



TO: Board of Directors
THRU: Mark Foree, General Manager
FROM: John Erwin, Director Natural Resources-Planning & Management
DATE: 3 January 2011
SUBJECT: **Second reading and request for Board adoption of Resolution No. 169 amending TMWA's Rule 5 to clarify applicability of Schedule Water System Facilities Charges (WSF) Refunds and Credits**

RECOMMENDATION

After the Public Hearing for the Second Reading of the revisions to TMWA's Rule 5, staff recommends the Board's adopt Resolution No. 169 to revise Rule 5 per the revisions presented in the *attached* redline of TMWA's Rule 5 which revisions are to be effective the start of the business day January 20, 2011.

The proposed revisions clarify refunds of Schedule WSF fees and ensure monies collected for Schedule WSF fees, should a credit be established, be applied against Schedule WSF fees in subsequent or other Water Service Agreements as directed by Applicants. Additions are shown in red-underlined text and deletions are indicated in red-strikethrough text.

DISCUSSION

In March 2008, the Board adopted revisions to Rule 5 that established the conditions when a Water Service Agreement terminates. Upon request by the Applicant, Schedule WSF charges paid by the Applicant that are \$50,000 or less are refunded, or a credit is established if WSF fees exceed \$50,000. This process helps reduce TMWA's exposure of refunding monies collected against investments in facilities that were constructed for the applicants' project(s).

Applicants who are eligible to receive credits are required to enter into a WSF Credit Agreement, which agreement recognizes the intention of Rule 5 that the credits "may only be used on a dollar for dollar basis to satisfy WSF fees". To date, TMWA has administered the credit program such that credits may only be used to satisfy WSF fees, and not any other fees or payment obligations due TMWA. Staff believes it appropriate to clarify Rule 5 to simplify refund tracking and ensure monies collected for Schedule WSF fees, should a credit be established, be limited and applied against Schedule WSF fees in subsequent or other Water Service Agreements as directed by Applicant(s).

Truckee Meadows Water Authority

RULE 5

WATER SYSTEM FACILITIES

- b. A Water Service Agreement shall automatically terminate and be null and void without further notice from the Authority (i) on the date and terms stated within the Water Service Agreement; (ii) on the date Applicant provides written notice to the Authority that Applicant's project is canceled; (iii) if Applicant does not commence construction on water facilities required by this Rule and/or the Water Service Agreement within 12 months of the effective date of the Water Service Agreement or within such other deadline contained in the Water Service Agreement; or (iv) on the date approval for the project by the applicable governing body expires or is terminated. Upon the termination of a Water Service Agreement, the Application for the project for new Service or Modified Service shall automatically be deemed rejected or canceled.
- (1) If a rejected or canceled Application for the project is re-submitted, a new Water Service Agreement must be entered into by the Authority and Applicant for the project, which agreement may include different terms and conditions, including different fees and facility charges, than those set forth in the prior terminated Water Service Agreement.
- c. If a Water Service Agreement has been executed by Applicant and Authority, and Applicant has paid all required charges in accordance with Schedule WSF and the Water Service Agreement is subsequently terminated, the Authority will:
- (1) Refund to the Applicant all Schedule WSF charges paid by the Applicant, without interest, provided Applicant submits a written request for a refund to the Authority ~~within 60 days~~ after the execution of the Water Service Agreement and provided the total of Schedule WSF charges eligible for refund is \$50,000 or less, or;
- (2) Credit the Applicant, or Applicant's designated successor or assign, the dollar amount of all Schedule WSF charges paid by Applicant, without interest, which dollar credit can be applied to Schedule WSF charges in other Water Service Agreement(s) for Application(s) for new Service and Modified Service within the Authority's retail service area as directed in writing by the Applicant, or Applicant's designated successor or assign.

TRUCKEE MEADOWS WATER AUTHORITY

RESOLUTION NO. 169

A RESOLUTION ADOPTING REVISIONS TO TRUCKEE MEADOWS WATER AUTHORITY’S RULE 5 “WATER SYSTEM FACILITIES”

WHEREAS, upon its formation, the Truckee Meadows Water Authority (“the Authority”) adopted Rules of Service on March 28, 2001, and such Rules have been modified and revised subsequent to the formation of TMWA;

WHEREAS, the Authority’s Board desires to amend the Authority’s Rule 5 to clarify refunds of Schedule Water System Facilities Charges (WSF) fees and ensure monies collected for Schedule WSF fees, should a credit be established, be applied against Schedule WSF fees in subsequent or other Water Service Agreements as directed by Applicants;

WHEREAS, after conducting a review and public hearings of its Rules, the Authority has revised and amended the Rules to meet the needs of its business environment by eliminating obsolete language and ensuring consistency within the Rule; and

WHEREAS, the revisions to Rule 5 set forth in Exhibit 1 attached hereto and incorporated herein are appropriate and justified;

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE TRUCKEE MEADOWS WATER AUTHORITY DOES RESOLVE:

The revisions to Rule 5 as set forth in Exhibit 1 are approved and adopted effective the start-of-business day January 20, 2011.

Upon motion of _____, seconded by _____, the foregoing Resolution was passed and adopted this 19th day of January, 2011, by the following vote of the Board:

Ayes: _____

Nays: _____

Abstain: _____ Absent: _____

Approved this 19th day of January, 2011

Chairman

STATE OF NEVADA,)
 : ss.
COUNTY OF WASHOE.)

On this 19th day of January, 2011, Mike Carrigan, Chairman of the Board of Truckee Meadows Water Authority, personally appeared before me, a Notary Public in and for said County and State, and acknowledged that he executed the above instrument freely and voluntarily and for the purposes therein mentioned.

Notary Public