

**HUDSON RIVER-BLACK RIVER REGULATING DISTRICT
BOARD MEETING**

Utica State Office Building
207 Genesee Street
Conference Room B
Utica, NY 13501

March 1, 2016

Immediately following 10:00 AM Finance Committee Meeting

CALL TO ORDER

Chairman Mark M. Finkle called the meeting to order at 10:19 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 Robert A. Moore; Acting Executive Director and Chief Fiscal Officer Richard J. Ferrara; General Counsel Robert P. Leslie; Chief Engineer Robert Foltan; Administrator John Hodgson; and Compliance Officer Stephanie Ruzicky.

Excused: Jeffrey Rosenthal

MOTION TO ADOPT OR REVISE THE MEETING AGENDA

Chairman Finkle asked for a motion to revise the meeting agenda to add an Executive Session to discuss personnel and collective bargaining. Mr. Neddo made a motion to adopt the agenda as revised. Mr. Berkstresser seconded. The Board unanimously approved the motion.

PUBLIC COMMENT

Chairman Finkle solicited comments from the public. Hearing none.

APPROVAL OF THE FEBRUARY 2, 2016 ORGANIZATIONAL AND REGULAR MEETING MINUTES

Chairman Finkle asked for a motion to adopt the February 2, 2016 Organizational and Regular Meeting Minutes. Mr. Hayes advanced the motion to approve the Organizational and Regular Meeting Minutes. Mr. Moore seconded and the motion was unanimously approved.

KUNKEL PERMIT APPEAL

Mr. Ferrara introduced Mr. Kunkel and his Attorney Michael Poulin to the Board and then explained that an April 20, 2015 staff inspection revealed the installation of an unauthorized stone staircase and cutting of five trees on the access permit area issued to Mr. Kunkel. (Access Permit Area 1061, Tract 954.) Mr. Ferrara noted that staff required that the steps be removed

and new trees planted. On May 15th the Area Administrator denied a work permit application through which Mr. Kunkel sought retention of the stone steps. Following Mr. Kunkel's appeal, the Chief Engineer ruled that placement of the stone staircase on the access permit area is prohibited absent a section 814 approval from APA; noting the Regulating District's reluctance to act as a co-applicant for such approval. On July 16, 2015 the former Executive Director denied Mr. Kunkel's appeal of the Chief Engineer's determination. Mr. Kunkel hired counsel who then secured a second resolution conference with the current acting Executive Director. Mr. Ferrara explained that he concurred with the Chief Engineer's determination, as endorsed by the former Executive Director, that the Adirondack Park Agency limits or prohibits certain construction and land development activities within the Adirondack Park and that as the agency with jurisdiction over the access permit area in question, the Regulating District would have to join in a request for a permit or variance from the APA restrictions. Mr. Ferrara explained that his decision to deny Mr. Kunkel's request to retain the stone steps is based on the Board's Resolution 06-20-05 through which the Board has limited the Regulating District's participation in Section 814 reviews to those activities with specific public benefit which are intended to serve the public good and are considered duly authorized public works projects of local, county, state, or federal governmental agencies or departments. On Mr. Kunkel's behalf, Mr. Poulin appealed Mr. Ferrara's decision resulting in the instant appeal to the Board.

Mr. Poulin noted that Mr. Kunkel had sought a work permit to replace wooden stairs located nearby on his access permit area because the existing wooden stairs were affected frequently by the weather and reservoir elevation changes. Mr. Poulin argued that the replacement non-mortared stone steps do not qualify as 'new land use and development' under the Adirondack Park Agency rules and that Mr. Kunkel had replanted trees as required by Regulating District staff. Mr. Poulin asked that the Board reconsider its position that the Regulating District seeks to avoid partnering in APA Section 814 applications which do not offer a public benefit and that the Board overrule staff's determination that the placement of the stone steps should be considered new land use and development. Mr. Poulin offered nine photographs depicting the stone steps, the rip rapped area where the old wooden steps were located, eroded areas showing the trees which had been removed, and several photos of neighboring lots showing stairs.

Chairman Finkle thanked staff and Mr. Poulin for their presentations and noted that the Board would take the matter under advisement; likely issuing a decision at the Board's April meeting.

REPORT OF THE ACTING EXECUTIVE DIRECTOR

Mr. Ferrara presented his report. He noted that staff completed and EFC has accepted the EFC funding application concerning the work at Conklingville Dam. Staff also continue to work on the Black River Area Apportionment. He reported that he and Counsel met with CSEA Local 1000 representatives and are prepared to advance a proposed agreement. Mr. Ferrara directed the Board's attention to the new web-casting equipment and briefly discussed the efforts to bring that new system on-line.

STAFF/COMMITTEE REPORTS

FINANCE COMMITTEE

RESOLUTION APPROVING BUDGET & FINANCIAL PLAN REQUIRED PURSUANT TO SECTION 2801 OF PUBLIC AUTHORITIES LAW

Committee Chairman Neddo presented the Board with a Resolution approving the Budget & Financial Plan which must be reported to PARIS pursuant to Section 2801 of the Public Authorities Law. Mr. Neddo explained that Public Authorities Law Section 2801 requires that a Budget & Financial Plan, based in part on financial data contained in the Regulating District's adopted 2017 Budget (as amended), must be posted to the Public Authorities Reporting & Information System (PARIS) no later than 90 days prior to the start of the Regulating District's fiscal year beginning on July 1, 2016. Mr. Ferrara explained the data to be recorded.

Mr. Berkstresser moved to adopt the Resolution to approve the Budget & Financial Plan. Mr. Hayes seconded it and the Resolution was unanimously adopted.

Mr. Leslie presented his report to the Board. Mr. Leslie reminded the Board that Erie Boulevard Hydropower, L.P. and the Boralex Companies appealed FERC's November 19th Order through the United States Court of Appeals for the D.C. Circuit. The NYS Attorney General has filed a 'Motion to Intervene' on the Regulating District's behalf. Both Erie and Boralex have filed their non-binding list of issues on appeal. FERC has filed its Notice of Appearance. Mr. Leslie also noted that the Regulating District continues to await Niagara Mohawk's draft of the comprehensive settlement agreement consistent with the terms of the executed term sheet.

Ms. Ruzycky presented her report to the Board. She noted that she submitted the 3rd Quarter Utilization report to Empire State Development noting that MWBE utilization was \$80,231.21 (37.1%) for the quarter. Year to date spend is 26.9%. She noted that current quarter MWBE utilization includes \$105,553.13 to Aztech Technologies, Inc. for the Conklingville Phase II subsurface Investigation and \$31,398.28 to VanBortel Ford for the purchase of a Ford F250 for Conklingville Dam. Ms. Ruzycky assured the Board that the Regulating District was prepared to comply with the 6% Service-Disabled Veteran-Owned (SDVOB) Act goal by the April 1st deadline.

Mr. Ferrara presented his report to the Board. He noted that, as estimated for his report prepared in early January, at the close of fiscal December 31, 2015, the general fund balances for the HRA and BRA were approximately \$1,575,891 and \$1,305,159 respectively. He noted that District transactional processing and reporting for the fiscal month of January 2016 was completed in an accurate and timely fashion. District bank reconciliations are complete through January 31, 2015. Mr. Ferrara noted that Boralex has paid the balance of its Headwater Benefits Assessment under protest.

Mr. Foltan presented the Chief Engineer's report to the Board. Mr. Foltan noted that reservoir releases and elevations are on target. Monthly total precipitation was near normal at

84%, 87%, and 123% of historic average at Indian Lake, Mayfield, and Conklingville respectively as of February 6th. Releases of water from Great Sacandaga Lake and Indian Lake measured 99% and 67% of historic average respectively. Precipitation was near average at Stillwater, Old Forge and Sixth Lake. Releases from Stillwater Reservoir averaged 93% of historic discharge. Mr. Foltan noted that staff continue to analyze the three bids for work on the Conklingville Dam Ice Sluice and Concrete Repair project.

Mr. Hodgson presented his report to the Board. He reported that the Sacandaga Field Office has processed nearly 700 renewal and 60 new permit applications. He reported on meetings with APA, DEC and permit holders regarding ground disturbance encroachments. Mr. Hodgson noted that staff installed a bubbler system for the McKeever river gauge and that work at Stillwater has moved from gate #5 to gate #4.

RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE REGULAR BOARD MEETING FOR APRIL 12, 2016

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, April 12, 2016 at the at the Dulles State Office Building, Watertown NY at 10:00 A.M. Chairman Finkle asked for a motion to set the meeting as indicated.

Mr. Neddo moved to adopt the Resolution setting the date, time and place of the next meeting. Mr. Hayes seconded it and the Resolution was unanimously adopted.

EXECUTIVE SESSION

Chairman Finkle called for a motion to adjourn to Executive Session to discuss personnel issues and collective bargaining. The Chairman invited the Acting Executive Director/Chief Fiscal Officer, General Counsel, Chief Engineer, Area Administrator, and Compliance Officer to join the Board. Chairman Finkle noted that the Board did not anticipate conducting business upon its return from Executive Session. Mr. Berkstresser advanced the motion, Mr. Neddo seconded. The Board adjourned to Executive Session at 10:56 A.M. and returned at 11:22 A.M.

ADJOURNMENT

There being no further business to come before the Board, Mr. Berkstresser moved to adjourn the meeting. Mr. Neddo seconded it. The motion was unanimously approved. The meeting adjourned at 11:22 A.M.

RESOLUTIONS

16-06-03 RESOLUTION APPROVING BUDGET & FINANCIAL PLAN REQUIRED PURSUANT TO SECTION 2801 OF PUBLIC AUTHORITIES LAW

Mr. Berkstresser moved to adopt the Resolution to approve the Budget & Financial Plan. Mr. Hayes seconded it and the Resolution was unanimously adopted.

**16-07-03 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE
REGULAR BOARD MEETING FOR APRIL 12, 2016**

Mr. Neddo moved to adopt the Resolution setting the date, time and place of the next meeting. Mr. Hayes seconded it and the Resolution was unanimously adopted.

Respectfully submitted,

Richard J. Ferrara,
Secretary/Treasurer

Mark M. Finkle
Board Chairman