

Northern Nevada Water Planning Commission

STAFF REPORT

DATE: January 30, 2020
TO: Chairman and Members, Northern Nevada Water Planning Commission
FROM: Jim Smitherman, Water Resources Program Manager
SUBJECT: Review of Western Regional Water Commission (“WRWC”) Resolution Number 5, Adopting Facility Conformance Review Procedures, dated April 16, 2014, discussion and possible direction to staff, and possible recommendation to the WRWC

SUMMARY

Recent communication between NNWPC/WRWC staff and Reno planning staff led to a review of NNWPC/WRWC conformance review procedures as set forth in WRWC Resolution No. 5, entitled “A Resolution Adopting Facility Conformance Review Procedures” (attached), and adopted in the 2016-2035 Comprehensive Regional Water Management Plan (“RWMP”). After discussing with NNWPC/WRWC legal counsel, staff believes that it may be appropriate for the NNWPC to recommend to the WRWC some revisions to the procedures.

DISCUSSION

Late last year staff learned of an appeal of a special use permit granted by the Reno Planning Commission for two 300,000-gallon water equalization tanks proposed for the Cold Springs hydrographic basin. The appeal referred to the RWMP and asserted that the permit was issued prematurely because impacts were not included in the RWMP. Staff discussed the appeal with Reno planning staff and asked how NNWPC/WRWC staff could help clarify the role of the RWMP relative to the appeal. Reno staff suggested clarification as to whether the proposed tanks would require a conformance review by the NNWPC/WRWC. Staff communicated to Reno that the proposed tanks are not of such a kind or size as to affect the working of the RWMP as distinct from providing normal service to customers, and as such do not trigger conformance review.

This activity prompted staff to review and carefully consider Resolution No. 5. After discussing with legal counsel, it is apparent that the procedures adopted in the Resolution are not entirely consistent with the intent of the Western Regional Water Commission Act (the “Act”), Chapter 531 Statutes of Nevada 2007.

Under Section 51 of the Act, after the RWMP is adopted, “no facility intended to provide a service relating to a subject of the Comprehensive Plan within the planning area may be constructed, if the facility is of such a kind or size as to affect the working of the Comprehensive Plan as distinct from providing normal service to customers, unless it is included in the Comprehensive Plan or has been reviewed and approved as provided in subsection 3.”

Subsection 3 provides that a “proposal to construct a facility described in subsection 1 . . . must be submitted to the Water Planning Commission for review and recommendation to the Board concerning the conformance of the proposal with the Comprehensive Plan.”

Section 51 of the Act is intended to provide for conformance review of “major” or “regional” facilities proposed for construction, intended to provide a service relating to a subject of the RWMP. Sections 41 and 42 provide clarification as to the subjects of the RWMP and the types of facilities subject to review.

Paragraph 1 of the Resolution provides that staff will review development applications to identify proposals to construct facilities that may affect the working of the RWMP, however, counsel advises that conformance review should be required and triggered only where a utility or municipality has proposed the construction of a major, regional facility. Planning or permitting of facilities does not trigger conformance review, therefore staff review of development applications does not appear to be appropriate. Also, the first determination made by staff should be as to whether the facility proposed for construction is of such a kind or size as to affect the working of the RWMP as distinct from providing normal service to customers, keeping in mind that only major, regional facilities would be subject to review. Only then would staff determine whether the facility is in the RWMP. Paragraph 1 should be revised appropriately.

Paragraph 2 lists examples of facilities that may affect the working of the RWMP. Counsel advises that the NNWPC and/or the WRWC Board could adopt policies providing further guidance as to what constitutes a major or regional facility. The list in Paragraph 2 is intended to provide such guidance, however it should be reviewed and revised as necessary to enhance its usefulness.

Paragraphs 3 and 4 describe procedures whereby staff would make recommendations to the NNWPC as to whether a conformance review is required, and if one is required, the establishment of a meeting date. These procedures should be reviewed to ensure NNWPC concurrence.

Paragraph 5 describes three items required by Subsection 3, Section 51, to be in the review:

- an evaluation of stranded costs,
- the need for the facility within the planning area, and
- the impact that construction of the facility will have on any potential consolidation of public purveyors.

The procedures should be revised to clarify that the submitting entity must provide responses to these items relative to the proposal for construction before a meeting date is established for the conformance review.

The remainder of Paragraphs 5 and 6 address requirements and procedures for conformance reviews as per Subsections 3 and 4, Section 51.

PREVIOUS ACTION

None

BACKGROUND

WRWC Resolution Number 5 was adopted on April 16, 2014, pursuant to Subsection 4, Section 51 of the of the Act which states “[t]he Board shall provide, by resolution after holding a hearing, for the Water Planning Commission or its staff to make final decisions concerning the conformance of classes of proposed facilities to the Comprehensive Plan. A resolution adopted pursuant to this section must provide an opportunity for the applicant or a protestant to appeal from a decision of the Water Planning Commission or its staff to the Board.”

FISCAL IMPACT

None

RECOMMENDATION

Staff recommends that the NNWPC consider and discuss the staff report and provide appropriate direction to staff, and/or a recommendation to the WRWC Board concerning conformance review procedures.

Attachment

JS:jp

WESTERN REGIONAL WATER COMMISSION

RESOLUTION NO. 5

A RESOLUTION ADOPTING FACILITY CONFORMANCE REVIEW PROCEDURES

WHEREAS, Section 51(3), Chapter 531, Statutes of Nevada 2007, the Western Regional Water Commission Act (the "Act"), requires a proposal to construct a facility intended to provide a service related to the Comprehensive Regional Water Management Plan (the "Plan") to be submitted to the Northern Nevada Water Planning Commission ("NNWPC") for review and recommendation to the Western Regional Water Commission ("WRWC") Board concerning the conformance of the proposal with the Plan; and

WHEREAS, Sections 51(2) and (3) of the Act provide that such a facility may not be constructed, if it is of such a kind or size as to affect the working of the Plan as distinct from providing normal service to customers, unless it is included in the Plan, proposed to meet an emergency as defined in the Plan, or has been reviewed and approved for conformance by the WRWC; and

WHEREAS, Section 51(4) of the Act allows the WRWC Board to provide, by resolution after holding a hearing, for the NNWPC or its staff to make final decisions concerning the conformance of proposed facilities to the Plan. Such a resolution, if adopted, must provide an opportunity for an applicant or protestant to appeal to the WRWC Board from a decision of the NNWPC or its staff; and

WHEREAS, the NNWPC, at its meeting held December 4, 2013, recommended approval of the attached Facility Conformance Review Procedures, whereby the WRWC delegates final conformance decisions to the NNWPC and its staff, with appropriate rights of appeal to the WRWC for both applicants and protestants; and

WHEREAS, a public hearing on the proposed procedures was duly noticed on April 4, 2014 and April 5, 2014, and held on April 16, 2014, by the WRWC.

NOW, THEREFORE, IT IS RESOLVED that the Western Regional Water Commission does hereby find that the proposed procedures provide a fair, reasonable, and efficient process for the review of proposals to construct facilities required by the Act; and

IT IS FURTHER RESOLVED that the attached Facility Conformance Review Procedures be, and are hereby, approved and adopted, and shall be followed and administered from this day forward according to their terms.

WESTERN REGIONAL WATER COMMISSION

RESOLUTION NO. 5, PAGE 2

Upon motion of Geno Martini, seconded by Ron Smith, the foregoing Resolution was approved and adopted April 16, 2014, by the following vote of the Board of Trustees:

Ayes: Mike Carrigan, Sandra Ainsworth, Steve Cohen, Kitty Jung, Geno Martini, Ron Smith

Nays: None

Abstain: None

Absent: Vaughn Hartung, Jenny Brekhus, Neoma Jordan


Chairman, WRWC Board



STATE OF NEVADA

COUNTY OF WASHOE

On the 16th day of April, 2014, personally appeared before me, a Notary Public, Mike Carrigan, known to me to be the Chairman of the Board of Trustees of the Western Regional Water Commission, who acknowledged that he executed the foregoing Resolution.



Notary Public

Western Regional Water Commission

Facility Conformance Review Procedures

1. Western Regional Water Commission ("WRWC") / Northern Nevada Water Planning Commission ("NNWPC") Staff will review local and regional development applications on a regular basis to identify proposals to construct a facility that may affect the working of the Comprehensive Regional Water Management Plan (the "Plan"), and make a determination as to whether the facility in issue is included in the Plan, or proposed for construction in order to meet an emergency as defined in the Plan. If so, no conformance review is required, and Staff shall so notify the NNWPC at its next meeting.
2. If the facility is not included in the Plan, or is not proposed to meet an emergency, Staff will request the applicant to submit the proposal for review, conduct an analysis, and make an initial determination as to whether the facility may be of such a kind or size as to affect the working of the Plan as distinct from providing normal service to customers. Examples of facilities that may affect the working of the Plan include, but are not limited to:
 - a. Facility increasing existing capacity by more than 625 acre feet of water supply per year or sewage processing of 187,500 gallons per day
 - b. New resource, e.g. importation, creeks, poor quality groundwater
 - c. New or expanded water reclamation facility
 - d. New sewer interceptor greater than 30 inches diameter
 - e. New reclaimed water transmission main greater than 24 inches diameter
 - f. New water transmission main greater than 30 inches diameter
 - g. Regional water storage facility
 - h. Flood control facility
 - i. Hydrologic or hydraulic modification of stream or river
 - j. New or expanded water treatment facility
 - k. Facility having impact on the potential consolidation of public purveyors
3. If the facility, in Staff's analysis, is not of such a kind or size as to affect the working of the Plan as distinct from providing normal service to customers, Staff will prepare a recommendation to the NNWPC for review and a decision as to whether a conformance review by the NNWPC is required.
4. If the facility, in Staff's analysis, may be of such a kind or size as to affect the working of the Plan as distinct from providing normal service to customers, Staff will prepare an analysis/report and set a meeting date for conformance review by the NNWPC.
5. The NNWPC will review the proposal and Staff's analysis/report, and approve or disapprove the proposal as conforming to the Plan. The review must include an evaluation of stranded costs and the impact that construction of the facility will have on any potential consolidation of public

WRWC
Facility Conformance Review Procedures

purveyors, as defined in Chapter 531, Statutes of Nevada 2007. The NNWPC shall limit its review to the substance and content of the Plan and shall not consider the merits or deficiencies of a proposal in a manner other than is necessary to enable them to make a determination concerning conformance with the Plan. Any disapproval of conformance must be accompanied by recommended actions to be taken to make the proposal conform to the Plan.

If the NNWPC fails to approve or disapprove the proposal as conforming to the Plan within 30 days after the proposal is submitted to it, the NNWPC shall be deemed to have approved the proposal as conforming to the Plan.

6. The applicant or a protestant may appeal to the WRWC Board from a decision of Staff made pursuant to Paragraph 1, or a decision of the NNWPC made pursuant to Paragraphs 3 or 5, by mailing or delivering a written notice of appeal to the WRWC Water Resources Program Manager within ten (10) business days following the decision subject to appeal.

6.1 Upon receipt of a Notice of Appeal, the WRWC Program Manager will set a meeting date for the WRWC Board to hear the appeal. The WRWC Board shall limit its review to the substance and content of the Plan and shall not consider the merits or deficiencies of a proposal in a manner other than is necessary to enable them to make a determination concerning conformance with the Plan.

6.2 Upon appeal, the WRWC Board may uphold or reverse the decision subject to appeal. Any disapproval of conformance must be accompanied by recommended actions to be taken to make the proposal conform to the Plan.