Suspend the Rules And Pass the Bill, H.R. 3682, With Amendments

(The amendments strike all after the enacting clause and insert a new text and a new title)

116TH CONGRESS
2D 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

In this Act:

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

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

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

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

(A) the use of water;

(B) religious or cultural use and protection;

(C) gathering herbs;

(D) gathering wood products;

(E) gathering flora or botanical products;

(F) grazing, to the extent that grazing has traditionally been carried out on the land, as determined by the Secretary concerned in consultation with the governing body of the affected land grant-merced;
(G) hunting or fishing;

(H) soil or rock gathering; and

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

(i) has a sustainable beneficial community use, as determined by the Secretary concerned in consultation with the governing body of the affected land grant-merced;

(ii) supports the long-term cultural and socioeconomic integrity of the community, as determined by the Secretary concerned in consultation with the governing body of the affected land grant-merced;

and

(iii) is agreed to in writing by the Secretary concerned and the governing body of the qualified land grant-merced.

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

(6) **Qualified Land Grant-Merced.**—The term “qualified land grant-merced” means a com-
munity land grant issued under the laws or customs of the Government of Spain or Mexico that—

(A) is recognized under New Mexico Statutes Chapter 49 (or a successor statute); and

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

(7) SECRETARY CONCERNED.—The term “Secretary concerned” means the relevant Secretary of the Department of Agriculture or the Department of the Interior, with respect to land under the jurisdiction of that Secretary.

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

SEC. 3. GUIDANCE ON PERMIT REQUIREMENTS FOR QUALIFIED LAND GRANT-MERCEDES.

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

(b) CONTENTS OF GUIDANCE.—

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

(A) a description of the historical-traditional uses that—

(i) a community user or a governing body of a qualified land grant-merced may conduct for noncommercial use on land under the jurisdiction of the Secretary concerned; and

(ii) require a permit from the Secretary concerned;

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

(C) subject to subsection (c), the fees required to obtain that permit;

(D) the permissible use of motorized and nonmotorized vehicles and equipment by a community user or the governing body of a qualified land grant-merced for noncommercial his-
torical-traditional use on land under the juris-
diction of the Secretary concerned;

(E) the permissible use of mechanized ve-
hicles 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 mate-
rial 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 con-
cerned.

(2) ROUTINE MAINTENANCE AND MINOR IM-
PROVEMENTS.—Written guidance issued under sub-
section (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 monu-
ment or shrine;
(D) maintenance and upkeep of a community cemetery;

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

(F) any other routine maintenance or minor improvement associated with historical-traditional uses identified by any of the entities described in subsection (a) in the process of developing the guidance.

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

(A) construction or expansion of a community water or wastewater system;

(B) construction or major repair of a livestock well, water lines, water storage container, or water tank;

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

(D) installation of a cattle guard;

(E) construction of a trail, road, or fence;
(F) construction or expansion of a cemetery; and

(G) any other major improvement associated with historical-traditional uses, as determined by the Secretaries concerned.

(4) NOTICE AND COMMENT.—Written guidance issued under subsection (a) shall set forth the policies and procedures for notice and comment on planning decisions, routine engagement, and major Federal actions that could impact historical-traditional uses of a qualified land grant merced, and methods of providing notice under subsection (a), including—

(A) online public notice;

(B) printed public notice;

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

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

(c) FEES FOR QUALIFIED LAND GRANT-MERCEDES.—Where the Secretary concerned is authorized to consider the fiscal capacity of the applicant in determining whether to reduce or waive a fee for a permit for historical-traditional uses, the Secretary shall consider—
(1) the socioeconomic conditions of community users; and

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

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

In developing, maintaining, and revising land management plans pursuant to section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) and section 6 of the National Forest Management Act (16 U.S.C. 1604), as applicable, the Secretary concerned shall, in accordance with applicable law, consider and, as appropriate, provide for and evaluate impacts to historical-traditional uses by qualified land grant-mercedes.

SEC. 5. SPECIAL USE PERMITS FOR ROUTINE MAINTENANCE AND MINOR IMPROVEMENTS OF ACEQUIAS.

(a) In General.—Not later than 90 days after the date of the enactment of this Act, the Secretary Agriculture shall initiate procedures under subchapter III of chapter 5 of title 5, United States Code, to promulgate such regulations as are necessary to carry out and implement the Forest Service’s Acequia Guidance Document, dated July 2, 2019.
(b) PUBLICATION OF PROPOSED REGULATIONS.—The Secretary shall cause to be published in the Federal Register proposed regulations to implement this section not later than 21 months after the date of the enactment of this Act.

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

(d) EXTENSION OF DEADLINES.—The Secretary may extend, for not more than 180 days, a deadline under subsection (b) or (c) if—

(1) the negotiated rulemaking committee referred to in subsection (e) concludes that the committee cannot meet the deadline; and

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

(e) COMMITTEE.—

(1) ESTABLISHMENT.—The Secretary shall ensure that a negotiated rulemaking committee is established under section 565 of title 5, United States Code, to carry out this section.

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

(A) the relevant Regional Forester (or a designee of the relevant Regional Forester); and
(B) the selected representative of a non-
governmental organization identified by the
Secretary of Agriculture as having a statewide
acequia membership, nominated by such organi-
zation to the Secretary of Agriculture.

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

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

(B) State acequia elected officials.

(f) EFFECT.—The lack of promulgated regulations
shall not limit the effect of the Forest Service’s Acequia

SEC. 6. SAVINGS.

Nothing in this Act shall be construed—

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

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

(3) to impact any valid existing rights or valid
permitted uses, including grazing permits;
(4) to create any implicit or explicit right to
grazing on Federal lands; or
(5) to alter or diminish any rights reserved for
an Indian Tribe or members of an Indian Tribe by
treaty or Federal law.

SEC. 7. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of
complying with the Statutory Pay-As-You-Go Act of 2010,
shall be determined by reference to the latest statement
titled “Budgetary Effects of PAYGO Legislation” for this
Act, submitted for printing in the Congressional Record
by the Chairman of the House Budget Committee, pro-
vided that such statement has been submitted prior to the
vote on passage.

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.”.