

Decision No. 91972 JUL 2 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of LAGUNA HILLS
SANITATION, INC. for authori-
zation to increase its Contri-
butions-in-Aid for Backbone
Plant (CIA - BP) charges for
sewer service.

Application No. 59571
(Filed April 3, 1980)

Graham & James, by Thomas J. MacBride, Jr.,
Attorney at Law, for applicant.
Donald E. Sloan, Attorney at Law, and Carl
Kymla, for Sterling Homes; David L. Colgan,
Attorney at Law, for The William
Lyon Company; and Dennis Sundstrom,
for The Warmington Group; protestants.
Martin E. Whelan, Jr. and Carl M. Faller,
Jr., Attorneys at Law, for Professional
Community Management, Golden Rain
Foundation, and various mutual housing
corporations inside Leisure World,
interested parties.
John Gibbons, for the Commission staff.

INTERIM OPINION

Applicant Laguna Hills Sanitation, Inc. seeks authority to increase its connection charges^{1/} for sewer service. Such charges are by their nature one-time charges, which represent contributions-in-aid of construction of backbone plant (CIA-BP) by developers of residential, commercial, and industrial

^{1/} Applicant proposes to replace the term "connection charges" with "CIA-BP charges" because present internal revenue policies construe the term "connection fee" to embrace service charges which are reportable as taxable income.

developments in applicant's service area that are received by applicant at the time the developments are connected to applicant's system and certificates of occupancy are issued.

Applicant estimates that the rates proposed in this application will generate \$2,117,925 in contributed capital, an increase of \$1,492,021 (217.5 percent) over the contributions to be generated at its present level of CIA-BP charges. CIA-BP from residential developers would increase by \$1,145,098 (208.3 percent). CIA-BP from commercial and industrial developers would increase by \$346,098 (254.8 percent). Applicant's present CIA-BP charges have been in effect since September 18, 1977, were approved by Resolution No. W-2230, and represented a 130 percent increase over the charges they replaced.

The CIA-BP is intended to provide funds to meet the cost of expanding applicant's backbone plant sewage system so that that system may adequately handle and treat the additional effluent from the developments for which the proposed CIA-BP charges are to be exacted. The planned developments, according to Appendix D to this application, are:

PLANNED DEVELOPMENT WITHIN
LHSI SERVICE AREA

Residential

Contributions-in-Aid
for Backbone Plant
(CIA-BP)

<u>Tract No.</u>	<u>Type</u> (2)	<u>Units</u>	<u>Contributions-in-Aid for Backbone Plant (CIA-BP)</u>		
			<u>Present</u>	<u>Proposed</u>	<u>Adopted</u>
5278	Unrestricted	99	\$ 55,836	\$ 198,000	\$ 176,715
9808	Unrestricted	28	15,792	56,000	49,980
10633	Unrestricted	392	221,088	784,000	699,720
9667*	Unrestricted	182	102,648	364,000	324,870
7934	Restricted	194	54,708	194,000	346,290
9611 & 9613 (1)	Unrestricted	418	100,000	100,000	100,000
Subtotal - Residential			\$550,072	\$1,696,000	\$1,697,575

Commercial

<u>Location</u>	<u>Acres</u>			
Mathis Ranch II	15.0	\$ 22,170	\$ 78,660	
Agdelena Commercial	10.3	15,223	54,013	
Iglesia Commercial*	9.9	14,632	51,916	
Aragon Commercial	7.9	11,676	41,428	
Willow Tree	13.0	19,214	68,172	
Carlotta Commercial	5.9	8,720	30,940	
Lake Forest Commercial	24.4	36,063	127,954	
Freeway - Stuart IV	5.5	8,129	28,842	
Subtotal - Commercial	91.9	135,827	481,925	481,925
Total CIA-BP		\$685,899	\$2,177,925*	\$2,179,500

(1) The outcome of certain contingencies, as set forth in Paragraph XVI of the application, affecting Tracts Nos. 9611 and 9613, Tract No. 9667, and Iglesia Commercial may reduce the amounts of CIA-BP per unit required to generate the \$2,177,925.

(2) The terms "unrestricted" and "restricted" used in this table refer to those residential areas in which children are permitted or excluded.

The CIA-BP charge requirement was developed assuming that the facilities can, and only will, be constructed as developer CIA-BP funds become available. The improvements include modification of major pump stations and the expansion of the treatment plant to increase existing sewerage capacity. The following CIA-BP Construction Cost Schedule is provided in Appendix E to the application:

CIA-BP Construction Cost Schedule

Item	1979 Estimate	1980 Costs	1981 Costs	1982 Costs
(Dollars in Thousands)				
Northline Pump Station	\$ 89.1	\$ 89.1	\$ -	\$ -
Aliso Creek Pump Station	39.8	39.8	-	-
Veeh Pump Station	236.0	150.0	86.0	-
Veeh Force Main	37.2	37.2	-	-
Westline Pump Station	65.0	65.0	-	-
Trunk Connector	7.0	7.0	-	-
Freeway Pump Station	49.3	20.3	29.0	-
Oso Pump Station	69.6	-	69.6	-
WWTP Expansion	378.6	75.0	303.6	-
Sludge Press	116.9	-	116.9	-
Effluent System	778.3	100.0	200.0	478.3
Total Construction	\$1,866.8	\$583.4	\$ 805.1	\$478.3
Inflation (15% per year)		87.5	259.6	249.1
Cost at Completion		670.9	1,064.7	727.4
Plant Upgrading Overheads		100.0		
Preparation of EIR for Expansion		60.0		
Total Expenditures		\$830.9	\$1,064.7	\$727.4

Applicant requests that the Commission immediately issue an interim order authorizing applicant to file its proposed tariff sheets. In support of this request applicant stated:

"The order authorizing interim rates could order Applicant to file periodic reports with respect to the above three contingencies /re: Tracts 9611 and 9613, Tract 9667, and Iglesia Commercial/ with accompanying tariff sheets effectuating any required downward adjustments. Whatever technique is employed, it is simply imperative that the Commission remember that once a unit has been connected and the one-time CIA-BP charge paid, the opportunity for further recovery from that developer is lost and any shortfall in CIA-BP must be compensated for by those who have not yet been connected. It is for this primary reason that Applicant urges prompt action with regard to an interim order."

Several letters opposing applicant's request for interim rate relief were received. A limited public hearing was held before Administrative Law Judge A. E. Main on May 30, 1980 in Los Angeles. It was restricted to statements and testimony of protestants and interested parties and the argument of applicant, the latter concerning the need for granting interim relief subject to refund.

Protestant Sterling Homes is the developer-builder of Tract No. 9667, which is listed above in the tabulation of planned developments within applicant's service area. It is Sterling Homes' position that past decisions of the Commission established, as basic doctrine, that interim rate increases

are not to be granted except under extraordinary circumstances. In essence, Sterling Homes, and the other protestants, contends that to qualify for interim relief applicant must show that it is experiencing a financial emergency or will experience irreparable financial harm absent interim relief.

In the absence of an actual emergency, Sterling Homes contends that the many questions surrounding this application require a full hearing before a decision is reached on such a drastic increase in the CIA-BP charges. Sterling Homes believes that there is a substantial and inequitable discrepancy between the rates proposed to be charged to residential and commercial developments and also between restricted and unrestricted residential developments; that many of the facilities are required for service to areas other than where its property is located; that portions of the plant expansion are not needed; that the number of units in pending developments will probably be increased, reducing the fixed cost of the plant expansion on a per unit basis; and that consideration should be given to the effect of the proposed charges on affordable housing.

Protestant The William Lyon Company, the developer-builder of Tracts Nos. 5278 and 9808, basically disputes the reasonableness of the proposed \$2,000 charge for unrestricted residential units and supports the points raised by Sterling Homes concerning alleged inequities and deficiencies underlying applicant's requested increases. This protestant, in recognition of the need for funding additional sewer system facilities and in order to make all developments connecting to the sewer system in the future subject to increases,

suggested an interim increase in the CIA-BP charge to bring it up to \$1,000 for unrestricted residential units and indicated that this suggestion had the support of protestant Sterling Homes.

Protestant The Warmington Group is the developer-builder of Tract No. 10633, a 392-unit affordable housing condominium project with prices ranging from \$41,000 to \$74,000 per unit. This protestant asserts that its affordable housing project is "highly supported by all state agencies and the county;" that the Commission must analyze the social and economic impacts of the proposed increase in CIA-BP charges on affordable housing; and that its condominium units are finished and actually physically connected to applicant's sewer system with only landscaping and road surfacing needing to be completed prior to issuance of certificates of occupancy. The Warmington Group disputes applicant's policy of not allowing the connection charge to be paid until the certificates of occupancy are issued, contending that pursuant to applicant's tariff the CIA-BP charges for Tract No. 10633 are payable immediately and, accordingly, should be accepted. The pertinent tariff provision reads: "Unless otherwise deferred by Rossmoor Sanitation, Inc. [applicant's predecessor] the connection charge shall be paid before the actual physical connection of the customer's service line to the Rossmoor Sanitation, Inc. system."

Interested parties Professional Community Management, et al., support the two-to-one differential in CIA-BP charges between unrestricted and restricted residential dwelling developments. They support applicant's request for interim relief as long as that differential is maintained.

Applicant's assessment of the impact of not providing interim relief is that it would not be as much on the applicant as it would be on the developers who may not be connected to the sewer system at the time the Commission issues a final order in this proceeding. Applicant stressed that the additional facilities are needed, that they must be paid for, that the developers are the only source of funds, and that since mid-1979 applicant's general manager has kept developers apprised of imminent proposals for very large increases in connection charges so the developers could consider them when making pricing decisions.

As an illustration of the impact of either no interim relief or untimely interim relief on the required level of CIA-BP charges, contributions for The Warmington Group's Tract No. 10633, which will be fully occupied shortly, at present rates are \$221,000 versus \$784,000 at proposed interim rates, creating a shortfall of \$563,000. To offset this reduction in projected contributions, applicant asserts that the proposed CIA-BP charges would have to be increased by 43.5 percent. ✓

Applicant fails to see how any party would be prejudiced if the interim increase in CIA-BP charges is made subject to refund and asks that it not be denied the opportunity to insure that all parties who will benefit from the proposed backbone plant expansion participate in the costs of that expansion.

After the hearing a letter was received from the director of the California Department of Housing and Community Development. He expressed concern on the impact on affordable housing, particularly for families with children. The director requested that, prior to granting interim relief, the Commission conduct a thorough analysis to justify any increase. The director also made clear the department's strong opposition to the two-to-one differential in both the existing and proposed CIA-BP charges between unrestricted and restricted (adults only) dwelling units.

Discussion

A primary concern of this Commission is to assure there will be an adequate sewer system to serve the people who will live in the area. Toward that end, either the primary plant has to be expanded or a commensurate limitation placed on new connections to the sewer system. The sole source of funds for the needed expansion is the CIA-BP charge.

Protestants are generally correct that interim relief should not be granted except in extraordinary circumstances. The circumstances presented do, however, fully justify interim relief. The present connection fees appear inadequate to cover the cost of plant expansion necessitated by additional development in applicant's service area. Since the connection fees under the existing tariff are one-time charges, any such fees paid at present rates, pending our final decision in this proceeding, will require even higher charges from those paying CIA-BP charges after our final decision. We are of the opinion that all pending developments that contribute to the need for backbone plant expansion should share equitably in the cost of that expansion. Interim relief is clearly required to assure this result.

We are not persuaded that the existing two-to-one differential in charges between unrestricted and restricted (adult only) dwelling units is justified, and are concerned about the impact this rate design may have on "affordable housing". We will authorize

applicant to collect uniform residential CIA-BP charges of \$1,785 on a temporary basis subject to further review and modification in our final decision in this proceeding. ✓

It has been applicant's practice to collect connection charges when certificates of occupancy are issued. Under the pertinent tariff provision cited by the Warmington Group, it is clear, however, that applicant may defer collection and payment of connection charges at its discretion. Pending our final decision in this proceeding, applicant should continue to defer collection of connection charges, as it has pending this interim decision, or, at its discretion, it may accept payment under the interim tariff established herein. Any payment accepted under this interim tariff will, however, remain subject to modification in our final order. Any amount collected in excess of the charges approved in our final order shall be promptly refunded with interest computed by applying The Federal Reserve Board Commercial Paper Rate Three-Month Prime (published monthly in Federal Reserve Board Statistical Release G-13), with monthly compounding. Any amount collected, short of the charges approved in our final order, shall be promptly collected with interest computed in the same manner.

Findings of Fact

1. Consistent with its tariffs and an established and pervasive practice of sewer utilities, applicant requires developers to pay applicant a connection charge for residential and commercial developments. It is collected before sewer service is provided to the development for use by applicant to build backbone facilities, including expansion of treatment plant. Accordingly, these charges represent contributions-in-aid of construction of backbone plant (CIA-BP charges).
2. An increase in CIA-BP charges is clearly needed.
3. Because the CIA-BP is a one-time charge, the increase in charges should be made on an interim basis to assure that the cost of plant expansion is borne equitably by all pending developments in applicant's service area.

4. Applicant's proposed charges for CIA-BP and proposed tariff revisions are set forth in Appendix C to the application.

5. The uniform residential CIA-BP charge of \$1,785 and applicant's proposed commercial CIA-BP charge, if made subject to modification in our final decision, and subject to further collection or refund with interest, are reasonable on an interim basis.

6. The interest rate published monthly in the Federal Reserve Statistical Release, G-13, applicable to commercial paper, prime three months, is a reasonable interest rate to apply to amounts subject to further collection or refund.

7. In order to insure that all pending developments in applicant's service area contribute equitably to the cost of required plant expansion, this order should be made effective the date hereof.

Conclusions of Law

1. Interim relief is warranted; further public hearings will precede any final disposition of this proceeding.

2. The CIA-BP charges found reasonable herein should be authorized on an interim basis subject to modification. ✓

INTERIM ORDER

IT IS ORDERED that:

1. Applicant, Laguna Hills Sanitation, Inc., is authorized to file with this Commission, after the effective date of this order, in conformity with the provisions of General Order No. 96-A, the revised rate schedules attached to this decision as Appendix A. The effective date of the revised tariff sheets shall be one day after the date of filing. The interim charges contained therein may be collected subject to modification in our final decision, or, at applicant's discretion, may be deferred entirely pending our final decision.

2. Interest on any difference between the interim charges approved herein and those approved in our final order, subject to refund or further collection, shall be computed by applying the Federal Reserve Board Commercial Paper Rate, Three-Month Prime, published monthly in Federal Reserve Board Statistical Release G-13, with monthly compounding.

The effective date of this order is the date hereof.

Dated JUL 2 1980, at San Francisco, California.

John E. Bryan
President

Samuel L. Shugart

Richard W. Howell

Paul J. Fiedler

Samuel W. James
Commissioners

APPENDIX A
Page 1 of 3

SCHEDULE NO. 4

CONTRIBUTIONS-IN-AID FOR BACKBONE PLANT (CIA-BP)

Residential Developments

(Interim Charges Subject to Refund or Further Collection)

Applicability

Applicable to Residential Developments.

Territory

El Toro, Laguna Hills, Rossmoor Leisure World and vicinity,
Orange County.

- (A) The CIA-BP for any unrestricted family residential dwelling unit shall be \$1,785 for each dwelling unit. (I) ✓
- (B) The CIA-BP for any restricted family residential dwelling unit shall be \$1,785 for each dwelling unit. (I) ✓
- (C) Unless otherwise deferred by Laguna Hills Sanitation, Inc. the CIA-BP shall be made before sewer service is provided to the development.
- (D) If the sewage discharged by a residential dwelling unit does not conform to the definition, as established by Laguna Hills Sanitation, Inc. as to quantity or quality, the above rates shall be increased accordingly, either before service is rendered or any time thereafter, and shall be final and not subject to arbitration. Immediately upon notification to a customer of such an increase, it shall be due and payable, and failure to pay shall be grounds for discontinuation of service to the customer by Laguna Hills Sanitation, Inc.
- (E) Laguna Hills Sanitation, Inc. may require from any prospective residential developer and prior to commencement of service to the development, a statement as to the quantity and quality of sewage to be discharged into its system. At the option of Laguna Hills Sanitation, Inc. the statement may be used to check if the CIA-BP to be made by the developer should be based on residential or commercial rates, if it does not meet the characteristics of ordinary domestic sewage as to quantity and quality.

APPENDIX A
Page 2 of 3

SCHEDULE NO. 5

CONTRIBUTIONS-IN-AID FOR BACKBONE PLANT (CIA-BP)

(T)

Commercial and Industrial Developments

(Interim Charges Subject to Refund or Further Collection)

Applicability

Applicable to Commercial and Industrial Developments.

Territory

El Toro, Laguna Hills, Rossmoor Leisure World and vicinity,
Orange County.

- (A) The CIA-BP for any commercial or industrial development establishment shall be based on the daily volume of sewage to be discharged into the Laguna Hills Sanitation, Inc. system by each establishment within a development.
- (B) The basic CIA-BP for each establishment within a development shall be an amount equal to the number of gallons of sewage to be discharged into the Laguna Hills Sanitation, Inc. system each day times \$4.75. (I)
- (C) Prior to service being rendered to establishments in the development, an estimated daily volume of sewage shall be determined by Laguna Hills Sanitation, Inc.'s engineer, using methods which are considered standard for such determinations. This initial determination shall be the final basis for the CIA-BP unless an adjustment is provided for as outlined in Section (D) below.
- (D) At the option of the developer, a totalizing flowmeter approved by Laguna Hills Sanitation, Inc. may be installed in the customer's service pipe to measure the actual volume of sewage discharged by the establishment. The meter shall be installed and operated at the developer's expense, but under the supervision of Laguna Hills Sanitation, Inc. If the flow totalized over a single one-year period indicates that the average daily volume of sewage contributed by the customer during that single one-year period is different from the daily volume previously established by Laguna Hills Sanitation, Inc.'s engineer, the developer's CIA-BP will be adjusted accordingly. The one-year period referred to above shall be a period of full operation of the establishment as determined by Laguna Hills Sanitation, Inc. (I)

APPENDIX A
Page 3 of 3

SCHEDULE NO. 5 (Continued)

(T)

CONTRIBUTIONS-IN-AID FOR BACKBONE PLANT (CIA-BP)

Commercial and Industrial Developments

(Interim Charges Subject to Refund or Further Collection)

- (E) The minimum CIA-BP for any commercial or industrial establishment within a development shall be \$2,000 and no adjustment below that amount shall be allowed. (I)
- (F) Unless otherwise mutually agreed between Laguna Hills Sanitation, Inc. and the developer, the CIA-BP shall be made before sewer service is provided to the development.
- (G) If the sewage discharged by a commercial or industrial establishment does not conform to the definition of ordinary domestic sewage as set forth in Schedule No. 2, Paragraph D, the basic rate set forth in (B) above shall be increased proportionately by the method set forth in Schedule No. 2, Paragraph (E) and/or Paragraph (F). This increase will be determined by Laguna Hills Sanitation, Inc. either before commencement of service or within 2 years thereafter. Immediately upon notification of the developer and/or customer of such an increase, it shall be due and payable in 15 days and failure to pay shall be grounds for disconnection of service to the development or customer by Laguna Hills Sanitation, Inc.
- (H) Laguna Hills Sanitation, Inc. may require, from any prospective commercial or industrial developer, and prior to commencement of service to the development, a statement as to the quantity and quality of sewage to be discharged into its system. At the option of Laguna Hills Sanitation, Inc. the statement may be used to any degree in determining the CIA-BP to be made by the developer.
- (I) Laguna Hills Sanitation, Inc. may deviate from any of the foregoing rules in special circumstances and cases to be conclusively determined by said Laguna Hills Sanitation, Inc. (T)