

**HUDSON RIVER-BLACK RIVER REGULATING DISTRICT
BOARD MEETING MINUTES
737 Bunker Hill Road
Mayfield, NY 12117
November 9, 2022**

Immediately Following the Finance Committee Scheduled for 10:00 AM

Remote Conference-In Information

Participants were invited to join the meeting via computer, tablet or smartphone.
<https://global.gotomeeting.com/join/652825493> or via phone.
United States: [+1 \(872\) 240-3412](tel:+18722403412) Access Code: 652-825-493

CALL TO ORDER

Chairman Mark M. Finkle called the meeting to order at 10:16 A.M.

ROLL CALL

Present: Board Chair Mark M. Finkle, Second Vice-Chair Kenneth F. DeWitt; Board Members Albert J. Hayes, Alfred J. Candido Jr., Richard Bird and Timothy J. Reagan; Executive Director John C. Callaghan; General Counsel Robert P. Leslie; Chief Engineer Robert S. Foltan; Chief Fiscal Officer Timothy M. Maniccia; and Director of Administrative Services Stephanie V. Ruzycky.

Video Feed: Board Member Nicole T. Allen

MOTION TO ADOPT OR REVISE THE MEETING AGENDA

Chair Finkle asked for a motion to revise the meeting agenda to add items under Contract/Actions to reflect consideration of resolutions authorizing the Executive Director to extend the reservoir operating agreements at Stillwater and Conklingville. Mr. Candido moved to revise the agenda accordingly. Mr. DeWitt seconded. The Board approved the motion by unanimous vote.

PUBLIC COMMENT

Chair Finkle opened the meeting to public comment; hearing none.

APPROVAL OF THE OCTOBER 12, 2022 REGULAR BOARD MEETING MINUTES

Chair Finkle asked for a motion to adopt the October 12, 2022 regular board meeting minutes. Mr. Candido advanced the motion to approve the regular meeting minutes. Mr. Hayes seconded and the Board approved the motion by unanimous vote.

REPORT OF THE EXECUTIVE DIRECTOR

Mr. Callaghan presented his report to the Board. Mr. Callaghan referenced the upcoming CFO's report pertaining to repayment of the note issued by the Black River Area in favor of the Hudson River Area; noting that early repayment is perhaps the best evidence in the reversal of the Regulating District's fortunes. He also noted passage by NYS voters of the \$4.2 billion environmental bond act.

CONTRACTS/ACTIONS

RESOLUTION TO APPROVE FIRST AMENDMENT TO CONTRACT C012020 WITH HENNINGSON, DURHAM & RICHARDSON ARCHITECTURE AND ENGINEERING, P.C., INC.

Mr. Foltan presented the resolution to approve an amendment to Contract C012020. He explained that the Board approved Resolution 20-06-03 authorizing Henningson, Durham & Richardson Architecture and Engineering, P.C., Inc. (HDR) to perform the 8th Part 12D Independent Consultant Safety Inspection at Stillwater Dam and to prepare the resulting safety inspection report for a total not-to-exceed amount of \$36,700 (Contract C012020). HDR completed the Stillwater Dam 8th Part 12D Independent Consultant Safety Inspection on September 1, 2020 and submitted the safety inspection report to the Federal Energy Regulatory Commission (FERC) in February 2021. In a letter dated August 22, 2022, FERC requested that HDR submit a "Supplement" to clarify several recommendations and comments. Mr. Foltan recommended the Board accept HDR's proposal to respond to the FERC comments and to develop a "Supplement" letter report; sought Board authorization to amend the scope of work of Contract C012020; and requested authorization for the Executive Director to execute an amendment to the contract to increase the fee by \$2,500 to a not-to-exceed amount of \$39,200. He noted that the contract is subject to review and approval by the State of New York Office of the Attorney General and the New York State Office of the State Comptroller.

Chair Finkle asked for a motion to adopt the resolution authorizing the Executive Director to execute an amendment to Contract C012020 increasing the fee by \$2,500 to a not-to-exceed amount of \$39,200. Mr. Hayes so moved. Mr. Bird seconded and the Board approved the motion adopting the resolution by unanimous vote.

RESOLUTION AUTHORIZING A SIXTH AMENDMENT TO THE GROUND LEASE AND WATER USAGE AGREEMENT AT STILLWATER

Mr. Leslie presented a resolution authorizing the Executive Director to extend by up to six months the Ground Lease and Water Usage Agreement with Stillwater Associates. Mr. Leslie noted that the parties have solicited a third appraiser, but noted that the results of that appraiser's analysis and consummation of the transfer of ownership of Stillwater's hydroelectric plant to the Regulating District is likely to extend beyond the December 31, 2022 expiration of the current agreement. This sixth amendment would authorize the continuation of the current agreement through June 30, 2023.

Mr. Candido made a motion to adopt the resolution which authorizes the Executive Director to execute a Sixth Amendment to the Ground Lease and Water Usage Agreement extending the extended term six months to June 30, 2023. Mr. DeWitt seconded and the Board adopted the motion by unanimous vote.

RESOLUTION APPROVING A FOURTH AMENDMENT TO THE RESERVOIR OPERATING AGREEMENT AT CONKLINGVILLE

Mr. Leslie presented a resolution authorizing the Executive Director to extend by up to six months the Reservoir Operating Agreement at Conklingville. In a departure from ninety-five years of precedent, Erie Boulevard Hydropower LP has refused to pay for use of the Regulating District's fifty-six (56) feet of head; a necessary component of the E.J. West hydroelectric project and a property interest the use of which the Walden appraisal valued at \$2.5 million annually. The authority to extend the agreement by six months will grant staff flexibility to pursue the dispute resolution provisions of the Offer of Settlement with FERC, maintain prescribed flows in the Hudson and Sacandaga Rivers while bypassing E.J. West, and/or enter into a short-term extender or a long-term extension of the current agreement. Mr. Leslie and the Executive Director recommended that the Board authorize the Executive Director to enter into an agreement extending the current Reservoir Operating Agreement's term by six months to June 30, 2023.

Mr. DeWitt made a motion to adopt the resolution authorizing the Executive Director to enter into an agreement extending the current Reservoir Operating Agreement at Conklingville by six months to June 30, 2023. Mr. Reagan seconded and the Board approved the motion adopting the resolution by unanimous vote.

STAFF/COMMITTEE REPORTS

FINANCE COMMITTEE REPORT

RESOLUTION TO ENGAGE MANUFACTURERS AND TRADERS TRUST COMPANY TO PROVIDE TRUSTEE SERVICES IN CONNECTION WITH THE ANTICIPATED ISSUANCE OF SERIAL BONDS

Mr. Maniccia presented the resolution to engage a trustee in connection with the Regulating District's anticipated issuance of serial bonds. He noted that the services of a trustee, a banking corporation duly organized and existing under the laws of the State of New York, are needed as part of the issuance of serial bonds to, among other things, collect the funds to pay scheduled interest and principal on the bonds to bondholders, receive financial and other periodic reports from the issuer and, if necessary, enforce the bond obligations if the issuer cannot or will not comply. Mr. Maniccia explained that he contacted three of the leading providers of Trustee services to the municipal marketplace upon the recommendation of the Regulating District's bond counsel and municipal advisor to better understand the services they offer and to obtain proposals for the provision of trustee services for as long as any bonds issued in this series by the Regulating District remain outstanding. The Regulating District received three proposals and, after careful evaluation of the three proposals, Mr. Maniccia determined that the Manufacturers and Traders

Trust Company proposal, a New York based bank with offices located at 285 Delaware Avenue, 3rd Floor, Buffalo, New York 14202, provides the highest and best value to the Regulating District. He noted that given the terms and conditions of the proposal, this procurement falls under the discretionary category in both the Regulating District's Procurement Policy and Procurement Guidelines issued by the New York State Office of General Services. Mr. Maniccia recommended that the Board conditionally award the work to Manufacturers and Traders Trust Company as described in their proposal.

Chair Finkle asked for a motion to adopt the resolution to authorize the Chief Fiscal Officer to form an agreement with Manufacturers and Traders Trust Company to engage in trustee services for a fee and expenses not-to-exceed \$1,500 per year for as long as bonds are outstanding plus \$6,500 in one-time fees. Mr. DeWitt so moved. Mr. Reagan seconded and the Board approved the motion adopting the resolution by unanimous 7-0 roll call vote.

RESOLUTION APPROVING THE LONG-TERM REFINANCING OF THE NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION HUDSON RIVER-BLACK RIVER REGULATING DISTRICT E.F.C. CLEAN WATER FACILITY 2017 BOND ANTICIPATION NOTE THAT FINANCED A PORTION OF THE COST OF THE RECONSTRUCTION OF THE SPILLWAY AT THE CONKLINGVILLE DAM; ADOPTING AND AUTHORIZING THE EXECUTION OF A TRUST INDENTURE FOR THE ISSUANCE OF HUDSON RIVER AREA SYSTEM BONDS AND NOTES OF THE HUDSON RIVER BLACK RIVER REGULATING DISTRICT; APPOINTING MANUFACTURERS AND TRADERS TRUST COMPANY TO SERVE AS TRUSTEE THEREUNDER; ADOPTING AND AUTHORIZING THE EXECUTION OF A FIRST SUPPLEMENTAL INDENTURE PROVIDING FOR THE ISSUANCE AND DELIVERY OF SERIES 2022 BONDS; AND ADOPTING OF POST-ISSUANCE COMPLIANCE PROCEDURES FOR TAX-EXEMPT HUDSON RIVER AREA SYSTEM BONDS OR 2022 EFC BONDS

Mr. Maniccia presented the resolution to authorize the execution of a trust indenture which, when read in the context of the instant and future supplemental trust indentures, will govern the Regulating District's actions in issuing and servicing Hudson River Area bonds. The resolution then authorizes the first supplemental trust indenture allowing the long-term refinancing, not-to-exceed \$1 million, of the 2017 EFC notes which had previously partially financed reconstruction of the spillway and ice sluice at the Conklingville Dam. The resolution also authorizes the appointment of the trustee named earlier for work specified in the first supplemental trust indenture. Finally, the resolution authorizes the adoption of compliance procedures for future tax-exempt Hudson River Area System bonds as well as the current refinancing of the EFC note.

Chair Finkle asked for a motion adopting the resolution authorizing: EFC refinancing; the HRA trust indenture; appointment of the trustee; execution of the first supplemental trust indenture; and adoption of procedures. Mr. DeWitt so moved. Mr. Candido seconded and the Board approved the motion adopting the resolution by unanimous 7-0 roll call vote.

STAFF REPORTS

Mr. Leslie presented his report. He reported that there have been no new developments during the reporting period with regard to the negotiations with Brookfield/Erie Boulevard Hydropower L.P. ('Erie') regarding the soon to expire Reservoir Operating Agreement at Conklingville. Erie has still not yet supplied their appraisal. While Erie's counsel has reduced to writing their argument suggesting fees due under the Reservoir Operating Agreement are duplicative of the amount charged Erie under the federal power act's headwater benefit assessment, this writing is neither persuasive nor does it lead to a resolution. Erie has been asked if they are interested in an extension of the current agreement past the December 31, 2022 end of term, but have yet to respond. Mr. Leslie reported that negotiations regarding the Regulating District's purchase of the hydroelectric plant adjacent to the Stillwater Reservoir continue to progress. Counsel for Stillwater has released a request for proposals to secure a third appraiser to resolve differences between the two party appraisals. Stillwater Associates LP seeks roughly twice what the Regulating District's appraisal indicates it should pay. Counsel worked with the CFO, Bond Counsel, and the Environmental Facilities Corp. to fashion a Trust Indenture to overlay coming debt issues; including the execution of a Project Finance Agreement and Opinion of Local Counsel supporting the conversion of short-term Regulating District debt to long-term financing. Counsel and the Director of Administrative Services worked with representatives from Omni Development Company, Inc. to finalize a lease for space at 54 State Street in Albany to house the Hudson River Area Office and to secure approval with the Office of the Attorney General and the Office of the State Comptroller. On behalf of the records access officer, counsel/staff addressed one (1) FOIL request(s) during the reporting period. There were no appeals.

Ms. Ruzicky presented her report to the Board. Ms. Ruzicky reported that she completed the SFO internal control compliance quarterly audit and continues to develop a new access permit renewal application.

Mr. Maniccia presented his report to the Board. Therein he noted that at the close of October 31, 2022, the general fund balances for the HRA and BRA were approximately \$5,853,193 and \$2,111,639 respectively. When combined (in the amount of \$7,964,832), this total is \$1,793,365 or 29.1% more than the same period last year. Mr. Maniccia cautioned that the Regulating District has not, this year, had to make the school tax payment, which last year totaled more than 1.9 million. Mr. Maniccia noted that in 2011, the Board adopted Resolution 11-24-08, authorizing a loan of \$3,045,337.65 from the Black River Area to the Hudson River Area. By adopting Resolution 22-33-06 last June, the Board authorized the Regulating District Chief Fiscal Officer and Treasurer to make a final payment from the Hudson River Area to the Black River Area for the balance due on the Note Payable. Payment of the balance due (\$1,779,176.30) was made electronically with the assistance of the Office of the State Comptroller. Mr. Maniccia noted that the funds are available to the Black River Area immediately and that this final payment means the debt has been retired nearly twenty years ahead of the original schedule.

Mr. Foltan presented the Chief Engineer's report to the Board. Mr. Foltan noted that the October average daily release from the Sacandaga Reservoir (Great Sacandaga Lake) was approximately 1,060 cubic feet per second (cfs). Precipitation during the month of October was

below normal across the Great Sacandaga Lake and Indian Lake watersheds. The monthly inflow to Great Sacandaga Lake and Indian Lake reservoir was approximately 33% and 33% of historic average, respectively. Monthly release of water from Great Sacandaga Lake and Indian Lake measured 55% and 83% of historic average, respectively.

Mr. Foltan continued on to note that the October average daily release from Stillwater Reservoir was approximately 410 cfs. Monthly total precipitation measured 28%, 35%, and 22% of historic average at Stillwater, Old Forge, and Sixth Lake, respectively, as of October 23rd. Precipitation in the month of October was below average at Stillwater, Old Forge and Sixth Lake. The monthly inflow to Stillwater Reservoir was approximately 32% of historic average. The inflow to Sixth Lake and Old Forge Reservoir totaled 0.05 and 0.09 billion cubic feet, respectively, in October. Release of water from Stillwater Reservoir averaged 128% of historic discharge.

RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE JANUARY 10, 2023 REGULAR BOARD & ORGANIZATIONAL COMMITTEE MEETINGS

Chair Finkle asked for a motion to adopt a resolution setting the date, time and location for the January 10, 2023 Regular Board and Organizational meeting of the Board of the Hudson River-Black River Regulating District for Tuesday, January 10, 2023 at the Regulating District's Sacandaga Field Office, 737 Bunker Hill Road, Mayfield, NY 12117. The Organizational Meeting will be scheduled for 10:00 A.M. with the Regular Meeting to follow immediately thereafter.

Mr. DeWitt moved to adopt the resolution setting the date, time and location of the Organizational and Regular meetings. Mr. Bird seconded and the Board adopted the resolution by unanimous vote.

BOARD MEMBER COMMENTS

ADJOURNMENT

Chair Finkle called for a motion to adjourn the meeting. Mr. Hayes advanced the motion. Mr. Reagan seconded. The meeting adjourned at 10:45 A.M.

RESOLUTIONS

22- 58-11 RESOLUTION TO APPROVE FIRST AMENDMENT TO CONTRACT C012020 WITH HENNINGSON, DURHAM & RICHARDSON ARCHITECTURE AND ENGINEERING, P.C., INC.

Chair Finkle asked for a motion to adopt the resolution authorizing the Executive Director to execute an amendment to Contract C012020 increasing the fee by \$2,500 to a not-to-exceed amount of \$39,200. Mr. Hayes so moved. Mr. Bird seconded and the Board approved the motion adopting the resolution by unanimous vote.

22-59-11 RESOLUTION AUTHORIZING A SIXTH AMENDMENT TO THE GROUND LEASE AND WATER USAGE AGREEMENT AT STILLWATER

Mr. Candido made a motion to adopt the resolution which authorizes the Executive Director to execute a Sixth Amendment to the Ground Lease and Water Usage Agreement extending the extended term six months to June 30, 2023. Mr. DeWitt seconded and the Board adopted the motion by unanimous vote.

22-60-11 RESOLUTION APPROVING A FOURTH AMENDMENT TO THE RESERVOIR OPERATING AGREEMENT AT CONKLINGVILLE

Mr. DeWitt made a motion to adopt the resolution authorizing the Executive Director to enter into an agreement extending the current Reservoir Operating Agreement at Conklingville by six months to June 30, 2023. Mr. Reagan seconded and the Board approved the motion adopting the resolution by unanimous vote.

22-61-11 RESOLUTION TO ENGAGE MANUFACTURERS AND TRADERS TRUST COMPANY TO PROVIDE TRUSTEE SERVICES IN CONNECTION WITH THE ANTICIPATED ISSUANCE OF SERIAL BONDS

Chair Finkle asked for a motion to adopt the resolution to authorize the Chief Fiscal Officer to form an agreement with Manufacturers and Traders Trust Company to engage in trustee services for a fee and expenses not-to-exceed \$1,500 per year for as long as bonds are outstanding plus \$6,500 in one-time fees. Mr. DeWitt so moved. Mr. Reagan seconded and the Board approved the motion adopting the resolution by unanimous 7-0 roll call vote.

22-62-11 RESOLUTION APPROVING THE LONG-TERM REFINANCING OF THE NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION HUDSON RIVER-BLACK RIVER REGULATING DISTRICT E.F.C. CLEAN WATER FACILITY 2017 BOND ANTICIPATION NOTE THAT FINANCED A PORTION OF THE COST OF THE RECONSTRUCTION OF THE SPILLWAY AT THE CONKLINGVILLE DAM; ADOPTING AND AUTHORIZING THE EXECUTION OF A TRUST INDENTURE FOR THE ISSUANCE OF HUDSON RIVER AREA SYSTEM BONDS AND NOTES OF THE HUDSON RIVER BLACK RIVER REGULATING DISTRICT; APPOINTING MANUFACTURERS AND TRADERS TRUST COMPANY TO SERVE AS TRUSTEE THEREUNDER; ADOPTING AND AUTHORIZING THE EXECUTION OF A FIRST SUPPLEMENTAL INDENTURE PROVIDING FOR THE ISSUANCE AND DELIVERY OF SERIES 2022 BONDS; AND ADOPTING OF POST-ISSUANCE COMPLIANCE PROCEDURES FOR TAX-EXEMPT HUDSON RIVER AREA SYSTEM BONDS OR 2022 EFC BONDS

Chair Finkle asked for a motion adopting the resolution authorizing: EFC refinancing; the HRA trust indenture; appointment of the trustee; execution of the first supplemental trust indenture; and adoption of procedures. Mr. DeWitt so moved. Mr. Candido seconded and the Board approved the motion adopting the resolution by unanimous 7-0 roll call vote.

22-63-11 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE REGULAR MEETING FOR JANUARY 10, 2023

Mr. DeWitt moved to adopt the resolution setting the date, time and location of the Organizational and regular meetings. Mr. Bird seconded and the Board adopted the resolution by unanimous vote.

Robert P. Leslie
Secretary

Mark M. Finkle
Board Chair