

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

**September 29-30, 2008
Ballroom A, Student Union Building
University of New Mexico, Albuquerque**

The fourth meeting of the interim Land Grant Committee was called to order by Senator Richard C. Martinez, chair, at 10:25 a.m. on Monday, September 29, 2008, in Ballroom A of the Student Union Building at the University of New Mexico (UNM) in Albuquerque, New Mexico.

Present

Sen. Richard C. Martinez, Chair
Rep. Miguel P. Garcia, Vice Chair
Rep. Paul C. Bandy
Sen. Joseph J. Carraro
Rep. Thomas A. Garcia
Rep. Jimmie C. Hall
Rep. Debbie A. Rodella (9/30)

Absent

Sen. Rod Adair
Sen. Gerald Ortiz y Pino
Sen. James G. Taylor

Advisory Members

Sen. Bernadette M. Sanchez

Sen. Carlos R. Cisneros
Rep. Justine Fox-Young
Sen. Phil A. Griego
Rep. Ben Lujan
Sen. William E. Sharer
Rep. Eric A. Youngberg

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

Staff

Jon Boller, Legislative Council Service (LCS)
Damian Lara, LCS
Raúl Burciaga, LCS

Guests

The guest list is in the meeting file.

Handouts

All handouts are in the meeting file.

Monday, September 30

Welcome

Dr. David J. Schmidly, University of New Mexico president, welcomed the committee to the university and thanked the committee for its work in establishing the Land Grant Studies Program at the university.

Department of Transportation (DOT) Issues

Lawrence Barreras, DOT property asset management director, and Germaine Chappelle, DOT general counsel, appeared on behalf of the DOT to report on the status of negotiations on a wildlife crossing in Tijeras Canyon that affects the Cañon de Carnue Land Grant. Mr. Barreras reported that the department has come to an agreement with the land grant on an exchange of property interests related to the crossing and that the interests in land given to the land grant are more valuable than the interests received by the department. Asked what role the department will play in monitoring the wildlife crossing, Mr. Barreras said that the Department of Game and Fish would actually be monitoring the crossing. Ms. Chappelle added that the DOT would still inspect the fencing periodically.

Representative Bandy requested a meeting with the DOT concerning the use of land that is part of a right of way by an acequia in his district. Mr. Barreras said he would contact Representative Bandy to look at the issue.

Ben Chavez of the Cubero Land Grant asked if the DOT had done an environmental assessment of the new exit off I-40 planned near the Pueblo of Acoma. He said that the Pueblo of Acoma and the state had been meeting since 1997, and that Cubero had started meeting with the DOT in 2003, and he wondered if Cubero would have been better off negotiating with the Pueblo of Acoma so that both communities could benefit from the exit and make it a win-win situation. Right now, he said, things are not working out so well for Cubero. Mr. Barreras said the DOT will continue to meet with Cubero and that if the department gets the right to enter, it will not have to condemn the property right now and negotiations can continue.

Macario Griego thanked the DOT for working with Carnuel on the wildlife crossing, but noted that it took a long time and did not go so well at the beginning. He also expressed hope that the department will work with the land grant on runoff problems created by I-40 because contaminants are fouling the land grant's acequia and ground water.

Land Grant Studies Program

Dr. Manuel Garcia y Griego, director of the Southwest Hispanic Research Institute (SHRI) at the University of New Mexico, updated the committee on the land grant studies program at the university. He said the program has received a very positive response and that he was happy to report that the program will receive recurring funding and, thus, he will not have to come back to the legislature for a special appropriation this year to continue the program. Part of the program — basic research — is being funded by outside grants through the SHRI and by

university "ING" funds, he explained. Though the program is only three months old, it has already sponsored a public forum on land grant issues, which, he said, brings the university in closer contact with the community, and it is one way the program can help serve the interests of the community. Student internships take up the bulk of the program's resources, he noted. Interns Jacobo Baca, Sofia Sanchez, Karen Roybal Montoya and Salima Padilla all introduced themselves and briefly described the projects they are working on. Tony Lucero of the San Antonio de las Huertas Land Grant suggested that a speakers program be established to come to communities like Placitas to educate locals. Senator Bernadette Sanchez moved to have the Public Education Department attend the next meeting of the committee to explain what the elementary and secondary school requirements for New Mexico history are. The motion was adopted without objections.

Tour of UNM Library Archives Related to Land Grants

The committee recessed for lunch and then toured the Center for Southwest Research. Mr. Baca and the library staff described the extensive resources available in the library for research of land grant histories.

Risk Management Division Proposed Legislation to Allow Liability Coverage of Land Grants

Al Duran and Patrick Simpson, attorneys for the Risk Management Division (RMD) of the General Services Department, presented a draft bill to the committee that would allow land grants that are political subdivisions of the state to obtain liability coverage through the RMD as do other state agencies. Mr. Simpson said the RMD currently covers more than 151 separate state entities, with premiums ranging from \$1,000 per year to \$15 million per year. He explained that rates for any particular land grant would depend on the specific conditions of that grant, but that in general it would be cheaper to go through the RMD than to purchase insurance on the open market. In answer to a question about what coverage is available, Mr. Duran replied that the RMD will not cover commercial enterprises, zoning or land-use issues, but that it will cover the board of trustees and property of a land grant.

State Auditor's Task Force on Rural Accountability

Hector Balderas, state auditor, Evan Blackstone, general counsel for the Office of the State Auditor, and Arturo Archuleta, task force member, presented task force recommendations on how the Audit Act should be amended to make accountability affordable for small governmental entities. Mr. Balderas explained that the task force gathered information on more than 600 entities, held four meetings and received testimony on the budget process from a number of agencies. He noted that although the final report was not yet done, he could present the task force's recommendations today and hoped to have draft legislation prepared before the committee's next meeting.

Mr. Blackstone outlined the recommendations, which he said would create a tiered system of audit requirements based on the actual revenues of any entity that expends public money. Those entities with less than \$10,000 in revenues, he explained, would not be required to report to the state auditor unless they have received and spent capital outlay funds. Other tiers

would require progressively more detailed reports as revenues increased, with entities having over \$500,000 in revenues subject to the same audit requirements as any other state agency. Mr. Blackstone also noted that the state auditor would issue rules that would allow more certified public accountants to be eligible to conduct the work required for those entities with less than \$500,000 in revenues. Mr. Archuleta added that the proposed changes would be a big help with the capital outlay process, in which many projects are currently held up because of compliance issues with the current requirements of the Audit Act.

Uranium Mining Leases — Cebolleta Land Grant and Juan Tafoya Land Corporation

Jerry Pohl, Cebolleta Land Grant (CLG), and James Martinez, Juan Tafoya Land Corporation (JTLC), outlined plans for uranium mining and milling in their communities and explained that both the CLG and the JTLC had entered into lease agreements about three years ago to begin the process. Mr. Martinez expressed his concern that there have been delays in the state permitting process for exploratory drilling in the Marquez Canyon area and noted that Neutron Energy had applied for a permit from the Energy, Minerals and Natural Resources Department nine months ago, in January. He explained that area had already been extensively explored more than 30 years ago and, thus, the company only needed to drill approximately 50 holes to validate the existing data on the area. Both he and Mr. Pohl said the local communities supported bringing back mining to the area and cited a New Mexico State University study that reported that over a 30-year period, 8,000 new jobs would be created and \$1 billion in revenue could be brought into the state from uranium mining. They asked the committee for its support in their efforts, and the committee moved without objection to write a letter to the Energy, Minerals and Natural Resources Department urging the department to expedite the permitting process for Neutron Energy's exploratory wells.

Recess

The committee recessed at 4:30 p.m.

Tuesday, September 30

Attorney General Response to the 2004 General Accounting Office (GAO) Report

David Thomson and Stephen Vigil, Office of the Attorney General, and David Benavides and Ryan Golten, New Mexico Legal Aid, presented the attorney general's response to the 2004 GAO report "Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico".

(See the attached executive summary of the report set out in full.)

Asked if the state could pursue litigation to return lands or use rights as was done in Colorado, the presenters cautioned that the judicial remedies in the Sangre de Cristo case in Colorado were not based on the Treaty of Guadalupe Hidalgo, and that most judicial avenues for questioning the confirmation process were closed off by the *Tameling* decision. Mr. Archuleta and Mr. Vigil stressed that the importance of the attorney general's response was in correcting the GAO's findings and conclusions and making it clear that a congressional response is in order.

The committee moved without objection for the attorney general to identify any potential cases where litigation could still be pursued, and it requested that a memorial be drafted asking that the attorney general's response be made part of the Congressional Record. It was also suggested that the Land Grant Forum be asked how it would like to proceed. Another motion was adopted without objection to have a bill drafted to require all state agencies holding property that is formerly part of a community land grant to include that land grant in the planning process for any use of that land.

Bureau of Land Management (BLM) — Rio Puerco Resources Management Plan Revision Process

Joe Blackmon, Danita Burns, Tom Gow and Sabrina Flores appeared on behalf of the BLM's Rio Puerco Field Office. Mr. Blackmon described the BLM's resource management plan (RMP) revision process, noting that the current Rio Puerco RMP was originally approved in 1986. He said that the revision is largely needed because of population growth in the region, and that nearly half the population of the state lives in the Rio Puerco management area. The process will cost approximately \$3.5 million. The office has been collecting comments for 200 days, he said, and he has met with representatives from the San Antonio de las Huertas Land Grant to discuss their concerns.

Mr. Gow said he has been advocating for an update to the 1986 plan for nine years and that the plan will affect one million acres of land in six counties. The process requires six environmental impact statements to be conducted, he explained, with one on wind energy siting already completed. The RMP should be completed by early spring of 2012, he said.

Committee members urged the BLM to take into consideration the San Antonio de las Huertas request to set aside lands within its historic boundaries and put a moratorium on the disposal of any land grant lands until Congress has a chance to consider the issue.

Atrisco Heritage Foundation Organization and Function

Peter Sanchez of the Atrisco Heritage Foundation presented a brief history of the foundation, which he said is dedicated to the promotion and preservation of the culture and history of the Atrisco Land Grant. The foundation has several programs, including an oral history project, an education scholarship program, a summer camp program, a project to identify all heirs to the grant, a newsletter and the creation of an endowment fund to ensure the foundation's continued existence. Also created at the time of Westland's sale to SunCal was El Campo Santo, which manages three historic cemeteries, and Atrisco Oil and Gas, LLC, which recently discovered water in a deep aquifer under the Atrisco area.

Land Grant Bureau for Coordination of Federal and State Programs Affecting Community Land Grants

Mr. Boller presented draft legislation on the creation of a land grant bureau in the Department of Finance and Administration. The bureau, he said, would be tasked, in part, with coordinating state and federal programs affecting land grants; acting as a liaison between land grants and federal, state and local governments; identifying those land grants that operate as political subdivisions of the state; acting as a fiscal agent for land grants in the capital outlay process when necessary; and reviewing and promoting federal legislation to address the failings in the confirmation process that are outlined in the attorney general's response to the 2004 GAO report. Senator Sanchez said the bureau should be part of a Hispanic Affairs Department, if one were created. Asked if the \$250,000 funding included in the bill is a minimum or if it is just an estimate, Mr. Boller replied that it is merely an estimate and that a lesser amount would probably be appropriate for a bureau with less staff. The committee moved to endorse the bill without objection. Representative Rodella asked that a memorial based on House Bill 753 be drafted for the next meeting.

The committee adjourned at 3:00 p.m.

EXECUTIVE SUMMARY

Purpose of This Report

In 2001, U.S. Senators Pete V. Domenici and Jeff Bingaman and Representative Tom Udall asked the United States General Accounting Office (“GAO”), an agency of the United States Congress, to study the issue of community land grant losses that occurred in New Mexico after the signing of the Treaty of Guadalupe Hidalgo.¹ The GAO issued two reports. In 2001 it identified lands in New Mexico which it considered to be community land grants.² In 2004, it issued a Final Report analyzing whether the United States Government legally complied with the terms of the Treaty.³

In general, the 2004 GAO Report concluded the federal government fulfilled any duties it may have had to grantees and heirs under the Treaty and Constitution, and that potential remedies for the land losses were up to Congress as a matter of public policy, rather than as a matter of legal obligation. Specifically, the report stated that the Treaty of Guadalupe Hidalgo was not self-executing and therefore Congress had discretion in confirming Spanish and Mexican land grants under American title, without any duty to do so as Spain and Mexico would have. The fact that otherwise valid grants were rejected on mistakes, technicalities, and misapprehensions of Spanish and Mexican law was unfortunate but ultimately Congress’s prerogative. The report declined to express an opinion as to whether the U.S. fulfilled its treaty obligations as a matter of international law. Rather, it stated that if the implementing statute conflicted with the terms of treaty, it could only be resolved as a matter of international law between U.S. and Mexico.

The GAO declared the confirmation process essentially successful, concluding that fifty-five (55) percent of acreage claimed by land grants heirs in New Mexico was awarded to both community and individual grants – though it failed to evaluate whether such grants were in fact confirmed properly. For instance, the report sidestepped the issue of community land grants being mischaracterized as private co-tenancies and attributed the resulting losses to the actions of heirs themselves rather than the nature of the confirmation process. In addition, the report concluded that the procedures used to award grants met due process requirements as the courts at the time defined them and even under today’s standards. It stated that any equitable rights regarding land grants are a “policy judgment.”

While it absolved the federal government of any legal culpability for land grant losses, the GAO listed options Congress might consider in resolving the issue. The Report identified, among other options: (1) Doing nothing; (2) Establishing a Commission or

¹ See 149 CONG. REC. E128 (daily ed. Feb. 4, 2003) (statement of Rep. Udall).

² U.S. Gen. Accounting Office, Treaty of Guadalupe Hidalgo: Definition and List of Community Land Grants in New Mexico (2001).

³ U.S. Gen. Accounting Office, Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico (2004).

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other body to reexamine specific community land grant claims that were rejected or not confirmed for the full acreage claimed; (3) Consider transferring federal land to communities that did not receive all of the acreage originally claimed for their community land grants; (4) Consider making financial payments to claimants' heirs or other entities for the non-use of land originally claimed but not awarded; and (5) apologizing to land grant heirs.⁴

This Response is an attempt to address the GAO's aforementioned conclusions and the analysis it used in reaching those conclusions. The Response does not pretend to be a stand-alone legal history of land grants in New Mexico. Rather, its purpose is to critique the analysis and conclusions of the GAO report and to identify areas meriting further research.

Certainly, the topic of the federal government's role in the loss of New Mexico's land grants, particularly in terms of common lands, is a significant one. This report aspires to deepen the discussion and illuminate important points for Congress's consideration. Hopefully, this report will help pave the way for meaningful redress for New Mexico's land grant communities, who have suffered terrible losses since the signing of the Treaty of Guadalupe Hidalgo.

Historical Background

From the end of the 17th Century to the mid-19th Century, Spain and then Mexico made land grants to individuals, groups and towns in New Mexico. Following the Mexican War (1846 - 1848), the United States and Mexico signed the Treaty of Guadalupe Hidalgo on February 2, 1848. The Treaty states that "Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican Republic, *retaining the property which they possess in the said territories*, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever."⁵ In addition, "In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected."⁶ In order to implement the provisions of the Treaty of Guadalupe Hidalgo with respect to land grant claims in New Mexico, Congress passed two laws. In 1854, Congress passed the Surveyor General Act [cite] which directed the Surveyor General to use "laws, usages, and customs" of Spain and Mexico in adjudicating land grant claims. Land grants were to be recognized "precisely as Mexico would have done."⁷ It also

⁴ Id. at 12-13.

⁵ Treaty of Peace, Friendship, Limits and Settlement Between the United States of America and the Mexican Republic, art. VIII, U.S.-Mex., Feb. 2, 1848, 9 Stat. 922 (emphasis added).

⁶ Id.

⁷ DOI instructions, see Appendix IX at p. 198

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presumed that the existence of a city, town, or village at the time of the Treaty was clear evidence of a grant. In 1891, Congress established the Court of Private Land Claims which was instructed to accept grants “lawfully and regularly derived” under Spanish and Mexican law. The Act also called for proceedings to be conducted “as courts of equity.” This language was essentially gutted by the courts and largely ignored by the GAO’s report. Congress may very well have thought it was bound to confirm lands as Spain and Mexico would have, but the GAO did not give this issue (or the courts’ decisions which it cited for this proposition) any critical analysis.

Summary

This critique of the GAO Report is divided into the following topics: (1) the GAO’s analysis of the duty owed under the Treaty of Guadalupe Hidalgo and its interpretation of the Congressional actions implementing that duty; (2) the fact that most community grants were not confirmed as they existed under Mexican and Spanish law, and the disastrous effects of those mis-confirmations; (3) the GAO’s mistaken reliance on a New Mexico district Court decision, *Montoya v. Tecolote*, since reversed, for the notion that wrongful confirmations could be collaterally attacked in state court; (4) the fact that many post-confirmation land losses were direct results of the improper nature of confirmations, rather than attributable simply to the actions of land grant heirs themselves; (5) an analysis of the cases and circumstances in which grants were improperly rejected and discouraged from being pursued; and (6) an analysis of due process under the federal confirmation process.

A. The GAO failed to adequately analyze the duty owed to land grant heirs under international law and failed to recognize shifting supreme court interpretations of treaty implementation

The GAO concludes the Treaty of Guadalupe Hidalgo was not self-executing, and consequently the federal government had no legal duty to land grantees to recognize land grants to the extent they would have been recognized under Mexico. In doing so, the GAO ignores the more nuanced historical question of whether Congress in fact intended, through the Treaty and subsequent legislation in 1854 and 1891, to protect land grants to the extent they would have been recognized under Mexico. Arguably Congress intended to do so, as suggested by U.S. Supreme Court decisions during the first half of the 19th Century. Likewise, it is arguable that later courts misinterpreted Congress’s intent surrounding the Treaty and subsequent legislation, as pressure increased to settle and market Western lands. If the courts indeed misinterpreted Congressional intent, Congress has the present-day prerogative to legislatively overrule such cases and restore its intent as articulated in the Treaty and Acts of 1854 and 1891. This discussion was entirely overlooked by the GAO and bears consideration.

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- B. The GAO ignored the fact that most community grants were not confirmed as they existed under Mexican and Spanish law, counting grants misconfirmed as tenancies-in-common and grants misconfirmed to private individuals.

In its discussion of confirmed land grants, the GAO inadequately addressed the fundamental problem of lands grants not being awarded correctly, using statistics and drawing conclusions that fail to evaluate the extent to which erroneously confirmed land grants led to land loss. The GAO largely ignores and fails to provide similar data relating to the large numbers of community land grants that were confirmed *improperly*, i.e., not as Mexico would have done, based on errors in the confirmation process and a failure to apply the proper legal standards. The GAO also fails to acknowledge the effect of these wrongful confirmations in causing massive dispossession of land grant heirs without any legal recourse in the courts, based on much-criticized Supreme Court decisions that Congress never acted to rectify.

The GAO counted in its report as “confirmed” those grants improperly confirmed as tenancies-in-common and those grants confirmed to private individuals. Of the 131 non-Pueblo community grants identified by the GAO, only 20 were correctly confirmed as community grants with true common lands. Thirty (30) grants were confirmed to individuals, 27 were confirmed as tenancies-in-common, and 7 were confirmed but stripped of their common lands under the holding in the controversial *Sandoval* case.⁸ Forty-seven (47) land grants were not confirmed. Thus, only fifteen (15) percent of the one-hundred, thirty-one (131) land grants emerged from the confirmation process as true community lands grants. Community land grants contained true common lands, which were not privately owned but were to be held in perpetuity by the land grant in a corporate capacity as a quasi-public entity and could not be sold. Confirmation as tenancies-in-common privatized the common lands and allowed for partition sales and dispossession of the land from the community. Tenancies-in-common and partition were foreign to the Mexican way of regarding community land grants. The common lands of community land grants should never have been subject to a partition suit because they were not tenancies-in-common under Spanish and Mexican law. A similar process of privatization and dispossession occurred when community grants were erroneously confirmed to private individuals.

- C. The GAO mistakenly relied on a New Mexico district court decision, since reversed, for the proposition that wrongful confirmations can be attacked in state court

The GAO relied on a single New Mexico District Court opinion for the proposition that errors in the confirmation process were in fact *not* final and could be remedied in the courts. According to the GAO, federal confirmations were not final as to parties with adverse claims, and that people who believed they were the rightful owners, but were not

⁸ *United States v. Sandoval*, 167 U.S. 278 (1897).

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awarded the grant (“third parties”), remain free to challenge confirmations in state court.⁹ This contention was not only overturned by the New Mexico Court of Appeals but flies in the face of hundreds of years of Supreme Court precedent. In 1876, the U.S. Supreme Court held that, regardless of the validity of a particular land grant under Spanish or Mexican law, Congress’s confirmation of a grant under the 1854 Act – whether as a particular type or size, or to a particular entity or individual – constituted a *final decision* on the matter which had to be appealed through the political rather than judicial channels. *Tameling v. U.S. Freehold Co.*, 93 U.S. 644, 662 (1876). *Tameling* and its progeny foreclosed any judicial review of such confirmations, notwithstanding that those persons aggrieved by that confirmation might possess evidence as to the error of the Congressional determination. In numerous state and federal court cases, courts have consistently rejected these third-party claims, holding a claimant’s only remedy is to seek relief from the political branch. *Sanchez v. Taylor*, 377 F.2d 733, 737 (10th Cir. 1967) (“If the confirmation of the title was [in error], the question was political, not judicial.”). A court is without jurisdiction to even hear such evidence and must dismiss such a claim. *Tameling* has been repeatedly affirmed for the proposition that third-party claimants may *not* collaterally attack a Congressional land grant confirmation in the courts. The GAO’s claim to the contrary is unfounded, yet the GAO uses this claim to suggest that land grant heirs have failed to pursue available judicial remedies.

D. The GAO’s premise that many losses were due to the heirs themselves is mistaken and ignores the improper nature of the confirmation process itself.

In its discussion of post-confirmation losses, the GAO focuses only on whether the federal government had a post-confirmation fiduciary duty to land grantees, comparable to that owed to Indian tribes and pueblos, rather than recognizing the legal effects of the mis-confirmations themselves on the fate of land grants and common lands. Concluding there was no such duty, the GAO ascribes the loss of improperly confirmed common lands to the actions of land grantees and heirs themselves and to state law. This analysis overlooks how the federal government’s breach of its *original* duty to land grantees, by confirming land grants improperly, set in motion the ultimate loss of common lands. Rather than breaching a post-confirmation duty, the breach had already occurred – resulting inevitably in significant losses to community grants.

E. The federal government improperly rejected valid land grant claims, and federal delays resulted in the wrongful adjudication of others.

The GAO does not adequately analyze how grants were entirely rejected based on technicalities that would not have applied under Spain or Mexico. While it acknowledges the narrow decisions that resulted in the rejection of these claims, the GAO Report omits any critical analysis of the decisions themselves. The GAO Report also underemphasizes the inequity of such decision-making and the consequences thereof, particularly when a number of these grants were recommended for confirmation by prior federal actors, but

⁹ The district court’s decision in *Montoya v. Tecolote Land Grant*, No. D-412-CV-9900322 (4th Judicial District) was overturned by *Montoya v. Tecolote Land Grant*, 2008-NMCA-014, ¶ 27, 176 P.3d 1145, *cert. granted*, 176 P.3d 1130 (2008).

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then were ultimately rejected after Congress failed to act on these confirmations and the grants became subject to the stricter, less equitable standards of subsequent decision-makers. Approximately half of the 88 non-Pueblo community land grants that received a favorable recommendation from the Surveyor General were forced by Congressional inaction to resubmit their claims before the CPLC and fared worse under the later process – either in terms of rejection or in terms of reduced acreage or total loss of common lands.

F. The Post-Treaty Confirmation Process was Rife with Due Process Violations

The GAO concludes that the process used under the Surveyor General and the Court of Private Land claims was constitutional. The GAO's analysis ignores relevant case law, the realities of the time, and the fact that confirmations were in fact final as to all potential claimants.

As discussed by the GAO, the Surveyor General published notices in the Santa Fe newspaper requiring claimants to present land grant claims to the Surveyor General in Santa Fe for confirmation. Although the Surveyor General was specifically directed to attempt to ascertain names of grantees of the various land grants, there is no evidence that he did so, or if he did, that he ever attempted to give notice to such grantees. Thus, claimants were not generally notified of pending claims whose validity, boundaries, or ownership they might contest. This lack of notice resulted in many largely *ex parte* decisions without ever affording adverse claimants to the same lands with an opportunity to be heard.

Further, the GAO overlooks the realities of 19th century New Mexico, and the fact that notice simply by publication was unlikely to inform potential claimants of their rights, much less any adverse claims. At the time, New Mexico had an extremely low literacy rate and few individuals could have even read the notices.

The GAO does not address any due process concerns from the Court of Private Land Claims process including the fact that the U.S. Attorney could assume an adversarial posture with respect to land grant claimants, and that he was under no directive to be balanced or reasonable in his positions. The stakes were much higher for claimants who were often poor and illiterate individuals. The vastly differing resources between claimants and the government attorneys substantially increased the risk of erroneous deprivation to claimants. Therefore, the process arguably warranted additional due process safeguards. These and other due process concerns were omitted entirely from the GAO report and certainly deserve additional analysis and scrutiny.

Finally, the GAO argued that the proceedings were not final and therefore less due process was required. This argument was based on its misplaced view that land grant confirmations are subject to collateral attack in the courts.