

**MINUTES OF THE
STATE COMMISSION OF PUBLIC RECORDS
REGULAR MEETING
August 24, 2010**

The State Commission of Public Records convened at 9:30 a.m. on Tuesday, August 24, 2010 at 1209 Camino Carlos Rey, Santa Fe, New Mexico 87507.

Members Present

Stanley Hordes, Ph.D.	Chair, Historian
Arturo Jaramillo	Cabinet Secretary, General Services Department
Patricia Herrera	Designee for Honorable Mary Herrera, Secretary of State
Robert Mead	State Law Librarian
Betsy Glenn	Representative for Honorable Gary King, State Attorney General
Shawna Owens	Representative for Honorable Hector Balderas, State Auditor

Members Absent

Frances Levine, Ph.D.	Director, Museum of New Mexico
Hector Balderas	Honorable State Auditor

Staff Present

Sandra Jaramillo	State Records Administrator
Judi Hazlett	Deputy State Records Administrator
Antoinette L. Solano	Administrative Assistant
Pete Chacon	Information Technology, Chief Information Officer
John Martinez	Director, Administrative Law Division
Jackie Garcia	Records Management Analyst, RMD
Emmanuel Rodriguez	Records Management Analyst, RMD
Leo Lucero	Chief, Agency Analysis Bureau, RMD
Melissa Salazar	Director, Archives and Historical Services Division
Rick Hendricks, Ph.D.	State Historian
Tania Maestas	Assistant Attorney General

Guests Present

Cathy Baca	Board of Nursing
Teresa E. Carrillo	Department of Public Safety
Michelle Sandoval	Department of Public Safety

CALL TO ORDER

The Chair called the meeting to order at 9:30 a.m.

The Chair asked that the minutes reflect the passing of a very good friend of the State Records Center and Archives Professor David Weber. He acknowledged the scholarly contributions made by Dr. Weber in the field of history.

APPROVAL OF AGENDA

The Chair entertained a motion to approve the agenda. Mr. Arturo Jaramillo so moved and Mr. Robert Mead seconded the motion. The motion carried. The agenda was approved.

APPROVAL OF MINUTES – June 15, 2010

The Chair entertained a motion for approval of the minutes. Mr. Mead so moved and Ms. Patricia Herrera seconded the motion. The motion carried. The minutes were approved.

Ms. Betsy Glenn joined the Commission meeting. The Chair acknowledged Ms. Glenn who asked if the minutes had been approved. She stated she had one correction to the minutes on the first page; Ms. Tania Maestas was listed as an Assistant District Attorney and her correct title is Assistant Attorney General. The Chair entertained a motion to amend the minutes of June 15, 2010 as corrected to reflect that Ms. Maestas should be listed as Assistant Attorney General and not Assistant District Attorney. Ms. Glenn so moved and Ms. Herrera seconded the amended motion. The motion carried. The minutes were approved as amended.

ELECTION OF COMMISSION VICE CHAIR (Replacement of Deborah Moll)

The Chair opened the floor for nominations for the replacement of Ms. Deborah Moll as Vice-Chair due to her retirement from state government. Ms. Herrera nominated Ms. Glenn as Vice chair and Mr. Mead seconded the motion. The motion passed unanimously, with no abstentions. The Chair stated that a reception for Ms. Moll would be held after the Commission Meeting.

ACTION ITEMS

A. Records Retention and Disposition Schedules

1.17.230 NMAC, Executive Records Retention and Disposition Schedule (ERRDS), New Mexico District Courts

Ms. Sandra Jaramillo stated that the first schedule for the Commission's consideration was an amendment to 1.17.230 NMAC, *ERRDS, New Mexico District Courts*, which Mr. Jay Rodriguez would present. Mr. Rodriguez informed the Commission that the amendment to the existing Judicial Records Retention and Disposition schedule for the New Mexico District Courts added a new records series, Section 1.17.230.252 NMAC, *Drug Court Files*, and also amended Section, 1.17.230.7 NMAC, *Definitions* by adding a definition for "drug court" and Section 1.17.230.8 NMAC, *Instructions*, by renumbering the subsections and adding subsections A and I.

The Chair entertained a motion to accept the amendment. Mr. Mead so moved and Mr. Jaramillo seconded the motion. The Chair asked if there was any discussion. The Chair then asked if assuming a juvenile, just prior to turning the age of eighteen made a bad choice would his records be destroyed when he reached the age of majority or would the records be retained an additional five years. Mr. Rodriguez replied that the records would be destroyed five years after reaching the age of majority and explained that—a juvenile may choose to participate in a drug program after he or she reached the age of majority. The five years allows an individual to complete the program. Mr. Mead stated that the deferred sentence of a juvenile to the judicial district drug program is contingent upon successful treatment and completion of the program and that the punishment period could extend past the age of majority. The Chair asked if there was further discussion; hearing none, the Chair called for a vote to approve the amendment to *1.17.230 NMAC*. The motion passed unanimously, with no abstentions.

1.18.790 NMAC, ERRDS, Department of Public Safety

Ms. Jaramillo informed the Commission that Ms. Garcia would present the amendment for *1.18.790 NMAC, ERRDS, Department of Public Safety*. Ms. Garcia stated that the amendment to the schedule added Section *1.18.790.188 NMAC, Vehicle Consent to Search Form*. She informed the Commission that the amendment was made at the request of the Department of Public Safety's Motor Transportation Division to ensure proper record retention of the forms. The Chair entertained a motion to accept the amendment. Mr. Jaramillo so moved and Mr. Mead seconded the motion. The Chair asked if there was discussion. Mr. Mead asked if the three-year period was a sufficient time in the event that the search was challenged. Ms. Garcia replied that if an investigation case is initiated as a result of the search, the original consent form is filed in an investigation case file. The Chair asked if there was further discussion; hearing none, the Chair called for a vote to approve the amendment to *1.18.790 NMAC*. The motion passed unanimously, with no abstentions.

1.18.449 NMAC, ERRDS, Board of Nursing

Ms. Jaramillo informed the Commission that Mr. Rodriguez would present the repeal and replacement of *1.18.449 NMAC, ERRDS, Board of Nursing*. Mr. Rodriguez stated that the schedule was a replacement schedule for the existing Executive Records Retention and Disposition Schedule for the Board of Nursing. A required State Records Center and Archives (SRCA) five-year review of the schedule for the Board of Nursing determined that significant modifications and additions were needed. Mr. Rodriguez introduced Ms. Cathy Baca, Executive Assistant representing the Board of Nursing.

The Chair recognized Ms. Baca and thanked her for attending. The Chair entertained a motion to accept the repeal and replacement. Mr. Jaramillo so moved and Mr. Mead seconded the motion. The Chair asked if there was any discussion; hearing none, the Chair called for a vote to approve the repeal and replacement of *1.18.449 NMAC*.

B. FY 2012 Appropriation Request

Ms. Jaramillo stated that Ms. Judi Hazlett, the Deputy State Records Administrator and CFO, would present the FY 2012 appropriation request. Ms. Hazlett began by reviewing the agency's budget structure, directing the Commission's attention to the pertinent forms in the draft version before them.

Ms. Hazlett then discussed the request for the operating fund, noting that the primary source of money was general fund support, although federal funds and other grants were also budgeted in the fund. She noted that to understand the FY 2012 request, it was important to look first at the FY 2011 operating budget. She reminded the Commission that the agency's FY 2011 general fund appropriation reflected dramatic under funding, especially in the Other category, from which by far the majority of the agency's basic operating expenses were paid.

For comparison, the FY 2010 general fund actual in the Other category were \$394.1, plus \$3.2 in other state grants); the FY 2011 operating budget as originally approved was only \$171.1 - a reduction of \$223.0; and that amount was further decreased to \$165.5 by the September, 2010 reductions. Those September reductions, which affected every category, compounded an obviously, already severe budgetary challenge. The agency shifted some operating expenses to its revolving fund; however, that, she explained, presented two problems. First, many of the items that support revenue generation as well as replacements for more expensive equipment historically acquired through the fund cannot be purchased. Second, if revenues do not materialize as projected, it may well not be possible to fund all the operational items shifted from general fund support. The revenue concern is that the agency's primary customers are other state agencies and local governments that are facing the same budgetary shortfalls as the SRCA.

Ms. Hazlett emphasized the significance of the reductions in the other category. She noted that FY 2011 fixed costs – those that the agency has little or no discretion in paying - for example DoIT and GSD fees and charges, audit costs, costs to operate the Albuquerque record center, legal advertising, rental of the postage meter, etc. – made up approximately \$147 of the \$165.5 available. In FY 2012, those costs jump to some \$210.0, primarily because of reinstatement of property insurance. Obviously, if a flat budget were submitted, the agency could not pay them.

According to Ms. Hazlett, that, while the FY 2012 request before the Commission was not flat, it was conservative. The FY 2012 general fund request of \$2745.4 reflected an increase of \$156.2 over the original approved FY 2011 operating budget amount and \$240.3 over the operating budget adjusted for the September 3.245 percent reductions. Of that increase, \$85.9 was attributable to the PERA re-shift and GSD rate increases - specifically \$22.4 for PERA, \$0.9 in GSD Workers' Compensation, \$2.5 in Retiree Health Care, and \$60.1 in property insurance.

She explained that the increase over the original FY 2011 operating budget in Personal Services and Benefits was only \$17.3, less than the increase in PERA alone. The small increase resulted from budgeting salaries and benefits for four vacant positions at zero and projecting hiring into tow other vacancies at salaries lower than those of the previous incumbents. That increase jumped to \$71.7, net of the \$22.4 PERA increase, if compared against the general fund operating budget in the category after the September reductions.

The remainder of the increase showed an effort to regain some general fund support for basic operating expenses, especially in light of a projected reduction in revolving fund revenues and the need to utilize more fund balance. In recognition of the state's continuing revenue shortfall, the request, while moving some basic operational expenses back to the operating fund, proposed still to fund many of the agency's basic operating cost through the revolving fund. However, Ms. Hazlett warned, the same concerns over continued diversion of money used to underwrite revenue generating activities and key equipment purchases and the possibility of unrealized revenue discussed earlier, with respect to the FY 2011 budget, persist.

In order to trim its request, the agency budgeted four vacant positions at \$0.0 and the insurance premiums at \$0.0; however, it asked that the positions not be deleted. If the agency is to restore service levels when the economy rebounds, it will need the positions. Mr. Mead inquired if the DFA was accepting vacancies budgeted at zero rather than the minimum. Ms. Hazlett replied that she had spoken with the DFA analyst earlier and was told that other agencies were doing the same; however, the analyst had been on vacation and she had not spoken with her recently about that approach. If the positions were budgeted, it would raise the request by some \$200,000. If it were necessary to budget the positions, then the funding would have to be reduced through the application of vacancy savings.

Ms. Hazlett opined that the risk of losing the positions, regardless of the budgeting approach, could be high. The Chair asked what the process would be if the positions were eliminated. Ms. Hazlett responded that usually the number of authorized positions approved for the agency in the General Appropriations Act would be four less. She noted that currently the agency has seven vacancies.

Returning to the discussion of the request, Ms. Hazlett pointed out that the \$5.6 increase in Contractual Services was: accommodate the increase in audit fees, based on the third-year amount in the agency's existing contract; provide minimal support for the NM history scholars program; and address increased IT maintenance costs associated with the new records management application that will come off warranty. The largest, by far general fund increase in the Other category is the increase in property insurance, which, while less than FY 2010 actual, is a \$60.1 increase over the as-yet unexplained \$1.4 FY 11 charge.

Ms. Hazlett touched on the federal funds included in the request, noting that they represented those expected through the agency's regular National Archives and Records Administration/National Historical Publications and Records Commission grant – funds used to support the activities of the NM Historical Records Advisory Board, the regrant program and 20 percent of the grant administrator's salary.

She then addressed the appropriation for agency's revolving fund, noting that the fund was an internal service fund established in statute and that the money deposited in it derived from sales of goods and services, primarily to state agencies. Ms. Hazlett stated that, historically, the fund had been used to support activities related to revenue generation, including salary and benefits for one employee, the editor for the NM Register. To supplement revenues earned in a given year, the agency requests appropriation of fund balance to enable it to cover those costs and to

purchase replacements for some of the high – cost equipment used in performance of its statutory and business mandates. She explained that the FY 2012 request was essentially the same as the FY 2011 operating budget, although the amount of fund balance was higher since revenues were expected to be lower, given that state agencies were experiencing the same budgetary restrictions as the SRCA. Projected revenues for FY 2012 were only \$115,700, compared with the \$134,000 earned in FY 2010. The lower revenues meant that use of fund balance would rise to over \$90,000. The actual expenditures for FY 2010 were low, she pointed out, since the agency wanted to preserve fund balance to use in FY 2011 operating budget and as she discussed previously, the request included funding for some basic operational costs normally paid through the operating budget.

Ms. Hazlett concluded by stating that the request did not include any expansion items, in recognition of the anticipated state revenue shortfalls, although, again a business case for funding of phase II of the Centralized Electronic Records Repository had been included in the agency Information Technology Plan.

She asked that the Commission approve the request as submitted with the provision that staff could make technical changes if needed.

The Chair asked if the agency were anticipating any furloughs or layoffs. Ms. Hazlett said that, at the moment, none were expected in FY 2011 and none were considered in the FY 2012 request. However, the legislature included language in the 2010 General Appropriations Act giving the Governor the authority to reduce agency appropriations if revenue lagged. That was the authority behind the September reductions and that same authority could be invoked again, if revenues continued to come in lower than projected. The Chair emphasized that he would like to see the agency take whatever steps were necessary to continue to avoid furloughs or layoffs.

Mr. Mead asked that, if the FY 2012 request were reduced, would the agency be able to absorb the cut. Ms. Hazlett replied that there would be items that the agency would not be able to pay - for example, the fine arts insurance premium. She continued that the only other option would be to close the Albuquerque Records Center, which, with rent, utilities and maintenance services and supplies alone, required about \$90,000 to operate. However, since the agency would not be able to move many of the records stored there to Santa Fe because of space limitations, the records would have to be returned to the originating agencies – a move that would only transfer and likely increase costs and raise the risks associated with lost or prematurely destroyed records.

Secretary Jaramillo acknowledged the efforts of the staff in preparing the request and noted that the General Services Department (GSD) had been going through its own budget presentations, including discussions about insurance and other rates, and asked if the SRCA budget analysts had any suggestions. Ms. Hazlett replied that, while she had spoken with the DFA and LFC analysts about budgetary concerns, she had not asked for specific recommendations. However, she noted that the DFA instructions did recognize that there could be costs beyond an agency's control that would preclude flat budgets. Secretary Jaramillo stated that he realized the challenges the agency faced and that he know that, particularly for small agencies like the SRCA,

paying premiums increases would be difficult and that the GSD was prepared to work with the agencies. The Chair asked if it were possible to renegotiate the fine arts premium. Ms. Hazlett stated that the agency could try but that, in order to meet the legal deadline, the appropriation request needed to be approved and submitted. Secretary Jaramillo asked if Ms. Jaramillo could meet with the LFC and emphasize the dire predicament facing the agency. Ms. Jaramillo agreed to try to schedule a meeting with the Director of the LFC. She also informed that Commission that the agency's LFC hearing was scheduled for October 21, at 2 30 pm, in Subcommittee A.

Ms. Hazlett recognized Mr. Ruben Rivera and Mr. Scott Sheldon of the Administrative Services Division's fiscal staff for their help in preparing the request.

C. Acceptance Deed of Gift

Ms. Jaramillo stated that the agenda reflected two deeds of gifts for the Commission's consideration; however, the Nuestra Senora de Rosario Sand Fernando y Santiago Land Grant deed of gift had been withdrawn due to access restrictions the President of the Land Grant association had requested. The Chair asked if the land grant association was a political subdivision of the State of New Mexico. Ms. Jaramillo replied that land grant associations are considered political subdivision of the state.

The Chair stated that political subdivisions of the State were subject to public record requirements, and therefore the records should be open to the public. Placing an access restriction on the records was inconsistent with the law. Ms. Jaramillo replied that the Chair was correct and the request for the restriction was the reason the deed of gift was not being considered. Ms. Salazar said that the donors were concerned of the possible theft of the documents based on previous experience in private hands. The Chair asked if she would speak to the President of the Association and let him know that the agency was willing to accept the donation. But with any access restrictions

New Mexico Territory Penitentiary Book

Ms. Jaramillo introduced Melissa Salazar who presented the deed of gift. Ms. Salazar stated that Mr. Tom Allen wished to donate a Territory Of New Mexico Penitentiary Book. Ms. Salazar stated that upon review, the item appeared to be the notebook of Penitentiary assistant Superintendent Phil J. Barber. In 1891, Mr. Barber was the penitentiary yardmaster but was elevated to acting assistant superintendent after the resignation of Superintendent Francisco Chavez. In June 1982, Barber was appointed and confirmed as the assistant superintendent.

Ms. Salazar indicated that the agency has three other superintendent notebooks; however, the proposed donation appeared to be the oldest in the series. Ms. Jaramillo stated that Mr. Allen had contacted the agency via email to see if the agency was interested in the donation.

The Chair entertained a motion for approval of the deed of gift. Mr. Mead so moved and Ms. Herrera seconded the motion. The motion passed unanimously, with no abstentions.

Old Business

A. Feasibility Study

Ms. Jaramillo stated that the firm contracted to conduct a feasibility study for the agency, Architectural Research Consultants (ARC) had presented their findings and recommendations to the Commission at their June meeting. She summarized the goals of the study as follows:

- Project long-term records and archives growth in the Santa Fe, Albuquerque and Las Cruces metropolitan areas
- Identify space requirements to meet projected demand;
- Identify capacity of existing facilities to meet existing and projected demands; and
- Identify alternatives and strategies to meet needs in the Santa Fe, Albuquerque and Las Cruces metropolitan areas.

Ms. Jaramillo stated that the findings reported by ARC included the existing storage capacity for records maintained in the Albuquerque Records Center (36,140 cf), the Santa Fe Records Center (77,312 cf), and the State Archives (27,667 cf). Existing SRCA facilities are at about 85 percent capacity and will be full in six to seven years.

ARC reported that an additional 5,300 gross square feet (gsf) are needed (3,400 for records storage and 1,900 for the archives vault) by the year 2020 to meet projected demand. Projected demand for storage is based on the historic trend analysis conducted by ARC. Annual growth based on a 12-year period for the records centers is 2 and 6.9 percent for the archives.

Ms. Jaramillo reported that recommendations for addressing the need for additional records storage space included several options:

1. **Increase training of state agencies so that only appropriate records are sent for storage:** She stated that the Records Management Agency Analysis Bureau has routinely conducted training in Santa Fe and Albuquerque. Three trainings sessions are being scheduled for September, November, and December but due to staff vacancies in Records Management (24%), the agency was unable to conduct as many training sessions as expected. Also due to budget shortages, the staff was unable to travel to different parts of the state to reach those field offices that require training.
2. **Invest in an electronic records management system:** Ms Jaramillo indicated the agency has previously submitted requests to fund a centralized electronic records repository (CERR) which have received favorable recommendations, but were unfunded.
3. **Serve state agencies as a priority and local governments as space permits:** Ms. Jaramillo informed the Commission that storage in the records centers is 95 percent state agency and 5 percent local government. The 5 percent is primarily off-site storage for microfilm.

- 4. Improve storage efficiency within existing facilities by investing in additional high capacity storage shelving:** Ms. Jaramillo indicated that funding (\$500.0) for additional high capacity storage shelving would be included and submitted through the agency's Infrastructure Capital Improvement Plan (ICIP) plan. The SRCA will require additional storage space before the high-density shelving can be purchased, as the boxes currently stored in the records center will have to be relocated during installation of the shelving.
- 5. Lease additional space in Albuquerque:** The agency's ICIP plan will be amended to include the need for additional lease space.
- 6. Investigate creating an additional record storage space in Santa Fe:** Ms. Jaramillo informed the Commission that an assessment study of how space in the Santa Fe facility can be utilize more effectively is currently underway. Property Control Division is conducting the assessment through a private architectural firm. A report should be available by December, 2010.
- 7. Consider creating additional records centers in other parts of the State:** No action has been taken on this recommendation.
- 8. Investigate lease of existing facilities to test demand prior to constructing new facilities to test demand prior to constructing new facilities:** Ms. Jaramillo stated that the Albuquerque Records Center has been leased for over 25 years and that demand for storage indicates there is a need for a records center in Albuquerque. However investigating the need for a records center in the southern part of the State could be done by leasing a facility prior to construction.
- 9. Maintain one central archive in Santa Fe and expand the archives vault located at the Santa Fe facility:** Ms. Jaramillo stated that the assessment of the Santa Fe facility underway include recommendations as to how the Archives vault can be expanded, including heating, ventilation and cooling systems.

Ms. Jaramillo indicated she would continue to follow through on all of the ARC recommendations and report to the Commission on the progress.

B. FY 11-Operating Budget

Ms. Jaramillo asked Ms. Hazlett to speak about the operating budget. Ms. Hazlett stated that, despite the severe budgetary constraints she discussed in her earlier presentation, the agency needed to fill the Records Management Division Director position but would have to push the hiring back to the second half of the FY in order to assure compliance with the 50 percent rule and to gain savings to cover expenditures.

The Chair had to leave the meeting and asked Ms. Glenn the Vice Chair to take over. Ms. Glen asked Ms. Jaramillo to present the Director's report.-

Director's Report

Ms. Jaramillo reported that the Administrative Law Division had received the Robert J Colburn Innovation award, which is given annually by the Administrative Codes and Registers' (ARC) section of the National Association of Secretaries of State. The award recognizes programs that demonstrate creativity and innovation in providing public access to administrative rules. She

congratulated the Administrative Law Division staff and acknowledged Mr. John Martinez, who had been recently elected President of the ACR organization.

She recognized Dr. Rick Hendricks, State Historian, and added that due to low funding this year, the agency was unable to fund scholarships or fellowships with the general fund support. However, through the efforts of Dr. Hendricks and Dr. Dennis Trujillo, the agency had received support for the fellowship program from non-profit organizations, such as Historical Society of New Mexico, Albuquerque Historical Society, and Humanities Council Center for Regional Studies and King/Carpenter Trust.

Ms. Jaramillo indicated that the agency had an additional vacancy in the Electronic Records Bureau. Ms. Marla Gabaldon had accepted a position with the Administrative Office of the Courts. She said that Ms. Gabaldon was instrumental, along with Mr. Pete Chacon and Mr. Leo Lucero, in implementing the new HP Trim software, which has replace the agency's records inventory application. The application manages the retention and location of all the boxes and microfilm rolls that are stored with the Record Centers.

Ms. Jaramillo stated the agency would be celebrating its 50th anniversary in conjunction with Archives month. A lecture and reception are scheduled for October 29, 2010 at 2:00 pm. She added that the Archives Division was in the process of completing a poster commemorating the 50th anniversary. She said that the Commission would be receiving invitations.

SCHEDULING OF NEXT MEETING

The Chair asked the Commission members if the November 16, 2010 at 9:30 am would be acceptable time for the next meeting. There were no conflicts with the date; the Chair scheduled the meeting for November 16, 2010 at 9:30 am.

ADJOURNMENT

The Chair entertained a motion for adjournment. Mr. Jaramillo so moved and Mr. Mead seconded the motion. The meeting adjourned at 11:08 a.m.