

Land Grant-Merced Common Land: Statutes, Case Law & Public Policy

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What are “Common Lands”

- Lands surrounding a Spanish and Mexican Land Grant-Merced utilized for their natural resources to sustain the community(ies).
- Derives from the concept *de mancomún*, meaning in common or collective.

What are “Common Lands”

- Under Spanish custom common lands were separated in different types of use categories:
 - *prados* – high yield pasture lands for growing forage
 - *dehesas* – pasture lands that could also be cultivated
 - *ejidos* – unfenced lands used for open grazing and other customary common uses
 - *própios/concegiles* – municipal lands for plazas, cemeteries, orchards, etc.
 - *baldíos* – uncultivated lands surrounding communities

Uses of the Common Land

- All waters within a land grant-*merced* available for the common use.
- Harvesting of fuelwood and building materials
- Harvesting of wild fruits, nuts and herbs
- Hunting and fishing
- Livestock grazing
- Religious/Spiritual Uses

Uses of the Common Land

San Miguel del Bado Granting Documentation

“... and another small surplus portion, which by the consent of all is set aside for the benefit of the blessed souls in purgatory, on condition that the products are to be applied annually to the payment of three masses”

Uses of the Common Land

San Joaquín del Río de Chama Cemetery

- 2015 Land Grant received an easement from U.S. Forest Service for a community cemetery then had been locked out of until since prior to 1920.
- U.S. Forest Service acquired the cemetery in 1970.
- Planned to include as part of the Rio Chama Wilderness in order to try and prohibit community from using mechanized equipment to clean the cemetery.

Origins of Common Land in the Law

San Miguel del Bado Granting Documentation

"I, Lorenzo Marquez, resident of this town of Santa Fé, for myself and in the name of fifty-one men accompanying me, appear before your excellency, and state that in consideration of having a very large family, as well myself as those accompanying me, though we have some land in this town, it is not sufficient for our support, on account of its smallness and the great scarcity of water, which, owing to the great number of people, . . . and among these fifty-one men petitioning are **thirteen Indians**, and among them all are twenty-five firearms, and they are the same persons who appear in the subjoined list which I present in due form;"

Origins of Common Land in the Law

- Siete Partidas - 1255

Siete Partidas - 1255

3rd Division, Title 28, Law 9

Separately, the commons of each city or village are the fountains and squares where the fairs and markets are held, and the places where the council meets, and the sandy areas on the banks of the rivers, and the other ***ejidos*** (*common lands*) and the places where horses run and mountains and pastures and all other places similar to these that are established and granted for the communal benefit of each city or town or castle or other place; and every man who dwells there can use all these above-mentioned things, and they are common to all, both the poor and the rich. **But the inhabitants of another place cannot use them against the will and without permission of those who live there.**

Origins of Common Law in the Law

- Siete Partidas - 1255
- Recopilación de Las Leyes de Los Reinos de Las Indias - 1680

Recompilación de Los Leyes de Los Reinos de Las Indias – Book IV

○ Title 5: Concerning the Settlements

- Law 1 – lands chosen for settlement shall have pastures for raising livestock, forests, groves for wood, and good water for drinking and irrigating.

Recompilación de Los Leyes de Los Reinos de Las Indias – Book IV

○ Title 5: Concerning the Settlements

- Law 6 - If the nature of the land is suitable for settlement of a town ... with a council composed of an Alcalde Ordinario and councilmen...with the condition that the limits of the territory shall be at least five leagues away from any city, town or place of Spaniards previously settled there, and that it shall cause no harm to any town of Indians or to any individual.

Recompilación de Los Leyes de Los Reinos de Las Indias – Book IV

○ Title 7: Concerning the Settlement of Cities Villages and Towns

- Law 7 ...enough common lands and pastures in which the livestock that the residents have may graze plentifully, and an additional portion for the town itself.

Recompilación de Los Leyes de Los Reinos de Las Indias – Book IV

- **Title 7: Concerning the Settlement of Cities Villages and Towns**
- Law 13 - Common land shall be extensive enough that, if the settlement increases, there may always be enough space for the people to reproduce and for the livestock to graze, without causing damage.

Recompilación de Los Leyes de Los Reinos de Las Indias – Book IV

- **Title 17: Concerning Public Roads, Hostelries, Inns, Public Houses, Municipal Lands, Pastures, Forests, Waters, Groves, and Vineyards.**
- Law 5 - residents shall have use in common of all pastures, forests and waters in the provinces of the Indies.

Recompilación de Los Leyes de Los Reinos de Las Indias – Book IV

- **Title 17: Concerning Public Roads, Hostelries, Inns, Public Houses, Municipal Lands, Pastures, Forests, Waters, Groves, and Vineyards.**
- Law 8 - wild fruit in the forests is to be for the common good

Recompilación de Los Leyes de Los Reinos de Las Indias – Book IV

- **Title 17: Concerning Public Roads, Hostelries, Inns, Public Houses, Municipal Lands, Pastures, Forests, Waters, Groves, and Vineyards.**
- Law 9 - The Viceroy and *Audiencias* shall consider the matter of good management of pastures, waters and public buildings, and they shall make provision as necessary for the settling and preservation of the land.

Recompilación de Los Leyes de Los Reinos de Las Indias – Book IV

- **Title 17: Concerning Public Roads, Hostelries, Inns, Public Houses, Municipal Lands, Pastures, Forests, Waters, Groves, and Vineyards.**
- Law 11 - We order that the same regulation followed by the Indians in dividing and distribution of water shall be-observed and followed by the Spaniards among whom lands are apportioned and assigned. For this reason the same natives who were previously in charge shall manage watering of the lands; and the water that each must have shall be given to each one in turn. Penalty for violation of this regulation shall be that he who wants, takes and uses the water by his own authority shall be deprived of it until all those in line after him have watered the lands assigned to them.

Recompilación de Los Leyes de Los Reinos de Las Indias – Book IV

- **Title 17: Concerning Public Roads, Hostelries, Inns, Public Houses, Municipal Lands, Pastures, Forests, Waters, Groves, and Vineyards.**
- Law 14 - It is Our will that the Indians may freely cut wood from the forests for their own use. We command that no impediment shall be placed in their way, provided that they do not cut trees in such a way that they cannot grow and increase.

Origins of Common Land in the Law

- Siete Partidas - 1255
- Recopilación de Los Leyes de Los Reinos de Las Indias - 1680
- Plan de Pitic - 1789
- Various Mexican Colonization Laws – 1823 - 1846

Origins of Common Land in the Law

○ *Hijuela* (Deed) for a lot in Tierra Amarilla Land Grant 1863

“The said *varas* of land retain the right of pastures, water, firewood, timber and roads, free and common, without prejudice to a third party nor to the owners, as in all settlements made and granted;”

1848 - End of Mexican American War

- 1848 - End of Mexican American War
- Treaty of Guadalupe Hidalgo
- Adjudication Process
- Impact of the Courts
- Legislative Policy

Surveyor General Process – 1854 - 1891

- Survey General Reports findings to Congress
- Congress to take such action as may be deemed “just and proper” to give full affect of the Treaty of Guadalupe Hidalgo.
- Until Congress acts, all lands covered by claims reserved from sale.

Actual Patent Language

Town of Anton Chico Land Grant

"only be construed as quit-claims or relinquishments on the part of the United States, and shall not affect the adverse rights of any other person or persons whomsoever."

Tierra Amarilla Land Grant

sixty, this patent shall only be construed as a quit-claim or relinquishment on the part of the United States and shall not affect the adverse rights of any other person or persons whomsoever.

Act of Limitations – 1857 & 1858

- Territorial Legislature passed the Act limiting the timeframe for challenging property ownership of lands granted by Spain, Mexico or the United States in 1857
- Challenges to possession of lands derived from a government grant must be done within 10 years of grant.
- If no challenge in 10 years owners protected from future claims against property by third party.
- Similar Act of Limitations passed in February 1858.

Legal Right to Property – 1864

- Provides for lawful claim of property and legal ownership of property granted by Spain or Mexico prior to Treaty of Guadalupe Hidalgo (February 2, 1848).
- “The persons are entitled to a lawful claim of property and legal ownership. . . exclusively, and against any other persons whatsoever, who lay claim subsequent to that date.”

Partition Suits – 1876

- SECTION 1. When any lands, tenements or hereditaments shall be owned in joint tenancy, tenancy in common or coparcenary, whether the right or title be derived by donation, grant, purchase, devise or descent, **it shall be lawful for any one or more of the persons interested, whether they be in possession or not, to present to the District Court their petition in chancery praying for a division and partition of such premises, according to the respective rights of the parties interested therein, and for a sale thereof, if it shall appear that partition cannot be made without great prejudice to the owners.**

Partition of Real Estate - 1876

- Allowed for partition of real estate owned by joint tenancy & tenancy in common.
- Included persons having an interest in the premises without having possession of the land.
- Provided for the forced sale of real estate that could not be easily divided.

Cebilleta (Sevilleta) de la Joya - 1874

- Established commission to oversee and govern the grant
- Empowered the Commission to over distribution of lands to private individuals from grant lands.
- Included requirement for" commission to provide rules for the government, management, and disposition of all classes of mines, veins, and minerals in said grant. . ."

Las Vegas & Cañada de Jemez - 1876

- Establish process for establishing a commission to oversee the lands of each grant.
- Includes a provision requiring the Commission to survey the private and public lands of the grant.

Chililí Land Grant – 1876

- Passed the same day as the Las Vegas & Cañada de Jemez Statute
- Establishes a Board of 5 Trustees, to be elected year 2 years “whose duties shall be to pass such ordinance as they may deem necessary for the protection of the common property of the grant. .
.”

1891 & 1897 General Authority for Land Grants Recognized in Territorial Statute

- Gives Board of Trustees the authority make rules and regulations for the protection and improvement of the “Common Lands” and “Common Waters” of the Land Grant.
- Regulates the Sale, Lease and Mortgage of common lands.
- Determine number of animals and price for grazing of common lands.

Court of Private Land Claims – 1891

- SEC. 8 “And no confirmation of claims or titles in this section mentioned shall have any effect other or further than as a release of all claim of title by the United States; and no private right of any person as between himself and other claimants or persons, in respect of any such lands, shall be in any manner affected thereby.

United States v. Sandoval – May of 1897

- Decided on May 24, 1897
- Relied heavily on United States v. Santa Fe
- Decided March 1, 1897

United States v. Santa Fé – March 1897

Book 4, Title 7, Law 7

"The tract of territory granted by agreement to the founder of a settlement shall be distributed in the following manner: they shall, in the first place, lay out what shall be necessary for the site of the town and sufficient **liberties (exidos)**, and **abundant pasture [dehesas]** for the **cattle to be owned by the inhabitants**, and as much besides for that which shall **belong to the town (propios)**. The balance of the tract shall then be divided into four parts; one to be selected by the person obligated to form the settlement, and the remaining three parts to be divided in equal portions among the settlers."

United States v. Santa Fé – March 1897

Liberty – Middle age term for an area of land to which regalian (crown) right was revoked and the land was held privately (not by the sovereign), usually by a community or town.

United States v. Santa Fé – March 1897

Book 4, Title 7, Law 11 – From *U.S. v. Santa Fé*

"The lots shall be distributed among the settlers by lot, beginning with those adjoining the main square, and the remainder shall be reserved to us, to give, as rewards, to new settlers or otherwise, according to our will, and we command that a plan of the settlement be always made out."

United States v. Santa Fé – March 1897

Book 4, Title 7, Law 11

"The lots shall be distributed among the settlers by lot, beginning with those adjoining the main square, and the remainder (**remaining**) shall be reserved to us, to give, as rewards, to new settlers or otherwise, according to our will, and we command that a plan of the settlement be always made out."

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United States v. Santa Fé – March 1897

Book 4, Title 7, Law 11

"The lots shall be distributed among the settlers by lot, beginning with those adjoining the main square, and the remainder (**remaining**) shall be reserved to us, to give, as rewards, to new settlers or otherwise, according to our will, and we command that a plan of the settlement be always made out." **Not the ejidos, not the dehesas, not the própios**

United States v. Santa Fe - 1897

"The provisions of law 14, title 12, book 4, of the Recopilación . . . illustrate the absolute control thus exercised by the King of Spain over the subject."

United States v. Santa Fe - 1897

“that all the land which is held without just and true titles be restored, as belonging to us, in order that we may retain, before all things all the lands which may appear to us and to our viceroys, audiences and governors, to be necessary for public squares, liberties (exidos), reservations (propios), pastures and commons, to be granted to the villages and councils already settled, with due regard as well to their present condition as to their future state, and to the increase they may receive, and after distributing among the Indians whatever they may justly want to cultivate, sow and raise cattle, confirming to them what they now hold, and granting what they may want besides, all the remaining land may be reserved to us, clear of any incumbrance, for the purpose of being given as rewards, or disposed of according to our pleasure.”

Court's Translation

“in order that we may retain, before all things all the lands which may appear to us and to our viceroys, audiences and governors, to be necessary for public squares, liberties (exidos), reservations (propios), pastures and commons, to be granted to the villages and councils already settled, with due regard as well to their present condition as to their future state, and to the increase they may receive,”

Actual Language

“para que reservando ante todas cosas lo que á Nos, ó á los Virregyes, Audiencias, y Governadores pareciere necessario para plazas, exidos, propios, pastos, y valdios de los Lugares, y Concejos, que están poblados: asi por lo que toca al estado presente en que se hallan:”

Translation from American West Center University of Utah

“Thus, before all things, there shall be reserved that which We, or the Viceroy, Audiencias, and Governors, consider necessary for squares, public lands, municipal properties, pastures, and vacant lands for places and municipalities that are settled. This applies to the present state of these places as well as to the future and the growth that they may have.”

My Translation

In order to reserve, before all things, what is to Us, or to the Viceroyes, Audiencias, and Governors, we deem necessary for the *plazas, exidos*, *propios, pastos*, and *baldíos* of (belonging to) the Communities, and Councils, which are settled: for both what is currently needed and what is needed in the future.

United States v. Santa Fe - 1897

[A]nd after distributing among the Indians whatever they may justly want to cultivate, sow and raise cattle, confirming to them what they now hold, and granting what they may want besides, all the remaining land may be reserved to us, clear of any incumbrance, for the purpose of being given as rewards, or disposed of according to our pleasure.”

What is remaining & reserved to Crown?

- *Not the plazas, exidos, propios, pastos, y valdios, Council properties (NOT THE COMMON LANDS)*
- NOT THE LANDS OF THE INDIANS
- Including what exists now and what is needed in the future.

What is remaining & reserved to Crown?

○ *“in order that we may retain”*

vs.

○ *Recognizing lands not to be retained*

Cost of misinterpretation

- Over 1 million acres of common land belonging to 7 distinct communities.
- These Lands become the basis for the establishment of the United States Forest Reserves (National Forests) in New Mexico.

Federal Legislation 2021

FOR IMMEDIATE RELEASE

Date: October 13, 2021

**Members of N.M. Delegation
Introduce Legislation to Strengthen Land
Grant Communities' Rights**

Federal Legislation 2021

- **S. 2708 & H.R. 5493**
- **Land Grant-Mercedes Traditional Use Recognition and Consultation Act**
- **Provide for recognition of traditional uses on former common lands now managed by the Federal Government**

1907 Community Land Grant General Provisions

Gives Boards the Authority to:

- "control, care for and manage the said grant and real estate, and to prescribe the terms and conditions under which the common lands thereof may be used and enjoyed, and to make all necessary and proper rules and regulation for the government thereof.
- Sell, convey, lease or mortgage the land grant common land.
- No right to sell or mortgage common lands without approval of community

1907 Community Land Grant General Provisions

- To prescribe price to be paid for use of the common lands and prohibit use from those in default of payments.
- Gives Boards the rights to institute actions of ejectment
- Courts to entertain bills of complaint to enjoin persons from trespass on common lands and using common waters.

Court's Interpretation Third Party Claims

Bond v. Barela's Heirs, 229 U.S. 488 (1913)

“When patent to the entire grant issued to the town of Tome, title to all the unallotted land passed from the United States to the town unburdened with any trust for heirs or grantees of persons named in the original petition and decree.”

Court's Interpretation Third Party Claims

Bond v. Barela's Heirs, 229 U.S. 488 (1913)

Result: Recognizes that the patent passed title to the land grant-merced as a corporate entity.

Court's Interpretation Land Grant vs Land Grant

Board of Trustees of Sevilleta De La Joya Grant v. Board of Trustees of Belen Land Grant, 242 U.S. 595 (1917)

“The Court of Private Land Claims was bound to respect the Belen grant as confirmed by Congress and described in the patent. It was not given any power to reduce the area of that grant or to make any decisions respecting its boundaries that would affect private rights in the grant. On the contrary, it was prohibited from doing so. And, of course, the owners of the grant could not by any act or consent of theirs enlarge the power of the court as defined in the act creating it.”

Court's Interpretation Land Grant vs Land Grant

Board of Trustees of Sevilleta De La Joya Grant v. Board of Trustees of Belen Land Grant, 242 U.S. 595 (1917)

Result: Land Grants themselves cannot raise third party claims against other land grants erroneously confirmed.

Court's Interpretation Third Party Claims

First National Bank v. Town of Tome, 1917-NMSC-064

“By the confirmation by Congress to the town of Tome nothing more than a relinquishment or quitclaim was intended or accomplished, and adverse rights being excepted were not affected, if valid. For this reason the alleged superiority of appellant's title, depending upon the confirmatory act of Congress and the resultant constructive possession following such alleged superior title, falls to the ground and need not be considered.”

Court's Interpretation Third Party Claims

First National Bank v. Town of Tome, 1917-NMSC-064

“the plaintiff's right of action is based upon adverse possession of land within land grants, and where such possession has been shown for ten years, . . . the possessor holding by virtue of a deed of conveyance, or other grant purporting to convey an estate in fee simple, and no claim by suit in law or equity effectually prosecuted shall have been set up or mode to said lands within said period, then the person or persons so holding adverse possession shall be entitled to keep and hold the land in preference to all and against all.”

Court's Interpretation Third Party Claims

First National Bank v. Town of Tome, 1917-NMSC-064

“It might as well be argued that the right of the town of Tome which arose as to the common lands after the confirmation by Congress in 1858 should have been prosecuted by the proper proceeding prior to 1868, or be forever barred.”

Act of Limitations – 1857 & 1858

- Territorial Legislature passed the Act limiting the timeframe for challenging property ownership of lands granted by Spain, Mexico or the United States in 1857
- Challenges to possession of lands derived from a government grant must be done within 10 years of grant.
- If no challenge in 10 years owners protected from future claims against property by third party.
- Similar Act of Limitations passed in February 1858.

Court's Interpretation Third Party Claims

First National Bank v. Town of Tome, 1917-NMSC-064

“We therefore pass to the second point, which is that under the laws of Spain and Mexico prefects had no power to make grants of public lands. and even though the prefect was without authority to make an allotment within a community grant, which we do not decide, nevertheless, the deed made by the allottee and the paper title resulting therefrom would constitute color of title.”

Court's Interpretation Third Party Claims

First National Bank v. Town of Tome, 1917-NMSC-064

Result: First National Bank Prevails setting up precedent that land grant-merced common lands can be adversely possessed

Court's Interpretation Third Party Claims

H.N.D. Land Co. v. Suazo, 44 N.M. 547 (N.M. 1940)

“Appellants rely upon more than one hundred documents made and executed by Francisco Martinez to their predecessors in title conveying particular tracts of 200 varas each, which said varas remain with the right of ‘pastures, woods, water, lumbers, watering places, and roads, common and free.’ All of these deeds upon which appellants rely were executed and recorded between the dates of 1861 and 1866. . . . [T]he grantor, Martinez, was endeavoring in all these conveyances to observe what he thought was a legal obligation enjoined upon him by the terms of the Mexican grant and the Mexican Laws of Colonization, to see that the Common and unallotted lands remain free for the common rights to water, timber, roads, etc.” ¶ 9.

Court's Interpretation Third Party Claims

H.N.D. Land Co. v. Suazo, 44 N.M. 547 (N.M. 1940)

“This point, though intriguing in its ramifications and by its vigorous challenge to appellee's title, we need not and do not decide. Another question, which is whether appellee has not acquired title by adverse possession, in any event, also presented and relied upon, is decisive, and it would serve no useful purpose to discuss further or pass upon such other point.” ¶ 29.

Court's Interpretation Third Party Claims

H.N.D. Land Co. v. Suazo, 44 N.M. 547 (N.M. 1940)

“The question then is: Can title by adverse possession be acquired as to common lands of a community grant? We hold that it can be.” In *Kavanaugh v. Delgado*, we held the ‘Tecolote land grant is not a municipal corporation in the sense that it constitutes an instrumentality or agency of the state.’ ” ¶ 33

Court's Interpretation Third Party Claims

H.N.D. Land Co. v. Suazo, 44 N.M. 547 (N.M. 1940)

“This court has considered rights acquired by adverse possession to lands within community grants without any question being raised as to the applicability of the New Mexico statutes with respect to such adverse possession of such lands. *First National Bank of Albuquerque v. Town of Tome*.” ¶ 35.

Court's Interpretation Third Party Claims

H.N.D. Land Co. v. Suazo, 44 N.M. 547 (N.M. 1940)

Result: The third party of interest of the heirs ignored in favor or adverse possession of the common lands by an outside third party.

Court's Interpretation Third Party Claims

Board of Tecolote Land Grant v. Griego, 136 N.M. 688
(N.M. Ct. App. 2004)

“We hold that title by adverse possession requires nothing short of unequivocal conduct by a claimant to commonly held land. Such a claimant must give specific notice to cotenants of an intent to claim exclusive ownership of part of the common estate. Clear notice can include both use of the land and the express exclusion of other interests, but also requires explicit notice of an intent to oust the cotenant, **particularly when the cotenant is a land grant.**” ¶ 12.

Court's Interpretation Third Party Claims

Board of Tecolote Land Grant v. Griego, 136 N.M. 688
(N.M. Ct. App. 2004)

Result: Heirs to land grants-mercedes cannot claim adverse possession of lands simply by exercising their use rights to the common lands.

Legislative Response

- **NMSA 1978, §49-1-1. Management of Spanish and Mexican grants.**
- “All land grants-Mercedes in the state or land grants-Mercedes described in Section 49-1-2 NMSA 1978 shall be managed. . . as political subdivisions of the State.”

Legislative Response

- **NMSA 1978, §49-1-11.2. Adverse possession.**
- A land grant-merced managed, controlled and governed as a political subdivision pursuant to Chapter 49 NMSA 1978 shall not be subject to adverse possession claims to or defenses against the common lands administered by the political subdivision, provided that those claims or defenses have not vested prior to the effective date of this section.

Adverse Possession of the Common Lands

- **NMSA 1978, §49-1-11.2. Adverse possession.**
- A land grant-merced managed, controlled and governed as a political subdivision pursuant to Chapter 49 NMSA 1978 shall not be subject to adverse possession claims to or defenses against the common lands administered by the political subdivision, provided that those claims or defenses have not vested prior to the effective date of this section.
- effective June 15, 2007

Current Statutes Affecting Common Lands

- NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-3. Board of trustees; management of grant; powers.**
- The management and control of all land grants-mercedes and tracts of land to which Sections 49-1-1 through 49-1-18 NMSA 1978 are applicable is vested in a board of trustees...and the board shall have the power to:

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-3. Board of trustees; management of grant; powers.**
- A. control, care for and manage the land grant-merced and real estate, prescribe the terms and conditions under which the common lands may be used and enjoyed and make all necessary and proper bylaws, rules and regulations that shall be in substantial compliance with applicable statutes for the government thereof;

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-3. Board of trustees; management of grant; powers.**
- C. convey, lease or mortgage the common lands of the land grant-merced in accordance with the land grant-merced bylaws;

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-3. Board of trustees; management of grant; powers.**
- D. determine the number of animals that may be permitted to graze upon the common lands and determine other uses of the common lands that may be authorized;

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-3. Board of trustees; management of grant; powers.**
- E. prescribe the price to be paid for the use of the common lands and resources of the land grant-merced and prohibit a person failing or refusing to pay that amount from using a portion of the common lands while the person continues in default in those payments; provided that the amount fixed shall be in proportion to the number and kinds of livestock pasturing upon the common lands or to other authorized use of the common lands;

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-3. Board of trustees; management of grant; powers.**
- H. make bylaws, rules and regulations, not in conflict with the constitution and laws of the United States or the state of New Mexico, as may be necessary for the protection, improvement and management of the common lands and real estate and for the use and enjoyment of the common lands and of the common waters of the land grant-merced;

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-3. Board of trustees; management of grant; powers.**
- I. determine land use, local infrastructure and economic development of the common lands of the land grant-merced;

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-3. Board of trustees; management of grant; powers.**
- J. determine zoning of the common lands of the land grant-merced pursuant to a comprehensive plan approved by the board of trustees that considers the health, safety and general welfare of the residents and heirs of the land grant-merced; and

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-11. Sale or mortgage of common lands; restrictions.**
- A. A conveyance of a portion or of all of the common lands of a land grant-merced shall be effective only if:

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-11. Sale or mortgage of common lands; restrictions.**
- A. A conveyance of a portion or of all of the common lands of a land grant-merced shall be effective only if:
 - (1) the conveyance is made in accordance with the land grant-merced bylaws and this section;

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-11. Sale or mortgage of common lands; restrictions.**
- A. A conveyance of a portion or of all of the common lands of a land grant-merced shall be effective only if:
 - (2) the conveyance is made for the benefit of the land grant-merced;

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-11. Sale or mortgage of common lands; restrictions.**
- A. A conveyance of a portion or of all of the common lands of a land grant-merced shall be effective only if:
 - (3) the board of trustees of the land grant-merced has approved a resolution to make the conveyance at a regular meeting held in accordance with Sections 49-1-9 and 49-1-12 NMSA 1978;

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-11. Sale or mortgage of common lands; restrictions.**
- A. A conveyance of a portion or of all of the common lands of a land grant-merced shall be effective only if:
 - (4) the board of trustees has petitioned for an order affirming the board's resolution from the district court of the district in which the property is located; and

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-11. Sale or mortgage of common lands; restrictions.**
- A. A conveyance of a portion or of all of the common lands of a land grant-merced shall be effective only if:
 - (5) the district court has issued an order affirming the board of trustees' resolution pursuant to Subsection E of this section.

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-11. Sale or mortgage of common lands; restrictions.**
- B. An heir may file a written protest of a conveyance with the board of trustees of the land grant-merced and the district court within thirty days of the date that the resolution approving the conveyance is passed by the board. The board shall address and make a decision on the protest at a special meeting held in accordance with Sections 49-1-9 and 49-1-12 NMSA 1978 within thirty days of receiving the protest.

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- **§49-1-11. Sale or mortgage of common lands; restrictions.**
- C. An heir dissatisfied with a decision of the board of trustees may appeal to the district court of the county in which property is located in the following manner:

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- **§49-1-11. Sale or mortgage of common lands; restrictions.**
- C. An heir dissatisfied with a decision of the board of trustees may appeal to the district court of the county in which property is located in the following manner:
- (1) appeals to the district court shall be taken by serving a notice of appeal upon the board within thirty days of the decision. If an appeal is not timely taken, the action of the board is conclusive;

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- **§49-1-11. Sale or mortgage of common lands; restrictions.**
- C. An heir dissatisfied with a decision of the board of trustees may appeal to the district court of the county in which property is located in the following manner:
 - (2) the notice of appeal may be served in the same manner as a summons in civil actions brought before the district court or by publication in a newspaper printed in the county in which the property is located, once per week for four consecutive weeks. The last publication shall be at least twenty days prior to the date the appeal may be heard. Proof of service of the notice of appeal shall be made in the same manner as in actions brought in the district court and shall be filed in the district court within thirty days after service is complete. At the time of filing the proof of service and upon payment by the appellant of the civil docket fee, the clerk of the district court shall docket the appeal;

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- **§49-1-11. Sale or mortgage of common lands; restrictions.**
- C. An heir dissatisfied with a decision of the board of trustees may appeal to the district court of the county in which property is located in the following manner:
- (3) costs shall be taxed in the same manner as in cases brought in the district court and bond for costs may be required upon proper application; and

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- **§49-1-11. Sale or mortgage of common lands; restrictions.**
- C. An heir dissatisfied with a decision of the board of trustees may appeal to the district court of the county in which property is located in the following manner:
 - (4) the proceeding upon appeal shall be de novo as cases originally docketed in the district court. Evidence taken in a hearing before the board may be considered as original evidence subject to legal objection, the same as if the evidence was originally offered in the district court. The court shall allow all amendments that may be necessary in furtherance of justice and may submit any question of fact to a jury or to one or more referees at its discretion.

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-11. Sale or mortgage of common lands; restrictions.**
- D. If the district court finds that all requirements of this section have been satisfied and that all protests and appeals are concluded, the court shall issue its order affirming the board of trustees' resolution conveying the property.

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-11. Sale or mortgage of common lands; restrictions.**
- E. After the district court issues its order, the board of trustees shall execute the necessary documents in the name and under the seal of the land grant-merced, and all heirs shall be bound by the board's conveyance.

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-11.1. Rights of lessees and purchasers; rights to use of common lands.**
- A. A person who is not an heir and who has purchased or leased property within the limits of a land grant-merced shall only have a right to the lands acquired through the purchase or lease but not to any common lands within the land grant-merced.

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-11.1. Rights of lessees and purchasers; rights to use of common lands.**
- B. The provisions of Chapter 49, Article 1 NMSA 1978 shall not diminish, extinguish or otherwise impair any private property interest located within the boundaries of a land grant-merced or be construed to grant the board of trustees of a land grant-merced regulatory authority over such property interests or lands other than the common lands. As used in this subsection, "property interest" includes valid easements and rights of access, but does not include use rights to the common lands of the land grant-merced.

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-15. Removal from land grant-merced; delinquency; forfeiture.**
- A. If a person holds in possession or claims in private ownership, within the exterior boundaries of a land grant-merced, any tract, piece or parcel of land to which, in the opinion of the board of trustees, the person has no right or title, the board may institute an action of ejectment in district court against the person. If upon the trial it is determined that such possession is without right, judgment shall be rendered in favor of the board for possession of the tract, piece or parcel of land and for such damages as it may have proved for the wrongful detention.

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-15. Removal from land grant-merced; delinquency; forfeiture.**
- B. Any delinquent heir shall lose all right that the heir may have had to use the common lands of the land grant-merced unless the heir pays in full all legal assessments or dues due by the heir.

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- **§49-1-16. Trespass on common lands or waters; injunctions**
- The courts of this state shall entertain bills of complaint filed by the board of trustees of a land grant-merced to enjoin persons from trespassing upon the common lands or using the common waters within the land grant-merced if it appears that the complainant is without a plain, speedy and adequate remedy at law or that the persons committing trespass are insolvent or unable to respond in damages.

Rayellen Res., Inc. v. N.M. Cultural Props. Review Comm., 2014-NMSC-006

- “Our courts have long recognized that the common lands of a community land grant are jointly held as private property by the heirs of the land grant.” ¶ 39.

Rayellen Res., Inc. v. N.M. Cultural Props. Review Comm., 2014-NMSC-006

- See *Mondragon v. Tenorio*, 554 F.2d 423, 424–25 (10th Cir.1977) (addressing a federal civil rights claim under the New Mexico Land Grants Act and explaining that “[t]he common lands are not open to the public; they are private property and may be leased. Only the heirs of the original claimants can use them for wood gathering and similar purposes without lease or consent of the trustees.”), recognized by *Maestas v. Board of Trustees of Anton Chico Land Grant*, 1985–NMSC–068, ¶¶ 8–9, 103 N.M. 77, 703 P.2d 174. *Id.*

Rayellen Res., Inc. v. N.M. Cultural Props. Review Comm., 2014-NMSC-006

- *Armijo v. Cebolleta Land Grant*, 1987–NMSC–006, ¶ 6, 105 N.M. 324, 732 P.2d 426 (“[A]s a practical matter the Legislature has assumed the function of exercising control over [community land grants] through statutes providing for their administration by boards of trustees.” (second alteration in original) (internal quotation marks and citation omitted). *Id.*

Rayellen Res., Inc. v. N.M. Cultural Props. Review Comm., 2014-NMSC-006

- Bd. of Trs. of Town of Las Vegas v. Montano, 1971–NMSC–025, ¶ 16, 82 N.M. 340, 481 P.2d 702 (The “principal function [of the board of trustees] is to hold title to and manage the common lands of the grant.”). *Id.*

Rayellen Res., Inc. v. N.M. Cultural Props. Review Comm., 2014-NMSC-006

- “A legislative taking would violate the privately held rights to these land grant properties that have existed since the land grant's inception and have expressly been confirmed by our federal government under the Treaty of Guadalupe Hidalgo.” ¶ 41.

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-11.1. Rights of lessees and purchasers; rights to use of common lands.**
- C. The designation of land grants-mercedes as political subdivisions of the state shall not alter the property rights of the heirs in the common lands. The common lands owned or controlled by a land grant-merced shall not be considered to be, designated or treated as state land.

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

- **§49-1-3. Board of trustees; management of grant; powers.**
- K. enter into memoranda of understanding, contracts and other agreements with a local, state or federal government or a government of a federally recognized Indian nation, tribe or pueblo, including but not limited to agreements concerning the protection and maintenance of cultural resources.

Rayellen Res., Inc. v. N.M. Cultural Props. Review Comm., 2014-NMSC-006

- “the management, control, and governance of community land grants includes those rights recognized by the Treaty of Guadalupe Hidalgo.” *Id.*

Rayellen Res., Inc. v. N.M. Cultural Props. Review Comm., 2014-NMSC-006

- “We construe the two statutes in favor of an interpretation that complies with the international treaty, the New Mexico Constitution, and our long-standing jurisprudence recognizing the private property rights inherent in a community land grant's common lands.” *Id.*

NMSA 1978, Chapter 49, Article 1 – Land Grant General Provisions

○ Questions

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