

Calendar No. 619

117TH CONGRESS
2^D SESSION

S. 2708

[Report No. 117-242]

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 (for himself and Mr. HEINRICH) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

DECEMBER 12, 2022

Reported by Mr. MANCHIN, without amendment

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Land Grant-Mercedes
3 Traditional Use Recognition and Consultation Act”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

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

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

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

16 (A) the use of water;

17 (B) religious or cultural use and protec-
18 tion;

19 (C) gathering herbs;

20 (D) gathering wood products;

21 (E) gathering flora or botanical products;

22 (F) grazing, to the extent that grazing has
23 traditionally been carried out on the land, as
24 determined by the Secretary concerned in con-
25 sultation with the governing body of the af-
26 fected land grant-merced;

1 (G) hunting or fishing;
 2 (H) soil or rock gathering; and
 3 (I) any other traditional activity for non-
 4 commercial benefit that—

5 (i) has a sustainable beneficial com-
 6 munity use, as determined by the Sec-
 7 retary concerned in consultation with the
 8 governing body of the affected land grant-
 9 merced;

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

16 (iii) is agreed to in writing by the Sec-
 17 retary concerned and the governing body of
 18 the qualified land grant-merced.

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

23 (5) QUALIFIED LAND GRANT-MERCEd.—The
 24 term “qualified land grant-merced” means a com-

1 munity land grant issued under the laws or customs
 2 of the Government of Spain or Mexico that—

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

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

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

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

17 **SEC. 3. GUIDANCE ON PERMIT REQUIREMENTS FOR QUALI-**
 18 **FIED LAND GRANT-MERCEDES.**

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

1 riculture and Department of the Interior in the State, in
 2 consultation with the New Mexico Land Grant Council,
 3 the governing bodies of qualified land grant-mercedes, and
 4 Indian Tribes, shall issue the written guidance described
 5 in subsection (b).

6 (b) CONTENTS OF GUIDANCE.—

7 (1) IN GENERAL.—Written guidance issued
 8 under subsection (a) shall include—

9 (A) a description of the historical-tradi-
 10 tional uses that—

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

16 (ii) require a permit from the Sec-
 17 retary concerned;

18 (B) administrative procedures for obtain-
 19 ing a permit under subparagraph (A);

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

22 (D) the permissible use of motorized and
 23 nonmotorized vehicles and equipment by a com-
 24 munity user or the governing body of a quali-
 25 fied land grant-merced for noncommercial his-

1 torical-traditional use on land under the juris-
 2 diction of the Secretary concerned;

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

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

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

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

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

24 (C) maintenance and upkeep of a monu-
 25 ment or shrine;

1 (D) maintenance and upkeep of a commu-
2 nity cemetery;

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

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

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

17 (A) construction or expansion of a commu-
18 nity water or wastewater system;

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

22 (C) construction or major repair of a
23 monument or shrine;

24 (D) installation of a cattle guard;

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

1 (F) construction or expansion of a ceme-
 2 tery; and

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

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

13 (A) online public notice;

14 (B) printed public notice;

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

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

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

1 (1) the socioeconomic conditions of community
2 users; and

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

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

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

16 **SEC. 5. SAVINGS.**

17 Nothing in this Act shall be construed—

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

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

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

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

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

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