STATE OF MICHIGAN

COURT OF CLAIMS

DAVID KRIEGER, et al.,

Plaintiffs,

v

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

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

Hon. James Robert Redford

Defendants.

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COURT'S DECEMBER 10, 2025
OPINION AND ORDER DENYING PARTIES' MOTIONS IN LIMINE, RESPECTIVELY FILED ON 9/5/2025, 10/03/2025 AND 11/21/2025

Before the Court are several motions in limine: (1) Defendants' 9/5/2025 Motion In Limine to Bar the Introduction of Evidence Challenging the May 28, 2019 Ruling of the Circuit Court; (2) Plaintiffs' 10/03/2025 Motion to Exclude the Independent Forensic Team (IFT) engaged by the Federal Energy Regulatory Commission (FERC); (3) Plaintiffs' 11/21/2025 Motion In Limine to Exclude Expert Opinion Testimony from the IFT; (4) Defendants' 11/21/2025 Motion In Limine

to Preclude Testimony Based on David Williams' Model; and (5) Defendants' 11/21/2025 Motion In Limine to Preclude Testimony of Governmental Inaction. Oral argument occurred on December 5, 2025. For the reasons explained below, the parties' motions are DENIED.

I. INTRODUCTION

This consolidated action represents numerous lawsuits arising out of the Edenville Dam failure in May 2020. The above-listed motions all seek to limit the evidence presented at a bench trial, which is scheduled to begin on January 12, 2026.

The starting point of the Court's analysis is that relevant evidence is admissible unless otherwise prohibited by law or rule. MRE 402. Relevancy is not limited to evidence that will resolve an ultimate issue at trial but, rather, the test is whether the evidence has "any tendency" to make a fact that is "of consequence in determining the action" "more or less probable than it would be without the evidence." MRE 401(a), (b). If these criteria are satisfied, courts may only exclude such evidence if its "probative value is substantially outweighed by the danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." MRE 403. Moreover, questions of weight, credibility, and application to the legal arguments are for the trier-of-fact to resolve at trial. See, e.g., *People v Garcia*, 51 Mich App 109, 112-113; 214 NW2d 544 (1974) (recognizing the court's role as the trier-of-fact in a bench trial to assign credibility to witnesses and weigh conflicting evidence).

Having considered the parties' briefs and arguments in light of the applicable law, the Court finds that the evidence challenged in all of these motions is relevant and that there is no basis for exclusion under MRE 403. The Court also finds the parties' asserted legal bases for wholesale

exclusion to be without merit. Of course, this does not resolve admissibility once-and-for-all. The party presenting it at trial must still establish a foundation (if contested) and demonstrate its application to the claim(s) or defense(s) to which it is directed. And, the Court will determine the weight and credibility to be assigned in light of all evidence presented during trial.

II. ANALYSIS OF EACH MOTION

A. DEFENDANTS' 9/5/2025 MOTION IN LIMINE TO BAR EVIDENCE OF 5/28/2019 RULING OF THE MIDLAND CIRCUIT COURT

Defendants seek to preclude plaintiffs from introducing evidence challenging the safety of the established lake level of Wixom Lake. On May 28, 2019, the Midland Circuit Court entered an Order setting the normal lake levels for four lakes in this region, one of which was Wixom Lake. The Order was entered in connection with the Inland Lake Level Act (Act) within the Natural Resources and Environmental Protection Act (NREPA), MCL 324.30701 *et seq.*, upon petition by the Four Lakes Task Force (FLTF) and with a resolution of support by the elected county commissions in both Gladwin and Midland Counties. The circuit court's order was entered pursuant to Part 307 of the Act, which requires a court to hold a hearing and determine the "normal level" to "be established and maintained." MCL 324.30707(5). Notice of this hearing date must be given by publication at least once each week for three successive weeks before the date set for the hearing and, also, mailed to each person last identified as an owner of land within a tentative special assessment district, as well as to the governing body of the political subdivisions affected and/or where the lake is located. MCL 324.30707(2).

"Normal level" is defined as follows:

> (i) "Normal level" means the target level or levels of the water of an inland lake, around which actual levels may fluctuate, that provide the most benefit to the

> public; that best protect the public health, safety, and welfare; that best preserve the natural resources of this state; and that best preserve and protect the value of property around the inland lake. A normal level shall be measured and described as an elevation or elevations based on a geodetic vertical datum including ranges based on tolerance, operational or weather conditions, seasonality, or other similar natural and regional considerations. An inland lake shall be considered to be maintained at its normal level during temporary water level fluctuations resulting from weather or natural events, during construction activities authorized by [the Department of Environment, Great Lakes, and Energy (EGLE)], or if a county or its delegated authority operates lake level infrastructure in a manner that may affect water levels but is reasonably intended to maintain a normal level. The application of this definition includes, but is not limited to, all normal levels established before the effective date of the amendatory act of the 2023-2024 legislative session that amended this section. [MCL 324.30701(i).]

The May 28, 2019 Order followed a public hearing on May 3, 2018, at which the Spicer Group, an engineering consulting firm hired by the FLTF, provided testimony. With respect to the Edenville Dam, the order not only sets the lake levels but, also, requires dam operator(s) to comply with the provisions in the most recent FERC license for that dam regardless of whether the FERC license is in effect. And, "[a]ny permits required by law shall be obtained prior to the commencement of any work necessary to achieve or maintain the lake levels set forth in this Order."

Defendants do not seek to preclude the May 28, 2019 Order itself, but they allege that collateral estoppel prohibits plaintiffs from arguing that the lake level set by the Midland Circuit Court was unsafe based on information or evidence in existence on or before May 28, 2019, because they had notice and the right to challenge this at the May 3, 2019 hearing. Plaintiffs argue that defendants waived the argument of collateral estoppel by not raising it as an affirmative defense. Moreover, plaintiffs claim that the issues presented to the Midland Circuit Court are different than that presented here because the primary issue here is the dam's inadequacy, not the

water level in the abstract. And, plaintiffs dispute defendants' claim that any individual property owner was either a party or privy in the Midland Circuit Court action.

To the extent defendants seek to use collateral estoppel to deny plaintiffs relief on their claims, they waived this opportunity. MCR 2.111(F) requires the affirmative defense of estoppel be raised in a responsive pleading or in a motion for summary disposition filed in lieu of a responsive pleading. MCR 2.111(F)(2), (3). "An affirmative defense is a defense that does not controvert plaintiff's establishing a prima facie case, but that otherwise denies relief to the plaintiff." *Stanke v State Farm Mut Auto Ins Co*, 200 Mich App 307, 312; 503 NW2d 758 (1993). To the extent that defendants assert estoppel to deny plaintiffs' relief in this case as a whole, their failure to timely raise this defense is fatal to their efforts.

Collateral estoppel, however, may be asserted in a manner other than an affirmative defense. See, e.g., *id.* at 312-313. In this case, defendants use it for purposes of limiting the issues at trial by claiming that collateral estoppel bars presentation of certain evidence related to the safety of the water level set by the Midland Circuit Court. This is a valid use. Specifically, collateral estoppel may be used to bar relitigation of a claim or position that has been fully litigated and determined by a valid and final judgment. See, e.g., *Law Offices of Jeffrey Sherbow, PC v Fieger v Feiger, PC*, 347 Mich App 533, 550; 15 NW3d 356 (2023). Even for this purpose, though, collateral estoppel is inapplicable here.

"Generally, for collateral estoppel to apply three elements must be satisfied: (1) 'a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment'; (2) 'the same parties must have had a full [and fair] opportunity to litigate the issue'; and (3) there must be mutuality of estoppel.' " *Monat v State Farm Ins Co*, 469 Mich 679,

682-685; 677 NW2d 843 (2004), quoting *Storey v Meijer, Inc*, 431 Mich 368, 373 n 3; 429 NW2d 169 (1988). The purpose of this doctrine is to "strike a balance between the need to eliminate repetitions and needless litigation and the interest in affording litigants a full and fair adjudication of the issues involved in their claims." *Storey*, 431 Mich at 372-373. It only bars relitigation of issues that are identical, not merely similar, and where the litigants had a " 'full and fair' opportunity to litigate the issue in the prior proceeding." *Keywell & Rosenfeld v Bithell*, 254 Mich App 300, 340-341; 657 NW2d 759 (2002).

The Court DENIES defendants' motion in limine because the question of fact(s) litigated by the Midland Circuit Court are not identical with the question of facts necessary to resolve plaintiffs' inverse condemnation claim. Part 307 requires the circuit to determine the "normal level" of Wixom Lake, which is defined as the "target level or levels" of Wixom Lake and other lakes, and which is "considered to be maintained . . . during temporary water level fluctuations" for various reasons, including "construction activities authorized by [EGLE]." MCL 324.30701(i).

Plaintiffs have not alleged that the water level was unsafe in and of itself but, rather, that EGLE took actions to keep the water level at-or-above its normal level when it was unsafe to do so because of the need for repairs on the Edenville Dam. Plaintiffs apparently plan to present evidence that EGLE had information related to the integrity of the Edenville Dam and the dam's ability to retain water at the normal lake level that was undisclosed to the Midland Circuit Court and/or which should have caused EGLE to require Boyce to temporarily draw down the water level to allow repairs to the dam. In other words, it is not the "normal lake level" set by the Midland Circuit Court that is at issue here but, rather, the actions EGLE took as a regulator given the information in its possession regarding the structure of the Edenville Dam and the potential risk to

plaintiffs' property. The issues before the Midland Circuit Court and this Court are not identical. Nor does the Court find that preventing the parties from presenting evidence related to the safety of the lake level, given the structural integrity of the Edenville Dam, will serve the purposes of collateral estoppel. To the contrary, to bar such evidence would deprive plaintiffs of "a full and fair adjudication of the issues involved in their claims." *Storey*, 431 Mich at 372-373. Defendants' motion in limine to bar evidence of the 5/28/2019 Ruling of the Midland Circuit Court is DENIED.

B. PLAINTIFFS' 10/3/2025 MOTION IN LIMINE TO EXCLUDE THE INDEPENDENT FORENSIC TEAM (IFT) REPORT

Plaintiffs seek to exclude a report and testimony from the five-member IFT that worked under contract with the FERC to investigate the cause of the Edenville Dam's failures, including the physical and human factors contributing to this. In May 2022, the IFT issued a report spanning nearly 150 pages plus appendices, which FERC published online at https://www.ferc.gov/media/independent-forensic-team-ift-investigation-2020-failures-edenville-and-sanford-dams.

The report identifies each member of the IFT as a licensed, professional engineer with a specialty in an area related to investigation of the dam. None of the individuals were involved in the "design, construction, inspection, operation, maintenance, or investigations of Boyce Hydro Structures prior to the failures[,]" nor were any of them "involved with any of the emergency response or long-term repairs following the failures." While their contract was with FERC, "the IFT carried out its work independently, and its efforts were not directed or controlled by FERC, EGLE, Boyce Hydro, or [FLTF]." The stated purpose of the investigation was "to evaluate physical and human factors that contributed to the failures and to identify lessons to be learned by the industry, emergency management agencies, and the public to prevent similar failures." Their

investigation and evaluation included a thorough and critical review of initial documents, including inspection, mechanical and evaluation reports, inspection at a site visit, interviews, various analyses, and personal discussions.

The IFT Report itself provides background information including a brief history and description of the relevant dams, a chronology of the failure of the Edenville and Sanford Dams that includes data on the precipitation and lake levels, the physical mechanism of the embankment failure, evaluations of the flood event and response thereto, and both contributing factors and lessons to be learned. In its summary, the IFT Report concludes that the "physical mechanism of the May 19, 2020 failure of Edenville Dam was static liquefaction (sudden loss of soil strength) in a section of the embankment . . . when Wixom Lake reached a level that was about 3 feet higher than the previous high level which occurred in 1929." The spillway gates were opened only to less than seven feet, which "limited the flow through the spillways," the embankments around the Edenville Dam were constructed nearly 100 years ago in a manner that "significantly deviated from the design plan and construction specifications," and none of the dam owners were able to make significant progress toward satisfying regulatory requirements due to the significant costs of repair. The IFT "found that the failure [of the Edenville Dam] cannot reasonably be attributed to any one individual, group, or organization" but, instead, "it was the overall system for financing, designing, constructing, operating, evaluating and upgrading the four dams, involving many parties during the nearly 100 years of project history, which fell short in ensuring a safe dam at the Edenville site."

Plaintiffs request this Court strike the IFT Report because they describe it is as inadmissible hearsay, i.e., "opinion work" that "[u]nder Michigan law, that is expert evidence, and expert

evidence can only be admitted if it is fully disclosed, subject to cross examination, and tested for reliability under MRE 702 standards." Plaintiffs claim that defendants cannot prove the authenticity of the IFT Report "because FERC has repeatedly asserted the deliberative process privilege protects or prohibits all discovery and testimony relating to the process underlying the IFT Report." And, they assert that they were not able to depose the members of the IFT and cross-examine the contents of the IFT Report because the report falls "squarely" within the due process privilege protections.

Defendants claim that the IFT Report must be admitted if plaintiffs' retained expert witnesses testify at trial. Many of these experts expressly cite the IFT Report in their expert reports presented in this case, and MRE 703 mandates that facts or data upon which the expert bases his or her opinion "must be in evidence—or in the court's discretion, be admitted in evidence later." MRE 703. During oral argument, plaintiffs' counsel conceded that at minimum the facts and data of the IFT Report must be admitted as a result of their anticipated expert testimony under MRE 703.

Defendants also claim the IFT Report is admissible under the residual exception to the hearsay exemption contained in MRE 807, which reads as follows:

> **(a) In General.** Under the following conditions, a hearsay statement is not excluded by the rule against hearsay even if the statement is not admissible under a hearsay exception in Rule 803 or 804.
>
> (1) the statement has equivalent circumstantial guarantees of trustworthiness;
> (2) it is offered as evidence of a material fact;
> (3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and
> (4) admitting it will serve the purposes of these rules and the interests of justice.
>
> **(b) Notice.** The statement is admissible only if the proponent gives an adverse party reasonable notice of the intent to offer the statement—including its substance

> and the declarant's name and address—so that the party has a fair opportunity to meet it. [MRE 807.]

The Court agrees with EGLE that, at a minimum, the facts and data included in the IFT Report must be admitted under MRE 703 and, also, that the whole report can be admitted under MRE 807. The record lacks evidence supporting plaintiffs' claim that the deliberative-process privilege protects the IFT Report from disclosure. First, the privilege is for FERC to assert—and this has not occurred. At best, the correspondence that plaintiffs attach in support of their motion evidence FERC's notice that a privilege may prevent one-or-more members of the IFT from testifying as to specific questions or topics, but it does not evidence a prohibition by FERC against disclosure of the IFT Report. Moreover, even if FERC had asserted this privilege, it is doubtful that it would have been successful because the deliberative-process privilege does not apply to finished work, like the report. "Two requirements are essential to the deliberative process privilege: the material must be predecisional and it must be deliberative." *Truel v Dearborn*, 291 Mich App 125, 136; 804 NW2d 744 (2010). The IFT Report satisfies neither of these requirements. It is a published report that reflects the final decision and analysis of this independent team of professional engineers as to what factors were responsible for the failure of the Edenville and Sanford Dams. It is not a rough draft, nor does it reflect nonpublic deliberations. The deliberative-process privilege does not apply.

Moreover, to the extent that plaintiffs seek its exclusion as hearsay, the Court finds that EGLE has the stronger argument. The IFT Report was repeatedly cited by several of plaintiffs' experts as a basis upon which they relied in drafting their expert reports in this matter. MRE 703 "permits an expert's opinion only if that opinion is based exclusively on evidence that has been introduced into evidence in some way other than through the expert's hearsay testimony." *People*

v Fackelman, 489 Mich 515, 534; 802 NW2d 552 (2011). To the extent plaintiffs' experts testify about opinions based on the IFT Report, at least the facts and data in the report must be in evidence.

To the extent that either party seeks to admit the IFT Report in its entirety, the Court finds it admissible under the residual exception to the hearsay rule contained in MRE 807. Under this rule, a hearsay statement is not excluded even if it is not admissible under a hearsay exception if it satisfies the four criteria listed therein. The IFT Report qualifies. The report has "equivalent circumstantial guarantees of trustworthiness" in that it was investigated and authored by individuals not employed by EGLE or Boyce Hydro, under contract with FERC, to prepare an independent assessment and analysis of what caused the Edenville Dam's failures. The data and facts underlying the report are included in lengthy appendices attached thereto and the report itself was, apparently, made publicly available on FERC's website and has been relied upon in federal court. See *Bruneau v Mich Dep't of Environment, Great Lakes, & Energy*, 104 F4th 972 (CA 6, 2024). While the Court has heard some expert testimony refuting one-or-more of the report's conclusions, neither party has challenged its admissibility or argued against its credibility or trustworthiness despite the fact that it was presented to the Court as an exhibit to defendants' motion for summary disposition more than a year ago, on September 5, 2024. The Court finds that it would be difficult to discern a document with a stronger circumstantial guarantee of trustworthiness than the IFT Report. Cf MRE 807(1).

The Court can identify several facts cited in the report that are likely material to this case. For example, the state of the soil in the embankments surrounding the dam, amount of rainfall and the lake level at the time the Edenville Dam failed, the dam's construction, the event of soil liquefaction, the causes of the dam's breach, what actions or omissions were taken prior to the

dam's failure and the effect such actions had on plaintiffs' property are all issues that up to this point in the litigation have been cited by both parties and appear material to the parties' respective claims or defenses. The IFT Report satisfies the requirements for MRE 807(2).

The report is also likely to be more probative than evidence that either party could obtain through reasonable efforts and, therefore, admitting it will serve the purpose of these rules and the interest of justice. Cf MRE 807(3), (4). To the Court's knowledge, this is the most comprehensive, close-in-time analysis of the Edenville Dam after its failure in May 2020. Plaintiffs cannot claim surprise as all parties' counsel and their experts knew of this report and cited it in expert reports and in filings before this Court. The facts and data underlying it will be admitted through plaintiffs' expert witnesses and parsing out the IFT's opinions and analysis from those facts and data on which the experts' relied is likely to be an impossible task. Plaintiffs' concerns with the admissibility of this report are less a question of admissibility and more a question of the weight to be assigned to it. The Court is able to make this determination at trial as the finder of fact.

In short, the IFT Report satisfies the requirements for admissibility under the residual exception to the hearsay rule in MRE 807 and would also be admissible, in large part, under MRE 703. Plaintiffs' motion for its exclusion is DENIED.

C. PLAINTIFFS' 11/21/2025 MOTION IN LIMINE TO EXCLUDE EXPERT OPINION TESTIMONY FROM THE NON-RETAINED IFT MEMBERS

Plaintiffs' motion to exclude testimony from any member of the IFT is also DENIED. Both parties identified the IFT members as potential witnesses in lists submitted as early as July 4, 2024. Defendants provided plaintiffs with an affidavit from the only IFT member whom they apparently intend to call as a witness, Mr. John France, on January 31, 2025, and plaintiffs served

a subpoena on Mr. France for deposition earlier this year. FERC authorized this deposition in writing, with the caveat that Mr. France is not permitted to disclose FERC's "confidential, nonpublic information, including pre-decisional deliberations." For reasons unknown to the Court, Plaintiffs decided not to proceed with the deposition. Defendants are not offering any IFT member as a retained expert; in fact, counsel for the defense represented to the Court during oral argument that neither he nor his colleagues deposed Mr. France in the context of this case or a related case. If he testifies at trial, it will be his first testimony under oath for either side in this litigation. Moreover, plaintiffs' concerns as to whether any one member can speak to the IFT's collaborative conclusions and analysis are questions that can be addressed during cross-examination and, ultimately, present questions as to the weight and credibility to be assigned to Mr. France's testimony, not admissibility. Defendants assert that Mr. France can testify as to his extensive professional experience, the role he played on the IFT in evaluating the Edenville Dam, and the preparation of the IFT Report, among other things. These items satisfy the relevancy requirements of MRE 401, and none of the bases for excluding relevant testimony in MRE 403 apply. Plaintiffs' motion in limine to preclude the testimony of any IFT member, including John France, is DENIED.

D. DEFENDANTS' 11/21/2025 MOTION IN LIMINE TO PRECLUDE TESTIMONY BASED ON DR. DAVID WILLIAMS' MODEL

Defendants' motion to exclude a model prepared by Dr. David Williams, one of plaintiffs' retained experts, is also DENIED. Dr. Williams prepared this model using a software program known as Hydrologic Engineering Center Hydrologic Modeling System to predict what would have happened if Wixom Lake had been lowered to the run-of-the-river elevation before the storm event. Another of plaintiffs' experts, Allen Marr, relied on this model to opine that the Edenville Dam would not have failed if the lake level had been lowered to this level. Defendants object to

this model because they claim the model relies on assumptions that do not comport with reality and, therefore, cannot be presented as an identical replica of what would have occurred. The Court disagrees.

Under Michigan law, a model offered for the purpose of duplicating or recreating an accident is admissible if it portrays "conditions almost identical to those prevailing at the time of the accident itself." *Gorelick v Dep't of State Hwys*, 127 Mich App 324, 336; 339 NW2d 635 (1983). Plaintiffs dispute that the discrepancies identified in defendants' brief prevent this model from portraying conditions "almost identical" to the time of the Edenville Dam's failure. They characterize defendants' critique as "disputes about assumptions and inputs," not the effectiveness or applicability of the model or the analysis underlying it. Moreover, this is not the only admissible use for the model. A model may be offered not "for the purpose of duplicating or recreating an accident, but merely to illustrate certain general principles," and if so, differences do not require exclusion. *Id.*

At this stage of the litigation, the Court finds this scenario applicable here. Plaintiffs present Dr. Williams' model is based on reliable methodology and is "the only transparent, reproducible hydrologic analysis" that will be presented in this litigation and which can be used to call into question one-or-more of the findings in the IFT Report. It satisfies the standard for relevant under MRE 401, without any undue bias or prejudice warranting its exclusion under MRE 403. Moreover, the extent to which Dr. Williams' model represents an accurate or identical model of the Edenville Dam's structural integrity in the event that Wixom Lake had been lowered to the run-of-the-river level is a question of credibility and weight of the evidence, not admissibility at this stage of the litigation. Defendants' motion to exclude Dr. Williams' model is DENIED.

E. DEFENDANTS' 11/21/2025 MOTION IN LIMINE TO PRECLUDE TESTIMONY OF GOVERNMENTAL INACTION

Lastly, defendants seek to exclude testimony and evidence regarding defendants' alleged inaction or failure to respond appropriately to the conditions of the Edenville Dam when FERC revoked the federal license in 2018. Defendants claim the evidence may be relevant to a tort claim, but not a claim of inverse condemnation. The Court disagrees.

There is no dispute that this is not a negligence case. Plaintiffs' sole claim here is one of inverse condemnation, i.e., a "cause of action against a governmental defendant to recover the value of property which has been taken . . . even though no formal exercise of the power of eminent domain has been attempted by the taking agency." *Krieger v Dep't of Environment, Great Lakes & Energy*, 348 Mich App 156, 182-183; 17 NW3d 700, lv den 513 Mich 951; 998 NW2d 212 (2023). To establish this claim, plaintiffs must demonstrate that EGLE "abused its powers in affirmative actions directly aimed at the property." *Id.* The Court of Appeals elaborated on what allegations are necessary to establish affirmative actions. Alleged malfeasance in licensing and supervising the dam is not sufficient in and of itself to satisfy this standard. *Id.* at 182. However, allegations of EGLE's failure to act may be relevant to the analysis. The Court of Appeals indicated as much in the following description of the allegations on which plaintiffs would be allowed to proceed in an earlier proceeding:

> [P]laintiffs alleged that defendants knew about the Edenville Dam's inability to withstand significant rainfall because of insufficient spillway capacity and knew that the dam's poor conditions posed a danger to the surrounding area and properties. Plaintiffs also alleged that defendants actively prevented efforts to repair the dam and threatened enforcement actions if the water levels were drawn down. Finally, plaintiffs claimed that defendants acted to conceal the risks posed by the dam and to raise the lake levels to dangerous levels because they were more concerned with protecting environmental conditions in the lake. Accepting these allegations as true, plaintiffs sufficiently pleaded affirmative actions taken by

> defendants that were directly aimed at plaintiffs' properties. [*Krieger*, 348 Mich App at 185-186.]

EGLE's alleged knowledge of the potential for the Edenville Dam's failure, prevention of repair efforts, and concealment—if established through evidence at trial—are, at minimum, relevant to establishing an abuse of authority. In addition, repeated decisions not to act or not to disclose information with knowledge that the inaction is likely to have a significant, catastrophic effect on plaintiffs' property may be relevant in the context of plaintiffs' claim for inverse condemnation. The Court agrees that plaintiffs face the burden of establishing all elements of their claim of inverse condemnation; however, inactions and omissions of EGLE or another governmental entity may be relevant to the Court's ultimate determination here. Defendants' motion to exclude such evidence is DENIED.

III. CONCLUSION

For the reasons explained above, the Court DENIES all of the following motions in limine: (1) Defendants' 9/5/2025 Motion In Limine to Bar the Introduction of Evidence Challenging the May 28, 2019 Ruling of the Circuit Court; (2) Plaintiffs' 10/03/2025 Motion to Exclude the Independent Forensic Team (IFT) engaged by the Federal Energy Regulatory Commission (FERC); (3) Plaintiffs' 11/21/2025 Motion In Limine to Exclude Expert Opinion Testimony from the IFT; (4) Defendants' 11/21/2025 Motion In Limine to Preclude Testimony Based on David Williams' Model; and (5) Defendants' 11/21/2025 Motion In Limine to Preclude Testimony of Governmental Inaction.

IT IS SO ORDERED.

This is not a final order and does not resolve the last pending issue in this case.

Date: December 10th, 2025

Hon. James Robert Redford
Judge, Court of Claims