

## Schools to sue county for river district tax funds

By Jason Subik

**GREAT SACANDAGA LAKE** — Several school districts around the Great Sacandaga Lake are preparing to sue Fulton County for not making the districts whole for unpaid taxes from the Hudson River Black River Regulating District.

Broadalbin-Perth Central School District Superintendent Steve Tomlinson said his school board Monday night authorized him to begin preparations to sue Fulton County.

"I'm going to be working with Northville and Mayfield Central School districts, [we] all have the same legal counsel, Girvin and Ferlazzo, to consider a process of trying to gain this tax revenue through legal means," he said.

The regulating district owes about \$1.5 million in school taxes in Fulton and Saratoga counties for the 2009-10 school year. It also owes some county and local taxes, but it has no stable revenue stream to pay taxes for next year. The regulating district is the single largest taxpayer in Northville, Broadalbin-Perth and Edinburg, owing those school districts \$326,000, \$256,000 and \$234,000, respectively. It owes Mayfield \$354,000 for 2009-10.

HRBRRD has been reeling from a funding crisis ever since a federal court ruled it could no longer pass on the cost of its operating budget and local property taxes 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, money that was largely used to pay local taxes.

Under normal circumstances, county governments pay school districts an amount equal to unpaid taxes, then foreclose on the properties that owe the taxes. In this case, Fulton County officials have refused to follow the playbook.

Fulton County Attorney Arthur "Skip" Spring said he's researched the issue and determined that Fulton County cannot foreclose on the state-owned land HRBRRD controls. He said if Fulton County paid the school districts, it's possible the county would never be reimbursed.

"The only thing we can do is bring an action against the state, which we've contemplated," Spring said. "We were hoping that the Legislature would solve this problem through the budget process; that's the only reason we haven't taken action yet."

Spring said he's advised the Fulton County Board of Supervisors that if the school districts sue the county, the county's next move should be to initiate a lawsuit against HRBRRD and possibly New York state itself.

"We're legally obligated to the school districts, and we know that. We put them on notice as to what we were doing; we didn't want to just not pay them and have them be surprised," Spring said. "The state is the real culprit that has put us in this position. [Paying the tax bills] could practically break us, if we kept reimbursing the school districts for something the state

didn't pay."

Northville Superintendent Kathy Dougherty said she regrets having to consider suing Fulton County for the unpaid taxes, but she has lost faith in the state Legislature's ability to provide a solution to HRBRRD's funding crisis.

A bill in the state Legislature supported by Gov. David Paterson, which would have allowed HRBRRD to borrow against the value of its Black River-area reserve funding to pay its Hudson River-area taxes and maintenance costs, passed the state senate 61-0 in June but has stalled in the Assembly.

The sponsor of the Assembly bill, Assemblywoman Addie Russell, D-Watertown, has said she is actually not in favor of enabling HRBRRD to use its Black River funds as a means to pay for its Hudson River-area problems. She said she sponsored the legislation only "to ensure that I was part of the decision-making process."

Russell represents a district in the Black River area. She is also the sponsor of legislation that would separate the Black River area completely from HRBRRD.

Dougherty said she's tried lobbying Assembly Speaker Sheldon Silver, D-Manhattan, to help force a vote on the bill.

"His staff didn't even know what I was speaking about. I had to review the bill with them, and they said, 'Is this something you're looking to have passed?' I said absolutely," she said. "I just don't think this is a priority for the Assembly."

Mayfield Superintendent Paul Williamsen said he still hopes the Legislature will come through with a solution for the unpaid taxes, but if it doesn't, his board will likely join in the lawsuit against Fulton County.

Of the three districts considering the lawsuit, only Broadalbin-Perth is planning to use short-term borrowing to maintain cash flow after the school year starts and before tax receipts begin flowing into the districts. Tomlinson said his district's reserves have dwindled down to a few thousand dollars and Broadalbin-Perth would have been forced to borrow money even if HRBRRD paid its bills.

Dougherty and Williamsen said both of their districts should be able to avoid borrowing money this year, although they are both closely monitoring cash flow.

HRBRRD Executive Director Glenn LaFave said the regulating district will defend any lawsuits against it as long as it has the cash to do so. He said the district has its own in-house counsel but has been forced to layoff employees as it progressively spends through the remaining money in its Hudson River-area accounts. He said another round of layoffs could be possible if revenues don't begin to flow before the end of the year.

In February, HRBRRD billed Albany, Saratoga, Rensselaer, Warren and Washington counties a combined \$4.5 million for flood control benefits to make up for the revenues it lost from the federal court ruling. All five counties have filed a lawsuit in Saratoga County court against HRBRRD and the state Department of Environmental Conservation, which oversees it. The counties have vowed not to pay the flood control bills unless ordered to do so by a court.

LaFave said he believes HRBRRD will be defended in the lawsuit from the counties by the state attorney general's office, which is also representing the DEC. He said a court date has not yet been set for the matter.