

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

**July 30-31, 2009
Rio Grande Hall
Taos Convention Center
Taos, New Mexico**

The second meeting of the interim Land Grant Committee was called to order at 10:20 a.m. on Thursday, July 30, 2009, by Representative Miguel P. Garcia, chair, in the Rio Grande Hall at the Taos Convention Center in Taos, New Mexico.

Present

Rep. Miguel P. Garcia, Chair
Sen. Richard C. Martinez, Vice Chair
Sen. Rod Adair
Rep. Paul C. Bandy
Rep. Andrew J. Barreras (7/30)
Rep. Eleanor Chavez (7/31)
Rep. Thomas A. Garcia (7/30)
Rep. Jimmie C. Hall
Sen. Gerald Ortiz y Pino
Sen. Sander Rue
Sen. Bernadette M. Sanchez

Absent

Rep. Debbie A. Rodella

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Carlos R. Cisneros
Rep. Brian F. Egolf, Jr. (7/30)

Sen. Dianna J. Duran
Rep. Ben Lujan
Rep. Richard D. Vigil

Guest Legislators

Rep. Roberto "Bobby" J. Gonzales (7/31)
Sen. Cisco McSorley (7/30)

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

Staff

Jon Boller
Tamar Stieber

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts and written testimony are in the meeting file.

Thursday, July 30

Welcoming Remarks and Introductions

Representative Miguel Garcia invited Francisco "El Comanche" Gonzales to open the meeting with a prayer. After a brief explanation of the agenda, Representative Garcia asked committee members and staff to introduce themselves. Taos Mayor Darren Cordova welcomed the committee to Taos and thanked members for holding the meeting there. He said it behooves the state to invest in northern New Mexico and especially in Taos, which he said is a tourist hub and the "jewel of northern New Mexico".

Representative Garcia asked audience members to introduce themselves.

Cristobal de la Serna Land Grant

Joe Romero, president, Cristobal de la Serna Land Grant, described what he believes is encroachment on the land grant's property. He said that non-heirs are not only intervening in the land grant's affairs, but they are trying to claim ownership of land. The rightful owners are paying taxes but are being left out of decisions, he said. He discussed a 1984 quiet title suit involving The Weimer Properties (TWP), which he said claims ownership of 6,400 acres on the land grant. Mr. Romero said "it's not that way", noting that Cristobal de la Serna is registered as a community land grant with New Mexico's secretary of state and in Washington, D.C.

Tod Barbee, a representative of TWP, submitted a record of the court decisions referred to by Mr. Romero. In 1998, TWP sued the Cristobal de la Serna Land Grant Association for trespass, among other allegations, claiming that the association blocked access to land that TWP owns by virtue of the 1984 quiet title suit. In the quiet title suit, the court had ruled that Cristobal de la Serna is a private, rather than a community, land grant and that it has no rights to TWP property. Between 1998 and 2004, the court issued various orders that granted relief to TWP, confirmed the findings of the 1984 decision and prohibited the land grant from blocking access to TWP property or interfering with TWP's use of the property.

Mr. Romero said the association decided to fence land at the base of Picuris Mountain because TWP had put up gates, closing off open land that land grant heirs have traditionally used for grazing animals and harvesting wood. He said that the association closed the gates at one time for security reasons, so that the association could know who was in there and why. He said that the heirs' *lineas* (strips of land) end at the top of the mountain and claimed that TWP has no right to close the land and that the heirs are the rightful owners of the land grant. He asked the Land Grant Committee for help in investigating the chain of title to the land and questioned how the county assessors can assess property taxes when they do not have good records of the boundaries of the *lineas*. He criticized decisions by a Taos County commissioner and a district judge that sided with TWP. "We put them into office to help protect the land... not benefit themselves", Mr. Romero said.

Mr. Gonzales said he agrees with his *primo* (cousin) but wanted to take another approach. He said he wanted to go back in time to when the Cristobal land grant was first awarded in the early eighteenth century to a soldier named Cristobal de la Serna; sold to Don Diego Romero; divided into *solares de casa* (small tracts of land for a dwelling), *suertes* (plots of farmland) and common lands; and patented in the late nineteenth century with the help of Alexander Gusdorf, who had begun buying parcels of the land grant in the late nineteenth century. Referring to Gusdorf as "one of the first hippies" in New Mexico, Mr. Gonzales claimed that Mr. Gusdorf swindled heirs to the land grant by getting them to sign over deeds to him that they did not understand because they did not read English.

The State of New Mexico's decision to levy property taxes on the land grant in the 1940s forced heirs to sell more land to pay the taxes, further decimating the land grant, according to Mr. Gonzales. Adding to the complications was a 1984 district court decision that Cristobal de la Serna is a private, rather than community, land grant and that the original heirs do not have the right to challenge the Gusdorf heirs for title. However, said Mr. Gonzales, the Treaty of Guadalupe Hidalgo guarantees original heirs the right to their land grants.

Mr. Gonzales added that because many descendants of the original heirs, through intermarriage, are *genizaros*, some have considered claiming the land as a Native American community. That idea was rejected because Native Americans have historically had even fewer rights than Hispanics, he said.

Mr. Gonzales asked the committee for its help and thanked members for endorsing a law prohibiting adverse possession on land grants, calling it a good piece of legislation.

Representative Miguel Garcia proposed that the committee recommend funding for an abstract of the Cristobal de la Serna Land Grant. Senator Sanchez so moved, and Representative Hall seconded. The motion passed without discussion.

Land Conservation Incentives Tax Credit (Senate Bill 32)

Joanna Prukop, secretary of energy, minerals and natural resources, briefed the committee on conservation easements and land conservation tax credits and discussed their application to land grants, as per Senate Bill 32 (2009). Sponsored by Senator Cisneros, the bill would have made land grants operating as political subdivisions eligible for tax credits for granting a conservation easement. The bill did not pass during the 2009 legislative session.

Secretary Prukop's presentation included the following points:

- conservation easements are voluntary restrictions placed on property to protect man-made or natural resources by limiting further development of the property;
- the Land Conservation Incentives Act offers tax credits of up to \$250,000 for conservation easements and other donations of land;
- only a landowner can grant an easement to an eligible government or nonprofit agency;

- easements do not reduce property taxes; and
- easements exist in perpetuity; they cannot be undone.

Secretary Prukop provided details about who qualifies to give an easement and who qualifies to accept one. She explained the requirements for the landowner, the recipient and the property. She said that between 2004 and 2008, landowners donated 32,536 acres of land appraised at \$23,841,318, and they received tax credits totaling \$4,978,784.

The committee had questions and comments that included the following:

- Landowners can sell tax easements; an industry has grown up around marketing tax credits.
- How do conservation easements affect the property value? Who determines the subsequent taxes and who pays them? (Conservation easements reduce the value of the property because the owner gives up development rights. The tax credit compensates the owner for that decrease in value. Property taxes are re-assessed based on the new, lower property value, and the landowner, not the easement holder, pays the taxes.)
- Is there a requirement that forestry easements be managed so that they do not fall prey to insect infestations and fire? (The forest legacy program requires that holders of forest easements work with the Forestry Division of the Energy, Minerals and Natural Resources Department (EMNRD) to design and adhere to a forest management plan.)
- Are many people participating in the program? (The EMNRD did not get the landslide of applications it was expecting after the law went into effect. The first year, it received 13 applications; last year, 24 landowners applied; so far this year, the department has received between 16 and 18 applications. The department expects the numbers to grow.)
- Have there been any applications for transfers of tax credits and would it benefit a local government to transfer credits? (There are several deals in the works right now. The benefits depend on what the entities agree to in their dealings.)
- Is there a prohibition against subsurface mining and drilling? (There is no statutory prohibition; the secretary of energy, minerals and natural resources determines if mining and drilling will have a negative impact on open space, wildlife habitat or cultural resources that the easement is supposed to protect.)
- The Santa Fe Railyard is an example of a well-considered and well-executed conservation easement that could be a model for land grants.

The committee recessed for lunch at 12:45 p.m. and reconvened at 1:50 p.m.

Land Grant Tort Liability Coverage

Al Duran, Risk Management Division (RMD), General Services Department (GSD), and Paula Ganz, RMD staff attorney, updated the committee on tort liability coverage for land grants following the failure of Senate Bill 59 in the 2009 session. Sponsored by Senator Martinez, Senate Bill 59 would have amended the Tort Claims Act to extend to land grants governed as

political subdivisions the same eligibility for liability insurance coverage and the same exclusions from the waiver of immunity that acequia associations have.

Mr. Duran noted that this was the RMD's third appearance before the committee and said he was disappointed that Senate Bill 59 did not pass. He explained that the bill was amended to take out the provisions that excluded most of the waivers of immunity, which made the bill more acceptable to trial attorneys, but came too late in the session to get on the calendar for a final vote in the house.

Ms. Ganz said that, as political subdivisions of the state, land grants are covered by the Tort Claims Act, which provides, with certain exceptions, immunity from tort liability to governmental entities and public employees acting within the scope of their duties. Ms. Ganz said the RMD is already authorized to provide coverage to land grants because they are political subdivisions of the state. This coverage only covers tort claims, however, and must be paid for by the covered entity. Such things as contracts, leases and property disputes are not covered.

Mr. Duran said that land grants may pay for additional limited coverage from the RMD, though that coverage could be expensive, depending upon the amount of risk to which the land grant is exposed. He said that the RMD cannot cover commercial enterprises.

Juan Sanchez, president, Chililí Land Grant, said the reason that Senate Bill 59 was introduced was because the Cebolleta and Cañon de Carnuel land grants applied to the RMD for coverage and were told that they would not be eligible unless the law was changed. Manuel Garcia y Griego, director, Southwest Hispanic Research Institute, University of New Mexico (UNM), associate professor of history at UNM and a member of the Cañon de Carnuel Land Grant, asked, "As a member of a land grant that sought to get this coverage but could not, I take it, Ms. Ganz, that you're inviting us to submit an application?". Ms. Ganz answered yes.

Mr. Duran said that 162 agencies that the RMD insures all have the same type of immunity that land grants have. For some, it is automatic, while others have to apply, he said, depending on what the RMD director decides. The current director of the RMD actively wants to cover land grants provided that they follow the application procedure, he said.

Former Lieutenant Governor Roberto Mondragon asked whether land grants that went to the RMD for coverage would participate in the same risk pool as the 162 other entities to which Mr. Duran referred, or if they would be in a different pool. Ms. Ganz said that all tort claims coverage is funded through the Public Liability Fund.

Representative Miguel Garcia asked where the committee stands in terms of the issue. Mr. Sanchez replied that nothing has changed; the best thing to do is to reintroduce the legislation, especially with an RMD director that is "pro-land grants and wants to help". He said it is important to get the legislation written so land grants do not have to come back when there is a change of administration asking for the same piece of legislation.

Mr. Sanchez asked why, if coverage is guaranteed in statute for land grants with political subdivision status, were some land grant applications refused? Mr. Duran said that past RMD directors did not have insurance experience; the current director does. Mr. Sanchez said the policy should be based on statute, not on the director, and no matter who the director is, the director must uphold the law.

The committee voted to endorse the legislation in Senate Bill 59 for introduction next session.

Senator Sanchez made a motion to reintroduce the legislation in Senate Bill 32 regarding conservation easements for land grants. Representative Alcon seconded the motion. The committee adopted it unanimously.

The committee unanimously adopted the minutes of its June 9, 2009 meeting.

Tiered Financial Reporting System

State Auditor Hector Balderas updated the committee on implementation of Senate Bill 336 (2009), which provides for a tiered system of financial reporting rather than a full-scale audit for small political subdivisions such as land grants. The committee had endorsed the bill during the last interim, and the bill passed during the last regular legislative session. Mr. Balderas thanked the committee for being "out in front" in presenting a model of financial accountability for rural communities, in many cases for the first time. As a result, he said, a lot of communities can come out of the dark and submit a financial report so the legislature can be better informed as to how state money is being spent there. He said the committee is making history in providing a solution for self-government, and he thanked the committee for "scolding us when we needed it".

Evan Blackstone, general counsel, Office of the State Auditor (OSA), thanked the committee for well-prepared legislation that was vetted adequately, which he said was instrumental in getting unanimous approval for the bill from the legislature. He noted that a companion bill creating an audit grant fund for smaller governmental entities, including land grants, did not pass. However, the OSA received a \$10,000 appropriation last year specifically to audit land grants. He said that while that money does not go very far, the OSA has already begun looking at land grants' books to ensure that they comply with Department of Finance and Administration rules for financial reporting without creating an undue burden on them.

Natalie Cordova, audit supervisor, OSA, said the OSA has thus far met with 15 of the 22 land grants registered with the secretary of state as political subdivisions, and the agency is in the process of gathering relevant data from them, including historical and financial information, cash procedures, cash and capital assets and expenditures. Based on the information, the OSA is able to provide recommendations for stronger financial controls.

Arroyo Hondo Arriba Land Grant

David Fermin Arguello said he had a "show and tell" abstract of his land grant to share with the committee that includes a patent signed on October 11, 1910 by President Theodore Roosevelt. He explained that the Arroyo Hondo Arriba Land Grant was originally part of the larger Arroyo Hondo Land Grant. A 1904 court case separated the upper and lower parts of the land grant, despite laws prohibiting judges from separating land grants, he said. The Village of Arroyo Hondo within the land grant was founded between 1750 and 1800, when it was named San Antonio.

Mr. Arguello said that in spite of having quiet title insurance and a land patent, the Arroyo Hondo Arriba Land Grant lost 70 percent of its land through legal maneuvering by Thomas Benton Catron and the Santa Fe Ring. Much was lost due to back taxes, forcing many heirs to sell their land to "fairly rich people", including the family of actress Elizabeth Taylor, he said.

Mr. Arguello said the land grant's major concerns include:

- maintaining the integrity and privacy of the *camposanto* (cemetery) and the *morada* (chapel), both of which abut noncontiguous pieces of former land grant property sold to private parties;
- keeping non-heirs from using land grant trails for horseback riding, all-terrain vehicles, hiking and mountain biking;
- encroachment by developers on land grant property;
- setting up fences and cameras to catch trespassers;
- heirs' access to old trails for grazing animals and harvesting wood; and
- that new roads are endangering the acequias.

Referring to previous presentations on financial reporting by and liability insurance for land grants, Mr. Arguello said the Arroyo Hondo Arriba Land Grant has a cumulative annual income of \$640 and cannot afford either of those things.

Noting that the Abiquiú Land Grant got 35 acres returned to it last year, Mr. Arguello said the Arroyo Hondo Arriba Land Grant has some major obstacles for land restoration, including some firmly established new settlements.

Representative Miguel Garcia suggested that the Arroyo Hondo Arriba Land Grant create its own zoning, as Cañon de Carnuel Land Grant did, so the county has no jurisdiction, and register with the secretary of state as a political subdivision so the land grant is entitled to the rights and privileges of a political subdivision, including liability coverage.

Mr. Arguello said that the land grant lost much of its land because it allegedly owed back taxes, even though it has records proving it paid land taxes since 1914. He wanted to know why the land grant has to pay taxes and municipalities do not. Mr. Boller explained that the Constitution of New Mexico exempts municipalities and counties from property taxes, but that land grants are not included in that exemption. Senator McSorley said the legislature ought to change the constitution to read that anyone who lives on a traditional land grant must pay taxes

to the land grant, and then the land grant would have plenty of money.

Senator McSorley asked if anyone has endowed a chair at UNM solely for land grant issues. He said that it costs only \$1.5 million to endow a chair, that he has never seen a bill to that effect and that the legislature could give UNM an "offer it can't refuse" to endow a land grant chair. Representative Miguel Garcia said the Land Grant Committee is currently working with UNM on similar initiatives, including a land grant clinic at the university. Regarding taxing non-heir residents on land grants, Representative Garcia said the Manzano Land Grant tried to do that, but "the courts shut them down". Senator McSorley asked whether the committee has considered amending the constitution to make land grants nontaxable entities. Representative Garcia said that was not a key priority for the committee.

Mr. Arguello said the larger Arroyo Hondo Land Grant is trying to reestablish the original land grant, as it was prior to the separation of the Arroyo Hondo Arriba Land Grant, with a new board of directors and new bylaws. Arroyo Hondo contends that the land grant was divided illegally, which Mr. Arguello described as a legal ambiguity the land grant still faces. In the meantime, he said, the situation is causing friction between neighbors and cousins.

Representative Miguel Garcia said the committee has a hard time grappling with partitioned land grants, such as Arroyo Hondo and Cebolleta. He said the committee is there to help work out solutions. He told Mr. Arguello to "keep up the faith and the good work you're doing".

Public Comment

Rosita Tijerina, daughter of the late land grant activist Reies Lopez Tijerina, told the committee she is trying to reestablish her father's organization, Alianza Federal de Mercedes, in reaction to "seeing how so many rich white ranchers came and took over so many of the land grants". She asked the committee to sign a letter she wrote to President Obama asking for help in getting back land stolen from land grant heirs. Co-signing the letter with Ms. Tijerina was Andres Valdez of New Mexico Vecinos Unidos, who said he would like feedback on the letter, even if committee members do not want to sign.

Senator Sanchez moved that the committee draft its own letter because it would have more weight. Representative Hall seconded the motion, which passed unanimously. Mr. Valdez said he will invite the committee when the Alianza goes to Washington, D.C., to meet with the president.

John Chavez of the Santa Cruz De La Cañada Land Grant asked to be put on the agenda for a future meeting to discuss encroachment by the U.S. Forest Service and the Bureau of Land Management on the land grant. He also said he wants to address the concerns of community land grants that are not political subdivisions of the state. The committee voted unanimously to add Mr. Chavez to the committee's next agenda.

Land Grant Council

Mr. Sanchez of Chililí briefed the committee on the Land Grant Support Act (Laws 2009, Chapter 94), sponsored by Representative Miguel Garcia, which passed during the last legislative session. The legislation creates the Land Grant Council to provide advice and assistance to land grants, serve as a liaison between land grants and the federal, state and local governments and suggest and review state and federal legislation affecting land grants. Mr. Sanchez explained that the bill also appropriated \$150,000 to the council through 2011. He thanked the committee for endorsing the legislation and said he will inform the committee when all the council members have been appointed.

Dr. Garcia y Griego announced that the Land Grant Consejo, which is a different organization than the Land Grant Council, along with Congressman Ben Ray Lujan, organized and conducted a forum on land grant issues at UNM on April 18 and that the forum was recorded. He said he will provide a copy of the presentation to each committee member.

More Public Comment

Estevan Flores said his organizations have been participating in dialogue with the U.S. Forest Service, which he said has taken about 80 percent of land grant land since 1898. He said that land grant heirs would like some type of moratorium to stop the sale of land grant property and to stop levying taxes on land grants.

Senator Martinez made a motion that the committee look into whether land grants are being doubly taxed by county assessors throughout the state and that the New Mexico Association of Counties and the Land Grant Consejo appear before the committee to discuss the issue. Senator Ortiz y Pino seconded the motion, which passed unanimously.

Paul Martinez, representing the northern New Mexico portion of the Sangre de Cristo Land Grant, said the Alianza Federal de Mercedes has not received technical assistance that was provided to other land grants and that the committee should look into whether the state got any money for that purpose that was not expended. He also said that the district court decisions dividing the Arroyo Hondo Land Grant violated the Treaty of Guadalupe Hidalgo and that when people decide to take back their land, they have every right to do it "with a three-fifty-seven in their hand".

Shirley Otero, who represents the southern Colorado portion of the Sangre de Cristo Land Grant, said she feels like an outsider looking in because whatever the Land Grant Committee does in New Mexico may affect her land grant in Colorado. (She said, however, that she does not recognize the state line.) Ms. Otero said she is very concerned that the committee understand that land grants are as different from each other as individuals are. She said she thinks it may be a good thing that three different organizations are working on behalf of land grants, but worries about conflicts and whether mixed messages may be sent.

The committee recessed at 4:40 p.m.

Friday, July 31

Mr. Arguello led the committee on a tour of the Arroyo Hondo Arriba Community Land Grant. The land grant hosted lunch at its campsite. The committee adjourned at around 1:00 p.m.