

**BEFORE THE STATE ENGINEER, STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL
RESOURCES, DIVISION OF WATER RESOURCES**

IN THE MATTER OF APPLICATION
NOS. 54003 THROUGH 54021,
INCLUSIVE, FILED BY THE LAS
VEGAS VALLEY WATER DISTRICT TO
APPROPRIATE THE UNDERGROUND
WATERS OF SPRING VALLEY (184)
HYDROGRAPHIC BASINS, LINCOLN
AND WHITE PINE COUNTIES,
NEVADA.

**SOUTHERN NEVADA WATER
AUTHORITY'S OPPOSITION TO
NATIONAL PARK SERVICE'S
MOTION TO ALLOW TESTIMONY
OF DAVID PRUDIC**

State	'S EXHIBIT 61
DATE:	9-11-06

COMES NOW, the SOUTHERN NEVADA WATER AUTHORITY (hereinafter "SNWA"), by and through its attorneys the law firms of KING & TAGGART, LTD and McQUAID BEDFORD & VAN ZANDT, LLP, and presents its Opposition to the motion of the National Park Service (NPS) to allow testimony by David Prudic (Prudic Motion) and Motion to Exclude Evidence.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

By its Intermediate Order and Hearing Notice dated March 8, 2006 ("Intermediate Order"), the State Engineer ordered that a hearing be held beginning Monday, September 11, 2006, on the Applications pertaining to the Spring Valley basin. The Intermediate Order states that "[o]nly those persons or entities that have indicated their intent to present a case-in-chief or to participate in cross-examination are considered parties to the administrative hearing for purposes of service of evidentiary documents, witness lists, notice, and motions." (Intermediate Order, p. 7.)

The Intermediate Order also set the procedure, timing and format for exchange of exhibit and witness lists, summary of witness testimony, and copies of evidentiary documents intended

to be introduced at the hearing. The date of the initial evidentiary exchange was June 30, 2006. (*Id.* at p. 11.) Any pre-hearing motions were to be filed by July 7, 2006. (*Id.* at p. 16.) On August 11, 2006, NPS served the Prudic Motion on the parties, seeking to add Mr. Prudic as an expert witness to testify at the hearing.

II. The NPS Failed to Identify Mr. Prudic as a Witness According to the Intermediate Order And He Should Be Barred From Testifying

A. The NPS did Not Timely Serve a Witness Statement and Report for Mr. Prudic.

Under the Nevada Administrative Code (NAC), rulings made by the state engineer at a prehearing conference “[c]ontrol the course of subsequent proceedings unless modified at the hearing by the state engineer; and . . . [a]re binding upon all parties.” NAC 533.170 (h). The State Engineer required the parties to identify the witnesses for direct oral testimony at the hearing (NAC 533.230) and required parties and witnesses to submit their testimony in written form before the hearing date (NAC 533.250).

The initial evidentiary exchange for the Spring Valley hearings were to be served on each party and the State Engineer “no later than Friday, June 30, 2006.” (Intermediate Order at p. 11). While SNWA received NPS’s witness statements and reports on this date, Mr. Prudic was not included. Now, in a motion dated August 11, 2006, the NPS is asking permission for Mr. Prudic to testify.

NPS argues that Mr. Prudic’s testimony is needed to verify aspects of a report NPS submitted in its initial submittals on June 30, 2006, that Mr. Prudic prepared. (*See* NPS Ex. 2502). Now that SNWA has criticized the report, NPS wants to identify Mr. Prudic to testify about the report after the time for identifying all witnesses has passed. NPS elected to submit NPS Ex. 2505 and not identify any of its authors as witnesses. If NPS believed an author of the report was necessary to testify to prove NPS’ case-in-chief, then NPS should have complied with

the intermediate order and included Mr. Prudic as a witness to testify about the report in its initial witness list.

NPS characterizes Mr. Prudic's proposed testimony as "rebuttal" of SNWA's criticisms of the report. This backdoor approach to including Mr. Prudic is inappropriate since the obligation was on NPS, at the outset, to identify expert witnesses who would testify concerning expert reports in support of its position. Mr. Prudic's testimony would not be rebuttal because SNWA is not addressing a new issue or raising something that was not covered in the original submittal. Instead, SNWA is commenting on evidence originally submitted, that NPS should have anticipated would be rebutted. It is improper, now, for NPS to try to include Mr. Prudic after the fact.

The Intermediate Order sets out specific requirements for those parties who wish to participate in the hearing to submit evidentiary documents, witness lists, notice, and motions. This order was binding upon the NPS. Because Mr. Prudic's testimony in support of the NPS's case-in-chief has been submitted after the deadline of June 30, 2006 (and even after the rebuttal evidence deadline of August 4, 2006), the NPS should not be allowed to call Mr. Prudic as a witness.

B. The State Engineer Has Discretion To Exclude Mr. Prudic's Testimony for NPS's Failure to Comply with the Intermediate Order Because SNWA Will be Prejudiced if Mr. Prudic is Allowed to Testify.

NPS acknowledges in its motion that strict compliance with the code would require the State Engineer to exclude Mr. Prudic's testimony. As noted, failure to identify a witness in a pre-hearing order gives the State Engineer the option of excluding that witness or disregarding the testimony, when the failure prejudices a party. NAC § 533.230(3).

The time for identification of expert and lay witnesses was narrow and limited in the Intermediate Order. NPS served its motion to include Mr. Prudic nearly a month and a half after

the date ordered by the State Engineer. This does not provide the interested parties sufficient time to prepare to examine a new expert. The State Engineer provided a specific time line for the introduction of testimony in the Intermediate Order of March 8, 2006 and NPS had ample time to determine what witnesses it wanted to exchange by the June 30th date. And pre-hearing motions were due on July 7th, one week after the date of initial evidentiary exchange. SNWA has spent a great deal of time reviewing the evidence submitted by the parties on June 30th and has prepared pre-hearing motions accordingly. SNWA is now in the process of preparing for the hearing set for September 11, 2006 based on the material submitted by those parties who indicated their interest in participating in the case-in-chief by exchanging evidence. Because NPS did not give any indication that it intended to call Mr. Prudic, SNWA assumed the NPS had decided not to identify an expert witness who would testify about the report prepared in part by Mr. Prudic in the case-in-chief.

It would be unfair to allow the NPS to call Mr. Prudic to testify when it did not provide timely notice of whom they would present and what information would be presented or provide any of the required documentation (testimony summary and witness report). Due to the tight time frame of events leading up to the hearing on September 11, 2006, SNWA will not have time to adequately prepare for the Mr. Prudic's participation in the case-in-chief. NPS represents that the time between now and the hearing will be adequate to prepare for Mr. Prudic's testimony. When NPS submitted Mr. Prudic's report without identifying him as a witness, SNWA believed that no witness would be offered to testify about the report authored by Mr. Prudic. Allowing Mr. Prudic to testify about the report, potentially raising a whole host of unanticipated issues, unfairly burdens SNWA.

Thus not only does the late submission prevent SNWA from countering Mr. Prudic's testimony in the motions, NPS's motion is itself untimely. Also, NPS has neither submitted a

summary of Mr. Prudic's testimony nor a report he prepared for the hearing, forcing the parties to guess as to the actual substance of his testimony. All of these omissions will prejudice SNWA, which must spend additional time and money in review of this late submitted, insufficiently detailed evidence during a time needed for hearing preparation. This may require additional time thus causing delays in the hearing process. Accordingly, in the interest of expediting the hearings and administrative economy, the State Engineer has discretion to exclude Mr. Prudic for NPS's failure to timely include his testimony. As a matter of equity and to ensure a fair process, the State Engineer should exercise his discretion and not allow Mr. Prudic to testify in the case-in-chief.

III. CONCLUSION

SNWA requests that NPS be barred from presenting Mr. Prudic's testimony during the hearing. Their late filed motion and failure to comply with the requirements of the intermediate order prejudices SNWA and imperils the strict time line set for the pending hearing. Mr. Prudic's testimony will not add anything to this already complex hearing. Instead, allowing NPS to disregard the procedures for including witnesses will simply in accord NPS the ability to

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conduct the hearing outside the rules and thereby prejudice SNWA. Therefore, SNWA respectfully requests that Mr. Prudic be excluded from testifying at the hearing.

DATED this 22nd day of August, 2006.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of KING & TAGGART, LTD., and that on this date I served, or caused to be served, a true and correct copy of the **SOUTHERN NEVADA WATER AUTHORITY'S OPPOSITION TO NATIONAL PARK SERVICE'S MOTION TO ALLOW TESTIMONY OF DAVID PRUDIC**, addressed to:

By **U.S. POSTAL SERVICE**: I deposited for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed to:

SEE ATTACHED SERVICE LIST

By **FACSIMILE**: I transmitted via facsimile from the law offices of KING & TAGGART, a true and correct copy of the above-identified document, in the ordinary course of business, to the individual and facsimile number listed below:

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By **E-MAIL**:

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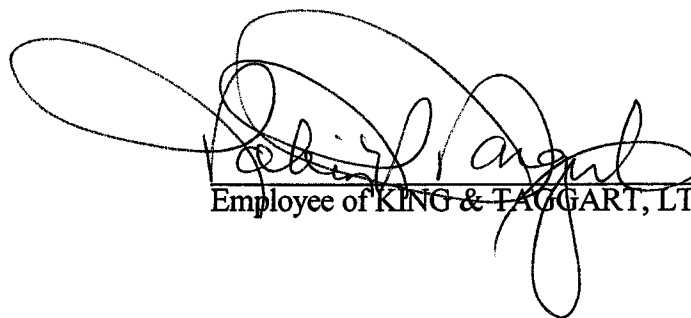
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DATED this 22nd day of August, 2006.



Employee of KING & TAGGART, LTD.

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