

LAKE COUNTY REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

October 2014



JOHN CHIANG
California State Controller

October 8, 2014

Matthew Perry, Chief Deputy County Administrative Officer
Lake County Redevelopment/Successor Agency
255 North Forbes Street
Lakeport, CA 95453

Dear Mr. Perry:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Lake County Redevelopment Agency (RDA) to the County of Lake (County) or any other public agency after January 1, 2011. This statutory provision states, "The Legislature hereby finds that a transfer of assets by a redevelopment agency during the period covered in this section is deemed not to be in furtherance of the Community Redevelopment Law and is thereby unauthorized." Therefore, our review included an assessment of whether each asset transfer was allowable and whether the asset should be turned over to the Successor Agency.

Our review applied to all assets including, but not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and rights to payment of any kind. We also reviewed and determined whether any unallowable transfers of assets to the County or any other public agencies have been reversed.

Our review found that the RDA transferred \$14,079,475 in assets after January 1, 2011, including unallowable transfers to the County totaling \$1,012,979, or 7.19% of transferred assets.

However, on June 29, 2012, the County turned over \$627,868 in cash to the Successor Agency. Therefore, the remaining \$385,111 in unallowable transfers must be turned over to the Successor Agency.

If you have any questions, please contact Elizabeth González, Chief, Local Government Compliance Bureau, by telephone at (916) 324-0622.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/kw

MAILING ADDRESS P.O. Box 942850, Sacramento, CA 94250-5874
SACRAMENTO 3301 C Street, Suite 700, Sacramento, CA 95816 (916) 324-8907
LOS ANGELES 901 Corporate Center Drive, Suite 200, Monterey Park, CA 91754 (323) 981-6802

Mathew Perry, Chief Deputy County
Administrative Officer

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October 8, 2014

cc: Denise Rushing, Oversight Board Chair
Lake County Redevelopment/Successor Agency
Cathy Saderlund, Auditor-Controller
Lake County
David Botelho, Program Budget Manager
California Department of Finance
Richard J. Chivaro, Chief Legal Counsel
State Controller's Office
Elizabeth González, Bureau Chief
Division of Audits, State Controller's Office
Betty Moya, Audit Manager
Division of Audits, State Controller's Office
Cecilia Michaels, Auditor-in-Charge
Division of Audits, State Controller's Office

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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Lake County Redevelopment Agency (RDA) after January 1, 2011. Our review included, but was not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and rights to payments of any kind from any source.

Our review found that the RDA transferred \$14,079,475 in assets after January 1, 2011, including unallowable transfers to the County of Lake (County) totaling \$1,012,979, or 7.19% of transferred assets.

However, on June 29, 2012, the County turned over \$627,868 in cash to the Successor Agency. Therefore, the remaining \$385,111 in unallowable transfers must be turned over to the Successor Agency.

Background

In January of 2011, the Governor of the State of California proposed statewide elimination of redevelopment agencies (RDAs) beginning with the fiscal year (FY) 2011-12 State budget. The Governor's proposal was incorporated into Assembly Bill 26 (ABX1 26, Chapter 5, Statutes of 2011, First Extraordinary Session), which was passed by the Legislature, and signed into law by the Governor on June 28, 2011.

ABX1 26 prohibited RDAs from engaging in new business, established mechanisms and timelines for dissolution of the RDAs, and created RDA Successor Agencies to oversee dissolution of the RDAs and redistribution of RDA assets.

A California Supreme Court decision on December 28, 2011 (*California Redevelopment Association et al. v. Matosantos*), upheld ABX1 26 and the Legislature's constitutional authority to dissolve the RDAs.

ABX1 26 was codified in the Health and Safety (H&S) Code beginning with section 34161.

H&S Code section 34167.5 states, in part “. . .the Controller shall review the activities of Redevelopment Agencies in the State to determine whether an asset transfer has occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency or any other public agency, and the redevelopment agency.”

The SCO identified asset transfers that occurred after January 1, 2011, between the RDA, the County, and/or other public agencies. By law, the SCO is required to order that such assets, except those that already had been committed to a third party prior to June 28, 2011, the effective date of ABX1 26, be turned over to the Successor Agency. In addition, the SCO may file a legal action to ensure compliance with this order.

Objective, Scope, and Methodology

Our review objective was to determine whether asset transfers that occurred after January 1, 2011, and the date upon which the RDA ceased to operate, or January 31, 2012, whichever was earlier, between the city or county, or city and county that created an RDA, or any other public agency, and the RDA, were appropriate.

We performed the following procedures:

- Interviewed Successor Agency personnel to gain an understanding of the Successor Agency operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the County, the RDA, the Oversight Board, the Successor Agency, and the Entity Assuming the Housing Functions.
- Reviewed accounting records relating to the recording of assets.
- Verified the accuracy of the Asset Transfer Assessment Form. This form was sent to all former RDAs to provide a list of all assets transferred between January 1, 2011, and January 31, 2012.
- Reviewed applicable financial reports to verify assets (capital, cash, property, etc.).

Conclusion

Our review found that the Lake County Redevelopment Agency transferred \$14,079,475 in assets after January 1, 2011, including unallowable transfers to the County of Lake (County) totaling \$1,012,979, or 7.19% of transferred assets.

However, on June 29, 2012, the County turned over \$627,868 in cash to the Successor Agency. Therefore, the remaining \$385,111 in unallowable transfers must be turned over to the Successor Agency.

Details of our finding are described in the Finding and Order of the Controller section of this report.

Views of Responsible Officials

We issued a draft review report on August 25, 2014. Matt Perry, County Administrative Officer, responded by letter dated September 4, 2014. The County's response is included in this final review report as an attachment.

Restricted Use

This report is solely for the information and use of the County, the Successor Agency, the Oversight Board, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record when issued final.

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

October 8, 2014

Findings and Orders of the Controller

FINDING— Unallowable Asset Transfers to the County of Lake

The Lake County Redevelopment Agency (RDA) made unallowable asset transfers of \$1,012,979 to the County of Lake (County). The transfers occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

Unallowable asset transfers were as follows:

- On March 14, 2011, the RDA transferred \$385,111 in cash as repayment of a long-term loan from the County.
- On December 14, 2011, the RDA transferred \$166,443 in cash as repayment of a long-term loan from the County. On June 29, 2012, the County transferred the funds back to the Successor Agency.
- On January 17, 2012, the RDA transferred \$461,425 in cash as repayment of a long-term loan from the County. On June 29, 2012, the County transferred the funds back to the Successor Agency.

Pursuant to Health and Safety (H&S) Code section 34167.5, the RDA may not transfer assets to a city, county, city and county, or any other public agency after January 1, 2011. The assets must be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d).

Order of the Controller

Pursuant to H&S Code section 34167.5, the County is ordered to reverse the transfer of the assets in the amount of \$1,012,979 and turn over the assets to the Successor Agency. However, the County turned over \$627,868 in assets to the Successor Agency. Therefore, the remaining \$385,111 in unallowable transfers must be turned over to the Successor Agency.

The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code sections 34177(d).

County's Response

The County stated in its response that while it acknowledges that the payments were made as stated in the draft review report the county does not agree the payments constitute a transfer of assets. A complete response to the report is included in this final review report.

SCO's Response

The SCO's authority under H&S Code section 34167.5 extends to all assets transferred after December 31, 2010, by the RDA to the city or county, or city and county that created the RDA, or any other public agency. This responsibility is not limited by the other provision of the

RDA dissolution legislation. As a result, the cash transfers made by the RDA to the County during the periods of January 1, 2011, through January 31, 2012, are unallowable.

Pursuant to H&S Code section 34191.4, the Successor can utilize the ROPS process to obtain authorization on repaying the \$385,111 loan payments to the County.

The Finding and Order of the Controller remain as stated.

**Schedule 1—
Unallowable RDA Asset Transfers to Lake County
January 1, 2011, through January 31, 2012**

Current Assets – cash	
Repayment of loan (March 14, 2011)	\$ 385,111
Repayment of loan (December 14, 2011)	166,443
Repayment of loan (January 17, 2012)	<u>461,425</u>
Total unallowable transfers	1,012,979
Less reversal of transfers (June 29, 2012)	<u>(627,868)</u>
Total transfers subject to H&S Code section 34167.5	<u>\$ 385,111</u>

**Attachment—
Lak County's Response to
Draft Review Report**



COUNTY OF LAKE
Administrative Office
Courthouse-255 North Forbes Street
Lakeport, CA 95453
Telephone (707) 263-2580
FAX (707) 263-1012
Matt.Perry@lakecountyca.gov

MATT PERRY
County Administrative Officer

September 4, 2014

Elizabeth Gonzalez
Chief, Local Government Compliance Bureau
State Controller's Office
Division of Audits
P.O. Box 942850
Sacramento, CA 94250-5874

RE: Response to Lake County Redevelopment Agency
Asset Transfer Review Report (Draft), August 2014

Dear Ms. Gonzalez:

Thank you for the opportunity to comment on this draft report. I appreciate the work of your staff member, Cecilia Michaels, in performing this audit and understand she was following instructions pursuant to Health and Safety Code Section 34167.5 as understood by your agency.

First, I wish to clarify a statement made in the Review Report under, "Views of Responsible Officials." The report states that I "agreed with the review results." This may imply, incorrectly, that I agree with the findings and conclusions as stated in the report. While I acknowledge that the former Lake County Redevelopment Agency paid \$385,111 to the County of Lake in March 2011, I do not agree that these payments constitute a "transfer of assets" as envisioned in the legislation.

In order to more clearly explain my position, it is important to understand the circumstances under which these payments were made. As you may know, redevelopment agencies were required by law to incur debt in order to receive tax increment. Rather than borrowing from a third party, the Lake County RDA borrowed money from the Lake County General Fund in a series of 10 loans. The first loan was made in May 2000 and the last loan was made in September 2010.

The \$385,111 that is requested to be turned over to the Successor Agency is comprised of three 3 separate loan payments paid by the Lake County RDA to the County General Fund in March 2011, as described below:

**Letter to Elizabeth Gonzalez, re: Response to Lake County Redevelopment Agency
Asset Transfer Review Report (Draft), September 4, 2014, page 2**

1. \$110,730.58 of principal and interest for the 2nd payment for loan #2 per the loan agreement dated January 23, 2001.
2. \$104,124.62 of principal and interest for the 2nd payment for loan #3 per the loan agreement dated February 5, 2002.
3. \$170,256.41 of principal and interest for the 2nd payment for loan #9 per the loan agreement dated March 3, 2009.

Please note that these loan payments were made pursuant to pre-existing loan documents between the County and the RDA (see enclosed).

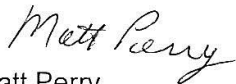
Therefore, it is appropriate to conclude that these loan payments were not at all similar to transfers many agencies made in 2011 to shield assets from being distributed to other tax receiving agencies. I understand that the purpose of the asset transfer review directed by Health and Safety Code Section 34167.5 was to reverse any of those asset transfers that were not legitimate. However, the \$358,111 that the Lake County RDA paid to County General Fund was to satisfy legitimate, legally enforceable, and pre-existing obligations of the RDA. In fact, as you may know, Health and Safety Code Section 34191.4(b)(1) defines these loan payments as recognized obligations. Therefore, they should not be considered "asset transfers" for purposes of Section 34167.5.

In light of the information in this letter, I respectfully request that you re-consider the findings and conclusion in the subject Review Report and revise the order so that no money is ordered to be turned over to the Successor Agency.

By the way, please note my name and title is Matt Perry, County Administrative Officer, and the name and title of the other staff member who participated in this review is Kathy Barnwell, Administrative Analyst. There were slight errors in these names and titles under the paragraph heading "Views of Responsible Officials."

Please contact me should you have any questions. Thank you for your consideration of

Sincerely,



Matt Perry
County Administrative Officer

Enclosures

cc: Cathy Saderlund, Lake County Auditor-Controller
Denise Rushing, Redevelopment Agency Oversight Board Chair

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>