

117TH CONGRESS  
1ST SESSION

# S. 915

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.

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IN THE SENATE OF THE UNITED STATES

MARCH 23, 2021

Mr. SANDERS introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## 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-

1 izes Oak Flat, which is sacred to Indian Tribes in  
2 the region and is part of the larger Chí'chil  
3 Bıldagoteel Traditional Cultural Property listed in  
4 the National Register of Historic Places, to be  
5 transferred to Resolution Copper.

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

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

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

16 (C) require significant quantities of water,  
17 which will—

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

20 (ii) result in polluted water that will  
21 seep into drinking water supplies.

22 (3)(A) Once Resolution Copper owns Oak Flat,  
23 Resolution Copper plans to use the highly destruc-  
24 tive block cave mining method to remove 1 cubic  
25 mile of ore that (as of the date of enactment of this

1 Act) is located 7,000 feet beneath the surface of the  
2 earth without replacing any of the earth removed,  
3 because that is the cheapest form of mining.

4 (B) Resolution Copper admits that the surface  
5 of Oak Flat will subside and ultimately collapse, de-  
6 stroying forever the Tribal sacred areas described in  
7 paragraph (2)(A).

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

15 (5)(A) Section 3003 of the Carl Levin and  
16 Howard P. “Buck” McKeon National Defense Au-  
17 thorization Act for Fiscal Year 2015 (16 U.S.C.  
18 539p)—

19 (i) was included in that Act without proper  
20 legislative process, in a manner that cir-  
21 cumvented the will of the majority of Members  
22 of Congress; and

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

1 (B) H.R. 687 was—

2 (i) brought to the floor of the House of  
3 Representatives for consideration twice; and

4 (ii) pulled from consideration each time.

5 (C) S. 339 was never considered—

6 (i) by the Senate; or

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

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

14 (E) A proposed amendment to remove that sec-  
15 tion was not allowed to be considered before passage  
16 of the bill.

17 (6)(A) Indian Tribes have—

18 (i) ceded or had taken from the Tribes mil-  
19 lions of acres of land to help build the United  
20 States; and

21 (ii) suffered under Federal assimilationist  
22 policies that sought to destroy Tribal cultures.

23 (B) Despite those policies, American Indians  
24 continue to practice their religions as they have done  
25 for thousands of years.

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

4           (D) As a result of previous Federal land poli-  
5           cies that resulted in the significant loss of land of  
6           Indian Tribes, many sacred areas of the Tribes are  
7           currently located on Federal land.

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

14          (B) in contradiction to those laws, section 3003  
15          of the Carl Levin and Howard P. “Buck” McKeon  
16          National Defense Authorization Act for Fiscal Year  
17          2015 (16 U.S.C. 539p) requires the mandatory con-  
18          veyance of a Tribal sacred area located on Federal  
19          land, regardless of the outcome of consultation with  
20          affected Indian Tribes.

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

24                  (A) was strongly opposed by Indian Tribes  
25                  throughout the United States because that sec-

1           tion establishes a dangerous legislative prece-  
2           dent for the lack of protection of Tribal sacred  
3           areas located on Federal land by mandating the  
4           conveyance of Federal land with significant reli-  
5           gious, cultural, historic, and anthropological  
6           significance for Indian Tribes to a private com-  
7           pany that will destroy the land;

8           (B) circumvents standard environmental  
9           review procedures that ensure that the public  
10          interest is protected, including the interests of  
11          Indian Tribes; and

12          (C) requires a mandatory conveyance of  
13          Oak Flat, regardless of the findings resulting  
14          from the environmental review process.

15          (9) The inclusion in the Carl Levin and Howard  
16          P. “Buck” McKeon National Defense Authorization  
17          Act for Fiscal Year 2015 of section 3003 of that Act  
18          (16 U.S.C. 539p) establishes a negative precedent  
19          for—

20                  (A) the legislative process; and

21                  (B) Federal Indian policy.

22 **SEC. 3. DEFINITIONS.**

23          In this Act:

24                  (1) OAK FLAT.—The term “Oak Flat” means  
25          the approximately 2,422 acres of Forest Service land

1 in the Tonto National Forest in southeastern Ari-  
2 zona commonly known as “Oak Flat” and generally  
3 depicted as “Oak Flat Withdrawal Area” on the  
4 map entitled “Save Oak Flat Act of 2021” and  
5 dated March 15, 2021.

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

9 **SEC. 4. REPEAL AND WITHDRAWAL.**

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

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

17 (1) entry, appropriation, or disposal under the  
18 public land laws;

19 (2) location, entry, and patent under the mining  
20 laws; and

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

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