

**HUDSON RIVER-BLACK RIVER REGULATING DISTRICT  
BOARD MEETING  
Northampton Town Hall  
412 South Main Street  
Northville, NY 12134**

May 12, 2015

Immediately following the Finance Committee Meeting  
which will immediately follow the 10:00 A.M. Governance Committee Meeting

**CALL TO ORDER**

Chairman Mark M. Finkle called the meeting to order at 10:21 A.M.

**ROLL CALL**

**Present:** Board Chairman Mark M. Finkle; First Vice-Chair Albert J. Hayes; Second Vice-Chair David W. Berkstresser, and Board Members Anthony M. Neddo, and Jeffrey Rosenthal; Executive Director Michael A. Clark; General Counsel Robert P. Leslie; Chief Fiscal Officer Richard J. Ferrara; Chief Engineer Robert Foltan; Administrator John Hodgson; and Compliance Officer, Stephanie Ruzycky.

Excused: Robert A. Moore

**MOTION TO ADOPT OR REVISE THE MEETING AGENDA**

Chairman Finkle asked for a motion to revise the meeting agenda to reflect an Executive Session to discuss a personnel issue. Mr. Rosenthal noted that the Agenda did not reflect discussion of the Resolution pertaining to the payment of utilities at the Indian Lake house or the bid for construction of the concrete pad for the garage at Stillwater. Mr. Berkstresser made a motion to adopt a meeting agenda revised to reflect the Executive Session and the Indian Lake house Resolution; noting that the other item would be discussed during Mr. Foltan's report to the Board. Mr. Hayes seconded it and the motion was unanimously approved.

**PUBLIC COMMENT**

Chairman Finkle solicited comments from the public. Noting that the only members of the public interesting in making a comment planned to address the appeal scheduled for later in the meeting, Chairman Finkle offered the appellant, Richard Sansevera, the floor. Mr. Sansevera recited the history of ownership to Lot 22 referencing deeds executed in 1944, 1948 & 1957. Mr. Sansevera related to the Board that he had spoken with various county officials who had confirmed to him his ownership of the lot. He further recited the history of the Regulating District's issuance of access permits associated with Lot 22; specifically his delivery of documents to the Area Administrator which led to issuance of the access permit # 14601 to Richard and Carole Sansevera. Charles Bousa, Michael Decker, and other members of the "Lot 22 Owners" group to whom the permit had been issued between 2001 and 2013 and from 2015 onward, related their version of the Lot 22 ownership and access permit #14601 issuance history.

Mr. Bousa noted that he and other members of the group had periodically paid the property taxes associated with Lot 22. Others in the audience confirmed that such payments, either directly to taxing authorities or through the Sanseveras or their predecessors in title, continued for many years, excepting, a recent period during which Mr. Sansevera alone paid such taxes. An attorney representing the “Lot 22 Owners” group, Stephanie Bitter, presented a 1948 deed transferring property from Michael Perceri to Michael Perceri and others (Heinen, Ericson, MacDonald, Bousa & Nurmi).

Mr. Clark referred to a packet of material delivered to the Board and the parties under cover of an April 24, 2015 letter to explain the circumstances leading to the recent appeal filed by Richard & Carol Sansevera. The packet explained that in December 2001, the then Area Administrator, determined that seven camps within the Capron Development shared ownership to Lot 22; a lot fronting directly on the lands of the state. Further, in 2001 the then Area Administrator determined that as a partial owner of this front lot, each of the seven camp owners were eligible for, and limited to, an access permit in front of Lot 22 along with the other six owners. Mr. Clark noted that Regulating District records reveal that in response to renewal applications filed each year, between 2002 and 2013, the Regulating District annually renewed the non-commercial access permit designating “Lot 22 Owners” as the permit holder. In 2013, Mr. Sansevera supplied documentation supporting his claim to sole ownership of Lot 22 and in 2014, the Regulating District issued the access permit #14601 solely to Richard & Carol Sansevera. Another of the Lot 22 Owners appealed the decision to the Chief Engineer who found that Board Resolution 10-03-01, issued in January 2010, required that preference should have been given to the co-permit holders of record; and that as the “current permit holder”, the Lot 22 Owners should have been given the opportunity to renew and maintain access permit 14601. In November 2014, Richard Sansevera appealed the Chief Engineer’s decision to the Executive Director. The remaining Lot 22 Owners assert that they share title to Lot 22 with Richard & Carol Sansevera and that none of the seven owners has any right superior to the others. Mr. Clark indicated that he denied the Sansevera’s appeal; noting that title to Lot 22 remains contested and that adjudication of disputed title lies beyond the scope of the Regulating District’s jurisdiction. Mr. Clark offered that in the absence of a clear statement from the parties indicating a resolution of the title dispute, or a court ruling resolving such dispute, he denied the appeal. He noted that through the instant appeal, the parties ask the Board to determine to whom the Regulating District should issue an access permit for the use of a portion of the state property (Tract 728) surrounding GSL. He recommended that in reliance on Resolution 10-03-01 and in light of the continuing property title dispute, the Board direct staff to issue Permit # 14601 to the group of permit holders entitled “Lot 22 Owners”.

The Board engaged in a brief discussion of the matter. Mr. Rosenthal asserted that he believed the Regulating District lacked jurisdiction to adjudicate the property title dispute and encouraged the parties to quiet title in NYS Supreme Court. Mr. Neddo noted that the 1948 deed evidenced a transfer of ownership from one party to a group including that party. Chairman Finkle indicated that the Board would take the matter under advisement and that the parties should expect a decision within 30 days, or the Board’s next meeting.

## **APPROVAL OF THE APRIL 14, 2015 REGULAR BOARD MEETING MINUTES**

Chairman Finkle asked for a motion to adopt the April 14, 2015 Regular Board Meeting Minutes. Mr. Rosenthal advanced the motion to approve the Board's April 14, 2015 Meeting Minutes. Mr. Berkstresser seconded and the motion was unanimously approved.

### **EXECUTIVE SESSION**

Chairman Finkle called for a motion to adjourn to Executive Session to discuss a personnel issue. The Chairman invited the Executive Director, and General Counsel to join the Board for the entire Executive Session. Mr. Hayes advanced the motion, Mr. Neddo seconded. The Board adjourned to Executive Session at 11:20 A.M. and returned at 11:28 A.M. Chairman Finkle reported that the Board took no action in Executive Session.

### **EXECUTIVE DIRECTOR'S REPORT**

Mr. Clark provided his report; noting that again this month he and General Counsel met with representatives from EFC. Discussions now center around the potential for the Regulating District to secure funding for the Conklingville and Hawkinsville projects through EFC's administration of EPA's Section 319 "Non-Point Source Management" funds. EFC has surmised that the Conklingville project will likely qualify for funding under the 319 block grant program, but that the Hawkinsville dam reconstruction project likely would not. In addition, talks with DEC regarding the potential benefits from stream restoration at Hawkinsville continue. Nonetheless, Mr. Clark indicated that the Regulating District continues to pursue an easement with the adjacent landowner at Hawkinsville necessary to extension of the dam's wing wall. Mr. Clark noted that the Regulating District has nearly completed re-branding letterhead, uniforms, vehicles, etc. in compliance with NYS's re-branding initiative. Finally, Mr. Clark reported on his continuing effort to periodically visit/inspect staff/facilities at HRAO, SFO, BRAO, Watertown, Stillwater and Conklingville.

### **RESOLUTION TO AMEND INDIAN LAKE HOUSE AGREEMENT**

Mr. Clark explained that through a long-standing agreement, the Regulating District's gatekeeper at Indian Lake occupies a house located adjacent to the Indian Lake Dam. He noted that the agreement sets forth the terms & conditions pertaining to the use of the house including the Regulating District's provision of fuel to heat the house. Further, Mr. Clark noted that the agreement; included as part of the compensation afforded the occupant to supplement the nominal monetary compensation offered for round-the-clock services to the District, calls for the occupant to arrange for, and pay, all other utilities (electric). Mr. Clark explained that the electric utility bill is approximately \$130 per month. Mr. Clark recommended that the utilities should be covered by the District.

Mr. Berkstresser made a motion to adopt the Resolution authorizing the Regulating District to pay the utility costs associated with the maintenance and upkeep of the Regulating District's building at Indian Lake. Mr. Rosenthal seconded and the motion was unanimously approved.

## **CONTRACTS/REPORTS**

### **MOTION TO APPROVE REGULATING DISTRICT ANNUAL REPORT FOR JANUARY 1, 2014 THROUGH DECEMBER 31, 2014.**

Mr. Clark offered the Regulating District's Annual Report to the Board. He noted that the report is available on the Regulating District's website.

Mr. Berkstresser made a Motion to submit the Regulating District's Annual Report to the Commissioner of the Department of Environmental Conservation in accordance with Environmental Conservation Law section 15-2131. Mr. Rosenthal seconded and the Motion was adopted by unanimous vote.

### **MOITION TO APPROVE ANNUAL REVIEW OF MISSION STATEMENT & PERFORMANCE MEASUREMENTS**

Mr. Clark noted that the Mission Statement, the Performance Goals and Metrics used to measure those goals, and the Annual Report were forwarded to Board members prior to the meeting. Mr. Clark read the Regulating District's current Mission Statement into the record and asked the Board to review the series of questions found on page 48 of the Board packet to help them determine if the mission statement continued to accurately reflect the Board's mission as they saw it.

Mr. Rosenthal made a motion to adopt the Authority Mission Statement and Performance Measurements Annual Review – 5/12/15. Mr. Hayes seconded and the motion was unanimously approved.

## **GOVERNANCE COMMITTEE REPORT**

Committee Chairman Rosenthal reported on the Committee's May 12<sup>th</sup> meeting.

### **RESOLUTION DESIGNATING A SPECIFIC GRADE AND STEP FOR EACH M/C EMPLOYEE AND APPROVING ADOPTION OF MANAGEMENT CONFIDENTIAL SALARY SCHEDULES AS SET FORTH BY THE GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS**

Committee Chair Rosenthal presented the Board with a proposed Resolution placing the Regulating District's M/C staff on the Management Confidential Salary schedules maintained by the Governor's Office of Employee Relations for the state's M/C employees. He explained that certain Regulating District employees, not members of a negotiating unit under the State's Taylor Law, are subject to a set of Management/Exempt Employment Rules and Benefit Guidelines and that such guidelines provide the Board with no parameters for establishing salaries for the Regulating District's Management/Exempt employees. He noted that state employees designated Management/Confidential by the Public Employee Relations Board are subject to salary schedules established through the NYS legislative process and maintained by

the Governor's Office of Employee Relations, and that the NYS Division of Budget issues periodic Budget Bulletins controlling the timing and escalation of salary actions taken pursuant to such schedules. Committee Chair Rosenthal noted that, consistent with the Governance Committee's charter, the Committee is to review Senior Staff compensation annually. He reported that the Committee desires to bring the consistency and ease of administration afforded by adherence to such statewide schedules and to ensure treatment of the Regulating District's Management/Exempt employee equal to that afforded similarly situated state Management/Confidential employees.

Committee Chair Rosenthal noted that the effective date of placement, March 12<sup>th</sup>, puts each affected employee on the 2012-2015 schedule as close as possible to their current salary consistent with that employee's position and experience. He indicated that it is the Committee's expectation that each Regulating District M/C employee will receive the same performance advance afforded to all other state M/C's when the Division of Budget issues a Budget Bulletin implementing the Governor's resolution of the statewide M/C salary issue adopted as part of the State's 2015-2016 Budget. As such, the Resolution would also adopt the 2015-2018 M/C salary schedule, effective April 1, 2015, consistent with the expected language of the forthcoming Budget Bulletin. He noted that the Resolution further forecasts the Board's intention to adopt future M/C salary schedules as are adopted through the NYS legislative process and established and maintained by the Governor's Office of Employee Relations and to take no further M/C salary actions unless such action is contemporaneous and consistent with subsequent Division of Budget Bulletins addressing M/C salaries.

Mr. Rosenthal moved to adopt the Resolution to place the Regulating District M/C's upon the 2012-2015 salary schedule and to implement the 2015-2018 salary schedule consistent with the Division of Budget Bulletin adopted to implement the treatment of M/C salaries in the state's 2015-2016 Budget. Mr. Berkstresser seconded it and the Resolution was unanimously adopted.

## **STAFF REPORTS**

Mr. Leslie presented his report to the Board. Mr. Leslie noted that it remains quiet on the litigation front; the Regulating District still awaits outcomes of the competing dispositive motions in NiMo's federal court challenge and the slip in fall case in front of Captain Nauti's. Mr. Leslie reported that he prepared the materials for the Sansevera appeal and continues to await a response from FERC concerning the commencement of HWB payments. Chairman Finkle asked Mr. Leslie to reach out to FERC to determine when the Regulating District might expect a decision. Mr. Leslie related that counsel for the Thompsons, a party involved in an enforcement action initiated by DEC's Region Six concerning use of a Ferry at Stillwater Reservoir, has delivered a document evidencing that the Regulating District has been added as an additional insured on the liability policy covering the Thompson's barge/ferry. He also reported that, at Mr. Moore's invitation, he joined Mr. Moore as he participated in the Authority Budget Office's April 29<sup>th</sup> new board member training.

Finally, Mr. Leslie reminded all FDS filers, Board and staff, to file the required Financial Disclosure Statement with the Joint Commission on Public Ethics by the May 15<sup>th</sup> deadline. Go to <http://www.jcope.ny.gov>. Look for the "Electronic Filing of Financial Disclosure Statements" box.

Mrs. Ruzycky presented her report to the Board. She noted that the 4<sup>th</sup> quarter utilization report was submitted and accepted by Empire State Development. The 1<sup>st</sup> quarter 2015-2016 MWBE utilization includes the purchase of a Ford F-250 at \$25,904 for BRFO and uniforms at \$1,441.75. She anticipates another \$18,000 in MWBE purchases for a heavy equipment trailer and vehicle decals. She reported that she attended the 2015 Central New York MWBE Expo in Syracuse; meeting with several potential vendors.

Mr. Ferrara presented his report to the Board. He noted that at the close of fiscal April 30, 2015, the general fund balances for the HRA and BRA were estimated to be \$836,265 and \$735,359 respectively. He noted that District transactional processing and reporting for the fiscal month of March was completed in an accurate and timely fashion. District bank reconciliations are complete through March 31, 2015. Mr. Ferrara provided a draft budget update focusing on the status of capital project funding alternatives

Mr. Ferrara reported on efforts to complete previously budgeted purchases of a new car and a new truck to replace aging Regulating District vehicles. He sought and received Board permission to dispose of the surplus vehicles through an NYS OGS program and noted that the Regulating District has received the state share of the Hudson River Area assessment for 2014-2015.

Mr. Foltan presented the Chief Engineer's report to the Board. Mr. Foltan commented upon discussions with various stake-holders, including DEC and Erie Boulevard Hydropower, to address low flow augmentation issues on the Beaver River. Mr. Foltan explained that staff solicited bids for construction of a garage foundation at the Stillwater Field Office. He noted that staff estimated the project cost at \$22,000 and anticipated the use of the Regulating District's discretionary authority pursuant to State Finance Law §163(6) to hire a NYS small business or MWBE contractor. Although approximately 75 firms requested and received copies of the Invitation for Bids document, only one firm, a women owned business enterprise, offered a bid. That company, Rock Boulder Inc., bid \$64,025. Mr. Foltan explained that the significant difference between staff's estimate of cost and the bid likely precludes any reasonable negotiation of a lower acceptable price. Mr. Foltan recommended rejecting the bid and using Regulating District field staff to complete the project.

Chairman Finkle asked whether the Board needed to take any action to reject the bid; hearing consensus of the remaining members that no action to approve such bid would suffice. Mr. Finkle confirmed that the Board intended that the construction work on the Stillwater Garage would proceed using Regulating Field staff to complete the project.

Mr. Hodgson presented his report to the Board. Mr. Hodgson noted that he and the staff at SFO emailed a survey to a subset of GSL permit holders, those who had submitted email addresses, to assess interest in a process for the Regulating District to accept access permit system related payments via credit card and/or over the internet. He, Mr. Ferrara, and Mr. Clark discussed efforts to date to afford GSL Access Permit applicants the opportunity to pay permit fees via the internet and through use of credit cards. Mr. Hodgson also reported to the Board on a recent equipment trailer purchase.

## **BOARD MEMBER QUESTIONS AND COMMENTS**

### **RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE REGULAR BOARD MEETING FOR JUNE 9, 2015**

Chairman Finkle asked for a motion to adopt a Resolution setting the next meeting of the Board of the Hudson River-Black River Regulating District for Tuesday, June 9, 2015 at the at the Town of Inlet Town Hall, 160 Route 28, Inlet, NY 13360 at 10:00 A.M. Chairman Finkle asked for a motion to set the meeting as indicated.

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

## **ADJOURNMENT**

There being no further business to come before the Board, Mr. Neddo moved to adjourn the meeting. Mr. Hayes seconded it. The motion was unanimously approved. The meeting adjourned at 12:20 P.M.

## **RESOLUTIONS**

### **15-16-05 RESOLUTION TO AMEND INDIAN LAKE HOUSE AGREEMENT**

Mr. Berkstresser made a motion to adopt the Resolution authorizing the Regulating District to pay the utility costs associated with the maintenance and upkeep of the Regulating District's building at Indian Lake. Mr. Rosenthal seconded and the motion was unanimously approved.

### **15-17-05 RESOLUTION DESIGNATING A SPECIFIC GRADE AND STEP FOR EACH M/C EMPLOYEE AND APPROVING ADOPTION OF MANAGEMENT CONFIDENTIAL SALARY SCHEDULES AS SET FORTH BY THE GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS**

Mr. Rosenthal moved to adopt the Resolution to place the Regulating District M/C's upon the 2012-2015 salary schedule and to implement the 2015-2018 salary schedule consistent with the Division of Budget Bulletin adopted to implement the treatment of M/C salaries in the state's 2015-2016 Budget. Mr. Berkstresser seconded it and the Resolution was unanimously adopted.

### **15-18-05 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE REGULAR BOARD MEETING FOR JUNE 9, 2015**

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

Respectfully submitted,

Richard J. Ferrara  
Secretary/Treasurer

Mark M. Finkle  
Board Chairman