

SONORA REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



BETTY T. YEE
California State Controller

December 2015



BETTY T. YEE
California State Controller

December 31, 2015

Rachelle Kellogg, Community Development Director
City of Sonora Redevelopment/Successor Agency
94 N. Washington Street
Sonora, CA 95370

Dear Ms. Kellogg:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Sonora Redevelopment Agency (RDA) to the City of Sonora (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 \$6,078,712 in assets after January 1, 2011, including unallowable transfers to the City totaling \$438,277, or 7.21% of transferred assets. However, on April 17, 2013, the City remitted \$111,665 to the Tuolumne County Auditor-Controller. Therefore, the remaining \$326,612 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/as

Rachelle Kellogg, Community Development -2-
Director

December 31, 2015

cc: Timothy A. Miller, City Administrator
City of Sonora
Deborah Bautista, Auditor-Controller
Tuolumne County
William Canning, Oversight Board Chair
c/o City of Sonora
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
Scott Freesmeier, 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 Sonora 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 \$6,078,712 in assets after January 1, 2011, including unallowable transfers to the City of Sonora (City) totaling \$438,277, or 7.21% of transferred assets. However, on April 17, 2013, the City remitted \$111,665 to the Tuolumne County Auditor-Controller. Therefore, the remaining \$326,612 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 Code (H&S Code) beginning with section 34161.

In accordance with the requirements of H&S Code section 34167.5, the State Controller is required to review the activities of RDAs, "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," and the date on which the RDA ceases to operate, or January 31, 2012, whichever is earlier.

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 RDA, the City Council, 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 Sonora Redevelopment Agency transferred \$6,078,712 in assets after January 1, 2011, including unallowable transfers to the City of Sonora totaling \$438,277, or 7.21% of transferred assets. However, on April 17, 2013, the City remitted \$111,665 to the Tuolumne County Auditor-Controller. Therefore, the remaining \$326,612 must be turned over to the Successor Agency.

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

Views of Responsible Official

We issued a draft review report on March 10, 2014. Timothy Miller, City Administrator, responded by letter dated March 20, 2014. The City's response is included in this final review report as an attachment. Please note that the City's response references a finding related to the housing assets. This finding was eliminated due to a subsequent court ruling.

Restricted Use

This report is solely for the information and use of the City of Sonora, the Successor Agency, the Oversight Board, the Entity Assuming the Housing Functions, 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 31, 2015

Findings and Orders of the Controller

FINDING 1— Unallowable asset transfers to the City of Sonora

The Sonora Redevelopment Agency (RDA) transferred \$438,277 in assets to the City of Sonora (City). The transfers occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

- On July 15, 2011, the RDA made two payments on three separate loans from the City, for a total of \$111,665.
- On November 30, 2011, the RDA used Low- and Moderate-Income Housing Fund unencumbered cash to purchase two rental properties owned by the City for a total of \$326,612. On February 1, 2012, the RDA transferred the two rental properties to the Entity Assuming the Housing Functions, without Oversight Board approval.

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. Those assets must be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177 (d) and (e).

Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to reverse the transfers totaling \$438,277, and turn over the assets to the Successor Agency.

However, on April 17, 2013, the City remitted \$111,665 to the Tuolumne Auditor-Controller. The remaining \$326,612 in cash must be turned over to the Successor Agency.

City's Response

The City believes there is a difference of interpretation concerning the handling of the former RDA repayments of loans to the City, given the law in place at the time the actions were taken.

The City requests that the two rental properties be transferred to the Successor Agency as opposed to remitting cash. The Successor Agency stated they would add the properties to the Long-Range Property Management Plan.

SCO's Comment

The City has turned over the loan repayments to the Tuolumne County Auditor-Controller. No further actions are need for the loan repayments.

The former RDA acquired the two rental properties from the City on November 30, 2011, and subsequently transferred those properties back to the City on February 1, 2012. Both actions are contrary to the RDA Dissolution Law. The Order of the Controller is to reverse those transfers, and restore the former RDA's assets for the Successor Agency to dispose of in accordance with the RDA Dissolution Law. Consequently, the unencumbered cash should have been turned over to the Tuolumne County Auditor-Controller for redistribution to the local taxing entities. Although the City discussed its plan with the SCO, the City's plan does not guarantee that the Successor Agency will obtain the full value of the cash used to purchase the properties. Therefore, the City may retain the two rental properties, but must turn over \$326,612 in cash to the Successor Agency.

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

Unallowable asset transfers to the City of Sonora:

Current assets

Loan payments (July 15, 2011)	\$ 111,665
Low- and Moderate-Income Housing Fund unencumbered cash used to purchase two properties from the City (Nov 30, 2011)	<u>326,612</u>
Total unallowable asset transfers	<u>438,277</u>
Less:	
Remittance to the Tuolumne County Auditor-Controller	<u>(111,665)</u>
Properties turned over to the Successor Agency	<u>(326,612)</u>
Total transfers subject to H&S Code section 34167.5	<u>\$ —</u>

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



City of Sonora

"Queen of the Southern Mines"

94 North Washington Street
Sonora, California 95370

Area Code 209

Administrator 532-6115
Administration 532-4541
Finance 532-4541
Building/Planning . . . 532-3508
Police 532-8143
Fire 532-7432
Public Works 532-2922
Cemetery 532-4492
Opera Hall 532-7725
Special Programs . . . 532-7725
Redevelopment 532-7725
www.sonoraca.com

March 20, 2014

Jeffrey V. Brownfield
Chief, Division of Audits
State Controller's Office
P.O. Box 942850
Sacramento, CA 94250-5874

Re: Response to Draft Asset Transfer Review for the Sonora Redevelopment Agency

Dear Mr. Brownfield:

This letter comprises the comments of the City of Sonora Successor Agency on the Draft Asset Transfer Review Report (the "Draft Report") prepared by the State Controller's Office for the former Sonora Redevelopment Agency (the "RDA"), which we received on March 13, 2014. In that report, the State Controller finds that the RDA made an unallowable transfer to the Successor Housing Agency in the amount of \$1,686,606 and an unallowable transfer in the amount of \$326,612 to the City of Sonora. The City intends to address the State Controller's findings in the manner described in the paragraphs below.

Transfer of Assets to the Housing Successor Agency

In the Draft Report, the State Controller finds that the transferred \$1,686,606 in loan receivables to the Successor Housing Agency (in this case, the City) was without Oversight Board authority. At the time the RDA was dissolved on February 1, 2012, Section 34175 provided that the assets of the RDA were transferred to the Successor Agency. However, the next section of the law, Section 34176, provides that the city that authorized the creation of a redevelopment agency may elect to *retain* the housing assets of the former RDA, and that if the city did elect to retain those housing assets, the housing assets *shall be transferred to the city*. This language in Section 34176 appeared to modify the language in Section 34175 indicating that assets be transferred to the Successor Agency and upon dissolution, the housing assets of the former RDA were consequently transferred to the City of Sonora, which had elected to retain the housing assets.

Jeffrey V. Brownfield
March 20, 2014
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The Draft Report notes that Section 34181(c) requires the Oversight Board to direct the Successor Agency to transfer housing assets to the appropriate entity pursuant to Section 34176. However, Section 34181(c) was added to the law by AB 1484, which was adopted *after* the RDA had transferred the housing assets to the City as Housing Successor Agency. Nothing in AB 1484 suggested that this requirement for Oversight Board direction was supposed to have retroactive application, and therefore the Oversight Board did not consider the transfer, which was completed in accordance with Section 34176 before the Oversight Board was established.

Nevertheless, the Successor Agency plans to take a resolution to the Oversight Board confirming that those assets transferred are housing assets and affirming that the housing assets were properly transferred to the City as Housing Successor Agency in accordance with the requirements of Section 34176. Upon passage of the Oversight Board resolution, we will send it on to the State Controller to confirm the validity of those transfers. This action should resolve any questions regarding the transfer of housing assets to the Housing Successor Agency, and will constitute an appropriate disposal of these housing assets in accordance with the requirements of Section 34181(c).

Transfer of Real Property to the City of Sonora

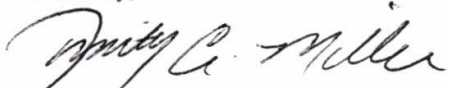
The Draft Report additionally finds that the Redevelopment Agency acquired two rental properties from the City with \$326,612 in low and moderate income housing funds, then transferred those properties back to the City on February 1, 2012, without Oversight Board approval. The Order of the Controller contained in the Draft Report with regard to these properties was not clear to the City staff. However, on March 18, 2014, Rachelle Kellogg, Community Development Director for the City discussed the Order via telephone with Elizabeth Gonzalez, Bureau Chief and Betty Moya, Audit Manager of the State Controller's Office. Based on that conversation, it is our understanding that the Successor Agency can address this second finding by transferring the two rental properties at issue back to the Successor Agency, and disposing of those rental properties through the Successor Agency's Long Range Property Management Plan.

Therefore, in order to address this second finding, the City intends to reconvey these two properties to the Successor Agency, so that the Successor Agency can dispose of the two properties in accordance with its Long Range Property Management Plan, and provide documentation of this transaction to the State Controller's Office upon completion of the reconveyance.

Jeffrey V. Brownfield
March 20, 2014
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These steps should address all outstanding findings in the Draft Report provided to us by the State Controller. Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy A. Miller". The signature is fluid and cursive, with the first name being the most prominent.

Timothy A. Miller, City Administrator
City of Sonora

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

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