

ANDREW M. CUOMO
GOVERNOR



JOE MARTENS
COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ALBANY, NEW YORK 12233-1010

JUL 19 2012

Mr. Michael A. Clark
Executive Director
Hudson River-Black River Regulating District
737 Bunker Hill Road
Mayfield, New York 12117

Dear Mr. Clark:

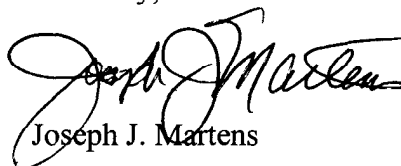
The Department of Environmental Conservation (Department) has received the Hudson River-Black River Regulating District's (District) apportionment of its costs, as approved by the District's Board (Board) at the July 10, 2012 Board meeting and subsequently certified by the District to the Department on July 10, 2012. ECL §15-2121 provides that the Board shall prepare an apportionment to recover the District's total cost and operation and maintenance expense from the public corporations and parcels of real estate benefitted by the Great Sacandaga Lake and Indian Lake Reservoirs (Reservoirs) in proportion to the amount of the benefit which will inure to each by reason of such Reservoirs. ECL §15-2121(4) requires the Board to certify the apportionment to the Department for its approval and provides in effect that such apportionment is not effective until so approved.

In reviewing the apportionment, the Department has relied on the expertise of the District staff who prepared the apportionment regarding: (1) the computation of the District's total cost of the Reservoirs; (2) the identification of flood protection as being the most direct and clearly defined benefit derived by operation of the Reservoirs; (3) the identification of the methodology used to determine the proportion of the flood protection benefit inuring to each beneficiary; (4) the amount of such benefit which may be chargeable to the state; and (5) the amount of such benefit to be apportioned among the public corporations and parcels of real estate benefitted from such flood protection.

The Department notes that this new apportionment is identical to the apportionment previously approved by the Department with one slight modification. Because the District is now apportioning costs to the counties less the amount which may be chargeable to the State, as required by County of Albany, et al. v. Hudson River-Black River Regulating District, et al. (Third Department, May 10, 2011), the formula used by the District for such apportionment excludes the value of state properties within the floodplain lying within the five counties from the total value of properties within the floodplain lying within those counties. This is appropriate, as it ensures that if the counties pass the apportionment of costs to the properties identified in the apportionment as being afforded flood control, the state will not have to pay twice on the same properties: once indirectly as the result of such pass-through of costs; and once directly as part of the state share.

For the above reasons, I find the “State of New York Hudson River – Black River Regulating District Apportionment of Operation and Maintenance Cost” is not inconsistent with the provisions of ECL §15-2121 and ECL §15-2125 or the decision of the Appellate Division in the above-referenced case. Therefore, I hereby approve said apportionment as required by ECL §15-2121(4).

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph J. Martens". The signature is fluid and cursive, with the first name "Joseph" and last name "Martens" clearly legible.

Joseph J. Martens