

**Hearing
05/12/2025**

**STATE OF MICHIGAN
COURT OF CLAIMS**

DAVID KRIEGER, et al.,
Plaintiffs,

Case Nos. 20-000094-MM; 20-
000102-MM; 20-000103-MM; 20-
000111-MM; 20-000112-MZ; 20-
000116-MM; 20-000118-MM; 20-
000121-MM; 20-000140-MM; 20-
000151-MM; 20-000156-MM; 20-
000230-MM; 20-000232-MZ; 20-
000233-MM; 20-000235-MM; 20-
000236-MM; 20-000237-MM; 20-
000239-MM; 20-000240-MZ; 20-
000241-MM; 20-000245-MM; 20-
000246-MM; 20-000257-MM; 20-
000260-MM; 20-000262-MM; 23-
000073-MM; 23-000074-MZ; 23-
000076-MM

HON. James R. Redford

V
MICHIGAN DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND
ENERGY, et al.,
Defendants.

RULING ON DEFENDANT'S MOTION

Commencing at 3:30 p.m.

APPEARANCES:

Judge James R. Redford

Ms. Sharon Almonrode - Mass Plaintiffs

Mr. Nathan Gambill - State Defendants

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Ruling on Defendant's Motion by Judge Redford

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EXHIBITS

(None.)

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1 Grand Rapids, Michigan
2 Monday, May 12, 2025 - 3:30 p.m.
3 - - -
4 RULING ON DEFENDANT S MOTION
5 JUDGE REDFORD: All right, good afternoon. Today
6 is May 12th, 2025, time is 3:30 p.m. And this is the
7 matter of Krieger et al versus the Michigan Department of
8 Environment in Great Lakes and Energy et al. Court of
9 Claims Case Number 2020 0094 et al. There are many other
10 captioned plaintiffs in the case. Many other case numbers.
11 We've been together many times in this case. This is the
12 time and date that I've set for placing my opinion on the
13 record, on the motions for summary disposition filed by
14 the defendants.
15 Are there any other attorneys? I saw two lawyers are
16 going to be appearing -- okay. All right. So Mr. Gambill,
17 the attorney for the State of Michigan, defendants, is
18 present here in the courtroom. Ms. Almonrode and one other
19 attorney, and let me get my notes. Do you know who the
20 other attorney was who said he was going to -- Yeah, I
21 think it might have been. All right. Mr. Carlson is
22 indicating his attendance today, and Ms. Almonrode. And if
23 there are other lawyers who filed an appearance and I
24 didn't say your name, it's not because I don't hold you in
25 the highest regard. It's because I have many stacks of

1 paper in front of me and if I try to find everything,
2 it'll will be here until 4:30 just looking for lawyers'
3 names and that would not be an efficient use of everyone's
4 time.
5 All right, before I proceed to my opinion which I
6 will memorialize with an order, I want to thank the
7 attorneys for the defense and the plaintiff's. They have
8 submitted very comprehensive and thoughtful and well-
9 prepared briefs in support of their motions, or, in
10 defense of the motion. The record is in excess of 2,400
11 pages just on these three pleadings. A lot of thought went
12 into it. A lot of hard work on behalf of the plaintiffs,
13 who, whether you're a member of the class who's named or
14 putative class, I should say, that we have an endorsed
15 class, or you're the director of a state agency, you
16 should be assured that the counsel's representing you and
17 the claims that you are putting forth are the defenses
18 that you are asserting have all done a very capable job in
19 this briefing, as well as throughout the litigation of
20 this case. So thank you, Mr. Gambill. You're here in
21 person so you get personal thanks, and thanks to the other
22 lawyers who are attending by Zoom. I'm very grateful.
23 My name is James Robert Redford. I have the privilege
24 of serving the plaintiffs and the defendants in this case.
25 This is a matter that has been on the Court of Claims
1 docket for some time. So thank you. I appreciate
2 everyone's work. I'm going to largely be looking at my
3 notes, so if I don't look up, it's not because I'm trying
4 to be discourteous or not have eye contact. I'm doing what
5 we used to always tell the young lawyers in trial
6 advocacy, don't work off your notes go by, but there's
7 just too much information in this matter. All right, so
8 what I always used to tell my law clerks when I was a
9 circuit judge in Kent when I had the privilege of serving
10 there or when I was a lawyer in private practice, when I
11 became a partner, and then had associates working with
12 these; always give the punchline upfront so everybody
13 knows. So, it's not -- you're not writing a novel, you are
14 writing an opinion to assist the litigants. So I will take
15 my own advice, and counsel, and I will indicate what my
16 ruling is going to be upfront, and then I'm going to
17 explain the reasons for it. I will tell you right now I
18 have 14 pages of type notes plus about three other pages.
19 It's going to be memorialized in a very short order, but
20 the bottom line is that for the reasons which I will state
21 orally here on the record, the defendant's motion for
22 summary disposition under MCR 2.116 C10 is denied without
23 prejudice today.
24 The reasons for this, I think it's reasonable to give
25 somewhat of a background for purposes of any reviewing

1 tribunal's responsibility of needing to review the case.
2 The matter's giving rise to this litigation in this action
3 are the result of the failure of an earth and dam in mid-
4 Michigan called the Edenville Dam. The dam failed May
5 20th, 2020. Next Tuesday, it will be five years to the day
6 from when the dam failed. Two days after the dam failed on
7 May 22nd, 2020. The Krieger plaintiffs filed the first
8 complaint in this matter. Many subsequent and additional
9 complaints have been filed thereafter. On August 30th,
10 2020 in lieu of an answer, the defendants, as is
11 authorized under Michigan's law, filed a motion for
12 summary disposition under MCR 2.116 C7. On October 5th,
13 2021, the trial court granted in part and denied in part
14 the defense motion. Subsequent to that decision, appeals
15 were taken to the Michigan Court of Appeals, which
16 affirmed the court of claims decision. At that time, the
17 honorable Cynthia Stevens, one of my predecessors and
18 interests on this case, and her decision continued -- in
19 that appeal process continued -- excuse me. Part of my
20 materials fell on the floor so I am going to pick them up.
21 The appellate process from the October 5th, 2021
22 decision continued until November 15th, 2023 when the
23 Supreme Court of this state denied leave to review the
24 Court of Appeals decision. On January 30th, 2024, the
25 matter was assigned to this court, to me. On February 2nd,

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1 2024, I issued an order for a status conference. The
2 parties, through their counsel and the court and the court
3 staff, just as the previously assigned judges of this
4 court and those judges, previous staff members, have all
5 been working diligently to advance this entire series of
6 cases. On January 31st, 2025, defendants represented by
7 Mr. Gambill, the Michigan Department of Environment Great
8 Lakes and Energy, et al, filed a revised brief in support
9 of its September 5th, 2024 Motion for summary disposition,
10 under MCR 2.116 C10. Plaintiffs filed a response brief on
11 March 7th, 2025 and then a corrected response on April
12 19th, 2024. Defendants replied to plaintiff's March 7th
13 response on March 21st, 2025. The party's briefs with
14 exhibits, caption, signature pages and the remaining
15 documents attached to them, combined to be 2,651 pages.
16 As I told these very capable lawyers a week ago, I
17 did not read every page of the exhibits. I absolutely can
18 assure the parties I read every single page, and most
19 pages, multiple times, of the briefs reply and responses
20 and replies. I read a lot of the exhibits, but I did not
21 read 2,651 pages in their entirety. All of the filings
22 were filed before the end date of discovery in this case,
23 which was May 1st, 2025. Last Monday, May 5th, 2025, the
24 parties appeared for oral argument on the motion and at
25 that time the court was advised that at least one expert's

1 deposition had yet been completed and there were certain
2 models used by experts in the case that the parties were
3 still working on and discussing. And a review of the
4 transcript from the May 5th, 2025 hearing will reveal the
5 discussions that the court had on the record.
6 The bottom line is there's some limited, albeit, but
7 there is some expert discovery that's continuing in other
8 discovery. I think just expert discovery this continuing,
9 not much, but some. Pursuant to the court's order dated
10 February 10th, 2025. Summary disposition motions after the
11 close of discovery are to be filed no later than July 3rd,
12 2025. Currently, oral argument is scheduled. If there is,
13 if the case continues, well it will because I've already
14 told you I'm going to deny the motion. So the oral
15 argument on those motions will be September 15th, 2025.
16 Off of my notes, off of my script, I will tell counsel
17 this has been so well argued, so well briefed. It's
18 possible I'm going to let the parties know additional oral
19 argument is not necessary, but I'm not sure I have not
20 made that decision then if you do want, if a party files a
21 subsequent motion or summary disposition and you do seek
22 oral argument, please just indicate on the cover or
23 argument requested so I know. I do think everybody has
24 argued this thing so well, I'm not sure we need it, but
25 it's an important case for the court and it's far more

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1 important for the parties. I understand that. So I'm not
2 saying that definitively.
3 So what is before the court today? Today we have a
4 motion for summary disposition filed pursuant to MCR 2.116
5 C10. This Court Rule authorizes summary disposition when
6 quote, except to the amount of damages, there is no
7 genuine issue of any material fact, and the moving party
8 is entitled to judgment or partial judgment as a matter of
9 law. Generally, the granting of, and this is quote again,
10 "generally, the granting of a motion for summary
11 disposition before discovery on a disputed issue is
12 complete, is complete, is considered premature." See,
13 Bayn, B-A-Y-N versus Michigan Department of National
14 Resources 202 Mich. App. 66 at page 70 (1993).
15 In order to find in a defendant's favor, in a
16 circumstance such as this, the court must find that there
17 is no fair chance that further discovery will result in
18 factual support for the party opposing the motion. Mackey
19 versus Department of Corrections. 205 Mich App. 330 at 333
20 (1994). To defeat such a finding the plaintiffs must
21 identify a disputed issue and support that issue with
22 independent evidence. See Meisner, M-E-I-S-N-E-R Law Group
23 PC versus Weston, W-E-S-T-O-N, downs Condominium
24 Association, 321 Mich. App. 702 at 7/23/2017, quoting
25 Marilyn Froing Revocable Living Trust versus Bloomfield

1 Hills Country Club 283 Mich. App. 264 at 292 (2009).
2 Excuse me.
3 The granting of summary disposition, in White V
4 Taylor distributing the Court of appeals wrote, "granting
5 summary disposition is suspect improper, where the
6 credibility of a witness or a deponent is crucial." 275
7 Mich. App. 616 at page 626, 2007. And of course that,
8 which all of us who have litigated civil cases in Michigan
9 now Skinner versus Square D. 445, Michigan 153, 1994, at
10 page 161 in Skinner, the Supreme Court and cited by
11 literally generations of lawyers. My P number's 38, I
12 think Mr. Gambill's is 75 or 80 something. I bet both of
13 us were taught this when we were first trial
14 practitioners, as I'm sure Ms. Almonrode and the other
15 attorneys of record. So Skinner V Square D, "the court is
16 not permitted to assess credibility or to determine facts
17 on a motion for summary disposition." That's under C10.
18 "Instead, the court's task is to review the record
19 evidence in all reasonable inferences there from, and
20 decide whether a genuine issue of material fact exists to
21 warrant a trial." In the matter before the court, the sole
22 remaining claim being made or sought to be made by either
23 class plaintiffs or individually named plaintiffs is
24 inverse condemnation. The elements of this cause of action
25 were analyzed by the Court of Appeals in this very case at

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1 348 Mich. App. 156 at page 182, 2023, Krieger versus EGLE,
2 Michigan Court of Appeals set forth the standard for
3 evaluating claims for inverse condemnation. The Court of
4 appeals specifically recognized the availability of
5 inverse condemnation in situations where the government
6 action caused flooding.
7 And it quoted the Wiggins case where the court said,
8 "Michigan recognizes the theory of inverse condemnation as
9 a means of enforcing the constitutional ban on
10 uncompensated takings of property." It is a cause of
11 action against a governmental defendant to recover the
12 value of property which has been taken, even though no
13 formal exercise of the power of eminent domain has been
14 attempted by the taking agency. It can occur, "without a
15 physical taking of the property, diminution in the value
16 of the property or a partial destruction can constitute
17 taking." That's Wiggins v City of Burton 291 Mich. App.
18 532. Generally, the elements are one, that the
19 government's actions were; A substantial cause of the
20 decline of the property's value, and two, the government
21 abused its power in affirmative actions directly aimed at
22 the property. See the Krieger case 348 at pages 182
23 through 183. As was has been correctly briefed and argued
24 by the defense authorizing a permit in and of itself is
25 not sufficient. The court fully under -- this court. I,

1 fully understand and recognize that, and that's in the
2 attorney General v Ankerson 148 Mich. App. 524 at page
3 562. In 1986, it was decided and the Krieger Court said,
4 "Nearly 40 years ago, we held that the state's alleged
5 misfeasance in licensing and supervising waste disposal
6 operation did not constitute affirmative actions directly
7 aimed at the counter plaintiff's property." Krieger 348 at
8 182 and 183. Likewise alleged inaction and omissions by
9 the state could not sustain such a claim. Krieger 348 at
10 184. Active steps and actions have to be taken by a
11 governmental agent to support the claim of a taking.
12 If all that was present in this case was a permit
13 having been issued or not declined to be issued, that the
14 plaintiffs would not have met their burden to sustain
15 being able to continue to litigate the case beyond the C10
16 stage because a permit is not enough. There is more in the
17 record, however, than simply the denial of the permit. And
18 at this stage of the proceedings, this court is required
19 to take all evidence in the light most favorable, as well
20 as the inferences from that evidence, in favor of the non
21 moving party. The opinion to deny C10 relief is not an
22 opinion which states the plaintiffs will win this case at
23 trial. That's not the standard. This case, if allowed to,
24 will go to trial and the trial court will have to weigh
25 and evaluate the credibility of the evidence, in a

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1 standard and in a manner which is far different from that
2 in the C10 motion. As was argued by the government, they
3 can't, they being the plaintiffs can't, and this is not a
4 direct quote, I'm paraphrasing counsel for the defense.
5 They can't sustain their burden by simply because we just
6 didn't issue the permit. But that's not all that they've
7 alleged, nor is that all the evidence that they have. The
8 plaintiffs allege that there is more than simply the
9 issuing of permit. The party's briefings submitted in
10 connection with this or in response to EGLE's -- and DNR'S
11 Motion for summary disposition, in my assessment, having
12 carefully reviewed it, clearly create factual questions as
13 to whether or not EGLE knew that the Edenville Dam
14 presented a safety risk through the FERC order, which is
15 the Federal Energy Regulatory Commission Order, revoking
16 the license as well as the Spicer Group report.
17 And if they knew this, did their actions result in
18 the denial of voices request for a draw down in 2019 and
19 the subsequent either actual commencement of litigation or
20 communication that litigation would be commenced, because
21 of the draw down, impact the level that the water was
22 retained at. The defense has argued, and I understand the
23 argument, judge, it doesn't matter what the level was
24 because what caused the failure of the Edenville Dam was
25 the liquification of the soil, not the water level. I

1 understand that argument and that argument can be made at
2 trial, but when we are required to take the evidence and
3 the most favorable to non-moving party, we look to what
4 the factual record is before the court. Some examples of
5 factual questions, and if I give page numbers, these are
6 to the plaintiff's corrected, revised brief. For example
7 in the record; there are allegations that Eagle had notice
8 of the dam's potential for failure with significant damage
9 as is evidence. Page 107 of 1,385 pages, the Federal
10 Energy Regulatory Commission's order revoking the license
11 recognizes Boyce's quote, and Boyce's being the operator,
12 I think an owner of the Dam at the time of the dam failure
13 Boyce's "Long standing failure to increase the project
14 spillway capacity to safely pass flood flows." Also on
15 September 13th, 2018, there's an email from Lee Mueller to
16 Luke Trumble expressing the quote "sense of urgency that
17 should be applied to the scheduling of the MDEQ Dam Safety
18 Division inspection of the Edenville Dam." likewise at
19 page 604 of the record, 1,385 pages is the Spicer Group
20 report, which was prepared for the Four Lakes Task force,
21 which states; Currently there are deficiencies which need
22 to be corrected. I indicate for purposes of subsequent
23 appellate review if it becomes necessary by a different
24 tribunal above this trial court that the FLTF, Four Lakes
25 Task Force, is a combination of counties and that got

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1 together to try to manage, if you will, or, and
2 potentially take ownership of the Edenville Dam after the
3 federal regulators withdrew their licensing to allow the
4 Edenville Dam to continue to produce hydroelectric power.
5 In the Spicer Group report, it states, "currently there
6 are deficiencies which need to be corrected. The Dam does
7 not provide adequate capacity to pass one half the
8 probable maximum flood, PMF, event sufficiently to meet
9 EGLE Dam safety requirements. This has been previously
10 identified during the review of the rating curves by the
11 EGLE Dam Safety Engineers and confirmed by the FLTF Four
12 Lakes Task Force Engineering team, page 604 of 1,385." It
13 continues. "The Edenvale Dam is classified as having a
14 high hazard potential due to the impact that a potential
15 failure could have on downstream developments potentially
16 for loss of life and potential for failure of downstream
17 dams." 606 of 1385. At 610 of 1385, it's stated, quote,
18 "as reported by EGLE, the Edenville spillway capacity is
19 11,102 cubic feet per second, and the tobacco DM has a
20 spillway capacity of 9,967 cubic feet per second. The
21 rating curve from Eagle is included in Appendix B. The one
22 half PMF, which, again is the Probable Maximum Flood is
23 25,900, and therefore existing spillways do not have the
24 capacity to pass this flow. Dam modifications are being
25 considered to pass this flow through a passive auxiliary

1 spillway and supporting modeling is being developed. Page
2 610 of 1,385. It is anticipated at page 610. It also
3 states it is anticipated that an additional auxiliary
4 spillway will be needed and the FLTF engineering team is
5 currently working on a PMF study and planning for
6 additional spillway capacity and phase two improvements on
7 both sides of the dam. Page 610 of 1385.

8 One witness proffered for the plaintiffs, Mr.
9 Sturdevant (phonetic), testified as a deposition that,
10 quote: "he considered the normal pool which is the lake
11 level of Wixom Lake. That's not in the quote, but that I'm
12 explaining what the normal pool is. But he testified,
13 "Considered the normal pool to be dangerously high given
14 that the dam was not capable of passing the flows that
15 were it was supposed to by regulation." That's page 189 of
16 1385.

17 He felt that the winter level was less dangerous
18 given the inability of the reservoir to attenuate flows
19 with just that three feet. The that would not be enough.
20 He also opined that, Failure of the spillway at the
21 Edenville Dam to satisfy the state of Michigan's PMF rules
22 had a role in causing the dam's failure because it
23 couldn't pass the water to keep the water level low enough
24 in the reservoir and allowed the water to rise to an
25 elevation that caused total saturation and liquification

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1 of the embankment. This also increased phreatic surface
2 within the earth and embankment on May 20th, 2020. This is
3 at page 404 of 1,385 of the Plaintiff's submissions. In
4 response to the defense's motion.

5 He continued, water level, quote "increases to the
6 point where you can and did result in embankment
7 instability." Page 406 of 1,385. I recognize that at pages
8 15 and 16 of the reply brief filed by the defendants on
9 March 21st, 2025, there is exception taken to the
10 testimony of Mr. Sturdevant (phonetic) in their brief the
11 people, the defendants, the state agencies, state through
12 their very capable counsel, "plaintiffs fail to
13 rehabilitate the reliability of their primary expert Mr.
14 Sturdevant. Upon whose statements plaintiffs rely
15 extensively. As defendant showed Mr. Sturdevant has no
16 experience with Michigan statutes. He's tasked with
17 interpreting for the court, is not familiar with the
18 regulatory rules of EGLE and DNR and cannot identify the
19 rules played by the writers or recipients of emails he
20 reviewed."

21 And it continues for a couple pages talking about the
22 various reasons the evidence is insufficient to satisfy
23 that which plaintiff must do in the face of the motion. At
24 this stage of the proceedings, however, there is sworn
25 testimony on the record, a witness proffered to be an

1 expert, and the court is obligated to take it in the light
2 most favorable, it's a non-moving party. And all the
3 lawyers have heard me say it before. I mean, I've had the
4 privilege of being a Circuit judge for 12 years and just
5 the most wonderful place I've called home since 1990 when
6 I left active duty in the Navy. I had probably 4,000 civil
7 cases had 234 jury trials, hundreds and hundreds and
8 hundreds of motions for summary disposition. And you just
9 at this stage of the proceedings, it's the arguments, and
10 we see it in applications for leave to appeal here in the
11 court of appeals where I also serve.

12 If there's a factual question on the record that's
13 before the trial court that has to decide a C10 motion in
14 our court, it is my understanding when we take the
15 evidence in light most favorable to the non-moving party
16 on a material issue, and are these two elements met by the
17 plaintiffs, I just think that the Sturdevant testimony
18 standing alone, it would be enough. That I would be
19 required to deny the motion. I just, it didn't, who knows?
20 Maybe in the short run somebody will tell me I'm wrong,
21 and then that's fine. Or maybe there won't be an
22 interlocutory review. I just don't know. I hope we're able
23 to move forward, but I understand everybody has rights and
24 I am by no means the last word on this case, but that's,
25 when I look at that case. And I'm obviously judging this

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1 case based on the law of the state of Michigan, on the
2 record before me.

3 I'm not basing it on, oh, I did 4,000 civil cases, so
4 I got to do it this way. No, but I'm just saying, I've had
5 the privilege of serving in a lot of other cases and I get
6 what the role of the trial court is here. I think I do
7 anyway, and I think that there's enough questions based on
8 what I've just already said, and I'm going to say some
9 more, but I just, I go off of my prepared notes. I don't
10 mean any disrespect to any of the lawyers on either side
11 for the defense or the plaintiffs. I just, I think that's
12 what the law requires at this point of the litigation, and
13 I'm not at all, you know, that's where I'm at.

14 In addition to this, there is testimony at page or
15 there's evidence page 504 of 1,385 of, a witness
16 Pawlowski, P-A-W-L-O-S-K-I, retired EGLE Dam Safety
17 Inspector testifies that the deposition, the purpose of a
18 drawdown is to, "reduce the risk of threat the dam
19 failing." And a drawdown is a quote "mechanism to address
20 quote "a spillway capacity deficiency" at page 504 as
21 well. He testified that it was correct that the drawdown
22 provides an advantage, "in that when flooding a flooding
23 event would happen, the starting point of the water level
24 would already be lower or relatively lower than before
25 drawdown." Pawlowski said also page 504, that a drawdown

1 gives you a little bit of a buffer and you can end up of
2 storing some of the water and the impoundment as the water
3 in the impoundment rises, and you may be able to pass the
4 design flood.

5 Also in support of their response was a expert report
6 of W. Allen Marr, page 750, professional engineer PhD, who
7 discussed the water levels. Some of the affirmative
8 actions that EGLE has alleged to have done, which the
9 plaintiffs argue satisfies some of the elements, the two
10 elements is that on November 25th, 2019, EGLE sent a
11 letter to Mr. Mueller, denying the Four Lakes Task Force
12 application for winter drawdown of eight feet, 511 of the
13 record of 1,157 pages.

14 I recall some of the arguments, very capable defense
15 counsel said, it doesn't matter, that doesn't matter
16 because they still drew it down anyway. But it can matter
17 because if the state has said; you can't do this, through
18 a declaration, a letter, a order, whatever it is, and we
19 take the reasonable inferences from that, that can impact.
20 There's a reasonable inference that that would impact the
21 decision or decisions as things move forward.

22 Additionally, there's an enforcement notice that is
23 sent December 12th, 2019. Letter to Mr. Mueller regarding
24 the drawdown below the elevation of 672.8 NGVD, which is a
25 specific amount of water in the reservoir allowed under

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1 the circuit order. In at Mueller in the Four Lakes Task
2 force with Spicer Group serving as a consultant applied
3 for permits to restore the normal lake levels. The permit
4 authorized this and then the Four Lakes Task Force dated
5 April 8th states that "time is of the essence to raise
6 Wixom Lake level to its normal summer level." That's at
7 547. Subsequent also of record, EGLE sues Mueller and
8 Boyce Michigan, due to significant drawdowns, which took
9 place in 2018, refilling it in the spring of 2019, and
10 then the drawdown in the spring -- and then drew down in
11 the spring of 2019, which was "expressly destructive to
12 the fresh water mussel M-U-S-S-E-L community on Wixom
13 Lake," page 569, the state sought an order under MCL 324
14 0.30316, "requiring Boyce to restore the effective
15 wetlands as nearly as possible to their state prior to the
16 drawdowns, along with an assessment of civil fines.

17 The Sturdevant declaration says the state not only
18 authorized, but forced the water laws of Wixom Lake to be
19 raised when they had knowledge that the dam was dangerous
20 and unsafe and that had been deemed unsafe by the Federal
21 Energy Regulatory Commission. He also states that
22 qualified dam qualified as a high hazard potential dam
23 when it did not satisfy the state's PMF, the Probable
24 Maximum Flood. Sturdevant observes that the rejection of
25 voices request for a drawdown to lower the lake level and

1 then threaten legal action when Boyce lowered the lake
2 levels anyway, also goes into his opinion forming. He said
3 the state actively participated in the petition to set
4 water levels with reckless disregard to the dangers caused
5 by the unsafe condition of this high hazard dam, and
6 deliberately disregarded the necessity undertake immediate
7 efforts to mitigate the danger it posed. And in April,
8 2020, issued a permit to Boyce to raise the lake water
9 levels and condition the permit on Boyce, maintaining high
10 water levels without further drawdowns. This is in a
11 deposition January 14th, 2025, which begins at page 722 of
12 1,157 pages.

13 Mr. Sturdevant also provides declarations on December
14 5th, 2024, which suggests that he believes that EGLE
15 actively move to prevent Boyce from drawing down the lake
16 level. Pressured Boyce to raise the lake level and conceal
17 the risk of the dam condition posed, and that the
18 defendant exercised operational control over the dam. He
19 said that high water levels resulting from raising the
20 lake level further reduce the dam spillway capacity and
21 increase the phreatic water surface on the dam.

22 He has several other opinions about priorities of the
23 state and other scientific conclusions that I believe from
24 taking the light most favorable to non-moving party
25 prescribed C10 relief. I would note that the court is

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1 familiar that there are two previous federal trial court
2 decisions that have been made giving under the allegations
3 about the failure of the Edenvale Dam, and one federal
4 appellate court has granted relief in favor of the
5 defendants. The two trial courts granted relief in favor
6 of the trial, of the defendants.

7 I am familiar with four of the five judges, who,
8 either were the trial court judges or members of the
9 (inaudible) absolutely nothing but the highest regard for
10 the Judges I know who are on that. It doesn't matter. I'm
11 not ruling one way or the other because of how somebody
12 else ruled, but my point is, I know that judges have ruled
13 on this and granted the relief that the defense seeks in
14 this case. I've read all three of those opinions. The
15 motion before this court today, though, must be based on a
16 record that is before this court. Not the record, which
17 may or may not have been before another court.

18 I am satisfied on my review of the record with the
19 benefit of many meetings, in person, telephonically motion
20 hearings, reviewing of thousands of pages of transcripts,
21 documents, and briefs. Since I've had the privilege of
22 being assigned this case on my docket at the end of
23 January, 2024, that the facts of record at this time,
24 taken in light most favorable to the plaintiffs,
25 prescribed the court's ability to grant the relief that

1 the defense seeks.

2 It is for these reasons that I respectfully deny the
3 motion for summary disposition. I'm signing an order here
4 in open court. The time is 10 minutes after four, on
5 May 12th, 2025. The order will state it's captioned: Order
6 denying defendant's motion for summary disposition under
7 MCR 2.116 C10 and it states as follows. For the reasons
8 stated on the record, defendant's September 5th, 2024
9 motion for summary disposition under MCR 2.116 C10, as
10 revised on January 31st, 2025 is denied without prejudice.
11 This is not a final order resolving all issues in this
12 case. It is so ordered, dated, May 12th, 2025. Time is, of
13 course the pen doesn't work. Signing the record in open
14 court, I did ask my assistant if I could get extra copies
15 so I could, when I was advised, well, when I had a nice
16 chance to visit with Mr. Gambill previously that I was
17 here and I was advised Mr. Gambill, judge, we will send it
18 to him immediately. He's going to get it when everybody
19 else is, but right after it gets filed.

20 So I don't have a copy for you Mr. Gambill. I do
21 appreciate your taking time out of your busy schedule to
22 be with the court today. I didn't know anybody was coming.
23 It's always nice to have people in the courtroom. We have
24 two very fine young, a fine young lawyer and a fine young
25 law clerk for one of the other judges is here. Is there

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1 anything you'd like to say?

2 MR. GAMBILL: Yes, your Honor, if I may, as the
3 court knows, the Court Rules require that prior to seeking
4 a stay from the Court of Appeals, we have to go to the
5 trial level first. So I'd just like to read the first stay
6 of the case pending appeal.

7 JUDGE REDFORD: Thank you. Your Motion for Stay
8 is respectfully denied. And none of the other lawyers are
9 present, but the motion for stay is respectfully denied.
10 I'll draft a quick, like, one sentence order that says;
11 Following the pronouncement of the opinion and order and
12 the issuing of the order, the defense counsel being
13 present in court made an oral motion for stay. The motion
14 is respectfully denied.

15 And then we'll get that set so you can ask the Court
16 of appeals to do whatever the Court of appeals would like
17 to do. Okay. And then Ms. Price, if any of the lawyers
18 order a transcript, which I'm assuming somebody's going to
19 have to, if you're going to appeal it, if that does
20 happen, if you could advise our clerk's office and I'll be
21 asking for a copy of the transcript as well.

22 COURT REPORTER: Okay. Thank you.

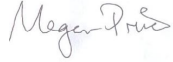
23 (At 4:30 p.m., hearing in recess.)
24
25

CERTIFICATION

STATE OF MICHIGAN)

COUNTY OF MACOMB)

I, Megan Price, certify that this hearing was taken before me on the date hereinbefore set forth; that the foregoing statements were recorded by me, and reduced to computer transcription; that this is a true, full, and correct transcript of my recorded notes so taken; and that I am not related to, nor of counsel to, either party nor interested in the event of this cause.



Megan Price, CER 9296

Notary Public

Macomb County Michigan

My Commission Expires: 03/29/2026

Hearing
05/12/2025

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