

**HUDSON RIVER-BLACK RIVER REGULATING DISTRICT  
BOARD MEETING –JUNE 8, 2010  
OLD FORGE, NY– 10:00 A.M.**

**CALL TO ORDER**

Chairman Klein called the regularly scheduled meeting to order at 10:00 A.M.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**Present:** Chairman Philip W. Klein; First Vice Chair Pamela S. Beyor; Second Vice Chair Ronald Pintuff and Board members; David Berkstresser; Paul J. Cornell and Michael F. Astafan; General Counsel Robert P. Leslie; Chief Fiscal Officer Richard J. Ferrara; Operations Engineer Michael A. Mosher; Hudson River Area Administrator Michael A. Clark; Black River Area Administrator Carol L. Wright and other Regulating District staff.

Executive Director Glenn A. LaFave present via teleconference

**Excused:** Chief Engineer Robert S. Foltan

**MOTION TO ADOPT MEETING AGENDA**

Mr. Pintuff moved to adopt the meeting agenda. Mr. Berkstresser seconded it and the motion was unanimously approved.

**MOTION FOR EXECUTIVE SESSION**

Chairman Klein asked for a motion for Executive Session to discuss collective bargaining negotiations and personnel matters. Ms. Beyor made a motion for Executive Session. It was seconded by Mr. Berkstresser and was unanimously approved. Chairman Klein stated there will be business conducted after Executive Session. Chairman Klein asked the Executive Director, General Counsel and Chief Fiscal Officer to join the Board for Executive Session. Chairman Klein asked the Legal Assistant to join the Executive Session for discussions relating to collective bargaining negotiations.

**PUBLIC COMMENT PERIOD**

There were five speakers who made comments on Freedom of Information Law, Early Retirement Incentive Program and employment at the Regulating District.

**APPROVAL OF MEETING MINUTES**

Chairman Klein asked for a motion to accept the regular May 11, 2010 Board Meeting minutes and if there were any additions or corrections. Mr. Pintuff made a motion to accept the regular May 11, 2010 Board Meeting minutes. It was seconded by Mr. Cornell and was unanimously approved.

## **EXECUTIVE DIRECTOR'S REPORT**

Mr. LaFave presented his report to the Board.

### **COMMITTEE BUSINESS**

#### **(a) Permit System – Mr. Pintuff**

**(1) Old Business – None**

**(2) New Business – None**

#### **(b) Governance – Mr. Astafan**

**(1) Old Business - None**

**(2) New Business**

#### **(A) Resolution to Approve 6<sup>th</sup> Amendment to Contract C082006 with Brickfield, Burchette, Ritts & Stone, P.C. – Mr. Leslie**

Mr. Leslie said Brickfield, Burchette, Ritts & Stone, P.C. (BBRS) is the Regulating District's counsel in Washington, D.C. who handles matters before the Federal Energy Regulatory Commission (FERC). Mr. Leslie stated that the Headwaters Benefit Study is ongoing and that Oakridge National Laboratory continues to work through data needed to come up with a proposed headwater benefits determination. He noted that the current contract with BBRS is expiring and is in need of a two year extension in order to continue representation on matters with FERC.

A motion was made by Mr. Cornell to approve the Resolution. Mr. Astafan seconded it and without objections, the Board unanimously approved.

#### **(B) Resolution to Re-Adopt Apportionment Grievance Hearing Procedures through Emergency Rulemaking – Mr. Leslie**

Mr. Leslie stated that this is the same rule that the Board previously adopted however, under the State Administrative Procedure Act a re-adoption and any subsequent re-adoption of an emergency rule is valid for only 60 days. Mr. Leslie said the emergency rule is due to expire on June 20, 2010 and therefore, it is recommended that the Board re-adopt the emergency rule in order to keep it in effect for another 60 days. This re-adoption will allow the Grievance Hearing Rules to remain in effect through the public comment period which ends on June 26, 2010 and allow the Board the opportunity, after review of any public comments, to adopt the permanent rule at the July 13<sup>th</sup> Board meeting.

A motion was made by Mr. Cornell to approve the Resolution. Mr. Astafan seconded it and without objections, the Board unanimously approved.

**(C) General Counsel Report – Mr. Leslie**

Mr. Leslie presented his report to the Board and noted the following updates:

The plaintiffs in the matter John McDonald and Kandy McDonald v. Board of Hudson River Black River Regulating District, Glenn A LaFave, as Executive Director of the Hudson River Black River Regulating District, Saratoga County Department of Public Works, Joseph C. Ritchey, as Saratoga County Superintendent of Public Works, and Judith Campbell has filed an appeal regarding the exclusive rights conferred by the permit system.

In the matter of Albany, Rensselaer, Saratoga, Warren and Washington Counties v. The Hudson River-Black River Regulating District and the New York State Department of Environmental Conservation a letter was sent to the Department of Law asking them to represent the Regulating District. Mr. Leslie said he received a phone call indicating that they were likely to represent the Regulating District, however the Solicitor General for state counsel suggested that the Regulating District Board move forward with authorization for the Executive Director to solicit counsel in this case in the event that there is a need to proceed in a different manner.

In the matter Christina V. Chera v. Board of Hudson River-Black River Regulating District the Plaintiff also filed against the State of New York in the Court of Claims Christina V. Chera v. The State of New York. The Court of Claims ruled on April 5, 2010 that the claimant assumed the risk and that defendant owed no duty to claimant, granting defendant's motion to dismiss. The Regulating District's special counsel, Clemente J. Parente will be filing a motion to dismiss the claim against the Regulating District based on those grounds.

The Mercer Companies, Inc. proposal to give the Regulating District the right of first refusal to buy the hydroelectric generating plant at Stillwater has expired.

Mr. Leslie reported that to date we have not received from attorney Douglas Bird the executed Easement Agreement granting the Regulating District a perpetual appurtenant easement over Jean L. Bird's property accessing the Sixth Lake Dam Property.

**(c) Finance Committee – Mr. Pintuff**

**(1) Approval of Expenses - None**

**(2) Old Business – None**

**(3) New Business**

**(A) Resolution to Approve the Annual Assessment for the Operation and Maintenance of Storage Reservoirs in the Black River Area for the Second Year of the Three Year Budget Period Beginning July 1, 2010 through June 30, 2011 – Mr. Ferrara**

After Board discussion a motion was made by Mr. Astafan to approve the Resolution. Mr. Berkstresser seconded it and without objections, the Board unanimously approved.

**(B) Resolution to Approve District Insurance Contract Period Beginning  
July 1, 2010 through June 30, 2011 – Mr. Ferrara**

Mr. Klein asked Mr. Ferrara to request Cool Insurance set up an eight (8) month pay plan. Mr. Ferrara confirmed he would do that.

A motion was made by Mr. Berkstresser to approve the Resolution. Mr. Astafan seconded it and without objections, the Board unanimously approved.

**(C) CFO's Report – Mr. Ferrara**

Mr. Ferrara presented his report to the Board.

The Board discussed the assessment of the current operating model of the Regulating District in terms of sustainability of reservoir operations and permit system activities with Regulating District Mission critical functions being the focus.

In committee Mr. Pintuff made a motion to have staff prepare a list to be presented at the September 14, 2010 Board meeting of critical mission threshold priorities. Mr. Berkstresser seconded it and without objections, the Finance Committee unanimously approved.

Mr. Ferrara also reported that the allocation of General Board expenses for the current fiscal year requires an adjustment in order to properly reflect proportions based on "moneys collected" from the respective areas. To date, actual General Board expenses have been charged based on the "total budgeted expenses" of the respective areas or 89.69% for the Hudson River area and 10.31% for the Black River area. Allocation percentages adjusted to reflect "moneys collected" for this fiscal year through May 31, 2010 is estimated to be 64% for the Hudson River area and 36% for the Black River area resulting in an estimated overcharge to the Hudson River area of \$265,064.00.

Mr. Ferrara stated that a final allocation adjustment for this year will be made no later than the completion of the independent audit of the District's fiscal results for year ending June 30, 2010. In terms of the allocation of General Board expenses going forward, the CFO has revised the procedure to reflect proportions based on actual income received monthly.

**(d) Operations Committee – Mr. Berkstresser**

**(1) Old Business -None**

**(2) New Business**

**(A) Chief Engineer's Report – Mr. Mosher**

Mr. Mosher presented the Engineering Report to the Board.

**(B) Hudson River Area Administrator Report – Mr. Clark**

Mr. Clark presented his report to the Board. Mr. Clark and the Board discussed the implications of the May layoffs on the operations at the Sacandaga Field Office.

**(C)Black River Area Administrator Report – Mrs. Wright**

Mrs. Wright presented her report to the Board.

**(e)Employment and Compensation Committee – Ms. Beyor**

**(1) Old Business –None**

**(2) New Business**

**(A)Management Hiring Policy (third reading) – Mr. LaFave**

Ms. Beyor stated that this particular policy had previously been under General Board Business and therefore recommended that it be moved to the full Board for discussion.

Ms. Beyor noted that this is the third reading so the Board has the opportunity to adopt the resolution accepting this policy.

Ms. Beyor asked Mr. Leslie if there was any legal reason why the Board should not consider adopting this resolution. Mr. Leslie stated that there was none.

Ms. Beyor asked for a motion to approve the Management Hiring Policy. Mr. Pintuff made the motion and Mr. Berkstresser seconded it and without objections, the Board unanimously approved.

Ms. Beyor stated as Chairwoman of the Employment and Compensation Committee and a member of the Executive Committee one of the past practices is that one of those committee members approves the Executive Director's time keeping sheets. Ms. Beyor requested that the record show that she is the committee member that has been approving the Executive Director's timesheets since 2006. Ms. Beyor informed the Board that since Mr. LaFave's surgery he has been working from home and is not actually in the office and any time that he is charging is being charged as vacation time in accordance with the Management Exempt Guidelines.

Ms. Beyor recommended that the Employment and Compensation Committee review the use of time sheets for management exempt employees. Ms. Beyor noted that one of the duties of the Employment and Compensation Committee is to perform an annual evaluation of the Executive Director and recommended the committee meet prior to the July 13, 2010 meeting to accomplish that.

**BOARD BUSINESS**

**(1) Old Business -None**

**(2) New Business**

**(A) Resolution to Authorize the Solicitation of Legal Services to Represent the District in Suit filed by Counties – Mr. Leslie**

Mr. Berkstresser requested that the Resolution be amended to include the date the apportionment was served on the counties.

A motion was made by Mr. Cornell to approve the Resolution as amended. Mr. Astafan seconded it and without objections, the Board unanimously approved.

**BOARD MEMBER QUESTIONS AND COMMENTS**

Chairman Klein noted that there may be need for an August Board Meeting and suggested that staff look into having that meeting in Herkimer. Mr. Ferrara said he would research that and report to the Board at the July 13<sup>th</sup> Board meeting.

Chairman Klein noted that the September 14, 2010 Board meeting location is changed to Saratoga Springs, NY.

**MOTION FOR NEXT BOARD MEETING**

**(1) Regular Board Meeting**

A motion was made by Mr. Pintuff for approval of the Resolution for the Regular Board Meeting to be held on Tuesday, July 13, 2010 at 308 North Comrie Avenue, Johnstown, NY 12095 at 10:00 A.M. Mr. Berkstresser seconded it. Chairman Klein asked if there was any discussion. Mr. Astafan noted that he may not be in attendance at the July Board meeting. The motion was unanimously approved.

**EXECUTIVE SESSION**

**The Board entered Executive Session at 12:26 PM until 1:28 PM**

**Board meeting reconvened at 1:30 PM**

**Resolution Adopting the 2010 Retirement Incentive Program – Mr. Leslie**

Mr. Leslie read for the record the Resolution Adopting the 2010 Retirement Incentive Program.

A motion was made by Mr. Pintuff to approve the Resolution. Mr. Cornell seconded it and without objections, the Board unanimously approved.

Mr. Pintuff made a motion that the Regulating District reinstate John M. Hodgson, Engineering Assistant to full employment effective retroactive to May 27, 2010. Mr. Astafan seconded it and without objections, the Board unanimously approved.

## RESOLUTIONS

**10-25-06 RESOLUTION APPROVING LEGAL SERVICES AMENDMENT #6 IN CONNECTION TO THE REPRESENTATION OF THE REGULATING DISTRICT BEFORE THE D.C. CIRCUIT COURT TERM EXTENSION ONLY**

Mr. Cornell moved to adopt the resolution. Mr. Astafan seconded it and the resolution was adopted.

**10-26-06 RESOLUTION TO RE-ADOPT APPORTIONMENT GRIEVANCE HEARING PROCEDURES THROUGH EMERGENCY RULEMAKING AND TO ADVANCE THE RULE TO THE DEPARTMENT OF STATE FOR PUBLICATION IN THE STATE REGISTER**

Mr. Cornell moved to adopt the resolution. Mr. Astafan seconded it and the resolution was adopted.

**10-27-06 RESOLUTION TO APPROVE THE ANNUAL ASSESSMENT FOR THE OPERATION AND MAINTENANCE OF STORAGE RESERVOIRS IN THE BLACK RIVER AREA FOR THE SECOND YEAR OF THE THREE YEAR BUDGET PERIOD BEGINNING JULY 1, 2010 THROUGH JUNE 30, 2011**

Mr. Astafan moved to adopt the resolution. Mr. Berkstresser seconded it and the resolution was adopted.

**10-28-06 RESOLUTION TO APPROVE COOL INSURING AGENCY, INC. INSURANCE PROPOSAL FOR POLICY YEAR JULY 1, 2010 THROUGH JUNE 30, 2011**

Mr. Berkstresser moved to adopt the resolution. Mr. Astafan seconded it and the resolution was adopted.

**10-29-06 RESOLUTION TO AUTHORIZE THE SOLICITATION OF LEGAL SERVICES TO REPRESENT THE DISTRICT IN A LAWSUIT FILED AGAINST THE REGULATING DISTRICT AND DEC BY ALBANY, RENSSELAER, SARATOGA, WARREN, WASHINGTON COUNTIES**

Mr. Cornell moved to adopt the resolution. Mr. Astafan seconded it and the resolution was adopted.

**10-30-06 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE JULY 13, 2010 BOARD MEETING**

Mr. Pintuff moved to adopt the resolution. Mr. Berkstresser seconded it and the resolution was adopted.

**10-31-06      RESOLUTION ADOPTING THE 2010 RETIREMENT INCENTIVE PROGRAM**

Mr. Pintuff moved to adopt the resolution. Mr. Astafan seconded it and the resolution was adopted.

**ADJOURNMENT**

There being no further business to come before the Board, Mr. Pintuff moved to adjourn the meeting. Mr. Berkstresser seconded it. The motion was unanimously approved. The meeting adjourned at 1:38 P.M.

Respectfully submitted,

Richard J. Ferrara  
Secretary/Treasurer