

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

September 9, 2014  
Lowville Town Offices  
5533 Bostwick Street  
Lowville, NY 13367

**CALL TO ORDER**

Chairman Mark M. Finkle called the meeting to order at 10:10 A.M.

**ROLL CALL**

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

**MOTION TO ADOPT OR REVISE THE MEETING AGENDA**

Chairman Finkle suggested the meeting agenda be revised to reflect an Executive Session to discuss the Niagara Mohawk and Erie litigation. Mr. Foltan requested that two items be added to the agenda: a proposal to amend contract C032013 to increase the budget for the Indian Lake Dam Engineering Assessment to provide for survey work; and a proposal to authorize the solicitation of bids from geotechnical firms to complete the Indian Lake subsurface investigation. Chairman Finkle asked for a motion to adopt the agenda as revised. Mr. Berkstresser made a motion to adopt the revised meeting agenda. Mr. Stover seconded it and the motion was unanimously approved.

**HAWKINGSVILLE DAM – DISCUSSION OF ALTERNATIVES - PUBLIC COMMENT**

Chairman Finkle solicited comments from the public. Several speakers addressed the Board regarding preferred alternatives for the Hawkinsville Dam. One speaker addressed the Board requesting forbearance on assessments. Chairman Finkle asked the Chief Engineer to update the Board on the proposal to remediate/remove the Hawkinsville Dam. Mr. Foltan noted that the Regulating District has reached a tentative agreement with the owner of adjacent property for the use of the land were the Board to choose the remediation option. Mr. Berkstresser made a motion directing staff to continue discussions on a lease and/or flood easement with the adjacent landowner and to evaluate the environmental impacts associated with the remediation alternative. Mr. Hayes seconded and the motion was unanimously approved.

**APPROVAL OF THE JULY 8, 2014 BOARD MEETING MINUTES**

Chairman Finkle asked for a motion to adopt the July 8, 2014 Regular Meeting Minutes. Mr. Hayes advanced the motion to approve the Board's July 8, 2014 Regular Meeting Minutes. Mr. Stover seconded it and the motion was unanimously approved.

## **EXECUTIVE DIRECTOR'S REPORT**

Mr. Clark provided his report. Mr. Clark noted that he had met with representatives of a Black River Area beneficiary seeking forbearance on HRBRRD assessments, but could not offer the relief requested. Mr. Clark noted the Chairman's response to the Office of the State Comptroller's draft audit explaining the connection to the proposal advanced to the Board through the Governance Committee to address OSC's concern that a procurement falling below the \$25,000 threshold was let to the most qualified instead of the lowest bidder. Mr. Clark discussed briefly the status of litigation facing the Regulating District and noted staff's effort to address filings by CSEA. Finally, Mr. Clark related his experiences attending meetings of lake-interest groups.

## **CONTRACTS**

### **RESOLUTION TO AWARD THE WORK TO PERFORM "ON CALL" SURVEYING SERVICES TO CLARK ENGINEERING & SURVEYING, P.C.**

Mr. Clark related to the Board that in an effort to address the occasional need for a "licensed" surveyor, the Regulating District solicited proposals for "on call" land surveying services on August 4, 2014. The proposal was structured around the District's intermittent need for a licensed surveyor to perform the following services:

- Maintenance of the NYS Property line around Great Sacandaga Lake, to include re-setting monuments
- Deed research as necessary
- Surveys for work permit projects
- Establish and adjust benchmarks
- Establish and monument street center lines
- Prepare and interpret deeds and descriptions
- Develop legal descriptions and plat maps in the latest release of AutoCAD™
- Other survey-related tasks as necessary

Following review of the twelve (12) proposals received on August 18, 2014, it was determined that all proposers were qualified, but only four (4) indicated that their firm was MWBE certified or that they would subcontract to a particular MWBE certified firm. Based on the Regulating District's need to have a licensed surveyor available at certain times and at the same time achieve its MWBE goals for fiscal 2014-2015, the Chief Fiscal Officer recommended that the Board award the work to Clark Engineering & Surveying, P.C., a certified WBE firm. Mr. Clark made clear to the Board that similarities between his surname and the firm selected is a mere coincidence; there being no family relationship. Mr. Ferrara noted that 'S Y Kim Land Surveyor, P.C.', a certified MBE firm will join Clark Engineering in support of this procurement.

Mr. Hayes made a motion to adopt a Resolution authorizing the Executive Director to enter into a contract for 'on-call surveying services' with Clark Engineering & Surveying, P.C. Mr. Rosenthal seconded and the Board adopted the motion by unanimous vote.

**RESOLUTION TO ENGAGE KLEINSCHMIDT ASSOCIATES, PA, PC TO COMPLETE 1<sup>ST</sup> IC REVIEW OF CONKLINGVILLE SPILLWAY ANALYSIS REVIEW**

Mr. Foltan presented the Resolution to the Board. He noted that in 1994 Niagara Mohawk Power Corporation commissioned a stability study of the Conklingville Dam spillway. That study, completed by Kleinschmidt Associates, found that the spillway did not comply with Federal Energy Regulatory Commission (FERC) dam safety regulations. A 2002 spillway stability study completed by CT Male Associates for the Regulating District found the spillway to be stable and in compliance with FERC dam safety regulations. In February 2005 the first FERC Part 12 Independent Consultant for Conklingville Dam, Jeffrey Coffin, P.E. of Kleinschmidt Associates, completed a review of the Conklingville Dam and facilities and recommended that further spillway stability analysis be completed to identify the differences between the two previous spillway stability studies. In March 2006, FERC completed its review of, and accepted, Mr. Coffin's Independent Consultant's Safety Inspection report. On March 27, 2006, FERC concluded that Conklingville Dam met FERC dam safety engineering standards and criteria, but concurred with the independent consultant's recommendation to identify the differences between the two recent spillway stability studies. In December 2011 Gomez and Sullivan Engineers, P.C. (Gomez and Sullivan) completed a review of the two previous spillway stability analyses (Kleinschmidt and C.T. Male). Gomez and Sullivan made a determination of the differences between the two analyses, and completed an independent analysis of the stability of the spillway according to current FERC guidelines. Gomez and Sullivan identified the previous study differences and concluded that the Conklingville spillway complies with FERC dam safety regulations and stability requirements.

Because the recommendation to complete a review of the two previous stability studies was made by the first Independent Consultant, Jeffrey Coffin, P.E., FERC requires the Regulating District to provide the Independent Consultant (Mr. Coffin) an opportunity to review and comment on Gomez and Sullivan's review of the two previous studies. Kleinschmidt Associates, PA, PC has provided a scope of work and fee proposal for engineering services for Mr. Coffin to review and comment on the December 2011 stability analysis review report prepared by Gomez and Sullivan. Staff recommended that the Board authorize the Executive Director to hire Kleinschmidt Associates, PA, PC to complete the work for an amount not to exceed \$9,500. Mr. Rosenthal opined that should FERC require a fourth report on the same subject, FERC could pay for such study.

Mr. Stover made a motion to adopt a Resolution authorizing the Executive Director to engage Kleinschmidt Associates, PA, PC, to complete the 1<sup>st</sup> Independent Consultant review for a not to exceed amount of \$9,500.00 conditional upon the successful negotiation of contract terms and conditions. Mr. Berkstresser seconded. By a 5-1 vote, the Board rejected the motion.

Mr. Rosenthal made a motion directing staff to provide the first Independent Consultant, Jeffrey Coffin, P.E., copies of the Gomez and Sullivan review of the two previous studies so as to provide him with an opportunity to review and comment and to contact FERC to determine whether FERC will require a report from Mr. Coffin with the proviso that the Board would expect FERC to cover Mr. Coffin's fee for preparation of such report. Mr. Hayes seconded and the Board adopted the motion by unanimous vote.

**INDIAN LAKE DAM ENGINEERING ASSESSMENT SUBSURFACE INVESTIGATION / CONTRACT NO. D012014**

Mr. Foltan reminded the Board that on April 8, 2014, it had awarded work associated with the Indian Lake Dam Engineering Assessment to Bergmann Associates. Bergmann began the site review and inspection in August 2014 and has now developed a subsurface investigation program to conduct soil sampling and rock coring at the Dam necessary to complete analysis required to satisfy State dam safety regulations. Staff has estimated the probable cost to complete the subsurface investigation to be approximately \$26,000. Staff sought Board authorization to solicit bids from geotechnical drilling firms to complete the subsurface investigation utilizing discretionary authority afforded under the Minority-owned or Women – owned Business Enterprises (MWBE) guidelines. Mr. Berkstresser made a motion to authorize staff to solicit bids for the subsurface work from MWBE’s. Mr. Neddo seconded and the Board adopted the motion by unanimous vote.

**RESOLUTION TO AMEND CONTRACT C032013 WITH BERGMANN ASSOCIATES TO COMPLETE INDIAN LAKE FIRST ENGINEERING ASSESSMENT**

Mr. Foltan related that one of Bergmann Associate’s subcontractors, Prudent Engineering, will undertake field surveying for the Indian Lake Dam Engineering Assessment. Such surveying will include reservoir sections, stream sections, topographic surveys, and survey of key structures (including first floor elevations of buildings within the potential inundation area downstream of the Indian Lake Dam). One of the contract conditions with Bergmann Associates defining the survey work provides for reliance on cellular telephone coverage around the project area to facilitate survey work with a global positioning system. Prudent has indicated that cellular coverage is sporadic and insufficient to complete the survey work as proposed. Prudent Engineering recommends adding Optional Task 3c to the scope of work. Optional Task 3c includes the work necessary to complete the survey in areas where cellular telephone service is inadequate. Staff requests that the Board, by Resolution, authorize an increase in the project budget for Contract C032014 by \$9,420 to a total contract price of \$178,576.

Mr. Rosenthal made a motion to adopt a Resolution to amend Contract C032013 with Bergmann Associates to increase the contract amount to \$178,576 to facilitate inclusion of optional task 3c – Additional Survey at an additional cost of \$9,420. Mr. Stover seconded and the Board adopted the motion by unanimous vote.

**COMMITTEE REPORTS**

**RESOLUTION TO AMEND THE REGULATING DISTRICT’S PROCUREMENT POLICY PURSUANT TO THE RECOMMENDATION OF THE NYS OFFICE OF THE STATE COMPTORLLER**

Governance Committee Chairman Hayes recommended that the Board consider a Resolution to amend the Regulating District’s procurement policy to adhere to a recommendation advanced in an Office of the State Comptroller audit of the Regulating District’s finances. Committee Chair Hayes noted that in instances where the procurement officer is certain that the total contract price for Architectural, Engineering, and Surveying (AES)

is sure to fall below \$25,000, the Policy will require the contract be let on a lowest cost basis. In all other instances where an AES contract will exceed or may approach the \$25,000 threshold, the Policy will require the contract be awarded to the most qualified consultant as required by State Finance Law 136a.

Mr. Hayes made a motion to adopt a Resolution approving the revision to the Regulating District's procurement policy. Mr. Berkstresser seconded and the Board adopted the motion by unanimous vote.

## **STAFF REPORTS**

Mr. Leslie presented his report to the Board. Mr. Leslie related to the Board the Appellate Division Third Department schedule for oral argument in the New York State Electric and Gas and Boralex cases. Mr. Leslie noted that counsel for Erie Boulevard has indicated an intent to oppose the Regulating District's response to Erie's Motion for Summary Judgment with respect to the Regulating District's affirmative case seeking a Declaration that Erie's entry into a 2006 Stipulation settling several lawsuits challenging Regulating District assessments precludes any refund claim Erie may assert with respect to the Regulating District's Headwater Benefit Assessments. (Feel free to read that twice). Mr. Leslie also reported his participation in: crafting the Regulating District's response to the OSC draft audit; the Regulating District's response to CSEA's Improper Practices Charge; and the Regulating District's Brief to the Fact Finder appointed by PERB to help resolve the ongoing contract dispute with the Regulating District's represented employees. Finally, Mr. Leslie explained that the litigator defending the Regulating District in the 14 year series of lawsuits brought by Niagara Mohawk to challenge Regulating District assessments has left Brown & Weinraub to pursue a career in public service. The firm has indicated its intent to withdraw representation and suggests the Regulating District would be better served by a firm specializing in litigation. Brown & Weinraub will stay on through a period sufficient for the Regulating District to procure new counsel, but cautions that should the Court set the matter for trial, the Regulating District should be prepared to pursue trial with new counsel. Mr. Leslie indicated that he, the Executive Director and the Chief Fiscal Officer have worked with existing counsel, the Attorney General's Office, the Office of the State Comptroller and the Office handling the Governor's Minority and Women Owned Business Enterprise program to pursue a 'single source' procurement. During this period, Brown & Weinraub has filed the Regulating District's Motion for Summary Judgment and has replied to Niagara Mohawk's cross-motion for Summary Judgment in the United States District Court for the Northern District of New York. Mr. Leslie noted that should the Regulating District and/or the Sacandaga Protection Corporation lose their pending Motions for Summary Judgment, the federal court could immediately schedule trial. He recommended that the Executive Director be authorized to secure counsel immediately from among the firms solicited. He noted that staff had solicited firms culled from the MWBE list several Capital District firms, one of which appeared to possess the necessary litigation experience.

Mr. Neddo made a motion to authorize the Executive Director to engage counsel from the bids solicited for the purpose of addressing the suits brought by Niagara Mohawk with the proviso that staff seek the Board's ratification of that choice at the next regularly scheduled Board meeting. Mr. Hayes seconded and the Board adopted the motion by unanimous vote.

Mr. Ferrara presented his report to the Board. He noted that at the close of fiscal August 31, 2014, the general fund balances for the HRA and BRA were \$547,647 and \$258,841 respectively. He noted that District transactional processing and reporting for fiscal months of July and August were completed in an accurate and timely fashion. District bank reconciliations are complete through July 31, 2014. Mr. Ferrara noted that the Regulating District's Independent Auditors have completed their field work and expect to have the completed audit to the Regulating District in time for posting onto the Public Authority report system by September 30, 2014. Finally, Mr. Ferrara noted that cash flow projections suggest that the Regulating District will need to break the lump sum payment due to Saratoga County under the Apportionment Consent Agreement into three separate payments, each to be made within the County's fiscal year, but split over two fiscal years for the Regulating District and timed to coincide with the Regulating District's collection of assessments.

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

Mr. Hodgson presented his report to the Board. In response to Mr. Hayes' query regarding the deteriorating condition of the maintenance garage roof at the Mayfield office, Mr. Rosenthal questioned whether the roofing materials utilized originally might have been supplied by IKO; a roofing supplier subject to a class-action suit over durability. Mr. Ferrara indicated that he would check the original invoices.

#### **RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE REGULAR MEETING FOR OCTOBER 15, 2014 BOARD MEETING**

Chairman Finkle asked for a motion to adopt a Resolution setting the next meeting of the Board of the Hudson River-Black River Regulating District for Wednesday, October 15, 2014 at the Stillwater Hotel, Stillwater, NY at 10:00 A.M.

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

#### **EXECUTIVE SESSION**

Chairman Finkle called for a motion to adjourn to Executive Session to discuss litigation involving Niagara Mohawk and Erie Boulevard. The Chairman indicated that the Board did not expect to conduct further business after the Executive Session and invited the Executive Director, Chief Fiscal Officer, and General Counsel to join the Board in Executive Session. Mr. Hayes advanced the motion, Mr. Neddo seconded. The Board adjourned to Executive Session at 12:18 P.M. and returned at 12:54 P.M.

#### **ADJOURNMENT**

There being no further business to come before the Board, Mr. Berkstresser moved to adjourn the meeting. Mr. Neddo seconded it. The motion was unanimously approved. The meeting adjourned at 12:55 P.M.

## RESOLUTIONS

### **14-27-09 RESOLUTION TO AWARD THE WORK TO PERFORM “ON CALL” SURVEYING SERVICES TO CLARK ENGINEERING & SURVEYING, P.C.**

Mr. Hayes made a motion to adopt a Resolution authorizing the Executive Director to enter into a contract for ‘on-call surveying services’ with Clark Engineering & Surveying, P.C. Mr. Rosenthal seconded and the Board adopted the motion by unanimous vote.

### **RESOLUTION TO ENGAGE KLEINSCHMIDT ASSOCIATES, PA, PC TO COMPLETE 1<sup>ST</sup> IC REVIEW OF CONKLINGVILLE SPILLWAY ANALYSIS REVIEW**

Mr. Stover made a motion to adopt a Resolution authorizing the Executive Director to engage Kleinschmidt Associates, PA, PC, to complete the 1<sup>st</sup> Independent Consultant review for a not to exceed amount of \$9,500.00 conditional upon the successful negotiation of contract terms and conditions. Mr. Berkstresser seconded. The Board rejected the motion by a 5-1 vote.

### **14-28-09 RESOLUTION TO AMEND CONTRACT C032013 WITH BERGMANN ASSOCIATES TO COMPLETE INDIAN LAKE FIRST ENGINEERING ASSESSMENT**

Mr. Rosenthal made a motion to adopt a Resolution to amend Contract C032013 with Bergmann Associates to increase the contract amount to \$178,576 to facilitate inclusion of optional task 3c – Additional Survey at an additional cost of \$9,420. Mr. Stover seconded and the Board adopted the motion by unanimous vote.

### **14-29-09 RESOLUTION TO AMEND THE REGULATING DISTRICT’S PROCUREMENT POLICY PURSUANT TO THE RECOMMENDATION OF THE NYS OFFICE OF THE STATE COMPTROLLER**

Mr. Hayes made a motion to adopt a Resolution approving the revision to the regulating District’s procurement policy. Mr. Berkstresser seconded and the Board adopted the motion by unanimous vote.

### **14-30-09 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE REGULAR MEETING FOR OCTOBER 15, 2014 BOARD MEETING**

Mr. Berkstresser moved to adopt the Resolution as revised. Mr. Stover seconded it and the Resolution was unanimously adopted.

Respectfully submitted,

Richard J. Ferrara  
Secretary/Treasurer