

Four Lakes Task Force Fact Sheet: Positions and Issues

Secord, Smallwood, Edenville/Wixom and Sanford Dams and Lakes

July 16, 2020



The May 19, 2020 Flood and the New Reality for the Four Lakes System

An embankment failed on the Edenville Dam. Sanford Dam failed because of excess water from the Edenville failure. All causes have yet to be determined. FERC ordered Boyce to form an independent investigation team and Michigan Dam Safety joined effort. We believe the investigation should be independent from Boyce. Smallwood and Secord Dams were lowered for inspection **by order of FERC**. Boyce's inspection information has not been shared with counties or FLTF. The State of Michigan has **challenged** Boyce on its inadequacy of inspections and plans for stabilization of the Tobacco spillway. Boyce is behind on FERC order compliance.

THE PRESIDENT HAS APPROVED A MAJOR DISASTER DECLARATION

All Four Dams will be required to meet Current Standard of Practice for dam engineering and have appropriate Spillway Capacity.

The Counties, State and Federal Government, or the Community should not and cannot require anything less.

Long-term financing or grants are not going to be available if we are not providing a 75+ year service life to all four lakes.

While the independent investigation will show causes, one thing is clear: the system failed to protect people and property.

THE FOUR LAKES TASKS FORCE PLAN GOING FORWARD REFLECTS THIS REALITY.

Lake Levels for the Four Lakes in Gladwin and Midland County

Part 307 Inland Lake Level of the Michigan Natural Resources and Environmental Protection Act, 1994 PA 451 allows for the establishment of legal (normal) lake levels.

If a hydropower dam no longer has a FERC License to Operate, a Part 307 State Legal (Normal) Lake Level is the only way property owners would be legally entitled to existence of a Lake.

In May 2019, after County Resolutions and Circuit Court Orders; State Legal Lake Levels were established for the Four Lakes, along with a required Special Assessment District, and the Four Lakes Task Force was named by the counties as the Delegated Authority for the Special Assessment District. ***This was a huge effort and it's critical that the community stands by this work.***

Four Lakes Task Force (FLTF)

FLTF is a 501(c)(3) non-profit that was formed by the Lake Associations in 2018 to support the counties in obtaining the Court Order for Part 307 and acquiring the lake and dam properties.

Seven board members are nominated from their lake associations. They are volunteers and not compensated. Two board members come from Midland and Gladwin counties – one per county. **No board member has or can profit from their engagement.**

FLTF has secured the services of Spicer Group for civil engineering and survey, GEI Consulting for hydro dam engineering, Essex Partnership for dam operations, Clark Hill PPC for legal services, Trapani Communications, Yeo and Yeo for auditing.

Four Lakes Operations (FLO) is and was always owned 100% by FLTF and put in place to coordinate the acquisition and operations from Boyce. ***Its purpose is no longer needed. No board member other than FLTF ever had shares in FLO.***

Boyce Ownership of the Dams

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

Boyce lost the bottomlands in Wixom and Sanford lakes in Midland County over a tax dispute. The bottomlands for all of Sanford and the Midland County portion of Wixom lake are now owned by FLTF. ***These properties will return to county ownership.***

FERC revoked Boyce's hydropower license for the Edenville Dam in September 2018, *"because of Boyce's long-standing failure to increase the project's spillway capacity to safely pass flood flows."* The Edenville Dam then moved to oversight by Michigan EGLE Dam Safety. Both parties have sued each other.

FLTF was in the process of acquiring and then improving and repairing the dams on behalf of the counties through an agreement with Boyce Trusts that was to start in 2020. **That agreement cannot and is not proceeding.**

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THE LAKES WITH BOYCE OR PRIVATE OWNERSHIP ARE NOT SUSTAINABLE

Boyce has acknowledged to FERC that it could not afford to keep the dams in compliance. The dams have been under-invested in. **A Private Owned Hydropower has not and will not generate enough revenue to cover the costs for these dams.**

The liability, and recovery and repair effort are Boyce's responsibility. Lee Mueller, the Boyce Hydro Power Co-Manager has stated it is beyond Boyce's capability to address the damages, post-flood debris removal, stabilization of the lakes, dam improvements, and restoration of the lakes. Boyce has over \$6 million dollars of debt.

FLTF PLAN TO RECOVER AND RESTORE THE LAKES

- 1. Out of necessity, the counties approved to acquire the property from Boyce through condemnation (eminent domain).**
- 2. Stabilize all four dams, remove debris and address erosion - \$30+ Million.** Over the next two years the dams need to be stabilized while restoration and repairs are underway. Debris needs to be removed and erosion needs to be managed.
- 3. Start the rebuild and repair program - ~ \$250 to \$400 million over 4 to 6 years.** This is based on the opinion of our experts, and others with the current facts available. It is not an estimate, but a look at scale and needs to be refined.

In the first part of 2021, we will refine our plans, get approval from the Counties, then we must submit these plans to the State of Michigan.

Planning Cost Breakdown for State Requirements (1/2 PMF with -30% to +50% confidence)

Sanford: \$92 million ♦ Edenville: \$208 million ♦ Smallwood: \$14 million ♦ Secord: \$24 million ♦ Total planning level cost: \$338 million

Lawsuits

There are multiple lawsuits related to this matter, FLTF has no position on a lake owner joining a class. The counties and FLTF are named in some of the lawsuits. **We maintain that the lawsuits against the counties and FLTF are without merit.**

Boyce and the State of Michigan have filed lawsuits against each other. Neither FLTF nor the Counties are a party to those suits. However, Boyce has published its positions in the cases, and some newspapers have reported them as fact.

Environmental and Recreation Studies

The State and Boyce are in a legal suit over environmental damage to mussels as a result of the 2018 and 2019 drawdown. FLTF is not involved in this litigation. FLTF agreed to contribute \$1 million towards studies, monitoring, and conservation efforts to benefit the freshwater mussel ecosystem in all four lakes and to determine how to limit negative impacts on the ecosystem and conserve the ecosystem. **FLTF did not agree to pay fines or damages for Boyce, or to the State of Michigan.**

Boyce was required by FERC and DNR to conduct environmental monitoring and management, including invasive species, bald eagles counts, sediment, and water quality. Prior to May 2020, FLTF was planning to take over Boyce's environmental reporting responsibilities, to ensure timely and complete reports would be sent to FERC. *Currently a new plan will be developed for future studies and monitoring as we implement our restoration plan.*

Financing and Funding

Recovery Funds: FLTF is working with FEMA and USDA-Natural Resource Conservation Services for grants and loans. We have estimated the impact to be in the \$10's of Millions. FLTF has submitted several projects requesting federal support.

US ARMY CORP OF ENGINEERS: FLTF is engaged for support for Flood Studies, Planning Assistance, and Future Project Support.

We are getting significant support from our Counties, State Senator and State Representatives, Congressman and Senators in helping to implement our plan. The Special Assessment District will need to be a major source of financing.

Special Assessment District and Assessments

The planned assessment methodology before May 2019, is no longer valid. A new methodology needs to be developed. FLTF does not have an estimate. No plans for assessment timing have been made, but certainly we do not expect it to be earlier than 2022. **Any number being reported by others is only speculation.**

It is not practical that the Secord and Smallwood Lake communities should pay for Sanford or Edenville dam Restorations. These communities will remain in the Four Lakes Special Assessment District. **Boyce or others that want to challenge this will have to do so in the Circuit Court of Midland and Gladwin, and FLTF would then respond.**