

Testimony on 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. Also known as the "Save Oak Flat Act."

April 9, 2021

**For consideration by the United States House
Subcommittee For Indigenous Peoples Of The United States
Committee on Natural Resources**

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Dear Chairman Fernandez and Members United States House Subcommittee For Indigenous Peoples Of The United States:

The Access Fund, the national organization that keeps climbing areas open and conserved in the US, welcomes this opportunity to submit testimony for inclusion into the public record regarding 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. This bill is also familiarly referred to as the "Save Oak Flat Act, or SOFA."

Since 2004, the Access Fund has been an interested party and involved stakeholder opposing the numerous versions of the federal land exchange bills involving Resolution Copper Mining (RCM) and the public land at Oak Flat, AZ. We have met dozens of times with congressional staff about our concerns with this land exchange, which would direct the Secretary of Agriculture to convey highly popular public rock climbing resources on federal land for use as a massive underground copper mine. The Access Fund opposes this exchange because it desecrates native lands, destroys public climbing resources, lacks meaningful environmental analysis and is a massive giveaway of public wealth to a foreign-owned private mining company. For those same reasons we support the passage of H.R. 1884.

Access Fund feels strongly that Section 3003 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 should have never become law. For ten years in a row, RCM succeeded in getting land exchange legislation introduced into Congress that would give them ownership of Oak Flat. Over that ten-year time period however, through both Democratic and Republican administrations and Congresses, opposition kept the RCM land exchange legislation from passing through Congress. The legislation simply could not pass on its own merits.

In late 2014, however, sponsors of the RCM land exchange legislation succeeded in getting the land exchange bill attached as an unrelated rider to the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 as Section 3003. The process of attaching the RCM land exchange bill to the NDAA involved private negotiations between powerful members of Congress and was devoid of any public input, comment, or scrutiny. Each year the NDAA is considered a piece of must pass legislation as it provides funding for our military services. Thus, when the NDAA was passed by Congress in late December, 2014, President Obama had no option but to sign it into law, in spite of the Administration's lack of support for the land exchange.

The Access Fund and Our Stake in Oak Flat

The Access Fund is a 501(c)3 non-profit advocacy group representing the interests of approximately 7 million rock climbers and mountaineers in the United States. The Access Fund's mission is to keep climbing areas open and to conserve the climbing environment. Preserving the opportunity to climb and the diversity of the climbing experience are fundamental to our mission. Arizona is one of our largest member states.

Rock climbers account for the greatest number of recreational user days at the Oak Flat/Queen Creek area, and we stand to suffer the largest destruction of climbing resources ever on public lands in this country if this area is destroyed by mining activities. There are hundreds of established rock climbs and thousands of boulder problems (short climbs) in the Oak Flat area that will subside into an enormous crater if RCM is allowed to proceed with their present plan to block cave mine the underlying copper deposit.

The Access Fund has advocated against the land transfer, submitted comments at every opportunity during the NEPA process, and filed a lawsuit after the Final EIS was published just prior to the recent change in administration.

Oak Flat Recreation

The value of Oak Flat as a recreational resource has been officially acknowledged since the 1950s. The Eisenhower Administration presciently anticipated the threat of mining to Oak Flat when it issued Public Land Order 1229 in 1955, and specifically placed this land off-limits to all future mining activity. The Nixon Administration subsequently issued PLO 5132 in 1972 to modify PLO 1229 and allow “all forms of appropriation under the public land laws applicable to national forest lands *except under the US mining laws.*” These executive orders sought to protect Oak Flat from exactly the threat that this land exchange enables. For decades climbers have frequented the Oak Flat/Queen Creek Canyon area in Central Arizona to scale the vast assortment of cliffs, canyons, and boulders. Climbing at Oak Flat—one of the country’s few areas widely visited during winter months—has become so popular that for fifteen years running the area hosted the Phoenix Bouldering Contest which, at the time, was the world’s largest outdoor rock climbing event.

Section 3003 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act violates the religious rights of Native Americans

In addition to the loss of rock climbing, H.R. 1884 should be passed to protect Native American cultural resources and sacred lands. We fully support the objections to the land transfer and proposed mining project based on religious and cultural grounds by the San Carlos Apache tribe, the Inter Tribal Association of Arizona, the National Congress of American Indians, and Apache Stronghold. Oak Flat, Chi’chil Bıldagoteel by its Indian name, has great prehistoric and historic significance to several Indian tribes in Arizona. The area was added to the National Register of Historic Places specifically in recognition of its importance to the tribes.

Resolution Copper, a subsidiary of Rio Tinto, is intrinsically connected to Rio Tinto’s May, 2021 [destruction of a 46,000-year-old Aboriginal heritage site](#) in Australia. The parent company promised to never destroy indigenous sites again. Yet, the Oak Flat land exchange would in fact result in the complete destruction of an indigenous sacred site. Access Fund objects to handing over public lands to a foreign company with a track record of decimating indigenous sites for shareholder profit.

There is insufficient water in Arizona to support this mine project

The current RCM General Plan of Operation calls for RCM to pump at least 550,000 acre-feet of groundwater from Pinal County, where there is already a huge water shortfall that will be now made much worse by the impending Colorado River Tier-1 shortfall declaration.

In preparing its Environmental Impact Statement for the RCM mine project, the USFS claimed that the potential for a Tier-1 shortage declaration for the Colorado River was not foreseeable, and therefore the impacts of that declaration on water availability for the mine did not need to be considered. On April 2, however, a joint statement was made by the Arizona Department of Water Resources and Central Arizona Project, saying that they anticipate the first-ever water shortage declaration to be made for the Colorado River. Not only was this declaration foreseeable, we have now been told to prepare for it. <https://www.cap-az.com/documents/departments/planning/colorado-river-programs/ADWR-CAP-ShortageStatement.pdf>

The shortage declaration will go into effect on January 1, 2022 and will result in a substantial cut to Arizona's share of the river, approximately 320,000 acre-feet per year, with reductions falling largely to central Arizona agricultural users. According to the "2019 Pinal Model and 100-Year Assured Water Supply Projection Technical Memorandum," (AMA report), Pinal County is already projected to have an 8.1 million acre-foot shortage of water, or roughly 10%, over the next hundred years. The AMA report concludes "Looking out 100 years, there is insufficient groundwater in the Pinal Active Management Area to support all existing uses and issued assured water supply determinations." <https://new.azwater.gov/news/articles/2019-07-11-0> The AMA report does not even factor in the need to make up for the loss of agricultural CAP water by pumping even more groundwater. There simply will not be sufficient water for the RCM mine project, without taking the water away from agricultural and/or residential water users.

Conclusions

Section 3003 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 should have never become law. This legislation, if not repealed, will result in the largest loss of climbing resources in the history of the United States, will trample on the religious and cultural rights of Native Americans, and will result in a vast amount of water being taken from agricultural and residential users in Pinal County, Arizona. It is for these reasons Access Fund supports H.R. 1884. We are, of course, happy to answer any questions the Committee may have. Access Fund thanks the Subcommittee in advance for consideration of these concerns.