



## **FOUR LAKES TASK FORCE**

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March 22, 2021

Nathaniel J. Davis, Sr., Deputy Secretary  
Federal Energy Regulatory Commission  
888 First Street NE  
Washington, DC 20426

**RE: COMMENTS ON FERC MARCH 3, 2021 NOTICE OF TERMINATION OF LICENSES BY IMPLIED SURRENDER OF SANFORD (P-2785), SECORD (P-10809) and SMALLWOOD (P-10810) HYDRO ELECTRIC PROJECTS (Boyce Projects)**

Dear Mr. Davis:

With this letter, the Four Lakes Task Force (“FLTF”) is commenting on FERC’s March 3, 2021 Notice of Termination for the Boyce Projects. We agree with FERC’s rationale for Implied Surrender as articulated below:

*“On May 19, 2020, the floodwaters of the Tittabawassee and Tobacco Rivers breached the Edenville Dam and the downstream Sanford Dam. The Secord and Smallwood Dams were not breached. The breaches and flooding caused substantial damage to the surrounding communities, washing out major roads, destroying homes, and forcing the evacuation of thousands of residents. The Commission’s Division of Dam Safety and Inspections issued numerous directives relating to dam and public safety at the Boyce Projects that Boyce Hydro failed to address. Boyce Hydro filed for bankruptcy protection on July 31, 2020. Midland and Gladwin Counties, Michigan, acting through their delegated authority, the Four Lakes Task Force, filed condemnation petitions against Boyce Hydro. On December 23, 2020, and December 28, 2020, the circuit court judges granted the petitions, which resulted in the transfer of all properties associated with the Secord, Sanford, Smallwood, and the non-jurisdictional Edenville Projects to Four Lakes Task Force, retroactively, effective to July 31, 2020.”*

Further, as stated in our letter to FERC dated January 5, 2021: The Counties now own the properties, and not the FERC Licenses. The regulatory framework in connection with the four dams needs to be resolved. Michigan’s Department of Environment, Great Lakes and Energy (“EGLE”) cannot assume regulatory authority until there is a disposition of the licenses. FLTF, Midland and Gladwin counties, have no legal interest in the fate of these licenses, and further, will not yield control of the properties and flowage rights required in connection with our responsibilities under Part 307, Inland Lakes, of the State of Michigan’s Natural Resource and Environmental Protection Act, MCL 324.30701 et seq.

Accordingly, with this being the only recourse for moving forward and restoring the dams and lakes, we believe that the Boyce Project Licenses should be terminated by implied surrender of the Boyce Projects’ licenses by Boyce Hydro Power, LLC (BHP). BHP is now insolvent and no longer in operation. Currently, the Counties and FLTF do not see a path to restoring hydropower on the Four Lakes. If that changes, we will certainly reach out to FERC in this regard. We appreciate FERC’s willingness to engage with the FLTF, and EGLE Dam Safety, to ensure that there is an effective handoff of regulatory control. Termination by implied surrender allows FLTF to continue with the work of stabilizing the Dams and Lakes, and recovery of the Four Lakes to their State legally established normal levels.

## IN SUMMARY

FLTF and the Midland and Gladwin counties have successfully acquired the real property interests from the BHP. BHP's holding of the licenses for the three dams has become a burden to FLTF. We support FERC's proposal to terminate the Boyce Projects' Licenses through implied surrender and help facilitate an orderly transition of jurisdiction to the State of Michigan.

BHP was given the opportunity with a FERC license to profit from a natural resource but failed its stewardship to protect the public and the environment despite FERC oversight. It required Gladwin and Midland Counties to take the properties via condemnation, and FLTF to negotiate with Boyce, its lender, and the Bankruptcy Trustee to acquire the property to implement emergency repairs and remove debris; something FERC, under its existing authority, was unable to compel BHP to do.

These Four Lakes and dams had a sustainable future. BHP's failures have resulted in significant environmental and economic damage that is now left for FLTF and the Counties to address. We believe, FERC should seek additional authority or statutory changes to ensure that private hydropower owners make timely and appropriate investment in infrastructure to avoid the catastrophic failures suffered by so many in Midland and Gladwin counties. Specifically, FERC and the Department of Justice, should be able to take immediate control when a license owner is not performing, and place a lien on revenue to pay the costs associated with the required improvements. BHP should not have been permitted to obfuscate, maneuver and delay. The May 2019 catastrophe left the former BHP properties and surrounding Four Lakes community in an unacceptable condition.

In the United States, especially under Federal Regulatory oversight, infrastructure should not just be allowed to "AGE". It must be sustained with ongoing maintenance and managed as environmental conditions change. It requires a duty of care by all parties private and public. While recognizing it is beyond FERC's authority, we believe significant federal assistance will be required and should be offered beyond just an administrative transfer of regulatory oversight.

Sincerely,



David E. Kepler II  
President and  
Chairperson  
Four  
Lakes Task Force

CC:

Liesl Clark, Director of the Michigan Department of Environment, Great Lakes and Energy (EGLE)  
John Moolenaar, Congressman, 4<sup>th</sup> District of Michigan  
Gary Peters, U.S. Senator for Michigan  
Debbie Stabenow, U.S Senator for Michigan  
James Stamas, State Senator, Michigan 36<sup>th</sup> District