

CAROL RAISH & ALICE M. MCSWEENEY* †

Land Grants and the U. S. Forest Service

ABSTRACT

The U.S. Forest Service (Forest Service) has a long, shared history with the land grants of northern New Mexico. During the land grant adjudication process after U.S. conquest, much common land from both Spanish and Mexican land grants was declared public domain, eventually becoming part of the northern and central New Mexico National Forests. These forests were established during the late 1800s and early 1900s. Other lands went into private ownership and were later sold to the government. This paper focuses on the contemporary situation concerning land grants and the Forest Service. We explore current land-loss issues through the theoretical and historical framework of other indigenous cultures, whose experience with a colonizing force mirrors that of the initial northern New Mexico land grantees. This paper presents interview results with land grant heirs, now grazing permittees on the Carson and Santa Fe National Forests, and with Forest Service personnel in terms of resolving land- and resource-loss problems. A federal solution might include compromise on both sides for present-day problems deriving from past actions and policies of the Forest Service. We explore the question: Is there a middle ground or some area of agreement that would lower tensions and ameliorate, if not

* Carol Raish holds a M.A. and Ph.D. in anthropology/archaeology and is a Research Social Scientist at the U.S. Forest Service Rocky Mountain Research Station in Albuquerque, N.M. Her research interests include understanding the roots of land-use conflict on public lands and the role of traditional economic practices, such as ranching, in maintaining cultural identification and traditional life ways among the diverse population found in northern and central New Mexico. Alice M. McSweeney, also at the Rocky Mountain Research Station, studies the values and attitudes of ranchers in the rural communities of northern New Mexico and surrounding areas. Her M.S., "*Views on Land and Nature: Conversations with Northern New Mexico Ranchers*," from the Range Science Department of New Mexico State University, developed from her interests in range ecology and public land policy. U.S. Forest Service, Rocky Mountain Research Station, Albuquerque, New Mexico 87102-3497.

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resolve, the conflict between land grant heirs and the federal government?

I. HISTORICAL BACKGROUND

Hispano land grant resource and land loss during the process of U.S. conquest and occupation shadows resource and land loss among other traditional and indigenous peoples. To understand land loss after U.S. conquest and during the New Mexico Territorial period (1848-1912), culture-based internal colonialism theory is used to bring the relevant issues into focus. This theory centers on political dominance and economic exploitation of a subordinate culture by a dominant one. The internal colonialism¹ theory clarifies the process of resource loss and its consequences.

During the Spanish and Mexican periods, land ownership and use were confirmed by land grants from the Spanish Crown or Mexican government. Although there were several types of land grants, community grants that were used by a group of settlers in common are of particular interest because they are a primary land ownership issue in the region.² Within community grants, settlers received individually-owned building sites and plots of irrigated agricultural land.³ The villagers shared grazing, timber, and pasture lands.⁴

United States conquest during the Mexican-American War of 1846-48 changed patterns of land use and ownership. Under the Treaty of Guadalupe Hidalgo, the United States promised to recognize and respect the property rights of former Mexican citizens. However, to obtain land titles according to U.S. law, land grantees had to petition for title confirmation, first through the Surveyor General to the Congress and, after 1891, to the Court of Private Land Claims.⁵ In many cases, as discussed by

1. See generally FRANTZ FANON, *THE WRETCHED OF THE EARTH* (1968); ALBERT MEMMI, *THE COLONIZER AND THE COLONIZED* (1965); Pablo Gonzalez Casanova, *Internal Colonialism and National Development*, 1 *STUD. IN COMP. INT'L DEV.* 27 (1965).

2. See CLYDE EASTMAN ET AL., *N.M. ST. UNIV. AGRIC. EXPERIMENTAL STATION BULL.*, *EVALUATION OF ATTITUDES TOWARD LAND IN NORTH-CENTRAL NEW MEXICO* (1971); ALLAN G. HARPER ET AL., *MAN AND RESOURCES IN THE MIDDLE RIO GRANDE VALLEY* 18-19 (1943).

3. EASTMAN ET AL., *supra* note 2, at 4.

4. *Id.*

5. See generally RICHARD GRISWOLD DEL CASTILLO, *THE TREATY OF GUADALUPE HIDALGO: A LEGACY OF CONFLICT* (1990).

authors Eastman,⁶ Ebright,⁷ and Griswold del Castillo,⁸ the U.S. government did not uphold the intent of the treaty and related documents that land grants in the ceded territories should be honored. The government adopted a legalistic, restrictive stance toward land claims adjudicated in New Mexico. Although some fraudulent claims were rejected, many legitimate claims were also rejected, often on the basis of incomplete or inconsistent documentation. Claims from families who had resided on their land for generations were denied because of lost or inconsistent documents.⁹ Often, the court confirmed private lands and irrigated plots but did not confirm community pastures and woodlands that provided the Hispano villagers with their main grazing and fuel-wood resources.¹⁰

Villagers also lost significant amounts of confirmed land because they were unable to pay property taxes under the American system of cash payments. Unscrupulous land speculation by both Anglos and Hispanos, often upheld by the courts, also resulted in land loss by Hispano farmers.¹¹ Thus, the American system of land grant adjudication and property taxation ultimately served to facilitate and legitimize the loss of substantial amounts of land owned and used by the resident population. The land lost by the farmers provided areas for colonization by Anglo-Americans and non-local commercial enterprises.

Such processes of indigenous land loss also occurred during the periods of Spanish colonization in both Mexico and New Mexico, which authors Melville and Wozniak both discuss.¹² These authors have extensively studied land-use situations that have resulted in land loss, including the role of unfamiliar legal systems. Melville sketches the colonization process in the Valle del Mexquital, Mexico, in the following way: the Spanish colonizers conquered, dominated, and acquired resources not only by force but also by means of the court system. Spanish resource acquisitions in the New World were regulated by law and custom, but the process was not always straightforward. The distance of New World courts

6. See generally Clyde Eastman, *Community Land Grants: The Legacy*, 28 SOC. SCI. J. 101 (1991).

7. See generally Malcolm Ebright, *New Mexico Land Grants: The Legal Background*, in LAND, WATER, AND CULTURE: NEW PERSPECTIVES ON HISPANIC LAND GRANTS 15 (Charles L. Briggs & John R. Van Ness eds., 1987).

8. See generally GRISWOLD DEL CASTILLO, *supra* note 5.

9. Eastman, *supra* note 6, at 103.

10. See EASTMAN ET AL., *supra* note 2, at 4-5.

11. See WILLIAM DEBUYS, ENCHANTMENT AND EXPLOITATION: THE LIFE AND HARD TIMES OF A NEW MEXICO MOUNTAIN RANGE 171-192 (1985).

12. See ELINOR G.K. MELVILLE, A PLAGUE OF SHEEP: ENVIRONMENTAL CONSEQUENCES OF THE CONQUEST OF MEXICO 62-65, 116-125 (1994); Frank E. Wozniak, *Human Ecology and Ethnology*, in USDA FOREST SERV. GEN. TECHNICAL REPORT RM-GTR-268: ECOLOGY, DIVERSITY, AND SUSTAINABILITY OF THE MIDDLE RIO GRANDE BASIN 29 (1995).

from the authority of traditional courts altered the application of the law, distorted the intent of rulings, and opened loopholes for opportunists. Successful application of the law in this context required a knowledge base that indigenous people did not have, which put them at a disadvantage. "It is in this compromised context that the Spanish settlers were able to acquire access to water, and pasture, and finally to land."¹³

A somewhat similar process occurred in Ireland under British domination. The Penal Laws, which discriminated against indigenous Roman Catholics, were passed in the early 1700s ostensibly to encourage conversion to the Church of England. However, the Penal Laws effectively dispossessed the landed Catholic population of their farms and estates. "The ownership of land was the subject of a whole complex branch of the penal code, as a result of which almost all the remaining land still owned by Catholics passed into Protestant hands."¹⁴ Land loss resulting from 800 years of British domination in Ireland remains a problem to the present day.

A. The Forest Service and the Land

In northern New Mexico today, land grant loss remains an issue of bitter controversy. Federal agencies — primarily the Forest Service — manage much of the former grant lands in the area. These lands consist of unconfirmed common lands that became public domain as well as confirmed grant lands that were lost for a variety of reasons. Often, lost lands were purchased by non-local corporate interests for large commercial timbering and ranching operations. When these operations were no longer profitable, the often degraded land was sold to the government.¹⁵ Meyer¹⁶ discusses how the federal government proved to be the biggest beneficiary of decisions reached by the Court of Private Land Claims. Because of these government purchases, the northern New Mexico national forests eventually included considerable amounts of former grant land that had been primarily used as community range and woodland by local villages.¹⁷ Many local grazing permittees on these two forests (Carson and Santa Fe) are land grant heirs who resent government restrictions and paying fees to use land considered part of their heritage.

13. MELVILLE, *supra* note 12, at 116.

14. MÁIRE O'BRIEN & CONOR CRUISE O'BRIEN, *A CONCISE HISTORY OF IRELAND* 77 (1972).

15. See EASTMAN ET AL., *supra* note 2, at 6; Hal Rothman, *Cultural and Environmental Change on the Pajarito Plateau*, 64 N.M. HIST. REV. 185, 197-201 (1989).

16. MICHAEL C. MEYER, N.N.M. STOCKMAN'S ASS'N OF THE INST. OF HISPANIC AM. CULTURE REPORT: THE CONTEMPORARY SIGNIFICANCE OF THE TREATY OF GUADALUPE HIDALGO 85 (1998).

17. See DEBUYS, *supra* note 11, at 190, 240-257; EASTMAN ET AL., *supra* note 2, at 6.

The Forest Service has introduced changes in range management that many permittees consider harsh and poorly explained. The evolving economy of the region, from subsistence-based farming and ranching to wage work in surrounding towns, has also had a strong effect on local ranching operations. Over the years, free-use permits for milk cows and draft horses were phased out, goats were restricted, and sheep permits were reduced by the Forest Service.¹⁸ Due to changing Forest Service policy and employment circumstances, many ranchers switched from raising sheep to cattle. Cattle require less intensive herding and care than sheep. Thus, they are easier to manage for people with full-time, off-ranch jobs.

There has also been a trend toward fewer permittees with larger herds. These changes have affected the resources and economies of many area communities. Some residents of the village of Cañones expressed sentiments that the Forest Service administration favored large-scale ranching, which was often not compatible with the subsistence needs of local communities. Disputes over herd restrictions have continued, as evidenced by drought-driven reductions of herd size, and time allowed in the permit area.

B. Land-Loss Protest

Land-loss protest has occurred in the region virtually since conquest in the mid-1800s.¹⁹ Discontent over federal grazing policies, loss of land grant lands, and general economic decline led to an upsurge of protest in the 1960s. Probably the most well-known of the protest groups was the Alianza Federal de Mercedes (Alianza), led by Reies López Tijerina. Two of the group's goals were to bring the problem of grant land loss to public attention and to address grievances concerning national forest grazing management.²⁰

The violence of the Alianza protests triggered re-examination of Forest Service policies in northern New Mexico, both within the Forest Service and within the U.S. Department of Agriculture. The Forest Service produced a report entitled *The People of Northern New Mexico and the National Forests*, commonly known as the Hassell Report.²¹ The Hassell Report—intended to improve conditions for the local Hispano population—recommended 99 measures, 26 of which related to grazing.

18. See DEBUYS, *supra* note 11, at 247–249, 258–259; John R. Van Ness, *Hispanic Land Grants: Ecology and Subsistence in the Uplands of Northern New Mexico and Southern Colorado*, in LAND, WATER, AND CULTURE, *supra* note 7, at 141, 202.

19. See Rothman, *supra* note 15, at 185–211.

20. See DEBUYS, *supra* note 11, at 258–277.

21. See M.J. HASSELL, USDA FOREST SERVICE REPORT: THE PEOPLE OF NORTHERN NEW MEXICO AND THE NATIONAL FORESTS (1968).

The Forest Service later developed a special policy for managing the forests of northern New Mexico. Regional Forester Hurst set forth the Southwestern Policy on Managing National Forest Lands in the Northern Part of New Mexico (Northern New Mexico Policy – N.N.M. Policy) in a 1972 memo.

The N.N.M. Policy stressed the importance of valuing the Hispano and Indian cultures of the Southwest and recommended that efforts of the Forest Service be directed toward cultural preservation. This Policy also stated that the attitudes of Forest Service employees “must be attuned to the land and its people and to the unique values involved.”²² The recommendations of the Hassell Report²³ formed an integral part of the N.N.M. Policy. Periodic reviews of the N.N.M. Policy found that some measures had been implemented, resulting in some progress. However, there were difficulties with implementing recommendations of the N.N.M. Policy. For example, cultural sensitivity and Spanish-language training were recommended. Special training programs and seminars occurred initially but tapered off considerably in recent years owing to budget cuts and declining numbers of staff. Spanish-language training for Forest Service employees was provided until the mid-1990s, when it was discontinued due to budget cuts. Many situations discussed in the Hassell Report have not been improved.²⁴ Poverty, disappearing traditional ways of life, and environmental problems persist in the region.

In 1981, the Forest Service decided that a separate policy statement was no longer needed. Further implementation of the N.N.M. Policy would occur through Regional and Forest Service mission statements and plans.²⁵ Although there have been recent efforts to develop regional cultural awareness programs and hire managerial-level employees from the area, the Forest Service still needs to improve training in the cultural traditions and social values of northern New Mexico.

22. Memorandum from Wm. D. Hurst, Reg'l Forester, USDA Forest Serv. Region 3, on Policy on Managing National Forest Land in Northern New Mexico to Forest Supervisors & Dist. Rangers 3 (Mar. 6, 1972) (on file with the Natural Resources Journal).

23. See generally HASSELL, *supra* note 21.

24. See generally Carol Raish, Northern New Mexico and the USDA Forest Serv. (1997) (presented at Partnerships Without Borders Conference, Arizona State University, Tempe, Arizona) (on file with the Natural Resources Journal).

25. See Memorandum from M.J. Hassell, Southwestern Region, USDA Forest Serv., on Northern New Mexico policy review and action plan (1981) (on file with authors).

II. CONTEMPORARY LAND-LOSS ISSUES

A. Contemporary Significance of the Treaty of Guadalupe Hidalgo

In Meyer's 1998 report he reviews how the intent of the Treaty of Guadalupe Hidalgo (to protect the property and rights of the former Mexican citizens) has never been implemented. He cites Michael J. Rock in his belief that "it will take Congressional action to overthrow the precedents established by...court decisions and to fulfill the obligations of the United States under the Treaty of Guadalupe Hidalgo."²⁶ Meyer discusses how land and water are not only part of the physical landscape but are also part of the cultural landscape. Loss of access to these resources threatens the livelihood of many Hispanos and attacks the social fabric of rural Hispanic communities.²⁷ Meyer concludes the time is right to reconsider the property guarantees of the Treaty in light of the loss of community lands. He suggests a town-by-town study of New Mexico's common lands with parameters set by a proposed Hispanic Land Claims Commission. In his view, "only Congressional action can make such a study a reality."²⁸

B. The General Accounting Office (GAO) Report

Congress did commission a study, but not the one Meyer envisioned. After various legislative proposals to address this topic in the Treaty, the GAO presented its report in June 2004 (GAO Report). In brief, the GAO Report states that "there does not appear to be a specific legal basis for relief, because the Treaty was implemented in compliance with all applicable U.S. legal requirements."²⁹ However, the GAO Report does identify a range of possible options that Congress may wish to take. These include: (1) no action, (2) acknowledgement of hardships imposed, (3) re-examination of claims, (4) transfer of lands, or (5) financial payments.³⁰ The land grant heirs and activists we interviewed were not pleased with the findings of the GAO Report. Comments ranged from "a whitewash" to "a

26. MEYER, *supra* note 16, at 85.

27. *Id.* at 87-88.

28. *Id.* at 90.

29. U.S. GEN. ACCOUNTING OFFICE, TREATY OF GUADALUPE HIDALGO: FINDINGS AND POSSIBLE OPTIONS REGARDING LONGSTANDING COMMUNITY LAND GRANT CLAIMS IN NEW MEXICO 12 (2004) [hereinafter GAO REPORT], available at <http://www.gao.gov/new.items/d0459.pdf>.

30. *Id.* at 13.

slap in the face.”³¹ Also, not surprisingly, those interviewed by the GAO preferred the last two options if Congress were to take any action on the Report.³²

C. New Mexico Land Grant Council – Proposal for Congressional Action

In response to the options proposed in the 2004 GAO Report, the New Mexico Land Grant Forum, the Mexicano Land Education and Conservation Trust, and officials of various land grants requested that Congress establish a 2.7 billion dollar trust fund. This trust would compensate land grants for loss of lands and resulting economic hardships. Interest from the trust would be used by land grants for land recovery, community and economic development, and educational and cultural programs. The recently formed New Mexico Land Grant Council has expanded the trust proposal to cover issues including land restitution, adjudications, and recognition. Regarding land restitution, the Council requests such concessions to land grants as (1) payment in lieu of taxes (PILT) if their former common lands are now owned by any federal agency; (2) first priority to former common lands disposed of in the future; (3) stewardship, access, and right to use natural resources on former common lands now under federal management; and, (4) first priority to lease rights on federal lands that are former common lands. Regarding adjudication and recognitions, the Council requests that Congress act on any unadjudicated or unjustly rejected land grants identified in the GAO Report.³³

III. VIEWS OF THE PERMITTEES

We examined our prior research with ranchers in northern New Mexico to understand the views of the people on the land. As a discussion question during interviews for our pilot study, we asked permittee ranchers about their views on the implementation of the Treaty of Guadalupe Hidalgo, specifically regarding the loss of grant lands or portions of grant land. The ranchers gave varying responses. Their views ranged from those of land grant activism, to the desire of many that “grant lands should be in the ownership of the original families,” to the opinion that the past should

31. Malcolm Ebright, *The G.A.O. Land Grant Report: A Whitewash and a Slap in the Face*, LA JICARITA NEWS, July 2004, <http://www.lajicarita.org/04jul.htm#GAO> (last visited Sept. 28, 2009).

32. GAO REPORT, *supra* note 29, at 13.

33. N.M. LAND GRANT COUNCIL, PROPOSAL FOR CONGRESSIONAL ACTION 1 (2007).

be “left in the past.”³⁴ There is the definite impression, however, that most are aware that the treaty was meant to include a provision that would protect the property rights of the conquered people of the region.³⁵ They also believe that, in many cases, property rights were not honored, causing land to be lost by the original owners. These losses significantly affected the ability of their ancestors to support themselves as ranchers and farmers. Furthermore, they believe the past losses continue to affect them to the present day.³⁶

Many legal complications and related intrigues led to the loss of Spanish and Mexican land grants after U.S. takeover of the territory. In his book on the Treaty of Guadalupe Hidalgo, Griswold del Castillo cites cases and explains what happened to many of the grant lands. Causes of land loss leading to the situation today include changes in government (Spain to Mexico to the United States), changes in ruling officials, racism, twisted meaning of treaty language, hidden intentions, a language barrier, legal expenses, and taxes that resulted in land sales or forfeits.³⁷

Stories passed down through families share a common narrative thread: (1) the land was granted to a family or community by Spain or Mexico; (2) the United States took over via war and treaty; (3) articles in the treaty intended to protect land owners were deleted, reworded, or disregarded; (4) a language foreign to the conquered people was used, hindering communication; (5) when residents could prove title to land, legal fees and taxes were so high they lost the land anyway; (6) rural isolation, language barriers, and unfamiliarity with the American legal system left many unaware of the situation; (7) grant lands were assigned to the public domain (ultimately to the Forest Service) or sold to private owners; (8) after the Forest Service was created, permits were required for use of land formerly belonging to grantees; and, (9) over time, new legislation, an increase in regulations, and environmentalist pressure gained momentum and began to challenge remaining permitted uses.

This sequence of events has severely undermined the ability of ranchers to make a living. As pressure for change on the range has mounted, ranch after ranch has been sold, often to luxury developments. As a new population moves in, taxes increase in response to rising land values, but income from agricultural land does not increase for the rancher. It has become more and more difficult for a rancher to afford to own his land.

34. CAROL RAISH & ALICE M. MCSWEENEY, USDA FOREST SERV. GEN. TECHNICAL REPORT RMRS-GTR-113: ECONOMIC, SOCIAL, AND CULTURAL ASPECTS OF LIVESTOCK RANCHING ON THE ESPAÑOLA AND CANJILON RANGER DISTRICTS OF THE SANTA FE AND CARSON NATIONAL FORESTS: A PILOT STUDY 28 (2003).

35. *Id.*

36. *Id.*

37. See generally GRISWOLD DEL CASTILLO, *supra* note 5.

Purchasing additional land for agricultural purposes becomes cost-prohibitive. Many of the new residents resent the ranching way of life as a once-rural countryside becomes more urbanized.³⁸

To some, the land grant issue was a remote idea, too distant in the framework of time or in relevance to present-day life. To others, the treaty and resulting land loss are pertinent topics impressed upon them by fathers and grandfathers. One grandson said his feelings are hard to describe except as "silent rage."³⁹

A few declined to comment on the basis of the subject's controversial nature. Several ranchers simply stated that the provisions of the Treaty of Guadalupe Hidalgo had "never been honored." One of the more emphatic responses referred to discrimination by the federal government against the native communities. This rancher feels the government "throw[s] bones to divide and conquer, to control the people. The U.S. government is going to run out of places to run and hide....How can the U.S. step in to help other countries and [at the same time] mistreat its own people?"⁴⁰ He refers to the permits (*preferencios*) as "the crumbs" that have been given to them. Being allowed to use the ancestral rangeland for grazing cattle or sheep and having the "privilege" of paying for permits to do so are the "crumbs" of which he speaks.⁴¹

As one of the ranchers discussed with us, the U.S. government made mistakes when New Mexico became a territory and then a state. "The people here," he told us, "did not have an understanding of the system nor the economic means to avoid exploitation. They lacked information on U.S. law."⁴² To make matters worse, the information they did receive was passed on in a language foreign to them. There was the Treaty between the U.S. and Mexico, but "the U.S. government failed to protect the rights" of its new subjects.⁴³ According to another, the lands were taken from the people who owned them by using a foreign government and language to do so. Yet another refers to the wording of the Treaty and how the use of language can be manipulated or reinterpreted. He feels the grant lands should be governed for the good of the people, the state of New Mexico, and the communities that have been here for so long.⁴⁴

The people we spoke with have strong feelings on the subject and generally indicated support for the various efforts that would return lands to the land grant communities: "We feel we were placed in a position of

38. RAISH & MCSWEENEY, *supra* note 34, at 28, 31.

39. *Id.* at 28.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. RAISH & MCSWEENEY, *supra* note 34, at 28, 31.

semi-poverty.”⁴⁵ In this rancher’s opinion, they are at a disadvantage in spite of all the resources around them; it is another method to starve and chase the people out from their homelands. He feels poverty levels, drug abuse, lack of ambition, and people on welfare are all results of the situation, leaving them to feel like second-class citizens.⁴⁶ Griswold del Castillo describes how the Hispano population of New Mexico was shifted into the position of second-class citizens. Land that belonged to them was taken away in a confusing set of circumstances and, to a great extent, by design and greed. Now, they must pay for the privilege of using lands that they believe they should have owned through inheritance.⁴⁷

Another feels they were mistreated as a result of implementation of the Treaty. It would be good, he said, “if the mess got straightened out, but it [a land trust] would need a strong board of directors to manage it.”⁴⁸ Perhaps the land could be returned. However, these returned lands, much of it being community land, would need to be carefully managed. Success would depend on the strength and ability of a managing board of directors.⁴⁹

The son of one permittee rancher tells us that it is difficult for him to watch television and hear: “These are your Public Lands.” These lands belonged to the land grants, not to the public; they were “Land Grant Grabs.” They (his family and people) did not realize that the injustices had occurred until recently. He feels they have more knowledge of what the land needs than anybody else.⁵⁰ Yet another said that it should be brought out in the open, from behind closed doors. Let the public know what belongs to whom. If native tribes are getting land back, why not the heirs to the land grants? His father has papers dating back to the late 1800s. He remembers the way their animals grazed the high grasses, and says there was a greater diversity of animals then and the grasses did better.⁵¹ Many ranchers in this area seem to equate their permitted use of the forestlands with the land grants. Despite past shifts in ownership, they continue to feel a responsibility and connection to the land. These lands still feel like home.⁵²

45. CAROL RAISH & ALICE M. MCSWEENEY, ECONOMIC, SOCIAL, AND CULTURAL ASPECTS OF LIVESTOCK RANCHING ON THE ESPAÑOLA AND CANJILON RANGER DISTRICTS OF THE SANTA FE AND CARSON NATIONAL FORESTS (2003) (unpublished interview notes from 2003 pilot study).

46. *Id.*

47. *See generally* GRISWOLD DEL CASTILLO, *supra* note 5.

48. RAISH & MCSWEENEY, *supra* note 34.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

During the second phase of our study in which we interviewed 238 permittees, we asked if the family is or was part of a community land grant, and if no longer associated with the grant land, how that occurred. Of that number, 121 (51 percent) could identify their families with land grants; 14 others were uncertain. The remaining families had no connection with a land grant, knew their family had purchased some portion of former grant land, or were from a homestead heritage.⁵³

A majority of the ranchers who could trace connections to a land grant were fairly conversant with the circumstances leading to loss of those lands. Responses ranged from brief comments regarding land having been taken away, or sold for needed money, to more complex explanations; there was a language barrier, notices in a foreign language (English), letters that reached them too late, taxes that couldn't be paid in a subsistence-based economy (payment in grain or animals), and the unscrupulous dealings by lawyers and politicians of the Santa Fe Ring.⁵⁴

Many stated that these grants ended up as Forest Service land (and some as Bureau of Land Management land) or, to a lesser degree, were transferred to various Pueblos. Most frequently the answers centered on a simple theme: that the U.S. government took the land.⁵⁵ This view of the situation is echoed in the words of Ebright on the treatment of Hispano people in relation to the land grant issue. "No one individual or group of individuals is to blame....They all played a part in the chicanery of land grant adjudication, but the drama was allowed to proceed by the United States government."⁵⁶ Ebright writes of the Hispano residents of rural, northern New Mexico as a people who are still living close to the land. He states that "the land grant story is not simply a fading part of New Mexico's history," but a story of generations of families and "of a passionate and continuing struggle for the land their ancestors were promised when they became citizens of the United States in 1848."⁵⁷

Many ranchers spoke of how land was lost because the people could not afford their taxes or could not read English and were unaware that their taxes were due. One interviewee described the following scenario. His mother was from the Manzano Land Grant, but the government owns it now. He suspects that the government wanted it and took it, using unfair tactics to get lands; he has papers on the grant. When New Mexico became a state, a messenger came to tell people they had to be in Santa Fe at 8:00

53. CAROL RAISH & ALICE M. MCSWEENEY, ECONOMIC, SOCIAL, AND CULTURAL ASPECTS OF LIVESTOCK RANCHING ON THE SANTA FE AND CARSON NATIONAL FORESTS (unpublished interview notes from Ranching Study) (2004).

54. *Id.*

55. *Id.*

56. See Ebright, *supra* note 7, at 50.

57. *Id.*

A.M. the following morning for a hearing on the land, but they had no vehicles to get there in time for the hearing.⁵⁸ Or a notice was in a paper in Tucumcari, but not in Cuba, where the people lived.

Another also stated that his family's grant land was taken away by the U.S. government. He related the story that follows:

I own part of my granddad's homestead, but that's not part of the land grant. It was taken away by the U.S. Government....Of course, my grandmother couldn't speak English at all, and my granddad was in France during WWI in 1918. And he wasn't here to sign some paperwork or something, and then they took part, some of that land away and turned it into national forest. He was fighting in WWI in France. My grandmother..., had a lot of animosity towards the U.S. government over that. My granddad he just, it didn't bother him that much. I mean it did, but he said, 'Hey, that's just the way things happen in this country.'...Of course there were a lot of families that were moved, relocated, and stuff was taken away from them.⁵⁹

The grandson, now a permittee, states that meetings have been held regarding the land grant, and says, "I think the U.S. government is trying to settle some of these grants."⁶⁰ He holds on to the hope that heirs to the grant will get some settlement as others have, especially for the grazing land: "I probably will never see it, but maybe something will come about, I don't know. Maybe a percentage of it will be turned back."⁶¹

A permittee rancher told us he can trace his grant (the Trampas Land Grant) connections back to 1751.⁶² He shared with us information on the Grant, compiled by Arguello (no date). The Grant was confirmed by the U.S. Congress in 1860, but boundary resolution was delayed due to the Civil War. Multiple subsequent surveys and manipulation by crooked lawyers (in the Santa Fe Ring) led to partition and sale of the Grant. The Grantees lost everything, and now that land is part of the Carson National Forest.⁶³

A permittee's aunt told him how the Sebastián Martín Land Grant (1750; 55,000 acres) was lost due to "crooked politicians" and "rotten attorneys."⁶⁴ She told him that Elias Clark, the Catrons, and David Martinez

58. RAISH & MCSWEENEY, *supra* note 53.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. See generally JEROL ARGUELLO, THE SANTO THOMAS APOSTOL DEL RIO DE LAS TRAMPAS LAND GRANT (on file with authors).

64. RAISH & MCSWEENEY, *supra* note 53.

collected taxes and pocketed the money. As a result, the Grantees were delinquent in paying taxes and lost the land. The land was eventually sold to the government, and is now managed by the Forest Service and the Bureau of Land Management.⁶⁵

A rancher discussed the Capulin area as a place where everyone had access to grazing and timbering. Later, the land was bought by a company. People were supposed to be able to use the land with no taxes as long as the company owned it. The 1930s brought drought and depression. Many people left. The company traded the land to the Forest Service, and that was the end of free use.⁶⁶

Many permittees told us that studying land grant issues helps them maintain their connection with the land. They feel that there may not be an equitable resolution of land grant questions, but they still wish that the government would acknowledge the injustices of the past.⁶⁷ Much of the northern New Mexico national forests are emotionally and psychologically vital to the lives of the people.

IV. FOREST SERVICE POLICY

To understand Forest Service policy regarding land grants, we consulted Southwest Region lands staff and others from the Santa Fe and Carson National Forests, who were recommended for their knowledge of land grant issues. We examined official policy of the Forest Service, personal views of Forest Service employees on land grant issues, and the various efforts by land grant groups to seek equitable resolution.

The Forest Service has a mandate to defend the U.S. title to national forest lands and to manage them to the best of its ability. The official policy of the Forest Service is to support the conclusions of the 2004 GAO Report. The Southwestern Region views the Report favorably, feeling that it confirms that land adjudications were accomplished properly. Forest supervisors have received direction to defend U.S. title to lands. Forest Service resources are not to be used to undermine U.S. title. A report prepared by the Regional Office briefing the outcome of the GAO study reads as follows:

The Region's view on the recently issued Report is that it is a highly credible independent source confirming the legal foundation of the subject National Forests; and, therefore the USDA Forest Service as the agency with jurisdiction and proper authority as stewards for administering these National

65. *Id.*

66. *Id.*

67. *Id.*

Forest Lands. It is a given that considerations for social and economic impacts on these local communities and due consideration of peoples' relationships with the land will continue to be a part of the Forest Service mission. This view and this mission will continue to be carried out with tact and diplomacy. And, when challenged as it has been through the decades, carried out with both respect and resolve.⁶⁸

V. INFORMAL COMMENTS FROM FOREST SERVICE STAFF

We discussed a November 28, 2007, meeting of the New Mexico Interim Land Grant Committee with Forest Service representatives. They told us that the Land Grant Committee voiced several issues of general concern, including the following from the committee meeting minutes: (1) the Forest Service should add a land grant heir to the Collaborative Forest Restoration Program (CFRP) committee; (2) land grant representatives should be included in Forest Service plan revisions and travel management processes; (3) the Forest Service should provide Memoranda of Understanding (MOUs) concerning access and firewood on former common lands to land grants; (4) the Forest Service should assign a specific person as a land grant liaison.⁶⁹ We included questions on these topics as we carried out our interviews. Several of the interviewees were from different parts of the country, some were from the local area, and two were land grant heirs.

In our informal discussions with Forest Service people, we found a range of views concerning land grant issues and problems. Several began our discussions with statements that no special treatment or consideration is given to land grants in terms of preferential access to forest resources or CFRP grants.⁷⁰ However, CFRP coordinators are pleased that the new state designation (as political subdivisions of the state) allows land grants to apply directly for these funds. Those working with the grants believe they provide a robust program of outreach, coaching, and training for proposal preparation to all interested parties. One coordinator says he makes land grant associations aware of the training workshops in northern New Mexico (four were held in 2007). To the best of his knowledge, no land grant representatives have yet attended these workshops.⁷¹ There is currently a land grant representative on the CFRP panel for 2008, as requested by the New Mexico Interim Land Grant Committee. The CFRP Program Manager

68. See ROBERT CORDIS, USDA FOREST SERVICE BRIEFING PAPER (2004).

69. Carol Raish & Alice McSweeney, unpublished interview notes from discussions with U.S. Forest Service personnel (2008) (on file with authors).

70. *Id.*

71. *Id.*

feels it is very important that the first land grant projects go well. He recommends oversight and vigilance to avoid problems before they arise. He sees these projects as precedent-setting.⁷²

One person feels that the GAO Report did not address the issues permittees are concerned about. The situation is not resolved in the eyes of the permittees. He says the Forest Service will continue to do its work until things change: keep the land sustainable and used in the proper way.⁷³ Several discussed that they do not work directly with land grants, stating that it is hard to find a clearinghouse for land grants that provides someone to contact on the different boards.⁷⁴ The newly formed Interim Land Grant Committee should help solve this problem. One staff member said that the Forest Service should establish stronger ties to land grants and make sure grantees know who to contact in the Forest Service. This train of thought ended with, "we [the Forest Service] should be doing more, we could be doing more."⁷⁵ Perhaps the requested land grant liaison position could assist in bridging this communication gap. At last word, the position is still under discussion in the Forest Service Regional Office.

However, one reason for lack of communication is described by a Forest Service interviewee as "fear of giving the farm away."⁷⁶ This mindset is described as a Forest Service mentality, which has made some Forest Service people hesitant to become too involved with the land grants, knowing that the grantees want the land back.⁷⁷ On the other hand, another employee questions why the grants have had to pay taxes, when Pueblos do not. According to this person, the King of Spain granted lands to both Pueblos and land grants. When surveys turn out to be inaccurate, Pueblos often have lands returned, but land grants do not. He says that land grants have not had the support Pueblos have had.⁷⁸

Many of those we spoke with stressed the need for training Forest Service employees from outside the area in the history, culture, and traditions of the local people, stating that the Forest Service should recognize the need of northern New Mexicans for traditional resources. "We must have people here who are very connected [to the land] and understand northern New Mexico needs, lifestyle, culture, and tradition. I always share the *Tierra O Muerte* video with new employees, especially line officers," says one staff member.⁷⁹ Another recommendation is that the

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

Carson and Santa Fe National Forests should work more closely together and coordinate fees, permits, etc., because they serve many of the same people.⁸⁰ This employee also shared that trust building and small accomplishments are needed among the groups. The land grant heirs work well with individual Forest Service employees and vice versa, but grantees will probably never be “hand-in-hand” with the Forest Service.⁸¹ In sum, we heard: Treat people with respect and expect respect. Work in partnerships. Pass land on to children and grandchildren in a sustainable manner.⁸²

Our discussions with Forest Service personnel show that effort and concern go beyond the “official” Forest Service position. Many local people are employed by the northern forests and understand the concerns of friends, neighbors, and relatives. These employees often view greater participation by local communities in Forest Service decision making in a positive light. They argue for promoting locals in place and for longer tenure in leadership positions to build communication and trust between communities and the Forest Service. Some feel such changes in Forest Service culture are occurring, while others do not. Despite some disagreements, those we spoke with believe that land grant issues can only be resolved by Congress and not through the courts.

CONCLUSION

The protesters of the late 1960s brought land grant loss to the public’s attention, and aired grievances concerning grazing management on Forest Service land. Forty years later, grant heirs still feel they have seen little meaningful change in Forest Service grazing programs. However, many do feel their efforts have focused greater attention on land-loss issues. The GAO Report and recent Land Grant Forum proposals to be introduced into Congress demonstrate this ongoing concern and interest. If these proposals are supported by Congress, land grant members and heirs may have access to resources or compensation that they have sought for years. In many cases local Forest Service personnel would be involved in supporting grant members in these endeavors. However, until statutes and policies change, the Forest Service and its employees will follow the official federal government position, defending U.S. title to land currently administered by the national forest system.

80. *Id.*

81. *Id.*

82. *Id.*

