby declared inoperative and ineffective as to this act, as completely as if they did not exist, but all such acts and parts of acts shall not in any way be otherwise affected by this act.*

NMSA 1978, § 73-17-23 (1927) (emphasis added). "The Legislature is presumed to know existing statutory law and to take that law into consideration when enacting new law." *State v. Torres*, 2006-NMCA-106, ¶ 9, 141 P.3d 1284, 1286. Not only are we able to presume that the Legislature knew of existing, and possibly conflicting, statutory law such as the mandamus

statute,<sup>1</sup> it explicitly indicated its awareness of conflicting laws and indicated its intention that the Conservancy Act would trump any existing statute to the contrary. If the provisions of the Conservancy Act regarding judicial venue conflict with contrary provisions of other statutes, the provisions of the Conservancy Act (in this case granting jurisdiction to the Conservancy Court rather than the District Court) control.

As the proper venue for the Petition is the Conservancy Court, and since the Court here does not have the authority to transfer this Petition, the proper action is to dismiss it pursuant to Rule 1-012(b)(3) NMRA. *Jones v. New Mexico State Highway Department*, 92 N.M. 671, 672, 593 P.2d 1074, 1075 (1979) (holding that “[a]bsent a statute giving such authority, a trial court has no power to change the venue of a misfiled lawsuit.”).

## **II. PETITIONERS HAVE FAILED TO INVOKE THE JURISDICTION OF THIS COURT BY VIOLATING STATUTORY PROCEDURAL PROVISIONS.**

Petitioners misconstrue the narrow procedural constraints of writ pleading under New Mexico statutes. NMSA 1978, §§ 44-2-1 through 44-2-14 direct petitioners to file a petition seeking the issuance of the writ with the court. Assuming the writ is of proper form, the court then may issue either an alternative or peremptory writ as the court deems proper. NMSA 1978, § 44-2-7. Jurisdiction over respondents in writ pleading is invoked *upon issuance by the court* of the alternative or peremptory writ, not at the time petitioners file. NMSA 1978, § 44-2-9; *State ex rel. Burg v. City of Albuquerque*, 31 N.M. 576, 249 P. 242 (1926); *Laumbauch v. Board of County Com’rs of San Miguel County*, 60 N.M. 226, 232, 290 P.2d 1067, 1070 (1955).

Once the court deems issuance of the writ proper and orders the clerk to issue same, the writ and answer “shall be construed and amended in the same manner as pleadings in a civil action, and the issues thereby joined shall be tried and further proceedings had in the same

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<sup>1</sup> NMSA 1978, §§ 44-2-1 through 44-2-14 were originally written in 1884, while the Conservancy Act was enacted in 1927.

manner as in a civil action.” NMSA 1978, § 44-2-11. In the initial petition, however, “[n]o other pleading or written allegation is allowed than the writ and answer.” *Id.*; *Alfred v. Anderson*, 86 N.M. 227, 230, 522 P.2d 79, 82 (1974).

In the present case, Petitioners serve their Petition upon Respondent as though the jurisdiction of the Court is invoked via that Petition. Because Petitioners have failed to follow proper statutory procedural provisions, the Petition must be dismissed

### **III. PETITIONERS FAIL TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED, THEREFORE, THE PETITION MUST BE DISMISSED.**

While the MRGCD waives no procedural defense as stated above, alternatively, the Petition must be dismissed for failure to state a claim upon which relief can be granted pursuant to Rule 1-012(b)(6) NMRA. It is well established that a court may only properly issue a writ of mandamus in order to “compel the performance of an act” that is non-discretionary. NMSA 1978, § 44-2-11. When actions by an official, as here, are purely discretionary, mandamus will not lie “to correct or control the judgment or discretion of a public officer in matters committed to his care in the ordinary discharge of his duties.” *State ex rel. Four Corners Exploration Co. v. Walker*, 60 N.M. 459, 463, 292 P.2d 329, 331 (1956). The writ must contain allegations of all facts necessary to authorize the relief sought. *Burg*, 31 N.M. 576, 249 P. 242 (1926).

In the present matter, the distribution of irrigation waters is committed to the pure discretion of the MRGCD Board of Directors on the face of the statute itself:

All conservancy districts heretofore organized under the laws of New Mexico, and all such districts hereafter to be organized, are specifically empowered to make such proper and necessary distribution and allocation of the waters available for irrigation within such districts as the boards of directors thereof, in consultation with the chief engineer of such districts, shall determine to be reasonable and proper. The method and manner of distribution and allocation may be altered and changed as often as is deemed requisite. The decision [decisions] of said board of directors, as determined from time to time, shall be expressed in

rules and regulations to be adopted and published as hereinbelow specified.

NMSA 1978, § 73-14-50 (1951). A process deferring more to the discretion of the board could hardly be drafted. Indeed, the Legislature “deems it of manifest importance that conservancy districts have the unquestioned power to make such distribution and allocation of irrigation waters.” NMSA 1978, § 73-14-49 (1951). As the New Mexico Supreme Court observed in *Middle Rio Grande Conservancy District v. Chavez*, 44 N.M. 240, 101 P.2d 190, 194 (1940):

All water rights of the individual remain undisturbed; but the administration of these rights, so far as the impounding, diversion, carrying and delivering of so much water for irrigation as any land owner under the project is by prior established right entitled to receive, has now been placed in the hands of this new and superior authority, plaintiff District.

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The legislature thought it wise to provide the machinery found in the Conservancy Act. Thus operating, the land owners of the district must of necessity surrender the superior right of control of the distributing system.

Thus, the MRGCD is vested with full and total discretion to operate its delivery system as it determines to be appropriate. Sharing its authority to determine the best method of distribution and delivery with any other party or entity would contravene the clear intention of the Legislature and thwart the purposes of the Conservancy Act. As the *Chavez* court also noted:

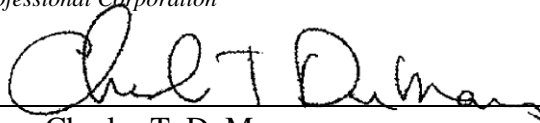
It would mean reposing in plaintiff district a useless and wholly ineffectual power to say that it could own, manage, operate and maintain its system of ditches and “administer” the water supply of the district thereby, and yet hold it could not protect its right to deliver water to such a user as had water rights, without the consent or approval of another authority. The glaring inconsistency of the challenge defendants thus present is so obvious as to answer its own contention.

*Id.* Mandamus is only proper to compel non-discretionary duties, and the actions enumerated in the Petition are entirely left to the discretion of the MRGCD.

**WHEREFORE**, because: 1) Petitioners have filed in the improper venue; 2) Petitioners fail to invoke the jurisdiction of this Court due to insufficient process; and 3) Petitioners fail to state a claim for which relief may be granted, Respondent MRGCD respectfully requests that the Court dismiss the Petition pursuant to Rule 1-012(b)(6) NMRA and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

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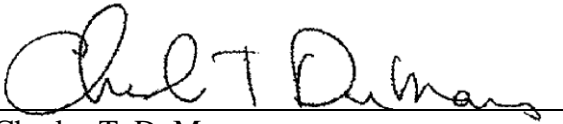
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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of this pleading was mailed to all counsel entitled to notice on this 8th day of October, 2012 as follows:

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