

RECEIVED

JUN 04 1993

OFFICE OF COUNSEL  
SOUTHWESTNAVFACENGCOM



*Directors*

PHILIP L. ANTHONY  
WES BANNISTER  
KATHRYN L. BARR  
JOHN V. FONLEY  
DANIEL E. GRISET  
DONN HALL  
LAWRENCE P. KRAEMER JR.  
GEORGE OSBORNE  
LANGDON W. OWEN  
IRV PICKLER

*Officers*

PHILIP L. ANTHONY  
*President*  
KATHRYN L. BARR  
*First Vice President*  
DONN HALL  
*Second Vice President*  
WILLIAM R. MILLS JR.  
*General Manager*  
MARY E. JOHNSON  
*District Secretary*  
CLARK IDE  
*General Counsel*

## ORANGE COUNTY WATER DISTRICT

June 3, 1993

Mr. Rex Callaway  
Associate Counsel (Environmental)  
Office of Counsel 09C.RC  
Southwest Division  
Naval Facilities Engineering Command  
1220 Pacific Highway, Room 250  
San Diego, CA 92132-5189

Re: Agreement Between The Orange County Water District and  
United States Department of the Navy for Reimbursement of  
OCWD Costs Incurred in Constructing Groundwater  
Monitoring Wells

Dear Mr. Callaway:

Enclosed is a redlined copy of the above Agreement. You will  
note that we have made the following changes:

1. We have eliminated Paragraph IIC because it does not  
seem to be necessary in view of Paragraph IIA.
2. We have added new Paragraph G to provide for each  
party being responsible for any damage that they cause to the wells  
while using equipment to monitor or sample the wells.
3. We have deleted original Paragraph IIIB pertaining  
to refund of costs recovered from other sources. Any monies  
received from outside sources will be used to reduce Orange County  
Water District and Irvine Ranch Water District rates to customers.  
Since the pollution was the cause of the extra expenses in the  
first place, the customers of the two districts should get the full  
benefit of the total reimbursement regardless of any outside  
sources of income.

Mr. Rex Callaway  
June 3, 1993  
Page Two

4. We have deleted Paragraph IIIB2 because it does not correctly reflect the facts. The Orange County Water District has always maintained that these releases of hazardous wastes came from MCAS El Toro. We are willing to not mention that fact in the Agreement.

I have also included a final copy of the Agreement so that it may be executed by the Department of Navy and returned to the District for execution. If you can return the Agreement immediately, we can put it on the agenda for the District's next meeting on June 16, 1993.

Also enclosed are all of the documents showing the District's total cost for construction and initial testing of these wells. Not included, which will have to be addressed in the final Agreement relating to the Irvine Desalter, are the District's costs in sampling and testing the water after the wells were put in operation.

Thank you for your cooperation in this matter.

Very truly yours,



Clark F. Ide  
General Counsel

CFI/mak

Enclosures

cc: William R. Mills Jr., General Manager, OCWD  
Roy Herndon, OCWD  
James Reilly, OCWD

Draft

DRAFT  
June 3, 1993

**AGREEMENT**  
**BETWEEN THE**  
**ORANGE COUNTY WATER DISTRICT (OCWD)**  
**AND**  
**UNITED STATES DEPARTMENT OF THE NAVY**  
**FOR**  
**REIMBURSEMENT OF OCWD COSTS INCURRED IN**  
**CONSTRUCTING GROUNDWATER MONITORING WELLS**

**Dated:**

**Enclosure 3**

## AGREEMENT

This Agreement ("Agreement") is made and entered into by and between the Orange County Water District ("OCWD") and the United States Department of the Navy ("DON") respecting the reimbursement of certain costs incurred by OCWD in constructing and initial integrity testing groundwater monitoring wells in the area surrounding the United States Marine Corps Air Station ("MCAS") El Toro facility in Orange County, California.

## RECITALS

WHEREAS, the MCAS El Toro facility has been listed by the United States Environmental Protection Agency ("USEPA") upon the National Priorities List ("NPL") promulgated by USEPA pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9605 and §9601, et seq., respectively.

WHEREAS, pursuant to Section 120 of CERCLA, 42 U.S.C. §9620, DON, of which the United States Marine Corps ("USMC") is a component, USEPA, and the State of California Environmental Protection Agency (CALEPA) have entered into a Federal Facility Agreement ("FFA") requiring that DON, through the USMC, investigate and remediate actual and potential releases of hazardous substances at the MCAS El Toro NPL site;

WHEREAS, the MCAS El Toro FFA workplan for the Remedial Investigation/Feasibility Study ("RI/FS") for Operable Unit No. 1 requires that the nature and extent of potential releases of Volatile Organic Compounds (VOCs) into groundwater at MCAS El Toro be investigated and characterized through sampling and analysis of the groundwater and related groundwater quality and migration evaluations;

WHEREAS, OCWD has the statutory authority and duty to manage, regulate, replenish, and protect the quality of the groundwater supplies within its boundaries for the beneficial use of the approximately 2,000,000 residents and water users who rely upon those groundwater resources to satisfy all or a portion of their beneficial water needs;

WHEREAS, in the period from January 1, 1988 to December 31, 1990, OCWD installed a series of ten groundwater monitoring wells in the immediate vicinity of the MCAS El Toro facility delineated as Monitoring Well Nos. MCAS-1 through MCAS-10 on the attached map which is hereby incorporated into this Agreement by reference (Attachment 1);

WHEREAS, OCWD incurred costs totalling \$863,766.00 in constructing (including costs of drilling, installation and

initial integrity testing) Monitoring Wells No. MCAS-1 through MCAS-10;

WHEREAS, Monitoring Well Nos. MCAS-1 through MCAS-10 have produced samples of groundwater and analytical results that have been utilized in the RI/FS for Operable Unit No. 1 and may continue to produce samples and analytical data for utilization in the CERCLA process if DON access to those wells is authorized by DON and the monitoring wells are properly operated and maintained in the future;

WHEREAS, certain costs of constructing Monitoring Well Nos. MCAS-1 to MCAS-10 incurred by OCWD and within the scope of this Agreement are consistent with CERCLA and the NCP based upon information presently available;

WHEREAS, OCWD and DON desire to amicably resolve and settle any and all past, present and future claims, causes of action, and liabilities that OCWD may have against DON for the costs incurred by OCWD in constructing (drilling, installing, and initial integrity testing) Monitoring Well No. MCAS-1 to MCAS-10 without litigation and without admission of fact or liability by either OCWD or DON;

IT IS, THEREFORE, AGREED AS FOLLOWS:

I. DON REIMBURSEMENT OF OCWD COSTS

DON shall pay OCWD the sum of \$863,766 not later than August 1, 1993 as reimbursement of the costs incurred by OCWD in constructing Groundwater Monitoring Well Nos. MCAS-1 through MCAS-10 and specifically identified in the attached Cost Summary which is hereby incorporated into this Agreement as Attachment 2. For purposes of this Agreement, "costs incurred in constructing" shall be deemed to include drilling, installation, and initial integrity testing and associated labor and equipment costs. Payment shall be in the form of a check for that amount.

II. MAINTENANCE AND ACCESS TO MONITORING WELLS

A. OCWD shall provide access to DON, EPA, the State of California and their authorized representatives during reasonable business hours for purposes of sampling the groundwater collected in the wells.

B. OCWD shall operate and maintain Groundwater Monitoring Well Nos. MCAS-1 through MCAS-10. OCWD shall take all necessary measures to maintain the integrity of the ten monitoring wells within the scope of this Agreement to ensure that data collected in the wells satisfies all Federal, State and local operation, maintenance, quality assurance/quality control, and safety

standards.

~~C. OCWD and DON shall enter into access agreements for each of the ten monitoring wells within the scope of this Agreement for purposes of addressing any additional issues that must be addressed prior to access by DON.~~

C. In the event of any death or injury to any person, or the loss of or damage of any property, caused by DON officers, employees, or contractors in connection with any of DON's activities hereunder or in the event of any legal or equitable action instituted between the property owner and DON, the liability, if any, of DON shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act (62 Stat. 869, 982; 26 U.S.C. 2671-2680).

~~D. Within 30 days of written request by OCWD, DON shall provide OCWD with copies of analytical data reports for all validated analytical data collected by DON and its authorized representatives and contractors in the groundwater monitoring wells that are the subject of this Agreement upon written request by OCWD.~~

E. OCWD shall provide DON with copies of analytical data reports for all analytical data collected by OCWD or its authorized representatives in the groundwater monitoring wells that are the subject of this Agreement within 30 days upon written request by DON.

F. OCWD shall not modify or otherwise affect the design and performance of Monitoring Well Nos. MCAS-1 to MCAS-10 without the prior written concurrence of DON.

~~G. In the event that monitoring activities by DON or OCWD have caused damage to the monitoring well(s) or have created a condition in the well which prevents the future intended use of the monitoring well(s) within the scope of this Agreement (e.g. equipment lodged), then the party responsible for causing the damage or creating said condition shall repair the damage or remedy the condition at its sole cost to ensure that data collected in the well(s) satisfies all Federal, State and local operation, maintenance, quality assurance/quality control, and safety standards.~~

~~In the event that monitoring or sampling equipment used by DON or OCWD at monitoring wells MCAS-1 through MCAS-10 is lost or damaged during well monitoring activities by the respective parties, then it will be the responsibility of the respective party to retrieve and/or repair its own equipment.~~

### III. OTHER PROVISIONS

#### A. MUTUAL RELEASE AND COVENANT NOT TO SUE

1. In consideration of the settlement of these issues between the Parties (OCWD and DON) and the terms and conditions set forth in this Agreement, each of the Parties hereby expressly releases, forever and fully discharges, waives and covenants not to sue the other Party and all the past and present officers, employees and successors of each of them, with respect to any claim for contribution, cost recovery or other liability or financial payment with respect to any civil claim, counterclaim, cross claim, indemnity, demand, liability, duty, damage, debt, cause of action, due or other chose in action, administrative or judicial, at law or equity, (hereinafter collectively referred to as "claim") for or pertaining to the construction (drilling, installing and initial integrity testing) and operation of Monitoring Well Nos. MCAS-1 through MCAS-10.

2. This Mutual Release and Covenant Not to Sue shall not bar any claim or proceeding by either OCWD or the United States to resolve disputes arising under this Agreement or any action to enforce this Agreement.

3. This Mutual Release and Covenant Not to Sue shall not bar any claim or proceeding by either Party, and both Parties expressly reserve, any and all past, present and future claims that they may have to seek recovery from the other Party of costs not covered by this Agreement. This Mutual Release and Covenant Not to Sue is intended to relate only to costs incurred in constructing and initial integrity testing the ten monitoring wells as defined in Section I above.

#### ~~B. OCWD REFUND OF COSTS RECOVERED FROM OTHER SOURCES~~

~~1. If OCWD should also recover all or a portion of the costs incurred in constructing Monitoring Well Nos. MCAS 1 to MCAS 10 through user fees, bond issues or similar financing mechanisms or from any other responsible party or other third party through litigation or settlement of any claim or claims, OCWD shall in turn refund a corresponding dollar amount to DON not later than sixty (60) days of receipt of recovery of the costs by OCWD.~~

#### B. DISCLAIMER OF LIABILITY AND RESERVATION OF RIGHTS

1. The participation of OCWD and DON in this Agreement is not, and cannot be construed as, an admission of liability for actual or threatened releases of hazardous substances or hazardous wastes under CERCLA; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901, et seq.;

or any other federal, state or local law or regulation. Nothing in this Agreement shall limit either Party's rights to individually defend itself or to bring suit on its behalf concerning any matter not addressed in this Agreement.

~~2. OCWD and DON do not admit and expressly deny any and all allegations and statements of fact and liability concerning actual or threatened releases at or from or the presence at the MCAS El Toro facility of hazardous, toxic or solid wastes or substances under Federal and State law.~~

2. OCWD and DON expressly and fully reserve any and all rights and defenses that they may have under Federal and State statutory and common law, at law or in equity, against each other or any third party in this and any future proceeding.

3. OCWD and DON expressly and fully reserve and do not waive any and all past, present and future claims that they may have against any third party.

4. The liability of the United States under this Agreement is subject to the availability of appropriated funds. Nothing in this Agreement shall be construed as implying that the Congress will, at a later time, appropriate funds sufficient to meet deficiencies.

#### C. NO RIGHTS CREATED FOR OCWD OR DON CONTRACTORS

Nothing in this Agreement shall create any right or any claim for any contractor of OCWD or DON related in any way to the ten monitoring wells that are the subject of this Agreement.

#### D. NO RELEASE OF THIRD PARTIES

Nothing in this Agreement is intended or shall be construed to release any individual or entity not a party to this Agreement from liability for past, present or future response and/or remediation costs, or from liability for damages for injury to, destruction of, or loss of natural resources arising from the release or threatened release of any hazardous substances from the MCAS El Toro facility.

#### E. OCWD COOPERATION IN FUTURE DON CIVIL ACTIONS AGAINST THIRD PARTIES

OCWD shall provide DON with original or certified copies of relevant technical and cost documentation and the cooperation of OCWD officers, employees, and contractors as witnesses in support of any future contribution, cost recovery or other civil claims made and proceedings instituted by the United States under Federal and State statutory and common law, at law

or in equity, against third parties for reimbursement of all or a portion of the costs of construction of Monitoring Well Nos. MCAS-1 to MCAS-10 paid by DON to OCWD pursuant to this Agreement.

**F. COOPERATION WITH FEDERAL AND STATE AGENCIES**

Both Parties shall at all times work in cooperation with all Federal, State and local agencies involved in the investigation and remediation of hazardous substances and hazardous wastes at the MCAS El Toro NPL site. Both Parties shall share all information developed by either Party with each other and with all involved Federal, State and local agencies.

**G. NOTICE**

1. The Parties designate the following technical and legal representatives to be the primary points of contact in the performance of this Agreement:

Technical:

OCWD: \_\_\_\_\_

DON: \_\_\_\_\_

Legal:

OCWD: \_\_\_\_\_

DON: \_\_\_\_\_

2. These representatives may be changed from time to time as the Parties see fit and at their sole discretion. Notice of the change shall be provided to the other Party.

**H. AMENDMENT**

The Agreement may be modified upon the mutual agreement of the Parties reflected in a written document signed by duly authorized representatives of the Parties, which expressly makes reference to this Agreement and the intent to modify the terms of this Agreement.

**I. TERM OF THE AGREEMENT**

This Agreement shall remain in full force and effect until the Parties mutually agree to terminate the Agreement.

Sections III.A through III.F, inclusive, shall survive and continue beyond termination of this Agreement.

**J. CAPTION**

Captions and section headings are inserted for the convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

**K. EFFECTIVE DATE OF THE AGREEMENT**

This Agreement shall take effect upon the date of signature by the last Party to sign it.

**L. SIGNATORIES**

Each undersigned representative of a Party to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of the Agreement and to execute and legally bind Party to the document.

The undersigned, duly authorized representatives of OCWD and DON, have hereby executed this Agreement on the date(s) set forth below.

**APPROVED AS TO FORM**

ORANGE COUNTY WATER DISTRICT

**Clark F. Ide, General Counsel**

\_\_\_\_\_

Date: \_\_\_\_\_

UNITED STATES DEPARTMENT OF  
THE NAVY

\_\_\_\_\_

Date: \_\_\_\_\_