

**MINUTES
of the
FIFTH MEETING
of the
LAND GRANT COMMITTEE**

**November 21, 2011
Room 322, State Capitol
Santa Fe**

D The fifth meeting of the interim Land Grant Committee was called to order at 9:15 a.m. on November 21, 2011 by Representative Miguel P. Garcia, chair, in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Miguel P. Garcia, Chair
Sen. Richard C. Martinez, Vice Chair
Rep. Eliseo Lee Alcon
Rep. Alonzo Baldonado
Rep. Paul C. Bandy
Rep. Eleanor Chavez
Rep. Jimmie C. Hall
Sen. Gerald Ortiz y Pino
Rep. Debbie A. Rodella
Sen. Sander Rue
Sen. Bernadette M. Sanchez

Absent

Sen. Rod Adair

Advisory Members

Rep. Jim W. Hall

Sen. Carlos R. Cisneros
Rep. Joni Marie Gutierrez
Rep. Ben Lujan
Rep. Patricia A. Lundstrom
Sen. David Ulibarri
Rep. Richard D. Vigil

Approval of Minutes

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

Staff

Peter Kovnat, Staff Attorney, Legislative Council Service (LCS)
Douglas Carver, Staff Attorney, LCS
Abenicio Baldonado, Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts are in the meeting file.

Monday, November 21

Opening Remarks and Introductions

Representative Garcia opened the meeting by extending a welcome to the committee, staff and members of the public present. He asked all committee members and staff to introduce themselves.

Land Grant Law: Training New Mexico's Law Students, Lawyers and Judges

Kevin Washburn, dean of the University of New Mexico School of Law (UNMSOL), and Pam Lambert, director, Judicial Education Center (JEC) and interim director of the Institute of Public Law, gave a presentation to the committee on education and training on land grant issues in the New Mexico legal community. Dean Washburn noted that this is his first time appearing before the committee, and although he is new to the law school, he has seen some evidence of the efforts made regarding land grants in the past. He discussed recent successes of the law school, including that it was ranked the tenth most popular law school among those who attended after acceptance; was ranked the seventh best value; and was ranked in the top five law schools for Hispanics. He discussed his varied tasks as dean of the law school and the unique role the law school plays in the state. Dean Washburn said that he understands that land grants are an important part of New Mexico's heritage and a part of the state's legal legacy.

Dean Washburn stated that the UNMSOL has had a wealth of talent in the area of land grant law, including Professor G. Emlen Hall, who now is an emeritus professor, and Professor Laura Gomez, who recently was lured away to the University of California, Los Angeles, as it was able to offer her a greater salary than the UNMSOL could afford. Dean Washburn noted that it is hard to keep good faculty when only relatively low salaries could be paid.

Dean Washburn stated that he had met with Dr. Manuel Garcia y Griego of the University of New Mexico (UNM) Land Grant Studies Program to discuss experts who might be able to teach some courses, because with the departures of Professors Hall and Gomez, the UNMSOL is now thin on talent regarding land grants. Dean Washburn added that the UNMSOL has a good relationship with the Atrisco Heritage Academy, and the hope is that students there decide ultimately to attend the UNMSOL.

Ms. Lambert read from a handout discussing the mission, programs, funding and training areas of the JEC. She stated that the JEC is proud of the intense orientation that it gives the state's magistrate and municipal judges, noting that it works closely with the Administrative Office of the Courts (AOC) and the UNMSOL faculty. She added that the JEC is self-supported and funded through the judicial education fee. She discussed how the annual judicial conclave, a two-day program in June, is the most likely venue for land grant instruction, but that there are a

number of training topics that compete for attention at the conclave. In addition, judges are sent to programs that the JEC does not put on itself. She encouraged the members of the committee to provide suggestions for training topics so she can propose them to the planning committee that organizes training.

There was a discussion between members of the committee and Dean Washburn concerning the amounts that might be required to set up a land grant program at the UNMSOL along the lines of the Indian Law Program. Dean Washburn noted that he could not speak for the university regarding funding, but the clinical component of the Indian Law Program needs approximately \$300,000 in funding, although the funding is presently at under \$200,000.

Ms. Lambert explained that the judicial education fee is a penalty assessed in the courts by statute, intended for judicial education. These fees bring in \$400,000 per fiscal year in the district court and \$800,000 per fiscal year in the municipal courts. She also noted that there is a separate one-week-long magistrate judge training; at the request of the AOC, funds for training for magistrate courts are used to train staff on the Odyssey case management system. Members of the committee asked whether the conclave could be opened to attorneys, at least for any land grant portion. Ms. Lambert explained that the conclaves are held using funds intended for judicial education and they provide a rare and valuable forum for judges to meet without attorneys. Nevertheless, it would be possible for the New Mexico State Bar to hold a continuing legal education session on land grants, and, in addition, there are regional seminars that include judges, staff and attorneys that might provide a suitable forum.

In response to questions from members of the committee, Dean Washburn noted that approximately 90 percent of UNMSOL graduates stay in New Mexico. He also stated that while he does not know how many total cases statewide involve land grants, he does not think that the number is particularly large, and he thinks that they probably tend to be in particular areas. Ms. Lambert added that she had yet to have a judge request that land grants be covered as a topic in a judicial conclave, but said that she would welcome suggestions for presenters who could discuss land grants in the context of the courts.

Motion

Representative Rodella made a motion, seconded by Representative Jimmie C. Hall, for the committee to send a letter to the JEC planning committee for the conclave, suggesting as topics: 1) the recent court decision in Colorado; and 2) the recent litigation concerning the Tecolote Land Grant. The motion passed with all voting members present voting in favor.

Representative Garcia recommended that the Land Grant Council (LGC) form a subcommittee to work with the UNMSOL regarding legal initiatives. He also suggested that the UNMSOL could draw from the members of the land grant communities to find individuals who might be able to replace some of the expertise lost with the retirement of Professor Hall.

Motion

Senator Sanchez made a motion, seconded by Senator Martinez, to fund \$300,000 for a land grant law studies program at the UNMSOL. The motion passed with all voting members present voting in favor.

Status of Negotiations for the Sale of the Marquez Wildlife Area from the State Game Commission to the Cebolleta Land Grant

Jim Lane, director, Department of Game and Fish (DGF), and Jim McClintic, chair, State Game Commission (SGC), gave a presentation to the committee regarding the transfer of the Marquez Wildlife Area to the Cebolleta Land Grant. Mr. McClintic stated that he had only recently been told of the possibility of a transfer of the Marquez to Cebolleta. When it became known that the Marquez might be sold, the SGC received hundreds of emails opposing the transfer. He did not know that former DGF Director Tod Stephenson had agreed to a transaction to sell the Marquez to Cebolleta. Mr. McClintic stated that he had voted against the transaction. He stated that the SGC is not interested at this point in selling the Marquez, but if it decides to sell it, it would of course give the necessary right of first refusal to the Cebolleta Land Grant. The SGC is concerned about state residents losing hunting opportunities.

Director Lane noted that he has found that the communication between his department and the SGC has been lacking. He added that he understands the SGC's position but that he is open to work with Cebolleta as well. Members of the committee asked questions about the miscommunication among Cebolleta, the DGF and the SGC.

Pat Block, assistant director, DGF, stated that there are significant issues with trespass on the Marquez property, which uses significant staff and financial resources. A trade had been discussed for years — if possible, one that would maintain good hunting but require less management. Mr. Block stated that the DGF was careful not to commit the SGC to anything and he did not feel that anyone had been strung along. The DGF is still contemplating a trade and is open to a transaction of some kind in the future. Mr. McClintic added that the Marquez has been owned for 44 years by the DGF. He further added that the vote against the sale by the SGC had been unanimous, but that the commission is not closing the door on some kind of arrangement in the future.

Mr. McClintic noted that he understood that the prior director had made representations to the committee that the DGF wanted to sell the Marquez but, he added, the SGC owns the property, not the DGF. Mr. Lane agreed with members of the committee that it is incomprehensible that a miscommunication of this magnitude had occurred.

Members of the committee expressed their amazement and disappointment that representations had been made to the committee that the DGF was prepared to sell the Marquez to Cebolleta, returning historical property to the land grant under the new right of first refusal statute, only to learn that the SGC was not at all in agreement with the sale. Members of the committee encouraged the DGF and the SGC to continue to work with Cebolleta to see if some kind of arrangement could be made.

Members of the committee discussed grazing issues with Mr. McClintic and Mr. Lane.

Members of the committee and Mr. Lane discussed the costs associated with maintaining the Marquez and the revenue the Marquez brings into the state through the sale of hunting permits.

Federal and State Processes for Getting Tax Credits for Money Contributions and Land Donations to Land Grants

Arturo Archuleta, advisor to the Land Grant Studies Program at the UNM, gave a presentation concerning whether land parcels donated to land grants could be deducted from one's taxes. He noted that under regulations of the Internal Revenue Service, it is possible for deductions to be made to political subdivisions, if the contribution is made solely for public purposes. He also noted that New Mexico taxes are generally based upon the adjusted gross income from one's federal taxes and, thus, a deduction on federal taxes for a donation of land would also be reflected in one's New Mexico taxes. There was discussion between Mr. Archuleta and the members of the committee regarding how a land grant becomes or is considered a political subdivision, and whether the LGC might be able to play a role in deciding the status of individual land grants.

Reconsideration of Senate Bill 176 (2011)

Mr. Archuleta and Juan Sanchez, chair of the LGC, discussed SB 176 from the 2011 regular session that was pocket-vetoed by the governor. Mr. Sanchez noted that the bill would have expanded the powers of the LGC to help land grants with funding. Mr. Archuleta noted that the goal is to make it possible for the LGC to be able to help land grants that are not political subdivisions. Mr. Archuleta and Mr. Sanchez answered questions from the members of the committee regarding whether it is best to have the council determine whether a land grant is eligible to be a political subdivision, or whether the council should just determine whether a given land grant is merely in compliance with the requirements to become a political subdivision. Mr. Archuleta and Mr. Sanchez both indicated that the council does not want the power to determine which land grants should become political subdivisions.

Upon a motion by Senator Martinez, seconded by Senator Sanchez, the committee voted without objection to endorse a new version of SB-176 (2011), a bill to allow the LGC to use private and federal funds to assist community land grants that are not political subdivisions and clarifying the council's authority to determine the status of community land grants, with changes to be made to Paragraph (8) of Subsection C of Section 3 of the bill draft to reflect that the LGC would only decide whether a land grant is in compliance with the requirements to become a political subdivision (file no. 187923.2).

Developing Federal Legislation Giving Land Grants Right of First Refusal on Disposition or Sale of All Federal Lands That Were Once Common Lands and Fall Within the Boundaries of the Original Patent

Jennifer Catechis, district director, office of Congressman Ben Lujan, read a letter from the congressman that discussed a concept paper on possible federal legislation supporting

traditional use of land grants and acequias being incorporated into the resource management plans for the United States Forest Service (USFS) and the Bureau of Land Management (BLM). She informed the committee that she was not there to testify before it, merely to read the congressman's letter. Pablo Sedillo from the office of Senator Jeff Bingaman, Anna Rael Delay from the office of Senator Tom Udall and Antonio Sandoval from the office of Congressman Martin Heinrich informed the committee that they were attending the meeting to listen but were not allowed to testify. Members of the committee stressed to the congressional staff in attendance the importance of the state's congressional delegation working on legislation to help to rectify land use disputes between land grants and federal landholders, particularly the USFS and the BLM. There was discussion regarding the concept paper. The congressional staff were informed that they have a standing invitation, and are encouraged, to attend every meeting of the Land Grant Committee.

Reconsideration of HB 82 (2011)

Joe Herrera, chair of the Tecolote Land Grant, and Angela Herrera of the Tecolote Land Grant spoke to the committee about the adverse possession lawsuit that the land grant had endured. They noted that the bill to grant the Tecolote Land Grant political subdivision status became caught up in the filibuster at the end of the last regular legislative session and asked the committee to endorse the resubmission of the bill.

Upon a motion by Senator Martinez, seconded by Senator Rue, the committee voted without objection to endorse a new version of HB 82 (2011) to make the Tecolote Land Grant a political subdivision (file no. 187924.2). It was agreed that Representative Garcia would carry the bill.

Reconsideration of SB 154 (2011)

Mary Quintana, deputy secretary of state, and Patricia Herrera, operations director for the Office of the Secretary of State (OSS), spoke to the committee about SB 154 from the 2011 regular session that was pocket-vetoed by the governor and the history of the OSS possession of the New Mexico Community Land Grant Registry. They noted that the secretary of state approves of the transfer of the registry to the LGC. Mr. Sanchez noted the benefits that would ensue from the transfer of the registry to the council. Deputy Secretary Quintana said that her office would help to track the legislation during the session and would communicate with the governor's office about the bill. There was some concern expressed about the possibility of historical documents and maps currently in the possession of the OSS being lost or damaged. Mr. Sanchez indicated that the council would only keep modern records, and anything of historic value would be copied and then transferred to the state archives. Representative Rodella expressed her opposition to the transfer, noting that she feels it would be easier for the public to access the land grant registry's documents if they are kept in the OSS, and that the registry would be easier to maintain if kept in the OSS.

Upon a motion by Senator Martinez, seconded by Senator Rue, the committee voted to endorse a new version of SB 154 (2011), a bill to transfer the New Mexico Community Land Grant Registry from the OSS to the LGC (file no. 187925.2). Representatives Bandy and

Rodella opposed the motion. It was agreed that Senator Martinez would carry the bill.

Consideration of Legislation for Endorsement

Upon a motion by Representative Rodella, seconded by Senator Martinez, the committee voted without objection to endorse a joint memorial asking the USFS to conduct a survey of its boundaries with the Merced del Pueblo de Abiquiu and to return real property to the merced according to the findings of the survey (file no. 187711.2). The memorial would only be introduced if the mapping is not being done already. It was agreed that Representative Rodella would carry the bill.

Upon a motion by Representative Rodella, seconded by Senator Martinez, the committee voted without objection to endorse a joint memorial asking the USFS to conduct a survey of its boundaries with the Nuestra Señora de Rosario (file no. 187983.1) Land Grant and to return real property to the land grant according to the findings of the survey. It was agreed that Senator Cisneros would carry the bill.

Upon a motion by Senator Martinez, seconded by Representative Chavez, the committee voted without objection to endorse a bill granting political subdivision status to the San Antonio del Rio Colorado Land Grant-Merced (file no. 187272.2). It was agreed that Senator Cisneros would carry the bill.

Upon a motion by Representative Garcia, seconded by Senator Martinez, the committee voted without objection to endorse a joint resolution proposing the sale or trade of the Marquez Wildlife Area to the Cebolleta Land Grant (file no. 187868.2). The bill language was approved pending some editorial changes, including the legal description of the real property. It was agreed that Representative Garcia would carry the bill.

The members of the committee discussed, but did not act on, two competing drafts of a bill to provide for a special method of valuation for the lands of those New Mexico land grant-mercedes that are recognized as political subdivisions of the state (file nos. 187723.1 and 187754.2).

Approval of Minutes

Senator Martinez made a motion, seconded by Representative Rodella, to approve the minutes of the fourth meeting of the committee. The motion passed with all voting members present voting in favor.

LGC Updates on the Land Grant Studies Program, the American Bar Association, Loss of Funding (State and Federal) and Outreach

Mr. Sanchez gave a presentation to the members of the committee, providing two reports for their review: 1) "New Mexico Land Grant Council", a summary of the council's activities over the prior year; and 2) "New Mexico Land Grant Council — Budget Request for FY 2013 — \$200,000.00". He discussed some of the highlights of the summary report, including the development of the land grant support fund, progress on the mapping and archival research

project, the provision of a number of workshops and training sessions, the distribution of materials pertaining to land grants and the development of a web site development for the council. He also noted that the council is working with the state congressional delegation on three bills: 1) a set-aside program to be placed in the Farm Bill that would start at \$20 million; 2) a traditional use rights bill with the BLM; and 3) the return of common lands and the camposanto in the Rio Chama Land Grant. He also requested that the committee send a letter to the Legislative Finance Committee (LFC) supporting the requested funding.

Motion

D Representative Garcia made a motion, seconded by Representative Jimmie C. Hall, for a letter to be drafted from the committee to the LFC endorsing the LGC's budget. The motion passed with all voting members present voting in favor.

Senate Joint Memorial 27 (2011)

Andres Valdez of Vecinos Unidos and Assistant Attorney General Steven Vigil made a brief presentation to the members of the committee on SJM 27 from the 2011 regular session. Mr. Vigil noted that the attorney general is not endorsing any specific legislation, but that he endorses the concept behind the bill.

Upon a motion by Representative Rodella, seconded by Senator Ortiz y Pino, the committee voted without objection to endorse a new version of SJM 27 (2011), a joint memorial asking the federal government to negotiate with New Mexico and representatives of displaced land grant heirs for the return of land grants. It was agreed that Senator Linda M. Lopez would carry the bill (file no. 187984.1).

Public Comment

A There was no one in attendance who wished to make a public comment.

Other Matters

Representative Alcon mentioned that former Lieutenant Governor Mondragon had CDs available of his music.

F Mr. Archuleta noted that copies of maps of land grants that are being developed by the Land Grant Studies Program would be provided to the LCS.

Adjournment

There being no other business before it, the committee adjourned at 3:05 p.m.

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