

**IN THE STATE OF MICHIGAN  
COURT OF CLAIMS**

DAVID KRIEGER, ANDREW  
KRIEGER, JAMES SPERLING,  
and MARGARET SPERLING,  
individually and on behalf of  
a class of all similarly situated persons,

**CLASS ACTION**

Plaintiffs,

Case No.20 -  
Hon.

vs.

MICHIGAN DEPARTMENT OF  
ENVIRONMENT, GREAT LAKES & ENERGY,

Defendant.

---

Michael L. Pitt (P24429)  
Megan A. Bonanni (P52079)  
Robert W. Palmer (P31704)  
Beth M. Rivers (P33614)  
Kevin M. Carlson (P67704)  
PITT MCGEHEE PALMER  
BONANNI & RIVERS, PC  
117 W. Fourth Street, Suite 200  
Royal Oak, MI 48067  
248-398-9800  
[mpitt@pittlawpc.com](mailto:mpitt@pittlawpc.com)  
[rpalmer@pittlawpc.com](mailto:rpalmer@pittlawpc.com)  
[brivers@pittlawpc.com](mailto:brivers@pittlawpc.com)  
[mbonanni@pittlawpc.com](mailto:mbonanni@pittlawpc.com)  
[kcarlson@pittlawpc.com](mailto:kcarlson@pittlawpc.com)  
Attorneys for Plaintiffs

---

**CLASS ACTION COMPLAINT FOR DECLARATORY RELIEF,  
INJUNCTIVE RELIEF, EQUITABLE RELIEF AND DAMAGES**

## **INTRODUCTION**

1. This class action is brought by named Plaintiffs David Krieger, Andy Krieger, James Sperling, and Margaret Sperling, on behalf of themselves and a class of similarly situated property owners pursuant to the unjust takings clause, Art. 10, §2 of the Michigan Constitution against the Michigan Department of Environment, Great Lakes & Energy (“EGLE”), acting pursuant to its official customs, policies, and practices.

2. Plaintiffs and the class of persons they seek to represent are property owners who experienced and continue to experience serious property damage and destruction caused by Defendant’s oversight of and regulatory actions with respect to the Edenville Dam.

3. Defendant’s actions, as pleaded in this complaint, caused damage to and a limitation on the use of Plaintiffs’ property thereby amounting to a de facto taking.

4. The infringement of this constitutional right is on-going and is likely to continue.

5. These actions caused Plaintiffs to sustain serious property damages and economic harm.

## **PARTIES, JURISDICTION, AND VENUE**

6. Plaintiffs David Krieger and Andy Krieger, Class Representatives, are residents of Edenville, Michigan who own a parcel of real property located at 450 Cedar Drive.

7. The Kriegers' property sits along the Tittabawassee River, downriver from both the Edenville Dam and Sanford Dam, and approximately 50 feet above the usual water level of the river.

8. The Kriegers' property has been in their family for many decades, and multiple generations of the Krieger family have maintained and improved the property by building structures, planting hundreds of trees, improving the home on the property, and otherwise maintaining and caring for the property.

9. The flooding on May 19, 2020 caused the basement of the Kriegers' home to flood with water, and water surrounded approximately  $\frac{3}{4}$  of their house.

10. While the damage to the Kriegers' property is still ongoing, they have already lost several boats, two sheds, and many chairs and tables that were destroyed in the flood.

11. Plaintiffs Jim and Margaret Sperling, class representatives, have lived in Edenville Michigan since 1996.

12. The Sperlings own and live in a home at 490 Cedar Drive in Edenville, Michigan.

13. The Sperlings also have long-standing and deep connection to the community, and Jim Sperling is currently a third term Edenville Township Trustee

14. Flood waters began to damage the Sperlings' property on Tuesday, May 19, 2020 after the failure of the Edenville Dam and spillway.

15. Floodwaters and mud totally submerged the Sperling's basement and flooded their living and dining areas with six feet or more of water, causing severe damage to their home.

16. Floodwaters also destroyed the Sperlings' dock, boat lift, canopy, and boat, as well as their shed and the contents inside, including a fishing boat and fishing equipment.

17. Plaintiffs were and continue to be injured in person and property because of flooding caused by Defendant's decisions and actions regarding oversight and management of the Edenville Dam, as set forth in this complaint.

18. Plaintiffs bring this action on behalf of themselves and others constituting a Class of persons who suffered property damage and loss on and after May 19, 2020 because of the failure of the Edenville Dam, the flooding of water over the Sanford Dam, and the resulting damage and destruction of Plaintiffs' property in the ensuing floods.

19. The Michigan Court of Claims has personal jurisdiction over the Defendant because EGLE is an agency of the State of Michigan

20. The Michigan Court of Claims also has original jurisdiction over this matter pursuant to MCL § 600.6419, et seq. because the claims herein are brought against the State, its departments and officers all acting in their official capacities, all within the meaning of MCL § 600.6419(7).

21. Venue is proper in the Court of Claims pursuant to MCL § 600.6419, et seq.

22. Plaintiffs certify that the original Complaint is signed and verified by Plaintiffs before an officer authorized to administer oaths pursuant to MCL § 600.6432(1).

23. Pursuant to MCL § 600.6431(1), Plaintiffs designate the following institutions, "departments or officers" of the State "involved in connection" with this claim: Michigan Department of Environment, Great Lakes and Energy.

24. The original Complaint is filed within six months of the accrual of Plaintiffs' claim and satisfies all timeliness requirements of MCL §§ 600.6431 and 600.6452.

25. Plaintiffs' constitutional tort claim accrued on May 19, 2020, when Defendant's actions with respect to the Edenville Dam caused the Edenville Dam

to fail, resulting the overflow of the Sanford Dam, and actual damage to and destruction of Plaintiffs' property in the ensuing flood.

## **GENERAL ALLEGATIONS**

### **A. The Edenville Dam and Sanford Dam**

26. The Edenville Dam, built in 1924, is a 4.8-megawatt, 6,600-foot dam, located at the confluence of the Tittabawassee River and its tributary, the Tobacco River.

27. The Edenville Dam is located about one mile north of Edenville, Michigan, mostly in the southeast corner of Tobacco Township in Gladwin County, with its southeastern end reaching into Edenville Township, in Midland County.

28. The Edenville Dam held back the water of the Tittabawassee River and Tobacco River, forming Wixom Lake.<sup>1</sup>

### **B. May 19, 2020 – The Edenville Dam Fails, Causing Floodwater to Flow Downriver, Overtaking the Sanford Dam and Causing Massive Damage and Destruction to Plaintiffs' Property.**

29. On Monday, May 18, 2020, a rainstorm caused flooding in Midland County, Michigan.

---

<sup>1</sup> <https://www.mlive.com/news/saginaw-bay-city/2020/05/flooding-in-michigan-everything-we-know-about-midland-county-dam-break.html>

30. At about 12:22 a.m. on Tuesday, May 19, 2020, Midland County Central Dispatch issued an alert advising Edenville Township residents to leave their homes due to an “imminent dam failure.”<sup>2</sup>

31. People living along Sanford Lake and Wixom Lake were told to vacate their homes and head to shelters, which had been set up at two area schools.<sup>3</sup>

32. On Tuesday May 19, 2020 at approximately 5:46 p.m., due to rising water on the Tittabawassee Rivers, the eastern side of the Edenville Dam collapsed.<sup>4</sup>

33. Residents in Edenville and Sanford were told to immediately evacuate, and additional evacuation orders followed for some city of Midland residents.<sup>5</sup>

34. On Tuesday, May 19, 2020, floodwaters flowed over the impoundment at Sanford Dam, in Midland County, approximately 10 miles downstream of the Edenville Dam and six miles upstream of the city of Midland.<sup>6</sup>

35. As of this filing, the Sanford Dam is still overflowing, and officials are unable to assess the state of the structure below the water surface.<sup>7</sup>

---

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

36. It is possible that the whole structure may collapse, resulting in a much higher surge and a quick rise of water levels.<sup>8</sup>

37. Toxic contamination from the Dow Chemical facility could also be discharged due to the flooding resulting in even more serious damage and destruction of Plaintiffs' property.

38. In response to the collapse of the Edenville Dam and the flooding of water over the top of the Sanford Dam, Governor Whitmer issued an emergency declaration on Tuesday, May 19, 2020 and sent the National guard to help.<sup>9</sup>

39. On Tuesday, May 19, 2020, approximately 10,000 people in the City of Midland were evacuated, along with others in Sanford and Edenville.<sup>10</sup>

40. Water levels along the Tittabawassee River continued to rise on the evening of Tuesday May 19 and into Wednesday, May 20, 2020, forcing additional residents to evacuate.<sup>11</sup>

41. At approximately 6:36 a.m. on Wednesday, May 20, 2020, Midland County Central Dispatch sent an alert stating that the Poseyville dike had broken and advising all residents in the area of Ashby road between Poseyville and Patterson Roads, in Midland Township, to evacuate the area.<sup>12</sup>

---

<sup>8</sup>*Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

42. As a result of the failure of the Edenville Dam and the resulting flood of water over the Sanford Dam, flooding damages and closed area roads and bridges, some of which were destroyed by the impact of the water.<sup>13</sup>

43. The M-30 bridge in Wixom Lake, Gladwin County, Michigan, collapsed around 8 p.m. on Tuesday, May 19, 2020.<sup>14</sup>

44. Saginaw County officials have warned residents that flooding could get worse downstream when and if the Samford Dam fails.<sup>15</sup>

45. As of the afternoon of Wednesday, May 20, 2020, floodwaters had reached as far west as Shields, Michigan, which is located approximately 6 miles west of Saginaw and downstream of Midland.<sup>16</sup>

**C. Defendant Engaged in Affirmative Acts of Mismanagement and Concealment in the Operation of the Dam, Resulting in the Dam’s Failure and the Resulting Damage to Plaintiffs’ Property.**

46. Defendant had ample warning and notice that the failure of the Edenville Dam was inevitable, if not imminent.

47. While touring the devastation from the flooding, Governor Whitmer was quoted as stating, “The initial readout is that this was a known problem for a while.”<sup>17</sup>

---

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

48. A state agency spokesperson, Nick Assenfeldt, was quoted as stating that EGLE “had strong concerns the dam did not have enough spillway capacity” in the event of heavy rains and “expressed those concerns[.]”<sup>18</sup>

49. Assenfeldt further acknowledged that Michigan regulators did not move beyond “continued conversations” about repairs.<sup>19</sup>

50. For decades, federal regulators had demanded changes to the design of the Edenville Dam to improve its ability to withstand flooding, and federal regulators had warned since at least 1993 that the dam failed to meet safety requirements.<sup>20</sup>

51. In 2018, federal agency regulators revoked the license of the Edenville Dam operator, Boyce Hydro, to sell power generated by the dam, based on well-founded concerns that the Dam’s spillway could not pass enough water to avert failure during a historic flood.<sup>21</sup>

52. In the 2018 regulatory filing, Federal regulators described Boyce Hydro as chronically non-compliant with regulatory requests to upgrade the dam.<sup>22</sup>

---

<sup>17</sup> <https://www.bridgemi.com/michigan-environment-watch/feds-revoked-dams-license-over-safety-issues-then-michigan-deemed-it-safe>

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> <https://www.bridgemi.com/michigan-environment-watch/michigan-regulators-moved-fast-dangerous-dam-protect-mussels>

<sup>21</sup> <https://www.mlive.com/news/saginaw-bay-city/2020/05/flooding-in-michigan-everything-we-know-about-midland-county-dam-break.html>

<sup>22</sup> *Id.*

53. The Federal Energy Regulatory Commission (“FERC”) requested that Boyce Hydro build additional spillways to reduce the risk of failure.<sup>23</sup>

54. In court documents, federal regulators wrote Boyce repeatedly failed to improve its capacity to handle big floods, revealing “a pattern of delay and indifference to the potential consequences.” Fixing the dam was necessary “in order to protect life, limb, and property,” lawyers for the FERC wrote in January 2018.<sup>24</sup>

55. FERC terminated Boyce Hydro Power's license in 2018 because of its "inability to pass the Probable Maximum Flood (PMF)",<sup>25</sup> as well as seven other failures.<sup>26</sup>

56. The federal government was concerned that "the dam may not have the ability to pass enough water, if a severe flood were to hit, among other issues and violations."<sup>27</sup>

57. Following the federal government's 2018 license revocation, the Michigan Department of Environment, Great Lakes, and Energy (EGLE) took oversight of the dam.<sup>28</sup>

---

<sup>23</sup> *Id.*

<sup>24</sup> <https://www.bridgemi.com/michigan-environment-watch/feds-revoked-dams-license-over-safety-issues-then-michigan-deemed-it-safe>

<sup>25</sup> "FERC Denies Stay of Hydro Project License Termination". Washington Energy Report. October 30, 2018.

<sup>26</sup> "Federal government orders dam owner to cease operations". mlive. November 22, 2017.

<sup>27</sup> Terylch, Rebecca. "FERC revokes license for Edenville Dam". [www.abc12.com](http://www.abc12.com).

58. Just nine days after FERC revoked the dam's license based on years of failing to fix "structural instability, Michigan inspectors, based on a cursory inspection, ruled the dam was in "fair" condition and allowed it to continue operating.<sup>29</sup>

59. The Michigan's inspector's report, dated October 8, 2018, was merely three paragraphs long, concluding the dam's earthen embankments were "well maintained, with only a few bare spots, minor erosion, and no visible signs of significant distress," and its embankment drains appeared to be functional and the two concrete spillways "showed signs of moderate deterioration ... but appeared to be stable and functioning normally."<sup>30</sup>

60. EGLE issued a statement that it had inspected the Dam in October 2018 and had found it to be structurally sound.<sup>31</sup>

61. In the nineteen months after that inspection and statement, EGLE did not demand any repairs to the dam.<sup>32</sup>

---

<sup>28</sup> Wixom Lake drops more than 7 feet, abc12 News, Rebecca Trylch, October 29, 2018

<sup>29</sup> <https://www.bridgemi.com/michigan-environment-watch/feds-revoked-dams-license-over-safety-issues-then-michigan-deemed-it-safe>

<sup>30</sup> <https://www.bridgemi.com/michigan-environment-watch/feds-revoked-dams-license-over-safety-issues-then-michigan-deemed-it-safe>

<sup>31</sup> Erin Ailworth; John D. Stoll (May 20, 2020). "Failed Michigan Dam Lost License in 2018". The Wall Street Journal. Retrieved May 21, 2020. After its license was revoked by FERC, regulation of the Edenville dam was taken over by the Michigan Department of Environment, Great Lakes and Energy in 2018. Spokesman Nick Assendelft said the agency inspected the dam in October 2018 and found it structurally sound

62. Michigan's flood control standards are half as strict as the federal standards, and Michigan has one of the least stringent design standards for dams in the country.<sup>33</sup>

63. The State of Michigan employs three staffers who are charged with overseeing more than 1,000 dams in the state.<sup>34</sup>

64. In the months preceding the flood, EGLE, despite knowing the Edenville Dam was not capable of withstanding flooding in the event of a historic flood, took several official actions designed to force the dam's operator to increase water levels in Wixom Lake.<sup>35</sup>

65. On November 25, 2019, EGLE denied a requested permit for the operator to lower water levels to repair gates in the dam to minimize ice damage in winter.<sup>36</sup>

66. In October 2018 and November 2019, the dam operator took action to lower the level of Wixom Lake.<sup>37</sup>

---

<sup>32</sup> <https://www.bridgemi.com/michigan-environment-watch/feds-revoked-dams-license-over-safety-issues-then-michigan-deemed-it-safe>

<sup>33</sup> <https://www.bridgemi.com/michigan-environment-watch/michigan-regulators-moved-fast-dangerous-dam-protect-mussels>

<sup>34</sup> <https://www.bridgemi.com/michigan-environment-watch/michigan-regulators-moved-fast-dangerous-dam-protect-mussels>

<sup>35</sup> <https://www.bridgemi.com/michigan-environment-watch/michigan-regulators-moved-fast-dangerous-dam-protect-mussels>

<sup>36</sup> <https://www.bridgemi.com/michigan-environment-watch/michigan-regulators-moved-fast-dangerous-dam-protect-mussels>

67. The dam operator, Boyce Hydro, stated that the drawdowns were made “due to concern for the safety of its operators and the downstream community,” and went on to sue EGLE in federal court, alleging “its safety concerns were paramount.”<sup>38</sup>

68. EGLE threatened legal actions against the Boyce Hydro, the dam operator, asserting that its actions were illegal drawdowns of Wixom Lake.

69. On April 9, 2020, just weeks before the flood, EGLE authorized Boyce Hydro to raise water levels in Wixom Lake.<sup>39</sup>

70. In addition to authorizing the raising of lake levels on April 9, 2020, the state imposed strict conditions on its permit, which were intended to ensure that the dam operator kept the water levels high and did not undertake further drawdowns.<sup>40</sup>

---

<sup>37</sup> <https://www.bridgemi.com/michigan-environment-watch/feds-revoked-dams-license-over-safety-issues-then-michigan-deemed-it-safe>

<sup>38</sup> David Welch (May 21, 2020). "Michigan Flood Puts Privately Owned Dams in Harsh Spotlight". Bloomberg. Retrieved May 21, 2020. Boyce said it lowered lake-water levels as a safety move in October 2018

Garret Ellison (May 21, 2020). "Failed dam owner fought with state over Wixom Lake levels before flood". Booth Newspapers. Retrieved May 21, 2020. Boyce says it asked EGLE for permission to lower Wixom Lake last fall “due to concern for the safety of its operators and the downstream community.” EGLE and the Michigan Department of Natural Resources denied the request. Boyce lowered the lake without approval in mid-November “believing its safety concerns were paramount.” Boyce sued the state on April 29 in Grand Rapids federal court

<sup>39</sup> <https://www.bridgemi.com/michigan-environment-watch/michigan-regulators-moved-fast-dangerous-dam-protect-mussels>

71. The raising and lowering of water levels of Wixom Lake are a state prerogative, and such actions are the actions of the state, because the exclusive methods for establishing a legal lake level are through authorization of hydro dam actions by EGLE, or through the procedures outlined under Part 307 of the Natural Resources and Environmental Protection Act (NREPA).

72. Edenville and the other former Boyce dams were taken over in 2019 by the Four Lakes Task Force, a county delegated authority.<sup>41</sup>

---

<sup>4040</sup>According to Ryan Jarvi, a spokesman for the Michigan Attorney General, the state's approval came with "several conditions," because the company "was hesitant to promise that it wouldn't just drop the level again in winter 2020, thus further damaging the state's natural resources." Detroit News, May 21, 2020, "Did state pressure to keep Wixom Lake level high contribute to Edenville Dam's failure?"<https://www.detroitnews.com/story/news/local/michigan/2020/05/21/state-says-didnt-pressure-boyce-hydro-raise-water-levels-before-dam-failure/5236290002/>

<sup>41</sup> Lyden, David (April 25, 2019). "Wixom Lake Levels Expected to Return to Normal as Task Force Agrees to Buy Dams". 9 and 10 News. Retrieved May 20, 2020. The Four Lakes Task Force agreed to buy Wixom, Sanford, Secord and Smallwood dams from Boyce Hydro for nearly \$9.5 million.

Chris Clor (April 24, 2019). "Task Force Agrees to Buy Dams, Restore Wixom Lake in Gladwin Co". 9 and 10 News. Retrieved May 20, 2020. Wednesday the task force announced it agreed to buy the Wixom, Sanford, Secord and Smallwood dams from Boyce for nearly \$9.5 million.

"Four Lakes Task Force, as Delegated Authority for the Counties of Midland and Gladwin, Michigan". County Government. Archived from the original (PDF) on May 20, 2020. Retrieved May 20, 2020. the Four Lakes Task Force, in its capacity as the County Delegated Authority for the Four Lakes Special Assessment District

73. Title of the dams will transfer from Boyce to the Four Lakes Task Force in early 2022.<sup>42</sup>

74. The State of Michigan appropriated \$5 million for the purchase.<sup>43</sup>

75. The Four Lakes Task Force operates under the Four Lakes Assessment District in the State of Michigan, created in May 2019 by Judge Stephen Carras.<sup>44</sup>

76. Since its formation in 2019, the Task Force has sought through public campaigns as well as formal filings under Part 307 of NREPA to establish a higher level of water on Wixom Lake, despite the fact that the Edenville Dam has not been maintained properly to withstand flooding.<sup>45</sup>

77. As a result of the foregoing, Plaintiffs and the class members they seek to represent have suffered and will continue to suffer damage to and destruction of their property.

---

<sup>42</sup> "Frequently Asked Questions". Four Lakes Task Force. Retrieved May 20, 2020.

<sup>43</sup> Tereasa Nims (March 14, 2019). "Task Force wants Midland, Gladwin counties to help with dam". Midland Daily News. Retrieved May 20, 2020. The state reportedly issued the task force a \$5 million grant.

Kukulka, Mitchell (January 3, 2020). "Boyce Hydro, Four Lakes Task Force sign dam agreement". Midland Daily News. Retrieved May 20, 2020.

<sup>44</sup> "Four Lakes Task Force, as Delegated Authority for the Counties of Midland and Gladwin, Michigan". County Government. Archived from the original (PDF) on May 20, 2020. Retrieved May 20, 2020. the Four Lakes Task Force, in its capacity as the County Delegated Authority for the Four Lakes Special Assessment District

<sup>45</sup> <https://www.ourmidland.com/news/article/Task-Force-wants-Midland-Gladwin-counties-to-13684193.php>

78. The violations of Plaintiffs' constitutional rights as set forth in this Complaint are ongoing and likely to continue into the future.

### **CLASS ACTION ALLEGATIONS**

79. Plaintiffs request certification pursuant to MCR 3.501 on behalf of a proposed damages class defined as follows: all individuals and entities who from May 19, 2020 to present owned property and experienced injuries and damages to their person or property as a result of the failure of the Edenville Dam, the flooding of water over the Sanford Dam, and the resulting damage and destruction of Plaintiffs' property in the ensuing floods.

80. Plaintiffs also request certification pursuant to MCR 3.501 on behalf of a proposed injunctive relief class defined as follows: all individuals and entities who from May 19, 2020 to present owned property and experienced injuries and damages to their person or property as a result of the failure of the Edenville Dam, the flooding of water over the Sanford Dam, and the resulting damage and destruction of Plaintiffs' property in the ensuing floods.

81. The number of class members is sufficiently numerous to make class action status the most practical method for Plaintiffs to secure redress for injuries sustained and to obtain class wide equitable injunctive relief.

82. There are questions of law and fact raised by the named Plaintiffs' claims common to those raised by the Class(es) they seek to represent. Such

common questions predominate over question affecting only individual members of the Class(es).

83. The violations of law and resulting harms alleged by the named Plaintiffs are typical of the legal violations and harms suffered by all Class members.

84. Plaintiff Class representatives will fairly and adequately protect the interests of the Plaintiff Class members.

85. Plaintiffs' counsel are unaware of any conflicts of interest between the Class representatives and absent Class members with respect to the matters at issue in this litigation; the Class representatives will vigorously prosecute the suit on behalf of the Class; and the Class representatives are represented by experienced counsel.

86. Plaintiffs are represented by attorneys with substantial experience and expertise in complex and class action litigation involving personal and property damage.

87. Plaintiffs' attorneys have identified and investigated all claims in this action, and have committed sufficient resources to represent the Class.

88. The maintenance of the action as a class action will be superior to other available methods of adjudication and will promote the convenient administration of justice.

89. Moreover, the prosecution of separate actions by individual members of the Class could result in inconsistent or varying adjudications with respect to individual members of the Class and/or one or more of the Defendants.

90. Defendants have acted or failed to act on grounds generally applicable to all Plaintiffs, necessitating declaratory and injunctive relief for the Class.

**COUNT I**  
**VIOLATION OF ARTICLE 10 § 2**  
**UNCONSTITUTIONAL TAKING OF PROPERTY**

91. Plaintiffs incorporate all the foregoing allegations by reference.

92. Article 10, § 2 of the Michigan Constitution requires that “[p]rivate property shall not be taken for public use without just compensation.”

93. Thus, “[a]ny injury to the property of an individual which deprives the owner of the ordinary use of it is equivalent to a taking, and entitles him to compensation. So a partial destruction or diminution of value of property by an act of government, which directly and not merely incidentally affects it, is to that extent an appropriation.” *Peterman v State Dep't of Nat Res*, 446 Mich 177, 190, 521 NW2d 499, 506–07 (1994)(citatons omitted).

94. This claim is brought by Plaintiff property owners and/or users who through the action of the state suffered damages to and destruction of their property by the manner in which Defendant oversaw and managed the operation of the Edenville Dam so as to cause it to fail on May 19, 2020.

95. Defendant's actions have resulted in a limitation on the use of Plaintiffs' property and diminution of property values.

96. The actions of Defendant constitute a de facto taking of private property without just compensation because the actions of the state were unreasonable, unwarranted and reckless.

97. The Defendants took affirmative actions that directly led to the failure of the Edenville Dam and resulting damage to Plaintiffs' property.

98. Defendant had knowledge and ample warning of the problems with the Edenville Dam and owed Plaintiffs a duty to anticipate the failure of the Dam as well as the consequences of such failure, and to act accordingly to avoid subjecting Plaintiffs' to property damage and destruction.

99. State exercised control over the dam to such an extent that the use of the dam by Boyce, the Task Force, and the state was a public use for which Defendant is responsible.

100. The property damage to Plaintiffs and the class are unique among similarly situated individuals, ie, property owners, caused directly by governmental actions that resulted in exposure of their property to specific harm.

101. Defendants knew of the dangers to Plaintiffs' property posed by the Edenville Dam and made the affirmative decisions and actions to inspect and approve the dam for continued use, deny permits to drawdown water levels for

purposes of repair and public safety, and to authorize the raising of water levels on Wixom Lake, among other decisions and actions, which caused the failure of the Edenville Dam on May 19, 2020 and resulting damage to and destruction of Plaintiffs' and class members' property.

102. Defendant abused its powers in stating publicly that the Dam was structurally sound when, in fact, it was unsound.

103. Defendant concealed information and made false statements in public to hide the dangers caused by the failures in the Edenville Dam.

104. As a result of the failure of the Edenville Dam, which Defendant knew was inevitable, if not imminent, flood water flowed directly down river, overflowing the Sanford Dam, and onto Plaintiffs' property, where it caused extraordinary damage and destruction.

105. These actions also led directly to the forced evacuation of Plaintiffs from their property, thereby depriving them of the complete possession and enjoyment of their property.

106. The damage and destruction to Plaintiffs' property was the natural and direct result of Defendant's decisions and actions as set forth in this complaint.

107. Prior to the failure of the Edenville Dam on May 19, 2020, Defendant recognized that the structure of the Dam was unsound, the Dam could not

withstand historic storms, and that failure of the Dam was inevitable, if not imminent.

108. As direct and proximate result of Defendants' unconstitutional taking of Plaintiffs' properties, Plaintiffs have experienced substantial loss of value and the ordinary use and enjoyment of their properties.

109. The injury to Plaintiffs and the class member property owners is unique or special because this group of Plaintiffs had property uniquely susceptible to damage by corrosive water and which were rendered unsafe even after the corrosive water was discontinued.

### **REQUEST FOR RELIEF**

Plaintiffs request the following relief from the court:

- a. An order certifying a damages class pursuant to MCR 3.501 and an injunctive relief class pursuant to MCR 3.501;
- b. An order declaring the conduct of Defendants unconstitutional;
- c. An injunctive order to remediate the harm caused by Defendants' unconstitutional conduct including, but not limited to: repairs and replacement of private property;

- d. Appointment of a monitor who will assist in the development of remedial plans including, but not limited to repairs and replacements of private;
- e. An order for an award of compensatory damages;
- f. An order for an award of punitive damages;
- g. An order for an award of actual reasonable attorney fees and litigation expenses; and
- h. An order for all such other relief the court deems equitable.

**SIGNATURE AND VERIFICATION OF COMPLAINT BY PLAINTIFF**

**DAVID KRIEGER**

Pursuant to MCL § 600.6431(1), Plaintiff hereby signs and verifies this complaint before an officer authorized to administer oaths:

Signed: \_\_\_\_\_

David Krieger

**CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC**

State of: \_\_\_\_\_

County of: \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ by David Krieger

Signature of Notary Public: \_\_\_\_\_

Title or Rank: \_\_\_\_\_

Serial Number, if any: \_\_\_\_\_

My Appointment Expires: \_\_\_\_\_

**SIGNATURE AND VERIFICATION OF COMPLAINT BY PLAINTIFF**

**ANDREW KRIEGER**

Pursuant to MCL § 600.6431(1), Plaintiff hereby signs and verifies this complaint before an officer authorized to administer oaths:

Signed: \_\_\_\_\_

Andrew Krieger

**CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC**

State of: \_\_\_\_\_

County of: \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ by Andrew Krieger.

Signature of Notary Public: \_\_\_\_\_

Title or Rank: \_\_\_\_\_

Serial Number, if any: \_\_\_\_\_

My Appointment Expires: \_\_\_\_\_

**SIGNATURE AND VERIFICATION OF COMPLAINT BY PLAINTIFF**

**JAMES SPERLING**

Pursuant to MCL § 600.6431(1), Plaintiff hereby signs and verifies this complaint before an officer authorized to administer oaths:

Signed: \_\_\_\_\_

James Sperling

**CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC**

State of: \_\_\_\_\_

County of: \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ by James Sperling.

Signature of Notary Public: \_\_\_\_\_

Title or Rank: \_\_\_\_\_

Serial Number, if any: \_\_\_\_\_

My Appointment Expires: \_\_\_\_\_

**SIGNATURE AND VERIFICATION OF COMPLAINT BY PLAINTIFF**

**MARGARET SPERLING**

Pursuant to MCL § 600.6431(1), Plaintiff hereby signs and verifies this complaint before an officer authorized to administer oaths:

Signed: \_\_\_\_\_

Margaret Sperling

**CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC**

State of: \_\_\_\_\_

County of: \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ by Margaret Sperling.

Signature of Notary Public: \_\_\_\_\_

Title or Rank: \_\_\_\_\_

Serial Number, if any: \_\_\_\_\_

My Appointment Expires: \_\_\_\_\_

Respectfully submitted,

---

Michael L. Pitt (P24429)  
Robert W. Palmer (P31704)  
Beth M. Rivers (P33614)  
Megan A. Bonanni (P52079)  
Kevin M. Carlson (P67704)  
PITT MCGEHEE PALMER  
BONANNI & RIVERS, PC  
117 W. Fourth Street, Suite 200  
Royal Oak, MI 48067  
248-398-9800  
[mpitt@pittlawpc.com](mailto:mpitt@pittlawpc.com)  
[rpalmer@pittlawpc.com](mailto:rpalmer@pittlawpc.com)  
[brivers@pittlawpc.com](mailto:brivers@pittlawpc.com)  
[mbonanni@pittlawpc.com](mailto:mbonanni@pittlawpc.com)  
[kcarlson@pittlawpc.com](mailto:kcarlson@pittlawpc.com)  
Attorneys for Plaintiffs

Date: May 22, 2020