

**HUDSON RIVER-BLACK RIVER REGULATING DISTRICT
GOVERNANCE COMMITTEE MEETING**

April 9, 2013

Warren County Municipal Center

1340 State Rt. 9

Lake George, NY 12845

CALL TO ORDER

Committee Chairman Hayes called the meeting to order at 10:00A.M.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: Committee Chairman Albert J. Hayes; Committee Member Thomas Stover; and Board Chairman as Ex Officio Committee Member David W. Berkstresser; Executive Director Michael A. Clark; General Counsel Robert P. Leslie; Chief Engineer Robert S. Foltan; Chief Fiscal Officer Richard J. Ferrara; Hudson River Area Administrator John Hodgson; Black River Area Administrator Carol L. Wright; and other Regulating District staff.

MOTION TO ADOPT COMMITTEE MEETING AGENDA

A motion was made by Mr. Stover to adopt the meeting agenda. Mr. Hayes seconded it and the motion was unanimously approved.

MOTION TO APPROVE MAY 8, 2012 COMMITTEE MEETING MINUTES

A motion was made by Mr. Stover to approve the Minutes of the Committee's May 8, 2012 Meeting. Mr. Hayes seconded it and the motion was unanimously approved.

COMMITTEE BUSINESS

(A) Old Business – None

(B) New Business

- a. Discussion of Domestic Violence & Workplace Policy – Mr. Leslie
 - i. Mr. Stover made a motion to advance to the full Board and recommend approval of the Domestic Violence & Workplace policy. Mr. Hayes seconded it and the motion was unanimously approved.
- b. Discussion of Annual Review and Approval of Investment Policy - Mr. Ferrara
 - i. Mr. Stover made a motion to advance to the full Board and recommend approval of the Investment Policy. Mr. Hayes seconded it and the motion was unanimously approved.

- c. Discussion of Annual Review and Approval of Procurement Policy- Mr. Ferrara
 - i. Mr. Stover made a motion to advance to the Full Board and recommend approval of the Procurement Policy. Mr. Hayes seconded it and the motion was unanimously approved.

- d. Discussion of Annual Review and Approval of Property Guidelines Policy- Mr. Ferrara
 - i. Mr. Stover made a motion to advance to the full Board and recommend approval of the Property Guidelines. Mr. Hayes seconded it and the motion was unanimously approved.

ADJOURNMENT

There being no further business to come before the Governance Committee, Mr. Stover moved to adjourn the meeting. Mr. Hayes seconded it. The motion was unanimously approved. The committee meeting adjourned at 10:10A.M.

Respectfully submitted,

Richard J. Ferrara
Secretary/Treasurer

**HUDSON RIVER-BLACK RIVER REGULATING DISTRICT
BOARD MEETING
MARCH 12, 2013
10:00 A.M.**

Warren County Municipal Center
1340 State Rt. 9
Lake George, NY 12845

CALL TO ORDER

Chairman David W. Berkstresser called the meeting to order at 10:14 A.M.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: Board Chairman David W. Berkstresser; First Vice Chair Mark M. Finkle; Second Vice Chair Albert J. Hayes; Board Member Thomas Stover and; Executive Director Michael A. Clark; General Counsel Robert P. Leslie; Chief Fiscal Officer Richard J. Ferrara; Chief Engineer Robert Foltan; Hudson River Area Administrator John Hodgson; Black River Area Administrator Carol L. Wright.

MOTION TO ADOPT OR REVISE THE MEETING AGENDA

Chairman Berkstresser asked if there was a need for a Motion to revise the meeting agenda noting that staff had proposed to him a new item, "c" be added under contracts. The new item would involve the Board's authorization to solicit for a soil boring project connected to the Sixth Lake/Old Forge Engineering Assessment. Mr. Finkle made a Motion to adopt the proposed meeting agenda as revised. Mr. Hayes seconded it and the motion was unanimously approved.

PUBLIC COMMENT PERIOD

Chairman Berkstresser solicited comments from the public. One speaker inquired about the prospects for commercial rafting on the Sacandaga River. Mark Schachner, attorney for the Five Counties, thanked the Board and specifically Mr. Clark, Mr. Ferrara and Mr. Leslie for the professional and fair manner in which they conducted the difficult negotiations resulting in the recently passed apportionment. The Board Chair also praised Mr. Schachner and his team for their efforts.

APPROVAL OF THE MARCH 12, 2013 BOARD MEETING MINUTES

A motion was made by Mr. Finkle to approve the Minutes of the Board's March 12, 2013 regular board meeting. Mr. Hayes seconded it and the motion was unanimously approved.

EXECUTIVE DIRECTOR'S REPORT

Mr. Clark provided his report. Mr. Clark began by noting the Regulating District's prospect for achieving MWBE goals in the upcoming year. He also briefly discussed his attendance at a continuing education seminar necessary to maintain his professional engineering license. Mr. Clark explained that the Apportionment has been approved by DEC, original signatures on the consent agreement have been secured, as have the Judge's 'So Ordered' signature on the Stipulation of Settlement and Discontinuance for Fulton County which serves as one of the conditions precedent to the Apportionment Consent agreement. Finally he noted that in accordance with the Regulating District's enabling statute, Apportionment filings have been made with each of the five affected county clerks. Mr. Clark noted that initial payments to Fulton and Hamilton County will take place as soon as possible once apportionment payments have been received from Albany, Rensselaer, Saratoga, Warren, Washington, Fulton and Hamilton Counties.

CONTRACTS

RESOLUTION TO AWARD THE WORK TO PERFORM STILLWATER DAM BREACH ANALYSIS TO HENNINGSON, DURHAM & RICHARDSON ARCHITECTURE AND ENGINEERING, P.C. (HDR)

Mr. Foltan noted that the Hudson River-Black River Regulating District solicited Statement of Qualifications (SOQ's) for Stillwater Dam Breach Analysis in the Contract Reporter and the Regulating District's 'official newspapers' on January 9, 2013. One hundred thirty-six prospective respondents reviewed the RFQ documents and the Regulating District received and opened thirteen (13) statements of qualification. A three person evaluation team including the Executive Director, Chief Engineer and the Operations Engineer evaluated the State of Qualifications supplied by each respondent. After careful independent consideration of the thirteen (13) SOQ's based on the evaluation criteria set forth in said SOQ, Henningson, Durham & Richardson Architecture and Engineering, P.C. (HDR) received the highest average total score. Mr. Foltan and the Chief Fiscal Officer recommended the Board award the work to HDR.

Mr. Stover moved to adopt the Resolution to award the Stillwater Dam Breach Analysis to Henningson, Durham & Richardson Architecture and Engineering, P.C. and to authorize solicitation of a scope of work and fee proposal. Mr. Hayes seconded it and the Resolution was unanimously adopted.

RESOLUTION TO APPROVE CONTRACT FOR KLEINSCHMIDT ASSOCIATES, PA, PC TO PERFORM HAWKINSVILLE DAM REMEDIATION & REMOVAL FINAL STUDY & DESIGN

Mr. Foltan noted that pursuant to a NYS DEC notification of insufficient spillway capacity, in October 2010 the Board hired a consultant to complete a remediation and removal alternatives assessment at the Hawkinsville dam. The consultant's March 2012 preliminary assessment presented four concepts for increasing the discharge capacity and offered removal as a fifth alternative. Staff presented the consultant's report to the Board in April 2012 and in May 2012 recommended further study of one of the four capacity increasing alternatives (inflatable weir)

and further study of the removal alternative. In September 2012, the Board authorized staff to solicit qualifications from engineering firms to conduct the final study. In January 2013, the Board conditionally awarded the Hawkinsville Dam Remediation and Removal Final Study to Kleinschmidt. As requested, Kleinschmidt submitted a scope of work and fee proposal. The work proposed by Kleinschmidt will take place in two phases. Kleinschmidt will first conduct a records review and site assessment to establish the environmental, socioeconomic, recreational, aesthetic, physical, and regulatory issues related to repair or removal. After preparing and developing a draft report and presentation to the Board, Kleinschmidt will present the alternatives at two public outreach meetings. Kleinschmidt will then develop a final report taking into account the Board's comments. Phase two of the project will involve final design services and construction observation. Mr. Foltan recommended that the Board authorize the Executive Director to execute a contract with Kleinschmidt Associates for a not to exceed amount of \$ 90,980.00.

Mr. Stover moved to adopt the Resolution to award the Hawkinsville Dam Remediation & removal final Study & Design to Kleinschmidt Associates, PA, PC. Mr. Finkle seconded it and the Resolution was unanimously adopted.

MOTION TO AUTHORIZE THE EXECUTIVE DIRECTOR TO SOLICIT PROPOSALS FOR THE COMPLETION OF SUBSURFACE INVESTIGATION WORK AT THE SIXTH LAKE AND OLD FORGE DAMS

Mr. Foltan noted that NYS DEC Dam Safety Regulations require the completion of an engineering assessment of the Sixth Lake and Old Forge Dams including a safety inspection and an evaluation of the hydraulic and structural condition and capacity of each dam. The inspection must be done by an independent engineering consultant. In July 2012, the Board conditionally awarded work associated with the engineering assessment to Camp Dresser McKee & Smith (CDM Smith). CDM Smith began work on April 1, 2013 by providing an outline of their recommendation for the subsurface investigation. CDM Smith proposes soil sampling and laboratory testing to evaluate soil characteristics and groundwater conditions. Staff estimates the probable costs to complete the subsurface investigation to be approximately \$20,000. Regulating District staff is prepared to solicit proposals from qualified contractors to complete the subsurface investigations. Mr. Foltan recommended that the Board authorize the solicitation of proposals by motion.

Mr. Hayes moved to authorize the Executive Director to solicit proposals for the completion of subsurface investigation work at the Sixth Lake and Old Forge Dams. Mr. Stover seconded it and the Motion was unanimously adopted.

COMMITTEE REPORTS

Governance Committee Chairman Albert Hayes reported four matters for consideration by the full Board. Those matters include:

RESOLUTION TO ADOPT DOMESTIC VIOLENCE AND WORKPLACE POLICY

Mr. Stover moved to adopt the Resolution to adopt the Regulating District's Domestic Violence and Workplace Policy. Mr. Finkle seconded it and the Resolution was unanimously adopted.

RESOLUTION TO SATISFY ANNUAL REVIEW AND APPROVAL OF THE REGULATING DISTRICT'S INVESTMENT POLICY

Mr. Finkle moved to adopt the Resolution to satisfy the necessary annual review of the Regulating District's Investment Policy. Mr. Stover seconded it and the Resolution was unanimously adopted.

RESOLUTION TO SATISFY ANNUAL REVIEW AND APPROVAL OF THE REGULATING DISTRICT'S PROCUREMENT POLICY

Mr. Stover moved to adopt the Resolution to satisfy the necessary annual review of the Regulating District's Procurement Policy. Mr. Hayes seconded it and the Resolution was unanimously adopted.

RESOLUTION TO ANNUALLY REVIEW AND APPROVE THE REGULATING DISTRICT'S DISPOSITION OF PROPERTY GUIDELINES – PURSUANT TO SECTION 2896(1) OF THE PUBLIC AUTHORITIES LAW

Mr. Finkle moved to adopt the Resolution to satisfy the necessary annual review of the Regulating District's Disposition of Property Guidelines. Mr. Stover seconded it and the Resolution was unanimously adopted.

STAFF REPORTS

Mr. Leslie presented his report to the Board.

Mr. Leslie noted that judgments in favor of Fulton (\$1,660,129.90) and Hamilton (\$119,361.84) Counties remain outstanding. Mr. Leslie referenced the following from his written report:

2013 Apportionment. As required by the Board's March 12, 2013 Resolution adopting the Apportionment by Consent, on March 13, a copy of said resolution, the consent agreement, the apportionment and a cover letter describing the supporting documentation were hand delivered to associate counsel at DEC to facilitate the Commissioner's approval. By letter dated April 3, 2013, the Department approved the Apportionment. In addition, Stipulations of Discontinuance of the Hamilton and Fulton County cases have been secured. Also, original signatures upon the Apportionment Consent have been secured from the Board Chair and each of the Five Counties. The apportionment has been filed with each affected County Clerk. HRBRRD awaits payment of the Apportioned amounts from the Five Counties and the amount appropriated by the State. On Feb 21, 2013, the AG's Office filed HRBRRD's Appellate Brief with the App Division Third Department. HRBRRD challenges Judge Teresi's grant of Summary Judgment to AEC awarding \$516,655.62 plus interest dating to January 1, 2003. We await AEC's Appellate Brief and the Court's determination.

On 6/21/12, Northern Electric Power Company, L.P. and South Glens Falls, L.P. (“Boralex”) served a Summons and Complaint seeking refunds. On January 17, 2013, Judge Teresi issued a Decision and Order in the Boralex v. HRBRRD case. As characterized by the Attorney General’s Office, the decision is a decisive win for the plaintiffs. The Attorney General’s Office has indicated it will prepare an appeal.

On 11/15/12 New York State Electric and Gas Corporation served a Summons and Complaint seeking \$446,798.07 with interest thereon for alleged overpayment of headwater benefits. The assigned AAG has employed defensive strategies similar to those advanced in the Albany Engineering refund case appeal and the Boralex refund case. The AG’s Office filed HRBRRD’s Answer & Memo of Law 02/01/13.

On September 29, 2010, U.S. District Court Judge Norman Mordue dismissed the NiMo federal Court Permit System and Assessment challenge. On March 7, 2012, the U.S. Court of Appeals 2nd Circuit (USCA 2nd Circuit) affirmed the District Court’s ruling on preemption and dismissal of DEC. However, the USCA 2nd Circuit also vacated the District Court’s abstention ruling and remanded NiMo’s federal and NY constitutional claims back to the District Court for further proceedings. Special Counsel Justin Driscoll indicates that the USDC NDNY’s current court schedule shows Discovery to be complete by August 15th 2013. Plaintiff’s Expert Discovery list is due May 20th. HRBRRD Expert Discovery Disclosure, if any, would be Due July 2nd. Driscoll believes strongly this matter gets decided in HRBRRD’s favor on MSJ which he expects to file around Mid October.

Finally, Mr. Leslie reminded the Board and Senior Staff regarding the Governor’s Project Sunlight initiative.

Mr. Ferrara presented his report to the Board.

At the close of fiscal February 2013, general fund balances for the HRA and BRA were approximately \$198k and \$379k respectively. Regulating District transactional processing and reporting for the fiscal month of March was completed in an accurate and timely fashion. Regulating District expenses for the month came in at forecasted levels. Mr. Ferrara noted that permit system renewal fee receipts through March are \$396.5k and thus are 95% complete. He provided an update regarding the Regulating District’s MWBE goal and described a few upcoming expenditures through which the Regulating District should make significant inroads in reaching the MWBE goals.

Mr. Ferrara presented the Board with the list of Board Member expenses depicted at page 101 of his report. Chairman Berkstresser asked for a Motion to approve said expenses. Mr. Stover made the Motion to approve \$602.86 expenses incurred by Mr. Astafan and Mr. Berkstresser. Mr. Hayes seconded and the Motion was approved unanimously.

Mr. Foltan presented the Chief Engineer’s report to the Board.

Chairman Berkstresser asked Mr. Foltan to update the list of deferred maintenance projects in both the Hudson River Area and the Black River Area for next month’s Board meeting.

Mr. Hodgson presented his report to the Board.

Mrs. Wright presented her report to the Board.

RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE MAY 14, 2013 BOARD MEETING

Chairman Berkstresser asked for a Motion to adopt a revised Resolution setting the May 14, 2013 date of the Board's next meeting at the Mayfield Municipal Complex.

Mr. Stover moved to adopt the Resolution. Mr. Finkle seconded it and the Resolution was unanimously adopted.

ADJOURNMENT

There being no further business to come before the Board, Mr. Hayes moved to adjourn the meeting. Mr. Finkle seconded it. The motion was unanimously approved. The meeting adjourned at 10:58 A.M.

RESOLUTIONS

13-06-04 RESOLUTION TO AWARD THE WORK TO PERFORM STILLWATER DAM BREACH ANALYSIS TO HENNINGSON, DURHAM & RICHARDSON ARCHITECTURE AND ENGINEERING, P.C. (HDR)

Mr. Stover moved to adopt the Resolution to award the Stillwater Dam Breach Analysis to Henningson, Durham & Richardson Architecture and Engineering, P.C.. Mr. Hayes seconded it and the Resolution was unanimously adopted.

13-07-04 RESOLUTION TO APPROVE CONTRACT FOR KLEINSCHMIDT ASSOCIATES, PA, PC TO PERFORM HAWKINSVILLE DAM REMEDIATION & REMOVAL FINAL STUDY & DESIGN

Mr. Stover moved to adopt the Resolution to award the Hawkinsville Dam Remediation & removal final Study & Design to Kleinschmidt Associates, PA, PC. Mr. Finkle seconded it and the Resolution was unanimously adopted.

13-08-04 RESOLUTION TO ADOPT DOMESTIC VIOLENCE AND WORKPLACE POLICY

Mr. Stover moved to adopt the Resolution to adopt the Regulating District's Domestic Violence and Workplace Policy. Mr. Finkle seconded it and the Resolution was unanimously adopted.

13-09-04 RESOLUTION TO SATISFY ANNUAL REVIEW AND APPROVAL OF THE REGULATING DISTRICT'S INVESTMENT POLICY

Mr. Finkle moved to adopt the Resolution to satisfy the necessary annual review of the Regulating District's Investment Policy. Mr. Stover seconded it and the Resolution was unanimously adopted.

13-10-04 RESOLUTION TO SATISFY ANNUAL REVIEW AND APPROVAL OF THE REGULATING DISTRICT'S PROCUREMENT POLICY

Mr. Stover moved to adopt the Resolution to satisfy the necessary annual review of the Regulating District's Procurement Policy. Mr. Hayes seconded it and the Resolution was unanimously adopted.

13-11-04 RESOLUTION TO ANNUALLY REVIEW AND APPROVE THE REGULATING DISTRICT'S DISPOSITION OF PROPERTY GUIDELINES – PURSUANT TO SECTION 2896(1) OF THE PUBLIC AUTHORITIES LAW

Mr. Finkle moved to adopt the Resolution to satisfy the necessary annual review of the Regulating District's Disposition of Property Guidelines. Mr. Stover seconded it and the Resolution was unanimously adopted.

13-12-04 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE MAY 14, 2013 BOARD MEETING

Mr. Stover moved to adopt the Resolution. Mr. Finkle seconded it and the Resolution was unanimously adopted.

Respectfully submitted,

Richard J. Ferrara
Secretary/Treasurer