

**HUDSON RIVER-BLACK RIVER REGULATING DISTRICT
BOARD MEETING
Warren County Municipal Center
1340 State Rt. 9
Lake George, NY 12845
December 8, 2015
10:00AM**

CALL TO ORDER

Chairman Mark M. Finkle called the meeting to order at 10:00 A.M. Chairman Finkle then announced that Executive Director, Michael Clark, had resigned to pursue other opportunities.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: Board Chairman Mark M. Finkle; First Vice-Chair Albert J. Hayes; and Board Members, Jeffrey Rosenthal, Anthony M. Neddo and Robert A. Moore; General Counsel Robert P. Leslie; Chief Fiscal Officer Richard J. Ferrara; Chief Engineer Robert Foltan; Administrator John Hodgson; and Compliance Officer Stephanie Ruzycky.

Excused: David W. Berkstresser

MOTION TO ADOPT OR REVISE THE MEETING AGENDA

Chairman Finkle asked for a motion to revise the meeting agenda to reflect an Executive Session to discuss personnel issues, specifically, appointment of an Acting Executive Director. The Chairman also noted a need to address the Baldwin/Klena appeal. Mr. Leslie noted that the Board would likely want to consider a Resolution to appoint an acting Executive Director and that staff would present a Resolution to authorize the Executive Director and/or Counsel to enter into a comprehensive settlement agreement consistent with the Settlement Term Sheet resolving the Niagara Mohawk litigation; and to execute any other agreements necessary to settle and discontinue that litigation. Mr. Ferrara asked the Board to consider a Resolution to approve a 1st amendment to Contract D022015 affecting the 2nd Geotechnical Investigation at Conklingville Dam. Mr. Hayes made a motion to add the indicated items. Mr. Rosenthal seconded and the Board unanimously approved the motion revising the agenda.

APPROVAL OF THE NOVEMBER 10, 2015 REGULAR BOARD MEETING MINUTES

Chairman Finkle asked for a motion to adopt the November 10, 2015 Regular Board Meeting Minutes. Mr. Rosenthal advanced the motion to approve the Meeting Minutes. Mr. Hayes seconded and the motion was unanimously approved.

BALDWIN/KLENA ACCESS PERMIT APPEAL

The Board took up consideration of the 514 Beach Association LLC access permit appeal. At Chairman Finkle's request, Mr. Leslie related that: Janice Baldwin presented oral and written material at the Board's November 2015 meeting to argue that certain Board policies place too great a burden on landowners seeking access permits. She noted that when the association commenced this appeal, it submitted the paperwork and fee and was subsequently granted the special access permit sought. As such, Mr. Leslie noted that the appeal requests that the policies and regulations governing any subsequent renewal of the special access permit be modified.

In 2014, the Baldwin's subdivided their property into three parcels. Only one of the three resulting lots bordered state land at Sacandaga. The buyer of one of the non-border lots, Klena, sought guaranteed access to the beach. After consulting with the Regulating District, Baldwin/Klena formed the "514 Beach Association, LLC" granting beach access to each member of the association. The association then applied for the access permit previously held by Baldwin.

6 NYCRR §606.80 authorizes the Board to reserve the right to require commercial and certain other special permit areas be covered by public liability and property damage insurance. 6 NYCRR §606.81 permits the Board to set the coverage limits required. Board Resolution 03-03-02 requires that certain commercial and special permits carry general liability insurance at coverage amounts not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

Mr. Leslie related that Mrs. Baldwin noted that several insurance carriers have refused to provide coverage for the 514 Beach Association, LLC because carriers will not permit Baldwin and/or Klena to include the LLC in a rider on their homeowner's policies. Rather, those companies writing policies covering special access permits require LLC's to carry commercial rather than homeowner's insurance. Further, Mrs. Baldwin noted at the November meeting that several carriers were unwilling to even provide commercial coverage because the covered area is beach front. Mrs. Baldwin characterized the commercial insurance premiums as cost prohibitive and difficult to obtain. As a result, the LLC has been forced to seek commercial coverage through the 'excess' market.

Mrs. Baldwin argued that the Board's required coverage places too great a burden on families seeking to create an association for the sole purpose of obtaining a special permit allowing multiple lots to be eligible for access to a single access permit area. Mrs. Baldwin noted that the Board's policies require the 514 Beach Association, LLC to obtain the same insurance coverage required of restaurants and marinas around the lake, but that the 514 Beach Association, LLC is commercial in name only. Mrs. Baldwin argued that the association anticipates neither a massive dock system, nor rental of dock space, but rather just two or three families using the 150' beach front for boats.

Regulating District regulations (6 NYCRR 606.25) establish three classifications of permits: non-commercial, commercial and special permits. Mrs. Baldwin suggested that the Board create a fourth classification to address the situation presented by the Baldwin/Klena's creation of the 514 Beach Association, LLC. She also requested that the coverage limits required by the Board be reduced for that fourth classification.

Staff noted during the November meeting that nearly 100 associations have been created for the purpose of obtaining a special access permit for access to Great Sacandaga Lake. The associations come in a range of sizes, and include clubs, non-profits, and homeowners associations. Staff acknowledged that some associations are operated as marinas.

Mr. Leslie noted that the instant appeal is not really an appeal of a permit denial or an appeal of the conditions placed on permit issuance, but a request for a rule change. Creation of a fourth classification of access permit would require a revision to the Regulating District's rules and regulations governing use by permit holders of state owned Property at Great Sacandaga Lake; specifically 6 NYCRR 606.25. The rulemaking process itself is rather straightforward. However, the appealing party has not presented proposed language to affect the change they seek. Further, the appealing party has not demonstrated that creation of a fourth classification would alter their commercial insurer's interpretation suggesting that listing two unrelated individuals on an LLC would likely preclude listing the LLC on a homeowner's policy. Absent a concrete proposal and a clear understanding of the impact a rule change could have on the administration of the access permit system, Mr. Leslie recommended that the Board take no action to alter the Regulating District's access permit system rules.

Mr. Leslie explained that adoption of a resolution to alter the special policies established by Resolution 03-03-02 is also straightforward. However, even were the Board to reduce the policy coverage amounts from \$1,000,000/\$2,000,000 to some lower amount, the appealing party offered no compelling evidence that associations organized like the 514 Beach Association, LLC would find it easier to secure coverage. Therefore, Mr. Leslie recommended that the Board take no action to modify Resolution 03-03-02 or the special policies established thereunder.

Based on the forgoing, Chairman Finkle asked if any Board member would like to offer a motion or resolution addressing the Baldwin/Klena appeal. Hearing none, Chairman Finkle noted that the Board's denial of the appeal would leave the Baldwin/Klena Association with no recourse, and suggested the Board create a sub-committee to be comprised of staff, members of the Governance Committee, a Member of a large lake association or interest group to be named later, and a member of a small lake association to be represented by Baldwin/Klena, and a representative of the insurance industry to be named later. Mr. Rosenthal made a motion for the Board to deny the 514 Beach Association LLC appeal and to charge a committee comprised of the representatives identified by the Chairman to return a non-binding recommendation for language to amend specific, limited, portions of the Access Permit Rules and/or to recommend revisions to the Special Policies adopted pursuant to Resolution 03-03-02 to address the issues faced by small associations like the 514 Beach Association LLC when securing insurance required for Regulating District access permits. Mr. Hayes seconded and the Board adopted the motion by unanimous vote. Chairman Finkle asked staff to reach out to the Baldwin's and Klena's and the Sacandaga Protection Corporation to solicit interest in sitting on the sub-committee.

PUBLIC COMMENT

Chairman Finkle solicited comments from the public. Hearing none.

CONTRACTS/REPORTS

REQUEST BOARD AUTHORIZATION TO CONTRACT WITH ATLANTIC TESTING LABORATORIES TO COMPLETE CONCRETE TESTING DURING CONSTRUCTION REPAIR OF ICE SLUICE

Mr. Foltan addressed the Board seeking authorization to proceed with a contract for the repair of the Conklingville Dam ice sluice. Mr. Foltan reported that the project is scheduled to begin in May 2016. He noted that concrete materials testing services will be needed to confirm concrete quality and contractor compliance with construction documents. He recommended that the Board utilize discretionary authority pursuant to State Finance Law Section §163(6) to make the award. He noted that SFL §163(3) authorizes purchases without a formal competitive process for purchases from New York State small businesses and from businesses certified pursuant to Article 15-A of the New York State Executive law to a certified minority or women-owned business enterprise (MBE or WBE). Mr. Foltan requested a proposal from Atlantic Testing Laboratories (ATL), a women-owned business enterprise, to supply concrete materials testing services. Mr. Foltan assured that Board that ATL's proposal includes corporate and personnel experience and qualifications, and demonstrates it has a satisfactory record of past performance to responsibly and reliably complete the work. ATL proposes a unit price-based fee of \$6,762. Mr. Foltan recommends conditionally awarding the work to Atlantic Testing Laboratories and seeks Board acceptance of the recommendation, authorization to form a contract to complete the work, and authorization for the Executive Director to execute an agreement in the amount of \$6,762.

Mr. Rosenthal moved to conditionally award the Conklingville Dam Ice Sluice concrete testing contract to Atlantic Testing Laboratories and to authorize the Executive Director to execute an agreement with the firm in the amount not to exceed \$6,762. Mr. Neddo seconded the motion and the Board adopted the motion by unanimous vote.

REQUEST BOARD AUTHORIZATION TO PROCURE ENGINEERING SERVICES TO DESIGN CONKLINGVILLE DAM SPILLWAY GROUTING AND CONCRETE REPAIR

Mr. Foltan reminded the Board that the 2015-2018 budget includes funding for the *Conklingville Spillway Reconstruction Project*. The first phase is to begin in December 2015 and will involve the repair of the abandoned ice sluice (*Conklingville Dam Ice Sluice Repair Project*). The engineering design for this phase has been completed and procurement of construction services is scheduled to begin December 4, 2015. The second phase of construction will include: 1) concrete and rock drilling to cut a series of holes through the spillway into the rock foundation to facilitate high pressure pumping of a cement-based epoxy grout to seal cracks and void space in the rock base to minimize and eliminate leakage through the rock base and at the rock-concrete interface, and 2) the removal of deteriorated concrete on the 400 foot-long spillway and installation of new concrete and steel reinforcement. Engineering design for the grouting and concrete repair phase is scheduled for the first half of 2016. Construction work is scheduled to begin in mid-2017. Mr. Foltan highlighted the following milestones for key phases of work:

Proposed Project Schedule Task	Milestone Date
Construction Bidding - Ice Sluice Structure	December 2015
Procure Engineering Services	December 2015 - April 2016
Engineering Design - Grouting and Concrete Repair	April 2016 - July 2016
Construction - Ice Sluice Structure	June 2016 - September 2016
Construction Bidding - Grouting and Concrete Repair	August 2016
Construction - Grouting and Concrete Repair	June 2017 - September 2017

Mr. Foltan asked for Board authorization to procure engineering services from a qualified engineering firm to complete the engineering design work necessary to complete the Conklingville Dam Grouting and Concrete Repair project. Mr. Rosenthal moved to authorize the procurement of engineering services for this purpose. Mr. Neddo seconded the motion and the Board adopted the motion by unanimous vote.

REQUEST BOARD AUTHORIZATION TO PROCURE SUBSURFACE INVESTIGATION SERVICES AT HAWKINSVILLE DAM CONTRACT D052015

Mr. Foltan proposed the completion of subsurface investigations at Hawkinsville Dam to facilitate completion of the final design for dam and spillway remediation. Mr. Foltan estimated the probable cost to complete the subsurface investigation to be approximately \$5,000. Mr. Foltan anticipated that the Regulating District could use discretionary authority pursuant to State Finance Law §163(3) to seek the services of a Minority-owned or Women-owned businesses qualified to complete the work. He sought Board authorization to procure the subsurface investigation services from a geotechnical drilling firm to complete the Hawkinsville Dam subsurface investigation. Mr. Moore asked if an RFQ would be prepared. Mr. Ferrara noted that several firms are pre-qualified annually and that from those, the Regulating District will likely select three from whom to seek competitive bids.

Mr. Moore moved to authorize the procurement of subsurface investigation services from a geotechnical drilling firm to complete the Hawkinsville Dam subsurface investigation. Mr. Rosenthal seconded and the Board adopted the Motion by unanimous vote.

RESOLUTION TO APPROVE 1st AMENDMENT TO CONTRACT D022015 2nd GEOTECHNICAL INVESTIGATION WORK AT CONKLINGVILLE DAM

Mr. Foltan explained that GEI developed a Geotechnical Plan to address the FERC required investigation of the Conklingville Dam pursuant with contract C032007. He noted that the Board awarded the 1st Geotechnical Investigation to Boart Longyear and that GEI determined the need for additional Geotechnical Investigation. The Board approved resolution 15-21-06, awarding the 2nd Geotechnical work to Aztech Technologies, Inc. for a lump sum amount of \$90,352.22. Mr. Foltan explained that site conditions at certain borings produced difficult drilling conditions during the completion of the project and resulted in the need to perform additional drilling to facilitate the installations of the piezometers. Mr. Foltan approved the change. Additional work was completed for an additional cost of \$15,200.91. Mr. Foltan recommends that the Board adopt a Resolution to approve a 1st amendment to contract D022015

to complete the 2nd Geotechnical Investigation, increasing the lump sum amount to \$105,553.13. Mr. Neddo asked if the increase in contract cost could have been reasonably foreseen. Mr. Foltan explained that such increases are not a-typical in sub-surface investigations such as this.

Mr. Moore moved to adopt the Resolution to amend contract D022015 authorizing \$15,200.91 in additional funding. Mr. Rosenthal seconded and the Board adopted the Resolution by unanimous vote.

STAFF REPORTS

Mr. Leslie presented his report to the Board. Mr. Leslie reported that on November 19, 2015, FERC issued its Order dispensing with the rehearing requests advanced by Erie Boulevard Hydropower, L.P. and the Boralex Companies. The Nov 19th Order dismissed the Boralex request in its entirety. With respect to Erie, the Order granted rehearing in part and then...in the same document...dispensed with rehearing by modifying one provision of the August 21st order to clarify that one of the five projects attributed to Erie is actually owned by a separate subsidiary of Erie's parent company (Brookfield Renewal Energy Group). Brookfield purchased that project (FH Opco LLC/P-2609...formerly owned by Finch Pruyn) in 2007; about 14 months after Erie and HRBRRD executed the 2006 Stipulation of Settlement forming the basis for FERC's denial of Erie's claim for a credit against previously paid state based assessments. FERC's Nov 19th Order separately calculates dates for the commencement of HWB assessments for that project (FH Opco LLC) and each of the remaining four Erie projects (E. J. West/P-2318; Stewarts Bridge/P-2047; Spier Falls-Sherman Island Developments/P-2482; and Feeder Dam/P-2554). Since Erie's claim to a credit against state based assessments paid by Brookfield on the FH Opco LLC project in 2007 and 2008 is not affected by the waiver contained in the 2006 Stipulation of Settlement, Brookfield's obligation to commence payment of its \$66,548 HWB assessment on the Opco LLC project from July 1, 2009 must be offset against the \$161,251 outstanding overpayment. Once the Regulating District clarifies how Brookfield wants to address the \$161,251 (write them a check now or allow an offset against the \$66,548 until the \$161,251 overpayment is exhausted), the end result will be that Brookfield will continue to pay \$365,000 per year covering the annual HWB assessment for the five projects owned by its two subsidiaries. Erie/Brookfield and/or the Boralex Companies may elect to appeal FERC's decision. The parties, or rather any party aggrieved by an order of the commission, may obtain review of such order in the United States Court of Appeals by filing in such court within 60 days a written petition praying the order of the commission be modified or set aside in whole or in part. The Order also dismissed as moot the two motions to stay the obligation to pay HWB assessments advanced by Erie and Boralex. While Erie has paid its 2009-2015 HWB assessment (\$2,555,700), Boralex has not. Boralex may now be subject to penalties for non-timely-payment of the HWB assessment. Also of note, the FERC Order dispensed with Albany Engineering's request for clarification as to when they should start paying its HWB assessment. (The FERC Order appears to say: "Now"...or rather "When we issued the August 21st Order"). Albany Engineering may also be subject to penalties for non-timely-payment of its HWB assessment.

RESOLUTION CONFERRING UPON THE EXECUTIVE DIRECTOR AUTHORITY TO ENTER INTO A DEFINITIVE SETTLEMENT AGREEMENT AS WELL AS ANY OTHER STIPULATIONS OF SETTLEMENT NECESSARY TO RESOLVE CERTAIN STATE AND FEDERAL LITIGATION WITH NIAGARA MOHAWK POWER CORPORATION, d/b/a NATIONAL GRID

Mr. Leslie presented the Board with a Resolution conferring upon the Acting Executive Director and/or the General Counsel authority to settle the Niagara Mohawk Litigation on the terms outlined in a Settlement Term Sheet advanced to the Board.

Mr. Rosenthal made a motion for the Board to adopt a Resolution conferring authority for the Executive Director and/or the General Counsel to enter into a definitive settlement agreement as well as any other stipulations of settlement necessary to resolve the state and federal litigation with Niagara Mohawk Power Corporation. Mr. Hayes seconded the motion and the Board adopted the Resolution by unanimous vote.

Ms. Ruzycky presented her report to the Board. She noted that the Regulating District's 3rd quarter utilization report to ESD, due January 16, currently shows MWBE utilization of \$85,992.94 and includes the purchase of a Ford F-250 at \$31,398.28; \$24,701.00 to AMZ; \$19,105.00 to Monroe Tractor; Ryan Biggs Clark Davis Engineering and Surveying at \$9,868.66; and IMC at \$920.00. Further, Ms. Ruzycky noted that she continues to work with IMedia on the HRBRRD website upgrade and on transferring the Watertown office phones to VOIP.

Mr. Ferrara presented his report to the Board. Mr. Ferrara reported that the general fund balances for the HRA and BRA closed at \$2,416,953 and \$1,255,435 respectfully. District transactional processing and reporting for the fiscal month of November were completed in an accurate and timely fashion. District bank reconciliations are complete through October 31, 2015.

Mr. Ferrara noted that as a result of the receipt of Headwater Benefit Assessments from Erie Blvd., for the period 2009-2015 in the amount of \$2,555,700, cash flow forecasts through the budget cycle ending June 30, 2018 have improved dramatically. This improvement has allowed for the Black River note to be brought up to date through the current period and for the reestablishment of regular monthly payment's going forward. Also, current school taxes due Saratoga County have been paid and the past due taxes in the amount of \$920K have been credited against their current assessment resulting in a net due the District of \$115,143. Significant disbursements for the period include: Hudson River Area school taxes in the amount of \$1,746,706.91, District's monthly health insurance, \$ 58,932.08 and bi-weekly payroll through 11/04/15, \$ 56,116.37, payroll through 11/18/15, \$56,259.75.

Mr. Foltan presented the Chief Engineer's report to the Board. November was a dry month with total precipitation at 34% of historic average. Conditions were similar in the Black River Area with precipitation at Stillwater at 68% and at Old Forge/Sixth Lake at 40% of historic average. With some rain at the end of November, the Reservoirs are near target and well positioned for winter draw-downs.

Mr. Hodgson presented his report to the Board. Mr. Hodgson reported that staff at the Sacandaga Field Office completed CPR and First Aid training, that access permit system renewals have started to come back and that Rip Rap activities continue.

BOARD MEMBER QUESTIONS AND COMMENTS

Chairman Finkle suggested that staff prepare a monthly column for inclusion in local papers explaining the basic operations undertaken by the Regulating District to better educate the public.

RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE REGULAR BOARD MEETING FOR DECEMBER 8, 2015

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 Tuesday, January 12, 2015 at the at the Northampton Town Hall, 412 South Main Street, Northville, NY 12134 at 10:00 A.M. Chairman Finkle asked for a motion to set the meeting as indicated.

Mr. Hayes moved to adopt the Resolution setting the date, time and place of the next meeting. Mr. Neddo seconded it and the Resolution was unanimously adopted.

EXECUTIVE SESSION

Chairman Finkle called for a motion to adjourn to Executive Session to discuss personnel issues; specifically the appointment of an interim/Acting Executive Director. The Chairman invited the General Counsel, Chief Fiscal Officer, Compliance Officer, Chief Engineer, and Area Administrator to join the Board in turn each for a distinct portion of the Executive Session. Chairman Finkle noted that the Board did anticipate conducting business upon its return from Executive Session. Mr. Rosenthal advanced the motion, Mr. Neddo seconded. The Board adjourned to Executive Session at 10:55 A.M. and returned at 12:30 P.M.

RESOLUTION CONFERRING UPON RICHARD J. FERRARA THE RESPONSIBILITIES AND DUTIES OF THE EXECUTIVE DIRECTOR

The Chairman presented the Board with a Resolution conferring upon Richard J. Ferrara the responsibilities and duties of the Executive Director.

Mr. Rosenthal moved to adopt the Resolution conferring upon Richard J. Ferrara the responsibilities and duties of the Executive Director. Mr. Neddo seconded. Chairman Finkle asked for a roll call vote:

Finkle:	Aye	Rosenthal:	Aye
Berkstresser:	Absent	Neddo:	Aye
Hayes:	Noe	Moore:	Aye

The roll call vote was four in favor, one opposed. The Resolution passed by a four to one vote.

ADJOURNMENT

There being no further business to come before the Board, Mr. Hayes moved to adjourn the meeting. Mr. Neddo seconded it. The motion was unanimously approved. The meeting adjourned at 12:33 P.M.

RESOLUTIONS

15-41-12 RESOLUTION TO APPROVE 1st AMENDMENT TO CONTRACT D022015 2nd GEOTECHNICAL INVESTIGATION WORK AT CONKLINGVILLE DAM

Mr. Moore moved to adopt the Resolution to amend contract D022015 authorizing \$15,200.91 in additional funding. Mr. Rosenthal seconded and the Board adopted the Resolution by unanimous vote.

15-42-12 RESOLUTION CONFERRING UPON THE EXECUTIVE DIRECTOR AUTHORITY TO ENTER INTO A DEFINITIVE SETTLEMENT AGREEMENT AS WELL AS ANY OTHER STIPULATIONS OF SETTLEMENT NECESSARY TO RESOLVE CERTAIN STATE AND FEDERAL LITIGATION WITH NIAGARA MOHAWK POWER CORPORATION, d/b/a NATIONAL GRID

Mr. Rosenthal made a motion for the Board to adopt a Resolution conferring authority for the Executive Director and/or the General Counsel to enter into a definitive settlement agreement as well as any other stipulations of settlement necessary to resolve the state and federal litigation with Niagara Mohawk Power Corporation. Mr. Hayes seconded the motion and the Board adopted the resolution by unanimous vote.

15-43-12 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE REGULAR BOARD MEETING FOR JANUARY 12, 2015

Mr. Hayes moved to adopt the Resolution setting the date, time and place of the next meeting. Mr. Neddo seconded it and the Resolution was unanimously adopted.

15-44-12 RESOLUTION CONFERRING UPON RICHARD J. FERRARA THE RESPONSIBILITIES AND DUTIES OF THE EXECUTIVE DIRECTOR

Mr. Rosenthal moved to adopt the Resolution conferring upon Richard J. Ferrara the responsibilities and duties of the Executive Director. Mr. Neddo seconded.

Chairman Finkle asked for a roll call vote:

Finkle:	Aye	Rosenthal:	Aye
Berkstresser:	Absent	Neddo:	Aye
Hayes:	Noe	Moore:	Aye

The roll call vote was four in favor, one opposed. The Resolution passed by a four to one vote.

Respectfully submitted,

Richard J. Ferrara,
Secretary/Treasurer

Mark M. Finkle
Board Chairman