

118TH CONGRESS
2D SESSION

S. 4271

To provide for greater cooperation and coordination between the Federal Government and the governing bodies and community users of land grant-mercedes in New Mexico relating to historical or traditional uses of certain land grant-mercedes on Federal public land, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 7, 2024

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

A BILL

To provide for greater cooperation and coordination between the Federal Government and the governing bodies and community users of land grant-mercedes in New Mexico relating to historical or traditional uses of certain land grant-mercedes on Federal public land, 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 “New Mexico Land
5 Grant-Mercedes Historical or Traditional Use Cooperation
6 and Coordination Act”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

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

6 (2) **FEDERAL LAND.**—

7 (A) **IN GENERAL.**—The term “Federal
8 land” means any land or interest in land owned
9 by the United States.

10 (B) **EXCLUSIONS.**—The term “Federal
11 land” does not include—

12 (i) land within the boundary of an In-
13 dian reservation;

14 (ii) land held in trust or in restricted
15 status by the United States for the benefit
16 of—

17 (I) an Indian Tribe; or

18 (II) an individual Indian; or

19 (iii) land held in fee by an Indian or
20 Indian Tribe that is subject to restrictions
21 on alienation by the United States.

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

1 (4) HISTORICAL OR TRADITIONAL USE.—The
2 term “historical or traditional use” means the fol-
3 lowing long-established and habitual uses conducted
4 by a qualified land grant-merced on Federal land for
5 noncommercial benefit and for the benefit of the
6 qualified land grant-merced:

7 (A) The use of water in accordance with
8 all applicable Federal and State laws (including
9 regulations).

10 (B) Gathering herbs in small quantities.

11 (C) Gathering wood products in small
12 quantities.

13 (D) Gathering flora or botanical products
14 in small quantities.

15 (E) Grazing, to the extent that grazing has
16 traditionally been carried out on Federal land,
17 as determined by the Secretary concerned, in
18 coordination with the New Mexico Land Grant
19 Council.

20 (F) Subsistence hunting or fishing that is
21 conducted in accordance with State law.

22 (G) Soil or rock gathering in small quan-
23 tities.

24 (H) The use and maintenance of an exist-
25 ing monument or shrine.

1 (I) The use and maintenance of an existing
2 cemetery by a qualified land grant-merced.

3 (J) Any other long-established and habit-
4 ual use conducted by a qualified land grant-
5 merced for noncommercial benefit that—

6 (i) has a sustainable use by the quali-
7 fied land grant-merced, as determined by
8 the Secretary concerned, in coordination
9 with the New Mexico Land Grant Council;

10 (ii) supports the long-term integrity of
11 the qualified land grant-merced, as deter-
12 mined by the Secretary concerned, in co-
13 ordination with the New Mexico Land
14 Grant Council; and

15 (iii) is agreed to in writing by the Sec-
16 retary concerned and the New Mexico
17 Land Grant Council.

18 (5) INDIAN TRIBE.—The term “Indian Tribe”
19 means the governing body of any individually identi-
20 fied and federally recognized Indian or Alaska Na-
21 tive tribe, band, nation, pueblo, village, community,
22 affiliated Tribal group, or component reservation in-
23 cluded on the most recent list published pursuant to
24 section 104(a) of the Federally Recognized Indian
25 Tribe List Act of 1994 (25 U.S.C. 5131(a)).

1 (6) MEMORANDUM OF UNDERSTANDING.—The
 2 term “memorandum of understanding” means a
 3 memorandum of understanding entered into or ex-
 4 tended, renewed, or revised under section 3(a)(1).

5 (7) NONCOMMERCIAL BENEFIT.—The term
 6 “noncommercial benefit” means a benefit from a
 7 use, the primary purpose of which is not the sale of
 8 a good or service.

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

13 (A) is recognized under New Mexico Stat-
 14 utes Chapter 49, Articles 1 and 4 (or a suc-
 15 cessor statute); and

16 (B)(i) has a record of historical or tradi-
 17 tional use on Federal land under the jurisdic-
 18 tion of the Secretary concerned; or

19 (ii) has a patented exterior boundary that
 20 is or was previously located on or adjacent to
 21 Federal land under the jurisdiction of the Sec-
 22 retary concerned.

23 (9) SECRETARY CONCERNED.—The term “Sec-
 24 retary concerned” means the Secretary of Agri-
 25 culture or the Secretary of the Interior, with respect

to Federal land under the jurisdiction of the Secretary of Agriculture or the Secretary of the Interior, respectively.

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

SEC. 3. MEMORANDUM OF UNDERSTANDING ON PERMIT REQUIREMENTS AND OTHER LAND USE AUTHORIZATIONS FOR HISTORICAL OR TRADITIONAL USES OF QUALIFIED LAND GRANT-MERCEDES; REDUCTION OR WAIVER OF CERTAIN FEES.

(a) MEMORANDUM OF UNDERSTANDING.—

(1) IN GENERAL.—The Secretary concerned, acting through the appropriate officials of the Department of Agriculture and the Department of the Interior in the State, in consultation with Indian Tribes, shall—

(A) not later than 2 years after the date of enactment of this Act, enter into an initial memorandum of understanding with the New Mexico Land Grant Council; and

(B) subject to the requirements of this section, on the expiration of the initial memorandum of understanding entered into under subparagraph (A) or any successor memo-

1 random of understanding entered into under
 2 this subparagraph—

3 (i) enter into a successor memo-
 4 randum of understanding with the New
 5 Mexico Land Grant Council; or

6 (ii) extend or renew, with any revi-
 7 sions determined to be appropriate by the
 8 Secretary concerned and the New Mexico
 9 Land Grant Council, the expired memo-
 10 randum of understanding.

11 (2) APPLICABLE REQUIREMENTS AND AUTHOR-
 12 IZATIONS.—

13 (A) IN GENERAL.—A memorandum of un-
 14 derstanding shall—

15 (i) provide for enhanced cooperation
 16 and coordination between the Secretary
 17 concerned and qualified land grant-mer-
 18 cedes;

19 (ii) provide for the Secretary con-
 20 cerned, acting through the appropriate of-
 21 ficials of the Department of Agriculture
 22 and the Department of the Interior, to
 23 enter into subsidiary agreements with
 24 qualified land grant-mercedes for specific

1 projects consistent with the memorandum
2 of understanding; and

3 (iii) be consistent with, and subject
4 to—

5 (I) applicable Federal laws (in-
6 cluding regulations);

7 (II) applicable land use plans;
8 and

9 (III) valid existing rights.

10 (B) PERMITS AND OTHER LAND USE AU-
11 THORIZATIONS.—A memorandum of under-
12 standing shall include—

13 (i) a description of the types of histor-
14 ical or traditional uses that—

15 (I) a community user or a gov-
16 erning body of a qualified land grant-
17 merced may conduct for noncommer-
18 cial benefit on Federal land under the
19 jurisdiction of the Secretary con-
20 cerned; and

21 (II) require a permit or other
22 land use authorization from the Sec-
23 retary concerned;

24 (ii) a citation to, and description of,
25 any administrative procedures for obtain-

1 ing the permit or other land use authoriza-
2 tion under clause (i);

3 (iii) a description of—

4 (I) the types of fees, including
5 cost recovery fees and land use fees,
6 that may be associated with a permit
7 or other land use authorization under
8 clause (i); and

9 (II) if applicable, the process to
10 request a reduction or waiver of the
11 fees described in subclause (I) under
12 regulations promulgated by the Sec-
13 retary concerned;

14 (iv) a description of the process for
15 determining the permissible use of motor-
16 ized and nonmotorized vehicles and equip-
17 ment by a community user or the gov-
18 erning body of a qualified land grant-
19 merced for noncommercial historical or
20 traditional use on Federal land under the
21 jurisdiction of the Secretary concerned;

22 (v) a description of the process for de-
23 termining the permissible use of mecha-
24 nized vehicles or equipment by a commu-
25 nity user or governing body of a qualified

land grant-merced for historical or traditional use on Federal land under the jurisdiction of the Secretary concerned;

(vi) a description of the process for determining the permissible use of non-native material by a community user or the governing body of a qualified land grant-merced for any of the uses described in subparagraphs (C) and (D) on Federal land under the jurisdiction of the Secretary concerned;

(vii) a description of any applicable restrictions and prohibitions on historical or traditional uses conducted by a qualified land grant-merced on Federal land under the jurisdiction of the Secretary concerned; and

(viii) a description of the process, in accordance with applicable law, for consulting with 1 or more Indian Tribes that would be directly affected by a proposed historical or traditional use on Federal land by a qualified land grant-merced.

(C) ROUTINE MAINTENANCE AND MINOR IMPROVEMENTS.—A memorandum of under-

1 standing shall address authorization of routine
2 maintenance and minor improvements of infra-
3 structure used by a qualified land grant-merced
4 in connection with a historical or traditional use
5 on Federal land under the jurisdiction of the
6 Secretary concerned, including—

7 (i) cleaning, repair, or replacement-in-
8 kind of infrastructure;

9 (ii) maintenance of a trail, road, cattle
10 guard, culvert, or fence;

11 (iii) maintenance of a monument or
12 shrine;

13 (iv) maintenance of a community cem-
14 etery by a qualified land grant-merced;

15 (v) maintenance of a livestock well,
16 water line, water storage container, or
17 water tank; and

18 (vi) any other routine maintenance or
19 minor improvement associated with histor-
20 ical or traditional uses identified by the
21 New Mexico Land Grant Council during
22 the development of the memorandum of
23 understanding.

24 (D) MAJOR IMPROVEMENTS.—A memo-
25 randum of understanding may describe the

1 process for authorizing major improvements of
2 infrastructure of a qualified land grant-merced
3 in connection with a historical or traditional use
4 on Federal land under the jurisdiction of the
5 Secretary concerned, including—

6 (i) construction or expansion of a
7 community water or wastewater system of
8 a qualified land grant-merced;

9 (ii) construction or major repair of a
10 livestock well, water line, water storage
11 container, or water tank of a qualified land
12 grant-merced;

13 (iii) major repair of a monument or
14 shrine of a qualified land grant-merced;

15 (iv) installation of a cattle guard;

16 (v) construction of a trail, road, or
17 fence;

18 (vi) construction or expansion of a
19 community cemetery by a qualified land
20 grant-merced; and

21 (vii) any other major improvement as-
22 sociated with historical or traditional uses,
23 as determined by the Secretary concerned.

24 (E) NOTICE AND COMMENT.—A memo-
25 randum of understanding shall describe the

1 policies and procedures for notice and comment
 2 on land management planning decisions and
 3 major Federal actions that could affect histor-
 4 ical or traditional uses of Federal land by a
 5 qualified land grant-merced, and methods of
 6 providing the notice, including notice—

7 (i) online;

8 (ii) in print; and

9 (iii) by mail or email to the New Mex-
 10 ico Land Grant Council and Indian Tribes,
 11 including through a listserv that would in-
 12 clude qualified land grant-mercedes, the
 13 New Mexico Land Grant Council, and In-
 14 dian Tribes.

15 (3) DEVELOPMENT, EXECUTION, AND IMPLE-
 16 MENTATION OF MEMORANDUM OF UNDER-
 17 STANDING.—

18 (A) ROLE OF THE NEW MEXICO LAND
 19 GRANT COUNCIL.—The New Mexico Land
 20 Grant Council may represent qualified land
 21 grant-mercedes in developing, executing, and
 22 implementing a memorandum of understanding.

23 (B) ROLE OF GOVERNING BODIES OF
 24 QUALIFIED LAND GRANT-MERCEDES.—The Sec-
 25 retary concerned may invite representatives of

1 governing bodies of qualified land grant-mer-
2 cedes to participate in meetings and provide
3 input during the development of a memo-
4 randum of understanding.

5 (4) LIMITATION.—A memorandum of under-
6 standing—

7 (A) shall describe the process for a quali-
8 fied land grant-merced to obtain authorizations
9 for historical or traditional uses through exist-
10 ing authorities, subject to existing Federal laws
11 (including regulations) and applicable permit
12 and land use authorization requirements; but

13 (B) shall not directly approve or authorize
14 a historical or traditional use described in sub-
15 paragraph (A).

16 (b) FEES FOR QUALIFIED LAND GRANT-MER-
17 CEDES.—Where the Secretary concerned is authorized to
18 reduce or waive land use fees or consider the fiscal capac-
19 ity of the applicant in determining whether to reduce or
20 waive a fee for a land use permit, the Secretary shall con-
21 sider—

22 (1) the socioeconomic conditions of community
23 users of a qualified land grant-merced; and

24 (2) the annual operating budget of the gov-
25 erning body of the qualified land grant-merced.

1 **SEC. 4. CONSIDERATION AND INCLUSION OF PROVISIONS**
2 **WITH RESPECT TO HISTORICAL OR TRADI-**
3 **TIONAL USES IN LAND USE PLANNING.**

4 In developing, maintaining, and revising land use
5 plans pursuant to section 202 of the Federal Land Policy
6 and Management Act of 1976 (43 U.S.C. 1712) and sec-
7 tion 6 of the National Forest Management Act (16 U.S.C.
8 1604), as applicable, the Secretary concerned shall, in ac-
9 cordance with applicable law, and, as determined to be ap-
10 propriate by the Secretary concerned, include a section in
11 the applicable land use plan that considers and evaluates
12 the impact of other uses in the land use plan on historical
13 or traditional uses by qualified land grant-mercedes.

14 **SEC. 5. EFFECT.**

15 Nothing in this Act—

16 (1) modifies, limits, expands, or otherwise af-
17 fects any treaty-reserved right, or any other right of,
18 or obligation to, any Indian Tribe, including treaties
19 or agreements with the United States, Executive or-
20 ders, statutes, regulations, or case law, that is recog-
21 nized on or after the date of enactment of this Act
22 by any other means;

23 (2) affects the authority of the State to regulate
24 water use in accordance with all Federal and State
25 laws (including regulations);

1 (3) affects the authority of the State to regulate
2 the management of game and fish, in accordance
3 with all Federal and State laws (including regula-
4 tions);

5 (4) affects any valid existing rights, or valid
6 permitted authorized uses of, Federal land; or

7 (5) creates any implicit or explicit right to any
8 type of use of Federal land.

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