

## **Outline of Traditional Use Access and Return of State-Owned Land in Tierra Amarilla Land Grant.**

**Purpose of Proposed Legislation:** To provide for traditional uses, joint stewardship and return of 44,398 acres of property, currently owned by the New Mexico Game Commission and managed by the New Mexico Department of Game and Fish, to the Merced de Los Pueblos de Tierra Amarilla. Subject properties include: Edward Sargent Wildlife Management Area encompassing 20,208 acres; Rio Chama Wildlife Management Area encompassing 13,239 acres; and Humphries Wildlife Management Area encompassing 10,951 acres. All properties are located within the patented exterior boundaries of the Merced de Los Pueblos de Tierra Amarilla, also known as the Tierra Amarilla Land Grant.

**Background:** The Tierra Amarilla Land Grant was established as a community grant in 1832 by a grant of land from the Mexican Government to Manuel Martinez, his 8 sons and all unnamed persons who accompanied him in settling on the land grant. The boundaries of the land grant were described as:

On the north, the Navajo River, on the east, a range of mountains (Sangre de Cristo Mountains), on the south, the Nutrias River, on the west, the mount of the Laguna de los Caballos.

The issuance of the land grant was made after the fourth petition request. The first two petitions were made during the Spanish Period and third and final during the Mexican Period. The first made in 1814 included 72 petitioning families, the second made in 1820 included 62 petitioning families, the third made in 1824 included 78 petitioning families. Although Manuel Martinez presented arguments to Mexican officials to issue the grant to him as an individual all recommendations for granting the land included provisions ensuring that the excess lands not deeded for individual home plots were to remain in common for use by the entire community. This is reflected in the granting document made by the Territorial Deputation in 1832, in Article 3, stating “That the pastures, watering places and roads remain free according to the customs commonly held in each settlement.”

In 1856 Francisco Martinez, son of Manuel Martinez petitioned the Office of the Surveyor General of New Mexico to have the Tierra Amarilla Land Grant claim recognized by the United States as required by the Treaty of Guadalupe Hidalgo. The first Surveyor General of New Mexico William Pelham in his review of the claim, a copy of which is included in the patent, clearly indicated that the grant was originally made to Manuel Martinez and all those that accompanied him. Further it clearly indicates that in issuing the grant the Mexican Territorial Deputation instructed “the Constitutional Justice of Abiquiu to place the **parties** in possession of the land so grant, leaving the pastures, watering places and roads free according to the customs existing in every settlement.” Based on his review Pelham recommended that Congress confirm the Grant, which they did as Land Claim #3 in 1860.

Although the grant was approved by Congress in 1860 a patent for the land was not issued until 1881. By that time Thomas B. Catron and his associates (the Santa Ring) had already begun to claim an interest in the Land Grant. In fact, the Surveyor General in office at the time the grant

was surveyed and the patent was issued was Henry Atkinson a corrupt government official, who as part of the Santa Fe Ring, became one of the largest land owners in New Mexico through his illegal dealing in land speculation on Spanish and Mexican Land Grants claims coming before his office. As a direct result of manipulation by the Santa Fe Ring the patent was issued solely to Francisco Martinez as the heir of Manuel Martinez. Francisco Martinez died in 1874, 7 years before the patent was issued.

Between the years of 1861 to 1866, after Congress approved the grant, but prior to receipt of the official patent, Francisco Martinez issued deeds, known as *hijuelas*, to over 130 individuals residing in 7 different communities on the land grant. These original 7 communities included Los Brazos, Barranco, Cañones, Ensenada, Nutritas (now know is Tierra Amarilla), Los Ojos, and La Puente. These *hijuelas* where issued to families that “accompanied” Manuel Martinez in the settlement of the Tierra Amarilla Grant. The *Hijuelas* were all publicly recorded in the Rio Arriba County and each deed included language that stated the land deeded “retain the right of pastures, water, firewood, timber and roads, free and common.”

Thomas Catron began to acquire an interest in the land grant through purchase from the heirs of Francisco Martinez immediately after his death in 1874, using local speculators Thomas Burns and Wilmot Broad to purchase the interests of locals that would not sell to Catron. In 1883 Tomas Catron filed a quiet title suit claiming title to the entire land grant. The suit quieted title to all the common lands but excluded the individual *hijuelas*, which abstractors called the Catron exclusions, of the families living on the land grant. It is undoubtable that Thomas Catron won quiet title in the Territorial Court system whose judges were likely members of the Santa Fe Ring and it is highly likely that, like all other quiet title suits filed by Thomas Catron, for claims within land grants-mercedes, the community was unaware that the suit was even filed as notice was likely published only in English and perhaps in a paper not in local circulation.

Once title was quieted Catron, immediately began leasing the common for his own private investment interests including conveying easements for the establishment of the Denver and Rio Grande Railroad and establishing lumber, irrigation and development companies. By 1901 Tomas Catron and his associated companies transferred the land grant to his son Charles Catron. In 1909 Charles Catron deeded all of the common lands of the land grant to the Chama Valley Land Company who within two months deeded it to the Arlington Land Company, a company comprised of midwestern developers and financiers including U.S. Congressman John E. Andrus. The Arlington Land Company is the first one to begin subdividing large tracts of the common lands in order to sell to other third-party interests. The Sargent, Rio Chama and Humphries Wildlife Management Areas all find their origin in deeds issued by the Arlington Land Company in the 1910s and 1920s.

Since the settlement of the land grant, the residents of the community continued to access and utilize the common lands of the land grant mostly unabated up until the land begins to be subdivided and sold off. The community was largely unaware that their access and use of common lands were ever in jeopardy since their deeds included the rights to access and use the common lands for pasturing and watering of livestock, hunting and fishing as a food source, gathering of firewood to cook their food and heat their homes, harvesting of timber, soil and rocks for building materials, collecting of various herbs, berries and nuts for use in *remedios* and

as a food source. It was not until some of the newer large land claimants began to fence off portion of the common lands in the 1930's did the community realize their ownership and use of the commons was in question. The community fought hard to maintain their collective ownership and rights to the common lands, including filing of several lawsuits and attempts to organize a board of trustees for the land grant. When lawsuits proved ineffective, a vigilante group known as *La Mano Negra* undertook extra legal means to keep the common open, cutting fences and burning the barns of speculators. Unfortunately, due to a systemically racist judicial system, the land grant was not successful at gaining a victory in the courts, this included having their attempts to organize a legal board of trustees halted by the court in the 1950s. This has caused lasting effects in the community including extreme poverty and an out migration of families no longer able to sustain their traditional way of life without access to the common lands.

Since the time that the Sargent, Rio Chama and Humphries Wildlife Management Areas (WMA) were purchased by the New Mexico Game Commission, the New Mexico Department of Game and Fish has continued to deny access to the local communities for traditional use within the WMAs. Since all of the common lands have been privatized the community has no access to a local fuelwood supply. Additionally, the local rarely, if ever, receive permits to hunt within any of the WMAs and instead are relegated to watching trophy hunters, often from out-of-state, flood the area during hunting season for trophy kills rather than sustenance. Upon review the history of the Tierra Amarilla Land Grant it is clear that the community has suffered a great injustice. While the courts have not been able to remedy the wrongs perpetrated against the communities of the Tierra Amarilla Land Grant, the State of New Mexico, now owners of over 44,000 acres of the common lands, does have the ability and duty to find an equitable solution for this longstanding injustice.

**Outline of Proposed Legislation:** The Merced del los Pueblos de Tierra Amarilla proposes that legislation be drafted and endorsed by the Land Grant Interim Committee to provide for the re-establishment of traditional uses on, and stewardship of, the Sargent, Rio Chama and Humphries WMAs by the Merced del los Pueblos de Tierra Amarilla and its community members with the eventual return of those properties to the ownership, control and management by the Land Grant-Merced. The Land Grant-Merced proposes a 5-year window after the passage of the Act for the implementation of legislation and final return of the land. This would include 3 different phases: Planning phase; implementation phase and land return phase.

The proposed elements of the bill include:

### ***Definitions***

- A definition of the subject properties - Ed Sargent Wildlife Management Area, encompassing 20,208 Acres; Rio Chama Wildlife Management Area, encompassing 13,239 Acres; Humphries Wildlife Management Area, encompassing 10,951 acres.

- A definition of the affected land grant - Merced de Los Pueblos de Tierra Amarilla, a political subdivision of the State, also known as the Tierra Amarilla Land Grant.

- A definition of Traditional Uses, defined as follows:

Traditional uses for the Merced de Los Pueblos de Tierra Amarilla include: communal livestock grazing; use of water; fuelwood gathering; harvesting timber and gathering of soils and rocks for personal or community use; hunting and fishing; harvesting of vegetation and vegetation products, including herbs, roots, nuts, berries, fungi, and sap; recreation including camping, hiking, horseback riding; any other traditional activity, such as antler shed collection, that has sustainable beneficial community uses that support the long-term cultural and socio-economic integrity of the community included in the Traditional Use Resources Management Plan.

- A definition of meaningful access, defined as follows:

Meaningful access means unabated ingress and egress through existing roads, trails and paths or permanent/temporary roads, trails and paths specifically established for the purpose of accessing traditional use resources on the subject properties including stream access for fishing and livestock watering and the reopening of former state road 29 for use by Land Grant-Merced community.

- A definition of Traditional Use Resources Management Plan - a natural resources management plan developed jointly by the New Mexico Department of Game and Fish and Merced del Los Pueblos de Tierra Amarilla.

***Components required in Management Plan:***

The development of the traditional use resources management plan must begin immediately following the passage of the act and must be completed within 18 months. The plan shall:

- identify all traditional use resources, including seasons of use, and acceptable methods of harvesting/extraction.
- identify all water resources, i.e. stock ponds, wells, streams located in the three WMAs.
- identify all existing roads, trails and paths within the WMA.
- address ingress and egress access plan which can include the construction of new permanent or temporary roads, trails or paths. Also, identify the process for how the Department will allow year-round access, including motorized access, to heirs of the Land Grant-Merced to all three properties for accessing traditional uses.
- develop a livestock grazing plan that establishes the type and number of livestock that the land grant is allowed to graze on the three WMAs, including grazing season, stocking limits and plan for rotation of livestock. Livestock grazing plan with consider impact to forge for wildlife and Game and Fish will identify how to appropriately manage the elk population to ensure opportunities for livestock grazing are available annually;
- develop, in consultation with New Mexico State Forestry, a community fuelwood management plan that will provide for annual fuelwood collection opportunities. The plan will identify at least

5 fuelwood collection project areas across all three WMA's each of which is not greater than 100 acres for guaranteed fuelwood collection during the years prior to the transfer of the properties back to the land grant. Basal counts and approximate cords of fuelwood available in each project area will be determined. In addition, fuelwood gathering prescriptions will be developed for each project area, aimed increasing fire resiliency and overall watershed health as a mutual environmental benefit to community fuelwood gathering opportunities. Also, project areas must include plan for motorized access into fuelwood collection, including locations for temporary roads.

- develop the process for distribution of hunting permits to the Land Grant-Merced. During the years the Game and Fish remains in management of the property the Department shall provide a portion of the total available hunting permits for each available species to the Land Grant-Merced. The percentage of permits available to the Land Grant-Merced shall steadily increase beginning with 20% on the first hunting season following the completion of the Traditional Use Resources Management Plan (likely in year, two of implementation). The percentage shall increase 20% each year until it reaches 100%. This will allow for a phasing out of the Game and Fish ownership and distribution of the permits as a WMA. The phase out will be completed approximately 1 year after the land has already been transferred. Permits made available to the land grant shall be of the same value as those retained by the Department of Game and Fish. After the Land Grant-Merced reaches 100% the Department of Game and Fish will continue to provide hunting permits to the Land Grant-Merced in perpetuity at a distribution equal to the type and amount of permits available to all private landowners in the game unit.

- identify areas where soils and rocks may be harvested by members of the Land Grant-Merced for personal use. Including identifying allowable amounts and acceptable methods for removal.

- identify acceptable types of recreation that can be enjoyed within the WMA by members of the Land Grant-Merced, including seasons and times when each type is allowed, such as camping, hiking, horseback riding, etc.

### ***Implementation***

- The Land Grant-Merced will establish a process with the Department of Game and Fish for identifying heirs of the Land Grant-Merced that will be eligible for free use and access to the WMAs, which may include issuance of identification cards or permits.

- During appropriate times of year when wildcrafting and collection of antler sheds can occur members of the Land Grant-Merced can gather herbs, fungi and vegetation products, for personal use, free of charge from within any of the WMAs.

- The Land Grant-Merced board of trustees will establish rules and regulations for the management and distribution of fuelwood collection permits not to exceed the total estimated number of cords of wood available. The Land Grant-Merced may distribute permits to individuals for personal use not to exceed 10 cords per household. In addition, the land grant may issue small-scale commercial permits to local *leñeros* who sell firewood to local families unable

to harvest their own wood, provided that the total number of commercial permits does not exceed 30 percent of the total estimated wood available.

- The Land Grant-Merced board of trustees will establish rules and regulations for the distribution the hunting permits provided that at least 50% of all hunting permits received from the Department of Game and Fish must be distributed to at no cost to members of the Land Grant-Merced community. The Land Grant-Merced shall establish a fair and equitable process for the distribution of the no cost permits to the community. The Land Grant-Merced may set the price for the sale of any additional permits above the 50% no cost permits. If the number of permits issued to the land grant is an odd number, then extra permit shall be included in the no cost permit count. The land grant shall be allowed to sell permits to any member of the general public provided they are a New Mexico resident. Once the Land Grant-Merced is receiving 100% of all the permits made available for the acreage transferred from the Game and Fish the land grant must at all times provide for at least 40% of the permits to remain available for purchase by the general public. During the hunting season the Land Grant-Merced must allow purchasers of the permits free and unabated access to the former WMA properties.

- The Land Grant-Merced board of trustees will establish rules and regulations for management of communal grazing of livestock within the WMAs. Livestock grazing will occur under a single grazing permit issued to the Land Grant-Merced during the years in which the WMAs are still under the management and control of the Department of Game and Fish.

- The Land Grant-Merced board of trustees will establish rules and regulations for issuing permits for the removal of soils and rocks for personal use, including developing an application process for approving or denying permit request.

- During the period where the WMA's are under management and control of Game and Fish the heirs of the Land Grant-Merced shall be allowed free access to any streams or lakes for fishing or watering of livestock. Heirs must adhere to catch limits set by Game and Fish. After the properties are turned over to the Land Grant-Merced, the Land Grant-Merced and the Department of Game and Fish may enter into an agreement for continued stocking of any streams or lakes, provided that the land grant allow access to the general public for fishing to areas stocked.

- During the period where the WMAs are under the control and management of the Department of Game and Fish the heirs of Merced del Los Pueblos de Tierra Amarilla shall have free access for the types of recreation identified in the Traditional Uses Resources Management Plan within all three WMAs.

- After the lands are transferred to the Land Grant-Merced, the Land Grant-Merced and the Department may enter into an agreement to allow the Departments enforcement officers to continue to patrol the area and issue citations for violation under the Department's jurisdiction.

- During the period when the three WMA's are still under management and control of the Department of Game and Fish, the Department will ensure that any stewardship opportunities that may arise from any project specific actions within the WMAs will be vetted with the Land

Grant-Merced board of trustees to determine what role, if any, the Land Grant-Merced can play implementation of a given project.

***Transfer of Property to the Merced de Los Pueblos de Tierra Amarilla***

Within 1 year of the passage of the bill the Game Commission, through the Department of Game and Fish will submit a report to the Legislature, including a presentation before the Land Grant Interim Committee. The report shall include copies of all property deeds, surveys, chains of title, surface and ground water right permits, and mineral rights for all three WMAs. The report will also include any potential issues, the Legislature should be aware of concerning the property transfers, identified by the Department. This report will allow the Legislature, the Department and Land Grant-Merced to properly plan and coordinate the property transfer process at the end of the 5-year period, including conducting any required assessments or surveys and drafting of deed transfer documents. The transfer of the properties shall include any and all water rights (surface and ground) and mineral rights (surface and sub-surface).

The Merced del Los Pueblos de Tierra Amarilla recommends that this bill include language that provides all legislative approvals necessary for the transfer to take place without the need to come back to the legislature prior to the final transfer in year 5.