

**MEETING MINUTES
NEW MEXICO STATE GAME COMMISSION
SPECIAL MEETING**

Thursday, November 8, 2018
New Mexico Department of Game and Fish
7816 Alamo Road NW
Albuquerque, NM 87120

9:00 a.m. – 12:00 p.m.

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1 A P P E A R A N C E S

- 2 Chairman Paul Kienzle
- 3 Vice Chairman William Montoya
- 4 Game Commissioner Craig Peterson
- 5 Game Commissioner Ralph Ramos
- 6 Game Commissioner Robert Ricklefs
- 7 Game Commissioner Thomas Salopek
- 8 Game Commissioner Chance Chase

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11 A B S E N T None

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1 CHAIRMAN KIENZLE: Call our meeting to order. We need to do roll call.
2 DIRECTOR SLOANE: Commissioner Salopek.
3 COMMISSIONER SALOPEK: Present.
4 DIRECTOR SLOANE: Commissioner Ricklefs.
5 COMMISSIONER RICKLEFS: I'm sorry. Here.
6 DIRECTOR SLOANE: Commissioner Ramos. Are you on the phone, Mr.
7 Commissioner Ramos?
8 COMMISSIONER RAMOS: Did you say Mr. Ramos?
9 DIRECTOR SLOANE: I did.
10 COMMISSIONER RAMOS: Yes, I am present.
11 DIRECTOR SLOANE: Excellent. Commissioner Peterson.
12 COMMISSIONER PETERSON: Present.
13 DIRECTOR SLOANE: Commissioner Chase.
14 COMMISSIONER CHASE: Yes.
15 CHAIRMAN KIENZLE: I think that was a yes.
16 DIRECTOR SLOANE: Okay. Vice Chairman Montoya.
17 VICE CHAIRMAN MONTOYA: Here.
18 DIRECTOR SLOANE: Chairman Kienzle.
19 CHAIRMAN KIENZLE: Present.
20 DIRECTOR SLOANE: Mr. Chairman, you have a quorum.
21 CHAIRMAN KIENZLE: Right on. Do we have telephones in this building now?
22 Somebody? No telephones here?
23 UNKNOWN SPEAKER: Getting closer.
24 CHAIRMAN KIENZLE: So this is truly [indiscernible] rigged [indiscernible] I'm
25 impressed. Is there duct tape involved? Probably.

1 DIRECTOR SLOANE: Mr. Chairman. If I may add, both Commissioner Ramos and
2 Commissioner Chase, I guess, I need to acknowledge that they were unable to get
3 here in person and that is why they are participating telephonically.

4 CHAIRMAN KIENZLE: Okay.

5 DIRECTOR SLOANE: So that's the case that would be helpful for the record.

6 CHAIRMAN KIENZLE: Commissioner Ramos, is that accurate?

7 COMMISSIONER RAMOS: Mr. Ramos. Yes, that is okay and that is correct.

8 CHAIRMAN KIENZLE: Commissioner Chase?

9 COMMISSIONER CHASE: Yes, sir, that's correct.

10 CHAIRMAN KIENZLE: Okay, great.

11 DIRECTOR SLOANE: Thank you.

12 CHAIRMAN KIENZLE: We are here this morning, special meeting. I don't expect this
13 will take too long, but we are going to consider five applications for certification of
14 non-navigable public water. The first -- we will take these in order -- yes, sir?

15 DIRECTOR SLOANE: Mr. Chairman, I think we need to approve the minutes from
16 the last meeting.

17 CHAIRMAN KIENZLE: Oh, you want to approve minutes?

18 DIRECTOR SLOANE: If we could do that.

19 CHAIRMAN KIENZLE: Okay. We will do that first, then. Can I get a motion to
20 approve the minutes from the last meeting?

21 COMMISSIONER SALOPEK: So moved.

22 COMMISSIONER PETERSON: Second.

23 CHAIRMAN KIENZLE: All in favor?

24 ALL COMMISSIONERS: Aye.

25 CHAIRMAN KIENZLE: Okay.

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1 DIRECTOR SLOANE: Thank you.

2 CHAIRMAN KIENZLE: This is an echo, yeah. Okay, all of that having been said,
3 we'll take these in order, we won't do them all in one lump. We'll consider each one
4 on its own. I will ask for a motion at the end of the meeting on each particular -- or
5 the hearing on each particular application, then we'll go from there. If there's any
6 questions or comments from the Commission about either the process, or the
7 substance of the application, obviously feel free to ask. The way the rule is written
8 we do not take public comment from -- we don't take comment from the public, the
9 question and answer, oral testimony, if you will. Comments are supposed to be
10 submitted in writing. For good cause shown, the Chairman can open the floor for oral
11 comment or public comment, if necessary. Since this is the first of these set of
12 hearings or meetings on these applications, people for and against these
13 applications, I encourage you to submit your comments in writing, follow what the rule
14 says. There is a comment period, it closes before this hearing, roughly seven days
15 before this hearing. The applications along with the comments are transmitted to the
16 Commission, so we've all done our homework by the time we get here. But it's
17 important for this process that your written comments are submitted timely so that we
18 can consider them as we get ready for a hearing like today. This is a little bit more
19 like the federal model. You submit your comments, and typically, at least under the
20 federal model, under some circumstances if you don't submit written comments, you
21 don't have the ability to have standing or the ability to appeal later on. So it's
22 important, again, if you wish to participate in this process to get in early with your
23 written comments and make sure that they become part of the record. As we go
24 through this set of hearings today, I will be admitting evidence into the record. My
25 sense -- unless it's completely inflammatory comment from the public, it's submitted

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1 in writing, I see no reason to exclude any public comments that are submitted in
2 writing. Typically what we get in writing is always thoughtful and useful to the
3 dialogue. But I will address those in turn. Again, get your comments in in a timely
4 fashion, for or against, whatever the application is that you wish to address. All of
5 that having been said, I will call the first one, Application No. 1 for Certification of
6 Non-Navigable Public Waters Segment. This is Chama Troutstalkers, LLC.
7 Commission was provided with the application packet prior to today's hearing. I
8 believe we got only one public comment. Is that correct?

9 DIRECTOR SLOANE: Mr. Chairman, we received only one public comment during
10 the comment period. We've subsequently received two additional ones.

11 CHAIRMAN KIENZLE: Okay. And were the two additional ones outside the 14-day
12 comment period?

13 DIRECTOR SLOANE: They were.

14 CHAIRMAN KIENZLE: Okay. And what was the one that was received during the
15 comment period? Do you recall?

16 DIRECTOR SLOANE: It was -- I forgot the name. I think it was Backcountry Hunters
17 & Anglers.

18 CHAIRMAN KIENZLE: This is a test, by the way.

19 DIRECTOR SLOANE: [indiscernible] I believe it was Backcountry Hunters & Anglers.

20 CHAIRMAN KIENZLE: That's okay. Okay, so on Application No. 1 to be considered
21 for the record, I do have the application and then I've got a comment from
22 Backcountry Hunters & Anglers dated October 24, 2018 that was submitted timely. Is
23 there any other information that was submitted to the Department that needs to be
24 included in the record for Application No. 1?

25 DIRECTOR SLOANE: Mr. Chairman, none that was submitted timely.

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1 CHAIRMAN KIENZLE: Okay. So that having been said, I will admit the application
2 as Exhibit 1. I'll admit the letter from Backcountry Hunters & Anglers dated October
3 24, 2018 as Exhibit No. 2. Are there any questions or comments from the
4 Commission on the application? Anything submitted by the applicant for anything in
5 regard to the comments submitted by Backcountry Hunters & Anglers? Mr. Director,
6 would you tell us what your recommendation was on this particular application?

7 DIRECTOR SLOANE: Mr. Chairman, I reviewed the application and found that it met
8 all of the requirements set forth in rule and, therefore, recommend adoption of the
9 application.

10 CHAIRMAN KIENZLE: Okay. And I received as part of the packet, if you will, on this
11 in advance of the hearing, your letter to the Commission dated August 28, 2018 that
12 does show a recommendation for approval of the application to designate the
13 segment identified in the application as non-navigable public water. We'll go ahead
14 and admit that recommendation as Exhibit 3. Are there any questions on anything
15 that has been admitted so far from Commissioners? All right. So ultimately, what we
16 do -- this having been the first one, I'll kind of layout the process a little bit. We will
17 take final action today on this particular application. Per rule, we are permitted to
18 approve or reject the written determination and recommendation or [indiscernible]
19 rejection, if there is one. [indiscernible] but we are not limited to those options. So we
20 do have some flexibility if, for instance, an application needed to be supplemented,
21 amended, or beefed up a little bit in order to meet the requirements of the rule. But I
22 will call for an amendment or a motion on this one. What will come out of this,
23 essentially, something like findings of fact and conclusions of law, there will be a
24 written agency decision, and from that point it can be appealed or -- it can be
25 appealed, typically within 30 days, and then there is ultimately a certificate that is

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1 issued by the Director and then there are signs that follow from this if the application
2 is approved by the Commission. Any further discussion on Application No. 1? Any
3 questions? From anyone? Okay. I will point out with regard to Application No. 1,
4 which is Exhibit No. 1, we are provided with the information that was required by rule.
5 We have name, address, telephone number, et cetera. We do have recorded deeds
6 which go on for quite a few pages. We do have proof of publication and then we
7 were provided with substantial evidence from the applicant's perspective.

8 [indiscernible] the watercourse or rivers be non-navigable [indiscernible] on a
9 segment by segment basis. There is a report that is attached to the application.
10 There is additional information, it's not strictly required by the rule, it gives further
11 support to the application. All that having been said, I will entertain a motion to
12 approve the application as submitted, which would include a determination and
13 finding that the segment in the application be designated a non-navigable public
14 water. Somebody needs to make that motion if they choose to do so. Other than
15 you.

16 VICE CHAIRMAN MONTOYA: I so move, Mr. Chairman.

17 CHAIRMAN KIENZLE: Can we get a second?

18 COMMISSIONER RICKLEFS: Second.

19 CHAIRMAN KIENZLE: Any discussion -- further discussion on the application for the
20 motion on the table? Hearing none, all in favor?

21 ALL COMMISSIONERS: Aye.

22 CHAIRMAN KIENZLE: Commissioner Chase?

23 COMMISSIONER CHASE: Aye.

24 CHAIRMAN KIENZLE: Any opposed? None opposed. So we will issue a written
25 Agency decision on this particular application, Application No. 1. It is approved.

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1 Application No. 2, this is The Kenneth A. Hersh Qualified Residence Trust and The
2 Julie K. Hersh Qualified Residence Trust on July 24 – I'm sorry, Residence Trust
3 property in San Miguel County. With regard to this property, did we receive any
4 comments other than the Backcountry Hunters & Anglers comment?

5 DIRECTOR SLOANE: Mr. Chairman, the Backcountry Hunters & Anglers was the
6 only comment received.

7 CHAIRMAN KIENZLE: Mr. Simpson [phonetic], you are the big winner, I think, in
8 today's --

9 UNKNOWN SPEAKER: Mr. Chair?

10 CHAIRMAN KIENZLE: Yes?

11 UNKNOWN SPEAKER: I might add that I received an e-mail from the Walleye
12 Federation that has to do with all of these. I am not sure where their comment page
13 would come in, I only received it three days ago, and I see that Mr. Crenshaw is here
14 representing them. I don't know how we would handle that with something that would
15 apply to all of them regarding background information and some of the legal.

16 CHAIRMAN KIENZLE: If they're not timely, I won't admit them as evidence. But that
17 doesn't mean that whoever submits those can't bring their issues up, whether it's
18 through appeal or otherwise. There is a rule, it's got time periods in it, we need to
19 follow it. But I'm mindful of that.

20 UNKNOWN SPEAKER: I wonder if I'm the only one that received the e-mail, Mr.
21 Chairman, but --

22 CHAIRMAN KIENZLE: I don't know if I received one.

23 DIRECTOR SLOANE: Mr. Chairman, that was one of the two comments that I
24 mentioned earlier that did not come in timely.

25 CHAIRMAN KIENZLE: Okay, thank you. So we do have the timely comment from

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1 Backcountry Hunters & Anglers. We have Application No. 2. I will admit both of those
2 into evidence. I will note, both for Application No. 1 and for all of these applications,
3 that we did receive two comments that were not timely submitted. One was Wildlife
4 Federation. Do we know who the other one was, Mr. Director?

5 DIRECTOR SLOANE: Give me just a minute, Mr. Chairman.

6 CHAIRMAN KIENZLE: You are [indiscernible] looking on your phone for the name of
7 that person, I will continue with Application No. 2. Actually, I need you to weigh in on
8 this, Mr. Director, so I will wait until you're done.

9 DIRECTOR SLOANE: Mr. Chairman, we received a comment from [indiscernible]
10 who manages a ranch near Pecos in support. And the comment from Jim Norton
11 [phonetic], New Mexico public land user and enjoyer, opposed.

12 CHAIRMAN KIENZLE: Opposed. Thank you. I will admit, as I said, the application,
13 Exhibit 1, Backcountry Hunters & Anglers, Exhibit 2. Mr. Director, what was your
14 recommendation, written recommendation, on this particular application?

15 DIRECTOR SLOANE: Mr. Chairman, with this application – again, I've reviewed the
16 rule and the application and found that the application met all the requirements of the
17 rule and, therefore, recommend approval.

18 CHAIRMAN KIENZLE: I'm going to admit, as Exhibit 3, the Director's
19 recommendation of approval. Is there any question or comment on Application No. 2
20 from Commissioners? Hearing none, I will entertain a motion to approve Application
21 No. 2 and further determine and find that the segment identified in the application be
22 designated as a non-navigable public water.

23 COMMISSIONER SALOPEK: So moved.

24 COMMISSIONER PETERSON: Second.

25 CHAIRMAN KIENZLE: Any questions, comments, or further discussion? Hearing

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1 none, all in favor?

2 ALL COMMISSIONERS: Aye.

3 CHAIRMAN KIENZLE: Any opposed? None opposed. All right, Application No. 2 is
4 approved. The Chairman will issue written findings of fact and conclusions of law on
5 that particular application. Application No. 3, Z&T Cattle Company, LLC, Mimbres
6 River. We will go through the comment two step here one more time. The only
7 comment we received was Backcountry Hunters & Anglers, October 24, 2018, the
8 one we received timely. Correct?

9 DIRECTOR SLOANE: Mr. Chairman, that is correct.

10 CHAIRMAN KIENZLE: And then the other two that you mentioned, and then maybe
11 a third one, it sounds like, perhaps, from the Wildlife Federation, was not received
12 within the comment period?

13 DIRECTOR SLOANE: Correct.

14 CHAIRMAN KIENZLE: I will admit Application No. 3 as Exhibit 1. I will admit
15 Backcountry Hunters & Anglers' letter, October 24, 2018, as Exhibit No. 2. Mr.
16 Director, what was your recommendation as to Application No. 3?

17 DIRECTOR SLOANE: Mr. Chairman, as with other applications, I reviewed both the
18 rule and the application and found that the application met the requirements of the
19 rule and, therefore, recommend approval.

20 CHAIRMAN KIENZLE: Any questions or comments from Commissioners on
21 Application No. 3 before I call for a motion? Hearing none, I will entertain a motion to
22 approve Application No. 3 and designate the segment identified in the application as
23 a non-navigable public water, as well as determining and finding that that segment is
24 non-navigable public water, I will entertain a motion to that affect.

25 VICE CHAIRMAN MONTOYA: So moved.

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1 COMMISSIONER SALOPEK: Second.

2 CHAIRMAN KIENZLE: Any further discussion, question, or comment on Application
3 No. 3? Hearing none, all in favor?

4 ALL COMMISSIONERS: Aye.

5 CHAIRMAN KIENZLE: Any opposed? None opposed. Application No. 4, Z&T Cattle
6 Company, LLC, Alamosa River. I will note, again, for the record that we received one
7 public comment in a timely, Backcountry Hunters & Anglers. I will admit exhibit as
8 Exhibit 1, Application No. 4. I will also admit as Exhibit No. 2, the letter from
9 Backcountry Hunters & Anglers. I will note for the record that we had three other
10 untimely comments. And Mr. Director, what was your recommendation on Application
11 No. 4?

12 DIRECTOR SLOANE: Mr. Chairman, after reviewing the application and the
13 requirements of the rule, I found that the application met requirements and, therefore,
14 recommend approval.

15 CHAIRMAN KIENZLE: Any questions or comments on Application No. 4? Hearing
16 none, I will entertain a motion to approve the application and further determine and
17 find that the segment identified in the application be designated as a non-navigable
18 public water. Can I get a motion to that effect, please?

19 COMMISSIONER PETERSON: So moved.

20 COMMISSIONER RICKLEFS: Second.

21 CHAIRMAN KIENZLE: Any further discussion, question, or comment on Application
22 No. 4, the motion on the table? Hearing none, all in favor?

23 ALL COMMISSIONERS: Aye.

24 CHAIRMAN KIENZLE: Any opposed? Commissioner Chase?

25 COMMISSIONER CHASE: Aye.

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1 CHAIRMAN KIENZLE: Any opposed? None opposed, the motion carries. We will
2 issue a written decision on this application, as well as Application No. 4. The fifth and
3 final application, Z&T Cattle Company, LLC, Penasco River. Note again, for the
4 record, that we received one timely public comment on this from Backcountry
5 Hunters & Anglers. We received three other comments as identified previously, but
6 they were untimely. I will admit as evidence into the record Application No. 5. I will
7 also admit as Exhibit 2, Backcountry Hunters & Anglers' letter dated October 24,
8 2018. Mr. Director, what was your written determination on this application?

9 DIRECTOR SLOANE: Mr. Chairman, again, after review of the application and the
10 rule, I found that the application met the requirements set forth in the rule and
11 recommend approval.

12 CHAIRMAN KIENZLE: Any questions or comments from the Commission on
13 Application No. 5? Hearing none, I will entertain a motion to approve the application
14 as submitted and further determine and find that the segment in the application be
15 designated as a non-navigable public water. Make a motion to that effect, please.

16 COMMISSIONER RICKLEFS: So moved.

17 COMMISSIONER PETERSON: Second.

18 CHAIRMAN KIENZLE: Any further discussion, question, or comment on Application
19 No. 5? Hearing none, all in favor?

20 ALL COMMISSIONERS: Aye.

21 CHAIRMAN KIENZLE: Commissioner Chase?

22 COMMISSIONER CHASE: Yes, sir. Aye.

23 CHAIRMAN KIENZLE: Okay, motion carries. We will issue a written Agency decision
24 on Application No. 5. That concludes all the applications for today. I will, again,
25 stress to the public and interested parties, get your comments in timely, get them in in

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1 writing. If there was something raised in a written comment that was untimely, we
2 might take oral testimony. If an application is incomplete, or confusing, or needs
3 clarification, we might take oral testimony to, quote unquote, fix that problem or get
4 some more background information. Typically, these hearings are handled in a way
5 that we follow up on the Director's hard work. And so we are not looking at these
6 applications, necessarily, in the first instance. We are having the Director provide us
7 with a written determination based on the application that's made. Then we have
8 written comments that come in, everything gets [lost audio]

9 UNKNOWN SPEAKER: Did you push the phantom button?

10 CHAIRMAN KIENZLE: I didn't do it. Everything gets rolled up and is provided to us
11 a week in advance. So to make this a smooth process, I encourage you to get
12 involved in the process at the earliest possible moment. Make sure that you get your
13 comments in timely. In addition, it is not sufficient to send your comments solely to
14 Commissioners. So there is a process, there is an address, there is an electronic
15 address, do things the right way so there's no question later on whether your
16 comment was included in the packet properly or not as it is transmitted to the
17 Commissioners. Yes, Mr. --

18 DIRECTOR SLOANE: Mr. Chairman, I have a procedural question, I guess. Do we
19 need a [indiscernible] from the Commission for you to sign off on the approval of the
20 findings of fact and conclusions of law?

21 CHAIRMAN KIENZLE: Yes. I think we will do it individually for each five of them, just
22 so it's clear.

23 DIRECTOR SLOANE: So [indiscernible] forward to another meeting or --

24 CHAIRMAN KIENZLE: No. I think we've got -- it's sufficient to give me authorization
25 to sign off on those. So as to Application 1, which was approved, I would entertain a

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1 motion for the Chairman to sign and execute findings of fact and conclusions of law
2 constituting a final Commission or Agency decision on Application No. 1.

3 VICE CHAIRMAN MONTOYA: I will so move, Mr. Chairman.

4 COMMISSIONER PETERSON: Second.

5 CHAIRMAN KIENZLE: Any discussion? All in favor?

6 ALL COMMISSIONERS: Aye.

7 CHAIRMAN KIENZLE: I heard two ayes that time. On Application No. 2, I would
8 entertain a motion for the Chairman to sign and execute findings of fact and
9 conclusions of law constituting a final Agency and Commission decision on
10 Application No. 2.

11 COMMISSIONER SALOPEK: So moved.

12 COMMISSIONER PETERSON: Second.

13 CHAIRMAN KIENZLE: Any discussion? All in favor?

14 ALL COMMISSIONERS: Aye.

15 CHAIRMAN KIENZLE: Ayes have it. As to Application No. 3, I would move -- I
16 would entertain a motion to authorize the Chairman to sign and execute findings of
17 fact and conclusions of law constituting the final Agency or Commission decision as
18 to Application No. 3.

19 COMMISSIONER PETERSON: So moved.

20 COMMISSIONER SALOPEK: Second.

21 CHAIRMAN KIENZLE: All in favor?

22 ALL COMMISSIONERS: Aye.

23 CHAIRMAN KIENZLE: Ayes have it. As to Application No. 4, I would entertain a
24 motion to authorize the Chairman to execute and sign findings of fact and
25 conclusions of law constituting the final Agency and Commission decision as to

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1 Application No. 4.

2 COMMISSIONER SALOPEK: So moved.

3 COMMISSIONER PETERSON: Second.

4 CHAIRMAN KIENZLE: Any discussion? All in favor?

5 ALL COMMISSIONERS: Aye.

6 CHAIRMAN KIENZLE: As to Application No. 5, I would entertain a motion to
7 authorize the Chairman to execute and sign findings of fact and conclusions of law
8 constituting a final Agency decision -- final Agency and Commission decision as to
9 Application No. 5.

10 COMMISSIONER PETERSON: So moved.

11 COMMISSIONER SALOPEK: Second.

12 CHAIRMAN KIENZLE: All in favor?

13 ALL COMMISSIONERS: Aye.

14 CHAIRMAN KIENZLE: Ayes have it. I don't think we've got anything further on
15 today's agenda. Any questions or comments to wrap this up? For those applicants
16 today that are successful, read the rule, there is a process that follows from this.
17 There will be a written decision that comes out, ultimately, that will translate into a
18 certificate that is issued by the Director and, ultimately, there are signs that are
19 available under the rule in the final sections of the rule. So I encourage, both the
20 public and applicants, familiarize yourself with this rule. There are certainly more
21 segments of river water courses and lakes in New Mexico to be considered in the
22 future. This is perhaps -- this is the first group of these, but I am certain in the future
23 there will be more of them. So if there is nothing further, I will entertain a motion to
24 adjourn.

25 VICE CHAIRMAN MONTOYA: So moved, Mr. Chairman.

1 COMMISSIONER SALOPEK: Second.

2 CHAIRMAN KIENZLE: All in favor?

3 ALL COMMISSIONERS: Aye.

4 CHAIRMAN KIENZLE: Ayes have it.

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CERTIFICATE

1
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3 I, Marsha Busson, Certified Verbatim Reporter,
4 DO HEREBY CERTIFY that the
5 above captioned transcription was prepared by me;
6 that the RECORDING was reduced to typewritten
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14

15 I FURTHER CERTIFY that I am neither employed
16 by nor related to nor contracted with (unless
17 excepted by the rules) any of the parties or
18 attorneys in this matter, and that I have no
19 interest whatsoever in the final disposition
20 of this matter.
21

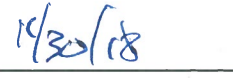
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25

**APPROVAL OF SPECIAL MEETING MINUTES
NEW MEXICO STATE GAME COMMISSION**

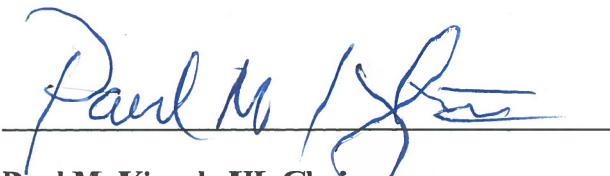
**November 8, 2018
NM Department of Game and Fish Office
7816 Alamo Road NW
Albuquerque, NM 87120
9:00 a.m.-12:00 p.m.**



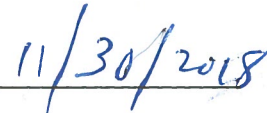
Michael B. Sloane, Director



Date



Paul M. Kienzle III, Chairman



Date

New Mexico State Game Commission

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