

**HUDSON RIVER-BLACK RIVER REGULATING DISTRICT  
BOARD MEETING**

**November 2, 2011**

Saratoga County Offices  
Cornell Cooperative Extension Building  
50 West High Street  
Ballston Spa, NY 12020

**CALL TO ORDER**

Chairman Berkstresser called the meeting to order at 11:21 A.M.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**Present:** Chairman David W. Berkstresser; Second Vice Chairperson Albert J. Hayes and Board members: Thomas Stover, Philip W. Klein, and Mark M. Finkle; Executive Director Michael A. Clark; General Counsel Robert P. Leslie; Chief Engineer Robert S. Foltan; Chief Fiscal Officer Richard J. Ferrara; Hudson River Area Administrator John Hodgson; and Black River Area Administrator Carol L. Wright.

**Excused:** Michael F. Astafan

**MOTION TO ADOPT MEETING AGENDA**

A motion was made by Mr. Klein to adopt the meeting agenda. Mr. Stover seconded it and the motion was unanimously approved.

**PUBLIC COMMENT PERIOD**

Peter Byron spoke favorably of Mr. Finkle's effort as a liaison between the Board and Great Sacandaga Lake stakeholder groups. Chairman Berkstresser asked if any other member of the public wanted to speak; hearing none.

**APPROVAL OF THE October 12, 2011 MEETING MINUTES**

Mr. Finkle moved to approve the Regular Board Meeting minutes of October 12, 2011. Mr. Stover seconded and the motion was unanimously approved.

**EXECUTIVE DIRECTOR'S REPORT**

Mr. Clark presented his report to the Board.

Mr. Clark indicated that he and the Chief Fiscal Officer, as part of an ongoing effort to effectively manage the Hudson River Area's diminishing fund balance, have identified data/voice services as a significant expenditure item. As further explained by Mr. Ferrara, Mr. Clark proposed that at a significant cost savings the Board convert all District data/voice services

to Time Warner Cable at the earliest opportunity. Mr. Stover made a motion to authorize the Chief Fiscal Officer to negotiate the consolidation of data/voice services across all facilities, for a term that could extend to five years, with Time Warner Cable; said contract to be presented to the Board for approval at a future date. Mr. Klein seconded, and the motion was unanimously adopted.

Mr. Clark noted that there exists the possibility that the Regulating District could be released from the lease for the Black River Area Office in Watertown and that such action would facilitate entry into a new lease, at lesser cost, for a slightly smaller space in State owned office space in Watertown. Mr. Klein made a motion to authorize the Chief Fiscal Officer to negotiate a lease for the relocation of the Black River Area Office to the Dulles State Office Building operated by the NYS Office of General Services; said contract to be presented to the Board for approval at a future date. Mr. Stover seconded, and the motion was unanimously adopted.

Mr. Clark addressed the Board regarding Contract C012011 and Contract C022011. These two contracts awarded to Camp, Dresser & McKee for the Old Forge & Sixth Lake Engineering Assessment, and review of the Stillwater Dam liquefaction analysis to be completed by Kleinschmidt Associates, are currently being negotiated and have a total cost approaching \$103,000. As neither contract has yet to be executed and operating cash in the Black River Area could be depleted on or about July 1, 2012, there are insufficient funds to warrant commencement of either project. Mr. Finkle moved to defer contract execution and notification of authorization to proceed for either contract. Mr. Klein noted that upon collection of outstanding Hudson River Area Assessments owed by Albany, Rensselaer, Saratoga, Warren and Washington Counties, and the restoration of operating funds to the Black River Area through the resumption of the historic allocation of general board expenses, these projects should immediately be resumed. Mr. Stover seconded Mr. Finkle's Motion, and the Motion was unanimously adopted.

Mr. Clark noted that the Regulating District maintains a contract with the United States Geological Survey (USGS) for the measurement and publication of stream discharge and reservoir water elevation at 17 stations within the Hudson River and Black River Areas. The annual cost for such services is \$106,640 for the fiscal year ending June 30, 2012. Mr. Klein made a Motion to authorize the Chief Fiscal Officer to postpone payment of a currently outstanding invoice in the amount of \$50,639 and an anticipated invoice in the amount of \$25,340; both payable to USGS, until July 2012 or when there is an adequate cash balance and cash flow in each river area. Mr. Stover seconded, and the motion was unanimously adopted.

Mr. Clark reminded the Board that the non-payment of Assessments by the Five Counties subject to the March 2010 Apportionment (Albany, Rensselaer, Saratoga, Warren and Washington) had reduced funds received in the Hudson River Area. The Regulating District's enabling statute [specifically ECL 15-2141(2)] requires that the expenses of the Board shall be paid from the appropriate river area in the same proportion as monies are annually collected from the respective areas. The non-payment of Hudson River Area Assessments, when compared against the continued receipt of Assessments due from Black River Area beneficiaries, has increased the Black River Area's allocation of general board expenses. Historically, approximately eighty-five percent (85%) of the funds received by the Regulating District have come from Assessments levied upon Hudson River Area beneficiaries; fifteen percent (15%) have come from the Black River Area. Now, with the Five Counties' non-payment, the allocation is closer to 60% Hudson River Area and 40% Black River Area. As this change in

general board allocation was not budgeted, and despite significant reductions in the Board's expenses, the Black River Area expenses have outpaced revenues in this third year of the District's three year budget cycle. In addition, while the Regulating District may be able to stretch remaining funds through the end of the fiscal year through the strategies outlined above, the potential delay between the commencement of the next fiscal year and the receipt of Black River Area Assessment receipts will likely result in a cash shortage at the beginning of the Black River Area's next fiscal year. Mr. Clark asked the Board to consider additional measures to close this gap in funding to forestall the need for a reassessment or issuance of a tax anticipation note. Chairman Berkstresser asked for a Motion to adjourn to Executive Session to discuss a possible sale of an interest in real property and litigation matters to include the Cenci matter and the Five Counties' appeal of the Supreme Court ruling up-holding the March 2010 Apportionment. Mr. Stover made the Motion, Mr. Finkle seconded. The motion carried by unanimous vote and the Board adjourned to Executive Session at 12:10pm.

Executive Session began at 12:10 pm and ended at 12:40pm.

### **COUNSEL'S REPORT**

Mr. Leslie presented his report to the Board.

He highlighted the following issues:

In the matter of *Albany, Rensselaer, Saratoga, Warren and Washington Counties vs. The Hudson River-Black River Regulating District and The New York State Department of Environmental Conservation*, the Attorney General's Appeals and Opinion's Bureau (AAG Victor Palladino) has received the Five Counties' appeal brief and proposed Record on Appeal. While they have indicated a willingness to accelerate the submission of our response to the Appellant's Brief, the AG has yet to receive a scheduling order from the Court. AAG Palladino doubts whether early submission of our response will translate into placement of the appeal on an earlier term of the Appellate Division 3<sup>rd</sup> Department's calendar.

Argument before the Second Circuit Court of Appeals in the Niagara Mohawk challenge is scheduled for December 2<sup>nd</sup>. Mr. Klein moved to authorize the Executive Director and General Counsel to attend oral argument on such appeal. Mr. Berkstresser seconded, and the motion was unanimously adopted.

### **CHIEF FISCAL OFFICER'S REPORT**

Mr. Ferrara presented his report to the Board.

He highlighted the following issues:

Mr. Ferrara highlighted certain portions of his written report, noting that fund balances continue to stabilize due in part to ongoing cost reduction efforts and minimal engineering consultant invoicing. District transactional processing and reporting for the fiscal month October was performed in an accurate and timely fashion. District bank reconciliations are complete through September 30, 2011.

Within the next one year period, the possibility exists that the Regulating District's cash flow could go into the negative. Reliance upon access permit system fees and revenue from the E.J. West agreement, in the absence, of payment by the Five Counties of the assessments due, make cost reductions critical.

**CHIEF ENGINEER’S REPORT**

Mr. Foltan presented his report to the Board.

**AREA ADMINISTRATOR REPORTS**

(A)Hudson River Area Administrator’s Report - Mr. Hodgson

Mr. Hodgson presented the Hudson River Area Administrator’s report to the Board.

(B)Black River Area Administrator’s Report - Mrs. Wright

Mrs. Wright presented the Black River Area Administrator’s report to the Board.

**e. Board Business – Chairman Berkstresser**

(1) Old Business - (None)

(2) New Business –

**RESOLUTION TO EXTEND CONTRACT C152006 CENCI v. DISTRICT**

Mr. Leslie explained that the parties continue to await a decision from the Supreme Court, Fulton County regarding this encroachment case. Although there is a likelihood that little legal work remains, the contract for such work with Brown & Weinraub should be extended. The proposed amendment would involve a one year extension of the contract term, but no increase in the contract’s Not-To-Exceed amount.

Mr. Klein moved to adopt the Resolution. Mr. Stover seconded it and the Resolution was unanimously adopted.

**RESOLUTION TO APPROVE REVISED MANAGEMENT EXEMPT GUIDELINES**

Mr. Hayes reported the Governance Committee’s consideration of the proposed revision to the Management Exempt Guidelines noting that it is the Governance Committee’s recommendation that the Board adopt the Guidelines as revised. Mr. Hayes led a discussion exploring the proposed change to the Guidelines, to wit: existing language defining ‘flex-time’ is to be removed from the Guidelines in accordance with the Chairman’s prior commitment.

Mr. Stover moved to adopt the Resolution. Mr. Hayes seconded it and the Resolution was unanimously adopted.

**RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE DECEMBER 13, 2011 BOARD MEETING**

Mr. Finkle moved to adopt the Resolution. Mr. Hayes seconded it and the Resolution was unanimously adopted.

**RESOLUTIONS**

**11-33-11 RESOLUTION TO EXTEND CONTRACT C152006 CENCI v. DISTRICT**

Mr. Klein moved to adopt the Resolution. Mr. Stover seconded it and the Resolution was unanimously adopted.

**11-34-11 RESOLUTION TO APPROVE REVISED MANAGEMENT EXEMPT GUIDELINES**

Mr. Stover moved to adopt the Resolution. Mr. Hayes seconded it and the Resolution was unanimously adopted.

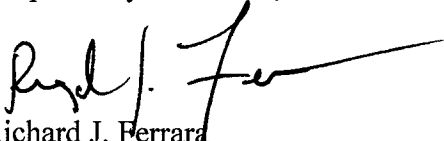
**11-35-11 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE DECEMBER 13, 2011 BOARD MEETING**

Mr. Finkle moved to adopt the Resolution. Mr. Hayes seconded it and the Resolution was unanimously adopted.

**ADJOURNMENT**

There being no further business to come before the Board, Mr. Hayes moved to adjourn the meeting. Mr. Finkle seconded it. The motion was unanimously approved. The meeting adjourned at 1:00 P.M.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard J. Ferrara", with a long horizontal flourish extending to the right.

Richard J. Ferrara  
Secretary/Treasurer