

**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

AQB 26-57

NO. 10883

**MOTION TO RESET OCTOBER 19 HEARING SCHEDULE AND PRESERVE  
DUE PROCESS**

The Center for Biological Diversity and Jose Saldaña Jr. and Vivian Fuller hereby request the Hearing Officer withdraw the hearing order issued on July 29, 2026 and restore the October 19, 2026 hearing date specified in the July 16, 2026 scheduling order.

At the scheduling conference held on Monday, July 27, the Hearing Officer verbally denied Applicant's request to move up the October 19 hearing, rejecting the Applicant's unsupported argument that somehow the Hearing Officer was bound by an 180-day statutory deadline that could not be extended. Oddly, on July 30, the Hearing Officer issued an order contrary to his verbal order at the scheduling conference, setting the hearing for September 14, 2026 – six weeks from the date of this filing, despite Movants' and other parties' arguments that such a fast-moving schedule is untenable and highly unprecedented. The Hearing Officer provided no reason for this abrupt change.

This case concerns an air pollution permit for a proposed massive gas power plant that will produce more air emissions than Las Cruces, Albuquerque and Santa Fe

combined. The application provides for the use of new technology at a scale never implemented anywhere in the world. The application and administrative record that Movants must grapple with is thousands of pages long. First, Movants need to actually receive all of these documents, which they have not. Then, Movants need to work with experts to fully understand the application and administrative record and prepare and present their case. Clearly, this case is of a magnitude unseen before in New Mexico in both its complexity and its potential impacts to the environment and public health. Yet under the current schedule, Movants have merely a few weeks and a just a fraction of the required record to prepare for the hearing.

The September 14, 2026 hearing schedule is unreasonable, deprives Movants of the opportunity to meaningfully participate in this process, and violates Movants' right to due process. Indeed, as set forth below, under the current schedule, Movants will not have the time or information needed to submit their direct cases by the deadline. Critically, the New Mexico Environment Department (the "Department") has announced its intention to release the full administrative record on August 24, 2026, giving Movants no time to review these critical documents before filing their cases.

Movants ask the Hearing Officer to exercise his clear authority to extend deadlines for good cause, restore the Oct. 19 hearing schedule, and provide Movants and all parties a meaningful opportunity to participate, while still moving faster than any air pollution permit hearing the Department has held in recent memory.

**I. The Hearing Officer Has Authority to Extend the Statutory Deadlines for Good Cause.**

The Hearing Officer has the authority to extend the hearing and decision deadline for good cause. The New Mexico Supreme Court has held that a statutory deadline may be extended for good cause. *N.M. Dep't of Health v. Compton*, 131 N.M. 204, 215. In *Compton*, the Supreme Court held that a statutory 7-day deadline for holding an involuntary treatment hearing per § 43-1-15(B) could be extended for good cause – in that case the judge’s illness – and noted that the legislature had not intended for the deadline to prevent the trial court from controlling its own docket. *Id.* The Supreme Court found that “the constitutional right to due process necessarily requires flexibility,” and that “trial courts possess the inherent power to manage their dockets, and must have the ability to respond to exigencies that arise in individual cases.” *Id.* at 213, 215 (internal citations omitted).

Similarly, the Court of Appeals has held that statutory hearing deadlines can be extended when a party’s counsel establishes that they have not had sufficient time to prepare. *State v. Bunnell (In re Bunnell)*, 100 N.M. 242, 245 (Ct. App. 1984). The *Bunnell* court held that the statutory deadline must be balanced against counsel’s right to present evidence, stating that “[u]nless an attorney has an opportunity to obtain records, talk with his client, and secure witnesses necessary to present his client's response to a commitment petition, the rights afforded him in § 43-1-11 provide only hollow safeguards.” *Id.* at 244.

The Court of Appeals has likewise held that an administrative hearing may be postponed for good cause. *Redman v. Bd. of Regents*, 102 N.M. 234, 239 (Ct. App. 1984). In *Redman*, the court upheld a postponement of a statutory deadline for a State Board of Education appeal hearing related to a teacher's termination. In allowing an extension of a statutory deadline for good cause, the court balanced the "significant right the legislature has granted a teacher to require that the local board present its case within sixty days as well as with *the statutory mandate that the hearing be conducted so that both sides may present their evidence amply and fairly.*" Id. at 240 (emphasis added).

## **II. Good Cause Exists to Extend the Deadline for Decision Here.**

Under the September 14 hearing schedule, Movants' direct technical case will be due on August 24, 2026, less than four weeks from the announcement of the schedule. The Hearing Officer has good cause to extend this schedule and the decision deadline for a number of reasons.

First, as Movants stated at the July 27 scheduling conference, a little over three weeks is simply not enough time for Movants to review and prepare comprehensive testimony on a complex and novel permit application for what is proposed to be the single largest source of greenhouse gas pollution in the state of New Mexico. The Department has stated that it will not file the administrative record until August 24, 2026, the same day that Movants must file their direct cases.<sup>1</sup> This will give Movants no time at all to review and develop testimony around "thousands of pages" of documents that are

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<sup>1</sup> See July 31, 2026 e-mail from Chris Vigil, *Re: [EXTERNAL] AQB 26-57: Maxwell Objection to Department's Failure to Produce AR*, attached herein as Attachment 1.

highly relevant to this hearing.<sup>2</sup> Indeed, the Department is the source of significant delay here. It is forcing Movants to use the slow and cumbersome IPRA request process to access basic hearing records including recordings of scheduling conferences. While the Department did release the draft permit and statement of basis on the evening of July 29 – some, but not all, of the documents that Movants must review in order to develop their technical cases – it did not serve or notify the parties, and Movants only chanced upon the documents in their frequent checking of various Department webpages.<sup>3</sup> At the July 27 scheduling conference, Mr. Vigil admitted that the Department is at “an advantage” in this hearing because it has access to thousands of pages of information that are currently unavailable to Movants, and will not be available to Movants prior to their technical testimony deadline.

Second, Movants’ direct cases will be due prior to responses to Movants’ timely filed requests for discovery on the Applicant and NMED. Movants will be unable to review discovery responses and incorporate that information into their direct case, because the deadline will have passed, rendering discovery meaningless. At this stage, the Applicant has been in receipt of Movants’ discovery request for 7 days and, according to Carlos Romo at the July 27 scheduling conference, maintains the position that it is not even subject to discovery in this proceeding. Movants intend to fight for their rights to

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<sup>2</sup> Id.

<sup>3</sup> Inexplicably, rather than post these documents on the Department’s “Docketed Matters” webpage, where all hearing-related documents have been up to now, the Department posed these documents on their “Public Notice” webpage instead, which the Department has failed to rely upon since the date the hearing determination for this letter was posted on July 2, 2026.

review responsive documents, but the Applicant is unlikely to have complied with its discovery obligations prior to Movants' deadline for technical testimony, if ever.

Third, under the current schedule, prehearing motions, including motions to exclude evidence and dispositive motions, are due August 24, 2026. This is the very same day that parties' direct technical cases must be filed, and ten days prior to parties' rebuttal case deadline. These deadlines mean that Movants will likely have mere minutes to draft motions to exclude evidence from other parties' direct technical cases – and only if all parties file their documents before 5pm – which is not required. It also means that Movants will be entirely unable to move to exclude evidence from other parties' rebuttal cases, as the deadline for such motions will have long passed before rebuttal cases are even filed. The schedule is thus absurd on its face, and entirely fails to comply with motion, response and reply opportunities mandated by NMAC 20.1.4.200.D (providing 15 days to respond to prehearing motions and an additional 10 days to reply to any responses).

Fourth, shortening the post-hearing briefing deadlines will further limit Movants' ability to meaningfully participate in the hearing. Applicants propose to build the largest source of greenhouse gas pollution in the state, using a new technology on a scale never before attempted. This unprecedented application merits at least the same time for

adequate briefing received by, for example, a comparatively small and vastly simpler amendment to a gas plant.<sup>4</sup>

Fifth, as Chris Vigil of the Environment Department admitted at the July 27 scheduling conference, “almost all” permitting hearings at the Department exceed the decision deadline in 1978 NMSA § 74-2-7(B)(2)(a) and 20.2.72.207(B)(1) and (C) NMAC. In fact, Mr. Vigil failed to identify a single hearing that has complied with that deadline. While Mr. Vigil disingenuously stated that every other applicant has either explicitly or “constructively” waived their right to a decision by that deadline, his statement is baseless and unsupported by any facts. Mr. Vigil’s creative invention of “constructive waiver” is entirely foreign to numerous attorneys with combined decades of experience in Department permitting hearings. The Department has demonstrated a pattern and practice of extending the statutory deadline to allow adequate time for meaningful hearing participation. Its opposition to continuing that practice here is arbitrary, and unreasonable and amounts to a violation of Movants’ right to meaningfully participate in this hearing.

**III. Failure to Extend the Deadline and Reset the Hearing Will Violate Movants’ Right to Due Process.**

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<sup>4</sup> See generally ABQ 21-38, Willow Lake Gas Plant, Final Permit Decision on Feb. 10, 2022, 327 days after publication of the draft permit, available at <https://www.env.nm.gov/opf/wp-content/uploads/sites/13/2022/02/2022-02-10-OPF-Crestwood-AQB21-38-Final-Order-Signed.pdf>.

The “fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *N.M. Dep’t of Health v. Compton*, 131 N.M. 204, 210 (internal citations omitted).

As explained above, the current schedule deprives Movants adequate time to prepare and present technical testimony. It deprives Movants of the opportunity to conduct meaningful discovery. It deprives Movants of the ability to meaningfully engage in pre-hearing and post-hearing motions and briefing.

The current schedule ignores “the statutory mandate that the hearing be conducted so that both sides may present their evidence amply and fairly.” *Redman* at 240. It fails to balance the statutory deadline against Movants right to present evidence, reducing the hearing rules to “hollow safeguards.” *Bunnell* at 244.

Thus, the current schedule deprives Movants of their opportunity to be heard at a meaningful time and in a meaningful manner. It deprives Movants of due process. This deprivation is reversible error.

To state it plainly, the current schedule is a farce – and renders the hearing process a sham, completely out of compliance with New Mexico’s environmental protections.

#### **IV. Prayer for relief**

The Hearing Officer has broad authority to extend deadlines – both statutory and administrative – for good cause. We ask the Hearing Officer to use that authority here to restore the October 19 hearing date and allow for adequate and meaningful review of the administrative record, pre-hearing motions practice and discovery, and post-hearing briefing for a case of this unprecedented complexity and magnitude. This relief is

necessary to protect Movants' due process right to meaningful participation in this hearing.

Respectfully submitted this 31<sup>st</sup> day of July 2026,

/s/ Colin Cox

Colin Cox

Gail Evans

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## Certificate of Service

I hereby certify that on July 31, 2026 a copy of the foregoing Motion to Restore October 19 Hearing Schedule and Preserve Due Process was emailed to the persons listed below.

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/s/ Colin Cox



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Re: [EXTERNAL] AQB 26-57: Maxwell Objection to Department's Failure to Produce AR

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From Vigil, Christopher J, ENV <ChristopherJ.Vigil@env.nm.gov>

Date Fri 7/31/2026 10:05 AM

To Nick Maxwell <inspector@sunshineaudit.com>

Cc Yardman-Frank, Brian, ENV <brian.yardman-frank@env.nm.gov>; jennifer@bradfutelaw.com <jennifer@bradfutelaw.com>; david@bradfutelaw.com <david@bradfutelaw.com>; jbiever@williamsweese.com <jbiever@williamsweese.com>; Colin Cox <ccox@biologicaldiversity.org>; Gail Evans <GEvans@biologicaldiversity.org>; mnanasi@newenergyeconomy.org <mnanasi@newenergyeconomy.org>; chris@fayerbergdodd.com <chris@fayerbergdodd.com>; mlocke@nmelc.org <mlocke@nmelc.org>; ejantz@nmelc.org <ejantz@nmelc.org>; esperanza@yuccanm.org <esperanza@yuccanm.org>; Chen, Yiwei, EDD <yiwei.chen@edd.nm.gov>; izemke <izemke@smwlu49.org>; joe@progressnownm.org <joe@progressnownm.org>; editor@thecandlepublishing.com <editor@thecandlepublishing.com>; Chakeres, Nathaniel, OSE <Nathaniel.Chakeres@ose.nm.gov>; max.shepherd@comcast.net <max.shepherd@comcast.net>; Jones, Pamela, ENV <Pamela.Jones@env.nm.gov>; cromo@williamsweese.com <cromo@williamsweese.com>; dobbin.cc@gmail.com <dobbin.cc@gmail.com>

Any document you want is available through IPRA. We are delivering the Administrative Record to the parties on August 24.

Locating and delivering documents takes time, and NMED is in full compliance with both IPRA and the ACQA.

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*New Mexico Environment Department*

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*Albuquerque, NM 87102*

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**From:** Nick Maxwell <inspector@sunshineaudit.com>

**Sent:** Friday, July 31, 2026 8:45 AM

**To:** Vigil, Christopher J, ENV <ChristopherJ.Vigil@env.nm.gov>

**Cc:** Yardman-Frank, Brian, ENV <brian.yardman-frank@env.nm.gov>; jennifer@bradfutelaw.com

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**Subject:** [EXTERNAL] AQB 26-57: Maxwell Objection to Department's Failure to Produce AR

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Chris,

I object to the Department's continuing failure to make key portions of the Administrative Record available for inspection, despite my prior IPRA request and a second, narrowed request for records expressly identified in the Department's draft materials. Those records remain unavailable to me. The Department states I may not received my response until August 14? How is that fair to me, Chris? How am I supposed to meaningfully participate?

The original request was closed with a completion letter, but the following morning I was told by email that the Administrative Record was still being "compiled." That email did not identify a production date, state whether the request was denied, explain the legal basis for withholding the records, or identify the person responsible for that determination. Part 4 provides that the Administrative Record is available for public review "at all times"; it does not condition inspection upon completion of a later compilation or index.

To simplify matters, I submitted a second IPRA request limited to specific records, including the Department's July 13 request to YGI, YGI's July 16 response and attachments, and the calculations supporting the CDS and SSM analysis. These records are plainly identifiable and appear central to the Department's proposed permit conditions, yet they are still unavailable.

The resulting prejudice is substantial. Technical testimony is due August 24, before expiration of the separate thirty-day period allowed for review and comment on the Department's analysis. That later period does not run concurrently with the initial comment period. Requiring complete technical testimony before the comment period has expired—and while the supporting Administrative Record remains unavailable—does not

provide a meaningful opportunity to participate.

Please promptly:

1. Produce the records responsive to my narrowed request, on a rolling basis if necessary;
2. State whether the first IPRA request remains pending, has been completed, or has been denied;
3. Identify the custodian or other person responsible for any withholding of records or denial of inspection; and

Because the deadlines have been expedited in this matter, I require an expedited response from the Department before end of day.

Thanks,

Nick Maxwell

On 2026-07-30 13:06, Nick Maxwell wrote:

> Chris,  
>  
> I disagree with your construction of the Part 4 rules, particularly  
> with regard to development of the AR. The interpretation, perhaps  
> unintentionally, allows for withholding of key records of which  
> disclosure is necessary for developing a full record and enabling an  
> opportunity for meaningful participation, particularly where timelines  
> are especially constrained, as the record shows is the case in this  
> matter. Convenient for the Department, perhaps. Not so much for me.  
>  
> I'll tell you the same thing I noted to Ms. Engelmann this morning: I  
> have significant concerns regarding the fuel processing and permit  
> enforceability of this plant. The lack of transparency, particular to  
> records requested, which I argue should already be accessible as they  
> are necessary for forming technical testimony (now due prior to the  
> expiration of the 30 day review period), is impairing my ability to  
> conduct limited discovery with precision.  
>  
> Nick Maxwell  
>  
> On July 30, 2026 12:29:29 PM MDT, "Vigil, Christopher J, ENV"  
> <ChristopherJ.Vigil@env.nm.gov> wrote:  
>  
>> Hi Nick,  
>>  
>> The Bureau is preparing the administrative record. It will likely  
>> be hundreds, if not thousands of pages, along with an extensive  
>> index. While the documents are available via the IPRA process, the  
>> AR itself is not fully compiled.

>>  
>> This is normal for this stage of the proceeding. Typically the AR  
>> does not get filed until the day NOI's are filed, and often later.  
>>  
>> Feel free to contact me directly for updates. For now, we are  
>> working on compiling it.  
>>  
>> \_Chris Vigil\_  
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>> From: Nick Maxwell <inspector@sunshineaudit.com>  
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>> Subject: [EXTERNAL] AQB 26-57: Maxwell Notice Second IPRA AR  
>>  
>> CAUTION: This email originated outside of our organization. Exercise  
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>>  
>> Good afternoon,  
>>  
>> Please find attached for filing into docket matter no. AQB 26-57(P)  
>> my  
>> Notice of Second Request for Administrative Record.  
>>  
>> Thank you,  
>> Mr. Nicholas R. Maxwell  
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