Ruling may effect port project

Supreme Court says no permit granted

THE ASSOCIATED PRESS

CHARLESTON — A South Carolina Supreme Court ruling that no state water quality certification has been granted for deepening the Savannah River shipping channel may raise difficult legal issues in an ongoing federal court dispute over the $650 million project, a federal judge said.

In an order this week, U.S. District Judge Richard Gergel asked all the parties in the federal suit "to participate fully and in good faith in court-ordered mediation."

The suit before Gergel concerns whether a South Carolina state pollution control permit is needed for the work.

Deepening the river on the border between the states been long sought by Georgia so its ports can handle larger containerships that will routinely call when the expanded Panama Canal opens in 2015. The project would deepen the river and harbor entrance channel from its current 42 feet to 47 feet.

But the South Carolina Supreme Court ruled last week the Department of Health and Environmental Control violated state law in certifying a needed federal clean water permit for the project.

The court ruled the state Savannah River Maritime Commission, not DHEC, has authority over river activities.

In granting the certification last year, the DHEC board reversed a decision by its own staff which said the dredging would harm endangered sturgeon in the river and fragile South Carolina wetlands.

When the environmental groups later sued over the state pollution permit - they argue toxic cadmium will be deposited on the South Carolina shore - the U.S. Army Corps of Engineers and the Georgia ports argued that no permit was needed because the water quality certification had already been issued. Under the Supreme Court ruling, that argument is now moot.

"These developments, which may both clarify some issues and raise new and difficult legal questions, suggest this may be a propitious moment for the parties to sit down and attempt to resolve through mediation these complex and difficult issues," Gergel's order said.

He had earlier ordered mediation directed by former South Carolina U.S. Rep. John Spratt, although that was delayed until the Supreme Court ruled. Now it will be rescheduled.

Gergel's order also gives the corps 10 days to provide all submissions it's made to Congress seeking an exemption from a South Carolina water quality certification.

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He also wants a status report on federal funds for the deepening.

Last month the corps notified Congress it wanted an exemption to prevent what it called "inappropriate delays" in the project.

A letter seeking the exemption was sent to U.S. Sen. Barbara Boxer, D-Cal. and chairman of the Senate Committee on Environment and Public Works, by Jo-Ellen Darcy, assistant secretary of the Army for Public Works.

"Be advised that if Congress authorizes this project or next appropriates funds for construction" it would be providing an exemption, she wrote the senator.