

Committee on Natural Resources

Rob Bishop Chairman
Markup Memorandum

September 25, 2018

To: All Natural Resources Committee Members

From: Majority Committee Staff— Brandon Miller and Leah Baker (x66849)

Markup: **H.R. 6365 (Rep. Stevan Pearce)**, to establish the Treaty of Guadalupe Hidalgo Land Grant-Merced Claims Commission and other Federal policies for the restoration of land for hardships resulting from the incomplete and inequitable implementation of the Treaty of Guadalupe Hidalgo, to affirm Land Grant-Merced property rights protected by the Treaty of Guadalupe Hidalgo, and for other purposes.

September 27, 2018, 10:15 am; 1324 Longworth House Office Building

H.R. 6365, “Treaty of Guadalupe-Hidalgo Land Claims Act of 2018”

Summary of the Bill

H.R. 6365 would establish the Treaty of Guadalupe Hidalgo Land Grant-Merced Claims Commission and other federal policies for the restoration of land for hardships resulting from incomplete and inequitable implementation of the Treaty of Guadalupe Hidalgo, to affirm the Land Grant-Merced property rights protected by the Treaty of Guadalupe Hidalgo, and for other purposes.

Background

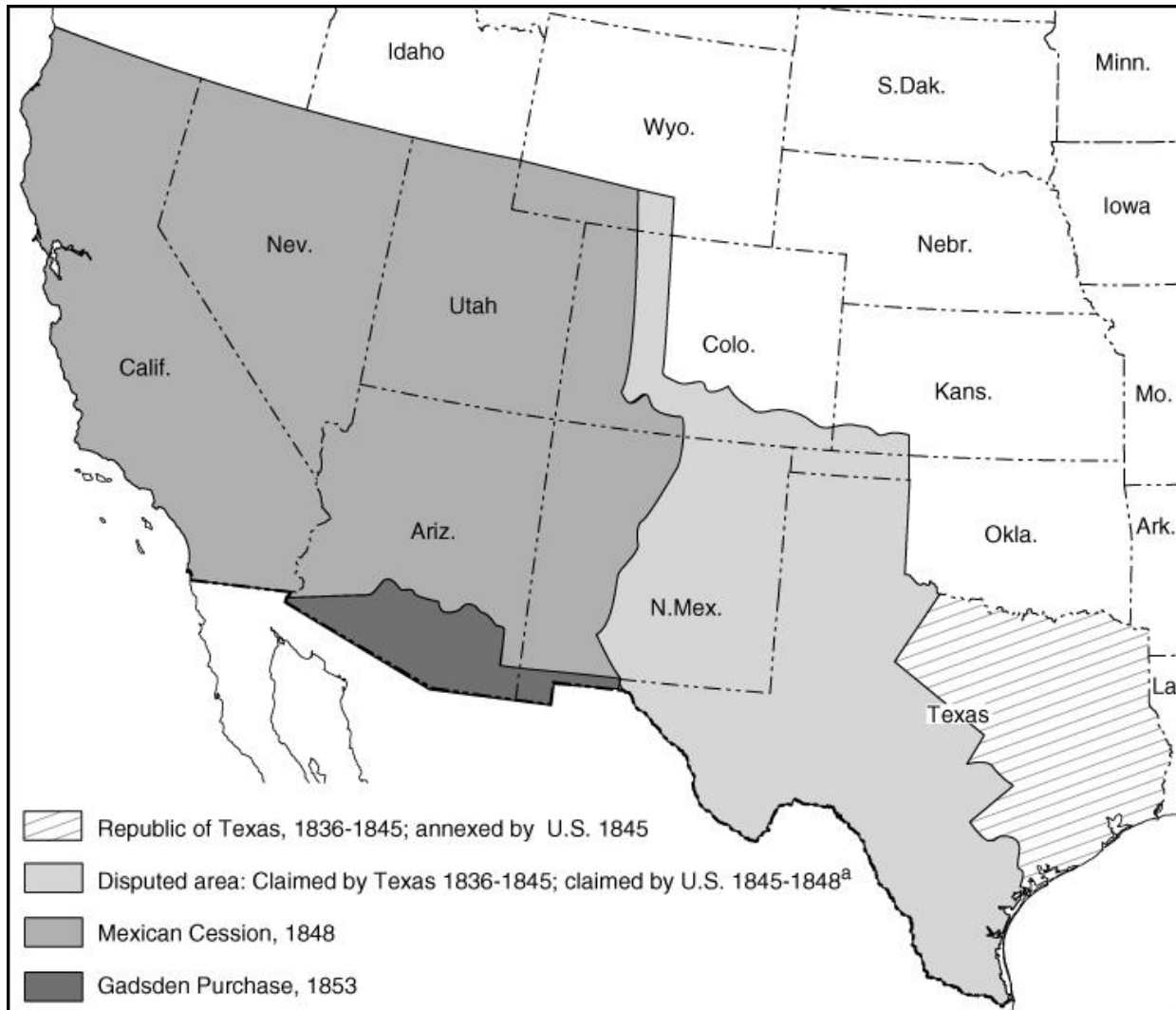
From the late 17th to mid-19th centuries, Spanish and later Mexican governments made hundreds of land grants to individuals and communities in what is now the southwestern United States.¹ In New Mexico, grants were made “to encourage settlement, reward patrons of the Spanish government, and to create a buffer zone between Indian tribes and the more populated regions of its northern frontier.”² Meanwhile, increased tensions between the United States and Mexico over the newly-independent State of Texas and disputed lands culminated in the Mexican-American War of 1846.³ After almost two years of battling, the United States and Mexico signed the Treaty of Guadalupe Hidalgo in 1848, officially ending the war. The Treaty ceded from Mexico to the United States approximately one-half million acres of land in present-day Nevada, Utah, Arizona, New Mexico, Colorado, and Wyoming. The Treaty also required the United States to honor the land conveyances and property rights in its new territory.⁴

¹ Government Accountability Office, GAO-04-59, *Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico* (2004).

² Ibid.

³ Department of State Office of the Historian, *The Annexation of Texas, the Mexican-American War, and the Treaty of Guadalupe-Hidalgo, 1845-1848* (<https://history.state.gov/milestones/1830-1860/texas-annexation>).

⁴ Treaty of Guadalupe Hidalgo, 9 Stat 922



Territory Ceded by México Under the Treaty of Guadalupe Hidalgo in 1848 and the Gadsden Purchase of 1853.⁵

To validate these land claims the United States government established the office of the Surveyor General in 1854. The mission of this office was to determine “the origin, nature, character, and extent to all claims to lands under the laws, usages, and customs of Spain and Mexico.”⁶ The adjudication process used by the Surveyor General was not defensible, however, so in 1891 Congress established the Court of Private Land Claims to adjudicate land claims in New Mexico under more stringent guidelines. This body adjudicated claims through 1904.⁷ Throughout the entire land grant adjudication process, 154 claims were filed on 9.38 million acres, with 105 claims confirmed on 5.96 million acres.⁸ The 3.42 million acres not confirmed for land grantees became part of the public domain, which has been a point of consternation for many land grant heirs for more than a century.⁹

⁵ “Background” U.S. Government Accountability Office: <https://www.gao.gov/guadalupe/bckgrd.htm>.

⁶ 10 Stat. at 309.

⁷ Government Accountability Office, GAO-04-59, *Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico* (2004).

⁸ Ibid.

⁹ Ibid.

H.R. 6365 would provide an opportunity for these land grantees to have their claims reviewed. This bill would establish a Commission to review each claim and prepare a report to the Secretaries of Agriculture and the Interior that outlines findings and suggested restitution. This restitution can include special access to the lands in question or wholesale transfer. Any recommended restitution would affect only federal land, not private or State land. Further, valid existing rights for leases, permits and rights-of-way would not be affected. Relevant land management agencies, through their respective Secretaries, may execute the recommended restitution or Congress could pass legislation to do so. This bill would implement recommendations made by the Government Accountability Office in 2004.¹⁰

The Subcommittee on Federal Lands held a hearing on H.R. 6365 on September 6, 2018.

Major Provisions of H.R. 6365

Section 4. Treaty of Guadalupe Hidalgo Land Grant-Merced Claims Commission.

This section establishes the Treaty of Guadalupe Hidalgo Land Grant-Merced Claims Commission that will conduct hearings on each qualifying petition and formulate a recommendation on restitution to submit to Congress. It requires that the Commission will be comprised of nine members appointed by the President who have experience in Spanish colonial history, Southwestern history, international laws pertaining to treaties, cultural geography, and land grants. It further requires that each member serves for the life of the Commission, and vacancies will be handled in the same manner as the appointment was made. It requires Commission members to study relevant history and provides that they shall receive compensation, subject to appropriations for that purpose.

This section also sets forth Commission's powers to hold hearings, accept gifts of services or property, use the U.S. mail as other federal agencies do, hire staff, issue subpoenas, and receive support from State and federal agencies. It requires that the Commission terminate 180 days after the final report is submitted.

Section 5. Hearings on Qualifying Petitions.

This section establishes the Commission's hearing process. Each petition shall receive a hearing in the claimant's State. It allows all persons having an interest in the land to testify. Upon receiving a qualifying petition, the Commission shall review many aspects of the land grant-merced (Spanish or Mexican land grants), including the impacts as a result of it not being recognized in 1854; existing federal land use policies on the land in question; all private and public leases involved; the value of the revenues generated from the land identified over time; and existing laws relating to the management of land at question. The Commission shall also apply appropriate international treaty law when evaluating the petitions.

This section also delineates the elements of a qualifying petition. First, a petition must be received within five years after enactment. Second, it must be made pursuant to an official

¹⁰ Ibid.

resolution adopted by the claimant. Third, it must include contact information, documentation on the boundaries, and the summary of claims being presented.

This section also sets the criteria for possible restitution. The Commission may make the following recommendations: 1) convey the land; 2) grant the claimant stewardship rights; 3) grant the claimant priority access and use rights; 4) grant the claimant priority rights to leases, permits, and easements; 5) grant the claimant priority rights to acquire lands; or 6) grant the claimant priority rights to obtain new, unused, or unrenewed grazing allotments. It also adds two provisions that protect non-federal land and existing leases, permits, and rights-of-way.

Section 6. Reports.

This section requires that, within 90 days of a hearing, the Commission must complete and submit a report to the Secretary concerned. Ten years after the bill is enacted, the Commission must submit a report to Congress that details the claims, the restitution offered, and the Secretary who administers the land.

Section 7. Federal Land Disposal Authority.

This section provides the Secretary concerned the ability to grant the recommended restitution.

Section 8. Protection of Acequias.

This section ensures that the rights of any acequia (waterways) on federal land shall not be impaired.

Section 9. Authorization of Appropriations.

This section authorizes appropriations of \$1 million a year for each of Fiscal Years 2019 through 2028 to carry out the activities of the Commission.

Cost

A Congressional Budget Office cost estimate has not yet been completed for this bill.

Administration Position

The Administration's position is currently unknown.

Anticipated Amendment

One amendment is anticipated to address technical changes.

Effect on Current Law (Ramseyer)

None.