

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

**November 25, 2009  
Room 307, State Capitol**

The fifth meeting of the interim Land Grant Committee was called to order at 9:00 a.m. on Wednesday, November 25, 2009, by Representative Miguel P. Garcia, chair, in Room 307 of the State Capitol.

**Present**

Rep. Miguel P. Garcia, Chair  
Sen. Richard C. Martinez, Vice Chair  
Sen. Rod Adair  
Rep. Paul C. Bandy  
Rep. Andrew J. Barreras  
Rep. Eleanor Chavez  
Rep. Thomas A. Garcia  
Rep. Jimmie C. Hall  
Rep. Debbie A. Rodella  
Sen. Sander Rue  
Sen. Bernadette M. Sanchez

**Absent**

Sen. Gerald Ortiz y Pino

**Advisory Members**

Rep. Eliseo Lee Alcon  
Rep. Brian F. Egolf, Jr.

Sen. Carlos R. Cisneros  
Sen. Dianna J. Duran  
Rep. Ben Lujan  
Rep. Richard D. Vigil

**Staff**

Jon Boller  
Peter Kovnat

**Minutes Approval**

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

**Guests**

The guest list is in the meeting file.

**Handouts**

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

**Wednesday, November 25**

**Presentation to Congressional Delegation Staff and Committee Members**

Pablo Sedillo from Senator Jeff Bingaman's office, Heather Brewer and Antonio Sandoval from Congressman Martin T. Heinrich's office and Jennifer Manzanares from Congressman Ben Ray Lujan's office were seated with the committee to take testimony from representatives of three land grants concerning federal agency policies and practices.

Tony Lucero, president of the Board of Trustees of the San Antonio de las Huertas Land Grant, gave a brief history of the land grant and noted that a large portion of the common lands of the grant are now controlled by the federal Bureau of Land Management (BLM). He explained that the Federal Land Policy and Management Act (FLPMA), which governs federal land use decisions, requires meaningful participation of state and local governments in the planning process for the use and disposition of federal lands. The San Antonio de las Huertas Land Grant, which is now a political subdivision of the state, he explained, is in the process of negotiating a memorandum of understanding with the BLM on planning issues affecting the land grant. Mr. Lucero said he thought that some provisions in the FLPMA may be useful in helping land grants retrieve some of the common lands they have lost over the years. Asked whether additional legislation may be needed to address these issues, he replied that more direct legislation would be most helpful, but that better application of existing law could also be useful in gaining back some control over former common lands of the grant. Mr. Lucero said he hoped that approximately 500 acres of BLM land adjoining the land grant could be returned; he said that he also hoped that the land grant would have a role to play in the use of a tract of land that the BLM may be about to transfer to the United States Forest Service (USFS).

Wilfred Romero, president of the Nuestra Senora del Rosario, San Fernando y Santiago Land Grant Board of Trustees; and Adelido Torrez and John Chavez, members of the Nuestra Senora del Rosario, San Fernando y Santiago Land Grant Board of Trustees, presented testimony on a boundary dispute the land grant is having with the USFS. Mr. Chavez explained that the USFS had constructed a 15-mile fence on the land grant that was anywhere from 20 feet to 1.3 miles north of the actual southern boundary of the land grant and USFS land. Mr. Torrez went on to describe how the boundaries of the land grant as patented had been surveyed by Albert Easley in 1895 and marked with rock piles called *mojoneras*. He added that these *mojoneras* still exist and are located along the heights adjoining the Rio Quemado. Repeated attempts to get the USFS to move the fence to the legal boundary have not been successful. The board of trustees members said that as a result of now having more than 400 pages of notes from Albert Easley's survey, they have better documentation of the original boundaries, which may help their case. Mr. Sedillo offered the services of Senator Bingaman's office to set up a meeting with the USFS.

Gilbert Ferran, president of the Board of Trustees of the Town of Abiquiu Land Grant, and David Lopez, historian for the land grant, described the boundaries of the grant and explained that the current incorrect boundaries deprive the grant of approximately 2,000 acres on the south, roughly 2,000 acres on the east and about 1,000 acres on the west. Mr. Lopez said that

the *mojonares* had been located and that the board of trustees would like to have the current boundaries of the grant adjusted to reflect the real boundaries.

Chairman Garcia and other committee members asked the representatives from the congressional delegation to work with the presenters to address their respective issues and include the newly appointed Land Grant Council (scheduled to hold its first meeting this December) in the process, if possible. Mr. Sedillo offered to take the lead in following up on the presenters' issues. Ms. Brewer, Mr. Sandoval and Ms. Manzanares also agreed to work with the parties.

### **Boundary Survey Process and Requirements; Consideration of Legislation**

Representatives from the Nuestra Senora del Rosario, San Fernando y Santiago Land Grant Board of Trustees briefly summarized their testimony from the October meeting regarding the problem of adverse possession suits, whereby common lands were being claimed based on boundary surveys that had been conducted without notice to the board of trustees. The committee reviewed legislation requiring that proof of notice to the board of trustees of certain land grants be filed when surveys of property within those grants are recorded.

Edward Ytuarte, executive director of the State Board of Licensure for Professional Engineers and Professional Surveyors, and Fred Sanchez, a member of the State Board of Licensure for Professional Engineers and Professional Surveyors, summarized the procedures by which surveys are conducted. Mr. Ytuarte explained that surveyors must follow the direction of the persons hiring them but must also follow statutory requirements to find all the recorded documents of all the surrounding properties as well as of the land being surveyed. Anyone has the right to file a complaint that a survey has been done incorrectly, he said. Once the complaint is filed, the board will conduct an investigation to see if the public has been harmed. Noting that a surveyor has the right to access all land necessary to do the surveyor's job, Mr. Ytuarte said that he thought that the proposed legislation before the committee would prevent the surveyor from carrying out the surveyor's job as required by statute. Commenting on the proposed legislation, Mr. Sanchez expressed concern that giving notice to the boards of trustees of land grants would greatly increase the cost of surveys because there are so many land grants and no one knows whom to contact.

Committee members urged the presenters to recommend changes in rules that would require surveyors to talk to the owners of property neighboring the property being surveyed. Committee members also explained the narrow focus of the bill being considered by the committee. Members noted that the bill only requires notice to the boards of trustees of four community land grants, each of which is governed by specific statutes and all of which are registered with the state. The committee also pointed out that the bill does not affect access to property but rather only requires that proof of notice be filed when a survey is recorded for property located within the boundaries of one of the named land grants.

On motion by Representative Rodella, seconded by Senator Rue, the committee adopted an amendment to the proposed bill requiring that notice be given by certified mail. The

committee endorsed the bill as amended without objection. Senators Rue and Sanchez agreed to co-sponsor the bill.

The committee also approved without objection the minutes from the previous three meetings.

### **Additional Proposed Legislation**

The committee added two amendments to a proposed bill allowing land grants to purchase tort liability coverage from the Risk Management Division of the General Services Department: one to make clear that the division is required to allow land grants that are governed as political subdivisions of the state to purchase coverage, and one to ensure that the division would issue rules on how to determine if a land grant is running any type of business enterprise. The committee endorsed the bill, as amended, with three members voting against endorsement. Senator Martinez will carry the bill.

The committee voted without objection to table the bill making land grants eligible for conservation easement tax credits, with the proviso that the bill be brought back next year for the long session.

Jaime Chavez and Richard Griego, representing the Town of Atrisco Land Grant, and Ray Mares and Charlie Pena, representing the Atrisco Heritage Foundation, informed the committee that they have been working on a memorandum of understanding regarding the recognition of the Town of Atrisco land grant as a political subdivision of the state. The presenters said that they hope to come to an agreement by January but have not yet reached a final decision on terms. After discussion, the committee voted to table the bill recognizing the Town of Atrisco land grant as a political subdivision of the state, with Chairman Garcia and Representative Chavez voting in the negative.

### **Traditional Cultural Properties Designation of Common Lands**

The committee discussed a bill that explicitly excludes the common lands of land grants from being treated as state land and that prohibits the designation of common lands as historic property without the permission of the affected land grant. The committee had requested the drafting of the bill following the October meeting. The request came in response to the Cultural Properties Review Committee's designation of approximately 500,000 acres in the Mt. Taylor region as a traditional cultural property (TCP), which included some 19,000 acres of common lands of the Cebolleta Land Grant.

Stuart Ashman, secretary of cultural affairs, said he had not seen, and therefore was not prepared to discuss, the draft legislation, but that he would be happy to answer any questions about the TCP process. Several committee members noted that when legislation passed making community land grants political subdivisions of the state, the intent of the legislature was not to make the common lands of land grants state lands. Mr. Ashman said that private lands within Cebolleta are not included in the TCP designated area, but that under statute the rest fell into what is considered to be state land. Representative Rodella commented that there has been a real

injustice in the interpretation of the legislative intent. Unintended consequences have been a real problem, she explained, and she pointed out that the intent of this legislation is clarified on Page 4, Line 13 of the bill. Members also expressed concern about how much land was designated, how quickly the process moved and whether the Cultural Properties Review Committee had overstepped its authority. Allan "Mac" Watson, Chairman of the Cultural Properties Review Committee, noted that the current litigation on the Mt. Taylor TCP makes it difficult to respond to some questions without tainting the legal process, but that the legal process is important and will test the validity of the law.

Chairman Garcia asked if Mr. Ashman would request that the governor give a message and support the bill this session. Mr. Ashman replied that he would be happy to go to the Office of the Governor with Chairman Garcia. Chairman Garcia thanked Mr. Ashman for appearing before the committee and offering to work with the committee to protect land grants and common lands in the state.

The members of the committee endorsed the bill without objection. The committee also endorsed without objection a joint memorial making clear that the legislature never intended to change the status of the common lands of land grants to state land when it made land grants political subdivisions of the state. Chairman Garcia said he will carry the bill, while Senator Sanchez will carry the memorial.

The committee also asked staff to send a letter to the Legislative Finance Committee, the House Appropriations and Finance Committee and the Office of the Attorney General expressing the committee's belief that the litigation over the TCP designation should be settled out of court.

### **Department of Game and Fish Ownership of Property in La Joya Area**

Tod Stevenson, director of the Department of Game and Fish, presented a map of properties owned by the department that lie within the boundaries of the Sevilleta de la Joya Land Grant. He said that in the late 1930s and early 1940s, the state purchased several small plots of land in the area at tax sales, totaling about 112 acres. Jim Karp, general counsel for the department, said that the department also owned about 3,550 acres in the areas that are part of a waterfowl management area.

Sally Chavira explained that 13 acres of the land (tracts 3 and 4 of map 141) in the area had been passed from her grandparents to her parents and then to her. She said that her father, who just died this year at the age of 102, had been paying taxes on the property for more than 40 years, and that she had been paying taxes on the property for the past 28 years. Mr. Stevenson said that the department was willing to sell the small tracts but had to follow statutory requirements in doing so, and that the appraisals of the tracts that Ms. Chavira submitted had not been approved by the Taxation and Revenue Department. Asked why she had been paying the taxes on the land for the past 28 years, Ms. Chavira answered that the county kept sending invoices. Mr. Karp said that she might be able to get the taxes back, because it was the state's obligation to tell the assessor not to tax the land, as it was state-owned land, and the state failed to do that. Mr. Stevenson noted that the property had been subject to a quiet title suit, in which

Ms. Chavira had not prevailed. Senator Rue requested that Mr. Stevenson supply the committee with documentation of that suit; Mr. Stevenson agreed to send the documents to committee staff.

### **Public Comment**

Mr. Lucero thanked the committee for its support and requested that a memorial be drafted supporting the San Antonio de las Huertas Land Grant's efforts to obtain land from the BLM.

Juan Sanchez announced that the first meeting of the Land Grant Council was scheduled to meet on December 18, 2009. He also asked if the Department of Finance and Administration had responded to the committee's request that capital outlay authorizations to land grants not be taken away if the land grants had not yet been audited.

Carmen Quintana brought the committee's attention to the United States Supreme Court decision *U.S. v. City of Santa Fe*, 165 U.S. 675 (1897), which she said confirms water rights to the people of Santa Fe. She also claims that her family is the rightful owner of land occupied by the Santa Fe Indian School and Saint Catherine's and would like help in getting that land back.

Representative Barreras announced that the Valencia County Commission will be hearing a proposal to transfer a community center to the Tome Land Grant at its December 2, 2009 meeting.

The committee adjourned at 4:20 p.m.