

107TH CONGRESS  
2D SESSION

# H. R. 5155

To protect sacred Native American Federal lands from significant damage.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2002

Mr. RAHALL (for himself, Mr. KILDEE, Mr. GEORGE MILLER of California, Mr. FALCOMA, Mr. PALLONE, Mr. UDALL of New Mexico, Mr. CARSON of Oklahoma, Ms. MCCOLLUM, Mr. KENNEDY of Rhode Island, and Mr. BALDACC) introduced the following bill; which was referred to the Committee on Resources

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## A BILL

To protect sacred Native American Federal lands from significant damage.

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; DEFINITIONS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Native American Sacred Lands Act”.

6 (b) DEFINITIONS.—For the purposes of this Act, the  
7 following definitions shall apply:

8 (1) FEDERAL LANDS.—The term “Federal  
9 lands” means any land or interests in land owned by

1 the United States, including leasehold interests held  
2 by the United States, except Indian trust lands.

3 (2) INDIAN TRIBE.—The term “Indian tribe”  
4 has the meaning given such term by section 4(e) of  
5 the Indian Self-Determination and Education Assist-  
6 ance Act.

7 (3) NATIVE HAWAIIAN ORGANIZATION.—The  
8 term “Native Hawaiian organization” has the mean-  
9 ing given that term in section 301(18) of the Na-  
10 tional Historic Preservation Act (16 U.S.C.  
11 470w(18)).

12 (4) SACRED LAND.—The term “sacred land”  
13 means any geophysical or geographical area or fea-  
14 ture which is sacred by virtue of its traditional cul-  
15 tural or religious significance or ceremonial use, or  
16 by virtue of a ceremonial or cultural requirement, in-  
17 cluding a religious requirement that a natural sub-  
18 stance or product for use in Indian tribal or native  
19 Hawaiian organization ceremonies be gathered from  
20 that particular location.

21 (5) UNDERTAKING.—The term “undertaking”  
22 has the same meaning given that term in section  
23 301(7) of the National Historic Preservation Act  
24 (16 U.S.C. 470w(7)).

1 **SEC. 2. PROTECTION OF SACRED LANDS.**

2 Each department or agency of the United States with  
3 administrative jurisdiction over the management of Fed-  
4 eral lands shall—

5 (1) accommodate access to and ceremonial use  
6 of Indian sacred lands by Indian religious practi-  
7 tioners;

8 (2) avoid significant damage to Indian sacred  
9 lands; and

10 (3) consult with Indian tribes and Native Ha-  
11 waiian organizations prior to taking significant ac-  
12 tions or developing policies affecting Native Amer-  
13 ican sacred lands.

14 **SEC. 3. DESIGNATING INDIAN SACRED LANDS UNSUITABLE**  
15 **FOR DEVELOPMENT.**

16 (a) **IN GENERAL.**—Federal lands shall be designated  
17 unsuitable for any or certain types of undertakings if the  
18 head of the department or agency with administrative ju-  
19 risdiction over that Federal land decides, in accordance  
20 with this section, that by a preponderance of the evidence  
21 the undertaking is likely to cause significant damage to  
22 Indian sacred lands.

23 (b) **PETITION.**—

24 (1) **IN GENERAL.**—Any Indian tribe or Native  
25 Hawaiian organization shall have the right to peti-  
26 tion any department or agency of the United States

1 with administrative jurisdiction over Federal lands  
2 to have Federal lands under the jurisdiction of that  
3 department or agency designated as unsuitable for  
4 any or certain types of undertaking.

5 (2) SUPPORTING EVIDENCE.—Such a petition  
6 shall contain allegations of facts with supporting evi-  
7 dence which would tend to establish the allegations.  
8 Oral history shall be given no less weight than other  
9 evidence. After an Indian tribe or Native Hawaiian  
10 organization has filed a petition under this section,  
11 and before the hearing as required by this sub-  
12 section, any person may file allegations of facts, with  
13 supporting evidence, that are relevant to the peti-  
14 tion.

15 (c) HEARING.—

16 (1) IN GENERAL.—Not later than 90 days after  
17 the receipt of such petition, the department or agen-  
18 cy with administrative jurisdiction over that Federal  
19 land involved shall hold a public hearing on the sub-  
20 ject of the petition in the locality of that Federal  
21 land after public notice, including publication of the  
22 date, time, and location of the hearing.

23 (2) WRITTEN DECISION.—Not later than 60  
24 days after a hearing held pursuant to this sub-  
25 section, the head of the department or agency with

1 administrative jurisdiction over that Federal land  
2 shall issue and furnish to the petitioner and any  
3 other parties to the hearing a written decision re-  
4 garding the petition and the reasons for the decision.

5 (d) APPEAL.—Not later than 60 days after a written  
6 decision is issued pursuant to subsection (c)(2), any peti-  
7 tioner or person filing under section 3(b)(2) may appeal  
8 the decision to the appropriate Federal agency appeals  
9 board or through a civil action in accordance with sub-  
10 section (e). A decision regarding a petition shall not be  
11 considered final for the purposes of this section until—

12 (1) the deadline for filing an appeal to the deci-  
13 sion has past and no appeal has been filed; or

14 (2) if an appeal was timely filed, the appeal has  
15 been heard and decided.

16 (e) CIVIL ACTIONS; JURISDICTION; RELIEF.—

17 (1) IN GENERAL.—The United States district  
18 courts shall have original jurisdiction over any civil  
19 action or claim against the Secretary of the Interior  
20 or the head of another Federal agency, as appro-  
21 priate, arising under this section. In an action  
22 brought under this paragraph, the district courts  
23 may order appropriate relief including money dam-  
24 ages, injunctive relief against any action by an offi-  
25 cer of the United States or any agency thereof con-

1 trary to this Act, or regulations promulgated there-  
2 under, or mandamus to compel an officer or em-  
3 ployee of the United States, or any agency thereof,  
4 to perform a duty provided under this Act or regula-  
5 tions promulgated hereunder.

6 (2) APPLICATION OF EQUAL ACCESS TO JUSTICE ACT.—The Equal Access to Justice Act (Public  
7 Law 96–481; Act of October 1, 1980; 92 Stat. 2325;  
8 5 U.S.C. 594; 28 U.S.C. 2412) shall apply to ac-  
9 tions brought under this Act.  
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11 (f) EFFECT OF DECISION OF UNSUITABILITY.—

12 (1) IN GENERAL.—A final decision that Federal  
13 lands identified by a petition considered pursuant to  
14 subsection (b) are unsuitable for any or certain  
15 types of undertakings shall be immediately effective  
16 and the undertaking shall be prohibited.

17 (2) WITHDRAWAL OF LANDS.—Subject to valid  
18 and existing rights, the Secretary of the Interior  
19 shall (with the consent of the department or agency  
20 other than the Department of the Interior in the  
21 case of Federal lands not under the administration  
22 of the Secretary of the Interior) withdraw Federal  
23 lands included in a decision of unsuitability under  
24 this section pursuant to section 204 of the Federal  
25 Land Policy and Management Act of 1976 (43

1 U.S.C. 1714). The Secretary's decision under this  
2 section shall constitute the documentation required  
3 to be provided under section 204(c)(12) of the Fed-  
4 eral Land Policy and Management Act of 1976 (43  
5 U.S.C. 1714) and in compliance with section 4.

6 (3) LAND USE PLANS.—Any decision of  
7 unsuitability made for Federal lands under the ad-  
8 ministrative jurisdiction of the Secretary of the Inte-  
9 rior or the Secretary of Agriculture (with respect to  
10 National Forest System lands) shall be incorporated  
11 into the appropriate land use plan when such plan  
12 is adopted, revised, or significantly amended pursu-  
13 ant to the Federal Land Policy and Management  
14 Act of 1976 or, as the case may be, the Forest and  
15 Rangeland Renewable Resources Planning Act of  
16 1974.

17 **SEC. 4. CONFIDENTIALITY.**

18 (a) IN GENERAL.—Notwithstanding section 5 of title  
19 5, United States Code (commonly known as the Freedom  
20 of Information Act) or any other law, no information ob-  
21 tained as a result of or in connection with a petition filed  
22 or a hearing held under this Act that contains a reference  
23 pertaining to a specific detail of a Native American tradi-  
24 tional cultural practice or religion, or the significance of  
25 an Indian or Native Hawaiian sacred land, or the location

1 of that sacred land, shall be released except as provided  
2 in subsection (c).

3 (b) RELEASE OF INFORMATION.—

4 (1) INITIAL VIOLATION.—Any person who in-  
5 tentiously releases any information knowing that it  
6 is required to be held confidential pursuant to this  
7 section shall, upon conviction, be fined not more  
8 than \$10,000, or imprisoned not more than 1 year,  
9 or both.

10 (2) SUBSEQUENT VIOLATIONS.—In the case of  
11 a second or subsequent violation of this section, a  
12 person shall, upon conviction, be fined not more  
13 than \$100,000, or imprisoned not more than 5  
14 years, or both.

15 (c) EXCEPTION.—This section shall not apply in any  
16 case in which all persons filing pursuant to section 3(b),  
17 including the petitioner, waive the application of this sec-  
18 tion.

19 **SEC. 5. GRANTS.**

20 (a) AUTHORITY TO PROVIDE GRANTS.—The Sec-  
21 retary may provide grants to Indian tribes to assist the  
22 Indian tribes in carrying out activities related to this Act.

23 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
24 are authorized to be appropriated to the Secretary such  
25 sums as may be necessary to carry out this section.

1 **SEC. 6. REGULATIONS.**

2 (a) CONSULTATION WITH INDIAN TRIBES.—In devel-  
3 oping regulations under this Act, the Secretary shall use—

4 (1) an effective process to permit elected tribal  
5 officials, traditional Native American practitioner,  
6 and other representatives of Indian tribal govern-  
7 ments to provide meaningful and timely input in  
8 that development; and

9 (2) where appropriate, consensual mechanisms,  
10 including negotiated rulemaking.

11 (b) EFFECTIVE DATE.—This Act shall become effec-  
12 tive on the date of the enactment of this Act. Any failure  
13 of the Secretary to promulgate regulations under this sec-  
14 tion shall not affect such effective date.

15 **SEC. 7. CONSULTATION UNDER OTHER LAWS.**

16 Nothing in this Act shall affect any consultation proc-  
17 ess under the National Historic Preservation Act or any  
18 other Federal law.

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