



## MEMORANDUM

To: Board of Hudson River - Black River Regulating District  
From: Glenn A. LaFave, Executive Director  
Robert P. Leslie, General Counsel  
Richard J. Ferrara, Chief Fiscal Officer  
Robert S. Foltan, P.E., Chief Engineer  
Michael A. Clark, P.E., Hudson River Area Administrator  
CC: File  
Date: 01/07/2010 (for the January 12, 2010 Board Meeting)  
Re: Hudson River Area / Great Sacandaga Lake Apportionment

---

The Board directed Regulating District staff to complete an internal apportionment for the Hudson River Area and the Great Sacandaga Lake and to develop an apportionment schedule for the purpose of generating revenue and facilitating the sale of tax anticipation notes.

The development of an apportionment analysis involved: 1) identification of the type of benefit derived by operation of Great Sacandaga Lake; 2) identification of the group of beneficiaries which are benefited by operation of the Great Sacandaga Lake; 3) the selection of a method to determine the proportion of benefit or relative percentage by which an assessment will be levied among the members of the beneficiary group.

### Identification of the Type of Benefit Derived

Regulating District staff concluded, for the purpose of an internal apportionment, that flood protection is the most direct and clearly defined benefit to the beneficiaries derived from the operation of river regulating reservoirs. Flood protection benefits are provided to properties in the floodplain and to the greater community which avoids loss of public infrastructure (i.e., roads, bridges, water, sewer, etc.). The 100-year flood is widely considered the benchmark by which the public measures flood events, and serves as a reasonable and rational basis for calculation of flood protection benefits. For these reasons staff has selected the 100-year flood as the basis for its analyses.

### Identification of the Group of Beneficiaries

Recognizing that flood protection benefits are received by both the properties in the floodplain as well as the greater community, staff focused its attention on development of an apportionment among the counties that receive flood protection benefit. Staff has identified five counties within the jurisdictional territory that comprises the Hudson River Area, and through which the Hudson River flows, as the group of beneficiaries that derive flood protection benefits. The five counties that border the Hudson River include Albany, Rensselaer, Saratoga, Washington, and Warren. A detailed discussion of the statutory and legal basis for selection of counties as beneficiaries was provided to the Board in December in a memorandum from General Counsel.

### Selection of a Method to Determine the Proportion of Benefit

Two methods were considered as potential means for determining the proportion of benefit derived by each beneficiary from flood protection. One approach considered by staff included the use of the Federal Emergency Management Agency's (FEMA's) Hazards U.S. Multi-Hazard (HAZUS-MH) flood assessment model software. This software was ordered in mid-November 2009. Staff made several attempts in early December 2009, through various contacts, to expedite delivery of the software, and the Regulating District anticipated receipt of the software by late December; however, as of January 6, 2010, that software had not been delivered. By mid-December 2009 it became apparent to staff that an equally effective alternative method of completing the flood protection benefit analysis would be required. In December 2009 staff began utilizing a graphic information (GIS) system, *ArcGIS*, to conduct a mapping analysis of the properties in the five counties that derive flood protection benefits from the operation of the Great Sacandaga Lake.

In general, a graphic information system-based analysis involves the layering of digital mapping and spatially oriented data to conduct evaluations, generate inventories, or quantify characteristics represented in the mapping. For the in-house GIS analysis of the flood protection benefit derived by properties within the floodplain of the Hudson River, staff used in-house generated flood inundation data, New York State Office of Real Property data, and United States Geological Survey topographic maps to identify flood protected properties.

## Calculation of an Apportionment

Calculation of an apportionment involved three stages of analysis:

- Hydraulic Modeling of the Hudson River for the “without GSL” 100-year flood,
- Generation of GIS map layers and an inventory of properties within the floodplain,
- Summation of property values and a calculation of the relative proportion of benefit based on the total value of properties within the floodplain in each county to the total value of properties within the floodplain in all five counties.

The following terminology and phrases are used throughout the remainder of this memorandum.

**“with GSL” :** refers to analyses involving river flow conditions that exist after the creation of the Great Sacandaga Lake

**“without GSL” :** refers to analyses involving river flow conditions that exist before the creation of the Great Sacandaga Lake

**ArcGIS or GIS :** computer mapping software for completing 3-dimensional/spatial analysis

**100-year flood :** refers to river flow produced by an analysis involving a Log Pearson Type III frequency distribution probability-based calculation which determines the flow for specific recurrence interval(s) (i.e. 1 in 100 years, or an exceedance probability of 0.01, known as the 100-year flood).

**inundation area :** the surface area of land flooded during a flood event.

### Hydraulic Modeling of the Hudson River “without GSL” 100-year floodplain

This analysis assumes that all properties within the “without GSL” 100-year floodplain receive some level of flood protection. A portion of the properties are not damaged by a 100-year flood event if it were to occur today (as a result of the flood protection offered by the GSL), but would be flooded if the GSL did not exist. Other properties would be partially inundated or damaged by a flood event if it were to occur today, but would be more severely impacted by a 100-year flood event if the Great Sacandaga Lake did not provide some reduction in the flood flow.

Therefore, engineering staff selected the "without GSL" 100-year flood flow and the resulting inundation area and floodplain as the basis for the apportionment analyses. This approach to calculating the apportionment recognizes benefit derived by both the properties that receive full flood protection (those properties above the current 100-year floodplain elevation which would be flooded if the reservoir did not exist) and the properties that receive partial protection (those in the current 100-year floodplain which would experience greater flood depth and damage if the reservoir did not exist).

USGS gauge data information for the Hudson River at Newcomb, North Creek, Hadley, Stewarts Bridge, Fort Edward, and Waterford has been used to complete 100-year flood flow frequency analyses. The 100-year flood flow values for the "without GSL" scenario for the Hudson River from the confluence of the Sacandaga and Hudson River (at the Town of Hadley) to Albany were added to a U.S. Army Corps of Engineers *HEC-RAS River Analysis System* water surface profile model of the Hudson River, to calculate the depth of water in the Hudson River for the "without GSL" 100-year flood scenario.

#### Generation of GIS Map Layers and Inventory of Properties

The *HEC-RAS* generated "without GSL" 100-year floodplain water surface data was exported to *ArcGIS* where it was combined with topographic mapping, and real property tax maps to develop inundation mapping of all properties within the "without GSL" 100-year floodplain.

The combined GIS map layers were used to develop an inventory of properties and property values, within each town, city, and village, which were located within the "without GSL" 100-year floodplain.

#### Summation of Property Values and Proportion of Benefit

The final step in the apportionment analysis involved quantifying the benefit derived from flood protection based on the value of properties within the "without GSL" 100-year floodplain. Property value data was exported from *ArcGIS* to an Excel spreadsheet, sorted by county, and adjusted to "market value" as necessary through application of equalization rates. The "market value" of properties in the "without GSL" 100-year floodplain serves as the basis for the calculation of the proportion of benefit derived by

each. Table 1 – *Property Values in the “without GSL” 100-year floodplain* contains the “market value” of properties in the “without GSL” 100-year floodplain. Table 2 – *Apportionment of Counties* contains the recommended proportion of flood protection benefit derived by each county.

Included as an attachment to this memorandum is the:

- Statement of Operation and Maintenance Cost and Apportionment of Operation and Maintenance Cost
- Assessment of Maintenance and Operation Cost

Table 1 - Property Values in the "without GSL" 100-year floodplain

A County	B Quantity of Properties in 100 yr floodplain (without GSL) 1	C Total Value of Property in 100 yr floodplain (without GSL) 1	D Apportionment of Benefit	
City of Albany	411	\$609,579,955	0.1459	\$ 649,766.99
City of Cohoes	207	\$48,845,159	0.0116	\$ 51,852.13
City of Watervliet	76	\$349,029,774	0.0835	\$ 372,039.33
Town of Bethlehem	103	\$163,189,392	0.0391	\$ 173,947.78
Town of Coeymans	80	\$120,411,153	0.0288	\$ 128,349.35
Town of Colonie	183	\$150,854,878	0.0361	\$ 160,799.89
Town of Green Island	467	\$161,912,621	0.0388	\$ 172,586.84
<b>Albany</b>	<b>1527</b>	<b>\$1,603,622,732</b>	<b>0.3838</b>	<b>\$ 1,709,342.82</b>
City of Rensselaer	559	\$191,657,235	0.0459	\$ 204,292.39
City of Troy	790	\$388,545,166	0.0930	\$ 414,160.31
Town of East Greenbush	78	\$13,820,775	0.0033	\$ 14,731.92
Town of North Greenbush	10	\$62,679,592	0.0150	\$ 66,811.79
Town of Schaghticoke	363	\$48,312,609	0.0116	\$ 51,497.66
Town of Schoadack	125	\$4,580,900	0.0011	\$ 4,882.90
Village of Castleton-on-Hudson	64	\$23,475,973	0.0056	\$ 25,023.65
<b>Rensselaer</b>	<b>1969</b>	<b>\$733,072,251</b>	<b>0.1755</b>	<b>\$ 761,400.61</b>
City of Mechanicville	107	\$23,338,209	0.0056	\$ 24,876.80
Town of Corinth	90	\$11,755,945	0.0028	\$ 12,530.97
Town of Hadley	183	\$123,392,222	0.0295	\$ 131,526.95
Town of Halfmoon	181	\$55,046,292	0.0132	\$ 58,675.26
Town of Moreau	202	\$301,696,248	0.0722	\$ 321,585.81
Town of Northumberland	88	\$23,586,400	0.0056	\$ 25,141.35
Town of Saratoga	106	\$19,345,000	0.0046	\$ 20,620.33
Town of Stillwater	120	\$61,941,977	0.0148	\$ 66,025.55
Town of Waterford	422	\$240,861,358	0.0577	\$ 256,740.33
Village of Corinth	64	\$135,702,062	0.0325	\$ 144,646.33
Village of Schuylerville	87	\$19,068,359	0.0046	\$ 20,323.64
Village of South Glens Falls	26	\$76,990,429	0.0184	\$ 82,066.08
Village of Stillwater	427	\$74,102,225	0.0177	\$ 78,987.47
Village of Waterford	422	\$240,861,358	0.0577	\$ 256,740.33
<b>Saratoga</b>	<b>2525</b>	<b>\$1,407,686,385</b>	<b>0.3369</b>	<b>\$ 1,500,489.21</b>
Town of Easton	130	\$32,975,897	0.0079	\$ 35,149.86
Town of Fort Edward	177	\$37,292,438	0.0089	\$ 39,751.02
Town of Greenwich	76	\$14,323,200	0.0034	\$ 15,267.47
Village of Fort Edward	211	\$42,742,349	0.0102	\$ 45,560.17
Village of Hudson Falls	8	\$33,425,000	0.0080	\$ 35,628.57
<b>Washington</b>	<b>602</b>	<b>\$160,758,935</b>	<b>0.0385</b>	<b>\$ 171,367.09</b>
City of Glens Falls	58	\$99,933,638	0.0239	\$ 106,521.84
Town of Lake Luzerne	378	\$95,021,024	0.0227	\$ 101,285.36
Town of Queensbury	181	\$77,687,347	0.0186	\$ 82,808.95
<b>Warren</b>	<b>617</b>	<b>\$272,642,010</b>	<b>0.0653</b>	<b>\$ 290,616.16</b>
	<b>7260</b>	<b>\$4,177,782,312</b>	<b>1.0000</b>	<b>\$ 4,453,206.88</b> <sup>3</sup>

Notes

- 1 ORPS and County Real Property Assessment Data
- 2 Based on internal Regulating District analysis of value of properties in the "without a reservoir" floodplain
- 3 Represents unlevied balance of Board approved assessment for year 1 of budget July 1, 2009 - June 30, 2010 in the amount of \$5,403,458. Difference of \$950,252 is the amount levied against the original five(5) municipalities and the five(5) undeveloped parcels owed by NIMO.

**Table 2 - Apportionment of Counties**

A County	B Quantity of Properties Receiving Flood Protection Benefit 1	C Total Value of Property Receiving Flood Protection Benefit 1	D Apportionment of Benefit (%)
Albany	1527	\$1,603,622,732	38.38%
Rensselaer	1989	\$733,072,251	17.55%
Saratoga	2525	\$1,407,686,385	33.69%
Washington	602	\$160,758,935	3.85%
Warren	617	\$272,642,010	6.53%
	7260	\$4,177,782,312	100.00%

**Notes**

1 ORPS and County Real Property Assessment Data

2 Based on internal Regulating District analysis of value of properties in the "without GSL" floodplain



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

To: Members of the Board  
 From: Robert Leslie, General Counsel  
 Re: Public Corporations and Parcels of Real Estate Benefited  
 Date: Prepared November 23, 2009 for the December 8, 2009 Meeting

As the Regulating District Board embarks upon a reapportionment of the costs to maintain and operate the Hudson River Area facilities, it is worth taking a look at the statutory basis for doing so; specifically what the legislature contemplated by the phrase "among the public corporations and parcels of real estate benefited". The provision within the Regulating District's enabling statute dealing with apportionment, NY ECL §15-2121(1) requires that the Board prepare a statement estimating the total cost to construct each reservoir, including interest on debt and all other expenses necessarily incurred in such construction and operation. The Board fulfills this responsibility through the adoption of the Regulating District's budget.

Once the Board has estimated the costs to be apportioned, NY ECL §15-2121(2) provides that:

[ t]he Board shall then apportion such cost, less the amount which may be chargeable to the state, 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 by reason of such reservoir. Such apportionment shall be made in writing and **shall show 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 cost less the amount which may be chargeable to the state 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 of real estate. (emphasis added)

Note that the statute requires that the Board show the 'name of each public corporation', but does not require that the Board prepare a description of the land within that entity. By contrast, each parcel of real estate benefited must be described and linked to the owner or owners thereof. The manner in which the Regulating District has prepared its annual assessment shows how it has historically viewed this disparate apportionment treatment.

The Regulating District's annual assessments have treated 'parcels' separately from 'public corporations'. The statutory provision on 'assessments', NY ECL §15-2123(1), requires the Board to prepare a statement showing the name of each public corporation and a description of each parcel of real estate benefited. This is the same language used in the earlier section setting up the apportionment. The Regulating District's statement of annual assessment addresses these requirements by listing each hydropower company, the proportion of cost, and total dollars to be borne by such company. Up through last year, each hydropower plant was linked to a parcel number on the statement of annual assessment which then referred back to a description of that parcel. By contrast, the entries for the cities of Albany, Troy, Rensselaer and Watervliet and the entry for the Village of Green Island did not get linked to any particular parcel.



The provision on assessments, Section 15-2123, treats these two groups (public corporations and individual parcels) differently throughout the assessment process. The legislative body for each municipality levies the assessment on the municipality as a whole. The county legislature levies the amount to be collected directly on the relevant county or town. The common council of a city levies upon its city and the village board of trustees levies upon the relevant village. By contrast, for individual parcels, the statute contemplates that each county legislature shall create a separate assessment roll and levy any assessment directly upon any specific parcel identified for apportionment.

The Regulating District's first apportionment split the benefit derived among the 'parcels of real estate' lying along the Sacandaga and Hudson Rivers upon the basis of 'head'. Each of these parcels, except those owned by National Grid, were/are owned by the hydropower companies. The first apportionment also identified some, but not all, of the public corporations lying along the Hudson River. The United States Court of Appeals decision in *Albany Engineering v. FERC* eliminated the Regulating District's authority to assess the FERC licensed hydropower companies, but did not affect the Regulating District's authority to apportion its costs among the remaining parcels of real estate, or among the public corporations benefiting from the Regulating Districts facilities. As a result, the question faced by the current Regulating Board is the same question faced by the first Regulating District Board: "which public corporations and parcels of real estate should share in the cost to operate the Regulating District's facilities?" The only difference wrought by the *Albany Engineering v. FERC* decision is that the Board can no longer include the FERC licensed hydropower company parcels in the mix.

Before picking among the public corporations and individual parcels, the Board should determine whether any portion of its costs should be assessed against the state. Throughout NY ECL §15-2121, the statute provides for the Regulating District to apportion its cost "...less the amount chargeable to the state". NY ECL §15-2123(5) also provides for the Regulating District's consideration of amounts appropriated by the state. However, while the Regulating District's statute makes provision for both assessments against the state and appropriations from the state, neither have historically materialized. Case in Point: Buried within the definition of "Benefit or benefits" at NY ECL §15-2101(3) is the following statement "In the event that any regulating reservoir operates to relieve the state of any obligation by reason of diversion of the water of any river for canal purposes, the state, to the extent that the maintenance and operation of such reservoir may accomplish such relief, shall be deemed to have received benefit therefrom." Despite this provision, the Regulating District does not collect an assessment from the state based on canal flow augmentation. According to the Gomez and Sullivan Report, the Regulating District provides a negligible benefit to the state by diverting flow to the NYS Champlain canal. Thus, any apportionment of costs to the state, if based on value of that benefit received, might not amount to much. In addition, the Regulating District's enabling statute makes provision for the utilization of an appropriation to cover its costs but does not confer upon the Regulating District the authority to compel an appropriation from the NYS Legislature. Despite the lack of a track record for seeking an assessment from the state, the Board should determine whether to do so in the future.

Turning back to the discussion of an apportionment among public corporations and parcels, let us first focus on an apportionment against individual parcels. Historically, the bulk of the burden to defray the cost to operate the Regulating District's facilities was placed on the parcels of real estate along the Sacandaga and Hudson Rivers which generate or had the potential to generate hydropower. The balance was apportioned to public corporations. Now, due to the *Albany Engineering v. FERC* case, the Regulating District can no longer directly assess FERC licensed hydropower companies using state law, but rather must rely upon FERC's calculation of the relative headwater benefit derived by each generator under federal law. That leaves only the National Grid lands within the group of 'parcels'

traditionally assessed within the reach of the Regulating District's power to assess under state law. Although National Grid contests the Regulating District's apportionment of costs to the undeveloped National Grid properties, the current apportionment remains valid and enforceable. Were National Grid to develop the parcels on which they could theoretically generate power, one could assume that such generating capacity would be subject to FERC licensure and that such parcels would then be protected from Regulating District assessment under state law by the Albany Engineering v. FERC decision. However, even the elimination of both the FERC licensed hydropower companies and the National Grid parcels does not preclude an apportionment against individual parcels of real property within the Hudson River Area. Nonetheless, such an apportionment would have to articulate a basis for treating some parcels differently than others if less than all parcels within the Regulating District's territorial jurisdiction were to share equally in the apportionment.

One way to address the question of who should share in the apportionment of costs is to break out the benefit derived by each affected group. Based on previous recommendations, the Board has elected to apportion costs based on benefits from flow control (flood protection) and, flow augmentation (waste water and white water recreation). With respect to flow control, the benefit could be attributed to individual parcels, neighborhoods, or to whole communities. Those parcels which flood less frequently or with less severity could be considered to have received a flood control benefit. The value of that benefit could be determined for each parcel or neighborhood. However, simply aggregating the value of the flood benefit to all such parcels would not accurately represent the value of potential flood avoidance to the community as a whole. Such a methodology would fail to account for costs to the community like the loss of highways, blockage of pathways to hospitals, industrial facilities or retail establishments, and the expenditure of municipal disaster response resources, etc. Therefore, an apportionment of only those parts of a community close to the River (the ones flooded) fails to capture the value of the benefits received by those parcels located farther away. Conversely, the flood avoidance benefit to the community as a whole could be captured in an apportionment of costs to the community as a whole. This analysis assumes that as the group against whom an apportionment is asserted increases in size, the potential for disparate treatment diminishes.

There are other practical considerations in selecting to apportion costs against a community rather than against individual parcels within that community. For instance, NY ECL §15-2121(4) requires that the Board, or a majority of the members thereof, view the premises and public corporations benefited before it apportions costs against such premises. There is no case law interpreting exactly what the legislature meant when it required that the Board 'view' the premises. However, because the statute separately mentions 'public corporations', and fails to define the term premises, one could infer that the legislature intended that the Board, or a majority thereof, visit the individual parcels identified for apportionment. While a visit to a few dozen Adirondack region hydropower companies in the summer circa 1925 may have imposed a burden, viewing thousands of individual properties, even with the benefit of modern transportation, could still prove costly and time consuming.

The original apportionment limited the number of public corporations to whom an apportionment lay. The five municipalities originally identified, Albany, Troy, Rensselaer, Watervliet and Green Island, represent some but not all of the public corporations which line the Hudson and Sacandaga Rivers and may derive a flood benefit. The term "public corporation" is not defined within NY ECL title 21 of Article 15, but is defined for the purposes of all of Article 15 by NY ECL §15-0107(2) and all of the ECL by NY ECL §1-0303 to mean public corporation as defined at NY General Corporation Law §3(1). The General Corporation Law was repealed in 1973. The definition of a public corporation is now covered by General Construction Law §66 which defines a public corporation to include a municipal

corporation, a district corporation, or a public benefit corporation. In addition, as noted at NY ECL §1-0303(20), the term public corporation includes all public authorities.

The General Construction Law further defines a municipal corporation to include counties, towns, cities, villages and school districts. A district corporation in essence includes any territorial division of the state established by law which possesses the power to contract indebtedness and levy taxes or benefit assessments upon real estate. These definitions are important because while the Board might be inclined to expand an apportionment of its costs from four cities and a village to include counties, towns, cities and villages, the Board might also determine to include school districts, public benefit corporations, district corporations, or public authorities.

To: Board of the Hudson River-Black River Regulating District  
From: Robert Leslie, General Counsel  
Date: Prepared January 7, 2010 for the January 12, 2010 Board Meeting  
Re: Memo in Support of the Apportionment Resolution

In consultation with counsel at the Department of Environmental Conservation, staff has prepared the attached Resolution to approve an Apportionment of costs for the Regulating District's Hudson River Area facilities Great Sacandaga Lake (Formerly Sacandaga Reservoir) to supercede the apportionment adopted by the Board on December 5, 1924.

By Resolution 09-24-06, passed June 9, 2009, the Board of the Hudson River-Black River Regulating District passed the current three year budget which determined the total cost to operate and maintain the Regulating District's Hudson River Area facilities. 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.

As discussed extensively in other memoranda to the Board, on November 28, 2008, 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 operation and maintenance from Hudson River hydropower companies licensed by the Federal Energy Regulatory Commission (FERC). The Regulating District continues to pursue headwater benefits charges from downstream hydro power companies pursuant to the Federal Power Act. Such headwater benefits consist of an 'equitable' portion of the "Interest, Maintenance, and Depreciation" expenses incurred by upstream facilities such as the Regulating District for the operation of facilities like the Conklingville Dam. As a result of the court's decision and the expected revenue from FERC's headwater benefits determination currently underway, the Regulating District Board must shift a significant portion of its Hudson River Area costs from the merchant hydropower companies to the municipalities in the Hudson River basin.

As described in a series of memorandum prepared for the December 8, 2009 Board meeting, staff recommends that the Regulating District Board determine that by grouping the towns, cities, villages and the individual parcels of real estate within each such public corporations, the potential for disparate treatment of one individual parcel, neighborhood or municipality when compared to others diminishes. Further, staff recommends that the Board determine that the Regulating District provides a negligible annual benefit to the state by diverting flow to the NYS Champlain Canal and note that the state has not required that a reasonable return to the state be included in the costs to be apportioned.

Staff's preparation of the apportionment is based upon data and analysis which could be applied to an apportionment at either the county level, or to an apportionment against the cities, towns and villages within such counties. The documents supporting staff's recommended apportionment against the counties includes information upon which the counties could rely to pass-through such apportionment to the constituent cities, towns and villages within such county. Such information will be publically available both through FOIL and on the Regulating District's website. In contrast, staff recommends that the tentative apportionment itself list only the five counties against whom the apportionment applies; an expression of that apportionment in decimal form; and the dollar amount to be paid each county. The

simplicity of listing the counties only, rather than listing each county with a break-out of the cities, towns and villages within such county forestalls any argument by a county that the apportionment actually lies against the cities, towns and villages, rather than the county itself. Listing only the entity which derives a benefit best reflects the statutory requirement set forth at NY ECL §15-2121(2). (“...**Such apportionment shall be made in writing and shall show 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 cost less the amount which may be chargeable to the state 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 of real estate.**” *Emphasis added*).

NY ECL §15-2121(4) requires that ‘the board, or a majority thereof, before making such apportionment shall view the premises and public corporations benefited’. The minutes of the meeting memorializing the Resolution through which the first Regulating District Board approved the initial apportionment simply stated that the board, or a majority thereof, had viewed the premises. The minutes did not articulate the manner in which the Board conducted such viewing. Historically, a viewing of the premises benefited might have meant a visit to each affected hydropower facility along the length of the Sacandaga and Hudson Rivers and thus, a visit to the county within which such land lay. In light of the court case ruling for Federal Power Act preemption, visits to such specific sites are not warranted. 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. In the absence of a written record or a definition explaining the legislature’s intent, and in light of available modern technology, we believe that such an appreciation can best be gained through review of aerial photographs, inundation mapping, and the presentation of staff’s data analysis. In addition, some on the Board have indicated that they have already physically visited each affected county.

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. In order to levy assessments and issue a Tax Anticipation Note in a timely fashion, the Regulating District will need DEC’s approval of the Apportionment before January 29<sup>th</sup>. This assumes the Board adopts and DEC approves the Apportionment Grievance Hearing Procedure emergency rule which contemplates a 45 day period between Service/Filing of the Apportionment and the Board’s March 16<sup>th</sup> Meeting [proposed date of the Apportionment Grievance Hearing]. Filing of the Notice of Emergency Adoption for State Register publication completes the final step necessary for the Emergency Rule to become effective and would be required before January 29<sup>th</sup> to allow the subsequent publication of a Notice announcing the Apportionment Grievance Hearing. Staff have made arrangements for DEC staff to accept a fax or emailed copy of a Certification showing Board action on the Resolution adopting the emergency rule. DEC staff has promised to quickly release DEC’s letter approving the emergency rule.

NY ECL §15-2121(4) requires that upon approval of the apportionment by the DEC, copies of the Apportionment should be served upon the chair or other presiding officer of the county legislature of each county, the mayor of each city, the supervisor of each town, and the mayor of each village named in the apportionment and that it shall be filed in the office of the county clerk of each county in which any public corporation or real property thereby affected is located. Since the Apportionment will affect only the counties, staff recommends that copies be served on the county legislature and the county clerk. Courtesy copies would be served on the other municipal corporations within those counties and posted to the Regulating District’s website. Following such service, NY ECL §15-2121(4) also requires that a

notice be published announcing the time and place at which the Board will meet to hear any public corporation or person aggrieved by the Board's apportionment determination. Staff recommends that the Board chose to hear grievances at the Board's March 2010 meeting.

Pursuant to NY ECL §15-2121(5), 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 DEC, such apportionment as so modified shall become final and conclusive.