

City of Carson City
Agenda Report

Item # 9-3B

Date Submitted: June 19, 2009

Agenda Date Requested: July 2, 2009
Time Requested: Consent Agenda

To: Mayor and Supervisors

From: Public Works Department

Subject Title: Action to adopt Resolution No. _____, a resolution approving the Cooperative Agreement between State of Nevada Department of Corrections and Carson City For Water Service to the Northern Nevada Correctional Center. (Arnold)

Staff Summary: Adoption of the Resolution approving this agreement will continue to allow Carson City to provide water service to the Northern Nevada Correctional Center, facilitate the location of a new City well on State property, and will maintain the State of Nevada Department of Correction's water rights in good standing with the State Engineer.

Type of Action Requested: (check one)
☒ Resolution ☐ Ordinance
☐ Formal Action/Motion ☐ Other (Status Report)

Does This Action Require A Business Impact Statement: ☐ Yes (XX) No

Recommended Board Action: I move to adopt Resolution No. _____, a resolution approving the Cooperative Agreement between State of Nevada Department of Corrections and Carson City For Water Service to the Northern Nevada Correctional Center.

Explanation of Recommended Board Action: The agreement between Carson City and State of Nevada Department of Corrections allows for water service to continue by Carson City to the Northern Nevada Correctional Center and will continue to keep water rights owned by the State of Nevada Department of Corrections in good standing with the State Engineer. Additionally, this agreement allows for the locating of a City municipal well on State property. This agreement benefits both parties by allowing better utilization and management of available Carson Valley water resources. The original cooperative agreement for this purpose was established in March of 1991 and needs to be renewed.

Fiscal Impact: N/A

Funding Source: N/A

Explanation of Impact: N/A

Alternatives: Do Not Approve

Supporting Material:

1. Resolution and Cooperative Agreement between State of Nevada Department of Corrections and Carson City For Water Service to the Northern Nevada Correctional Center.

Prepared By: Ken Arnold, Deputy Public Works Director

Reviewed By: [Signature]
(Department Head)

Date: 6.23.09

Concurrences: [Signature]
(City Manager)

Date: 6/24/09

[Signature]
(District Attorney)

Date: 6-23-09

Nancy Paulsen
(Finance Director)

Date: 6/23/09

Board Action Taken:

Motion: _____

1) _____

Aye/Nay

2) _____

(Vote Recorded By)

RESOLUTION NO. _____

**RESOLUTION ADOPTING AND APPROVING A COOPERATIVE
AGREEMENT BETWEEN STATE OF NEVADA, DEPARTMENT OF
CORRECTIONS, AND CARSON CITY FOR WATER SERVICE TO THE
NORTHERN NEVADA CORRECTIONAL CENTER**

WHEREAS, any two or more political subdivisions of the State of Nevada may enter into cooperative agreements for the performance of any governmental function pursuant to NRS 277.045; and

WHEREAS, NRS 277.045 provides that every such agreement must be by formal resolution or ordinance of the governing body of each political subdivision included and must be spread at large upon the minutes, or attached in full thereto as an exhibit, of each governing body; and

WHEREAS, the parties to the Cooperative Agreement between State of Nevada Department of Corrections and Carson City For Water Service to the Northern Nevada Correctional Center, desire to adopt and approve such agreement as required by NRS 277.045. A copy of the agreement is attached to this Resolution as Exhibit "A;" and

WHEREAS, all parties to the Cooperative Agreement between State of Nevada Department of Corrections and Carson City For Water Service to the Northern Nevada Correctional Center are political subdivisions of the State of Nevada; and

NOW, THEREFORE, BE IT RESOLVED that the terms and conditions of Cooperative Agreement between State of Nevada Department of Corrections and Carson City For Water Service to the Northern Nevada Correctional Center are hereby adopted and approved; and

BE IT FURTHER RESOLVED that the Cooperative Agreement between State of Nevada Department of Corrections and Carson City For Water Service to the Northern Nevada Correctional Center shall be spread at large upon the minutes or attached in full thereto as an exhibit, and that a copy of this Resolution shall be sent to the State of Nevada, Department of Corrections.

Upon motion by Supervisor _____, seconded by Supervisor _____, the foregoing Resolution was passed and adopted this _____ day of _____, 2009 by the following vote:

AYES: _____ NAYS: _____

ABSENT: _____ ABSTAIN: _____

Robert L. Crowell, Mayor
Carson City, Nevada

ATTEST:

Alan Glover, Clerk
Carson City, Nevada

**COOPERATIVE AGREEMENT
BETWEEN THE STATE OF NEVADA, DEPARTMENT OF CORRECTIONS
AND CARSON CITY NEVADA
FOR WATER SERVICE TO THE NORTHERN NEVADA CORRECTIONAL CENTER**

THIS AGREEMENT, made and entered into this _____ day of _____, 2009 by the STATE of NEVADA Department of Corrections, hereinafter referred to as STATE; and CARSON CITY NEVADA, a consolidated municipality under the Nevada Revised Statutes, hereinafter referred to as CARSON.

WITNESSETH:

WHEREAS, NRS 277.180 provides that any public agency may contract with any one or more other public agencies to enter into Agreements to perform a governmental service, activity or undertaking which any one or more of the agencies are authorized by law to perform; and

WHEREAS, CARSON owns, operates, and maintains a municipal water system for the benefit of their citizens and has and is currently serving the Northern Nevada Correctional Center; and

WHEREAS, STATE owns and operates an internal water distribution system for the Northern Nevada Correctional Center after receiving water through a water meter from CARSON; and

WHEREAS, STATE owns certain water rights under Certificates of Appropriation No. 6396 (Permit 20435), attached as Exhibit A, and No. 8785 (Permit 27279), Exhibit B; and

WHEREAS, CARSON has the ability to produce the water to support the rights owned by the STATE referred to above from its municipal water system; and

WHEREAS, CARSON and STATE previously had entered into an Interlocal Agreement, dated March 7, 1991 relative to water system improvements which were completed pursuant to that agreement which included CARSON providing water service to the Northern Nevada Correctional Center; and

WHEREAS, CARSON and STATE desire to continue the same water service relationship as previously agreed; and

WHEREAS, CARSON and STATE desire to renew and extend the previous water service agreement for the Northern Nevada Correctional Center.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein, it is hereby agreed by and between the parties as follows:

ARTICLE I

The parties agree as follows:

1. CARSON will provide water service to STATE for the Northern Nevada Correctional Center from CARSON's municipal water system.
2. STATE will make available Carson Valley water rights, as described in Certificates of Appropriation No. 6396 (Permit 20435) and No. 8785 (Permit 27279), to CARSON to offset water required to serve the Northern Nevada Correctional Center. In the event the water demand by STATE exceeds the amounts in Certificates of Appropriation No. 6396 (Permit 20435) and No. 8785 (Permit 27279) then STATE will provide additional State water rights, as approved by the Division of Water Resources, sufficient to meet the demand to serve the Northern Nevada Correctional Center.
3. CARSON will charge STATE the standard City monthly water rate for residential or commercial accounts pursuant to the current rates and charges specified in the March 19, 2009 rate schedule issued by the Carson City Board of Supervisors, as allowed by the Cooperative Agreement between Public Agencies, effective July 1, 1999, for the supply of potable water to state owned property through CARSON's water system. Water rate increases to the STATE will occur July 1 of each year, with notice of the proposed increase to be approved by the Carson City Board of Supervisors together with the estimated increase for the second year of the biennium provided to the STATE by February 15 of each odd numbered year. CARSON agrees not to charge STATE any connection fees for water or sewer service provided to the Northern Nevada Correctional Center by CARSON pursuant to this Agreement.
4. STATE will be fully responsible for maintaining the water rights owned by STATE. STATE and CARSON will cooperate in maintaining the water rights in good standing with the State Engineer. STATE will make waters under Certificates of Appropriation No. 6396 (Permit 20435) and No. 8785 (Permit 27279) available for transfer in the state's name at CARSON's expense to any location within the Carson Valley groundwater basin (as approved by the State Engineer) to better produce and deliver water to the Northern Nevada Correctional Center. STATE will fully cooperate with and support any such transfer if requested by CARSON.
5. If the STATE's Carson Valley water rights, under certificates of Appropriation No. 6396 (Permit 20435) and No. 8785 (Permit 27279), or other acceptable water rights approved by the State Engineer, are not made available for use by CARSON for delivery to the Northern Nevada Correctional Center then CARSON will be under no further obligation to provide water or sewer service to the STATE.
6. CARSON agrees that STATE acting by and through its Nevada Division of State Lands, shall retain, at all times, the absolute ownership of the water rights as described in Certificates of Appropriation No. 6396 (Permit 20435) and No. 8785 (Permit 27279).
7. CARSON proposes to drill a water well on state property and STATE will grant an appropriate authorization and easement to facilitate that process. Appropriate authorization must be obtained from STATE prior to construction.

8. CARSON and STATE agree to maintain and be responsible for their own internal water distribution systems.
9. This AGREEMENT shall not become effective until and unless approved by appropriate official action of the governing body of each Party.
10. NOTICES.
 - a) All written notices and contacts under this Contract shall be delivered to the following officials at the addresses stated:

STATE of NEVADA, Department of Corrections
Lorraine H. Bagwell, Deputy Director Support Services
5500 Snyder Ave.
P.O. Box 7011
Carson City, NV 89702
lbagwell@doc.nv.gov

STATE of NEVADA, Division of State Lands
Robert C. Nellis, Supervisory Land Agent
901 S. Stewart St, #5003
Carson City, NV 89701
rnellis@lands.nv.gov

CARSON CITY
Andrew Burnham, Public Works Director
3505 Butti Way
Carson City, NV 89701
Aburnham@ci.carson-city.nv.us

11. LIMITED LIABILITY. The parties will not waive and intend to assert available NRS Chapter 41 liability limitations in all cases. Contractual liability of both parties shall not be subject to punitive damages.
12. INDEMNIFICATION.
 - a) Each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of the party, its officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.
 - b) The indemnification obligation under this paragraph is conditioned upon receipt of written notice by the indemnifying party within 30 days of the indemnified party's actual notice of any actual or pending claim or cause of action. The indemnifying

party shall not be liable to hold harmless any attorneys' fees and costs for the indemnified party's chosen right to participate with legal counsel.

13. **OWNERSHIP OF FACILITIES.** Each entity maintains ownership of its own facilities and no transfer of ownership is implied as part of this Agreement. Ownership notwithstanding, nothing shall preclude CARSON's ability to transfer water rights as provided in Item 4.
14. **REASONABLE CARE.** Each party shall exercise reasonable care in the performance of its obligations and rights under this Agreement to ensure that the other parties' facilities and operations are not impaired or damaged.
15. **PROTECTION OF A PARTY'S SEPARATE FACILITIES.** If any occurrence or conditions during operation or maintenance of the connection between the parties' facilities threaten the physical integrity or operational capability of a party's separate facilities, upon notification to the other party the affected party may stop operation or maintenance of the connection and/or take any action that the affected party determines to be necessary to protect its own separate facilities. Any party may remove part of the connection if required, for emergency repair of its separate facilities provided that such affected connection facilities are restored as soon as possible by the removing party.
16. **RESPONSIBILITY FOR DAMAGES TO FACILITIES.** If damages occur to connected facilities during the operation of connection under this Agreement, then responsibility to pay for any necessary repairs of said damaged facilities shall be as follows:
 - a) If damages occur when the connection is being operated within typical Operating Standards, then responsibility to pay for any necessary repairs to said damaged facilities shall be allocated based on ownership.
 - b) If damages occur when the connection is being maintained and/or is being operated beyond typical Operating Standards, then responsibility to pay for any necessary repairs to said damaged facilities shall be allocated to the party responsible for the nonstandard operations.
17. **FORCE MAJEURE.** No party to this Agreement shall be considered to be in default in the performance of any obligations under this Agreement when a failure of performance shall be due to uncontrollable forces. The Term "uncontrollable force" shall mean any cause beyond the control of the Party unable to perform such obligation, including but not limited to failure or threat of failure of facilities, flood, earthquake, storm, fire, lightning, and other natural catastrophes, epidemic, war, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, restraint by order of a court or regulatory body or agency of competent jurisdiction, and any non-action by, or failure to obtain the necessary authorization or approvals from a Federal governmental agency or authority, which by the exercise of due diligence and foresight such Party could not reasonably have been expected to overcome. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it is involved or accede to claims or conditions which it believes to be adverse to its business or other interests.
18. **SEVERABILITY.** If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist

and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

19. **TERMINATION.** This Agreement deals with water resources and the providing of utility service for community water systems. As such, the public interest is not served by the termination by one of the Parties to this Agreement absent an opportunity to resolve the alleged breach.

Except as otherwise provided in this paragraph, this Agreement may be terminated only by the mutual consent and agreement of the Parties. If a Party is in breach of a portion of this Agreement, then the Party alleging such breach shall provide written notice to the other Party specifying the nature of the violation and allowing thirty (30) days for the party in breach to correct the violation. Extensions of time to correct the violation shall be permitted if the violation cannot be cured in thirty (30) days with the exercise of reasonable diligence. If the breach is not corrected within the thirty (30) day period and any extensions thereto, then the non-breaching party may, at its option, terminate the Agreement.

20. **PUBLIC RECORDS.** Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The parties will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.

21. **CONFIDENTIALITY.** Each party shall keep confidential all information, in whatever form, produced, prepared, observed or received by that party to the extent that such information is confidential by law or otherwise required by this Agreement.

22. **PROPER AUTHORITY.**

a) The parties hereto present and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement and that the parties are authorized by law to perform the services set forth in this Agreement.

b) The parties are associated with each other only for the purpose and to the extent set forth in this Agreement, and in respect to performance of services and payment of costs pursuant to this Agreement, each party is and shall be a public agency separate and distinct from the other party and, subject only to the terms of this Agreement, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

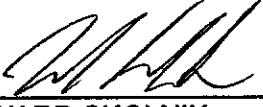
23. **GOVERNING LAW: JURISDICTION.** This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to the laws of the State of Nevada. The parties consent to the jurisdiction of the Nevada district courts for enforcement of this Agreement.

24. **ENTIRE AGREEMENT AND MODIFICATION.** This Agreement constitutes the entire Agreement of the parties and such are intended as a complete and exclusive statement of

the promises, representations, negotiations, discussions, and other Agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistent with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement.

STATE of NEVADA, Department of Corrections

By: 
HOWARD SKOLNIK
Director

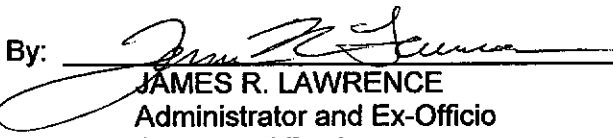
Date: 6/16/09

CARSON CITY NEVADA

By: _____
ROBERT CROWELL
Mayor

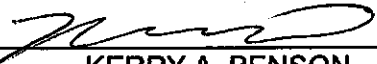
Date: _____

APPROVED:

By: 
JAMES R. LAWRENCE
Administrator and Ex-Officio
State Land Registrar

Date: 6/16/09

APPROVED as to Form:
CATHERINE CORTEZ MASTO
Attorney General

By: 
KERRY A. BENSON
Deputy District Attorney General

Date: 6/17/09

APPROVED:
STATE BOARD OF EXAMINERS

By: _____

Date: _____

THE STATE OF NEVADA
CERTIFICATE OF APPROPRIATION OF WATER

WHEREAS J. N. Littlefield has presented to the State Engineer of the State of Nevada Proof of Application of Water to Beneficial Use, from an underground source through well, pump, storage tank distribution system for general domestic (prison compound) purposes. The point of diversion of water from the source is as follows: SE 1/4 NW 1/4 Sec. 4, T. 14N., R. 20E., M.D.B. & M. or at a point from which the northwest corner of said Sec. 4 bears N. 38° 25' W. a distance of 3251.0 feet situated in Ormsby County, State of Nevada.

Now Know Ye, That the State Engineer, under the provisions of NRS 533.425, has determined the date, source, purpose, amount of appropriation, and the place where such water is appurtenant, as follows:

Name of appropriator State of Nevada by Nevada State Prison

Post-office address Carson City, Nevada

* Amount of appropriation 0.2 c.f.s. but not to exceed 21.2 mg. annually

Period of use, from January 1st to December 31st of each year

Date of priority of appropriation May 4, 1962

Description of works of diversion, place and manner of use:

water is pumped from a screened well by a 20 h.p. 8-stage 6" bowl pump to a 40,000 gallon storage tank, from where it is distributed by pipelines throughout the Minimum Security Compound, Nevada State Prison, located in the SE 1/4 NW 1/4 of Sec. 4, T. 14N., R. 20E., M.D.B. & M., there to be used for domestic purposes for 250 prisoners and 40 staff members, and for lawn irrigation

* This Certificate is issued subject to the terms of the Permit.

The right to water hereby determined is limited to the amount which can be beneficially used, not to exceed the amount above specified, and the use is restricted to the place and for the purpose as set forth herein.

IN TESTIMONY WHEREOF, I ROLAND D. WESTERGARD, State Engineer

Compared iw/jb of Nevada, have hereunto set my hand and the seal of my office, this

Recorded 12-4-67 71 Page 200 20th day of November, A.D. 1967

Ormsby County Records.

Roland D. Westergard
State Engineer.

THE STATE OF NEVADA
CERTIFICATE OF APPROPRIATION OF WATER

WHEREAS, Edwin T. Pogue, Warden has presented to the State Engineer of the State of Nevada Proof of Application of Water to Beneficial Use, from an underground source through a drilled well, pump, storage tank and pressure system for quasi-municipal and domestic purposes. The point of diversion of water from the source is as follows: SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 4, T.14N., R.20E., M.D.B.&M., or at a point from which the NW corner of said Sec. 4 bears N. 43° 28' W., a distance of 2,115.0 feet situated in Carson City County, State of Nevada.

Now Know Ye, That the State Engineer, under the provisions of NRS 533.425, has determined the date, source, purpose, amount of appropriation, and the place where such water is appurtenant, as follows:

Name of appropriator State of Nevada, by Nevada State Prison

Post-office address Carson City, Nevada

Amount of appropriation 0.28 c.f.s., but not to exceed 65.7 M.G.A.

Period of use, from January 1st to December 31st of each year

Date of priority of appropriation February 12, 1973

Description of works of diversion, manner and place of use:

The water is diverted from a drilled well and pumped through a 4" line to two 40,600 gallon storage tanks, thence through a closed pressure system to the place of use located in portions of the NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, T.14N., R.20E., M.D.B.&M. for quasi-municipal and domestic purposes (Nevada State Prison).

This certificate is issued subject to the terms of the permit.

The right to water hereby determined is limited to the amount which can be beneficially used, not to exceed the amount above specified, and the use is restricted to the place and for the purpose as set forth herein.

IN TESTIMONY WHEREOF, I, ROLAND D. WESTERGARD, State Engineer

Compared lk/ns

of Nevada, have herunto set my hand and the seal of my office, this

Recorded Bk. Page

27th day of May, A.D. 19 76

 County Records.

Roland D. Westergard
State Engineer

1923