Barrasso-Carper Amendment #1

This amendment fixes typos and makes minor technical changes, additions, and clarifications to sections of the underlying substitute amendment; authorizes an additional Chief’s Report that was received from the U.S. Army Corps of Engineers (Corps); calls upon the Corps to deauthorize a specific project, expedites an additional project, as well as provides technical assistance for a project needing inclusion under section 7001(b) of WRRDA 2014; makes improvements to the Upper and Lower Missouri River comprehensive flood protection studies, as well as that for the Great Lakes comprehensive study; helps prevent further additions to the backlog of Corps projects through enactment of America’s Water Infrastructure Act of 2020 (AWIA 2020); increases term flexibility for the financing of specified projects by non-federal sponsors; clarifies that the definition of “covered contracts” under section 1056 of AWIA 2020 includes those for water supply storage at both federal and non-federal hydropower lakes; requires the Secretary to offer leases of between twenty-five and fifty years for commercial leases under which a lessee has agreed to build structures or improve the land; and increases inclusion of tribes into specific provisions of AWIA 2020.

This amendment also includes a new non-federal cost-share in section 2001 Resiliency and Sustainability grant program of 10 percent for disadvantaged communities or populations of under 10,000; adds language to section 2014, to clarify existing law, that projects eligible for WIFIA assistance as defined under the statute that are also eligible for scoring under the Federal Credit Reform Act (as defined in the 1990 law) are non-federal and eligible for non-cash budgetary scoring, in order to preserve the existing practice of the scoring method used for WIFIA projects; adds language in section 2017 Discretionary Grant Program that clarifies the provision does not increase states’ bonding authority in order to prevent scoring issues; clarifies in section 2019 that the Centers of Excellence include the “goal of improving the effectiveness, cost efficiencies, and protection of public safety and water quality in their operations”, directs the inclusion of stakeholder consultation, and allows stormwater infrastructure grants to be used not only for developing, but also delivering, educational and training materials; creates section 2022 the Water Reuse Interagency Taskforce to allow the EPA to coordinate with other agencies and develop a plan for opportunities for water reuse.
AMENDMENT NO._______  Calendar No._______

Purpose: To improve the bill.


S.3591

To provide for improvements to the rivers and harbors of the United States, to provide for the conservation and development of water and related resources, to provide for water pollution control activities, and for other purposes.

Referred to the Committee on _____________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. BARRASSO
(for himself and Mr. CARPER)

Viz:

1. On page 10, strike lines 16 through 19 and insert the following:

   (2) TREATMENT.—A feasibility study carried out under paragraph (1)(B)—

   (A) shall be considered to be a continuation of the applicable study under subsection (b); and

   (B) may be carried out concurrently with the study under subsection (b).
Beginning on page 13, strike line 7 and all that follows through page 16, line 20, and insert the following:

SEC. 1002. GREAT LAKES COMPREHENSIVE FLOOD PROTECTION STUDY.

(a) DEFINITION OF GREAT LAKES.—In this section, the term "Great Lakes" has the meaning given the term in section 118(a) of the Federal Water Pollution Control Act (33 U.S.C. 1268(a)).

(b) DEVELOPMENT.—The Secretary, in collaboration with the heads of other relevant Federal agencies, shall conduct and submit to Congress a comprehensive study to address shoreline protection and resiliency in areas affected by flooding in 2019 due to high lake water levels along the Great Lakes, including an examination of—

(1) the use of structural and nonstructural coastal storm and flood risk management measures and flood zone management strategies, including the consideration of natural features or nature-based features (as those terms are defined in section 1184(a) of the Water Infrastructure Improvements for the Nation Act (33 U.S.C. 2289a(a)));

(2) continued operation and maintenance of navigation projects within or along the Great Lakes impacted by flooding related to high water levels;
(3) management of shoreline caving and erosion;

(4) recreation needs;

(5) environmental restoration needs;

(6) the division of responsibilities of the Federal Government and non-Federal interests with respect to Great Lakes coastal storm and flood risk management measures;

(7) the roles and responsibilities of Federal agencies with respect to Great Lakes coastal storm and flood risk management measures; and

(8) other related matters, as determined by the Secretary.

(c) CONTENTS.—The study under subsection (b) shall—

(1) include recommendations on management plans and actions to be carried out by the responsible Federal agencies for reducing flood risk and improving resiliency that shall—

(A) be used in recommending projects for construction authorization; and

(B) include the identification of—

(i) additional work that can be carried out by the Corps of Engineers under exist-
ing authorities to further reduce flood risk;
and
(ii) additional studies that may be needed;
(2) address whether changes are necessary to—
   (A) the management plan for the Great Lakes; and
   (B) the management plans for individual lakes of the Great Lakes;
(3) address whether there are opportunities for increased non-Federal management in the Great Lakes; and
(4) include recommendations for—
   (A) non-Federal and Federal action, where appropriate; and
   (B) follow-up studies for problem areas for which data or current technology does not allow immediate solutions.
(d) FURTHER ANALYSIS.—
(1) IN GENERAL.—As part of the study conducted under subsection (b), the Secretary shall—
   (A) identify institutional and other barriers to providing protection to the areas evaluated in the study;
(B) carry out activities that warrant additional analysis by the Corps of Engineers, including feasibility studies; and

(C) provide recommendations for inclusion of projects and feasibility studies in the report under section 1013.

(2) TREATMENT.—A feasibility study carried out under paragraph (1)(B)—

(A) shall be considered to be a continuation of the study under subsection (b); and

(B) may be carried out concurrently with the study under subsection (b).

(3) PRIORITY.—In carrying out activities under paragraph (1)(B), the Secretary shall give priority to activities—

(A) related to infrastructure projects that are necessary to protect critical public infrastructure, communities, and critical natural or cultural resources; or

(B) for which a non-Federal interest has taken substantial emergency action to reduce further damage to failed shore protection revetments and to mitigate threats to life safety.

(4) COST-SHARE.—
(A) IN GENERAL.—The non-Federal share
of the cost of carrying out a feasibility study
under paragraph (1)(B) shall not be more than
35 percent.

(B) WAIVER FOR SMALL OR DISADVANTAGED COMMUNITIES.—In carrying out a feasibility study under paragraph (1)(B) in partnership with a small or disadvantaged community (as those terms are defined in section 1017(a)), if the Secretary determines the life safety or economic viability of the community is at risk, the Secretary shall reduce the non-Federal cost share applicable to the study through a mutual agreement between the Corps of Engineers and the non-Federal interest, in an amount that is—

(i) not less than 10 percent of the
total project cost; and

(ii) up to 100 percent of the non-Federal
cost share applicable to the study.

(5) TIMELINESS.—The Secretary shall carry out feasibility studies under paragraph (1)(B) as expeditiously as possible, including by concurrently conducting feasibility studies and subsequently authorized construction activities where advisable.
(6) DELEGATION OF APPROVAL.—The Secretary shall delegate the approval authority for any feasibility study conducted under paragraph (1)(B) to the appropriate Division Commander of the Corps of Engineers.

(c) CONSULTATION; USE OF EXISTING DATA.—

(1) CONSULTATION.—In conducting the study under subsection (b), the Secretary shall consult with applicable Federal and State agencies, Indian Tribes, and other stakeholders.

(2) USE OF DATA.—In conducting the study under subsection (b), the Secretary shall make maximum use of data in existence on the date of enactment of this Act and ongoing programs and efforts of Federal agencies, States, Indian Tribes, and other stakeholders.

(f) COST SHARING.—The study conducted under subsection (b) shall be at full Federal expense.

(g) EXEMPTION.—Section 1001(a) of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282e(a))—

(1) shall not apply to the studies conducted under subsection (b); and

(2) shall apply to a feasibility study carried out under subsection (d)(1)(B).
(h) **Authorization of Appropriations.**—There is authorized to be appropriated to carry out subsection (b) $50,000,000, to remain available until expended.

On page 58, line 9, insert "Tribal," after "State".

On page 65, lines 2 and 3, strike "which is a National Historic Site".

On page 65, line 21, strike "area" and insert "are".

On page 66, lines 3 and 4, strike "the National Historic Site described in subsection (a)(2)" and insert "the Federal land".

On page 73, line 5, strike "**SMALL DAMS**" and insert "**LOW-HEAD DAMS**".

On page 73, line 9, strike "small dams" and insert "low-head dams".

On page 74, strike lines 2 through 4 and insert the following:

(9) the Director of the United States Geological Survey; and
1. (10) the Chief of the Forest Service.

2. On page 74, line 7, insert “and after providing an opportunity for public review and comment,” after “2021,”.

3. On page 74, lines 13 and 14, strike “small dams” and insert “low-head dams”.

4. On page 74, line 21, insert “and Indian tribes” after “States”.

5. On page 74, lines 22 and 23, strike “small dams” and insert “low-head dams”.

6. On page 75, lines 3 and 4, strike “small dams” and insert “low-head dams”.

7. On page 75, line 7, strike “small dams” and insert “low-head dams”.

8. On page 80, between lines 14 and 15, insert the following:

(g) SAVINGS PROVISION.—Nothing in this section affects, preempts, or interferes with any obligation to com-
ply with the provisions of any Federal environmental law, including—

(1) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);
(2) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and
(3) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

On page 91, line 24, insert "in consultation with affected Indian tribes," after "Secretary".

On page 104, line 18, insert "Federal or non-Federal" before "hydropower".

On page 112, line 11, strike "652(j)" and insert "1103(j)".

Beginning on page 124, strike line 25 and all that follows through page 125, line 5, and insert the following:

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall ensure that, when evaluating the placement of dredged material, the Corps. of Engineers shall consider—

On page 130, line 25, insert "Indian tribes," after "States,".
On page 145, line 4, insert “, Tribal,” after “State”.

On page 151, lines 13 and 14, strike “and the Governor of each affected State” and insert “, the Governor of each affected State, and each affected Indian tribe”.

On page 163, after line 24, insert the following:

**SEC. 1106. BACKLOG PREVENTION.**

(a) **PROJECT DEAUTHORIZATION.—**

(1) **IN GENERAL.—**A water resources development project authorized for construction by this Act shall not be authorized after the last day of the 10-year period beginning on the date of enactment of this Act unless—

(A) funds have been obligated for construction of, or a post-authorization study for, the project or the separable element during that period; or

(B) a subsequent Act of Congress modifies the authorization contained in this Act.

(2) **IDENTIFICATION OF PROJECTS.—**Not later than 60 days after the expiration of the 10-year period described in paragraph (1), 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 that identifies the projects
deauthorized under paragraph (1).

(b) REPORT TO CONGRESS.—Not later than 60 days
after the expiration of the 12-year period beginning on the
date of enactment of this Act, the Secretary shall submit
to the Committee on Environment and Public Works of
the Senate and the Committee on Transportation and In-
frastucture of the House of Representatives, and make
available to the public, a report that contains——

(1) a list of any water resources development
projects authorized by this Act for which construc-
tion has not been completed;

(2) a description of the reasons each project
was not completed;

(3) a schedule for the completion of the projects
based on expected levels of appropriations;

(4) a 5-year and 10-year projection of construc-
tion backlog; and

(5) any recommendations to Congress regarding
how to mitigate the backlog.

SEC. 1107. LEASE TERMS FOR COMMERCIAL CONCESSION
LEASES.

Section 4 of the Act of December 22, 1944 (com-
monly known as the “Flood Control Act of 1944”) (58
Stat. 889, chapter 665; 16 U.S.C. 460d), is amended in
the second sentence by striking “Provided,” and inserting
the following: “Provided, That a lease for commercial con-
cession purposes, under which the lessee has agreed to
build structures or facilities on, or to otherwise improve,
the land that is subject to the lease, shall be for a period
of not more than 50 years and, unless the Secretary of
the Army and the lessee agree otherwise, not less than
25 years: Provided further.”.

On page 166, strike lines 21 and 22.

On page 181, line 19, strike “Glenn” and insert
“Glens”.

On page 185, between lines 21 and 22, insert the fol-
lowing:

(72) Modification of the environmental assist-
ance project authorized by section 542 of the Water
2671; 121 Stat. 1150), for sanitary sewer system
upgrades in the Village of Whitehall, New York.

On page 201, between lines 14 and 15, insert the fol-
lowing:
SEC. 1310. SACRAMENTO RIVER, GLENN-COLUSA, CALIFORNIA.

The portion of the project for flood control, Sacramento River, California, authorized by section 2 of the Act of March 1, 1917 (39 Stat. 949, chapter 144), and modified by section 102 of the Energy and Water Development Appropriations Act, 1990 (103 Stat. 649), section 301(b)(3) of the Water Resources Development Act of 1996 (110 Stat. 3709), title I of the Energy and Water Development Appropriations Act, 1999 (112 Stat. 1841), and section 305 of the Water Resources Development Act of 1999 (113 Stat. 299), consisting of a riverbed gradient restoration facility at the Glenn-Colusa Irrigation District Intake, is no longer authorized beginning on the date of enactment of this Act.

On page 202, line 2, insert "or decision documents" after "reports".

On page 206, between the table and line 2, insert the following:

(6) NAVIGATION AND ECOSYSTEM RESTORATION.
<table>
<thead>
<tr>
<th>A. State</th>
<th>B. Name</th>
<th>C. Date of Decision Document</th>
<th>D. Estimated Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>TX</td>
<td>Corpus Christi</td>
<td>May 4, 2020</td>
<td>Federal: $403,000,000</td>
</tr>
<tr>
<td></td>
<td>Ship Channel</td>
<td></td>
<td>Non-Federal: $373,010,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Total: $676,010,000</td>
</tr>
</tbody>
</table>

On page 207, between lines 21 and 22, insert the following:

(14) The project for coastal storm damage reduction, San Diego County shoreline, California.

On page 209, between the table and line 1, insert the following:

SEC. 1404. TREATMENT OF PROJECT.

In the case of the project listed in item 4 in the table under section 1401(2), the non-Federal contribution for the project shall be financed over a period of 30 years from the date of completion of the project, in accordance with section 193(k) of the Water Resources Development Act of 1986 (33 U.S.C. 2213(k)).

On page 216, line 7, insert "Indian tribes," after "agencies, ".

On page 225, line 21, strike "to support efforts to eradicate invasive species from" and insert "to support efforts for the early detection of and rapid response to"
1. aquatic invasive species, including eradication and control measures, in”.

3. On page 230, line 16, insert “, in coordination with the Aquatic Nuisance Species Task Force,” after “Secretary”.

6. On page 231, line 5, insert “, or update or expand an existing plan,” after “plan”.

8. On page 231, lines 23 and 24, strike “PREVENTION AND REDUCTION” and insert “PREVENTION, CONTROL, AND ERADICATION”.

11. On page 232, line 13, strike “reduce” and insert “prevent the introduction of, control, or eradicate”.

13. On page 232, line 23, strike “manage” and insert “eradicate”.

15. Beginning on page 244, strike line 1 and all that follows through page 245, line 2, and insert the following:
SEC. 1609. INVASIVE SPECIES IN ALPINE LAKES PILOT PROGRAM.

(a) ESTABLISHMENT.—The Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service (referred to in this section as the "Secretary"), shall establish a pilot program (referred to in this section as the "pilot program") to develop and carry out effective measures necessary to prevent, control, or eradicate aquatic invasive species in alpine lakes that are not located within a unit of the National Park System.

(b) PARTNERSHIPS.—The Secretary shall offer to enter into a partnership to carry out the pilot program with—

(1) any relevant partnering Federal agency; and
(2) any relevant compact agency organized with the consent of Congress under the Interstate Compact Clause of section 10 of article I of the Constitution of the United States.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the pilot program $25,000,000 for the period of fiscal years 2022 through 2024.

SEC. 1610. INVASIVE SPECIES IN NONCONTIGUOUS STATES AND TERRITORIES PILOT PROGRAM.

(a) ESTABLISHMENT.—The Secretary of the Interior, acting through the Director of the United States Fish and
Wildlife Service, shall establish a pilot program to carry out measures necessary to prevent, control, or eradicate invasive species in culturally significant forested watersheds in noncontiguous States and territories of the United States in which the Secretary is carrying out flood risk reduction projects.

(b) IMPLEMENTATION.—The Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, is encouraged to carry out the measures described in subsection (a) in consultation with—

(1) States and units of local government, including Indian tribes and Native Hawaiian organizations (as those terms are defined in section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001)); and

(2) nonprofit organizations with knowledge and experience in forested watershed management.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the pilot program under subsection (a) $25,000,000 for the period of fiscal years 2022 through 2024.

On page 248, strike lines 11 through 16 and insert the following:

'(1) COST SHARE.—Except as provided in paragraph (2), a grant under the program shall not
exceed 75 percent of the total cost of the proposed project.

"(2) EXCEPTION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a grant under the program shall not exceed 90 percent of the total cost of the proposed project if the project serves a community that—

"(i) has a population of fewer than 10,000 individuals; or

"(ii) meets the affordability criteria established by the State in which the community is located under section 603(i)(2).

"(B) WAIVER.—At the discretion of the Administrator, a grant for a project described in subparagraph (A) may cover 100 percent of the total cost of the proposed project.

"(3) REQUIREMENTS.—The requirements of section 608 shall apply to a project funded with a grant under the program.

On page 277, strike line 20 and insert the following:

(a) APPLICATIONS.—Section 5023 of the Water Infrastructure Finance and Innovation Act of 2014 (33 U.S.C. 3902) is amended by adding at the end the following:
(c) BUDGETARY TREATMENT.—If the recipient of financial assistance under this subtitle is an eligible entity other than a Federal entity, agency, or instrumentality and the dedicated sources of repayment of that financial assistance are non-Federal revenue sources, the project or asset for which financial assistance is being provided shall, for purposes of budgetary treatment under the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.)—

“(1) be deemed to be non-Federal; and

“(2) be treated as a direct loan or loan guarantee.”.

(b) FUNDING.—Section 5033 of the Water Infrastructure Finance

On page 280, line 9, insert “subject to paragraph (3),” before “1 or more”.

On page 280, line 18, insert “prior” after “received”.

On page 281, between lines 5 and 6, insert the following:

(3) NO INCREASED BONDING AUTHORITY.—Amounts made available under the program may not be used as a source of payment of, or security for (directly or indirectly), in whole or in part, any obligation the interest on which is exempt from the tax.
imposed under chapter 1 of the Internal Revenue Code of 1986.

On page 287, line 22, insert "with the goal of improving the effectiveness, cost efficiency, and protection of public safety and water quality" after "benefits".

On page 289, line 1, insert "and other stakeholders" after "partnerships".

On page 292, line 1, insert "and delivering" after "Developing".

On page 299, between lines 13 and 14, insert the following:

SEC. 2022. WATER REUSE INTERAGENCY WORKING GROUP.

(a) In general.—Not later than 180 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency (referred to in this section as the "Administrator"), shall establish a Water Reuse Interagency Working Group (referred to in this section as the "Working Group").

(b) Purpose.—The purpose of the Working Group is to develop and coordinate actions, tools, and resources to advance water reuse across the United States, including through the implementation of a National Water Reuse Action Plan that creates opportunities for water reuse in the mission areas of each of the Federal agencies included
in the Working Group under subsection (c) (referred to
in this section as the "Action Plan").
(c) CHAIRPERSON; MEMBERSHIP.—The Working
Group shall be—

(1) chaired by the Administrator; and

(2) comprised of senior representatives from
such Federal agencies as the Administrator deter-
mines to be appropriate.
(d) DUTIES OF THE WORKING GROUP.—In carrying
out this section, the Working Group shall—

(1) with respect to water reuse, leverage the ex-
pertise of industry, the research community, non-
governmental organizations, and government;

(2) seek to foster water reuse as an important
component of integrated water resources manage-
ment;

(3) conduct an assessment of new opportunities
to advance water reuse and annually update the Ac-
tion Plan with new actions, as necessary, to pursue
those opportunities;

(4) seek to coordinate Federal programs and
policies to support the adoption of water reuse;

(5) consider how each Federal agency can ex-
plore and identify opportunities to support water
reuse through the programs and activities of that
Federal agency; and

(6) consult, on a regular basis, with representa-
tives of relevant industries, the research community,
and nongovernmental organizations.

(e) REPORT.—Not less frequently than once every 2
years, the Administrator shall submit to Congress a report
on the activities and findings of the Working Group.

(f) SUNSET.—

(1) IN GENERAL.—Subject to paragraph (2),
the Working Group shall terminate on the date that
is 6 years after the date of enactment of this Act.

(2) EXTENSION.—The Administrator may ex-
tend the date of termination of the Working Group
under paragraph (1).

On page 323, strike lines 1 through 4 and insert the
following:

“(4) establishing local funding sources, organi-
zation analyses, and developing innovative funding
strategies, fee structures, and funding mecha-
nisms.”; and