

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHIGAN DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND
ENERGY; AND THE MICHIGAN
DEPARTMENT OF NATURAL RESOURCES,

No. 1:20-cv-528

Plaintiffs,

HON. PAUL L. MALONEY

v

**ESTABLISHED FACTS AS
ORDERED BY THE COURT
ON SEPTEMBER 30, 2022**

LEE MUELLER; BOYCE MICHIGAN, LLC;
EDENVILLE HYDRO PROPERTY, LLC;
BOYCE HYDRO POWER LLC; BOYCE
HYDRO, LLC; WD BOYCE TRUST 2350; WD
BOYCE TRUST 3649; WD BOYCE TRUST
3650,

Defendants.

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The following facts are established in this case:

1. Following the May 19, 2020 breach of the Edenville Dam, Lee and Michele Mueller worked with attorneys Dan Curth and Larry Kogan to prepare a response (Public Response) to questions about the dam.
2. The Public Response included the preparation of press releases, the transmission of emails, and the conducting of interviews, which were distributed or communicated to members of the media primarily by Dan Curth and Larry Kogan.
3. The Public Response included statements that were not true. The untrue statements were part of a coordinated effort to deflect blame away from the Muellers and their family business, and onto the State of Michigan.
4. The Public Response included a statement that Mr. Mueller and Boyce Hydro asked the State of Michigan in September 2019 to permanently lower Wixom Lake to run of river levels year-round because Mr. Mueller and Boyce Hydro believed the Edenville Dam's spillway capacity made it unsafe to maintain Wixom Lake at either its winter or normal (spring, summer, and fall) level. That is not correct. Mr. Mueller and Boyce Hydro never expressed such a belief to the State of Michigan, and never made such a request to the State of Michigan.
5. The Public Response included a statement that Mr. Mueller and Boyce Hydro did not believe that the Edenville Dam's spillway capacity met the safety standards of the State of Michigan. That is not correct. As late as March 26, 2020, Boyce Hydro's dam safety engineer affirmed that the dam's spillway capacity met State of Michigan standards, and that Boyce Hydro would not be required to upgrade the dam's spillway capacity under Michigan law.
6. The Public Response included a statement that when Mr. Mueller and Boyce Hydro lowered Wixom Lake to run of river levels in November 2019, they intended to permanently lower it to run of river levels because Mr. Mueller did not believe the dam's spillway capacity made it safe to maintain Wixom Lake at any other level. That is not correct. Mr. Mueller and Boyce Hydro asked the State of Michigan to temporarily lower Wixom Lake to run of river levels for the winter of 2019/2020 only because of potential ice buildup on the dam over the winter and explained in their permit application that they intended to return Wixom Lake to its normal spring, summer, and fall level in the spring of 2020, which they did.
7. The Public Response included a statement that Mr. Mueller and Boyce Hydro only returned Wixom Lake to its normal level in April 2020 because the State

of Michigan took enforcement action against it, compelling it to do so despite Mr. Mueller and Boyce Hydro expressing the concern that the Edenville Dam's spillway capacity made it unsafe to do so. That is not correct. The September 2019 permit application expressed Mr. Mueller and Boyce Hydro's plan to return Wixom Lake to its normal level in spring 2020. They voluntarily implemented their stated plan by beginning the refill of Wixom Lake on April 13, 2020 and did not express a concern to the State of Michigan that doing so would be unsafe.