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DEPARTMENT OF
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**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION
FOR PERMIT NO. 63-32573 IN THE
NAME OF M3 EAGLE LLC

**M3 EAGLE'S RESPONSE TO
NACGUA'S PETITION FOR REVIEW
OF THE HEARING OFFICER'S
DECEMBER 1, 2008 ORDER**

Applicant M3 Eagle LLC ("M3 Eagle"), through Jeffrey C. Fereday and Michael P. Lawrence of the firm Givens Pursley LLP, hereby responds to *NACGUA's Rule 711 Petition for Review of December 1, 2008 Interlocutory Order; and Memorandum in Support* filed April 8, 2008 ("Petition"). NACGUA's Petition should be denied because it is untimely and meritless. In its Petition NACGUA asks the Hearing Officer to revisit moot questions, most of which were meritless when they were raised; all were disposed of several months ago.

NACGUA asks the Hearing Officer, now, on the eve of the hearing, to revisit his December 1, 2008 *Order Denying Request to Designate Individual Depositions Under Rule 30(b)(6); and Denying Motion for Order Compelling Attendance at Depositions* ("December 1 Order"). Exactly how the Hearing Officer would revise the December 1 Order, or what would be

accomplished by doing so, is unclear. M3 Eagle suggests that no revision is necessary or appropriate.

As to the substance of its Petition (a pleading that appears to have been written months ago), NACGUA asserts that once they provided certain notices concerning group participation and representation through spokesmen, “[t]he individual members of NACGUA ceased to be parties to the contested case,” their individual protests do “not exist independently and separate from NACGUA’s protest,” that Josephine Beeman did not represent the individual members of NACGUA, and that “[w]ithout a subpoena, a notice of deposition was not sufficient to require the attendance of the individual members of NACGUA at depositions.....” The Petition asks the Hearing Officer to enter a ruling adopting these positions.

The Hearing Officer ruled on the subpoena issue in his December 1 Order, which was not challenged by NACGUA (until now). Subsequent to the December 1 Order’s issuance, M3 Eagle deposed 17 individual NACGUA members, NACGUA’s sole expert, and three non-NACGUA protestants. M3 Eagle does not seek to conduct further depositions. Accordingly, there would be no practical significance to revisiting the Hearing Officer’s decisions regarding deposition attendance.

NACGUA’s arguments regarding its former counsel’s representation also are moot. Ms. Beeman withdrew as counsel by her January 27, 2009 *Withdrawal of Attorney for North Ada County Ground Water Association* (“Withdrawal Notice”) and no longer represents any party in this matter. The Withdrawal Notice stated that David Head and John Thornton would henceforth represent NACGUA, and M3 Eagle did not object to that. In any event, it is unclear what NACGUA intends by raising this issue now. We believe it is moot.

NACGUA’s Petition contains also no arguments concerning depositions, Ms. Beeman’s representation, or the status of individual NACGUA member protestants that have not already

been addressed by M3 Eagle in earlier filings. *See, e.g., M3 Eagle's Motion for Order Compelling Parties to Attend Scheduled Depositions, or for Issuance of Subpoenas* (Nov. 24, 2008) (discussing the events leading up to the depositions and why the depositions were properly noticed); *M3 Eagle's Response to NACGUA's Motion to Designate 30(b)(6) Deponents* (Nov. 28, 2008) (discussing why M3 Eagle was not obligated to schedule 30(b)(6) depositions and noting that we did not intend to impede any protestant from obtaining counsel). M3 Eagle incorporates by this reference the arguments contained in its previous filings in this matter.

NACGUA's attempt to rekindle old issues regarding deposition procedures and protestant representation, and to do so one week before hearing, appears intended to increase M3 Eagle's costs, use up its counsel's (and the Hearing Officer's) time, and potentially delay the proceedings. All of this is prejudicial to M3 Eagle.

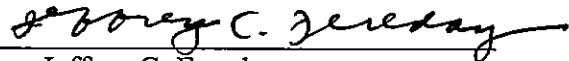
M3 Eagle requests that the Hearing Officer deny the Petition.

DATED this 9th day of April, 2009.

Respectfully submitted,

GIVENS PURSLEY LLP

By



Jeffrey C. Fereday

Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th of April, 2009, the foregoing was filed, served, or copied as follows:

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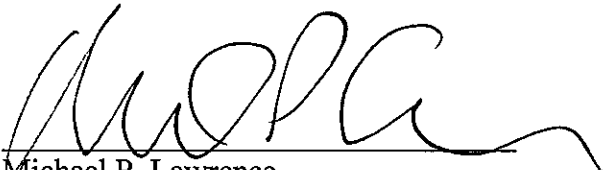
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