

114TH CONGRESS
1ST SESSION

S. 2242

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

NOVEMBER 5, 2015

Mr. REID (for Mr. SANDERS (for himself, Mr. HEINRICH, and Ms. BALDWIN))
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 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 approximately 2422 acres of Forest Service land
2 known as “Oak Flat” in the Tonto National Forest
3 in Southeastern Arizona that is sacred to Indian
4 tribes in the region, including the San Carlos
5 Apache Tribe, to be transferred to a mining com-
6 pany called Resolution Copper. That company plans
7 to hold the Forest land privately for a mining
8 project that will result in the physical destruction of
9 tribal sacred areas and deprive American Indians
10 from practicing their religions, ceremonies, and
11 other traditional practices. The mining project will
12 also create significant negative environmental im-
13 pacts by destroying the area and depleting and con-
14 taminating precious water resources.

15 (2) Once Resolution Copper owns the Oak Flat
16 area, it plans to use the highly destructive block cave
17 mining method to remove one cubic mile of ore that
18 is now 7,000 feet beneath the surface of the earth
19 without replacing any of the earth removed because
20 that is the cheapest form of mining. Resolution Cop-
21 per admits that the surface will subside and ulti-
22 mately collapse, destroying forever this place of wor-
23 ship.

24 (3) The Tonto National Forest in which Oak
25 Flat is located was established in 1905 from the an-

1 cestral homelands of the Tonto Apache and other
2 American Indians who were forcibly removed at gun-
3 point from the Oak Flat area and other areas of the
4 Tonto National Forest by the United States Army
5 in the 1880s and imprisoned in other areas, includ-
6 ing what is now the San Carlos Apache Reservation,
7 located approximately 15 miles from Oak Flat,
8 where Apaches were held as prisoners of war until
9 the early 1900s.

10 (4) Section 3003 was included in the Carl Levin
11 and Howard P. “Buck” McKeon National Defense
12 Authorization Act for Fiscal Year 2015 without
13 proper legislative process and circumvented the will
14 of the majority of Members of the House of Rep-
15 resentatives. Section 3003 was originally introduced
16 in the House of Representatives as H.R. 687 and in
17 the Senate as S. 339 in the 113th Congress. H.R.
18 687 was brought to the floor of the House of Rep-
19 resentatives for consideration twice and was pulled
20 from consideration both times. S. 339 was never
21 considered by the Senate or even considered for
22 mark up by the Senate Committee on Energy and
23 Natural Resources. Section 3003 was then included
24 in the Carl Levin and Howard P. “Buck” McKeon
25 National Defense Authorization Act for Fiscal Year

1 2015 without majority support from either the
2 House or Senate and an amendment to remove sec-
3 tion 3003 was not allowed to be considered.

4 (5) American Indian tribes have ceded or have
5 had taken from them millions of acres of land to
6 help build the United States and have suffered
7 under Federal assimilationist policies that sought to
8 destroy tribal cultures. Despite these policies, Amer-
9 ican Indians continue to practice their religions as
10 they have done for thousands of years. American In-
11 dian places of worship, or sacred areas, are often
12 land based, including mountains, streams, and trees.
13 As a result of previous Federal land policies that re-
14 sulted in the significant loss of lands of American
15 Indian tribes, many sacred areas of tribes are now
16 located on Federal lands.

17 (6) The United States has a trust responsibility
18 acknowledged by Congress to protect tribal sacred
19 areas on Federal lands. These laws require meaning-
20 ful consultations with affected Indian tribes before
21 making decisions that will impact American Indians.
22 In contradiction to these laws, section 3003 requires
23 the mandatory conveyance of a tribal sacred area lo-
24 cated on Federal lands regardless of the outcome of
25 consultation with affected Indian tribes.

1 (7) Section 3003 was strongly opposed by In-
2 dian tribes nationwide because it sets dangerous leg-
3 islative precedent for the lack of protection of tribal
4 sacred areas located on Federal lands by mandating
5 the conveyance of Federal lands with significant reli-
6 gious, cultural, historic, and anthropological signifi-
7 cance for Indian tribes to a private company that
8 will destroy the land.

9 (8) Section 3003 circumvents standard environ-
10 mental review procedures that ensure that the public
11 interest is protected, including the interests of In-
12 dian tribes. Section 3003 requires a mandatory con-
13 veyance of the Oak Flat area regardless of the find-
14 ings resulting from the environmental review proc-
15 ess. The mining project will require significant
16 amounts of water that will likely affect the local hy-
17 drology, including the underlying aquifer, and will
18 result in polluted water that will seep into drinking
19 water supplies.

20 (9) The inclusion of section 3003 in the Carl
21 Levin and Howard P. “Buck” McKeon National De-
22 fense Authorization Act for Fiscal Year 2015 sets
23 negative precedent for legislative process and for
24 Federal Indian policy.

1 **SEC. 3. REPEAL OF THE SOUTHEAST ARIZONA LAND EX-**
2 **CHANGE AND CONSERVATION.**

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

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