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

Add at the end of title I the following:

SEC. ___. REBURIAL AND CONVEYANCE AUTHORITY.

(a) DEFINITIONS.—Section 208(a) of the Water
Resources Development Act of 2000 (33 U.S.C. 2338(a)) is
amended to read as follows:

“(a) DEFINITIONS.—In this section:

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

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

“(3) COVERED CIVIL WORKS PROJECT.—The
term ‘covered civil works project’ means a civil
works project—
“(A) that is being carried out, or operated and maintained, using Federal funds; and

“(B) that is owned, authorized, permitted, carried out, or operated and maintained by the Department of the Army, including a project carried out by a non-Federal interest under section 204 of the Water Resources Development Act of 1986 (33 U.S.C. 2232) or section 1043 of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2201 note).

“(4) CULTURAL RESOURCES.—The term ‘cultural resources’ means—

“(A) human remains; or

“(B) funerary objects or other ceremonial objects.

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

“(6) HUMAN REMAINS.—The term ‘human remains’ means the physical remains of a human body, including such remains that have been cremated and that may be in any state of decomposition or skeletal completeness (including ashes or small bone fragments).
“(7) INDIAN TRIBE.—The term ‘Indian Tribe’ has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(e)).

“(8) RIGHTFULLY CLAIMED.—The term ‘rightfully claimed’ means claimed by—

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

“(i) the person or entity with ownership or control of the cultural resources under section 3 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002); or

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

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

“(i) in the case of Native American human remains and funerary objects asso-
ciated with such remains, the lineal de-
sendants of the Native American, as de-
termined in accordance with the laws of
the State in which the site is located; or

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

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

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

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

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

“(AA) the Indian Tribe
that is recognized as aborigi-
nally occupying the area in
which the cultural resources
were identified or discov-
ered; or

“(BB) if it can be
shown by a preponderance
of the evidence that a dif-
f erent Indian Tribe has a
stronger cultural relation-
ship with the cultural re-
sources than the Indian
Tribe specified in subitem
(AA), the Indian Tribe that
has the strongest dem-
onstrated relationship with
such cultural resources.

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

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

“(b) REBURIAL.—
“(1) Reburial areas.—In consultation with and with the consent of each affected Indian Tribe, the Secretary shall identify, and, as applicable, co-operate with appropriate property owners to set aside, areas that may be used for the reburial of Native American human remains and funerary objects that—

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

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

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

“(2) Recovery and reburial standards.—

“(A) Timing of recovery.—

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

“(I) the recovery from the site of a covered civil works project of Native American cultural resources under
this section is completed, pursuant to a written plan or protocol, not later than 45 days after the initiation of recovery from the site; and

“(II) with respect to a burial site, village site, or cultural resources identified at the site of a covered civil works project before construction of the covered civil works project commences, such recovery is completed before such construction commences on the portion of the covered civil works project affected by the recovery process.

“(ii) ALTERNATIVE TIMETABLE.— Notwithstanding the deadlines established by clause (i), the Secretary, each relevant non-Federal interest for the covered civil works project, each affected Indian Tribe, and each owner of property affected by the recovery process may negotiate and agree to an alternative timetable for recovery other than that required by such clause, based on the circumstances of the applicable covered civil works project.
“(B) GUIDANCE.—Not later than 180 days after the date of enactment of the Water Resources Development Act of 2022, the Secretary shall develop and issue written guidance for recovery and reburial under this section that meets or exceeds the recovery and reburial standards in policy statements and guidance issued by the Advisory Council on Historic Preservation.

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

“(3) RECOVERY AND REBURIAL.—

“(A) RECOVERY AND REBURIAL BY SECRETARY.—In consultation with and with the consent of each affected Indian Tribe, the Secretary shall at Federal expense, with appropriate dignity and in accordance with the guidance developed under paragraph (2)—

“(i) recover any cultural resources identified or discovered at the site of a covered civil works project and rightfully claimed by any affected Indian Tribe;
“(ii) rebury any human remains and
funerary objects so recovered at the appli-
cable areas identified and set aside under
paragraph (1); and

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

“(B) TRIBAL DELEGATION.—

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

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

“(I) with respect to a burial site,
village site, or cultural resources iden-
tified at a covered civil works project
before construction of the project
commences, the Secretary shall, upon
request by the affected Indian Tribe,

enter into a written memorandum of

agreement with the affected Indian

Tribe before such construction com-

mences; and

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

“(iii) limitation.—Reimbursement

under clause (i) shall not exceed 1 percent

of the total cost of construction of the ap-

picable covered civil works project.

“(4) tribal monitors.—

“(A) in general.—During the construc-
tion of any covered civil works project, the Sec-
retary may hire a Tribal monitor or monitors,
and shall allow any affected Indian Tribe to
hire a Tribal monitor or monitors, at Federal
expense, for each area of construction, including
for each burial site and village site with respect
to which Native American cultural resources
are being recovered for reburial.

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

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

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

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

“(5) IDENTIFICATION AND INVENTORY.—The
Secretary shall accept identifications made by an af-
fected Indian Tribe of Native American burial sites
and village sites at the site of a covered civil works
project, and include such identifications in any in-
ventory document for such project.
“(6) TIMING OF PAYMENTS.—The Secretary shall enter into a contract or other agreement to make a payment to an affected Indian Tribe for reimbursement of costs under paragraph (3)(B) or expenses under paragraph (4), which payment shall be made not later than 90 days after the affected Indian Tribe submits an invoice for such costs or expenses to the Secretary.”.

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

(d) CONFIDENTIALITY; AVOIDANCE OF DUPLICATION.—Section 208 of the Water Resources Development Act of 2000 (33 U.S.C. 2338) is amended by adding at the end the following:

“(d) CONFIDENTIALITY OF INFORMATION PROVIDED.—
“(1) IN GENERAL.—The Secretary shall develop
and issue written guidance regarding the confidential-
tiality of information provided to the Department of
the Army by Indian Tribes in connection with any
covered civil works project.

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

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

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