

**HUDSON RIVER-BLACK RIVER REGULATING DISTRICT
BOARD MEETING
Northampton Town Hall
412 South Main Street
Northville, NY 12134
May 10, 2016
10:00 AM**

CALL TO ORDER

Chairman Mark M. Finkle called the meeting to order at 10:04 A.M.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: Board Chairman Mark M. Finkle; First Vice-Chair Albert J. Hayes; Second Vice-Chair David W. Berkstresser, and Board Member Jeffrey Rosenthal; Acting Executive Director and Chief Fiscal Officer Richard J. Ferrara; General Counsel Robert P. Leslie; Chief Engineer Robert Foltan; Administrator John Hodgson; and Compliance Officer Stephanie Ruzycky.

Excused: Anthony M. Neddo, Robert Moore

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 collective bargaining. Mr. Hayes made a motion to adopt the revised agenda. Mr. Rosenthal seconded. The Board unanimously approved the motion.

PUBLIC COMMENT

Chairman Finkle solicited comments from the public. One speaker asked the Board to consider adopting rules and regulations, including dawn to dusk hours of operation, governing an unallocated area (Tract 80) on South Shore Road.

APPROVAL OF THE APRIL 12, 2016 REGULAR MEETING MINUTES

Chairman Finkle asked for a motion to adopt the April 12, 2016 regular meeting minutes. Mr. Rosenthal advanced the motion to approve the regular meeting minutes. Mr. Berkstresser seconded and the motion was unanimously approved.

REVOCAION OF ACCESS PERMITS 13547, 15260 and 15357

Chairman Finkle noted by Notice sent March 31, 2016, the Board scheduled a hearing concerning the revocation of access permits issued to Edwards, Oakey & Gizzi. Pursuant to a

request from Counsel for Gizzi and Oakey, the hearing was adjourned to the May 2016 meeting. Chairman Finkle then related that a staff field inspection of three access permit areas had revealed a ground disturbance with the use of mechanical equipment completed without authorization. As a result, staff have recommended the revocation of access permits issued to Connie Jo Edwards (Access Permit # 13547); Sean C. Oakey (Access Permit # 15260); and William P. Jr. and Andrea Gizzi (Access Permit # 15357). He noted that the access permits in question are front lot permits associated with properties on Lakeside Drive in Mayfield. Mr. Finkle noted the presence of a representative for Mrs. Edwards, Mr. Oakey, Mr. Edwards and Counsel Robert Feller, and three Environmental Conservation Officers (ECO's) from the NYS Department of Environmental Conservation.

Chairman Finkle asked that Mr. Ferrara articulate the basis for staff's recommendation. Mr. Ferrara referred the Board to his March 31st memorandum and noted that notice of the potential revocation had been delivered to each permittee. Mr. Rosenthal asked the parties representatives if there was any issue with notice; hearing that there was none. Mr. Ferrara then noted that the three permittees had removed, or caused to be removed, extensive quantities of material from the Sacandaga Reservoir without authorization and that pursuant to 6 NYCRR §606.95(a)(1) such permittee's failure to comply with 6 NYCRR §606.46 constitutes sufficient cause for the Board to cancel or revoke all three permits.

Mr. Ferrara noted that each of the three access permit holders hold a deed reserving a right of access over and across their respective access permit area, but that such deeds expressly recognize that the privilege of construction and maintenance or any use of the access permit area is subject to the rules and regulations of the Regulating District and of all agencies having control over the reservoir. As a result, while each permittee may still claim a right of access to the reservoir through their respective deed, revocation of the access permit would render inoperable that deed holder's privilege to erect a dock, mooring or flagpole etc., and to utilize such access permit area through placement of a picnic table, fire pit, etc.

Mr. Ferrara noted that, as articulated in counsel's memorandum, each permittee had sought authorization to move earth back up onto the shore and that in each case the Regulating District denied the work permit application sought. Notwithstanding the Regulating District's denial, the permittees went ahead with the earth work. Mr. Ferrara noted that on January 11, 2016, in response to several telephone complaints received at the Sacandaga Field Office, Regulating District Field Assistant Danielle Thorne, accompanied by the HRBRRD's Randy Palmateer, observed an excavator and a bulldozer working on state land within access permit areas #13547, #15260, and #15357. On January 11, 2016, Thorne and Palmateer spoke with permittee Sean Oakey at the site and issued to Mr. Oakey a stop work notice. Later that day, the Regulating District's Sacandaga Field Office personnel reported their observations to the Adirondack Park Agency (APA), the Army Corp of Engineers ("ACOE"), and the NYS Department of Environmental Conservation ("NYS DEC").

Mr. Ferrara explained that the NYS DEC has prepared a remediation plan that the permittees have yet to complete. He also noted that the APA and NYS DEC investigations into the matter continue and that further enforcement actions by those agencies may be forthcoming. Finally, Mr. Ferrara recommended that the Board revoke each of the three access permits

pending each permittee's completion of the NYS DEC remediation plan to the satisfaction of the NYS DEC.

Chairman Finkle then called upon ECO Lt. John Ellithorpe. Lt. Ellithorpe indicated that he and the ECO's he supervises had been called in to investigate the ground disturbance in early January. He noted that they worked with staff and counsel at the Department to determine if the case should be handled as a criminal matter or as an administrative complaint; deciding upon the latter. Lt. Ellithorpe confirmed that the Department has offered the parties an administrative consent order including both a remediation plan and a penalty. He also confirmed that while the respondents have taken some remediation steps, the parties have yet to agree to the extent of the required remediation. Lt. Ellithorpe explained to the Board that the respondents will have to either execute a consent order including a penalty and remediation plan, or face a hearing likely to result in a Commissioner's Order imposing such plan and penalty.

Chairman Finkle then called upon counsel for Oakey and Gizzi, Robert Feller Esq. of Bond Schoeneck & King. Mr. Feller offered as an explanation to the Board that the permittees were acting as stewards of the land addressing the accumulation of debris. Attorney Feller acknowledged, in response to questions posed by Mr. Rosenthal, that a permit had been applied for and denied, that no appeal to that denial had been taken, and that he was not arguing that a permit was not required. Attorney Feller acknowledged that heavy equipment had been brought into perform earth moving work, but asked the Board to consider that his clients were trying to act responsibly. He noted that after speaking to the ECO's and other staff from the Department, his clients hired a contractor to undertake remediation activities but later found the contractor unwilling to risk miring the heavy equipment in soft soils increasingly saturated by rising lake levels. Mr. Feller acknowledged that the earliest that his clients could complete remediation activities would be the fall of 2016 when lake levels return to their winter draw down levels. Mr. Feller called upon his client Sean Oakey. Before Mr. Oakey spoke, Kevin Capobianco, son-in-law and representative to Connie Edwards, spoke to the character of Mr. Oakey and Mr. Gizzi. Mr. Oakey acknowledged that he now knows that what has been done was wrong and that he and Mr. Gizzi fully intend to complete the remediation activities to be negotiated with DEC.

The Chairman asked for a motion to address the three permittee's actions. Mr. Rosenthal offered a motion to revoke all three permits and to make eligibility for permits contingent upon completion of remedial activities and the passage of time (one year for Gizzi and five years for Oakey). Discussion ensued.

Mr. Berkstresser made a motion that the Board determine that the permittees {Connie Jo Edwards (Access Permit # 13547); Sean C. Oakey (Access Permit # 15260); and William P. Jr. and Andrea Gizzi (Access Permit # 15357)} violated 6 NYCRR §606.46 by removing, or causing to be removed, extensive quantities of material from the Sacandaga Reservoir without authorization and that pursuant to 6 NYCRR §606.95(a)(1) this violation constitutes grounds for revocation of each access permit. Further, that the Board determine that each permittee should be eligible to apply for an access permit only upon resolution of the violations alleged by DEC, payment of any fines, and completion of site remediation to the NYS DEC's satisfaction. Mr. Hayes seconded and the Board adopted the motion by unanimous vote.

EMPLOYMENT ACTION

RESOLUTION AUTHORIZING THE EMPLOYMENT OF AN EXECUTIVE DIRECTOR FOR THE HUDSON RIVER-BLACK RIVER REGULATING DISTRICT

Mr. Berkstresser made a motion that the Board adopt a Resolution to employ Robert J. Smullen as the Executive Director of the Hudson River-Black River Regulating District effective May 19, 2016 and that upon hire the new Executive Director shall be placed at and shall progress from Step 2 of Grade M5 (\$119,101) of the management/confidential salary schedule maintained by the Governor's Office of Employee Relations for the state's M/C employees. Mr. Rosenthal seconded and the Board adopted the Resolution by unanimous vote. Chairman Finkle thanked Mr. Ferrara for his services as the interim Executive Director.

REPORT OF THE ACTING EXECUTIVE DIRECTOR

Mr. Ferrara presented his report. As a first order of business, Mr. Ferrara offered a resolution to address a change in coverage for the Regulating District's dental plan.

RESOLUTION TO AUTHORIZE THE SELECTION OF THE DUTCHESS DENTAL PLAN TO REPLACE THE BLUE SHIELD DENTAL PLAN

Mr. Ferrara reported that the Affordable Care Act mandate redefined "group size" such that the District which was formerly a "large" group is now designated a "small" group. The District's current dental plan provided through Blue Shield is only available to "large" groups. The current plan will expire as of June 30, 2016. The District's employment agreements include dental coverage as a component of the benefits provided to its employees. He noted that he has been exploring options to replace the Regulating District's dental coverage. Several firms offer coverage including CSEA and our current carrier Blue Shield. However, no plan provides the same 100% coverage and no maximum lifetime ceiling as does the current plan. After careful consideration, Mr. Ferrara determined that the Dutchess Plan, costing an additional \$70 per month, offered through CSEA most closely matches the Regulating District's current dental insurance plan in terms of both cost and coverage. Upon the Board's approval, the Dutchess Plan would go into effect on July 1, 2016.

Chairman Finkle sought a motion with respect to the Resolution. Mr. Rosenthal made a motion to adopt the resolution authorizing the Acting Executive Director to select on a split cost basis the Dutchess Plan offered by CSEA to replace the Blue Shield dental plan. Mr. Hayes seconded the motion and the Board adopted the resolution by unanimous vote.

Mr. Ferrara reported that Budget Bulletin D-1133, dated April 25, 2016, titled "Management/Confidential Salary Actions: 2% Parity Increase, Effective April 1, 2016; Performance Advances; Longevity Payments" triggered applicable staff salary increases. He noted that at the Board's May 2015 meeting, the Board adopted Resolution 15-17-05 which placed each of the Regulating District's management confidential staff at a specific grade and step on salary schedules administered by the Governor's Office of Employee Relations. These statewide M/C salary schedules cover the vast majority of the State's management confidential

employees. Through Resolution 15-17-05 the Board indicated an intent to adhere to future schedules as adopted by the Governor's Office of Employee Relations.

On April 25, 2016 the NYS Division of Budget approved Budget Bulletin D-1133 entitled "*Management/Confidential Salary Action: 2% Parity Increase Effective April 1, 2016*". As a result of the Division of Budget Bulletin, salary actions for applicable M/C employees will be executed pursuant to the Governor's Office of Employee Relations 2015-2018 M/C Salary schedule effective April 1, 2016.

CONTRACTS

Mr. Ferrara presented the Regulating District's annual report. Chairman Finkle asked for a motion to adopt the Report and deliver it to the Commissioner of the NYS Department of Environmental Conservation as required by ECL Article 15, Title 21. Mr. Berkstresser made a motion to approve the Regulating District's Annual Report for January 1, 2015 through December 31, 2015 and to deliver the report to DEC as required. Mr. Rosenthal seconded the motion and the Board adopted the motion by unanimous vote.

Mr. Ferrara presented the Regulating District's authority mission statement and performance measurements for the Board's annual review. Mr. Leslie read the mission statement and Mr. Ferrara reviewed with the Board each of the performance goals and metrics as required by the Public Authorities Law. As required, Mr. Ferrara collected signatures from each Board member indicating their understanding and acceptance of each of the answers offered to the questions posed to Board members as part of the review.

Chairman Finkle asked for a motion to approve the annual review of the Regulating District's mission statement & performance measurements. Mr. Hayes so moved. Mr. Rosenthal seconded and the Board adopted the motion by unanimous vote.

RESOLUTION TO AUTHORIZE THE PURCHASE OF A LAWN MOWER FOR USE AT THE SACANDAGA FIELD OFFICE THAT EXCEEDS THE BUDGET AMOUNT SET FOR THAT ITEM

Mr. Ferrara reported that the current approved budget for the Sacandaga Field Office includes the purchase of a lawn mower for the fiscal year ending June 30, 2016. However, he explained that the budget amount is not sufficient to cover the purchase. Staff solicited and received three (3) bids for a zero turn mower.

Chairman Finkle called for a motion to approve the purchase. Mr. Berkstresser moved to adopt the Resolution to authorize the purchase of the zero-turn mower from B&B Equipment, the low bidder, in the amount of \$7,310.40. Mr. Hayes seconded and the Board adopted the Resolution by unanimous vote.

STAFF/COMMITTEE REPORTS

Mr. Leslie presented his report to the Board. Mr. Leslie reminded the Board that Erie Boulevard Hydropower, L.P. and the Boralex Companies appealed FERC's November 19th Order through the United States Court of Appeals for the D.C. Circuit, that the NYS Attorney General has filed a 'Motion to Intervene' on the Regulating District's behalf and that both Erie and Boralex have filed their non-binding list of issues on appeal. FERC has filed its Notice of Appearance. Mr. Leslie noted that the Court issued a briefing schedule requiring Erie's brief by June 15th, FERC's brief by August 15th and the Regulating District's brief by August 22nd. Mr. Leslie also noted that Niagara Mohawk's counsel has drafted and he has executed, on the Regulating District's behalf, the Stipulations of Settlement and Order necessary to resolve all of the Niagara Mohawk litigation. He awaits counsel's submission of the Stipulations to the various courts and those Court's execution of same. Mr. Leslie also recommended that the Regulating District reach out to the affected Counties without delay.

Ms. Ruzycky presented her report to the Board. She noted that she submitted the 4th Quarter Utilization report to Empire State Development on April 15th. MWBE utilization was \$156,702.52 (66.2%) for the quarter. 1st Quarter 2016/2017 MWBE utilization includes \$24,565 to Ryan Biggs Clark Davis for the Black River Area GIS project. She noted that she attended the NYSICA Internal Control, Fraud, and Risk Management Conference with the Acting Executive Director and General Counsel.

Mr. Ferrara presented his report to the Board. He noted that at the close of fiscal April 30, 2016, the general fund balances for the HRA and BRA were approximately \$1,773,053 and \$1,127,475 respectively. He noted that District's transactional processing and reporting for the fiscal month of March 2016 was completed in an accurate and timely fashion. District bank reconciliations are complete through March 31, 2016. Mr. Ferrara noted that the Regulating District has received the state share for both the Hudson River Area (\$1,000,000) and the Black River Area (\$250,000). Mr. Ferrara introduced a proposed revision to the Regulating District's sexual harassment policy designed to conform the reporting and investigation protocol to statewide norms.

Mr. Foltan presented the Chief Engineer's report to the Board. Mr. Foltan noted that reservoir releases and elevations are on target. Monthly total inflow is below normal at 46% and 46% of historic average at Great Sacandaga Lake and Indian Lake respectively. Releases of water from Great Sacandaga Lake and Indian Lake measured 100% and 111% of historic average respectively. Precipitation was below average at Stillwater, Old Forge and Sixth Lake. Inflow to Stillwater Reservoir averaged 97% of historic average.

Mr. Hodgson presented his report to the Board. He reported that he met with several permit holders in regard to proposed work on permit areas. The Sacandaga Field Office has processed 72 renewals and 20 new permit applications during the reporting period. He also noted that the office processed 56 work permit applications and monitored the Gizzi, Edwards & Oakey ground disturbance encroachment area twice weekly. Mr. Hodgson noted that staff attended the NYSIF sexual harassment training and addressed repairs to the Conklingville log booms, and the boat launch at Conklingville.

BOARD MEMBER QUESTIONS AND CONCERNS

Mr. Berkstresser inquired about a proposal to hire additional staff noting that the proposal was raised and tabled at the Board's September 2015 meeting in Long Lake. Mr. Ferrara indicated he would look into the matter.

RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE REGULAR BOARD MEETING FOR JUNE 14, 2016

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, June 14, 2016 at the Inlet Town Offices, 160 State Route 28, Inlet, NY 13360 at 10:00 A.M. Chairman Finkle asked for a motion to set the meeting as indicated.

Mr. Berkstresser moved to adopt the Resolution setting the date, time and place of the next meeting. Mr. Hayes seconded and the Board adopted the Resolution by unanimous vote.

EXECUTIVE SESSION

Chairman Finkle called for a motion to adjourn to Executive Session to discuss collective bargaining. Chairman Finkle noted that the Board did not anticipate conducting business upon its return from Executive Session. Mr. Rosenthal advanced the motion, Mr. Berkstresser seconded. The Board adjourned to Executive Session at 11:42 A.M. and returned at 11:49 A.M.

RESOLUTIONS

16-13-05 RESOLUTION AUTHORIZING THE EMPLOYMENT OF AN EXECUTIVE DIRECTOR FOR THE HUDSON RIVER-BLACK RIVER REGULATING DISTRICT

Mr. Berkstresser made a motion that the Board employ Robert S. Smullen as the Executive Director of the Hudson River-Black River Regulating District effective May 19, 2016 and that upon hire the new Executive Director shall be placed at and shall progress from Step 2 of Grade M5 (\$119,101) of the management confidential salary schedule maintained by the Governor's Office of Employee Relations for the state's M/C employees. Mr. Rosenthal seconded and the Board adopted the Resolution by unanimous vote.

16-14-05 RESOLUTION TO AUTHORIZE THE SELECTION OF THE DUTCHESS DENTAL PLAN TO REPLACE THE BLUE SHIELD DENTAL PLAN

Chairman Finkle sought a motion with respect to the Resolution. Mr. Rosenthal made a motion to adopt the Resolution authorizing the Acting Executive Director to select on a split cost basis the Dutchess Plan offered by CSEA to replace the Blue Shield dental plan. Mr. Hayes seconded the motion and the Board adopted the Resolution by unanimous vote.

16-15-05 RESOLUTION TO AUTHORIZE THE PURCHASE OF A LAWN MOWER FOR USE AT THE SACANDAGA FIELD OFFICE THAT EXCEEDS THE BUDGET AMOUNT SET FOR THAT ITEM

Chairman Finkle called for a motion to approve the purchase. Mr. Berkstresser moved to adopt the Resolution to authorize the purchase of the zero-turn mower from B&B Equipment, the low bidder, in the amount of \$7,310.40. Mr. Hayes seconded and the Board adopted the Resolution by unanimous vote.

16-16-05 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE REGULAR BOARD MEETING FOR JUNE 14, 2016

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, June 14, 2016 at the Inlet Town Offices, 160 State Route 28, Inlet, NY 13360 at 10:00 A.M. Chairman Finkle asked for a motion to set the meeting as indicated.

Mr. Berkstresser moved to adopt the Resolution setting the date, time and place of the next meeting. Mr. Hayes seconded and the Board adopted the Resolution by unanimous vote.

Respectfully submitted,

Richard J. Ferrara,
Secretary/Treasurer

Mark M. Finkle
Board Chairman