

# **BARSTOW REDEVELOPMENT AGENCY**

## **ASSET TRANSFER REVIEW**

### Review Report

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



**JOHN CHIANG**  
California State Controller

September 2014



**JOHN CHIANG**  
**California State Controller**

September 29, 2014

Curt Mitchell, City Manager  
City of Barstow/Successor Agency  
220 East Mountain View Street, Suite A  
Barstow, CA 92311

Dear Mr. Mitchell:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Barstow Redevelopment Agency (RDA) to the City of Barstow (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 \$13,664,097 in assets after January 1, 2011, including unallowable transfers to the City totaling \$4,865,652, or 35.61% of transferred assets.

However, on March 18, 2013, the City turned over \$4,393,652 in real properties to the Successor Agency. Therefore, the remaining \$472,000 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/mh

cc: Cindy Prothro, Finance Director  
City of Barstow/Successor Agency  
Mary Stapp, Assistant Finance Director  
City of Barstow/Successor Agency  
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# Asset Transfer Review Report

## Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Barstow 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 \$13,664,097 in assets after January 1, 2011, including unallowable transfers to the City of Barstow (City) totaling \$4,865,652, or 35.61% of transferred assets.

However, on March 18, 2013, the City turned over \$4,393,652 in real properties to the Successor Agency. Therefore, the remaining \$472,000 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 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 Barstow Redevelopment Agency transferred \$13,664,097 in assets after January 1, 2011, including unallowable transfers to the City of Barstow totaling \$4,865,652, or 35.61% of transferred assets.

However, on March 18, 2013, the City turned over \$4,393,652 in real properties to the Successor Agency. Therefore, the remaining \$472,000 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 July 31, 2014. Charles C. Mitchell, City Manager, responded by letter dated August 12, 2014, agreeing with the review results with the exception of the finding for loan repayments. 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 of Barstow, 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

September 29, 2014

# Finding and Order of the Controller

## **FINDING— Unallowable asset transfers to the City of Barstow**

The Barstow Redevelopment Agency (RDA) made unallowable asset transfers of \$4,865,652 to the City of Barstow (City). The asset transfers occurred after January 1, 2011, and were not contractually committed to a third party prior to June 28, 2011.

Unallowable asset transfers were as follows:

- On April 4, 2011, the RDA transferred land held for resale totaling \$4,393,652 to the City per Resolution 4610-2011.
- On June 30, 2011, the RDA transferred cash totaling \$472,000 to the City as loan repayment.

However, on March 18, 2013, the City turned over \$4,393,652 of land held for resale to the Successor Agency. Therefore, the remaining \$472,000 in unallowable transfers must be turned over 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 unless those assets were contractually committed to a third party. Those assets should 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 transfer of the assets in the amount of \$4,865,652 and turn the assets over to the Successor Agency. However, because the City subsequently turned over the \$4,393,652 of land held for resale, only the remaining amount of \$472,000 must be turned over to the Successor Agency. The Successor Agency is to properly dispose of the assets in accordance to H&S Code section 34177(d) and (e).

### City's Response

The City responded to the draft report as follows:

We respectfully disagree with the SCO's preliminary decision to disallow this loan repayment, because this loan payment was made according to a written loan repayment schedule and is expressly authorized as an enforceable obligation under Health & Safety Code Sections 34167 (d) (2) and 34171 (d) (2) as a loan made by the City to the former RDA within the first two years of the RDA's creation. . . .

### SCO's Comment

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 provisions of the RDA dissolution legislation. As a result, loan repayments made by the RDA to the City during the periods of January 1, 2011, through January 31, 2012, were unallowable.

Additionally, H&S Code section 34167.5 states that if such an unallowable transfer occurs, the Controller shall order the return of those assets to the Successor Agency. Therefore, the Finding and Order of the Controller remain as stated.

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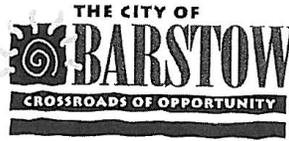
**Schedule 1—  
Unallowable Asset Transfers to  
the City of Barstow  
January 1, 2011, through January 31, 2012**

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Unallowable asset transfers to the City of Barstow:	
April 4, 2011 Land held for resale	\$ 4,393,652
June 30, 2011 Cash	<u>472,000</u>
Total transfers to the City	4,865,652
March 18, 2013 Land held for resale turned over to the Successor Agency	<u>(4,393,652)</u>
Total transfers subject to H&S Code section 34167.5	<u><u>\$ 472,000</u></u>

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

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August 12, 2014

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

Re: Barstow Redevelopment Agency Draft Asset Transfer Review

Dear Ms. Gonzalez,

We are in receipt of the July 31, 2014 SCO draft Asset Transfer Review in which the SCO has disallowed the annually scheduled repayment of the Pool Loan, in the amount of \$472,000 which was paid on June 30, 2011 by the former RDA to the City of Barstow. We respectfully disagree with the SCO's preliminary decision to disallow this loan payment, because this loan payment was made according to a written loan repayment schedule and is expressly authorized as an enforceable obligation under Health & Safety Code Sections 34167(d)(2) and 34171(d)(2) as a loan made by the City to the former RDA **within the first two years of the RDA's creation**. The installment payment occurs on an annual basis and the payment in question was shown on the DDR and the SCO did not object. Moreover, the Department of Finance also reviewed both the DDR and the annual ROPS payment and has ruled in a December 12, 2012 determination that the loan agreement is, in fact, an enforceable obligation consistent with the Health & Safety Code Section 34171(d)(2).

While Health & Safety Code Section 34167.5 provides the SCO the authority to review asset transfers made by the RDA after January 1, 2011, it does not provide any authority for the SCO to order the return of such transfers that were made in compliance with state law, including express provisions of AB 1X 26 and AB 1484. This limitation on the SCO's authority is stated in Health & Safety Code Section 34167(f).

We respectfully request you correct this erroneous finding. There is simply no support in the law or in the record for the conclusion that an installment payment made by the former RDA on a loan which has been approved by the Department of Finance as a valid enforceable obligation should be returned to the Successor Agency.

As for the finding that the former RDA's transfer of \$4,393,652 in real property to the City of Barstow in March 2011 was a disallowed transfer of assets which must be returned to the Successor Agency, we do not contest this finding. As you also acknowledge in the draft report, the City Council did authorize the return of this real property to the Successor Agency by City



Council Resolution in March 2013, effectively, correcting the transfer of property in order to comply with AB 1X 26. The real property in question has since been included on the Successor Agency's Long Range Property Management Plan for disposition consistent with Health & Safety Code Section 34191.5.

Sincerely

Charles C. Mitchell,  
City Manager

cc: Cindy Prothro, Finance Director  
City of Barstow/Successor Agency  
Mary Stapp, Assistant Finance Director  
City of Barstow/Successor Agency  
Richard J. Chivaro, Chief Legal Counsel  
State Controller's Office  
Scott Freesmeier, Audit Manager  
State Controller's Office  
Trisha L. Quimbao, Auditor-in-Charge  
State Controller's Office  
Tiffany Weir, Auditor  
State Controller's Office  
Ms. Teresa Highsmith, City Attorney  
Colantuono, Highsmith & Whatley, PC

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