

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

UNITED STATES OF AMERICA,)
ET AL.,)
))
PLAINTIFFS,)
))
))
v.)
))
STATE OF NEW MEXICO)
COMMISSIONER OF PUBLIC)
LANDS, ET AL.,)
))
DEFENDANTS.)
_____)

CIV NO. 01- 00072 BDB/WDS

**ZUNI RIVER BASIN
ADJUDICATION**

**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**

COMES NOW, the membership of the Western New Mexico Water Preservation Association (“WNMWPA”), by and through its counsel, Law & Resource Planning Associates, P.C., and hereby respectfully moves the Court for an Order allowing its counsel to withdraw its general Entry of Appearance on behalf of individual members of WNMWPA and for leave to enter a Limited Entry of Appearance on behalf of its membership in this proceeding as global issues or matters of general concern to WNMWPA arise. As grounds for this Motion, WNMWPA states as follows:

1. WNMWPA is a non-profit corporation, organized under the laws of the State of New Mexico.

2. The membership of WNMWPA is comprised of persons who claim ownership of water rights in the Zuni River Basin. Most of the membership has been joined as defendants in this adjudication.

3. WNMWPA itself claims no water rights ownership and thus is not a named party in the Zuni River Basin adjudication.

4. WNMWPA was formed for the purpose of combining assets so as to allow the membership to litigate matters in the general stream adjudication that are common to the membership as a whole. Individual members of the association have managed their individual subfile claims, unless they have specifically retained counsel to represent them.

5. Past examples of matters of global importance to the members of WNMWPA include participation in determining the geographic boundaries of the stream adjudication, filing a motion to cancel the notices of *lis pendens* filed by the United States, and filing a motion seeking the certification of water law questions to the New Mexico Supreme Court for determination.

6. Early in the proceedings, a general Entry of Appearance was filed on behalf of individual members of WNMWPA because the association is not itself a party to this action. The general Entry of Appearance has recently proven problematic and unworkable for a variety of reasons.

7. Pursuant to the Special Master's Order of October 10, 2007 (Doc. 1300), attorneys were ordered to update their entries of appearance to reflect current representation of defendants. Updating the entry of appearance for the members of WNMWPA proved to be a Herculean task. Many members had moved or sold their land, settled their individual subfiles and no longer wished to participate, stopped paying dues or resigned. Others had newly joined the organization. Still others were members but had not yet been joined as defendants in the

action. Updating the entry of appearance required attempts to contact former members to seek instruction regarding their present intentions, most of whom did not reply to the inquiries. Numerous motions to withdraw were thus filed to allow counsel to withdraw as attorneys for a number of named defendants. The membership list is constantly in flux with a number of changes since last fall.

8. The recent increase in the number of motions for default judgments that are being filed by Plaintiff's counsel has also proven problematic. Even though counsel for WNMWPA has been retained by the association only to represent the organization and not individuals regarding their own subfiles,¹ the rules of professional responsibility require counsel to address any matter for any defendant for whom a general entry of appearance has been entered.

9. The monitoring by counsel of record of individual subfiles has become a burden for WNMWPA in general because it becomes responsible for payment of attorney's fees incurred as a result of any action taken on behalf of an individual member.

10. A limited entry of appearance for matters of general or global concern to WNMWPA as they arise should alleviate all of these problems. Such entries are specifically authorized by both the local rules of the Federal District Court, D.N.M. LR-Civ. 83.4(c), and the New Mexico Rules of Professional Responsibility, Rule 16-102 NMRA, for attorneys practicing in the State of New Mexico.

11. The American Bar Association has recently considered, in depth, the issue of providing legal services to individuals on a limited basis so as to maximize access to legal representation while minimizing costs. *See Handbook on Limited Scope Legal Assistance – A Report of the Modest Means Task Force* (Washington, DC: ABA Section of Litigation, 2003).²

¹ Some members have specifically retained counsel to manage their subfiles. Separate entries of appearance have been filed on their behalves.

² <http://www.abanet.org/litigation/taskforces/modest/report.pdf>.

A driving concern behind this effort is the desire to provide legal services in a targeted fashion so that litigants can receive professional legal services in some areas, while conserving funds by maintaining their ability to represent themselves in other areas. *Id.*

12. A stream adjudication provides an ideal situation in which to employ the concept of limited legal representation. Most individuals are competent to handle negotiations regarding their own subfiles, particularly in the early phases of the stream adjudication, but may be completely unable to recognize and litigate more complex issues that have impacts far beyond their own subfiles. Allowing a limited entry of appearance to represent a group of these individuals in defined areas will provide professional representation on global issues, while conserving client funds by not having to employ attorneys to represent them in matters where clients feel able to represent themselves.

13. WNMWPA proposes that whenever an issue of interest to its membership arises, it be allowed to have counsel enter a limited entry of appearance on behalf of its current membership to litigate the specified issue. It further proposes that once the issue is decided, the limited entry of appearance expire automatically or that counsel be allowed to simply file a notice of withdrawal of the limited entry of appearance without further need to acquire consent of all members, file a motion to withdraw, and obtain an Order of the Court allowing the withdrawal.

14. WNMWPA and its counsel will assume the responsibility of obtaining the consent of all individual members of the organization for such limited representation. Such consent will be in writing and can be filed with the Court if the Court requires.

15. Such a limited entry of appearance on a specific, defined matter will relieve opposing parties of any ethical concerns about if and when they can communicate directly with opposing parties.

16. A written agreement with each member will define the limits of representation and allow each member to obtain alternative counsel for their own individual files if they choose, represent themselves, or opt out of the group representation.

17. These and other possible methods of structuring a limited entry of appearance are discussed in the *ABA Handbook. Id.*

18. Such limited entries of appearance will alleviate the need to continually evaluate membership lists and withdraw as counsel for defendants who are no longer members and enter appearances for newly joined members. It will also remove the burden on the counsel of record of being professionally responsible for all activities in any individual's subfile. Finally, it will allow WNMWPA to target its resources to those areas that will benefit its membership as a whole, and not to individual subfiles.

19. While limited entries of appearance have historically been used to allow attorneys to challenge jurisdiction, there is no limitation in the Local Rules that they be employed for only this specific purpose. See D.N.M. LR-Civ. 83.4(c); *see, e.g., Certain Underwriters at Lloyd's, London, Subscribing to Policy Number 501/NB03ACMD v. Nance*, 2007 WL 1302569, 5 (D.N.M.) (Counsel entered a limited appearance for the sole purpose of contesting a motion for summary judgment).

20. The concept of limited entries of appearance has recently been extensively studied and endorsed by the American Bar Association after observing that our dispute resolution process is not fair to those who cannot afford an attorney to represent them in litigation. "They include *most* low and moderate income families and individuals; that is, the *majority* of the people in our nation!" (Emphasis in original). *ABA Handbook*, at page 3. In response to this overwhelming need, the ABA developed a series of recommendations that provide guidance to both courts and practitioners for handling discreet, targeted legal matters on behalf of litigants in

a cost effective manner. The ABA considered and discussed a number of issues relating to limited entries of appearance, such as clarification of the rules for communication, informed consent for clients, and termination of the limited entries once the targeted issue has been resolved. *Id.*

21. The topic of limited legal representation is also gaining favorable exposure in recent law review articles that describe the need for moderately priced representation and how that need can be effectively fulfilled through the concept of limited representation. *See* Alicia M. Farley, *An Important Piece of the Bundle: How Limited Appearances Can Provide an Ethically Sound Way to Increase Access to Justice for Pro Se Litigants*, *The Georgetown Journal of Ethics*, Summer 2007.³

22. The WNMWPA has contacted opposing counsel regarding this motion and they oppose this motion.

WHEREFORE, WNMWPA membership proposes that its retained counsel be granted leave to withdraw all general entries of appearance for its current membership and be granted leave to enter a limited appearance if and when the membership considers it to be in its best interest.

Respectfully submitted,

LAW & RESOURCE PLANNING ASSOCIATES,
A Professional Corporation

By:  _____

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³ http://findarticles.com/p/articles/mi_qa3975/is_200707/ai_n19511819/pg_1.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on May 8, 2008, I filed the foregoing pleading electronically through the CM/ECF system, which caused the parties or counsel reflected on the Notice of Filing to be served by electronic means.


Tanya L. Scott