

FILED
Court Administrator

STATE OF MINNESOTA

JUL 15 2011

DISTRICT COURT

COUNTY OF RAMSEY

By Deputy

SECOND JUDICIAL DISTRICT

Court File No. 62-CV-11-5203

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

**ORDER REGARDING PETITION OF
THIEF RIVER FALLS AIRPORT
AUTHORITY**

On June 23, 2011, the undersigned heard oral argument pursuant to the Motion of Petitioner Lori Swanson, Attorney General for the State of Minnesota, for temporary funding the executive branch. On June 29, 2011, the Court issued its Findings of Fact, Conclusions of Law and Order Granting Motion for Temporary Funding.

In its Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding dated June 29, 2011, the Court appointed retired Minnesota Supreme Court Chief Justice Kathleen Blatz as Special Master to hear and make recommendations to the Court with respect to issues regarding compliance with the terms of its Order. On July 14, 2011, Special Master Blatz conducted evidentiary hearings regarding Petitioners seeking state funding as providers of critical core functions of government.

The Court accepts and adopts the attached findings of the Special Master subject to modification pursuant to Minn. R. Civ. P. 53.07(b) with respect to the requests of government offices and petitions brought by the program hereinafter listed: Based on the file, proceedings, and recommendations, the Court makes the following ORDER:

1. The petition filed by the Thief River Falls Airport Authority is granted as the work required is an emergency repair analogous to “emergency highway repair,” which is allowed in the June 29, 2011 order.

Dated:

7-15-11

BY THE COURT:



The Honorable Kathleen R. Gearin

Chief Judge

Ramsey County District Court

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Court File No. 62-CV-11-5203

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

**SPECIAL MASTER
RECOMMENDATIONS REGARDING
PETITION OF THIEF RIVER FALLS
AIRPORT AUTHORITY**

This matter came before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center on July 15, 2011. Present before the Special Master were Jacob Kraus, Assistant Attorney General for the State of Minnesota; Bob Roche, Assistant Attorney General for the State of Minnesota; David Lillehaug, Special Counsel to the Office of the Governor; and Joseph Cassioppi, Special Counsel to the Office of the Governor. Joe Hendrick, Airport Manager; Darrell Tvietaad; and Dan Triller, appeared on behalf of Petitioner.

Based upon the arguments of counsel at the hearing, the Special Master makes the following:

Recommendation

1. The Court should **CLARIFY** that its Order authorizes the Minnesota Pollution Control Agency (“MPCA”) to issue a permit to the Thief River Falls Airport Authority (the “Authority”) for the purpose of performing replacement construction at its primary runway.

Concerns of Petitioner

1. Petitioner seeks leave from the Court to begin construction at one of its two runways to correct violations identified during an inspection by the Federal Aviation Administration (“FAA”) in July 2010.

Analysis

1. The Authority is the governing body of the Thief River Falls Regional Airport (the "Airport"), located in Northwest Minnesota. The Airport has four passenger flights per day, five cargo flights per day, student flights from the University of North Dakota, and flights of private planes. Numerous local businesses rely upon the airport for commercial purposes.

2. In July 2010, the FAA performed a periodic inspection of the Airport and found severe cracking affecting 80,000 linear square feet on the Airport's primary runway (Runway 13-31). The cracks are producing "foreign object debris," or pieces of asphalt, that break off and pose a serious safety risk to aircraft and passengers. On July 14, 2010, the FAA issued a Letter of Correction instructing the Authority to crack-seal the runway to maintain the surface until the scheduled pavement replacement in 2012. In November 2010, a Minnesota Department of Transportation ("MNDOT") engineer reviewed the Airport for the purpose of determining the best method to improve the condition of the runway. The MNDOT engineer suggested that the Airport remove and replace the asphalt to increase the safety of landings at the Airport.¹

3. The Authority subsequently sought to obtain grants for the runway pavement construction. It secured \$1.6 million from the FAA to start runway construction and a promise that \$4.4 million was reserved for the project, to be paid out on a periodic, rolling basis. The Authority received the \$1.6 million grant on June 27, 2011. On July 1, 2011, the Airport entered into an agreement with Knife River Materials (the "Contractor") to perform the necessary construction work. On July 8, 2011 the Contractor applied for a permit from the MPCA to begin

¹ A question was raised during the hearing regarding a letter sent to the Authority by the FAA on July 14, 2010. The 2010 FAA letter informed the Authority that it was out of compliance with certain federal requirements and required notification to the FAA when the "discrepancies" were corrected. If the Court agrees with the Recommendation to allow the permitting process to go forward, the Authority stated that it would provide proof to the MPCA that the FAA has no objections to the project going forward. The Special Master notes that the FAA's June 27, 2011 \$1.6 million grant to the Authority for such improvements is evidence of FAA acceptance of the project.

the project but, due to the shutdown, was unable to secure it. Petitioner seeks an Order from the Court clarifying that the MPCA may issue a permit to the Airport for the purpose of proceeding with FAA-required construction.

4. The Court's Order establishes four statewide priority service definitions to meet the State's objectives during a government shutdown. (Order Ex. A III(A).) Priority 1 Critical Services are identified as those relating to the "immediate threat to public health and/or safety" and expressly includes "[c]ontinuation of transportation safety functions and the protection of transport property." (*Id.*; *see also* pp. 5-6 ¶ 18 for the Court's reference to the federal government's designation of certain activities, such as protection of transport properties, as core or essential services pursuant to the OMB Memorandum).

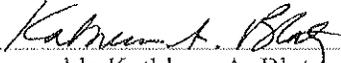
5. The Special Master's analysis is further instructed by the Court's Order Regarding Petitions of the Port Authority of St. Paul, the Minnesota Trucking Association, and Minnesota Recovery Connection of July 11, 2011 (the "July 11th Order"). In the Special Master Recommendations Regarding Petition of the Port Authority of Saint Paul, the Special Master cited to the "Transportation" category in Exhibit A for the proposition that silting in a river bed required immediate action similar to "Emergency Highway Repair." The Court adopted the Special Master's Recommendation on the grounds that "the work required is an emergency repair analogous to 'emergency highway repair.'" (July 11th Order p. 2 ¶ 1.) This Petition presents a similar case of urgent repair. Therefore, the permitting necessary to make the repairs should be deemed as a critical core function under the same analysis.

6. Evidence was presented that Petitioner's request is time-sensitive. The Contractor has indicated that the work needs to begin no later than July 18, 2011 in order for the project to be completed by the end of the building season in October. In order to meet density requirements

on asphalt, the Contractor needs to complete the paving by early September at the latest. If the construction is not completed in 2011, the FAA could withdraw their navigational aids and effectively shut down the Airport.

7. The Special Master recommends that the Court clarify the Order as authorizing the necessary permit and minimal staffing at the MPCA to allow Petitioner to begin construction on its primary runway in order that it remain safe, functional, and in compliance with FAA and MNDOT regulations. Permitting such construction is a critical core function directly related to “the maintenance and preservation of public property.” (Order p. 15 ¶ 4.)

Dated: July 15, 2011



The Honorable Kathleen A. Blatz
Special Master