

# REGIONAL TRANSIT ISSUE PAPER

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
6	03/25/13	Open	Action	03/07/13

Subject: Approving the Tolling Agreement with Welch & Ryce for Northeast Corridor Project

## ISSUE

Whether or not to approve the Tolling Agreement with Welch & Ryce for the Northeast Corridor Project.

## RECOMMENDED ACTION

Adopt Resolution No. 13-03-\_\_\_\_, Approving the Tolling Agreement with Welch & Ryce for the Northeast Corridor Project.

## FISCAL IMPACT

None as a result of this action.

However, the Agreement would expose RT to contractual liability for attorney fees if: (1) property exchange is not completed; and (2) Welch & Ryce sues RT and prevails.

## DISCUSSION

In 2008, the Board authorized the solicitation of bids for the Northeast Corridor Project: Lumberjack Realignment (Project) to move the light rail tracks to eliminate the “Lumberjack Curve” segment of track, which required trains to slow down through the curve. To complete the Project, RT needed to acquire property from three different property owners: the State of California Department of Transportation (Caltrans), RJB Company, and Welch & Ryce. To reduce RT’s project costs, RT proposed to enter into a series of exchange transactions whereby RT would obtain ownership of the parcels it needed and transfer other parcels of approximately equal value to the affected landowners.

On May 20, 2008, RT and Welch & Ryce, a California Corporation, entered into a Possession and Use Agreement that gave RT an irrevocable right to occupy its property, but assumed that RT would either: (1) enter into the property exchange the parties contemplated; or (2) proceed to take the property through eminent domain. Neither of those things has happened. RT has been working with all three property owners to complete the exchange transactions. All three property owners have agreed to the transactions, but the exchanges have been delayed due to the need to obtain FTA approval of the transfer of property to RJB Company. On August 13, 2012, the Board (in Resolution No. 12-08-0124) approved the Second Amendment to the Possession and Use Agreement with Welch & Ryce to extend the deadline to close escrow on the exchange transaction until December 31, 2012. However, because RT is still awaiting FTA approval to dispose of one of the exchange properties, none of the exchange transactions have been completed.

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Approved:

Presented:

Final 03/13/13

General Manager/CEO

Assistant General Manager, Engineering and Construction

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While Welch & Ryce is willing to give RT additional time to complete the exchange transaction, the firm is concerned that the 5-year statute of limitations to file an inverse condemnation claim will expire in May 2013 and does not want to forfeit the right to sue if that deadline passes before the parties can complete the exchange transaction. Welch & Ryce has proposed entering into a "tolling agreement", which is an agreement by which the parties mutually agree to extend the statute of limitations for a claim.

In this case, Welch & Ryce would agree not to file any lawsuit until October 2013 and RT would agree to extend the statute of limitations for claims arising out of RT's occupancy of the property or the Possession and Use Agreement, as amended, until March 2014. The tolling agreement would provide an opportunity for the parties to complete the long-anticipated property exchanges for the Northeast Corridor Project and avoid land acquisition costs. The tolling agreement would also provide that the "prevailing party" in any lawsuit is entitled to attorneys' fees.

Staff believes execution of the Tolling Agreement will allow the parties the time to finally conclude the land exchange transactions.

RESOLUTION NO. 13-03-\_\_\_\_\_

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

March 25, 2013

**APPROVING THE TOLLING AGREEMENT WITH WELCH & RYCE FOR THE  
NORTHEAST CORRIDOR PROJECT**

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE  
SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the Tolling Agreement between Sacramento Regional Transit District, therein referred to as "RT," and Welch & Ryce, therein referred to as "Owner," whereby Owner agrees not to file a lawsuit against RT until October 2013, and RT would agree to extend the statute of limitations, for claims arising out of RT's occupancy of Owner's property or the May 20, 2008 Possession and Use Agreement, as amended, until March 2014, is hereby approved.

THAT, the Chair and General Manager/CEO are hereby authorized and directed to execute said Agreement.

\_\_\_\_\_  
PATRICK HUME, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: \_\_\_\_\_  
Cindy Brooks, Assistant Secretary