

NEEDLES REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

December 2014



JOHN CHIANG
California State Controller

December 17, 2014

Sylvia Miledi, Finance Director
Needles Redevelopment/Successor Agency
817 Third Street
Needles, CA 92363

Dear Ms. Miledi:

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

Our review found that the RDA transferred \$2,028,842 in assets after January 1, 2011, including unallowable transfers to the City totaling \$50,000, or 2.46% of transferred assets. These assets 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/mh

cc: Edward Paget, Oversight Board Chair
City of Needles Redevelopment/Successor Agency
Larry Walker, Auditor-Controller
San Bernardino 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
Daniel Tobia, 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 Needles 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 \$2,028,842 in assets after January 1, 2011, including unallowable transfers to the City of Needles (City) totaling \$50,000, or 2.46% of transferred assets. These assets 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 and oversight boards 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 City and/or any other public agency. 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's operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the City the RDA, the Successor Agency, and the Oversight Board.
- 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 Needles Redevelopment Agency transferred \$2,028,842 in assets after January 1, 2011, including unallowable transfers to the City of Needles totaling \$50,000, or 2.46% of transferred assets. These assets 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 July 1, 2014. Rick Daniels, City Manager, responded by letter dated August 1, 2014, disagreeing with the review results. The City's response is included in this final review report.

Restricted Use

This report is solely for the information and use of the City of Needles, 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

December 17, 2014

Finding and Order of the Controller

FINDING— Unallowable asset transfer to the City of Needles

The Needles Redevelopment Agency (RDA) made an unallowable transfer of \$50,000 to the City of Needles (City). The asset transfer to the City occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

On November 30, 2011, the RDA transferred \$50,000 to the City for a loan repayment per an agreement made within the first two years of the RDA's existence. However, it was determined that the original advance has been repaid and the payment was for further advances from the City that were made after the first two years of existence.

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 sections 34177(d).

Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to reverse the transfer of the assets in the amount of \$50,000 and turn over the assets to the Successor Agency.

City's Response

The City and the Successor Agency disagree with the SCO's characterization of these loan repayments as "transferred assets" because they are required payments under contract law. The Agency made loan repayments on the Administrative Loan Agreement, after January 1, 2011, to the City, in the amount of \$50,000. Under Health and Safety Code S 34178(b)(2), loan agreements entered into within the first two years of the creation of the Redevelopment Agency are enforceable obligations. The payment of \$50,000 to the City was specifically made in accordance with the Dissolution Law and an approved Redevelopment Obligation Payment Schedule (as defined in Section 34178(h)).

Please note that the validity of the Administrative Loan Agreement is also the subject of litigation filed by the City and the Successor Agency in Sacramento Superior Court.

SCO's Comment

The \$50,000 transfer from the RDA to the City was made for subsequent advance loans to the RDA from the City, beyond the first two years of the RDA's existence, which excludes the transfers as payments for loans covered under H&S 34178(b)(2).

The SCO's authority under H&S Code section 34167.5 extends to all assets transferred after January 1, 2011, by the RDA to the City of County, or City and County that created the RDA or any other public

agency. This responsibility is not limited by the other provisions of the RDA dissolution legislation. As a result, the cash transfers made by the RDA to the City during the period of January 1, 2011, through January 31, 2012, are unallowable.

Pursuant to H&S Code section 34191.4, the Successor Agency can utilize the Department of Finance's Recognized Obligation Payment Schedule process to obtain authorization on repaying the loan payment.

The Finding and Order of the Controller remain as stated.

**Attachment—
City's Response to
Draft Review Report**



CITY OF NEEDLES

817 Third Street • Needles, California 92363
(760) 326-2113 • FAX (760) 326-6765
www.cityofneedles.com

*Mayor Edward Paget, M.D.
Vice Mayor Terry Campbell
Councilmember Tony Frazier
Councilmember Jim Lopez
Councilmember Shawn Gudmundson
Councilmember Linda J Kidd
Councilmember Tom Darcy
City Manager Rick Daniels*

August 1, 2014

Ms. Elizabeth González, Chief
Local Government Compliance Bureau
State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874

Re: Draft Asset Transfer Review

Dear Ms. González:

This letter is provided in response to the draft State Controller's Office ("SCO") Report ("Draft Report") on the Asset Transfer Review for the Redevelopment Agency of the City of Needles ("Redevelopment Agency") dated July 2014 and the cover letter thereto, signed by Jeffrey Brownfield, Chief, Division of Audits. In the Draft Report, the SCO has indicated that the Redevelopment Agency made unallowable transfers of \$50,000 in assets to the City of Needles ("City"), and is ordering that the City transfer the assets back to the Successor Agency to the Redevelopment Agency ("Successor Agency").

The City and the Successor Agency disagree with the findings of the SCO. As referenced in the Draft Report, the amount of \$50,000 in cash was transferred to the City by the Redevelopment Agency as loan repayments. Long before the enactment of ABX1 26 (the "Dissolution Law"), the City and the Redevelopment Agency entered into a loan agreement to assist the Redevelopment Agency in funding the initial administrative costs of the Redevelopment Agency ("Administrative Loan Agreement"). The Administrative Loan Agreement was entered into in 1985, within the first two years of the establishment of the Redevelopment Agency, and constitutes a redevelopment indebtedness as defined under former Health & Safety Code § 33670. The City and the Successor Agency disagree with the SCO's characterization of these loan repayments as "transferred assets" because they are required payments under contract law.

As set forth in the Draft Report, the Agency made loan repayments on the Administrative Loan Agreement, after January 1, 2011, to the City, in the amount of \$50,000. Under Health and Safety Code § 34178(b) (2), loan agreements entered into within the first two years of the creation of the Redevelopment Agency are enforceable obligations. The payment of \$50,000 to the City was specifically made in accordance with the Dissolution Law and an approved Redevelopment Obligation Payment Schedule (as defined in Section 34178(h) of the Dissolution Law).

Please note that the validity of the Administrative Loan Agreement is also the subject of litigation filed by the City and the Successor Agency in Sacramento Superior Court (*City of Needles, et al. v. Ana Matosantos*, Case No. 34-2013-8001590).

The City and the Successor Agency believe that both former redevelopment law and the current Dissolution Law prevents the SCO from requiring that \$50,000 in loan repayments, as set forth in the Draft Report, be returned to the Successor Agency, and respectfully request that the SCO revise the Draft Report accordingly.

The City and the Successor Agency reserve all rights to raise other legal arguments with respect to the Draft Report as may be necessary. If you have any questions, please contact Sylvia Miledi, Finance Director, at (760) 326-2115 ext. 336.

Sincerely,



Rick Daniels
City Manager

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

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