

OCT 30 2023

Superior Court of WA
Charles G. Rhodes

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF MASON

BRAD CAREY, PAMELA ROGERS, and
LIBERTY MANAGEMENT LLC, a
Washington State limited liability company,

Plaintiffs,

v.

WASHINGTON STATE DEPARTMENT
OF NATURAL RESOURCES, a public agency,

Defendant.

NO. 19-2-00737-23

JUDGMENT AND ORDER

~~(PROPOSED)~~

THIS MATTER came before the Court on Plaintiffs Brad Carey, Pamela Rogers, and Liberty Management LLC's Motion for Summary Judgment.

The Court has reviewed the entire court file in addition to the recently filed pleadings including:

1. Plaintiffs' Motion for Summary Judgment;
2. The Declaration of Counsel Nicholas Power and exhibits thereto.
3. The Declaration of Brad Carey and exhibits thereto.
4. The Declaration of Pamela Rogers and exhibits thereto.
5. The Declaration of Wade Anderson and exhibits thereto.
6. The Declaration of Grant Novak and the expert report appended thereto.

ORDER

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7. The Declaration of Martin Fisher and the expert report appended thereto.

8. RESPONSE TO PLAINTIFFS' MOTION; (CR56(A) REPLY) NP

9. REPLY IN SUPPORT OF PLAINTIFFS' MOTION NP

10. DECLARATION OF POWER WITH ATTACHMENT NP

11. DECLARATION OF VERA WITH ATTACHMENT NP

12. _____

13. _____

14. _____

15. _____

The Motion was heard in open court on OCTOBER 30, 2023. Each party was represented at the hearings by counsel of record.

The Court makes the following FINDINGS:

1. The Court hereby FINDS that Defendant Washington State Department of Natural Resources was negligent in the manner in which it unplugged the culvert at Wood Lake on or about December 1, 2016 and is therefore liable to Plaintiffs for the proximately caused damage occasioned by the flooding including the costs of the mitigation and restoration efforts both undertaken and required.
2. The Court FURTHER FINDS that the Defendant trespassed on the property of Plaintiffs when it released water and debris in uncontrolled manner on or about December 1, 2016 and that such substantially and unreasonably interfered with Plaintiff's use and enjoyment of Plaintiff's real property.

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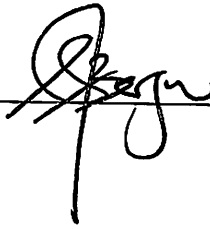
ORDER

- 1 3. The Court FURTHER FINDS that DNR's actions on or about December 1, 2023
2 wrongfully caused waste and injury to Plaintiffs' real property pursuant to RCW
3 4.24.630.
- 4 4. The Court FURTHER FINDS that DNR deprived Plaintiffs of their real property
5 without having first paid just compensation as required by Article I, Section 16 of the
6 Washington State Constitution.
- 7 5. The Court FURTHER FINDS that DNR breached its fiduciary duties under the
8 Public Trust Doctrine.
- 9 6. The Court FURTHER FINDS that Plaintiffs have proven damages in an amount of
10 \$475,830.00; and that pursuant to RCW 4.24.630 that amount is appropriately trebled
11 yielding a total finding of trebled damages of \$1,427,490.00.
- 12 7. The Court Further Finds that Plaintiffs are entitled to an award of fees and costs
13 (including expert witness fees). Plaintiffs are directed to submit fee and cost
14 declarations within 14 days of this Order with a proposed judgment and judgment
15 summary detailing the damages awarded herein, in addition to the fees and costs
16 recoverable by Plaintiffs.
- 17 8. It is FURTHER ORDERED that within 90 days of this Order, DNR submit a
18 remediation plan for Caldervin Creek which returns the functions and values of the
19 Creek and returns it flow characteristics and hydrology to its pre 2016 state. Upon
20 the plan's approval by the Court, DNR shall undertake any and all steps to implement
21 said plan.

22 9. THE COURT DENIED THE DEFENDANTS' CR 56 (f) REQUEST for
ENTERED IN OPEN COURT on this 30th day of October 2023. CONTINUANCE. *JP*

23 ORDER

Hon.



Presented by:

s/Nick Power

Nicholas Power WSBA #45974

Approved to form and notice of presentation waived:

Sean Hornbrook WSBA #31260

SCOTT M. BARBARA, WSBA No. 20885
SENIOR COUNSEL
ATTORNEY FOR DEFENDANT DNR

ORDER

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