

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 7776
OFFERED BY MR. LAMALFA OF CALIFORNIA**

Add at the end of title I the following:

1 **SEC. ____ . REBURIAL AND CONVEYANCE AUTHORITY.**

2 (a) DEFINITIONS.—Section 208(a) of the Water Re-
3 sources Development Act of 2000 (33 U.S.C. 2338(a)) is
4 amended to read as follows:

5 “(a) DEFINITIONS.—In this section:

6 “(1) AFFECTED INDIAN TRIBE.—The term ‘af-
7 fected Indian Tribe’ means any Indian Tribe that
8 attaches religious or other significance to any burial
9 site, village site, or cultural resources identified or
10 discovered at a covered civil works project.

11 “(2) BURIAL SITE.—The term ‘burial site’
12 means any natural or prepared physical location,
13 whether originally below, on, or above the surface of
14 the earth, where Native American cultural resources
15 are present as a result of a death rite or ceremony
16 of a culture.

17 “(3) COVERED CIVIL WORKS PROJECT.—The
18 term ‘covered civil works project’ means a civil
19 works project—

1 “(A) that is being carried out, or operated
2 and maintained, using Federal funds; and

3 “(B) that is owned, authorized, permitted,
4 carried out, or operated and maintained by the
5 Department of the Army, including a project
6 carried out by a non-Federal interest under sec-
7 tion 204 of the Water Resources Development
8 Act of 1986 (33 U.S.C. 2232) or section 1043
9 of the Water Resources Reform and Develop-
10 ment Act of 2014 (33 U.S.C. 2201 note).

11 “(4) CULTURAL RESOURCES.—The term ‘cul-
12 tural resources’ means—

13 “(A) human remains; or

14 “(B) funerary objects or other ceremonial
15 objects.

16 “(5) FUNERARY OBJECTS.—The term ‘funerary
17 objects’ means items that are associated with the
18 death rite or ceremony of a culture.

19 “(6) HUMAN REMAINS.—The term ‘human re-
20 mains’ means the physical remains of a human body,
21 including such remains that have been cremated and
22 that may be in any state of decomposition or skeletal
23 completeness (including ashes or small bone frag-
24 ments).

1 “(7) INDIAN TRIBE.—The term ‘Indian Tribe’
2 has the meaning given that term in section 4(e) of
3 the Indian Self-Determination and Education Assist-
4 ance Act (25 U.S.C. 5304(e)).

5 “(8) RIGHTFULLY CLAIMED.—The term ‘right-
6 fully claimed’ means claimed by—

7 “(A) with respect to cultural resources
8 identified or discovered on Federal or Tribal
9 lands at the site of a covered civil works
10 project—

11 “(i) the person or entity with owner-
12 ship or control of the cultural resources
13 under section 3 of the Native American
14 Graves Protection and Repatriation Act
15 (25 U.S.C. 3002); or

16 “(ii) with respect to cultural resources
17 not subject to such Act, the appropriate
18 person or entity determined in accordance
19 with the priority order established by such
20 section; and

21 “(B) with respect to cultural resources
22 identified or discovered on other lands at the
23 site of a covered civil works project—

24 “(i) in the case of Native American
25 human remains and funerary objects asso-

1 ciated with such remains, the lineal de-
2 scendants of the Native American, as de-
3 termined in accordance with the laws of
4 the State in which the site is located; or

5 “(ii) in any case in which such lineal
6 descendants cannot be ascertained, and in
7 the case of other funerary objects or other
8 ceremonial objects—

9 “(I) the Indian Tribe with the
10 highest priority under the priority
11 order established by the laws of the
12 State in which the site is located; or

13 “(II) if the State in which the
14 site is located has not so established a
15 priority order—

16 “(aa) the Indian Tribe that
17 has the closest cultural affiliation
18 with the cultural resources; or

19 “(bb) if the cultural affili-
20 ation of the cultural resources
21 cannot be reasonably
22 ascertained—

23 “(AA) the Indian Tribe
24 that is recognized as aborigi-
25 nally occupying the area in

1 which the cultural resources
2 were identified or discov-
3 ered; or

4 “(BB) if it can be
5 shown by a preponderance
6 of the evidence that a dif-
7 ferent Indian Tribe has a
8 stronger cultural relation-
9 ship with the cultural re-
10 sources than the Indian
11 Tribe specified in subitem
12 (AA), the Indian Tribe that
13 has the strongest dem-
14 onstrated relationship with
15 such cultural resources.

16 “(9) VILLAGE SITE.—The term ‘village site’
17 means any natural or prepared physical location,
18 whether below, on, or above the surface of the earth,
19 where a Native American village has been present.”.

20 (b) RECOVERY AND REBURIAL REQUIREMENTS.—
21 Section 208(b) of the Water Resources Development Act
22 of 2000 (33 U.S.C. 2338(b)) is amended to read as fol-
23 lows:

24 “(b) REBURIAL.—

1 “(1) REBURIAL AREAS.—In consultation with
2 and with the consent of each affected Indian Tribe,
3 the Secretary shall identify, and, as applicable, co-
4 operate with appropriate property owners to set
5 aside, areas that may be used for the reburial of Na-
6 tive American human remains and funerary objects
7 that—

8 “(A) have been identified or discovered at
9 the site of a covered civil works project;

10 “(B) have been rightfully claimed by any
11 affected Indian Tribe; and

12 “(C) can be reburied in such areas in a
13 manner secure from future disturbances, with
14 the consent of the property owner or owners, as
15 applicable.

16 “(2) RECOVERY AND REBURIAL STANDARDS.—

17 “(A) TIMING OF RECOVERY.—

18 “(i) REQUIREMENTS.—The Secretary
19 shall work in good faith with each affected
20 Indian Tribe, and each owner of property
21 affected by the recovery process, to ensure
22 that—

23 “(I) the recovery from the site of
24 a covered civil works project of Native
25 American cultural resources under

1 this section is completed, pursuant to
2 a written plan or protocol, not later
3 than 45 days after the initiation of re-
4 covery from the site; and

5 “(II) with respect to a burial site,
6 village site, or cultural resources iden-
7 tified at the site of a covered civil
8 works project before construction of
9 the covered civil works project com-
10 mences, such recovery is completed
11 before such construction commences
12 on the portion of the covered civil
13 works project affected by the recovery
14 process.

15 “(ii) ALTERNATIVE TIMETABLE.—
16 Notwithstanding the deadlines established
17 by clause (i), the Secretary, each relevant
18 non-Federal interest for the covered civil
19 works project, each affected Indian Tribe,
20 and each owner of property affected by the
21 recovery process may negotiate and agree
22 to an alternative timetable for recovery
23 other than that required by such clause,
24 based on the circumstances of the applica-
25 ble covered civil works project.

1 “(B) GUIDANCE.—Not later than 180 days
2 after the date of enactment of the Water Re-
3 sources Development Act of 2022, the Secretary
4 shall develop and issue written guidance for re-
5 covery and reburial under this section that
6 meets or exceeds the recovery and reburial
7 standards in policy statements and guidance
8 issued by the Advisory Council on Historic
9 Preservation.

10 “(C) EMINENT DOMAIN PROHIBITION.—
11 The Secretary may not exercise the power of
12 eminent domain to acquire any property to be
13 used for reburial under this section.

14 “(3) RECOVERY AND REBURIAL.—

15 “(A) RECOVERY AND REBURIAL BY SEC-
16 RETARY.—In consultation with and with the
17 consent of each affected Indian Tribe, the Sec-
18 retary shall at Federal expense, with appro-
19 priate dignity and in accordance with the guid-
20 ance developed under paragraph (2)—

21 “(i) recover any cultural resources
22 identified or discovered at the site of a cov-
23 ered civil works project and rightfully
24 claimed by any affected Indian Tribe;

1 “(ii) rebury any human remains and
2 funerary objects so recovered at the appli-
3 cable areas identified and set aside under
4 paragraph (1); and

5 “(iii) repatriate any other cultural re-
6 sources so recovered to the affected Indian
7 Tribe that has rightfully claimed such cul-
8 tural resources.

9 “(B) TRIBAL DELEGATION.—

10 “(i) IN GENERAL.—Upon the request
11 of an affected Indian Tribe, the Secretary
12 shall delegate to the Indian Tribe recovery
13 and reburial responsibilities under this sec-
14 tion of cultural resources that have been
15 rightfully claimed by the affected Indian
16 Tribe, and shall reimburse the affected In-
17 dian Tribe for costs directly related to such
18 recovery and reburial.

19 “(ii) MEMORANDUM OF AGREE-
20 MENT.—In carrying out clause (i)—

21 “(I) with respect to a burial site,
22 village site, or cultural resources iden-
23 tified at a covered civil works project
24 before construction of the project
25 commences, the Secretary shall, upon

1 request by the affected Indian Tribe,
2 enter into a written memorandum of
3 agreement with the affected Indian
4 Tribe before such construction com-
5 mences; and

6 “(II) with respect to a burial site,
7 village site, or cultural resources dis-
8 covered at a covered civil works
9 project after construction of the
10 project commences, the Secretary
11 shall, upon request by the affected In-
12 dian Tribe, enter into a written
13 memorandum of agreement with the
14 affected Indian Tribe not later than
15 45 days after such discovery.

16 “(iii) LIMITATION.—Reimbursement
17 under clause (i) shall not exceed 1 percent
18 of the total cost of construction of the ap-
19 plicable covered civil works project.

20 “(4) TRIBAL MONITORS.—

21 “(A) IN GENERAL.—During the construc-
22 tion of any covered civil works project, the Sec-
23 retary may hire a Tribal monitor or monitors,
24 and shall allow any affected Indian Tribe to
25 hire a Tribal monitor or monitors, at Federal

1 expense, for each area of construction, including
2 for each burial site and village site with respect
3 to which Native American cultural resources
4 are being recovered for reburial.

5 “(B) QUALIFICATIONS.—The Secretary or
6 affected Indian Tribe, as applicable, shall en-
7 sure that preference in hiring Tribal monitors
8 under this paragraph is provided to qualified
9 Native Americans, including individuals who—

10 “(i) have a professional relationship
11 with the affected Indian Tribe; or

12 “(ii) possess knowledge of, and exper-
13 tise in, the customs of the affected Indian
14 Tribe.

15 “(C) LIMITATION.—The Federal expense
16 of Tribal monitors hired under this paragraph
17 shall not exceed 1 percent of the total cost of
18 construction of the applicable covered civil
19 works project.

20 “(5) IDENTIFICATION AND INVENTORY.—The
21 Secretary shall accept identifications made by an af-
22 fected Indian Tribe of Native American burial sites
23 and village sites at the site of a covered civil works
24 project, and include such identifications in any in-
25 ventory document for such project.

1 “(6) TIMING OF PAYMENTS.—The Secretary
2 shall enter into a contract or other agreement to
3 make a payment to an affected Indian Tribe for re-
4 imbursement of costs under paragraph (3)(B) or ex-
5 penses under paragraph (4), which payment shall be
6 made not later than 90 days after the affected In-
7 dian Tribe submits an invoice for such costs or ex-
8 penses to the Secretary.”.

9 (c) CONVEYANCE AUTHORITY.—Section 208(c)(1) of
10 the Water Resources Development Act of 2000 (33 U.S.C.
11 2338(c)(1)) is amended by striking “the Secretary may
12 convey to an Indian tribe for use as a cemetery an area
13 at a civil works project that is identified and set aside by
14 the Secretary under subsection (b)(1)” and inserting “the
15 Secretary may convey to an affected Indian Tribe for use
16 as a cemetery or reburial area any area that is located
17 on land owned by the Department of the Army and is
18 identified and set aside under subsection (b)(1)”.

19 (d) CONFIDENTIALITY; AVOIDANCE OF DUPLICA-
20 TION.—Section 208 of the Water Resources Development
21 Act of 2000 (33 U.S.C. 2338) is amended by adding at
22 the end the following:

23 “(d) CONFIDENTIALITY OF INFORMATION PRO-
24 VIDED.—

1 “(1) IN GENERAL.—The Secretary shall develop
2 and issue written guidance regarding the confiden-
3 tiality of information provided to the Department of
4 the Army by Indian Tribes in connection with any
5 covered civil works project.

6 “(2) APPLICABILITY OF FOIA.—Information
7 provided to the Department of the Army by an In-
8 dian Tribe under this section shall be exempt from
9 public disclosure under section 552(b)(3) of title 5,
10 United States Code, to protect Native American bur-
11 ial sites, village sites, and cultural resources, and
12 their locations, from unauthorized excavation, dese-
13 cration, or vandalism.

14 “(e) AVOIDANCE OF DUPLICATION.—In carrying out
15 this section, the Secretary shall avoid, to the maximum
16 extent practicable, duplication of efforts relating to com-
17 pliance with this section and any other applicable provision
18 of law.”.

19 (e) APPLICABILITY.—Any requirement of subsection
20 (b) of section 208 of the Water Resources Development
21 Act of 2000 resulting from the amendments made by this
22 section shall not affect any contract relating to a covered
23 civil works project (as defined in such section 208) entered

1 into by the Secretary before the date of enactment of this
2 Act.

