

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;

(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;

(C) maintenance and upkeep of a monument or shrine;

(D) maintenance and upkeep of a community 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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