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Legal Challenges to the Four Lakes Special Assessment District Boundaries

Several property owners have reached out to FLTF about a solicitation from attorneys that propose to legally challenge the Special Assessment District (SAD) to include other properties downstream. The claim asserts that the Special Assessment District boundaries should be extended to include properties that do not have access to the Four Lakes. In addition, FLTF has also received information that others within the lake level SAD boundaries plan to legally challenge the properties in the Special Assessment District. Property owners have asked our view on this effort.

FLTF cannot provide individual legal advice as property owners have the right to make their own choices and should seek the consultation of a lawyer to inform their own decision in connection with such challenges.

That said, FLTF makes the following points in connection with the claims associated with expanding the SAD, or removing properties from the SAD as approved by the Midland and Gladwin county Circuit Courts in May of 2019:

- 1) Special Assessment and Special Assessment District. The Four Lakes Special Assessment District (“SAD”) is a special-purpose public body with an established boundary of waterfront properties along or near the four lakes, and backlot properties with dedicated (private easement) access. The original intent was for properties within the SAD to share financial responsibility by paying an annual assessment for maintaining legal lake levels. The SAD offers a method of financing the acquisition, operation, maintenance, repairs and improvements to the dams to ensure that they meet State of Michigan dam safety standards (in accordance with [Part 315 “Dam Safety” of Natural Resources Environmental Protection Act \(NREPA\), MCL 324.31501 et seq.](#)). To date, there has been no lake level special assessment imposed on property owners in the Four Lakes SAD. At some point when a project cost and lake level special assessment roll have been established, all property owners and public corporations (i.e., cities, township, villages and counties), and the State of Michigan will receive a notice and will have the opportunity to be heard in connection with the project cost and the special assessment. If you believe your property will have no or little benefit from having a lake, and your property is in the Four Lakes SAD, you will have the opportunity to challenge the lake level special assessment.

- 2) Expansion of Special Assessment Boundaries. The legal boundaries of the Special Assessment District were established by the Midland County Circuit Court following notice and hearing. No one appealed the circuit court order. We maintain that a person or property owner cannot challenge the boundaries once established in accordance with [Part 307 of the NREPA, 1994 PA 451, as amended, MCL 324.30701 et seq.](#) Rather, to revisit this issue would likely require both Midland and Gladwin counties to petition the circuit court to reconsider its prior order. The purpose of Part 307 is to provide for the control and maintenance of inland lake levels for the benefit and welfare of the public and properties benefitting from the maintenance of the normal lake level. Part 307 essentially authorizes counties to make policy decisions as to the levels of their inland lakes and to build and finance dams as necessary to maintain the desired lake levels. The counties may also determine that the costs of a lake level project and



maintenance of the normal level be defrayed by special assessments. However, it is the county circuit court that ultimately has the authority to weigh competing factors in its determination of the normal levels of an inland lake and boundaries of the special assessment district.

- 3) Flood Control. We understand that there are a few people who are convinced that the dams and lakes were created for the purpose of “flood control,” and therefore properties downstream (without lake access) should be included in the Four Lakes Special Assessment District. This is a mistaken proposition. The dams and lakes were created to produce hydroelectric power, and properties and cottages were permitted to develop around the lakes afterward. Until December 2020, the dams on Secord, Smallwood, Wixom and Sanford, were owned and controlled privately. Michigan common law does not require a private dam owner to maintain the existence of a dam or the artificial level of a lake. The case of *Goodrich v McMillan*, 217 Mich. 630, 187 NW 368 (1922), established the rule that ownership of a dam *does not impose a duty* on the dam owner to maintain the water at an artificial level created by the operation of a dam. Consequently, Boyce Hydro (and prior dam owners) had no legal obligation to maintain the lake levels and could have removed the dams. If there was a legal requirement for Boyce Hydro to maintain the dams for flood control, then Boyce would have had a legal obligation to manage the lake levels for that purpose. The record does not support this proposition. There is no federal or state agency ordering these dams to be rebuilt. However, once the community has decided to restore the dams and the lakes, the dams must be constructed to meet certain standards to prevent the catastrophe many experienced in May 2020. Part 307 (and prior Michigan law dating back to the early 1900s) provides a public solution for restoring the lakes that were created by a private project nearly a century ago to impound the water. Part 315 (Dam Safety) is the regulatory framework related to dam safety and design in connection with the artificial impoundment of water.
- 4) Lake Restoration and Lawsuits. FLTF is dedicated in its pursuit to restore the lakes and surrounding ecosystems as soon as possible, as safely as possible, and as affordably as possible for our lake communities. We are working with local, state and federal authorities to obtain funding to remove debris, restore shoreline, and construct and improve the lake level structures. However, aside from local, state and federal financial assistance and private donations, the only remaining source of revenue to restore the lakes and ecosystems, is the revenue derived from special assessments. Consequently, when FLTF is required to defend itself or the Four Lakes Special Assessment District, those costs will eventually be paid from the revenue derived from special assessments. Moreover, lawsuits can and will delay efforts to restore the lakes. To date, FLTF has had to defend itself against four separate class-action lawsuits which, following negotiations with counsel for the various lawsuits, have been dismissed without prejudice. Nonetheless, as legal costs continue to be incurred in connection with lawsuits (or responding to requests for information), legal defense costs that were covered by a few private donors, will become an expense of the Special Assessment District.
- 5) Public Parks and Lands. State land with lakefront or access to the lakes can be specially assessed. Other public lands, such as township or county parks will be a factor in determining at-large assessments against “political subdivisions” (i.e., townships, villages and counties). See Section 30711 of Part 307 (MCL 324.30711). At-large assessments are generally paid from the county



and local community general funds to account for the general public benefits received by citizens that utilize public access to the four lakes (e.g., via county and local parks) and for general benefit of the community.

- 6) Information and Outreach. Cost estimates and proposed restoration plans, along with legal and regulatory framework are included in the May Feasibility Study and Restoration Plan: <https://www.four-lakes-taskforce-mi.com/restoration-plan.html>. Some points have been extracted from the plan and are provided for those considering challenging the legal lake levels, the Special Assessment District or their individual SAD assessment.

Property owners have every right to make choices and to take the best path they feel is in their self-interest, which includes pursuing legal challenges.

FLTF will take all appropriate legal action in response to such challenges. We believe there is a clear path forward which is outlined in the [Restoration Plan](#) on our website.

We continue to exhaust all avenues to restore the lakes most affordably. **Legal challenges to modify the court order or create new law can and will be costly to defend, increase the burden on property owners, and will delay restoration of the lakes.**