

**HUDSON RIVER-BLACK RIVER REGULATING DISTRICT
BOARD MEETING
September 13, 2011
Lowville Town Offices
5533 Bostwick Street
Lowville, NY – 10:00 A.M.**

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; Philip W. Klein, 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; Black River Area Administrator Carol L. Wright; and other Regulating District staff.

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.

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 August 9, 2011 MEETING MINUTES

Mr. Stover moved to approve the Special Board Meeting minutes of August 9, 2011. Mr. Hayes seconded and the motion was unanimously approved.

EXECUTIVE DIRECTOR REPORT

Mr. Clark presented his report to the Board.

Mr. Clark indicated that following the August 9 Board Meeting, and in compliance with the Resolution adopted by the Board at that meeting, the Regulating District liquidated necessary reserve funds and delivered a check, approved by the NYS Comptroller, to Fulton County in

satisfaction of Judge Aulisi's June 23rd Order/Judgment. Mr. Clark related that the Fulton County treasurer has, according to the media, disbursed such funds to the affected school districts.

Mr. Clark made a point to note the Regulating District staff's exemplary performance during and after Tropical Storm Irene and subsequent weather events. As detailed in Mr. Foltan's report, significant rainfall throughout the District's Hudson River Area watershed tested the GSL's ability to function as designed. Alert, forward thinking by District staff and especially the Chief Engineer, ensured that the District entered each rain event with sufficient capacity to address near record, and in some spots record, inflow. Timely and accurate information from staff allowed Mr. Clark to provide relevant and meaningful input to the Governor's task force members and thus contributed to the outstanding mitigation and relief efforts undertaken at the State level.

Mr. Clark discussed the need to defer big ticket item expenditures throughout the balance of the District's fiscal year or until the Five Counties pay the share of expenses required of them by the March 2010 Apportionment and Saratoga County Supreme Court Judge Ferradino's Order. Mr. Clark provided some examples of expenditures that the Regulating District may need to avoid. Such expenses include: some of the USGS contracts covering gauge stations; webcasting costs; the "T-1" line linking FERC mandated security and safety cameras at Conklingville; school and real property taxes; etc. Without such deferrals, the Regulating District may be unable to meet basic payroll expenses by this time next year.

Mr. Clark noted that staff had contacted the Authority Budget Office regarding potential updates to the Regulating District's Mission Statement. He led a discussion with staff and the Board regarding how and for whom the District performs its mission. Staff read a draft revision to the mission statement for the Board's consideration. After discussion, Mr. Klein made a motion to table further consideration of revisions to the Mission Statement, but to submit to the ABO for consideration the current draft in satisfaction of the ABO's October 1, deadline for submission of a revised statement. Mr. Astafan seconded the Motion. The Motion passed unanimously.

Mr. Clark noted that Mr. Hodgson has settled into his position as the Hudson River Area Administrator and asked that the Board act by Motion to remove the Acting moniker from Mr. Hodgson's title. Mr. Stover made the Motion. Mr. Astafan seconded it. The Motion passed unanimously.

COMMITTEE BUSINESS

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

(1) Old Business (None)

(2) New Business

(A) Discussion of Moving up Permit Renewal Mailing – Mr. Clark

Mr. Clark discussed staff's plan to initiate the access permit renewal process a couple of weeks earlier this year than in years past. Timely receipt of access permit revenues could be important that year in light of the Five Counties' (Albany, Rensselaer, Saratoga, Warren & Washington) failure to timely pay assessments due and owing.

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

Mr. Clark and Mr. Hodgson outlined for the Board the potential for permit revocation in cases involving repeated violations of District access permit rules. Mr. Astafan asked that if staff should determine to initiate permit revocation such notice be put in writing and personally served, by process server if necessary, upon the permit holder.

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

(1) Old Business

(A) Confidential Evaluation of Board Performance – Mr. Astafan reminded each Board Member that the Authority Budget Office requires submission of the Board's summary compilation of the Board Member's Confidential Evaluation of Board Performance within 90 days of the close of the District's fiscal year; thus the District's response is due no later than September 30th.

(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. The Board thus determined to review said change at three successive meetings before further action on the Resolution. The Resolution was thus tabled for consideration at the board's next scheduled meeting.

(B) 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 Honorable Stephen A. Ferradino, Justice Supreme Court, County of Saratoga by decision dated April 1, 2011 granted the respondents/defendants (Regulating District) motion for summary judgment dismissing the counties' complaint in its entirety. The counties have appealed the Ferradino ruling and would typically have nine months to perfect that appeal. However, the Department of Law filed a Motion to Dismiss the Appeal for lack of prosecution on July 27th. On August 25th, the Appellate Division 3rd Department issued a decision requiring the Five Counties to file their Record on Appeal and Brief by October 24, 2011. The Regulating District will likely be afforded 45 days from the Five County filing to submit our reply. On August 18th, the Department of Law sent Demand Letters to each of the Five Counties requiring payment of the assessments due within 30 days. Baring compliance, we expect the Attorney General to file suit. The Attorney General's Civil Recoveries Unit will impose a 22% collection charge against any amount collected through their efforts. Presumably, such charge would be an expense of the District subject to assessment should conditions require.

The Fulton County Supreme Court, Hon. Richard T. Aulisi has ruled in the matter of the application of *County of Fulton, New York, Broadalbin-Perth Central School District, Mayfield Central School District, and Northville Central School District vs. The State of New York and Hudson River-Black River Regulating District*. The Court dismissed the claims brought by the three school districts, dismissed the County's claim against the State and has ordered the

Regulating District to pay back taxes. In accordance with the Board's resolution adopted at the August 9th meeting in Watertown, the Regulating District delivered a check for the entire judgment amount due on Thursday, August 25th.

On September 29, 2010, U.S. District Court Judge Norman Mordue dismissed the NiMo Federal Court Permit System and Assessment challenge. Niagara Mohawk filed a Notice of Appeal on October 26, 2010. NiMo filed its Brief and Joint Appendix on February 24, 2011. The HRBRRD Reply Brief was due and was filed on May 26, 2011. The parties await the Court's decision.

On July 24, 2005, Christine V. Chera sustained significant personal injuries alleged to have resulted from a fall from a rope swing on State lands at Great Sacandaga Lake. Counsel for Ms. Chera then commenced suits against the State in the Court of Claims and against the Regulating District in Supreme Court, Albany County. The Court of Claims dismissed Ms. Chera's claim against the State in an April 2010 ruling. The Regulating District, represented by Clem Parente of the law firm of Crane and Parente filed a Motion to Dismiss in April 2011. On August 19, 2011, Acting Supreme Court Justice Thomas J. McNamera granted HRBRRD's Motion for Summary Judgment and thereby dismissed Chera's claim against the District. Clem Parente will handle entry and filing under CPLR 2220.

On August 3, 2011, Niagara Mohawk Power Corporation, d/b/a National Grid filed the 2011 version of their annual assessment challenge and Notice of Intention to File a Claim in the Court of Claims. The Article 78 Petition filed in Supreme Court Herkimer County seeks the removal, or reduction of the 2011-2012 Black River Area assessment on Niagara Mohawk property. This suit is the next in a series of similar suits brought annually by Niagara Mohawk since 2000. The Regulating District is represented by David Cherubin of Brown & Weinraub in each of the previously filed suits. A copy of the Petition and Exhibits has been delivered to Mr. Cherubin. It is anticipated that the defense of this suit will fit neatly into the defense offered with respect to each of the other similar suits. As noted earlier, a Resolution was proposed to the Board through which the Board could elect to amend the scope of Mr. Chrubin's current legal services contract to include this new NiMo challenge. Also note that on July 27, 2011, NiMo served its annual request for a hearing on the Apportionment underlying the 2011-2012 Black River Area Assessment. Also, on July 26, 2011 the Sacandaga Protection Committee filed a Notice of Motion to Intervene in the NiMo Assessment Challenge. The return date for the Motion was August 25th before Judge Aulisi. We filed, SPC filed and NiMo filed affidavits and memos. We await the court's decision.

Chairman Berkstresser asked about the status of the Albany Engineering case. Mr. Leslie noted that the Attorney General has taken up the Regulating District's defense and has interposed an Answer. Discovery will follow.

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

(1) Approval of Expenses

Mr. Ferrara detailed expenses due to Mr. Klein in the amount of \$427.08.

Mr. Hayes made a Motion to approve such expenses. Mr. Finkle seconded the motion. The Motion passed unanimously. Mr. Klein abstained.

(2) Old Business (none)

(3) New Business

(A) RESOLUTION TO ADOPT THE STATE OF NEW YORK OFFICE OF THE STATE COMPTROLLER TRAVEL MANUAL AS THE DISTRICTS OPERATIVE TRAVEL AND MEETING REIMBURSEMENT POLICY RESCINDING AND REPLACING RESOLUTIONS 88-58-10, 05-54-12, 06-26-06, and 07-30-05

Mr. Ferrara 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 formally adopt the State's Travel and Meals Guidelines. Mr. Ferrara noted that the Regulating District has always adhered to such Guidelines. The Board considered the Board's Policy on Policies embodied in Resolution 06-08-02 determining that the adoption of the State's Meals and Travel Guidelines in merely formality.

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

Mr. Leslie noted that, in the absence of a specific District Policy, Procedure, or Guideline, the District should look first to the applicable/relevant State Statute, then the relevant Policy, Procedure, or Guideline. For instance, with regard to limitations upon District reimbursements to District employees for lost or damaged personal property, staff will alert the Board to relevant state level guidance so that the Board can limit reimbursements in compliance with relevant state statutory provisions such as State Finance Law §8(12-f).

Mr. Hayes made a motion to direct staff to seek and follow relevant state policy pronouncements in the absence of a specific District policy. Mr. Stover seconded the motion and the Motion was unanimously adopted.

(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. Mr. Ferrara discussed in further detail, the elimination of certain gauging stations from the USGS contracts, elimination of the T-1 line linking Conklingville to the District's other offices, and elimination of the closed captioning element of the District's webcasting efforts.

Mr. Ferrara asked the Board to further consider the designation of an official workstation for Mr. Clark; noting that during Mr. Clark's past year of service at that location, the District's travel expenses have been reduced significantly when compared to previous years. Mr. Klein made a Motion to re-designate the Sacandaga Field Office, centrally located, and the situs of much of Mr. Clark's immediate duties, as Mr. Clark's official workstation, further noting that such designation is in the best interests of the District. Mr. Stover seconded the Motion. It passed unanimously. Mr. Ferrara noted that his discussions with the Office of the State Comptroller revealed that OSC does not opine upon official workstation designations, but does

retain authority to challenge such designations as part of OSC's routine review of expense reimbursements.

In response to the Inspector General's request for clarification regarding employee attendance at the commemorative events orchestrated by Mr. LaFave in the Spring of 2009, Mr. Ferrara recited for the Board the analysis he undertook with respect to staff attendance at the events marking the 50th Anniversary of the District's operations. Mr. Ferrara noted that first and foremost the events were one time significant recognition gatherings. At each commemorative event, former Executive Director Mr. LaFave presented an 8 to 10 minute video detailing the history of both watersheds. Next, Mr. LaFave presented a 114 slide PowerPoint presentation detailing to local officials and community leaders the issues faced by the Regulating District. Following Mr. LaFave's two presentations, an invited guest speaker from the Department of Environmental Conservation presented prepared remarks explaining the working relationship developed and maintained between the Department and the Regulating District. Following these presentations, Mr. LaFave led a question and answer session for which he requested that senior staff be available to answer any questions that arose. Mr. Ferrara noted that it is his recollection that few questions were asked.

Mr. Ferrara noted that each event was attended by the District's Board, senior staff, many current and former employees, and local elected officials. The events were by invitation with the tacit expectation of the Executive Director that staff would make every effort to attend. Senior Staff each reported that their attendance was compelled to the same extent, and in the same manner, as attendance at regular and special meetings of the Board. The total cost incurred for both events, of \$2,770.85, covered the attendance of the 142 attendees. Each attendee, except employees and several special guests all of whom were government employees, paid \$20 to cover expenses. Mr. Ferrara noted that none of the District employees or government employee guests submitted for per diem or reimbursement of travel expenses; even though several were in travel status. Based on the aforementioned, Mr. Ferrara concluded that both events in question were compulsory to staff, served a business purpose, and as such the expenses incurred were considered reasonable and necessary.

Mr. Ferrara next addressed the Inspector General's request as it pertained to meals provided to staff in conjunction with Board meetings. Mr. Ferrara noted that it is his opinion, as the CFO of the District, that Board meetings were and are a compulsory business event for senior staff. He stated that it is reasonable to provide a lunch to staff who are expected to attend such Board meetings: many of which did not conclude as expected; or such meeting was in a remote area of the watershed where the expectation of bringing ones lunch is not practicable; and the staff member is in travel status. With respect to lunches provided following certain Board meetings, Mr. Ferrara concluded that the expense associated with said lunches was a necessary and reasonable expense.

Mr. Leslie and Mr. Ferrara noted that staff was prepared to deliver the forgoing analysis at the Board's special meeting held in August, but as the matters discussed at that meeting took precedence, the Board did not have an opportunity to endorse or reject the analysis before the Board Chair submitted the District's Action Plan to address the July 2011 Inspector General's Report. The Action Plan erroneously noted that the Board had already provided its endorsement.

Mr. Finkle made a motion to endorse the analysis indicating that staff's attendance at the 50th Anniversary events was compulsory; that meals provided to staff at such events in lieu of

direct meal expenses or per diems were necessary expenses of such events, and that each such event served a legitimate Regulating District business purpose. Mr. Stover seconded it. The motion was unanimously approved. Mr. Hayes abstained.

Mr. Astafan made a motion to endorse the CFO's analysis indicating that meals provided to staff in conjunction with Board meetings noted in the Inspector General's Report; where such meetings ran longer than expected and/or were in remote locations were necessary expenses of such meetings, and each such meeting served a legitimate Regulating District business purpose. Mr. Hayes seconded it. The motion was unanimously approved.

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

(1) Old Business - (None)

(2) New Business

(A) RESOLUTION TO ACCEPT OLD FORGE/SIXTH LAKE ENGINEERING ASSESSMENT PROPOSAL – Mr. Foltan

Mr. Foltan explained that on July 12, 2011 the Board conditionally awarded the Engineering Assessment for Sixth Lake and Old Forge Dam to Camp Dresser & McKee (CDM), and requested a scope of work and fee proposal. This engineering assessment is necessary to comply with Department of Environmental Conservation dam safety regulations. CDM has submitted their proposal, which was attached for Board consideration. CDM proposes to conduct a records review, safety inspection, and hazard classification reconnaissance necessary to develop the engineering assessment of the physical, structural, and hydraulic adequacy of the Sixth Lake and Old Forge Dam facility. The engineering effort will include a hazard classification, hydrologic and hydraulic, and seepage and stability assessment. CDM will issue an Engineering Assessment Report which will discuss the data reviewed and provide a conclusion as to whether each dam is in conformance with current dam safety criteria. CDM will also recommend, as appropriate, remedial work that may be necessary to bring the facilities into conformance with applicable dam safety regulations and provide preliminary design services for the selected remediation work. Additionally, CDM will develop inundation mapping for both Sixth Lake and Old Forge for two failure scenarios which will be incorporated into the Regulating District's Sixth Lake and Old Forge Emergency Action Plans. Camp Dresser & McKee proposes to complete these engineering services for a "not-to-exceed" price of \$94,500. Mr. Foltan recommended acceptance of Camp Dresser & McKee's Proposal for Professional Engineering Services and sought 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 \$94,500.

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

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

Mr. Foltan presented his report to the Board.

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

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

(D) 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)

(2) New Business

(A) Mr. Ferrara led a discussion with the Board regarding additional internal control activities necessary to improve the Board's over-site of monthly travel and meeting expenses. Mr. Ferrara stated that in an effort to improve the Board's oversight of travel and meeting expenses associated with staff's attendance at monthly meetings and other necessary business activities, the Board should consider the following:

1. Monthly reporting provided to the Board will be expanded to provide further detail.
 - a. Board will receive, in addition to the year to date financial summary and related budget breakdown by account.
 - b. A general ledger detail of the related budget line item for Travel and Meeting Expenses; and
 - c. A summary of credit card activity report reflecting all travel and meeting expenses for the fiscal period just completed.
2. These additional reports will enhance the Board's ability to discern the scope, reason and necessity of each expense item/transaction. More specifically, the budget breakdown report reflects the year to date actual and budget amount by cost center and account. The general ledger detail will provide the transaction source of the travel & meeting expense for the month just closed. For instance for staff or Board member expenses the last name and month of submittal will be indicated. Other transactional areas include EZ pass charges, and charges on the Districts credit card. For credit card charges, a summary of travel & meeting expenses will be provided to augment the total charge.

(B) Mr. Leslie noted Staff and the Board's effort to address each of the items requested by the Inspector General in the August 29, 2011 letter delivered in response to Chairman Berkstresser's August 19th response to the Inspector General's July 20, 2011 Report. Mr. Leslie recited for the Board, the final two paragraphs of the August 19th letter. The first regarding the Inspector General's request that the Board advise of all steps taken to recoup the improper payment of District funds paid to an employee for the loss of personal property as detailed in the Inspector General's July 20th Report. The second requiring a response no later than 10:00am September 14th; the day after this meeting. A discussion ensued regarding the circumstances of the payment; the reasonableness of the employees' actions leading to the loss; and the statutory prohibition against reimbursement of amounts in excess of \$350. Mr. Leslie recommended to the Board that it demand payment of any amount reimbursed over the \$350 limit. The Board Chair indicated that the Board would take the matter under advisement.

MOTION FOR NEXT BOARD MEETING

(1) Regular Board Meeting

A motion was made by Mr. Astafan for adoption of the Resolution for the Regular Board Meeting to be held on Wednesday, October 12, 2011 at the Utica State Office Bldg, 207 Genesee Street, Utica, New York 13501 at 10:00 A.M. Mr. Klein seconded it. The motion was unanimously approved.

RESOLUTIONS

11-27-09 RESOLUTION TO ADOPT THE STATE OF NEW YORK OFFICE OF THE STATE COMPTROLLER TRAVEL MANUAL AS THE DISTRICTS OPERATIVE TRAVEL AND MEETING REIMBURSEMENT POLICY RESCINDING AND REPLACING RESOLUTIONS 88-58-10, 05-54-12, 06-26-06, and 07-30-05

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

11-28-09 RESOLUTION TO ACCEPT OLD FORGE/SIXTH LAKE ENGINEERING ASSESSMENT PROPOSAL

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

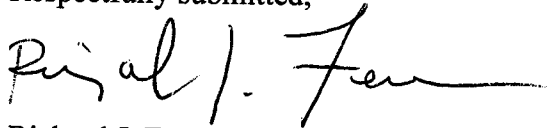
11-29-09 RESOLUTION FOR REGULAR BOARD MEETING FOR October 12, 2011

Mr. Astafan moved to adopt the Resolution. Mr. Klein 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. Astafan seconded it. The motion was unanimously approved. The meeting adjourned at 12:20 P.M.

Respectfully submitted,



Richard J. Ferrara
Secretary/Treasurer