

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

Sacandaga Field Office Conference Room  
737 Bunker Hill Road  
Mayfield, NY 12117  
**September 12, 2023**

**Remote Conference-In Information**

Participants were invited to join the meeting via computer, tablet or smartphone.  
<https://global.gotomeeting.com/join/481237549> or via phone.

United States: [+1 \(571\) 317-3112](tel:+15713173112) Access Code: 481-237-549

**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 Fiscal Officer Timothy M. Maniccia; and Director of Administrative Services Stephanie V. Ruzicky.

**Excused:** Chief Engineer Robert S. Foltan

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

**PUBLIC COMMENT**

Chair Finkle opened the meeting to public comment. Access Permit holder Michael Bresney addressed the Board to further his appeal. Mr. Bresney also distributed copies of remarks he wanted to see reflected in the August 1, 2023 meeting minutes. Following Board discussion, input from staff and further exchanges with Mr. Bresney, Chair Finkle tabled further discussion asking staff to meet with the appellant. Access permit holder Burton Frasier addressed the Board regarding potential pollutants in Mayfield Lake and a request for assistance clearing a path from shore to open waters.

**APPROVAL OF THE AUGUST 1, 2023 REGULAR BOARD MEETING MINUTES**

Chair Finkle asked for a motion to adopt the August 1, 2023 regular board meeting minutes. Counsel noted the submission by a member of the public seeking inclusion of additional language. Noting that the Executive Director and Counsel caution that the additional language suggested does not capture accurately, and in the entirety, the matter discussed, Counsel indicated that, rather than

resulting in an amendment to the August 1<sup>st</sup> meeting minutes, the request would be appended to the current meeting's minutes. Mr. Bird advanced the motion to approve the regular meeting minutes. Mr. Candido seconded. The Board approved the motion by unanimous vote.

## **REPORT OF THE EXECUTIVE DIRECTOR**

Mr. Callaghan presented his report to the Board. Mr. Callaghan highlighted staff action hosting the Safe Lake Initiative partners presenting the NYS Boater Safety course at SFO on August 15&16. He also noted work with senior staff, Executive Chamber & NYSDEC personnel to finalize and issue a press release on the Indian Lake Dam project, and following the Board's authorization to award the Indian Lake Dam project to CD Perry, LLC at the August meeting, to finalize contract documents for submittal to the Attorney General and State Comptroller for review and approval. Also relative to the Indian Lake project, Mr. Callaghan and Mr. Foltan hosted two public information sessions in Indian Lake on 8/21, and attended the Indian Lake Association's annual meeting on 8/26 to give a presentation and answer questions about the project. Mr. Callaghan worked with the CFO relative to the application to EFC for financing; noting that the project has been placed upon EFC's Multi-year Intended Use Plan. Mr. Callaghan thanked staff for their effort to host the 109<sup>th</sup> Airlift Wing of the Air National Guard at the Sacandaga Field Office for water survival training August 4-6. The training was very successful. The ANG 109<sup>th</sup> Airlift Wing conveyed their appreciation for the opportunity to utilize the District's facility in support of their mission. Finally, Mr. Callaghan noted media reports concerning the drowning death of a boater on Great Sacandaga Lake this past weekend. He expressed sympathy for the families and friends and those involved in the recovery. Mr. Callaghan explained that, in compliance with the FERC license, staff will report the incident to the Federal Energy Regulatory Commission.

## **CONTRACTS/ACTIONS**

### **RESOLUTION AUTHORIZING STAFF TO ACCEPT AN APPLICATION FOR A PERMIT AUTHORIZING ACCESS TO STATE LANDS FORMERLY PERMITTED TO MICHAEL & LINDA BELL, AND TO ISSUE SAME UPON COMPLETION OF REQUIRED WORK**

Mr. Callaghan outlined the history behind the existing prohibition on issuance of an access permit for former Access Permit Area #15874 and offered staff's recommendation regarding steps the applicants could take to warrant issuance. The prospective applicants advocated passage. Chair Finkle pointed to the resolution outlining that: the application fee for said permit will be equal to the fees that would apply to a new permit application for the said permit area, plus an amount equal to the permit fees in place at the time had the applicants timely renewed for each of the twelve years between 2012 and 2023; the applicant must pay a \$100 administrative penalty prescribed by the Board's current access permit fee structure for each year the applicant failed to perform the required remediation from the Board's first authorization for the imposition of such penalties, on October 14, 2020, through completion of the requirements enumerated herein warranting the issuance of an access permit; that staff are authorized to issue a work permit specifying the prescribed remediation work to be performed at the applicant's expense to include: the planting of three native trees, no less than 3 inches in diameter at 'breast height' or 'dbh' ('dbh' = 4.5 feet above forest floor on the uphill side of the tree); placement of stabilizing rip-rap stone along the shoreline to Regulating District specifications; and reestablishment, above ground, of three monuments used to establish the New York State Property Boundary; which may remain on site but may be buried; and replacement of a fourth property line monument which is no longer present. All monuments utilized shall be to Regulating District specifications; and that the Executive Director is authorized to process said

application upon receipt of the fees and penalties described above and, following the completion of required remediation work to be conducted under the work permit issued by the Regulating District, to issue said access permit.

Chair Finkle called for a vote to authorize issuance of an access permit for former Access Permit Area #15874 upon satisfaction of the conditions outlined above. Mr. Reagan so moved. Mr. DeWitt seconded and the Board approved the Resolution by unanimous vote.

## **STAFF/COMMITTEE REPORTS**

### **GOVERNANCE COMMITTEE REPORT**

#### **RESOLUTION APPROVING A NINTH AMENDMENT TO THE GROUND LEASE AND WATER USAGE AGREEMENT AT STILLWATER**

Governance Committee Chair Alfred J. Candido, Jr. noted that the Committee has tabled consideration of this Resolution.

#### **RESOLUTION ADOPTING AMENDED BY-LAWS OF THE HUDSON RIVER – BLACK RIVER REGULATING DISTRICT**

Governance Committee Chair Alfred J. Candido Jr. presented a resolution amending the By-Laws to reflect the new address for the Hudson River Area Office. He noted that the Board has previously enacted changes to its By-Laws, on November 12, 1979, July 13, 2010, April 10, 2012, May 12, 2020, and last amended on September 14, 2021 and now deems it necessary and appropriate to enact the change as reflected in the draft attached hereto and made a part hereof.

Chair Finkle asked for a motion to adopt and approve the language changes in the Hudson River-Black River Regulating District By-Laws in the manner set forth in the By-Laws at Article X, Section 1, Amendments. Mr. Hayes so moved. Mr. DeWitt seconded and the Board adopted the resolution by unanimous vote.

## **STAFF REPORTS**

Mr. Leslie presented his report. Mr. Leslie reminded the Board that on June 15, 2023, the Federal Energy Regulatory Commission (“FERC”) issued an Order addressing the January 2023 Petitions filed by the Regulating District and Erie Boulevard Hydropower L.P. (‘Erie’) seeking assistance determining whether payments due for Erie’s use of the Regulating District’s interest in the fifty-six (56) feet of head created by the Conklingville Dam are duplicative of headwater benefits assessments FERC compels Erie to make pursuant to section 10(f) of the Federal Power Act. FERC determined that such payments are not preempted by the FPA, but also ruled that any agreement governing such payments is beyond the scope of FERC’s jurisdiction. Erie, realizing FERC would not compel it to maintain control over the head it uses to generate power, allowed the contractual agreement through which it paid the Regulating District \$1.5 million per annum for use of such head to expire. In compliance with FERC’s June 15th Order, and because Erie no longer pays for use of the state asset, on July 5th, the Regulating District sought FERC approval to divert flows around E.J. West. FERC has responded to the request to divert by outlining steps necessary for the Regulating District to seek a non-capacity amendment to the license for Conklingville (P-12252). Mr. Leslie

noted that, also on July 5th, the Regulating District requested assistance from the Office of the Attorney General to appeal the June 15th FERC Order and to, potentially, commence an affirmative case seeking redress against Erie in the state and/or federal court system. The OAG has acknowledged receipt and has asked a few questions regarding the request and will get back to the Regulating District. Mr. Leslie also reminded the Board that on July 14th, the Regulating District filed a Petition seeking a re-hearing of the petitions resulting in FERC's June 15th Order. The re-hearing request 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 and asks FERC to retain jurisdiction. The request also seeks redress for FERC's unraveling of the negotiated exchange of value between the parties, dating back to the 1927 transaction in which the Regulating District agreed to build the dam in exchange for the full value of the additional power generated through use of the extra head the dam provides. In short, FERC's Order shields Erie's non-performance without ensuring just compensation to the Regulating District. On August 14th, FERC issued a tolling Order essentially acknowledging the Regulating District's right to appeal, but also indicating that a future Order will address the substance of the Regulating District's July 14th Petition. Finally, Mr. Leslie reported that Stillwater Associates LP has 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 for \$1,510,000. 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 added that he has approached the New York Power Authority for their expertise in the matter.

Ms. Ruzycky presented her report to the Board. Ms. Ruzycky noted completion of the SFO and BRAO compliance audit and her work completing annual employee training.

Mr. Maniccia presented his report to the Board. Therein he noted that at the close of August 31, 2023, the general fund balances for the HRA and BRA were approximately \$7,575,177 and \$2,269,582 respectively. When combined (in the amount of \$9,844,759), this total is \$2,396,435 or 32.2% 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, Health Insurance and Kleinschmidt Associates. Mr. Maniccia noted that the Regulating District moved funds to enable timely and complete payment of principal (in the amount of \$25,000) and interest (in the amount of \$9,318.75) due as part of its long-term financial arrangement with the New York State Environmental Facilities Corporation (EFC). The next interest payment is due on March 1, 2024. He also noted that the Regulating District is poised to file a Clean Water State Revolving Fund application with EFC to obtain financing for the Indian Lake Dam Rehabilitation project; noting that the project is listed on the Multi-Year and Annual Intended Use Plans for the coming federal fiscal year. Mr. Maniccia reported that the Regulating District's transactional processing and reporting are current.

Mr. Maniccia presented an affidavit evidencing necessary and reasonable Board expenses incurred by Alfred Candido Jr. (\$110.04) in the course of his duties as a Board Member. Mr. DeWitt

moved to approve payment of such expenses. Mrs. Allen seconded and the Board passed the motion in a unanimous vote. Mr. Candido abstained.

Board Chair Finkle noted Mr. Foltan's excused absence pointing to the Board to the Chief Engineer's report. Therein Mr. Foltan noted that the August average daily release from the Sacandaga Reservoir (Great Sacandaga Lake) was approximately 2,220 cubic feet per second (cfs). Precipitation during the month of August 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 270% and 219% of historic average, respectively. Monthly release of water from Great Sacandaga Lake and Indian Lake measured 116% and 128% of historic average, respectively.

The August average daily release from Stillwater Reservoir was approximately 815 cfs. Monthly total precipitation measured 240%, 183%, and 131% of historic average at Stillwater, Old Forge, and Sixth Lake, respectively, as of August 27<sup>th</sup>. Precipitation in the month of August was above average at Stillwater, Old Forge and Sixth Lake. The monthly inflow to Stillwater Reservoir was approximately 407% of historic average. The inflow to Sixth Lake and Old Forge Reservoir totaled 0.08 and 0.24 billion cubic feet, respectively, in August. Release of water from Stillwater Reservoir averaged 188% of historic discharge.

In Mr. Foltan's absence, at the request of the Board, Mr. Callaghan provided a brief update on progress at the Hawkinsville Dam project.

#### **RESOLUTION SCHEDULING DATE TIME AND LOCATION OF THE REGULAR MEETING FOR OCTOBER 11, 2023**

Board 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 Wednesday, October 11, 2023 at the Dulles State Office Building 317 Washington Street, Watertown, NY 13601. The meeting will be scheduled for 10:00 A.M.

Mr. Hayes moved to adopt the resolution setting the date, time and location of the next meeting. Mr. Candido 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. Mr. Reagan seconded. The meeting adjourned at 11:53 A.M.

#### **RESOLUTIONS**

##### **23-42-09 RESOLUTION AUTHORIZING STAFF TO ACCEPT AN APPLICATION FOR A PERMIT AUTHORIZING ACCESS TO STATE LANDS FORMERLY PERMITTED TO MICHAEL & LINDA BELL, AND TO ISSUE SAME UPON COMPLETION OF REQUIRED WORK**

Chair Finkle called for a vote to authorize issuance of an access permit for former Access Permit Area #15874 upon satisfaction of the conditions outlined above. Mr. Reagan so moved. Mr. DeWitt seconded and the Board approved the Resolution by unanimous vote.

**23-43-09        RESOLUTION ADOPTING AMENDED BY-LAWS OF THE HUDSON  
RIVER – BLACK RIVER REGULATING DISTRICT**

Chair Finkle asked for a motion to adopt and approve the language changes in the Hudson River-Black River Regulating District By-Laws in the manner set forth in the By-Laws at Article X, Section 1, Amendments. Mr. Hayes so moved. Mr. DeWitt seconded and the Board adopted the resolution by unanimous vote.

**23-44-09        RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE  
REGULAR MEETING FOR OCTOBER 11, 2023**

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

Robert P. Leslie  
Secretary

Mark M. Finkle  
Board Chairman