

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

Lowville Town Offices
5533 Bostwick Street
Lowville, NY 13367
September 13, 2016

Following the Governance and Finance Committee Meetings
Scheduled for 10:00 AM

CALL TO ORDER

Chairman Mark M. Finkle called the meeting to order at 10:06 A.M.

ROLL CALL

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

MOTION TO ADOPT OR REVISE THE MEETING AGENDA

Chairman Finkle asked for a motion to adopt the meeting agenda. Mr. Berkstresser made a motion to adopt the agenda. Mr. Neddo seconded. The Board unanimously approved the motion.

INTRODUCTION OF GUESTS

Chairman Finkle recognized Assemblyman Ken Blankenbush and Lewis County Officials including the Chair of the Board of Supervisors, and the County Attorney.

PUBLIC COMMENT

Chairman Finkle solicited comments from the public. Following remarks from Assemblyman Ken Blankenbush thanking the Board for meeting with officials in Castorland regarding flood concerns and expressing concerns regarding the repayment schedule for Black River Area reserve funds loaned to the Hudson River Area in 2013, the Board engaged with the Assemblyman and county officials in a discussion of the Black River Area's finances and the Black River Area Apportionment.

APPROVAL OF THE JULY 12, 2016 REGULAR MEETING MINUTES

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

REPORT OF THE EXECUTIVE DIRECTOR

Mr. Smullen presented his report; noting participation in informational meetings with representatives from the Indian Lake Owners Association, the Day Property Owners Association, and the Great Sacandaga Lake Association. Mr. Smullen reported completion of service of process with respect to the Black River Area Apportionment and completion of two inspections of the Dam at Stillwater; one by the Federal Energy Regulatory Commission and the other by the DEC Office of Dam safety.

CONTRACTS

RESOLUTION TO AUTHORIZE THE PURCHASE OF A LAWN MOWER FOR USE AT THE CONKLINGVILLE DAM THAT EXCEEDS THE BUDGET AMOUNT SET FOR THAT ITEM

Mr. Hodgson presented the Board with a draft Resolution to authorize the purchase of a lawn mower for use at the Conklingville Dam. He noted that staff currently tow a brush hog behind a tractor to mow the long the slopes of the dam embankment. This combination of equipment requires two (2) District personnel for safety purposes. Mr. Hodgson explained that purchasing a walk behind mover would permit the required mowing to be completed with only one person; eliminating the need for Mayfield personnel to complete this reoccurring task. Mr. Ferrara noted that the current approved budget for the Conklingville Dam includes the purchase of equipment for the fiscal year ending June 30, 2016, but that the budgeted amount is insufficient to cover the proposed purchase. Staff has solicited and received three (3) bids for a Gravely walk behind mower. Mr. Hodgson and Mr. Ferrara recommended that the Board authorize the purchase of a lawn mower from MTE Turf Equipment, the low bidder, in the amount of \$5,205.24.

Mr. Berkstresser made a motion to adopt a Resolution to authorize the purchase of a lawn mower from MTE Turf Equipment for an amount not to exceed \$5,205.24. Mr. Rosenthal seconded and the Board adopted the Resolution by unanimous vote.

EVALUATION OF SACANDAGA FIELD OFFICE ROOF PROJECT BIDS

Mr. Foltan noted that staff solicited bids for the replacement of the Roof at the Sacandaga Field Office, but that the low bidder excessively exceeds the estimate of probable cost. Mr. Foltan explained that staff placed a Notice of Invitation to Bid in the State Contract Reporter on July 27, 2016 seeking bids for the removal of the SFO asphalt roof and installation of a metal roof. Three firms submitted a bid by the deadline. Staff publicly opened bids at 11:00 am on August 18, 2016. Staff's detailed estimate of the probable cost to complete the roof replacement work reflects anticipated labor, material, and equipment necessary to remove the existing asphalt shingles, repair of roof structure, and installation of a standing seam metal roof. Staff believes the apparent low bid excessively exceeds the estimate of probable cost and recommends re-bidding the work during the spring of 2017 to include metal roof as well as asphalt shingle bid alternatives.

Chairman Finkle confirmed with Mr. Ferrara that no motion was required for staff to reject the bids.

RESOLUTION TO EXTEND CONTRACT C042013 WITH BRYANT RABBINO, LLP TO PROVIDE BOND SERVICES WORK IN CONNECTION WITH THE ISSUANCE OF SERIAL BONDS

Mr. Ferrara noted that, pursuant to Resolution 13-40-11, the Board engaged Bryant Rabbino, LLP to provide certified Bond Counsel Services in connection with the Board's desire to issue serial bonds for the completion of capital projects and the settlement of refunds. Mr. Ferrara noted that while the firm's work continues, the contract of services (C042013) has expired. Mr. Ferrara proposed extending the contract through August 5, 2017.

Mr. Berkstresser made a motion to adopt a Resolution authorizing the Executive Director to execute an amendment to C042013 to extend the Bond Services Contract with Bryant Rabbino, LLP through August 5, 2017. Mr. Rosenthal seconded and the Board adopted the resolution by unanimous vote.

RESOLUTION TO APPROVE 4TH AMENDMENT TO CONTRACT NO. C092007 WITH GOMEZ AND SULLIVAN ENGINEERS, P.C.

Mr. Foltan presented the Board with a Resolution to approve a fourth amendment to the Contract with Gomez and Sullivan Engineers, P.C. in connection with the completion of the Dam Breach Analysis at Conklingville. He noted that the original scope of work and contract amount of \$170,000, entered into pursuant to Resolution 08-22-05 was first amended in May 2011 meeting. The Contract was then extended by Resolution adopted at the October 2013 meeting. Mr. Foltan recommends that the Board now extend the contract's termination date to December 2019 to accommodate unfinished work.

Mr. Rosenthal made a motion to authorize the Executive Director to execute an amendment of contract C092007 with Gomez and Sullivan, P.C. to extend the contract's expiration date to December 31, 2019. Mr. Hayes seconded and the Board approved the motion by unanimous vote.

COMMITTEE/STAFF REPORTS

GOVERNANCE COMMITTEE

Governance Committee Chairman Jeffrey Rosenthal reported that the Governance Committee met earlier in the morning and considered the range and content of the policies required of the Regulating District by the NYS Authorities Budget Office and state statute.

FINANCE COMMITTEE

Finance Committee Chairman Anthony Neddo reported that the Committee considered

and desires to advance to the full Board a Resolution to establish a debt service reserve fund in connection with bonding for work at the Conklingville Dam.

A RESOLUTION AUTHORIZING THE FUNDING OF A DEBT SERVICE RESERVE FUND IN THE AMOUNT OF \$342,352.00 TO BE PAID FROM THE HUDSON RIVER AREA GENERAL FUND

Finance Committee Chairman Neddo noted that the Environmental Facilities Corporation requires the establishment of a debt service reserve fund in order to ensure the timely payment of debt service costs in connection with the bonding of the Conklingville Dam Spillway Reconstruction.

Mr. Ferrara noted that the amount has been set at \$342,352.00 and is not an included amount in the costs covered by the bond resolution. He recommended adoption of the Resolution.

Mr. Neddo made a motion to adopt the Resolution establishing a debt service reserve fund in connection with bonding of the Conklingville Dam Spillway reconstruction. Mr. Rosenthal seconded and the Board approved the motion by unanimous vote.

Mr. Leslie noted that on January 15th and 19th respectively, Erie Boulevard Hydropower, L.P., and the Boralex Companies filed Petitions in the U.S.C.A. DC Cir. seeking review of FERC's August 21, 2015 Order Calculating Dates for the Commencement of Headwater Benefits Assessments and FERC's November 19, 2015 Order on Rehearing and Dismissing Motion for Stay. On April 14th the Court granted the NYS Attorney General's motion to Intervene filed on the Regulating District's behalf. On May 17, 2016, the U.S.C.A., DC Cir. dismissed the Boralex appeal upon Boralex's petition to withdraw. Pursuant to the Court's May 9th Order, Erie filed their brief on June 15th. FERC's filed its responsive on August 15th. The Regulating District filed its intervening responsive brief on August 19th. Erie filed its reply brief on September 6, 2016. The parties will next conform their Brief citations to the jointly prepared Certified Index to the Record. The Court has yet to schedule oral argument.

Mr. Leslie next reported that on August 15th, DEC Commissioner Seggos approved the Black River Area apportionment. Counsel and the Executive Director then filed with each affected county clerk, a cover letter including: copies of the apportionment; the notice of grievance hearing; the Board's July 12th resolution adopting the apportionment; and Commissioner Seggos' letter. Time/date stamped copies were then served upon the chair of the respective legislature and/or board of supervisors in each such county; with a follow-up mailing. Courtesy copies were served upon each affected county attorney, treasurer, and/or administrator; with a follow-up mailing. Courtesy copies were mailed to the owner of each hydroelectric facility named in the apportionment. Courtesy copies were mailed to the NYS Comptroller and the Director of the NYS Division of Budget. On August 19th, Regulating District staff published notice of the Black River Area apportionment grievance hearing in the Regulating District's two official newspapers (The Watertown Daily Times & the Albany Times Union).

Mr. Leslie then noted that, other than those with a grievance who appeared at today's meeting, other of the five affected counties have made polite inquiries regarding the apportionment. He stressed that while anyone interested may have appeared at the Board's September 13th meeting to inquire and/or object to the apportionment, all must do so no later than the Board's October 12th meeting at which the Board will be asked to convene the apportionment grievance hearing. The Regulating District has requested that parties intending to air a grievance submit that grievance in writing at least 7 days in advance of the October 12th meeting. This will afford staff the opportunity to understand the issues presented and to prepare a modification to the apportionment if warranted. Staff filed, served, published, and mailed the notice of hearing early enough to provide parties with at least 45 days to prepare their written complaints; if any.

Mr. Leslie noted that in connection with the Hawkinsville Dam remediation project, he has been working with DEC counsel to secure authority for the Regulating District's contractor to utilize land south of the BREIA parcel for staging and access to the BREIA parcel and for placement of the toe of the planned embankment. Some factions within DEC have objected to some aspects of that plan for this DEC fishing access point. Negotiations continue.

Ms. Ruzycky presented her report to the Board. She noted that Empire State Development has accepted the District's 1st Quarter utilization report. Current quarter utilization includes \$2,500 for the Hawkinsville property survey and \$9,500 for the Sacandaga Field Office sealcoating. Ms. Ruzycky noted that ESD issued MWBE report cards and that the Regulating District has received an "A" for the fourth quarter FY 15/16. She noted that the SDVOB current quarter utilization includes \$3,185.74 for carpet replacement at SFO. Mr. Rosenthal asked Ms. Ruzycky for an update with regard to the conversion of our current Microsoft Access database to MySQL. Ms. Ruzycky and Mr. Ferrara assured Mr. Rosenthal that the Access Permit System will be converted soon.

Mr. Ferrara presented his report to the Board. He noted that several federal headwater benefits assessments and payments of Hudson River Area assessments have arrived and been posted and that at the close of fiscal August 31, 2016, the general fund balances for the HRA and BRA were approximately \$4,020,029 and \$1,101,433 respectively. He noted that District's transactional processing and reporting are current. District bank reconciliations are complete through July 31, 2016. Mr. Ferrara noted that he expects the draft independent audit to be delivered by the end of September in time for PARIS filing on 09/30/16.

Mr. Foltan presented the Chief Engineer's report to the Board. Mr. Foltan noted that the August average daily release from the Sacandaga Reservoir (Great Sacandaga Lake) was approximately 1,630 cubic feet per second (cfs). Precipitation during the month of August was above normal across the Great Sacandaga Lake watershed and the Indian Lake watershed. The monthly inflow to Great Sacandaga Lake and Indian Lake reservoir was approximately 125% and 143% of historic average, respectively. Monthly release of water from Great Sacandaga Lake and Indian Lake measured 85% and 96% of historic average, respectively.

The August average daily release from Stillwater Reservoir was approximately 350 cfs. Monthly total precipitation measured 114%, 163%, 137% of historic average at Stillwater, Old

Forge, and Sixth Lake, respectively, as of August 23rd. Precipitation in the month of August was above average at Stillwater, Old Forge and at Sixth Lake. The monthly inflow to Stillwater Reservoir was approximately 69% of historic average. The inflow to Sixth Lake and Old Forge Reservoir totaled 0.05 and 0.20 billion cubic feet, respectively, in August. Release of water from Stillwater Reservoir averaged 77% of historic discharge

Mr. Foltan reported that in 2014 Camp Dresser McKee & Smith (CDM Smith) completed a safety inspection and the First Engineering Assessment of Old Forge Dam and Sixth Lake Dam, consistent with Department of Environmental Conservation (DEC) dam safety regulations. CDM Smith's reports detailing the results, conclusions, and recommendations of the inspection and assessment were provided to the Board in May 2015. CDM Smith identified the following safety and maintenance compliance issues in the Engineering Assessment Report.

Old Forge Dam compliance issues include:

- Insufficient low level outlet discharge capacity
- Inadequate spillway stability under Spillway Design Flood conditions
- Seepage through the concrete outlet structure
- Deteriorated concrete surfaces
- Inoperable auxiliary gate

Sixth Lake Dam compliance issues include:

- Trees encroaching upon downstream face of embankment dam
- Non-uniform riprap and uneven surface on slopes of embankment dam
- Inadequate embankment stability for "top of dam" conditions
- Seepage through the concrete outlet structure
- Deteriorated concrete surfaces
- Repair gatehouse downstream left abutment concrete footing

Mr. Foltan anticipated that Regulating District personnel will be capable of completing maintenance items including tree removal, rip-rap placement and soil fill placement. He recommended hiring an engineering consultant to provide design services to complete the following tasks to address identified deficiencies:

- **Develop a methodology and plan to adequately and safely pass the spillway design flood at each dam.** May include spillway expansion and outlet structure modifications
- **Develop a methodology and plan to stabilize the spillway at Old Forge and the embankment at Sixth Lake.** May include spillway and embankment modifications, respectively.
- **Develop a methodology and plan to reduce or eliminate the seepage through the concrete outlet structure at each dam.** May include concrete repair or complete structure replacement.
- **Develop a plan to construct low level outlet discharge at Old Forge Dam.** May be incorporated into outlet structure modifications.
- **Develop a plan to repair or replace deteriorated concrete structures.**

Mr. Foltan noted that design work is scheduled for the first half of 2017. Construction will be completed in two Phases. Phase I work will include repairs and modifications at Old

Forge Dam and is scheduled to begin in mid-2018. Phase II work at Sixth Lake Dam is anticipated to begin in mid-2019.

Mr. Foltan noted that following table details the milestone dates for key phases of work.

<i>Proposed Project Schedule Task</i>	<i>Milestone Date</i>
Procure Engineering Services	September 2016 – December 2016
Engineering Design (discharge capacity, stability, concrete repair)	January 2017 – July 2017
Construction Bidding – Phase I & Phase II	July - September 2017
Construction Contract Award	October 2017
Construction – Old Forge (structural and concrete repair)	June 2018 – September 2018
Construction – Sixth Lake (structural and concrete repair)	June 2019 – September 2019

Mr. Hodgson presented his report to the Board. He reported that he and the Executive Director met with the President of the Indian Lake Association, the Saratoga County Sheriff, and that he attended training on sexual harassment 7 workplace violence and cyber security. He also provided the Board with an update on DEC’s progress securing a consent order including a fine and a remediation schedule for the Gizzi, Oakey, Edwards encroachment.

BOARD MEMBER QUESTIONS AND CONCERNS

Chairman Finkle asked Executive Director Smullen for an update with respect to staff’s effort to prepare a newsletter exposing upon the Regulating District’s activities and successes. Executive Director Smullen noted that staff have investigated several platforms; including ‘constant contact’, and have reviewed examples prepared by other agencies; including the Hudson Valley Greenway Council. Chairman Finkle noted that Assemblyman Blankenbush, and several Lewis County executives and legislators were present and expected to meet with Regulating District staff to address several questions with respect to the apportionment. He noted that he would stay to observe. Executive Director Robert Smullen indicated that he and senior staff were prepared for the meeting.

RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE REGULAR MEETING FOR OCTOBER 12, 2016 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 12, 2016 at the Stillwater Reservoir Offices, 116 Necessary Dam Road, Lowville, NY 13367 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 and the Board adopted the Resolution by unanimous vote.

ADJOURNMENT

Chairman Finkle called for a motion to adjourn the meeting. Mr. Rosenthal advanced the motion. Mr. Berkstresser seconded. The meeting adjourned at 11:01 A.M.

RESOLUTIONS

16-30-09 RESOLUTION TO AUTHORIZE THE PURCHASE OF A LAWN MOWER FOR USE AT THE CONKLINGVILLE DAM THAT EXCEEDS THE BUDGET AMOUNT SET FOR THAT ITEM

Mr. Berkstresser made a motion to adopt a Resolution to authorize the purchase of a lawn mower from MTE Turf Equipment for an amount not to exceed \$5,205.24. Mr. Rosenthal seconded and the Board adopted the Resolution by unanimous vote.

16-31-09 RESOLUTION TO EXTEND CONTRACT C042013 WITH BRYANT RABBINO, LLP TO PROVIDE BOND SERVICES WORK IN CONNECTION WITH THE ISSUANCE OF SERIAL BONDS

Mr. Berkstresser made a motion to adopt a Resolution authorizing the Executive Director to execute an amendment to C042013 to extend the Bond Services Contract with Bryant Rabbino, LLP through August 5, 2017. Mr. Rosenthal seconded and the Board adopted the resolution by unanimous vote.

16-32-09 RESOLUTION TO APPROVE 4TH AMENDMENT TO CONTRACT NO. C092007 WITH GOMEZ AND SULLIVAN ENGINEERS, P.C.

Mr. Rosenthal made a motion to authorize the Executive Director to execute an amendment of contract C092007 with Gomez and Sullivan, P.C. to extend the contract's expiration date to December 31, 2019. Mr. Hayes seconded and the Board approved the motion by unanimous vote.

16-33-09 A RESOLUTION AUTHORIZING THE FUNDING OF A DEBT SERVICE RESERVE FUND IN THE AMOUNT OF \$342,352.00 TO BE PAID FROM THE HUDSON RIVER AREA GENERAL FUND

Mr. Neddo made a motion to adopt the Resolution establishing a debt service reserve fund in connection with bonding of the Conklingville Dam Spillway reconstruction. Mr. Rosenthal seconded and the Board approved the motion by unanimous vote.

**16-34-09 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE
REGULAR MEETING FOR OCTOBER 12, 2016 BOARD MEETING**

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

Respectfully submitted,

Richard J. Ferrara,
Secretary/Treasurer

Mark M. Finkle
Board Chairman