

**Bay Area Toll Authority**  
**BATA**

March 22, 2023

Agenda Item 4a - 23-0502

**Adoption of BATA Resolution No. 170, Terminating Escrow Arrangements for Regional Measure 3 Bridge Toll Revenues**

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**Subject:**

A request for Authority approval of BATA Resolution No. 170, Termination of Escrow Arrangements for Regional Measure 3 (RM3) Bridge Toll Revenues.

**Background:**

On the June 5, 2018 ballot, Regional Measure 3 (RM3) was approved by voters, setting in motion implementation of a toll increase of three dollars to be phased in over time to fund a program of transportation projects. The funds from the toll increase will finance a comprehensive suite of highway and transit improvements described in Senate Bill 595 to help solve the Bay Area's traffic congestion problems.

Lawsuits challenging Senate Bill 595 and RM3 were filed. Pursuant to BATA Resolution No. 129, adopted December 11, 2018, toll revenues related to RM3 were placed into an escrow account managed by an independent trustee, to be held until final resolution of the litigation challenging collection of the RM3 revenues. Litigation continued through the appellate level – where the regional measure was upheld -- and review was sought in the California Supreme Court. The cases were held there without briefing until January 2023, at which time they were remanded to the Court of Appeal. That court issued its remittitur in late February of this year. The litigation is now finally resolved in favor of the regional measure. With the Supreme Court's ruling and subsequent administrative process completed by the appeals court, the Authority's General Counsel certifies that a final resolution of all RM3 related litigation has been reached, as required by the adoption of BATA Resolution 129.

With this certification, staff is requesting the Authority to release the escrow and to direct staff to terminate the escrow agreement which established the escrow. BATA Resolution No. 170, authorizing the release of the escrow and the termination of the escrow agreement, is attached as Attachment A.

**Recommended Action:**

Staff recommends that the Authority approve BATA Resolution No. 170.

**Attachments:**

- Attachment A: BATA Resolution No. 170

A handwritten signature in black ink, reading "Andrew B. Fremier". The signature is written in a cursive style with a large initial "A".

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Andrew B. Fremier

Date: March 22, 2023

W.I.: 1252

ABSTRACT

BATA Resolution No. 170

This resolution approves release of escrowed toll revenue associated with Regional Measure 3 and the termination of the escrow arrangement established between BATA and MUFG Union Bank (or its successors) relating to the escrow of such toll revenue.

Discussion of this action is contained in the Executive Director's Memorandum to BATA, dated March 22, 2023.

Date: March 22, 2023  
W.I.: 1252

RE: Termination of Escrow Arrangements for Regional Measure 3 Bridge Toll Revenues

BAY AREA TOLL AUTHORITY  
RESOLUTION NO. 170

WHEREAS, the Bay Area Toll Authority (the “Authority”) was created pursuant to Sections 30950 et seq. of the California Streets and Highways Code (the “Code”); and

WHEREAS, the Authority administers the toll revenues from and finances improvements for the seven state-owned toll bridges in the San Francisco Bay area: the Antioch Bridge, the Benicia-Martinez Bridge, the Carquinez Bridge, the Dumbarton Bridge, the Richmond-San Rafael Bridge, the San Francisco-Oakland Bay Bridge, and the San Mateo-Hayward Bridge (the “Bridge System”); and

WHEREAS, in 2017, Senate Bill 595 (“Senate Bill 595”) amended certain sections of the Code, and, pursuant to Section 30923 of the Code as amended, a special election was held on June 5, 2018, in the City and County of San Francisco, and the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma (individually, each a “County” and, collectively, the “Counties”) to approve a toll increase of three dollars (\$3.00) phased in over time, including a one dollar (\$1.00) toll increase on January 1, 2019, a one dollar (\$1.00) toll increase on January 1, 2022, and a one dollar (\$1.00) toll increase on January 1, 2025 (the “SB 595 Increases”), for vehicles traveling on the state-owned bridges located in the San Francisco Bay Area (collectively, “Regional Measure 3”); and

WHEREAS, on September 26, 2018, the Authority adopted Resolution No. 126 accepting certified statements from the Registrar of Voters of the City and County of San Francisco and each of the Counties and observing that a majority of all voters voting on Regional Measure 3 at such special election voted affirmatively for Regional Measure 3; and

WHEREAS, pursuant to Section 30916(c)(1) of the Code, the Authority has approved toll schedules, that effectuate the toll increases approved pursuant to Regional Measure 3; and

WHEREAS, on July 5, 2018, several plaintiffs filed suit against the Authority and the State Legislature in the Superior Court of the County of San Francisco in an action, entitled Howard Jarvis Taxpayers Assn., Et al. v. The Bay Area Toll Authority, Et al., No. CGC-18-567860 (Cal. Super. Ct. filed July 5, 2018) (the “Validation Action”), seeking declaratory relief and invalidation of Senate Bill 595 and Regional Measure 3; and

WHEREAS, on August 3, 2018, a plaintiff filed suit against the Metropolitan Transportation Commission in the Superior Court of the County of San Francisco in an action, entitled Randall Whitney v. Metropolitan Transportation Commission, No. CPF-18-516276 (Cal. Super. Ct. filed Aug. 3, 2018) (together with the Validation Action, the “RM3 Challenges”), asserting, among other things, that: (i) Senate Bill 595 is unconstitutional, and (ii) that Regional Measure 3 is a special tax which would require 2/3 voter approval; and

WHEREAS, to avoid any doubt or uncertainty in connection with the collection of the SB 595 Increases while the RM3 Challenges were pending, the Authority established an escrow account (the “Escrow Account”) with an escrow agent (the “Escrow Agent”) for the purpose of depositing proceeds of such SB 595 Increases collected by the Authority, such amounts to be held in the Escrow Account until each of the RM3 Challenges has reached a final, non-appealable resolution and further action consistent with such final, non-appealable resolutions is taken by this Board; and

WHEREAS, the Authority entered into an Escrow Agreement, dated as of January 1, 2019 (the “Escrow Agreement”), with MUFG Union Bank, N.A., as Escrow Agent, to administer the Escrow Account and to hold, invest and distribute the proceeds of such Regional Measure 3 bridge toll revenues as provided therein; and

WHEREAS, litigation of the RM3 Challenges continued through the appellate level, where the regional measure was upheld. Thereafter, appellants sought review in the California Supreme Court, where the RM3 challenges were held without briefing until January 2023, at which time they were remanded to the Court of Appeal. The Court of Appeal issued its remittitur on February 23, 2023; and

WHEREAS, the Authority is hereby advised by General Counsel that each of the RM3 Challenges has reached a final, non-appealable resolution in favor of the regional measure; now, therefore, be it

RESOLVED, that the Authority finds that the foregoing recitals are true and correct; and be it further

RESOLVED, that the Authority is satisfied that the RM3 Challenges have been fully resolved in favor of RM3; and be it further

RESOLVED, that the Executive Director, the Chief Financial Officer, and other appropriate officers of the Authority, are hereby authorized and directed, jointly and severally, for and in the name and on behalf of the Authority, to execute and deliver any and all certificates, documents, amendments, instructions, orders, representations and requests, and to do any and all things and take any and all actions that may be necessary or advisable, in their discretion, to distribute the escrowed property, pursuant to the terms of the Escrow Agreement, for use by the Authority and to terminate the Escrow Agreement approved pursuant to BATA Resolution No. 129; and be it further

RESOLVED, that this Resolution shall take effect from and after its adoption.

BAY AREA TOLL AUTHORITY

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Alfredo Pedroza, Chair

The above resolution was entered into by the Bay Area Toll Authority at a duly called and noticed meeting held in San Francisco, California, on March 22, 2023.