



February 26, 2024

FLTF Response to Heron Cove Appeal

A claim of appeal was filed in Midland Circuit Court challenging the Gladwin and Midland County Boards of Commissioners' approval of the special assessment rolls required to restore Smallwood, Secord, Wixom, and Sanford lakes. The claim of appeal was submitted to the circuit court by the Heron Cove Association which seeks on behalf of its members to set aside the special assessment roll.

What will it mean if the Four Lakes Capital Special Assessment roll is set aside? **Short answer: There will be insufficient funding available to complete the Four Lakes project and restore the lakes.**

While we respect landowners' rights to appeal the assessment rolls, it is important to understand the implications:

- If the special assessment roll is set aside by the circuit court, the Four Lakes Special Assessment District will not be able to issue bonds required to complete the Four Lakes project.
On February 6, 2024, the Counties approved a normal (legal) lake level special assessment roll and plan of financing to fund the capital improvements required to complete the project. The proposed financing will include the issuance of municipal bonds secured by lake level special assessment revenue.
- This appeal is already impacting the financing plan.
As May approaches, if there is no funding certainty construction will continue until State of Michigan funds are depleted. With public safety being a key factor in dam construction, each dam will be brought to a point where we can ensure stability and safety and then construction will pause. This means no dam would be fully restored and the lakes would not return until the future of the restoration financing is determined.
- Time is of the essence.
Legal counsel for FLTF advised that it is optimistic to have the appeal matter closed by the end of April. If just a few months are added to the project timeline, there will be cost and timeline consequences.

I believe the restoration of the Four Lakes is in the best interests of the property owners for the quality of life in our community, as well as the environment. I believe our community needs certainty.

With the approved plan of financing, the community had a certain path forward to restore all four lakes. No outcome of this appeal will be more painful for the community than finding itself in 2025, five years after the lakes were lost, looking at dams sitting idle, with no construction underway and no clear path forward.

Four Lakes Task Force will do all it can to fulfill its obligations and restore the lakes and fight to keep the project on track. We will need your help.

Dave Kepler
President, Four Lakes Task Force



FLTF will provide an update on this matter on March 4th. A [webinar](#) is planned for March 13th, where FLTF will cover the status of the projects, financing plan and an appeal update.

What Happens Next With the Appeal?

FLTF legal counsel is filing a record on appeal, which starts the process under the Michigan Court Rules for Appeals in the circuit court. At this time, the appellants (Heron Cove Association, “HCA”) would have 28 days to file their brief supporting their claims. FLTF would then have 21 days to file its brief, followed by HCA filing a reply brief. Then, the circuit court would set a date for oral argument and then issue a decision.

What’s the History of the Assessment?

The State of Michigan dam safety regulatory requirements state that costs associated with maintaining inland legal lake levels may be funded by lake level special assessment revenue. This is true throughout the State of Michigan. The Four Lakes project was deemed necessary by Midland and Gladwin counties following the catastrophic dam failures in May 2020. The Counties, through Four Lakes Task Force, stepped in and began the process to first stabilize the dams, restore shoreline, and remove debris. In addition, FTLF received funding for the dams’ design engineer. The funding for this work, over \$60 million, came in the form of federal and state grants. No lake level special assessment revenue was necessary.

Understanding the complexities and costs, FLTF sought out and obtained a grant from the State of Michigan which provided \$200 million dollars for the design and construction of the Four Lakes project to meet the obligations under Part 307 “Inland Lake Levels” and Part 315, “Dam Safety” of the Michigan Natural Resources and Environmental Protection Act. State funding covers nearly 45% of the Four Lakes project, which means that 55% of the cost requires funding from other sources.

On February 6, 2024, the Counties approved a lake level special assessment roll and financing plan to fund the capital improvements required to complete the project. The proposed financing includes the issuance of lake level (municipal) bonds secured by lake level special assessment revenue. Hence, if the special assessment roll is set aside by the circuit court, the Four Lakes Special Assessment District will not be able to issue the bonds required to complete the Four Lakes project.

What is EGLE’s Expectation if the Lake Levels Are Not Restored?

In the June 30, 2021, EGLE (Michigan Department of Environment, Great Lakes, and Energy) letter¹ to FLTF, EGLE recognized the Counties’ ownership of the Delegated Authority, and that the four dams were rated as high-hazard potential dams regulated by EGLE. The letter states the following expectations:

- “FLTF should continue to pursue improvements to the [Secord and Smallwood dams] as outlined in the March 2021 Feasibility Study. Impoundment water levels shall be maintained at the current, drawn down level until the above referenced deficiencies are remedied.”

¹ [EGLE Letterhead Lansing Central \(four-lakes-taskforce-mi.com\)](#)



- “FLTF should continue to pursue these efforts according to the Feasibility Study and apply for permits according to local, state, and federal laws. However, if FLTF determines that reconstruction of the [Sanford or Edenville] Dam is not feasible in a reasonable timeframe, a plan to address remaining concerns with long-term dam safety and stability and ongoing natural resource impacts will need to be developed and implemented. The plan would need to consider such alternatives as additional stabilization and restoration measures or removal of the dam(s) and restoration of impacted reaches of the river channel.”