



Board of Hudson River-Black River Regulating District
350 Northern Boulevard, Albany, New York 12204 Phone (518) 465-3491
FAX (518) 432-2485

February 4, 2010

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 – March 30, 2010

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 82% of the Regulating District's beneficiaries. Recently, 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 State law hydroelectric projects that are downstream from the Conklingville Dam which creates Great Sacandaga Lake. As a result, the Regulating District was compelled to prepare a new apportionment through which Washington County will now share a portion of those costs. 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 year July 2009 – June 2010 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 June 30, 2010.

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 January 12, 2010 meeting; the letter

from Commissioner Grannis 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.

Staff will give a short presentation beginning at 9 a.m. March 30th immediately preceding the meeting at which the Regulating District Board will conduct the Apportionment Grievance Hearing. This presentation will provide a brief history of the Regulating District and outline the issues guiding the Board to determine the new Apportionment.

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

Sincerely,



Glenn A. LaFave
Executive Director

cc: Kevin Hayes, Washington County Administrator
Roger A. Wicks, Washington County Attorney
Dona Crandall, Washington County Clerk



Washington County Attorney

County Municipal Center - Bldg. B.

383 Broadway

Fort Edward, New York 12828

Tel. (518) 746-2216

Fax (518) 746-2137*

*Service by fax not accepted



ROGER A. WICKES County Attorney

DANIEL S. MARTINDALE Deputy County Attorney

ERIKA SELLAR RYAN Assistant County Attorney

March 19, 2010

Glenn A. LaFave, Executive Director
Hudson River-Black River Regulating District
State of New York
Hudson River Area Office
350 Northern Boulevard
Albany, New York 12204

Re: In the Matter of Application of The County of Washington, N.Y. for modification/withdrawal of apportionment under NYS ECL Sec. 15-2121 by the Hudson River Black River Regulating District

Dear Mr. LaFave:

Enclosed herewith please find an original complaint together with five copies of same with respect to the above referenced matter.

Thank you for your time and attention to this matter.

Very truly yours,

Roger A. Wickes
County Attorney

CC: Craig Denning, Esq., Albany County Attorney w/enclosure
Stephen Pechenik, Esq., Rensselaer County Attorney w/enclosure
Paul Dusek, Esq., Warren County Attorney w/enclosure
Mark Rider, Esq., Saratoga County Attorney w/enclosure

RECEIVED
MAR 22 2010
HUDSON RIVER-BLACK RIVER
REGULATING DISTRICT
ALBANY, NY

HUDSON RIVER BLACK RIVER REGULATING DISTRICT
COUNTY OF ALBANY

In the Matter of the Application of

THE COUNTY OF WASHINGTON, NY,
Petitioner

VERIFIED COMPLAINT

For modification/withdrawal of apportionment
under NYS ECL Sec. 15-2121 by the

**Administrative Proceeding
NYS ECL Sec. 15-2121**

HUDSON RIVER BLACK RIVER
REGULATING DISTRICT,
Respondent.

The County of Washington, a municipal corporation organized under the laws of the State of New York and as a Public Corporation aggrieved by the apportionment to it of a portion of the total cost and expense of the Great Sacandaga Lake Reservoir by the Hudson River Black River Regulating District, as and for a complaint, exception to, and demand for modification of, said appropriation, states the following:

1. This is an administrative grievance brought by the County of Washington, New York (County) under NYS Environmental Conservation Law (ECL) Sec. 15-2121 in response and objection to the apportionment approved by the Board of the Hudson River Black River Regulating District (HRBRD) on January 12, 2010 in Resolution No.: 10-6-01, certified to the NYS Department of Environmental Conservation (DEC) January 12, 2010, and approved by DEC in an undated letter received by the Board February 3, 2010. For the reasons set forth herein, the County takes exception to and objects to the apportionment in entirety as applicable to Washington County and seeks withdrawal and/or modification of the apportionment under Sec. 15-2121.
2. The amount of said apportionment allegedly attributable to the County of Washington is \$171,357.09, 6.53% of the total.
3. Jurisdiction and venue rests with the Board at Albany, New York in accordance with ECL Sec. 15-2121 (4) and the Board's notice (undated) under the hand of Richard J. Ferrara, Sec.-Tres. requiring the filing of the instant complaint at the Board's Offices located at 350 Northern Blvd., Albany

on or before March 23, 2010.

4. The County respectfully requests ten minutes to present documents, exhibits and oral testimony.
5. Petitioner is the County of Washington, New York, a municipal corporation established under the laws of New York State, with offices located at 383 Broadway, Fort Edward, New York, an identified entity allegedly subject to the Board's apportionment approved January 12, 2010 by Board Resolution No.: 10-6-01.
6. Respondent is a public corporation established pursuant to Art. 15, Title 21 of the NYS ECL, identified and designated by statute as the Hudson River Black River Regulating District under ECL Sec. 15-2139(3).
7. The name and, address and telephone number of the representative of Complainant Washington County is its duly appointed County Attorney Roger A. Wickes, Esq. Washington County Attorney, 383 Broadway, Fort Edward, New York 12828 (518-746-2216)
8. Authority for the objections herein is derived from ECL Sec. 15-2121 and associated sections.

POINT ONE

9. The District has failed to perform its duty and failed to observe premises as required by statute (C.P.L.R. Sec. 7803[1])
10. ECL Sec. 15-2121 (4) provides, in pertinent part, that: "The board, or a majority of the members thereof, before making such apportionment shall view the premises and public corporations benefitted."
11. There is no proof submitted that the Board, or a majority thereof, physically attended and observed the premises or corporations allegedly subject to the apportionment.
12. By memo dated January 7, 2010 General Counsel Robert Leslie, Esq. relates, without reference to any authority, that: "Current staff is of the opinion that the word "view", when taken in this context, contemplates a thorough understanding of: the breadth and scope of the apportionment; against whom such apportionment will lie; and the relative amount to be borne by each such entity." There is no authority for the Board to interpret the statute in such manner.
13. Even assuming that this interpretation is true, as will be seen below, the District did not even perform a cursory "review" of the wealth of data available in arriving at its apportionment.

14. “It is a general rule in the interpretation of statutes that the legislative intent is primarily to be determined from the language used in the act, considering the language in its most natural and obvious sense.” NYS Statutes, Sec. 232. Further, “Words of ordinary import used in a statute are to be given their usual and commonly understood meaning, unless it is plain from the statute that a different meaning is intended.” Sec. 232. Additionally; “From this general rule it is deducible that words of ordinary import are to be construed according to their ordinary and popular significance, and are to be given their ordinary and usual meaning. That is to say, as a general proposition, words which have not received a technical or peculiar significance from long habitual construction, or by legislative definition, are to be interpreted according to the meaning with which they were generally accepted at the time of the enactment...” Sec. 232

15. The term “view” found in ECL Sec. 15-2121(4) is not defined by statute, nor has the term received a technical or peculiar significance in the context of the ECL.

16. Accordingly, neither the Board or it’s staff are authorized to substitute their interpretation of the word “view” from the generally recognized “most natural and obvious sense” (Sec. 232). Rather, the Board must give the word its “usual and commonly understood meaning” when interpreting Sec. 15-2121. (Sec. 232).

17. That is, in the context presented; “The board, or a majority thereof...” is required under Sec. 15-2121 to physically visit, observe and assess each and every premises and public corporation allegedly subject to the statute.

18. In this case, there is no proof offered that either the Board in total or a majority physically visited each parcel and corporation allegedly benefitted. In fact, there is admission that the “natural and obvious sense” of the statutory requirement was ignored.

19. The apportionment process was therefore flawed, not consistent with the requirements of Sec. 15-2121, and represents an actionable failure to perform a statutory mandate. Accordingly, the apportionment fails and should be withdrawn.

POINT TWO

20. The District’s apportionment is an arbitrary and capricious abuse of discretion (C.P.L.R. Sec. 7803[3]) in that it fails to determine or apportion any benefits to New York State.

21. ECL Sec. 15-2121 requires, in relevant part, the Board determine to determine the “...amount of benefit which will inure to each public corporation...” by reason of the Sacandaga Reservoir.

22. §15-2121 further requires that, once the benefit is determined, the Board's apportionment is to be applied against benefitted parcels and public corporations "...less the amount which may be chargeable to the state,...."

23. There is no proof showing the Board performed a comprehensive study and analysis of NYS real and/or personal property and made any associated benefit analysis. The sole representation in this context is commentary offered in the November 23, 2009 memo from Robert Leslie, Esq., General Counsel, referencing the Gomez and Sullivan Report of 2003 which concludes that there is "negligible benefit to the state by diverting flow to the NYS Champlain canal." No mention or analysis is made in the memo of Board inquiry or investigation into other possible benefits to NYS beyond canal flow. For instance, completely ignored are state interests in resources of: state roads and highways, state bridges, state recreation opportunities, state and local waste assimilation and nuisance prevention, navigation, as well as statewide flood protection and hydroelectric power generation. NYS has obvious interests to be protected, if not enhanced, by District activities in each of these subject areas, yet there is no analysis or consideration given to State interests in this context as required under Sec. 15-2121(2).

24. A review of the ownership of the properties used for the apportionment is also revealing. Although the District does not apportion any benefit to the State, of the municipal entities owning property in the apportioned area (9,942.2325 acres), .359 acres are federal, 617.119 are state owned, 11.742 are county owned and 22.340 are town owned making the State the largest municipal owner of property within the apportioned acreage area with the County as the second smallest.

25. Compliance with Sec. 15-2121 requires analysis and determination of state interests. The statutorily required analysis has not occurred in the instance of the Board's apportionment. The Board's failure to conduct a comprehensive inquiry and make associated determinations of possible State interests is inconsistent with the requirements of Sec. 15-2121. Thus the apportionment is flawed, a violation of statutory procedure, representing an actionable arbitrary and capricious abuse of discretion. Accordingly, the apportionment fails and should be withdrawn.

POINT THREE

26. The District's decisions and apportionment are an arbitrary and capricious abuse of discretion (C.P.L.R. Sec. 7803[3]) since they failed to examine the actual benefits to the apportioned counties and contain a flawed determination of benefit to the parcels and public corporations.

27. ECL Sec. 15-2121(2) in pertinent part, requires the Board to "...apportion...cost among the public corporations and parcels of real estate benefitted, in proportion to the amount of benefit which will inure to each such public corporation and parcel of real estate...."

28. The Board calculated the apportionment using three stages of analysis: 1. hydraulic modeling of the Hudson River flood plain; 2. generation of GIS maps showing an inventory of properties within the flood plain; and 3. summation of property values culminating in a benefit shared between properties based upon total value of each property. See Memorandum to the Board dated January 7, 2010 from Executive Director LaFave and staff.

29. Sec. 15-2121(2) requires calculation of benefit to include: the name of each public corporation and a brief description of each parcel of real estate benefitted; the name of the owner or owners of each such parcel of real estate, so far as can be ascertained; the proportion of such cost ...less state costs...to be borne by each expressed in decimals; and the amount to be paid by each such public corporation or the owner or owners of each such parcel.

30. The apportionment here did not comply with the identification and evaluation requirements of 15-2121(2). The Board merely established a summary calculation of District costs split between affected municipalities within the five Counties in general. The apportionment merely totaled the number of properties in various municipalities adjacent to a flood plain map within each County, then proportionately divided the amounts between the five affected Counties. There is no proof offered by the District showing each parcel was evaluated to show actual flood effects and damages.

31. Further, there is no evidence that the District performed more than a perfunctory examination of the available data used to apportion their costs to the counties.

32. Even a cursory examination of the data used to compile the District's apportionment reveals that there is an underlying flaw in utilizing the County as the apportioned entity. For example, the District's apportionment states that Washington County has a total of 602 parcels with a portion of that parcel within the 100 year flood plain. The entire value of those parcels was used to calculate Washington County's portion of the assessment.

33. A quick request to the Washington County Real Property Tax Services Department would have revealed that those 602 parcels identified by the District comprise 9,942.2325 total acres of land. Of that total acreage only 2,187.1041 or 28% is actually within the flood plan. The remaining 72% of the acreage used for apportionment has no contact with the flood plain whatsoever.

34. Washington County consists of 535,680 total acres. Two state prisons and other exempt facilities take approximately 20,300 acres off the tax rolls leaving 515,380 acres as the tax base of the County. Out of that net tax base, 26,363 acres is forest land that is owned by the State of New York representing 5.1% of the net tax base of the County by acreage. That entire tax base acreage of the County (515,380) is asked to pay the apportionment for what in reality is only 2,187.1041 acres of benefit. In reality, only .43% of Washington County's tax base lies within the 100 year flood plain as indicated by the District.

35. Just as the Board failed to undertake an study related to the actual benefit to the County of Washington, it also failed to study the benefit to the individual towns in which the allegedly benefitted acreage lies.

36. The numbers are just as stark for each town. The approximate total acreage of the Village of Hudson Falls and towns of Fort Edward, Greenwich and Easton is 87,495.34 acres. The total acreage used for apportionment in those municipalities is 9,942.2325 acres making the actual percentages of those municipalities utilized for apportionment 1.1%. When utilizing the flood plain acreage analysis, that percentage falls to .3%.

37. The actual utilization of these properties is also revealing. Real Property classification codes reveal the following:

<u>Classification</u>	<u>Acreage</u>
Field Crops	1504.219
Private Forest	376.202
Res Vacant Land	116.027
Rural Vacant >10	452.556
State Forest	46.475
Vac Farmland	785.196
Vacant Land	12.568
<u>Vacant Rural</u>	<u>130.112</u>
Total	3423.355

It is generally acknowledged that these classification codes cover vacant land. There may be other parcels with different classifications that increase the amount of vacant land, these represent the minimum. The figures reveal that of the apportioned area (9,942.2325 acres), approximately 35% is vacant.

38. The methodology applied by the Board was inconsistent with the requirements of Sec. 15-2121(2) because it did not identify, evaluate and assess costs against each parcel. Additionally, there was no evaluation made of relative damages to each property given various levels of water in the flood plain. Thus the apportionment is flawed, a violation of statutory procedure, representing an actionable arbitrary abuse of discretion. Accordingly, the apportionment fails and should be withdrawn.

POINT FOUR

39. The District's current apportionment should be barred As inequitable and unfair under the doctrine of equitable estoppel.

40. It is settled that the doctrine of estoppel precludes enforcement of a right otherwise permissible which results in injustice to a party who has acted to its detriment in reliance on previously established conduct. (Citations omitted.)

41. Never before in history has the District apportioned costs against Counties as it intends in the current reapportionment. In light of the District's prior course of conduct, Washington County did not budget for an apportionment of any District costs to be chargeable against the County. The County was induced to act to its detriment by the District's prior conduct.

42. The apportionment is therefore flawed and unjust. Accordingly, the District should be precluded from enforcing the intended apportionment under the doctrine of equitable estoppel.

POINT FIVE

43. The District has failed to reapportion within a reasonable time thus violating the doctrine of laches.

44. It is settled that failure to assert a right for an unreasonable and unexplained length of time is a bar to enforcement of the right when it operates to the detriment of another acting in reliance.

45. Under the circumstances presented, for over eighty years, since creation of the District, costs have never been assessed against Counties. As a result, Washington County has never budgeted to pay District costs, and did not budget for such costs in 2010.

46. In its budgets of the last several years, the County has worked hard to stabilize and reduce the County levy. The County's total budget is approximately \$112 million. Out of that total, the County derives income from a number of sources such as federal and state payments as well as fees and reimbursements for services. The real number in a county budget that impacts the taxpayer, however, is the county tax levy. The County's revenue from the real property tax levy in 2010 is \$27,467,800. An assessment of \$171,357.09 represents .62% of the tax levy or over one half a percent increase that would be required to pay the apportionment.

47. The County budget does not run with much of a surplus. The County's fund balance is approximately \$8 million. Since the County requires approximately \$10 million for cash flow purposes (i.e. to reimburse villages, towns and school districts for unpaid taxes etc.), the County has very little to no extra cash on hand. Past budgets have also appropriated fund balance in order to keep the tax levy stable. Funds for this assessment were not included in the 2010 budget. In fact, at date of this writing, the County is using approximately \$3 million of its fund balance in the 2010 budget and is awaiting the impact from anticipated cuts in state funding. Other revenues are down. For instance the County failed to meet its 2009 sales tax budget by over \$1.2 million. The initial projected tax increase for 2011 is 15.3%.

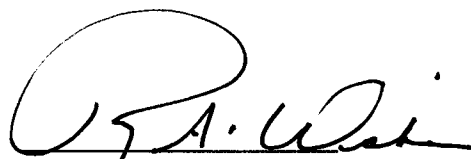
48. Imposition of the proposed apportionment would further compromise the fiscal position of the County which, given current state budget issues and funding reductions as well as national economic and market conditions, is already severely compromised.

49. Given the length of time over which the District chose not to apportion costs against Counties, and reliance on that conduct by Washington County in preparing yearly budgets for over eighty years, the current apportionment should be precluded under the doctrine of laches.

50. Finally, Washington County hereby adopts and incorporates the arguments made in this proceeding by the counties of Albany, Rensselaer, Saratoga and Warren to the extent not made herein.

WHEREFORE, for the reasons set forth above the County respectfully requests, in the alternative, that; the apportionment be withdrawn, and/or alternatively, the apportionment be modified in accordance with objections stated herein; and/or alternatively the District take such other and further action in accordance with law.

DATED: Fort Edward, New York
March 19, 2010



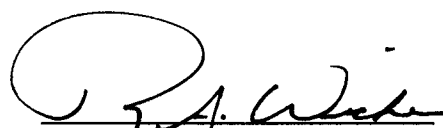
Roger A. Wickes, Esq.
Washington County Attorney
Attorney for: Washington County, NY
383 Broadway, Bldg. B
Fort Edward, New York 12828
518-746-2216

TO: HRBRRD

VERIFICATION

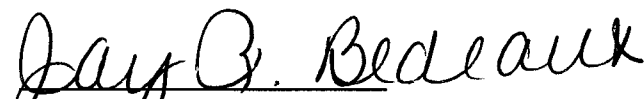
State of New York)
County of Washington) SS.:

Roger A. Wickes, affirms under penalty of perjury that; 1. He is the duly appointed County Attorney for the County of Washington; 2. the County of Washington is the Petitioner in this proceeding; 3. that Petitioner is a governmental subdivision; 4. that he is acquainted with the facts of this matter; he makes this verification pursuant to CPLR Sec. 3020(d)(2); 5. he has read the foregoing complaint and knows the contents thereof; the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.



Roger A. Wickes

Sworn to before me this
19th day of March, 2010.



Notary Public

JOY R. BEDEAUX
Notary Public, State of New York
No. 01BE6066297
Qualified in Washington County
Commission Expires November 13, 2013



Board of Hudson River-Black River Regulating District
350 Northern Boulevard, Albany, New York 12204 Phone (518) 465-3491
FAX (518) 432-2485

April 8, 2010

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

Dear Chairman Rymph:

The Hudson River – Black River Regulating District Board adopted the Apportionment for the Hudson River Area with Modification subsequent to conducting the Apportionment Hearing Grievance at its March 30, 2010 Board meeting. Following approval by the Department of Environmental Conservation, and as required by NY ECL §15-2121(5), on behalf of the Regulating District Board, please find a copy of the Apportionment for the Regulating District's fiscal year July 2009 – June 2010 served upon you as Chairman of the Rensselaer County Legislature. 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 June 30, 2010.

Also enclosed, please find a copy of the Resolution through which the Regulating District adopted the Apportionment for the Hudson River Area with Modification and the letter from Commissioner Grannis through which the Department of Environmental Conservation approved the Apportionment.

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

Sincerely,

A handwritten signature in cursive script that reads 'Glenn A. LaFave'.

Glenn A. LaFave
Executive Director

cc: Kevin Hayes, Washington County Administrator
Roger A. Wicks, Washington County Attorney
Dona Crandall, Washington County Clerk

State of New York

Hudson River – Black River Regulating District

Great Sacandaga Lake

Operation and Maintenance Cost

and

Apportionment of Operation and Maintenance Cost

Approved by
BOARD OF HUDSON RIVER – BLACK RIVER REGULATING DISTRICT
March 30, 2010

Certified to
Department of Environmental Conservation
March 30, 2010

APPORTIONMENT OF OPERATION AND MAINTENANCE COST OF THE GREAT SACANDAGA LAKE RESERVOIR PREFIXED TO A RESOLUTION ADOPTED BY THE BOARD OF HUDSON RIVER – BLACK RIVER REGULATING DISTRICT March 30, 2010.

ID No.	NAME OF PUBLIC CORPORATION	PROPORTION OF COST	AMOUNT TO BE PAID
1	County of Albany	0.392563628	\$ 1,748,166.66
2	County of Rensselaer	0.215951341	\$ 961,675.78
3	County of Saratoga	0.285389349	\$ 1,270,897.53
4	County of Warren	0.066742217	\$ 297,216.83
5	County of Washington	0.039353465	\$ 175,249.08

10-11-03

**RESOLUTION TO APPROVE THE APPORTIONMENT
FOR THE HUDSON RIVER AREA WITH MODIFICATION**

WHEREAS, the Regulating District Board, served a copy of such apportionment as provided at NY ECL §15-2121, noticing and publishing the time and place at which the Board will meet to hear any public corporation or person aggrieved by the Board's apportionment determination; and

WHEREAS, the Board of the Hudson River-Black River Regulating District has determined the total cost to operate and maintain the Regulating District's Hudson River Area facilities (Great Sacandaga Lake, formerly Sacandaga Reservoir); and

WHEREAS, NY ECL §15-2121(2) and §15-2125(2) require the Regulating District Board to apportion such cost, less the amount chargeable to the state, among the public corporations and parcels of real estate benefited, in proportion to the amount of benefit which shall inure to each such public corporation and parcel of real estate by reason of such reservoir; and

WHEREAS, the United States Court of Appeals, DC Circuit determined that the Federal Power Act preempts the Regulating District's use of state law to collect the Regulating District's annual costs of operations and maintenance from the federally licensed hydropower companies operating within the Hudson River Area; and

WHEREAS, the Regulating District Board has determined that by grouping the towns, cities, villages and the individual parcels of real estate within each such public corporation, the potential for disparate treatment of one individual parcel, neighborhood or municipality when compared to others diminishes; and

WHEREAS, the Regulating District Board has determined that the Regulating District provides a negligible annual benefit to the state by diverting flow to the NYS Champlain Canal and the state has not required that a reasonable return to the state be included in the costs to be apportioned; and

WHEREAS, the attached written apportionment shows the name of each public corporation benefited and the proportion of such cost less the amount chargeable to the state to be borne by each, expressed in decimals and the amount to be paid by each such public corporation; and

WHEREAS, the amount to be paid by each such public corporation is determined by multiplying the total cost less the amount which may be chargeable to the state by the decimal representing the proportion thereof to be borne by each public corporation; and

WHEREAS, the Regulating District Board, or a majority of its members, have viewed the public corporations benefited; and

WHEREAS, NY ECL §15-2121 requires that the Regulating District Board shall, upon its approval of the apportionment, certify such apportionment to the Department of Environmental Conservation for approval; and

Approved at the March 30, 2010 Board Meeting

10-11-03

WHEREAS, following such apportionment grievance hearing, such apportionment if not modified shall become final and conclusive; or if modified, following approval of the modified apportionment by the Department of Environmental Conservation, such apportionment as so modified shall become final and conclusive; and

WHEREAS, the Board of the Hudson River-Black River Regulating District, at the January 12, 2010 Board meeting, adopted the “State of New York Hudson River-Black River Regulating District Great Sacandaga Lake Operation and Maintenance Cost and Apportionment of Operation and Maintenance Cost” apportionment for the Regulating District’s Hudson River Area facilities; and

WHEREAS, on January 12, 2010, the Board certified the Apportionment to the Department of Environmental Conservation for its approval; and

WHEREAS, by letter dated February 3, 2010, the Department Commissioner approved the Apportionment; and

WHEREAS, the Board having heard those aggrieved by the Board’s apportionment determination at an apportionment grievance hearing held March 30, 2010; and

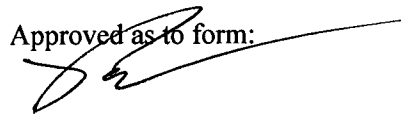
NOW THEREFORE BE IT RESOLVED, the Board of the Hudson River-Black River Regulating District does hereby adopt the “State of New York Hudson River-Black River Regulating District Great Sacandaga Lake Operation and Maintenance Cost and Apportionment of Operation and Maintenance Cost” apportionment for the Regulating District’s Hudson River Area facilities with modification; and

BE IT FURTHER RESOLVED, pursuant to NY ECL §15-2121, the Board of the Hudson River-Black River Regulating District certifies such apportionment to the Department of Environmental Conservation for its approval; and

BE IT FURTHER RESOLVED, that upon approval by the Department of Environmental Conservation the Board of the Hudson River-Black River Regulating District directs staff to serve the apportionment as required by NY ECL §15-2121; and

BE IT FURTHER RESOLVED, that once approved and served, the Regulating District Board’s apportionment is final and conclusive fixing the apportionment and basis of apportionment of all subsequent expenses to be incurred in the maintenance and operation of the Regulating District’s Hudson River Area facilities.

Approved as to form:



Robert P. Leslie
General Counsel

Approved at the March 30, 2010 Board Meeting

10-11-03

Motion was made by Ms. Beyor and seconded by Mr. Berkstresser that the Resolution be approved.

Present and Voting:

<u>MEMBER</u>	<u>AYE</u>	<u>NOE</u>	<u>ABSTAIN</u>
Ms. Beyor.....	<u> X </u>	<u> </u>	<u> </u>
Mr. Pintuff	<u> </u>	<u> </u>	<u> </u> (Excused)
Mr. Bartow.....	<u> X </u>	<u> </u>	<u> </u>
Mr. Berkstresser	<u> X </u>	<u> </u>	<u> </u>
Mr. Cornell.....	<u> X </u>	<u> </u>	<u> </u>
Mr. Klein.....	<u> X </u>	<u> </u>	<u> </u>

Approved at the March 30, 2010 Board Meeting

CORPORATE RESOLUTION CERTIFICATION

I HEREBY CERTIFY that the following is a true and correct copy of Resolution 10-11-03 to Approve an Apportionment With Modification for the Hudson River Area duly adopted at a meeting of the Board of Directors of **The Board of Hudson River – Black River Regulating District** a corporation incorporated under the laws of the State of New York duly called and held on the 30th day of March, 2010, a quorum then being present; that the said resolution has been entered upon the regular minute book of the corporation and are in accordance with the certificate of incorporation and the by-laws and are now in full force and effect.

I FURTHER CERTIFY that the names of the persons holding titles referred to in the foregoing resolutions are as follows:

<u>NAME</u>	<u>TITLE</u>
Pamela Beyor	First Vice Chairperson
Philip Klein	Chairperson
John Bartow	Board Member
David Berkstresser	Board Member
Paul Cornell	Board Member

(Corporate Seal)

Treasurer: Royal J. F.

Date: 3/31/10

DAVID A. PATERSON
GOVERNOR



ALEXANDER B. GRANNIS
COMMISSIONER

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

APR 02 2010

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

Dear Mr. LaFave:

The Department of Environmental Conservation has received the Hudson River-Black River Regulating District's (District) March 30, 2010 State of New York Hudson River-Black River Regulating District Great Sacandaga Lake Operation and Maintenance Cost and Apportionment of Operation and Maintenance Cost (revised apportionment) approved by the District's Board (Board) on March 30, 2010, and certified to DEC on April 1, 2010. Environmental Conservation Law (ECL) §15-2121 provides that the Board shall prepare an apportionment, certified to DEC for its approval, 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 (Reservoir) in proportion to the amount of the benefit which will inure to each by reason of such Reservoir.

In reviewing the revised apportionment, DEC has relied on the expertise of District staff who prepared the revised apportionment in identification of: (1) the most direct and clearly defined benefit derived by operation of the Reservoir, i.e. flood protection; (2) the beneficiaries which receive the flood protection benefit; and (3) the method to determine the proportion of the flood protection benefit which will inure to each beneficiary. As the revised apportionment is not inconsistent with the provisions of ECL §15-2121 and ECL §15-2125, I hereby approve said revised apportionment as required by ECL §15-2121(4).

Sincerely,

A handwritten signature in black ink that reads "Alexander B. Grannis". The signature is written in a cursive style.

Alexander B. Grannis

RECEIVED

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HUDSON RIVER-BLACK RIVER
REGULATING DISTRICT
MAYFIELD, NY