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SENATE JOINT MEMORIAL 5

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Gerald P. Ortiz y Pino

FOR THE LAND GRANT COMMITTEE

A JOINT MEMORIAL

REQUESTING THAT NEW MEXICO'S CONGRESSIONAL DELEGATION INTRODUCE LEGISLATION TO ADDRESS THE NEW MEXICO ATTORNEY GENERAL'S REPORT ON HISTORICAL INEQUITIES ARISING FROM THE LAND GRANT CONFIRMATION PROCESS FOLLOWING THE SIGNING OF THE TREATY OF GUADALUPE HIDALGO.

WHEREAS, from the end of the seventeenth century to the mid-nineteenth century, the sovereigns of Spain and Mexico made land grants to individuals, groups and towns in New Mexico; and

WHEREAS, the Treaty of Guadalupe Hidalgo was signed on February 2, 1848 between the United States and Mexico, and Article VIII of the treaty guaranteed that the private property rights of the inhabitants in the ceded territories as well as the rights of their heirs would be respected; and

WHEREAS, Article VI of the United States constitution

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1 affirms that treaties are the supreme law of the land; and

2 WHEREAS, Article 2, Section 5 of the New Mexico
3 constitution states that the rights guaranteed to the people of
4 New Mexico under the Treaty of Guadalupe Hidalgo shall be
5 preserved inviolate; and

6 WHEREAS, in 2001, United States Representative Tom Udall
7 introduced H.R. 1823, which would establish a presidential
8 commission to determine and evaluate the validity of certain
9 land claims arising out of the Treaty of Guadalupe Hidalgo; and

10 WHEREAS, New Mexico Senators Pete V. Domenici and Jeff
11 Bingaman and Representative Tom Udall requested that the United
12 States general accounting office study how the United States
13 has implemented the provisions of the Treaty of Guadalupe
14 Hidalgo that pertain to the protection of community land grant
15 claims in New Mexico; and

16 WHEREAS, in 2001, the general accounting office identified
17 lands in New Mexico that it considered to be community land
18 grants, and in 2004, it issued a final report concluding that
19 the treaty was "implemented in compliance with all applicable
20 U.S. legal requirements"; and

21 WHEREAS, the report identified options the United States
22 congress could consider in response to concerns regarding New
23 Mexico community land grants, including: (1) taking no
24 additional action; (2) acknowledging difficulties in evaluating
25 the original claims; (3) establishing a commission or other

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1 entity to evaluate and resolve concerns about individual claims
2 or categories of claims; (4) considering transferring federal
3 land to communities; and (5) considering making financial
4 payments to claimants' heirs or other entities for the nonuse
5 of land originally claimed but not awarded; and

6 WHEREAS, following the issuance of the 2004 general
7 accounting office report, the New Mexico legislature in House
8 Joint Memorial 41 requested that the United States congress
9 support legislation to implement the options suggested by the
10 general accounting office report; and

11 WHEREAS, in 2003, the New Mexico legislature created a
12 Guadalupe Hidalgo treaty division in the state attorney
13 general's office; and

14 WHEREAS, the division commissioned an independent response
15 to the 2004 general accounting office report, which was
16 prepared by New Mexico legal aid; and

17 WHEREAS, having received the report from the attorney
18 general, the legislature believes it to be an excellent and
19 well-researched piece of historical and legal scholarship that
20 raises serious questions and concerns about the general
21 accounting office's legal conclusions, the basis for its
22 reasoning and inequities affecting the historical treatment of
23 land grants in New Mexico; and

24 WHEREAS, the evidence presented by the attorney general's
25 report raises serious doubts about the historical fairness of

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1 the land grant confirmation process as well as the lack of due
2 process and a misunderstanding by the general accounting office
3 of Spanish and Mexican law;

4 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
5 STATE OF NEW MEXICO that the attorney general's report be
6 entered into the United States Congressional Record by New
7 Mexico's congressional delegation; and

8 BE IT FURTHER RESOLVED that, since the ability of the
9 judicial branch of government to address land grant claims has
10 been severely limited by United States supreme court
11 jurisprudence, as made very clear in both the general
12 accounting office report and the attorney general's report, the
13 United States congress should consider all its legislative
14 options to address this important matter; and

15 BE IT FURTHER RESOLVED that the New Mexico legislature
16 call on New Mexico's congressional delegation to take a
17 leadership role in addressing concerns raised in the attorney
18 general's report and to consider fully all appropriate remedies
19 to address the historical treatment of land grant claims in New
20 Mexico; and

21 BE IT FURTHER RESOLVED that copies of this memorial be
22 transmitted to the members of New Mexico's congressional
23 delegation.