

117TH CONGRESS
2D SESSION

S. 2708

AN ACT

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:

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

11 (2) **GOVERNING BODY.**—The term “governing
 12 body” means the board of trustees authorized under
 13 State law with the control, care, and management of
 14 a qualified land grant-merced.

15 (3) **HISTORICAL-TRADITIONAL USE.**—The term
 16 “historical-traditional use” means, for a qualified
 17 land grant-merced, for noncommercial benefit—

18 (A) the use of water;

19 (B) religious or cultural use and protec-
 20 tion;

21 (C) gathering herbs;

22 (D) gathering wood products;

23 (E) gathering flora or botanical products;

24 (F) grazing, to the extent that grazing has
 25 traditionally been carried out on the land, as

determined by the Secretary concerned in consultation with the governing body of the affected land grant-merced;

(G) hunting or fishing;

(H) soil or rock gathering; and

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

(i) has a sustainable beneficial community use, as determined by the Secretary concerned in consultation with the governing body of the affected land grant-merced;

(ii) supports the long-term cultural and socioeconomic integrity of the community, as determined by the Secretary concerned in consultation with the governing body of the affected land grant-merced; and

(iii) is agreed to in writing by the Secretary concerned and the governing body of the qualified land grant-merced.

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

1 (5) QUALIFIED LAND GRANT-MERCED.—The
 2 term “qualified land grant-merced” means a com-
 3 munity land grant issued under the laws or customs
 4 of the Government of Spain or Mexico that—

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

7 (B) has a historic or cultural record of use
 8 of lands under the jurisdiction of a Secretary
 9 concerned or their original or patented exterior
 10 boundaries are located adjacent to land under
 11 the jurisdiction of a Secretary concerned.

12 (6) SECRETARY CONCERNED.—The term “Sec-
 13 retary concerned” means the relevant Secretary of
 14 the Department of Agriculture or the Department of
 15 the Interior, with respect to land under the jurisdic-
 16 tion of that Secretary.

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

19 **SEC. 3. GUIDANCE ON PERMIT REQUIREMENTS FOR QUALI-**
 20 **FIED LAND GRANT-MERCEDES.**

21 (a) IN GENERAL.—In accordance with all relevant
 22 laws, including subchapter II of chapter 5 of title 5,
 23 United States Code (commonly known as the “Administra-
 24 tive Procedure Act”) and all applicable environmental
 25 laws, and not later than 2 years after the date of the en-

1 actment of this Act, the Secretary concerned, acting
 2 through the appropriate officials of the Department of Ag-
 3 riculture and Department of the Interior in the State, in
 4 consultation with the New Mexico Land Grant Council,
 5 the governing bodies of qualified land grant-mercedes, and
 6 Indian Tribes, shall issue the written guidance described
 7 in subsection (b).

8 (b) CONTENTS OF GUIDANCE.—

9 (1) IN GENERAL.—Written guidance issued
 10 under subsection (a) shall include—

11 (A) a description of the historical-tradi-
 12 tional uses that—

13 (i) a community user or a governing
 14 body of a qualified land grant-merced may
 15 conduct for noncommercial use on land
 16 under the jurisdiction of the Secretary con-
 17 cerned; and

18 (ii) require a permit from the Sec-
 19 retary concerned;

20 (B) administrative procedures for obtain-
 21 ing a permit under subparagraph (A);

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

24 (D) the permissible use of motorized and
 25 nonmotorized vehicles and equipment by a com-

community user or the governing body of a qualified land grant-merced for noncommercial historical-traditional use on land under the jurisdiction of the Secretary concerned;

(E) the permissible use of mechanized vehicles or equipment by a community user or governing body of a qualified land grant-merced for historical-traditional use on land under the jurisdiction of the Secretary concerned; and

(F) the permissible use of non-native material by a community user or the governing body of a qualified land grant-merced for any of the uses covered in paragraphs (2) and (3) on land under the jurisdiction of the Secretary concerned.

(2) ROUTINE MAINTENANCE AND MINOR IMPROVEMENTS.—Written guidance issued under subsection (a) shall address routine maintenance and minor improvements of infrastructure owned or used by a qualified land grant-merced on land under the jurisdiction of the Secretary concerned, including—

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

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

1 (C) maintenance and upkeep of a monu-
 2 ment or shrine;

3 (D) maintenance and upkeep of a commu-
 4 nity cemetery;

5 (E) maintenance and upkeep of a livestock
 6 well, water lines, water storage container, or
 7 water tank; and

8 (F) any other routine maintenance or
 9 minor improvement associated with historical-
 10 traditional uses identified by any of the entities
 11 described in subsection (a) in the process of de-
 12 veloping the guidance.

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

19 (A) construction or expansion of a commu-
 20 nity water or wastewater system;

21 (B) construction or major repair of a live-
 22 stock well, water lines, water storage container,
 23 or water tank;

24 (C) construction or major repair of a
 25 monument or shrine;

- 1 (D) installation of a cattle guard;
- 2 (E) construction of a trail, road, or fence;
- 3 (F) construction or expansion of a ceme-
- 4 tery; and
- 5 (G) any other major improvement associ-
- 6 ated with historical-traditional uses, as deter-
- 7 mined by the Secretaries concerned.

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

- 15 (A) online public notice;
- 16 (B) printed public notice;
- 17 (C) mail, including certified mail, and
- 18 email notifications to governing bodies through
- 19 a listserv; and
- 20 (D) mail, including certified mail, and
- 21 email notifications to the Land Grant Council.

22 (c) FEES FOR QUALIFIED LAND GRANT-MER-
 23 CEDES.—Where the Secretary concerned is authorized to
 24 consider the fiscal capacity of the applicant in determining

1 whether to reduce or waive a fee for a permit for histor-
 2 ical-traditional uses, the Secretary shall consider—

3 (1) the socioeconomic conditions of community
 4 users; and

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

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

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

18 **SEC. 5. SAVINGS.**

19 Nothing in this Act shall be construed—

20 (1) to impact the State’s authority to regulate
 21 water rights, in conformance with all State and Fed-
 22 eral laws and regulations;

23 (2) to impact the State’s authority to regulate
 24 the management of game and fish, in conformance
 25 with all State and Federal laws and regulations;

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

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

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

Passed the Senate December 22, 2022.

Attest:

Secretary.

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