

**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 TO DEEM NMED'S AUGUST 7 RESPONSE
FILED AUGUST 10, 2026 AND FOR RELIEF FROM THE AUGUST 11, 2026 ORDER**

Mr. Maxwell respectfully moves pursuant to 20.1.4.100(E)(2), 20.1.4.100(F)(2), 20.1.4.100(H)(1), and 20.1.4.200(D) NMAC for an order (1) deeming the New Mexico Environment Department Air Quality Bureau's response to Maxwell's August 3, 2026 Motion ("NMED's Response") filed on Monday, August 10, 2026; (2) applying the waiver consequence prescribed by 20.1.4.200(D)(4) NMAC; and (3) granting relief from the August 11, 2026 Order to the extent it expressly relies upon NMED's untimely objections.

Maxwell submits his Affidavit as Exhibit A. Exhibits 1–3 to the Affidavit are the relevant emails.

I. NMED'S RESPONSE IS DEEMED FILED AUGUST 10 UNDER SECTION 100(H)(1)(c).

On August 4, 2026, the Hearing Officer ordered that responses to Maxwell's August 3 Motion "shall be filed by August 7, 2026" and any reply "shall be filed by August 10, 2026." *August 4, 2026 Order* at 1.

Part 4 provides:

"The close of business on a working day shall be 5:00 p.m. . . . A working day shall not include a Saturday, Sunday, or state or federal holiday. A document received after close of business or on a non-working day shall be deemed filed on the next business day."

20.1.4.100(H)(1)(c) NMAC.

The contemporaneous emails establish the filing chronology.

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At 2:57 p.m. on August 7, Hearing Clerk Luis Lopez's automatic reply advised that he was out until Monday, August 10, and directed matters requiring immediate attention to Pamela Jones. *Maxwell Aff.* ¶¶ 2–4 & Ex. 1.

At 8:25 p.m. that evening, NMED counsel Christopher J. Vigil transmitted two NMED responses to both Mr. Lopez and Ms. Jones, including NMED's Response to Maxwell's August 3 Motion. The Hearing Officer, Maxwell, and other parties were copied. *Id.* ¶¶ 5–9 & Ex. 2.

At 11:00 a.m. on Saturday, August 8, Ms. Jones replied on the same email chain: "The attached documents are file-marked and posted." *Id.* ¶¶ 10–13 & Ex. 3.

Thus, NMED did not transmit its Response to either Mr. Lopez or Ms. Jones until 8:25 p.m., more than three hours after Part 4's close of business. Saturday and Sunday were non-working days pursuant to the same rule. The next business day was Monday, August 10. Section 100(H)(1)(c) therefore deems NMED's Response filed August 10.

The subsequent file-marking of the Response as August 7 cannot change the filing date prescribed by the rule. If some separate order, electronic-filing procedure, or other authority permitted an after-hours submission to retain an August 7 filing date, Maxwell respectfully requests identification of that authority. The August 4 Order contains no such provision.

II. NMED DID NOT OBTAIN AN EXTENSION, AND SECTION 200(D)(4) DEEMS ITS OBJECTIONS WAIVED.

Part 4 permits an extension of time "upon timely motion of a party," for good cause and after consideration of prejudice and delay. 20.1.4.100(F)(2) NMAC.

NMED did not move before the August 7 deadline for an extension or authorization to file after close of business. NMED's Response was instead transmitted at 8:25 p.m. *Maxwell Aff.* ¶¶ 5–9 & Ex. 2.

Section 20.1.4.200(D)(4) NMAC provides:

“A non-moving party failing to file a timely response shall be deemed to have waived any objection to the granting of the motion.”

The August 4 Order substituted August 7 for the ordinary response deadline. Because Section 100(H)(1)(c) deems NMED’s Response filed August 10, NMED failed to file a timely response and is deemed to have waived its objections.

Maxwell does not contend that waiver automatically requires entry of every form of relief sought in his August 3 Motion regardless of governing law or the remainder of the record. It does mean that NMED’s untimely objections cannot properly furnish the grounds for denying that Motion.

III. MAXWELL WAS PREJUDICED BECAUSE THE AUGUST 11 ORDER EXPRESSLY RELIED UPON NMED’S UNTIMELY OBJECTIONS.

The prejudice here is concrete.

NMED’s Response supplied the very objections the Hearing Officer subsequently adopted as the stated grounds for denying Maxwell’s Motion.

The August 11 Order states:

“Having reviewed Mr. Maxwell’s motion and the arguments and authorities cited therein, and the responsive pleading filed by NMED, I find for the reasons argued by NMED in Part I of its response that Mr. Maxwell is asking the hearing officer to order NMED to submit technical testimony before it is due . . . And I also find 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.”

August 11, 2026 Order at 1.

The Order then denies Maxwell’s Motion in its entirety. *Id.* at 2.

Treating NMED’s Response as timely therefore had a direct procedural and decisional effect: objections that Section 200(D)(4) deems waived were considered and expressly relied upon against Maxwell, depriving him of the protection the waiver rule affords.

IV. THE APPROPRIATE RELIEF IS TO APPLY THE REGULATORY FILING DATE AND REDECIDE THE AUGUST 3 MOTION WITHOUT NMED'S WAIVED OBJECTIONS.

NMED's Response need not be removed from the Hearing Record. Maxwell requests that it remain in the record but be treated as filed August 10, as required by Section 100(H)(1)(c).

Because the August 11 Order expressly adopted NMED's Part I and Part II objections, the Hearing Officer should vacate, modify, or reconsider that Order to the extent it relies upon those objections and decide Maxwell's August 3 Motion without them.

If the Hearing Officer concludes that the August 3 Motion should nevertheless be denied on an independent legal ground not dependent upon NMED's waived objections, Maxwell respectfully requests that the resulting order identify that ground expressly.

Uniform application of these rules is necessary to a fair and orderly proceeding. NMED was subject to its August 7 deadline and to Part 4's rule determining when an after-hours submission is filed. Enforcing those provisions gives the Response the filing date and procedural consequence that Part 4 itself prescribes.

V. EXPEDITED TREATMENT IS WARRANTED.

The August 11 Order affects matters bearing on Maxwell's preparation for the imminent August 24 technical-filing deadline. Prompt resolution will clarify which objections properly may be considered in deciding the August 3 Motion and avoid carrying this filing-date dispute further into the proceeding.

Maxwell therefore requests expedited consideration and such shortened response and reply periods as provide the parties a fair opportunity to respond while permitting resolution sufficiently before August 24.

VI. CONCURRENCE.

Pursuant to 20.1.4.200(D)(3) NMAC, Maxwell sought concurrence from the parties by email on the evening of August 11, 2026. NMED opposes the motion. Bruce Wetherbee does not oppose the motion. The motion is therefore opposed.

VII. CONCLUSION AND PRAYER FOR RELIEF.

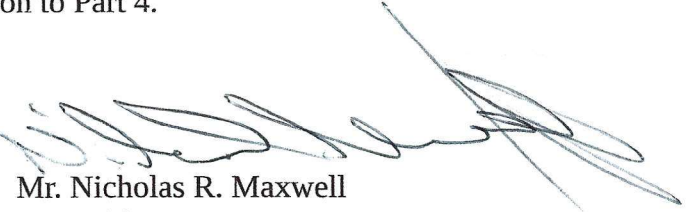
NMED transmitted its Response to Mr. Lopez and Ms. Jones at 8:25 p.m. on Friday, August 7. Under 20.1.4.100(H)(1)(c) NMAC, it is therefore deemed filed on the next business day, Monday, August 10. Section 200(D)(4) consequently deems NMED to have waived its objections. Because the August 11 Order expressly adopted those objections as its grounds for denying Maxwell's Motion, relief is required.

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

1. determine that NMED transmitted its Response after the 5:00 p.m. close of business on August 7, 2026;
2. deem NMED's Response filed on Monday, August 10, 2026 pursuant to 20.1.4.100(H)(1)(c) NMAC;
3. direct the Hearing Clerk to correct or annotate the docket and filed copy accordingly while leaving NMED's Response otherwise in the Hearing Record;
4. determine pursuant to 20.1.4.200(D)(4) NMAC that NMED failed to file a timely response and is deemed to have waived its objections to granting Maxwell's August 3 Motion;
5. vacate, modify, or reconsider the August 11, 2026 Order to the extent it relies upon Parts I and II of NMED's Response;
6. decide Maxwell's August 3 Motion without reliance upon NMED's waived objections;
7. if the Motion is nevertheless denied on an independent ground, identify that ground expressly;

8. if some separate authority permitted NMED's after-hours transmission to retain an August 7 filing date, identify that authority and its basis for application here; and
9. grant such other procedural relief as is necessary to conform the Hearing Record and disposition of Maxwell's August 3 Motion to Part 4.

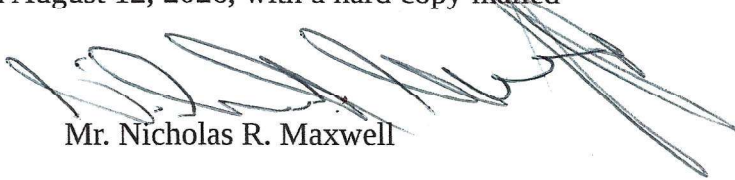
Respectfully submitted,

By 

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

CERTIFICATE OF SERVICE

I certify that a true and correct copy of my Expedited Motion to Deem NMED's August 7 Response Filed August 10, 2026 and for Relief from the August 11, 2026 Order was served by email to the Hearing Clerk and all parties of record on August 12, 2026, with a hard copy mailed upon request.


Mr. Nicholas R. Maxwell

AFFIDAVIT OF NICHOLAS R. MAXWELL

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

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

1. I am over eighteen years of age, competent to
testify, and a *pro se* intervenor in AQB 26-57(P),
In the Matter of the Application of Yucca Growth
Infrastructure, LLC for an Air Quality Permit, No.
NSR 10883. I make this Affidavit from my personal
knowledge.
2. On Friday, August 7, 2026, I sent an electronic-
mail message to Hearing Clerk Luis Lopez concerning
this proceeding.
3. At approximately 2:57 p.m., I received an automatic
reply from Mr. Lopez's New Mexico Environment
Department email account stating:

"Luis is out of the office until Monday,
August 10th. If your matter requires immediate
attention, please email Pamela Jones at
pamela.jones@env.nm.gov. Thank you!"

4. Exhibit 1 to this Affidavit is a true and correct copy of that automatic reply as I received it.
5. Later that evening, I received as a copied recipient an electronic-mail message from Christopher J. Vigil, counsel for the New Mexico Environment Department ("NMED"), transmitted at approximately 8:25 p.m. on Friday, August 7, 2026.
6. That 8:25 p.m. email was addressed to both Hearing Clerk Luis Lopez and Pamela Jones. The Hearing Officer and numerous parties or counsel of record, including me, were copied on the email.
7. The subject of the email was "AQB 26-57 (P) - NMED Responses to Discovery Requests and Maxwell's Motion." Its body stated:

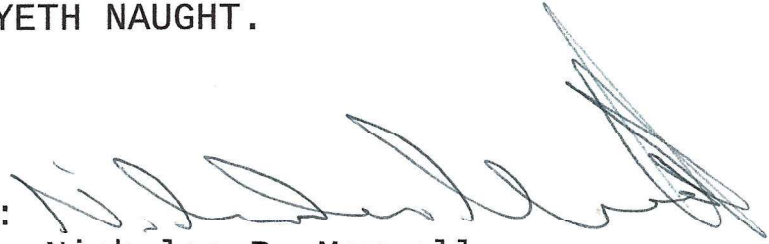
"Hi Luis,
See attached.
Thank you
Chris Vigil"
8. The email identified two attached files: NMED's response to my August 3, 2026 Motion and NMED's response to requests for discovery.

9. Exhibit 2 to this Affidavit is a true and correct copy of the August 7, 2026 transmitting email as I received it, showing the sender, recipients, date and time of transmission, subject, message, and identification of the attached files. The two NMED responses transmitted with that email did not bear a filing mark. The attachments themselves are omitted from Exhibit 2 because the NMED responses are already contained in the Hearing Record.
10. At approximately 11:00 a.m. on Saturday, August 8, 2026, I received as a copied recipient an email from Pamela Jones of the Office of Public Facilitation replying on the same email chain.
11. Ms. Jones's August 8 email was addressed to Christopher J. Vigil and Luis Lopez, with the Hearing Officer, me, and numerous parties or counsel of record copied. Ms. Jones stated:

"Greetings -
The attached documents are file-marked and posted."

12. The August 8 email included beneath Ms. Jones's message the prior August 7 email from Mr. Vigil showing its 8:25 p.m. transmission time and its transmission to both Mr. Lopez and Ms. Jones.
13. Exhibit 3 to this Affidavit is a true and correct copy of the August 8, 2026 email chain as I received it. The NMED filings attached to Ms. Jones's email are omitted because those filings are already contained in the Hearing Record. Unlike the unstamped copies transmitted by NMED the previous evening, the copies circulated by Ms. Jones bore, on the upper-right portion of the first page, a filing mark stating "Secretary of the Environment – RECEIVED – July 7, 2026," followed by the name "Pamela Jones."

FURTHER YOUR AFFIANT SAYETH NAUGHT.

By: 

Nicholas R. Maxwell

P.O. Box 1064

Hobbs, New Mexico 88241

Telephone: (575) 441-3560

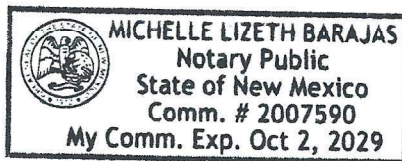
Dated: August 12, 2026

STATE OF NEW MEXICO)
)
COUNTY OF LEA)

SUBSCRIBED AND SWORN TO before me this 12th day of
August, 2026.

Michelle Lizeth Barajas
Judge, notary, or other officer
authorized to administer oaths

Notary Public
Official title



Nicholas R. Maxwell

From: Lopez, Luis, ENV <luis.lopez@env.nm.gov>
Sent: Friday, August 7, 2026 2:57 PM
To: Nick Maxwell
Subject: Automatic reply: [EXTERNAL] AQB 26-57: Maxwell Response NEE Motion & Objection to Aug 5 Order

Luis is out of the office until Monday, August 10th. If your matter requires immediate attention, please email Pamela Jones at pamela.jones@env.nm.gov. Thank you!

Nicholas R. Maxwell

From: Vigil, Christopher J, ENV <ChristopherJ.Vigil@env.nm.gov>
Sent: Friday, August 7, 2026 8:25 PM
To: Lopez, Luis, ENV; Jones, Pamela, ENV
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; Nick Maxwell; izemke; Gail Evans; Chakeres, Nathaniel, OSE; Chen, Yiwei, EDD; andre@ualocal412.org; mlocke@nmelc.org; ejantz@nmelc.org; Jennifer Bradfute; david; courtenaye@ualocal412.org; Jones, Pamela, ENV; joan@ualocal412.org; Carlos Romo; Esperanza Chairez Uriarte; alfonso@ibew611.org; markgtrujillo@ibew611.org; smaeznm@gmail.com; Ogaz, Zachary, ENV; jbiever@williamsweese.com; Darrell.deaguero@liuna16.org; Colin Cox
Subject: AQB 26-57 (P) - NMED Responses to Discovery Requests and Maxwell's Motion
Attachments: 2026-08-07 - AQB 26-57 - NMED Resp to Maxwell Motion.pdf; 2026-08-07 - AQB 26-57 - NMED Resp to Req for Discovery.pdf

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
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Nicholas R. Maxwell

From: Jones, Pamela, ENV <Pamela.Jones@env.nm.gov>
Sent: Saturday, August 8, 2026 11:00 AM
To: Vigil, Christopher J, ENV; Lopez, Luis, ENV
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; Nick Maxwell; 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; Ogaz, Zachary, ENV; jbiever@williamsweese.com; Darrell.deaguero@liuna16.org; Colin Cox
Subject: RE: AQB 26-57 (P) - NMED Responses to Discovery Requests and Maxwell's Motion
Attachments: 2026-08-07 - AQB 26-57 - NMED Resp to Maxwell Motion.pdf; 2026-08-07 - AQB 26-57 - NMED Resp to Req for Discovery.pdf

Greetings –

The attached documents are file-marked and posted.

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
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