

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

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**November 19-20, 2013  
State Capitol, Santa Fe**

The sixth meeting of the Land Grant Committee (LGC) was called to order at 9:45 a.m. by Representative Miguel P. Garcia, chair, on November 19, 2013 at the State Capitol in Santa Fe.

**Present**

Rep. Miguel P. Garcia, Chair  
Sen. Jacob R. Candelaria, Vice Chair  
Rep. Eliseo Lee Alcon  
Rep. Alonzo Baldonado  
Rep. David M. Gallegos  
Rep. Jimmie C. Hall  
Sen. Richard C. Martinez  
Sen. Gerald Ortiz y Pino  
Rep. Debbie A. Rodella  
Sen. Sander Rue (11/20)  
Rep. Tomás E. Salazar

**Absent**

Sen. Daniel A. Ivey-Soto

**Advisory Members**

Rep. Patricia A. Lundstrom  
Rep. W. Ken Martinez (11/19)  
Rep. Vickie Perea  
Rep. Christine Trujillo

Rep. Phillip M. Archuleta  
Sen. Carlos R. Cisneros  
Sen. Timothy M. Keller

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

**Staff**

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)  
Peter Kovnat, Staff Attorney, LCS  
Alexandria Tapia, Research Assistant, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Copies of all handouts are in the meeting file.

**Tuesday, November 19**

**Welcome and Introductions**

Representative Garcia provided a brief background of the work of the LGC. The committee members, staff and audience introduced themselves.

**Update from the United States Forest Service (USFS)**

James Melonas, New Mexico state liaison, USFS southwestern region, discussed working with the LGC on mutually beneficial projects, including work with the San Joaquin del Rio de Chama Land Grant to return the cemetery to the land grant and work with the Land Grant Council to address this issue administratively without the need for federal legislation, which is important since virtually no legislation is getting through the United States Congress currently.

The San Joaquin del Rio de Chama Land Grant held a trail-making and cleanup day in an attempt to support long-term use of the cemetery by the heirs. Ultimately, such use may require an easement, the securing of which will likely prove to be complicated. Until that occurs, it is possible for the USFS to provide a special use permit to allow access to the cemetery. The San Joaquin del Rio de Chama Land Grant wants that permit to be valid for as long as possible, and it appears the permit may be valid for about 20 years, but that information is still being verified. Despite the permit, San Joaquin del Rio de Chama Land Grant continues to seek a permanent easement.

The USFS continues to work with the Abiquiu Land Grant to identify boundary discrepancies between USFS land and land grant land, in order for the USFS district ranger to assess whether the fence is in the wrong place. Dr. Manuel García y Griego, director, University of New Mexico (UNM) Land Grant Studies Program, and the Land Grant Council have been helpful in working as a liaison between the Abiquiu Land Grant and the USFS.

Responding to a question, Mr. Melonas explained the USFS travel management project. The project directs that all national forests must designate roads and trails for motorized access. In the past, those roads were "open, unless closed". Now the roads are generally considered "closed, unless open". For example, the Camino Real Ranger District recently completed its travel management project and now has 1,800 miles of roads and 67 trails available.

In the past, firewood collection was limited to a distance of 300 feet from the edge of roads and trails. Now, specifically designated areas have been established for firewood collection, accessible with a firewood collection permit. So, fuel wood is available to local communities, but strategic thinning is under way. Notably, permits are activity-specific — one cannot use a firewood collection permit to hunt.

A discussion ensued about differing viewpoints among hunters regarding the travel management project. While some hunters like the improved habitat with the road closures,

others, particularly disabled hunters and fishers, object to limiting access. One committee member noted that the Rocky Mountain Elk Foundation is unhappy about the road closures.

Another concern raised was the curtailing of cross country all-terrain vehicle and motorbike use that could affect traditional use. Mr. Melonas said that traditional use permits exempt holders from the limits placed upon others. The project set up a framework for travel management to be consistent nationwide but to be responsive to local needs.

A committee member recounted an instance where some firewood collection permit holders were stopped by a USFS employee, but it soon became clear that neither the holders nor the USFS employee knew the correct location for firewood collection that was approved by the permit. After leaving the firewood in place, the permit holders hiked back to their car and then were cited in the parking lot by a different USFS employee. The USFS official citing the permit holders had not seen what had happened, yet still issued a citation. Mr. Melonas said that the situation needs to be addressed through better communication and that abuse of power is taken very seriously by the USFS.

Representative Rodella said that she knows a family that was mistreated by a USFS law enforcement officer and that she wants the officer removed, and she requested a meeting with the special agent in charge.

In closing, Mr. Melonas said that the USFS can only act on administrative issues, but transferring ownership of land must be done by the United States Congress. So, it is imperative that communities work with the USFS to achieve success. While the USFS cannot change the past, it can work with land grants to improve the future.

#### **Update from State Auditor on Tierra Amarilla Investigation/Reorganization Update/Oil and Gas Lease Issues**

Evan Blackstone, chief of staff, Office of the State Auditor, discussed the suspected misuse of \$233,000 that was provided to a group of individuals who held themselves out to comprise the board of trustees of the Tierra Amarilla Land Grant. This issue was reported to the Office of the State Auditor in July 2013.

In response to a letter from the LGC to the state auditor, an investigation is under way. The first step has been the seeking of bank records to determine the disposition of the \$233,000 and of another payment made previously. Wind River Energy Corp, the company that paid the \$233,000, has yet to be contacted as part of the investigation, but Mr. Blackstone noted that would be within the scope of the investigation.

Mr. Blackstone said that he cannot reveal specific information because the investigation is ongoing but, under the Audit Act, a political subdivision such as a land grant must report its revenue and account for that revenue. The tier system of reporting, which allows small

governmental entities to provide financial transparency in an affordable way, is state law and must be followed.

A resolution to the problem is at least a few months away, but a potential problem is confusion over how to punish the Tierra Amarilla Land Grant for past wrongdoing by a now-defunct board of trustees.

Steve Polaco, Tierra Amarilla Land Grant, asked for clarification about whether the current board can be held responsible for the past board's actions.

### **Update on the Tierra Amarilla Land Grant Reorganization**

Mr. Polaco, Charlie Chacon and Pedro Antonio Archuleta, Tierra Amarilla Land Grant, and Arturo Archuleta, Land Grant Council, discussed the creation of a subcommittee of the Tierra Amarilla Land Grant board of trustees. The subcommittee was created because people were unhappy with and confused about the actions of the previous Tierra Amarilla Land Grant board of trustees.

The current Tierra Amarilla Land Grant board of trustees proposes to amend the land grant bylaws to prevent the board from signing documents on behalf of the land grant without the support of the heirs, as determined by a majority vote. Now, better notice of meetings is being provided to the heirs, and the most recent Tierra Amarilla Land Grant board meeting was noticed as far north as Chromo, Colorado. The subcommittee wants to hear from all of the heirs to know what they want. The new board wants to be accountable to the heirs.

For a land grant to reorganize, it usually takes inventory of the land it currently possesses. The land grant has a right to meet the highest bid for property on the original grant that has gone tax delinquent.

### **Approval of Minutes from the September and October 2013 Meetings**

Upon a motion made by Representative Rodella, seconded by Representative Baldonado, the minutes for the September and October 2013 LGC meetings were approved without objection.

### **Discussion with the Bureau of Land Management (BLM)**

Jesse Juen, state director, BLM New Mexico State Office, thanked Juan Sanchez, chair, Land Grant Council, and president, Merced del Pueblo de Chilili, and Leonard Martinez, president, Land Grant Consejo, and said that he looks forward to cultivating a relationship with them and with the LGC.

Mr. Juen said that land grants should have some direct dialogue with the BLM to iron out land management issues. An inventory of each land grant and its issues with the BLM needs to be compiled. A recommendation was made to have a workshop to get those relationships started.

Then, the federal government could begin to rectify past inequities and assist land grant communities in getting back their land.

Lawrence Sanchez, president, Tome Land Grant, spoke about federal legislation to transfer BLM land bordering USFS land and private land to make it USFS land. Instead, he asked that the land be deeded to the Tome Land Grant.

John Chavez, board member, Santa Cruz de la Canada Land Grant board, said that the land grant was established in 1692, predating the formation of the United States and that some of the land in the grant is in BLM custody. All that is left of the grant is a riparian zone where land grant members grow some crops. Now, the land grant has no choice but to develop the irrigated land for housing for their children. There is no policing of the land, and there are all-terrain vehicles everywhere, creating erosion that is filling the acequias, leading to further loss of agriculture. Illegal dumping occurs on the land grant, which further pollutes the acequias. Mr. Chavez noted that the Santa Cruz de la Canada Land Grant is part of the Sandoval Seven, and that six of the seven are represented at the meeting.

Tony Lucero, San Antonio de las Huertas Land Grant, said that the land grant had land stolen by Thomas Catron, then the BLM took possession and now the Pueblo of San Ildefonso owns it. Currently, United States Senator Martin D. Heinrich is trying to get the land to the USFS, but the heirs want to get the land back to the land grant. The land grant does not have the money to mount a lawsuit to get the land back, and its members say they need a champion to take up their cause.

Oliver Perea, president, San Miguel del Bado Land Grant, discussed areas of land that the BLM fails to manage well and the land grant wants back. Specifically, he referred to some property that borders Villanueva State Park.

Higinia Gallegos, Juan Bautista Baldes Land Grant, said that since the LGC met at the land grant, she left a message with the BLM regarding the 10-acre recreation site that the land grant seeks to reclaim.

David Benavides, attorney, provided the committee with some history of the Embudo Land Grant, whose petition was rejected and the land was deemed federal land. Subsequently, the federal Color of Title Act was used to gain title to the land by some community members. Most of the people who applied did not meet the requirements, but those that did got their land.

Dr. García y Griego discussed the land grant land that has been mapped as part of a project he is heading. Over 50 percent of that land is currently designated as BLM land.

Mr. Juen reminded the committee and the audience that all of the BLM's authority is limited to the letter of the law, though many of the issues raised at the meeting could be addressed, at least in part, by working together.

Representative Rodella asked for a joint memorial to request that the New Mexico congressional delegation and the BLM work together to solve these issues.

In his closing comments, Mr. Juen committed to working with land grant communities and to looking at various mechanisms to help out when there is an opportunity to do so.

### **Relationship Between the Land Grant Council and the Department of Finance and Administration (DFA)**

Mr. Juan Sanchez and Wayne Sowell, director, Local Government Division (LGD), DFA, discussed some concerns about the relationship between the Land Grant Council and the DFA.

Mr. Archuleta discussed the master stewardship agreement with the USFS that would allow individual land grants under the umbrella of the council, but it is still imperative that the DFA accept the terms of the agreement as the council's fiscal agent.

Questions that arose included: 1) How much power does the council have to act on its own behalf; and 2) What does "administratively attached" mean? As stated in Section 9-1-7 NMSA 1978:

"A. An agency attached to a department for administrative purposes only shall:

(1) exercise its functions independently of the department and without approval or control of the department;

(2) submit its budgetary requests through the department; and

(3) submit reports required of it by law or by the governor through the department.

B. The department to which an agency is attached for administrative purposes only shall:

(1) provide, if mutually agreed, the budgeting, recordkeeping and related administrative and clerical assistance to the agency; and

(2) include the agency's budgetary requests, as submitted and without changes, in the departmental budget."

Mr. Sowell said that the DFA's obligation is administrative in nature, and he does not think that the master stewardship memorandum of understanding (MOU) was stalled by the DFA. He questioned whether the MOU would have made a difference. Mr. Juan Sanchez said that it would have made a difference, and the council is not looking for a fiscal agent — it just wants the same process for federal funding pass-through administration by the DFA as the Community

Development Block Grant program. A member asked to see a copy of the master stewardship agreement to clarify the request.

Mr. Sowell said the LGD gets numerous requests to act as a fiscal agent, and there is not enough personnel to oversee the council, so the DFA does not want to be the fiscal agent. In short, if the Land Grant Council operates independently, then the DFA should not be the council's fiscal agent.

A committee member opined that, in light of this testimony, it makes sense to administratively attach the Land Grant Council to another agency, and the committee discussed which agency would be a viable option to provide oversight for the council so that it could receive federal money and expedite its work. It was noted that the council could be its own fiscal agent if it had adequate staffing.

Mr. Carver offered to work with the Land Grant Council after its meeting with Secretary of Finance and Administration Tom Clifford and to send out a summary to the LGC. If any committee members wish to seek legislation to administratively attach the Land Grant Council to another agency, of course, the committee member can do so.

As a final point, committee members were reminded that New Mexico is missing out on \$100,000 from the federal government due to this unresolved issue with the DFA.

#### **Update on Land Grant Board Elections in Anton Chico Land Grant**

Former Lieutenant Governor Roberto Mondragon, treasurer, Anton Chico Land Grant, discussed an article from the *Guadalupe County Communicator* that reported that the Anton Chico Land Grant election did not happen as planned.

Ernest Padilla, Anton Chico Land Grant attorney, said that no fewer than four different judges have been disqualified from adjudicating the election dispute. So, there has not been an election, and there is currently no judge to adjudicate the situation.

#### **Update on Land Grant Board Elections in San Miguel del Bado Land Grant**

Mr. Perea said that the issue with the 2012 San Miguel del Bado Land Grant election was the changing of district boundaries within the grant. As president, Mr. Perea voided the election and sent a letter to the person running the election about the situation. In turn, a judge charged with overseeing the situation reinstated the previous board and gave the board members some responsibilities. The court provided two special masters to help the San Miguel del Bado Land Grant run an election: Pete Aguilar and Mr. Archuleta.

Mr. Aguilar stated that the first order of business is to create the voter roll. This cannot be solely based on the county's voter rolls, because it would allow non-heirs to vote. The process has to be more discriminating and needs to use genealogical information to identify the heirs. A

request was made for the last election's voter registry, but that information has not been forthcoming.

Lou Sena, San Miguel del Bado Land Grant, stating that he was speaking on behalf of the heirs, said that he does not know of any other land grants that have voting districts as part of their elections. He said that it would be hard to do and still maintain the requirement of proportional representation. Mr. Sena said that the community is disheartened. The 129 people who voted believe that their opinion was wasted by the stroke of a pen by the court. Because the court prefers non-involvement, there was no discovery, just some preliminary posturing by the litigants. The court said that it has no purview over land grant election voter rolls because land grant bylaws exist to permit the communities to address these issues on their own.

Mr. Sena said that the voided election is not the major point. The major point is the board's management of the election process. Many laws were not followed. The board does not have the capacity required of it to carry out the fiduciary duties given to it by statute.

### **Public Comment**

Joe Benito Chavez, heir, San Miguel del Bado Land Grant, chair of the genealogy committee, is a party to the action entered by Mr. Perea. Mr. Chavez said that the heirs were not represented in the case filed by Mr. Perea.

There are two sets of San Miguel del Bado Land Grant bylaws that were ratified in 2009 and 2010, respectively, but very few members were present to vote on them. The bylaws were given to the Secretary of State's Office at the last minute in an attempt to meet a deadline to qualify for state money.

A committee member said that each land grant should decide who is an heir and who gets to vote in an election. This is not for the LGC to decide. In response, another member noted the need for a consistent standard for who can vote in land grant elections.

### **Recess**

The committee recessed at 5:21 p.m.

## **Wednesday, November 20**

### **Call to Order**

Representative Garcia called the second day of the LGC meeting to order at 9:44 a.m. Members of the committee briefed new member, Representative Perea, on some of the land grant issues covered during the interim, particularly those in her district. These issues include a corruption case in Torrance County and capital outlay; elk permits in the Juan Bautista Baldes Land Grant; and issues with double-assessing land for taxes in Chilili.

## **Concept Paper on Revenue for Land Grants and Acequias**

Mr. Juan Sanchez presented to the committee the Land Grant Council's concept paper that arose out of the different presentations during the interim about funding sources for the acequias. (See handout.) Ideally, the Land Grant Council believes that the establishment of a combined acequia and land grant-merced infrastructure fund should be modeled after the already established Tribal Infrastructure Project Fund (Section 6-29-7 NMSA 1978) and the Colonias Infrastructure Project Fund (Section 6-30-8 NMSA 1978).

Mr. Archuleta shares the concerns of acequia associations and acknowledged the differences in infrastructure needs that acequias and land grants have. He added that acequia leadership feels that it is not ready to move forward with this at this time. Unlike the acequias, land grants do not have funds established for infrastructure needs.

Members of the committee and the presenters discussed some of the similarities between land grant communities and colonias. A member mentioned the work of the New Mexico Finance Authority Oversight Committee to create what the committee member referenced as the "everybody else" fund. The member noted that land grants are similar to colonias, but mostly fall outside of the 150-miles-of-the-border requirement.

Members of the committee also discussed the possibility of allowing third-party payments so that land grants would not have to pay out of pocket for infrastructure and other needs. Mr. Archuleta stressed the need for helping land grant communities establish reliable revenue streams.

## **Proposed Legislation**

The following legislation was presented to the committee for endorsement for the 2014 legislative session.

### *Use of Credit Unions by Land Grants: 202.195036.2*

This proposed bill would allow land grant-merced funds to be deposited in a credit union. Members of the committee discussed the benefits to amending the statute to allow land grants to use this option. Representative Hall moved for committee endorsement, and the motion was seconded by Representative Rodella. It was determined this proposed bill would be combined with 202.195039.1 and then put forth with a committee endorsement.

### *Allowing Expenditure of Funds by the Board of Trustees: 202.195039.1*

This proposed bill would allow the board of trustees of a land grant-merced to spend land grant funds following the approval of the expenditure by a majority of the board and the support of the expenditure by an invoice or receipt. Mr. Archuleta provided some clarification on the need for this change and the desire to update statute with changing technology. Senator Candelaria moved for an amendment to the bill's language, beginning on page 2, line 9. The amendment was adopted, and it was determined that the bill would be combined with

202.195036.2. The combined bills will be carried by Senator Candelaria and Representative Baldonado.

*District Residency Requirements for Candidates: 202.195034.1*

This proposed bill would establish district residency requirements for candidates for a board of trustees position of a land grant-merced. After discussion by the committee, it was determined that action on this matter would be postponed until the 2014 interim.

*Changes to Board of Trustees Elections: 202.195035.1*

This proposed bill would establish voting districts and provide for the cancellation of elections for the board of trustees of a land grant-merced. After discussion by the committee, it was determined that action on this matter would be postponed until the 2014 interim.

*Approval of Comprehensive Plans by Board of Trustees: 202.195033.1*

This proposed bill would allow land grant boards of trustees to approve comprehensive plans. Mr. Archuleta provided clarification on the need for this legislation, adding that the DFA requested this legislation due to a lack of DFA staff to conduct the approvals. Senator Martinez moved for committee endorsement, Senator Ortiz y Pino seconded the motion and the motion was passed with Senator Candelaria voting against endorsement. The endorsed bill will be carried by Representatives Trujillo and Perea.

*Calling Special Meetings of Board of Trustees: 202.195037.1*

This proposed bill would expand the ability of land grants-mercedes boards of trustees to call special meetings. After discussion by the committee, it was determined that action on this matter would be postponed until the 2014 interim.

*Filing of Annual Reports with the New Mexico Community Land Grant Registry: 202.195038.2*

This proposed bill would require land grant-merced board of trustees annual reports to be filed with the New Mexico Community Land Grant Registry. After discussion of the legislation, Senator Rue moved for endorsement, and Representative Baldonado seconded the motion. The bill will be carried by Representative Salazar and Senator Rue.

*Amending and Creating Definitions in the Land Grant Statutes: 202.195032.1*

This proposed bill would amend the definition of "heir" and create a definition of "common land" as they are used in Chapter 49 NMSA 1978. After discussion by the committee, it was determined that action on this matter would be postponed until the 2014 interim.

*Amending the Personnel Act: 202.195040.1*

This proposed bill would amend the Personnel Act to add members of a board of trustees of a land grant-merced as an office not construed as a political office. After discussion by the committee, it was determined that action on this matter would be postponed until the 2014 interim.

*A Joint Memorial Requesting Return of Land Grant Lands: 202.195094.1*

This proposed joint memorial would request the federal government to negotiate with the State of New Mexico and representatives of displaced land grant heirs for the return of land grants. The Land Grant Council noted its opposition to this legislation. After discussion, the committee voted not to endorse the joint memorial.

*Adding Land Grants-Mercedes to the Colonias Infrastructure Act: 202.195121.1*

This proposed bill would incorporate land grants-mercedes into the Colonias Infrastructure Act and change the name of the act to the "Colonias and Land Grants-Mercedes Infrastructure Act". Senator Candelaria moved, and Senator Martinez seconded, a motion for committee endorsement of the bill, and the motion was approved, with Representatives Hall and Baldonado voting against the endorsement. The bill will be carried by Senators Martinez and Cisneros.

*A Joint Memorial Requesting the BLM and the New Mexico Congressional Delegation to Work on the Return of Lands: 202.195163.1*

This joint memorial would request the New Mexico Congressional delegation to work closely with the BLM to return land under the present control of the BLM to New Mexico's land grants. Representative Rodella moved for committee endorsement, and Representative Baldonado seconded the motion. Having received endorsement, the bill will be carried by Representative Rodella and Senator Martinez.

*Appropriation for Removing Waste from Common Lands: 202.195150.1*

This proposed bill would authorize an appropriation in the amount of \$1 million from the general fund to the Department of Environment for removal of solid waste, liquid waste and hazardous waste from the common lands of community land grants organized under the state. Senator Candelaria moved, and Senator Martinez seconded, a motion for committee endorsement. The bill was endorsed by the committee. Senator Martinez will carry the bill.

**Adjournment**

There being no further business before the committee, the sixth meeting of the LGC adjourned at 1:05 p.m.