"In the Nature of a Quasi-Municipality"

A Brief Overview of the Legal Status of Community Land Grants

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The legal status of community land grants as organizational entities has been a vexing question for generations. In 1958, the New Mexico Supreme Court developed the explanation that a community land grant is "in the nature of a quasi-municipality" without explaining what that phrase means.[1] This outline is intended to provide a brief overview of how the New Mexico Legislature has tried to define the legal status of community land grants and how they are defined for purposes of the interim Land Grant Committee.

Key Concepts

When thinking about the legal status of the Spanish and Mexican land grants in New Mexico, there are three foundational factors to consider:

first, whether the original grant of land was made to an individual or to a community;

second, the federal statutory framework for land settlement at the time of the 1848 Treaty of Peace, Friendship, Limits, and Settlement between the United States of America and the United Mexican States (commonly referred to as the Treaty of Guadalupe Hidalgo); and

third, and most importantly, that within the federal system of the United States, the authority to create a political subdivision of a state resides in the state government, not the federal government.

The Treaty of Guadalupe Hidalgo and American Settlement Law at the Time

The Treaty of Guadalupe Hidalgo, ratified in 1848, obligated the United States to recognize the existing land ownership stemming from grants of land made by the Spanish crown and the Mexican government within territory it gained via the treaty, including New Mexico. Many of these grants had been made to private individuals, but some of them had been made to communities or for the purpose of creating settlements. The communities resulting from the grants intended to create settlements are now commonly known as "community land grants". However, the grants themselves were typically made to a set of named families, or to a particular individual *and that individual's heirs and followers*, so those grants conferred land title to groups of people, and the heirs of those people own the land jointly as tenants-in-common.

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[1] *See Bibo v. Town of Cubero Land Grant*, 65 N.M. 103, 332 P.2d 1020 (S. Ct. 1958).

While land ownership through tenancies-in-common exists in the United States, it is relatively uncommon. Further, at the time that the Treaty of Guadalupe Hidalgo was ratified, the institution of a general-use commons serving as the economic foundation for a given community had died out. The last general-use commons may have been the Boston Common, which was converted from a communal livestock grazing area into a city park with no grazing in 1830. Thus, it seems likely that if the United States Congress contemplated the idea of community ownership of land when it ratified the treaty, it was thinking in terms of how land was being settled pursuant to the federal Town Site Act of 1844, enacted just four years prior (5 Stat. at Large, Chapter 17).

The federal Town Site Act authorized the patenting of land for the purpose of developing a town site and created a legal status for town sites until their conversion into a municipality under state law. Chapter 19, Article 4 NMSA 1978 is the state's statutory counterpart to the federal Town Site Act. This article provides for the registration of town sites within their respective counties and for the dissolution of their status if the development fails to establish a viable community. Importantly, a town site does not become a town (i.e., a municipality under state law) until a petition has been submitted to and approved by its local county commission pursuant to Chapter 3, Article 2 NMSA 1978.

While the federal Town Site Act may have been a background concept when the Treaty of Guadalupe Hidalgo was ratified, the treaty itself is silent regarding the legal status of community land grants as organizations. Article 9 of the treaty merely states that the people living within the ceded territory who chose to become citizens of the United States "shall be maintained and protected in the free enjoyment of their liberty and property".

Congress did establish a process for community land grants to receive federal patents of land. The process required congressional approval but was predicated upon a certification by either the United States Surveyor General or the Court of Private Land Claims. However, the legal status of the communities themselves was left up to the newly established territories that were in the process of applying for statehood. Therefore, one must keep in mind that when Congress established the land patent system, the Territory of New Mexico did not yet have a statutory system in place for the incorporation of municipalities. The result was that several community land grants were awarded federal patents to "the Town of ___ Land Grant". Those

patents recognized the existing communal ownership of the lands but did not confer a legal status for the governing organizations for those lands.

State Statutes

New Mexico has had land grant laws since territorial times. These laws govern community land grants, and the current land grant statutes are compiled in Chapter 49 NMSA 1978. However, different types of land grants have different statutory authorities. Political subdivision status is only granted to qualified land grants-mercedes. "Land grant-merced" is a statutory term specific to New Mexico and defined as:

> "a grant of land made by the government of Spain or by the government of Mexico to a community, town, colony or pueblo or to a person for the purpose of founding or establishing a community, town, colony or pueblo" (Section 49-1-1.1 NMSA 1978).

The qualifications and duties of a land grant-merced are detailed in Chapter 49, Article 1 NMSA 1978 for every land grant-merced except the Chilili Land Grant-Merced, which is governed by Chapter 49, Article 4 NMSA 1978.

Terms Used for the Land Grant Committee

To distinguish among all of the different entities that are known as "land grants", the following terms are used for Land Grant Committee agendas:

"grant" refers to a community that has developed on land originally made to an individual and has never been recognized by the state as a "community land grant". An example of this is the Juan Jose Lobato Grant near El Rito, New Mexico, which has presented to the committee in the past under the designation of "Juan Jose Lobato Grant";

"land grant" may refer to a grant of land to an individual or to a community without political subdivison status. An example of this is the presentation by the Las Vegas Land Grant to the committee in 2024. The Las Vegas Land Grant is governed under Chapter 49, Article 6 NMSA 1978 and is not a political subdivision of the state; and

"land grant-merced" refers to political subdivision land grants and is referred to on agendas with "merced" in their titles.

Recent Developments in New Mexico Land Grant Law

In 2023, the legislature brought four land grant communities under the auspices of Chapter 49, Article 1 NMSA 1978: the Arroyo Hondo Arriba Community Land Grant-Merced;

the Los Vigiles Land Grant-Merced; the Lower Gallinas Land Grant-Merced; and the San Augustin Land Grant-Merced. The lands of these communities had originally been part of either the Arroyo Hondo land grant or the Las Vegas land grant, but the land ownership had been separated from the original grant generations earlier and had been recognized either by a court order or by a deed of land from the board of the original grant.