

Introduced by _____:

BOARD OF COMMISSIONERS OF THE COUNTY OF GLADWIN

RESOLUTION FOR THE DETERMINATION OF THE NORMAL LAKE LEVEL FOR WIXOM LAKE, SANFORD LAKE, SMALLWOOD LAKE AND SECORD LAKE PURSUANT TO PART 307 OF THE MICHIGAN NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT

RESOLUTION # 2018-034

Minutes of a regular meeting of the Board of Commissioners of the County of Gladwin, Michigan, held at the 401 W Cedar Ave, Gladwin, Michigan 48624, on October 9, 2018, 2018, at 9:00 a.m., local time.

PRESENT: Commissioners Hinman, Walters, Aultman,
Smith, Birgel

ABSENT: Commissioners none

The following resolution was offered by Commissioner Hinman and supported by Commissioner: Smith.

WHEREAS, Wixom Lake, Sanford Lake, Smallwood Lake, and Secord Lake are inland lakes located in Gladwin and Midland Counties, created by the impoundment of the Tittabawassee River by four (4) hydroelectric dams which are privately owned and operated by Boyce Hydro Power, LLC ("Boyce Hydro"); and are currently regulated by the Federal Energy Regulatory Commission ("FERC") which, among other things, includes terms and conditions concerning the water levels for each of the lakes, dam safety, property rights, water quality, public recreation and safety, and other areas of public concern; and,

WHEREAS, Wixom Lake, Sanford Lake, Smallwood Lake, and Secord Lake, are important resources in Gladwin and Midland Counties, and the continued operation of the dams are of paramount importance to the environment, recreation, property values of lake residents, and the public and economic health of Gladwin and Midland Counties; and,

WHEREAS, in the event that Boyce Hydro loses its FERC license(s) with respect to any of the Lakes, or is unable to perform its responsibilities, there is no current state requirement for maintaining the lake levels or governance structure in the community to ensure that the dams and lake levels will be sustained long term; and,

WHEREAS, Part 307 of the Michigan Natural Resources and Environmental Protection Act, "Inland Lake Levels", MCL 324.30701 et seq. ("Part 307") governs the process for the determination, establishment and maintenance of the water level of inland lake, and authorizes counties to finance, construct, operate and maintain dams as necessary to maintain such levels as determined by the circuit court; and,

WHEREAS, Section 307011 of Part 307, MCL 324.30711 provides that the County may determine that the whole or part of the cost of the project to establish and maintain the normal

level for an inland lake be defrayed by special assessments for the benefits derived against privately owned parcels of land, political subdivisions of the state, and state owned lands, through the establishment of a special assessment district; and,

WHEREAS, Section 30704(1) of Part 307, MCL 324.30704(1), provides that if the County Board of Commissioners finds it expedient to have determined and established the normal level of an inland lake, the County shall direct legal counsel of the county to initiate a proceeding by proper petition in the circuit court for a determination of the normal level and for establishment of a special assessment district; and,

WHEREAS, the Sanford Lake Preservation Association, a Michigan non-profit corporation and IRC 501(c)(3) organization has raised the funds and committed to the funding of the Part 307 through creation of an authority and special assessment districts, and will expand their bylaws to include the preservation of all four lakes, and include representation of all four Lake Associations Presidents or Delegates currently represented on the Four Lakes Task Force, and representative(s) from Gladwin and Midland County, upon this and a similar resolution from Midland County; and,

WHEREAS, Section 30704(2) of Part 307, MCL 324.30704(2) provides that if the waters of an inland lake are located in 2 or more counties, the normal level of the lake may be determined by all counties involved, by resolution directing legal counsel of 1 or more counties to initiate proceedings by proper petition in the circuit court for a determination of the normal level and for establishment of a special assessment district; and,

WHEREAS, in order to maintain the normal lake levels for Wixom Lake, Sanford Lake, Smallwood Lake, and Secord Lake (the "Lakes") in Gladwin and Midland Counties, the County Board of Commissioners has determined that it is necessary to establish the normal level or levels of the Lakes in order to protect the public's health, safety, and welfare, to best preserve the natural resources of the state, and to preserve and protect the value of property around the lake.

NOW THEREFORE BE IT RESOLVED, that the County Board of Commissioners finds that in order to protect the public's health, safety, and welfare, to best preserve the natural resources of the state, and to preserve and protect the value of property around the Lakes, that it is necessary to take all action to establish and maintain the normal lake level for the Lakes (the "Lake Level Project").

BE IT FURTHER RESOLVED, that County Board of Commissioners finds that the cost of the Lake Level Project to establish and maintain the normal level of the Lakes shall be defrayed by special assessments for the benefits derived against privately owned parcels of land, political subdivisions of the state, and state owned lands.

BE IT FURTHER RESOLVED, that the Sanford Lake Preservation Association, upon approval of new bylaws including representation of all lakes, shall be the "Delegated Authority" as provided by Part 307 to act on behalf of the Board of Commissioners to oversee the Lake Level Project, to prepare a Special Assessment District and Special Assessment Roll in

accordance with the procedures set forth in Part 307, and to take all other actions as necessary and required by the delegated authority as provided in Part 307.

BE IT FURTHER RESOLVED, that attorney, Douglas A. Jacobson representing Gladwin County as to Smallwood Lake, Secord Lake, and that portion of Wixom Lake located in Gladwin County, and attorney, Lawrence Wm. Smith, Jr., representing Midland County as to Sanford Lake and a portion of Wixom Lake located within Midland County, are appointed as joint-legal counsel for the Lake Level Project, and are directed to initiate a petition or other appropriate legal action in the appropriate Circuit Court(s) in Midland and/or Gladwin County for the determination of the legal lake level and the approval of boundaries of the Special Assessment District in accordance with the procedures set forth in Part 307 and said counsel may obtain the assistance of additional counsel where appropriate; and to assist the Delegated Authority with the Project and procedures as set forth in Part 307.


BE IT FURTHER RESOLVED, that the Spicer Group, Inc., is appointed as the engineer for the Lake Level Project, to prepare a preliminary study and/or reports required for the Lake Level Project, and to assist the Delegated Authority with all actions as necessary and required by the delegated authority as set forth in Part 307.

BE IT FURTHER RESOLVED, this Resolution shall not take effect unless and until the adoption of a resolution with substantially the same findings, determinations and conditions as set forth herein by the Board of Commissioners for the County of Midland, Michigan, within thirty (30) days from the date of the adoption of this Resolution.


YEAS: Commissioners 5

NAYS: Commissioners 0

ABSTAIN: Commissioners 0


Laura Brandon-Maveal, Clerk

10-9-2018


Terry L. Walter, Chairman

#1

October 11, 2018

To the Honorable Chairman and
Members of the Board of Commissioners

Agenda Item: 72-7-18AO

Ladies and Gentlemen:

We your Administration and Operations Committee recommend the approval of the attached Resolution for the Determination of the normal lake level for Wixom Lake, Sanford Lake, Smallwood Lake and Secord Lake pursuant to Part 307 of the Michigan Natural Resources and Environmental Protection Act.

Respectfully Submitted,



James Geisler, Chairperson



Eric Dorrien

Steve Glaser for Scott Noesen

Administration and Operations Committee

jmg

ADOPTED
Midland County Board
Of Commissioners

Date: October 11, 2018
Attested: [Signature]

County Clerk and
Clerk of the Board of Commissioners

Introduced by Geisler :

BOARD OF COMMISSIONERS OF THE COUNTY OF MIDLAND

RESOLUTION FOR THE DETERMINATION OF THE NORMAL LAKE LEVEL FOR WIXOM LAKE, SANFORD LAKE, SMALLWOOD LAKE AND SECORD LAKE PURSUANT TO PART 307 OF THE MICHIGAN NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT

RESOLUTION # _____

Minutes of a regular meeting of the Board of Commissioners of the County of Midland, Michigan, held at the County Services Building, 220 W. Ellsworth Street, Midland, Michigan 48640, on October 16, 2018, at 9:05 a.m., local time.

PRESENT: Commissioners Snyder, Geisler, Dorrison
Bone

ABSENT: Commissioners Glaser, Terwilliger, Noesen

The following resolution was offered by Commissioner Geisler and supported by Commissioner: Noesen.

WHEREAS, Sanford Lake, Wixom Lake, Smallwood Lake, and Secord Lake are inland lakes located in Gladwin and Midland Counties, created by the impoundment of the Tittabawassee River by four (4) hydroelectric dams which are privately owned and operated by Boyce Hydro Power, LLC ("Boyce Hydro"); and regulated by the Federal Energy Regulatory Commission ("FERC") which, among other things, includes terms and conditions concerning the water levels for each of the lakes, dam safety, property rights, water quality, public recreation and safety, and other areas of public concern; and,

WHEREAS, Sanford Lake, Wixom Lake, Smallwood Lake, and Secord Lake, are important resources in Gladwin and Midland Counties, and the continued operation of the dams are of paramount importance to the environment, recreation, property values of lake residents, and the public and economic health of Gladwin and Midland Counties; and,

WHEREAS, in the event that Boyce Hydro loses its FERC license(s) with respect to any of the Lakes, or is unable to perform its responsibilities, there is no current state requirement for maintaining the lake levels or governance structure in the community to ensure that the dams and lake levels will be sustained long term; and,

WHEREAS, Part 307 of the Michigan Natural Resources and Environmental Protection Act, "Inland Lake Levels", MCL 324.30701 et seq. ("Part 307") governs the process for the determination, establishment and maintenance of the water level of inland lake, and authorizes counties to finance, construct, operate and maintain dams as necessary to maintain such levels as determined by the circuit court; and,

WHEREAS, Section 307011 of Part 307, MCL 324.30711 provides that the County may determine that the whole or part of the cost of the project to establish and maintain the normal level for an inland lake be defrayed by special assessments for the benefits derived against privately owned parcels of land, political subdivisions of the state, and state owned lands, through the establishment of a special assessment district; and,

WHEREAS, Section 30704(1) of Part 307, MCL 324.30704(1), provides that if the County Board of Commissioners finds it expedient to have determined and established the normal level of an inland lake, the County shall direct legal counsel of the county to initiate a proceeding by proper petition in the circuit court for a determination of the normal level and for establishment of a special assessment district; and,

WHEREAS, the Sanford Lake Preservation Association, a Michigan non-profit corporation and IRC 501(c)(3) organization has raised the funds and committed to the funding of Part 307 activities through creation of an authority and special assessment districts, and will expand their bylaws to include the preservation of all four lakes, and include representation of all four Lake Associations Presidents or Delegates currently represented on a Four Lakes Task Force, and representative(s) from Midland and Gladwin County, upon this and a similar resolution from Gladwin County; and,

WHEREAS, Section 30704(2) of Part 307, MCL 324.30704(2) provides that if the waters of an inland lake are located in 2 or more counties, the normal level of the lake may be determined by all counties involved, by resolution directing legal counsel of 1 or more counties to initiate proceedings by proper petition in the circuit court for a determination of the normal level and for establishment of a special assessment district; and,

WHEREAS, in order to maintain the normal lake levels for Sanford Lake, Wixom Lake, Smallwood Lake, and Secord Lake (the "Lakes") in Midland and Gladwin Counties, the respective County Boards of Commissioners have determined that it is necessary to establish the normal level or levels of the Lakes in order to protect the public's health, safety, and welfare, to best preserve the natural resources of the state, and to preserve and protect the value of property around the lake.

NOW THEREFORE BE IT RESOLVED, that the County Board of Commissioners finds that in order to protect the public's health, safety, and welfare, to best preserve the natural resources of the state, and to preserve and protect the value of property around the Lakes, that it is necessary to take all action to establish and maintain the normal lake level for each of the Lakes (the "Lake Level Project").

BE IT FURTHER RESOLVED that County Board of Commissioners finds that the cost of the Lake Level Project to establish and maintain the normal level of each of the Lakes shall be defrayed by special assessments for the benefits derived against privately owned parcels of land, political subdivisions of the state, and state owned lands.

BE IT FURTHER RESOLVED, that the Sanford Lake Preservation Association, upon approval of new bylaws including representation of all lakes, shall be the "Delegated Authority" as provided by Part 307 to act on behalf of the Board of Commissioners to oversee the Lake Level Project, to prepare a Special Assessment District(s) and Special Assessment Roll(s) in accordance

with the procedures set forth in Part 307, and to take all other actions as necessary and required by the delegated authority as provided in Part 307.

BE IT FURTHER RESOLVED, that attorney, Lawrence Wm. Smith, Jr., representing Midland County as to Sanford Lake and a portion of Wixom Lake located within Midland County, and attorney, Douglas A. Jacobson representing Gladwin County as to Smallwood Lake, Secord Lake, and that portion of Wixom Lake located in Gladwin County, are appointed as joint-legal counsel for the Lake Level Project, and are directed to initiate a petition or other appropriate legal action in the appropriate Circuit Court(s) in Midland and/or Gladwin County for the determination of the legal lake level and the approval of boundaries of the Special Assessment District in accordance with the procedures set forth in Part 307 and said counsel may obtain the assistance of additional counsel where appropriate; and to assist the Delegated Authority with the Project and procedures as set forth in Part 307.

BE IT FURTHER RESOLVED, that the Spicer Group, Inc., is appointed as the engineer for the Lake Level Project, to prepare a preliminary study and/or reports required for the Lake Level Project, and to assist the Delegated Authority with all actions as necessary and required by the Delegated Authority as set forth in Part 307.

BE IT FURTHER RESOLVED, this Resolution shall not take effect unless and until the adoption of a resolution with substantially the same findings, determinations and conditions as set forth herein by the Board of Commissioners for the County of Gladwin, Michigan, within thirty (30) days from the date of the adoption of this Resolution.

YEAS: Commissioners Snyder, Geisler, Dorrien, Bone

NAYS: Commissioners None.

ABSTAIN: Commissioners Glaser, Terwilliger, Noesen. (Absent)

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MIDLAND

IN THE MATTER OF:
WIXOM LAKE, SANFORD LAKE,
SMALLWOOD LAKE and SECORD
LAKE,

Case No. 19-5980 -PZ¹
Hon. Stephen P. Carras

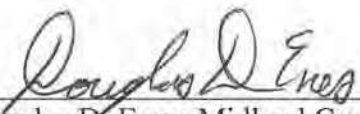
MIDLAND COUNTY and
GLADWIN COUNTY,
Petitioners.

AFFIDAVIT OF MAILING

Re: Midland County Circuit Court - Notice of Hearing
May 3, 2019; 1:30 p.m., Daylights Savings Time


STATE OF MICHIGAN)
) ss.
COUNTY OF MIDLAND)

I, **Douglas D. Enos, Drain Commissioner, Midland County, Michigan**, being duly sworn, deposes and says, that on April 5th, 2019, a Circuit Court Order and Notice of Hearing, of which is attached hereto, was sent by first class mail to all persons whose names and addresses appear on the tax rolls as owning lands subject to assessment for relating to the Petition to Establish the Normal Levels for Wixom Lake, Sanford Lake, Smallwood Lake, and Secord Lake pursuant to Part 307 of the Michigan Natural Resources and Environmental Protection Act (Michigan Compiled Laws §§324.30701 et seq.), pending before the Honorable Stephen P. Carras, Midland County Circuit Court.



Douglas D. Enos, Midland County Drain
Commissioner

Subscribed and sworn to before me this 29 day of March, 2019.



Jennifer Taylor, Notary Public
Saginaw County, Michigan
Acting in Saginaw County
My Commission Expires: 12-15-2023

JENNIFER TAYLOR
Notary Public, State of Michigan
County of Saginaw
My Commission Expires 12-15-2023
Acting in the county of Saginaw

¹ Pursuant to State Court Administrator's Order dated March 12, 2019, Judge Carras was also assigned to: *In the Matter of: Wixom Lake, Sanford Lake, Smallwood Lake and Secord Lake*, Case No. 19-009892-PZ, pending in the Gladwin County Circuit Court.

- State of Michigan: Department of Natural Resources; Department of Environmental Quality and Department of Transportation.
- Federal Energy Regulatory Commission

Douglas D. Enos
Douglas D. Enos, Midland County Drain
Commissioner

Subscribed and sworn to before me this 29 day of March, 2019.

Jennifer Taylor
Jennifer Taylor, Notary Public
Saginaw County, Michigan
Acting in Saginaw County
My Commission Expires: 12-15-2023

JENNIFER TAYLOR
Notary Public, State of Michigan
County of Saginaw
My Commission Expires 12-15-2023
Acting in the county of Saginaw

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MIDLAND

IN THE MATTER OF:
WIXOM LAKE, SANFORD LAKE,
SMALLWOOD LAKE and SECORD
LAKE,

Case No. 19-5980 -PZ¹
Hon. Stephen P. Carras

MIDLAND COUNTY and
GLADWIN COUNTY,
Petitioners.

AFFIDAVIT OF MAILING – POLITICAL SUBDIVISIONS OF THE STATE
Re: Midland County Circuit Court - Notice of Hearing
May 3, 2019; 1:30 p.m., Daylights Savings Time

STATE OF MICHIGAN)
) ss.
COUNTY OF GLADWIN)

I, **Robert Evans, Drain Commissioner, Gladwin County, Michigan**, being duly sworn, deposes and says, that on April 5th, 2019, a Circuit Court Order and Notice of Hearing, of which is attached hereto, was sent by first class mail to the following governing bodies of the political subdivisions affected or where the lake(s) are located and within Gladwin County, relating to the Petition to Establish the Normal Levels for Wixom Lake, Sanford Lake, Smallwood Lake, and Secord Lake pursuant to Part 307 of the Michigan Natural Resources and Environmental Protection Act (Michigan Compiled Laws §§324.30701 et seq.), pending before the Honorable Stephen P. Carras, Midland County Circuit Court:


- Gladwin County Clerk
- Hay Township Clerk
- Billings Township Clerk
- Tobacco Township Clerk
- Clement Township Clerk
- Secord Township Clerk
- Bourret Township Clerk
- Buckeye Township Clerk
- Gladwin Township Clerk

¹ Pursuant to State Court Administrator's Order dated March 12, 2019, Judge Carras was also assigned to: *In the Matter of: Wixom Lake, Sanford Lake, Smallwood Lake and Secord Lake*, Case No. 19-009892-PZ, pending in the Gladwin County Circuit Court.

- State of Michigan: Department of Natural Resources; Department of Environmental Quality and Department of Transportation.
- Federal Energy Regulatory Commission


Robert Evans, Gladwin County Drain
Commissioner

Subscribed and sworn to before me this 29 day of March, 2019.


Notary Public
Saginaw County, Michigan
Acting in Saginaw County
My Commission Expires: 6-6-2021

BETTY L. MCCRACKEN
Notary Public, State of Michigan
My Commission Expires: 06/06/2021