

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 10833

AQB 26-57 (P)

NEW MEXICO ENVIRONMENT DEPARTMENT'S RESPONSE PURSUANT TO THE
HEARING OFFICER'S ORDER DENYING MOTION FOR RECONSIDERATION AND
ORDERING EXPEDITED BRIEFING ON A COROLLARY ISSUE IN
MR. MAXWELL'S AUGUST 14, 2026 EXPEDITED MOTION FOR
RECONSIDERATION AND CLARIFICATION OF AUGUST 11, 2026 ORDER AND, IN
THE ALTERNATIVE, FOR LIMITED MODIFICATION OF TECHNICAL-FILING
PROCEDURE

The New Mexico Environment Department (the "Department") submits this response to the Hearing Officer's *Order Denying Motion for Reconsideration and Ordering Expedited Briefing on a Corollary Issue* (entered August 14, 2026) ("August 14 Order") in Mr. Maxwell's *Expedited Motion for Reconsideration and Clarification of August 11, 2026 Order and, in the Alternative, for Limited Modification of Technical-Filing Procedure* (filed August 11, 2026) ("Mr. Maxwell's August 11th Motion").

I. RESPONSE TO MOTION

The Department incorporates by reference and restates its argument in *New Mexico Environment Department Air Quality Bureau's Response to Maxwell's Motion for Expedited Prehearing Disclosure, Production of Identified Administrative Record Materials, Targeted Admissions, and, in the Alternative, Limited Discovery* (filed Aug. 7, 2026), which remains relevant for the Hearing Officer's decision-making here.

Additionally, the Department responds to the added points raised in Mr. Maxwell's August 11th Motion:

First, the appropriate mechanism for responding to new technical matters is rebuttal, not an open-ended right to revise or expand the affirmative technical case. *Archuleta v. Santa Fe Police Dep't ex rel. City of Santa Fe*, 2005-NMSC-006, ¶ 32, 137 N.M. 161, 108 P.3d 1019 (restating the principle that “[c]onstitutional due process does not require an agency to afford a petitioner all elements of a traditional judicial proceeding . . . In general, the right to due process in administrative proceedings contemplates only notice of the opposing party's claims and a **reasonable** opportunity to meet them”) (internal citations and quotation marks omitted) (emphasis added). Mr. Maxwell’s requested modification is unnecessary because the *Amended Scheduling Order* (entered July 29, 2026) already establishes separate procedures and deadlines for technical evidence and rebuttal evidence. Mr. Maxwell’s proposed procedure would substantially alter that framework for Mr. Maxwell alone. Mr. Maxwell’s proposal would effectively transform the August 24 deadline for full written technical testimony into a preliminary deadline followed by a rolling opportunity to modify or expand an affirmative technical case. The *Amended Scheduling Order* already recognizes that a party may respond to matters disclosed in another party’s affirmative technical presentation by providing a separate filing date for rebuttal on September 3, 2026.

Second, Mr. Maxwell’s proposal would further compress the timeframe for the parties to make their technical case. For purported supplementation testimony and exhibits based on the NOI filings, the other parties would have less than three business days before the September 3 rebuttal deadline to review the supplemental testimony, evaluate any new or modified technical opinions and supporting materials, consult with their technical witnesses, and prepare and file responsive rebuttal testimony. The proposal therefore would give Mr. Maxwell additional time to develop his affirmative technical case at the direct expense of the time expressly afforded by the

other parties to prepare their rebuttal.

Third, the proposed rolling supplementation procedure presents an even greater concern because it contains no meaningful endpoint. As written, the resulting procedure could become iterative. For example, a party could timely file rebuttal on September 3; Mr. Maxwell could characterize information contained in that rebuttal as “materially responsive” and supplement his affirmative testimony within five days; the Department and Applicant, or other parties if prejudiced by the submission, would then need an opportunity to respond to the new supplemental testimony; and any such response could itself contain information that Mr. Maxwell might contend, triggers another right to supplement. The proposal thus has no defined mechanism for bringing the technical filings to a close before the start of the September 14 hearing.

Fourth, Mr. Maxwell’s proposal presents a fundamental problem for information he may allege is “new” in the Administrative Record. The Administrative Record is constantly under construction and a continually growing body of documents that develops through the day of the hearing and until the Department’s permitting decision is issued, particularly given the record includes evidence from the hearing itself. *See* 20.2.72.207(D) NMAC. This reality is recognized by 20.1.4.200(A)(2) NMAC, which gives the Department until the day of the hearing to deliver the Administrative Record to the hearing clerk. The *Amended Scheduling Order*, paragraph 12, constrains this by requiring filing the day before the start of the hearing. Mr. Maxwell asks for permission to supplement his affirmative technical testimony within five calendar days whenever “materially responsive information” is first made available after August 24. The Administrative Record, however, may lawfully continue to develop after August 24 and, under the Amended Scheduling Order, including through September 13. Despite a filing date for the public hearing, such release does not have the effect of declaring the evolving Administrative Record complete.

Thus, Mr. Maxwell's proposed process would allow him to supplement his direct testimony through September 18, after the Department has presented its witnesses and when the hearing is expected to be nearing a close. When 20.1.4 NMAC was adopted, the timelines established in the rule were deemed appropriate and reasonable to protect all participants. The rule expressly contemplates that the Administrative Record may continue developing after technical testimony is due, later additions to that record cannot themselves provide a categorical basis for supplementation.

In conclusion, the Department does not agree that a special procedure is necessary for Mr. Maxwell to participate in the hearing when the current process affords the Department and all other parties their first opportunity to see witness lists, technical testimony, and other exhibits at the same time to ensure fairness and process. If the Hearing Officer considers his request though, any departure from the established testimony deadlines should be based upon an actual circumstance and a particularized showing rather than an advance authorization for rolling supplementation. Thus, if the Hearing Officer considers Mr. Maxwell's request, the consideration must afford protection for the other parties and the process, such as the following:

Proposal No. 1

1. The supplemental direct testimony and exhibits must be limited to responding to information in the NOIs filed on August 24, 2026.

2. "Information" must be defined as being limited to materially responsive factual evidence necessary for supporting an affirmative case challenging a permit condition or lack thereof as inadequate, improper, or invalid, that was identified by Mr. Maxwell in *Exhibit A* to his *Motion for Expedited Prehearing Disclosure, Production of Identified Administrative Record Materials, Targeted Admissions, and in the Alternative, Limited Discovery* (filed Aug. 3, 2026);

and does not mean opinions, conclusions, legal argument, general comments, or statements of policy. *See e.g.*, 20.1.4.7(A)(22) and (23) NMAC; 20.1.4.400(A)(1) NMAC.

3. Prior to filing supplemental direct testimony and exhibits, Mr. Maxwell must provide the Hearing Officer with a specific citation to the information Mr. Maxwell is relying upon as not being publicly available and request permission to file supplemental direct testimony and exhibits. Any party may challenge the request by filing a response within two business days of Mr. Maxwell's request. The Hearing Officer shall enter an order no later than two business days after the response deadline evaluating whether the information is "new" and if the existing procedural protections for rebuttal and cross-examination are sufficient in lieu of a supplemental filing.

4. Any approved supplemental direct testimony and exhibits must be filed by Thursday, September 3, 2026, at 5 p.m.

5. Any party seeking to rebut Mr. Maxwell's supplemental direct testimony and exhibits may file rebuttal testimony and exhibits by September 9, 2026.

Proposal No. 2

1. The supplemental direct testimony and exhibits must be limited to responding to information in the NOIs filed on August 24, 2026, and the Administrative Record.

2. "Information" must be defined as being limited to materially responsive factual evidence necessary for supporting an affirmative case challenging a permit condition or lack thereof as inadequate, improper, or invalid, that was identified by Mr. Maxwell in *Exhibit A* to his *Motion for Expedited Prehearing Disclosure, Production of Identified Administrative Record Materials, Targeted Admissions, and in the Alternative, Limited Discovery* (filed Aug, 3, 2026); and does not mean opinions, conclusions, legal argument, general comments, or statements of

policy. *See e.g.*, 20.1.4.7(A)(22) and (23) NMAC; 20.1.4.400(A)(1) NMAC.

3. The supplemental direct testimony and exhibits must be filed by Friday, August 28, 2026 at 5 p.m.

4. The supplemental direct testimony and exhibits must contain a specific citation the information Mr. Maxwell is relying upon as not being publicly available.

5. The deadline for any party to file rebuttal testimony and exhibits in response to Mr. Maxwell's supplemental direct testimony and exhibits is September 9, 2026.

6. Any party may challenge in a pre-hearing motion, filed by September 9, 2026, Mr. Maxwell's citation to the information he has relied upon as not being publicly available as the basis for his supplemental direct testimony and exhibits.

II. REQUEST FOR STATUS CONFERENCE

The matters raised by Mr. Maxwell are appropriate to address at a status conference with all the parties rather than the constraints offered by motion practice. *See* 20.1.4.300(A)(3) NMAC; *see also, Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (stating that the government's interest in conserving scarce fiscal and administrative resources is a factor that must be weighed in determining whether due process requires procedural safeguards prior to an administrative decision).

As an initial matter, Mr. Maxwell sought a position from the parties for Mr. Maxwell's August 11th Motion via email at 7:10 p.m. on August 11, 2026, then filed Mr. Maxwell's August 11th Motion at 9:54 a.m. the next day. Mr. Maxwell provided the parties with less than two working business hours to provide a position. *See Exhibit A*, attached hereto (email requesting positions); *Exhibit B*, attached hereto (email filing Mr. Maxwell's August 11th Motion). The rules provide that a motion must "state whether it is opposed or unopposed" and "[a]ny opposed motion shall state either that concurrence of other parties was sought and denied, or why

concurrence was not sought.” 20.1.2.200(D)(3) NMAC. The purpose and spirit of procedural rules requiring a party to seek opposing counsels’ concurrence before filing a motion express the desire for communication about issues to try and resolve them in a simple conversation rather than by intervention of the court, or here the hearing officer. Mr. Maxwell failed to allow the parties any opportunity to offer a position or have a conversation before initiating briefing with Mr. Maxwell’s August 11th Motion.

The Department believes the parties should be afforded an opportunity to discuss with the Hearing Officer the Department’s proposed protective limitations if Mr. Maxwell’s request is approved.

Furthermore, a status conference would benefit all parties at this point in the case. The Department has identified a number of additional matters that would be best addressed through a status conference rather than briefing. For example, the deadline for “pre-hearing motions” is set for August 24, 2026. Functionally, this inhibits the ability to file certain motions since the testimony and exhibits would be filed the same day as the evidence itself. Other parties have similarly shared this concern in the scheduling conferences before the Hearing Officer. This particular deadline must be extended for pre-hearing matters to a later date before the start of the hearing. Also, response and reply (if applicable) deadlines should be set for clarity. Additionally, other pre-hearing matters should be discussed, such as paper filings, the filing deadline for demonstrative exhibits, order and length of opening statements, permissibility of presenting witnesses in a panel format¹, order of testimony presentation, order of and time limits on cross examination, time limits for witnesses with rebuttal testimony and correspondingly cross-

¹ Although the Hearing Officer stated approval of witness panels during the July 15, 2026, scheduling conference, such was not included in the Scheduling Order or Amended Scheduling Order.

examination, etc. Some of these matters can be preliminarily discussed but not decided until the number of witnesses is known. Additionally, there are matters for discussion regarding public comment, information to share regarding safety and security of the hearing space, etc.

Lastly, a status conference is of the utmost importance to discuss the recent filing *New Energy Economy's Emergency Request for a Stay of Proceedings Pending a Determination on Verified Petition for Writ of Mandamus*.

Respectfully Submitted,

ROBLES, RAEL & ANAYA, P.C.

By: /s/ Kelsea E. Sona
Kelsea E. Sona
500 Marquette Ave NW, Suite 700
Albuquerque, New Mexico 87102
(505) 242-2228
kelsea@roblesrael.com

-and-

**OFFICE OF GENERAL COUNSEL,
New Mexico Environment Department**

Zachary Ogaz, General Counsel
Brian Yardman-Frank
121 Tijeras Ave NE, Suite 1000
Albuquerque, NM 87102
505-470-8151
505-490-7111
zachary.ogaz@env.nm.gov
brian.yardman-frank@env.nm.gov

Counsel for NMED

CERTIFICATE OF SERVICE

I hereby certify that the foregoing *New Mexico Environment Department's Response Pursuant to the Hearing Officer's Order Denying Motion for Reconsideration and Ordering Expedited Briefing On a Corollary Issue in Mr. Maxwell's August 14, 2026 Expedited Motion For Reconsideration and Clarification Of August 11, 2026 Order and, In the Alternative, For Limited Modification of Technical-Filing Procedure* was electronically filed and sent via electronic mail on this 19th day of August 2026 to the following:

Max Shepherd
Max.shepherd@comcast.net
Hearing Officer

Luis Lopez
Luis.lopez@env.nm.gov
Hearing Clerk

Jennifer L. Bradfute
David Kirmse
jennifer@bradfutelaw.com
david@bradfutelaw.com
Counsel for Applicant Yucca Growth Infrastructure, LLC

Jennifer Bieber
Carlor Romo
Jbiever@williamsweese.com
Cromo@williamsweese.com
Counsel for Yucca Growth Infrastructure, LLC

Nicholas R. Maxwell
inspector@sunshineaudit.com
Pro Se Intervenor

Bruce Wetherbee
editor@thecandlepublishing.com
Pro Se Intervenor

Colin Cox
Gail Evans
ccox@biologicaldiversity.org
gevans@biologicaldiversity.org
Counsel for Center of Biological Diversity

Maslyn Locke
Eric Jantz
mlocke@nmelc.org
ejantz@nmelc.org
Counsel for Vivian Fuller and Jose Saldana Jr.

Joe Cardillo
joe@progressnownm.org
Pro Se Intervenor

Esperanza Chairez
Zephyr Jaramillo
Esperanza@yuccanm.org
info@yuccanm.org
Youth United for Climate Crisis Action

Mariel Nanasi
Christopher Dodd
New Energy Economy
mnanasi@newenergyeconomy.org
chris@fayerbergdodd.com
Counsel for New Energy Economy

Yiwei Chen
yiwei.chen@edd.nm.gov
Counsel for the New Mexico Economic Development Department

Isaiah Zemke
izemke@smwlu49.org
Counsel for Sheet Metal Workers Local Union No. 49

Courteany Eichhorst
courtenaye@ualocal412.org
*Counsel for New Mexico Building and
Construction Trades Council*

Christine Dobbin
Dobbin.cc@gmail.com
Pro Se Intervenor
Andre Makarski
andre@ualocal412.org
Counsel for United Association Local 412

Nathaniel Chakeres
Nathaniel.chakeres@ose.nm.gov
Counsel for NMOSE

Mark Trujillo
Stephanie Maez
markgtrujillo@ibew611.org
smaeznm@gmail.com
*Authorized Representatives for IBEW Local
Union 611*

Darrell Deaguero
Darrel.deaguero@liuna16.org
Cc: mlor@liuna.org
Representative of LIUNA Local 16

Should the Hearing Clerk require a paper original, Robles, Rael, and Anaya, P.C. shall promptly provide the document upon request.

/s/Kelsea E. Sona
Kelsea E. Sona

A

From: [Nicholas R. Maxwell](#)
To: ["Lopez, Luis, ENV"; inspector@sunshineaudit.com](#)
Cc: ["Mariel Nanasi"; mlor@liuna.org; chris@fayerbergdodd.com; dobbin.cc@gmail.com; "Yardman-Frank, Brian, ENV"; max.shepherd@comcast.net; editor@thecandlepublishing.com; joe@progressnownm.org; "izemke"; "Gail Evans"; "Chakeres, Nathaniel, OSE"; "Chen, Yiwei, EDD"; andre@ualocal412.org; mlocke@nmelc.org; ejantz@nmelc.org; "Jennifer Bradfute"; "david"; courtenaye@ualocal412.org; joan@ualocal412.org; "Carlos Romo"; "Esperanza Chairez Uriarte"; alfonso@ibew611.org; markgtrujillo@ibew611.org; smaeznm@gmail.com; zachary.ogaz; jbiever@williamsweese.com; Darrell.deaguero@liuna16.org; "Jones, Pamela, ENV"; "Vigil, Christopher J, ENV"; "Colin Cox"; Kelsea Sona](#)
Subject: AQB 26-57 (P) - Maxwell Motion to Deem NMED Response Filed August 10
Date: Wednesday, August 12, 2026 9:54:23 AM
Attachments: [AOB26-57-Motion-Deem-NMED-Response-Aug10.pdf](#)

Greetings,

Please find attached for filing into docket no. AQB 26-57 my expedited motion to deem NMED's August 7 Response Filed August 10, 2026 and for Relief from the August 11, 2026 Order.

Thanks,
Mr. Nicholas R. Maxwell
P.O. Box 1064
Hobbs, New Mexico 88241
Telephone: (575) 441-3560
Email: inspector@sunshineaudit.com

From: Jones, Pamela, ENV <Pamela.Jones@env.nm.gov>
Sent: Saturday, August 8, 2026 11:00 AM
To: Vigil, Christopher J, ENV <Christopher.J.Vigil@env.nm.gov>; Lopez, Luis, ENV <luis.lopez@env.nm.gov>
Cc: Mariel Nanasi <mnanasi@newenergyeconomy.org>; mlor@liuna.org; chris@fayerbergdodd.com; dobbin.cc@gmail.com; Yardman-Frank, Brian, ENV <brian.yardman-frank@env.nm.gov>; max.shepherd@comcast.net; editor@thecandlepublishing.com; joe@progressnownm.org; Nick Maxwell <inspector@sunshineaudit.com>; izemke <izemke@smwlu49.org>; Gail Evans <GEvans@biologicaldiversity.org>; Chakeres, Nathaniel, OSE <Nathaniel.Chakeres@ose.nm.gov>; Chen, Yiwei, EDD <yiwei.chen@edd.nm.gov>; andre@ualocal412.org; mlocke@nmelc.org; ejantz@nmelc.org; Jennifer Bradfute <jennifer@bradfutelaw.com>; david <david@bradfutelaw.com>; courtenaye@ualocal412.org; joan@ualocal412.org; Carlos Romo <cromo@williamsweese.com>; Esperanza Chairez Uriarte <esperanza@yuccanm.org>; alfonso@ibew611.org; markgtrujillo@ibew611.org; smaeznm@gmail.com; Ogaz, Zachary, ENV <zachary.ogaz@env.nm.gov>; jbiever@williamsweese.com; Darrell.deaguero@liuna16.org; Colin Cox <ccox@biologicaldiversity.org>
Subject: RE: AQB 26-57 (P) - NMED Responses to Discovery Requests and Maxwell's Motion

Greetings –

The attached documents are file-marked and posted.

EXHIBIT

B

Pam Jones
Paralegal
Office of Public Facilitation
505-660-4305

From: Vigil, Christopher J, ENV <ChristopherJ.Vigil@env.nm.gov>
Sent: Friday, August 7, 2026 8:25 PM
To: Lopez, Luis, ENV <luis.lopez@env.nm.gov>; Jones, Pamela, ENV <Pamela.Jones@env.nm.gov>
Cc: Mariel Nanasi <mnanasi@newenergyeconomy.org>; mlor@liuna.org; chris@fayerbergdodd.com; dobbin.cc@gmail.com; Yardman-Frank, Brian, ENV <brian.yardman-frank@env.nm.gov>; max.shepherd@comcast.net; editor@thecandlepublishing.com; joe@progressnownm.org; Nick Maxwell <inspector@sunshineaudit.com>; izemke <izemke@smwlu49.org>; Gail Evans <GEvans@biologicaldiversity.org>; Chakeres, Nathaniel, OSE <Nathaniel.Chakeres@ose.nm.gov>; Chen, Yiwei, EDD <yiwei.chen@edd.nm.gov>; andre@ualocal412.org; mlocke@nmelc.org; ejantz@nmelc.org; Jennifer Bradfute <jennifer@bradfutelaw.com>; david <david@bradfutelaw.com>; courtenaye@ualocal412.org; Jones, Pamela, ENV <Pamela.Jones@env.nm.gov>; joan@ualocal412.org; Carlos Romo <cromo@williamsweese.com>; Esperanza Chairez Uriarte <esperanza@yuccanm.org>; alfonso@ibew611.org; markgtrujillo@ibew611.org; smaeznm@gmail.com; Ogaz, Zachary, ENV <zachary.ogaz@env.nm.gov>; jbiever@williamsweese.com; Darrell.deaguero@liuna16.org; Colin Cox <ccox@biologicaldiversity.org>
Subject: AQB 26-57 (P) - NMED Responses to Discovery Requests and Maxwell's Motion

Hi Luis,

See attached.

Thank you

Chris Vigil
Assistant General Counsel
Air Quality Bureau
New Mexico Environment Department
121 Tijeras Ave. NE, Ste. 1000
Albuquerque, NM 87102
Phone: (505) 469-4696
Fax: (505) 383-2064
Email: christopherj.vigil@env.nm.gov
<https://www.env.nm.gov/>

CONFIDENTIALITY NOTICE: This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. This communication may contain material that is protected by the attorney-client privilege. If you have received this e-mail in error please immediately notify the sender by reply e-mail or by telephone at the number above and destroy the e-mail that you have received.