

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

**IN RE CROOKED AND EAGLE LAKES,
LOCATED IN KALAMAZOO COUNTY,
MICHIGAN**

Case No. 21-_____ - CZ

HON. _____

Stacy L. Hissong (P55922)
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Kyle A. O'Meara (P83075)
FAHEY SCHULTZ BURZYCH RHODES PLC
Attorneys for Kalamazoo County Drain Commissioner
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**PETITION TO ESTABLISH LAKE LEVELS, ESTABLISH SPECIAL ASSESSMENT
DISTRICT, AND CONFIRM SPECIAL ASSESSMENT DISTRICT BOUNDARY**

NOW COMES Kalamazoo County, by and through the Kalamazoo County Drain Commissioner, as the delegated authority under Part 307 of the Natural Resources and Environmental Protection Act, MCL 324.30701, *et seq.* ("Part 307"), through its attorneys, FAHEY SCHULTZ BURZYCH RHODES PLC, and files this Petition on behalf of the Board of Commissioners of Kalamazoo County, Michigan, and respectfully states as follows:

1. Crooked Lake and Eagle Lake are inland lakes located in Texas Charter Township, Kalamazoo County, Michigan.

2. There are no records in the office of the Kalamazoo County Drain Commissioner or elsewhere indicating that legal lake levels have ever been established consistent with Part 307 to set and maintain proper levels for Crooked and Eagle Lakes.

3. Likewise, there is not a special assessment district formed under Part 307 to levy assessments against benefitting properties for the costs associated with the maintenance of established lake levels for Crooked and Eagle Lakes.

4. A county board of commissioners must initiate action to take steps necessary to determine a normal lake level of an inland lake if it receives a property owner petition requesting such action from 2/3 of property owners abutting an inland lake. MCL 324.30702(1).

5. Section 30703 of Part 307 allows a county board of commissioners to retain an engineer to perform a preliminary study to determine, among other things, the feasibility of maintaining a lake level and the estimated costs of any improvements necessary to maintain a lake level. See MCL 324.30703(2).

6. After a preliminary study investigating the necessity of an established lake level, MCL 324.30704 allows designated legal counsel to initiate a lake level petition to establish a legal lake level and form a corresponding special assessment district. MCL 324.30707(5) gives this Court the authority to confirm a lake level special assessment district's boundary.

7. The Kalamazoo County Board of Commissioners received property owner petitions from 2/3 of the property owners who abut Crooked and Eagle Lakes requesting the establishment of legal lake levels.

8. On February 18, 2020, the Kalamazoo County Board of Commissioners adopted a resolution: (1) acknowledging the property owner petitions; (2) designating the Kalamazoo County Drain Commissioner as the delegated authority under Part 307 for both Crooked and Eagle Lakes; (3) authorizing the Kalamazoo County Drain Commissioner to retain a licensed professional

engineer to prepare a preliminary lake level study; and (4) requiring cash deposits by the petitioners for the costs of the preliminary study. (See, **Exhibit 1, February 18, 2020 Resolution.**)

9. The Kalamazoo County Board of Commissioners later adopted a resolution directing designated legal counsel to institute circuit court proceedings to establish legal lake levels and a special assessment district for Crooked and Eagle Lakes. (See, **Exhibit 2, April 7, 2020 Resolution.**)

10. The engineering firm Prein&Newhof prepared a preliminary lake level study (“Preliminary Study”) to evaluate establishing legal lake levels for Crooked and Eagle Lakes. (See, **Exhibit 3, Preliminary Study.**) This Preliminary Study recommends establishing a legal lake level for Crooked Lake at 895.12 feet North American Vertical Datum of 1988 (NAVD 88) and for Eagle Lake at 899.26 feet NAVD88, forming a special assessment district to pay for lake level maintenance, and constructing various improvements that will assist in maintaining the legal lake levels for Crooked and Eagle Lakes. (See Exhibit 3, Section 2.) Maps depicting the proposed special assessment district boundary are located on Figures 6a and 6b of the Preliminary Study. Although there are two maps, we recommend to set one special assessment district boundary as the levels of Crooked and Eagle Lakes are dependent on each other.

11. The Kalamazoo County Drain Commissioner provided a draft copy of the Preliminary Study to officials from Texas Charter Township, representatives from the lake associations for Crooked and Eagle Lakes, the Michigan Department of Environment, Great Lakes, and Energy (“EGLE”), and the Michigan Attorney General’s Office. The Drain Commissioner incorporated feedback from those stakeholders in the Preliminary Study filed with this Petition.

WHEREFORE, Petitioner requests that this Honorable Court:

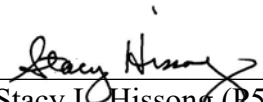
1. Enter the attached Proposed Scheduling Order to set an evidentiary hearing to hear proofs related to establishing normal levels under Part 307 on Crooked and Eagle Lakes; and

2. Following the hearing, enter an Order that: (1) establishes a normal level for Crooked Lake at 895.12 feet North American Vertical Datum of 1988; (2) establishes a normal level for Eagle Lake at 899.26 feet North American Vertical Datum of 1988; and (3) establishes a special assessment district and boundary to fund improvements to maintain aforementioned proposed lake levels.

Respectfully submitted,

FAHEY SCHULTZ BURZYCH RHODES PLC
Attorneys for Kalamazoo County Drain
Commissioner

Dated: February 10, 2021



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EXHIBIT

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KALAMAZOO COUNTY GOVERNMENT

In the Pursuit of Extraordinary Governance...

COUNTY OF KALAMAZOO, MICHIGAN RESOLUTION OF THE KALAMAZOO COUNTY BOARD OF COMMISSIONERS

A RESOLUTION TO REQUIRE PRELIMINARY STUDIES AND CASH DEPOSITS IN RESPONSE TO THE SUBMISSION OF PETITIONS TO DETERMINE A NORMAL LAKE LEVEL FOR EAGLE AND CROOKED LAKES

Minutes of a regular meeting of the Kalamazoo County Board of Commissioners held on February 18, 2020, at 7:00 o'clock p.m., local time, at the County Administration Building.

PRESENT, Commissioners: Aniano, Bauer, Gisler, Moore, Morse, Hall, Rogers, Place, Quinn, Seals, Tuinier

ABSENT, Commissioners: None

The following resolution was offered by Commissioner Morse and supported by Commissioner Seals.

WHEREAS, the Kalamazoo County Board of Commissioners received Petitions pursuant to Part 307 of the Michigan Natural Resources and Environmental Protection Act, being MCL 324.30701 *et seq.* ("Part 307"), requesting that normal lake levels be determined and established for Eagle and Crooked Lakes both located in Texas Charter Township, Kalamazoo County, Michigan; and

WHEREAS, the Board of Commissioners has determined that the Petitions contain the signatures of at least 2/3rds of the owners of land abutting Eagle and Crooked Lakes, and otherwise comply with the petition requirements of Part 307. MCL 324.30702(1).; and

WHEREAS, the seasonable variations of inflow and evaporation or other losses, combined with a lack of suitable control over outflow, causes the water levels of Eagle and Crooked Lakes to vary to a degree which is harmful to the abutting property owners' interests; and

WHEREAS, Section 30703 of Part 307, being MCL 324.30703 provides that the Kalamazoo County Board of Commissioners may require a preliminary lake level study be conducted by a licensed professional engineer before acting on a lake level petition; and

WHEREAS, Section 30703 of Part 307, being MCL 324.30703 further provides that the Kalamazoo County Board of Commissioners may require the petitioners to deposit a cash payment with the County

Treasurer sufficient to cover the actual costs of a preliminary study or of \$10,000, whichever amount is less; and

WHEREAS, Section 307011 of Part 307, being MCL 324.30711 provides that the Kalamazoo County Board of Commissioners may determine that a whole or part of the costs of a lake level project to determine and maintain a normal level for an inland lake shall be defrayed by special assessment of those who benefit, including privately owned parcels of land, political subdivisions of the State, and State owned lands under the jurisdiction and control of the Department of Natural Resources.

NOW, THEREFORE, BE IT IS RESOLVED by the Kalamazoo County Board of Commissioners as follows:

1. The Kalamazoo County Drain Commissioner shall serve as the delegated authority under Part 307 for both Eagle and Crooked Lakes and shall have all powers granted to a delegated authority under Part 307. MCL 324.30702(2).
2. The Kalamazoo County Drain Commissioner shall retain a licensed professional engineer to conduct preliminary lake level studies for Eagle and Crooked Lakes pursuant to Section 30703 of Part 307. Once completed, the Kalamazoo County Drain Commissioner shall forward copies of the lake level studies to the Kalamazoo County Board of Commissioners. Based on the content of these studies, the Kalamazoo County Board of Commissioners will determine whether to initiate action in the Kalamazoo County Circuit Court to establish lake levels for Eagle and/or Crooked Lake(s). MCL 324.30704(1).
3. The lake level petitioners for Eagle and Crooked Lakes (or Texas Charter Township on behalf of a lake's petitioners) must each contribute \$10,000 to the Kalamazoo County Drain Commissioner before the Drain Commissioner retains an engineer to conduct a lake level study for each respective lake. MCL 324.30703. The Drain Commissioner will refund any funds not expended on a preliminary lake level study. The County or Drain Office will not be required to cover any funds for the study.

AYES, Commissioners: all present

NAYS, Commissioners: None

ABSTAIN, Commissioners: None

RESOLUTION DECLARED ADOPTED.

Dated: 2.18.20



Julie Rogers, Chairperson
Kalamazoo County Board of Commissioners

EXHIBIT

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COUNTY OF KALAMAZOO, MICHIGAN

RESOLUTION OF THE KALAMAZOO COUNTY BOARD OF COMMISSIONERS

A RESOLUTION TO AUTHORIZE AND DIRECT DRAIN COMMISSIONER TO PETITION
CIRCUIT COURT TO DETERMINE LAKE LEVEL FOREAGLE AND CROOKED LAKES
AND TO APPOINT DRAIN COMMISSIONER TO RESPOND TO TECHNICAL
CONSIDERATIONS LISTED IN MCL 324.30707

Minutes of a regular meeting of the Kalamazoo County Board of Commissioners held on April 7, 2020, at 7:00 p.m., local time, at the County Administration Building.

PRESENT, Commissioners: Aniano, Bauer, Hall, Gistler, Morse, Moore, Place, Quinn, Seals,

ABSENT, Commissioners: None Rogers,
Twinier

The following resolution was offered by Commissioner Morse and supported by
Commissioner Seals.

WHEREAS, the Kalamazoo County Board of Commissioners received Petitions pursuant to Part 307 of the Michigan Natural Resources and Environmental Protection Act, being MCL 324.30707 et seq. ("Part 307"), requesting that normal lake levels be determined and established for Eagle and Crooked Lakes both located in Texas Charter Township, Kalamazoo County, Michigan; and

WHEREAS, the Kalamazoo County Board of Commissioners determined that the Kalamazoo County Drain Commissioner shall serve as the delegated authority under Part 307 for both Eagle and Crooked Lakes and shall have the all powers granted to a delegated authority under Part 307. MCL 324.30702(2).

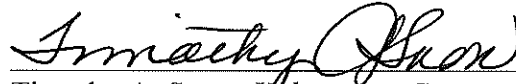
WHEREAS, the Kalamazoo County Drain Commissioner retained the professional engineering firm of Prein & Newhoff to conduct a preliminary lake level study for Eagle and Crooked Lakes pursuant to Section 30703 of Part 307, and which study has been provided to the Kalamazoo County Board of Commissioners on or about March 20, 2020.

WHEREAS, the Kalamazoo County Board of Commissioners must determine whether to initiate action in the Kalamazoo County Circuit Court to establish lake levels for Eagle and/or Crooked Lake(s). MCL 324.30704(1).

NOW, THEREFORE, BE IT RESOLVED by the Kalamazoo County Board of Commissioners as follows:

1. The Preliminary Engineering Study prepared for the Charter Township of Texas, at the request of the Kalamazoo County Drain Commissioner, in consideration of a Normal Lake Level for Eagle and Crooked Lakes, in accordance with MCL 324.30701, *et seq.*, Inland Lake Levels, Part 307, of Act 451 of 1994, is hereby accepted, and it is further determined that based upon the Preliminary Engineering Study.
2. That it is expedient and feasible to proceed to have the Kalamazoo County Circuit Court determine and establish the normal lake level for Eagle and/or Crooked Lakes.

I, the undersigned, duly qualified and acting clerk for Kalamazoo County DO HEREBY CERTIFY that foregoing is a true and complete copy of a resolution adopted by the Kalamazoo County Board of Commissioners at a regular meeting held on April 7, 2020. Public Notice was given and the meeting was conducted in full compliance with the Michigan Open Meetings Act (PA 267, 1976). Minutes of the meeting will be available as required by the Act.

A handwritten signature in cursive script, reading "Timothy A. Snow". The signature is written in black ink and is positioned above a horizontal line.

Timothy A. Snow, Kalamazoo County
Clerk/Register

EXHIBIT

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***Lake Level Report Available Via Separate Link on Website Due to File Size**