

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

**November 7, 2012 - 10:00 A.M.**

**Washington County Municipal Center**

383 Broadway

Bldg. B, Room 230

Fort Edward, New York 12828

**CALL TO ORDER**

Chairman David W. Berkstresser called the meeting to order at 10:08 A.M.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

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

**Excused:** Michael Astafan; Robert Foltan

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

Chairman Berkstresser noted the need to revise the agenda to include discussion regarding a revised assessment for 7/1/09 – 6/30/10 to reflect the reclassification of parcel #6 in the HRA owned by Georgia Pacific. The Chairman asked for a Motion to revise the meeting agenda. Mr. Finkle made a Motion to adopt the proposed meeting agenda as revised. Mr. Stover seconded it and the motion was unanimously approved.

**PUBLIC COMMENT PERIOD**

Chairman Berkstresser solicited comments from the public. John Morabito of Beech Trail Associates spoke regarding the timing of the Fall drawdown at Indian Lake.

**APPROVAL OF THE OCTOBER 10, 2012 BOARD MEETING MINUTES**

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

**APPORTIONMENT**

Mr. Clark presented staff findings with respect to the Apportionment. Mr. Clark noted that staff has nearly completed its review of the three primary points raised by the Five Counties at the September 21<sup>st</sup> Apportionment Grievance Hearing. Staff has conducted a line-by-line review of the assessment rolls provided by each of the Five County Assessors; identifying several

duplicate entries and a couple of State owned properties depicted as non-state owned. Staff has also further refined the unit value applied to the total square foot of deck area used to establish the value of state bridges. Staff is working to finalize its analysis of the value of state owned highways within the 100 year flood plain. Mr. Clark indicated that staff should be prepared to present the Board with a recommendation for revisions to the July 2012 Apportionment at the Board's December meeting.

## **EXECUTIVE DIRECTOR'S REPORT**

Mr. Clark noted that the bulk of his time this month has been spent revising the 2012 Hudson River Area Apportionment and communicating with the FPA Section 10(f) hydroelectric producers to satisfy FERC's final Headwater Benefits Determination and Order. Mr. Clark reported that his focus, and the focus of the Chief Engineer, the Chief Fiscal Officer, General Counsel has this month been directed to an analysis of the points raised by the Five Counties at the September 21<sup>st</sup> Apportionment Grievance Hearing. He noted that staff is addressing each of the three general topic areas raised including duplicate non-state-owned properties in the assessment data, the number of lane miles of NYS Highways in the floodplain and the per square-foot cost used to value NYS State owned bridges in the floodplain.

Mr. Clark also noted that all but one of the FPA Section 10(f) hydroelectric power producing beneficiaries have contacted the Regulating District regarding payment of Headwater Benefits. Each of the hydropower producers has proposed some version of 'immediate payment'. To date, in light of the Five Counties' reluctance to make payments of assessments and the potential for successful defense of litigation filed by some of those beneficiaries, the Regulating District is not in a position to honor any of the proposals advanced.

Mr. Clark noted that FERC's NYC office sent an October 23, 2012 letter which identified several uncompleted action items previously noted as deficiencies in the Regulating District's Emergency Action Plan. FERC noted that the Regulating District had undertaken certain required activities, but that it had failed to complete improvements to flood inundation mapping and the installation of warning sirens in the Town of Lake Luzerne and the Village of Hadley. While FERC acknowledged the revenue shortfalls which make completion of those items difficult, FERC's letter constitutes notice that the Commission is authorized to impose civil penalties of up to \$11,000 per day for continued non-compliance. Mr. Clark noted, that in satisfaction of a requirement in the letter, he and staff participated in a conference call on Monday the 6<sup>th</sup> with FERC to discuss a schedule for coming into compliance.

## **STAFF REPORTS**

Mr. Leslie presented his report to the Board.

Mr. Leslie reported to the Board that on October 30, 2012, the New York State Court of Appeals issued a decision denying the Five Counties Motion for Leave to Appeal the Appellate Division Third Department's May 10, 2012 decision. Therefore, the Five Counties have exhausted their appellate options with respect to the methodology employed by the Regulating District.

Mr. Leslie noted that the Regulating District submitted its response to FERC's Headwater Benefits Determination and Order well within FERC's October 29<sup>th</sup> deadline. Several hydropower beneficiaries have also responded to FERC within the deadline; some noting their displeasure that the Regulating District continues to contest its obligation to pay refunds alluded to by FERC's Order. Several beneficiaries also took issue with the Regulating District's assertion that it lacks funds necessary to make such payments in the event such payments become due.

On June 4 and June 6<sup>th</sup> respectively, Fulton County and then Hamilton County brought suit to compel payment of school and property taxes. Fulton County Supreme Court (Aulisi) issued decisions and Judgments in favor of Fulton (\$1,660,129.90) and Hamilton (\$119,361.84). By Order dated 10/18/12 Judge Aulisi clarified his decision to reflect no intention to hold any of the Board members named in the decision personally liable for payment of either judgment. The Judgment remains outstanding.

Mr. Leslie noted FERC's October 23, 2012 letter regarding the Regulating District's inability to address 'significant deficiencies' in coming into compliance with its Emergency Action Plan. Specifically, Mr. Leslie noted the potential that FERC might impose penalties reaching \$11,000 per day for continued non-compliance. Such expenses of the District would have to be passed onto the Regulating District's beneficiaries as an expense of the District. In addition, some of the deficiencies noted (failure to install warning sirens for one) are required based on the desires of Towns within the Counties affected by the Apportionment.

Mr. Ferrara presented his report to the Board.

At the close of fiscal October 2012, general fund balances for the HRA and BRA were approximately \$400k and \$140k respectively. However, the BRA is in receipt of \$579k in assessment revenue during the first week in November. Regulating District transactional processing and reporting for the fiscal month of October was completed in an accurate and timely fashion. Regulating District bank reconciliations are complete through September 2012. Regulating District expenses for the month came in at forecasted levels.

Mr. Ferrara presented the Board with the list of Board Member expenses depicted at page 49 of his report. Chairman Berkstresser asked for a Motion to approve said expenses. Mr. Hayes made the Motion to approve \$1,073.38 expenses incurred by Mr. Stover. Mr. Finkle seconded and the Motion was approved unanimously.

**RESOLUTION TO APPROVE REVISED ANNUAL ASSESSMENT FOR THE OPERATION AND MAINTENANCE OF THE GREAT SACANDAGA LAKE FOR THE FIRST YEAR OF THE THREE YEAR BUDGET PERIOD BEGINNING JULY 1, 2009 THROUGH JUNE 30, 2012**

Mr. Ferrara explained that the Board adopted Resolution 09-26-06 approving the Annual Assessment for the Operation and Maintenance of Sacandaga Reservoir, now Great Sacandaga Lake, for the first year of the budget period beginning July 1, 2009 in the total amount of \$5,404,933.00. That assessment excluded all known licensed hydro beneficiaries pursuant to the mandate and decision of the United States Court of Appeals for the District of Columbia in

Albany Engineering v. FERC, 548 F.3d 1071 (D.C. Cir 2008) including Georgia Pacific Corporation. During an audit, staff determined that the assessed parcel #6 in the Town of Greenwich in Washington County owned by Georgia Pacific Corporation, (undeveloped head), is not a licensed hydro project as defined by the mandate and decision of the US Court of Appeals for the District of Columbia. Therefore, Mr. Ferrara recommended that the Board authorize the HRBRRD Secretary to collect said assessment from Georgia Pacific Corporation in the amount of \$70,461.09, as allowed or required by law.

Mr. Stover made a Motion to adopt the Resolution to approve a revised annual assessment for 2009-2012. Mr. Finkle seconded it and the Resolution was adopted unanimously.

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

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.

#### **RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE DECEMBER 11, 2012 BOARD MEETING**

Chairman Berkstresser asked for a Motion to adopt a Resolution setting the December 11, 2012 date of the Board's next meeting at Watertown.

In response to an inquiry regarding the potential to move the location of the next meeting to accommodate the Hudson River Area beneficiaries interested in the Board's final adoption of the Hudson River Area Apportionment, Chairman Berkstresser agreed to confer with staff regarding the location of the December meeting. However, in the absence of a subsequent notice providing another location, staff recommended that the Board establish the tentative plan to hold the meeting in Watertown.

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

#### **MOTION FOR EXECUTIVE SESSION**

Chairman Berkstresser called for a Motion to adjourn to Executive Session to consider the Regulating District's position in light of the Court of Appeals decision in the Five Counties litigation. Chairman Berkstresser invited the Executive Director, the Chief Fiscal Officer and General Counsel to participate noting that the Board would not conduct business upon its return from Executive Session. Mr. Hayes seconded and the Chairman's motion was adopted

unanimously. The Board adjourned to Executive Session at 11:12 AM and returned at 12:20 P.M.

**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 12:20 P.M.

**RESOLUTIONS**

**12-37-11 RESOLUTION TO APPROVE REVISED ANNUAL ASSESSMENT FOR THE OPERATION AND MAINTENANCE OF THE GREAT SACANDAGA LAKE FOR THE FIRST YEAR OF THE THREE YEAR BUDGET PERIOD BEGINNING JULY 1, 2009 THROUGH JUNE 30, 2012**

Mr. Stover made a motion for the Board to adopt the Resolution. Mr. Finkle seconded and the Resolution was unanimously adopted.

**12-38-11 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE DECEMBER 11, 2012 BOARD MEETING**

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

Respectfully submitted,



Richard J. Ferrara  
Secretary/Treasurer