

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

Sacandaga Field Office Conference Room
737 Bunker Hill Road
Mayfield, NY 12117
November 7, 2023

Remote Conference-In Information

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

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CALL TO ORDER

Board Chair Mark M. Finkle called the meeting to order at 10:30 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.

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. Candido 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 OCTOBER 11, 2023 REGULAR BOARD MEETING MINUTES

Chair Finkle asked for a motion to adopt the October 11, 2023 regular board meeting minutes. Mrs. Allen advanced the motion to approve the regular meeting minutes. Mr. Reagan seconded. The Board approved the motion by unanimous vote.

CONTRACTS/ACTIONS

BRESNEY ACCESS PERMIT APPEAL

The Board Chair recognized access permit holder Michael Bresney's attendance at the meeting; noting that a motion to accept Mr. Bresney's proposed resolution of the appeal, tabled at the October meeting, remains open for discussion and a vote. The Chair noted that, absent an affirmation of Mr. Bresney's proposal, 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 remains an open question. The Chair asked Mr. Leslie to restate the motion and then reopened 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 he had a new, six-page handout that he had produced for the meeting that he would like to distribute. The Chair asked the members if anyone thought they needed to see any more materials from Mr. Bresney and, no Board members indicated an interest in additional materials, the Chair, noting that the matter had already been under review for some time, declined Mr. Bresney's offer to distribute these materials. 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." The Board Chair, having heard sufficient evidence, called for a vote on the motion to accept Mr. Bresney's proposal. The Board rejected the motion to accept Mr. Bresney's proposal to resolve the appeal by unanimous vote.

The Board Chair then brought the matter of Mr. Bresney's appeal of staff's determination that the retaining wall in front of 379 So. Shore Road must be removed forward for discussion. Based on discussions to date, the Board determined that Article 8 of the Environmental Conservation Law (SEQRA) and DEC regulations (6 NYCRR Part 617) detail the steps and criteria against which each state and local agency must weigh permitting, licensing and funding determinations. DEC created a list of activities, called a Type II list, which the Department determined would not have an adverse environmental impact (6 NYCRR §617.5). DEC's Type II list includes maintenance of existing landscaping or natural growth [6 NYCRR 617.5(C)(8)]. Thus, only if the placement of the retaining wall is considered a replacement in kind, does DEC's Type II list exempt said replacement from environmental review. As permitted by DEC regulation, through resolution 80-07-02, the Regulating District adopted its own supplemental Type II list of activities which the Board determined would have no environmental impact. The Regulating District's supplemental Type II list does permit: [b]older and stone earth retaining walls with eighteen inch maximum height and five hundred feet maximum length [See, Section 3(b)(11)]. The retaining wall at issue, as constructed on access permit area #9366, is in excess of eighteen inches in height. As such, the Regulating District's Type II list does not exempt the project from environmental review. As the proposed project is too small to fall within DEC's list of Type I activities, the Regulating District characterized the project as an unlisted action.

At this and previous meetings, the Board further considered that the Adirondack Park Agency (APA), regulates development upon most of the lands underlying Great Sacandaga Lake. Projects undertaken on state land are considered the project of the state agency having jurisdiction over said land (9 NYCRR §579.1(b)). Such projects may be subject to the APA's §814 permitting requirements. Board Resolutions 05-51-11 & 06-20-05 limit Regulating District participation in most §814 permit applications to only duly authorized public works projects of local, county, state or federal government. Staff have discretion, upon consultation with the APA, to commit the Regulating District as a co-applicant to participate in a §814 review for new or expanded seasonal, non-permanent docks on commercial access parcels and for modest new or expanded pedestrian access facilities on any access parcel. Staff determined that the proposed project did not fit within the bounds of the authority extended though these board resolutions.

A March 30, 2004 letter to the Regulating District from APA counsel, makes clear that the APA excludes the construction of retaining walls less than 200 sq ft in size made of dry-laid stone from APA §814 review. Staff determined the retaining wall at issue proposed for access permit area #9366 to exceed 200 sq ft in size thus subjecting the project to APA jurisdiction. The Board concluded that the project sponsor is subject to APA's jurisdiction and should have approached that agency for project approval. APA would have required the Regulating District, as the landowner, to participate as a co-applicant. In light of the Board's policy restricting the Regulating District's participation as a co-applicant for §814 review before the APA as articulated in the preceding paragraph, the Board determined not to join the permittee in an application for approval from the APA. Therefore, knowing that: the project would require an environmental review; that the project fell beyond the threshold over which APA would exert jurisdiction; and that the Board's policy was to avoid involvement in the APA review process for what amounts to a private (rather than public) project, staff recommended that the Board uphold the Executive Director's determination.

Mr. Candido moved to deny the Bresney appeal. Mr. Hayes moved to amend the motion to read: "that the Board uphold the determination of the Executive Director in the matter of Mr. Bresney's appeal, allowing the wall on New York State property at 377 South Shore Road to remain in place, and requiring that the portion of the wall on New York State property at 379 South Shore Road be removed, under conditions prescribed in a work permit issued by the Regulating District. Mr. DeWitt seconded the amended motion. Chair Finkle and the Board assented to the amendment and Chair Finkle called for a vote on the amended motion. The Board approved the motion as amended by unanimous vote.

Counsel asked the permittee to contact the Mayfield office to secure the work permit necessary before beginning to complete the work. The Executive Director noted that conditions would soon make such work difficult and agreed to work with the permittee over the winter months such as to be prepared to move forward with the removal when the weather turns more conducive in the spring.

REPORT OF THE EXECUTIVE DIRECTOR

Mr. Callaghan presented his report to the Board. Mr. Callaghan acknowledged this last meeting of the year and took a moment to note completion of several initiatives including: completion of the Hawkinsville remediation, and the commencement of several other capital projects, including the imminent mobilization at the Indian lake Rehabilitation project. Mr. Callaghan briefly discussed meetings with Stillwater Associates and the Office of the State Comptroller's Contract Approval unit; subsequent follow-up calls with Mr. Tucker from Stillwater Associates and the upcoming meeting with the New York Power Authority concerning a potential purchase of the

plant at Stillwater. He also discussed the FERC's October 19th ruling with respect to the Regulating District's ongoing contract dispute with Erie Boulevard Hydropower L.P.

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

Mr. Foltan presented a resolution through which the Board would approve a tenth amendment to Contract C012012 extending Kleinschmidt Associates' construction observation & additional engineering support through December 31, 2024; roughly representing the expiration of Environmental Services Group's contractor warranty period upon completion the Hawkinsville Dam rehabilitation.

Chair Finkle called for a vote to adopt the resolution authorizing a tenth amendment to extend the Contract C012012 term through December 31, 2024. Mr. Candido so moved. Mr. Reagan seconded and the Board approved the Resolution by unanimous vote.

RESOLUTION TO APPROVE AMENDMENT #6 TO HDR CONTRACT C022012 TO PERFORM STILLWATER DAM BREACH ANALYSIS SITE SPECIFIC PROBABLE MAXIMUM PRECIPITATION STUDY

Mr. Foltan presented the resolution through which the Board would approve a sixth amendment to extend contract C022012 with Henningson, Durham & Richardson Architecture and Engineering, P.C. (HDR) through December 31, 2026 affording staff additional time to analyze HDR's recent final draft PMF report submission before recommending next steps in the Stillwater Dam site specific probable maximum precipitation study required by FERC.

Chair Finkle asked for a motion to adopt the resolution extending Contract C022012 with HDR through December 31, 2026. Mr. Reagan so moved and Mrs. Allen seconded. The Board approved the motion adopting the resolution by unanimous vote.

RESOLUTION TO ACCEPT AMENDMENT #5 TO THE HENNINGSON, DURHAM & RICHARDSON ARCHITECTURE AND ENGINEERING, P.C. (HDR) CONTRACT (C032018) CONKLINGVILLE DAM FOURTH PART 12D INDEPENDENT SAFETY INSPECTION

Mr. Foltan presented the resolution through which the Board would approve a fifth amendment to extend Contract C032018 with Henningson, Durham & Richardson Architecture and Engineering, P.C. (HDR) through December 31, 2025 affording the contractor time to complete the 4th Part 12D Safety Inspection of Conklingville Dam.

Chair Finkle asked for a motion to adopt the resolution extending Contract C032018 with HDR through December 31, 2025. Mr. Bird so moved and Mr. DeWitt seconded. The Board approved the motion adopting the resolution by unanimous vote.

RESOLUTION TO ACCEPT HENNINGSON, DURHAM AND RICHARDSON ARCHITECTURE AND ENGINEERING, P.C., INC'S (HDR) PROPOSAL TO COMPLETE 5TH PART 12D INDEPENDENT CONSULTANT SAFETY INSPECTION OF THE CONKLINGVILLE DAM

Mr. Foltan presented the resolution through which the Board would accept a proposal and authorize the Executive Director to execute an agreement with Henningson, Durham & Richardson Architecture and Engineering, P.C., Inc. ('HDR') for the 5th Part 12 D independent consultant safety inspection at Conklingville Dam. He noted that the Federal Energy Regulatory Commission ("FERC" or "the Commission") requires an Independent Consultant Safety Inspection of Conklingville Dam, and submission of an Independent Consultant inspection report (Part 12D Report), every five years; next due by February 3, 2025. Mr. Foltan explained that recent changes to the Federal Power Act, specifically FERC's dam safety inspection program (the Part 12D Program), establish a more thorough safety review process. The previous Part 12D Program required a single independent consultant to evaluate the safety of a dam. Current regulations require a multi-disciplinary team of engineers (Independent Consultant Team) to complete a Comprehensive Assessment of a dam every ten years. The Comprehensive Assessment must include: a full Potential Failure Modes Analysis; a Level 2 Risk Analysis; and a Field Inspection. Previously, the inspection and report submission were completed in approximately 3 to 6 months. The Commission's Comprehensive Assessment-based safety program requires: development of a Part 12D Inspection Plan; selection and approval of the Independent Consultant Team; development of a Pre-Inspection Preparation Report; in-field Safety Inspection; Potential Failure Modes Analysis; Risk Analysis; and a Comprehensive Assessment Report. Mr. Foltan explained that pursuant to State Finance Law section 136a, staff requested and received Annual Statement of Qualifications and performance data from professional engineering firms for the purpose of evaluating qualifications to identify the firm most qualified to provide the services required and, following a review of Annual Statement of Qualifications submitted, and based upon corporate and personnel experience demonstrated as it pertains to the project needs and services required; specifically, review for experience completing Federal Energy Regulatory Commission Part 12D Safety Inspections and Comprehensive Assessments, a review team comprised of the Chief Engineer and the Operations Engineer determined that HDR is the most qualified firm to complete the work. Mr. Foltan explained that he solicited a proposal to complete the work from HDR and that HDR proposes to use Mr. Brian Chrisman, P.E., as the Independent Consultant. Mr. Chrisman has over 20 years of dam safety and geotechnical engineering experience specializing in earth dam stability evaluations and dam design. Mr. Chrisman has previously been approved by FERC to conduct Part 12 Independent Consultant Safety Inspections. Mr. Foltan reported that HDR's proposal and scope of services fully encompasses the effort needed to meet FERC's expectations and to produce a Comprehensive Assessment Report. Mr. Foltan recommended that the Board accept HDR's proposal and authorize the Executive Director to execute an agreement with HDR for \$369,500.00. He noted that the agreement is subject to the review and approval of the NYS Attorney General and the NYS Office of the State Comptroller.

Chair Finkle asked for a motion to adopt the resolution accepting HDR's proposal and authorizing the Executive Director to enter into an agreement with Henningson, Durham & Richardson Architecture and Engineering, P.C., Inc. to complete the work described for an amount not-to-exceed \$369,500.00. Mr. DeWitt so moved and Mrs. Allen seconded. The Board approved the motion adopting the resolution by unanimous vote.

STAFF/COMMITTEE REPORTS

AUDIT COMMITTEE REPORT PRESENTATION OF INDEPENDENT AUDIT FOR YEAR ENDING JUNE 30, 2023.

Audit Committee Chair Hayes noted that Nora Galleros of Galleros Robinson presented the Regulating District's fairly stated audit to the Audit Committee.

STAFF REPORTS

Mr. Leslie presented his report. Mr. Leslie noted that FERC's October 19, 2023 Order on Rehearing addressing the January 2023 Petitions filed by the Regulating District and Erie has been forwarded to the Office of the Attorney General; which has previously been asked to appeal the FERC Order and Order on rehearing and to commence an affirmative case seeking redress against Erie in the state and/or federal court system. Mr. Leslie reported that he, the Executive Director, and the Chief Fiscal Officer met with representatives from Stillwater Associates LP regarding disagreements over the value placed on the hydroelectric plant at Stillwater. The parties' opinion on value remains in dispute, but the parties have made significant progress toward a resolution. 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 HRAO quarterly compliance audit and submission of the DEC Part 248 annual report. She also noted that staff at the Sacandaga Field Office will soon begin preparations for the 2024 access permit renewal season.

Mr. Maniccia presented his report to the Board. Therein he noted that at the close of October 31, 2023, the general fund balances for the HRA and BRA were approximately \$7,244,648 and \$2,259,640 respectively. When combined (in the amount of \$9,504,288), this total is \$1,539,456 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 and the David Ioele payout; Health Insurance and Kleinschmidt Associates, United States Geological Survey and Galleros Robinson. He also noted that the Regulating District has been identified on the Clean Water State Revolving Fund Intended Use Plan enabling submission of the final application with EFC to obtain financing for the Indian Lake Dam Rehabilitation project on October 26th. 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 Richard Bird (\$351.08) Alfred Candido Jr. (\$110.04) Albert Hayes (\$159.10) and Ken DeWitt (\$191.98) in the course of their duties as Board Members. Mrs. Allen moved to approve payment of such expenses. Mr. Reagan seconded and the Board passed the motion in a unanimous vote.

Mr. Foltan presented the Chief Engineer's report. Therein Mr. Foltan noted that the October average daily release from the Sacandaga Reservoir (Great Sacandaga Lake) was approximately 2,520 cubic feet per second (cfs). Precipitation during the month of October was above normal across the Great Sacandaga Lake watershed and below normal in the Indian Lake watershed. The monthly inflow to Great Sacandaga Lake and Indian Lake reservoir was approximately 90% and 37% of historic average, respectively. Monthly release of water from Great Sacandaga Lake and Indian Lake measured 132% and 100% of historic average, respectively.

The October average daily release from Stillwater Reservoir was approximately 470 cfs. Monthly total precipitation measured 131%, 70%, and 73% of historic average at Stillwater, Old Forge,

and Sixth Lake, respectively, as of October 22nd. Precipitation in the month of October was above average at Stillwater, Old Forge and Sixth Lake. The monthly inflow to Stillwater Reservoir was approximately 103% of historic average. The inflow to Sixth Lake and Old Forge Reservoir totaled 0.07 and 0.13 billion cubic feet, respectively, in October. Release of water from Stillwater Reservoir averaged 142% 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

RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE JANUARY 9, 2024 REGULAR BOARD & ORGANIZATIONAL COMMITTEE MEETINGS

Chair Finkle asked for a motion to adopt a resolution setting the date, time and location for the January 9, 2024 Regular Board and Organizational meeting of the Board of the Hudson River-Black River Regulating District for Tuesday, January 9, 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. Hayes moved to adopt the resolution setting the date, time and location of the Organizational and Regular meetings. Mr. Reagan 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 11:54 A.M.

RESOLUTIONS

23-51-11 RESOLUTION TO APPROVE TENTH AMENDMENT TO CONTRACT C012012 WITH KLEINSCHMIDT ASSOCIATES, PA, PC

Chair Finkle called for a vote to adopt the resolution authorizing a tenth amendment to extend the Contract C012012 term through December 31, 2024. Mr. Candido so moved. Mr. Reagan seconded and the Board approved the Resolution by unanimous vote.

23-52-11 RESOLUTION TO APPROVE AMENDMENT #6 TO HDR CONTRACT C022012 TO PERFORM STILLWATER DAM BREACH ANALYSIS SITE SPECIFIC PROBABLE MAXIMUM PRECIPITATION STUDY

Chair Finkle asked for a motion to adopt the resolution extending Contract C022012 with HDR through December 31, 2026. Mr. Reagan so moved and Mrs. Allen seconded. The Board approved the motion adopting the resolution by unanimous vote.

23-53-11 RESOLUTION TO ACCEPT AMENDMENT #5 TO THE HENNINGSON, DURHAM & RICHARDSON ARCHITECTURE AND ENGINEERING, P.C.

**(HDR) CONTRACT (C032018) CONKLINGVILLE DAM FOURTH PART 12D
INDEPENDENT SAFETY INSPECTION**

Chair Finkle asked for a motion to adopt the resolution extending Contract C032018 with HDR through December 31, 2025. Mr. Bird so moved and Mr. DeWitt seconded. The Board approved the motion adopting the resolution by unanimous vote.

**23-54-11 RESOLUTION TO ACCEPT HENNINGSON, DURHAM AND RICHARDSON
ARCHITECTURE AND ENGINEERING, P.C., INC'S (HDR) PROPOSAL TO
COMPLETE 5TH PART 12D INDEPENDENT CONSULTANT SAFETY
INSPECTION OF THE CONKLINGVILLE DAM**

Chair Finkle asked for a motion to adopt the resolution accepting HDR's proposal and authorizing the executive director to enter into an agreement with Henningson, Durham & Richardson Architecture and Engineering, P.C., Inc. to complete the work described for an amount not-to-exceed \$369,500.00. Mr. DeWitt so moved and Mrs. Allen seconded. The Board approved the motion adopting the resolution by unanimous vote.

**23-55-11 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE
JANUARY 9, 2024 REGULAR BOARD & ORGANIZATIONAL
COMMITTEE MEETINGS**

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

Robert P. Leslie
Secretary

Mark M. Finkle
Board Chairman