



Board of Hudson River-Black River Regulating District
350 Northern Boulevard, Albany, New York 12204 Phone (518) 465-3491
FAX (518) 432-2485

February 4, 2010

Honorable Daniel P. McCoy, Chairman
Albany County Legislature
Albany County Office Building
112 State Street, Room 710
Albany, New York 12207

Re: Hudson River – Black River Regulating District
Apportionment
Apportionment Grievance Hearing – March 30, 2010

Dear Chairman McCoy:

The Hudson River – Black River Regulating District maintains facilities in the Hudson River Area, including the Great Sacandaga Lake, which provide flood protection to Albany County. As it has done for the last eighty-five years, and pursuant to NY Environmental Conservation Law Article 15, Title 21, the Regulating District Board is required to apportion and assess the cost to maintain such facilities among the parcels of real estate and public corporations benefited by such facilities. Between 1930 and 2008, the owners of hydroelectric projects downstream of the Great Sacandaga Lake comprised 82% of the Regulating District's beneficiaries. Recently, in Albany Engineering Corp. v FERC (548 F3rd. 1071, 2008) the D.C. Circuit Court of Appeals ruled that the Federal Power Act preempts the Regulating District -- a FERC license holder in the Hudson River watershed -- from assessing under State law hydroelectric projects that are downstream from the Conklingville Dam which creates Great Sacandaga Lake. As a result, the Regulating District was compelled to prepare a new apportionment through which Albany County will now share a portion of those costs. Following approval by the Department of Environmental Conservation, and as required by NY ECL §15-2121(4), on behalf of the Regulating District Board, please find a copy of the Apportionment for the Regulating District's fiscal year July 2009 – June 2010 served upon you as Chairman of the Albany County Legislature. As required by statute, a copy of the Apportionment will also be filed in the Office of the County Clerk. Remittance is due upon receipt, but no later than June 30, 2010.

Also enclosed, please find a copy of a legal notice identifying the time and place where the Regulating District Board will meet to hear any public corporation or person aggrieved by the Apportionment. In addition, please find enclosed: copies of the Resolution through which the Regulating District adopted the Apportionment at its January 12, 2010 meeting; the letter

from Commissioner Grannis through which the Department of Environmental Conservation approved the Apportionment; the Regulating District's rule governing the Apportionment Grievance Hearing process; and the documents prepared for the Regulating District Board in support of its determination.

Staff will give a short presentation beginning at 9 a.m. March 30th immediately preceding the meeting at which the Regulating District Board will conduct the Apportionment Grievance Hearing. This presentation will provide a brief history of the Regulating District and outline the issues guiding the Board to determine the new Apportionment.

Please feel free to contact me if you have any questions. Thank you.

Sincerely,



Glenn A. LaFave
Executive Director

cc: Hon. Michael G. Breslin, Albany County Executive
Craig A. Denning, Esq. Albany County Attorney
Thomas G. Clingan, Albany County Clerk



MICHAEL G. BRESLIN
COUNTY EXECUTIVE

CRAIG A. DENNING
COUNTY ATTORNEY

COUNTY OF ALBANY
OFFICE OF THE COUNTY ATTORNEY
COUNTY OFFICE BUILDING
112 STATE STREET, ROOM 900
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ASSISTANT COUNTY ATTORNEYS
EUGENIA KOUTELIS CONDON
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KARA M. FRANK
KARRY L. CULIHAN

March 23, 2010

Mr. Glen A. LaFave
Executive Director
Hudson River Black River Regulating District
350 Northern Boulevard
Albany, New York 12204

Re: 2010 District Apportionment: Albany County, NY
Request for Modification or Withdrawal

Dear Mr. LaFave:

This office represents Albany County, N.Y. generally and specifically with reference to the captioned apportionment. Submitted herewith for filing please find an administrative complaint which will serve as notice of objection and establishes the basis for a request for modification by Albany County of the District's 2010 apportionment. Additionally, this office requests an opportunity to be heard at the grievance hearing scheduled for March 30th.

Kindly date stamp and return the copy of the complaint enclosed.

Respectfully,


Craig A. Denning
County Attorney

Enc.

cc: Hon. Daniel P. McCoy
Hon. Michael G. Breslin

RECEIVED

MAR 23 2010

HUDSON RIVER-BLACK RIVER
REGULATING DISTRICT
ALBANY, NY

H2

HUDSON RIVER BLACK RIVER REGULATING DISTRICT
COUNTY OF ALBANY

In the Matter of the Application of

THE COUNTY OF ALBANY, NY

Petitioner,
against

HUDSON RIVER BLACK RIVER
REGULATING DISTRICT,

Respondent.

VERIFIED COMPLAINT

Administrative Proceeding
NYS ECL Sec. 15-2121

Oral Presentation Requested:
Time: 10 Minutes

For modification/withdrawal of apportionment
under NYS ECL Sec. 15-2121.

INTRODUCTION

1. This is an administrative grievance brought by the County of Albany, New York (County) under NYS Environmental Conservation Law (ECL) Sec. 15-2121 in response and objection to the apportionment approved by the Board of the Hudson River Black River Regulating District (HRBRRD) on January 12, 2010 in Resolution No.: 10-6-01, certified to the NYS Department of Environmental Conservation (DEC) January 12, 2010, and approved by DEC in an undated letter apparently received by the Board February 3, 2010. For the reasons set forth herein, the County takes exception to and objects to the apportionment in entirety as applicable to Albany County and seeks withdrawal and/or modification of the apportionment under Sec. 15-2121 under pertinent principles of law and equity.

JURISDICTION AND VENUE

2. Jurisdiction and venue rests with the Board at Albany, New York in accordance with ECL Sec. 15-2121 (4) and the Board's notice (undated) under the hand of Richard J. Ferrara, Sec.-Tres. requiring the filing of the instant complaint at the Board's Offices located at 350 Northern Blvd., Albany on or before March 23, 2010.

ESTIMATE OF TIME FOR PRESENTATION AT HEARING

3. The County respectfully requests ten minutes to present documents and oral testimony.

PARTIES

4. Petitioner is the County of Albany, New York, a municipal corporation established under the laws of New York State, an identified entity allegedly subject to the Board's apportionment approved January 12, 2010 by Board Resolution No.: 10-6-01.

5. Respondent is a public corporation established pursuant to Art. 15, Title 21 of the NYS ECL, identified and designated the party in interest by statute as the Hudson River Black River Regulating District under ECL Sec. 15-2139(3).

STATUTORY AUTHORITY FOR APPORTIONMENT CHALLENGE

6. Authority for the objections herein is derived from ECL Sec. 15-2121 and associated sections.

AS AND FOR A FIRST CAUSE OF ACTION:

Failure to Perform Duty (C.P.L.R. Sec. 7803[1])

Failure to Observe Premises

7. ECL Sec. 15-2121 (4) provides, in pertinent part, that: "The board, or a majority of the members thereof, before making such apportionment shall view the premises and public corporations benefited."

8. There is no proof submitted that the Board, or a majority thereof, physically attended and observed the premises or corporations allegedly subject to the apportionment.

9. By memo dated January 7, 2010, p. 2, first full para., General Counsel Robert Leslie, Esq. (hereafter Leslie memo, Jan. 7) relates, without reference to any authority, that: "Current staff is of the opinion that the word "view", when taken in this context, contemplates a thorough understanding of: the breadth and scope of the apportionment; against whom such apportionment will lie; and the relative amount to be borne by each such entity."

10 There is no authority for the Board to interpret the statute in such manner.

11. "It is a general rule in the interpretation of statutes that the legislative intent is primarily to be determined from the language used in the act, considering the language in its most natural and obvious sense." NYS Statutes, Sec. 232. Further, "Words of ordinary import used in a statute are to be given their usual and commonly understood meaning, unless it is plain from the statute that a different meaning is intended." Sec. 232. Additionally; "From this general rule it is deducible that words of ordinary import are to be construed according to their ordinary and popular significance, and are to be given their

ordinary and usual meaning. That is to say, as a general proposition, words which have not received a technical or peculiar significance from long habitual construction, or by legislative definition, are to be interpreted according to the meaning with which they were generally accepted at the time of the enactment..." Sec. 232

12. The term "view" found in ECL Sec. 15-2121(4) is not defined by statute, nor has the term received a technical or peculiar significance in the context of the ECL.

13. Accordingly, neither the Board nor its staff are authorized to substitute their interpretation of the word "view" from the generally recognized "most natural and obvious sense" (Sec. 232). Rather, the Board must give the word the "usual and commonly understood meaning" when interpreting Sec. 15-2121. (Sec. 232).

14. That is, in the context presented; "The board, or a majority thereof..." is required under Sec. 15-2121 to physically visit, observe and assess each and every premises and public corporation allegedly subject to the statute. Implicit in the requirement to view the premises is that the Board is required to make a specific and particularized benefit assessment of each property.

15. In this case, there is no proof offered that either the Board in total or a majority physically visited each parcel and corporation allegedly benefited. In fact, there is admission that the "natural and obvious sense" of the statutory requirement was ignored. See Leslie memo, Jan. 7 , p. 2.

16. The apportionment process was therefore flawed, not consistent with the requirements of Sec. 15-2121, and represents an actionable failure to perform a statutory mandate. Accordingly, the apportionment fails and should be withdrawn.

AS AND FOR A SECOND CAUSE OF ACTION

Arbitrary and Capricious Abuse of Discretion (C.P.L.R. Sec. 7803[3])

Failure to Determine NYS Benefits

17. ECL Sec. 15-2121 requires, in relevant part, that the Board's apportionment is to be applied against benefited parcels and public corporations "...less the amount which may be chargeable to the state,...." (Emphasis added)

18. There is no proof showing the Board performed a comprehensive study and analysis of NYS real and/or personal property, made an associated specific benefit analysis, then deducted a proportionate amount from costs to be applied against benefited parcels and public corporations. The sole representation in this context is commentary offered in the November 23, 2009 memo from Robert Leslie, Esq., General Counsel, (hereafter Leslie memo, Nov. 23) referencing the Gomez and Sullivan Report of 2003 which concludes that there is "negligible benefit to the state by diverting flow to the NYS Champlain canal." No mention or analysis is made in the memo of Board inquiry or investigation into other benefits to NYS beyond canal flow. For instance, completely ignored are state interests in resources such as; state roads and highways, state bridges, state recreation opportunities, state and local waste assimilation and nuisance prevention, navigation, as well as statewide flood protection and hydroelectric power generation. NYS has obvious interests to be protected, if not enhanced, by District activities, yet there is no analysis or consideration given to State benefits required under Sec. 15-2121(2) to be deducted from costs otherwise apportioned.

19. In sum, Sec. 15-2121 requires analysis and determination of state benefits and appropriate deductions made from District costs. The statutorily required state benefit analysis and deduction has not occurred in the instance of the Board's apportionment. The Board's failure to conduct a comprehensive inquiry and make associated determinations of State benefits to be applied in the first instance against District costs is inconsistent with the requirements of Sec. 15-2121. Thus the apportionment is flawed, a violation of statutory procedure, representing an actionable arbitrary and capricious abuse of discretion. Accordingly, the apportionment fails and should be withdrawn.

AS AND FOR A THIRD CAUSE OF ACTION

Arbitrary and Capricious Abuse of Discretion (C.P.L.R. Sec. 7803[3])

Flawed Determination of Benefit to Parcels and Public Corporations

20. ECL Sec. 15-2121(2) in pertinent part, requires the Board to "...apportion...cost among the public corporations and parcels of real estate benefited, in proportion to the amount of benefit which will inure to each such public corporation and parcel of real estate...."

21. The Board calculated the apportionment using three stages of analysis: 1. hydraulic modeling of the Hudson River floodplain; 2. generation of GIS maps showing an inventory of properties within the floodplain; and 3. summation of property values culminating in a purported benefit shared between properties based upon total value of each property. See Memorandum to the Board dated January 7, 2010 from Executive Director LaFave and staff. (hereafter LaFave memo, Jan. 7)

22. Sec. 15-2121(2) requires the calculation of benefits to include: the name of each public corporation and a brief description of each parcel of real estate benefited; the name

of the owner or owners of each such parcel of real estate, so far as can be ascertained; the proportion of such costless state costs...to be borne by each expressed in decimals; and the amount to be paid by each such public corporation or the owner or owners of each such parcel.

23. The apportionment here did not comply with the identification and evaluation requirements of 15-2121(2). For example:

- a. the Board merely established a summary calculation of District costs;
- b. state benefits were not determined and deducted from District costs;
- c. the costs were split between parcels without regard to a parcels relation to the floodplain or actual benefit received;
- d. the total equalized assessed value of each parcel, partially or wholly within the Hudson River floodplain, was used to calculate the alleged benefit by dividing it by the total equalized assessed valuations of property of the five subject Counties partially or wholly within the 100 year floodplain, without an analysis and determination of any actual benefit to each subject parcel and each public corporation;
- e. the amounts were divided between the five affected Counties without an actual benefit analysis to Albany County (or any other county),

There is no proof offered by the District showing each parcel and each public corporation were evaluated to show actual flood effects and damages.

24. The methodology applied by the Board was inconsistent with the requirements of Sec. 15-2121(2) because the process did not identify, evaluate and assess costs against each parcel and public corporation in direct proportion to specific benefits received. Additionally, the assessed values of property not owned by Albany County, but considered by the District, are not relevant to a calculation of benefit to the County. Also, there was no

evaluation of relative damages to any property of the County, or any private property not owned by the County, given various levels of water in the floodplain.

25. Additionally, the ECL requires the District to adequately identify the benefited properties and quantify an associated benefit. Without making such determinations the District is, effectively, inappropriately conferring that statutory obligation on Albany County (and the four other involved counties). The District's failure to properly identify the benefited properties appears to put each County in the position to make benefit determinations which is not consistent with the requirements of the ECL. The District has, inappropriately, refused to perform a duty imposed by law.

26. Additionally, because the District has failed to properly identify the properties and property owners benefited as required under ECL 15-2121(2), as opposed to merely identifying the five Counties included in the apportionment, the District has also failed to provide adequate notice of the grievance procedure required under 15-2121(4) because the unidentified property owners have no meaningful way of knowing whether they are benefited.

27. Further, the District has additionally failed to include all properties within the District arguably receiving benefits. For example, according to the District's rural area flexibility analysis dated 12/9/09, the Counties of Essex, Fulton, Hamilton, Herkimer, Jefferson, Lewis and Oneida Counties should also be included in the apportionment. The District has also failed to identify all benefited properties within the Hudson River portion of the HRBRRD area. The Hudson River portion, in addition to the five Counties allegedly subject to the apportionment, also includes the Counties of: Essex, Fulton, and Hamilton. HRBRRD failed to identify the properties that derive a benefit from the Great Sacandaga Lake and Indian Lake, the two reservoirs within the Hudson River Basin. Failure to identify and apportion costs against all benefited properties is not consistent with law.

28. Additionally, identification of the District boundaries appears ambiguous, the practical effect of which prejudices Albany County (and the other four subject Counties) in an effort to properly identify benefited parcels.

29. Because of the failure to determine the appropriately benefited entities and parcels, the apportionment is flawed, a violation of statutory procedure, representing an actionable arbitrary and capricious abuse of discretion. Accordingly, the apportionment fails and should be withdrawn.

AS AND FOR A FOURTH CAUSE OF ACTION

Arbitrary and Capricious Abuse of Discretion (C.P.L.R. Sec. 7803[3])

Failure to Assess and Include Benefits to Parcels and Public Corporations Outside

Geographic Boundaries of District

30. ECL Sec. 15-2121(2) in pertinent part, requires the Board to "...apportion...cost among the public corporations and parcels of real estate benefited,....."

31. ECL Sec. 15-2101(3) provides that; " Benefit or benefits shall be interpreted to include benefits to real estate, public or private, to municipal water supply, to navigation, to agriculture and to industrial and general welfare by reason of the maintenance and operation of a regulating reservoir, whether such benefit shall inure to a person, a public corporation or the state."

32. There is no statutory distinction made between benefits received to entities existing within the District's geographic boundary and those existing outside.

33. In apportioning costs, the District considered only benefits purportedly received by parcels and public corporations located within the geographic confines of the District. See LaVave memo, Jan.7, p. 2, "Identification of the Group of Beneficiaries".

34. There is no authority supporting the District's determination of beneficiaries. Further, the statutory definition of "benefit" is not limited to the District's territory. ECL Sec. 15-2121(3)

35. The methodology applied by the District, establishing an artificial geographic limit of the pool of beneficiaries contrary to the statutory definition, was inconsistent with Sec. 15-2101(3). Thus the apportionment is flawed and represents an actionable arbitrary and capricious abuse of discretion. Accordingly the apportionment fails and should be withdrawn.

AS AND FOR A FIFTH CAUSE OF ACTION

Current Apportionment Should Be Barred As Inequitable and Unfair

Equitable Estoppel

36. It is settled that the doctrine of estoppel precludes enforcement of a right otherwise permissible which results in injustice to a party who has acted to its detriment in reliance on previously established conduct. (Citations omitted.)

37. Never before in history has the District apportioned costs against Counties as it currently intends. In light of the District's prior course of conduct, Albany County did not budget for an apportionment of any District costs to be chargeable against the County. The County was induced to act to its detriment by the District's prior conduct.

38. The apportionment is therefore flawed and unjust. Accordingly, the District should be precluded from enforcing the intended apportionment under the doctrine of equitable estoppel.

AS AND FOR A SIXTH CAUSE OF ACTION

Failure to Reapportion Within Reasonable Time

Laches

39. It is settled that failure to assert a right for an unreasonable and unexplained length of time is a bar to enforcement of the right when it operates to the detriment of another acting in reliance. (Citations omitted.)

40. Under the circumstances presented, for over eighty years, since creation of the District, costs have never been assessed against Counties. As a result, Albany County has never budgeted to pay District costs, and did not budget for such costs in 2009 and 2010. See Affidavit of John W. Rodat, Commissioner, Albany County Department of Management and Budget, dated March 19, 2010 attached hereto as Exhibit "A" (hereafter Rodat Affidavit).

41. Imposition of the proposed apportionment would severely damage the current fiscal position of the County which, given current state and national market conditions, is already severely compromised. Rodat Affidavit, Ex. "A". Albany County does not have budgeted funds to pay District costs.

42. Given the length of time over which the District chose not to apportion costs against Counties, and reliance on that conduct by Albany County in preparing yearly budgets for over eighty years including the current 2010 budget, the current apportionment should be precluded under the doctrine of laches.

AS AND FOR A SEVENTH CAUSE OF ACTION

Lack of Authority

43. ECL Sec. 15-2121(6), in pertinent part, authorizes the District to establish an apportionment of costs for a reservoir, which, “....when finally made, also shall be deemed to fix and determine the apportionment and the basis of apportionment of all subsequent expenses to be incurred...”

44. ECL Sec. 15-2121(7) provides; “If powers be developed after such apportionment has been made or if for any other reason any public corporation or any parcel of real estate becomes liable equitably for such subsequent expenses, a subsequent apportionment may be made....” This subdivision requires that, once the original apportionment is fixed, there must be a circumstance in which a public corporation becomes “equitably liable” for any additional expenses.

45. The initial, fixed apportionment, carried over year after year for over eighty years, did not apportion any costs to Albany County. Additionally, there has been no change in the status of Albany County as would make the County “ become liable” under Sec. 15-2121. No change in status is alleged by the District. Albany County has not changed its status as a beneficiary since the original apportionment was fixed. The only change from the original apportionment is the ability of the District to apportion costs against power companies. The County’s status has not changed, it has not “become liable” under Sec. 15-2121 for additional costs.

46. Therefore, the District is without authority to modify the fixed apportionment established originally, which, in the instance of Albany County is \$0 dollars. In filing the recent apportionment the District has acted in excess of its authority under Sec. 15-2121 by

attempting, contrary to statute, to assess some portion of District costs against Albany County when there is no rational basis upon which Albany County became liable for a portion of District costs.

47. Additionally, the District has identified only flood control as a benefit under the apportionment, and as a result, uses that determination to identify only Albany, Saratoga, Rensselaer, Warren and Washington Counties as benefited because they lie downstream of the Conklingville Dam. If the apportionment stands, it will be in place until the District adopts a future apportionment. In that event, of the eight counties and countless properties apparently within the Hudson River Basin portion of the District, only five Counties will be determined to benefit for any cost allocations. Such a result is patently unfair and contrary to the legislative intent.

48. For all the above reasons, the apportionment is flawed and represents an actionable arbitrary and capricious abuse of discretion. Accordingly the apportionment fails and should be withdrawn.

AS AND FOR AN EIGHTH CAUSE OF ACTION

Equal Protection

49. From the foregoing, the District has not apportioned costs against all parcels and public corporations which benefit from HRBRRD activities.

50. As such, Albany County citizens are denied equal protection of law because the apportionment attempts to impose costs against them differently from others.

AS AND FOR AN NINTH CAUSE OF ACTION

51. Albany County hereby adopts and incorporates herein by reference as applicable any and all other objections made by Saratoga, Rensselaer, Washington and Warren Counties not otherwise made here.

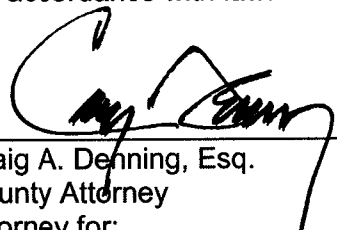
DAMAGES

52. Requiring Albany County to pay District costs under the intended apportionment would severely strain an already austere budget. See Rodat affidavit, Exhibit "A" attached. Such costs are not authorized. Payments to settle the intended apportionment are not feasible under the 2010 plan adopted in Albany County to address the severe effects of the current recession. Rodat Affidavit, Exhibit "A" attached.

WHEREFORE, in accordance with the objections stated herein and for the reasons set forth above the County respectfully requests, in the alternative, that; the apportionment be withdrawn; and/or alternatively, the apportionment be modified; and/or alternatively, the District take such other and further action necessary in accordance with law.

DATED: Albany, New York
March 23, 2010

TO: HRBRRD
350 Northern Blvd.
Albany, New York

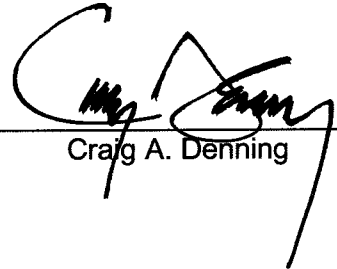


Craig A. Denning, Esq.
County Attorney
Attorney for:
Albany County, NY
c/o Albany County Department of Law
112 State Street, Rm. 900
Albany, New York 12207
518-447-7110

VERIFICATION

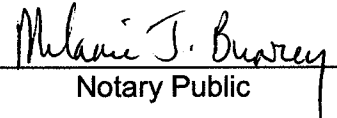
State of New York)
County of Albany) SS.:

Craig A. Denning, affirms under penalty of perjury that; the County of Albany is the Petitioner in this proceeding, that Petitioner is a governmental subdivision; that he is acquainted with the facts of this matter; he makes this verification pursuant to CPLR Sec. 3020(d)(2); he has read the foregoing complaint and knows the contents thereof; the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.



Craig A. Denning

Sworn to before me this
23rd day of March, 2010.



Notary Public

MELANIE J. BUNZEY
Notary Public, State of New York
Qualified in Albany County
No. 01BU6048902
Commission Expires Oct. 2, 2016

Exhibit A

HUDSON RIVER BLACK RIVER REGULATING DISTRICT
COUNTY OF ALBANY

In the Matter of the Application of

THE COUNTY OF ALBANY, NY

against

HUDSON RIVER BLACK RIVER
REGULATING DISTRICT,

Petitioner,

Respondent.

AFFIDAVIT
IN
SUPPORT
OF
COMPLAINT

For modification/withdrawal of apportionment
Under NYS ECL Sec. 15-2121.

STATE OF NEW YORK)
COUNTY OF ALBANY) SS,

John W. Rodat, being duly sworn, deposes and states:

1. I am Commissioner of the Albany County Department of Management and Budget, the duties of which I assumed in January, 2006. With limited exceptions I am responsible for administering the financial affairs of the County. I receive and have custody of all public funds which belong to or are handled by the County and have responsibility for the investment and management of all County funds. With limited exceptions I collect all taxes, assessments, license fees and other revenue of the County. I am acutely familiar with the financial circumstances faced by the County over the last four years.

2. For the reasons set forth below I submit this affidavit in support of the complaint filed by Albany County in this proceeding objecting to the apportionment recently filed by the Hudson River Black River Regulating District.

3. Consistent with the situation in the state and national economies, the County of Albany suffered significant budgetary concerns in 2009, the likes of which have not been experienced since the recession of the early 1990's.

4. Albany County is particularly susceptible to declines in consumer spending because it is a center for shopping and commerce. A balanced County budget relies extensively on sales tax revenue.

5. In 2009 the County experienced a budget shortage of \$19 million dollars.

6. The 2009 budget gap was due primarily to a major decline in sales tax revenue and State budget cuts during the 2009 fiscal year. For example, sales tax revenue declined \$11.16 million (7.83%) from 2008 levels. That represents the lowest level than any year since 2005. Currently, sales tax revenue is running even with the reduced 2009 levels. Additionally, State aid reductions to the County in 2010 are projected to be \$6.8 million.

7. As a result of the 2009 revenue shortfall, the County was forced to implement a variety of cost-saving programs, including mid-year spending reductions, furloughs, and delays in filling vacant positions.

8. Major financial issues continue in 2010 and are expected to worsen, consistent with the state and national economic downturn. The 2010 budget was adopted after considerable controversy and included a six percent property tax increase. No allowance was made for payment of District costs.

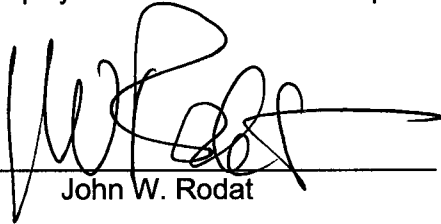
9. In addition to the problems faced in 2009 and 2010, the County must deal with, among other things, a reduction in Federal stimulus funds to offset Medicaid expenditures; a reduction in earnings at the State Retirement System, which will require offsetting increases in contributions for employee pensions; increases in employee health benefit costs; and expected increases in public assistance costs due to the national economic climate.

10. Accordingly, because County operations are currently subject to severe financial constraints, the County has been forced to make a variety of further cuts.

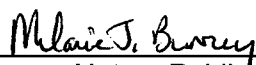
11. The future holds no better news. The projected structural deficit for the 2011 Albany County budget is approximately \$35 million dollars, equivalent to a 50% property tax increase. While that projection assumes no improvement in sales tax revenue, it also assumes no reduction in State aid, a very unlikely prospect given the State's financial condition.

12. Requiring the County to pay District costs as set out in the 2010 apportionment would further strain an already austere budget. The funds to pay District costs are not authorized and payments to settle the apportionment imposed against Albany County are not feasible under the 2010 plan adopted to address the severe effects of the current recession.

13. Accordingly, I respectfully request that the District's recent apportionment be withdrawn or modified in accordance with law and equity as set forth in the complaint filed by Albany County.


John W. Rodat

Sworn to before me this
19th day of March, 2010


Notary Public

MELANIE J. BUNZEY
Notary Public, State of New York
Qualified in Albany County
No. 01BU6048902
Commission Expires Oct. 2, 2010



Board of Hudson River-Black River Regulating District
350 Northern Boulevard, Albany, New York 12204 Phone (518) 465-3491
FAX (518) 432-2485

April 8, 2010

Honorable Daniel P. McCoy, Chairman
Albany County Legislature
Albany County Office Building
112 State Street, Room 1114
Albany, New York 12207

Re: Hudson River – Black River Regulating District
Apportionment

Dear Chairman McCoy:

The Hudson River – Black River Regulating District Board adopted the Apportionment for the Hudson River Area with Modification subsequent to conducting the Apportionment Hearing Grievance at its March 30, 2010 Board meeting. Following approval by the Department of Environmental Conservation, and as required by NY ECL §15-2121(5), on behalf of the Regulating District Board, please find a copy of the Apportionment for the Regulating District's fiscal year July 2009 – June 2010 served upon you as Chairman of the Rensselaer County Legislature. As required by statute, a copy of the Apportionment will also be filed in the Office of the County Clerk. Remittance is due upon receipt, but no later than June 30, 2010.

Also enclosed, please find a copy of the Resolution through which the Regulating District adopted the Apportionment for the Hudson River Area with Modification and the letter from Commissioner Grannis through which the Department of Environmental Conservation approved the Apportionment.

Please feel free to contact me if you have any questions. Thank you.

Sincerely,


Glenn A. LaFave
Executive Director

cc: Hon. Michael G. Breslin, Albany County Executive
Craig A. Denning, Esq. Albany County Attorney
Thomas G. Clingan, Albany County Clerk

State of New York

Hudson River – Black River Regulating District

Great Sacandaga Lake

Operation and Maintenance Cost

and

Apportionment of Operation and Maintenance Cost

Approved by
BOARD OF HUDSON RIVER – BLACK RIVER REGULATING DISTRICT
March 30, 2010

Certified to
Department of Environmental Conservation
March 30, 2010

APPORTIONMENT OF OPERATION AND MAINTENANCE COST OF THE GREAT SACANDAGA LAKE
RESERVOIR PREFIXED TO A RESOLUTION ADOPTED BY THE BOARD OF HUDSON RIVER – BLACK
RIVER REGULATING DISTRICT March 30, 2010.

ID No.	NAME OF PUBLIC CORPORATION	PROPORTION OF COST	AMOUNT TO BE PAID
1	County of Albany	0.392563628	\$ 1,748,166.66
2	County of Rensselaer	0.215951341	\$ 961,675.78
3	County of Saratoga	0.285389349	\$ 1,270,897.53
4	County of Warren	0.066742217	\$ 297,216.83
5	County of Washington	0.039353465	\$ 175,249.08

10-11-03

**RESOLUTION TO APPROVE THE APPORTIONMENT
FOR THE HUDSON RIVER AREA WITH MODIFICATION**

WHEREAS, the Regulating District Board, served a copy of such apportionment as provided at NY ECL §15-2121, noticing and publishing the time and place at which the Board will meet to hear any public corporation or person aggrieved by the Board's apportionment determination; and

WHEREAS, the Board of the Hudson River-Black River Regulating District has determined the total cost to operate and maintain the Regulating District's Hudson River Area facilities (Great Sacandaga Lake, formerly Sacandaga Reservoir); and

WHEREAS, NY ECL §15-2121(2) and §15-2125(2) require the Regulating District Board to apportion such cost, less the amount chargeable to the state, among the public corporations and parcels of real estate benefited, in proportion to the amount of benefit which shall inure to each such public corporation and parcel of real estate by reason of such reservoir; and

WHEREAS, the United States Court of Appeals, DC Circuit determined that the Federal Power Act preempts the Regulating District's use of state law to collect the Regulating District's annual costs of operations and maintenance from the federally licensed hydropower companies operating within the Hudson River Area; and

WHEREAS, the Regulating District Board has determined that by grouping the towns, cities, villages and the individual parcels of real estate within each such public corporation, the potential for disparate treatment of one individual parcel, neighborhood or municipality when compared to others diminishes; and

WHEREAS, the Regulating District Board has determined that the Regulating District provides a negligible annual benefit to the state by diverting flow to the NYS Champlain Canal and the state has not required that a reasonable return to the state be included in the costs to be apportioned; and

WHEREAS, the attached written apportionment shows the name of each public corporation benefited and the proportion of such cost less the amount chargeable to the state to be borne by each, expressed in decimals and the amount to be paid by each such public corporation; and

WHEREAS, the amount to be paid by each such public corporation is determined by multiplying the total cost less the amount which may be chargeable to the state by the decimal representing the proportion thereof to be borne by each public corporation; and

WHEREAS, the Regulating District Board, or a majority of its members, have viewed the public corporations benefited; and

WHEREAS, NY ECL §15-2121 requires that the Regulating District Board shall, upon its approval of the apportionment, certify such apportionment to the Department of Environmental Conservation for approval; and

Approved at the March 30, 2010 Board Meeting

10-11-03

WHEREAS, following such apportionment grievance hearing, such apportionment if not modified shall become final and conclusive; or if modified, following approval of the modified apportionment by the Department of Environmental Conservation, such apportionment as so modified shall become final and conclusive; and

WHEREAS, the Board of the Hudson River-Black River Regulating District, at the January 12, 2010 Board meeting, adopted the "State of New York Hudson River-Black River Regulating District Great Sacandaga Lake Operation and Maintenance Cost and Apportionment of Operation and Maintenance Cost" apportionment for the Regulating District's Hudson River Area facilities; and

WHEREAS, on January 12, 2010, the Board certified the Apportionment to the Department of Environmental Conservation for its approval; and

WHEREAS, by letter dated February 3, 2010, the Department Commissioner approved the Apportionment; and

WHEREAS, the Board having heard those aggrieved by the Board's apportionment determination at an apportionment grievance hearing held March 30, 2010; and

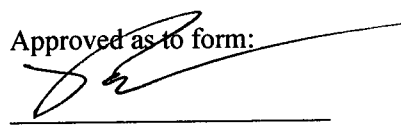
NOW THEREFORE BE IT RESOLVED, the Board of the Hudson River-Black River Regulating District does hereby adopt the "State of New York Hudson River-Black River Regulating District Great Sacandaga Lake Operation and Maintenance Cost and Apportionment of Operation and Maintenance Cost" apportionment for the Regulating District's Hudson River Area facilities with modification; and

BE IT FURTHER RESOLVED, pursuant to NY ECL §15-2121, the Board of the Hudson River-Black River Regulating District certifies such apportionment to the Department of Environmental Conservation for its approval; and

BE IT FURTHER RESOLVED, that upon approval by the Department of Environmental Conservation the Board of the Hudson River-Black River Regulating District directs staff to serve the apportionment as required by NY ECL §15-2121; and

BE IT FURTHER RESOLVED, that once approved and served, the Regulating District Board's apportionment is final and conclusive fixing the apportionment and basis of apportionment of all subsequent expenses to be incurred in the maintenance and operation of the Regulating District's Hudson River Area facilities.

Approved as to form:


Robert P. Leslie
General Counsel

Approved at the March 30, 2010 Board Meeting

10-11-03

Motion was made by Ms. Beyor and seconded by Mr. Berkstresser that the Resolution be approved.

Present and Voting:

<u>MEMBER</u>	<u>AYE</u>	<u>NOE</u>	<u>ABSTAIN</u>
Ms. Beyor.....	<u>X</u>	_____	_____
Mr. Pintuff	_____	_____	_____(Excused)
Mr. Bartow.....	<u>X</u>	_____	_____
Mr. Berkstresser	<u>X</u>	_____	_____
Mr. Cornell.....	<u>X</u>	_____	_____
Mr. Klein.....	<u>X</u>	_____	_____

Approved at the March 30, 2010 Board Meeting

CORPORATE RESOLUTION CERTIFICATION

I HEREBY CERTIFY that the following is a true and correct copy of Resolution 10-11-03 to Approve an Apportionment With Modification for the Hudson River Area duly adopted at a meeting of the Board of Directors of **The Board of Hudson River – Black River Regulating District** a corporation incorporated under the laws of the State of New York duly called and held on the 30th day of March, 2010, a quorum then being present; that the said resolution has been entered upon the regular minute book of the corporation and are in accordance with the certificate of incorporation and the by-laws and are now in full force and effect.

I FURTHER CERTIFY that the names of the persons holding titles referred to in the foregoing resolutions are as follows:

NAME

Pamela Beyor
Philip Klein
John Bartow
David Berkstresser
Paul Cornell

TITLE

First Vice Chairperson
Chairperson
Board Member
Board Member
Board Member

(Corporate Seal)

Treasurer: Rajal. 7

Date: 3/31/10

DAVID A. PATERSON
GOVERNOR



ALEXANDER B. GRANNIS
COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ALBANY, NEW YORK 12233-1010

APR 02 2010

Mr. Glen A. LaFave
Executive Director
Hudson River-Black River Regulating District
737 Bunker Hill Road
Mayfield, New York 12117

Dear Mr. LaFave:

The Department of Environmental Conservation has received the Hudson River-Black River Regulating District's (District) March 30, 2010 State of New York Hudson River-Black River Regulating District Great Sacandaga Lake Operation and Maintenance Cost and Apportionment of Operation and Maintenance Cost (revised apportionment) approved by the District's Board (Board) on March 30, 2010, and certified to DEC on April 1, 2010. Environmental Conservation Law (ECL) §15-2121 provides that the Board shall prepare an apportionment, certified to DEC for its approval, to recover the District's total cost and operation and maintenance expense from the public corporations and parcels of real estate benefitted by the Great Sacandaga Lake (Reservoir) in proportion to the amount of the benefit which will inure to each by reason of such Reservoir.

In reviewing the revised apportionment, DEC has relied on the expertise of District staff who prepared the revised apportionment in identification of: (1) the most direct and clearly defined benefit derived by operation of the Reservoir, i.e. flood protection; (2) the beneficiaries which receive the flood protection benefit; and (3) the method to determine the proportion of the flood protection benefit which will inure to each beneficiary. As the revised apportionment is not inconsistent with the provisions of ECL §15-2121 and ECL §15-2125, I hereby approve said revised apportionment as required by ECL §15-2121(4).

Sincerely,

A handwritten signature in dark ink, appearing to read "Alexander B. Grannis".

Alexander B. Grannis

RECEIVED

APR 05 2010 52

HUDSON RIVER-BLACK RIVER
REGULATING DISTRICT
MAYFIELD, NY