



DEPARTMENT OF THE NAVY
SOUTHWEST DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
1220 PACIFIC HIGHWAY
SAN DIEGO, CA 92132-5190

M60050.000600
MCAS EL TORO
SSIC # 5090.3

5090
Ser 183/2870
August 20, 1993

Mr. William R. Mills, Jr.
General Manager
Orange County Water District
P.O. Box 8300
Fountain Valley, CA 92728-8300

Dear Mr. Mills:

Please find enclosed a signed original copy of the settlement agreement between the Department of the Navy (DON) and the Orange County Water District regarding the MCAS-1 through MCAS-10 groundwater monitoring wells adjacent to Marine Corps Air Station (MCAS) El Toro. Enclosed also, is a check in the amount of \$797,062.69 in satisfaction of DON's obligations under that agreement. We look forward to continued dialogue with OCWD regarding the desalter project and anticipate initiating discussions of additional agreement(s) in the near future.

Sincerely,

WILLIAM A. DOS SANTOS
Commander, CEC, U.S. Navy
By direction of
the Commanding Officer

Encls:

- (1) Settlement agreement
- (2) Check

Copy to:

MCAS El Toro
COMCABWEST
WACO Camp Pendleton
CMC Wash, DC
COMNAVFACENGCOM



United States Treasury ¹⁵⁻⁵¹ 000



NAVY

8352-03404954

PORT HUENEME, CALIFORNIA

Check No.

18 AUG 93

Pay to the order of ORANGE COUNTY WATER DISTRICT

\$797062.69*

797062DOLLARSAND69CENTS

VOID AFTER ONE YEAR

DISBURSING OFFICER

BY *Marissa L. Berdwell*

⑈83523⑈

⑆000000518⑆ 034049543⑈

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



RECEIVED
AUG 06 1993
OFFICE OF COUNSEL
SOUTHWESTNAVFACENGCOM

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

August 5, 1993

Mr. Rex Callaway
Associate Counsel (Environmental)
Office of Counsel O9C.RC
Southwest Division
Naval Facilities Engineering Command
1220 Pacific Highway, Room 250
San Diego, CA 92132-5189

Dear Mr. Callaway:

Enclosed are two originals of *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* for execution by the Navy. Please return one executed original together with the Navy's reimbursement check in the amount of \$797,062.69.

Thank you for your cooperation.

Very truly yours,

Clark F. Ide
General Counsel

CFI/mak
Enclosures

cc: William R. Mills Jr.
Mary Johnson
Debbie Van Haun

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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: August 4, 1993

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 \$797,062.69 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 under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), or other applicable Federal or State laws or regulations 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 \$797,062.69 not later than September 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. 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.

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, 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 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 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. Section 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. 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 or allegations and statements of fact and liability.

4. 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.

5. 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.

6. The liability of the United States under this Agreement is subject to the availability of appropriated funds consistent with the Anti-Deficiency Act, 31 U.S.C. Section 1341. 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
Clark F. Ide, General Counsel

Philip L. Anthony
President

Date: 8-4-93

Mary E. Johnson
District Secretary

Date: 8-4-93

UNITED STATES DEPARTMENT OF THE NAVY

[Signature]

Date: 8/16/93