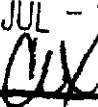


STATE OF MINNESOTA  
COUNTY OF RAMSEY

FILED  
Court Administrator

DISTRICT COURT

JUL - 7 2011 SECOND JUDICIAL DISTRICT  
By  Deputy CASE TYPE: OTHER CIVIL

In re Government Shutdown Litigation,

Court File No. 62-cv-11-5203  
The Honorable Kathleen R. Gearin

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

Special Master Kathleen Blatz

**VERIFIED PETITION OF LAKE  
MANAGEMENT, INC., LAKE  
RESTORATION INC., MIDWEST  
AQUA CARE, INC., AND CENTRAL  
MINNESOTA AQUATICS, INC.**

This Verified Petition is submitted on behalf of Lake Management, Inc., Lake Restoration, Inc., Midwest Aqua Care, Inc. and Central Minnesota Aquatics, Inc. (hereinafter referred to as "Petitioners") to request an order requiring that the Minnesota Department of Natural Resources (hereinafter the "DNR") authorize the companies named herein to perform the services authorized by existing and currently effective DNR issued permits to manage and control aquatic vegetation, swimmers' itch parasites, and algae; limited to permits that do not expressly require further supervision by the DNR. Significantly, the completion of work under these permits does not require any expenditure of funds on the part of the State of Minnesota.

The Petitioners herein are established and long-standing commercial providers of aquatic control services in the form of herbicides and algaecides for management of noxious weeds, swimmers' itch, and algae in Minnesota lakes and ponds. These companies do not provide mechanical control services, but rather control through the application of EPA approved and Minnesota DNR allowed herbicides and algaecides. This includes invasive and exotic (non-native) aquatic vegetation which is very much in the State of Minnesota's interest to control.

These companies collectively employ approximately 50 individuals during the summer months – the only time in which these application services can be performed.

The control of lake vegetation and algae by these companies is done pursuant to permits issued by the DNR pursuant to Minn. Stat. § 103G.615 and Minn. Rule, Chapter 6280. Upon application for a permit, the DNR conducts such investigation it considers to be appropriate based upon the “criteria for issuing APM (aquatic plant management) permits” set forth in the DNR rule. All investigation of the need for the permit and its meeting the criteria for issuance is conducted by the DNR before the permit is issued. The only activity required by the permittee after issuance of the permit is to notify by telephone call or e-mail to the DNR’s automated system as to when the activity pursuant to the permit is to start.

Permit application fees are substantial. For example, Lake Management, Inc. and Lake Restoration, Inc. each have approximately 150 open and outstanding permits under which they would perform services in the next 60 days. Any one of these permits might authorize work for a large number of lake residents on the same lake and often times are issued to a lake association formed for the betterment of the quality of that lake or to a local government unit. Fees for such permits are up to \$750 per permit, based upon a formula of \$35 per property. Attached hereto as Exhibit A is an example of current “Permit to Destroy Aquatic Vegetation” held by Lake Management, Inc.

In a very few instances, the Minnesota DNR issues a permit that requires further supervision by DNR staff. Attached hereto as Exhibit B is an example of such a permit which requires supervision issued to Lake Management, Inc. Petitioners herein are not requesting that they be allowed to continue to provide lake management services under such supervision permit,

but rather are only requesting authorization to continue services under those permits that do not require further DNR supervision.

On or about July 2, 2011, each of the named Petitioners received a letter from the Minnesota DNR, a copy of which is attached as Exhibit C, which required that such companies suspend all activities pursuant to the permits that had previously been issued, until state offices were re-opened for business. Part of the rationale for such suspension was that commercial mechanical control companies require inspection as they move their equipment from lake to lake. However, that is not applicable to the four Petitioners herein, which do not conduct commercial mechanical control services.

With respect to the requirement that in an unsupervised permit that the permittee shall provide advance notice of commencing work to the DNR, such notice is provided by e-mail or phone call into an automated system. None of the four companies herein has ever been contacted by the DNR requesting a delay, modification, suspension or anything else, based upon these notifications. These notifications are a formality and can continue in the absence of DNR staff. However, in any case, as indicated in the DNR letter (Exhibit C), "DNR Conservation Officers will continue working during a shutdown and will enforce this suspension."

In the event that relief is not granted and the permits continue to be suspended, there will be significant adverse consequences to the Petitioners and others, including the following:

- (a) Petitioners have a very short window for aquatic applications due to the aquatic plant growing cycle and DNR permit expiration dates, with the consequence that one half or greater of their yearly income is threatened and may be lost because of contracts that will be unfulfilled. This financial harm is exacerbated in that, based on permits already received, thousands of dollars of herbicide have already been purchased and delivered to Petitioners to fulfill the permitted contracts.
- (b) Petitioners have already begun the process of laying off employees and reducing employee hours. If the suspension holds, these

layoffs will have to be expanded and continued throughout the duration of the suspension. These employees receive a significant portion of their earnings for the year during this critical time period.

- (c) The customers of Petitioners will be harmed in that they will not be able to obtain and receive the services necessary to control nuisance aquatic vegetation. In many instances, these are lake associations and often times Minnesota counties and cities. One very distinct possibility is that public beaches may be required to be closed because of swimmers itch, which would otherwise be treated immediately upon its occurrence with the permits that have previously been issued. Public beaches may be closed because of swimmers itch or because of invasive weeds that might jeopardize use by residents and visitors.
- (d) Particularly for those customers of Petitioners that have conducted programs over a period of many years and now have noxious aquatic weeds under control, the loss of one summer of further management may have more consequences than just one year, but might put these customers back three or four years in their weed control and management programs.

These harms are irreversible and no suitable source is available to recoup any monetary damages that may result thereby.

Under the statute pursuant to which the DNR is operating, in the event that the Commissioner wants to issue an order stopping a person from destroying aquatic vegetation, there is a process set forth for the Commissioner to follow in order to do so. See, Minn. Stat. § 103G.615, Subd. 4. Under the Commissioner's rules, an existing permit may only be suspended or modified upon "a determination that that is necessary to protect the interest of the public, to protect human life, or to protect fish, wildlife, and native plants." However, a contrary determination was made prior to the time the permits were issued and nothing has changed in the meantime to change this determination, other than that the state has been shutdown. These permits and the activities which they authorize can be and will be conducted independently from any further state activity or funding.

Based upon the foregoing, Petitioners are requesting that an order be entered staying the effectiveness of the DNR's suspension letter and authorizing the above named aquatic management companies to perform services pursuant to those existing and currently effective permits which do not expressly require further supervision by the DNR. A copy of a proposed Order is attached hereto.

DATED: July 7, 2011

Respectfully Submitted,

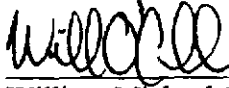
**LINDQUIST & VENNUM PLLP**

By William E. Flynn  
William E. Flynn (#0030600)  
wflynn@lindquist.com  
4200 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402-2274  
(612) 371-3211  
(612) 371-3207 (facsimile)

**ATTORNEYS FOR PETITIONERS**

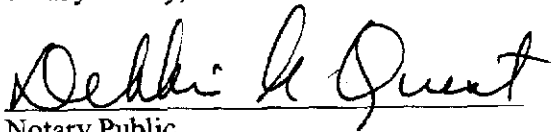
**VERIFICATION**

William Michael O'Connell, being first duly sworn upon oath, deposes and states that he is an officer and owner of Lake Management, Inc. and that he has read and understands the foregoing Verified Petition, and that the same is true of his own personal knowledge, information and belief.



\_\_\_\_\_  
William Michael O'Connell

Subscribed and sworn to before me this  
7<sup>th</sup> day of July, 2011.



\_\_\_\_\_  
Notary Public





PERMIT TO DESTROY AQUATIC VEGETATION

Permit No.: 11F-3A383
Device No.:

The Commissioner of the Natural Resources, pursuant to authority by law, hereby grants this permit to the person whose name appears below, for the purpose specified, dates inclusive as shown, in the conditions hereinafter set forth:

Permittee's Name: JOE BESTER
Fire Number:
Telephone Number: 651-483-3488
Lake Address (if different): 480 W HORSESHOE DR
SHOREVIEW MN 55126

INCLUSIVE DATES OF PERMIT:
FROM: May 16, 2011
TO: September 01, 2011
TYPE OF PERMIT: 1 Season

THIS PERMIT APPLIES ONLY TO THE WATER AREA AS DESCRIBED AS FOLLOWS:
Name of Lake: Owasso
Acres: 360
County: Ramsey
Extending 57 feet along shore and lakeward a maximum distance of 150 feet and 15 acres.
Treatment by permittee or: LM - Lake Management
Location of Treatment Area: Permittees and their allowed treatment areas are listed on this permit, also up to a 15.0 acres located in the center and south portions of the lake as diagrammed on application. channels up to 15' wide are allowed at #2982 W. Owasso blvd, #2916 W. Owasso blvd, #2900 W. Owasso blvd, #2924 W. Owasso blvd, #2976 W. Owasso blvd, if needed.

Type of Control: Chemical control of submerged and floating leaf vegetation, filamentous algae, chara, snails (swimmer's itch).
Means and Methods Allowed: Up to two treatments with DNR approved herbicides and algicides to be applied by a licensed commercial applicator. Up to two treatments with copper sulfate for swimmer's itch control per season as per label instructions. Only copper products from Phelps Dodge and Chem One, which list snails as a target pest, may be used. You must wait at least 7 days between each treatment. Closing the area to swimming for 24 hours following swimmers itch treatment is recommended. Maximum dose is 10.6 lbs/acre-foot (0.24 lbs per 1000 square feet). This is a one (1) year permit and must be renewed for the 2012 aquatic plant control season.

THE PERMITTEE OR AGENT SHALL GIVE NOTICE OF COMMERCIAL MECHANICAL CONTROL OR CHEMICAL TREATMENT DATE TO THE FOLLOWING PERSON WHICH SHALL BE RECEIVED BEFORE BEGINNING ANY WORK HEREUNDER. FAILURE TO NOTIFY PRIOR TO BEGINNING WORK OR VIOLATION OF OTHER TERMS AND CONDITIONS OF THIS PERMIT SHALL BE GROUNDS FOR REVOCATION OF THIS PERMIT OR REFUSAL TO RENEW.
APM Treatment Notification: APM.notifyR3a@state.mn.us; 1200 Warner Rd St. Paul, MN; or 651-296-9242

The Minnesota Department of Natural Resources does not vouch for the effectiveness of any control method or operation nor does it stand as arbiter whether or not any such method or operation has been satisfactory. This permit is permissive only and no liability shall be incurred by the State or by any of its offices, agents, or employees by reason of the issuance of it or by reasons of acts or operations of the permittee. The permittee shall be solely responsible for any damage or injury to persons, domestic or wild animals, waters, or property, real or personal of any kind, resulting from the permittee's acts or operations, and at all times the State of Minnesota, its officers, agents, and employees, shall be held harmless from any liability for such damage or injury.

AFS: 610 EAST METRO
CO: 325
Other:

Authorized Signature for Commissioner: [Signature]
Date: Digitally signed by Sean Sisler
DN: CN = Sean Sisler, C = US
Date: 2011.04.28 10:07:25 -05'00'



# Supervision Permit



## PERMIT TO DESTROY AQUATIC VEGETATION

Permit No.: 11F-3A100

Device No.:

The Commissioner of the Natural Resources, pursuant to authority by law, hereby grants this permit to the person whose name appears below, for the purpose specified, dates inclusive as shown, in the conditions hereinafter set forth:

Permittee's Name DAN COUGHLIN CITY OF FOREST LAKE 220 N. LAKE ST. FOREST LAKE MN 55025	Fire Number  Lake Address (if different) 220 N. LAKE ST. FOREST LAKE MN 55025	Telephone Number 651-209-9750
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### INCLUSIVE DATES OF PERMIT:

FROM: April 01, 2011	TO: May 25, 2011	TYPE OF PERMIT: 1 Season
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### THIS PERMIT APPLIES ONLY TO THE WATER AREA AS DESCRIBED AS FOLLOWS:

Name of Lake Forest	Acres 82015900 2206	County Washington
Extending _____ feet along shore and lakeward a maximum distance of _____ feet and <u>200</u> acres.		
Treatment by permittee or: LM - Lake Management		
<u>Location of Treatment Area:</u>		
As illustrated on map submitted with application. Not more than 200 acres allowed for early season offshore CLP control. CLP herbicide treatments are not allowed from May 14-15, 2010, MN fishing opener.		

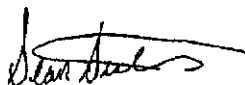
Type of Control:  
Chemical control of submerged vegetation (curly leaf pondweed) early season. Chemical treatments must stay 25' away from floating leaf and emergent plants.

Means and Methods Allowed:  
Up to one treatment with Endothal formulated as Aquathol to be applied per label instructions. Dose rate target is .75ppm-1.0ppm for early season Curly leaf Pondweed control. Treatment must occur when water temperature are between 50 and 60 degrees Fahrenheit and increasing. Treatment must be targeted to curly leaf pondweed and completed before May 21, 2010. Steve Hanson of MN DNR Ecological Resources must be present for treatment or give his personal approval to treat in his absence. Contact Steve at 651-407-5343 to make the appropriate arrangements prior to treatment date.

THE PERMITTEE OR AGENT SHALL GIVE NOTICE OF COMMERCIAL MECHANICAL CONTROL OR CHEMICAL TREATMENT DATE TO THE FOLLOWING PERSON WHICH SHALL BE RECEIVED BEFORE BEGINNING ANY WORK HEREUNDER. FAILURE TO NOTIFY PRIOR TO BEGINNING WORK OR VIOLATION OF OTHER TERMS AND CONDITIONS OF THIS PERMIT SHALL BE GROUNDS FOR REVOCATION OF THIS PERMIT OR REFUSAL TO RENEW.  
APM Treatment Notification: APM.notifyR3a@state.mn.us; 1200 Warner Rd St. Paul, MN; or 651-296-9242

The Minnesota Department of Natural Resources does not vouch for the effectiveness of any control method or operation nor does it stand as arbiter whether or not any such method or operation has been satisfactory. This permit is permissive only and no liability shall be incurred by the State or by any of its offices, agents, or employees by reason of the issuance of it or by reasons of acts or operations of the permittee. The permittee shall be solely responsible for any damage or injury to persons, domestic or wild animals, waters, or property, real or personal of any kind, resulting from the permittee's acts or operations, and at all times the State of Minnesota, its officers, agents, and employees, shall be held harmless from any liability for such damage or injury.

AFS: 610 EAST METRO  
CO: 374  
Other:

Aut 

er Digitally signed by Sean Sisler  
DN: CN = Sean Sisler, C = US  
Date: 2011.03.04 12:48:06 -06'00'





Minnesota Department of Natural Resources  
500 Lafayette Road • St. Paul, MN • 55155-40



June 30, 2011

Dear Aquatic Plant Management or Commercial Mechanical Control Permit Holder:

**Re: Potential State Government Shutdown and Aquatic Plant Management in Public Waters.**

In the event of a state government shutdown and pending any other direction from the courts, all aquatic plant management (APM) and commercial mechanical control permits will be suspended from July 1, 2011, until state offices re-open for business. Minnesota Rules, part 6280.0900, provide that the Minnesota Department of Natural Resources (DNR) may suspend an aquatic plant management or commercial harvest permit without prior notice whenever it has been determined necessary to protect the public interest and/or fish, wildlife and native plants.

All APM permits require notification of program staff prior to conducting work authorized under the permit. In addition, commercial mechanical control companies must notify the DNR so that equipment can be inspected to confirm that it has been thoroughly cleaned before being launched in a public water, to prevent the movement of invasive species. Because there will be no DNR staff available to receive notices, inspect aquatic plant control being performed, or inspect mechanical control equipment, all APM permits will be suspended in the event of a state government shutdown until state offices re-open for business.

DNR Conservation Officers will continue working during a shutdown and will enforce this suspension.

Media announcements that state offices have re-opened for business will serve as your notice that this suspension has been lifted.

Thank you for your cooperation in this matter.

Sincerely,

Steve Hirsch, Director  
Division of Ecological and Water Resources

c: Conservation Officers

