

116TH CONGRESS
2D SESSION

H. R. 3682

IN THE SENATE OF THE UNITED STATES

DECEMBER 7, 2020

Received; read twice and referred to the Committee on Energy and Natural
Resources

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) ACEQUIA.—The term “acequia” has the
9 meaning of the term “community ditch” as that
10 term is construed under New Mexico Stat. 73–2–27.

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

14 (3) GOVERNING BODY.—The term “governing
15 body” means the board of trustees authorized under
16 State law with the control, care, and management of
17 a qualified land grant-merced.

18 (4) HISTORICAL-TRADITIONAL USE.—The term
19 “historical-traditional use” means, for a qualified
20 land grant-merced, for noncommercial benefit—

21 (A) the use of water;

22 (B) religious or cultural use and protec-
23 tion;

24 (C) gathering herbs;

25 (D) gathering wood products;

1 (E) gathering flora or botanical products;

2 (F) grazing, to the extent that grazing has
3 traditionally been carried out on the land, as
4 determined by the Secretary concerned in con-
5 sultation with the governing body of the af-
6 fected land grant-merced;

7 (G) hunting or fishing;

8 (H) soil or rock gathering; and

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

11 (i) has a sustainable beneficial com-
12 munity use, as determined by the Sec-
13 retary concerned in consultation with the
14 governing body of the affected land grant-
15 merced;

16 (ii) supports the long-term cultural
17 and socioeconomic integrity of the commu-
18 nity, as determined by the Secretary con-
19 cerned in consultation with the governing
20 body of the affected land grant-merced;
21 and

22 (iii) is agreed to in writing by the Sec-
23 retary concerned and the governing body of
24 the qualified land grant-merced.

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

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

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

11 (B) has a historic or cultural record of use
12 of lands under the jurisdiction of a Secretary
13 concerned or their original or patented exterior
14 boundaries are located adjacent to land under
15 the jurisdiction of a Secretary concerned.

16 (7) SECRETARY CONCERNED.—The term “Sec-
17 retary concerned” means the relevant Secretary of
18 the Department of Agriculture or the Department of
19 the Interior, with respect to land under the jurisdic-
20 tion of that Secretary.

21 (8) STATE.—The term “State” means the State
22 of New Mexico.

1 **SEC. 3. GUIDANCE ON PERMIT REQUIREMENTS FOR QUALI-**
2 **FIED LAND GRANT-MERCEDES.**

3 (a) IN GENERAL.—In accordance with all relevant
4 laws, including subchapter II of chapter 5 of title 5,
5 United States Code (commonly known as the “Administra-
6 tive Procedure Act”) and all applicable environmental
7 laws, and not later than 2 years after the date of the en-
8 actment of this Act, the Secretary concerned, acting
9 through the appropriate officials of the Department of Ag-
10 riculture and Department of the Interior in the State, in
11 consultation with the New Mexico Land Grant Council,
12 the governing bodies of qualified land grant-mercedes, and
13 Indian Tribes, shall issue the written guidance described
14 in subsection (b).

15 (b) CONTENTS OF GUIDANCE.—

16 (1) IN GENERAL.—Written guidance issued
17 under subsection (a) shall include—

18 (A) a description of the historical-tradi-
19 tional uses that—

20 (i) a community user or a governing
21 body of a qualified land grant-merced may
22 conduct for noncommercial use on land
23 under the jurisdiction of the Secretary con-
24 cerned; and

25 (ii) require a permit from the Sec-
26 retary concerned;

1 (B) administrative procedures for obtain-
2 ing a permit under subparagraph (A);

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

5 (D) the permissible use of motorized and
6 nonmotorized vehicles and equipment by a com-
7 munity user or the governing body of a quali-
8 fied land grant-merced for noncommercial his-
9 torical-traditional use on land under the juris-
10 diction of the Secretary concerned;

11 (E) the permissible use of mechanized ve-
12 hicles or equipment by a community user or
13 governing body of a qualified land grant-merced
14 for historical-traditional use on land under the
15 jurisdiction of the Secretary concerned; and

16 (F) the permissible use of non-native mate-
17 rial by a community user or the governing body
18 of a qualified land grant-merced for any of the
19 uses covered in paragraphs (2) and (3) on land
20 under the jurisdiction of the Secretary con-
21 cerned.

22 (2) ROUTINE MAINTENANCE AND MINOR IM-
23 PROVEMENTS.—Written guidance issued under sub-
24 section (a) shall address routine maintenance and
25 minor improvements of infrastructure owned or used

1 by a qualified land grant-merced on land under the
2 jurisdiction of the Secretary concerned, including—

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

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

7 (C) maintenance and upkeep of a monu-
8 ment or shrine;

9 (D) maintenance and upkeep of a commu-
10 nity cemetery;

11 (E) maintenance and upkeep of a livestock
12 well, water lines, water storage container, or
13 water tank; and

14 (F) any other routine maintenance or
15 minor improvement associated with historical-
16 traditional uses identified by any of the entities
17 described in subsection (a) in the process of de-
18 veloping the guidance.

19 (3) MAJOR IMPROVEMENTS.—Written guidance
20 issued under subsection (a) may describe the process
21 for managing major improvements of infrastructure
22 owned or used by a qualified land grant-merced on
23 land under the jurisdiction of the Secretary con-
24 cerned, including—

1 (A) construction or expansion of a commu-
2 nity water or wastewater system;

3 (B) construction or major repair of a live-
4 stock well, water lines, water storage container,
5 or water tank;

6 (C) construction or major repair of a
7 monument or shrine;

8 (D) installation of a cattle guard;

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

10 (F) construction or expansion of a ceme-
11 tery; and

12 (G) any other major improvement associ-
13 ated with historical-traditional uses, as deter-
14 mined by the Secretaries concerned.

15 (4) NOTICE AND COMMENT.—Written guidance
16 issued under subsection (a) shall set forth the poli-
17 cies and procedures for notice and comment on plan-
18 ning decisions, routine engagement, and major Fed-
19 eral actions that could impact historical-traditional
20 uses of a qualified land grant merced, and methods
21 of providing notice under subsection (a), including—

22 (A) online public notice;

23 (B) printed public notice;

1 (C) mail, including certified mail, and
2 email notifications to governing bodies through
3 a listserv; and

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

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

11 (1) the socioeconomic conditions of community
12 users; and

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

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

17 In developing, maintaining, and revising land man-
18 agement plans pursuant to section 202 of the Federal
19 Land Policy and Management Act of 1976 (43 U.S.C.
20 1712) and section 6 of the National Forest Management
21 Act (16 U.S.C. 1604), as applicable, the Secretary con-
22 cerned shall, in accordance with applicable law, consider
23 and, as appropriate, provide for and evaluate impacts to
24 historical-traditional uses by qualified land grants-mer-
25 cedes.

1 **SEC. 5. SPECIAL USE PERMITS FOR ROUTINE MAINTENANCE AND MINOR IMPROVEMENTS OF**
2
3 **ACEQUIAS.**

4 (a) IN GENERAL.—Not later than 90 days after the
5 date of the enactment of this Act, the Secretary Agri-
6 culture shall initiate procedures under subchapter III of
7 chapter 5 of title 5, United States Code, to promulgate
8 such regulations as are necessary to carry out and imple-
9 ment the Forest Service’s Acequia Guidance Document,
10 dated July 2, 2019.

11 (b) PUBLICATION OF PROPOSED REGULATIONS.—
12 The Secretary shall cause to be published in the Federal
13 Register proposed regulations to implement this section
14 not later than 21 months after the date of the enactment
15 of this Act.

16 (c) EXPIRATION OF AUTHORITY.—The authority to
17 promulgate regulations under subsection (a) shall expire
18 30 months after the date of the enactment of this Act.

19 (d) EXTENSION OF DEADLINES.—The Secretary may
20 extend, for not more than 180 days, a deadline under sub-
21 section (b) or (c) if—

22 (1) the negotiated rulemaking committee re-
23 ferred to in subsection (e) concludes that the com-
24 mittee cannot meet the deadline; and

25 (2) the Secretary so notifies the appropriate
26 committees of Congress.

1 (e) COMMITTEE.—

2 (1) ESTABLISHMENT.—The Secretary shall en-
3 sure that a negotiated rulemaking committee is es-
4 tablished under section 565 of title 5, United States
5 Code, to carry out this section.

6 (2) MEMBERS.—The members of the committee
7 shall be—

8 (A) the relevant Regional Forester (or a
9 designee of the relevant Regional Forester); and

10 (B) the selected representative of a non-
11 governmental organization identified by the
12 Secretary of Agriculture as having a statewide
13 acequia membership, nominated by such organi-
14 zation to the Secretary of Agriculture.

15 (3) REQUIREMENTS.—The committee shall con-
16 fer with, and accommodate participation by—

17 (A) representatives of any agency or com-
18 mission of the State government established or
19 designated by the State to advise public officials
20 on proposed legislation affecting acequias; and

21 (B) State acequia elected officials.

22 (f) EFFECT.—The lack of promulgated regulations
23 shall not limit the effect of the Forest Service’s Acequia
24 Guidance Document, dated July 2, 2019.

1 **SEC. 6. SAVINGS.**

2 Nothing in this Act shall be construed—

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

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

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

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

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

16 **SEC. 7. DETERMINATION OF BUDGETARY EFFECTS.**

17 The budgetary effects of this Act, for the purpose of
18 complying with the Statutory Pay-As-You-Go Act of 2010,
19 shall be determined by reference to the latest statement
20 titled “Budgetary Effects of PAYGO Legislation” for this
21 Act, submitted for printing in the Congressional Record
22 by the Chairman of the House Budget Committee, pro-

1 vided that such statement has been submitted prior to the
2 vote on passage.

Passed the House of Representatives December 3,
2020.

Attest: CHERYL L. JOHNSON,
Clerk.