

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

**October 29-30, 2018
Chilili Land Grant-Merced**

The fourth meeting of the Land Grant Committee (LGC) for the 2018 interim was called to order by Senator Elizabeth "Liz" Stefanics, chair, on October 29, 2018 at 10:09 a.m. in the Chilili Rodeo Club in Chilili.

Present

Sen. Elizabeth "Liz" Stefanics, Chair
Rep. Miguel P. Garcia, Vice Chair
Sen. Gregory A. Baca
Rep. David M. Gallegos
Sen. Linda M. Lopez
Rep. Sarah Maestas Barnes
Sen. Richard C. Martinez
Rep. Debbie A. Rodella
Rep. Tomás E. Salazar
Rep. Christine Trujillo (10/29)

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Alonzo Baldonado (10/29)
Rep. Harry Garcia (10/29)

Absent

Rep. Jimmie C. Hall
Sen. Bill B. O'Neill
Sen. Cliff R. Pirtle
Sen. Sander Rue

Sen. Carlos R. Cisneros
Sen. Stuart Ingle
Rep. D. Wonda Johnson
Sen. Gay G. Kernan
Rep. Derrick J. Lente
Rep. Patricia A. Lundstrom
Rep. Jim R. Trujillo
Sen. James P. White

Guest Legislators

Rep. Kelly K. Fajardo (10/29)
Rep. Matthew McQueen

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

Staff

Mark Edwards, Drafter, Legislative Council Service (LCS)

Michelle Jaschke, Researcher, LCS

Anthony Montoya, Drafter, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file and are posted online.

Monday, October 29**Introductions, Announcements and Minutes**

Senator Stefanics welcomed committee and audience members and asked members and guests to introduce themselves. On a motion duly made and seconded, the minutes of the third meeting of the LGC for the 2018 interim were approved without objection.

Chilili Land Grant-Merced (Chilili): Status Update

Juan Sanchez, president, Chilili, related the history of Chilili from its inception in the early 1500s as the Tompiras Pueblo settlement of Chilili, one of the oldest named places in New Mexico. The site was visited by the Chamuscado y Rodriguez expedition in 1581, the first Spaniards known to have visited native settlements in the area since Coronado's visit some 40 years earlier. In 1613, Nuestra Senora de Navidad was established as the first church in Chilili, but the settlement was abandoned in 1670 in the wake of Apache raids.

In 1841, Santiago Padilla and 20 other families were granted 41,481 acres by the recently established Mexican government. The Treaty of Guadalupe Hidalgo followed shortly thereafter in 1848, and in 1858, the claim of La Merced del Pueblo de Chilili was confirmed by an act of Congress. The land was subsequently surveyed, and a patent was issued in 1909. The Chilili Cooperative Association was formed in 1943 and, according to Mr. Sanchez, proceeded to divest the merced and its members of many of their land holdings. In 1973, El Comite Para Reformar y Preservar Las Tierras de la Merced de Chilili was formed to end the unscrupulous behavior of the Chilili Cooperative Association, and in 1988, the association was dissolved and a board of trustees was established to administer and protect the merced. The association retained a 5,000-acre subdivision that was established during its tenure.

Mr. Sanchez related a history of conflict with the New Mexico State Police, the Bernalillo County Sheriff's Department and the United States Department of Justice during the years that the governance of the merced was in question. He described one instance when a helicopter was flown in to forcibly remove a gate and signage that were erected by Chilili to protect the merced. Mr. Sanchez further stated that Chilili had repeatedly contacted law enforcement agencies to little

or no effect in those years as illicit drug manufacturers illegally moved their manufacturing facilities and drugs in and out of merced lands.

According to Mr. Sanchez, Chilili's established status as a political subdivision has been a positive development for the merced. He noted that Chilili has a long-standing cooperative relationship with the neighboring Pueblo of Isleta, due in part to an old trade route know as La Cuesta that passes through Hell's Canyon from Chilili onto pueblo lands. Chilili is also bounded by forest lands. Mr. Sanchez stated that the United States Forest Service (USFS), Chilili and the Pueblo of Isleta cooperate on a forest-thinning project that has been highlighted nationally as a model for its positive environmental impact. He also reported that Chilili continues to work with the New Mexico congressional delegation on an amendment to the federal Farm Bill that would allow land grants to gain access to the federal Environmental Quality Incentives Program, commonly referred to as EQIP, that provides surplus heavy equipment to eligible entities.

Chilili suffered damage of varying intensity to around 13,000 acres of land during the Dog Head Fire of 2016. Mr. Sanchez reported that native herbs and shrubs are rebounding from the fire damage, but concerns remain with respect to debris in the arroyos when post-fire flooding occurs. Chilili has cleared debris and placed gabions in critical areas in a cooperative effort with the local soil and water conservation district. Mr. Sanchez reported that initial efforts to mitigate the disaster were slowed when the Federal Emergency Management Agency (FEMA) became involved because FEMA lacked an understanding of critical road and post-fire flooding issues in the area and underestimated the need for immediate aid in the aftermath of the fire.

Mr. Sanchez stated that Chilili's board of directors is elected every two years and that Chilili conducts an annual cleanup that is a mandatory work project for land grant members. He described a housing subdivision that Chilili has developed with 15 lots that are leased to active land grant heirs. The infrastructure for the development was funded with a Community Development Block Grant, which was intended to launch a permanent housing development for residents. Mobile homes have been placed on the one- to two-acre lots; however, as the cost of permanent structures proved prohibitive, Chilili has placed restrictions on the age of mobile homes that may be located on the lots. According to Mr. Sanchez, Chilili has received capital outlay funds from the state in the past to purchase heavy equipment and to build a community center. It needs additional funding for improvements to the community center.

In response to members' questions, Mr. Sanchez observed that Chilili has doubled the acreage under the land grant's control since 1981, with close to 10,000 acres now under Chilili's management. He noted that the biggest struggle in reestablishing ownership of the lands was in paying off taxes, penalties and interest that were multiply assessed on the properties under the association and then under the new land grant board. Chilili is working with the USFS under the Collaborative Forest Landscape Restoration Program, a shared stewardship program for forest lands, including the initial restoration of approximately 290 acres of land. Mr. Sanchez reported that Chilili opposes the water distribution plans of the Estancia Basin Water Planning Committee

(EBWPC), which include piping water to the community of McIntosh from the basin and further development of a well in Willard.

USFS: Status Update

Sandy Watts, deputy regional forester, Southwestern Region (SR), USFS, was joined by Tracy Parker, director of lands, SR, USFS, and Ericka Luna, New Mexico liaison, SR, USFS, to provide a status update for the region. Ms. Watts reported on staff changes at the USFS, noting that Jim Upchurch, the former deputy regional forester, has retired and that Elaine Kohrman has replaced Mr. Upchurch. Ms. Watts updated members on the status of the forest plan revisions for the five New Mexico national forests. The plan for the Gila National Forest is in its final stage, and the wild and scenic designation process paper for that area has been released. Cibola National Forest's draft plan is ready, and public comment periods are scheduled for 2019. The Carson, Lincoln and Santa Fe national forests are working to develop draft plans and environmental impact statements for 2019. Time lines for public participation and open houses for various planning phases are posted online.

Mr. Parker provided an update on the status of cemeteries on forest lands. Permits now allow for cemetery visitation and upkeep, and Mr. Parker stated that the USFS is working with the Land Grant Council (Council) and U.S. Senator Martin Heinrich's office on an amendment to the federal Small Tract Act of 1983 to facilitate the transfer of those sites back to local communities. A committee member expressed opposition to having to pay for the transfer of those lands, although it was noted that the appraised value of those lands would be essentially zero. The chair asked that committee staff work with the Council to send a letter to Senator Heinrich from the committee in support of the proposed amendment to the act. Members also discussed ongoing efforts by the USFS to coordinate with land grant communities on a variety of issues, including the recently completed appraisal of the Piedra Lumbre property.

Barilla Peak Road Closure

Joe Chavez, president, San Miguel del Bado Land Grant-Merced, reported the closure of a road in the Barilla Peak area that runs through private land but has traditionally provided access to forest land. Mr. Chavez expressed concern that hunters trying to access the forest lands in that area might express their frustrations inappropriately when they find that the road has been closed. A committee member asked that the USFS staff in attendance at the meeting meet with Mr. Chavez to discuss options for restoring access in that area.

Torreón Land Grant-Merced (Torreón): Status Update

Jose Maria Perea, president, Torreón, related the history of the land grant from the mid-1800s. He noted that water rights issues are a major concern for Torreón and introduced Erminio Salas, president of the Torreón Acequia Association. Mr. Salas reported that Torreón has three acequias and that the association has received funding to start a process of restoration for the acequias. The association has worked to clear at its source the spring that feeds the acequias, and it is now working on an infiltration gallery and piping. The system suffers from sedimentary deposits that have accumulated over time, and much work remains to be done in clearing the

system. Plans to restore irrigation to some of the 2,000 acres that were once irrigated by the system include the installation of an underground piping system and head gates. The association will request capital outlay funding for some of these improvements. It was noted that Torreon is working to establish political subdivision status, but until that time, it will need the county or another local entity to serve as its fiscal agent to receive capital project funding. Mr. Perea said that the state engineer has failed to enforce the water rights of the acequia association and that Torreon is opposed to private entities coming in and taking subsurface water.

Tajique Land Grant-Merced (Tajique): Status Update

Andrew Gutierrez, treasurer, Tajique, reviewed the status of a capital project to improve a park in Tajique. Funding for the playground equipment at the park had been deauthorized mid-purchase in 2016, but in a second round of funding, the playground and a basketball court were completed. Mr. Gutierrez emphasized the importance to the community of being able to provide safe and engaging after-school activities for children, in part due to the high incidence of substance abuse in the community. Mr. Gutierrez reported that Tajique struggles to develop revenue sources for area facilities. Part of the community center that was funded in 2014 is leased to the water association, and Tajique has entered into a lease agreement with the county to establish a transfer station on Tajique land. In addition, Tajique is working to negotiate a lease to place a cell tower on merced lands.

A committee member observed that few, if any, revenue sources exist for small communities to establish infrastructure and critical amenities without the infusion of capital project funds that the state can provide. Those funds also provide local employment opportunities in smaller communities. In response to members' questions, Mr. Gutierrez reported that Tajique has received fencing material from the Department of Transportation that has been erected to help prevent illegal dumping. He stated that Tajique will be seeking capital project funding for community center upgrades and to improve drainage at the park. A committee member observed that funding to provide computers for rural libraries is a priority for after-school programming.

Manzano Land Grant-Merced (Manzano): Status Update

Jason Quintana, president, Manzano, addressed Manzano's capital project needs and water issues. He reported that in the past, the community has received funding for a small playground, but it now has plans to purchase and renovate an existing building that once served as a senior center. The facility has a kitchen that could be renovated to provide local meals for seniors. At present, senior meals are delivered from Mountainair. Tajique also plans to purchase delinquent properties in the area.

Mr. Quintana stated that Manzano was at one time the county seat, and since 1907, Manzano's statutory status has been as a "body corporate and politic". He said that it is unclear if this status now legally equates to being a political subdivision. Arturo Archuleta, program manager, Council, informed the committee that the Council is working to sort out this question to provide guidance to Manzano and the LGC regarding statutory needs to clarify Manzano's status.

In response to members' questions, Mr. Quintana reported that Manzano has adequate water rights at present, but it is fighting off the EBWPC's efforts to divert water to a new subdivision.

Implementation of House Bill (HB) 88 (2018) (Tax Delinquent Property Sales): Status Report

John Monforte, acting secretary, Taxation and Revenue Department (TRD), reported that a significant number of delinquent properties in New Mexico are part of failed subdivisions that date back to the 1960s. Many have been in arrears for 10, 20 and 30 years or more with little or no hope for resolution through current legal processes. He stated that at the time HB 88 was contemplated, there were 85,738 delinquent accounts in these subdivisions that constituted 74% of the total delinquent property accounts in the state.

Mr. Monforte said that HB 88:

- defines "abandoned real property" in failed subdivisions and differentiates it from typical delinquent property;
- protects existing owners by requiring title research and notice of sale to be sent for abandoned real property prior to sale at auction or through a "right of first offer";
- allows for the sale of abandoned real property via a right of first offer to a land grant or other nontaxable entity, such as a tribe or pueblo, before it is offered for sale via public auction; and
- allows the TRD to reduce the sales price below the total amount of base tax, penalty, interest and state cost, meaning that the Town of Tome Land Grant-Merced (Tome) may be able to purchase its historical and cultural land back at potentially discounted prices.

Michael K. O'Melia, acting director, Property Tax Division (PTD), TRD, noted that liquidating delinquent properties in large failed subdivisions has proven extremely difficult. The most recent example includes 457 accounts offered in two sales in 2015, only eight of which sold. He noted that HB 88 targets subdivisions of more than 5,000 vacant lots plotted before 1980 with delinquent liability of at least 10 years and that additional notice and title research are required for many of these properties. No additional resources were provided for these activities, and the PTD is planning to add three positions to address the requirements of the law. Proceeds from these sales may be less than the total liability, and all proceeds will go to the counties.

Mr. O'Melia said that the TRD has met with Tome, reviewed the Valencia County lands, mapped the sections and completed title work on a test case of 430 properties. He noted that the PTD has recently received bids from five title companies to do bulk title research. The TRD does not have the staff to do the title research in-house. He also noted that there are constitutional concerns with the bill with regard to due process and serving proper notice. He said that the bill created a new section of law that allows for the sale of abandoned real property via an online platform, but the TRD does not have the resources to operate such a platform, which would amount to operating a constant online auction.

In response to members' questions, Mr. O'Melia reported that the right of first offer would apply to land grants only where those lands fall into their recognized boundaries, not necessarily their historical boundaries. Mr. O'Melia noted that any land grant purchases of the delinquent properties would be required to go into the land grant's common lands holdings, and the potential for significant checkerboarding with noncontiguous tracts of land remains. A committee member observed that checkerboarding can present major obstacles for land grants in managing those lands and suggested that a better solution is needed to eliminate substandard subdivisions throughout the state. He offered to work with other members on successive statute changes. Other members stated that the bill presents new market opportunities for those lands. Andrea Padilla, president, Tome, reported that a landholder associated with the former homeowners' association in the Tome area is working with the land grant to transfer 12,000 acres of delinquent property in the subdivision to the land grant. She said that Tome supports the legislation. Other public comments addressed the potential for HB 88 to help other land grants, including suggestions to extend the provisions of the bill to the historical boundaries of the land grants and to eliminate requirements to pay accrued penalties and interest.

Review of Topics for Draft Legislation

Mr. Edwards presented a list of proposed legislation for the committee to review for possible endorsement at its meeting in November. Mr. Archuleta noted that legislation the committee discussed last year to create a revenue stream for land grants should also be added to the list.

Tuesday, October 30

Potential Providers of Legal Services for Land Grants-Mercedes and Acequias

Tania Maestas, chief deputy attorney general for civil affairs and operations, Office of the Attorney General (OAG), provided an update on the OAG's budget and the status of the Guadalupe Hidalgo Treaty Division (GHTD) of the OAG. She reported that the OAG's budget request for the coming fiscal year will include funding for an attorney for the GHTD as part of the regular budget. She credited University of New Mexico School of Law (UNMSL) students and staff and the staff of New Mexico Legal Aid (NMLA) with much of the progress that has been made on land grant issues in the past several years. Ms. Maestas reported that the OAG is making progress with the joint resolution passed in 2018 to study the Cristobal de la Serna Land Grant-Merced platting issue and that the lawsuit on behalf of the Tierra Amarilla Land Grant-Merced is on track. Ms. Maestas observed that the existing legislation for the GHTD is limiting for the OAG and may need to be expanded to enable the OAG to litigate on behalf of land grants.

Gabriel Pacyniak, assistant professor, Environmental Law Clinic, UNMSL, Adrian Oglesby, director, Utton Transboundary Resources Center, UNMSL, and David Benavides, counsel, NMLA, explained the various resources and programs they operate in support of expanding land grant and acequia education programs at UNMSL and throughout New Mexico. The panelists spoke in support of providing funding for legal services for land grants and

acequias and for reviving a bill to provide support for law students who train in the areas of land grant, acequia and water law.

Tour

Committee members received a tour of Chilili, including the community center, a view of fire damage on the nearby mountains and the housing development.

Adjournment

There being no further business before the committee, the LGC meeting adjourned at 12:13 p.m.