

Mallory

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
COUNTY OF VENTURA For Review Of)
Staff Decision Regarding Eligibility)
of House Lateral Costs. Our File)
No. G-67.)
_____)

ORDER NO. WQG 82-12

BY THE BOARD:

The County of Ventura (County) petitions from a final decision of the Division of Water Quality (DWQ) related to certain "house lateral"^{1/} costs involved in the County's North Coast Project. DWQ's final determination was that "house lateral" costs are not allowable for grant funding.

I. BACKGROUND

The factual background is fully described in the County's petition and supplemental documents, and reports from our staff which have also been made available to the County. Consequently, only a very brief summary of the background will suffice.

The County is presently constructing a treatment system commonly referred to as a STEP system (Septic Tank Effluent Pump system). Portions of the project consist of transporting wastewaters from individual residences through "lateral sewers" to septic tanks. The County was advised at various times prior to 100 percent design approval that "house lateral" costs were not

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1. The term "house laterals" generally refers to pipelines necessary to transport wastewaters from individual treatment units.

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eligible for grant funding. However, the 100-percent design approval letter contained a statement indicating that "house lateral" costs would be eligible if the laterals were located on public property. The County proceeded to obtain easements for the "house lateral" locations in the expectation that this would render "house lateral" costs eligible. Subsequently, prior to award of actual construction contracts by the County, DWQ advised the County that an error had been made and that, under EPA regulations, "house lateral" costs were of questionable eligibility regardless of whether the laterals were located on public or private lands. After receipt of this advice, the County awarded construction contracts and proceeded with the project. In its petition, the County basically alleges:

1. EPA regulations, guidance and criteria do permit grant funding of "house lateral" costs for its project.

2. The County was misled into proceeding with its project by assurance that house lateral costs would be eligible if the laterals were located on public land and that DWQ's decision will cost the County a loss of grant funds of approximately \$500,000.

III. FINDINGS AND CONCLUSIONS

In large part, the grant program administered by this Board operates pursuant to Delegation Agreements with EPA. Under our existing agreements with EPA, we do not have the power to make final determinations on allowable project costs. Our decisions are preliminary and subject to review and final determination by

EPA. In making our decisions, we are obligated by our agreements with EPA to implement EPA rules, regulation, policy and guidance on allowable costs, regardless of whether we personally approve or disapprove of EPA approaches.

EPA regulations and guidance (both past and present) on allowability of "house lateral" costs is somewhat ambiguous.^{2/} It was this ambiguity which led to conflicting staff advice on the eligibility of "house laterals". However, our best reading of EPA regulations, policy and guidance on funding of "house laterals" is that "house lateral" costs are not now and never were intended to be eligible for federal grant funding.

Consequently, while we have no doubt that for some period of time the County was misled into believing that its "house lateral" costs would be eligible,^{3/} we have no alternative except to conclude that the "house lateral" costs at issue are not eligible for federal or state grant funding.

At the same time, as we have indicated, the applicable regulations and guidance are somewhat ambiguous, and EPA has the final voice on both interpretation of its regulations and allowability of costs. We believe that the County is entitled to an expeditious determination by EPA on eligibility of the

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2. The ambiguities are detailed in the staff reports referred to above and will not be detailed here, particularly in view of the directions hereafter given.
 3. While this circumstance was unfortunate, we do have some doubt about the extent of any prejudice to the County since the County was aware that "house lateral" costs were of questionable eligibility prior to the time that the County awarded construction contracts. The County contends that they still believed that they could justify the eligibility of the "house laterals". This order is not intended to preclude the County from pursuing their contentions with EPA.

"house lateral" costs at issue. We also believe that the Grant Program and other grantees will benefit from explicit clear guidance on eligibility of such costs.

V. ORDER

IT IS HEREBY ORDERED:

1. DWQ is directed to immediately seek EPA guidance on the eligibility of "house lateral" costs for the County's project and to implement the guidance when received. We recommend that EPA permit County representatives to be present at any meeting with EPA on the issues involved so that the County is provided with a full opportunity to present its position.

2. DWQ is directed to immediately seek explicit EPA guidance on application of past and present EPA regulations on eligibility of "house lateral" costs, to advise all grantees of the guidance received, and to implement such guidance when received.

Dated: September 16, 1982

/s/ Carole A. Onorato
Carole A. Onorato, Chairwoman

/s/ L. L. Mitchell
L. L. Mitchell, Vice Chairman

/s/ Jill D. Golis
Jill D. Golis, Member

ABSENT
F. K. Aljibury, Member

/s/ Warren D. Noteware
Warren D. Noteware, Member