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

At the end of title I, add the following:

SEC. 1. PILOT PROGRAM FOR NON-FEDERAL REPAIR
AND RESTORATION OF CERTAIN FLOOD CONTROL WORKS AND HURRICANE OR SHORE
PROTECTION STRUCTURES AND PROJECTS.

(a) ESTABLISHMENT.—The Secretary shall establish a pilot program to evaluate the benefits of allowing non-Federal interests to repair and restore eligible works that ordinarily would be repaired and restored by the Corps of Engineers using Federal funds, under section 5 of the Act of August 18, 1941 (33 U.S.C. 701n), in order to—

(1) reduce the backlog, and accelerate the repair and restoration, of eligible works;

(2) provide incentives to non-Federal interests to carry out the repair and restoration of eligible works by allowing any Federal and non-Federal funds that remain after a pilot project is complete to be used for the subsequent maintenance of the eligible works that was repaired and restored; and
(3) evaluate the technical, financial, and organizational benefits of allowing non-Federal interests to carry out the repair and restoration of eligible works.

(b) Administration.—

(1) Notice of Program.—In carrying out the pilot program established under subsection (a), the Secretary shall, not later than 90 days after the date of enactment of this Act, and periodically thereafter in accordance with paragraph (3), publish a public notice containing—

(A) a description of the pilot program;

(B) a list of eligible works and a description of the necessary repairs and restoration at each eligible works;

(C) a statement inviting non-Federal interests to participate in the pilot program and to carry out the repair and restoration of the eligible works;

(D) a deadline for submitting applications to participate in the pilot program.

(2) Applications.—The Secretary shall require that each application to participate in the pilot program—
(A) be submitted to the Division Commander of the Corps of Engineers Division in which the eligible works is located; and

(B) contain—

(i) a statement of the capability of the non-Federal interest submitting the application to repair and restore the applicable eligible works and to enter into an agreement under subsection (c); and

(ii) a proposed plan that describes how the repair and restoration of the applicable eligible works will, at a minimum, restore the eligible works to the condition it was in before the damage that the Secretary determined made it eligible for repair and restoration under section 5 of the Act of August 18, 1941 (33 U.S.C. 701n) occurred, as identified in the notice published under paragraph (1);

(iii) a schedule for completing the repair and restoration that identifies key events and milestone dates, based on estimated funding levels; and

(iv) a letter of support from the non-Federal interest associated with the appli-
cable flood control works or hurricane or
shore protection structure or project, if the
applicant is not such non-Federal interest.

(3) ROLLING PROGRAM.—The Secretary shall
issue in accordance with paragraph (1), on a regular
and timely basis for the duration of the pilot pro-
gram, such additional notices to the public and invi-
tations to participate in the pilot program as are
necessary to ensure that the list of eligible works is
current.

(c) AGREEMENTS.—

(1) REQUIREMENTS.—Before a non-Federal in-
terest initiates the repair and restoration of an eligi-
bles works pursuant to this section, the Secretary and
the non-Federal interest shall enter into a legally en-
forceable agreement that—

(A) identifies the eligible works, or por-
tions thereof, that will be repaired or restored;

(B) sets forth the estimated cost of the re-
pair and restoration, based on a current Corps
of Engineers estimate of the cost of the Corps
of Engineers carrying out the repair and res-
toration;

(C) authorizes the non-Federal interest to
carry out the repair and restoration;
(D) specifies that, in carrying out the repair and restoration, the non-Federal interest may take measures and carry out activities to reduce the costs, or accelerate the delivery of the repair and restoration, of the eligible works, if such measures and activities do not violate applicable law, eliminate or alter procedures required by Federal regulation, reduce the quality or performance of the eligible works over their useful life, or increase the probability or magnitude of loss of life;

(E) requires the Secretary to make a payment to the non-Federal interest that is equal to 75 percent of the estimated cost of the repair and restoration set forth under subparagraph (B), using funds made available to the Secretary for the repair and restoration of eligible works under section 5 of the Act of August 18, 1941 (33 U.S.C. 701n);

(F) requires the non-Federal interest to pay any sums above the payment made to the non-Federal interest under subparagraph (E) that are necessary to pay for the costs of completing the repair and restoration;
(G) specifies that the non-Federal interest may use any sums that remain from the payment made to the non-Federal interest under subparagraph (E) after the repair and restoration of the eligible works is complete for the subsequent maintenance of the eligible works that is desired by and of benefit to the non-Federal interest; and

(H) contains such other provisions that the Secretary and non-Federal interest agree are consistent with this section.

(2) NOTICE OF AGREEMENTS.—In each year in which the Secretary enters into an agreement under this section, the Secretary shall publish a notice containing a list of all such agreements.

(3) NUMBER OF AGREEMENTS.—The Secretary is authorized to enter into not more than 20 agreements under this section.

(d) TERMINATION.—The authority of the Secretary to enter into agreements under this section shall terminate on the earlier of—

(1) the date that is 5 years after the date of enactment of this Act; or

(2) the date on which the Secretary enters into the twentieth agreement under this section.
(c) REPORT TO CONGRESS.—Not later than 1 year after the date on which the authority of the Secretary to enter into agreements under this section terminates under subsection (d), the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report describing the number of agreements entered into under this section, any benefits resulting from the participation of non-Federal entities in the repair and restoration of eligible works under the pilot program established under this section, and the effectiveness of the pilot program in reducing the backlog, and accelerating the repair and restoration, of eligible works.

(f) DEFINITIONS.—In this section:

(1) ELIGIBLE WORKS.—The term “eligible works” means a flood control works that has been damaged by flood, or a hurricane or shore protection structure or project that has been damaged or destroyed by wind, wave, or water action of other than an ordinary nature, that the Secretary determines is eligible for repair and restoration, and ordinarily would be carried out using Federal funds, under section 5 of the Act of August 18, 1941 (33 U.S.C. 701n).
(2) NON-FEDERAL INTEREST.—The term “non-Federal interest” has the meaning given that term in section 221(b) of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b(b)).

(3) REPAIR AND RESTORATION.—The term “repair and restoration” means all construction and related activities necessary to repair and restore the eligible works, including engineering, design, permitting, and mitigation.