

Before Department of Water Resources
of the State of Idaho

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DEPARTMENT OF
WATER RESOURCES

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

**NACGUA's Response to M3's Eagle's motion to
deny NACGUA's Rule 711 Petition for Review of
December 1, 2008 Interlocutory Order; and
Memorandum in Support.**

To Hearing Officer, Mr. Gary Spackman,

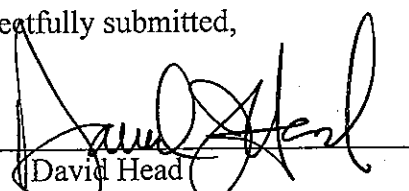
In response to a denial of petition request by Jeffrey C. Fereday and Michael P. Lawrence of the firm Givens Pursley LLP, we respectfully urge the hearing officer to issue an order now, or at the conclusion of the M3 Eagle hearing as submitted on page 2 of *NACGUA's Rule 711 Petition for Review of December 1, 2008 Interlocutory Order; and Memorandum in Support*. But for purposes of the M3 Eagle hearing which will commence on April 15, 2009, we request that depositions of NACGUA's individual members not be used. NACGUA believes Rule 711 as outlined below specifically addresses why these depositions are not usable.

Despite the claims of Mr. Fereday, we believe the filing of NACGUA's rule 711 petition is not limited by a specific time frame, and our filing of this motion is not moot as claimed, but involves important procedural rights of non-parties that should be addressed. In the statement of facts and request for order, we clearly identify those concerns, ~~NACGUA's rights, and the relief we are seeking.~~ With full knowledge and approval of the hearing officer and the applicant, we formed a single association comprised of 38 Protestants. Each protestant was required to sign a waiver of his or her individual rights as a protestant, and thereby have all rights subsumed into the corporate body known as North Ada County Groundwater User's Association or NACGUA. Those facts clearly establish the single identity of NACGUA as the protesting party, and not its individual members. Despite these facts, NACGUA was never deposed, but instead its individual members were deposed. In each case we filed objections, but our individual members were ultimately compelled (and did comply) by order to submit to these individual depositions. Those members were not represented by counsel, and were entitled to process that was denied them, thereby making these depositions not usable.

In consideration of these facts, we believe we have the right to make these legal arguments regarding procedure, and are due the order suggested in the petition. A position of support is provided in the February 2009 edition of the *Advocate*, for which a copy was provided to all parties with our petition.

Respectfully submitted,

By


David Head
John L. Thornton

Representing NACGUA

Certificate of Service

I HEREBY CERTIFY that on this 14th day of April, 2009, a true and correct of the document described below was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

NACGUA's Response to M3's Eagle's motion to deny NACGUA's Rule 711 Petition for Review of December 1, 2008 Interlocutory Order: and Memorandum in Support.

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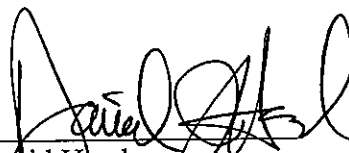
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By



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