



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

LORI SWANSON
ATTORNEY GENERAL

SUITE 900
445 MINNESOTA STREET
ST. PAUL, MN 55101-2127
TELEPHONE: (651) 297-1075

September 29, 2010

The Honorable Richard C. Luis
Office of Administrative Hearings
P.O. Box 64620, 600 North Robert Street
St. Paul, Minnesota 55164-0620

**Re: Brookings to Hampton Transmission Line Project Subpoena Request from
Legalelectric, Inc.
OAH Docket No. 7-2500-20283-2
PUC Docket No. ET-2/TL-08-1474**

Dear Judge Luis:

The Minnesota Department of Natural Resources ("DNR") has received notification that request for subpoena forms have been submitted to the Office of Administrative Hearings requesting testimony from DNR staff members Richard Baker, Lisa Gelvin-Innvaer, Lisa Joyal, and Jamie Schrenzel in the above-referenced matter. The subpoena requests also include DNR documentation related to review of the Brookings to Hampton Transmission Line Project. The DNR is providing the following information that it believes may be helpful to your determination regarding the requested subpoenas with respect to DNR staff.

Legalelectric, Inc. is requesting subpoenas for four DNR staff members to provide testimony and documents related to impact and mitigation details the DNR requested in comment letters, and data regarding eagle nest locations. Jamie Schrenzel of DNR staff was already planning to be present and available for questions about the DNR correspondence regarding the Brookings to Hampton Transmission Line Project at the public hearing scheduled for October 5, 2010, at the Valley View Golf Course in Belle Plaine, Minnesota. Requiring the testimony of all four requested DNR employees would likely result in duplicative and redundant testimony. Moreover, the DNR notes that although Richard Baker is the contact for Threatened and Endangered Species Permits, he provided little or no review of this project and therefore appears to be an unnecessary witness. Either Lisa Joyal and Lisa Gelvin-Innvaer could provide the requested testimony regarding eagle data or provide the data for the record without testimony.

Also, the bald eagle is listed as a species of special concern by the State of Minnesota. The DNR does provide data from the Natural Heritage Information System ("NHIS") for special concern species. This data is usually available by following the process included in the attached document titled "How to Obtain Natural Heritage Data." If it is determined that NHIS data or



The Honorable Richard C. Luis

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other location information regarding bald eagles is necessary for the project record, it is important to note that data provided previously to the applicant by DNR or any new data requested may contain information that is classified as non-public data under the Minnesota Data Practices Act. *See* Minn. Stat. §§ 13.7931 and 84.0872, subd. 2 (2008). Consequently, a protective order may be necessary if this data is to be made part of the proceeding record. An example of a protective order similar to one that may be necessary is included for your reference.

Sincerely,

A handwritten signature in black ink, appearing to read 'David P. Iverson', with a long horizontal line extending to the right.

DAVID P. IVERSON
Assistant Attorney General

(651) 757-1466 (Voice)

(651) 297-4139 (Fax)

cc: Jamie Schrenzel
Richard Baker
Lisa Joyal
Lisa Gelvin-Innvaer

AG: #2703203-v1



How to Obtain Natural Heritage Data

What is Natural Heritage Data? The Division of Ecological Resources maintains the Natural Heritage Information System (NHIS), a collection of databases that provides information on Minnesota's rare plants and animals, native plant communities, and other rare features. The NHIS is continually updated as new information becomes available, and the Minnesota County Biological Survey (MCBS) is a major source of this information. Three of the NHIS databases (MCBS Native Plant Communities, MCBS Sites of Biodiversity Significance, and MCBS Railroad Rights-of-Way Prairies) are available as GIS shapefiles and can be downloaded at no cost from the DNR Data Deli at <http://deli.dnr.state.mn.us>. The locations of state-listed species and other rare features are maintained in the Rare Features Database. This information is considered sensitive and is protected under the Minnesota Data Practices Act.

There are two ways to receive data from the Rare Features Database:

- 1) **Database Reports.** Submit a NHIS Data Request Form available at http://files.dnr.state.mn.us/eco/nhnrp/nhis_data_request.pdf. We will search all of the NHIS databases and provide you with the results, including a Rare Features Database report of rare features in the area of interest. The fee for this service is based on the following schedule*:

	Amount	Explanation
Base Fee	\$60.00	
Option 1: Query By Project		
Technician time	\$30.00	Per hour
Coordinator time	\$40.00	Per hour
Option 2: Query by Species		
	\$25.00	For one species
	\$5.00	Per additional species
Option 3: County Summary		
	\$25.00	For one county
	\$5.00	Per additional county
Rush Fee	\$50.00	Optional

Why request this data?

This information is required as part of Minnesota's environmental review process. This data is often referred to as "ecologically sensitive resources" in environmental review documents.

This information is also useful for local government planning (e.g., comprehensive plans and watershed district plans).

- 2) **Electronic Data.** The Rare Features Database can be obtained in electronic format (i.e., a GIS shapefile of locations of state-listed species and other rare features) by entering into a license agreement with the DNR. The purpose of the license is to establish a contractual relationship between the DNR and outside users of the data, and to provide a training context regarding the interpretation and appropriate use of the rare features data. If you are interested in pursuing the license agreement, please contact the NHIS Data Distribution Coordinator, Lisa Joyal at 651-259-5109 or lisa.joyal@dnr.state.mn.us. The fee for this service is based on the following schedule*:

	Amount	Explanation
2-year License Agreement		
Base Fee	\$80.00	
License Query & Data prep	\$40.00	Per hour
Amendment to Agreement		
No Base Fee		
Amendment Query & Data prep	\$40.00	Per hour
Data Volume Fee (three options)		
County Fee	\$35.00	Per county
Species Fee	\$25.00	Per species
Local Government Boundary	\$0.036	Per square mile

*Effective May 1st, 2009, for all data requests

State of Minnesota
Kittson County

District Court
9th Judicial District

Court File Number:	35-CV-07-155
Case Type:	Civil Other/Misc.

Notice of Filing of Order

DAVID PETER IVERSON
OFFICE OF ATTORNEY GENERAL
445 MINNESOTA ST STE 900
ST PAUL MN 55101

State of Minnesota ex rel, Minnesota Center for Environmental Advocacy vs Kittson County, Kittson County Board of Commissioners, and Glenn Anderson d/b/a Glenn Anderson Construction

You are notified that a STIPULATION and PROTECTIVE AGREEMENT AND ORDER was filed on this date.

Dated: July 30, 2008

Teresa McDonnell
Court Administrator
Kittson County District Court
410 5th St South Suite 204
Hallock MN 56728
(218) 843-3632

A true and correct copy of this notice has been served by U.S. Mail upon the following parties at the last known postal address of each, pursuant to Minnesota Rules of Civil Procedure, Rule 77.

Enclosure(s)

cc: MATTHEW JACK NORTON
KIM SOBIEK
LYNN SCHMIDT WALTERS
DAVID PETER IVERSON

Filed 7-30-08
Kittson County
Court Administrator
Hallock, Minnesota 56728

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF KITTSO

Court Administrator/Deputy

NINTH JUDICIAL DISTRICT

Case Type: Civil Other/Misc.
Court File No. 35-CV-07-155

State of Minnesota, ex rel., and Minnesota
Center for Environmental Advocacy,

Plaintiffs,

vs.

STIPULATION

Kittson County, Kittson County Board of
Commissioners, and Glenn Anderson d/b/a
Glenn Anderson Construction,

Defendants.

The above-named Plaintiff Minnesota Center for Environmental Advocacy, through its attorney, Janette K. Brimmer, Minnesota Center for Environmental Advocacy, 26 E. Exchange Street, Suite 206, St. Paul, Minnesota 55416; Defendants Kittson County and Kittson County Board of Commissioners through their attorneys, Kim Sobiek, Ratwik, Roszak & Maloney, 300 U.S. Trust Building, 730 Second Avenue South, Minneapolis, Minnesota 55402; Defendant Glenn Anderson, d/b/a Glenn Anderson Construction, through their attorneys, Lynn Schmidt Walters, Gislason & Hunter, LLP, 701 Xenia Avenue S., Suite 500, Minneapolis, Minnesota 55416; and the Minnesota Department of Natural Resources through by its Assistant Attorney General, David P. Iverson, Suite 900, 445 Minnesota Street, St. Paul, Minnesota 55101-2127, DO HEREBY STIPULATE AND AGREE TO THE FOLLOWING:

WHEREAS, Plaintiff Minnesota Center for Environmental Advocacy ("Plaintiff") brought the above-captioned action under the Minnesota Environmental Rights Act, Minn. Stat. ch. 116B (2006), against Defendants Kittson County, Kittson County Board of Commissioners, and Glenn Anderson, d/b/a Glenn Anderson Construction (hereinafter referred to collectively as "Defendants")

relating to drainage work performed under Minn. Stat. ch. 103E (2006) in Kittson County, Minnesota;

WHEREAS, Plaintiffs hold a Limited License to Use Copyrighted Material (“Limited License”) issued by the Minnesota Department of Natural Resources (“DNR”) to use the DNR database known as the Natural Heritage Information System (hereinafter referred to as the “Heritage Database”);

WHEREAS, DNR deems the Heritage Database to be “specific location data” classified as nonpublic data under the Minnesota Data Practices Act, Minn. Stat. § 13.7931 (2006) and Minn. Stat. § 84.0872, subd. 2 (2006). In addition, DNR deems the Heritage Database to be of economic and commercial value and, therefore, is considered to be trade secret information under the federal Freedom of Information Act;

WHEREAS, in the course of the above-referenced action, it has been asserted that certain data contained within the Heritage Database and known to Plaintiffs is relevant discoverable material and may become evidence introduced at hearing or trial in the above-referenced matter;

WHEREAS, DNR is not a party to the above-referenced action; and


WHEREAS, Plaintiff, Defendants, and DNR wish to protect the confidentiality of the Heritage Database in the course of the above-referenced legal action.

NOW, THEREFORE, it is stipulated and agreed as follows:

1. That DNR, through its legal counsel, consents to the transfer of the data contained within the Heritage Database for the sole purpose of this litigation;
2. That this Stipulation shall satisfy the requirement of paragraph 5 of Plaintiff’s Limited License requiring DNR consent in writing for the transfer of data contained within the Heritage Database to Defendants herein; and

3. That Plaintiff, Defendants, and DNR stipulate and agree that this Court may execute the attached Protective Agreement and Order for purposes of protecting the confidentiality of the Heritage Database and its use during the course of the above-referenced action.

Dated: July 25, 2008



Matthew Jack Norton
Staff Attorney
Atty. No. 0292722

Minnesota Center for Environmental
Advocacy
26 E. Exchange Street, Suite 206
St. Paul, MN 55416

ATTORNEYS FOR MINNESOTA CENTER
FOR ENVIRONMENTAL

Dated: July 15, 2008

LORI SWANSON
Attorney General
State of Minnesota

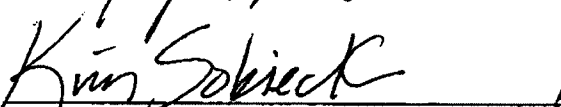


DAVID P. IVERSON
Assistant Attorney General
Atty. Reg. No. 180944

445 Minnesota Street, Suite 900
St. Paul, Minnesota 55101-2127
(651) 296-0687 (Voice)
(651) 296-1410 (TTY)

ATTORNEYS FOR STATE OF
MINNESOTA

Dated: July 27, 2008

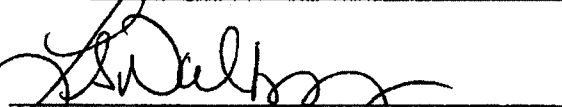


KIM SOBIEK
Atty Reg. No. 288299

Ratwik, Roszak & Maloney
300 U.S. Trust Building
730 Second Avenue South
Minneapolis, MN 55402

ATTORNEYS FOR KITTSON COUNTY
BOARD OF COMMISSIONERS

Dated: 7/18/08



LYNN SCHMIDT WALTERS
Atty Reg. No. 339398

Gislason & Hunter, LLP
701 Xenia Avenue S., Suite 500
Minneapolis, MN 55416

ATTORNEYS FOR GLENN ANDERSON
D/B/A GLENN ANDERSON
CONSTRUCTION

Filed 7-30-08
Kittson County
Court Administrator
Hallock, Minnesota 56728

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF KITTSON

NINTH JUDICIAL DISTRICT
Court Administrator/Deputy

State of Minnesota, ex rel., and Minnesota
Center for Environmental Advocacy,

Case Type: Civil Other/Misc.
Court File No. 35-CV-07-155

Plaintiffs,

vs.

**PROTECTIVE AGREEMENT
AND ORDER**

Kittson County, Kittson County Board of
Commissioners, and Glenn Anderson d/b/a
Glenn Anderson Construction,

Defendants.

BACKGROUND

1. This action has been brought by the Minnesota Center for Environmental Advocacy ("MCEA") under the Minnesota Environmental Rights Act ("MERA"), Minn. Stat. ch. 116B (2006), against the Kittson County Board of Commissioners and Glenn Anderson, d/b/a Glenn Anderson Construction, relating to drainage ditch work performed under Minn. Stat. ch. 103E (2006) in Kittson County, Minnesota.

2. MCEA holds a Limited License to Use Copyrighted Material issued by the Minnesota Department of Natural Resources ("DNR") to use the DNR database known as the Natural Heritage Information System, hereinafter referred to as the "Heritage Database." A copy of MCEA's Limited License to Use Copyrighted Material is attached as Exhibit A. The Heritage Database consists of electronic data identifying rare feature locations, including the locations of endangered, threatened, and special concern plants and animals, native plant communities, animal aggregation sites, geological features and processes for the State of Minnesota. DNR deems the Heritage Database to be "specific location data" classified as general non-public data

under the Minnesota Data Practices Act, Minn. Stat. § 13.7931 (2006) and Minn. Stat. § 84.0872, subd. 2 (2006). In addition, DNR deems the Heritage Database to be of economic and commercial value and therefore is considered to be Trade Secret information under the federal Freedom of Information Act.

3. In the course of the above-referenced action, it has been asserted that certain data contained within the Heritage Database and known to MCEA is relevant discoverable evidence. Consequently, such data has been or may be subject to one or more discovery requests. In addition, it is anticipated that such data could become evidence introduced at any hearing or trial in the above-referenced matter.

4. Pursuant to paragraph 5 of MCEA's Limited License to Use Copyrighted Material (*see* Exhibit A at 2), DNR has consented in writing through its legal counsel to the transfer of data contained in the Heritage Database for the sole purpose of this litigation. In order to protect the confidentiality of the Heritage Database, the parties to this matter have agreed to the following Protective Agreement and Order in order to seal all or part of the record that contains data from the Heritage Database.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. (a) Trade Secret Information and Non-Public Information. All Trade Secret Information and/or Non-Public Information from the Heritage Database shall be furnished pursuant to the terms of this Protective Agreement and Order, and shall be treated by all persons accorded access thereto pursuant to this Protective Agreement and Order as constituting trade secret and security data, and shall be used solely for the purpose of this proceeding and solely in accordance with this Protective Agreement and Order, and shall not be used or disclosed for any other purpose or in any other manner unless written consent is obtained from DNR or further

order of this Court. All documentary material claimed to be Trade Secret Information or Non-Public Information from the Heritage Database shall be so marked by the party by stamping or otherwise marking each individual page with the designation "CONTAINS TRADE SECRET INFORMATION/NONPUBLIC DATA - USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. 35-CV-07-155 or with words of similar import. For purposes hereof, notes made pertaining to or prepared as the result of a review of Trade Secret Information or Non-Public Information of the Heritage Database shall be subject to the terms of this Protective Agreement and Order. Any Trade Secret Information or Non-Public Information received in photographic, digital or electronic formats shall be identified as protected by the producing party by means appropriate to the medium and shall be handled by the recipient in a manner suitable to protect its confidentiality.

(b) Definition of Disclosing Party and Receiving Party. For purposes of this Protective Agreement and Order the term "Disclosing Party" means a party that furnishes the relevant Trade Secret or Non-Public Information under this Protective Agreement and Order and the "Receiving Party" shall mean the party that receives Non-Public Information from the Disclosing Party, directly or indirectly, under this Protective Agreement and Order.

(c) Use of Trade Secret or Non-Public Information and Persons Entitled to Review. All Trade Secret Information or Non-Public Information made available from the Heritage Database pursuant to this Protective Agreement and Order shall be given solely to counsel for the Receiving Party or other authorized persons who are designated by counsel as being the party's experts or witnesses in this proceeding and who execute a Nondisclosure Agreement in the form set forth and attached herewith as Exhibit B in a timely manner prior to their receipt of the Trade Secret Information and/or Non-Public Information. Trade Secret

Information and/or Non-Public Information shall not be used or disclosed except for purposes of this proceeding. The Trade Secret Information and/or Non-Public Information may not be used or referenced in other proceedings in Minnesota or in other jurisdictions without the express permission of DNR or further order of this Court.

(d) Nondisclosure Protective Agreement and Order. Prior to giving access to Trade Secret Information and/or Non-Public Information from the Heritage Database as contemplated in paragraphs (a)-(c) above to any expert or witness, whether or not such expert or witness is a person designated to testify in any such proceeding:

- (i) counsel for the party seeking review of the Non-Public Information and/or Trade Secret Information shall deliver a copy of this Protective Agreement and Order to such person; and
- (ii) such person shall agree in writing to comply with and be bound by this Protective Agreement and Order by signing a Nondisclosure Agreement in the form which is attached hereto and incorporated herein as Exhibit B; and
- (iii) counsel for the Receiving Party shall provide a copy of the signed Exhibit B to counsel for the Disclosing Party and to DNR; and
- (iv) the Disclosing Party or DNR shall have one (1) business day in which to object to the disclosure of the applicable information to the proposed expert or witness; and
- (v) no disclosure of any Trade Secret Information and/or Non-Public Information shall be made to the expert or witness until either: (A) no such objection has been made and the one (1) business day period has expired; or (B) until ordered by the undersigned Judge.

The Nondisclosure Agreement, Exhibit B, shall require the person to whom disclosure is to be made to read a copy of this Protective Agreement and Order and to certify in writing that he or she has reviewed the same and has consented to be bound by its terms. The Nondisclosure Agreement shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated.

2. Scope of Protective Agreement and Order. This Protective Agreement and Order establishes a procedure for the expeditious handling of Non-Public Information and/or Trade Secret Information. It shall not be construed as an agreement or ruling on the discoverability, confidentiality, or trade secret or non-public designation of any such information or document.

3. Use of Trade Secret Information and/or Non-Public Information in Pleadings. Where reference to Trade Secret Information and/or Non-Public Information from the Heritage Database is required in pleadings, cross-examinations, briefs, argument, or motions, it shall be by citation of title or exhibit number or by some other nonconfidential description. Any further use of or substantive references to Trade Secret Information and/or Non-Public Information shall be placed in a separate "Restricted Non-Public" copy of the pleading or brief. This "Restricted Non-Public" copy shall be served only on counsel of record. All the protections afforded in this Protective Agreement and Order apply to materials prepared and distributed under this paragraph.

4. Use of Trade Secret Information and/or Non-Public Information in Depositions. If, in the course of depositions, counsel for any party concludes that testimony or exhibits will involve Trade Secret Information and/or Non-Public Information, counsel shall request that the court reporter record such testimony in a confidential transcript that is marked "CONTAINS TRADE SECRET INFORMATION/NONPUBLIC DATA - USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. 35-CV-07-055. All exhibits which have been marked as involving Trade Secret Information and/or Non-Public Information shall be attached to the confidential transcript. Each party and DNR has the right to identify a transcript or exhibits as including Trade Secret Information and/or Non-Public Information pursuant to this paragraph for up to three business days after the deposition is completed.

5. Use of Trade Secret Information or Non-Public Information in Trial. The Receiving Party shall not use Trade Secret and/or Non-Public Information from the Heritage Database in a hearing without first: (a) providing prior notice to the Disclosing Party regarding the information to be used; and (b) conferring with the Disclosing Party regarding limitations or procedures that can be used to avoid disclosing the confidential aspects of the information at issue to persons not otherwise entitled to receive such information. If the parties cannot reach agreement the use of such information, then the dispute shall be submitted to this Court before the information is used or publicly disclosed. Without limiting the foregoing, no party shall refer to Trade Secret and/or Non-Public Information on oral testimony, cross-examination, or argument except in accordance with this paragraph.

6. Preservation of Non-Publicity. Unless otherwise ordered, all Trade Secret and/or Non-Public Information, including transcripts of any depositions to which a claim of "trade secret" or "non-public" status or confidentiality is made, shall remain under seal and shall continue to be subject to the protective requirements of this Protective Agreement and Order. All persons who may be entitled to receive, or who are afforded access to any Trade Secret and/or Non-Public Information by reason of this Protective Agreement and Order, shall neither use nor disclose the Trade Secret and/or Non-Public Information for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of these proceedings, and then solely as contemplated herein, and shall take reasonable precautions to keep the Trade Secret Information and/or Non-Public Information secure and in accordance with the purposes and intent of this Protective Agreement and Order.

7. Reservation of Rights. The parties governed by the terms of this Protective Agreement and Order retain the right to question, challenge, and object to the admissibility of

any and all data, information, studies and other matters furnished under the terms of this Protective Agreement and Order in response to interrogatories, requests for information or documents or cross-examination on the grounds of relevancy or materiality.

8. Inadvertent Disclosure. No party or DNR shall have waived its right to designate any documents, data, information, studies, or other materials as Trade Secret Information or Non-Public Information by inadvertent disclosure, provided that any party or DNR thereafter gives written notice to the recipient(s) of such information that it should have been designated as Trade Secret Information or Non-Public Information. From and after receipt of such notice, the previously disclosed information subsequently identified as Trade Secret Information or Non-Public Information shall be treated as Trade Secret Information or Non-Public Information for purposes of this Protective Agreement and Order.

Dated: July 29, 2008
Judge of the District Court



LIMITED LICENSE TO USE COPYRIGHTED MATERIAL

This LICENSE is issued by the State of Minnesota, by and through its Department of Natural Resources, hereinafter referred to as the "DNR", as licensor, to:

LICENSEE: Minnesota Center for Environmental Advocacy
 Attn: Randall Cutting, GIS Specialist
 26 East Exchange St., Suite 206
 St. Paul, MN 55101

The DNR hereby grants to the LICENSEE a non-exclusive, non-transferrable, royalty free limited LICENSE to use the database described in Section 1 of this LICENSE. This database is voluntarily provided to the LICENSEE upon the following terms and conditions:

1. LICENSED MATERIAL

- 10/25/06
FTP'd data
S.W.*
- 2/25/08
data update*
- A. The LICENSEE is licensed to use a subset of the DNR's proprietary database known as the Natural Heritage Information System, which consists of electronic data of rare feature locations (endangered, threatened, and special concern plants and animals, native plant communities, animal aggregation sites, geological features and processes) and associated data in Minnesota. Said subset, including any portions thereof, are hereinafter referred to as the "HERITAGE DATABASE".
- B. The DNR deems the HERITAGE DATABASE to be "security information" under the Minnesota Data Practices Act, and access by the public is restricted to uses that will promote public benefit. The HERITAGE DATABASE contains the specific locations of rare natural features, the release of which would expose these rare and sensitive natural resources to theft, tampering, improper use, trespass, or physical injury. Furthermore, the DNR has expended substantial time and funds in locating these rare features, and in compiling and creating the HERITAGE DATABASE, and has kept the HERITAGE DATABASE confidential. The HERITAGE DATABASE is of economic and commercial value, and is deemed by the DNR to be trade secret information under the federal Freedom of Information Act.

2. RESTRICTIONS ON USE

- A. The HERITAGE DATABASE shall be used by the LICENSEE only for conservation planning and analysis activities. No other use shall be made of the HERITAGE DATABASE, except with prior written permission of the DNR.
- B. Products, for the purpose of this LICENSE, are hereinafter defined as and include hard-copy or digital versions of studies, summaries, reports, maps, proposals, plans, analyses, interpretations, derivative works, and compilations containing data from the Heritage Database.

To protect rare features from exploitation or destruction, the LICENSEE shall mask either the identity or specific location of rare species in any Products for external distribution or use. Masking of identity shall be done by using an identifier more general than the species' scientific genus or common name. For example, use of the term "rare species" would be preferable. Masking of specific location shall be done by using a description precise to no more than the section. Exception to this restriction will be allowed when providing information to private landowners about features which occur on or directly adjacent to their own land.

Exhibit A

A94669

C. The LICENSEE shall not edit the HERITAGE DATABASE, except to add or delete fields.

3. ENDORSEMENT OF PRODUCTS

The LICENSEE shall not state or imply that the DNR endorses, approves, or is responsible for any Product derived by the LICENSEE from the HERITAGE DATABASE, unless the DNR provides express written consent prior to release of the Product.

4. ASSIGNMENT OR TRANSFER OF LICENSE

The LICENSEE may not assign, delegate, sublicense or otherwise transfer this LICENSE or any rights or obligations under this LICENSE to any other party, except with the prior written consent of the DNR. This LICENSE shall be binding upon the LICENSEE's respective contractors, sublicensees, assignees, and transferees, if prior written consent has been provided by the DNR.

5. ACCESS TO AND TRANSFER OF THE DATABASE

The LICENSEE shall not permit access to the HERITAGE DATABASE by any other party, nor transfer the HERITAGE DATABASE to any other party or location, without prior written consent of the DNR, with the exception that Emmons & Olivier Resources, Inc. and Applied Ecological Services, Inc. shall be permitted access to the Anoka County data, and shall be permitted to receive a copy of these data for the sole purpose of collaborating with the LICENSEE. Any other requests for access to or use of the HERITAGE DATABASE should be referred directly to the DNR.

Authority to limit access to the HERITAGE DATABASE is exercised under the Minnesota Data Practices Act (Minn. Stat., Ch. 13), since the disclosure of the specific locations of the rare features described in the HERITAGE DATABASE is likely to substantially jeopardize the security of these rare features due to theft, tampering, improper use, trespass, or physical injury under Minn. Stat., sec. 13.37, subd. 1(a); since specific location data may be considered nonpublic under Minn. Stat., sec. 13.7931; and since the HERITAGE DATABASE was developed with significant expenditure of public funds by the DNR, and has a commercial value under Minn. Stat., sec. 13.03, subd.3(d).

The LICENSEE must comply with the Minn. Stat., Chapter 13, as it applies to all data collected, received, stored, used, maintained, or disseminated by the LICENSEE in accordance with this LICENSE. The civil remedies of Minn. Stat., sec. 13.08, apply to the release of the Heritage Database by either the LICENSEE or the DNR.

6. LICENSE LOCATION

The LICENSEE may use the HERITAGE DATABASE, subject to the restrictions contained in this LICENSE, only at the LICENSEE's computer facilities located at Minnesota Center for Environmental Advocacy, 26 East Exchange St., Suite 206, St. Paul, MN 55101, and at the computer facilities of Emmons & Olivier Resources, Inc., 651 Hale Avenue, Oakdale, MN 55128 and Applied Ecological Services, Inc., Minnesota Office, 21938 Mushtown Road, Prior Lake, MN 55372.

7. COPYRIGHT NOTICE

The LICENSEE shall protect the DNR's copyright interest in the HERITAGE DATABASE by including in any Product an appropriate copyright notice in the name of the DNR or the LICENSEE. The copyright notice shall state "Copyright (year) (name)" or a substantially similar copyright notice. (For example, "Copyright 2006 State of Minnesota, Department of Natural Resources".) The LICENSEE shall cooperate with the DNR in enforcing any infringement of copyright for Products produced by the LICENSEE under this LICENSE.

8. ACKNOWLEDGMENT

The LICENSEE, when using the HERITAGE DATABASE, shall acknowledge DNR's Natural Heritage and Nongame Research Program as the source of the information. This shall be done by printing the following or a substantially equivalent statement on any Product containing the HERITAGE DATABASE:

"Data included here were provided by the Natural Heritage and Nongame Research Program of the Division of Ecological Services, Minnesota Department of Natural Resources (DNR), and were current as of (*date delivered*). These data are not based on an exhaustive inventory of the state. The lack of data for any geographic area shall not be construed to mean that no significant features are present."

9. DNR LOGOS

This LICENSE does not authorize the LICENSEE to use DNR logos, trademarks or other identification marks or symbols, except with the prior written consent of the DNR.

10. RENEWAL AND TERMINATION OF AGREEMENT; UPDATE OF DATA

A. This LICENSE is granted for two years and shall terminate on the anniversary of the date of the final required signature on page 4. At that time, at the written request of the LICENSEE, and at the discretion of the DNR, a new LICENSE may be issued for a two-year period.

B. The LICENSEE is entitled to request an updated HERITAGE DATABASE annually on the anniversary of this license. The DNR will attempt to provide the LICENSEE an updated HERITAGE DATABASE, subject to the availability of staff and funds. The LICENSEE agrees to use this updated HERITAGE DATABASE, if provided by the DNR, to replace the current data-set on any computer on which it resides within two weeks of receipt.

C. Either party may terminate, without cause, this LICENSE thirty (30) days after providing written notice to the other party at any time.

D. Upon termination of this LICENSE, the LICENSEE shall purge the HERITAGE DATABASE from any computer or storage medium on which it resided, including those of any sublicensees.

11. DISCLAIMER

THE HERITAGE DATABASE IS MADE AVAILABLE ON AN "AS IS" BASIS, WITHOUT EXPRESS OR IMPLIED WARRANTY OF ANY SORT INCLUDING, SPECIFICALLY, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES OF MERCHANTABILITY, OR WARRANTIES RELATING TO THE ACCURACY OR COMPLETENESS OF THE HERITAGE DATABASE.

12. PRODUCTS PRODUCED

The LICENSEE shall notify DNR of any significant Product produced using all or part of the HERITAGE DATABASE, and at DNR's request, provide one copy of any such Product produced, free of charge to the State Representative (identified in Section 14).

13. NOTIFICATION TO THE DNR

The LICENSEE shall notify the DNR in writing within thirty (30) days of the discovery of any errors found, any new data obtained, or any other needed corrections or modifications to the HERITAGE DATABASE. The LICENSEE hereby grants to DNR a perpetual, irrevocable, non-exclusive, royalty-free LICENSE to use said data.

14. STATE REPRESENTATIVE

Questions regarding the administration of this LICENSE or use of the HERITAGE DATABASE should be referred to:

Sarah Hoffmann, NHIS Data Distribution Coordinator
Natural Heritage and Nongame Research Program
Minnesota Department of Natural Resources
500 Lafayette Road, Box 25
St. Paul, MN 55155
Phone: 651/259-5107 Fax: 651/296-1811
E-mail: sarah.hoffmann@dnr.state.mn.us

15. VENUE AND JURISDICTION

This LICENSE shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this LICENSE, or breach thereof, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

16. OTHER APPLICABLE LAWS AND SEVERABILITY

Nothing herein shall be construed to violate any Federal or State law or regulation. If a provision of this LICENSE is found by administrative proceedings or a court of proper jurisdiction to be in violation of Federal or State law or regulation, this LICENSE shall be immediately terminated, unless DNR give the LICENSEE written notice that this LICENSE is not terminated.

17. STATE AUDITS

The books, records, documents, and accounting procedures and practices of the LICENSEE relevant to this LICENSE shall be subject to examination by the DNR and state and legislative auditors, and shall be kept by the LICENSEE for a minimum of six (6) years after the expiration or termination of this LICENSE.

18. AUTHORIZATION

The persons executing this LICENSE for the LICENSEE represent and warrant that they are duly authorized to execute this LICENSE on behalf of the requesting party or entity, and to legally bind the LICENSEES.

IN WITNESS WHEREOF, the parties have caused this LICENSE to be duly executed intending to be legally bound thereby.

MINNESOTA CENTER FOR ENVIRONMENTAL ADVOCACY, LICENSEE

By: Mark Bent
Title: Executive Director
Date: 6/29/06

By: _____
Title: _____
Date: _____

STATE OF MINNESOTA, DEPARTMENT OF NATURAL RESOURCES

Ken A. Gammiller
Title: Director, Division of Ecological Services
Date: 10/06/06

STATE OF MINNESOTA, DEPARTMENT OF ADMINISTRATION

By: Jennifer J. Fultz
Title: Contract Admin
Date: 10/13/06

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF KITTSON

NINTH JUDICIAL DISTRICT

State of Minnesota, ex rel., and Minnesota
Center for Environmental Advocacy,

Case Type: Civil Other/Misc.

Court File No. 35-CV-07-155

Plaintiffs,

vs.

NONDISCLOSURE AGREEMENT

Kittson County, Kittson County Board of
Commissioners, and Glenn Anderson d/b/a
Glenn Anderson Construction,

Defendants.

I, the undersigned, hereby acknowledge that I have read the attached Protective Agreement and Order dated July 29th, 2008, in the above-captioned matter, and understand the terms thereof and agree to be bound by all such terms. Without limiting the generality of the foregoing, I agree not to disclose to any person or entity not authorized to receive materials designated "CONTAINS TRADE SECRET INFORMATION NONPUBLIC DATA - USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. 35-CV-07-055" under the terms of said Protective Agreement and Order, or any copies of extracts of information derived therefrom, which have been disclosed to me. I further agree to use any such materials disclosed to me solely for the purpose of this proceeding and for no other purpose.

I hereby submit myself to the jurisdiction of the Minnesota District Court for the purpose of enforcing said Protective Agreement and Order.

Exhibit B