



DEPARTMENT OF THE NAVY
SOUTHWEST DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
OFFICE OF COUNSEL
1220 PACIFIC HIGHWAY, RM 250
SAN DIEGO, CALIFORNIA 92132-5189

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MCAS EL TORO
SSIC # 5090.3

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09C.RC/Ser 5138
28 Jul 93

Clark F. Ide, Esq.
General Counsel
Orange County Water District
P.O. Box 8300
Fountain Valley, CA 92728-8300

Subj: AGREEMENT BETWEEN ORANGE COUNTY WATER DISTRICT AND U.S.
DEPARTMENT OF THE NAVY FOR REIMBURSEMENT OF OCWD COSTS
INCURRED IN CONSTRUCTING GROUNDWATER MONITORING WELLS

Dear Mr. Ide:

The Department of Navy (DON) has reviewed Orange County Water District's (OCWD's) June 3, 1993, redraft of the above Agreement. It appears that the issues that OCWD has raised should be easily resolvable.

DON's most significant concern pertains to the scope of the costs included in the cost documentation that OCWD provided to DON and the dollar amount of the settlement. My clients have reviewed the cost documentation in detail and determined that \$66,703.31 of the amount requested in the June 3, 1993, letter pertained to "TIC Well Tests" relating to expenses associated with wells of The Irvine Company. It is the DON's position that the scope of the agreement should be limited to OCWD costs relating to MCAS-1 through MCAS-10 as originally proposed. The agreement should provide for reimbursement of \$797,062.69.

The following modifications to the language of your proposal are also requested:

1. Add the following language immediately after the abbreviation "DON" on the third line in the last "Whereas" clause on the third page of your redrafted Agreement: "under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), or other applicable Federal or State laws or regulations".

2. Instead of deleting Paragraph III.B.1 as proposed by DON, substitute the following language for that originally proposed by DON:

"B. OCWD REIMBURSEMENT OF COSTS RECOVERED
FROM OTHER SOURCES

1. If OCWD should assert a claim (including but not limited to a claim for cost recovery or contribution) against any

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responsible or potentially responsible party(s) addressing reimbursement of all or a portion of costs incurred by OCWD in constructing Monitoring Well Nos. MCAS-1 to MCAS-10, OCWD shall notify DON in writing prior to asserting such a claim promptly upon determining the existence of the claim. Furthermore, OCWD shall not settle or release any such claim without providing DON with thirty (30) calendar days written notice prior to such settlement or release.

2. If OCWD should recover all or a portion of the costs incurred by OCWD in constructing Monitoring Well Nos. MCAS-1 to MCAS-10 from any other responsible or potentially responsible party(s) through litigation or settlement of any claims under Section 107 of CERCLA, 42 U.S.C. §9607, or analogous State laws, OCWD shall refund to DON the amount recovered up to the amount of \$797,062.69 not later than sixty (60) days of receipt of payment for the recovery of the costs by OCWD."

3. Instead of deleting Paragraph III.B.2 as proposed by DON, substitute the following language for that originally proposed by DON and renumber it as Paragraph III.B.3:

"In signing this Agreement, DON does not admit and expressly denies 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. In signing this Agreement, OCWD does not endorse or agree with DON's denial of allegations and statements of fact and liability."

4. Renumber Paragraphs III.B.2 through III.B.4 of the original DON proposal as Paragraphs III.B.4 through III.B.6 respectively.

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5. Insert the following language in the renumbered Paragraph III.B.6 at the end of the first sentence: "consistent with the Anti-Deficiency Act, 31 U.S.C. §1341".

DON is willing to agree to the rest of the proposed changes highlighted in your June 3, 1993 draft. I suggest that you incorporate the changes set forth above and, if OCWD agrees with them with no further changes, send two clean original final Agreements to me and I will forward them for signature. If you have any questions or comments, do not hesitate to call me at 619-532-1662.

Sincerely,

A handwritten signature in black ink that reads "Rex Callaway". The signature is written in a cursive, flowing style.

REX CALLAWAY
Associate Counsel
(Environmental)

Copy to:
Ron Ress, Counsel, COMCABWEST, USMC

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Major Scharfen, WACO, USMC

Pete Kushner, OAGC(I&E)

John Thompson, NAVFAC, OGC

John Burleson, CMC

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