

**RESOLUTION NO. 2016-03**

**RESOLUTION OF THE GOVERNING BOARD OF THE  
GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT ADOPTING AND  
ISSUING (1) BOARD ORDER #160413-01 UNDER THE PROVISIONS OF CAL.  
HEALTH & SAFETY CODE SECTION 42316, (2) DISTRICT RULE 433 FOR THE  
CONTROL OF PARTICULATE EMISSIONS AT OWENS LAKE, AND (3) FINAL 2016  
REVISION TO THE OWENS VALLEY PM<sub>10</sub> PLANNING AREA DEMONSTRATION  
OF ATTAINMENT STATE IMPLEMENTATION PLAN, AND MAKING FINDINGS OF  
FACT**

**WHEREAS**, pursuant to the federal Clean Air Act Amendments of 1990 (CAAA), the State of California is required to submit to the Administrator of the United States Environmental Protection Agency (U.S. EPA) a State Implementation Plan for the Owens Valley PM<sub>10</sub> Planning Area, located in southern Inyo County, California, that demonstrates timely attainment of the National Ambient Air Quality Standards (NAAQS) for PM<sub>10</sub>, defined as particulate matter having an aerodynamic diameter of a nominal 10 microns or less; and

**WHEREAS**, the Great Basin Unified Air Pollution Control District (District or GBUAPCD) is the body vested by law with the authority and responsibility to develop and adopt the Demonstration of Attainment State Implementation Plan for the Owens Valley PM<sub>10</sub> Planning Area, and to submit the Demonstration of Attainment State Implementation Plan to the California Air Resources Board for its approval and submittal to the U.S. EPA Administrator on behalf of the State of California; and

**WHEREAS**, on March 23, 2007, the U.S. EPA published a finding that the Owens Valley Planning Area did not attain the 24-hour NAAQS for PM<sub>10</sub> by December 31, 2006 as mandated by the CAAA; and

**WHEREAS**, as a result of the U.S. EPA finding, the State Implementation Plan for the Owens Valley Planning Area that was approved by the District in 2003 must be revised to include a control strategy that will provide for attainment in the Owens Valley Planning Area as soon as practicable and that said revised SIP must be submitted to the U.S. EPA by December 31, 2007; and

**WHEREAS**, starting in 1997, the GBUAPCD has adopted a series of SIPs to address and control PM<sub>10</sub>; including in 2008 when the GBUAPCD approved the 2008 Revised State Implementation Plan for the Owens Valley Planning Area (2008 SIP), which was implemented through GBUAPCD Board Order #080128-01; and

**WHEREAS**, in 2011, a dispute arose between the GBUAPCD and the City regarding the requirements of the 2008 SIP, which were resolved when the Sacramento Superior Court entered a Stipulated Judgment for the GBUAPCD on December 30, 2014 in the case captioned *City of Los Angeles v. California Air Resources Board, et al.*, Case No. 34-2013-80001451-CU-WM-GDS (Stipulated Judgment); and

**WHEREAS**, under the Stipulated Judgment, the City agreed to implement additional dust control measures on the lake bed (for a total of 48.6 square miles) by December 31, 2017, and the GBUAPCD may also order the City to implement dust control measures on up to 4.8 additional square miles of the lake bed if needed to meet the NAAQS or related state standards; and the GBUAPCD agreed to revise the 2008 SIP by December 31, 2014 (later amended by agreement to April 15, 2016) to incorporate the relevant provisions of the Stipulated Judgment into a 2016 SIP Order; and

**WHEREAS**, the GBUAPCD reaffirms its commitment to and intends to abide by the terms of the Stipulated Judgment; and

**WHEREAS**, the GBUAPCD proposes to adopt District Rule 433 (Control of Particulate Emissions at Owens Lake) to contain the dust control requirements of the 2016 SIP Order, which will comprise the attainment strategy for the 2016 SIP to be submitted to the California Air Resources Board and the U.S. Environmental Protection Agency for their approval; and

**WHEREAS**, notice to the public and to the California Air Resources Board was duly and timely given of this public hearing on the adoption of District Rule 433 in accordance with California Health & Safety Code §40725; and

**WHEREAS**, the District prepared and made available for review a written analysis of District Rule 433 under Health & Safety Code §40727.2, and

**WHEREAS**, adoption of the revisions and rules is necessary, as demonstrated by the record of this proceeding, to comply with the legal requirement imposed on the District by federal law and state law, including but not limited to the federal Clean Air Act and Health and Safety Code Section 42316; and

**WHEREAS**, District Rule 433 is consistent with and not in conflict with or contradictory to, any existing statutes, court decisions, or State or federal regulations, and

**WHEREAS**, District Rule 433 is written so that persons directly affected by it can easily understand its meaning, and

**WHEREAS**, District Rule 433 includes requirements that are duplicative of requirements contained in this Board Order ordering air pollution controls at Owens Lake, but it is necessary and proper in order to execute the powers and duties granted to, and imposed upon the District for the adoption of the 2016 SIP in order to comply with the CAAA, and

**WHEREAS**, District Rule 433 and this resolution adequately and comprehensively set forth the proper references to the legal authority that authorizes and requires the District to adopt this Rule, and

**WHEREAS**, no changes have been made in the text of Rule 433 originally made available to the public that are so substantial as to significantly affect its meaning, and

**WHEREAS**, the District has prepared a proposed 2016 Revision to the Owens Valley PM<sub>10</sub> Planning Area Demonstration of Attainment State Implementation Plan which incorporated proposed District Rule 433 (collectively, 2016 SIP) and circulated the proposed 2016 SIP Order, 2016 SIP and Rule 433 and the for public and governmental agency comment; and

**WHEREAS**, the control strategy for the 2016 SIP includes the Keeler Dunes Project which was funded by the City and implemented by GBUAPCD pursuant to a settlement agreement between those parties in 2013, and consists of straw bale and native vegetation dust control measures on 194 acres to provide the necessary control efficiency to meet the NAAQS and CAAQS for PM<sub>10</sub> in the communities of Swansea and Keeler with scheduled completion in 2016; and which settlement agreement provides a release of the City's liability to the GBUAPCD under the GBUAPCD's state law authority for the subject areas as more specifically described in the agreement;

**WHEREAS**, under the Stipulated Judgment, the City served as Lead Agency to prepare and certify the Environmental Impact Report for the Owens Lake Dust Mitigation Program – Phase 9/10 Project (May 2015) (EIR) for the dust control project required by the Board Actions; and filed a Notice of Determination for the project on June 8, 2015; and the GBUAPCD served as the Responsible Agency to assist with, and to rely upon the EIR in considering the adoption of the 2016 SIP Order, District Rule 433 and the 2016 SIP.

**WHEREAS**, in Resolution 2016-02, which is incorporated by reference herein, the Governing Board of the Great Basin Unified Air Pollution Control District (Governing Board) acted as a Responsible Agency in reviewing and considering the EIR; and

**WHEREAS**, the EIR found that except for lake bed areas containing cultural resources, all impacts were beneficial, less than significant or less than significant as mitigated, and the Governing Board of the GBUAPCD concurs with those findings. For areas containing cultural resources, the EIR concluded that impacts of the project could not be mitigated to less than significant levels, and therefore selected the alternative of avoidance of those areas as the environmentally superior alternative; and

**WHEREAS**, the Governing Board has further determined and made findings in the attached Exhibit A to explain and support its consideration, adoption and issuance of the 2016 SIP Order, District Rule 433 and 2016 SIP; and

**WHEREAS**, the Governing Board has conducted a public hearing on the adoption and issuance of the 2016 SIP Order, District Rule 433 and the 2016 SIP, and has provided for and invited the submission of statements, arguments, or contentions, both written and oral, in accordance with Health & Safety Code §40726; and

**WHEREAS**, the 2016 SIP Order, District Rule 433 and the 2016 SIP will be effective upon adoption;

**NOW, THEREFORE, BE IT RESOLVED** by the Governing Board of the Great Basin Unified Air Pollution Control District as follows:

1. Through this Resolution, the Governing Board hereby finds and determines to be true, on the basis of substantial evidence, each statement of fact, and hereby adopts on the basis of the record of this proceeding each conclusion of law, set forth in the recitals to this Resolution.
2. Through this Resolution, the Governing Board hereby approves and directs the Air Pollution Control Officer to issue to the City of Los Angeles, Great Basin Unified Air Pollution Control District Order No. 160413-01, in the form attached hereto, which adoption and issuance are effective immediately.
3. Through this Resolution, the Governing Board hereby approves, adopts and promulgates District Rule 433 (Control of Particulate Emissions at Owens Lake) which is included and incorporated in Chapter 12 of the 2016 Revision to the Owens Valley PM<sub>10</sub> Planning Area Demonstration of Attainment State Implementation Plan, in the form attached hereto, which approval and adoption are effective immediately.
4. Through this Resolution, the Governing Board hereby approves and adopts the 2016 Revision to the Owens Valley PM<sub>10</sub> Planning Area Demonstration of Attainment State Implementation Plan, in the form attached hereto, which approval and adoption are effective immediately.
5. Through this Resolution, the Governing Board hereby authorizes and commits the District to complete the Keeler Dunes Project as set forth in the 2016 Revision to the Owens Valley PM<sub>10</sub> Planning Area Demonstration of Attainment State Implementation Plan.
6. Through this Resolution, the Governing Board hereby reaffirms each of its findings and resolutions made in Resolution 2016-02, which is incorporated herein by reference.
7. Through this Resolution, the Governing Board makes all the findings set forth in the Findings of Fact which are incorporated herein by reference and included as Exhibit A to this Resolution.
8. Through this Resolution, including the exhibits incorporated herein and attached hereto, the Governing Board has satisfied its obligations pursuant to the Health and Safety Code, including but not limited to Section 43216, and the Public Resources Code Sections 21000 *et seq.*, including California Code of Regulations, Title 14, Sections 15091 and 15096, in that the Governing Board has found with respect to the significant or potentially significant effects of the 2016 SIP Order, District Rule 433 and the 2016 SIP, that changes or alterations have been required in, or incorporated into the project which mitigate or avoid many of the significant environmental effects thereof as identified in the EIR.

9. Through this Resolution, the Governing Board hereby authorizes and directs the Air Pollution Control Officer to execute on behalf of the District the Notices of Determination for the 2016 SIP Order, District Rule 433 and the 2016 SIP, and to file or record the notices reflecting those actions as provided by applicable law.

10. Through this Resolution, the Governing Board hereby authorizes and directs the Air Pollution Control Officer to execute and deliver on behalf of the District all documents and to undertake all acts as are necessary to comply with applicable law including, but not limited to, California Health & Safety Code §40724 and §40724.5, and to enforce District Rule 433 hereunder.

11. The Clerk of the Governing Board is hereby authorized to compile and publish the complete 2016 Revision to the Owens Valley PM<sub>10</sub> Planning Area Demonstration of Attainment State Implementation Plan and Incorporated Board Order, adopted on April 13, 2016 and shall certify on behalf of the District that said compilation is the authoritative version of the Owens Valley PM<sub>10</sub> Planning Area Demonstration of Attainment State Implementation Plan and Incorporated Board Order.

12. The District shall prepare and maintain a record of this rule adoption in accordance with Health & Safety Code §40728.

**APPROVED, ADOPTED and ORDERED** by the Governing Board of the Great Basin Unified Air Pollution Control District this 13<sup>th</sup> day of April 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

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(Name), Chair of the Governing Board

ATTEST:

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Tori DeHaven  
Clerk of the Governing Board

Incorporated attachments:

Exhibit A - Findings of Fact