

BIG BEAR LAKE IMPROVEMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



BETTY T. YEE
California State Controller

February 2015



BETTY T. YEE
California State Controller

February 6, 2015

Kelly Ent, Director of Administrative Services
City of Big Bear Lake/Successor Agency
P.O. Box 10000
39707 Big Bear Boulevard
Big Bear Lake, CA 92315

Dear Ms. Ent:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Big Bear Lake Improvement Agency (RDA) to the City of Big Bear Lake (City) or any other public agency after January 1, 2011. This statutory provision states, "The Legislature hereby finds that a transfer of assets by a redevelopment agency during the period covered in this section is deemed not to be in furtherance of the Community Redevelopment Law and is thereby unauthorized." Therefore, our review included an assessment of whether each asset transfer was allowable and whether the asset should be turned over to the Successor Agency.

Our review applied to all assets including, but not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and rights to payment of any kind. We also reviewed and determined whether any unallowable transfers to the City or any other public agency have been reversed.

Our review found that the RDA transferred \$24,896,554 in assets after January 1, 2011, including unallowable transfers to the City totaling \$5,154,399, or 20.70% of transferred assets.

However, on April 25, 2013, the City remitted \$4,795,436 to the San Bernardino County Auditor-Controller to be distributed to the taxing entities.

Therefore, the remaining \$358,963 in unallowable transfers must be turned over to the Successor Agency.

If you have any questions, please contact Elizabeth González, Chief, Local Government Compliance Bureau, by telephone at (916) 324-0622.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/kw

cc: Erica Stephenson, Finance Supervisor
City of Big Bear Lake
Carol Coalson, Accountant
City of Big Bear Lake
Larry Walker, Auditor-Controller
San Bernardino County
Jay Obernolte, Chairman
Successor Agency
David Botelho, Program Budget Manager
California Department of Finance
Richard J. Chivaro, Chief Legal Counsel
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Elizabeth González, Bureau Chief
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Scott Freesmeier, Audit Manager
Division of Audits, State Controller's Office
Kandy Liu, Auditor-in-Charge
Division of Audits, State Controller's Office

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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Big Bear Lake Improvement Agency (RDA) after January 1, 2011. Our review included, but was not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and rights to payments of any kind from any source.

Our review found that the RDA transferred \$24,896,554 in assets after January 1, 2011, including unallowable transfers to the City of Big Bear Lake (City) totaling \$5,154,399, or 20.70% of transferred assets.

However, on April 25, 2013, the City remitted \$4,795,436 to the San Bernardino County Auditor-Controller to be distributed to the taxing entities.

Therefore, the remaining \$358,963 in unallowable transfers must be turned over to the Successor Agency.

Background

In January of 2011, the Governor of the State of California proposed statewide elimination of redevelopment agencies (RDAs) beginning with the fiscal year (FY) 2011-12 State budget. The Governor's proposal was incorporated into Assembly Bill 26 (ABX1 26, Chapter 5, Statutes of 2011, First Extraordinary Session), which was passed by the Legislature, and signed into law by the Governor on June 28, 2011.

ABX1 26 prohibited RDAs from engaging in new business, established mechanisms and timelines for dissolution of the RDAs, and created RDA successor agencies and oversight boards to oversee dissolution of the RDAs and redistribution of RDA assets.

A California Supreme Court decision on December 28, 2011 (*California Redevelopment Association et al. v. Matosantos*), upheld ABX1 26 and the Legislature's constitutional authority to dissolve the RDAs.

ABX1 26 was codified in the Health and Safety (H&S) Code beginning with section 34161.

H&S Code section 34167.5 states in part, ". . . the Controller shall review the activities of redevelopment agencies in the state to determine whether an asset transfer has occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency or any other public agency, and the redevelopment agency."

The SCO identified asset transfers that occurred after January 1, 2011, between the RDA, the City and/or any other public agency. By law, the SCO is required to order that such assets, except those that already had been committed to a third party prior to June 28, 2011, the effective date of ABX1 26, be turned over to the Successor Agency. In addition, the SCO may file a legal action to ensure compliance with this order.

Objective, Scope, and Methodology

Our review objective was to determine whether asset transfers that occurred after January 1, 2011, and the date upon which the RDA ceased to operate, or January 31, 2012, whichever was earlier, between the city or county, or city and county that created an RDA or any other public agency, and the RDA, were appropriate.

We performed the following procedures:

- Interviewed Successor Agency personnel to gain an understanding of the Successor Agency's operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the City, the RDA, the Successor Agency, and the Oversight Board.
- Reviewed accounting records relating to the recording of assets.
- Verified the accuracy of the Asset Transfer Assessment Form. This form was sent to all former RDAs to provide a list of all assets transferred between January 1, 2011, and January 31, 2012.
- Reviewed applicable financial reports to verify assets (capital, cash, property, etc.).

Conclusion

Our review found that the Big Bear Lake Improvement Agency transferred \$24,896,554 in assets after January 1, 2011, including unallowable transfers to the City of Big Bear Lake (City) totaling \$5,154,399, or 20.70% of transferred assets.

However, on April 25, 2013, the City remitted \$4,795,436 to the San Bernardino County Auditor-Controller to be distributed to the taxing entities.

Therefore, the remaining \$358,963 in unallowable transfers must be turned over to the Successor Agency.

Details of our finding are described in the Finding and Order of the Controller section of this report.

Views of Responsible Officials

We issued a draft review report on September 23, 2014. Kelly Ent, Director of Administrative Services, responded by letter dated October 2, 2014, disagreeing with the review results. The City's response is included in this final review report as an attachment.

Restricted Use

This report is solely for the information and use of the City of Big Bear Lake, the Successor Agency, the Oversight Board, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record when issued final.

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

February 6, 2015

Finding and Order of the Controller

FINDING— Unallowable asset transfers to the City of Big Bear Lake

The Big Bear Lake Improvement Agency (RDA) made unallowable asset transfers of \$5,154,399 to the City of Big Bear Lake (City). The transfers occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

Unallowable asset transfers were as follows:

- On December 31, 2011, the RDA transferred \$4,649,277 in cash to the City for loan repayments.
- On various dates, the RDA transferred \$502,532 in cash to the City for interest payments.
- On various dates after January 1, 2011, the RDA transferred \$209,691 in cash to the City for capital project reimbursements. Of this amount, \$207,101 was contractually committed to third parties prior to June 28, 2011; therefore, the remaining \$2,590 in cash transfers is unallowable.

Pursuant to Health and Safety (H&S) Code section 34167.5, the RDA may not transfer assets to a city, county, city and county, or any other public agency after January 1, 2011. The assets must be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d).

Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to reverse the transfers totaling \$5,154,399 and turn over the assets to the Successor Agency.

However, on April 25, 2013, the City remitted \$4,795,436 in cash to the San Bernardino County Auditor-Controller for distribution to the taxing entities.

Therefore, the remaining \$358,963 in unallowable transfers must be turned over to the Successor Agency.

City of Big Bear Lake/Successor Agency response:

City-Agency Loan Repayments

The City of Big Bear Lake (“City”) and the Successor Agency respectfully disagree with the characterization and findings of the SCO regarding the transfers to the City by the Improvement Agency as loan repayments and interest. The Draft Report states that the former Agency made loan repayments to the City totaling \$5,151,809 made up of \$4,649,277 in principal and \$502,532 in interest. (Schedule 1) On April 25, 2013, the City returned principal and interest in the amount of \$4,795,436 to the Successor Agency. However, the remaining \$356,373 retained by the City pertains to loans made by the City to the Improvement Agency within the first two years of the formation of the redevelopment agency. The Improvement Agency was activated on October 5, 1982. The City retained amounts related to the loan approved by the Board on April 25, 1984, Resolution No. 84-09, a copy

of which is enclosed as part of the enclosed supporting documentation. Under Health and Safety Code (“HSC”) Section 34178(b)(2), loan agreements entered into within the first two years of the formation of the redevelopment agency are deemed to be enforceable obligations.

In addition, the Department of Finance reviewed the detail of the loan repayment provided to their office in the Other Funds and Accounts DDR and did not take exception to the repayment of loans which were made within the first two years of the Improvement Agency’s creation. For all of the reasons stated above, we respectfully request that the State Controller revise the Draft Report accordingly and find that the retained amount of \$356,373 was an allowable transfer.

Capital Project Reimbursements

The draft SCO report also found that there had been unallowable transfers of \$209,691 to the City for capital project reimbursements. However, our records indicate that all but \$2,590 were contractually committed to third parties by June 28, 2011. A schedule showing the detail of the capital project expenditures for the six projects that received funding from the Improvement Agency is attached. In summary, the six projects . . . are outlined below:

1. Knickerbocker Creek Drainage Channel . . .
2. Pineknoll Passageway . . .
3. Orchestra Pit Remediation . . .
4. Waste Recycling Receptacles . . .
5. Boulder Bay Park Phase 2 . . .
6. Village Perimeter Parking . . .

See Attachment for the City/Successor Agency’s complete response.

SCO Comment:

City-Agency Loan Repayments

The asset transfer review performed by the SCO is a different and separate review from the Department of Finance’s (DOF) Due Diligence Reviews. As such, transfers not identified through the DDR process may be identified in the asset transfer review. The RDA transferred assets to the City after January 1, 2011.

The SCO’s authority under H&S Code section 34167.5 extends to all assets transferred after January 1, 2011, by the RDA to the city or county, or city and county that created the RDA or any other public agency. This responsibility is not limited by the other provisions of the RDA dissolution legislation.

The Finding and Order of the Controller remains as stated for the City-Agency loan repayments.

Capital Project Reimbursements

Upon further review of additional documents submitted, the SCO agrees with the City that commitments for the projects were made prior to June 28, 2011, with the exception of \$2,590.

The Finding and Order of the Controller has been modified for the Capital Project reimbursements.

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

Description	Date	Reference	Amount
Cash transfers			
Loan repayments	December 31, 2011	GL 06 000190	\$ 4,649,277
Interest payments	Various	Various	502,532 ¹
Capital project reimbursement (Pineknott Passageway)	Various	Various	<u>2,590</u>
Total unallowable transfers			<u>5,154,399</u>
Less cash remitted to the San Bernardino County Auditor-Controller			
	April 25, 2013	Check# 060907	<u>(4,795,436)</u>
Total transfers subject to H&S Code 34167.5			<u><u>\$ 358,963</u></u>

¹ See Exhibit A for details.

Exhibit A— Interest Payments for City Loans

Date	Reference	Description	Amount
1/11/2011	GL 07 000076	Debt Service Accrual (Moonridge)	\$ 10,466.67
2/28/2011	GL 08 000013	Debt Service Accrual (Moonridge)	10,466.67
3/31/2011	GL 09 000086	Debt Service Accrual (Moonridge)	10,466.67
4/30/2011	GL 10 000141	Debt Service Accrual (Moonridge)	10,466.67
5/30/2011	GL 11 000149	Debt Service Accrual (Moonridge)	10,466.67
6/30/2011	GL 12 000005	Debt Service Accrual (Moonridge)	10,466.67
7/31/2011	GL 01 000227	Debt Service Accrual (Moonridge)	10,466.67
8/30/2011	GL 02 000210	Debt Service Accrual (Moonridge)	10,466.67
9/30/2011	GL 03 000212	Debt Service Accrual (Moonridge)	10,466.67
10/31/2011	GL 04 000095	Debt Service Accrual (Moonridge)	10,466.67
11/30/2011	GL 05 000032	Debt Service Accrual (Moonridge)	10,466.67
12/31/2011	GL 06 000037	Debt Service Accrual (Moonridge)	10,466.67
Account# 840-4452-4611 Total			125,600.04
1/11/2011	GL 07 000076	Debt Service Accrual (Big Bear)	31,400.00
2/28/2011	GL 08 000013	Debt Service Accrual (Big Bear)	31,400.00
3/31/2011	GL 09 000086	Debt Service Accrual (Big Bear)	31,382.21
4/30/2011	GL 10 000141	Debt Service Accrual (Big Bear)	31,382.21
5/30/2011	GL 11 000149	Debt Service Accrual (Big Bear)	31,382.21
6/30/2011	GL 12 000005	Debt Service Accrual (Big Bear)	31,588.96
7/31/2011	GL 01 000227	Debt Service Accrual (Big Bear)	31,399.44
8/30/2011	GL 02 000210	Debt Service Accrual (Big Bear)	31,399.44
9/30/2011	GL 03 000212	Debt Service Accrual (Big Bear)	31,399.44
10/31/2011	GL 04 000095	Debt Service Accrual (Big Bear)	31,399.44
11/30/2011	GL 05 000032	Debt Service Accrual (Big Bear)	31,399.44
12/31/2011	GL 06 000037	Debt Service Accrual (Big Bear)	31,399.44
Account# 860-4450-4611 Total			376,932.23
Total Unallowable Transfers			\$ 502,532.27

Attachment— City of Big Bear Lake’s Response to Draft Review Report

In addition to the attached letter, the city provided additional documents. Due to their size we are not including them as an attachment to this report. Please contact the City of Big Bear Lake for copies of the following documents:

Agency Loan Resolution No. IA 84-09	3
Schedule of Expenditures by Project and Vendor	5
Knickerbocker Creek Drainage Channel	
Minutes – June 27, 2011 – Award of Contract RRM Design Group	7
Agenda Report – June 27, 2011 – Award of Contract RRM Design Group	9
Contract – RRM Design Group	77
Contract – Cylwik Property Management	106
Pineknot Passageway	
Resolution No. 2011-12 – Capital Improvement Master Plan	123
Minutes – June 13, 2011 – Award of Contract Tryco General Engineering	137
Agenda Report – June 13, 2011 – Award of Contract Tryco General Engineering	139
Contract – Tryco General Engineering	142
Purchase Order – Tyrco General Engineering	161
Contract – LOR Geotechnical Group, Inc.	163
Invoice Payment – Withers & Sandgren Inc. – Check #56449	172
Invoice Payment – King Craig – Check #56943	175
Invoice Payment – King Craig – Check #57161	178
Orchestra Pit Remediation	
Minutes – February 8, 2010 – Authorize Expenditure	181
Agenda Report – February 8, 2010 – Authorize Expenditures	183
Minutes – June 27, 2011 – Authorize Release of Final Retention	186
Agenda Report – June 27, 2011 – Authorize Release of Final Retention	188
Contract – Romans Construction	191
Waste Recycling Receptacles	
Minutes – February 8, 2010 – Authorize Expenditure	237
Invoice Payment – Carry Company – Check #55675	239
Invoice Payment – Belson Outdoors Inc. – Check #28364	244
Invoice Payment – Belson Outdoors Inc. – Check #55670	251

City of Big Bear Lake



October 2, 2014

Mrs. Elizabeth Gonzalez, Chief
Local Government Compliance Bureau
Division of Audits
State Controller's Office
P.O. Box 942850
Sacramento, CA 94258-5874

RE: Big Bear Lake Improvement Agency Asset Transfer Review – Draft Report

Dear Mrs. Gonzalez:

This letter is in response to the draft State Controller's Office ("SCO") Report ("Draft Report") on the Asset Transfer Review for the Big Bear Lake Improvement Agency ("Improvement Agency") dated September 23, 2014 and the cover letter thereto (signed by Jeffrey Brownfield, Chief, Division of Audits). The Draft Report was received in our office on September 30, 2014. It preliminarily found that there were unallowable transfers to the City of \$5,361,500. Since the Successor Agency had previously remitted \$4,795,436¹ to the San Bernardino County Auditor-Controller under the Due Diligence Review ("DDR") process, the SCO's preliminary finding was that the remaining \$566,064 should be turned over to the Successor Agency.

City-Agency Loan Repayments

The City of Big Bear Lake ("City") and the Successor Agency respectfully disagree with the characterization and findings of the SCO regarding the transfers to the City by the Improvement Agency as loan repayments and interest. The Draft Report states that the former Agency made loan repayments to the City totaling \$5,151,809 made up of \$4,649,277 in principal and \$502,532 in interest. (Schedule 1) On April 25, 2013, the City returned principal and interest in the amount of \$4,795,436 to the Successor Agency. However, the remaining \$356,373 retained by the City pertains to loans made by the City to the Improvement Agency within the first two years of the formation of the redevelopment agency. The Improvement Agency was activated on October 5, 1982. The City retained amounts related to the loan approved by the Board on April 25, 1984, Resolution No. 84-09, a copy of which is enclosed as part of the enclosed supporting documentation. Under Health and Safety Code ("HSC") Section 34178(b)(2), loan agreements entered into within the first two years of the formation of the redevelopment agency are deemed to be enforceable obligations.

¹ The total amount remitted to the Auditor-Controller pursuant to the DDR process was \$9,560,262. We understand that the SCO's figure of \$4,795,436 represents the portion of the DDR payment determined by SCO to have constituted unallowable transfers based on SCO's review.

In addition, the Department of Finance reviewed the detail of the loan repayment provided to their office in the Other Funds and Accounts DDR and did not take exception to the repayment of loans which were made within the first two years of the Improvement Agency's creation. For all of the reasons stated above, we respectfully request that the State Controller revise the Draft Report accordingly and find that the retained amount of \$356,373 was an allowable transfer.

Capital Project Reimbursements

The draft SCO report also found that there had been unallowable transfers of \$209,691 to the City for capital project reimbursements. However, our records indicate that all but \$2,590 were contractually committed to third parties by June 28, 2011. A schedule showing the detail of the capital project expenditures for the six projects that received funding from the Improvement Agency is attached. In summary, the six projects and their respective commitment dates are outlined below:

1. **Knickerbocker Creek Drainage Channel** – A contract was awarded by the Board on June 27, 2011. A copy of the Improvement Agency minutes and agenda report are attached as is the contract with RRM Design Group. The total cost of this contract funded by the Improvement Agency was **\$53,633.11**. In addition, **\$2,428.75** funded the engineering consulting services provided by Cylwik Property Management. This firm provides general engineering consulting services for all construction projects. The contract for this firm (formerly known as Wireless Consulting – Joseph A Cylwik) was entered into in November 2006. A copy of this contract is attached. Total allowable: **\$56,061.86**.
2. **Pineknot Passageway** – This project was part of the redevelopment plan as was memorialized in Resolution No. 2011-12 adopting the Capital Improvement Plan.² A contract to construct the passageway was awarded on June 13, 2011 to Tryco General Engineering to construct the passageway. This contract cost funded by the Improvement Agency was **\$103,949.82**. A copy of the contract is attached. General engineering services for this project in the amount of **\$172.04** were also provided by Cylwik Property Management under the same contract described in #1 Knickerbocker Creek Drainage Channel. Soil testing services were provided by LOR Geotechnical Group, Inc. in the amount of **\$156.00**. The contract with LOR Geotechnical Group, Inc. was entered into on May 26, 2010 and a purchase order for this particular project (PO#12608) was created on June 27, 2011. The contract and purchase order are attached. The final aesthetics including landscape design and signage were provided by Withers & Sandgren Inc and Kirby Craig. Invoices supporting the payments made to these vendors totaling \$595 and \$1,995, respectively, are attached; however, these supporting documents do not provide evidence of a commitment date. Thus, \$2,590 remains unallowable. Total allowable: **\$104,277.86**.
3. **Orchestra Pit Remediation** – This project was approved by the Board on February 8, 2010 with final release of retention and approval of final construction cost taking place on June 27, 2011. The total Improvement Agency funding for this project was **\$34,728**. Copies of the Improvement Agency minutes and agenda reports for these meetings are attached as is the contract with Romans Construction. Total allowable: **\$34,728**.

² The Pineknott passageway is listed in Exhibit B to the Resolution, under Public Improvements and Amenities, Village Perimeter Parking.

Elizabeth Gonzalez
October 2, 2014
Page 3

4. **Waste Recycling Receptacles** – This project was approved by the Board on February 8, 2010. Two vendors supplied the waste receptacles (Carry Company and Belson Outdoors Inc). Copies of the invoices totaling **\$10,904.43** and the Improvement Agency minutes are attached. Total allowable: **\$10,904.43**.
5. **Boulder Bay Park Phase 2** – Phase 2 of the park improvements began in 2010. This final invoice payment of **\$129.00** for general engineering consulting services for this project was paid on June 30, 2011 to Cylwik Property Management under the same contract described in #1 above. Total allowable: **\$129.00**.
6. **Village Perimeter Parking** – General engineering consulting services in the amount of **\$1,000** for this project was funded by the Improvement Agency. These services were provided by Cylwik Property Management under the same contract described in #1 above. Total allowable: **\$1,000.00**.

As evidenced by the enclosed supporting documentation and explanations as described above, all of the commitments to fund the capital projects were made before June 28, 20011 and paid to third parties. Therefore we respectfully request that the State Controller revise the draft report accordingly and recognize that **\$207,101** were allowable transfers. Because we could not substantiate the date of the funding commitments for \$2,590 of the Pineknot passageway costs, we accept that that amount may be deemed by SCO to be an unallowable transfer.

The City and Successor Agency reserve all rights to raise other legal arguments with respect to the Draft Report as may be necessary. If you have any questions, my contact information is provided below.

Sincerely,



Kelly Ent
Director of Administrative Services
City of Big Bear Lake
PO Box 10000
39707 Big Bear Boulevard
Big Bear Lake, CA 92315-8900
Phone: (909) 866-5831 x119
Fax: (909) 866-5491
Email: kent@citybigbearlake.com

Attachment: Supporting documentation

**State Controller's Office
Division of Audits
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