

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION R5-2011-XXXX

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 The Site was regulated by various Central Valley Water Board orders from the 1960's until 2009, when the orders were rescinded.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 _____, 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