

**Re-Opening of Deliberations
5/27/2022**

EIB Ozone Hearing

1 1 STATE OF NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD 2 3 No. EIB 21-27 (R) 4 5 In the Matter of: 6 PROPOSED NEW REGULATION 20.2.50 NMAC - Oil and Gas Sector Ozone Precursor Pollutants 7 8 9 TRANSCRIPT OF PROCEEDINGS 10 BE IT REMEMBERED that on the 27th day of May, 2022, 11 this matter came on for Deliberations and Decision on the 12 virtual WebEx platform, before PHOEBE SUINA, Chairperson 13 for the Environmental Improvement Board, commencing at the 14 hour of 9:00 a.m. 15 16 17 18 REPORTED BY: 19 THERESA E. DUBOIS, RPR, NM CCR #29 ALBUQUERQUE COURT REPORTING SERVICE, LLC 20 3150 Carlisle Boulevard, Northeast Suite 104 21 Albuquerque, New Mexico 87110 (505)806-1202 22 Abqcrs@gmail.com 23 24 25	3 1 CHAIRPERSON SUINA: Good morning, everyone. I 2 hope everybody is doing well. It looks like we have a 3 quorum, and I'd like to get the meeting started, and if we 4 can to do a -- start the meeting. Maybe, Ms. Jones, could 5 you do a roll-call just to see who is all here? 6 ADMINISTRATOR JONES: Yes, ma'am. Beginning with 7 Member Bitzer, are you present? 8 BOARD MEMBER BITZER: I am indeed. 9 ADMINISTRATOR JONES: Member Cates? 10 BOARD MEMBER CATES: Yes. 11 ADMINISTRATOR JONES: Member Duvall is not with 12 us. 13 Member Garcia? 14 BOARD MEMBER GARCIA: Yes. Here. 15 ADMINISTRATOR JONES: Member Honker? 16 BOARD MEMBER HONKER: I am here. 17 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis. 18 VICE-CHAIR TRUJILLO-DAVIS: Here, present. 19 ADMINISTRATOR JONES: There you are. 20 And Chair Suina? 21 CHAIRPERSON SUINA: Here. 22 ADMINISTRATOR JONES: Madam Chair, you have a 23 quorum. 24 CHAIRPERSON SUINA: Thank you so much. I 25 appreciate that, Ms. Jones. So, the next we have on our
2 1 A P P E A R A N C E S 2 3 For the Environmental Improvement Board: 4 PHOEBE SUINA, Chairperson AMANDA TRUJILLO-DAVIS, Vice-Chairperson BARRY BITZER, Board Member 5 KARL CATES, Board Member KAREN GARCIA, Board Member 6 WILLIAM HONKER, Board Member 7 Hearing Officer: 8 FELICIA ORTH, ESQ. 9 Counsel For the EIB: 10 KARLA SOLARIA, Commission Counsel Office of the Attorney General 11 P.O. Box 1508 Santa Fe, New Mexico 87504 12 ksoloria@nmag.gov 13 PAMELA JONES, Commission Administrator 14 15 REPORTER'S CERTIFICATE 57 16 17 18 19 20 21 22 23 24 25	4 1 agenda -- Ms. Jones, would you be able to put the agenda 2 up on the screen for me? 3 ADMINISTRATOR JONES: Counsel Soloria, do you 4 have the agenda handy? Otherwise, I can dig it out and 5 share it. 6 MS. SOLORIA: I can do that. Just give me one 7 moment to pull it up. 8 ADMINISTRATOR JONES: Thanks. We've got her cued 9 up already to share screen. 10 CHAIRPERSON SUINA: Great. I just wanted to make 11 sure we're all on the same page with our agenda. This 12 morning, fellow Board members, I have a pressing meeting 13 later or -- later this morning. And so I wanted -- as 14 we're on agenda item number 2, approval of the agenda, I 15 was asking -- I wanted to see if the fellow Board members 16 would be willing to move up EIB 21-27. That would be 17 agenda items 11 and 12, and move those above currently 18 agenda item number 5. 19 I have a pressing meeting regarding the wildfires 20 and some of the monsoon preparations that are needed for 21 New Mexican communities this morning. And so I was 22 wondering if that would be possible. 23 Ms. Soloria, I just wanted to reach out to you, 24 is that -- is that -- is that appropriate if I -- if I 25 propose that?

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5 1 MS. SOLORIA: Yes, that's fine. It's at the 2 Board's pleasure if you want to reorder the agenda items, 3 just have that discussion and then we'll move forward. 4 CHAIRPERSON SUINA: Okay. So I look to the Board 5 and get your thoughts about my -- my request and see what 6 you think. 7 BOARD MEMBER HONKER: Fine with me. 8 VICE-CHAIR TRUJILLO-DAVIS: It's good with me. 9 Do we need to make a motion to reorder the agenda items? 10 MS. SOLORIA: Yes, you can make a motion and then 11 do a quick vote and then we'll proceed from there. 12 VICE-CHAIR TRUJILLO-DAVIS: Okay. I can make 13 that motion. Is it just items 10 and 11 that we would 14 want to move up? 15 CHAIRPERSON SUINA: It would be 11 and 12 on the 16 agenda that we have on the screen. 17 VICE-CHAIR TRUJILLO-DAVIS: I'm sorry, I couldn't 18 see 12 down there. Okay. So I'm going to go ahead and 19 make the motion that we reorder our agenda items for 20 today's meeting on 5/27/22, moving items number 11, EIB 21 21-27 and number 12, EIB 21-27 to the top of the list. We 22 can make them item numbers 5 and 6 if that's -- does that 23 suffice for a motion? 24 MS. SOLORIA: Yes. 25 VICE-CHAIR TRUJILLO-DAVIS: Okay.	7 1 CHAIRPERSON SUINA: Thank you so much, Ms. Jones. 2 Appreciate that. 3 (Off the record discussion.) 4 CHAIRPERSON SUINA: With that, I guess we'll go 5 to the first discussion item on our agenda and that is now 6 moved up for EIB 21-27. 7 Ms. Soloria, I think -- I think you're up. 8 MS. SOLORIA: Yes, thank you, Madam Chair. 9 So you all have received the Statement of Reasons 10 that was to be put together with the assistance of Hearing 11 Officer Orth. It reflects your decision -- deliberations 12 and decisions in the ozone rulemaking -- Ozone Precursor 13 Rulemaking EIB 21-27. In compiling the Statement of 14 Reasons there were just a few items that we -- the Board 15 just didn't address during their deliberations. And so, 16 for the sake of completeness, dotting our I's, crossing 17 our T's, we're going to do a limited reopening of those 18 deliberations so you all can address those matters and 19 make sure the Statement of Reasons is as complete as we 20 can get it. 21 So I am -- I took the liberty of outlining those 22 issues that are outstanding, and my intention is to just 23 walk you through those. And then, if there's any further 24 discussion on those matters, you all are free to have 25 that, and we'll have that all on the record. And then
6 1 BOARD MEMBER BITZER: I'll second that. 2 CHAIRPERSON SUINA: Thank you so much. Is there 3 any further discussion regarding the motion? 4 And if not, Ms. Jones, would you mind doing a 5 roll-call vote. 6 ADMINISTRATOR JONES: Yes. I just want to 7 confirm the second; was that you, Member Bitzer? Did you 8 get in before Member Honker? 9 BOARD MEMBER BITZER: (Nodding head.) 10 ADMINISTRATOR JONES: Okay. So the vote on the 11 amended agenda for this morning, Member Bitzer, how do you 12 vote? 13 BOARD MEMBER BITZER: I vote yes. 14 ADMINISTRATOR JONES: Member Cates? 15 BOARD MEMBER CATES: Yes. 16 ADMINISTRATOR JONES: Member Garcia? 17 BOARD MEMBER GARCIA: Yes. 18 ADMINISTRATOR JONES: Member Honker? 19 BOARD MEMBER HONKER: Yes. 20 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis? 21 VICE-CHAIR TRUJILLO-DAVIS: Yes. 22 ADMINISTRATOR JONES: And Chair Suina? 23 CHAIRPERSON SUINA: Yes. 24 ADMINISTRATOR JONES: Madam Chair, the motion 25 passes.	8 1 we'll take a series of votes just to make sure that, 2 again, the Statement of Reasons accurately and faithfully 3 reflects the Board's decision making. 4 And we are on the record. Ms. DuBois, you are 5 good to go? 6 COURT REPORTER: (Nodding head.) 7 MS. SOLORIA: Great. So let me share -- if I can 8 find it, I just want to put the draft on the screen 9 because I think it will be easier to follow along that 10 way. 11 BOARD MEMBER HONKER: So are we looking at the 12 highlighted in green items? 13 MS. SOLORIA: Yes. Yes, Member Honker. And let 14 me pull it up. Okay. Can you all see that? Great. 15 CHAIRPERSON SUINA: Yes, Ms. Soloria. 16 MS. SOLORIA: Okay. So the first item -- and, 17 again, just to preface this, the parties -- the Department 18 and other parties in their closing arguments and, of 19 course, in their testimony and with their evidence, 20 presented sort of general evidence that kind of went to 21 their support for the rule as a whole. And because of the 22 way that the Board progressed through its deliberations, 23 where we were going line by line, provision by provision, 24 we just -- we just didn't go back and make some of these 25 general findings that I have included in the Statement of

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9 1 Reasons. And I think that was important to do so, so 2 we're just going to go back and make sure that we have 3 actual Board votes on those, so that it's reflective of 4 the Board's decision making. 5 The first item I have on the screen has to do 6 with the Air Quality Control Act's requirement that the 7 Board shall adopt a plan, including rules, to control 8 emissions of oxide of nitrogen, or NOx, and volatile 9 organic compounds, or VOCs, to provide for the attainment 10 and maintenance of the standards. 11 So, you all adopted the rules. We did not go 12 back and consider the "plan," as required by the Air 13 Quality Control Act. The Department proffered, during 14 their evidence, that their Ozone Path Forward, which was 15 their Exhibit 4 in testimony, and I believe the witness 16 proffering that was Mr. Baca, as their plan. So the Board 17 needs to make a finding whether or not to accept that as 18 the plan required to satisfy the statute. So, the 19 proposed language I have there is highlighted in green, 20 and you all can discuss that. And if that is acceptable 21 to you, someone can offer a motion to that effect. 22 CHAIRPERSON SUINA: Thank you, Ms. Soloria. 23 Appreciate that. 24 Fellow Board members, do you have any questions? 25 Yes, Ms. Garcia.	11 1 great. Thank you. 2 CHAIRPERSON SUINA: Wonderful. Does your second 3 hold, Member Honker? 4 BOARD MEMBER HONKER: Yes. Yes, I amend my 5 second. 6 CHAIRPERSON SUINA: Thank you so much. With 7 that, if there is no further discussion, I'm looking at 8 our Board members. 9 Ms. Jones, would you mind doing a roll-call vote 10 on Member Garcia's? 11 ADMINISTRATOR JONES: Member Bitzer, how do you 12 vote? 13 BOARD MEMBER BITZER: I vote yes. 14 ADMINISTRATOR JONES: Member Cates? 15 BOARD MEMBER CATES: I vote yes. 16 ADMINISTRATOR JONES: Member Garcia? 17 BOARD MEMBER GARCIA: Yes. 18 ADMINISTRATOR JONES: Member Honker? 19 BOARD MEMBER HONKER: Yes. 20 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis? 21 VICE-CHAIR TRUJILLO-DAVIS: Yes. 22 ADMINISTRATOR JONES: Chair Suina? 23 CHAIRPERSON SUINA: Yes. 24 ADMINISTRATOR JONES: The motion passes. 25 CHAIRPERSON SUINA: Thank you, Ms. Jones.
10 1 BOARD MEMBER GARCIA: I don't have any questions. 2 At this point I would be ready to put forth a motion if 3 there's no other discussion. I'll wait and see. 4 CHAIRPERSON SUINA: Okay. Wonderful. 5 Board members, does anybody else have any 6 comments or discussion regarding this? All right. I 7 don't see any, looking here. 8 So, Member Garcia, I guess your offer is on the 9 table to make a motion, and I'd just maybe request that 10 you do. 11 BOARD MEMBER GARCIA: So I move that the Board 12 adopt the Ozone Path Forward as set forth in Exhibit 4, as 13 the plan required to satisfy 74-2-5 of the New Mexico Air 14 Quality Control Act. 15 CHAIRPERSON SUINA: Thank you, Member Garcia. 16 BOARD MEMBER HONKER: I'll second. 17 CHAIRPERSON SUINA: Thank you, Member Honker. 18 BOARD MEMBER BITZER: I would offer a friend 19 amendment if I could; Exhibit 4 amended. I don't think 20 she said "amended," as the plan required to satisfy the 21 mandatory statutory directive to the Board under Section 22 74-2-5 of the AQCA. 23 CHAIRPERSON SUINA: Thank you, Member Bitzer. 24 Is that all right with you, Member Garcia? 25 BOARD MEMBER GARCIA: Yes, absolutely. That's	12 1 And back to you, Ms. Soloria. 2 MS. SOLORIA: Thank you. Okay. So the next 3 piece to consider, the Department proposed a couple of 4 findings; the first is here in paragraph 99. And it has 5 to do with the modeling the Department conducted for the 6 Ozone Attainment Initiative. And they asked the Board to 7 find that the modeling conducted for the OAI provides a 8 reliable basis for the emission reductions strategy 9 statutory, such as proposed by Part 50, for reducing ozone 10 concentrations in New Mexico. 11 So I'll just mention that I did find this 12 language consistent with the Board's deliberations as a 13 whole, in the sense that, ultimately, you-all did adopt 14 Part 50. And, of course, you did discuss the Board's 15 evidence and found it in favor of supporting the adoption. 16 So I will just proffer that in consideration of adopting 17 this language. 18 CHAIRPERSON SUINA: Thank you, Ms. Soloria. 19 And fellow Board members, do you have any 20 questions or comments regarding this? I don't see any. 21 Vice-Chair Trujillo-Davis. 22 VICE-CHAIR TRUJILLO-DAVIS: I just -- as a point 23 of clarification for Ms. Soloria, is that we -- this 24 statement would be consistent with just adopting the rule 25 that we did; is that correct?

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13 1 MS. SOLORIA: Right. So -- so the history of 2 this provision is all of the parties offered their 3 proposed Statement of Reasons. This was in the 4 Department's kind of prefatory proposed statements of 5 reasons before they got into the support for every 6 line-by-line provision of the rule. And so I would 7 represent that they -- that their modeling was -- well, 8 thinking back to the hearing, they presented their 9 modeling as supporting the rule as a whole because they 10 had to show -- you know, they had to show that the rule 11 could reduce emissions in pursuit of the NAAQS. 12 So, yeah, this would be general to the rule. 13 It's subject -- you know, this portion can say what you 14 want it to say. This was -- this was proposed by the 15 Department, but as I said before, I do think that the 16 Board's deliberations as a whole, fairly reflected that 17 you gave due weight to the modeling performed by the 18 Department, in the sense that ultimately you accepted the 19 emission standards that they proposed. 20 VICE-CHAIR TRUJILLO-DAVIS: Okay. Thank you for 21 clarifying that for me. 22 MS. SOLORIA: I'm not sure if I did, but if you 23 have another question, I can take a stab at it. 24 VICE-CHAIR TRUJILLO-DAVIS: No, I think we're 25 good. Thank you.	15 1 BOARD MEMBER CATES: Yes. 2 ADMINISTRATOR JONES: Member Garcia? 3 BOARD MEMBER GARCIA: Yes. 4 ADMINISTRATOR JONES: Member Honker? 5 BOARD MEMBER HONKER: Yes. 6 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis? 7 VICE-CHAIR TRUJILLO-DAVIS: Yes. 8 ADMINISTRATOR JONES: Thank you. 9 Chair Suina? 10 CHAIRPERSON SUINA: Yes. 11 ADMINISTRATOR JONES: The motion passes. 12 CHAIRPERSON SUINA: Thank you, Ms. Jones. 13 That takes us to number 100, and Ms. Soloria, do 14 you have anything to share with us on this one? 15 MS. SOLORIA: Yes. So, this statement that the 16 modeling demonstrates, the oil and gas sources in Chaves, 17 Doña Ana, Eddie, Lee, Rio Arriba, Sandoval, San Juan and 18 Valencia Counties are causing or contributing to ambient 19 ozone concentrations that exceed 95 percent of the NAAQS, 20 I would view this as a companion finding to the Board's 21 acceptance of the scope of the rule. So if you recall, 22 there was some back and forth between the parties 23 regarding monitors only being in certain counties. And 24 you recall that industry argued that because certain 25 counties didn't have the monitors showing exceedances,
14 1 CHAIRPERSON SUINA: Thank you, Vice-Chair 2 Trujillo-Davis. 3 Member Bitzer. 4 BOARD MEMBER BITZER: Counsel, do we want to do 5 this as one motion or two? 6 MS. SOLORIA: Well, we're only considering 7 paragraph 99 right now, so I would do it as one. 8 BOARD MEMBER BITZER: I'll take a stab at this if 9 we're ready for it. 10 CHAIRPERSON SUINA: Thank you, Member Bitzer. 11 BOARD MEMBER BITZER: I move that we find that 12 the modeling conducted for the OAI provides a reliable 13 basis for evaluating emission reductions strategies, such 14 as proposed Part 50, for reducing ozone concentrations in 15 New Mexico. 16 CHAIRPERSON SUINA: Thank you, Member Bitzer. 17 BOARD MEMBER HONKER: And I'll second. 18 HEARING OFFICER ORTH: Thank you, Member Honker. 19 Is there any further discussion? If not, 20 Ms. Jones, would you mind doing a roll-call vote for us on 21 this motion? 22 ADMINISTRATOR JONES: Yes, I will. 23 Member Bitzer, what is your vote? 24 BOARD MEMBER BITZER: I vote yes. 25 ADMINISTRATOR JONES: And Member Cates?	16 1 that the rules shouldn't apply to those counties. And, of 2 course, the Department's counter-argument was that areas, 3 for purpose of considering attainment, aren't by county 4 line and there was a whole, you know, argument presented 5 by both sides. 6 Ultimately, the Board adopted the scope of the 7 rules proposed by the Department, which included these 8 counties. So I find that this particular statement 9 regarding the modeling is consistent with that, and I 10 would say is kind of a companion finding to the Board's 11 acceptance of the rules applying to those specific 12 counties. 13 CHAIRPERSON SUINA: Thank you, Ms. Soloria. 14 Yes, Member Garcia. 15 BOARD MEMBER GARCIA: I'll go ahead and -- unless 16 there's any discussion, I'll go ahead and make a motion. 17 CHAIRPERSON SUINA: Wonderful. 18 BOARD MEMBER GARCIA: So I move that the Board 19 find that the modeling demonstrates that oil and gas 20 sources in Chaves, Doña Ana, Eddie, Lee, Rio Arriba, 21 Sandoval, San Juan and Valencia Counties in New Mexico are 22 causing or contributing to ambient ozone concentrations 23 that exceed 95 percent of the NAAQS. 24 BOARD MEMBER BITZER: I'll second that. 25 CHAIRPERSON SUINA: Thank you, Member Bitzer.

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17 1 I don't see any further discussion. Ms. Jones, 2 would you please take a roll-call vote for us. 3 ADMINISTRATOR JONES: Yes, Madam Chair. 4 Member Bitzer, how do you vote? 5 BOARD MEMBER BITZER: I vote yes. 6 ADMINISTRATOR JONES: Member Cates? 7 BOARD MEMBER CATES: Yes. 8 ADMINISTRATOR JONES: Member Garcia? 9 BOARD MEMBER GARCIA: Yes. 10 ADMINISTRATOR JONES: Member Honker? 11 BOARD MEMBER HONKER: I vote yes. 12 ADMINISTRATOR JONES: Thank you. 13 Vice-Chair Trujillo-Davis? 14 VICE-CHAIR TRUJILLO-DAVIS: Yes. 15 ADMINISTRATOR JONES: Chair Suina? 16 CHAIRPERSON SUINA: Yes. 17 ADMINISTRATOR JONES: The motion passes. 18 CHAIRPERSON SUINA: Thank you, Ms. Jones. 19 So, back to you, Ms. Soloria. 20 MS. SOLORIA: Okay. So this item is regarding 21 the industry's cost analysis that, again, was discussed at 22 the top of the hearing, way back when, sort of with the 23 first -- the first witnesses. And I recall the Department 24 framing the industry's cost analysis, of course, in their 25 opening statement. So this item may -- I think I would	19 1 analysis, then we can amend it. 2 CHAIRPERSON SUINA: Thank you, Ms. Soloria. 3 Board members, do you have any comments or 4 questions regarding number 137? Yes, Vice-Chair 5 Trujillo-Davis. 6 VICE-CHAIR TRUJILLO-DAVIS: I guess I'll start us 7 off here. If I remember correctly, I feel like we did 8 discuss at length the different cost analyses presented by 9 both the Department and the JDA. I don't believe that we 10 disregarded any of them, so I feel like we did give them 11 their due weight in consideration. 12 Unless anybody else has any other thoughts on 13 that. 14 CHAIRPERSON SUINA: Thank you, Vice-Chair 15 Trujillo-Davis. 16 Yes, Member Honker. 17 BOARD MEMBER HONKER: Yeah, I agree with the 18 Vice-Chair. I remember there was a lot of discussion of 19 the JDA analysis. There was comments by the other 20 parties. I remember we, as Board members, had discussions 21 about that versus the other cost estimates, so I think the 22 language you've presented, Counselor, is accurate from my 23 perspective. 24 CHAIRPERSON SUINA: So, thank you, Member Honker. 25 Any other Board members have any comments or
18 1 encourage the Board maybe to have a little bit of 2 discussion on. 3 Essentially, in the Department's proposed 4 statement -- Statements of Reasons, they propose that the 5 Board find that the industry's cost analysis, which is 6 referred to as the JDA analysis here, to be given no 7 weight by the Board. 8 Looking back at your deliberations, I didn't feel 9 that that -- that the Board gave that cost analysis zero 10 weight. You all are welcome to have your own 11 recollection, and, of course, I would encourage any 12 discussion at this point because these are reopened 13 deliberations. So the competing -- I guess for this 14 portion, the competing versions of the language would be 15 that you gave the industry analysis -- the industry cost 16 analysis zero weight, or what I propose here, that you did 17 give it its due weight in consideration of the critiques 18 that the Department and other parties brought to bear on 19 that analysis. Or we could put some other language that 20 you all think is more appropriately reflective of how you 21 all weighed industry's cost analysis. 22 So I have these -- these two paragraphs are sort 23 of companion paragraphs with each other. And you're 24 welcome to review it. And like I said, if you don't feel 25 that it fairly accounts for how the Board considered that	20 1 input? 2 BOARD MEMBER CATES: Chair Suina. Chair Suina. 3 CHAIRPERSON SUINA: Yes, Member Cates. 4 BOARD MEMBER CATES: The choice of the word "due 5 weight" is perfect. It doesn't say we gave it too much 6 weight, it doesn't say we ignored it. You know, we gave 7 it due weight, so I like it as well. 8 CHAIRPERSON SUINA: Thank you, Member Cates. 9 All right. If there's no other comments, looking 10 to our Board, see if anybody wants to propose a motion. 11 BOARD MEMBER BITZER: I'll move that we gave the 12 JDA analysis its due weight in considering the economic 13 reasonableness of Part 50. 14 BOARD MEMBER GARCIA: I second that motion. 15 HEARING OFFICER ORTH: Okay. Thank you, Member 16 Bitzer, for your motion, and I think Member Garcia just 17 got in there for the second. 18 With that, if there's no further discussion, 19 Ms. Jones, would you please do a roll-call vote on Member 20 Bitzer's motion? 21 ADMINISTRATOR JONES: Well, Member Bitzer, how do 22 you vote? 23 BOARD MEMBER BITZER: I vote yes. 24 ADMINISTRATOR JONES: Member Cates? 25 BOARD MEMBER CATES: Yes.

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21 1 ADMINISTRATOR JONES: Member Garcia? 2 Member Garcia, I didn't -- I didn't hear your 3 vote. I'm sorry. 4 BOARD MEMBER GARCIA: Yes. Can you hear me? 5 ADMINISTRATOR JONES: Yes, I can hear you. 6 Appreciate that. 7 Member Honker? 8 BOARD MEMBER HONKER: Yes. 9 ADMINISTRATOR JONES: Vice Chair Trujillo-Davis? 10 VICE-CHAIR TRUJILLO-DAVIS: Yes. 11 ADMINISTRATOR JONES: Chair Suina? 12 CHAIRPERSON SUINA: Yes. 13 ADMINISTRATOR JONES: The motion passes. 14 CHAIRPERSON SUINA: Thank you, Ms. Jones. 15 With that, Ms. Soloria, we turn it back to you 16 for item 138. 17 MS. SOLORIA: This item is something we're going 18 to go see repeated a few times. The general notion that 19 the Board make a specific finding that certain costs were 20 reasonable and necessary to further the statutory purpose 21 of attaining and maintaining the ozone NAAQS in the areas 22 of the State specified in Part 50. 23 So, the Board presented that here, and I've put 24 it here kind of in the prefatory section of the Statement 25 of Reasons. Again, I think that following your finding	23 1 the fact that you-all must consider economic 2 reasonableness in adopting these rules. 3 So there's no -- attaining and maintaining the 4 ozone NAAQS, that's from the Air Quality Control Act, but 5 this isn't -- this isn't pulled directly from the statute. 6 BOARD MEMBER GARCIA: Did we -- did we not vote 7 on the economic reasonableness during the other 8 deliberations? 9 MS. SOLORIA: Well, we did -- you did a couple of 10 things. One, at the end of the deliberations, the Board 11 found sort of a blanket finding, where that tracked the 12 factors of the statute, that you considered the economic 13 reasonableness, technical feasibility, the public 14 interest; those three sets of factors are laid out in the 15 Air Quality Control -- Air Quality Control Act. 16 So the Board found all of those favors -- all of 17 those factors weighed in favor of adopting the rule as a 18 whole. For purposes of this Statement of Reasons, there's 19 this -- this finding here, and the Department also 20 proposed for each specific section, that the same finding 21 be made. I would say that the fact that you-all 22 ultimately accepted each of those provisions, taking into 23 consideration economic reasonableness, which I think is 24 just reflected in the course of your deliberations, 25 you-all were discussing costs, cost benefit, throughout,
22 1 just now, that you gave due weight to opposing cost 2 analyses, that's it's reasonable that you adopt that you 3 found the Department's costs entailed by proposed Part 50, 4 as reasonable and necessary for the statutory purpose. 5 CHAIRPERSON SUINA: Thank you, Ms. Soloria. 6 Members -- fellow Board members, do you have any 7 comments? Discussion? 8 Yes, Vice-Chair Trujillo-Davis. 9 VICE-CHAIR TRUJILLO-DAVIS: I will say that I did 10 not find the Department's costs reasonable; although, I 11 found them necessary. I didn't think that they used 12 quality data in determining their costs. That wouldn't 13 change my vote for an approval of this section, but just 14 thought I'd better say it. 15 CHAIRPERSON SUINA: Thank you, Vice-Chair 16 Trujillo-Davis. 17 Any other Board members have any comments or 18 discussion? 19 BOARD MEMBER GARCIA: Just a question. Is that 20 language right out of the act, Ms. Soloria? 21 MS. SOLORIA: It's not in the act. It is -- so 22 the economic reasonableness is a factor that the Board 23 should consider in adopting the whole rule. So this 24 doesn't track the act, but it does -- it's a finding 25 proposed by the Department that makes sense, in light of	24 1 so I do think making this finding is consistent with what 2 your ultimate decision was, but this -- this is proposed 3 language. This is not -- you know, this was proposed by 4 the Department. You-all are able to justify your adoption 5 in any way you see fit, so -- but that's my take on it. 6 That the findings -- the finding that the Department's 7 proposed costs were reasonable, was sort of implicit in 8 the fact that you-all adopted the full rule provisions, 9 considering that you were required by the Act, to consider 10 economic reasonableness. 11 CHAIRPERSON SUINA: Thank you, Ms. Soloria. 12 So, I think just so maybe I can get my head 13 around this one, we still can sort of look at the language 14 here, but it seems to me that we need to also tie it to 15 that reasonable -- excuse me -- the costs reasonable -- 16 reasonableness -- I can't talk this morning. The 17 reasonable costs in some way related to the costs, in 18 terms of supporting some of our -- our -- our decisions. 19 Is that what I'm hearing, Ms. Soloria? 20 MS. SOLORIA: Right. And I guess I would say 21 that this language and, you know, that punch list I sent 22 all of you, where this finding is -- this specific finding 23 is made for each and every section, I would say it says 24 explicitly -- it says explicitly, the reason that you all 25 adopted, in the sense that -- I think you could fairly say

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25 1 that if you had found that the costs were unreasonable and 2 unnecessary -- unnecessary, you wouldn't have adopted 3 those sections because there was a discussion and you 4 ultimately came to the conclusion that you should adopt 5 it. 6 So, that is my impression of your deliberations, 7 but, again, if you feel differently, it's your Statement 8 of Reasons. So we can amend it as -- as you see fit. 9 CHAIRPERSON SUINA: Thank you, Ms. Soloria. And 10 so I guess I just want to -- not to put you on the spot, 11 Vice-Chair Trujillo-Davis, I know you brought up some 12 concerns regarding the current language that we're looking 13 at right now. Do you, by chance, have any other 14 suggestions to address some of your thoughts you shared 15 with the Board earlier? 16 VICE-CHAIR TRUJILLO-DAVIS: I think that the 17 language is -- it should be adopted as it is. I think 18 those concerns that I had came out during our other 19 deliberations, and at this point we are kind of tying the 20 bow on this -- this particular rule. So I don't think 21 it's necessary to change the language, but I just wanted 22 to make -- for the record, that there were the costs that 23 the Department presented, I thought were underestimated. 24 Although, I do think that for the purposes of 25 this rule and for the reduction of the ozone and	27 1 ADMINISTRATOR JONES: Member Honker? 2 BOARD MEMBER HONKER: Yes. 3 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis? 4 VICE-CHAIR TRUJILLO-DAVIS: Yes. 5 ADMINISTRATOR JONES: Chair Suina? 6 CHAIRPERSON SUINA: Yes. 7 ADMINISTRATOR JONES: Madam Chair, the motion 8 passes. 9 CHAIRPERSON SUINA: Thank you, Ms. Jones. 10 All right. Ms. Soloria, back to you. 11 MS. SOLORIA: And since we've had that 12 discussion, I'm going to hop around. And as I mentioned 13 previously, the Department, in their proposed Statement of 14 Reasons, asked us to adopt that federal finding specific 15 to each section, so let me see if I can just -- I'll show 16 you an example. 17 So, here, estimated costs associated with Section 18 113, are reasonable and necessary to achieve the purpose 19 of the Air Quality Control Act. Let me show you a 20 different -- so, here, it's with regard to Section 121. 21 So, that languages is found in each section, save 115, 22 because that was -- those were emission control -- sorry. 23 So, that language was for every section of the 24 rule where there would have been supporting costs 25 proffered by NMED. So my proposal was consistent with the
26 1 maintaining those numbers in those counties, that they are 2 necessary, so I do suggest that we keep the language as it 3 is. 4 CHAIRPERSON SUINA: Okay. Thank you, Vice-Chair. 5 Is there any other discussion from the Board? If 6 not -- yes, Member Garcia. 7 BOARD MEMBER GARCIA: Yes, I'll go ahead and move 8 that the Board finds that the costs entailed by proposed 9 Part 50, as presented in the Department's testimony and 10 exhibits, are reasonable and necessary to further the 11 statutory purpose of attaining and maintaining the ozone 12 NAAQS in the areas of the State specified in Part 50. 13 CHAIRPERSON SUINA: Thank you, Ms. Garcia. 14 BOARD MEMBER HONKER: I'll second. 15 CHAIRPERSON SUINA: Thank you, Member Honker. 16 If there's no further discussion, Ms. Jones, 17 would you please do a roll-call vote for Member Garcia's 18 motion? 19 ADMINISTRATOR JONES: Member Bitzer, how do you 20 vote? 21 BOARD MEMBER BITZER: I vote yes. 22 ADMINISTRATOR JONES: Member Cates? 23 BOARD MEMBER CATES: Yes. 24 ADMINISTRATOR JONES: Member Garcia? 25 BOARD MEMBER GARCIA: Yes.	28 1 vote you-all just had, that we do a consolidated motion 2 adopting this language for each section that it was 3 proposed, and I would open that up for discussion. 4 CHAIRPERSON SUINA: Thank you, Ms. Soloria. 5 Fellow Board members, do you have any comments, 6 discussion? Questions? 7 BOARD MEMBER CATES: Chair Suina? 8 CHAIRPERSON SUINA: Yes, Member Cates. 9 BOARD MEMBER CATES: Just one point in discussing 10 reasonableness and -- well, need. So the conversation is 11 tending toward reasonableness, and has glossed over the 12 necessary part of it -- the "necessary" word, so I just 13 want to point out that we're talking about both, to enact 14 this rule; does it require, you know, does it put us in 15 the position of requiring or expressing the need for, you 16 know, the cost associated with it. So that's it. 17 CHAIRPERSON SUINA: Thank you, Member Cates. 18 Appreciate that. 19 Any other discussion? Comments? 20 So, Ms. Soloria, are we looking for a motion for 21 all of these sections or how would you or -- 22 MS. SOLORIA: Yes, Madam Chair. And I took the 23 liberty of putting one together, if the Board would 24 consider it. And the motion would be that the Board finds 25 that NMED's estimated costs associated with Sections 113,

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29 1 114, and Sections 116 through 124, are reasonable and 2 necessary to achieve the purposes of Section 74-2-5 C of 3 the Air Quality Control Act. 4 CHAIRPERSON SUINA: Thank you, Ms. Soloria. 5 BOARD MEMBER BITZER: I'll adopt that language as 6 offered by Counsel, as my motion. 7 HEARING OFFICER ORTH: Thank you, Member Bitzer. 8 BOARD MEMBER HONKER: I'll second. 9 CHAIRPERSON SUINA: Thank you, Member Honker. 10 If there's no further discussion, Ms. Jones, 11 would you please do a roll-call vote on Member Bitzer's 12 motion? 13 ADMINISTRATOR JONES: Member Bitzer, your vote, 14 please. 15 BOARD MEMBER BITZER: I vote yes. 16 ADMINISTRATOR JONES: Member Cates, how do you 17 vote? 18 BOARD MEMBER CATES: Yes. 19 ADMINISTRATOR JONES: Member Garcia? 20 BOARD MEMBER GARCIA: Yes. 21 ADMINISTRATOR JONES: Member Honker? 22 BOARD MEMBER HONKER: Yes. 23 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis? 24 VICE-CHAIR TRUJILLO-DAVIS: Yes. 25 ADMINISTRATOR JONES: Chair Suina?	31 1 Well, we did for other definitions, but these two 2 terms, we just didn't catch, so. And, again, I would 3 proffer that it sort of necessarily that -- it's necessary 4 that you would adopt these definitions because you adopted 5 Section 1237 where they are used. 6 CHAIRPERSON SUINA: Thank you, Ms. Soloria. 7 Member Honker. 8 BOARD MEMBER HONKER: Yeah, I'll go ahead and 9 move that we adopt the definitions of "flowback" and 10 "flowback vessel" as proposed by CEP and Oxy USA, in 11 connection with their joint completions, recompletions 12 proposals set out and adopted in Section 127. 13 CHAIRPERSON SUINA: Thank you, Member Honker. 14 BOARD MEMBER BITZER: I'll second that. 15 CHAIRPERSON SUINA: Thank you, Member Bitzer. 16 Is there any discussion on this one? 17 If not, Ms. Jones, would you mind doing a 18 roll-call vote for Member Honker's motion. 19 ADMINISTRATOR JONES: Member Bitzer, how do you 20 vote? 21 BOARD MEMBER BITZER: I vote yes. 22 ADMINISTRATOR JONES: Member Cates? 23 BOARD MEMBER CATES: Yes. 24 ADMINISTRATOR JONES: Member Garcia? 25 BOARD MEMBER GARCIA: Yes.
30 1 CHAIRPERSON SUINA: Yes. 2 ADMINISTRATOR JONES: The motion passes. 3 CHAIRPERSON SUINA: Thank you, Ms. Jones. 4 I'll turn it back to you, Ms. Soloria. 5 MS. SOLORIA: Okay. This is back -- these two 6 provisions are back in the definition section. If you-all 7 recall, we tried very hard to make sure that we went back 8 and adopted all of the definitions that we had tabled for 9 discussions of the related proposals. 10 The Hearing Officer caught that we had not gone 11 back to these technical terms, which is "flowback" and 12 "flowback vessels." You-all adopted Section 127, which 13 entailed these two terms, so this would be consistent with 14 that. And, again, this was more of just an oversight that 15 we didn't go back and adopt -- officially adopt these 16 definitions. 17 CHAIRPERSON SUINA: Thank you, Ms. Soloria. 18 Yes, Vice-Chair Trujillo-Davis. 19 VICE-CHAIR TRUJILLO-DAVIS: I feel like I 20 remember we had a discussion on this. Did we just not 21 vote on it? 22 MS. SOLORIA: I believe that's the case because 23 you-all had a discussion of 127, and we just didn't go 24 back and formally adopt the specific definitions relevant 25 to that section.	32 1 ADMINISTRATOR JONES: Member Honker? 2 BOARD MEMBER HONKER: Yes. 3 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis? 4 VICE-CHAIR TRUJILLO-DAVIS: Yes. 5 ADMINISTRATOR JONES: Chair Suina? 6 CHAIRPERSON SUINA: Yes. 7 ADMINISTRATOR JONES: The motion passes. 8 CHAIRPERSON SUINA: Thank you, Ms. Jones. 9 All right. Back to you, Ms. Soloria. 10 MS. SOLORIA: All right. Okay. So, this 11 particular provision, if you recall, a number of times 12 industry proposed that certain provisions and their rules 13 were more stringent than federal law, and for the sake of 14 addressing that argument, and, again, for the sake of 15 completeness, the Board made the finding required under 16 Section G of the Air Quality Control Act, that that 17 provision, to the extent it would be found more stringent 18 than federal law, is more protective of health and the 19 environment. 20 Again, going through compiling the Statement of 21 Reasons, there was a particular argument made by -- I 22 believe it was NMOGA -- that the requirement that a 23 professional engineer conduct the applicability 24 certification for the rule, that that was, in particular, 25 was more stringent than federal law. So, again, for the

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33 1 sake of addressing that, and consistent with what the 2 Board did when the argument was presented, I just made the 3 finding here -- or proposed the finding here, that you 4 found that proposal to be more protective of public health 5 and the environment, based on substantial evidence. 6 CHAIRPERSON SUINA: Thank you, Ms. Soloria. 7 Any discussion by the Board? Questions? Yes, 8 Member Garcia. 9 BOARD MEMBER GARCIA: Or was -- Member Bitzer had 10 his hand up. I'll let him go. 11 HEARING OFFICER ORTH: Okay. Thank you. 12 Member Bitzer. 13 BOARD MEMBER BITZER: I'm just looking on the 14 screen. I don't see anything in green. 15 MS. SOLORIA: That's because I forgot to put it 16 in green before, so it's in yellow now. 17 BOARD MEMBER BITZER: I thought maybe you ran out 18 of green highlighter -- digital green highlighter or 19 something else. I don't know. 20 While I've got the mic, I guess I'll go ahead and 21 make the motion. I move that to the extent the proposal 22 is more stringent than federal law, than requiring the 23 qualified professional engineer, the Board finds that 24 based on substantial evidence, that the proposed rule is 25 more protective of public health and the environment.	35 1 CHAIRPERSON SUINA: Yes, Member Garcia, second. 2 BOARD MEMBER GARCIA: Second. 3 CHAIRPERSON SUINA: Wonderful. 4 If there's no further discussion or questions, 5 Ms. Jones, would you mind doing a roll-call vote on Member 6 Bitzer's motion and Member Garcia's second. 7 ADMINISTRATOR JONES: Member Bitzer, your vote? 8 BOARD MEMBER BITZER: I vote yes. 9 ADMINISTRATOR JONES: Member Cates? 10 BOARD MEMBER CATES: I vote yes. 11 ADMINISTRATOR JONES: Thank you, Member Cates. 12 Member Garcia? 13 BOARD MEMBER GARCIA: Yes. 14 ADMINISTRATOR JONES: Member Honker? 15 BOARD MEMBER HONKER: Yes. 16 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis? 17 VICE-CHAIR TRUJILLO-DAVIS: Yes. 18 ADMINISTRATOR JONES: Chair Suina? 19 CHAIRPERSON SUINA: Yes. 20 ADMINISTRATOR JONES: The motion passes. 21 CHAIRPERSON SUINA: Thank you. 22 And back to you, Ms. Soloria. 23 MS. SOLORIA: Okay. We have just a handful more, 24 I promise. Okay. So, this has to do with Section 116, 25 kind of thoroughly, as to subsection -- or Section 116.
34 1 CHAIRPERSON SUINA: Thank you, Member Bitzer. 2 And I saw Vice-Chair Trujillo-Davis, your hand up. 3 VICE-CHAIR TRUJILLO-DAVIS: Yes. I just wanted 4 to ask a point of clarification. And I'm sorry I didn't 5 catch Member Bitzer before his motion there. I'm just 6 filing back through our many discussions in our 7 deliberations. So maybe one of the other Board members or 8 Ms. Soloria can clarify this for me, but I remember having 9 extensive discussions on this. I felt like we decided 10 that it was -- it could be more than just a professional 11 engineer. I could be in the wrong spot, too. So I'm 12 asking for a little -- a little help just remembering and 13 clarifying what we had discussed there. 14 MS. SOLORIA: Right. Well, this is the language 15 that I have scrolled up -- this is the language that 16 you-all ultimately adopted. So, you're correct, in that 17 there was extensive discussion about -- because there was 18 a proposal about allowing for a qualified "air quality 19 professional," but ultimately what's reflected here is 20 what you-all adopted. 21 VICE-CHAIR TRUJILLO-DAVIS: Okay. Thank you. 22 And I apologize, we had a lot of discussions there. 23 CHAIRPERSON SUINA: Thank you, Vice-Chair. 24 We do have a motion on the floor. And a second? 25 BOARD MEMBER GARCIA: Second.	36 1 Again, this is another finding proposed by the Department, 2 which is that the Board finds that NMED properly relied on 3 the model plants included in the 2016 CTG as the basis for 4 its cost effectiveness analysis for this section. 5 So, part 116, which, you know, was one of the 6 biggest frogs that the Board had to handle, on LDAR, the 7 Department proffered its cost estimate -- its cost -- or 8 I'm sorry -- its model plant -- and that's discussed -- 9 again, this was all presented in their proposed Statement 10 of Reasons. And it was summarized by the Hearing Officer, 11 so you all considered this in the deliberations. There 12 were extensive comments on that by NMOGA, an argument 13 against using that data, again. 14 I would say that finding that the Board properly 15 relied on its model plants is consistent with the fact 16 that you ultimately adopted Part 116. But, again, this is 17 a specific finding that the Board didn't really explicitly 18 address during its deliberation, so this is proposed 19 language reflecting that decision. 20 CHAIRPERSON SUINA: Thank you, Ms. Soloria. 21 Fellow Board member, is there any discussion, 22 questions or comments? No? 23 Yes, Member Garcia. 24 BOARD MEMBER GARCIA: I'll go ahead and move that 25 the Board find that the NMED properly relied on the model

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37 1 plants, included in the 2016 CTG as the basis for its 2 cost-effectiveness analysis for this section. 3 CHAIRPERSON SUINA: Thank you, Member Garcia. 4 BOARD MEMBER HONKER: I'll second. 5 CHAIRPERSON SUINA: Thank you, Member Honker. 6 With that, if there's no further discussion, 7 Ms. Jones, would you please do a roll-call vote on Member 8 Garcia's motion? 9 ADMINISTRATOR JONES: Member Bitzer, how do you 10 vote? 11 BOARD MEMBER BITZER: I vote yes. 12 ADMINISTRATOR JONES: Member Cates, how do you 13 vote? 14 BOARD MEMBER CATES: Yes. 15 ADMINISTRATOR JONES: Member Garcia? 16 BOARD MEMBER GARCIA: Yes. 17 ADMINISTRATOR JONES: And Member Honker? 18 BOARD MEMBER HONKER: Yes. 19 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis? 20 VICE-CHAIR TRUJILLO-DAVIS: Yes. 21 ADMINISTRATOR JONES: Chair Suina? 22 CHAIRPERSON SUINA: Yes. 23 ADMINISTRATOR JONES: The motion passes. 24 CHAIRPERSON SUINA: Thank you, Ms. Jones. 25 All right. Ms. Soloria.	39 1 the EPA's response to these particular API comments on the 2 2016 CTG, in the absence of any additional information 3 from API or NMOGA, relative to those original comments, 4 and EPA's response, and NMED's Rebuttal Exhibit 1, page 5 63. And further, that the Board find that NMED's 6 estimated costs associated with Section 20.2.50.116 are 7 reasonable and necessary to achieve the purpose of Section 8 74-2-5 C of the AQCA. 9 BOARD MEMBER BITZER: I'll second that. 10 CHAIRPERSON SUINA: Thank you, Member Bitzer, for 11 your second. 12 If there's no other discussion, looking to the 13 Board here, Ms. Jones, would you please do a roll-call 14 vote for us. 15 ADMINISTRATOR JONES: Member Bitzer, how do you 16 vote? 17 BOARD MEMBER BITZER: I vote yes. 18 ADMINISTRATOR JONES: And Member Cates? 19 BOARD MEMBER CATES: Yes. 20 ADMINISTRATOR JONES: And Member Garcia? 21 BOARD MEMBER GARCIA: Yes. 22 ADMINISTRATOR JONES: Member Honker? 23 BOARD MEMBER HONKER: Yes. 24 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis? 25 VICE-CHAIR TRUJILLO-DAVIS: Yes.
38 1 MS. SOLORIA: Okay. All right. So this is, 2 again, a related finding which had to do with the 3 competing critiques of using that 2016 model plan for the 4 costs in the 2016 CTG here. And so, here is the proposed 5 language, which is the specific finding. 6 This is in light of NMOGA's comments that -- up 7 here, the language -- it's here, comments submitted to the 8 EPA on the draft CTG by the API. So, again, this is a 9 specific finding that the Department has asked for 10 regarding how you could -- how you considered that 11 critique by NMOGA. 12 So, again, this is subject to any revision. I 13 will represent this is -- I didn't make any changes of 14 this language. This was proposed by the Department in 15 their proposed Statement of Reasons. 16 CHAIRPERSON SUINA: Thank you, Ms. Soloria. 17 Any comments, questions, discussion from the 18 Board? 19 If not, is there a move toward a motion from 20 fellow Board members? 21 BOARD MEMBER CATES: Well, Chair Suina, I could 22 do one. 23 CHAIRPERSON SUINA: Okay. Member Cates. 24 BOARD MEMBER CATES: I move that the Board finds 25 that it's beyond the scope of this rulemaking to reassess	40 1 ADMINISTRATOR JONES: Chair Suina? 2 CHAIRPERSON SUINA: Yes. 3 ADMINISTRATOR JONES: Motion passes. 4 CHAIRPERSON SUINA: Thank you, Ms. Jones. 5 Back to you, Ms. Soloria. 6 MS. SOLORIA: Okay. Okay. So this one is just 7 a -- after our deliberations, the Department -- so the 8 Board adopted this highlighted paragraph here, which was 9 proposed by Oxy as a clarification change; stating that 10 alternative monitoring -- monitoring plans may utilize 11 alternative monitoring methods. The Board accepted that 12 as paragraph A. 13 Subsequent to the deliberations, the Department, 14 with the approval of those proposing parties, suggested 15 that we go ahead and move instead of having a new 16 paragraph A, we would just move it to paragraph D. And 17 actually, let me just pull that up real quick. 18 This is purely a stylistic and drafting 19 clarification. It makes the rule more consistent and I'll 20 just show you what I'm talking about. 21 CHAIRPERSON SUINA: Yes, Ms. Soloria. 22 Board members, is there any comments? 23 MS. SOLORIA: I'm just trying to think of how to 24 show this. So, this is the change: it's just the 25 Department brought up if the rest of Subparagraph 1 has to

41 1 do with the technicalities of the monitoring plan -- it's 2 like kind of an administrative thing. So it made it less 3 awkward to put it here in the prefatory paragraph. And 4 the parties agreed to that, so it's really just a 5 stylistic drafting clarification for purposes of 6 subparagraph D. 7 So this is where you had it, where you accepted 8 it, and it's moved here. (Indicating.) 9 BOARD MEMBER GARCIA: Is there any way that you 10 could make that screen just a little bit bigger? 11 MS. SOLORIA: Yes. Is that better? 12 BOARD MEMBER GARCIA: Yes, thank you. 13 So it was turned into subpart A? 14 MS. SOLORIA: Yes. Yes, so the Board accepted it 15 as a new paragraph A, but if you look, so paragraph (i), 16 the little letters, talk about compliance. Right? So 17 timing, administrative, and the notion that an alternative 18 monitoring plan may utilize alternative monitoring 19 methods, that was a general concession the Department made 20 at the request of Oxy and CEP. It doesn't change the 21 substance of it; it's just to put it here in paragraph D. 22 And that was requested by the Department; one, 23 they didn't have to put in this new paragraph at A, and it 24 keeps -- it keeps paragraph (i) a little bit more 25 consistent as to the substance. So, and they reached out	43 1 CHAIRPERSON SUINA: Thank you, Member Honker. 2 Ms. Jones, would you mind doing a roll-call vote? 3 ADMINISTRATOR JONES: Member Bitzer, your vote? 4 BOARD MEMBER BITZER: I vote yes. 5 ADMINISTRATOR JONES: Member Cates? 6 BOARD MEMBER CATES: Yes. Yes. 7 ADMINISTRATOR JONES: Member Garcia? 8 BOARD MEMBER GARCIA: Yes. 9 ADMINISTRATOR JONES: Member Honker? 10 BOARD MEMBER HONKER: Yes. 11 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis? 12 VICE-CHAIR TRUJILLO-DAVIS: Yes. 13 ADMINISTRATOR JONES: Chair Suina? 14 CHAIRPERSON SUINA: Yes. 15 ADMINISTRATOR JONES: The motion passes. 16 CHAIRPERSON SUINA: Thank you, Ms. Jones. 17 And Ms. Soloria, back to you. 18 MS. SOLORIA: Just two more. Okay. So, this was 19 again, just one of those catches we made while we were 20 drafting the Statement of Reasons, that if you recall, 21 when the Board explicitly rejected a party's proposal, we 22 noted that in the record. And this was an instance where 23 NMOGA had proposed -- this is Section 120 -- that 24 hydrocarbon liquid transfers at existing gathering and 25 boosting stations without any controlled storage vessels,
42 1 to CEP and Oxy, and those proposing parties are fine with 2 it. 3 CHAIRPERSON SUINA: Thank you, Ms. Soloria. 4 BOARD MEMBER HONKER: So, do we needed to make a 5 motion on that, or is that just letting us know? 6 MS. SOLORIA: You can go ahead and take an action 7 on it because it is -- it is now a change from what you 8 voted on during deliberations. And also, they would make 9 this change in actually how this provision is drafted. 10 So, again, I have taken the liberty of putting something 11 together, if the Board would consider that motion. 12 CHAIRPERSON SUINA: Thank you, Ms. Soloria. Can 13 you share that? 14 MS. SOLORIA: Sure. The motion would be that the 15 Board find -- oops, I'm reading the wrong one. 16 The motion would be that the Board revise the 17 prior accepted revision at Section 116, subsection D. 18 (1)(a), by moving the proposal by CEP and Oxy to Section 19 116 paragraph D., for reasons offered by CEP and Oxy, and 20 for clarity and to keep paragraph 1 consistent, as 21 requested by NMED, and agreed to by the proposing parties. 22 BOARD MEMBER BITZER: I would adopt Counsel's 23 proposed language as my motion. 24 CHAIRPERSON SUINA: Thank you, Member Bitzer. 25 BOARD MEMBER HONKER: And I'll second that.	44 1 be made subject to a compliance schedule, and the 2 different provision of the rule, which is Section 123. 3 So, the Board didn't make a finding rejecting -- 4 rejecting that. I would say finding that that proposal 5 was not supported by the evidence is consistent with 6 your -- with the Board's ultimate acceptance of Paragraph 7 A. here. 8 So that, what you ultimately accepted was the two 9 years' compliance part or compliance requirement, where 10 NMOGA was arguing for an alternative compliance time 11 frame. So, again, for the sake of completeness, I would 12 suggest that the Board go ahead and make that finding; 13 that you rejected their proposal, consistent with your 14 adoption of the language at Subparagraph A. 15 CHAIRPERSON SUINA: Thank you, Ms. Soloria. 16 Fellow Board members, do you have any questions, 17 comments? If not -- 18 BOARD MEMBER HONKER: Yeah, I'm still a little 19 foggy on what NMOGA's proposal was, that the -- was it a 20 different schedule? I'm just trying to get that straight 21 in my mind. 22 MS. SOLORIA: Right. I will -- let me pull up 23 the argument, for reference. I'm searching. I'm trying 24 to find the reference in the record, but -- 25 (unintelligible and/or inaudible.)

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45 1 So the argument, it's actually, they wanted to 2 have the schedule -- the compliance schedule at 123, which 3 was -- 4 CHAIRPERSON SUINA: Excuse me real quick. 5 Court reporter, are you having a little trouble 6 hearing Ms. Soloria? 7 COURT REPORTER: Yes. 8 CHAIRPERSON SUINA: Okay. Ms. Soloria, I know 9 when you moved your head around, it kind of got muffled 10 there. 11 MS. SOLORIA: I apologize, Ms. DuBois. When I 12 share a screen, I can't see everyone so I couldn't catch 13 your difficulties, so I will try to do better. 14 So, NMOGA had proposed the hydrocarbon liquid at 15 gathering and boosting stations on the schedule that was 16 proposed at 123 B. (1), which had -- had different year 17 compliance schedules for storage vessels. So they wanted 18 to make it consistent with that, because they disagreed 19 with the two-year compliance. 20 CHAIRPERSON SUINA: Thank you, Ms. Soloria. 21 Does that help, Member Honker? 22 BOARD MEMBER HONKER: Yes. Yeah, that's what I 23 was wanting to know, so I'm good. 24 HEARING OFFICER ORTH: Wonderful. 25 Any other questions or comments? Yes, Member	47 1 that this is reflective of what we actually did. 2 CHAIRPERSON SUINA: Yes. 3 MS. SOLORIA: 126. 4 CHAIRPERSON SUINA: Madam Hearing Officer, do you 5 have any thoughts on this one? Just making sure we 6 support our Board and Ms. Soloria. 7 HEARING OFFICER ORTH: All right. I'm looking 8 through my papers. 9 CHAIRPERSON SUINA: Okay. 10 MS. SOLORIA: I just want to look. 11 CHAIRPERSON SUINA: I just want to make sure we 12 get all of the I's dotted and T's crossed. 13 MS. SOLORIA: I'm wondering if this is -- and I'm 14 speaking out loud to Madam Hearing Officer. If this was 15 an accepted change that I may have mistakenly noticed -- 16 noticed -- noted was rejected, because it's in the 17 language of the rule. 18 HEARING OFFICER ORTH: I think you're correct 19 about that, Ms. Soloria. 20 MS. SOLORIA: Okay. So we don't need to vote on 21 this. 22 BOARD MEMBER GARCIA: I withdraw my motion. 23 CHAIRPERSON SUINA: Thank you, Member Garcia. 24 MS. SOLORIA: I don't know why -- I don't know 25 why that was in there. I honestly don't know why that was
46 1 Garcia? 2 BOARD MEMBER GARCIA: Okay. So I would go ahead 3 and move that the Board reject NMOGA's proposal that 4 hydrocarbon liquid transfers at existing gathering and 5 boosting stations, including associated tank batteries 6 without any controlled storage vessels, be made subject to 7 the requirements of Section 120 on the schedule in 8 20.2.50.123 B.(1), as not supported by the evidence. 9 MS. SOLORIA: And I will -- I will pause you 10 right there. I just want to -- Madam Hearing Officer, are 11 you on? I don't want to put her on the spot, but I'm now 12 catching this may have been... 13 HEARING OFFICER ORTH: Yes. 14 MS. SOLORIA: I'm looking at the actual rule here 15 with this -- the one which was accepted, so I'm wondering 16 if I mistakenly had a holdover of this reasoning. Seeing 17 as that was actually in the rule. And I'm seeing that 18 now. 19 HEARING OFFICER ORTH: Okay. 20 MS. SOLORIA: I have the wrong reference in the 21 attachment to this section, so I'm trying to find it. 22 BOARD MEMBER GARCIA: I sort of have a vague 23 memory that we voted on this, rejecting it already, but 24 maybe I'm mixing it up with something else. 25 MS. SOLORIA: Again, I just want to make sure	48 1 in there. Let me just -- there we go. 2 CHAIRPERSON SUINA: Are we good, Ms. Soloria? 3 MS. SOLORIA: Yes. Yes. And I apologize for 4 that. I overstepped. Sorry. 5 HEARING OFFICER ORTH: Ms. Soloria, I think the 6 confusion was maybe the Board had rejected a NMOGA change 7 in 120 B., and somehow that made its way up to 120 A. 8 That's my best guess. 9 MS. SOLORIA: Okay. And we do have that noted 10 here. Okay. Thank you. Thank you, Madam Hearing 11 Officer. And I apologize for putting you on the spot 12 there, but we don't have to address that. 13 CHAIRPERSON SUINA: Okay. 14 MS. SOLORIA: Okay. So it's the final item. 15 Okay. This is -- again, this is the final cost item. And 16 I put -- I didn't include this in the consolidated motion 17 because the language proposed here was slightly different, 18 which is that the Board found the costs associated with 19 Section 126 are reasonable and that the requirements of 20 that Section help achieve important emission reductions, 21 while continuing to encourage the use of produced water 22 instead of freshwater resources throughout the industry. 23 So this -- this finding was just a little bit 24 more specific to the Section itself. And so, it was 25 proposed by the Department, so I left that separate for

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49 1 you-all to consider adoption of that provision. 2 BOARD MEMBER GARCIA: What page is that? 3 MS. SOLORIA: This is page 275, Member Garcia. 4 CHAIRPERSON SUINA: So, is there any question or 5 discussion on this? 6 Yes, Member Honker. 7 BOARD MEMBER HONKER: I'll go ahead and make a 8 motion that we find the costs associated with Section 126 9 are reasonable and the requirements of Section 126 help 10 achieve important emissions reductions while continuing to 11 encourage the use of produced water instead of freshwater 12 resources throughout the industry. 13 BOARD MEMBER BITZER: I'll second that. 14 CHAIRPERSON SUINA: Thank you, Member Honker and 15 Member Bitzer. 16 If there's no further discussion, Ms. Jones, 17 would you please do a roll-call vote on Member Honker's 18 motion? 19 ADMINISTRATOR JONES: Member Bitzer, how do you 20 vote? 21 BOARD MEMBER BITZER: I'll vote yes. 22 ADMINISTRATOR JONES: Member Cates? 23 BOARD MEMBER CATES: Yes. Excuse me. Yes. 24 ADMINISTRATOR JONES: Member Garcia? 25 BOARD MEMBER GARCIA: Yes.	51 1 deliberations are closed, and you-all can move on to -- I 2 don't know what the reorder number is, but it would be EIB 3 21-27, the discussion of possible action on the Statement 4 of Reasons. 5 So this would be the point where you actually 6 vote whether or not to adopt the Statement of Reasons and 7 Final Order and delegate the signature to the Chair. 8 CHAIRPERSON SUINA: Thank you so much, 9 Ms. Soloria. 10 So, if there's no further discussions, just one 11 more time on the deliberations. If there isn't, we will 12 close deliberations and move on to the next agenda item 13 that Ms. Soloria referenced, which is EIB 21-27. And this 14 is the discussion and possible action on the Statement of 15 Reasons. 16 With that, it looks like Ms. Soloria, we'll turn 17 it over to you and see how to proceed on this -- this next 18 agenda item. 19 MS. SOLORIA: All right. Thank you, Madam Chair. 20 So, with the close of the deliberations, you-all have 21 tackled all of the findings and decisions you had to make. 22 So the Statement of Reasons that you would be adopting 23 would include all of the language that you-all accepted 24 and, of course, the rest of the Statement of Reasons that 25 you reviewed prior to today.
50 1 ADMINISTRATOR JONES: Member Honker? 2 BOARD MEMBER HONKER: Yes. 3 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis? 4 VICE-CHAIR TRUJILLO-DAVIS: Yes. 5 ADMINISTRATOR JONES: Thank you. 6 Chair Suina? 7 CHAIRPERSON SUINA: Yes. 8 ADMINISTRATOR JONES: The motion passes. 9 CHAIRPERSON SUINA: Thank you, Ms. Jones. 10 All right. Back to you, Ms. Soloria, to wrap it 11 up. I think that was it, right? 12 MS. SOLORIA: That was it. 13 I would open the floor to any other discussions 14 the Board wants to have in terms of deliberations that 15 they feel they need to express or voice. 16 If not, we would close out our reopened 17 deliberations and move on to the next item of the agenda, 18 which would be adoption of the Statement of Reasons. 19 CHAIRPERSON SUINA: Thank you, Ms. Soloria. 20 Fellow Board members, is there any more 21 discussion since we do have this very defined opening here 22 for deliberations and discussions? 23 If not, Ms. Soloria, do we have to make a formal 24 motion to close deliberations again? 25 MS. SOLORIA: No. We can just -- the	52 1 And you-all can have a discussion whether or not 2 to accept that, if you -- if you'd like to see some 3 changes, you can note those as well. And then the Board 4 would take a final vote to kind of sign, seal and deliver 5 this thing. So, yeah, that's where we are. 6 HEARING OFFICER ORTH: Thank you, Ms. Soloria. 7 And so, fellow Board members, I know this has 8 been a long process, and I know for NMED and the parties, 9 years' long process -- multiple years. 10 And so, I'm just looking to you-all and seeing 11 what you're feeling right now and how we want to proceed 12 on the Statement of Reasons, and this next step, as we've 13 gone through. And I know the Statement of Reasons was 14 provided to us prior to the meeting and, hopefully, the 15 Board has been able to review some of that information and 16 the materials that Ms. Soloria has put together for us. 17 Personally -- well, I'll leave it to the Board 18 here and see what your thoughts are before sharing any of 19 mine. 20 Yes, Member Garcia. 21 BOARD MEMBER GARCIA: I would like to commend our 22 Counsel for doing a great job on the Statement of Reasons 23 and Final Order. I know it was a big job, a very 24 complicated rule. Appreciate all of her work on this. 25 And I'm ready to make a motion, unless there's any other

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53 1 discussion. 2 CHAIRPERSON SUINA: If there's no other 3 discussion, before you make a motion, Member Garcia, you 4 took the words out of my mouth. And I just want to say, 5 thank you, Ms. Soloria. I had time to look through what 6 you provided the Board, and it seemed very clear. I love 7 Excel spreadsheets, so it was my kind of formatting. 8 Thank you so much. 9 MS. SOLORIA: Madam Chair, I would just be remiss 10 if I didn't recognize Hearing Officer Orth, who offered 11 tremendous help preparing the Statement of Reasons, so I 12 did want to mention that as well. 13 CHAIRPERSON SUINA: Thank you, Ms. Soloria, and 14 of course, Ms. Orth, Madam Hearing Officer. I know you've 15 helped us through this process, and so I echo 16 Ms. Soloria's words here, and thank you as well. 17 With that, I guess, Member Garcia -- and 18 Ms. Soloria, is there -- just again, just to making sure 19 we dot our I's and cross our T's, is there a motion that 20 we need to consider the language specific in a motion? 21 MS. SOLORIA: I would -- I would just say, Madam 22 Chair, that the Board move to adopt the Statement of 23 Reasons for EIB 21-27 and ask the Chair to sign it on 24 behalf of the Board. 25 CHAIRPERSON SUINA: Thank you, Ms. Soloria.	55 1 that we adopt the Statement of Reasons and Final Order as 2 proposed, and that the Chair sign the Statement of Reasons 3 and Final Order. 4 BOARD MEMBER HONKER: I'll second that. 5 CHAIRPERSON SUINA: Thank you, Member Garcia and 6 Member Honker. 7 With that, Ms. Jones, I don't see any other 8 discussion from our Board members. Ms. Jones, would you 9 mind doing a roll-call vote for Member Garcia's motion and 10 Member Honker's second? 11 ADMINISTRATOR JONES: Member Bitzer, how do you 12 vote? 13 BOARD MEMBER BITZER: I vote yes. 14 ADMINISTRATOR JONES: Member Cates, how do you 15 vote? 16 BOARD MEMBER CATES: Yes. 17 ADMINISTRATOR JONES: Member Garcia? 18 BOARD MEMBER GARCIA: Yes. 19 ADMINISTRATOR JONES: Member Honker? 20 BOARD MEMBER HONKER: I vote yes. 21 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis? 22 VICE-CHAIR TRUJILLO-DAVIS: Yes. 23 ADMINISTRATOR JONES: Chair Suina? 24 CHAIRPERSON SUINA: Yes. 25 ADMINISTRATOR JONES: The motion passes.
54 1 Yes, Member Garcia. 2 BOARD MEMBER GARCIA: That would be my motion. 3 HEARING OFFICER ORTH: Thank you, Member Garcia. 4 BOARD MEMBER HONKER: I'll add my thanks to my 5 fellow Board members and for Ms. Soloria and the Hearing 6 Officer. And I second Member Garcia's motion. 7 CHAIRPERSON SUINA: Thank you, Member Honker. 8 Fellow Board Members, if there's -- I'm looking 9 around here -- any other further discussion. 10 One thing I just wanted to also get on the 11 record, just after reviewing the document for the 12 Statement of Reasons, going back through my notes, and so 13 forth, in addition to clarifying some of those items that 14 we clarified earlier, I just want to note that for the 15 record, that, you know, it did track. And I did also do 16 that -- that review as well. So I feel fairly confident 17 as well in the Statement of Reasons. I just wanted to put 18 that on record. 19 MS. SOLORIA: I'll offer a friendly, suggested 20 amendment to my proposed motion, that also includes the 21 Final Order, which is appended today on the end of the 22 Statement of Reasons, actually, adopting the rule. 23 CHAIRPERSON SUINA: Yes, Member Garcia. 24 BOARD MEMBER GARCIA: So I'll go ahead and 25 restate the motion would be in the matter of EIB 21-27,	56 1 CHAIRPERSON SUINA: Thank you, Ms. Jones. 2 Appreciate that. 3 I did also want to thank Ms. Jones as well, with 4 this process, now that we're wrapping up EIB 21-27, for 5 your support through the deliberations, in organizing all 6 of the logistics, and checking that the thing on the roof 7 didn't fall on us during deliberations and everything. So 8 thank you as well, Ms. Jones, and your colleague Madai as 9 well. 10 With that, I guess we'll continue on, if that's 11 it. Ms. Soloria, do you have anything to add? 12 MS. SOLORIA: That's it, Madam Chair. And I 13 would just mention that the court reporter, Ms. DuBois, is 14 excused. And thank you so much for your support during 15 this process. 16 CHAIRPERSON SUINA: Yes, thank you, Ms. DuBois, 17 as well, and your colleagues through this process as well. 18 (Deliberations adjourned on May 27, 2022, at 19 10:27 a.m.) 20 21 22 23 24 25

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STATE OF NEW MEXICO
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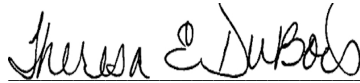
No. EIB 21-27 (R)

In the Matter of:
PROPOSED NEW REGULATION
20.2.50 NMAC - Oil and Gas Sector
Ozone Precursor Pollutants

REPORTER'S CERTIFICATE

I, THERESA E. DUBOIS, RPR, CSR #29, DO HEREBY
CERTIFY that on May 27, 2022, the Reopened Deliberation
Hearing of the New Mexico Environmental Improvement Board,
was taken before me, that I did report in stenographic
shorthand the Proceedings set forth herein, and the
foregoing pages are a true and correct transcription to
the best of my ability.

I FURTHER CERTIFY that I am neither employed by
nor related to nor contracted with (unless excepted by the
rules) any of the parties or attorneys in this matter, and
that I have no interest whatsoever in the final
disposition of this matter.



THERESA E. DUBOIS, RPR
New Mexico CCR #29
License Expires: 12/31/2022

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