

**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 EXPEDITED MOTION FOR RECONSIDERATION AND  
CLARIFICATION OF AUGUST 11, 2026 ORDER AND, IN THE ALTERNATIVE,  
FOR LIMITED MODIFICATION OF TECHNICAL-FILING PROCEDURE**

Mr. Nicholas R. Maxwell respectfully moves under 20.1.4.100(E)(2), 20.1.4.100(F)(2), 20.1.4.200(D), and 20.1.4.300(A)(3) NMAC for expedited reconsideration and clarification of the Order served August 11, 2026 denying Maxwell's Motion for Expedited Prehearing Disclosure, Production of Identified Administrative-Record Materials, Targeted Admissions, and, in the Alternative, Limited Discovery ("Order"). In the alternative, if the Hearing Officer maintains the denial of pre-August 24 access, Maxwell requests a limited modification of the technical-filing procedure sufficient to prevent material first disclosed on or after August 24 from defeating the affirmative case that 20.1.4.400(A)(1) NMAC requires him to present.

This Motion does not ask the Hearing Officer simply to revisit an exercise of discretion because Maxwell disagrees with the result. The Order appears to resolve the entire underlying Motion on two premises adopted from NMED's Response: that Maxwell is asking NMED to submit its technical testimony before it is due, and that public documents are available through IPRA. *Order* at 1–2. Those premises do not address substantial portions of the relief actually requested, including existing Administrative-Record materials, specifically identified existing records, targeted documentary admissions, Applicant-directed existing project records, and the expressly stated minimum alternative. They also do not address the concrete timing prejudice

created by requiring Maxwell's complete affirmative technical case on August 24 while allowing material needed to prepare that case to be first disclosed on that same date or later.

The issue is urgent but narrow. Maxwell's complete direct technical testimony and supporting exhibits remain due August 24. He therefore requests expedited briefing and a prompt ruling.

**I. THE ORDER IS A NONFINAL PROCEDURAL ORDER THAT MAY BE CLARIFIED OR MODIFIED DURING THE PENDING PROCEEDING.**

Part 4 does not expressly prescribe a separate reconsideration procedure for an interlocutory Hearing Officer order. It does, however, define a "final order" as "the order issued by the Secretary that is dispositive of the matter." 20.1.4.7(A)(10) NMAC. The Order is not such an order.

Part 4 permits any party to file a written motion stating the grounds and relief sought. 20.1.4.200(D)(1) NMAC. It further requires the Hearing Officer to conduct a fair and impartial proceeding, assure that the facts are fully elicited, and avoid delay, and expressly authorizes the Hearing Officer to "rule upon motions, procedural requests, and offers of proof" and to "issue all necessary orders, except final orders issued by the Secretary." 20.1.4.100(E)(2)(b)–(c) NMAC. Section 20.1.4.300(A)(3) likewise authorizes prehearing orders to expedite disposition, simplify issues, obtain stipulations or admissions, avoid unnecessary or cumulative activity, and manage difficult or complex proceedings.

Maxwell invokes those continuing procedural powers to request reconsideration, clarification, and, if necessary, modification of the filing procedure before the August 24 deadline. He does not contend that Part 4 creates an unrestricted power to reconsider a final agency order.

## **II. THE ORDER’S “PREMATURE TECHNICAL TESTIMONY” RATIONALE DOES NOT ADDRESS THE EXISTING-RECORD AND PRESENT-REGULATORY-BASIS RELIEF ACTUALLY REQUESTED.**

The Order finds, “for the reasons argued by NMED in Part I of its response,” that Maxwell is asking the Hearing Officer to require NMED to submit technical testimony before it is due. *Order* at 1. NMED’s Part I did characterize all four Bureau interrogatories as requests for premature technical testimony and argued that the ordinary sequence of direct testimony, rebuttal, and cross-examination should control. *NMED Resp.* at 2–4.

But the underlying Motion was not confined to those interrogatories. Its first requested item was access to the Administrative Record as it presently exists. *Motion* at 2. It separately sought existing records and allowed exact incorporation of prior responses or productions rather than duplication. *Id.* It expressly disclaimed creation of new engineering work. *Id.* At 1–2. And it stated a minimum alternative directed principally to existing materials:

- (1) the current organization of the Administrative Record sufficient to locate its constituent materials;
- (2) NMED’s July 13, 2026 communication to Applicant;
- (3) Applicant’s July 16, 2026 response and attachments;
- (4) the native SSM calculation;
- (5) an existing CDS process-flow or piping diagram;
- (6) existing startup and maintenance purge procedures; and
- (7) concise clarification of the per-CDS versus facility-wide quantities and the basis for excluding overlapping startup and maintenance.

*Motion* at 3.

Maxwell’s timely August 10, 2026 Reply in Support of the Motion (“Reply”) directly addressed NMED’s characterization. It explained that the four NMED interrogatories ask what the Bureau presently determined, verified, included, or intended in performing regulatory review already completed sufficiently to issue the July 29 Draft Permit, Statement of Basis, and Modeling Review Report. *Reply* at 3–4. The Reply expressly stated that if a point remains unresolved or will first be determined in later testimony, NMED can say so. *Id.* It separately

emphasized that the July 13 and July 16 communications, calculation files, diagrams, purge procedures, gas analyses, and modeling files are existing records, and that identifying and transmitting an existing record does not require NMED to file its August 24 technical case. *Id.* at 4.

NMED's own Attachment A illustrates that distinction procedurally. On August 6, NMED transmitted two existing files as "responsive documents to RFP No. 2 in your Motion." *NMED Resp.*, Attach. A. Maxwell does not rely here on the substantive contents of those files. The procedural point is only that production of an existing responsive record before August 24 is possible without filing NMED's technical testimony early.

Thus, even if the Hearing Officer continues to conclude that one or more interrogatories would require premature technical testimony, that conclusion does not by itself resolve the distinct requests for existing records, Administrative-Record access, incorporation of already-produced material, documentary admissions, or the minimum alternative. Maxwell respectfully requests reconsideration at least as to those categories.

### **III. THE ORDER SHOULD CLARIFY THE DISPOSITION OF APPLICANT-DIRECTED RELIEF AND WHETHER MAXWELL'S AUGUST 10 REPLY WAS CONSIDERED.**

The Order states that the matter came before the Hearing Officer on Maxwell's Motion "and the responsive pleading filed by" NMED, and states that the Hearing Officer reviewed Maxwell's Motion and "the responsive pleading filed by NMED." *Order* at 1. The Order does not mention Applicant's August 7 response or Maxwell's consolidated Reply filed August 10.

Maxwell does not assume from that omission that the Reply or Applicant's Response was not considered. He respectfully requests clarification because the Order adopts the two principal grounds advanced in NMED's Response, while Maxwell's Reply directly addressed both grounds and separately addressed Applicant-directed relief.

That distinction matters because the underlying Motion also sought existing project facts, existing records, and targeted admissions from Applicant. The Reply explained that Applicant's interrogatories concern the existing onsite natural-gas treatment configuration and that Applicant may incorporate an existing diagram, drawing, record, or prior production rather than recreate the information in narrative form. *Reply* at 4–5. The ten targeted admissions principally concern documentary arithmetic and propositions apparent from existing permit materials and were requested as issue-narrowing measures under 20.1.4.300(A)(3) NMAC. *Id.* at 5–6.

Neither of the two grounds stated in the Order necessarily disposes of that Applicant-directed relief. NMED's assertion that responding to NMED interrogatories would disclose NMED's technical testimony does not establish the burden or character of Applicant's separate requests. And IPRA is a public-records statute; it is not a mechanism for obtaining Applicant's private project records or admissions.

Maxwell therefore requests clarification whether the Order intended to deny the Applicant-directed portions of the Motion and, if so, on what ground. If Maxwell's Reply was not considered before issuance of the Order, Maxwell respectfully requests reconsideration after consideration of that timely filing.

#### **IV. AVAILABILITY OF INDIVIDUAL PUBLIC RECORDS THROUGH IPRA DOES NOT RESOLVE THE SEPARATE PART 4 ADMINISTRATIVE-RECORD QUESTION.**

The Order separately finds, “for the reasons argued by NMED in Part II of its response,” that “all public documents related to this matter not subject to exceptions are available via IPRA.” *Order* at 1. Maxwell does not dispute that IPRA supplies a separate statutory means to request public records. The underlying Motion expressly preserved all separate IPRA rights and did not ask the Hearing Officer to adjudicate the timeliness or completeness of an IPRA response, award an IPRA remedy, or override a valid exception or privilege. *Motion* at 9–10.

The unresolved question arises from Part 4 itself. Section 20.1.4.200(A)(2) NMAC first provides that the Division shall forward the Administrative Record to the Hearing Clerk no later than the hearing. The same paragraph then separately states: “The Administrative Record is available for public review at all times.”

NMED acknowledged both the definition of the Administrative Record and the quoted public-review language. *NMED Resp.* at 4–5. Its position was that, because the record is still being organized and collated, the phrase “available for public review at all times” “appears” to contemplate access through IPRA rather than through the requested proceeding-specific relief. *Id.* at 5. Maxwell’s Motion and Reply answered that the forwarding deadline and the public-review command are distinct, that the Administrative Record is defined functionally by public records used in evaluating the application, and that nothing in Section 200(A)(2) makes a completed compilation or separate IPRA request a condition of Part 4 review. *Motion* at 7–10; *Reply* at 2–3, 16–17.

The proposition that individual public records may be requested under IPRA therefore does not itself interpret or give independent effect to Part 4’s command that the Administrative Record be “available for public review at all times.” Nor does it resolve the request for access to NMED’s current organization of that record sufficient to identify what materials have been used in the permit evaluation.

Maxwell respectfully requests reconsideration of the categorical denial of this relief or, at minimum, clarification whether the Order holds that access through IPRA is the exclusive means by which NMED satisfies the public-review requirement in 20.1.4.200(A)(2) NMAC. If that is the intended construction, Maxwell requests that the Order state it expressly so that the legal issue is clear in the record.

**V. THE ORDER DOES NOT ADDRESS THE AFFIRMATIVE-CASE PREJUDICE CREATED BY THE AUGUST 24 DEADLINE.**

NMED argued that all parties should have their “first opportunity” to see witness lists, technical testimony, and exhibits at the same time on August 24, and characterized that simultaneity as ensuring fairness. *NMED Resp.* at 3. The Order adopts NMED’s Part I rationale but does not address the separate burden Part 4 assigns to Maxwell.

Section 20.1.4.400(A)(1) NMAC provides that a person who contends a proposed permit condition is inadequate, improper, or invalid has “the burden of going forward to present an affirmative case on the challenged condition.” Maxwell challenges proposed Conditions A107 and A110. Under the Amended Scheduling Order, his complete written technical testimony and supporting exhibits are due August 24.

Section 20.1.4.300(B)(1)(a) NMAC requires a technical filer to identify witnesses and exhibits, list or make available the technical materials relied upon by each witness, and state the testimony, opinions, and bases to be offered. Section 20.1.4.400(B)(2) NMAC generally prevents technical information from being introduced during witness examination unless it was placed in the Hearing Record by the technical-filing deadline, except for impeachment or rebuttal.

The resulting prejudice is therefore concrete, not abstract. Information first disclosed in NMED’s or Applicant’s August 24 filing cannot beforehand be reviewed, supplied to Maxwell’s witness, analyzed, tested against A107 or A110, incorporated into calculations, or used to support Maxwell’s own affirmative technical filing due that same day. *Reply* at 7–8. Rebuttal and cross-examination may respond to later-disclosed material, but they do not replace the affirmative case Section 400(A)(1) requires Maxwell to present.

The timing also overlaps Part 72's separate thirty-day opportunity to review the Department's July 29 analysis. *Reply* at 8–10. Maxwell does not contend that the hearing process could not begin during that period. The point is narrower: an accelerated schedule should not require a party to finalize an affirmative technical case before information underlying the challenged proposed conditions becomes meaningfully available.

Reconsideration is therefore warranted at least to address the specific prejudice identified in the *Reply*. If the Hearing Officer continues to deny pre-August 24 access, the filing procedure should be modified so that the denial does not simultaneously prevent Maxwell from satisfying the burden Part 4 places upon him.

**VI. AT MINIMUM, THE HEARING OFFICER SHOULD GRANT THE NARROW ALTERNATIVE OR PROVIDE A LIMITED SCHEDULING CURE.**

The *Reply* expressly rejected an all-or-nothing choice between every request in Exhibit A and no relief. *Reply* at 21–23. The minimum alternative was designed to obtain core existing material without new engineering work and without postponing the September 14 hearing.

Maxwell therefore first requests reconsideration sufficient to grant the minimum alternative stated on page 3 of the Motion, with the following clarifications:

1. NMED need not complete a new or final Administrative-Record index. It may identify the current organization by any existing working index, log, folder listing, file structure, or electronic location sufficient to permit meaningful review.
2. No record already produced must be produced again. NMED or Applicant may incorporate an existing production by exact file name, Bates range, Administrative Record number, or electronic location.
3. No party need create a new diagram, study, test, model, calculation, or engineering analysis.

4. If a requested clarification has not yet been determined, the responding party may state that it remains unresolved rather than prepare a premature witness opinion.

If the Hearing Officer nevertheless maintains the denial of pre-August 24 access, Maxwell alternatively requests a limited modification under 20.1.4.100(F)(2) NMAC and the Hearing Officer's case-management authority. Specifically:

- a. Maxwell shall be permitted to supplement his direct technical testimony and exhibits to the extent, and only to the extent, materially responsive information concerning the subjects of the August 3 Motion is first made available too late for reasonable use in his August 24 filing;
- b. for information first made available on or before August 24, any such supplement may be filed no later than August 28, 2026;
- c. for materially responsive information first made available after August 24, Maxwell may seek or file a narrowly confined supplement within five calendar days of disclosure, subject to any further order necessary to protect the response rights of NMED and Applicant;
- d. NMED and Applicant may address any such supplementation in rebuttal or request a correspondingly limited adjustment upon a particularized showing; and
- e. the September 14 hearing date shall remain unchanged unless the Hearing Officer later determines that a narrow adjustment is necessary to prevent prejudice.

This alternative does not give Maxwell a second unrestricted direct case after seeing opposing testimony. Any supplement would be confined to material made available too late for reasonable use by August 24 and to the subject matter of that delayed information. It simply prevents the August 11 ruling from converting later disclosure into forfeiture of the affirmative technical position Maxwell was required to formulate before the disclosure occurred.

## **VII. EXPEDITED BRIEFING IS NECESSARY..**

The ordinary response and reply periods in 20.1.4.200(D)(4)–(5) NMAC would extend beyond the August 24 technical-filing deadline. The issue has already been fully briefed once, and this Motion narrows the dispute to the effect and scope of the Order.

Maxwell therefore requests that responses to this Motion be filed by 5:00 p.m. on August 13, 2026, and that any reply be filed by 5:00 p.m. on August 14, 2026, or on such other expedited schedule as the Hearing Officer determines will permit a ruling sufficiently before August 24 to provide meaningful relief.

## **VIII. CONCURRENCE.**

Pursuant to 20.1.4.200(D)(3) NMAC, on August 11, 2026, Maxwell sought concurrence from the parties concerning the relief requested in this Motion. Bruce Wetherbee indicated support for the contemplated motion. No other party responded prior to filing of this motion.

This motion should be treated as opposed.

## **IX. CONCLUSION AND PRAYER FOR RELIEF.**

The Order adopts two propositions from NMED's Response: that Maxwell seeks premature NMED technical testimony and that public documents are available through IPRA. Those propositions may support denial of particular requests, but they do not resolve the materially different categories of relief presented in the Motion and addressed in Maxwell's timely Reply.

The underlying Motion sought existing Administrative-Record materials, specifically identified existing records, the present basis of regulatory work already reflected in the July 29 draft materials, targeted admissions designed to narrow issues, Applicant-directed existing project information, and formal discovery only to the extent narrower means were insufficient. It also provided an express minimum alternative. The Order does not explain why those categories

constitute premature NMED testimony, how IPRA resolves Applicant-directed relief, or how IPRA alone gives effect to Part 4's separate command that the Administrative Record be available for public review at all times. Nor does it address Maxwell's burden under Section 400(A)(1) to present an affirmative case by August 24 using information that may not be disclosed until that same deadline.

**WHEREFORE**, Mr. Maxwell respectfully requests that the Hearing Officer:

1. reconsider the Order to the extent it categorically denies Administrative-Record access, specifically identified existing records, targeted documentary admissions, Applicant-directed existing-record relief, and the minimum alternative stated on page 3 of Maxwell's August 3 Motion;
2. grant the minimum alternative relief described in Section VI above, subject to the burden-reducing limitations stated there;
3. clarify whether Maxwell's August 10 consolidated Reply and Applicant's August 7 Response were considered before issuance of the Order;
4. clarify whether the Order holds that IPRA is the exclusive means by which NMED satisfies the requirement in 20.1.4.200(A)(2) NMAC that "[t]he Administrative Record is available for public review at all times";
5. clarify whether the Order intended to deny the Applicant-directed portions of Maxwell's Motion and, if so, identify the ground for that denial;
6. in the alternative, if pre-August 24 access remains denied, enter the limited supplementation and filing procedure stated in Section VI so that later disclosure does not prevent Maxwell from presenting the affirmative case required by 20.1.4.400(A)(1) NMAC;
7. establish the expedited briefing schedule requested in Section VII; and

8. grant such other limited procedural relief as is necessary to preserve a fair and orderly hearing without unnecessary delay.

Respectfully submitted,

By -s- Nicholas Maxwell  
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### **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of my Expedited Motion for Reconsideration and Clarification of August 11, 2026 Order and, in the Alternative, for Limited Modification of Technical-Filing Procedure was served by email to the Hearing Clerk and all parties of record on August 11, 2026, with a hard copy mailed upon request.

-s- *Nicholas Maxwell*  
Mr. Nicholas R. Maxwell