



July 14, 2024

AFTER APPEAL IS DENIED, HERON COVE CONTINUES EFFORTS TO STALL THE RETURN OF SECORD LAKE
With their appeal denied due to lack of evidence, HCA has 3 other court filings
Secord Could Delay until Spring 2026 with an Increase of \$20 Million in Costs Passed to Property Owners

We encourage you to watch / listen to the FLTF webinar held Wed July 10th. Click [HERE](#) to view

What does this potentially mean for Secord?

- At this point, work on Secord dam is scheduled to **suspend (stop) in September 2024**.
- Assuming work can **restart by April 2025**, Secord is scheduled for completion in **November 2025 meaning a potential spring fill 2026**. (The scheduled completion without delay was mid to late summer 2025).
- FLTF indicates suspension of work on the 4 dams will **increase the costs of the project by an upper range of \$20 Million**.
- For those wondering about the impact of \$20 Million. The SLA used the ratios of the construction assessment to calculate the impact of the potential suspension of construction. For a property with a benefit factor of '1' the \$20 Million represents about \$4,033. To illustrate the impact for your situation, take your benefits factor and multiply by \$4,033 (example: .69 X \$4,033 = \$2,783). Note: this applies to all property owners in the special assessment district.
- **Bottom line – the potential loss of at least one summer for Secord and additional costs to ALL property owners. This negatively impacts property and local business owners.**

These are new developments. We recognize there are more questions than answers available now. Between the FLTF and SLA you will be kept informed. Be very wary of anything you hear from "Facebook Guy".

The Rest of the Story . . .

Since late last year, we communicated the requirement for the FLTF to secure additional funding to complete the restoration of Secord dam. As the state grant money will be exhausted in the summer 2024, additional funds need to be borrowed to complete the projects. The FLTF plan called for a combination of municipal bond financing and a loan from the US Army Corps of Engineers. The plan called for bond financing by June 2024 to continue the Secord project. We shared FLTF cannot secure loans with legal objections pending.

Earlier this year, a group formed calling themselves the Heron Cove Association filed an appeal with the Midland Circuit Court. In early April, as a board we shared **key reasons we do not have confidence Heron Cove Association (HCA) is working in the best interests of the Secord Lake community**. We also reiterated our view "We agree property owners have the right to appeal their individual assessment as described by the laws of the special assessment district as outlined by the Midland Circuit Court." Click [HERE](#) to read SLA's statement.

Heron Cove filed an appeal in Midland Circuit Court. They asked for the presiding judge to be recused (removed) and the judge stepped aside. Heron Cove had their case heard by 42nd Circuit Court Judge Michael Beale on May 29, 2024. On June 20th, 2024, Judge Beale issued an opinion and order to confirm Gladwin and Midland counties' January 6 approved lake level special assessment rolls to restore and maintain the legal lake levels in the Four Lakes Special Assessment District.

Judge Beale's order states, "The Court finds, from the record before it, Appellants [Heron Cove Association] **have failed to carry their burden and show the special assessments are not supported by competent, material and substantial evidence due to lack of credible evidence** rebutting the presumption of validity for a special assessment district apportionment determination. Appellants' appeal seeking relief from the FLTF Special Assessment District apportionment is **DENIED.**" Read legal opinion [HERE](#).

The property owners making up the Heron Cove Association had their day in court to appeal their individual assessments. During the hearing, the judge asked for evidence several times. As the judge's ruling indicates, there was a lack of credible evidence presented to support their claims.

Judge Beale dismissed the Heron Cove Association's (HCA) "claim of appeal" which affirmed the assessments needed to complete the construction and repairs of the dams to restore the lakes. One would think with the appeal dismissed the FLTF can move forward to secure funding to complete Secord.

While that administrative appeal was underway, HCA also filed two separate lawsuits in Midland and Gladwin circuit courts against the counties and FLTF, seeking to further derail efforts to restore the lakes. FLTF maintains that HCA's lawsuits are the proverbial "second bite at the apple" -- apparently hoping for a better result.

Because HCA complaints allege claims under the U.S. Constitution, both lawsuits were removed to the Federal District Court for disposition. Both FLTF and the counties filed motions seeking to dismiss these lawsuits. FLTF also filed separate motions to expedite the hearing on its motion to dismiss. Read FLTF News Flash [HERE](#).

July 11th - - Under Michigan law, a litigant has the right to request a higher court to review errors of a lower court. The Heron Cove Association (HCA) filed a request asking the Michigan Court of Appeals to review Judge Beale's decision. Such an appeal was expected; however, FLTF maintains that Judge Beale got it right, and there were no errors that would warrant a reversal of his decision. FLTF is reviewing HCA's appeal and will file their response.

What does this mean in the effort to secure funding? While these two federal lawsuits are pending coupled with the appeal of Judge Beale's ruling, FLTF **cannot** secure loans. Funding for construction will be exhausted this summer and the projects, including Secord, will be suspended.

What percentage of the Secord dam project is complete?

Secord Dam

55.8% COMPLETE

Auxiliary Spillway Basin Auxiliary Spillway Chute Downstream of Primary Spillway

Current Status

- Water diverted through the auxiliary spillway
- Upstream cofferdam being constructed
- Downstream cofferdam install and area dewatered
- Partial demolition of roadway slab
- Continuing low level outlet (LLO) construction
- Preparing for first concrete pour for primary spillway

What's Left to Do After September

- Dewater upstream cofferdam
- Final demolition and concrete in primary spillway
- Complete LLO
- Install crest gates
- Complete right embankment
- Complete control building and site restoration

The Secord dam restoration project is about 56% complete. The estimated cost is \$66 Million with \$50 Million projected to be spent prior to the suspension in September.

Moving Forward:

There is recognition that Special Assessment District (SAD) costs to property owners are high. The capital/ construction SAD does not go into effect until the winter tax bill, Dec 2025 which is due in Feb 2026. We have almost 2 years to find additional funding to reduce costs to ALL property owners. The SLA continues to meet with legislators to seek additional funding to reduce the cost to ALL property owners.

The capital/construction SAD is based on the “not to exceed” amounts, which will provide the needed funds to meet or exceed the costs to restore all four dams. In the event additional funds are obtained, or there are cost reductions, the capital/construction SAD will be reduced for all lake property owners.

Good news was shared by the FLTF as the Edenville project bid came in below projection and there is confirmation from Representatives Kildee and Moolenaar along with Senator Peters of federal appropriations in the approval process. These cost reductions and federal appropriations **could have** reduced the assessment cost for all, rather they are diluted by the pending delay costs increases of up to \$20 Million as outlined by FLTF.

Our goal is simple, to restore Secord Lake as soon as possible while reducing assessment costs for ALL property and business owners within the special assessment district.

To HCA members:

We agree property owners have the right to appeal their individual assessment as described by the laws of the special assessment district as outlined by the Midland Circuit Court. **HCA had their appeal trial with the court and the judge rendered a ruling regarding all the issues the HCA attorney presented.**

The HCA leadership team has communicated NO plan to restore Secord Lake. Their actions are designed to further derail efforts to restore the lakes while increasing costs to all property and business owners. The increased cost will be felt by your friends, neighbors and in your own capital assessment. The delay in time cannot be measured as time is a non-renewable resource. Once time is gone, it is lost forever.

In the event any appellees want to be removed from the appeal, this is permitted by providing an email directly to Michael Homier at mhomier@fosterswift.com. A client has the legal right to terminate their attorney at any time. (Michigan Rules Professional Conduct 1.16). Provide a statement to the law firm Foster Swift such as the following:

“I wish to immediately withdraw from the appeal filed in Midland Circuit Court, Case No. 2024-002751-AA or any subsequent appeal to the Michigan Court of Appeals along with the separate filings in U.S. Federal Court, Eastern District of Michigan, being *Heron Cove Assoc v Midland County*, Case No. 2024-cv-11458 and *Heron Cove Assoc v Gladwin County*, Case No. 2024-cv-11473. Please file a dismissal on my behalf and provide me with email confirmation. I will no longer be responsible for any legal costs and request a return of any unused retainers at this time.”

We support the FLTF’s Restoration Plan as this is the only viable plan. We are committed to seeing Secord Lake returned as soon as possible and will continue to work to secure additional grants to benefit ALL property owners.

We recognize there are more questions than answers available now. Look for more informational updates from the FLTF and Secord Lake Association. Our next meeting is Saturday, July 20th at 10 AM – Secord Township Hall.

www.SecordLakeAssociation.org