

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ATTACHMENT A TO RESOLUTION R5-2011-XXXX

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-XXXX (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 In 2009, all of the Central Valley Water Board-issued orders were rescinded.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-XXXX 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-XXXX , 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-XXXX, 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-XXXX Mutual Release and Covenant Not To Sue adopted by the California Regional Water Quality Control Board, Central Valley Region, on _____.

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: