

New Mexico Land Grant Council (NMLGC)
December 19, 2019 – 10:00am
UNM Science and Technology Park
851 University Blvd SE, Suite 202
Albuquerque, NM 87106

Minutes – Final

Regular Council Meeting

1. Call to Order - Roll Call

Chairman Juan Sánchez called the meeting to order at 10:09 am. Roll call of the Council members: Andrea Padilla, Steve Polaco, Leonard Martínez, Rebecca Correa Skartwed and Juan Sánchez were present.

2. Introduction of Guests

Juan Sánchez (NMLGC); Rebecca Correa Skartwed (NMLGC); Andrea Padilla (NMLGC); Leonard T. Martinez (NMLGC); Steve Polaco (NMLGC); Arturo Archuleta (NMLGC/LGSP); Jacobo Baca (NMLGC/LGSP); Venessa Chavez (NMLGC/LGSP); Vidal Gonzales (NMLGC/LGSP); Cheyenne Trujillo (NMLGC/LGSP); Lisa Morrison (BLM); Eric Chávez (Office of Rep. Ben Ray Luján); Isis López (Office of Rep. Ben Ray Luján); Lisa Morrison (BLM); Patricia Domínguez (Office of Senator Martin Heinrich); Novela Salazar (NMAG - Treaty of Guadalupe Hidalgo Division); Rita Padilla Gutiérrez (Town of Tomé Land Grant); Michelle Kavanaugh (Office of Senator Tom Udall).

3. Approval of Agenda

Councilor Steve Polaco made a motion to approve the agenda; Councilor Leonard Martínez seconded the motion. The motion was approved unanimously.

4. Approval of Meeting Minutes from Regular Council Meeting of November 21, 2019

Councilor Andrea Padilla made a motion to approve the meeting minutes of the November 21, 2019 Council meeting; Councilor Rebecca Correa Skartwed seconded the motion. The motion was approved unanimously.

5. Discussion and Possible Action on U.S. Forest Service Update

Mr. Arturo Archuleta discussed a letter to Senator Martin Heinrich from the San Joaquín del Río de Chama Land Grant regarding the Llaves cemetery, which Councilor Martínez stated was not surveyed. Patricia Domínguez (Office of Sen. Martin Heinrich) commented that land grants can pursue the Small Tracts Act (where land grants need to pay) or the legislative route. She added that she had draft language that needs revision and that land grants need to review the list to see which cemeteries are historic, which ones are active and to identify cemeteries that are not on the list. Mr. Archuleta commented that cemeteries associated with the La Petaca Grant are not on the list and that the Council would review lists shared at past Council meetings. Ms. Domínguez added that the next step is for communities and the Council to identify cemeteries that are on the list and to work with Maya Hermann of Senator Heinrich's Washington DC office to craft language, as well as determine activity on U.S. Forest Service and BLM lands.

Also in the packet is a letter from Santa Fe NF Supervisor James Melonas to San Joaquín del Río de Chama LG president Leonard Martínez regarding the historic cemetery near Llaves, New Mexico. Councilor Martínez commented that the cemetery needs to have boundaries determined with GPS. Mr. Archuleta commented that in the letter, Mr. Melonas stated that though the last corner of the cemetery remains to be surveyed, there is no justification for immediately completing survey. Chairman Sánchez commented that the survey is important to the San Joaquín del Río de Chama Land Grant and Mr. Archuleta added that the traditional use legislation will help justify the survey if it is passed. Councilor Martínez commented that the San Joaquín del Río de Chama LG will respond and Chairman Sánchez added that the NMLGC will support the San Joaquín del Río de Chama Land Grant.

The Encino Vista project has commenced (in packet) and the Juan Bautista Baldes Grant was offered liaison services by the Council, which offered services to the San Joaquín del Río de Chama LG well. A letter was drafted to Forest Service regarding the CFRP, asking that monies from the CFRP to go to the mayordomo project and other community-based projects as well. Ms. Domínguez added that there is no way to approve monies from the panel process but monies from last year (appropriated but not funded) may be used. People are concerned that last years monies were used for a different purpose and the CFRP panel is unlikely to be approved as it is considered too New Mexico specific. The CFLRP projects and panels are getting approved because they are national.

Councilor Padilla reviewed comments submitted by NMLGC staff for the Cibola, Santa Fe and Carson National Forest plans and praised the comments. Councilor Martínez made a motion to approve comments submitted by the NMLGC to the Cibola, Carson and Santa Fe National Forests; Councilor Padilla seconded the motion. The motion was approved unanimously.

Councilor Polaco made a motion to approve a letter to USFS Region 3 Regional Forester Cal Joyner regarding the CFRP; Councilor Correa-Skartwed seconded the motion. The motion passed unanimously.

6. Discussion and Possible Action on BLM Update

Lisa Morrison (BLM) reported on the Farmington RAC. She stated that the online permitting process seems to be working, including the Christmas tree permitting. Councilor Martínez thanked Ms. Morrison for assuring that the piñón tree permits were available online. Ms. Morrison reported that the Sombrillo Travel Management Plan is underway and pertinent documents are available on the Taos field office section of BLM website. The comment deadline is next year. Councilor Martínez commented that the Santa Cruz de la Cañada Land Grant is re-organizing and that they should be considered in the plan. Ms. Morrison also reported that Santa Fe County has recently completed a purchase of BLM lands; Councilor Martínez asked if the property was appraised at federal yellow book value and if the sale was publicized; Ms. Morrison commented that she would look into the sale and report back. She reported that the Carlsbad RMP has not yet been approved. BLM planners may attend the next NMLGC meeting. She also stated that she would have an answer regarding the harvesting of coal on BLM lands at the January 2020 meeting. Councilor Martínez commented that there is a need for a cemetery near Gallina. There is no available land and people are burying on their own private property.

Available cemeteries are denominational and impose burying restrictions. If the BLM would donate or otherwise make lands available, the San Joaquín del Río de Chama LG could make a non-denominational cemetery. Ms. Morrison reported that the Buffalo Tract withdrawals from mineral development are being considered and these withdrawals could mean the property could be transferred. Councilor Correa-Skartwed asked if this means mining will cease; Ms. Morrison reported that she believed this refers to no development of sand and gravel or other minerals on the Buffalo Tract. The withdrawal is still in committee and has not passed, though it is moving and it is part of the Rio Puerco Land Management plan. Ms. Domínguez added that the legislation would remove minerals rights development on Buffalo tract and the Crest of Montezuma. Mr. Archuleta requested a copy of the legislation.

7. Discussion and Possible Action on Federal and State Legislation Update

Federal

Mr. Archuleta reported regarding a news release for the EQIP program; comments are due Feb. 18, 2020. Council staff have yet to review proposed rule to understand land grant eligibility. The Council has received no updates regarding traditional use legislation, though LM García y Griego met with Levi Patterson. Dr. García y Griego expressed trepidation with the National Academies language in section 10 of the draft bill and Council staff are reviewing to see if their inclusion is a necessity in moving the bill forward. Eric Chavez (Office of Congressman Ben Ray Luján) introduced Isis Zamora López (Office of Congressman Ben Ray Luján) and commented that she is working with Levi Patterson on land grant issues and attended the meeting with Mr. García y Griego and Mr. Patterson. He added that Congressman Luján is considering the language proposed by the NMLGC and committed to keeping the Council and its staff informed about the inclusion of the suggested language. Ms. López commented that she is an heir of the Trampas Land Grant and was excited about the bill and believed the discussion to be constructive. Michelle Kavanaugh (Office of Senator Tom Udall) commented that the hearing would likely be in February or March on the House and stated that Congresswoman Haaland is on the House Natural Resources Committee.

Ms. Domínguez offered an update regarding the Mexican Spotted Owl injunction. We are awaiting a reply from the Court on the Cibola National Forest on a biological opinion for the Cibola, though this does not prevent another filing. She credited Laura McCarthy and BLM for stepping up and opening state resources when projects on USFS lands stopped. People were nonetheless being laid off for the holidays. Mr. Chávez stated that the USFS encourages communities and individuals work through their ranger districts to adjust their information. He added that the delegation, the New Mexico Acequia Commission and the Forest Service did hold a conference call regarding the MSO injunction. Wild Earth Guardians wants monitoring on all landscape, including areas in Mexico, which is outside of the area the USFS can monitor and impossible to do with budget constraints. Councilor Martínez asked how long the case will drag on as CFRP projects are being halted and could affect their work into April. Mr. Chávez stated that the judge is busy but trying to get it done, adding that the fuelwood injunction is off and that they hope the judge will rule soon. Ms. Domínguez added that it is at the judges discretion.

State

Mr. Archuleta commented that he will meet with ILGC Chair Rep. Miguel García and representatives of the Las Vegas Grant (which is under the 4th Judicial District) regarding the partition bill at NMHU in Las Vegas. Victor Reyes will be involved as well.

Mr. Jacobo Baca (NMLGC/LGSP) reported that he and Vidal Gonzales participated in a conference call regarding the proposed “Agricultural and Natural Resources Trust Fund Act,” which similar to EQIP legislation but proposed at the state level. He commented that conservation districts seems to be the chief driver behind the bill and are attempting to drum up support. He asked that Councilors review the bill and offer comments. Mr. Archuleta and Chairman Sánchez asked if land grants and acequias were a part of the bill; Mr. Baca replied that they are not, but that they are eligible. Vidal Gonzales (LGSP) added that Section 5 of the bill mentions instrumentalities of political subdivisions of the State, which he believes land grants are so considered. Mr. Archuleta added that the definition of “instrumentality” remains ambiguous. Council members and staffed discussed the bill and stated that it also remains unclear what can be purchased (i.e. water rights; distinctions between real and personal property).

8. Discussion and Possible Action on Professional Surveyor Services Contract

Mr. Archuleta reported that the Council received four proposals from the RFP. Some of those that submitted proposals could not do on call work and others let their insurance lapse. In the packet and to Councilor members is a bid from Territorial Land Surveying, owned by Chris Chávez, who is retired from the Santa Fe National Forest and Region 3 and Leslie Byrne, also retired from the Santa Fe National Forest. The rate is 189 per hour without gross receipts and overnight travel will include extra costs. Councilor Correa Skartwed stated that the San Antonio de las Huertas LG pays about \$700 to survey the property. Mr. Archuleta responded that the Council seeks an attorney with statewide knowledge and not wed to a particular area. The current contract would fund about 113 hours of work. The Council can ask for a different rate for survey review work vs. in the field survey work. Mr. Martínez stated that though the rate seems high, we must be mindful of contractors overhead. Councilor Padilla asked if Mr. Chávez has done work outside of northern New Mexico; Mr. Archuleta replied that through his work with Region 3, he has done work statewide. He stated that Rep. Matthew McQueen expressed concern over hiring rather than contracting locally. The priority will likely be the Cristóbal de las Serna Land Grant.

Councilor Martínez made a motion to approve the proposal submitted by Territorial Land Surveying and that they be approved as the Council’s surveying services contractor. Councilor Correa-Skartwed seconded the motion. The motion was approved unanimously.

9. Discussion and Possible Action on Inspection of Public Records Act Policy

Mr. Baca presented a draft Inspection of Public Records Policy. The language is standard to government entities and includes the confidential materials act (Item 5, A, B, and C). The proposed policy may appear broader than the Council’s current activities but reflects materials that the Councilor may receive in the future. Mr. Archuleta added that the Council does not have to take action on the draft right now; it is for review purposes and the Council can officially adopt at a later meeting.

10. Discussion and Possible Action on Recognition of Land Grants that are Political Subdivisions

Mr. Archuleta commented that the letter in the packet that lays out items that the Council might ask of a land grant to determine whether a land grant is a political subdivision of the State. Though the Council does not have the statutory authority to determine whether a grant is a political subdivision, it is increasingly asked to discuss whether a grant is a political subdivision or not. The list of items is similar to the LGSF, and includes Registry items, including bylaws and a list of officers, which is important as it offers a potential vulnerability for land grants, especially those involved in litigation which have been attacked in past as an “illegitimate entity.” Certification that land grants are not on the auditors at risk list is another item, as is the Open Meetings Act resolution. The Annual Report, which includes minutes, agendas and all financial transactions, is also required and land grants that do not have a public place to allow for inspection can elect to deposit these documents in the Registry with the NMLGC for inspection. The Council can decide whether it wants a formal policy similar to an IPRA policy.

Councilor Martínez added that there remains confusion as only six land grants are specifically mentioned under Chapter 49. Mr. Archuleta replied that 49.2 and other land grants that are statute specific are named and that he has discussed this with the LCS, which stated that they cannot make legislation specific to an entity. There remains precedence that courts have argued that land grants are a legislative creature. Chairman Sánchez commented that it is the duty as a Council is to create policy and respond to legislature with policy. Ms. Morrison (BLM) commented that for the federal government, political subdivisions are important as they have other rights and asked where entities should go for information. Mr. Archuleta commented that the Chair of the Interim Land Grant Committee stated that the NMLGC has the authority to determine which grants are political subdivisions of the State. Councilor Correa Skartwed commented that the Council needs more than a check mark on annual report and there needs to be more accountability, including a brief form regarding the annual report and to let the Council know that we are in compliance. Chairman Sánchez and Mr. Archuleta suggested that grants adopt a resolution accompanied by their certification from the Auditors office and submit this to the Council. Councilor Correa Skartwed added that this encourages grants to develop data that grants will benefit from in the future.

11. Discussion and Action on *US v. Sandoval* (1897)

Mr. Archuleta reported that land grants held a preliminary meeting regarding the *US v. Sandoval* (1897) case. Mr. Baca commented that additional research on all seven *US v. Sandoval* effected land grants (San Miguel del Bado, San Joaquín del Río de Chama, Cañón de Carnué, Petaca, Galisteo, Santa Cruz de la Cañada, and Don Fernando de Taos) needs to be completed. Councilor Martínez added that this required a lot of reading and background and the grants need to define questions to ask the UNM Law School to answer, as well as determine the role of the land grants, the Council, the Land Grant Studies Program, (etc.) in pursuing this case for either a congressional or legal remedy. The group will meet again in April 2020 and he will report back to the NMLGC chair and Consejo president.

12. Discussion and Possible Action on Town of Tomé LG

Mr. Archuleta reported that the New Mexico Taxation and Revenue Department (NM TRD) sale of lots to the Town of Tomé Grant was cancelled via lawsuits filed in state and federal court that

questioned the constitutionality of using public monies for the purchase. The NMLGC may need to be involved in the process and the Grant, the Council and the plaintiffs may sit down to discuss further. Chairman Sánchez asked if NM TRD informed the Grant of the cancelation of sale at the outset of the scheduled sale; Councilor Padilla responded that they did not and that she had registered for the sale before its cancellation. She added that the plaintiff has shown his dislike of land grants and was unsure of his interest in the land. Paul Baca of VIA previously stated that he was in opposition with energy development plans on VIA property and had initially approached the Town of Tomé Grant about donating property back to the Grant. She added that there is another site that the Grant is interested in obtaining; a historic site on .7 acres. The other potential buyer of this site does not seek to preserve the site. The Grant is looking into a purchase agreement, and though the price is high, they remain fearful that the old plaza. They have discussed their plan with New Mexico Legislators. Rita Padilla-Gutiérrez (Town of Tomé LG) thanked the Council and its staff for its support and offered that NM TRD did its part, adding that the loss of the historic site will transform plaza. Ms. Novela Salazar (Office of the NM Attorney General – Treaty of Guadalupe Hidalgo Division), referring to a statement by the plaintiff that he obtained information from NM TRD via an IPRA, stated that an IPRA request can be reviewed via and IPRA. Mr. Archuleta added that the NM Attorney General's office was notified of the lawsuit.

13. Discussion and Possible Action on Laguna del Campo Transfer Update

Councilor Polaco discussed with transfer with David Benavides and will meet with the New Mexico Department of Game and Fish on January 7 in Tierra Amarilla to discuss water rights issues involved in transfer. He has contacted contractors regarding the restoration of dike and plans for a headgate.

14. Discussion and Possible Action on Treaty of Guadalupe Hidalgo Division

Novela Salazar (Treaty Division) reported that Attorney General Balderras is unavailable on Treaty Day. Work with the Anton Chico Land Grant is going well. The Division is reviewing cases relating to the Cristóbal de las Serna Land Grant, including the Caldwell decision and three other decisions that legally questions whether the Serna Grant is a political subdivision of the state of New Mexico. The New Mexico State Legislature's prerogative to recognize the Grant as a political subdivision operates independent of these decisions. Ms. Salazar added that she has discussed the Serna Grant's political subdivision status with the LCS staff and their opinion remains unchanged. HJM 1 regarding the lineas stands and the NMAG's office recommends that heirs reconstruct the ejido with lineas. The Memorial does not address Serna Grant's political subdivision status. Ms. Salazar added that she will share cases that site 1942 assessment survey and claim it conveys title, stating that it was standard practice.

Mr. Archuleta stated that the question that remains unanswered is over the access and use of the Grant by heirs, despite the fact the the Grant remains recognized as a quasi-municipal corporation. Since 2004, the Grant was recognized as a political subdivision. An opinion by the Treaty Division would carry weight with the Interim, despite the opinions of LCS staff. The NM Legislature recognized the San Antonio del Río Colorado Grant; Ms. Salazar stated that she mentioned this in her discussion.

Ms. Venessa Chávez (NMLGC / UNM LGSP) asked if the New Mexico Attorney General's office can inform the Council when legal action is taken against a land grant. Ms. Salazar responded that she will look into it.

15. Discussion and Possible Action on Legal Services Contract: Updates and Requests

Mr. Archuleta reported that the Parkview ditch case decision is in the packet. David Benavides will get an updated letter to the Council regarding the case soon. Work with the Juan Bautista Land Grant is ongoing. A district court judge ruled against the Tajiue Land Grant regarding the cell tower in a short decision, which will be appealed. The Tierra Amarilla 'Tierra o Muerte' tract case is moving forward. The \$250,000 appropriated to New Mexico Community governance attorney program – cannot be reauthorized and needs to be spent on June 30, 2020. Mr. Archuleta is meeting with HED and the UNM Law School to determine options, including law school students fellowships in the spring and summer semesters. The New Mexico Acequia Association and New Mexico Legal Aid can support their work through small contracts to legal service providers.

16. Discussion and Possible Action on Council Annual Report & FY 2019, FY 2020 Budgets

FY 2019
The Council reverted very little in FY 2019. New Mexico Legal Aid used nearly half of its award in the first three months of the fiscal year. Council staff are evaluating whether the travel budget allows for travel for later meetings and if the budget allows for Councilors to travel to other meeting sites.

FY 2020

23% of the UNM contract has been spent, though this will accelerate once the contracted surveyor is on board. Other costs will be transferred as well. Name placards and business cards have been delayed and cards (250 per Councilor) will be purchased through the publishing budget from the State Printing Office.

Councilor Polaco made a motion to approve the printing of business cards for NMLGC Councilors from the publishing budget; Councilor Correa-Skartwed seconded the motion. The motion passed unanimously.

17. Discussion and Possible Action on UNM Intergovernmental Agreement – FY 2020

Mr. Archuleta presented Pay Request #4 for \$11,268.75, leaving a balance of \$165,483.34 on the Council contract.

Councilor Martínez made a motion to approve Pay Request #4; Councilor Padilla seconded the motion; the motion passed unanimously.

18. Discussion and Possible Action on Land Grant Support Fund

None.

19. Discussion and Possible Action on Land Grant Registry

Mr. Baca commented that the following documents have been submitted to the New Mexico Land Grant Registry.

- The Manzano Land Grant submitted the results of their recent election.
- The Tajiue Land Grant submitted the results of their recent election.

20. Discussion and Possible Action on Land Grant Studies Program Update

None.

21. Discussion and Possible Action on Correspondence

Letter regarding the NM Department of Game and Fish policy restricting public access to waters crossing private lands were sent to the Department of Game and Fish. Mr. Archuleta credited Vidal Gonzales (UNM LGSP) with research and drafting of the letter.

22. Discussion and Possible Action on Staff Assignments

Venessa Chávez stated the capital outlay digital form is now available on the website of the New Mexico State Legislature (nmlegis.gov). The form auto-populates from the ICIP, but this does not determine eligibility. Land grants can modify from auto-population from their ICIP, but need to contact Carmen Morin for changes. With this form, they will need just one sheet (the signature sheet) to be submitted in person. This form needs to be turned in signed on or before Feb. 2, 2020 and the Council will offer aid to any land grant requesting assistance; Councilors Padilla (Town of Tomé) and Skartwed (San Antonio de las Huertas) commented that their land grant welcomed assistance.

Councilor Padilla added that she requests that Cheyenne Trujillo assist her with the Town of Tomé webpage. Chairman Sánchez asked Council staff to get a hold of Kristen Chávez Graham of Natural Resource Conservation Service (NRCS) regarding the EQIP program regarding qualifications and meeting with NRCS staff. Michelle Kavanaugh (Office of Senator Tom Udall) stated that she will work on getting clarification on the NRCS's EQIP deadline. Chairman Sánchez also requested that Council staff look into the Healthy Soil Initiative grant program; Mr. Archuleta responded that discussed the program with Todd Haines of New Mexico State Forestry. The Chairman replied that \$6 million was appropriated across New Mexico to do projects throughout state on non-federal lands. Councilors also requested that LGSP Director and NMLGC PI Dr. LM García y Griego attend the next Council meeting and submit a written report on research.

23. Public Comments – discussion only

Councilor Padilla commented regarding the Trees that Please program. Ms. Venessa Chávez thanked the Town of Tomé Grant for graciously hosting youth events at the last New Mexico Land Grant Consejo meeting in December and Councilor Padilla thanked the youth and Ms. Chávez for the luminarias. Councilor Polaco thanked the Town of Tomé Land Grant for firewood.

24. Miscellaneous Announcements

Chairman Sánchez announced that Cheyenne Trujillo was accepted into UNM Law School and offered his congratulations.

25. Date and Location for January 2020 Council Meeting

The next Council meeting will be held on January 16, 2020 at 10:00am in Albuquerque, NM at the UNM Science and Technology TC).

26. Adjournment

Councilor Padilla made a motion to adjourn; Councilor Correa-Skartwed seconded the motion. The meeting adjourned at 1:11pm.

Approved:

Chair

Date