

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

**August 14, 2008  
North Gymnasium, Northern New Mexico College  
El Rito**

**August 15, 2008  
Abiquiú Land Grant, New Mexico**

The third meeting of the interim Land Grant Committee was called to order by Senator Richard C. Martinez, chair, at 10:50 a.m. on Thursday, August 14, 2008, in the North Gymnasium at Northern New Mexico College in El Rito, New Mexico.

**Present**

Sen. Richard C. Martinez, Chair (8/14)  
Rep. Miguel P. Garcia, Vice Chair  
Rep. Paul C. Bandy  
Sen. Joseph J. Carraro (8/14)  
Rep. Thomas A. Garcia (8/14)  
Rep. Jimmie C. Hall  
Sen. Gerald Ortiz y Pino (8/14)  
Rep. Debbie A. Rodella

**Absent**

Sen. Rod Adair  
Sen. James G. Taylor

**Advisory Members**

Sen. Carlos R. Cisneros  
Rep. Justine Fox-Young  
Sen. Phil A. Griego  
Rep. Ben Lujan  
Sen. Bernadette M. Sanchez  
Sen. William E. Sharer  
Rep. Eric A. Youngberg

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

**Staff**

Jon Boller, Legislative Council Service (LCS)  
Tamar Stieber, LCS

## **Guests**

The guest list is in the meeting file.

## **Handouts**

All handouts are in the meeting file.

## **Thursday, August 14**

### **Welcome**

Carlos Martinez, director of the El Rito Campus, Northern New Mexico College, welcomed the committee to the campus and gave a brief history of the college. He explained that the college is promoting its corporate retreat facilities (El Rito Heritage Retreat Center) and noted that the college has both dining facilities and 46 rooms available for retreat attendees.

Felipe Martinez, Rio Arriba County commissioner, also welcomed the committee to El Rito and noted that the area is part of his district.

### **Open Gate Program**

R. J. Kirkpatrick and Pat Block, Department of Game and Fish, described the "Open Gate Hunting and Fishing Access" Program, which they explained is designed to allow hunting and fishing, along with other outdoor activities, on private lands and to allow access over private land to public lands for those same purposes. Mr. Kirkpatrick noted that Aaron Roberts is now the full-time open gate coordinator for the department. The program is funded by a fee structure whereby each resident and nonresident license or permit includes a \$1.00 open gate conservation and access fee. Approximately \$250,000 has been taken in under the program, according to Mr. Kirkpatrick, with \$145,000 of that coming in last year. Asked how the program could benefit land grants, he said that a land grant could meet with the department and negotiate the terms of access and value of that access, sign an agreement and go from there. According to Mr. Kirkpatrick, there are currently 15-20 such agreements in place so far. Asked if the state can indemnify private landowners, Mr. Block replied that he did not think the state could *not* do so, though no additional liability is incurred under the agreements.

### **Elk Management and Depredation Issues**

Mr. Kirkpatrick and Mr. Block were joined by game officers John Zamora from Tierra Amarilla and Jaime Martinez from Chama. Mr. Kirkpatrick provided a detailed description of the department's elk management program, noting many of the problems associated with trying to balance the interests of different parties with the allocation of elk permits and with elk depredation.

Asked if he had utilization figures on wildlife areas like the Sargent and the Humphries, Mr. Kirkpatrick replied that he did not because they are wildlife areas, but he estimated that there are approximately 1,000 to 1,500 elk in those areas. It was suggested that the Sargent Wildlife

Area might be a good place to study how limited livestock grazing could benefit the area. Mr. Kirkpatrick said the department had considered that, but that federal agencies have a big say in accepting or rejecting such a proposal. He also noted that he thinks livestock grazing can be beneficial and that the Chama area may be deteriorating without it. The committee voted to make a formal request to the director of the Department of Game and Fish to work with the Range Improvement Task Force to study the feasibility of conducting livestock grazing in the W.A. Humphries, Edward Sargent and Rio Chama wildlife areas and to submit the resulting plan to the U.S. Fish and Wildlife Service.

Committee members queried Mr. Kirkpatrick on a number of issues related to elk hunting and depredation, including:

- É the number of appeals to the department and the number that have been favorably resolved for landowners;
- É how the number of permits to be issued in a particular area is determined;
- É conflicts between those wanting more trophy elk and those who are hurt by the consequent larger herds necessary to produce big bulls;
- É the number of bonus allocations that are based on unconverted permits;
- É the alternative ways of getting elk off private land;
- É how deer are managed compared to elk;
- É the amount of income to the department attributable to hunting versus fishing;
- É the distribution of permits to residents (78%) versus nonresidents (10%) and guided nonresidents (12%); and
- É the number of permits issued to various land grants.

Mr. Kirkpatrick said he would provide the information requested by various committee members as soon as possible.

### **Landowner Perspectives**

Carlos Salazar, a local rancher and landowner, expressed concerns on a number of issues, including that:

- É grazing is a right, not a privilege, under the Treaty of Guadalupe Hidalgo;
- É greater numbers of elk create a hardship among ranchers because elk spread disease, knock down fences and compete with cattle for grazing;
- É the Department of Game and Fish does not manage the elk population well, and perhaps an independent task force can do a better job;
- É the Open Gate Program will result in too many hunters on private land;
- É elk herds are a "big money-making machine" for the Department of Game and Fish, but threaten the livelihoods of ranchers and other locals;
- É the socio-economic impacts of a proposed wildlife corridor in Ojo Caliente need to be analyzed; and
- É environmental groups are conspiring with the Department of Game and Fish and the U.S. Forestry Service to kick ranchers off their land.

John S. Hernandez and John Y. Hernandez, Jr., ranchers and landowners from the Cuba area, expressed frustration with the elk situation on their land and with the response from the Department of Game and Fish, noting that, at one point, John S. Hernandez was threatened with a reduction in landowner permits if he kept complaining. John Y. Hernandez, Jr., submitted a copy of the letter to the committee that he had written to the State Game Commission outlining the problems he and his father had been experiencing since the erection of a game-proof fence on a neighbor's land. He said that all he is asking is for the department to communicate and work with them on the problem, adding that the local game management officer has not been cooperative. Representative Rodella requested that a formal apology be sent to John S. Hernandez, that the department respond to Mr. Hernandez's letter and that Mr. Kirkpatrick meet with the Hernandezes and come to a resolution.

### **Attorney General Response to General Accounting Office (GAO) Report on the Treaty of Guadalupe Hidalgo**

David Thomson, deputy attorney general, and Stephen Vigil, assistant attorney general, introduced attorney David Benavides, whom the Attorney General's Office hired to co-author its response to the GAO's 2004 analysis of the Treaty of Guadalupe Hidalgo. The 72-page report raises serious questions and concerns about the GAO's legal conclusions, the basis for its reasoning and the resulting inequities affecting the historical treatment of land grants in New Mexico. The major issues that the attorney general response raises are as follows:

1. The GAO concluded that the Treaty of Guadalupe Hidalgo was not "self-executing" and that Congress therefore had sole discretion in confirming land grants. However, there was little analysis of whether Congress, in confirming land grants, implemented the terms of the treaty and considered what was owed to land grant heirs.
2. The report only cursorily addressed the issue of community grants that, contrary to the treaty, were often confirmed as tenancies-in-common, rather than as community grants, thus subjecting them to partition suits that deprived heirs of their land.
3. The GAO report suggested that the courts provide the best venue for contesting abuses against land grants. However, the GAO mistakenly relied on a New Mexico district court decision, since reversed, for the proposition that wrongful confirmations can be attacked in state court.

The chair asked that Mr. Vigil, Mr. Thomson and Mr. Benavides attend the committee's next meeting to give a more detailed summary of the report to the committee and to give members a chance to read through the report.

### **Recess**

The committee recessed at 6:55 p.m.

**Friday, August 15**

**Tour**

The committee reconvened at 9:00 a.m. on the banks of the Chama River near Abiquiú for a ceremony commemorating the transfer of approximately 35 acres of land from the State Game Commission to the Abiquiú Land Grant.