Minnesota Center for
Environmental Advocacy

Using law, science, and research to protect Minnesota's environment, its natural resources, and the health of its people.

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December 4, 2015

VIA E-MAIL

Dear Gov. Dayton,

I write to express my concern about the recently announced plans to hire the law firm of Crowell and Moring to handle lawsuits related to PolyMet's proposed NorthMet Project. The decision to select this particular firm compromises your administration's neutrality at a critical time in the process.

The decision to hire Washington D.C. attorneys that regularly represent the mining industry raises significant questions about the state's position on PolyMet before the state has made any decisions (or even completed environmental review) regarding the PolyMet proposal. In your letter to Speaker Kurt Daudt on December 1, 2015, you outlined your position on the proposed PolyMet mine, demonstrating your continuing commitment to neutrality—a commitment that the project would not be pre-judged before all of the science was complete and all available information gathered and appropriately analyzed.

Despite your statements (and the State of Minnesota's legal obligation prior to completion of environmental, scientific, and engineering review) to remain open, objective, and neutral, on the day before Thanksgiving, Commissioner Myron Frans of your Administration announced that the State of Minnesota was considering retaining the law firm of Crowell and Moring to defend the state of Minnesota against potential challenges related to the PolyMet mine. ("Minnesota braces for PolyMet mine legal fight, retains Washington firm to handle likely cases," *Star Tribune*, November 25, 2015). Crowell and Moring is a Washington-based law firm that specializes in representing metals and coal mining companies against regulators and citizen organizations.

In the event that there is a legal dispute in which PolyMet challenges a state decision, Crowell and Moring would not and cannot defend the state. One of their clients is the National Mining Association, a national lobbying group on

behalf of mining companies that bills itself "the official voice of U.S. mining."[1] PolyMet Mining Corporation is a member of the National Mining Association.[2] Thus, by hiring this law firm, the state is prejudging the outcome of the permit process, assuming all or almost all disputes will be with citizen organizations or others, and that PolyMet will be satisfied with the state's decisions.

Moreover, Crowell and Moring markets itself to clients who seek to undermine and limit the application of state and federal environmental law. Their prior litigation is antithetical to everything you and your administration stand for, including the protection of natural resources and respect for environmental laws. They seek to excuse mine operators from liability in major mining disasters.[3] Crowell and Moring's website decries the very laws your administration is committed to protecting, stating that "[e]nvironmental laws present a host of litigation risks, regulatory challenges and myriad other impediments – such as government enforcement and citizen suits—that can stand in the way of bringing a project to fruition."[4] Crowell and Morning does not specialize in defending these laws; it specializes in helping its industry clients overcome environmental laws when their projects run afoul of them. They have used questionable tactics to attempt to market their services to mining companies in Appalachia.[5] We find it highly doubtful that this large law firm chooses to represent the State of Minnesota at a discounted rate in order to defend the environment and any decisions the State of Minnesota might make to protect its environment and its people.

If PolyMet wishes for Crowell and Moring to be involved in mining litigation in Minnesota, it should hire the firm itself. It is not an appropriate use of taxpayer dollars to hire this firm. Nor is it an efficient one, since the $750,000-1,000,000 proposed for this contract could probably fund between 6 and 10 full time positions at the Attorney General's office, who is obligated to appear on behalf of state agencies.[6] Those employees would be fully prepared to defend *any* decision on PolyMet, regardless of the plaintiff. Even if the Attorney General insists on hiring outside

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[1] www.nma.org

[2] http://www.nma.org/index.php/member-list

[3] They state on their website that they "defended the mine operator of key company officials in the MSHA proceedings or Congressional hearings following many of the major mine disasters of the last forty years, including Crandall Canyon, Upper Big Branch, Sago, Wilberg, Homer City Greenwich Ferrell, Jim Walter Resources, and others." Found at https://www.crowell.com/Practices/Environment-Natural-Resources/Mining

[4] https://www.crowell.com/Practices/Environment-Natural-Resources/Mining

[5] In an effort to obtain more business from mining companies, four Crowell and Moring lawyers released a statement attempted to discredit recent research on the link between coal mining and health problems by suggesting that the health problems were caused by in-breeding, or "consanguinity" in Appalachia. While the attorneys were ultimately cleared of an ethical violation, the disciplinary panel did note that "such implications of gross stereotypes have no place in the legal system and undermine the integrity of the profession." http://www.bcgsearch.com/bcgnews/900012016/Crowell_Moring_lawyers_cleared_in_ethics_charge_brought_on_by_inbreeding_memo/. The formal complaint against the attorneys may be found here: http://amlawdaily.typepad.com/files/huber-ethics-complaint-re-crowell.pdf.

[6] Minn. Stat. § 8.01.

counsel to defend decisions related to PolyMet, there is no reason why they should not hire a Minnesota firm to do so, rather than sending taxpayer dollars to a large, Washington D.C.-based firm.

I know that your neutrality on PolyMet has been hard-fought. I trust that you will give serious consideration to whether to permit this mine, and what conditions should be placed on PolyMet if it ever is permitted, including a financial assurance package that protects Minnesota's taxpayers and requirements that Minnesota waters stay safe and clean, if such a thing is possible. And I believe that you do not want the state represented by an outside law firm that represents the mining industry against regulators and in conflict with environmental laws; whose previous litigation is so antithetical to your administration's values; and that appears to predetermine the outcome of upcoming key decisions on the PolyMet mine.

I urge you to reject this proposed arrangement. Please do not hesitate to contact me with questions.

Sincerely,

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