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**IN THE UTAH COURT OF APPEALS**

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<p>EMIGRATION CANYON HOME OWNERS ASSOCIATION, a Utah Corporation,</p>	<p><b>MOTION TO DISMISS FOR UNAUTHORIZED PRACTICE OF LAW</b></p>
<p>Appellant</p>	
<p>vs.</p>	
<p>KENT L. JONES, Division Director of the Utah State Division of Water Rights, and EMIGRATION IMPROVEMENT DISTRICT, a special service district of the state of Utah,</p>	<p>Appellate Case No. 20200295-CA</p>
<p>Appellees</p>	

Appellee Emigration Improvement District (“**EID**”), through counsel, respectfully moves the Court to require Appellant Emigration Canyon Home Owners Association (“**ECHO Association**”) to obtain legal counsel or dismiss the appeal.

**STATEMENT OF RELIEF SOUGHT**

The Court should dismiss this matter or require ECHO Association to obtain legal counsel because Mark Christopher Tracy (“**Mr. Tracy**”) cannot represent ECHO Association *pro se*.

## **STATEMENT OF FACTS**

1. The Petition was filed in the name of “Emigration Canyon Homeowners Association, a Utah corporation.” *See* Petition.
2. The first line of the Petition reads: “The Emigration Canyon Home Owners Association (“The ECHO-Association”) brings this action . . . .”
3. In the Petition, ECHO Association alleged: “The ECHO-Association has suffered total impairment of its water right.” Petition, ¶ 103 (emphasis added).
4. Petitioner’s former counsel, Christensen and Jensen, signed the Petition as “Attorneys for Petitioner Emigration Canyon Home Owners Association.” Petition, p. 39.
5. In its *Memorandum in Opposition to Respondent’s Motion to Dismiss Petition for De Novo Judicial Review*, p. 12, ECHO Association argued: “The ECHO-Association is a legal entity, sufficiently situated with an administrative structure, financial resources and legal counsel. See e.g. Complaint, at ¶ 1, and Exhibits F, G and H, thereto. It owns a water right which has suffered total impairment.”

## **ARGUMENT**

### **I. Mr. Tracy Cannot Represent ECHO Association *Pro Se*.**

Utah law is clear that a *pro se* litigant cannot represent a legal entity. In *Tracy-Burke v. Department of Employment Sec.*, 699 P. 2d 687, 688 (Utah 1985), the Utah Supreme Court recognized that “[i]t has long been the law of this jurisdiction that a corporate litigant must be represented in court by a licensed attorney.” In addition, this Court has recognized that it is proper for the Court of Appeals to require entities to be represented by legal counsel on appeal.

*See Nicholls v. Weinstein*, 2012 UT App 246, fn. 1 (“This court sent a letter to Sealeal Associates notifying it that, as a business entity, it must be represented by a Utah licensed attorney.”)

Mr. Tracy is not licensed to practice law in the State of Utah. It is also clear that ECHO Association has taken the position that ECHO Association is a legal entity that must be represented by a licensed attorney. Primarily, in its *Memorandum in Opposition to Respondent’s Motion to Dismiss Petition for De Novo Judicial Review*, p. 12, ECHO Association, which was represented by legal counsel at the time, argued:

The ECHO-Association is a legal entity, sufficiently situated with an administrative structure, financial resources and legal counsel. See e.g. Complaint, at ¶ 1, and Exhibits F, G and H, thereto. It owns a water right which has suffered total impairment.

ECHO Association’s argument that ECHO Association is a legal entity with an administrative structure and the ability to own real property (water rights) was made to support its argument that it has public interest standing. *Id.* In other words, ECHO Association argues that it is not just a single person operating under an assumed name, but an association of members with its own separate legal counsel and financial resources. Clearly, ECHO Association’s own position that ECHO Association is an entity with the ability to own water rights, and not just an individual operating under an assumed name, subjects ECHO Association to the requirement that it be represented by legal counsel, particularly since the District Court’s denial of public interest standing is one of the issues that ECHO Association appealed.<sup>1</sup> *See* Docketing Statement.

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<sup>1</sup> In addition, although ECHO Association has now changed the caption to read “Mark Christopher Tracy dba Emigration Canyon Home Owners Association”, ECHO Association has never requested leave of the Court to change the real party in interest. This is significant in this matter because a dba cannot own real property. Thus, the only possible argument for standing is

## CONCLUSION

The Court should require ECHO Association to obtain legal counsel or dismiss this appeal.

DATED this 6<sup>th</sup> day of July 2020.

COHNE KINGHORN

/s/ Jeremy R. Cook

Jeremy R. Cook

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that Mr. Tracy really owns a water right and he is the real party in interest. However, Mr. Tracy did not file a protest in the State Engineer's informal adjudicative proceeding and therefore failed to exhaust his administrative remedies. Utah Code Ann. §63G-4-401(2) ("A party may seek judicial review only after exhausting all administrative remedies available"). *See e.g. Kennon v. Air Quality Board*, 2006 UT App 486 (unpublished decision) (dismissing the appeal because the individual *pro se* appellants were not parties to the administrative proceeding below). Accordingly, if Mr. Tracy is the real party in interest the Court lacks jurisdiction to hear the appeal.

**CERTIFICATE OF SERVICE**

I hereby certify that on July 6, 2020, a true and correct copy of the foregoing  
MOTION TO DISMISS FOR UNAUTHORIZED PRACTICE OF LAW was sent by electronic  
mail to the following:

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*/s/ Janelle L. Dannenmueller*  
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