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VIA TELEFAX

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

Dear Mr. Mills:

As the date for our next meeting approaches, I thought it would be helpful to address some key issues in a way that could help us better focus our negotiations. Although these issues weren't specifically the subject of a detailed discussion, they heavily influenced the Department of Navy's (DON's) position as set forth in the October 26, 1994 settlement offer to Orange County Water District (OCWD) regarding the Irvine Desalter Project. Some of these issues are also indirectly raised in your November 3, 1994 preliminary response to the Department of Navy's (DON's) October 26, 1994 settlement offer.

As you are aware, DON's offer addressed costs associated with construction, operation and maintenance of the VOC treatment plant as well as a "fair share" of the costs of groundwater extraction wells and pipelines for delivery of extracted water to the VOC treatment plant. The offer did not include compensation for OCWD and Irvine Ranch Water District (IRWD) expenses associated with construction, operation and maintenance of the desalination plant and associated infrastructure. We need to more clearly state DON's reasoning for this conscious omission.

Stated simply, DON is not liable to OCWD for remediation of past releases of agricultural and natural background contaminants that are integral to the desalination plant and associated infrastructure. Liability for this contamination lies elsewhere with other parties that are not involved in the cost-sharing negotiations to date.

We believe that OCWD's demands for funding beyond VOC remediation improperly include costs relating to agricultural and natural background contaminant remediation and associated costs. You can understand DON's refusal to fund the aspects of the Irvine Desalter Project activities that directly address cleanup of regional agricultural pollution and associated water supply development infrastructure. This is unfair and goes beyond an equitable apportionment of response costs under the law.

Based upon discussions to date, as well as review of extensive documentation previously provided by OCWD, DON is aware that the Irvine Desalter Project, as conceived and designed by OCWD, serves multiple purposes. These include interception and treatment of groundwater contaminated with agricultural and natural background contaminants (e.g., nitrates and selenium), interception and treatment of groundwater contaminated with volatile organic compounds (VOCs), and development of a local supply of drinking water to reduce local dependence upon imported water. Consistent with the multiple purposes of the project, the extracted and treated water will not be discharged or reinjected following treatment but will, instead, be delivered to IRWD for use as drinking water.

The multiple purposes to be served by the project are stated clearly on pages 1 and 2 of OCWD's December 30, 1992 "Irvine Desalter Facility Plan Project Report and Cost Sharing Analysis":

"Consistent with its statutory responsibility and authority, OCWD is moving forward with the Irvine Desalter Project. The objectives of the project are twofold -to remediate groundwater contamination while developing a reliable potable water supply. As originally envisioned, the project was to remove inorganic contaminants from the pumped groundwater. However, the presence of TCE requires substantial modification of the original project, particularly with respect to well locations and treatment processes, resulting in increased costs. The project will pump, collect and treat the contaminated groundwater and deliver the product to IRWD's distribution system for potable use... As responsible party, the U.S. Marine Corps is compelled by federal and state law to remediate the TCE contamination. OCWD (1990) demonstrated that the Irvine Desalter Project will meet this objective. Thus, through participation in the Irvine Desalter Project, the U.S. Marine Corps can avoid substantial effort and cost. The project cost must be allocated between OCWD and the U.S. Marine Corps."

In addition, on page 1 of that report, OCWD acknowledges that: "Return flows from overlying agricultural irrigation coupled with natural hydrogeologic conditions are the likely causes of the inorganic contamination".

Based upon these and similar statements in other documents produced by OCWD, it is clear that OCWD and IRWD intend to proceed with the project with or without DON "up-front" payment

of costs. The project has been financed, is partially constructed and design work is in progress. We would hope that, OCED recognizes DON's responsibilities are to address the VOC contamination and not other contaminants, as indicated in the quotes above.

Because of OCWD's commitment to the Irvine Desalter Project, DON analyzes its responsibilities in terms of identifying and evaluating costs of the multi-purpose Irvine Desalter Project that are directly associated with VOC remediation. That is where DON's potential liability lies. This is where the settlement negotiations should focus.

Accordingly, the "Navy stand-alone" system that was utilized in developing the cost-sharing ratio utilized in DON's September 1994 Cost Allocation Report for the groundwater extraction wells and associated pipelines specifically did not address costs beyond those associated with pumping and VOC treatment. DON intends to provide supporting analysis for the basic assumptions for the extraction and VOC treatment "Navy stand-alone" system at the November 22, 1994, meeting as requested in your November 3, 1994, letter. However, DON does not intend to develop such analyses regarding desalinization, brine disposal, etc. for the reasons set forth above. It is not realistic or useful to hypothesize concerning dual or competing OCWD and DON pump and treat scenarios and the many entangled hypothetical issues that they raise regarding desalinization, discharge and disposal of extracted groundwater particularly given DON's lack of liability for agricultural and natural background contaminants.

In the upcoming meeting, DON would greatly appreciate OCWD's cooperation in clarifying the current institutional and financial arrangements for constructing, operating and maintaining the Irvine Desalter Project. More specifically, DON would appreciate it if OCWD would make an organized presentation with supporting documentation addressing the roles of IRWD, the Metropolitan Water District and the ultimate water users and ratepayers for the treated water in financing the project including addressing Section 5 of the November 18, 1992 amended agreement between OCWD and IRWD. As a public agency, DON wants, of course, to ensure that any funding paid out to address VOC remediation costs covers only those costs and that the benefit of such payment goes directly to the ultimate water users/ratepayers. DON also wants to ensure that the federal taxpayers and local rate payers are not duplicating payments for the same VOC remediation costs.

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DON believes that these key issues should be specifically addressed at the scheduled November 22, 1994 meeting. In addition, DON urges OCWD to specifically address the draft Settlement Agreement in writing before that meeting by preparing its own draft agreement as a counter-offer. That would facilitate identification of all the issues that must be resolved in the negotiations and ultimately speed resolution of those issues. If OCWD would like more time to prepare such a response and address other DON concerns and issues raised above, we would be prepared to reschedule a meeting at a later date although we are anxious to move forward. We look forward to further discussions with OCWD.

Sincerely,



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

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