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BEFORE THE PUBLIC EDUCATION COMMISSION
STATE OF NEW MEXICO

TRANSCRIPT OF PUBLIC MEETING PROCEEDINGS
February 26, 2013
1:30 p.m.
Mabry Hall - Jerry Apodaca Education Building
300 Don Gaspar
Santa Fe, New Mexico

REPORTED BY: Cynthia C. Chapman, RMR-CRR, NM CCR #219
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A P P E A R A N C E S

COMMISSIONERS:

MS. CAROLYN SHEARMAN, Chair
MR. EUGENE GANT, Vice Chair
MR. VINCE BERGMAN, Secretary
MR. JEFF CARR
MS. MILLIE POGNA
MS. CARMIE TOULOUSE

STAFF:

MS. ABBY WEAR
Counsel for the CSD
Assistant General Counsel for the PED

MR. MARK REYNOLDS
MR. MIKE WILLIAMS
Counsel for the PEC
Assistant Attorneys General
State of New Mexico

MS. BEVERLY FRIEDMAN, PED Liaison to the PEC

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1 (February 26, 2013, 1:30 p.m.)

2 THE CHAIR: I call to order this special
3 meeting of the New Mexico Public Education
4 Commission. Secretary Bergman, will you call the
5 roll, please?

6 COMMISSIONER BERGMAN: Commissioner Carr.

7 COMMISSIONER CARR: Here.

8 COMMISSIONER BERGMAN: Commissioner Pogna.

9 COMMISSIONER POGNA: Here.

10 COMMISSIONER BERGMAN: Commissioner
11 Toulouse.

12 COMMISSIONER TOULOUSE: Here.

13 COMMISSIONER BERGMAN: Commissioner Gant.

14 COMMISSIONER GANT: Here.

15 COMMISSIONER BERGMAN: Commissioner
16 Shearman.

17 THE CHAIR: Here.

18 COMMISSIONER BERGMAN: Commissioner
19 Bergman is here. Madame Chair, you have six members
20 present. That is a quorum.

21 THE CHAIR: Thank you, Secretary. We do
22 have a quorum. We'll move to Item 3 on the agenda,
23 the Pledge of Allegiance, and we'll be led by Millie
24 Pogna; the Salute to the New Mexico Flag, by
25 Commissioner Toulouse.

1 (Pledge of Allegiance and Salute
2 to the New Mexico Flag.)

3 THE CHAIR: Thank you, Commissioners.
4 Next item on the agenda is Approval of the Agenda.

5 COMMISSIONER CARR: So moved.

6 COMMISSIONER POGNA: Second.

7 THE CHAIR: Motion by Commissioner Carr;
8 seconded by Commissioner Pogna, to approve the
9 agenda. All those in favor, please say "Aye."
10 (Commissioners so indicate.)

11 THE CHAIR: Any opposed, same sign?
12 Motion carries.

13 Next item is No. 5, Executive Session.
14 I'll ask our attorney, Mark Reynolds, to speak to
15 this issue.

16 MR. REYNOLDS: Sure. Madame Chair, I
17 would invite a member of the Commission to make a
18 motion along these lines. The motion would be to go
19 into Executive Session, pursuant to Section
20 10-15-1(H)(7), NMSA 1978, to have an
21 attorney-client-privileged discussion on pending
22 litigation, specifically possible appeal of the
23 Secretary-Designate's decision on the New Mexico
24 Corrections -- Connections Charter Academy and Taos
25 International School.

1 COMMISSIONER GANT: So moved.

2 COMMISSIONER BERGMAN: Second.

3 THE CHAIR: Have a motion by
4 Commissioner Gant and second by Commissioner Bergman
5 to go into executive session. Is there any
6 discussion? Secretary Bergman, will we have a
7 roll-call vote, please?

8 COMMISSIONER BERGMAN: Commissioner Carr.

9 COMMISSIONER CARR: Yes.

10 COMMISSIONER BERGMAN: Commissioner Pogna.

11 COMMISSIONER POGNA: Yes.

12 COMMISSIONER BERGMAN: Commissioner
13 Toulouse.

14 COMMISSIONER TOULOUSE: Yes.

15 COMMISSIONER BERGMAN: Commissioner Gant.

16 COMMISSIONER GANT: Yes.

17 COMMISSIONER BERGMAN: Commissioner
18 Shearman.

19 THE CHAIR: Yes.

20 COMMISSIONER BERGMAN: Commissioner
21 Bergman votes "yes." Again, we have a six-zero
22 vote, Madame Chair.

23 THE CHAIR: Thank you. By unanimous vote,
24 the Commission votes to go into executive session.

25 We would invite the people in the audience to step

1 out, please. And when the executive session is
2 completed, we will let you know, and you can come
3 back in. Thank you very much.

4 (Executive session conducted
5 off the record.)

6 THE CHAIR: Commissioner Toulouse.

7 COMMISSIONER TOULOUSE: Madame Chair, I
8 move that we now, at 2:22 p.m., return to an open
9 meeting and go back on the record.

10 And, for the record, I would like us, in
11 the motion, to state we made no -- took no vote.

12 THE CHAIR: Thank you. Do we have a
13 second?

14 COMMISSIONER BERGMAN: Second.

15 THE CHAIR: Motion and second. Motion by
16 Commissioner Toulouse, second by
17 Commissioner Bergman, to go back into open session.
18 Mr. Secretary, may we have a roll-call vote?

19 COMMISSIONER BERGMAN: Commissioner Carr.

20 COMMISSIONER CARR: Yes.

21 COMMISSIONER BERGMAN: Commissioner Pogna.

22 COMMISSIONER POGNA: Yes.

23 COMMISSIONER BERGMAN: Commissioner
24 Toulouse.

25 COMMISSIONER TOULOUSE: Yes.

1 COMMISSIONER BERGMAN: Commissioner Pogna.

2 COMMISSIONER GANT: Yes.

3 COMMISSIONER BERGMAN: Commissioner
4 Shearman.

5 THE CHAIR: Yes.

6 COMMISSIONER BERGMAN: Commissioner
7 Bergman votes "yes." Madame Chair, it's a
8 six-to-zero vote.

9 THE CHAIR: Thank you, Mr. Secretary. By
10 a vote of six to zero, we are back in session in an
11 open meeting. Only those items in the motion were
12 discussed. There were no votes taken in the
13 executive session.

14 We will move on to Item No. 6, Action on
15 New Mexico Connections Charter Academy.
16 Commissioners? Commissioner Bergman?

17 COMMISSIONER BERGMAN: I move that the
18 Public Education Commission appeal the January 30,
19 2013, decision of the Department of Education
20 Secretary-Designate on New Mexico Connections
21 Charter Academy to District Court and to seek a stay
22 of the Secretary-Designate's decision.

23 COMMISSIONER GANT: Second.

24 THE CHAIR: We have a motion by
25 Commissioner Bergman, second by Commissioner Pogna,

1 to appeal the -- the decision of the
 2 Secretary-Designate. Is there any discussion,
 3 Commissioners? Hearing no discussion, I will ask
 4 for a roll-call vote. Mr. Secretary.

5 COMMISSIONER BERGMAN: Commissioner Carr.

6 COMMISSIONER CARR: Yes.

7 COMMISSIONER BERGMAN: Commissioner Pogna.

8 COMMISSIONER POGNA: Yes.

9 COMMISSIONER BERGMAN: Commissioner
 10 Toulouse.

11 COMMISSIONER TOULOUSE: Yes.

12 COMMISSIONER BERGMAN: Commissioner Pogna.

13 COMMISSIONER GANT: Yes.

14 COMMISSIONER BERGMAN: Commissioner
 15 Shearman.

16 THE CHAIR: Yes.

17 COMMISSIONER BERGMAN: Commissioner

18 Bergman votes "yes." Madame Chair, that is another
 19 six-to-zero vote.

20 THE CHAIR: Thank you, Mr. Secretary. By
 21 a unanimous discussion, the motion is unanimous to
 22 appeal the decision on New Mexico Connections
 23 Charter Academy.

24 We will move to Item No. 7, Action on Taos
 25 International Schools -- pardon me -- International

1 School. Do I hear a motion?

2 COMMISSIONER CARR: Madame Chair?

3 THE CHAIR: Commissioner Carr.

4 COMMISSIONER CARR: I move that the Public
5 Education Commission appeal the February 13, 2013,
6 decision of the Department of Education
7 Secretary-Designate on Taos International School to
8 District Court and seek a stay of the
9 Secretary-Designate's decision.

10 COMMISSIONER GANT: Second.

11 THE CHAIR: Motion by Commissioner Carr,
12 second by Commissioner Pogna, to appeal the decision
13 of the Secretary-Designate regarding Taos
14 International School.

15 Is there any discussion among
16 Commissioners? Hearing none, I will ask for a
17 roll-call vote.

18 COMMISSIONER BERGMAN: Commissioner Carr.

19 COMMISSIONER CARR: Yes.

20 COMMISSIONER BERGMAN: Commissioner Pogna.

21 COMMISSIONER POGNA: Yes.

22 COMMISSIONER BERGMAN: Commissioner

23 Toulouse.

24 COMMISSIONER TOULOUSE: Yes.

25 COMMISSIONER BERGMAN: Commissioner Pogna.

1 COMMISSIONER GANT: Yes.

2 COMMISSIONER BERGMAN: Commissioner
3 Shearman.

4 THE CHAIR: Yes.

5 COMMISSIONER BERGMAN: Commissioner
6 Bergman votes "yes." Again, Madame Chair, a vote of
7 six to zero.

8 THE CHAIR: Thank you, Mr. Secretary. By
9 a unanimous vote, the Commission votes to appeal the
10 decision of the Secretary-Designate on the decision
11 of Taos International School.

12 We now move to Item No. 8, PEC Discussion
13 of Current Legislation, including, but not limited
14 to -- the first is House Bill 392 and Senate
15 Bill 376 [verbatim]. Commissioners, I believe you
16 have information on those bills in your notebooks.

17 If I might just speak to this item first,
18 I have given testimony before the House Voters and
19 Elections Committee on House Bill 392. The bill was
20 granted a do-pass. I have testified before the
21 House Education Committee, at which time the
22 committee asked for a committee substitute to that
23 so that the amendments can be incorporated in the
24 bill. It will be heard again in the morning,
25 8:00 a.m., with House Education.

1 This bill seeks to make the Public
2 Education Commission an independent entity, removing
3 its administrative attachment to the Public
4 Education Department, providing for Public Education
5 Commission rule-making authority and staff, removing
6 from the Public Education Department and granting to
7 the Public Education Commission the authority to
8 review decisions to grant, renew, deny, or revoke a
9 charter.

10 Commissioners, I am asking that we endorse
11 this legislation.

12 COMMISSIONER CARR: So moved.

13 COMMISSIONER POGNA: Second.

14 THE CHAIR: Motion by Commissioner Carr to
15 approve. Do I hear a second? Commissioner Pogna?
16 We have a motion to endorse House Bill 392 and
17 its -- its mirror, Senate Bill 476. Motion by Carr,
18 seconded by Pogna. Any discussion? Will a voice
19 vote do?

20 MR. REYNOLDS: Yes.

21 THE CHAIR: We will have a voice vote.

22 All those in favor, please say "Aye."

23 (Commissioners so indicate.)

24 THE CHAIR: Any opposed? Thank you.

25 Motion carries.

1 Next we look at House Bill 460. I believe
2 that's -- and I believe you have a separate handout
3 on that one that is Representative Mimi Stewart's
4 bill. Let me find mine.

5 Commissioners, House Bill 460, relating to
6 public schools, clarifying that the Public Education
7 Department, school districts, and charter schools
8 shall not contract with for- -- pardon me --
9 for-profit entities to manage or administrate --
10 administer a public school or school district or its
11 educational program, clarifying that applicants for
12 chartering and members of governing boards of
13 charter schools must be New Mexico residents.

14 Is there discussion, or do I hear a
15 motion?

16 COMMISSIONER GANT: I so move, that we --

17 COMMISSIONER CARR: Second.

18 COMMISSIONER GANT: All right.

19 THE CHAIR: Motion by Commissioner Pogna,
20 second by Commissioner Carr, that the Public
21 Education Commission endorse House Bill 460.
22 Discussion? All those in favor, please say -- I'm
23 sorry? Commissioner Pogna.

24 COMMISSIONER GANT: Fellow

25 Commissioners -- Madame Chair, fellow Commissioners,

1 this is one that's very important, because it's
2 closing a lot of loopholes that, up to this point,
3 we as a Commission, and as the LEA, the local
4 districts, could not overcome. And Representatives
5 Stewart and Keller have overcome a lot of issues
6 that are still in the books that we've been trying
7 to get fixed for a long time.

8 And I really -- when you talk to your
9 representatives and the senators, see if you can get
10 this one. We need to get this one through this
11 session and passed, because it'll be two years
12 before we can even talk about this again.

13 THE CHAIR: Thank you. Further
14 discussion? Hearing none, we will vote on the
15 motion to endorse House Bill 460. All those in
16 favor, please say Aye.

17 (Commissioners so indicate.)

18 THE CHAIR: Any opposed? Motion carries.

19 The next is Senate Bill 338, an act
20 relating to public schools, establishing a one-year
21 moratorium on the creation of certain online
22 schools, declaring an emergency. Do we have a
23 motion?

24 COMMISSIONER CARR: So moved.

25 COMMISSIONER BERGMAN: Second.

1 THE CHAIR: Motion by Commissioner Carr,
2 seconded by Commissioner Bergman, to endorse Senate
3 Bill 338. Is there discussion?

4 Commissioner Pogna?

5 COMMISSIONER GANT: Again, Madame Chair,
6 this is a very important bill. And -- by Senator
7 Kernan, in that, up to this point, the State of New
8 Mexico and the PED had not addressed the issue of
9 virtual schools. And there's a lot of loopholes
10 that can -- that virtual school people can get
11 through. And what Senator Kernan wants to do is
12 have time to sit down and look at the statutes and
13 straighten out the mess we've got right now with
14 virtual schools.

15 And I would, again, suggest you back this
16 bill as best you can. Anytime you see Senator
17 Kernan, show her your support of this bill. Thank
18 you.

19 THE CHAIR: Further discussion? I'll call
20 for a vote. All those in favor of endorsing Senate
21 Bill 338, please say "Aye."

22 (Commissioners so indicate.)

23 THE CHAIR: Any opposed? Motion carries.

24 The next bill is Senate Bill 377,
25 Statewide Digital Learning Task Force. This is

1 introduced by Senator Linda Lopez and Representative
2 Sheryl Williams-Stapleton, an act relating to public
3 schools creating a Statewide Digital Learning Task
4 Force establishing membership, providing duties,
5 allowing contracts, and making an appropriation.

6 Do I hear a motion?

7 COMMISSIONER CARR: So move.

8 THE CHAIR: Motion by Sena- --
9 Commissioner Gant.

10 COMMISSIONER GANT: Second.

11 THE CHAIR: Seconded by Commissioner Carr.

12 COMMISSIONER CARR: Were you promoting me
13 as a senator?

14 THE CHAIR: Is there discussion?
15 Commissioner Bergman.

16 COMMISSIONER BERGMAN: Is there any chance
17 this is going to adversely affect IDEAL New Mexico
18 in this bill? Does anybody know?

19 THE CHAIR: Commissioner, in my reading of
20 the bill, I don't see that it does. And, of course,
21 I'm no expert. But I did not see anything in here
22 that I felt like would adversely impact IDEAL
23 New Mexico.

24 COMMISSIONER BERGMAN: I just ask, because
25 I have not had a chance to read that bill yet, so --

1 thank you.

2 THE CHAIR: Seeing no further discussion,
3 all those in favor of endorsing Senate Bill 377,
4 please say "Aye."

5 (Commissioners so indicate.)

6 THE CHAIR: Any opposed? Motion carries
7 to endorse Senate Bill 377.

8 Is there any other discussion -- any other
9 legislation to come before the Commission?

10 Next item on the agenda are PEC Comments.

11 COMMISSIONER GANT: No, the Constitution.

12 COMMISSIONER CARR: No, the Constitutional
13 Amendment.

14 COMMISSIONER GANT: Item E?

15 THE CHAIR: Oh, I'm sorry. I missed one,
16 I'm sorry. Let's go back to Item 8, No. E, PEC
17 Constitutional Amendment. Commissioner Carr, I will
18 defer to you on that.

19 COMMISSIONER CARR: Madame Chair. And I
20 would -- we can -- probably should change the
21 resolution to -- should cross out "New Mexico State
22 Legislature" and place in, "Be it resolved that the
23 Public Education Commission supports an amendment to
24 the State Constitution giving oversight and
25 regulatory authority to the New Mexico Public

1 Education Commission in regards to the budget
2 licensing and policy.

3 "Be it further resolved, the Secretary of
4 Education be appointed by the Public Education
5 Commission and have a New Mexico education
6 administration certification;

7 "And, be it further resolved that if a
8 vacancy occurs in the Public Education Commission,
9 the Public Education Commission shall appoint a
10 resident in the district in which the vacancy occurs
11 to that position until the regular election --"

12 (A discussion was held off the record.)

13 COMMISSIONER CARR: "...if a vacancy
14 occurs on the Public Education Commission, the
15 Public Education Commission shall appoint a resident
16 from the district in which the vacancy occurs to the
17 position until the next regular election."

18 And I would -- and I would ask that we
19 vote to support this.

20 THE CHAIR: Is that a motion
21 Commissioner Carr?

22 COMMISSIONER CARR: I make a motion that
23 we support this Resolution.

24 COMMISSIONER GANT: Second.

25 THE CHAIR: Motion and a second to support

1 the Constitutional Amendment regarding the Secretary
2 of Education and the Public Education Commission.

3 Is there discussion? Commissioner Bergman.

4 COMMISSIONER BERGMAN: On this one, I do
5 oppose this one. I expressed my thoughts to
6 Commissioner Carr, and I'll say, between us. But I
7 am opposed to this one. Thank you.

8 THE CHAIR: Thank you. All right.
9 Hearing no further discussion, we'll move for a
10 vote. All those in favor of supporting this
11 Constitutional Amendment, please say "Aye."

12 (Commissioners so indicate.)

13 THE CHAIR: All opposed, the same sign?

14 COMMISSIONER BERGMAN: No.

15 THE CHAIR: Let the record indicate there
16 were five votes in favor, one vote negative.

17 All right. Let's move to Item No. 9, PEC
18 Comments. Any comments from Commissioners?

19 Anything you'd like to bring to the Commission?

20 Seeing no comments, we'll move to the
21 Public Forum. I'm looking for Ms. Friedman. She's
22 gone out to get the sign-up sheet. Let's give her
23 time to get back in here, please.

24 Let me read the segment before I ask
25 anyone to come forward.

1 Public comments and observations regarding
2 education policy and governance issues, as well as
3 the Strategic Plan for Education, are heard at this
4 time.

5 Four-minute time limit per presenter.
6 Persons from the same group and having similar
7 viewpoints are asked to select a spokesperson to
8 speak on their behalf. Multiple and repetitious
9 presentations of the same view will be discouraged
10 and may be ruled out of order by the PEC Chair.

11 I have one person signed up on the Open
12 Forum sheet, and -- the name is Mark Boitano. I'm
13 not sure I -- anyway, I will ask you to come
14 forward. Remember, you have a four-minute time
15 limit. Good afternoon.

16 MR. BOITANO: Okay. Madame Chair, members
17 of the Commission. You know, I --

18 THE CHAIR: Pardon me. Would you use the
19 mic? Press the button down, please.

20 MR. BOITANO: Madame Chair, members of the
21 Commission, I'm going to kind of wear two hats at
22 this short presentation: One, as a former
23 legislator who is intimately involved in the two
24 State laws giving rise to your makeup as the Public
25 Education Commission; and another as a board member

1 of the Connections Academy.

2 You know, a wise man once said it's
3 impossible to understand the present and the future
4 unless we can understand the past.

5 And in 2003, the Legislature passed Senate
6 Joint Resolution No. 2, which revolutionized the
7 makeup of our education delivery system in the State
8 of New Mexico. As you know, at that time, the -- we
9 had a State Board of Education, and we had a
10 State -- we had a State Board of Education. This
11 changed the language to say that the PED shall now
12 control management and direction of all school
13 policy.

14 As you probably know, at that time, the --
15 the Governor and many people in the Legislature
16 wanted to actually eliminate completely the School
17 Board or a Commission.

18 Governor Richardson advocated for this.
19 There was bipartisan support for it in the
20 Legislature. There were actually four bills, and
21 there were two bills on the Republican side, two
22 bills on the Senate side. And we developed a
23 consensus from those two bills that moved forward as
24 Senate Joint Resolution 2.

25 It went to the House, and there was a

1 House amendment put on that would make the PEC
2 policy-making. And that was actually rejected. And
3 it moved along, was passed by the Legislature. It
4 was -- it was voted on by the Governor, and it was
5 signed by the Governor and went to the voters. And
6 then the voters said, "Yes, this is the way that we
7 want to have our education system delivered in the
8 State of New Mexico."

9 The Governor, the Legislature, and the
10 voters agreed that the changes would lead to a more
11 coherent education policy, a system that was able to
12 respond in a timely fashion to the education needs
13 of the state, and, overall, a better managed Public
14 Education Department for the State of New Mexico.

15 And then, in 2006, we passed Senate
16 Bill 600 that created a second chartering authority
17 with the Public Education Commission. And the
18 intent behind that bill was to open the door for
19 charters, because there were problems occurring in
20 the districts throughout the state with the local
21 boards. And so we created a new Charter School
22 Division within the Public Education Department, and
23 we created a second chartering authority.

24 And that bill, if you remember, passed
25 almost unanimously. In the Senate, it passed

1 unanimously. There was one dissent in the House.
2 And we had -- you know, we had feedback from the
3 Attorney General's Office; we had feedback from the
4 PED; we had feedback from the Public School
5 Facilities Department. Everybody gave input. There
6 wasn't any problem with that. And never, at any
7 time, was there any discussion about whether or not
8 the PEC should have policy-making authority.

9 So, you know, Madame Chair, I guess the
10 question is where is the beef? Because I remember,
11 as a minority party member back in the old days, we
12 said, "Well, what if" -- I'm a minority party
13 member -- "What if, you know, we don't like some of
14 the things that the Governor is doing or his
15 appointed Cabinet Secretary is doing? What if?"

16 And we thought, Well, the policy is good
17 for the State of New Mexico, and the voters have
18 said "yes" to it.

19 And now, here we are, in a situation where
20 there is a Governor who's a Republican and a
21 Legislature that's Democratic, and the Commission is
22 primarily made up of Democrats. And we've gotten
23 into this situation where, you know, what's good for
24 the goose is not good for the gander.

25 And, Madame Chair, you know, this is not

1 the way to change policy. If you disagree with the
2 Governor and if you disagree with the
3 Secretary-Designee of Public Education, you need to
4 communicate it with them. The Public Education
5 Commission needs to be communicating with them.

6 The way to resolve disagreements is not to
7 proceed in this manner. So what you're looking at
8 is -- you know, the question is whether or not, you
9 know, the Public Education Commission has standing
10 to make an appeal. We changed the appeal law,
11 actually, in Senate Bill 600. And, you know, the
12 lawyers will duke that out.

13 But, you know, what's good for the goose
14 is good for the gander. And you should be in
15 communication with the Governor and the Secretary of
16 Public Education, because they're the ones that were
17 elected by the voters of the State of New Mexico.
18 They ran on an education agenda that's very similar
19 to what we've seen, you've seen, the legislature has
20 seen, and --

21 COMMISSIONER GANT: Madame Chair, time.

22 MR. BOITANO: -- and let's let the voters
23 decide what our policy should be.

24 THE CHAIR: Thank you. Your time is up.

25 We appreciate your remarks.

1 I see no one else signed up on the Open
2 Forum sheet.

3 The next item on our agenda is Adjourn.
4 May I hear a motion?

5 COMMISSIONER GANT: So move.

6 COMMISSIONER CARR: So move. Second,
7 then.

8 THE CHAIR: It's moved and seconded that
9 we adjourn. Meeting adjourned. Thank you all for
10 coming.

11 (Proceedings adjourned at 2:45 p.m.)
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BEFORE THE PUBLIC EDUCATION COMMISSION
STATE OF NEW MEXICO

REPORTER'S CERTIFICATE

I, Cynthia C. Chapman, RMR, CCR #219, Certified Court Reporter in the State of New Mexico, do hereby certify that the foregoing pages constitute a true transcript of proceedings had before the said NEW MEXICO PUBLIC EDUCATION COMMISSION, held in the State of New Mexico, County of Santa Fe, in the matter therein stated.

In testimony whereof, I have hereunto set my hand on March 4, 2013.

Cynthia C. Chapman, RMR-CRR, NM CCR #219
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