To protect sacred Native American Federal lands from significant damage.

IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2002

Mr. Rahall (for himself, Mr. Kildee, Mr. George Miller of California, Mr. Faleomavaega, Mr. Pallone, Mr. Udall of New Mexico, Mr. Carson of Oklahoma, Ms. McCollum, Mr. Kennedy of Rhode Island, and Mr. Baldacci) introduced the following bill; which was referred to the Committee on Resources

A BILL

To protect sacred Native American Federal lands from significant damage.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; DEFINITIONS.

(a) Short Title.—This Act may be cited as the “Native American Sacred Lands Act”.

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

(1) Federal lands.—The term “Federal lands” means any land or interests in land owned by
the United States, including leasehold interests held
by the United States, except Indian trust lands.

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

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

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

(5) UNDERTAKING.—The term “undertaking”
has the same meaning given that term in section
301(7) of the National Historic Preservation Act
(16 U.S.C. 470w(7)).
SEC. 2. PROTECTION OF SACRED LANDS.

Each department or agency of the United States with administrative jurisdiction over the management of Federal lands shall—

(1) accommodate access to and ceremonial use of Indian sacred lands by Indian religious practitioners;

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

(3) consult with Indian tribes and Native Hawaiian organizations prior to taking significant actions or developing policies affecting Native American sacred lands.

SEC. 3. DESIGNATING INDIAN SACRED LANDS UNSUITABLE FOR DEVELOPMENT.

(a) In General.—Federal lands shall be designated unsuitable for any or certain types of undertakings if the head of the department or agency with administrative jurisdiction over that Federal land decides, in accordance with this section, that by a preponderance of the evidence the undertaking is likely to cause significant damage to Indian sacred lands.

(b) Petition.—

(1) In General.—Any Indian tribe or Native Hawaiian organization shall have the right to petition any department or agency of the United States...
with administrative jurisdiction over Federal lands
to have Federal lands under the jurisdiction of that
department or agency designated as unsuitable for
any or certain types of undertaking.

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

(c) HEARING.—

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

(2) WRITTEN DECISION.—Not later than 60
days after a hearing held pursuant to this sub-
section, the head of the department or agency with
administrative jurisdiction over that Federal land
shall issue and furnish to the petitioner and any
other parties to the hearing a written decision re-
garding the petition and the reasons for the decision.
(d) APPEAL.—Not later than 60 days after a written
decision is issued pursuant to subsection (c)(2), any peti-
tioner or person filing under section 3(b)(2) may appeal
the decision to the appropriate Federal agency appeals
board or through a civil action in accordance with sub-
section (e). A decision regarding a petition shall not be
considered final for the purposes of this section until—
(1) the deadline for filing an appeal to the deci-
sion has past and no appeal has been filed; or
(2) if an appeal was timely filed, the appeal has
been heard and decided.
(e) CIVIL ACTIONS; JURISDICTION; RELIEF.—
(1) IN GENERAL.—The United States district
courts shall have original jurisdiction over any civil
action or claim against the Secretary of the Interior
or the head of another Federal agency, as appro-
priate, arising under this section. In an action
brought under this paragraph, the district courts
may order appropriate relief including money dam-
ages, injunctive relief against any action by an offi-
cer of the United States or any agency thereof con-
trary to this Act, or regulations promulgated there-
under, or mandamus to compel an officer or em-
ployee of the United States, or any agency thereof,
to perform a duty provided under this Act or regula-
tions promulgated hereunder.

(2) APPLICATION OF EQUAL ACCESS TO JUS-
TICE ACT.—The Equal Access to Justice Act (Public
Law 96–481; Act of October 1, 1980; 92 Stat. 2325;
5 U.S.C. 594; 28 U.S.C. 2412) shall apply to ac-
tions brought under this Act.

(f) EFFECT OF DECISION OF UNSUITABILITY.—

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

(2) WITHDRAWAL OF LANDS.—Subject to valid
and existing rights, the Secretary of the Interior
shall (with the consent of the department or agency
other than the Department of the Interior in the
case of Federal lands not under the administration
of the Secretary of the Interior) withdraw Federal
lands included in a decision of unsuitability under
this section pursuant to section 204 of the Federal
Land Policy and Management Act of 1976 (43
U.S.C. 1714). The Secretary’s decision under this section shall constitute the documentation required to be provided under section 204(c)(12) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714) and in compliance with section 4.

(3) LAND USE PLANS.—Any decision of unsuitability made for Federal lands under the administrative jurisdiction of the Secretary of the Interior or the Secretary of Agriculture (with respect to National Forest System lands) shall be incorporated into the appropriate land use plan when such plan is adopted, revised, or significantly amended pursuant to the Federal Land Policy and Management Act of 1976 or, as the case may be, the Forest and Rangeland Renewable Resources Planning Act of 1974.

SEC. 4. CONFIDENTIALITY.

(a) IN GENERAL.—Notwithstanding section 5 of title 5, United States Code (commonly known as the Freedom of Information Act) or any other law, no information obtained as a result of or in connection with a petition filed or a hearing held under this Act that contains a reference pertaining to a specific detail of a Native American traditional cultural practice or religion, or the significance of an Indian or Native Hawaiian sacred land, or the location...
of that sacred land, shall be released except as provided in subsection (c).

(b) RELEASE OF INFORMATION.—

(1) INITIAL VIOLATION.—Any person who intentionally releases any information knowing that it is required to be held confidential pursuant to this section shall, upon conviction, be fined not more than $10,000, or imprisoned not more than 1 year, or both.

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

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

SEC. 5. GRANTS.

(a) AUTHORITY TO PROVIDE GRANTS.—The Secretary may provide grants to Indian tribes to assist the Indian tribes in carrying out activities related to this Act.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this section.
SEC. 6. REGULATIONS.

(a) Consultation With Indian Tribes.—In developing regulations under this Act, the Secretary shall use—

(1) an effective process to permit elected tribal officials, traditional Native American practitioner, and other representatives of Indian tribal governments to provide meaningful and timely input in that development; and

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

(b) Effective Date.—This Act shall become effective on the date of the enactment of this Act. Any failure of the Secretary to promulgate regulations under this section shall not affect such effective date.

SEC. 7. CONSULTATION UNDER OTHER LAWS.

Nothing in this Act shall affect any consultation process under the National Historic Preservation Act or any other Federal law.