SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

DATE/TIME:	**10:00 a.m. June 21, 2013**	**DEPT. NO.:**	**14**
JUDGE:	**HON. EUGENE L. BALONON**	**CLERK:**	**P. MERCADO**

CITY OF RIVERSIDE; SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF RIVERSIDE; SCOTT C. BARBER; BELINDA J. GRAHAM; EMILIO RAMIREZ, **Petitioners and Plaintiffs,** **v.** **ANA J. MATOSANTOS, Director of the Department of Finance; PAUL ANGULO, Auditor-Controller of the County of Riverside; and DOES 1-30,** **Respondents and Defendants,** **ALVORD UNIFIED SCHOOL DISTRICT, et al.,** **Real Parties in Interest.**	**Case No.: 34-2013-80001421**

Nature of Proceedings:	**PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

TENTATIVE RULING

The following shall constitute the Court's tentative ruling on the above matter, set for hearing in Department 14, on Friday, June 21, 2013, at 11:00 a.m. The tentative ruling shall become the final ruling of the Court 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.

If a hearing is requested, oral argument shall not exceed 20 minutes per side.

Petitioners/Plaintiffs (Petitioners), which include City of Riverside (City) and the Successor Agency to the former Redevelopment Agency of the City of Riverside

(Successor Agency), have filed a petition for writ of mandate and related complaint for declaratory and injunctive relief (Petition).

The Petition centers on two actions of Respondent Department of Finance (DOF) in response to the Successor Agency's submission of its Recognized Obligation Payment Schedule (ROPS) for the period of January 1, 2013 to June 30, 2013 (ROPS III). Petitioners contend that DOF: (1) denied that numerous agreements between the City and former Redevelopment Agency (RDA) were enforceable obligations, and (2) erroneously reclassified agreements for services to the Successor Agency as "administrative expenses."

BACKGROUND

Between 2007 and 2011, the City and the RDA entered into numerous loan or reimbursement agreements for redevelopment projects. Petitioners refer to these agreements as the Reimbursement Agreements and the Loan Agreements. These agreements generally involved the RDA's commitment to pay construction, acquisition or other project costs. The RDA obtained funding from bond proceeds or loans from City funds.

The City and RDA also entered a Cooperation Agreement on March 8, 2011 to provide funding to complete previously approved projects and activities, including the Reimbursement Agreements and the Loan Agreements.

On June 28, 2011, the Legislature enacted the first component of the Dissolution Law, AB X1 26, which provided for the dissolution of redevelopment agencies. Among other things, AB X1 26 invalidated the Reimbursement Agreements, Loan Agreements and Cooperation Agreement. This is because newly-enacted Health and Safety Code[1] sections 34171(d)(2) and 34178(a) generally provided that contracts between a city or county and former RDA were invalid and not "enforceable obligations."

In early 2012, the RDA dissolved. The City assumed status as the RDA's Successor Agency and was charged with winding down the RDA's affairs. As required by law, the Successor Agency began to submit to DOF for approval ROPS for upcoming six-month periods. These ROPS submissions listed putative enforceable obligations of the former RDA, for which the Successor Agency must now make payments.

The effect of DOF's review and approval of ROPS items as enforceable obligations is that a successor agency may receive funding to pay for those items from the Redevelopment Property Tax Trust Fund (RPTTTF).[2] (Health & Saf. Code, § 34183.)

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

[2] As of this date, there have been four ROPS "cycles" during which successor agencies have submitted ROPS, DOF has approved or disapproved the items listed therein as enforceable obligations, and allowed successor agencies to receive funding to make payments due.

On June 14, 2012, the oversight board for the Successor Agency (Oversight Board) passed numerous resolutions that acknowledged the existence of the various Loan Agreements and Reimbursement Agreements between the City and RDA, and authorized the Successor Agency to "reenter" those agreements with the City pursuant to then-existing Section 34179(h). (*See,* AR III, tabs 54-65; AR III, tabs 66-77.)

That same day, the Oversight Board e-mailed DOF staff a June 14, 2012 Oversight Board meeting agenda and copies of all resolutions that were adopted by the Oversight Board. DOF did not timely seek review or respond to this notification of the Oversight Board's action, pursuant to Section 34179(h)

On June 27, 2012, AB 1484, the second component of the Dissolution Law, took effect. AB 1484 revised many previously-enacted Dissolution Law statutes and added others.

On July 23, 2012, Petitioners submitted another letter to DOF notifying them that "[o]n June 14, 2012, the Successor Agency submitted to [DOF] by e-mail the Oversight Board agenda and all approved resolutions. To date there has been no request for review, nor any response by [DOF] regarding these actions." (AR IV, tab 94:1140.)

On August 30, 2012, the Successor Agency submitted ROPS III to DOF for review. (*See*, AR VI, tab 87.) The ROPS III submission listed numerous items approved by the Cooperation Agreement, Reimbursement Agreements, and Loan Agreements as putative enforceable obligations. The ROPS III submission also included three agreements for legal and accounting services as enforceable obligations.

DOF denied many of the ROPS III items as enforceable obligations in a letter to the Successor Agency dated October 14, 2012. On November 20, 2012, the parties met and conferred. DOF issued a final determination letter on December 18, 2012, which forms the basis for the Petition. (*See*, Decl. of Justyn Howard, (Howard Decl.) Exh. 2.)

DOF's December 18, 2012 letter concludes that the following items are not "currently" enforceable obligations: (1) 11 items totaling $13,646,062 in bond funds, which the Successor Agency contends were authorized by the 2011 Cooperation Agreement; and (2) six "City loan" Loan Agreement items, totaling $18,566,971. DOF concluded that these items were not enforceable obligations because Section 34171(d)(2) generally provides that agreements between the City and former RDA are not enforceable obligations.

DOF's December 18, 2012 letter also classified three contracts for Successor Agency services as administrative expenses, and not enforceable obligations.

The Petition was filed on February 27, 2013.

On April 17, 2013, DOF issued a Finding of Completion to the Successor Agency, pursuant to Section 34191.4(c). On March 1, 2013, the Successor Agency submitted its

fourth ROPS submission (ROPS 13-14A) to DOF. On May 15, 2013, DOF issued a final determination on the ROPS 13-14A submission. (Howard Decl., Exhs. 4, 5.)

DISCUSSION

Evidentiary Objections and Requests for Judicial Notice

Accompanying its Opposition Brief are numerous objections from DOF to the evidence submitted by Petitioners—namely, the "administrative record" and the Declaration of Scott Catlett pertaining to the origination of the funds for the Loan Agreements. Objections 1-4, and 6-8 are **OVERRULED**. Objections 5 and 9 are **SUSTAINED**.

DOF argues in detail that Petitioners have not met their burden of pleading by providing a complete and accurate administrative record. The Court concludes that Petitioners furnished copies of documents that were relevant to the claims, and that the City of Riverside City Clerk's attestation was sufficient to introduce these documents into evidence.

In this case, there is no "administrative record" as the term is used in proceedings pursuant to Code of Civil Procedure section 1094.5. In proceedings under Code of Civil Procedure section 1085, such as this one, the rules governing the submission of documents sufficient to support writ petitions are less clear. Certainly, Petitioners should submit all documents presented to DOF that are relevant to Petitioners' challenge to the underlying decision.

Petitioners contend that their challenge is to DOF's determinations as to the ROPS III submission, which DOF argues is now moot. DOF argues that Petitioners should have included in the administrative records DOF documents following the ROPS III denial. In response, Petitioners have explained why DOF actions following the ROPS III determination do not moot their claims.

DOF has also submitted copies of documentation of the events following the ROPS III submission, attached to declarations, and the Court finds that it is appropriate to consider them, as they are relevant to DOF's affirmative defenses. (*See*, Western *States Petroleum Association v. Superior Court* (1995) 9 Cal.4th 559, 575, n.5.) However, the Court does not conclude that Petitioners failed to meet their burden of pleading by omitting this documentation. The Court qualifies that its ruling is limited to this case only.

The Court also accepts Petitioners' statement that Petitioners mistakenly omitted the December 18, 2012 ROPS III denial letter from the Administrative Record. Petitioners' index to the administrative record lists this letter, and Petitioners admit that this letter forms the basis for the Petition and DOF has introduced this letter into evidence.

On June 19, 2013 DOF filed additional objections to evidence furnished by Petitioners in support of their reply brief.

The Court **OVERRULES** DOF's objections to Petitioners' request for judicial notice and **GRANTS** Petitioners' request for judicial notice. As to DOF's objections regarding judicial notice of a trial court's decision, the Court notes that the Rule of Court cited by DOF applies to unpublished "opinion[s] of a California Court of Appeal or superior court appellate division." (Cal. Rules Ct., Rule 8.1115(a).) The Court recognizes that trial court decisions are not controlling or precedential, but may be relevant in certain cases.

Objections 1-13 to the declaration and exhibits of Jason Al-Imam are **SUSTAINED**. Underpinning this evidence is the assertion that the Loan Agreement items were issued from Special or Enterprise Funds. However, as noted by DOF, no documentary evidence in the administrative record reveals that the loans originated from Enterprise or Special Funds.

DOF Objections 14-15 and 19 are **SUSTAINED**. Objections 16-18, and 20-21 are **OVERRULED.**

Standard of Review

Petitioners seek a writ of mandate pursuant to Code of Civil Procedure section 1085 to review DOF's determinations. The applicable standard of review is whether DOF abused its discretion. (*See Ridgecrest Charter Sch. v. Sierra Sands Unif. Sch. Distr*. (2005) 130 Cal.App.4th 986, 1003.)

When the agency's action depends solely upon the correct interpretation of a statute, it is a question of law, upon which the Court exercises independent judgment. (*California Correctional Peace Officers' Assn. v. State* (2010) 181 Cal.App.4th 1454, 1460.) The weight to be given an agency's interpretation of law depends upon the thoroughness of its consideration, the validity of its reasoning, and its consistency with earlier and later pronouncements. (*Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 14.) However, final responsibility for interpreting the law rests with the Court. (*Id*. at p.7.)

Mootness

DOF argues that Petitioners' claims are moot regarding DOF's denial of the Loan Agreement and Reimbursement Agreement items on the ROPS III submission. The Court disagrees. In support for its argument, DOF cites a Finding of Completion that it issued to the Successor Agency on April 17, 2013. The effect of the Finding of Completion is that:

> "[n]otwithstanding subdivision (d) of Section 34171, upon application by the successor agency and approval by the oversight board, loan agreements entered into between the redevelopment agency and the city, county, or city and county that created by the redevelopment agency shall be deemed to be enforceable obligations provided that the oversight board

makes a finding that the loan was for legitimate redevelopment purposes." (Section 34191.4.)

Thus, as to loan agreements that DOF previously rejected as enforceable obligations pursuant to Section 34171(d), DOF may no longer make this determination, once the Successor Agency's Oversight Board has found that the loans were for legitimate redevelopment purposes. DOF contemplates that Petitioners will submit these items on future ROPS and that DOF will approve them as enforceable obligations.

Petitioners counter that DOF's Finding of Completion does not moot whether DOF previously abused its discretion in denying the items as enforceable obligations in the ROPS III submission. This is because a Finding of Completion imposes certain limitations on the City's ability to receive repayment on loans. (*See* Section 34191.4(b).) Section 34191.4 suggests that the financial effect of receiving payment on an item found to be an enforceable obligation could differ from receiving payment on an item after a Finding of Completion issues.

Petitioners' arguments are well taken. The Court concludes that Petitioners' challenges to the DOF's denial of the Reimbursement Agreement and Loan Agreement items on the ROPS III submission are not moot.

Petitioners also challenge DOF's determination that three agreements for Successor Agency services were "administrative costs" rather than enforceable obligations on the ROPS III submission. However, it appears that DOF has now recognized these agreements as enforceable obligations in the subsequent ROPS 13-14 submission. (Howard Decl., Exh. 5.) Thus, the Successor Agency is entitled to receive reimbursement for those agreements. Petitioners have not contended otherwise. Accordingly, the Court concludes that Petitioner's claims as to these items are moot and does not address them.

DOF Abused its Discretion in Determining that Section 34171(d)(2) Prohibited the Successor Agency from Reviving Agreements Between the City and RDA

DOF found that the Reimbursement Agreement and Loan Agreement items were not enforceable obligations, because they were agreements between the City and the RDA. (Sections 34171(d)(2).) DOF concluded that because it had not yet issued the Successor Agency a Finding of Completion, "the provisions of Section 34171 appl[ied]." DOF asserted no other statutory basis to conclude that the items were not enforceable obligations.

Enforceable obligations include bonds, loans, payments required by law, judgments or settlements, and agreements or contracts. (Section 34171(d)(1).) However, Section 34171(d)(2) expressly excludes from an enforceable obligation "any agreements, contracts, or arrangements between the city, county…that created the redevelopment agency and the former redevelopment agency." (Section 34171(d)(2).) Section 34178

also states that such agreements are invalid. However, Section 34178, as effective on June 14, 2011, also provided:

> **(a)** Commencing on the operative date of this part, agreements, contracts, or arrangements between the city or county…that created the redevelopment agency and the redevelopment agency are invalid and shall not be binding on the successor agency; provided, however, that a *successor entity wishing to enter or reenter into agreements with the city [or] county… that formed the redevelopment agency that it is succeeding may do so upon obtaining the approval of its oversight board.*

(Section 34178(a) (emphasis added).) Here, the Oversight Board authorized the Successor Agency to "reenter" the agreements with the City on June 14, 2011.

Despite the Oversight Board's action and subsequent notification to DOF, DOF concluded that the Reimbursement Agreement and Loan Agreement items were not enforceable obligations because they were agreements between the City and RDA.

DOF argues that Section 34178 must be read in the context of the entire Dissolution Law, and should not be interpreted as to improperly expand the Successor Agency's power by allowing it to reenter contracts that would otherwise not be enforceable obligations.

"The court's role in construing a statute is to 'ascertain the intent of the Legislature so as to effectuate the purpose of the law.' [Citation] In determining the Legislature's intent, a court looks first to the words of the statute. [Citation.]....When looking to the words of the statute, a court gives the language its usual, ordinary meaning. [Citation.] If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs. [Citation.]" (*People v. Snook* (1997) 16 Cal.4th 1210, 1215.)

The Court rejects DOF's argument. It is true that provisions of the Dissolution Law invalidate agreements between a city and former redevelopment agency. (*See*, Section 34171(d), 34178.) However, Section 34178(a), as it was written at the time the Oversight Board acted, plainly permitted a city and successor agency to "enter or reenter" an otherwise invalidated agreement, if the oversight board so approved. DOF's argument would render this statutory language surplusage, which contradicts the rule that a court should give effect to every word of a statute. (*See*, *Reno v. Baird* (1988) 18 Cal.4th 640, 568.)

The Court also finds that an interpretation of former Section 34178, allowing "revival" of otherwise invalidated agreements is not inconsistent with the Dissolution Law's purpose of winding down the affairs of redevelopment agencies. The Legislature could have determined that some redevelopment projects, if abandoned now, would cause properties to be under-used or devalued to the detriment of taxing entities. The Court also notes that the Legislature has now provided that such loan agreements may be deemed enforceable obligations, notwithstanding Section 34171(d), if the Successor Agency receives a Finding of Completion.

Petitioners argue that DOF should not have interpreted Section 34178(a) so as to operate retroactively upon the Successor Agency. However, it is not clear from DOF's December 18, 2012 letter that it made this determination. Nor does DOF contend that it did so or otherwise address this argument in its Opposition Brief.

AB 1484 subsequently changed Section 34178(a) to add "[a] successor agency or an oversight board shall not exercise the powers granted by this subdivision to restore funding for an enforceable obligation that was deleted or reduced by the Department of Finance pursuant to subdivision (h) of Section 34179 unless it reflects the decisions made during the meet and confer process with the Department of Finance or pursuant to a court order." Petitioner appears to concede that if this version of the statute were in effect on June 14, 2012, the Oversight Board would not have been able to approve reentry into the various agreements. However, AB 1484 did not take effect until June 28, 2012. The Court agrees that AB 1484 did not make the revisions to Section 34178 retroactive. (*See, McClung v. Employment Development Department* (2004) 34 Cal.4th 467, 475.)

The Oversight Board approved the Successor Agency's reentry into the Reimbursement Agreements and Loan Agreements, pursuant to Section 34178. Further, the Oversight Board was authorized to do so, when it made the approvals on June 14, 2012. Thus, these agreements were no longer invalid under Section 34178. Additionally, DOF did not conclude that the agreements were invalid for any other reason, or make other related findings as to why the agreements were not enforceable obligations.

Thus, DOF abused its discretion in concluding that the Reimbursement Agreement and Loan Agreement Items listed on the ROPS III submissions were not enforceable obligations under Section 34171(d)(2).

Estoppel

Petitioners also argue that DOF was estopped from objecting to the Reimbursement Agreement and Loan Agreement items on the ROPS III submission. Petitioners contend that DOF did not first timely advise the Successor Agency whether it intended to review the Oversight Board's actions allowing the City and Successor Agency to reenter the Reimbursement Agreements and Loan Agreements.

Section 34179(h) governs DOF's review of oversight board actions. It provides:

> **(h)** [DOF] may review an oversight board action taken pursuant to this part. Written notice and information about all actions taken by an oversight board shall be provided to [DOF] by electronic means and in a manner of [DOF's] choosing. *An action shall become effective five*[3] *business days after notice in the manner specified by [DOF] is provided unless [DOF] requests a review.*…Except as otherwise provided in this

[3] The former version of the statute, in effect June 14, 2012 possessed only minor differences. For example, it provided that DOF had three business days after receiving notice, in which to respond.

> part, in the event that [DOF] requests a review of a given oversight board action, it shall have 40 days from the date of its request to approve the oversight board action or return it to the oversight board for reconsideration and the oversight board action shall not be effective until approved by [DOF]. In the event that [DOF] returns the oversight board action to the oversight board for reconsideration, the oversight board shall resubmit the modified action for [DOF] approval and the modified oversight board action shall not become effective until approved by [DOF]. If [DOF] reviews a Recognized Obligation Payment Schedule, [DOF] may eliminate or modify any item on that schedule prior to its approval….[DOF] shall provide notice to the successor agency…as to the reasons for its actions. To the extent that an oversight board continues to dispute a determination with [DOF], one or more future recognized obligation schedules may reflect any resolution of that dispute. [DOF] may also agree to an amendment to a Recognized Obligation Payment Schedule to reflect a resolution of a disputed item; however, this shall not affect a past allocation of property tax or create a liability for any affected taxing entity.

(Section 34179(h) (emphasis added).)

The statute provides that DOF "may" review oversight board actions. However, it also states that oversight board actions are "effective" within five days after proper notice to DOF, unless DOF requests review. The parties do not dispute that Petitioners timely and properly notified DOF of the Oversight Board's June 14, 2012 approvals of the reentered agreements pursuant to Section 34179(h). Petitioners also advised DOF on July 23, 2012, of its notification and DOF's failure to respond. DOF admits that it did not respond. Thus, the Oversight Board's approvals became "effective" on June 19, 2012.

The Court must resolve whether DOF may review the Oversight Board's actions in a later ROPS submission, despite its failure to timely review the Oversight Board's actions per Section 34179(h).

DOF's December 18, 2012 letter concluded that the Oversight Board's actions had no legal effect. DOF acknowledged that oversight boards could allow successor agencies to reenter agreements, but that "the Oversight Board had no legal basis to approve an action that directly conflicted with and violated the definition of an enforceable obligation." Thus, DOF effectively reviewed the Oversight Board's actions. It rejected the Reimbursement Agreement and Loan Agreement items as enforceable obligations on the ROPS III schedule, because they were contracts entered into between the City and former RDA, notwithstanding the Oversight Board's approvals.

Estoppel may be applied against a government agency in limited circumstances. The government may be bound by estoppel in the same manner as a private party when the requisite elements are present and the injustice that would result from failure to uphold the estoppel justifies any effect upon public interest. (*Long Beach v. Mansell* (1970) 3

Cal.3d 462, 496-497.) The elements for estoppel are that: (1) the party to be estopped is apprised of the facts; (2) intends that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party is ignorant of the true state of facts; and (4) he relies upon the conduct to his injury. (*Id*., at p. 469.)

DOF argues that it is not estopped from denying the items as enforceable obligations. It argues, as it did in the December 18, 2012 ROPS III denial that it retains the ability to review and deny items on future ROPS submissions. Citing Petitioners' July 23, 2012 letter to DOF, it also argues that Petitioners were on notice that the agreements were still "in controversy in late July 2012." However, DOF created the "controversy" by not responding to Petitioners' notices and inquiries.

The Legislature clearly provided a mechanism by which DOF could review Oversight Board actions. It is undisputed that Petitioners notified DOF pursuant to the statute, and that DOF did not timely seek review or respond. Petitioners could reasonably conclude that DOF's inaction rendered the Oversight Board's actions "effective" and Petitioners were not obliged to assume that DOF would use the Oversight Board's actions as a basis to deny items listed in later ROPS determinations, when DOF had not sought review. (Section 34179(h).)

Further, Petitioners were unaware that DOF did not intend to be bound by Section 34178(h). DOF asserts that its responses to Petitioners' earlier ROPS submissions notified Petitioners that it retained authority to review and deny items listed in future ROPS. However, this does not inform a successor agency that DOF may opine on the validity of an oversight board's action, if DOF were properly notified and failed to request review under Section 34178(h).

Here, DOF purported to review the Oversight Board's actions in the ROPS III submission, declared them to be without "legal basis" and cited this as a ground on which to conclude that the agreements were not enforceable obligations. If the notification requirements of Section 34179(h) are to have any meaning, then DOF could not later opine on the effectiveness of the Oversight Board's action and use this as a basis to deny items as enforceable obligations in a ROPS submission.

Petitioners make a general argument that they relied to their detriment on DOF's failure to timely review the Oversight Board's actions. DOF's decisions unquestionably affect City planning and budgeting actions. However, Petitioners have not presented evidence of a specific decision by the Successor Agency, between the June 14, 2012 Oversight Board Approval, and December 18, 2012, that was based on DOF's failure to review the Reimbursement Agreements and Loan Agreements. The Court is sympathetic to Petitioners. However, it cannot conclude that Petitioners met this requirement for their estoppel claim.

Constitutional Claims

Petitioners argue that because DOF denied Loan Agreement items as enforceable obligations, the Successor Agency will not receive the full amount of funding from RPTTF funds allowing the loans to be repaid, and that this will violate the United States and California Constitutions.

As the Court has determined that DOF abused its discretion in concluding that the Loan Agreement items were not enforceable obligations on the ROPS III submission, the Court does not consider these arguments.

DISPOSITION

The Petition for peremptory writ of mandate is **GRANTED**, in that the Court finds that DOF abused its discretion in concluding that the Reimbursement Agreement and Loan Agreement items were not enforceable obligations, pursuant to Section 34171(d), in its ROPS III final determination Petitioners are entitled to a writ of mandate requiring DOF to recognize these items as valid enforceable obligations for the purposes of the Dissolution Law. In all other respects, the causes of action in the petition and complaint are **DENIED** or **DISMISSED**.

The petition for writ of mandate is granted, in part. Counsel for Petitioners is directed to prepare the judgment and writ of mandate, submit them to opposing counsel for approval as to form, and thereafter submit them to the Court for approval in accordance with Rule of Court 3.1312.