

**HUDSON RIVER-BLACK RIVER REGULATING DISTRICT
BOARD MEETING MINUTES
Sacandaga Field Office
737 Bunker Hill Road
Mayfield, NY 12117**

January 10, 2023

Immediately Following the Annual Organizational Meeting 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/938270685> or via phone.

United States: [+1 \(571\) 317-3122](tel:+15713173122) Access Code: 938-270-685

CALL TO ORDER

Chair Mark M. Finkle called the meeting to order at 10:06 A.M.

ROLL CALL

Present: Board Chair Mark M. Finkle, Second Vice-Chair Kenneth F. DeWitt; Board Members Albert J. Hayes, Timothy J. Reagan and Nicole T. Allen; 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 Members Richard Bird and Alfred J. Candido Jr.,

MOTION TO ADOPT OR REVISE THE MEETING AGENDA

Chair Finkle asked for a motion to adopt or revise the meeting agenda. Mr. Hayes moved to adopt the agenda. Ms. Allen seconded. The Board approved the motion by unanimous vote.

PUBLIC COMMENT

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

APPROVAL OF THE NOVEMBER 9, 2022 REGULAR BOARD MEETING MINUTES

Chair Finkle asked for a motion to adopt the November 9, 2022 regular board meeting minutes. Mr. Reagan 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 reported the Regulating District has 'gone-live' with year-3 of the online access permit system renewal project. He worked with the General Counsel to extend the expiring Stillwater Associates & Erie Boulevard agreements. Mr. Callaghan worked with the Chief Engineer to address issues associated with the Hawkinsville Dam remediation and worked with senior staff on strategy & operational direction surrounding the Brookfield Renewable dispute.

CONTRACTS/ACTIONS

RESOLUTION AUTHORIZING THE EXPENDITURE OF \$6,742 FOR NEW FLOATING DOCK LUMBER

Mr. Callaghan introduced a resolution to authorize the expenditure of \$6,742 for lumber to be used to improve the functionality and readiness of the docking facilities at the Regulating District's Sacandaga Field Office. He noted that the location provides a strategic, convenient location for emergency responders and law enforcement personnel to deploy assets on Great Sacandaga Lake during the summer and winter months alike and that response vessels from NYSDEC, the New York State Police, and the Fulton County Sheriff's Department utilize these docks during the boating season, allowing these departments to respond quickly and efficiently to incidents on the lake. He noted that the resolution would also authorize a budget transfer from the 5900-0200 'Taxes' line item to 5650-0200 'Repairs to Structures' to facilitate the expenditure.

Chair Finkle called for a motion to adopt the resolution authorizing the \$6,742 expenditure for lumber to improve the functionality and readiness of the docking facilities at SFO. Mr. Hayes so moved. Ms. Allen seconded and the Board approved the motion adopting the resolution by unanimous vote.

RESOLUTION AUTHORIZING THE EXPENDITURE OF \$17,360 FOR NEW FLOATING DOCK HARDWARE

Mr. Callaghan introduced a resolution authorizing the expenditure of \$17,360 to fund docking system hardware, which will enhance capacity and stability, at the Regulating District's Sacandaga Field Office (SFO). The new docking system will provide improvements not only to Regulating District operations directly, but also create more capacity and a better platform for law enforcement/ emergency response activities at the facility. He noted that the resolution would also authorize a budget transfer from the 5900-0200 'Taxes' line item to 5650-0200 'Repairs to Structures' to facilitate the expenditure.

Chair Finkle called for a motion to adopt the resolution authorizing the \$17,360 expenditure for new docking system hardware. Mr. Hayes so moved. Mr. DeWitt seconded and the Board approved the motion adopting the resolution by unanimous vote.

RESOLUTION TO ADOPT GENDER-BASED VIOLENCE AND THE WORKPLACE POLICY

Mr. Leslie presented the Resolution to the Board. He noted that Executive Order 19, issued October 22, 2007 required certain state agencies to formulate and issue a Domestic Violence Workplace Policy for that agency. Shortly thereafter, the Office for the Prevention of Domestic Violence (“OPDV”) formulated a model workplace policy for state agencies to address domestic violence (“the Model Domestic Violence and Workplace Policy”), and pursuant to resolution 22-24-05, the Regulating District Board last revised its Domestic Violence Prevention Policy based on the model provided. Mr. Leslie recommended that, in light of revisions to the OPDV model policy, now renamed the “State of New York Gender-Based Violence and the Workplace Policy”, the Board consider adoption of the attached Gender-Based Violence and the Workplace Policy.

Chair Finkle asked for a motion to adopt the resolution enacting the Gender-Based Violence in the Workplace Policy. Ms. Allen so moved. Mr. Reagan seconded and the Board approved the motion adopting the resolution by unanimous vote.

RESOLUTION TO APPROVE NINTH AMENDMENT TO CONTRACT C012012 WITH KLEINSCHMIDT ASSOCIATES, PA, PC

Mr. Foltan presented the resolution to the Board to authorize a ninth amendment to Contract C012012 with Kleinschmidt Associates, PA, PC. Mr. Foltan related the series of contract amendments necessary to accomplish the completion of the remediation at Hawkinsville Dam and then explained that that in response to construction delays and contractor performance issues, Kleinschmidt Associates has begun providing additional on-site construction inspection and engineering services at the Regulating District’s direction; has been asked to submit a proposal for expanded construction engineering services to provide full-time monitoring of contractor activities and additional engineering support and management to resolve core material compaction and west bank excavation concerns; and to facilitate quick resolution of any additional construction issues. Mr. Foltan noted that Kleinschmidt’s additional scope of work includes full-time construction observation services to support quality control and contract compliance monitoring, field engineering, and some limited engineering office support. He recommended that the Board authorize the executive director to execute a ninth amendment to contract C012012 accepting Kleinschmidt’s proposed amendment #9: Full-time Construction Observation & Additional Engineering Support proposal and authorizing an increase the contract price by \$283,500 to a total contract price of \$557,764. He noted that the additional contract cost would be covered by a budget transfer from the 5695-0000 ‘Repairs to Structures’ line item to 5695-0000 ‘Engineering Consultant’. Mr. Foltan noted that the contract amendment would be subject to approval by the State Comptroller and the Office of the Attorney General.

Chair Finkle asked for a motion to adopt the resolution authorizing a ninth amendment to Contract C012012, accepting Kleinschmidt’s proposed amendment #9: Full-time Construction Observation & Additional Engineering Support proposal, and authorizing an increase the contract price by \$283,500 to a total contract price of \$557,764. Mr. DeWitt so moved. Mr. Hayes seconded. Mr. Reagan abstained and the Board approved the motion adopting the resolution by unanimous 6-0 vote.

RESOLUTION AUTHORIZING A FORMAL PETITION TO THE FEDERAL ENERGY REGULATORY COMMISSION SEEKING ASSISTANCE RESOLVING A DISPUTE REGARDING REASONABLE COMPENSATION FOR USE OF REGULATING DISTRICT ASSETS

Mr. Leslie presented a resolution through which the Board would authorize staff to petition the Federal Energy Regulatory Commission (FERC) for assistance addressing an impasse in the negotiation of reasonable compensation for use of Regulating District assets. Mr. Leslie noted that, in a letter dated November 30, 2022, the Regulating District alerted FERC to a dispute over obligations incorporated in the license issued to Erie Boulevard Hydropower, LP (“Erie”) to operate the E.J. West powerhouse and generating facilities (Project 2318) at the Regulating District’s Conklingville Dam (Project 12252). He explained that Erie’s FERC license requires, in part, that “*The licensee, ...shall, during the period of the license, retain possession of all project property covered by the license as issued ...including...water rights...*” and that the Regulating District owns fifty-six (56) feet of the seventy-one (71) feet of head supplying Erie’s E.J. West (Project 2318). Beginning in 1927, the Regulating District, Erie, and Erie’s predecessors in interest, entered into a series of Reservoir Operating Agreements through which the powerhouse owner secured the right to utilize the fifty-six (56) feet of head necessary to operate the powerhouse in exchange for an amount which compensated the Regulating District for the full value of the power thus produced by such additional head. Erie now contends that payments made under the current Reservoir Operating Agreement are duplicative of payments Erie is obligated to make for headwater benefits assessments FERC levies pursuant to section 10(f) of the federal power act. Mr. Leslie indicated that staff have rejected Erie’s contention and have secured an appraisal valuing the Regulating District’s contribution of said fifty-six (56) feet of head to Erie’s ability to generate at the E.J. West power plant (Project 2318). He noted that Erie has not provided its own appraisal of the value of said fifty-six (56) of head and has declined to negotiate a new agreement which appropriately values, and provides compensation for, said fifty-six (56) feet of head. Mr. Leslie explained that section 2.5 of the Offer of Settlement, incorporated into Erie’s FERC license through Appendix “A” of such license, requires the respective licensee to report such disputes to FERC and, if the parties have not resolved said dispute within forty-five (45) days, to petition FERC for assistance resolving said dispute. Absent the commencement of good faith negotiations between the parties on a new agreement providing appropriate compensation for Erie’s utilization of the Regulating District’s property rights, and upon the passage of the forty-five (45) day period since delivery of the Regulating District’s November 30, 2022 letter, staff seeks Board authorization to initiate a procedure before FERC seeking assistance resolving the question whether section 10(f)’s headwater benefits assessment supplants the Regulating District’s control of assets under its jurisdiction. He noted that, per FERC regulations, the HRBRRD submission will include a petition for an exemption from the \$33,690 fee which is to accompany such Petition. Absent payment of the fee, due 30 days after denial of the waiver request, FERC would deem the Petition withdrawn. Mr. Leslie also noted that on December 21, 2022, the Regulating District and Erie entered into an agreement extending the current Reservoir Operating Agreement through June 30, 2023 to afford the parties additional time to resolve the dispute and to negotiate a new Reservoir Operating Agreement.

Chair Finkle asked for a motion to adopt the resolution authorizing staff to file a formal petition seeking FERC assistance resolving the dispute. Ms. Allen so moved. Mr. Reagan seconded and the Board approved the motion adopting the resolution by unanimous vote.

STAFF REPORTS

Mr. Leslie presented his report. He reported that the agreements with both Brookfield/Erie Boulevard Hydropower L.P. ('Erie') and Stillwater Associates LP have been extended. Counsel and the Director of Administrative Services continue to work with the Office of the State Comptroller and 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. On behalf of the records access officer, counsel/staff did not have to address any (0) FOIL request(s) during the reporting period. There were no appeals.

Ms. Ruzycky presented her report to the Board. Ms. Ruzycky reported that the Regulating District has rolled-out the new access permit renewal application. Ms. Ruzycky noted her completion of the quarterly Internal Control compliance audits at HRAO and BRFO.

Mr. Maniccia presented his report to the Board. Therein he noted that at the close of December 31, 2022, the general fund balances for the HRA and BRA were approximately \$4,889,047 and \$3,144,709 respectively. When combined (in the amount of \$8,033,756), this total is \$1,299,751 or 19.3% more than the same period last year. Mr. Maniccia noted that the Trust Indenture, the Project Finance Agreement and the conversion of short-term Regulating District debt to long-term financing has closed.

Mr. Maniccia presented an affidavit evidencing necessary and reasonable expenses incurred by Richard Bird (\$125.00) and Alfred J. Candido, Jr. (\$176.25) in the course of their duties as Board members. Chair Finkle asked for a Motion to approve payment of such expenses. Mr. Hayes so moved. Mr. DeWitt seconded and the Board passed the Motion by unanimous vote.

Mr. Foltan presented the Chief Engineer's report to the Board. Mr. Foltan noted that the December average daily release from the Sacandaga Reservoir (Great Sacandaga Lake) was approximately 2,710 cubic feet per second (cfs). Precipitation during the month of December was above average across the Great Sacandaga Lake and Indian Lake watersheds. The monthly inflow to Great Sacandaga Lake and Indian Lake reservoir was approximately 58% and 63% of historic average, respectively. Monthly release of water from Great Sacandaga Lake and Indian Lake measured 98% and 85% of historic average, respectively.

Mr. Foltan continued on to note that the December average daily release from Stillwater Reservoir was approximately 450 cfs. Monthly total precipitation measured 56%, 90%, and 96% of historic average at Stillwater, Old Forge, and Sixth Lake, respectively, as of December 26th. Precipitation in the month of December was below average at Stillwater, Old Forge and Sixth Lake. The monthly inflow to Stillwater Reservoir was approximately 87% of historic average. The inflow to Sixth Lake and Old Forge Reservoir totaled 0.19 and 0.45 billion cubic feet, respectively, in December. Release of water from Stillwater Reservoir averaged 100% of historic discharge.

RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE MARCH 14, 2023 REGULAR BOARD MEETING

Chair Finkle asked for a motion to adopt a resolution setting the date, time and location for the next Regular Board meeting of the Board of the Hudson River-Black River Regulating District for Tuesday, March 14, 2023 at the Indian Lake Town Hall, 730 Pelon Road, Indian Lake, NY 12842 at 10:00 A.M.

Mr. Reagan moved to adopt the resolution setting the date, time and location of the Regular meeting. Ms. Allen 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. Reagan advanced the motion. Mr. DeWitt seconded. The meeting adjourned at 11:07 A.M.

RESOLUTIONS

23-01-01 RESOLUTION AUTHORIZING THE EXPENDITURE OF \$6,742 FOR NEW FLOATING DOCK LUMBER

Chair Finkle called for a motion to adopt the resolution authorizing the \$6,742 expenditure for lumber to improve the functionality and readiness of the docking facilities at SFO. Mr. Hayes so moved. Ms. Allen seconded and the Board approved the motion adopting the resolution by unanimous vote.

23-02-01 RESOLUTION AUTHORIZING THE EXPENDITURE OF \$17,360 FOR NEW FLOATING DOCK HARDWARE

Chair Finkle called for a motion to adopt the resolution authorizing the \$17,360 expenditure for new docking system hardware. Mr. Hayes so moved. Mr. DeWitt seconded and the Board approved the motion adopting the resolution by unanimous vote.

23-03-01 RESOLUTION TO ADOPT GENDER-BASED VIOLENCE AND THE WORKPLACE POLICY

Chair Finkle asked for a motion to adopt the resolution enacting the Gender-Based Violence in the Workplace Policy. Ms. Allen so moved. Mr. Reagan seconded and the Board approved the motion adopting the resolution by unanimous vote.

23-04-01 RESOLUTION TO APPROVE NINTH AMENDMENT TO CONTRACT C012012 WITH KLEINSCHMIDT ASSOCIATES, PA, PC

Chair Finkle asked for a motion to adopt the resolution authorizing a ninth amendment to Contract C012012, accepting Kleinschmidt's proposed amendment #9: Full-time Construction Observation & Additional Engineering Support proposal, and authorizing an increase the contract price by \$283,500 to a total contract price of \$557,764. Mr. DeWitt so moved. Mr. Hayes seconded. Mr. Reagan abstained and the Board approved the motion adopting the resolution by unanimous 6-0 vote.

**23-05-01 RESOLUTION AUTHORIZING A FORMAL PETITION TO THE
FEDERAL ENERGY REGULATORY COMMISSION SEEKING
ASSISTANCE RESOLVING A DISPUTE REGARDING REASONABLE
COMPENSATION FOR USE OF REGULATING DISTRICT ASSETS**

Chair Finkle asked for a motion to adopt the resolution authorizing staff to file a formal petition seeking FERC assistance resolving the dispute. Ms. Allen so moved. Mr. Reagan seconded and the Board approved the motion adopting the resolution by unanimous vote.

**23-06-01 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE
REGULAR MEETING FOR MARCH 14, 2023**

Mr. Reagan moved to adopt the resolution setting the date, time and location of the regular meeting. Ms. Allen seconded and the Board adopted the resolution by unanimous vote.

Robert P. Leslie
Secretary

Mark M. Finkle
Board Chair