

# **FIREBAUGH REDEVELOPMENT AGENCY**

## **ASSET TRANSFER REVIEW**

### Review Report

*January 1, 2011, through January 31, 2012*



**BETTY T. YEE**  
California State Controller

January 2015



**BETTY T. YEE**  
California State Controller

January 15, 2015

Kenneth McDonald, City Manager  
Firebaugh Redevelopment/Successor Agency  
1133 P Street  
Firebaugh, CA 93622

Dear Mr. McDonald:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Firebaugh Redevelopment Agency (RDA) to the City of Firebaugh (City) 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 City or any other public agencies have been reversed.

Our review found that the RDA transferred \$2,764,378 in assets after January 1, 2011, including unallowable transfers to the City totaling \$1,453,695, or 52.59% of transferred assets. However, on February 10, 2014, the Department of Finance approved the Successor Agency's Long-Range Property Management Plan that included \$1,194,851 in assets. Therefore, the remaining \$258,844 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 or by email at [egonzalez@sco.ca.gov](mailto:egonzalez@sco.ca.gov).

Sincerely,

*Original signed by*

JEFFREY V. BROWNFIELD, CPA  
Chief, Division of Audits

JVB/sk

cc: Vicki Crow, CPA, Auditor-Controller  
Fresno County  
Jack Minnite, Chair  
Oversight Board to Successor Agency  
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  
Scott Freesmeier, Audit Manager  
Division of Audits, State Controller's Office  
Daniel Tobia, Auditor-in-Charge  
Division of Audits, State Controller's Office  
Trisha L. Quiambao, Auditor  
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 Firebaugh 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 \$2,764,378 in assets after January 1, 2011, including unallowable transfers to the City of Firebaugh (City) totaling \$1,453,695, or 52.59% of transferred assets. However, on February 10, 2014, the Department of Finance approved the Successor Agency's Long-Range Property Management Plan that included \$1,194,851 in assets. Therefore, the remaining \$258,844 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 has identified asset transfers that occurred after January 1, 2011, between the RDA, the City, 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 City, the Successor Agency, the Oversight Board, and the RDA.
- 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 Firebaugh Redevelopment Agency transferred \$2,764,378 in assets after January 1, 2011, including unallowable transfers to the City of Firebaugh totaling \$1,453,695, or 52.59% of transferred assets. However, on February 10, 2014, the Department of Finance approved the Successor Agency's Long-Range Property Management Plan that included \$1,194,851 in assets. Therefore, the remaining \$258,844 in unallowable transfers must be turned over to the Successor Agency.

Details of our findings are described in the Findings and Orders of the Controller section of this report.

## **Views of Responsible Official**

We issued a draft review report on July 21, 2014. Kenneth McDonald, City Manager, responded via letters dated September 5, 2014, and September 19, 2014, disagreeing with the review results. The City'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 City, 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

January 15, 2015

# Findings and Orders of the Controller

**FINDING—  
Unallowable RDA  
asset transfers to  
the City of  
Firebaugh**

The Firebaugh Redevelopment Agency (RDA) made unallowable asset transfers of \$1,453,695 to the City of Firebaugh (City). 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 15, 2011, the RDA transferred \$1,630,000 in cash to the City to purchase capital assets per Resolution No. RDA 11-01, but various transactions effectively returned \$1,554,529 of the assets (\$1,089,380 in capital assets and \$465,149 in cash) to the RDA in January of 2012.

However, the City should have returned the \$1,089,380 in cash, not capital assets. This transfer should be reversed; the capital assets should be returned to the City and the cash turned over to the Successor Agency. Additionally, the remaining \$75,471 in cash from the original transfer should be turned over to the Successor Agency.

- Also on March 15, 2011, the RDA transferred \$744,286 in land to the City per Resolution No. RDA 11-02, but various transactions effectively returned the land to the RDA in January of 2012, so no further action is necessary for this transfer.
- On June 30, 2011, the RDA transferred \$258,844 in cash to the City for various projects. The City could not provide documentation showing that the assets were contractually committed to a third party prior to June 28, 2011.
- On October 13, 2011, the RDA transferred \$30,000 in capital assets to the City. To accomplish this transfer, the Board of Directors approved July 18, 2011 Agenda Item 14.

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. These assets must be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d) and (e). Some of the assets also may be subject to the provisions of H&S Code section 34181(a). H&S Code section 34181(a) states:

The oversight board shall direct the successor agency to do all of the following:

- (a) Dispose of all assets and properties of the former redevelopment agency that were funded by tax increment revenues of the dissolved redevelopment agency; provided however, that the oversight board may instead direct the successor agency to transfer ownership of those assets that were constructed and used for a government purpose, such as roads, school buildings, parks, and fire stations, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such as asset....



### Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to turn over the above assets, described in Schedule 1, in the amount of \$1,453,695, to the Successor Agency.

However, on February 10, 2014, the Department of Finance approved the Successor Agency Long-Range Property Management Plan (LRPMP) that included \$1,194,851 in assets. Therefore, the remaining \$258,844 in unallowable transfers must be turned over to the Successor Agency.

### City's Response

September 5, 2014 letter:

1) The transfer on March 15, 2011, from the RDA to the City of \$1,630,000 in cash was entirely bond proceeds. The withdrawals are shown as coming out of Account Number 12152424 on the enclosed bank statements, attached hereto as Exhibit "A", which account holds only bond proceeds. If the transfer were reversed as directed by the Controller, the Successor Agency would have no power under Health and Safety Code section 34177, subdivisions (d) and (e), to "dispose of those assets." Moreover, bond proceeds are not assets that are distributed to taxing entities as contemplated by the statute...Reversing the transaction would place bond proceeds back into the bond proceeds fund of the Successor Agency to be spent on capital projects and other appropriate uses of bond proceeds (such as the acquisition of the capital assets at issue here), none of which are governed by Health and Safety Code section 34177, subdivisions (d) and (e).

2) The transfer of June 30, 2011, from the RDA to the City of \$281,344 in cash is believed to be entirely bond proceeds. We are in the process of gathering additional documentation regarding this transfer. For this reason, if the assets were turned over to the Successor Agency as directed by the Controller, the Successor Agency would have no power under Health and Safety Code section 34177, subdivisions (d) and (e), to "dispose of those assets."...Of the \$281,344 in cash transferred from the RDA to the City, \$22,500 was committed to third parties prior to June 28, 2011 pursuant to a grant of additional monies from the USDA (Exhibit "B").

3) The transfer on October 13, 2011, from the RDA to the City of \$30,000 in capital assets relates to real property that is part of the Successor Agency's Long Range Property Management Plan (PMP) (Exhibit "C") pursuant to Health and Safety Code section 34191.5. The PMP, including transfer of this real property to the City, was approved by the Department of Finance on February 10, 2014 (Exhibit "D"). The property is listed as government purpose property pursuant to Health and Safety Code section 34181, subdivision (a).

September 19, 2014 letter:

With regards to the \$281,344 in expenditures, staff was unable to find documentation that these amounts were bond proceeds. Unfortunately, prior management did not keep thorough records and, since current

management employees were not around at the time, there is no way of proving where this money came from. Likewise, staff was unable to locate additional documentation of demonstrating that the funds were committed to third parties prior to June 28, 2011.

See Attachment for the City's complete response.

#### SCO's Response

The SCO's comments for the items addressed by the City are as follows:

- 1) The SCO acknowledges the receipt of the bank statement from which the transferred funds were withdrawn. In addition, the SCO acknowledges the receipt of the Oversight Board Resolution No. OB 13-10, passed on September 19, 2013. This resolution approved the Successor Agency's Long-Range Property Management Plan (LRPMP), in which the Successor Agency included the transfers for the properties (1185 N Street, 1284 N Street, 1320 N Street, and 1458 11<sup>th</sup> Street), totaling \$1,164,851. The Department of Finance (DOF) approved the Successor Agency's LRPMP on February 10, 2014. Regarding this item, the SCO has adjusted the Order of the Controller.
- 2) The SCO acknowledges the receipt of the additional documentation for the validation of the \$22,500 expenditure related to the Fire Department Satellite Pumper Trailer project that began on May 28, 2009, and contractually committed to a third party prior to June 28, 2011. Regarding this item, the SCO has adjusted the Finding and Order of the Controller.
- 3) The SCO acknowledges the receipt of the Oversight Board Resolution No. OB 13-10 passed on September 19, 2013. This resolution approved the Successor Agency's LRPMP, in which the Successor Agency included the transfer of governmental purpose property located on the Northeast corner of Helm Canal Road and Birch Drive valued at \$30,000. The DOF approved the Successor Agency's LRPMP on February 10, 2014. Regarding this item, SCO has adjusted the Order of the Controller.

**Schedule 1—  
Unallowable RDA Asset Transfers to  
the City of Firebaugh  
January 1, 2011, through January 31, 2012**

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Unallowable asset transfers to the City of Firebaugh:

Cash transfer for properties (March 15, 2011)	\$ 1,630,000
Return of assets (cash and capital) in January, 2012	(1,554,529)
Add back unallowable capital assets received (in lieu of cash)	1,089,380
Capital assets transfer (March 15, 2011)	744,286
Return of capital assets (January 2012)	(744,286)
Cash transfer for projects (June 30, 2011)	258,844
Capital asset transfer (October 13, 2011)	<u>30,000</u>
Total unallowable asset transfers to the City of Firebaugh <sup>1</sup>	1,453,695
Less property on the Successor Agency's Long-Range Property Management Plan approved by the Department of Finance (February 10, 2014)	
1185 N Street, 1284 N Street, 1320 N Street, 1458 11 <sup>th</sup> Street	(1,164,851)
NE corner of Helm Canal Road and Birch Drive	<u>(30,000)</u>
Total unallowable asset transfers subject to H&S Code section 34167.5	<u>\$ 258,844</u>

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<sup>1</sup> See the Findings and Orders of the Controller section.

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**Attachment—  
City of Firebaugh’s Response to  
Draft Review Report**

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In addition to the attached letters, the City provided additional documents. Due to their size, we are not including them as an attachment to this report. Please contact the City for copies of the following documents:

September 5, 2014 Attachments:

- Exhibit A – Bank Statements
- Exhibit B – USDA Grant with Matching RDA Funds
- Exhibit C – Long Range Property Management Plan
- Exhibit D – Letter from Department of Finance

September 19, 2014 Attachment:

- Exhibit A – ROPS 14-15A



Laurie A. Avedisian  
Attorney at Law

E-mail: [lavedisian@lozanosmith.com](mailto:lavedisian@lozanosmith.com)

September 5, 2014

**By U.S. Mail and E-Mail:** [EGonzalez@sco.ca.gov](mailto:EGonzalez@sco.ca.gov)

John Chiang  
California State Controller  
Attn.: Elizabeth Gonzalez, Chief, Local Government Compliance Bureau  
Division of Audits  
P.O. Box 942850  
Sacramento, CA 94250-5874

**RE: City of Firebaugh, Successor Agency to Firebaugh Redevelopment Agency  
Letter Dated July 21, 2014, Jeffrey V. Brownfield, Chief, Division of Audits  
Draft Asset Transfer Review Report, Firebaugh Redevelopment Agency**

Dear Ms. Gonzalez,

This letter responds to the Controller's findings and orders contained in a Draft Asset Transfer Review Report ("Draft Report") and letter dated July 21, 2014, directed to the City of Firebaugh ("City") as the Successor Agency to the former Firebaugh Redevelopment Agency ("Successor Agency").

This letter is written pursuant to additional time provided by Elizabeth Gonzalez by e-mail dated August 5, 2014.

The Draft Report on page 1 states: "Our review found that the RDA transferred \$2,786,878 in assets after January 1, 2011, including unallowable transfers to the City of Firebaugh totaling \$1,476,195, or 52.97% of transferred assets. These assets must be turned over to the Successor Agency." The Draft Report also directs the Successor Agency to properly dispose of those assets in accordance with Health and Safety Code section 34177, subdivisions (d) and (e).

The City and the Successor Agency hereby challenge certain "Findings and Orders" of the Controller contained on pages 4 and 5 of the Draft Report, and provide supplemental facts not previously considered by the Controller in its review, as follows:

1. The transfer on March 15, 2011, from the RDA to the City of \$1,630,000 in cash was entirely bond proceeds. The withdrawals are shown as coming out of Account Number 121524 on the enclosed bank statements, attached hereto as Exhibit "A," which account holds only bond proceeds. If the transfer were reversed as directed by the Controller, the Successor Agency

*Limited Liability Partnership*

7404 N. Spalding Avenue Fresno, California 93720-3370 Tel 559-431-5600 Fax 559-261-9366

September 5, 2014

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would have no power under Health and Safety Code section 34177, subdivisions (d) and (e), to “dispose of those assets.” Moreover, bond proceeds are not assets that are distributed to taxing entities as contemplated by the statute. The Draft Report on pages 4 and 5 states:

“On March 15, 2011, the RDA transferred \$1,630,000 in cash to the City to purchase capital assets per Resolution No. RDA 11-01, but various transactions effectively returned \$1,554,529 of the assets (\$1,089,380 in capital assets and \$465,149 in cash) to the RDA in January of 2012. [¶] However, the City should have returned the \$1,089,380 in cash, not capital assets. This transfer should be reversed; the capital assets should be returned to the City and the cash turned over to the Successor Agency. [ . . . ] [¶] *The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code section 34177(d) and (e).*”

This is an impossible directive. Reversing the transaction would place bond proceeds back into the bond proceeds fund of the Successor Agency to be spent on capital projects and other appropriate uses of bond proceeds (such as the acquisition of the capital assets at issue here), none of which are governed by Health and Safety Code section 34177, subdivisions (d) and (e).

The RDA spent bond proceeds and subsequently received capital assets in the form of real properties valued at \$1,089,380. As a result, the real properties will be disposed of by the Successor Agency pursuant to an approved property management plan and, upon sale of these properties, the Successor Agency will have in its possession cash from the sale of the real properties for distribution to taxing entities, as contemplated by Health and Safety Code section 34177, subdivisions (d) and (e). This will confer a tangible financial benefit on the taxing entities, which would never occur if the transfer were reversed as directed by the Controller because, as explained above, the return of bond proceeds to the Successor Agency would provide no money for distribution to the taxing entities.

Accordingly, the City and the Successor Agency respectfully request that the Controller reevaluate this directive in light of the facts and history of this transaction.

2. The transfer on June 30, 2011, from the RDA to the City of \$281,344 in cash is believed to be entirely bond proceeds. We are in the process of gathering additional documentation regarding this transfer to confirm that the money was bond proceeds and to document third party obligations. The Draft Report on pages 4 and 5 states:

“On June 30, 2011, the RDA transferred \$281,344 in cash to the City for various projects. The City could not provide documentation showing that the assets were contractually committed to a third party prior to June 28, 2011. [ . . . ] [¶] *Pursuant to H&S Code section 34167.5, the City is ordered to turn over the above assets, described in Schedule 1, . . . to the Successor Agency. [¶] The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code section 34177(d) and (e).*”

For the reasons discussed above, if the assets were turned over to the Successor Agency as directed by the Controller, the Successor Agency would have no power under Health and Safety

September 5, 2014

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Code section 34177, subdivisions (d) and (e), to “dispose of those assets.” Bond proceeds are not assets that are distributed to taxing entities as contemplated by the statute.

Moreover, the assets were committed to third parties prior to June 28, 2011. The Draft Report on page 1 states: “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.” We are in the process of gathering additional information documenting the commitments between the City and third parties regarding this transfer, which information is currently in storage.

Of the \$281,344 in cash transferred from the RDA to the City, \$22,500 was committed to third parties prior to June 28, 2011 pursuant to a grant of additional monies from the USDA (Exhibit “B”).

In addition, these monies have already been spent. Health and Safety Code section 34167.5 provides in relevant part: “Upon receiving that order from the Controller, an affected local agency shall, *as soon as practicable*, reverse the transfer and return the applicable assets.” Since the monies have already been spent, it is not possible for the City to return the monies and follow the directive of the Controller in the current fiscal year. However, the City may be able to do so in some future fiscal year “as soon as practicable.” Health and Safety Code section 34167.5 suggests that the Controller may only order “available” assets to be returned. The monies are no longer “available” for purposes of the statute and directive of the Controller because the monies have already been spent.

Accordingly, the City and the Successor Agency respectfully request that the Controller reevaluate this directive in light of the facts and history of this transaction.

3. The transfer on October 13, 2011, from the RDA to the City of \$30,000 in capital assets relates to real property that is part of the Successor Agency’s Long Range Property Management Plan (PMP) (Exhibit “C”) pursuant to Health and Safety Code section 34191.5. The PMP, including transfer of this real property to the City, was approved by the Department of Finance on February 10, 2014 (Exhibit “D”). The property is listed as government purpose property pursuant to Health and Safety Code section 34181, subdivision (a). As a result, the property need not be transferred back to the Successor Agency as directed by the Controller.

The Draft Report on pages 4 and 5 states:

“On October 13, 2011, the RDA transferred \$30,000 in capital assets to the City. To accomplish this transfer, the Board of Directors approved July 18, 2011 Agenda Item 14. [ . . . ] [¶] Pursuant to H&S Code section 34167.5, the City is ordered to turn over the above assets, described in Schedule 1, . . . to the Successor Agency. [¶] The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code section 34177(d) and (e).”

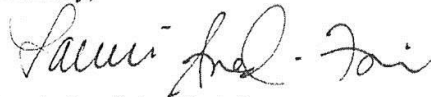
Accordingly, the City and the Successor Agency respectfully request that the Controller reevaluate this directive in light of the facts and history of this transaction.

September 5, 2014

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We respectfully request that the Controller review the attached documents, carefully consider the contents of this letter, and accordingly reverse the affected Findings and Orders related to the March 15, 2011 transfer from the RDA to the City of \$1,630,000 in cash bond proceeds; the June 30, 2011 transfer from the RDA to the City of \$281,344 in cash bond proceeds; and the October 13, 2011 transfer from the RDA to the City of \$30,000 in capital assets.

Sincerely,



Laurie Avedisian-Favini  
Counsel to the City of Firebaugh and  
The Successor Agency to the Firebaugh Redevelopment Agency

Enclosures: Exhibit "A" Bank Statements  
Exhibit "B" USDA Grant with Matching RDA Funds  
Exhibit "C" Long Range Property Management Plan  
Exhibit "D" Letter from Department of Finance

CC: Ken McDonald, City Manager  
Pio Martin, Finance Director



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

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