

Union Calendar No. 427

117TH CONGRESS
2D SESSION

H. R. 1884

[Report No. 117–592]

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

DECEMBER 7, 2022

Additional sponsors: Mr. GALLEG0, Mr. NADLER, Mr. BLUMENAUER, Mr. LEVIN of California, Mr. POCAN, Ms. DELBENE, Ms. PORTER, Mrs. HAYES, Mr. SOTO, Mr. COHEN, Mr. GARCÍA of Illinois, Ms. DAVIDS of Kansas, Ms. JAYAPAL, Ms. CHU, Mr. CASE, Mr. LOWENTHAL, Ms. VELÁZQUEZ, Ms. MATSUI, Ms. NEWMAN, Mr. NEGUSE, Mr. McEACHIN, Mr. KAHELE, Ms. LOFGREN, Mrs. DEMINGS, Mr. CLEAVER, Mr. LIEU, Ms. BARRAGÁN, Ms. SCHAKOWSKY, Mrs. TORRES of California, Mr. AGUILAR, Mr. JONES, Ms. SLOTKIN, Mr. CARTWRIGHT, Mr. KILDEE, Ms. STRICKLAND, Mr. COLE, Ms. WILD, Mr. CARSON, Mr. SCOTT of Virginia, Mr. TAKANO, Mrs. AXNE, Mr. BEYER, Mr. THOMPSON of California, Mr. CRIST, Ms. BASS, Mr. PALLONE, Mr. BROWN of Maryland, Mr. LEVIN of Michigan, Mr. LAWSON of Florida, Mr. QUIGLEY, Ms. STANSBURY, Mr. CONNOLLY, Mr. CICILLINE, Ms. LEE of California, Mr. SEAN PATRICK MALONEY of New York, Mr. HARDER of California, Mr. BOWMAN, Ms. JACOBS of California, Mrs. TRAHAN, Ms. ADAMS, Ms. OMAR, Mr. DANNY K. DAVIS of Illinois, Mr. TONKO, Ms. SPANBERGER, Mr. COURTNEY, Mr. MCNERNEY, Ms. JACKSON LEE, Ms. MANNING, Mrs. CAROLYN B. MALONEY of New York, Ms. ROSS, Ms. SEWELL, Mr. KHANNA, Ms. SCHRIER, Ms. BUSH, Ms. BOURDEAUX, Ms. PRESSLEY, Mr. MORELLE,

Ms. OCASIO-CORTEZ, Mr. DOGGETT, Ms. ROYBAL-ALLARD, Ms. WILLIAMS of Georgia, Mr. SUOZZI, Mr. PRICE of North Carolina, Mr. MOULTON, and Mrs. CHERFILUS-McCORMICK

DECEMBER 7, 2022

Reported from the Committee on Natural Resources; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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:

7 (1) Section 3003 of the Carl Levin and Howard
8 P. “Buck” McKeon National Defense Authorization
9 Act for Fiscal Year 2015 (16 U.S.C. 539p) author-
10 izes Oak Flat, which is sacred to Indian Tribes in
11 the region and is part of the larger Chí’chil
12 Bíłdagoteel Traditional Cultural Property listed in
13 the National Register of Historic Places, to be
14 transferred to Resolution Copper.

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

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

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

1 (C) require significant quantities of water,
2 which will—

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

5 (ii) result in polluted water that will
6 seep into drinking water supplies.

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

14 (B) Resolution Copper admits that the surface
15 of Oak Flat will subside and ultimately collapse, de-
16 stroying forever the Tribal sacred areas described in
17 paragraph (2)(A).

18 (4) The Tonto National Forest in which Oak
19 Flat is located was established in 1905 from the an-
20 cestral homelands of American Indians, who were
21 forcibly removed at gunpoint from Oak Flat and
22 other areas of the Forest by the Army during the
23 1880s and held as prisoners of war until the early
24 1900s.

1 (5)(A) Section 3003 of the Carl Levin and
2 Howard P. “Buck” McKeon National Defense Au-
3 thorization Act for Fiscal Year 2015 (16 U.S.C.
4 539p)—

5 (i) was included in that Act without proper
6 legislative process, in a manner that cir-
7 cumvented the will of the majority of Members
8 of Congress; and

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

12 (B) H.R. 687 was—

13 (i) brought to the floor of the House of
14 Representatives for consideration twice; and

15 (ii) pulled from consideration each time.

16 (C) S. 339 was never considered—

17 (i) by the Senate; or

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

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

1 (E) A proposed amendment to remove that sec-
2 tion was not allowed to be considered before passage
3 of the bill.

4 (6)(A) Indian Tribes have—

5 (i) ceded or had taken from the Tribes mil-
6 lions of acres of land to help build the United
7 States; and

8 (ii) suffered under Federal assimilationist
9 policies that sought to destroy Tribal cultures.

10 (B) Despite those policies, American Indians
11 continue to practice their religions as they have done
12 for thousands of years.

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

16 (D) As a result of previous Federal land poli-
17 cies that resulted in the significant loss of land of
18 Indian Tribes, many sacred areas of the Tribes are
19 currently located on Federal land.

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

1 (B) in contradiction to those laws, section 3003
2 of the Carl Levin and Howard P. “Buck” McKeon
3 National Defense Authorization Act for Fiscal Year
4 2015 (16 U.S.C. 539p) requires the mandatory con-
5 veyance of a Tribal sacred area located on Federal
6 land, regardless of the outcome of consultation with
7 affected Indian Tribes.

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

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

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

1 (C) requires a mandatory conveyance of
2 Oak Flat, regardless of the findings resulting
3 from the environmental review process.

4 (9) The inclusion in the Carl Levin and Howard
5 P. “Buck” McKeon National Defense Authorization
6 Act for Fiscal Year 2015 of section 3003 of that Act
7 (16 U.S.C. 539p) establishes a negative precedent
8 for—

9 (A) the legislative process; and

10 (B) Federal Indian policy.

11 **SEC. 3. DEFINITIONS.**

12 In the Act:

13 (1) OAK FLAT.—The term “Oak Flat” means
14 the approximately 2,422 acres of Forest System
15 land in the Tonto National Forest in southeastern
16 Arizona commonly known as “Oak Flat” and gen-
17 erally depicted as “Oak Flat Withdrawal Area” on
18 the map titled “Save Oak Flat Act of 2021” and
19 dated March 15, 2021.

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

23 **SEC. 4. REPEAL AND WITHDRAWAL.**

24 (a) REPEAL.—Section 3003 of the Carl Levin and
25 Howard P. “Buck” McKeon National Defense Authoriza-

1 tion Act for Fiscal Year 2015 (16 U.S.C. 539p) is re-
2 pealed.

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

6 (1) entry, appropriation, or disposal under the
7 public land laws;

8 (2) location, entry, and patent under the mining
9 laws; and

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

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