

**HUDSON RIVER-BLACK RIVER REGULATING DISTRICT  
BOARD MEETING –OCTOBER 13, 2009  
STILLWATER, 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; John K. Bartow, Jr.; David Berkstresser and Paul J. Cornell; Executive Director Glenn A. LaFave; General Counsel Robert Leslie; Chief Engineer Robert S. Foltan; Chief Fiscal Officer Richard J. Ferrara; Hudson River Area Administrator Michael A. Clark and other Regulating District staff.

**Excused:** Audrey Dunning and Carol Simpson

**MOTION TO ADOPT OR REVISE MEETING AGENDA**

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

**MOTION FOR EXECUTIVE SESSION**

There was no motion for Executive Session.

**PUBLIC COMMENT PERIOD**

There were three speakers who made comments on parking issues at Stillwater.

**APPROVAL OF MEETING MINUTES**

Ms. Beyor requested Resolution 09-37-09 Authorizing the Transfer of all Hudson River Area Sentinel Funds for the Purpose of Forestalling the Interruption of Operations of the Hudson River Area Due to a Revenue Shortfall Caused by the U.S. Court of Appeals D.C. Circuit Court Ruling and Resolution 09-38-09 Authorizing the Transfer of All Black River Area Sentinel Funds for the Purpose of Forestalling the Interruption of Operations of the Hudson River Area Due to a Revenue Shortfall Caused by the U.S. Court of Appeals D.C. Circuit Court Ruling be amended to include a listing of the liquidation amounts of the Hudson River Area Fund Sentinel Investment accounts.

Mr. Pintuff moved to approve the amended Regular Board Meeting minutes of September 15, 2009. Mr. Berkstresser seconded it and the motion was unanimously approved.

## **EXECUTIVE DIRECTOR'S REPORT**

Mr. LaFave reported Governor Paterson has established a new Office of Taxpayer Accountability (OTA). He said the Regulating District is complying with many information requests and surveys from OTA. In addition, Mr. LaFave noted there is a meeting hosted by OTA every two weeks at which Regulating District participation is required, either by attending the meeting or via conference call. The Regulating District's website homepage now includes a link to this new office.

Mr. LaFave stated that at the Board's request letters were sent explaining the Regulating District's fiscal crisis to federal and state legislators whose constituency includes the Regulating District. Mr. LaFave said there were letters also sent to each taxing jurisdiction to whom the Regulating District pays taxes to explain the challenge and potential inability of the Regulating District to pay school and property taxes in the future.

Mr. LaFave said he attended a meeting with some of the Saratoga County legislators and New York State Department of Transportation (DOT) regarding the Batchellerville Bridge Project. He said this project came in over budget and now is being assessed at ways to build it safely at less cost.

## **COMMITTEE BUSINESS**

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

**Old Business -None**

**New Business - None**

### **(b) Governance – Mr. Bartow**

**(1) Old Business –None**

**(2) New Business**

#### **(A) Resolution to Approve 3<sup>rd</sup> Amendment to Legal Services Agreement Chera V. District – Mr. Leslie**

Mr. Leslie said this is a Resolution to Approve a 3<sup>rd</sup> Amendment to the Legal Services Agreement with Crane, Parente and Cherubin in the matter of Chera v. Hudson River-Black River Regulating District. Mr. Leslie stated that in March of 2009 the Board authorized a not to exceed amount to increase the amount to \$157,500 but at that time the Board did not amend the term of the contract, this resolution is authorizing the extension of the termination date of the contract to November 30, 2010.

After Board discussion it was agreed to amend the resolution to read Resolution to Approve Legal Services Amendment #3A to Execute Legal Services Contract Amendment #3 to

Contract C162006 in Connection to the Claim Entitled Christina V. Chera against the Hudson River-Black River Regulating District

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

**(B) Resolution to Revise the Vehicle Use Policy – Mr. LaFave**

Mr. Bartow said in reference to the Resolution to Revise the Vehicle Use Policy it was just brought to his attention that the Board normally tables a policy for three months to have ample time to review and discuss it.

Mr. Leslie stated Resolution 06-08-02 passed by the Board adopts the District's Prospective Policy-Making Policy. The policy states the Board shall review and discuss the proposed policy in work sessions at a series of at least three open public Board Meetings before adoption by Resolution.

Mr. Berkstresser asked if this was for new policy and would it include revision to an existing policy.

Mr. Leslie said it is for making new policy, however there is substantial change language, specifically, "there is no requirement that the board shall review and discuss an amendment to a policy at three (3) open meetings before adoption of a resolution amending a policy for the purpose of effecting a technical correction, minor revision or update thereto that does not substantially change the intent of the original resolution."

Mr. Bartow asked, should the Board waive the policy's three month period before acting on the Resolution and did the Board need to act on the Resolution at the meeting.

Mr. LaFave said the Regulating District received a memorandum from the Executive Chamber on September 18, 2009 stating the Regulating District is required to submit a revised fleet policy by October 15, 2009. Therefore, Mr. LaFave said his recommendation to the Board is that since the Regulating District has been mandated by the Governor's office the Board should waive the policy's three month period and approve the Resolution in some form at the meeting.

Mr. Pintuff said the Board's policy for a three month review of policy by the Board was put in place allowing the Board the first month to read the policy, the second month to ask questions and explore it with staff and then the third month after all the Board's questions have been answered to vote for or against the policy. He did not agree with waiving the policy.

Mr. Klein asked if it was correct that the Board is faced with an immediate mandate given by the Governor and therefore the Board must take action at the Board meeting on the Resolution with the understanding that it can be changed if needed.

Mr. LaFave said that was correct.

Mr. Bartow said his understanding of the policy is directed at the efficiency of using the Regulating District's vehicles and for the use of alternative modes of transportation taking into consideration the use of the most energy efficient types of vehicles and secondly the allocation of vehicles among different types of people in the Regulating District and finally maintenance of the vehicles. Mr. Bartow noted he would want to be sure that two specific items are in the proposed vehicle policy, specifically accident reporting and responsibility on the driver for traffic violations.

Mr. LaFave indicated that those items are addressed in the policy.

Ms. Beyor requested that with the understanding that the Board is mandated to do this she requested that this be an item on next month's Board agenda for further discussion and amendment if necessary.

Mr. Ferrara indicated that whatever the Board approves will still need to be approved by the Division of Budget.

A motion was made by Mr. Cornell to waive the Regulating District's Prospective Policy-Making Policy. Mr. Bartow seconded it. The motion was passed with one dissent. (Mr. Pintuff)

A motion was made by Mr. Cornell to approve the Resolution to Revise the Vehicle Use Policy. Mr. Bartow seconded it and without objections, the Board unanimously approved.

Mr. LaFave asked General Counsel if the Board can waive policy in a meeting. Mr. Leslie said if that question were posed to him he would say no. He said a policy on policy was passed by Resolution and this policy like all others was in the Board's plan to review policies over a three meeting period.

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

Mr. Leslie said his report is in the Board packet and that the majority of his time this month has been spent dealing with the fiscal problems facing the Regulating District.

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

#### **(1) Approval of Expenses**

Mr. Pintuff asked for a motion to approve the expenses. A motion was made by Mr. Cornell to approve expenses in the amount of \$149.65. It was seconded by Mr. Klein. The motion carried with one abstention (Mr. Bartow).

#### **(2) Old Business – None**

#### **(3) New Business**

**(A) CFO's Report – Mr. Ferrara**

Mr. Ferrara reported the Regulating District is in compliance with New York State Reporting in that, the Annual, Investment, Procurement, and Certified Independent Audit Reports were submitted electronically to the Budget Office on September 30, 2009 via PARIS. Mr. Ferrara said there was one additional report called Managing the Procurement Audit Process Report which was also performed which he drafted and submitted to Office of State Comptroller (OSC) on September 30, 2009. Mr. Ferrara stated he also spent the majority of his time looking into and accessing the Regulating District's financial situation.

**(d) Operations Committee –Chairwoman Dunning (In the absence of Chairwoman Dunning, Ms. Beyor served as Acting Chair.)**

**(1) Old Business -None**

**(2) New Business**

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

Mr. Foltan stated that precipitation in the Hudson River Area was below normal but despite that and with the limitations on releases and still maintaining the minimum flows in the Hudson River area, he said Great Sacandaga Lake and Indian Lake Reservoir by the end of the month were within six inches of their target elevations. Mr. Foltan said the Black River Area also was below average in terms of precipitation for the month of September however, in terms of the target elevation at the end of the month Stillwater Reservoir was only 3/10 of a foot off of target elevation.

**(B) Hudson River Area Administrator Report – Mike Clark**

Mr. Clark reported erosion control shoreline stabilization work continued in the month of September. He said at the writing of this report the year to date totals are 3330 tons of rip rap and just under 4200 linear feet of shoreline completed and that erosion control work will be ongoing until such time that the weather shuts it down. Mr. Clark said the staff made repairs on the boat house at the Sacandaga Field Office and the maintenance crew also spent three days at the Indian Lake Dam facility doing masonry repairs to the upstream face and some underwater repairs with the diving expertise of Engineering Assistant, Mr. Hodgson.

Mr. Klein asked for the summary of the past year's totals in tons of rip rap and feet of shore line for erosion control work that has been completed. Mr. Clark volunteered to summarize the data by the next meeting.

**(C) Black River Area Administrator Report – Carol Simpson (In the absence of Carol Simpson, Mr. LaFave gave the report)**

Mr. LaFave noted that the Black River Area Field staff in addition to working at the Black River Field Office at the Stillwater Reservoir, they also work at Sixth Lake near Inlet Hamilton County, Old Forge Dam in Herkimer and Hawkinsville Dam in Oneida County.

Mr. LaFave commended the staff on their competency and assistance in preparation for the Board meeting. Mr. LaFave reported that Black River Area Administrator attended and participated in functional emergency action plan exercise for the Beaver Falls Project of the Algonquin Power Systems, the Black River Watershed Management Plan Project Advisory Committee meeting and in the bimonthly Lewis County Local Emergency Planning Committee meeting. Mr. LaFave noted the Assistant to the Chief Engineer along with Black River Field staff removed sediment from inside the piezometers on the embankments of the Stillwater Dam.

Mr. Klein asked if there would be a cost to the Regulating District for the scheduled three day shutdown this month of the Mosher Hydropower plant.

Mr. LaFave said the Chief Engineer computes the releases and instead of the releases going through the dam the water will go through the gates which will be opened.

Mr. Berkstresser commented that he had the opportunity to visit the Black River Area Field Office for a day in September and wanted to thank Ms. Simpson and the staff for a very interesting and informative day.

## **BOARD BUSINESS**

### **(1) Old Business**

#### **(A) Resolution to Conditionally Award Work Associated with Hudson Area Reapportionment Study – Mr. Ferrara**

Mr. Foltan reported the following regarding the Request for Proposals associated with the Hudson Area Reapportionment Study. Mr. Foltan said thirty one Requests for Proposals (RFP's) were issued to various companies. Three of those submitted proposals on October 1, 2009. The three technical proposals were evaluated by four members of the Regulating District comprised of two Board members and two staff members. The financial proposal was evaluated by the Chief Fiscal Officer. The three firms that responded were Brooker Engineering, PLLC, MRB Group, P.C. and Economic Research Services, Inc. doing business as American Economics Group. The evaluation resulted in Economic Research Services, Inc. having the highest average technical score of the three. Economic Research Services, Inc. also got the highest score for the financial proposal evaluation. Mr. Foltan said the evaluation team recommends conditionally awarding the project and to authorize the Executive Director to execute an agreement in the amount of \$122,000 to Economic Research Services, Inc. d/b/a American Economics Group (AEG).

Ms. Beyor asked for the actual completion date and when the first preliminary draft would come before the Board. Mr. Foltan said Economic Research Services, Inc. had agreed to complete the work by June 1, 2010. Mr. Foltan said one of the first tasks to be completed is a kick off meeting to provide a specific timetable throughout the project.

Ms. Beyor asked for clarification in Economic Research Services, Inc. d/b/a AEG's proposal concerning the hydraulic models used to complete the apportionment. Mr. Foltan stated his interpretation was that if the Board needed to have additional work beyond the scope of this

agreement done, such as a new hydraulic model for the reapportionment, that Economic Research Services, Inc. d/b/a AEG would be willing to work with the Board to accomplish that. He said that the model Economic Research Services, Inc. d/b/a AEG is proposing to use to provide their finished product to the Regulating District is the HECK 5 Model, which is the scientific data that gives you the basis for the flood protection that had been completed by Gomez and Sullivan.

The Board held discussions concerning the placement of this project into a specific committee.

Mr. Bartow asked for clarification on the three benefit categories. Mr. Foltan said the focus will be on flood protection, waste assimilation and white water recreation.

Ms. Beyor asked whether Department of Environmental Conservation (DEC) would have to approve the reapportionment before the Board can adopt it.

Mr. LaFave said that DEC will need to approve it, however, staff has already met with DEC and the team that will be overseeing this project is currently being identified by DEC.

Mr. Leslie stated there is another element with DEC which comes out of the Regulating District's enabling statute wherein a grievance procedure be in place prior to the Board adopting the reapportionment. This grievance procedure would be in the form of rules and regulations which will allow potentially aggrieved parties to come before the Board and present their grievance. These rules will need to be approved by DEC. Mr. Leslie said he has a draft of the proposed rules completed.

Mr. Bartow requested that staff provide the Board with a detailed timeline outlining the process for the rule making, meetings with Economic Research Services, Inc. d/b/a AEG, DEC and the Governor's office to assure that all deadlines are met from now through June 1, 2010.

A motion was made by Mr. Pintuff to approve the Resolution to Conditionally Award Work in Connection to Hudson River Reapportionment Study. Mr. Berkstresser seconded it and without objections, the Board unanimously approved.

**(B) Board Authorization to Solicit Bond Counsel for the Purpose of Issuing Revenue Anticipation Notes for the Hudson River Area – Mr. Ferrara**

Mr. Leslie reported that the Office of State Comptroller (OSC) has approved the liquidation and transfer of the Hudson River funds, but that with regard to the liquidation and transfer of the Black River funds there has been no answer from OSC. He said that there have been discussions with OSC and Counsel for the Governor to explore other funding sources available to the Regulating District including a Revenue Anticipation Note, a Tax Anticipation Note or a Budget Note. Mr. Leslie stated that for the purposes of the Local Finance Law the Regulating District is a District Corporation and has authority to issue any one of the notes. However, because the Regulating District may not have revenue to support a Revenue Anticipation Note and because a Budget Note might be limited in the funds it could provide, the Regulating District needs may be best met by a Tax Anticipation Note. Mr. Leslie cautioned that

because neither he nor the CFO have much expertise in Public Finance Law, the Board should consider hiring Bond Counsel who will provide an opinion as to whether a Tax Anticipation Note issued by the Regulating District would be saleable on the market and allow the Regulating District to bring in monies now in anticipation of assessment in the future. If Bond Counsel gives a positive response, the Regulating District would have the ability to borrow from the market the balance of the money needed to operate; borrowing only those monies not already collected through assessments. Mr. Leslie said staff recommends that the Board authorize the Executive Director to solicit Bond Counsel for this purpose and in anticipation of the Regulating District's issuance of Tax Anticipation Notes covering the \$4.4MM difference between assessments received to date and the total Hudson River Area assessment approved by the Board for the current fiscal cycle of the three year budget. The Board held discussion on the solicitation of Bond Counsel.

Mr. Leslie said the other matter before the Board is whether the CFO is directed to cut the checks for the 2009 school tax or whether the Regulating District can defer those payments until such time that the money is available. The Board held discussion on the deferment of payment for the 2009 school taxes.

A motion was made by Mr. Pintuff to allow the CFO to defer payment of the 2009 school taxes. Mr. Berkstresser seconded it and without objections, the Board unanimously approved.

A motion was made by Mr. Bartow to approve Board Authorization to Solicit Bond Counsel for the Purpose of advising the Regulating District concerning the issuance of Tax Anticipation Notes for the Hudson River Area. Mr. Berkstresser seconded it and without objections, the Board unanimously approved.

## **(2) New Business – None**

### **BOARD MEMBER QUESTIONS AND COMMENTS**

Mr. Pintuff stated he will not be in attendance at the November 10, 2009 Board meeting.

Discussions were held pertaining to the role senior staff should play in providing documentation, opinions and guidance to the Board in order for the Regulating District Board to make informed decisions.

Mr. Klein said there will be a tour of the Stillwater Reservoir and there will be no business conducted during that tour. He noted a discussion about the tour will take place at the November 10, 2009 Board meeting.

### **MOTION FOR NEXT BOARD MEETING**

A motion was made by Mr. Klein for the Regular Board Meeting to be held on Tuesday, November 10, 2009 at the Town of Indian Lake Town Hall, Pelon Road, Indian Lake, NY at 10:00 A.M. Ms. Beyor seconded it. Chairman Klein asked if there was any discussion. There was none. The motion was unanimously approved.

## **RESOLUTIONS**

**09-44-10 RESOLUTION TO APPROVE 3<sup>rd</sup> AMENDMENT TO LEGAL SERVICES AGREEMENT CHERA V. DISTRICT**

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

**09-45-10 RESOLUTION TO REVISE THE VEHICLE USE POLICY**

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

**09-46-10 RESOLUTION TO CONDITIONALLY AWARD WORK ASSOCIATED WITH HUDSON AREA REAPPORTIONMENT STUDY**

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

**09-47-10 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE NOVEMBER 10, 2009 REGULAR BOARD MEETING**

Mr. Klein moved to adopt the resolution. Ms. Beyor 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 12:08 P.M.

Respectfully submitted,

Richard J. Ferrara  
Secretary/Treasurer