

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

Sacandaga Field Office Conference Room

737 Bunker Hill Road

Mayfield, NY 12117

**August 1, 2023**

**Remote Conference-In Information**

Participants were invited to join the meeting via computer, tablet or smartphone.

<https://global.gotomeeting.com/join/178452125> or via phone.

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**CALL TO ORDER**

Chairman Mark M. Finkle called the meeting to order at 10:07 A.M.

**ROLL CALL**

**Present:** Board Chair Mark M. Finkle; First Vice-Chair Kenneth F. DeWitt, Second Vice-Chair Alfred J. Candido, Jr.; Board Members Albert J. Hayes, Richard Bird, 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:**

**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. Mr. DeWitt seconded. The Board approved the motion in a unanimous vote.

**PUBLIC COMMENT**

Chair Finkle opened the meeting to public comment hearing none.

**APPROVAL OF THE JUNE 13, 2023 REGULAR BOARD MEETING MINUTES**

Chair Finkle asked for a motion to adopt the June 13, 2023 regular board meeting minutes. Mr. Candido advanced the motion to approve the regular meeting minutes. Mr. Bird seconded. The Board approved the motion by unanimous vote.

**ACCESS PERMIT APPEAL— Bresney - Permit Area # 9366**

Chair Finkle acknowledged staff's position with regard to the instant appeal before asking the appellant to address the Board. The permit appeal concerns the placement of a rock retaining wall in direct violation of a work permit expressly denying authorization. On October 18, 2021 the permittee

submitted an application seeking to replace an existing field stone wall with a loose fitted stone retaining wall. Staff denied the application two days later. Staff's September 2022 inspection revealed that a retaining wall had nonetheless been placed on access permit #9366 running parallel to the shoreline. The Executive Director's September 29, 2022 letter required that the retaining wall be removed. On October 24, 2022, the permittee appealed to the Chief Engineer who on December 20, 2022 confirmed that there has been no authorization for installation of retaining walls, the placement of fill or the installation of drainage pipes and that no such authorization would be forthcoming. After a field visit on April 4, 2023, on May 1, 2023 Executive Director Callaghan upheld the Chief Engineer's determination.

The permittee's presentation to the Board argued that the high quality replacement wall provides a safe and usable permit area without altering the pre-existing terrain on access permit area #9366 and, while following the pre-existing contour of the shoreline, eliminates unsafe conditions.

The Board Chair tabled discussion of the matter to a subsequent meeting.

*Note: Post meeting, the appellant submitted an additional written argument with a request for an opportunity to address the Board when the matter is next discussed.*

## **REPORT OF THE EXECUTIVE DIRECTOR**

Mr. Callaghan presented his report to the Board. Mr. Callaghan highlighted staff action pursuant to the recent NYS Division of Budget Bulletins D-1148 entitled "*FY 2024 Performance Advances and Longevity Payments for Management/Confidential Employees*" effective May 5, 2023 and D-1150 entitled "*FY 2024 \$3,000 Lump Sum Payment and 3% General Salary Increase for Management/Confidential Employees*" effective July 17, 2023. Mr. Callaghan noted that, pursuant to Resolution 15-17-05 adopted at the May 2015 meeting, which placed each of the Regulating District's management confidential (M/C) staff at a specific grade and step pursuant to salary schedules administered by the Governor's Office of Employee Relations (GOER) and linked M/C raises for Regulating District employees to future schedules as adopted by the GOER, the CFO has executed the appropriate salary actions for applicable M/C employees. Mr. Callaghan noted his attendance at the recent Town of Day Property Owner's Association annual meeting and noted the Regulating District will host the New York National Guard's 109<sup>th</sup> Air Lift Wing water survival training at the Sacandaga Field Office.

## **CONTRACTS/ACTIONS**

### **MOTION TO APPROVE REGULATING DISTRICT ANNUAL REPORT JANUARY 1, 2022-DECEMBER 31, 2022**

Mr. Callaghan presented the Regulating District's annual report. Chairman Finkle asked for a motion to adopt the report and deliver it to the Commissioner of the NYS Department of Environmental Conservation as required by ECL Article 15, Title 21. Mrs. Allen moved to approve the Regulating District's Annual Report for January 1, 2022 through December 31, 2022 and to deliver the report to DEC as required. Mr. Hayes seconded the motion and the Board adopted the motion by unanimous vote.

### **RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO NEGOTIATE AND ENTER INTO AN AGREEMENT WITH INTERACTIVE MEDIA CONSULTING, LLC**



Mr. Callaghan presented the resolution authorizing an annual agreement with Interactive Media Consulting, LLC ("IMC") to provide technical support and services to assist the Regulating District's administration of the on-line payment option for the access permit system for access to and on Great Sacandaga Lake. He noted that IMC has been providing such services pursuant to previous board authorizations in May 2020, November 2021 and May 2022 and that continued system improvement for online permit transaction system has resulted in greater speed for renewals, and improved record keeping such as a definitive email confirmation of a successful transaction. Mr. Callaghan reported that service to residents on and around Great Sacandaga Lake has been significantly ameliorated by the introduction of an online permit transaction option and the Regulating District seeks to build on these improvements by further enhancing the functionality of the online system and providing the necessary technical support to customers. IMC has provided a proposal to provide the services described above to the Regulating District for a not to exceed amount of \$9,638.40.

Board Chair Finkle called for a motion to adopt the resolution authorizing the Executive Director to enter into an agreement with Interactive Media Consulting, LLC at an amount not to exceed \$9,638.40. Mr. Candido so moved. Mr. DeWitt seconded and the Board adopted the resolution by unanimous vote.

#### **RESOLUTION AUTHORIZING THE EXPENDITURE OF \$16,866.25 TO REPLACE A DUMP TRUCK BODY IN THE HUDSON RIVER AREA**

Mr. Callaghan presented a resolution to authorize the purchase of a new dump truck body for the 2004 International dump truck. He noted that staff routinely conduct maintenance and operation activities at facilities throughout the Hudson River Area necessitating the movement of materials, debris, and other large items via dump truck and that the 2004 International dump truck, as the sole functioning dump truck in the Hudson River Area, has shown wear and tear on the twenty-year-old dump truck body to the point where bent steel is impacting the operation of the dump body. Staff has determined that repairs to the existing, worn dump truck body are no longer feasible nor efficient and has solicited several vendors to determine best value for a replacement dump body including Leroy Holding Lease and Service Company, Gabrielli Truck, T & T Sales, Inc., and Binghamton Truck Body. Binghamton Truck Body offered the lowest quote at \$16,866.25.

Board Chair Finkle called for a motion to adopt the resolution authorizing the Executive Director to enter into an agreement for a new dump truck body with Binghamton Truck Body at an amount not to exceed \$16,866.25. Mr. Reagan so moved. Mrs. Allen seconded and the Board adopted the resolution by unanimous vote.

#### **RESOLUTION AUTHORIZING THE EXPENDITURE OF \$8,750 TO REPLACE ROOF ON THE SACANDAGA FIELD OFFICE BOATHOUSE**

Mr. Callaghan presented a resolution authorizing the expenditure of \$8,750 to replace the roof on the boat house at the Sacandaga Field Office. Staff solicited several vendors for quotes on the project. Correll Contracting Corp provided the lowest quote at \$8,750. Mr. Callaghan also recommended the following transfer in the Fiscal Year 2023-24 budget:

<b>Account Number</b>	<b>Account Name</b>	<b>Increase</b>	<b>Decrease</b>
5650-0200	Repairs to Structures	\$8,750	
5770-0200	Contingencies		\$8,750

Board Chair Finkle called for a motion to adopt the resolution authorizing the Executive Director to enter into an agreement with Correll Contracting Corp. at an amount not to exceed \$8,750 and to authorize a transfer of that amount from line item 5650-0200 (Repairs to Structures) from line item 5770-0200 (Contingencies). Mr. Bird so moved. Mr. DeWitt seconded and the Board adopted the resolution by unanimous vote.

**RESOLUTION TO AWARD INDIAN LAKE DAM REHABILITATION CONSTRUCTION WORK TO C.D. PERRY, LLC (CONTRACT D012023)**

Mr. Foltan presented the resolution to conditionally award construction work associated with the Indian Lake Dam rehabilitation to C.D. Perry, LLC. He explained that the Regulating District contracted with Bergmann Associates (C032013) to conduct an engineering assessment of the Indian Lake dam and that, following review by the Department of Environmental Conservation's Bureau of Dam Safety resulting in further study, in June 2023 Bergmann McMahon & Mann Consulting Engineering and Geology, P.C. furnished the 100% design documentation report utilized in the construction bidding solicitation commencing with June 29, 2023 and July 9, 2023 pre-bid meetings.

Staff placed a public notice advertising the work to perform the rehabilitation in the State Contract Reporter on June 12, 2023. Mr. Foltan noted that seven contractors participated in the mandatory pre-bid meetings and thus became eligible to submit a bid to perform the rehabilitation. One firm submitted a bid with staff publically opening that bid at the 11:00 AM July 24, 2023 deadline.

Mr. Foltan directed the Board's attention to the following table which summarizes the bids received.

*Hawkinsville Dam remediation Bid Tabulation*

Bidder Name	Bid Amount (\$)
C.D. Perry, LLC	\$10,834,860.17

Mr. Foltan explained that staff reviewed the bids for compliance with the Bid Documents and made a determination of apparent low bidder according to Section I-27 of the Information for Bidders. He identified the C.D. Perry, LLC. ("C.D. Perry") as the lowest bidder and explained that he has reviewed C.D. Perry's evidence of experience completing similar construction, and confirmed that C.D. Perry has the experience necessary to responsibility and reliably complete the work. Mr. Foltan recommended the Board conditionally award the work to C.D. Perry, LLC and sought Board authorization to form a contract to complete the work, and authorization for the Executive Director to execute an agreement in the amount of \$10,834,860.17. Mr. Foltan noted that the agreement is subject to the review and approval of the NYS Attorney General and the NYS Office of the State Comptroller.

Mr. Leslie noted that, pursuant to the State Environmental Quality Review Act, the Board had an obligation to assess the project's environmental impact before committing District resources to the project. He argued that the Board was now in a position to confirm that the project will have no impact on the environment. He, Mr. Callaghan and Mr. Foltan expressed staff's position that the rehabilitation at the Indian Lake Dam could easily be characterized as a Type II action under the SEQRA Regulations



(6 NYCRR 617.592) “*replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building, energy, or fire codes unless such action meets or exceeds any of the thresholds in section 617.4 of this Part*”). Such a designation by the Board would conclude the Board’s SEQRA obligations with respect to that project. Nonetheless, staff have undertaken a review of the potential impacts as if the project were considered an unlisted action and prepared a negative declaration for the Board’s consideration. Chairman Finkle asked for a motion declaring the Indian Lake rehabilitation project to be a Type II action pursuant to the SEQRA Regulations, but also asked that the Board embrace the negative declaration prepared as if the project were characterized as an unlisted action. Mr. Candido advanced the Motion. Mrs. Allen seconded it and the Motion was passed by unanimous vote.

Board Chair Finkle called for a motion adopting the resolution conditionally awarding rehabilitation work at Indian Lake Dam to C.D. Perry, LLC and authorizing the Executive Director to form a contract to complete the work for an amount not-to-exceed \$10,834,860.17. Mr. Candido so moved. Mr. Hayes seconded and the Board adopted the resolution by unanimous vote.

## STAFF/COMMITTEE REPORTS

### FINANCE COMMITTEE REPORT

#### RESOLUTION TO AUTHORIZE REAPPROPRIATIONS FOR CAPITAL PROJECTS

Finance Committee Chair Kenneth DeWitt presented a resolution to establish the use of re-appropriations for capital project accounts to include: 5260 (Capital Improvements); 5650 (Repairs to Structures); 5695 (Engineering Consultant) and 5770 (Contingencies). He noted the resolution would establish an August 31 lapse date and would authorize the Chief Fiscal Officer/Treasurer to make initial use of re-appropriations in managing these accounts effective immediately; to wit:

Re-appropriations in the following accounts and amounts for the Fiscal Year 2023-24 budget.

Account	Subaccount	Re-appropriation: 2023-24
5260	0300	19,473
	0400	10,565
	0700	7,500
5650	0200	14,665
	0400	4,109,813
	0700	46,481
	0000	806,789
5695	0300	14,165
	0400	541,583
	0700	283,051
	0800	23,555
	0900	23,555
	0000	231,143
5770	0400	80,782

Board Chair Mark Finkle called for a motion. Mrs. Allen made a motion to adopt the resolution to authorize re-appropriations for capital projects. Mr. Hayes seconded and the Board approved the motion adopting the resolution by unanimous vote.

#### **RESOLUTION REGARDING A DECLARATION OF OFFICIAL INTENT PURSUANT TO SECTION 1.150-2 OF THE TREASURY REGULATIONS**

Mr. Maniccia presented a resolution through which the Board would declare its intent pursuant to section 1.150 of the Treasury regulations. He noted that with respect to the Board's decision to finance the reconstruction, rehabilitation and modernization of the Indian Lake Dam with tax-exempt bond or notes to be issued either by (i) a New York State financing authority or agency, or (ii) the Regulating District (in either case, in such capacity, the "Issuer"), the Regulating District reasonably expects that it will reimburse itself for advances from its own funds to pay certain expenditures with the proceeds of obligations to be issued.

Board Chair Mark Finkle called for a motion. Mr. Hayes made a motion to adopt the resolution declaring the Board's intent that the Regulating District will reimburse itself for advances made from its own funds from the proceeds of the obligations it intends to issue for the capital project at the Indian Lake Dam. Mr. Reagan seconded and the Board approved the motion adopting the resolution by unanimous vote.

#### **STAFF REPORTS**

Mr. Leslie presented his report. Mr. Leslie reminded the Board that on June 15<sup>th</sup>, the Federal Energy Regulatory Commission ("FERC") issued an Order addressing the Petitions filed in January by the Regulating District and Erie Boulevard Hydropower L.P. ("Erie") seeking assistance resolving the ongoing contractual dispute over use of Regulating District assets at Conklingville to generate power at Erie's E.J. West hydroelectric plant. In compliance with that Order, staff have sought FERC approval to divert flows around E.J. West because Erie has ceased payments upon the June 30, 2023 expiration of the Reservoir Operating Agreement through which Erie compensated the Regulating District for the use of such assets. Staff have also filed a Petition seeking a re-hearing of the Petitions resulting in FERC's June 15<sup>th</sup> Order. The Regulating District's Petition notes FERC's failure to distinguish between the headwater flow received by all downstream licensees and the head benefitting Erie's E.J. West plant. The Petition also seeks redress for the unraveling of the negotiated exchange of value between the parties, shielding Erie's non-performance, without ensuring just compensation to the Regulating District. Mr. Leslie also reported that staff have requested representation by the Office of the Attorney General in order that the Regulating District might commence an affirmative case seeking redress against Erie in the state and/or federal court system. Stillwater Associates LP alerted the Regulating District that it has a buyer for the hydroelectric plant who is also interested in leasing the state land underlying said plant. However, immediately thereafter, Stillwater demanded the Regulating District purchase that same plant. Regulating District staff continue to hold the opinion that the plant's value is hampered by considerations not yet taken into account by CNY Pomeroy Appraisers, Inc., the third appraiser chosen to review the appraisals commissioned by the Regulating District and Stillwater Associates. As such, staff will continue to negotiate a defensible price for said plant, entertain any other potential buyer, and consider proposals for an extended term lease at the market rate determined in the appraisal.



Mr. Callaghan presented Ruzycky's report to the Board. Ms. Ruzycky had noted completion of the HRAO compliance audit and her work completing onboarding seasonal laborers and her role managing contract administration and consulting with IMC on database modifications, permit renewals and the new contract proposal.

Mr. Reagan and Mr. Candido were excused from the meeting at 12:10PM.

Mr. Maniccia presented his report to the Board. Therein he noted that at the close of June 30, 2023, the general fund balances for the HRA and BRA were approximately \$6,290,018 and \$2,435,815 respectively. When combined (in the amount of \$8,725,833), this total is \$2,359,803 or 37.1% more than the same period last year. Mr. Maniccia noted that elimination of the requirement to make real property tax payments thanks to a change in statute adopted as part of the State FY 2022-2023 budget explains the increase in net revenue and the increase in cash and investments in comparison to the same period in the prior year. Significant disbursements for the period include: Payroll, U.S.G.S, Arcadis of New York, Inc., and Environmental Services Group. Mr. Maniccia noted that the Regulating District's transactional processing and reporting are current. Mr. Maniccia also noted that the Comptroller notified the Regulating District on May 24<sup>th</sup> that it had scheduled an audit of the HRBRRD's security over critical systems. Staff have met with OSC on two occasions and have delivered each of the documents requested. Mr. Maniccia also noted that the annual Independent Audit for Fiscal Year 2022-2023 has begun. This year's kick-off is a little earlier so that staff and the Board will have more time to review the reporting results before the September 28 deadline for submission to the Authorities Budget Office.

Mr. Maniccia presented an affidavit evidencing necessary and reasonable Board expenses incurred by Ken DeWitt (\$161.13), Richard Bird (\$131.00) and Alfred Candido Jr. (\$110.04) in the course of their duties as Board Members. Mr. Hayes moved to approve payment of such expenses. Mrs. Allen seconded and the Board passed the motion in a unanimous vote.

Mr. Foltan presented the Chief Engineer's report to the Board. Mr. Foltan noted that the June average daily release from the Sacandaga Reservoir (Great Sacandaga Lake) was approximately 1,340 cubic feet per second (cfs). Precipitation during the month of June was below average across the Great Sacandaga Lake and Indian Lake watersheds. The monthly inflow to Great Sacandaga Lake and Indian Lake reservoir was approximately 26% and 60% of historic average, respectively. Monthly release of water from Great Sacandaga Lake and Indian Lake measured 64% and 79% of historic average, respectively.

The June average daily release from Stillwater Reservoir was approximately 300 cfs. Monthly total precipitation measured 138, 117%, and 110% of historic average at Stillwater, Old Forge, and Sixth Lake, respectively, as of June 27<sup>th</sup>. Precipitation in the month of June was above average at Stillwater, Old Forge and Sixth Lake. The monthly inflow to Stillwater Reservoir was approximately 62% of historic average. The inflow to Sixth Lake and Old Forge Reservoir totaled 0.05 and 0.14 billion cubic feet, respectively, in June. Release of water from Stillwater Reservoir averaged 72% of historic discharge.

## **RESOLUTION SCHEDULING DATE TIME AND LOCATION OF THE REGULAR MEETING FOR SEPTEMBER 12, 2023**

Chair Finkle asked for a motion to adopt a resolution setting the date, time and location for the next meeting of the Board of the Hudson River-Black River Regulating District for Tuesday, September 12, 2023 at the Sacandaga Field Office 737 Bunker Hill Road, Mayfield, NY 12117. The meeting will be scheduled for 10:00 A.M.

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

## **ADJOURNMENT**

Chair Finkle called for a motion to adjourn the meeting. Mr. Hayes advanced the motion. Mrs. Allen seconded. The meeting adjourned at 12:15 P.M.

## **RESOLUTIONS**

### **23-35-08 RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO NEGOTIATE AND ENTER INTO AN AGREEMENT WITH INTERACTIVE MEDIA CONSULTING, LLC**

Board Chair Finkle called for a motion to adopt the resolution authorizing the Executive Director to enter into an agreement with Interactive Media Consulting, LLC at an amount not to exceed \$9,638.40. Mr. Candido so moved. Mr. DeWitt seconded and the Board adopted the resolution by unanimous vote.

### **23-36-08 RESOLUTION AUTHORIZING THE EXPENDITURE OF \$16,866.25 TO REPLACE A DUMP TRUCK BODY IN THE HUDSON RIVER AREA**

Board Chair Finkle called for a motion to adopt the resolution authorizing the Executive Director to enter into an agreement with Binghamton Truck Body at an amount not to exceed \$16,866.25. Mr. Reagan so moved. Mrs. Allen seconded and the Board adopted the resolution by unanimous vote.

### **23-37-08 RESOLUTION AUTHORIZING THE EXPENDITURE OF \$8,750 TO REPLACE ROOF ON THE SACANDAGA FIELD OFFICE BOATHOUSE**

Board Chair Finkle called for a motion to adopt the resolution authorizing the Executive Director to enter into an agreement with Correll Contracting Corp. at an amount not to exceed \$8,750 and to authorize a transfer of that amount from line item 5650-0200 (Repairs to Structures) from line item 5770-0200 (Contingencies). Mr. Bird so moved. Mr. DeWitt seconded and the Board adopted the resolution by unanimous vote.

### **23-38-08 RESOLUTION TO AWARD INDIAN LAKE DAM REHABILITATION CONSTRUCTION WORK TO C.D. PERRY, LLC (CONTRACT D012023)**



Board Chair Finkle called for a motion adopting the resolution conditionally awarding rehabilitation work at Indian Lake Dam to C.D. Perry, LLC and authorizing the Executive Director to form a contract to complete the work for an amount not-to-exceed \$10,834,860.17. Mr. Candido so moved. Mr. Hayes seconded and the Board adopted the resolution by unanimous vote.

**23-39-08      RESOLUTION TO AUTHORIZE REAPPROPRIATIONS FOR CAPITAL PROJECTS**

Board Chair Mark Finkle called for a motion. Mrs. Allen made a motion to adopt the resolution to authorize re-appropriations for capital projects. Mr. Hayes seconded and the Board approved the motion adopting the resolution by unanimous vote.

**23-40-08      RESOLUTION REGARDING A DECLARATION OF OFFICIAL INTENT PURSUANT TO SECTION 1.150-2 OF THE TREASURY REGULATIONS**

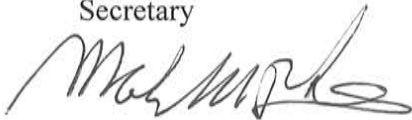
Board Chair Mark Finkle called for a motion. Mr. Hayes made a motion to adopt the resolution declaring the Board's intent that the Regulating District will reimburse itself for advances made from its own funds from the proceeds of the obligations it intends to issue for the capital project at the Indian Lake Dam. Mr. Reagan seconded and the Board approved the motion adopting the resolution by unanimous vote.

**23-41-08      RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE REGULAR MEETING FOR OCTOBER 11, 2023**

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



Robert P. Leslie  
Secretary



Mark M. Finkle  
Board Chairman