

116TH CONGRESS
1ST SESSION

H. R. 665

To repeal section 3003 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 17, 2019

Mr. GRIJALVA (for himself, Mr. AGUILAR, Mr. JONES, Mr. MULLIN, Mr. KILMER, Mr. CARTWRIGHT, Mr. BLUMENAUER, Ms. DEGETTE, Ms. PINGREE, Mr. HASTINGS, Ms. OCASIO-CORTEZ, Mrs. NAPOLITANO, Mr. SABLAN, Mr. LUJÁN, Mr. COLE, Ms. DELBENE, Mrs. TORRES of California, Mr. CÁRDENAS, Mr. GOMEZ, Mr. GALLEGO, Ms. MCCOLLUM, Mr. McEACHIN, Mr. RUIZ, Ms. HAALAND, Mr. DEFazio, Mr. TED LIEU of California, Mr. HUFFMAN, Mr. MEEKS, Mr. LOWENTHAL, and Ms. MOORE) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To repeal section 3003 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015.

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.**

4 This Act may be cited as the “Save Oak Flat Act”.

5 **SEC. 2. FINDINGS.**

6 Congress finds that—

1 (1) section 3003 of the Carl Levin and Howard
2 P. “Buck” McKeon National Defense Authorization
3 Act for Fiscal Year 2015 (16 U.S.C. 539p) author-
4 izes the approximately 2,422 acres of Forest Service
5 land in the Tonto National Forest in southeastern
6 Arizona commonly known as “Oak Flat” (referred
7 to in this section as “Oak Flat”), which is sacred to
8 Indian Tribes in the region and is listed on the Na-
9 tional Register of Historic Places, to be transferred
10 to Resolution Copper Mining, LLC, a Delaware lim-
11 ited liability company (referred to in this section as
12 “Resolution Copper”);

13 (2) Resolution Copper plans to hold Oak Flat
14 privately for a mining project that will—

15 (A) result in the physical destruction of
16 Tribal sacred areas and deprive American Indi-
17 ans from practicing their religious ceremonies
18 and other traditional practices;

19 (B) create significant negative environ-
20 mental impacts by destroying Oak Flat and de-
21 pleting and contaminating precious water re-
22 sources; and

23 (C) require significant quantities of water,
24 which will—

1 (i) likely affect the local hydrology, in-
2 cluding the underlying aquifer; and

3 (ii) result in polluted water that will
4 seep into drinking water supplies;

5 (3)(A) once Resolution Copper owns Oak Flat,
6 Resolution Copper plans to use the highly destruc-
7 tive block cave mining method to remove 1 cubic
8 mile of ore that (as of the date of enactment of this
9 Act) is located 7,000 feet beneath the surface of the
10 earth without replacing any of the earth removed,
11 because that is the cheapest form of mining; and

12 (B) Resolution Copper admits that the surface
13 of Oak Flat will subside and ultimately collapse, de-
14 stroying forever the Tribal sacred area described in
15 paragraph (2)(A);

16 (4) the Tonto National Forest in which Oak
17 Flat is located was established in 1905 from the an-
18 cestral homelands of American Indians, who were
19 forcibly removed at gunpoint from Oak Flat and
20 other areas of the Forest by the Army during the
21 1880s and imprisoned as prisoners of war until the
22 early 1900s;

23 (5)(A) section 3003 of the Carl Levin and How-
24 ard P. “Buck” McKeon National Defense Authoriza-
25 tion Act for Fiscal Year 2015 (16 U.S.C. 539p)—

1 (i) was included in that Act without proper
2 legislative process, in a manner that cir-
3 cumvented the will of the majority of Members
4 of the House of Representatives and the Sen-
5 ate; and

6 (ii) was originally introduced in the House
7 of Representatives as H.R. 687 and in the Sen-
8 ate as S. 339 during the 113th Congress;

9 (B) H.R. 687 was—

10 (i) brought to the floor of the House of
11 Representatives for consideration twice; and

12 (ii) pulled from consideration each time;

13 (C) S. 339 was never considered—

14 (i) by the Senate; or

15 (ii) for mark-up by the Committee on En-
16 ergy and Natural Resources of the Senate;

17 (D) section 3003 of the Carl Levin and Howard
18 P. “Buck” McKeon National Defense Authorization
19 Act for Fiscal Year 2015 (16 U.S.C. 539p) was in-
20 cluded in that Act without majority support from ei-
21 ther the House of Representatives or the Senate;
22 and

23 (E) a proposed amendment to remove that sec-
24 tion was not allowed to be considered before passage
25 of the bill;

1 (6)(A) Indian Tribes have—

2 (i) ceded or had taken from the Tribes mil-
3 lions of acres of land to help build the United
4 States; and

5 (ii) suffered under Federal assimilationist
6 policies that sought to destroy Tribal cultures;

7 (B) despite those policies, American Indians
8 continue to practice their religions as they have done
9 for thousands of years;

10 (C) American Indian places of worship, or sa-
11 cred areas, are often land-based, including moun-
12 tains, streams, and trees; and

13 (D) as a result of previous Federal land policies
14 that resulted in the significant loss of land of Indian
15 Tribes, many sacred areas of the Tribes are cur-
16 rently located on Federal land;

17 (7)(A) the United States has a trust responsi-
18 bility acknowledged by Congress to protect Tribal
19 sacred areas on Federal land, including pursuant to
20 laws requiring meaningful consultation with affected
21 Indian Tribes before making decisions that will im-
22 pact American Indians; but

23 (B) in contradiction to those laws, section 3003
24 of the Carl Levin and Howard P. “Buck” McKeon
25 National Defense Authorization Act for Fiscal Year

1 2015 (16 U.S.C. 539p) requires the mandatory con-
2 conveyance of a Tribal sacred area located on Federal
3 land, regardless of the outcome of consultation with
4 affected Indian Tribes;

5 (8) section 3003 of the Carl Levin and Howard
6 P. “Buck” McKeon National Defense Authorization
7 Act for Fiscal Year 2015 (16 U.S.C. 539p)—

8 (A) was strongly opposed by Indian Tribes
9 throughout the United States because that sec-
10 tion establishes a dangerous legislative prece-
11 dent for the lack of protection of Tribal sacred
12 areas located on Federal land by mandating the
13 conveyance of Federal land with significant reli-
14 gious, cultural, historic, and anthropological
15 significance for Indian Tribes to a private com-
16 pany that will destroy the land;

17 (B) circumvents standard environmental
18 review procedures that ensure that the public
19 interest is protected, including the interests of
20 Indian Tribes; and

21 (C) requires a mandatory conveyance of
22 Oak Flat, regardless of the findings resulting
23 from the environmental review process; and

24 (9) the inclusion in the Carl Levin and Howard
25 P. “Buck” McKeon National Defense Authorization

1 Act for Fiscal Year 2015 of section 3003 of that Act
2 (16 U.S.C. 539p) establishes a negative precedent
3 for—

4 (A) the legislative process; and

5 (B) Federal Indian policy.

6 **SEC. 3. REPEAL OF SOUTHEAST ARIZONA LAND EXCHANGE**
7 **AND CONSERVATION PROVISION.**

8 Section 3003 of the Carl Levin and Howard P.
9 “Buck” McKeon National Defense Authorization Act for
10 Fiscal Year 2015 (16 U.S.C. 539p) is repealed.

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