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QUAY COUNTY LABOR MANAGEMENT RELATIONS ORDINANCE

ORDINANCE NO. 21

RELATING TO COLLECTIVE BARGAINING FOR THE COUNTY OF QUAY;
PROVIDING RIGHTS, RESPONSIBILITIES AND PROCEDURES IN THE
EMPLOYMENT RELATIONSHIP BETWEEN THE EMPLOYEES AND THE
EMPLOYER;

REPEALING ORDINANCE NO. 16

BE IT ENACTED BY THE BOARD OF QUAY COUNTY COMMISSIONERS:

SECTION 1. SHORT TITLE. -- This Ordinance may be cited as the "Quay County Labor Management Relations Ordinance".

SECTION 2. PURPOSE. -- The purpose of the Labor Management Relations Ordinance is to guarantee employees the right to organize and bargain collectively with their employer, to protect the rights of the employer and to promote harmonious and cooperative relationships between the employer and the employees; and to acknowledge the rights of the citizens to the orderly and uninterrupted delivery of services.

SECTION 3. CONFLICTS. -- In the event of conflict with other Quay County ordinances, the provisions of the Quay County Labor Management Relations Ordinance shall supersede other previously enacted ordinances.

Quay County sanctioned rules and regulations, administrative directives, departmental rules and regulations, and work place practices shall control unless there is a conflict with a collective bargaining agreement. Where a conflict exists the collective bargaining agreement shall control.

SECTION 4. DEFINITIONS. -- As used in the Labor Management Relations Ordinance:

A. "appropriate bargaining unit" means a group of employees designated by the Board for the purpose of collective bargaining. Appropriate units shall be formed by occupational group, such as blue collar (unskilled, semi-skilled, and skilled), white collar (clerical, secretarial, administrative employees), para-professional, professional, corrections, fire, and sheriff's officers.

B. "board" means the Quay County Labor Management Relations Board;

C. "certification" means the designation by the Board of a labor organization as the exclusive representative for all employees in an appropriate bargaining unit;

D. "collective bargaining" means the act of negotiating between the employer and an exclusive representative for the purpose of entering into a written agreement regarding wages, hours and other terms and conditions of employment;

E. "confidential employee" means a person who assists and acts in a confidential capacity with respect to a person who formulates, determines and effectuates management policies;

F. "employee" means a regular non probationary employee of Quay County;

G. "employer" means the County of Quay;

H. "exclusive representative" means a labor organization that, as a result of certification by the Board, represents all employees in an appropriate bargaining unit for the purposes of collective bargaining;

I. "fact-finding" means the procedure following mediation whereby the parties involved in an impasse submit their differences to a third party for an advisory recommendation.

J. "governing body" means the Quay County Commission;

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K. "impasse" means failure of the employer and an exclusive representative, after good-faith bargaining to reach agreement in the course of negotiating a collective bargaining agreement;

L. "labor organization" means any employee organization one of whose purposes is the representation of public employees in collective bargaining and in otherwise meeting, consulting, and conferring with employers on matters pertaining to employment relations;

M. "lockout" means an act by the employer to prevent its employees from going to work for the purpose of resisting demands of the employees' exclusive representative or for the purpose of gaining a concession from the exclusive representative;

N. "management employee" means an employee who is engaged primarily in executive and management functions and is charged with the responsibility of developing, administering or effectuating management policies. An employee shall not be deemed a management employee solely because the employee participates in cooperative decision making programs on an occasional basis;

O. "mediation" means assistance by an impartial third party to resolve an impasse in contract negotiation between the employer and an exclusive representative through interpretation, suggestion and advice;

P. "professional employee" means an employee whose work is predominantly intellectual and varied in character and whose work involves the consistent exercise of discretion and judgment in its performance and requires knowledge of an advanced nature in a field of learning customarily requiring specialized study at an institution of higher education or its equivalent. The work of a professional employee is of such character that the output or result accomplished cannot be standardized in relation to a given period of time;

Q. "strike" means an employee's refusal, in concerted action with other employees, to report for duty or his willful absence or withholding of service in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the working conditions, compensation, rights, privileges or obligations of employment;

R. "supervisor" means an employee who devotes a substantial amount of work time to supervisory duties, who customarily and regularly directs the work of two or more other employees and who has the authority in the interest of the employer to hire, promote or discipline other employees or to recommend such actions effectively. This definition does not includes individuals who perform merely routine, incidental, or clerical duties or who occasionally assume supervisory or directory roles or whose duties are substantially similar to those of their subordinates and does not include lead employees or employees who participate in peer review or occasional evaluation of employees;

SECTION 5. RIGHTS OF EMPLOYEES. --

Employees, other than management, supervisors, and confidential employees, may form, join or assist any labor organization for the purpose of collective bargaining through representative chosen by the employees without interference, restraint or coercion. Employees also have the right to refuse to form, join or assist any labor organization.

SECTION 6. MANAGEMENT RIGHTS. -- Unless limited by the provisions of a collective bargaining agreement or by other statutory provision, the employer's rights shall include, but are not limited to, the following:

A. To direct and supervise all operations, functions and the work of the employees;

B. To hire, lay off, promote, demote, assign, reassign, transfer, discipline, discharge or terminate employees;

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C. To determine what, by whom and when services will be rendered to the citizens;

D. To determine staffing requirements, create, abolish positions or to eliminate or reorganize work units;

E. To determine the need for and the qualifications of new employees, and to determine the qualifications for and qualifications of employees considered for transfer and promotion;

F. To take actions as necessary to carry out the mission of the employer in emergencies; and

G. The employer retains all rights not specifically limited by a collective bargaining agreement or other statutory provision.

SECTION 7. LABOR MANAGEMENT RELATIONS BOARD CREATED-TERMS.

A. The "labor-management relations board" is hereby created. The Board shall be composed of three members appointed by the Board of Quay County Commissioners. One member shall be appointed on the recommendation of individuals representing labor, one member shall be appointed on the recommendation of the County Manager, and one member shall be appointed on the recommendation of the first two appointees.

B. Board members shall serve for a period of one year with terms commencing in the month of September except in the initial appointment which will be a shorter term effective the same day as this Ordinance. Vacancies shall be filled in the same manner as the original appointment, and such appointments shall only be made for the remainder of the unexpired term. A Board member may serve an unlimited number of terms.

C. During the term of appointment, no Board member shall hold or seek any other political office or public employment or be an employee of a union or an organization representing public employees or public employers.

D. Each Board member shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act.

SECTION 8. BOARD-POWERS AND DUTIES. --

A. The Board shall promulgate rules and regulations necessary to accomplish and perform its functions and duties as established in the Labor Management Relations Ordinance, including the establishment of procedures for:

- 1) the designation of appropriate bargaining units;
- 2) the selection, certification and decertification of exclusive representatives; and
- 3) the filing of, hearing on and determination of complaints of prohibited practices.

B. The Board shall:

- 1) hold hearings and make inquiries necessary to carry out its functions and duties;
- 2) request from employers and labor organizations the information and data necessary to carry out the Board's functions and responsibilities.

C. The Board may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents relating to any matter in question. The Board may prescribe the form of the subpoena, but it shall adhere insofar as practicable to the form used in civil actions in the district court. The Board may administer oaths and affirmations, examine witnesses and receive evidence.

D. The Board shall decide all issues by majority vote and shall issue its decisions in the form of written orders and opinions. The decisions of the Board on

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interpretation and applications of the ordinance and collective bargaining agreements are final and binding on the parties subject to the appeal process provided in Section 20. This section does not apply to negotiation impasses.

E. The Board has the power to enforce provisions of the Quay County Labor-Management Relations Ordinance, which includes the labor management agreements between parties covered by this Ordinance, through the imposition of appropriate administrative remedies.

F. The Board shall have no power to promulgate policy other than for its own operation.

G. No rule or regulation promulgated by the Board shall require, directly or indirectly, as a condition of continuous employment, any employee covered by the Labor Management Relations Ordinance to pay money to any labor organization that is certified as an exclusive representative. This issue shall be left to voluntary bargaining by the parties.

SECTION 9. HEARING PROCEDURES. --

A. The Board may hold hearings for the purposes of:
1) information gathering and inquiry;
2) adopting rules and regulations; and
3) adjudicating disputes and enforcing the provisions of a labor management agreement, the provisions of the Labor Management Relations Ordinance and rules and regulations adopted pursuant to the Ordinance.

B. The Board shall adopt regulations setting forth procedures to be followed during hearings of the Board. Such regulations shall meet minimal due process requirements of the state and federal constitutions.

C. Prohibited labor practices that are filed within 60 days of the commission, omission or discovery of the action that generated the charges shall be heard by the Board. Charges filed beyond the 60 day limit shall not be heard by the Board and

are not considered timely. Such charges must identify the specific violation and relief requested. Proceedings against the party alleged to have committed a prohibited practice shall be commenced by service upon it and the Board of a written notice together with a copy of the charges and relief requested. A filing fee of \$100.00 shall be paid by any party filing a prohibited labor practice complaint with the Board. The filing fee may be waived by the Board for any party which can establish the inability to pay.

D. All adopted rules and regulations shall be filed in accordance with applicable laws.

E. A verbatim record made by electronic or other suitable means shall be made of every rule-making and adjudicatory hearing. The record shall not be transcribed unless required for judicial review or unless ordered by the Board. Payment for the transcription shall be made by the party requesting the transcript.

F. Each party to a prohibited labor practice shall bear the cost of producing its own witnesses for hearings under this Ordinance.

G. No regulation proposed to be adopted by the Board that affects any person or governmental entity outside of the Board and its staff shall be adopted, amended or repealed without public hearing and comment on the proposed action before the Board. The public hearing shall be held after notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method in which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained. All meetings shall be held in Tucumcari, New Mexico. Notice shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation in Quay County, and notice shall be mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearings.

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SECTION 10. APPROPRIATE BARGAINING UNITS. --

A. The Board shall, upon receipt of a petition for a representation election filed by a labor organization, designate the appropriate bargaining unit. Appropriate bargaining units shall be established on the basis of occupational groups with a clear and identifiable community of interest in employment terms, employment conditions and related personnel matters among the employees involved. Occupational groups shall generally be identified as blue collar, white collar, para-professional, professional, corrections, sheriff's officers, and fire. Bargaining units shall not be determined by craft or trade designations. The parties, by mutual agreement and approval of the Board, may further consolidate occupational groups. Essential factors in determining appropriate bargaining units shall include the principles of efficient administration of government, the history of collective bargaining with the employer and the assurance to employees of the fullest freedom in exercising the rights guaranteed by the Statute.

B. If the labor organization and the employer cannot agree on the appropriate bargaining unit within 30 days, the Board shall hold a hearing concerning the composition of the bargaining unit. Any agreement as to the appropriate bargaining unit between the employer and the labor organization shall be subject to the approval of the Board.

C. The Board shall not include in any appropriate bargaining unit probationary, supervisory, managerial or confidential employees.

SECTION 11. ELECTIONS. --

A. Whenever, in accordance with regulations prescribed by the Board, a petition is filed by a labor organization containing the signatures of at least thirty percent of the employees in an appropriate bargaining unit, the Board shall conduct a secret ballot representation election.

B. Once a labor organization has filed a petition with the Board calling for a representation election, other labor organizations may seek to be placed on the ballot. Any organization may file a petition containing the signatures of not less than ten percent of the employees in the appropriate bargaining unit no later than ten days after the Board has posted a written notice that a petition containing the signatures of not less than thirty percent of the employees has been filed by a labor organization.

C. All representation elections, except run-off elections, shall include the option for "no representation."

D. In the event of an election with two or more organizations on the ballot where neither of the choices received a majority of the votes case, a run-off election shall be held within 15 days. The choices on the run-off election shall consist of the two choices which received the greatest number of votes in the original election.

E. Where a majority of the votes cast are in favor of representation by a labor organization and at least 60% of the members in the bargaining unit have cast a vote, the Board shall certify the labor organization as the exclusive representative for all employees in that appropriate bargaining unit. No labor organization shall be certified as an exclusive representative unless at least 60% of the members of the bargaining unit vote in the election.

F. No election shall be conducted if an election has been conducted in the 12 month period immediately preceding the proposed representation election. No election shall be held during the term of an existing collective bargaining agreement, except as provided in Section 13B of the Labor Management Relations Ordinance.

G. Election disputes shall be resolved by the Board.

SECTION 12. EXCLUSIVE REPRESENTATION. --

A. A labor organization that has been certified by the Board as representing the employees in the appropriate bargaining unit shall be the exclusive representative of all employees in the appropriate bargaining unit. The exclusive

representative shall act for all employees in the bargaining unit and negotiate a collective bargaining agreement covering all employees in the bargaining unit. The exclusive representative shall represent the interests of all employees in the bargaining unit without discrimination or regard to membership or non membership in the labor organization..

B. The existence of an exclusive bargaining representative shall not prevent employees from taking their grievances through the grievance process or filing prohibited practices with the Board based upon discrimination by the exclusive representative or the employer. The Board will adjudicate disagreements over contract interpretations only when the disagreement is between the employer and the exclusive representative. Any settlement of a grievance or relief given on a prohibited practice brought by an individual shall not be inconsistent with or in violation of the collective bargaining agreement in effect between the employer and the exclusive representative or inconsistent with or in violation of good faith resolution made between the employer and the exclusive representative in the day to day administration of the collective bargaining agreement.

SECTION 13. DECERTIFICATION OF EXCLUSIVE REPRESENTATIVE. --

A. Any member of a labor organization or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if thirty percent of the employees in the appropriate bargaining unit make a written request to the Board for a decertification election. Decertification elections shall be held in a manner prescribed by the Board.

B. When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the Board no earlier than 90 days and no later than 60 days before the expiration of the collective bargaining agreement; provided, however, that a request for a decertification election may be filed at any time after the expiration of the third year of a collective bargaining agreement with a term of more than three years.

C. When, within the time period prescribed in subsection B of this section, a competing labor organization files a petition containing signatures of at least thirty percent of the employees in the appropriate bargaining unit, a representation election rather than a decertification election shall be conducted.

D. When an exclusive representative has been certified but no collective bargaining agreement is in effect, the Board shall not accept a request for a decertification election earlier than twelve months subsequent to a labor organization's certification as the exclusive representative.

SECTION 14. SCOPE OF BARGAINING. --

A. Except for retirement programs provided under the Public Employees' Retirement Act, the parties shall bargain in good faith on wages, hours and other terms and conditions of employment and other issues agreed to by the parties.

B. Bargaining in good faith shall not require either party to agree to a proposal or to make a concession.

C. The obligation to bargain collectively imposed by the Labor Management Relations Ordinance shall not be construed as authorizing employers and exclusive representatives to enter into any agreement that is in conflict with state statutes or federal statutes. In the event of conflict between the provision of any federal or state statutes and any agreement entered into by the employer and the exclusive representative, the former shall prevail.

D. Payroll deduction of the exclusive representative's membership dues shall be a mandatory subject of bargaining if either party chooses to negotiate the issue. The amount of dues shall be certified in writing by an official of the labor organization and shall not include special assessments, penalties or fines of any type levied by the exclusive representative. During the time that a Board certification is in effect for a particular exclusive representative, the employer shall not deduct dues for any other labor organization from members of the same bargaining unit.

E. Any agreement by the employer and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the governing body and the availability of funds to fund the agreed upon provision.

F. The parties have a requirement that grievance procedures culminating with final and binding arbitration be negotiated. This applies only to grievances and does not apply to negotiation impasses.

SECTION 15. NEGOTIATIONS AND IMPASSE RESOLUTION. --

A. The following meetings shall be closed:

- (1) meetings for the discussion of collective bargaining strategy between the employer and the employer's negotiating team;
- (2) collective bargaining sessions; and
- (3) consultations and impasse resolution procedures at which the employer and the exclusive representative of the appropriate bargaining unit are present.

B. The following negotiation procedures shall apply to the employer and exclusive representatives:

(1) Initial negotiations shall be opened upon written notice by either party to the other requesting that negotiating sessions be scheduled. Subsequent requests for negotiations shall be post marked no earlier than 120 days nor later than 60 days prior to the contract ending date. The parties may open negotiations at any time by mutual agreement.

(2) Negotiating teams will consist of a maximum of seven (7) persons designated by the exclusive representative and a maximum of seven (7) persons designated by the County Manager .

(3) All negotiations will be conducted in closed sessions. Negotiations will be held at the facilities and at a time mutually agreed upon by the

negotiating teams. Negotiations will begin with the party that requested the negotiations presenting their proposals section by section.

(4) Following the complete presentation of both proposals the parties will identify the economic and non-economic issues. All non-economic issues must be resolved prior to negotiating economic issues.

(5) Recesses and study sessions may be called by either team. Prior to these recesses or study sessions the reconvening time will be agreed upon. A caucus may be taken as needed.

(6) Employees who are members of the exclusive representative's negotiating team will be released from their normal duties without pay to participate in negotiations.

(7) Tentative agreements reached during negotiations will be reduced to writing, dated and initialed by each team spokesperson. Such tentative agreements are conditional and may be withdrawn should later discussion change either team's understanding of the language as it relates to another part of the agreement.

(8) Provisions in multi-year agreements providing for economic increases for subsequent years shall be contingent upon the governing body appropriating the funds necessary to fund the increase for the subsequent year or years. Should the governing body not appropriate sufficient funds to fund the agreed upon increase either party may reopen negotiations.

(9) At the commencement of negotiations for any collective bargaining agreement or reopens during the duration of a collective bargaining agreement, the parties shall negotiate bargaining ground rules. The issues addressed in subsections 15(B)(1)-(8) are considered permissive subjects of bargaining.

C. The following impasse procedure shall be followed by the employer and exclusive representative:

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(1) Either party may declare an impasse if no agreement has been reached by the contract expiration date or within 120 days of the first negotiating session on the negotiation of the first agreement. Once an impasse exists, a mediator from the Federal Mediation and Conciliation Service will be assigned by the Board.

(2) If the impasse continues after a thirty (30) day mediation period, either party may request from the Board that a fact-finder be assigned to the negotiations. A fact-finder will be selected by the parties from a list of individuals requested from the Federal Mediation and Conciliation Service.

(3) The fact-finder shall conduct hearings with the parties. The fact-finder shall complete all work and submit a recommendation to the parties and the Board within 45 calendar days of initial appointment. If the parties have not reached agreement within ten (10) days after receipt of the fact-finder's report, the Board shall publish the report.

(4) The cost for the mediator or the fact-finder shall be borne equally by the parties to the impasse.

SECTION 16. EMPLOYERS -- PROHIBITED PRACTICES

A. No employer or his representative shall:

(1) discriminate against an employee with regard to terms and conditions of employment because of the employee's membership in a labor organization;

(2) interfere with, restrain or coerce any employee in the exercise of any right guaranteed under the Labor Management Relations Ordinance;

(3) dominate or interfere in the formation, existence or administration of any labor organization;

(4) discriminate in regard to hiring, or any term or condition of employment in order to encourage or discourage membership in a labor organization;

(5) discharge or otherwise discriminate against an employee because he has signed or filed an affidavit; petition, grievance or complaint or given any

information or testimony under the provisions of the Labor Management Relations Ordinance or because an employee is forming, joining or choosing to be represented by a labor organization;

(6) refuse to bargain collectively in good faith with the exclusive representative;

(7) refuse or fail to comply with any provisions of the Labor Management Relations Ordinance or Board regulation; or;

(8) refuse or fail to comply with any collective bargaining agreement.

B. During the negotiating process, including the impasse procedure, elected Quay County officials are prohibited from discussing any issue, which is a subject of negotiations, with employees of the bargaining unit involved in negotiations and employees of the exclusive representative.

SECTION 17. EMPLOYEES - LABOR ORGANIZATIONS - PROHIBITED PRACTICES. --

A. An employee, labor organization or its representative shall not:

(1) discriminate against an employee with regard to labor organization membership because of race, color, religion, creed, age, disability, sex or national origin;

(2) solicit membership for an employee or labor organization during the employee's duty hours. This does not include the break or lunch period;

(3) use County time, property or equipment for union business other than as provided in a collective bargaining agreement between the parties;

(4) restrain or coerce any employee in the exercise of any right guaranteed by the provisions of the Labor Management Relations Ordinance;

(5). restrain or coerce any elected or appointed official, for the purpose of gaining a concession;

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(6) refuse to bargain collectively in good faith with the employer;

(7) refuse or fail to comply with any collective bargaining agreement with the employer;

(8) refuse or fail to comply with any provision of the Labor Management Relations Ordinance;

(9) picket homes or private businesses of Board members, elected officials or employees of the Quay County;

(10) interfere with or coerce the employer in the selection of its agent for bargaining; and

(11) during the negotiating process, including the impasse procedure, discuss any issue with the Quay County elected officials which is a subject of negotiations.

B. Unions that represent Quay County employees may not endorse or support any candidate running for Quay County elective office.

SECTION 18. STRIKES AND LOCKOUTS PROHIBITED. --

A. No employee or labor organization shall engage in a strike. No labor organization shall cause, instigate, encourage or support a strike. The employer shall not cause, instigate or engage in an employee lockout.

B. Should the employer allege that a strike has occurred by the bargaining unit employees, the Labor Management Relations Board shall meet in emergency session, within 48 hours of the filing of the charge by the employer, and determine whether a strike has indeed occurred.

C. Any labor organization that causes, instigates, encourages or supports a public employee strike, walkout, or slow-down may be decertified as the exclusive representative for that appropriate bargaining unit by the Board and shall be

barred from serving as the exclusive representative for any bargaining unit of the Quay County employees for a period of not more than one year.

SECTION 19. AGREEMENTS VALID -- ENFORCEMENT. --

All collective bargaining agreements and other agreements between employers and exclusive representatives are valid and enforceable according to their terms when entered into in accordance with the provisions of this Labor Management Relations Ordinance.

SECTION 20. JUDICIAL ENFORCEMENT -- STANDARD OF REVIEW. --

A. The Board may request the District Court to enforce any order issued pursuant to the Labor Management Relations Ordinance, including those for appropriate temporary relief and restraining orders. The Court shall consider the request for enforcement on the record made before the Board. The Court shall uphold the action of the Board and take appropriate action to enforce it unless the Court concludes that the order is:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence on the record considered as a whole; or
- (3) otherwise not in accordance with law.

B. Any person or party, including any labor organization, affected by a final regulation, order or decision of the Board, may appeal to the District Court for further relief. All such appeals shall be based upon the record made at the Board hearing. All such appeals to the District Court shall be taken within thirty days of the date of the final regulation, order or decision of the Board. Actions taken by the Board shall be affirmed unless the Court concludes that the action is:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence on the record taken as a whole; or

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(3) otherwise not in accordance with law.

SECTION 21. SEVERABILITY.--

If any part or application of the Quay County Labor Management Relations Ordinance is held invalid, the remainder or its application to other situations or persons shall not be affected.

SECTION 22. EFFECTIVE DATE.--

The effective date of the Quay County Labor Management Relations Ordinance is June 8, 1994

SECTION 23. REPEAL OF ORDINANCE NO. 16.

ADOPTED BY THE GOVERNING BODY OF QUAY COUNTY THIS 9th DAY OF May, 1994.

QUAY COUNTY BOARD OF COMMISSIONERS



Glenn Biscoe
Chairman
Jim Sub. Junderson
Member
Robert Christen
Member

Attestation:

Jeannette Maddaford
County Clerk



STATE OF NEW MEXICO } SS
COUNTY OF QUAY }
I hereby certify that this instrument was filed for record at 10:55 o'clock A M.

FEB 10 1995
Misc page 920-938 of the record
book 92
said county,
Jeannette Maddaford County Clerk
By _____ Deputy