

MINNESOTA'S ECONOMIC RIGHTS IN THE SUPERIOR
NATIONAL FOREST ACT

NOVEMBER 21, 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. 3905]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3905) 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, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 3905 is to require Congressional approval of any mineral withdrawal or monument designation involving the National Forest System lands in the State of Minnesota, and to provide for the renewal of certain mineral leases in such lands.

BACKGROUND AND NEED FOR LEGISLATION

The Twin Metals Minnesota Project is a prospective underground copper, nickel, platinum, palladium, gold and silver mine oper-

ation.¹ 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.²

The Twin Metals project is expected to extract 20,000 tons of mineralized ore per day from which marketable concentrates are produced.³ This project is expected to create 650 direct and 1,300 indirect jobs.⁴ In 2015 the average wage for a mining job in Minnesota was \$78,635, while the average wage in Minnesota was \$53,938.⁵ 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.⁶ 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.⁷ 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 (Sess. 2, ch. 152, 17 Stat. 91–96), the Weeks Act (16 U.S.C. 521a), which deals with acquired lands and minerals, controls the Twin Metals project.⁸ Leases of acquired minerals on federal land for mineral exploration and extraction are not indefinite agreements and periodically need to be renewed in 20-year increments. The two leases for the mineral deposit in question began in 1966 and were renewed in 1989 and 2004.⁹ 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.¹⁰

However, the Obama 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 the Bureau of Land Management (BLM) had discretion to deny renewal of Twin Metals' leases.¹¹ On Sep-

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

² 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/>

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

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

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

⁹ *Id.*

¹⁰ Twin Metals Minnesota, *supra*, note 3.

¹¹ 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>.

tember 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.¹²

On December 14, 2016, the U.S. Forest Service (USFS) denied consent for the renewal of Twin Metals’ leases, and on the following day, BLM denied the renewal of the leases.¹³ Shortly thereafter, at the end of the Obama Administration, USFS and BLM proposed to withdraw 235,000 acres of federal land from mineral exploration and mining development for 20 years.¹⁴ The Twin Metals’ leases were within the boundaries of the withdrawal. USFS is now conducting an extensive environmental review of the impacts of the proposed withdrawal.

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

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides a short title for the bill, the Minnesota’s Economic Rights in the Superior National Forest Act.

Section 2. Condition on mineral withdrawal of National Forest System lands in Minnesota

This section prohibits the withdrawal of minerals within National Forest System lands (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 under the Antiquities Act (54 U.S.C. 320301 *et seq.*) 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 the Interior may suspend operations under a lease.

This section authorizes the Secretary of the 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 of 1969 (U.S.C. 4321 *et seq.*) to leases in effect,

¹² *Franconia Minerals v. U.S. Dep’t of the Interior*, *supra* note 8.

¹³ U.S. Forest Service, Twin Metals Lease Renewal, <https://www.fs.usda.gov/detail/superior/landmanagement/resourcemanagement/?cid=fseprd507250>.

¹⁴ *Id.*

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.

COMMITTEE ACTION

H.R. 3905 was introduced on October 2, 2017, by Congressman Tom Emmer (R-MN). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittees on Energy and Mineral Resources, and Federal Lands. On November 7, 2017, the Natural Resources Committee met to consider the bill. The two Subcommittees were discharged by unanimous consent. No amendments were offered, and the bill was ordered favorably reported to the House of Representatives by a roll call vote of 17 ayes to 13 noes on November 8, 2017, as follows:

Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 11-08-17

Recorded Vote #: 13

Meeting on / Amendment on: **FC Mark Up on Favorably Reporting H.R. 3905** (Rep. Tom Emmer), 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. "Minnesota's Economic Rights in the Superior National Forest Act"

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	X			Mr. Westerman, AR	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. McEachin, VA</i>		X	
Mr. Gohmert, TX, Vice Chairman				Mr. Graves, LA			
<i>Ms. Bordallo, Guam</i>				<i>Mr. Brown, MD</i>		X	
Mr. Lamborn, CO				Mr. Hice, GA	X		
<i>Mr. Costa, CA</i>				<i>Mr. Clay, MO</i>			
Mr. Wittman, VA				Mrs. Radewagen, AS			
<i>Mr. Sablan, CNMI</i>		X		<i>Mr. Gomez, CA</i>		X	
Mr. McClintock, CA	X			Mr. LaHood, IL			
<i>Ms. Tsongas, MA</i>		X		Mr. Webster, FL	X		
Mr. Pearce, NM	X			Mr. Bergman, MI	X		
<i>Mr. Huffman, CA</i>				Ms. Cheney, WY	X		
Mr. Thompson, PA	X			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>		X					
Mr. LaMalfa, CA	X						
<i>Ms. Hanabusa, HI</i>							
Mr. Denham, CA	X						
<i>Ms. Barragán, CA</i>		X		TOTAL:	17	13	

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 AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. 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 following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 21, 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. 3905, the Minnesota's Economic Rights in the Superior National Forest Act.

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,
Director.

Enclosure.

H.R. 3905—Minnesota's Economic Rights in the Superior National Forest Act

Summary: H.R. 3905 would prevent federal agencies from withdrawing certain federal land in northern Minnesota from use for mining activities. The bill also would restore two mineral leases that were canceled by the Bureau of Land Management (BLM). CBO estimates that enacting the bill would increase offsetting receipts, which are treated as reductions in direct spending, by \$2 million over the 2018–2027 period; therefore, pay-as-you-go procedures apply. Enacting H.R. 3905 would not affect revenues.

CBO estimates that enacting H.R. 3905 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 3905 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated Cost to the Federal Government: The estimated budgetary effect of H.R. 3905 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment),

	By fiscal year, in millions of dollars—												
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018– 2022	2018– 2027	
DECREASES IN DIRECT SPENDING													
Estimated Budget Authority	*	*	*	*	*	*	*	*	*	*	–2	*	–2
Estimated Outlays	*	*	*	*	*	*	*	*	*	*	–2	*	–2

Note: * = between –\$500,000 and zero.

Basis of estimate: For this estimate, CBO assumes that H.R. 3905 will be enacted near the beginning of calendar year 2018.

Background

In 2012, BLM denied a request from Twin Metals, a mining firm with operations in northern Minnesota, to renew two mineral leases on federal land. Those leases expired in December 2016, and the Forest Service subsequently announced its intent to withdraw 234,000 acres of federal land from use for commercial purposes, including the lands that were held under Twin Metals’ leases. No final decision on the withdrawal has been announced. In addition, Twin Metals has sued the federal government seeking to have its leases restored. That litigation is ongoing.

Rents and royalties

H.R. 3905 would restore Twin Metals’ leases. Based on an analysis of information provided by the affected agencies and Twin Metals, CBO estimates that Twin Metals would pay rents totaling less than \$5,000 a year over the 2018–2027 period. Further, CBO expects that production from those leases would begin in 2027 and we estimate that royalties would total \$7 million in 2027. That estimate accounts for the possibility that production would not occur until after 2027. About half of the royalties (\$3.5 million) would be paid to the State of Minnesota. Because the outcome of the litigation between Twin Metals and the federal government is uncertain, CBO assumes there is a 50 percent chance that the firm will have the affected leases restored under current law. Thus, we estimate that enacting H.R. 3905 would increase net rents and royalties by about \$2 billion over the 2018–2027 period.

Because the Forest Service’s proposed withdrawal would not affect mineral producers with valid existing rights, and CBO does not expect any of the other lands that may be withdrawn to generate any receipts over the next 10 years, we estimate that preventing the withdrawal of those lands from mining activities would have no effect on the federal budget.

Pay-As-You Go Considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 3905, AS ORDERED REPORTED BY THE
HOUSE COMMITTEE ON NATURAL RESOURCES ON NOVEMBER 8, 2017

	By fiscal year, in millions of dollars—											
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018– 2022	2018– 2027
NET DECREASE IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	0	0	0	0	0	0	0	0	0	–2	0	–2

Increase in long-term direct spending and deficits: 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.

Mandates: H.R. 3905 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Jeff LaFave; Mandates: Zach Bynum.

Estimate approved by: H. Samuel Papenfuss, Deputy 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 require Congressional approval of any mineral withdrawal or monument designation involving the National Forest System lands in the State of Minnesota, and to provide for the renewal of certain mineral leases in such lands.

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 MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 54, UNITED STATES CODE

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SUBTITLE III—NATIONAL PRESERVATION PROGRAMS

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CHAPTER 3203—MONUMENTS, RUINS, SITES, AND OBJECTS OF ANTIQUITY

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§ 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 MONUMENT 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.*

* * * * *

DISSENTING VIEWS

We strongly oppose H.R. 3905 because it would risk the health and vitality of the most visited wilderness area in America, the Boundary Waters Canoe Area Wilderness in northern Minnesota (BWCAW). The BWCAW and the neighboring Voyageurs National Park power the economy of that region, supporting 22,000 jobs and \$1.4 billion in visitor spending, all of which are dependent on the unspoiled character of the more than 1,000 lakes in the area. This legislation would reverse recent decisions by federal agencies and stop an environmental review in its tracks in order to promote a Chilean mining conglomerate's proposed copper sulfide mine that would sit right at the edge of the BWCAW.

During the markup, members from the Majority insisted that this mine would be much ado about nothing, since it would be located outside the BWCAW. That would be fine if acid mine drainage—a key feature of copper sulfide mines—would also stop at the boundary of the BWCAW, but it would not. The lakes and streams in the vicinity of the mine flow into the BWCAW, and the inevitable acid drainage from the mine would seep through the wilderness area, harming aquatic and terrestrial wildlife, negatively affecting soils and forests, and potentially damaging human health, even in the absence of a major pollution release from a dam failure or other incident.

H.R. 3905 would reverse a 2016 decision by the Bureau of Land Management to adopt the recommendation of the U.S. Forest Service and reject the renewal of two 50-year-old mining leases in the Superior National Forest. The bill would also moot the current U.S. Forest Service study into the appropriateness of withdrawing the lands from potential mining activity for 20 years, a study that even the current Administration—which has shown itself to be a great friend of mining interests—supports.

Furthermore, the bill would amend the Antiquities Act to eliminate the ability to protect sites in Minnesota, for no obvious reason other than to ensure that this mine gets built. We should not be making major adjustments to bedrock public land laws just to allow individual mining projects to move ahead.

This legislation and the potential mine is opposed by a large majority of people in the state and a broad coalition of local residents, local business owners, and conservationists that treasure the pristine character of the Boundary Waters and depend on the economic foundation that it provides. This legislation subverts the will of the people and the U.S. Forest Service, and threatens irreversible harm to a national treasure, all for the benefit of a single mine being promoted by an international mining outfit. It is one of the clearest indications yet of whose side the Majority is on.

RAÚL M. GRIJALVA,

*Ranking Member, Committee
on Natural Resources.*

ALAN LOWENTHAL,
*Ranking Member, Sub-
committee on Energy and
Mineral Resources.*

