

**MINUTES
of the
FIRST MEETING
of the
LAND GRANT COMMITTEE
June 28, 2004
Room 311, State Capitol**

The first meeting of the Land Grant Committee was called to order by Senator Bernadette M. Sanchez, chair, at 10:20 a.m. in Room 311, State Capitol.

PRESENT

Sen. Bernadette M. Sanchez, chair
Rep. Miguel P. Garcia, vice chair
Sen. Rod Adair
Sen. Richard C. Martinez
Rep. Debbie A. Rodella

ABSENT

Rep. Don Tripp

Advisory Members

Rep. Ben Lujan

Sen. Manny M. Aragon
Sen. Joseph J. Carraro
Rep. Bengie Regensberg
Rep. James G. Taylor
Rep. Eric A. Youngberg

Staff

Jon Boller
Sheila Manzagol

Guests: A copy of the guest list is in the meeting file.

Senator Sanchez welcomed the public and introduced the committee and staff.

GAO REPORT

David Benavides, staff attorney for New Mexico Legal Aid, Inc., gave a preliminary overview of the recently released Governmental Accountability Agency (GAO) report entitled "Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico" (GAO-04-59). Mr. Benavides said that while much work went into creating this much anticipated report, the first of its kind written and published outside New Mexico, there are a number of problems with the report that are readily apparent.

First, he noted, the report downplays how easily the land grant confirmation process set up by the federal government could be manipulated so that a land grant would be awarded to someone other than the correct owners without the knowledge and participation of the correct

owners. Using the case of the Tierra Amarilla Land Grant as an example, Mr. Benavides explained how the report minimized the effect of the *ex parte* nature of the confirmation process and the lack of notice as they applied in that case and instead focused on a non-grant-specific evaluation of the legality of the confirmation process, concluding that there were no constitutional or other legal deficiencies in the process. Even the surveyors general, according to Mr. Benavides, recognized deficiencies in the process and the likely result of injustices being done.

Second, he pointed out how the report dismisses legitimate grievances regarding cases where community land grants were confirmed improperly, which led to partitioning and sale of common lands. Many community land grants were erroneously awarded as tenancies-in-common, even though Spanish and Mexican law did not provide for such a land tenure arrangement, which allowed for the common lands to be partitioned if just one co-tenant filed for partition, according to Mr. Benavides. If the federal government had not made the error of awarding these grants as tenancies-in-common, the existence of state or territorial partition law would not have mattered. The GAO report, he noted, consequently dismisses the loss of lands due to partitioning as a matter of state and territorial law instead of a flawed federal process.

Finally, the report states that mistakes in the confirmation process were fixable through the courts, even though this is contradicted by a number of U.S. Supreme Court and federal and state court decisions where land grant heirs have attempted, and failed, to obtain relief, according to Mr. Benavides. Though the report discusses the Supreme Court decision, *Tameling v. U.S. Freehold and Emigration, Co.*, which essentially blocked all attempts at relief, he observed that the report cites a recent district court decision with no precedential value to argue that mistakes in the confirmation process can still be remedied by the courts. Such a conclusion, he said, is misleading.

In summary, Mr. Benavides said that he would be willing to report to the committee at a later date with a more thorough evaluation of the GAO report.

Members of the committee expressed interest in hearing from the authors of the report. Senator Sanchez said that she had extended an invitation to the GAO to address the committee at its July meeting, but had not yet received a response. Roberto Mondragon said that Representative Udall's office was looking into getting legal help from UNM law students to research land grant issues through a land grant studies program.

WORK PLAN

The committee discussed its proposed work plan to follow up on the tasks it began last interim by addressing several issues that were raised with the passage of Senate Bill 142 and Senate Joint Memorials 10 and 11 of the 2004 legislative session. These issues include clarification of the responsibility for legal representation of land grants; the definition of common lands; political subdivision status; the verification of land grant status; ejectment and delinquent heir issues; review of statutes affecting individual community grants; and the status of negotiations between the Juan Tafoya Land Grant and the State Game Commission. In addition,

the committee decided to invite the authors of the recently released GAO report to present their findings to the committee and allow the attorney general and New Mexico's congressional delegation an opportunity to respond to that report. Finally, the committee proposed to hear testimony on the economic development plans of various community land grants. In addition, the committee agreed to get a status report from Representative Udall's office during the Taos meeting and to hear from the Juan Batista Valdez Land Grant, Abiquiu and Youngsville.

The committee approved the proposed work plan and budget without objection. After a brief public comment period, the committee adjourned at 12:10 p.m.