

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION – BAY CITY**

In re: ) Case No. 20-21214  
)  
BOYCE HYDRO, LLC, *et al.* ) (Joint Administration Requested)  
)  
Debtors.<sup>1</sup> ) Chapter 11  
)  
\_\_\_\_\_ ) Honorable Daniel S. Opperman

**DEBTORS’ FIRST DAY MOTION PURSUANT TO SECTIONS 361 AND  
363 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 4001  
FOR INTERIM AND FINAL ORDERS: (1) AUTHORIZING USE  
OF CASH COLLATERAL; (2) SCHEDULING FINAL  
HEARING; AND (3) FOR RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “*Debtors*”), by and through their proposed undersigned counsel, hereby move this Court (the “*Motion*”) for entry of orders pursuant to sections 361 and 363 of title 11 of the United States Code (the “*Bankruptcy Code*”), Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), and Rule 4001-2 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Michigan (the “*Local Rules*”): (1) authorizing the Debtors to use cash collateral pursuant to the budgets attached as Exhibit A to the Proposed Interim Order attached hereto (collectively, the “*Budgets*”); (2) scheduling a final hearing on the Motion; and

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal taxpayer-identification number, are: (i) Boyce Hydro, LLC (6694), Case No. 20-21214 and (ii) Boyce Hydro Power, LLC (3034), Case No. 20-21215.

(3) for other related relief as necessary. In further support of this Motion, the Debtors respectfully state as follows:

### **JURISDICTION**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are sections 361 and 363 of the Bankruptcy Code and Bankruptcy Rule 4001.

### **RELEVANT BACKGROUND**

2. On July 13, 2020 (the “*Petition Date*”), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code commencing the above-actioned chapter 11 cases (the “*Chapter 11 Cases*”). The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code and have filed a motion requesting joint administration of the Debtors’ chapter 11 cases.

3. The Office of the United States Trustee has appointed Mark H. Shapiro of Steinberg, Shapiro & Clark as the Subchapter V Trustee for the Chapter 11 Cases.

4. A detailed description of the Debtors’ business operations, corporate structure, capital structure, and reasons for commencing these cases is set forth in the

*Declaration of Lee W. Mueller in Support of First Day Motions and Applications* (the “*Declaration*”) and the Debtors incorporate that background herein.

5. As discussed in the Declaration, the Debtors have historically operated four hydroelectric dams (the “*Edenville Dam*”; “*Sanford Dam*”; “*Secord Dam*”; and “*Smallwood Dam*”; and together, the “*Dams*”) owned by four non-debtor entities (defined in the Declaration as the HoldCos). The Debtors’ bankruptcy filings resulted in large part from Dam Breaches<sup>2</sup> at the Edenville and Sanford Dams.

6. Operationally, Debtor Boyce Hydro Power, LLC (“*BHP*”) holds the FERC licenses for the three currently licensed Dams (Sanford, Secord, and Smallwood), is the assignee of a power purchase agreement (“*PPA*”) with Consumers Energy, is at various times party to sales agreements pursuant to which it sells Renewable Energy Credits which are also periodically sold to other parties, leases the four Dams from the HoldCo Debtors, and is party to an Operations and Maintenance Agreement (“*O&M Agreement*”) with BH. BHP does not have employees, and its main expenses are comprised of its lease obligations, funding to BH under the O&M Agreement, and professional fees.

7. BH is the entity that operates the Dams pursuant to the O&M Agreement with BHP. BH owns vehicles, equipment, furniture, computers, tools

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Declaration.

and other personal property needed for same. As of the Petition Date, BH had four full time employees. BH receives funding from BHP under the O&M Agreement, and its expenses are largely comprised of payroll and operational expenses relating to the Dams.

8. In bankruptcy, the Debtors are seeking to maximize outcomes for creditors by, among other things: (a) maximizing sale, liquidation, and / or condemnation proceeds from the two dams impacted by the Dam Breaches; (b) maximizing the value of the two dams that remain operational (the Debtors are working with FERC to safely re-activate these Dams and exploring reorganization and sale opportunities); (c) effectuating an Insurance Settlement reached pre-petition with the Debtors' liability insurers which should result in more than the policy proceeds coming into the estates; and (d) confirming a plan that will effectuate the Insurance Settlement and set up a liquidating trust to pursue the estates' significant litigation claims and distribute funds to creditors. The foregoing, as it may change and evolve as the Chapter 11 Cases play out, shall be referred to herein as the "Restructuring."

9. The Debtors have substantially pared back their operations to minimize cost as they pursue the Restructuring (including in light of the almost certain transfer of the breached dams) but do need to maintain operations and pay bankruptcy-related costs in order to accomplish the Restructuring. The anticipated

costs and revenues for each Debtor through the end of November 2020 (the “*Budget Period*”) are reflected in the Budgets.

10. In the aggregate, over the entire four-month Budget Period, the Debtors project to incur an aggregate total of \$992,978 in expenses. *However*, at least \$500,000 of those expenses are expected to be paid from unencumbered funds received during the Budget Period (as reflected in the Budgets), *and notably the Budgets do not assume the Debtors realizing any value from their Dams and associated licenses* (and one of the primary goals of the cases is to monetize those assets). Moreover, of the \$492,978 in projected aggregate Cash Collateral use, \$130,069 is proposed to go to Byline Bank (“*Byline*”), the entity asserting an interest in the Cash Collateral, in the form of adequate protection payments. Factoring that in, the real use of Cash Collateral over the entire Budget Period is projected to be approximately \$362,909.

11. Of that \$362,909, at least \$96,000 is proposed to be spent on repairs to the Secord and Smallwood Dams (Byline collateral), and \$40,000 on associated engineering reports, all costs that should enhance Byline’s collateral by at least an equal amount (and ideally materially more if the Dams can be re-started or put in position to be re-started). Moreover, all costs in the BH Budget (\$257,204 in operating costs, inclusive of the \$96,000 in repairs noted above) are costs being incurred to maintain, repair, and protect Byline’s Dam collateral.

12. Finally, while the Debtors believe that there is more value to be obtained from the Secord and Smallwood Dams outside of a condemnation proceeding, even if all four Dams end up in condemnation, the Debtors believe that Byline will be better off as a result of the Restructuring and the Cash Collateral use requested herein. For one thing, the BHP Budget contemplates funding condemnation counsel to challenge valuation (fair value must be paid by the condemning authority) and the liquidating trust established via the Plan will provide an efficient mechanism for litigating the issue and distributing proceeds (in addition to pursuing claims that may materially benefit Byline and other creditors). Moreover, the Insurance Settlement results in the Trusts authorizing BM to contribute thousands of acres of bottomlands associated with the Edenville Dam (avoiding any dispute over value allocation and hopefully enhancing the outcome at a valuation hearing). And if condemnation becomes the path in the coming months, the use of cash collateral would be lessened as the BH budget would be revised accordingly.

13. In other words, the purpose of using the Cash Collateral *is to achieve a materially better recovery for Byline* that the Debtors believe would occur in a liquidation or shut-down scenario where the collateral is not maintained or repaired, and efforts are not made to thoughtfully maximize value.

## DISCUSSION

### *The Need for Use of Cash Collateral*

14. The only entity that the Debtors are aware of that asserts a security interest in cash or cash proceeds of other assets of the Debtors is Byline. As outlined in the Mueller Declaration, the Debtors have one U.S. Department of Agriculture (“USDA”) loan and seven U.S. Small Business Association (“SBA”) loans, all issued through Byline (either directly or as assignee). The loans are as follows:

<b>Loan</b>	<b>Date Issued</b>	<b>Borrower(s)</b>	<b>Guarantor(s)</b>	<b>Original Principal Amount</b>	<b>Approximate Amount Owed as of July 30, 2020</b>
SBA Loan 49178450-07 (Bank #16499)	11/28/11	Sanford HP, BH, BHP	Edenville HP, Secord HP, Smallwood HP, Trusts	\$421,000	\$346,286.53
SBA Loan 49177950-05 (Bank #16498)	11/28/11	Sanford HP, BH, BHP	Edenville HP, Secord HP, Smallwood HP, Trusts	\$844,000	\$700,814.03
SBA Loan 49179550-05 (Bank #16501)	11/28/11	Edenville HP, BH, BHP	Sanford HP, Secord HP, Smallwood HP, Trusts	\$636,000	\$530,502.03
SBA Loan 49180650-00 (Bank #16500)	11/28/11	Edenville HP, BH, BHP	Sanford HP, Secord HP, Smallwood HP, Trusts	\$1,297,000	\$1,083,227.52
SBA Loan 49182850-07 (Bank #16504)	11/28/11	Secord HP, BH, BHP	Edenville HP, Sanford HP, Smallwood HP, Trusts	\$730,000	\$608,641.51
SBA Loan 49181950-04	11/28/11	Secord HP, BH, BHP	Edenville HP, Sanford HP,	\$390,000	\$317,476.93

(Bank #16503)			Smallwood HP, Trusts		
SBA Loan 49183150-03 (Bank #16502)	11/28/11	Smallwood HP, BH, BHP	Edenville HP, Sanford HP, Secord HP, Trusts	\$339,000	\$273,255.50
USDA Loan 26-056-380858018 (Bank #21912)	10/16/14	Sanford HP, BH, BHP	Edenville HP, Secord HP, Smallwood HP, Trusts	\$2,500,000	\$2,246,799.75
<b>TOTAL:</b>				\$7,157,000	\$6,107,003.80

15. As explained above, the Debtors have an immediate need to use cash collateral (as that term is defined in section 363 of the Bankruptcy Code, the “*Cash Collateral*”) of Byline in order to assure the orderly administration of their bankruptcy estates. Without use of the Cash Collateral in accordance with the Budgets, the Debtors will not be able to pay their employees, operating expenses, and Restructuring costs. Inability to use the Cash Collateral on an expedited basis will likely result in an immediate cessation of the ongoing operations of the Debtors’ businesses and will cause irreparable harm to the Debtors’ estates. To give just one example, if the Debtors do not meet FERC requirements – such as getting a forensic report that FERC is requiring started and expeditiously completed, and completing repairs FERC requires – BHP would be at risk of losing its FERC licenses for the Secord and Smallwood Dams, licenses and Dams that the Debtors believe still have material value. And the Debtors need to fund payroll, Restructuring, and operational



costs in the coming days and weeks. Put simply, the Debtors cannot continue operations and their Restructuring efforts absent use of the Cash Collateral.

16. Moreover, as set forth above, not only do the Debtors believe that creditors – including Byline – will come out economically better as a result of the Debtors being able to use the Cash Collateral, having the Debtors continue to operate and maintain the Dams, particularly the Secord and Smallwood Dams which are still holding back impoundments, is important from a safety / stewardship perspective. For all of these reasons, this Motion is being presented on an expedited interim basis.

**Adequate Protection**

17. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor in possession may not use cash collateral without the consent of the secured party or court approval. In the present case, the Debtors have been actively communicating and working with Byline for several months and are hopeful that Byline will have consented to interim Cash Collateral use by the time of the initial hearing.

18. Even if Byline does not consent, however, the Debtors respectfully submit that Cash Collateral use should be approved on an interim basis (up to an amount not to exceed \$213,000 in the aggregate), and ultimately on a final basis, in accordance with the Budgets.

19. Section 363(e) of the Bankruptcy Code provides that upon request of an entity that has an interest in property to be used by a debtor, the Court shall prohibit or condition such use as is necessary to provide adequate protection of such interest. Although “adequate protection” is not defined in the Bankruptcy Code, section 361 of the Bankruptcy Code provides the following three non-exclusive examples of what may constitute adequate protection:

- (1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the . . . use . . . under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity’s interest in such property;
- (2) providing to such entity an additional or replacement lien to the extent that such . . . use . . . results in a decrease in the value of such entity’s interest in such property; or
- (3) granting such other relief . . . as will result in the realization by such entity of the indubitable equivalent of such entity’s interest in such property.

11 U.S.C. § 361.

20. According to the legislative history, a finding of adequate protection is “left to case-by-case interpretation and development. It is expected that the courts will apply the concept in light of facts of each case and general equitable principals.” H.R. Rep. No. 595, 95th Cong., 2nd Sess. 339 (1977), reprinted in 1978 U.S.C.C.A.N. 5787, 6295. *See MBank Dallas, N.A. v. O’Connor (In re O’Connor)*, 808 F.2d 1393, 1396-97 (10th Cir. 1987) (stating that adequate protection should be measured on a “case by case basis”); *In re TeVoortwis Dairy, LLC*, 605 B.R. 833,

839 (Bankr. E.D. Mich. 2019) (Opperman, J.) (citing *O'Connor*). The purpose is to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. *See O'Connor*, 808 F.2d at 1396; *see also TerVootwis Dairy*, 605 B.R. at 839 (recognizing same); *In re Planned Sys., Inc.*, 78 B.R. 852, 861-62 (Bankr. S.D. Ohio 1987).

21. Here, Byline is being adequately protected in multiple ways.

22. **Continued Operations / Enhancement of Collateral Value.** As discussed above, by continuing to operate, the Debtors are maintaining and repairing Byline's collateral, including the Secord and Smallwood Dams. Currently FERC has ordered the impoundments behind those Dams lowered, meaning that they are not operating and generating revenue. The Debtors are working with FERC on plans to raise water levels and re-start operations, and the repairs and engineering costs contemplated in the Budgets are costs that the Debtors believe will be needed to accomplish this. The Debtors have been engaging in discussions with potential buyers or partners for those Dam assets and believe that the value of the Dams remains substantial and will be substantially enhanced by the steps the Debtors are taking. Even in an eminent domain scenario, valuation can only be positively impacted by the improvements and maintenance contemplated by the Budgets. It should be fairly apparent that the alternatives, such as shutting down and allowing the Four Lakes Task Force ("*FLTF*") to condemn the Dam assets for its "good faith"

offer of \$100,000 (which as explained in the Declaration is nowhere close to fair value), and / or shutting down and trying to contest value in a condemnation proceeding without maintaining the Dams, would likely negatively impact Byline's recovery and collateral position.

23. The cases are legion that a secured lender is adequately protected in connection with a debtor's proposed use of the lender's cash collateral if the cash will be used to maintain the lender's collateral, including for the payment of ongoing operating and other expenses necessary to maximize the value of the collateral. *See, e.g., In re Dixie-Shamrock Oil & Gas, Inc.*, 39 B.R. 115, 118 (Bankr. M.D. Tenn. 1984) (permitting the use of cash collateral where it was used to "protect, maintain, or enhance the collateral of [the secured lender]."); *see also In re Salem Plaza Assocs.*, 135 B.R. 753, 758 (Bankr. S.D.N.Y. 1992) ("Allowing the Debtor to use [cash collateral] . . . will preserve the base that generates the income stream.").

24. **Additional Collateral.** As noted, the Debtors expect Byline's position and recovery to be *enhanced*, not diminished, by the Cash Collateral use contemplated hereunder. However, in order to further adequately protect Byline, Boyce Michigan, LLC ("*BM*"), a non-debtor affiliate of the Debtors, and an entity that is not an obligor on the Byline debt, has agreed to grant Byline, to secure payment of an amount equal to any diminution in value of Byline's collateral resulting from the Debtors' use of Cash Collateral in these Chapter 11 Cases, first

priority liens on the four currently unencumbered development properties described in Exhibit B to the Proposed Interim Order attached hereto (the “*BM Properties*”).

25. The BM Properties are comprised of four parcels south of the Edenville Dam. To provide a sense of the value of the BM Properties, on December 31, 2019, BM entered into an Asset Purchase Agreement with the FLTF pursuant to which FLTF agreed to pay \$1,000,000 for these four parcels. Because this sale was part of a larger transaction, BM agreed to accept this price notwithstanding that on August 21, 2019, it had received an appraisal that valued just the three parcels East of state highway M-30 (*i.e., less than all of the BM Properties*) at \$1,275,000. BM believes that the BM Properties have substantial recreational development potential, potential which BM has already taken steps to pursue.

26. The Debtors respectfully submit that addition of the BM Properties to Byline’s collateral package *alone* more than adequately protects Byline against any possible diminution resulting from the Debtors’ use of Cash Collateral, which as discussed above, effectively amounts to approximately \$362,909 over the entire Budget Period, and a maximum of \$213,000 on an interim basis. *See* 11 U.S.C. § 361(2) (specifically enumerating additional liens as providing adequate protection).

27. **Replacement Liens.** As additional adequate protection for the Debtors’ use of Cash Collateral hereunder, the Debtors shall provide Byline, to

secure payment of an amount equal to any diminution in value of Byline's collateral, a security interest in and lien upon all assets of the Debtors and all hereafter-acquired assets of the Debtors, of any kind or nature, wherever located, and the proceeds, products, rents, and profits thereof, whether arising from section 552(b) of the Bankruptcy Code or otherwise, including commercial tort claims and other causes of action (*but not including any causes of action arising under the Bankruptcy Code*), senior to any other security interests, liens, or encumbrances, subject only to, in the following order of priority: (a) any lien on the Debtors' assets that the Court may approve in the future as being senior to Byline's liens on a particular asset or assets (with proper notice to Byline and an opportunity to object); (b) valid, perfected, and enforceable prepetition liens which are senior to the Lenders' respective liens or security interests as of the Petition Date, (c) the payment of the United States Trustee's fees, pursuant to 28 U.S.C. § 1930, and (d) the amount of the Debtors' professionals' fees and disbursements accrued as of the date of the termination of the Debtors' use of Cash Collateral after application of any pre-petition retainer.<sup>3</sup>

28. Pursuant to section 361 of the Bankruptcy Code, replacement liens in the nature of those provided by the Debtors can serve as adequate protection. 11 U.S.C. § 361(2); *see also TeVoortwis Dairy*, 605 B.R. at 839 ("Adequate protection

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<sup>3</sup> As set forth in paragraph 3 of the Proposed Interim Order, the Budgets shall include payments to a professional fee escrow.

can take different forms, including . . . additional or replacement liens . . . .”) (citing *O’Connor*, 808 F.2d at 1396–97); *In re HardRock HDD, Inc.*, 569 B.R. 443, 450 (Bankr. E.D. Mich. 2017) (recognizing same).

29. **Adequate Protection Payments.** As discussed above, the Budget contemplates paying \$130,069 to Byline in the form of adequate protection payments. This constitutes all post-petition interest payments due under the loans (taking the CARES Act deferral on the SBA loans into account). Again, the adequate protection payments alone could be deemed to adequately protect Byline. *See* 11 U.S.C. § 361(1) (specifically enumerating periodic payments as providing adequate protection).

30. **Monthly Reporting.** As further adequate protection, within fourteen (14) days of the end of each month, the Debtors shall provide Byline an “actual to budget” reconciliation of all inflows and expenses listed in the Budget for the preceding month.

**Interim Approval of the Use of Cash Collateral Should Be Granted**

31. Bankruptcy Rule 4001(b) provides that a final hearing on a motion to use cash collateral pursuant to section 363 may not be commenced earlier than fourteen (14) days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize use of cash collateral on an interim basis to the extent necessary to avoid

immediate and irreparable harm to a debtor's estate. *See* Fed. R. Bankr. P. 4001(b); *see also* Local Rule 4001-2(d).

32. Pursuant to Bankruptcy Rule 4001(b), the Debtors request that the Court conduct a preliminary expedited hearing as soon as practicable to enter the Proposed Interim Order authorizing the Debtors to use Cash Collateral in an aggregate amount not to exceed the amounts set forth in the Budget attached to the Proposed Interim Order (subject to a 15% variance as set forth in the Proposed Interim Order) pending the final hearing.

33. The ability of the Debtors to finance, through the use of Cash Collateral, their ongoing operations as they pursue the Restructuring for the benefit of all creditors is in the best interests of the Debtors, all their creditors, and their estates. The relief requested is necessary in order to avoid immediate and irreparable harm and prejudice to the estates and to all parties-in-interest in these Bankruptcy Cases.

34. The Debtors have an urgent and immediate need to use Cash Collateral to continue to their business operations while they pursue the Restructuring. All of the Debtors' businesses will be immediately and irreparably harmed without authorization from the Court to use Cash Collateral, as requested, on an interim basis pending the final hearing.



**Request for a Final Hearing**

35. Finally, pursuant to Bankruptcy Rule 4001(c)(2), the Debtors respectfully request that this Court set a date for the final hearing. The Debtors request that they be authorized to serve a copy of the signed Interim Order, which fixes the time and date for filing objections, if any, by first class mail upon Byline, the United States Trustee, the Debtors' twenty (20) largest creditors, and any party having filed a request to receive service in the Chapter 11 Cases. The Debtors request that the Court consider such notice of the final hearing to be sufficient notice under Rule 4001 of the Bankruptcy Rules.

**NOTICE**

36. The Debtors have provided notice of this Motion to the following parties or their respective counsel: (a) the United States Trustee's Office for the Eastern District of Michigan; (b) Byline Bank; (c) the holders of the twenty (20) largest unsecured claims against the Debtors; (d) the Federal Energy Regulatory Commission; (e) the United States Attorney's Office for the Eastern District of Michigan; (f) Applicable Taxing Authorities<sup>4</sup>; and (g) any party that has formally appeared and requested notice pursuant to Bankruptcy Rule 2002. In light of the

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<sup>4</sup> The term "Applicable Taxing Authorities" as used herein and in the notice section of future motions filed in these Chapter 11 Cases shall mean the following taxing authorities that the Debtors are aware of: (a) the Internal Revenue Service; (b) the Gladwin and Midland County Treasurers; and (c) the Hay, Secord, Bourret, Clement, Jerome, Billings, Edenville, and Tobacco Township Treasurers.

nature of the relief requested, the Debtors submit that no other or further notice need be given.

WHEREFORE, the Debtors respectfully request that this Court (a) conduct an emergency hearing on this Motion; (b) enter an Interim Order substantially in the form submitted herewith; (c) schedule a final hearing on the relief requested herein; and (d) grant such further relief as may be equitable and just.

Dated: August 3, 2020

Respectfully submitted,

By: /s/ Matthew E. McClintock

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*Proposed Counsel to the Debtors*

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION – BAY CITY**

In re: ) Case No. 20-21214  
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 BOYCE HYDRO, LLC, *et al.* ) (Joint Administration Requested)  
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 Debtors.<sup>1</sup> ) Chapter 11  
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 ) Honorable Daniel S. Opperman

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**COVER SHEET FOR MOTION TO USE CASH  
COLLATERAL OR TO OBTAIN CREDIT**

The Debtors have filed a motion to use cash collateral which is attached to this Cover Sheet. In accordance with LBR 4001-2(b) (E.D.M.), the Debtors have identified below, by page and paragraph number, the location in the proposed order accompanying the motion of each of the following provisions:

<b>Provision</b>	<b>Contained in Proposed Order</b>	<b>Location in Proposed Order</b>
(1) Provisions that grant liens on the estate’s claims and causes of action arising under Chapter 5 of the Code.	NO	N/A

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal taxpayer-identification number, are: (i) Boyce Hydro, LLC (6694), Case No. 20-21214 and (ii) Boyce Hydro Power, LLC (3034), Case No. 20-21215.

(2) Provisions that grant cross-collateralization protection to the prepetition secured creditor (i.e., clauses that secure prepetition debt with categories of collateral that were not covered by the secured party's lien prepetition) other than liens granted solely as adequate protection against diminution in value of a prepetition creditor's collateral.	NO	N/A
(3) Provisions that establish a procedure or conditions for relief from the automatic stay.	NO	N/A
(4) Provisions regarding the validity or perfection of a secured creditor's prepetition liens or that release claims against a secured creditor.	NO	N/A
(5) Provisions that prime any lien without that lienholder's consent.	NO	N/A
(6) Provisions that relate to a sale of substantially all of the debtor's assets.	NO	N/A
(7) Provisions for the payment of professional fees of the debtor or any committees, including any carve-outs for such payments.	YES	Pages 3 & 4, ¶¶ 2 & 5.
(8) Provisions for the payment of prepetition debt.	NO	N/A
(9) Provisions that waive the debtor's exclusive right to file or solicit acceptances of a plan during the time periods specified in 11 U.S.C. § 1121.	NO	N/A
(10) Provisions that require the debtor's plan to be on terms acceptable to the secured creditor.	NO	N/A

(11) Provisions that require or prohibit specific terms in the debtor's plan.	NO	N/A
(12) Provisions establishing that proposing a plan inconsistent with the order constitutes a default.	NO	N/A
(13) Provisions that waive surcharge under 11 U.S.C. § 506(c).	NO	N/A
(14) Provisions that address the rights and obligations of guarantors or co-obligors.	NO	N/A
(15) Provisions that prohibit the debtor from seeking approval to use cash collateral without the secured creditor's consent.	NO	N/A
(16) Provisions that purport to bind a subsequent trustee.	NO	N/A
(17) Provisions that obligate the debtor to pay any of a secured creditor's professional fees.	NO	N/A

Dated: August 3, 2020

Respectfully submitted,

By: /s/ Matthew E. McClintock

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*Proposed Counsel to the Debtors*

**UNITED STATES BANKRUPTCY COURT  
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BOYCE HYDRO, LLC, *et al.* ) (Joint Administration Requested)  
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Debtors.<sup>1</sup> ) Chapter 11  
)  
\_\_\_\_\_ ) Honorable Daniel S. Opperman

**FIRST DAY INTERIM ORDER AUTHORIZING USE OF CASH  
COLLATERAL AND SCHEDULING FINAL HEARING**

Upon the motion (the “*Motion*”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “*Debtors*”) for entry of an order pursuant to sections 361 and 363 of title 11 of the United States Code (the “*Bankruptcy Code*”) and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”): (1) authorizing the Debtors to use cash collateral; (2) scheduling a final hearing on the Motion; and (3) for other related relief as necessary; the Court having considered the Motion and Mueller Declaration and statements of counsel; and it appearing to the Court that granting certain limited relief on the terms and conditions herein contained is necessary and essential to enable the Debtors to

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal taxpayer-identification number, are: (i) Boyce Hydro, LLC (6694), Case No. 20-21214 and (ii) Boyce Hydro Power, LLC (3034), Case No. 20-21215.

<sup>2</sup> Capitalized terms not defined herein shall have the meanings provided in the

continue to operate their businesses pending a final hearing on the Motion; and it appearing that Byline is adequately protected; and good cause appearing therefore, it is HEREBY ORDERED THAT:

1. The Court authorizes the Debtors to use Cash Collateral pending a final hearing on the Motion for the disbursements set forth in the budget (the “*Budget*”) attached hereto as Exhibit A, up to an amount not to exceed \$213,000 in the aggregate. The Debtors are and shall be authorized to use Cash Collateral exclusively for disbursements to the extent and in the amounts set forth in the Budget. The Debtors may use Cash Collateral in an amount equal to up to 15% more than a particular corresponding “category” in the Budget (*e.g.*, “rent,” “phone,” or “utilities”), measured on a cumulative, weekly basis, provided that Cash Collateral is available. In the event that Byline consents, in writing, to the use of its Cash Collateral in a manner or amount which does not conform to the Budget (such use of Cash Collateral, a “*Non-Conforming Use*”), the Debtors shall be authorized pursuant to this Interim Order to expend Cash Collateral for such Non-Conforming Use without further Court approval.

2. In addition to Byline’s security interests, liens, rights, and other interests in and with respect to its collateral, as adequate protection for and to secure the payment of an amount equal to any diminution in the value of its

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Motion.

collateral, the Debtors hereby grant Byline security interests in and liens upon all the assets of the Debtors and all hereafter-acquired assets of the Debtors, of any kind or nature, wherever located, and the proceeds, products, rents, and profits thereof, whether arising from Section 552(b) of the Bankruptcy Code or otherwise, and specifically including commercial tort claims and other causes of action (*but not including any causes of action arising under the Bankruptcy Code*) senior to any other security interests, liens, or encumbrances, subject only to, in the following order of priority: (a) any lien on the Debtors' assets that the Court may approve in the future as being senior to Byline's liens on a particular asset or assets (with proper notice to Byline and an opportunity to object); (b) valid, perfected, and enforceable prepetition liens which are senior to the Lenders' respective liens or security interests as of the Petition Date, (c) the payment of the United States Trustee's fees, pursuant to 28 U.S.C. § 1930, and (d) the amount of the Debtors' professionals' fees and disbursements accrued as of the date of the termination of the Debtors' use of Cash Collateral after application of any pre-petition retainer.

3. As further adequate protection and to secure the payment of an amount equal to any diminution in the value of its collateral resulting from the Debtors' use of Cash Collateral in these chapter 11 cases, Boyce Michigan, LLC ("*BM*") hereby grant Byline security interests in and liens (the "*Additional Liens*") upon the four currently unencumbered development properties described in



Exhibit B hereto (the “*BM Properties*”). The Additional Liens on the BM Properties shall be deemed properly perfected mortgages on the BM Properties without further action on the part of Byline or BM, but Byline is authorized to take any actions reasonably appropriate to document such Additional Liens, and BM shall reasonably cooperate in connection with same.

4. As further adequate protection, within fourteen (14) days of the end of each month, the Debtors shall provide Byline an “actual to budget” reconciliation of all inflows and expenses listed in the Budget for the preceding month.

5. Pending entry of an order (“*Retention Order*”) approving the retention of the Debtors’ counsel (“*Counsel*”), fees and expenses allocated for Counsel in the Budget will be segregated by the Debtors. Upon entry of a Retention Order, such amounts (as well as amounts budgeted for Counsel in future months, which may be paid on the first of each month) will be paid to Counsel to be held in escrow pending order of the Court approving Counsel’s fees and expenses.

6. This Interim Order constitutes an interim order pursuant to Bankruptcy Rule 4001(b). A final hearing to consider the Motion and the relief sought therein shall be held on \_\_\_\_\_, \_\_\_, 2020 at \_\_\_:\_\_\_ \_\_.m. (the “*Final Hearing*”) in accordance with Rule 4001(c)(2) of the Federal Rules of Bankruptcy Procedure.

7. The notice given by the Debtors of the Interim Hearing was given in

accordance with Bankruptcy Rule 4001(c)(2). Within three business days after the Court's entry of this Interim Order, the Debtors shall mail copies of this Interim Order and notice of the Final Hearing to: (i) Byline Bank; (ii) the United States Trustee; (iii) the Debtors' twenty (20) largest creditors; and (iv) known holders of liens against any of the Debtors' assets. Any party-in-interest objecting to the relief sought in the Final Order shall submit any such objection in writing and file same with the Court and serve (so as to be received) such objection upon counsel to the Debtors and the United States Trustee by \_\_\_\_\_,\_\_\_\_, 2020 at 4:00 p.m. Should no objections be timely filed by such date(s), a form of order substantially similar hereto may become a Final Order without further hearing.

8. This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof.

9. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Interim Order.

Bay City, Michigan  
Dated: August \_\_, 2020

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United States Bankruptcy Judge

# **EXHIBIT A**

## Boyce Hydro, LLC

	<b>Aug. 2020</b>	<b>Sept. 2020</b>	<b>Oct. 2020</b>	<b>Nov. 2020</b>
<b>Beginning Cash Balance</b>	\$ 25,555.06	\$ 9,757.80	\$ 4,055.54	\$ 3,603.28
<b><u>INCOME</u></b>				
<b>Operating Income required from Boyce Hydro Power, LLC</b>	\$ 25,000.00	\$ 110,000.00	\$ 50,000.00	\$ 50,000.00
<b>Misc.</b>				
<b>Total Income</b>	<b>\$ 25,000.00</b>	<b>\$ 110,000.00</b>	<b>\$ 50,000.00</b>	<b>\$ 50,000.00</b>
<b><u>OPERATING EXPENSES</u></b>				
<b>Bank Fees</b>	\$ 50.00	50.00	50.00	50.00
<b>Other / Miscellaneous</b>	\$ 1,000.00	1,000.00	1,000.00	1,000.00
<b>Payroll (includes payroll taxes)</b>	\$ 26,692.00	\$ 26,692.00	\$ 26,692.00	\$ 26,692.00
<b>Payroll expense - processing</b>	\$ 197.34	\$ 197.34	\$ 197.34	\$ 197.34
<b>Trucks and Equipment -- Repair and Maintenance</b>	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00
<b>Rent (temporary storage &amp; office facilities)</b>	\$ 577.32	\$ 577.32	\$ 577.32	\$ 577.32
<b>Rent and utilities (temporary office at 745 Wolverine)</b>	\$ 650.00	\$ 650.00	\$ 650.00	\$ 650.00
<b>Office Rent Paid to Boyce Michigan</b>	\$ -			
<b>Insurance (Commercial Auto, Property &amp; General Liab.)</b>	\$ 5,155.60	\$ 5,155.60	\$ 5,155.60	\$ 5,155.60
<b>Insurance - Employee Health &amp; Life</b>	\$ 1,600.00	\$ 1,600.00	\$ 1,600.00	\$ 1,600.00
<b>Auto Fuel</b>	\$ 600.00	400.00	400.00	400.00
<b>Diesel for portable generator/off-road vehicles</b>	\$ 400.00	0.00	200.00	0.00
<b>Material Costs -- Supplies</b>	\$ 375.00	375.00	375.00	375.00
<b>Repairs for FERC compliance (Secord/Smallwood)*</b>	\$ -	70,000.00	10,000.00	10,000.00
<b>Repairs - other</b>				
<b>Facilities Repairs &amp; Maintenance**</b>	\$ 550.00	6,550.00	550.00	550.00
<b>Equipment Rentals (portable johns, generators, etc.)</b>	\$ 95.00	0.00	150.00	150.00
<b>Travel expenses</b>	\$ 400.00	0.00	400.00	400.00
<b>Office Supplies</b>	\$ 50.00	50.00	50.00	50.00
<b>Summer Dam Grass Cutting &amp; Maintenance</b>	\$ 225.00	225.00	225.00	225.00
<b>Postage and Delivery</b>	\$ 25.00	25.00	25.00	25.00
<b>Printing and Reproduction</b>	\$ 60.00	60.00	60.00	60.00
<b>Security</b>	\$ 225.00	225.00	225.00	225.00
<b>Miscellaneous / Repairs</b>	\$ 500.00	500.00	500.00	500.00
<b>Utilities (telephone &amp; internet)</b>	\$ 370.00	370.00	370.00	370.00
<b>Utilities (electricity, trash)</b>	\$ 500.00	500.00	500.00	500.00
<b>Total Operating Expenses</b>	<b>\$ 40,797.26</b>	<b>115,702.26</b>	<b>50,452.26</b>	<b>50,252.26</b>
<b>Net Income</b>	<b>\$ (15,797.26)</b>	<b>\$ (5,702.26)</b>	<b>\$ (452.26)</b>	<b>\$ (252.26)</b>
<b>Ending Cash Balance</b>	<b>\$ 9,757.80</b>	<b>\$ 4,055.54</b>	<b>\$ 3,603.28</b>	<b>\$ 3,351.02</b>
*Debtors are waiting on Federal Energy Regulatory Commission sign-off on plans, but anticipated				
**This amount increases in September to account for electrical repairs needed to equipment in the Smallwood Dam.				

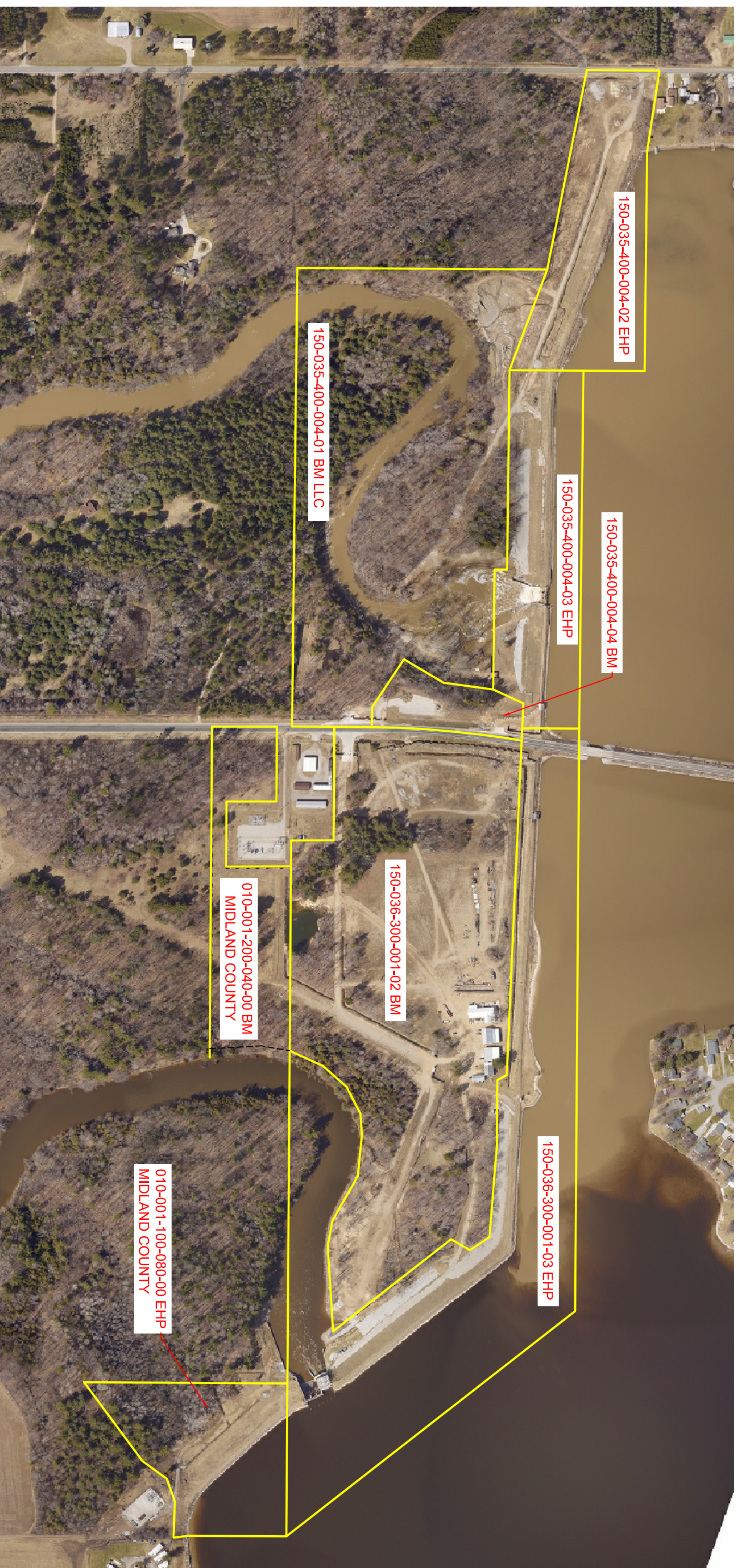
## Boyce Hydro Power, LLC

	Aug. 2020	Sept. 2020	Oct. 2020	Nov. 2020
Beginning Cash Balance	\$ 48,474.69	\$ 841,322.93	\$ 708,946.17	\$ 580,823.41
<b><u>INCOME</u></b>				
Operating Income (Gross Receipts)				
FERC Report Reimbursement Settlement Proceeds*				\$ 350,000.00
New PPA (True-Up Dependent on Re-Start)				
Sale Proceeds Dams (TBD)				
Sale Proceeds Excess Vehicles (Estimated)**			\$ 50,000.00	
Insurance Proceeds (property / liability settlement)**	\$ 1,000,000.00	\$ 75,000.00		25,000.00
<b>Total Income</b>	<b>\$ 1,000,000.00</b>	<b>\$ 75,000.00</b>	<b>\$ 50,000.00</b>	<b>\$ 375,000.00</b>
<b><u>OPERATING EXPENSES</u></b>				
Bank Debt Service (USDA Loan -- Interest-Only)	\$ 17,076.76	17,076.76	17,076.76	17,076.76
Bank debt Service (SBA loans) (CARES act suspended until October payment)			30,881.00	30,881.00
Operations (Boyce Hydro, LLC)	\$ 25,000.00	110,000.00	50,000.00	50,000.00
Bank Fees	\$ 75.00	300.00	165.00	165.00
Professional Fees - Engineering for Secord & Smallwood	\$ 10,000.00	10,000.00	10,000.00	10,000.00
Professional Fees - Forensic Investigation	\$ 75,000.00	25,000.00	25,000.00	225,000.00
Legal Fees (Condemnation Counsel Retainer)	\$ 25,000.00			
Legal Fee Accrual (Debtor's Counsel)	\$ 55,000.00	45,000.00	45,000.00	45,000.00
Property taxes	\$ -			
<b>Total Operating Expenses</b>	<b>\$ 207,151.76</b>	<b>207,376.76</b>	<b>178,122.76</b>	<b>378,122.76</b>
<b>Net Income</b>	<b>\$ 792,848.24</b>	<b>\$ (132,376.76)</b>	<b>\$ (128,122.76)</b>	<b>\$ (3,122.76)</b>
Ending Cash Balance	<b>\$ 841,322.93</b>	<b>\$ 708,946.17</b>	<b>\$ 580,823.41</b>	<b>\$ 577,700.65</b>
<p>*The Debtors anticipate requesting to use settlement funds to fund the FERC report (because it is primarily for the benefit of the trust) concurrently with seeking approval of the insurer settlement. Accordingly, the bank is effectively advancing these amounts.</p>				
<p>**Could be materially more depending on disposition of Dam assets and need for vehicles and equipment.</p>				
<p>***\$1 million is proceeds from a property insurance policy; the other amounts in this row are the two forgivable DIP loan payments contemplated by the insurance settlement motion.</p>				

# **EXHIBIT B**

**Unencumbered Boyce Michigan, LLC Properties**

County	Tax ID	Township Name	#	R	Sec	Description	Winter Tax (2019)	Summer Tax (2020)	Notes
Gladwin	150-035-400-004-01	Tobacco	17N	1W	35	5970 S M30	\$ 160.38	\$ 368.16	See Edenville ALTA Survey; Parcel 7
Gladwin	150-035-400-004-04	Tobacco	17N	1W	35	5930 S M30	\$ 15.62	\$ 35.91	See edenville ALTA Survey; Parcel 6
Gladwin	150-036-300-001-02	Tobacco	17N	1W	36	Parcel 5 East of M-30	\$ 1,605.25	\$ 3,576.22	See Edenville ALTA survey; Parcel 5
Midland	010-001-200-040-00	Edenville	16N	1W	1	East of M-30, on Midland County Line	\$ 395.50	\$ 58.10	See Edenville tax parcels and Aerial



**EDENVILLE DAM TAX PARCELS**  
**SECTIONS 35&36, TOBACCO TWP., GLADWIN CO.**  
**SECTION 1, HOPE TWP., MIDLAND CO.**

PREPARED: FEBRUARY 12, 2018

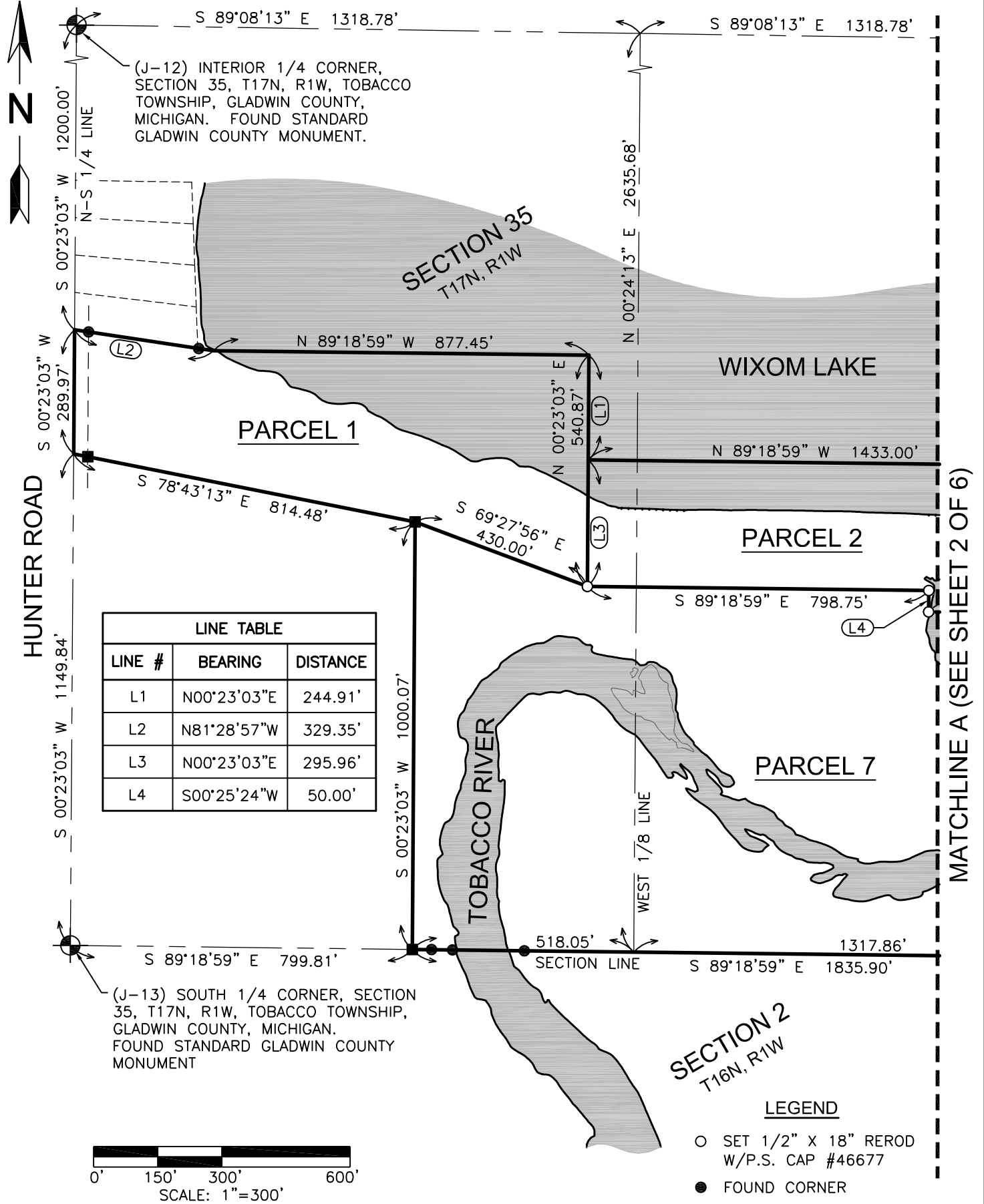


# CERTIFICATE OF SURVEY

SECTION 35 AND 36, T17N, R1W, TOBACCO TOWNSHIP, GLADWIN COUNTY, MICHIGAN  
AND SECTION 1, T16N, R1W, EDENVILLE TOWNSHIP, MIDLAND COUNTY, MICHIGAN

I Pete Lorenz, hereby certify that on August 4, 2011, I surveyed the land described hereon and all the requirements of P.A. 132 of 1970 as amended, have been met.

**CERTIFIED TO:** Edenville Hydro Property, LLC



LINE TABLE		
LINE #	BEARING	DISTANCE
L1	N00°23'03"E	244.91'
L2	N81°28'57"W	329.35'
L3	N00°23'03"E	295.96'
L4	S00°25'24"W	50.00'

0' 150' 300' 600'  
SCALE: 1"=300'

- LEGEND**
- SET 1/2" X 18" REROD W/P.S. CAP #46677
  - FOUND CORNER
  - FOUND CONC. MONUMENT



3229 W. Beal City Road  
Weidman, Michigan 48893

Phone: (989) 644-5953  
Fax: (989) 644-8659

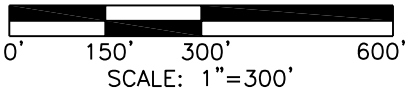
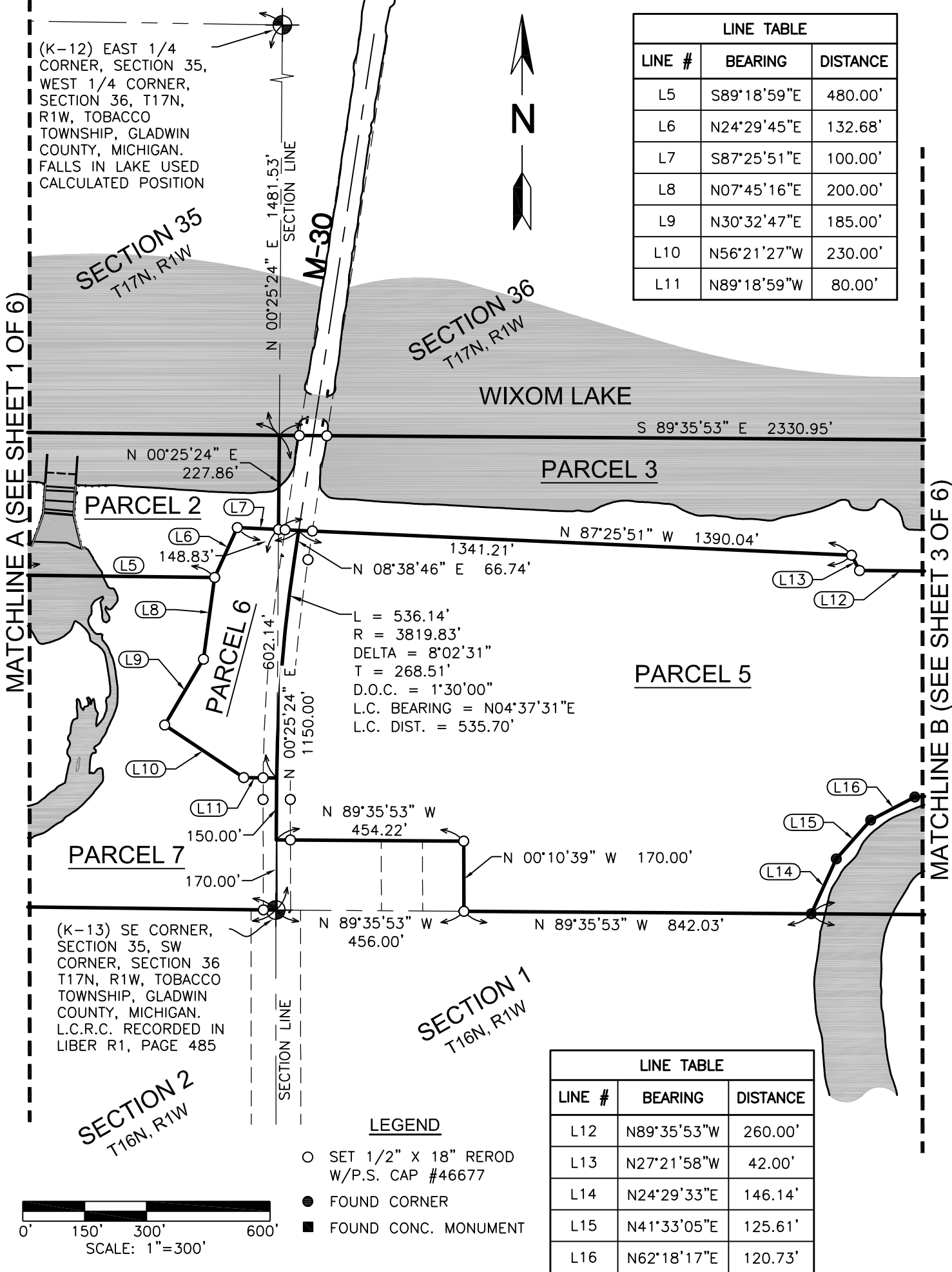
Pete Lorenz, PS # 46677

SCALE: 1" = 300'	DATE: December 19, 2011
JOB NUMBER: 110053	REV. DATE:
DRAWN BY: TPL	SHEET NUMBER: 1 OF 6

# CERTIFICATE OF SURVEY

SECTION 35 AND 36, T17N, R1W, TOBACCO TOWNSHIP, GLADWIN COUNTY, MICHIGAN  
AND SECTION 1, T16N, R1W, EDENVILLE TOWNSHIP, MIDLAND COUNTY, MICHIGAN

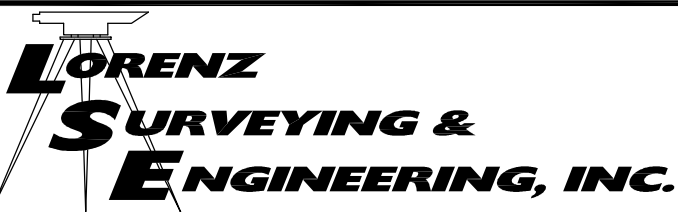
LINE TABLE		
LINE #	BEARING	DISTANCE
L5	S89°18'59"E	480.00'
L6	N24°29'45"E	132.68'
L7	S87°25'51"E	100.00'
L8	N07°45'16"E	200.00'
L9	N30°32'47"E	185.00'
L10	N56°21'27"W	230.00'
L11	N89°18'59"W	80.00'



**LEGEND**

- SET 1/2" X 18" REROD W/P.S. CAP #46677
- FOUND CORNER
- FOUND CONC. MONUMENT

LINE TABLE		
LINE #	BEARING	DISTANCE
L12	N89°35'53"W	260.00'
L13	N27°21'58"W	42.00'
L14	N24°29'33"E	146.14'
L15	N41°33'05"E	125.61'
L16	N62°18'17"E	120.73'



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Fax: (989) 644-8659

Pete Lorenz, PS # 46677

SCALE: 1" = 300'

DATE: December 19, 2011

JOB NUMBER: 110053

REV. DATE:

DRAWN BY: TP

SHEET NUMBER: 2 OF 6

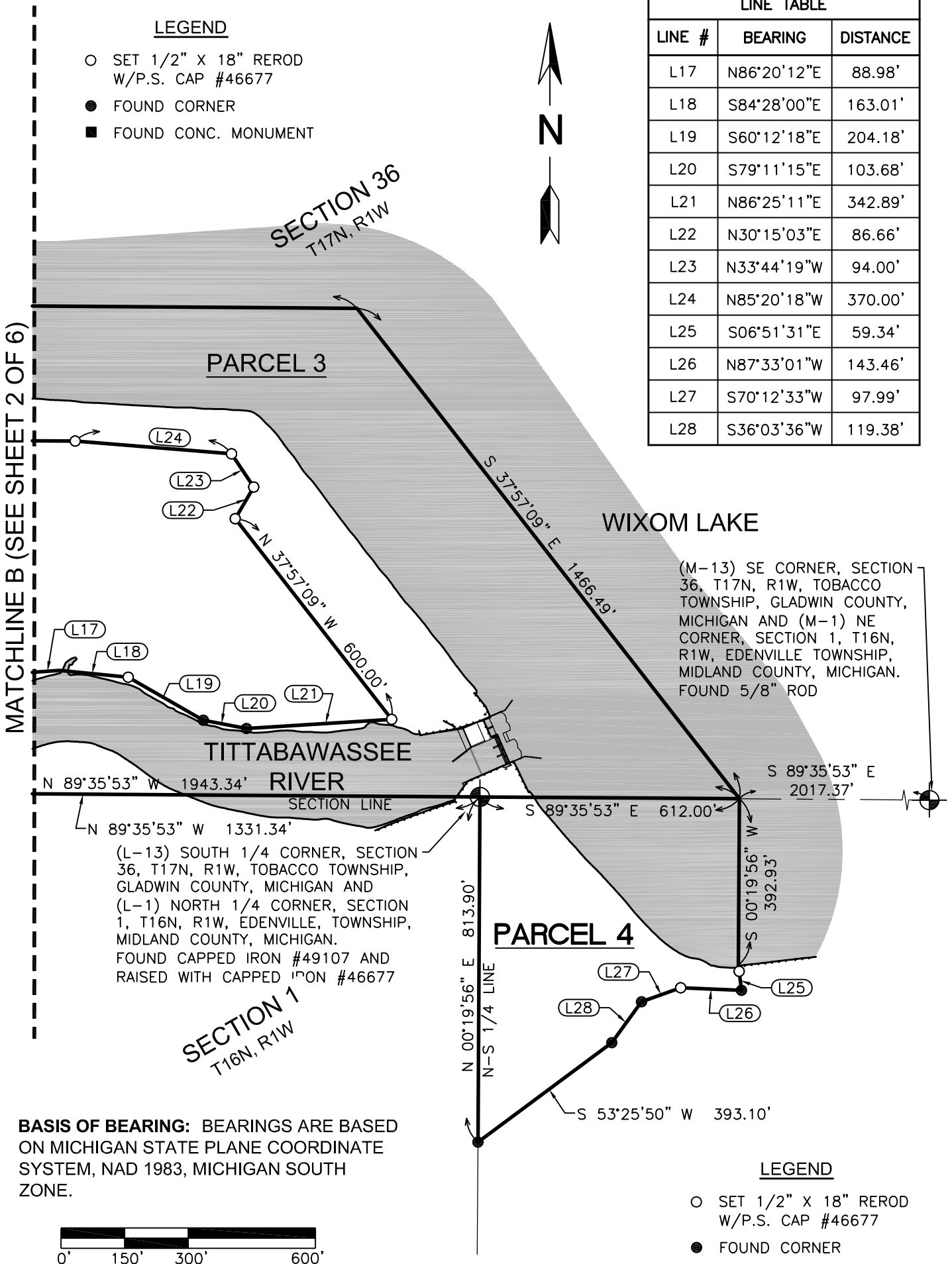
# CERTIFICATE OF SURVEY

SECTION 35 AND 36, T17N, R1W, TOBACCO TOWNSHIP, GLADWIN COUNTY, MICHIGAN  
AND SECTION 1, T16N, R1W, EDENVILLE TOWNSHIP, MIDLAND COUNTY, MICHIGAN

LINE TABLE		
LINE #	BEARING	DISTANCE
L17	N86°20'12"E	88.98'
L18	S84°28'00"E	163.01'
L19	S60°12'18"E	204.18'
L20	S79°11'15"E	103.68'
L21	N86°25'11"E	342.89'
L22	N30°15'03"E	86.66'
L23	N33°44'19"W	94.00'
L24	N85°20'18"W	370.00'
L25	S06°51'31"E	59.34'
L26	N87°33'01"W	143.46'
L27	S70°12'33"W	97.99'
L28	S36°03'36"W	119.38'

**LEGEND**

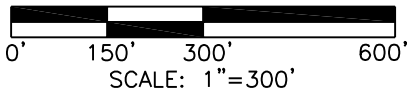
- SET 1/2" X 18" REROD  
W/P.S. CAP #46677
- FOUND CORNER
- FOUND CONC. MONUMENT



(M-13) SE CORNER, SECTION 36, T17N, R1W, TOBACCO TOWNSHIP, GLADWIN COUNTY, MICHIGAN AND (M-1) NE CORNER, SECTION 1, T16N, R1W, EDENVILLE TOWNSHIP, MIDLAND COUNTY, MICHIGAN. FOUND 5/8" ROD

(L-13) SOUTH 1/4 CORNER, SECTION 36, T17N, R1W, TOBACCO TOWNSHIP, GLADWIN COUNTY, MICHIGAN AND (L-1) NORTH 1/4 CORNER, SECTION 1, T16N, R1W, EDENVILLE, TOWNSHIP, MIDLAND COUNTY, MICHIGAN. FOUND CAPPED IRON #49107 AND RAISED WITH CAPPED IRON #46677

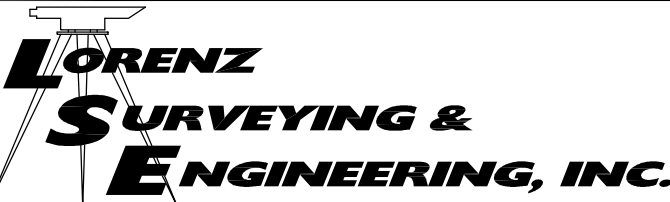
**BASIS OF BEARING:** BEARINGS ARE BASED ON MICHIGAN STATE PLANE COORDINATE SYSTEM, NAD 1983, MICHIGAN SOUTH ZONE.



**LEGEND**

- SET 1/2" X 18" REROD  
W/P.S. CAP #46677
- FOUND CORNER
- FOUND CONC. MONUMENT

Pete Lorenz, PS # 46677



3229 W. Beal City Road  
Weidman, Michigan 48893

Phone: (989) 644-5953  
Fax: (989) 644-8659

SCALE: 1" = 300'	DATE: December 19, 2011
JOB NUMBER: 110053	REV. DATE:
DRAWN BY: TPB	SHEET NUMBER: 3 OF 6

# CERTIFICATE OF SURVEY

SECTION 35 AND 36, T17N, R1W, TOBACCO TOWNSHIP, GLADWIN COUNTY, MICHIGAN  
AND SECTION 1, T16N, R1W, EDENVILLE TOWNSHIP, MIDLAND COUNTY, MICHIGAN

## DESCRIPTIONS:

### PARCEL 1

Part of the Northwest One-quarter of the Southeast One-quarter and Part of Government Lot 5, Section 35, T17N, R1W, Tobacco Township, Gladwin County, Michigan, described as: Commencing at the Southeast Corner of said Section 35; thence N.00°25'24"E., along the East line of said Section 35, 1150.00 feet to a point in Wixom Lake; thence N.89°18'59"W., parallel with the South line of said Section 35, 1433.00 feet to a point in said Wixom Lake and the TRUE PLACE OF BEGINNING; thence N.00°23'03"E., parallel with the North-South One-quarter line of said Section 35, 244.91 feet to a point in said Wixom Lake; thence N.89°18'59"W., parallel with said South Section line, 877.45 feet to a point on the Westerly water's edge of said Wixom Lake; thence N.81°28'57"W., 329.35 feet to said North-South One-quarter line; thence S.00°23'03"W., along said North-South One-quarter line, 289.97 feet; thence S.78°43'13"E., 814.48 feet; thence S.69°27'56"E., 430.00 feet; thence N.00°23'03"E., parallel with said North-South One-quarter line, 295.96 feet to the point of beginning. Subject to the Westerly 33.00 feet thereof as Hunter Road. And subject to easements, right of ways, restrictions and reservations whether used, implied or of record.

### PARCEL 2

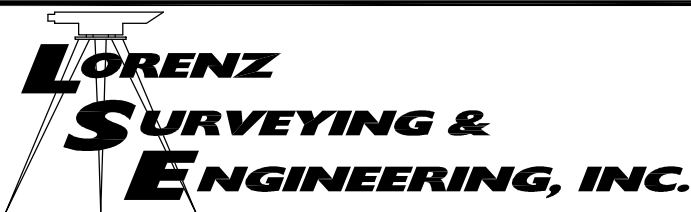
Part of Government Lot 5 and Government Lot 6, Section 35, T17N, R1W, Tobacco Township, Gladwin County, Michigan, described as: Beginning at a point on the East line of said Section 35 which is N.00°25'24"E., along the East line of said Section 35, 922.14 feet from the Southeast Corner of said Section 35; thence continuing N.00°25'24"E., along said East Section line, 227.86 feet to a point in Wixom Lake; thence N.89°18'59"W., parallel with the South line of said Section 35, 1433.00 feet to a point in said Wixom Lake; thence S.00°23'03"W., parallel with the North-South One-quarter line of said Section 35, 295.96 feet; thence S.89°18'59"E., parallel with said South Section line, 798.75 feet; thence S.00°25'24"W., parallel with said East Section line, 50.00 feet; thence S.89°18'59"E., parallel with said South Section line, 480.00 feet; thence N.24°29'45"E., 132.68 feet; thence S.87°25'51" E., 100.00 feet to the point of beginning. Subject to easements, right of ways, restrictions and reservations whether used, implied or of record.

### PARCEL 3

Part of the Southwest One-quarter of the Southwest One-quarter and Part of Government Lots 5, 6 and 7, all in Section 36, T17N, R1W, Tobacco Township, Gladwin County, Michigan, described as: Beginning at a point of the West line of said Section 36 which is N.00°25'24"E. along said West Section line, 922.14 feet from the Southwest Corner of said Section 36; thence continuing N.00°25'24"E., along said West Section line, 227.86 feet to a point in Wixom Lake; thence S.89°35'53"E., parallel with the South line of said Section 36, 2330.95 feet to a point in said Wixom Lake; thence S.37°57'09"E., 1466.49 feet to a point in said Wixom Lake on the South line of said Section 36; thence N.89°35'53"W., along said South Section line, 612.00 feet to the South One-quarter Corner of said Section 36; thence N.89°35'53"W., continuing along said South Section line, 1331.34 feet to a point on the Northwesterly top of bank of the Tittabawassee River; thence along said top of bank the following eight courses: N.24°29'33"E., 146.14 feet and N.41°33'05"E., 125.61 and N.62°18'17"E., 120.73 feet and N.86°20'12"E., 88.98 feet and S.84°28'00"E., 163.01 feet and S.60°12'18"E., 204.18 feet and S.79°11'15"E., 103.68 feet and N.86°25'11"E., 342.89 feet; thence N.37°57'09"W., 600.00 feet; thence N.30°15'03"E., 86.66 feet; thence N.33°44'19"W., 94.00 feet; thence N.85°20'18"W., 370.00 feet; thence N.89°35'53"W., 260.00 feet; thence N.27°21'58"W., 42.00 feet; thence N.87°25'51"W., 1390.04 feet to the point of beginning. Subject to the M-30 right of way. And subject to easements, right of ways, restrictions and reservations whether used, implied or of record.

### PARCEL 4

Part of the Northwest One-quarter of the Northeast One-quarter of Section 1, T16N, R1W, Edenville Township, Midland County, Michigan, described as: Beginning at the North One-quarter Corner of said Section 1; thence S.89°35'53"E., along the North line of said Section 1, 612.00 feet to a point in Wixom Lake; thence S.00°19'56"W., parallel with the North-South One-quarter line of said Section 1, 392.93 feet; thence S.06°51'31"E., 59.34 feet; thence N.87°33'01"W., 143.46 feet; thence S.70°12'33"W., 97.99 feet; thence S.36°03'36"W., 119.38 feet; thence S.53°25'50"W., 393.10 feet to said North-South One-quarter line; thence N. 00°19'56" E., along said North-South One-quarter line, 813.90 feet to the point of beginning. Subject to easements, right of ways, restrictions and reservations whether used, implied or of record.



3229 W. Beal City Road  
Weidman, Michigan 48893

Phone: (989) 644-5953  
Fax: (989) 644-8659

Pete Lorenz, PS # 46677

SCALE: N/A

DATE: December 19, 2011

JOB NUMBER: 110053

REV. DATE:

DRAWN BY: TPL 20-2114-dob Doc 11-2 SHEET NUMBER: 4 OF 6

20-2114-dob Doc 11-2 Filed 08/03/20 Entered 08/03/20 16:58:29 Page 15 of 17

# CERTIFICATE OF SURVEY

SECTION 35 AND 36, T17N, R1W, TOBACCO TOWNSHIP, GLADWIN COUNTY, MICHIGAN  
AND SECTION 1, T16N, R1W, EDENVILLE TOWNSHIP, MIDLAND COUNTY, MICHIGAN

**DESCRIPTIONS:**

**PARCEL 5**

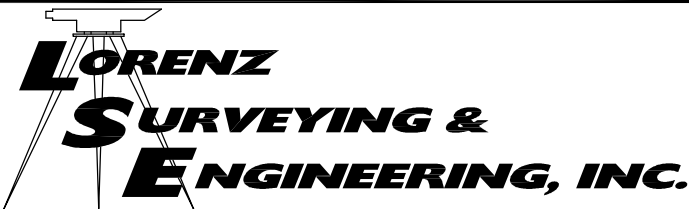
Part of the Southwest One-quarter of the Southwest One-quarter and Part of Government Lot 6, Section 36, T17N, R1W, Tobacco Township, Gladwin County, Michigan, described as: Beginning at a point of the West line of said Section 36 which is N.00°25'24"E. along said West Section line, 170.00 feet from the Southwest Corner of said Section 36; thence continuing N.00°25'24"E., along said West Section line, 150.00 feet to a point on the centerline of State Highway M-30; thence along said centerline of M-30, 536.14 feet on a curve to the right having a radius of 3819.83 feet, a delta angle of 8°02'31", a tangent length of 268.51 feet, a degree of curvature of 1°30'00" and a long chord bearing and distance of N.04°37'31"E., 535.70 feet; thence N.08°38'46"E., continuing along said centerline of M-30, 66.74 feet; thence S.87°25'51"E., 1341.21 feet; thence S.27°21'58"E., 42.00 feet; thence S.89°35'53"E., 260.00 feet; thence S.85°20'18"E., 370.00 feet; thence S.33°44'19"E., 94.00 feet; thence S.30°15'03"W., 86.66 feet; thence S.37°57'09"E., 600.00 feet to a point on the Northwesterly top of bank of the Tittabawassee River; thence along said top of bank the following eight courses: S.86°25'11"W., 342.89 feet and N.79°11'15"W., 103.68 feet and N.60°12'18"W., 204.18 feet and N.84°28'00"W., 163.01 feet and S.86°20'12"W., 88.98 feet and S.62°18'17"W., 120.73 feet and S.41°33'05"W., 125.61 feet and S.24°29'33"W., 146.14 feet to the South line of said Section 36; thence N.89°35'53"W., along said South Section line, 842.03 feet; thence N.00°10'39"W., parallel with the Easterly right of way line of said M-30, 170.00 feet; thence N.89°35'53"W., parallel with said South Section line, 454.22 feet to the point of beginning. Containing 37.30 acres more or less. Subject to the M-30 right of way. And subject to easements, right of ways, restrictions and reservations whether used, implied or of record.

**PARCEL 6**

Part of Government Lot 6, Section 35, T17N, R1W, Tobacco Township, Gladwin County, Michigan and Part of the Southwest One-quarter of the Southwest One-quarter of Section 36, T17N, R1W, Tobacco Township, Gladwin County, Michigan described as: Beginning at a point on the Section line common to said Sections 35 and 36 which is N.00°25'24"E, along said Section line common to Sections 35 and 36, 320.00 feet from Southeast Corner of said Section 35, also being the Southwest Corner of said Section 36; thence N.89°18'59"W., parallel with the South line of said Section 35, 80.00 feet; thence N.56°21'27"W., 230.00 feet; thence N.30°32'47"E., 185.00 feet; thence N.07°45'16"E., 200.00 feet; thence N.24°29'45"E., 132.68 feet; thence S.87°25'51"E., 100.00 feet to a point on said Section line common to Sections 35 and 36; thence continuing S.87°25'51"E., 48.83 feet to the centerline of State Highway M-30; thence S.08°38'46"W., along said centerline of M-30, 66.74 feet; thence continuing along said centerline of M-30, 536.14 feet on a curve to the left having a radius of 3819.83 feet, a delta angle of 8°02'31", a tangent length of 268.51 feet, a degree of curvature of 1°30'00" and a long chord bearing and distance of S.04°37'31"W., 535.70 feet to the point of beginning. Containing 2.68 acres more or less. Subject to the M-30 right of way. And subject to easements, right of ways, restrictions and reservations whether used, implied or of record.

**PARCEL 7**

Part of Government Lot 5 and Government Lot 6, Section 35, T17N, R1W, Tobacco Township, Gladwin County, Michigan, described as: Beginning at the Southeast Corner of said Section 35; thence N.00°25'24"E., along the East line of said Section 35, 320.00 feet; thence N.89°18'59"W., parallel with the South line of said Section 35, 80.00 feet; thence N.56°21'27"W., 230.00 feet; thence N.30°32'47"E., 185.00 feet; thence N.07°45'16"E., 200.00 feet; thence N.89°18'59"W., parallel with said South Section line, 480.00 feet; thence N.00°25'24"E., parallel with said East Section line, 50.00 feet; thence N.89°18'59"W., parallel with said South Section line, 798.75 feet; thence N.69°27'56"W., 430.00 feet; thence S.00°23'03"W., parallel with the North-South One-quarter line of said Section 35, 1000.07 feet to the South line of said Section 35; thence S.89°18'59"E., along said South Section line, 1835.90 feet to the point of beginning. Containing 33.85 acres more or less. Subject to the State Highway M-30 right of way. And subject to easements, right of ways, restrictions and reservations whether used, implied or of record.



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Fax: (989) 644-8659

Pete Lorenz, PS # 46677

SCALE: N/A

DATE: December 19, 2011

JOB NUMBER: 110053

REV. DATE:

DRAWN BY: TPL 20-21214-dob Doc 11-2 SHEET NUMBER: 5 OF 6

# CERTIFICATE OF SURVEY

SECTION 35 AND 36, T17N, R1W, TOBACCO TOWNSHIP, GLADWIN COUNTY, MICHIGAN  
AND SECTION 1, T16N, R1W, EDENVILLE TOWNSHIP, MIDLAND COUNTY, MICHIGAN

## WITNESSES:

(J-12) Interior 1/4 Corner, Section 35, T17N, R1W, Tobacco Township, Gladwin County, Michigan. Found standard Gladwin County monument.

N45W 107.75' Power pole, nail & tag  
S37E 64.57' Telephone pole, nail & tag  
East 33.00' Capped iron  
N85E 146.25' 24" pine, nail & tag  
N48E 92.60' 20" pine, nail & tag  
S45E 165.80' 12" pine, nail & tag

(J-13) South 1/4 Corner, Section 35, T17N, R1W, Tobacco Township, Gladwin County, Michigan. Found standard Gladwin County monument.

S85W 56.95' 10" pine (spike)  
N50W 49.30' 16" pine (spike)  
East 31.90' Project marker (center)  
S70E 53.80' 5"x5" steel post (nail & tag top center)  
N40E 64.31' 12" pine, nail & tag  
East 36.07' 3/8" iron  
ESE 61.30' 12" pine, nail & cap

(K-13) Section Corner common to Sections 35 & 36, T17N, R1W, Tobacco Township, Gladwin County, Michigan. Found standard Gladwin County monument in monument box.

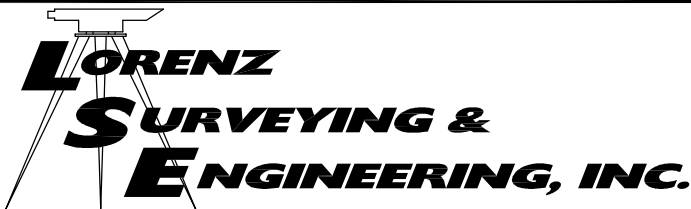
N60W 60.31' 16" ash, spike  
S80W 69.75' 24" pine, spike  
S48E 105.62' 16" ash, spike  
East 58.43' Corner post 3"x6' pipe (face)

(L-13) South 1/4 Corner of Section 36, T17N, R1W, Tobacco Township, Gladwin County, Michigan and (L-1) North 1/4 Corner of Section 1, T16N, R1W, Edenville Township, Midland County, Michigan. Found capped iron #49107 42" deep and raised with capped iron #46677.

S08E 104.43' Set nail & tag in W. face of power pole  
North 51.22' Near face of fence post on top of spillway wall where flat and sloped wall meet  
S78W 61.54' Near face of steel fence post on top of spillway wall at corner point in wall.  
N30W 47.10' Near face of steel fence post on top of spillway wall at Westerly step down.

(M-13) Southeast Corner of Section 36, T17N, R1W, Tobacco Township, Gladwin County, Michigan and (M-1) Northeast Corner of Section 1, T16N, R1W, Edenville Township, Midland County, Michigan. Found 5/8" rod.

S22E 76.23' 10" ash, nail & tag  
S75E 86.09' 8" pine, nail & tag  
N45E 51.12' Telephone riser (pole), old tag  
N45W 58.82' Power pole, nail & tag  
N82W 33.35' Concrete monument



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Pete Lorenz, PS # 46677

SCALE: N/A

DATE: December 19, 2011

JOB NUMBER: 110053

REV. DATE:

DRAWN BY: TPL 20-21214-dob Doc 11-2 SHEET NUMBER: 6 OF 6

20-21214-dob Doc 11-2 Filed 08/03/20 Entered 08/03/20 16:58:29 Page 17 of 17

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION – BAY CITY**

In re: ) Case No. 20-21214  
)  
BOYCE HYDRO, LLC, *et al.* ) (Joint Administration Requested)  
)  
Debtors.<sup>1</sup> ) Chapter 11  
)  
\_\_\_\_\_ ) Honorable Daniel S. Opperman

**NOTICE OF DEBTORS’ FIRST DAY MOTION PURSUANT TO  
SECTIONS 361 AND 363 OF THE BANKRUPTCY CODE AND  
BANKRUPTCY RULE 4001 FOR INTERIM AND FINAL ORDERS:  
(1) AUTHORIZING USE OF CASH COLLATERAL;  
(2) SCHEDULING FINAL HEARING;  
AND (3) FOR RELATED RELIEF**

The above-captioned debtors (the “*Debtors*”), as Chapter 11 debtors and debtors in possession, have filed papers with the court for entry of interim and final orders authorizing the Debtors to use cash collateral (the “*Motion*”).

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)**

If you do not want the court to grant the Motion, or if you want the court to consider your views on the Motion, you or your attorney must attend a hearing on the Motion, which the Debtors understand is being held on **Thursday, August 6, 2020 at 2:00 PM (EST), Dial-in #: 888-557-8522, Access #: 1287364.** The Debtors shall provide you with any court order

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal taxpayer-identification number, are: (i) Boyce Hydro, LLC (6694), Case No. 20-21214 and (ii) Boyce Hydro Power, LLC (3034), Case No. 20-21215.

scheduling the Motion, if a different hearing date or time is established prior to presentment.

You or your attorney may also file with the court a written response or an answer, explaining your position at:<sup>2</sup>

**United States Bankruptcy Court**  
111 First Street  
Bay City, MI 48708

If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above. All attorneys are required to file pleadings electronically.

You must also send a copy to:

**Goldstein & McClintock, LLLP**  
**c/o Matthew E. McClintock, Esq.**  
111 West Washington Street—Suite 1221  
Chicago, IL 60602

**If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.**

---

<sup>2</sup> Response or answer must comply with F. R. Civ. P. 8(b), (c) and (e).



Dated: August 3, 2020

/s/ Matthew E. McClintock

Matthew E. McClintock, Esq.

Jason J. Ben, Esq.

Daniel C. Curth, Esq.

Eric W. Garavaglia, Esq.

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*Proposed Counsel to the Debtors*

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION – BAY CITY**

In re: ) Case No. 20-21214  
)  
BOYCE HYDRO, LLC, *et al.* ) (Joint Administration Requested)  
)  
Debtors.<sup>1</sup> ) Chapter 11  
)  
\_\_\_\_\_ ) Honorable Daniel S. Opperman

**CERTIFICATE OF SERVICE**

I, Matthew E. McClintock, Esq., hereby certify that on August 3, 2020, I served documents as follows:

Documents Served: Debtors’ First Day Motion Pursuant to Sections 361 and 363 of the Bankruptcy Code and Bankruptcy Rule 4001 for Interim and Final Orders: (1) Authorizing Use of Cash Collateral; (2) Scheduling Final Hearing; and (3) For Related Relief

Served Upon and Method of Service:

Overnight Delivery Service

Office of the U.S. Trustee for the Eastern District of Michigan  
201 Superior Avenue, Suite 441  
Cleveland, OH 44144

United States Attorney’s Office for the Eastern District of Michigan  
211 W. Fort Street, Suite 2001  
Detroit, MI 48226

Electronic Mail

Office of the U.S. Trustee for the Eastern District of Michigan  
Attn: Ronna G. Jackson  
201 Superior Avenue, Suite 441  
Cleveland, OH 44144  
[Ronna.G.Jackson@usdoj.gov](mailto:Ronna.G.Jackson@usdoj.gov)

---

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal taxpayer-identification number, are: (i) Boyce Hydro, LLC (6694), Case No. 20-21214 and (ii) Boyce Hydro Power, LLC (3034), Case No. 20-21215.

Internal Revenue Service  
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Philadelphia, PA 19101

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Gladwin, MI 48624

Midland County Treasurer  
Attn: Catherine L. Lunsford  
County Services Building  
220 W Ellsworth Street  
Midland, MI 48640-5194

Billings Township Treasurer  
Attn: Linda J. McSweyn  
1050 Estey rd  
Beaverton, MI 48612

Bourret Township Treasurer  
Attn: Lisa Ball  
4430 Pine St  
Alger MI 48610-0000

Clement Township Treasurer  
Attn: Eric House  
1497 E. M-30  
Alger MI 48610-0000

Edenville Township Treasurer  
Attn: Lydia Draves  
467 Moore St.  
P.O. Box 24  
Edenville MI 48620-0000

Hay Township Treasurer  
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Beaverton MI 48612-0000

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Tobacco Township Treasurer  
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5119 S M-18  
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By: /s/ Matthew E. McClintock

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