

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

Sacandaga Field Office Conference Room
737 Bunker Hill Road
Mayfield, NY 12117
January 9, 2024

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 10:07 A.M.

ROLL CALL

Present: Board Chair Mark M. Finkle; First Vice-Chair Kenneth F. DeWitt, Board Members Albert J. Hayes, Richard Bird, 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. Ruzicky.

Excused: Second Vice-Chair Alfred J. Candido, Jr. and Board Member Timothy J. Reagan

MOTION TO ADOPT OR REVISE THE MEETING AGENDA

Chair Finkle asked for a motion to adopt or revise the meeting agenda. Mrs. Allen 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; hearing none.

APPROVAL OF THE NOVEMBER 7, 2023 REGULAR BOARD MEETING MINUTES

Chair Finkle asked for a motion to adopt the November 7, 2023 regular board meeting minutes. Mr. Bird advanced the motion to approve the regular meeting minutes. Mr. Hayes seconded. The Board approved the motion by unanimous vote. Mr. DeWitt joined the meeting at 10:15 A.M. for the Executive Director's report.

REPORT OF THE EXECUTIVE DIRECTOR

Mr. Callaghan presented his report to the Board. Mr. Callaghan acknowledged this first meeting of the year and took a moment to note it coincides with the Governor's State of the State address. He thanked the Governor and her team for their support on several initiatives this year and last. Mr. Callaghan also acknowledged the Sacandaga Field Office staff; especially Stephanie Ruzycky, Stephanie Porter, Danielle Thorne and Dan Kiskis for their strong work preparing for the annual access permit renewal season, particularly with regard to the online permit system. He noted that over 1,000 access permit holders have used the online renewal option in the few days since staff released renewal notices and that additional functionality for that system should be rolled-out shortly. Mr. Callaghan reported on the status of the Regulating District's preparedness for Tuesday night's anticipated rain event and thanked Chief Engineer Robert Foltan for the manner in which he ably handled a similar event in mid-December 2023. Mr. Callaghan noted the significant benefits derived by downstream residents from the Regulating District's operations during the flooding that occurred during the mid-December event, especially in the Hudson River Area. Finally, Mr. Callaghan noted the significant progress made under the Board's leadership in addressing the Regulating District's infrastructure; with the work at Hawkinsville Dam completed and work at Indian Lake Dam underway. He then outlined the opportunities facing the Regulating District in 2024 including a new collective bargaining agreement with represented employees, a new three-year spending plan, progress on projects like Conklingville, Old Forge and Sixth Lake dams, and his hope that the disputes with Brookfield Renewable and Stillwater Associates can be successfully resolved, either through the courts or through a settlement.

RESOLUTION TO AMEND CONTRACT C032013 TO ACKNOWLEDGE TRANSFER OF CONTRACT RESPONSIBILITY FROM BERGMANN ASSOCIATES TO COLLIERS ENGINEERING & DESIGN AND TO MODIFY SCOPE AND NOT-TO-EXCEED CONTRACT PRICE

Mr. Foltan presented a resolution to amend Contract C032013 through which Bergmann Associates (Bergmann), since 2013, has provided design, construction phase support, and inspection services in connection with the rehabilitation of the Indian Lake Dam. Mr. Foltan introduced Greg Johnson of Bergmann who explained that Bergmann's final design work for the project revealed that certain assumptions, while valid in 2013, required additional analysis resulting in more complex construction activities than even those incorporated in the Board's September 2021 amendment to Contract C032013. In addition, Mr. Foltan noted that Bergmann has entered into an agreement with Colliers Engineering & Design (Colliers) to rebrand under the Colliers' name. Noting that the engineering professionals who initiated the work supported by Contract C032013 remain the same and such professionals will continue to provide the services necessary to complete the project, Mr. Foltan recommended the Board approve the assignment of responsibilities to the rebranded entity. Mr. Foltan and Mr. Callaghan engaged in discussions with Colliers regarding a September 7, 2023 proposal detailing additional costs associated with final design and construction phase support and inspection services. Colliers' January 2, 2024, revised proposal reflects both these discussions and internal review in coordination with the HRBRRD's Chief Fiscal Officer. The January 2, 2024 proposal includes \$176,162 in additional final design costs, and \$753,024 in additional construction phase support and inspection costs, for a total increase in cost of \$929,186 and total contract value of \$2,268,377. Mr. Maniccia noted that the

total construction phase expenditure remains within the amount budgeted for the project's engineering services as included in the Regulating District's financing application to the Environmental Facilities Corporation. Mr. Foltan recommended the Board approve the amendment.

Chair Finkle called for a motion to adopt the resolution accepting Bergmann Associates contract assignment and resulting transfer of contract C032013 responsibilities to Colliers Engineering & Design and authorizing the Executive Director to amend Contract C032013, now and hereafter with Colliers Engineering & Design, to perform the amended scope of work outlined in the January 2, 2024 proposal for a not-to-exceed price contract of \$2,268,377. Mrs. Allen so moved. Mr. DeWitt seconded and the Board approved the Resolution by unanimous vote.

RESOLUTION CLARIFYING THAT THE REHABILITATION OF THE INDIAN LAKE DAM IS A SEQRA TYPE II ACTION

Mr. Leslie presented a resolution to clarify that at its August 1, 2023 regular meeting, the Board determined that the project to rehabilitate the Indian Lake Dam is a Type II action which will not have a significant adverse impact on the environment and as such did not require the preparation of an Environmental Impact Statement.

Board Chair Finkle asked for a motion to adopt the resolution to clarify that on August 1, 2023, the Board determined that the rehabilitation of Indian Lake Dam is a "Type II" action for purposes of the State Environmental Quality Review Act. Mr. Hayes so moved. Mr. DeWitt seconded and the Board approved the Resolution by unanimous vote.

STAFF/COMMITTEE REPORTS

STAFF REPORTS

Mr. Leslie presented his report. Mr. Leslie reminded the Board that on October 19, 2023 the Federal Energy Regulatory Commission issued its Order on Rehearing addressing the January 2023 Petitions filed by the Regulating District and Erie. Mr. Leslie reported that, per OAG request, on November 11th the Regulating District updated the July 5th request for representation to specifically request only that OAG prosecute an appeal through the federal courts. Despite the available extensive record and robust discussion, on December 8th the OAG's Environmental Protection Bureau indicated it would decline to appeal the matter. The EPB suggested that the more direct path to success would involve the General Recoveries Unit of the OAG's Civil Recoveries Bureau commencing an affirmative case seeking redress against Erie in the state and/or federal court system. Mr. Leslie also reported that he engaged in concurrent talks with the OAG's General Recoveries Unit and, at their behest, had the Executive Director send a demand letter to Erie and subsequently sent his own follow-up demand to Erie. That OAG unit also solicited, and has received, an updated request for representation specific to the affirmative case. Barring Erie's payment of the \$1,460,083.31 demanded (seven twelfths of \$2,503,000) on or before January 16, 2024, Counsel expects the Civil Recoveries Unit to alert Erie and commence an action. Mr. Leslie reported that he, the Executive Director, and the Chief Fiscal Officer continue to engage representatives from Stillwater Associates LP regarding disagreements over the value placed on

the hydroelectric plant at Stillwater. The parties' opinion on value remains unresolved, but closer than previously reported. Staff have engaged in discussions with the New York State Power Authority relative to Stillwater's proposed sale terms. Stillwater has suggested a purchase leaseback arrangement which the Regulating District has rejected. 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. Finally, Mr. Leslie noted that the Executive Director has executed the concurrent use and occupancy agreement facilitating use of DEC lands necessary for construction of a berm or retaining wall at the downstream toe of the Indian Lake Dam, placement of an anchor for the upstream log boom, and use of nearby lands for equipment storage during the Indian Lake Dam rehabilitation/post construction creation of a day-use parking area.

Ms. Ruzycky presented her report to the Board. Ms. Ruzycky noted her participation in the 2024 access permit renewal process; especially with respect to resolution of database issues enabling efficient on-line renewals.

Mr. Maniccia presented his report to the Board. Therein he noted that at the close of December 31, 2023, the general fund balances for the HRA and BRA were approximately \$6,402,895 and \$2,027,097 respectively. When combined (in the amount of \$8,429,991), this total is \$396,235 or 4.9% more than the same period last year. Year-to-date Regulating District Revenue exceeded Expenses by \$442,413. This amount is \$1,311,922 less than the Jul 2022-Dec 2022 period. Not collecting nearly \$768,000 from Erie Boulevard Hydropower that the Regulating District would have collected during the first six months of this fiscal year had the agreement been renewed is a driver of this variance. The Regulating District also made payments in connection with rehabilitation of the Hawkinsville Dam and the Indian Lake Dam that were not made in the prior fiscal year. Significant disbursements for the period include: Payroll, Longevity and Vacation Buyback payouts, Health Insurance, Pension and Property & Casualty Insurance, Environmental Services Group and DeNooyer Chevrolet. Mr. Maniccia reported that the Regulating District's transactional processing and reporting are current. Mr. Maniccia also reported that the Office of the State Comptroller has finalized the security over critical systems audit noting the report speaks favorably as to the Regulating District's actions. Mr. Maniccia outlined efforts to address OSC's suggestion that the Regulating District formalize certain policies.

Mr. Maniccia presented an affidavit evidencing necessary and reasonable Board expenses incurred by 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. Therein Mr. Foltan noted that the December average daily release from the Sacandaga Reservoir (Great Sacandaga Lake) was approximately 1,690 cubic feet per second (cfs). Precipitation during the month of December was above normal across the Great Sacandaga Lake watershed and above normal in the Indian Lake watershed. The monthly inflow to Great Sacandaga Lake and Indian Lake reservoir was approximately 241% and 184% of historic average, respectively. Monthly release of water from Great Sacandaga Lake and Indian Lake measured 63% and 129% of historic average, respectively.

The December average daily release from Stillwater Reservoir was approximately 450 cfs. Monthly total precipitation measured 142%, 128%, and 150% of historic average at Stillwater, Old Forge, and Sixth Lake, respectively, as of December 26th. Precipitation in the month of December was above average at Stillwater, Old Forge and Sixth Lake. The monthly inflow to Stillwater Reservoir was approximately 174% of historic average. The inflow to Sixth Lake and Old Forge Reservoir totaled 0.25 and 0.51 billion cubic feet, respectively, in December. Release of water from Stillwater Reservoir averaged 100% of historic discharge.

BOARD MEMBER QUESTIONS & COMMENTS

Chair Finkle echoed the Executive Director's statements regarding staff; thanking the entire staff for its professionalism, dedication and accomplishments.

RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE MARCH 12, 2024 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 12, 2024 at the Regulating District's Sacandaga Field Office, 737 Bunker Hill Road, Mayfield, NY 12117 at 10 AM.

Mr. Bird moved to adopt the resolution setting the date, time and location of the Regular 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 11:06 A.M.

RESOLUTIONS

24-01-01 RESOLUTION TO AMEND CONTRACT C032013 TO ACKNOWLEDGE TRANSFER OF CONTRACT RESPONSIBILITY FROM BERGMANN ASSOCIATES TO COLLIERS ENGINEERING & DESIGN AND TO MODIFY SCOPE AND NOT-TO-EXCEED CONTRACT PRICE

Chair Finkle called for a motion to adopt the resolution accepting Bergmann Associates contract assignment and resulting transfer of contract C032013 responsibilities to Colliers Engineering & Design and authorizing the Executive Director to amend Contract C032013, now and hereafter with Colliers Engineering & Design, to perform the amended scope of work outlined in the January 2, 2024 proposal for a not-to-exceed price contract of \$2,268,377. Mrs. Allen so moved. Mr. DeWitt seconded and the Board approved the Resolution by unanimous vote.

24-02-01 RESOLUTION CLARIFYING THAT THE REHABILITATION OF THE INDIAN LAKE DAM IS A SEQRA TYPE II ACTION

Board Chair Finkle asked for a motion to adopt the resolution to clarify that on August 1, 2023, the Board determined that the rehabilitation of Indian Lake Dam is a “Type II” action for purposes of the State Environmental Quality Review Act. Mr. Hayes so moved. Mr. DeWitt seconded and the Board approved the Resolution by unanimous vote.

**24-03-01 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE
MARCH 12, 2024 REGULAR BOARD MEETING**

Mr. Bird moved to adopt the resolution setting the date, time and location of the March 12, 2024 regular Board meeting. Mr. DeWitt seconded and the Board adopted the resolution by unanimous vote.

Robert P. Leslie
Secretary

Mark M. Finkle
Board Chairman