

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION R5-2011-0059

AUTHORIZING THE EXECUTIVE OFFICER TO ENTER INTO AN AGREEMENT FOR
MUTUAL RELEASE AND COVENANT NOT TO SUE WITH
SVA GROUP, LLC AND SIERRA VALLEY ALMONDS, LLC
FOR
TWO PARCELS CONTAINING CONCRETE WAREHOUSES
AT THE FORMER OBERTI OLIVE PROCESSING FACILITY, 12806 ROAD 26
MADERA COUNTY, CALIFORNIA

WHEREAS, the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) finds that:

1. **Jurisdiction:** The former Oberti Olive Company olive processing facility (the Site) is in Madera County, California. The two parcels of interest are more particularly described in Attachment B, property description. Historic operations on portions of the Site impacted groundwater with non-hazardous olive processing brine containing sodium chloride (salt). The Central Valley Water Board is the lead agency for cleanup of the Site.
2. **Site Status:** The Site consists of four parcels comprising approximately 78.5 acres, as shown on Figure 1. Various owners operated the Site from the late 1940's until 2004. In 2004, the final owner declared bankruptcy and liquidated non-exempt assets pursuant to Chapter 7 of the Bankruptcy Code. The Site was regulated by various Central Valley Water Board orders from the 1960's until 2009, when the orders were rescinded. Originally, high-strength olive brine wastewater was discharged into three clay-lined ponds located at the south end of the Site. Historically, wastewater leaked from the ponds, impacting the underlying regional groundwater aquifer. The ponds were closed in the 1970's. Several offsite private drinking water and agricultural wells that were impacted by discharges from the Site were replaced. Numerous groundwater monitoring wells and several groundwater extraction wells both on- and off-site were constructed for monitoring and remediation. Groundwater extraction and monitoring ceased in 2004. In 2006 a local developer purchased 61 acres of the Site, but did not purchase a five-acre parcel containing olive trees or the two parcels described herein.
3. SVA Group, LLC has expressed interest in acquiring title to two of the four parcels at the Site to lease to Sierra Valley Almonds, LLC to process almonds. Each parcel contains a concrete warehouse, which are referred to as the North Warehouse and the South Warehouse, as shown on Figure 2. SVA Group, LLC's interest is exclusively in acquiring the two parcels; SVA Group, LLC does not express an interest in acquiring additional parcels affected by historic operations at the Site. The North Warehouse is owned by J. Oberti, Inc. and the South Warehouse is owned by United Security Bank. The almond processing proposed by Sierra Valley Almonds, LLC is a dry process and does not pose any known threat to water quality.
4. SVA Group, LLC and Sierra Valley Almonds, LLC are seeking assurances from the Central Valley Water Board that they will not incur liability for the cleanup of the Site by

virtue of their purchase and use (respectively) of the two parcels. While the Site has been the subject of multiple remedial actions, the Central Valley Water Board is not pursuing additional remediation at this time, and views the acquisition of the parcels by SVA Group, LLC and their use by Sierra Valley Almonds, LLC as a positive redevelopment, giving a benefit not only to SVA Group, LLC and Sierra Valley Almonds, LLC, but to the surrounding community as well. SVA Group, LLC and Sierra Valley Almonds, LLC propose to carry out certain limited remedial activities in exchange for a mutual release and covenant not to sue for investigation and cleanup of contamination and/or pollution at or originating from the Site, such activities being carried out by SVA Group, LLC and Sierra Valley Almonds, LLC at the direction and under the supervision of Central Valley Water Board staff. Entering into a mutual release and covenant not to sue with SVA Group, LLC and Sierra Valley Almonds, LLC will facilitate work related to cleanup of the Site.

5. Absent an agreement to the contrary, under the Water Code and under the Policies, Regulations and Procedures of the Central Valley Water Board and the State Water Resources Control Board, a party acquiring title to property affected by the discharge of wastes acquires liability for the cleanup of that property. The agreement authorized by this Central Valley Water Board action limits SVA Group, LLC's and Sierra Valley Almonds, LLC's liability for cleanup related to the Site to the limited and defined set of activities described in Attachment C.
6. **Board Authority:** Pursuant to Water Code section 13300 et seq., the Central Valley Water Board has authority to release and covenant not to sue or assert claims for environmental investigation or remediation or other related claims against potentially responsible parties if such agreements are sufficiently in the public interest to warrant expending the public resources necessary to reach such agreement.
7. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, Fourth Edition, revised September 2009 (the Basin Plan) designates the beneficial uses of the groundwater underlying the Site. The Basin Plan considers that the groundwater beneath the Site is suitable for municipal and domestic water supply, agricultural supply, industrial service supply, and industrial process supply. However, these uses may be impacted by past activities that have affected the quality of the groundwater beneath the Site and this groundwater may not be suitable for all of the enumerated beneficial uses.
8. **CEQA:** The granting of a Covenant Not to Sue does not constitute a project as defined by Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378(a). Thus, this action is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.).
9. **Public Notice:** The Board provided notice of its intention to consider this matter at the 3/4/5 August 2011 Central Valley Water Board meeting, and provided an opportunity for interested persons, including all Designated Persons and Dischargers to comment on the draft resolution and its attachments.

10. **Public Hearing:** The Central Valley Water Board, at a public meeting, heard and considered all comments pertaining to the alleged discharges at or from the Site.

NOW, THEREFORE BE IT RESOLVED, that the Central Valley Water Board, having considered the facts regarding the water quality concerns and the intended involvement of SVA Group, LLC and Sierra Valley Almonds, LLC, and having considered the terms of the proposed settlement, after notice to and full opportunity to be heard for all affected parties, including all Designated Persons and Dischargers, finds that the proposed agreement, release and covenant not to sue are in the public interest, and authorizes the Executive Officer to negotiate minor amendments to the draft Mutual Release and Covenant Not To Sue (Attachment A) and to sign and execute the Mutual Release and Covenant Not to Sue (Attachment A, as amended) with SVA Group, LLC and Sierra Valley Almonds, LLC.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Valley Region, on 5 August 2011.

PAMELA C. CREEDON, Executive Officer

Attachment A: Mutual Release and Covenant Not to Sue
Attachment B: Property Description
Attachment C: Workplan
Figure 1
Figure 2

Ave 13

W Pecan Ave

Oberti Property
 Parcel # 046-020-040
 5 acres

Ironhorse Oberti, LLC Property
 Parcel # 046-020-043
 57.72 acres

NORTH WAREHOUSE
Oberti Property
 Parcel # 046-020-041
 7 acres

SOUTH WAREHOUSE
United Security Bank Property
 Parcel # 046-020-044
 6.58 acres

Old Clay-Lined Ponds

35A3

35A2

35A5

35A4

Rd 26

Rd 26

MW-27-2

MW-29

MW-18

MW-16

PE-01

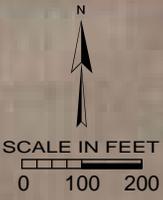
PE-02

MW-15

MW-14

MW-17

Ave 12 1/2



SITE MAP
 MADERA COUNTY

Explanation

- Groundwater Monitoring Well
- Agricultural Well
- Industrial Well
- Groundwater Extraction Well

Note: All well locations are approximate

FIGURE 1



NORTH WAREHOUSE

Oberti Property
Parcel # 046-020-041
7 acres

SOUTH WAREHOUSE

United Security Bank Property
Parcel # 046-020-044
6.58 acres

SITE MAP
OBERTI WAREHOUSE
&
UNITED SECURITY BANK WAREHOUSE
MADERA COUNTY



FIGURE 2

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ATTACHMENT A TO RESOLUTION R5-2011-0059

MUTUAL RELEASE AND COVENANT NOT TO SUE
WITH SVA GROUP, LLC AND SIERRA VALLEY ALMONDS, LLC
FOR
TWO PARCELS CONTAINING CONCRETE WAREHOUSES
AT THE FORMER OBERTI OLIVE PROCESSING FACILITY, 12806 ROAD 26
MADERA COUNTY, CALIFORNIA

I. INTRODUCTION

THIS MUTUAL RELEASE AND COVENANT NOT TO SUE (the Mutual Release) is provided pursuant to Central Valley Regional Water Quality Control Board (Central Valley Water Board) Resolution R5-2011-0059 (hereafter Resolution) authorizing its Executive Officer to negotiate and sign the Mutual Release concerning two parcels that each contain a concrete warehouse identified as the North Warehouse and the South Warehouse, which are located at the former Oberti Olive Company olive processing facility (the Site) at 12806 Road 26 in Madera County, California. The parcels are more particularly described in Attachment B to the Resolution.

The Central Valley Water Board has issued various orders directing former responsible parties to undertake investigative, monitoring, and cleanup actions at the Site in order to remediate groundwater impacts related to historic olive processing. In 2004, the final owner declared bankruptcy and liquidated non-exempt assets pursuant to Chapter 7 of the Bankruptcy Code. In 2009, all of the Central Valley Water Board-issued orders were rescinded. The Central Valley Water Board understands that SVA Group, LLC and Sierra Valley Almonds, LLC have agreed to undertake, at the direction and under the oversight of the Central Valley Water Board, a limited set of remedial actions on the parcels. SVA Group, LLC and Sierra Valley Almonds, LLC desire a commitment, to the maximum extent permitted by law, that they, as well as all of their respective members, managers, directors, officers, employees, partners, affiliates, and agents, (individually SVA Group, LLC, Sierra Valley Almonds, LLC or Released Party and collectively the Released Parties) will not be subject to any further liability for, or the subject of any actions, claims, orders, demands, enforcement actions or other civil or administrative proceedings, including without limitation, any investigation, monitoring or remediation requirements, related to or arising from the Known Conditions as of the date this Mutual Release is fully executed (Effective Date).

II. DEFINITIONS

For purposes of this Mutual Release, Known Conditions means all conditions of pollution or nuisance at, under, or originating from the Site or any portion thereof, that are known to the Central Valley Water Board prior to the Effective Date. The term “known to the Central Valley Water Board” means all information regarding the pollution or nuisance at, under, or originating from the Site, or any portion thereof, that was disclosed to the Central Valley Water Board, or that is reasonably discernible from the information contained in the Central Valley Water Board’s files relating to the Site, the Resolution, or the investigations, work plans, reports, or

any other information submitted to the Central Valley Water Board by any party prior to the Effective Date.

III. FINDINGS OF FACT

This Mutual Release is based on the findings made by the Central Valley Water Board in Resolution R5-2011-0059 and on the following findings by Central Valley Water Board staff:

1. The Site is within the jurisdiction of the Central Valley Water Board due to the Known Conditions. The Central Valley Water Board enters into this Mutual Release pursuant to Water Code sections 13000 et seq. The Central Valley Water Board has authority to release and covenant not to sue or assert claims for environmental investigation or remediation or other related claims against potentially responsible dischargers at environmentally impacted properties where, as here, the agreement is sufficiently in the public interest.
2. It is not disputed that the groundwater impacts are primarily the result of former olive processing activities, which ended December 2004. There is no longer olive processing conducted on the Site and all processing and water treatment equipment has been removed.
3. With respect to the involvement of SVA Group, LLC and Sierra Valley Almonds, LLC at the properties, it is not disputed that:
 - a. Neither SVA Group, LLC nor Sierra Valley Almonds, LLC is a current or previous owner or operator at the Site;
 - b. Neither SVA Group, LLC nor Sierra Valley Almonds, LLC is related or affiliated with any other party responsible for remediation, cleanup, or investigation at the Site;
 - c. SVA Group, LLC's and Sierra Valley Almonds, LLC's sole relationship with the Site at the time that this Mutual Release is entered into is as a prospective purchaser and lessee of the two parcels seeking indemnification from future Central Valley Water Board actions.
4. By entering into this Mutual Release, SVA Group, LLC and Sierra Valley Almonds, LLC certify that, to the best of their knowledge and belief, they have fully and accurately disclosed to the Central Valley Water Board any and all information known to SVA Group, LLC and Sierra Valley Almonds, LLC and all information in the possession or control of their respective members, managers, officers, directors, employees, contractors and agents which relates in any way to any existing condition of pollution or nuisance, or any past or potential future release of wastes, arising at or originating from the Site.

5. This Mutual Release is consistent with the goals and purposes of the Porter-Cologne Water Quality Control Act (Water Code § 13000 et seq.).

IV. MUTUAL RELEASE AND COVENANT

1. In accordance with Resolution R5-2011-0059 , the Central Valley Water Board expressly finds that the Released Parties shall not be liable or otherwise responsible for such Known Conditions and hereby covenants and agrees not to initiate, bring, or support any claim, order, demand, enforcement action or other civil or administrative proceeding against the Released Parties arising out of or related to such Known Conditions under any local, state or federal statute or the common law, including but not limited to, in their entirety, the United States Code, including the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the various California Codes, or other applicable laws, regulations, ordinances, or civil, judicial or administrative authorities, having application to the handling, release, presence, migration, cleanup, containment or maintenance of the Known Conditions at, on, under or originating from the Site, or any portion thereof.
2. In partial consideration for this Mutual Release, the Released Parties promise to carry out the limited remediation actions described in Attachment C. In further consideration for this Mutual Release, the Released Parties hereby release and covenant not to sue the Central Valley Water Board, its authorized officers, employees or representatives, with respect to any and all liability or claims associated with or arising out of the Known Conditions.
3. Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, Liability and Recovery Act of 1980 (42 U.S.C. § 9613(f)(2).) provides that: "A person who has resolved its liability to the United States or a State in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement." Accordingly, the Central Valley Water Board affirms that this Mutual Release and Covenant Not to Sue resolves the Released Parties' liability to the Central Valley Water Board with regard to any claims related to the matters included in Resolution R5-2011-0059, including all claims regarding the handling, storage, presence, migration, cleanup, or disposal of the Known Conditions at, under, or originating from the Site, and that the Released Parties are entitled to protection against claims for contribution by any other parties to the extent authorized by state, federal or common law for all matters covered under the proposed settlement, including Civil Code section 877 and 42 U.S.C. § 9613(f)(2).
4. The Board will not seek to hold SVA Group, LLC or Sierra Valley Almonds, LLC, liable or otherwise responsible for any additional work outside of the work delineated in Attachment C relating to water quality impacts related to the Known Conditions.
5. This Release shall be without prejudice to the ability of the Central Valley Water Board to take action against any party other than the Released Parties, relating to the investigation, cleanup, or cost of investigation or cleanup of the Known Conditions.

6. Notwithstanding any other provisions of this Mutual Release, the Central Valley Water Board reserves the right to assert any claims, enforcement actions or other civil or administrative proceedings against the respective Released Parties relating to the acts or omissions of the Released Parties arising after the Effective Date and which are based on the failure of the respective Released Parties, to the extent they have control over the parcels, to (i) comply with the requirements and conditions of the Mutual Release, (ii) comply with any deed restrictions and/or institutional constraints currently imposed or that may be subsequently imposed pursuant to Central Valley Water Board order, and (iii) cooperate in providing reasonable access to the parcels for the purpose of inspections or investigations required by the Central Valley Water Board pursuant to this Mutual Release. If the Central Valley Water Board determines that a Released Party has failed to comply with any of these three enumerated requirements, and the Central Valley Water Board elects to proceed against that Released Party, then this Mutual Release shall be suspended as to that Released Party, and the Central Valley Water Board and the Released Party shall then have any rights or defenses they would have had if this Mutual Release and Covenant Not to Sue had not existed.
7. This Mutual Release may be executed in one or more counterparts, each such counterpart being deemed an original but all counterparts constituting a single instrument.
8. Each of the undersigned parties hereby certifies, and warrants that he or she is authorized to bind his or her agency or entity to the continuing obligations described herein, and that the foregoing is a full, true and correct copy of Attachment A to Resolution R5-2011-0059 Mutual Release and Covenant Not To Sue adopted by the California Regional Water Quality Control Board, Central Valley Region, on 5 August 2011.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, CENTRAL VALLEY REGION

By: _____
Title:
Date:

SIERRA VALLEY ALMONDS, LLC

By: _____
Title:
Date:

SVA GROUP, LLC

By: _____
Title:
Date:

ATTACHMENT B TO RESOLUTION R5-2011-0059: PROPERTY DESCRIPTION

Each of two parcels contains a concrete warehouse. The parcels are in the E½, SE¼, Section 35, T11S, R17E, MDB&M, on a portion of the former 78.5 acre Oberti Olive Company processing facility at 12806 Road 26 in Madera County, California.

The North Warehouse is on a parcel identified as Assessors Parcel # 046-020-041 containing approximately 6.87 acres of land owned by Gary and Stan Oberti in Madera. The parcel contains two groundwater monitoring wells identified as MW-27-2 and MW-29, an irrigation/industrial well identified as 35A4, and a small concrete-lined fire water storage pond.

The South Warehouse is on a parcel identified as Assessors Parcel # 046-020-044 containing approximately 6.58 acres of land owned by United Security Bank in Fresno. The parcel contains one groundwater monitoring well identified as MW-16. The west half of the South Warehouse overlies the northeast corner of what is identified in Central Valley Water Board files as the former Old Clay-lined Ponds.

ATTACHMENT C TO RESOLUTION R5-2011-0059: SCOPE OF WORK

On behalf of SVA Group, LLC, the prospective purchaser, and Sierra Valley Almonds, LLC, the prospective user of two parcels at the former Oberti Olive Company olive processing facility (the Site) at 12806 Road 12 in Madera County, California, we, Mark H. Turmon and Dean K. Nelson, do hereby represent as follows:

1. As the prospective purchaser of the parcels, SVA Group, LLC, and as the prospective user of the parcels, Sierra Valley Almonds, LLC, are seeking assurances from the Central Valley Regional Water Quality Control Board (Central Valley Water Board) that they will not incur liability for cleanup actions related to past activities at the Site, including, but not limited to:
 - a. The investigation and cleanup of soil and/or groundwater impacted by salt;
 - b. The maintenance of any groundwater extraction and treatment system.
2. In consideration of the Mutual Release and Covenant Not to Sue, SVA Group, LLC and Sierra Valley Almond, LLC, upon taking title to the two parcels described in Attachment B to Resolution R5-2011-0059 shall:
 - a. In accordance with an approved plan, properly destroy the two groundwater monitoring wells identified as MW 27-2, and MW-29, located on the parcel containing the North Warehouse, and one groundwater monitoring well identified as MW-16, located on the parcel containing the South Warehouse. A well destruction plan and time schedule shall be submitted for Central Valley Water Board staff review 30 days following adoption of the Resolution.
 - b. Submit evidence to the Central Valley Water Board staff that the concrete-lined fire water pond has been emptied 30 days following installation of an acceptable water service via a waterline connected to the parcels;
 - c. Provide a written easement agreement between SVA Group, LLC and the adjacent property owner for the disposal of storm water runoff from the parcels that is in a form acceptable to Central Valley Water Board staff or, annually, provide written confirmation of storm water easement controls at the parcels with the adjacent property owner;
 - d. Provide notification within 30 days regarding any changes to the terms or cancellation of the storm water easement agreement.
 - e. Within six months, construct a durable surface on those unpaved portions of the parcels, which shall be graded to provide storm water runoff;
 - f. Allow duly authorized Central Valley Water Board staff reasonable access to the parcels during normal business hours to ensure compliance with the provisions of this Paragraph 2;
 - g. Except in the event of emergency (i.e., the repair or replacement of ruptured or damaged electric, water, gas, sewer and/or septic lines), provide to the Central Valley Water Board at least 60 days prior written notice of the construction of new

buildings, structures or other installations on the parcels that may disturb the soil, which notice shall include a general description of the work to be performed and copies of any site plans; and

- h. Provide the Central Valley Water Board with written notice of the transfer of ownership of the parcels by SVA Group, LLC, which notice shall be given at least 60 days prior to such transfer. SVA Group, LLC agrees to provide a prospective purchaser with copies of the Mutual Release and Covenant Not to Sue, together with a copy of this Attachment C. The parties acknowledge that no transferee of the parcels shall be entitled to the benefits of the Mutual Release and Covenant Not to Sue. The prospective transferee of the parcels may, in its discretion, request that the Central Valley Water Board grant continued coverage under the Mutual Release and Covenant Not to Sue. The Central Valley Water Board retains the discretion to grant, conditionally grant or refuse such continued coverage to the prospective transferee.

Within 60 days of completion of each phase of the work described in subparagraphs a, b and c, and upon receipt of an acceptable form of storm water disposal easement as envisioned in subparagraph c., Central Valley Water Board staff shall provide written notice to SVA Group, LLC and Sierra Valley Almond, LLC that such requirements have been satisfied.

3. We understand that non-compliance with the above terms may be considered a material breach of the Mutual Release and Covenant Not to Sue, and could render the Mutual Release and Covenant Not to Sue null and void.
4. We are duly authorized representatives of both SVA Group, LLC and Sierra Valley Almonds, LLC, and have the legal authority to enter into this agreement.

Mark H. Turmon, Manager

Dean K. Nelson, Manager