

115TH CONGRESS  
1ST SESSION

**H.R.**

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.

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IN THE HOUSE OF REPRESENTATIVES

JUNE 29, 2017

Mr. NOLAN (for himself, Mr. PETERSON, Mr. EMMER, MR. TIPTON, MR. LAMBORN, MR. LEWIS, MR. WESTERMAN, MR. MCCLINTOCK, MR. GOSAR), introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**A BILL**

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.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**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. Findings.
- Sec. 3. Purpose and Need for NorthMet Land Exchange.
- Sec. 4. Definitions.
- Sec. 5. NorthMet Land Exchange.
- Sec. 6. Valuation of NorthMet Land Exchange.
- Sec. 7. Maps and legal descriptions.
- Sec. 8. Post-exchange land management.
- Sec. 9. Miscellaneous provisions.

**SEC. 2. FINDINGS.**

Congress makes the following findings:

(1) On January 9, 2017, the Forest Service issued a Final Record of Decision approving the NorthMet Land Exchange between the United States and Poly Met Mining, Inc., a Minnesota Corporation, involving National Forest System land in the Superior National Forest in Minnesota.

(2) The Final Record of Decision is based on the Final Environmental Impact Statement for the NorthMet Mining Project and Land Exchange.

(3) The Final Record of Decision was issued as the result of a complex, multi-year review under the National Environmental Policy Act (42 U.S.C. §4321, et seq.) and other laws and public-input process that included—

(A) the October 2009 publication of a Draft Environmental Impact Statement on the mining operation;

(B) a 2009 Forest Service Feasibility Analysis of the Land Exchange and Forest Service inclusion as a co-lead agency on the land exchange and proposed mining operation;

(C) a September 2010 Agreement to Initiate a land exchange between Poly Met and the Forest Service;

(D) the December 2013 completion of a Supplemental Draft Environmental Impact Statement analyzing the mining operation and the land exchange;

(E) the November 2015 completion of a Final Environmental Impact Statement on the mining operation and the land exchange;

(F) the November 2015 issuance of a Forest Service draft Record of Decision approving the NorthMet Land Exchange; and

(G) the December 2016 execution of a Memorandum of Agreement under section 306108 of title 54, United States Code (former section 106 of the National Historic Preservation Act).

(4) The 6,650 acres of Federal land proposed for conveyance to Poly Met in the NorthMet Land Exchange is National Forest System land, the surface estate of which is administered as part of the Superior National Forest, but which is underlain by the privately owned NorthMet ore body.

(5) Poly Met owns and controls the mineral rights to the NorthMet ore body through long-term mineral leases and proposes to build an open pit mine to recover the minerals.

(6) The United States owns the remainder of the property rights, including the surface that would be removed to access the minerals as proposed by Poly Met, and this separate ownership of the surface and subsurface, known as a split estate, raises fundamental legal and land management conflicts.

(7) The Federal land was purchased by the Forest Service, for National Forest System purposes, under the authority of section 6 of the Act of March 1, 1911 (commonly known as the Weeks Law; 16 U.S.C. 515), and the Forest Service has taken the position that the mineral rights that were reserved when the lands were acquired by the United States in 1935 do not include the right to surface mine as proposed by Poly Met.

(8) Due to the incompatibility between National Forest management objectives and Poly Met's intended mining operations, in the absence of a land exchange, the Forest Service is not willing or able to authorize such private, surface mining operations on lands of the Superior National Forest.

(9) Poly Met disagrees with the Forest Service position and argues that the mineral rights it seeks to utilize provide for access to the minerals by any mining method, including open pit or surface mining.

(10) This fundamental conflict raises the possibility of litigation between Poly Met and the Forest Service that has no certain outcome and could set an adverse judicial precedent not only for the 6,650 acres of Federal land, but also for other lands owned by the United States that were 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).

(11) The NorthMet Land Exchange would permanently resolve this fundamental conflict and risk to the United States.

(12) Consummation of the NorthMet Land Exchange will not authorize Poly Met's mining proposal to occur because other governmental entities, primarily the State of Minnesota and the United States Army Corps of Engineers, will still have the responsibility and authority to make decisions related to approval of the mining proposal.

(13) Under the NorthMet Land Exchange, the United States will acquire 6,690 acres of non-Federal private land that will be open to public use and enjoyment and managed for multiple resource values as a part of the Superior National Forest.

### **SEC. 3. PURPOSE AND NEED FOR NORTHMET LAND EXCHANGE.**

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

(b) **NEED.**-In addition to the findings contained in Section 2 of this Act supporting the advisability and need for the NorthMet Land Exchange, 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. 4. DEFINITIONS.**

In this Act:

(1) **COLLECTION AGREEMENTS.**—The term “Collection Agreements” means the 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 Parcel–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 5 of this Act.

(5) POLY MET.—The term “Poly Met” means Poly Met Mining, 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 Poly Met 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. 5. NORTHMET LAND EXCHANGE.**

### **(a) EXCHANGE AUTHORIZED AND DIRECTED.**

(1) IN GENERAL.— Subject to section 6(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 with the Secretary 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 depicted 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. 6. 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 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

(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 5(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. 7. 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 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 4 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. 8. 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 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. 9. 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.