

Community land grants in New Mexico: some background

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Historical background

The most current information we have on the research of land grants in New Mexico is that the Spanish and Mexican governments issued permits for 295 land grants within the current boundaries of New Mexico and (southern) Colorado; 154 community grants--which is our primary concern here--and 141 individual grants. The classification between individual and community grants is still debated by historians for some land grants; all land grants established for settlement (e.g. Town of Tecolote) and individual grants that became community grants as the founding family expanded and invited new settlers (e.g. Cristóbal de la Serna) are now considered community grants. In the adjudication process that occurred after the United States assumed sovereignty over this territory, Of the 154 grants that were confirmed by the U.S. federal government under either the Surveyor General process (1854-1891) or under the Court of Private Land Claims (1891-1904), 47 were individual, 23 were Pueblo grants,¹ and 84 were Nuevomexicano community land grants-mercedes. Of these 84, approximately 35 continue to have active boards of trustees today. These 35 comprise the population of community land grants which is the focus of the Interim Land Grant Committee of the State Legislature. They also constitute the focus of attention of the New Mexico Land Grant Council, the state agency responsible for managing the Land Grant Registry and serving as a principal vehicle for communication between the state government, the U.S. federal government, and community land grants.

Most community land grants that were adjudicated early in the Territorial period received federal recognition of their entire historic claim and were issued a patent for that claim. Examples of land grants in this category are Santa Gertrudis de lo de Mora and the Pueblo of Chililí. Most other land grants lost land in the adjudication process--often because U.S. authorities recognized claims to the base of mountains or foothills and neglected to consider as common lands the timberlands on their watersheds. Examples of these land grants are the Town of Tomé, San Antonio de las Huertas, and Juan Bautista Baldés. Seven land grants had all of their common lands stripped as a result of a U.S. Supreme Court decision, U.S. v Sandoval 167 U.S. 278 (1897) in which the Court accepted the argument presented by the United States on appeal that all common lands of land grants belonged to Mexico, as the sovereign, in 1846 and hence these belonged not to the village or the land grant but the U.S. federal government after

¹ It is not often recognized that today's Indian Pueblos had their community properties recognized as Spanish land grants under the Treaty of Guadalupe Hidalgo. Since these communities never went to war with the United States there is no treaty of peace between the United States and the Pueblos. Hence the federal statutory framework for the recognition of Pueblo Indian rights arose from the Treaty of Guadalupe Hidalgo, negotiated between Mexico and the United States on February 2, 1848, and federal statutes and court opinions (which have varied over several decades) that identify them as American Indians with aboriginal rights arising from that status.

1897. The seven land grants affected directly by this decision were San Miguel del Bado, Don Fernando de Taos, Santa Cruz de la Cañada, Galisteo, San Joaquín del Río de Chama, La Petaca, and Cañón de Carnué. Each of these land grants lost between 95% and 99% of their historic claims as a result.

Most of the remaining community land grants adjudicated before 1897 as tenancies-in-common nevertheless lost most of their common lands as a result of partition suits.² Prominent examples of these are Santa Gertrudis de lo de Mora and Santo Tomás Apóstol del Río de las Trampas. As a consequence, most active community land grants today own less than 500 acres of common lands. Remarkably, however, a few maintain ownership of thousands of acres of common lands, including Anton Chico, Abiquiú, Chililí, Cebolleta, Nuestra Señora del Rosario San Fernando y Santiago (Truchas), Town of Jacona, and Cebolleta. Together, these land grants own approximately 200,000 acres of common land. Compared to the figure of historic claims before adjudication, land grants have lost approximately 98% of their lands--3 million acres during the adjudication process and over 4.5 million acres after adjudication. Many land grants lost or nearly lost their common lands as a result of the inability to pay the property taxes of the common land. Some engaged in creative ways to apportion financial responsibility among heirs for property taxes which staved off the auctioning of common lands but that created later problems. A good example of this is Cristóbal de la Serna, whose common lands were divided into thin strips a few feet wide and several miles long as a way to enjoin individual responsibility for land that was used collectively.

By the 1960s, this condition had generated sufficient anger and resentment that thousands of Nuevomexicanos joined a militant organization, the Alianza Federal de Mercedes (later Alianza Federal de Pueblos Libres, led by Reies López Tijerina) advocating the return of these common lands. That movement suffered a major setback when Tijerina was sent to prison and there is no record of any common lands returned to any land grants during the 1960s or 1970s. By the 1980s, however, a new movement was sparked in Tierra Amarilla, leading to the return of 200 acres to that land grant by a private party. The Land Grant Forum was organized in 1994-1995 and it succeeded in getting the attention of some members of Congress to this issue. The House passed a bill to establish a claims commission; a bill that was not considered by the Senate. In response to the publicizing of these concerns New Mexico's two Senators, Pete Domenici and Jeff Bingaman at that time, obtained a congressional appropriation to have the General Accounting Office (later the General Accountability Office) to conduct a study and present options to Congress for action.

No legislative action has been taken by Congress on New Mexico land grant issues since the funding of the GAO study. The principal federal activity in 2015 is the concluding of the process of drafting legislation to provide access to land grant heirs to former common lands now in federal hands, especially that managed by the U.S. Forest Service and the Bureau of Land Management. The New Mexico congressional

² For an excellent review of how tenancies-in-common led to land loss please consult David Benavides and Ryan Golten, "Right the record: a response to the GAO's 2004 report Treaty of Guadalupe Hidalgo: findings and possible options regarding longstanding community land grant claims in New Mexico," *Natural Resources Journal* 48 (Fall 2008): 567-926.

delegation has been active in facilitating communication between land grants and the two principal federal agencies: the U.S. Forest Service and the Bureau of Land Management. Both agencies now have their public liaisons regularly attend NM Land Grant Council meetings and a number of modest collaborative efforts have been undertaken.

Community land grants today

Of the approximately 35 community land grants with active boards of trustees, 26 are units of government as a result of their assuming responsibilities as a political subdivision of the state under the general provisions (Article I) of Chapter 49 of the New Mexico Statutes Annotated (NMSA). The remainder are either land grants that could become recognized as units of government upon assuming those responsibilities or are statute-specific land grants (e.g., Nuestra Señora del Rosario San Fernando y Santiago, the Las Vegas grant, and Manzano). Some land grants have recently re-organized their boards of trustees and have assumed this role (e.g., Town of Tajique); others were recognized as units of government by legislative action (Town of Tecolote; San Antonio del Río Colorado). There are approximately five sub-grants that are partitions of larger grants that also do not have unit of government status. The history of how they became subgrants is somewhat different in each case: these include Arroyo Hondo Arriba (Arroyo Hondo); Merced del Carmel (Santa Gertrudis de lo de Mora); and Los Vigiles, Gallina, and San Gerónimo (Las Vegas). A bill (HB 46) to confer political subdivision status for these subgrants was passed by the House but was not acted on by the Senate this spring.

Units of government have specific obligations and opportunities under New Mexico law. They are eligible to receive capital projects monies from the legislature; they are obligated to submit quarterly and annual budgets and financial reports to the Department of Finance and Administration, they must conduct their meetings according to an Open Meetings Resolution, and they must hold elections according to their by-laws and statutory requirements under Chapter 49. They have zoning authority over their common land and are required to develop a Comprehensive Plan for the management of their common lands. Their common lands can no longer be adversely possessed. They can enter into joint powers agreements with other units of government. Unlike other units of government, however, they neither have taxing authority (nor a guaranteed income stream) and must pay property taxes on their common lands. The total tax bill for all 35 community land grants in 2013, however, was about \$50,000--a small fraction of all the property taxes collected by the state.

Two land grants have secured the return of small parcels of former common lands. In 2008 Abiquiú received approximately 30 acres of former common lands from Game and Fish. More recently, the Town of Tomé has received ownership of a community center, the small parcel of land around it, the historic Cerro de Tomé which has broad religious significance to New Mexico's communities of the region, and additional acreage from a non-profit corporation that donated it to the land grant.

The modern land grant movement is more institutionalized and has created a number of organizations. In 2005 it established the Mexicano Land Education and

Conservation Trust (now the Merced Land Education and Conservation Trust, MLECT), a 501(c) 3 non-profit organization dedicated to providing support for land grants.

In 2006 the New Mexico Land Grant Consejo was founded--an organization whose members are community land grants. Currently it has 14 dues-paying members. Non-dues paying members are also free to participate and occasionally the Consejo has advocated on their behalf. The Consejo seeks to represent the major concerns of community land grants before state and federal agencies. It reviews annually a set of state and federal legislative priorities. The officers of the Consejo also serve as the Board of Directors of the MLECT.

In 2008 the UNM Land Grant Studies Program was established through a state appropriation. Its budget currently is \$130,000. It hires students that support community land grants, has developed maps for historic and traditional use areas, holds conferences and public events and supports undergraduate and graduate research on Nuevomexicano land grants-mercedes. Recently it has provided technical support for holding the 20014 election of San Miguel del Bado and has been engaged in identifying the correct patent boundaries for Nuestra Señora del Rosario San Fernando y Santiago, Abiquiú, and San Joaquín del Río de Chama. The UNM LGSP is a research and public service program of the University of New Mexico at its main campus in Albuquerque. It does not have a teaching program, though it has supported the teaching of the history of New Mexico and supported graduate students writing master's and doctoral theses on community land grants.

In 2009 the New Mexico Land Grant Council was established by statute and administratively attached to the Department of Finance and Administration. The Council has a mandate to engage state and federal agencies on land grant issues, invite land grants to express their needs and concerns, assigns staff support to address land grant needs, and administers a small grants program dedicated to providing seed money to land grants for specific community needs. Together with the UNM Land Grant Studies Program it holds training workshops on a variety of topics, from conducting elections to preparing financial reports to developing an Infrastructure Capital Improvement Plan.

Although substantial work needs to be done at the federal level to address the concerns of land grants with respect to access to and recovery of former common lands, the State Legislature has done much to improve the legal structure within which community land grants must operate.