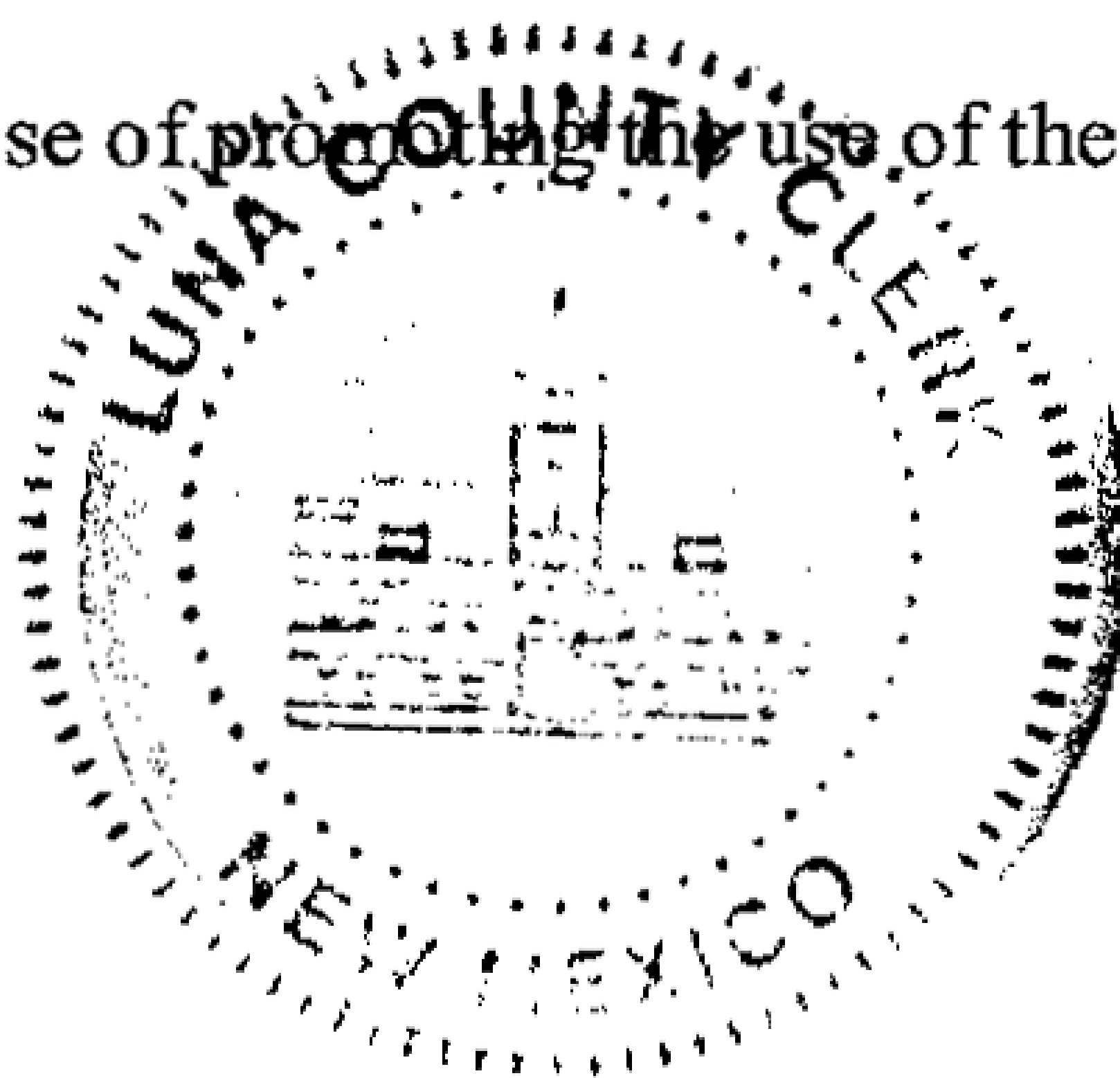


**LUNA COUNTY, NEW MEXICO**  
**BOARD OF COUNTY COMMISSIONERS**  
**ORDINANCE NO. 79**

AUTHORIZING THE ISSUANCE AND SALE OF LUNA COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (MACHO SPRINGS WIND PROJECT) SERIES 2010, IN AN AGGREGATE PRINCIPAL AMOUNT UP TO \$110,000,000 TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A WIND FARM FOR THE PURPOSE OF GENERATING ELECTRICITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, BONDS, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BONDS AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, Luna County (the "County") is a legally and regularly created, established, organized and existing political subdivision of the State of New Mexico (the "State") created pursuant to Sections 4-3A-1 through 4-3A-14, NMSA 1978, as amended; and

WHEREAS, pursuant to New Mexico Statutes Annotated, Sections 4-59-1 through 4-59-16, 1978 Compilation, as amended (the "Act"), the County is authorized to acquire industrial revenue projects to be located within the County, to issue industrial revenue bonds and to use the proceeds of such bonds for the purpose of promoting the use of the natural resources of the State



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and promoting industry and developing trade or other economic activity to secure and maintain a balanced and stable economy in the County to promote public health, safety, security and general welfare of the citizens of the County; and

WHEREAS, Macho Springs Power I, LLC (the "Company"), is a limited liability company organized under the laws of Delaware; and

WHEREAS, the Company has requested that the County issue industrial revenue bonds for the purpose of providing funds to finance the acquisition, construction, installation, and equipping, of a wind farm for the purpose of generating electricity (the "Project"). [The County has been advised by the Company that a building permit must be obtained and that neither location approval nor a certificate of convenience and necessity are required prior to commencing construction or operation of the facility pursuant to the laws of the State]; and

WHEREAS, the Company has presented to the Luna County Board of County Commissioners (the "Commission") a proposal whereby the County would (a) issue its Taxable Industrial Revenue Bonds (Macho Springs Wind Project), Series 2010 (the "Bonds"), and (b) acquire certain wind generation turbines, blades, nacelles, rotors, supporting structures used to generate electricity from wind and related equipment and property, and land leases related to the Project (collectively, the "Project Property"), located within a part of the County which is outside the corporate limits of any municipality in the County, to be used by the Company for the generation, transportation and delivery of electricity; and

WHEREAS, under the Company's proposal, the County would enter into an Indenture of Trust to be dated as of October 15, 2010 (the "Indenture"), with the Purchaser and a Depositary acceptable to the County and the Purchaser pursuant to which, together with this ordinance (the "Bond Ordinance"), the County would issue the Bonds; and

WHEREAS, under the Company's proposal, the County and the Company would enter into a Lease, pursuant to which the Company will lease the Project Property from the County and the Company will make payments sufficient to pay the principal of and interest on the Bonds and to pay all other obligations incurred pursuant to the provisions of the Lease and the Bond Ordinance; and

WHEREAS, the County is authorized to enter into, deliver and perform all of its obligations under the Bond Documents and to issue, execute and deliver the Bonds pursuant to the Act and the Bond Ordinance; and

WHEREAS, the Bonds in an aggregate principal amount up to \$110,000,000 will be issued, sold and delivered by the County, in a private sale to Element Power Wind Development, LLC (the "Purchaser"), pursuant to a bond purchase agreement to be dated as of the initial date of delivery of the Bonds, among the County, the Purchaser and the Company (the "Bond Purchase Agreement"); and

WHEREAS, the proceeds of the Bonds shall be applied to pay the costs of the Project and to pay certain costs associated with the transaction; and

WHEREAS, the Commission has determined that it is in the best interest of the County to issue the Bonds and to execute and deliver the Bond Documents, defined below, and other documents related thereto; and

WHEREAS, the County will enter into the following documents in connection with the issuance of the Bonds:

1. Lease;
2. Indenture;
3. Bond Purchase Agreement; and



4. Bonds.

The Lease, Indenture, Bond Purchase Agreement and Bonds are collectively referred to in the Bond Ordinance as the "Bond Documents"; and

WHEREAS, the County is authorized to issue the Bonds under the Act and after having considered the Company's proposal, has concluded that it is desirable at this time to authorize the issuance of the Bonds to finance the Project and that the County's issuance of the Bonds will constitute and be a valid public purpose; and

WHEREAS, this Commission has been advised by Company Counsel that the disclosure provisions of Rule 15-2-12 of the Securities and Exchange Commission are not applicable to this transaction inasmuch as the Bonds are being sold in a private sale without participation of an underwriter; and

WHEREAS, there has been published in the *Deming Headlight*, a newspaper of general circulation in the County, public notice of the Commission's intention to adopt this Bond Ordinance, which notice contained certain information concerning the ownership, purpose, location and size of the Project and the amount of the Bonds to be issued to finance the Project, which notice was published at least fourteen (14) days prior to final action upon this Bond Ordinance; and

WHEREAS, the acquisition of the Project Property has been approved by the Deming Public School District No.1.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS, THE GOVERNING BODY OF LUNA COUNTY, NEW MEXICO:

Section 1. RATIFICATION. All actions not inconsistent with the provisions of this Bond Ordinance previously taken by the Commission and the officials of the County directed

toward approval of the issuance and sale of the Bonds be approved and the same hereby are ratified, approved and confirmed.

Section 2. FINDINGS.

A. General. The Commission hereby declares that it has considered as relevant information presented to it relating to the Bonds and the Project and hereby finds and determines that the issuance of the Bonds pursuant to the Bond Ordinance to provide funds for the Project is necessary and advisable and in the interest of and will promote the use of the natural resources of the State, industry and trade and a sound and proper balance in the State between agriculture, commerce and industry.

B. The Commission finds that:

- (1) The Bonds will be issued for the purpose of financing the Project.
- (2) The face amount of obligations to be issued with respect to financing the Project is an aggregate principal amount up to \$110,000,000.
- (3) The developer of the Project Property is the Company.
- (4) The Project Property is located in Luna County, approximately 26 miles northeast of Deming, New Mexico and outside the corporate limits of any municipality located in the County.

Section 3. BONDS - APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale.

The issuance of the Bonds in an aggregate principal amount up to \$110,000,000 and the use of the proceeds of the Bonds to finance the cost of the Project including payment of transaction expenses related thereto are hereby approved and confirmed.

The sale of the Bonds at par in an aggregate principal amount up to \$110,000,000 is approved.

B. Form and Terms.

Subject to the limitations set forth in this Bond Ordinance, the Bonds shall (i) be in the form and denomination and shall be numbered and dated as set forth in the Indenture; (ii) be payable as to principal and interest and subject to optional and mandatory redemption and defeasance in the amounts, upon the conditions and at the times and prices set forth in the Indenture; and (iii) be issued in an aggregate principal amount up to \$110,000,000, bearing interest at the rate and maturing on the date set forth in the Indenture.

C. Execution. The Bonds shall be signed by the presiding officer of the Board of County Commissioners of the County.

D. Interest Rate. The interest rate on the Bonds shall not exceed 6% per annum.

Section 4. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS; ACTIONS TO BE TAKEN. The form, terms and provisions of the Bond Documents in the form on deposit in the office of the County Clerk are in all respects approved, authorized and confirmed.

The Presiding Officer of the Board of County Commissioners of the County is authorized to approve the form, terms and provisions of the Bond Documents on behalf of the Commission, provided that such form, terms and provisions are consistent with this Bond Ordinance and to execute and deliver in the name and on behalf of the County, and the County Clerk or Deputy County Clerk is hereby authorized to attest, as necessary, the Bond Documents.

The County Clerk is further authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other agreements, including security agreements, and to do such other acts and things, either prior to or after the date of delivery of the Bonds, as are necessary or appropriate to consummate the transactions contemplated by the Bond Documents.

The Presiding Officer of the Commission and County Manager shall take such action as is necessary to effectuate the provisions of the Indenture and shall take such action as is necessary in conformity with the Act to finance the costs of the Project and for carrying out other transactions as contemplated by this Ordinance, and the Bond Documents, including, without limitation, the execution and delivery of any closing documents to be delivered in connection with the sale and delivery of the Bonds.

Section 5. DELIVERY OF BONDS. Upon the execution of the Bond Documents, the satisfaction of the conditions set forth in the Bond Documents and upon receipt of the purchase price for the Bonds, the Bonds shall be executed, authenticated and delivered to the Purchaser. The Bonds shall not be valid for any purpose until the Bonds has been properly authenticated as set forth in the Indenture.

Section 6. FUNDS AND ACCOUNTS. There is established in the Indenture, and on and after the date on which the Bonds are issued there shall be maintained, the funds and accounts as set forth in the Indenture. Other funds and accounts may be established as are necessary under the Indenture.

Section 7. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND OTHER MATTERS. The following determinations are made:



A. The maximum amount necessary in each year to pay the principal of and interest on the Bonds, assuming issuance of the Bonds as of October 15, 2010, in the maximum aggregate principal amount of \$110,000,000 and bearing a maximum interest rate of 6%, is as follows:

Year	Balance	Principal	Interest	Total Debt Service
2010	\$110,000,000.00	\$ 0	\$ 0	\$ 0
2011	106,333,333.33	3,666,666.67	6,600,000.00	10,266,666.67
2012	102,666,666.66	3,666,666.67	6,380,000.00	10,046,666.67
2013	98,999,999.99	3,666,666.67	6,160,000.00	9,826,666.67
2014	95,333,333.32	3,666,666.67	5,940,000.00	9,606,666.67
2015	91,666,666.65	3,666,666.67	5,720,000.00	9,386,666.67
2016	87,999,999.98	3,666,666.67	5,500,000.00	9,166,666.67
2017	84,333,333.31	3,666,666.67	5,280,000.00	8,946,666.67
2018	80,666,666.64	3,666,666.67	5,060,000.00	8,726,666.67
2019	76,999,999.97	3,666,666.67	4,840,000.00	8,506,666.67
2020	73,333,333.30	3,666,666.67	4,620,000.00	8,286,666.67
2021	69,666,666.63	3,666,666.67	4,400,000.00	8,066,666.67
2022	65,999,999.96	3,666,666.67	4,180,000.00	7,846,666.67
2023	62,333,333.29	3,666,666.67	3,960,000.00	7,626,666.67
2024	58,666,666.62	3,666,666.67	3,740,000.00	7,406,666.67
2025	54,999,999.95	3,666,666.67	3,520,000.00	7,186,666.67
2026	51,333,333.28	3,666,666.67	3,300,000.00	6,966,666.67
2027	47,666,666.61	3,666,666.67	3,080,000.00	6,746,666.67
2028	43,999,999.94	3,666,666.67	2,860,000.00	6,526,666.67
2029	40,333,333.27	3,666,666.67	2,640,000.00	6,306,666.67
2030	36,666,666.60	3,666,666.67	2,420,000.00	6,086,666.67
2031	32,999,999.93	3,666,666.67	2,200,000.00	5,866,666.67
2031	29,333,333.26	3,666,666.67	1,980,000.00	5,646,666.67
2033	25,666,666.59	3,666,666.67	1,760,000.00	5,426,666.67
2034	21,999,999.92	3,666,666.67	1,540,000.00	5,206,666.67
2035	18,333,333.25	3,666,666.67	1,320,000.00	4,986,666.67
2036	14,666,666.58	3,666,666.67	1,110,000.00	4,766,666.67
2037	10,999,999.91	3,666,666.67	879,999.99	4,546,666.66
2038	7,333,333.24	3,666,666.67	659,999.99	4,326,666.66
2039	3,666,666.57	3,666,666.67	439,999.99	4,106,666.66
2040	0	3,666,666.57	219,999.99	3,886,666.56

B. The Bonds will bear interest at six percent (6%).

C. The Bonds may be redeemed at any time without premium.



D. It shall not be necessary to deposit any amount in a debt service reserve fund or a repair and replacement reserve fund for the maintenance of the Project Property.

E. The Lease requires that the Company maintain the Project Property in safe repair and in such operating condition as is needed for its operations and carry proper insurance with respect to the Project Property as provided in the Lease.

F. The Lease requires the Company to make lease payments in an amount sufficient to pay the principal of and interest on the Bonds as principal and interest become due and to pay all related costs.

Section 8. LIMITED OBLIGATIONS. The Bonds shall be a special limited obligation of the County, payable solely from the Base Rent (as defined in the Lease) paid by the Company to the County as described in the Indenture and any other property or interest of the County specifically pledged under the Indenture and shall never constitute a debt or indebtedness of the County or the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution or statutes, and shall not constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power. Nothing contained in the Bond Ordinance or in the Bond Documents or any other instrument shall be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Bonds, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing powers, nor shall the breach of any agreement contained in the Bond Ordinance, the Bond Documents, the Bonds or any other instrument be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Bonds, all as provided in the Bond Documents), nor as

incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing power, the County having no power to pay out of its general funds, or otherwise contribute any part of the costs of constructing or equipping the Project Property, nor power to operate the Project Property as a business or in any manner except as lessor of the Project Property.

Section 9. APPROVAL OF INDEMNIFICATION. The Commission specifically requires that the Lease contain provisions relating to indemnification which provide that the Company shall indemnify and hold harmless the County and its Board of County Commissioners, officials, employees and agents against liability to the Company, or to any third parties that may be asserted against the County or its Board of County Commissioners, officials, members, officers, employees or agents with respect to the County's ownership of the Project Property or the issuance of the Bonds and arising from the condition of the Project Property or the acquisition, construction and operation of the Project Property by the Company, except to the extent New Mexico Statutes Annotated Section 56-7-1, 1978 Compilation, applies, and except claims for any loss or damage arising out of or resulting from the negligence or misconduct of the County or its Board of County Commissioners, or any official, employee or agent of the County.

Section 10. BOND ORDINANCE IRREPEALABLE. After the Bonds are issued, the Bond Ordinance shall be and remain irrevocable until the Bonds, including interest, are fully paid, canceled and discharged or there has been defeasance of the Bonds in accordance with the Indenture.

Section 11. REPEALER. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Bond Ordinance is repealed by this Bond Ordinance but only to

the extent of that inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, previously repealed.

Section 12. SEVERABILITY. If any section, paragraph, clause or provision of the Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of the Bond Ordinance.

Section 13. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. This Ordinance, immediately upon its final passage and approval, shall be authenticated by the signature of the presiding officer of the Board of Commissioners, and by the signature of the County Clerk or any Deputy County Clerk, and shall be recorded in the Ordinance book of the County, kept for that purpose, and shall be in full force and effect thereafter in accordance with the laws of the State, and notice of adoption thereof shall be published once in a newspaper which maintains an office in, and is of general circulation in the County.



Done this 9<sup>th</sup> day of September, 2010

ATTEST:

*Karen Smyer*

by: *Berenda McWright*  
County Clerk

LUNA COUNTY, NEW MEXICO  
BOARD OF COUNTY COMMISSIONERS

*[Signature]*  
Chairman



*Debra French*  
Commissioner

*Fred L. Williams*  
Commissioner

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