Briefing on Land Grant-Merced History and Current Legislation
New Mexico Land Grant Council – July 2018

Issue: Spanish and Mexican Land Grant-Merced communities in the Southwest have, for more than a century, suffered social and economic hardships as a direct result of the failure of the United States to adequately and justly adjudicate communal land claims required under the Treaty of Guadalupe Hidalgo.

History: From the late 1600s through the 1820s, the Spanish crown granted more than one hundred land grants to communities and individuals to promote the settlement of their northern frontier, the modern day southwest (including New Mexico). These grants included both private tracts that belonged to the grant's settlers and large areas of communal lands that belonged to the community at large. This included pasturelands for grazing of livestock and forested lands to extract fuelwood, building materials and harvest other natural resources vital to the survival of these communities. Upon independence in 1821, the Mexican Republic continued the practice, granting dozens more land grants until the Mexican American War broke out in 1846.
In 1848 the United States and Mexico signed the Treaty of Guadalupe Hidalgo to end the Mexican American War. The Treaty transferred more than half of Mexico's territory to the United States. This change in sovereignty affected approximately 80,000 Mexican citizens, including approximately 60,000 in the New Mexico Territory. Provisions for the protection of property titles recognized by Mexico, including Spanish and Mexican land grants-mercedes, were included in the Treaty and affirmed by the Protocol of Querétaro. Under the Treaty, the United States was obligated to establish a process for adjudicating/ recognizing land titles in the newly ceded territory.

The adjudication of land claims in the New Mexico Territory spanned 50 years, from 1854 to 1904, and was subject to two different processes. The first process was administered by the Office of the Surveyor General of New Mexico from 1854 to 1891 and the second process by the Court of Private Land Claims from 1891 to 1904. Neither process achieved positive results for the majority of the land grant-mercedes in New Mexico. The Surveyor General process was rot with corruption and collusion between federal officials and land speculators. The Court of Private Land Claims was inherently adversarial to land grant-merced claims. When established, the Court's enabling act called for both a narrow interpretation of Spanish and Mexican law and for the appointment of a U.S. Attorney tasked with extinguishing title to as many Spanish and Mexican land claims as possible. As a direct result of the adjudication process land grant-merced communities in New Mexico lost millions of acres of communal lands that were critical to sustaining their agrarian way of life.

For those land grants-mercedes whose claims were confirmed by the United States, a great number of them suffered the loss of their common land almost immediately. This was due to several factors. First, some confirmations resulted in the United States significantly reducing of the amount of lands that were originally granted by Spain of Mexico. This was due to erroneous surveys, mistranslation of boundaries from original documents written in Spanish, and misinterpretations of Spanish and Mexican laws and customs for granting lands for community settlement. Second, as a result of the direct actions of corrupt government officials and unscrupulous attorneys, many land grants were incorrectly confirmed to either the wrong party

(i.e. an individual or third party such as a land and cattle company) or as a tenancy-in-common (a legal property concept that did not exist under Spanish and Mexican law), which allowed for partition suits that forced the sale of the common lands. Third, land grants-mercedes that gained confirmation of even a portion of their lands were susceptible to delinquent tax seizures by state and county governments and sometimes resorted to selling off lands to pay inflated tax assessments. Finally, land grants-mercedes were vulnerable to encroachments and adverse possession, resulting in additional post-confirmation losses.

Decades after the end of the adjudication process, the federal domain continued to grow via land grants. The U.S. Forest Service established forest reserves on former land grant-merced common lands and by the 1920s acquired many of these lands from the same speculators and attorneys that stole these lands from land grants-mercedes during adjudication. When New Deal programs came in the 1930s, field workers found communities starved from the lack of access to resources surrounding their communities. Numerous federal agencies purchased land grants and instituted relief programs that partially restored access to former common lands. As the New Deal ended, relief programs were cut and land grant-merced lands were transferred to the U.S. Forest Service, which gradually reduced stock grazing, wood cutting, and other uses, reneging on the intent of federal purchases and creating the seedbed for radicalism.

The result was a period of militant land grant activism that spanned from the 1960s to the 1970s. Since the 1990s, land grants-mercedes began a new period of grassroots organizing that resulted in the creation of Land Grant Interim Committee of the New Mexico State Legislature and the Treaty Division in the New Mexico Attorney General's office in 2003, recognition as political subdivisions in 2004, the organization of the grassroots New Mexico Land Grant Consejo in 2006, and the creation of the New Mexico Land Grant Council, a state agency, in 2009.

Since 2006 land grant communities and advocates through the support of the New Mexico Land Grant Consejo and later the New Mexico Land Grant Council have been working to develop federal policies aimed at preserving socio-economic and cultural integrity of land grant-merced communities in New Mexico. This work has included: partnering with federal land management agencies on mutually beneficial projects to improve watershed health and reduce the risk of catastrophic wildfire; engaging federal management agencies on the development of land management plans such as the Forest Plan Revisions for the Cibola, Santa Fe, and Carson National Forests and the BLM's Rio Grande del Norte National Monument Management Plan to ensure that land grant-merced interests are being properly represented in those documents; working with the New Mexico Congressional Delegation to develop legislation that will address longstanding injustices, protect land grant-merced cultural practices and provide resources and opportunities for advancing land grant-merced communities. This work has included the introduction of legislation by Senator Tom Udall and Congresswomen Michelle Lujan Grisham to amend the Farm Bill in order to make land grants-mercedes eligible for Conversation Program funding and most recently the introduction of H.R. 6365 by Congressman Steve Pearce and H.R. 6487 by Congressman Ben Ray Lujan.

Background on H.R. 6487 – Land Grant and Acequia Traditional Use Recognition Act – This Act is intended to provide for the recognition of traditional uses, on federally managed lands, by land grant-merced communities and to provide for greater consultation between federal land management agencies and land grant-merced and acequia governing bodies. The Act would require federal land management agencies to issue guidance on how land grant-merced communities can access and use natural resources, for traditional use purposes, on federally managed lands located within their patented and/or historical-traditional use boundaries. Traditional uses include: use of water; religious and cultural use, gathering of herbs, wood and other botanical products; grazing; hunting and fishing; and soil and rock gathering. The Act would also provide land grant-merced governing boards the opportunity to negotiate historical-traditional use boundaries with federal land management agencies in order to identify their traditional use areas located on federally managed lands. This will provide for the management of those areas in a manner that is consistent with the protection traditional uses and their related natural resources. Along those lines the Act would also require federal land management agencies to consult with land grant-merced and acequia governing bodies whenever there are any proposed actions that require a National Environmental Policy Act (NEPA) review, to ensure there are no adverse impacts on traditional uses or associated natural resources.

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115TH CONGRESS
2D SESSION

H. R. 6487

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 24, 2018

Mr. BEN RAY LUJÁN of New Mexico 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 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Land Grant and Acequia Traditional Use Recognition and Consultation Act".

(b) TABLE OF CONTENTS.—

SEC. 2. FINDINGS.

Congress finds the following:

(1) From the 17th to the mid-19th centuries, the Governments of Spain and Mexico made grants of land to individuals, groups, and communities throughout the Southwest United States to promote settlement in frontier lands.

(2) The key land ownership feature for a land grants-merced was common lands, meaning lands that were not individually owned but were considered ''commons'' for use by all local residents to provide the necessary resources to sustain the entire community.

(3) On February 2, 1848, the United States and Mexico ended the Mexican-American war by signing the Treaty of Peace, Friendship, Limits, and Settlement (commonly known as the Treaty of Guadalupe Hidalgo), in which Mexico formally relinquished to the United States claims to over 790,000 square miles of land now constituting all or part of

Arizona, California, Colorado, Nevada, New Mexico, Texas, Utah, and Wyoming.

(4) The Treaty of Guadalupe Hidalgo included provisions under article VIII for the protection of established property rights, including community land grants located in the new territories, and the United States and Mexico further affirmed these protections in the Protocol of Queretaro.

(5) Although the Senate struck article X of the Treaty of Guadalupe Hidalgo as negotiated, the United States clarified in the subsequent Protocol of Queretaro that ''these grants . . . preserve the legal value which they may possess'' and the grantees in the new territories retained their property rights.

(6) As noted by the Government Accountability Office in the 2001 report GAO–01–951, ''The Protocol specified the United States' position that land grant titles would be protected under the treaty and that grantees could have their ownership of land acknowledged before American tribunals.''.

(7) In the second half of the 19th century, the United States enacted various laws establishing processes to review property claims in the new territories, such as the Act of July 22, 1854 (10 Stat. 308; ch. 103), that created the office of Surveyor

General of New Mexico and the Act of March 3, 1891 (26 Stat. 854; ch. 539), that created the Court of Private Land Claims.

(8) The established processes differed from State to State, and a history of problematic surveys and corruption may explain why there was so much acreage lost by community land grants and why so few survived into modern times as self-governing entities administering intact common lands.

(9) Studies have concluded that for land grant communities and community members to survive in the non-cash economies prior to the mid-20th century, it was essential that they have access to the common land resources of their own private inholdings, which provided a complete resource base for successful small-scale family farming and stock-raising activities, upon which the local economy was based.

(10) New Mexico's community land grants, now known as land grant-mercedes, are an important part of the State's culture and history and have been recognized under the Kearny Code of 1846 and subsequent territorial laws of New Mexico and New Mexico State law.

(11) Article 2, section 5 of the constitution of New Mexico states, ''The rights, privileges and immunities, civil, political and religious guaranteed to the people of New Mexico by the Treaty of Guadalupe Hidalgo shall be preserved inviolate'', providing powerful constitutional protection for the rights of the State's land grant communities.

(12) Water delivery systems known as acequias, or community ditches, are a centuries-old system used for water distribution, introduced to New Mexico by the Spanish in the 16th century, to allow for farming to sustain the needs of the community, creating a cultural landscape and way of life centered around local agriculture.

(13) In New Mexico, acequias are governed by a centuries-old form of water governance, known as acequias, that are political subdivisions of the State and are composed of a board of private land owners that are responsible for the upkeep and maintenance of the acequias and for monitoring and administering surface water rights along the acequia.

(14) In New Mexico, acequias have created a cultural landscape and way of life centered around local agriculture, water governance, and a custom of sharing scarce water.

SEC. 3. DEFINITIONS.

In this Act:

(1) COMMUNITY USERS.—The term ''community user'' means—

(A) with respect to a qualified acequia, an individual who is the legal owner of a water right on a qualified acequia; and

(B) with respect to a qualified land-grant merced, an heir as defined by N.M. Stat. § 49–1–1.1.

(2) GOVERNING BODY.—The term ''governing body''—

(A) with respect to a qualified acequia, means the board composed of private land owners (known as commissioners) for such qualified acequia, as provided in N.M. Stat. § 73–2–12 and recognized as a political subdivision of the State under N.M. Stat. § 73–2–28; and

(B) with respect to a qualified land grant-merced, means the board of trustees charged under State law with the control, care, and management of the qualified land grant-merced.

(3) HISTORICAL-TRADITIONAL USE BOUNDARY.—The term ''historical-traditional use boundary'', with respect to a land grant-merced, means

the boundary recognized under the process described in section 10.

(4) PATENT BOUNDARY.—The term ''patent boundary'', with respect to a land grant-merced, means the boundary in the official survey that accompanied the land patent issued by the United States for a land grant-merced claim at the conclusion of the adjudication process required by the Treaty of Guadalupe Hidalgo.

(5) QUALIFIED ACEQUIA.—The term ''qualified acequia'' means a waterway in the State recognized as an acequia or a community ditch under State or Federal law, including the diversions, storage facilities, and easements of such waterway.

(6) QUALIFIED LAND GRANT-MERCED.—The term ''qualified land grant-merced''—

(A) means a community land grant issued under the laws or customs of Spain or Mexico that received a patent from the United States or has been recognized under State law; and

(B) includes land—

(i) with respect to a land grant-merced that has not completed the process under section 10, within the patent boundary of such land grant-merced; and

(ii) with respect to a land grant-merced that has completed the process under section 10, the historical-traditional use boundary of such land grant-merced.

(7) STATE.—The term ''State'' means the State of New Mexico.

(8) SECRETARY CONCERNED.—The term ''Secretary concerned'' means—

(A) if the qualified acequia or qualified land grant-merced concerned is located on land under the administration of the Secretary of Agriculture, or adjacent to such land, the Secretary of Agriculture; or

(B) if the qualified acequia or qualified land grant-merced concerned is located on land under the administration of the Secretary of the Interior, or adjacent to such land, the Secretary of the Interior.

SEC. 4. NOTICE AND COMMENT.

(a) NOTICE AND COMMENT PROCESS.—Not less than 90 days before the Secretary adopts, amends, or revises a management plan for, or before the Secretary conducts an action for which a detailed statement is required under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to be conducted on,

any Federal land that contains any portion of a qualified land grant-merced, or any Federal land that is adjacent to or nearby a qualified land-grant merced, the Secretary concerned shall—

(1) provide written notice and an opportunity for comment to—

(A) the governing body of the qualified land grant-merced using the mailing address and electronic address on file in the database established under subsection (c); and

(B) the relevant State agency thats purpose is to serve as a liaison between land grants-mercedes and the Federal Government;

(2) hold not less than 2 meetings with the governing body of the qualified land grant-merced on the proposed adoption, amendment, or revision of the management plan, or the proposed action, within the immediate vicinity of the qualified land grant-merced; and

(3) not less than 30 days before each public meeting, notify the governing body of the qualified land grant-merced of the date, time, location, and subject matter of such public meeting.

(b) NOTIFICATION OF FINAL PLAN.—Not less than 10 days after the Secretary adopts, amends, or revises a

management plan for any Federal land that contains any portion of a qualified land grant-merced, or any Federal land that is adjacent to any land grant-merced, the Secretary concerned shall—

(1) provide written notice to the governing body of the qualified land grant-merced using the mailing address and electronic address on file in the database established under subsection (c); and

(2) publish notice of availability of the final plan in a local newspaper.

(c) DATABASE OF GOVERNING BODIES.—The Secretary concerned shall maintain and periodically update a database of the mailing address and, if available, electronic address of each governing body of a qualified land grant-merced. The Secretary concerned shall be responsible for verifying the information in the database is correct before providing any notice required by this section.

(d) EVALUATION.—Before the Secretary adopts, amends, or revises a management plan for, or before the Secretary conducts an action for which a detailed statement is required under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to be conducted on any Federal land that contains any portion of a qualified land grant-merced, or any Federal land that is adjacent to or nearby a qualified land-

grant merced, the Secretary concerned shall, in consultation with the governing body of the qualified land grant-merced, evaluate the potential impact of the adoption, amendment, or revision, or the proposed action, on the ability of the relevant community users and governing body of the qualified land grant-merced to carry out the historical-traditional uses described in section 5.

(e) MITIGATION.—If the Secretary determines that a the adoption, amendment, or revision of a management plan, or the proposed action, may result in an adverse impact to a historical-traditional use described in section 5 of relevant community users or governing body of the qualified land grant-merced, the Secretary shall, to the maximum extent practical and consistent with the purposes, policies, and programs of Federal laws and regulations applicable, mitigate such adverse impact.

SEC. 5. GUIDANCE ON PERMIT REQUIREMENTS FOR QUALIFIED LAND GRANT-MERCEDES.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Secretary concerned, in consultation with the governing bodies of a qualified land grant-merced, shall issue written guidance for each of the uses described in paragraphs (1) through (3) of subsection (c) on—

(1) what activities conducted by a community user or governing body of a qualified land grant-merced, or a contractor of such a governing body, on such qualified land grant-merced require the community user or governing body of the qualified land grant-merced to obtain a permit from the Secretary concerned;

(2) what administrative procedures must be followed to obtain such permit;

(3) what fees are required to obtain such permit;

(4) the permissible use of motorized and non-motorized vehicles by community users or the governing body of a qualified land grant-merced on such qualified land grant-merced to carry out each of the uses described in paragraphs (1) through (3) of subsection (c) on such qualified land grant-merced;

(5) permissible use of mechanized equipment by community users or the governing body of a qualified land grant-merced on such qualified land grant-merced to carry out each of the uses described in paragraphs (1) through (3) of subsection (c) on such qualified land grant-merced; and

(6) permissible use of non-native materials by community users or the governing body of a quali-

fied land grant-merced to carry out each of the uses described in paragraphs (1) through (3) of subsection (c) on such qualified land grant-merced.

(b) FEES FOR QUALIFIED LAND GRANT-MERCEDES.—

(1) IN GENERAL.—When determining the fees referred to in subsection (a)(3), the Secretary concerned shall consider the socio-economic conditions of community users and the annual operating budgets of governing bodies of qualified land grant-mercedes.

(2) FEES FOR HISTORICAL-TRADITIONAL USES.—The Secretary concerned shall waive any fee to obtain a permit for a historical-traditional use to be conducted by a community user or governing body of a qualified land grant-merced on such qualified land grant-merced, except that the Secretary is not required under this paragraph to waive a fee to obtain a permit for grazing.

(c) DEFINITIONS.—For the purposes of this section:

(1) HISTORICAL-TRADITIONAL USES.—Historical-traditional uses on a qualified land grant-merced on Federal land are—

(A) use of water;

(B) religious and cultural use;

(C) gathering herbs;

(D) gathering wood products;

(E) gathering flora and botanical products;

(F) grazing, to the extent that grazing has traditionally been carried out on such land;

(G) recreation;

(H) hunting and fishing;

(I) soil and rock gathering; and

(J) any other traditional activity that has sustainable beneficial community uses that support the long-term cultural and socio-economic integrity of the community and that is agreed to in writing by the Secretary concerned and the governing body of the relevant qualified land grant-merced.

(2) ROUTINE MAINTENANCE AND MINOR IMPROVEMENTS.—Routine maintenance and minor improvements on a qualified land grant-merced on Federal land are—

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

(B) maintenance and upkeep of a trail, road, or fence;

(C) maintenance and upkeep of a monument or shrine;

(D) maintenance and upkeep of a community cemetery;

(E) maintenance and upkeep of a livestock well or water tank; and

(F) any other traditional activity that preserves the state of the qualified land grant-merced, as agreed to in writing by the Secretary concerned and the governing body of the qualified land grant-merced.

(3) MAJOR IMPROVEMENTS.—Major improvements on a qualified land grant-merced on Federal land are—

(A) construction or expansion of a community water or wastewater system;

(B) construction or major repair of a livestock well or water tank;

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

(D) installation of a cattle guard;

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

(F) construction or expansion of a cemetery.

SEC. 6. SPECIAL USE PERMITS NOT REQUIRED FOR ROUTINE MAINTENANCE AND MINOR IMPROVEMENTS OF ACEQUIAS.

(a) IN GENERAL.—Special use permits shall not be required for the presence of or use of water from a qualified acequia on Federal land or for routine maintenance and minor improvements conducted by a community user, governing body or employee of a qualified acequia on a qualified acequia on Federal land.

(b) ROUTINE MAINTENANCE AND MINOR IMPROVEMENTS.—For purposes of this section, routine maintenance and minor improvements on a qualified acequia on Federal land are—

(1) cleaning, maintenance, repair, or replacement in kind of infrastructure;

(2) annual ditch cleaning, including removal of silt; and

(3) any other traditional activity that preserves the state of the qualified acequia, as agreed to in writing by the Secretary concerned and the governing body of the qualified acequia.

SEC. 7. NOTIFICATION TO PERMIT APPLICANTS; COMPLIANCE WITH NEPA.

(a) NOTIFICATION TO PERMIT APPLICANTS.—

(1) IN GENERAL.—Not later than 45 days after receiving a request for a permit from a governing

body, the Secretary concerned shall provide a written response to the governing body notifying the governing body that—

(A) the permit has been approved;

(B) the permit has been denied, including a description of why the permit was denied; or

(C) such activity requires an environmental assessment or environmental impact statement, as applicable, before a permit may be issued for the activity.

(b) COMPLIANCE WITH NEPA.—In any case in which an environmental assessment or environmental impact statement is required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for an activity for which a governing body has requested a permit from the Secretary concerned to conduct such activity on a qualified acequia or qualified land grant-merced on Federal land, and for which the Secretary has not denied the permit under subsection (a)(3), the Secretary shall—

(1) estimate the time necessary to complete such environmental assessment or environmental impact statement;

(2) not later than 30 days after receiving the request for a permit from a governing body, notify the governing body of such estimation; and

(3) not later than 30 days after completing all action required under such Act for such activity—

(A) issue such permit to the community user or governing body; or

(B) notify the community user or governing body that the request for a permit has been denied.

(c) FAILURE TO TIME ESTIMATE.—If the Secretary concerned fails to prepare an environmental assessment or environmental impact statement within the respective time period estimated under subsection (b)(1), then the Secretary shall—

(1) notify the governing body in writing of the delay;

(2) notify Congress in writing of the delay;

(3) make a new estimate of the time necessary to complete such environmental assessment or environmental impact statement; and

(4) not later than 30 days after the end of the respective time period estimated under subsection (b)(1) notify the governing body of such new estimation.

(d) COST OF NEPA COMPLIANCE.—In consideration of the socio-economic conditions of community users and the annual operating budgets of governing bodies of qualified acequias and qualified land grant-mercedes, the Secretary concerned may waive any cost-share requirement on the community user or the governing body of a qualified acequia or qualified land grant-merced with respect to the cost of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for an activity to be conducted on a qualified acequia or qualified land grant-merced on Federal land by a community user or governing body of a qualified acequia or qualified land grant-merced for which the Secretary has required such community user or governing body of a qualified acequia or qualified land grant-merced to obtain a permit from the Secretary.

SEC. 8. ASSISTANCE TO GOVERNING BODIES.

Not later than 60 days after a governing body requests in writing assistance from the Secretary concerned to explain or clarify a process of the agency relating to the agency's interaction with the governing body, the Secretary shall provide such assistance in writing to the governing body.

SEC. 9. SPIRITUAL AND CULTURAL SITES.

(a) IDENTIFICATION OF SPIRITUAL AND CULTURAL SITES.—

(1) IDENTIFICATION BEFORE A MANAGEMENT PLAN IS ADOPTED, AMENDED, OR REVISED.—Not less than 1 year before a management plan is adopted, or the first time a management plan is amended or revised after the date of the enactment of this Act, for any Federal land that contains any portion of a qualified land grant-merced, the Secretary concerned shall, in consultation with governing body of such qualified land grant-merced, identify all spiritual and cultural sites located on such Federal land.

(2) IDENTIFICATION BEFORE DISPOSAL.—Not less than 180 days before any Federal land that contains any portion of a qualified land grant-merced is disposed of pursuant to section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712), the Secretary concerned shall, in consultation with governing body of such qualified land grant-merced, identify all spiritual and cultural sites located on such Federal land.

(b) NOTIFICATION REQUIRED.—Before disposing of Federal land that contains any portion of a qualified land grant-merced upon which a spiritual and cultural site is located, and before acquiring any non-Federal land upon

which a spiritual and cultural site is located, the Secretary concerned shall notify the governing body of such qualified land grant-merced.

(c) REVISION OF GUIDANCE.—The Secretary shall revise any guidance applicable to the disposal of such land to encourage conveyances, leases, exchanges, modified competitive sales, or direct sales to the governing body of such qualified land grant-merced, as appropriate and consistent with the purposes, policies, and programs of Federal laws and regulations applicable to these lands.

(d) DEFINITION OF SPIRITUAL AND CULTURAL SITE.—In this section, the term ''spiritual and cultural site'' means a cemetery, pilgrimage site, shrine, or similar site that has a spiritual or cultural significance for the community users of a land grant-merced, as determined by the Secretary, of the relevant land grant-merced.

SEC. 10. PROCESS FOR RECOGNITION OF HISTORICAL-TRADITIONAL USE BOUNDARIES OF QUALIFIED LAND GRANT-MERCEDES.

(a) SUBMISSION OF PROPOSED BOUNDARIES.—During the 5-year period beginning on the date of the enactment of this Act, a governing body of a qualified land grant-merced may submit to the Forest Supervisor or Field Manager, as appropriate, of the Secretary concerned the governing body's interpretation of the historical-tradi-

tional use boundaries using geographical and historical evidence supported by maps and documentation.

(b) ACCEPTABLE SOURCES OF RECORDS.—Acceptable documentation for the purposes of subsection (a) includes records from the following sources:

(1) The National Archives and Records Administration in Washington, DC, Regional Archives and Presidential Libraries.

(2) Archivo General de la Nación (Mexico City), Archivo de la Real Audiencia de La Nueva Galicia (Guadalajara), Archivos Generales de Indias, Simancas y de la Corona de Aragón (Seville), Archivo General de Simancas (Valladolid), Biblioteca Nacional (Madrid), and the national archives of other countries.

(3) The New Mexico State Records Center and Archives, California State Library, and archives and libraries of other States.

(4) The Department of the Interior, the Department of Agriculture, and other Federal agencies.

(5) The University of New Mexico, including the Center for Southwest Research, the Zimmerman Library, the Special Collections at the University of New Mexico Law Library, the Spanish Colonial Research Center, the University of New Mexico Land

Grant Studies Program, Bancroft Library at the University of California, Berkley, and other university archives and special collections.

(6) The primary sources cited in: the Master of Laws (L.L.M.) thesis by J.J. Bowden at Southern Methodist University Law School entitled ''Private land Claims in The Southwest'', the Government Accountability Office Reports GAO–01–951 and GAO–04–59, and the Benavides and Golten Study in the Natural Resources Journal, Vol. 48, Fall 2008.

(7) Office of the Attorney General of the State of New Mexico, the New Mexico Land Grant Council, and other agencies of the State.

(8) State Legislative Records.

(9) Records of courts, counties and municipalities.

(10) Records of members of Congress not included in the National Archives.

(11) Authenticated records of land grant-mercedes, pueblos, tribes, and private entities.

(c) NOTICE OF RECEIPT OF MATERIALS.—Not later than 60 days after receipt of a submission pursuant to subsection (a), the Forest Supervisor, Field Manager, or other similarly situated authority, as appropriate, of the

Secretary concerned shall notify the governing body that the submission was received.

(d) PROCESS FOR DETERMINATION OF HISTORICAL-TRADITIONAL USE BOUNDARIES.—

(1) IN GENERAL.—Not later than 14 months after receipt of a submission pursuant to subsection (a), the Forest Supervisor or Field Manager, or other similarly situated authority, as appropriate, of the Secretary concerned shall—

(A) approve of the historical-traditional use boundaries as proposed by the qualified land grant-merced governing body; or

(B) offer an alternative historical-traditional use boundary using geographical and historical evidence supported by maps and documentation.

(2) ALTERNATIVE HISTORICAL-TRADITIONAL USE BOUNDARY.—If an alternative historical-traditional use boundary is offered by the Forest Supervisor or Field Manager, or other similarly situated authority, as appropriate, of the Secretary concerned under paragraph (1)(B), then the governing body of the qualified land grant-merced shall have 180 days to accept the alternative historical-traditional use boundary.

(3) STEP-BY-STEP NEGOTIATION PROCESS TO DETERMINE HISTORIC-TRADITIONAL USE BOUNDARIES OF A LAND GRANT-MERCED.—If an alternative historical-traditional use boundary is offered by the Forest Supervisor or Field Manager, or other similarly situated authority, as appropriate, of the Secretary concerned under paragraph (1)(B) and the governing body of the qualified land grant-merced does not accept the boundary within the 180-day period described in paragraph (2), then a negotiation process shall take place as follows:

(A) REGIONAL LEVEL.—The governing body of the qualified land grant-merced and the Regional Forester or State Director, or other similarly situated authority, as appropriate, shall—

(i) jointly notify the relevant Forest Supervisor or Field Manager, or other similarly situated authority, as appropriate, of the Secretary concerned that negotiations have been elevated to the regional level; and

(ii) have one year from the date of the expiration of the 180-day period described in paragraph (2) to negotiate an agree-

ment on the historical-traditional use boundary.

(B) DIRECTOR LEVEL.—If an agreement is not reached under subparagraph (A), then the governing body of the qualified land grant-merced and the Chief of the Forest Service or the Director of the Bureau of Land Management, or other similarly situated authority, as appropriate, shall have one additional year to negotiate an agreement on the historical-traditional use boundary.

(C) DEPARTMENTAL LEVEL.—If an agreement is not reached under subparagraph (B), then the governing body of the qualified land grant-merced and the Secretary concerned shall have one additional year to negotiate an agreement on the historical-traditional use boundary.

(4) FAILURE OF NEGOTIATION PROCESS.—If the negotiation process described in paragraph (3) does not result in an agreement between the governing body of the qualified land grant-merced and the Secretary concerned, or, if requested by the governing body of the qualified land-grant merced at any time during the negotiation process described in paragraph (3), then the Secretary concerned shall,

not later than 90 days after the expiration of the time period described in paragraph (3)(C), issue a final decision on the historical-traditional use boundary of the land grant-merced.

(5) FEDERAL COURT.—Any decision made under paragraph (4) shall be appealable to Federal court, and the court shall hear the case de novo. Both parties shall submit to the court evidence supporting such party's interpretation of the historical-traditional use boundaries. The court shall determine the historic-traditional boundary of the land grant-merced that most accurately represents the area of historical and traditional use.

(6) MANAGEMENT OF QUALIFIED LAND GRANT-MERCED.—Management of lands located within the patent boundary of a qualified land grant-merced shall not be affected during the negotiation process under paragraphs (3) or (4) or the appeal process under paragraph (5).

(e) AMENDMENT OF MANAGEMENT PLAN TO REFLECT HISTORICAL-TRADITIONAL USE BOUNDARIES.—Not later than two years after the determination of the historical-traditional use boundaries of a qualified land grant-merced under this section, the Secretary concerned shall—

(1) conduct a land survey of the historical-traditional use boundary of a land grant-merced;

(2) create a map that depicts such historical-traditional use boundary; and

(3) amend the management plans for appropriate lands in accordance with section 4.

(f) TREATMENT OF NEWLY RECONSTITUTED QUALIFIED LAND GRANT-MERCEDES.—If a qualified land grant-merced is established after the date of the enactment of this Act, then the 5-year period described in subparagraph (a) shall begin on the date of such establishment.

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