

STAFF REPORT

DATE: April 1, 2021
TO: Northern Nevada Water Planning Commission ("NNWPC")
FROM: Chris Wessel, Water Resources Program Manager
SUBJECT: Discussion, action, and possible recommendation to the Western Regional Water Commission ("WRWC") on amendments to Resolution No. 5 and Facility Conformance Review Procedures under Section 51 of the Western Regional Water Commission Act; 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 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.