



NEW MEXICO ENVIRONMENTAL LAW CENTER  
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GREEN FIRE TIMES

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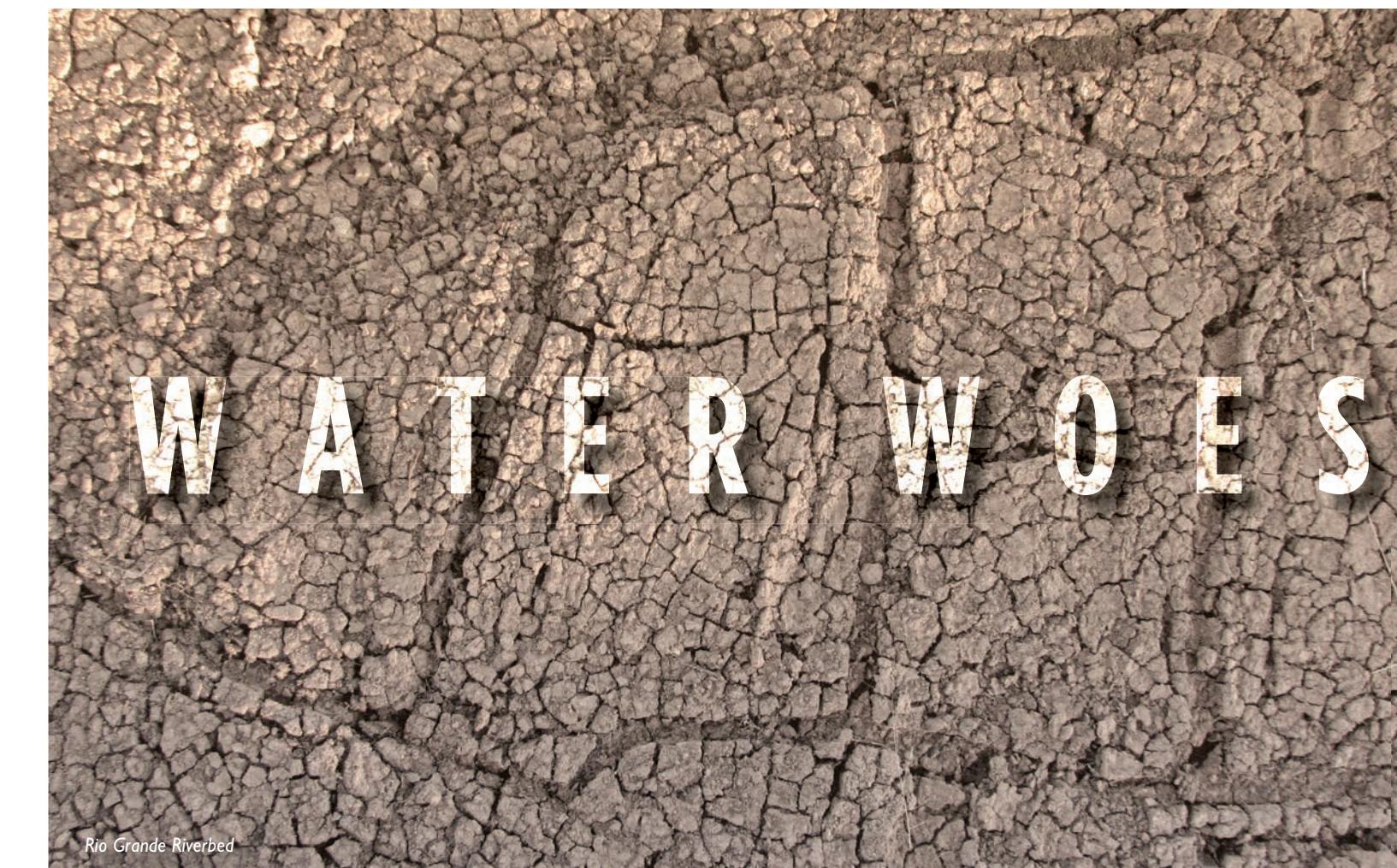
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New Mexico Environmental Law Center | SUMMER 2018

# Green Fire Report



In our May 1990 Green Fire Report, we wrote,

*"New Mexico is rich in natural resources. Water, however, is a scarce resource in this state. The water we have is essential. Nine out of ten New Mexicans depend on underground supplies for their drinking water. Water quantity and quality are critical to our public health and environment."*

This statement is as true today as it was 28 years ago, but we take up the responsibility to protect this most precious resource with more urgency than ever before.

David Gutzler, a professor at UNM and an internationally respected expert on the impacts of climate change in New Mexico and the Southwest, testified earlier this year for the Law Center in our Aquifer Science water speculation case in Albuquerque's East Mountains. His conclusion was bleak. Rising temperatures, shrinking snow packs, and an expanding population indicate that access to clean water may be the greatest challenge facing New Mexico in the coming decades.

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## Water: Our Irreplaceable Resource

Anyone who lives in New Mexico knows that the state has serious water problems. The most obvious problem is that there is not enough water. Less obvious, at least to a casual observer, is pollution of surface water. Even less obvious, because it occurs underground, is the mining and pollution of groundwater. However, the most insidious and serious problem of all may be the refusal of political decision makers to take into account what it really means to live in an arid state.

New Mexico had a record low snowpack this year, which translates to very low runoff into our rivers. The Rio Grande south of Socorro began drying up several months early and predictions are that 120 miles of it will be dry this summer, including possibly the parts

of the river in the Albuquerque area. Global warming is making these shortages of surface water the "new normal".

Water that cannot be used because it is contaminated also diminishes our supplies. Sometimes, water pollution is obvious as in the case of the spill from the Gold King Mine in Colorado that turned the Animas River bright orange. In many cases, pollution is not so obvious. Many of our rivers are brown with sediment, but the real problem is the industrial metals and PCBs attached to the sediments, along with bacteria and excess nutrients from animal waste and leaking septic systems.

Groundwater today is the source of drinking water for the vast majority of New Mexicans, with the amount of groundwater pumping set to expand rapidly in the coming decades. New Mexico therefore must treat its groundwater as the irreplaceable resource that it is. Unfortunately, the state is doing exactly the opposite. First, New Mexico's groundwater resources are being mined; they are being extracted at rates faster than they are recharged. Second, large amounts of groundwater have already been polluted by copper, uranium, and molybdenum mines, the national nuclear laboratories, and Kirtland Air Force Base. Once groundwater is polluted, it is very difficult and expensive to clean.

Surface and groundwater are inextricably linked. Inadequate irrigation water from the Rio Grande led to greatly increased groundwater pumping in the southern part of the state. This lowered the water table near the river, causing the river to lose water that Texas claims it is owed under the Rio Grande Compact. Texas has sued New Mexico in the US Supreme Court and was recently joined by the federal government. Early indications are that the case is not going well for New Mexico. If the state loses, it may have to provide massive monetary compensation and more water to Texas to make up for past delivery shortages. This would be disastrous for New Mexico.

Despite all of these issues, New Mexico's political decision makers continue to act as if the state has water resources to spare. The Martinez administration Copper Rule authorizes copper mines to pollute the groundwater in the "capture zones" created by their open pit mines; the "capture zone" at one of the largest mines in Grant County covers about nine square miles. The developers of the proposed Santolina development on the west side of Albuquerque have violated the requirement to identify where the water for this development would come from. Nevertheless, the majority of the Bernalillo County Board of County Commissioners has approved it at every step of the process. The Mt Taylor uranium mine has not produced since 1990 and has contaminated groundwater. Rather than being forced into reclamation, the state has given the mine operator a permit to return to "active" status. In addition, the Mining and Minerals Division acknowledges that at least half of all known abandoned uranium mines in New Mexico have never had any reclamation work done on them.

These approaches must change. New Mexico does not have unlimited amounts of water, and the amounts of surface and groundwater available to New Mexicans will continue to decrease as global warming continues. Unless New Mexico's elected decision makers recognize these facts, the state's water woes will continue to increase.

Yours truly,  
*Doug*

## DONOR SPOTLIGHT - Helenty Homans



The Law Center is blessed to have the most interesting, educated and compassionate donors in all New Mexico, and Helenty Homans is no exception.

At age 92, she's been a few places, seen a few things, and developed a few ideas. She grew up in Prague until the age of 12, when her family emigrated in 1938. After some time in Canada, they ended up in Boston. There, Helenty (whose given name is Helen) met a New Mexican named Mary Riseley (also a Law Center supporter). When Mary returned to New Mexico, she and Helenty stayed in touch, and after four years Helenty found herself in Colorado and took the opportunity to visit Mary.

As is true with so many New Mexican stories, Helenty "just loved the place", she recalls. "It reminded me of Europe."

Helenty went back to Boston to get her dog, and returned to the Santa Fe area where she found several house-sitting gigs. Eventually, she bought a house on four acres north of town in Jacona – where she lives to this day. (Her daughter Dee – also a Law Center supporter – and her son Rick lived in Albuquerque's South Valley for a time before moving to Tampa, FL.)

"There have been so many changes" since buying her home 45 years ago, Helenty notes. "I wanted to give something back" and preserve something of the community. So she gave her four-acre property to the Santa Fe Community Housing Trust. Now Helenty's home is joined by three other affordable family homes on two acres of the property. The other two acres are devoted to small-scale farming – handled by Mr. G., who sells his produce at the weekly Santa Fe Farmers Market.

Helenty has four charitable giving priorities: animal causes; affordable housing; small-scale farming and environmentalism. She has been a supporter of the Law Center's environmental justice work since 1991 – giving through a donor-advised fund in her name at the Santa Fe Community Foundation – and has a particular interest in the impacts of mining on the environment and communities in New Mexico. She also is concerned about contamination from activities at the Los Alamos National Laboratory. We are honored to have Helenty's loyal support as we fight on these important fronts.

**Thank you, Helenty!**

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### Newest Office Dog

Arlo is a 10-month old Blue Heeler rescue with suspiciously large ears. Genetic testing is in order. He arrived in the Law Center offices in January, and diligently guards us from mystery guests, the other dogs in the office, and ourselves. Like the rest of the staff, Arlo is mischievous and friendly and loves to run with the big dogs.

### Join the Law Center's CLUB DOUG!\*

You can become a member by making a donation of only \$10 or more per month.

When you join the Law Center's CLUB DOUG,\* you not only receive a free "Doug Mug", but you become a part of a dedicated community of supporters reaching out each month to help ensure that we can continue fighting to protect our state's air, land, and water for the long term.



Monthly recurring donations can easily be set up online at [nmelc.org](http://nmelc.org) or by calling Grace Aroha at (505) 989-9022, ext 119.

\*As you can see, Doug has no control over the wildly creative ways in which his name is used around here. He laments that being Executive Director means that he is directed by the Staff – this is a prime example!

*Thank you to all of our supporters who donated so generously - making it possible for the Law Center to bring on new staff so we can more strategically manage our ever-growing load of water-related cases.*

## NEW STAFF



### Charles de Saillan, Staff Attorney

Charles de Saillan started work with the Law Center on June 4, 2018. He joins us from the New Mexico Interstate Stream Commission, where he worked for over 4 years. Before moving to New Mexico, Charlie worked at the Environmental Protection Agency and the Justice Department in Washington, D.C., handling enforcement litigation under the Clean Water Act, the Safe Drinking Water Act, and federal hazardous waste laws.

Charlie moved to New Mexico in 1993 to work for Attorney General Tom Udall. He helped develop the state's natural resource damage program and led a national attorney general work group to retain strong liability and cleanup provisions in the Superfund program. In 1999, Charlie moved to the Environment Department where he worked on enforcement and permitting actions involving hard rock mines, petroleum refineries, electric power plants, and the nuclear weapons laboratories. Notably, he negotiated the 2005 Consent Order for comprehensive investigation and cleanup of pollution at Los Alamos National Laboratory.

Charlie holds a Bachelor of Arts from Boston University, a Juris Doctor from Boston University School of Law, and an LL.M. in Energy and Environmental Law from Katholieke Universiteit, Leuven, Belgium. He has numerous publications in the field of environmental law. Charlie enjoys many outdoor activities and is a photographer. For several years he was a volunteer with St. John's College and Atalaya search and rescue teams. He is on the Board of Conservation Voters New Mexico, and Conservation Voters N.M. Education Fund.

### Kendra Palmer, Paralegal

Kendra Palmer is a certified paralegal with a passion for environmental protection in New Mexico. She comes to us from a similar position with the First Judicial District Court in Santa Fe, where she worked for almost eight years. Prior to that, Kendra worked as a paralegal for a law office in Austin, Texas.

In her free time, Kendra enjoys camping, hiking, photography, small-scale urban farming, music, and sewing. Kendra is currently attending the Santa Fe Community College and will graduate this summer with a Certificate in Paralegal Studies. She will begin work at the Law Center in mid-July.



### Nadine Padilla, Law Fellow

Nadine Padilla just graduated from UNM Law School, and will join the Law Center staff on September 4th to begin a two-year fellowship funded primarily by the Kellogg Foundation.

Nadine, who is Navajo and Pueblo (Isleta/Laguna) from Bluewater Lake, NM, has a unique understanding of and sensitivity to the many complexities involved in addressing environmental concerns of Indigenous communities.

Before law school, Nadine worked with the Multicultural Alliance for a Safe Environment (one of our clients) to protect Mt. Taylor, a mountain sacred to her community, from proposed uranium mining. Nadine has one son, Noah (4 yo), and they love to read, swim, do puzzles, and go for walks together. She was Editor-in-Chief for the Natural Resources Journal, a writing tutor for first year law students, a volunteer with the Native American Law Student Association, and a Teaching Assistant for the Pre-Law Summer Institute program. Nadine received her Bachelor of Arts degree from Fort Lewis College in Durango, Colorado, and her Master's in Communication from Gonzaga University.

## CLIENT SPOTLIGHT - Ray & Carol Pittman



We came to Datil in 1996, after looking for a retirement home throughout the west. After 28 years in southern California, it seemed the time to move to a quieter place with less commotion. Besides, living in a rural area would be an adventure.

Our location in the Datil mountains is one of the most beautiful places in the country. The Plains of San Augustin seem to flow endlessly below the distant mountains that surround them, the sky arching overhead. This is ranching country with large spreads around us, the open land serene and quiet. Several generations of families have lived and ranched the land and these families have a dedication to this way of life. Those who, like ourselves, are newcomers to this rural community, share in that love of this place.

## “El agua es la vida.”

That dedication shows up in the fight to save the Augustin Plains aquifer. Going on 11 years, this community, which includes those of us who are not ranchers as well as those who are, has fought an attempt to mine the waters of the basin that sustains us. A corporate entity has applied to take 54,000 acre feet of water each year from the basin and send it via pipeline to Albuquerque. That application threatens the community, the economy, the culture and our very lives should it be approved. We are fighting to maintain our adopted community, knowing that this land could sustain us and our families forever.

*El agua es la vida.* The stakes are high, and should this application to mine water here be approved, all of New Mexico's rural communities will be threatened by the precedent it will set. We will live or die on the decision of the State Engineer, so serious is this threat to our well-being. Perhaps we should all ask: is this a decision that one man should make? Shouldn't we ourselves have a say in the future of our communities? We would like to think that is possible.

*Editor's note: The Law Center represents Ray & Carol Pittman and approximately 80 other residents in this decade-long fight.*

# WATER WOES

*continued from front cover*

In the years after its founding in 1987, most of the Law Center's cases dealt with land habitat conservation. However, by the early 90's, the Center's mission began to shift to environmental justice as it became clear that New Mexico's communities desperately needed accessible and responsible legal representation to deal with environmental and public health harms. Minority, rural, and low-income communities are most likely to suffer the effects of contamination; they are also the most likely to be targeted in water grabs by high-profile private interests that threaten future public supplies, and are often the first to experience conflict around who owns and controls the rights to water in our state. They are also likely to suffer most from climate change impacts.

Many of the battles we are fighting today date back years and even decades. In 1988, the Law Center took on its first water case, advising Los Amigos Del Rio about monitoring Santa Fe Alloy's attempts to get permits to process thorium from rare earth oxides, a process that could have seriously affected water quality along the Pecos near San Jose. Other early cases dealt with fuel leaks from underground storage tanks, the toxic waste at Los Alamos, and contamination from improper waste disposal.

## Mining: The Greatest Source of Water Pollution in NM

The most significant water cases in the Law Center's history have had to do with the pollution caused by mining and drilling activities that have predominantly affected Native populations in New Mexico. In 1979, 95 million gallons of radioactive waste spilled into the Rio Puerco, flowing through the Diné (Navajo) Reservation, through the towns of Church Rock and Gallup. The Law Center took up the challenge in the early 1990's and began representing Eastern Navajo Diné Against Uranium Mining (ENDAUM) in cases against industry and the government. ENDAUM and the Law Center won several major victories, including significant strengthening of New Mexico's uranium groundwater standard (2004), and adoption of the Navajo Natural Resources Protection Act, which bans uranium mining on Navajo lands (2005).

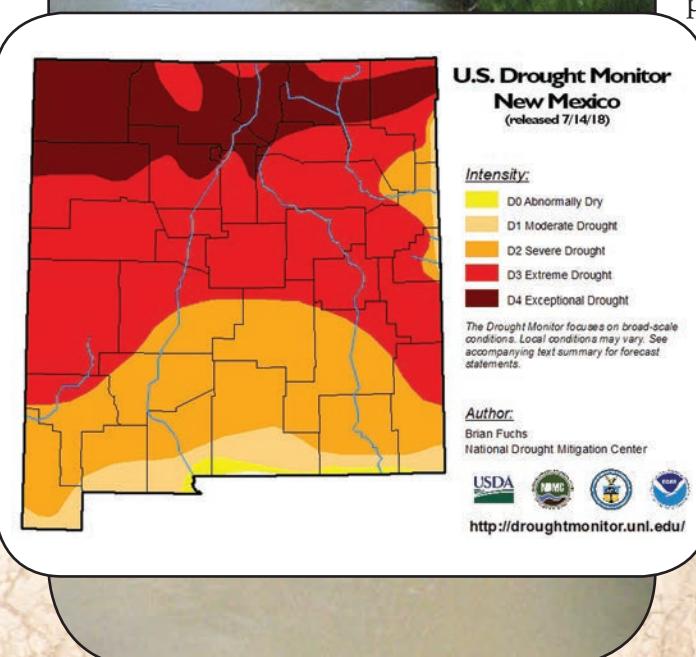
**One of the most significant victories in the Law Center's history came in 1993 when we played a pivotal role in passing the New Mexico Mining Act.** Before the passage of this act, there were very few laws that regulated mining activities in New Mexico. However in 1993, when the Rio Galisteo ran foul with cyanide leaking from Cunningham Hill mine, Law Center founder Douglas Meiklejohn helped draft a new law that requires all hard-rock mines to develop reclamation plans, to restore surrounding land to self-sustaining ecosystems, and to post financial assurance adequate to cover the costs of reclamation. Since the Mining Act's passage, no irresponsible proposal for a new hard-rock mine has been permitted in the state. In addition, we have been able to get substantial partial reclamation at copper mines in Grant County and were able to get the largest mining reclamation bond in the country at the time for the Molycorp (now Chevron Mining) molybdenum mine in Questa. The copper mines owned by Freeport McMoRan now have the largest financial assurance bonds in the country.

## Where We Stand Now

The efforts to protect our current resources from contamination have been more difficult under Governor Susana Martinez's administration, which seeks to protect big polluters at the expense of public health and the environment. Her administration has weakened protections of groundwater, limited the ability of members of the public to participate, and made the oil and gas industry essentially self-regulating.

The following are some of the most significant groundwater protection issues facing New Mexico and the Environmental Law Center now:

**• Copper Rule** In a confusing and frustrating decision, the NM Supreme Court upheld the Copper Rule in March of this year, allowing companies to exclude the area beneath open pit mines from water quality standards, creating water sacrifice zones. We will now look at copper mine operations on a case-by-case basis and seek to rescind or modify the Rule.



**• Mt. Taylor Mine** The Law Center has appealed a "return to active" permit granted for the mine, which has not produced uranium ore since 1990 and will not produce ore during the permit period. The mine ought to be closed and reclaimed. Instead, the NM Mining and Minerals Division has created a new category of "zombie mines" that neither produce nor clean up.

**• Kirtland Air Force Base Plume** After two decades, the US Air Force has neither fully characterized the toxic fuel plume nor achieved significant cleanup. The spill threatens the most productive drinking water well field in Albuquerque. In February, the NM Environment Department supported an Air Force report that has serious deficiencies in data collection, analysis, and proposed actions. We are exploring our options with our clients.

**• Aquifer Science** The water developer continues to pursue a permit to pump 1,500 acre-feet of water annually for a proposed residential resort in Albuquerque's East Mountains. The plan is clearly out-of-state water speculation. In March 2018, the Law Center went to court citing seriously flawed modeling used to support the permit and the fact that the State Engineer has already declared that there is no available new water. We are waiting for the judge's decision.

**• Augustin Plains Ranch** The Law Center argued in front of the State Engineer's Hearing Officer against granting Augustin Plains Ranch a permit to extract nearly 17 billion gallons of groundwater per year from the San Augustin Basin, west of Socorro. An Italian billionaire, whose previous applications have been rejected because they fail to identify end users and beneficial uses for the water, owns the ranch. The Water Rights Division attorney said the application was speculative, but the final decision now rests with the State Engineer.

**• Copper Flat Mine** We won a victory in a water rights case that awarded only a small fraction of the water the mine's owners were attempting to claim. Now, we are challenging the mine permit itself on both procedural grounds and on the basis of problems with the hydrologic data and modeling used to support the permit.

**• Water Quality Rules** The NM Environment Department petitioned the Water Quality Control Commission (WQCC) to change a number of water quality rules. We succeeded in getting some of the problematic changes withdrawn prior to the hearing, but there are still some serious issues. We have just filed our exceptions (comments) to the Hearing Officer's Report and are waiting for the WQCC's decision.

**• Santolina** The Bernalillo County Planning Commission and Bernalillo County Board of County Commissioners have approved every step of the master-planned community approval process, even though the developer and the Albuquerque Bernalillo County Water Utility Authority have not produced the required Development Agreement detailing how the development, which will have more than 90,000 people, will get its water. We recently filed our brief with the Court of Appeals concerning the faulty county process as well as the incorrect decision by the District Court in not reviewing those decisions.

**• Public Participation** In a critical decision that will have an impact on all our water work, the Court of Appeals found that the WQCC had erred in upholding the Environment Department's decision to deny a public hearing on a discharge permit for a facility at Los Alamos National Laboratory. The Court stated that public participation is an inherent part of the permit process by forcing agencies to defend their decisions. Public hearings also create a record that is necessary to appeal a decision in the courts.

The Law Center depends on – and defends – public participation as the first line of defense against polluters and agencies that fail to protect the environment and public health. We all depend on those individuals and community organizations who take the time and trouble to pay attention, show up at meetings, and protest against actions that harm the environment and their community. It is an honor to represent them when legal representation is necessary.