SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE/TIME **JUDGE**	**December 6, 2013** **HON. ALLEN SUMNER**	**DEPT. NO** **CLERK**	**42** **M. GARCIA**
CITY OF BRENTWOOD, et al. **Petitioners,** **v.** **CALIFORNIA DEPARTMENT OF FINANCE, et al.,** **Respondents.**		**Case No.: 34-2013-80001568**	
Nature of Proceedings:	**PETITION FOR WRIT OF MANDATE**		

Following is the court's tentative ruling granting in part and denying in part the petition for writ of mandate, scheduled for December 6, 2013, at 1:30 p.m., in Department 42.

INTRODUCTION

The City of Brentwood ("City") challenges four determinations by the Department of Finance ("DOF") related to the dissolution and winding down of redevelopment agencies. The City's primary challenge is to DOF's determination that five agreements between the City and the former Redevelopment Agency of the City of Brentwood ("RDA") are not enforceable obligations. As a result of that determination, DOF ordered the City to return $19.6 million transferred to it by the RDA in its waning days and will not allow the RDA's successor agency to continue making payments to the City pursuant to the agreements.

For the reasons discussed below, the petition is granted in part and denied in part.

BACKGROUND

Dissolution of Redevelopment Agencies

In 1945, the Legislature enacted the Community Redevelopment Law authorizing cities and counties to establish redevelopment agencies to remediate urban decay. (Health & Saf. Code § 33000 et seq.; see also *California Redevelopment Association v.*

Matosantos, *supra,* 53 Cal.4th at 245-46.)[1] Redevelopment agencies funded their activities primarily through "tax increment" financing: the redevelopment agency received property tax revenue in excess of the property tax revenue allocated to other local entities prior to the redevelopment plan. (*Matosantoa*, *supra*, 53 Cal.4th at 246-47.) This "excess" property tax revenue was referred to as tax increment.

In June 2011, the Legislature enacted AB1X 26 eliminating redevelopment agencies. In December 2011, the California Supreme Court upheld the constitutionality of AB1X 26 in *Matosantos*, *supra*, 53 Cal.4th 231. In June 2012, the Legislature adopted AB 1484 modifying the provisions of AB1X 26. The court refers to AB1X 26 and AB 1484 collectively as the "Dissolution Law."

A primary goal of the Dissolution Law was to increase the share of property taxes going to cities, counties, schools and other local entities by reallocating to them the tax increment formerly allocated to redevelopment agencies. (See, e.g., *Matosantos*, *supra*, 53 Cal.4th at 241, 250, 263; 2011 Stats., 1st Ex. Sess., ch. 5, § 1.) This reallocation, however, would not happen immediately. Although the Dissolution Law eliminated redevelopment agencies, it did not eliminate their existing enforceable obligations.

The Legislature established successor agencies to wind down the affairs of the former redevelopment agencies.[2] (§§ 34173, 34177.) Successor agencies are responsible for making payments due on the former redevelopment agencies' ***enforceable obligations***. (§ 34177(a), (d), (h).) Of relevance here, the Dissolution Law provides "agreements, contracts, or arrangements between the city . . . that created the redevelopment agency and the former redevelopment agency" are ***not*** enforceable obligations. (§ 34171, subd. (d)(2).)

To be paid, an enforceable obligation must be listed on a Recognized Obligation Payment Schedule or "ROPS." Every six months, the successor agency prepares a ROPS listing the former redevelopment agency's enforceable obligations coming due the next six months. (See generally § 34177.) Each ROPS must be reviewed by DOF, which may disapprove any obligation listed. (§§ 34177, 34179(h).) An obligation disapproved by DOF does not get paid.

The successor agency is also responsible for conducting a due diligence review to determine the "unobligated balances" of the former redevelopment agency now available for allocation to other local entities. (See generally § 34179.5.) Among other things, the review determines the value of any assets or cash transferred by the former redevelopment agency to its sponsor city between January 1, 2011 and June 30, 2012. (§ 34179.5(c)(2).) For any such transfer not required by an "enforceable obligation," the amount transferred is added to the unobligated balance available for distribution to other local taxing entities. (§ 34179.5(c)(6).) The due diligence review must be approved by

[1] Unless otherwise specified, all statutory references are to the Health and Safety Code.

[2] The City has become the RDA's successor agency.

DOF, which may adjust the amount available for distribution. (§ 34179.6, subds. (c) and (d).)

Public Improvement Projects and Agreements

In February and March of 2011, in response to the Governor's plan to dissolve redevelopment agencies, the City and RDA entered into five separate "Public Improvement Agreements" ("PIAs") pursuant to which the RDA agreed to pay the City over $34 million to fund various public improvement projects.[3]

Due Diligence Review of PIAs

Between January 1, 2011, and January 31, 2012, the RDA transferred $19.6 million to the City pursuant to the PIAs: $15.5 million in cash and $4.1 million in bond proceeds. (Ex. 302, pp. 2239-40.) The successor agency's due diligence review concluded these transfers were required by an enforceable obligation. However, DOF disallowed the transfers, finding the PIAs were not enforceable obligations. DOF thus determined the $15.5 million in transferred cash was available for distribution to local taxing entities.[4] (Ex. 305, p. 2270.) DOF ordered the successor agency to remit the $15.5 million to the county auditor-controller for distribution. In October 2013, DOF informed the successor agency if it did not remit the $15.5 million, DOF would direct the Board of Equalization to withhold this amount from the City's sales and use tax revenues. (Ex. 307.)

The City challenges these determinations.

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[3] The five PIAs are:

- The **Infrastructure PIA** was executed on February 28, 2011, and amended on March 8, 2011. (Exs. 71, 91.) Pursuant to its terms, the RDA agreed to pay the City $3,887,410 for costs incurred in connection with various infrastructure projects. (Ex. 72, p. 371.) $1,614,467 was due immediately, and $2,272.943 would be paid later. (Ex 91, pp. 438-39.)
- The **Downtown Streetscape PIA** was executed on February 28, 2011, and amended on March 8, 2011. (Exs. 77, 92.) It requires the RDA to pay the City $7,085,000 for costs incurred in connection with the Downtown Streetscape Project. (Ex. 77, p. 387.) $5,949,755 was due immediately, and $1,135,245 would be paid later. (Ex. 92, p. 442.)
- The **City Park PIA** was executed on February 28, 2011, and amended on March 8, 2011. (Exs. 82, 93.) It requires the RDA to pay the City $3,449,168 for costs incurred in connection with the City Park Project. (Ex. 82.) $1,971,091 was due immediately, and $1,478,077 would be paid later. (Ex. 93, pp. 445-46.)
- The **Community Center PIA** was executed on March 8, 2011. It required the RDA to pay the City $12,500,000 in connection with the Community Center Project. (Ex. 96.)
- The **Parking Facility PIA** was executed on March 8, 2011. (Ex. 100.) It requires the RDA to immediately pay the City $5,500,000 for costs incurred in connecting with a Parking Facility Project, and pay an additional $2,000,000 later. (Ex. 100, p. 481.)

[4] The bond proceeds were legally restricted to the purposes for which the bonds were issued, and thus are not available for distribution. (*Id.*) Instead, DOF noted the bond proceeds should be returned to the successor agency to use for the purposes for which the bonds were issued. (*Id.*)

ROPS Listing of the PIAs

The successor agency similarly identified at least four of the PIAs as enforceable obligations on ROPS IV for future payment. (Ex. 300, p. 2221.) DOF again determined two of the PIAs were not enforceable obligations because they were agreements between the RDA and its sponsor city.[5] (AR, Exs. 299, 301.) The City also challenges this determination.

Property Transfers

On February 28, 2011, the City and the RDA entered into an "Option Agreement" pursuant to which the RDA granted the City the "exclusive right and option" to purchase nine parcels of property owned by the RDA for $10 a parcel. (Ex. 86.) The City exercised its option on all nine parcels on March 4, 2011, and remitted $90 to RDA. (*Id*., p. 426.) The RDA thereafter transferred all nine parcels to the City. (*Id*., p. 425.)

DOF found the transfers were improper, concluding:

> To the extent these properties do not meet criteria outlined in HSC section 34181(a), they should be returned to the Agency and disposed of in a manner consistent with the Agency's Long Range Property Management Plan pursuant to HSC section 34191.5 and should maximize value as required in HSC section 34171.

(Ex. 305, p. 2270.) The City challenges this determination.

Oversight Board's Legal Expenses

The successor agency listed $15,000 in legal services for the oversight board as an enforceable obligation on ROPS IV, with $7,500 due immediately. (Ex. 297, p. 2221 [item 24].) DOF reclassified this as an administrative expense rather than an enforceable obligation. (Ex. 299, p. 227; Ex. 301, p. 235.) The City challenges this determination, without explaining the effect of DOF's determination or how the City is prejudiced.

DISCUSSION

1. The "claw back" violates Proposition 22

The City's primary challenge is to DOF's determination the City must return $15.5 million in cash and $4.1 million in bond proceeds transferred to it by the RDA between January 1, 2011 and January 31, 2012. The parties refer to this as the "claw back" determination.

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[5] The ROPS identified a total of $899,826 outstanding on the City Park PIA, and a total of $1,562,530 outstanding on the Community Center PIA. For the ROPS IV period, the City requested $321,551 for the City Park PIA, and $175,000 for the Community Center PIA. (Ex. 297, p. 2221.)

The City argues DOF's claw back violates Proposition 22, which amended the California Constitution to provide:

> [T]he Legislature shall not . . . [r]equire a community redevelopment agency . . . to pay, remit, loan, or otherwise transfer, directly or indirectly, taxes on ad valorem real property and tangible personal property allocated to the agency pursuant to Section 16 of Article XVI[6] to or for the benefit of the State, any agency of the State, or any jurisdiction.[7]

(Cal. Const., art. XIII, sec. 25.5(a)(7).)

The City notes the purpose of Proposition 22 was to prohibit the State from requiring redevelopment agencies to shift their funds to schools or other agencies, and to eliminate the Legislature's authority to redirect a redevelopment agency's property taxes to any other local government. (Voter Information Guide, Gen. Elec. (Nov. 2, 2010), analysis of Prop. 22 by Legis. Analyst, pp. 31, 34.)[8] The City argues DOF is violating Proposition 22 by ordering the return of funds the RDA expended for redevelopment projects before the RDA was dissolved.

The City cites the Supreme Court's holding in *Matosantos* that Proposition 22 strips the Legislature of the "power to insist on transfers to third parties of property tax revenue ***already allocated*** to the redevelopment agencies." (*Matosantos*, *supra*, 53 Cal.4th at 261-62 [emphasis added].) In upholding the Legislature's authority to dissolve redevelopment agencies, the Court explained:

> ***Proposition 22's limit on state restrictions of redevelopment agencies' use of their funds is best read as limiting the Legislature's powers during the operation,*** rather than the dissolution, ***of redevelopment agencies***. . . . Thus, *if* the Legislature exercises its constitutional power to authorize allocation of property taxes to redevelopment agencies, and *if* a redevelopment plan so provides, *then* those ***taxes so allocated*** to ***an operating redevelopment agency may not be restricted to benefit the state by any further legislative action***.

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[6] Section 16 of article XVI authorizes the Legislature to allocate tax increment to redevelopment agencies.

[7] Jurisdictions include both special districts and school districts. (*Matosantos*, *supra*, 53 Cal.4th at 260, fn.14.)

[8] The City's request to judicially notice the Official Voter Information Guide for Proposition 22 (November 2, 2010), including the Legislative Analyst's analysis of the Proposition, is granted. The Guide is attached as Exhibit A to the City's request.

(*Matosantos*, *supra*, 53 Cal.4th at 263 [italics in original, bold italics added].)

The City argues Proposition 22 and *Matosantos* establish the Legislature cannot reallocate tax increment already transferred by the RDA to the City ***prior to*** its dissolution. The court agrees.

The RDA's operations were frozen on June 28, 2011, and it was dissolved on February 1, 2012. (§ 34161; *Matosantos*, *supra*, 53 Cal.4th at 275.) All transfers DOF challenges occurred ***prior to*** the RDA's dissolution on February 1, 2012. According to the City, the "vast majority" also occurred prior to AB 1X 26's enactment on June 28, 2011.[9] The City argues Proposition 22 expressly prohibits the Legislature from requiring the RDA to "***transfer***, directly or ***indirectly***, [tax increment] to or for the benefit of" the State or any local jurisdiction thereof. (Cal. Const., art. XIII, sec. 25.5(a)(7) [emphasis added].)

DOF argues Proposition 22 does not prevent the Legislature from abolishing RDAs and redirecting their funds to other local taxing entities. This is true. *Matosantos* established Proposition 22 does not prevent the Legislature from abolishing RDAs. (*Matosantos*, *supra*, 53 Cal.4th at 262, 264 ["no constitutional impediment to the Legislature's electing to dissolve the state's redevelopment agencies" and "Proposition 22 does not invalidate the freeze portions of Assembly Bill 1X 26"].) However, *Matosantos* did not address the claw back provisions added by AB 1484 six months after *Matosantos* was decided.

DOF argues Proposition 22 simply does not apply to the Dissolution Law. Proposition 22 only applies to operational RDAs. Thus Proposition 22 does not apply to the dissolution process or claw back, which come into play only after the RDA's dissolution, and apply only to ***successor agencies***.[10] This argument elevates form over substance.

If the Legislature had not dissolved redevelopment agencies, could it have required the RDA to transfer $15.5 million to other local government entities? If not, can the Legislature achieve the same result by requiring the RDA's successor agency to reallocate the $15.5 million the RDA transferred to the City prior to the RDA's dissolution?

DOF argues the Supreme Court in *Matosantos* was well aware that ABx1-26 requires RDAs' unencumbered funds to be distributed to other local entities. (Opp. at 11:22-23.) This is also true. But DOF is not simply reallocating unencumbered funds remaining in the dissolved RDA. Instead, DOF seeks to "claw back" and then

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[9] The City claims less than $350,000 was transferred during the freeze period from June 28, 2011, to February 1, 2012. (Opening at p. 3, fn. 5.) However, it cites no evidence substantiating this claim.

[10] Again, the successor agency, not the RDA, has been ordered to remit the disputed $15.5 to the county-auditor controller for distribution to local taxing entities.

redistribute funds already distributed by the RDA prior to its dissolution. This is a fundamental difference, and where the Dissolution Law violates Proposition 22.

DOF argues RDAs are not constitutionally entitled to tax increment funds, including those in their possession before the passage of ABx126. (Opp. at 11:25-26.) DOF cites two passages from *Matosantos* holding Proposition 22 only applies to existing RDAs. This is true, but again misses the point: DOF is attempting to claw back money transferred by an RDA ***prior*** to its dissolution.

2. The $19.6 million transferred was not in payment for goods and services

The City alternatively argues even if the claw back did not violate Proposition 22, the $19.6 million paid under the PIAs is still not subject to claw back because these payments were for goods and services. They were not.

The due diligence review identifies all assets and cash ***transferred*** by the RDA to the City between January 1, 2011, and June 30, 2012. (§ 34179.5, subd. (c)(2) [emphasis added].) Such transfers are set aside, and the funds reallocated to other local entities. The City argues the $19.6 million it received from the RDA was not ***transferred*** as defined by the Dissolution Law: Transferred "means the transmission of money to another party that is ***not in payment for goods or services*** . . . ." (§ 34179.5, subd. (b)(3) [emphasis added].) The City argues the $19.6 million was in payment for goods or services, and thus not a prohibited "transfer." The record does not support this conclusion.

First, the City defines the term "goods or services" too broadly. According to the City, a payment for "goods and services" includes any payment that was simply ***legally valid*** when made. (See Opening at 21:6-13.) The City argues all the payments were legal when made. This construction is inconsistent with the plain wording of section 34179.5, which allows only payments for goods and service. The court assumes the Legislature said what it meant, and meant what it said. (*People v. Skiles* (2011) 51 Cal. 4th 1178, 1185.)

Such a construction is also inconsistent with the Legislature's intent. Sections 34171 and 34197.5 evidence the Legislature's intent to set aside agreements transferring the RDA's assets to the City between January 1, 2011, and June 30, 2012, so the money can be reallocated to other local government entities. (§§ 34171, subd. (d)(2), 34179.5, subd. (c)(6).) Again, a primary goal of the Dissolution Law was to preserve "to the maximum extent possible" the revenue and assets of the dissolved redevelopment agencies so that money could be transferred to local taxing entities to fund "core governmental services" such as fire protection, police and schools. (§ 34167, subd. (a); *Matosantos*, *supra*, 53 Cal.4th at 250.)

The court's fundamental purpose in construing a statute is to determine and effectuate the Legislature's intent. (*People v. Skiles* (2011) 51 Cal.4th 1178, 1185; *Bourquez v. Superior Court* (2007) 156 Cal.App.4th 1275, 1288.) Accepting the City's

interpretation allowing any otherwise lawful transfer to stand would defeat the Legislature's goal of maximizing reallocation of RDA funds to maintain core government services provided by other local government entities.

The City alternatively argues the $19.6 million was a payment for goods or services even under a more conventional definition of those terms. The City argues the goods or services the RDA paid for include (1) goods and services provided by ***third party*** contractors to construct the various public improvement projects, and (2) the City's planning, administration, and construction management services. (Opening at 22:12-25.) Again the court is not persuaded.

If the RDA made a payment to the City between January 1, 2011, and June 30, 2012, for goods or services ***the City*** provided ***to the RDA***, that was not a prohibited transfer. (§ 34179.5, subds. (b)(2), (b)(3), (c)(2), and (c)(6).) However, the City maintains reimbursement by the RDA for goods and services the City purchased from third parties is also allowed under section 34179.5. Again, such a construction is not supported by the language of section 34179.5 or the Legislature's intent.

Finally, the City fails to show the $19.6 million was paid for services the City actually ***provided*** the RDA. The PIAs are replete with reference to ***prepaying*** the City for costs it will incur in the future. (See, e.g., Ex. 77, p. 387; Ex. 82, p. 403; Ex. 91, p. 438; Ex. 92, p. 442; Ex. 93, p. 445.)

3. Constitutionality of the Dissolution Law's "enforcement" provisions

The City challenges DOF's invocation of the Dissolution Law's "enforcement" provisions. Pursuant to section 34179.6, subdivision (h), if the Successor Agency fails to remit the $15.5 million to the county-auditor controller for distribution to other local entities, DOF may order an offset of the City's sales and use tax revenues. (§ 34179.6, subd. (h)(1)(C)(C).) The City argues this offset violates the California Constitution, as amended by Proposition 22 and Proposition 1A.

Proposition 22 prohibits the Legislature from reallocating, transferring, appropriating, or otherwise using the proceeds of any tax imposed or levied by a local government solely for the local government's purpose, which would include sales and use taxes. (Cal. Const., art. XIII, sec. 24(b).) Proposition prohibits the Legislature from changing the method of distributing sales and use taxes. (Cal. Const., art. XIII, sec. 25.5, subd. (a)(2)(A).) The City argues these provisions prohibit DOF from offsetting its sales and use tax revenues to satisfy a debt of the Successor Agency.

The court's ruling that the claw back of payments made prior to the RDA's dissolution violates Proposition 22 renders the City's challenge to the offset procedures moot. The court will not render an advisory opinion on the constitutionality of a statute not at issue. (*People v. Talhelm* (2000) 85 Cal. App. 4th 400, 408.)

4. The transfer of real proper is not ripe for review

The City argues DOF has no authority to demand the return of the real property transferred from the RDA to the City. (Opening at 24:17-18.) DOF determined the RDA "improperly" sold nine land parcels to the City and stated, "[t]o the extent those properties do not meet criteria outlined in HSC section 34181(a), they should be returned to the [Successor] Agency." (AR, Ex. 305, p. 2270.) However, as the City acknowledges, DOF has not ordered it to return these parcels. (Opening at 24 fn.15.) Accordingly, any challenge to actions DOF may take on this issue is not ripe for review.

5. There are no third party beneficiaries to the PIAs

For two of the PIA's challenged by DOF, the City additionally argues the PIAs are enforceable obligations because they were intended to benefit ***third parties***. The City maintains these two PIA's are not agreements between just the City and its RDA excluded from "enforceable obligations" as defined by section 34171, subdivision (d)(2). Rather, they are third party agreements intend to benefit the contractors the City has hired, or will hire, to build the projects. The argument does not persuade, for two reasons.

First, the point of the third party beneficiary doctrine is to allow the ***third party*** to enforce the contract against the promisor. (*Souza v. Westlands Water Dist.* (2006) 135 Cal.App.4th 879, 893.) Here, none of the third parties the PIAs were purportedly intended to benefit are before the court.

Second, the City has not established the PIAs were in fact intended to benefit any third parties. "The test for determining whether a contract was made for the benefit of a third person is whether ***an intent*** to benefit a third person appears from the terms of the contract." (*Prouty v. Gores Technology Group* (2004) 121 Cal. App.4th 1223, 1232 [emphasis added].) "The contracting parties must have intended to confer a benefit on the third party." (*Neverkovec v. Fredericks* (1999) 74 Cal.App.4th 337, 348.) The City fails to establish it and the RDA intended to benefit contractors or any other third parties when they executed the PIAs.

The PIAs make no reference to contractors.[11] Rather, the PIAs provide the RDA will pay the City for costs ***the City*** incurs in connection with planning, developing, administering, and managing the Downtown Infrastructure Project. (*Id*.) The purpose of the PIAs is thus to pay for the City's assistance. There is no suggestion the PIAs are to

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[11] As one example, the purpose of the Public Improvement PIA is described as follows:

> The purpose of this Agreement is to provide for the City's provision of cooperation and assistance in the Agency's Downtown Infrastructure Project and the prepayment of funding for such cooperation and assistance from the [RDA] to the City. The obligations set forth in this Agreement are contractual obligations between the parties.

(Ex. 72, p. 371.)

benefit the contractors.[12] That contractors might be incidentally benefited from performance of the contract is not enough. (*Souza*, *supra*, 135 Cal.App.4th at 891.)

6. DOF is not estopped from denying the PIAs are enforceable obligations

The City argues DOF is estopped from now denying the PIAs are enforceable obligations because it approved them on ROPS I, II, and III. The City allegedly relied on those approvals by moving forward with the projects and making payments to contractors. This argument also fails.

Estoppel ***may*** be asserted against the government where "justice and right require it," but not if doing so would nullify a policy adopted for the public benefit. (*Cotta v. City and County of San Francisco* (2007) 157 Cal.App.4th 1550, 1567.) Again, the Legislature dissolved redevelopment agencies and reallocated their funds to preserve core government functions of other local entities during a fiscal emergency. (*Matosantos*, *supra*, 53 Cal.4th at 250.) The reallocation of funds to maintain core government services was clearly adopted for the public benefit. Accordingly, "justice and right" do not estop DOF from challenging the PIAs.

Nor does it appear denying estoppel results in any injustice. DOF's final determination letters regarding ROPS I, II, and III informed the City, "If an item included on a future ROPS is not an enforceable obligation, Finance reserves the right to remove that item from the future ROPS, even if it was not removed from the preceding ROPS." (Ex. 288, p. 2192; see also Ex. 293, p. 2209 ["All items listed on a future ROPS are subject to a subsequent review. An item included on a future ROPS may be denied even if it was not questioned from the preceding ROPS."].) There is no evidence DOF intended to induce the City to believe the PIAs were forever beyond review. (*Cotta*, *supra*, 157 Cal.App.4th at 1567 [essential element of estoppel is that party to be estopped intended to induce reliance by other party, or acted so as to cause other party to ***reasonably*** believe reliance was intended].)

The City's estoppel argument is based on one sentence in DOF's determination letter regarding ROPS I and II: "Items ***not questioned*** during this review are subject to a subsequent review, if they are included on a future ROPS."[13] (Ex. 289, p. 2192 [emphasis added].) Because DOF questioned, and then approved, at least some of the

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[12] The City asserts the RDA's promise to fund the Projects was noted in resolutions relating the City's contracts with third party contractors and was thus relied on by those contractors. To support this assertion, it cites ten exhibits, but provides no pin cites. With no pin cites, the court is unable to determine why the City believes the cited evidence supports the assertion any third party contractors relied on the PIAs. (See, e.g., *United States v. Dunkel* (7th Cir. 1991) 927 F.2d 955, 956 ["Judges are not like pigs, hunting for truffles buried in briefs" or in the record.].) As one example, Exhibit 175 is a June 10, 2008, memo recommending the City award an infrastructure construction contract to Delta Excavating in the amount of $869,077. The memo also discusses a bid protest filed by the second-lowest bidder, and recommends the bid protest be denied. As far as the court can tell, the memo does not mention the RDA. The City also fails to explain how Delta Excavating, which was awarded a contract with the City in ***2008***, could have relied on a PIA between the City and the RDA executed in ***2011***.

[13] This sentence does not appear in the ROPS III determination letter.

PIAs during its review of ROPS I and II, the City contends DOF must essentially approve the PIAs forever. This argument fails. DOF informed the City in the next sentence, "If an item included on a future ROPS is not an enforceable obligation, Finance reserves the right to remove that item from the future ROPS, even if it was not removed from the preceding ROPS." The City was clearly informed (1) items not questioned during a review are subject to subsequent review, and (2) items questioned during a review may nonetheless be removed from future ROPS if DOF determines they are not enforceable obligations.

Finally, the Dissolution Law allows a successor agency to petition DOF to provide written confirmation that a ROPS determination "is final and conclusive, and reflects the department's approval of subsequent payments made pursuant to the enforceable obligation." (§ 34177.5, subd. (i).) If the City could achieve the same result via estoppel, subdivision (i) would be superfluous.

The court thus finds DOF is not estopped to deny the PIAs are enforceable obligations.

7. The City fails to establish DOF's reclassification of legal expenses was erroneous

The City's final challenge is to DOF's determination that $15,000 in legal expenses incurred by the successor agency's oversight board should be reclassified as administrative expenses rather than an "enforceable obligation."

As the RDA's successor agency, the City is allocated an administrative cost allowance of not less than $250,000 per year to pay its administrative costs. (§ 34171, subd. (b).) The Dissolution Law does not define the term "administrative costs." Section 34171, subdivision (b), however, provides the administrative cost allowance "shall exclude any ***litigation expenses related to assets or obligations, settlement and judgments, and the costs of maintaining assets prior to disposition***." (§ 34171, subd. (b) [emphasis added].) DOF determined only those litigation expenses expressly listed in section 34171 are excluded from administrative costs; all other legal expenses are administrative costs. Again, the City challenges DO's determination without explaining how the City has been harmed.

The term administrative costs is not defined in the Dissolution Law. The Legislature gave DOF responsibility to review and approve all items listed on the ROPS. In the absence of contrary legislative history or other authority, the court finds DOF's determination was reasonable.

CONCLUSION

For the foregoing reasons, the petition is granted in part and denied in part. The court finds DOF's claw back determination violates Proposition 22. The claw back seeks

to reallocate to other local entities tax increment that had already been transferred by the RDA prior to its dissolution. In all other respects, the petition is denied.

The tentative ruling shall become the court's final ruling and statement of decision unless a party wishing to be heard so advises the clerk of this department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear. In the event this tentative ruling becomes the final ruling of the court, counsel for the prevailing party is directed to prepare a formal judgment and writ, incorporating this ruling as an exhibit; submit it to opposing counsel for approval as to form; and thereafter submit it to the court for signature and entry of judgment in accordance with Rule of Court 3.1312.

The court prefers that any party intending to participate at the hearing be present in court. Any party who wishes to appear by telephone must contact the court clerk by 4:00 p.m. the court day before the hearing. (See Cal. Rule Court, Rule 3,670; Sac. County Superior Court Local Rule 2.04.)

In the event that a hearing is requested, oral argument shall be limited to no more than thirty (30) minutes per side.

If a hearing is requested, any party desiring an official record of the proceeding shall make arrangement for reporting services with the clerk of the department not later than 4:30 p.m. on the day before the hearing. The fee is $30.00 for civil proceedings lasting under one hour, and $239.00 per half day of proceedings lasting more than one hour. (Local Rule 9.06(B) and Gov't. Code § 68086.) Payment is due at the time of the hearing.