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1       **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2       Opinion Number: \_\_\_\_\_

3       Filing Date: April 8, 2026

4       **No. A-1-CA-41585**

5       **NEW MEXICO AUTOMOTIVE DEALERS**  
6       **ASSOCIATION and AUTOMUNDO DE**  
7       **GARCIA, LTD. COMPANY,**

8               Appellants,

9       v.

10       **NEW MEXICO ENVIRONMENTAL**  
11       **IMPROVEMENT BOARD and**  
12       **ALBUQUERQUE-BERNALILLO COUNTY**  
13       **AIR QUALITY CONTROL BOARD,**

14               Appellees,

15       and

16       **NATURAL RESOURCES DEFENSE COUNCIL,**  
17       **SOUTHWEST ENERGY EFFICIENCY PROJECT,**  
18       **COALITION FOR CLEAN AFFORDABLE ENERGY,**  
19       **350 NEW MEXICO, WESTERN RESOURCE**  
20       **ADVOCATES, PROSPERITY WORKS,**  
21       **CONSERVATION VOTERS NEW MEXICO,**  
22       **SIERRA CLUB, NEW MEXICO INTERFAITH**  
23       **POWER AND LIGHT, CENTER FOR CIVIC**  
24       **POLICY, WESTERN ENVIRONMENTAL LAW**  
25       **CENTER, CALSTART, NEW MEXICO**  
26       **ENVIRONMENT DEPARTMENT, and**  
27       **350 SANTA FE,**

28               Intervenors-Appellees,

1 and

2 **NICHOLAS R. MAXWELL,**

3 Intervenor,

4 **IN THE MATTER OF PETITION TO AMEND**  
5 **EXISTING REGULATIONS 20.2.91 NMAC and**  
6 **20.11.104 NMAC, NEW MOTOR VEHICLE**  
7 **EMISSION STANDARDS.**

8 **APPEAL FROM ENVIRONMENTAL IMPROVEMENT BOARD and**  
9 **THE ALBUQUERQUE BERNALILLO AIR QUALITY CONTROL BOARD**  
10 **Felicia Orth, Administrative Hearing Officer**

11 **Atler Law Firm, P.C.**  
12 **Timothy J. Atler**  
13 **A. Howland Swift**  
14 **Jazmine J. Johnston**  
15 **Albuquerque, NM**

16 **Domenici Law Firm, P.C.**  
17 **Pete Domenici**  
18 **Albuquerque, NM**

19 **for Appellants**

20 **Raúl Torrez, Attorney General**  
21 **Ellen Venegas, Assistant Solicitor General**  
22 **Blaine N. Moffatt, Division Director**  
23 **Seth C. McMillan, Deputy Solicitor General**  
24 **Santa Fe, NM**

25 **for Appellee New Mexico Environmental Improvement Board**

26 **Antoinette Sedillo Lopez**  
27 **Albuquerque, NM**

28 **for Appellee City of Albuquerque-Bernalillo County Air Quality Control Board**

1 Baake Law, LLC  
2 David R. Baake  
3 Las Cruces, NM

4 for Intervenors-Appellees Southwest Energy Efficiency Project,  
5 350 New Mexico, Western Resource Advocates,  
6 Prosperity Works, Conservation Voters New Mexico,  
7 Sierra Club, New Mexico Interfaith Power and Light,  
8 Center for Civic Policy, Western Environmental  
9 Law Center, and 350 Santa Fe

10 Andrew P. Knight, Assistant General Counsel  
11 Brecken L. Scott, Assistant General Counsel  
12 Santa Fe, NM

13 for Intervenor-Appellee New Mexico Environment Department

14 Charles de Saillan  
15 Santa Fe, NM

16 for Intervenor-Appellee Coalition for Clean Affordable Energy

17 Vivian Wang  
18 Alexis Mena  
19 New York, NY

20 for Intervenor-Appellee Natural Resources Defense Council

1 **OPINION**

2 **YOHALEM, Judge.**

3 {1} Appellants New Mexico Automotive Dealers Association and Automundo De  
4 Garcia, Ltd. Co. (collectively, Auto Dealers) appeal the adoption of the State of  
5 California’s Advanced Clean Cars II (ACC II) new motor vehicle emission control  
6 standards for model years 2027 through 2032 by the New Mexico Environmental  
7 Improvement Board (EIB) and the Albuquerque-Bernalillo County Air Quality  
8 Control Board (AQCB)<sup>1</sup> (collectively, the Boards).<sup>2</sup> See 20.2.91 NMAC (7/1/2022  
9 as amended through 12/31/2023) (EIB statewide regulations); 20.11.104 NMAC  
10 (7/1/2022 as amended through 12/31/2023) (AQCB regulations). The regulations  
11 provide, in relevant part, that an increasing percentage of new vehicles provided to  
12 New Mexico in each model year, beginning with model year 2027, must be zero  
13 emission vehicles (ZEVs).<sup>3</sup> Auto Dealers challenge the validity of these regulations

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<sup>1</sup>Regulations adopted by the EIB apply to all nontribal areas of the State of New Mexico, with the exception of the City of Albuquerque and Bernalillo County, where the regulations adopted by the AQCB apply. See NMSA 1978, §§ 74-2-4, -5(B) (2021); Albuquerque, N.M., Rev. Ordinance of Albuquerque, ch. 9, art. 5, §§ 9-5-1-4(B), -6 (1974, amended 1993); Bernalillo County, N.M., Code of Ordinances, ch. 30, art. II, §§ 30-33, -35 (1994).

<sup>2</sup>Intervenors-Appellees Climate Advocates and the New Mexico Environment Department (NMED) are also parties to this appeal. They have filed briefs on appeal arguing in favor of the validity of the regulations, which we have reviewed and considered.

<sup>3</sup>The EIB and AQCB regulations incorporate by reference Title 13 of the California Code of Regulations’ new vehicle emission control standards for model years 2027 through 2032. See 20.2.91.101(A) NMAC; 20.2.91.102 NMAC;

1 under both the federal Clean Air Act (CAA), Pub. L. 101-549, 104 Stat 2399 (1990),  
2 42 U.S.C. §§ 7401-7671q, and the New Mexico Air Quality Control Act (AQCA),  
3 NMSA 1978, §§ 74-2-1 to -17 (1967, as amended through 2021). Not persuaded by  
4 Auto Dealers’ arguments, we affirm.<sup>4</sup>

## 5 **BACKGROUND**

### 6 **The Federal Regulatory Scheme Governing Vehicle Emissions**

7 {2} The CAA directs the EPA to adopt regulations setting emission control  
8 standards for new motor vehicles nationwide. *See* 42 U.S.C. § 7521(a). To ensure

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20.11.104.101(A) NMAC, 20.11.104.102 NMAC; *see also* Cal. Code Regs., tit. 13, § 1962.4(c)(1)(B) (2022) (mandating 43 percent ZEV manufacturing percentage requirement at model year 2027 and 82 percent by model year 2032). Because the regulations adopted by the EIB and the AQCB relevant to this appeal are identical and were adopted following a joint public hearing where the Boards heard the same evidence, we discuss the regulations together, and do not generally distinguish between the EIB and the AQCB.

<sup>4</sup>We note that Auto Dealers previously filed a motion to stay this appeal with this Court. Auto Dealers’ request for a stay was based on pending litigation in federal court in California challenging Congress’s authority to withdraw by Congressional resolution a waiver previously granted to California by the Environmental Protection Agency (EPA). New Mexico, along with California and a number of other states, is a party-plaintiff in that lawsuit. *See* Complaint for Declaratory and Injunctive Relief, *State of Cal. v. United States*, No. 3:25-cv-04966 (N.D. Cal. June 12, 2025). We acknowledge that the outcome of this pending litigation is uncertain, and some or all of the New Mexico regulations at issue in this appeal could possibly be invalidated. We nevertheless denied the stay. We were persuaded by the Boards’ and Intervenors’ request that we proceed to decide this appeal so that automobile manufacturers and other interested parties are on timely notice of New Mexico’s choice of the California ACC II standards, and so that New Mexico will be ready to enforce the ZEV standards without the confusion and delay that would be created by having to wait for this appeal to be resolved should the federal courts allow the ACC II standards to be implemented.

1 national uniformity, Congress preempts state law concerning new vehicle emissions,  
2 preventing each state from setting its own standards. *See* 42 U.S.C. § 7543(a).  
3 Congress makes one exception, which is central to this case: the EPA is authorized  
4 to grant a waiver of preemption to California—the only state having vehicle  
5 emission standards in place prior to the enactment of the CAA. *See* 42 U.S.C.  
6 § 7543(a)-(b). Section 177 of the CAA, 42 U.S.C. § 7507, permits states to choose  
7 to “piggyback” on California’s new vehicle emission control standards, so long as  
8 the standards adopted by another state “are identical to the California standards for  
9 which a waiver has been granted [by the EPA] for such model year,” and are adopted  
10 by both California and that state “at least two years before commencement of such  
11 model year.” 42 U.S.C. § 7507(1), (2). The model year commences on January 1 of  
12 such calendar year. *See* 40 C.F.R. § 85.2302.

### 13 **New Mexico Law Governing Vehicle Emission Control Standards**

14 {3} In New Mexico, the Boards are authorized by statute to “adopt, promulgate,  
15 publish, amend and repeal rules and standards consistent with [AQCA] to attain and  
16 maintain national ambient air quality standards and prevent or abate air pollution.”  
17 Section 74-2-5(B)(1). As previously noted, the AQCA provides that rules adopted  
18 by the EIB apply to nontribal areas of the state outside of the City of Albuquerque  
19 and Bernalillo County, *see* § 74-2-3(B), and those adopted by the AQCB apply to  
20 Albuquerque and Bernalillo County. *See supra* note 1. Our Legislature’s delegation

1 of rulemaking authority authorizes the Boards to adopt new vehicle emission control  
2 standards for New Mexico that comply with or exceed federal requirements. *See*  
3 § 74-2-5(D)(2), (3) (authorizing the Boards to adopt regulations that are “at least as  
4 stringent” as any federal emission standard or limitation).

### 5 **New Mexico’s Adoption of California’s ACC II Emission Standards**

6 {4} In 2012, California adopted new vehicle emission standards known as  
7 Advance Clean Cars I (ACC I). *See* Notice of Decision Granting a Waiver of CAA  
8 Preemption for California’s Advanced Clean Car Program, 78 Fed. Reg. 2112 (Jan.  
9 9, 2013). The ACC I regulations set California’s new vehicle emission control  
10 standards well in advance for model years 2018 through 2025. *Id.* The EPA granted  
11 California a waiver of EPA’s federal standards on January 9, 2013. *Id.*; *see also* Cal.  
12 Code Regs. tit. 13, § 1962.2 (2012) (ZEV mandates for year 2018 through 2025).

13 {5} On July 1, 2022, the Boards adopted the California ACC I new vehicle  
14 emission control standards for New Mexico, beginning with model year 2026. *See*  
15 20.2.91.2 NMAC (7/1/2022); 20.11.104 NMAC (7/1/2022) The EIB’s New Mexico  
16 rules “adopt and implement the California vehicle emission standards and  
17 requirements statewide pursuant to Section 177 of the federal [CAA].” *See* 20.2.91.6  
18 NMAC (7/1/2022); *see also* 20.11.104.6 NMAC (7/1/2022) (stating same for AQCB  
19 regulation).

1 {6} Four months after the Boards adopted New Mexico rules incorporating  
2 verbatim the California ACC I standards, on November 30, 2022, California adopted  
3 ACC II emission standards, effective beginning in model year 2026. *See* Cal. Code  
4 Regs. tit. 13, § 1962.4 (2022). Relevant to this appeal, California’s new vehicle  
5 emission standards for 2026 and beyond require manufacturers of automobiles and  
6 other covered vehicles to provide increasing percentages of ZEVs each model year  
7 to automobile dealers in California, reaching 100 percent ZEVs in model year 2035  
8 (the ZEV standards).<sup>5</sup> *See* Cal. Code Regs. tit. 13, § 1962.4(c) (2022).

9 {7} In July 2023, the NMED and the City of Albuquerque Environmental Health  
10 Department petitioned the Boards to amend New Mexico’s emission control  
11 regulations by adopting California’s ACC II emission standards, including the new  
12 ZEV standards. Auto Dealers opposed the petitions, specifically objecting to New  
13 Mexico adopting California’s ZEV standards.

14 {8} In November 2023, the Boards held a joint rulemaking hearing to consider the  
15 petitions’ request to amend New Mexico’s new vehicle emission control regulations.  
16 Following the joint public rulemaking hearing, both Boards issued identical  
17 regulations incorporating the California ACC II standards, including the ZEV

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<sup>5</sup>The Boards adopted other aspects of California’s ACC II. *See* 20.2.91.118 NMAC; 20.2.91.119 NMAC; 20.2.91.120 NMAC; 20.11.104.118 NMAC; 20.11.104.119 NMAC; 20.11.104.120 NMAC. Auto Dealers challenge only the ZEV standards in this appeal.

1 standards, beginning with model year 2027 and continuing through model year 2032,  
2 for “all new motor vehicles imported, sold, leased, or registered with the New  
3 Mexico Motor Vehicle Division.” *See* 20.2.91.101 NMAC; 20.2.91.108 NMAC;  
4 20.11.104.101 NMAC; 20.11.104.108 NMAC. The Boards explained that by  
5 incorporating the relevant provisions of the California Code of Regulations by  
6 reference, they ensured compliance with the “identity” requirement of Section  
7 177 of the CAA, 42 U.S.C. § 7507(1).

8 {9} We note that the EPA granted California’s request for a waiver for its ACC II  
9 emission standards in December 2024, thirteen months after the Boards’ adoption of  
10 the ACC II standards in New Mexico, and two years before the beginning of the first  
11 model year covered by the ACC II regulations in New Mexico. *See* Notice of  
12 Decision, 90 Fed. Reg. 642-43 (Jan. 6, 2025) (publishing EPA’s December 2024,  
13 grant of a waiver of CAA preemption for California’s ACC II regulations).

14 {10} We reserve review of the evidence presented at the rulemaking hearing and of  
15 the Boards’ findings and conclusions for our discussion of the issues on appeal.

## 16 **DISCUSSION**

17 {11} Auto Dealers appealed the Boards’ new vehicle emission regulations to this  
18 Court, pursuant to Section 74-2-9 of the New Mexico AQCA, asking this Court to  
19 set aside the regulations incorporating the California ZEV standards for new motor  
20 vehicles. Section 74-2-9(A) provides that “[a]ny person adversely affected by an

1 administrative action taken by the [EIB or the AQCB] may appeal to the court of  
2 appeals.” All such appeals “shall be upon the record made at the hearing.” *Id.* This  
3 Court is permitted by Section 74-2-9(C) to “set aside the action [of the Boards] only  
4 if found to be: (1) arbitrary, capricious or an abuse of discretion; (2) not supported  
5 by substantial evidence in the record; or (3) otherwise not in accordance with law.”

6 {12} We first consider Auto Dealers’ arguments claiming error as a matter of  
7 federal law in the Boards’ adoption of the ZEV standards. Auto Dealers argue that  
8 California’s ZEV standards are not “emission control standards” as described in the  
9 CAA that are subject to the identity requirement of Section 177 of the CAA, and,  
10 therefore, the Boards acted arbitrarily and capriciously by not taking evidence and  
11 considering ZEV standards unique to New Mexico. The Boards argue first that this  
12 issue was not preserved for our review, and then point to federal precedent that  
13 resolves this issue against Auto Dealers’ argument.

14 {13} After a careful review of the record, we agree with the Boards that Auto  
15 Dealers did not make this argument to the Boards either at the hearing, or in written  
16 pleadings before or after the hearing. It was, therefore, not preserved for our review.  
17 We are not persuaded by Auto Dealers’ request that we exercise our discretion to  
18 address this argument under the public interest exception to our preservation  
19 requirements. We, therefore, decline to address Auto Dealers’ unpreserved  
20 argument.

1 {14} We next address Auto Dealers’ second federal statutory challenge to the  
2 Boards’ adoption of the California ZEV standards. Auto Dealers argue that the  
3 Boards’ actions were contrary to the plain language of Section 177 of the CAA, 42  
4 U.S.C. § 7507(1), which Auto Dealers claim allows New Mexico to adopt  
5 California’s regulations only *after* the EPA has granted a waiver to California. It is  
6 undisputed that EPA did not grant California’s waiver request until December 2024,  
7 thirteen months after the New Mexico regulations were adopted. We agree with the  
8 decision of the federal Court of Appeals for the Second Circuit in *Motor Vehicle*  
9 *Manufacturers Ass’n of United States, Inc. v. New York State Department of*  
10 *Environmental Conservation (MVMA)*, 17 F.3d 521, 533-36 (2d Cir. 1994). In a  
11 well-reasoned opinion, the Second Circuit held in *MVMA* that other states may adopt  
12 California’s emission control regulations before EPA grants California a waiver, but  
13 may not take any action to enforce their regulations until the EPA grants the waiver.  
14 *Id.* The Boards’ adoption of rules effective for model year 2027 meet this standard.

15 {15} Finally, we address Auto Dealers’ central argument on appeal: their claim that  
16 the Boards acted arbitrarily and capriciously and without substantial support in the  
17 record as a whole when they concluded that adopting California’s ZEV standards  
18 beginning in model year 2027 is a technically practicable and economically  
19 reasonable choice for New Mexico. We are not persuaded that the Boards’ decision  
20 is arbitrary, capricious or without sufficient support in the record.

1 {16} For the reasons stated, we affirm the validity of the regulations, including the  
2 ZEV standards, adopted by the Boards.

3 **I. Auto Dealers Failed to Preserve Their Statutory Construction Argument**  
4 **Concerning the Definition of an “Emission Control Standard” and We**  
5 **Decline to Apply the Public Interest Exception to Preservation**

6 {17} Rule 12-601(B) NMRA provides that the Rules of Appellate Procedure apply  
7 to appeals from agency rulemaking. We, therefore, apply our rule requiring  
8 preservation, Rule 12-321 NMRA, and the precedent we have developed under that  
9 rule, to Auto Dealers’ legal claims under Section 177 of the CAA. *See Martinez v.*  
10 *Pub. Emps. Ret. Ass’n of N.M.*, 2012-NMCA-096, ¶ 24, 286 P.3d 613 (“Preservation  
11 of issues is required on appeal from decisions in administrative proceedings.”). Auto  
12 Dealers’ statutory construction argument is the predicate for their claim that the  
13 Boards’ failure to consider evidence supporting ZEV standards different from those  
14 adopted by California was arbitrary and capricious.

15 {18} Rule 12-321(A) requires that in order “[t]o preserve an issue for review, it  
16 must appear that a ruling or decision by the [lower tribunal] was fairly invoked.”  
17 Our precedent explains that “[t]he party claiming error must have raised the issue  
18 below clearly and have invoked a ruling by the [lower tribunal].” *See Diversey Corp.*  
19 *v. Chem-Source Corp.*, 1998-NMCA-112, ¶ 12, 125 N.M. 748, 965 P.2d 332  
20 (citation omitted). In order to invoke a ruling from a tribunal, a party must have  
21 asserted a legal principle, developed any facts necessary to show that the legal

1 principle applies, and brought the issue to the attention of the decision-maker. *See*  
2 *State v. Adame*, 2020-NMSC-015, ¶ 13, 476 P.3d 872. “To preserve an issue for  
3 review on appeal, it must appear that appellant fairly invoked a ruling of the [lower  
4 tribunal] on the same grounds argued in the appellate court.” *Woolwine v. Furr’s,*  
5 *Inc.*, 1987-NMCA-133, ¶ 20, 106 N.M. 492, 745 P.2d 717.

6 {19} This Court has described three purposes served by our preservation  
7 requirements: “(1) to specifically alert the [tribunal] to a claim of error so that the  
8 error may be corrected at that time, (2) to allow the opposing party adequate  
9 opportunity to respond to a claim of error, and (3) to create a sufficient record to  
10 allow this Court to make an informed decision regarding the contested issue.” *Estate*  
11 *of Nauert v. Morgan-Nauert*, 2012-NMCA-037, ¶ 28, 274 P.3d 799.

## 12 **A. Preservation**

13 {20} The Boards contend that Auto Dealers’ two related contentions on appeal (1)  
14 that the CAA allowed the Boards to consider ZEV percentages different than  
15 California’s, and (2) that the Board acted arbitrarily and capriciously by not taking  
16 evidence on and considering ZEV standards for New Mexico that differed from both  
17 the federal and California standards, were not preserved for our review. Auto Dealers  
18 cite in response to their proposed statement of reasons submitted to the Boards prior  
19 to the public hearing, claiming that this statement sufficiently preserved both issues.  
20 The paragraphs cited by Auto Dealers, however, refer to the argument, presented by

1 Auto Dealers at the public hearing, that the ACC I California standards already  
2 adopted by New Mexico meet the requirements of Section 177 of the CAA, and  
3 should be left in place to see how these standards work in 2026 before ACC II ZEV  
4 standards are considered for later model years. We do not agree that Auto Dealers’  
5 request to the Boards to stick with the ACC I ZEV percentages for another year,  
6 rather than adopting California’s new ACC II ZEV standards, alerted the Boards and  
7 the opposing parties to the complex statutory interpretation argument Auto Dealers  
8 now make on appeal: that the ZEV standards are not “standards relating to control  
9 of emissions,” as that phrase is used in Section 177 of the CAA, because the ZEV  
10 standards relate only to the supply of new ZEVs, rather than the imposition of  
11 permissible emissions for all vehicles.

12 {21} This statutory construction argument is a far cry from the request made by  
13 Auto Dealers to delay adoption of California’s ACC II ZEV standards and keep the  
14 ACC I standards until more data could be gathered on the New Mexico market. This  
15 argument did not satisfy any of the purposes of preservation: the Boards were not  
16 alerted that they must consider and decide the statutory construction arguments now  
17 made on appeal, the state agencies and intervenors supporting the adoption of the  
18 regulations were not alerted that they needed to respond to this statutory  
19 interpretation argument, and no record was made concerning the alternative ZEV

1 standards Auto Dealers now argue that the Boards failed to consider. *See Estate of*  
2 *Nauert*, 2012-NMCA-037, ¶ 28.

3 **B. General Public Interest Exception to Preservation**

4 {22} Concluding that Auto Dealers’ statutory construction argument about the  
5 meaning of “emission control standards” under Section 177 of the CAA was not  
6 preserved before the Boards, we turn to Auto Dealers’ request that we apply the  
7 general public interest exception to preservation. Auto Dealers argue that we should  
8 consider their statutory construction argument even though it is raised for the first  
9 time on appeal “because the heightened ZEV mandate will have a resounding effect  
10 on the automobile industry, which is a matter of public interest.”

11 {23} Rule 12-321(B)(2)(a) allows this Court, in its discretion, to review  
12 unpreserved issues involving “general public interest.” Reviewing courts “have  
13 invoked the general public interest exception to the preservation rule where  
14 review . . . is likely to settle a question of law affecting the public at large or a great  
15 number of cases and litigants in the near future.” *Azar v. Prudential Ins. Co. of Am.*,  
16 2003-NMCA-062, ¶ 28, 133 N.M. 669, 68 P.3d 909; *see State v. Candelaria*, 2019-  
17 NMCA-032, ¶ 22, 446 P.3d 1205 (applying the general public interest exception  
18 because the case presented “an issue of law that is likely to recur in the Second  
19 Judicial District Court, and perhaps elsewhere”).

1 {24} The federal law regarding motor vehicle emission standards is in flux. *See*  
2 *supra* note 4. It is far from clear that the issues raised by Auto Dealers on appeal  
3 regarding California’s ACC II ZEV standards will arise again in New Mexico. Nor  
4 is the public without guidance on this issue if it does arise again. Auto Dealers  
5 concede on appeal that the federal statutory construction issue they raise for the first  
6 time on appeal has been addressed by several federal courts of appeals, with  
7 consistent results that reject Auto Dealers’ argument that the California ZEV  
8 standards are not “emission control standards” under the CAA. *See Am. Auto. Mfrs.*  
9 *Ass’n v. Cahill*, 152 F.3d 196, 200 (2nd Cir. 1998); *Ass’n of Int’l Auto. Mfrs., Inc. v.*  
10 *Comm’r, Mass. Dep’t of Env’t Prot.*, 208 F.3d 1, 4 (1st Cir. 2000) (holding that  
11 “ZEV mandates are [emission control] standards within the meaning of [the CAA]”  
12 (internal quotation marks omitted)).

13 {25} We conclude that there is no significant public interest in this Court resolving  
14 this unpreserved question on the inadequate record in this case. We therefore do not  
15 consider Auto Dealers’ statutory interpretation argument on appeal or their related  
16 argument that the Boards failed to elicit and consider evidence on alternative ZEV  
17 standards unique to New Mexico. *See Selmecki v. N.M. Dep’t of Corr.*, 2006-  
18 NMCA-024, ¶ 24, 139 N.M. 122, 129 P.3d 158 (declining to review an issue not  
19 preserved in the relevant administrative proceeding).

1 **II. Section 177 of the CAA Does Not Prohibit States from Adopting**  
2 **California’s Regulations Prior to the Grant of an EPA Waiver for**  
3 **California**

4 {26} We next address the second federal statutory argument Auto Dealers make on  
5 appeal: that New Mexico was required to wait to adopt California’s ACC II standards  
6 until California received a waiver from the EPA under Section 209(b)(1) of the  
7 CAA, 42 U.S.C. § 7543(b)(1). Assuming without deciding that the issue was  
8 sufficiently preserved for our review, we agree with the federal courts to consider  
9 this issue that states are permitted to *adopt* the California regulations prior to  
10 issuance of an EPA waiver, so long as the state regulations are not enforced until  
11 EPA grants California a waiver.

12 **A. Preservation**

13 {27} The EIB and Intervenor Climate Advocates argue that Auto Dealers failed to  
14 preserve this issue for our review on appeal. They claim that Auto Dealers’ inclusion  
15 of this issue in a single paragraph of their written statement of reasons and order,  
16 submitted to the Boards two days before the hearing was set to begin, was not  
17 sufficient to preserve this issue for our review on appeal.

18 {28} Auto Dealers’ statement of reasons reads as follows: “New Mexico may not  
19 adopt California vehicle emission standards unless and until EPA grants California  
20 a waiver pursuant to Section 209(b)(1) of the CAA.” *See* 42 U.S.C. § 7543(b)(1).  
21 Auto Dealers’ quoted statement was not accompanied by argument or citation to

1 authorities and Auto Dealers did not raise or argue this issue during the course of the  
2 public hearing. Moreover, neither Board addressed this argument in its findings and  
3 conclusions.

4 {29} Although preservation of this issue is less than ideal, because this is purely a  
5 question of statutory construction that we conclude lacks merit, we assume without  
6 deciding that Auto Dealers’ statement of reasons prior to the hearing was sufficient  
7 to preserve it for our review and proceed to address it on its merits.

8 **B. Construction of Section 177 of the CAA**

9 {30} Section 177 of the CAA, 42 U.S.C. § 7507, states, in relevant part, as follows:

10 Any [s]tate may adopt and enforce for any model year standards  
11 relating to control of emissions from new motor vehicles . . . if—

12 (1) such standards are identical to the California standards for which  
13 a waiver has been granted for such model year, and

14 (2) California and such [s]tate adopt such standards at least two years  
15 before commencement of such model year.

16 {31} It is undisputed that EPA granted California a waiver for its ACC II standards,  
17 including the ZEV standards adopted by New Mexico, in December 2024, and  
18 published that waiver in the Federal Register on January 6, 2025. Auto Dealers do  
19 not claim any violation of the two-year advance notice requirement of 42 U.S.C.  
20 §7501(2).

21 {32} Auto Dealers claim that the use of the past tense in the phrase in 42 U.S.C.  
22 § 7507(1), noted above, stating that any state’s regulations must be “identical to the

1 California standards for which a waiver *has been granted* for such model year,”  
2 indicates that the EPA waiver “must have already been granted [by EPA] before  
3 another state can adopt or enforce the standards.”

4 {33} “Our duty, when interpreting federal statutes, is to give effect to the intent of  
5 the legislative body. In this instance, we endeavor to give effect to the intent of  
6 Congress.” *State v. Branham*, 2004-NMCA-131, ¶ 11, 136 N.M. 579, 102 P.3d 646  
7 (citation omitted). In construing a federal statute, we look to federal precedent for  
8 guidance. *See Inv. Co. of the Sw. v. Reese*, 1994-NMSC-051, ¶ 16, 117 N.M. 655,  
9 875 P.2d 1086 (“When a case concerns a right or obligation created by federal law,  
10 a state court should look to federal precedent for guidance in interpretation.”).

11 {34} Federal courts, construing federal statutes, apply virtually the same principles  
12 of statutory construction applied by this Court to construe New Mexico statutes.  
13 Primary among these rules of construction is the directive that courts look first to the  
14 plain meaning of the statute. *Compare MVMA*, 17 F.3d at 531 (stating that “[t]he  
15 familiar rules of statutory construction look first to the language of the statute itself”  
16 (internal quotation marks and citation omitted)), *with Leger v. Gerety*, 2022-NMSC-  
17 007, ¶ 27, 503 P.3d 349 (“The first and most obvious guide to statutory interpretation  
18 is the wording of the statutes themselves.” (internal quotation marks and citation  
19 omitted)). Where there is ambiguity, both federal and state courts look beyond the  
20 plain meaning to other tools of statutory interpretation to discern the intent of the

1 legislative body. *Compare MVMA*, 17 F.3d at 531 (“Even when the meaning of  
2 language seems apparent, it must be remembered that we are attempting to ascertain  
3 Congress’ purpose; where ambiguity resides in a statute, legislative history and other  
4 tools of interpretation may be employed to determine legislative purpose more  
5 perfectly.”), *with State v. Smith*, 2004-NMSC-032, ¶¶ 10-11, 136 N.M. 372, 98 P.3d  
6 1022 (applying the rules of statutory construction to determine legislative intent  
7 when the language of a statute is ambiguous).

8 {35} The statutory language relied on by Auto Dealers here allows New Mexico to  
9 “adopt and enforce” emission standards “identical to the California standards for  
10 which a waiver has been granted.” *See* 42 U.S.C. § 7507(1). Although this language  
11 plainly makes the EPA’s grant of a waiver to California a precondition to some type  
12 of action by a state concerning its regulations, it is less than clear whether that action  
13 is the *adoption* or the *enforcement* of the California standards. Auto Dealers focus  
14 on the grant of the waiver preceding the *adoption* of the regulations, claiming that  
15 the statutory language prohibits New Mexico from taking any action to adopt  
16 regulations until the EPA actually grants California a waiver.

17 {36} In examining the language of the statutory section at issue here, we note that  
18 the statute’s grant to the states of authority “to adopt *and* enforce” emission standards  
19 identical to California’s standards suggests that Congress is thinking about adoption  
20 or promulgation of regulations and enforcement of those regulations separately,

1 creating uncertainty about whether Congress intends that the EPA waiver be a  
2 precondition to both the adoption and enforcement of state regulations, or a  
3 precondition only to the enforcement of the state regulations. In its opinion in  
4 *MVMA*, the federal Court of Appeals for the Second Circuit, finding this provision  
5 ambiguous, addressed this very question. 17 F.3d at 531. In *MVMA*, the federal court  
6 noted that Congress set a common deadline in Subsection (2) for both California  
7 regulations and state regulations adopting the California standards. *See id.* at 525;  
8 42 U.S.C. § 7507(2). The Second Circuit concluded that this deadline is designed to  
9 ensure that automobile manufacturers have a two-year period to prepare in advance  
10 of the model year regulated, both in California and in other states that adopt  
11 California's regulations. *Id.* at 533-34. The Second Circuit noted that a common  
12 sense reading of 42 U.S.C. § 7507 as a whole allows states to adopt the California  
13 regulations in advance of EPA approval in order to be able to meet this two-year  
14 requirement when EPA grants the California waiver. So long as action to enforce the  
15 regulations is not taken until EPA grants California a waiver, and two years remain  
16 before the first model year covered, the court finds that the purpose of this section is  
17 satisfied. *Id.* Finally, the court notes that, just as the California regulations are  
18 promulgated *before* being submitted to the EPA for a waiver, other state regulations  
19 must be promulgated and ready to go into effect when the waiver is granted in order  
20 to meet the requirement of Subsection (2) that the regulations be adopted two years

1 prior to the first model year addressed. *Id.* The Board’s regulations, beginning with  
2 model year 2027, satisfy this requirement.

3 {37} In an unpublished decision, the United States District Court for the District of  
4 Massachusetts agreed with the Second Circuit’s conclusion in *MVMA*, pointing out  
5 that requiring states to wait to adopt California’s regulations until the EPA granted  
6 a waiver “seem[s] likely to lead to utter chaos” by precluding other states from  
7 implementing California standards in the same model year as California. *Am. Auto.*  
8 *Mfrs. Ass’n v. Greenbaum*, No. 93-10799-MA, slip op. at \*8 (D. Mass. Oct. 27,  
9 1993), *aff’d sub nom. Am. Auto. Mfrs. Ass’n v. Comm’r, Mass. Dep’t of Env’t Prot.*,  
10 31 F.3d 18 (1st Cir. 1994). By adopting, without enforcing, standards identical to  
11 California’s before the EPA issues the California waiver, a state puts manufacturers  
12 on notice that it intends to take the same path as California. *MVMA*, 17 F.3d at 534.

13 {38} We agree with the approaches taken by the Second Circuit and the District of  
14 Massachusetts and hold that it was permissible for the Boards to adopt standards  
15 identical to California’s prior to the EPA’s granting a waiver, “so long as the [state]  
16 ma[de] no attempt to enforce the plan prior to the time when the waiver [was]  
17 actually obtained.” *See id.*

1 **III. The Board Did Not Act Arbitrarily, Capriciously, or Without Substantial**  
2 **Evidence in Weighing the Technical Practicability and Economic**  
3 **Reasonableness of the ZEV Standards**

4 {39} Auto Dealers challenge as arbitrary and capricious and without support in the  
5 record the Boards’ finding that the California ZEV mandate is “both technically  
6 practicable and economically reasonable in the methods it employs to reduce air  
7 contaminants from the sources involved.”

8 **A. Standard of Review**

9 {40} “When reviewing findings of fact made by an administrative agency we apply  
10 a whole record standard of review.” *Fitzhugh v. N.M. Dep’t of Lab.*, 1996-NMSC-  
11 044, ¶ 23, 122 N.M. 173, 922 P.2d 555. “In applying whole record review, this Court  
12 reviews both favorable and unfavorable evidence to determine whether there is  
13 evidence that a reasonable mind could accept as adequate to support the conclusions  
14 reached by the fact[-]finder.” *Ruiz v. Los Lunas Pub. Schs.*, 2013-NMCA-085, ¶ 5,  
15 308 P.3d 983 (internal quotation marks and citation omitted). We are cautioned by  
16 our Supreme Court, however, that “[w]hole record review is not an excuse for an  
17 appellate court to reweigh the evidence and replace the fact[-]finder’s conclusions  
18 with its own.” *Herman v. Miners’ Hosp.*, 1991-NMSC-021, ¶ 10, 111 N.M. 550, 807  
19 P.2d 734. If there is substantial evidence to support an agency, board, or  
20 commission’s findings of fact, we affirm those findings, rejecting them “only if  
21 conflicting evidence renders incredible the evidence in support of the decision.”

1 *Albuquerque Bernalillo Cnty. Water Util. Auth. v. N.M. Pub. Reg. Comm'n*, 2010-  
2 NMSC-013, ¶ 89, 148 N.M. 21, 229 P.3d 494 (internal quotation marks and citation  
3 omitted).

4 {41} We will also set aside a regulation if we find that the agency or board has  
5 acted arbitrarily and capriciously in adopting the regulation. “We define ‘arbitrary’  
6 and ‘capricious’ acts as those that may be considered [willful] and unreasonable,  
7 without consideration, and in disregard of the facts and circumstances.” *Wilcox v.*  
8 *N.M. Bd. of Acupuncture & Oriental Med.*, 2012-NMCA-106, ¶ 7, 288 P.3d 902  
9 (alteration, internal quotation marks, and citation omitted).

10 **B. The Governing Law on “Technical Practicability and Economic**  
11 **Reasonableness”**

12 {42} The Boards are authorized by our Legislature to adopt regulations for the  
13 purpose of “prevent[ing] or abat[ing] air pollution.” *See* § 74-2-5(A). In making its  
14 rules, the Boards are further directed by the AQCA as follows:

15 F. In making its rules, the [EIB] or the [AQCB] shall give weight it  
16 deems appropriate to all facts and circumstances, including:

17 (1) character and degree of injury to or interference with  
18 health, welfare, visibility and property;

19 (2) the public interest, including the social and economic  
20 value of the sources and subjects of air contaminants; and

21 (3) technical practicability and economic reasonableness of  
22 reducing or eliminating air contaminants from the sources involved and  
23 previous experience with equipment and methods available to control  
24 the air contaminants involved.

1 *See* § 74-2-5(F)(1)-(3).

2 **C. The Evidence in the Record Weighed by the Boards to Determine the**  
3 **Technical Practicability and Economic Reasonableness of the ZEV**  
4 **Standards**

5 {43} Auto Dealers challenge the findings of the Boards that the regulations as  
6 amended by the Boards are “technical[ly] practicable and economically reasonable”  
7 under the third paragraph of Section 74-2-5(F). Auto Dealers claim that the Boards  
8 improperly relied on “unsupported assumptions” and “on representations that were  
9 not New Mexico-specific and did not directly relate to the ZEV mandate” in finding  
10 the ZEV standards technically practicable and economically reasonable.<sup>6</sup>

11 {44} We understand Auto Dealers to argue that it was arbitrary and capricious for  
12 the Boards to afford greater weight to the evidence concerning the anticipated  
13 direction of the automobile industry, advances underway in ZEV technology, the  
14 anticipated reduction in purchase price of ZEVs, and the charging stations and other  
15 infrastructure under construction in New Mexico, and less weight to Auto Dealers’  
16 evidence based on their direct experience “on the ground” in New Mexico involving

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<sup>6</sup>Auto Dealers begin their argument by contending that the process was “rushed,” but concede that the Boards complied with all notice or timing requirements applicable to the rulemaking process. Because compliance with the notice requirements set by law is adequate, and Auto Dealers offer no argument to the contrary, we do not address this contention.

1 the difficulty of selling electric vehicles to New Mexico consumers and the  
2 differences in geography, climate and population from California.

3 {45} Given our focus is on the Boards’ statutory authority to “give [the] weight it  
4 deems appropriate to all facts and circumstances,” § 74-2-5(F), and on the evidence  
5 supporting the Boards’ decision, as is required by our standard of review, we are not  
6 persuaded the Boards’ finding that the ZEV mandates are technically practicable and  
7 economically reasonable for New Mexico is arbitrary, capricious, or unsupported by  
8 the evidence. *See Wilcox*, 2012-NMCA-106, ¶ 7 (“[T]he question is not whether  
9 substantial evidence exists to support the opposite result, but rather whether such  
10 evidence supports the result reached.” (alteration, internal quotation marks and  
11 citation omitted)). We explain.

12 {46} Auto Dealers claim that ZEVs are not affordable for New Mexicans, pointing  
13 to the testimony of Auto Dealers’ representatives about low demand for ZEVs in  
14 New Mexico during the years preceding the 2023 public hearing, the higher price of  
15 ZEVs during those years compared to gasoline automobiles, and New Mexico’s  
16 market for ZEVs being skewed to high-income New Mexicans. The record,  
17 however, also includes testimony of officials from the New Mexico Environment  
18 Department reporting that vehicle manufacturers have invested billions of dollars  
19 aimed at reducing the price of ZEVs by the 2027 model year, when the New Mexico  
20 rules would go into effect, and ZEVs “will be able to be available to New Mexicans

1 at an affordable price.” Climate Advocates, one of the intervenors supporting the  
2 regulations, presented data showing that “new [Z]EVs are expected to be about  
3 \$5,400 cheaper than new internal combustion engine vehicles by [model year]  
4 2027.” Climate Advocates also offered evidence that there was currently  
5 “exponential growth in the sale of [Z]EVs” nationally, and that sales in New Mexico  
6 were growing, with 2023 sales stronger than previous model years. A manufacturer  
7 of electric vans and pickup trucks testified that both the demand for and availability  
8 of ZEVs was growing well ahead of schedule in California and that early adoption  
9 of the ACC II standards by New Mexico was necessary to allow vehicle  
10 manufacturers and related industries a reasonable timeline to address a market that  
11 was undergoing a transformation. There was also evidence that if the Boards adopted  
12 the new regulations, the increased availability of new ZEVs would help bring down  
13 prices by creating a secondary market for used ZEVs, offering a less expensive  
14 option for New Mexico consumers.

15 {47} Auto Dealers also claim on appeal that the Boards erred by wrongly  
16 “assum[ing] that there would be tax incentives to make [Z]EVs more affordable.”  
17 Auto Dealers’ argument overlooks that the EIB’s finding on the affordability of  
18 ZEVs in New Mexico states that it did not rely on tax incentives: “The estimated  
19 cost savings for individual [Z]EV ownership do not include the impact of potential

1 tax rebates such as the current \$7,500 federal rebate provided by the Inflation  
2 Reduction Act . . . and any future state legislatively funded [Z]EV incentives.”

3 {48} As to whether New Mexico could build the charging stations and other  
4 technological infrastructure to support the ZEV mandate and whether New Mexicans  
5 could afford home chargers—two technologies that witnesses for Auto Dealers  
6 testified were not available in New Mexico and could not be implemented by the  
7 2027 model year—the evidence showed that ZEV drivers with a short commute  
8 could recharge at home with a normal 120-volt outlet; that residents with longer  
9 commutes could purchase a level two charger for \$138, requiring a 240-volt outlet  
10 (washing machine outlets), rather than spending the \$4,000 Auto Dealers claimed  
11 would be required for home charging; and that charging stations were already  
12 available in Lordsburg, Socorro, Farmington, and Clovis, and an additional forty-  
13 two locations had been funded and were under construction with a completion date  
14 of 2024.

15 {49} In its final order,<sup>7</sup> the EIB stated that it gave little weight to Auto Dealers’  
16 assertion that local demand and New Mexico’s lower annual income compared to  
17 California generally would not support the adoption of the ACC II ZEV mandate,  
18 finding that “a typical model year 2027 [ZEV] will pay back the added costs in under

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<sup>7</sup>We quote the EIB’s final order. Although the AQCB final order reflects reliance on the data and findings described above, it does not include the quoted language.

1 [five] years and deliver over \$7,000 in savings for a car and \$10,000 for a truck over  
2 the vehicle's life; while a typical model year 2035 [Z]EV will pay back smaller  
3 added costs in just over [one] year with lifetime savings over \$13,000." The EIB  
4 reasoned that "the projected reduced cost of ownership for [ZEV]s of all types will  
5 provide significant economic benefits to New Mexico businesses and individual  
6 citizens." Further, the EIB's findings and conclusions expressly acknowledge Auto  
7 Dealers' testimony concerning what its members saw as potential economic harm to  
8 dealerships in the state from low demand for ZEVs, unaffordable prices, and lack of  
9 necessary infrastructure. However, the EIB noted that it did not find Auto Dealers'  
10 testimony based on the experience of their members in the past persuasive: "[M]any  
11 of the challenges [Auto Dealers] face are the result of a global shift to electrified  
12 transportation in general, and will not result specifically from the implementation of  
13 ACC II" and their concerns are mitigated by the regulation's delay in adopting the  
14 ACC II ZEV standards until model year 2027. Finally, the Boards determined that  
15 ACC II standards are "both technically practicable and economically reasonable in  
16 the methods [the regulations] employ[] to reduce air contaminants from the sources  
17 involved."

18 {50} In reviewing the whole record, we are not persuaded that the Boards acted  
19 without substantial evidence in the record, that the conflicting evidence in the record  
20 renders the evidence that supports the Boards' decision not credible, or that the

1 Boards' decision is arbitrary or capricious. *See Albuquerque Bernalillo Cnty. Water*  
2 *Util. Auth.*, 2010-NMSC-013, ¶ 89; *Wilcox*, 2012-NMCA-106, ¶ 7.

3 {51} The findings show that the Boards did not disregard Auto Dealers' contrary  
4 evidence; they simply weighed more heavily both the contrary technical evidence  
5 and the evidence concerning the benefits to public health and the economy from  
6 adopting ACC II's ZEV standards. We will not interfere with the weight the Boards  
7 decided to give Auto Dealers' concerns regarding technical practicability and  
8 economic reasonableness, where the Boards reasonably considered all of the facts  
9 and circumstances. *See* § 74-2-5(F)(3) (stating that each Board "shall give weight it  
10 deems appropriate to all facts and circumstances, including: . . . (3) technical  
11 practicability and economic reasonableness of reducing or eliminating air  
12 contaminants from the sources involved"). In short, we find the Boards' decision  
13 that California's ACC II ZEV standards for model years 2027 through 2032 is a  
14 "technically practicable and economically reasonable" choice for New Mexico is  
15 supported by substantial evidence, and is not arbitrary or capricious. We remind  
16 Auto Dealers that "[w]here there is room for two opinions, the [Boards'] action is  
17 not arbitrary and capricious even though one may believe an erroneous conclusion  
18 has been reached." *See Tenneco Oil Co. v. N.M. Water Quality Comm'n*, 1987-  
19 NMCA-153, ¶ 15, 107 N.M. 469, 760 P.2d 161 (alteration, internal quotation marks,  
20 and citation omitted), *superseded by statute on other grounds as stated in N.M.*

1 *Mining Ass'n v. N.M. Water Quality Control Comm'n*, 2007-NMCA-010, ¶ 19, 141  
2 N.M. 41, 150 P.3d 991.

3 **CONCLUSION**

4 {52} For the reasons stated above, we affirm.

5 {53} **IT IS SO ORDERED.**

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**JANE B. YOHALEM, Judge**

8 **WE CONCUR:**

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**JENNIFER L. ATTREP, Judge**

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**GERALD E. BACA, Judge**