

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

**September 18-19, 2014
San Joaquin del Rio de Chama Land Grant
Gallina, New Mexico**

The third meeting of the Land Grant Committee was called to order by Representative Miguel P. Garcia, vice chair, on September 18, 2014 at 10:20 a.m. at the San Joaquin del Rio de Chama Land Grant in Gallina, New Mexico.

Present

Rep. Miguel P. Garcia, Vice Chair
Rep. Eliseo Lee Alcon
Rep. Alonzo Baldonado (9/18)
Rep. Jimmie C. Hall
Sen. Richard C. Martinez
Sen. Gerald Ortiz y Pino (9/18)
Rep. Debbie A. Rodella
Sen. Sander Rue (9/18)
Rep. Tomás E. Salazar

Absent

Sen. Jacob R. Candelaria, Chair
Rep. David M. Gallegos
Sen. Daniel A. Ivey-Soto

Advisory Members

Sen. Carlos R. Cisneros
Rep. Patricia A. Lundstrom
Rep. Vickie Perea

Rep. Phillip M. Archuleta
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, September 18

Call to Order

Representative Garcia welcomed the committee and members of the audience and asked committee members, staff and the audience to introduce themselves.

Update: The San Joaquin del Rio de Chama Land Grant-Merced (SJRC): Current Challenges and Future Prospects

Leonard T. Martinez, president; Thelma Lovato Chavez, vice president; and Gerald Chacon, secretary of land and water, SJRC, welcomed the committee to the SJRC. They provided a brief history of the SJRC and referred the committee to its web site, www.riodechamalandgrant.com, for more information about current activities.

Ms. Chavez explained that in 1806, Francisco Salazar and 30 other people petitioned for the land grant, which was delivered in 1808 and recognized as a community grant with individual private allotments. The boundaries for the land grant were the Cebolla Valley on the north, the Capulin River on the south, the boundary of the Martinez grant (now known as the Piedra Lumbre Grant) on the east and the Segita Blanca ("Little White Ridge") on the west. The western boundary was not as clear as the others because there were two possible ridges that could have been the boundary, and it later became the subject of controversy. In 1861, descendants petitioned the surveyor general for confirmation of the land grant, and 17 years later, in 1878, the land was surveyed and found to encompass approximately 473,000 acres. The survey did not distinguish between community and private allotments, and a protest against the survey was filed claiming that private allotments were improperly included in the survey. Most of the land grant was lost in 1897 as a result of a case decided by the United States Supreme Court, *United States v. Sandoval*, in which the court found that the community lands had been retained by the Spanish, and later the Mexican, government and therefore were acquired by the United States government as a result of the Treaty of Guadalupe Hidalgo. In 1905, the remaining portion, 1,422 acres, was lost to the Rio Arriba Cattle Company, which was owned by T. D. Burns, who lived in Parkview, now known as Los Ojos.

From 1895 through 2004, Ms. Chavez continued, descendants of the 1806 grantees remained on the land grant. In 2004, the last four heirs still living on the land grant were Salomon Lovato, Ubaldo Velasquez, Joe Cordova and Charlie Chacon. Mr. Chacon attended the meeting and was recognized by the committee. Leonard Martinez, grandson of Mr. Lovato, is now the president of the land grant.

Mr. Chacon added that in 2004, a law was passed (Chapter 49 NMSA 1978) allowing community land grants, defined as land grants-mercedes, to apply to be political subdivisions. The SJRC applied in 2006 and has complied with all the statutory requirements since then.

The SJRC has completed a number of projects, and others are under way. A database of all the heirs of the land grant has been created. Appropriations from the legislature were secured to purchase the land grant building and to grade and gravel its parking lot, and the SJRC also

received \$10,000 from the Land Grant Council for improvements to the building. U.S. Senator Tom Udall provided assistance and a liaison to discuss with the U.S. Forest Service (USFS) and the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) an easement to a historic cemetery. The USFS put a gate on the cemetery and resurveyed the area to confirm the cemetery's boundaries, and the SJRC built a trail to the cemetery.

The first priority of the SJRC now is to renew the historic farmlands near the cemetery. With the cooperation of the USFS, Senator Udall's office and others, the SJRC is working on getting a permit to use water from the Rio Chama to irrigate 270 acres for farming. The SJRC is working with the NRCS to create a farm plan to develop necessary infrastructure and has sent branch cuttings from heritage apple trees on the land to Michigan State University for grafting.

The SJRC's second immediate priority is to refurbish the Sala building next door to the SJRC office for use as a community center. The SJRC lost an \$80,000 appropriation because it was not able to use it in time under Department of Finance and Administration (DFA) rules; it would like legislation to reinstate that appropriation.

The SJRC also has an ongoing fundraising project selling posters of an original oil painting by Juan Chavez depicting a view from the historic cemetery.

In response to questions from the committee, Leonard Martinez and Arturo Archuleta of the Land Grant Council explained that the reason the \$80,000 appropriation was lost was that it was a capital outlay appropriation and therefore structured as reimbursement for payments already made. The problem was that the SJRC did not have the money up front, so it could not pay for the work and then be reimbursed. Since the SJRC could not expend the appropriation, the money reverted. A committee member noted that the DFA audit requirements for public entities have hindered expenditure of capital outlay funds for projects statewide. Discussion of various alternatives to provide funding to land grants for infrastructure development and improvement included the possibility of counties acting as fiscal agents to receive and disburse appropriations. It was noted, however, that a number of rural counties are also challenged by the DFA's audit requirements. Using the New Mexico Finance Authority as a disbursement clearinghouse for capital outlay for land grants was brought up.

USFS Status Report

James Melonas, New Mexico state liaison, USFS Southwestern Region; Mike Frazier, staff officer, USFS; and Chris Chavez, regional land surveyor, USFS, addressed the committee.

Mr. Melonas informed the committee that USFS personnel received training in land grant issues from Mr. Archuleta and Dr. Manuel Garcia y Griego, director, Land Grant Studies Program, University of New Mexico (UNM), and the USFS civil rights staff also provided training to other USFS personnel.

Mr. Melonas noted that he had a follow-up trip scheduled for September 29, 2014 to Truchas to address the concerns of the Nuestra Señora del Rosario, San Fernando y Santiago del Rio de las Truchas Land Grant (Nuestra Señora).

Mr. Melonas advised the committee that he has accepted another position within the USFS and will be moving to North Carolina in a month. He will be able to work with his successor for about three weeks before he leaves and will bring him up to speed on land grant issues. The committee expressed its appreciation to Mr. Melonas for the work he has done in improving relationships between the USFS and the land grants.

Motion

A motion was made and passed without objection that staff draft for the committee a letter of appreciation regarding Mr. Melonas to the USFS regional forester and to have the New Mexico congressional delegation copied on the letter.

Mr. Frazier related that, historically, there were approximately 1,400 acres of irrigated land along the Rio Chama. The associated water rights were perfected by Mr. Burns when he took possession of the land. Land and water rights were transferred from Mr. Burns to a Mr. Skull and were subsequently acquired in 1969 by the USFS. The USFS is not currently using the water rights because plans to put them to use were delayed by the theft of eight miles of aluminum irrigation pipe. In response to a question from the committee, Mr. Frazier said that the Office of the State Engineer said that it has no plans to recall the water rights for lack of use. Nonetheless, the USFS is concerned about that possibility. The USFS has been working with the SJRC to return the fields to working farms irrigated by Rio Chama water. As mentioned by Leonard Martinez earlier, development of the historical farmland is the SJRC's first priority at present. A committee member asked Leonard Martinez how much land is involved and if the land grant heirs had ever tried to get this land confirmed to them or if Mr. Burns had applied for confirmation. Leonard Martinez replied that there are 1,492 acres, 277 of which are irrigable. A committee member asked what crops had historically been grown on the land and what the ideal crops would be. Mr. Chacon answered that, historically, the land was used for subsistence farming and later for forage for cattle; the SJRC's current plan is to grow wheat, alfalfa and vegetables. In response to a question from the committee, Leonard Martinez said that the SJRC is not in position at present to address the issue of getting title to the land returned to the SJRC. A committee member remarked that perhaps the attorney general could pursue the issue.

Cañon de Chama Cemetary Access

Mr. Frazier informed the committee that for the present, the SJRC has been granted a permit to access the cemetery. For the longer term, an easement will be issued, probably in the next couple of weeks, to ensure permanent access. Mr. Chavez informed the committee that the USFS had resurveyed the area and corrected an earlier surveying error, which showed that the cemetery was in a designated wilderness area. Mr. Frazier noted that since the corrected survey shows that the cemetery is not in designated wilderness, the road can be improved to allow motorized access, which is important for older or infirm land grant members. The easement will provide unlimited access to land grant members, but the area will be closed to the public. Access is for the purpose of historic preservation, not for burials.

Nuestra Señora Boundary Issues

Mr. Melonas said the USFS is working with the land grant to clarify boundary issues.

Review of USFS Liaison Issues and Challenges Statewide

The committee reiterated its appreciation of the efforts of the USFS in general and Mr. Melonas in particular to reach out to and work with land grant communities. Mr. Melonas informed the committee that the new regional forester has visited northern New Mexico several times and is gaining an understanding of its history and current relationships.

Tierra Amarilla Land Grant-Merced: The Past Informing the Future

David Correia, associate professor, Department of American Studies, UNM, addressed the committee. Mr. Correia referred to his book, *Properties of Violence, Law and Land Grant Struggle in Northern New Mexico* (University of Georgia Press, 2013). He opined that the 1967 raid on the Tierra Amarilla courthouse was the least interesting thing about the Tierra Amarilla Land Grant (TALG). He said that the TALG was and is very well-organized and has been actively used and defended since at least 1776. The major points of his presentation included that:

- (1) land grant dispossession is a phenomenon of the twentieth century;
- (2) courts have wilfully misinterpreted laws regarding land grants; and
- (3) there has been a crackdown on land grant heirs by law enforcement.

Mr. Correia described a series of four court cases that he claimed produced private property out of community land grants. He said that there was no history of private property in the TALG until courts said there was, and he detailed the legal history that led up to the activism of the late 1960s. In response to a question from the committee, Mr. Correia said that returning land grants to heirs is more problematic in the TALG than in some other land grants because all of the TALG is now in private hands. He said that when the land is held by a government, either state or federal, reclaiming it is more successful.

There was related discussion about the efforts to engage with the Department of Game and Fish (DGF) regarding three parcels of land in the original TALG that had been subsequently acquired by the DGF from private owners. The parcels are now known as the Edward Sargent Wildlife Area, the W.A. Humphries Wildlife Area and the Rio Chama Wildlife and Fishing Area.

Motion

A motion was made and approved without objection to have a formal letter of invitation and request sent to the DGF to address the committee at the October or November meeting regarding access to wildlife areas for traditional uses.

Potential for Civil Remedies in Embezzlement Cases Involving Land Grants

David Pederson, general counsel, Attorney General's Office (AGO), addressed the committee.

Mr. Pederson reviewed the apparent embezzlement by Dennis Wells, former president of the TALG board of trustees, of approximately \$233,000 that was paid by Wind River Energy Corp. to the TALG but which was never received by the TALG. Mr. Wells has since died. Mr. Pederson said that a civil suit had been brought against the estate of Mr. Wells on behalf of five TALG heirs. Possible civil remedies include fines, penalties and restitution. Mr. Pederson was not optimistic about the chances for recovery of any substantial amount of money from Mr. Wells' estate because, to date, the estate appears to be valued at only \$10,000 to \$20,000. Mr. Pederson said that although the AGO cannot move on behalf of private interests, it is investigating to determine whether there are accomplices who may be prosecuted on behalf of the TALG as a whole. At this time, it does not appear that persons other than Mr. Wells were involved. Mr. Pederson informed the committee that the first judicial district attorney is also investigating the case to determine whether there is criminal culpability against a living person; he added that the First Judicial District Attorney's Office has not availed itself of the offered assistance from the AGO. Mr. Pederson also related that the state auditor is investigating bank accounts established by people associated with the TALG after the date of the Wind River Energy Corp. payment to trace owners and amounts and especially whether there were payable-on-death accounts. In response to a question by the committee, Mr. Pederson explained that the Fraud Against Taxpayers Act does not apply in this situation because the money was not stolen from the state. Mr. Pederson also raised an idea that, to prevent similar situations in the future, the legislature could consider an appropriation to the Land Grant Council to support hiring attorneys and financial experts to assist the land grants with their fiscal responsibilities.

Los Vigiles Subgrant: Potential Benefits of Providing Subgrants a Pathway to Land Grant-Merced Status Under Chapter 49, Article 1 NMSA 1978

Lalo Lovato, president; Joseph Padilla, former president; and Larry J. Montaña, attorney, Los Vigiles Community Land Grant, addressed the committee. They provided handouts that consisted of a copy of a deed conveying a portion of the Las Vegas Land Grant to Justice of the Peace Ricardo Varela and his successors in office; a copy of the "Stipulated Judgment Confirming in Part and Reversing in Part District Court's Order and Entering Judgment" filed on March 25, 2014 in *Los Vigiles Land Grant v. Rebar Haygood Ranch LLC, et al.*; and a copy of a plat of easement survey for Los Vigiles Community Land Grant.

Mr. Montaña informed the committee that Los Vigiles is a subgrant of the Las Vegas Land Grant, which is administered by the City of Las Vegas. He provided the committee with a copy of a deed, dated December 31, 1951, in which the Las Vegas Land Grant conveyed in trust a portion of land of approximately 3,000 acres within the Las Vegas Land Grant to the justice of the peace acting as a trustee for the residents of that parcel of land. According to the deed, the land was to be held by the residents of the land and was prohibited from ever being conveyed or used by any individual adversely to any of the other residents. The conveyance was for the limited purpose of grazing. Logging of live timber was specifically prohibited, but the residents were also specifically allowed to use dead wood for domestic purposes only. The residents were

responsible for payment of property taxes on the land. The Las Vegas Land Grant retained the right to lease the land for oil and gas, sharing equally the yearly lease rental. The Las Vegas Land Grant also reserved one-half of the minerals, oil and gas and the authority to execute leases for exploration, development and mining of any of them. The deed further specified that if at any time the land ceased to be used for community purposes or the residents failed to pay the taxes due, the land would revert to the Las Vegas Land Grant.

Mr. Montaña confirmed that the residents of the Los Vigiles subgrant had continuously paid the taxes and used the land for community grazing. Los Vigiles has bylaws and an elected board that meets regularly in noticed public meetings to take action related to use and management of the subgrant lands. In every way, it acts like a land grant-merced, but it is not a stand-alone land grant, and its legal nature is unclear; that fact has caused considerable confusion when Los Vigiles has taken legal action to use, manage or preserve its lands. A semicontinuous project of Los Vigiles to thin dead wood from the land to protect the Gallinas watershed from wildfires is the subject of two such actions.

In 2008, new people bought part of La Bonita Ranch just south of Los Vigiles. The new neighbors objected to the Los Vigiles thinning project and barricaded the road, with the result that Los Vigiles residents could not access their land. Eventually, Los Vigiles sued the new neighbors, claiming implied and prescriptive easements through the neighbors' land. Los Vigiles won a district court judgment in its favor. On appeal, among other issues, the defendants raised the issue of the standing of the plaintiffs to sue because the nature of their legal status and their interest in the land was not clear. The New Mexico Court of Appeals found that Los Vigiles was a legal entity without making specific findings as to its legal nature and confirmed the easement by implication. Mr. Montaña provided the committee with copies of the "Stipulated Judgment Confirming in Part and Reversing in Part District Court's Order and Entering Judgment", filed in the Fourth Judicial District Court on March 25, 2014 in *Los Vigiles Land Grant and Mike Martinez v. Rebar Haygood Ranch, LLC; Rocky Know [sic] Ranch, LLC; and James and Florence Howard*. The easement has now been platted and recorded. Mr. Montaña provided the committee with copies of the plat of easement survey for Los Vigiles Community Land Grant.

The second ongoing legal issue for Los Vigiles is the status of a \$300,000 award from the state to thin the dead wood from the land. Los Vigiles has received a thinning grant annually for some time, but the award was revoked this year when it came to light that Los Vigiles is not a statutory land grant-merced and its legal nature is not clear. The committee expressed concern that Los Vigiles had lost the thinning award and discussed possible ways to reinstate it, including having the county act as fiscal agent and contract with Los Vigiles, which would then subcontract the thinning work. There was some question about whether that would be a viable solution because it was unknown whether San Miguel County, where the land grant is located, is in compliance with DFA's audit requirements. Another possibility is to apply for federal grant funding for thinning. A committee member recommended that the Land Grant Council work with Los Vigiles to try to decipher the status of the thinning award money and determine if there might be another way to obtain it.

Motion

A motion was made and approved without objection to have staff contact the Energy, Minerals and Natural Resources Department regarding the thinning award money and the possibility of it being awarded through the county, the local soil and water conservation district or some other political subdivision that could act as a fiscal agent.

The continuing issue for Los Vigiles is the nature of its legal status. There was extensive discussion about the legal nature of Los Vigiles and questions about whether there are other similarly situated subgrants. Mr. Montañó stated that his understanding is that there are at least four others: Gallinas, San Geronimo, Juan Tafoya and Mora (El Carmel). Mr. Archuleta mentioned San Agustin and Arroyo Hondo Arriba as well. Gallinas, San Agustin, San Geronimo and Los Vigiles were originally part of the Las Vegas Land Grant. Juan Tafoya is within the Cebolleta Land Grant. El Carmel is within the Mora Land Grant. Arroyo Hondo Arriba is part of the Arroyo Hondo Land Grant.

Motion

It was moved and approved without objection that the Land Grant Council and LCS staff research and draft a proposal to allow subgrants to attain political subdivision status.

Public Comment

Dr. Federico Reade asked to be scheduled to make a presentation to the committee at the November meeting about an ethnohistory project he is involved with to produce a documentary film about New Mexico land grants from 1960 to the present.

Mr. Archuleta raised the issue of a bill introduced in the last session (House Bill 35), which was pocket vetoed, that would have allowed the Land Grant Council to use private and federal funds to assist community land grants that are not political subdivisions. A committee member requested that the bill be prepared for reintroduction in the upcoming session.

Approval of Minutes

The minutes of the July 21-22, 2014 meeting were approved unanimously, without correction.

Recess

The committee recessed at 5:20 p.m.

Friday, September 19

The committee reconvened at 9:30 a.m. at the Cebolla Community Center for a tour of the SJRC. The tour included a visit to fields that are being reclaimed for agriculture, particularly apple orchards, and to the historic Cañon de Chama Cemetery.

Adjournment

There being no further business before the committee, the third meeting of the Land Grant Committee for the 2014 interim adjourned at 1:30 p.m.

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