

June 5, 2013

State of Michigan
Department of Environmental Quality
Water Resources Division
Saginaw Bay District Office
401 Ketchum Street, Suite B
Bay City, MI 48708-5430

Re: File Number 13-26-0014-P

On behalf of the Wixom Lake Association, we offer comments in response to the May 22, 2013 Public Notice regarding the application by Boyce Hydro Power, LLC (Applicant) to draw down Wixom Lake in 2013, 2014 and 2017 to perform work on the dam spillways. We recognize the permit requested is a necessary step in a project at the Edenville Dam, as required by the Federal Energy Regulatory Commission (FERC). We recognize the project is an exceedingly burdensome and costly regulatory requirement imposed by FERC.

The Michigan Department of Environmental Quality (MDEQ) is advised that Applicant has stated intent to begin the process of surrendering the hydropower license for the dam impounding Wixom Lake, issued by FERC in 1998. A copy of Applicant's letter stating that intent is attached in Exhibit A. As clearly stated in the letter, Applicant lacks funds to perform the proposed dam work. Thus, there is no longer need for the requested MDEQ drawdown permit, as the project requiring that drawdown is stalled for lack of funds. The permit should not be granted.

In the same letter, Applicant suggested drawing down Wixom Lake water level approximately 8 feet as "mitigation" since he cannot afford the cost of spillway modifications. The drawdown permit currently requested does not support such mitigation and it would be premature to consider granting the permit for such a purpose. The 8 foot drawdown mitigation has not yet been formally proposed to FERC and certainly not ordered by FERC. If such mitigation should eventually be approved and ordered by FERC, a separate drawdown permit application would be required specific to conditions of FERC orders.

In the permit application package received by our township supervisor, we find material omissions and errors of fact which we call to your attention. In pointing out these omissions and error, we rely upon accuracy of publicly available records and communications from Applicant. By application section:

1. Section 1. The Property Tax ID# provided does not properly identify the project properties on which work will be done and/or which will be affected by the proposed

drawdowns. MDEQ should be aware that the dam structure itself occupies multiple parcels in two different counties, none of which parcel numbers appear in this application. Proposed construction activities requiring drawdowns will take place on all these parcels in the two counties. In addition, a number of parcels representing flowage lands under the present Wixom Lake are not identified by parcel number.

2. Section 3- Applicant does not indicate the project involves a wetland. This appears to contradict a Sept. 20, 2012 letter from MDNR to FERC stating complaints that Applicant has failed to resolve a number of long-standing wetlands violations at this project- see Page 2 of the letter in Exhibit B.
3. Section 3- Applicant does not indicate that the project involves a 100-year floodplain. Note that language on page containing Drawing 4.1.00 clearly states excavation will take place within the 100-year floodplain in order to install a new penstock.
4. Section 3- Applicant does not indicate type of permit being sought.
5. Section 4- Applicant states that “The footprint of the spillways will not be altered.” This is a confusing statement, as the proposed plan includes constructing a new penstock adjacent the east side of the existing Tobacco River spillway structure, thus modifying the dam structure outside the spillway footprint. However, this new penstock construction is not listed as part of the project purpose. Unlike the spillway enlargement work, penstock construction has not been ordered by FERC.
6. Section 6- Applicant did not identify a state highway right of way bisecting the dam structure, which represents a significant easement on the dam property.
7. Section 6- Applicant did not identify an encumbrance, a \$636,000 mortgage with Ridgestone Bank, confirmed by Gladwin County Register of Deeds on May 28, 2013.
8. Section 6- Date of application to FERC is incorrect.
9. Section 8- Applicant does not list any adjoining property owners. There are in excess of 3000 property owners adjoining or with lake access rights to Wixom Lake waters who would be affected by the proposed drawdowns.
10. Section 10-B- Applicant did not indicate whether previously dredged area would be enlarged, yet indicates that a dredge or excavation method would be used.
11. Section 16- Applicant makes no reference to the 4’ drawdown beginning Oct. 1, 2013, however that is in his plans.
12. The Water Management Plan, center of Page 5, states that the Applicant operates two dams upstream of the Edenville Dam (true) but does not acknowledge that both of these dams are on the Tittabawassee River. Applicant states “The operation of these upstream dams allows the Owners personnel every opportunity to get early warning notification of an increase in flow or of significant rain coming.” Applicant does not acknowledge the presence of the Tobacco River dam in Beaverton, also upstream of Edenville, which is not operated by Applicant. On Jan. 31, 2013, a heavy rainfall event led to water release from the Beaverton Dam, to which Applicant’s Edenville Dam personnel did not react, resulting in flooding of homes on the Tobacco River arm of Wixom Lake (Exhibit C).

Applicant has been ordered by FERC to install lake level monitoring equipment on the Tobacco River side of the dam, with appropriate data recording and alarm notifications for lake level excursions (Exhibit D-1). Until Applicant complies with this order, Applicant's personnel are demonstrably not "allowed every opportunity" to get early warning notification of increased flow on the Tobacco River.

The application package makes several references to constructing a new penstock for a future powerhouse. FERC is not requiring Applicant to construct either the penstock or the powerhouse. Thus, the project is more than spillway modification, it is also a change to the dam structure, below the normal high water level and outside the Tobacco River side spillway footprint. The new penstock would provide for power generation capacity by an as-yet unbuilt powerhouse, over and above the current licensed generating capacity of the Edenville Dam. To our knowledge, no FERC license amendment application for increased generating capacity has been filed to-date.

The proposed 4' drawdown begins Oct. 1, 2013, approximately 2.5 months earlier than historic winter drawdowns and continues until the normal spring re-filling. This drawdown starts sooner, lasts longer and is 1 foot lower than the normal winter drawdown. DEQ should consider the potential adverse impact on Wixom Lake's amphibians and reptiles that normally enter the lake's marshlands in the fall to hibernate. This portion of their life cycle would be impacted by the proposed earlier-than-normal, longer-than-normal drawdown. This impact may be reduced if the 4' drawdown was delayed until nearer the normal mid-December date. Wixom Lake rarely freezes before late November and often not until late December, so it appears somewhat later drawdown would create little risk of interfering with the planned construction activities.

In addition to the above, the proposed project involves installation of over one thousand feet (1000') of sheet piling along the lake-ward face of Edenville Dam, blocking access to the aquatic habitat on the current dam face. It appears Applicant intends to leave the sheet piling in place permanently. Will the loss of aquatic habitat be remediated by placement of rock or other habitat-creating material along the lake-ward face of the sheet piling? This is not clear to us from documents accompanying the permit application.

In addition to the above, Applicant stated intent to suspend bypass flow to the Tobacco River during June 1, 2014 to Oct. 30, 2014. This bypass flow was originally requested by State of Michigan during the FERC license application process and granted by FERC, in order to maintain fish habitat in the Tobacco River downstream of the Edenville Dam.

In addition to the above, Applicant is in potential non-compliance with FERC operating license provisions for recreational facilities and environmental provisions, as described in a letter dated Sept. 20, 2012 letter from Kyle Kruger, Senior Fisheries Biologist, MDNR, to Kimberly Bose,

Secretary, FERC. The letter notes Applicant's lack of effective response to a number of long-standing concerns. This 38-page letter may be viewed at the FERC e-library (Accession # 20120921-5035), while the only first three pages are included in hard copy versions of Exhibit B.

In addition to the above, FERC contacted Applicant via multiple letters regarding potential non-compliance with other FERC license requirements related to environmental concerns, among them, allowing lake level excursion above the permitted maximum level and inadequate monitoring and/or reporting of lake levels on Wixom Lake pursuant to investigation of a flooding incident Jan. 31, 2013 (see Exhibit D-1), failure to provide adequate required reports on aquatic invasive plant species (see Exhibit D-2) and failure to monitor dissolved oxygen and temperature downstream of dams in accord with license requirements (see Exhibit D-3).

In addition to the above, the MDEQ Public Notice, dated May 22, 2013, does not explicitly state the extent of the drawdown during the period June 1, 2014 to Oct. 30, 2014, although all other drawdown extents are explicitly stated in the Public Notice. We expect this is a typo. However, as the extent of the June 1, 2014 to Oct. 30, 2014 drawdown is of material interest to the public, MDEQ may wish to consider what, if any, action is needed to address such inadvertent omission.

In summary, we believe issuance of the drawdown permit requested by Applicant is unwarranted due to Applicant's initiation of the dam license surrender process, in addition to material shortcomings in the application documents noted above. Issuance of an unnecessary permit is undesirable due to impact on aquatic life and recreational use of the lake. In considering the drawdown permit requested by Applicant, MDEQ should bear in mind Applicant's documented history of potential non-compliance with license requirements. In the words of Kyle Kruger, MDNR Fisheries Biologist, in his Sept. 20, 2012 letter, "No licensee who is entrusted with the privilege of having use of a public trust resource should be able to continue that use while being such a poor steward of that resource and associated lands." If MDEQ chooses to grant the permit request, MDEQ should consider granting such approval only subsequent to Applicant's full correction of the compliance concerns raised in Mr. Kruger's letter.

Respectfully submitted,
Wixom Lake Association- Dam Project Study Group subcommittee

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Exhibit A. Applicant's letter stating intent to begin FERC license
surrender process for Edenville Dam.

Exhibit B. Letter from Kyle Kruger to FERC concerning Applicant
license compliance issues.

Exhibit C. FERC letter to Applicant regarding flooding incident on
Wixom Lake Jan. 31, 2013.

Exhibit D. Sample FERC letters advising Applicant of license compliance issues.