

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA and)	
STATE OF NEW MEXICO, ex rel. STATE)	
ENGINEER,)	
Plaintiffs,)	
)	
and)	No. 01cv0072 BB/WDS
ZUNI INDIAN TRIBE and NAVAJO NATION,)	
Plaintiffs-in-Intervention)	
)	
)	ZUNI RIVER BASIN
v.)	ADJUDICATION
)	
A & R PRODUCTIONS, et al.,)	

STATE OF NEW MEXICO’S RESPONSE IN OPPOSITION TO MOTION TO WITHDRAW
GENERAL ENTRIES OF APPEARANCE AND FOR LEAVE TO ENTER LIMITED
APPEARANCES

Comes Now, the State of New Mexico *ex rel.* State Engineer (“State”), and hereby opposes the *Motion to Withdraw General Entries of Appearance for Members of the Western New Mexico Water Preservation Association and for Leave to Enter Limited Appearances on Behalf of Association Members When Global Issues Arise* (Doc. No. 1763) (“Motion to Withdraw General Entries of Appearance”), filed by Law Resource and Planning Associates, P.C. (“LRPA”), on May 8, 2008. In support thereof, the State states as follows:

1. The State concurs in all respects with the United States’ *Opposition to Motion to Withdraw and for Leave to Enter Limited Appearances* (No.), expected to be filed Monday, June 9, 2008.

2. In particular, the State agrees with the United States that the LRPA motion fails to meet the requirements for either a withdrawal of representation or a limited entry of appearance; the authorities cited by LRPA in support of its Motion are either not on point, or stand for a

proposition contrary to that cited by LRPA; and that it is at best unclear whether those clients to be affected by LRPA's Motion have been provided notice of it.

3. Moreover, the State has specific practical concerns that the regime of limited appearances proposed by LRPA would raise serious questions about who will be receiving notice when LRPA receives notice. Under LRPA's proposal it will be impossible to determine who is receiving notice of their opportunity to participate, and therefore receiving due process, when LRPA is receiving service. In addition, this uncertainty makes it impossible to develop mailing lists when it is unclear whether parties are appearing *pro se* or are represented by counsel, making the management of an adjudication involving thousands of parties simply unworkable.

4. The same uncertainty exists with regard to who will be bound by Court Orders. The potentially ambiguous representation LRPA proposes would make it uncertain whether claimants represented by them would be bound by Court orders. The result would be LRPA clients having multiple "bites at the apple," and an unnecessarily prolonging of litigation.

5. With regard to the concern that LRPA's multiplicity of entries and withdrawals on behalf of WNMWPA members are an excessive demand on it, and on the resources of the Court's clerk, the State seconds the United States' suggestion that "the solution to [LRPA's] problem with the Association's ever-changing membership would appear to be entry of an appearance on behalf of a single Association member who has standing and has agreed to advance the Association's interests in this litigation." *United States Opposition to Motion to Withdraw and for Leave to Enter Limited Appearances*, p. 4 (No.).

6. In any event, the limited representation model proposed by LRPA's Motion will do exactly nothing to remedy the difficulty it purports to address, namely the "Herculean task" of updating entries of appearance to reflect current representation of defendants. Whether its

appearances are limited or general, LRPA is still bound to inform the Court, its opposing counsel and its clients exactly whom it represents. Absent that, the State and other parties can have no way of knowing what claimants are bound by Court orders, or who can be deemed to have received notice when LRPA gets notice.

WHEREFORE, the State urges the Court to deny LRPA's Motion to Withdraw General Entries of Appearance for Members of the Western New Mexico Water Preservation Association and for Leave to Enter Limited Appearances on Behalf of Association Members When Global Issues Arise.

Electronically Filed

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on June 6, 2008, I filed the foregoing State of New Mexico's Response in Opposition to Motion to Withdraw General Entries of Appearance and for Leave to Enter Limited Appearances electronically through the CM/ECF system, which caused the parties or counsel reflected on the Notice of Electronic Filing to be served by electronic means.