

SUPERIOR NATIONAL FOREST LAND EXCHANGE ACT OF
2017

SEPTEMBER 5, 2017.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3115]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3115) to provide for a land exchange involving Federal land in the Superior National Forest in Minnesota acquired by the Secretary of Agriculture through the Weeks Law, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Superior National Forest Land Exchange Act of 2017”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purpose and need for NorthMet Land Exchange.
- Sec. 3. Definitions.
- Sec. 4. NorthMet Land Exchange.
- Sec. 5. Valuation of NorthMet Land Exchange.
- Sec. 6. Maps and legal descriptions.
- Sec. 7. Post-exchange land management.
- Sec. 8. Miscellaneous provisions.

SEC. 2. PURPOSE AND NEED FOR NORTHMET LAND EXCHANGE.

(a) **PURPOSE.**—It is the purpose of this Act to further the public interest by consummating the NorthMet Land Exchange as specifically set forth in this Act.

(b) NEED.—According to the Final Record of Decision, the NorthMet Land Exchange is advisable and needed because the NorthMet Land Exchange will—

- (1) result in a 40-acre net gain in National Forest System lands;
- (2) improve the spatial arrangement of National Forest System lands by reducing the amount of ownership boundaries to be managed by 33 miles;
- (3) improve management effectiveness by exchanging isolated Federal lands with no public overland access for non-Federal lands that will have public overland access and be accessible and open to public use and enjoyment;
- (4) result in Federal cost savings by eliminating certain easements and their associated administration costs;
- (5) meet several of the priorities identified in the land and resource management plan for Superior National Forest to protect and manage administratively or congressionally designated, unique, proposed, or recommended areas, including acquisition of 307 acres of land to the administratively proposed candidate Research Natural Areas, which are managed by preserving and maintaining areas for ecological research, observation, genetic conservation, monitoring, and educational activities;
- (6) promote more effective land management that would meet specific National Forest needs for management, including acquisition of over 6,500 acres of land for new public access, watershed protection, ecologically rare habitats, wetlands, water frontage, and improved ownership patterns;
- (7) convey Federal land generally not needed for other Forest resource management objectives, because such land is adjacent to intensively developed private land including ferrous mining areas, where abundant mining infrastructure and transportation are already in place, including—
 - (A) a large, intensively developed open pit mine lying directly to the north of the Federal land;
 - (B) a private mine railroad, powerlines, and roads lying directly to the south of the Federal land; and
 - (C) already existing ore processing, milling, and tailings facilities located approximately 5 miles to the west of the Federal land; and
- (8) provide a practical resolution to complex issues pertaining to the development of private mineral rights underlying the Federal land surface, and thereby avoid potential litigation which could adversely impact the status and management of the Federal land and other National Forest System land acquired under the authority of section 6 of the Act of March 1, 1911 (commonly known as the Weeks Law; 16 U.S.C. 515).

SEC. 3. DEFINITIONS.

In this Act:

- (1) COLLECTION AGREEMENTS.—The term “Collection Agreements” means the following agreements between the Secretary and Poly Met pertaining to the NorthMet Land Exchange:
 - (A) The agreement dated August 25, 2015.
 - (B) The agreement dated January 15, 2016.
- (2) FEDERAL LAND PARCEL.—The term “Federal land parcel” means all right, title, and interest of the United States in and to approximately 6,650 acres of National Forest System land, as identified in the Final Record of Decision, within the Superior National Forest in St. Louis County, Minnesota, as generally depicted on the map entitled “Federal Land Parcel–NorthMet Land Exchange”, and dated June 2017.
- (3) NON-FEDERAL LAND.—The term “non-Federal land” means all right, title, and interest of Poly Met in and to approximately 6,690 acres of land in four separate tracts (comprising 10 separate land parcels in total) within the Superior National Forest to be conveyed to the United States by Poly Met in the land exchange as generally depicted on an overview map entitled “Non-Federal Land Parcels–NorthMet Land Exchange” and dated June 2017, and further depicted on separate tract maps as follows:
 - (A) TRACT 1.—Approximately 4,650 acres of land in St. Louis County, Minnesota, generally depicted on the map entitled “Non-Federal Land Parcels–NorthMet Land Exchange–Hay Lake Tract”, and dated June 2017.
 - (B) TRACT 2.—Approximately 320 acres of land in 4 separate parcels in Lake County, Minnesota, generally depicted on the map entitled “Non-Federal Land Parcels–NorthMet Land Exchange–Lake County Lands”, and dated June 2017.
 - (C) TRACT 3.—Approximately 1,560 acres of land in 4 separate parcels in Lake County, Minnesota, generally depicted on the map entitled “Non-Federal Land Parcels–NorthMet Land Exchange–Wolf Lands”, and dated June 2017.

(D) TRACT 4.—Approximately 160 acres of land in St. Louis County, Minnesota, generally depicted on the map entitled “Non-Federal Land Parcel—NorthMet Land Exchange—Hunting Club Lands”, dated June 2017.

(4) NORTHMET LAND EXCHANGE.—The term “NorthMet Land Exchange” means the land exchange specifically authorized and directed by section 4 of this Act.

(5) POLY MET.—The term “Poly Met” means Poly Met Mining Corporation, Inc., a Minnesota Corporation with executive offices in St. Paul, Minnesota, and headquarters in Hoyt Lakes, Minnesota.

(6) RECORD OF DECISION.—The term “Record of Decision” means the Final Record of Decision of the Forest Service issued on January 9, 2017, approving the NorthMet Land exchange between the United States and PolyMet Mining, Inc., a Minnesota Corporation, involving National Forest System land in the Superior National Forest in Minnesota.

(7) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

(8) STATE.—The term “State” means the State of Minnesota.

SEC. 4. NORTHMET LAND EXCHANGE.

(a) EXCHANGE AUTHORIZED AND DIRECTED.—

(1) IN GENERAL.—Subject to section 5(c)(1) and other conditions imposed by this Act, if Poly Met offers to convey to the United States all right, title, and interest of Poly Met in and to the non-Federal land, the Secretary shall accept the offer and convey to Poly Met all right, title, and interest of the United States in and to the Federal land parcel.

(2) LAND EXCHANGE EXPEDITED.—Subject to the conditions imposed by this Act, the NorthMet Land Exchange directed by this Act shall be consummated not later than 90 days after the date of enactment of this Act.

(b) FORM OF CONVEYANCE.—

(1) NON-FEDERAL LAND.—Title to the non-Federal land conveyed by Poly Met to the United States shall be by general warranty deed subject to existing rights of record, and otherwise conform to the title approval regulations of the Attorney General of the United States.

(2) FEDERAL LAND PARCEL.—The Federal land parcel shall be quitclaimed by the Secretary to Poly Met by an exchange deed.

(c) EXCHANGE COSTS.—

(1) REIMBURSEMENT REQUIRED.—Poly Met shall pay or reimburse the Secretary, either directly or through the Collection Agreements, for all land survey, appraisal, land title, deed preparation, and other costs incurred by the Secretary in processing and consummating the NorthMet Land Exchange. The Collection Agreements, as in effect on the date of the enactment of this Act, may be modified through the mutual consent of the parties.

(2) DEPOSIT OF FUNDS.—All funds paid or reimbursed to the Secretary under paragraph (1)—

(A) shall be deposited and credited to the accounts in accordance with the Collection Agreements;

(B) shall be used for the purposes specified for the accounts; and

(C) shall remain available to the Secretary until expended without further appropriation.

(d) CONDITIONS ON LAND EXCHANGE.—

(1) RESERVATION OF CERTAIN MINERAL RIGHTS.—Notwithstanding subsection (a), the United States shall reserve the mineral rights on approximately 181 acres of the Federal land parcel as generally identified on the map entitled “Federal Land Parcel—NorthMet Land Exchange”, and dated June 2017.

(2) THIRD-PARTY AUTHORIZATIONS.—As set forth in the Final Record of Decision, Poly Met shall honor existing road and transmission line authorizations on the Federal land parcel. Upon relinquishment of the authorizations by the holders or upon revocation of the authorizations by the Forest Service, Poly Met shall offer replacement authorizations to the holders on at least equivalent terms.

SEC. 5. VALUATION OF NORTHMET LAND EXCHANGE.

(a) APPRAISALS.—The Congress makes the following new findings:

(1) Appraisals of the Federal and non-Federal lands to be exchanged in the NorthMet Land Exchange were formally prepared in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions, and were approved by the Secretary in conjunction with preparation of the November 2015 Draft Record of Decision on the NorthMet Land Exchange.

(2) The appraisals referred to in paragraph (1) determined that the value of the non-Federal lands exceeded the value of the Federal land parcel by approximately \$425,000.

(3) Based on the appraisals referred to in paragraph (1), the United States would ordinarily be required to make a \$425,000 cash equalization payment to Poly Met to equalize exchange values under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), unless such an equalization payment is waived by Poly Met.

(b) VALUES FOR CONSUMMATION OF LAND EXCHANGE.—The appraised values of the Federal and non-Federal land determined and approved by the Secretary in November 2015, and referenced in subsection (a)—

(1) shall be the values utilized to consummate the NorthMet Land Exchange; and

(2) shall not be subject to reappraisal.

(c) WAIVER OF EQUALIZATION PAYMENT.—

(1) CONDITION ON LAND EXCHANGE.—Notwithstanding section 206(b) of the Federal Land Policy and Management Act (43 U.S.C. 1716(b)), and as part of its offer to exchange the non-Federal lands as provided in section 4(a)(1) of this Act, Poly Met shall waive any payment to it of any monies owed by the United States to equalize land values.

(2) TREATMENT OF WAIVER.—A waiver of the equalization payment under paragraph (1) shall be considered as a voluntary donation to the United States by Poly Met for all purposes of law.

SEC. 6. MAPS AND LEGAL DESCRIPTIONS.

(a) MINOR ADJUSTMENTS.—By mutual agreement, the Secretary and Poly Met may correct minor or typographical errors in any map, acreage estimate, or description of the Federal land parcel or non-Federal land to be exchanged in the NorthMet Land Exchange.

(b) CONFLICT.—If there is a conflict between a map, an acreage estimate, or a description of land under this Act, the map shall control unless the Secretary and Poly Met mutually agree otherwise.

(c) EXCHANGE MAPS.—The maps referred to in section 3 depicting the Federal and non-Federal lands to be exchanged in the NorthMet Land Exchange, and dated June 2017, depict the identical lands identified in the Final Record of Decision, which are on file in the Office of the Supervisor, Superior National Forest.

SEC. 7. POST-EXCHANGE LAND MANAGEMENT.

(a) NON-FEDERAL LAND.—Upon conveyance of the non-Federal land to the United States in the NorthMet Land Exchange, the non-Federal land shall become part of the Superior National Forest and be managed in accordance with—

(1) the Act of March 1, 1911 (commonly known as the Weeks Law; 16 U.S.C. 500 et seq.); and

(2) the laws and regulations applicable to the Superior National Forest and the National Forest System.

(b) PLANNING.—Upon acquisition by the United States in the NorthMet Land Exchange, the non-Federal lands shall be managed in a manner consistent with the land and resource management plan applicable to adjacent federally owned lands in the Superior National Forest. An amendment or supplement to the land and resource management plan shall not be required solely because of the acquisition of the non-Federal lands.

(c) FEDERAL LAND.—Upon conveyance of the Federal land parcel to Poly Met in the NorthMet Land Exchange, the Federal land parcel shall become private land and available for any lawful use in accordance with applicable Federal, State, and local laws and regulations pertaining to mining and other uses of land in private ownership.

SEC. 8. MISCELLANEOUS PROVISIONS.

(a) WITHDRAWAL OF ACQUIRED NON-FEDERAL LAND.—The non-Federal lands acquired by the United States in the NorthMet Land Exchange shall be withdrawn, without further action by the Secretary, from appropriation and disposal under public land laws and under laws relating to mineral and geothermal leasing.

(b) WITHDRAWAL REVOCATION.—Any public land order that withdraws the Federal land parcel from appropriation or disposal under a public land law shall be revoked without further action by the Secretary to the extent necessary to permit conveyance of the Federal land parcel to Poly Met.

(c) WITHDRAWAL OF FEDERAL LAND PENDING CONVEYANCE.—The Federal land parcel to be conveyed to Poly Met in the NorthMet Land Exchange, if not already withdrawn or segregated from appropriation or disposal under the mineral leasing and geothermal or other public land laws upon enactment of this Act, is hereby so withdrawn, subject to valid existing rights, until the date of conveyance of the Federal land parcel to Poly Met.

(d) ACT CONTROLS.—In the event any provision of the Record of Decision conflicts with a provision of this Act, the provision of this Act shall control.

PURPOSE OF THE BILL

The purpose of H.R. 3115 is to provide for a land exchange involving Federal land in the Superior National Forest in Minnesota acquired by the Secretary of Agriculture through the Weeks Law.

BACKGROUND AND NEED FOR LEGISLATION

In 1935, the United States Forest Service (USFS) purchased 6,650 acres of land under the Weeks Act (36 Stat. 961). The private owner of the lands reserved its rights to the subsurface minerals, sometimes referred to as the NorthMet ore body, underlying those lands when the USFS purchased the surface rights for National Forest purposes. Today, PolyMet controls the mineral rights to the NorthMet ore body through long-term mineral leases. The USFS owns the remainder of the property rights, including the surface rights on the lands in question. PolyMet proposes to build a surface mine to develop its mineral rights.

The USFS took the position that the mineral rights reserved by the private property owner when the lands were conveyed to the United States do not include the right to construct a surface mine. PolyMet disagrees with the USFS position and argues that the mineral rights retained by the private property owner provide for access to the minerals by any mining method, including surface mining. To eliminate this conflict, the Obama Administration proposed a land exchange. Under the agreed-upon exchange, PolyMet would receive the 6,650 acres of split estate USFS lands and in return would convey to the USFS 6,690 acres of non-federal lands within the Superior National Forest. The bill waives PolyMet's right to a cash equalization payment that would otherwise be owed by the United States to PolyMet to equalize the difference in value between the lands transferred to PolyMet and to the USFS.

The land exchange facilitated by H.R. 3115 is modeled after the administrative land exchange proposed by the Obama Administration that has been under National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 et seq.) analysis since 2010. The analysis involved multiple federal agencies as well as the State of Minnesota. The results of the NEPA analysis were documented in a Final Environmental Impact Statement released in November 2015 as well as in a Record of Decision issued in January 2017.

Neither H.R. 3115 nor the land exchange described in the Final Record of Decision would by themselves authorize mining operations to occur on the lands conveyed to PolyMet. Following conveyance of the land, permitting responsibilities for mining activities on the parcel would rest primarily with the State of Minnesota and the U.S. Army Corps of Engineers.

COMMITTEE ACTION

H.R. 3115 was introduced on June 29, 2017, by Congressman Richard M. Nolan (D-MN). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Federal Lands and the Subcommittee on Energy and Mineral Resources. On July 14, 2017, the Subcommittee on Federal Lands held a hearing on the bill. On July 25, 2017, the Natural

Resources Committee met to consider the bill. The two Subcommittees were discharged by unanimous consent. Congressman Bruce Westerman (R-AR) offered an amendment designated #1; it was adopted by voice vote. No further amendments were offered, and the bill, as amended, was ordered favorably reported to the House of Representatives by a bipartisan roll call vote of 26 ayes to 10 nays on July 26, 2017, as follows:

Committee on Natural Resources
U.S. House of Representatives
115th Congress

Date: 07-26-17

Recorded Vote #: 7

Meeting on / Amendment on: FC Mark Up on 21 bills: **On Favorably Reporting H.R. 3115** (Rep. Richard Nolan),
"Superior National Forest Land Exchange Act of 2017"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman	X			Mr. Cook, CA	X		
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. Soto, FL</i>	X		
Mr. Young, AK, Chairman Emeritus				Mr. Westerman, AR	X		
<i>Mrs. Napolitano, CA</i>				<i>Mr. McEachin, VA</i>		X	
Mr. Gohmert, TX, Vice Chairman	X			Mr. Graves, LA	X		
<i>Ms. Bordallo, Guam</i>				<i>Mr. Brown, MD</i>		X	
Mr. Lamborn, CO	X			Mr. Hice, GA	X		
<i>Mr. Costa, CA</i>	X			<i>Mr. Clay, MO</i>		X	
Mr. Wittman, VA	X			Mrs. Radewagen, AS	X		
<i>Mr. Sablan, CNMI</i>	X			<i>Mr. Gomez, CA</i>		X	
Mr. McClintock, CA	X			Mr. LaHood, IL	X		
<i>Ms. Tsongas, MA</i>		X		Mr. Webster, FL	X		
Mr. Pearce, NM	X			Mr. Bergman, MI	X		
<i>Mr. Huffman, CA</i>		X		Ms. Cheney, WY	X		
Mr. Thompson, PA				Mr. Johnson, LA			
<i>Mr. Lowenthal, CA</i>	X			Ms. González-Colón, PR	X		
Mr. Gosar, AZ	X			Mr. Gianforte, MT	X		
<i>Mr. Beyer, VA</i>		X					
Mr. Labrador, ID							
<i>Mrs. Torres, CA</i>		X					
Mr. Tipton, CO	X						
<i>Mr. Gallego, AZ</i>							
Mr. LaMalfa, CA	X						
<i>Ms. Hanabusa, HI</i>	X						
Mr. Denham, CA	X						
<i>Ms. Barragán, CA</i>		X		TOTAL:	26	10	

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation and the Congressional Budget Act of 1974. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 1, 2017.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3115, the Superior National Forest Land Exchange Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 3115—Superior National Forest Land Exchange Act of 2017

H.R. 3115 would require the Forest Service to exchange, at the request of a private entity, 6,650 acres of federal lands in the Superior National Forest for 6,690 acres of private lands in that forest. Based on an analysis of information provided by the agency, CBO estimates that enacting the legislation would have no significant effect on the federal budget.

On January 9, 2017, the Forest Service issued a Final Record of Decision approving the land exchange required under the bill. CBO expects that, under current law, the land exchange would be completing in 2018, the same year we would expect it would occur under H.R. 3115. Because enacting the legislation would not affect the timing of the land exchange or the acreage conveyed, CBO estimates that enacting the bill would not affect direct spending.

Based on information regarding recent appraisals of the two parcels, CBO estimates that the value of the nonfederal land would exceed the value of the federal land by less than \$500,000. If the exchange is consummated under current law, the Forest Service would be required to use appropriated funds to make an equalization payment to the private landowner. Under the bill, that requirement would be waived. Because CBO expects that the agency would use appropriated funds that would have been used to make the equalization to carry out other activities, we estimate that implementing the bill also would have no significant effect on spending subject to appropriation.

Enacting the bill would not affect direct pending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 3115 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to provide for a land exchange involving Federal land in the Superior National Forest in Minnesota acquired by the Secretary of Agriculture through the Weeks Law.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

DISSENTING VIEWS

H.R. 3115 ratifies the Forest Service decision to execute a land exchange in the Superior National Forest with the PolyMet Mining Company.

PolyMet's plans to develop the first open pit copper mine in the State of Minnesota are controversial. Open pit copper mining is a highly toxic procedure that disturbs the surface and threatens ground water and other critical resources.

Ahead of the hearing on this bill, the committee received letters from concerned Minnesotans, including the Minnesota Environmental Partnership, the Minnesota Center for Environmental Advocacy and the Fon du Lac Band of Lake Superior Chippewa, a federally-recognized tribe whose reservation is downstream from the proposed mine. The area to be exchanged is part of the tribe's ancestral homeland and they have concerns that the conveyance could impact their retained rights to hunt, fish and gather. Federal ownership, which is threatened by this exchange, protects these rights.

Furthermore, since the Forest Service's approval of the exchange, several lawsuits have been filed to challenge the decision. We should think twice about rubber stamping this exchange while there is active litigation. Our system of government is set up to allow concerned citizens to challenge government decisions through the judicial branch. Access to courts is a fundamental right guaranteed by the Constitution. This bill takes away that right, something that should make us all more than a little concerned.

The mining company has not secured any of the state or federal permits necessary to move forward with the mine. Congress should not expedite a federal land transfer that is being reviewed by the judicial branch for a mine that has not secured the necessary permits. For these reasons, we oppose H.R. 3115.

RAÚL M. GRIJALVA,
*Ranking Member, Committee
on Natural Resources.*

NANETTE DIAZ BARRAGÁN.
GRACE F. NAPOLITANO.

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