

AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into as of April 15, 2020 (“**Effective Date**”) by and among State of Michigan, including its Department of Environment, Great Lakes and Energy (EGLE), and the Department of Natural Resources (DNR), and Attorney General Dana Nessel (“the Attorney General”) in her *parens patriae* capacity on behalf of the State of Michigan, (collectively, “SOM”), by and through its attorneys the Michigan Department of Attorney General (“DAG”), and the Four Lakes Task Force (“FLTF”), whose address is 233 E. Larkin, Midland, Michigan, and the Four Lakes Task Force Special Assessment District (“SAD”). In this Agreement, the SOM, and FLTF may be referred to as “Party” or collectively, as “Parties”.

RECITALS:

- A. Boyce Hydro, LLC and/or affiliated entities (collectively known as “Boyce Hydro”) is the owner and operator of four (4) hydroelectric energy projects (i.e. Sanford, Edenville, Smallwood and Secord dams) situated in Midland and Gladwin Counties, Michigan.
- B. The Sanford, Smallwood and Secord hydroelectric projects are currently regulated by the Federal Energy Regulatory Commission (“FERC”) and produce electric energy which is then purchased by a third-party energy provider. The Edenville hydroelectric project does not currently produce electric energy and is not regulated by FERC.
- C. Wixom Lake, Sanford Lake, Smallwood Lake, and Secord Lake are four inland lakes located in Gladwin and Midland counties (the “Four Lakes”) created by the impoundment of the Tittabawassee and Tobacco Rivers by Boyce’s hydroelectric energy projects (“dams”).
- D. FLTF is a Michigan non-profit and a 501(c)(3) charitable organization, organized for the purpose of lessening the burden of government and serving as the Counties’ Delegated Authority pursuant to Part 307.
- E. Pursuant to a petition filed by Midland and Gladwin Counties (“Counties”) in accordance with Part 307 of the Michigan Natural Resources and Environmental Protection Act (“NREPA”), MCL 324.30701 et seq. (“Part 307”), on May 28, 2019 the Midland County Circuit Court entered an order establishing the normal levels for the Four Lakes (“the lake level order”).
- F. Under the lake level order, the FLTF was granted authority and is responsible for managing the normal (legal) lake levels of the Four Lakes pursuant to the circuit court order, which includes acquiring, operating, maintaining, improving and repairing the dams. To this end, FLTF has entered into a purchase agreement with Boyce Hydro, to acquire all four dams and associated property interests.
- G. The SAD is a public body district established in accordance with Part 307 by the Midland and Gladwin Circuit Court to defray the costs associated with the acquisition, operation, maintenance, improvement and repair of the dams (but not the power generation portion of the dams). The SAD has an established geographic boundary consisting of waterfront and “backlot” (properties with dedicated private easement access to the Four Lakes) properties that

benefit from the operations of the dams. Properties within the SAD are responsible for the costs associated with acquiring, repairing, improving, operating, and maintaining dams to be compliant with the State of Michigan dam safety standards.

- H. In 2018 and 2019, Wixom Lake was lowered below the normal winter level during the winter months.
- I. The SOM has alleged that the lake drawdowns were undertaken without necessary state authorization and that the drawdowns resulted in damage to the state's natural resources.
- J. The State of Michigan has indicated that it may file a civil action against Boyce Hydro seeking money damages and civil fines because of the natural resource damages caused by the 2018 and 2019 drawdowns along with civil fines for the statutory violations (the "Claim").
- K. To enable the FLTF and the SAD to issue notes and bonds necessary to fulfill its duty under the lake levels order to acquire and to make necessary capital improvements of the four dams, FLTF has requested that the SOM agree not to pursue the Claim against FLTF and the SAD. A key reason the SOM is willing to execute this agreement is to ensure that the FLTF and the SAD can issue those notes and bonds. Accordingly, the FLTF and the SAD certify that they are not aware of any other potential legal claim that would prevent it from issuing those notes and bonds.
- L. FLTF has indicated that it would continue to assist and participate as a non-party, in any settlement negotiations, mediation, arbitration or other legal proceedings related to the Claim.
- M. This Agreement contains all of the terms and conditions of the Parties' understanding.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. General Release of Claim. The SOM hereby agrees to release the Claim against the FLTF (including its officers and employees as constituted at the time of the drawdowns) and the SAD to the extent it exists against the FLTF or the SAD, and agrees to hold harmless and not to sue the FLTF (including its officers and employees as constituted at the time of the drawdowns) and the SAD for the Claim. This release does not resolve and otherwise has no effect on the SOM's Claim against Boyce Hydro.

2. Subject to paragraph 3, SOM agrees that in the event that it is successful in securing a judgment, arbitration decision, settlement, or any other favorable resolution of its Claim or any other legal claim against Boyce Hydro, that it will not place a judgment lien upon or otherwise execute against the real and personal property that is to be acquired from Boyce Hydro by FLTF or FLTF's affiliate, Four Lakes Operations Corporation, under the Purchase Agreement between FLTF and Boyce Hydro dated December 31, 2019.

3. It is understood that the final Closing under the Purchase Agreement between Boyce and FLTF (and FLTF affiliate, Four Lakes Operations Corporation) is scheduled for

January 2022 at which time, complete title of the real and personal properties associated with all four dams shall be free and clear of all liens. FLTF promises to notify DAG at least thirty (30) days prior to the scheduled final Closing date. In addition, FLTF will inform DAG at least fourteen (14) days in advance of contract milestones associated with FLTF purchase of the four dams, including notifying DAG of the fact of any payments expected to be made that will exceed \$25,000. FLTF also agrees to promptly provide status updates to the DAG of the progress of the FLTF purchase of the four dams upon request. Such notifications and updates may be made in any form reasonably calculated to give notice to the DAG, including via e-mail to Assistant Attorney General Nathan A. Gambill at GambillN@michigan.gov.

4. FLTF further agrees to assist and participate as a non-party in any settlement negotiations, mediation, arbitration or other legal proceedings related to the Claim. However, in no event shall this obligation to assist and participate be construed as binding FLTF to provide additional monetary or other contributions to settlement beyond those expressly laid out in this agreement, nor shall this obligation be construed as requiring FLTF to provide particular testimony or make particular statements regarding the controversy or to refrain from giving testimony or making statements consistent with FLTF's understanding of the facts.

5. In the spirit of cooperation and sound management, FLTF agrees to contribute \$1,000,000 towards studies, monitoring, and conservation efforts to benefit the freshwater mussel ecosystem in the Four Lakes watershed, determine how to limit negative impacts on the ecosystem, and conserve the ecosystem ("Activities").

- a. No later than 3 months after the final Closing referred to in Paragraph 3, the FLTF will submit an initial draft freshwater mussel study and monitoring plan to the SOM for review and approval. That initial draft will propose beginning the first study and monitoring period no later than 12 months after the final Closing referred to in Paragraph 3. The SOM shall review and either approve or state in writing the modifications to the proposed study within 45 days of submission.
- b. The FLTF agrees to pursue the planning and implementation of Activities with diligence, and that its obligation under this paragraph will continue until the FLTF has expended \$1,000,000. The FLTF also agrees to provide an accounting, upon request, of how much of the \$1,000,000 it has spent at any given time.
- c. During its obligation period, the FLTF will collaborate with the SOM on what Activities are necessary to fulfill the purposes of this paragraph in addition to the initial freshwater mussel study and monitoring plan. For both the initial study and any other Activities, the FLTF agrees to submit the parameters of the proposed Activities to the SOM for review and approval prior to their implementation; to conduct all Activities in accordance with best scientific practices; provide copies of the data and analysis obtained from the Activities to the SOM; and waive any right (including securing the waiver of any right of

any contractor hired by the FLTF) that could impede the SOM from making the data and analysis available to the public.

- d. The FLTF's obligations under this paragraph are in addition to whatever the Federal Energy Regulatory Commission may require from the FLTF. The FLTF's obligations under this paragraph do not resolve, mitigate, or otherwise have any effect on the SOM's Claim against Boyce Hydro.

6. The FLTF further agrees to provide the data gathered and the reports or other work product produced by Streamside Ecological Services (or any of Streamside's subcontractors at the request of Streamside) at the request of FLTF related to the drawdowns from the time FLTF retained Streamside Ecological Services to the date this Agreement is executed. FLTF further agrees to waive any privileges applicable to those documents FLTF will provide complete copies of the data, reports, or work product to the SOM within 28 days of the execution of this Agreement.

7. The Parties are deemed to have cooperated in the drafting and preparation of this Agreement and any construction interpretation to be made shall not be construed against any Party.

8. Each Party hereby certifies and warrants that it has read and understands and is in full concurrence with the provisions contained within this Agreement, and that it has entered into and executed this Agreement voluntarily and with full knowledge of its significance, meaning and binding effect.

9. The individuals signing this Agreement hereby represent and warrant that they and each of them are duly authorized and empowered to act on behalf of and sign for the Parties for whom they have signed respectively.

10. This Agreement constitutes the entire understanding of the Parties with respect to the subject matter contained herein and supersedes any prior understandings and agreements between them respecting such subject matter. Any modifications of this Agreement shall be made only in writing executed by both Parties.

11. This Agreement shall be construed under and governed by the laws of the State of Michigan.

12. This Agreement is binding upon and inures to the benefit of each Party's successors and assigns.

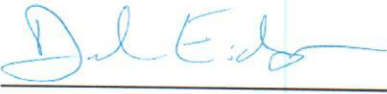
13. This Agreement may be executed in several counter-parts (exchanged via facsimile or e-mail is acceptable), each of which shall be an original and all of which shall constitute but one and the same instrument.

14. The Recitals shall be considered an integral part of the Agreement.

15. THE PARTIES AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date of last signature written below.

STATE OF MICHIGAN

By: 

Name: Dan Eichinger

Its: Director of Department of Natural Resources

Date: April 15, 2020

FOUR LAKES TASK FORCE

By: 

Name: David E. Kepler, II

Its: President

Date: 4/15/2020