

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
2^D 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.**

4 This Act may be cited as the “Land Grant-Mercedes
5 Traditional Use Recognition and Consultation Act”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

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

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

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

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

16 (A) the use of water;

17 (B) religious or cultural use and protec-
18 tion;

19 (C) gathering herbs;

20 (D) gathering wood products;

21 (E) gathering flora or botanical products;

22 (F) grazing, to the extent that grazing has
23 traditionally been carried out on the land, as
24 determined by the Secretary concerned in con-
25 sultation with the governing body of the af-
26 fected land grant-merced;

1 (G) hunting or fishing;

2 (H) soil or rock gathering; and

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

5 (i) has a sustainable beneficial com-
6 munity use, as determined by the Sec-
7 retary concerned in consultation with the
8 governing body of the affected land grant-
9 merced;

10 (ii) supports the long-term cultural
11 and socioeconomic integrity of the commu-
12 nity, as determined by the Secretary con-
13 cerned in consultation with the governing
14 body of the affected land grant-merced;
15 and

16 (iii) is agreed to in writing by the Sec-
17 retary concerned and the governing body of
18 the qualified land grant-merced.

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

23 (6) QUALIFIED LAND GRANT-MERCEd.—The
24 term “qualified land grant-merced” means a com-

1 munity land grant issued under the laws or customs
2 of the Government of Spain or Mexico that—

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

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

10 (7) SECRETARY CONCERNED.—The term “Sec-
11 retary concerned” means the relevant Secretary of
12 the Department of Agriculture or the Department of
13 the Interior, with respect to land under the jurisdic-
14 tion of that Secretary.

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

17 **SEC. 3. GUIDANCE ON PERMIT REQUIREMENTS FOR QUALI-**
18 **FIED LAND GRANT-MERCEDES.**

19 (a) IN GENERAL.—In accordance with all relevant
20 laws, including subchapter II of chapter 5 of title 5,
21 United States Code (commonly known as the “Administra-
22 tive Procedure Act”) and all applicable environmental
23 laws, and not later than 2 years after the date of the en-
24 actment of this Act, the Secretary concerned, acting
25 through the appropriate officials of the Department of Ag-

1 riculture and Department of the Interior in the State, in
2 consultation with the New Mexico Land Grant Council,
3 the governing bodies of qualified land grant-mercedes, and
4 Indian Tribes, shall issue the written guidance described
5 in subsection (b).

6 (b) CONTENTS OF GUIDANCE.—

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

9 (A) a description of the historical-tradi-
10 tional uses that—

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

16 (ii) require a permit from the Sec-
17 retary concerned;

18 (B) administrative procedures for obtain-
19 ing a permit under subparagraph (A);

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

22 (D) the permissible use of motorized and
23 nonmotorized vehicles and equipment by a com-
24 munity user or the governing body of a quali-
25 fied land grant-merced for noncommercial his-

1 torical-traditional use on land under the juris-
2 diction of the Secretary concerned;

3 (E) the permissible use of mechanized ve-
4 hicles or equipment by a community user or
5 governing body of a qualified land grant-merced
6 for historical-traditional use on land under the
7 jurisdiction of the Secretary concerned; and

8 (F) the permissible use of non-native mate-
9 rial by a community user or the governing body
10 of a qualified land grant-merced for any of the
11 uses covered in paragraphs (2) and (3) on land
12 under the jurisdiction of the Secretary con-
13 cerned.

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

20 (A) cleaning, repair, or replacement-in-
21 kind of infrastructure;

22 (B) maintenance and upkeep of a trail,
23 road, cattle guard, culvert, 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, water lines, water storage container, or
5 water tank; and

6 (F) any other routine maintenance or
7 minor improvement associated with historical-
8 traditional uses identified by any of the entities
9 described in subsection (a) in the process of de-
10 veloping the guidance.

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

17 (A) construction or expansion of a commu-
18 nity water or wastewater system;

19 (B) construction or major repair of a live-
20 stock well, water lines, water storage container,
21 or water tank;

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

24 (D) installation of a cattle guard;

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

1 (F) construction or expansion of a ceme-
2 tery; and

3 (G) any other major improvement associ-
4 ated with historical-traditional uses, as deter-
5 mined by the Secretaries concerned.

6 (4) NOTICE AND COMMENT.—Written guidance
7 issued under subsection (a) shall set forth the poli-
8 cies and procedures for notice and comment on plan-
9 ning decisions, routine engagement, and major Fed-
10 eral actions that could impact historical-traditional
11 uses of a qualified land grant merced, and methods
12 of providing notice under subsection (a), including—

13 (A) online public notice;

14 (B) printed public notice;

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

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

20 (e) FEES FOR QUALIFIED LAND GRANT-MER-
21 CEDES.—Where the Secretary concerned is authorized to
22 consider the fiscal capacity of the applicant in determining
23 whether to reduce or waive a fee for a permit for histor-
24 ical-traditional uses, the Secretary shall consider—

1 (1) the socioeconomic conditions of community
2 users; and

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

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

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

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

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

1 (b) PUBLICATION OF PROPOSED REGULATIONS.—

2 The Secretary shall cause to be published in the Federal
3 Register proposed regulations to implement this section
4 not later than 21 months after the date of the enactment
5 of this Act.

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

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

12 (1) the negotiated rulemaking committee re-
13 ferred to in subsection (e) concludes that the com-
14 mittee cannot meet the deadline; and

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

17 (e) COMMITTEE.—

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

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

24 (A) the relevant Regional Forester (or a
25 designee of the relevant Regional Forester); and

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

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

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

12 (B) State acequia elected officials.

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

16 **SEC. 6. SAVINGS.**

17 Nothing in this Act shall be construed—

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

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

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

1 (4) to create any implicit or explicit right to
2 grazing on Federal lands; or

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

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

7 The budgetary effects of this Act, for the purpose of
8 complying with the Statutory Pay-As-You-Go Act of 2010,
9 shall be determined by reference to the latest statement
10 titled “Budgetary Effects of PAYGO Legislation” for this
11 Act, submitted for printing in the Congressional Record
12 by the Chairman of the House Budget Committee, pro-
13 vided that such statement has been submitted prior to the
14 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.”.