

Order for Automatic Statewide Recount

WHEREAS, Section 1-14-24 NMSA 1978 provides that an automatic recount of the vote is required when the canvass of returns for a state office in a general election indicates that the margin between the two candidates receiving the greatest number of votes for the office is less than one-half of one percent of the total votes cast for that office in that election; and

WHEREAS, in the November 4, 2014 General Election, the canvass of returns indicates that the margin in the contest for Commissioner of Public Lands, between Ray Bennett Powell and Aubrey Dunn, is 0.14% and therefore is less than one-half of one percent, and an automatic recount is required in that contest; and

WHEREAS, on Tuesday, November 25, 2014, the Secretary of State notified the State Canvassing Board that an automatic recount is required;

NOW THEREFORE IT IS ORDERED by the State Canvassing Board this 26th Day of November, 2014, that a statewide recount shall be conducted in the manner set forth below:

A. Dates and times prescribed for the Recount:

1. Pursuant to 1-14-16 NMSA 1978, the absent voter precinct board (“the absentee board”), district judge (“district judge”) and county clerk (“clerk”) shall meet at the county seat on Monday, December 8, to recount and retally the ballots in the contest for Commissioner of Public Lands, and no other contest.
2. Upon receipt of this order, county clerks shall send notices, by registered mail, of the date for the recount to the district judge for the county, the absentee board members and the county chair of each of the political parties that participated in the election for the office in question. In addition to the notices sent by registered mail, the Canvassing Board strongly recommends that county clerks promptly contact, by telephone, email, and all other appropriate media the district judge, absentee board members and county chairs involved in the recount. It is also recommended that there be notification to the general public in all appropriate media.

3. The Secretary of State's office has ordered 500 new, unused Compact Flash Cards ("cards") for the vote tabulators and will provide those to the counties for the conduct of the recount. From December 1 through December 4, 2014, the removable storage media for the election tabulators and Results Tabulating Reporting (RTR) servers will be programmed to conduct the recount of the ballots for the Commissioner of Public Lands race.
4. The absentee board, district judge and clerk shall meet on the date fixed, at 8:00 AM, for the recount. The recount shall continue until all ballots shall have been recounted and retallied. If the recount is not completed during the first day, Monday, December 8, 2014, the process shall continue until at least 5:00 PM on that date and shall continue on the second day beginning at 8:00 AM and continuing until at least 5:00 PM or until the process is completed. If the process is still not complete, the same schedule used for Day 2 shall be followed each succeeding day until such time as the recount and retally is completed and the absentee board has certified the results to the Secretary of State (§ 1-14-16. D. NMSA 1978).
5. All counties, with the exception of Bernalillo County, should complete the recount and retally not later than Day 2, and shall complete the process not later than Day 3, Wednesday, December 10, 2014. Should a continuation of the process beyond Day 3 be deemed necessary, the clerk shall request an extension, in writing, to the Secretary of State, providing the reasons for the extension and the ballot security measures in place.
6. Bernalillo County should complete the recount and retally not later than Day 4, and shall complete process not later than Day 5, Friday, December 12, 2014. Should a

continuation of the process beyond Day 5 be deemed necessary, the clerk shall request an extension, in writing, to the Secretary of State, providing the reasons for the extension and the ballot security measures in place.

7. The absentee board shall consist of a sufficient number of members to ensure that each time a tabulator is in operation in the conduct of the recount, whether it is for absentee ballots, early voting ballots, or Election Day ballots, a two-person team is assigned to conduct the recount on that particular tabulator. Examples follow:
 - A. If a county uses five tabulators simultaneously to recount Early Voting ballots cast, ten precinct board members would be required to conduct that portion of the recount.
 - B. If, simultaneously, absentee ballots are being recounted on one tabulator, early voting ballots are being recounted on two tabulators, and Election Day ballots are being recounted on three tabulators, all tabulators being programmed for the respective ballot types, then twelve absentee board members would be required to be present in order to ensure the required two-person team per tabulator.
8. County clerks shall appoint additional members of the absentee board in order to ensure the board is sufficiently staffed to complete the recount, provided that equal numbers of qualified board members from the Democratic Party and the Republican Party shall be appointed. Names and respective political party affiliations of absentee board members shall be provided to the Secretary of State not later than Noon, Thursday, December 4, 2014. If any absentee board members are replaced or added during the recount, the names and political party affiliations of the replaced members

and of those of the new members replacing them shall be provided to the Secretary of State.

B. Duties of the State Canvassing Board, Secretary of State, Presiding Judge, Absentee Board, District Judge and Clerk.

1. The State Canvassing Board has adopted these procedures governing the statewide recount to ensure that all ballots are treated uniformly and consistently throughout the state and that the procedures followed are uniform and consistent in each county.
2. The Presiding Judge (“presiding judge”) of the absentee board in each county is charged with the duty of conducting and maintaining an orderly recount following the procedures set forth in this order and under the oversight and supervision of the Secretary of State, and shall maintain a record of the proceedings (“the log”).
3. The District Court judge, or his or her designee, is charged with maintaining the security of the ballots and election returns during the conduct of the recount.
4. The Clerk is charged with providing the tabulators, staff assistance as required by the Presiding Judge in zeroing machines, or other technical assistance not provided by the *Dominion* technical representatives, lists of voters as required, and shall supervise review of qualified and unqualified provisional ballots and absentee-in-lieu-of ballots. The Clerk shall maintain the list of watchers (Paragraph I).
5. Consistent with the provisions of 1-2-1 and 1-2-2 NMSA 1978, the Secretary of State shall be authorized to provide required ministerial and technical instructions as needed to implement this order.

C. Ballot Security

1. When the absentee board is properly convened in the presence of the district judge and county clerk, the ballot boxes and ballot containers or voting machines of the precincts involved in the recount or recheck shall be opened.
2. Either the district judge (“the district judge”) or the presiding judge of the absentee board (“the presiding judge”) and at least one other witness, shall witness the movement of all ballots during the recount.
3. All movement of ballots to and from the ballot boxes shall be logged by the precinct board.
4. Each time that ballots are removed from or returned to a ballot box, the presiding judge shall ensure that the number of ballots present are determined and ensure that that number is compared to the number of ballots that should be in that particular box. All discrepancies shall be noted by the precinct board, and the presiding judge shall report the same to the Secretary of State, Bureau of Elections.

D. Preparation; Zeroing and Testing Procedures

1. The absentee board shall recount and retally the ballots for the office in question in the presence of the county clerk, district judge or person designated to act for the district judge, and any other person who may desire to be present.
2. The automatic recount shall be conducted pursuant to the recount procedures established in Sections 1-14-16 and 1-14-18 through 1-14-22 NMSA 1978, and further delineated in greater detail in this order.

3. The recount will involve the machine retabulating and tallying of an expected number of 521,797 ballots cast, based on county canvass reports, plus any additional provisional or absentee ballots which may be determined to have been improperly disqualified and that may be qualified during the course of the recount.
4. Pursuant to the express provisions of § 1-14-24 NMSA 1978, the provisions of § 1-14-23 NMSA 1978 do not apply to a statewide automatic recount. Therefore, the ballots in this statewide recount will be electronically tabulated using *Imagecast Evolution* (ICE), *Imagecast Precinct* (ICP) and *Imagecast Central Count* (ICC) voting systems, which shall be certified according to the procedures set forth below.
5. In each instance where an ICE or ICP is being used, the clerk and the presiding judge shall ensure that only new, unused, Compact Flash Cards (“cards”) programmed by and provided by Dominion Voting are employed for the recount, and that each is clearly marked for use in recounting and retabulating for either “Absentee,” “Early Voting” or “Election Day” ballots. The clerk and presiding judge shall confirm such markings in the log.
6. In each instance where an ICE or ICP is being used, the clerk and the presiding judge shall ensure that each tabulator present for use in the recount, or designated as a back-up tabulator, is clearly marked for either “Absentee,” “Early Voting” or “Election Day” ballots, and that only those ballots and those Compact Flash Cards (“cards”) designated for the corresponding method of voting shall be inserted into any tabulator. Upon ensuring that tabulator identification has been completed, the clerk and the presiding judge shall confirm such markings in the log.

7. In each instance where an ICC is being used, the clerk and presiding judge shall ensure that the correct file for each method of voting is uploaded, and that each ICC is labeled as Early Voting 1, Early Voting 2, Election Day 1 and Election 2, as the case may be. Counties with two ICCs or fewer will ensure the labels conform with the method of voting being recounted.
8. The recount shall be conducted using newly acquired removable media storage devices for the tabulators which shall be programmed to accept all precincts in the county.
9. A team of two members of the absentee board, one from each of the major political parties involved in the recount, shall be assigned to each tabulator.
10. A zero summary report (“zero tape”) shall be generated and certified by the absentee board in the presence of the clerk and a designated representative of a candidate or political party who may desire to witness the certification, prior to tabulating any ballots on any machine. This designated representative shall be chosen from the appointed watchers discussed in Paragraph H. below.
11. One hundred (100) ballots of the ballot type (absentee, early voting and Election Day) to be recounted on each tabulator shall be used to test the accuracy of each tabulator to be used in the recount. 100 absentee ballots shall be inserted into the absentee tabulator, 100 early ballots shall be inserted into each early vote tabulator and 100 Election Day ballots shall be inserted into each Election Day tabulator. The same ballots for each shall have been hand-tallied by the absentee board prior to being fed into the tabulators. If the vote totals on the tabulator tape match the hand-tally totals for each candidate, the recount may then proceed with the machine recount. If the

count does not match, the presiding judge shall supervise a retally of the hand count at least twice to ensure that no error has occurred in the hand tally. If after the presiding judge is certain that the tabulator and the hand-tally counts cannot be reconciled on the tabulator being tested, new removable storage media cards shall be programmed for that ballot type and inserted in a new tabulator, and shall be tested. Only those tabulators that match the hand-tally with 100% accuracy shall be used.

12. Note: If 100 ballots of a particular ballot type were not voted during the November 4, 2014 General Election, then the test shall be conducted using all those ballots available from that particular ballot type, and if the tabulator tape matches the hand-tally of those same ballots the totals produced in that process shall constitute the final totals of that particular portion of the recount, and that portion shall be concluded.

E. Recounting and Retallying of Ballots.

1. The ballots shall be retabulated by precinct and ballot type (absentee ballots, early voting ballots and Election Day ballots).
2. Where ICE and ICP units are in use, the absentee board two-person team conducting each recount on each ballot type on each tabulator shall closely preview each ballot. Those ballots which do not show a mark in a voting target oval (an oval alongside one of the two candidates, indicating a choice for a candidate) but which do provide an indication of voter intent, such as a circled name, check mark beside a candidate's name or other similar marking, shall be set aside for

hand-tallying. All other ballots shall be inserted into the tabulator. Once all the ballots for the precinct or Voting Convenience Center (VCC) being recounted have been inserted into the tabulator, the absentee board shall then hand-tally the ballots that have been set aside for review. Those ballots shall be adjudicated according to procedures shown in Paragraph H.

3. When all ballots to be tabulated in that vote category (absentee, early, Election Day) have been either placed in the tabulator or hand-counted, the Presiding Judge shall close the polls on the tabulator and generate a results tape.

The total of hand-tallied ballots and machine-tallied ballots shall be compared to the existing results—the official canvassed results of the 2014 General Election, and any discrepancies shall be noted by the absentee board.

4. When all ballots in all categories have been tabulated the clerk shall upload the results from the removable storage media (cards) to the Secretary of State's IRIS reporting system.
5. Where ICC units are in use, the two-person teams shall use the adjudication program provided for those ballots with ambiguous marks or overvotes, applying the same standards outlined in Paragraph H.

6. The existing removable media storage devices from the 2014 General Election shall be preserved in their current state, and shall not be handled, examined, erased, or altered, and shall be retained by the county clerks, including the ballot images, all audit logs and audit marks. In the event any voted ballots are unavailable or incomplete for the recount, the district judge, in consultation with the clerk, may order that a results tape and/or ballot images be regenerated from the removable storage media that was originally used to tabulate the voted ballots.
7. Each clerk shall ensure that tabulators, sufficient in number to allow for the completion of the recount, are available in each county beginning on December 8, 2014 and concluding not later than December 10, 2014, or in the case of Bernalillo County not later than 5:00 PM, December 12, 2014. Should a continuation of the process beyond those scheduled dates be deemed necessary, the clerk shall request, in writing to the Secretary of State, an extension, providing the reasons for the extension and detailing the ballot security measures in place.
8. As each box of ballots is completely tabulated in the recount, the absentee precinct

board shall replace the ballots in the original ballot box and re-lock it. The absentee precinct board shall certify to the secretary of state the results of the recount. The district judge, or the person designated to act for the district judge, and the county clerk shall also certify that the recount was made in their presence.

9. The Secretary of State shall have the authority to extend the time set aside for the statewide recount on a county-by-county basis, if extraordinary circumstances are deemed to exist.

F. Provisional Ballots

1. Any ballot boxes, envelopes or containers that hold provisional or absentee-in-lieu-of ballots shall be opened one at a time.
2. The presiding judge shall count the total number of provisional and absentee-in-lieu-of ballots in each polling location and the number shall be compared to the previously certified signature roster count in that polling location and noted. Any discrepancies in the number of ballots shall be immediately reported to the county clerk, district judge and Secretary of State's office, Bureau of Elections.
3. Section 1-4-22 NMSA 1978 states "the secretary of state shall issue rules governing and allowing procedures for reviewing the qualification of provisional ballot envelopes, absentee and other paper ballots in case of a contest or recount of election results. All rejected provisional paper ballot envelopes shall be included in any

contest or recount of election results, and a review of the qualifications of provisional ballots envelopes shall occur in a recount.”

4. The county clerk shall review the qualification of all rejected provisional and absentee in-lieu-of ballots. Reasons for rejected ballots shall be clearly stated and detailed and shall be noted on the ballot application or other appropriate form or record. If a previous record of reasons for rejected ballots exists on the ballot application or other appropriate form, new comments or details that may be added by the County Clerk shall be added in blue pencil and in such a manner as to ensure the new comments are distinguishable from previous records.
5. The absentee board shall review the qualification of all rejected absentee ballots. Reasons for rejected ballots shall be clearly stated and detailed and shall be noted on the ballot application or other appropriate form or record. If a previous record of reasons for rejected ballots exists on the ballot application or other appropriate form, new comments or details that may be added by the Presiding Judge shall be added in blue pencil and in such a manner as to ensure the new comments are distinguishable from previous records.
6. The county clerk shall not disqualify any provisional ballot or absentee-in-lieu-of ballot because the voter’s address on the affidavit of the outer provisional ballot envelope does not match the voter’s address on the certificate of registration, provided the county clerk can identify the voter with other information provided on the affidavit or certificate of voter registration attached to the provisional ballot outer envelope.

7. The county clerk shall not disqualify a provisional or absentee-in-lieu-of ballot because the voter has used an abbreviated name, abbreviated address, middle name, middle initial or suffix, provided the county clerk can identify the voter with other information provided on the provisional ballot outer envelope or certificate of voter registration attached to the provisional ballot outer envelope.
8. The county clerk shall not disqualify a provisional or absentee-in-lieu-of ballot because the voter did not sign both the affidavit and the polling place roster if the voter provided a valid signature and the county clerk can identify the voter with the information provided on the affidavit on the outer envelope or certificate of voter registration attached to the provisional ballot outer envelope.

G. Hand-tallied Ballots

1. Any ballots that cannot be read by a ballot tabulator shall be hand-tallied by the absentee precinct board. (See Paragraph H, as applicable.)
2. The absentee precinct board shall utilize tally sheets provided by the Bureau of Elections showing only the Commissioner of Public Lands race, with options for undervotes and overvotes.
3. The two-person counting team for hand-tallying shall be a Democrat and a Republican. The team shall ensure that the ballot type (Election Day, early, absentee, provisional, or absentee-in-lieu-of) and the precinct number are noted on each hand-tally sheet.
4. The reader shall read the vote to the marker and the marker shall observe whether the reader has correctly read the vote. The marker shall then mark the tally sheet of the

appropriate precinct and the reader shall observe whether the marker correctly marked the tally sheet. Upon completion of the hand-tally sheet, the marker shall add the total number of votes for each candidate, as well as any undervotes and overvotes. The reader shall confirm those numbers. Both the marker and the reader shall sign the tally sheet.

H. Ambiguous Marks

1. If a ballot is marked indistinctly or not marked according to the instructions on the ballot, the counting team shall count as a vote as provided for in 1-1-5.2 NMSA 1978. A vote shall be counted if it is (1) marked in accordance with the ballot instructions; (2) the preferred candidate's name is circled; (3) there is a cross or check within the voting response area for the preferred candidate; or (4) the presiding judge and election judges for the absentee precinct board unanimously agree that the voter's intent is clearly discernable.
2. In no case shall the counting team mark or remark a ballot. The Presiding Judge shall inform the counting team of the procedures to be followed. The Presiding Judge shall ensure that the counting team is sensitive to the need to handle ballots in a manner that facilitates possible reviews and inspections. The counting team shall not use black ink pens or markers to mark the tally sheets and shall only use blue or red pencils.

I. Watchers.

1. Appointment.

- a. Each candidate and each political party participating (“organization”) in the recounted race shall be entitled to have watchers present during the recount, provided that watchers shall not disturb or obstruct the conduct of the recount.
- b. Watchers may be appointed for each county.
- c. The list of watchers appointed by each organization shall be provided to the county clerk not later than Noon, Friday, December 5.

2. Counties other than Bernalillo County.

- a. The county chairs for the Democratic and Republican Parties of each county may appoint a watcher to be present during the recount for each method of voting: absentee voting recount, early voting recount, and Election Day voting recount.
- b. Each of the candidates may appoint a watcher to be present in each county in the same manner as provided for the political parties. Substitute watchers may be employed, but no more than one watcher for each organization, or a maximum of 12 individuals may act as watcher at one time (four for each method of voting recount).
- c. No watcher may be appointed who is a sheriff, deputy sheriff, marshal, deputy marshal, or state or municipal police officer. Nor may a watcher be a member of the judiciary or a member of the staff of a judicial officer or the office of the district attorney.

3. Bernalillo County.

- a. Watchers may be appointed in the same manner as described in Paragraph I.2. above, except that each organization may have a maximum of three watchers

for the absentee ballot recount, and two each for the early vote ballot recount and Election Day ballot recount.

- b. No more than 12 watchers may be present for the absentee vote ballot recount at any one time. No more than eight watchers may be present for the early vote ballot recount. No more than eight watchers may be present for the Election Day ballot recount.

4. Identification.

- a. Watchers shall identify themselves to the county clerk or county clerk staff and clerk staff shall verify watchers' appointments on the list provided by the organization. At all times while present at the recount proceedings, a watcher shall wear a self-made badge, nameplate, or other suitable means of identification, designating himself or herself as an authorized watcher on behalf of the organization he or she represents.
- b. Substitute watchers must observe the same rule, and watchers leaving the area shall remove their identification.

5. Permitted Activities.

- a. A watcher, upon ensuring his or her identifying badge is visible to the Presiding Judge, shall be permitted to be present at any time from the time the absentee precinct board convenes at the recount location until the completion of the absentee board's duties.
- b. A watcher may view, but not handle, signature rosters, precinct or Voting Convenience Center (VCC) voter lists, ballots and provisional ballot applications.

He or she may view each tabulator to ensure that the public counter is at zero, and to ensure the zero results tape contains no votes and that there are no voted ballots in the voting machine bins, and the results tape which is produced for each tabulator in the course of the recount. The watcher may also make and preserve for future reference written memoranda of any action or omission on the part of any member of the absentee precinct board, or other official present at the recount.

6. Questions.

- a. While a watcher shall not be permitted to interfere with or disrupt the proceedings, he or she may interpose reasonable questions to the presiding judge.
- b. The presiding judge is charged with conducting the recount in accordance with the provisions set forth in this order, pertinent provisions of the Election Code and NMAC 1.10.23, as applicable.
- c. Determinations made by the Presiding Judge in consultation with the absentee board shall be adhered to in the course of the recount proceedings.
- d. The Presiding Judge may refer questions, if he or she deems it necessary, to the Secretary of State. However, questions or discussions should not, except in rarest instances, require any pause in the recount proceedings.
- e. In the event a watcher or candidate or party representative is not satisfied with a decision taken by the Presiding Judge, the watcher may file a statement, report, or question, in writing, to the Office of the Secretary of State. Such report or statement shall outline in detail the concerns or issues in

question and shall be forwarded via immediately via email or other appropriate media available. However, no pause in the recount proceedings shall take place unless the Presiding Judge so determines.

7. Provisional Ballots.

- a. Watchers may review qualification and disqualification decisions of the Clerk, and may pose reasonable questions regarding the qualifications.
- b. Determinations made by the Clerk shall be adhered to in the course of the recount proceedings.
- c. The Clerk may refer questions, if he or she deems it necessary, to the Secretary of State.
- d. In the event a watcher or candidate or party representative is not satisfied with a decision taken by the Clerk, the watcher may file a report, in writing, to the Office of the Secretary of State. Such report shall be forwarded via email immediately, but no pause in the recount proceedings shall take place, unless the Presiding Judge so determines.

8. Prohibited Activities.

Watchers shall not be permitted to perform any duty of a precinct board member; shall not handle the ballots, signature rosters, checklist of voters or voting machines or take any part in the recounting or retallying of the ballots; shall not be allowed to view a voter's full date of birth or any portion of the voter's social security number; and shall not interfere with the orderly conduct of the recounting or retallying of ballots.

J. Preservation of the Record.

1. Upon completion of the recount and the certification of the results to the Secretary of State, the county clerk shall take all measures necessary to preserve the record of the recount proceedings, including all ballots cast, the identity of the tabulators used and the ballots contained therein, the cards and the identity of the cards, hand-tallied ballots, and all other categories of ballots; including all records, notes, observations and provisional ballots accepted and rejected.
2. The clerk shall ensure that all the above records are locked and secured in a secure location.
3. The clerk shall preserve all records for a minimum of 22 months from the date the results of the recount are certified to the Secretary of State, or until the Office of the Secretary of State provides further information regarding their disposition.

By order of:

THE STATE CANVASSING BOARD

Susana Martinez, Governor

Dianna J. Duran, Secretary of State

Richard C. Bosson, Acting Chief Justice of the Supreme Court