

118TH CONGRESS
1ST SESSION

H. R. 5865

To require the Secretary of the Army to establish a pilot program to protect Native American burial sites, village sites, and cultural resources discovered at Corps of Engineers civil works projects in the Sacramento River watershed, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 2, 2023

Mr. LAMALFA (for himself and Mr. GARAMENDI) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To require the Secretary of the Army to establish a pilot program to protect Native American burial sites, village sites, and cultural resources discovered at Corps of Engineers civil works projects in the Sacramento River watershed, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Native American Bur-
5 ial Sites and Cultural Resources Protection Act”.

1 **SEC. 2. SACRAMENTO RIVER WATERSHED NATIVE AMER-**
2 **ICAN SITE AND CULTURAL RESOURCE PRO-**
3 **TECTION 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
19 be used for the reburial of Native American human
20 remains and funerary objects that—

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

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

25 (C) can be reburied in such areas in a
26 manner secure from future disturbances, with

1 the consent of such property owner or owners,
2 as applicable.

3 (2) RECOVERY AND REBURIAL STANDARDS.—

4 (A) TIMING OF RECOVERY.—

5 (i) REQUIREMENTS.—In carrying out
6 the pilot program, the Secretary shall work
7 in good faith with each affected Indian
8 Tribe, and each owner of property affected
9 by the recovery process, to ensure that—

10 (I) the recovery of a burial site,
11 village site, or cultural resources from
12 the site of a covered civil works
13 project under the pilot program is
14 completed, pursuant to a written plan
15 or protocol, not later than 45 days
16 after the initiation of such recovery;
17 and

18 (II) with respect to a burial site,
19 village site, or cultural resources iden-
20 tified at the site of a covered civil
21 works project before construction of
22 the covered civil works project com-
23 mences, such recovery is completed
24 before such construction commences
25 on the portion of the covered civil

1 works project affected by the recovery
2 process.

3 (ii) ALTERNATIVE TIMETABLE.—Not-
4 withstanding the deadlines established by
5 clause (i), the Secretary, each relevant
6 non-Federal interest for the covered civil
7 works project, each affected Indian Tribe,
8 and each owner of property affected by the
9 recovery process may negotiate and agree
10 to an alternative timetable for recovery
11 other than that required by such clause,
12 based on the circumstances of the applica-
13 ble covered civil works project.

14 (B) GUIDANCE.—In carrying out sub-
15 section (a), the Secretary shall develop and
16 issue written guidance for recovery and reburial
17 under the pilot program that meets or exceeds
18 the recovery and reburial standards in policy
19 statements and guidance issued by the Advisory
20 Council on Historic Preservation.

21 (C) EMINENT DOMAIN PROHIBITION.—No
22 Federal entity may exercise the power of emi-
23 nent domain to acquire any property to be used
24 for reburial under the pilot program.

25 (3) RECOVERY AND REBURIAL.—

1 (A) RECOVERY AND REBURIAL BY SEC-
2 RETARY.—In carrying out the pilot program,
3 the Secretary shall, at Federal expense, in con-
4 sultation with and with the consent of each af-
5 fected Indian Tribe, and with appropriate dig-
6 nity and in accordance with the guidance devel-
7 oped under paragraph (2)—

8 (i) recover any cultural resources
9 identified or discovered at the site of a cov-
10 ered civil works project and rightfully
11 claimed by any affected Indian Tribe;

12 (ii) rebury any human remains and
13 funerary objects so recovered at the appli-
14 cable areas identified and set aside under
15 paragraph (1); and

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

20 (B) TRIBAL AUTHORIZATION.—

21 (i) IN GENERAL.—Upon the request
22 of an affected Indian Tribe, the Secretary
23 shall authorize, pursuant to a memo-
24 randum of agreement entered into under
25 clause (ii), the Indian Tribe to assume re-

1 covery and reburial responsibilities under
2 the pilot program of cultural resources
3 that have been rightfully claimed by the af-
4 fected Indian Tribe, and shall reimburse
5 the affected Indian Tribe for reasonable
6 costs directly related to such recovery and
7 reburial.

8 (ii) MEMORANDUM OF AGREEMENT.—

9 In carrying out clause (i)—

10 (I) with respect to a burial site,
11 village site, or cultural resources iden-
12 tified at a covered civil works project
13 before construction of the project
14 commences, the Secretary shall, upon
15 request by the affected Indian Tribe,
16 enter into a written memorandum of
17 agreement with the affected Indian
18 Tribe to authorize the necessary re-
19 covery and reburial activities before
20 such construction commences; and

21 (II) with respect to a burial site,
22 village site, or cultural resources dis-
23 covered at a covered civil works
24 project after construction of the
25 project commences, the Secretary

1 shall, upon request by the affected In-
2 dian Tribe, enter into a written
3 memorandum of agreement with the
4 affected Indian Tribe to authorize the
5 necessary recovery and reburial activi-
6 ties not later than 45 days after such
7 discovery.

8 (iii) LIMITATION.—Reimbursement
9 under clause (i) shall not exceed 1 percent
10 of the total cost of construction of the ap-
11 plicable covered civil works project, pursu-
12 ant to the terms outlined in paragraph (6).

13 (4) TRIBAL MONITORS.—

14 (A) IN GENERAL.—In carrying out the
15 pilot program, the Secretary may hire a Tribal
16 monitor or monitors, and shall allow any af-
17 fected Indian Tribe to hire a Tribal monitor or
18 monitors, at Federal expense, during the con-
19 struction of any covered civil works project, for
20 each area of construction, including for each
21 burial site and village site with respect to which
22 Native American cultural resources are being
23 recovered for reburial.

24 (B) QUALIFICATIONS.—The Secretary or
25 affected Indian Tribe, as applicable, shall en-

1 sure that preference in hiring Tribal monitors
2 under this paragraph is provided to qualified
3 Native Americans, including individuals who—

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

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

9 (C) LIMITATION.—The Federal expense of
10 Tribal monitors hired under this paragraph
11 shall not exceed 1 percent of the total cost of
12 construction of the applicable covered civil
13 works project, pursuant to the terms outlined in
14 paragraph (6).

15 (5) IDENTIFICATION AND INVENTORY.—In car-
16 rying out the pilot program, the Secretary shall ac-
17 cept identifications made by an affected Indian
18 Tribe of Native American burial sites and village
19 sites at the site of a covered civil works project, and
20 include such identifications in any inventory docu-
21 ment for such project.

22 (6) TIMING OF PAYMENTS.—The Secretary
23 shall enter into a contract or other agreement to
24 make a payment to an affected Indian Tribe for re-
25 imbursement of reasonable costs under paragraph

1 (3)(B) or actual expenses under paragraph (4), sub-
2 ject to market-based pricing, which payment shall be
3 made not later than 90 days after the affected In-
4 dian Tribe submits an invoice for such costs or ex-
5 penses to the Secretary.

6 (c) CONVEYANCE AUTHORITY.—

7 (1) IN GENERAL.—Subject to paragraph (2),
8 notwithstanding any other provision of law, the Sec-
9 retary may convey to an affected Indian Tribe for
10 use as a cemetery or reburial area any area that is
11 located on land owned by the Department of the
12 Army and is identified and set aside under sub-
13 section (b)(1).

14 (2) RETENTION OF NECESSARY PROPERTY IN-
15 TERESTS.—In carrying out paragraph (1), the Sec-
16 retary shall retain any necessary right-of-way, ease-
17 ment, or other property interest that the Secretary
18 determines to be necessary to carry out the author-
19 ized purposes of any Corps of Engineers project re-
20 lated to the conveyed land.

21 (d) CONFIDENTIALITY OF INFORMATION PRO-
22 VIDED.—

23 (1) IN GENERAL.—In carrying out subsection
24 (a), the Secretary shall develop and issue written
25 guidance regarding the confidentiality of information

1 provided to the Department of the Army by Indian
2 Tribes in connection with any covered civil works
3 project under the pilot program.

4 (2) NONPUBLIC INFORMATION.—The following
5 information provided to the Department of the Army
6 by an Indian Tribe under the pilot program shall be
7 treated as confidential and nonpublic information, to
8 protect Native American burial sites, village sites,
9 and cultural resources, and their locations, from un-
10 authorized excavation, desecration, or vandalism:

11 (A) Information regarding the locations of
12 burial sites, village sites, and cultural resources,
13 including maps designating such locations.

14 (B) Information regarding cultural or tra-
15 ditional practices related to such sites or re-
16 sources.

17 (e) AVOIDANCE OF DUPLICATION.—In carrying out
18 the pilot program, the Secretary shall avoid, to the max-
19 imum extent practicable, duplication of efforts relating to
20 compliance with this section and any other applicable pro-
21 vision of law.

22 (f) APPLICABILITY.—

23 (1) IN GENERAL.—Section 208 of the Water
24 Resources Development Act of 2000 (33 U.S.C.
25 2338) shall not apply to a covered civil works project

1 during the period during which the Secretary is car-
2 rying out the pilot program.

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

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

10 (h) DEFINITIONS.—In this section:

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

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

22 (3) COVERED CIVIL WORKS PROJECT.—The
23 term “covered civil works project” means a civil
24 works project that is—

1 (A) located in the watershed of the Sac-
2 ramento River and its tributaries, including the
3 American, Bear, Yuba, and Feather Rivers,
4 within the State of California;

5 (B) being constructed, reconstructed, or
6 repaired, or operated and maintained, using
7 Federal funds; and

8 (C) owned, authorized, permitted, carried
9 out, or operated and maintained by the Depart-
10 ment of the Army, including a project carried
11 out by a non-Federal interest under section 204
12 of the Water Resources Development Act of
13 1986 (33 U.S.C. 2232) or section 1043 of the
14 Water Resources Reform and Development Act
15 of 2014 (33 U.S.C. 2201 note).

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

18 (A) human remains; or

19 (B) funerary objects or other ceremonial
20 objects.

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

24 (6) HUMAN REMAINS.—The term “human re-
25 mains” means the physical remains of a human

1 body, including such remains that have been cre-
2 mated and that may be in any state of decomposi-
3 tion or skeletal completeness (including ashes or
4 small bone fragments).

5 (7) INDIAN TRIBE.—The term “Indian Tribe”
6 has the meaning given that term in section 102 of
7 the Federally Recognized Indian Tribe List Act of
8 1994 (25 U.S.C. 5130).

9 (8) PILOT PROGRAM.—The term “pilot pro-
10 gram” means the pilot program established under
11 this section.

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

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

17 (i) the person or entity with owner-
18 ship or control of the cultural resources
19 under section 3 of the Native American
20 Graves Protection and Repatriation Act
21 (25 U.S.C. 3002); or

22 (ii) with respect to cultural resources
23 not subject to such Act, the appropriate
24 person or entity determined in accordance

1 with the priority order established by such
2 section; and

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

6 (i) in the case of Native American
7 human remains and funerary objects asso-
8 ciated with such remains, the lineal de-
9 scendants of the Native American, as de-
10 termined in accordance with the laws of
11 the State of California; or

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

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

19 (II) if the cultural affiliation of
20 the cultural resources cannot be rea-
21 sonably ascertained—

22 (aa) the Indian Tribe that is
23 recognized as aboriginally occu-
24 pying the area in which the cul-

1 tural resources were identified or
2 discovered; or

3 (bb) if it can be shown by a
4 preponderance of the evidence
5 that a different Indian Tribe has
6 a stronger cultural relationship
7 with the cultural resources than
8 the Indian Tribe specified in item
9 (aa), the Indian Tribe that has
10 the strongest demonstrated rela-
11 tionship with such cultural re-
12 sources.

13 (10) SECRETARY.—The term “Secretary”
14 means the Secretary of the Army, acting through
15 the Chief of Engineers.

16 (11) 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.

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