

**HUDSON RIVER-BLACK RIVER REGULATING DISTRICT  
FINANCE COMMITTEE MEETING  
July 10, 2012**

Mayfield Municipal Complex  
28 North School Street  
Mayfield, New York 12117

**CALL TO ORDER**

Committee Chairman Stover called the meeting to order at 10:02 A.M.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**Present:** Committee Chairman Thomas Stover; Committee Member Mark M. Finkle; Board Chairman as Ex Officio Committee Member David W. Berkstresser; 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.

**Excused:** Michael F. Astafan

**MOTION TO ADOPT COMMITTEE MEETING AGENDA**

Chairman Stover noted that the adoption of an Apportionment reflecting a state share will require an amendment to the current and past budgets. The Chairman asked for a Motion to revise the Committee's draft agenda to reflect consideration of amendments to the current and past budgets. Mr. Finkle moved to adopt a revised meeting agenda. Mr. Stover seconded it and the motion was unanimously approved.

**APPROVAL OF JUNE 12, 2012 FINANCE COMMITTEE MEETING MINUTES**

A motion was made by Mr. Finkle to adopt the June 12, 2012 Finance Committee Meeting Minutes. Mr. Stover seconded it and the motion was unanimously approved.

**COMMITTEE BUSINESS**

Old Business –

- (A) Motion to Advance to the full Board & Recommend Adoption of a HRA Apportionment
  - a. Mr. Stover asked Mr. Clark and staff to present to the Committee staff's recommendation for an apportionment of Hudson River Area costs. Mr. Clark lead a discussion with the Committee through which he and staff summarized the written materials presented to the Board to outline the apportionment methodology recommended by staff and described the procedural steps necessary to adopt the apportionment and satisfy the Appellate Division Third Department's May 10, 2012 decision. The Committee considered the following issues:
    - i. Staff recommends the new Apportionment in light of the Appellate Division Third Department's May 10, 2012 decision which declared the Board's previous

- Apportionment invalid to the extent that it failed to consider and reduce the total amount to be Apportioned by the amount chargeable to the State
- ii. This Apportionment uses the same methodology which the Appellate Division Third Department determined to be rational. It also establishes a state share of 11.96%. Due to slight revisions in the inputs, to remove the value of State properties within the affected counties, the percentage of costs to be borne by each county changes slightly from the March 2010 apportionment.
  - iii. The Apportionment will be used to re-set the percentage of costs for the Regulating District's fiscal years 2009-2010, 2010-2011, & 2011-2012 to be borne by the identified beneficiaries and the state. It will also be used to establish the percentage of costs for the current and future fiscal years.
  - iv. The need for the Apportionment arose from the United State Court of Appeals, DC Circuit November 28, 2008 decision.
  - v. Pursuant to ECL 15-2125(1), the Apportionment calculates a 'Reasonable Return to the State' at zero dollars.
    1. Reasonable return includes the value of rights and property of the State used
    2. This equals six percent of the value of State lands flowed
    3. However, State lands flowed does not include private lands purchased
    4. No State lands were used to construct the GSL Reservoir
    5. Reasonable Return also includes value of State services rendered
    6. No direct State resources have been employed to enable the Regulating District's current operations
  - vi. Consistent with the Appellate Division Third Department's ruling, staff again recommends grouping towns, villages, cities and individual parcels to establish the County beneficiaries
  - vii. Staff recommends not breaking out the expenses or beneficiaries associated with the Indian Lake Reservoir.
    1. The added cost would not materially reduce, and may not reduce at all, the charges imposed upon the identified beneficiaries.
    2. Indian Lake expenses are small (\$62k of \$3.8 Million)
    3. Many of the same beneficiaries, small volume, steep channel, limited floodplain
    4. Benefits from GSL mathematically/statistically account for protection provided by IL (hydraulic modeling margins/error)
  - viii. The statutory requirement to view does not require that the entire Board visit each parcel, or even each municipality within the petition area. Rather, it contemplates a thorough understanding of the apportionment's breadth & scope. In as much as federal law prohibits the District from apportioning costs among hydroelectric power companies, it is rational to conclude that the requirement to view the individual hydropower generating facilities is moot. The Appellate Division Third Department decision affirmed this interpretation.
  - ix. The Board must certify the Apportionment to DEC for approval. In addition, should the Apportionment be modified after the Board hears grievances, the Board must then certify the modified Apportionment to DEC for its approval.
  - x. The Board must afford any interested person an opportunity to grieve the apportionment
    1. The Committee recommends that the Board hold an Apportionment Grievance Hearing at the September meeting. The Committee discussed moving the meeting from its current proposed location, Lowville, to either Ballston Spa or

- the Warren County Office Building to accommodate the Five Counties and/or counsel for the Five Counties.
- 2.HRBRRD Regs will govern the hearing process
- 3.The Board will cause staff to publish Notice of the Hearing
- 4.The Committee recommends that staff prepare a press release to announce the Apportionment
- xi. This new Apportionment uses the same methodology used in the March 30, 2010 Apportionment.
  - 1.Compare value of real property within a 100-year floodplain within each County within the Regulating District’s petition area downstream of the Conklingville Dam to all such properties.
  - 2.A slight revision to the data inputs will reduce each County’s total property value by the value of State Properties within that County.
  - 3.This Apportionment will utilize the same data compiled for the 2010 Apportionment. Staff found no evidence that the Assessment rolls provided by the Counties have undergone a material change
- xii. As noted in the Chief Engineer’s September 10, 2010 Memo, staff recommends that the District not utilize the methodology suggested by the Consultant (AEG)
- xiii. The methodology utilized to calculate the Amount Chargeable to the State (aka “State Share”) is similar, but not identical to the methodology used to compare among the Counties.
  - 1.Both use the same property values within the 100-year floodplain
  - 2.Both recognize that, after hydropower, flood protection is the most substantial, clearly defined benefit.
  - 3.The state share calculation identifies and extracts the value of all State properties lying within the affected counties and adds that figure to the value of state roadways and state bridges before comparing such sum to the value of all non-state properties within the affected counties.
  - 4.State roads are valued at \$1.5 M per mile; an accepted design standard for budgeting and programming for State DOT and Federal Highway Administration across the United States.
  - 5.State bridge values are calculated at \$300 per Sq Ft; also an accepted design standard for budgeting and programming for State DOT and Federal Highway Administration across the United States.
- xiv. Although the various benefits (augmentation, waste assimilation, canal operation, flood protection, recreation, quality of the environment) derived by the State and by the Counties may differ, the use of value of state and the value of non-state property within the 100-year flood plain as a basis for calculating a respective proportion of benefit derived by the state and each county remains equally rational and reasonable as the methodology used in the March 30, 2010 apportionment. The flood protection benefit realized by each beneficiary and the State continues to represent all benefits received by those beneficiaries and the State.
- xv. Staff rejected a number of alternative methodologies

Mr. Stover asked for a Motion to advance to the full Board and recommend for adoption the Apportionment for the Hudson River Area. Mr. Finkle made the Motion. Mr. Stover seconded it and the motion was unanimously approved.

New Business -

(A) Motion to Advance to the full Board & Recommend Adoption of a Resolution to revise the July 1, 2012 through June 30, 2015 Budget

- i. Mr. Ferrara explained that because the Apportionment being advanced to the Board includes an amount chargeable to the State, the 2012-2015 budget adopted by the Board through Resolution 12-24-06 at the June 2012 meeting requires revision. This revision will not affect any of the cost elements of the budget, but will rather cause the 2012-2015 budget to accurately reflect the amount to be assessed to HRA beneficiaries.

Mr. Stover asked for a Motion to advance to the full Board and recommend for adoption the revised July 1, 2012 through June 30, 2015 Budget. Mr. Finkle made the Motion. Mr. Stover seconded it and the motion was unanimously approved.

(B) Motion to Advance to the full Board & Recommend Adoption of a Resolution to revise the July 1, 2009 through June 30, 2012 Budget

- i. Mr. Ferrara explained that, similar to the revision to the current budget, a revision to the 2009-2012 budget is required to accurately reflect the amount chargeable to the State wrought by the Apportionment which the Committee is advancing to the full Board for consideration and passage. This revision will not affect any of the cost elements of the budget, but will rather cause the 2009-2012 budget to accurately reflect the amount to be assessed to HRA beneficiaries.

Mr. Stover asked for a Motion to advance to the full Board and recommend for adoption the revised July 1, 2009 through June 30, 2012 Budget. Mr. Finkle made the Motion. Mr. Stover seconded it and the motion was unanimously approved.

(C) Discussion of Motion to Adopt the July 1, 2012 through June 30, 2013 Hudson River Area Assessment

- i. Mr. Ferrara explained that upon final adoption of the Apportionment for the Hudson River Area, the Regulating District will be in a position to issue assessments for the 2012 -2013 fiscal year. However, such assessments will not be issued before; Board approval of the Apportionment, DEC approval of the Apportionment, service of the Apportionment as required by the HRBRRD's enabling statute, and conduct of an Apportionment Grievance Hearing. Mr. Ferrara projected that the Apportionment would be finalized and Assessment adoption would likely be on the Committee's and Board's agenda for the September 2012 meeting. Barring unforeseen circumstances, the Assessments would be adopted in September and be due by the end of October 2012.

## **ADJOURNMENT**

There being no further business to come before the Finance Committee, Mr. Finkle moved to adjourn the meeting. Mr. Stover seconded it. The motion was unanimously approved. The committee meeting adjourned at 10:52 A.M.

Respectfully submitted,

Richard J. Ferrara  
Secretary/Treasurer