

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

**Stillwater Hotel**  
2591 Stillwater Road  
Stillwater Reservoir  
Lowville, New York 13360  
October 15, 2014

**CALL TO ORDER**

Chairman Mark M. Finkle called the meeting to order at 10:33 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; 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.

Excused: Jeffrey Rosenthal, Anthony M. Neddo

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

Chairman Finkle asked for a motion to adopt the meeting agenda with a revision to account for an Executive Session at the conclusion of the meeting at which the Board would discuss Litigation (Nimo, Erie, Boralex & NYSEG) and Personnel issues. Mr. Berkstresser made a motion to adopt the meeting agenda. Mr. Stover seconded it and the motion was unanimously approved.

**PUBLIC COMMENT**

Chairman Finkle solicited comments from the public. One speaker asked the Board to consider partnering on a lake deepening project at GSL.

**COMMITTEE ASSIGNMENTS**

Chairman Finkle made the following Committee assignments:

Governance: Jeffrey Rosenthal Chair  
Finance: Anthony Neddo Chair  
Audit: David Berkstresser Chair

**DISCUSSION OF SEQRA FOR CAPITAL PROJECTS**

Chairman Berkstresser asked where the Board stands on SEQRA for the Capital Projects it has under consideration. Mr. Ferrara noted that the Board's Finance Committee has considered, but not yet advanced resolutions authorizing bonds to finance three projects: the Hawkinsville reconstruction; the Conklingville ice sluice/spillway concrete reconstruction; and the Warning

Sirens. Mr. Leslie briefly outlined the differences between Type I, Type II, and Unlisted projects under SEQRA. The Board discussed designating the Ice Sluice/Spillway project as a Type II and sending a lead agency coordination letter for the unlisted Hawkinsville project.

## **APPROVAL OF THE SEPTEMBER 9, 2014 BOARD MEETING MINUTES**

Chairman Finkle asked for a motion to adopt the September 9, 2014 regular meeting minutes. Mr. Stover advanced the motion to approve the Board's September 9, 2014 regular meeting minutes. Mr. Hayes seconded it and the motion was unanimously approved.

## **EXECUTIVE DIRECTOR'S REPORT**

Mr. Clark provided his report. Mr. Clark noted discussions with counsel regarding litigation matters; specifically Niagara Mohawk, Erie, NYSEG & Boralex and his extensive discussions with the CFO regarding cash flow projections, the District's receipt of a new vehicle and plans to sell the Regulating District's 2006 Grand Cherokee. He recounted his attendance at the Great Sacandaga Lake Association's Annual Dinner. Mr. Clark presented the PERB Fact Finder's Report noting that he disagrees with the finding. Mr. Clark recommended that the Board authorize him to conclude negotiations on the terms outlined in Resolution 14-22-07.

## **CONTRACTS**

### **RESOLUTION TO ENGAGE THE FIRM OF GIRVIN FERLAZZO, PC TO PROVIDE LEGAL SERVICES WORK IN CONNECTION WITH THE NIMO STATE & FEDERAL CASES**

Mr. Clark reminded the Board that at the September meeting it authorized the Executive Director to secure new outside counsel to replace Brown & Weinraub who asked to withdraw as counsel because that firm's chief litigator left for employment in the public sector. Mr. Leslie related that the River Regulating District remains engaged in ongoing litigation in connection with Niagara Mohawk Power Corporation's (NiMo) Federal Court challenges and Article 78 Petitions challenging the Regulating District's apportionment and/or assessments on petitioner's property. Due to the urgency of the legal matters at hand, District staff received a single source exemption from the Office of the State Comptroller for this solicitation, and requested billing rates from five (5) qualified area legal services firms, one being a certified MWBE firm. Other than the MWBE firm who cited a conflict, Girvin Ferlazzo, PC was the only firm to respond. Mr. Leslie recommended that the Board authorize the engagement of Girvin Ferlazzo, PC, through a contract not to exceed \$ 40,000.00, plus approved disbursements. Mr. Leslie noted that such contract would still be subject to review and approval by the New York State Attorney General.

Mr. Berkstresser made a motion to adopt a Resolution authorizing the Executive Director to enter into a contract with Girvin & Ferlazzo PC for a not to exceed amount of \$40,000. Mr. Stover seconded and the Board adopted the motion by unanimous vote.

## **RESOLUTION TO AWARD INDIAN LAKE DAM ENGINEERING ASSESSMENT SUBSURFACE INVESTIGATION / CONTRACT NO. D012014**

Mr. Foltan referred to his October 10, 2014 memo to the Board and 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. In September, staff secured 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. Foltan recommended the Board award the work to Atlantic Testing Laboratories and authorize the Executive Director to execute an agreement not to exceed \$47,200.

Mr. Hayes made a motion to award the subsurface work to Atlantic Testing Laboratories, the low MWBE bidder, and authorize the Executive Director to execute a contract for a not to exceed amount of \$47,200. Mr. Stover seconded and the Board adopted the motion by unanimous vote.

### **COMMITTEE REPORTS**

Finance Committee Chair Stover recounted that the Finance Committee has discussed three resolutions which would authorize funding for three separate projects: the reconstruction of the Hawkinsville Dam; reconstruction of the Ice Sluice and Spillway at Conklingville Dam; and the installation of Warning Sirens below the Conklingville Dam. Mr. Stover indicated that the Committee tabled all three Resolutions pending reconsideration of the amounts to be financed and completion of SEQRA review for the Hawkinsville project.

Mr. Stover reported on the Committee's consideration of a schedule for completion of the next three-year budget. Mr. Berkstresser made a motion for the Board to accept the committee's recommendation regarding the proposed budget schedule. Mr. Hayes 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 that the Appellate Division Third Department has now heard oral argument in both the New York State Electric and Gas and Boralex cases. A decision is expected in the next six to eight weeks. 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. Mr. Leslie also noted that the Attorney General has filed a request for and secured permission to file a sur-reply to Erie's papers in opposition to HRBRRD's capitulation. 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.

Mr. Ferrara presented his report to the Board. He noted that at the close of fiscal September 30, 2014, the general fund balances for the HRA and BRA were \$491,459 and \$185,454 respectively. He noted that District transactional processing and reporting for the fiscal month of September was completed in an accurate and timely fashion. District bank reconciliations are complete through August 31, 2014.

Mr. Ferrara noted that the Regulating District's Independent Auditors have completed their field work and submitted the unqualified audit to the Regulating District in time for posting onto the Public Authority report system by September 30, 2014. He noted that the Auditors will require that one item in the 2013 budget be re-stated.

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. Such a split is necessary to avoid a material interruption in the Regulating District's cash flow.

Mr. Berkstresser made a motion to authorize the Executive Director to contract Saratoga County to discuss the proposed amendment to the schedule of payments between the Regulating District and Saratoga County stemming from the 2013 Consent Agreement connected to the HRA Apportionment of Charges. Mr. Stover seconded and the Board adopted the Motion by unanimous vote.

Mr. Ferrara presented to the Board a schedule of expenses incurred by Mr. Berkstresser through October 8, 2014. Mr. Hayes made a motion to approve the reimbursement of such expenses. Mr. Stover seconded the motion and the Board adopted the motion by unanimous vote.

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

Mr. Hodgson presented his report to the Board.

#### **RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE REGULAR MEETING FOR NOVEMBER 12, 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, November 12, 2014 at the Saratoga County Office, Cornell Cooperative Extension, 50 West High Street, Ballston Spa, NY 12020 at 10:00 A.M.

Mr. Berkstresser moved to adopt the Resolution. Mr. Hayes 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, Erie Boulevard, NYSEG & Boralex and collective bargaining issues. The Chairman indicated that the Board did expect to conduct further business after the Executive Session and invited the Executive Director and General Counsel to join the Board in Executive Session. Mr. Stover advanced the motion, Mr. Berkstresser seconded. The Board adjourned to Executive Session at 11:42 P.M. and returned at 12:36 P.M. The Board conducted no business upon its return from Executive Session.

## **ADJOURNMENT**

There being no further business to come before the Board, Mr. Berkstresser moved to adjourn the meeting. Mr. Finkle seconded it. The motion was unanimously approved. The meeting adjourned at 12:37 P.M.

## **RESOLUTIONS**

### **14-31-10 RESOLUTION TO ENGAGE THE FIRM OF GIRVIN FERLAZZO, PC TO PROVIDE LEGAL SERVICES WORK IN CONNECTION WITH THE NIMO STATE & FEDERAL CASES**

Mr. Berkstresser made a motion to adopt a Resolution authorizing the Executive Director to enter into a contract with Girvin & Ferlazzo PC for a not to exceed amount of \$40,000. Mr. Stover seconded and the Board adopted the motion by unanimous vote.

### **14-32-10 RESOLUTION TO AWARD INDIAN LAKE DAM ENGINEERING ASSESSMENT SUBSURFACE INVESTIGATION / CONTRACT NO. D012014**

Mr. Hayes made a motion to award the subsurface work to Atlantic Testing Laboratories, the low MWBE bidder, and authorize the Executive Director to execute a contract for a not to exceed amount of \$47,200. Mr. Stover seconded and the Board adopted the motion by unanimous vote.

### **14-33-10 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE REGULAR MEETING FOR NOVEMBER 12, 2014 BOARD MEETING**

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

Respectfully submitted,

Richard J. Ferrara  
Secretary/Treasurer