

2007 DRAFTING REQUEST

Bill

Received: **06/22/2007**

Received By: **jkuesel**

Wanted: **Soon**

Identical to LRB:

For: **Jeff Stone (608) 266-8590**

By/Representing: **Marsha Dake**

This file may be shown to any legislator: **NO**

Drafter: **jkuesel**

May Contact:

Addl. Drafters:

Subject: **State Finance - claims agnst st**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Stone@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Klemme Brothers Well Drilling claim

Instructions:

Per board recommendation, 6/11/07.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkuesel 06/26/2007	kfollett 06/26/2007		_____			State
/1			rschluet 06/26/2007	_____	lparisi 06/26/2007	cduerst 06/28/2007	

FE Sent For:

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intro*

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1/1	jkuesel 6/26/07	1/1 kf 6/26					

FE Sent For:

<END>




State of Wisconsin • CLAIMS BOARD

101 E. Wilson Street • Post Office Box 7864 • Madison, Wisconsin 53707-7864 • 608-264-9595 • Patricia.Reardon@doa.state.wi.us

DATE: June 14, 2007

TO: Jeffrey Kuesel
Legislative Reference Bureau

FROM: Patricia A. Reardon 
Paralegal

RE: Drafting of Claims Legislation

Attached, please find a copy of the proceedings from the meeting held by the State Claims Board on May 21st and 23rd, 2007. At that time, the Board recommended that the following claims be paid:

Klemme Brothers Well Drilling	\$10,317.93
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The Claims Board members would appreciate it if you would draft the necessary legislation for this claim. Representative Jeff Stone will sponsor the bill. Thank you for your assistance in this matter.

the compaction portion of the state project took place in October 2005, but the well did not fail until March 2006. The claimants provide no reasonable explanation for the 5-6 month delay between the construction and the failure of the well.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles at this time. The Board states that it is not opposed to reconsidering this claim at a future date if the claimants are able to produce more definitive evidence explaining the cause of the well failure. (*Member Rothschild not participating.*)

3. Klemme Brothers Well Drilling of Kewaskum, Wisconsin, claims \$17,405.00 for costs incurred abandoning two wells and drilling two new ones because of incorrect information provided by the Department of Natural Resources. The claimant was contracted to install two wells in the town of Jackson in 2004. The claimant suspected the property might be located in an area requiring special casing and called the DNR to double check the specifications of the special casing area. The claimant states that DNR employee Chad Czarkowski told him the property was not located in a special casing area and that there were no special requirements for the wells. The claimant installed the two wells without special casing per the DNR's instructions. One year later, the wells tested as unclear. The claimant states that after looking into the matter further, Mr. Czarkowski told him he had made an error and that the property was indeed in a special casing area. For safety purposes, the DNR required the abandonment of the two original wells and the claimant had to drill two new wells with the special casing. The claimant states that it only was paid for the first set of wells by the person who contracted his services. The claimant therefore does not feel it should be held responsible for the cost of abandoning the original wells or for the cost of drilling the new wells and requests reimbursement for those costs.

The DNR recommends payment of this claim in the reduced amount of \$10,317.93. The DNR states that it does appear possible that a mistake may have been made by a DNR employee. The DNR notes, however, that it is difficult to determine exactly what happened from the employee's telephone log because the employee discussed several areas with the claimant during the same phone call. The DNR also points to the fact that the legal description provided by the claimant for this property was incorrect and may have contributed to the error. It is possible that the DNR employee gave the correct instruction—no special casing—for the incorrect plot of land provided by the claimant. The DNR states that there is no way to determine exactly what happened in this instance but believes that because there is reasonable possibility of an error on the part of the state, the claim should be paid. The DNR does not, however, support payment of the full amount requested by the claimant. The drilling costs of the second set of wells is higher because of the additional special casing expenses, but the DNR does not believe that it should have to pay the cost of the second set of wells. The DNR believes that if an error was made, it should only be responsible for paying for the result of that error—the first set of wells. If not for the error, the claimant would have been told about the special casing requirements right away and the first set of wells would never have been drilled. The DNR therefore believes that the claimant should be reimbursed for the cost of drilling and abandoning the first set of wells and recommends payment of the claim in the reduced amount of \$10,317.93.

The Board recommends payment of this claim in the reduced amount of \$10,317.93 based on equitable principles. The Board further recommends, under authority of § 16.007 (6m), Stats., payment should be made from the Department of Natural Resources appropriation § 20.370 (4)(mq), Stats.

4. David E. Johnson of Port Wing, Wisconsin, claims \$1.6 million for lost value of land. The claimant states that in 1981 he purchased approximately 1300 feet of lake frontage in the Orienta flowage in Bayfield County, with the intention of selling the lots to fund his retirement. In 1985, the Orienta Dam washed out due to flooding. The claimant states that for 12 years the dam sat inactive. The claimant alleges that the Department of Natural Resources' insistence that any new owner install a fish ladder deterred interest from potential purchasers. In 1997, Northern States Power Company initiated the permit process to remove the dam. The claimant states that public hearings were held relating to the removal permit and that one of

13. Shirell Watkins, Sr. of Boscobel, Wisconsin, claims \$108.55 for the unreimbursed value of a damaged television set and fan. In October 2003, the claimant was transferred from Green Bay Correctional Institution to the Wisconsin Secure Program Facility. Staff at GBCI packed the claimant's property, including a TV and fan, neither of which were noted as damaged. In 2006, during a routine property check of the WSPF warehouse, it was noted that both the fan and the TV were damaged. The claimant objects to the fact that the Department of Corrections depreciated the fan by 50% and the TV by 40% when calculating the reimbursement value. The claimant does not believe this depreciation is fair, as he would be charged full value for any DOC property he damaged. The claimant also objects to the fact that the DOC deducted 5% sales tax from the TV purchase. The claimant alleges that he did not pay any sales tax on the TV purchase. The claimant was reimbursed \$149 by the DOC and requests payment of an additional \$108.55 to cover the full purchase price of his fan and TV.

The DOC recommends denial of this claim. The DOC has established policies to reimburse inmates for damaged property in a fair and uniform manner. Pursuant to the DOC Internal Management Procedure Property Depreciation Schedule, both fans and TVs are considered to have a total of 10 useful years and are therefore depreciated at 10% annually. The Schedule also indicates that if no receipt is available, an item is assumed to be 5 years old and that taxes and shipping & handling should not be included in the base price for reimbursement. There was no receipt for either the TV or the fan. The cost of the TV was \$235.50 minus 5% for sales tax. The age of the TV was determined from the claimant's trust account statement, which showed the payment for the TV. The TV was four years old and was therefore depreciated 40%, for a reimbursement of \$136. The age of the fan was unknown, so it was depreciated at 50% for a reimbursement of \$13. The DOC reimbursed the claimant according to its standard policy and does not believe that there are any equitable grounds to grant him any additional payment.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

The Board concludes:

That the claims of the following claimants should be denied:

Fred and Leslie Schweinert
David E. Johnson
Audio Contractors, LLC
Steven J. Graf
Todd Burow (14 claims)
Tomas Barajas
Mark Brown (\$61.70)
Mark Brown (\$48.63)
Shirell Watkins, Sr.

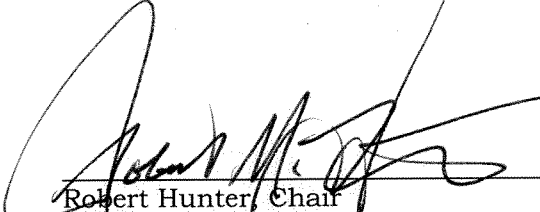
That payment of the following amounts to the following claimants from the following statutory appropriations is justified under s. 16.007, Stats:

JMPK Company, LLC	\$5,000.00	§ 20.395 (3)(eq), Wis. Stats.
Bryan Pelant	\$185.45	§ 20.370 (1)(ea), Wis. Stats.
Mark Brown	\$19.66	§ 20.410 (1)(a), Wis. Stats.

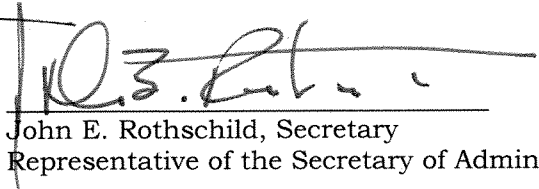
The Board recommends:

Payment of \$10,317.93 to Klemme Brothers Well Drilling for damages relating to well drilling costs, and that this payment be taken from Department of Natural Resources appropriation § 20.370 (4)(mq), Wis. Stats.

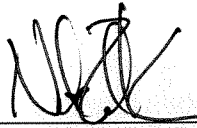
Dated at Madison, Wisconsin this 11TH day of JUNE, 2007.




Robert Hunter, Chair
Representative of the Attorney General



John E. Rothschild, Secretary
Representative of the Secretary of Administration



Nate Zolik
Representative of the Governor



Jeffrey Stone
Assembly Finance Committee



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-2906/2

JTK. K.A. [initials]

wanted wed 6/27

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

LPS:
insert line numbers

Gen

in payment of a claim against DNR made by Klemme Brothers Well Drilling, Inc.

AN ACT...; relating to: expenditure of \$10,317.93 from moneys appropriated to the Department of Natural Resources in payment of a claim against the state made by the Klemme Brothers Well Drilling, Inc.

Analysis by the Legislative Reference Bureau

This bill directs expenditure of \$10,317.93 from moneys appropriated to the Department of Natural Resources (DNR) for the current fiscal biennium for ground, surface, and drinking water protection and sewage and water pollution discharge control. The claimant contracted to install two wells in the town of Jackson (Washington county) in 2004. The claimant asserted that an employee of DNR advised it that special casing was not required in the area where the wells were to be installed, and the wells were constructed without the casing. After the wells tested as unclean, DNR required abandonment of the wells and the claimant was required to replace the wells with new wells using special casing. The claimant claimed \$17,405.00 for the cost of replacing the abandoned wells. DNR maintains that the claimant discussed various well locations with its employee and the legal description of the property provided by the claimant was incorrect and may have contributed to the erroneous information that led to construction of the abandoned wells. On June 11, 2007, the claims board recommended payment of this claim in the reduced amount of \$10,317.93, representing the cost of drilling the original wells (see Senate Journal, p. 259).

X
X
X
X

[Handwritten signature]

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Claim against the state. There is directed to be expended from the appropriation under section 20.370 (4) (mq) of the statutes, as affected by the acts of 2005 and 2007, \$10,317.93 in payment of a claim against the state made by Klemme Brothers Well Drilling, Inc., Kewaskum, Wisconsin, as reimbursement for the cost of drilling 2 wells in the town of Jackson, Washington county, that the Department of Natural Resources required to be abandoned because the wells were constructed improperly, possibly as a result of incorrect information provided by the department. Acceptance of this payment releases this state and its officers, employees, and agents from any further liability resulting from the failure to construct these wells in an appropriate manner.

(END)

Duerst, Christina

From: Dake, Marsha
Sent: Thursday, June 28, 2007 2:32 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-2906/1 Topic: Klemme Brothers Well Drilling claim

Please Jacket LRB 07-2906/1 for the ASSEMBLY.