

2009 LUNA COUNTY BURNING
ORDINANCE 12

AN ORDINANCE DECLARING AN EMERGENCY AND ESTABLISHING
LIMITATIONS ON ALL BURNING IN LUNA COUNTY, NEW MEXICO.

WHEREAS, an immediate danger to the public health, safety and welfare of Luna County residents has arisen due to extreme drought and fire conditions within the County; and

WHEREAS, it is essential to protect the public health, safety and welfare of Luna County residents from fire danger; and

WHEREAS, it is necessary to provide and declare a limitation on burning within the County; and

WHEREAS, the Board of Commissioners of Luna County, New Mexico is authorized to provide for the safety of the inhabitants of Luna County pursuant to 4-37-1, et seq., NMSA, 1978.

NOW, THEREFORE, the Luna County Board of County Commissioners does hereby adopt the following Ordinance:

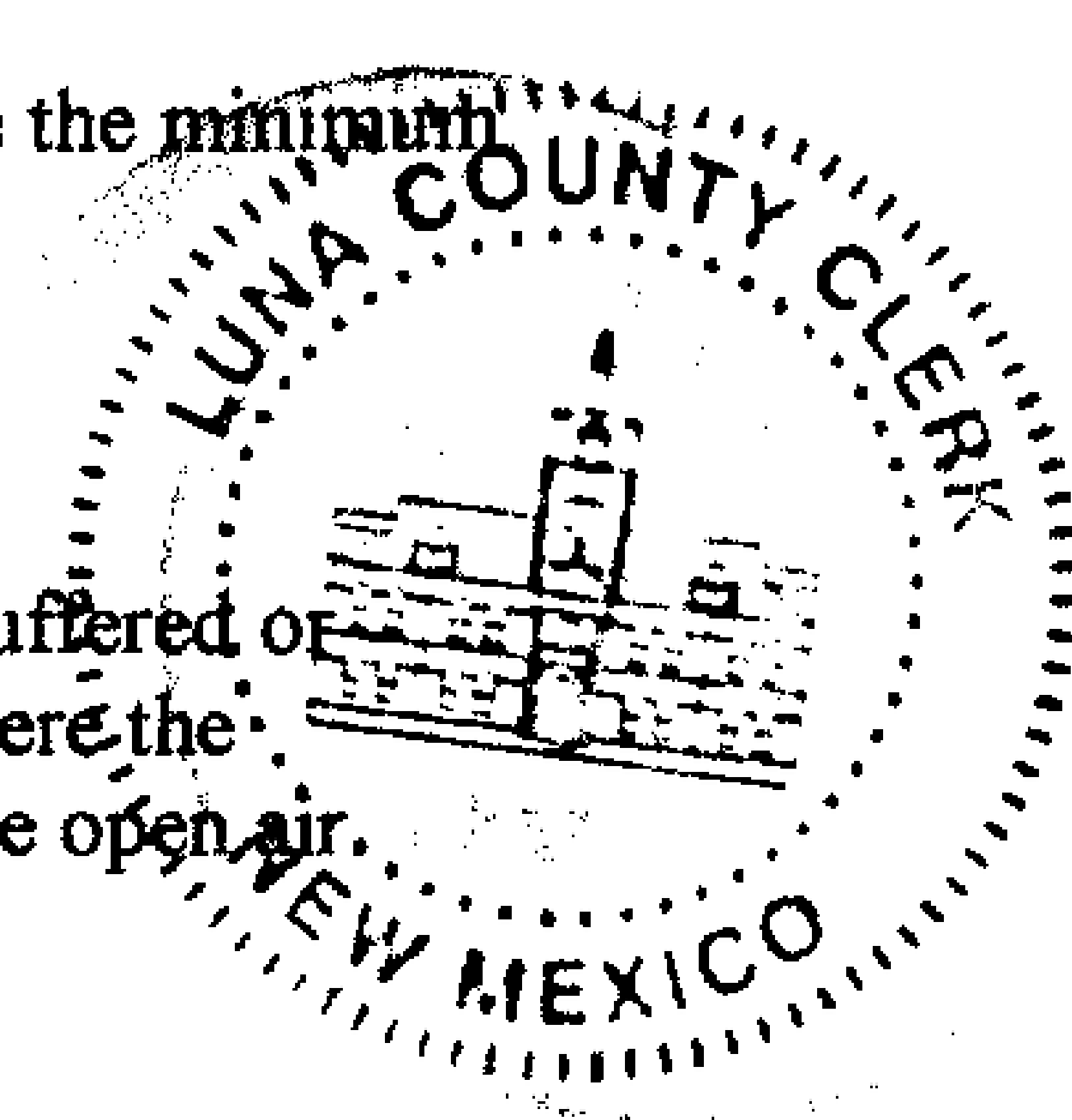
Section 1. Title. This ordinance shall be known as the 2009 Luna County Burning Ordinance.

Section 2. Authority. This ordinance is executed pursuant to the authority granted to counties to provide for the safety and preserve the health of County residents as set forth in §4-37-1 et seq., NMSA 1978. It incorporates the applicable provisions of the New Mexico Environment Department regulations 20.2.60 NMAC.

Section 3. Interpretation. The provisions herein are held to include the minimum standards necessary to carry out the purposes of this ordinance.

Section 4. Definitions.

- A. Open burning means any manner of burning, whether caused, suffered or allowed, not in a devise or chamber to achieve combustion, where the products of combustion are emitted directly or indirectly into the open air. This does not include detonation of manufactured explosives.
- B. Fire Marshall shall be the Director of Emergency Preparedness.
- C. Agricultural burning shall mean any burning of agricultural products, by-products or agricultural refuse (and is included within the definition of



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vegetative materials) by a farmer engaged in the commercial production of agricultural products or by a facility which processes agricultural products.

- D. Vegetative material is defined in Section 20.2.60.7 NMAC incorporated herein by reference.

Section 5. Prohibited Acts.

Except as stated herein, no person or entity within the County shall start, ignite or cause to be started or ignited:

- A. Any open burn, except those permitted by Section 20.2.60.109 NMAC
- B. Fireworks.

Section 6. Vegetative Burns/Agricultural Burning. Any vegetative burn or agricultural burn shall be subject to the following requirements:

- (1) burning shall be conducted at least three hundred feet from any occupied dwelling, workplace, or place where people congregate, which is on property owned by, or under possessory control of, another person; burning that does not meet this requirement is subject to 20.2.65 NMAC (Smoke Management);
- (2) burning shall begin no earlier than one hour after sunrise, and shall be extinguished no later than one hour before sunset; burning outside of this time limitation is subject to 20.2.65 NMAC (Smoke Management);
- (3) burning shall be attended at all times;
- (4) the Fire Marshall shall be notified 24 hours prior to burning; if he is not available, the chief of the volunteer fire department for the area where the burn is located shall be notified 24 hours in advance of the burn.
- (5) for burns exceeding one acre per day or one hundred cubic feet of pile volume per day, the burner shall provide prior notice of the date and location of the burn to all households within one quarter of a mile of the burn;
- (6) burning shall be in compliance with 20.9.1 NMAC (Solid Waste Management);
- (7) burning shall not be conducted when an air pollution episode is in effect;
- (8) auxiliary fuel or incendiary devices may be used to ignite the burning allowed by this section, provided that:
 - i. no oil heavier than number two diesel shall be used; and
 - ii. no more than the minimum amount of auxiliary fuel necessary to complete the burn shall be used;

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- (9) polyethylene sheeting may be burned with the vegetative materials, provided that:
- i. the sheeting has been covering piled vegetative material for at least one month prior to burning;
 - ii. the amount of sheeting burned is no more than the minimum necessary to cover the pile;
 - iii. removal of the sheeting before burning is impractical; and
 - iv. the burner is able to provide evidence, such as purchase records or package labeling, that the sheeting is polyethylene and not some other form of plastic;
- (10) the burner shall consider alternatives to burning prior to igniting a burn; and
- (11) material to be burned shall be as dry as practicable.

Section 7. Violation; Enforcement.

Any person who commits any of the above prohibited acts shall be subject to the following penalties in accordance with §4-37-3 NMSA 1978.

- A. A fine of up to \$300.00;
- B. imprisonment of up to 90 days, or both.

Citations for violations may be issued by the County Code Enforcement Officer, or any deputy sheriff.

Section 8. Severability.

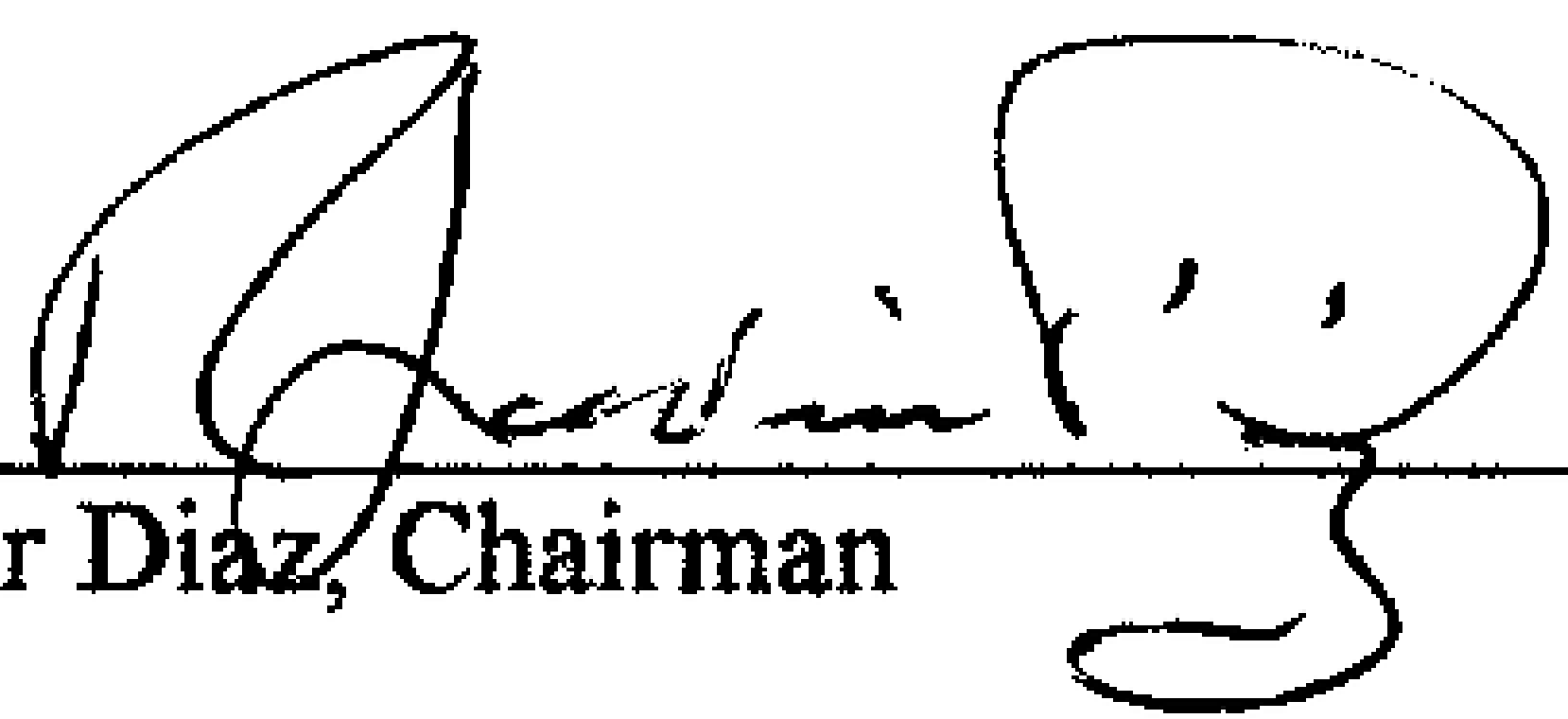
If any article, section or provision of this ordinance is deemed invalid or void, the remaining portions shall not be affected and shall be enforced accordingly.

Section 9. Effective Date; Declaration of Moratorium.


The Board of County Commissioners hereby declares a continuing emergency relating to fire conditions within the County which are an immediate danger to the public health, safety and welfare of the County and its residents, and the ordinance shall take effect immediately upon adoption by the Board of County Commissioners and recordation by the County Clerk as required by statute. Due to the declared emergency and danger, no publication under §4-37-7 NMSA 1978 is required.

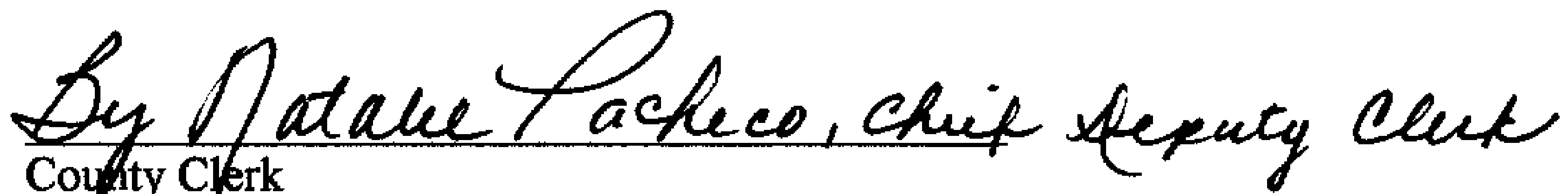
PASSED, APPROVED AND ADOPTED this 9th day of April, 2009, by the Luna County Board of County Commissioners.

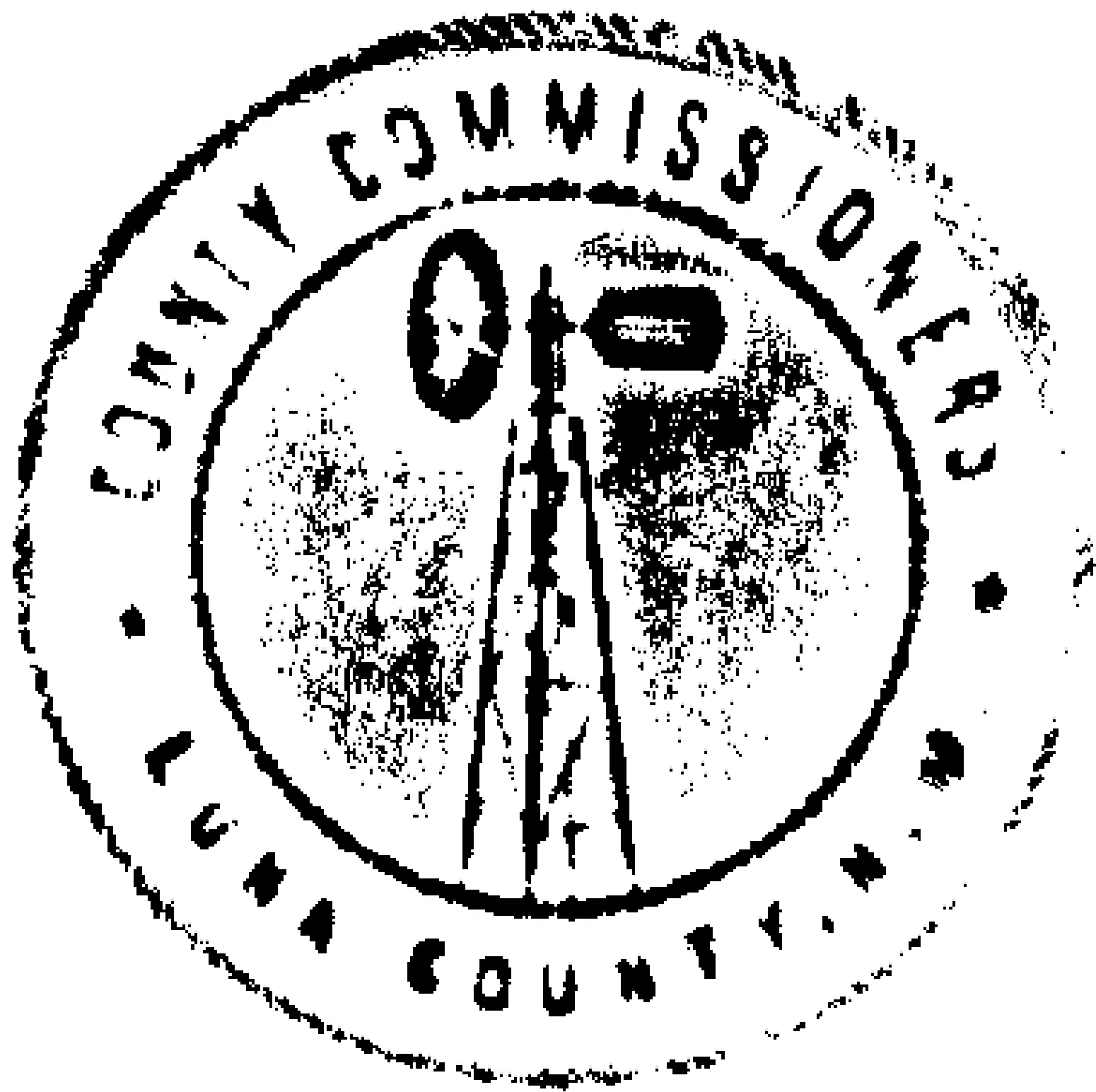
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R. Javier Diaz, Chairman


Becky Allen Gilmore, Member


Fred Williams, Member


Natalie Pacheco, Chief Deputy Clerk
County Clerk



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