



MINUTES
NEW YORK STATE CANAL CORPORATION
BOARD MEETING NO. CC-170
November 17, 2010

Minutes of a meeting of the New York State Canal Corporation, held in the Board Room at Administrative Headquarters, 200 Southern Boulevard, Albany, New York 12209.

The meeting began at 12:00 p.m.

There were present:

Chairman John L. Buono
E. Virgil Conway, Board Member
Donna J. Luh, Vice Chair
J. Donald Rice, Board Member
Brandon R. Sall, Board Member
Richard N. Simberg, Board Member

Constituting a majority of the members of the Thruway Authority Board.

Board Member Dr. Jose Holguin-Veras was absent from the meeting.

In addition, there were present the following staff personnel:

Michael R. Fleischer, Executive Director
John Barr, Director, Administrative Services
Donald Bell, Director, Operations and Maintenance
John Bryan, Chief Financial Officer

William Estes, General Counsel
J. Marc Hannibal, Director, Audit and Management Services
Carmella Mantello, Director of Canal Corporation
Major Robert C. Meyers, Troop T
Thomas Ryan, Director, Office of Public Affairs
Richard Garrabrant, Division Director, Syracuse Division
Ted Nadratowski, Chief Engineer
Thomas Pericak, Division Director, Buffalo Division
Michael Loftus, Deputy Division Director, Albany Division
Stephen Grabowski, Acting New York Division Director via video conference
Catherine Sheridan, Acting Deputy Director for Canal Maintenance, Operations & Engineering
Wendy Allen, Director, Management and Planning
Anthony Kirby, Director, Real Property Management
Dorraine Steele, Director, Fiscal Audit and Budget
Karen Osborn, Budget Manager
Harry Lennon, Senior Investigator
Tracie Sandell, Assistant Director, Audit and Management Services
Jonathan Gunther, Assistant Counsel
Lawrence Norville, Chief Compliance Officer
Judy Gallagher, Assistant Secretary

Also in attendance:

John Armstrong, New York Network

Chairman Buono noted that he, Mr. Conway, Ms. Luh, Mr. Rice, Mr. Sall and Mr. Simberg had received and reviewed the Agenda submitted for consideration at this meeting and were prepared to act on each of the Items.

Chairman Buono called the meeting to order.

Ms. Gallagher recorded the minutes as contained herein (public notice of the meeting had been given).

Item 1 by Board Secretary (Appendix A)
Approval of Minutes of Board Meeting No. CC-169

On the motion of Mr. Simberg, seconded by Ms. Luh, without any objections, the Board approved the minutes of Meeting No. CC-169 held on September 22, 2010, which were made available to the Board Members as part of the Agenda.

Item 2 by Mr. Bryan (Appendix B)
Approval of the 2011 Proposed Budget for the New York State Canal Corporation

Mr. Bryan reported that he gave a combined presentation at the Thruway Board Meeting and the report is the same as follows:

Mr. Bryan presented this item to the Board on the advice of the Finance Committee and it seeks the full Board's approval of the Authority's Revised 2010 Financial Plan, the Proposed 2011 Budget and the Revised Multi-Year Financial Plan.

As with the 2010 Budget that was originally adopted by the Board in November of 2009, the Revised 2010 Financial Plan includes revenue, expense and fund deposit adjustments that will result in a balanced budget for the year. The impact that slow and deliberate national economic growth has had on passenger and commercial traffic throughout the year has constrained revenue growth. However, the continuation of operating expense reductions, principally an extension of strict hiring controls and other actions that have been put in place over the past 4 or 5 years, and the impact of the Early Retirement Incentive Program, will allow the Authority to remain in good financial health through the end of 2010.

The Proposed 2011 Budget is based on the assumption that we will begin to see a slightly stronger economic growth that will allow traffic and revenues a change to show some better, albeit small, growth. In addition, we expect Federal aid that is allocated to the Thruway to continue to remain at very low levels – representing only 0.4 percent of the sources that will fund our 2011 budget. To help meet the challenges of low federal aid and a slow and protracted economic recovery, the Proposed 2011 Budget includes a continuation of ongoing strict hiring controls and other enhanced cost containment measures. In fact, last week Mr. Fleischer re-issued his Executive Instruction that affirmed the Authority's cost containment program will extend through 2011.

The Proposed 2011 Budget also includes the elimination of 170 full time, permanent positions, 89 which were vacated as a result of the transfer of I-84 to the NYS Department of Transportation and 81 that were made vacant and unfunded due to the Early Retirement Incentive Program that the Authority offered this past summer. As a result of these staffing reductions, full-time, permanent staffing at the Authority has been reduced by 714 positions since 1995, representing a decline of 17 percent.

As a result, we anticipate the total combined operating budget for the Thruway and Canal to grow by 3.5 percent, respectively. However, if we adjust for mandated, non-discretionary costs, operating expenses for both the Canal and the Thruway are expected to only increase by 0.7 percent, respectively.

As noted in the Budget Book, an increase in Capital Program expenses estimated for 2011 make up the overwhelming growth in the overall Authority's budget. There are a number of important capital projects which will be funded in the Proposed 2011 Budget that are designed to retain the overall good rating condition of the Authority's roads and bridges, expand capacity and reduce congestion as well as other service improvements.

While Mr. Nadratowski may go into greater detail when the Board considers the 2011 Contracts Program later this morning, I thought it be worth mentioning a few:

- Continuation of additional deck replacement and other repairs on the Tappan Zee Bridge in the New York Division (around \$150 million);
- Rehabilitation of pavement between Exit 17 and Exit 18 in the New York Division (around \$30 million);
- Pavement reconstruction and capacity improvements between Exit 23 and 24 in the Albany Division (around \$115 million);
- Pavement reconstruction and rehabilitation of 11 bridges between Exit 37 and Exit 39 in the Syracuse Division (\$70 million);
- Pavement reconstruction between Exit 47 through to the West of Batavia in the Buffalo Division (\$150 million); and
- Deck rehabilitation of the South Grand Island Bridge in the Buffalo Division (\$21 million);

The 2011 Proposed Budget also contains an update to the Authority's Multi-Year Financial Plan, which shows that:

- Debt service coverage is expected to remain above the minimum levels established in the Authority's Fiscal Management Guidelines and bond resolution in 2010 and 2011 – offering a great opportunity for the Authority to preserve its current high, A grade credit rating;
- No reductions in the Capital Program are required to retain a balanced financial plan in 2010 and 2011. The Authority will continue to have the resources to provide safe and efficient transportation services to our patrons and to invest in its infrastructure, with nearly \$600 million in lettings scheduled from now until the end of 2011; and
- Sufficient cash resources will be available to maintain a balanced budget and allow pay-as-you-go financing in the Capital Program to remain around 20 percent in 2010 and 2011.

Before we ask for a vote on the budget, I would like to briefly thank the Chairman and the Board for their involvement and input to the budget-making process this year. I have to say, that in general, staff feels that the leadership and guidance the Board provides on a daily basis has certainly helped make the Authority a much more responsive, efficient and effective organization.

After full discussion, on the motion of Ms. Luh, seconded by Mr. Conway, without any objections, the Board adopted the following resolution:

RESOLUTION NO. 528

**APPROVAL OF THE 2011 PROPOSED BUDGET FOR
THE NEW YORK STATE CANAL CORPORATION**

RESOLVED, that the Canal Corporation's proposed Budget for the fiscal year 2011, submitted by the Executive Director and the Chief Financial Officer, be, and the same hereby is, approved and funded in accordance with the attached Exhibit I, and be it further

RESOLVED, that the Executive Director or his designee be, and he hereby is, authorized to make such expenditures as set forth in this Budget, subject to compliance with Authority policies and procedures, and to make such internal adjustments and transfers within the Authority Budget as are necessary and proper,

and to make any other adjustment with the concurrence of the Board, and be it further

RESOLVED, that a copy of the Budget approved herein, when printed in final form, be attached to these minutes and made a part thereof and be submitted to the New York State entities in accordance with Section 2801 of the Public Authorities Law, and be it further

RESOLVED, that this resolution be incorporated in the minutes of this meeting.

Item 3 by Mr. Nadratowski (Appendix C)
Approving the 2011 Canal Contracts Program

Mr. Nadratowski advanced this item to the Board on the advice of the Finance Committee and it seeks the full Board's approval of the Canal Corporation's 2011 Contracts Program for the rehabilitation and reconstruction of Canal facilities and the revitalization program. The Canal Corporation's estimated 2011 cash flow for the program amounts to \$24,465,274. This amount includes the cost of construction contracts, contingencies and engineering.

Several of the larger projects in the proposed program include a \$13.2 million contract to rehabilitate the Utica taintor gate and dam in Oneida County in the Syracuse Division, and a \$1.4 million repair of 7 Erie Canal culverts in Orleans County in the Buffalo Division.

This program will be funded using a combination of Thruway Revenues and 2005 Transportation Bond Act funds. In order to administer the 2011 Contracts Program and expedite the awarding of contracts, this Board resolution authorizes the Executive Director, Chief Engineer, and Chief Financial Officer to take various actions as outlined in the resolution for this item. The authorizations provided for in the 2011 resolution are the same as those in the 2010 Contracts Program item.

After full discussion, on the motion of Mr. Conway, seconded by Mr. Simberg, without any objections, the Board adopted the following resolution:

RESOLUTION NO. 529

APPROVING THE 2011 CANAL CONTRACTS PROGRAM

RESOLVED, that the 2011 Contracts Program for Canals and related facility projects be, and the same hereby is, approved, and be it further

RESOLVED, that the Chief Engineer be, and hereby is, authorized:

- A. to prepare and approve Official Proposals, Plans and Specifications, Engineer's/Architect's Estimates of Cost and Contract Documents for such projects as are tabulated in the 2011 Contracts Program;
- B. to hold the respective Engineer's/ Architect's Estimate of Cost for such contracts confidential;
- C. to advertise for receipt of bids for those projects which are tabulated in the 2011 Contracts Program; (1) when the final Engineer's/Architect's Estimates of Cost are equal to or less than the project's budget allocations, and (2) when the final Engineer's/Architect's Estimate of Cost does not exceed the project's budget allocation by more than \$75,000 for projects with budget allocations of up to \$500,000 or by more than 15 percent for projects with budget allocations that exceed \$500,000 provided confirmation is received from the Department of Finance and Accounts that sufficient funds are available in the 2011 Contracts Program, or (3) when the final Engineer's/Architect's Estimate of Cost exceeds the project's budget allocation beyond the limits in (2), provided that he receives prior approval of the Executive Director and confirmation from

the Department of Finance and Accounts that sufficient funds are available in the 2011 Contracts Program;

D. to award any such contract to the lowest responsible bidder when it is deemed to be an acceptable bid, and:

1. the low bid is equal to or less than the Engineer's/Architect's Estimate; or
2. the low bid exceeds the Engineer's/Architect's Estimate by up to \$75,000 on contracts up to and including \$500,000, or 15 percent on contracts over \$500,000 and confirmation is received from the Department of Finance and Accounts that, by virtue of bid savings and/or deferrals, sufficient funds are available for the additional difference between the Estimate amount and the low bid; or
3. the low bid exceeds the Engineer's/Architect's Estimate by up to \$100,000 on contracts up to and including \$500,000, or 20 percent on contracts over \$500,000, provided that he receives prior approval of the Executive Director and confirmation from the Department of Finance and Accounts that, by virtue of bid savings and/or deferrals, sufficient funds are available for the additional difference between the Estimate amount and the low bid; or
4. the low bid exceeds the limits of (1), (2) or (3) provided he obtains Board authorization for the necessary additional funds;

E. to reject bids for any such contract which are determined to be not in accordance with bid documents and specifications thereof, or not in the Corporation's best interests, or which are submitted by bidders determined to be not responsible. In these cases and where no bids are received, he may again

- advertise for receipt of bids pursuant to paragraph C;
- F. to approve contingent or extra work on such construction contracts, when necessary, provided the additional cost shall not exceed the bid price by more than \$150,000, for contracts bid up to and including \$1,000,000, or 15 percent for contracts bid in excess of \$1,000,000 and to approve additional extra work, beyond that authorized above with the prior approval of the Executive Director, provided the final cost of the respective contracts shall not exceed the total bid price by more than \$200,000, for contracts bid up to and including \$1,000,000, or 20 percent for contracts bid in excess of \$1,000,000; and to adjust and determine disputed contract claims in accordance with contract documents;
 - G. to enter into, extend, and modify project specific agreements or multi-project agreements with localities, utility companies, railroads, and/or others as may be necessary in order to facilitate the administration, award, progress and completion of such contracts;
 - H. to acquire and grant such property interests (fee title, easements, etc.), in accordance with the provisions of the Corporation's Real Property Management Policy, as may be necessary for implementation of the 2011 Contracts Program; provided that the total amount of acquisitions or the amount of grants for any one project shall not exceed \$150,000 each without Board authorization;
 - I. to execute engineering agreements approved by the Board, or where otherwise authorized by the Executive Director, including amendments thereto, for services relating to projects included in the 2011 Contracts Program;
 - J. to approve a supplemental agreement, for expenditure of

additional funds in furtherance of a Board approved engineering agreement, including any Board approved supplemental agreement, provided that the amount of such additional funds does not exceed \$150,000 in the case of agreements up to and including \$3,000,000, or 5 percent, in the case of agreements over \$3,000,000;

K. to approve, with the prior approval of the Executive Director, a supplemental agreement for expenditure of additional funds in furtherance of a Board approved engineering agreement, including any Board approved supplemental agreement, provided that the amount of such additional funds does not exceed 25 percent including any additional funds authorized in paragraph J; and provided further, when such supplemental agreement includes additional new design or construction inspection tasks, such approval must be based upon the following: it is determined that the assignment of the additional tasks is in the best interests of the Corporation when considering the proximity of the additional tasks to the ongoing tasks, or it is determined to be in the best interests of the Corporation to expedite the additional tasks through such assignment, or it is determined that significant savings to the Corporation will result through the assignment of the additional tasks;

L. to exercise all powers reserved to the Corporation under the provisions of any contracts or agreements executed pursuant to this item, manage and administer any such contracts or agreements, amend the provisions of any such contracts or agreements consistent with the terms of this item and in accordance with other applicable Board authorizations, and suspend or terminate any such contracts

or agreements in the best interests of the Corporation, and be it further

RESOLVED, that any powers granted to the Executive Director by the Board to approve expenditures or to increase expenditures for contracts and agreements shall be in addition to those powers granted under this resolution and any action taken pursuant thereto shall be deemed to be authorized under this resolution, and be it further

RESOLVED, that in accordance with the other powers delegated herein, the Chief Engineer shall be, and hereby is, authorized to make all necessary decisions pursuant to the State Environmental Quality Review Act (SEQRA) with relation to the 2011 Contracts Program, and be it further

RESOLVED, that quarterly reports shall be submitted to the Board by the Chief Engineer on all awarded construction contracts; on approved additional funds for construction contracts over and above the contingency funds; on all engineering agreements and supplemental engineering agreements, approved pursuant to the provisions of this resolution, and be it further

RESOLVED, that the Chief Financial Officer be, and he hereby is, authorized:

- A. upon award of such contracts to return such funds budgeted for such projects in the respective 2011 Budgets which are otherwise not required for expenditure during 2011 to its proper fund in accordance with acceptable budgeting and accounting procedure;
- B. to monitor total cash expenditures for the 2011 Contracts Program to insure that they do not exceed \$24,465,274 during the 2011 Fiscal Year;
- C. to return bid checks submitted for such contracts to unsuccessful bidders; and to make necessary adjustments in

the respective 2011 approved Budgets as required by implementation of any part of the Resolution relative to the 2011 Contracts Program, and be it further

RESOLVED, that the Executive Director or Chief Engineer be, and they hereby are, authorized to execute such contracts, including any amendments thereto, provided such amendments do not increase the authorized contract value beyond that which is otherwise authorized, and be it further

RESOLVED, that the provisions of this resolution shall be deemed to supercede all other inconsistent Corporation/Thruway Authority policies and procedures to the extent necessary to implement the approved 2011 Contracts Program and for no other purposes, and be it further

RESOLVED, that this resolution be incorporated in the minutes of this meeting.

Item 4 by Mr. Nadratowski (Appendix D)
Approving Supplemental Agreement No. 2 to D213575 with Bergmann Associates for Design Services Relative to the Rehabilitation of the Utica Taintor Gate and Dam in the Syracuse Division

Mr. Nadratowski presented this item seeking Board approval to designate Bergmann Associates D/B/A Bergmann Associates Architects, Engineers, Landscape Architects and Surveyors to complete the final design for the rehabilitation of the Utica taintor gate and dam in the Syracuse Division. At meeting number CC-145 on March 21, 2007 the Board approved Engineering Agreement D213575 with Bergmann Associates with a Maximum Amount Payable of \$900,000. Supplemental Agreement No. 1 was executed in February of 2008 in order to add a subconsultant to the agreement. The Supplemental Agreement No. 1 did not change the Maximum Amount Payable.

At this time, Authority staff is requesting approval of Supplemental Agreement No. 2 in the amount of \$284,000. As explained in the attached memorandum dated October 20, 2010 the supplemental is needed for additional design effort to address poor river bed conditions and to

implement full automation of the taintor gates to improve the controlled release of water and reduce the potential for flooding. The revised Maximum Amount Payable is \$1,184,000 which is 9 percent of the \$13.2 million construction cost estimate. Sufficient funding for this supplemental is provided for through item C57.1 in the 2011 Canal contracts program.

After full discussion, on the motion of Mr. Conway, seconded by Ms. Luh, without any objections, the Board adopted the following resolution:

RESOLUTION NO. 530

APPROVING SUPPLEMENTAL AGREEMENT NO. 2 TO D213575 WITH BERGMANN ASSOCIATES FOR DESIGN SERVICES RELATIVE TO THE REHABILITATION OF THE UTICA TAINTOR GATE AND DAM IN THE SYRACUSE DIVISION

RESOLVED, that the proposed Supplemental Agreement No. 2 to D213575 with Bergmann Associates, 220 First Federal Plaza, 28 East Main Street, Rochester, New York 14614, for an additional sum of \$284,000 (Item C57.1 of the 2011 Canal Contracts Program), be, and the same hereby is, approved, and be it further

RESOLVED, that the revised Maximum Amount Payable for this Agreement (D213575) be \$1,184,000, and be it further

RESOLVED, that the Chief Engineer or his designees shall have the authority to exercise all powers reserved to the Authority under the provisions of the Supplemental Agreement, manage and administer the Supplemental Agreement, amend the provisions of the Supplemental Agreement consistent with the terms of this Item and in accordance with the 2011 Canal Contracts Program Resolution and other Board authorizations, and suspend or terminate the Supplemental Agreement in the best interests of the Authority, and be it further

RESOLVED, that this resolution be incorporated in the minutes of this meeting.

Item 5 by Ms. Mantello and Mr. Bryan (Appendix E)
Authorizing the Abandonment of Approximately 9.079+ Acres of Canal Land Located in the Town of Fort Edward, Washington County and Authorizing Their Sale to the Town of Fort Edward

Ms. Mantello presented this item seeking Board approval to authorize the sale of canal land to the Town of Fort Edward in the amount of \$40,000. The Town has requested to pave and widen the road bed for use as a public Town road. The property was appraised at \$40,000 and the Authority/Canal Real Property office concurs with the appraisal. Canal staff has determined that we no longer need this land. The contracting office determined that a competitive bid was not required and SEQR has been done.

Mr. Sall asked if the Town is picking up any of the transactional costs. Ms. Mantello replied that the Town is paying for the appraisal. Mr. Sall asked if there was a way to determine getting any costs back. Mr. Bryan replied that it is hard to come up with an algorithm to determine what fees should be charged. Mr. Estes reported that the sale of land reduces our liability and clears encroachments.

After full discussion, on the motion of Mr. Conway, seconded by Mr. Sall, without any objections, the Board adopted the following resolution:

RESOLUTION NO. 531

AUTHORIZING THE ABANDONMENT OF APPROXIMATELY 9.079± ACRES OF CANAL LAND LOCATED IN THE TOWN OF FORT EDWARD, WASHINGTON COUNTY AND AUTHORIZING THEIR SALE TO THE TOWN OF FORT EDWARD

RESOLVED, that approximately 9.079± acres of Canal land located in the Town of Fort Edward, County of Washington are no longer useful or necessary as part of the Barge Canal System, as an aid to navigation thereon, or for Barge Canal purposes, and be it further

RESOLVED, that following transmittal of notice of proposed abandonment to the CRC, the Office of Canal Maintenance and Operations shall prepare an Official Order abandoning the land for canal purposes, together with a map and description of such lands for review and execution by the Director of Canals, and be it further

RESOLVED, that the recommendation for issuance of a Negative Declaration based on an environmental assessment of the proposed action completed in accordance with the provisions of the State Environmental Quality Review Act (“SEQRA”) be, and hereby is, approved, and be it further

RESOLVED, the Chief Engineer, or his designee, be, and he hereby is, authorized to sign the SEQRA Environmental Assessment and issue the Negative Declaration, and to distribute any required notices on behalf of the Canal Corporation Board with relation to this action, and be it further

RESOLVED, that the sale of said approximately 9.079± acres of land by quitclaim deed to the Town of Fort Edward for \$40,000 be, and hereby is, approved, subject to such other legal, financial, engineering and other terms as may be deemed by the Executive Director, the Director of Canals or the General Counsel, to be in the best interest of the Canal Corporation and consistent with the intent of this agenda item, and be it further

RESOLVED, that such sale shall be conditioned upon the payment of certain costs incidental to the conveyance of real property, and be it further

RESOLVED, that the Corporation’s Contracting Officer determined that the Property may be sold by negotiation without public advertising because such disposal falls under Section 2897 (6) (c) (iv) of the Public Authorities Law, and Section IV. (I.) (3.) of the Canal Real Property Management Policy, and that the sale of

the Property on the terms recommended in the agenda item complies with all applicable provisions of law, including Article 9, Title 5-A of the Public Authorities law, and with the Canal Real Property Management Policy, and be it further

RESOLVED, that following preparation of the Official Order of Abandonment, the Executive Director be, and he hereby is, authorized to execute such order of abandonment, and be it further

RESOLVED, that the Executive Director, or his designee, be authorized to execute a contract of sale, and all other documents necessary for closing of title, and be it further

RESOLVED, that the Executive Director, the Director of Canals, the Chief Financial Officer, and the General Counsel be, and the same hereby are, authorized to take all actions necessary to implement this Board item, and be it further

RESOLVED, that this resolution be incorporated in the minutes of this meeting.

OTHER BUSINESS

Ms. Mantello reported that the Canal officially closed for the season on Monday (November 15) at 5:00 p.m.

Mr. Simberg asked about the status of the Dam Safety Program. Ms. Mantello reported that the budget passed by the Board includes \$700,000 for dam safety inspections in compliance with DEC's regulations and mandated program. An RFP went out for engineering services. Emergency action plans are in place and elevated. Mr. Estes pointed out that the definition of high hazard does not mean the gates are in danger of falling down; the population below the dam, if it were to fail, would be at risk.

ADJOURNMENT

There being no further business to come before the Board, without any objections, on the motion of Mr. Sall, seconded by Mr. Simberg, the meeting was adjourned at 12:10 p.m. and went into an Executive Session.

Judy A. Gallagher
Assistant Secretary

Note: Webcasts, which include dialogue of Authority/Corporation Board Meetings, are available on the Thruway Authority website 48 hours after such meetings occur and remain on the website for a period of 4 months.