

FILED  
Court Administrator

STATE OF MINNESOTA

JUL 7 2011

DISTRICT COURT

COUNTY OF RAMSEY

By BH Deputy

SECOND JUDICIAL DISTRICT

Case Type: Civil

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In re-Government Shutdown Litigation,

Court File No. 62-CV-11-5203

In Re Temporary Funding Core Functions  
Of the Executive Branch of the State of  
Minnesota

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**PETITION OF THE PORT AUTHORITY OF THE CITY OF SAINT  
PAUL FOR AN ORDER LIFTING THE TEMPORARY TERMINATION OF THE  
DEPARTMENT OF NATURAL RESOURCES' MAINTENANCE EXCAVATION  
PERMIT FOR THE PORT AUTHORITY'S SOUTHPORT TERMINAL**

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**INTRODUCTION**

The Port Authority of the City of Saint Paul ("the Port Authority") is a governmental subdivision, body politic and corporate, created by the State of Minnesota in 1932. Minn. Stat. § 469.049.

The Port Authority seeks a court order permitting the Port Authority to continue and complete its routine maintenance dredging at its Southport Terminal. This maintenance dredging is critical to open access to a public mode of transportation for interstate commerce shipping of commodities to and from worldwide markets, including the providing of essential commodities to Minnesotans and others throughout the upper Midwest region, such as feed and product for the livestock of Minnesota farmers.

Granting the Port Authority's Petition will impose no additional costs to the State of Minnesota while protecting public property and furthering essential and core governmental functions.

### **FACTUAL BACKGROUND**

The Port Authority's statutory mandate is to ensure that the ports at the Mississippi River in the City of Saint Paul operate:

A port authority *shall*: (1) promote the general welfare of the port district, and of the port as a whole; (2) try to increase the volume of the port's commerce; (3) promote the efficient, safe, and economical handling of the commerce; and (4) provide or promote adequate docks, railroad and terminal facilities open to all on reasonable and equal terms for the handling, storage, care, and shipment of freight and passengers to, from, and through the port.

Minn. Stat. § 469.055(1) (2011) (emphasis added). To fulfill this statutory mandate contained in the word, "shall", the Port Authority must dredge its terminals to ensure the viable and continued use of its operating terminals.

Interstate commerce depends on functional ports and the Southport Terminal is an essential component of the barge river commerce in the City of Saint Paul. *See* Affidavit of Kelly A. Jameson, dated July 7, 2011, and Affidavit of Charles F. Derscheid, dated July 7, 2011.

The Port Authority has been engaged in routine dredging of its terminals since approximately 1932 to the present. Southport Terminal is public property serving an essential function of the State of Minnesota and the City of Saint Paul dating back to when Minnesota was a territory. *See* Affidavit of Eric D. Larson, dated July 7, 2011, Exhibit A, "Property of the Port Authority of the City of Saint Paul", prepared by the Saint Paul City Planning Survey in 1938. On as needed basis, the Port Authority seeks

reactivation of its dredging permit from the DNR. Per the documentation attached to the Affidavit of Charles F. Derscheid, dated July 7, 2011, reactivating the Port Authority's maintenance dredging is routine. Southport Terminal must be dredged and will become inaccessible if not dredged once the Mississippi River's water level decreases in the next week. Dredging was and is scheduled to commence this Tuesday, July 12, 2011.

Unfortunately, the Port Authority received on July 5, 2011 a blanket temporary termination of all DNR permits, preventing the Port Authority to dredge Southport Terminal. The Port Authority's routine maintenance dredging does not require any State monies or resources. The Port Authority only requires leave to proceed in accordance with the issued permit. The DNR hydrologist has already authorized this work to commence. The Permit does permit a DNR hydrologist to inspect the dredging operations, but in the Port Authority's experience the DNR hydrologist has not undertaken inspection of this routine and necessary operation. [Jameson Affidavit, ¶ 6] In any event the Port Authority has hired a hydrologist to oversee its maintenance dredging activities.

## **DISCUSSION**

Judge Gearin concluded, "Core functions include matters relating to life, health and safety of Minnesota citizens, the protection of rights of citizens under the Minnesota and United States Constitutions, and the maintenance and preservation of public property." June 29, 2011 Order, Conclusions of Law, at p. 15, ¶ 4. Judge Gearin's Findings of Fact incorporated the Office of Management and Budget's conclusion that "core and essential services necessary to protect life and property" include (1) "Continuance of transportation safety functions and the protection of transport property,

and (2) Protection of lands, buildings, waterways, equipment and other property owned by the government”. June 29, 2011 Order, Findings of Fact, at p. 5-6, ¶ 18. In keeping with the core function identified above, the Port Authority must be permitted to dredge its Southport Terminal otherwise this public transportation property, waterway, and function ceases and is not protected. *See also* June 29, 2011 Order, Conclusions of Law, at p. 14-15, ¶ 3 (citing *Clerk of Court’s Compensation for Lyon County Commissioners*, 241 N.W.2d 781, 784 (Minn. 1976) (“recognizing that ‘separation of powers becomes a myth,’ if one branch of government could ‘effectively abolish’ another”)).

The Port Authority also has a contract with the U.S. Army Corp of Engineers (“the Army Corp”) for the Army Corp to deposit its dredge materials at the Southport Terminal. The Port Authority needs to dredge to provide the Army Corp access to the Southport Terminal. Judge Gearin’s order recognizes the constitutional requirements of the Supremacy of the United States Government respecting contractual obligations with the United States. June 29, 2011 Order at p. 7, ¶ 24. The Army Corp dredges the main channel of the Mississippi River so that the barges may use the River. The Army Corp has a contract with the Port Authority to use the Southport Terminal to deposit its dredge material. The Army Corp may not need access and use of Southport until sometime this fall, but per the Port Authority’s contract with the Army Corp, the Southport Terminal must be accessible for the Army Corp to fulfill its main channel dredging when needed by the Army Corp. If the Army Corp requires access to the Southport Terminal this summer the Port Authority must dredge soon.

## CONCLUSION

The Port Authority seeks a court order permitting the Port Authority to continue and complete its routine maintenance dredging at its Southport Terminal. This maintenance dredging is critical to open access to a public mode of transportation for interstate commerce shipping of commodities to and from worldwide markets, including the providing of essential commodities to Minnesotans and others throughout the upper Midwest region, such as feed and product for the livestock of Minnesota farmers.

Granting the Port Authority's Petition will impose no additional costs to the State of Minnesota while protecting public property and furthering essential and core governmental functions.

Dated: July 7, 2011.

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## ACKNOWLEDGMENT

The undersigned acknowledges that sanctions may be imposed pursuant to Minn. Stat. § 549.211, Subd. 3

