

New Business #1

June 9, 2020


To the Honorable Chairman and
Members of the Board of Commissioners


Agenda Item: 60-6-20BOC


Ladies and Gentlemen:

We your Administration and Operations Committee recommend approval of the Resolution for Condemnation pursuant to Part 307 of the Michigan Natural Resources and Environmental Protection Act and the Uniform Condemnation Procedure Act.

Respectfully Submitted,


James Geisler, Chairperson



Scott Noesen


Eric Dorrien

Administration and Operations Committee

jmg

Motion by Commissioner Geisler/Noesen to approve
Motion carried by roll call vote.

Attested:  for Ann Marang
Midland County Clerk and Clerk of the Board of Commissioners
Dated: June 9, 2020

Introduced by _____:

BOARD OF COMMISSIONERS OF THE COUNTY OF MIDLAND

**RESOLUTION FOR CONDEMNATION
PURSUANT TO PART 307 OF THE MICHIGAN NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION ACT AND
THE UNIFORM CONDEMNATION PROCEDURE ACT**

RESOLUTION # _____

Minutes of a regular meeting of the Board of Commissioners of the County of Midland, Michigan, held at the County Services Building, 220 W. Ellsworth Street, Midland, Michigan 48640, on June 9, 2020, at 9:00 a.m., local time.

PRESENT: Commissioners Snyder, Glaser, Terwillegar
Noesen, Dorrien, Geisler + Bone

ABSENT: Commissioners None

The following resolution was offered by Commissioner Geisler and supported by Commissioner: Noesen.

WHEREAS, Wixom Lake, Sanford Lake, Smallwood Lake, and Secord Lake are inland lakes located in Gladwin and Midland Counties, that were created by the impoundment of the Tittabawassee and Tobacco Rivers by four (4) hydroelectric dams that are privately owned and operated by Boyce Hydro Power, LLC ("Boyce Hydro") and, with exception of the Edenville Dam on Wixom Lake, are regulated by the Federal Energy Regulatory Commission ("FERC"); and,

WHEREAS, Wixom Lake, Sanford Lake, Smallwood Lake, and Secord Lake (the "Lakes" or "Four Lakes"), are important resources to both Midland and Gladwin counties, and the impoundment and operation of the dams are of paramount importance to the environment, recreation, property values of lake residents, and the public and economic health of the counties; and,

WHEREAS, Part 307 of the Michigan Natural Resources and Environmental Protection Act, "Inland Lake Levels", MCL 324.30701 et seq. ("Part 307") governs the process for the determination, establishment and maintenance of the water level of inland lakes, and authorizes counties to acquire, finance, construct, operate and maintain dams as necessary to maintain such levels as determined by the circuit court; and,

WHEREAS, on October 9, 2018, the Gladwin County Board of Commissioners adopted Resolution #2018-034, finding that in order to protect the public's health, safety, and welfare, to best preserve the natural resources of the state, and to preserve and protect the value of properties around the Lakes, that it was necessary to take all action to establish and maintain the normal lake level for the Lakes pursuant to Part 307 (the "Lake Level Project" or "Project"); and,

WHEREAS, on October 16, 2018, the Midland County Board of Commissioners adopted a resolution, finding that in order to protect the public's health, safety, and welfare, to best preserve the natural resources of the state, and to preserve and protect the value of properties around the Lakes, that it was necessary to take all action to establish and maintain the normal lake level for the Lakes pursuant to Part 307 (the "Lake Level Project" or "Project"); and,

WHEREAS, the Four Lakes Task Force, is a Michigan non-profit corporation and IRC 501(c)(3) organization comprised of representatives from all four lakes and lake associations, and was appointed by the Counties to serve as the "Delegated Authority" as provided by Part 307, to act on behalf of the Counties to oversee the Lake Level Project, to prepare a Special Assessment District and Special Assessment Roll in accordance with the procedures set forth in Part 307, and to take all other actions as necessary and required by the Delegated Authority as provided in Part 307 ("Delegated Authority"); and,

WHEREAS, in February, 2019, the Counties filed petitions in the circuit courts of Gladwin and Midland counties pursuant to Part 307 requesting the determination of the normal levels of the Four Lakes, and approval of the boundaries of a special assessment district (*In the matter of Wixom Lake, Sanford Lake, Smallwood Lake and Secord Lake*, Midland Circuit Court Case #19-5980-PZ and Gladwin Circuit Court Case #19-009892-PZ); and,

WHEREAS, on May 28, 2019 ("Lake Level Order") following a hearing, Midland County Circuit Court Judge Stephen P. Carras entered an order establishing the normal levels for each of the Four Lakes and approved the boundaries of the Four Lakes Special Assessment District; and,

WHEREAS, on May 19, 2020 the privately-owned earthen dam/dikes supporting Wixom and Sanford Lakes failed causing catastrophic flooding in and throughout Midland and Gladwin counties and the loss of Wixom and Sanford Lakes; and,

WHEREAS, County of Midland acting under the authority granted by Section 30710 of Part 307 (MCL 324.30710) and pursuant to the procedures set forth in the Michigan Uniform Condemnation Procedures Act, Michigan Public Act 87 of the Public Acts of 1980, as amended, MCL 213.51 et seq. ("UCPA") has determined that it is necessary to condemn private property for the purposes set forth in Part 307 and in order to restore and maintain the normal levels for each of the Four Lakes in accordance with the Lake Level Order; and,

WHEREAS, the Counties' Delegated Authority has not been able to secure through negotiation all such property interests needed to undertake the Lake Level Project; and,

WHEREAS, the property interests located in Midland County that will be subject to proceedings in condemnation are described in Attachment A hereto (including list of parcels, legal descriptions and property owners); and,

WHEREAS, in order to expedite proceedings in regard to the Lake Level Project so that design and construction can be started with the least possible delay, to restore the normal levels of the Four Lakes in accordance with the Lake Level Order and purposes set forth in Part 307, it has become necessary to employ the services of an appraiser and/or other consultants, and legal

counsel to continue negotiations and initiate condemnation proceedings in court as necessary to acquire the all appropriate property interests for the Lake Level Project.

NOW THEREFORE BE IT RESOLVED, that the Midland County Board of Commissioners finds that in order to protect the public's health, safety, and welfare, to best preserve the natural resources of the state, to preserve and protect the value of properties around the lake, and to restore and maintain the normal lake levels of the Four Lakes, all such being necessary and essential to the public health and welfare of the residents of served by the Four Lakes Special Assessment District, that it is necessary that the private property interests located in Midland County and described in Attachment A be taken in order to undertake the Lake Level Project as provided in Part 307 and in conformance with UCPA.

BE IT FURTHER RESOLVED, that the County authorizes its Delegated Authority to take all such action as are necessary under the applicable provisions of Part 307 and UCPA, and any other applicable state or federal law, including but not limited, to retain qualified appraisers or other consultants to undertake studies to determine an amount that will be just compensation for the Property (as defined by the UCPA) interests acquired through condemnation, to make good faith written offer(s) to property owner(s) of such Property, to enter into negotiations thereafter, to reach agreements with regarding to the Property as to just compensation, and, as the Delegated Authority deems necessary, to initiate appropriate proceedings in the Circuit Courts of the Counties of Midland and Gladwin for the condemnation of the Property herein designated on Attachment A.

BE IT FURTHER RESOLVED, that the Delegated Authority is authorized to establish with the Midland and Gladwin County Treasurers an escrow account for the specific amounts estimated to be just compensation for the Property that will be condemned pursuant to the UCPA.

BE IT FURTHER RESOLVED, that the Delegated Authority is authorized to retain the law firm of CLARK HILL PLC or in the event of conflict, such other firm as the Delegated Authority may select in consultation with County's legal counsel, and to take all appropriate action in regard to the initiation of condemnation proceedings in the Circuit Courts of the Counties of Midland and Gladwin for the taking of private property as indicated in Attachment A.

BE IT FURTHER RESOLVED, that the Delegated Authority is hereby authorized to select a real estate appraiser or other consultants, to consider the factors of estimated appraisal cost, timing of services, professional services, expert witness qualifications, to prepare estimates of just compensation required for the property interests taken as described in Attachment A.

BE IT FURTHER RESOLVED, this Resolution shall not take effect unless and until the adoption of a resolution with the same findings, determinations and conditions as set forth herein by the Board of Commissioners for the County of Gladwin, Michigan.

YEAS: Commissioners Glaser, Terwilliger, Geisler
Dorrien, Noesen, Snyder

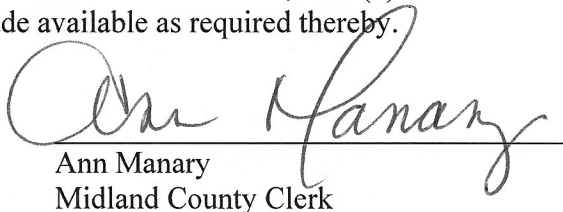
NAYS: Commissioners None

ABSTAIN: Commissioners None

The Resolution was declared adopted.

CLERK'S CERTIFICATE

The undersigned, being the duly qualified and acting Clerk of the County of Midland, Michigan, hereby certifies that (1) the foregoing is a true and complete copy of a resolution duly adopted by the County Board of Commissioners at a meeting held on June 9, 2020, at which meeting a quorum was present and remained throughout, (2) the original thereof is on file in the records in my office, (3) the meeting was conducted, and public notice thereof was given, pursuant to and in full compliance with the Open Meetings Act (Act No. 267 Public Acts of Michigan, 1976, as amended) and the Governor's Executive Orders relating to COVID-19 emergency response and concerning public meetings, as the same may be or has been expanded, extended, supplemented or replaced from time to time, and (4) minutes of such meeting were kept and will be or have been made available as required thereby.


Ann Manary
Midland County Clerk

New Business #2

June 9, 2020

To the Honorable Chairman and
Members of the Board of Commissioners

Agenda Item: 61-6-20BOC

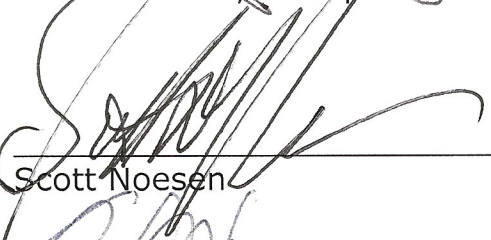
Ladies and Gentlemen:

We your Administration and Operations Committee recommend approval of amendment #1 to the agreement between Midland & Gladwin Counties and Four Lakes Task Force.

Respectfully Submitted,



James Geisler, Chairperson



Scott Noesen




Eric Dorrien

Administration and Operations Committee

jmg

Motion by Commissioner Geisler to approve
Motion carried by roll call vote.

Attested:  for Ann Harty
Midland County Clerk and Clerk of the Board of Commissioners
Dated: June 9, 2020

AMENDMENT #1 TO AGREEMENT
Between
MIDLAND AND GLADWIN COUNTIES
and
FOUR LAKES TASK FORCE

This AMENDMENT ("Amendment #1") to the Agreement dated August 21, 2019 between the COUNTY OF MIDLAND, a Michigan constitutional corporation whose address is County Services Building, 220 W. Ellsworth Street, Midland, Michigan 48640, the COUNTY OF GLADWIN, a Michigan constitutional corporation, whose address is 401 W. Cedar Ave, Gladwin, Michigan 48624 (collectively referred as the "Counties"), and the FOUR LAKES TASK FORCE, a Michigan non-profit corporation whose address is 233 E. Larkin, Midland, Michigan 48640 ("Delegated Authority") is entered into as of June 9, 2020 (Effective date).

In this Amendment #1, either the Counties and/or the Delegated Authority may also be referred to individually as a "Party" or jointly as "Parties."

Recitals:

- A. On August 21, 2019 the Parties entered into an Agreement ("Agreement") to establish terms and conditions between the Counties, and the Delegated Authority with respect to the acquisition of the Part 307 Facilities (as defined in the Agreement) privately owned and operated by Boyce Hydro Power, LLC ("Boyce Hydro"¹); to administer, operate, maintain, repair, replace and improve the four (4) hydroelectric dams that are currently privately owned and operated by Boyce Hydro; and take other actions necessary and required by the Delegated Authority, as provided in Part 307.
- B. On December 31, 2019, the Delegated Authority entered into a Purchase Agreement with Boyce Hydro for the acquisition of the Part 307 Facilities with a final closing to occur in January 2022. Said Purchase Agreement was subsequently amended on April 27, 2020 to address, among other things, the timing of certain interim payments related to the acquisition of the Part 307 Facilities.
- C. On May 19, 2020 Edenville and Sanford dams experienced a catastrophic failure resulting in the loss of Wixom and Sanford Lakes and permanent damage and/or loss of to the dams and earthen dikes of a severity yet unknown, of not only Wixom and Sanford, but also possibly Secord and Smallwood. These catastrophic events have fundamentally changed the transaction originally contemplated by the Purchase Agreement, and at this time, it appears that the dam owner (Boyce Hydro) is incapable of restoring and replacing the Part 307 Facilities that were damaged/lost.

¹ Boyce Hydro Power, LLC includes all Boyce entities described in the definition section of the Purchase Agreement between Boyce and FLTF dated December 31, 2019 that holds real and personal property interests set forth in the Purchase Agreement; hereinafter referred to as "Boyce Hydro")

- D. Protection of the public, replacement and repair of the dams, and the restoration of Wixom and Sanford lakes will require significant coordination between Federal and State regulatory agencies and departments, as well as local and County government. The Delegated Authority has expertise and experience to lead and coordinate with the federal, state and local agencies as well as the Boyce Hydro, with respect to the restoration of Wixom and Sanford Lakes, with a focus on public safety.
- E. This Amendment #1 is intended to amend the Agreement between the Counties and the Delegated Authority to provide that the Delegated Authority will serve as the Counties' lead authority in coordinating the funding, design, repairs and replacement of the damaged Part 307 Facilities, to coordinate all efforts with Federal, State and local agencies and departments with respect to the restoration of the damaged Part 307 Facilities, and to indemnify and hold harmless the Delegated Authority in these efforts.

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 agree as follows:

1. Amend Section 1 of the Agreement as follows:

Appointment and Authority. Pursuant to the urban cooperation act of 1967, Part 307 and any other applicable laws of the State of Michigan, the Counties and the Delegated Authority enter into this Agreement to establish terms and conditions for the operation and maintenance of the Project. Each Party agrees to take all actions reasonably necessary to effectuate the objectives set forth in this Agreement consistent with Part 307. In addition, the Counties hereby reaffirm their appointment of the Four Lakes Task Force as the Counties' Delegated Authority pursuant to Part 307 with the authority and responsibilities, set forth in Part 307, and in accordance with the terms and conditions set forth in this Agreement.

The Delegated Authority shall serve as the Counties' lead authority in coordinating the funding, administration, design, improvements, repairs and replacement of the Part 307 Facilities damaged or lost on May 19, 2020 or anytime thereafter. The Delegated Authority is authorized to coordinate any and all efforts, including funding, design, contracting, with Federal, State and local agencies and departments with respect to the restoration, replacement and/or repairs of the damaged Part 307 Facilities, and the restoration of Wixom and Sanford Lakes. Further, to the every extent possible, the Delegated Authority shall be imbued with all governmental immunity available by law to the Counties and each of them.

2. Amend Section 8 of the Agreement as follows:

Liability of Four Lake Special Assessment District. Except as provided in this Section, and in Section 10, infra, the Parties understand and agree, all costs and expenses, including Claims (as previously defined in this Agreement), associated with the operating and maintaining the lake levels, and permitted under Part 307, shall be the responsibility of the Four Lakes Special Assessment District established and shall be defrayed by special assessments, gifts or grants, if any, pursuant to Part 307.

Notwithstanding the Section 4(f) of the Agreement ("Indemnification"), and until such time that a special assessment roll (for the Four Lakes Special Assessment District) is approved by the Counties, until a successor delegated authority is appointed, or the Act 307 Order is terminated, the resolving County, to the extent the resolving county is covered by its insurance policies, hereby agrees to indemnify, defend and hold the Delegated Authority harmless from any and all Claims (as defined in the Agreement) that are incurred by or asserted against Delegated Authority by any person, entity or governmental agency, and alleged to have been caused or found to arise, from the acts, performances, errors, or omissions of the Delegated Authority with respect to the Delegated Authority's coordination of the funding, administration, design, improvements, repairs and replacement of the Part 307 Facilities as contemplated by this Amendment #1. This indemnification of the Delegated Authority shall commence on the Effective date of this Amendment, and to the extent possible, shall be the responsibility of the county in which the acts giving rise to the claim were performed.

3. Except for the foregoing, all other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, this Agreement is executed by the Parties on the date hereafter set forth in the opening paragraph of this Agreement.


COUNTY OF MIDLAND

By: _____


Mark Bone
Chairperson, Midland County Board of Commissioners

Dated: 6-9-20

By: _____


Ann Manary
Midland County Clerk

Dated: 6-9-20

COUNTY OF GLADWIN

By: _____

Sharron Smith
Chairperson, Gladwin County Board of Commissioners


Dated: _____

By: _____

Laura Brandon-Maveal
Gladwin County Clerk

Dated: _____

FOUR LAKES TASK FORCE

By: 
David Kepler
Chairperson

Dated: 6/9/2020