

New Mexico Land Grant Council (NMLGC)
April 20, 2023 – 9:00am
National Hispanic Cultural Center
Intel Visual Arts Building - Executive Conference Room
1701 4th St SW, Albuquerque, NM 87102
Zoom – Meeting I.D. –992 2538 8913

**Final Meeting Minutes
Regular Council Meeting**

1. Call to Order - Roll Call

Chairman Juan Sánchez called the meeting to order at 9:08am MDT. Roll call of the Council members: Andrea Padilla, Steve Polaco, and Juan Sánchez were present.

2. Introduction of Guests – Welcome from Zach Quintero, Interim Director, NHCC

Juan Sánchez (NMLGC); Andrea Padilla (NMLGC); Steve Polaco (NMLGC); Arturo Archuleta (NMLGC/LGSP); Anissa Baca (NMLGC/LGSP); Greta Archuleta (NMLGC); Jacobo Baca (NMLGC) Ricardo Dow y Anaya (NM Attorney General’s Office); Lisa Morrison (BLM); Erick Stemmerman (USFS, R3); Eric Chavez (Office of Sen. Ben R. Lujan); Camila Romero (State Land Office); Monica Rodríguez (San Joaquín del Río de Chama Land Grant); John Romero (Office of the State Engineer); Bonifacio Vásquez (Santa Bárbara Land Grant); Steven Bekkerus (USFS); Aurora Valdez (Office of Sen. Martin Heinrich); Leonard Martinez (San Joaquín del Río de Chama Land Grant); Daniel Maes (Cristóbal de la Serna Land Grant); Tim Hagamann (NM EDD); Ashely Beyer (Sen. Martin Heinrich); Manuel Trujillo (Santa Bárbara Land Grant); Zachary Quintero (NHCC)

Zach Quintero, interim director of the NHCC, offered his welcome to the National Hispanic Cultural Center.

3. Approval of Agenda

Councilor Steve Polaco made a motion to approve the agenda, as amended; Councilor Andrea Padilla seconded the motion.

Roll call vote:

- Councilor Padilla – aye
- Councilor Polaco - aye
- Chairman Sánchez – aye

The motion was passed.

4. Approval of Meeting Minutes from March 24, 2023 Regular Meeting & April 13, 2023 Special Meeting

Councilor Padilla made a motion to approve the meeting minutes of the March 24, 2023 Council meeting; Councilor Polaco seconded the motion.

Roll call vote:

- Councilor Padilla – aye
- Councilor Polaco - aye
- Chairman Sánchez – aye

The motion was passed.

Councilor Polaco made a motion to approve the meeting minutes of the April 13, 2023 Special Council meeting; Councilor Padilla seconded the motion.

Roll call vote:

Councilor Padilla – aye

Councilor Polaco - aye

Chairman Sánchez – aye

The motion was passed.

5. Discussion and Possible Action on Natural Resource Issues & Concerns – Presentation by John Romero, OSE

John Romero introduced himself as the water rights director for the Office of the State Engineer, where he oversees the Water Resource Allocation Program. He is from Mora and has been with the OSE for 30 years. He attended the Council meeting today to answer questions posed by the Council in an August 15, 2022 letter regarding Sipapu Ski Resort's use of water from the Rio Pueblo during the Hermits Peak / Calf Canyon Fire. Mr. Romero stated that he spoke with Sipapu manager John Paul Bradley during the fire and they asked if they could use water. They were able to measure usage precisely because of meters. Permission was granted verbally and not in writing because it was an emergency. Small fire fighting trucks were also drawing water out of the Rio Pueblo and there was additional unmetered use. According to Mr. Romero, the use of meters allows us to at least know what Sipapu extracted from the river. They hold a diversion right is for 18.46 acre feet per year. Councilor Polaco asked if it was a junior or senior water right and Mr. Romero did not know, but guessed that it was a transferred senior right, transferred around 20 years ago. This is important because if there is a call on the water, junior right holders could be cut off and seniors water rights holders would retain their rights.

Mr. Romero stated that Sipapu's water usage was 18.39 acre feet in 2019, 18.92 acre feet in 2021 and 36.77 feet in 2022, meaning that they doubled their allotted water usage in fighting the HP/CC Fire. Mr. Archuleta inquired over protocols for overuse. Mr. Romero stated that outside of an emergency situation, where verbal permission was granted, a water use has to pay the overuse back and the OSE can make them pay double. They can also acquire other water rights through lease or reduce use in a subsequent year and compliance order enforcement. For Sipapu, the use during the HPCC was an emergency, so we won't ask for it to be repaid. Mr. Archuleta asked what the statutory authority the OSE had that allowed them to grant emergency use. Mr. Romero responded that he is not an attorney and doesn't know precisely and Mr. Archuleta countered that typically there needs to be permission to change use and that perhaps the Legislature needs to take up and create statutory authority to protect OSE. Councilor Padilla commented that the USFS should pay with their water rights since they started the fire.

Mr. Romero stated that transfer of water rights is common and that water rights need to be transferred from the same basin and the same stream system. Water rights also need to stay within northern Rio Grande, middle Rio Grande and lower Rio Grande. Typically, water rights are moved via a permit through the OSE. He and Councilor Polaco added that if the acequia has it in their bylaws, they can stop the transfer of the water rights. Municipalities have a water right that is broad and allows for emergency use, like fire fighting. Ricardo Dow y Anaya (NMAG – Treaty of Guadalupe Hidalgo Division) commented that issues like ponding and transfers raise red flags and concerns that acequias and water rights are not being protected. Mr. Romero responded that transfer requests are given an impairment test that is rigorous and the OSE is very conservative in

how it reviews applications. Permits take a long time to review and include complex modeling, hydrology, engineering reports, etc.

Mr. Romero stated that the OSE has four divisions and seven district offices statewide. The Litigation and Adjudication Program (LAP) takes care of adjudications, the Interstate Streams Commission deals with compact issues and the Water Rights Division deals with water rights and supervises water masters on more active streams, especially those under adjudication. There remains a lot of illegal use and stealing of water and the OSE is understaffed and needs more people to fight wealthy people that lawyer up. In the 2023 legislative session there was a bill to increase enforcement capabilities and allow steeper fines but it did not get a single hearing. Twelve years ago, the Water Resource Allocation Program had more than seventy staff; now it has around forty. Councilor Padilla commented that in Valencia County businessmen buy land, sell water rights to municipality, then dig wells and irrigate day and night. Mr. Romero stated this would be a case of illegal use since once a water right is sold, leased or transferred, they cannot use it. Unpermitted wells being drilled by unlicensed well drillers is a problem, as is illegal diversions. In the Chama area, there are more than 100 ponds. Mr. Martinez and Councilors Polaco and Padilla asked who was protecting the interest of the small operators that cannot afford lawyers.

Bonifacio Vásquez, President of the Santa Bárbara Land Grant, clarified that the Council's August 2022 letter was the result of his inquiry. He stated that 99% of Sipapu is on their former common lands and that people in the area have been talking about Sipapu's water right for years. He added that people learned about the OSE giving permission for Sipapu to pull water from the river when people downstream were not allowed to do the same and feel that priority rights were being ignored. There remains a high potential for another big wildfire in the area and it seems that during an emergency, the rule book is thrown away. 72-5-24.1 states that the OSE shall not approve, even in an emergency, the transfer of a right and Picuris Pueblo has priority rights over Sipapu. The Rio Pueblo was pumped so much that the Rio Pueblo was nearly dry and Rio Embudo users didn't have water. They felt that priority rights were circumvented with OSE action allowing use. Additionally, people believe that Bruce Bolander sold his water right when he sold Sipapu but is still using it to irrigate. In 2012 Sipapu asked for 100-350 acre feet purchased from the Jicarilla Apache Nation be transferred to the Rio Pueblo, which doesn't make sense they are from different stream systems. Mr. Romero responded that the permit has not been approved. Additionally, a 1999 transfer happened before acequias were empowered under state law to stop them.

Mr. Romero reiterated that he made the call to allow Sipapu to use water in excess of their right as it was an emergency as it employs people and is important to save. Mr. Vásquez responded that Sipapu is a business, not a home and other users protecting their homes were not allowed to do the same. Instead, they had to get permission from the USFS to access compuertas. Mr. Archuleta brought up HB 121, which addressed temporary water leasing permits, which are conditionally approved while the request is made. An NMAG opinion in January stated that the practice is illegal, but Mr. Romero stated that the OSE will continue the practice everywhere except the 5th judicial district. The OSE plans to clarify the rule, but Mr. Romero reiterated that when someone comes in with a valid water right, we will still issue approval on the temporary lease. The OSE Counsel opined that the OSE can still issue temporary leasing for immediate use of water. Mr. Archuleta asked what happened when someone is using a lease that is ultimately not approved and Mr. Romero responded that the would-be lessee will have to repay it from another lease.

Daniel Maes (Cristóbal de la Serna) asked (via chat) if the government use water rights under imminent domain for public emergency; Mr. Romero responded that he did not know. Monica Rodriguez (San Joaquin del Rio de Chama LG) asked (via chat) is there a process in place to record and document the water usage for commercial marijuana use; Mr. Romero responded that there was and that it is documented and water right needs to be converted. Users cannot use domestic wells to grow marijuana and need to transfer other outdoor rights to an indoor right. Many people that were growing medical marijuana did so illegally, using domestic wells and now went into recreational growing and are using more water and using it illegally.

6. Discussion and Possible Action State Land Office Update

Camila Romero (SLO) reported that the Villanueva project is in process and the contractor is moving wood to the land grant. SLO will hold a meeting on the Bearcat project tomorrow. The SLO hopes to have both projects to complete by July.

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

Erick Stemmerman inquired regarding the Council's Washington DC trip in June and offered his assistance coordinating a meeting with the USFS Washington DC office. Chairman Sánchez stated to work with staff to coordinate. Mr. Stemmerman also offered a meeting with the Regional Office prior to the trip the first week of June. He added that he would share the discussion of emergency response to fire from the OSE presentation with the Regional Office. Zach Behrens (Carson NF PAO) reported that the Carson NF will host a second community event regarding the Taos Ski Valley's proposed expansion on May 9th; comments are due May 20th. The Carson is working on the wildfire crises strategy landscape, a priority project of State of New Mexico and the federal agencies. The Taos area is considered a high risk fire shed, including a 1.5 million acre area, a third of which is USFS land. During this fuel season, a contractor is thinning near San Cristóbal and the Questa and Camino Real Ranger Districts are offering 10 cords of dead and down wood for free and ten additional cords can be purchased. Other areas with projects include Taos Canyon, the Pueblo ridge area, Angel Fire, Arroyo Seco, and thinning work continues in Las Trampas with majordomo programs (the Ojitos Project and Rio de las Trampas Project) and there us an interest throughout Taos County to expand program. The Valle Vidal, McGaffey and Rio Grande del Rancho projects are undergoing NEPA. The Rio Chama Collaborative Forest Restoration Project may undertake some prescribed fires if weather allows. Leonard Martínez (San Joaquín del Río Chama LG) asked Mr. Behrens when wood permits for the Coyote, Canjilón, and Cuba districts would be available. He replied that sometime in May and added that there would be no free use permits on the west zone. Bonifacio Vasquez (Santa Bárbara Land Grant) added that he attended a meeting in January to discuss the Carson National Forest's 5 year plan, including treatment and firewood areas. In 2016, he began attending meetings and advocating for evaluating Bear Mountain for treatment, but at the most recent meeting, it was no longer a part of the 5-year plan. He asked how do we get our initiatives in consideration for treatment for fire and fuelwood? Mr. Behrens responded that he will have someone from the Carson National Forest / Camino Real Ranger District get back to him.

8. Discussion and Possible Action on Bureau of Land Management Update

Lisa Morrison thanked Mr. Archuleta and Mr. Baca for the 'Land Grant 101' presentation. The presentation was recorded and will be shared with BLM staff. BLM is hiring a new BLM deputy state director for resources, who will supervise the new BLM state forester. The Rio Grande del Norte plan is ongoing and the BLM will be reaching out to the San Antonio del Rio Colorado Grant.

Leonard Martínez (San Joaquín del Río de Chama LG) asked Ms .Morrison about the status of the Farmington Mancos Gallup RMP. She responded that the Department of Interior is assessing the Chaco withdrawal, which will take these lands out of natural resource extraction and production. She expressed her willingness to schedule a meeting with Maureen Joe of the BLM to provide an update.

9. Discussion and Possible Action on Federal and State Legislative Update

Eric Chávez (Office of Sen. Ben R. Luján) stated that hopefully they will have more information on the reintroduction of the traditional use bill soon. He thanked Council staff (Mr. Archuleta, Mr. Baca and Ms. Baca) for answering questions and for all of their help. He reported that Senator Ben R. Luján was in New Mexico for the work period, where he hosted Secretary of Agriculture Tom Vilsack to review the Hermits Peak / Calf Canyon Fire and met with the delegation. Sec. Vilsack committed to working with the delegation to provide resources, including \$40 million for broadband. Sen. Luján also joined Sec. of Transportation Pete Buttigieg to discuss the infrastructure law and improvements coming to New Mexico, including wildlife crossings near Santa Ana Pueblo and \$1.5 million to UNM for science education. Mr. Chávez has updated the San Joaquín del Río de Chama and Town of Tomé Grants on the IRS review of their EIN issues. They are hoping to amend IRS form SS4 to accommodate the change from non-profit to political subdivisions / units of government.

Mr. Martínez (San Joaquín del Río de Chama LG) stated to Mr. Chávez that he approached Rio Arriba County Commissioner Moises Morales about the BLM's disposal of an old building in Coyote between 1999-2001 to Rio Arriba County, with the stipulation that it remained in the public interest. Five acres continued to be used as part of this disposal, but 400 acres are not used. Mr. Martínez has proposed that Rio Arriba County transfer the property to the San Joaquín del Río de Chama Land Grant, but wants to be sure that the BLM will take no issue with it. He has discussed the proposal with Lisa Morrison from the BLM. Mr. Martínez asked if the Senator's office can help facilitate this transfer of two 200 acres lots. Mr. Chávez asked Mr. Martínez to send a request letter and documentation that identifies how the Senator's office can help.

Mr. Baca presented a letter in opposition to the Wildlife-Livestock Conflict Resolution Act (previously introduced by Senator Martin Heinrich) from the Rocky Mountain Farmers Union and several other organizations and individuals. Chairman Sánchez stated that the Council would review and consider taking action on the letter in the May 2023 meeting.

State

Anissa Baca (NMLGC staff) reported that questionnaires for 2023 capital outlay appropriations have gone out. They were funded with general fund monies so there are no STB questionnaire issues. Chairmans Sánchez commented that we will know the new chair of the Interim at the next Council meeting. Leonard Martínez stated that since the San Joaquín Grant has been the fiscal agent for the Mercedes Unidas Center the Grant has not received capital outlay appropriations for itself. They need the legal structure defined to separate San Joaquin Grant from the Mercedes Unidas. Mr. Archuleta commented that the Holland and Hart contract is in. Depending on the structure, it is unlikely that the entity (Mercedes Unidas) can receive monies since the three land grants themselves are the units of government, not the Mercedes Unidas. The Council can help set up a meeting with the North Central New Mexico Economic Development District's grant writers to apply for USDA – Rural Development monies. Former LGSP student intern Vidal Gonzales was

just recently hired as community planner. We need the dates of the next Mercedes Unidas center meeting so NCNMEDD can be asked to attend.

10. Discussion and Possible Action on Natural Resource Issues & Concerns - Local, State and Federal

None.

11. Discussion and Possible Action on Office of the Attorney General & Treaty Division

Ricardo Dow y Anaya reported that the Treaty Division is in the process of defining goals and roles and that NM Attorney General Raúl Tórrez wants to meet with the NMLGC. The transition continues and he is working on database to log complaints. He commented that the OSE presentation raised some red flags regarding water rights and pueblo nations.

12. Discussion and Possible Action on Council FY 2023 & FY 2024 Budget

Mr. Archuleta provided a budget update. New Mexico Legal Aid has invoiced \$28,900. Travel has totaled \$3,674.59. The IGSA has totaled \$247,114.86 so far with \$380,086 remaining. Youth development has not been spent, but many contracts and purchases are in process. The FY 2024 budget (in packet) was presented for a total budget of \$701,900.

Councilor Steve Polaco made a motion to approve the FY 2024 budget; Councilor Padilla seconded the motion.

Roll call vote:

Councilor Padilla – aye

Councilor Polaco - aye

Chairman Sánchez – aye

The motion was passed.

Travel to Washington DC need to be approved by the Governor’s office. Council members will have to pay up front and will be reimbursed for actual expenses with costs for food reimbursable for up to \$59.00 per day. Councilors will need to show itemized receipts for expenses, including travel and hotels.

Mr. Archuleta also verified that no action was taken on Joe Lennihan contract. NMLGC staff met with RMD. Progress is slow but the process is moving along. Some land grants have outstanding balances, which the Council can pay. 5-6 different applications for insurance coverage and bonding have been sent to land grants. Excess monies may be used to purchase of other items and we need to send list of what we want to buy to DFA for approval. Staff is examining the New Mexico statewide price agreements for costs.

13. Discussion and Possible Action UNM Intergovernmental Services Agreement

Pay request #4 for was presented for \$42,606.68, including \$7,789.60 in surveyor contract, \$7,101.11 in F&A.

Councilor Polaco made a motion to approve Pay Request #4 for \$42,606.68; Councilor Padilla seconded the motion.

Roll call vote:

Councilor Padilla – aye

Councilor Polaco - aye
Chairman Sánchez – aye

The motion was passed.

14. Discussion and Possible Action on Professional Surveyor Services Contract Update & Requests

Mr. Archuleta reported that Chris Chavez has been busy working on projects on the Tajiye and Town of Tomé Land Grants. He presented invoice #3 for \$7,094.10.

Chairman Sánchez made a motion to approve Invoice #3 from Territorial Land Surveying for \$7,094.10; Councilor Polaco seconded the motion.

Roll call vote:

Councilor Padilla – abstain
Councilor Polaco - aye
Chairman Sánchez – aye

The motion was passed.

The Council received a request from Melvin Apodaca from the Tierra Amarilla Land Grant for surveying services related to the old elementary administration building the Grant is trying to acquire from Rio Arriba County. Councilor Polaco commented that the Grant has been working on an agreement with the Commission Chair. The work would include more drafting and platting than fieldwork.

Councilor Padilla made a motion to approve surveying services for the Merced de los Pueblos de Tierra Amarilla. Chairman Sanchez seconded the motion.

Roll call vote:

Councilor Padilla – aye
Councilor Polaco - abstain
Chairman Sánchez – aye

The motion was passed.

15. Discussion and Possible Action on Legal Services Contract Update & Requests

Mr. Archuleta reported that the Council has received 5 invoices from New Mexico Legal Aid for work from November 2022 through March 2023. The description for work conducted each month is included in each billing and both are included in the meeting packet.

Councilor Polaco made a motion to approve Pay Request #1 from New Mexico Legal Aid for \$1,100.00 for work completed in November 2022; Councilor Padilla seconded the motion.

Roll call vote:

Councilor Padilla – aye
Councilor Polaco - aye
Chairman Sánchez – aye

The motion was passed.

Councilor Padilla made a motion to approve Pay Request #2 from New Mexico Legal Aid for \$9,725.00 for work completed in December 2022; Councilor Polaco seconded the motion.

Roll call vote:

Councilor Padilla – aye
Councilor Polaco - aye
Chairman Sánchez – aye

The motion was passed.

Councilor Polaco made a motion to approve Pay Request #3 from New Mexico Legal Aid for \$7,975.00 for work completed in January 2023; Councilor Padilla seconded the motion.

Roll call vote:

Councilor Padilla – aye
Councilor Polaco - aye
Chairman Sánchez – aye

The motion was passed.

Councilor Padilla made a motion to approve Pay Request #4 from New Mexico Legal Aid for \$5,487.50 for work completed in February 2023; Councilor Polaco seconded the motion.

Roll call vote:

Councilor Padilla – aye
Councilor Polaco - aye
Chairman Sánchez – aye

The motion was passed.

Councilor Polaco made a motion to approve Pay Request #5 from New Mexico Legal Aid for \$4,612.50 for work completed in March 2023; Councilor Padilla seconded the motion.

Roll call vote:

Councilor Padilla – aye
Councilor Polaco - aye
Chairman Sánchez – aye

The motion was passed.

16. Discussion and Possible Action on Laguna del Campo Update

Councilor Polaco stated that the Tierra Amarilla Land Grant is waiting to hear from NM Game and Fish regarding the deed and transfer.

17. Discussion and Possible Action on Land Grant Registry Update

Mr. Baca stated that the Cebolleta, Arroyo Hondo Arriba, and Don Fernando de Taos Land Grants submitted their updated boards of trustees.

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

Anissa Baca (NMLGC/LGSP) stated that she, Mr. Baca and Councilor Padilla participated in the New Mexico Association for Bilingual Education annual conference (April 13-15) and participated in an ALGE workshop and flushed out a few lesson plans. There were also discussion panels regarding ALGE. Ms. Baca stated that she has continued working with Tierra Amarilla youth project and did a presentation for Dawn Salazar. The LGSP is planning a small teachers institute.

19. Discussion and Possible Action on Correspondence

The Council received information from Perry Valdez regarding licensure for professional engineers and surveyors. We also received an e-mail from Tim Hagamann, NM EDD, regarding a

\$3,600 grant to the Anton Chico Economic Development for plumbing improvements, which might be lost as there Guadalupe County has not committed to assist. Mr. Archuleta stated that he will contact the Anton Chico Land Grant to see if they can assist. The Council sent a letter on behalf of the Trampas Land Grant regarding their ability to purchase property. The Council and David Benavides will be recognized by MALSA with the Fighting for Justice Award at a ceremony on April 22, 2023.

Mr. Vásquez asked if the Council ever received a response from the USFS regarding Sipapu’s planned expansion; no response was received. He mentioned that part of their planning and expansion (900 acres increase in size) includes ponds and summer operations with zip lines.

20. Discussion and Possible Action on Staff Assignments

Councilor Padilla requested assistance with the Town of Tomé Land Grant election, to be held on April 30th.

21. Public Comments – discussion only

None.

22. Miscellaneous Announcements

DFA is hosting ICIP virtual trainings and attendees need to register. Mr. Vásquez reported that the Santa Bárbara Land Grant will start negotiations with the Peñasco Independent School District for the acquisition of the old dental clinic. He thanked the Council and the NM Land Grant Consejo for their letters of support.

23. Date and Location for May Council Meeting

The May 2023 Council meeting will take place on May 25th at 10:00am in Albuquerque, venue to be determined.

24. Tour of NHCC

Zach Quintero, Director of the National Hispanic Cultural Center, provided a tour of the NHCC Art Gallery, Library, genealogical center, and fresco in the torreón.

25. Adjournment

Councilor Polaco made a motion to adjourn; Councilor Padilla seconded the motion.

Roll call vote:

Councilor Padilla – aye

Councilor Polaco - aye

Chairman Sánchez – aye

The motion was passed. The meeting adjourned at 1:43pm MDT.

Approved:

Chair

Date