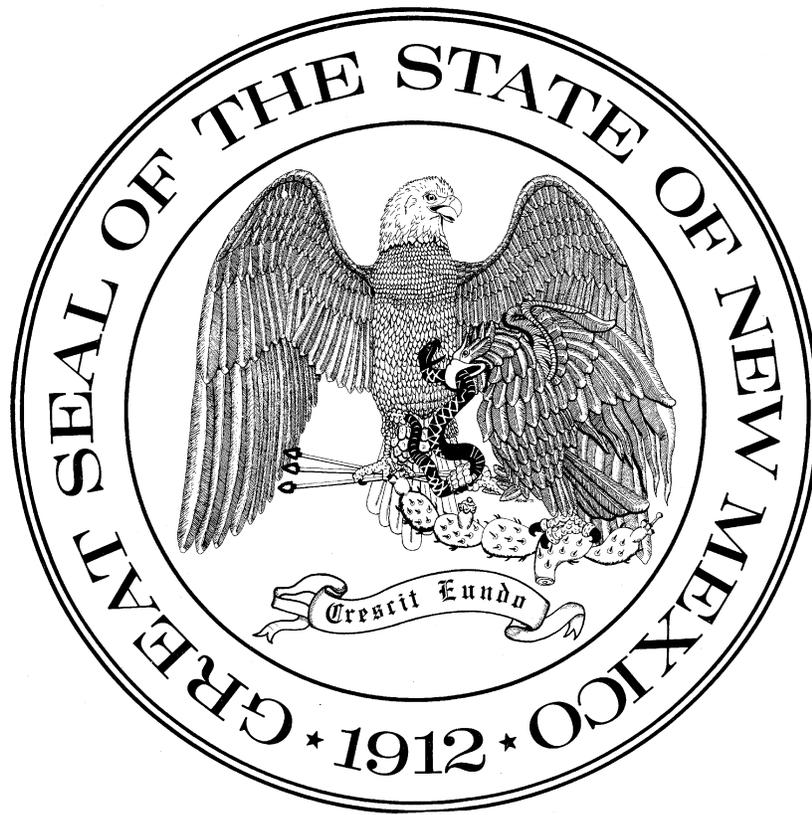


LAND GRANT COMMITTEE
2014 INTERIM FINAL REPORT



New Mexico Legislative Council Service
Santa Fe, New Mexico
January 2015

**Land Grant Committee
2014 Interim Final Report
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SUMMARY

Land Grant Committee Summary of 2014 Interim

The interim legislative Land Grant Committee held five meetings during the 2014 interim. Aside from the first and last meetings at the State Capitol in Santa Fe, committee meetings were hosted by the University of New Mexico School of Law (UNM Law School) and the Tierra Amarilla and San Joaquin del Rio de Chama land grants-mercedes. At the hosting land grant communities, committee members were able to examine in depth the plans and possible methods of assistance for that land grant-merced to strengthen its economy and its organization as a political subdivision of the state. In addition, the committee was privileged to be given tours of these communities. Of long-standing interest to the committee was the tour of the historic cemetery for the San Joaquin del Rio de Chama community. The cemetery resides on land that is now managed by the United States Forest Service (USFS) and had been the focus of a multiyear dispute regarding the boundaries of an adjacent federal wilderness area. The committee was pleased to hear about the resolution of that dispute.

An issue of particular interest for the committee this interim was examining the difficulty that land grant communities experience in starting and completing legislatively approved infrastructure projects. The current capital outlay system requires recipients to initially pay vendors' invoices and then submit a voucher to the Department of Finance and Administration (DFA). The reimbursement process from the DFA can take a few weeks to a few months. Many land grants-mercedes do not have the finances to pay these up-front costs or to wait for reimbursement, and as a result, many approved capital projects are never begun. The committee formed a working group specifically to examine this problem.

A continuing issue that the committee examined is the concept of forest dependency within rural communities. For generations, families in New Mexico have derived and continue to derive heating and cooking fuel, medicines and spices, basic sustenance and livelihoods from forest lands. Forest lands also often contain traditional community cemeteries. Accordingly, access to and use of forest lands are a basic economic and cultural requirement for many communities in New Mexico, and community land grants may be viewed as a model of this dynamic. The committee examined various aspects of this issue throughout the interim, including: discussions on land access at Tierra Amarilla; the examination of plans to redevelop agricultural lands by the San Joaquin del Rio de Chama community; a presentation by an expert on the harvesting of medicines growing in the wild; and a report on the administration of game animals and wildlife management areas presented by staff from the Department of Game and Fish. It was with particular regret that the committee viewed the out-of-state transfer of longtime USFS New Mexico state liaison officer James Melonas, who had proven to be a great asset in working through land access issues between land grant communities and forest managers.

Of note with regard to the ability of forest-dependent communities to protect their connection to surrounding lands is the recent ruling by the New Mexico Supreme Court on traditional cultural properties, commonly referred to as the "Mount Taylor case". The committee had a presentation from attorneys for both the Cebolleta Land Grant-Merced and the Pueblo of

Acoma, which were parties to that case. While the ruling does not give communities adjacent to traditional cultural properties a right to veto land-use decisions on those lands, it does give them the right to consultation. With regard to the Mount Taylor area, the decision allowed the Pueblo of Acoma to raise concerns about the de-watering of the local aquifer and resulted in a change in development plans designed to recapture the water for that aquifer. The ruling represents an important tool for forest-dependent communities.

The committee continued to examine possibilities for organizational strength and governmental accountability within land grants-mercedes. Using the controversies connected to the Tierra Amarilla mineral lease to the Wind River Energy Corporation (Wind River) and the dissolution of the previous Tierra Amarilla Land Grant board as a case example, the committee returned to this issue several times. It heard presentations from State Auditor Hector Balderas and his staff, the new leadership at Tierra Amarilla and staff from the Office of the Attorney General to gain perspective on what had gone wrong in the Wind River transaction, how the situation might be rectified and how to prevent a similar issue in the future.

The committee broadened its efforts concerning the institutional strength of land grants-mercedes during its meeting at the UNM Law School. The committee engaged in discussions with Dean David J. Herring and law school faculty on methods to incorporate land grant legal issues into the school's curriculum. Further, the committee explored how to build greater competency within the existing State Bar of New Mexico regarding the legal rights and challenges of land grant communities.

The committee endorsed the following bills for the 2014 session:

- 1) a bill incorporating land grants-mercedes into the Colonias Infrastructure Act (Senator Carlos R. Cisneros to sponsor);
- 2) a bill allowing land grant-merced funds to be deposited into a credit union (Representative Christine Trujillo to sponsor);
- 3) a bill authorizing land grants-mercedes to do comprehensive land-use planning for the a land grant's common lands (Senator Jacob R. Candelaria to sponsor);
- 4) a bill creating the land grant-merced project fund as a revolving loan fund to "float" capital outlay costs pending reimbursement (Senator Gerald Ortiz y Pino to sponsor);
and
- 5) a bill establishing qualified partitions of land grants-mercedes as autonomous land grants-mercedes in their own right (Representative Tomás E. Salazar to sponsor).

**APPROVED WORK PLAN AND
MEETING SCHEDULE**

**2014 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
LAND GRANT COMMITTEE**

Members

Sen. Jacob R. Candelaria, Chair
Rep. Miguel P. Garcia, Vice Chair
Rep. Eliseo Lee Alcon
Rep. Alonzo Baldonado
Rep. David M. Gallegos
Rep. Jimmie C. Hall

Sen. Daniel A. Ivey-Soto
Sen. Richard C. Martinez
Sen. Gerald Ortiz y Pino
Rep. Debbie A. Rodella
Sen. Sander Rue
Rep. Tomás E. Salazar

Advisory Members

Rep. Phillip M. Archuleta
Sen. Carlos R. Cisneros
Sen. Timothy M. Keller
Rep. Patricia A. Lundstrom

Rep. W. Ken Martinez
Rep. Vickie Perea
Rep. Christine Trujillo

Work Plan

The Land Grant Committee was created by the New Mexico Legislative Council on May 5, 2014. The committee proposes to focus on the following topics:

1. an overview of land grant history, including contemporary history (a continuing item throughout the interim);
2. creation of a working group to review capital outlay and land grants;
3. Tierra Amarilla Land Grant follow-up — investigation into alleged misappropriation of funds and the reorganization of the land grant;
4. updates from and discussion with the United States Forest Service (USFS) on:
 - a. the strikeforce initiative (New Mexico is a pilot state);
 - b. Nuestra Señora del Rosario San Fernando y Santiago Land Grant (Truchas) and Abiquiu Land Grant boundary disputes;
 - c. an update on the memorandum of understanding with the USFS and land grants (master stewardship plans);
 - d. traditional use rights of land grants on USFS lands; and
 - e. use of law enforcement powers by the USFS;

5. an update from the Bureau of Land Management;
6. an update from the Acequia Commission;
7. an update on the New Mexico Supreme Court decision on the Mount Taylor Traditional Cultural Properties designation opinion;
8. conflicts and problems with land grant elections;
9. native plant use and traditional use of forest resources;
10. traditional use rights and state-owned properties;
11. the relationship between the Land Grant Council and the Department of Finance and Administration and New Mexico Finance Authority;
12. continuing dialogue on taxation issues — exploring exemption of taxes for land grants, or intercepting part of an already collected tax, such as mill levy or property taxes;
13. examination of a need for any changes to Chapter 49 NMSA 1978 or other statutes pertaining to land grants;
14. training for boards of trustees of land grants;
15. examination of the feasibility of creating a land grant infrastructure fund or a guaranteed revenue stream for land grants;
16. examination of the situation of subgrants in the land grant community and how they might be assisted;
17. land grants and the New Mexico legal community — how to create wider understanding of the legal issues pertaining to land grants among the state's judges and attorneys;
18. budgetary needs of the Land Grant Council;
19. the role of the Land Grant Council in setting capital outlay priorities for land grants;
20. examination of a need for a Department of Hispanic Affairs; and
21. exploration of the use of the community development block grant program in land grants.

**Land Grant Committee
2014 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
June 11	State Capitol, Santa Fe
July 21-22	Tierra Amarilla Land Grant
September 18-19	San Joaquin del Rio de Chama Land Grant
October 23-24	University of New Mexico (Albuquerque)
November 13-14	State Capitol, Santa Fe

AGENDAS

**TENTATIVE AGENDA
for the
FIRST MEETING
of the
LAND GRANT COMMITTEE**

**June 11, 2014
Room 317, State Capitol**

Wednesday, June 11

- 9:00 a.m. **Call to Order/Introductions**
- 9:15 a.m. (1) [Committee-Endorsed Legislation in 2014 Session — Summary](#)
—Douglas Carver, Staff Attorney, Legislative Council Service (LCS)
- 9:30 a.m. (2) [Update on the State Auditor Investigation of the Tierra Amarilla
Land Grant](#)
—Hector Balderas, State Auditor
- 10:00 a.m. (3) [2014 Interim Work Plan and Meeting Schedule Development](#)
—Douglas Carver, Staff Attorney, LCS
—Juan Sanchez, Chair, Land Grant Council, and President, La Merced del
Pueblo de Chilili
- 11:30 a.m. **Public Comment**
- 12:00 noon **Adjourn**

4:00 p.m. (6) [Nuestra Señora del Rosario, San Fernando y Santiago del Rio de las Truchas Land Grant \(Nuestra Señora Land Grant\) and Its Work with the United States Forest Service](#)

—Roberto Romero, President, Nuestra Señora Land Grant

—Ted Trujillo, Member, Nuestra Señora Land Grant

—Jerry Fuentes, Member, Nuestra Señora Land Grant

4:30 p.m. **Public Comment**

5:00 p.m. **Recess**

Tuesday, July 22

9:30 a.m. **Tour of Tierra Amarilla Land Grant**

12:00 noon **Adjourn**

Revised: September 16, 2014

**TENTATIVE AGENDA
for the
THIRD MEETING
of the
LAND GRANT COMMITTEE**

**September 18-19, 2014
San Joaquin del Rio de Chama Land Grant
Capulin, New Mexico**

Thursday, September 18

- 10:00 a.m. **Call to Order/Introductions**
- 10:15 a.m. (1) **Welcome and Update: The San Joaquin del Rio de Chama Land Grant-Merced Current Challenges and Future Prospects**
—Leonard T. Martinez, President
—Thelma Lovato Chavez, Vice President
—Gerald Chacon, Secretary for Land and Water
- 11:15 a.m. (2) **United States Forest Service (USFS) Status Report:**
(a) Cañon de Chama Cementerio Access
(b) Nuestra Señora Land Grant-Merced Boundary Issues
(c) Review of USFS Liaison Issues and Challenges Statewide
—James Melonas, New Mexico State Liaison, USFS Southwestern Region
- 12:00 noon **Lunch**
- 1:00 p.m. (3) **Tierra Amarilla Land Grant-Merced: The Past Informing the Future**
—David Correia, Associate Professor, Department of American Studies, University of New Mexico
- 2:00 p.m. (4) **Potential for Civil Remedies in Embezzlement Cases Involving Land Grants**
—David Pederson, General Counsel, New Mexico Attorney General's Office
- 3:30 p.m. (5) **Los Vigiles Subgrant: Potential Benefits of Providing Subgrants a Pathway to Full Land Grant-Merced Status Under Chapter 49, Article 1 NMSA 1978**
—Lalo Lovato, President, Los Vigiles Board of Directors
—Larry J. Montañó, Attorney for Los Vigiles
- 4:30 p.m. (6) **Public Comment**

Friday, September 19

9:30 a.m. **Tour San Joaquin del Rio de Chama Land Grant**

12:00 noon **Adjourn**

Revised: October 22, 2014

**TENTATIVE AGENDA
for the
FOURTH MEETING
of the
LAND GRANT COMMITTEE**

**October 23-24, 2014
Forum, University of New Mexico School of Law
Albuquerque, New Mexico**

Thursday, October 23

- 10:00 a.m. **Call to Order/Introductions**
—Senator Jacob R. Candelaria, Chair, Land Grant Committee (LGC)
- 10:15 a.m. (1) **[Welcome to the University of New Mexico \(UNM\) School of Law](#)**
—David J. Herring, Dean, UNM School of Law
- 10:30 a.m. (2) **[Land Grant Notice Requirements Within the Surveying Statute](#)**
—Christopher A. Medina, President-Elect, New Mexico Professional
Surveyors (NMPS)
—Allen C. Grace, Former President, NMPS
—James Rivera, Consultant, NMPS
- 11:30 a.m. (3) **[Update from the Land Grant Council and Land Grant Consejo](#)**
—Juan Sanchez, President, Land Grant Council
—Leonard Martinez, President, Land Grant Consejo
- 12:30 p.m. **Lunch**
- 1:30 p.m. (4) **[Traditional Remedies and Uses of Native Plants](#)**
—Lawrence Sanchez, President, Tomé Land Grant-Merced
- 2:30 p.m. (5) **[Land Grants-Mercedes and Acequias: Building Competence with New Mexico's Inherited Spanish and Mexican Legal Constructs Within the State Bar of New Mexico](#)**
—Max Minzner, Associate Dean for Academic Affairs, UNM School of
Law
—Adrian Oglesby, Director, Utton Transboundary Resources Center,
UNM School of Law
- 4:00 p.m. **Public Comment**

4:30 p.m. **Recess**

Friday, October 24

10:00 a.m. **Call to Order**
—Senator Jacob R. Candelaria, Chair, LGC

10:05 a.m. (6) **Department of Game and Fish (DGF): Considerations Regarding Traditional Use Access and Balancing Elk Populations with Grazing Allotments**
—Daniel E. Brooks, Deputy Director, DGF
—R. J. Kirkpatrick, Assistant Director, DGF

11:00 a.m. (7) **Update of UNM's Land Grant Studies Program**
—Dr. Manuel García y Griego, Director, Land Grant Studies Program,
UNM

11:30 a.m. (8) **Potential Enhanced Collaboration Between the New Mexico Land Grant Council and the University of New Mexico Land Grant Studies Program**
—Juan Sanchez, President, New Mexico Land Grant Council
—Carlos Rey Romero, Associate Vice President, Research and Compliance,
UNM
—Dr. Manuel García y Griego, Director, Land Grant Studies Program,
UNM

12:30 p.m. **Adjourn**

**TENTATIVE AGENDA
for the
FIFTH MEETING
of the
LAND GRANT COMMITTEE**

**November 13, 2014
Room 317, State Capitol
Santa Fe**

Thursday, November 13

- 10:00 a.m. **Call to Order/Introductions**
- 10:15 a.m. (1) **[Prospects for Cultural Properties Designations: Ramifications of the Mount Taylor Decision for Rural Communities](#)**
—Brett J. Olsen, Attorney, Cebolleta Land Grant-Merced
—Ann Berkley Rodgers, Attorney, Pueblo of Acoma
- 11:15 a.m. (2) **[Documentary Proposals: History of the Community Land Grant Movement](#)**
—Federico A. Reade, Ph.D., University of New Mexico
- 11:30 a.m. (3) **[Nuestra Señora del Rosario San Fernando y Santiago \(Nuestra Señora\) Land Grant: Decision to Seek Land Grant-Merced Status Pursuant to Chapter 49, Article 1 NMSA 1978](#)**
—Roberto A. Romero, President, Nuestra Señora Land Grant
—Danny Córdova, Treasurer, Nuestra Señora Land Grant
—John Chàvez, Member, Nuestra Señora Land Grant
- 11:45 a.m. (4) **Review of Proposed Legislation**
- 1:00 p.m. **Adjourn**

MINUTES

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

**June 11, 2014
Room 317, State Capitol
Santa Fe**

The first meeting of the Land Grant Committee (LGC) for the 2014 interim was called to order by Senator Jacob R. Candelaria, chair, at 9:10 a.m., on Wednesday, June 11, 2014, in Room 317 of the State Capitol in Santa Fe.

Present

Sen. Jacob R. Candelaria, Chair
Rep. Miguel P. Garcia, Vice Chair
Rep. Eliseo Lee Alcon
Rep. Alonzo Baldonado
Rep. David M. Gallegos
Rep. Jimmie C. Hall
Sen. Richard C. Martinez
Sen. Gerald Ortiz y Pino
Rep. Debbie A. Rodella
Sen. Sander Rue
Rep. Tomás E. Salazar

Absent

Sen. Daniel A. Ivey-Soto

Advisory Members

Rep. Vickie Perea

Rep. Phillip M. Archuleta
Sen. Carlos R. Cisneros
Sen. Timothy M. Keller
Rep. Patricia A. Lundstrom
Rep. W. Ken Martinez
Rep. Christine Trujillo

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)
Mark Edwards, Staff Attorney, LCS
John L. Mitchell, Law School Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Wednesday, June 11

Introductions

Senator Candelaria called the meeting to order, welcomed the committee members and asked committee members and staff to introduce themselves. He recognized Hector Balderas, state auditor, and expressed a desire to strengthen the relationship between the state and the land grant community.

Committee-Endorsed Legislation During the 2014 Session

To begin, Mr. Carver called the committee's attention to the Interim Committee Reminder memorandum. Next, he gave an overview of the committee-endorsed legislation introduced during the 2014 session and presented the committee with a sheet that shows the disposition of the committee's bills and other land grant-related legislation.

Mr. Carver explained that House Bill 42 was signed, but none of the other endorsed legislation made it through committee. A committee member commented that there is still life left in Senate Bill (SB) 92.

Committee members discussed the Cañones water issue and questioned whether the water project went through or was vetoed. Arturo Archuleta, Land Grant Council, addressed the committee and said that all water projects were vetoed.

A committee member said that it would be helpful if a liaison from the Governor's Office would attend the LGC meetings on a regular basis and proposed writing a formal invitation letter to the Governor's Office.

It was also suggested that the committee should revisit SB 83, the incorporation of land grants into the Colonias Infrastructure Act. Although land grants are not within the mileage limit to officially be considered colonias, both of these types of communities share similar problems, such as lack of infrastructure and running water.

Motion 1:

Senator Martinez made a motion to send a letter to the Governor's Office to formally invite an appropriate representative to attend LGC meetings. Representative Hall seconded the motion, which passed without objection.

Update on the State Auditor Investigation of the Tierra Amarilla Land Grant

Mr. Balderas addressed the committee. He began by informing the committee that the case concerning the Tierra Amarilla Land Grant is still an ongoing criminal investigation and that he would only be able to speak about certain details.

In the summer of 2013, the state auditor launched an official investigation into the \$233,000 that the Tierra Amarilla Land Grant received from Wind River Energy Corp. for

mineral rights (see LGC minutes from July 16-17, 2012 for more detailed background information). The State Auditor's Office requested the land grant's bank records from Wells Fargo. Wells Fargo refused to release the documents and forced the state auditor to get a subpoena. After the documents were released, the State Auditor's Office determined that there was not itemized support for many of the transactions made from the account. The account showed ATM withdrawals, debit purchases, dental work, foreign currency exchange and more. The State Auditor's Office was concerned that multiple individuals may be involved, and it shared the information with the Federal Bureau of Investigation and the Tax Fraud Investigations Division of the Taxation and Revenue Department.

Mr. Balderas reiterated that he cannot discuss monetary amounts. He also mentioned that Mr. Wells is deceased and his estate is in probate. The State Auditor's Office notified the family of the current investigation and possible future litigation.

Mr. Balderas expressed concern with accountability practices. There are two types of accountability practices: back-end and front-end. Back-end accountability is the most frequently used but least effective method in preventing fraud. It occurs when something has already gone wrong. Front-end accountability methods, which are more effective, occur before something goes wrong and include better reporting, increased training and partnerships with local governments. The return on investment for front-end accountability is substantial. For example, a \$50,000 front-end accountability allocation would have created proper oversight and training that could have prevented the fraud.

Creating an umbrella entity consisting of multiple land grants was discussed. This idea would simplify the audit process because the umbrella entity would only require a single, annual audit as opposed to hundreds or thousands of annual land grant audits.

There was concern that the state auditor was forced to subpoena Wells Fargo to get the bank records and that such a process seems unnecessary and affords a great deal of time in which potential fraud may be covered up. Another committee member expressed appreciation for the breadth of the state auditor's investigation. Comments were made that the land grant communities need more training and that the state auditor can provide essential information on community needs.

Mr. Carver explained that the Wind River Energy Corp. employees who were originally involved in the deal are no longer with the company, and the new leadership does not have interest in pursuing any claims against the land grant. A committee member requested that a representative of the oil and gas industry address the committee to discuss Wind River Energy Corp.'s business practices and explain the industry standards in deals like this one.

The committee members discussed the possibility of developing a subcommittee that will identify the appropriate land grant oversight agency.

A committee member asked why the State Auditor's Office only investigated the Wind River Energy Corp. The committee member believes that another company was involved and wondered why this issue was not investigated. Mr. Balderas stated that the scope of the investigation was only on the accounts at Wells Fargo held by Mr. Wells or the land grant. There were no other accounts or companies involved that the State Auditor's Office was aware of.

Mr. Balderas explained that the legislature appropriated \$160,000 for small political subdivision audits. The appropriation is used to assist land grant governments that are struggling with audits. Unfortunately, the State Auditor's Office cannot assist every community and must determine which land grants have the most immediate needs. Currently, land grants may be referred to the State Auditor's Office for a needs assessment.

A committee member opined that there should be criteria and set priorities developed for the money. Another member mentioned that, for accountability reasons, the committee should look at what funding is still outstanding and current before the money is allocated to new projects.

There was concern as to whether or not a civil complaint under the Fraud Against Taxpayers Act (FATA) was made to the Attorney General's Office regarding the \$233 fraud investigation. Under the FATA, the state can recoup up to three times the amount of damages sustained because of a violation. Any member of the public can initiate a FATA complaint on behalf of the state. The money was intended for the people of the land grant and it did not go to them.

2014 Interim Work Plan and Meeting Schedule Development

Mr. Carver, Arturo Archuleta, Juan Sanchez, chair of the Land Grant Council and president of the Merced del Pueblo de Chilili, and Dr. Manuel Garcia y Griego, director, Land Grant Studies Program, University of New Mexico (UNM), discussed the proposed work plan for the 2014 interim. In addition to approving each of the items on the proposed work plan, the committee discussed the following items:

- establishing the New Mexico Department of Hispanic Affairs;
- creating a land grant law clinic similar to the Tribal Law Clinic at the UNM School of Law (SOL);
- implementing a study by Hispanic males and females from New Mexico on the human and civil rights of the Chicano/a population. A speaker from the University of Alabama should be invited to present and discuss Chicano/a legal education. The dean of the UNM SOL should be invited to attend the presentation;
- resurrecting Senate Bill 83, which would incorporate land grants into the Colonias Infrastructure Act;
- getting an update from the Bureau of Land Management on the progress of returning common lands to the land grants. This presentation should be done when the committee meeting is held at a land grant community, not at UNM;

- integrating a working group to address various issues surrounding the funding and administration of capital projects in land grants and to develop legislation prior to the November meeting; and
- exploring a new capital outlay methodology. Currently, the process involves reimbursement of out-of-pocket expenses. Many land grants cannot afford to come out of pocket and do not apply for capital outlay. A study of the City of Albuquerque's method and other best practices should be included.

Motion 2:

Senator Ortiz y Pino made a motion to draft a letter to the dean of the UNM SOL prior to the October committee meeting. The letter will outline the desire for a land grant law clinic and other ideas as to how the SOL can play a role in training the legal community (continuing legal education, collaboration with the State Bar of New Mexico, judicial conclave, etc.). Representative Rodella seconded the motion, which passed without objection.

Motion 3:

Representative Hall made a motion to integrate the funding and administration of a capital projects working group into the work plan. Representative Baldonado seconded the motion, which passed without objection.

Public Comment

Jerry Fuentes discussed issues concerning the Truchas Land Grant. He was concerned about possible fraud and corruption. He requested funds for building new fences that have been destroyed. The loss of the fences has allowed cows to move back and forth between federal land and the land grant.

Motion 4:

Senator Candelaria moved to adopt the work plan and meeting schedule as amended. Representative Garcia seconded the motion, and the motion passed without objection.

Adjournment

There being no further business before the committee, the first meeting of the Land Grant Committee for the 2014 interim adjourned at 11:55 a.m.

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

**July 21-22, 2014
Tierra Amarilla Land Grant**

The second meeting of the Land Grant Committee (LGC) was called to order by Senator Jacob R. Candelaria, chair, on July 21, 2014 at 10:17 a.m. at the Old Tierra Amarilla Elementary School gymnasium in the Tierra Amarilla Land Grant.

Present

Sen. Jacob R. Candelaria, Chair
Rep. Miguel P. Garcia, Vice Chair
Rep. Eliseo Lee Alcon
Rep. Alonzo Baldonado (7/21)
Rep. David M. Gallegos
Rep. Jimmie C. Hall
Sen. Richard C. Martinez
Sen. Gerald Ortiz y Pino
Rep. Debbie A. Rodella
Sen. Sander Rue (7/21)
Rep. Tomás E. Salazar

Absent

Sen. Daniel A. Ivey-Soto

Advisory Members

Sen. Carlos R. Cisneros (7/21)
Rep. Christine Trujillo (7/21)

Rep. Phillip M. Archuleta
Sen. Timothy M. Keller
Rep. Patricia A. Lundstom
Rep. W. Ken Martinez
Rep. Vickie Perea

(Attendance dates are noted for members who were not present for the entire meeting.)

Staff

Mark Edwards, Legislative Council Service (LCS)
Peter Kovnat, LCS
John L. Mitchell, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Monday, July 21

Call to Order

Senator Candelaria welcomed the committee and members of the audience and asked committee members and staff to introduce themselves.

Steve Polaco, Pedro Archuleta, Belarmino Archuleta and Robert Torrez welcomed the committee to the Tierra Amarilla Land Grant. Mr. Torrez provided historical background of the land grant from 1832 to the present.

Reorganization of the Board of the Tierra Amarilla Land Grant

Arturo Archuleta, Land Grant Council, discussed the council's work with the Tierra Amarilla Land Grant community to develop new bylaws. He stated that the council is working with New Mexico Legal Aid to bring legal action to vacate the former board members of the land grant.

David Benavides, New Mexico Legal Aid, addressed five pressing issues for the Tierra Amarilla Land Grant. First, there is not a current functioning board of trustees. Second, there has not been an election since 2006, even though the bylaws require one every year. Third, the current bylaws do not meet state election rules. Fourth, the board of trustees has not held quarterly community meetings, despite a requirement to do so in the bylaws. Fifth, the current bylaws permit decisions to be made without a public meeting, which violates the Open Meetings Act.

Mr. Benavides said that a step-by-step approach would be required to rectify the current situation. The first step is to get a court order to hold an election for a new board of trustees. The second step will be to create a new set of bylaws that are in compliance with state law. Mr. Benavides said that he currently represents five heirs to the Tierra Amarilla Land Grant and will file the suit within a week. If the court issues an order for a new election, the Land Grant Council will act as special master for the election.

Mr. Benavides said he had also filed a probate claim on behalf of the five heirs against the estate of Dennis Wells, the former president of the board of trustees of the Tierra Amarilla Land Grant. The claim is concerning \$233,000 paid by Wind River Energy Corporation to the land grant.

Arturo Archuleta emphasized the importance of electing a new board of trustees. He said that many families still rely on access to the common lands of the land grant for survival. They use the common areas for hunting, fishing and gathering wood. They are currently being charged with trespassing when they are caught in the common areas. Almost 40,000 acres of the original

common land are owned by the state. Arturo Archuleta stated that the land grant needs a recognized governmental body to work on its behalf. In this example, he indicated that at least 200 acres of common land had been identified and that a functioning board could work toward obtaining those acres.

Questions

A committee member asked if the establishment of who is an heir would be difficult. Arturo Archuleta stated that state statute defines what an heir is. The heirs in Tierra Amarilla are lucky because the original 118 settlers were given deeds to their land. These deeds make it easy to identify the heirs. In the end, the legal process will be required to officially recognize the heirs.

The committee discussed the elimination of oil contracts, the ownership of Chama Land and Cattle Company and the current boundaries of the Tierra Amarilla Land Grant.

A committee member requested that LCS staff prepare a history of the committee's legislative initiatives on behalf of land grant communities. The history should include a list of legislation with a short description. The committee member also requested a written copy of the historical background that Mr. Torrez presented.

Update on the State Auditor Investigation of the Tierra Amarilla Land Grant

Carla C. Martinez, deputy state auditor, stated that the presentation would be similar to the presentation given by the state auditor at the June 2014 LGC meeting.

Evan C. Blackstone, chief of staff, Office of the State Auditor, gave a brief reiteration of the issue. In the summer of 2013, the state auditor opened an official investigation into \$233,000 that was paid by the Wind River Energy Corporation for an option on potential mineral interests in Tierra Amarilla. This money was paid to Mr. Wells. The funds are missing and appear to not have been spent on expenditures for the land grant. Mr. Wells has since died. (See the LGC minutes from the June 2014 and the July 2012 LGC meetings for more detailed information on this issue.)

Mr. Blackstone provided a few updates since the June presentation. He stated that the First Judicial District Attorney's Office (DA) has contacted the Office of the State Auditor and acknowledged that an official criminal investigation has started. He also stated that the Office of the State Auditor has notified the DA of a concern over a possible second company that may have made a payment to Mr. Wells.

Motion 1

Senator Candelaria made a motion to request that the attorney general personally attend the next LGC meeting to discuss potential remedies to recover the money. The request should be made to the DA as well. The motion was seconded by Representative Rodella. The motion passed without objection.

Questions

The committee members were concerned about how much of the \$233,000 could conceivably be recovered. Mr. Blackstone stated that he was not allowed to discuss amounts at this time due to legal issues and that his office is not legally allowed to pursue recovery. He said that the DA is exploring the money trail and may file criminal charges. He indicated that it will be up to the DA to determine if Wind River Energy Corporation has any actionable liability for making what may have been an illegal purchase.

A committee member stated that the statute of limitations for civil action exhausted on May 28, 2014. There may still be criminal charges brought, but the odds are that no money will ever be recovered. The situation is a lesson learned for the future.

Another committee member asked if the Attorney General's Office could pursue a Fraud Against Taxpayers Act (FATA) civil action (see June 2014 LGC minutes for a description of the FATA). Mr. Blackstone said that criminal charges are not required for a FATA civil suit, but the amount recoverable may not be enough to pursue that type of action. The committee member stated that if a FATA civil suit were successful, the estate of Mr. Wells would be required to satisfy the judgment. Noting the incarceration penalty for failing to pay a FATA judgment, Mr. Blackstone stated that Mr. Wells might have faced incarceration for his actions, but he is deceased.

Committee members raised the question of whether any other individuals besides Mr. Wells were involved. Mr. Blackstone stated that the Office of the State Auditor believes that others were likely involved but that it is not the proper agency to determine that. Mr. Wells was identified because he was the signer on the land grant's account at Wells Fargo. Mr. Wells was the one who executed the questionable transactions.

Differing Types of Land Grants

Dr. Manuel Garcia y Griego, director, Land Grant Studies Program, University of New Mexico (UNM), gave an overview of the different types of land grants in New Mexico (see handout). He stated that lands grants should be viewed as a continuum and not as separate entities. He acknowledged that the focus of the committee is on community land grants, not private land grants. With that focus in mind, he suggested that common lands are a major issue and must be studied.

Arturo Archuleta opined that there is confusion as to what a land grant is. He stated that government agencies continuously attempt to categorize land grants despite the fact that each one has unique characteristics. He noted that some land grants have formal governance in place while others do not. Some land grants became land grant corporations created by the Territorial Legislature in 1891. Unfortunately, he stated, no records exist of which land grants became corporations.

Arturo Archuleta suggested that the land grant statute be amended to list all recognized land grants in the state. This would help eliminate some of the ambiguity regarding which land grants are political subdivisions.

Questions

A committee member suggested that a comprehensive database be created that lists all of the land grants and provides information on each of them. This type of database would make understanding land grants much easier and would provide an excellent resource to teach children. Arturo Archuleta replied that making a database would be difficult because some land grants may inadvertently be miscategorized. He felt that statutorily defining the entities that are land grants would make establishing a database more effective.

A committee member stated that there are many land grants that have already gone through the political subdivision process. Postulating that these land grants should be able to be placed into a database very easily, the committee member requested that Arturo Archuleta provide the LGC with a list of land grants that have already sought to be political subdivisions.

Arturo Archuleta said that the process of providing clarity on the issue would not be a short-term one. To sort out the land grant entities would first require identifying which land grants want to be political subdivisions. Second, he suggested, the Land Grant Council would need to determine the land grants that are not political subdivisions to know what options are available and to determine the benefits of becoming a political subdivision. Finally, he stated that to be successful, land grants would need additional resources to help navigate the state's system.

The committee requested that Arturo Archuleta bring a concrete proposal for legislation to the final interim committee meeting. The committee suggested that the proposed legislation be limited and prioritized.

Report from the United States Forest Service (USFS)/Nuestra Señora del Rosario, San Fernando y Santiago del Rio Las Truchas (Nuestra Señora) Land Grant and Its Work with the USFS

These two presentations were combined due to their common issues. James Melonas, New Mexico state liaison, USFS Southwest Region, provided the LGC with four updates concerning the USFS.

Mr. Melonas stated that the USFS has been working closely with the Land Grant Council and engaging with the land grant community. As an example, he discussed a proposal that a small building on USFS land just north of Ghost Ranch be converted to a community center for the land grant in the area. He also noted that the Land Grant Council had provided an overview of land grants, including their history, to the U.S. Bureau of Land Management and the USFS staff. As a final matter, he highlighted that the new federal farm bill will extend "good neighbor" authority, allowing the USFS to work directly with states on land grant issues.

Jerry Fuentes, a member of Nuestra Señora Land Grant, discussed the use of global positioning system methods to correctly identify the boundaries of his land grant. He stated that the discussions of fences and cattle issues between the land grant and the USFS have been pointless, with no resolution of the issues. He stated that the correct boundaries must be identified, and the USFS should replace fences that it had taken down.

Robert Romero, president of Nuestra Señora Land Grant, stated a need for the USFS to set an official date and time to meet with members of Nuestra Señora Land Grant to make an agreement on the boundaries and offer a promise to rebuild the fences.

Questions

A committee member asked about the brass caps and the mojonera on the map provided (see handout). It was explained that mojoneras are the original boundary markers of a land grant, typically piles or stacks of rocks. The brass caps are the federal survey markers that officially define recognized patented boundaries of a land grant. Mr. Melonas said that the USFS must recognize the brass caps as the official boundaries and said that the USFS does not have the authority to change that. Mr. Fuentes replied that the brass caps were sometimes placed in the wrong areas because the original Spanish was translated incorrectly.

Committee members then requested that Mr. Melonas set a specific date and time to meet with the members of the land grant. Further, the meeting was requested to be before the end of August so that the USFS could provide an update on the boundary issue at the committee meeting in September. Mr. Melonas agreed to follow up on the request and stated that the agreement time frame will depend on staff availability to survey the boundaries.

Motion 2

Representative Rodella made a motion to send a request to the New Mexico congressional delegation to explore options for providing additional resources to the USFS, specifically for determining boundary issues. Senator Candelaria seconded the motion. The motion passed without objection.

Raising a concern regarding contentious personal interactions between land grant community members and USFS employees, a committee member asked about USFS training programs. Mr. Melonas agreed to get a status update on the training for the LGC.

On a separate issue, Mr. Romero stated that the land grants need help navigating the process of becoming a political subdivision and need legal assistance. A committee member replied that there are multiple resources available to assist land grant communities, such as the Land Grant Council, the Land Grant Studies Program at UNM and the LCS.

Mr. Romero then requested that the committee provide a list of the strengths and weaknesses of becoming a political subdivision, which he could provide to his land grant members. He acknowledged that the land grant itself could create the list but that the LGC has a

stronger legitimacy in the eyes of his land grant's members. In response, a couple of committee members expressed their willingness to come to a Nuestra Señora Land Grant meeting to discuss the benefits of formalizing into a political subdivision.

A committee member suggested that Mr. Romero attend the LGC meeting in October. The meeting will be held at UNM, and the dean of the law school will be invited. It was noted that the October meeting is part of the committee's effort to increase awareness within the state bar of the unique needs of the land grant community and to foster education on land grant legal issues.

Motion 3

Representative Garcia made a motion to approve the June 2014 LGC minutes. Senator Martinez seconded the motion. The motion passed without objection.

Public Comment

A few members of the public made comments concerning the similarities of challenges facing acequias and land grants and the desire for stabilized and permanent funding for land grants.

Recess

The committee recessed at 4:45 p.m.

Tuesday, July 22

Tour of the Tierra Amarilla Land Grant

The committee reconvened at 9:30 a.m. for a tour of the Tierra Amarilla Land Grant. The tour included a visit to a local wool dyeing and weaving factory, a morada and some areas of the traditional commons lands of the land grant.

Adjournment

There being no further business before the committee, the second meeting of the LGC for the 2014 interim adjourned at 12:30 p.m.

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

**September 18-19, 2014
San Joaquin del Rio de Chama Land Grant
Gallina, New Mexico**

The third meeting of the Land Grant Committee was called to order by Representative Miguel P. Garcia, vice chair, on September 18, 2014 at 10:20 a.m. at the San Joaquin del Rio de Chama Land Grant in Gallina, New Mexico.

Present

Rep. Miguel P. Garcia, Vice Chair
Rep. Eliseo Lee Alcon
Rep. Alonzo Baldonado (9/18)
Rep. Jimmie C. Hall
Sen. Richard C. Martinez
Sen. Gerald Ortiz y Pino (9/18)
Rep. Debbie A. Rodella
Sen. Sander Rue (9/18)
Rep. Tomás E. Salazar

Absent

Sen. Jacob R. Candelaria, Chair
Rep. David M. Gallegos
Sen. Daniel A. Ivey-Soto

Advisory Members

Sen. Carlos R. Cisneros
Rep. Patricia A. Lundstrom
Rep. Vickie Perea

Rep. Phillip M. Archuleta
Sen. Timothy M. Keller
Rep. W. Ken Martinez
Rep. Christine Trujillo

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Mark Edwards, Legislative Council Service (LCS)
Peter Kovnat, LCS
Celia Ludi, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Thursday, September 18

Call to Order

Representative Garcia welcomed the committee and members of the audience and asked committee members, staff and the audience to introduce themselves.

Update: The San Joaquin del Rio de Chama Land Grant-Merced (SJRC): Current Challenges and Future Prospects

Leonard T. Martinez, president; Thelma Lovato Chavez, vice president; and Gerald Chacon, secretary of land and water, SJRC, welcomed the committee to the SJRC. They provided a brief history of the SJRC and referred the committee to its web site, www.riodechamalandgrant.com, for more information about current activities.

Ms. Chavez explained that in 1806, Francisco Salazar and 30 other people petitioned for the land grant, which was delivered in 1808 and recognized as a community grant with individual private allotments. The boundaries for the land grant were the Cebolla Valley on the north, the Capulin River on the south, the boundary of the Martinez grant (now known as the Piedra Lumbre Grant) on the east and the Segita Blanca ("Little White Ridge") on the west. The western boundary was not as clear as the others because there were two possible ridges that could have been the boundary, and it later became the subject of controversy. In 1861, descendants petitioned the surveyor general for confirmation of the land grant, and 17 years later, in 1878, the land was surveyed and found to encompass approximately 473,000 acres. The survey did not distinguish between community and private allotments, and a protest against the survey was filed claiming that private allotments were improperly included in the survey. Most of the land grant was lost in 1897 as a result of a case decided by the United States Supreme Court, *United States v. Sandoval*, in which the court found that the community lands had been retained by the Spanish, and later the Mexican, government and therefore were acquired by the United States government as a result of the Treaty of Guadalupe Hidalgo. In 1905, the remaining portion, 1,422 acres, was lost to the Rio Arriba Cattle Company, which was owned by T. D. Burns, who lived in Parkview, now known as Los Ojos.

From 1895 through 2004, Ms. Chavez continued, descendants of the 1806 grantees remained on the land grant. In 2004, the last four heirs still living on the land grant were Salomon Lovato, Ubaldo Velasquez, Joe Cordova and Charlie Chacon. Mr. Chacon attended the meeting and was recognized by the committee. Leonard Martinez, grandson of Mr. Lovato, is now the president of the land grant.

Mr. Chacon added that in 2004, a law was passed (Chapter 49 NMSA 1978) allowing community land grants, defined as land grants-mercedes, to apply to be political subdivisions. The SJRC applied in 2006 and has complied with all the statutory requirements since then.

The SJRC has completed a number of projects, and others are under way. A database of all the heirs of the land grant has been created. Appropriations from the legislature were secured

to purchase the land grant building and to grade and gravel its parking lot, and the SJRC also received \$10,000 from the Land Grant Council for improvements to the building. U.S. Senator Tom Udall provided assistance and a liaison to discuss with the U.S. Forest Service (USFS) and the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) an easement to a historic cemetery. The USFS put a gate on the cemetery and resurveyed the area to confirm the cemetery's boundaries, and the SJRC built a trail to the cemetery.

The first priority of the SJRC now is to renew the historic farmlands near the cemetery. With the cooperation of the USFS, Senator Udall's office and others, the SJRC is working on getting a permit to use water from the Rio Chama to irrigate 270 acres for farming. The SJRC is working with the NRCS to create a farm plan to develop necessary infrastructure and has sent branch cuttings from heritage apple trees on the land to Michigan State University for grafting.

The SJRC's second immediate priority is to refurbish the Sala building next door to the SJRC office for use as a community center. The SJRC lost an \$80,000 appropriation because it was not able to use it in time under Department of Finance and Administration (DFA) rules; it would like legislation to reinstate that appropriation.

The SJRC also has an ongoing fundraising project selling posters of an original oil painting by Juan Chavez depicting a view from the historic cemetery.

In response to questions from the committee, Leonard Martinez and Arturo Archuleta of the Land Grant Council explained that the reason the \$80,000 appropriation was lost was that it was a capital outlay appropriation and therefore structured as reimbursement for payments already made. The problem was that the SJRC did not have the money up front, so it could not pay for the work and then be reimbursed. Since the SJRC could not expend the appropriation, the money reverted. A committee member noted that the DFA audit requirements for public entities have hindered expenditure of capital outlay funds for projects statewide. Discussion of various alternatives to provide funding to land grants for infrastructure development and improvement included the possibility of counties acting as fiscal agents to receive and disburse appropriations. It was noted, however, that a number of rural counties are also challenged by the DFA's audit requirements. Using the New Mexico Finance Authority as a disbursement clearinghouse for capital outlay for land grants was brought up.

USFS Status Report

James Melonas, New Mexico state liaison, USFS Southwestern Region; Mike Frazier, staff officer, USFS; and Chris Chavez, regional land surveyor, USFS, addressed the committee.

Mr. Melonas informed the committee that USFS personnel received training in land grant issues from Mr. Archuleta and Dr. Manuel Garcia y Griego, director, Land Grant Studies Program, University of New Mexico (UNM), and the USFS civil rights staff also provided training to other USFS personnel.

Mr. Melonas noted that he had a follow-up trip scheduled for September 29, 2014 to Truchas to address the concerns of the Nuestra Señora del Rosario, San Fernando y Santiago del Rio de las Truchas Land Grant (Nuestra Señora).

Mr. Melonas advised the committee that he has accepted another position within the USFS and will be moving to North Carolina in a month. He will be able to work with his successor for about three weeks before he leaves and will bring him up to speed on land grant issues. The committee expressed its appreciation to Mr. Melonas for the work he has done in improving relationships between the USFS and the land grants.

Motion

A motion was made and passed without objection that staff draft for the committee a letter of appreciation regarding Mr. Melonas to the USFS regional forester and to have the New Mexico congressional delegation copied on the letter.

Mr. Frazier related that, historically, there were approximately 1,400 acres of irrigated land along the Rio Chama. The associated water rights were perfected by Mr. Burns when he took possession of the land. Land and water rights were transferred from Mr. Burns to a Mr. Skull and were subsequently acquired in 1969 by the USFS. The USFS is not currently using the water rights because plans to put them to use were delayed by the theft of eight miles of aluminum irrigation pipe. In response to a question from the committee, Mr. Frazier said that the Office of the State Engineer said that it has no plans to recall the water rights for lack of use. Nonetheless, the USFS is concerned about that possibility. The USFS has been working with the SJRC to return the fields to working farms irrigated by Rio Chama water. As mentioned by Leonard Martinez earlier, development of the historical farmland is the SJRC's first priority at present. A committee member asked Leonard Martinez how much land is involved and if the land grant heirs had ever tried to get this land confirmed to them or if Mr. Burns had applied for confirmation. Leonard Martinez replied that there are 1,492 acres, 277 of which are irrigable. A committee member asked what crops had historically been grown on the land and what the ideal crops would be. Mr. Chacon answered that, historically, the land was used for subsistence farming and later for forage for cattle; the SJRC's current plan is to grow wheat, alfalfa and vegetables. In response to a question from the committee, Leonard Martinez said that the SJRC is not in position at present to address the issue of getting title to the land returned to the SJRC. A committee member remarked that perhaps the attorney general could pursue the issue.

Cañon de Chama Cemetary Access

Mr. Frazier informed the committee that for the present, the SJRC has been granted a permit to access the cemetery. For the longer term, an easement will be issued, probably in the next couple of weeks, to ensure permanent access. Mr. Chavez informed the committee that the USFS had resurveyed the area and corrected an earlier surveying error, which showed that the cemetery was in a designated wilderness area. Mr. Frazier noted that since the corrected survey shows that the cemetery is not in designated wilderness, the road can be improved to allow motorized access, which is important for older or infirm land grant members. The easement will

provide unlimited access to land grant members, but the area will be closed to the public. Access is for the purpose of historic preservation, not for burials.

Nuestra Señora Boundary Issues

Mr. Melonas said the USFS is working with the land grant to clarify boundary issues.

Review of USFS Liaison Issues and Challenges Statewide

The committee reiterated its appreciation of the efforts of the USFS in general and Mr. Melonas in particular to reach out to and work with land grant communities. Mr. Melonas informed the committee that the new regional forester has visited northern New Mexico several times and is gaining an understanding of its history and current relationships.

Tierra Amarilla Land Grant-Merced: The Past Informing the Future

David Correia, associate professor, Department of American Studies, UNM, addressed the committee. Mr. Correia referred to his book, *Properties of Violence, Law and Land Grant Struggle in Northern New Mexico* (University of Georgia Press, 2013). He opined that the 1967 raid on the Tierra Amarilla courthouse was the least interesting thing about the Tierra Amarilla Land Grant (TALG). He said that the TALG was and is very well-organized and has been actively used and defended since at least 1776. The major points of his presentation included that:

- (1) land grant dispossession is a phenomenon of the twentieth century;
- (2) courts have wilfully misinterpreted laws regarding land grants; and
- (3) there has been a crackdown on land grant heirs by law enforcement.

Mr. Correia described a series of four court cases that he claimed produced private property out of community land grants. He said that there was no history of private property in the TALG until courts said there was, and he detailed the legal history that led up to the activism of the late 1960s. In response to a question from the committee, Mr. Correia said that returning land grants to heirs is more problematic in the TALG than in some other land grants because all of the TALG is now in private hands. He said that when the land is held by a government, either state or federal, reclaiming it is more successful.

There was related discussion about the efforts to engage with the Department of Game and Fish (DGF) regarding three parcels of land in the original TALG that had been subsequently acquired by the DGF from private owners. The parcels are now known as the Edward Sargent Wildlife Area, the W.A. Humphries Wildlife Area and the Rio Chama Wildlife and Fishing Area.

Motion

A motion was made and approved without objection to have a formal letter of invitation and request sent to the DGF to address the committee at the October or November meeting regarding access to wildlife areas for traditional uses.

Potential for Civil Remedies in Embezzlement Cases Involving Land Grants

David Pederson, general counsel, Attorney General's Office (AGO), addressed the committee.

Mr. Pederson reviewed the apparent embezzlement by Dennis Wells, former president of the TALG board of trustees, of approximately \$233,000 that was paid by Wind River Energy Corp. to the TALG but which was never received by the TALG. Mr. Wells has since died. Mr. Pederson said that a civil suit had been brought against the estate of Mr. Wells on behalf of five TALG heirs. Possible civil remedies include fines, penalties and restitution. Mr. Pederson was not optimistic about the chances for recovery of any substantial amount of money from Mr. Wells' estate because, to date, the estate appears to be valued at only \$10,000 to \$20,000. Mr. Pederson said that although the AGO cannot move on behalf of private interests, it is investigating to determine whether there are accomplices who may be prosecuted on behalf of the TALG as a whole. At this time, it does not appear that persons other than Mr. Wells were involved. Mr. Pederson informed the committee that the first judicial district attorney is also investigating the case to determine whether there is criminal culpability against a living person; he added that the First Judicial District Attorney's Office has not availed itself of the offered assistance from the AGO. Mr. Pederson also related that the state auditor is investigating bank accounts established by people associated with the TALG after the date of the Wind River Energy Corp. payment to trace owners and amounts and especially whether there were payable-on-death accounts. In response to a question by the committee, Mr. Pederson explained that the Fraud Against Taxpayers Act does not apply in this situation because the money was not stolen from the state. Mr. Pederson also raised an idea that, to prevent similar situations in the future, the legislature could consider an appropriation to the Land Grant Council to support hiring attorneys and financial experts to assist the land grants with their fiscal responsibilities.

Los Vigiles Subgrant: Potential Benefits of Providing Subgrants a Pathway to Land Grant-Merced Status Under Chapter 49, Article 1 NMSA 1978

Lalo Lovato, president; Joseph Padilla, former president; and Larry J. Montaña, attorney, Los Vigiles Community Land Grant, addressed the committee. They provided handouts that consisted of a copy of a deed conveying a portion of the Las Vegas Land Grant to Justice of the Peace Ricardo Varela and his successors in office; a copy of the "Stipulated Judgment Confirming in Part and Reversing in Part District Court's Order and Entering Judgment" filed on March 25, 2014 in *Los Vigiles Land Grant v. Rebar Haygood Ranch LLC, et al.*; and a copy of a plat of easement survey for Los Vigiles Community Land Grant.

Mr. Montaña informed the committee that Los Vigiles is a subgrant of the Las Vegas Land Grant, which is administered by the City of Las Vegas. He provided the committee with a

copy of a deed, dated December 31, 1951, in which the Las Vegas Land Grant conveyed in trust a portion of land of approximately 3,000 acres within the Las Vegas Land Grant to the justice of the peace acting as a trustee for the residents of that parcel of land. According to the deed, the land was to be held by the residents of the land and was prohibited from ever being conveyed or used by any individual adversely to any of the other residents. The conveyance was for the limited purpose of grazing. Logging of live timber was specifically prohibited, but the residents were also specifically allowed to use dead wood for domestic purposes only. The residents were responsible for payment of property taxes on the land. The Las Vegas Land Grant retained the right to lease the land for oil and gas, sharing equally the yearly lease rental. The Las Vegas Land Grant also reserved one-half of the minerals, oil and gas and the authority to execute leases for exploration, development and mining of any of them. The deed further specified that if at any time the land ceased to be used for community purposes or the residents failed to pay the taxes due, the land would revert to the Las Vegas Land Grant.

Mr. Montaña confirmed that the residents of the Los Vigiles subgrant had continuously paid the taxes and used the land for community grazing. Los Vigiles has bylaws and an elected board that meets regularly in noticed public meetings to take action related to use and management of the subgrant lands. In every way, it acts like a land grant-merced, but it is not a stand-alone land grant, and its legal nature is unclear; that fact has caused considerable confusion when Los Vigiles has taken legal action to use, manage or preserve its lands. A semicontinuous project of Los Vigiles to thin dead wood from the land to protect the Gallinas watershed from wildfires is the subject of two such actions.

In 2008, new people bought part of La Bonita Ranch just south of Los Vigiles. The new neighbors objected to the Los Vigiles thinning project and barricaded the road, with the result that Los Vigiles residents could not access their land. Eventually, Los Vigiles sued the new neighbors, claiming implied and prescriptive easements through the neighbors' land. Los Vigiles won a district court judgment in its favor. On appeal, among other issues, the defendants raised the issue of the standing of the plaintiffs to sue because the nature of their legal status and their interest in the land was not clear. The New Mexico Court of Appeals found that Los Vigiles was a legal entity without making specific findings as to its legal nature and confirmed the easement by implication. Mr. Montaña provided the committee with copies of the "Stipulated Judgment Confirming in Part and Reversing in Part District Court's Order and Entering Judgment", filed in the Fourth Judicial District Court on March 25, 2014 in *Los Vigiles Land Grant and Mike Martinez v. Rebar Haygood Ranch, LLC; Rocky Know [sic] Ranch, LLC; and James and Florence Howard*. The easement has now been platted and recorded. Mr. Montaña provided the committee with copies of the plat of easement survey for Los Vigiles Community Land Grant.

The second ongoing legal issue for Los Vigiles is the status of a \$300,000 award from the state to thin the dead wood from the land. Los Vigiles has received a thinning grant annually for some time, but the award was revoked this year when it came to light that Los Vigiles is not a statutory land grant-merced and its legal nature is not clear. The committee expressed concern that Los Vigiles had lost the thinning award and discussed possible ways to reinstate it, including

having the county act as fiscal agent and contract with Los Vigiles, which would then subcontract the thinning work. There was some question about whether that would be a viable solution because it was unknown whether San Miguel County, where the land grant is located, is in compliance with DFA's audit requirements. Another possibility is to apply for federal grant funding for thinning. A committee member recommended that the Land Grant Council work with Los Vigiles to try to decipher the status of the thinning award money and determine if there might be another way to obtain it.

Motion

A motion was made and approved without objection to have staff contact the Energy, Minerals and Natural Resources Department regarding the thinning award money and the possibility of it being awarded through the county, the local soil and water conservation district or some other political subdivision that could act as a fiscal agent.

The continuing issue for Los Vigiles is the nature of its legal status. There was extensive discussion about the legal nature of Los Vigiles and questions about whether there are other similarly situated subgrants. Mr. Montaña stated that his understanding is that there are at least four others: Gallinas, San Geronimo, Juan Tafoya and Mora (El Carmel). Mr. Archuleta mentioned San Agustin and Arroyo Hondo Arriba as well. Gallinas, San Agustin, San Geronimo and Los Vigiles were originally part of the Las Vegas Land Grant. Juan Tafoya is within the Cebolleta Land Grant. El Carmel is within the Mora Land Grant. Arroyo Hondo Arriba is part of the Arroyo Hondo Land Grant.

Motion

It was moved and approved without objection that the Land Grant Council and LCS staff research and draft a proposal to allow subgrants to attain political subdivision status.

Public Comment

Dr. Federico Reade asked to be scheduled to make a presentation to the committee at the November meeting about an ethnohistory project he is involved with to produce a documentary film about New Mexico land grants from 1960 to the present.

Mr. Archuleta raised the issue of a bill introduced in the last session (House Bill 35), which was pocket vetoed, that would have allowed the Land Grant Council to use private and federal funds to assist community land grants that are not political subdivisions. A committee member requested that the bill be prepared for reintroduction in the upcoming session.

Approval of Minutes

The minutes of the July 21-22, 2014 meeting were approved unanimously, without correction.

Recess

The committee recessed at 5:20 p.m.

Friday, September 19

The committee reconvened at 9:30 a.m. at the Cebolla Community Center for a tour of the SJRC. The tour included a visit to fields that are being reclaimed for agriculture, particularly apple orchards, and to the historic Cañon de Chama Cemetary.

Adjournment

There being no further business before the committee, the third meeting of the Land Grant Committee for the 2014 interim adjourned at 1:30 p.m.

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

**October 23-24, 2014
Forum, University of New Mexico School of Law
Albuquerque, New Mexico**

The fourth meeting of the Land Grant Committee was called to order by Senator Jacob R. Candelaria, chair, on October 23, 2014 at 10:10 a.m. at the Forum of the University of New Mexico (UNM) School of Law in Albuquerque.

Present

Sen. Jacob R. Candelaria, Chair
Rep. Miguel P. Garcia, Vice Chair
Rep. Eliseo Lee Alcon
Rep. Alonzo Baldonado
Rep. Jimmie C. Hall
Sen. Richard C. Martinez
Sen. Gerald Ortiz y Pino
Rep. Debbie A. Rodella
Sen. Sander Rue (10/23)
Rep. Tomás E. Salazar

Absent

Rep. David M. Gallegos
Sen. Daniel A. Ivey-Soto

Advisory Members

Rep. Patricia A. Lundstrom (10/23)
Rep. Vickie Perea

Rep. Phillip M. Archuleta
Sen. Carlos R. Cisneros
Sen. Timothy M. Keller
Rep. W. Ken Martinez
Rep. Christine Trujillo

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Mark Edwards, Legislative Council Service (LCS)
Peter Kovnat, LCS
Celia Ludi, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Thursday, October 23

Call to Order

Senator Candelaria welcomed committee members and members of the audience and asked committee members to introduce themselves.

Welcome to the UNM School of Law

David J. Herring, dean, UNM School of Law, thanked legislators for their support for the law school's Corrine Wolfe Children's Law Center, American Indian Law Center, Inc., and the Utton Transboundary Resources Center. Dean Herring informed the committee that the UNM School of Law is ranked fourth in the country in student satisfaction and that 80 percent of graduates are employed upon graduation. In response to a question from a committee member, Dean Herring expressed willingness to explore development of a clinical program that would address land grant issues.

Land Grant Notice Requirements Within the Surveying Statute

Allen Grace, former president, New Mexico Professional Surveyors (NMPS), informed the committee that Section 61-23-33 NMSA 1978 [Notice of boundary survey; certain land grants] imposed a burden on surveyors that should be shifted to the property owner, and he requested the committee's support for an amendment to the statute to accomplish that change. The statute requires surveyors who conduct a boundary survey within or bordering four specified community land grants to notify the board of trustees or commissioners of the land grant of the survey by certified mail prior to recording the survey with the county clerk. Surveyors are also required to note on the survey the certified mail tracking number and the address of the land grant when the survey is recorded. The statute further requires the boards of trustees or commissioners of those land grants to record contact information with county clerks so that they may be notified by surveyors. The four specified land grants are: the Las Vegas Grant, La Merced del Manzano Land Grant, the Nuestra Señora del Rosario, San Fernando y Santiago Land Grant in Truchas and the Tecolote Land Grant.

Christopher Medina, president-elect, NMPS, added that the notification requirement is difficult for surveyors to comply with because it is hard to determine who should get notice and where to send the notice. Mr. Medina believes that responsibility should fall to the county clerk or the county assessor to provide notice of surveys to the land grants.

In response to a committee member's question, Arturo Archuleta, Land Grant Council, clarified that the statute does not require that the surveyor notify the land grant before or during the survey, but rather after the survey is completed. Mr. Archuleta explained that the reason for the enactment of Section 61-23-33 NMSA 1978 is that, historically, land grants often learned of a survey that diminished their holdings when a suit for adverse possession was brought against the

land grant based on the survey — long after the time to challenge the survey had expired. Mr. Archuleta told the committee that Section 61-23-33 NMSA 1978 only applies to certain community land grants, and the Land Grant Council would like to expand the language so it applies to all community land grants.

Mr. Medina reiterated that the NMPS believes that it should be the duty of the county clerk or the county assessor to notify the community land grants when the surveys are recorded, and he stated that the association would also like to see all community land grants included in the adverse possession protection currently afforded to the four land grants-mercedes.

In response to a question from a committee member, Mr. Grace stated that the NMPS would like the legislature to change the notification duty from the surveyor to the landowner. Alternatively, Mr. Medina said that the NMPS would like a county official to be responsible for notification to the land grant.

The committee chair invited the surveyors to present proposed legislation to the committee and noted that the committee will consider proposed legislation at its last meeting of the interim.

Approval of Minutes

The minutes of the September 18-19, 2014 meeting were approved without objection or amendment.

Update from the Land Grant Council and Land Grant Consejo

Juan Sanchez, president of the Land Grant Council, described the accomplishments of the council in the past year. Accomplishments included:

Direct assistance to community land grants

- reviewing bylaws and giving election and technical assistance to the San Miguel del Bado, Tierra Amarilla, Town of Tomé, Santa Gertrudis de lo de Mora and San Antonio de las Huertas community land grants;
- helping secure a legal services contract for legal assistance to Tierra Amarilla and San Antonio de las Huertas community land grants;
- assisting with budget, capital outlay and financial reporting requirements of the San Joaquin del Rio de Chama and Town of Tajique community land grants;
- hosting an Infrastructure Capital Improvement Plan workshop and providing direct assistance to Juan Bautista Baldez, San Joaquin del Rio de Chama, Anton Chico, San Antonio de las Huertas and the Town of Tajique community land grants;
- facilitating meetings with community land grants located in and around the Sandia and Manzano mountains;
- facilitating a meeting of Rio Arriba County community land grants regarding regional cooperation;
- advising Los Vigiles community and other partitioned subgrants;

- assisting the Abiquiu Land Grant concerning road easement issues; and
- providing funding to the Town of Tajiique Land Grant for improvements to its cemetery, including fencing, a metal archway and a gate.

Federal-level policy work

- working with the New Mexico congressional delegation to develop traditional-use consultation legislation for federal lands;
- holding a "Land Grant 101" workshop with the Bureau of Land Management (BLM) and the United States Forest Service (USFS);
- working with the USFS regarding San Joaquin del Rio de Chama issues concerning a cemetery easement; an irrigation project; the Ghost Ranch and Abiquiu; and the Cibola National Forest and land grants in its region;
- working with United States Representative Michelle Lujan Grisham's office in support of the San Antonio de las Huertas claim regarding land managed by the BLM;
- assisting in setting up meetings with various community land grants and U.S. Representative Lujan Grisham; and
- providing comments on the drafting of federal legislation regarding watershed health and water protection.

State-level policy work

- consulting on the development of a Rio Grande water protection fund;
- increasing collaboration between the Land Grant Council and UNM; and
- providing letters to Sandoval and Torrance counties on behalf of community land grants.

Mr. Sanchez informed the committee that he would meet with representatives of the Department of Finance and Administration, to which the Land Grant Council is administratively attached, on October 29, 2014 regarding the Land Grant Council's budget. Mr. Sanchez handed out copies of the proposed budget. The Land Grant Council is requesting a budget of \$500,000 for fiscal year 2016. Mr. Sanchez then explained the need for a guaranteed revenue stream to the Land Grant Council to provide resources for operation and maintenance costs associated with managing land grant assets; successfully planning and completing capital outlay projects; hiring personnel; complying with statutory mandates, such as financial reporting requirements; and providing a stable funding source. In particular, he said, a guaranteed revenue stream could provide funding for the up-front costs of capital outlay projects, which would prevent the common scenario that has resulted in \$8 million of capital outlay appropriations to land grants since 2004 reverting to the general fund because the land grants often do not have enough money to pay up-front costs and then be reimbursed from capital outlay appropriations. In response to a question from a committee member, Mr. Sanchez explained that the proposed \$45,000 budget item designated "Land Grant Support Fund" would be for this purpose. That budget item is currently at \$5,000.

Leonard Martinez, president of the Land Grant Consejo, presented the consejo's legislative requests for the upcoming session. The consejo's first priority is the increase in the Land Grant Council's budget from \$100,000 to \$500,000 to address the fiscal issues described by Mr. Sanchez. The consejo's second priority is the establishment of a guaranteed revenue stream as described by Mr. Sanchez. Mr. Martinez requested legislation to return state lands to community land grants and provide access to land for traditional uses; to address administrative requirements for capital outlay appropriations and direct third-party payments by state entities; to define common land and property tax status; to amend the surveyor statute, Section 61-23-33 NMSA 1978, to include all land grants and provide surveyors with updated contact information from the council. He also requested "clean-up" legislation as follows by amending:

- Sections 49-1-8 and 49-1-14 NMSA 1978 to recognize credit unions as financial institutions and to amend voucher check requirements to allow for electronic payment with receipt;
- Subsection J of Section 49-1-3 NMSA 1978 to change comprehensive plan requirements and the appeal arbitration process; and
- Section 49-1-4 NMSA 1978 to replace precincts with a provision allowing for representation of communities of interest.

Mr. Martinez further informed the committee that:

- the Merced Land Education and Conservation Trust received \$13,500 for land grants to host meetings in different community Land Grants within the Cibola National Forest;
- the San Joaquin del Rio de Chama Land Grant won an award from the USFS for the collaboration on the historical cemetery boundaries; and
- two members of the consejo will attend a conference celebrating the fiftieth anniversary of the federal Wilderness Act.

Representative Hall introduced Daniel Antonio Herrera, president of the Manzano Land Grant, who thanked Representatives Hall and Perea for help in re-opening the Manzano Mountains State Park. By opening the state park, land grant members are allowed to participate in wood thinning projects. Harvesting and selling wood provides needed income for many community members and improves forest health.

In response to a question from the committee regarding the status of the Los Vigiles community subgrant thinning grant within the Gallinas watershed, Mr. Edwards informed the committee that he had spoken with the general counsel of the Energy, Minerals and Natural Resources Department (EMNRD) regarding a potential anti-donation clause issue. To avoid this issue, the EMNRD is planning to use reserve funding until next spring, Mr. Edwards said, to see if the status of partitioned subgrants is resolved by legislation in the upcoming session. He said that the EMNRD's alternative plan is to work with federal agencies that have watershed restoration funding but do not have anti-donation limitations. Mr. Edwards said that there may

be an opportunity for the state to use its funding on other parts of the Gallinas watershed, while federal agencies use their funding to work on the Los Vigiles parcels.

A committee member asked how many subgrants might seek to become political subdivisions. Mr. Sanchez answered that five, at most, might seek this designation.

A committee member encouraged the council to work with the Office of the Attorney General to initiate a lawsuit by the State of New Mexico on behalf of the mercedes against the United States to recover lost land grant lands. Mr. Sanchez responded that the council is hoping that the attorney general requests funding for at least a half-time attorney in its treaty division.

A committee member asked about the status of a previously discussed transfer by the Department of Game and Fish (DGF) of isolated parcels of irrigable land to the Cebolleta Land Grant. Mr. Sanchez said the council and the consejo had offered assistance to the land grant but there had been no response until recently, when the president of the land grant expressed that the members are interested in pursuing the project.

The committee chair commented that the committee should get legislative requests to the LCS as soon as possible. The committee agreed that legislative requests should include a bill to deal with third-party payments and appropriations.

Traditional Remedies and Uses of Native Plants

Lawrence Sanchez, president of the Town of Tomé Land Grant-Merced, informed the committee that harvesting wild plants, called "wildcrafting", for medicinal uses is a traditional use of community lands. He commented that, at present, in some areas of community land grants within national forests, the USFS requires permits to harvest wild plants for traditional uses. Lawrence Sanchez gave the committee samples of various herbal remedies, including Osha root and Manzanillo. He explained the uses of those and other herbs and provided an informational handout on traditional medicinal plants.

Land Grant-Mercedes and Acequias: Building Competence with New Mexico's Inherited Spanish and Mexican Legal Constructs Within the State Bar of New Mexico

Max Minzner, associate dean for academic affairs, UNM School of Law, described the law school's curricular structure in general and its clinical program in particular, noting that the clinical program was a pioneering program when it was started, and it remains one of the top-10 ranked clinical law programs in the country.

Adrian Oglesby, director of the Utton Transboundary Resources Center (center) at the law school, explained that he has been the director for only a short while and his expertise is in acequias. He informed the committee that the center under its previous name of the Natural Resources Center in 1980 produced the seminal history of all of the Spanish and Mexican land grants in the country. Mr. Oglesby informed the committee that the center is open to discussion about taking land grant cases, and since a major activity of many land grants is caring for

watersheds, there is a natural affinity between the land grants and the center, and the center would be interested in working with the land grants and supporting their efforts.

Mr. Oglesby further informed the committee that as the chair-elect of the Natural Resources Section of the State Bar of New Mexico, he will work to sponsor continuing legal education programs on land grant issues.

Motion.

After a discussion about the need to provide UNM law students with resources that encourage learning about land grant issues, it was moved and approved without objection that staff be directed to draft a letter to the New Mexico Supreme Court, the Administrative Office of the Courts and the State Bar of New Mexico encouraging the development and presentation of continuing legal education programs on land grant issues. Mr. Oglesby asked that he be copied on the letter, and he said he would take it to the Natural Resources Section of the State Bar of New Mexico.

Public Comment

Fred Sanchez described a problem in Torrance County, where the Manzano, Torreon and part of the Chilili land grants are located. He said a water pipeline project for municipalities in the county is being considered, but the land grants did not receive notice of the project.

Michael Goudy commented that municipalities control water, and land grants are affected by their decisions but there are no notice requirements when the municipalities make decisions or take action that affects the land grants.

Recess

The committee recessed for the day at 3:36 p.m.

Friday, October 24

Call to Order

Senator Candelaria reconvened the meeting at 10:13 a.m.

DGF: Considerations Regarding Traditional Use Access and Balancing Elk Populations with Grazing Allotments

Daniel Brooks, deputy director, DGF, provided a handout about elk management. Mr. Brooks noted that the State Game Commission has the authority to set elk harvest numbers, and the DGF implements the commission's plan. Often, he said, what hunters want and what farmers and ranchers want are in opposition, and the commission and the DGF try to balance interests. A committee member asked why the elk harvest statistics are in a range that is sometimes quite broad. Mr. Brooks answered that specific numbers are very difficult to determine, partly because it is not possible to count each animal and partly because some permittees do not always report their harvest.

A committee member asked Mr. Brooks to discuss the issue of competing interests regarding water access. Mr. Brooks explained that the USFS has a riparian protection project under way in the Cloudcroft/Mayhill area that affects hunting permittees and ranchers. The DGF was initially involved in the project but has since withdrawn because water rights issues have yet to be resolved in court. Mr. Brooks remarked that everyone wants to improve watersheds statewide and that healthy watersheds benefit everyone.

A committee member asked about elk depredation complaints, particularly in the Artesia area. Mr. Brooks answered that the DGF has a 24-hour response policy to complaints about wildlife depredation. In general, he said, farmers and ranchers prefer monetary reimbursement for damages from elk depredation, but if no money is forthcoming, they want the animals removed.

The committee invited Zach Riley, regional director, New Mexico Farm and Livestock Bureau, to describe the bureau's concerns. Mr. Riley advised that the greatest concern is always access to water. The bureau is also concerned about fencing projects and habitat stamp funds being misused. Many agriculture producers in the northern part of the state have been adversely affected by elk. In the bureau's opinion, elk have a larger impact on efforts to restore riparian areas than do cattle. Mr. Riley assured the committee that producers understand the importance of wildlife, but he observed that everything needs to be managed together.

A committee member averred that the issue before the committee is how DGF practices abridge the land grants' access to traditional use of lands. The committee member asked Mr. Brooks if the DGF keeps records of the identities of permittees, where depredation occurs and where access to forest lands is limited. Mr. Brooks replied that forest access is controlled by the USFS, but the DGF has some wildlife management areas (WMAs), in particular the Edward Sargent Wildlife Area (Sargent), the W.A. Humphries Wildlife Area and the Rio Chama Wildlife and Fishing Area (Chama). The state's elk herd lives in the Sargent, and the Chama is important for wildlife migrations from Colorado. Mr. Brooks explained that the State Game Commission manages only wildlife, not multiple uses as the USFS does. The WMAs are closed, Mr. Brooks said, unless they are specifically opened for certain activities such as hiking and biking. Consumptive use, such as woodcutting and pinon picking, are not allowed in the WMAs. A committee member informed Mr. Brooks that the committee is very concerned that the commission consider land grant concerns regarding access for traditional activities such as herb gathering. Mr. Brooks assured committee members that he would take their concerns back to the commission.

Committee members asked a number of questions regarding issuance of elk hunting licenses, including:

- whether the licenses are gender-specific (Mr. Brooks answered that they are, and are also based on age and size);

- details about a converted license (Mr. Brooks answered that it signifies the assurance that a landowner's authorization can be converted to a permit);
- whether landowners have to apply for a license in the drawing (Mr. Brooks answered that they do not);
- whether land grants get landowner permits (Mr. Brooks answered that land grants are eligible for the permits, but to his knowledge, none have applied; one committee member noted that both the Juan Bautista Baldez and the Nuestra Señora del Rosario San Fernando y Santiago (Truchas) land grants had obtained elk permits in the past);
- whether a land grant could sell its permits as a fundraiser (a committee member responded that of the two land grants that had obtained elk permits, one had distributed the permits to its members and the other had sold the permits to raise money); and
- the cost of a hunting license (Mr. Brooks answered that it depends on the type of license and whether the applicant is a New Mexico resident).

A committee member asked Mr. Brooks to provide counts of elk populations and hunting quotas derived from those counts. Responding to a comment regarding long waiting lists for fencing, Mr. Brooks agreed that there is a waiting list, but noted that it is shorter now because the DGF has started providing landowners with fencing materials if landowners are willing to do the work themselves rather than wait for the DGF. Mr. Brooks was asked to provide information on how many people are on the waiting list and how many of the total are in each legislative district.

Several committee members expressed disappointment that the new director of the DGF was not in attendance. The chair reported that he had contacted her and she was very responsive and very regretful that scheduling conflicts prevented her attendance.

Motion

Committee members discussed traditional remedies and traditional land uses. Following this discussion, a motion was made and passed without objection that the committee send a letter to the new director of the DGF and the State Game Commission requesting the DGF to provide access to land grant heirs for traditional land uses.

Update of UNM's Land Grant Studies Program

Dr. Manuel Garcia y Griego, director, Land Grant Studies Program, UNM, provided the committee with a handout detailing the projects of the program. He stressed that research and public service are the principal missions of the program. Even though the program is not a teaching program, the director does teach, and the program offers community-based learning and internship opportunities to students as well as educational outreach, such as sponsored lectures, to the public.

Potential Enhanced Collaboration Between the New Mexico Land Grant Council and the UNM Land Grant Studies Program

Juan Sanchez described the collaboration between the Land Grant Council and the UNM Land Grant Studies Program on various projects, and said that, as a result, there has been discussion about administratively moving the Land Grant Council to UNM.

Carlos Rey Romero, associate vice president, Research and Compliance, UNM, stated that UNM's mission is education, research, public service and health care. He said that the research and public service aspects of the Land Grant Council are similar to UNM's mission, especially UNM's Southwest Hispanic Research Institute. He opined that administratively attaching the Land Grant Council to UNM would provide the structure to build institutional knowledge. He offered that if the Department of Finance and Administration is willing, UNM is willing to give the council a home. Citing the example of the New Mexico Sentencing Commission, he stated that there are precedents for UNM to house state entities, such as the Land Grant Council.

Some committee members expressed agreement that the missions of the two agencies are compatible, and there are significant opportunities for mutual benefit and enhanced services, but committee members also expressed concern that if the council is housed at UNM and there are budget cuts, the council might be adversely affected.

Mr. Romero suggested using the same funding process as for the New Mexico Sentencing Commission, in which the commission contracts with UNM and the legislature appropriates money in House Bill 2 specifically for the commission. In this way, the commission is not part of UNM's budget. The chair then asked LCS staff to schedule a meeting with Legislative Finance Committee staff to determine the best approach to facilitate this change.

Adjournment

There being no further business before the committee, the fourth meeting of the Land Grant Committee for the 2014 interim adjourned at 12:31 p.m. on October 24, 2014.

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

**November 13, 2014
Room 317, State Capitol
Santa Fe**

The fifth meeting of the Land Grant Committee was called to order by Senator Jacob R. Candelaria, chair, on November 13, 2014 at 10:10 a.m. in Room 317 of the State Capitol in Santa Fe.

Present

Sen. Jacob R. Candelaria, Chair
Rep. Miguel P. Garcia, Vice Chair
Rep. Eliseo Lee Alcon
Rep. David M. Gallegos
Rep. Jimmie C. Hall
Sen. Richard C. Martinez
Sen. Gerald Ortiz y Pino
Rep. Tomás E. Salazar

Absent

Rep. Alonzo Baldonado
Sen. Daniel A. Ivey-Soto
Rep. Debbie A. Rodella
Sen. Sander Rue

Advisory Members

Rep. Vickie Perea
Rep. Christine Trujillo

Rep. Phillip M. Archuleta
Sen. Carlos R. Cisneros
Sen. Timothy M. Keller
Rep. Patricia A. Lundstrom
Rep. W. Ken Martinez

Minutes Approval

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

Staff

Mark Edwards, Legislative Council Service (LCS)
Peter Kovnat, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Thursday, November 13

Welcome and Introductions

Senator Candelaria welcomed committee members and members of the audience and asked committee members to introduce themselves.

Representative Perea thanked the committee members and the audience for the opportunity to serve the land grant community in her time in the legislature.

Representative Garcia thanked the committee and said this would be his last meeting as vice chair. He then said that Representative Don L. Tripp was one the founding Land Grant Committee members, and he urged those interested in land grant issues to meet with Representative Tripp.

Representative-Elect Sarah Maestas Barnes introduced herself to committee members and the audience, and it was noted by a committee member that Representative-Elect Barnes is an heir to the Cebolleta Land Grant.

Prospects for Cultural Properties Designations: Ramifications of the Mount Taylor Decision for Rural Communities

Brett J. Olsen, attorney, Cebolleta Land Grant-Merced, and Ann Berkley Rodgers, attorney, Pueblo of Acoma, discussed the *Rayellen Resources, Inc. v. New Mexico Cultural Properties Review Committee* (CPRC) court case.

On February 6, 2014, the New Mexico Supreme Court, in a unanimous decision, affirmed the authority of the CPRC to designate the Mount Taylor area as a traditional cultural property. This is important for all of the traditional communities in New Mexico, not just Indian tribes. The values that other cultures imbue in buildings and structures, the people of New Mexico have found in the mountains and mesas that have framed their lives for centuries. Now there is no question as to whether these features can be given the respect under law that the people give to them as a matter of course.

The Indian tribes that nominated Mount Taylor for listing on the State Register of Cultural Properties explicitly excluded all private property from inclusion in the designation. The New Mexico Supreme Court decision confirmed that the common lands of certain land grants should be considered private property and therefore excluded from the listing.

While the case was on appeal, a statute was enacted clarifying that "[t]he designation of land grants-mercedes as political subdivisions of the state shall not alter the property rights of the heirs in the common lands. The common lands owned or controlled by a land grant-merced shall not be considered to be, designated or treated as state land.". The New Mexico Supreme Court clearly heard the legislature's concern on this issue.

It is important to remember, however, that land grant boards of trustees for political subdivision land grants still need to comply with the Cultural Properties Act as other governmental entities do. Also, the statute does allow communities to "enter into memoranda of understanding, contracts and other agreements with a government of a federally recognized Indian nation, tribe or pueblo, including but not limited to agreements concerning the protection and maintenance of cultural resources". This is critical as it provides a means for the communities to come together to protect what is important, including the rights of both tribes and political subdivision land grants.

Committee members thanked the presenters and applauded them on a job well done. One member asked about situations that might occur when an entity wants to take an action that affects other entities. The proposed Mount Taylor uranium mine plan to "de-water" millions of acre-feet of water was offered as an example. The member said that there should be consultation with the pueblos and land grants on the potential impacts, not necessarily a veto, but some input on where the discharge of this polluted water will go. Another member asked what the role of the state historical projects officer is.

Ms. Rodgers said that in regard to a consultation about the mine on the cultural property-designated land, one of the recommendations from the Pueblo of Acoma regarding keeping the water in the valley that was not originally followed is now being followed.

Another committee member was interested in learning about the relationship between the state and federal governments in terms of designation of land as cultural property.

Approval of Minutes

Upon a motion by Representative Garcia, seconded by Representative Hall, and without opposition, the committee approved the minutes of the October 23-24, 2014 Land Grant Committee meeting.

Documentary Proposal: History of the Community Land Grant Movement

Federico A. Reade, Ph.D., University of New Mexico, discussed his proposal to create a video record of the history of the Spanish and Mexican land grants-mercedes in New Mexico. In addition, Dr. Reade hopes to document the current state of land grants in New Mexico and the great gains that have been made by working with state government. Dr. Reade asked for an appropriation of \$204,400, and he said that he hoped that the University of New Mexico would be the fiscal agent.

Upon a motion by Representative Hall, seconded by Representative Garcia, and without opposition, the committee requested a letter be sent by the Land Grant Committee to the Legislative Finance Committee supporting the budget recommendation of \$204,400 to fund this project.

Nuestra Señora del Rosario San Fernando y Santiago (Nuestra Señora) Land Grant: Decision to Seek Land Grant-Merced Status Pursuant to Chapter 49, Article 1 NMSA 1978

Roberto A. Romero, president, Nuestra Señora Land Grant, Danny Córdova, treasurer, Nuestra Señora Land Grant, and John Chávez, member, Nuestra Señora Land Grant, discussed the attempt by Nuestra Señora Land Grant to become a political subdivision of the state.

A major issue facing Nuestra Señora is the fact that 100 individuals from Chimayo helped the community pay its tax bill, and some now believe they are part of the community. However, those individuals do not satisfy the definition of "heir" under Chapter 49, Article 1 NMSA 1978. The committee then discussed creating an exception to the definition of "heir" in Chapter 49, Article 1 NMSA 1978, and whether that would be advisable.

Upon a motion by Representative Garcia, seconded by Senator Ortiz y Pino, and without opposition, the committee requested staff work with the Nuestra Señora board and the drafting of a bill that would not create unintended precedents for other land grants.

Review of Proposed Legislation

The first of five bills considered by the committee for endorsement, .197426.1, would incorporate land grants-mercedes into the Colonias Infrastructure Act, renaming it the Colonias and Land Grants-Mercedes Infrastructure Act, and would allocate severance tax bonding capacity and authorize the issuance of severance tax bonds for land grants-mercedes infrastructure projects. Some committee members cited concerns about limited funds for colonias and said that they could not support the proposed legislation, and they asked if the sponsor would consider a stand-alone bill that did not merge the land grants with colonias. The committee noted that the bill could be amended after it was introduced and not lose the committee endorsement. Upon a proper motion and second, with opposition by Representatives Hall and Perea, the committee voted to endorse the bill, which Senator Cisneros will carry.

The second of five bills considered by the committee for endorsement, .197428.1, would allow Chapter 49 NMSA 1978 land grants to determine zoning of the common lands of the land grant pursuant to a comprehensive plan approved by the land grant's board of trustees rather than the Department of Finance and Administration (DFA). The DFA would also be removed as the arbitrator for zoning conflicts between land grants and neighboring municipalities and counties. Abby Lewis, assistant attorney general, noted that the DFA welcomes the idea of not being the arbitrator, but the bill should clarify a replacement. Upon a proper motion and second, and without opposition, the committee voted to endorse the bill, which Senator Candelaria will carry. Ms. Lewis cited some concerns, including that because the bill requires action taken by three land grant board members, the land grant would need to hold a meeting, which would then require compliance with the Open Meetings Act, which would slow down the process. Arturo Archuleta, Land Grant Council, said that if the bill included a threshold amount that would trigger the requirement that three land grant board members act, it might work.

The third of five bills considered by the committee for endorsement, 197447.1, would amend existing law to allow land grants-mercedes to deposit their funds into credit unions as well as banks. Upon a proper motion and second, and without opposition, the committee voted to endorse the bill, which Representative Christine Trujillo will carry.

The fourth of five bills considered by the committee for endorsement, .197922.1, came from the committee's Capital Outlay Working Group. The bill would establish a fund administered by the New Mexico Finance Authority that would work as a temporary loan fund to assist in getting capital outlay projects for land grant communities started and completed. The current capital outlay system requires recipients to initially pay vendors and then submit a voucher to the DFA. The reimbursement process from the DFA can take a few weeks to a few months. Many land grants-mercedes do not have the finances to pay these upfront costs, or to wait for reimbursement. Mr. Archuleta noted that to be most effective, the bill should be amended to specify that the loans would be zero interest loans. Upon a proper motion and second, with opposition by Representatives Hall, Gallegos and Perea, the committee voted to endorse the bill, which Senator Ortiz y Pino will carry.

The last of five bills considered by the committee for endorsement, .197991.1, would establish qualified partitions of certain land grants-mercedes as autonomous land grants-mercedes. Some concerns about the language in the bill were raised, and again, members noted that the bill could be amended once introduced and would retain the committee endorsement. Upon a proper motion and second and without opposition, the committee voted to endorse the bill, which Representative Salazar will carry.

Adjournment

There being no further business before the committee, the fifth and final meeting of the Land Grant Committee for the 2014 interim adjourned at 1:31 p.m.

ENDORSED LEGISLATION

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE LAND GRANT COMMITTEE

AN ACT

RELATING TO LAND GRANTS; INCORPORATING LAND GRANTS-MERCEDES INTO THE COLONIAS INFRASTRUCTURE ACT; CHANGING THE NAME OF THE COLONIAS INFRASTRUCTURE ACT TO THE "COLONIAS AND LAND GRANTS-MERCEDES INFRASTRUCTURE ACT"; ALLOCATING SEVERANCE TAX BONDING CAPACITY AND AUTHORIZING ISSUANCE OF SEVERANCE TAX BONDS FOR LAND GRANTS-MERCEDES INFRASTRUCTURE PROJECTS; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 6-30-1 NMSA 1978 (being Laws 2010, Chapter 10, Section 1) is amended to read:

"6-30-1. SHORT TITLE.--~~[Sections 1 through 8 of this act]~~ Chapter 6, Article 30 NMSA 1978 may be cited as the "Colonias and Land Grants-Mercedes Infrastructure Act"."

SECTION 2. Section 6-30-2 NMSA 1978 (being Laws 2010,

underscoring material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 Chapter 10, Section 2) is amended to read:

2 "6-30-2. FINDINGS AND PURPOSE.--

3 A. The legislature finds that:

4 (1) colonias and land grants-mercedes lack
5 basic infrastructure resulting in poor social, health and
6 economic conditions;

7 (2) adequate infrastructure such as water and
8 wastewater systems, solid waste disposal facilities, flood and
9 drainage control, roads and housing infrastructure are
10 essential to improved health, safety and welfare of all New
11 Mexicans, including residents of the colonia and land grant-
12 merced communities;

13 (3) local efforts and resources have been
14 insufficient to develop and maintain a consistent and adequate
15 level of infrastructure;

16 (4) addressing the urgent need of replacing,
17 improving and developing infrastructure through the use of an
18 alternative financing mechanism is a long-term cost savings
19 benefit to both the state and the communities; and

20 (5) adequate infrastructure development allows
21 colonia and land grant-merced residents to achieve the basic
22 conditions necessary to improve the quality of their lives.

23 B. The purposes of the Colonias and Land Grants-
24 Mercedes Infrastructure Act are to:

25 (1) ensure adequate financial resources for

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1 infrastructure development for colonia and land grant-merced
2 recognized communities;

3 (2) provide for the planning and development
4 of infrastructure in an efficient and cost-effective manner;
5 and

6 (3) develop infrastructure projects to improve
7 quality of life and encourage economic development."

8 SECTION 3. Section 6-30-3 NMSA 1978 (being Laws 2010,
9 Chapter 10, Section 3) is amended to read:

10 "6-30-3. DEFINITIONS.--As used in the Colonias and Land
11 Grants-Mercedes Infrastructure Act:

12 A. "authority" means the New Mexico finance
13 authority;

14 B. "board" means the colonias and land grants-
15 mercedes infrastructure board;

16 C. "colonia" means a rural community with a
17 population of twenty-five thousand or less located within one
18 hundred fifty miles of the United States-Mexico border that:

19 (1) has been designated as a colonia by the
20 municipality or county in which it is located because of a:

21 (a) lack of potable water supply;
22 (b) lack of adequate sewage systems; or
23 (c) lack of decent, safe and sanitary
24 housing;

25 (2) has been in existence as a colonia prior

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1 to November 1990; and

2 (3) has submitted appropriate documentation to
3 the board to substantiate the conditions of this subsection,
4 including documentation that supports the designation of the
5 municipality or county;

6 D. "financial assistance" means providing grants or
7 loans on terms and conditions approved by the authority;

8 E. "land grant-merced" means a community land grant
9 organized and governed pursuant to Chapter 49, Article 1 or 4
10 NMSA 1978 and operating as a political subdivision of the
11 state;

12 [~~E.~~] F. "project fund" means the colonias and land
13 grants-mercedes infrastructure project fund;

14 [~~F.~~] G. "qualified entity" means a county,
15 municipality or other entity recognized as a political
16 subdivision of the state;

17 [~~G.~~] H. "qualified project" means a capital outlay
18 project selected by the board for financial assistance that is
19 primarily intended to develop colonias or land grants-mercedes
20 infrastructure. A qualified project may include a water
21 system, a wastewater system, solid waste disposal facilities,
22 flood and drainage control, roads or housing infrastructure;
23 but "qualified project" does not include general operation and
24 maintenance, equipment, housing allowance payments or mortgage
25 subsidies; and

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1 [~~H.~~] I. "trust fund" means the colonias and land
2 grants-mercedes infrastructure trust fund."

3 SECTION 4. Section 6-30-4 NMSA 1978 (being Laws 2010,
4 Chapter 10, Section 4) is amended to read:

5 "6-30-4. COLONIAS AND LAND GRANTS-MERCEDES INFRASTRUCTURE
6 BOARD CREATED.--

7 A. The "colonias and land grants-mercedes
8 infrastructure board" is created.

9 B. The board shall consist of seven voting members
10 as follows:

11 (1) the secretary of finance and
12 administration or the secretary's designee from the department
13 of finance and administration;

14 (2) the secretary of environment or the
15 secretary's designee from the department of environment;

16 (3) the chief executive officer of the
17 authority or the chief executive officer's designee from the
18 authority;

19 (4) one member appointed by the president pro
20 tempore of the senate;

21 (5) one member appointed by the minority
22 leader of the senate;

23 (6) one member appointed by the speaker of the
24 house of representatives; and

25 (7) one member appointed by the minority

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1 leader of the house of representatives.

2 C. The members appointed pursuant to Paragraphs (4)
3 through (7) of Subsection B of this section shall be appointed
4 with the advice and consent of the senate, serve at the
5 pleasure of the appointing authority, be residents of the
6 colonias area or a member of a land grant-merced and have
7 experience in capital project development or administration,
8 and they may receive per diem and mileage as provided for
9 nonsalaried public officers in the Per Diem and Mileage Act but
10 shall receive no other compensation, perquisite or allowance.

11 D. There shall be [~~five~~] seven advisory, nonvoting
12 members of the board as follows:

13 (1) the executive director of the south
14 central council of governments or the director's designee;

15 (2) the executive director of the southwest
16 New Mexico council of governments or the director's designee;

17 (3) the executive director of the southeastern
18 New Mexico economic development district or the director's
19 designee;

20 (4) the executive director of the north
21 central New Mexico economic development district or the
22 director's designee;

23 (5) the chair of the land grant council or the
24 chair's designee;

25 [~~(4)~~] (6) the executive director of the New

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1 Mexico association of counties or the director's designee; and
2 [~~(5)~~] (7) the executive director of the New
3 Mexico mortgage finance authority or the director's designee.

4 E. The board shall choose a chair and vice chair
5 from among its members and such other officers as it deems
6 necessary. A majority of members constitutes a quorum for the
7 transaction of business. The affirmative vote of at least a
8 majority of a quorum shall be necessary for an action to be
9 taken by the board. The board shall meet whenever a voting
10 member submits a request in writing to the chair, but not less
11 than quarterly.

12 F. All meetings of the board shall be open to the
13 public and subject to the Open Meetings Act and, at each
14 meeting, the board shall provide an opportunity for public
15 comment."

16 SECTION 5. Section 6-30-7 NMSA 1978 (being Laws 2010,
17 Chapter 10, Section 7) is amended to read:

18 "6-30-7. COLONIAS AND LAND GRANTS-MERCEDES INFRASTRUCTURE
19 TRUST FUND--CREATED--INVESTMENT--DISTRIBUTION.--

20 A. The "colonias and land grants-mercedes
21 infrastructure trust fund" is created in the state treasury.
22 The trust fund shall consist of money that is appropriated,
23 donated or otherwise allocated to it. Money in the trust fund
24 shall be invested by the state investment officer in the manner
25 that land grant permanent funds are invested pursuant to

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1 Chapter 6, Article 8 NMSA 1978. Income from investment of the
2 trust fund shall be credited to the fund. Money in the trust
3 fund shall not be expended for any purpose, but an annual
4 distribution from the trust fund shall be made to the project
5 fund pursuant to this section.

6 B. On July 1 of each year in which adequate money
7 is available in the trust fund, an annual distribution shall be
8 made from the trust fund to the project fund in the amount of
9 ten million dollars (\$10,000,000) until the distribution is
10 less than an amount equal to four and seven-tenths percent of
11 the average of the year-end market values of the trust fund for
12 the immediately preceding five calendar years. Thereafter, the
13 amount of the annual distribution shall be four and seven-
14 tenths percent of the average of the year-end market values of
15 the trust fund for the immediately preceding five calendar
16 years."

17 SECTION 6. Section 6-30-8 NMSA 1978 (being Laws 2010,
18 Chapter 10, Section 8) is amended to read:

19 "6-30-8. COLONIAS AND LAND GRANTS-MERCEDES INFRASTRUCTURE
20 PROJECT FUND--CREATED--PURPOSE--APPROPRIATIONS.--

21 A. The "colonias and land grants-mercedes
22 infrastructure project fund" is created in the authority and
23 shall be administered by the authority.

24 B. The project fund shall consist of:

25 (1) distributions from the trust fund;

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1 (2) payments of principal and interest on
2 loans for qualified projects;

3 (3) other money appropriated by the
4 legislature or distributed or otherwise allocated to the
5 project fund for the purpose of supporting qualified projects;

6 (4) the proceeds of severance tax bonds
7 appropriated to the fund for qualified projects; and

8 (5) income from investment of the project fund
9 that shall be credited to the project fund.

10 C. Except for severance tax bond proceeds required
11 to revert to the severance tax bonding fund, balances in the
12 project fund at the end of a fiscal year shall not revert to
13 any other fund.

14 D. The project fund may consist of subaccounts as
15 determined to be necessary by the authority.

16 E. The authority may establish procedures and adopt
17 rules as required to:

18 (1) administer the project fund;

19 (2) originate grants or loans for qualified
20 projects recommended by the board;

21 (3) recover from the project fund the costs of
22 administering the fund and originating the grants and loans;
23 and

24 (4) govern the process through which qualified
25 entities may apply for financial assistance from the project

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1 fund."

2 SECTION 7. Section 7-27-12.5 NMSA 1978 (being Laws 2010,
3 Chapter 10, Section 9) is amended to read:

4 "7-27-12.5. AUTHORIZATION FOR SEVERANCE TAX BONDS--
5 PRIORITY FOR INFRASTRUCTURE PROJECTS FOR COLONIAS AND LAND
6 GRANTS-MERCEDES.--

7 A. After the annual estimate of severance tax
8 bonding capacity pursuant to Subsection A of Section 7-27-10.1
9 NMSA 1978, the board of finance division of the department of
10 finance and administration shall allocate five percent of the
11 estimated bonding capacity each year for colonias and land
12 grants-mercedes infrastructure projects, and the legislature
13 authorizes the state board of finance to issue severance tax
14 bonds in the annually allocated amount for use by the colonias
15 and land grants-mercedes infrastructure board to fund the
16 projects. The colonias and land grants-mercedes infrastructure
17 board shall certify to the state board of finance the need for
18 issuance of bonds for colonias and land grants-mercedes
19 infrastructure projects. The state board of finance may issue
20 and sell the bonds in the same manner as other severance tax
21 bonds in an amount not to exceed the authorized amount provided
22 for in this subsection. If necessary, the state board of
23 finance shall take the appropriate steps to comply with the
24 federal Internal Revenue Code of 1986, as amended. Proceeds
25 from the sale of the bonds are appropriated to the colonias and

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1 land grants-mercedes infrastructure project fund for the
2 purposes certified by the colonias and land grants-mercedes
3 infrastructure board to the state board of finance.

4 B. Money from the severance tax bonds provided for
5 in this section shall not be used to pay indirect project
6 costs. Any unexpended balance from proceeds of severance tax
7 bonds issued for a colonias or land grants-mercedes
8 infrastructure project shall revert to the severance tax
9 bonding fund within six months of completion of the project.
10 The colonias and land grants-mercedes infrastructure board
11 shall monitor and ensure proper reversions of the bond proceeds
12 appropriated for the projects.

13 C. As used in this section, "colonias or land
14 grants-mercedes infrastructure project" means a qualified
15 project under the Colonias and Land Grants-Mercedes
16 Infrastructure Act."

17 SECTION 8. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2015.

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HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE LAND GRANT COMMITTEE

AN ACT

RELATING TO LAND GRANTS; ALLOWING LAND GRANT-MERCED FUNDS TO BE DEPOSITED IN A CREDIT UNION; ALLOWING EXPENDITURE OF FUNDS BY THE BOARD OF TRUSTEES OF A LAND GRANT-MERCED UPON APPROVAL OF A MAJORITY OF THE BOARD AND SUPPORTED BY AN INVOICE OR RECEIPT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 49-1-8 NMSA 1978 (being Laws 1907, Chapter 42, Section 8, as amended) is amended to read:

"49-1-8. ORGANIZATION OF BOARD--BONDS--VACANCIES.--

A. All members of the newly elected board of trustees shall meet no later than seven days after the votes are canvassed and organize themselves by the election of a president, secretary and treasurer. The treasurer shall perform such duties as may be required by the board and shall furnish to the board a good and sufficient surety bond in a sum

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1 as set forth in this section, to be conditioned as are the
2 bonds of other public officials handling public money. It is
3 the duty of the treasurer to deposit all the money coming [~~into~~
4 ~~his hands as~~] to the treasurer in a bank or credit union
5 organized and doing business in New Mexico.

6 B. In the event of the death or resignation of the
7 treasurer, the board shall fill the vacancy by appointing one
8 of the members of the board as treasurer, who shall, before
9 entering into the performance of [~~his~~] duties as treasurer,
10 execute and furnish to the board a good and sufficient surety
11 bond, similar to the bond entered into by [~~his~~] the predecessor
12 treasurer.

13 C. The amount of the bond required of the treasurer
14 and [~~his~~] the treasurer's successor shall at all times be for a
15 sum of at least double the amount received by and deposited in
16 the bank or credit union by the treasurer.

17 D. In the event that the board of trustees
18 delegates any other of its members to collect money due the
19 land grant-merced, that person shall be bonded in the same
20 manner as is provided in this section for the bonding of the
21 treasurer.

22 E. Those authorized to collect money shall give
23 receipts for the money collected, which receipts shall be in
24 the form prescribed by the board of trustees in the bylaws as
25 an official receipt."

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underscored material = new
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1 SECTION 2. Section 49-1-14 NMSA 1978 (being Laws 1907,
2 Chapter 42, Section 14, as amended) is amended to read:

3 "49-1-14. SALARIES OF TRUSTEES--RECORDS--EXPENDITURES.--

4 A. The board of trustees may fix in the land
5 grant-merced bylaws and pay to its members a salary not to
6 exceed two hundred dollars (\$200) to any member in one month.
7 The salary as fixed shall be in full as compensation for the
8 duties performed by the board or the individual members
9 within the exterior boundaries of the land grant-merced and
10 for attendance at regularly scheduled meetings. The
11 secretary of the board may be allowed a salary not to exceed
12 two hundred twenty-five dollars (\$225) in one month.

13 B. Board members may be authorized per diem and
14 mileage pursuant to the Per Diem and Mileage Act.

15 C. The board of trustees and the treasurer shall
16 keep permanent and legible records capable of audit, and no
17 money or funds shall be paid by the board of trustees or by
18 any person authorized to expend money [~~except by written~~
19 ~~check drawn upon vouchers~~] unless the expenditure is approved
20 by a majority of the board of trustees and is in the form of
21 a written check or in such a form that the date, amount and
22 payee of the transaction are automatically recorded; and the
23 payment is supported by an invoice or receipt."

24 SECTION 3. Section 49-4-9 NMSA 1978 (being Laws 2007,
25 Chapter 145, Section 8) is amended to read:

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1 "49-4-9. ORGANIZATION OF BOARD--BONDS--VACANCIES.--

2 A. All members of the newly elected board of
3 trustees shall meet no later than seven days after the votes
4 are canvassed and organize themselves by the election of a
5 president, secretary and treasurer. The treasurer shall
6 perform such duties as may be required by the board and shall
7 furnish to the board a good and sufficient surety bond in a
8 sum as set forth in this section, to be conditioned as are
9 the bonds of other public officials handling public money.
10 It is the duty of the treasurer to deposit all the money of
11 the land grant-merced in a bank or credit union organized and
12 doing business in New Mexico.

13 B. In the event of the death or resignation of
14 the treasurer, the board shall fill the vacancy by appointing
15 one of the members of the board as treasurer, who shall,
16 before entering into the performance of the duties as
17 treasurer, execute and furnish to the board a good and
18 sufficient surety bond, similar to the bond entered into by
19 the predecessor.

20 C. The amount of the bond required of the
21 treasurer and the treasurer's successor shall at all times be
22 for a sum of at least double the amount received by and
23 deposited in the bank or credit union by the treasurer.

24 D. In the event the board of trustees delegates
25 any other of its members to collect money due the land grant-

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~~[bracketed material] = delete~~

1 merced, that person shall be bonded in the same manner as is
2 provided in this section for the bonding of the treasurer.

3 E. Those authorized to collect money shall give
4 receipts for the money collected, which receipts shall be in
5 the form prescribed by the board of trustees in the bylaws as
6 an official receipt."

7 SECTION 4. Section 49-4-15 NMSA 1978 (being Laws 2007,
8 Chapter 145, Section 14) is amended to read:

9 "49-4-15. SALARIES OF TRUSTEES--RECORDS--
10 EXPENDITURES.--

11 A. The board of trustees may fix in the land
12 grant-merced bylaws and pay to its members a salary not to
13 exceed two hundred dollars (\$200) to any member in one month.
14 The salary as fixed shall be in full as compensation for the
15 duties performed by the board of trustees or the individual
16 members within the exterior boundaries of the land grant-
17 merced and for attendance at regularly scheduled meetings.
18 The secretary of the board of trustees may be allowed a
19 salary not to exceed two hundred twenty-five dollars (\$225)
20 in one month.

21 B. Board of trustees members may be authorized
22 per diem and mileage pursuant to the Per Diem and Mileage
23 Act.

24 C. The board of trustees and the treasurer shall
25 keep permanent and legible records capable of audit, and no

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underscoring material = new
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1 money or funds shall be paid by the board of trustees or by
2 any person authorized to expend money [~~except by written~~
3 ~~check drawn upon vouchers~~] unless the expenditure is approved
4 by a majority of the board of trustees and is in the form of
5 a written check or in such a form that the date, amount and
6 payee of the transaction are automatically recorded; and the
7 payment is supported by an invoice or receipt."

8 SECTION 5. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2015.

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE LAND GRANT COMMITTEE

AN ACT

RELATING TO LAND GRANTS; ALLOWING LAND GRANT BOARDS OF TRUSTEES
TO APPROVE COMPREHENSIVE PLANS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 49-1-3 NMSA 1978 (being Laws 1907,
Chapter 42, Section 3, as amended) is amended to read:

"49-1-3. BOARD OF TRUSTEES--MANAGEMENT OF GRANT--
POWERS.--The management and control of all land grants-mercedes
and tracts of land to which Sections 49-1-1 through 49-1-18
NMSA 1978 are applicable is vested in a board of trustees, to
be known as the "board of trustees of the land grant-merced del
pueblo de _____" (designating the name of the town, colony,
pueblo or community), and the board shall have the power to:

A. control, care for and manage the land grant-
merced and real estate, prescribe the terms and conditions

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1 under which the common lands may be used and enjoyed and make
2 all necessary and proper bylaws, rules and regulations that
3 shall be in substantial compliance with applicable statutes for
4 the government thereof;

5 B. sue and be sued under the title as set forth in
6 this section;

7 C. convey, lease or mortgage the common lands of
8 the land grant-merced in accordance with the land grant-merced
9 bylaws;

10 D. determine the number of animals that may be
11 permitted to graze upon the common lands and determine other
12 uses of the common lands that may be authorized;

13 E. prescribe the price to be paid for the use of
14 the common lands and resources of the land grant-merced and
15 prohibit a person failing or refusing to pay that amount from
16 using a portion of the common lands while the person continues
17 in default in those payments; provided that the amount fixed
18 shall be in proportion to the number and kinds of livestock
19 pasturing upon the common lands or to other authorized use of
20 the common lands;

21 F. adopt and use an official seal;

22 G. appoint judges and clerks of election at all
23 elections provided for in Sections 49-1-1 through 49-1-18 NMSA
24 1978, subsequent to the first, and canvass the votes cast in
25 those elections;

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1 H. make bylaws, rules and regulations, not in
2 conflict with the constitution and laws of the United States or
3 the state of New Mexico, as may be necessary for the
4 protection, improvement and management of the common lands and
5 real estate and for the use and enjoyment of the common lands
6 and of the common waters of the land grant-merced;

7 I. determine land use, local infrastructure and
8 economic development of the common lands of the land grant-
9 merced;

10 J. determine zoning of the common lands of the land
11 grant-merced pursuant to a comprehensive plan approved by the
12 [~~local government division of the department of finance and~~
13 ~~administration]~~ board of trustees that considers the health,
14 safety and general welfare of the residents and heirs of the
15 land grant-merced [~~The department of finance and administration~~
16 ~~shall act as arbitrator for zoning conflicts between land~~
17 ~~grants-mercedes and neighboring municipalities and counties];~~
18 and

19 K. enter into memoranda of understanding, contracts
20 and other agreements with a local, state or federal government
21 or a government of a federally recognized Indian nation, tribe
22 or pueblo, including but not limited to agreements concerning
23 the protection and maintenance of cultural resources."

24 **SECTION 2. EFFECTIVE DATE.**--The effective date of the
25 provisions of this act is July 1, 2015.

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE LAND GRANT COMMITTEE

AN ACT

RELATING TO LAND GRANTS; ENACTING THE LAND GRANT-MERCED PROJECT
FINANCE ACT; CREATING THE LAND GRANT-MERCED PROJECT FUND;
MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Land Grant-Merced Project Finance Act".

SECTION 2. [NEW MATERIAL] FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) land grants-mercedes are communities that
represent an ongoing aspect of New Mexico's cultural heritage;

(2) in general, land grants-mercedes have
limited sources of internal revenue but often are in need of
capital projects for economic growth and viability;

(3) as with other communities, land grants-

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1 mercedes are regular recipients of legislative appropriations
2 for capital projects from severance tax bond revenues;

3 (4) the requirements of the funding process
4 for a capital project, including the required initial payments
5 to vendors by appropriation recipients, often exceed the
6 resources of the recipients, causing project delays that extend
7 beyond the time requirements for the use of severance tax bond
8 revenues and resulting in subsequent cancellation of the funded
9 project; and

10 (5) public confidence in the process for
11 procuring public infrastructure is based on a reasonable
12 expectation that capital projects receiving appropriations will
13 proceed to construction or procurement.

14 B. The purpose of the Land Grant-Merced Project
15 Finance Act is to provide efficiency in the capital project
16 procurement process.

17 **SECTION 3. [NEW MATERIAL] DEFINITIONS.--**As used in the
18 Land Grant-Merced Project Finance Act:

19 A. "authority" means the New Mexico finance
20 authority;

21 B. "land grant-merced" means a community land grant
22 qualifying as a political subdivision of the state pursuant to
23 the requirements of Sections 49-1-1 through 49-1-18 NMSA 1978;

24 C. "qualifying project" means a capital project for
25 which an appropriation has been authorized by the legislature

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1 through enacted legislation; and

2 D. "vendor" means an entity that has been
3 contracted to provide a product or construction element for a
4 qualifying project.

5 SECTION 4. [NEW MATERIAL] AUTHORITY DUTIES.--The
6 authority shall:

7 A. develop application procedures and forms for
8 land grants-mercedes to apply for vendor payments for
9 qualifying projects;

10 B. make loans to land grants-mercedes for
11 qualifying projects subject to the availability of funds within
12 the land grant-merced project fund; and

13 C. provide notice within twenty-four hours to the
14 local government division of the department of finance and
15 administration when a loan has been made to a land grant-merced
16 for a qualifying project.

17 SECTION 5. [NEW MATERIAL] CONDITIONS FOR LOANS.--Loans
18 shall only be made to land grants-mercedes for vendor payments
19 when:

20 A. the board of trustees of a land grant-merced has
21 certified that the product or construction element for a
22 qualifying project has been delivered;

23 B. the board of trustees of a land grant-merced has
24 certified that a voucher for reimbursement for the cost of the
25 product or construction element delivered by the vendor has

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1 been submitted to the local government division of the
2 department of finance and administration; and

3 C. sufficient funds are available in the land
4 grant-merced project fund.

5 SECTION 6. [NEW MATERIAL] REIMBURSEMENTS TO THE LAND
6 GRANT-MERCED PROJECT FUND.--The department of finance and
7 administration shall make reimbursement payments directly to
8 the land grant-merced project fund for vouchers from land
9 grants-mercedes for which it has received a notice of a loan
10 payment from the fund by the authority.

11 SECTION 7. [NEW MATERIAL] LAND GRANT-MERCED PROJECT
12 FUND--CREATED.--The "land-grant merced project fund" is created
13 in the state treasury. The fund shall consist of money
14 appropriated, donated or otherwise accrued to the fund. The
15 fund shall be administered by the authority. Income from
16 investment of money in the land grant-merced project fund shall
17 be credited to the fund. Balances in the fund at the end of
18 any fiscal year shall not revert to the general fund. The land
19 grant-merced project fund may consist of such subaccounts as
20 the authority deems necessary to carry out the purposes of the
21 fund. The authority may establish procedures and adopt rules
22 as required to administer the fund and to recover from the fund
23 the costs of administering the fund. Money in the land grant-
24 merced project fund may be used to make loans to land grants-
25 mercedes for any qualifying project pursuant to the Land Grant-

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1 Merced Project Finance Act.

2 SECTION 8. [NEW MATERIAL] REPORT TO LEGISLATURE.--The
3 director of the authority shall report to the legislature no
4 later than October 1 of each calendar year the total number and
5 dollar amounts of loan requests from land grants-mercedes for
6 qualifying projects, the purposes of those loan requests, the
7 total number and dollar amounts of the loans that were made and
8 any recommendations for legislative action regarding the land
9 grant-merced project fund.

10 SECTION 9. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2015.

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HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE LAND GRANT COMMITTEE

AN ACT

RELATING TO LAND GRANTS; ESTABLISHING QUALIFIED PARTITIONS OF
LAND GRANTS-MERCEDES AS AUTONOMOUS LAND GRANTS-MERCEDES;
AMENDING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 49-1-1.1 NMSA 1978 (being Laws 2004,
Chapter 124, Section 1) is amended to read:

"49-1-1.1. DEFINITIONS.--As used in Chapter 49 NMSA 1978:

A. "heir" means a person who is a [~~descendent~~]
descendant of the original grantees and has an interest in the
common land of a land grant-merced through inheritance, gift or
purchase;

B. "land grant-merced" means:

(1) a grant of land made by the government of
Spain or by the government of Mexico to a community, town,

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1 colony or pueblo or to a person for the purpose of founding or
2 establishing a community, town, colony or pueblo; or

3 (2) a grant of land made by the community,
4 town, colony or pueblo that received a grant of land as
5 provided in Paragraph (1) of this subsection that has been
6 partitioned from the lands of that land grant for the purpose
7 of establishing common lands for a separate community, town or
8 pueblo and where the boundaries of those common lands have been
9 confirmed by the court of private land claims, designated as a
10 land grant-merced in any report or list of land grants prepared
11 by the surveyor general and confirmed by the congress of the
12 United States or by deed of title or indenture executed by the
13 board of trustees of that land grant-merced; and

14 C. "qualified voting member" means an heir who is
15 registered to vote in a land grant-merced as prescribed in the
16 land grant-merced bylaws."

17 SECTION 2. Section 49-1-2 NMSA 1978 (being Laws 1907,
18 Chapter 42, Section 2, as amended by Laws 2013, Chapter 8,
19 Section 1 and by Laws 2013, Chapter 83, Section 1) is amended
20 to read:

21 "49-1-2. APPLICATION.--

22 A. Sections 49-1-1 through 49-1-18 NMSA 1978:

23 (1) shall apply to:

24 (a) all land grants-mercedes confirmed
25 by the congress of the United States or by the court of private

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1 land claims or designated as land grants-mercedes in any report
2 or list of land grants prepared by the surveyor general and
3 confirmed by congress; and

4 (b) any partition of a land grant-merced
5 conveyed by deed of title or indenture executed by the board of
6 trustees of a land grant-merced to an heir or heirs of that
7 land grant-merced for the purpose of establishing common lands
8 for a separate land grant-merced; but

9 (2) shall not apply to any land grant that is
10 now managed or controlled in any manner, other than as provided
11 in Sections 49-1-1 through 49-1-18 NMSA 1978, by virtue of any
12 general or special act.

13 B. If a majority of the members of the board of
14 trustees of a land grant-merced covered by specific legislation
15 determines that the specific legislation is no longer
16 beneficial to the land grant-merced, the board has the
17 authority to petition the legislature to repeal the legislation
18 and to be governed by its bylaws and as provided in Sections
19 49-1-1 through 49-1-18 NMSA 1978.

20 C. The town of Tome land grant-merced, situated in
21 Valencia county, confirmed by congress in 1858 and patented by
22 the United States to the town of Tome, shall be governed by the
23 provisions of Sections 49-1-1 through 49-1-18 NMSA 1978.

24 D. The town of Atrisco land grant-merced, situated
25 in Bernalillo county, confirmed by the court of private land

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1 claims in 1894 and patented by the United States to the town of
2 Atrisco in 1905, shall be governed by the provisions of
3 Sections 49-1-1 through 49-1-18 NMSA 1978; provided that the
4 board of trustees shall not have regulatory jurisdiction over,
5 and the provisions of Chapter 49, Article 1 NMSA 1978 shall not
6 apply to or govern, any lands or interests in real property the
7 title to which is held by any other person, including a public
8 or private corporation, partnership or limited liability
9 company.

10 E. The Tecolote land grant-merced, also known as
11 the town of Tecolote, situated in San Miguel county, confirmed
12 by congress in 1858 and patented by the United States to the
13 town of Tecolote in 1902, shall be governed by the provisions
14 of Sections 49-1-1 through 49-1-18 NMSA 1978.

15 ~~[E-]~~ F. Notwithstanding the provisions of
16 Subsection A of this section to the contrary, the San Antonio
17 del Rio Colorado land grant-merced, situated in Taos county,
18 which claim was recommended for confirmation by surveyor
19 general James K. Proudfit in 1874 and again in 1886 by surveyor
20 general George W. Julian, but not confirmed by congress, shall
21 be governed by the provisions of Sections 49-1-1 through
22 49-1-18 NMSA 1978."

23 SECTION 3. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2015.