



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 Frederick Monroe, Chairman  
Warren County Board of Supervisors  
Warren County Municipal Center  
1340 State Route 9  
Lake George, New York 12845

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

Dear Chairman Monroe:

The Hudson River – Black River Regulating District maintains facilities in the Hudson River Area, including the Great Sacandaga Lake, which provide flood protection to Warren 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 Warren 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 Warren County Board of Supervisors. 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 30<sup>th</sup> 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,

A handwritten signature in black ink, appearing to read "Glenn A. LaFave".

Glenn A. LaFave  
Executive Director

cc: Paul B. Dusek, Warren County Attorney  
Pamela J. Vogel, Warren County Clerk

**WARREN COUNTY ATTORNEY'S OFFICE**

WARREN COUNTY MUNICIPAL CENTER  
1340 STATE ROUTE 9  
LAKE GEORGE, NEW YORK 12845

**PAUL B. DUSEK**  
COUNTY ATTORNEY

ASSISTANT COUNTY ATTORNEYS  
AMY C. BARTLETT  
PATRICIA C. NENNINGER

SOCIAL SERVICES ATTORNEYS  
H. BARTLETT McGEE, JR.  
ANTHONY JORDAN

TELEPHONE NO.  
(518)761-6463  
TELECOPIER NO.  
(518)761-6377

March 22, 2010

Board of Directors of the  
Hudson River - Black River  
Regulating District  
350 Northern Boulevard  
Albany, New York 12204

RE: ADMINISTRATIVE PROCEEDING  
NYS ECL SEC. 15-2121

Dear Board Members

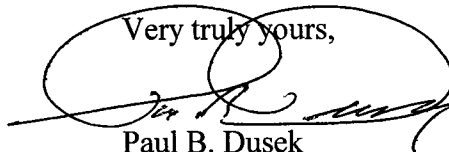
In accordance with the notice by Richard J. Ferrara, Secretary/Treasurer, the County of Warren, as an aggrieved entity is notifying the Board in writing regarding the basis for a requested setting aside/modification to the apportionment of the Hudson River - Black River Regulating District adopted by Resolution of the Board dated January 12, 2010.

Enclosed is a complaint together with supporting documents consisting of Affidavits and the petition and order establishing the District, which includes an estimate of time necessary to present documentary and/or oral testimony.

Please be advised that this office has authorization to appear on behalf of Warren County by virtue of Resolution No. 236 of 2010 and County Law §501 which provides that the County Attorney shall prosecute and defend all civil actions and proceedings brought by the County.

Thank you for your attention to this matter.

Very truly yours,



Paul B. Dusek  
Warren County Attorney

PBD:svn  
enc.

HUDSON RIVER BLACK RIVER REGULATING DISTRICT  
COUNTY OF ALBANY

---

In the Matter of the Application of

THE COUNTY OF WARREN, NY,  
Petitioner,

VERIFIED COMPLAINT

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

**Administrative Proceeding  
NYS ECL Sec. 15-2121**

HUDSON RIVER BLACK RIVER  
REGULATING DISTRICT,  
Respondent.

---

The County of Warren, a municipal corporation organized under the laws of the State of New York and as a Public Corporation aggrieved by the apportionment to it of a portion of the total cost and expense of the Great Sacandaga Lake Reservoir by the Hudson River Black River Regulating District, as and for a complaint, exception to, and demand for modification of, said appropriation, states upon information and belief the following:

1. This is an administrative grievance brought by the County of Warren, 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 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 Warren County and seeks withdrawal and/or modification of the apportionment under Sec. 15-2121.

2. The amount of said apportionment allegedly attributable to the County of Warren is \$290,616.15, 6.53% of the total.

3. 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.

4. The County respectfully requests ten minutes to present documents, exhibits and oral testimony.

5. Petitioner is the County of Warren, New York, a municipal corporation established under the laws of New York State, with offices located at Warren County Municipal Center, 1340 State Route 9, Lake George, New York 12845, an identified entity allegedly subject to the Board's apportionment approved January 12, 2010 by Board Resolution No.: 10-6-01.

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

7. The name and, address and telephone number of the representative of Complainant Warren County is its duly appointed County Attorney Paul B. Dusek, Esq. Warren County Attorney, Warren County Municipal Center, 1340 State Route 9, Lake George, New York 12845 (518-761-6463).

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

### POINT ONE

9. The District has failed to perform its duty and failed to observe premises as required by statute (C.P.L.R. Sec. 7803[1])

10. 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 benefitted."

11. 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.

12. By memo dated January 7, 2010 General Counsel Robert Leslie, Esq. 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." There is no authority for the Board to interpret the statute in such manner.

13. Even assuming that this interpretation is true, as will be seen below, the District did not even perform a cursory "review" of the wealth of data available in arriving at its apportionment.

14. "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

15. 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.

16. Accordingly, neither the Board or it's 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 its "usual and commonly understood meaning" when interpreting Sec. 15-2121. (Sec. 232).

17. 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.

18. In this case, there is no proof offered that either the Board in total or a majority physically visited each parcel and corporation allegedly benefitted. In fact, there is admission that the "natural and obvious sense" of the statutory requirement was ignored.

19. 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.

## POINT TWO

20. The District's apportionment is an arbitrary and capricious abuse of discretion (C.P.L.R. Sec. 7803[3]) in that it fails to determine or apportion any benefits to New York State.

21. ECL Sec. 15-2121 requires, in relevant part, the Board determine to determine the "...amount of benefit which will inure to each public corporation..." by reason of the Sacandaga Reservoir.

22. §15-2121 further requires that, once the benefit is determined, the Board's apportionment is to be applied against benefitted parcels and public corporations "...less the amount which may be chargeable to the state,...."

23. There is no proof showing the Board performed a comprehensive study and analysis of NYS real and/or personal property and made any associated benefit analysis. The sole representation in this context is commentary offered in the November 23, 2009 memo from Robert Leslie, Esq., General Counsel, 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 possible benefits to NYS beyond canal flow. For instance, completely ignored are state interests in resources of: 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 in each of these subject areas, yet there is no analysis or consideration given to State interests in this context as required under Sec. 15-2121(2).

24. Compliance with Sec. 15-2121 requires analysis and determination of state interests. The statutorily required analysis 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 possible State interests 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.

### POINT THREE

26. The District's decisions and apportionment are an arbitrary and capricious abuse of discretion (C.P.L.R. Sec. 7803[3]) since they failed to examine the actual benefits to the apportioned counties and contain a flawed determination of benefit to the parcels and public corporations.

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

28. The Board calculated the apportionment using three stages of analysis: 1. hydraulic modeling of the Hudson River flood plain; 2. generation of GIS maps showing an inventory of properties within the flood plain; and 3. summation of property values culminating in a 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.

29. Sec. 15-2121(2) requires calculation of benefit to include: the name of each public corporation and a brief description of each parcel of real estate benefitted; the name of the owner or owners of each such parcel of real estate, so far as can be ascertained; the proportion of such cost ....less 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.

30. The apportionment here did not comply with the identification and evaluation requirements of 15-2121(2). The Board merely established a summary calculation of District costs split between affected municipalities within the five Counties in general. The apportionment merely totaled the number of properties in various municipalities adjacent to a flood plain map within each County, then proportionately divided the amounts between the five affected Counties. There is no proof offered by the District showing each parcel was evaluated to show actual flood effects and damages.

31. Further, there is no evidence that the District performed more than a perfunctory examination of the available data used to apportion their costs to the counties.

32. Even a cursory examination of the data used to compile the District's apportionment reveals that there is an underlying flaw in utilizing the County as the apportioned entity. For example, the District's apportionment states that Warren County has a total of 617 parcels with a portion of that parcel within the 100 year flood plain. The entire value of those parcels was used to calculate Warren County's portion of the assessment.

33. The annexed Affidavit of Sheri Norton, Warren County GIS Coordinator/E-911 Facilitation shows that she finds that in a CD furnished by representatives of the Hudson River - Black River Regulating District containing the 2010 apportionment GIS data, that the parcels in flood plain only contains 545 parcels as opposed to the 617 parcels referred to in Table 1 annexed to the Memorandum to the Board of the Hudson River - Black River Regulating District from Glen

A. LaFave, Executive Director and others, dated January 7, 2010. The Affidavit further shows that if the Warren County Real Property Tax Services Department data is used she finds a total of 619 parcels. Further, she notes that many parcels are not in or intersecting the Warren County in the flood plain layer. And that the stretch of parcels is beyond the scope of the study areas of the Gomez and Sullivan report referred to hereinabove.

34. The methodology applied by the Board was inconsistent with the requirements of Sec. 15-2121(2) because it did not identify, evaluate and assess costs against each parcel. Additionally, there was no evaluation made of relative damages to each property given various levels of water in the flood plain. Thus the apportionment is flawed, a violation of statutory procedure, has no rational basis representing an actionable arbitrary abuse of discretion. Accordingly, the apportionment fails and should be withdrawn.

#### POINT FOUR

35. The petition for the creation of the Hudson River Regulating District filed in the Office of Water Control Commissioner on July 6, 1922, a copy of the same being annexed hereto as Exhibit "A", set forth in paragraph "SECOND" the purposes and benefits as a result of establishing the District. Those benefits included floods, sanitation and sewage issues during low flow of the river, sea water being as far north as Poughkeepsie during low flows of the river, navigation problems when there is no sufficient water, generation of electrical energy, operation of New York Central Railroad and D&H Railroad and "public and private interests in many respects not enumerated".

36. The final Order creating the Hudson River Regulating District, was dated August 2, 1922 and referred to and used the petition as the basis upon which the Order was granted. Annexed hereto as Exhibit "B" is a copy of that Order.

37. The apportionment of operation and maintenance cost adopted by the Hudson River - Black River Regulating District dated January 12, 2010, assigns a portion of the cost to only five Counties.

38. The apportionment of the operation and maintenance cost adopted by the Board of the Hudson River - Black River Regulating District dated January 12, 2010, does not assign or apportion costs for all purposes and benefits set forth in the original petition seeking the establishment of the District.

39. The Board apparently determined that "flood protection is the most direct and clearly defined benefit (see Memorandum dated January 7, 2010) and failed to identify, quantify or evaluate any other benefit and purpose for which the District was originally established.

40. The Board knew or had reason to know that there were additional benefits created by the construction of the reservoir by virtue of the petition and final Order, hereinbefore referred to, and the Gomez and Sullivan report, hereinabove referred to.

41. The failure to consider all benefits and purposes of the District apportion cost to all categories of benefit and purpose as well as to determine and assign the value of the benefits to the



particular real estate parcels contained within said District is arbitrary and capricious, not in compliance with the requirements of law and lacks a rational basis.

42. The allegations set forth in paragraph numbered 36 through 42 are hereby repeated and realleged as if more fully set forth herein.

43. The apportionment of the cost to the County of Warren as a whole, results part of the District apportionment becoming a County expense.

44. The District apportionment, as a County expense, is payable by all residents of the County.

45. The Gomez and Sullivan report refers to only one municipality in Warren County being within the 100 year flood plain, i.e., the Town of Queensbury. The Memorandum to the Board of the Hudson River - Black River Regulating District from Glen A. LaFave, Executive Director, et al. dated January 7, 2010 (for the meeting of January 12, 2010 Board meeting), refers to and incorporates Table 1 which purportedly sets forth property values in the "without GSL" 100 year flood plain. The municipalities of the City of Glens Falls, Town of Lake Luzerne, Town of Queensbury are listed. No other municipality within Warren County is listed.

46. Warren County is made up of 10 towns, one village and one city.

47. The apportionment established by the District does not provide for mechanism whereby Warren County may assess only those properties that are affected and there would not appear to be any mechanism under State law that would allow for such assessments.

48. By failing to properly identify the benefitted properties and quantify that benefit, the District has placed the County in a position of having to do so.

49. By failing to apportion benefit cost to each parcel benefitted as required by statute and instead of apportioning the cost to the County as a whole, the Board is violating, constitutional, statutory and common law.

#### POINT FIVE

50. The District's current apportionment should be barred as inequitable and unfair under the doctrine of equitable estoppel.

51. 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.

52. Never before in history has the District apportioned costs against Counties as it intends in the current reapportionment. In light of the District's prior course of conduct, Warren 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.

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

#### POINT SIX

54. The District has failed to reapportion within a reasonable time thus violating the doctrine of laches.

55. 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.

56. Under the circumstances presented, for over eighty years, since creation of the District, costs have never been assessed against Counties. As a result, Warren County did not budget for such costs in 2010, as will be seen from the annexed Affidavit of Joann McKinstry, Deputy Commissioner of Administrative & Fiscal Services.

57. As can be seen from the Affidavit of Joann McKinstry, Deputy Commissioner of Administrative & Fiscal Services, in 2010 Warren County raised the County tax by 5.9% over the 2009 amount raised or a total of 38,139,044.33 for the year 2010.

58. The apportionment costs to Warren County, \$290,616.15 represents .0076% of the tax levy or 3/4 of a percent.

59. According to the Affidavit of Robert V. Lynch, II, Deputy Warren County Treasurer, the County borrowed \$4,506,0000 for cash flow purposes in 2009 and has had to borrow \$6,500,000 in 2010.

60. Imposition of the proposed apportionment would further compromise the fiscal position of the County which, given current state budget issues and funding reductions as well as national economic and market conditions, is already severely compromised.

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

#### POINT SEVEN

62. As HRBRRD has failed to properly identify the properties and property owners benefitted [ECL 15-2121(2)], as opposed to simply identifying the Counties, it has also failed to provide adequate notice of the grievance hearing as property owners have no meaningful way of knowing whether they are actually "benefitted" and to what extent. It also does not appear that municipal entities other than Counties were provided with notice of the grievance hearing as is required by ECL 15-2121(4).

#### POINT EIGHT

63. Not only did HRBRRD fail to include properties outside the District, but it also failed

to include properties within the District. It appears that twelve Counties are partially or wholly within the District (according to the HRBRRD's rural area flexibility analysis dated 12/8/09 these Counties are: Albany, Essex, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Oneida, Rensselaer, Saratoga, Warren, and Washington. ECL 15-2109(7) implies that only eleven Counties are within the District. This provision includes Greene, Columbia and Schenectady Counties but excludes Herkimer, Jefferson, Lewis and Oneida Counties). HRBRRD failed to apportion these fees among all properties within the District, instead focusing on just the Conklingville Dam and just the Counties "down stream" of the Dam.

POINT NINE

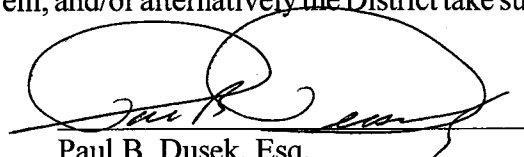
64. The District boundaries appear ambiguous. This ambiguity is to the detriment of the Counties and benefitted property owners.

POINT TEN

65. Finally, Warren County hereby adopts and incorporates the arguments made in this proceeding by the counties of Albany, Rensselaer, Saratoga and Warren to the extent not made herein.

WHEREFORE, 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 in accordance with objections stated herein; and/or alternatively the District take such other and further action in accordance with law.

DATED: Lake George, New York  
March 22, 2010



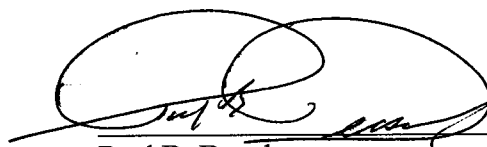
Paul B. Dusek, Esq.  
Warren County Attorney  
Attorney for: Warren County, NY  
Warren County Municipal Center  
1340 State Route 9  
Lake George, New York 12845  
(518)761-6463

TO: HRBRRD

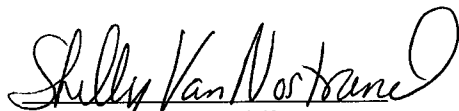
VERIFICATION

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

Paul B. Dusek, affirms under penalty of perjury that; 1. He is the duly appointed County Attorney for the County of Warren; 2. the County of Warren is the Petitioner in this proceeding; 3. that Petitioner is a governmental subdivision; 4. that he is acquainted with the facts of this matter; he makes this verification pursuant to CPLR Sec. 3020(d)(2); 5. 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.

  
Paul B. Dusek

Sworn to before me this  
22nd, day of March, 2010.

  
Notary Public

SHELLY VAN NOSTRAND  
Notary Public, State of New York  
No. 01VA4964626  
Qualified in Warren County  
Commission Expires April 2, 20\_\_\_\_

Exhibit A

PETITION

Filed in office of Water Control Commission  
July 6, 1922.

---

TO THE CONSERVATION COMMISSION, THE ATTORNEY  
GENERAL AND THE STATE ENGINEER, AND OR THEIR  
RESPECTIVE DEPUTIES, CONSTITUTING THE WATER  
CONTROL COMMISSION UNDER ARTICLE VII-A OF THE  
CONSERVATION LAW OF THE STATE OF NEW YORK.

The Petition of the undersigned residents of, or owners of  
real estate within the district herein proposed to be organized, and  
public corporations whose boundaries lie wholly or partially within  
such district, for the creation of a river regulating district, under  
and pursuant to the provisions of said Article VII-A, respectfully  
shows:

FIRST: The proposed name of said district is the "Hudson  
River Regulating District."

SECOND: The necessity for the organization of such district,  
the purposes to be accomplished thereby and the benefit to inure from  
the exercise of the powers are as follows, viz:

A. The Hudson River is the largest and most important river  
in the State. Said river and its principal tributaries rise in the  
Adirondacks and empties into the Atlantic Ocean at the City of New  
York. Its length from its source to its mouth is about three hundred  
miles and from its source to the City of Troy is about one hundred and  
fifty miles. It is navigable and extensively used commercially for  
the transportation of property and persons from the City of Troy to  
the City of New York, a distance of some one hundred fifty miles.  
The Adirondack region in which the upper Hudson and its tributaries  
find their source is a high mountainous region. Within this region  
there occurs annually a very heavy rainfall. A great part of this

precipitation takes the form of snow, the melting of which in the spring causes great floods. There is a great variation of flow of this river owing to such floods and to droughts. Such variation differs from year to year between an observed maximum and minimum flow during spring freshets of over one hundred thirteen thousand (113,000) cubic feet per second at a given point, and in the same year at the same place a minimum flow of less than seven hundred (700) cubic feet per second. That such variation is not necessarily the limit but floods to a greater extent have occurred and may be expected to re-occur, and in extraordinarily dry years the river has and may shrink to even smaller proportions. That such freshet flow of water cannot be contained within the normal banks of the river and during the years of such freshets the banks of the river have overflowed causing extensive damage. In a single year such damage in the City of Albany and vicinity has been upwards of a million dollars and a total property damage of upwards of two million dollars.

That the cities of Albany, Watervliet, Rensselaer, Troy and Mechanicville and the villages of Castletown, Green Island and Waterford are all adjacent to said river and within such proposed district as are other villages and towns, and during such freshets large areas thereof are flooded and inundated with water, rendering such flooded areas unsanitary and unsafe to health, and cause sickness and death and do great property damage and inconvenience to the inhabitants thereof, and cause great public and private damage.

That the New York Central Railroad and the D. & H. Railroad are for many miles constructed along and adjacent to the banks of said river and during the times of such freshets the flow of water in said river interferes with and stops traffic on said railroads, suspends transportation of passengers and freight, and inflicts great

public and private injury.

That many of the municipalities located along said Hudson River from the village of Corinth to the city of New York empty raw sewage into said river, and during the periods of low flow of water in said river said sewage contaminates this water and the same becomes a menace to the general health and during the periods of lowest flow such contamination approaches the stage of an actual nuisance and renders habitation along said river unsanitary and the condition of the river at such times is a menace to the public health.

That at the times of the low flow of said river sea water is found as far north as Poughkeepsie and it is impossible to take water from the river below said place for domestic purposes.

That from the Village of Fort Edward to the City of Troy said Hudson River is in part canalized and used for navigation and during the period of natural minimum flow there is not sufficient water for continuous navigation.

That during the periods of low flow of said river it has at times been difficult for boats carrying persons and property to pass up and down said river for several miles below the city of Troy and because of the low level of water in said river resulting from drought.

That there are at present on the Hudson River and within the district herein asked to be created many developed water power plants, some of which are used to generate electric energy which is utilized for public purposes in lighting streets and public and private buildings in municipalities and operating street railroads, and that more of such energy is needed for public uses. Other water power plants are now in course of construction on said river. It is impossible for these plants to use waters coming from freshets and to the extent not used the flow is economic waste; during the periods of the low flow a



large part of this installed power capacity is idle and throws out of employment a great many men and suspends in whole or in part operations in said power plants resulting in lack of electric energy needed for public uses and in hardship to industries and to communities along said river and the inhabitants of such communities.

Said variations in the flow of said river are detrimental to public and private interests in many respects not above enumerated.

B. The topography of said Adirondack region is such that large storage reservoirs can be constructed in which the spring freshet floods may be restrained and impounded and thus prevent floods and thereafter the waters thus impounded can be released when the flow of the river is naturally at minimum and such minimum flow be very materially increased. That extensive surveys and investigations of the possibilities of such reservoirs have been made by the Conservation Commission of this State and by private interests, and it has been determined and the fact is that two thirds of the maximum flow can be restrained and impounded in reservoirs and that by so doing said river will not overflow its banks so as to impair or injure health or do damage to persons or property. The water thus restrained and impounded can be released during the times of natural minimum flow and such flow raised from less than seven hundred cubic feet per second to fifty six hundred cubic feet per second or better.

By the creation of such district storage reservoirs can be provided which will regulate the flow of such river eliminating the now maximum flow thereof and by properly operating such reservoirs increase such minimum flow. This will increase by about a foot and a half the depth of water in the Hudson River below the City of Troy and benefit navigation; and also supply ample water for navigation between Fort Edward and Troy; it will prevent loss and damage to life and property;

it will greatly improve the dangerous unsanitary conditions along said river; and the consequent impairment of health; it will greatly diminish the danger of interference and suspension of railroad operations (and the transportation of persons and property) and the obstruction and washing out of bridges and highways and thus facilitate public travel and intercourse; it would permit the cities along said river to draw their supply of water from the river for domestic and other purposes and would even permit the City of New York to obtain its future water supply by taking water from the river in the vicinity of Poughkeepsie, it will give a more continuous and uniform flow of water for use of said power plants and increase the power or energy therefrom for both public and private purposes and keep labor more uniformly and continuously employed and be a great benefit to the cities along said river and the inhabitants of such cities and will also be a great benefit in producing hydro-electric energy and in building up communities and creating values and will accomplish other public and private purposes. That such additional energy is needed for public uses.

THIRD: The territory to be included in the proposed district constitutes the watershed of the Hudson River and its tributaries within the State of New York above the intersection of the southerly boundary lines of the counties of Albany and Rensselaer with the Hudson River, excepting therefrom the Mohawk River and its tributaries. The extent of the proposed district is approximately five thousand square miles. The reason why the Mohawk River is not included in the proposed district is because this river is a canalized stream and controlled and supervised by the Superintendent of Public Works. That the counties that lie wholly or in part in the proposed district are Albany, Columbia, Rensselaer, Saratoga, Washington, Warren, Fulton, Hamilton, Essex, Greene, Schenectady and Schoharie.

FOURTH: That as your petitioners are informed and believe through the construction and operation of reservoirs two thirds of the maximum flood flow can be restrained, and a maximum flow of 113,000 cubic feet per second can be cut in half, and that a minimum flow of 650 cubic feet per second can be raised to 5,600 cubic feet per second.

FIFTH: Both state and private lands will be required. The amount of state lands required will not exceed 9,000 acres and together with all other state lands which may be required for reservoir purposes on other watersheds will not exceed 3% of all the state lands within the Forest Preserve. The amount of private lands required cannot be determined accurately until all proposed reservoirs are located and the high flow lines thereof surveyed, but private land necessary for such reservoirs will be inconsiderable when compared with the great public benefits to be derived from the regulation of the river.

WHEREFORE your petitioners pray that your honorable Commission will create the regulating district herein petitioned for pursuant to and for the accomplishments of the objects provided for in said Chapter VII-A of the Conservation Law.

Dated, July 5th. 1922.

City of Glens Falls, N. Y.  
By C. W. Cool, Mayor.

Village of Corinth, N. Y.  
By Maurice T. Jones, President.

Town of Corinth, N. Y.  
By J. Harry Dunmore, Supervisor.

Village of Sol Glens Falls  
By John Fridge, President.

Village of Fort Edward  
By Millard Robinson, President.

Village of Hudson Falls

By George S. Drome, President.

Adirondack Power & Light Corporation

By Elmer J. West, Vice Presdt.

Frank L. Bell

Elmer J. West

Village of Schuylerville, N. Y.

E. D. Naylor, President.

City of Mechanicville, N. Y.

By John W. Burke, Mayor.

Albert E. Cluett, Troy, N. Y.

A. E. Roche, Engr., Troy, N. Y.

City of Watervliet, N. Y.

By M. L. Walsh, Mayor.

City of Rensselaer

By Henry Meurs, Mayor.

City of Albany, N. Y.

By Wm. S. Hackett, Mayor.

Exhibit B

STATE OF NEW YORK  
WATER CONTROL COMMISSION

IN THE MATTER

-of the-

Petition of the City of Glens Falls  
and Others, for the Creation of the  
Hudson River Regulating District.

FINAL ORDER.

On reading and filing the petition of the City of Glens Falls and others, duly presented to the Commission on the 8th of July, 1922, praying that the territory constituting the watershed of the Hudson River and its tributaries within the State of New York above the intersection of the southerly boundary lines of the counties of Albany and Rensselaer with the Hudson River, excepting therefrom the watershed of the Mohawk River and its tributaries, be created into a river regulating district pursuant to and for the accomplishment of the objects provided for in said Article VII-A of the Conservation Law, being Chapter 662 of the Laws of 1915 of the State of New York as amended, and that the district be known as the "HUDSON RIVER REGULATING DISTRICT"; and the notice of hearing thereof, together with proof of due publication thereof; and hearings having been had on said petition on the 25th day of July, 1922, and on the 2nd day of August, 1922, and Allen Wardwell, Esq., of 15 Broad Street, New York, N. Y., and John H. Vincent, Esq., of 15 Broad Street, New York, N. Y., representing the Adirondack Power & Light Corporation, and Frank L. Bell, Esq., of Glens Falls, New York, in person and representing the Village of South Glens Falls, New York, having appeared in favor of the petition; and F. W. Orr, Esq., of Menands, Albany, New York, in person, A. W. Klopot, Esq., of Sacandaga Park, New York, in person. Stuart Christie Esq. of Newfield

New York, and H. E. Perkins, Esq., Green Island, New York, representing the Ford Motor Company, having appeared; and Joseph Moses, Esq., of Northville, New York, in person, and F. M. Sinclair, Esq., of Northampton, New York, in person, and representing Lucy J. Sinclair, Messrs. Baker & Maider, of Gloversville, New York, representing the Fonda, Johnstown & Gloversville Railroad Company and the Village of Northville, and George W. Murray, Esq., of 37 Wall Street, New York, N. Y., President of and representing the Schroon Lake Association, a corporation whose members consist of free-holders and residents in the neighborhood of Schroon, Brant and Paradox Lakes, having appeared in opposition thereto, and evidence having been taken at such hearings, and no person or public corporation having filed objections to the organization of such district, except the Village of Northville and the Fonda, Johnstown & Gloversville Railroad Company, and Frank M. Sinclair, Lucy J. Sinclair, Harry T. Sinclair, W. R. Stark, D. W. Noyes, W. A. Hayden, Ray Leslie, John G. Stead, Elmer Brown, and Joseph Moses, all of Northampton, New York, and F. E. Eddy of Edinburgh, Saratoga County, New York, and the Commission having considered the evidence offered by the parties appearing and after due deliberation had thereon, it is

ORDERED, that the Commission does hereby find, determine and declare that the creation of the Hudson River Regulating District as prayed for in the said petition is required by the public welfare, including public health and safety, and that the purposes of Article VII-A of the Conservation Law, being Chapter 662 of the Laws of 1915 of the State of New York, as amended, will be subserved by the creation of the Hudson River Regulating District, as prayed for in the said petition and that such regulation is feasible, and it is

FURTHER ORDERED, that the petition of the City of Glens Falls and others, praying that the territory constituting the watershed of the Hudson River and its tributaries within the State of New York above the intersection of the southerly boundary lines of the counties of Albany and Rensselaer with the Hudson River, excepting therefrom the watershed of the Mohawk River and its tributaries, be created into a river regulating district pursuant to and for the accomplishment of the objects provided for in said Article VII-A of the Conservation Law, being Chapter 662 of the Laws of 1915 of the State of New York, as amended, be and the same hereby is in all respects granted, and such territory is hereby constituted and created a river regulating district and it is

FURTHER ORDERED, that the said river regulating district shall be known as the Hudson River Regulating District.

WATER CONTROL COMMISSION      by

Charles D. Newton  
Attorney General

Frank M. Williams  
State Engineer and Surveyor

C. Tracey Stagg  
Deputy Conservation Commissioner.

Dated, Albany, N. Y.  
August 2, 1922.

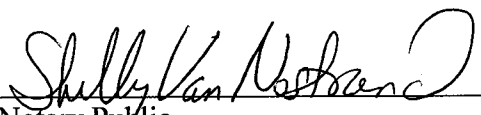


4. Based on personal knowledge as well as a review of computer software programs with regard to the County budget, I represent that in 2010 Warren County raised the County tax by

5.9% over the 2009 amount raised or provided for a total of \$38,139,044.35 to be raised by taxation for the year 2010.

  
JOANN MCKINSTRY

Sworn to before me this  
22<sup>nd</sup> day of March, 2010.

  
Notary Public

SHELLY VAN NOSTRAND  
Notary Public, State of New York  
No. 01VA4964626  
Qualified in Warren County  
Commission Expires April 2, 2010

**SHELLY VAN NOSTRAND**  
Notary Public, State of New York  
No. 01VA4964626  
Qualified in Warren County  
Commission Expires April 2, 2010


4. As a result of my analysis of the data provided on the CD, I find that the data layer, “WarrenParcelsInFloodPlain” only contains 545 total parcels rather than 617 encompassing the Town of Queensbury, Town of Lake Luzerne and the City of Glens Falls. This data layer includes private, non-profit and municipal owned properties.

5. Using the most current data from the Warren County Real Property Tax Services Department (March 2010), I find 619 parcels (rather than 545 properties) within the County intersecting the flood plain.


6. Using the CD layer “HudsonRiverGSL100YearWithoutGSL”, which I presume to be the FINAL model created using ArcGIS by the Regulating District staff as indicated in the January 7, 2010, memo to the District Board, I calculated both the total acreage per community within and outside of the flood plain (see the excel spread sheet). Also on this spread sheet is the breakdown of number of parcels and total acreage for municipally owned property (of the 545 included for Warren County). The analysis of the first table was generated using ArcInfo 9.3.1 GIS software. The Acres field of the “WarrenParcelsInFloodPlain” layer was re-calculated in the GIS based on the feature geometry (i.e., total area of each respective parcel). The layer was then clipped with the boundaries of the “HudsonRiverGSL100YearWithoutGSL”. Values for acreage of the features in this new clipped layer were generated using the Calculate Geometry tool in ArcInfo. A new field was then added to the attribute table of the clipped layer and the difference evaluated between the original total parcel acreage (of the “WarrenParcelsInFloodPlain” layer) and flood plain acreage, providing total non-flood plain acreage. Using the Summarize tool in ArcInfo, the total acreage of these three fields (original parcel acreage, acreage within the flood plain, and acreage outside of the flood plain) per municipality (i.e., Town of Lake Luzerne, Town of Queensbury, and City of Glens Falls) was generated as a new table.

7. I found it very odd that many parcels not intersecting the “HudsonRiverGSL100YearWithoutGSL” layer were included in the “WarrenParcelsInFloodPlain” layer. As one can see from the excel spread sheet, many parcels within the “study area” (as described in the July 2003 Gomez and Sullivan final report and illustrated with a map on page 51 of this report)

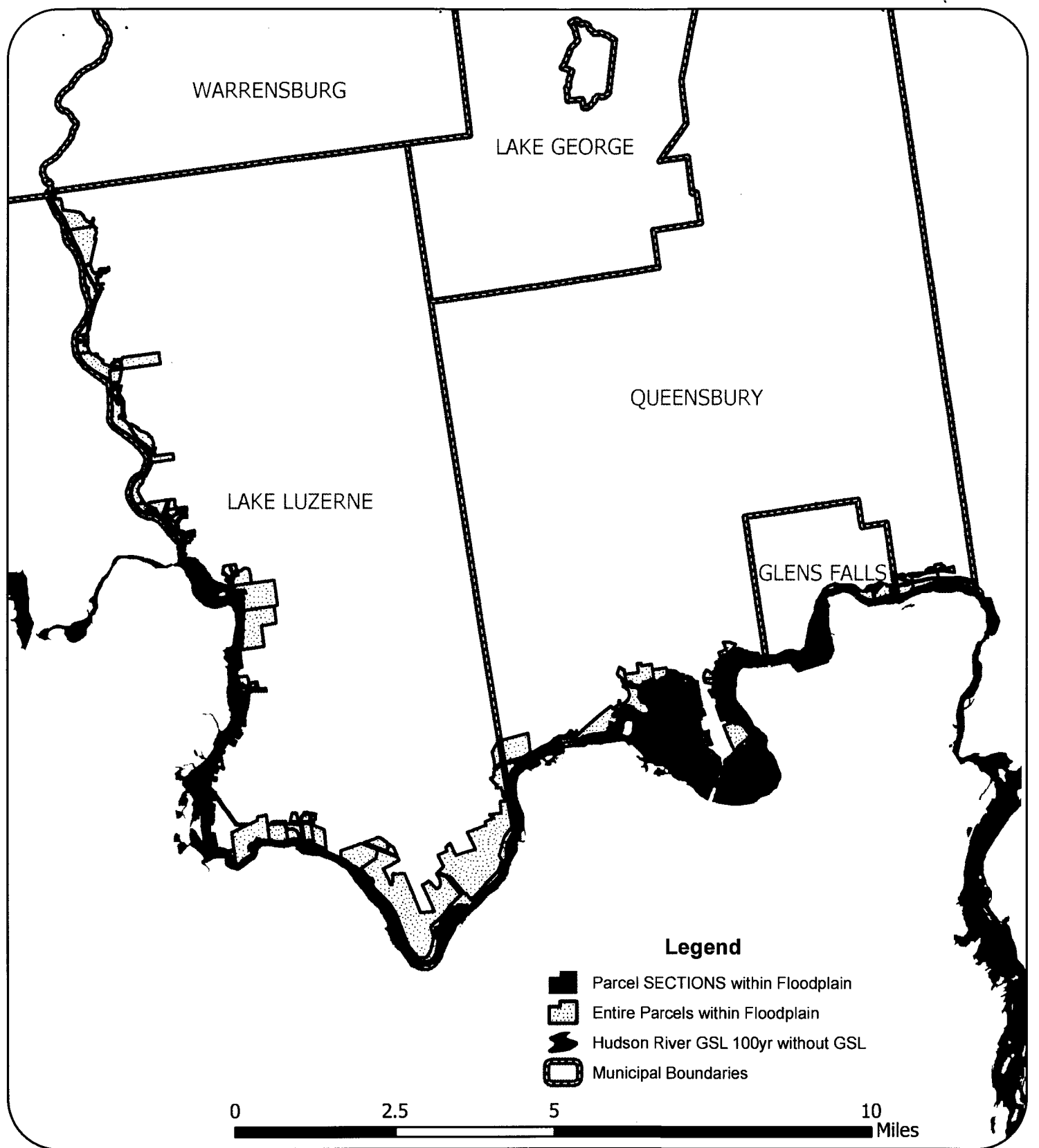
aren't even touching the boundary of (let alone contained partially or wholly within) the flood plain. The attached maps clarify this concern, particularly all the parcels on the northwest section of the Town of Lake Luzerne. These latter parcels, while certainly adjacent to the Hudson River and also within the FEMA flood zone (required mandatory flood insurance), they are not within "HudsonRiverGSL100YearWithoutGSL" layer . This stretch of parcels is beyond the scope of the studies areas of the Gomez and Sullivan report.

  
\_\_\_\_\_  
SHERI NORTON

Sworn to before me this  
22<sup>nd</sup> day of March, 2010.

  
\_\_\_\_\_  
Notary Public

SHELLY VAN NOSTRAND  
Notary Public, State of New York  
No. 01VA4964626  
Qualified in Warren County  
Commission Expires April 2, 2010



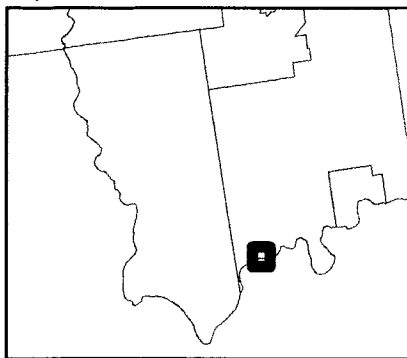
**IMPORTANT NOTICE AND DISCLAIMER:**

THIS MAP AND INFORMATION IS PROVIDED "AS IS" AND WARREN COUNTY MAKES NO WARRANTIES OR GAURANTEES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF TITLE, NON-INFRINGEMENT, MARCHANTABILITY AND THAT OF FITNESS FOR A PARTICULAR PURPOSE CONCERNING THIS MAP AND THE INFORMATION CONTAINED HERIN. USER ASSUMES ALL RISKS AND RESPONSIBILITY FOR DETERMINING WHETHER THIS MAP IS SUFFICIENT FOR PURPOSES INTENDED.

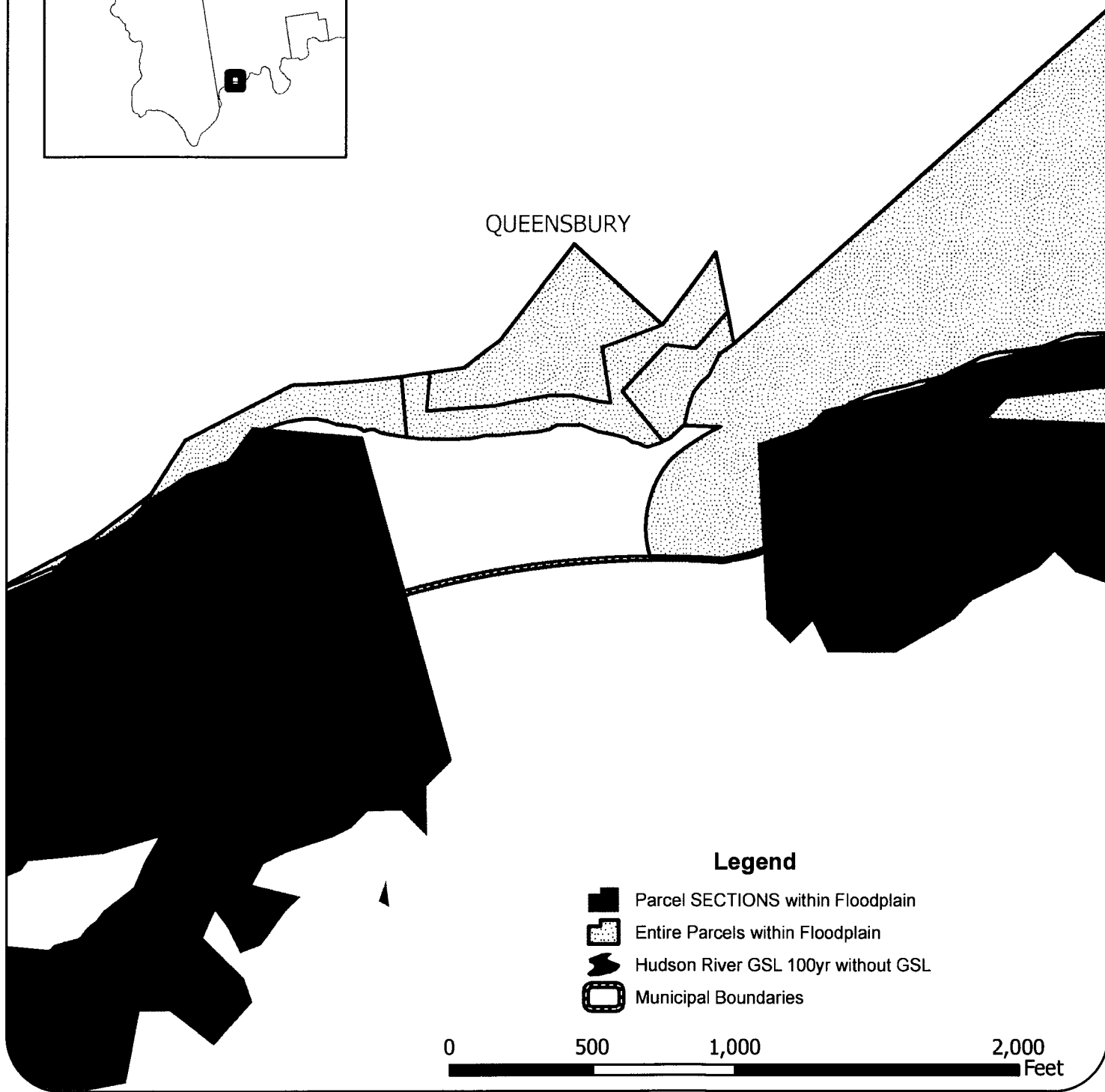
Map prepared by Warren County  
Planning Department in March 2010







## Area within the Hudson River/Black River Regulating District



QUEENSBURY



### Legend

-  Parcel SECTIONS within Floodplain
-  Entire Parcels within Floodplain
-  Hudson River GSL 100yr without GSL
-  Municipal Boundaries

0 500 1,000 2,000 Feet

#### IMPORTANT NOTICE AND DISCLAIMER:

THIS MAP AND INFORMATION IS PROVIDED "AS IS" AND WARREN COUNTY MAKES NO WARRANTIES OR GAURANTEES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF TITLE, NON-INFRIDGEMENT, MARCHANTABILITY AND THAT OF FITNESS FOR A PARTICULAR PURPOSE CONCERNING THIS MAP AND THE INFORMATION CONTAINED HERIN. USER ASSUMES ALL RISKS AND RESPONSIBILITY FOR DETERMINING WHETHER THIS MAP IS SUFFICIENT FOR PURPOSES INTENDED.



## Area within the Hudson River/Black River Regulating District

Map prepared by Warren County  
Planning Department in March 2010



| MUNICIPALITY  | NUMBER OF PARCELS | TOTAL ACRES       | ACRES WITHIN FLOOD ZONE | ACRES OUT OF FLOOD ZONE |
|---------------|-------------------|-------------------|-------------------------|-------------------------|
| GLENS FALLS   | 20                | 183.0714          | 102.2322                | 80.8391                 |
| LAKE LUZERNE  | 277               | 2,410.6326        | 250.5102                | 2,160.1237              |
| QUEENSBURY    | 155               | 1,080.0414        | 419.5093                | 660.5320                |
| <b>TOTAL:</b> | <b>452</b>        | <b>3,673.7454</b> | <b>772.2517</b>         | <b>2,901.4948</b>       |

| MUNICIPALITY | NUMBER OF MUNICIPALLY-OWNED PARCELS | TOTAL ACRES |
|--------------|-------------------------------------|-------------|
| Glens Falls  | 4                                   | 53.3615     |
| Lake Luzerne | 15                                  | 15.9234     |
| Queensbury   | 7                                   | 198.2478    |