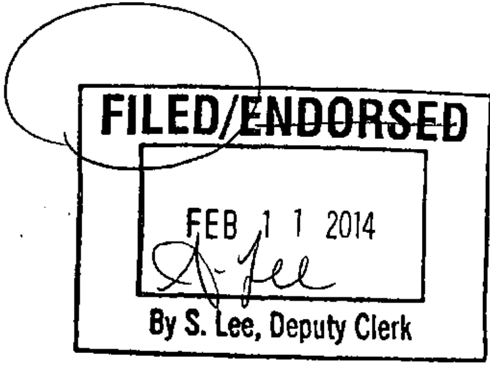

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

CITY OF FRESNO; SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, **Plaintiffs and Petitioners,** **v.** **STATE OF CALIFORNIA; ANA J. MATOSANTOS, in her official capacity as Director of the State of California Department of Finance, JOHN CHIANG, in his official capacity as Controller of the State of California; VICKI CROW, in her official capacity as Auditor-Controller of the County of Fresno,** **Defendants and Respondents.**	**Case No. 34-2013-80001450-CU-WM-GDS** **RULING ON SUBMITTED MATTER: PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Introduction

The long and complicated process of winding down the activities of redevelopment agencies continues. In this case, which involves a petition for writ of mandate under Code of Civil Procedure section 1085 and claims for declaratory and injunctive relief, the City of Fresno and the Successor Agency to the former Redevelopment Agency of the City of Fresno ("petitioners") challenge several administrative

orders and determinations made by respondents State Controller and Department of Finance ("DOF").[1]

The order and determinations at issue here are the following:

1. An Order of the State Controller dated March 14, 2013, directing the City to return housing assets, including cash, that had been transferred to the City as the designated housing successor to the former Redevelopment Agency.

2. Two related determinations by DOF dated January 11, 2013 and June 27, 2013. The first determination found that a balance of $168,534 in the Successor Agency's Low and Moderate Income Housing Fund ("LMIHF") was available for transfer to taxing entities. The second determination found that a balance of $4,933, 178 in the Successor Agency's Other Funds and Accounts was available for transfer to taxing entities. The two determinations addressed cash housing assets previously transferred to the City as the designated housing successor to the former Redevelopment Agency, and effectively directed the City and the Successor Agency to accomplish the transfer of the cash (totaling $5,101,712) to the Successor Agency.

3. A determination by DOF dated June 27, 2013 that an account receivable payable from Utility Trailer Sales ("UTS") to the former Redevelopment Agency is to be considered payable on demand and therefore is considered "cash" or a "cash equivalent" for purposes of the Due Diligence Review.

4. A determination by DOF dated March 19, 2013 that a payment to the City under an agreement entered into between the City and the former Redevelopment Agency in 2000, referred to in this ruling as the "Downtown Stadium Agreement", is not an enforceable obligation that may be paid with funds from the Redevelopment Property Tax Trust Fund ("RPTTF").

The Court heard oral argument on Friday, January 10, 2014. At the close of the hearing, the Court took the matter under submission for issuance of a written ruling. Having considered the oral and written

[1] Respondent Vicki Crow, the Fresno County Auditor-Controller, filed an answer to the petition but filed no briefing on the merits and has not taken an active role in the case.

arguments submitted by the parties, as well as the documentary evidence, the Court now issues its final ruling.

Standard of Review

Petitioners seek a writ of mandate pursuant to Code of Civil Procedure section 1085 to review the administrative orders and determinations of respondents State Controller and DOF, described above, under the redevelopment dissolution laws. In ordinary mandamus actions the Court applies an abuse of discretion standard, reviewing the challenged administrative decision to determine if it was arbitrary, capricious, or entirely lacking in evidentiary support, or whether the agency failed to follow the procedure and give the notices the law requires. (*Shelden v. Marin County Employees' Retirement Association.* (2010) 189 Cal.App.4th 458, 463; see also, *Ridgecrest Charter School v. Sierra Sands Unified School District* (2005) 130 Cal.App.4th 986, 1003.)

The Court's review necessarily extends to the question of whether the respondents properly applied the law. Issues involving the agency's interpretation of statutes raise questions of law, upon which the Court exercises its independent judgment. (*California Correctional Peace Officers' Association. v. State of California* (2010) 181 Cal.App.4th 1454, 1460.)

Under well-established principles of law, there is a presumption that the agency's action was valid, and petitioners have the burden of demonstrating that it was not. (See, e.g., *MCM Construction, Inc. v. City and County of San Francisco* (1998) 66 Cal. App. 4th 359, 368.)

In this case, because declaratory and injunctive relief are essentially ancillary remedies to issuance of a writ of mandate, the standard of review to be applied by the Court is identical.

This proceeding arises out of an administrative determination that did not involve an evidentiary hearing or other formal fact-finding procedure. The Court therefore must find the relevant facts based on the evidence submitted by the parties.[2] Because this case involves several separate administrative actions, the Court will set forth its determination of the relevant facts for each of those actions, based on the

[2] No formal administrative record has been lodged with the Court. All evidence has been presented through declarations or requests for judicial notice. Petitioner's request for judicial notice filed on December 20, 2013, including Exhibits 32-35, is granted. Respondents have not objected to the request.

preponderance of the evidence, under separate headings below.

State Controller's Order

Facts:

The Court finds that the following are the facts relevant to petitioners' challenge to the State Controller's Order.

On January 26, 2012, the Fresno City Council adopted Resolution 2012-12 in order to address the imminent dissolution of the Redevelopment Agency of the City of Fresno. The Resolution provided that the City elected to serve as the Successor Agency to the Redevelopment Agency. The Resolution further provided that the City elected "...to assume all rights, powers, assets, liabilities, duties and obligations associated with the housing activities of the Agency in accordance with Health and Safety Code section 34176". The City thus elected to serve as the Successor Agency to the former Redevelopment Agency, and to act as the successor to the former Redevelopment Agency for housing purposes. The City's Mayor approved the Resolution on January 30, 2012, and the Resolution became effective on that date.[3]

On February 1, 2012, the Redevelopment Agency was dissolved by operation of law as provided in the redevelopment dissolution laws and the Supreme Court's decision in *California Redevelopment Association v. Matosantos* (2011) 53 Cal. 4th 231.

On the same date, the Successor Agency transferred the former Redevelopment Agency's housing-related assets to the City, acting as the housing successor. The assets were placed in the City's new Low and Moderate Income Housing Fund.[4]

The assets transferred included $17,880,383 in cash, $12,906,497 in receivables and advances, and $10,682,955 in property held for resale, for a total of $41,469,835.[5]

At the time of this transfer, the Oversight Board for the Successor Agency had not yet held its first

[3] See, Index to Petitioners' and Plaintiffs' Documentary Evidence ("Evidence"), Exhibit 29.

[4] See, Declaration of Debra Barletta, Financial Officer of the Successor Agency to the Redevelopment Agency of the City of Fresno, paragraph 3.

[5] See, Evidence, Exhibit 29: City of Fresno Redevelopment Agency Asset Transfer Review prepared by the State Controller's Office, dated March 2013.

meeting, which took place on April 30, 2012.[6]

On March 14, 2013, the State Controller issued a report reviewing all asset transfers made from the City of Fresno Redevelopment Agency to the City of Fresno after January 1, 2011. The report found that the Redevelopment Agency had made unallowable transfers of assets totaling $41,469,835, i.e., all of the cash, receivables and advances and property held for resale that had been transferred to the City's Low and Moderate Income Housing Fund, as described above. The basis of this finding was the State Controller's legal conclusion that Health and Safety Code section 34181(c) required the Oversight Board to direct the Successor Agency to "[t]ransfer housing responsibilities and all rights, powers, duties and obligations...to the appropriate entity pursuant to Section 34176", and that until a transfer of the assets to the Successor Agency was made, the Oversight Board was denied the opportunity to take such action. In essence, the State Controller found that a direct transfer of the housing assets from the Successor Agency or the Redevelopment Agency to the City as housing successor agency was improper. The State Controller ordered the City, acting as the Successor Housing Agency, to reverse the transfer of those assets and return them to the Successor Agency.[7]

Analysis:

The State Controller makes no attempt to defend its order in this proceeding. Instead, it claims that the order is moot. The Court is not persuaded. As petitioners argue, the continued existence of the order constitutes a cloud on the title of real property housing assets and may inhibit the use of any of the housing assets, real property or otherwise, for their intended purposes. The Court therefore finds it necessary and appropriate to address the issue of whether the order is valid.

The Court finds that it is not. The State Controller's authority to review asset transfers from a successor agency to a city occurring after January 31, 2012 arises out of Health and Safety Code section 34178.8. The statute specifically provides, however, that "[t]his section shall not apply to housing assets as defined in subdivision (e) of Section 34176." It is undisputed for the purposes of reviewing the State

[6] See, Declaration of Marlene Murphey, Executive Director of the Successor Agency to the Redevelopment Agency of the City of Fresno, paragraph 19.

[7] See, Evidence, Exhibit 19: Finding and Order of the Controller, pages 4-5.

Controller's order that all of the assets covered by the order are housing assets of the former Redevelopment Agency. The State Controller therefore lacked the authority to make the order.

Furthermore, the order is based on the theory that the Oversight Board has the authority, and the right, to direct or approve the transfer of the former Redevelopment Agency's housing assets to the agency acting as the housing successor, and that any transfer done without such direction or approval is invalid. This theory is untenable because Health and Safety Code section 34176(a)(1) specifically provides that if a city that created a redevelopment agency elects to retain the authority to perform housing functions previously performed by the agency, "...all rights, powers, duties, obligations, **and housing assets... shall be transferred to the city**". (Emphasis added.) Furthermore, Health and Safety Code section 34177(g) specifically requires a successor agency to "[e]ffectuate the transfer of housing funds and assets to the appropriate entity designated pursuant to Section 34176." Indeed, the provision of law cited in the State Controller's order, Health and Safety Code section 34181(c), only gives the Oversight Board the authority to direct the Successor Agency to "[t]ransfer housing assets pursuant to Section 34176", i.e., to the designated housing successor.

Clearly, where a city elects to act as the housing successor, as occurred here, the law requires all housing assets to be transferred to the city. Thus, even if the Oversight Board had been in existence and active at the time of the transfer in this case, which it was not, it would have had no discretion or authority to direct the transfer of housing assets to any other entity. An order directing that asset transfers required by law be reversed so that the Oversight Board may simply order the assets transferred back to the City serves no legitimate purpose.

The State Controller did not have authority to make the challenged order, which involved housing assets. Also, because the housing assets in this case were properly transferred to the City as required by Section 34176, the State Controller's order reversing the transfer was unnecessary and improper. The State Controller's order therefore was not made in compliance with law, and was not supported by any evidence. The Court grants the petition for writ of mandate and finds that petitioners are entitled to declaratory and injunctive relief on this issue. The Court finds and declares that the State Controller's

order dated March 14, 2013 is invalid, and will issue a writ directing the State Controller to rescind the order, and an injunction directing the State Controller not to enforce it.

Department of Finance Orders Regarding Cash Housing Assets

Facts:

The Court finds that the following are the facts relevant to petitioners' challenge to DOF's orders regarding cash housing assets.

As stated above, on February 1, 2012, the Successor Agency transferred the former Redevelopment Agency's housing-related assets to the City's new Low and Moderate Income Housing Fund.[8]

The assets transferred included $17,880,383 in cash, $12,906,497 in receivables and advances, and $10,682,955 in property held for resale, for a total of $41,469,835.[9]

On July 31, 2012, petitioners prepared and submitted to respondent DOF a Housing Assets Transfer list as required by Health and Safety Code section 34176(a)(2), showing all assets transferred to the City in its role as the entity assuming the housing functions of the former Redevelopment Agency.[10]

Pursuant to Health and Safety Code section 34176(a)(2), respondent DOF had up to 30 days from the date of receipt of the list to object to any of the assets or transfers of assets identified on the list. On August 31, 2012 respondent DOF issued a letter setting forth the results of its review of petitioners' Housing Assets Transfer list. "Based on a sample of line items reviewed and the application of law", respondent DOF objected to one item, a consultant service contract executed on September 22, 2011. Respondent DOF did not object to any other items on the list.[11] DOF therefore did not object to any of the cash transfers.

Respondent DOF subsequently conducted a Due Diligence Review of the Successor Agency's

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[8] See, Declaration of Debra Barletta, Financial Officer of the Successor Agency to the Redevelopment Agency of the City of Fresno, paragraph 3.

[9] See, Evidence, Exhibit 29: City of Fresno Redevelopment Agency Asset Transfer Review prepared by the State Controller's Office, dated March 2013.

[10] See, Evidence, Exhibit 11.

[11] See, Evidence, Exhibit 12.

Low and Moderate Income Housing Fund, and a separate Due Diligence Review of the Successor Agency's Other Funds and Accounts, according to the process set forth in Health and Safety Code section 34179.6(c). The purpose of the Due Diligence Review was to determine the amount of cash available for transfer from the Successor Agencies to the County Auditor-Controller for distribution to other taxing entities.

On January 11, 2013, respondent DOF issued a letter setting forth its determination in the Low and Moderate Income Housing Fund review. The letter stated DOF's conclusion that "...the amount of available cash in the LMIHF was $312,704 as of January 31, 2012. [¶] The full $312,704 was transferred to the Housing Successor on February 1, 2012. However, the Recognized Obligation Payment Schedules for the January 1, 2012 through June 30, 2013 periods only identified $144,170 in expenditures to be funded by the LMIHF. Therefore, Finance is adjusting the June 30, 2012 cash balance by only $168,534 ($312,704 - $144,170). [¶] The Agency's LMIHF balance available for distribution to the affected taxing entities has been revised to $168,534."[12]

On June 27, 2013, respondent DOF issued a letter setting forth its determination in the Other Funds and Accounts review. The letter stated:

"Cash transfers totaling $17,567,681 to the City of Fresno Housing Successor were initially disallowed. Per HSC section 34176(a)(1), assets approved by Finance as an inclusion on the Housing Asset Transfer Form excludes any amounts on deposit in the Low and Moderate Income Housing Fund, or other Agency Funds. During the Meet and Confer process, it was determined that $7,975,191 has already been expended with approval from Finance and another $4,659,312 has been approved for expenditure during the January through June 2013 and July through December 2013 periods. Therefore, Finance is reversing $12,634,503 ($7,975,191 + $4,659,312) of the adjustment and increasing the [Other Funds and Accounts] balance available by $4,933,178 ($17,567,681 - $12,634,503). [¶] Additional funding needed for the remaining balances of the commitments and the Agency's direct project costs should be requested in future Recognized Obligation Payment Schedule (ROPS) on separate line items to be paid out of the

[12] See, Evidence, Exhibit 15.

Redevelopment Property Tax Trust Fund (RPTTF)." In a chart entitled "OFA Balances Available for Distribution to Taxing Entities", the letter identified the amount of $4,933,178 as "Disallowed transfers".[13]

Analysis:

In essence, DOF's determinations addressed a portion of the $17,880,497 in cash housing assets that previously had been transferred to the City, as the designated housing successor to the former Redevelopment Agency, on February 1, 2012. DOF's two determinations amounted to a directive to return to the Successor Agency a portion of the amount previously transferred (totaling $5,101,732) on the ground that such amount was not presently needed to pay for enforceable housing obligations.

The Court finds that DOF exceeded its authority in making these two determinations. DOF previously had determined that all of the $17,880,497 in cash transferred to the City as housing successor represented housing assets. This necessarily represented a determination that the cash, as a housing asset, was encumbered by one or more enforceable housing obligations. Once DOF made that determination, it was precluded from making a contrary determination in the Due Diligence Review process.

Health and Safety Code section 34176 governs the treatment of housing assets of the former redevelopment agency. As described above, subsection (a)(1) of the statute provides that a city may elect to retain the housing assets and functions previously performed by its redevelopment agency. If it does so, as occurred here, the statute provides that the assets shall be transferred to the city. Subsection (a)(2) then requires the housing successor (in this case, the City) to submit a list of housing assets that have been transferred, along with an explanation of how the assets meet the definition of "housing asset" contained in subdivision (e) of the statute. Subdivision (e) defines "housing assets" as including "any funds encumbered by an enforceable obligation to build or acquire low- and moderate-income housing". Subsection (a)(2) gives DOF up to 30 days to raise any objection to the list, and if a transferred asset is deemed not to be a housing asset as defined in subdivision (e), it shall be returned to the successor agency.

Under these provisions of law, DOF has specific statutory authority to review transfers of housing assets to the housing successor and to disapprove any transfer that does not involve a legitimate housing

[13] See, Evidence, Exhibit 18.

asset as defined in the statute. In conducting that review, DOF necessarily must determine whether a transferred asset is a "housing asset" within the meaning of Health and Safety Code section 34176(e), i.e., DOF must determine whether the housing asset is encumbered by an enforceable obligation.

In this case, DOF exercised its statutory review authority. It issued a determination on August 31, 2012 that raised no objection to the transfer of any of the cash to the City. In making that determination, DOF necessarily found that the cash transferred to the City represented a "housing asset" within the meaning of Health and Safety Code section 34176(e), and thus found that all of the cash represented funds encumbered by an enforceable obligation to build or acquire low- and moderate-income housing.[14]

Moreover, DOF's June 27, 2013 determination recognized that it previously had approved the spending of $4,659,312 of the cash housing assets through the ROPS process, which required a finding that the expenses were for enforceable obligations.[15] That determination also recognized that "remaining balances of the commitments and the Agency's direct project costs" would be expended in the future. Thus, DOF implicitly conceded that virtually all of the cash housing assets were needed for enforceable obligations.

In this proceeding, DOF has offered no evidence to show that the transferred funds were not encumbered by one or more enforceable housing obligations. Nor did DOF ever withdraw or modify its August 31, 2012 determination. The Court notes that Health and Safety Code section 34179.6(d), which sets forth DOF's authority in the Due Diligence Review Process, does not explicitly state that DOF may issue an order that effectively reverses previously-approved transfers of encumbered cash assets to the housing successor. The Court accordingly concludes that DOF's August 31, 2012 determination approving transfer of cash housing assets to the City was final and binding and could not be reversed, in

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[14] Schedule C of the Housing Assets List, which lists nine separate types of housing built or acquired with enforceably obligated funds and states the amounts owed as enforceable obligations on each type, is evidence that supports DOF's August 31, 2012 determination approving the transfer of the cash to the City. (See, Evidence, Exhibit 11.)

[15] In passing, petitioners argue that the City, acting as housing successor, was not legally required to obtain DOF's approval for expenditures for housing purposes through the ROPS process, and state that such expenditures were listed in the ROPS under protest. The issue of whether the City was required to submit a ROPS for housing expenditures is not before the Court and is not material to the Court's ruling in this matter. The Court accordingly does not address that issue in this ruling.

whole or in part, through a contradictory determination in the Due Diligence Review process.

The Court therefore grants the petition for writ of mandate and finds that petitioners are entitled to declaratory and injunctive relief on this issue. The Court finds and declares that DOF's January 11, 2013 and June 27, 2013 determinations that cash housing assets in the possession of the City as housing successor represent unencumbered assets available for distribution to taxing entities are invalid, in that those determinations exceeded its authority under the law and are not supported by the evidence. The Court will issue a writ directing DOF to vacate those determinations, and an injunction directing DOF not to take any action to enforce them.

UTS Receivable

Facts:

The Court finds that the following are the facts relevant to petitioners' challenge to DOF's determination regarding the UTS receivable.

In July 2008, UTS executed a Drainage Facility Development Agreement with the Fresno Metropolitan Flood Control District, in which the District agreed to reimburse UTS for certain costs incurred by UTS for construction of a public storm drain. The District agreed to reimburse UTS from future drainage fees received by the District from the local drainage area served by the drain.[16]

On or about March 17, 2010, the Redevelopment Agency of the City of Fresno agreed to advance $58,970.00 to UTS to cover "the amount of monies Utility Trailer Sales paid in excess of storm drain fees to construct a storm drain on East Avenue". UTS and the Redevelopment Agency agreed that the latter would be reimbursed by the District. The parties memorialized this agreement on the face of a UTS invoice, and the Redevelopment Agency paid $58.970.00 to UTS.[17]

The former Redevelopment Agency recorded the disbursement to UTS as a receivable from the District.[18]

On May 7, 2013, the Successor Agency, the District and UTS executed an Agreement of Excess

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[16] See, Evidence, Exhibit 27.

[17] *Id.*

[18] See, Declaration of Debra Barletta, paragraph 7.

Credit Reimbursement under which UTS, with the District's agreement, assigned excess credit reimbursement payments to the Successor Agency in the amount of $46,485.00.[19]

On June 27, 2013, DOF issued a letter setting forth its determination based on the Other Funds and Accounts Due Diligence Review. The letter addressed the UTS receivable as follows:

"Based on the documentation provided for the East Avenue Improvements project, an advance receivable in the amount of $58,970...is not evidenced with a contract. Pursuant to the Drainage Facility Development Agreement dated July 8, 2008 between the Fresno Metropolitan Flood Control District (District) and Utility Trailer Sales (Developer), the District was to reimburse the Developer for costs in excess of the drainage fee obligation. However, on an invoice dated March 17, 2010, the former Redevelopment Agency (RDA) agreed to reimburse the Developer $58,970 on behalf of the District and the former RDA would be reimbursed by the District. The former RDA had agreed to make the payment to the Developer as part of the Memorandum of Understanding between the former RDA and the Developer dated April 15, 2008. The only agreement between the Agency and the District is the Assignment of Excess Credit Reimbursement Agreement dated May 7, 2013; however, the Agency no longer has the authority to enter into agreements. Without a valid contract or repayment schedule with the District, this loan is considered payable on demand from the District and should be included as part of the June 30, 2012 balance. Per HSC section 34179.5(b)(1), 'cash' and 'cash equivalents' include payables on demand. As such, the [Other Funds and Accounts] available for distribution to the taxing entities will be increased by $58,970."[20]

Analysis:

Health and Safety Code section 34171.5(b)(1) provides, as DOF stated, that "payables on demand" are considered to be cash or cash equivalents for purposes of the Due Diligence Review. In this case, however, there is no evidence to support the conclusion that the UTS receivable represented a

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[19] See, Evidence, Exhibit 28. It is not clear why this amount differs from the amount stated in the 2010 invoice. The parties do not address the discrepancy. The Court accordingly concludes that the discrepancy is not material to its analysis of this issue.

[20] See, Evidence, Exhibit 18.

"payable on demand". Instead, all the evidence before the Court demonstrates that the UTS receivable represented a three-party agreement between the Redevelopment Agency, the District and UTS that contemplated a future payment to be made upon the fulfillment of certain contingencies.

Specifically, the agreement provided that the District would reimburse excess drainage costs from fees the District would receive in the future, and that the reimbursement would go to the Redevelopment Agency rather than to UTS when the District received such fee payments. The District thus did not agree to make payment on demand, and the Redevelopment Agency did not have the right to demand payment until the District actually received fees. There is no evidence that the District has received the fee payments, which would make the obligation currently due. Thus, the evidence regarding the agreement does not support DOF's conclusion that the receivable is a "payable on demand". DOF's determination that the receivable should be treated as cash or a cash equivalent for purposes of the Due Diligence Review therefore cannot be upheld.

The Court accordingly grants the petition for writ of mandate and finds that petitioners are entitled to declaratory and injunctive relief on this issue. The Court finds and declares that DOF's June 27, 2013 determination that the UTS receivable is cash or a cash equivalent under Health and Safety Code section 34179.5(b)(1) for purposes of the Due Diligence Review is invalid. The Court will issue a writ directing DOF to vacate that determination, and an injunction directing DOF not to take any action to enforce it.

Downtown Stadium Agreement

Facts:

The Court finds that the following are the facts relevant to petitioners' claims regarding the Downtown Stadium Agreement.

On October 24, 2000, the City of Fresno and its former Redevelopment Agency entered into a written agreement entitled the "Downtown Sports/Entertainment Stadium Disposition and Development Agreement".[21]

The former Redevelopment Agency agreed to sell property it owned in downtown Fresno to the

[21] See, Evidence, Exhibit 21.

City for a price of $710,000, which the City would pay by crediting that amount against current Redevelopment Agency debts to the City.[22]

The City agreed to design and construct a stadium on the property, financing construction through the Fresno Joint Powers Financing Authority ("JPA"), a joint powers authority created by the City Council and the former Redevelopment Agency in 1988. [23] The City was to enter into a Site Lease with the JPA, and the JPA was to enter into a Facilities Lease with the City, for the purpose of the JPA issuing bonds in an amount not to exceed $45,000,000 to finance construction of the stadium. The agreement provided that the JPA would pledge the Facilities Lease payments from the City to pay down the debt on the bond transaction. The agreement further provided that the City anticipated pledging "any and all legally available funds of the City's general fund to pay the annual Facility Lease payments, which will be equivalent to the Bond Transaction debt service, to the JPA."[24]

The agreement also provided for potential payments by the Redevelopment Agency, described as the "Agency Obligation". In the event that the City's annual Facility Lease payment to the JPA exceeded the stadium's annual revenues actually received by the City and certain "pass through payments" of tax increment revenue from the Redevelopment Agency's four newest redevelopment project areas, the Redevelopment Agency agreed "...to reimburse or pay the City the excess amount, not to exceed $200,000 annually, from any legally available revenues".[25]

On June 7, 2001, the JPA issued bonds for the downtown stadium project. A copy of the Bond Official Statement Cover Page states that the bonds "...are special obligations of the [JPA], payable solely from and secured by a pledge of certain Revenues and other moneys pledged therefor on the Trust Agreement consisting primarily of Base Rental Payments... to be received by the [JPA] from the City pursuant to a Facility Lease.... Such Base Rental Payments are calculated to be sufficient to pay the principal of and interest on the Bonds when due. The obligation of the City to make Base Rental

[22] *Id.*, page 7, Section 3.

[23] *Id.*, page 10, Section 5.

[24] *Id.*, pages 16-17, Section 10(e).

[25] *Id.*, page 17, Section 10(e).

Payments is an obligation payable from any lawfully available funds of the City."[26]

The City subsequently built the stadium, which now serves as the home park for a minor league baseball team and hosts other events. Prior to its dissolution, the former Redevelopment Agency made payments to the City under the agreement to supplement stadium revenues.[27]

On August 21, 2012, the Successor Agency for the Redevelopment Agency of the City of Fresno submitted a Recognized Obligation Payment Schedule ("ROPS") for the period January 1, 2013 to June 30, 2013. Item 3 of the ROPS listed a projected payment of $140,743 for the Downtown Stadium Agreement, and sought approval to make the payment with funds from the Redevelopment Property Tax Trust Fund ("RPTTF").[28]

On March 19, 2013, respondent DOF issued a letter stating its determination with regard to this item. DOF denied the item on the following basis:

"Finance previously denied the item as HSC section 34171(d)(2) states that agreements, contracts, or arrangements between the city that created the redevelopment agency (RDA) and the former RDA are not enforceable. The Agency contends the item is an enforceable obligation because written agreements entered into at the time of issuance, but in no event later than December 31, 2010, of indebtedness obligations, and solely for the purpose of securing or repaying those obligations may be deemed enforceable. HSC section 34171(d)(2) states that written agreements entered into at the time of issuance, but in no event later than December 31, 2010, of indebtedness obligations, and solely for the purpose of securing or repaying those indebtedness obligations may be deemed enforceable obligations. However, the agreement was not entered into at the time of the issuance as the Disposition and Development Agreement between the City and the former RDA was dated October 24, 2000, and the bonds were dated June 7, 2001. Furthermore, the agreement was not solely for the purpose of securing or repaying the indebtedness obligations. The provisions of HSC section 34171 apply. HSC section 34171(d)(2) states that agreements, contracts, or arrangements between the city, county, or city and county that created the

[26] See, Evidence, Exhibit 22.

[27] See, Declaration of Marlene Murphey, paragraph 25.

[28] See, Evidence, Exhibit 6.

RDA and the former RDA are not enforceable obligations. Therefore, this item is not an enforceable obligation and is not eligible for Redevelopment Property Tax Trust Fund (RPTTF)."[29]

Analysis:

The issue before the Court is whether respondent DOF correctly determined that the Downtown Stadium Agreement was not an "enforceable obligation" for purposes of the redevelopment dissolution laws. If DOF's determination was correct, DOF was also correct in disapproving the payment under the agreement petitioners claimed as Item 3 on the ROPS for January 1-June 30, 2013.

Health and Safety Code section 34171(d)(2) applies directly to this case. The statute declares that the term "enforceable obligation" does not include "...any agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency". The Downtown Stadium Agreement, as an agreement between the City and the former Redevelopment Agency, falls squarely within the terms of the statute, and therefore may not be considered an "enforceable obligation" unless an exception applies.

Health and Safety Code section 34171(d)(2) does contain a potential exception to the general rule that agreements between a city and its redevelopment agency may not be treated as enforceable obligations, which is stated as follows: "However, written agreements entered into (A) at the time of issuance, but in no event later than December 31, 2010, of indebtedness obligations, and (B) solely for the purpose of securing or repaying those indebtedness obligations may be deemed enforceable obligations for the purposes of this part."[30]

Petitioners contend that the Downtown Stadium Agreement falls within this exception. This contention is not persuasive, for reasons of both timing and substance.

With regard to timing, the exception applies to agreements entered into at the time of issuance of

[29] See, Evidence, Exhibit 7.

[30] Health and Safety Code section 34171(d)(2) contains another exception for loan agreements entered into between a redevelopment agency and the city, county or city and county that created it, within two years of the date of creation of the redevelopment agency. Petitioners do not contend that this exception applies, and it does not, because the City created the Redevelopment Agency in 1959 (see, Declaration of Marlene Murphey, paragraph 2) and the agencies entered into the Downtown Stadium Agreement in 2000.

"indebtedness obligations". Subdivision (e) of the statute defines this term as meaning "...bonds, notes, certificates of participation, or other evidence of indebtedness, issued or delivered by the redevelopment agency, or by a joint exercise of powers authority created by the redevelopment agency, to third-party investors or bondholders to finance or refinance redevelopment projects undertaken by the redevelopment agency in compliance with the Community Redevelopment Law...". In this case, the bonds issued for stadium construction in June 2001 qualify as "indebtedness obligations", because the bonds were issued to third-party investors or bondholders to finance downtown stadium project. However, petitioners' contention that the Downtown Stadium Agreement is an enforceable obligation under the exception founders on the fact that the bonds were not issued until nine months after the City and the Redevelopment Agency entered into that agreement.

Petitioners argue that the Downtown Stadium Agreement and the subsequent issuance of bonds should be considered as a single transaction, because the Downtown Stadium Agreement explicitly contemplated the issuance of bonds. In essence, petitioners argue that the statutory language applying the exception in subdivision (d)(2) to agreements entered into "at the time of issuance" of indebtedness obligations should be interpreted as meaning agreements entered into "in connection with", but not necessarily "simultaneously with", the issuance of indebtedness obligations.

The Court finds petitioners' proposed interpretation of the statutory exception to be unconvincing. In this case, the City and the Redevelopment Agency entered into the Downtown Stadium Agreement approximately nine months before the bonds were issued. To interpret the statutory language "at the time of issuance" to apply to an action taken nine months before the issuance of bonds, as petitioners suggest, stretches such language far beyond its reasonable and ordinary meaning. Indeed petitioners' interpretation could make an agreement between a city and its redevelopment agency into an "enforceable obligation" even when bonds are issued many years after the date of the agreement, as long as issuance of the bonds was at least contemplated at the time of the agreement. Petitioners cite no evidence of legislative intent that would support such an expansive interpretation of the statutory timing requirement. The Court therefore finds no basis for adopting that interpretation here.

With regard to substance, petitioners' contention that the Downtown Stadium Agreement falls within the terms of the exception in Health and Safety Code section 34171(d)(2) also fails. Part (B) of the exception provides that, to be considered as an enforceable obligation, an agreement between a redevelopment agency and its sponsor city must be one entered into *solely* for the purpose of securing or repaying indebtedness obligations.

In this case, the City and the Redevelopment Agency did not enter into the Downtown Stadium Agreement solely for the purpose of securing or repaying projected bonds for the project. They also did so for the purpose of transferring ownership of the project site from the Redevelopment Agency to the City, and for the purpose of building a stadium on the property, which the parties believed would help eliminate blight in the project area and provide jobs for the local economy. Indeed, the contractual recitals contained in the agreement focus primarily on achieving such benefits, and only mention bond financing in one of the seventeen recital paragraphs.[31] Bond financing thus appears to be the means of accomplishing the agreement to build a stadium, rather than the sole or even major purpose of the agreement. The fact that the Downtown Stadium Agreement had purposes other than solely securing or repaying indebtedness obligations precludes those agreements from being considered enforceable obligations under Health and Safety Code section 34171(d)(2).

Because the City and the Redevelopment Agency did not enter into the Downtown Stadium Agreement at the time of issuance of the bonds for the project, and did not enter into that agreement solely for the purpose of securing or repaying the bonds, the Downtown Stadium Agreement may not be considered an "enforceable obligation" under the provisions of Health and Safety Code section 34171(d)(2). The petition for writ of mandate challenging respondent DOF's determination is therefore denied, as are petitioners' requests for declaratory and injunctive relief on this issue.

Conclusion

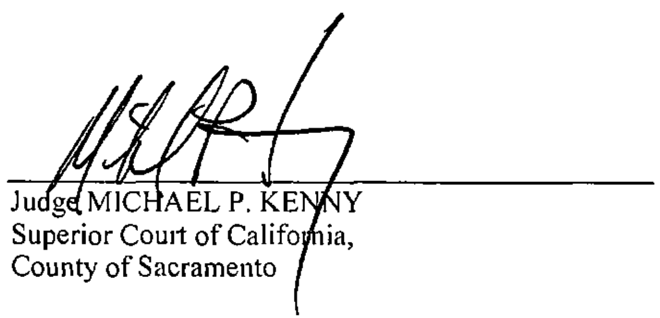
For the reasons stated above, the Court finds in favor of petitioners, and grants their requests for declaratory, injunctive and writ of mandate relief, with regard to the State Controller's order, DOF's

[31] See, Evidence, Exhibit 20, pages 1-4, paragraphs A – Q.

determinations regarding cash housing assets transferred to the City as housing successor, and DOF's determination regarding the UTS receivable. The Court finds in favor of respondents and denies petitioners' claims for relief with regard to DOF's determination regarding the Downtown Stadium Agreement.

In accordance with Local Rules 2.07 and 2.15, counsel for petitioners is directed to prepare a formal order granting declaratory and injunctive relief and the petition for writ of mandate in part, as stated above, and denying such relief in part, incorporating this Court's ruling as an exhibit; and a separate judgment and writ of mandate; submit the order, judgment and writ to all other counsel for approval as to form in accordance with Rule of Court 3.1312(a); and thereafter submit them to the Court for signature, entry of judgment and issuance of the writ in accordance with Rule of Court 3.1312(b).

DATED: February 11, 2014



Judge MICHAEL P. KENNY
Superior Court of California,
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled **RULING ON SUBMITTED MATTER** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 9th Street, Sacramento, California.

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Superior Court of California,
County of Sacramento

Dated: February 11, 2014

By: S. LEE
Deputy Clerk