

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

Dulles State Office Building, 5th Floor
317 Washington Street
Watertown, NY 13601
October 11, 2023

Remote Conference-In Information

Participants were invited to join the meeting via computer, tablet or smartphone.
<https://global.gotomeeting.com/join/387117117> or via phone.

United States: [+1 \(646\) 749-3122](tel:+16467493122) Access Code: 387-117-117

CALL TO ORDER

Board Chair Mark M. Finkle called the meeting to order at 10:01 A.M.

PLEDGE OF ALLIEGIENCE

ROLL CALL

Present: Board Chair Mark M. Finkle; First Vice-Chair Kenneth F. DeWitt,; Board Members Albert J. Hayes, 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: Second Vice-Chair Alfred J. Candido, Jr. (illness), Board Member Nicole T. Allen (unexpected work commitment)

MOTION TO ADOPT OR REVISE THE MEETING AGENDA

Chair Finkle asked for a motion to revise the meeting agenda tabling item 8(e) [HDR proposal to complete Part 12D inspection at Conklingville]. 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 SEPTEMBER 12, 2023 REGULAR BOARD MEETING MINUTES

Chair Finkle asked for a motion to adopt the September 12, 2023 regular board meeting minutes. Mr. Hayes advanced the motion to approve the regular meeting minutes. Mr. Bird seconded. The Board approved the motion by unanimous vote.

REPORT OF THE EXECUTIVE DIRECTOR

Mr. Callaghan presented his report to the Board. Mr. Callaghan thanked Mr. Foltan and Ms. Ruzicky for their work to gain Office of the State Comptroller approval for the contract for Indian Lake Dam project with CD Perry, LLC. Mr. Callaghan noted David Ioele's retirement on 10/2/23 after his service to the Regulating District over the course of two decades. Mr. Callaghan led the Board and staff in wishing Mr. Ioele the best in retirement. Mr. Callaghan discussed Stillwater Associates' letter to him and Chairman Finkle which he had forwarded to the Board the previous day, and noted staff's recent meeting with OSC to learn what will be required to gain OSC approval of the potential purchase of the plant at Stillwater. Mr. Callaghan noted the presence of Administrative Officer Kim Scott and thanked Ms. Scott and Ms. Cole for the work they do on the Board's behalf in the Black River Area. Finally, Mr. Callaghan invited Board Members to a site visit evidencing substantial completion of the Hawkinsville Dam remediation; noting that no Board business would be conducted at that visit.

CONTRACTS/ACTIONS

RESOLUTION TO APPROVE AMENDMENT #1 TO CONTRACT C062016 WITH ARCADIS OF NEW YORK TO PERFORM ENGINEERING SERVICES IN CONNECTION WITH THE OLD FORGE & SIXTH LAKE DAM RECOMMENDATION FOR REMEDIAL MEASURES

Mr. Foltan presented a resolution to authorize an extension to Contract C062016 with Arcadis of New York ('Arcadis'). He noted that Arcadis performs engineering services in connection with remedial measures required at the Old Forge and Sixth Lake dams pursuant to a contract for a not-to-exceed amount of \$1,008,000.00. Mr. Foltan explained that work continues to progress and the parties desire to extend the term of the contract through December 31, 2025. Further, Mr. Foltan noted that the term extension is subject to the review and approval of the Office of the New York State Attorney General and the New York State Office of the State Comptroller.

Chair Finkle called for a vote to authorize an amendment to extend the Contract C062016 term through December 31, 2025. Mr. Bird so moved. Mr. DeWitt seconded and the Board approved the Resolution by unanimous vote.

RESOLUTION APPROVING A CASH PAYOUT OF UNUSED ANNUAL AND SICK LEAVE AND CONTRIBUTION TO HEALTH INSURANCE PREMIUMS TO DAVID IOELE UPON RETIREMENT

Mr. Maniccia presented the resolution authorizing a cash payout of unused annual and sick leave and a contribution to health insurance premiums to David Ioele upon Mr. Ioele's retirement. Mr. Maniccia noted that David Ioele retired directly from Regulating District employment effective October 3, 2023 and that pursuant to the July 1, 2020-June 30, 2024 CSEA Contract he shall be paid: up to a maximum of forty (40) days of vacation leave [Article VI (C)]; unused sick leave up to 100 days, excluding any days used to pay for health insurance premiums for spouse under Article VIII of the agreement [Article VII (F)]; and health insurance premiums at the same rate as when the employee was employed, regardless of whether it is Family, 2-person (if available), or Individual coverage, provided that: (a) the employee retires with ten (10) or more years of service with the Regulating District and (b) the employee is eligible for New York State Retirement benefits [Article VIII (G)]. Mr. Maniccia added that a review of Mr. Ioele's personnel record maintained by the Executive Director

reveals that Mr. Ioele commenced service as an employee of the Regulating District on June 19, 2003 and that at the conclusion of his twenty-year tenure with the Regulating District, has a balance of: 124.13 hours (16.55 days) of unused annual leave; 585.13 hours (78.02 days) of sick leave (payout limited to 100 days/750 hours); and zero (0) hours (payout limited to 37.5 hours) of on call time. At twenty years of service, Mr. Ioele is entitled to \$1,200 in longevity compensation. On a pro-rated basis, Mr. Ioele is eligible to be paid \$300 hours of this longevity payment. The cash payment of \$21,945.55 to Mr. Ioele for unused annual and sick leave, on call time and longevity upon retirement is subject to review and approval by the NYS Comptroller. Mr. Maniccia recommended the Board authorize the payouts indicated. Finally, Mr. Maniccia added that based on the fact that Mr. Ioele's hire date (June 19, 2003) falls before July 1, 2006, Mr. Ioele is not required to contribute toward the payment of health insurance premiums due each month during retirement.

Chair Finkle asked for a motion approving the resolution authorizing a cash payout to David Ioele in the amount not to exceed \$21,945.55 representing up to 16.55 days (124.13 hours) of unused annual leave, 78.02 days (585.13 hours) of unused sick leave, zero (0) hours of on call time, and \$300 of longevity, and acknowledging that because Mr. Ioele's hire date precedes July 1, 2006, Mr. Ioele is not required to contribute toward payment of health insurance premiums due each month during retirement. Mr. DeWitt so moved, Mr. Reagan seconded. During discussion, Mr. Reagan questioned the wisdom of the Regulating District carrying the liability associated with negotiated employment benefits for extended periods of time. Mr. Maniccia provided information on the collective bargaining process, as well as how these liabilities are accounted for in accordance with current government accounting standards. The Board approved the motion adopting the resolution by unanimous vote.

RESOLUTION TO AMEND THE APPROVED INSURANCE PROPOSAL FOR POLICY YEAR JULY 1, 2023 THROUGH JUNE 30, 2024

Mr. Maniccia presented a Resolution to amend the Regulating District's insurance program for policy year July 1, 2023 through June 30, 2024. He noted that the Board approved Resolution 23-30-06 awarding the New York State Office of General Services, Bureau of Risk and Insurance Management the Regulating District's Insurance Program for the policy year ending June 30, 2024. Mr. Maniccia explained that the Regulating District has in the past and desires once again during the policy year ending June 30, 2024 to obtain Terrorism Risk Insurance which covers damaged or destroyed property, losses associated with the interruption of Regulating District business and liability claims associated with a terrorist attack if such an attack is certified by the United States Department of the Treasury. He noted that the New York State Office of General Services, Bureau of Risk and Insurance Management and its insurance advisor Arthur J. Gallagher recommend the Regulating District carry Terrorism Risk Insurance, but also noted that the original insurance program authorized by the Regulating District's Board via adoption of Resolutions 23-31-06 mistakenly did not include Terrorism Risk Insurance and the cost of obtaining such coverage.

Chair Finkle called for a motion to adopt the resolution approving an amendment in the amount of \$7,498.31 to the original insurance policy proposal for the fiscal period of July 1, 2023 through June 30, 2024, for an amount now estimated at \$244,016.56, which includes the cost of insurance coverage and the cost recovery fee charged by the New York State Office of General Services, Bureau of Risk and Insurance Management but excludes Stamping or other fees charged by insurance carriers and expected to be minimal. Mr. Hayes so moved and Mr. Reagan seconded. The Board approved the motion adopting the resolution by unanimous vote.

RESOLUTION TO APPROVE A FEE PROPOSAL AND AUTHORIZE THE EXECUTIVE DIRECTOR TO ENTER INTO CONTRACT C020223 WITH GOMEZ AND SULLIVAN ENGINEERS, D.P.C. TO DEVELOP THE FINAL DAM BREACH INUNDATION MAPPING AND A NARRATIVE OF THE BREACH ANALYSIS FOR USE IN THE CONKLINGVILLE DAM EAP

Mr. Foltan presented the resolution to authorize a contract with Gomez and Sullivan Engineers, D.P.C. ('GS'). Mr. Foltan explained that in February 2008, the Federal Energy Regulatory Commission ("FERC" or "the Commission") requested that the Regulating District develop a dam breach analysis and inundation mapping for the Conklingville Dam to enhance the project's Emergency Action Plan ("EAP"). The Board then approved resolution 08-22-05 authorizing contract C092007 with GS for the completion of the Conklingville Dam breach analysis for a not-to-exceed amount of \$170,000. Mr. Foltan noted that, in May 2011, the Board approved resolution 11-12-05 authorizing GS to address the Commission's response to the preliminary dam failure analysis for Conklingville Dam, increasing the not to exceed amount by \$103,090.00 to a total amount not-to-exceed \$273,090.00 and then, in February 2017, approved resolution 17-02-02 authorizing GS to address additional FERC comments and implement certain billing rate adjustments, increasing the Contract C092007 not-to-exceed amount by \$49,580.00 to \$322,670.00. Mr. Foltan further explained that GS developed a subsequent revised dam breach analysis, again in response to FERC comments, in April 2021. He noted that staff, rather than seek additional resolutions authorizing necessary extensions to Contract C092007 while awaiting receipt of the Commission's next round of comments, elected to allow the nearly fifteen year contract C092007 to expire on December 31, 2021. The Commission did finally accept the GS dam breach analysis model on February 7, 2023. Mr. Foltan recommended that the Board accept the proposal advanced by Gomez and Sullivan Engineers D.P.C. to: update the inundation maps for those portions of the dam breach model previously mapped; develop inundation maps for the remainder of the revised model approved by the Commission; and prepare a narrative summary of the dam breach model used to develop the mapping for inclusion in the Conklingville Dam EAP for a not-to-exceed contract price of \$44,400. Mr. Maniccia noted the contract award would require certain budget transfers. The contract is subject to review and approval by the New York State 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 which authorizes the Executive Director to form contract C022023 with Gomez and Sullivan Engineers, D.P.C to complete work outlined in their July 24, 2023 proposal for an amount not-to-exceed \$44,400. The Chair also noted the resolution would authorize the following budget transfers: Increase Account 5695-0300 (Engineering Consultant) by \$30,235, and decrease account 5260-0300 (Capital Improvements) by \$900, account 5740-0300 (Debt Payments – Principal) by \$14,691, account 5750-0300 (Debt Payments – Interest) by \$6,524, and account 5770-0300 (Contingencies) by \$8,120. Mr. DeWitt so moved and Mr. Reagan seconded. The Board approved the motion adopting the resolution by unanimous vote.

RESOLUTION AUTHORIZING THE EXPENDITURE OF UP TO \$49,700 FOR PURCHASE OF A REPLACEMENT PICKUP TRUCK IN THE HUDSON RIVER AREA

Mr. Callaghan presented a resolution authorizing the purchase of a truck to replace the recently surplused 2003 Ford F250 for the Hudson River Area. He noted that repairs increased in cost and frequency and were not sufficient to ensure an acceptable level of safety for Regulating District employees. The manufacturer's suggested retail price (MSRP) through New York State Contract for a vehicle with the appropriate capabilities is \$49,700. Mr. Callaghan also proposed

budget transfers to increase account 5220-0200 (Vehicles) and decrease account 5900-0200 (Property Taxes) by that amount.

Chair Finkle asked for a motion to adopt the resolution authorizing the purchase of the Ford F250 through state contract for \$49,700 for use primarily in the Hudson River Area. Mr. Hayes so moved and Mr. DeWitt seconded. The Board approved the motion adopting the resolution by unanimous vote.

STAFF/COMMITTEE REPORTS

STAFF REPORTS

Mr. Leslie presented his report. Mr. Leslie noted there has been no movement with Erie Boulevard Hydropower L.P. ('Erie') regarding the expired Reservoir Operating Agreement at Conklingville nor on the FERC Order on re-hearing addressing the January 2023 Petitions filed by the Regulating District and Erie. Mr. Leslie did explain that the Office of the Attorney General stands ready to appeal the June 15th FERC Order and Order on rehearing should an appeal be necessary and to commence an affirmative case seeking redress against Erie in the state and/or federal court system. Mr. Leslie reported little movement with Stillwater Associates LP who believes the Regulating District should now buy the hydroelectric plant it operates at Stillwater. The parties' opinion on value remains nearly one half Million dollars apart. Stillwater has allowed the existing Ground Lease and Water Usage Agreement to expire. Staff will continue to negotiate a defensible price for said plant, entertain any other potential buyer, and pursue partnership options and opportunities with other New York State entities like NYPA.

Ms. Ruzycky presented her report to the Board. Ms. Ruzycky noted completion of the SFO quarterly compliance audit and consulted with Interactive Media Consulting, LLC (IMC) on permit renewal applications.

Mr. Maniccia presented his report to the Board. Therein he noted that at the close of September 30, 2023, the general fund balances for the HRA and BRA were approximately \$7,483,464 and \$2,371,894 respectively. When combined (in the amount of \$9,855,358), this total is \$1,596,544 or 19.3% 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 Environmental Services Group and Bergmann. Mr. Maniccia noted that the Regulating District's independent auditors (Galleros Robinson) completed their audit of Fiscal Year 2022-23 financial statements on September 28, 2023. Nora Galleros will present her report to the Audit Committee at the November 7th meeting. He also noted that the Regulating District remains 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. Foltan presented the Chief Engineer's report. Therein Mr. Foltan noted that the September average daily release from the Sacandaga Reservoir (Great Sacandaga Lake) was approximately 1,610 cubic feet per second (cfs). Precipitation during the month of September 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 68% and 78% of historic average, respectively. Monthly release of water from Great Sacandaga Lake and Indian Lake measured 88% and 88% of historic average, respectively.

The September average daily release from Stillwater Reservoir was approximately 760 cfs. Monthly total precipitation measured 39%, 32%, and 23% of historic average at Stillwater, Old Forge, and Sixth Lake, respectively, as of September 24th. Precipitation in the month of September was below average at Stillwater, Old Forge and Sixth Lake. The monthly inflow to Stillwater Reservoir was approximately 81% of historic average. The inflow to Sixth Lake and Old Forge Reservoir totaled 0.03 and 0.05 billion cubic feet, respectively, in September. Release of water from Stillwater Reservoir averaged 187% of historic discharge.

Mr. Foltan provided the Board with a brief update with respect to progress on the Hawkinsville Dam remediation project.

BOARD MEMBER QUESTIONS & COMMENTS

The Board Chair recognized access permit holder Michael Bresney's attendance at the meeting determining to take up the issue of Mr. Bresney's appeal of a staff determination that a retaining wall constructed on an access permit area (# 9366) adjacent to Mr. Bresney's property at 379 So. Shore Road must be removed. The Board Chair then solicited a motion for the Board to consider a proposed compromise advanced by Mr. Bresney to resolve the appeal. Mr. Bird so moved with Mr. DeWitt seconding the motion. The Chair opened the discussion by soliciting from Mr. Bresney the particulars of his proposed resolution. Mr. Bresney explained his plan to move both the North and South ends of the retaining wall in front of 379 So. Shore Road in by five feet (5') reducing the total width of the wall by ten feet (10') and reducing the total wall area to approximately 170 sq. ft.; below what Mr. Bresney asserts to be a 200 sq. ft. threshold for APA section 814 review. Mr. Bresney also proposed to eliminate two four inch (4") by four foot (4') ground water drain extensions now existing within the five foot (5') areas of the retaining wall to be removed. Mr. Bresney noted that the total length of the wall remaining in front of 379 So. Shore Road would be thirty feet (30'); which he asserted is less than the adjacent thirty-one foot (31') long retaining wall which Mr. Bresney had constructed on his access permit area (# 15363) in front of 377 So. Shore Road. Mr. Bresney noted that the Executive Director, as part of the determination requiring removal of the retaining wall in front of 379 So. Shore Road, had given permission for the also newly reconstructed thirty-one foot (31') wall in front of 377 So. Shore Road to remain in his May, 2023 determination of Mr. Bresney's appeal to the Executive Director. In so noting, Mr. Bresney referred to the wall in front of 377 So. Shore Road as the "accepted wall." Mr. Callaghan pointed out that, notwithstanding his determination in his May, 2023 letter, the matter of the appeal is now in the Board's hands with the entire encroachment before the Board, and as such no element has been "accepted." Mr. Hayes moved to table consideration of Mr. Bresney's proposal to the November meeting. Mr. Reagan seconded Mr. Hayes' motion. The Board adopted the motion to table the matter by a roll call vote of 6-1 (Mr. DeWitt voting "no").

RESOLUTION SCHEDULING DATE TIME AND LOCATION OF THE REGULAR MEETING FOR NOVEMBER 7, 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 Tuesday,

November 7, 2023 at the Sacandaga Field Office, 737 Bunker Hill Road, Mayfield, NY 12117. 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. DeWitt seconded and the Board adopted the resolution by unanimous vote.

ADJOURNMENT

Chair Finkle called for a motion to adjourn the meeting. Mr. Reagan advanced the motion. Mr. Bird seconded. The meeting adjourned at 11:28 A.M.

RESOLUTIONS

23-45-10 RESOLUTION TO APPROVE AMENDMENT #1 TO CONTRACT C062016 WITH ARCADIS OF NEW YORK TO PERFORM ENGINEERING SERVICES IN CONNECTION WITH THE OLD FORGE & SIXTH LAKE DAM RECOMMENDATION FOR REMEDIAL MEASURES

Chair Finkle called for a vote to authorize an amendment to extend the Contract C062016 term through December 31, 2025. Mr. Bird so moved. Mr. DeWitt seconded and the Board approved the Resolution by unanimous vote.

23-46-10 RESOLUTION APPROVING A CASH PAYOUT OF UNUSED ANNUAL AND SICK LEAVE AND CONTRIBUTION TO HEALTH INSURANCE PREMIUMS TO DAVID IOELE UPON RETIREMENT

Chair Finkle asked for a motion approving the resolution authorizing a cash payout to David Ioele in the amount not to exceed \$21,945.55 representing up to 16.55 days (124.13 hours) of unused annual leave, 78.02 days (585.13 hours) of unused sick leave, zero (0) hours of on call time, and \$300 of longevity, and acknowledging that because Mr. Ioele's hire date precedes July 1, 2006, Mr. Ioele is not required to contribute toward payment of health insurance premiums due each month during retirement. Mr. DeWitt so moved, Mr. Reagan seconded and the Board approved the motion adopting the resolution by unanimous vote.

23-47-10 RESOLUTION TO AMEND THE APPROVED INSURANCE PROPOSAL FOR POLICY YEAR JULY 1, 2023 THROUGH JUNE 30, 2024

Chair Finkle called for a motion to adopt the resolution approving an amendment in the amount of \$7,498.31 to the original insurance policy proposal for the fiscal period of July 1, 2023 through June 30, 2024, for an amount now estimated at \$244,016.56, which includes the cost of insurance coverage and the cost recovery fee charged by the New York State Office of General Services, Bureau of Risk and Insurance Management but excludes Stamping or other fees charged by insurance carriers and expected to be minimal. Mr. Hayes so moved and Mr. Reagan seconded. The Board approved the motion adopting the resolution by unanimous vote.

23-48-10 RESOLUTION TO APPROVE A FEE PROPOSAL AND AUTHORIZE THE EXECUTIVE DIRECTOR TO ENTER INTO CONTRACT C020223 WITH GOMEZ AND SULLIVAN ENGINEERS, D.P.C. TO DEVELOP THE FINAL DAM BREACH INUNDATION MAPPING AND A NARRATIVE OF THE BREACH ANALYSIS FOR USE IN THE CONKLINGVILLE DAM EAP

Chair Finkle asked for a motion to adopt the resolution which authorizes the Executive Director to form contract C022023 with Gomez and Sullivan Engineers, D.P.C to complete work outlined in their July 24, 2023 proposal for an amount not-to-exceed \$43,500. The Chair also noted the resolution would authorize the following budget transfers: Increase Account 5695-0300 (Engineering Consultant) by \$29,335, and decrease account 5740-0300 (Debt Payments – Principal) by \$14,691, account 5750-0300 (Debt Payments – Interest) by \$6,524, and account 5770-0300 (Contingencies) by \$8,120. Mr. DeWitt so moved and Mr. Reagan seconded. The Board approved the motion adopting the resolution by unanimous vote.

23-49-10 RESOLUTION AUTHORIZING THE EXPENDITURE OF UP TO \$49,700 FOR PURCHASE OF A REPLACEMENT PICKUP TRUCK IN THE HUDSON RIVER AREA

Chair Finkle asked for a motion to adopt the resolution authorizing the purchase of the Ford F250 through state contract for \$49,700 for use primarily in the Hudson River Area. Mr. Hayes so moved and Mr. DeWitt seconded. The Board approved the motion adopting the resolution by unanimous vote.

23-50-10 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE REGULAR MEETING FOR NOVEMBER 7, 2023

Mr. Hayes 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