



DEPARTMENT OF THE NAVY
SOUTHWEST DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
CONTRACTS DEPARTMENT
1220 PACIFIC HIGHWAY, RM 135
SAN DIEGO, CALIFORNIA 92132-5187

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MCAS EL TORO
SSIC # 5090.3

MCOC
5090
Ser 09E/246
December 16, 1994

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

Dear Mr. Mills:

The Department of the Navy (DON) has preliminarily reviewed the revised information and settlement offer presented by the Orange County Water District (OCWD) at the November 22, 1994, settlement meeting in OCWD's offices. We appreciate the effort that went into preparing OCWD's new offer. Before providing you with DON's interim response, we believe that it is important to review the past course of the negotiations between DON and OCWD regarding the Irvine Desalter project.

OCWD initially approached DON concerning financial participation in the Irvine Desalter Project in the 1990-1991 time period. At that time, OCWD informed DON that it was pursuing DON participation because volatile organic compound (VOC) contamination attributed to Marine Corps Air Station (MCAS), El Toro had migrated off station. OCWD stated that this VOC contamination was impacting OCWD plans for future treatment of total dissolved solids (TDS) and nitrates in the groundwater and development of the groundwater resource as a drinking water supply. OCWD initially indicated it anticipated a financial contribution by DON in the range of \$9 million (September 20, 1991).

In the fall of 1992, MCAS El Toro representatives agreed to consider incorporating the Irvine Desalter Project as it pertained to VOC remediation into the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) remedy selection process. OCWD then presented a report to DON dated December 30, 1992, in which OCWD requested a DON payment of \$58.3 million as DON's "fair share" of the overall project cost. As I noted in my letter to you dated November 15, 1994, OCWD's December 30, 1992, report clearly represented the Irvine Desalter Project as a multi-purpose project serving the purposes of TDS/nitrate treatment, VOC remediation, and water supply development. DON liability was acknowledged by OCWD as being limited to releases of VOC contamination from MCAS El Toro.

In letters dated January 29, 1993, February 19, 1993, and May 11, 1993, DON indicated to OCWD that DON would give the Irvine Desalter Project a "hard look" by evaluating it via the CERCLA

Remedial Investigation/Feasibility Study (RI/FS) process. In the months that followed, DON incorporated the Irvine Desalter Project into a draft Feasibility Study addressing the VOC contamination and submitted the draft Feasibility Study report to USEPA and CALEPA for their review and comment. Because OCWD had indicated repeatedly, both verbally and in the December 30, 1992, report, that the project would proceed with or without DON support, remedial alternatives other than the Irvine Desalter Project were not included in the draft Feasibility Study. DON based the draft Feasibility Study on the presumption that the Irvine Desalter Project was going to be constructed with or without DON participation. Consequently, the draft Feasibility Study treated the Irvine Desalter project as a "baseline condition" that had to be reckoned with and assumed as a given in the study.

As the draft Feasibility Study was under preparation, DON began preparing a settlement offer to present to OCWD. In preparing its offer, DON relied on past OCWD representations made to DON that by jointly participating in financing the project on a "fair share" basis, there would be costs borne by and saved for both parties. This offer was developed in good faith based upon an approach built around DON's potential liability for only the VOC contamination. It was presented to OCWD on October 27, 1994. DON offered \$15.8 million to pay all capital and Operations and Maintenance (O&M) costs for VOC treatment as well as a significant percentage of "joint costs" for infrastructure serving all three of the project's purposes, i.e., groundwater extraction and conveyance to the treatment facilities. DON believes that its offer is fair.

We were surprised and disappointed by OCWD's response to our offer. OCWD has escalated its demands on the DON from \$9 million to \$58.3 million to now \$96.3 million. OCWD is, in effect, attempting to place the entire financial burden for the project, including the full cost of treating the agricultural and naturally occurring TDS and nitrates, upon DON. OCWD's revised position is no longer based upon a mutual cost sharing/cost savings approach.

DON shares OCWD's concern as expressed at the November 22, 1994, meeting that the Irvine Desalter Project may not be economically feasible for either party. OCWD indicates that it may have lost needed local support for their project. Specifically, OCWD provided new information to DON at the meeting indicating that the Irvine Ranch Water District (IRWD) now intends to utilize a \$150/acre foot water supply source. This will allow IRWD to

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terminate their financial support of the Irvine Desalter Project due to economic non-viability. What's more, closer examination of the recent data developed as a result of the Remedial Investigation and groundwater modelling conducted in association with the Feasibility Study has raised serious questions regarding whether or not the Irvine Desalter Project is the best technical solution to the VOC contamination. In this light, DON intends to expand the scope of the Feasibility Study to look at other remedial alternatives. Under applicable Federal law, any remedial action that DON selects for VOC remediation is required to be focused on CERCLA hazardous substances and to be cost-effective. Our obligation to the Federal taxpayer requires no less.

It would be very helpful to DON if OCWD would clarify whether or not OCWD will proceed with construction and operation of the Irvine Desalter Project with or without IRWD and/or DON participation. Although DON is compelled to address other remedial alternatives for the reasons stated above, clarification of OCWD's intentions regarding this issue has a bearing on how the Feasibility Study is prepared and how the schedule for preparing that document must be revised. Once we receive a response to this issue, we will communicate the revised schedule to OCWD and the regulators. We will, of course, continue to coordinate closely with OCWD as we re-evaluate and re-scope the Feasibility Study. Meanwhile, DON will defer further response to OCWD's draft Settlement Agreement to a later date. We are, however, always available to discuss or meet with you on these issues.

Sincerely,



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

Copy to:
Commanding General
Assistant Chief of Staff Environmental
Marine corps Air Station, El Toro
P.O. Box 95001
Santa Ana, CA 92709-5001

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Commander
Marine Corps Air Bases, Western Area
MCAS El Toro
Santa Ana, CA 92709

Comandant of the Marine Corps
Headquarters, U.S. Marine Corps (LFL)
Washington, DC 20380

Cheryl Kandaras
Principle Deputy, ASN (I&E)
1000 Navy Pentagon Room 4E765
Washington, DC 20350-1000

Elsie L. Munsell
Deputy Asst Secy of the Navy
(Environmental & Safety)
1000 Navy Pentagon Room 4A686
Washington, DC 20350-1000