

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

May 8, 2012

Johnstown Town Hall
2753 State Highway 29
Johnstown, NY 12095

CALL TO ORDER

Chairman David W. Berkstresser called the meeting to order at 10:40 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. Clark asked that the Board consider adding an agenda item after his report to the Board. Mr. Hayes moved to revise the agenda to allow for the consideration of a Resolution concerning the sale of the Regulating District's work boat, and then to adopt the meeting agenda as revised. Mr. Finkle seconded it and the motion was unanimously approved.

PUBLIC COMMENT PERIOD

Chairman Berkstresser solicited comments from the public. The Board heard extended comments from Counsel for the Sacandaga Protection Committee and an additional nine (9) members of the public who spoke in opposition to, or in support of, a resolution previously tabled by the Governance Committee, and an appeal of the Executive Director's decision on a permit matter related to the subject matter of said resolution.

APPROVAL OF THE APRIL 10, 2012 BOARD MEETING MINUTES

A motion was made by Mr. Hayes to approve the Minutes of the Board's April 10, 2012 meeting. Mr. Stover seconded it and the motion was unanimously approved.

EXECUTIVE DIRECTOR'S REPORT

Mr. Clark again 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 was expected in eight to ten weeks from the February 6th oral argument date. This coming Thursday marks week Thirteen (13).

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

RESOLUTION AUTHORIZING THE SALE OF WORK BOAT THROUGH EBAY

Mr. Clark presented the Board with a proposed Resolution authorizing the sale of the Work Boat through EBay. He explained that because use of the boat is not the most efficient manner of placing riprap, and in light of the fiscal difficulties facing the District, no riprap was placed using the boat this year or last, sale before further deterioration is desirable. In addition, in keeping with the statewide effort to dispose of surplus property in the most efficient manner, Mr. Clark recommended placement of the boat for sale on EBay.

Mr. Stover moved the Resolution authorizing the sale of the work boat through EBay. Mr. Hayes seconded it and the Resolution was unanimously adopted.

RESOLUTION TO APPROVE 11TH AMENDMENT TO CONTRACT C022004.

Mr. Leslie noted that the legal services contract between the Regulating District and the law firm of Brown & Weinraub is nearing its expiration date. While there is no need at this time to amend the contract's 'not-to-exceed' amount, the litigation that is the subject of the contract continues. Mr. Leslie recommended that the contract term be extended by one year. The contract's approval by the Board is subject to approval by the Attorney General and the Office of the State Comptroller.

Mr. Hayes moved the Resolution to approve the 11th amendment to Contract C022004. Mr. Stover seconded it and the Resolution was unanimously adopted.

GOVERNANCE COMMITTEE REPORT

Mr. Hayes noted that the Governance Committee had met earlier to discuss the resolution through which the Board might have revised the existing past practices resolution (10-03-01). Mr. Hayes noted that the Governance Committee had tabled the Resolution in Committee. He and Mr. Clark noted that no further action on the subject resolution is contemplated at this time.

FINANCE COMMITTEE REPORT

Mr. Stover reported on the Finance Committee's consideration of the draft 2012-2015 Triennial budget. Mr. Stover noted that the Committee will continue its work on the draft budget with the expectation that it will be ready for consideration by the Board following the Finance Committee's next scheduled meeting in June in Inlet, NY.

STAFF REPORTS

Mr. Leslie presented his report to the Board.

Mr. Leslie reported that there have been no changes since his last report 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 3rd Dept heard oral argument on Monday, February 6th. Based on the Court's previous decision release history, we expected a decision within 8 to 10 weeks (April 2nd - 16th).

There also has been no change with regard to NiMo's federal and state constitutional challenges before the U.S.D.C., N.D.N.Y. 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 2nd Circuit (USCA 2nd Circuit) affirmed the District Court's ruling on preemption and dismissal of DEC. However, the USCA 2nd 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 David Cherubin continues to await the District Court's scheduling order with respect to the remanded claims. Mr. Leslie noted that Mr. Cherubin had accepted an appointment to work with the administration and that Mr. Clark and Mr. Leslie would be meeting with other counsel at Brown & Weinraub to confirm that office's availability to continue representation.

There has been no change on NiMo's state court assessment challenges. 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. David Cherubin of Brown & Weinraub prepared and served the Regulating District's Answer on or about October 18, 2011. On January 11, 2012, Judge Aulisi denied the Sacandaga Protection Committee's 7/26/11 Motion to Intervene.

Mr. Leslie reported that he prepared the request through which the Executive Director asked the Attorney General to appeal the April 2, 2012, Albany County Supreme Court (Judge Teresi) grant of summary judgment to Albany Engineering Corp awarding \$516,655.62 plus interest dating back to January 1, 2003. The Department of Law reports that the Plaintiff's Notice of Entry of Judgment was filed and that the Notice of Appeal must be filed by May 16th. In addition, the Attorney General has moved to re-argue the issue of the imposition of interest from January 1, 2003.

Mr. Leslie reported that he attended an Equal Employment Opportunities briefing with the Executive Director. The Division of Human Rights and the Governor's office presented an overview of issues faced by employees and employers.

On January 25th, the Chief Engineer received from FERC a draft of the Headwater Benefits Determination for the Hudson River Basin. The District submitted its comments on March 19th. Erie Boulevard and others submitted comments as well. As requested, Mr. Leslie prepared a response to the Erie Boulevard comment.

Mr. Leslie reported that he had reviewed and updated the Regulating District's Workplace Violence Prevention program for 2012. Additional revisions will be necessary now

that the move to the new office in Watertown is complete. Mr. Leslie indicated he would help Carol Simpson Wright to prepare the necessary revision.

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 in the Hudson River Area and in the Black River Area remain as forecasted. He continues preparation of the draft 2012-2015 budget.

Mr. Ferrara noted that the server deployment has been completed. The hardware and software have been installed. Data migration is complete and email is now functioning off of the new server. The Regulating District's piece of the statewide accounting system, "MASS-90", is to be migrated shortly.

Mr. Foltan presented his report to the Board

Mr. Foltan noted that inflow at Indian Lake and Great Sacandaga Lake reflects the below average precipitation received over the reporting period (63 and 46% of historic average precipitation respectively). With respect to GSL, this reduced inflow has resulted in lake levels 2.5' below the settlement target and 3.5' below historic average for this time of the year. None-the-less, receipt of historic average rainfall throughout the balance of the spring refilling period should be sufficient to refill the reservoir.

Mr. Foltan provided a follow-up on last month's report on the Milone & McBroom, Inc's remediation assessment summary for Hawkinsville. The assessment had identified 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 established a cost range from \$1million to \$7 million for the various remediation options and about \$500,000 for removal. Staff have determined that the 'removal' alternative warrants additional consideration. While not the least expensive option, it is much less costly than some other alternatives and does not impact private property as significantly as the other alternatives.

Mr. Hodgson presented his report to the Board

Mr. Hodgson reported staff remains busy staking out permit areas for new property owners. The volume of permit renewals has wound down, but has been replaced by work permit applications. In addition, with the warmer weather the number of boundary disputes and complaints regarding neighborly behavior has started to increase.

Mrs. Wright presented her report to the Board

Mrs. Wright noted that staff at the Black River Field Office assisted in the Black River Area Office move to the Dulles Building. The move has been completed. Field staff has fertilized and limed the embankment at Stillwater and have prepared the log booms for Sixth Lake and Old Forge.

RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE JUNE 12, 2012 BOARD MEETING

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

BOARD BUSINESS

Mr. Berkstresser asked staff to inquire of the Town of Webb regarding the progress on the sewer pump station at Old Forge.

RESOLUTIONS

12-15-05 RESOLUTION AUTHORIZING THE SALE OF WORK BOAT THROUGH EBAY

Mr. Stover moved the Resolution authorizing the sale of the work boat through EBay. Mr. Hayes seconded it and the Resolution was unanimously adopted.

12-16-05 RESOLUTION TO APPROVE 11TH AMENDMENT TO CONTRACT C022004.

Mr. Hayes moved the Resolution to approve the 11th amendment to Contract C022004. Mr. Stover seconded it and the Resolution was unanimously adopted.

12-17-05 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE JUNE 12, 2012 BOARD MEETING

Mr. Finkle moved to adopt the Resolution. Mr. Hayes 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. Stover seconded it. The motion was unanimously approved. The meeting adjourned at 12:22 P.M.

Respectfully submitted,



Richard J. Ferrara
Secretary/Treasurer