

117TH CONGRESS  
1ST SESSION

# H. R. 5493

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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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 5, 2021

Ms. LEGER FERNANDEZ (for herself, Ms. STANSBURY, Ms. LEE of California, and Mr. GRIJALVA) introduced the following bill; which was referred to the Committee on Natural Resources

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## 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.

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:

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

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

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

11                (A) the use of water;

12                (B) religious or cultural use and protec-  
13      tion;

14                (C) gathering herbs;

15                (D) gathering wood products;

16                (E) gathering flora or botanical products;

17                (F) grazing, to the extent that grazing has  
18      traditionally been carried out on the land, as  
19      determined by the Secretary concerned in con-  
20      sultation with the governing body of the af-  
21      fected land grant-merced;

22                (G) hunting or fishing;

23                (H) soil or rock gathering; and

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

1 (i) has a sustainable beneficial com-  
2 munity use, as determined by the Sec-  
3 retary concerned in consultation with the  
4 governing body of the affected land grant-  
5 merced;

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

12 (iii) is agreed to in writing by the Sec-  
13 retary concerned and the governing body of  
14 the qualified land grant-merced.

15 (4) INDIAN TRIBE.—The term “Indian Tribe”  
16 has the meaning given the term in section 4 of the  
17 Indian Self-Determination and Education Assistance  
18 Act (25 U.S.C. 5304).

19 (5) QUALIFIED LAND GRANT-MERCED.—The  
20 term “qualified land grant-merced” means a com-  
21 munity land grant issued under the laws or customs  
22 of the Government of Spain or Mexico that—

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

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

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

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

13 **SEC. 3. GUIDANCE ON PERMIT REQUIREMENTS FOR QUALI-**  
14 **FIED LAND GRANT-MERCEDES.**

15 (a) IN GENERAL.—In accordance with all relevant  
16 laws, including subchapter II of chapter 5 of title 5,  
17 United States Code (commonly known as the “Administra-  
18 tive Procedure Act”) and all applicable environmental  
19 laws, and not later than 2 years after the date of the en-  
20 actment of this Act, the Secretary concerned, acting  
21 through the appropriate officials of the Department of Ag-  
22 riculture and Department of the Interior in the State, in  
23 consultation with the New Mexico Land Grant Council,  
24 the governing bodies of qualified land grant-mercedes, and

1 Indian Tribes, shall issue the written guidance described  
2 in subsection (b).

3 (b) CONTENTS OF GUIDANCE.—

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

6 (A) a description of the historical-tradi-  
7 tional uses that—

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

13 (ii) require a permit from the Sec-  
14 retary concerned;

15 (B) administrative procedures for obtain-  
16 ing a permit under subparagraph (A);

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

19 (D) the permissible use of motorized and  
20 nonmotorized vehicles and equipment by a com-  
21 munity user or the governing body of a quali-  
22 fied land grant-merced for noncommercial his-  
23 torical-traditional use on land under the juris-  
24 diction of the Secretary concerned;

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

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

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

18 (A) cleaning, repair, or replacement-in-  
19 kind of infrastructure;

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

22 (C) maintenance and upkeep of a monu-  
23 ment or shrine;

24 (D) maintenance and upkeep of a commu-  
25 nity cemetery;

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

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

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

15 (A) construction or expansion of a commu-  
16 nity water or wastewater system;

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

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

22 (D) installation of a cattle guard;

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

24 (F) construction or expansion of a ceme-  
25 tery; and

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

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

11 (A) online public notice;

12 (B) printed public notice;

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

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

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

23 (1) the socioeconomic conditions of community  
24 users; and



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

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

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

14 **SEC. 5. SAVINGS.**

15       Nothing in this Act shall be construed—

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

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

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

24           (4) to create any implicit or explicit right to  
25       grazing on Federal lands; or

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

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