



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF NATURAL RESOURCES  
LANSING



DANIEL EICHINGER  
DIRECTOR

April 5, 2021

Ms. Kimberly Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street NE, Room 1A  
Washington, DC 20426

**RE: COMMENTS of Michigan Department of Natural Resources on Notice of Termination of Licenses by Implied Surrender of Projects No. P-2785-103, P-10809-051, and P-10810-057**

Dear Secretary Bose:

The Michigan Department of Natural Resources (Department) appreciates the opportunity to comment on the Federal Energy Regulatory Commission's (Commission) request for input on the notice of termination of licenses by implied surrender of Boyce Hydro, LLC (Boyce Hydro) Sanford (P-2785), Secord (P-10809), and Smallwood (P-10810) Hydroelectric Projects. During a voluntary or more typical license surrender process, resource agencies would have the opportunity to comment on local environmental and recreational issues that may result from license surrender and seek to ensure the licensee acts in the public interest. In light of the limitations imposed by the implied surrender, and dysfunction preceding it, the Department's comments are framed as comments on the proceeding itself, and recommendations for consideration by the new facility owner/operator, presumably Four Lakes Task Force (FLTF).

#### **Implied Surrender**

The FLTF has requested prompt action. We are aware of FLTF's commitment to maintain the dams "with ongoing maintenance and managed as environmental conditions change" (Accession no. 20210323-5068). As evidenced in the highly organized outreach and informative resources FLTF provides (<https://www.four-lakes-taskforce-mi.com/>), the environment surrounding the dams are in constant flux as a result of the May 2020 Tittabawassee River flood and ensuing damage to the aforementioned hydroelectric projects. The Department recommends that any plans account for this variability.

The Commission's selection of implied surrender proceedings appears to stem from expected limitations on obtaining cooperation of any sort from the prior Licensee, Boyce Hydro. While that is unfortunate, as there are measures we would have recommended of the Licensee, the Department recommends that the Commission move to terminate the Boyce Hydro licenses as soon possible so that the Department of Environment, Great Lakes, and Energy (EGLE) and the Department can work directly with the affected communities. This process should also include a timely transfer of any files and documentation from the Commission to EGLE Dam Safety and the Department. Access to this information will facilitate informed conversations and assessment of future options and alternatives to ensure public safety and environmental protection.

## **Recommendations**

The Department recommends the following measures for FLTF, or any successors which accept responsibility for the projects or to which project responsibilities are transferred:

### Public Recreation

While the character of the area has changed dramatically, and will continue to change, we anticipate there will still be a lot of public recreational interest. These interests include fishing and boating. Because the Tittabawassee and Tobacco Rivers through Edenville and Sanford dams are likely to remain riverine for several years, developing safe access opportunities as soon as possible will be of great benefit to the public and could facilitate local economic recovery. The Department recommends that the successor inventory existing viable public recreation access and develop a comprehensive plan that addresses short and long-term recreational needs. The inventory should address changes to the "Exhibit G" and "Exhibit R" drawings for each project, which may reflect the previous condition and expectations of access, project boundaries, and project-associated recreational facilities.

### Resource Protection

The Department recommends the compilation or collection of the following data to fully assess potential natural resource impacts resulting from future construction activities and prior to restoring legal lake levels:

- Stream Stabilization – potential for shoreline or riverbank erosion, erosion control measures during construction activities, and evaluation of potential sediment release and downstream sedimentation
- Water Quality – impacts to water quality and water supply
- Aquatic Resources and Habitat – proposals to remove or modify barriers to fish migration and passage, plan for rescue and relocation of stranded fish and mussels during impoundment drawdowns, and protective measures during construction activities
- State and Federally Listed Fish and Wildlife Species – plans for the protection of listed species during construction activities
- Invasive Species – plans to address invasive plants that may colonize exposed impoundment areas (<https://www.michigan.gov/invasives/>)
- Historic and Archaeological Resources – plan for protection of cultural and historic resources during construction activities
- Downstream Flood Conditions / Inundation Maps
- Wetland and Terrestrial Resources
- Vegetation Management – exposed tree stumps should be left intact as they provide stream bottom stability and aquatic organism habitat, non-invasive vegetation should be allowed to grow on the exposed bottomlands to prevent erosion and downstream sedimentation
- Land Use and Aesthetics
- Groundwater Elevations
- Private Wells
- Infrastructure
- State and Local Bridges and Pipelines
- Ice – evaluation of increased potential for downstream ice jams and ice scour

### Maintenance

If any remaining dam structures are to be left in place, they must be maintained and operated in a manner that is responsible with respect to public safety and environmental protection. We defer to EGLE Dam Safety's recommendations on the structural improvements and maintenance required to ensure the structures will not pose a risk to public safety. The Department also recommends that the successor develop long-term maintenance and operation plans that includes mechanisms for financial assurances to cover the entire life cycle of the dams and contingencies.

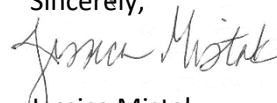
It is the policy of DNR Fisheries Division to recommend dam operations that mimic natural riverine conditions. The intact dams should continue to be operated as run-of-river, where instantaneous inflow approximately equals instantaneous outflow. Measures to avoid introduction and control invasive species, prevent excess sedimentation, and other environmental measures should be conducted. If dams or similar structures for impounding water are rebuilt, requirements relating to water quality, fish passage, and other concerns may need to be addressed.

### Future Hydropower

Should any successor seek to reestablish hydropower in the future, the Department will follow the established Commission licensing procedure, which includes providing review criteria, data needs, and study guidelines for use in recommending measures protective of aquatic resources. The Department will also work with EGLE to provide standards for the 401 Water Quality Certifications.

Thank you for the opportunity to comment on Boyce Hydro's license surrender. If you have any questions regarding these comments, please contact me at 906-280-8876 or [mistakj@michigan.gov](mailto:mistakj@michigan.gov).

Sincerely,



Jessica Mistak  
Habitat Management Unit  
Fisheries Division  
Department of Natural Resources

cc: Jim Dexter, Fisheries Division  
Randy Claramunt, Fisheries Division  
Jeff Jolley, Fisheries Division  
Addie Dutton, Fisheries Division  
Dave Kepler, FLTF  
Luke Trumble, EGLE  
Dan DeVaun, EGLE