

**HUDSON RIVER-BLACK RIVER REGULATING DISTRICT
BOARD MEETING
JANUARY 31, 2013
Immediately following the Organizational Meeting scheduled for 10:00 A.M.
Johnstown Town Hall
2753 State Hwy 29
Johnstown, NY 12095**

CALL TO ORDER

Chairman David W. Berkstresser called the meeting to order at 10:11A.M.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: Board Chairman David W. Berkstresser; First Vice Chair Mark M. Finkle; Second Vice Chair Albert J. Hayes; Board Member Thomas Stover; Executive Director Michael A. Clark; General Counsel Robert P. Leslie; Chief Fiscal Officer Richard J. Ferrara; Chief Engineer Robert S. Foltan; Hudson River Area Administrator John Hodgson.

Excused: Board Member Michael Astafan, Black River Area Administrator Carol Wright

MOTION TO ADOPT OR REVISE THE MEETING AGENDA

Chairman Berkstresser asked if there was a need for a Motion to revise the meeting agenda. Mr. Berkstresser suggested that the Agenda be revised to eliminate discussion of the Apportionment from the agenda. Mr. Finkle made a Motion to so revise the agenda and as revised adopt the proposed meeting agenda. Mr. Stover seconded it and the motion was unanimously approved.

PUBLIC COMMENT PERIOD

Chairman Berkstresser solicited comments from the public, hearing none.

APPROVAL OF THE DECEMBER 11, 2012 BOARD MEETING MINUTES

A motion was made by Mr. Hayes to approve the Minutes of the Board's December 11, 2012 meeting. Mr. Finkle seconded it and the motion was unanimously approved.

EXECUTIVE DIRECTOR'S REPORT

Mr. Clark reported that he attended the Great Sacandaga Lake Association Committee Meeting in early December. Mr. Clark briefly discussed the assistance he provided to Ken Avery of Bergman Associates to foster Mr. Bergman's understanding of the HRBRRD's engineering services procurement process/evaluation/selection. Mr. Clark also briefly described the efforts put forth by members of the Board and Senior Staff to reach a settlement with the Five

Counties on the Apportionment issue. He praised the effort put forth by Mr. Finkle, Mr. Hayes, General Counsel and Chief Fiscal Officer as they engaged in a series of meetings/exchanges with representatives and counsel from the five Counties.

CONTRACTS

RESOLUTION TO AWARD THE WORK TO PERFORM HAWKINSVILLE DAM REMEDIATION & REMOVAL FINAL STUDY & DESIGN TO KLEINSCHMIDT ASSOCIATES, PA, PC

Mr. Foltan explained that a Regulating District solicitation for the Hawkinsville Dam remediation project resulted in eight Statements of Qualification submissions. Each were each opened and evaluated by the HRBRRD's evaluation team based on the criteria set forth in the SOQ. Mr. Foltan indicated that Kleinschmidt Associates, PA, PC had received the highest total average score and recommended that the firm be conditionally awarded the final study and design engineering work for the Hawkinsville Dam Remediation and removal. Mr. Ferrara noted the procurement followed the accepted Request For Qualifications format and that if upon receipt of a fee proposal the parties were unable to negotiate an acceptable contract, the Regulating District would proceed to the next most qualified submitter.

Mr. Stover made a Motion to adopt the Resolution conditionally awarding the final design and engineering study and authorizing the Executive Director to request a scope of work and fee proposal from Kleinschmidt Associates, PA, PC. Mr. Finkle seconded the Motion. The Resolution was adopted unanimously.

STAFF REPORTS

Mr. Leslie presented his report to the Board.

Mr. Leslie noted that judgments in favor of Fulton (\$1,660,129.90) and Hamilton (\$119,361.84) Counties remain outstanding.

Mr. Leslie reported that Albany County Supreme Court Justice Joseph C. Teresi ruled against the Regulating District in a January 17, 2013 Decision and Order in the Northern Electric Power Company, L.P. and South Glens Falls L.P. v. HRBRRD case (the Plaintiffs are collectively known as "Boralex"). As characterized by the Attorney General's Office, the decision is a decisive win for the plaintiffs. None-the-less, the assigned AAG indicated he believed there were grounds for appeal and that he would commence the internal process within the AG's office to commence an appeal. Mr. Leslie noted that this is the second negative decision HRBRRD has suffered with respect to the HWB Refund issue. HRBRRD now faces judgments totaling (\$3,244,475.66 plus interest) (AEC - \$516,665.62 plus interest at 9%, Northern Electric \$2,368,480.51 plus interest at 9%, South Glens Falls \$359,329.53 plus interest at 9%). The AG has put the AEC case under appeal to the Appellate Division Third Department. Mr. Leslie indicated that the Board can expect the AG to also support/prosecute the appeal of the Boralex case as well. Mr. Leslie noted that HRBRRD faces another pending HWB Refund suit (New York State Electric & Gas) seeking \$771,667.58 plus interest.

On September 29, 2010, U.S. District Court Judge Norman Mordue dismissed the NiMo federal Court Permit System and Assessment challenge. On March 7, 2012, the U.S. Court of Appeals 2nd Circuit (USCA 2nd Circuit) affirmed the District Court's ruling on preemption and dismissal of DEC. However, the USCA 2nd Circuit also vacated the District Court's abstention ruling and remanded NiMo's federal and NY constitutional claims back to the District Court for further proceedings. Special Counsel Justin Driscoll indicates that the District Court's scheduling conference set for late October was postponed without date due to Hurricane Sandy.

Mr. Ferrara presented his report to the Board.

At the close of fiscal December 2012, general fund balances for the HRA and BRA were approximately \$391k and \$649k respectively. Regulating District transactional processing and reporting for the fiscal month of December was completed in an accurate and timely fashion. Regulating District expenses for the month came in at forecasted levels. Mr. Ferrara noted that permit system renewal fee receipts to date exceed \$200K and thus are ahead of last year's pace. Mr. Ferrara noted the submission of the Regulating District's 3rd Quarter MWBE Utilization suggesting that the results depicted several small disbursements for office supplies. He pointed the Board to the key financial data shown on page 15 of his report and noted that the Black River Area has collected just over \$1Million of the \$1,170,000 due in BRA Assessments. Finally, he indicated that the Black River Area office had assured him of their efforts to collect the balance aggressively.

Mr. Foltan presented the Chief Engineer's report to the Board.

Mr. Hodgson presented his report to the Board.

Mr. Hodgson reported that staff has placed rip rap on 520 feet of GSL shoreline and that the Mayfield office has received and processed 1,147 access permit renewals to date. Mr. Hodgson noted that SFO Staff participated in the Indian Lake and Great Sacandaga Lake EAP training conducted by the Operations Engineer. SFO Staff have begun converting SFO's alphabetical filing system to a numerical filing system.

Mr. Clark presented the Black River Area Administrator's report to the Board.

RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE MARCH 12, 2013 BOARD MEETING

Chairman Berkstresser asked for a Motion to adopt a Resolution setting the March 12, 2013 date of the Board's next meeting at Utica.

Mr. Hayes moved to adopt the Resolution. Mr. Finkle seconded it and the Resolution was unanimously adopted.

EXECUTIVE SESSION

Chairman Berkstresser called for a motion to adjourn to Executive Session to discuss concessions necessary to satisfy a judgment against the Regulating District concerning the Fulton/Hamilton County v. HRBRRD litigation. The Chairman invited the Executive Director, Chief Fiscal Officer, General Counsel, Chief Engineer, Hudson River Area Administrator, and Mr. Schachner, counsel for the Five Counties to join the Board in Executive Session. Mr. Stover advanced the motion, Mr. Hayes seconded. The Board adjourned to Executive Session at 10:35A.M. and returned at 11:31A.M. Chairman Berkstresser noted that the Board anticipated no Board action following the Executive Session.

ADJOURNMENT

There being no further business to come before the Board, Mr. Stover moved to adjourn the meeting. Mr. Hayes seconded it. The motion was unanimously approved. The meeting adjourned at 11:32 A.M.

RESOLUTIONS

13-01-01 RESOLUTION TO AWARD THE WORK TO PERFORM HAWKINSVILLE DAM REMEDIATION & REMOVAL FINAL STUDY & DESIGN TO KLEINSCHMIDT ASSOCIATES, PA, PC

Mr. Stover moved to adopt the Resolution. Mr. Finkle seconded it and the Resolution was unanimously adopted.

13-02-01 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE MARCH 12, 2013 BOARD MEETING

Mr. Hayes moved to adopt the Resolution. Mr. Finkle seconded it and the Resolution was unanimously adopted.

Respectfully submitted,

Richard J. Ferrara
Secretary/Treasurer