

The questions below were compiled during the July 18, 2020 Secord Lake Association Board Meeting and were answered by Dave Kepler, President of the Four Lakes Task Force during the Zoom presentation. His answers to the questions were transcribed from the meeting audio.

10:17:34 From Galaxy Note9 : it is only fair and responsible to postpone the condemnation and allow us all to work together to determine our best course of action. I need more information.

The counties have approved the condemnation process. There are other legal steps to be made. We made an offer which was approved by the board. We will file a suit for necessity with Midland and Gladwin Counties. Then it goes through a process and Boyce can challenge that necessity. Once that is done, that is the point that we take the properties. We are not taking the properties tomorrow. Boyce will have the opportunity to argue necessity which means he disagrees with why we want to take it. Then once we take it he has the opportunity to argue the price of the dam later in another suit even though we have acquired the property. The condemnation process probably won't be done until the end of the year but we are hoping for a September timeframe. We can't get any funds that support this from the Federal Government with a private operator other than things like debris removal and erosion. We need to get control of it so we can get money from outside of our district. This is a pretty critical issue that we need to work on. There is no confidence, in our mind, by the state or the counties that Boyce will be able to fulfill his obligation to bring these dams back up. So it's our duty to make that happen. To me it's embedded appropriately and legally so we aren't going to step back and slow down that process. I will point out that the only other alternative to this, the only way the water will come back up, is if the Federal Government approves a permit. And then someone would have to pay for the repair. Boyce already said he doesn't have the money to make the repairs. Or you could go buy the dam. There's nothing that would prevent another entity from not being able to buy that dam. But I know of no private company that would buy those dams before and certainly not after. And then we already have a special assessment district. I'm not an expert but being one who has done it and spent many months doing it, you have to have a plan. You have to have a financial plan and an engineering plan before you can get money into a special assessment district. You can't just say we are going to repair it and put money in it. You have to get a feasibility plan to explain how you are going to finance it which requires an engineering plan so that it can be voted on. We don't have that data and certainly any other party wouldn't have that data either.

I tried to answer three different questions in that question. It's a pretty complicated question in terms of delaying things. Frankly we have probably lost nine months of the year from where we first started this to where we should have been and we just can't do that.

Board Member - Deb Stover: If the counties proceed with the condemnation and it works does that mean that the county takes possession of the dams and the counties would own the dams. At that point would that release the county and the property owners from all the liability that Boyce Hydro has right now for this disaster?

Our position in taking the properties through condemnation and through the counties, oh and by the way, and just as an aside, the plan was always for the counties to own the property. When we take the property we are not taking the problem. We are kind of saying, the liability that Boyce created is his responsibility and he will have to manage it. He's going to bankruptcy and it's likely that he's already not doing things. And he owes \$6 million dollars. I know we will not be obligated for any of the damages. There are two types of liabilities. There are damages that the government will charge that would fundamentally go into the State and Federal coffers. Basically, when you get fined by the government, we will not have that liability. He is accountable for

cleanup of debris, erosion and stabilizing the dams. While he's accountable and responsible for that he is very unlikely to have the money to do it. So we can sit with the state and the state can do all the orders they have on him but at the end of the day if he doesn't have the money the repairs and upgrades are going to be on us. The argument that we are taking on the lakes is pretty simple. It's that the lakes were deeded to be lakes back in the 20s and the people have a right to the lake from an access point of view. They didn't have a right to a lake itself but now with the lake levels that we've put in there is a legal obligation to have that lake there. While we are taking it we are saying the best use for that property is a lake and the current owner can't deliver that so we are condemning it out of necessity to make sure it meets this need.

10:21:48 From Kim's iPhone : How much money does FLTF plan on assessing Secord for Wixom and Sanford? As well as legal battles?

I don't believe, expect or want the Secord people to pay for repairs on the other dams. I also believe and plan that Sanford and Edenville will have to be done together. It will be a different model then before. Before we wanted to spread the money between the lakes and then have an informed decision. We had a position with the Board all along that we wanted to get this thing done and then look three or four years out and account for the lakes. Now its pretty obvious that somebody with a \$24 million dollar problem isn't going to pay for someone with a \$200 million problem. That's not going to happen. What I do think is reasonable is that all the costs related to administration, fundraising and doing these things that benefit everyone will be split between the lakes. It's much cheaper for us to do it as one entity and those things would be spread evenly. I keep pointing this out that there hasn't been an assessment yet since we started this thing and millions of dollars have been spent and millions more will be spent before there is an assessment.

There are a lot of legal expenses to put all of this tougher for example regulatory activities, filings with the government, all of this is required to acquire the dam. If we are talking about the class action suits we are trying to develop this clearly so we are protected from that. We are engaged with the county who are also involved in lawsuits and we don't believe that is going to be an issue but it is a distraction. We've had a lot of distractions with people revisiting this thing. A lot of the narrative that is coming out honestly is, in his lawsuit with the state is Boyce's position is that he was made to do all the things he did because the counties wanted the lake and the State wanted the lakes up. That story has been put out there to position that. That puts every lawyer out there to come at this. Those cases will all get consolidated down to a few cases and will be managed separately but we are going to have to defend ourselves and so will the county.

10:30:22 From Kim's iPhone : Can Dave please tell us where the \$500 million is coming from? All SAD? No chance the State or Counties will pay.

I would say there is a high probability that the counties will not pay. The counties have made it pretty clear that they can't afford to put this on the back of the whole group, of the whole county, especially Gladwin because it has a challenge already. The legal aspect of this is the special assessment district. If we put all this money on everybody, and you said \$500, but our planning number is between \$250 and \$400 range. I think it's an affordable program to be under \$300 so we have to be under that number. That's a crazy number to work with. And frankly, we have \$20 million just on Sanford and Edenville for cleanup of debris. That is not coming from assessments. That has to come from those lakes. So, to me the point is that the special assessment districts can't financially afford that much. I believe that Secord is probably affordable at \$24 million. I'm not going to give you an assessment number but it would be affordable to most people but we want to get it better, we want to reduce that. I think it's very hard to imagine that people in Edenville would be able to afford \$200 million so we are going to have to get Federal money for that. So there are paths to follow for that but my view is to figure out the capacity to get at least a third of the money and as we do the numbers for

Edenville and Sanford we can. We believe that Secord and Smallwood are within the range of feasibility without it but we will try to get as much as we can.

10:35:24 From Karen O'Dwyer : If the County owns the dams will they be under State standards? Is FLTF doing a design study based on FERC standards?

So the first thing is there is general taxation that you can do through property taxes. That does not cover something like a dam. It could but the county would have to go out and make that decision. The way that the State works these things and it was explained on Wiggins Lake that a State can own a dam but they assess it through a special assessment district that's part 307. So generally when a dam is built they look at the group with the biggest benefit and they create a special assessment district. That's what's been done here. That is the legal way you form a dam. As we were doing this before we did the legal lake levels based on the same numbers as FERC, not on PMF numbers but the legal lake level. If they did lose the license, and this is pretty critical, we would have still have a legal lake level. Without that we would be running around for a year and a half trying to get a legal lake level. But we don't need to worry about that now because we have one.

Prior to May 19 we felt that because of cost or repair and construction that one of the options was to keep hydro on these dams because the equipment was already there and it could offset some of the special assessment district's costs. The challenge now is that those licenses now are very toxic in terms of the liability against them and the amount of infrastructure required to rebuild these dams. It would take longer probably for sure to get the license back on them or get the water back up if we are doing major repairs with FERC. And it would be more costly. So now it's very unlikely due to the affordability of the project that we will even be able to keep power on it because of the investment that you would have to do.

As Ron covered in our meeting, the report is based on the assumption that we would still be at the State standards, not the Federal standards. That still doesn't mean that there's not spillway capacity concerns on Secord.

County Commissioner - Joel Vernier: Sometimes when well intentioned individuals or groups enter into a complex situation like this at the last minute there may be unintended consequences and I'm thinking of two. The first one is there is a push to unravel Secord from the special assessment district. It's my understanding that the legal lake levels are tied to that special assessment district. Is that correct?

Dave Kepler - Yes, that is correct.

Joel Vernier - So if they move away from that they could lose the lake level mandate?

Yes. So, the State of Michigan slowed us down once before unintentionally because everyone wanted to get it (Boyce) and so you get these unintended consequences. You can Google part 307 Natural Resources of Michigan and they will give you a two page sheet on this so basically everyone can be an expert but basically you have to have a feasible plan that means a financial plan and an engineering plan with usually plus or minus 15% of what your costs are going to be. So you can then get bond financing with that kind of tolerance and go through the counties to get the resolution and then go to the Circuit Court and get those court orders. We will have done that with the two counties and the circuit court of Gladwin so whoever creates a new special assessment district they can't use the same purpose. They will have to go back to the Circuit courts and fix that. And, they can't just go to Gladwin county and fix it because Gladwin county has a three party agreement with Midland. So both Midland and Gladwin would have to fix it. So, if we wanted to spend the next year on fixing this by taking the three assessment districts apart and opening it up for exposure for people to challenge it, each group would have to. The other special assessment district would have to show they are going to meet

their numbers and we would have to show how we would meet ours and we would basically have to start all over again. And, the fact that we have the lake levels as I said on Thursday, we really, really, really don't want to mess with this. Because if we open that up then there is no legal right to those lake levels. They would not be defined and they would have to be redefined and other people will have different views on that. And because that is established and we don't want to break that. The law requires, if you read the law, you have to have a special assessment district with that lake level because you have to have a feasible course for financing for any operations going forward. That is why you have a special assessment district. There is a very clear way to do the special assessment district, it's a process where you go, like we did, where you go to the counties to get their approval. We went the association way. The counties could take this up for consideration themselves or for a party that is out there that wants to create their own, you can get a petition and you can go work through the counties and you can deal with that but you will eventually end up in Circuit court because someone has to go before the judge and say we don't want to do what we said we want to do. We want to have different lake levels and a different structure and I can guarantee that it will not take three months. It will take a year to two years.

10:49:44 From Kevin McAuliffe : is there a maximum that lake owners can be charged thru the fltf SAD?

Technically no but practically, as Joel said, it's got to be affordable. Honestly, if it's not affordable and we sit down with the county and say it's not affordable then we are going to have to find other money to make it affordable. Eventually if we don't make it affordable by other money from the Federal or State Government then we will have to say we aren't doing it. It's not something that we just go to everyone and charge them, you just can't do that. That's why we have to look at what's affordable structure and that's why for this to be affordable the Government has to see that we are not punishing people but doing as much as we can to get a reasonable value for that and then they can bring other money in. It would be very impractical for some of these areas to be getting the full assessment. Our view is though that the numbers you are seeing, where before you were looking at a 20 year loan and now we are looking at possibly a 30 year loan. We are going to drive our interest rates down and we are going to look to the government and we are talking to the Army Corp of Engineers and they are doing a lot of the planning studies. We have to get 50% at least of the money from somewhere other than the SAD. And that's work, it's not just going to show up.

11:05:52 From Karen O'Dwyer : MI State regulations for Dams are less than Ferc's. Why don't we let the State take control. Is the \$24M rebuild based on Ferc standards?

No, the \$24 million is based on state standards. The premise of the question isn't correct. The dam standards for the State are the same as for FERC. The difference is the construction of the dams, how they are constructed and the things that you're worried about when they are running, embankments and capacity. Those are all the same. What's different is the probable maximum flood (PMF). This is where the Federal Government has looked at the PMF as a full probable maximum. This was explained in our meeting on Thursday. The State, for different dam sizes, has different views of it. So if we were on the state level would be half of the PMF so we wouldn't need as much capacity on the dam. The dam today isn't configured right. As Ron said, it was probably estimated at 20,000 cubic feet per second of water going through at the peak and people were flooded. It wasn't catastrophic flooding but it was flooding. That is not supposed to happen. That has to be fixed regardless of whether it is State or Federal, you can't have a dam that doesn't perform like a dam. It was a historical storm but it wasn't THE historical storm. These dams should not have to be repaired after a storm like that. They shouldn't have overflowed, the wing wall should have contained things, it shouldn't have flooded. Those are things that aren't supposed to happen.

Board Member - Deb Stover - With FERC requiring a forensic engineering report and they are saying their timeline to get this report completed is 6 months to two years, is there any way that Secord Lake could be filled before that report is complete?

So, the one thing that hasn't been clear, most of their practice has been that once you have a major failure there is a forensic investigation. Design can't even start hardly until you have these forensic repairs. So, normally when a dam fails there's a forensic examination and then they do the repairs. They actually, on the Orville dam in California, they actually did engineering while they were doing the studies. The reason they did that is because they assumed about four different scenarios and spent about a million dollars on the investigation because it was a big deal for the State of California. I don't have the exact answer because normally they won't let you start. And because we have had a system failure and they will treat these three dams and the owner the same way. Because we have had a failure here we want a forensic investigation because we no longer have confidence. The normal practice would be to wait for that study to be done on all three dams and then start to do your engineering. There may be a window that says that FERC lets those go but these investigations here, they have to look and say, hey it looks like what we are seeing here has to be reasonable activity. I think there is going to have to be a forensic on the embankment regardless. I would like to say a yes or no answer but I would have to say that past practice has been that after an investigation starts it continues and it has to be done. I have asked specifically through documentation with FERC to give us that answer but they haven't yet.

County Commissioner - Joel Vernier: There was a FB post put out that suggests that by the middle of next week, Wednesday, that the FLTF would have ownership of the Secord Lake Dam. Is there any truth or do you have any knowledge of that statement.

Well, I think it may be confused by reading something in there but there is no way that we can buy the dam or take the dam in that period of time. We said that we would file and in the next couple days and we will be doing that. We have to file in Midland and Gladwin county. It then goes through a process of necessity that we have to go to court with a lawsuit that the counties voted that there was a necessity to do. And Boyce can challenge that. If Boyce doesn't challenge it it can go pretty quickly. But we are still talking at least 30 days.

Board Member - Rita Lewis: Is it possible that the dams might not be all condemned together?

What could happen is they could look at each dam and they could challenge. They can argue parcel by parcel. They could argue out of necessity by parcel.

Board Member - Rita Lewis: What would happen if three of the dams were condemned and one was not?

We would have to agree to have that happen. You're talking about a lot of complexities. I would say if the ownership is not transferred, there are two things that can happen while we are condemning. If he goes bankrupt then we will have to have a bankruptcy discussion. We are looking at scenarios that are much more complicated to answer the question. If we go down condemnation there are some challenges. It goes back to that necessity and if that goes everyone will have the chance to challenge on the property. During that time if he goes bankrupt, some of the properties will go into bankruptcy, specifically the dams for sure.

Board Member - Deb Stover: You had mentioned that Boyce Hydro does not have engineers on staff. If that is true, is that a business practice for a private dam owner?

No, well for a very small one they might have a shared engineer. All hydro dams have to have what they call a FERC engineer. So, everyone has to have one of those assigned. There is a problem that Boyce didn't have one on staff. I can tell you the last three months he had TCF but there is a gap in there that he didn't have an

engineer. So what you see now in the reports talking about TCF. That is the engineering firm that he is using now but another person has to check that work. Just because you have an engineer do it you have to have a FERC engineer that is independent that Boyce pays for that has to look at that. That is the common process and required process. It's not like you can do in a construction project around your house where a contractor comes and he throws a bunch of rocks into your garden. When they do construction work an engineer has to sign off on it and then a FERC engineer has to agree with it. That is the Federal Government. This is a very bureaucratic process to manage safety.

11:05 From shelley : I think FLTF's plan of taking 4 years to bring lake levels up is unacceptable to almost everyone so they need to consider revamping the plan. We need to consider the impact to the communities surrounding us as well. They will not be able to survive 4 years of no business. Bring up Secord and Smallwood ASAP to at least keep them up and running. DO not Condemn dams until all reports are in and homeowners have been given a vote.

First of all the two dams, we have a reasonably aggressive plan on that. I would say regardless of what we do the Federal Government is going to have to do an investigation and get comfortable with the safety of those dams. And if we lose the licenses, then the State Government will have to get comfortable with Boyce. The State government is in two lawsuits with Boyce. So, our view is on the point of pulling out of condemnation, there is no chance with Boyce owning those dams to get this water up so in reality it's a sense of urgency. If we delay this it just delays us getting started because we can't do engineering, we can't get on the site we don't know what is going on. We put our hands in basically Boyce who has already said he doesn't have the money to do it. The only way to get the money to him is to get it either through the Four Lakes special assessment district which we would have to do an engineering study for us. The four years...we put a timeline in there and that is the best estimate and it's not really an estimate. That's the opinion of experts that have come into our community and have looked at the dam with the best knowledge they have. Can it be improved? Yes. There is a year in there that has nothing to do with the project, it's all about getting ownership and getting the government approval that we can do it and getting approval from the state. If we can get it done in half the price and half the time we will do it. Looking at 2025 is unacceptable to me but I have to look at the reality. I'm living this too. This is a realistic plan that people have provided and it's an aggressive plan. It was filed on June 9 with FERC. FERC has a couple weeks to respond. We don't have the report, we've asked for the report from Boyce but he put it under Critical Infrastructure and we didn't get a response back. Now, when you read the report on Smallwood, when you get that report back, there's a lot of work to do. We have seen the report on Tobacco. My assumption is that if it's any kind of study from the same guys, and not that they were not good guys but the scope of what they were doing was visual inspection. That's not an engineering report. So our feeling is that we've seen the Tobacco report. We've seen the 30 items of study that they want out of the Smallwood report. And with the feedback from FERC we don't think it's going to be simple. And we also know that the embankment design and construction is the same as Edenville. It's hard to imagine that after you have a failure that someone is going to have to do a study of that and I think there is a spillway issue. So, if it's all sunshine and rainbows maybe it will come up in a year but I feel like that's a lot of assumptions to go by. We will know better in a week maybe two I'd say.

Joel Vernier -The dam safety report is going to be helpful because we will have a report coming from FERC to see what needs to be done. But that is not the bottom line at the end of the report. The major report that will be opening up some lights on some things that we have to do is the final forensic investigation report that is coming from FERC.

Dave Kepler - Yeah, This was an inspection report, not an engineering report. I would really encourage people to read this, it's only three pages, it was in the FERC report. It was an inspection report, not an engineering report. All they did was a visual inspection, the equivalent of that is like when you have an inspector come over to look at your house and he says it looks like there's something wrong with your foundation. If it's something simple they may say go fix that. Or if you have a problem with your foundation you might go talk to an engineer. What's going on here is there is an inspection and report and then you see the second part of it. There's additional information needed around the embankments that haven't been done and the powerhouse structure. These are a lot harder to work through.

Board Member - Rita Lewis - Dave, there is a question here that says, the Secord Lake Preservation Association has offered you access to that report. Have they? Not unless it's been within the last 24 hours. And technically, they are not legally able to do that because the owner filed that under Critical Infrastructure. So there are only two people that can get that report and only if the owner authorizes the person to see the report. So that person should not send me that report because it's not legal to send it to me. So if they do send it to me I will send it back to Boyce. Because legally I'm not allowed to have it unless I receive it from Boyce or from FERC.

Board President - Phil Dast - With the movement that we have on Secord Lake that wants to separate us, is there a potential fear of slowing the condemnation down. Would he (Boyce) be able to say that there is an interested party that would want to buy Secord, could that throw our efforts off?

Well yes, if somebody has a negotiating price with him, I'm sure he will use that as reference. That is not a legal way to do it but he will argue that he has a set market price.

Just so people understand, when you condemn something, and, as a private property owner you should feel good that it's complicated to do. It's just when you want to do it with the government process it's difficult to do. This is eminent domain. When the government takes a person's property they have a right to get a fair price for it. Even when we take it we will offer a price that we think is fair and then they will question necessity. We believe we will win on necessity and then there's the question of did you give them a fair price? We gave him a fair price. He can come back and refute the price. If he does he will have to come back to court and bring all the facts to indicate why. I can't say it slows it down but it does confuse things.

I worry about things slowing down because nothing is happening in terms of investment on anything related to these dams. There have been a lot of delays and time spent. We cannot work this way going forward. I think we will get through this period of a few weeks and people are going to figure out that it is what it is and we are going to have to work together.

11:17:04 From Justin : What is the process to set the amount of the SAD moving forward? Is there the possibility to protest the amounts? Can the SAD be charged multiple times?

Good question. The way the special assessment district works is we have to come up with a feasible plan. At the end of the day it's a design plan. Whatever we assess we have to do it with certainty. We can do it in chunks. So we could say hey we are going to acquire the dams and we have to operate the dams to basically keep them going. We could technically assess as long as we have a number that we are confident in for that budget period. We could have assessed during the past if we wanted to but we said hey we don't want to keep throwing this at people. We want to try and get this done through donations first.

But to get the repairs done you have to have a pretty clear number as they will be financed through bonds. Once we get that number we have to decide on the methodology and the team worked a lot on that but that

will have to be reset. That will take a year. Then you do get a protest. There are opportunities for homeowners to have input. We develop a methodology, like we did last time, where we had meetings and reviews and showed it out there. At the end, before we go to the County for their approval we have hearings where people can come in over three or four days to protest their individual viewpoint. Then the counties have to look at it and say, Hey that's fair and we agree. People may protest and we might say hey you have a good point. We did that when we set the special assessment district. We made a lot of changes after we listened to people. Then we go to the county and we say hey we had all of these hearings, here's the money we need and here's how we are going to allocate it to these rolls. If they don't like it then they can not approve it and send it back and we can start all over again but eventually we will get something where we can agree on scope and it will get approval. So yes, you do have a chance as an individual level to come in and state your case.

Board Member - Rita Lewis: Obviously communication is a concern and obviously we are dealing with covid and not being able to have meetings and so forth but can you talk a little bit about our communication process with the FLTF and even the Secord Lake Association?

We have four lake associations and four different sets of questions. We are trying to work through that. We want to have more meetings and specifically more webinars moving forward. And then we are trying to get the documents out there. Now, honestly that sometimes generates thousands of questions. We probably need to get a structure on that. I think that is a key thing that we need to be more reactive on literally, Joel and Phil know that. We need to be more regular on our email.

We put a search engine on the website where if people are asking questions that have already been answered then they can search for that answer.

Board Member - Rita Lewis: Can you speak specifically to how the FLTF will handle Facebook posts.

We said we have a policy. We've created more problems for ourselves trying to answer questions because the premise of the questions wasn't targeted right. So, what we plan to do is we will post information on FB but we are not going to get into communications down there. If we see an issue come up we will post a position statement on FB. We will get the data on our website so everyone can see it. One of the problems with FB is you can get absorbed in it. And, there are a lot of people not in it. That's where we get a lot of noise. We have two things: How do I get information on FB that is good and consistent. Everyone can have a voice, everyone can put up their own FB page. We want to make sure that our FB is respectful and that the facts are accurate and if people are going to be using that for finding facts we want to be pointing to our FLTF site.