

**HUDSON RIVER-BLACK RIVER REGULATING DISTRICT
BOARD MEETING
October 12, 2011
Utica State Office Building
207 Genesee Street
Utica, NY 13501**

CALL TO ORDER

Chairman Berkstresser called the meeting to order at 10:00 A.M.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: Chairman David W. Berkstresser; Second Vice Chairperson Albert J. Hayes and Board members: Michael F. Astafan, Thomas Stover 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: Philip W. Klein

MOTION TO ADOPT MEETING AGENDA

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

MOTION FOR EXECUTIVE SESSION

Chairman Berkstresser asked if there was a need for an Executive Session; hearing none.

PUBLIC COMMENT PERIOD

No members of the public signed up to speak at the meeting. Chairman Berkstresser asked if any member of the public wanted to speak; hearing none.

APPROVAL OF THE September 13, 2011 MEETING MINUTES

Mr. Finkle moved to approve the Regular Board Meeting minutes of September 13, 2011. Mr. Stover seconded and the motion was unanimously approved.

EXECUTIVE DIRECTOR REPORT

Mr. Clark presented his report to the Board.

Mr. Clark indicated that he and the Chief Fiscal Officer traveled to NYC to attend a meeting of public authorities before the Deputy Secretary for Civil Rights at which each agency

was to be prepared to discuss the Minority and Women Owned Business Enterprise goals each agency was to establish by the end of September.

Mr. Clark then spoke to a recent Schenectady Gazette article which described expenses incurred by Fulton County and each of the three school districts which instituted a lawsuit to compel payment of past due real estate and school taxes. Mr. Clark noted that the Regulating District lacks further reserve funds from which to pay currently due School and soon to be due County taxes. Mr. Clark noted that sufficient funds will not be available to meet such expenses before the overdue assessment payments are made by Albany, Rensselaer, Saratoga, Warren and Washington Counties.

COMMITTEE BUSINESS

a. Audit Committee – Chairman Finkle (Mr. Stover, Open)

(1) New Business

(A) Presentation of Regulating District’s Independent Audit by Bonadio - Mr. Ferrara

Mr. Randy Sheppard appeared before the Board to present the findings of the Bonadio & Co., LLP independent audit of the Regulating District’s financial statements for the fiscal year ended June 30, 2011.

b. Permit System - Chairman Hayes (Mr. Klein, Mr. Finkle)

(1) Old Business (None)

(2) New Business

(A) Discussion of Permit Revocation – Mr. Clark & Mr. Hodgson

Mr. Clark and Mr. Hodgson addressed the Board regarding violations of the District access permit rules on Access Permit Area 15874. Neither the permit holders (Michael and Linda Bell) nor any representative appeared before the Board to defend the violations alleged. The Board considered a packet of material including a September 30, 2011 letter sent return receipt requested to the Bells notifying them of the revocation hearing, as well a September 28 memorandum with attachments and photos detailing the alleged violation. Following a lengthy discussion, Mr. Astafan moved that:

the board revoke the access permit and condition the issuance of any renewal of said permit, or issuance of any new permit at that access permit site to Michael and/or Linda Bell and/or their successors in interest to the property establishing eligibility for such permit, upon removal of the unauthorized fill and restoration of the access permit area #15874 to its pre-construction natural state, or payment in full of the costs incurred by the Regulating District in removing the unauthorized fill and restoring access permit area #15874 to its pre-construction natural state.

Mr. Hayes seconded and the motion was unanimously approved.

c. Governance - Chairman Astafan (Mr. Hayes, Mr. Stover)

(1) Old Business

Mr. Astafan spoke briefly regarding the collection and submission of the Evaluation of Board Performance required by the Authority Budget Office. Mr. Astafan will work with

members of the Board and staff to develop strategies to improve each Board Member's understanding of how the Board operates and the role each member should take.

(2) New Business

(A) RESOLUTION REVISING THE EMPLOYEE RULES AND BENEFIT GUIDELINES FOR MANAGEMENT/EXEMPT EMPLOYEES

Mr. Leslie noted that in Chairman Berkstresser's Action Plan delivered in response to the July 20, 2011 Inspector General's Report, the Regulating District committed to eliminate the Flex time provision from the Management Exempt Employment Rules and Benefit Guidelines. The language to be removed includes an entire paragraph in Article I of the agreement dealing with attendance. The Board considered the Board's Policy on Policies embodied in Resolution 06-08-02 determining that the implementation of the change to the Management Exempt Guidelines is not simply a technical correction to such Guidelines. This being the second meeting at which the proposed changes were considered, the Board thus determined to review said change at the next meeting before further action on the Resolution. The Resolution was thus tabled for consideration at the Board's next scheduled meeting.

(B) RESOLUTION TO ADOPT LOBBYING CONTACTS POLICY

Mr. Leslie noted that Public Authorities Law, Article 9, Title 12-A, Section 2987 provides that every state authority shall maintain a record of all lobbying contacts made with such authority. Mr. Leslie further explained that a lobbying contact is defined to include any attempt to influence the adoption or rejection of any rule or regulation having the force and effect of law by a public authority, and the outcome of any rate making proceeding by a public authority. Mr. Leslie noted that he already tracks similar information with regard to those who appear before the Regulating District for a fee with regard to enforcement or formal permit application matters.

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

(C) Counsel Report - Mr. Leslie

Mr. Leslie 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 Civil Recoveries Unit is determining whether it can waive the 22% collection charge against any amount collected through their efforts. Mr. Leslie indicated that he has related to the AG's Office the Board's desire that the AG's office commence affirmative litigation immediately.

d. Finance - Chairman Stover (Mr. Astafan, Open)

(1) Approval of Expenses - None

Mr. Ferrara pointed the Board to pages 71 to 80 of the Board packet wherein the Board found additional detail regarding Board expenses for the previous month.

(2) Old Business (none)

(3) New Business

(A) Mr. Astafan engaged Mr. Clark and other staff in a discussion regarding the fiscal condition in which the Regulating District finds itself following the 2008 Court of Appeals decision in Albany Engineering v. FERC. Mr. Clark and staff engaged the Board in a brief discussion of the wide range of possible solutions regarding both revenue enhancements and further curtailment of expenses. Mr. Astafan noted the potential that such actions could further

impact the Regulating District's ability to complete its mission. The Board tasked staff with the development of various scenarios to assist the Board's understanding with respect to the likely outcome of each potential solution advanced.

(B) CFO's Report – Mr. Ferrara

Mr. Ferrara presented his report to the Board.

Mr. Ferrara highlighted certain portions of his written report, noting that 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; even reductions that impact the District's mission.

d. Operations - Chairman Hayes (Mr. Stover, Open)

(1) Old Business - (None)

(2) New Business

(A) MOTION TO REQUEST BOARD AUTHORIZATION TO EXECUTE AGREEMENT WITH NEW YORK STATE DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES – Mr. Foltan

Mr. Foltan explained that Staff has been working with the New York State Division of Homeland Security and Emergency Services to establish a public notification system through NY-ALERT which will provide public notice of reservoir operations (release or elevation data) and unusual or emergency conditions at Regulating District facilities or in the Hudson and Black River watersheds. NY-ALERT is the New York State All-Hazards Alert and Notification web-based portal through which state and local governments can provide emergency information to a defined audience. NY-ALERT offers nine methods to communicate incident specific messages to targeted audiences and the public. Messages will be generated and issued by Regulating District staff, and communicated to persons who join (subscribe to) the Regulating District's NY-ALERT Notification Group. The Regulating District must execute an agreement with the New York State Division of Homeland Security and Emergency Services to use the services of the NY-ALERT system. There is no cost associated with the Regulating District's use of NY-ALERT. Mr. Foltan sought Board authorization for the Executive Director to execute an agreement with the New York State Division of Homeland Security and Emergency Services for the use of NY-ALERT services.

Mr. Astafan moved authorize the Executive Director to execute an agreement with the NYS Division of Homeland Security and Emergency Services to establish a public notification system through NY-ALERT which will provide public notice of reservoir operations (release or elevation data) and unusual or emergency conditions at Regulating District facilities or in the Hudson and Black River watersheds. Mr. Finkle seconded it and the Motion was unanimously approved.

(B) RESOLUTION TO REQUEST BOARD ACCEPTANCE OF PROPOSAL FROM KLEINSCHMIDT ASSOCIATES, PA, PC TO COMPLETE REVIEW OF SEISMIC DEFORMATION REPORT FOR THE STILLWATER DAM – Mr. Foltan

Mr. Foltan explained that in September the Board was provided a memorandum summarizing the Stillwater Dam Liquefaction and Deformation Analysis which was completed by Paul C. Rizzo Engineering – New York, PLLC (Rizzo) on July 20, 2011. Rizzo's seismic stability evaluation for the north embankment dam at Stillwater Reservoir demonstrated that the

occurrence of a maximum credible earthquake event will not result in an uncontrolled release of water and that seismic stability of the north embankment dam generally meets FERC Engineering Guidelines criteria. The Federal Energy Regulatory Commission requires a review of the liquefaction and deformation/stability analysis by the Fifth Part12-D Independent Consultant, Jeffrey H. Coffin, P.E. of Kleinschmidt Associates (Kleinschmidt), prior to being submitted to FERC. Staff requested and has received a scope and fee proposal from Kleinschmidt for the completion of Mr. Coffin's review of Rizzo's liquefaction and deformation analysis. Mr. Foltan provided a copy of Kleinschmidt's proposal to the Board. Kleinschmidt proposes to complete a review of Rizzo's liquefaction and deformation analysis for a "not to exceed" amount of \$9,400. Mr. Foltan recommended Board acceptance of Kleinschmidt's Proposal, and seeks Board authorization to form a contract for the completion of the work, and authorization for the Executive Director to execute an agreement in the amount of \$9,400.

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

(C) Chief Engineer's Report - Mr. Foltan

Mr. Foltan presented his report to the Board.

(D) Hudson River Area Administrator's Report - Mr. Hodgson

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

(E) Black River Area Administrator's Report - Mrs. Wright

Mrs. Wright presented her report to the Board.

e. Board Business – Chairman Berkstresser

(1) Old Business - (None)

(A) Mr. Clark noted that in response to comments received from the Authorities Budget Office as part of the ABO's Mission Statement and Measurement Report Review, and pursuant to the Board's direction, staff presented the proposed revision of the Regulating District's Mission Statement to the ABO. Further, Mr. Clark reported that the Authorities Budget Office has accepted the Mission Statement as revised.

Mr. Finkle made Motion to adopt the Regulating District's revised Mission Statement. Mr. Stover seconded the Motion and the Motion was unanimously adopted. The Mission statement shall now read as follows:

The mission of the Hudson River-Black River Regulating District is to construct, maintain, and operate reservoirs in the upper Hudson River and Black River watershed, including the Sacandaga, Indian, Black, Moose, and Beaver Rivers for the purpose of regulating the flow of streams or rivers, when required by public welfare, including public health and safety. Regulating reservoirs operated by the Regulating District include Great Sacandaga Lake, Indian Lake, Stillwater Reservoir, Sixth Lake, and Old Forge. Benefits derived through the successful completion of the mission include, but may not be limited to, flood protection to the public corporations (counties) and parcels of real estate (power plants) downstream of said impoundments; low flow augmentation, to provide sufficient water flow enabling downstream wastewater treatment plants to avoid increased treatment costs associated with waste discharge to lower volume rivers and enabling downstream hydroelectric plants to generate low cost hydroelectric power in the hot summer months when rates are generally highest.

(2) New Business - None

MOTION FOR NEXT BOARD MEETING

(1) Regular Board Meeting

A motion was made by Mr. Finkle for adoption of the Resolution for the Regular Board Meeting to be held on Wednesday, November 2, 2011 at the Saratoga County Office Bldg, Cornell Cooperative Extension Building, 50 West High Street, Ballston Spa, New York 12020 at 10:00 A.M. Mr. Stover seconded it. The Motion was unanimously approved.

RESOLUTIONS

11-30-10 RESOLUTION TO ADOPT LOBBYING CONTACTS POLICY

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

11-31-10 RESOLUTION TO REQUEST BOARD ACCEPTANCE OF PROPOSAL FROM KLEINSCHMIDT ASSOCIATES, PA, PC TO COMPLETE REVIEW OF SEISMIC DEFORMATION REPORT FOR THE STILLWATER DAM

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

11-32-10 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE NOVEMBER 2, 2011 BOARD MEETING

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

ADJOURNMENT

There being no further business to come before the Board, Mr. Finkle moved to adjourn the meeting. Mr. Stover seconded it. The motion was unanimously approved. The meeting adjourned at 12:35 P.M.

Respectfully submitted,



Richard J. Ferrara
Secretary/Treasurer