

COPY

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 2

WASHINGTON COUNTY

JAMES K. MUEHLBAUER
BRANCH II

STATE OF WISCONSIN
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857,

Plaintiff,

v.

Case No. 14-CX- 4
Complex Forfeiture: 30109

CHRISTOPHER ELBE
8262 Orchard Valley Road
West Bend, WI 53090,

Defendant.

THE AMOUNT CLAIMED IS
GREATER THAN THE
AMOUNT CLAIMED UNDER
WIS. STAT. § 799.01(1)(d).

FILED
2014 NOV 17 AM 11:07
WASHINGTON COUNTY
CLERK OF COURT

SUMMONS

THE STATE OF WISCONSIN,

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached states the nature and basis of the legal action.

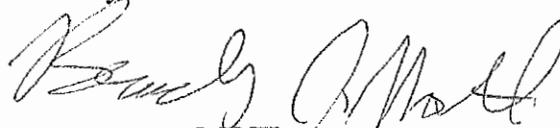
Within 20 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is

Washington County Clerk of Courts, 432 East Washington Street, Room 3151, West Bend, WI 53095, and to Bradley J. Motl, plaintiff's attorney, whose address is Wisconsin Department of Justice, Environmental Protection Unit, 17 West Main Street, Post Office Box 7857, Madison, WI 53707-7857. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the Court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 14th day of November, 2014.

J.B. VAN HOLLEN
Attorney General



BRADLEY J. MOTL
Assistant Attorney General
State Bar #1074743

Attorneys for Plaintiff State of Wisconsin

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-0505
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motlbj@doj.state.wi.us

STATE OF WISCONSIN

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WIS. STAT. § 799.01(1)(d).

COMPLAINT

The State of Wisconsin by its attorneys, Attorney General J.B. Van Hollen and Assistant Attorney General Bradley J. Motl, brings this Complaint against the above-named defendant at the request of the Wisconsin Department of Natural Resources (WDNR) pursuant to Wis. Stat. ch. 30, and alleges as follows:

ALLEGATIONS RELEVANT TO ALL VIOLATIONS

1. The plaintiff is a sovereign state of the United States of America with its principal offices at the State Capitol in Madison, Dane County, Wisconsin. It has enacted in Wis. Stat. ch. 30 and administered through WDNR, laws to protect public rights in waters of the state.

2. Defendant Christopher Elbe (Elbe) is an adult resident of Washington County, who resides at 8262 Orchard Valley Road, Town of Farmington, Wisconsin.

3. Elbe's date of birth is December 27, 1968 and his social security number is XXX-XX-1059.

FACTS

4. At all times relevant to the allegations in this complaint, Elbe and his wife, Tracey Elbe, owned property located at 8262 Orchard Valley Road, Town of Farmington, Wisconsin (hereafter referred to as the Orchard Valley Site).

5. The legal description for the Orchard Valley Site is SE of Section 22, T12N, R20E, Washington County, Wisconsin. The Washington County Tax Key number for the property is T4 0539.

6. The Orchard Valley Site contains a segment of Erler Creek.

7. Erler Creek is a tributary to the North Branch of the Milwaukee River.

8. Erler Creek is a navigable waterway.

9. Alice Saiia owns two adjoining properties, Washington Tax Key numbers T4 0296 and T4 0297, located at the SE ¼ NE ¼ Section 12, T12N, R20E, Washington County, Wisconsin, which are located to the west of Camp Awana Road (hereafter referred to as the Camp Awana Site).

10. The Camp Awana Site contains a segment of an unnamed tributary to the North Branch of the Milwaukee River (hereafter referred to as Camp Awana Tributary).

11. Camp Awana Tributary is a navigable waterway.

12. In 1996, WDNR informed Tracey Elbe that a permit was required to dredge Erler Creek.

13. In 1999, Elbe applied for a permit from WDNR to remove material from the bed of a segment of Erler Creek contained on the Orchard Valley Site. After a site visit with WDNR and Army Corps of Engineers staff members, WDNR denied the permit.

14. On April 26, 2011, WDNR Warden Supervisor Joe Jerich responded to a complaint about illegal dredging at the Orchard Valley Site.

15. On April 26, 2011, Warden Jerich met with Elbe at the Orchard Valley Site.

16. On April 26, 2011, Warden Jerich observed a backhoe being operated by Elbe in the vicinity of Erler Creek.

17. On April 26, 2011, Warden Jerich observed that at least 600 feet of Erler Creek had been straightened.

18. On April 27, 2011, WDNR Warden Supervisor Joe Jerich and WDNR Water Management Specialist Travis Schroeder met with Elbe at the Orchard Valley Site.

19. On April 27, 2011, WDNR observed that the banks of Erler Creek were freshly disturbed with machine marks on both sides of Erler Creek. WDNR observed dredge spoils in an agricultural field located along the southern bank of Erler Creek.

20. On April 27, 2011, WDNR observed that approximately 1,300 feet of the bed of Erler Creek had been dredged and removed.

21. On April 27, 2011, WDNR observed that a segment of Erler Creek had been straightened.

22. On April 27, 2011, Elbe admitted to WDNR that he had not applied for a permit to either remove material from the bed of Erler Creek or straighten Erler Creek.

23. On June 7, 2011, WDNR issued Elbe a Notice of Violation for removing material from the bed of Erler Creek and straightening Erler Creek without the proper WDNR permits.

24. At a WDNR enforcement conference held on June 20, 2011, Elbe stated that he began removing material from the bed of Erler Creek on Sunday, April 24, 2011 and finished on Tuesday, April 26, 2011.

25. At the June 20, 2011 WDNR enforcement conference, Elbe admitted that he had dredged and straightened Erler Creek.

26. Elbe restored Erler Creek to a condition similar to how it existed prior to April 24, 2011. The restoration work was completed in August 2012.

27. On October 20, 2012, WDNR Warden Bill Mitchell responded to a citizen complaint about an excavator stuck in wetlands on the Camp Awana Site.

28. On October 20, 2012, Warden Mitchell met with Elbe and his son Ryan Elbe at the Camp Awana Site.

29. On October 20, 2012, Warden Mitchell observed Elbe and his son Ryan operating a backhoe in wetlands adjacent to Camp Awana Tributary.

30. On October 20, 2012, Elbe removed material from the bed of Camp Awana Tributary and placed it into a wetland adjacent to the Camp Awana Tributary.

31. On October 20, 2012, Elbe admitted to Warden Mitchell that he did not have a permit to remove materials from the bed of Camp Awana Tributary.

32. On October 20, 2012, Elbe stated to Warden Mitchell that Elbe was doing the dredging for Vernon Huiras, who owned the land to the east of the Camp Awana Site, and that Mr. Huiras had obtained the permission of the owner of the Camp Awana Site to work on the property.

33. On October 22, 2012, Warden Mitchell and WDNR Water Management Specialist Jennifer Jerich inspected the Camp Awana Site.

34. On October 22, 2012, Jerich observed dredge spoils in an area approximately 145 feet long by 50 feet wide located in a wetland adjacent to Camp Awana Tributary. The dredge spoils were irregularly placed on the shore ranging from less than 6 inches to more than 2 feet deep.

35. On October 31, 2012, WDNR issued Elbe a Notice of Violation for removing material from the bed of Camp Awana Tributary without a permit and discharging dredged material into a wetland without a permit.

36. At a WDNR enforcement conference held on November 9, 2012, Elbe and Mr. Huiras estimated that on October 20, 2012, they dredged and removed material from the bed of approximately 300 feet of Camp Awana Tributary.

37. As of the date this Complaint was filed, the dredged material had not been removed from the wetlands adjacent to Camp Awana Tributary.

VIOLATION ONE: REMOVING MATERIAL FROM THE BED OF A NAVIGABLE WATERWAY WITHOUT A PERMIT.

38. Wisconsin Stat. § 30.20(1)(b) states that “[u]nless an individual or a general permit has been issued by [WDNR] under this section or authorization has been granted by the legislature, no person may remove any material from the bed of any lake or navigable stream that is not described under par. (a).”

39. Wisconsin Stat. § 30.20(1)(a) states that unless authorized, “no person may remove any material from the bed of a natural navigable lake or from the bed of any outlying waters.”

40. Neither Erler Creek nor Camp Awana Tributary is a natural navigable lake or outlying waters.

41. Elbe is a person.

42. Erler Creek is a navigable stream.

43. Camp Awana Tributary is a navigable stream.

44. On April 24, 25, and 26, 2011, material was removed from the bed of a segment of Erler Creek that is contained on the Orchard Valley Site.

45. On April 24, 25, and 26, 2011, Elbe either removed material from the bed of Erler Creek, aided and abetted the removal of material from the bed of Erler Creek, or advised, hired, counseled, or otherwise procured another person to remove material from the bed of Erler Creek.

46. On April 24, 25, and 26, 2011, neither Elbe nor anyone else had an individual or general permit issued by WDNR under Wis. Stat. § 30.20 or authorization from the legislature to remove material from Erler Creek.

47. On October 20, 2012, material was removed from the bed of a segment of Camp Awana Tributary.

48. On October 20, 2012, Elbe either removed material from the bed of Camp Awana Tributary, aided and abetted the removal of material from the bed of Camp Awana Tributary, or advised, hired, counseled, or otherwise procured another person to remove material from the bed of Camp Awana Tributary.

49. On October 20, 2012, neither Elbe nor anyone else had an individual or general permit issued by WDNR under Wis. Stat. § 30.20 or authorization from the legislature to remove material from the bed of Camp Awana Tributary.

50. Elbe violated Wis. Stat. § 30.20(1)(b) on April 24, 25, and 26, 2011 when he removed material from the bed of Erler Creek without an individual or general permit issued by WDNR under Wis. Stat. § 30.20 or authorization from the legislature.

51. Elbe violated Wis. Stat. § 30.20(1)(b) on October 20, 2012 when he removed material from the bed of Camp Awana Tributary without an individual or general permit issued by WDNR under Wis. Stat. § 30.20 or authorization from the legislature.

VIOLATION TWO: STRAIGHTENING A STREAM WITHOUT A PERMIT.

52. Wisconsin Stat. § 30.195(1) states that “[u]nless a permit has been issued under this section or authorization has been granted by the legislature, no person may change the course of or straighten a navigable stream.”

53. On April 24, 25, and 26, 2011, a segment of Erler Creek, contained on the Orchard Valley Site, was straightened.

54. On April 24, 25, and 26, 2011, Elbe either straightened a segment of Erler Creek, aided and abetted the straightening of a segment of Erler Creek, or advised, hired, counseled, or otherwise procured another person to straighten a segment of Erler Creek.

55. On April 24, 25, and 26, 2011, neither Elbe nor anyone else had a permit issued under Wis. Stat. § 30.195 or authorization from the legislature to change the course of or straighten Erler Creek.

56. Elbe violated Wis. Stat. § 30.195(1) on April 24, 25, and 26, 2011 when he changed the course of Erler Creek by straightening Erler Creek without a permit under Wis. Stat. § 30.195 or authorization from the legislature.

PENALTY PROVISIONS

57. Wisconsin Stat. § 30.03 states that “[t]he district attorney of the appropriate county or, at the request of [WDNR], the attorney general shall institute proceedings to recover any forfeiture imposed or to abate any nuisance committed under this chapter or ch. 31.”

58. Wisconsin Stat. § 30.294 states that "[e]very violation of [Wis. Stat. ch. 30] is declared to be a public nuisance and may be prohibited by injunction and may be abated by legal action brought by any person."

59. Wisconsin Stat. § 30.298(1) states that "[a]ny person who violates any provision of ss. 30.12 to 30.21 for which a penalty is not provided under the applicable section or by sub. (2) or (3) shall forfeit not less than \$100 nor more than \$10,000 for the first offense and shall forfeit not less than \$500 nor more than \$10,000 upon conviction of the same offense a 2nd or subsequent time."

60. Wisconsin Stat. § 30.298(2) states that "[a]ny person who violates s. 30.18(2)(a)1. or 30.195(1) shall forfeit not less than \$500 nor more than \$10,000 for the first offense and shall forfeit not less than \$1,000 nor more than \$10,000 upon conviction of the same offense a 2nd or subsequent time."

61. Wisconsin Stat. § 30.298(5) states that "[i]n addition to the forfeitures specified under subs. (1) to (3), the court may order the defendant to perform or refrain from performing such acts as may be necessary to fully protect and effectuate the public interest in navigable waters. The court may order abatement of a nuisance, restoration of a natural resource or other appropriate action designed to eliminate or minimize any environmental damage caused by the defendant."

62. Wisconsin Stat. § 30.292(1) states that "[w]hoever is concerned in the commission of a violation of this chapter for which a forfeiture is imposed is a principal and may be charged with and convicted of the violation although he or she did not

directly commit it and although the person who directly committed it has not been convicted of the violation."

63. Wisconsin Stat. § 30.292(2)(a)-(c) states that "[a] person is concerned in the commission of the violation if the person does any of the following: (a) Directly commits the violation. (b) Aids and abets the commission of the violation. (c) Is a party to a conspiracy with another to commit the violation or advises, hires, counsels or otherwise procures any person to commit it."

RELIEF REQUESTED

WHEREFORE, plaintiff asks the Court to enter judgment as follows:

1. Forfeitures as provided for in Wis. Stat. § 30.298(1) and (2);
2. The 26% penalty surcharge pursuant to Wis. Stat. § 814.77(11), the 20% environmental surcharge pursuant to Wis. Stat. § 814.77(5), the 1% jail surcharge pursuant to Wis. Stat. § 814.77(7), \$25.00 in court costs pursuant to Wis. Stat. § 814.63(1), the \$13.00 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.77(2), the \$68.00 court support services surcharge under Wis. Stat. § 814.77(1m), and the \$21.50 justice information system surcharge under Wis. Stat. § 814.77(8);
3. An injunction pursuant to Wis. Stat. §§ 30.294 and 30.298(5) requiring Elbe to refrain from dredging or straightening a navigable waterway unless he has prior authorization from WDNR or the legislature;

4. An injunction pursuant to Wis. Stat. §§ 30.294 and 30.298(5) requiring Elbe to remove the dredged material from the wetlands adjacent to Camp Awana Tributary and restore the wetlands pursuant to a WDNR-accepted restoration plan; and

5. Any other relief the Court deems just and appropriate.

Dated this 14th day of November, 2014.

J.B. VAN HOLLEN
Attorney General



BRADLEY J. MOTL
Assistant Attorney General
State Bar #1074743

Attorneys for Plaintiff State of Wisconsin

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
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(608) 266-2250 (fax)
motlbj@doj.state.wi.us

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STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 2

WASHINGTON COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 14-CX- 4
Complex Forfeiture: 30109

CHRISTOPHER ELBE,

Defendant.

STIPULATION AND ORDER FOR JUDGMENT

Plaintiff State of Wisconsin brought this civil action against defendant Christopher Elbe regarding violations of Wis. Stat. ch. 30 that involved removing material from the bed of a navigable waterway without a permit and straightening a stream without a permit. The parties now wish to settle this matter by agreement and avoid further litigation and, therefore, enter into this stipulation.

IT IS STIPULATED AND AGREED by the State of Wisconsin and Christopher Elbe that this case shall be settled on the merits, with prejudice, on the following terms and conditions:

1. The parties to this Stipulation are the plaintiff State of Wisconsin and the defendant Christopher Elbe.
2. The Circuit Court for Washington County, Wisconsin (the "Court") has jurisdiction over the parties and the subject matter of this action.

3. This Stipulation and Order for Judgment as approved by the Court shall apply to and be binding on the parties and on the successors and assignees of the parties.

4. Judgment shall be entered in favor of the plaintiff State of Wisconsin and against the defendant Christopher Elbe in the amount of \$26,000.00. This sum is comprised of forfeitures, statutory surcharges, and costs as follows: forfeitures of \$17,600.34 under Wis. Stat. § 30.298(1) and (2), a 26% penalty surcharge of \$4,576.09 under Wis. Stat. § 814.75(18), a 20% environmental surcharge of \$3,520.07 under Wis. Stat. § 814.75(12), \$25.00 in court costs under Wis. Stat. § 814.63(1), a \$13.00 crime laboratories and drug law enforcement surcharge under Wis. Stat. § 814.75(3), a \$68.00 court support services surcharge under Wis. Stat. § 814.75(2), a 1% jail surcharge of \$176.00 under Wis. Stat. § 814.75(14), and a \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15).

5. Defendant Christopher Elbe will pay \$26,000.00 by checks payable to the Washington County Clerk of Courts and delivered to the Clerk of Courts, 432 E. Washington St., Rm 3151, P.O. Box 1986, West Bend, Wisconsin 53095, along with a cover letter to the Court identifying the case by name and number. A copy of the checks and cover letters shall be simultaneously mailed as proof of payment to Assistant Attorney General Bradley J. Motl at the Wisconsin Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857. Payments shall be made in accordance with the following schedule:

- a. \$8,000.00 on or before January 1, 2015;
- b. \$10,000.00 on or before January 1, 2016; and

c. \$8,000.00 on or before January 1, 2017.

6. If defendant Christopher Elbe fails to comply with any provision or deadline in this Stipulation, the defendant shall be in default of the stipulated judgment, and all financial obligations remaining or outstanding under this Stipulation shall be accelerated and shall be immediately due and payable. In addition, if the defendant is held to be in default, the defendant shall reimburse the State of Wisconsin for all its costs and fees, including all its attorney fees, incurred in connection with enforcing this Stipulation.

7. In the event of default under the terms of this Stipulation, the terms of the Stipulation relating to payment of money shall be deemed null and void, and interest shall be added to the balance due, pursuant to Wis. Stat. § 815.05(8), from the date of entry of judgment.

8. The parties acknowledge that this Stipulation and Order for Judgment sets forth the entire understanding of the parties with respect to the subject matter hereto.

9. Defendant Christopher Elbe waives the requirement for formal service of the authenticated Summons and Complaint.

10. Except as between the parties hereto, nothing contained in this Stipulation and Order for Judgment shall be construed as an admission of liability in any other administrative or judicial proceeding now pending or hereafter commenced.

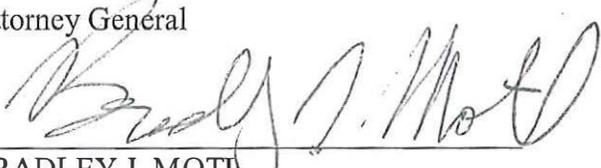
11. Compliance by defendant Christopher Elbe with his obligations under this Stipulation and Order for Judgment shall constitute full compromise, settlement, and satisfaction of his liability for the violations described in the Complaint.

12. The Order for Judgment accompanying this Stipulation will be a final and appealable Order. However, the parties hereby waive their right to appeal the Order.

13. The Order for Judgment and Judgment may be entered incorporating the terms of this Stipulation without further notice, and the Judgment may be docketed, pursuant to Wis. Stat. § 806.10(1).

Dated this 14th ^{November} day of ~~October~~, 2014.

J.B. VAN HOLLEN
Attorney General


BRADLEY J. MOTL
Assistant Attorney General
State Bar #1074743

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
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(608) 266-2250 (fax)
motlbj@doj.state.wi.us

Attorneys for Plaintiff State of Wisconsin

Dated this 31st day of October, 2014.

LAW OFFICE OF JOHN A. BEST LLC

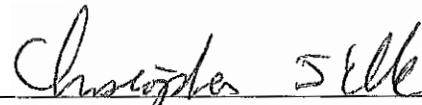


JOHN A. BEST
State Bar #1001262

Attorneys for defendant Christopher Elbe

1797 Barton Avenue
West Bend, Wisconsin 53090-1905
(262) 335-2605
(262) 335-3334 (fax)
john@johnbestlaw.com

Dated this 30th day of October, 2014.



CHRISTOPHER ELBE
Defendant

8262 Orchard Valley Road
West Bend, Wisconsin 53090

ORDER FOR JUDGMENT

The Court approves the terms of the foregoing settlement Stipulation in *State of Wisconsin v. Christopher Elbe*, Washington County Case No. 14-CX-_____, pursuant to which defendant Christopher Elbe will pay \$26,000.00 in forfeitures, surcharges, and costs. The Court therefore directs the clerk to enter and docket the Judgment accordingly.

This is a final order that disposes of the entire matter in litigation between the State of Wisconsin and Christopher Elbe, and is intended by the Court to be an appealable order within the meaning of Wis. Stat. § 808.03(1).

Dated this _____ day of _____ 2014.

BY THE COURT:

/s/ JAMES K. MUEHLBAUER
WASHINGTON COUNTY CIRCUIT COURT

STATE OF WISCONSIN
17 West Main Street
PO Box 7857
Madison WI 53707-7857,

Plaintiff,

COPY

JUDGMENT

vs.

Case #14CX4

CHRISTOPHER ELBE
8262 Orchard Valley Road
West Bend WI 53090,

Defendant.

Based on the Stipulation between the plaintiff State of Wisconsin and the defendant Christopher Elbe and on the Court's Order, the terms of which are incorporated into this Judgment in their entirety, judgment is granted in favor of the plaintiff, State of Wisconsin, and against the defendant, Christopher Elbe, in the amount of \$26,000.00 which includes forfeitures, court costs and surcharges pursuant to Wisconsin Statutes.

Defendant Christopher Elbe will pay \$26,000.00 by checks payable to: the Washington County Clerk of Courts, 432 E. Washington St, Rm 3151, PO Box 1986, West Bend, WI 53095, along with a cover letter to the Court identifying the case by name and number. Payments shall be made in accordance with the following schedule:

\$8,000.00 by January 1, 2015

\$10,000.00 by January 1, 2016

\$8,000.00 by January 1, 2017.

A copy of the checks and cover letters shall be simultaneously mailed as proof of payment to Assistant Attorney General Bradley J. Motl at the Wisconsin Department of Justice, PO Box 7857, Madison Wi 53707-7857.

This Judgment is final for purposes of appeal.

Dated this 24th day of November, 2014.

/s/ Theresa M. Russell

Theresa M. Russell
Washington County Clerk of Circuit Court

cc: Defendant
District Attorney
Victim