

108TH CONGRESS  
1ST SESSION

# H. R. 2419

To protect sacred Native American Federal land from significant damage.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 2003

Mr. RAHALL (for himself, Mr. LARSEN of Washington, Mr. KILDEE, Mr. PALLONE, Mr. GEORGE MILLER of California, Mr. FILNER, Ms. LEE, Mr. FROST, Mr. ACEVEDO-VILÁ, Mr. McNULTY, Mr. HOLT, Ms. MCCOLLUM, Mr. UDALL of New Mexico, Mr. HONDA, Mr. CARSON of Oklahoma, Mr. CASE, and Mr. GRIJALVA) introduced the following bill; which was referred to the Committee on Resources

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## A BILL

To protect sacred Native American Federal land from significant damage.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; DEFINITIONS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Native American Sacred Lands Act”.

6 (b) DEFINITIONS.—For the purposes of this Act, the  
7 following definitions shall apply:

8 (1) FEDERAL LAND.—The term “Federal land”  
9 means any land or interests in land owned by the

1 United States, including leasehold interests held by  
2 the United States, except Indian trust lands.

3 (2) INDIAN TRIBE.—The term “Indian tribe”  
4 has the meaning given such term by section 4(e) of  
5 the Indian Self-Determination and Education Assist-  
6 ance Act.

7 (3) NATIVE HAWAIIAN ORGANIZATION.—The  
8 term “Native Hawaiian organization” has the mean-  
9 ing given that term in section 301(18) of the Na-  
10 tional Historic Preservation Act (16 U.S.C.  
11 470w(18)).

12 (4) NATIVE SCIENCE.—The term “Native  
13 science”—

14 (A) means the oral knowledge of Native  
15 Americans gained throughout history by obser-  
16 vation and experience;

17 (B) embodies traditional tribal lifestyles  
18 and values;

19 (C) is based on the fundamental belief of  
20 the sanctity of all life;

21 (D) is guided by principles that include  
22 interdependency, reciprocity, and the signifi-  
23 cance of place;

1           (E) is a living, spiritual knowledge of the  
2           relationships between the land, natural re-  
3           sources, and the environment; and

4           (F) is transferred from one generation to  
5           the next often through oral tradition and prac-  
6           tice.

7           (5) SACRED LAND.—The term “sacred land”  
8           means any geophysical or geographical area or fea-  
9           ture which is sacred by virtue of its traditional cul-  
10          tural or religious significance or ceremonial use, or  
11          by virtue of a ceremonial or cultural requirement, in-  
12          cluding a religious requirement that a natural sub-  
13          stance or product for use in Indian tribal or Native  
14          Hawaiian organization ceremonies be gathered from  
15          that particular location.

16          (6) UNDERTAKING.—The term “undertaking”  
17          has the same meaning given that term in section  
18          301(7) of the National Historic Preservation Act  
19          (16 U.S.C. 470w(7)).

20          (7) SIGNIFICANT DAMAGE.—The term “signifi-  
21          cant damage” means any action or activity which re-  
22          sults in the loss of the sacred meaning and value of  
23          the site to the affected Indian tribe or Native Ha-  
24          waiian organization.

1 **SEC. 2. PROTECTION OF SACRED LANDS.**

2 Each department or agency of the United States with  
3 administrative jurisdiction over the management of Fed-  
4 eral land shall—

5 (1) accommodate meaningful access to and cer-  
6 emonial use of Indian sacred lands by Indian reli-  
7 gious practitioners;

8 (2) avoid significant damage to Indian sacred  
9 lands; and

10 (3) consult with Indian tribes and Native Ha-  
11 waiian organizations prior to taking significant ac-  
12 tions or developing policies affecting Native Amer-  
13 ican sacred lands.

14 **SEC. 3. DESIGNATING INDIAN SACRED LANDS UNSUITABLE**  
15 **FOR DEVELOPMENT.**

16 (a) IN GENERAL.—Federal land shall be designated  
17 unsuitable for any or certain types of undertakings if the  
18 head of the department or agency with administrative ju-  
19 risdiction over that Federal land decides, in accordance  
20 with this section, that by a preponderance of the evidence  
21 the undertaking is likely to cause significant damage to  
22 Indian sacred lands.

23 (b) PETITION.—

24 (1) IN GENERAL.—Any Indian tribe or Native  
25 Hawaiian organization shall have the right to peti-  
26 tion any department or agency of the United States

1 with administrative jurisdiction over Federal land to  
2 have Federal land under the jurisdiction of that de-  
3 partment or agency designated as unsuitable for any  
4 or certain types of undertaking.

5 (2) SUPPORTING EVIDENCE.—Such a petition  
6 shall contain allegations of facts with supporting evi-  
7 dence which would tend to establish the allegations.  
8 Oral history and Native science shall be given no  
9 less weight than any other evidence. After an Indian  
10 tribe or Native Hawaiian organization has filed a pe-  
11 tition under this section, and before the hearing as  
12 required by this subsection, any person may file alle-  
13 gations of facts, with supporting evidence, that are  
14 relevant to the petition.

15 (c) HEARING.—

16 (1) IN GENERAL.—Not later than 90 days after  
17 the receipt of such petition, the department or agen-  
18 cy with administrative jurisdiction over that Federal  
19 land involved shall hold a public hearing on the sub-  
20 ject of the petition in the locality of that Federal  
21 land after public notice, including publication of the  
22 date, time, and location of the hearing.

23 (2) WRITTEN DECISION.—Not later than 60  
24 days after a hearing held pursuant to this sub-  
25 section, the head of the department or agency with

1 administrative jurisdiction over that Federal land  
2 shall issue and furnish to the petitioner and any  
3 other parties to the hearing a written decision re-  
4 garding the petition and the reasons for the decision.

5 (d) APPEAL.—Not later than 60 days after a written  
6 decision is issued pursuant to subsection (c)(2), any peti-  
7 tioner or person filing under section 3(b)(2) may appeal  
8 the decision to the appropriate Federal agency appeals  
9 board or through a civil action in accordance with sub-  
10 section (e). A decision regarding a petition shall not be  
11 considered final for the purposes of this section until—

12 (1) the deadline for filing an appeal to the deci-  
13 sion has past and no appeal has been filed; or

14 (2) if an appeal was timely filed, the appeal has  
15 been heard and decided.

16 (e) CIVIL ACTIONS; JURISDICTION; RELIEF.—

17 (1) IN GENERAL.—The United States district  
18 courts shall have original jurisdiction over any civil  
19 action or claim against the Secretary of the Interior  
20 or the head of another Federal agency, as appro-  
21 priate, arising under this section. In an action  
22 brought under this paragraph, the district courts  
23 may order appropriate relief, including money dam-  
24 ages, injunctive relief against any action by an offi-  
25 cer of the United States or any agency thereof con-

1       trary to this Act, or regulations promulgated there-  
2       under, or mandamus to compel an officer or em-  
3       ployee of the United States, or any agency thereof,  
4       to perform a duty provided under this Act or regula-  
5       tions promulgated hereunder.

6               (2) APPLICATION OF EQUAL ACCESS TO JUSTICE ACT.—The Equal Access to Justice Act (Public  
7       Law 96–481; Act of October 1, 1980; 92 Stat. 2325;  
8       5 U.S.C. 594; 28 U.S.C. 2412) shall apply to ac-  
9       tions brought under this Act.  
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11       (f) EFFECT OF DECISION OF UNSUITABILITY.—

12               (1) IN GENERAL.—A final decision that Federal  
13       land identified by a petition considered pursuant to  
14       subsection (b) is unsuitable for any or certain types  
15       of undertakings shall be immediately effective and  
16       the undertaking shall be prohibited.

17               (2) WITHDRAWAL OF LANDS.—Subject to valid  
18       and existing rights, the Secretary of the Interior  
19       shall (with the consent of the department or agency  
20       other than the Department of the Interior in the  
21       case of Federal land not under the administration of  
22       the Secretary of the Interior) withdraw Federal land  
23       included in a decision of unsuitability under this sec-  
24       tion pursuant to section 204 of the Federal Land  
25       Policy and Management Act of 1976 (43 U.S.C.

1 1714). The Secretary's decision under this section  
2 shall constitute the documentation required to be  
3 provided under section 204(c)(12) of the Federal  
4 Land Policy and Management Act of 1976 (43  
5 U.S.C. 1714) and in compliance with section 4.

6 (3) LAND USE PLANS.—Any decision of  
7 unsuitability made for Federal land under the ad-  
8 ministrative jurisdiction of the Secretary of the Inte-  
9 rior or the Secretary of Agriculture (with respect to  
10 National Forest System lands) shall be incorporated  
11 into the appropriate land use plan when such plan  
12 is adopted, revised, or significantly amended pursu-  
13 ant to the Federal Land Policy and Management  
14 Act of 1976 or, as the case may be, the Forest and  
15 Rangeland Renewable Resources Planning Act of  
16 1974.

17 **SEC. 4. CONFIDENTIALITY.**

18 (a) IN GENERAL.—Notwithstanding section 5 of title  
19 5, United States Code (commonly known as the Freedom  
20 of Information Act) or any other law, no information ob-  
21 tained as a result of or in connection with a petition filed  
22 or a hearing held under this Act that contains a reference  
23 pertaining to a specific detail of a Native American tradi-  
24 tional cultural practice or religion, or the significance of  
25 an Indian or Native Hawaiian sacred land, or the location

1 of that sacred land, shall be released except as provided  
2 in subsection (c).

3 (b) RELEASE OF INFORMATION.—

4 (1) INITIAL VIOLATION.—Any person who in-  
5 tentiously releases any information knowing that it  
6 is required to be held confidential pursuant to this  
7 section shall, upon conviction, be fined not more  
8 than \$10,000, or imprisoned not more than 1 year,  
9 or both.

10 (2) SUBSEQUENT VIOLATIONS.—In the case of  
11 a second or subsequent violation of this section, a  
12 person shall, upon conviction, be fined not more  
13 than \$100,000, or imprisoned not more than 5  
14 years, or both.

15 (c) EXCEPTION.—This section shall not apply in any  
16 case in which all persons filing pursuant to section 3(b),  
17 including the petitioner, waive the application of this sec-  
18 tion.

19 **SEC. 5. GRANTS.**

20 (a) AUTHORITY TO PROVIDE GRANTS.—The Sec-  
21 retary may provide grants to Indian tribes to assist the  
22 Indian tribes in carrying out activities related to this Act.  
23 Such activities may include the acquisition or management  
24 of sacred lands deemed unsuitable for undertaking under  
25 this Act.

1 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated to the Secretary such  
3 sums as may be necessary to carry out this section.

4 **SEC. 6. TRANSFER OF LAND.**

5 (a) AUTHORITY.—The head of the department or  
6 agency with administrative jurisdiction over Federal land  
7 which is sacred land may take the Federal land into trust  
8 for the benefit of the Indian tribe or Indian tribes for  
9 which the land is considered sacred on the condition that  
10 the Indian tribe or Indian tribes for which it is taken into  
11 trust manage the land in perpetuity to protect that sacred-  
12 ness.

13 (b) REVERTER.—If the head of the department or  
14 agency that has taken Federal land into trust under this  
15 section determines that the land is not being managed in  
16 perpetuity to protect its sacredness as required by sub-  
17 section (a), the land shall be removed from trust and shall  
18 be managed under this Act by the the head of the depart-  
19 ment or agency that transferred land under subsection (a).

20 **SEC. 7. COOPERATIVE AGREEMENTS.**

21 The head of the department or agency with adminis-  
22 trative jurisdiction over Federal land which is sacred land  
23 may enter into cooperative agreements with one or more  
24 Indian tribes for which the land is considered sacred to  
25 provide for the Indian tribe or Indian tribes to manage—

1 (1) that Federal land; and

2 (2) any adjacent Federal land, if including the  
3 adjacent Federal land would facilitate management  
4 of the sacred land by the Indian tribe or Indian  
5 tribes.

6 **SEC. 8. REGULATIONS.**

7 (a) CONSULTATION WITH INDIAN TRIBES.—In devel-  
8 oping regulations under this Act, the Secretary shall use—

9 (1) an effective process to permit elected tribal  
10 officials, traditional Native American practitioners,  
11 and other representatives of Indian tribal govern-  
12 ments to provide meaningful and timely input in  
13 that development; and

14 (2) where appropriate, consensual mechanisms,  
15 including negotiated rulemaking.

16 (b) EFFECTIVE DATE.—This Act shall become effec-  
17 tive on the date of the enactment of this Act. Any failure  
18 of the Secretary to promulgate regulations under this sec-  
19 tion shall not affect such effective date.

20 **SEC. 9. CONSULTATION UNDER OTHER LAWS.**

21 Nothing in this Act shall affect any consultation proc-  
22 ess under the National Historic Preservation Act or any  
23 other Federal law.

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