

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

April 10, 2012

Warren County Municipal Center
1430 State Route 9
Lake George, NY 12845

CALL TO ORDER

Chairman David W. Berkstresser called the meeting to order at 11:25 A.M.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: Board Chairman David W. Berkstresser; Second Vice Chair Mark M. Finkle; Board Members Albert J. Hayes, Thomas Stover and; 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.

Excused: Michael F. Astafan

MOTION TO ADOPT OR REVISE THE MEETING AGENDA

Chairman Berkstresser asked for a motion to adopt or offer revisions to the meeting agenda. Mr. Hayes moved to adopt the meeting agenda without revision. Mr. Stover seconded it and the motion was unanimously approved.

PUBLIC COMMENT PERIOD

Chairman Berkstresser solicited comments from the public – hearing none.

APPROVAL OF THE MARCH 13, 2012 BOARD MEETING MINUTES

A motion was made by Mr. Finkle to approve the Minutes of the Board's March 13, 2012 meeting. Mr. Stover seconded it and the motion was unanimously approved.

EXECUTIVE DIRECTOR'S REPORT

Mr. Clark reported that he continues to meet with Members of the Finance Committee, the Chief Fiscal Officer, and other Regulating District staff to facilitate the Committee's/Board's understanding and adoption of the next triennial budget.

Mr. Clark reported that he and Mr. Leslie have been checking each week anticipating a decision from the Appellate Division Third Department regarding the Five Counties' challenge to the March 2010 Apportionment. The Court's decision is expected in eight to ten weeks from the February 6th oral argument date.

Mr. Clark noted that the Regulating District has submitted the Board's response to FERC's draft Headwater Benefits Determination. Albany Engineering Corp. and Boralex also submitted comments to FERC.

Mr. Clark then led a discussion of the impact of the Board's past practices resolution on staff's ability to rectify inequities in the administration of the Access Permit System. Mr. Clark introduced the Board to Raymond and Joan Laubenstien and Walter Santucci. Mr. Laubenstein and Mr. Santucci presented their respective appeals to the Board of decisions rendered by Mr. Clark in which Mr. Clark upheld previous determinations rendered by the Regulating District's Hudson River Area Administrator and Chief Engineer. Mr. Laubenstien and Mr. Santucci noted that the parcels upon which their current access permits are based adjoin state land surrounding the reservoir and noting that such parcels establish eligibility for 'front lot' access to the GSL. Both noted that the Regulating District has cited to Resolution 10-03-01 in affording each only a 'back lot' access permit. Mr. Clark noted that a proposed revision to the Resolution in question is under consideration by the Governance Committee. Chairman Berkstresser tabled consideration of the appeal for further consideration at the May meeting in Johnstown and directed staff to provide notice to the adjoining access permit holder.

EXECUTIVE SESSION

Chairman Berkstresser called for a motion to adjourn to Executive Session to discuss litigation and personnel. Chairman Berkstresser asked that the Executive Director and the balance of senior staff be invited to participate. The Board adjourned to Executive Session at 11:57A.M. and returned at 1:00 P.M. Chairman Berkstresser reported that the Board passed a Resolution to approve salary adjustments for management exempt employees.

GOVERNANCE COMMITTEE REPORT

Mr. Hayes noted that the Governance Committee had met earlier to discuss the Board's Committee structure. He noted that the Committee recommended a reduction of the current system of nine standing committees to a structure including only the three standing Committees required by the Public Authorities Law. Mr. Hayes noted further that the Committee had completed work on proposed Committee Charters for Governance, Finance, and Audit and reported that the Committee recommended Board adoption of each of three proposed charters.

Chairman Berkstresser called for a motion to adopt the Committee Charters as presented by the Governance Committee. Mr. Finkle moved to adopt the three Committee Charters (Audit, Finance & Governance). Mr. Stover seconded the Motion and the motion was unanimously approved.

RESOLUTION ADOPTING AMENDED BY-LAWS OF THE HUDSON RIVER-BLACK RIVER REEGULATING DISTRICT

Chairman Berkstresser called for a motion to adopt revised By-Laws via Resolution.

Mr. Hayes moved the Resolution to adopt revised Regulating District By-Laws. Mr. Stover seconded it and the Resolution was unanimously adopted.

RESOLUTION TO SATISFY ANNUAL REVIEW AND APPROVAL OF THE REGULATING DISTRICT'S INVESTMENT POLICY

Mr. Hayes brought the Resolution to satisfy the Annual Review and Approval of the Regulating District's Investment Policy before the full Board. There being no changes to the subject policy, the Governance Committee recommended that the Board approve a Resolution to satisfy the PAL §2925 requirement. Chairman Berkstresser called for a motion to adopt the Resolution to approve the annual review.

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

RESOLUTION TO SATISFY ANNUAL REVIEW AND APPROVAL OF THE REGULATING DISTRICT'S PROCUREMENT POLICY

Mr. Hayes brought the Resolution to approve the Annual Review and Approval of the Regulating District's Procurement Policy before the full Board. Pursuant to Section 2879(3)(1), the Procurement Guidelines have been amended to include the District's effort to include MWBE business enterprises in its procurement effort. The Governance Committee recommended that the Board approve the Resolution to satisfy the PAL §2879 requirement. Chairman Berkstresser called for a motion to adopt the Resolution to approve the annual review.

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

RESOLUTION TO ANNUALLY REVIEW AND APPROVE THE REGULATING DISTRICT'S DISPOSITION OF PROPERTY GUIDELINES – PURSUANT TO SECTION 2896(10 OF THE PUBLIC AUTHORITIES LAW

Mr. Hayes brought the Resolution to approve the Annual Review and Approval of the Regulating District's Property Disposal Guidelines before the full Board. There being no changes to the subject policy, the Governance Committee recommended that Board approve the Resolution to satisfy the PAL §2896 requirement. Chairman Berkstresser called for a motion to adopt the Resolution to approve the annual review.

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

STAFF REPORTS

Mr. Leslie presented his report to the Board.

Mr. Leslie reported that 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 Appellate Division Third Department held oral argument on Monday, February 6th. Based on the Court's previous decision release history, a decision is expected within 8 to 10 weeks (April 2nd - 16th).

Mr. Leslie also reported an update to the National Grid litigation pending in the federal court system. On March 7, 2012 the U.S.C.A. 2nd Circuit affirmed the District Court's ruling that the HRBRRD's assessment authority over National Grid's undeveloped properties is not preempted by the Federal Power Act. The court also affirmed the District Court's dismissal of DEC from the case. However, the appellate court vacated the District Court's decision to abstain from ruling on National Grid's constitutional claims. As a result, the U.S.C.A. 2nd Circuit remanded the case back to the U.S.D.C., N.D.N.Y for resolution of National Grid's federal and state constitutional claims. Special Counsel David Cherubin awaits the District Court's scheduling order with respect to the remanded claims. On 3/20/12, NiMo submitted a "Verified Itemized Bill of Costs" to the District Court. On 3/23/12, Cherubin filed the HRBRRD's objection to the imposition of such costs. On March 30th Cherubin reported that the Court had denied NiMo's request for costs.

Mr. Leslie also reported on an update to the Albany Engineering Corp litigation in Supreme Court, Albany County. On April 2, 2012 Judge Teresi issued a Decision and Order in favor of Albany Engineering Corporation awarding a refund of assessments collected under color of State law. The decision requires payment to AEC of \$516,655.62 plus interest dating to January 1, 2003. The Regulating District is conferring with the Office of the Attorney General to assess the Decision/judgment's impact and to determine appropriate next steps. Mr. Leslie confirmed that the Board directs staff to appeal the decision.

Mr. Ferrara presented his report to the Board.

Mr. Ferrara noted there were no expenses incurred by Board Members for consideration this month.

Mr. Ferrara noted that current fund balances include approximately \$352,000 in the Hudson River Area and \$441,000 in the Black River Area.

Mr. Ferrara noted that Public Authorities Law requires an annual review of contracts. Mr. Ferrara noted that in order to satisfy that requirement, he provides the Board each month a summary of all outstanding contracts. The monthly presentation effectively satisfies that review requirement by allowing the Board an ongoing and contemporaneous look at such contracts.

Mr. Ferrara noted that the server deployment is moving forward. The down-payment check has been received by the vendor and the vendor has indicated that the necessary hardware and software has been ordered.

Chairman Berkstresser asked when the Financial Disclosure requirement is due to be satisfied. Mr. Leslie indicated that such submissions are required of designated filers on May 15th each year.

Mr. Foltan presented his report to the Board

Mr. Foltan noted that due to the warm spring, the spring freshet is well underway. Despite having 50% of the snowpack, the rate at which the snow melted caused an increase over historic average inflows during the reporting period. The dry spring should not present an issue should we receive historic average rainfall throughout the balance of the spring refilling period.

Mr. Foltan also noted that a memorandum from Milone & McBroom, Inc's remediation assessment summary denotes four concepts for an increase in the discharge capacity at the Hawkinsville dam as required to satisfy DEC Dam Safety regulations. They also developed an alternative to remediation; removal. Milone & MacBroom's assessment establishes a cost range from \$1million to \$7 million for the various remediation options and about \$500,000 for removal. Staff will undertake additional study before making a recommendation.

Mr. Hodgson presented his report to the Board

Mr. Hodgson reported staff has begun to stake out permit areas for new property owners. The volume of permit renewals is beginning to wind down and the volume of work permit applications is starting to increase. Mr. Hodgson explained to the Board the process involved in securing a work permit.

Mrs. Wright presented her report to the Board

Mrs. Wright noted that staff at the Black River Field Office has completed their inspection of the Stillwater Dam gate brackets and stems. The inspection of gates 1 and 2 in the final well has been completed. Minor adjustments of brackets were required and completed. Staff is starting their Spring clean-up of the facilities. Lime and fertilizer has been ordered. The move to the Watertown office should take place within the next couple of weeks.

BOARD BUSINESS

Chairman Berkstresser noted that in light of the change in the Board's committee structure, he deemed it necessary to ensure that each of the indicated committees were at full strength. As such, he appointed the appointed the following members to the indicated committee:

Mr. Finkle – Finance
Mr. Hayes- Audit

RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE APRIL 10, 2012 BOARD MEETING

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

RESOLUTIONS

12-09-04 RESOLUTION APPROVING SALARY ADJUSTMENTS FOR MANAGEMENT/EXEMPT EMPLOYEES

In Executive Session, Mr. Stover moved to adopt the Resolution. Mr. Finkle seconded it and the Resolution was unanimously adopted. Upon return from Executive Session, Chairman Berkstresser reported the Resolution's adoption.

12-10-04 RESOLUTION ADOPTING AMENDED BY-LAWS OF THE HUDSON RIVER-BLACK RIVER REEGULATING DISTRICT

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

12-11-04 RESOLUTION TO SATISFY ANNUAL REVIEW AND APPROVAL OF THE REGULATING DISTRICT'S INVESTMENT POLICY

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

12-12-04 RESOLUTION TO SATISFY ANNUAL REVIEW AND APPROVAL OF THE REGULATING DISTRICT'S PROCUREMENT POLICY

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

12-13-04 RESOLUTION TO ANNUALLY REVIEW AND APPROVE THE REGULATING DISTRICT'S DISPOSITION OF PROPERTY GUIDELINES – PURSUANT TO SECTION 2896(10 OF THE PUBLIC AUTHORITIES LAW

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

12-14-04 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE MAY 8, 2012 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. Hayes seconded it. The motion was unanimously approved. The meeting adjourned at 1:28 P.M.

Respectfully submitted,



Richard J. Ferrara
Secretary/Treasurer