

**MINUTES OF THE STATE COMMISSION OF PUBLIC RECORDS  
REGULAR MEETING – August 27, 2013**

The State Commission of Public Records convened at 9:33 a.m. on Tuesday, August 27, 2013 at 1209 Camino Carlos Rey, Santa Fe, New Mexico 87507.

**Members Present**

Frances Levine, Ph.D.	Chair, Director, Museum of New Mexico
Edwynn Burckle	Cabinet Secretary, General Services Department
Patricia Herrera	Representative for Honorable Dianna J. Duran, Secretary of State
Robert Mead, J.D.	State Law Librarian
Robert J. Torrez	Historian
Mark Reynolds	Representative for Honorable Gary King, Attorney General
Luis Carasco	Assistant Attorney General

**Members Not Present**

Tania Maestas	Assistant Attorney General
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**Guests**

Senator Daniel A. Ivey-Soto	New Mexico County Clerks
Connie Torrez	Motor Vehicle Division
Adam Diamond	Motor Vehicle Division

**Staff Present**

John Hyrum Martinez, C.A.	State Records Administrator
Linda Trujillo, Esq.	Deputy State Records Administrator
Antoinette L. Solano	Administrative Assistant
Ruben Rivera	Accounting Auditor
Pete Chacon	Information Technology, Chief Information Officer
Leo Lucero	Director, Records Management Division, RMD
Art Bransford	Director, Administrative Law Division
Jackie Garcia	Agency Analysis, Bureau Chief, RMD
Pete Gurule	Management Analyst, RMD
Jennifer Camp	Management Analyst, RMD
Tanya Vigil	Management Analyst, RMD
Rick Hendricks, Ph.D.	State Historian
Louise Wood	New Mexico Register

**I. CALL TO ORDER**

The Chair called the meeting to order at 9:33 a.m.

**II. APPROVAL OF AGENDA**

The Chair entertained a **MOTION** to approve the agenda. The Chair requested that in future minutes her name be used uniformly as either Ms. or Dr. Mr. Mead **MOVED** and Ms. Herrera **SECONDED** the motion. The motion **PASSED** unanimously.

**III. APPROVAL OF MINUTES – August 27, 2013**

**MINUTES OF THE STATE COMMISSION OF PUBLIC RECORDS**  
**REGULAR MEETING – August 27, 2013**

The Chair entertained a **MOTION** to approve the minutes of the August 27, 2013 meeting. Secretary Burckle **MOVED** and Ms. Herrera **SECONDED** the motion. The motion **PASSED** unanimously.

The Chair asked if there were any additions, corrections or further discussion; hearing none, the Chair called for a vote. The motion **PASSED** unanimously.

**IV. ACTION ITEMS**

**A. Records Retention and Disposition Schedules**

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

Mr. Martinez stated that the first schedule was a proposed amendment to *1.18.333 NMAC*, which would be presented by Ms. Garcia. Ms. Garcia informed the Commission that the amendments were to the Executive Retention and Disposition schedule for *1.18.333 NMAC ERRDS, Taxation and Revenue*. Specifically, the Taxation and Revenue Department was requesting the amendment to define the Instruction section. And changes to section: *1.18.333.204 NMAC* were made to comply with current standards and format styles.

The Chair entertained a **MOTION** for approval of the amendment. Secretary Burckle **MOVED** and Mr. Mead **SECONDED** the motion. The Chair asked if there were any further comments or discussion.

Mr. Martinez reiterated that the amendments were being considered at the request of the Taxation and Revenue department to define that this type of record was of limited importance and could be destroyed when no longer needed for reference. Mr. Torrez asked if the amendment defined the type of record specifically. Mr. Martinez stated that these particular records were dismissed or warning citations. Mr. Torrez asked if they had been dismissed by the courts. Mr. Martinez said, yes.

Mr. Mead asked for clarification of the record series. Ms. Garcia stated that the records were citations, which are hard copies of traffic violations. Statute requires the courts to submit dismissed or voided citations to the Motor Vehicle department. The MVD does not have a statutory use for these records and is requesting authority to destroy the records upon receipt.

The Chair asked if there were any additions, corrections or further discussion; hearing none, the Chair called for a vote. The motion **PASSED** unanimously.

**B. Acceptance of Deed of Gift**

**1. Russell B. Rice Papers**

Mr. Martinez informed the Commission that there was one deed of gift for consideration. Mr. Martinez asked the Commission to excuse the Archives and Historical Services Division Director, Ms. Melissa Salazar, and that Ms. Lujan would be presenting the deed of gift.

Ms. Lujan stated that Kenny Libben, Curator of the Cleo Redd Fisher Museum in Loudonville, Ohio, wished to donate the Russell B. Rice Papers relating to New Mexico Land Survey

**MINUTES OF THE STATE COMMISSION OF PUBLIC RECORDS**  
**REGULAR MEETING – August 27, 2013**

Examinations for the Department of the Interior, General Land Office. The materials relate to Mr. Rice's work as the Examiner of Surveys in New Mexico between 1886 and 1888. The records were originally part of a larger collection; however, museum staff felt that the materials would better serve New Mexico researchers. The records were mailed initially to Deputy State Librarian Joy Pool for consideration. Ms. Pool recommended the records were more appropriate for inclusion at the State Archives.

**Scope and Content:**

The collection comprises approximately .25 linear feet of records. Included in the collection are letters between Examiner Rice and U.S. Surveyor General George W. Julian, General Land Commissioner William A.J. Sparks, and General Land Office Assistant Commissioner S.H. Stockslager. Many letters relate to his salary and to expenses incurred during his examinations. Others materials relate to the Pedro Armendariz Land Grant, the Las Vegas Land Grant, the Dona Ana Land Grant, the Brazita Land Grant, the Hugh Stephenson Land Grant, the Mesilla Civil Colony Land Grant and others. Also included is a portion of his journal, circulars, and some maps, mainly relating to the Armendariz Land Grant.

**Biographical Note:**

According to Mr. Libben, Colonel Russell Bryte Rice was born in 1846, to Alexander Rice and Mary VanSoyoc, Alexander's second wife. He had two sisters, three half-sisters, three half-brothers who died in infancy before Russell's birth. Russell married Alice Hartwell in 1899, and passed away in 1918. James Sharp, the former museum staff member who initiated the transfer, added that Mr. Rice graduated from Lafayette College in Easton, Pennsylvania in the late 1870s and joined the Interior Department shortly after. He was sent to the Dakota Territories and Minnesota and then to New Mexico. According to Mr. Sharp, Russell was a native of Perrysville, whose pioneer family came to the area in about 1810.

The donation will complement other collections relating to land in New Mexico, including the Spanish Archives of New Mexico, Series 1, the William Blackmore Land Records Collection, the Land grant Collection, the United States General Land Office Records, as well as others.

The Chair asked if there was any comment or discussion. Secretary Burckle asked what the procedure was once the agency takes custody of the records and how the general public would gain access to them. Ms. Lujan explained the process for a new collection, including how the staff will make the collection available on-line. Mr. Mead asked if any of the documents are scanned in the process. Ms. Lujan stated the staff tries to scan as much as possible. The Chair asked to clarify who the correct donor was on this particular collection. Ms. Lujan stated that it was Mr. Libben.

The Chair said that her only concern was that it be clarified that the Curator has the authority of the Museum to donate a collection. And that it was not Mr. Libben himself but that the Museum had given permission for the donation.

The Chair entertained a **MOTION** to accept the deed of gift. Mr. Mead **MOVED** and Mr. Reynolds **SECONDED** the motion. The motion **PASSED** unanimously.

**MINUTES OF THE STATE COMMISSION OF PUBLIC RECORDS**  
**REGULAR MEETING – August 27, 2013**

**C. FY 15 Appropriation Request**

Mr. Martinez stated that Ms. Trujillo, the Deputy State Records Administrator and CFO, would present the FY15 appropriation request. Ms. Trujillo said the agency is requesting the two term positions be changed to permanent positions for the next budget year and that the agency's analyst at DFA had agreed to the request. The Chair asked if it had approval of the State Personnel Office. Ms. Trujillo said that there had been some confusion but that SPO would not change the positions from temporary to permanent without the authority from HB2 and once the legislation is signed by the Governor the request would be sent to SPO. Mr. Torrez asked if this process maintained funding for the positions. Ms. Trujillo said, yes.

Ms. Trujillo also explained that the agency had opted to give all employees a one percent raise from the FY14 appropriation. Mr. Mead asked about the agency's vacancy rate. Ms. Trujillo reported that the agency was currently at a 19 % vacancy rate, which was still too high, but the agency was attempting to fill the positions that are funded. Filling these positions will bring the agency's vacancy rate down to 10%.

Secretary Burckle asked if the agency was turning in to SPO all the required paper work. Ms. Trujillo stated they were and that the agency is working on filling positions that have remained vacant for more than three years. She said that the positions still vacant were the ones that will support and assist in the implementation of the CERR program. The funded for CERR is authorized for an additional two years and until there is work in progress the positions will not be filled.

Ms. Trujillo noted that the hiring process was moving faster since SPO had authorized all agencies to advertise vacant positions. She also noted that the agency would have vacancy savings so the strategy is to over hire in preparation for additional funding, retirement and resignations or transfers. Mr. Torrez asked for clarification of over hiring. Ms. Trujillo explained that DFA recommends agencies plan for a 4%-5% vacancy rate and to hire slightly more than the budget will accommodate, knowing that within a two year period there will always be retirements, resignations and/or transfers. She then reviewed the 300 category expenses and noted that the budget had not changed significantly. The request includes \$10,000.0 for re-granting and \$5,000.0 for the History Scholars program. The audit was increased and the IT request was slightly decreased.

The Chair inquired about the Historian's website and its funding. Mr. Martinez stated that the deadline for the updates would be in October and that he was confident with the IT staff's management of the website. Ms. Trujillo interjected that if needed, there are funds for website assistance. Mr. Torrez said in the justification of the 300 category the NMHRAB naming was incorrect. Mr. Reynolds asked if there were matching federal funding. Ms. Trujillo replied, yes. Ms. Trujillo went on to explain the in state miles and fares. She said that this year the Records Management staff was nearly fully staffed and that the State Historian has been reimbursed for his travel. The Chair asked if the agency used the state motor pool vehicles. Ms. Trujillo replied, the agency uses the motor pool periodically, but staff typically uses their own vehicles and get mileage reimbursement.

**MINUTES OF THE STATE COMMISSION OF PUBLIC RECORDS**  
**REGULAR MEETING – August 27, 2013**

The Chair asked Secretary Burckle what his thoughts were regarding staff using personal vehicles. Secretary Burckle said he preferred staff use motor pool vehicles. Mr. Reynolds stated that from the perspective of the Attorney General's office, for liability reasons, using state motor pool vehicles was preferred. Secretary Burckle said that the motor pool had different options, including hourly rates.

Ms. Trujillo next noted that the Boards and Commission's expenses were increased to 2.8 due to the nine members on the NMHRAB board. She stated that she would increase the transportation expense and move the agency to using the State motor pool and thanked Secretary Burckle for his assistance.

The Chair inquired about the funds requested for expansion of the Albuquerque Records Center. Ms. Trujillo stated that the agency had submitted an ICIP request for FY 15, which was the same as the FY 14 request. Mr. Robert Torrez asked if the state was self-insured or if it was private insurance. Secretary Burckle replied that the state was self-insured.

Ms. Trujillo advised the Commission that the IT maintenance was less than last year. The Chair asked if the agency had a map scanner. Mr. Martinez said yes, the archives had a scanner. Ms. Trujillo noted that the agency had looked at purchasing copy machines rather than pay a maintenance fee but being a smaller agency it was more expensive to do so. Secretary Burckle said it would be better if the agency owned its own copiers. Ms. Trujillo stated that HP had come in and reviewed options. The Chair stated that the agency may want to look at what the State Library has with leasing equipment. Ms. Trujillo said that she would review it. Secretary Burckle replied that this would be logical. The next page was in dealing with the DoIT fees and she advised that no noticeable changes were done.

Ms. Trujillo noted the rent for the Albuquerque Record Center was increasing and has one more year on the contract. She said she hopes to move forward with PSD on a new lease agreement and or moving to another building. Secretary Burckle advised that we review before FY15. Mr. Mead inquired about the time frame if the Albuquerque Record Center was to move. Mr. Martinez reported there is 36,000 cubic feet of material with estimation of at least one year to move. The Chair asked if the collections have to be climate controlled. Mr. Martinez said that most of the material will ultimately be destroyed and does not need climate control, but that there was a small portion of material that is permanent archival records. The Chair stated that she would like a report regarding the logistics of moving at the next meeting. This would give all parties an idea of what needs to be done. Mr. Martinez stated that the destruction would still be a concern. The Chair asked if the agency had access to one time funds for the expansion or moving cost. Ms. Trujillo said that it would be possible through DFA. This would be reviewed if the agency acquired the funds for more shelving and a lease expansion. The Chair asked if there was staffing for destruction of records. Mr. Lucero explained the process. Mr. Reynolds asked if the current space was adequate and if it needed the expansion space and if space was available next to the current space.

Mr. Martinez said that the current space in the Albuquerque Record Center had been full for the past four years but that the owner of the space said it would be available. At the last legislative session it was stated that there would be no expansion of currently leased facilities. This issue of

**MINUTES OF THE STATE COMMISSION OF PUBLIC RECORDS**  
**REGULAR MEETING – August 27, 2013**

space therefore had not been included in the ICIP. Ms. Trujillo stated that although there were other state spaces available there were more issues to consider. The agency was very fortunate to receive the permission to expand the Santa Fe site. Secretary Burckle explained his view on the procedures and said he would review the lease agreement.

Ms. Trujillo explained the cost and procedures of employee training and reported that advertising costs were hard to predict. The Chair asked what the agency advertised. Mr. Martinez stated the agency advertised rule and hearing notices published in the Albuquerque Journal and the New Mexico Register. The Chair asked if any of the programs being done by the State Historian's office needed advertising costs or was it done via the internet. Mr. Martinez said that it was basically done through established networks. Mr. Torrez commented that he felt that the funding was not sufficient enough for the agency. Ms. Trujillo stated that this was just a small part of the cost for employee training which included registration fees. She pointed out the line items. Mr. Reynolds commented that if the new state rules act would get passed the agency would have many more notices to publish. Ms. Trujillo stated that the grants for local governments had been reduced from \$20,000 to \$16,200. The next page dealt with mileage, air fare, taxi fares and meals. She said she would have to adjust the cost of the lodging fees to reflect actuals spent for FY13.

She explained that the agency's 300 and 400 categories remained a flat budget and the 200 category at an 11% increase which in turn would give a 2% to 3% increase after review. Ms. Trujillo further stated there were no significant changes to revolving fund.

She reiterated that there was really no change and that everything remained the same. The Commissioners had questions on staff travel and she said on page three there was \$3,700 for mileage and fares and another \$3,000.0 for meals and lodging. Mr. Torrez asked about the difference of travel expenses for Records Management as opposed to Archival and Administrative staff. Ms. Trujillo said training was divided between funds 179 (general funds) 371 (revolving funds), Snap Grant (federal funds), and the CERR funds and that some training expense would be covered through the CERR project funding. Secretary Burckle asked to clarify how the revenue is generated for the agency. Mr. Martinez stated that the majority of the revenue is generated by two different sources: (1) is publication fees, state agency's pay to publish both notices and adopted rules in the New Mexico Register; and (2) is the sale of boxes by both Record Centers and the Archives. He said there were copy fees but those are not used as much due to online usage.

Ms. Trujillo discussed submitting a flat budget and noted that she had to submit a budget on federal funds. The Chair entertained a **MOTION** to approve the appropriation request for FY15. Mr. Mead **MOVED** with the caveat to make any additional changes that would be needed. Mr. Reynolds **SECONDED** the motion. The motion **PASSED** unanimously.

**V. Old Business**

**A. County Records**

Mr. Reynolds stated that on behalf of the AG's Office he would answer any county records questions. He said he had excused Mr. Luis Carerras to attend another meeting. The Chair said she didn't have any other news on the issue of the county records. Mr. Martinez stated that Mr.

**MINUTES OF THE STATE COMMISSION OF PUBLIC RECORDS**  
**REGULAR MEETING – August 27, 2013**

Mead would be presenting. Mr. Mead stated that the subcommittee had not had sufficient time to deal with the issues pertaining to the county records, but the group had two recommendations. He said essentially there is a record retention schedule for a county that is advisory and the State Records Administrator is given the first right of refusal within 60 days. This is what the statute currently states. The Committee doesn't think it should extend the retention schedule in a format that looked like a statutory required retention schedule. Mr. Mead said the next recommendation is dealing with microfilm that is currently not being filmed at the scheduled standards for permanent storage. The statute does allow for the state records administrator to review, give advice or consult and ultimately have the right to approve or disapprove a plan. But it didn't have county listed in the schedule. He said we could argue the fact or have the legislature try to resolve the issue.

Mr. Martinez stated that Senator Daniel Ivey-Soto, who is also the executive director at New Mexico Clerks. Senator Ivey-Soto discussed county record issues and said he preferred the Commission and the counties reach an understanding regarding appropriate disposition and preservation of records. He also said he would like to see each county adopt a retention schedule and have the state records administrators' guidance as the counties are learning the procedures. The Commission discussed these particular points with Senator Ivey-Soto.

Mr. Reynolds stated that he agreed with everything that was said as far as current state law not give the State Records Administrator authority to mandate any issues over the county except for one small exception over microphotography. He said that he believes a statutory change would be the best way to handle this confusion along the lines of the Senator's concerns. He stated that in regards to microphotography, the Attorney General did offer an opinion in 1979 which is still valid, meaning the law had not changed. He said *14.3.15 NMAC*, states that microphotography systems used pursuant to this section should comply with minimum standards approved by the NM Commission of Public Records.

The opinion issued by the AG's office is that this particular provision in section c is particular to county government however, in other parts of this section it specifically states for state agencies. He said that section applies to all public officials whether in state agencies or not from the Attorney General's opinion and is not a court decision which has never been tested in court. So the current opinion of the AG's office is that the Commission of Public Records and the Administrator through them does have the authority to approve microphotography plans of county governments. He said other than that it appears that records and retention and disposition schedules would be up to the counties discretion; except for the right of first refusal.

The Chair inquired if the Commission should propose language for these issues. Senator Ivey-Soto stated that because it is a short session, the Governor would have to approve for an amendment to be considered, but there would be some technical issues that could be worked on. Mr. Torrez asked if the Senator felt resistance from the county level to have this mandated. Senator Ivey-Soto suggested working with the Association of Counties to resolve any issues. His concern is that there be uniformity for all counties. The Chair asked if the State Records Administrator, along with the Senator would present this to the County Commissioners. She asked if this Commission should consider a directive to draft legislation. She said she would like the current committee to review these issues.

**MINUTES OF THE STATE COMMISSION OF PUBLIC RECORDS**  
**REGULAR MEETING – August 27, 2013**

Mr. Torrez asked if this involved any of the municipalities. Mr. Ivey-Soto said that he thought the municipalities would consider joining the efforts of the committee. He explained the current rule procedures of the counties.

Mr. Reynolds advised the Commission that a statutory change is ultimately going to be needed for there to be consistent records schedules throughout the state. He said it is within this Commission's authority to make a rule change specific to the microphotography and he proposed putting a rule change on the agenda to give the state administrator the authority to approve microphotography plans for local government agencies. This derives from *14.3.15 NMAC, Section C.* and the Attorney General's 1979 opinion. The Chair inquired if the agency needed a public notice before the next regular meeting in order to propose these rules. He said that it would be essential to place it on the agenda to take a vote for proposal.

Mr. Martinez stated that a notice is sent for all rule changes before the regular meetings. Mr. Reynolds stated that the proposed rule change on microphotography plans of county governments and the possible statutory changes to record retention are applicable to local government agencies. He said that would be sufficient. Secretary Burckle advised to get in contact with the Governor's office. The Chair asked if the Commission should get in contact with the Secretary of State for direction. She asked Mr. Martinez for his assistance.

**B. Building Issues**

Mr. Martinez reported that there had been a flood in the building and most of the damage was on the upper level floor, but no records were damaged. The upstairs lobby was flooded due to the court yard filling with water and the drains being plugged. The other area affected was the kitchen area in the administration area by the restrooms. He said the water that comes through the exit door was cleaned and the vinyl molding was removed. The major area of the flooding was in the area between micrographics and the record center hallway due to the courtyard filling with rain water. The excess water came in under the foundation between the walls, leading to removal of the hallway tile. The walls have been painted but the tiles have not been replaced. He said the hallway tiles were scheduled for replacement before the flood damages occurred. The Chair asked if the wall would be waterproofed. He said, yes that the General Services Department was handling the majority of the work but that an outside contractor had been hired to do the tile due to the fact that there were insurance issues with the tile before the damage. The area will be monitored for any mold issues as well.

Mr. Martinez give an update of the security cameras that were installed and the water system for fire suppression. He said he had taken a tour of what had been completed and reported that GSD was upgrading the security panels that control the access cards to the building. He stated that there were still a few issues that needed to be completed and APIX, the company who installed the security cameras, was monitoring the security cards issues. Mr. Martinez stated that Secretary Burckle had provided a timeline for the building expansion RFP; specifically for acquiring an architectural engineer. The Chair thanked Secretary Burckle for his assistance.

**VI. Executive Session**

The Chair entertained a **MOTION** to go into executive session to discuss limited personnel matters, annual review of the State Records Administrator, pursuant to Paragraph 2 of



**MINUTES OF THE STATE COMMISSION OF PUBLIC RECORDS**  
**REGULAR MEETING – August 27, 2013**

Subsection H of Section 10-15-1 NMSA 1978. Mr. Reynolds **MOVED** and Ms. Herrera **SECONDED** the motion. Ms. Solano conducted a roll call vote. Chair Levine, yes; Ms. Herrera, yes; Mr. Mead, yes; Secretary Burckle, yes, Mr. Torrez, yes; Mr. Reynolds, yes. The motion **PASSED** unanimously and the Commission went into executive session at 11:06 a.m.

The Commission re-convened the regular meeting at 11:33 a.m. The Chair stated that only limited personal matters, specifically the annual review of the State Records Administrator, was discussed during the closed session and no action was taken. The Chair entertained a motion to come out of executive session. Mr. Reynolds **MOVED** and Ms. Herrera **SECONDED** the motion. The motion **PASSED** unanimously.

The Chair reported that she wanted the record to reflect that the Commission was very pleased with the performance of the State Records Administrator. Mr. Reynolds entertained a **MOTION** to note for the record that the Commission has given Mr. Martinez a very positive evaluation and commends him for his work with the agency. Secretary Burckle **SECONDED** the motion. The motion **PASSED** unanimously.

**VII. Director's Report**

Mr. Martinez reported that the last page was omitted from the original packet and distributed the omitted page. He stated that the Records Management division had hired a new management analyst, Ms. Tanya Vigil, who came from the Department of Game and Fish. He said that Ms. Sonya Bachicha who was hired recently as the new financial specialist had moved on to a position at the Game and Fish Department. The vacant financial specialist position has been posted through SPO and Ms. Trujillo and Mr. Rivera were scheduling interviews. He stated that he anticipated filling more vacant positions and that the agency was over hiring at this point to accommodate projections for next year. He then explained the performance measures and the completion percentages.

Mr. Martinez stated that the record center did not have destruction during the last quarter and that the agency will do destruction two times a year. Mr. Mead asked if non records were included. Mr. Martinez said that non records are not counted. He further reported that some agencies, although it is not mandated, bring records to the center for destruction and any sensitive or confidential records must be destroyed in accordance with rule. Mr. Torrez asked to clarify the meaning of record or file. Mr. Martinez stated that these records were cubic boxes. Mr. Torrez asked if the whole box was destroyed. Mr. Martinez stated, yes.

Mr. Martinez said that the State Historian's office has been traveling and doing many presentations. He stated that he was asked to present at a Genealogy class earlier this month and that it went very well and the presentation will be included in Archives month in October.

Mr. Martinez reported that Ms. Salazar had spoken at the Society of American Archivists in New Orleans and he had spoken on the importance of preserving legal records and state rules at the National Associations of the Secretary of State. He said he was asked my Homeland security at the state level to assist in proofreading its plan and ensuring the language represented the importance of essential state records, which will be included in all states disaster planning. He said in addition to this he had been given a seat in the emergency operations center and on

**MINUTES OF THE STATE COMMISSION OF PUBLIC RECORDS**  
**REGULAR MEETING – August 27, 2013**

October 2, 2013 will be doing a full scale emergency drill. He said in October the agency will be hosting Archives month and the Governor had issued a proclamation regarding the importance of Archives month. There is also Genealogy day on October 24, 2013. The agency will be having multiple presentations on October 25 with the theme being growing as we go about the farming and ranching of New Mexico.

The Chair requested that Mr. Martinez provide the Commission members with an organizational chart showing the chain of command for the agency. Commission members also wanted information regarding agency procedures including how issues are resolved within the agency. The Commission also requested information regarding professional codes of conduct used in the archives.

The Chair requested an opportunity to review the annual agency goals and for a report on the agency strategic plan. Mr. Martinez stated that the strategic plan had been developed a year ago with the assistance of Chair Stan Hordes and Secretary Burckle. The group put together a five year plan for the agency. He noted that the performance measures were included in the plan and are updated every year. Mr. Martinez told the Chair he would distribute the information at the end of the meeting. The Chair asked if there was any further discussion, comments or observations; hearing none; the Chair asked for the next item of discussion.

**IX. SCHEDULING OF NEXT MEETING**

The Chair asked if December 3, 2013 was an acceptable date for the next Commission meeting. Hearing no conflicts; the Chair scheduled the next meeting for December 3, 2013.

**X. ADJOURNMENT**

The Chair entertained a **MOTION** to adjourn. Mr. Mead **MOVED** and Secretary Burckle **SECONDED** the motion. The motion **PASSED** unanimously. The meeting adjourned at 11:46 a.m.