

**PLACER COUNTY**  
**REDEVELOPMENT AGENCY**

**MEMORANDUM**

**TO:** Honorable Members of the Redevelopment Agency Board  
**FROM:** Rich Colwell, Chief Assistant CEO-Redevelopment Director *RE Colwell*  
James LoBue, Deputy Director  
**DATE:** December 8, 2009  
**SUBJECT:** Adopt a Resolution Authorizing Execution of a State Water Resources Control Board Tolling Agreement Related to Agency-Owned Property Located at 8797 North Lake Boulevard, Kings Beach, CA, and Authorize the Deputy Director-Redevelopment or Designee to Sign All Related Documents.

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**ACTION REQUESTED**

Adopt a resolution authorizing execution of a State Water Resources Control Board Tolling Agreement related to Agency-owned property located at 8797 North Lake Boulevard, Kings Beach, CA, and authorize the Deputy Director-Redevelopment or designee to sign all related documents.

**BACKGROUND**

In 1999, the California Regional Water Quality Control Board (Lahontan) issued a cleanup and abatement order to the owners of 8797 North Lake Boulevard (Site) in Kings Beach. This order began a series of failed cleanup efforts at the Site due to the continual change of ownership amongst multiple private parties. Consequently, in 2005, Placer County (County) received from the State of California Water Resources Control Board (State) Emergency, Abandoned, & Recalcitrant Account Program (EAR) a grant for corrective action and associated staff costs to facilitate the environmental remediation of the Site.

The Placer County Redevelopment Agency (Agency) entered into a Memorandum of Understanding with the County to assume the lead role initiating cleanup activities at the Site under the EAR program. The Agency received one reimbursement from the EAR account in the amount of \$40,237.20. Due to the multiple changes in ownership of the Site, the Agency decided to negotiate the purchase of the Site from Andco Farms, Inc. Escrow closed on the purchase November 6, 2006.

On August 7, 2007, the State issued a demand for payment in the amount of \$40,237.20 from the Agency as an attempt to recover reimbursements issued to the Agency under the EAR program. The Agency responded in a letter dated August 13, 2007, stating that the Agency would reimburse the State in the amount of \$40,237.20 upon transfer of title for the Site to another party. The Agency's intentions are to complete remediation efforts on the Site and to issue a Request for Proposals to develop the Site by a third party.

The State has agreed to this.

The attached Tolling Agreement memorializes these commitments by the Agency to reimburse the State upon transfer of title of the Site to a third party.

**FISCAL IMPACT**

At the time of transfer of title of the Site to a third party, the Agency will be required to reimburse the State \$40,237.20. The Agency does not anticipate transfer of title to occur sooner than 24 months. The Agency has sufficient funds in its North Lake Tahoe Redevelopment Project Area budget to cover the cost of reimbursement. There is no impact to the County's General Fund.

**ENVIRONMENTAL STATUS**

On August 9, 2005, the Planning Department reviewed the proposed intervention to complete the cleanup and abatement of discharge and threatened discharge of petroleum products into the groundwaters of Lake Tahoe occurring at and adjacent to the Site. The Site was determined by Planning to be exempt as a Class 8 action by regulatory agencies for the protection of the environment under the California Environmental Quality Act, Section 15308 and County Code 18.36.100. The current proposed action is in furtherance of this same action and is not a separate project as such is defined in CEQA.

**RECOMMENDATIONS**

Adopt a resolution authorizing execution of a State Water Resources Control Board Tolling Agreement related to Agency-owned property located at 8797 North Lake Boulevard, Kings Beach, CA, and authorize the Deputy Director-Redevelopment or designee to sign all related documents.

Attachments: Resolution  
Tolling Agreement

cc: Karin Schwab, Agency Counsel

**Before the Placer County  
Redevelopment Agency Board of Directors  
State of California**

In the matter of:

Authorizing execution of a State Water Resources Control Board Tolling Agreement related to Agency-owned property located at 8797 North Lake Boulevard, Kings Beach, CA, and authorize the Deputy Director-Redevelopment or designee to sign all related documents

Resol. No. ....

Ord. No. ....

First Reading.....

The following Resolution was duly passed by the Redevelopment Agency Board of Directors of the County of Placer at a regular meeting held \_\_\_\_\_,

by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Attest:  
Clerk of said Board

\_\_\_\_\_  
Chair, Redevelopment Agency Board

WHEREAS, by Ordinance No. 4753-B adopted on July 16, 1996, the Board of Supervisors of the County of Placer has adopted the Redevelopment Plan for the North Lake Tahoe Project Area (Project Area);

WHEREAS, the Redevelopment Agency of the County of Placer (Agency) is vested with responsibility pursuant to the Community Redevelopment Law, Part I of Division 24 of the Health and Safety Code of the State of California (Law) to implement the Redevelopment Plan in the Project Area;

WHEREAS, the Agency entered into a Memorandum of Understanding with the County of Placer (County) to assume the lead initiating cleanup activities at 8797 North Lake Boulevard, Kings Beach, California (Site) and assume the lead in activities under the County's State of California Water Quality Board Emergency, Abandoned and Recalcitrant (EAR) owner grant program;

WHEREAS, the Agency received \$40,237.20 in EAR funds for corrective action and staff costs incurred in implementing of remedial activities at the Site;

WHEREAS, on November 6, 2006, the Agency purchased the Site;

WHEREAS, on August 7, 2007, the State sent a letter to the Agency requesting reimbursement of the \$40,237.20 in EAR funds previously given to the Agency;

WHEREAS, the Agency responded to the State in a letter dated August 13, 2007 stating that it would reimburse the State upon transfer of title of the Site to a third party;

WHEREAS, by staff report accompanying this Resolution and incorporated herein by this reference (Staff Report), the Agency has been provided with additional information upon which the findings and actions set forth in this Resolution are based; and

WHEREAS, the actions are considered exempt from environmental review pursuant to California Environmental Quality Act Guidelines, Section 15308.

NOW, THEREFORE, BE IT RESOLVED THAT, based on information presented, the Agency Board finds and determines as follows:

1. All of the above recitals are true and correct and the Agency has based the findings and actions set forth in this Resolution, in part, on such recitals.

2. The Agency Board hereby finds and determines based on the factual and analytical basis set forth in the Staff Report that the Deputy Director-Redevelopment or designee is authorized to execute the Tolling Agreement by and between the Agency and State and sign all related documents.

3. This Resolution shall take immediate effect from and after its passage and approval.



Linda S. Adams  
Secretary for  
Environmental Protection

# State Water Resources Control Board



Arnold Schwarzenegger  
Governor

Division of Financial Assistance  
1001 I Street, 16th Floor, Sacramento, California 95814  
P.O. Box 944212, Sacramento, California 94244-2120  
(916) 341-5700 ♦ FAX (916) 341-5707 ♦ <http://www.waterboards.ca.gov>

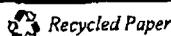
## TOLLING AGREEMENT

The State Water Resources Control Board (State Water Board) and Placer County Redevelopment Agency (Agency), collectively referred to as "the Parties," by and through the signatures of their respective agents, enter into the Tolling Agreement (Agreement) set forth below.

### RECITALS

- A. Whereas, the State Water Board administers the Emergency, Abandoned, Recalcitrant (EAR) Account, a subaccount of the Underground Storage Tank Cleanup Fund (Fund), to provide funding to specified local agencies for cleanup of releases from petroleum underground storage tanks (UST) at certain sites.
- B. Whereas, Placer County Department of Health and Human Services/Environmental Health Services (County) requested and was awarded funding from the EAR Account to undertake cleanup of an unauthorized release from a petroleum UST at the former Swiss Mart gasoline station located at 8797 North Lake Boulevard, Kings Beach, California (site).
- C. Whereas, the County entered into a Memorandum of Understanding with the Agency on January 26, 2006, and the Agency assumed the lead role in initiating cleanup activities at the site.
- D. Whereas, in September 2006, the State Water Board issued a payment to County in the amount of \$40,237.20 to reimburse corrective action costs incurred at the site.
- E. Whereas, on November 6, 2006, the Agency purchased the site and assumed direct responsibility for site remediation. The Agency is still undertaking remediation activities at the site, but EAR Account funding has ceased.
- F. Whereas, section 25299.70 of the Health and Safety Code authorizes the State Water Board to recover the amount of corrective action costs paid for from the EAR Account by means of a civil action or imposition of a lien on the affected property.
- G. Whereas, imposition of a lien is not a viable option in this case.
- H. Whereas, section 338 of the Code of Civil Procedure provides that a civil action upon a liability created by statute must commence within three years after the cause of action has accrued.

*California Environmental Protection Agency*



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I. Whereas, on August 7, 2007, the State Water Board issued a demand to the Agency for repayment of EAR Account expenditures at the site in the amount of \$40,237.20.

J. Whereas, on August 13, 2007, the Agency committed to reimburse the State Water Board in the amount of \$40,237.20 upon transfer of the site. The Agency informed the State Water Board that the Agency intended to complete cleanup of the site, issue a request for proposals to develop the site, and transfer the site to a third party entity for development.

#### AGREEMENT

In consideration of the mutual promises set forth below and acknowledgment of the recitals set forth above, the Parties agree as follows:

1. Any and all applicable statutes of limitation, the equitable defense of laches, and all other defenses concerning the timeliness of commencing a civil action shall be tolled four years from the date of execution of the Tolling Agreement, or until the State Water Board receives the notice of transfer specified in paragraph 3 below, whichever comes first (the "Tolling Period"), with respect to any action to recover the amount of the EAR Account expenditure at the site. The parties may extend the Tolling Period by written agreement.

2. The Agency agrees to provide written notice to the State Water Board within seven (7) days of execution of a purchase or transfer agreement for the site.

3. The Agency agrees to provide written notice to the State Water Board within seven (7) days of the transfer of the site.

4. Any notice required by this Agreement shall be delivered by hand, by facsimile transmission, or by overnight mail, addressed as follows:

To the State Water Board:

Judy Reid  
Underground Storage Tank Cleanup Fund  
State Water Resources Control Board  
1001 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814  
Phone: 916-341-5760  
Fax: 916-341-5806

To the Agency:

James LoBue  
Deputy Director, Redevelopment  
Placer County Redevelopment Agency  
3091 County Center Drive, Suite 260  
Auburn, California 95603  
Phone: 530-745-3156  
Fax: 530-745-3152

5. The undersigned representatives of the Agency and the State Water Board represent that they are fully authorized to enter into the terms and conditions of, and to execute, this Agreement.

6. This Agreement contains the entire agreement between Agency and the State Water Board concerning this subject matter. This Agreement may be modified only by a writing signed by the Parties.

7. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

8. This Agreement may be executed in counterparts, all of which together shall constitute one and the same Agreement.

9. This Agreement shall be deemed to have been drafted equally by the Parties and it shall not be interpreted for or against either party on the ground that any such party drafted it.

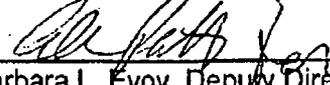
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10. Nothing in this Agreement shall be construed as a waiver of equity or other defenses the Agency has or may have and that are unrelated to timeliness of commencement of a civil action should the State Water Board file suit over cost recovery of the EAR Account expenditure. Nothing in this Agreement shall be construed as a waiver of any claims the State Water Board may bring against the Agency relating to the EAR Account expenditure.

Dated:  
PLACER COUNTY REDEVELOPMENT AGENCY

By \_\_\_\_\_  
James LoBue, Deputy Director  
Placer County Redevelopment Agency

Dated: 11/2/2009  
STATE WATER RESOURCES CONTROL BOARD

By   
Barbara L. Evoy, Deputy Director  
Division of Financial Assistance