

TREATY OF GUADALUPE-HIDALGO LAND CLAIMS  
ACT OF 2018

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NOVEMBER 27, 2018.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

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Mr. BISHOP of Utah, from the Committee on Natural Resources,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 6365]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 6365) to establish the Treaty of Guadalupe Hidalgo Land Grant-Merced Claims Commission and other Federal policies for the restoration of land for hardships resulting from the incomplete and inequitable implementation of the Treaty of Guadalupe Hidalgo, to affirm Land Grant-Merced property rights protected by the Treaty of Guadalupe Hidalgo, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Treaty of Guadalupe-Hidalgo Land Claims Act of 2018”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Definitions.
- Sec. 4. Treaty of Guadalupe Hidalgo Land Grant-Merced Claims Commission.
- Sec. 5. Hearings on qualifying petitions.
- Sec. 6. Reports.
- Sec. 7. Federal land disposal authority.
- Sec. 8. Authorization of appropriation.

**SEC. 2. FINDINGS.**

Congress finds the following:

(1) The Western and Southwestern United States have a unique history regarding land acquisition and ownership consequent to the substantial number of Spanish and Mexican land grants-mercedes. These land grants-mercedes were an integral part of the colonization and growth of the region before the United States acquisition under the Treaty of Guadalupe Hidalgo.

(2) Under the laws of Spain and Mexico, land grant-mercedes included thousands of acres of land that was owned and used by the communities, within the land grant-merced boundaries, in common. This included guaranteed right to the use of water, forest, pasture, minerals and other natural resources located on the common lands.

(3) The Treaty of Guadalupe Hidalgo as affirmed by the Protocol of Querétaro protects property rights of land grants-mercedes in the territory ceded by Mexico to the United States of America.

(4) Property rights include land, land title, water rights, natural resource rights, mineral rights, and rights to physical access.

(5) Congress has enacted several major Federal land laws subject to valid existing rights including the Organic Administration Act of 1897 (16 U.S.C. 473 et seq.), the Taylor Grazing Act (43 U.S.C. 315 et seq.), the Multiple Use and Sustained Yield Act of 1960 (16 U.S.C. 528 et seq.), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(6) Various provisions of the Treaty of Guadalupe Hidalgo have not yet been fully implemented in the spirit of the United States Constitution, article VI, section 2.

(7) Serious questions remain regarding the rightful ownership of lands in several western and southwestern States. Certain Federal lands are the focus of such questions.

(8) The Gadsden Purchase incorporated by reference the property protection provisions of the Treaty of Guadalupe Hidalgo.

(9) Land claim commissions, appointed by Congress, have successfully examined disputed land possession claims.

(10) The United States Government has recognized and upheld usufruct rights for other indigenous groups.

(11) Between 1968 and 1981, the Forest Service recognized the uniqueness of the land tenure history in New Mexico and instituted what became known as the Northern New Mexico Policy for the Southwest Region to address the socio-economic and cultural needs of the forest-dependent land grant-merced communities in New Mexico.

(12) The United States General Accounting Office Report to Congressional Requesters, dated June 2004, numbered GAO 04 59, and entitled the "Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico", found the New Mexico land claims confirmation process was inefficient and caused hardships to claimants. Such report provided the following options for congressional consideration in addressing land grant-merced claims:

(A) Consider establishing a commission or other body to reexamine specific Land Grant-Merced claims that were rejected or not confirmed for the full acreage claimed.

(B) Consider transferring Federal land to communities that did not receive all of the acreage originally claimed for their community land grants.

(C) Consider making financial payments to claimants' heirs or other entities for the non-use of land originally claimed but not awarded.

(13) The General Accounting Office also noted that "Congress may disagree with the U.S. Supreme Court's Sandoval 1897 decision and decide that it should be 'legislatively overruled', by addressing the affected land grants in some way or taking other action".

(14) The State of New Mexico's response to such report, dated August 14, 2008, and entitled "Report to the New Mexico Attorney General—A Response to the GAO's 2004 Report 'Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico'", found the following:

(A) The Federal Government had a duty to correctly confirm land grants-mercedes in New Mexico and that duty was understated by the analysis of the General Accounting Office.

(B) Most land grants-mercedes were not confirmed by the Federal Government in the correct type of land ownership pattern, as granted by Spain or Mexico to be held in common by the entire community, but rather the vast majority were confirmed as privately owned by the family of a single

petitioner or as tenancy-in-common. The tenancy-in-common designation was foreign to Spanish and Mexican jurisprudence and left land grants-mercedes subject to partition suits that resulted in the significant loss of common land. These facts were omitted by the General Accounting Office report.

(C) Most postconfirmation land losses were the direct result of the improper nature of the Federal confirmation, and erroneous Federal confirmations could not be remedied in the court system, contrary to the analysis of the General Accounting Office.

(D) Many land grants-mercedes or their common lands were improperly rejected in their entirety, others lost substantial amounts of acreage by improper application of boundary descriptions, and others were foreclosed from being confirmed by earlier adverse rulings.

(E) The Federal Government in a great many cases did not provide constitutionally sufficient notice of its confirmation activities, which contributed directly to many land grants-mercedes being erroneously misconfirmed.

(F) The Federal Government and various Federal agents and officials involved in the confirmation process helped create a climate in which land speculators were able to undermine the adjudication process to dispossess land grants-mercedes of their common lands.

(15) Compared to their original claims, land grants-mercedes suffered enormous loss of land to the Federal Government and others. This loss negatively impacted the economic, environmental, and social well-being of these communities.

(16) The following land grant-merced priority rights were protected by the Treaty of Guadalupe Hidalgo:

(A) Water rights, including all surface, ground, and runoff water within the former common lands that are now under the management of the Federal Government.

(B) Natural resource rights, including gathering of fuelwood, timber, vegetation, vegetation products, rocks, soils, and grazing and watering of livestock that are now under the management of the Federal Government.

(C) Mineral rights, including any and all surface and subsurface minerals located within the existing and former common lands as well as rights to compensation for minerals extracted from former common lands now under management of the Federal Government.

### SEC. 3. DEFINITIONS.

In this Act:

(1) ADJUDICATION PROCESS.—The term “adjudication process”—

(A) means the processes required by treaty by which the United States recognized land claims between 1854 and 1904 in the territories ceded under—

- (i) the Treaty of Guadalupe Hidalgo; and
- (ii) the Gadsden Purchase; and

(B) includes the processes provided for in the 1854 Act establishing the Office of Surveyor-General of New Mexico (10 Stat. 308) and the 1891 Act establishing the Court of Private Land Claims (26 Stat. 854).

(2) CLAIM.—The term “claim” means the declaration of property rights protected by the Treaty of Guadalupe Hidalgo vested in a land grant-merced, including—

- (A) land, land title, mineral, and natural resource claims; and
- (B) water rights.

(3) CLAIMANT.—The term “claimant” means a land grant-merced as represented by its Governing body or an agent thereof.

(4) FEDERAL LAND OR FEDERAL LANDS.—The terms “Federal land” or “Federal lands” means any land—

- (A) located in the State of New Mexico; and
- (B) administered by the Secretary of Agriculture through the Chief of the U.S. Forest Service or the Secretary of the Interior through the Director of the Bureau of Land Management.

(5) GADSDEN PURCHASE.—The term “Gadsden Purchase” means the Treaty of Boundary, Cession of Territory, Transit of Isthmus of Tehuantepec.

(6) GOVERNING BODY.—The term “Governing body” means the governing body, as recognized by State law, of a land grant-merced.

(7) LAND GRANT-MERCED.—The term “land grant-merced” means—

- (A) a community land grant identified in tables 1 and 2 of the General Accounting Office Report #GAO 01 951; or

(B) a community, village, town, or settlement, the land of which was granted by the Government of Spain or by the Government of Mexico, in accordance with the laws, usages, and customs of Spain or Mexico between 1689 and 1854, and is within the boundaries of the State of New Mexico, to—

- (i) the community, village, town, or pueblo; or
- (ii) a person for the purpose of founding or establishing a community, village, town, or settlement.

(8) **QUALIFYING PETITION.**—The term “qualifying petition” means a petition submitted under section 5.

(9) **SECRETARY CONCERNED.**—The term “Secretary concerned” means the Secretary that administers the relevant Federal land.

(10) **TREATY OF GUADALUPE HIDALGO.**—The term “Treaty of Guadalupe Hidalgo” means the Treaty of Peace, Friendship, Limits, and Settlement between the United States and the Republic of Mexico, effective February 2, 1848.

**SEC. 4. TREATY OF GUADALUPE HIDALGO LAND GRANT-MERCED CLAIMS COMMISSION.**

(a) **ESTABLISHMENT.**—There is hereby established a commission to be known as the Treaty of Guadalupe Hidalgo Land Grant-Merced Claims Commission (in this Act referred to as the “Commission”).

(b) **DUTIES.**—The duties of the Commission shall be to—

- (1) conduct a hearing on each qualifying petition and formulate a recommendation on restitution, as described in section 5(c); and
- (2) submit to Congress the reports required under section 6.

(c) **MEMBERSHIP.**—

(1) **NUMBER AND APPOINTMENT.**—The Commission shall be composed of 9 members, appointed by the President of the United States, of which—

(A) 1 member shall be appointed in consultation with the Secretary of the Interior;

(B) 1 member shall be appointed in consultation with the Secretary of Agriculture;

(C) 1 member shall be appointed who has a background in Spanish colonial and Mexican legal history as it applies to the Southwestern United States;

(D) 1 member shall be appointed who has a background in Spanish colonial, Mexican, and United States history of the Southwestern United States;

(E) 1 member shall be appointed who has a background in international laws pertaining to succession of States and treaties as they relate to property rights, land tenure, and usufruct rights;

(F) 1 member shall be appointed who has a background in past and present socioeconomic conditions of the Southwestern United States;

(G) 1 member shall be appointed who has a background in cultural geography; and

(H) 2 members shall be members of the governing body of a land grant-merced.

(2) **TERMS.**—Each member shall be appointed for the life of the Commission.

(3) **VACANCIES.**—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(4) **RATE OF PAY.**—To the extent or in the amounts provided in advance in appropriation Acts, Members shall each be entitled to receive daily compensation not to exceed the rate of basic pay for level V of the Executive Schedule for each day, including travel days, during which they are engaged in the performance of duties vested in the Commission.

(5) **PREPARATION BEFORE HEARINGS.**—Before the start of the first hearing under section 5, each member of the Commission shall prepare for such hearing by becoming familiar with the history of land grant-merced claims in the United States Southwest. This preparation may include—

(A) the purchase, by the Commission, of pertinent literature on the subject for each Commission member to review; and

(B) requests by the Commission for training and presentations on the subject from appropriate Federal or State agencies, institutions of higher education, and private organizations.

(d) **POWERS OF COMMISSION.**—

(1) **HEARINGS AND SESSIONS.**—The Commission shall, for the purpose of carrying out this Act, hold hearings, sit, and act at times and at a location in the State where the petitioning land grant-merced is located, take testimony, and receive evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.

(2) **POWERS OF MEMBERS AND AGENTS.**—Any member or agent of the Commission may, if authorized by the Commission, take any action that the Commission is authorized to take by this Act.

(3) **GIFTS, BEQUESTS, AND DEVICES.**—The Commission may accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of aiding or facilitating the work of the Commission.

(4) **MAIL.**—The Commission may use the United States mail in the same manner and under the same conditions as other departments and agencies of the United States.

(5) **AUTHORITY TO HIRE STAFF.**—The Commission may hire or contract staff necessary for the Commission to carry out its responsibilities under this Act.

(6) **ADMINISTRATIVE SUPPORT SERVICES.**—Upon the request of the Commission, the Administrator of General Services, Secretary of the Interior, and Secretary of Agriculture shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this Act.

(7) **IMMUNITY.**—The Commission is an agency of the United States for the purposes of part V of title 18, United States Code.

(8) **SUBPOENA POWER.**—

(A) **IN GENERAL.**—The Commission may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence relating to any qualifying petition.

(B) **FAILURE TO OBEY A SUBPOENA.**—If a person refuses to obey a subpoena issued under subparagraph (A), the Commission may apply to a United States district court for an order requiring that person to appear before the Commission to give testimony, produce evidence, or both, relating to any qualifying petition. The application may be made within the judicial district where the hearing is conducted or where that person is found, resides, or transacts business. Any failure to obey the order of the court may be punished by the court as civil contempt.

(C) **SERVICE OF SUBPOENAS.**—The subpoenas of the Commission shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(D) **SERVICE OF PROCESS.**—All process of any court to which application is made under subparagraph (B) may be served in the judicial district in which the person required to be served resides or may be found.

(e) **TERMINATION.**—The Commission shall terminate not later than 180 days after the Commission submits the report required under section 6(b).

(f) **ASSISTANCE FOR COMMISSION.**—

(1) **FEDERAL AGENCY ASSISTANCE TO COMMISSION.**—At the request of the Commission, relevant Federal agencies shall make available personnel, equipment, and facilities to assist the Commission in performing its activities under this Act.

(2) **STATE AGENCY ASSISTANCE TO COMMISSION.**—The Commission may accept assistance from relevant State agencies and institutions of higher education in performing its activities under this Act.

## **SEC. 5. HEARINGS ON QUALIFYING PETITIONS.**

(a) **QUALIFYING PETITION HEARING.**—

(1) **IN GENERAL.**—The Commission shall conduct a hearing on each qualifying petition, as described in subsection (b), to formulate a recommendation on restitution to the claimant, of the possible restitutions described in subsection (c).

(2) **DESIGNATION OF LOCATION.**—The Commission shall designate one or more locations in the claimant's State in which to hold such hearing.

(3) **RIGHT TO TESTIFY.**—All persons having an interest in the land involved in a qualifying petition shall have the right, upon notice, to be present and testify before the Commission during such hearing.

(4) **HEARING PROCESS.**—As part of such hearing, the Commission shall—

(A) review each qualifying petition and receive testimony to examine—

(i) the impact to the land grant-merced and its associated communities resulting from the failure of the United States to properly recognize, during the adjudication process, a land grant-merced boundary, as it existed in 1854;

(ii) the impact to the land grant-merced and its associated communities resulting from the failure of the United States to act on a land grant-merced claim made during the adjudication process;

(iii) the impact to the land grant-merced and its associated communities resulting from the rejection of a land grant-merced claim made during the adjudication process;

(iv) the impact to the land grant-merced and its associated communities resulting from the incorrect confirmation by the United States of a Land Grant-Merced as a tenancy-in-common;

(v) the impact to the land grant-merced and its associated communities resulting from the incorrect confirmation by the United States of the land grant-merced as a private land grant to an individual;

(vi) the impact to the land grant-merced and its associated communities resulting from the United States incorrectly issuing a patent for the land grant-merced to the wrong party;

(vii) the impact of prior adjudication decisions made by the United States on the submittal of subsequent land claim petitions with respect to the land grant-merced;

(viii) the impact to the land grant-merced and its associated communities resulting from the failure of the United States to provide adequate due process to land grant-merced during the adjudication process;

(ix) the impact to the land grant-merced and its associated communities resulting from the failure of the United States to provide adequate representation during the adjudication process, as required by law, for certain protected populations located on the land grant-merced; and

(x) the impact to the land grant-merced and its associated communities resulting from the misconduct or direct conflict of interest of United States officials during the adjudication process;

(B) review existing Federal land use policies governing land identified in the qualifying petition;

(C) identify and report all private and public leases on land identified in the qualifying petition, including lease type, term, and owner;

(D) determine the value of revenues generated and resources removed from land identified in the qualifying petition, through sale, lease, permit, and all other means granted to any person not associated with the claimant, during the period it was taken out of control of the claimant until the time of such hearing; and

(E) review and examine existing laws, memorandums of understanding, agreements, and easements relating to the management and use of land identified in the qualifying petition.

(5) LEGAL STANDARDS.—When evaluating qualifying petitions, the Commission shall apply international treaty law and laws pertaining to the succession of States. The Commission shall also evaluate qualifying petitions based on Spanish and Mexican civil and customary law, principles of equity, and customs and usages in effect in what is now the Southwestern United States, from 1692 up to the ratification of the Gadsden Purchase in 1854.

(b) ELEMENTS OF QUALIFYING PETITION.—For purposes of this Act, a qualifying petition is one that—

(1) is received by the Commission not later than the date that is 5 years after the date of the enactment of this Act;

(2) is made pursuant to an official resolution adopted by the claimant; and

(3) includes the following information:

(A) The name and address of the claimant and a name, address, telephone number, and if available, email address of the point of contact for the claimant.

(B) Documentation showing the claimed boundaries of the relevant land grant-merced, including a legal survey or, if a survey is not readily available, a sketch map or geographic information system rendering thereof.

(C) A summary of the claims being made and the requested restitution for each claim.

(c) POSSIBLE RESTITUTIONS.—The Commission may, under subsection (a), recommend as restitution that the Secretary concerned—

(1) convey Federal land to the claimant;

(2) grant the claimant stewardship rights to all or part of Federal land;

(3) grant the claimant priority access and use rights to all or part of Federal lands for—

(A) harvesting of natural resources, such as fuelwood, timber, minerals, rock, soils, vegetation, and vegetation products;

(B) grazing and watering of livestock; or

(C) hunting and fishing;

(4) grant the claimant priority rights to leases, special use permits, and easements on Federal land, which may include placement of land grant-merced infrastructure and community cemeteries;

(5) grant the claimant priority rights to acquire Federal lands that may become available for disposal; and

(6) grant the claimant priority rights to obtain new, unused, or unrenewed grazing allotments on Federal lands.

(d) **PROTECTION OF NON-FEDERAL PROPERTY.**—The Commission may not make any recommendation that affects the ownership, title, or rights of owners of any non-Federal lands covered by the qualifying petition.

(e) **PROTECTION OF EXISTING LEASES.**—The Commission may not make any recommendation that affects any lease, permit, right-of-way, or any other valid existing rights held by a person on such land as such lease, permit, or right-of-way existed on the day before the date of the transfer.

**SEC. 6. REPORTS.**

(a) **INDIVIDUAL REPORTS.**—Not later than 90 days after the date that the Commission concludes a hearing under section 5 for a qualifying petition, the Commission shall submit a report to Secretary concerned and the claimant that includes the Commission's recommendations and findings with respect to that petition.

(b) **REPORT TO CONGRESS.**—Not later than 10 years after the date of the enactment of this Act, the Commission shall submit a report to Congress that details, with respect to each qualifying petition—

(1) a summary of the claims in such qualifying petition;

(2) the Commission's recommended restitution with respect to each claim and reasons thereof; and

(3) the Secretary that administers the land identified in the qualifying petition.

**SEC. 7. FEDERAL LAND DISPOSAL AUTHORITY.**

(a) **IN GENERAL.**—The Secretary concerned may transfer land to the claimant or grant the claimant any rights as is recommended by the Commission in the report required to be issued under section 6(a).

(b) **COST.**—The Secretary concerned shall pay any costs associated with a land transfer under subsection (a).

**SEC. 8. PROTECTION OF ACEQUIAS.**

(a) **IN GENERAL.**—The rights of any acequia located on Federal land on the date of the enactment of this Act shall not be impaired as a result of the enactment of this Act, including the right to use of water by valid water right owners and access to the acequia for necessary maintenance and improvements to the acequia easement and infrastructure.

(b) **MANAGEMENT OF ACEQUIAS.**—Each acequia located on Federal land on the date of the enactment of this Act shall be managed and controlled by the governing body of such acequia in accordance with N.M. Stat. §73 2 12 or C.R.S. §7 42 101.5

(c) **DEFINITION.**—In this section the term “acequia” means a waterway recognized as an acequia or a community ditch under New Mexico State law, including the diversions, storage facilities, and easements of such waterway.

**SEC. 9. AUTHORIZATION OF APPROPRIATION.**

There is authorized \$1,000,000 for each of the fiscal years 2019 to 2028 for the purpose of carrying out the activities of the Commission.

**PURPOSE OF THE BILL**

The purpose of H.R. 6365 is to establish the Treaty of Guadalupe Hidalgo Land Grant-Merced Claims Commission and other Federal policies for the restoration of land for hardships resulting from the incomplete and inequitable implementation of the Treaty of Guadalupe Hidalgo and to affirm Land Grant-Merced property rights protected by the Treaty of Guadalupe Hidalgo.

**BACKGROUND AND NEED FOR LEGISLATION**

From the late 17th to mid-19th centuries, Spanish and later Mexican governments made hundreds of land grants to individuals

and communities in what is now the southwestern United States.<sup>1</sup> In New Mexico, grants were made to encourage settlement, reward patrons of the Spanish government, and to create a buffer zone between Indian tribes and the more populated regions of its northern frontier.<sup>2</sup> Meanwhile, increased tensions between the United States and Mexico over the newly-independent State of Texas and disputed lands culminated in the Mexican-American War of 1846.<sup>3</sup> After almost two years of battling, the United States and Mexico signed the Treaty of Guadalupe Hidalgo in 1848, officially ending the war. The Treaty ceded from Mexico to the United States approximately one-half million acres of land in present-day Nevada, Utah, Arizona, New Mexico, Colorado, and Wyoming. The Treaty also required the United States to honor the land conveyances and property rights in its new territory.<sup>4</sup>

To validate these land claims the United States government established the Office of the Surveyor General in 1854. The mission of this office was to determine “the origin, nature, character, and extent to all claims to lands under the laws, usages, and customs of Spain and Mexico.”<sup>5</sup> The adjudication process used by the Surveyor General was not defensible, however, so in 1891 Congress established the Court of Private Land Claims to adjudicate land claims in New Mexico under more stringent guidelines. This body adjudicated claims through 1904.<sup>6</sup> Throughout the entire land grant adjudication process, 154 claims were filed on 9.38 million acres, with 105 claims confirmed on 5.96 million acres.<sup>7</sup> The 3.42 million acres not confirmed for land grantees became part of the public domain, which has been a point of consternation for many land grant heirs for more than a century.<sup>8</sup>

H.R. 6365 would provide an opportunity for these land grantees to have their claims reviewed. This bill would establish a Commission to review each claim and prepare a report to the Secretaries of Agriculture and the Interior that outlines findings and suggested restitution. This restitution can include special access to the lands in question or wholesale transfer. Any recommended restitution would affect only federal land, not private or State land. Further, valid existing rights for leases, permits and rights-of-way would not be affected. Relevant land management agencies, through their respective Secretaries, may execute the recommended restitution or Congress could pass legislation to do so. This bill would implement recommendations made by the Government Accountability Office in 2004.<sup>9</sup>

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<sup>1</sup> Government Accountability Office, GAO-04-59, *Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico* (2004).

<sup>2</sup> *Ibid.*

<sup>3</sup> Department of State Office of the Historian, *The Annexation of Texas, the Mexican-American War, and the Treaty of Guadalupe-Hidalgo, 1845-1848* (<https://history.state.gov/milestones/1830-1860/texas-annexation>).

<sup>4</sup> Treaty of Guadalupe Hidalgo, 9 Stat 922.

<sup>5</sup> 10 Stat. at 309.

<sup>6</sup> Government Accountability Office, GAO-04-59, *Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico* (2004).

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title; Table of Contents*

This section provides a short title for the Act, the Treaty of Guadalupe-Hidalgo Land Claims Act of 2018, as well as a table of contents.

*Section 2. Findings*

This section provides Congressional findings for the Act.

*Section 3. Definitions*

This section defines terms used in the Act.

*Section 4. Treaty of Guadalupe Hidalgo Land Grant-Merced Claims Commission*

This section establishes the Treaty of Guadalupe Hidalgo Land Grant-Merced Claims Commission to conduct hearings on each qualifying petition and formulate a recommendation on restitution to submit to Congress. It requires that the Commission will be comprised of nine members appointed by the President who have experience in Spanish colonial history, Southwestern history, international laws pertaining to treaties, cultural geography, and land grants. It further requires that each member serves for the life of the Commission, and vacancies will be handled in the same manner as the appointment was made. It requires Commission members to study relevant history and provides that they shall receive compensation, subject to appropriations for that purpose.

This section also sets forth Commission powers to hold hearings, accept gifts of services or property, use the U.S. mail as other federal agencies do, hire staff, issue subpoenas, and receive support from State and federal agencies. It requires that the Commission terminate 180 days after the final report is submitted.

*Section 5. Hearings on qualifying petitions*

This section establishes the Commission's hearing process. Each petition shall receive a hearing in the claimant's State. It allows all persons having an interest in the land to testify. Upon receiving a qualifying petition, the Commission shall review many aspects of the land grant-merced (Spanish or Mexican land grants), including the impacts as a result of it not being recognized in 1854; existing federal land use policies on the land in question; all private and public leases involved; the value of the revenues generated from the land identified over time; and existing laws relating to the management of land at question. The Commission shall also apply appropriate international treaty law when evaluating the petitions.

This section also delineates the elements of a qualifying petition. First, a petition must be received within five years after the bill's enactment. Second, it must be made pursuant to an official resolution adopted by the claimant. Third, it must include contact information, documentation on the boundaries, and the summary of claims being presented.

This section also sets the criteria for possible restitution. The Commission may make the following recommendations: 1) convey the land; 2) grant the claimant stewardship rights; 3) grant the claimant priority access and use rights; 4) grant the claimant pri-

ority rights to leases, permits, and easements; 5) grant the claimant priority rights to acquire lands; or 6) grant the claimant priority rights to obtain new, unused, or unrenewed grazing allotments. It also adds two provisions that protect non-federal land and existing leases, permits, and rights-of-way.

*Section 6. Reports*

This section requires that, within 90 days of a hearing, the Commission must complete and submit a report to the Secretary concerned. Ten years after the bill is enacted, the Commission must submit a report to Congress that details the claims, the restitution offered, and the Secretary who administers the land.

*Section 7. Federal land disposal authority*

This section provides the Secretary concerned the ability to transfer land if recommended by the Commission.

*Section 8. Protection of acequias*

This section ensures that the rights of any acequia (waterways) on federal land shall not be impaired.

*Section 9. Authorization of appropriations*

This section authorizes appropriations of \$1 million a year for each of Fiscal Years 2019 through 2028 to carry out the activities of the Commission.

COMMITTEE ACTION

H.R. 6365 was introduced on July 13, 2018, by Congressman Stevan Pearce (R–NM). The bill was referred to the Committee on Natural Resources and within the Committee, to the Subcommittee on Federal Lands and the Subcommittee on Water, Power and Oceans. The Federal Lands Subcommittee held a hearing on the bill on September 6, 2018. On September 26, 2018, the Natural Resources Committee met to consider the bill. The Subcommittees were discharged by unanimous consent. Congressman Pearce offered an amendment designated #1; it was adopted by voice vote. Congressman Raúl M. Grijalva (D–AZ) offered an amendment designated 116; it was not adopted by voice vote. No additional amendments were offered, and the bill, as amended, was ordered favorably reported to the House of Representatives by a roll call vote of 19 yeas and 12 nays, as follows:

**Committee on Natural Resources**  
U.S. House of Representatives  
115th Congress

Date: 09.27.18 10:15 a.m.

Recorded Vote #:1

Meeting on / Amendment on: FC Markup Favorably Report HR 6365 (Rep. Stevan Pearce)

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
<b>Mr. Bishop, UT, Chairman</b>	X			<b>Mr. Cook, CA</b>	X		
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. McEachin, VA</i>			
<b>Mr. Young, AK, Chairman Emeritus</b>	X			<b>Mr. Westerman, AR</b>	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. Brown, MD</i>		X	
<b>Mr. Gohmert, TX, Vice Chairman</b>				<b>Mr. Graves, LA</b>			
<i>Ms. Bordallo, Guam</i>		X		<i>Mr. Clay, MO</i>		X	
<b>Mr. Lamborn, CO</b>	X			<b>Mr. Hice, GA</b>	X		
<i>Mr. Costa, CA</i>		X		<i>Mr. Gomez, CA</i>			
<b>Mr. Wittman, VA</b>	X			<b>Mrs. Radewagen, AS</b>			
<i>Mr. Sablan, CNMI</i>				<i>Ms. Velázquez, NY</i>			
<b>Mr. McClintock, CA</b>	X			<b>Mr. Webster, FL</b>	X		
<i>Ms. Tsongas, MA</i>		X		<b>Mr. Bergman, MI</b>	X		
<b>Mr. Pearce, NM</b>	X			<b>Ms. Cheney, WY</b>	X		
<i>Mr. Huffman, CA</i>		X		<b>Mr. Johnson, LA</b>			
<b>Mr. Thompson, PA</b>	X			<b>Ms. González-Colón, PR</b>			
<i>Mr. Lowenthal, CA</i>				<b>Mr. Gianforte, MT</b>	X		
<b>Mr. Gosar, AZ</b>	X			<b>Mr. Curtis, UT</b>	X		
<i>Mr. Beyer, VA</i>		X					
<b>Mr. Labrador, ID</b>							
<i>Mr. Gallego, AZ</i>		X					
<b>Mr. Tipton, CO</b>	X						
<i>Ms. Hanabusa, HI</i>		X					
<b>Mr. LaMalfa, CA</b>	X						
<i>Ms. Barragán, CA</i>		X					
<b>Mr. Denham, CA</b>							
<i>Mr. Soto, FL</i>		X		<b>TOTAL:</b>	19	12	

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND  
CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, November 7, 2018.*

Hon. ROB BISHOP,  
*Chairman, Committee on Natural Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6365, the Treaty of Guadalupe-Hidalgo Land Claims Act of 2018.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Janani Shankaran.

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

*H.R. 6365—Treaty of Guadalupe-Hidalgo Land Claims Act of 2018*

Summary: H.R. 6365 would authorize the appropriation of \$1 million annually over the 2019–2028 period to establish a commission to review petitions on the validity of certain land claims in New Mexico. CBO estimates that implementing H.R. 6365 would cost \$5 million over the 2019–2023 period, assuming appropriation of the authorized amounts.

The bill also would authorize the commission to accept and spend donations. Because enacting H.R. 6365 could affect direct spending, pay-as-you-go procedures apply. However, CBO estimates that the net effect on direct spending would be negligible. The bill would not affect revenues.

CBO estimates that enacting H.R. 6365 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 6365 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 6365 is shown in the following table. The costs of the legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2019	2020	2021	2022	2023	2019–2023
INCREASES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level .....	1	1	1	1	1	5
Estimated Outlays .....	1	1	1	1	1	5

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted near the start of 2019. Estimated outlays are based on historical spending patterns for similar activities.

H.R. 6365 would establish the Treaty of Guadalupe-Hidalgo Land Grant-Merced Claims Commission, which would be composed of nine members appointed by the President, to review petitions on the validity of certain land claims in New Mexico arising from the Treaty of Guadalupe-Hidalgo. The bill would direct the commission to conduct hearings for each petition and submit recommendations to the Congress on possible forms of restitution for petitioners. (Settling those claims or providing restitution would require separate legislation; any costs would be attributed to the legislation that provided such authority.)

H.R. 6365 would authorize the appropriation of \$1 million annually through 2028 for those activities. Assuming appropriation of the authorized amounts, CBO estimates that implementing the bill would cost \$5 million over the 2019–2023 period, and an additional \$5 million after 2023.

Pay-As-You-Go considerations: H.R. 6365 would authorize the commission to accept and spend donations, which would be recorded in the budget as offsetting receipts, or reductions in direct spending. Because CBO expects that any donations would be spent soon after they are received, we estimate that the net effect on direct spending would be negligible. The bill would not affect revenues.

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 6365 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

Mandates: H.R. 6365 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Janani Shankaran; Mandates: Zachary Byrum.

Estimate reviewed by: Kim P. Cawley, Chief, Natural and Physical Resources Cost Estimates Unit; H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to establish the Treaty of Guadalupe Hidalgo Land Grant-Merced Claims Commission and other Federal policies for the restoration of land for hardships resulting from the incomplete and inequitable implementation of the Treaty of Guadalupe Hidalgo and to affirm Land Grant-Merced property rights protected by the Treaty of Guadalupe Hidalgo.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e),

9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

## DISSENTING VIEWS

Following the implementation of the Treaty of Guadalupe Hidalgo, the United States had a responsibility to honor the land rights of historic communities in New Mexico. As confirmed by an extensive report by the Government Accountability Office (GAO), the confirmation process in the 19th Century was problematic, unfair, and inefficient, leaving many communities with unresolved claims.

Establishing a commission, as recommended by the GAO, may be an appropriate method to review historic claims and grievances. This bill, however, provides the Executive Branch with too much discretion to dispose of federal land without any input from Congress.

Sec. 7, for example, authorizes the Secretary of the Interior and Secretary of Agriculture to dispose of federal land based on the findings of the commission. This unrestricted authority could lead to unintended consequences, such as restricting access to federal land, conveyance of units of the National Park System and congressionally designated wilderness, and the disruption of Native American treaty rights exercised on existing federal land. Ranking Member Grijalva offered an amendment at markup to strike this section from the bill. Unfortunately, it was rejected by the majority.

Decisions about how to implement the findings of the commission, including the disposal of any federal land, should be left up to Congress. If Sec. 7 remains, H.R. 6365 will lead to more injustice and resentment than it will resolve.

RAÚL M. GRIJALVA,  
*Ranking Member, Committee  
on Natural Resources.*

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