



Four Lakes Task Force Clarifies Details Related to Edenville, Sanford Dams

Midland, MI – June 8, 2020 – On May 19th, the failures of the Edenville and Sanford dams and the resulting flood created a catastrophic change to thousands of people in Midland and Gladwin counties. But it has not changed the spirit of the towns and communities that live around the lake, and it shows in their efforts to recover and renew themselves.

In difficult times, it is natural for some people to come to their own conclusions and find blame. But this commentary from a few, including the owners of the dams and the State of Michigan, should not distract our community from its mission of recovery. Four Lakes Task Force (FLTF) wishes to clarify important facts as they relate to dam operations and procedural matters. Our desire is to provide information that will help an independent investigation to occur and allow our community to move forward with the vital work of restoring our lakes and dams.

FLTF was formed in 2018 by the lake communities when it became apparent that the system was not sustainable. FLTF went to the Board of Commissioners of Midland and Gladwin counties about the concern, and the community collectively took action, and worked within the State's legal framework to deal with a compromised private hydroelectric dam system regulated by federal and state agencies.

FLTF is a Michigan non-profit charitable organization representing the lake associations and property owners of Secord, Smallwood, Wixom and Sanford Lakes. It became the Counties' Delegated Authority to acquire, repair and operate the dams under Part 307 of the Michigan Natural Resource and Environmental Protection Act, MCL 324.30701 *et seq.* FLTF was in the process of acquiring the dams, on behalf of the counties, through negotiations with Boyce Trusts. The transfer of ownership was to start this year but now cannot proceed under the purchase agreement that was signed on December 31, 2019.

Some Key Facts

- All four dams have been under full operational control of Boyce Hydro since it acquired the property in 2006 and were under the Federal Energy and Regulatory Commission (FERC) regulatory jurisdiction.

- FERC revoked Boyce’s license for hydropower for the Edenville Dam September 2018, *“because of Boyce’s long-standing failure to increase the project’s spillway capacity to safely pass flood flows.”*
- Regulatory Jurisdiction for the Edenville Dam then fell under the Michigan Department of Environment, Great Lakes, and Energy (EGLE).
- In October 2018, the State inspected the dam. *“During the inspection, the dam was observed to be in fair structural condition. Its earthen embankments were well maintained, with only a few bare spots, minor erosion, and no visible signs of significant distress (sloughs, slumps, differential settlement, cracking, sinkholes, etc.). All embankment drains appeared to be functioning. The dam’s two concrete spillways showed signs of moderate deterioration (spalling, exposed reinforcing steel, minor cracking, and efflorescence), but appeared to be stable and functioning normally. All spillway gates appeared to be operational.”*
- In May 2019, the State lake levels for the dams were established at the exact same level as the federal levels. To allow continued operation of Edenville without power, FLTF entered into an agreement with Boyce to operate the dam at those State levels, as both parties negotiated a purchase agreement, and a permit was issued by EGLE.
- At no time did FLTF assume, take control of, or operate the dams. The purchase agreement between Boyce and FLTF was very clear that FLTF would not assume operational control until the closing on that agreement—which never happened.
- As a prospective purchaser of the Boyce assets, FLTF was undertaking appropriate due diligence in its efforts to acquire the dams. FLTF was engaged and transparent with EGLE as we moved forward to purchase.
- FLTF acted in good faith to make priority repairs to the Edenville Dam prior to purchase with appropriate EGLE permits. FLTF was also planning an anticipated \$2 million worth of repairs to the Edenville Dam to prepare it for the winter operations.

Safety Reports and Failure. All four dams have FERC Safety Reports, and FERC has assured the lake communities that there would be a handoff to the State once the license was revoked. The State received the FERC Safety Reports. Moreover, the knowledge that FLTF’s engineers obtained through their diligence was shared with EGLE’s Dam Safety Unit. FLTF agreed to write an additional dam safety report at the request of EGLE on September 20, 2019 in anticipation of its purchase. And in a December 18, 2019 meeting which was attended by representatives of EGLE, FLTF and others — FLTF verbally agreed to submit the report in March 2020. That date was picked because of FLTF’s anticipated payment

of a first installment payment on the dams in January 2020. The report was being prepared by Spicer Group, FLTF's contracted engineer. Knowing this was a complex transition from FERC to the State, given the complexity in purchasing the Boyce dams, EGLE Dam Safety has been proactive with FLTF, and FLTF and EGLE Dam Safety have been and still are engaged in a transparent and open process.

However, because of the cloud of the legal issues between the State and Boyce Hydro, FLTF was not able to obtain the needed financing (a bond-anticipation note) to begin the process to acquire the dams and was unable to close the deal in January 2020 as planned. The date for closing on the option and first installment payment was pushed back to June 2020. After the dam breach on May 19, the issue of the report resurfaced. FLTF agreed to submit a draft version of the report, although according to Michigan Statute the Delegated Authority is only required to submit a dam safety report every third year. This means that FLTF was not legally obligated to submit a report until May 2022. On Tuesday June 2, EGLE verbally instructed Spicer Engineering not to submit the report because of concerns related to classified information. The State subsequently characterized this in written correspondence as a "refusal" to provide the information, which was inaccurate. Neither FLTF nor Spicer Group ever refused to provide the draft report.

The information contained in the dam safety report concerning the condition of the Edenville Dam was information that EGLE's Dam Safety Unit already had in its possession. EGLE was aware of the deficiencies associated with Edenville Dam. FLTF has been cooperative and forthcoming with information, often going above and beyond the required activity in good faith, for the betterment of the community. Moreover, FLTF had provided verbal and written statements to EGLE in September 2019 that had expressed its conclusion regarding Edenville Dam's ability to meet the State's Probable Maximum Flood (PMF) requirements. In September 2019 communications, FLTF's engineers noted: "[a]t this point in time, based on documents reviewed, the FLTF does not believe that the Edenville Dam can be operated to meet the EGLE dam safety requirement to pass the ½ PMF without certain repairs and improvements."

Why is Four Lakes Task Force going to this effort to explain all this? To protect our efforts to save our lakes.

An EGLE Communication Manager contacted FLTF to establish a relationship, in the discussion EGLE suggested it would be a good idea to come to agreement on a set of stipulated facts as we

communicated to external parties. The attorney for Four Lakes Task Force contacted the Assistant Attorney General assigned to the Boyce litigation, and a meeting was refused.

Gov. Gretchen Whitmer has ordered EGLE to commission an investigation of the Edenville Dam. FERC has ordered Boyce to form an independent Board of Consultants for investigation of the other three dams. Before these investigations have even commenced, the State Attorney General's office and EGLE are creating their own narrative on the blame for the Edenville Dam's failure.

For all the hyperbole and narrative of blame, an independent investigation is needed to determine the cause of the failure of the Dam. Observations show an embankment failing on Edenville Dam and the Sanford Dam being overcome with the excess water that came from the Edenville failure. The cause of this still needs to be determined. While the investigation team seems qualified, Boyce and the regulators who were responsible for the operations and oversight should not have direct involvement with the team of dam safety experts performing the forensic investigation.

The forensic team must be completely independent of the dam operator and regulators. Convening a forensic team and administering its activities through a qualified, impartial third party would be in order. For example, the Association of State Dam Safety Officials (ASDSO) has a reputation of independence and integrity. FERC and the State need to step back and allow this investigation to be truly independent, especially since the Attorney General's division of Environment, Natural Resources and Agriculture and Boyce Hydro, in the rush to sue each other, are creating a narrative without exercising diligence for the truth.

The counties and Four Lakes Task Force, on behalf of the Lake Communities, were trying to get control of their future over a bureaucratic system that was failing us. We are still committed to our mission to acquire the property from Boyce and restore the damage created by this flood. We have been encouraged by the engagement every federal and state agency coming into our community to help. Well almost. We implore the Attorney General to insist that her Environment, Natural Resources and Agriculture Division work from the facts and apply critical thinking to the problem and insist on it from all parties involved. Our devastated communities deserve that much.

####