SEC. ___. NATIVE AMERICAN INDIAN LANDS ENVIRONMENTAL MITIGATION PROGRAM.

(a) IN GENERAL.—Chapter 160 of title 10, United States Code, is amended by adding at the end the following new section:

"**§2712. Native American lands environmental mitigation program**

"(a) ESTABLISHMENT.—The Secretary of Defense may establish and carry out a program to mitigate the environmental effects of Department of Defense actions on Indian lands and culturally connected locations.

"(b) PROGRAM ACTIVITIES.—The activities that may be carried out under the program established under subsection (a) are the following:

"(1) Identification, investigation, and documentation of suspected environmental effects attributable to past Department of Defense actions.

"(2) Development of mitigation options for such environmental effects, including development of cost-to-complete estimates and a system for prioritizing mitigation actions.

"(3) Direct mitigation actions that the Secretary determines are necessary and appropriate to mitigate the adverse environmental effects of past Department of Defense actions.

"(4) Demolition and removal of unsafe buildings and structures used by, under the jurisdiction of, or formerly used by or under the jurisdiction of the Department of Defense.

"(5) Training, technical assistance, and administrative support to facilitate the meaningful participation of Indian tribes in mitigation actions under the program.

"(6) Development and execution of a policy governing consultation with Indian tribes that have been or may be affected by Department of Defense actions, including training Department of Defense personnel to ensure compliance with the policy.

"(c) COOPERATIVE AGREEMENTS.—(1) In carrying out the program established under subsection (a), the Secretary of Defense, or the Secretary of a military department if authorized by the Secretary of Defense, may enter into a cooperative agreement with an Indian tribe, an instrumentality of tribal government, a consortium of Indian tribes, or an Alaska Native village or regional corporation.

"(2) Notwithstanding chapter 63 of title 31, a cooperative agreement under this section may be used to acquire property or services for the direct benefit of the United States Government.

"(3) Any cooperative agreement under this section for the procurement of severable services may begin in one fiscal year and end in another fiscal year provided the total period of performance does not exceed two calendar years.

"(d) DEFINITIONS.—In this section:

"(1) The term 'Indian land' includes—

"(A) any land located within the boundaries and a part of an Indian reservation, pueblo, or rancheria;

"(B) any land that has been allotted to an individual Indian but has not been conveyed to such Indian with full power of alienation;

"(C) Alaska Native village and regional corporation lands; and

"(D) lands and waters upon which any federally recognized Indian tribe has rights reserved by treaty, act of Congress, or action by the President.

"(2) The term 'Indian tribe' means any recognized Indian tribe included on the current list published by the Secretary of the Interior under section 104 of the Federally Recognized Indian Tribe Act of 1994 (Public Law 103–454; 108 Stat. 4792; 25 U.S.C. 5131).

"(3) The term 'culturally connected location' means a location or place that has demonstrable significance to Indians or Alaska Natives based on its association with the traditional beliefs, customs, and practices of a living community, including locations or places where religious, ceremonial, subsistence, medicinal, economic, or other lifeways practices have historically taken place.".

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2711 the following new item:

"2712. Native American lands environmental mitigation program.".

Section-by-Section Analysis

This proposal would provide permanent authority for the Department of Defense (DoD) to engage in a program to mitigate the environmental effects of defense activities on Indian lands and culturally connected locations.

Beginning with Fiscal Year (FY) 1993, the Congress has annually directed the Department to spend a specified amount (since FY 2009, not less than $12M) to be used only to mitigate environmental effects on Indian lands resulting from DoD activities. For fiscal years 1993 through 1995, these funds were administered on DoD's behalf by the Administration for Native Americans within the Department of Health and Human Services. Since FY 1996, DoD has administered the program directly, known as the Native American Lands Environmental Mitigation Program (NALEMP). Historically, these funds have not been part of DoD's budget request; instead, DoD was directed to spend not less than $12M each year and the Department had to redirect funds. As a result, the program has been governed solely by DoD's interpretation of the annual Appropriations Act language. This language has not changed materially since FY 1996; during the 20-plus years NALEMP has been in existence, DoD has sought to administer the program consistently and in accordance with Congress's intent. Now that DoD has begun to budget for NALEMP as directed by OMB, it is appropriate that it be authorized in permanent legislation. In addition, this legislative proposal would confirm and establish in law the principles that have governed the program since 1996.

Because it is primarily an environmental program, it will be included in chapter 160 of title 10, which contains DoD's environmental restoration authorities.

Subsection (a) authorizes the Secretary of Defense to engage in a program to mitigate the environmental effects of defense actions on Indian lands and culturally connected locations.

Subsection (b) lists the activities that are eligible for the program.

Subsection (c) authorizes the use of cooperative agreements and provides rules on their use.

Subsection (d) provides definitions of "Indian lands," "Indian tribe," and "culturally connected locations."

Each year since FY 1993, Congress has directed that a certain amount of funds appropriated to DoD under the heading "Operation and Maintenance, Defense-Wide" be available only for the mitigation of environmental effects on Indian lands resulting from DoD activities. The specified annual funding amount was initially $8M, but has been $12M since FY 2009. As a result, DoD has "sized" NALEMP to execute a $12M annual program to address the known sites most in need of mitigation. Even if this legislation is not enacted, we would expect to continue to receive this annual appropriation.

Budget Implications: The annual expenditures for the NALEMP program are shown in the table below. This proposal is funded in the President's Fiscal Year 2019 Budget Request.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2019	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Total	$12.176	$12.196	$12.202	$12.162	$12.393	Operations and Maintenance, Defense-wide	04	0100D_4GTN	0400004G4GTN

Changes to Existing Law: This proposal would insert a new section at the end of chapter 160 of title 10, United States Code, the full text of which is shown above in the legislative language.