

**STATE OF NEW MEXICO  
WATER QUALITY CONTROL COMMISSION**

**IN THE MATTER OF PROPOSED NEW  
RULE 20.6.8 NMAC – *Ground and Surface  
Water Protection – Supplemental Requirements  
For Water Reuse***

**No. WQCC 23 – 84 (R)**

**NEW MEXICO ENVIRONMENT DEPARTMENT,  
WATER PROTECTION DIVISION,**

**Petitioner.**

**THE HONORABLE HEARING OFFICER  
FELICIA ORTH, PRESIDING.**

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**MAXWELL'S  
MOTION TO DISQUALIFY  
AND MEMORANDUM BRIEF IN SUPPORT**

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**COMES NOW** Nicholas R. Maxwell, your movant, hereby wishes to disqualify certain members of the Water Quality Control Commission (“Commission”) who, as state agency heads, have not fulfilled their legal obligation to disclose their financial interests, and in support, states:

I. MEMORANDUM IN SUPPORT OF DISQUALIFICATION.

A. APPLICABLE LAW.

i. THE FINANCIAL DISCLOSURE ACT.

The Financial Disclosure Act, NMSA 1978, §§ 10-16A-1 to -9 (as amended 2021) (hereinafter, the “Act”), requires several categories of individuals to file annual financial disclosure statements with the Secretary of State: persons holding legislative or statewide office; candidates for legislative or statewide office; officials whose appointment to a board or commission is subject to senate confirmation; members of the insurance nominating committee; state ethics commissioners; and state agency heads (§ 10-16A-3(A)-(C)). The Act’s language generally makes clear which individuals fall within these categories, with one notable exception.

The Act does not specify what constitutes a “state agency” or a “state agency head” (§ 10-16A-2), leaving a gap in the absence of judicial interpretation by New Mexico appellate courts. The State Ethics Commission (“Ethics Commission”) issued Advisory Opinion 2021-10 on August 13, 2021<sup>1</sup>, offering interpretation on these undefined terms.

The Ethics Commission characterized a "state agency" under the Act as a state entity equipped with "powers and resources." *See* 2021 Op. Ethics Comm'n No. 2021-10, at page 4. Specifically, this includes state entities with “(i) the legally authorized powers to alter the rights, duties, or privileges of others; and (ii) appropriated funds.” *See id.*, at page 4. This delineation is

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<sup>1</sup> See <https://www.nmonesource.com/nmos/secap/en/item/18187/index.do>.

in harmony with definitions found in broader New Mexico law, such as the Administrative Procedure Act (§ 12-8-2(A)) and the Inspection of Public Records Act (§ 14-2-6(F)), which emphasize the capacity to alter legal rights and the reception of public funds as defining attributes of state agencies or public bodies. *See id.*, at page 2.

The Ethics Commission opined the term "head" of a "state agency" to be "the person *or persons* [emphasis added] who are ultimately responsible for exercising the agency's powers or expending the agency's appropriated funds." *See id.*, at page 4. The Act obligates such individuals to disclose information about their employment, sources of income, real estate holdings, business involvements, memberships in for-profit organizations, professional licenses, and transactions with state entities (§ 10-16A-3(D)(1)–(8)). While this general framework offered by the Ethics Commission seeks to identify who qualifies as a 'state agency head,' it also explicitly recognizes that some ambiguity may remain in specific situations. *See* 2021 Op. Ethics Comm'n No. 2021-10 at page 4 (noting 'The unavoidable fact is that each new arrangement must be examined anew and in its own context.' *Cf. Washington Rsch. Project, Inc. v. Dep't of Health, Ed. & Welfare*, 504 F.2d 238, 246 (D.C. Cir. 1974)). Nonetheless, this interpretation equips the Secretary of State and the Ethics Commission with a definition that aligns with the Act's overarching aim of fostering ethical governance and enhancing transparency. *See id.*, at page 5.

Notably, the Act explicitly mandates that state agency heads are required to file a financial disclosure statement within thirty days of their appointment, and again in the month of January each year for the duration of their service (§ 10-16A-3(C)). Non-compliance with the filing requirements of the Act renders an individual ineligible to lawfully occupy their appointed position (§ 10-16A-3(I)).

The Act establishes a framework for enforcing compliance (§§ 10-16A-6 to -9). It grants the Ethics Commission the authority to investigate and penalize non-compliance, imposing a fine of \$50 per regular working day for late filings, with a maximum penalty of \$5,000 (§ 10-16A-6(A)-(D)). Violators may face misdemeanor charges, with penalties up to \$1,000 or one year in jail (§ 10-16A-7). The Act also authorizes civil actions to address violations, enabling the Ethics Commission to initiate or refer cases to the Attorney General or a district attorney for enforcement (§ 10-16A-8(A)-(B)). The Act includes a range of judicial remedies, such as injunctions or restraining orders, and imposes civil penalties of \$250 for each infraction, with a total not exceeding \$5,000 (§ 10-16A-8(B)).

The Secretary of State is also vested with multiple duties under the Act: to advise, educate, and ensure voluntary compliance for individuals subject to the Act by “providing timely advance notice of the required financial disclosure statement” and “preparing forms that are clear and easy to complete” (§ 10-16A-5(A)); and to enact rules for the Act’s implementation (§ 10-16A-9). Initiatives to promote voluntary compliance, such as offering a grace period to rectify unintentional violations, take precedence before any referral from the Secretary of State to the Ethics Commission for civil enforcement. (§ 10-16A-5(B)).

(a). FINANCIAL DISCLOSURE REPORTING PROCEDURES RULE.

The Secretary of State has promulgated the Financial Disclosure Reporting Procedures Rule pursuant to the authority granted by the Act (§ 10-16A-9), as outlined in TITLE 1, CHAPTER 10, PART 31 NMAC (effective January 1, 2022). This rule establishes comprehensive procedures for the filing of “financial disclosure statements,” defined at



1.10.31.7.F NMAC, required by the Act, directly applicable to individuals including “state agency heads,” defined at 1.10.31.7.K NMAC (1.10.31.8 NMAC and 1.10.31.9 NMAC).

Specifically, this rule clarifies that financial disclosure statements must also enumerate “the name of the agency” and “the first day the filer held the position of state agency head” (1.10.31.8.C(2) NMAC) in addition to reiterating the Act’s required disclosures at Section 10-16A-3(D)(1)-(8) (1.10.31.8.B-N NMAC). It mandates that all financial disclosure submissions must be made through an electronic filing system prescribed by the Secretary of State, expressly prohibiting paper form submissions (1.10.31.8.A NMAC). It explicitly allows for the disclosure of additional information beyond the statutory requirements (1.10.31.8.O-P NMAC).

The rule reiterates the statutory ten-day grace period for correcting unintentional or good faith errors before imposing fines (1.10.31.10.B-C NMAC and § 10-16A-5(B)). It indicates the Secretary of State’s capacity to investigate compliance issues and collaborate with the Ethics Commission in enforcing the Act (*Id.*).

ii. THE WATER QUALITY ACT.

The Water Quality Act (hereinafter, the “WQA”), NMSA 1978, §§ 74-6-1 to -17 (as amended 2019) designates the Commission as the state water pollution control agency for New Mexico, granting the Commission with the responsibility of implementing federal water safety and pollution control acts and empowering it to undertake necessary actions to secure benefits from these programs for the state, local, and regional levels (§ 74-6-3(E)). Under the WQA, a quorum, consisting of a majority of the Commission, is required for conducting public business; and, for any action to be valid, it must receive the concurrence of at least six (6) members during a meeting (§ 74-6-3(D)).

Unlike the Environmental Improvement Board (“EIB”) or the Occupational Health and Safety Review Commission (“OHSRC”), other “affiliated” entities (See Exhibit 1) to the Environment Department (“Department”) with gubernatorial appointments requiring Senate confirmation (§§ 74-1-4(A) and 50-9-9(A), resp.), members of the Water Quality Control Commission do not undergo a senate confirmation. (§ 74-6-3(A)(1)-(11)). The Commission is instead composed of designated members from various state departments and public representatives – comprised of the secretaries or designated staff from the Departments of Environment, Health, Game and Fish, among others, as well as a municipal or county government representative and four public representatives appointed by the governor for four-year terms (*Id.*). ‘This serves the purpose of having expertise on the Commission which deals with highly technical and complicated matters.’ See *Kerr-McGee Nuclear Corp. v. N.M. Water Quality Control Comm'n*, 1982-NMCA-015, ¶ 19, 98 N.M. 240, 647 P.2d 873 (under prior law).

The Commission independently elects its chair and other officers (§ 74-6-3(C)). Furthermore, the Commission is empowered to select its legal counsel from the Office of the Attorney General, independent counsel, or another state agency that is sufficiently distinct from the Department and each constituent agency<sup>2</sup> to ensure impartial and independent legal advice (§ 74-6-3.1(A)).

The Commission’s enumerated powers, generally and inexhaustibly given, include accepting and supervising loans and grants from various sources, adopting comprehensive water quality management programs, and promulgating regulations to prevent or abate water pollution

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2 A “constituent agency,” including the Department and others, is defined under Section 74-6-2(K) NMSA 1978. The other constituent agencies include: the state engineer and the interstate stream commission. the department of game and fish, the oil conservation commission, the state parks division of the energy, minerals and natural resources department, the New Mexico department of agriculture, the soil and water conservation commission, and the bureau of geology and mineral resources at the New Mexico institute of mining and technology.

across New Mexico (§ 74-6-4(A)-(E)). The Commission is empowered to assign administrative responsibilities to constituent agencies as to assure adequate coverage and prevent duplication of effort, including classifying waters and sources of water contaminants to facilitate these assignments and resolving jurisdictional disputes between constituent agencies (§ 74-6-4(F)). The Commission is also authorized to enter into agreements with federal and other state governments, aligning with the purposes of the WQA, and to “receive and allocate to constituent agencies funds made available” to the Commission (§ 74-6-4(G)). The Commission can grant individual variances from regulations when compliance imposes an unreasonable burden, provided that these variances are conditioned upon the achievement of specified pollution abatement within a set timeframe, and subject to public hearing procedures as defined by the Commission (§ 74-6-4(H)). The Commission may adopt regulations requiring filings for construction and operation plans of sewer systems and treatment works, as well as regulations for preventing the introduction of contaminants into state waters (§ 74-6-4(I)-(K)). These regulations include measures to prevent pollution and monitor water quality, specifying requirements for industries such as the dairy and copper industries, based on the best available scientific information (§ 74-6-4(K)).

The Commission is empowered with regulatory powers under the WQA, specifically regarding permits, certification, and the comprehensive regulatory framework to manage water quality (§ 74-6-5). The Commission may require permits for discharging contaminants or for disposal and reuse of septage or sludge, as designated by regulations (§ 74-6-5(A)). It sets forth procedures for certifying federal water quality permits and adjudicating permit applications, including the conditions under which permits may be granted or denied based on the adherence

to environmental standards and regulations (§ 74-6-5(B)-(E)). The Commission oversees public notification procedures for permit issuance (§ 74-6-5(F)). The Commission holds the authority to adopt, amend, or repeal water quality regulations and standards only after conducting a public hearing (§ 74-6-6(A)-(E)). The Commission's powers also extend to issuing compliance orders and assessing penalties for violations of water quality standards (§ 74-6-10(A)-(K)). Final actions of the Commission are subject to judicial review (§ 74-6-7(A)-(C)).

Members of the Commission are required to maintain financial independence from entities regulated under the WQA, and upon appointment and before performing any duties, each member must file a disclosure statement with the Secretary of State detailing any significant financial interests received from permit holders or applicants over the past two years (§ 74-6-3(B)). If a member has received more than ten percent of their gross personal income from such entities, they must abstain from participating in related appeals (*Id.*).

The Commission is administratively attached to the Department (§ 74-6-3(F)), a relationship further defined in the Department of Environment Act.

iii. THE DEPARTMENT OF ENVIRONMENT ACT.

The Department of Environment Act (DEA), NMSA 1978, §§ 9-7A-1 to -17 (as amended 2022), as it relates to the Commission, establishes ties between the Department and its affiliated boards and commissions, specifically noting the exemptions of three (3) entities from the authority of the Secretary of Environment (§§ 9-7A-12 to -14). The DEA establishes the Secretary of Environment as the administrative head of the Department, who is appointed by the Governor and subject to the consent of the Senate. (§ 9-7A-5(A)). The Commission receives staff support from the Department but maintains autonomy in its "powers, duties, and responsibilities

under Sections 47-6-11<sup>3</sup>, 74-6-3 through 74-6-8, 74-6-10, and 74-6-12 NMSA 1978” (§ 9-7A-13). These aspects of the Commission's operation are explicitly exempt from the Secretary’s authority under 9-7A-6 NMSA 1978 (*Id.*). The EIB and OHSRC also receive staff and support from the Department and are the other two entities with “powers, duties, and responsibilities” explicitly exempt from the Secretary’s authority in the DEA (§§ 9-7A-12 and 9-7A-14, resp.).

iv. THE GENERAL APPROPRIATION ACTS OF 2023 & 2024.

The General Appropriation Acts for 2023 and 2024, cited as Laws 2023, Chapter 210, and Laws 2024, Chapter 69, respectively, (collectively or individually referred to as the "GAA") allocate funds for fiscal years 2024 and 2025. The Department, as one recipient of these appropriations, oversees various programs, further categorized: resource protection, water protection, environmental protection, resource management, and environmental health; additionally, the GAA independently categorizes special revenue funds (*See GAA § 4*).

According to the GAA, the “purpose of the water protection program is to protect and preserve the ground, surface, and drinking water resources of the state for present and future generations. The program also helps New Mexico communities develop sustainable and secure water, wastewater, and solid waste infrastructure through funding, technical assistance, and project oversight.” (*Id.*). The water protection program is appropriated the highest amount of federal funding of the aforementioned programs (*Id.*).

v. THE STATE RULES ACT.

The State Rules Act (hereinafter, the “SRA”), NMSA 1978, §§ 14-4-1 to -11 (as amended 2017), defines 'agency' as any state government agency, board, commission, department,

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<sup>3</sup> Your movant found the New Mexico Subdivision Act referenced the Commission prior to a 1995 amendment.

institution, or officer, excluding the judicial and legislative branches (§ 14-4-2(A)). The SRA specifically grants these agencies the authority to adopt 'procedural rules' for public rule hearings (§ 14-4-5.8).

(a). RULEMAKING PROCEDURES OF THE COMMISSION.

The Commission has promulgated procedural rules for public rulemaking hearings pursuant to the authority granted by the WQA and the SRA (§§ 74-6-4(E) and 14-4-5.8, resp.), as outlined in TITLE 20, CHAPTER 1, PART 6 NMAC (effective March 16, 2018). This rule mandates that members must recuse themselves from any action where their impartiality could reasonably be questioned (20.1.6.102 NMAC). Such recusal must be publicly announced on the record, with the decision potentially based on the Governmental Conduct Act, the Financial Disclosures Act, or any other relevant authority (20.1.6.102 NMAC).

vi. THE GOVERNMENTAL CONDUCT ACT.

The Governmental Conduct Act (hereinafter, the "GCA"), NMSA 1978, §§ 10-16-1 to -18 (as amended 2023), mandates that public officers or employees must disqualify themselves from any official act that could directly impact their financial interests, except when the financial benefit of the financial interest to the individual is proportionately less than the benefit to the general public (§ 10-16-4(B)). Important definitions relevant to this requirement include "financial interest," which is defined as an ownership interest in a business or property, or any employment where negotiations have already begun (§ 10-16-2(F)), and "official act," referring to decisions or actions involving discretionary authority (§ 10-16-2(H)). The term "public officer or employee" encompasses any elected or appointed official or employee of a state agency or local government agency who receives compensation in the form of salary or is eligible for per

diem or mileage, but excludes legislators (§ 10-16-2(I)). The GCA outlines ethical principles for public service, with one specifically stating that 'full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service' (§ 10-16-3(C)). Public officers and employees are required to disclose in writing any employment they engage in outside of their service to a state or local government agency (§ 10-16-4.2).

The GCA imposes specific criminal penalties for any person who knowingly and willfully violates its provisions, with offenders subject to fines of up to one thousand dollars (\$1,000), imprisonment for up to one year, or both (§ 10-16-17). The GCA details enforcement and civil penalties for violations, allowing the Ethics Commission to refer cases to the Attorney General or a district attorney, or initiate civil actions in district court for injunctions, restraining orders, or other appropriate orders, imposing civil penalties of two hundred fifty dollars (\$250) per violation up to a maximum of five thousand dollars (\$5,000) (§ 10-16-18(A)-(B)).

## B. FACTUAL BACKGROUND.

### i. THE COMMISSION MEMBERS.

The Commission now consists of thirteen (13) members: Bruce Thomson, who serves as the chairman; Jonas Armstrong, the vice chair; and William Brancard, Keith Candelaria, Paladugu Srikanth, Larry Dominguez, Bonnie Frey, Krista McWilliams, Kirk Patten, Gerasimos 'Gerry' Razatos, Toby Velasquez, Edward Vigil, and Katie Zemlick. There is a vacant seat on the Commission for a municipal or county government representative (§ 74-6-3(A)(10)).

ii. INSPECTION.

On March 8, 2024, your movant requested the public records custodian for the Secretary of State prepare for his inspection the financial statements of Commission members that were not shown on the Campaign Finance Information System website (hereinafter, the 'CFSI Website'), specifically when filtering results under filing year 2024 by the 'Office' category and selecting 'Water Quality Control Commission'; on March 13, 2024, the public records custodian indicated responsive records were maintained for public access on the CFSI website (*See Exhibits 2 & 3*).

Upon his final review of the CFSI Website conducted on April 15, 2024, your movant noted the status of the 2024 financial disclosure statements for members (*See also Exhibit 3*):

- (1) Chairman Bruce Thomson: No statement filed for 2024; latest filed in 2021.
- (2) Vice Chair Jonas Armstrong: Statement filed for 2024.
- (3) William Brancard: Statement filed for 2024.
- (4) Keith Candelaria: No statement filed for 2024; latest filed in 2021.
- (5) Paladugu Srikanth: No statement filed.
- (6) Larry Dominguez: Statement filed for 2024.
- (7) Bonnie Frey: Statement filed for 2024.
- (8) Krista McWilliams: No statement filed for 2024; latest filed in 2021.
- (9) Kirk Patton: No statement filed.
- (10) Gerasimos 'Gerry' Razatos: Statement filed for 2024.
- (11) Toby Velasquez: Statement filed for 2024.
- (12) Edward Vigil: No statement filed.
- (13) Katie Zemlick: No statement filed.



As of April 15, 2024, only six members of the Commission have filed a financial disclosure statement for 2024, while seven have not (*See Exhibit 3*). Of the six members who filed their statements in 2024, Brancard, Dominguez, and Velasquez have never disclosed their appointment to the Commission (*See id.*), while Vice Chair Armstrong first acknowledged his 2023 appointment upon refiling on January 11, 2024; Frey and Razatos filed their initial statements on March 4, 2024, and March 12, 2024, respectively (*See id.*). Frey's date of initial appointment was incorrectly recorded as the same as her filing date, although it actually preceded it (*See id.*).

Chair Thomson, Candelaria, and McWilliams, who last filed their statements in 2021, have previously filed statements in both 2020 and 2019, the year of their initial appointments (*See id.*).

iii. THIS PUBLIC HEARING.

This public hearing was approved by the Commission on January 9, 2024, on a 9-2 vote, with members Velasquez and Patton being absent. Member Brancard moved to schedule the hearing and appoint a hearing officer, seconded by Vigil. Members Dominguez and McWilliams voted against.

Nine Commission members - Chair Bruce Thomson and members Keith Candelaria, Paladugu Srikanth, Krista McWilliams, Kirk Patton, Edward Vigil, Katie Zemlick, Bonnie Frey, and Gerry Razatos - participated in this official act without having filed financial disclosure statements with the Secretary of State for either 2023 or 2024.

C. ARGUMENTS.

i. THE COMMISSION IS A STATE AGENCY.

In line with the interpretations provided by the Ethics Commission in Advisory Opinion 2021-10, the Commission, under the authority of the WQA and reinforced by the DEA, functions unequivocally as a state agency for the purposes of the Act. Under the Act, a 'state agency' encompasses any state entity that possesses the authority to alter the rights, duties, or privileges of others and to exercise authority over state-appropriated funds ('In light of the Financial Disclosure Act's governmental-ethics-related purpose, we conclude that a "state agency," under the Act, is a state entity that has "powers and resources"—more specifically, the (i) legally authorized powers to alter the rights, duties, or privileges of others; and (ii) appropriated funds.' See 2021 Op. Ethics Comm'n No. 2021-10, at page 4).

The Commission is the primary state authority for water pollution control, tasked with implementing and managing state water safety and pollution control programs. By its statutory mandate, the Commission adopts regulations, manages state funding, enforces compliance, issues permits, and conducts hearings—core functions that clearly define it as a state entity with significant discretionary and regulatory powers 'to alter the rights, duties, or privileges of others.'

The Commission, like the EIB and OHSRC, operates autonomously from the Department's Secretary. These three entities are explicitly exempt from the Secretary's direct oversight over their statutory powers, and though they receive administrative staff support from the Department, they maintain final authority over critical state powers in environmental regulations and public health, with their decisions subject to judicial review. While EIB and OHSRC members undergo Senate confirmation, qualifying for the Act's filing requirements, Commission members are appointed directly from various state departments and gubernatorial

selections from public interests as specified by statute, without Senate confirmation. This structural similarity to the EIB and OHSRC, particularly in terms of autonomy over its powers, provides reasonable grounds to classify the Commission as a state agency under the Act, despite its members not requiring Senate confirmation.

The Department, recognized as a state agency, receives its annual appropriation as specified in section 4 of the GAA, which is then legislatively allocated to its various programs, and its Secretary is required to comply with the Act's filing obligations ('Every state entity that receives an annual appropriation in section 4 of the General Appropriations Act or the feed bill is a "state agency" for the purposes of Section 10-16A-3(C), and their respective "heads" must file annual financial disclosure statements.' See 2021 Op. Ethics Comm'n No. 2021-10, at page 5). The Commission, while 'administratively attached' to the Department, operates with significant autonomy, exempt from the Secretary's direct oversight over the exercise of its powers. This exemption includes Section 74-6-4(G) of the WQA, which authorizes the Commission to independently forge agreements and to 'receive and allocate' funds to constituent agencies specifically allocated to it, exercising final authority over these resources. This use of state resources—though channeled through state appropriations to the Department as specified in the GAA—is but one example of the Commission's status as a distinct and independent state agency.

While the Commission's status as a state agency may not be as immediately clear as the Department's, the Ethics Commission's Advisory Opinion 2021-10 also emphasizes that such designations require careful consideration of the specific context and legal intent, essentially pointing out that determining 'state agency' and 'state agency head' status involves evaluating the unique circumstances and the comprehensive legal framework surrounding each entity and

appointee ('This construction might not perfectly resolve all the ambiguities that may arise when considering, under section 10-16A-3(C), whether a particular individual at a particular state entity is a "state agency head" or not.' Cf. *Washington Rsch. Project*, 504 F.2d at 246 ("The unavoidable fact is that each new arrangement must be examined anew and in its own context.")) See 2021 Op. Ethics Comm'n No. 2021-10 at page 4). With autonomous oversight over its powers and the independent authority to allocate state-appropriated resources to constituent agencies for WQA-aligned initiatives, the Commission is a 'state agency' for purposes of the Act.

ii. THE MEMBERS ARE STATE AGENCY HEADS.

If the Commission is a state agency under the Act, then the implication for its members—those who effectively govern and exercise its 'powers and resources,' whose composition is constructed by the WQA and whose collective power is exempt from the authority of the Secretary—is for those individuals to be the "state agency heads" of the Commission. According to Advisory Opinion 2021-10 by the State Ethics Commission, a "state agency head" is defined as "the person or *persons* [emphasis added] who are ultimately responsible for exercising the agency's powers or expending the agency's appropriated funds." These persons are the members themselves, exercising collective authority over the Commission's powers and resources.

Your movant turns to the specific statutory disclosure requirements mandated by Section 74-6-3(B) of the WQA to address the unique concerns of the Commission. These provisions require Commission members to disclose significant financial interests related to permit holders or applicants, clearly aimed at enhancing transparency and accountability. In all candor, these disclosures are not intended to supplant the broader mandates of the Act but to supplement them, addressing any potential gaps and ensuring all possible conflicts of interest are transparently

managed in accordance with Section 10-16-3(C) of the GCA. Critics might contend, without merit, that these requirements undermine the Act's jurisdiction; however, such interpretations overlook the clear legislative intent to reinforce ethical governance within the Commission.

Given that the WQA mandates specific disclosure requirements for Commission members, it follows logically that if the agency heads composing the greater part of the composition of the Commission, who are subject to the Act's requirements<sup>4</sup>, authorize designees to serve on the Commission in their stead, these designees must also comply with the broader disclosure mandates of the Financial Disclosure Act. This ensures that all Commission members, whether they are agency heads or their designees, disclose financial interests that might influence their decision-making. Thus, both agency heads and their designees are established as 'state agency heads' under the Act, subject to its comprehensive disclosure requirements.

iii. THE MEMBERS MUST ANNUALLY FILE DISCLOSURES.

Given that the Commission is determined to be a state agency under the Act, and its members recognized as 'state agency heads', the statutory filing requirements imposed by the Act apply unequivocally to all Commission members. According to the Act, the members, as state agency heads, are required to file a financial disclosure statement with the Secretary of State, who is tasked with providing "timely advance notice of the required financial disclosure statement" and preparing "forms that are clear and easy to complete." Specifically, these financial disclosure statements must be submitted to the Secretary of State within 30 days of their appointment and subsequently during the month of January every year for as long as a Commission member holds office.

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<sup>4</sup> Your movant noted off record in his inspection that two of these agency heads had not filed financial disclosure statements even for their leadership roles; however, this matter is beyond the scope of the current pleading.

iv. FORFEITURE OF APPOINTMENT UPON FAILURE TO FILE.

In accordance with Section 10-16A-3(I) of the Act, the timely filing of financial disclosure statements is a mandatory condition for holding Commission positions. The relevant statute clearly states: 'For a state agency head, ... the filing of the financial disclosure statement required by this section is a condition of entering upon and ... holding an appointed position.' Thus, failure to comply with these filing requirements results in automatic forfeiture of the right to hold the appointed position, regardless of whether previous conduct has been uncontested.

Chair Bruce Thomson and members Keith Candelaria, Paladugu Srikanth, Krista McWilliams, Kirk Patton, Edward Vigil, and Katie Zemlick have not filed their financial disclosure statements for 2024. Furthermore, Paladugu Srikanth, Kirk Patton, Edward Vigil, and Katie Zemlick have never filed a financial disclosure statement at all. The continued participation of these seven members, notably forming a quorum of the Commission, without adhering to the Act's financial disclosure requirements not only undermines the legitimacy of their official actions but also raises justified concerns about potential liabilities under the Act.

D. PROPOSED FINDINGS OF FACT.

The Commission, established under the WQA, functions as the state water pollution control agency, vested with the authority to alter legal rights and manage state-appropriated resources. Thirteen members comprise the Commission, collectively holding significant regulatory and discretionary power. As of April 15, 2024, seven members (Chairman Bruce Thomson, Keith Candelaria, Paladugu Srikanth, Krista McWilliams, Kirk Patton, Edward Vigil, Katie Zemlick) had not filed financial disclosure statements with the Secretary of State for 2024 pursuant to Section 10-16A-3 of the Act.

## E. CONCLUSIONS OF LAW.

1. The Commission is a state agency under the Act due to its statutory powers under the WQA to regulate, manage funds, and enforce compliance. Consequently, its members are classified as state agency heads who must file financial disclosure statements within thirty days of their appointment and annually thereafter, as required by Section 10-16A-3(C) of the Act. This filing is a mandatory condition for entering upon and holding their appointed positions.

2. Pursuant to 20.1.6.102 NMAC, Commission members must recuse themselves from participation in any action where their impartiality may reasonably be questioned, permitting reliance on the Act among other authorities to assess the need for recusal.

3. The failure of Commission members to submit financial disclosure statements, a requirement for entering upon and holding office as conditioned by Section 10-16A-3(I) of the Act, inherently casts doubt on their impartiality and fairness. This non-compliance exposes them to potential civil and criminal penalties under the Act and justifies their mandatory disqualification from this public hearing.

## II. POSITION OF FELLOW PARTIES.

Pursuant to 20.1.6.207.C NMAC, counsel for each party was consulted regarding their stance on the Motion to Disqualify. Counsel for the New Mexico Environment Department opposes the motion. Counsel for Amigos Bravos and Sierra Club had not yet determined their position at the time of this filing. Counsel for New Energy Economy, WildEarth Guardians, New Mexico Oil and Gas Association, and Select Water Solutions, Inc. took no position on the motion.

III. MOTION TO DISQUALIFY AND PRAYER FOR RELIEF.

WHEREFORE, your movant respectfully moves pursuant to 20.1.6.102 NMAC for the voluntary recusal or mandatory disqualification of Chair Thomson and members Candelaria, Srikanth, McWilliams, Patton, Vigil, and Zemlick, who have not complied with the Act's requirement in Section 10-16A-3(C) to file a financial disclosure statement for 2024 with the Secretary of State, on grounds that appointment to the Commission is conditioned on the initial and annual filing of such statements upon entering upon and holding the position, non-compliance with which exposes these members to criminal and civil penalties and inherently causes their impartiality or fairness to be reasonably questioned, and prays that this relief be GRANTED for such good cause.

By 

Nicholas R. Maxwell  
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Hobbs, New Mexico 88241  
Telephone: (575) 441-3560  
Email: [inspector@sunshineaudit.com](mailto:inspector@sunshineaudit.com)



**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of my Motion to Disqualify and Memorandum Brief in Support and Exhibits were served by email on April 15, 2024 to the persons listed below, with a hard copy mailed upon request:

Pamela Jones  
Commission Administrator  
Water Quality Control Commission  
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Water Quality Control Commission  
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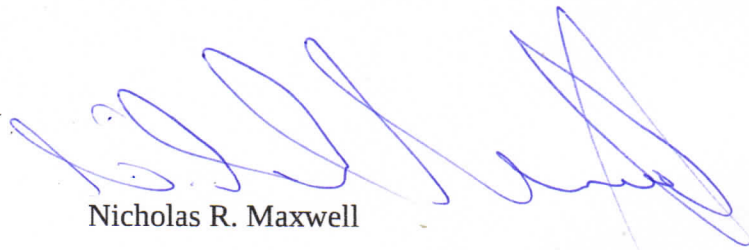
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*Counsel for New Energy Economy*



Nicholas R. Maxwell

**EXHIBIT 1:  
SUPPORTING DOCUMENT FOR  
MAXWELL'S MOTION TO DISQUALIFY**

I, Nicholas R. Maxwell, hereby certify under penalty of perjury that Exhibit 1 consists of a single page of a true and correct copy of a document to accompany and support my motion to disqualify. Exhibit 1 includes the following document, as summarized:

1. The NMED Organization Chart, as of January 22, 2024, totaling (1) page and posted on the NMED's website near the top of the page on following link:  
<https://www.env.nm.gov/organization/>.

Exhibit 1 is relevant and material to the motion to disqualify as it is a public record which identifies the New Mexico Environment Department's position of the Water Quality Control Commission as being one of the "affiliated" regulatory commissions to the Environment Department.

By 

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Office of the Secretary  
Cabinet Secretary  
James C. Kenney

Office of Natural Resources Trustee  
Maggie Hart Stebbins

Special Assistant  
Ana Aguilar Gray

Director of Communications  
Matthew Maez

Deputy Secretary of Administration  
Sydney Lienemann

Deputy Secretary of Operations  
Danielle Gilliam

Compliance and Enforcement Director  
Bruce Baizel

Director of Strategic Initiatives  
Jonas Armstrong

General Counsel  
Zachary Ogaz

Environmental Health Division Director  
Lauren Rechelt

Environmental Protection Division Director  
Michelle Miano

Resource Protection Division Director  
Rick Shean

Water Protection Division Director  
John Rhoderick

Administrative Services Division Director  
Christina Keyes

Chief Information Officer  
Todd Hochman (Acting)

Office of Public Facilitation  
Pamela Jones

Deputy General Counsel  
Gloria Lucero

**Affiliated Boards and Commissions**

**Regulatory**

- Environmental Improvement Board
- Mining Commission
- Occupational Health and Safety Commission
- State Emergency Response Commission
- Water Quality Control Commission

**Advisory**

- Medical Imaging and Radiation Therapy Advisory Council
- Radiation Technical Advisory Council
- Storage Tank Committee
- Utility Operators Certification Advisory Board
- Wastewater Technical Advisory Committee

**EXHIBIT 2:**  
**SUPPORTING DOCUMENTATION FOR**  
**MAXWELL'S MOTION TO DISQUALIFY**

I, Nicholas R. Maxwell, hereby certify under penalty of perjury that Exhibit 2 consists of two (2) pages of true and correct copies of documentation to accompany and support my motion to disqualify. Exhibit 2 includes the following documentation, as summarized:

1. A letter from the Secretary of State's public record custodian, dated March 13, 2024, to me in response to my request dated March 8, 2024 for an inspection of public records, totaling two (2) pages.

Exhibit 2 is relevant and material to the motion to disqualify as it provides the direct link for access to the official records to confirm the filing status of the Commission members.

By 

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Email: [inspector@sunshineaudit.com](mailto:inspector@sunshineaudit.com)



STATE OF NEW MEXICO  
**MAGGIE TOULOUSE OLIVER**  
SECRETARY OF STATE

March 13, 2024

Mr. Nicholas R. Maxwell  
P.O. Box 1064  
Hobbs, New Mexico 88241  
(575) 441-3560

Email: [inspector@sunshineaudit.com](mailto:inspector@sunshineaudit.com)

**Re: Records Request**

Mr. Maxwell:

On March 08, 2024, our office received your request, to inspect the following records:

*"Prepare for my inspection the following public records:*

*1) The 2024 Financial Disclosure Report for each of the following eleven (11) commissioners of the Water Quality Control Commission:*

- a) Chair Bruce Thomson*
- b) William Brancard*
- c) Keith Candelaria*
- d) Paladugu Srikanth*
- e) Larry Dominguez*
- f) Krista McWilliams*
- g) Kirk Patten*
- h) Gerasimos ""Gerry"" Razatos*
- i) Toby Velasquez*
- j) Edward Vigil*
- k) Katie Zemlick*

*Chair Bruce Thomson's name is appearing in the 2024 reports on the Secretary's web database, but his report cannot be viewed at all. I would also note that Vice Chair Jonas Armstrong has a 2024 report available on the Secretary's web database, however it is only found under the 2023 reports."*

Our office maintains the records requested on our Campaign Finance Information System website, which can be accessed via the following link: <https://login.cfis.sos.state.nm.us/#/index> Once on the website, use the search bar at the top of the page to look for the candidate, lobbyist, or committee whose records you wish to view. Please feel free to contact our office for assistance accessing the required documents.

By disclosing this information, the Secretary of State has complied with the Inspection of Public Records Act and now considers your request fulfilled. Should you have additional questions or concerns, please do not hesitate to contact our office at (505) 827-3600, option 2 or by email at [ipra.elections@sos.nm.gov](mailto:ipra.elections@sos.nm.gov).

Respectfully,

*Maria Spray*

Maria Spray  
Elections Compliance Officer

**EXHIBIT 3:**  
**SUPPORTING DOCUMENTATION FOR**  
**MAXWELL'S MOTION TO DISQUALIFY**

I, Nicholas R. Maxwell, hereby certify under penalty of perjury that Exhibit 3 consists of three (3) pages of true and correct copies of documentation to accompany and support my motion to disqualify. Exhibit 3 includes the following documentation, as summarized:

1. My affidavit, sworn on April 15, 2024, detailing my inspection of the public records of the Secretary of State's Campaign Finance Information System website related to the financial disclosure statements and filing status of the Commission members, including a detailed account of each member's filing history and any discrepancies or omissions in their declarations, totaling three (3) pages.

Exhibit 3 is relevant and material to the motion to disqualify as it provides concrete evidence of the non-compliance of specific Commission members with the filing requirements stipulated under the Financial Disclosure Act, thereby substantiating the grounds for their disqualification from the Commission.

By 

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Telephone: (575) 441-3560  
Email: [inspector@sunshineaudit.com](mailto:inspector@sunshineaudit.com)



**MAXWELL'S AFFIDAVIT OF INSPECTION**

STATE OF NEW MEXICO   )  
  ) S.S.  
COUNTY OF LEA                )

I, Nicholas R. Maxwell, being duly sworn, depose and state as follows:

1. I am of the age of majority.
2. I am a registered qualified elector of Lea County, New Mexico.
3. I am the movant in the motion to disqualify certain members of the Water Quality Control Commission ("Commission") in docket number WQCC 23-84 (R), having entered my appearance as an interested party in the matter on January 31, 2024.
4. On March 8, 2024, I requested the public records custodian for the Secretary of State to prepare for my inspection the 2024 Financial Disclosure Reports of Commission members that were not shown on the Secretary of State's website (hereinafter, the 'CFSI Website'<sup>1</sup>), specifically when filtering results under filing year 2024 by the 'Office' category and selecting 'Water Quality Control Commission'; on March 13, 2024, the public records custodian indicated responsive records were maintained for public access on the CFSI website (*See Exhibit 2, Mtn. to Disqualify*)
5. Upon my final review of the CFSI Website, conducted today, April 15, 2024, I noted in detail the status of the available financial disclosure statements for each member of the Commission, to wit:

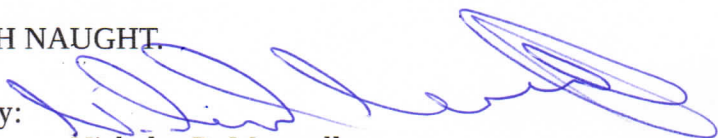
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1 Including both the old and new versions of the online public database. The new version holds statements filed from 2021 and beyond, while the old version holds statements filed from 2013 to 2020. The websites are found: OLD: <https://portal.sos.state.nm.us/FinancialDisclosure/search.aspx>. NEW: <https://login.cfis.sos.state.nm.us/#/exploreEthicsDisclosureFilers>.

1. Chairman Bruce Thomson: No statement filed for 2024; his latest filed state was filed on January 19, 2021. He previously filed a statement in 2020, and initially filed a statement in 2019.
2. Vice Chair Jonas Armstrong: Statement filed on January 11, 2024, which for the first time identifies his position on the Commission, previously unmentioned in his 2023 filing.
3. William Brancard: Statement filed on January 21, 2024, but his statement does not mention his position on the Commission.
4. Keith Candelaria: No statement filed for 2024; his latest filed state was filed on January 30, 2021. He previously filed a statement in 2020, and initially filed a statement in 2019.
5. Paladugu Srikanth: No statement on file.
6. Larry Dominguez: Statement filed on January 17, 2024, but his statement does not mention his position on the Commission.
7. Bonnie Frey: Statement filed on March 4, 2024, but her statement indicates her initial date of appointment as also on March 4, 2024, which is contradicted by her previous appearances at public meetings as a member of the Commission.
8. Krista McWilliams: No statement filed for 2024; her latest filed state was filed on January 27, 2021. She previously filed a statement in 2020, and initially filed a statement in 2019.
9. Kirk Patton: No statement on file.
10. Gerasimos 'Gerry' Razatos: Statement filed on March 12, 2024.

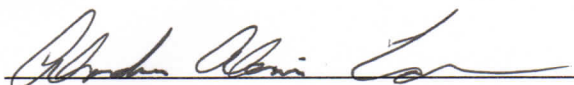
- 11. Toby Velasquez: Statement filed on January 12, 2024, but his statement does not mention his position on the Commission.
- 12. Edward Vigil: No statement on file.
- 13. Katie Zemlick: No statement on file.
- 6. Disclosures mentioned in this affidavit are available for review on the CFSI Website.
- 7. I am prepared to testify to these facts as set forth in this affidavit.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

By:   
 Nicholas R. Maxwell  
 P.O. Box 1064  
 Hobbs, New Mexico 88241  
 Telephone: (575) 441-3560  
 Dated: April 15, 2024

STATE OF NEW MEXICO )  
 )  
 COUNTY OF LEA )

SUBSCRIBED AND SWORN TO before me this 15th day of April, 2024.

  
 Judge, notary, or other officer  
 authorized to administer oaths  
 Notary  
 Official title

