



**DEPARTMENT OF THE NAVY**  
**BASE REALIGNMENT AND CLOSURE PROGRAM OFFICE**  
**SOUTHWEST DIVISION, NAVAL FACILITIES ENGINEERING COMMAND**  
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MCAS EL TORO  
SSIC # 5090.

5090  
Ser 56MC.AP/0818  
August 8, 1997

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

Dear Mr. Mills:

We received your letter of June 18, 1997 and have undertaken a preliminary review of the enclosed agreement. Thank you for responding to our December 30, 1996 draft Settlement Agreement regarding a joint water supply and volatile organic compound (VOC) remediation project between the Orange County Water District (OCWD) and the Department of the Navy (DON). Although progress appears to have been made on some issues, our preliminary review of your draft agreement has revealed some significant new issues when compared to our December 1996 draft agreement. We would like to meet with you to discuss your draft Contribution Agreement. To ensure our meeting is productive, it is important that we first carefully evaluate the new issues raised.

We are very pleased that your latest cost figures are much closer to those presented in our December 1996 draft Settlement Agreement. Although the difference between the cost figures have narrowed, we are concerned that OCWD appears to have made a shift away from a settlement approach for past costs and future response costs regarding potential DON liability associated with releases of hazardous substances from MCAS El Toro in favor of a contractual approach narrowly focused on future costs associated with a modified Irvine Desalter Project (IDP). Costs not associated with the IDP appear to fall entirely outside of the agreement. It is not clear how past costs are addressed. Moreover, the issue of DON's liability for TDS/nitrate treatment costs appears to have been reopened.

This significant change in approach comes after several years of dialogue in which the parties had agreed that a comprehensive settlement approach was appropriate and were attempting to work out the terms of such an agreement. The actual ultimate cost to DON under OCWD's proposal may be much higher than under DON's proposal. Without a settlement of past costs and future liability through a cash-out settlement accompanied by a covenant not to sue, DON is unfortunately not able to easily compare the respective costs of the two proposals and ensure that the agreement is fair and equitable. We are considering the consequences of your proposal very thoroughly.

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It will take time for DON to evaluate the ramifications of this change as well as other issues raised in your new draft. We will be requesting an extension to our Federal Facility Agreement from the regulatory agencies in order for us to continue our efforts to come to a fair and equitable settlement to a joint project and resolve the many issues brought forth in your draft Contribution Agreement.

After undertaking the necessary review and coordination within DON, we expect to be ready to meet with you within the next couple of months. Please contact me at (619) 532-2590 if you have any questions concerning this scheduled progress in our ongoing negotiations.

Sincerely,



DANA SAKAMOTO  
Deputy BRAC Operations Officer

Copy to:  
Clark Ide, OCWD Counsel  
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