

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

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In the Matter of the Denial of Contested  
Case Hearing Requests and Issuance of  
National Pollutant Discharge  
Elimination System/State Disposal  
System Permit No. MN0071013 for the  
Proposed NorthMet Project, St. Louis  
County, Hoyt Lakes, Babbitt,  
Minnesota.

Court File Number: 62-CV-19-4626

Honorable Judge John H. Guthmann

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**DECLARATION OF ALISON C. HUNTER**

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I, Alison C. Hunter, in accordance with section 358.116 of the Minnesota Statutes and rule 15 of the Minnesota Rules of General Practice, declare as follows:

1. My job title is Attorney for Holland & Hart LLP (“Holland & Hart”). I have been employed by Holland & Hart since May 2019. Holland & Hart is assisting the Minnesota Pollution Control Agency (“MPCA”) in this matter.

2. One of my responsibilities is to assist MPCA in discovery matters in connection with the above entitled case.

3. I submit this Declaration to the Court based on my personal knowledge and in support of MPCA’s Response in Opposition to Relators’ Motion for Production of Documents Identified in MPCA’s Privilege Logs and for Attorney Work Product.

4. Between October 4, 2019 and October 17, 2019, MPCA produced approximately 1,190 documents, totaling almost 20,000 pages. On November 11, 2019,

Relators' raised issues with approximately 350 documents on MPCA's privilege log. MPCA reviewed all of the challenged documents, produced an updated privilege log responding to each of the items flagged by Relators, and produced almost 200 of the challenged documents. These included documents that upon further review are not privileged for various reasons, documents to which only the deliberative process privilege applies and redacted copies of the two documents for which Relators claimed a substantial need (including Privilege Log Number 301). For documents not produced, MPCA provided additional information to clarify the basis for withholding the document (e.g., where a document was prepared by a non-attorney but at the request of, and under the direction of counsel), or corrected entry information (e.g., an incorrect date or other descriptive information).

5. On November 27, 2019, Relators asserted additional challenges to 63 documents on MPCA's privilege log (Relators had previously challenged 30 of these documents and the additional 33 challenged documents were added to MPCA's privilege log on November 26, 2019 following an additional production of documents).

6. MPCA again reviewed all of the challenged documents, produced a second amended privilege log ("Amended Privilege Log") further clarifying the basis for the privilege claimed, and produced 20 of the challenged documents, some with limited redactions. For documents not produced, MPCA provided additional information to clarify the basis for withholding the document. For example, (e.g., adding the author to certain documents that were attached to email communications and explaining where an email

communication was forwarding an attorney client communication internally to another MPCA employee).

7. By December 6, 2019, the parties had not yet agreed to search terms for the forensic search. However, the documents identified by that search were to be produced by December 16, 2019. In attempt to meet the Court's December 16, 2019 deadline for producing documents identified in the forensic search, MPCA retained Xact to perform document review commencing with the documents identified by MPCA's proposed search terms with the expectation that additional documents identified by the finalized search terms could be added to the review.

8. Xact commenced the review of identified documents on December 9, 2019. MPCA produced approximately 300 documents through Xact, as well as a Supplemental Privilege Log for the forensic search ("Supplemental Privilege Log"), with documents identified as privileged by Xact document review attorneys on December 16, 2019. MPCA removed a number of documents from the Supplemental Privilege Log on December 16, 2019, prior to its production but was unable to thoroughly review the documents the Xact document review attorneys identified as privileged, which were located on Xact's Relativity database. Before MPCA was able to further review the documents included on the Supplemental Privilege Log, this Court ruled that the forensic search was void and MPCA was to have no unilateral communications with Xact.

9. As approved by this Court, on December 20, 2019, MPCA asked Xact, copying Relators, to produce copies of the challenged privileged documents. True and

correct copies of the correspondence among Xact, Relators and MPCA are attached to this Declaration as **Attachment 1**.

10. MPCA did not receive copies of the challenged privileged documents until Friday, December 27, 2019, when it also received the approximately 30,781 documents identified by the Court-ordered forensic search terms. Therefore, MPCA was unable to meet and confer with Relators regarding the challenged documents on the Supplemental Privilege Log prior to Relators filing its Motion on December 23, 2019.

11. Following review of the 156 challenged documents on the Supplemental Privilege Log, MPCA produced 115 documents on December 30, 2019, some with limited redactions as well as an Updated Supplemental Privilege Log for the voided forensic search. A true and correct copy of the Updated Supplemental Privilege Log is attached to this Declaration as **Attachment 2**.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 30, 2019  
Ada County  
Boise, Idaho

/s/ Alison C. Hunter  
Alison C. Hunter  
Attorney  
Holland & Hart LLP

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