

**HUDSON RIVER-BLACK RIVER REGULATING DISTRICT
BOARD MEETING
NOVEMBER 13, 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 10:00 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.

MOTION TO ADOPT OR REVISE THE MEETING AGENDA

Chairman Berkstresser asked for a motion to adopt or revise the meeting agenda. Mr. Finkle made a motion to adopt the proposed meeting agenda without revision. Mr. Stover seconded it and the motion was unanimously approved.

PUBLIC COMMENT PERIOD

Chairman Berkstresser solicited comments from the public, hearing none.

APPROVAL OF THE OCTOBER 8, 2013 BOARD MEETING MINUTES

Chairman Berkstresser asked for a motion to adopt the October 8, 2013 Meeting Minutes. Mr. Hayes advanced the motion to approve the Minutes of the Board's October 8, 2013 Regular Board Meeting. Mr. Finkle seconded it and the motion was unanimously approved.

EXECUTIVE DIRECTOR'S REPORT

Mr. Clark provided his report. Mr. Clark reported on his attendance at the Great Sacandaga Lake Association annual dinner in early October and the GSL Advisory Council meeting. He noted for the Board progress achieved on the resolution of litigation against the Regulating District pursued to conclusion by Albany Engineering Corporation. He also noted continued discussions with the Regulating District's CSEA local regarding a new employment contract. At Chairman Berkstresser's request, Mr. Clark provided an update on the search for new Board Members.

CONTRACTS

RESOLUTION TO APPROVE THIRD AMENDMENT TO CONTRACT C032007 WITH GEI CONSULTANTS, INC. TO EXTEND EXPIRATION DATE

Mr. Ferrara explained that the Board approved Resolutions 07-52-09 and 09-39-09 authorizing GEI Consultant's, Inc. (GEI) to perform Engineering Work at the Conklingville Dam for a total not to exceed amount of \$151,500.00 (Contract C032007). The Board accepted a recommendation made by the Federal Energy Regulatory Commission (FERC) at the January 12, 2010 Board meeting concerning GEI's Conklingville Dam Geotechnical Report. GEI then prepared a scope of work, fee proposal and schedule for the completion of additional geotechnical engineering services (Phase 1) for an additional \$96,000.00 for Task 6 services. Pursuant to Article 2, Section 2.1.4. of the Contract, Mr. Ferrara recommended that the Board authorize an additional \$96,000.00 for work to be performed by GEI Consultant's Inc. increasing the total not to exceed amount of Contract C032007 to \$247,500.00. Further, Mr. Ferrara recommended that the Board extend the contract to December 31, 2017 in order to allow time for the completion of the additional work. He noted that adoption of this resolution would rescind and replace Resolutions 13-33-09 and 10-21-04. Mr. Ferrara noted that the contract amendment remains subject to review and approval by the State of New York Office of the Attorney General and the New York State Office of the State Comptroller.

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

RESOLUTION TO ENGAGE BRYANT RABBINO, LLP (BOND COUNSEL) FOR SERIAL BOND ISSUANCE

Mr. Ferrara noted that the Regulating District requested that the Division of Minority and Woman Business Development provide certified Bond Counsel Services firms pursuant to the Board's desire to issue serial bonds for the completion of capital projects and the settlement of refunds. The Regulating District received one (1) certified MWBE firm, Bryant Rabbino, LLP, from the Division of Minority and Woman Business Development. That firm agreed to a contract amount not to exceed \$75,000. Pursuant to the MWBE goals established for the Regulating District with oversight from the Division, the engagement of MWBE firms is a business priority goal of the Regulating District. Mr. Ferrara noted that the contract is subject to review and approval by the New York State Attorney General.

Mr. Hayes moved to adopt the Resolution. Mr. Stover seconded it and the Board adopted the Resolution unanimously.

**RESOLUTION TO AUTHROIZE SATISFACTION OF JUDGMENT IN AEC V.
HRBRRD**

Mr. Clark outlined for the Board the history of litigation between Albany Engineering Corporation (AEC) and the Hudson River-Black River Regulating District commencing with the service of a summons and complaint in the instant suit on August 4, 2011. Mr. Clark noted that, based in part on a November 28, 2008 United States Court of Appeals decision, AEC's verified complaint alleged that Assessments levied pursuant to ECL Article 15, Title 21 against AEC between 2003 and 2007 lacked statutory authority. He explained that AEC maintained that in reliance on such state statutory authority the Regulating District improperly collected \$516,655.62 and as such AEC sought that amount, interest, attorney's fees, costs and disbursements. The Regulating District solicited and secured representation from the NY Attorney General in defense of AEC's claim, but then on April 2, 2012, Supreme Court Justice, Joseph Teresi (Albany County) entered a judgment against the Regulating District for \$516,655.62 with interest from January 1, 2003. The Attorney General's Office then argued unsuccessfully a Motion to Reconsider the Supreme Court's calculation of interest and then appealed the Teresi judgment to the Appellate Division, Third Department. Mr. Clark explained that on October 17, 2013, the Appellate Division, Third Department declined to consider defenses raised by the Attorney General, but did agree that the Teresi Judgment should be modified, without costs, and remitted back to the Supreme Court to determine the Regulating District's entitlement to an offset of the amount owed to AEC based on the outcome of the now completed FERC Headwater Benefits Investigation.

Mr. Clark noted that the Attorney General's office has advised that a successful appeal of the Appellate Division, Third Department's ruling is unlikely. Mr. Clark noted that based on that advice, he and Counsel have successfully negotiated with AEC's Counsel that \$841,374.46 is an amount which, if paid by close of business on November 15, 2013, would be sufficient to satisfy AEC's claim. The parties have agreed that should the Regulating District be unable to secure necessary authorization from the Board and approval of the disbursement by the Office of the State Comptroller permitting delivery of the settlement check to AEC counsel by COB on November 15th, then the Regulating District will deliver with such settlement check an additional check representing the product of the number of days after November 15th the check is delivered multiplied by \$207.46 in daily per diem interest. Once AEC has received payment, AEC will provide the Regulating District with a Satisfaction of Judgment which AEC will have filed with the Supreme Court, Albany County to close out AEC's claim.

Mr. Clark also recommended to the Board that upon resolution of AEC's claim, the Regulating District immediately request that FERC begin collection of Headwater Benefit (HWB) Assessments from 2009 forward. He noted that as part of the satisfaction of the outstanding AEC claim, AEC will receive credit for HWB assessments due and owing for 2003-04, 2004-05, 2005-06, 2006-07 and 2007-08, but that AEC's HWB assessment obligation will be \$7,857.00 annually from 2009 forward. AEC will thus remain currently obligated for HWB assessments of \$7857.00 for 2009, 2010, 2011, 2012 & 2013 for a total amount due of \$39,285.

Mr. Clark recommended that the Board accept the judgment and take immediate steps to satisfy same.

Mr. Stover moved to adopt the Resolution. Mr. Hayes seconded it and the Board adopted the Resolution unanimously.

STAFF REPORTS

Mr. Leslie presented his report to the Board. On September 13, 2013 the AG's Office participated in oral argument before the Appellate Division, Third Department with respect to the HRBRRD's appeal of Albany Engineering's judgment on their assessment refund claim. As noted in the justification for the Resolution authorizing payment to satisfy the judgment, the Appellate Division's decision went against the Regulating District. Mr. Leslie noted he and the Executive Director have had no further discussions with the Appellate Division's Civil Appeals Settlement Conference clerk or with representatives for Northern Electric Power Company, L.P. and South Glens Falls, L.P. ("Boralex"). Mr. Leslie did note that he continues to work on the Amicus (or Friend of the Court) Brief in Niagara Mohawk's appeal against a Supreme Court decision upholding Lewis County's foreclosure on 1200 acres for NiMo's non-payment of HRBRRD assessments.

Mr. Ferrara presented his report to the Board. He first presented the Board with the list of Board Member expenses. Chairman Berkstresser asked for a Motion to approve said expenses. Mr. Hayes made the Motion to approve \$370.64 expenses incurred by Mr. Berkstresser. Mr. Stover seconded and the Motion was approved unanimously.

Mr. Ferrara noted that at the close of fiscal October 2013, general fund balances for the HRA and BRA were approximately \$1,840,300 and \$242,908 respectively. Regulating District transactional processing and reporting for the fiscal month of October was completed in an accurate and timely fashion. District bank reconciliations are complete through September 30, 2013.

Mr. Ferrara noted that District financials and cash flows are attached for the Board's review. Cash flow continues to stabilize in the HRA as past due tax liabilities are satisfied. Current HRA assessments have been received from Albany, Washington and Warren Counties for \$1,034,698, \$138,238 and \$242,908 respectfully. Rensselaer County assessment is due in January 2014.

Bond underwriter proposals have been evaluated by the District's fiscal advisor, Jeanine Caruso. A formal recommendation to the Board is tentatively scheduled for the December meeting in Watertown. On the disbursements front, school taxes in the amount of \$1,021,877, for 2013-2014, have been processed and paid.

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 DECEMBER 10, 2013 BOARD MEETING

Chairman Berkstresser asked for a motion to adopt a Resolution setting the next meeting of the Board of the Hudson River-Black River Regulating District for Tuesday, December 10, 2013 at the Dulles State Office Building located at 317 Washington Street, Room100 in Conference Room #1 Watertown, NY 13601 at 10:00 A.M.

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

ADJOURNMENT

There being no further business to come before the Board, Mr. Finkle moved to adjourn the meeting. Mr. Stover seconded it. The motion was unanimously approved. The meeting adjourned at 10:54 A.M.

RESOLUTIONS

13-39-11 RESOLUTION TO APPROVE THIRD AMENDMENT TO CONTRACT C032007 WITH GEI CONSULTANTS, INC. TO EXTEND EXPIRATION DATE

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

13-40-11 RESOLUTION TO ENGAGE BRYANT RABBINO, LLP (BOND COUNSEL) FOR SERIAL BOND ISSUANCE

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

13-41-11 RESOLUTION TO AUTHORIZE SATISFACTION OF JUDGMENT IN AEC V. HRBRD

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

13-42-11 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE DECEMBER 10, 2013 BOARD MEETING

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

Respectfully submitted,
Richard J. Ferrara
Secretary/Treasurer