

# Union Calendar No. 495

116<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3682

**[Report No. 116–602]**

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.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 10, 2019

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

NOVEMBER 19, 2020

Additional sponsor: Ms. HAALAND

NOVEMBER 19, 2020

Reported with amendments; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on July 10, 2019]

# **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.**

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 term*  
 10              *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 the*  
 13              *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 protection;*

23                      (C) *gathering herbs;*

24                      (D) *gathering wood products;*

25                      (E) *gathering flora or botanical products;*

1           (F) grazing, to the extent that grazing has  
 2           traditionally been carried out on the land, as de-  
 3           termined by the Secretary concerned in consulta-  
 4           tion with the governing body of the affected land  
 5           grant-merced;

6           (G) hunting or fishing;

7           (H) soil or rock gathering; and

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

10           (i) has a sustainable beneficial commu-  
 11           nity use, as determined by the Secretary  
 12           concerned in consultation with the gov-  
 13           erning body of the affected land grant-  
 14           merced;

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

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

23           (5) INDIAN TRIBE.—The term “Indian Tribe”  
 24           has the meaning given the term in section 4 of the In-

1        *dian Self-Determination and Education Assistance*  
 2        *Act (25 U.S.C. 5304).*

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

7                (A) *is recognized under New Mexico Stat-*  
 8        *utes Chapter 49 (or a successor statute); and*

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

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

19                (8) *STATE.*—*The term “State” means the State*  
 20        *of New Mexico.*

21        **SEC. 3. GUIDANCE ON PERMIT REQUIREMENTS FOR QUALI-**  
 22        **FIED LAND GRANT-MERCEDES.**

23                (a) *IN GENERAL.*—*In accordance with all relevant*  
 24        *laws, including subchapter II of chapter 5 of title 5, United*  
 25        *States Code (commonly known as the “Administrative Pro-*

1 *cedure Act”) and all applicable environmental laws, and*  
 2 *not later than 2 years after the date of the enactment of*  
 3 *this Act, the Secretary concerned, acting through the appro-*  
 4 *priate officials of the Department of Agriculture and De-*  
 5 *partment of the Interior in the State, in consultation with*  
 6 *the New Mexico Land Grant Council, the governing bodies*  
 7 *of qualified land grant-mercedes, and Indian Tribes, shall*  
 8 *issue the written guidance described in subsection (b).*

9 *(b) CONTENTS OF GUIDANCE.—*

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

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

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

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

21 *(B) administrative procedures for obtaining*  
 22 *a permit under subparagraph (A);*

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

1           (D) the permissible use of motorized and  
2           nonmotorized vehicles and equipment by a com-  
3           munity user or the governing body of a qualified  
4           land grant-merced for noncommercial historical-  
5           traditional use on land under the jurisdiction of  
6           the Secretary concerned;

7           (E) the permissible use of mechanized vehi-  
8           cles or equipment by a community user or gov-  
9           erning body of a qualified land grant-merced for  
10          historical-traditional use on land under the ju-  
11          risdiction of the Secretary concerned; and

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

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

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

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

3           (C) maintenance and upkeep of a monu-  
4           ment or shrine;

5           (D) maintenance and upkeep of a commu-  
6           nity cemetery;

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

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

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

21               (A) construction or expansion of a commu-  
22               nity water or wastewater system;

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



1                   (C) construction or major repair of a monu-  
2                   ment or shrine;

3                   (D) installation of a cattle guard;

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

5                   (F) construction or expansion of a cemetery;

6                   and

7                   (G) any other major improvement associ-  
8                   ated with historical-traditional uses, as deter-  
9                   mined by the Secretaries concerned.

10                  (4) NOTICE AND COMMENT.—Written guidance  
11                  issued under subsection (a) shall set forth the policies  
12                  and procedures for notice and comment on planning  
13                  decisions, routine engagement, and major Federal ac-  
14                  tions that could impact historical-traditional uses of  
15                  a qualified land grant merced, and methods of pro-  
16                  viding notice under subsection (a), including—

17                         (A) online public notice;

18                         (B) printed public notice;

19                         (C) mail, including certified mail, and  
20                         email notifications to governing bodies through a  
21                         listserv; and

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

24                  (c) FEES FOR QUALIFIED LAND GRANT-MERCEDES.—

25                  Where the Secretary concerned is authorized to consider the

1 *fiscal capacity of the applicant in determining whether to*  
 2 *reduce or waive a fee for a permit for historical-traditional*  
 3 *uses, the Secretary shall consider—*

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

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

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

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

18 **SEC. 5. SPECIAL USE PERMITS FOR ROUTINE MAINTENANCE AND MINOR IMPROVEMENTS OF**  
 19 **ACEQUIAS.**  
 20

21           (a) *IN GENERAL.*—*Not later than 90 days after the*  
 22 *date of the enactment of this Act, the Secretary Agriculture*  
 23 *shall initiate procedures under subchapter III of chapter*  
 24 *5 of title 5, United States Code, to promulgate such regula-*  
 25 *tions as are necessary to carry out and implement the For-*

1 *est Service's Acequia Guidance Document, dated July 2,*  
2 *2019.*

3 (b) *PUBLICATION OF PROPOSED REGULATIONS.—The*  
4 *Secretary shall cause to be published in the Federal Register*  
5 *proposed regulations to implement this section not later*  
6 *than 21 months after the date of the enactment of this Act.*

7 (c) *EXPIRATION OF AUTHORITY.—The authority to*  
8 *promulgate regulations under subsection (a) shall expire 30*  
9 *months after the date of the enactment of this Act.*

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

13 (1) *the negotiated rulemaking committee referred*  
14 *to in subsection (e) concludes that the committee can-*  
15 *not meet the deadline; and*

16 (2) *the Secretary so notifies the appropriate*  
17 *committees of Congress.*

18 (e) *COMMITTEE.—*

19 (1) *ESTABLISHMENT.—The Secretary shall en-*  
20 *sure that a negotiated rulemaking committee is estab-*  
21 *lished under section 565 of title 5, United States*  
22 *Code, to carry out this section.*

23 (2) *MEMBERS.—The members of the committee*  
24 *shall be—*

1           (A) the relevant Regional Forester (or a des-  
 2           ignee of the relevant Regional Forester); and

3           (B) the selected representative of a non-  
 4           governmental organization identified by the Sec-  
 5           retary of Agriculture as having a statewide  
 6           acequia membership, nominated by such organi-  
 7           zation to the Secretary of Agriculture.

8           (3) *REQUIREMENTS.*—The committee shall confer  
 9           with, and accommodate participation by—

10           (A) representatives of any agency or com-  
 11           mission of the State government established or  
 12           designated by the State to advise public officials  
 13           on proposed legislation affecting acequias; and

14           (B) State acequia elected officials.

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

18   **SEC. 6. 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.*

Amend the title so as to read: “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.”.

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116TH CONGRESS  
2D Session

**H. R. 3682**

[Report No. 116-602]

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NOVEMBER 19, 2020

Reported with amendments; committed to the Committee of the Whole House on the State of the Union and ordered to be printed