

Edenville Dam owner files for bankruptcy

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M-30 pictured on Wednesday, May 20, 2020. Flood waters took out the bridge. (Neil Blake | MLive.com)Neil Blake | MLive.com

By [Cheyna Roth | croth@mlive.com](mailto:croth@mlive.com) and [Garret Ellison | gellison@mlive.com](mailto:gellison@mlive.com) and [Cole Waterman | Cole Waterman@mlive.com](mailto:Cole.Waterman@mlive.com)

DETROIT -- The companies in charge of Midland-area dams that failed in May have filed for bankruptcy in a Michigan federal court.

Boyce Hydro LLC and Boyce Hydro Power LLC owned and operated the Edenville and Sanford dams, which failed May 19.

The companies are two of several entities owned by Lee Mueller, who filed for Chapter 11 bankruptcy protection July 31 in federal court in Bay City. The case is before Judge Daniel Opperman.

The state is largely responsible for the bankruptcy filing, said Boyce Hydro attorney, Lawrence Kogan of The Kogan Law Group, P.C.

“Boyce is insolvent and bankrupt because of the way the state enforced its laws,” Kogan said.

The state filed a lawsuit against Boyce Hydro in 2018. It accused Boyce Hydro, LLC of conducting a major drawdown of Wixom Lake without getting the proper permits. Boyce Hydro said it opened the gates as a preemptive safety measure to ensure dam safety during winter conditions, but the state said the drawdown was intended by Boyce Hydro to avoid paying for winter ice build up maintenance, not as a measure of downstream safety concern.

“No operating revenues and then you got these multi-million dollar lawsuits coming at them,” Kogan said.

“That’s siphoning off all types of money that is no longer available to operate.”

But Attorney General Dana Nessel said the bankruptcy filing is an example of the problem with private entities owning public infrastructure.

“Boyce Hydro has been a negligent owner and manager for years, and now, rather than dealing with the tragic circumstances that resulted from its negligence and paying the cost to fix those problems, the company is declaring bankruptcy and potentially leaving Michigan taxpayers holding the bag,” Nessel said in an email to MLive.

Lee Mueller manages multiple legal entities that split ownership and operating licensure for the Secord, Smallwood, Sanford and Edenville dams.

In the filings, Boyce Hydro listed more than \$7 million in liabilities owed to its 20 largest creditors. The list includes banks, local contractors, attorneys and class action litigants who have sued the company over flood damages after the dam collapses.

Filings indicate Boyce owes Byline Bank of Chicago about \$6.1 million for federal small business loans and a \$98,000 coronavirus paycheck protection program loan.

Also on the list of creditors is the Four Lakes Task Force, a \$418,000 claim by Gerace Construction of Saginaw and a \$68,000 judgement owed the state of Michigan.

Filings state that local contractors who provided emergency services in the wake of the dam collapse were not paid “due to challenging circumstances.”

In the filings, Mueller calls an offer by the Four Lakes Task Force to buy the dams at a substantially lower cost after the May collapse a “bad faith” effort and accused the task force of trying to undermine Boyce efforts to restart operations at the Secord and Smallwood dams, which were not affected by the failures in Edenville and Sanford.

The task force is taking steps to obtain the dams through eminent domain powers.

“I am personally devastated and am in despair for all property owners who have been impacted – many of whom I know personally,” Mueller wrote in a declaration statement.

“I am frustrated by years of unwillingness by homeowners to contribute to improvements that could have improved the dam for everyone, and with the regulatory decisions that directly caused this catastrophe. These are frustrations that existed long before the dam breaches because I could see unwise decisions beyond the control of the debtors being made that were making such a result far more probable. Comprehension of the journey that led to the tragedy we are now experiencing together is hard to express in words.”

In May, a flood triggered by heavy rains and the failure of the Edenville and Sanford dams largely [wiped out the village of Sanford](#), and [flooded parts of downtown Midland and beyond](#).

Midland County officials have estimated that the flooding caused upwards of \$209 million in damage.

10,000 residents were forced to evacuate the region, and five impacted counties, Midland, Saginaw, Gladwin, Arenac and Iosco, estimated that more than 3,700 properties were damaged, many were without flood insurance.

Detroit attorney Vernon “Ven” Johnson on June 1 filed a mass tort lawsuit with the Midland County Circuit Court against the owners of the dams on behalf of residents impacted by the catastrophic flooding. He joins other high profile attorneys filing similar lawsuits regarding the flooding, including Detroit attorney [Geoffrey Fieger, Buckfire Law Firm and Bernstein Law Firm](#).

Johnson on June 22 toured flood-ravaged Sanford to see the havoc wreaked by the Edenville and Sanford dam failures that led to massive flooding in Midland and Saginaw counties.

Speaking with MLive, Johnson said the bankruptcy filing was not surprising, but in fact was an expected, typical course of action in such matters.

“In these cases, this is just another arrow in their quiver,” Johnson said. “It’s what they always do, sadly.”

Johnson said the bankruptcy filing means they can’t move forward with their own case against Boyce Hydro until there is another order entered by a bankruptcy judge saying they can move forward.

“Which ultimately there will be,” he said. “We’re going to hire a kickass bankruptcy attorney, and we’re going to chase them.”

Johnson said he ultimately expects to get clearance from a bankruptcy judge “to allow us to continue our case as long as we’re initially pursuing only the insurance policy proceeds that these guys clearly have. The concern is, what if the insurance proceeds are insufficient, which they probably will be? Then we’ll cross that bridge when we come to it.”

In the meantime, Johnson said his clients should not panic.

“In every single client interview I’ve had since day one, I told them this was likely to happen,” he said. “We all knew it was likely to happen. It is a wrinkle but something that can be dealt with and will be dealt with.”

He vowed to continue a two-prong battle, fighting for the original suit and for a favorable ruling from a bankruptcy court judge.

“We’re going to be fighting with them to try not let them discharge these debts,” Johnson said. “We’re going to claim as part of our factual basis and say, ‘Judge, they did this on purpose. They’re just trying to avoid paying us. They could have filed for bankruptcy at any time. They’re just trying to avoid paying out of their own pockets.’”