

**Case 10-T-0139**

**Champlain-Hudson Power Express Project**

**Environmental Trust Governance Committee Meeting Minutes**

**August 13, 2013**

On August 13, 2013, Governance Committee for the Hudson River and Lake Champlain Habitat Enhancement, Restoration, and Research/Habitat Improvement Project Trust (the “Trust”) held the first regular meeting of the Governance Committee and to welcome the selected Trust Administrator, the Hudson River Foundation, in the above mentioned case.

The meeting took place at the NYS Public Service Commission, Third Floor, Albany, New York.

Preliminary Items:

Meeting was called to order at 10:00 a.m. and a quorum was obtained.

Attendees:

Jim de Waal Malefyt (DPS), Steve Blow (DPS), Vance Barr (DPS), Bill Wellman (Trout Unlimited), Dan Kelleher (APA), Matt Maraglio (DOS), Clay Hiles, Jim Lodge and Dennis Suskowski (HRF), Rick Chase (TDI), Ekin Senlet (TDI), George Pond (TDI) and Nancy Clarke (TDI).

DEC Region 3 at New Paltz – Hayley Carlock (Scenic Hudson), Dan Miller (DEC), Phillip Musegaas (Riverkeeper)

NYC VC Room 4<sup>th</sup> Floor – Mike Delaney (NYC)

Meeting minutes of June 28<sup>th</sup>, motion to approve, moved, 2d. All in favor, aye – all ayes.

Minutes approved of June 28, 2013 approved.

Agenda Items:

1. Discussion of the TA Agreement issues and items. One immediate concern was the Trust Agreement b/t Certificate Holders and the bank, with input from TA.
2. Update from Certificate Holders on Trust Agreement, which is to be filed on Friday, August 16<sup>th</sup>:

CH and TA have contacted JP Morgan. A draft Agreement will be filed notifying Commission of the chosen Bank. Once filed, the question is whether it constitutes a filing under

Cert. Conditions. We can file and supplement later. We will file a status report with the Commission and attach a draft Agreement as an Appendix. We are still working with JP Morgan re: language. Bank is the TA as well as Trustee. JP has a form that they will provide. The bank has been slow getting back. HRF will reach out again today.

Discussion of TA Agreement:

We know what we want, but maybe not everything to be in the Agreement. B/T Governance Committee and Trust Administrator? Thoughts? Clay – Very pleased and grateful re: selection. HRF has been very focused. Some things were left inconclusive and HRF still needs discussion with GC. How to proceed and get to where they need to be? Would be helpful for HRF to know how much time today – conference has hard stop at 1:30 p.m. today. They are here for us all day if needed. Are we all on the same page re: reaching approvals? SB – there will be a total of 3 agreements, GA establishing Governance Committee and how we govern. Controller's office called to see how things are going. Agreement was approved and they were happy with that. Don't need to approve the contract. Next, we file Trust Agreement b/t Trustee Bank and Certificate Holders, with TPA. The TA Governs monetary relationship b/t Trustee and Cert. Holder. TA Agreement is b/t Governance Committee and TA to say how the program will be carried out. Constraints on TA Agreement because of Cert Conditions, Governance Agreement and Trust Agreement. There will be another agreement to cement relationships.

GP – fundamental agreement, not total agreement. There will be an ongoing dialogue. This is the foundational doc of our relationship.

HRF – very eager to get going. Question 1 – the closing is expected to happen in Q1?

GP – we need ACOE Permit and DOE Presidential Permit, which need Environmental Impact analysis. NYISO interconnection could also affect the closing. Currently targeting Q1 2014.

Vance - DOE and Army Corp follow NEPA timeline.

GP – Governance Committee is an existing entity and we are ready to enter into an agreement with HRF.

SB – the GC can work on drafts b/t now and then.

GP – we want all docs in place before closing.

HRF – how should we proceed to facilitate?

GP – Business plan should not be part of basic agreement. It can be proposed from time to time for review and approval by GC. First focus on laying of foundation.

SB – changing biz plan will that alter anything in the agreement so we would have to provide for alternatives in agreement? Like pricing for example, will a change result in a different cost. If so, it would have to be provided for in agreement.

Mike D – reading bylaw info, seems that we could lift most language from Governance Agreement terms.

SB – as long as consistent with GA. We had some terms i.e. succession planning to address with HRF.

VB – baseline for starting would be priority projects, TA ability to get going prior to financial close.

GP – yes. Other concern (by Patty?) that we should challenge HRF re: leveraging funds.

HRF – Clay will talk with Patty D. when she returns.

ES – we should discuss communications.

SB – we can discuss drafts, but not have a meeting with a majority of members. We can do briefings and drafts. It would be helpful to have HRF meet with different member and get feedback and address concerns. We won't vote on agreement until it was closer to financial close.

BW – area of concern – UVM and Lake Champlain Research institute would like to input projects. There is room for other projects and this would be significant on how HRF handles funding and examination of projects not on the table.

HRF – Useful and essential to them, would be to put them in touch with interested parties. We can get in touch with HRF re: any questions to come up with an operating system.

VB – HRF can solicit on their own.

HRF – Research and restoration of Hudson River and Lake Champlain, HR Estuary Program, NY/NJ Estuary Program, Goals and Priorities of HRF and the Trust with all rules, etc. They all build on each other. We have common goals. Their job is to make it all work together and leverage against each other. All the pieces need to fit together. Next funding cycle – how does it relate to our projects? We need to discuss with regard to open meeting rules. They should start coming up with drafts and gear up to hit the ground running.

GP – there are a lot of moving parts. Permits, Presidential and Army Corp are separate. DOE is lead agency for Presidential permit.

HRF – once the Trust is funded, they want to be ready and have a strategy in place. It isn't high risk for them to get started. They want to be ready to utilize funds (\$2.5 M) while waiting for the big money. How do we want to utilize time between now and COD (3.5 yrs.)

SB – how is HRF going to work in Lake Champlain and do the priority projects? And how in the Hudson River – with your own personnel or other organizations? Another thing – focusing on in water projects, not simply research. How will that be done?

HRF – we have contacts in Lake Champlain, but wanted to have this meeting before reaching out. It's an “organized scramble.” They have a starting point for the Hudson River.

BW – knows players for Lake Champlain – Lake Champlain Basin Program, DEC, UVM, Maritime Museum, fisheries biologists, etc.

HRF – these contacts will lead to others.

VB – NYS SHPO also. Historical and archeological things need to be looked at.

HRF – timing is very important to them. They are very excited to be working on projects now. Two phases – some projects are very expensive and can't proceed until close. How should we proceed to reach the long-term objectives? How much money is really available and which projects should take priority? They would need more guidance on this initial period. They would like a 'refinement' of the priority projects. There are periods of uncertainty regarding time and amounts of money. Should we seize this moment re: climate change? Oyster bed restoration – should that go hand in hand with what's going on w/Tappan Zee bridge project?

SB – you have an idea of cost and timing for projects, so it would be helpful for you to suggest refinements given what you know now that the \$2.5M will be the only money in the Trust for 3-4 years. Is other \$ available from other sources? Can you partially fund?

HRF – all points of view must be accommodated. They accept the leadership role here. There is more than one way to implement and this needs to be worked out. They have 30 yrs. experience and have learned how to do things such as set up technical working groups, but would like out feedback. Tech working group members cannot be compensated. They would like to set up a committee structure that is not in violation of the Trust but is still effective.

GP – the GA allows us to establish tech working groups and sub-committees.

MD - Sub F provides for 2 or more committee members in a sub-committee.

HRF – we should come up with some ideas and decide if they fit with the open meetings law. This is the least amount of \$ for the longest time and they are eager to get going. Estuary programs may have funds. The road map has been to restore ecosystems and is laid out by the Trust.

BW – are you comfortable with preparing the initial draft?

HRF – yes. We need to work together to accommodate the needs of the moment.

SB – we were more comfortable with a more hands on approach because the agencies are busy with other responsibilities. His recollection is that we want to be involved, but we don't need to be the active participant with HRF being passive.

PM – discuss further about timing, how much work and pre-planning can HRF get done b/t now and close? Do we need to think more about using the \$2.5M to set up projects?

SB – will there be a priority project that can be funded with the money or will it be taken up with 'administration and planning' and setting up for long term?

HRF – would like to get started on projects. They will not 'hoard' money unless at our suggestion. How do they operate?

VB – order of projects was not considered and we would take their input re: same.

DEC – list of projects supports the science and implementation of the restoration projects. Research should be done over the first 5 years. We need to have a discussion about re-prioritizing projects.

MD – echoes sentiment. Priority projects were the product of lengthy negotiation. Recognize gap b/t initial funding and second infusion.

RC – projects may need long term maintenance. Do we set aside money for long-term needs and maintenance?

JDWM – that is typical.

HRF – it would be helpful if we could share some earlier write-ups and cost estimates. They assume numbers had budget lines. Detail would be very helpful for them to understand our expectations.

SB – DEC may have more detail.

GP – talk to Betsy, Dan, Patty and Larry Wilson.

HRF – Lake Champlain projects could be relatively modest to very expensive. Can we give guidance on how to balance the three geographic areas for projects?

SB – depends on whether a project is ready to go.

HRF – who has authority to make decisions? Over the next several weeks they will be working to get ready – they may need to spend \$. Who makes decision whether \$ is available?

SB – you were willing to get started ahead of time. ‘Prudently incurred’ expenses will be covered out of the Trust.

GP – maybe we need to put together a brief proposal, submit to GC and approve.

SB – technically we meet a minimum of 4 times a year. This is the first regular meeting. The Special meeting could be counted for this year. It won’t be difficult to meet in October and December.

VB – should we establish a fiscal year?

HRF – Clay will check their calendars and send availability in October and December.

SB – tentatively we will plan on Oct/Dec meetings to meet the 4 meeting per year requirement. Agenda – discuss various versions of draft.

BW – it would be important politically to not exclude any geographic region.

JDWM - look at relationship of projects to construction impact.

GP – the route may change, we may have to amend certificate, etc.

VB – that’s the beauty of the process, which involves input from multiple sources.

HRF – what are the rules and what ‘s feasible? Are there documents they can review?

SB – Certificate, GA, DEC may have docs they prepared re: projects, CNY may also. Proposals and details do not exist.

HRF – memos, correspondence that would be helpful?

MD – we may have some docs generated and will take a look.

MM – are any of the Hudson River projects already ongoing that may be advanced with a small infusion of \$?

HRF – are any of the projects overlapping TZB mitigation projects?

DEC – no.

HRF – overlap with Sturgeon tracking?

DEC – we will have to take a look.

HRF – shoreline restoration in NYC post-Sandy, some of our oyster work has progressed a bit and been done with TZB. Some survey work may overlap.

HRF – we may be able to partner/leverage with NJ/EPA \$\$\$. Dept. of Interior announced \$100M for science projects and there is an opportunity for leveraging, as well other opportunities in Harlem River.

SB – we will get potential dates in Oct/Dec. HRF will start drafting, start consultation with members of GC. Anything else?

VB – the GC agreed that hands-on approach is better. We are looking for a plan and strategy from HRF that we can all work with.

HRF – Steve are you the point of contact? Don't worry about Open Meetings law if it regards scheduling.

SB – talk to me or Cert Holder.

HRF – meetings take place at PSC?

SB – yes, we need to do videoconferencing and webcasting because of Executive Order. These are public meetings that the public can attend. Webcasting link won't be known until a few days prior to meeting. We give 14 day notice and supplement with link. We could meet in NYC at Commission Offices if need be. PSC is the main location.

Everyone email Nancy will availability for next meeting dates.

JDWM – motion to end meeting, all in favor.

Next meeting date has not been scheduled. October dates to be provided to Nancy Clarke of TDI.

Meeting was adjourned at approximately 12:30 p.m.