

117TH CONGRESS
1ST SESSION

H. R. 1884

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 2021

Mr. GRIJALVA (for himself, Ms. MOORE of Wisconsin, Mr. KILMER, Mr. RUIZ, Mr. SABLAN, Ms. MCCOLLUM, Mr. MEEKS, Mr. HUFFMAN, Mr. HASTINGS, Ms. LEGER FERNANDEZ, Mr. DEFAZIO, Mr. GOMEZ, Mr. CÁRDENAS, Mrs. NAPOLITANO, Ms. NORTON, Ms. MENG, Ms. DEGETTE, and Ms. PINGREE) 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, and for other purposes.

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 as follows:

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 Oak Flat, which is sacred to Indian Tribes in
5 the region and is part of the larger Chí’chil
6 Biłdagoteel Traditional Cultural Property listed in
7 the National Register of Historic Places, to be
8 transferred to Resolution Copper.

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

11 (A) result in the physical destruction of
12 Tribal sacred areas and deprive American Indi-
13 ans from practicing their religious ceremonies
14 and other traditional practices;

15 (B) create significant negative environ-
16 mental impacts by destroying Oak Flat and de-
17 pleting and contaminating precious water re-
18 sources; and

19 (C) require significant quantities of water,
20 which will—

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

23 (ii) result in polluted water that will
24 seep into drinking water supplies.

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

8 (B) Resolution Copper admits that the surface
9 of Oak Flat will subside and ultimately collapse, de-
10 stroying forever the Tribal sacred areas described in
11 paragraph (2)(A).

12 (4) The Tonto National Forest in which Oak
13 Flat is located was established in 1905 from the an-
14 cestral homelands of American Indians, who were
15 forcibly removed at gunpoint from Oak Flat and
16 other areas of the Forest by the Army during the
17 1880s and held as prisoners of war until the early
18 1900s.

19 (5)(A) Section 3003 of the Carl Levin and
20 Howard P. “Buck” McKeon National Defense Au-
21 thorization Act for Fiscal Year 2015 (16 U.S.C.
22 539p)—

23 (i) was included in that Act without proper
24 legislative process, in a manner that cir-

1 cumvented the will of the majority of Members
2 of Congress; and

3 (ii) was originally introduced in the House
4 of Representatives as H.R. 687 and in the Sen-
5 ate as S. 339 during the 113th Congress.

6 (B) H.R. 687 was—

7 (i) brought to the floor of the House of
8 Representatives for consideration twice; and

9 (ii) pulled from consideration each time.

10 (C) S. 339 was never considered—

11 (i) by the Senate; or

12 (ii) for mark-up by the Committee on En-
13 ergy and Natural Resources of the Senate.

14 (D) Section 3003 of the Carl Levin and How-
15 ard P. “Buck” McKeon National Defense Authoriza-
16 tion Act for Fiscal Year 2015 (16 U.S.C. 539p) was
17 included in that Act without majority support from
18 either the House of Representatives or the Senate.

19 (E) A proposed amendment to remove that sec-
20 tion was not allowed to be considered before passage
21 of the bill.

22 (6)(A) Indian Tribes have—

23 (i) ceded or had taken from the Tribes mil-
24 lions of acres of land to help build the United
25 States; and

1 (ii) suffered under Federal assimilationist
2 policies that sought to destroy Tribal cultures.

3 (B) Despite those policies, American Indians
4 continue to practice their religions as they have done
5 for thousands of years.

6 (C) American Indian places of worship, or sa-
7 cred areas, are often land-based, including moun-
8 tains, streams, and trees.

9 (D) As a result of previous Federal land poli-
10 cies that resulted in the significant loss of land of
11 Indian Tribes, many sacred areas of the Tribes are
12 currently located on Federal land.

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

19 (B) in contradiction to those laws, section 3003
20 of the Carl Levin and Howard P. “Buck” McKeon
21 National Defense Authorization Act for Fiscal Year
22 2015 (16 U.S.C. 539p) requires the mandatory con-
23 veyance of a Tribal sacred area located on Federal
24 land, regardless of the outcome of consultation with
25 affected Indian Tribes.

1 (8) 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)—

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

13 (B) circumvents standard environmental
14 review procedures that ensure that the public
15 interest is protected, including the interests of
16 Indian Tribes; and

17 (C) requires a mandatory conveyance of
18 Oak Flat, regardless of the findings resulting
19 from the environmental review process.

20 (9) The inclusion in the Carl Levin and Howard
21 P. “Buck” McKeon National Defense Authorization
22 Act for Fiscal Year 2015 of section 3003 of that Act
23 (16 U.S.C. 539p) establishes a negative precedent
24 for—

25 (A) the legislative process; and

1 (B) Federal Indian policy.

2 **SEC. 3. DEFINITIONS.**

3 In the Act:

4 (1) OAK FLAT.—The term “Oak Flat” means
5 the approximately 2,422 acres of Forest System
6 land in the Tonto National Forest in southeastern
7 Arizona commonly known as “Oak Flat” and gen-
8 erally depicted as “Oak Flat Withdrawal Area” on
9 the map titled “Save Oak Flat Act of 2021” and
10 dated March 15, 2021.

11 (2) RESOLUTION COPPER.—The term “Resolu-
12 tion Copper” means Resolution Copper Mining,
13 LLC, a Delaware limited liability company.

14 **SEC. 4. REPEAL AND WITHDRAWAL.**

15 (a) REPEAL.—Section 3003 of the Carl Levin and
16 Howard P. “Buck” McKeon National Defense Authoriza-
17 tion Act for Fiscal Year 2015 (16 U.S.C. 539p) is re-
18 pealed.

19 (b) WITHDRAWAL.—Subject to valid rights in exist-
20 ence on the date of the enactment of this Act, Oak Flat
21 is withdrawn from all forms of—

22 (1) entry, appropriation, or disposal under the
23 public land laws;

24 (2) location, entry, and patent under the mining
25 laws; and

- 1 (3) disposition under all laws pertaining to min-
- 2 eral and geothermal leasing or mineral materials.

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