

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

**August 1-2, 2016
South Valley Multipurpose Center
Albuquerque**

The third meeting of the Land Grant Committee for the 2016 interim was called to order by Senator Jacob R. Candelaria, chair, on August 1, 2016 at 10:15 a.m. at the South Valley Multipurpose Center in Albuquerque.

Present

Sen. Jacob R. Candelaria, Chair (8/1)
Rep. Sarah Maestas Barnes, Vice Chair (8/1)
Sen. Ted Barela (8/1)
Sen. Lee S. Cotter
Rep. David M. Gallegos
Rep. Miguel P. Garcia
Rep. Jimmie C. Hall
Sen. Linda M. Lopez
Sen. Gerald Ortiz y Pino
Rep. Debbie A. Rodella
Rep. Tomás E. Salazar
Rep. Bob Wooley

Absent

Sen. Richard C. Martinez
Sen. Sander Rue

Advisory Members

Rep. Eliseo Lee Alcon (8/1)
Sen. Carlos R. Cisneros
Rep. Randal S. Crowder
Rep. Patricia A. Lundstrom (8/1)
Rep. Matthew McQueen (8/1)
Rep. Christine Trujillo

Rep. Paul C. Bandy
Rep. D. Wonda Johnson

Guest Legislator

Rep. Alonzo Baldonado (8/1)

(Attendance dates are noted for members who did not attend the entire meeting.)

Staff

Mark Edwards, Legislative Council Service (LCS)
Michelle Jaschke, LCS
Taylor Smith, Legal Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Monday, August 1**Introductions, Announcements and Minutes**

Senator Candelaria welcomed committee and audience members and asked all those present to introduce themselves. On a motion duly made and seconded, the minutes of the second meeting of the Land Grant Committee for the 2016 interim, as amended, were approved without objection.

Welcome and Status Update: Town of Atrisco Land Grant-Merced (Atrisco)

Jesse Anzures, trustee, Atrisco, outlined the history of Atrisco. He recounted how the statutory provisions in Chapter 49 NMSA 1978 established political subdivision status for certain land grant communities in the state. Mr. Anzures presented a comprehensive plan that he and other trustees have developed for Atrisco and described the multiple purposes that the plan serves in addressing the health, safety and land-use needs of area residents.

Atrisco is seeking to work with the City of Albuquerque and Bernalillo County to address water rights and land-use issues. Mr. Anzures reported that Atrisco is concentrating on good citizenry in this regard and described the community gardening projects (Gardens de Atrisco) and the Desert Forge Foundation's Warrior Farmer Project, operated by Atrisco, that engage combat veterans, schoolchildren and the community in reclaiming urban and semi-rural lands in Atrisco for healing, education, growing food and saving seed. The Warrior Farmer Project offers job training and employment opportunities to returning veterans. Five separate farms are operating in the Atrisco area through these projects.

Representative Garcia elaborated on the history of Atrisco and provided information on the development of the meeting site, the South Valley Multipurpose Senior Center, which is a multiyear, \$7.2 million project that opened in 2010 to serve the Atrisco community. Representative Garcia described the process by which Atrisco family histories, photographs and artifacts have been preserved and are now displayed at the center. Later in the day, Jason Martinez, interim director of the center, and Representative Garcia guided a tour of the state-of-the-art center, which offers a multitude of programs and facilities to the entire community.

Jerome Padilla, president, Atrisco, described how Atrisco came to be established as a township, noting that the township has never exercised its authority to tax and thus has faced questions regarding its identity and jurisdiction. He observed that Atrisco's goals to improve the community have not changed, and he enumerated the many challenges presented in competing with the City of Albuquerque and Bernalillo County for resources. Mr. Padilla presented a letter

that he sent to Attorney General (AG) Hector Balderas, dated February 27, 2015, outlining a number of jurisdictional issues that Atrisco would like to see addressed. A major issue for Atrisco is the failure of local governments to notify Atrisco residents of planned road work and development in the Atrisco area. Atrisco would like to be a member of the Middle Rio Grande Council of Governments but lacks funding for the \$1,200 annual membership fee. Mr. Padilla requested that the fee be waived for Atrisco. Membership would ensure that some notification would be provided to Atrisco regarding county and municipal activities. Mr. Padilla also requested assistance to fund a proposed shared staff position for land grants-mercedes in the state.

In response to members' questions, Mr. Padilla and Mr. Anzures clarified that the county is creating roads in unpopulated areas of Atrisco and that Atrisco has no means to ensure that necessary environmental and other studies are conducted in those instances. Atrisco feels it has jurisdiction, even though Atrisco does not control those lands. Senator Candelaria moved that staff draft a letter to the City of Albuquerque, Bernalillo County, the Middle Rio Grande Council of Governments and the Albuquerque-Bernalillo County Water Utility Authority requesting that Atrisco receive notification of planned development activities in the area. The motion was seconded by Senator Ortiz y Pino and was approved without objection. Senator Candelaria also requested that staff research requirements that are already in statute for notification of land grants regarding area developments.

Guadalupe Hidalgo Treaty Division (GHTD) of the Office of the Attorney General (OAG)

Mr. Balderas provided an update on progress made toward staffing the GHTD and his vision of where the GHTD is headed. Mr. Balderas noted that, as a former legislator, he served as a member of the Land Grant Committee and is familiar with what he called the horrific wrongs and struggles that land grants-mercedes have faced. The AG stated that funding to staff the GHTD is available for the first time, and he thanked committee members for their work to provide that funding. He further observed that land grants-mercedes are facing new challenges as a result of their political subdivision status, but they also have new opportunities with the development of the GHTD. Mr. Balderas highlighted the issue of governance and the need to redefine standards of accountability as important balancing points for land grants-mercedes as they enter the political community. He asked for help from the land grant communities and legislators to identify culturally and legally competent candidates to fill the staff position at the GHTD.

Tania Maestas, deputy attorney general, Civil Affairs Division, OAG, explained the status of hiring for the new GHTD positions. Two positions were funded: a legal aid position and an assistant attorney general III position. The legal aid position has been filled from within the OAG. Brittany Martinez, who is from northern New Mexico and holds a B.A. in history, is already working with the Land Grant Council and the Acequia Commission to identify high-priority needs. The OAG has advertised the other position and is seeking a bilingual individual with a background in history and knowledge of the stakeholders, including acequias. Two strong candidates have already applied. Some committee members cautioned the AG that, with a

special legislative session pending to adjust the state budget, funding for unfilled staff positions will likely be "swept" to cover other budget shortfalls.

In response to questions from committee members, Ms. Maestas outlined some issues that the GHTD will likely address, including:

- property taxation;
- assessing land grant rights with regard to common lands;
- assessing and accessing traditional land uses;
- educating local and state officials with regard to the Treaty of Guadalupe Hidalgo;
- educating land grants regarding open meetings and other governance issues;
- identifying remedies to adverse use of common lands;
- enhancing rights and privileges included in the treaty; and
- extending boundaries of land grants.

With regard to the potential for litigating land grant issues, Mr. Balderas stated that the OAG would have to vet every claim and issue to meet the state's interest test, extending to all of the people of New Mexico, that guides the OAG. The AG noted that, strategically, the OAG would likely only pursue affirmative litigation that would synthesize the intent of the land grant community. He estimated that pursuing any such litigation would be costly, and he suggested looking for a model to fund land grant litigation. Members discussed how to establish a legal framework for jurisdictional issues arising from land grant claims, including traditional use rights.

A committee member apprised the AG that letters have been sent to the New Mexico congressional delegation and the United States Forest Service (USFS) from the committee in opposition to expansion of wilderness areas that might curtail traditional uses in the national forests. Senator Candelaria noted that the USFS was on the day's agenda. He said that absent a mechanism to prioritize traditional use rights at the federal level, authorizing land grant requests for such prioritized usage would be in violation of existing federal statute. The AG stated that he has been briefed regarding the controversy between the USFS and land grants-mercedes over traditional use rights. Mr. Balderas assured the committee that he is looking for the "right fight" with regard to any land grant litigation and that he will heed the advice of members to hire an attorney for the GHTD quickly.

Cibola National Forest Plan Revision and Preliminary Issues with the Dog Head Fire

Jim Upchurch, deputy regional forester, Region 3, United States Department of Agriculture Forest Service, addressed the committee regarding forest plan revision processes and the 12 "valued people and places" listening sessions that the USFS has conducted throughout the Southwest. Mr. Upchurch thanked the land grant communities for their efforts to educate the USFS and asserted that the USFS is looking for solid relationships with land grants-mercedes, recognizing many overlapping concerns about forest management. He stated that the USFS is

working to recognize custom, culture and traditional uses, including developing better definitions and regulatory processes for the location, use and maintenance of acequias.

Mr. Upchurch reported that the USFS wants to engage people in the forest plan revisions, noting that the revisions are required by a national planning rule. He acknowledged that the required evaluations of land for wilderness characteristics have created controversy in some areas. While planners are required to evaluate for possible wilderness designation, Mr. Upchurch observed that only the United States Congress has the authority to designate wilderness areas. He also enumerated many of the characteristics that qualify an area for wilderness designation, including remoteness and a range of other special characteristics.

Elaine Kohrman, forest supervisor, Cibola National Forest, updated the committee on the status of the investigation into the Dog Head Fire in the Cibola National Forest. The fire began on June 14, 2016 and burned 17,912 acres, including over 10,000 acres in La Merced del Pueblo de Chilili (Chilili). The fire began when a masticator (machinery that the USFS uses in its forest-thinning and management efforts) sparked a blaze in some of the downed wood. Ms. Kohrman noted the irony in how the fire began but stated that forest-thinning is the right work to be doing. She described the lessons learned and reported changes that the USFS plans for its management efforts, including removing downed wood that could fuel a fire and making that wood available to area residents by various means. Ms. Kohrman reported that a final report on the fire will be forthcoming in a few weeks and that an interagency team will convene to examine forest-thinning issues. The team has already begun restoration efforts, including road work, culvert clearing and storm patrols to monitor downstream effects.

Juan Sanchez, president, Chilili, reported on the effects of the fire and stated that approximately one-fourth of the burned area was severely burned, requiring more extensive restoration and flood-prevention efforts. One of the biggest problems for residents, who have worked to clear culverts and remediate the most immediate flooding and erosion resulting from thunderstorms following the fire, has been the slow response of the Homeland Security and Emergency Management Department (HSEMD). Mr. Sanchez stated that an emergency declaration triggers the requirement that everything go through the HSEMD and that the red tape and unfamiliarity of the agency with the local landscape has presented new hardships for residents. In response to member questions, Mr. Sanchez and Ms. Kohrman reported that responding to the severity and unexpected nature of the fire has prevented some residents from getting the information they need to present claims, but the USFS is working to ensure that residents have access to and understand the claims process.

Committee members discussed the following issues related to the Dog Head Fire and forest plan revisions:

- effective forest management in wilderness areas;
- prescribed burns as a forest management tool;
- area restoration efforts and compensation for residents affected by the fire;

- recovery time for the area burned by the Dog Head Fire;
- a shared stewardship vision for the forest plan to restore traditional uses;
- outreach to land grants-mercedes to provide regular updates and prescribed burn notifications;
- wood-gathering opportunities and impediments;
- multi-jurisdictional planning and coordination for the federal healthy forest plan;
- processes for wilderness designation; and
- assessing the need for a hotshot fire team to be located in the East Mountains.

Members also discussed the United States Department of Agriculture's Natural Resources Conservation Service (NCRS). Ms. Kohrman described a "joint chiefs initiative", wherein the USFS and the NCRS each set aside \$75,000 for a forest stewardship project. Mr. Sanchez also described a federal Collaborative Forest Landscape Restoration Program project in which Chilili is working with the Pueblo of Isleta and the USFS. Members discussed how best to enable access for land grants-mercedes to a program that provides equipment for forest-management efforts to qualifying entities. Mr. Sanchez stated that U.S. Representative Michelle Lujan Grisham has suggested establishing a separate set-aside under the program for land grant communities. Representative Rodella moved that the committee write a letter to Representative Lujan Grisham in support of the equipment set-aside. The motion was seconded by Representative Garcia and was approved without objection.

Challenges Facing Atrisco

Mr. Padilla enumerated the many challenges facing Atrisco, including the lack of funding, staffing, facilities and recognition by local governments. He stated that the current annual budget of close to \$150,000 consists mostly of in-kind contributions from trustees, and the issue of protecting land grant-merced rights under the Treaty of Guadalupe Hidalgo is of the utmost importance. Mr. Padilla observed that in the view of Atrisco members, jurisdiction does not require ownership.

Representative Salazar questioned the reasoning and the manner in which Atrisco entered an amendment to House Bill 46 during the 2015 regular legislative session, effectively killing a bill that would have established six land grant partitions as autonomous land grants-mercedes. Mr. Padilla stated that he was not fully aware of the consequences of promoting the amendment. Representative Salazar suggested that land grant communities work together to achieve their goals.

Public Comment

Jaime Chavez, Atrisco member, presented objections to a plan recently presented to the Bernalillo County Planning Commission for a new development by the Santolina working group in the area, stating that water is not available to support such a development. Patricio Dominguez, Atrisco resident, addressed the committee in support of establishing separate federal jurisdiction over Atrisco.

Recess

The committee recessed at 4:30 p.m.

Tuesday, August 2

Mr. Anzures and Victor Versace, Desert Forge Foundation, led a tour of a local greenhouse operation and several of the Gardens de Atrisco fields where the Warrior Farmer Project is growing chile and other crops. There are plans to further develop job training, food processing and food truck operations in the area to serve the needs of combat veterans and area residents. The tour also included a visit to the historic Juan Cristobal Armijo Homestead.

Adjournment

There being no further business before the committee, the committee adjourned at 12:30 p.m.