

**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.¹) Chapter 11
)
_____) Honorable Daniel S. Opperman

**SUPPLEMENT TO DECLARATION OF LEE W. MUELLER IN
SUPPORT OF FIRST-DAY MOTIONS AND APPLICATIONS**

I, Lee W. Mueller (“*Mueller*”), hereby declare under penalty of perjury that the following is true to the best of my knowledge, information, and belief:

1. In re-reviewing my previous declaration, which was filed on August 3, 2020 [Doc. No. 12] (the “*Declaration*”), as well as reviewing associated documents and UCC filing information, I identified inaccuracies in paragraphs 95 and 96. I am filing this supplement to correct those items and provide further detail on the BM Properties² that are discussed in those paragraphs.

2. In paragraph 95 of the Declaration, I stated that as Co-Trustee of the Boyce Trusts, which own the Debtors and non-Debtor BM, the Trusts and BM have

¹ 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 Capitalized terms used but not defined herein, shall have the respective meanings given to them in the Declaration.

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 to the Cash Collateral Motion (these are defined as the "BM Properties" in the Declaration).

3. I have since learned, however, that a claim of lien in the amount of \$418,152.16 was recorded by Gerace Construction Company on June 11, 2020 against certain properties owned by Edenville HP and BM, including one of the four BM Properties. Specifically, the BM property with Tax ID # 150-035-400-004-01, and identified in the First Day Declaration as unencumbered, is subject to Gerace Construction Company's ("*Gerace*") asserted a claim of lien. To the best of my knowledge, the three additional BM properties listed in Exhibit B, and offered to Byline as additional collateral, are unencumbered.

4. In paragraph 96 of the First Day Declaration, I stated that the BM Properties, which are being offered as additional collateral to Byline, are comprised of four parcels south of the Edenville Dam, which, as shown in Exhibit 1 to this supplement, is an accurate statement. To provide a sense of the value of these four BM Properties, I stated that 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. This is also an accurate statement. I then stated that 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 (the “*Appraisal*”) that valued just the three BM parcels East of state highway M-30 (i.e., less than all of the BM Properties) at \$1,275,000. While I still believe that the \$1,000,000 FLTF agreed to pay for the four BM parcels was less than their fair market value, I now realize that only two of the parcels east of M-30 referenced in the Appraisal were owned by BM. The other two parcels are owned by Edenville HP and comprise the Dam itself.

5. The two BM Properties located east of M-30 and included in the Appraisal are the properties with Tax ID # 150-036-300-001-02 and Tax ID # 010-001-200-040-00. *See Exhibit 1.* The other two BM Properties offered as additional collateral to Byline, with Tax ID # 150-035-400-004-01 and 150-035-400-004-04, are located west of M-30 and were not included in the Appraisal. *See Exhibit 1.*

6. Although only two of the parcels referenced in the Appraisal are owned by BM, my understanding is that it is the development potential of those parcels that is the primary basis for the Appraisal’s valuation. The value in these parcels derives largely from their frontage along and access to M-30, the length of developable river frontage, and the proximity to and views of Wixom Reservoir. Preliminary plans

showing the development potential of these BM parcels was included in the Appraisal and it is attached here as Exhibit 2.

7. Although the First Day Declaration was inadvertently inaccurate as to which parcels were included in the Appraisal, I continue to believe that the value of the BM Properties being offered as additional collateral substantially exceeds the amount of Cash Collateral the Debtors are seeking to use in the Chapter 11 Cases. For example, the Appraisal states that the two parcels east of M-30 consist of approximately 45 acres, and states that the average price per acre of non-waterfront land sold in area is \$14,500, with waterfront land selling for \$18,000 per acre. Here, both parcels have valuable frontage on M-30, *and* extensive river frontage. At \$18,000 per acre, these two parcels alone are worth \$810,000.

8. In addition to the two parcels east of M-30, BM is also offering the two parcels it owns west of M-30. I believe Parcel 150-035-400-004-04, located just west of and adjacent to M-30 (*See* Exhibit 1), is approximately 2.68 acres. As this parcel has no water frontage, at a value of \$14,500 per acre it would be valued at \$38,860.


9. Additionally, Parcel 150-035-400-004-01, which is approximately 33.85 acres, has access to M-30 and extensive river frontage. (*See* Exhibit 1) Conservatively valued at \$18,000 per acre (per the average price from the Appraisal), should have a value of \$609,300. As I stated above, however, this parcel is now the subject of Gerace's claim of lien of approximately \$418,000. BM plans

on contesting this lien because I do not believe that Gerace did performed any work that increased the value of this parcel. Instead, I believe Gerace merely drove across the parcel to access and perform immediate repairs on Parcel 150-035-400-004-03, owned by Edenville HP. Even with the lien, the BM parcel would appear to have \$191,000 in equity, and if the lien is not valid, \$609,300 in equity.

10. To be clear, the Court and parties in interest should not directly rely on the valuation in the Appraisal (since as explained above, it incorporated two other properties). For the reasons noted above, I still believe that the net value of the four BM Properties exceeds the \$1,000,000 that FLTF previously agreed to pay for them, even if Gerace's lien is not invalidated.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Date: August 4, 2020

By: 
Lee W. Mueller
Authorized Representative and Co-Manager
of each of the Debtors