

July 20, 2012

Honorable John A. Rymph
Chairman Washington County Board of Supervisors
Municipal Center, Building B
383 Broadway
Fort Edward, New York 12828

Re: Hudson River – Black River Regulating District
Apportionment
Apportionment Grievance Hearing – September 18, 2012

Dear Chairman Rymph:

The Hudson River – Black River Regulating District maintains facilities in the Hudson River Area, including the Great Sacandaga Lake, which provide flood protection to Washington County. As it has done for the last eighty-five years, and pursuant to NY Environmental Conservation Law Article 15, Title 21, the Regulating District Board is required to apportion and assess the cost to maintain such facilities among the parcels of real estate and public corporations benefited by such facilities. Between 1930 and 2008, the owners of hydroelectric projects downstream of the Great Sacandaga Lake comprised 95% of the Regulating District's beneficiaries. On November 28, 2008, in Albany Engineering Corp. v FERC (548 F3rd. 1071, 2008) the D.C. Circuit Court of Appeals ruled that the Federal Power Act preempts the Regulating District -- a FERC license holder in the Hudson River watershed -- from assessing under the State law hydroelectric projects that are downstream from the Conklingville Dam which creates Great Sacandaga Lake. In response, the Regulating District adopted an Apportionment of costs in March 2010. Washington County participated in a challenge to that Apportionment. On May 10, 2012, in the Matter of County of Albany et al., v Hudson River Black River Regulating District et al. (944 NYS 2d 369, 3d Dept. 2012) the Appellate Division Third Department declared the March 2010 Apportionment invalid to the extent that it failed to consider and reduce the total amount to be apportioned by the amount chargeable to the state.

As a result, the Regulating District has been forced to prepare a new apportionment through which Washington County will now share a portion of those costs; less an amount chargeable to the State. Following approval by the Department of Environmental Conservation, and as required by NY ECL §15-2121(4), on behalf of the Regulating District Board, please find a copy of the Apportionment for the Regulating District's fiscal years July 2009 – June 2010, July 2010 – June 2011, July 2011 – June 2012, and July 2012 – June 2013 served upon you as

Chairman of the Washington County Board of Supervisors. As required by statute, a copy of the Apportionment will also be filed in the Office of the County Clerk. Remittance is due upon receipt, but no later than October 31, 2012.

Also enclosed, please find a copy of a legal notice identifying the time and place where the Regulating District Board will meet to hear any public corporation or person aggrieved by the Apportionment. In addition, please find enclosed: copies of the Resolution through which the Regulating District adopted the Apportionment at its July 10, 2012 meeting; the July 19, 2012 letter from Commissioner Martens through which the Department of Environmental Conservation approved the Apportionment; the Regulating District's rule governing the Apportionment Grievance Hearing process; and the documents prepared for the Regulating District Board in support of its determination.

Please feel free to contact me if you have any questions. Thank you.

Sincerely,

Michael A. Clark, P.E.
Executive Director

cc: Hon. Kevin Hayes, Washington County Administrator
Roger Wickes, Esq. Washington County Attorney

Attachments