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This testimony is being submitted on behalf of the New Mexico Land Grant Council and the New Mexico Land Grant Consejo. The Council is a New Mexico state agency, established in 2009, tasked with providing advice and assistance for land grant-*merced* communities and serving as a liaison between land grants and federal, state and local governments. Its mission includes developing and promoting federal legislation for an appropriate congressional response to longstanding community land grant claims in New Mexico. It is the only agency within the executive branch of state government responsible for promoting federal legislation relating to land grant-*merced* matters. The New Mexico Land Grant Consejo is a grassroots consortium, whose membership is comprised of active community land grants-*mercedes* from throughout New Mexico. It is the only state-wide organization of community land grants. Its primary focus is to advocate for the advancement of Spanish and Mexican community land grants-*mercedes* in New Mexico. Both the New Mexico Land Grant Council and the New Mexico Land Grant Consejo fully support H.R. 6365.

H.R. 6365 – the **Treaty of Guadalupe Hidalgo Land Claims Act of 2018** will establish a presidentially appointed commission to evaluate unresolved property claims for Spanish and Mexican community land grants-*mercedes* stemming from the incomplete and inequitable application of the Treaty of Guadalupe Hidalgo. For more than a century, Spanish and Mexican Land Grant-*Merced* communities in the Southwest have suffered social and economic hardships as a direct result of the failed United States land adjudication process required by the Treaty. The Commission will consider these social and economic impacts and their effects on the land grant-*merced* communities when evaluating claims brought before it. Under the Act the Commission would hold hearings to provide land grant-*merced* governing boards an opportunity to give testimony and submit supporting documentation relating to land claims and use rights claims on former land grant-*merced* commonly-held lands now under the management of the federal government. Upon completion of its hearings the Commission would be required to issue a report to Congress on its findings, including recommendations for restitution to land grant-*merced* communities. Restitution recommendations can include: land returns, stewardship rights, and priority access and use rights on former common lands now managed by the federal government. The bill is not intended to impact any privately held lands located within the historical boundaries of a land grant-*merced*. If passed this bill would represent an important first step in addressing both the longest standing unresolved property rights issue in the Southwest as well as the oldest unresolved Hispanic social injustice in the United States.

The term land grant-*merced* refers to grants of land that were given by the Spanish Crown (1689 - 1821) or the Mexican Government (1821 - 1854) to communities or individuals for the purpose of either recognizing existing Native American Pueblos or establishing new *mestizo* (European and Native American mixed blood) and *genizaro* (full blood detribalized Hispanicized Native American) settlements within the northern frontier of New Spain and Mexico. These land grants were established in what is now the United States Southwest during the period between 1689 and the Gadsden Purchase in 1854. Land grants-*mercedes* can be classified in two categories: private land grants-*mercedes* and community land grants-*mercedes*. Private land grants-*mercedes* were those issued to individuals usually as a gift for service or for a specific purpose such as grazing, or mining and recipients were not necessarily required to establish community settlements. Community land grants-*mercedes* were issued

to individuals, groups of individuals/families or entire communities for the specific purpose of recognizing existing communities or establishing new ones. The 2001 United States General Accounting Office Report # GAO-01-951 found that there were 154 community land grants-*mercedes* established in what is now New Mexico and Southern Colorado. It is these community land grants-*mercedes* (and not the private land grants) that H.R. 6365 addresses. Within their boundaries community land grants included small private tracts of land, known as *suertes, solares,* and *hijuelas*, distributed to individual members of the community for building homes and growing crops and large areas of common lands that belonged to and were managed for use by the entire community. These common lands, known as *ejidos,* included pasturelands for grazing and watering of livestock, forested lands used to extract fuelwood, building materials and harvest other natural resources vital to the survival of these communities. The common lands represented the vast majority of land within a community land grant and the individual private allotments typically made up approximately five percent or less of the total land within the grant. It was understood that individual parcels, usually of a few acres, were insufficient for families and that access to common lands was essential for their subsistence and well-being. The common lands of the community land grants were managed by a locally elected board. This continues to this day for those community land grants still in existence and still possessing common lands. Under Spanish law, and today under New Mexico State statute, the common lands of the land grant-*merced* are managed and regulated for the beneficial use of the community by this elected board of trustees/commissioners. These locally elected governing boards find their origin in the *Recopilación de las Leyes de los Reinos de las Indias*, a codified set of Spanish Laws from 1573. Land grant-*merced* local governing bodies thus represent the first democratically elected local governments in the Southwest. Of the 154 community land grants-*mercedes* 82 were issued by Spain and 49 were issued by Mexico. Today there are between 30 to 40 land grants still in existence with active governing boards.

In 1848 the United States and Mexico signed the Treaty of Guadalupe Hidalgo to end the Mexican American War. The Treaty transferred more than half of Mexico's territory to the United States. This change in sovereignty affected approximately 80,000 Mexican citizens, including approximately 60,000 in the New Mexico Territory. Provisions for the protection of property titles recognized by Mexico, including Spanish and Mexican land grants-*mercedes*, were included in the Treaty and affirmed by the Protocol of Querétaro. Under the Treaty, the United States was obligated to establish a process for adjudicating/confirming land titles in the newly ceded territory. In 1854, the United States purchased additional lands from Mexico under the Gadsden Purchase Treaty. This Treaty by direct reference incorporated the property protection provisions established in the Treaty of Guadalupe Hidalgo.

The recognition of land claims in the New Mexico Territory spanned more than 50 years and was subject to two different adjudication processes. The first process was administered by the Office of the Surveyor General of New Mexico from 1854 to 1891 and the second process by the Court of Private Land Claims from 1891 to 1904. Although the Court of Private Land Claims ended in 1904 many land grant-*merced* claims from both processes did not have surveys completed or receive patents until well after the Court ceased operation. For example, the Chililí Land Grant, which was confirmed by Congress in 1858, was surveyed three different times. The first survey conducted in 1860 showed the grant containing approximately 38,000 acres. Although the grant was approved by Congress and promptly surveyed, no action was taken on issuing the patent for 15 years, when in 1875 the Commissioner S.S. Burdett of the General Land Office rejected the 1860 survey and ordered a new survey in an attempt to shrink its size. The community of Chililí challenged the move particularly since the new survey instructions would have placed the actual townsite of Chililí outside of the land grant boundaries. Their challenge was rejected, and the new survey reduced the grant to approximately 23,000 acres. The land grant community protested the approval of the new survey in 1880 and offered new evidence of a

mistranslation of the original granting documents. This resulted in an additional resurvey, completed in 1882, largely in conformance with the lands actually granted by Mexico. The new survey, which recognized approximately 41,000 acres, was completed in the 1880's. Nevertheless, the patent was not issued until 1909. The amount of effort and expense required over the 51 years that it took the community to receive clear title to the grant left them exposed and hard pressed to fight off land speculators who had targeted the land grant common lands in the years subsequent to their receipt of the patent. Today the Chilili Land Grant is still an active land grant-*merced* but only governs approximately ¼ of the lands it received in the 1909 patent, largely due to land speculation, delinquent tax seizures and private encroachments of the common lands.

Neither the Surveyor General process nor the Court of Private Land Claims process achieved positive results for the majority of the land grants-*mercedes* in New Mexico. Beginning with the passage of Organic Act in 1854 the Surveyor General process was set up to fail community land grants from its inception. To begin with, though the Office of Surveyor General of New Mexico had much more to do than other western territories, it was given the same budget as other Surveyor General offices. Unlike those other offices, which were tasked principally with establishing principal meridians and base lines and dividing up the territory into ranges and townships in order to allow for settlement, it had the additional duty of evaluating and making recommendations for congressional recognition of several hundred Spanish and Mexican land claims as required by Treaty of Guadalupe Hidalgo. Surveyors General of New Mexico were ill equipped to handle this task. To begin with virtually none of the Surveyors General, all of whom were Anglo Americans from the eastern states, could understand, speak, read or write Spanish. Notwithstanding this, section 8 of the Organic Act of 1854 required them "to ascertain the origin, nature, character, and extent of all claims of lands under the laws, usages, and customs of Spain and Mexico." The first Surveyor General of New Mexico, William Pelham, was quick to realize that neither he nor his office were equipped to properly evaluate Spanish and Mexican land grant claims. He made this clear to his superiors at the General Land Office (GLO) by requesting funds in order to hire additional staff and to purchase books containing English translations of Spanish and Mexican laws. The additional staff was needed to help shift through the over 150,000, mostly unorganized documents contained in the Spanish and Mexican archival records in Santa Fe as a means of verifying land claims. The purchase of Spanish and Mexican law books was needed in order to determine what exactly Spanish and Mexican laws and customs were for granting of land. Virtually all of these pleas for additional funding went ignored by the GLO. The underfunded Office of the Surveyor General became an easy target for Anglo land speculators that converged on New Mexico intent on getting rich off mineral extraction, timber production, livestock grazing, railroad development and speculating and drawing investment into land grant lands. These speculators quickly learned to manipulate the limitations of the Surveyor General process in order to fraudulently lay claims to Spanish and Mexican land grants-*mercedes*. This group, which included lawyers, politicians, judges and federally appointed territorial officials, came to be known as the Santa Fe Ring. In time, the Surveyors General themselves participated in the land speculation schemes of the Santa Fe Ring. Three Surveyors General, in particular, T. Rush Spencer (1869-1872), James K. Proudfit (1872-1876), and Henry M. Atkinson (1876-1884), utilized their positions in office to gain private interests in community land grants-*mercedes*. They often misrepresented community land grants as private land claims in order to divest a community's ownership and control of the land grant-*merced*.

A prime example of a how a corrupt federal official abused his position as Surveyor General in order to collude with land speculators is Henry M. Atkinson. Atkinson worked closely with Thomas B. Catron, an unscrupulous attorney, politician, land speculator and leader of the Santa Fe Ring, to defraud community land grants of the common lands which they depended on to survive. Two examples are his

fraudulent misdealings and misrepresentations concerning the Town of Anton Chico Land Grant and the San Miguel del Bado Land Grant. In the case of the former, the Anton Chico land grant, which was granted by Mexico in 1822, had been confirmed by Congress in 1860. However, as with most Spanish and Mexican land grant-*merced* claims, delays in approving the survey meant that the issuance of a patent did not occur for many years, the result of which would prove disastrous for the community. It was not until 1878, under Atkinson's tenure that the grant was surveyed. Although Atkinson was aware that the confirmation of the grant had been to the Town of Anton Chico, as a community grant, he still conspired to get it patented as an individual grant. He argued that the grant was a private grant that such be issued to the first person named on the Mexican granting documentation, Manuel Rivera. After the survey was completed but prior to it being patented Atkinson acquired, through a third-party agent, a property interest in the private estate of Manuel Rivera. Having done so, he proceeded to argue that this private property interest entitled him to ownership of the entire Anton Chico Land Grant, which was approximately 378,000 acres in size. While serving as Surveyor General he petitioned the General Land Office to issue the patent into his name, claiming it belonged to him as he had acquired it from the heirs of Manuel Rivera. The GLO denied his request and instead issued the grant to the Town of Anton Chico. Undeterred, he used the newly issued patent to file a quiet title suit to gain ownership of the entire grant. The suit was filed in Bernalillo County, 120 miles away (*New Mexico Land and Livestock Company v. Winernitz, et at*, Bernalillo County District Court Case No. 1246, August 1884). Atkinson brought the quiet title suit as president of the New Mexico Land and Livestock Company and he only published notice of the suit in the *Albuquerque Journal* a newspaper not in circulation in Anton Chico. He also intentionally published the notice solely in English since most Spanish-speaking New Mexicans did not read English. He neither mentioned the Anton Chico Land Grant nor the Town of Anton Chico by name in these notices. No one from the community of Anton Chico was aware of the quiet title suit—a failure of due process. As a result, the court awarded Atkinson title by default judgement. It was not until 1906, long after Atkinson's death, that the community of Anton Chico became aware of the quiet title suit and declaratory judgement. Once this treachery was discovered the Anton Chico Land Grant board of trustees immediately moved to challenge the quiet title judgement and sought the assistance of two prominent attorneys, Charles A. Spiess and Stephen B. Davis Jr. Unbeknownst to the Anton Chico Land Grant community, both Spiess and Davis were part of the Santa Fe Ring and partners with Thomas B. Catron. Spiess and Davis agreed to represent the land grant for a fee of approximately 1/3 of the land grants common land (100,000 acres). After securing the payment of land, they advised the Anton Chico Land Grant to settle with Thomas Catron for 35,000 acres. Therefore, as a direct result of corrupt actions of a U.S. Surveyor General the Anton Chico Land Grant lost 135,000 acres of common land. It should be noted that the terrain in Anton Chico is high desert grassland, and that farming, and pasturing require extensive lands.

Sadly, this is only a part of the story of Anton Chico's land loss. The United States Congress and the Territorial Court System also played a role in severing an additional 120,000 acres of common land from the land grant. This was the result of Congress issuing, in the exact same act that approved the Anton Chico Grant in 1860, an overlapping private land grant claim to an Anglo speculator named Preston Beck. Beck had acquired the interest in a private grant known as the Ojito de las Gallinas Land Grant, which had been issued to Juan Esteban Pino in 1823 by Mexico. Beck petitioned Surveyor William Pelham for confirmation of the grant, which he reviewed and recommended for confirmation by Congress. This was done in 1860 in the same act that approved the Anton Chico grant. When both grants were surveyed it was noted that there was an overlap of 120,000 acres of land. Anton Chico was surveyed first, in October of 1860 but their original survey was rejected by the General Land Office. It was not resurveyed until 1878 under the tenure of Surveyor General Henry Atkinson. The Preston Beck grant was surveyed at the same time as the first Anton Chico survey, but its survey as approved in

November of 1860. Neither grant received a patent until years later, with Anton Chico receiving theirs on March 27, 1883 and Preston Beck's estate receiving his in June of 1883. Preston Beck died shortly after the grant was confirmed in 1860 and his heirs sued to partition their interest in the grant. At this time the community of Anton Chico became aware of the overlap and intervened in the lawsuit claiming priority title to the overlapped lands since their deed to the land was from May of 1822 and the deed to the Ojito de las Gallinas was made eighteen months later in December of 1823. The Territorial Court, whose judges where appointed by the federal government, eventually ruled that although the Anton Chico Grant did have superior title under Mexico, the act of Congress confirming both grants made them grants de novo. It argued incorrectly that since the Preston Beck Grant received their U.S. patent before Anton Chico, which it had not, it now had superior title. The court made its ruling prior to either patent actually being issued, which did not occur for either until 1883, and instead based its ruling on the fact that the Preston Beck survey was approved prior to the Anton Chico survey. This was a miscarriage of justice and resulted in the community of Anton Chico land grant losing 120,000 acres of common lands to private interests.

The Court of Private Land Claims (CLPC) was established in 1891 in part as a reaction to this type of official corruption but in the process of cleaning up house it proved to be inherently adversarial to the genuine claims of land grants-*mercedes*. The Court's enabling act called for both a narrow interpretation of Spanish and Mexican law and for the appointment of a U.S. Attorney to represent the United States interest in any claims brought before the Court. This resulted in rulings that stripped millions of acres of common lands from communities that where hundreds-of-years-old because of technicalities. For example, the Court ruled that grant documentation submitted in support of a claim that was certified copies and not the original documents was inadmissible, notwithstanding the fact that the Court was established 43 years after the Treaty of Guadalupe Hidalgo was signed and the fact that many of the land grants-*mercedes* bringing claims before the Court were granted as far back as the 1700's and were not themselves responsible for the management of the Spanish/Mexican archives. Moreover, the interpretation of Spanish and Mexican laws by the Court was based on a text written by Matthew G. Reynolds who also served as the United States Attorney—the attorney representing the interests of the United States government, whose goal was to reduce land claims, especially timberlands, for the public domain. In addition to this conflict of interest, the Court also appointed William M. Tipton to serve as the Court's special agent and Spanish language expert. Tipton was the brother-in-law of Surveyor General Henry Atkinson and had acquired his knowledge of Spanish and purported expertise in Spanish and Mexican laws through his service as Deputy Surveyor General of New Mexico, a position that he received through a nepotistic appointment by Atkinson. Tipton's expertise in Spanish and Mexican laws came from his work in a corrupt and land speculative office, during which time Atkinson utilized his position to knowingly misrepresent Spanish and Mexican law for self-profit and personal gain. Through their positions in the Court of Private Land Claims both Tipton and Reynolds played crucial roles in decisions affecting the fate of community land grant-*merced* claims brought before the Court.

A prime example was the role Reynolds played in having the Courts restrict the confirmation of land grant-*merced* lands to the individual private allotments within the grant, thereby excluding the common lands and reverting them to the public domain. Reynolds persuaded the U.S. Supreme Court, and the Court held in *United States v. Sandoval* 167 U.S. 278 (1897) that the common lands of all the land grants-*mercedes* (the pasture and forested lands which the communities depended on) did not belong, under Mexican law, to the control and ownership of the land grant governing boards and local communities but rather to the sovereign of Mexico and now the United States. In making this argument Reynolds relied on a very narrow interpretation of Mexican law. This denial of the common lands and restriction to individual allotments affected eight land grants-*mercedes* with claims before the CLPC,

(San Miguel del Bado, Cañón de Carnué, San Joaquín del Río de Chama, Town of Galisteo, Petaca, Don Fernando de Taos, Santa Cruz de La Cañada, and Juan Bautista Baldes), five of which still have active boards of trustees today. When the Court of Private Land Claims applied this new rule, from *United States v. Sandoval*, it stripped over 1.1 million acres of common lands from the above mentioned, land grants, much of which is now managed by either the U.S Forest Service or Bureau of Land Management.

The *United States v. Sandoval* case centered around the San Miguel del Bado Land Grant and resulted in the land grant loosing over 300,000 acres of common lands that supported nine separate communities along the Pecos River valley. The U.S. Supreme Court ignored the fact that the San Miguel del Bado Land Grant was issued by Spain in 1794 and under Spanish law, the common lands were owned and managed by the local community. Therefore, the ownership and title to the land was already vested to the community by the time Mexico established independence from Spain in 1821. Thus, Mexican laws pertaining to lands considered to be in the public domain would not have applied to the San Miguel del Bado Land Grant common lands. The San Miguel de Bado Land Grant is not only an example of how the judicial process established to review land grant claims was biased against community land grants-*mercedes*, it is also a further example of corruption by the Surveyor General of New Mexico. Surveyor General Atkinson attempted to defraud the land grant-*merced* of its entire grant utilizing the same methods as he did with the Anton Chico Land Grant. Documented evidence provides reference to letters between Atkinson and known land speculators detailing how he was using his position as Surveyor General to manipulate the nature of the community grant in an attempt to secure within it the private interests of outside land speculators. In addition, the San Miguel del Bado Land Grant demonstrates the detrimental impact that such a long adjudication process had on community land grants-*mercedes*. The communities of San Miguel del Bado Land Grant initiated their petition for recognition of their land grant-*merced* to the Surveyor General of New Mexico in 1857. The petition was ignored by six Surveyors General and was not acted upon by that office until 1879. Still never reaching a final decision through the Surveyor General process, the community was forced to submit a new petition to the Court of Private Land Claims in 1892. The final step in the process the issuance of the land patent to the Board of Grant Commissioners of the San Miguel del Bado Land Grant (for only 5,207 acres) was not finally completed until 1910. That represents a span of 53 years, during which time the community had to constantly fight a losing battle to protect and preserve the lands that had been within their ownership and possession since 1794.

In addition to the above-mentioned examples, the Surveyor General, the Court of Private Land Claims, the Supreme Court and Congress all contributed toward the diminishing of Spanish and Mexican land grant-*merced* common lands, even for those land grant-*merced* claims where the amount of lands confirmed fairly represented what was originally granted by Spain or Mexico. Many of these land grants-*mercedes* were incorrectly confirmed to the wrong party (i.e. an individual or third party such as a land and cattle company) or confirmed as a tenancy-in-common (a legal property concept that did not exist under Spanish and Mexican law), which allowed for partition suits that forced the sale of the common lands when one member desired to cashout his or her interest. In the instance of the former, the imperfect process set up for adjudicating land grants allowed corrupt government officials and unscrupulous attorneys and land speculators to manipulate private land titles within land grant-*merced* communities in order make ownership claims to the entire common lands of the grant. Under Spanish and Mexican law, the common lands were not to be owned by any private individual but rather were to be open for use by the entire local community. In addition, common lands were not to be partitioned or sold as they provided the natural resources necessary for the community to survive. Allowing the common lands of a community grant to be issued to a private individual was a direct violation of the

laws, customs and nature of community land grants and in taking such action the United States government essentially ensured that the common lands would be severed from use by the local communities. In the case of the latter, tenancies-in-common was a form of property ownership recognized under American jurisprudence that did not exist as a land tenure concept applicable to community land grants under Spanish or Mexican law. Land grant-*merced* common lands were never intended to have individual members of the community own a dividable fractional interest in them. As mentioned above, they were common to all and could not be held privately or sold. Confirming community land grants-*mercedes* as tenancies-in-common was an ingenious scheme cooked up by corrupt officials and land speculators to defraud communities of their common lands through partition suits. So elaborate were the machinations that members of the Santa Fe Ring would work with adjudication officials to push for confirmation as tenancies-in-common while at the same time have Ring member attorneys representing the land grants-*mercedes* to inform them that this would protect their interests. The fees for the attorney's service to petition their claims was typically 1/3 of the lands confirmed. Upon having the grants confirmed the attorneys with their 1/3 interest would immediately sue for partition in a Territorial Court where a member of the Ring was a judge. The judge would order the common lands to be sold in order to allow the tenants to receive monetary compensation for their portion of the land. The Ring would already have investors, often times other members of the Ring, ready to purchase the land during the forced sale. These new owners would then restrict all communal uses of the common lands by the local communities. Therefore, although many community land grant-*merced* claims were adjudicated the manner in which they were confirmed, by design, resulted in the eventual loss of the vast majority of land grant common lands confirmed during the adjudication process.

A final example of how the adjudication process failed community land grants-*mercedes* is through the mistranslation, sometimes intentional, of the original Spanish document and Spanish customs. Misinterpretations in boundary descriptions often had the impact of limiting the size of the grants. For example, in the case of the Town of Tomé Land Grant the original Spanish granting document names the eastern boundary as the ridge of the mountain (now known as the Manzanos). However, in interpreting these documents, the U.S. Federal government recognized the eastern boundary as located at the base of the mountain. Under the Spanish customary law, it would clearly have been the ridge since the mountain contained all of the forested timber lands from which the community would harvest fuelwood and building materials. By restricting the boundary to the base of the mountain access to all those resources by the local community placed into question. These lands eventually became a part of the Cibola National Forest and in the early 1980's were designated as the Manzano Mountain Wilderness. This action further restricted the land grant-*merced* community from having any meaningful access to not only the natural resources but also the management of the lands for watershed health.

Summarizing the adjudication process of land titles for community land grants-*mercedes* requires that we recognize the complexity of land grant adjudication in New Mexico and the territory originally part of it. Some, but not all government officials were corrupt. Some land grants obtained virtually all of the land that they had claimed, others less than ten percent, still others were not even recognized at all. And even when the adjudication was nominally successful, sometimes the land was assigned in the wrong manner or to the wrong parties. Injustices were committed, but righting them, even only to those 30-40 land grants still active, requires the research and review of a commission that can recommend action to Congress. That there was injustice is clear because the confirmations resulted in the United States substantially reducing of the amount of lands that were originally granted by Spain or Mexico. Whether the reduction in common lands was caused by erroneous surveys, mistranslation of boundaries from original documents written in Spanish, corruption and collusion of government officials and their

misinterpretations of Spanish and Mexican laws and customs for granting lands for community settlements, or a narrow interpretation of admissible evidence to establish a claim, the loss of these common lands had lasting adverse social and economic impacts on the rural agrarian communities that relied on the land grant-*merced* common lands for subsistence and survival.

Decades after the end of the adjudication process, the federal domain continued to grow as a result of the acquisition of former land grant common lands from private parties. The U.S. Forest Service established forest reserves on former land grant-*merced* common lands and by the 1920s acquired many of these lands from the same speculators and attorneys that stole these lands from land grants-*mercedes* during adjudication. When New Deal programs came in the 1930s, field workers found communities starved from the lack of access to resources surrounding their communities. Numerous federal agencies purchased land grants and instituted relief programs that partially restored access to former common lands. As the New Deal ended, relief programs were cut and land grant-*merced* lands were transferred to the U.S. Forest Service, which gradually reduced stock grazing, wood cutting, and other uses, reneging on the intent of federal purchases and creating the seedbed for radicalism. The result was a period of militant land grant activism that spanned from the 1960s to the 1970s. During that time attempts were again made at the federal level to address these unresolved issues. Legislation similar to H.R. 6365 was introduced in 1970 and 1971 by Congressmen Ron Dellums and Augustus Hawkins of California, with the purpose of creating a commission to evaluate the Spanish and Mexican community land grant-*merced* claims. In 1981, a bill was introduced by Senator Pete Domenici seeking to create a commission to investigate claims relating to the San Joaquín de Río de Chama Land Grant.

This particular Spanish land grant-*merced*, as a result of the earlier mentioned *U.S. v. Sandoval* decision, lost many thousands of acres of common lands. Not only this but when the patent was issued for the mere 1,500 acres, that comprised the private allotments in only one community within the land grant-*merced* boundaries, it was issued to the Rio Arriba Land and Cattle Company as opposed to the families residing on the land. The cattle company, which was ran by members of the Santa Fe Ring, quickly moved to evict all of the town's residents by use of force. Eventually the 1,500 acres of patented land was sold to the U.S. Forest Service. In the subsequent years, as with many land grants, large portions of the former common lands of the land grant-*merced* received federal designations such as Wilderness, Wilderness Study Areas and Wild and Scenic Rivers thus further limiting land grant-*merced* communities' ability to meaningfully access and use the natural resources on those lands for traditional use purposes. The disconnect between federal agencies like the U.S. Forest Service and the needs of local land grant communities has been so great that the agency even attempted to place a historic community cemetery, that heirs of the San Joaquín de Río de Chama land grant still maintained and cleaned, inside the boundaries of the Chama River Canyon Wilderness. In doing so the agency attempted to restrict the San Joaquin del Río de Chama Land Grant's ability to utilize any mechanized equipment to clean and maintain the cemetery or bring community elders to the site to pay religious respects via ATVs. This resulted in nearly ten years of work by the land grant-*merced* and supporting entities, like the New Mexico Land Grant Council and the New Mexico Congressional Delegation, which culminated in the Forest Service surveying the Wilderness Boundary around the cemetery and issuing the community fairly limited and one-sided block easement to the cemetery.

In a late 1980s and early 1990s, land grants-*mercedes* began a new period of grassroots organizing that resulted in a new congressional effort to address the longstanding unresolved land grant-*merced* issue. Land grant activists worked with the 3rd Congressional District Representative Bill Richardson and his successor Bill Redmond to introduce and successfully pass in the United States House of Representative H.R. 2538 – Guadalupe-Hidalgo Treaty Land Claims Act of 1998. The Act, much like H.R. 6365 today,

looked to create a presidential appointed commission to evaluate unresolved issues stemming from the land grant adjudication required by the Treaty. Although the bill made it passed the House of Representatives it died in the United State Senate. What did result from these efforts was an appropriation to the General Accounting Office to complete an investigation of these longstanding claims. The General Accounting Office, now known as the Government Accountability Office, issued two reports, the 2001 report # GAO-01-951 - *Treaty of Guadalupe Hidalgo Definition and List of Community Land Grants in New Mexico*, and the 2004 report # GAO-04-59 – *Treaty of Guadalupe Hidalgo Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico*. The first report focused on defining what community land grants-*mercedes* are and the second report looked to investigate the issues surrounding land grants-*mercedes* in New Mexico. Though the second report made an attempt to develop an argument for how the adjudication process was technically legal but still resulted in social and economic hardships to land grant-*merced* communities, it openly admitted that it did not issue an opinion as to whether the United States had fulfilled the property protection provisions of Treaty of Guadalupe as a matter international law. Moreover, the GAO accepted as a premise that any process consistent with statute met the requirements of due process. This appears to have been both premise and conclusion. The GAO report did nonetheless point out that any conflict between the 1854 Act that created the Surveyor General process or the 1891 Act that created the Court of Private Land Claims and the Treaty of Guadalupe Hidalgo would have to be resolved as either a matter of international law between the United States and Mexico or by additional congressional action. It also acknowledged that the standards of adjudication applied at the beginning of the 50-year adjudication period were strikingly different from those applied at the end. When referring to the adjudication processes established in those Acts, the second GAO report also found that:

> . . . the processes were inefficient and created hardships for many grantees. For example, as the New Mexico Surveyor Generals themselves reported during the first 20 years of their work, they lacked the legal language, and analytical skills and financial resources to review grant claims in the most effective and efficient manner. Moreover, delays in Surveyor General reviews and subsequent congressional confirmations meant that some claims had to be presented multiple times to different entities under different legal standards. The Claims process also could be burdensome after a grant was confirmed but before specific acreage was awarded, because of the imprecision and cost of having the lands surveyed - a cost grantees had to bear for a number of years. For policy or other reasons, therefore, Congress may wish to consider whether some further action may be warranted to address remaining concerns.

The GAO went on further to recommend five options for congressional action. They included: Option 1 - taking no further action (that is, accepting the status quo); Option 2 - acknowledging that the confirmation process was burdensome and resulted in hardships to community land grants; Option 3 - establishing a commission or other body to reexamine specific community land grant claims; Option 4 - transferring federal land to communities that did not receive all of the acreage originally claimed for their community land grant claims; and Option 5 - making financial payments to claimants' heirs or other entities for the non-use of land originally claimed by not awarded. The GAO report also stated that the last four options are not necessarily mutually exclusive and could be used in some combination. The GAO reported that Congress could consider other options such as legislatively overruling United State Supreme Court's decision in the *United States v. Sandoval* case. This would be possible since the Supreme Court's decision was based on their interpretation of a congressional statute. That being the case, Congress can go back and revisit the case to determine if it was in fact the congressional intent to

strip the common lands away from the land grant-*merced* communities as a matter of sovereignty over the public domain. It is the third option and forth options that are the focus of H.R. 6365.

H.R. 6365 creates an opportunity for the Congress to finally address the shortcomings of the land adjudication process required by the property protection provisions of the Treaty of Guadalupe Hidalgo. As evidenced by the brief histories of the several land grants presented above as well as by the recommendation made by the GAO, it is apparent that the adjudication process failed to protect community land grant-*merced* property claims which were in existence before the United States established sovereignty over the Southwest. As a result of this failure millions of acres of land grant-*merced* common lands ended up in the hands of the Federal Government. Social and economic hardships from this loss of common lands have plagued land grant-*merced* communities throughout New Mexico for more than a century. These hardships resulted in extreme poverty for thousands of U.S. citizens and the many social ills that come with it, including poor physical and mental health, malnutrition, substance abuse and impediments to educational attainment. The effects of these hardships are still recognizable today. According to the 2016 American Community Survey New Mexico ranks 3rd in the nation for the percent of people living below the poverty line, with 19.8% of the State's population living below poverty. This is not surprising considering that the 2016 income threshold for a household of 4 is $24,563 and in 2010 the median household income for the land grant-*merced* community of La Petaca was only $7,727.

The La Petaca Land Grant is one of the land grants that was restricted to the individual allotments by the 1897 *United State v. Sandoval* case. All of the former common lands which the community utilized to economically sustain itself were stripped from their local control and placed in the management of the U.S. Forest Service. The management of former common lands by federal agencies has steadily resulted in the reduced access to use of those lands by land grant-*merced* communities. Initially federal agencies prioritized the high yield uses for extractive industries like mineral and timbers to the benefit national interests from outside over those of traditional resource use needs of the local land grant-*merced* communities. In recent years, federal agencies have shifted to an emphasis on recreation, again geared toward broader national interests from outside with minimal regard for the traditional use resources needs of the local land grant communities. This is problematic since a large percentage of the land grant-*merced* population from rural communities throughout northern and central New Mexico still rely on fuelwood to heat their homes 6 to 9 months out of the year. The decline of available permits for livestock grazing has also resulted in economic hardships for many land grant-*merced* communities. The pasturing of livestock on the common lands was and still is a substantial part of how land grant-*merced* communities ensure protein consumption for their families and offer a manner for families to own an asset that they can sell when cash is needed. After the establishment of Forest Reserves, large portions of which were carved former common lands of community land grants-*mercedes*, and, subsequently, National Forests, many of the communal grazing opportunities for communities were simply abolished by rule of the agency. This was the case with the Cibola National Forest when it unilaterally decided to cut all communal grazing permits for land grant-*merced* communities such as the San Antonio de Las Huertas, Cañón de Carnué and Manzano in the 1940s and 1950s. In its decision memo ending communal grazing for the Cañón de Carnué Grant, the Forest Service stated that "The allotment should not be used by livestock and it is recommended that we so notify paid permittees, allowing two grazing seasons in which to dispose of their stock. They being close to the unlimited labor market in Albuquerque can better do without this grazing livestock. . ." This represents a federal land management policy decision aimed at not only the management of the land for supposedly protecting and improving range health but also for the purpose of attempting to socially engineer how a community maintains their livelihood. Although the range health in many of the former communal allotments has long since improved none of

them have ever been allowed to be returned to communal grazing for the local communities. Part of the reason is that since the grazing was restricted by the agency some of those areas have been designated as the Sandia Mountain Wilderness, even though there was plenty of evidence including housing structures that indicated local land grant-*merced* community members were not visitors but residents of this land and it therefore should not have be eligible for a Wilderness designation under the 1964 Act. Since no active grazing was allowed at the time of the Wilderness designation the opportunity to ever graze on these allotments have been permanently removed.

The possibility of having the Commission evaluate land grant-*merced* claims in order to determine recommendations for congressional action that could include land either returned to local control or managed for traditional use purposes for land grants-*mercedes*. This will provide new local economic development opportunities that are currently unavailable based on existing federal land management policies. This includes increase opportunities for grazing, harvesting of wood products and revenue generation through big game hunting.

Comparisons can be made between the land grant-*merced* communities and the Native American Pueblos of New Mexico. To begin with both are land-based communities whose relationship and dependence on their surrounding lands can be categorized as not only a tangible need but also a cultural and spiritual connection. Maintaining the cultural integrity of both communities is reliant on traditional practices that are dependent on the access and use of their communal lands. Additionally, land grant-*merced* communities, like our Native American Pueblo and Tribal *primos* (cousins), were in existence in the Southwest well prior to the United States establishing sovereignty in the region. Like the Pueblos and tribes (i.e. Navajo, Apache, Ute and Comanche) we are the only other community groups in the Southwest that have prior title claims to portions of lands now managed by the Federal government. It is estimated that approximately 1.7 million acres of U.S. Forest Service managed lands and 264,000 acres of Bureau of Land Management managed lands in New Mexico are former community land grant common land. Unlike the Native American Pueblos in New Mexico community land grants-*mercedes* have never had an opportunity to have their unresolved land claims evaluated before a federally appointed body for the purposes of providing federal restitution or compensation. The Native American Pueblos in New Mexico have had two major opportunities. These were the Pueblo Lands Board which operated between 1926 and 1933, and the Indian Claims Commission, which operated between 1946 and 1978. Both processes resulted in Pueblos being compensated monetarily for property claims stemming from both Spanish land grant claims protected by the Treaty of Guadalupe Hidalgo and aboriginal land claims. In addition to having an opportunity to press their claim before those two official bodies, the Pueblos have also had separate individual opportunities to settle claims and receive land and/or stewardship rights over federal lands or monetary compensation through both the courts and through congressional action. Examples include: the return of Taos Blue Lake to Taos Pueblo in 1970; the return of the Zuni Salt Lake to Zuni Pueblo in 1985; and the return of Garcia Canyon to Santa Clara and San Ildefonso Pueblos in 2000; and the establishment of the T'uf Shur Bien Preservation Trust Area to recognize and protect in perpetuity the rights and interest of Sandia Pueblo to the area in 2003. In fact, the 2004 GAO report found that as of 2002 the Pueblos had collectively received over $130 millions dollars in compensation for property claims. The GAO report also found that as part of the adjudication process, required by Treaty of Guadalupe Hidalgo, the nineteen Native American Pueblos in New Mexico collectively had 602,035 acres confirmed and as of the year 2000, largely in part due to federal action, have increased the amount of lands held in trust for them to 2,359,566 acres. This represents a net increase of 1,757,531 acres. On the contrary non-Pueblo Spanish and Mexican land grant-*merced* communities have had zero land returned to them nor have they been compensated in any other way. In fact, of the approximately 5.3 million acres of non-Pueblo Spanish and Mexican land grant-*merced*

common land confirmed (not necessarily to the land grant-*merced* communities) during the adjudication process today only approximately 225,000 acres still remain in ownership and management of the roughly 35 land grants still in existence.That represents a net loss of approximately 5.08 million acres or nearly ninety five percent. This does not include the 1.1 million acres not confirmed after the 1897 *United State v. Sandoval* decision.

Although non-Pueblo Spanish and Mexican land grants edged near extinction in the late 20th century, in late 1990's and early 2000's they have found a resurgence in part by activity at the federal level. Since that time community land grants-*mercedes* in New Mexico have increased their capacity and made several important gains at the state level. This includes: in 2003 the creation of an ongoing state legislative committee to address land grant needs as well as the establishment of the Treaty of Guadalupe Hidalgo Division in the Office of the New Mexico Attorney General; in 2004 the statutory recognition of community land grants-*mercedes* as political subdivision of the state; in 2006 the organization of the New Mexico Land Grant Consejo; in 2008 the creation of the UNM Land Grant Studies Program, aimed at conducting historical research of land grants-*mercedes*; and in 2009 the creation of the New Mexico Land Grant Council. All of this activity at the state level has had many positive results for community land grants-*mercedes* including: having several hundred acres of former common lands owned by the state, counties and private entities returned to land grants-*mercedes*; partnering with Federal agency like the U.S. Forest Service and Bureau of Land Management on mutually beneficial project aimed at improving watershed health and reduce the reduce the risk of catastrophic wildfire; engaging federal management agencies on the development of land management plans such as the Forest Plan Revisions for the Cibola, Santa Fe, and Carson National Forests and the BLM's Rio Grande del Norte National Monument Management Plan to ensure that land grant-*merced* interests are being properly represented in those documents; working with the New Mexico Congressional Delegation to develop legislation that will address longstanding injustices, protect land grant-*merced* cultural practices and provide resources and opportunities for advancing land grant-*merced* communities. This work has included: the introduction of legislation by Senator Tom Udall and Congresswomen Michelle Lujan Grisham to amend the Farm Bill in order to make land grants-*mercedes* eligible for Conservation Program funding: the introduction of H.R. 6487 – Land Grant and Acequia Traditional Use Recognition Act by Congressman Ben Ray Lujan aimed providing for the recognition of traditional uses on federal lands and requiring consultation with land grant-*merced* communities by federal agencies managing former land grant-*merced* common land; and the introduction of H.R. 6365 by Congressman Pearce. All of these advances and capacity building at the local and state level provide the opportunity for land grants-*mercedes* to full advantage of any federal actions, such as a Commission to evaluate land claims, aimed at addressing the longstanding and unresolved land grant-*merced* question.

In closing, H.R. 6365 represents an important first step in addressing and rectifying longstanding historical injustices that have crippled land grant-*merced* communities in the Southwest. These communities represent a portion of the United States citizenry the that is culturally and historically unique to the Southwest and to our nation. Members of these communities have valiantly served our country through military service in every major U.S. conflict since the Civil War. Our communities are comprised of hard working, loyal, tax paying, law abiding, active voters who do not come to Congress looking for a handout but rather to simply ask for justice and equity for our communities, our families, our ancestors, and our future generations. Protection and preservation of community land grants-*mercedes* will ensure that these unique communities remain a part of the rich cultural fabric of the United States.