

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

**December 11, 2012 - 10:00 A.M.**

**Dulles State Office Building**

317 Washington Street, Room 100 (Conf. Room #1)  
Watertown, New York 13601

**CALL TO ORDER**

Chairman David W. Berkstresser called the meeting to order at 10:15 A.M.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**Present:** Board Chairman David W. Berkstresser; First Vice Chair Michael Astafan; Second Vice Chair Mark M. Finkle; Board Member Albert J. Hayes and; Executive Director Michael A. Clark; General Counsel Robert P. Leslie; Chief Fiscal Officer Richard J. Ferrara; Chief Engineer Robert Foltan; Hudson River Area Administrator John Hodgson; Black River Area Administrator Carol L. Wright.

**Excused:** Thomas Stover

**MOTION TO ADOPT OR REVISE THE MEETING AGENDA**

Chairman Berkstresser noted that the Board would not discuss, nor act upon Staff's recommendations regarding the Hawkinsville Dam Remediation and Removal Study and Design. The Chairman asked for a Motion to revise the meeting agenda. Mr. Hayes made a Motion to adopt the proposed meeting agenda as revised. Mr. Astafan seconded it and the motion was unanimously approved.

**PUBLIC COMMENT PERIOD**

Chairman Berkstresser solicited comments from the public. Hearing none.

**APPROVAL OF THE NOVEMBER 7, 2012 BOARD MEETING MINUTES**

A motion was made by Mr. Hayes to approve the Minutes of the Board's November 7, 2012 meeting. Mr. Finkle seconded it and the motion was unanimously approved.

**MOTION FOR EXECUTIVE SESSION**

Chairman Berkstresser called for a Motion to adjourn to Executive Session to consider the terms of a settlement agreement to resolve the threat of litigation surrounding the Regulating District's Apportionment of cost to operate the Hudson River Area facilities. Chairman Berkstresser invited the Executive Director, the Chief Fiscal Officer and General Counsel to participate noting that the Board would conduct business upon its return from Executive Session.

Mr. Astafan made the Motion, Mr. Hayes seconded and the motion was adopted unanimously. The Board adjourned to Executive Session at 10:18 AM and returned at 11:10 P.M.

## **EXECUTIVE DIRECTOR'S REPORT**

Mr. Clark reported that he, Mr. Finkle and Mr. Hayes, the General Counsel and the Chief Fiscal Officer engaged in a series of meetings with representatives from the five Counties named in the July 2012 Hudson River Area Apportionment and their collective outside legal counsel. Mr. Clark noted that staff would continue such meetings with an aim to bringing an executed consent agreement before the Board at the Board's January meeting. Mr. Clark also recommended that the Board's January meeting be held later in January than normal to permit each of the Five Counties named in the Apportionment to authorize the Consent Apportionment before the HRBRRD Board acts on the same. Mr. Clark further noted that in accordance with the terms outlined to the Board during Executive Session, the settlement provided the best opportunity to secure funding, including adequate funding to permit the near immediate payment of past due tax obligations. He also noted that the Board's delay of the adoption of the Apportionment to the January meeting should not result in any delay of payment of amounts necessary to fund those tax obligations. Further, restoration of funding could permit the Board, should it so choose, to reduce 2013-2014 Black River Area assessments levied in July 2013 to pre-2012-2013 levels.

Mr. Clark then led the Board in a discussion of tentative meeting dates for 2013; including moving the January date to the 23<sup>rd</sup>.

## **CONTRACTS**

Board Authorization to Solicit Bids for the Repair of Concrete Surfaces at the Stillwater Dam Gate Outlet Structure – Mr. Foltan

Mr. Foltan explained the need to solicit bids for the repair of the concrete surfaces at the Stillwater Dam Gate outlet structure. He noted time and deterioration, wear from water, sediment and silt, as contributing factors. Mr. Foltan noted that the repair had been budgeting during the current fiscal year and suggested a schedule that would result in bids and a Notice to proceed this summer.

Mr. Astafan made a Motion to authorize the Executive Director to solicit bids for the repair of concrete structures at the Stillwater Dam Gate outlet structure. Mr. Finkle seconded the Motion. The Motion was adopted unanimously.

## **STAFF REPORTS**

Mr. Leslie presented his report to the Board. He pointed to his written report which included:

The Judgments in favor of Fulton (\$1,660,129.90) and Hamilton (\$119,361.84) Counties remain outstanding.

FERC issued its HWB Determination on July 30, 2012. On October 1, 2012, FERC issued a 'tolling order' with respect to Erie's requests for re-hearing to consider capacity increases at GIPA 6MW to 48MW and at Erie's own plants. The Regulating District and counsel for Erie each submitted additional argument to FERC regarding the applicability of the May 2006 Stipulation of Settlement and Order executed by Erie and the Regulating District we claim limits the amounts which Erie can claim as a credit for assessments it paid between 2002 and 2008.

On 6/21/12, Northern Electric Power Company, L.P. and South Glens Falls, L.P. ("Boralex") served a Summons and Complaint seeking refunds. On 08/31/12 Boralex served plaintiff's Motion for Summary Judgment. On 10/19/12, the AG filed HRBRRD's Reply HRBRRD's Cross-Motion for Summary Judgment. The Albany County Supreme Court re-assigned the case from Judge Connolly to Judge Teresi. Judge Teresi, who previously decided the Albany Engineering Motion for Summary Judgment against the Regulating District, has cancelled oral argument on the Boralex Motion for Summary judgment. Judge Teresi also issued a scheduling Order received by the Attorney General's office on Thursday seeking additional briefs from both parties.

On 11/15/12 New York State Electric and Gas Corporation served a Summons and Complaint seeking \$446,798.07 with interest thereon for alleged overpayment of headwater benefits. A Request for Representation was delivered to the Department of Law on that same date. The assigned AAG will employ defensive strategies similar to those advanced in the Albany Engineering refund case appeal and the Boralex refund case.

On September 29, 2010, U.S. District Court Judge Norman Mordue dismissed the NiMo federal Court Permit System and Assessment challenge. On March 7, 2012, the U.S. Court of Appeals 2<sup>nd</sup> Circuit (USCA 2<sup>nd</sup> Circuit) affirmed the District Court's ruling on preemption and dismissal of DEC. However, the USCA 2<sup>nd</sup> Circuit also vacated the District Court's abstention ruling and remanded NiMo's federal and NY constitutional claims back to the District Court for further proceedings. Special Counsel Justin Driscoll indicates that the District Court's scheduling conference set for late October was postponed without date due to Hurricane Sandy.

Mr. Ferrara presented his report to the Board.

At the close of fiscal November 2012, general fund balances for the HRA and BRA were approximately \$445k and \$741k respectively. Regulating District transactional processing and reporting for the fiscal month of November was completed in an accurate and timely fashion. Regulating District expenses for the month came in at forecasted levels. Mr. Ferrara noted receipt of a past due assessment for 2009 from Georgia Pacific and noted that permit system renewal fee receipt is ahead of target.

Mr. Foltan presented the Chief Engineer's report to the Board.

Mr. Foltan noted that the Board suspended completion of all Hudson River Area maintenance projects in September 2009 to preserve the Regulating District's reserve funds to sustain Hudson River Area operations during the Board's completion of a new Apportionment of Hudson River Area costs. Two projects which the Board postponed included the Conklingville Dam Breach Analysis and Inundation Mapping; and the installation of warning sirens

downstream of the Conklingville Dam along the Sacandaga and Hudson Rivers. As noted in an earlier meeting, by letter dated October 23<sup>rd</sup>, the Federal Energy Regulatory Commission (FERC) requested the submission of a plan and schedule for these two projects. Mr. Foltan recommended that the Board authorize a response to FERC setting forth a proposed plan and schedule. The schedule contemplates a restart and rescheduling of the Conklingville Dam Breach Analysis along with issuance of a Notice to proceed to the chosen engineering consultant and the solicitation of bids for the warning siren project.

Mr. Clark noted a change in the schedule and Mr. Ferrara responded to questions posed by Mr. Astafan regarding the amounts budgeted and the impact a failure in settlement talks with the Five Counties could have on the awarding of these projects.

Mr. Astafan made a Motion to authorize the Executive Director to submit the proposed schedule to FERC; to issue a Notice to Proceed to the engineering consultant awarded the Conklingville Dam Breach Analysis project; and to solicit bids for the warning siren project. Mr. Finkle seconded the Motion. The Motion was adopted unanimously.

Mr. Hodgson presented his report to the Board.

Mr. Hodgson reported that staff has placed rip rap on 768 feet of GSL shoreline and that the Mayfield office mailed the annual permit renewals earlier this week. Said renewals are being processed. He offered special thanks to the staff of the Mayfield office for completing the mailing. Chairman Berkstresser offered his congratulations to staff and then also offered his congratulations to Mr. Hodgson with respect to a letter praising Mr. Hodgson's efforts as the Hudson River Area Administrator.

Mrs. Wright presented her report to the Board.

Mrs. Wright reported the office staff and field staff have been working together over the past couple of months in creating and implementing visual field inspection records for the three dam sites and three gauging stations within the Black River area. She also acknowledged the field staff's recent success in designing, fabricating and securing replacement tie-downs on the two operator/gates at the Old Forge Dam. This season's final removal of invasive species found on the upstream side of the Stillwater spillway has been completed. The field staff will continue monitoring the area early next spring for possible/probable regrowth.

#### **RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE JANUARY 23, 2013 BOARD MEETING**

Chairman Berkstresser asked for a Motion to adopt a revised Resolution setting the January 23, 2013 date of the Board's next meeting at Johnstown.

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

**ADJOURNMENT**

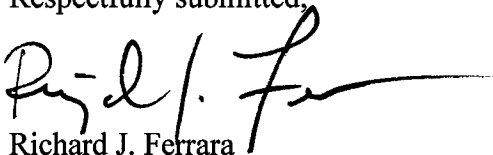
There being no further business to come before the Board, Mr. Astafan moved to adjourn the meeting. Mr. Hayes seconded it. The motion was unanimously approved. The meeting adjourned at 12:50 P.M.

**RESOLUTIONS**

**12-39-12 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE JANUARY 23, 2013 BOARD MEETING**

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

Respectfully submitted,



Richard J. Ferrara  
Secretary/Treasurer