

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

**July 21-22, 2014
Tierra Amarilla Land Grant**

The second meeting of the Land Grant Committee (LGC) was called to order by Senator Jacob R. Candelaria, chair, on July 21, 2014 at 10:17 a.m. at the Old Tierra Amarilla Elementary School gymnasium in the Tierra Amarilla Land Grant.

Present

Sen. Jacob R. Candelaria, Chair
Rep. Miguel P. Garcia, Vice Chair
Rep. Eliseo Lee Alcon
Rep. Alonzo Baldonado (7/21)
Rep. David M. Gallegos
Rep. Jimmie C. Hall
Sen. Richard C. Martinez
Sen. Gerald Ortiz y Pino
Rep. Debbie A. Rodella
Sen. Sander Rue (7/21)
Rep. Tomás E. Salazar

Absent

Sen. Daniel A. Ivey-Soto

Advisory Members

Sen. Carlos R. Cisneros (7/21)
Rep. Christine Trujillo (7/21)

Rep. Phillip M. Archuleta
Sen. Timothy M. Keller
Rep. Patricia A. Lundstrom
Rep. W. Ken Martinez
Rep. Vickie Perea

(Attendance dates are noted for members who were not present for the entire meeting.)

Staff

Mark Edwards, Legislative Council Service (LCS)
Peter Kovnat, LCS
John L. Mitchell, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Monday, July 21

Call to Order

Senator Candelaria welcomed the committee and members of the audience and asked committee members and staff to introduce themselves.

Steve Polaco, Pedro Archuleta, Belarmino Archuleta and Robert Torrez welcomed the committee to the Tierra Amarilla Land Grant. Mr. Torrez provided historical background of the land grant from 1832 to the present.

Reorganization of the Board of the Tierra Amarilla Land Grant

Arturo Archuleta, Land Grant Council, discussed the council's work with the Tierra Amarilla Land Grant community to develop new bylaws. He stated that the council is working with New Mexico Legal Aid to bring legal action to vacate the former board members of the land grant.

David Benavides, New Mexico Legal Aid, addressed five pressing issues for the Tierra Amarilla Land Grant. First, there is not a current functioning board of trustees. Second, there has not been an election since 2006, even though the bylaws require one every year. Third, the current bylaws do not meet state election rules. Fourth, the board of trustees has not held quarterly community meetings, despite a requirement to do so in the bylaws. Fifth, the current bylaws permit decisions to be made without a public meeting, which violates the Open Meetings Act.

Mr. Benavides said that a step-by-step approach would be required to rectify the current situation. The first step is to get a court order to hold an election for a new board of trustees. The second step will be to create a new set of bylaws that are in compliance with state law. Mr. Benavides said that he currently represents five heirs to the Tierra Amarilla Land Grant and will file the suit within a week. If the court issues an order for a new election, the Land Grant Council will act as special master for the election.

Mr. Benavides said he had also filed a probate claim on behalf of the five heirs against the estate of Dennis Wells, the former president of the board of trustees of the Tierra Amarilla Land Grant. The claim is concerning \$233,000 paid by Wind River Energy Corporation to the land grant.

Arturo Archuleta emphasized the importance of electing a new board of trustees. He said that many families still rely on access to the common lands of the land grant for survival. They use the common areas for hunting, fishing and gathering wood. They are currently being charged with trespassing when they are caught in the common areas. Almost 40,000 acres of the original common land are owned by the state. Arturo Archuleta stated that the land grant needs a recognized governmental body to work on its behalf. In this example, he indicated that at least

200 acres of common land had been identified and that a functioning board could work toward obtaining those acres.

Questions

A committee member asked if the establishment of who is an heir would be difficult. Arturo Archuleta stated that state statute defines what an heir is. The heirs in Tierra Amarilla are lucky because the original 118 settlers were given deeds to their land. These deeds make it easy to identify the heirs. In the end, the legal process will be required to officially recognize the heirs.

The committee discussed the elimination of oil contracts, the ownership of Chama Land and Cattle Company and the current boundaries of the Tierra Amarilla Land Grant.

A committee member requested that LCS staff prepare a history of the committee's legislative initiatives on behalf of land grant communities. The history should include a list of legislation with a short description. The committee member also requested a written copy of the historical background that Mr. Torrez presented.

Update on the State Auditor Investigation of the Tierra Amarilla Land Grant

Carla C. Martinez, deputy state auditor, stated that the presentation would be similar to the presentation given by the state auditor at the June 2014 LGC meeting.

Evan C. Blackstone, chief of staff, Office of the State Auditor, gave a brief reiteration of the issue. In the summer of 2013, the state auditor opened an official investigation into \$233,000 that was paid by the Wind River Energy Corporation for an option on potential mineral interests in Tierra Amarilla. This money was paid to Mr. Wells. The funds are missing and appear to not have been spent on expenditures for the land grant. Mr. Wells has since died. (See the LGC minutes from the June 2014 and the July 2012 LGC meetings for more detailed information on this issue.)

Mr. Blackstone provided a few updates since the June presentation. He stated that the First Judicial District Attorney's Office (DA) has contacted the Office of the State Auditor and acknowledged that an official criminal investigation has started. He also stated that the Office of the State Auditor has notified the DA of a concern over a possible second company that may have made a payment to Mr. Wells.

Motion 1

Senator Candelaria made a motion to request that the attorney general personally attend the next LGC meeting to discuss potential remedies to recover the money. The request should be made to the DA as well. The motion was seconded by Representative Rodella. The motion passed without objection.

Questions

The committee members were concerned about how much of the \$233,000 could conceivably be recovered. Mr. Blackstone stated that he was not allowed to discuss amounts at

this time due to legal issues and that his office is not legally allowed to pursue recovery. He said that the DA is exploring the money trail and may file criminal charges. He indicated that it will be up to the DA to determine if Wind River Energy Corporation has any actionable liability for making what may have been an illegal purchase.

A committee member stated that the statute of limitations for civil action exhausted on May 28, 2014. There may still be criminal charges brought, but the odds are that no money will ever be recovered. The situation is a lesson learned for the future.

Another committee member asked if the Attorney General's Office could pursue a Fraud Against Taxpayers Act (FATA) civil action (see June 2014 LGC minutes for a description of the FATA). Mr. Blackstone said that criminal charges are not required for a FATA civil suit, but the amount recoverable may not be enough to pursue that type of action. The committee member stated that if a FATA civil suit were successful, the estate of Mr. Wells would be required to satisfy the judgment. Noting the incarceration penalty for failing to pay a FATA judgment, Mr. Blackstone stated that Mr. Wells might have faced incarceration for his actions, but he is deceased.

Committee members raised the question of whether any other individuals besides Mr. Wells were involved. Mr. Blackstone stated that the Office of the State Auditor believes that others were likely involved but that it is not the proper agency to determine that. Mr. Wells was identified because he was the signer on the land grant's account at Wells Fargo. Mr. Wells was the one who executed the questionable transactions.

Differing Types of Land Grants

Dr. Manuel Garcia y Griego, director, Land Grant Studies Program, University of New Mexico (UNM), gave an overview of the different types of land grants in New Mexico (see handout). He stated that lands grants should be viewed as a continuum and not as separate entities. He acknowledged that the focus of the committee is on community land grants, not private land grants. With that focus in mind, he suggested that common lands are a major issue and must be studied.

Arturo Archuleta opined that there is confusion as to what a land grant is. He stated that government agencies continuously attempt to categorize land grants despite the fact that each one has unique characteristics. He noted that some land grants have formal governance in place while others do not. Some land grants became land grant corporations created by the Territorial Legislature in 1891. Unfortunately, he stated, no records exist of which land grants became corporations.

Arturo Archuleta suggested that the land grant statute be amended to list all recognized land grants in the state. This would help eliminate some of the ambiguity regarding which land grants are political subdivisions.

Questions

A committee member suggested that a comprehensive database be created that lists all of the land grants and provides information on each of them. This type of database would make understanding land grants much easier and would provide an excellent resource to teach children. Arturo Archuleta replied that making a database would be difficult because some land grants may inadvertently be miscategorized. He felt that statutorily defining the entities that are land grants would make establishing a database more effective.

A committee member stated that there are many land grants that have already gone through the political subdivision process. Postulating that these land grants should be able to be placed into a database very easily, the committee member requested that Arturo Archuleta provide the LGC with a list of land grants that have already sought to be political subdivisions.

Arturo Archuleta said that the process of providing clarity on the issue would not be a short-term one. To sort out the land grant entities would first require identifying which land grants want to be political subdivisions. Second, he suggested, the Land Grant Council would need to determine the land grants that are not political subdivisions to know what options are available and to determine the benefits of becoming a political subdivision. Finally, he stated that to be successful, land grants would need additional resources to help navigate the state's system.

The committee requested that Arturo Archuleta bring a concrete proposal for legislation to the final interim committee meeting. The committee suggested that the proposed legislation be limited and prioritized.

Report from the United States Forest Service (USFS)/Nuestra Señora del Rosario, San Fernando y Santiago del Rio Las Truchas (Nuestra Señora) Land Grant and Its Work with the USFS

These two presentations were combined due to their common issues. James Melonas, New Mexico state liaison, USFS Southwest Region, provided the LGC with four updates concerning the USFS.

Mr. Melonas stated that the USFS has been working closely with the Land Grant Council and engaging with the land grant community. As an example, he discussed a proposal that a small building on USFS land just north of Ghost Ranch be converted to a community center for the land grant in the area. He also noted that the Land Grant Council had provided an overview of land grants, including their history, to the U.S. Bureau of Land Management and the USFS staff. As a final matter, he highlighted that the new federal farm bill will extend "good neighbor" authority, allowing the USFS to work directly with states on land grant issues.

Jerry Fuentes, a member of Nuestra Señora Land Grant, discussed the use of global positioning system methods to correctly identify the boundaries of his land grant. He stated that the discussions of fences and cattle issues between the land grant and the USFS have been pointless, with no resolution of the issues. He stated that the correct boundaries must be identified, and the USFS should replace fences that it had taken down.

Robert Romero, president of Nuestra Señora Land Grant, stated a need for the USFS to set an official date and time to meet with members of Nuestra Señora Land Grant to make an agreement on the boundaries and offer a promise to rebuild the fences.

Questions

A committee member asked about the brass caps and the mojonera on the map provided (see handout). It was explained that mojoneras are the original boundary markers of a land grant, typically piles or stacks of rocks. The brass caps are the federal survey markers that officially define recognized patented boundaries of a land grant. Mr. Melonas said that the USFS must recognize the brass caps as the official boundaries and said that the USFS does not have the authority to change that. Mr. Fuentes replied that the brass caps were sometimes placed in the wrong areas because the original Spanish was translated incorrectly.

Committee members then requested that Mr. Melonas set a specific date and time to meet with the members of the land grant. Further, the meeting was requested to be before the end of August so that the USFS could provide an update on the boundary issue at the committee meeting in September. Mr. Melonas agreed to follow up on the request and stated that the agreement time frame will depend on staff availability to survey the boundaries.

Motion 2

Representative Rodella made a motion to send a request to the New Mexico congressional delegation to explore options for providing additional resources to the USFS, specifically for determining boundary issues. Senator Candelaria seconded the motion. The motion passed without objection.

Raising a concern regarding contentious personal interactions between land grant community members and USFS employees, a committee member asked about USFS training programs. Mr. Melonas agreed to get a status update on the training for the LGC.

On a separate issue, Mr. Romero stated that the land grants need help navigating the process of becoming a political subdivision and need legal assistance. A committee member replied that there are multiple resources available to assist land grant communities, such as the Land Grant Council, the Land Grant Studies Program at UNM and the LCS.

Mr. Romero then requested that the committee provide a list of the strengths and weaknesses of becoming a political subdivision, which he could provide to his land grant members. He acknowledged that the land grant itself could create the list but that the LGC has a stronger legitimacy in the eyes of his land grant's members. In response, a couple of committee members expressed their willingness to come to a Nuestra Señora Land Grant meeting to discuss the benefits of formalizing into a political subdivision.

A committee member suggested that Mr. Romero attend the LGC meeting in October. The meeting will be held at UNM, and the dean of the law school will be invited. It was noted

that the October meeting is part of the committee's effort to increase awareness within the state bar of the unique needs of the land grant community and to foster education on land grant legal issues.

Motion 3

Representative Garcia made a motion to approve the June 2014 LGC minutes. Senator Martinez seconded the motion. The motion passed without objection.

Public Comment

A few members of the public made comments concerning the similarities of challenges facing acequias and land grants and the desire for stabilized and permanent funding for land grants.

Recess

The committee recessed at 4:45 p.m.

Tuesday, July 22

Tour of the Tierra Amarilla Land Grant

The committee reconvened at 9:30 a.m. for a tour of the Tierra Amarilla Land Grant. The tour included a visit to a local wool dyeing and weaving factory, a morada and some areas of the traditional commons lands of the land grant.

Adjournment

There being no further business before the committee, the second meeting of the LGC for the 2014 interim adjourned at 12:30 p.m.