

Subject: HRBRRD bills counties for flood control benefits
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Regulating district in need of revenue
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Gazette Reporter

SARATOGA SPRINGS — The Hudson River Black River Regulating District's board of directors voted unanimously Tuesday to approve \$4.45 million in flood control charges for five Capital Region counties.

The board's vote approved an apportionment that held Albany County liable for 39.3 percent, or \$1.7 million, of the flood control benefits provided by the Conklingville Dam, which created the Great Sacandaga Lake. Rensselaer County is liable for 21.6 percent of the benefits, \$961,675; Saratoga County 28.5 percent, \$1.3 million; Warren County 6.7 percent, \$297,216; and Washington County 3.9 percent, \$175,249.

The apportionment was changed from the bills originally sent to the counties in February because of a "numerical error," according to board members. After correcting the error, the bills for Albany County and Rensselaer County were increased and the bills for the other counties went down. State Department of Environmental Conservation Commissioner Pete Grannis will now need to approve the new apportionment before the counties are required to pay the bills.

The board did not discuss the grievances presented by attorneys from the five counties prior to the approval vote.

Waterford town Supervisor Jack Lawler attended the meeting, which was held at the Saratoga Springs Holiday Inn. He was outraged the board seemed not to even consider the counties' grievances.

"I was stunned the board members completely disregarded without even the pretense of discussion the many valid arguments and questions asked today. With this action all they've done is guaranteed themselves a long, expensive and bitter legal battle," he said. "I don't see any way the Saratoga County Board of Supervisors will pay this assessment unless every legal avenue is exhausted. It's fundamentally unfair."

Official grievance complaints from the counties have been posted on www.hrbrrd.com. During the grievance hearing Tuesday, several of the counties' attorneys, including Stephen Pechenik for Rensselaer County, made brief statements expressing their county's inability to afford the high flood control bills, which were unexpected and have never been levied against them before.

"My purpose in appearing before you today is to implore you to reconsider your assessment," Pechenik told the board. "Our counties do not have the money to merely write out a check to your district on your say so. Therefore, if you adopt this we are going to litigate and it's going to be an intensive, expensive and I do not believe fruitful venture for your district."

Before this year, HRBRRD never attempted to charge counties for flood control benefits, although it traditionally issued small flood control bills to some municipalities along the Hudson River including the cities of Albany, Rensselaer, Troy and Watervliet and the village of Green Island.

Things changed when a federal court ruled in 2008 that the district could no longer pass on the cost of its operating budget and the local property taxes it pays to downstream hydroelectric plants licensed by the Federal Energy Regulatory Commission. The ruling eliminated about \$4 million of the district's \$5.8 million Hudson River-area operating budget.

The new flood control bills are an attempt to replace those revenues. Regulating district Executive Director Glenn LaFave said the regulating district right now has only enough cash to pay its employees through August.

Saratoga County Attorney Mark Rider said he understands HRBRRD's dire revenue situation, but he believes the board has not complied with state law by billing only the closest five counties to the dam.

Rider gave a complete oral argument Tuesday, including a slide show, treating the board almost like a jury in a court trial. He argued state law requires HRBRRD's board to determine what the benefits of the dam are and who the beneficiaries are, and first charge New York state itself for the benefits before any other municipality. He said the board failed to do any of those things before charging the counties.

"The board has charged nothing to the state and the state is the biggest beneficiary. There's no question about that. The state has the widest benefit to the widest number of people," he said. "The other two beneficiaries that are required to be looked at are the public corporations and parcels of real estate that benefit from the dam. There hasn't been one parcel of real estate identified in this apportionment."

LaFave said HRBRRD's board does not believe it has the legal authority to assess for flood control benefits outside of the district's "petitioning area," which includes the five-county area of the Hudson River watershed, ending at the southern borders of Albany and Rensselaer counties.

Rider said he thinks the HRBRRD's board is wrong. He said the counties will now sue HRBRRD in state Supreme Court in either Albany County or Saratoga County.

LaFave said the flood benefits reapportionment formula used to calculate the bills divides the funds the district needs across the value of property in the five counties located within the Hudson River's 100-year flood plain. The district estimates that the land within the flood plain is worth a combined \$4.2 billion. The formula was developed by the district's own staff and is considered a temporary fix until a permanent method of assessing beneficiaries is established.

HRBRRD has hired Washington-based consulting firm American Economics Group to perform a permanent reapportionment study. That study isn't expected to be completed until July and won't be used until the regulating district sends out flood control bills for its 2010-11 fiscal year.

"[The counties] claim the state should be assessed, maybe a judge will deem that so. If this ends up in court, it's possible a judge will decide who can be apportioned or who should be apportioned," LaFave said.