

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

**October 10, 2012 - 10:00 A.M.**

Stillwater Hotel  
2591 Stillwater Road  
Stillwater Reservoir  
Lowville, New York 13360

**CALL TO ORDER**

Chairman David W. Berkstresser called the meeting to order at 10:06 A.M.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**Present:** Board Chairman David W. Berkstresser; First Vice Chair Michael F. Astafan; Second Vice Chair Mark M. Finkle; Board Members Albert J. Hayes 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: Thomas Stover

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

Chairman Berkstresser asked for a Motion to adopt or revise the meeting agenda. Mr. Hayes made a Motion to adopt the proposed meeting agenda. Mr. Finkle seconded it and the motion was unanimously approved.

**PUBLIC COMMENT PERIOD**

Chairman Berkstresser solicited comments from the public; hearing none.

**APPROVAL OF THE SEPTEMBER 21, 2012 BOARD MEETING MINUTES**

A motion was made by Mr. Finkle to approve the Minutes of the Board's September 21, 2012 meeting. Mr. Hayes seconded it and the motion was unanimously approved.

**EXECUTIVE DIRECTOR'S REPORT**

Mr. Clark noted that the balance of his time has again this month been spent addressing demands lodged by the various hydropower entities following FERC's final Headwater benefits determination. 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 duplicates in the data,

value of State roads and value of state bridges. At Mr. Clark's request, Mr. Foltan spoke to the process he has undertaken to analyze the relevant property assessment rolls and to identify state properties within those rolls. Mr. Clark indicated that he expected that staff would be prepared to begin meeting with representatives from the Five Counties shortly to work out any differences revealed by our continuing analysis. Mr. Clark also detailed his meeting with the District's commercial insurance underwriter's loss control consultant; an event designed to catalog the Regulating District's assets and safety processes. Mr. Clark noted that the balance of his time has again this month been spent addressing demands lodged by the various hydropower entities following FERC's final Headwater benefits determination.

## **CONTRACTS**

### **RESOLUTION TO ACCEPT KLEINSCHMIDT ASSOCIATES, PA, PC REVISED/UPDATED PROPOSAL FOR ENGINEERING SERVICES FOR THE INDEPENDENT CONSULTANT REVIEW AND COMMENT ON THE STILLWATER DAM LIQUEFACTION AND DEFORMATION ANALYSIS**

Mr. Foltan explained that FERC requested a liquefaction and deformation analysis of the north embankment dam at Stillwater Reservoir. The contractor hired, Paul C. Rizzo Engineering – New York PLLC (Rizzo) submitted its analysis in July of 2011. Pursuant to FERC requirements, said study requires a review by the Part 12D Independent consultant, Jeffrey H. Coffin, P.S. of Kleinschmidt Associates, PA, PC (Kleinschmidt) prior to its submission to FERC. The Board approved Resolution 11-31-10 accepting Kleinschmidt's fee and scope proposal for the review totaling \$9,400. However, due to a suspension of work required by the Regulating District and Rizzo's resulting delay in the submission, Kleinschmidt requests an adjustment in their fee of \$300. Mr. Foltan recommends that the Board approve the payment of the additional fee.

Mr. Astafan made a motion for the Board to accept the updated proposal. Mr. Finkle seconded and the Resolution was unanimously adopted.

### **MOTION TO AUTHORIZE THE EXECUTIVE DIRECTOR TO ISSUE A REQUEST FOR QUALIFICATIONS FOR ENGINEERING SERVICES FOR THE STILLWATER DAM BREACH ANALYSIS, CONTRACT C022012, INCLUDING AN UPDATE OF BREACH ANALYSIS AND DEVELOPMENT OF INUNDATION MAPPING**

Mr. Foltan explained that in October 2009 FERC provided recommendations to enhance the overall effectiveness to the Stillwater Dam Emergency Action Plan. In December 2009, staff provided the Board with a schedule to address FERC's comments. In June 2011, FERC restated its recommendation for revision of the dam failure analysis. Staff has estimated the probable cost to complete the study and included that expense in the budget for the Black River Area approved in July 2012. Mr. Foltan recommends that the Board authorize the release of an RFQ to complete a Dam Breach Analysis and to develop Dam Breach Inundation Mapping.

Mr. Finkle made a motion for the Board to authorize the issuance of the Request for Qualifications. Mr. Astafan seconded and the motion was unanimously adopted.

## STAFF REPORTS

Mr. Leslie presented his report to the Board.

In response to an inquiry from Mr. Astafan, Mr. Leslie recounted the status of the judgment lodged against the Regulating District by the Fulton County Supreme Court. 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. After submission and receipt of the Attorney General's letter in response, Fulton County Supreme Court (Aulisi) issued a decision and Judgment in favor of Fulton County and another in favor of Hamilton County. The decision orders the Regulating District and each individual Board Member to pay \$1,660,129.90 within 10 days of Notice of Entry. (Hamilton = \$119,361.84). By letters dated August 23, 2012, the Attorney General's office granted each Board member's request for representation and indemnification with respect to the personal liability imposed by the Court's Orders. AAG Dague filed a Motion to Reargue and accompanied myself and the Executive Director to the Judge's chamber on the September 4 return date. Judge Aulisi offered to clarify 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 parties also agreed to an extension of the deadline for compliance with the Court's judgment to September 28<sup>th</sup> to provide sufficient time for the Board to complete the 2012 Apportionment Grievance Hearing procedure and for the Court to issue its clarification. Following passage of that deadline, the Assistant Attorney General scheduled meetings and calls with representatives from Fulton and Hamilton County. Neither Fulton nor Hamilton County has initiated any further action.

Mr. Ferrara presented his report to the Board.

Mr. Ferrara noted that the Cash Flow Report on page 48 of the Board packet reflects available funds through 6/30/2012, not 8/30/2012 as indicated in his written report on page 26. He further reported that the Data Request report due on 9/30/2012, via the public authority reporting system, was submitted on time. Reports submitted include the Procurement, Investment and final Independent Audit. Mr. Ferrara also noted that the Independent Audit Report has now been finalized and made available on the District's website. The principal auditor, Randy Sheppard, will present the report to the audit committee at the December meeting.

Mr. Foltan presented his report to the Board

Mr. Hodgson presented his report to the Board

Mr. Hodgson reported staff remains busy arbitrating disputes among permit system area neighbors. He also noted that staff has been engaged in rip rap repair utilizing existing stock of stone, and that the Mayfield office has begun to prepare the annual permit renewals.

Mrs. Wright presented her report to the Board

Mrs. Wright reported the field staff in the Black River Area has been preparing for the change of seasons, readying winter equipment and winterizing other. The field staff most recently finished painting the inside of the gatehouses at Sixth Lake and Old Forge. The Area Administrator pointed out she has been working with the Field Superintendent in developing an observation and monitoring checklist and schedule concerning certain points of interest located throughout the Black River Area and brought to light during dam safety inspections this past summer by the Regulating District's chief engineer, DEC and FERC. Mrs. Wright thanked the Board for returning to Stillwater Reservoir for their October board meeting and indicated the field staff was prepared to give board members a tour of the Stillwater dam facility if they were so inclined to accept.

#### **RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE NOVEMBER 7, 2012 BOARD MEETING**

Chairman Berkstresser asked for a Motion to adopt a Resolution setting the November 7, 2012 date of the Board's next meeting at Fort Edward.

Mr. Hayes moved to adopt the Resolution. Mr. Finkle 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. Astafan seconded it. The motion was unanimously approved. The meeting adjourned at 10:59 P.M.

#### **RESOLUTIONS**

**12-35-10 RESOLUTION TO ACCEPT KLEINSCHMIDT ASSOCIATES, PA, PC REVISED/UPDATED PROPOSAL FOR ENGINEERING SERVICES FOR THE INDEPENDENT CONSULTANT REVIEW AND COMMENT ON THE STILLWATER DAM LIQUEFACTION AND DEFORMATION ANALYSIS**

Mr. Astafan made a motion for the Board to accept the updated proposal. Mr. Finkle seconded and the Resolution was unanimously adopted.

**12-36-10 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE NOVEMBER 7, 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