

40 N. First Ave. East
Ely, MN 55731
(218) 365-3324

Up North Jobs Inc.

March 15, 2016

Hon. Mark Dayton
116 Veterans Service Building
20 West 12th Street
Saint Paul, MN 55155

Dear Governor Dayton:

I serve as the Chairman and CEO of Up North Jobs Inc., a 501 (c)(3) nonprofit membership organization based in Ely whose mission is to promote economic development and job growth in Northeastern Minnesota. Our membership is comprised of more than 1000 dues paying members and thousands of others from everywhere within the state who support copper-nickel mining in our region. Our Board of Directors and staff all serve as unpaid volunteers.

Boundary Waters Canoe Area Wilderness Act of 1978, Public Law 95-495

In 1978, federal legislation was passed that essentially created the Boundary Waters Canoe Area Wilderness (BWCAW) as a primitive wilderness area. The legislation, known as the Boundary Waters Canoe Area Wilderness Act of 1978, Public Law 95-495, banned mining, logging and all other commercial activities within the BWCAW. The environmental groups that supported the Wilderness Act, which included the Friends of the Boundary Waters and the Sierra Club, agreed at that time that these activities would be allowed anywhere within the Superior National Forest outside of the BWCAW and the buffer zone that borders the southern boundary line of the BWCAW.

Northeastern Minnesotans for Wilderness, Friends of the Boundary Waters and other Environmental Organizations

Elyites Susan and Paul Schurke, who you mentioned in your State of the State address, serve on the board of Ely based Northeastern Minnesotan's for Wilderness. Susan Schurke also serves as an advisor to Friends of the Boundary Waters.

Former Faegre & Benson lawyer Rebecca “Becky” L. Rom is the National Chairwoman of a campaign – the Campaign to Save the Boundary Waters. The campaign was organized by the Ely based Northeastern Minnesotan’s for Wilderness. Becky Rom serves as its Vice Chair.

In 1978, environmental groups, led by the Sierra Club and Friends of the Boundary Waters, were assured by the passage of Public Law 95-495 that mining would not be permitted within the BWCAW. Yet today, the restrictive provisions of the Wilderness Act do not extend far enough for some. Several of the same organizations have now organized in an effort to ban mining in the entire Superior National Forest, including the Rainey River Watershed. Is it any wonder that so many of the environmental groups are so mistrusted by so many of the citizens who reside in Northeastern Minnesota?

Minnesota’s Department of Employment and Economic Development loaned money to help Twin Metal’s predecessor develop copper-nickel mining operations in our region

Our organization, its members and thousands of our supporters are troubled and disturbed by your decision, as set forth in your letter of March 6, 2016 to Twin Metals Minnesota wherein you, *“directed the DNR [Minnesota Department of Natural Resources] not to authorize or enter into any new state access agreements or lease agreements for mining operations on state lands.”* Especially perplexing is the fact that in 2006 the IRRRB and the state’s Department of Employment and Economic Development entered into a financial arrangement to loan Franconia Minerals, Twin Metal’s predecessor, to assist them in developing their mining operations here in Northeastern Minnesota. If your directive is upheld, it will prevent Twin Metals Minnesota, whose parent company, Antofagasta, has already invested almost \$400 million dollars in the project, from accessing certain federal lands that lie outside of the BWCAW and the buffer strip. Your actions will not only make it more difficult for their project to proceed, but will have a chilling effect on any mining companies to consider investing in Minnesota.

We invite you to explain the meaning of the phrase you used in the directive issued to the DNR, *“not to authorize or enter into any new state access agreements or lease agreements for mining operations on state lands”*. We understand that Twin Metals only requested permits to engage in exploratory drilling, not permits required to conduct mining operations. The distinction is critical and significant. It causes us to ask whether your administration understood the nature and scope of Twin Metal’s request.

We share your concerns and your “obligation to ensure it [the BWCAW] is not diminished in any way”. The fact is, the BWCAW has been protected since 1978 by Public Law 95-495. Thousands of citizens residing in our region and throughout the state support copper-nickel mining and clean water. Yet, your directive prevents Twin Metals from conducting the studies that are

needed to prepare an Environmental Impact Statement that will determine whether the project can be developed and operated without degrading the water and air, and whether Twin Metal's copper-nickel project will negatively impact the BWCAW in any way.

The Executive Department

The efficacy of the directive you issued to the Department of Natural Resources fails for the several reasons that follow. We question whether a Governor has the authority to direct the Minnesota Department of Natural Resources *"not to authorize or enter into any new lease agreements or state access agreements"*. Pursuant to Article 5, Sec. 1 of the state constitution, the Executive Department is comprised of the Governor, the Lieutenant Governor, the Secretary of State, its Auditor and Attorney General. The five executive officers form the Executive Council.

Pursuant to Minnesota Statutes, Sec. 93.25, Subd. 2, *"All state leases for nonferrous metallic minerals or petroleum must be approved by the Executive Council"*. Mineral leases are routinely approved by the Executive Council by a majority vote of the state's Executive Officers. If Minn. Stat, Sec. 93.25, Subd. 2 requires that the Executive Council act as a body, then the legal argument can be made, that one of the state's executive officers acting alone cannot act for the Executive Council as a whole. If the directive issued to the DNR was not approved by a majority vote of the Executive Council, then your directive is ultra vires and is without legal standing.

The Legislative Department

Pursuant to Article III, Sec. 1, of the state constitution, *"No person or persons belonging to or constituting one these departments [legislative, executive and judicial] shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution"*.

Article X, Sec. 1 speaks to legislative powers: *"The power of taxation shall never be surrendered, suspended or contracted away"*.

Your directive withdrew public land containing mineral resources and denies the legislative branch of its power to raise revenue through mineral production taxes. This is clearly contrary to the power to tax granted the legislative branch by the aforementioned Article X, Sec. 1.

Copper-nickel mining will benefit the region and greater Minnesota

Your support of legislation to extend unemployment benefits for the 2,000 or more unemployed iron miners will help them survive for some 26 weeks. Yet, it will do nothing to promote economic development and job growth in Northeastern Minnesota. Mining industry operations have long supported economic development and job growth in our region and have resulted in many millions of dollars in financial aid flowing to our schools by way of the production taxes paid by the mining industry.

Mining operations have been safely conducted in Northeastern Minnesota for over 120 years and have not resulted in degrading the region's clean water and clean air. Now is not the time to slam the door on mining operations that will provide economic opportunities for its citizens for generations to come. For the above-mentioned reasons, we urge you to vacate your directive before litigation is brought by one of the injured parties and further damage is done to our state's reputation in its treatment of businesses investing in Minnesota.

Sincerely,

Gerald M. Tyler

Gerald M. Tyler
Chairman & CEO

Dan Waters

Dan Waters, Director &
Owner, Canadian Waters, Inc.