

117TH CONGRESS  
2D SESSION

# **S. 2708**

---

## **AN ACT**

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:

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

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

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

18            (A) the use of water;

19            (B) religious or cultural use and protec-  
 20 tion;

21            (C) gathering herbs;

22            (D) gathering wood products;

23            (E) gathering flora or botanical products;

24            (F) grazing, to the extent that grazing has  
 25 traditionally been carried out on the land, as

1 determined by the Secretary concerned in con-  
2 sultation with the governing body of the af-  
3 fected land grant-merced;

4 (G) hunting or fishing;

5 (H) soil or rock gathering; and

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

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

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

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

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

1           (5) QUALIFIED LAND GRANT-MERCEDES.—The  
 2 term “qualified land grant-merced” means a com-  
 3 munity land grant issued under the laws or customs  
 4 of the Government of Spain or Mexico that—

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

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

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

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

19 **SEC. 3. GUIDANCE ON PERMIT REQUIREMENTS FOR QUALI-**  
 20 **FIED LAND GRANT-MERCEDES.**

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

1 actment of this Act, the Secretary concerned, acting  
2 through the appropriate officials of the Department of Ag-  
3 riculture and Department of the Interior in the State, in  
4 consultation with the New Mexico Land Grant Council,  
5 the governing bodies of qualified land grant-mercedes, and  
6 Indian Tribes, shall issue the written guidance described  
7 in subsection (b).

8 (b) CONTENTS OF GUIDANCE.—

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

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

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

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

20 (B) administrative procedures for obtain-  
21 ing a permit under subparagraph (A);

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

24 (D) the permissible use of motorized and  
25 nonmotorized vehicles and equipment by a com-

1 community user or the governing body of a quali-  
2 fied land grant-merced for noncommercial his-  
3 torical-traditional use on land under the juris-  
4 diction of the Secretary concerned;

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

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

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

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

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

1 (C) maintenance and upkeep of a monu-  
2 ment or shrine;

3 (D) maintenance and upkeep of a commu-  
4 nity cemetery;

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

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

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

19 (A) construction or expansion of a commu-  
20 nity water or wastewater system;

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

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

- 1 (D) installation of a cattle guard;
- 2 (E) construction of a trail, road, or fence;
- 3 (F) construction or expansion of a ceme-
- 4 tery; and
- 5 (G) any other major improvement associ-
- 6 ated with historical-traditional uses, as deter-
- 7 mined by the Secretaries concerned.

8 (4) NOTICE AND COMMENT.—Written guidance

9 issued under subsection (a) shall set forth the poli-

10 cies and procedures for notice and comment on plan-

11 ning decisions, routine engagement, and major Fed-

12 eral actions that could impact historical-traditional

13 uses of a qualified land grant merced, and methods

14 of providing notice under subsection (a), including—

- 15 (A) online public notice;
- 16 (B) printed public notice;
- 17 (C) mail, including certified mail, and
- 18 email notifications to governing bodies through
- 19 a listserv; and
- 20 (D) mail, including certified mail, and
- 21 email notifications to the Land Grant Council.

22 (c) FEES FOR QUALIFIED LAND GRANT-MER-

23 CEDES.—Where the Secretary concerned is authorized to

24 consider the fiscal capacity of the applicant in determining



1 whether to reduce or waive a fee for a permit for histor-  
 2 ical-traditional uses, the Secretary shall consider—

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

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

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

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

18 **SEC. 5. 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.

Passed the Senate December 22, 2022.

Attest:

*Secretary.*



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

**S. 2708**

---

**AN ACT**

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.