

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION NO. R5-2005-0165

OBJECTING TO TAX SALE OF PENN MINE PROPERTY
CALAVERAS COUNTY

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

1. The Penn Mine site is a former copper mine from which acid rock drainage (ARD) containing high levels of dissolved metal was discharged into the Mokelumne River.
2. In 1978, following public hearings, the Regional Water Quality Control Board, Central Valley Region (Regional Board) and the East Bay Municipal Utility District (the District) constructed site improvements, including Mine Run Dam, to mitigate ARD discharge to Camanche Reservoir.
3. The Penn Mine site was the subject of a United States Environmental Protection Agency order under Section 309 of the federal Clean Water Act as well as litigation entitled *Committee To Save Mokelumne River v EBMUD*, 13F.3d 305 (9th Cir. 1993) and associated cases.
4. In settlement of those cases and in satisfaction of the 309 Order, the Regional Board and the District implemented the Penn Mine Environmental Restoration Project on certain parcels to restore the property to pre-mining conditions, including removal of the mine waste that was a source of ARD, placement of the waste in an on-site landfill, re-grading and re-vegetation of the site and restoration of the stream drainages through the site.
5. Although the Regional Board has no further remediation obligation at the site, in accordance with Title 27 of the California Code of Regulations, the District and the Regional Board are conducting post-closure maintenance of the landfill, which is located on two parcels, throughout the post-closure maintenance period (as defined in Title 27, Section 20164).
6. To recoup the public funds expended in the environmental cleanup, the District and the Regional Board placed simultaneous liens on the Penn Mine property pursuant to California Water Code Sections 13304(c) and 13305. The Regional Board's lien totals \$5,700,000 and names the Regional Board as the lien claimant.
7. On 3 November 2005 the Calaveras County Office of Treasurer-Tax Collector will offer the Penn Mine property (Parcels 048-002-002-000, 016-031-001-000, and 016-031-007-000) for sale at public auction to the highest bidder.
8. Revenue and Taxation Code Section 3712(b) provides that the purchaser of tax defaulted property acquires the property subject to the liens or other interest of a taxing agency that has objected to the sale.

9. The Regional Board is a taxing agency within the meaning of Revenue and Taxation Code Section 3712(b).
10. Revenue and Taxation Code Section 3695 provides that an objection must be in the form of a certified resolution of the governing body of the objecting agency and must be filed with the Tax Collector and the County Board of Supervisors prior to the sale.
11. The Regional Board has delegated to the Executive Officer, pursuant to Water Code section 13223, certain powers and duties, which includes the power to adopt resolutions. Actions taken pursuant to the delegated authority are considered actions of the Regional Board.
12. At a Regional Board meeting held on 21 October 2005, the Regional Board approved the action of the Executive Officer to adopt this Resolution.

THEREFORE BE IT RESOLVED:

1. That the Regional Board objects to the tax sale of the Penn Mine property, where the District and the Regional Board conducted extensive environmental remediation work and upon which the Regional Board has placed a lien in the amount of \$5,700,000.
2. That under authority delegated by the Regional Board pursuant to Section 13223 of the California Water Code, and as approved by the Regional Board, the Executive Officer hereby files with the Calaveras County Tax Collector, a certified copy of this resolution objecting to the sale of Parcels 048-002-002-000, 016-031-001-000, and 016-031-007-000, to avoid cancellation of the Regional Board's lien.

Original Signed by
THOMAS R. PINKOS, Executive Officer

21 October 2005
Date