



**MINUTES OF THE STATE COMMISSION OF PUBLIC RECORDS  
REGULAR MEETING – December 9, 2014**

The State Commission of Public Records convened at 9:30 a.m. on Tuesday, December 9, 2014 at 1209 Camino Carlos Rey, Santa Fe, New Mexico 87507.

**Members Present**

Robert J. Torrez	Chair, Historian
Edwynn Burckle	Cabinet Secretary, General Services Department
Christina Espinoza	Designee for the Honorable Secretary of State
Jeff Pappas	Representative for Department of Cultural Affairs
Mona Valicenti	Representative for the Honorable Attorney General
Jennifer Salazar	General Counsel, Assistant Attorney General

**Staff Present**

Linda Trujillo, Esq.	State Records Administrator
Antoinette L. Solano	Executive Administrative Assistant
Ruben Rivera	Accounts Payable Officer
Pete Chacon	Information Technology, Chief Information Officer
Pamela Vigil	Management Analyst, ALD
Jackie Garcia	Agency Analysis Bureau
Leo Lucero	Director, Records Management Division, RMD
Jennifer Camp	Management Analyst, RMD
Tanya Vigil	Management Analyst, RMD
Susan Montoya	Management Analyst, RMD
Melissa Salazar	Director, Archives and Historical Services
Felicia Lujan	Archives Bureau Chief
Dr. Rick Hendricks	State Historian
Matt Ortiz	Administrative Law, Division Director
Rachel Adler	Senior Archivist
Sibel Melik	Archives Division, Senior Archivist
Robert Wise	Network Administrator

**Guests**

Julia Wirick	Hoopes+Bowden, Architects
Suby Bowden	Hoopes+Bowden, Architects
Craig Hoopes	Hoopes+Bowden, Architects
Michael Rodriguez	Facilities Management Division, GSD

**I. OPENING ACTIVITIES:**

**A. Call to order**

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

**B. Approval of agenda**

The Chair entertained a **MOTION** to approve the agenda. Secretary Burckle **MOVED** and Mr. Pappas **SECONDED** the motion; the motion **PASSED** unanimously.

## II. OLD BUSINESS:

### A. Building Expansion - Hoopes+Bowden Building Expansion

Ms. Trujillo gave an update of the building expansion. She reported the presentations provided to the Capital Outlay committee (ICIP) and the Capital Building Planning Commission had gone well. She asked if the Commissioners had any questions to ask the Architects who were in attendance. Also in attendance was Mr. Michael Rodriguez from the General Services Dept. (GSD). The Chair stated that he didn't have any questions that have not been answered, but did relate that the priority was more storage space. Secretary Burckle added that the Finance Committee was holding a hearing that the agency might want to have representation for this particular hearing.

In closing, Ms. Trujillo reported that she had letters of support from various agencies for the expansion of the building. She said she had a letter from the Bernalillo County Metropolitan Court, Office of the State Treasurer, Aging and Long Term Services, Office of the District Attorney and the Commissioner of Public Lands.

### B. Robert Mead-Recognition of Service

The Chair publically recognized Mr. Robert Mead for his many years of outstanding services and dedication. He read his biography and pointed out many accomplishments. Mr. Mead thanked the Committee and staff.

## III. EXECUTIVE SESSION:

The Chair entertained a **MOTION** to go into Executive Session. Mr. Pappas **MOVED** to enter into executive session for the purpose of an Audit Exit Interview as listed on the agenda and explained the motion is pursuant to the Office of the Attorney General Open Meetings Act Compliance Guide on page 19 that states there are some circumstances where authority for closure of a public meeting, that is subject to the Open Meetings Act, may be implied from or required by other laws and Section 12-6-5 of the Audit Act, which provides that an audit report does not become a public record subject to inspection until ten days after the auditor releases the audit to the audited agency, is such a circumstance. Ms. Espinoza **SECONDED** the motion and Ms. Solano conducted a roll call vote. Chair Torrez, yes: Ms. Espinoza, Yes: Secretary Burckle, yes: Ms. Valincenti, yes: Mr. Pappas, yes; the **MOTION** passed unanimously and the Commission went into executive session at 9:45 a.m.

At 10:13 am the Chair stated that the Commission of Public Records was back in open session and pursuant to Section 10-15-1 (J) of the Open Meetings Act the matters discussed in executive session were limited only to the items specified in the motion for closure and no action was taken.

## IV. ACTION ITEMS

### A. Meeting Minutes

The Chair entertained a **MOTION** to approve the August 26, 2014 regular meeting minutes. Secretary Burckle **MOVED** and Mr. Pappas **SECONDED** the motion. The Chair asked if there was any further discussion or corrections. Mr. Pappas stated that his title should be changed to Representative of the Department of Cultural Affairs. Hearing no more discussion the motion **PASSED** unanimously.

### B. Accept Deeds of Gift

- **John Noble Landon Family Papers Relating to Jose Albino Baca**

Ms. Salazar stated that the Children of John Noble Landon, Lidia Michael, Tina Landon, and John Landon, wished to donate their father's papers relating to Jose Albino Baca. The Landons are descendants of Jose albino Baca, and Mr. John Noble Landon collected and maintained the materials. The agency has been in possession of the materials since 2005. In reading through documentations, she

believed that a deed of gift was sent by the previous division director but a response was never received. She spoke to Mr. Landon in 2008, who indicated he was still interested in donating the material. She sent a second deed of gift but never received a response and had lost contact. Earlier this year, she came across his obituary while conducting a Google search. She was able to locate his daughter through Facebook and reinitiated the process. The deed is signed by all three of his children.

The papers, dating from 1880 to 1906, include bills of sale to Jose Albino Baca from various individuals and pertain to the Ojo de Borrego Grant. Also included is an 1881 letter regarding recorded deeds by Probate Clerk Melchor Werner, a list of documents pertaining to the Montoya Grant, a list of heirs and certified genealogies pertaining to the Merced de Ojo de Borrego, a list of names and exhibit numbers stamped with A. A. Sedillo, Attorney at Law, Albuquerque, NM, and several unsigned and undated bills of sale.

According to Verna Laumbach in her 1933 article "Las Vegas Before 1850," the Baca's began settling in the Las Vegas area in the early 1940s. One of those individuals was Jose Albino Baca who followed his brothers and arrived most likely in 1850. He was said to have owned 60,000 sheep and more than 3,000 head of cattle. He also owned a mercantile and constructed the famous Baca mansion in Upper Las Vegas. In J.J. Bowden's dissertation on land claims in the southwest, Jose Albino Baca filed suits in both the Ojo de San Jose Grant and the Ojo de Borrego Grant. One can read more on these two cases on the Office of the State Historian's website. Jose Albino Baca is also the father of Jose Albino Baca II who was the 5<sup>th</sup> Lieutenant Governor of New Mexico, and who married Marguerite Pendaries, the 6<sup>th</sup> Secretary of State. Ms. Salazar stated that this collection was in acid free folders for preservation purposes.

The Chair entertained a **MOTION** to accept the deed of gift. Ms. Valencenti **MOVED** and Secretary Burckle **SECONDED**; the motion **PASSED** unanimously.

- **Eunice Gasner Panoramic Photograph of Camp Cody**

Ms. Salazar stated that Ms. Eunice Kanne Gasner of Waseca, Minnesota wished to donate an 8-foot black and white panoramic print of Camp Cody near Deming, New Mexico, dated June 1918. Ms. Gasner's father, Reuben Roy Kanne, was stationed and discharged from Camp Cody in 1918. According to her daughter, Susan Arneson, Mr. Kanne is pictured somewhere in the photograph. Ms. Gasner, now in her 90s, wished for the photograph to be returned to New Mexico where it originated. It is her belief that the image would be more beneficial to researchers here.

The image was most likely taken by Almeron Newman, a panoramic photographer, taking photographs of Camp Cody and the 34<sup>th</sup> Infantry Division. State Historian Rick Hendricks and Charles Stanford wrote a brief biographical sketch on Mr. Newman, which appeared in their article "Taking the Wider View: Panoramic Photography in the American Southwest." The sketch is also available at [NewMexicoHistory.org](http://NewMexicoHistory.org).

Similar images are held by the Library of Congress. The image would complement our Camp Cody Photograph collection and other collections containing information on Camp Cody and the military in New Mexico. She said that she did not bring a sample because the collection was being flattened. It had been rolled up for many years. The Chair asked if there were any unique images of this collection that the agency didn't possess already.

Ms. Salazar said that she had seen a similar image in the Camp Cody collection, but not an image that was 8 feet long. She said the agency had received another Camp Cody panoramic a couple of years ago that was shorter than this one and had much of the same imagery.

She referred to Dr. Hendricks. He stated that Mr. Newman was taking photographs all over New Mexico, and he didn't have the knowledge to know if this one was unique. Mr. Pappas asked if these photographs were going to be exhibited somewhere. Dr. Hendricks's replied that he wasn't quite sure other than there was a fascination among professional photographers who were working on that particular technique. He didn't know how they would have been displayed because they were so big. But he said there must have been an opportunity for soldiers to acquire them. Ms. Salazar said that she had read somewhere that Camp Cody photographs was being sold.

The Chair entertained a MOTION to accept the Eunice Gasner Panoramic Photograph of Camp Cody. Mr. Pappas **MOVED** and Ms. Espinoza **SECONDED** the motion; the motion **PASSED** unanimously. Ms. Salazar stated that if the Commissioners would like to see the collection it is in the Conservation lab and she would be available after the meeting.

## V. RULE HEARING

### **1.18.333 NMAC, Executive Records Retention and Disposition Schedule (ERRDS), Department of Taxation and Revenue**

Ms. Camp presented the amendment to *1.18.333 NMAC, Department of Taxation and Revenue*. Ms. Camp informed the Commission that this was an amendment to the records retention schedule for the Taxation and Revenue Department. The purpose of this amendment is to schedule and update sections 3,6,7,8 and 9 to conform to new language. Amendments made to Sections 53-255 are limited to formatting and grammar clean up.

The amendment has been reviewed by the Cabinet Secretary of the Taxation and Revenue Department; the State Commission of Public records Internal Review Committee and the Taxation and Revenue Department legal counsel. The amendment to the ERRDS of the Taxation and Revenue Department is up for Commission consideration and approval.

Ms. Trujillo pointed out that the Internal Review Committee and expanded staff members spent two days going over the first nine sections to refer definitions to the statute and the general rule for retention. She thanked all the staff for their hard work.

The Chair entertained a MOTION to approve the amendments to ERRDS of the Taxation and Revenue Department. Mr. Pappas **MOVED** and Ms. Espinoza **SECONDED** the motion; the motion **PASSED** unanimously.

### **1.18.350, NMAC, ERRDS, General Services Department**

Ms. Camp presented the amendment to *1.18.350 NMAC, ERRDS, General Services Department*. She stated the amendment was the executive records retention and disposition schedule for the General Services Department. The purpose of the amendment is to update Sections 3, 6, 7, 8 and 9 to conform to new language. Amendments made to Section 127-236 are limited to formatting and grammar clean up.

The amendment has been reviewed by the Cabinet Secretary of the General Services Department, the State Commission of Public Records Internal Review Committee and the General Services Department legal counsel. The amendment to the ERRDS is up for Commission consideration and approval.

The Chair asked Secretary Burckle if he had any comments. He thanked the staff for bring the schedule forward and for their hard work.

The Chair entertained a **MOTION** to approve the ERRDS for the General Services Department. Ms. Espinoza **MOVED** and Ms. Valencenti **SECONDED** the motion; the motion **PASSED** unanimously.

#### **1.18.369 NMAC, ERRDS, State Commission of Public Records**

Ms. Trujillo pointed out that one of the clean ups projects was to clarify the issuing agency. It varied from the Commission of Public Records to the New Mexico State Commission of Public Records, or State Commission of Public Records, or State Commission of Public Records/State Record Center and Archives. The agency issuing rules considered by the Commission is statutorily called the State Commission of Public Records. Legally, the State Record Center and Archives is defined as a building rather than an agency.

Ms. Montoya presented the schedule. She stated that this was an amendment to the executive records and disposition schedule for the State Commission of Public Records. The purpose of this amendment is to schedule and update current records and record keeping practices, being produced and maintained by the department. Throughout the course of surveying the records and the work flow processes of those records created by the programs, the following amendments were created.

The amendments are for the following programs: Training, New Mexico History, records management, microphotography, and agency analysis. Sections 1-3 and 6-9 were amended to reflect current language standards. Section 16 was repealed as the item, historical markers, is maintained by the Cultural Affairs department. This section was replaced with a new record series, scholar's program files, as these are records currently maintained and previously captured. Section 17 was amended to modify the retention to allow transfer to archives.

Sections 54, 56, 61 and 72 were amended to modify retention periods. Section 63 is repealed as the form is no longer in creation. Microfilm inspection targets are now reflected on the storage transmittal forms.

The amendments have been reviewed by the State Records Administrator, the State Records Center and Archives Internal Review Committee, and the State Commission of public records legal representative. This amendment to the schedule for the State Commission of Public Records is respectfully submitted for Commission consideration and approval.

The Chair asked if any records related to the historical markers come to the Office of the State Historian. Dr. Hendricks stated that he is not aware of any coming directly to his office and that this was a function that these request go to the Department of Transportation or the property division. He said that his role was to research; he does not keep any copy of record or any originals, and to his knowledge and tenure he has not had the records secured in his office. The Chair stated it was a different process when he was the State Historian. Ms. Salazar stated that the agency did accession the previous State Historians records which remained with those markers. She said that it would include a copy of whatever he was working on in the archives. Mr. Pappas stated that his agency doesn't have a retention schedule for the Historic Preservation Division, but one is being created. The Chair entertained a **MOTION** to accept the ERRDS, State Commission of Public Records as presented by Ms. Montoya. Mr. Pappas **MOVED** and Ms. Espinoza **SECONDED** the motion; the motion **PASSED** unanimously.

#### **1.18.924 NMAC, ERRDS, Public Education Department**

Ms. Trujillo reported that the practice of the Commission to receive a sign off page from the agency has been causing delay. For example, the PED general counsel indicated they did not have the time or resources to review and approve the proposed retention schedules. However, they did not foresee a problem with the schedule and expressed the Commission has full authority to adopt the rule.

The Chair stated that it was his impression that the actual authority to promulgate the rules belongs to the Commission. Ms. Trujillo stated he was correct and that the approval from an agency is limited to show that both agencies are in agreement with the retention schedule. Ms. Trujillo reported that SRCA staff has worked diligently with PED staff. She stated that if it was the pleasure of the Commission the schedule could be tabled and brought back on the March agenda. This would give the PED staff time to review the schedule. Ms. Trujillo stated that the IRC committee fully supports the adoption of the schedule.

Mr. Pappas commented that his agency has separate divisions and it is difficult to get a signature. The Chair asked for clarification on his understanding that a records clerk can sign off if the Secretary is aware and accepts the signage. Ms. Trujillo stated that it is hard for the staff of the SRCA to tell a Head of an Agency how to run their agency, but if the Commission would direct staff who they want to sign off paperwork it would support SRCA staff.

The Chair entertained a motion to **TABLE** this schedule until the agency receives a signature from the Department of Education. Mr. Pappas **MOVED** and Ms. Espinoza **SECONDED** the motion; the motion **PASSED** unanimously. The amendment was **TABLED**.

#### **1.1.505 NMAC, ERRDS, Department of Cultural Affairs**

Ms. Jackie Garcia presented the Repeal and Replacement for *1.18.505, ERRDS, NMAC, Department of Cultural Affairs*. She stated that this request was to repeal the executive records retention and disposition schedule for the state Cultural Affairs Department. She reported that one of her analyst had been working on the replacement schedule for the department and the schedule had not been updated since 2000.

Sections 1-3 and 6-9 are amended to reflect current language standards. For the replacement schedule there were similar records that were common to the museums in general and those records were captured and listed in the records common to museums. The repealed schedules Sections 231 and 232 were combined and are now in Section *101a Request for reproduction files*.

Section 102 Environmental conditions files is a new record series. From the repealed schedule: Sections 101, 102, 104, 105, 107, 108, 109, 216, 278, 296, 299, 301, 302, 311, 323, 331, 334 and 371 were combined. These are all part of the Museum Object files. In older schedules they were listed separately and were permanent. When the records were surveyed it was deemed that they all should be place in the object file. From the repealed: Sections 103, 104, 313 & 371 were combined to Section 104 of the Accession Log. Sections 105, 216, 217, 278, 283, 300, 341, 346, 371 & 380 were combined to Section 105 Catalog cards. In the old schedule the museums were in the schedule separately so all the catalog cards were combined in these sections.

Sections 106, 303, & 304 are combined to Section 110 General Exhibition files. Section 110 is in a new Record Series not previously captured Registrar Exhibit Files. Sections 108, 109, 296, 311, & 313 were combined to Section 111 the Object Loan files. Section 115 is a new Record Series not previously captured (Museum volunteer Files). Section 146 is a New Record Series not previously captured (PALEONTOLOGICAL REXOURCES USE PERMIT AND PERMISSIONS FILES). Sections 219, 220, & 221 were combined to Section 158 NATIVE AMERICAN ARTISAN PROGRAM FILES.

Sections 362, 363 were combined to Section 182 ARCHAEOLOGICAL RESEARCH ACTIVITY FILES. Section 201 is a new Record Series not previously captured (A TEMPORARY TRANSACTION FORMS). Sections 331 and 333 were combined to Section 204 CONSERVATION TREATMENT FILES. Section 205 is a new Record Series not previously captured CONSERVATION DATABASE. Section 262 is a new Record Series not previously captured EXCAVATION OF HUMAN BURIAL PERMIT FILES.

Section 200, 201& 202 were combined to the Section 265 NEW MEXICO CULTURAL RESOURCE INFORMATION SYSTEM (NMCRIIS). Sections 270, 271 and 272 are a new Record Series not previously capture STATE TAX CREDIT FILES, QUALIFIED CULTURAL RESOURCE PROFESSIONAL FILES and the QUALIFIED CULTURAL RESOURCE PROFESSIONALS' DATABASE. Sections 274, 275, 276 and 301 are new Record Series not previously captured CERTIFIED LOCAL GOVERNMENT FILES, OFFICIAL SCENIC HISTORIC MARKER FILES, SITE STEWARD FILES and The EL PALACIO SUBSCRIPTION FILES. Section 147 and 148 were combined to Section 339 BOKS BY MAIL AND BOOKMOBILE DATABASE. Sections 340 and 360 are new Record Series not previously captured NEW MEXICO LIBRARY FOR THE BLIND AND PHYSICALLY HANDICAPPED VOLUNTEER FILES and the STATE PUBLICATION SHIP-LIST DATABASE. This replacement schedule has been reviewed by the State Commission of Public records Internal Review Committee and was sent to the Cultural Affairs Department for review by their legal counsel and Cabinet Secretary. We have not received a signature page from the department.

Ms. Garcia advised the Commission that she did attempt to get agreement before the schedules was sent to the Internal Review Committee. She further stated that for years we have had the name of the Department of Cultural Affairs while the statutory name is Cultural Affairs Department. Ms. Garcia reiterated that the signature page had not been received and the proposed repeal and replace was up for review or tabling.

The Commissioners discussed the changes. Ms. Trujillo stated that if the Commission chooses not to adopt the new replacements the Commission should not repeals the current rules. The Chair stated that the head of the agency should be aware of all the updated changes The Chair entertained a **MOTION TO TABLE** the Repeal and Replacement of the Department of Cultural Affairs or rather Cultural Affairs Department, until the signatures are received. Secretary Burckle suggested that we adopted the changes and request a statutory change at the next legislative session to change the department name to the commonly used name. Ms. Trujillo interjected that the SRCA would not change anything but just how the Department is referred to in the record retention schedule.

The Chair stated that he would like to see that agencies understand that the Commission is not going to approve a schedule without the signature from the agency. Mr. Pappas asked if the agencies are statutorily required to sign off on these schedules. Ms. Trujillo and Ms. Garcia stated that it was a courtesy. Ms. Trujillo went on to say that it was for the Commissions clarity that there is no mistakes in what the agencies say are their particular records. She said that the Commission has the authority to adopt the schedule.

Ms. Valencenti stated that it is the job of the Commission to preserve and adopt rules. She said it is not on the Commission to make sure that the Departments are complying by signing. What can be done is that you can adopt the rules and you send a copy of the change of rules to the Department in question advising them that they need to be cognizant of this and it remains their responsibility to adhere to the rule. She suggested that agencies could be given a deadline to reply. She said maybe this process will get the agencies to work.

Secretary Burckle advised the Commissioners that it would be important to get back to the Cabinet Secretary and remind them that the Commission has the authority to accept rules if the agency refuses to act and the Commission would discharge its authority. He reiterated back to what Ms. Trujillo said about changing the language in the cover letter so that it would be sent to all agencies, with a deadline for response.

Secretary Burckle **MOVED** to **TABLE** this issue until the Cabinet Secretary is made aware of the recommendations. This should be brought back at the next Commission meeting; Mr. Pappas **SECONDED** the motion. The Chair stated that this item would be tabled pending acquisition of a 30 day response which will be brought back at the next Commission meeting. The motion **PASSED** unanimously. The amendment was **TABLED**.

#### **1.18.550 NMAC, ERRDS, Office of the State Engineer**

Ms. Trujillo stated that once a proposed rule has been published no additional changes are authorized. The reason is that the public has already been notified. She reported that the OSE had requested three words to be added and those would be presented by Ms. Vigil.

The Chair asked Ms. Vigil to proceed with the presentation of *1.18.550 NMAC, ERRDS, Office of the State Engineer*. Ms. Vigil stated that it was a repeal of the Executive Records Retention and Disposition Schedule for the Office of the State Engineer. The replacement schedule reflects records that are specific to the Office of the State Engineer and the following programs:

**Water Rights Program**, Section 50 has been modified to combine records. This section replaces sections 53, 124, 125 and 128. Section 51 has been modified to combine records. This section replaces sections 55, 56, and 63. Section 52 has been modified and is replacing Section 61. Section 53 has been modified and is replacing Section 10. Section, 54 has been modified and is replacing Section 57. Section 55 is now under the water rights program. This Section has been modified and is replacing Section 74.

Hydrographic Survey Program Section 150 has been modified and is replacing Section 122.

Dam safety program Section 200 has been modified to combine record. This Section replaces Sections 146 and 147.

Legal Services Section 300 has been modified to combine records. This Section replaces Sections 70, 71, 73, 121, and 123. Section 301 has been modified to combine record. This Section replaces Sections 70, 72 and 73.

As of December 8, the Legal Counsel for the Office of the State Engineer requested that a few items be added to Section 301. These additions are underlined in the handout.

The replacement to the Executive Records Retention and disposition schedule for the Office of the State Engineer has been reviewed by the State Commission of Public Records Internal Review Committee and Legal counsel for the Office of the State Engineer. The signature page from the Office of the State Engineer is pending approval of the amendments submitted in the hand out.

The Chair entertained a **MOTION** to approve the repeal and replacement of the recommendations for the Office of the State Engineer as submitted. Ms. Espinoza **MOVED** and Mr. Valicenti **SECONDED**; the motion **PASSED** unanimously.



### **1.18.780 NMAC, ERRDS, Crime Victim Reparation Commission**

Ms. Trujillo reported that there was a disagreement between the Crime Reparation Commission and the internal IRC committee regarding the length of retention. The Committee has suggested a longer retention and the CVR disagrees with a longer retention period. Ms. Camp stated that the current retention is 75 years from the application received and transfer to Archives. The change is for 100 years of date of person applying for services. The way it is currently written there is no definite action. So there is no way for this particular file to establish closure and therefore it continues to be open and permanent. There would not be a way for them to destroy the file if it can never be closed. She said it was changed to 100 years from the individual applying for services so they may come back at any time for additional services as long as an initial claim had been place. It is due to the life of the claimant or the person applying. It can also be on behalf of a child. It was decided that this retention be more appropriate.

The Chair stated he felt that this was a very long time. Ms. Garcia advised the Commission that these files are opened for the life of the claimant and as long as they have not capped out on their services. If they have capped out then the files is inactive. However, legislation can change the cap, which would allow the individual to go for more services throughout their lifetime.

The Crime Reparation Commission is in disagreement for the fact that they want the retention for 20 years. The IRC didn't agree that time frame was sufficient. The Chair asked if there was a 20 year limit. Ms. Garcia stated that there was not a 20 year limit on anything in this item. She explained how to make a claim.

The Chair asked for clarification. Ms. Trujillo stated that it is for the protection of the crime victim for their lifespan, whether they have capped out or not. She stated that Ms. Garcia was correct in stating that the Legislature can change time periods. The claimants could apply for a digitization plan and if the imaging plan met requirements then they could digitize these records and then create microfilm to take up less space.

Mr. Pappas asked if the current time frame is 20 years. Ms. Camp stated that it was 75 years from date of application. Mr. Pappas said that it was not from date of birth. Ms. Trujillo stated that it was date of application. Ms. Camp stated that the Crime Reparation Commission has only been in existence for 10 years. They have not been created long enough to have a closure date due to retention. Mr. Pappas asked to explain the claimant process. Ms. Garcia discussed and explained the process. Secretary Burckle asked how many records are produced every year.

Ms. Camp stated she didn't know how many are created each year, but there are 772 boxes currently in storage. Ms. Salazar asked if the Crime Victims Reparation Commission had made a statement on the 20 year recommended disposition or if the disagreement was coming from the Director. Ms. Camp stated that there had been several communications with the Bureau Chief and the Director of the Crime Victims Reparation Commission. She said the Director would not sign the approval page.

The Chair entertained a **MOTION** to approve the replacement of the *1.18.780 NMAC, ERRDS, Crime Victim Reparation Commission* with the recommended retention change. Mr. Pappas **MOVED** and Ms Valencenti **SECONDED**; the motion **PASSED** unanimously.

### **1.13.4 NMAC, Records Management Requirements for Electronic Messaging**

Ms. Trujillo distributed a packet of information for review related to Secretary Burckle's question about the different powers and responsibilities of the Commission versus the State Records Administrator. She stated the packet included statutory language regarding the duty and powers of the Commission and the Administrator and that it does state that both the State Record Administrator and the Commission have the authority to adopt rules. She stated that the separation of the two in the past had been that the Commission adopted record retention schedules and the Administrator has adopted rules related to the function of the agency.

Ms. Trujillo stated that she is requesting that the Commission repeal 1.13.14 NMAC so the Administrator could work with staff and promulgate a new rule. The reason she is asking for the repeal of this records management requirement is because it appears from the record that although the issuing agency is listed as the Commission of Public Records the record indicates it was adopted by the Administrator. She felt very uncomfortable appealing a rule that legally reflects that it was issued by the Commission of Public Records. The current rule as it stands is much more of a brochure that would give information about how to manage emails and is very confusing and contradictory of other information.

Ms. Trujillo said that Ms. Jackie Garcia and she had the opportunity to present at the Administrative Law Institute that was put on by the Bar Association. She said that there had been much confusion as to how to manage email. Even, the SRCA staff has disagreements of what an email is based on the contents. She said that staff is working on a new rule internally.

She reported that NARA had developed a position bucket that placed a head of an agency in one bucket and clerks in another. She said that she had been in contract with the former Records Administrator who is employed with NARA and that he was very informative in helping with suggestions and best practice. There is also a functionality idea that the majority of our staff had determined might be the option to proceed. Under the functionality ideas, an employee may have three to five folders and the head of the agency may have six or seven.

The Chair asked for clarification. Ms. Trujillo stated that she would like the Commission to repeal the rule and let her work with staff to adopt a process for managing emails. She stated that the Commission could be a part of the working group and she would welcome the input. Mr. Pappas asked if she meant to repeal the whole section. She replied, yes. And she pointed out that in repealing that it is not meant to mean that emails are not kept, because the retention schedules automatically state that emails that are public record must be managed per current retention and disposition schedules.

Mr. Pappas asked if the rule is repealed what takes its place. Ms. Trujillo stated that the same process as the Commission goes through. By leaving that in the Administrator's authority it gives it more flexibility because of the fact that the Commission only meets four times a year. She said it is more of a processing question or an operational than it is a records series retention issue.

The Chair asked what the difference was between the repeal and replacement schedules on the agenda today and what she is requesting. Ms. Trujillo stated that typically the Commission will repeal something and replace it with something. There will be a little bit of a gap but it will still not stop emails from being retained. She said that the agency would have a new rule adopted by March.

She stated that she would like to distinguish that the Commission does the Record Retention Schedules and the State Records Administrator does everything related to the administration of the Public Records Act. Mr. Pappas stated that his Department has a simple directive and asked would a new rule change the process to be more manageable across the board. Ms. Trujillo stated that her staff was working very hard

to make it more compatible to everyone and less confusing. Ms. Trujillo stated that she could notice that the Commission and the Administrator are having a joint hearing. She stated that there were two issues here. First, clarifying the issuing agency and second to simply email retention.

Ms. Jennifer Salazar interjected and stated that the Commission and the Administrator do have authority for rule making. She said what the Administrator is trying to accomplish is to delineate that the Commission adopts retention schedules and the Administrator adopts operational rules. Before she can move forward to have her independent rule authority the current rule must be repealed. Ms. Salazar suggested that the repeal and replace be done at the same time. It will let her in her capacity adopt the rules going forward.

The Chair entertained a motion to **TABLE** the repeal and replacement until a replacement is drafted. And will be addressed at that time. Ms. Trujillo had a clarifying question, if the Commission is recommending that she have a public hearing for comment for a replacement. So that when she comes to the March meeting she could issue a letter that states that she intends to promulgate this rule in the event that it is repealed and then she can file it the very same day. The Commission accepted the recommendation. Mr. Pappas **MOVED** to **TABLE** and Secretary Burckle **SECONDED** the motion; the motion **PASSED** unanimously.

#### **1.18.551 NMAC, ERRDS, Interstate Stream Commission**

Ms. Tanya Vigil stated that she is recommending that the Commission **TABLE** the executive records retention and disposition schedule for the *1.18.551 NMAC ERRDS, Interstate Stream Commission* at the request of the department. The Chair entertained a **MOTION** to **TABLE** the *ERRDS, for 1.18.551 Interstate Stream Commission*. Ms. Valencenti **MOVED** and Mr. Pappas **SECONDED** the motion; the motion **PASSED** unanimously.

#### **1.13.9 NMAC, New Mexico Historical Records Advisory Board**

Ms. Trujillo presented the next item for consideration. She stated that in the past the Governor's office appointed HRAB members. Through various communications with the Governor's office, and with the assistance of Secretary Burckle and Chair Torrez, the Governor's office approved the Commission taking responsibility for appointing HRAB members. The Public Records Act grants the Commission authority to appoint Advisory Committees upon the recommendation of the State Records Administrator. The Administrator is recommending that the Commission appoint a New Mexico Historical Records Advisory Board and that the Commission adopt a rule to explain how this process works. The rule is before the Commission for consideration and was also sent to the Governor's office for comment. She has not heard a response at this time. She also met with the Boards and Commissions Director and Assistant Director at the Governor's office and had an extensive discussion about this particular subject. There was no disagreement as far as the Commission taking over this responsibility. She asked Secretary Burckle if he had any further comments. He stated that he was glad she coordinated with the Governor's office.

The Chair stated that it was his impression that the Governor was making appointments and that there is not a statute. Ms. Trujillo stated that he was correct. She said that she could not find any rules for any procedures as to how that was done. The Governor's office did ask about statute or rules for appointments.

The Governor's office has well over 300 Boards and Commissions that they have responsibility for appointing. The Administrator presented a solution to legally manage the HRAB and the Governor's office was amenable to giving the Commission authority. Mr. Pappas asked how the Commission would implement this responsibly. Ms. Trujillo stated that the agency would receive and ask for

recommendations and bring them forward to the Commission. The recommendations would come from OSH, Archives, HRAB and would represent diversity of area, culture and expertise.

The Chair did have one request on page two under 1.13.99 C it clarifies that the HRAB shall develop, revise and submit to the NHPRC an annual (stated annual) so that there is a definition of time and State plan including priorities for State Historical Records Projects. This was her recommendation as well. The Chair entertained a **MOTION** to adopt the New Mexico Advisory Board rule as submitted. Mr. Pappas **MOVED** and Secretary Burckle **SECONDED** the motion; the motion **PASSED** unanimously.

## VI. NEW BUSINESS

### A. Possible Amendments to 1.12.7 NMAC, Electronic Authentication

Ms. Trujillo stated that drafting rules to implement this Act continues to be a challenge because of the technical aspect and the dual authority. Specifically, authority for the Commission to adopt standards is found in 14.3.15.2 NMSA and the Administrator has authority and responsibility under the Uniformed Electronics Transaction Act, Section 14-16-18 NMSA. There is also authority and responsibility for DoIT to adopt electronic signature rules.

Mr. Ortiz, the Director for the Administrative Law Division, has been meeting with DoIT, SPO, Department of Health and a number of other agencies to try to draft standards for an electronic signature. She stated that there were a couple of options. One is to leave the PKI electronic authentication that the Commission had adopted, which is the highest level of security. The issue is that it would cost millions of dollars to implement and is not necessary for most documents. Another option is to for the Administrator to adopt another rule that defines the medium and the lower level of authentication and electronic signature and refer back to the Commission's rule, which could cause confusion. Another option is to adopt a joint rule that would cover all the issues.

The Chair asked if the Secretary of State maintained the database for digital signatures to be registered. Ms. Trujillo stated no, the Secretary of State is no longer responsible for digital signatures. Mr. Ortiz stated that the Secretary of State's office had the authentication authority until an amendment to the law moved the authority to the DoIT. The Chair stated that it still said Secretary of State in the rule. Mr. Ortiz said he was correct. Rule 1.12.7 NMAC must be amended to reflect the change in State law. Ms. Trujillo asked if the Commission would like to appoint a task force to review amendments or would the Commission prefer staff develop a recommendation.

She also stated that the Uniform Electronic Transaction Act also grants agencies the authority to adopt their own rule for using digital signatures as long as it meets specified requirements. The Chair asked if the SRCA was using electronic signature. Ms. Trujillo replied, no, but because the agency is creating the Central Electronic Records Repository there have been many conversations about processes and work flow. She reported that adopting electronic signature and document authentication standards would be helpful to SRCA and other agencies.

Ms. Espinoza asked if there would be any red flag tags if someone were to misuse a signature. Mr. Ortiz stated that there were security protocols that could be implemented depending on what digital signature an agency implements.

The Chair asked for clarification regarding agencies that have different standards. Mr. Ortiz stated that the agency's IT Director as well as the CIO for General Services, DoIT, Department of Health and the general council for the State Personnel Office have had communications to avoid multiple standards. Secretary Burckle said that it was very important to him in his position as the Secretary of General

Services to provide rules for electronic signatures. He also expressed thanks to the group for their hard work. Secretary Burckle stated that he felt it was very important to have DoIT as a participant so that Secretary Ackley can sign off. Mr. Pappas stated that what also should be included in the rule that this issue needs to go through the agency's Administrator. Ms. Trujillo stated that there would be a report on progress at the next meeting in March 2015.

**B. Potential Legislation during the 2015 Legislative Session**

Ms. Trujillo presented the Commissioners with a framed poster of the October 2015 Archives month. The Chair thanked Ms. Trujillo and the staff for the generous gift. Ms. Salazar stated that the poster was designed by Ms. Coleman of the Office of the State Historian and it was designed for Archives month.

**VII. DIRECTOR'S REPORT**

Ms. Trujillo stated that the Commissioners could review the Directors Report and that it was very comprehensive and included the different divisions and what they have been working on.

She wanted to point out that the agency will be hiring for the Deputy position and that it had been advertised. She had acquired a letter of recommendation for an individual. She also thanked Melissa Salazar who had been placed as acting Deputy Administrator. She pointed out that the report included copies of newspaper articles the agency had earned. The articles consisted of a Halloween event that was published in Round the Roundhouse and the Santa Fe New Mexican. Also included was an article that she had submitted explaining the importance of preserving electronic records.

**VIII. SCHEDULING OF NEXT MEETING**

The Chair suggested scheduling the next meeting for Tuesday, March 10, 2015. All the Commissioners agreed on the time and date.

**IX. ADJOURNMENT**

The Chair entertained a **MOTION** to adjourn; Secretary Burckle **MOVED** and Mr. Reynolds **SECONDED**; the motion **PASSED** unanimously. The meeting adjourned at 12:35 p.m.

Submitted by:   
Linda M. Trujillo, State Records Administrator

3/10/15  
Date

Attested by:   
Robert J. Torrez, Commission Chair

3/15/15  
Date

Minutes approved on: 3/10/15