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This testimony is being submitted on behalf of the New Mexico Land Grant Council and the New Mexico Land Grant-Merced 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-Merced Consejo is a grassroots consortium, whose membership is comprised of participating 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-Merced Consejo fully support H.R. 3682.

H.R. 3682 – the **Land Grant and Acequia Traditional Use Recognition and Consultation Act** will provide recognition of longstanding traditional uses practiced by land grant-*merced* communities, in New Mexico, on federal lands formerly belonging to them. As land-based communities these uses and reliance on the natural environment surrounding land grant-*merced* communities are centuries old practices and customs which are engrained in the cultural fabric of the *nuevomexicano* people. Just like our Native American cousins, accessing and protecting our traditional use resources plays a critical role in ensuring the cultural integrity of our communities. The need for recognition of land grant-*merced* traditional uses and protections of the associated natural resources has been increasingly more important for a variety of reasons. As climate change continues to impact watersheds and forested uplands, if the protection of our traditional uses is not included in the conversation about shifting management practices to address climate change, our communities' needs cannot be assured to get consideration in the land management plans of federal agencies. In the past our communities have seen our access and use needs ignored by federal agencies and also have seen these agencies strip away our Treaty of Guadalupe Hidalgo-protected rights in favor of other uses they deem more desirable such as commercial natural resource extraction or recreation. Our communities are not opposed to the multiuse mission of federal land management agencies. However, they do not support the continual sacrifice of our pre-existing traditional use rights for the shifting desires of federal agencies that are based on ever-changing national trends. We believe that traditional use rights of land grant-*merced* communities on federal land are compatible with most other uses provided that those uses do not adversely impact the natural resources or access to those resources. Land grant-*merced* traditional uses are consistent with and predate modern conservation practices. It is sometimes forgotten that land grant-*merced* traditional uses predate the establishment of not only the federal agencies but the establishment of U.S. sovereignty in the Southwest and therefore recognizing these traditional uses is consistent with the rights and protections established in the Treaty of Guadalupe Hidalgo.

Dependence on traditional uses and natural resources have been a generational constant with each and every land grant-*merced* community since their inception. Because many of our communities have been negatively impacted as meaningful access to those resources has been significantly reduced over the years, these communities struggle to exist. The management of the natural resources surrounding our

communities has a vital impact to the overall health and the socio-economic well-being of our people. We rely on the forested uplands to provide both high quality water and a sufficient quantity of water for drinking and domestic use, for irrigating crops and for watering livestock. Our low-income communities have a continued need to access for wood as a heat source and building materials. During economically challenging times, fuelwood is a necessity for survival because families cannot afford the high costs of propane or natural gas, if available. In the past year access to adequate fuelwood supplies has been further hampered by the Federal Court-ordered injunction against the U.S. Forest Service in a lawsuit over Mexican Spotted Owl habitat. This lack of access to fuelwood supplies coupled with the economic crisis brought on by the Covid-19 pandemic and falling oil prices, can be expected to threaten the very survival of some of our people this winter. Additionally, as meat shortages become more acute our communities will suffer from the impact of the loss of communal grazing opportunities on former common lands now managed by the federal government. Where in the past livestock grazing of communal pasture provided a guaranteed protein source, today these closed allotments offer nothing more than aesthetics for the occasional hiker, when in reality both uses are completely compatible and fulfill the multiuse mission of federal public lands. Over the years our land grant-*merced* communities have been placed at odds with federal land management agencies not by choice but as a direct result of having our needs purposefully ignored or because we have not been at the table when land management decisions were being made. For these reasons, both the recognition and the consultation aspects of this bill are of vital importance.

Background on land grant-*merced* history

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* (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: individual (sometimes referred to as "private") land grants-*mercedes* and community land grants-*mercedes*. Individual 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 individual or private land grants) that H.R. 3682 addresses.

Within their boundaries community land grants-*mercedes* 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, also known as *ejidos,* that belonged to and were managed for use by the entire community. As originally granted land grant-*merced* communities included thousands of acres of common lands, that were to be utilized for the benefit of entire community. The purpose of the common lands was and still is to provide the natural resources necessary to sustain a community. These natural resources included common waters, common pasture for livestock grazing, wood products for fuelwood and building materials, native vegetation for medicinal and culinary purposes as well as hunting and fishing on the common lands. In addition, common lands were and still used for cemeteries as well as for construction of community facilities such community multipurpose centers and water and wastewater facilities. Common lands also play a role in the

spiritually of communities as they were used historically for placement of churches and are still used for placement of religious shrines and for religious pilgrimages. The common lands represented the vast majority of land within a community land grant-*merced* and the individual private allotments typically made up approximately five percent or less of the total land within the land grant-*merced*. Unfortunately, ownership of many of these common lands were stripped from the local community and are now in either private hands or managed by the federal government as federal land.

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. 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; the remaining 23 were issued to recognize the lands of various Indian Pueblos. Today there are between 30 and 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 adjudication and recognition of land claims in the New Mexico Territory by the United States 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. 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.

The Organic Act of 1854 required that the Surveyor General of New Mexico not only establish principal meridians and base lines for 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. None of the Surveyors General, 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." In addition, the Office was underfunded and could not afford the staff or material necessary to properly evaluate and correctly recognize exist land titles that had been perfected under Spain and Mexico. The under resourced Office of the Surveyor General became an easy target for 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*. In time, the Surveyors General themselves participated in the land speculation schemes. 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 land claims divisible into individual ownership interests in order to gain control of the large expanse of common lands of the land grant-*merced*.

The Court of Private Land Claims (CLPC) was established in 1891 in part as a reaction to the widely-known corruption of officials in New Mexico, 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 misinterpretations of Spanish and Mexican laws and questionable technicalities. For example, the Court rejected certified copies of original documents as inadmissible, notwithstanding that the Court was established 43 years after the Treaty of Guadalupe Hidalgo had been signed and that many of the land grants-*mercedes* bringing claims before the Court had been 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 law by the Court was substantially 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 espoused goal was to reduce land claims, especially with regard to timberlands, in favor of the public domain. The fairness of adjudication was adversely affected by conflicts of interest of this type. Another example: the Court 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 court system restrict the confirmation of land grant-*merced* lands to the individual private allotments within the grant, thereby excluding the common lands and reverting them in their entirety 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 under Mexican law the common lands of all the land grants-*mercedes* (the pasture and forested lands which the communities depended on) did not belongto the local land grant, were not under the control of the land grant governing boards and local communities but rather to Mexico as the sovereign, now replaced by the United States. In making this argument Reynolds relied on a 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.

In addition, Congress itself also contributed toward the diminishing of Spanish and Mexican land grant-*merced* common lands, even for those land grant-*merced* claims where the extent of lands confirmed fairly represented what was originally granted by Spain or Mexico. Many of these land grants-*mercedes* were erroneously 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. 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 are 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 land speculators would work with adjudication officials to push for confirmation as tenancies-in-common while at the same time they would have partner attorneys representing the land grants-*mercedes* inform these communities that this would protect their interests. The fees for the attorney's service to petition their claims was typically *one third* (1/3) of the lands confirmed. Upon having the grants confirmed, the attorneys, with their one-third interest would immediately sue for partition in a territorial court where additional partners of the land speculators served as the judges. The judge would order the common lands to be sold in order to allow the tenants to receive equal monetary compensation for their portion of the land. The speculators would already have investors 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. Often times these land speculators or their assigns would eventually sell their interests to the U.S. Federal Government which would continue the restrictions on use by local communities. Many of these former common lands are now managed by the Department of Interior or the Department of Agriculture.

A final example of how the adjudication process failed community land grants-*mercedes* is through the mistranslation 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

moving the boundary to the base of the mountain, access to all those resources by the local community was restricted. These lands eventually became a part of the Cibola National Forest.

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*, either during adjudication or immediately after through partition suits. 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.

Land grants-*mercedes* in the modern era

In the 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 New Mexico's 3rd Congressional District Representative Bill Richardson and his successor Representative Bill Redmond to introduce and successfully pass in the United States House of Representatives H.R. 2538 – Guadalupe-Hidalgo Treaty Land Claims Act of 1998. The Act 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 States 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 of 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 Surveyors General 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. (GAO-04-59, p. 11)

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.

As evidenced 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; by example, 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 States 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 rules 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 [sic] 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 its 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 in the time 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.

Although H.R. 3682 does not create the opportunity to re-evaluate concerns with the original adjudication process it does offer the opportunity to finally recognize the traditional use rights of land grant-*merced* communities on their former common lands now managed by the federal government. Both the recognition of traditional uses as well as the consultation aspects of this legislation are critical to begin addressing the longstanding injustices faced by land grant-*merced* communities. Similar legislation for Native American tribes has proven to be an effective tool for ensuring that Native American communities have continued access to federal lands and that their interests in those lands are protected. There are many comparisons that can be made between the land grant-*merced* communities and the Native American Pueblos and Tribes 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 or regaining land 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 claims 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 million 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 neither had 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-*mercedes* 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, the statewide land grant-*merced* grassroots organization; 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: the return of several hundred acres of former common lands owned by the state, counties and private entities to land grants-*mercedes*. However, unlike other local units of government land grants-*mercedes* do not currently have a guaranteed revenue stream nor a tax base and therefore have limited budgetary capacity. Most land grants-*mercedes* in New Mexico currently have annual operating budgets of less than $5,000. This provides challenges for land grant in delivering needs services for their communities.

At the federal level land grants-*mercedes* continues to work with the New Mexico Congressional Delegation and federal agencies. This includes: partnering 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; and 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 Congressman Ben Ray Luján, Congresswomen Michelle Lujan Grisham and Senator Tom Udall to amend the Farm Bill in order to make land grants-*mercedes* eligible for Conservation Program funding; the introduction of H.R. 6365 (which was heard and passed by the House Natural Resources Committee) by Congressman Steve Pearce in the 115th Congress that would have created a commission to evaluate land grant-*merced* claims; and the introduction of H.R. 3682 by Congressman Luján in the 116th Congress.

Land grant-*merced* communities represent a portion of the United States citizenry that is culturally and historically unique to the Southwest and to our nation. For centuries, our community land grants-*mercedes* have relied on the natural resources of the lands that surround our communities. Our ancestors taught us to be good stewards of the lands that we owned, employing conservation practices that ensured the persistence of these resources well before they became part of the modern public land management. These communal traditional uses practices have shown restraint, balancing the needs of our communities with nature's limitations, creating land use practices that are consistent with the multiple use mission of the agencies that manage the land that still defines who we are as land-based peoples. 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.

In closing, H.R. 3682 represents an important first step in addressing and rectifying longstanding historical injustices that have crippled land grant-*merced* communities in the Southwest. 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 and the subsequent denied access to traditional uses on our former common lands now managed by the federal government. If passed, this bill would represent an important first step in addressing some of the longest standing unresolved property and use rights issues in the Southwest, as well as the oldest unresolved Hispanic/Latino social injustice in the United States. While the bill will not directly address concerns over how the United States land adjudication process failed land grants-*mercedes*, it will provide for the needed recognition of traditional uses by land grant communities on federal lands. In addition, the bill will help ensure the protection of important natural resources associated with traditional uses through consultation with land grant-*merced* governing bodies during federal land management decision making processes. Both the recognition and the consultation aspects of this legislation will help to ensure that federal land management agencies find a proper balance between protection of preexisting traditional uses, commercial natural resource extraction, recreation, conservation for future generations and other multiple use needs.