

ITEM: 28

SUBJECT: Resolution Authorizing the Executive Officer to Enter Into an Agreement for Mutual Release and Covenant Not to Sue

BOARD ACTION: *Consideration of a Resolution authorizing the Executive Officer to enter into an agreement for mutual release and covenant not to sue with DowBrands, Inc. and either Saint Anthony's Bread Basket, Inc. and Fresno County Housing Authority or Royal Oaks Business park, LLC for the property at 2696 South Maple Avenue, Fresno, Fresno County*

BACKGROUND: The Site consists of approximately 14 acres and was previously operated as an auto parts manufacturing/rebuilding facility. Site operations resulted in soil and groundwater being degraded with solvents. Operations at the property ceased in 1997 and the current owner is in bankruptcy and cannot, as a practical matter, rehabilitate or redevelop the site.

DowBrands owned and operated a facility upgradient of the subject Site. The DowBrands facility also degraded soil and groundwater with solvents and solvents from the DowBrands facility have commingled with solvents from the subject Site in groundwater.

Saint Anthony's Bread Basket, Inc. (St. Anthony's)/Fresno County Housing Authority and Royal Oaks Business Park, LLC (Royal Oaks) are both interested in purchasing and redeveloping the Site. DowBrands and either St. Anthony's/Fresno County Housing Authority or Royal Oaks are seeking assurances from the Central Valley Water Board that they will not incur liability associated with the Site following the purchase of it.

St. Anthony's and Royal Oaks have expressed a willingness to carry out certain limited remedial activities at the Site in exchange for the 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 under the direction and supervision of Central Valley Water Board staff. The acquisition of the Site and subsequent redevelopment and operation by either St. Anthony's or Royal Oaks would benefit the surrounding community.

DowBrands proposes to carry out certain limited investigation of groundwater downgradient of the Site in exchange for the mutual release and covenant not to sue for investigation and cleanup of contamination and/or pollution at or originating from the Site.

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 § 210000 et seq.).

RECOMMENDATION: Adopt the proposed resolution.