

**Statement for the Record
Bureau of Land Management
U.S. Department of the Interior**

**House Committee on Natural Resources
Subcommittee on National Parks, Forests and Public Lands**

**H.R. 3682, Land Grant and Acequia Traditional Use Recognition and Consultation Act
June 18, 2020**

Thank you for the opportunity to provide a Statement for the Record on H.R. 3682, the Land Grant and Acequia Traditional Use Recognition and Consultation Act. H.R. 3682 provides additional opportunities for the Department of the Interior (DOI) and Department of Agriculture (USDA) to engage with certain communal land grant entities in New Mexico called “land grant-mercedes.” The bill also provides a process for recognition of the historic-traditional boundaries of land grant-mercedes.

The Bureau of Land Management (BLM) understands the importance of working closely with New Mexico’s land grant-mercedes and appreciates the cultural and historical role they have played and continue to play throughout New Mexico. We support the goal of the bill to better enhance the BLM’s coordination with governing bodies of the historic-traditional land grant-mercedes and in New Mexico. We would also like to work with the Sponsor and the Committee to address potential implementation concerns. The BLM defers to the USDA regarding any changes to the management of lands under its administration.

Background

A land grant-merced is a community, town, colony, or pueblo that includes certain land granted by Mexico or Spain. According to the Government Accountability Office, between the 17th century and 1848, Spanish and Mexican governments made 295 grants of land within what is today the State of New Mexico, including 141 to private individuals and 154 communal grants to communities to promote the settlement of these lands. The latter included 23 grants by Spain to indigenous Indian Pueblos. Most of the Federal lands within the traditional boundaries of land grant-mercedes are currently managed by the United States Forest Service, but some are also BLM-managed lands.

At the end of the 1845-1848 war with Mexico, the United States and Mexico signed the 1848 Treaty of Guadalupe Hidalgo (confirmed by the Senate in 1854). In the Treaty, Mexico ceded to the United States, for \$15 million, lands that now include the States of California, Arizona, New Mexico, and parts of Utah, Nevada, Colorado, and Texas. The United States agreed in the Treaty to establish a process for adjudicating and recognizing land held by people within the lands newly acquired by the United States.

Today, the BLM consistently seeks ways to work more closely with land grant-mercedes throughout New Mexico. For example, in 2013, the BLM appointed a BLM liaison to the New Mexico Land Grant Council, a State agency which represents the land grant-mercedes. Since 2013, the BLM liaison has attended the Council’s regular monthly meetings, updating it on all

activities of the BLM that may be of interest to the land grant-mercedes throughout the State. The BLM is also pleased to have started a pilot process for online fuelwood permitting, which enables members from land grant-mercedes to apply for fuelwood permits online rather than having to travel potentially long distances.

Furthermore, the BLM invites those land grant-mercedes that are political subdivisions of the State of New Mexico to participate as cooperating agencies on planning efforts. This allows the land grant-mercedes the ability to meet with the BLM throughout the planning process. For example, the San Joaquín del Río de Chama Land Grant is a cooperating agency on the BLM Farmington Mancos-Gallup Resource Management Plan Amendment. Additionally, the San Antonio del Río Colorado Land Grant and the New Mexico Land Grant Council are cooperating agencies on the BLM Río Grande del Norte National Monument Management Plan.

H.R. 3682

H.R. 3682 requires additional coordination between the DOI, USDA, and the governing bodies of certain land grant-mercedes in New Mexico. The bill applies to Federal land that contains a portion of a qualified land grant-mercedes, or is adjacent to or nearby a land grant-mercedes, and directs the DOI and USDA to provide certain notice and comment opportunities for the governing body of the relevant land grant-merced. Under the bill, the Departments would be required to hold at least two meetings with the governing body before adopting, amending, or revising a Federal land management plan or conducting a Federal action that involves preparation of an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA).

H.R. 3682 also requires the Departments to provide guidance to land grant-mercedes on Federal permits issued for certain activities and waives permit fees for historical-traditional uses and special use permit requirements. Further, the bill directs the Departments to work with land grant-mercedes to identify spiritual and cultural sites when updating a land management plan and to revise the Departments' guidance for land disposals. Finally, H.R. 3682 establishes a process for the Federal government to determine and recognize historical-traditional use boundaries of qualified land grant-mercedes.

Notice & Comment Requirements

While the BLM welcomes opportunities to increase outreach to and coordination with land grant-mercedes, the BLM believes H.R. 3682, as currently written, has the potential to significantly increase processing times and reduce project completions. The BLM is also concerned that some of the communication requirements of the bill are inefficient.

For example, the bill (Section 4) requires that the Departments provide notice and an opportunity to comment to a land grant-merced 90 days before the Departments revise land management plans or conduct a Federal action on Federal land that contains any portion of, is adjacent to, or "nearby" a qualified land grant-merced. The BLM believes this requirement is overly broad and recommends that it be limited to land grant-mercedes that contain or are adjacent to Federal land. The BLM also has concerns with the 90-day notification requirement for any Federal actions that require an EIS. The BLM processes many projects that meet this requirement, which would all necessitate notifications, and has concerns that this provision would potentially dilute communications on issues of priority to the land grant-merced. The BLM would like to work with

the Sponsor on alternative ways to better enhance communication and engagement between the Federal government and land grant-mercedes to provide a more targeted approach for notice on projects of interest to individual land grant-mercedes. The BLM also wishes to clarify the scope of mitigation measures required under Section 4(e) of the bill.

The BLM also has concerns with some of the timeframes outlined in the bill (Section 4). For example, the bill's requirement to notify a land grant-merced of the date, time, location, and subject matter 30 days prior to a public meeting is inconsistent the BLM's current public meeting notification requirements of 15 days. The BLM believes this change would cause unnecessary delays in scheduling public meetings and or the finalization of projects and is inconsistent with the Department's ongoing streamlining reform efforts. The BLM would like to work with the Sponsor and the Committee on revisions to H.R. 3682 that would more closely align with the notification requirements under current regulations.

Finally, the bill requires the Departments to maintain, periodically update, and verify that the information in the database of each governing body of a qualified land grant-merced is correct before providing Federal notices to them. The BLM believes the State agency that serves as a liaison between land grants-mercedes and the Federal Government is better equipped to provide the updated contact information.

Permitting for Qualified Land Grant Mercedes

While the BLM understands the goal to provide more certainty to land grant-mercedes when interacting with the BLM within the traditional boundaries of the land grant-mercedes, the BLM has concerns that some of the bill's requirements are duplicative. For example, Section 5 requires the Departments to provide written guidance on permits issued for activities conducted by a land grant-merced, which would ultimately add an unnecessary requirement for uses that are already covered under the appropriate BLM Land Use Plan.

Further, the BLM has concerns with the bill's provisions that would waive any cost-sharing or fee requirements when obtaining a permit for a historical-traditional use by a land grant-merced. We believe this will result in a substantial loss of revenue, and more importantly, the BLM is concerned that these provisions could have unintended consequences resulting in the inconsistent treatment of other BLM users, including our tribal partners. The BLM would like to work with the Sponsor and Committee on adding clarifying language to ensure consistency with other applicable laws and Federal regulations and requirements.

Identification of Spiritual & Cultural Sites & Recognition for Historical Traditional Use Boundaries

Finally, the BLM has concerns that substantial resources will be necessary to meet the bill's requirement for the Departments to work with land grant-mercedes to identify spiritual and cultural sites when updating a land use plan and to determine and recognize historical-traditional use boundaries of qualified land grant-mercedes.

The BLM notes that many of the land grants and mercedes addressed in H.R. 3682 are part of the aboriginal territory of one or more Native American tribes. The tribes have their own spiritual and cultural sites on these same lands and work with the Federal Agencies involved maintaining their

traditional sites and obtaining access. The bill does not recognize or address this potentially competing interest, and the DOI through the Bureau of Indian Affairs would like to work with the Sponsor on language to ensure deconfliction of legitimate use of Federal lands by tribes.

We would like to work with the Sponsor on clarifying several definitions included in the bill. For example, we would like to ensure the defined term "Federal Land" does not include Federal Land held in trust for Indian tribes or Pueblos. We would also like to ensure that any Spanish grants that are now part of tribal lands would be excluded from the provisions of the bill. Further, Section 9 defines "spiritual and cultural" site in a manner that may be inconsistent with the National Historic Preservation Act of 1966 (NHPA) interpretation of traditional cultural property. We would like to ensure that this definition is consistent with NHPA. The BLM also notes that currently any active cemetery could be transferred by direct sale or sale under the Recreation and Public Purposes Act, or direct sale under Section 203 of the Federal Land Policy and Management Act.

Conclusion

Thank you for the opportunity to provide a Statement for the Record. The BLM appreciates the Subcommittee's interest in this important topic in addition to the valuable contributions that the land grant-mercedes have made to the culture and history of New Mexico.