



City of Grand Junction, Colorado 81501

250 North Fifth St.,

December 15, 1983

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WATER QUALITY

D. E. _____

Mr. James M. Robb
Kelley, Stansfield & O'Donnell
Suite 900
550 15th Street
Denver, CO 80202

Dear Mr. Robb:

This letter will respond to your letter of Dec. 12, 1983 concerning sewer service to the Tiara Rado area property-owners.

Let me first correct an important misconception appearing in your letter, namely that there is a "proposed transfer of ownership of the sewer plant" to the City of Grand Junction. The City has no plans to acquire any ownership interest in the package sewage plant that is owned by CEW Development Company and that has served the area.

The collection system for Tiara Rado is now controlled by CEW, which is in the process of making physical corrections and upgrades to it. These improvements are a pre-condition to acceptance by the City on behalf of Mesa County of connection of the CEW collection system to the public sewer system. The City's role in this matter derives from our status as the Manager/Operator of the City/County Joint Sewerage System.

Assuming that City sewer standards are met, the package plant will be entirely bypassed on January 1, 1984 when area sewage is turned into the Tiara Rado Interceptor for transmission to the new Persigo Wastewater Treatment Plant. At that time the City will deem the collection system (and not the package plant) to have been dedicated to the County, and the City will commence maintenance of that system on behalf of the County.

The City has absolutely no interest in the disposition of the package plant, and does not intend to assert any equitable claims by third parties against its owner.

I am of course available to meet with members of your condominium association, just as I have met with members of the Tiara Rado Filing Two Homeowners Association on December 11, 1983.

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The City has operated the CEW package plant in the same manner as we have operated other private package plants such as the Bluffs plant. Our contractual relationship with CEW has extended over a period of approximately seven years. A copy of the contract will be made available at a later date.

Your questions as to the identity of the principals of CEW, its registered agent, and disposition of tap fees paid to CEW are best addressed to Mr. H. Kenneth Henry, CEW Development Co., Inc., d/b/a Tiara Rado Subdivision, P. O. Box 2960, Grand Junction, CO 81502 (telephone number 245-9390). Mr. Henry apparently is the President of CEW. His agents in this matter are Arnold Hottovy at Armstrong, and John A. Bare of Bare and Company (telephone number 245-8699).

The obligations of CEW to the City are for payment for plant maintenance, including final payment for operation, shutdown, and sludge removal. If the collection system upgrade is not entirely satisfactory prior to transfer to City sewer service, the City will refuse to assume maintenance responsibility for part or all of the collection system. This is not considered to be a liability to the City, but rather a CEW obligation to the existing sewer customers, in my opinion.

The City has no actual knowledge of the disposition of any payments from property owners directly to CEW, whether for service revenues or escrow purposes. We have been informed that some multiple-family unit owners in the later filings may have partially paid CEW for capital expansion of the plant to accommodate them. We also assume that proceeds from service fees by the residents were used to reimburse the City for operating expenses.

The plant investment fee (PIF) is calculated by taking the cost of the new Persigo plant, including retiring bonds on the old Westside plant, and dividing that cost by design capacity. A cost per gallon is derived, and compared to a known average volume of sewage generated by a single-family residential unit, which is equivalent to one E.Q.U. All useage is compared to this factor on a volume and/or quality basis. In the case of multi-family units, they generate 0.72 of the sewage volume of a typical house. The E.Q.U. is used in determining both the capital contribution to the plant, or PIF, and the monthly service fee. Each E.Q.U. has an assigned value of \$750 for P.I.F. purposes, based on the above formula. The P.I.F.'s generate 50% of the local share of the cost of the new plant and interceptors. Service charges will generate the other half, as well as cover the O&M costs.

For your information, our rate structure is based on Articles IX and XI of Chapter 25, and on portions of Chapter 18 of the Code of Ordinances of the City of Grand Junction. This rate structure is designed to be uniform for

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similar service, with proportionality among user classes. This type of user charge rate was required as a condition of our EPA grant under Section 204(b) of the Clean Water Act, as amended. The EPA, the State of Colorado Water Quality Control Division, the County Commissioners, and bond counsel have all reviewed and approved our rate structure.

The service charges quoted in the December 12, 1983 letter will be raised an average of 10.37% due to a rate increase approved by the City Council later that evening. The new rates will become effective on January 21, 1984. The monthly cost for a typical condo will then be \$5.36 per unit. The P.I.F. was not raised by the Council.

The reason that the private sewer customers of CEW were charged more than the City rates is that the costs of operating that plant were extremely high. The City incurred costs as contract operator of that plant for several hours of labor per day, all electrical power, plant parts, etc., and was reimbursed at cost. These costs have been identified through a separate budget program, and are available for inspection. CEW apparently charged its customers far less than the actual operational costs. The small plant was inefficient, and generally avoided non-compliance with its discharge permit (and fines therefore) only through expert operation by the City after previous contract operators had repeatedly failed.

Our service rates for your condominium association members, as new customers of the public sewer system will be significantly less due to our greater efficiency and economy of scale. We will continue to conduct periodic reviews and studies of our rate structure, including a major reassessment this spring.

Again, the question of disposition of service charges received by CEW is best answered by CEW.

The authority to charge the P.I.F. to all new sewer customers appears in Section 18-19 and Sections 25-25 to 25-73 of the City Code. Code Section 18-23 authorizes extension of municipal sewer service outside of the City, under both home-rule powers and statutory authority of C.R.S. 1973 Section 31-35-402(1)(b).

The City is also operating in part as the County's agent to the extent of County ownership in the regional wastewater system, pursuant to a Joint Agreement (enclosed). That agreement constitutes County adoption of the City rate structure and connection policies. The County also possesses the basic police power to directly compel connection of residential properties to the sewer system. See the Mesa County Land Development Code, Section 4.1.5(a), which restates prior County sewer connection policy. The City considers this County Code section to be authorized by the State of Colorado by virtue of C.R.S. 1973 Sections 30-20-416, -420.

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In addition, an implied contractual relationship between the City and County, and individual sewer customers, will be created at the instant sewer service by the regional plant commences. Tiara Rado residents who receive a benefit from the use of the public sewer system will be liable for their proportionate share of the cost of that system, as previously determined by both the City and County. It is important to emphasize that these residents and your clients will be charged for plant investment fees in exactly the same manner as any other new sewer customer, whether located within or without the City.

We are seeking to avoid an adversary and legalistic relationship with the new Tiara Rado area customers. We are sympathetic to your concerns about possible liability of CEW Development, but it will be up to its former customers to establish liability, if any, and to seek their own reimbursement. We have been actively encouraging the County to utilize local improvement district options to extend the period of payment for the P.I.F. to ten years. We have also devised our own short-term payment schedules for hardship cases. We are considering expanding these schedules within the constraints of the purposes of the City Sewer Fund, our obligations to existing and future users of the sewage system, and our City Code requirements to receive payment of the P.I.F. prior to connection. Your disagreement with the P.I.F. is understandable, but that cannot be a basis for us to delay further action in accommodating the proposed sewer service transfer.

Please let me know if there is any other information that I can provide you with. Do not hesitate to contact me or my assistant Steve Johnson if you would like to discuss these matters further.

Very truly yours,


James E. Patterson, Jr.
Utilities Director

JEP/hm

Enclosures

cc - Jim Wysocki, City Manager
Gerald Ashby, City Attorney
John Tasker, Finance Director
Mark Eckert, Asst. County Administrator
Lyle Dechant, County Attorney
Bennet Boeschenstein, County Planning Director