

116TH CONGRESS
1ST SESSION

H. R. 3682

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

IN THE HOUSE OF REPRESENTATIVES

JULY 10, 2019

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

A BILL

To provide for greater consultation between the Federal Government and the governing bodies of land grant-mercedes and acequias in New Mexico and to provide for a process for recognition of the historic-traditional boundaries 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Land Grant and Acequia Traditional Use Recognition
6 and Consultation Act”.

7 (b) TABLE OF CONTENTS.—

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Definitions.
- Sec. 4. Notice and comment.
- Sec. 5. Guidance on permit requirements for qualified land grant-mercedes.
- Sec. 6. Special use permits not required for routine maintenance and minor improvements of acequias.
- Sec. 7. Notification to permit applicants; compliance with NEPA.
- Sec. 8. Assistance to governing bodies.
- Sec. 9. Spiritual and cultural sites.
- Sec. 10. Process for recognition of historical-traditional use boundaries of qualified land grant-mercedes.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) From the 17th to the mid-19th centuries,
 4 the Governments of Spain and Mexico made grants
 5 of land to individuals, groups, and communities
 6 throughout the Southwest United States to promote
 7 settlement in frontier lands.

8 (2) The key land ownership feature for a land
 9 grants-merced was common lands, meaning lands
 10 that were not individually owned but were considered
 11 “commons” for use by all local residents to provide
 12 the necessary resources to sustain the entire commu-
 13 nity.

14 (3) On February 2, 1848, the United States
 15 and Mexico ended the Mexican-American war by
 16 signing the Treaty of Peace, Friendship, Limits, and
 17 Settlement (commonly known as the Treaty of Gua-
 18 dalupe Hidalgo), in which Mexico formally relin-
 19 quished to the United States claims to over 790,000
 20 square miles of land now constituting all or part of

1 Arizona, California, Colorado, Nevada, New Mexico,
2 Texas, Utah, and Wyoming.

3 (4) The Treaty of Guadalupe Hidalgo included
4 provisions under article VIII for the protection of es-
5 tablished property rights, including community land
6 grants located in the new territories, and the United
7 States and Mexico further affirmed these protections
8 in the Protocol of Queretaro.

9 (5) Although the Senate struck article X of the
10 Treaty of Guadalupe Hidalgo as negotiated, the
11 United States clarified in the subsequent Protocol of
12 Queretaro that “these grants . . . preserve the legal
13 value which they may possess” and the grantees in
14 the new territories retained their property rights.

15 (6) As noted by the Government Accountability
16 Office in the 2001 report GAO–01–951, “The Pro-
17 tocol specified the United States’ position that land
18 grant titles would be protected under the treaty and
19 that grantees could have their ownership of land ac-
20 knowledged before American tribunals.”.

21 (7) In the second half of the 19th century, the
22 United States enacted various laws establishing
23 processes to review property claims in the new terri-
24 tories, such as the Act of July 22, 1854 (10 Stat.
25 308; ch. 103), that created the office of Surveyor

1 General of New Mexico and the Act of March 3,
2 1891 (26 Stat. 854; ch. 539), that created the Court
3 of Private Land Claims.

4 (8) The established processes differed from
5 State to State, and a history of problematic surveys
6 and corruption may explain why there was so much
7 acreage lost by community land grants and why so
8 few survived into modern times as self-governing en-
9 tities administering intact common lands.

10 (9) Studies have concluded that for land grant
11 communities and community members to survive in
12 the non-cash economies prior to the mid-20th cen-
13 tury, it was essential that they have access to the
14 common land resources of their own private
15 inholdings, which provided a complete resource base
16 for successful small-scale family farming and stock-
17 raising activities, upon which the local economy was
18 based.

19 (10) New Mexico's community land grants, now
20 known as land grant-mercedes, are an important
21 part of the State's culture and history and have been
22 recognized under the Kearny Code of 1846 and sub-
23 sequent territorial laws of New Mexico and New
24 Mexico State law.

1 (11) Article 2, section 5 of the constitution of
2 New Mexico states, “The rights, privileges and im-
3 munities, civil, political and religious guaranteed to
4 the people of New Mexico by the Treaty of Guada-
5 lupe Hidalgo shall be preserved inviolate”, providing
6 powerful constitutional protection for the rights of
7 the State’s land grant communities.

8 (12) Water delivery systems known as acequias,
9 or community ditches, are a centuries-old system
10 used for water distribution, introduced to New Mex-
11 ico by the Spanish in the 16th century, to allow for
12 farming to sustain the needs of the community, cre-
13 ating a cultural landscape and way of life centered
14 around local agriculture.

15 (13) In New Mexico, acequias are governed by
16 a centuries-old form of water governance, known as
17 acequias, that are political subdivisions of the State
18 and are composed of a board of private land owners
19 that are responsible for the upkeep and maintenance
20 of the acequias and for monitoring and admin-
21 istering surface water rights along the acequia.

22 (14) In New Mexico, acequias have created a
23 cultural landscape and way of life centered around
24 local agriculture, water governance, and a custom of
25 sharing scarce water.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) COMMUNITY USERS.—The term “commu-
4 nity user” means—

5 (A) with respect to a qualified acequia, an
6 individual who is the legal owner of a water
7 right on a qualified acequia; and

8 (B) with respect to a qualified land grant-
9 merced, an heir as defined by N.M. Stat. § 49–
10 1–1.1.

11 (2) GOVERNING BODY.—The term “governing
12 body”—

13 (A) with respect to a qualified acequia,
14 means the board composed of private land own-
15 ers (known as commissioners) for such qualified
16 acequia, as provided in N.M. Stat. § 73–2–12
17 and recognized as a political subdivision of the
18 State under N.M. Stat. § 73–2–28; and

19 (B) with respect to a qualified land grant-
20 merced, means the board of trustees charged
21 under State law with the control, care, and
22 management of the qualified land grant-merced.

23 (3) HISTORICAL-TRADITIONAL USE BOUND-
24 ARY.—The term “historical-traditional use bound-
25 ary”, with respect to a land grant-merced, means

1 the boundary recognized under the process described
2 in section 10.

3 (4) PATENT BOUNDARY.—The term “patent
4 boundary”, with respect to a land grant-merced,
5 means the boundary in the official survey that ac-
6 companied the land patent issued by the United
7 States for a land grant-merced claim at the conclu-
8 sion of the adjudication process required by the
9 Treaty of Guadalupe Hidalgo.

10 (5) QUALIFIED ACEQUIA.—The term “qualified
11 acequia” means a waterway in the State recognized
12 as an acequia or a community ditch under State or
13 Federal law, including the diversions, storage facili-
14 ties, and easements of such waterway.

15 (6) QUALIFIED LAND GRANT-MERCED.—The
16 term “qualified land grant-merced”—

17 (A) means a community land grant issued
18 under the laws or customs of Spain or Mexico
19 that received a patent from the United States
20 or has been recognized under State law; and

21 (B) includes land—

22 (i) with respect to a land grant-
23 merced that has not completed the process
24 under section 10, within the patent bound-
25 ary of such land grant-merced; and

1 (ii) with respect to a land grant-
2 merced that has completed the process
3 under section 10, the historical-traditional
4 use boundary of such land grant-merced.

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

7 (8) SECRETARY CONCERNED.—The term “Sec-
8 retary concerned” means—

9 (A) if the qualified acequia or qualified
10 land grant-merced concerned is located on land
11 under the administration of the Secretary of
12 Agriculture, or adjacent to such land, the Sec-
13 retary of Agriculture; or

14 (B) if the qualified acequia or qualified
15 land grant-merced concerned is located on land
16 under the administration of the Secretary of the
17 Interior, or adjacent to such land, the Secretary
18 of the Interior.

19 **SEC. 4. NOTICE AND COMMENT.**

20 (a) NOTICE AND COMMENT PROCESS.—Not less than
21 90 days before the Secretary adopts, amends, or revises
22 a management plan for, or before the Secretary conducts
23 an action for which a detailed statement is required under
24 section 102(2)(C) of the National Environmental Policy
25 Act of 1969 (42 U.S.C. 4321 et seq.) to be conducted on,

1 any Federal land that contains any portion of a qualified
2 land grant-merced, or any Federal land that is adjacent
3 to or nearby a qualified land grant-merced, the Secretary
4 concerned shall—

5 (1) provide written notice and an opportunity
6 for comment to—

7 (A) the governing body of the qualified
8 land grant-merced using the mailing address
9 and electronic address on file in the database
10 established under subsection (c); and

11 (B) the relevant State agency that's pur-
12 pose is to serve as a liaison between land
13 grants-mercedes and the Federal Government;

14 (2) hold not less than 2 meetings with the gov-
15 erning body of the qualified land grant-merced on
16 the proposed adoption, amendment, or revision of
17 the management plan, or the proposed action, within
18 the immediate vicinity of the qualified land grant-
19 merced; and

20 (3) not less than 30 days before each public
21 meeting, notify the governing body of the qualified
22 land grant-merced of the date, time, location, and
23 subject matter of such public meeting.

24 (b) NOTIFICATION OF FINAL PLAN.—Not less than
25 10 days after the Secretary adopts, amends, or revises a

1 management plan for any Federal land that contains any
2 portion of a qualified land grant-merced, or any Federal
3 land that is adjacent to any land grant-merced, the Sec-
4 retary concerned shall—

5 (1) provide written notice to the governing body
6 of the qualified land grant-merced using the mailing
7 address and electronic address on file in the data-
8 base established under subsection (c); and

9 (2) publish notice of availability of the final
10 plan in a local newspaper.

11 (c) DATABASE OF GOVERNING BODIES.—The Sec-
12 retary concerned shall maintain and periodically update
13 a database of the mailing address and, if available, elec-
14 tronic address of each governing body of a qualified land
15 grant-merced. The Secretary concerned shall be respon-
16 sible for verifying the information in the database is cor-
17 rect before providing any notice required by this section.

18 (d) EVALUATION.—Before the Secretary adopts,
19 amends, or revises a management plan for, or before the
20 Secretary conducts an action for which a detailed state-
21 ment is required under section 102(2)(C) of the National
22 Environmental Policy Act of 1969 (42 U.S.C. 4321 et
23 seq.) to be conducted on any Federal land that contains
24 any portion of a qualified land grant-merced, or any Fed-
25 eral land that is adjacent to or nearby a qualified land

1 grant-merced, the Secretary concerned shall, in consulta-
2 tion with the governing body of the qualified land grant-
3 merced, evaluate the potential impact of the adoption,
4 amendment, or revision, or the proposed action, on the
5 ability of the relevant community users and governing
6 body of the qualified land grant-merced to carry out the
7 historical-traditional uses described in section 5.

8 (e) MITIGATION.—If the Secretary determines that a
9 the adoption, amendment, or revision of a management
10 plan, or the proposed action, may result in an adverse im-
11 pact to a historical-traditional use described in section 5
12 of relevant community users or governing body of the
13 qualified land grant-merced, the Secretary shall, to the
14 maximum extent practical and consistent with the pur-
15 poses, policies, and programs of Federal laws and regula-
16 tions applicable, mitigate such adverse impact.

17 **SEC. 5. GUIDANCE ON PERMIT REQUIREMENTS FOR QUALI-**
18 **FIED LAND GRANT-MERCEDES.**

19 (a) IN GENERAL.—Not later than 1 year after the
20 date of the enactment of this Act, the Secretary concerned,
21 in consultation with the governing bodies of a qualified
22 land grant-merced, shall issue written guidance for each
23 of the uses described in paragraphs (1) through (3) of sub-
24 section (c) on—

1 (1) what activities conducted by a community
2 user or governing body of a qualified land grant-
3 merced, or a contractor of such a governing body, on
4 such qualified land grant-merced require the commu-
5 nity user or governing body of the qualified land
6 grant-merced to obtain a permit from the Secretary
7 concerned;

8 (2) what administrative procedures must be fol-
9 lowed to obtain such permit;

10 (3) what fees are required to obtain such per-
11 mit;

12 (4) the permissible use of motorized and non-
13 motorized vehicles by community users or the gov-
14 erning body of a qualified land grant-merced on such
15 qualified land grant-merced to carry out each of the
16 uses described in paragraphs (1) through (3) of sub-
17 section (c) on such qualified land grant-merced;

18 (5) permissible use of mechanized equipment by
19 community users or the governing body of a quali-
20 fied land grant-merced on such qualified land grant-
21 merced to carry out each of the uses described in
22 paragraphs (1) through (3) of subsection (c) on such
23 qualified land grant-merced; and

24 (6) permissible use of non-native materials by
25 community users or the governing body of a quali-

1 fied land grant-merced to carry out each of the uses
 2 described in paragraphs (1) through (3) of sub-
 3 section (c) on such qualified land grant-merced.

4 (b) FEES FOR QUALIFIED LAND GRANT-MER-
 5 CEDES.—

6 (1) IN GENERAL.—When determining the fees
 7 referred to in subsection (a)(3), the Secretary con-
 8 cerned shall consider the socio-economic conditions
 9 of community users and the annual operating budg-
 10 ets of governing bodies of qualified land grant-mer-
 11 cedes.

12 (2) FEES FOR HISTORICAL-TRADITIONAL
 13 USES.—The Secretary concerned shall waive any fee
 14 to obtain a permit for a historical-traditional use to
 15 be conducted by a community user or governing
 16 body of a qualified land grant-merced on such quali-
 17 fied land grant-merced, except that the Secretary is
 18 not required under this paragraph to waive a fee to
 19 obtain a permit for grazing.

20 (c) DEFINITIONS.—For the purposes of this section:

21 (1) HISTORICAL-TRADITIONAL USES.—Histor-
 22 ical-traditional uses on a qualified land grant-merced
 23 on Federal land are—

24 (A) use of water;

25 (B) religious and cultural use;

- 1 (C) gathering herbs;
- 2 (D) gathering wood products;
- 3 (E) gathering flora and botanical products;
- 4 (F) grazing, to the extent that grazing has
- 5 traditionally been carried out on such land;
- 6 (G) recreation;
- 7 (H) hunting and fishing;
- 8 (I) soil and rock gathering; and
- 9 (J) any other traditional activity that has
- 10 sustainable beneficial community uses that sup-
- 11 port the long-term cultural and socio-economic
- 12 integrity of the community and that is agreed
- 13 to in writing by the Secretary concerned and
- 14 the governing body of the relevant qualified
- 15 land grant-merced.

16 (2) ROUTINE MAINTENANCE AND MINOR IM-
17 PROVEMENTS.—Routine maintenance and minor im-
18 provements on a qualified land grant-merced on
19 Federal land are—

- 20 (A) cleaning, repair, or replacement in
- 21 kind of infrastructure;
- 22 (B) maintenance and upkeep of a trail,
- 23 road, 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 or water tank; and

5 (F) any other traditional activity that pre-
6 serves the state of the qualified land grant-
7 merced, as agreed to in writing by the Sec-
8 retary concerned and the governing body of the
9 qualified land grant-merced.

10 (3) MAJOR IMPROVEMENTS.—Major improve-
11 ments on a qualified land grant-merced on Federal
12 land are—

13 (A) construction or expansion of a commu-
14 nity water or wastewater system;

15 (B) construction or major repair of a live-
16 stock well or water tank;

17 (C) construction or major repair of a
18 monument or shrine;

19 (D) installation of a cattle guard;

20 (E) construction of a trail, road, or fence;
21 and

22 (F) construction or expansion of a ceme-
23 tery.

1 **SEC. 6. SPECIAL USE PERMITS NOT REQUIRED FOR ROU-**
2 **TINE MAINTENANCE AND MINOR IMPROVE-**
3 **MENTS OF ACEQUIAS.**

4 (a) IN GENERAL.—Special use permits shall not be
5 required for the presence of or use of water from a quali-
6 fied acequia on Federal land or for routine maintenance
7 and minor improvements conducted by a community user,
8 governing body or employee of a qualified acequia on a
9 qualified acequia on Federal land.

10 (b) ROUTINE MAINTENANCE AND MINOR IMPROVE-
11 MENTS.—For purposes of this section, routine mainte-
12 nance and minor improvements on a qualified acequia on
13 Federal land are—

14 (1) cleaning, maintenance, repair, or replace-
15 ment in kind of infrastructure;

16 (2) annual ditch cleaning, including removal of
17 silt; and

18 (3) any other traditional activity that preserves
19 the state of the qualified acequia, as agreed to in
20 writing by the Secretary concerned and the gov-
21 erning body of the qualified acequia.

22 **SEC. 7. NOTIFICATION TO PERMIT APPLICANTS; COMPLI-**
23 **ANCE WITH NEPA.**

24 (a) NOTIFICATION TO PERMIT APPLICANTS.—

25 (1) IN GENERAL.—Not later than 45 days after
26 receiving a request for a permit from a governing

1 body, the Secretary concerned shall provide a written
2 response to the governing body notifying the gov-
3 erning body that—

4 (A) the permit has been approved;

5 (B) the permit has been denied, including
6 a description of why the permit was denied; or

7 (C) such activity requires an environmental
8 assessment or environmental impact statement,
9 as applicable, before a permit may be issued for
10 the activity.

11 (b) COMPLIANCE WITH NEPA.—In any case in
12 which an environmental assessment or environmental im-
13 pact statement is required under the National Environ-
14 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for
15 an activity for which a governing body has requested a
16 permit from the Secretary concerned to conduct such ac-
17 tivity on a qualified acequia or qualified land grant-merced
18 on Federal land, and for which the Secretary has not de-
19 nied the permit under subsection (a)(3), the Secretary
20 shall—

21 (1) estimate the time necessary to complete
22 such environmental assessment or environmental im-
23 pact statement;

1 (2) not later than 30 days after receiving the
2 request for a permit from a governing body, notify
3 the governing body of such estimation; and

4 (3) not later than 30 days after completing all
5 action required under such Act for such activity—

6 (A) issue such permit to the community
7 user or governing body; or

8 (B) notify the community user or gov-
9 erning body that the request for a permit has
10 been denied.

11 (c) FAILURE TO TIME ESTIMATE.—If the Secretary
12 concerned fails to prepare an environmental assessment
13 or environmental impact statement within the respective
14 time period estimated under subsection (b)(1), then the
15 Secretary shall—

16 (1) notify the governing body in writing of the
17 delay;

18 (2) notify Congress in writing of the delay;

19 (3) make a new estimate of the time necessary
20 to complete such environmental assessment or envi-
21 ronmental impact statement; and

22 (4) not later than 30 days after the end of the
23 respective time period estimated under subsection
24 (b)(1) notify the governing body of such new esti-
25 mation.

1 (d) COST OF NEPA COMPLIANCE.—In consideration
2 of the socio-economic conditions of community users and
3 the annual operating budgets of governing bodies of quali-
4 fied acequias and qualified land grant-mercedes, the Sec-
5 retary concerned may waive any cost-share requirement
6 on the community user or the governing body of a quali-
7 fied acequia or qualified land grant-merced with respect
8 to the cost of compliance with the National Environmental
9 Policy Act of 1969 (42 U.S.C. 4321 et seq.) for an activity
10 to be conducted on a qualified acequia or qualified land
11 grant-merced on Federal land by a community user or
12 governing body of a qualified acequia or qualified land
13 grant-merced for which the Secretary has required such
14 community user or governing body of a qualified acequia
15 or qualified land grant-merced to obtain a permit from
16 the Secretary.

17 **SEC. 8. ASSISTANCE TO GOVERNING BODIES.**

18 Not later than 60 days after a governing body re-
19 quests in writing assistance from the Secretary concerned
20 to explain or clarify a process of the agency relating to
21 the agency's interaction with the governing body, the Sec-
22 retary shall provide such assistance in writing to the gov-
23 erning body.

1 **SEC. 9. SPIRITUAL AND CULTURAL SITES.**

2 (a) IDENTIFICATION OF SPIRITUAL AND CULTURAL
3 SITES.—

4 (1) IDENTIFICATION BEFORE A MANAGEMENT
5 PLAN IS ADOPTED, AMENDED, OR REVISED.—Not
6 less than 1 year before a management plan is adopt-
7 ed, or the first time a management plan is amended
8 or revised after the date of the enactment of this
9 Act, for any Federal land that contains any portion
10 of a qualified land grant-merced, the Secretary con-
11 cerned shall, in consultation with governing body of
12 such qualified land grant-merced, identify all spir-
13 itual and cultural sites located on such Federal land.

14 (2) IDENTIFICATION BEFORE DISPOSAL.—Not
15 less than 180 days before any Federal land that con-
16 tains any portion of a qualified land grant-merced is
17 disposed of pursuant to section 202 of the Federal
18 Land Policy and Management Act of 1976 (43
19 U.S.C. 1712), the Secretary concerned shall, in con-
20 sultation with governing body of such qualified land
21 grant-merced, identify all spiritual and cultural sites
22 located on such Federal land.

23 (b) NOTIFICATION REQUIRED.—Before disposing of
24 Federal land that contains any portion of a qualified land
25 grant-merced upon which a spiritual and cultural site is
26 located, and before acquiring any non-Federal land upon

1 which a spiritual and cultural site is located, the Secretary
 2 concerned shall notify the governing body of such qualified
 3 land grant-merced.

4 (c) REVISION OF GUIDANCE.—The Secretary shall
 5 revise any guidance applicable to the disposal of such land
 6 to encourage conveyances, leases, exchanges, modified
 7 competitive sales, or direct sales to the governing body of
 8 such qualified land grant-merced, as appropriate and con-
 9 sistent with the purposes, policies, and programs of Fed-
 10 eral laws and regulations applicable to these lands.

11 (d) DEFINITION OF SPIRITUAL AND CULTURAL
 12 SITE.—In this section, the term “spiritual and cultural
 13 site” means a cemetery, pilgrimage site, shrine, or similar
 14 site that has a spiritual or cultural significance for the
 15 community users of a land grant-merced, as determined
 16 by the Secretary, of the relevant land grant-merced.

17 **SEC. 10. PROCESS FOR RECOGNITION OF HISTORICAL-TRA-**
 18 **DITIONAL USE BOUNDARIES OF QUALIFIED**
 19 **LAND GRANT-MERCEDES.**

20 (a) SUBMISSION OF PROPOSED BOUNDARIES.—Dur-
 21 ing the 5-year period beginning on the date of the enact-
 22 ment of this Act, a governing body of a qualified land
 23 grant-merced may submit to the Forest Supervisor or
 24 Field Manager, as appropriate, of the Secretary concerned
 25 the governing body’s interpretation of the historical-tradi-

1 tional use boundaries using geographical and historical
2 evidence supported by maps and documentation.

3 (b) ACCEPTABLE SOURCES OF RECORDS.—Accept-
4 able documentation for the purposes of subsection (a) in-
5 cludes records from the following sources:

6 (1) The National Archives and Records Admin-
7 istration in Washington, DC, Regional Archives and
8 Presidential Libraries.

9 (2) Archivo General de la Nación (Mexico City),
10 Archivo de la Real Audiencia de La Nueva Galicia
11 (Guadalajara), Archivos Generales de Indias,
12 Simancas y de la Corona de Aragón (Seville),
13 Archivo General de Simancas (Valladolid), Biblioteca
14 Nacional (Madrid), and the national archives of
15 other countries.

16 (3) The New Mexico State Records Center and
17 Archives, California State Library, and archives and
18 libraries of other States.

19 (4) The Department of the Interior, the De-
20 partment of Agriculture, and other Federal agencies.

21 (5) The University of New Mexico, including
22 the Center for Southwest Research, the Zimmerman
23 Library, the Special Collections at the University of
24 New Mexico Law Library, the Spanish Colonial Re-
25 search Center, the University of New Mexico Land

1 Grant Studies Program, Bancroft Library at the
2 University of California, Berkley, and other univer-
3 sity archives and special collections.

4 (6) The primary sources cited in: the Master of
5 Laws (L.L.M.) thesis by J.J. Bowden at Southern
6 Methodist University Law School entitled “Private
7 land Claims in The Southwest”, the Government Ac-
8 countability Office Reports GAO–01–951 and GAO–
9 04–59, and the Benavides and Golten Study in the
10 Natural Resources Journal, Vol. 48, Fall 2008.

11 (7) Office of the Attorney General of the State
12 of New Mexico, the New Mexico Land Grant Coun-
13 cil, and other agencies of the State.

14 (8) State Legislative Records.

15 (9) Records of courts, counties, and municipali-
16 ties.

17 (10) Records of members of Congress not in-
18 cluded in the National Archives.

19 (11) Authenticated records of land grant-mer-
20 cedes, pueblos, tribes, and private entities.

21 (c) NOTICE OF RECEIPT OF MATERIALS.—Not later
22 than 60 days after receipt of a submission pursuant to
23 subsection (a), the Forest Supervisor, Field Manager, or
24 other similarly situated authority, as appropriate, of the

1 Secretary concerned shall notify the governing body that
2 the submission was received.

3 (d) PROCESS FOR DETERMINATION OF HISTORICAL-
4 TRADITIONAL USE BOUNDARIES.—

5 (1) IN GENERAL.—Not later than 14 months
6 after receipt of a submission pursuant to subsection
7 (a), the Forest Supervisor or Field Manager, or
8 other similarly situated authority, as appropriate, of
9 the Secretary concerned shall—

10 (A) approve of the historical-traditional
11 use boundaries as proposed by the qualified
12 land grant-merced governing body; or

13 (B) offer an alternative historical-tradi-
14 tional use boundary using geographical and his-
15 torical evidence supported by maps and docu-
16 mentation.

17 (2) ALTERNATIVE HISTORICAL-TRADITIONAL
18 USE BOUNDARY.—If an alternative historical-tradi-
19 tional use boundary is offered by the Forest Super-
20 visor or Field Manager, or other similarly situated
21 authority, as appropriate, of the Secretary concerned
22 under paragraph (1)(B), then the governing body of
23 the qualified land grant-merced shall have 180 days
24 to accept the alternative historical-traditional use
25 boundary.

1 (3) STEP-BY-STEP NEGOTIATION PROCESS TO
2 DETERMINE HISTORIC-TRADITIONAL USE BOUND-
3 ARIES OF A LAND GRANT-MERCED.—If an alter-
4 native historical-traditional use boundary is offered
5 by the Forest Supervisor or Field Manager, or other
6 similarly situated authority, as appropriate, of the
7 Secretary concerned under paragraph (1)(B) and the
8 governing body of the qualified land grant-merced
9 does not accept the boundary within the 180-day pe-
10 riod described in paragraph (2), then a negotiation
11 process shall take place as follows:

12 (A) REGIONAL LEVEL.—The governing
13 body of the qualified land grant-merced and the
14 Regional Forester or State Director, or other
15 similarly situated authority, as appropriate,
16 shall—

17 (i) jointly notify the relevant Forest
18 Supervisor or Field Manager, or other
19 similarly situated authority, as appro-
20 priate, of the Secretary concerned that ne-
21 gotiations have been elevated to the re-
22 gional level; and

23 (ii) have one year from the date of the
24 expiration of the 180-day period described
25 in paragraph (2) to negotiate an agree-

1 ment on the historical-traditional use
2 boundary.

3 (B) DIRECTOR LEVEL.—If an agreement is
4 not reached under subparagraph (A), then the
5 governing body of the qualified land grant-
6 merced and the Chief of the Forest Service or
7 the Director of the Bureau of Land Manage-
8 ment, or other similarly situated authority, as
9 appropriate, shall have one additional year to
10 negotiate an agreement on the historical-tradi-
11 tional use boundary.

12 (C) DEPARTMENTAL LEVEL.—If an agree-
13 ment is not reached under subparagraph (B),
14 then the governing body of the qualified land
15 grant-merced and the Secretary concerned shall
16 have one additional year to negotiate an agree-
17 ment on the historical-traditional use boundary.

18 (4) FAILURE OF NEGOTIATION PROCESS.—If
19 the negotiation process described in paragraph (3)
20 does not result in an agreement between the gov-
21 erning body of the qualified land grant-merced and
22 the Secretary concerned, or, if requested by the gov-
23 erning body of the qualified land grant-merced at
24 any time during the negotiation process described in
25 paragraph (3), then the Secretary concerned shall,

1 not later than 90 days after the expiration of the
2 time period described in paragraph (3)(C), issue a
3 final decision on the historical-traditional use bound-
4 ary of the land grant-merced.

5 (5) FEDERAL COURT.—Any decision made
6 under paragraph (4) shall be appealable to Federal
7 court, and the court shall hear the case de novo.
8 Both parties shall submit to the court evidence sup-
9 porting such party’s interpretation of the historical-
10 traditional use boundaries. The court shall deter-
11 mine the historic-traditional boundary of the land
12 grant-merced that most accurately represents the
13 area of historical and traditional use.

14 (6) MANAGEMENT OF QUALIFIED LAND GRANT-
15 MERCED.—Management of lands located within the
16 patent boundary of a qualified land grant-merced
17 shall not be affected during the negotiation process
18 under paragraphs (3) or (4) or the appeal process
19 under paragraph (5).

20 (e) AMENDMENT OF MANAGEMENT PLAN TO RE-
21 FLECT HISTORICAL-TRADITIONAL USE BOUNDARIES.—
22 Not later than two years after the determination of the
23 historical-traditional use boundaries of a qualified land
24 grant-merced under this section, the Secretary concerned
25 shall—

1 (1) conduct a land survey of the historical-tra-
2 ditional use boundary of a land grant-merced;

3 (2) create a map that depicts such historical-
4 traditional use boundary; and

5 (3) amend the management plans for appro-
6 priate lands in accordance with section 4.

7 (f) TREATMENT OF NEWLY RECONSTITUTED QUALI-
8 FIED LAND GRANT-MERCEDES.—If a qualified land
9 grant-merced is established after the date of the enact-
10 ment of this Act, then the 5-year period described in sub-
11 paragraph (a) shall begin on the date of such establish-
12 ment.

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