

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT**

**IN THE MATTER OF:
THE APPLICATION OF YUCCA
GROWTH INFRASTRUCTURE
LLC FOR AN AIR QUALITY PERMIT,
NO. NSR 10883**

No. AQB 26-57 (P)

**MAXWELL'S SUPPLEMENT TO CONSOLIDATED RESPONSE
AND NOTICE OF SEPARATE PUBLIC COMMENT**

Mr. Maxwell submits this limited Supplement to his July 21, 2026 Consolidated Response in Opposition to Applicant's Request of Emergency Status Conference and Sheet Metal Workers Local Union No. 49's Request to Advance the Hearing Date.

The Consolidated Response is incorporated by reference. It already addresses the November 23 decision deadline, the availability of shortened post-hearing periods, Applicant's claim that opposing participants possessed the Department's analysis for months, the distinction between prior public comments and a prepared technical case, the asserted economic and employment interests, and the matters that should be addressed at a status conference. Mr. Maxwell does not repeat those arguments here.

This Supplement is limited to developments occurring after the Consolidated Response: substantially similar requests filed by United Association Local 412 and the New Mexico Building and Construction Trades Council; the Department's July 22 Position Statement; and notice of a separate public comment concerning the hearing venue and public-access arrangements.

**I. THE CONSOLIDATED RESPONSE APPLIES EQUALLY TO THE
ADDITIONAL LABOR REQUESTS.**

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After the Consolidated Response was filed, United Association Local 412 and the New Mexico Building and Construction Trades Council each entered an appearance and requested that the hearing be moved to the week of August 24, 2026, or to the earliest opportunity in September.

Both filings state that represented members work at the project, seek additional job opportunities, and may suffer lost wages and lost working time if the application is delayed. Both also ask that the hearing and post-hearing procedures be completed by November 23 and assert that failure to meet that date could result in loss of the project and associated employment. Their operative language is materially the same as Local 49's earlier filing.

Mr. Maxwell acknowledges that the additional filings demonstrate broader labor concern regarding prompt resolution. They do not, however, present a materially different legal or factual basis for advancing the hearing. The Consolidated Response therefore applies to the Local 412 and Building Trades Council requests to the same extent that it applies to Local 49's request.

In particular, the additional filings do not provide declarations or supporting records identifying the number of present workers, the work allegedly dependent upon Permit No. NSR 10883, the wages or assignments at risk, a contract or project milestone tied to an August hearing, or the factual basis for concluding that the project will be lost if the hearing remains scheduled for October. Those omissions are already addressed in the Consolidated Response and need not be reargued here. See Consolidated Response §§ VI–VII.

The additional filings also do not answer the central preparation issue: whether the Department's analysis and supporting technical materials were available in sufficient time for the

parties to review them, conduct authorized discovery, prepare testimony, and respond meaningfully.

The Local 49, Local 412, and Building Trades Council requests should therefore be considered together. Their common interest supports diligent case administration and a complete schedule through final agency action. Repetition of the same generalized assertions does not, standing alone, establish that the appropriate remedy is to move the evidentiary hearing to August.

II. THE DEPARTMENT’S POSITION STATEMENT CONFIRMS THAT ITS OWN PUBLICATION DECISION IS THE PRESENT SOURCE OF DELAY AND THAT APPLICANT’S ANALYSIS-AVAILABILITY PREMISE IS UNSUPPORTED.

Applicant previously asserted that opposing participants had possessed the Department’s analysis “for months” and that the thirty-day analysis-review period had been satisfied “by a wide margin.” The Consolidated Response explained that Applicant had not identified the analysis, its release date, the notice of its availability, or the dates on which the review period began and ended. See Consolidated Response § IV.

The Department’s July 22 Position Statement does not identify any draft permit or Statement of Basis that had been publicly available for months. Instead, the Department states that it was prepared to make the required postings and publications on July 17, 2026, but refrained after receiving the Hearing Officer’s July 16 Scheduling Order. It now states that, barring further changes to that Order, it will post the draft permit and Statement of Basis “on or before July 29, 2026.”

The Department thus represents that the materials were ready for publication on July 17. Its Position Statement does not identify any provision of the Scheduling Order that prohibited

their release, required the Department to withhold them, or established July 29 as the appropriate publication date. On the present record, July 29 therefore appears to be a date selected by the Department rather than a deadline imposed by statute, rule, or order.

Accordingly, the Department's own account identifies its decision to refrain from publishing materials it considered ready—not any lack of diligence by the opposing participants—as the present cause of their continued unavailability. The resulting delay should not be used to justify compressing the parties' preparation period. The Department cannot reasonably withhold the analysis and then rely upon the shrinking interval before November 23 as grounds to accelerate the hearing at the expense of those waiting to review it.

The July 29 date also corresponds to Mr. Maxwell's July 14, 2026 written request under the Inspection of Public Records Act for inspection of the complete administrative record and all public comments concerning Permit No. NSR 10883. July 29 is fifteen days after that request. Under Section 14-2-8(D) NMSA 1978, inspection ordinarily must be permitted immediately or as soon as practicable under the circumstances, but no later than fifteen days after receipt of a written request.

The IPRA request does not itself explain or justify withholding materials that the Department states were ready for publication on July 17. The statutory fifteen-day period is an outside limit for permitting inspection under ordinary circumstances, not a waiting period that requires an agency to delay access until the fifteenth day. Nor does production of only the draft permit and Statement of Basis necessarily satisfy a request for the complete administrative record and all public comments.

This new information reinforces—not displaces—the Consolidated Response. It shows that the principal public-facing products of the Department’s technical review had not been available when Applicant asserted that opponents had possessed the analysis for months. It further shows that the present delay arises from an affirmative Department decision made after the materials were reportedly ready.

The status conference should therefore establish what document or collection of documents constitutes the Department’s “analysis” under 20.2.72.206(B) NMAC; when each component was completed; why publication was deferred after July 17; when and where the complete analysis will become available; when interested persons were or will be notified; and when the corresponding thirty-day review period begins and ends.

The Department should also clarify whether the anticipated July 29 posting will include the complete materials necessary to evaluate its technical conclusions, including the draft permit, Statement of Basis, emissions calculations, modeling inputs and outputs, proposed monitoring provisions, technical memoranda, and other relied-upon documents.

These facts bear directly upon any proposal to move the hearing or accelerate the testimony schedule. The hearing should not be advanced on the assumption that the analysis-review period has already occurred when the Department acknowledges that the draft permit and Statement of Basis remained unpublished and attributes that condition to its own decision to defer publication.

III. THE STATUS CONFERENCE SHOULD ADDRESS THE COMPLETE REMAINING PROCESS.

The Department states that it remains committed to conducting the hearing and completing the permit decision by November 23. It also states that it is prepared to participate in any additional hearing or conference deemed necessary by the Hearing Officer.

Mr. Maxwell does not oppose that objective. As explained in the Consolidated Response, however, the November 23 deadline concerns final agency action and does not itself prescribe the date of the evidentiary hearing. The ordinary post-hearing periods may be shortened, but any shortened schedule should be established deliberately and with reference to the actual anticipated record. The Consolidated Response already sets out those considerations. See Consolidated Response §§ III and IX.

The status conference should therefore address the Department's analysis and review period, the remaining prehearing disclosures and discovery, testimony and rebuttal deadlines, the expected number of witnesses and hearing days, transcript preparation, proposed findings and closing argument, the Hearing Officer's report, party comments, and final review.

The labor organizations may present specific evidence concerning current employment, wages allegedly at risk, project or contractual deadlines, and the causal connection between the October hearing date and the asserted harms. Other parties should likewise be permitted to explain the preparation prejudice associated with any proposed acceleration.

That developed record will allow the Hearing Officer to determine whether the October date should remain, whether an intermediate date is practicable, or whether expedition of other portions of the proceeding provides the fairer means of addressing November 23.

IV. NOTICE OF SEPARATE PUBLIC COMMENT CONCERNING THE HEARING VENUE.

Mr. Maxwell provides notice that he is separately submitting a written public comment concerning the hearing venue, capacity, overflow arrangements, and public-access logistics.

The separate submission will address the particular room proposed for use at the Sunland Park Multigenerational Center, available public seating after installation of the formal hearing configuration, overflow and audiovisual arrangements, parking, restrooms, entrances and reentry, interpretation, accessibility, security, and related matters.

Those concerns are being submitted as public comment for inclusion in the administrative and public-comment records. They are not incorporated here as an additional motion or as an independent basis for deciding the pending requests to advance the hearing.

CONCLUSION AND REQUEST FOR RELIEF.

Mr. Maxwell respectfully incorporates his July 21 Consolidated Response and requests that its reasoning and requested relief be applied equally to the subsequent requests filed by United Association Local 412 and the New Mexico Building and Construction Trades Council.

On the present record, the Hearing Officer should deny the requests to move the hearing to the week of August 24 or another materially earlier date. The additional labor filings demonstrate shared concern regarding employment and timely resolution, but they do not provide materially new factual support for the requested change.

Before modifying the Scheduling Order, the status conference should establish the contents and availability of the Department's analysis, the timing of the thirty-day review period, the availability of supporting technical materials and the administrative record, the remaining discovery and testimony needs, and a complete schedule through final agency action.

Mr. Maxwell does not oppose reasonable expedition or a good-faith effort to complete the proceeding by November 23. He opposes presuming that moving the evidentiary hearing to August is the necessary or exclusive means of doing so before the relevant facts and competing forms of prejudice are established.

To the extent this Supplement is construed as independently requesting relief, concurrence was not sought because it responds to filings made after the Consolidated Response and seeks no materially different scheduling relief.

Respectfully submitted,

By -s- Nicholas Maxwell
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of my Supplement to Consolidated Response and Notice of Separate Public Comment was served by email on July 27, 2026 to the Hearing Clerk and to all parties of record in this matter, with a hard copy mailed upon request.

-s- Nicholas Maxwell
Mr. Nicholas R. Maxwell