

Northern Nevada Water Planning Commission

STAFF REPORT

DATE: January 28, 2021
TO: Northern Nevada Water Planning Commission ("NNWPC")
FROM: Chris Wessel, NNWPC Water Resources Program Manager
SUBJECT: Report on proposed Facility Conformance Review Procedures; possible recommendation to the Western Regional Water Commission regarding such Procedures, and possible direction to staff.

SUMMARY

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 NNWPC for review and recommendation to the Western Regional Water Commission ("WRWC") Board concerning the conformance of the proposal with the Plan. 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.

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.

Staff and Legal Counsel have found it necessary to revise the existing Facility Conformance Review Procedures, adopted in 2014, to provide clarity and better alignment with the Act. Legal Counsel and Staff developed the attached proposed revised Procedures after consulting with staff from public water purveyors and local governmental entities represented on the NNWPC and WRWC. The proposed revised Procedures are intended to comply with all statutory requirements and provide: a step by step process for facility conformance review; examples of facilities that may affect the working of the Plan; and a specific process for appellate review of NNWPC decisions by the WRWC Board.

Resolution 5, dated April 16, 2014, adopting the existing Facility Conformance Review Procedures is also attached.

FISCAL IMPACT

None.

RECOMMENDATION

Staff recommends that the NNWPC recommend to the WRWC the adoption of an Amendment to Resolution 5, after holding a public hearing, approving the proposed revised Facility Conformance Review Procedures.

POSSIBLE MOTION

Should the NNWPC agree with the recommendation, a suggested motion is: “Move to recommend to the WRWC that the WRWC adopt an Amendment to Resolution 5, after holding a public hearing, approving the proposed revised Facility Conformance Review Procedures.”

Attachments:

1. Proposed, Revised Facility Conformance Review Procedures
2. Resolution 5 Adopting Facility Conformance Review Procedures, April 16, 2014

Western Regional Water Commission

REVISED Facility Conformance Review Procedures (Sec. 51 of Act)

1. Western Regional Water Commission ("WRWC") / Northern Nevada Water Planning Commission ("NNWPC") Staff will review proposals received from utilities, municipalities or other service providers to construct major, regional facilities intended to provide a service relating to a subject of the Comprehensive Regional Water Management Plan (the "Plan") within the planning area, and make a determination as to whether facility conformance review is required under Section 51 of the Western Regional Water Commission Act.

2. Facilities subject to conformance review shall consist of major, regional facilities that are of such a kind or size as to affect the working of the Plan described as follows ("Major/Regional Facilities"), but which are not otherwise exempt from review as set forth in Section 3 below:

- a. Facility which increases existing water supply capacity by more than five million gallons per day (mgd), or which provides a new source of water supply (e.g. importation, creeks, groundwater, category A+ reclaimed water) in excess of 1,000 acre feet annually (afa);
- b. New water reclamation facility i) of any size which discharges to a river, creek, lake or other surface water source, or ii) with capacity in excess of 187,500 gallons per day (gpd) which discharges elsewhere.
- c. Facility which expands sewage processing capacity of an existing water reclamation facility above its permitted capacity;
- d. New water treatment facility with a capacity greater than five mgd;
- e. Facility which expands capacity of an existing water treatment facility by more than 20 mgd;
- f. New sewer interceptor greater than 30 inches diameter and more than two miles in length;
- g. New reclaimed water transmission main greater than 24 inches diameter and more than two miles in length;
- h. New potable water transmission main greater than 30 inches diameter and more than two miles in length; and
- i. Regional water storage facility with a capacity in excess of 4,000 acre feet.

3. The following facilities shall be exempt from conformance review:
 - a. Major/Regional Facilities which are included in the Plan.
 - b. Major/Regional Facilities which have been reviewed and found in conformance pursuant to subsection 3 of Section 51 of the Act, or which have been deemed conforming pursuant to subsection 3 of Section 51 of the Act;
 - c. Facilities which do not qualify as Major/Regional Facilities, including without limitation a facility: i) which is not of such a kind or size as to affect the working of the Plan; ii) is of such a kind or size related to providing normal service to customers; or iii) is proposed for construction in order to meet an emergency as defined in the Plan.

4. Staff will request that the utility (public or private), municipality or other person proposing the Major/Regional Facility submit the proposal including an evaluation of stranded costs, if any, 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. Staff will then conduct a review, make an initial determination as to conformance with the Plan and set a meeting date for conformance review by the NNWPC.

5. The NNWPC will review the proposal and Staff's report and approve or disapprove of the proposal as conforming to the Plan to the Western Regional Water Commission. 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.

6. 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.

7. An applicant or an aggrieved person may appeal the NNWPC decision to the WRWC Board delivering a written notice of appeal to the WRWC Water Resources Program Manager within ten (10) business days following the NNWPC decision.

8. 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 conduct a de novo review and 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. The WRWC Board may uphold or reverse the decision. Any disapproval of conformance must be accompanied by recommended actions to be taken to make the proposal conform to the Plan.

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.