

Friends of the Boyne River  
P. O. Box 186  
Boyne City, MI 49712

Federal Energy Regulatory Commission  
Secretary of the Commission  
888 First St. NE, Room 1A  
Washington DC 20426

June 26, 2025

RE: Boyne USA's Filing of 20250612-5114, FERC Project Number 3409-032

The Friends of the Boyne River (FoBR) is in receipt of Boyne USA's misrepresentations of our letter of May 28, 2025. At no point did we intend to make any representation that Consumers Power did anything wrong. In fact, all evidence that we have seen indicates that Consumers Power acted responsibly and ethically by putting in a land use restriction that would prevent any future operator from using the problematic penstocks. Consumers Power had every reason to believe that the land use restriction would be honored, and that the dam could be operated safely under those conditions. We had already read the purported "release" document that was filed with the Charlevoix County Register of Deeds. We had noted that it was signed by the land manager. It released Consumers Power's interest in the **property**, it does not "Bar or extinguish any land or resource use restriction", nor does it state that the land use restriction was entered in error. The restrictive covenant did not create any property interest for Consumers Power to release. However, there had been easements in the original indenture that the Consumers Power land manager **could** release, and the affidavit would certainly seem to address those easements. A land use restriction is for a "public interest", not a Consumers Power interest. If Boyne USA honestly believes that the affidavit filed by Consumers Power was actually intended to release the land use restriction rather than the easements, and that it could actually be legally recognized for the purpose of barring or extinguishing a land use restriction, then they are certainly welcome to file an action in Charlevoix County Circuit Court under MCL 600.2932 to "quiet title". In the meantime, the land use restriction is valid, since Boyne USA has not shown that a valid circuit court order has been entered into the public record to remove the land use restriction. We should point out that in April of 2022, Boyne USA finally admitted the penstocks leaked, so the fact that the penstocks have been problematic should not be at issue. We are a bit puzzled about why Boyne USA would choose to argue that they were and are entitled to ignore the land use restriction in order to operate problematic penstocks.

There may be parties reading this filing who are unfamiliar with how the dam is operating today. Each time that we have visited the dam over the last two months, the penstocks have been shut down. In other words, the dam was not generating hydroelectricity – and Boyne USA was finally following the restrictive covenant after 40 years. If this is a permanent arrangement,

we commend Boyne USA for listening. However, we suspect this is not a permanent arrangement. We note that the person writing the latest filing that attacks FoBR made no mention of why the penstocks have been shut down, but only attacks FoBR for pointing out the obvious: the penstocks are a problem. We will assume that the penstocks have not been shut down because Boyne USA no longer needs the electricity, or this would all be moot since Boyne USA would surrender their license.

We have not seen any filings that would indicate the reason why the penstocks have been shut down for the last few months, and whether FERC has ordered it – or is even aware of it. We will assume that the person who wrote the filing of 20250612-5114 is well aware that the penstocks have already been acknowledged in the past to have been problematic, and that the penstocks have been offline for some time now. Much time was spent in their filing discussing what their justification was for violating the land use restriction that would have prevented the use of the penstocks, but no time was spent in discussing why they violated the land use restriction. That question is undoubtedly more important to the parties who now have safety concerns.

Thank you for your time and consideration.

Sincerely,

Friends of the Boyne River  
PO Box 186  
Boyne City MI 49712