

116TH CONGRESS
1ST SESSION

S. 173

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

IN THE SENATE OF THE UNITED STATES

JANUARY 17, 2019

Mr. SANDERS (for himself, Mr. WYDEN, Ms. WARREN, Mr. MERKLEY, Mr. HEINRICH, and Mr. BOOKER) introduced the following bill; which was read twice and referred to the Committee on Energy and 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—

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 the approximately 2,422 acres of Forest Service
2 land in the Tonto National Forest in southeastern
3 Arizona commonly known as “Oak Flat” (referred
4 to in this section as “Oak Flat”), which is sacred to
5 Indian Tribes in the region and listed in the Na-
6 tional Register of Historic Places, to be transferred
7 to Resolution Copper Mining, LLC, a Delaware lim-
8 ited liability company (referred to in this section as
9 “Resolution Copper”);

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

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

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

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

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

24 (ii) result in polluted water that will
25 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; and

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 How-
20 ard P. “Buck” McKeon National Defense Authoriza-
21 tion Act for Fiscal Year 2015 (16 U.S.C. 539p)—

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

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

4 (B) H.R. 687 was—

5 (i) brought to the floor of the House of
6 Representatives for consideration twice; and

7 (ii) pulled from consideration each time;

8 (C) S. 339 was never considered—

9 (i) by the Senate; or

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

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

18 (E) a proposed amendment to remove that sec-
19 tion was not allowed to be considered before passage
20 of the bill;

21 (6)(A) Indian Tribes have—

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

9 (D) as a result of previous Federal land policies
10 that resulted in the significant loss of land of Indian
11 Tribes, many sacred areas of the Tribes are cur-
12 rently 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; and

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. REPEAL OF SOUTHEAST ARIZONA LAND EXCHANGE**

3 **AND CONSERVATION PROVISION.**

4 Section 3003 of the Carl Levin and Howard P.

5 “Buck” McKeon National Defense Authorization Act for

6 Fiscal Year 2015 (16 U.S.C. 539p) is repealed.

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