

**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 Tajiue 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 Tajiue 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 Tajiue 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 Cloudfcroft/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.