

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

At the appropriate place in title I, insert the following:

1 **SEC. 1\_\_\_\_. SACRAMENTO RIVER WATERSHED NATIVE**  
2 **AMERICAN SITE AND CULTURAL RESOURCE**  
3 **PROTECTION PILOT PROGRAM.**

4 (a) ESTABLISHMENT.—Not later than 180 days after  
5 the date of enactment of this Act, the Secretary shall es-  
6 tablish a pilot program in accordance with this section to  
7 protect Native American burial sites, village sites, and cul-  
8 tural resources identified or discovered at civil works  
9 projects in the watershed of the Sacramento River and its  
10 tributaries, including the American, Bear, Yuba, and  
11 Feather Rivers, in the State of California.

12 (b) REBURIAL.—

13 (1) REBURIAL AREAS.—In carrying out the  
14 pilot program, the Secretary shall, in consultation  
15 with and with the consent of each affected Indian  
16 Tribe, identify, and, as applicable, cooperate with  
17 appropriate Tribal, local, State, and Federal Govern-  
18 ment property owners to set aside, areas that may

1 be used for the reburial of Native American human  
2 remains and funerary objects that—

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

5 (B) have been rightfully claimed by any af-  
6 fected Indian Tribe; and

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

11 (2) RECOVERY AND REBURIAL STANDARDS.—

12 (A) TIMING OF RECOVERY.—

13 (i) REQUIREMENTS.—In carrying out  
14 the pilot program, the Secretary shall work  
15 in good faith with each affected Indian  
16 Tribe, and each owner of property affected  
17 by the recovery process, to ensure that—

18 (I) the recovery of a burial site,  
19 village site, or cultural resources from  
20 the site of a covered civil works  
21 project under the pilot program is  
22 completed, pursuant to a written plan  
23 or protocol, not later than 45 days  
24 after the initiation of such recovery;  
25 and

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

11 (ii) ALTERNATIVE TIMETABLE.—Not-  
12 withstanding the deadlines established by  
13 clause (i), the Secretary, each relevant  
14 non-Federal interest for the covered civil  
15 works project, each affected Indian Tribe,  
16 and each owner of property affected by the  
17 recovery process may negotiate and agree  
18 to an alternative timetable for recovery  
19 other than that required by such clause,  
20 based on the circumstances of the applica-  
21 ble covered civil works project.

22 (B) GUIDANCE.—In carrying out sub-  
23 section (a), the Secretary shall develop and  
24 issue written guidance for recovery and reburial  
25 under the pilot program that meets or exceeds

1 the recovery and reburial standards in policy  
2 statements and guidance issued by the Advisory  
3 Council on Historic Preservation.

4 (C) EMINENT DOMAIN PROHIBITION.—No  
5 Federal entity may exercise the power of emi-  
6 nent domain to acquire any property to be used  
7 for reburial under the pilot program.

8 (3) RECOVERY AND REBURIAL.—

9 (A) RECOVERY AND REBURIAL BY SEC-  
10 RETARY.—In carrying out the pilot program,  
11 the Secretary shall, at Federal expense, in con-  
12 sultation with and with the consent of each af-  
13 fected Indian Tribe, and with appropriate dig-  
14 nity and in accordance with the guidance devel-  
15 oped under paragraph (2)—

16 (i) recover any cultural resources  
17 identified or discovered at the site of a cov-  
18 ered civil works project and rightfully  
19 claimed by any affected Indian Tribe;

20 (ii) rebury any human remains and  
21 funerary objects so recovered at the appli-  
22 cable areas identified and set aside under  
23 paragraph (1); and

24 (iii) repatriate any other cultural re-  
25 sources so recovered to the affected Indian

1 Tribe that has rightfully claimed such cul-  
2 tural resources.

3 (B) TRIBAL AUTHORIZATION.—

4 (i) IN GENERAL.—Upon the request  
5 of an affected Indian Tribe, the Secretary  
6 shall authorize, pursuant to a memo-  
7 randum of agreement entered into under  
8 clause (ii), the Indian Tribe to assume re-  
9 covery and reburial responsibilities under  
10 the pilot program of cultural resources  
11 that have been rightfully claimed by the af-  
12 fected Indian Tribe, and shall reimburse  
13 the affected Indian Tribe for reasonable  
14 costs directly related to such recovery and  
15 reburial.

16 (ii) MEMORANDUM OF AGREEMENT.—

17 In carrying out clause (i)—

18 (I) with respect to a burial site,  
19 village site, or cultural resources iden-  
20 tified at a covered civil works project  
21 before construction of the project  
22 commences, the Secretary shall, upon  
23 request by the affected Indian Tribe,  
24 enter into a written memorandum of  
25 agreement with the affected Indian

1 Tribe to authorize the necessary re-  
2 covery and reburial activities before  
3 such construction commences; and

4 (II) with respect to a burial site,  
5 village site, or cultural resources dis-  
6 covered at a covered civil works  
7 project after construction of the  
8 project commences, the Secretary  
9 shall, upon request by the affected In-  
10 dian Tribe, enter into a written  
11 memorandum of agreement with the  
12 affected Indian Tribe to authorize the  
13 necessary recovery and reburial activi-  
14 ties not later than 45 days after such  
15 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, pursu-  
20 ant to the terms outlined in paragraph (6).

21 (4) TRIBAL MONITORS.—

22 (A) IN GENERAL.—In carrying out the  
23 pilot program, the Secretary may hire a Tribal  
24 monitor or monitors, and shall allow any af-  
25 fected Indian Tribe to hire a Tribal monitor or

1 monitors, at Federal expense, during the con-  
2 struction of any covered civil works project, for  
3 each area of construction, including for each  
4 burial site and village site with respect to which  
5 Native American cultural resources are being  
6 recovered for reburial.

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

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

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

17 (C) LIMITATION.—The Federal expense of  
18 Tribal monitors hired under this paragraph  
19 shall not exceed 1 percent of the total cost of  
20 construction of the applicable covered civil  
21 works project, pursuant to the terms outlined in  
22 paragraph (6).

23 (5) IDENTIFICATION AND INVENTORY.—In car-  
24 rying out the pilot program, the Secretary shall ac-  
25 cept identifications made by an affected Indian

1 Tribe of Native American burial sites and village  
2 sites at the site of a covered civil works project, and  
3 include such identifications in any inventory docu-  
4 ment for such project.

5 (6) TIMING OF PAYMENTS.—The Secretary  
6 shall enter into a contract or other agreement to  
7 make a payment to an affected Indian Tribe for re-  
8 imbursement of reasonable costs under paragraph  
9 (3)(B) or actual expenses under paragraph (4), sub-  
10 ject to market-based pricing, which payment shall be  
11 made not later than 90 days after the affected In-  
12 dian Tribe submits an invoice for such costs or ex-  
13 penses to the Secretary.

14 (c) CONVEYANCE AUTHORITY.—

15 (1) IN GENERAL.—Subject to paragraph (2),  
16 notwithstanding any other provision of law, the Sec-  
17 retary may convey to an affected Indian Tribe for  
18 use as a cemetery or reburial area any area that is  
19 located on land owned by the Department of the  
20 Army and is identified and set aside under sub-  
21 section (b)(1).

22 (2) RETENTION OF NECESSARY PROPERTY IN-  
23 TERESTS.—In carrying out paragraph (1), the Sec-  
24 retary shall retain any necessary right-of-way, ease-  
25 ment, or other property interest that the Secretary



1 determines to be necessary to carry out the author-  
2 ized purposes of any Corps of Engineers project re-  
3 lated to the conveyed land.

4 (d) CONFIDENTIALITY OF INFORMATION PRO-  
5 VIDED.—

6 (1) IN GENERAL.—In carrying out subsection  
7 (a), the Secretary shall develop and issue written  
8 guidance regarding the confidentiality of information  
9 provided to the Department of the Army by Indian  
10 Tribes in connection with any covered civil works  
11 project under the pilot program.

12 (2) NONPUBLIC INFORMATION.—The following  
13 information provided to the Department of the Army  
14 by an Indian Tribe under the pilot program shall be  
15 treated as confidential and nonpublic information, to  
16 protect Native American burial sites, village sites,  
17 and cultural resources, and their locations, from un-  
18 authorized excavation, desecration, or vandalism:

19 (A) Information regarding the locations of  
20 burial sites, village sites, and cultural resources,  
21 including maps designating such locations.

22 (B) Information regarding cultural or tra-  
23 ditional practices related to such sites or re-  
24 sources.

1 (e) AVOIDANCE OF DUPLICATION.—In carrying out  
2 the pilot program, the Secretary shall avoid, to the max-  
3 imum extent practicable, duplication of efforts relating to  
4 compliance with this section and any other applicable pro-  
5 vision of law.

6 (f) APPLICABILITY.—

7 (1) IN GENERAL.—Section 208 of the Water  
8 Resources Development Act of 2000 (33 U.S.C.  
9 2338) shall not apply to a covered civil works project  
10 during the period during which the Secretary is car-  
11 rying out the pilot program.

12 (2) EXISTING CONTRACTS.—Nothing in this  
13 section shall affect any contract relating to a covered  
14 civil works project entered into by the Secretary of  
15 the Army before the date of enactment of this Act.

16 (g) PERIOD.—The Secretary shall carry out the pilot  
17 program until the date that is 4 years after the date on  
18 which the pilot program is established.

19 (h) DEFINITIONS.—In this section:

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

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

7           (3) COVERED CIVIL WORKS PROJECT.—The  
8 term “covered civil works project” means a civil  
9 works project that is—

10           (A) located in the watershed of the Sac-  
11 ramento River and its tributaries, including the  
12 American, Bear, Yuba, and Feather Rivers,  
13 within the State of California;

14           (B) being constructed, reconstructed, or  
15 repaired, or operated and maintained, using  
16 Federal funds; and

17           (C) owned, authorized, permitted, carried  
18 out, or operated and maintained by the Depart-  
19 ment of the Army, including a project carried  
20 out by a non-Federal interest under section 204  
21 of the Water Resources Development Act of  
22 1986 (33 U.S.C. 2232) or section 1043 of the  
23 Water Resources Reform and Development Act  
24 of 2014 (33 U.S.C. 2201 note).

1           (4) CULTURAL RESOURCES.—The term “cul-  
2 tural resources” means—

3           (A) human remains; or

4           (B) funerary objects or other ceremonial  
5 objects.

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

9           (6) HUMAN REMAINS.—The term “human re-  
10 mains” means the physical remains of a human  
11 body, including such remains that have been cre-  
12 mated and that may be in any state of decomposi-  
13 tion or skeletal completeness (including ashes or  
14 small bone fragments).

15           (7) INDIAN TRIBE.—The term “Indian Tribe”  
16 has the meaning given that term in section 102 of  
17 the Federally Recognized Indian Tribe List Act of  
18 1994 (25 U.S.C. 5130).

19           (8) PILOT PROGRAM.—The term “pilot pro-  
20 gram” means the pilot program established under  
21 this section.

22           (9) RIGHTFULLY CLAIMED.—The term “right-  
23 fully claimed” means claimed by—

1 (A) with respect to cultural resources iden-  
2 tified or discovered on Federal or Tribal lands  
3 at the site of a covered civil works project—

4 (i) the person or entity with owner-  
5 ship or control of the cultural resources  
6 under section 3 of the Native American  
7 Graves Protection and Repatriation Act  
8 (25 U.S.C. 3002); or

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

14 (B) with respect to cultural resources iden-  
15 tified or discovered on other lands at the site of  
16 a covered civil works project—

17 (i) in the case of Native American  
18 human remains and funerary objects asso-  
19 ciated with such remains, the lineal de-  
20 scendants of the Native American, as de-  
21 termined in accordance with the laws of  
22 the State of California; or

23 (ii) in any case in which such lineal  
24 descendants cannot be ascertained, and in

1 the case of other funerary objects or other  
2 ceremonial objects—

3 (I) the Indian Tribe that has the  
4 closest cultural affiliation with the  
5 cultural resources; or

6 (II) if the cultural affiliation of  
7 the cultural resources cannot be rea-  
8 sonably ascertained—

9 (aa) the Indian Tribe that is  
10 recognized as aboriginally occu-  
11 pying the area in which the cul-  
12 tural resources were identified or  
13 discovered; or

14 (bb) if it can be shown by a  
15 preponderance of the evidence  
16 that a different Indian Tribe has  
17 a stronger cultural relationship  
18 with the cultural resources than  
19 the Indian Tribe specified in item  
20 (aa), the Indian Tribe that has  
21 the strongest demonstrated rela-  
22 tionship with such cultural re-  
23 sources.

24 (10) VILLAGE SITE.—The term “village site”  
25 means any natural or prepared physical location,

- 1 whether below, on, or above the surface of the earth,
- 2 where a Native American village has been present.

