



**Re: November 17, 2020 Update**

To Gladwin and Midland County Commissioners:

In the six months since the Edenville and Sanford Dam failures, and the lowering of Secord and Smallwood lakes, Four Lakes Task Force, with your support and the support of our local, state and federally elected officials, has made important progress toward our goal of restoring the lakes and dams. In September we issue a detailed path forward, with our objectives as follows:

1. **Stabilize** the four dams and lake bottoms this year.
2. **Acquire** the properties and develop a restoration plan.
3. **Study** flood impacts and develop a feasible design.
4. **Design** for the next future years and start to rebuild our future.

Earlier this month we issued a progress update to our September Recovery and Restoration Plan. We will have a Board Meeting/Community webinar in December, and plan to issue another Progress Report in January 2021. It has been a challenging effort to make progress with Boyce's entrenchment. However, the community has, and we are emerging from these many months of hard work with recovery projects underway, and studies that are mostly funded to complete the restoration plan for our lakes.

Our efforts are bringing a healthy public discussion and debate, which is good, and we are sure will continue. It is a tragic event that occurred, a significant effort to recover, and there are lots of decisions to be made. While generally supported, FLTF and the counties have been challenged by some on these decisions, including with lawsuits. Yet now that we have a clear path forward on recovery and acquisition, we will be turning the discussion to rebuilding the dams and restoring the lakes.

In 2020, FLTF received more than \$3 million in private donations, halfway to the goal. Additionally, we secured \$17.5 million in state grants, plus we expect about \$20 - \$30 million in funds from the USDA Natural Resource Conservation Services (NRCS). To date, the property owners of the Four Lakes Special Assessment District have not been assessed and there have been no expenditures requested from the counties' general funds.

The Gladwin and Midland County Boards made two critical decisions 1) after the revocation of the Edenville Dam's FERC license and 2) after the flood events and failure of the dam system this May:

- In May 2019, the Counties and the Circuit Court Established Legal Lake Levels via Part 307 of the Natural Resources and Environmental Protection Act
- In June 2020, the counties issued a resolution of condemnation of the Boyce dam and lake properties under their authority under 307

Six months from the dam failures and nearing the end of 2020, we can assess where we are, and the short- and long-term implications of these decisions. If these decisions by the counties had not be taken, the outcome would have been different:

- The Boyce companies would be in bankruptcy, with no clear path of ownership or resolution for our community



- The Boyce properties would have been likely excluded from any Federal support, leaving the lake system in a state of crisis, with more than \$40 million of just stabilization work
- The state or counties would have had no specific funding structure or governance to intervene and would have needed to create them to address the issue
- The burden on the counties' general funds in 2020 would have been significant to manage the recovery of this event

Instead, with the action by the county boards, we collectively have created a path forward, with major tracks of work funded and underway. While we still needed to raise an estimated \$6-\$8 million to get to the project construction phase financing for all the dams, we are ahead of our financial plan, eliminating the need for interim financing in 2021, and have confidence we can complete the major project tracks now underway.

### Stabilizing the Dams and Bottomlands

Although It was Boyce Hydro's responsibility, it took no action. FLTF assumed the task of administering repairs to these properties and for raising the money to cover costs to get federal matching grants. Now, with a partial lift of the stay from the Bankruptcy Court and agreement from Boyce to access the property, work is underway.

Our near-term focus has been on safe operations and repairs to get through the winter and spring months. We have an operations team, in place with experts, are engaging the county emergency managers and EGLE. There is a two-phased approach to put a rain and flow measurement system in place for this season which will be followed by a long-term design.

We have reviewed all the available engineering reports, done our own investigation and have projects underway on each Dam. EGLE, FLTF and NRCS are working together to stabilize the Tobacco Spillway, repair work is planned for Secord and Smallwood for safer winter and spring operations. The Edenville Tittabawassee spillway and Sanford breaches will be addressed in 2021. Debris has successfully been removed from the Sanford Dam.

Significant efforts to address bottomland erosion and debris removal which is a multi-million-dollar issue that has a short-term risk of major damage to more than 120 private properties is underway. This is being addressed with support of approximately 75% of matching funds from the USDA Natural Resource Conservation Service (NRCS). FLTF has structured a financial aid program to minimize limit costs risk to the individual property owners with expensive erosion damage. Another approximately 250 properties with erosion damage have been identified that are not eligible for a federal grant. FLTF is developing a program to help these property owners to help themselves.

In summary, our immediate focus is on repair and operations for this winter and spring, and we expect the recovery program to continue through all of 2021 and finish in early 2022.



## Acquiring the Properties

After negotiating with Boyce Hydro last month and obtaining an order from the bankruptcy court, FLTF has access to the Boyce properties to make repairs and ready the dams for the winter and spring seasons. However, we have made it clear that we must have operational control in December. We believe the Bankruptcy Court has an interest in our concern.

Last Friday, November 13th, Boyce and FLTF reached a settlement in connection with the condemnation litigation. In accordance with the settlement agreement, the counties on behalf of the Four Lakes Special Assessment District, will obtain ownership of the Boyce properties. This will come in the form of a consent to be filed to be approved by the circuit courts in Midland and Gladwin counties.

FTLF has agreed to pay \$1,576,000 that will be distributed as follows:

- \$270,000 to Boyce Michigan
- \$152,000 to local suppliers that had liens on Boyce properties
- The remaining \$1,154,000 will be up to the Bankruptcy Court to sort out between Byline Bank, lawyers and the bankruptcy trustee.

The settlement is not about the value of the property, or fairness, but it is the best deal we could get to allow the community to extract itself from the legacy of Boyce's ownership and move forward.

Regarding the class action lawsuits, three of the five lawsuits against FLTF have been dropped. FLTF, as part of the Boyce Bankruptcy proceeding, has also been included in an insurance settlement trust that would release FLTF from all future claims.

## Restoring Our Lakes

We now have funding for most of the feasibility and flood studies for 2021, as well as to begin the engineering studies.

The coming months will be important in framing our next steps. Plans include activity by April 2021 to:

- Conduct a flood study, that is ready and considers the lakes in their current state, and the lakes reestablished with the dams rebuilt. This will inform us for future dam design, also about the management of the system in its current state.
- A Community Survey will be performed by Public Sector Consultants to gauge property owner sentiments in the Four Lakes Special Assessment District on the importance of their lakes, and the assessments.
- A feasibility study that will inform the counties and the communities on
  - Uses and function of the lakes
  - Regulatory Framework and Design Standards
  - Alternative Design and Options
  - Financing and Affordability
  - Implementation Schedule



## Assessments by 2022

Longer-term, there will be two assessments – one for operations and one for the capital implementation costs to rebuild the dams. This was reviewed in our September Report, and has significant range by lake that needs to be further refined. We recognize these assessments, based on the information available, are significant especially on Sanford and Wixom Lake. It is a critical issue to address.

Our pre-application for the Four Lakes Special Assessment District (SAD) was accepted and meets the eligibility requirements for a low-interest loan from the U.S. Department of Agriculture (USDA). This means we now have a path to a funding mechanism to go forward with rebuilding our lakes and dams. We also now have legislation (with bi-partisan support and approved by Gov. Whitmer) that allows for 40-year financing.

We will need the Special Assessment District to fund lake operations, and some of the acquisition costs. It is estimated to be approximately \$100-\$200/year over the next 3 years per lake front property owner. This assessment will be implemented through the Part 307 process in 2021, which will include public hearings and County Approval of Rolls. While still being determined, the assessment will total about \$1-\$1.5 million per year.

## Critical Issues

With pursuit of Part 307 funding as our plan, we have four critical issues we are actively working on:

- 1) A dam design that brings back lake levels, at the current industry standards, to ensure reliability and integration of the dam, with dams that are built as affordably as possible without sacrificing public or environmental safety.
- 2) Understanding and addressing the state and federal regulatory agencies' environmental requirements in bringing back the lakes to their normal levels.
- 3) Determining whether Secord and Smallwood can be safely brought up before they are fully repaired in the next two years.
- 4) Finding a solution that is affordable to the community and a large majority of the individuals on the lakes.
  - a. If the Assessment District must bear the full cost of bringing back the lakes, it will be a burden to many. We are looking for other revenue sources, and will have a plan laid out for how we will pursue them in the feasibility study.
  - b. The county, state, foundations, and other revenue sources can contribute to these costs, to offset special assessments, but it is up to the community to find and sell a value proposition
  - c. Individuals and some of the communities on the lakes can look to grants and programs, or perhaps develop them to minimize displacement

## “Lakes or Not Lakes”

“Normal Lake level” in Part 307, Inland Lakes of the Natural Resource and Environmental Protection Act means “the level or levels of the water of an inland lake that provide the most benefit to the public; that best protect the public health, safety, and welfare; that best preserve the natural resources of the state; and that best preserve and protect the value of property around the lake....” We believe that this law



continues to be true for these four lakes. It is the Four Lakes Task Force's mission to restore these lakes to their legal lake levels as safe for the public and environment, in as an affordable way as possible.

### Summary

To be clear, The Feasibility Report in April and reviews early next year will not be the final decision on financing or long-term assessment charges. Our target is to have a plan that will have an improved estimate on construction and timetable for when each lake can be restored, and a position on the critical issues. We will have a dialogue with the community over the first half of 2021, with a series of open meetings. This will then go through a review by 2022 where lake by lake plans, financing and construction will be approved.

The only assessments in late 2021 would be the acquisition and operations costs to manage the lakes, dams, and bottomlands. We are on a path to have all the funds needed to define the future of the lakes to the point of financing. We likely will come to the county for some operational support as well, for example security services on the bottom lands.

Four Lakes is grateful to Midland and Gladwin Counties for their support for the creation of legal normal lake levels through Part 307 and the resolution to condemn, as without them the next three years would have brought significant issues and more public safety issues.

Thank you for your support of our work as we engage individuals at all levels of our community to bring back our lakes. Your time and attention are critical to this process.

Dave Kepler  
On behalf of the Four Lakes Task Force