

Land Grant-Merced Natural Resources Management Challenges & Opportunities

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Natural Resources Management Authority

§49-1-3. Board of Trustees; management of grant; powers - vests the board of trustees with the powers to:

- A. control, care for and manage the land grant-merced and real estate, prescribe the terms and conditions under which the **common lands** may be used and enjoyed and make all necessary and proper bylaws, rules and regulations that shall be in substantial compliance with the applicable statutes for the government thereof.

Natural Resources Management Authority

§49-1-3. Board of Trustees; management of grant; powers - vests the board of trustees with the powers to:

- D. determine the number of animals that may be permitted to graze upon the **common lands** and determine other uses of the **common lands** that may be authorized.

Natural Resources Management Authority

§49-1-3. Board of Trustees; management of grant; powers - vests the board of trustees with the powers to:

- E. prescribe the price to be paid for the use of the **common lands and resources** of the land grant-merced and prohibit a person failing or refusing to pay that amount from using a portion of the common lands while the person continues in default in those payments. . .

Natural Resources Management Authority

§49-1-16. Trespass on common lands or waters: injunctions

- The Courts of this state shall entertain bills of complaint filed by the board of trustees of a land grant-merced to enjoin person from trespassing upon the **common lands** or using the **common waters** within the land grant-merced if it appears that the complainant is without a plain, speedy and adequate remedy at law or that the person committing the trespass are insolvent or unable to respond in damages.

Natural Resources Management on existing Common Lands – Grazing

- Usually permitted by land grants for use by heirs.
- Range improvements and improvements to common waters livestock tanks and spring usually done by land grant.
- Livestock theft by non-heirs can be an issue particularly on common lands that are easily accessible by public roads.

Natural Resources Management on existing Common Lands – Fuelwood

- Usually permitted by land grants for personal and commercial use by heirs.
- Community collection can be supplemented by forest restoration projects sponsored by land grant.
- Unpermitted removal by heirs and non-heirs can be an issue particularly on common lands that are easily accessible by public roads.

Natural Resources Management on existing Common Lands – Mineral & Rock Extraction

- Usually permitted or leased by land grants for commercial extraction.
- Unpermitted removal of rock by heirs and non-heirs for commercial sale can be an issue particularly on common lands that are easily accessible by public roads.
- Unsanctioned rock quarries and gravel pits have led to environmental damages to common lands in need of costly remediation and have impacted other uses like grazing.

Protection and Use of Common Waters

- Land Grants-Mercedes and Acequias authority for common use and local management of water resources share a common origin.
- The concept of locally elected officials to manage the share use of common resources like water is found in Spanish and Mexican law in force at the time our communities were settled.
- Those laws can be traced back to earlier Roman and Moorish laws.
- Communal management of common water is something shared with Pueblos and it is likely those practices may have influenced land grants and acequias.
- Recognition of Land Grant and Acequia governance authority over water resources in current statute date back to territorial laws.

Territorial Statutes for Land Grants-Mercedes relating to Water

- 1891 & 1897 General Land Grant Statutes granted the following power for land grants to:

“To make such rules and regulations not in conflict with the constitution and laws of the United States or the laws of this Territory as may be necessary to the protection and improvement of such common lands and real estate and the use and enjoyment thereof, and of the common waters thereon.”

Separation of Management Authorities for Different Water Uses

- Acequias and Community Ditches – for agricultural irrigation
- Mutual Domestic Water Consumer Associations – for drinking water and domestic use
- Land Grant-Merced – Common wells, springs, streams and stock ponds – for watering of livestock & other communal and domestic uses.
- Centralization of authority to recognize water rights and settle water disputes after 1907.

Accessing Natural Resources on Former Common Lands

- House Resolution 3682 – Land Grant and Acequia Traditional Use Recognition and Consultation Act
- Master Stewardship Agreement between USFS and NM Land Grant Council
- Projects on State Trust Lands

Role of the New Mexico Land Grant Council in Assisting Land Grants with Natural Resources Management and Protection

- Provide technical assistance through staff; legal services through contract with New Mexico Legal Aid and partnership with UNM Natural Resources Environmental Law Clinic; Professional Surveyor contract.
- Serve as a liaison between land grants-Mercedes and Federal and State Agencies.
- Exploring opportunities and options for Land Grant Council to serve as fiscal agent on behalf of land grants-mercedes.

Role of the New Mexico Land Grant Council in Assisting Land Grants with Natural Resources Management and Protection (cont.)

- Provide direct funding for small projects through Land Grant Support Fund
- Partnering with UNM Land Grant Studies Program and Ancestral Lands to plan and develop Youth Conservation Corp opportunities.

Natural Resources Management Challenges and Potential Solutions

- Lack of resources for on the ground enforcement and legal support for court action.
 - Land Grants need a guaranteed revenue stream.
 - Increase resources for New Mexico Land Grant Council to hire full time attorney, professional surveyor and natural resources manager.
 - Fully fund Community Governance Attorney Program to provide additional legal support for land grants, acequias and colonias.
 - Expand the scope of the Treaty of Guadalupe Hidalgo Division to include assistance to land grants-mercedes with natural resources protection.

Natural Resources Management Challenges and Potential Solutions (cont.)

- Lack of expertise in land management practices and applying for and administering conservation funding programs.
 - Provide a guaranteed revenue stream for land grants.
 - Increase resources for New Mexico Land Grant Council to hire full time natural resources manager.
 - Continue to develop partnership with state and federal agencies like State Forestry, Natural Resources Conservation Services, Cooperative Extensions, Soil and Water Conservation Districts, etc.

Natural Resources Management Challenges and Potential Solutions (cont.)

- Clarify enforcement authority of land grant-merced natural resources regulations.
 - Need ability for Boards of Trustees to pass enforcement authority on to employees or others.
 - Need to continue to educate district courts about enforcement authority of land grants.
 - Explicitly include land grant-merced boards of trustees' ability to file in district court pro se.

Natural Resources Management Challenges and Potential Solutions (cont.)

- Use of common waters in Land Grant General Provisions lacks clear definition
 - Create a clear definition of land grant-merced common waters that identifies:
 - types of water resources and uses;
 - consider including times and conditions for use for water from a shared source;
 - set a priority date for land grant common waters consistent with the establishment of the land grant communities and initial use of water;
 - clearly recognizes the land grant-merced's ability to own waters rights in common and ability for the board of trustees to manage those water rights on behalf of the heirs.
 - Similar to authority for acequias to own water rights found in **§73-2-22.1**

73-2-22.1. Acequia and community ditch associations; additional powers; water rights acquisition; nonforfeiture.

- A. Any acequia or community ditch association has the power to acquire and hold property and water rights and transfer and use the property and water rights so acquired pursuant to law.
- B. The rights of an acequia or community ditch association to the waters of the acequia or association or their use or the lands and property owned by the acequia or association shall not be lost by the acequia or community ditch association by prescription or adverse possession or for nonuse of waters except as provided in Section [72-5-28](#) NMSA 1978.

Natural Resources Management Challenges and Potential Solutions (cont.)

- Include the term “common waters” in §49-1-3 subparagraphs A. D. and E.
 - A. control, care for and manage the land grant-merced and real estate, prescribe the terms and conditions under which the common lands **“and common waters”** may be used and enjoyed and make all necessary and proper bylaws, rules and regulations that shall be in substantial compliance with the applicable statutes for the government thereof.
 - D. determine the number of animals that may be permitted to graze upon the common lands **“and common waters”** and determine other uses of the common lands **“and common waters”**. that may be authorized.
 - E. prescribe the price to be paid for the use of the common lands, **“common waters”** and resources of the land grant-merced and prohibit a person failing or refusing to pay that amount from using a portion of the common lands while the person continues in default in those payments. . .

Natural Resources Management Challenges and Potential Solutions (cont.)

- Can be confusion about management authority and roles for water resources and infrastructure on land grant common lands.
 - Provide for agreements between land grant-merced boards of trustees and other entities with management authority of water and delivery or storage infrastructure located on land grant-merced common lands, which clearly define roles and responsibilities of each with specifics about separation of duties and authorities based on types of water use and protocols for access.
 - Provide for inclusion of land grant-merced board of trustees in third party agreements between local acequias or mutual domestics (acting within their authority) and outside individuals or entities for uses of and access to water resources and infrastructure located on land grant-merced common lands.
 - Clarification that land grant-merced board of trustees has sole authority to negotiate third party agreements for use of common lands of the land grant-merced to access water and infrastructure (such as in reservoirs) located on the common lands for uses not related to irrigation and domestic purposes (i.e. recreation and fishing)

Natural Resources Management Challenges and Potential Solutions (cont.)

- Land Grants lack access to traditional uses on former commons land owned and managed by the State.
 - Return former common lands owned and managed by the State to their respective land grant-merced.
 - Provide access to traditional uses to local land grant-merced communities on former common lands owned and managed by the state.

Questions