

117TH CONGRESS
1ST SESSION

S. 2708

To provide for greater consultation between the Federal Government and the governing bodies and community users of land grant-mercedes in New Mexico, to provide for a process for recognition of the historic-traditional uses of land grant-mercedes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 10, 2021

Mr. LUJÁN introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To provide for greater consultation between the Federal Government and the governing bodies and community users of land grant-mercedes in New Mexico, to provide for a process for recognition of the historic-traditional uses of land grant-mercedes, 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 “Land Grant-Mercedes
5 Traditional Use Recognition and Consultation Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) COMMUNITY USER.—The term “community
2 user” means an heir (as defined under the laws of
3 the State) of a qualified land grant-merced.

4 (2) GOVERNING BODY.—The term “governing
5 body” means the board of trustees authorized under
6 State law with the control, care, and management of
7 a qualified land grant-merced.

8 (3) HISTORICAL-TRADITIONAL USE.—The term
9 “historical-traditional use” means, for a qualified
10 land grant-merced, for noncommercial benefit—

11 (A) the use of water;

12 (B) religious or cultural use and protec-
13 tion;

14 (C) gathering herbs;

15 (D) gathering wood products;

16 (E) gathering flora or botanical products;

17 (F) grazing, to the extent that grazing has
18 traditionally been carried out on the land, as
19 determined by the Secretary concerned in con-
20 sultation with the governing body of the af-
21 fected land grant-merced;

22 (G) hunting or fishing;

23 (H) soil or rock gathering; and

24 (I) any other traditional activity for non-
25 commercial benefit that—

1 (i) has a sustainable beneficial com-
2 munity use, as determined by the Sec-
3 retary concerned in consultation with the
4 governing body of the affected land grant-
5 merced;

6 (ii) supports the long-term cultural
7 and socioeconomic integrity of the commu-
8 nity, as determined by the Secretary con-
9 cerned in consultation with the governing
10 body of the affected land grant-merced;
11 and

12 (iii) is agreed to in writing by the Sec-
13 retary concerned and the governing body of
14 the qualified land grant-merced.

15 (4) INDIAN TRIBE.—The term “Indian Tribe”
16 has the meaning given the term in section 4 of the
17 Indian Self-Determination and Education Assistance
18 Act (25 U.S.C. 5304).

19 (5) QUALIFIED LAND GRANT-MERCEd.—The
20 term “qualified land grant-merced” means a com-
21 munity land grant issued under the laws or customs
22 of the Government of Spain or Mexico that—

23 (A) is recognized under New Mexico Stat-
24 utes Chapter 49 (or a successor statute); and

1 (B) has a historic or cultural record of use
2 of lands under the jurisdiction of a Secretary
3 concerned or their original or patented exterior
4 boundaries are located adjacent to land under
5 the jurisdiction of a Secretary concerned.

6 (6) SECRETARY CONCERNED.—The term “Sec-
7 retary concerned” means the relevant Secretary of
8 the Department of Agriculture or the Department of
9 the Interior, with respect to land under the jurisdic-
10 tion of that Secretary.

11 (7) STATE.—The term “State” means the State
12 of New Mexico.

13 **SEC. 3. GUIDANCE ON PERMIT REQUIREMENTS FOR QUALI-**
14 **FIED LAND GRANT-MERCEDES.**

15 (a) IN GENERAL.—In accordance with all relevant
16 laws, including subchapter II of chapter 5 of title 5,
17 United States Code (commonly known as the “Administra-
18 tive Procedure Act”) and all applicable environmental
19 laws, and not later than 2 years after the date of the en-
20 actment of this Act, the Secretary concerned, acting
21 through the appropriate officials of the Department of Ag-
22 riculture and Department of the Interior in the State, in
23 consultation with the New Mexico Land Grant Council,
24 the governing bodies of qualified land grant-mercedes, and

1 Indian Tribes, shall issue the written guidance described
2 in subsection (b).

3 (b) CONTENTS OF GUIDANCE.—

4 (1) IN GENERAL.—Written guidance issued
5 under subsection (a) shall include—

6 (A) a description of the historical-tradi-
7 tional uses that—

8 (i) a community user or a governing
9 body of a qualified land grant-merced may
10 conduct for noncommercial use on land
11 under the jurisdiction of the Secretary con-
12 cerned; and

13 (ii) require a permit from the Sec-
14 retary concerned;

15 (B) administrative procedures for obtain-
16 ing a permit under subparagraph (A);

17 (C) subject to subsection (c), the fees re-
18 quired to obtain that permit;

19 (D) the permissible use of motorized and
20 nonmotorized vehicles and equipment by a com-
21 munity user or the governing body of a quali-
22 fied land grant-merced for noncommercial his-
23 torical-traditional use on land under the juris-
24 diction of the Secretary concerned;

1 (E) the permissible use of mechanized ve-
2 hicles or equipment by a community user or
3 governing body of a qualified land grant-merced
4 for historical-traditional use on land under the
5 jurisdiction of the Secretary concerned; and

6 (F) the permissible use of non-native mate-
7 rial by a community user or the governing body
8 of a qualified land grant-merced for any of the
9 uses covered in paragraphs (2) and (3) on land
10 under the jurisdiction of the Secretary con-
11 cerned.

12 (2) ROUTINE MAINTENANCE AND MINOR IM-
13 PROVEMENTS.—Written guidance issued under sub-
14 section (a) shall address routine maintenance and
15 minor improvements of infrastructure owned or used
16 by a qualified land grant-merced on land under the
17 jurisdiction of the Secretary concerned, including—

18 (A) cleaning, repair, or replacement-in-
19 kind of infrastructure;

20 (B) maintenance and upkeep of a trail,
21 road, cattle guard, culvert, or fence;

22 (C) maintenance and upkeep of a monu-
23 ment or shrine;

24 (D) maintenance and upkeep of a commu-
25 nity cemetery;

1 (E) maintenance and upkeep of a livestock
2 well, water lines, water storage container, or
3 water tank; and

4 (F) any other routine maintenance or
5 minor improvement associated with historical-
6 traditional uses identified by any of the entities
7 described in subsection (a) in the process of de-
8 veloping the guidance.

9 (3) MAJOR IMPROVEMENTS.—Written guidance
10 issued under subsection (a) may describe the process
11 for managing major improvements of infrastructure
12 owned or used by a qualified land grant-merced on
13 land under the jurisdiction of the Secretary con-
14 cerned, including—

15 (A) construction or expansion of a commu-
16 nity water or wastewater system;

17 (B) construction or major repair of a live-
18 stock well, water lines, water storage container,
19 or water tank;

20 (C) construction or major repair of a
21 monument or shrine;

22 (D) installation of a cattle guard;

23 (E) construction of a trail, road, or fence;

24 (F) construction or expansion of a ceme-
25 tery; and

1 (G) any other major improvement associ-
2 ated with historical-traditional uses, as deter-
3 mined by the Secretaries concerned.

4 (4) NOTICE AND COMMENT.—Written guidance
5 issued under subsection (a) shall set forth the poli-
6 cies and procedures for notice and comment on plan-
7 ning decisions, routine engagement, and major Fed-
8 eral actions that could impact historical-traditional
9 uses of a qualified land grant merced, and methods
10 of providing notice under subsection (a), including—

11 (A) online public notice;

12 (B) printed public notice;

13 (C) mail, including certified mail, and
14 email notifications to governing bodies through
15 a listserv; and

16 (D) mail, including certified mail, and
17 email notifications to the Land Grant Council.

18 (c) FEES FOR QUALIFIED LAND GRANT-MER-
19 CEDES.—Where the Secretary concerned is authorized to
20 consider the fiscal capacity of the applicant in determining
21 whether to reduce or waive a fee for a permit for histor-
22 ical-traditional uses, the Secretary shall consider—

23 (1) the socioeconomic conditions of community
24 users; and

1 (2) the annual operating budgets of governing
2 bodies of qualified land grant-mercedes.

3 **SEC. 4. CONSIDERATION OF HISTORICAL-TRADITIONAL**
4 **USE IN LAND MANAGEMENT PLANNING.**

5 In developing, maintaining, and revising land man-
6 agement plans pursuant to section 202 of the Federal
7 Land Policy and Management Act of 1976 (43 U.S.C.
8 1712) and section 6 of the National Forest Management
9 Act (16 U.S.C. 1604), as applicable, the Secretary con-
10 cerned shall, in accordance with applicable law, consider
11 and, as appropriate, provide for and evaluate impacts to
12 historical-traditional uses by qualified land grants-mer-
13 cedes.

14 **SEC. 5. SAVINGS.**

15 Nothing in this Act shall be construed—

16 (1) to impact the State's authority to regulate
17 water rights, in conformance with all State and Fed-
18 eral laws and regulations;

19 (2) to impact the State's authority to regulate
20 the management of game and fish, in conformance
21 with all State and Federal laws and regulations;

22 (3) to impact any valid existing rights or valid
23 permitted uses, including grazing permits;

24 (4) to create any implicit or explicit right to
25 grazing on Federal lands; or

1 (5) to alter or diminish any rights reserved for
2 an Indian Tribe or members of an Indian Tribe by
3 treaty or Federal law.

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