

Committee on Natural Resources

Rob Bishop, Chairman
Markup Memorandum

July 24, 2017

To: All Subcommittee on Federal Lands Members

From: Majority Committee Staff – Chris Marklund
Subcommittee on Federal Lands (x 6-7736)

Markup: **H.R. 3115 (Rep. Richard Nolan)**, 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.
July 25 & 26, 2017; 1324 Longworth HOB

H.R. 3115 (Rep. Nolan), “*Superior National Forest Land Exchange Act of 2017*”

Summary of the Bill

The “Superior National Forest Land Exchange Act of 2017,” H.R. 3115 (Rep. Nolan), directs the Secretary of Agriculture to convey 6,650 acres of split estate acres along the edge of the Superior National Forest to Poly Met Mining Inc. (PolyMet). In exchange, PolyMet would convey 6,690 acres of private inholdings within the Superior National Forest to the Secretary of Agriculture. The bill ratifies the objectives of the NorthMet Land Exchange Final Record of Decision (ROD) as approved by the U.S. Forest Service on January 9, 2017 and requires the land exchange to be completed within 90 days of the enactment of the legislation.

Cosponsors

Rep. Tom Emmer (R-MN), Rep. Paul Gosar (R-AZ), Rep. Doug Lamborn (R-CO), Rep. Jason Lewis (R-MN), Rep. Tom McClintock (R-CA), Rep. Collin Peterson (D-MN), Rep. Scott Tipton (R-CO), Rep. Timothy Walz (D-MN), Rep. Bruce Westerman (R-AR)

Background

In 1935, the United States Forest Service (USFS) purchased 6,650 acres of land under the authorities provided by the Weeks Act¹ (36 Stat. 961). The private owner of the lands reserved their rights to the subsurface minerals, sometimes referred to as the NorthMet ore body, underlying those lands when USFS purchased the surface rights for National Forest purposes.² Today, PolyMet controls the mineral rights to the NorthMet ore body through long term mineral

¹ USDA Forest Service. “Final Record of Decision NorthMet Project Land Exchange.” 9 January 2017, <https://www.fs.usda.gov/project/?project=33908>

² Minnesota Department of Natural Resources, United States Army Corps of Engineers and United States Forest Service. “NorthMet Mining Project and Land Exchange Final Environmental Impact Statement Executive Summary.” November 2015. <http://www.dnr.state.mn.us/input/environmentalreview/polymet/feis-toc.html#feisfactsheets>

leases and proposes to build an open-pit mine to recover the underlying copper, nickel and other minerals. The USFS owns the remainder of the property rights, including the surface rights on the lands.³

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 like the one proposed by PolyMet. USFS stated that, “due to the inconsistency between National Forest management objectives and PolyMet’s intended mining operations, in the absence of such an exchange, the USFS is not willing or able to authorize such private, surface mining operations on lands of the Superior National Forest.”⁴ PolyMet disagrees with the USFS position and argues that the mineral rights it seeks to utilize provide for access to the minerals by any mining method, including surface mining.⁵

Adjudicating the respective property rights of PolyMet and the USFS would likely require protracted litigation with an uncertain outcome that could set broad reaching judicial precedent with respect to other Weeks Act lands acquired under the same deed. In order to eliminate this conflict, the Obama Administration proposed a land exchange between PolyMet and USFS.

Proposed Land Exchange

According to the Final Environmental Impact Statement, the federal land proposed to be transferred to PolyMet is composed largely of black spruce, tamarack, and cedar wetland. Bodies of water on the property include Mud Lake, Yelp Creek and the Partridge River. In general, the 6,650 acres of land lie immediately south of the Superior National Forest proclamation boundary and are bounded to the south by the former LTV Steel Mining Company railroad and Dunka Road. The area around the federal land includes privately owned properties to the north and west that various companies surface mined over the years. There are mine pits, waste rock stockpiles, tailings basins, processing facilities, railroad grades, and other general mining facilities throughout the area.⁶ For more than 100 years, commercial mining and mineral exploration acted as a significant local economic driver and mining activities are clearly evident across the region as a prominent part of the landscape.⁷

The land proposed to be conveyed to the USFS in the legislation includes four tracts of non-federal land totaling 6,690 acres within the Superior National Forest.⁸ According to information provided by the bill’s sponsor, the exchange provides a 40-acre overall increase in National Forest System lands, a 505-acre increase in wetlands under federal ownership, and a 94-acre increase in public lakes with water frontage available for public and tribal use.⁹

³ Ibid.

⁴ USDA Forest Service. “Final Record of Decision NorthMet Project Land Exchange.”

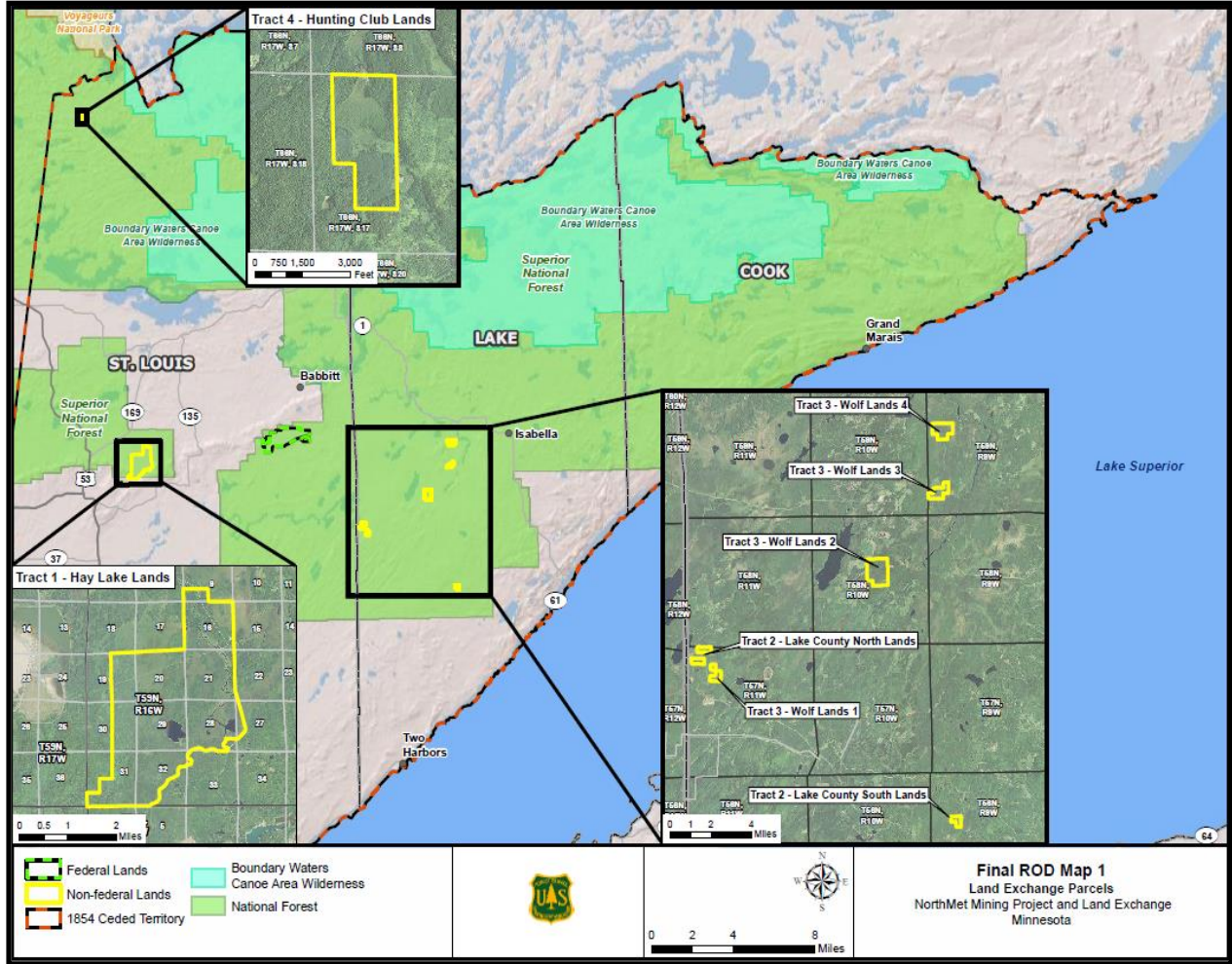
⁵ Ibid.

⁶ Minnesota Department of Natural Resources, United States Army Corps of Engineers and United States Forest Service. “NorthMet Mining Project and Land Exchange Final Environmental Impact Statement Executive Summary.”

⁷ USDA Forest Service. “Final Record of Decision NorthMet Project Land Exchange.”

⁸ Ibid.

⁹ Information provided by the Office of Congressman Rick Nolan



Map showing the tracts of land involved in the proposed land transfer and the surrounding area in northeast Minnesota.

Source: Final Record of Decision NorthMet Project Land Exchange Map 1,

http://a123.g.akamai.net/7/123/11558/abc123/forestservice.download.akamai.com/11558/www/nepa/72870_FSP

The administrative land exchange under H.R. 3115 is modeled after an administrative land exchange that has been under National Environmental Policy Act (NEPA) analysis since 2010.¹⁰ The analysis involved multiple federal agencies as well as the State of Minnesota. The results of that analysis were documented in a Final Environmental Impact Statement released in November of 2015¹¹ as well as in a Record of Decision issued in January of 2017.¹²

¹⁰ USDA Forest Service. "Final Record of Decision NorthMet Project Land Exchange."

¹¹ Minnesota Department of Natural Resources, United States Army Corps of Engineers and United States Forest Service. "NorthMet Mining Project and Land Exchange Final Environmental Impact Statement Executive Summary."

¹² USDA Forest Service. "Final Record of Decision NorthMet Project Land Exchange."

Neither H.R. 3115 nor the land exchange described in the Final Record of Decision would 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.¹³ Additionally, H.R. 3115 contains provisions that would withdraw the lands conveyed to the USFS from appropriation or disposal and from mineral and geothermal leasing. H.R. 3115 would require the completion of the land exchange within 90 days of the enactment of the legislation.

Of note, the administrative land exchange proposed in the January 2017 Record of Decision is the subject of litigation by environmental groups seeking to halt the land exchange between PolyMet and USFS. In late April, a federal district court heard oral arguments on a motion for preliminary injunction on the land exchange that raised questions regarding the valuation of the lands in question.¹⁴ The legislation introduced by Rep. Nolan is silent on the pending litigation. However, enactment of the legislation would render the pending litigation moot by applying Congress' authority under the property clause to finalize the land transfer.

Major Provisions of the Legislation

Section 1: Short title and table of contents

Sections 2 and 3: Findings and Purpose and Need

Section 4: Definitions

Section 5: Authorizes a land exchange between the Secretary of Agriculture and PolyMet exchanging a 6,650 acre of federal parcel for 6,690 acres of private inholdings within the Superior National Forest. Requires the land exchange be completed within 90 days of enactment of the legislation. Requires PolyMet to reimburse the Secretary for the costs of processing and consummating the land exchange. Reserves 181 acres of federal mineral rights on the federal land parcel to be exchanged and requires PolyMet to honor existing infrastructure authorizations and rights of way on the federal parcel.

Section 6: Makes findings regarding the valuations of the federal and non-federal parcels to be exchanged. Requires the valuations approved by the Secretary in November 2015 to be utilized to consummate the land exchange and provides for no reappraisal. Waives PolyMet's ability to seek an equalization payment for the difference between the federal parcel's valuation and the greater valuation of the non-federal parcels to be transferred to USFS. Provides that PolyMet's waiver of the valuation payment will be treated as a donation to the federal government.

Section 7: Provides authorities to correct minor errors in the documents and maps associated with the land exchange. Clarifies that the maps associated with the January 2017

¹³ Ibid.

¹⁴ Helmlinger, Marshall. "Nolan Bill Would Clear Way for Polymet Land Exchange." *The Timberjay*. 5 July 2017. <http://timberjay.com/stories/nolan-bill-would-clear-way-for-polymet-land-exchange.13497>

Record of Decision will be used to resolve conflicts with respect to property descriptions and acreage estimates.

Section 8: Provides that the non-federal parcels, once conveyed to the USFS, will become part of and be managed consistent with, the laws and regulations governing the management of the Superior Natural Forest. Provides that the land conveyed to PolyMet will become private lands available for any lawful use.

Section 9: Includes provisions to facilitate the land exchange. Withdraws the non-federal parcels to be transferred to USFS from further appropriation and disposal and from geothermal and mineral leasing. Revokes any mineral withdrawals, appropriations or disposals necessary to permit the conveyance of the federal parcel to PolyMet. Withdraws the ability to dispose of, appropriate or lease the federal parcel until it is conveyed to PolyMet.

Administration Position

In written testimony submitted to the Subcommittee on Federal Lands on H.R. 3115, Chief of the Forest Service Tom Tidwell noted, “The Forest Service has been diligently working towards completing the land exchange and supports continuing to do so administratively. Because H.R. 3115 correlates with the work that is currently underway, USDA is also supportive of the legislation.”

Cost

A Congressional Budget Office cost estimate has not yet been completed for this bill.