

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

Northampton Town Offices

412 South Main Street

Northville, New York 12134

January 9, 2018

10:00AM

CALL TO ORDER

Chairman Mark M. Finkle called the meeting to order at 10:06 A.M.

ROLL CALL

Present: Board Chairman Mark M. Finkle; First Vice-Chair David W. Berkstresser; Second Vice-Chair Albert J. Hayes; and Board Member Kenneth F. De Witt; Executive Director Robert J. Smullen; General Counsel Robert P. Leslie; Chief Fiscal Officer Richard J. Ferrara; Chief Engineer Robert Foltan; Administrator John Hodgson; and Compliance Officer Stephanie Ruzycky.

Excused: Jeffrey Rosenthal; Anthony M. Neddo

Chairman Finkle recognized staff member Cheryl Jaquish on the occasion of her final Board Meeting before retirement.

MOTION TO ADOPT OR REVISE THE MEETING AGENDA

Chairman Finkle asked for a motion to revise the meeting agenda to reflect an executive session concerning the employment history of a particular member of the staff. Mr. De Witt made a motion to adopt the revised agenda. Mr. Hayes seconded. The Board unanimously approved the motion.

PUBLIC COMMENT

Chairman Finkle opened the floor to public comments; hearing none.

APPROVAL OF THE DECEMBER 12, 2017 REGULAR MEETING MINUTES

Chairman Finkle asked for a motion to adopt the December 12, 2017 regular meeting minutes. Mr. De Witt advanced the motion to approve the regular meeting minutes. Mr. Hayes seconded and the Board approved the motion by unanimous vote.

PERMIT APPEAL

At the Board Chairman's request, Mr. Leslie briefly outlined staff's position regarding alleged non-compliance with the access permit system rules concerning allowable stairway and stair landing configurations. Mr. Leslie referred to staff's October 3, 2017 statement with its attached exhibits; the permit holder's November 2, 2017 response through counsel; and staff's

November 20, 2017 Notice of Hearing. The permit holder, Edward Decker, stated his position. Board Member Jeffrey Rosenthal participated in the Board's discussion via remote link. The parties reached a mutually agreeable resolution through which the renewal of Mr. Decker's access permit (#15320) will be held pending submission of an approvable work permit application and the reduction of the size of existing deck to conform to current stairway and stair landing configurations. The parties agreed that the permit holder would consult with his contractor and propose a date for completion of the work permit application and the reduction in deck size; but also agreed that both matters should be resolved by the end of spring 2018.

REPORT OF THE EXECUTIVE DIRECTOR

Mr. Smullen presented his report. He reported that the US Court of Appeals for the DC Circuit denied Erie Boulevard Hydropower's petition challenging the Federal Energy Regulatory Commission's Order calculating dates for the commencement of headwater benefits assessments for the Hudson River Area. Mr. Smullen noted that the lease on District office space at 350 Northern Boulevard in Albany expires at the end of February and that, as a result, he plans to locate a portion of the Hudson River Area Office staff housed there in a smaller, less costly, space. Mr. Smullen noted his attendance at Governor Cuomo's State of the State address on Wednesday, January 3rd at the Empire State Plaza.

Mr. Smullen then turned to two administrative tasks associated with the creation of the 2018-2021 budget. At Mr. Smullen's request, Mr. Ferrara explained a reporting requirement imposed by the Authorities Budget Office and requested that the Board authorize submission of the 2019 Financial Plan to the ABO.

Mr. Berkstresser moved to authorize the Chief Fiscal Officer to submit the Regulating District's projected 2019 Financial Plan to the Authorities Budget Office. Mr. De Witt seconded and the Board adopted the motion by unanimous vote.

At Mr. Smullen's request, Mr. Ferrara presented a proposed budget development schedule identifying staff responsible for achieving activities/deliverables by set target dates.

Mr. De Witt moved to adopt the budget development schedule. Mr. Hayes seconded and the Board adopted the motion by unanimous vote.

STAFF REPORTS

Mr. Leslie presented his report to the Board. Expanding upon Mr. Smullen's report, Mr. Leslie noted that on September 25th a three judge panel of the U.S.C.A. DC Cir. heard oral argument in Erie Boulevard Hydropower, L.P.'s appeal of FERC's August 21, 2015 Order Calculating Dates for the Commencement of Headwater Benefits Assessments and FERC's November 19, 2015 Order on Rehearing and Dismissing Motion for Stay. On December 22, 2017, in a 3-0 decision, the court dismissed Erie's petition to vacate those orders. The court's opinion mirrored arguments advanced in the Regulating District's intervening brief; finding that FERC correctly calculated the headwater benefits and exercised equitable discretion to find that the 2006 settlement precluded offsetting Erie's prior state law based assessment payments as

credits against those HWB. The decision paves the way for continued HWB payments from Erie and, barring a successful petition to the US Supreme Court, closes the case; eliminating the potential refund or credit of nearly \$13 Million in principal/interest claimed by Erie. Mr. Leslie noted that the chosen vendor has supplied an abstract of title and draft title insurance policy in connection with the Regulating District's purchase of a parcel of land adjacent to the Hawkinsville Dam. Finally, Mr. Leslie reminded the Board and affected staff that Financial Disclosure Statements are due to the Joint Commission on Public Ethics no later than May 15, 2018.

Ms. Ruzycky presented her report to the Board. She noted that the projected 3rd Quarter utilization report is due January 17th and that the MWBE spend was \$14,907.39 against total expenditures of \$116,168.11 for the period. The Regulating District achieved 12.8% for the 3rd Quarter. The Service-Disabled Veteran-Owned Business (SDVOB) 3rd Quarter Reports are due January 31. The total queerly spend was \$1,227.24.

Mr. Ferrara presented his report to the Board. He noted that at the close of fiscal December 31, 2017, the general fund balances for the HRA and BRA were approximately \$3,442,916 and \$1,985,162 respectively. He noted that District's transactional processing and reporting are current. District bank reconciliations are complete through December 31, 2017.

Mr. Ferrara presented Board expenses for Mr. Berkstresser (\$621.60) and Mr. Rosenthal (\$112.35). Mr. De Witt made a motion to reimburse said expenses. Mr. Hayes seconded. The Board approved reimbursement of such expenses by unanimous vote.

Mr. Foltan presented the Chief Engineer's report to the Board. Mr. Foltan noted that the December average daily release from the Sacandaga Reservoir (Great Sacandaga Lake) was approximately 3,020 cubic feet per second (cfs). Precipitation during the month of December was below normal across the Great Sacandaga Lake watershed and the Indian Lake watershed. The monthly inflow to Great Sacandaga Lake and Indian Lake reservoir was approximately 53% and 67% of historic average, respectively. Monthly release of water from Great Sacandaga Lake and Indian Lake measured 115% and 73% of historic average, respectively.

The December average daily release from Stillwater Reservoir was approximately 390 cfs. Monthly total precipitation measured 59%, 57%, 52% of historic average at Stillwater, Old Forge, and Sixth Lake, respectively, as of December 13th. Precipitation in the month of December was below average at Stillwater, and below average at Sixth Lake and Old Forge. The monthly inflow to Stillwater Reservoir was approximately 53% of historic average. The inflow to Sixth Lake and Old Forge Reservoir totaled 0.08 and 0.22 billion cubic feet, respectively, in December. Release of water from Stillwater Reservoir averaged 88% of historic discharge.

Mr. Hodgson presented his report to the Board. He reported that he attended the yearly Dam Safety and EAP training for the BRA & HRA. Staff printed, stuffed and mailed approximately 4,775 renewal notices. Mr. Hodgson also reported that staff repaired 1,492 feet of eroded shoreline using existing beach stone using an excavator and the Bobcat. Site work involved tree and brush removal and transportation of equipment to various locations.

APPOINTMENT OF COMMITTEE MEMBERS

Chairman Finkle noted that he has asked Mr. Rosenthal to serve as Chair of the Governance Committee, Mr. De Witt to serve as Chair of the Finance Committee, and Mr. Berkstresser to serve as Chair of the Audit Committee.

RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE ORGANIZATIONAL AND REGULAR MEETING FOR MARCH 13, 2018

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, March 13, 2018 at the Utica State Office Building, 207 Genesee Street, Conference Room 205, 2nd Floor, Utica, New York 13501 at 10:00 A.M.

Mr. Berkstresser moved to adopt the Resolution setting the date, time and place of the next meeting. Mr. De Witt seconded and the Board adopted the Resolution by unanimous vote.

EXECUTIVE SESSION

Chairman Finkle called for a motion to adjourn to Executive Session to discuss personnel issues. Chairman Finkle invited the Executive Director and Chief Fiscal Officer to participate and noted that the Board will not likely conduct business upon its return from Executive Session. Mr. Berkstresser advanced the motion, Mr. De Witt seconded. The Board adjourned to Executive Session at 11:10 A.M. and returned at 11:25 A.M.

ADJOURNMENT

Chairman Finkle called for a motion to adjourn the meeting. Mr. Berkstresser advanced the motion. Mr. De Witt seconded. The meeting adjourned at 11:25 A.M.

RESOLUTIONS

18-01-01 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE ORGANIZATIONAL AND REGULAR MEETING FOR MARCH 13, 2018

Mr. Berkstresser moved to adopt the Resolution setting the date, time and place of the next meeting. Mr. De Witt seconded and the Board adopted the Resolution by unanimous vote.

Respectfully submitted,

Richard J. Ferrara,
Secretary/Treasurer

Mark M. Finkle
Board Chairman