

Briefing on Land Grant-Merced History and Current Legislation

New Mexico Land Grant Council – July 2018

Issue: Spanish and Mexican Land Grant-Merced communities in the Southwest have, for more than a century, suffered social and economic hardships as a direct result of the failure of the United States to adequately and justly adjudicate communal land claims required under the Treaty of Guadalupe Hidalgo.

History: From the late 1600s through the 1820s, the Spanish crown granted more than one hundred land grants to communities and individuals to promote the settlement of their northern frontier, the modern day southwest (including New Mexico). These grants included both private tracts that belonged to the grant's settlers and large areas of communal lands that belonged to the community at large. This included pasturelands for grazing of livestock and forested lands to extract fuelwood, building materials and harvest other natural resources vital to the survival of these communities. Upon independence in 1821, the Mexican Republic continued the practice, granting dozens more land grants until the Mexican American War broke out in 1846. In 1848 the United States and Mexico signed the Treaty of Guadalupe Hidalgo to end the Mexican American War. The Treaty transferred more than half of Mexico's territory to the United States. This change in sovereignty affected approximately 80,000 Mexican citizens, including approximately 60,000 in the New Mexico Territory. Provisions for the protection of property titles recognized by Mexico, including Spanish and Mexican land grants-mercedes, were included in the Treaty and affirmed by the Protocol of Querétaro. Under the Treaty, the United States was obligated to establish a process for adjudicating/ recognizing land titles in the newly ceded territory.

The adjudication of land claims in the New Mexico Territory spanned 50 years, from 1854 to 1904, and was subject to two different processes. The first process was administered by the Office of the Surveyor General of New Mexico from 1854 to 1891 and the second process by the Court of Private Land Claims from 1891 to 1904. Neither process achieved positive results for the majority of the land grant-mercedes in New Mexico. The Surveyor General process was rife with corruption and collusion between federal officials and land speculators. The Court of Private Land Claims was inherently adversarial to land grant-merced claims. When established, the Court's enabling act called for both a narrow interpretation of Spanish and Mexican law and for the appointment of a U.S. Attorney tasked with extinguishing title to as many Spanish and Mexican land claims as possible. As a direct result of the adjudication process land grant-merced communities in New Mexico lost millions of acres of communal lands that were critical to sustaining their agrarian way of life.

For those land grants-mercedes whose claims were confirmed by the United States, a great number of them suffered the loss of their common land almost immediately. This was due to several factors. First, some confirmations resulted in the United States significantly reducing of the amount of lands that were originally granted by Spain or Mexico. This was due to erroneous surveys, mistranslation of boundaries from original documents written in Spanish, and misinterpretations of Spanish and Mexican laws and customs for granting lands for community settlement. Second, as a result of the direct actions of corrupt government officials and unscrupulous attorneys, many land grants were incorrectly confirmed to either the wrong party

(i.e. an individual or third party such as a land and cattle company) or as a tenancy-in-common (a legal property concept that did not exist under Spanish and Mexican law), which allowed for partition suits that forced the sale of the common lands. Third, land grants-mercedes that gained confirmation of even a portion of their lands were susceptible to delinquent tax seizures by state and county governments and sometimes resorted to selling off lands to pay inflated tax assessments. Finally, land grants-mercedes were vulnerable to encroachments and adverse possession, resulting in additional post-confirmation losses.

Decades after the end of the adjudication process, the federal domain continued to grow via land grants. The U.S. Forest Service established forest reserves on former land grant-merced common lands and by the 1920s acquired many of these lands from the same speculators and attorneys that stole these lands from land grants-mercedes during adjudication. When New Deal programs came in the 1930s, field workers found communities starved from the lack of access to resources surrounding their communities. Numerous federal agencies purchased land grants and instituted relief programs that partially restored access to former common lands. As the New Deal ended, relief programs were cut and land grant-merced lands were transferred to the U.S. Forest Service, which gradually reduced stock grazing, wood cutting, and other uses, renegeing on the intent of federal purchases and creating the seedbed for radicalism.

The result was a period of militant land grant activism that spanned from the 1960s to the 1970s. Since the 1990s, land grants-mercedes began a new period of grassroots organizing that resulted in the creation of Land Grant Interim Committee of the New Mexico State Legislature and the Treaty Division in the New Mexico Attorney General's office in 2003, recognition as political subdivisions in 2004, the organization of the grassroots New Mexico Land Grant Consejo in 2006, and the creation of the New Mexico Land Grant Council, a state agency, in 2009.

Since 2006 land grant communities and advocates through the support of the New Mexico Land Grant Consejo and later the New Mexico Land Grant Council have been working to develop federal policies aimed at preserving socio-economic and cultural integrity of land grant-merced communities in New Mexico. This work has included: partnering with federal land management agencies on mutually beneficial projects to improve watershed health and reduce the risk of catastrophic wildfire; engaging federal management agencies on the development of land management plans such as the Forest Plan Revisions for the Cibola, Santa Fe, and Carson National Forests and the BLM's Rio Grande del Norte National Monument Management Plan to ensure that land grant-merced interests are being properly represented in those documents; working with the New Mexico Congressional Delegation to develop legislation that will address longstanding injustices, protect land grant-merced cultural practices and provide resources and opportunities for advancing land grant-merced communities. This work has included the introduction of legislation by Senator Tom Udall and Congresswomen Michelle Lujan Grisham to amend the Farm Bill in order to make land grants-mercedes eligible for Conversation Program funding and most recently the introduction of H.R. 6365 by Congressman Steve Pearce and H.R. 6487 by Congressman Ben Ray Lujan.

Background on H.R. 6365 – Treaty of Guadalupe Hidalgo Land Claims Act of 2018 – This Act aims to create a presidentially appointed commission to evaluate longstanding injustice claims

stemming from the incomplete application of the Treaty of Guadalupe Hidalgo, including the social and economic impacts that the failed land adjudication process had on land grant-merced communities in the Southwest. Under the Act the Commission would hold hearings to provide land grant-merced governing boards an opportunity to give testimony and submit supporting documentation relating to land claims and use rights claims on former land grant-merced communal (common) lands now under the management of the federal government. Upon completion of its hearings the Commission would be required to issue a report to Congress on its findings, including recommendations for restitution to land grant-merced communities. Restitution recommendations could include: Land returns, stewardship rights, and priority access and use rights on former common lands now managed by the federal government. The bill is not intended to impact any privately held lands located within the historical boundaries of a land grant-merced.

Background on H.R. 6487 – Land Grant and Acequia Traditional Use Recognition Act – This Act is intended to provide for the recognition of traditional uses, on federally managed lands, by land grant-merced communities and to provide for greater consultation between federal land management agencies and land grant-merced and acequia governing bodies. The Act would require federal land management agencies to issue guidance on how land grant-merced communities can access and use natural resources, for traditional use purposes, on federally managed lands located within their patented and/or historical-traditional use boundaries. Traditional uses include: use of water; religious and cultural use, gathering of herbs, wood and other botanical products; grazing; hunting and fishing; and soil and rock gathering. The Act would also provide land grant-merced governing boards the opportunity to negotiate historical-traditional use boundaries with federal land management agencies in order to identify their traditional use areas located on federally managed lands. This will provide for the management of those areas in a manner that is consistent with the protection traditional uses and their related natural resources. Along those lines the Act would also require federal land management agencies to consult with land grant-merced and acequia governing bodies whenever there are any proposed actions that require a National Environmental Policy Act (NEPA) review, to ensure there are no adverse impacts on traditional uses or associated natural resources.