

# Committee on Natural Resources

Rob Bishop Chairman  
Mark-Up Memorandum

November 3, 2017

To: All Natural Resources Committee Members

From: Majority Committee Staff—Chris Esparza  
Subcommittee on Energy and Mineral Resources

Mark-Up: **H.R. 3905 (Rep. Tom Emmer, MN-06)**, To require congressional approval of any mineral withdrawal or monument designation involving the National Forest System lands in the State of Minnesota, to provide for the renewal of certain mineral leases in such lands, and for other purposes.  
**November 7 & 8, 2017; 1324 Longworth HOB**

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**H.R. 3905 (Rep. Tom Emmer)**, “*Minnesota’s Economic Rights in the Superior National Forest Act*”

## **Summary of the Bill**

The bill would require congressional approval to withdraw any minerals on National Forest System (NFS) lands in the State of Minnesota from disposition under U.S. mineral and geothermal leasing laws. The bill further requires congressional approval for the establishment of national monuments on NFS lands in the State of Minnesota. Finally, the bill clarifies the lease terms for all mineral leases within the exterior boundaries of NFS lands in the State of Minnesota.

## **Cosponsors**

Reps. Collin Peterson (D-MN), Jason Lewis (R-MN), Paul Gosar (R-AZ)

## **Background**

The Twin Metals Minnesota Project is a prospective underground copper, nickel, platinum, palladium, gold and silver mine operation.<sup>1</sup> The world-class Maturi mineral deposit is located near the cities of Ely, and Babbitt, Minnesota in the Superior National Forest. Project proponents seek to submit a formal mine plan proposal and formally begin detailed environmental reviews required by state and federal laws. Before this can occur, a pending court case between the federal government and the project owners will need to be resolved to determine the status of the project owner’s mineral rights.<sup>2</sup>

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<sup>1</sup> Twin Metals Minnesota, About the Project, <http://www.twin-metals.com/about-the-project/>.

<sup>2</sup> Steve Karnowski, Feds seek to dismiss Twin Metals mineral rights lawsuit, StarTribune, June 6, 2017, <http://www.startribune.com/feds-seeks-to-dismiss-twin-metals-mineral-rights-lawsuit/426796791/>

The Twin Metals project is expected to extract 20,000 tons of mineralized ore per day from which marketable concentrates are produced.<sup>3</sup> This project is expected to create 650 direct and 1,300 indirect jobs.<sup>4</sup> In 2015 the average wage for a mining job in Minnesota was \$78,635, while the average wage in Minnesota was \$53,938.<sup>5</sup> If approved, the project will generate significant tax and royalty revenues for Minnesota.

The Twin Metals project would consist of an underground operation and a tailings storage facility.<sup>6</sup> The mined out workings of the mine would serve as permanent storage for waste rock and tailings. This would minimize surface storage of these byproducts. Sufficient underground space would be created to contain 100% of the produced waste rock and 50% of the processed tailings. The other 50% will be deposited in a surface tailings storage facility.<sup>7</sup> This facility is expected to be located at an existing mine near Babbitt, Minnesota.

Unlike most mineral operations on federal lands, which are governed by the Mining Law of 1872 (30 U.S.C.), the Weeks Act (16 U.S.C. 521a), which deals with acquired lands and minerals, controls the Twin Metals project.<sup>8</sup> Leases of acquired minerals on federal land for mineral exploration and extraction are not indefinite agreements and periodically need to be renewed on 20-year increments. The two leases for the mineral deposit in question began in 1966 and were renewed both in 1989 and 2004.<sup>9</sup> These leases have been transferred several times, most recently to Antofagasta, a Chilean mining corporation. Upon acquisition, Antofagasta took a renewed interest in exploratory and design activities, spending more than \$400 million in developing the Twin Metals mine.<sup>10</sup>

However, the previous administration denied Antofagasta's recent application to renew its leases, premising the denial on an opinion (M-Opinion) by then-Interior Department Solicitor Hilary Tompkins that concluded that BLM had discretion to deny renewal of Twin Metals' leases.<sup>11</sup> On September 12, 2016, Twin Metals Minnesota filed a lawsuit in federal district court in Minnesota to challenge the M-Opinion, and to affirm and protect its long-standing mineral rights in the Iron Range region of Northeast Minnesota.<sup>12</sup>

On December 14, 2016, the Forest Service denied consent for the renewal of Twin Metals' leases and the following day, the BLM denied the renewal of the leases.<sup>13</sup> Shortly thereafter, at the end of the Obama administration, the U.S. Forest Service and the U.S. Bureau of Land Management (BLM) proposed to withdraw 235,000 acres from mineral exploration and mining development.<sup>14</sup> The leases were within the boundaries of the withdrawal. The Forest

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<sup>3</sup> Twin Metals Minnesota, Project Facts, <http://www.twin-metals.com/about-the-project/project-facts/>.

<sup>4</sup> *id.*

<sup>5</sup> *id.*

<sup>6</sup> *id.*

<sup>7</sup> *id.*

<sup>8</sup> Complaint, *Franconia Minerals v. U.S. Dep't of the Interior*, Filed Sept. 12, 2016 (Dist. MN).

<sup>9</sup> *id.*

<sup>10</sup> Twin Metals Minnesota, *supra*, note 3.

<sup>11</sup> U.S. Department of the Interior Solicitor Hilary Tompkins, M-37036: Twin Metals Minnesota Application to Renew Preference Rights Leases, <https://www.doi.gov/sites/doi.gov/files/uploads/m-37036.pdf>.

<sup>12</sup> *Franconia Minerals v. U.S. Dep't of the Interior*, *supra* note 8.

<sup>13</sup> U.S. Forest Service, Twin Metals Lease Renewal,

<https://www.fs.usda.gov/detail/superior/landmanagement/resourcemanagement/?cid=fseprd507250>.

<sup>14</sup> *id.*

Service is now conducting an extensive environmental review of the impacts of the proposed withdrawal to consider a 20-year withdrawal of the lands.

The House Natural Resources Subcommittee on Energy and Mineral Resources held a legislative hearing on a discussion draft for H.R. 3905 on July 27, 2017.

## **Major Provisions**

### **Section 1. Short Title.**

### **Section 2. Condition on Mineral Withdrawal of National Forest System Lands in Minnesota.**

This section prohibits the withdrawal of minerals within NFS lands in the State of Minnesota from disposition without congressional approval.

### **Section 3. Condition on Monument Designation on National Forest System Lands in Minnesota.**

This section prohibits the establishment of national monuments on NFS lands in the State of Minnesota without congressional approval.

### **Section 4. Clarifying the Nature of Mineral Rights on Forest System Lands in Minnesota.**

This section clarifies that all mineral leases issued within NFS lands in the State of Minnesota are indeterminate right leases subject to automatic renewal if certain requirements are met.

This section outlines specific instances when the Secretary of Interior may suspend operations under a lease.

This section authorizes the Secretary of Interior to issue permits for the use of surface lands, not included in the lease, for purposes connected with exploration and development of deposits.

This section clarifies the applicability of this legislation's lease terms to leases in effect, leases not yet in effect, and recently non-renewed hard rock mineral leases for the Superior National Forest in Minnesota.

This section clarifies the applicability of the National Environmental Policy Act (NEPA) to leases in effect, leases not yet in effect, and recently non-renewed hard rock mineral leases. The section further clarifies the time limit for completing the pending environmental assessment for the hard rock mineral leases referred to in this legislation.

Finally, this section clarifies this legislation should not be construed to permit prospecting for development and utilization of mineral resources within the Boundary Waters Canoe Area Wilderness or Mine Protection Area.

**Administration Position**

The administration's position is unknown at this time.

**Anticipated Amendments**

None

**Cost**

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

**Effect on Current Law (Ramseyer)**

**Showing Current Law as Amended by HR 3905**

[new text highlighted in yellow; text to be deleted bracketed and highlighted in blue]

Section 320301 of title 54, United States Code

**320301. National monuments**

(a) Presidential Declaration.-The President may, in the President's discretion, declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments.

(b) Reservation of Land.-The President may reserve parcels of land as a part of the national monuments. The limits of the parcels shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

(c) Relinquishment to Federal Government.-When an object is situated on a parcel covered by a bona fide unperfected claim or held in private ownership, the parcel, or so much of the parcel as may be necessary for the proper care and management of the object, may be relinquished to the Federal Government and the Secretary may accept the relinquishment of the parcel on behalf of the Federal Government.

(d) Limitation on Extension or Establishment of National Monuments in Wyoming.-No extension or establishment of national monuments in Wyoming may be undertaken except by express authorization of Congress.

**(e) LIMITATION ON EXTENSION OR ESTABLISHMENT OF A NATIONAL MONUMENTS IN MINNESOTA.—No extension or establishment of national monuments on National Forest System lands in the State of Minnesota may be undertaken except by express authorization of Congress.**