

Western Regional Water Commission

STAFF REPORT

DATE: May 14, 2021

TO: Chairman and Members, Western Regional Water Commission (“WRWC”)

FROM: Chris Wessel, Water Resource Program Manager,
Jim Smitherman, Water Resource Consultant,
John Rhodes, Conflict Legal Counsel

SUBJECT: **Public Hearing** and discussion and action on revised Facility Conformance Review Procedures pursuant to Section 51 of the WRWC Act recommended by the Northern Nevada Water Planning commission (“NNWPC”) and discussion, action and possible adoption of an amendment to Resolution No. 5: a resolution adopting facility conformance review 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(1) through (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.

The NNWPC, at its meeting held May 5, 2021, recommended that the WRWC adopt an amendment to Resolution No. 5, after holding a public hearing, approving the attached revised Facility Conformance Review Procedures: designating certain classes of facilities for conformance review; providing a process for conformance review of other facilities not specifically designated; and delegating final conformance decisions to the NNWPC, with appropriate rights of appeal to the WRWC for both applicants and protestants.

PREVIOUS ACTION

None.

BACKGROUND

Legal Counsel and Staff developed the proposed revised Procedures after consulting with staff from several public water purveyors and local governmental entities represented on the NNWPC and WRWC. Prior to April 1, 2008, the effective date of the Act, conformance review was the responsibility of the Regional Water Planning Commission, the predecessor to the NNWPC. The proposed revised Procedures are intended to comply with all statutory requirements and provide: a step by step process for facility conformance review; a list of Major/Regional Facilities that shall be subject to conformance review; a process for conformance review of other facilities not specifically designated; and a specific process for appellate review of NNWPC decisions by the WRWC Board.

FISCAL IMPACT

None.

RECOMMENDATION

The NNWPC recommends that the WRWC adopt the attached amendment to Resolution No. 5, approving the attached revised Facility Conformance Review Procedures.

POSSIBLE MOTION

Should the WRWC agree with the recommendation, a suggested motion is: "Move to adopt the proposed amendment to Resolution No. 5, approving the proposed revised Facility Conformance Review Procedures."

Attachments: WRWC Resolution No. 5, as Amended May 20, 2021
Revised Facility Conformance Review Procedures

CW:jp

WESTERN REGIONAL WATER COMMISSION

**RESOLUTION NO. 5
AS AMENDED MAY 20, 2021**

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(1) - (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 May 5, 2021, recommended that the WRWC adopt an amendment to Resolution No. 5, after holding a public hearing, approving the attached revised Facility Conformance Review Procedures: designating certain classes of facilities for conformance review; providing a process for conformance review of other facilities not specifically designated; and delegating final conformance decisions to the NNWPC, with appropriate rights of appeal to the WRWC for both applicants and protestants; and

WHEREAS, a public hearing on the proposed attached revised Procedures was duly noticed on May 10, 2021, and held by the WRWC on May 20, 2021, and

WHEREAS, the WRWC desires to amend Resolution No. 5 to adopt and approve the attached proposed Procedures.

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

WESTERN REGIONAL WATER COMMISSION

**RESOLUTION NO. 5, PAGE 2
AS AMENDED MAY 20, 2021**

IT IS FURTHER RESOLVED that the attached revised 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.

Upon motion of _____, seconded by _____, the foregoing Resolution was approved and adopted May 20, 2021, by the following vote of the Board of Trustees:

Ayes: _____

Nays: _____

Abstain: _____ Absent: _____

Chairman, WRWC Board

STATE OF NEVADA

COUNTY OF WASHOE

On the ___th day of May, 2021, personally appeared before me, a Notary Public, Vaughn Hartung, 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
REVISED Facility Conformance Review Procedures

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 (the "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 ("Major/Regional Facilities"), and shall include, but are not limited to:

- 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 and, after receipt of a complete proposal for a Major/Regional Facility listed Section 2 above, make an initial determination as to conformance with the Plan and set a meeting date for conformance review by the NNWPC.

If a proposed facility is not listed in Section 2 above, but may, in Staff's best judgment, be a Major/Regional Facility of such a kind or size as to affect the working of the Plan, Staff will submit the complete proposal to the NNWPC for a final determination as to whether conformance review is required under Section 51 of the Act. If the NNWPC determines that conformance review is required, they shall proceed forthwith, at the same meeting at which the determination for conformance review is made, to review and consider the proposal as provided in Section 5 below.

5. The NNWPC will review the proposal and Staff's report and approve or disapprove of the proposal as conforming to the Plan. 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 first submitted to them at public meeting as provided in

Section 4 above, 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 10 business days following the NNWPC decision.

8. Upon receipt of a written 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 of the NNWPC. Any disapproval of conformance must be accompanied by recommended actions to be taken to make the proposal conform to the Plan.