

09hr_SC-TTFNR_sb0391_pt01



(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Transportation, Tourism,
Forestry, and Natural Resources (SC-TTFNR)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (June/2012)

Senate

Record of Committee Proceedings

Committee on Transportation, Tourism, Forestry, and Natural Resources

Senate Bill 391

Relating to: expenditure of \$30,000 from moneys appropriated to the Department of Natural Resources in payment of a claim against the state made by Stillmunkes, Inc.

By Senator Hansen; cosponsored by Representative Sherman.

November 09, 2009 Referred to Committee on Transportation, Tourism, Forestry, and Natural Resources.

January 20, 2010 **PUBLIC HEARING HELD**

Present: (7) Senators Holperin, Sullivan, Plale, Hansen, Leibham, Kedzie and Grothman.

Absent: (0) None.

Appearances For

- Dave Hansen — 30th Senate District
- Gary Sherman — 74th Assembly District

Appearances Against

- None.

Appearances for Information Only

- None.

Registrations For

- None.

Registrations Against

- None.

Registrations for Information Only

- None.

February 4, 2010 **EXECUTIVE SESSION HELD**

Present: (6) Senators Holperin, Sullivan, Hansen, Leibham, Kedzie and Grothman.

Absent: (1) Senator Plale.

Moved by Senator Hansen, seconded by Senator Grothman that **Senate Bill 391** be recommended for passage.

Ayes: (6) Senators Holperin, Sullivan, Hansen, Leibham, Kedzie and Grothman.

Noes: (0) None.

Absent: (1) Senator Plale.

PASSAGE RECOMMENDED, Ayes 6, Noes 0

Elizabeth Novak
Committee Clerk

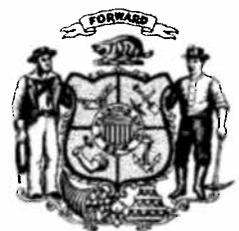
Record of Committee Proceedings

Joint committee on Finance

Senate Bill 391



WISCONSIN STATE LEGISLATURE



SB 391 folder

STATE OF WISCONSIN CLAIMS BOARD
CLAIM FOR DAMAGES AGAINST THE STATE

Official Use Only
2009-014-DNR

Please fill out form completely—incomplete forms may be returned. Submit one notarized copy of this form to the Claims Board, P.O. Box 7864, Madison, WI 53707-7864. Attach proof of loss; copies of all bills, receipts and insurance proceeds; and copies of medical and/or police reports, if applicable. This information will be sent to the appropriate department or agency. (Claim files are considered public records. Information submitted may be open to inspection by the public under Wisconsin Public Records Law.) Questions? Please call (608) 264-9595.

Claimant Name, Address and Phone: MARK STILLMUNKES 28620 CENTERVILLE RD. LAMOTTE, IA 52054	<small>Official Use Only</small> 4887	State Agency Claim is Against: Wisconsin Department of Natural Resources
		Date(s) of Occurrence: August 25, 2008 (Invoice date)

Statement of Circumstances. Explain how claim arose. Give complete background information and details of claim. Attach additional pages and copies of supporting documentation, as needed.

Mark Stillmunkes, d/b/a Stillmunkes, Inc., provided brush removal and forestry mowing services pursuant to a State of Wisconsin Purchase Order issued by the Department of Natural Resources to Mark Stillmunkes, d/b/a Stillmunkes, Inc., on February 7, 2008. Mr. Stillmunkes provided and performed the brush removal and forestry services on the Yellowstone wildlife area, Sections 33 and 34, T.4N-R.4E in Lafayette County, Wisconsin. Mr. Stillmunkes completed the brush removal and forestry services in August 2008 and submitted an invoice to the Department of Natural Resources on August 25, 2008 in the amount of \$96,850.00 for payment. The DNR has only paid \$20,800.00, and refuses to pay the remaining balance. The amount paid by the DNR was only the amount of services estimated.

Dollar Amount of Claim. Itemize all losses. Attach copies of bills, estimates and/or receipts as proof of loss.
\$76,050.00

There are some statutory restrictions on the amount of Claims Board payments – see Claims Board pamphlet for more information.

Insurance Information. Complete this section whether or not you have submitted a claim to your insurance company.

Do you have?

Vehicle insurance: Yes No. If yes, amount of coverage: \$ N/A, amount of deductible \$ N/A

Property insurance: Yes No. If yes, amount of coverage: \$ N/A, amount of deductible \$ N/A

Medical insurance: Yes No. If yes, amount of coverage: \$ N/A, amount of deductible \$ N/A

Have you filed a claim with your insurance company for any damages relating to this claim? Yes No.
If your insurer denied coverage for your damages, please attach explanation of denial.

I hereby certify that all statements contained herein and on any attachments hereto are true and that the losses claimed were actually incurred.

Signature of Claimant: [Signature] Date: 3-3-09

The above-named claimant personally came before me this day and is known to me to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public: [Signature] Date: 3-3-09

Dubuque County, Iowa My Commission Expires: 1/12/10

Official Use Only

Received

Secretary's Office
Dept of Administration

 DANITA L. GRANT
 COMMISSION NO. 711279
 MY COMMISSION EXPIRES
1/12/10

STATE OF WISCONSIN CLAIMS BOARD
CLAIM FOR DAMAGES AGAINST THE STATE

Statement of Circumstances cont.

by the DNR for the work contracted for. The work performed took longer than originally estimated due to unforeseen circumstances under the foliage on the land. Bruce Folley of the DNR was continuously kept advised of the status of the project, the additional work that needed to be performed, and the additional time it was taking to complete the project. Bruce Folley gave Mr. Stillmunkes the approval and go ahead to continue performing his services until the project was wholly completed. Pursuant to the invoice issued by the DNR, Bruce Folley was Mr. Stillmunkes' contact at the DNR who was to arrange all required delivery of necessary services. Mr. Stillmunkes reported to Bruce Folley and performed the services Mr. Folley authorized him to do. The DNR invoice also specifically states, "Amount shown is an estimate, actual amount paid will be based on actual authorized hours or services delivered." Accordingly, the DNR is responsible for payment of Stillmunkes' invoice in its entirety.

Stillmunkes, Inc

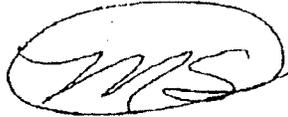
PO Box 98
605 Water St.
La Motte, IA. 52054

January 8, 2008

To Whom It May Concern:

We wish to put a bid in for the Forestry/Agricultural Clean-Up for Yellowstone Park (between Fayette & Blanchardville, WI). Our bid is for \$130.00 an hour which INCLUDES fuel. The work will consist of forestry brush mower and machine for purpose of removal of unwanted brush.

Sincerely,



Mark Stillmunkes, President
(563) 773-2734 -- office
(563) 773-2764 -- fax
PO Box 98
605 Water St.
La Motte, IA. 52054

VOICE IN TRIPLICATE TO:
 DEPT OF NATURAL RESOURCES
 SOUTH CENTRAL REGION FINANCE
 3911 FISH HATCHERY RD
 FITCHBURG, WI 53711

STATE OF WISCONSIN
 PURCHASE ORDER

- ENTER TYPE CODE
 1 - Regular
 2 - Change Previous
 3 - Cancel Previous
 4 - Interagency
 5 - Blanket-Non Contract
 8 - Blanket-Contract
 G - Grant (Pass-thru)
 L - Master Lease Program
 P - Project (Construction)

PURCHASE ORDER NUMBER
 NMH00000878

SHOW THIS NUMBER ON ALL SHIPMENTS
 CORRESPONDENCE AND INVOICES

1	STATE USE	PD 370
VENDOR NUMBER		DATE: 02/07/08
201556320		PAGE: 1

ENDOR:

SHIP TO:

STILLMUNKES INC
 ATTN: MARK STILLMUNKES
 PO BOX 98
 LAMOTTE IA 52054

BRUCE K. FOLLEY
 DEPT. OF NATURAL RESOURCES
 1900 ERVIN JOHNSON DR
 DARLINGTON, WI 53530

FOB	Terms	Delivery	Reference	Agency Bid No.	Statewide Contract No.
DESTINATION	NET 30	05/31/08			
Item	Quantity	Unit	Commodity Code	Unit Price	Total
1	160.000	HOUR	988-36-00-0000	130.000000	20,800.00

FORESTY MOWING SERVICES. AMOUNT REFLECTS ATTACHED 1/8/2008
 VENDOR QUOTATION. HOURLY RATE AMOUNT SHOWN INCLUDES OPERATOR SERVICES
 AND ALL FUEL. WORK IS TO BE COMPLETED PRIOR TO MAY 31, 2008 ON THE
 YELLOWSTONE WILDLIFE AREA, SECTIONS 33 AND 34, T.4N-R.4E, LAFAYETTE
 COUNTY, WI.

PLEASE CONTACT BRUCE FOLLEY AT PHONE NUMBER SHOWN BELOW TO ARRANGE
 ALL REQUIRED DELIVERY OF NECESSARY SERVICES. AMOUNT SHOWN IS AN
 ESTIMATE, ACTUAL AMOUNT PAID WILL BE BASED ON ACTUAL AUTHORIZED HOURS
 OF SERVICES DELIVERED.

TOTAL: 20,800.00

----- FOR STATE USE ONLY -----

LN	FUND	AGY	ORG/SUB	APPR	ACTV	FINC	OBJ/SUB	JOB	NUM	CAT	TOTAL
01	212	370	WMWA/LA	1	61	4	WMCI	2740/			20,800.00
TOTAL:											20,800.00

AGENCY CONTACT -- Name and phone no.
 BRUCE FOLLEY
 (608) 575-9288

TAX EXEMPTIONS

The State of Wisconsin and its agencies are exempt from payment of all federal
 tax and Wisconsin state and local taxes on its purchases except Wisconsin
 excise or occupation tax as described on the back of this form.
 The State of Wisconsin does not issue a tax exempt number for state agencies.
 Federal Exemption No. 39-73-1021-K is on file with the Internal Revenue
 Service, Milwaukee.

PLEASE NOTE

Deliver between 8 A.M. and 3 P.M.
 No Saturday, Sunday or Holiday deliveries.
 Acknowledge this order promptly.
 Accompany each delivery with a shipping ticket or memo showing Purchase
 Order Number and material furnished.
 If any item(s) on this order is a hazardous chemical, as defined under 29 CFR
 1910.1200, provide one copy of a Material Safety Data Sheet for each item with
 the shipped container and one copy with the invoice.
 VENDOR - See Other Side for Standard Terms and Conditions of Purchase.

ORDER APPROVED -- Signature

Richard M. Straub

Richard M. Straub-(603) 261-6415

STATE OF WISCONSIN
STANDARD TERMS AND CONDITIONS

ANTITRUST ASSIGNMENT: The contractor and the State of Wisconsin recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Wisconsin (purchaser). Therefore, the contractor hereby assigns to the State of Wisconsin any and all claims for such overcharges as to goods, materials or services purchased in connection with this contract.

APPLICABLE LAW AND COMPLIANCE: This contract shall be governed under the laws of the State of Wisconsin. The contractor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. The State of Wisconsin reserves the right to cancel this contract if the contractor fails to follow the requirements of s. 77.66, Wis. Stats. and related statutes regarding certification for collection of sales and use tax. The State of Wisconsin also reserves the right to cancel this contract with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

CANCELLATION: The State of Wisconsin reserves the right to cancel any contract in whole or in part without penalty due to nonappropriation of funds or for failure of the contractor to comply with terms, conditions, and specifications of this contract.

WORK CENTER CRITERIA: A work center must be certified under s.16.752, Wis. Stats., and must ensure that when engaged in the production of materials, supplies or equipment or the performance of contractual services, not less than seventy-five percent (75%) of the total hours of direct labor are performed by severely handicapped.

INSURANCE RESPONSIBILITY: The contractor performing services for the State of Wisconsin shall:

Maintain worker's compensation insurance as required by Wisconsin Statutes, for all employees engaged in the work.

Maintain commercial liability, bodily injury and property damage insurance against any claim(s) which might occur in carrying out this agreement/contract. Minimum coverage shall be one million (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out his contract. Minimum coverage shall be one million (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.

The state reserves the right to require higher or lower limits where warranted.

NONDISCRIMINATION / AFFIRMATIVE ACTION In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s.51.01(5) Wis. Stats., sexual orientation as defined in s.111.32(13m), Wis. Stats., or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities.

Contracts estimated to be over twenty-five thousand dollars (\$25,000) require the submission of a written affirmative action plan by the contractor. An exemption occurs from this requirement if the contractor has a workforce of less than twenty-five (25) employees. Within fifteen (15) working days after the contract is awarded, the contractor must submit the plan to the contracting state agency for

approval. Instructions on preparing the plan and technical assistance regarding this clause are available from the contracting state agency.

The contractor agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the contracting state agency that sets forth the provisions of the State of Wisconsin's nondiscrimination law.

Failure to comply with the conditions of this clause may result in the contractor's becoming declared an "ineligible" contractor, termination of the contract, or withholding of payment.

PATENT INFRINGEMENT: The contractor selling to the State of Wisconsin the articles described herein guarantees the articles were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of the articles described herein will not infringe any United States patent. The contractor covenants that it will at its own expense defend every suit which shall be brought against the State of Wisconsin (provided that such contractor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.

PAYMENT TERMS AND INVOICING: The State of Wisconsin normally will pay properly submitted vendor invoices within thirty (30) days of receipt providing goods and/or services have been delivered, installed (if required), and accepted as specified.

Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to purchase order number and submittal to the correct address for processing.

A good faith dispute creates an exception to prompt payment.

REFUND OF CREDITS: The contractor agrees to pay the state within 60 days, at the state's request, any credits resulting from the order which the state determines cannot be applied to future invoices.

TAXES: The State of Wisconsin, including all its agencies, is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of Wisconsin sales or use tax on its purchases. The State of Wisconsin may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials.

TERMS AND CONDITIONS: The Standard Terms and Conditions (DOA-3054) or the Standard Terms and Conditions for State of Wisconsin Printing (DOA-3604) shall apply to all orders. Copies of these terms and conditions are available upon request from the State Bureau of Procurement.

VENDOR TAX DELINQUENCY: Vendors who have a delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.



Good Quality Railroad Ties • Switch Ties • Guard Rails

STILLMUNKES, INC.

28620 Centerville Rd. • LaMotte, IA 52054 • (563) 773-2734 or 773-2764

Date 8-25-8

TO: <i>Dept of Natural Resources</i>		ADDRESS: <i>South Central Farmer 3911 Fish Hatchery Rd Fitchburg WI 53711</i>	
NO.	DESCRIPTION	TOTAL	
<i>745</i>	<i>hrs @ 130 M/hr</i>	<i>96,850</i>	
SPECIAL INSTRUCTIONS: <i>same use PD 370</i> <i>Vendor # 201556320</i> <i>Photo base # ALM H00000878</i>			
DRIVER:		UNIT #:	SHIPMENT RECEIVED IN GOOD CONDITION (full name):

CUSTOMER: WHITE COPY OFFICE: CANARY COPY

Good Quality Railroad Ties • Switch Ties • Guard Rails

STILLMUNKES, INC.

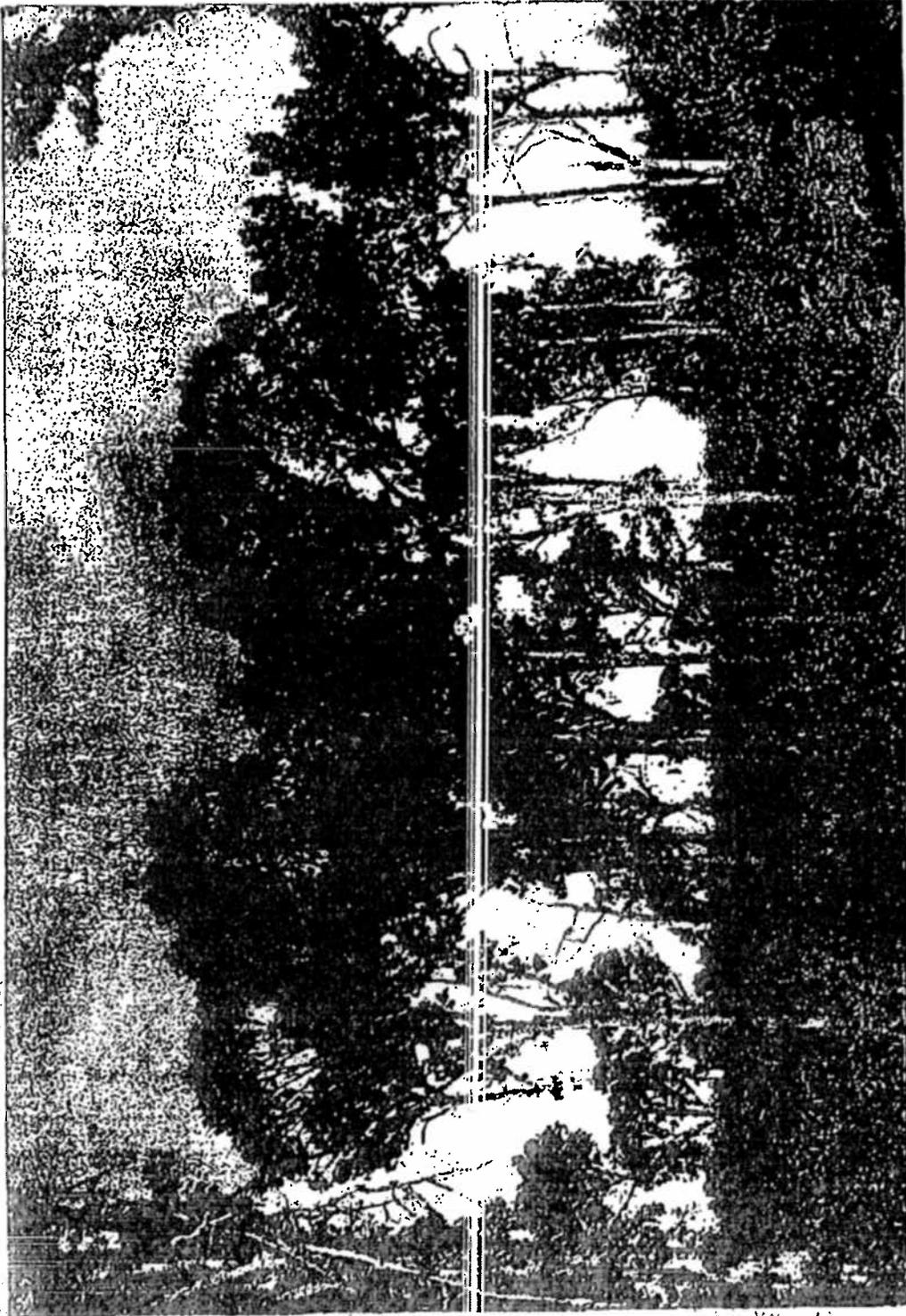
28620 Centerville Rd. • LaMotte, IA 52054 • (563) 773-2734 or 773-2764

Date 8-25-8

TO: Dept of Natural Resources		ADDRESS: South Central Finance 3911 Fish Hawkley Rd. Fitchburg MO 53711
NO.	DESCRIPTION	TOTAL
745 hrs	@ 130 m/h	RECEIVED \$196,850
SPECIAL INSTRUCTIONS: STATE use PD370 Vendor # 201556320		AUG 28 2008 SCR - FINANCE
DRIVER: Purchase # NMH00000878		UNIT #:
CUSTOMER: WHITE COPY OFFICE: CANARY COPY		SHIPMENT RECEIVED IN GOOD CONDITION (full name):

News Articles on DNR projects, which discusses the land Mark Stillmunkes cleared for conversion into a savanna.

SAVANNA IN MAKING



JERRY DAVIS for the State Journal

ABOVE: Savannas are grasslands with fewer than 20 trees per acre which were once common in Wisconsin, covering 5.5 million acres. BELOW: Bruce Folger, a Department of Natural Resources wildlife biologist in Lafayette and Iowa counties, points out a sedge plant that has appeared in an area where a forest is being turned into a savanna.



SAVANNAS are grasslands with fewer than 20 trees per acre which were once common in Wisconsin, covering 5.5 million acres. BELOW: Bruce Folley, a Department of Natural Resources wildlife biologist in Lafayette and Iowa counties, points out a sedge plant that has appeared in an area where a forest is being turned into a savanna.

Officials try to re-create once-widespread ecosystem

BLANCHARDVILLE — It might surprise people to learn that savannas were once widespread in Wisconsin. The ecosystem, a grassland with scattered trees, was in place up to 1850, but is being pre-white settlement times. Folley has put this park-like community at about 5.5 million acres.

Now, there's an effort to bring it back to life in southern Wisconsin.

"The savanna is one of the most endangered ecosystems in the world," said Katie Abbott, Military Ridge Prairie Heritage Area coordinator in Western Door County. "Some rare plants and animal species that are declining need this open habitat."

The term savanna historically has been used to identify plant communities similar to Wisconsin's tree-dotted grasslands. According to John T. Curtis' "The Vegetation of Wisconsin," Carib Indians used the term to describe some of their landscapes. The word was transferred to several European languages.

Oak opening is a synonym for Wisconsin's savanna with oak trees. As soon as natural fires were stopped by settlers, a rapid change occurred in these oak openings. Within a decade or so, the openings were filled with saplings and brush. Soon after, dense forests occupied the areas unless grazing kept the young trees at bay.

"Savannas are only represented by remnants," said Bruce Folley, Department of Natural Resources wildlife biologist in Lafayette and southern Iowa counties. "What we're trying to do here is establish a savanna on about 95 acres within the 4,000-acre Yellowstone Wildlife Area near Yellowstone Lake State Park."

Several years ago, the DNR identified this Lafayette County parcel as a logical site. In part because it lies within a larger Southwest Wisconsin Grassland and Stream Conservation Area project,

LANDOWNER INCENTIVE
State landowners who want to create a savanna on their property can receive a 50 percent discount on the cost of seedlings. The program is available to private landowners who are willing to apply for a 50 percent discount on the cost of seedlings. For more information, call 262-267-0727 for more information.

which encompasses land in parts of Dane, Green, Lafayette and Iowa counties.

A logging firm removed the understorey and a significant number of trees at the Yellowstone site, leaving a stand forest. The state benefitted from a timber sale.

"Savannas are not easy to maintain. Once they're re-created, they don't just continue," Folley said. "We'll have to maintain the area by using grazing or fire, and then grasses should replace the annuals. Some seeding of grasses may be necessary."

Some people are interested in establishing savannas on their property and a few have, according to Folley.

Ron and Sally Niemann have begun establishing a prairie and savanna and improving their woodland on their nearby 240-acre farm. "It's better for turkeys and deer, because it opens up the area and these animals can still use the nearby woods and fields when they need to," Ron Niemann said. "We'll graze cattle in the savanna but have more pasture grass than native grasses. We use mowing and grazing, some fire, too, to maintain the savanna."

Some game animals can be hunted on the Yellowstone property.

"Like the rest of the wildlife area, this savanna is open to hunting," Folley confirmed.

Folley said he has already begun to see a few sedges and grasses appear, probably from the seed bank in the soil, maybe carried in by animals. Annual weeds have also appeared. "Prescribed burns will take care of the weeds



and the bark on the oaks will protect them from fire," he said just as a raft of wild turkeys flew across a shallow ravine.

Now local residents and visitors are watching to see how these changes fit together.

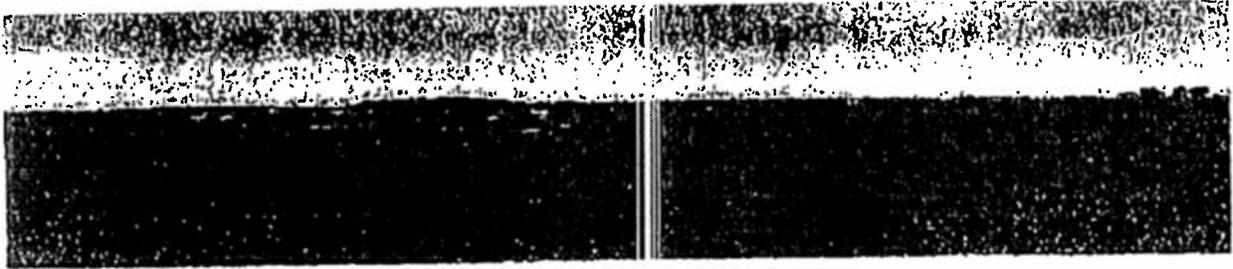
"Some have said 'it looks pretty nice,'" Folley said. "We'll continue to schedule tours to explain it. We had 15 to 20 people here for a session last year."

"The savanna gives a park appearance," Ron Niemann said.

Contact Jerry Davis, a free lance writer, at jivadjan@aol.com or 608-924-1122.



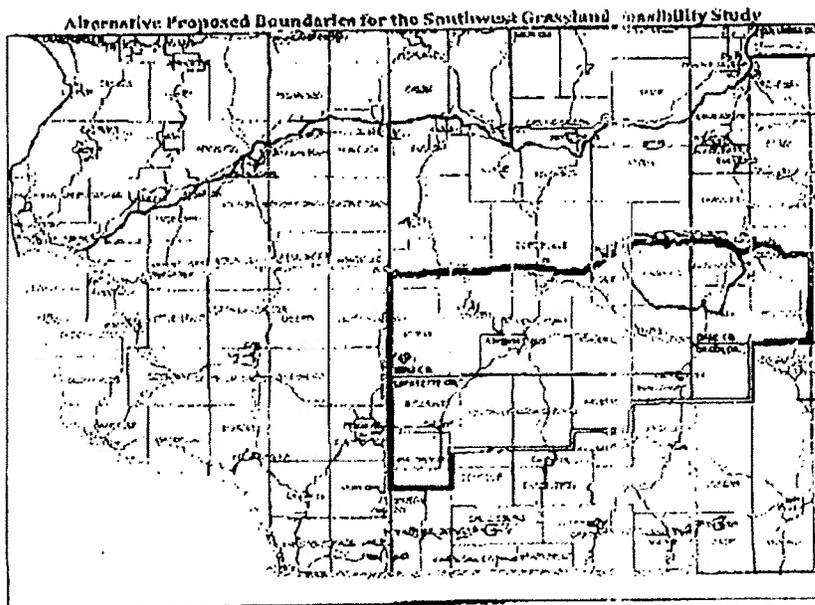
Southwest Wisconsin Grassland & Stream Conservation Area



The Wisconsin Department of Natural Resources (WDNR) is joining with a diverse and dedicated group of conservation partners, local governments, and landowners in Southwestern Wisconsin to establish a new Habitat Conservation Area, called the "Southwest Wisconsin Grassland and Stream Conservation Area."

Southwestern Wisconsin has been recognized for many years as one of the best grassland conservation opportunities in the Upper Midwest. The area stands out for its distinct combination of resources: exceptional populations of grassland birds, which are in serious decline across their range; many scattered remnants of the area's original prairie sod; concentrations of rare plants and animals, and spring-fed streams, all set within this expansive rural farming region of open fields, croplands, oak groves and pastures.

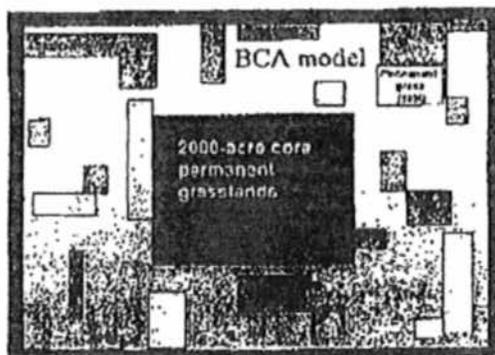
The partnership of the existing Military Ridge Prairie Heritage Area (MRPHA), which is within the WDNR's proposed SW Grasslands boundary, has led the way. Here a diverse group of partners and landowners are already managing and protecting many key areas in eastern Iowa and southwestern Dane counties. This Southwest Grassland project would expand upon the MRPHA partnership model.



Four alternative project boundaries are being considered, however the preferred boundary for the SW Grasslands project is shown here in blue. It expands upon an existing grassland boundary for the federal Conservation Reserve Enhancement Program (CREP) (shown in yellow). The MRPHA is shown in purple. The large green boundary reflects public input received at the initial public meetings. The Department proposes to protect 12,000 acres (through fee title and easement) across the 460,000-acre project area.

The primary goals of the Southwest Grassland project are to conserve and enhance functioning grassland, savanna and stream ecosystems across this landscape, and to establish three Bird Conservation Areas (BCAs) for declining grassland birds. Bird Conservation Areas are large, open areas of at least 10,000 acres, each with a 2,000-acre core of permanent, contiguous grassland (see model below). Long-term sustainability of grassland birds like the upland sandpiper, northern harrier, and western meadowlark depends upon large, open landscapes with adequate grassy cover for nesting and feeding. While such landscapes are now largely absent from Wisconsin (and the entire Upper Midwest), they still are found in the proposed SWGSCA region of Wisconsin.

Model of a Bird Conservation Area

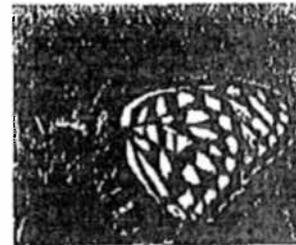


The project also would provide new public areas for hiking, birding, fishing, hunting and nature study. People living in the area have expressed high interest in such activities, yet the region currently offers very little public recreational land.

The many streams and rivers that drain the region's ridgetops and hillsides vary in quality and condition. Increased grassland cover and streambank management have demonstrably improved many area streams. Others still suffer from poor water quality and sedimentation. These "Impaired" streams (a federal designation), as well as the area's Outstanding/Exceptional Resource Waters, are the priority streams for this project.

Opportunities to protect open grasslands, prairie remnants, and priority streams can be found across the entire project area, but our primary focus will be on building the three 10,000-acre BCAs. Our focusing approach looks for specific areas where we can build these BCAs, while simultaneously protecting prairies, rare species, and priority streams. Prairies and prairie species will be much

more viable in the long-term when embedded within a larger grassland landscape. For example, the endangered Regal Fritillary butterfly needs open horizons, where this strong flier can find mates and food, and colonize other areas. Streams benefit from the infiltration and groundwater recharge that surrounding grass-covered uplands provide. Also, protection and management resources are limited, so we want to achieve the greatest benefit per acre protected.



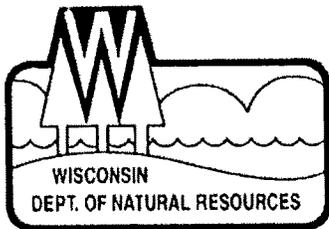
WDNR has developed three alternative Focus Areas, from which the final Focus Areas will be selected following public input. The Department derived these alternative Focus Areas by combining aerial photo and land cover maps with overlays of key resources such as priority streams and their watersheds, remnant prairies, endangered resources, soils, and existing conservation lands. Those areas on the landscape where these resource opportunities and needs converge are logical places to begin our work.

We expect to allocate 8-9,000 acres of our 12,000-acre total to the selected Focus Areas, mostly to the BCAs. Our primary role in the larger Partnership (see box below) will be to protect and manage each of the three 2,000-acre cores of permanent grassland, plus up to 1,000-acres of additional permanent grassland parcels scattered around each core. Partners are committed to working across this mosaic, and in areas where their programs are better suited to landowners' goals and desires.

We will reserve the remaining 3-4000 acres for opportunities to protect other key prairies, endangered resources, stretches of open grasslands buffering high priority streams, or key groundwater recharge areas across the entire project area. As always, we will work only with willing landowners. Contact *Cathy Bleser, WI DNR*, at Catherine.Bleser@WI.gov, or 608/275-3308 for more information.

Partners include: Southwest Badger Resource, Conservation & Development, The Prairie Enthusiasts, Driftless Area Land Conservancy, The Nature Conservancy, U.S. Dept. of Agriculture, Iowa Co., Iowa Co. Farm Bureau, Dane County, Pheasants Forever, and Trout Unlimited.





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Matthew J. Frank, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

April 15, 2009

Ms. Patricia Reardon
State of Wisconsin Claims Board
P. O. Box 7864
Madison, WI 53707-7864

SB 391
folder

Received

APR 17 2009

Secretary's Office
Dept of Administration

Subject: Claim No. 2009-014-DNR -Mark Stillmunkes

Dear Ms. Reardon:

This letter acknowledges a claim in the amount of \$76,050.00 filed by Mark Stillmunkes (Stillmunkes), President of Stillmunkes, Inc., La Motte, IA, and includes the Department of Natural Resources' (DNR's) recommendation regarding this claim.

Before we get to our recommendation, I believe it would be appropriate to give a brief history of the situation that led to Stillmunkes filing his claim. In an effort to re-create an endangered ecosystem, the DNR had planned to establish a 95-acre savanna within the Yellowstone Wildlife Area (YFA), located between Darlington and Blanchardville in Lafayette County. As part of this project, the DNR hired Stillmunkes, Inc., in the fall of 2007 to chip brush in the YFA. When weather conditions deteriorated in December, Stillmunkes stopped work on the job for the winter. The State paid Stillmunkes, Inc., \$3960.00 for the services provided in the fall of 2007.

Realizing that completing the job would require a Purchase Order (P.O.), the DNR solicited bids for brush and forestry mowing services on an hourly basis. On January 8, 2008, Stillmunkes, Inc., submitted a written bid for \$130.00 an hour. During conversations with Bruce Folley (Folley) of the DNR, Stillmunkes stated that he could likely chip between one-half an acre and one acre per hour, a pace consistent with other contractors. Thus, the whole job could be expected to cost between \$12,350.00 and \$24,700.00.

The P.O. was based on Stillmunkes' most conservative estimate of clearing one-half an acre an hour. If each acre required two hours of work at \$130.00 per hour, then clearing one acre would cost \$260.00. Consequently, one would reasonably expect the entire 95-acre job to take 190 hours and cost \$24,700.00. Because Stillmunkes had already provided \$3960.00 of the total services needed, the estimate in the P.O. was for \$20,800.00 (i.e., \$24,700.00 - \$3960.00 = \$20,740.00, or approximately \$20,800.00). If Stillmunkes cleared the land at a faster pace---approaching one acre per hour---then, naturally, the actual amount paid by the DNR would be less than \$20,800.00.

On February 7, 2008, the State of Wisconsin issued a P.O. for 160 hours of services at \$130.00 per hour, listing Stillmunkes, Inc., as the Vendor. The P.O. was numbered NMH00000878 and stated:

Forestry Mowing Services. Amount reflects attached 1/8/2008 vendor quotation. Hourly rate amount shown includes operator service and all fuel. Work is to be completed prior to May 31, 2008 on the Yellowstone Wildlife Area, sections 33 and 34, T. 4N - R. 4E, Lafayette County, WI.

Please contact Bruce Folley at phone number shown below to arrange all required delivery of necessary services. Amount shown is an estimate, actual amount paid will be based on actual authorized hours of services delivered.

In the spring of 2008, the weather was particularly wet and rainy. This delayed work on the job, which did not actually start until May. As a result, Stillmunkes asked Folley if he could work beyond the deadline of May 31, 2008. This request was approved.

During the summer, the weather continued to be wet, and Stillmunkes experienced equipment breakdowns. Stillmunkes apologized for the additional delays but explained that he wanted to do the job right. Not once did Stillmunkes report to Folley that he had exceeded the P.O. or that he would need more money to finish the work. Thus, Folley understood the delays to be due solely to inclement weather and equipment problems. In fact, while work was ongoing, Stillmunkes and Folley never discussed the cost of the job.

After Stillmunkes finished the job, Folley met him on site to review the results. Folley inspected the area and determined that the work had been completed in a satisfactory manner. Stillmunkes and Folley then parted company. During the course of this meeting, Stillmunkes never stated that the job had exceeded the P.O. and never requested additional money.

On August 25, 2008, Stillmunkes, Inc., submitted a bill to the DNR for \$96,850.00. This bill referred to P.O. number NMH00000878 and detailed 745 hours of services at \$130.00 per hour. The DNR finance department contacted Folley to inquire whether he had authorized the additional \$76,050.00. Folley confirmed that had not. Folley attempted repeatedly to call Stillmunkes but did not reach him. Ultimately, Folley left a message for Stillmunkes stating that the cost overrun in the bill had never been authorized. Folley did not hear back from Stillmunkes; instead, Folley was contacted by Stillmunkes' attorneys on October 1, 2008. They stated at that time that the bill for \$96,850.00 be paid in full by October 15, 2008. On October 13, 2008, the DNR sent Stillmunkes, Inc., a check for "Forestry Mowing Services" in the amount of \$20,800.00.

Shortly thereafter (October 22, 2008), Stillmunkes attorneys filed suit against the State of Wisconsin, alleging the value of the mowing services exceeded the amount paid; the suit was dismissed on December 26, 2008. (*Stillmunkes v. State of Wisconsin*, Lafayette County Circuit Court, Case No. 08 CV 133). On March 3, 2009, Stillmunkes filed a \$76,050.00 Claim for Damages Against the State with the State of Wisconsin Claims Board.

Upon careful assessment of the claim and consultation with DNR staff, the recommendation of the Department is that this claim should be denied. The P.O., which was based on a written bid and subsequent discussions, directs Stillmunkes to "contact Bruce Folley . . . to arrange all required delivery of necessary services" and goes on to state that the "actual amount paid will be based on actual *authorized* hours of services delivered" (emphasis added). As explained above, Folley never authorized Stillmunkes to exceed the 160 hours of work detailed on the P.O. of February 2, 2008. In fact, Stillmunkes never specifically asked Folley to authorize any hours of services beyond 160 hours and never asked Folley to authorize payment beyond \$28,000.00, a figure that had been calculated based on the 160 hours ordered in the P.O.

The fact that Stillmunkes was permitted to work beyond the May 31, 2008, deadline in the P.O. does not necessarily mean that more than 160 hours of services were needed to complete the job or that more than 160 hours of services had been authorized by Folley. A total of 160 hours of services can be provided over the course of four weeks, two months, or half a year. Postponing a deadline is not tantamount to authorizing additional hours of service or additional charges. In fact, nowhere in the Statement of Circumstances in his Claim for

Damages Against the State does Stillmunkes assert that Folley had authorized more that 160 hours of services or more than \$20,800.00 in charges. The P.O. requests services by the unit and defines a "unit" as an "hour." Nowhere in his Statement of Circumstances does Stillmunkes assert that additional hours of service had been requested or authorized. This is because none had been requested or authorized.

For a job that was mutually contemplated to take 160 hours, it goes beyond reason to think that Stillmunkes had been specifically authorized to work an additional 585 hours, more that four and one-half times that which was originally estimated and approved in writing! It also seems unlikely that a small business would be willing to provide 745 hours of service on a 160-hour P.O. without first obtaining authorization in writing, something that could quickly be accomplished by fax or email.

It is my opinion, therefore, that there is no legal basis for Stillmunkes' claim. The DNR bears no responsibility for the additional hours billed, as the additional hours were never specifically authorized, as required by the P.O. dated February 7, 2008. From an equitable standpoint, there is no basis for recommending payment of the claim. No acreage other than the original 95 acres were cut, and there is no proof that the additional hours were actually worked. Granted, it might have taken Stillmunkes a little longer to complete the job than 160 hours, but the DNR cannot award a contractor for miscalculating his bid; if that were the case, then we would be overwhelmed with low bidders who later sought recompense at the Claims Board. Moreover, this is not a slight overrun: asserting that it took four times as long to do the cutting, verges on the outrageous and is certainly unreasonable.

Normally, I would in closing provide a citation for appropriation, should the Claims Board disagree with the DNR's recommendation and chose to pay the claim. However, this claim is so tenuous that I feel it inappropriate to leave a citation, for fear that the Board may infer from doing so that the DNR believes there is a modicum of merit to this claim. There is not. Thus, if the Claims Board makes a decision *contra* to my recommendation, then I would respectfully request that I be contacted again and would, at that time, provide an appropriation citation upon consulting with the DNR Secretary and our Bureau of Finance.

The Department does not request a hearing on this matter.

Sincerely,



Michael D. Scott
Staff Attorney
Bureau of Legal Services

cc: Eric Lobner, SCR - Dodgeville
Bruce Folley, SCR - Darlington
Charlotte Gibson, DOJ



SB 391
folder

Received

AUG 24 2009

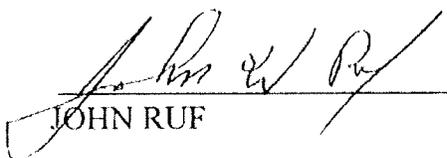
AFFIDAVIT

Secretary's Office
Dept of Administration

STATE OF WISCONSIN)
) ss:
LAFAYETTE COUNTY)

The undersigned, being first duly sworn, deposes and states that my name is John Ruf; that I reside at 11518 Hwy G, Darlington, Wisconsin 53530; that I am the owner of Ruf's Farm Service located at 11516 Hwy G, Darlington, Wisconsin 53530; that I also own 43 acres of land across from the Yellowstone wildlife area on English Hollow Road; that I am the Town Constable and Town Chairman of Fayette Township; that Bruce Folley with the Wisconsin DNR hired Mark Stillmunkes to cut and remove brush in the Yellowstone wildlife area; that the Yellowstone wildlife area has very steep terrain, in some areas it is straight up and down; that the majority of the brush Mark Stillmunkes was cutting and grinding was over 3" in diameter; that it was a very large overgrown area that Mark Stillmunkes had to cut; that I recall seeing Mark Stillmunkes working in the Yellowstone wildlife area numerous times all through the summer of 2008; that I also recall hearing Mark Stillmunkes machines running all through the summer of 2008; that I recall seeing black smoke rising up from the Yellowstone wildlife area from all the brush Mark Stillmunkes was burning during the summer of 2008; that I recall seeing Bruce Folley in the Yellowstone wildlife area many times during the summer of 2008.

Further Affiant Sayeth Not.


JOHN RUF

Subscribed and sworn to before me by the said John Ruf this 13 day of August, 2009.


Notary Public in and for the State of Wisconsin.
EXPIRES 2-24-2013

Received

AUG 24 2009

Secretary's Office
Dept of Administration

AFFIDAVIT

STATE OF IOWA)

) ss:

DUBUQUE COUNTY)

The undersigned, being first duly sworn, deposes and states that my name is Michael Kane; that I reside at 4079 Sandy Hook Road, Hazel Green, Wisconsin 53811; that during the summer of 2008, my son, Christopher Kane and I helped Mark Stillmunkes burn brush in the Yellowstone wildlife area; Christopher and I worked with Mark Stillmunkes for four days, eight hours each day; that Christopher Kane and I each worked 32 hours that week; that the majority of the brush we were burning was over 3" in diameter; that we burned hundreds of piles of brush in the four days we were there; that the piles we were burning were so large the flames were 30-40' high; that the Yellowstone wildlife area was very large and overgrown; that the terrain was very steep.

Further Affiant Sayeth Not.

Michael Kane

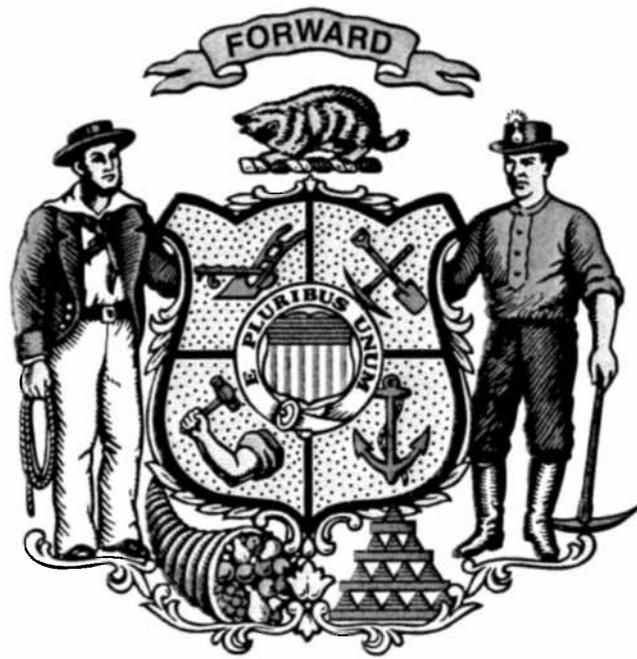
MICHAEL KANE

Subscribed and sworn to before me by the said Michael Kane this 6th day of August, 2009.

Katherine Brown

Notary Public in and for the State of Iowa.





Law Offices of
FUERSTE, CAREW, JUERGENS & SUDMEIER, P.C.
200 SECURITY BUILDING
151 WEST 8TH STREET
DUBUQUE, IOWA 52001-6832

Copy sent to: Carrie (Buller)
Steve Mason
Rep. Sherman
Sen. Hanson 8/25/09
ProMED/Scott, DNR

STEPHEN J. JUERGENS
ROBERT L. SUDMEIER*
DOUGLAS M. HENRY
MARK J. WILLGING
A. THEODORE HUINKER
DANITA L. GRANT*
WILLIAM N. TOOMEY
JENNY L. HARRIS †
JASON D. LEHMAN*
JASON L. COMISKY

ALL ATTORNEYS LICENSED IN IOWA
*ALSO LICENSED IN WISCONSIN
†ALSO LICENSED IN ILLINOIS

August 20, 2009

SB 391
folder

Received

AUG 24 2009

Secretary's Office
Dept of Administration

WILLIAM C. FURSTE
ALLAN J. CAREW
(RETIRED)

TELEPHONE:
(563) 556-4011

TELECOPIER:
(563) 556-7134

E-MAIL:
MAIL@FCCIS.COM

WRITER'S DIRECT
E-MAIL ADDRESS
dgrant@fccis.com

Ms. Patricia Reardon
State of Wisconsin Claims Board
P.O.Box 7864
Madison, WI 53707-7864

Re: Mark Stillmunkes claim

Dear Ms. Reardon:

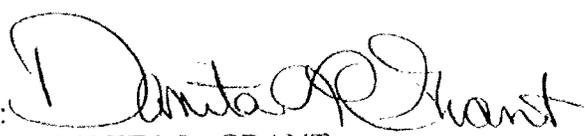
We represent Mark Stillmunkes in his claim for non-payment of services he performed for the Wisconsin Department of Natural Resources. Mr. Stillmunkes' claim is set for hearing on September 2, 2009. In addition to the information we previously provided in support of Mr. Stillmunkes' claim, we submit the enclosed sworn affidavit from Mark Stillmunkes in response to the agency's answer to his claim, affidavits given by three (3) other witnesses in this matter, and photographs depicting the area Mr. Stillmunkes worked and the type of foliage he had to deal with, for further consideration by the Claims Board.

Please see that the Claims Board is provided with this additional information prior to Mr. Stillmunkes' scheduled hearing. Thank you.

Very truly yours,

FUERSTE, CAREW,
JUERGENS & SUDMEIER, P.C.

BY:


DANITA L. GRANT

DLG/dmk
Enclosures

cc: Mark Stillmunkes

Received

AFFIDAVIT OF MARK J. STILLMUNKES

AUG 24 2009

STATE OF IOWA)
) ss:
DUBUQUE COUNTY)

Secretary's Office
Dept of Administration

The undersigned, being first duly sworn, deposes and states that my name is Mark J. Stillmunkes; that I reside at 28620 Centerville Road in LaMotte, Iowa; that I have read the State's Attorney General's response to my claim against the Wisconsin DNR; and that I have the following to state in rebuttal:

1. I was introduced to Bruce Folley in 2007 through Ron and Sally Newman while I was performing a job chipping brush 3" in diameter and smaller for them on land they owned. Bruce Folley stopped at the Newman's one day and liked the work I was doing and asked if I could do the same work chipping brush on some land owned by the Wisconsin DNR. I agreed, informing Bruce that I am able to clear a 1/2-1 acre of land that has brush 3" in diameter and smaller in about an hour. Bruce told me the job would be similar to what I was doing on the Newman's land.

2. I did not submit a bid or any documentation at first for the Wisconsin DNR job, nor was a Purchase Order issued for the job at first either. I started the job the Monday after Thanksgiving in 2007. I had another person working with me at that time, Tim Fields, and we each ran a machine. Initially I was paid \$90.00 an hour, plus fuel. We worked 44 hours, until winter prevented us from continuing. I was paid \$3,960.00 for that work (44 hours x \$90.00 an hour), plus fuel.

3. Bruce Folley then contacted me and said, "Mark, I got caught. I can't do it that way." Bruce told me he could not pay for my fuel separately, that my charge per hour had to take fuel into account, and that he needed to get a couple bids and have a Purchase Order issued.

4. I told Bruce I go through about 10 gallons of fuel an hour while chipping brush, so Bruce told me to draw up a bid for the job at \$130.00 an hour because he thought the extra \$40.00 an hour would adequately cover my fuel costs. Bruce told me what to put in my bid and what he did not want in the bid. Bruce specifically told me he did not want me to state in the bid my production rate, that I verbally told him prior to starting the job, of 1/2-1 acre an hour chipping 3" inch diameter and smaller brush. My secretary Rhonda Klein typed up the bid for me. She spoke to Bruce Folley on the phone about the terms and how they should be worded as she typed the bid. My bid was submitted in January 2008.

5. I never agreed to the estimate of 160 hours, that was written on the Purchase Order. I have no idea where that number came from.

6. Another guy who does the same work as I do chipping brush, Scott Olson, wanted this job also. Bruce Folley told me not to tell Scott what I was getting paid by the Wisconsin DNR to do the work.

7. After I submitted my bid and the Purchase Order was issued, I re-started the job. After a short while it became clear that the majority of the brush was more than just 3" in diameter. There were a lot of logs. After only 2 weeks into the job and being still on just the first hillside, I told Bruce face-to-face that the job was taking me much longer and was going to cost the Wisconsin DNR a lot more money. Bruce then directed me to stop grinding the brush and to start pushing it into piles and burning it, and then to go back through later and grind the small stuff that was left. Bruce told me I only had to notify him before burning the brush piles. I was instructed not to contact anyone else, as he did not want anyone else to know about the burning.

8. There were thousands of pine trees on the land, each about 5"-6" in diameter that I ground down. After pushing all the trees, there were mountains of brush. I pushed all of the trees, burned them, and then ground them down. The terrain was extremely steep. I rolled my machine twice because the terrain was so steep in areas. A dozer plate that was left by a logger on the land before me destroyed my machine head. The dozer plate was hidden underneath some logged trees when my machine hit it. I had to pay \$3,000 to fix my machine head. There was metal wire laying everywhere on the land that the DNR had put in there earlier that I wasn't told about or aware of. The wire wrapped up in my machine head and I had to use a torch to cut it out. The damage to my machine head from the wire cost me \$1,500 to fix. There were also piles of steel fence posts all over the land, about a truck trailer load full. The fence posts had to be removed before I could run my machine over the land to grind the brush.

9. Although the land takes up about 110 acres of space, because of the steep terrain, I cleared about 120-130 acres of land.

10. Because of the debris on the land, the steep terrain, the actual size of the brush, and the amount of the brush, I repeatedly told Bruce Folley it was taking me longer to do the work. I told Bruce there was at least three times more the work than I anticipated when I agreed to do the job. Bruce told me numerous times that he was really happy with the work I was doing, that I was doing such a good job, and that "we" really like your work ethic because you are always going. I also told Bruce the

job had run way over what the estimate on the Purchase Order said and Bruce told me several times, "Don't Worry. You're getting paid by the hour. You've got the Purchase Order."

11. Bruce Folley repeatedly visited the job site. He was there at least 15-20 times over the course of the 4 months I worked there. I had conversations with him almost every time about how much longer the job was taking and about the problems I had encountered. I also called Bruce numerous times from my cell phone while I was on the site and talked to him over the phone about the length of time and my concerns over getting paid. Bruce again repeatedly told me not to worry, that I had the Purchase Order that said I would be paid by the hour for the actual time worked. I trusted what Bruce told me.

Further Affiant Sayeth Not.

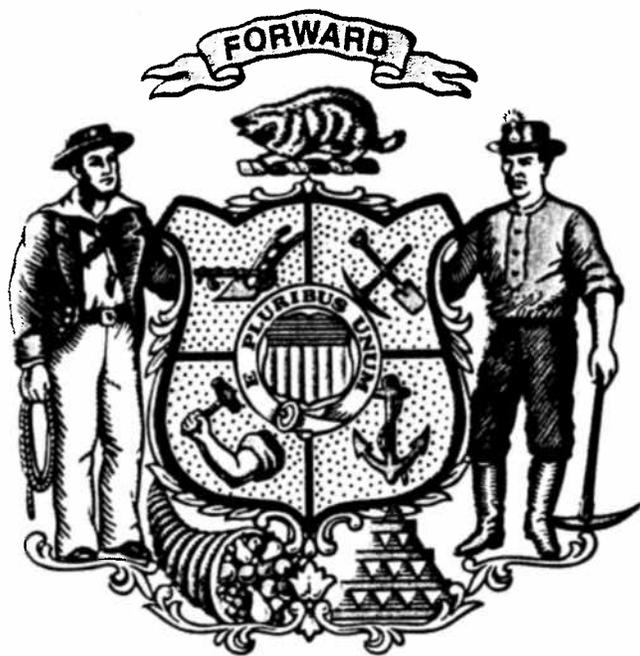


MARK J. STILLMUNKES

Subscribed and sworn to before me by the said Mark J. Stillmunkes this 25th day of June, 2009.



Notary Public in and for the State of Iowa.





Cleared areas.



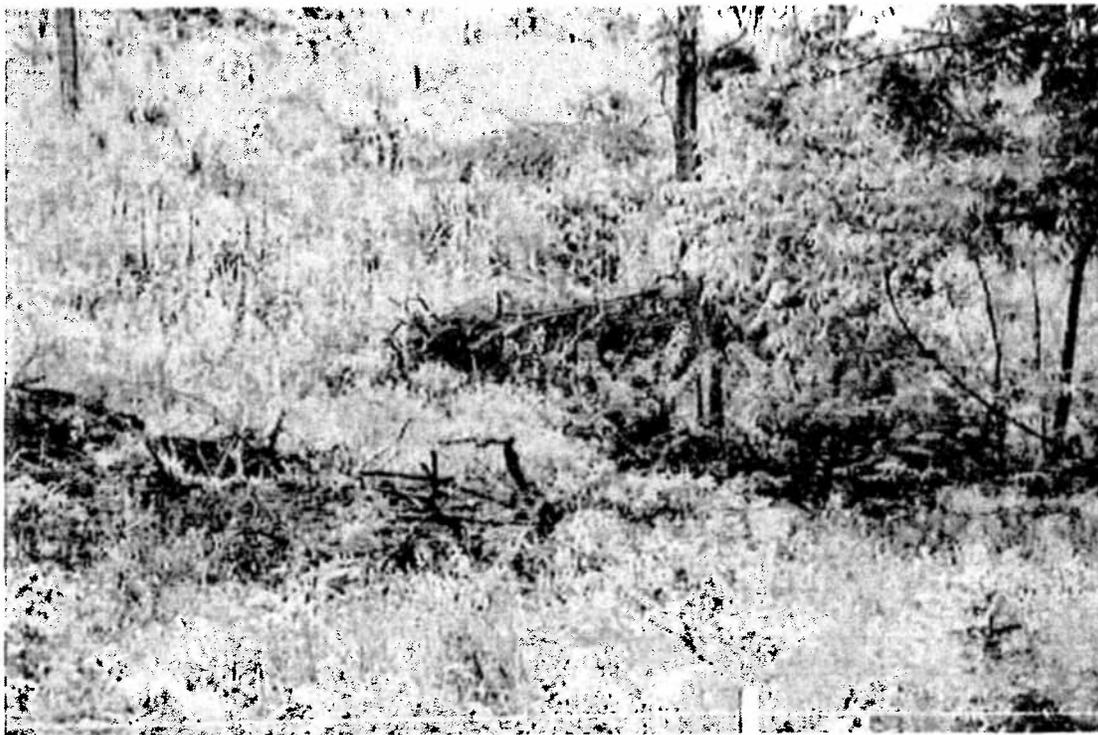
Foreground after clearing, background shows what cleared area looked like before Stillmunkes cleared area.



Left over after burning, much larger than 3" in diameter.



Large pile after burning, larger than 3" in diameter.



Three large burn piles close together depicts how dense and overgrown area was.



Pile by road that was not burned. Hill is 44 degree slope.



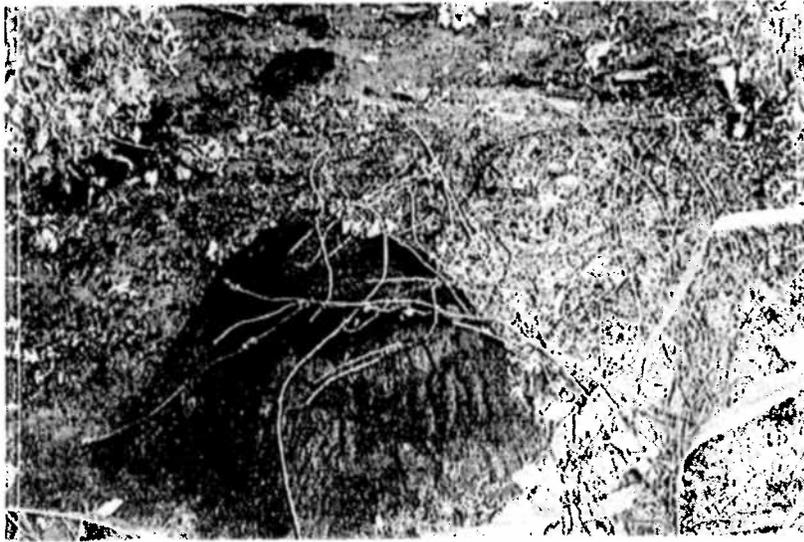
Pile after burning shows large diameter over 3".



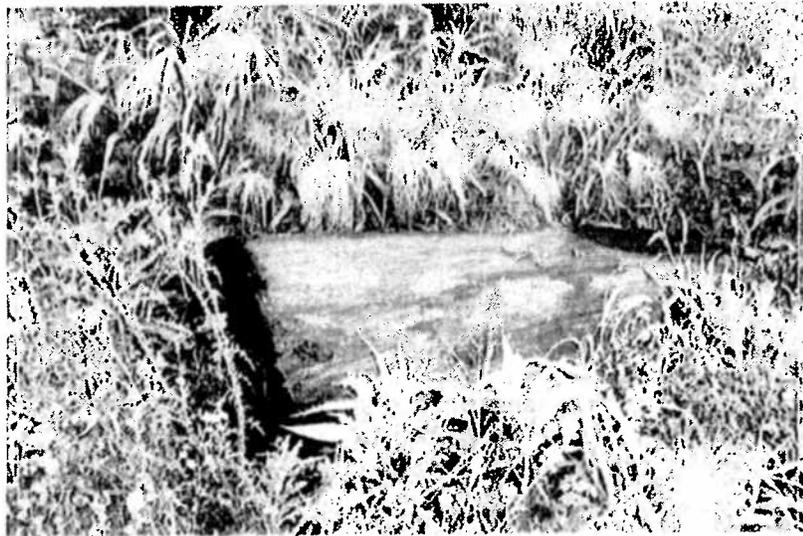
Example of large stumps Stillmunkes was to grind to ground level.



Notch marks all around bottom of stump where Stillmunkes machines would hit and cause damage to his equipment.



Example of wire found over entire Wildlife area that would get caught up in Stillmunkes equipment and cause damage.



After burn, much larger than 3" in diameter.



Pile depicting size over 3" in diameter.



Example of numerous stumps overgrown with grass and weeds left by logger before Stillmunkes making it difficult to get through Wildlife area.



Left over after burning, larger than 3" in diameter.





State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-3526/1
JTK:bjk:jf

2009 BILL 311

W/Notes

1 AN ACT relating to: expenditure of \$30,000 from moneys appropriated to the
2 Department of Natural Resources in payment of a claim against the state made
3 by Stillmunkes, Inc.

- Claims Bd. paid \$20,800
- This bill would authorize \$30,000
MORC

Analysis by the Legislative Reference Bureau Total: \$50,800

This bill directs expenditure of \$30,000 from moneys appropriated to the Department of Natural Resources (DNR) for the current fiscal biennium for wild turkey population development, management, preservation, restoration, and maintenance in payment of a claim against DNR made by Stillmunkes, Inc. The claimant contracted to perform brush removal and forestry services at the Yellowstone Wildlife Area in 2008. DNR issued the claimant a purchase order in the amount of \$20,800 for work to be completed by May 31, 2008. The purchase order stated that this amount was an estimate and the actual amount to be paid to the claimant would be based upon the actual amount of authorized services delivered. The claimant states that it encountered unforeseen weather conditions and was forced to remove larger brush and logs than DNR represented and that it obtained oral approval of DNR to work beyond the completion date and to perform additional work. DNR recommended denial of the claim. DNR states that it approved the claimant's request to work beyond the completion date but did not approve any work in an amount exceeding the amount estimated in the purchase order and the claimant did not submit proof that additional work beyond the amount estimated in the purchase order was performed. The claimant claimed \$76,050, representing the difference between the value of the amount of work it states was performed and the