

Introduced by \_\_\_\_\_:

BOARD OF COMMISSIONERS OF THE COUNTY OF GLADWIN

**RESOLUTION FOR THE DETERMINATION OF THE NORMAL LAKE LEVEL FOR WIXOM LAKE, SANFORD LAKE, SMALLWOOD LAKE AND SECORD LAKE PURSUANT TO PART 307 OF THE MICHIGAN NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT**

RESOLUTION # 2018-034

Minutes of a regular meeting of the Board of Commissioners of the County of Gladwin, Michigan, held at the 401 W Cedar Ave, Gladwin, Michigan 48624, on October 9, 2018, 2018, at 9:00 a.m., local time.

PRESENT: Commissioners Hinman, Wasters, Aultman,  
Smith, Birgel

ABSENT: Commissioners None

The following resolution was offered by Commissioner Hinman and supported by Commissioner: Smith.

WHEREAS, Wixom Lake, Sanford Lake, Smallwood Lake, and Secord Lake are inland lakes located in Gladwin and Midland Counties, created by the impoundment of the Tittabawassee River by four (4) hydroelectric dams which are privately owned and operated by Boyce Hydro Power, LLC ("Boyce Hydro"); and are currently regulated by the Federal Energy Regulatory Commission ("FERC") which, among other things, includes terms and conditions concerning the water levels for each of the lakes, dam safety, property rights, water quality, public recreation and safety, and other areas of public concern; and,

WHEREAS, Wixom Lake, Sanford Lake, Smallwood Lake, and Secord Lake, are important resources in Gladwin and Midland Counties, and the continued operation of the dams are of paramount importance to the environment, recreation, property values of lake residents, and the public and economic health of Gladwin and Midland Counties; and,

WHEREAS, in the event that Boyce Hydro loses its FERC license(s) with respect to any of the Lakes, or is unable to perform its responsibilities, there is no current state requirement for maintaining the lake levels or governance structure in the community to ensure that the dams and lake levels will be sustained long term; 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 lake, and authorizes counties to finance, construct, operate and maintain dams as necessary to maintain such levels as determined by the circuit court; and,

WHEREAS, Section 307011 of Part 307, MCL 324.30711 provides that the County may determine that the whole or part of the cost of the project to establish and maintain the normal

level for an inland lake be defrayed by special assessments for the benefits derived against privately owned parcels of land, political subdivisions of the state, and state owned lands, through the establishment of a special assessment district; and,

WHEREAS, Section 30704(1) of Part 307, MCL 324.30704(1), provides that if the County Board of Commissioners finds it expedient to have determined and established the normal level of an inland lake, the County shall direct legal counsel of the county to initiate a proceeding by proper petition in the circuit court for a determination of the normal level and for establishment of a special assessment district; and,

WHEREAS, the Sanford Lake Preservation Association, a Michigan non-profit corporation and IRC 501(c)(3) organization has raised the funds and committed to the funding of the Part 307 through creation of an authority and special assessment districts, and will expand their bylaws to include the preservation of all four lakes, and include representation of all four Lake Associations Presidents or Delegates currently represented on the Four Lakes Task Force, and representative(s) from Gladwin and Midland County, upon this and a similar resolution from Midland County; and,

WHEREAS, Section 30704(2) of Part 307, MCL 324.30704(2) provides that if the waters of an inland lake are located in 2 or more counties, the normal level of the lake may be determined by all counties involved, by resolution directing legal counsel of 1 or more counties to initiate proceedings by proper petition in the circuit court for a determination of the normal level and for establishment of a special assessment district; and,

WHEREAS, in order to maintain the normal lake levels for Wixom Lake, Sanford Lake, Smallwood Lake, and Secord Lake (the "Lakes") in Gladwin and Midland Counties, the County Board of Commissioners has determined that it is necessary to establish the normal level or levels of the Lakes 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 property around the lake.

NOW THEREFORE BE IT RESOLVED, that the 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, and to preserve and protect the value of property around the Lakes, that it is necessary to take all action to establish and maintain the normal lake level for the Lakes (the "Lake Level Project").

BE IT FURTHER RESOLVED, that County Board of Commissioners finds that the cost of the Lake Level Project to establish and maintain the normal level of the Lakes shall be defrayed by special assessments for the benefits derived against privately owned parcels of land, political subdivisions of the state, and state owned lands.

BE IT FURTHER RESOLVED, that the Sanford Lake Preservation Association, upon approval of new bylaws including representation of all lakes, shall be the "Delegated Authority" as provided by Part 307 to act on behalf of the Board of Commissioners 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.

BE IT FURTHER RESOLVED, that attorney, Douglas A. Jacobson representing Gladwin County as to Smallwood Lake, Secord Lake, and that portion of Wixom Lake located in Gladwin County, and attorney, Lawrence Wm. Smith, Jr., representing Midland County as to Sanford Lake and a portion of Wixom Lake located within Midland County, are appointed as joint-legal counsel for the Lake Level Project, and are directed to initiate a petition or other appropriate legal action in the appropriate Circuit Court(s) in Midland and/or Gladwin County for the determination of the legal lake level and the approval of boundaries of the Special Assessment District in accordance with the procedures set forth in Part 307 and said counsel may obtain the assistance of additional counsel where appropriate; and to assist the Delegated Authority with the Project and procedures as set forth in Part 307.


BE IT FURTHER RESOLVED, that the Spicer Group, Inc., is appointed as the engineer for the Lake Level Project, to prepare a preliminary study and/or reports required for the Lake Level Project, and to assist the Delegated Authority with all actions as necessary and required by the delegated authority as set forth in Part 307.

BE IT FURTHER RESOLVED, this Resolution shall not take effect unless and until the adoption of a resolution with substantially the same findings, determinations and conditions as set forth herein by the Board of Commissioners for the County of Midland, Michigan, within thirty (30) days from the date of the adoption of this Resolution.


YEAS: Commissioners 5

NAYS: Commissioners 0

ABSTAIN: Commissioners 0

  
Laura Brandon-Maveal, Clerk

10-9-2018

  
Terry L. Walter, Chairman