

GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT



GOVERNING BOARD REGULAR MEETING INFORMATION

Meeting Date & Time

Thursday, January 7, 2021 at 10:00 a.m.

Meeting Location

Teleconference (see next page for instructions)

District Board

John Peters, Mono County, Chair
John Wentworth, Town of Mammoth Lakes, Vice Chair
David Griffith, Alpine County
Dan Totheroh, Inyo County
Matt Kingsley, Inyo County
Fred Stump, Mono County
Ron Hames, Alpine County

Phillip L. Kiddoo, Air Pollution Control Officer
157 Short Street, Bishop, California 93514
(760) 872-8211 E-mail: pkiddoo@gbuapcd.org

****GBUAPCD Governing Board Meeting, Thursday, 01/07/2021, 10:00 am****

Welcome to the GBUAPCD Governing Board Meeting – January 7, 2021

This meeting is being held via Zoom and all attendees are muted by default. To join via computer, click this

link: <https://us02web.zoom.us/j/86859286499?pwd=UHM1WlI2VFV3M01reDIHWG5oVzFFUT09>

Passcode: 186342

If you do not have speakers or a microphone on your computer, you can dial in for audio.

Call (669) 900-6833 and enter ID 868 5928 6499

If you would like to speak during the public comment portion of the meeting, you have the following options:

Online - raise your hand or use the Q&A panel to submit written comments.

Phone - press *9 to raise your hand.

Public engagement is important to us, and meeting remotely is a new process. We appreciate everyone's understanding as we figure this out together.

All Board meeting documents are available on our website at www.gbuapcd.org.



GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT

157 Short Street, Bishop, California 93514-3537

Tel: 760-872-8211 www.gbuapcd.org

GOVERNING BOARD REGULAR MEETING AGENDA

THURSDAY, JANUARY 7, 2021 AT 10:00 AM

Teleconference Only – No Physical Location

TELECONFERENCE INFORMATION: As authorized by Governor Newsom's Executive Order, N-29-20, dated March 17, 2020, the meeting will be held via teleconferencing with members of the Board attending from separate remote locations. This altered format is in observance of recent recommendations by local officials that certain precautions be taken, including social distancing, to address the threat of COVID-19.

Important Notice to the Public Regarding COVID-19

Based on guidance from the California Department of Public Health and the California Governor's Officer, in order to minimize the spread of the COVID-19 virus, please note the following:

1. There is no physical location of the meeting open to the public. The meeting is accessible to the public via smartphone, tablet or computer at:

<https://us02web.zoom.us/j/86859286499?pwd=UHM1WlI2VFV3M01reDIHWG5oVzFFUT09>,
Passcode: 186342

You can also dial in using your phone at (669) 900-6833 and enter ID 868 5928 6499

2. If you would like to speak during the public comment portion of the meeting, you have the following options:

Online - raise your hand or use the Q&A panel to submit written comments.

Phone - press *9 to raise your hand.

Assistance for those with disabilities: If you have a disability and need accommodation to participate in the meeting, please call Tori DeHaven, Board Clerk, at (760) 872-8211 for assistance so the necessary arrangements can be made.

Great Basin Unified Air Pollution Control District is a California regional government agency that works to protect the people and the environment of Alpine, Mono and Inyo Counties from the harmful effects of air pollution.

Regular Meetings are held on the first Thursday of every odd month at 10:00 am

1. Call to Order and Pledge of Allegiance
2. Public Comment on Matters not on the Agenda (No Action)

January 7, 2021

3. Consent Items (Action)
 - a. Approval of the November 5, 2020 Regular Governing Board Meeting Minutes1
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13. **CLOSED SESSION – CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION** [Pursuant to Government Code Section 54956.9] – Discussion with Legal Counsel Regarding Anticipated Claim Against the District
14. **CLOSED SESSION - CONFERENCE WITH REAL PROPERTY NEGOTIATORS**
Real Property Negotiations. Government Code Section 54956.8. Property: 190 Cerro Gordo Road, Keeler, CA (Parcels 031-066-08 & 031-066-14). Agency Negotiator: Air Pollution Control Officer. Negotiating Parties: Great Basin Governing Board and Owner. Under Negotiation: Price and Terms of Sale.
15. Adjournment

(All Meetings Are Electronically Recorded – All public records relating to an agenda item on this agenda are available for public inspection at the time the record is distributed to all, or a majority of all, members of the Board. Such records shall be available at the District office located at 157 Short Street, Bishop, California.)



GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT

157 Short Street, Bishop, California 93514-3537

Tel: 760-872-8211 Fax: 760-872-6109

BOARD REPORT

Mtg. Date: January 7, 2021

To: District Governing Board

From: Tori DeHaven, Clerk of the Board

Subject: Approval of the November 5, 2020, Regular Governing Board Meeting Minutes (Action)

Summary:

Attached for the Board's approval are the minutes from the November 5, 2020, regular meeting held via teleconference.

Board Action:

Staff recommends that the Board review and approve the minutes from the November 5, 2020 meeting.

Attachment:

1. November 5, 2020 minutes

GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT
GOVERNING BOARD MINUTES
November 5, 2020

(All Meetings Are Mechanically Recorded)

The Great Basin Unified Air Pollution Control District Governing Board of the Counties of Alpine, Inyo, and Mono, State of California met at 10:00 am on November 5, 2020, via teleconference *(in light of COVID-19 concerns and in response to Governor Newsom's Executive Order N-29-20 dated March 17, 2020.*

Governing Board members present:

John Wentworth, Board Vice Chair, Town of Mammoth Lakes
Fred Stump, Mono County
Dan Totheroh, Inyo County
Ron Hames, Alpine County
David Griffith, Alpine County
Matt Kingsley, Inyo County

Governing Board members absent:

None.

A quorum was present.

GBUAPCD staff present:

Phill Kiddoo, Air Pollution Control Officer
Ann Logan, Deputy Air Pollution Control Officer
Susan Cash, Administrative Projects Manager
Tori DeHaven, Clerk of the Board
Christopher Howard, Senior Research & Systems Analyst
Kimberly Mitchell, Research & Systems Analyst II

Members of the public included: (as indicated by voluntary verbal identification)

Nelson Mejia, City of Los Angeles Department of Water and Power

Agenda Item #1
Call to Order
Pledge of
Allegiance

Board Chair Peters called to order the regular meeting of the Governing Board at 10:01 a.m.

Board member Stump then led the Pledge of Allegiance.

Agenda Item #2
Recognition of
Fred Stump for
His Service on

Staff and the Board recognized and thanked Board member Stump for his eight years of service on the GBUAPCD's Governing Board. We wish Mr. Stump all the best in his future; he will be missed.

the Great Basin
Governing Board
(No Action)

Agenda Item #3
Public Comment
on Matters not on
the Agenda
(No Action)

Board Chair Peters asked for public comment on items not on the agenda at 10:28 am.

No comment was offered.

Agenda Item #4
Consent Agenda
(Action)

Motion (Kingsley/Griffith) approving consent agenda items a through e as follows:

- a. Approval of the September 3, 2020 Regular Governing Board Meeting Minutes
- b. Approval of Myers Farms Request to Split Final Promissory Note Installment Payment
- c. Authorize the Purchase of Three (3) Thermo 1405 PM10 Monitors and One (1) Thermo 1405-F PM2.5 Monitor, and Associated Equipment from Thermo Fisher Scientific, a District-approved Specific Source Vendor,
for \$135,000
- d. Amendment #1 to Each of the Non-Management and Management MOUs to Incorporate the Sick Leave Pool Policy
- e. Approve Response Letter from the Governing Board to the Eastern Sierra Audubon Society and California Audubon

Motion by Roll Call:

Ayes: Board Members – Kingsley, Wentworth, Hames, Griffith, Stump, Totheroh, Peters

Noes: 0

Abstain: 0

Absent: 0

Motion carried 7/0 and so ordered.

B/O #201105-04

Agenda Item #5
Summary of
2020 Wildfire
Smoke Impacts
(No Action)

Ms. Kimberly Mitchell, Research & Systems Analyst II, provided a presentation (*available upon request to the Clerk of the Board*) to the Board regarding the 2020 wildfire season. She noted that this season included six of this year's fires being added to the list of the top twenty largest wildfires in California's recorded history. The smoke impacts of the forty-two (as of October 13, 2020) fires currently monitored by the District saw the issuance of many health advisories. Staff has maintained its efforts to monitor and report impacts to the public using low-cost monitors and the District's webpage.

The Board expressed their appreciation for the data and the report. Some Board members expressed interest in future agenda items that may involve plans for the Board and the District to engage with other agencies regarding recovery efforts as well as future grants and other resources. However other Board members questioned the appropriateness of those future actions for the District and the Board. The Board also asked staff for past numbers specific to Keeler Dunes to have something to compare the current numbers to; Ms. Mitchell indicated she would provide that information to APCO Kiddoo to distribute to the Board.

Board Chair Peters asked for public comment at 11:09 am. No comments were offered.

Agenda Item #6
WORKSHOP:
CAPP II
Program
(No Action)

Ms. Susan Cash, Administrative Projects Manager, gave a brief report about the CAPP II as outlined in the Board Packet. She noted that today involves just discussing how the Board might want to move forward, there is no action to this item as of now.

Board member Kingsley noted that the money should be distributed within the Owens Valley Planning Area (OVPA) because the citizens within that area have been the most directly affected by the dust coming off the lake. He added that he would be in support of Option D. The other Board members agreed with this rationale as well as Option D.

Board Chair Peters asked for public comments at 11:28 am.

Mr. Nelson Mejia, City of Los Angeles Department of Water and Power, offered comments supporting the idea that the money should be focused in the OVPA.

Agenda Item #7
Draft District
Mutual
Settlement
Program Policy
(No Action)

Deputy APCO Ann Logan gave a brief report and recap as outlined in the Board Packet. At this time, staff is asking for direction and suggestions regarding this item with plans to bring back a final policy for approval.

The Board expressed concern regarding addressing other environmental impacts (aggravating and mitigating factors) outside of air quality and how those concerns can be addressed within the Settlement Program Policy.

Board Chair Peters asked for public comment at 11:47 am. No comments were offered.

Agenda Item #8
Informational
Items
(No Action)

Board member Hames requested a future agenda item for the Board to consider rescheduling the March and September 2021 regular meetings of the Governing Board to avoid a scheduling conflict with the Sierra Nevada Conservancy, to which he has been appointed to.

Staff will put it on the next agenda for consideration.

Agenda Item #9
Board Member
Reports
(No Action)

Board member Totheroh: Nothing to report.

Board member Kingsley: Nothing to report.

Board member Stump: Nothing to report.

Board member Hames: Nothing to report.

Board member Griffith: Alpine County is being awarded the first gold medal in gold medal business permitting, which has to do with streamlining the permitting process for electric vehicle charging stations.

Board Chair Peters: Nothing to report.

Board Vice Chair Wentworth: Nothing to report.

Agenda Item #10
Air Pollution
Control Officer's
Report
(No Action)

APCO Kiddoo confirmed that the briefing with DWP regarding the Owens Lake Scientific Advisory Panel's recommendations occurred a few weeks ago. Former DWP Board of Commissioners, Mel Levine attended the briefing as advisors to the current Board of Commissioners. DWP staff recommended and committed to working and acting on recommendations of the panel. District staff is currently in a holding pattern waiting for further action/movement from DWP to being work on the recommendations.

Agenda Item #11
CLOSED
SESSION

The Board convened into closed session at 11:55 am.

The Board re-convened into open session at 12:20 pm.

CLOSED SESSION – CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION:

a. Russell Covington; Robert Moore; Randy Sipes; Randal Sipes, Jr.; Laborers' International Union of North America Local Union No. 783 vs. Great Basin Unified Air Pollution Control District; Mono County Superior Court, Case No. CV140075; Pursuant to Subdivision (a) of Section 54956.9 of the California Government Code.

Report: Nothing to report.

Agenda Item #12
CLOSED
SESSION

CLOSED SESSION – CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION [Pursuant to Government Code Section 54956.9] – Discussion with Legal Counsel Regarding Anticipated Claim Against the District

Report: Nothing to report.

Agenda Item #13

CLOSED SESSION - CONFERENCE WITH REAL PROPERTY NEGOTIATORS

**CLOSED
SESSION**

Real Property Negotiations. Government Code Section 54956.8. Property: 190 Cerro Gordo Road, Keeler, CA (Parcels 031-066-08 & 031-066-14). Agency Negotiator: Air Pollution Control Officer. Negotiating Parties: Great Basin Governing Board and Owner. Under Negotiation: Price and Terms of Sale.

Report: Action was taken and reported out of closed session, by John Wentworth, Governing Board Vice-Chair, as follows:

“With John (Peters) not being here we still have a quorum of four, so thank you all we are now out of closed session. There is no actionable item to report other than item number 13. A motion was made by Board member Hames and seconded by Board member Stump appointing and authorizing Air Pollution Control District Officer to act as the agent on behalf of the Great Basin Unified Air Pollution Control District in the real property negotiation designated by the agenda.”

Motion by Roll Call:

Ayes: Board Members – Kingsley, Wentworth, Hames, Griffith, Stump, Totheroh

Noes: 0

Abstain: 0

Absent: Board Member – Peters

Motion carried 6/0 and so ordered.

B/O #201105-13

**Agenda Item
#14
CLOSED
SESSION**

CLOSED SESSION – CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION. Name of case: Great Basin Unified Air Pollution Control District v. Stephen Paul McGreevy (Inyo Sup. Ct. Case No. SICV-CH-2020-65743), Pursuant to Subdivision (a) of Section 54956.9 of the California Government Code

Report: Nothing to report.

Adjournment

The meeting was adjourned by Board Vice Chair Wentworth at 12:23 pm. The Board will reconvene in open session at 10:00 am, on Thursday, January 7, 2021, via teleconference (details to follow).

John Peters, Board Chair

Attest:

Tori DeHaven, Board Clerk



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BOARD REPORT

Mtg. Date: January 7, 2021

To: District Governing Board

From: Ann Logan, Deputy Air Pollution Control Officer

Subject: Approval of Proposed 2021 District Rule and Policy Adoption Schedule

The District is required to prepare a list of regulatory measures scheduled or tentatively scheduled for consideration during the year per California Health & Safety Code §40923. The District may propose a measure not listed if necessary, to satisfy federal requirements, to protect public health, to preserve the original intent, or to increase opportunities for alternative compliance methods. The following are regulatory measures or policies that may be considered by the Governing Board for adoption, revision, or rescission in the 2021 calendar year.

<u>Type</u>	<u>Rule</u>	<u>Title</u>
New	---	Mutual Settlement Policy
Revision	202	Transfer
Revision	205	Action and Applications
Revision	216-A	New Source Review Requirements for Determining Impact on Air Quality – Secondary Sources
Revision	300	Permit Fees
Revision	301	Permit Fee Schedule
Revision	701	Air Pollution Episode Plan

Board Action

Staff recommends the Governing Board approve the proposed list and authorize the Air Pollution Control Officer to initiate any necessary processes for the above listed rule and policy adoptions, revisions and rescissions.



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BOARD REPORT

Mtg. Date: January 7, 2021

To: District Governing Board

From: Susan Cash, Administrative Projects Manager

Subject: Approval of Update to the District's Family and Medical Leave Policy

Summary:

On January 1, 2021, new state laws came into effect regarding leave entitlements and enhancements to State Disability programs. The District's Sick Leave Pool Policy approved by the Board on November 7, 2020, will also take effect the same day. These changes required an update to our Family and Medical Leave Policy approved in March of 2019.

Changes under SB 1383:

- Expands the California Family Rights Act (CFRA) to cover smaller employers, reducing the number of employees from fifty to five. This change aligns the CFR's threshold with the threshold governing pregnancy disability leave under the California Fair Employment and Housing Act (FEHA) and eliminates the need for the New Parent Leave Act (NPLA) which is repealed effective December 31, 2020.
- Adds to the list of family members for which employees may take CFRA leave. Leave may now be used to care for grandparents, grandchildren, and siblings, and the requirement that a child be under 18 or an adult dependent for the employee to qualify for leave is now eliminated under the act.
- Adds a new covered use - qualifying exigency - allowing employees to take covered leave related to covered active duty or call to covered active duty for an employee's spouse, domestic partner, child, or parent. This change dovetails with a new Disability Insurance program (Military Assist).
- SB 1383 eliminates the CFRA's limitation on the amount of leave parents may take to bond with a new child when both parents are employed with the same employer and an employer's ability to deny reinstatement to key employees.

Changes to Disability Insurance and Paid Family Leave:

- Addition of Military Assist, which dovetails with CFRA qualifying exigency leave
- Paid Family Leave will increase from six to eight weeks for claims starting on or after January 1, 2021.

While these changes seem extensive for an agency the size of the District, the policy that your board implemented last year voluntarily committed the District to follow the rules of the CFRA and the Family Medical Leave Act (FMLA). These changes to state law allow the District to no longer follow the majority of the FMLA as the CFRA meets or exceeds the FMLA in most instances. Regardless, it is critical that the written policy reflect the District's intention to only follow CFRA and Pregnancy Disability Leave (PDL, which is unchanged for 2021), to avoid the rare occasion where an employee would be entitled to both leaves for two different circumstances.

Additional changes to the policy were made to make consistent and simplify terminology for ease of understanding, as well as to remove Frequently Asked Questions that really weren't frequently asked or that simply restated definitions in the Definitions section.

There was one change that reduced an existing benefit in the former policy – elimination of the FMLA's 26-week entitlement for Military Caregiver Leave. This circumstance would still be covered under the CFRA, but at a reduced amount of 12 weeks. It was the only entitlement under FMLA not matched or enhanced by CFRA, and it also required a different calculation for the 12-month entitlement period. Leaving it in could have caused one of those aforementioned rare occasions of additional entitlements beyond the District's intention. As this was a change to an existing benefit, the District offered to meet and confer with the Employee's Associations, and both declined. It is important to note that the APCO has the existing authority to grant an additional 30-day leave, and your board can also grant additional leave to specific employees upon request on a case-by-case basis should an employee ever need leave beyond legally required entitlements.

Fiscal Impact:

None. The only enhancement to existing benefits is in the form of Disability Insurance programs which are paid by the State of California and funded by deductions from employee pay.

Board Action:

Request the Board adopt the attached updated Family and Medical Leave Policy, effective January 1, 2021.

Attachment:

1. Family and Medical Leave Policy (January 2021)



GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT

FAMILY AND MEDICAL LEAVE POLICY



UPDATED JANUARY 2021



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SECTION 1 General Information

Introduction to Leave(s)

The purpose of this policy is to provide District employees with information concerning federal and state family and medical leave-of-absence provisions, specifically the Family and Medical Leave Act (FMLA), California Family Rights Act (CFRA), and Pregnancy Disability Leave (PDL). These statutes provide employees with reasonable job-protected and unpaid leave(s) for medical reasons and specified family care. These laws intend to afford employees the ability to balance the demands of the workplace with the needs of their families.

Incorporated within this policy is information regarding leave eligibility, entitlement, certification, benefits, rights and obligations, and general information regarding the District's administration of these leaves.

This policy is not intended to be the sole source of information due to the complexities of these leave provisions. Their inter-relationship and overlap with the District's Accrued Paid Leave Balances (APLB), along with the integration of California's State Disability Insurance (SDI) and Paid Family Leave (PFL) programs can be difficult to navigate.

As a public agency employer, the District is considered a covered employer by FMLA, CFRA, and PDL but the District's **employees are not eligible under FMLA** as the District does not employ 50 employees. District employees are eligible for CFRA and PDL. Collectively, CFRA and PDL are known as Family and Medical Leaves (FML) and provide job protected leave to eligible employees (see Table 1). Depending on the leave, employees may also be eligible for State Disability Insurance (SDI) and Paid Family Leave (PFL) benefit programs which provide wage replacement benefits but do not provide job protection (see Table 2). Employees seeking a leave should read this Family and Medical Leave Policy and are strongly encouraged to consult with the District's Human Resources Office before taking a leave. Leaves for reasons outside of those covered by CFRA or PDL are addressed in the Employee Rules and Regulations.

District Policy Regarding Medical Certificates

The District's Memorandum of Understanding requires, "any employee of the District, who shall remain absent from work on sick leave for any period in excess of seven (7) calendar days in any one period shall furnish the APCO (at employee's own expense) a certificate signed by a licensed member of the healing arts that said employee or member of his immediate family was sick" (Section 3.7.1). This is required whether or not the sick leave is qualified under any of the following LOA provisions, with the exceptions of Child Bonding Leave and Military Exigency Leave under the CFRA.

California Family Rights Act (CFRA)

The California legislature established the California Family Rights Act (CFRA) which contains family care and medical leave provisions for California employees. The act was established to ensure secure leave rights and provides eligible employees with unpaid, job-protected leave, job restoration, and continuation of health benefits in the event an employee/covered family member has a qualifying medical condition or specific family need (see Table 1). CFRA does not provide leave for disabilities or related medical conditions due solely to pregnancy or childbirth – that falls under Pregnancy Disability Leave (PDL). CFRA, as last amended by SB 1383 effective 01/01/2021, includes up to 12

weeks of unpaid protected leave for bonding within one year of a child's birth, adoption, or foster care placement (Child Bonding), as well as Military Exigency Leave for certain military situations. Where applicable, the District's APLB will run concurrently with CFRA leave and PDL. Additionally, an employee on CFRA leave may be eligible for State Disability Insurance or the Paid Family Leave benefit programs (see Table 2 and Section 6).

Pregnancy Disability Leave (PDL)

California's Pregnancy Disability Leave Act, contained within the Fair Employment and Housing Act, has a provision related to Pregnancy Disability Leave. PDL provides employees with unpaid, job-protected leave, job restoration, and continuation of health benefits when disabled due to pregnancy, childbirth, or a related medical condition (see Table 1).

The District's applicable APLB may run concurrently with PDL if the employee so chooses and an employee on PDL may also be eligible for State Disability Insurance benefits (see Table 2 and Section 6). Employees are entitled to take PDL in addition to any leave entitlement they may have under CFRA. Employees affected by pregnancy/childbirth or a related medical condition are also eligible to transfer to a less strenuous or hazardous position or duties (temporary modified work assignment/reasonable accommodation), if medically advisable.

Temporary or Short-Term Reasonable Accommodation

Under the Americans With Disabilities Act, California's Fair Employment and Housing Act, and the Pregnancy Disability Leave Act, employees may request a reasonable accommodation for temporary disabilities and/or short-term impairments of short duration (i.e., less than six months if "substantially limiting" and thus disabling) and/or conditions related to pregnancy, childbirth, or related medical conditions with the advice of their health care provider. This policy will not go into depth regarding reasonable accommodations, as they are granted on a case-by-case basis.

Note: Should you have questions regarding the District's Reasonable Accommodation or Temporary Modified Work Program(s), contact the Human Resources Office

Table 1 - Protected (unpaid) Leaves

	CFRA (California Family Rights Act– Gov. Code §12945.2)	PDL (Pregnancy Disability Leave– Gov. Code §12945)
Employee Eligibility	The employee worked for the District for at least one year and for at least 1,250 hours over the previous 12 months.	All employees with pregnancy-related disabilities
Qualifying Events	<ul style="list-style-type: none"> for the reason of the birth of or placement (legal foster or adoption) of a child with the employee to care for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner who has a serious health condition To care for “next of kin” who is a covered military member (including certain veterans) with a serious military service-related illness or injury because of the employee’s own serious health condition except for disability due to pregnancy, childbirth, or related medical conditions. for exigencies related to covered active duty or call to covered active duty of a spouse, domestic partner, child, or parent. 	Pregnancy-related disability preventing work (includes morning sickness, prenatal care, post-partum issues, and end of pregnancy matters)
Length of leave available	Up to 12 weeks in 12 months	Length of pregnancy-related disability, up to four months (17.33 weeks)
Reinstatement Rights	Guaranteed to the same or comparable position.	Guaranteed to the same or comparable position.
Employer Must Maintain Group Health Coverage	Yes	Yes

Table 2 - California Insured (unprotected) Leaves

	<u>SDI State Disability Insurance</u>	<u>PFL Paid Family Leave Program</u>	<u>PFL Paid Family Leave - Military Assist</u>
Employee Eligibility	<ul style="list-style-type: none"> • be unable to do your customary work for at least eight days • have lost wages because of your disability • have earned at least \$300 from which SDI deductions were withheld during your base period • be under the care and treatment of a licensed physician, practitioner, or religious practitioner within the first eight days of your disability 	<ul style="list-style-type: none"> • be unable to do your customary work for at least eight days • have lost wages because you were caring for a seriously ill family member (Child, spouse, parent, grandparent, grandchild, sibling, or domestic partner), or bonding with a new child • have earned at least \$300 from which SDI deductions were withheld during your base period • be under the care and treatment of a licensed physician, practitioner, or religious practitioner within the first eight days of your disability 	<ul style="list-style-type: none"> • assisting attending to issues of their family member (spouse, domestic partner, child, or parent) before and arising from their deployment; • during temporary rest and recuperation; • make arrangements for the care of their family member's child or parent; • attend official military events or support programs; • attend to other needs arising from their loved one's deployment
Qualifying Events	Employee's own serious health condition.	<ul style="list-style-type: none"> • Family member's serious health condition that requires employee's care or assistance, or • Birth or placement 	The foreign deployment of a spouse, domestic partner, child, or parent in the Armed Forces of the United States
Length available	Up to 52 weeks.	Up to 8 weeks.	Up to 8 weeks.
Reinstatement Rights	None	None	None
Employer Must Maintain Group Health Coverage	No	No	No

SECTION 2 Eligibility and Qualifying Reasons for Protected Leave

California Family Rights Act

Eligible Employees

To be an “eligible employee” for leave under the CFRA, you must:

- be employed as a full time or part-time employee with the District;
- have worked at least 12 months for the District; and,
- have worked at least 1,250 hours (work hours) during the 12 months immediately preceding the commencement of the leave.

Note: Work hours are defined by the Fair Labor Standards Act (FLSA). Employees are not required to re-qualify with 1,250 work hours for additional LOA if the LOA is for the same qualifying reason within the 12 month period or when LOA is taken for Child Bonding immediately following Pregnancy Disability Leave. (See example)

Example: If Jane qualified for PDL due to her pregnancy disability, she does not have to re-qualify with an additional 1,250 work hours to be eligible for leave under CFRA to bond with her newborn child.

Qualifying Reasons for Leave

Circumstances qualifying for leave under the CFRA are any one or more of the following reasons:

- Your own serious health condition that makes you unable to perform the functions of the job;
 - To care for your child, parent, grandparent, grandchild, sibling, spouse, or domestic partner with a serious health condition;
 - To care for your spouse, son, daughter, parent, or next of kin who is a covered military member (including certain veterans) with a serious military service-related illness or injury;
- Note: This leave is not in the CFRA but is the only FMLA entitlement that is not matched or improved in the CFRA and therefore will be included throughout this policy under the CFRA umbrella to avoid separately and specifically calling out the FMLA. The District intends to voluntarily include this qualifying reason, but only up to 12 weeks and not the 26 that is included in the FMLA.*
- Child Bonding Leave -To care for your newborn child, within one (1) year of the birth, or for the placement of a son or daughter for legal adoption or foster care with the employee, within one (1) year of placement;
 - For any qualifying exigency arising out of the fact that your spouse, son, daughter, or parent is a covered military member on covered active duty status;
 - To care for your spouse, son, daughter, parent, or next of kin who is a covered military member (including certain veterans) with a serious injury or illness (FMLA only).

Amount of Leave Entitlement

Full-time employees: An eligible employee’s leave entitlement is limited to a total of up to 12 workweeks of unpaid LOA during any 12-month period measured backward (“rolling lookback”). Under the “rolling lookback” 12-month period, each time an employee takes CFRA leave, the

remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months.

Part-time employees: An eligible employee's leave entitlement is on a proportional basis. The amount of leave entitlement is based on the number of hours worked during the 12 months preceding the commencement of the leave. The "rolling lookback" method as described above will be used to calculate the proportionate leave entitlement.

Note: If both parents work for the District, each is eligible for up to 12 workweeks of unpaid leave for the birth of a child or to care for the child within one (1) year of birth (Child Bonding), or for the placement of a son or daughter for adoption or foster care within one (1) year of placement. The Human Resources Office can calculate and determine your amount of leave entitlement. (See example)

Example: While Doris continues to be disabled and unable to work following the exhaustion of her CFRA leave (12 workweeks), she may become eligible for more leave as leave taken more than 12 months prior "falls off" the rolling lookback calculation as long as she meets the CFRA eligibility requirements.

Pregnancy Disability Leave

Eligible Employees

There are no service or hour eligibility requirements for leave under California's Pregnancy Disability Leave (PDL).

Qualifying Reasons for Leave

You must be disabled due to pregnancy, childbirth, or related medical conditions. Receipt of medical certification/documentation is required for the leave, as well as a return-to-work certification.

Amount of Leave Entitlement

An employee's leave entitlement is limited to up to a total of 4 months (17.33 weeks) of unpaid leave. For part-time employees, the number of working days that constitutes four months is calculated on a proportional basis. The proportional leave entitlement is based on the number of hours worked during the 12 months preceding the commencement of the leave.

Employees are entitled to take PDL **in addition to** any leave entitlement they may have under CFRA. Employees affected by pregnancy/childbirth or a related medical condition are also eligible to transfer to a less strenuous or hazardous position or duties (temporary modified work assignment/reasonable accommodation), if medically advisable.

Note: The Human Resources Office can calculate and determine your amount of LOA entitlement if you are a part-time employee.

SECTION 3 Leave Usage

In most cases, CFRA leave or PDL is taken for a period of consecutive days, weeks, or months.

Intermittent Leave and Reduced Work Schedule

Under some circumstances, employees may need to take CFRA leave or PDL intermittently or on a reduced work schedule. Intermittent leave is taking leave in separate periods of time for a single qualifying reason, on an as-needed basis. A reduced work schedule can be taken by reducing your daily or weekly work hours.

There must be a medical necessity for these types of leaves that can be best accommodated through intermittent leave or reduced work schedule (e.g., temporary modified work assignment) except for Child Bonding or Military Exigency Leaves.

For more information on the District's Temporary Modified Work Program, contact the Human Resources Office.

Medical Treatments/Appointments

When leave is needed for planned medical treatments/appointments, a reasonable effort should be made to schedule treatments/appointments so as not to unduly disrupt the District operations.

Child Bonding Leave

Leave taken for bonding after birth, adoption, or foster care placement of a child does not have to be taken in one continuous period of time. The basic minimum duration of leave taken under CFRA shall be two (2) weeks.

Any requests for less than two (2) weeks, intermittent leave, or a reduced work schedule for Child Bonding is subject to approval by your supervisor and the APCO.

Transfer to an Alternate Position While on Intermittent Leave/Reduced Work Schedule

You may temporarily be transferred to an alternative position (for which you are qualified) during the period of your intermittent leave or reduced work schedule to better accommodate recurring periods of leave.

SECTION 4 Returning From Leave

Temporary Modified Work Assignments

Time spent performing “modified work” in a temporary modified work assignment does not count against your CFRA leave or PDL entitlement. Additionally, you will continue to occupy your regular position while performing temporary modified work.

Note: If you are on industrial sick leave (Workers’ Compensation) and choose not to accept an available temporary modified work assignment (based on work restrictions provided by your health care provider), you may lose your Workers’ Compensation benefits. However, you may continue to remain on your CFRA leave, if eligible.

An employee may be entitled to a reasonable accommodation if his/her temporary disability and/or short-term impairment is of short duration (i.e., less than six months) and “substantially limiting” pursuant to the expanded definition of “disability” under the Americans with Disabilities Act final regulations (3/25/11). Employees who fall within this category should contact the District’s Human Resources Office for further information.

Reinstatement Following Leave

Upon return from a CFRA leave or PDL you will be restored to your regular job, or an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.

The use of a CFRA leave or PDL will not result in the loss of any employment benefit that you earned or were entitled to before using CFRA leave or PDL. However, you have no greater right to restoration or other benefits and conditions of employment than if you had been continuously employed.

SECTION 5 Required Certification

Depending on the nature of the requested leave, employees are required to submit a certification supporting the need for the leave. Generally, there are three (3) types of certifications: an initial certification, a recertification, and a return-to-work certification. Additionally, employees are responsible for providing a timely, completed, and sufficient certification within 15 calendar days of receiving a Notification of Eligibility (FML Form 2) from the Human Resources Office.

Employee's/Family Member's Serious Health Condition, Military Caregiver Leave, or PDL

You are required to provide medical certification from your health care provider for your own serious health condition or from your family member's health care provider, as appropriate. The health care provider should complete the Certification of Health Care Provider Employee/Family Member (FML Form 3a or Military Member (FML Form 3b)).

The medical certification shall include (where appropriate):

- the date on which your/family member's serious health condition commenced and duration of the medical condition;
- the estimated period of time you will be unable to perform the essential functions of your job;
- that it is medically necessary for you to provide care for your family member;
- that your medical condition is due to pregnancy/childbirth or related condition;
- that you have been hospitalized overnight or that you or your family member is under the continuing care of a health care provider;
- if intermittent leave, that a reduced work schedule or follow-up visits are medically necessary;
- the duration and frequency for absences/flare-ups or follow-up medical visits

Note: If your CFRA leave or PDL is foreseeable and you have provided a 30-day advance notice, you must provide any requested medical documentation prior to the commencement of your leave.

Certification for Military Exigency Leave

Under the CFRA Military Exigency Leave provisions, you are required to provide an initial certification. Employees requesting a Military Exigency Leave must submit the applicable Certification for Military Exigency Leave Form (FML Form 5)

Recertification

If the duration of the need for leave is unable to be determined by your health care provider or the military in the initial certification, the District may request a recertification no more often than every 30 days. When the duration of the medical condition is described as "lifetime/permanent," the District may request a recertification for an ongoing condition every twelve months in conjunction with your FML absence.

Employees with medical conditions lasting longer than one year will require a yearly certification for their leave if allowed by the enabling legislation and the condition must continue to meet eligibility requirements.

Note: As part of the FMLA recertification process, the District may provide your health care provider with a record of your absences and ask

if such absences are consistent with the serious health condition and need for FML. Additionally, your health care provider may be asked to review a Description of Employee's Essential Job Functions for your position to determine your ability to return to work and perform the essential job duties.

Authentication/Clarification of Certification

To authenticate or clarify a certification, the Human Resources Office may contact your health care provider after you have been allowed to cure any deficiencies in the certification. Under no circumstances will your direct supervisor contact your health care provider.

Authentication: Providing the health care provider with a copy of the certification submitted and requesting verification that the information contained in the certification was completed and/or authorized by the health care provider who signed the certification.

Clarification: Contacting the health care provider to further clarify the handwriting on the certification and/or the meaning of what is written, only after you have had an opportunity to cure the deficiency. In order to provide the necessary clarification, your health care provider may request that you sign a release of medical information form or the District can provide the health care provider with your signed **Consent to Release Medical Information (FML Form 4a or 4b)**.

Note: You must cooperate in the certification/recertification process. Additionally, you are responsible for providing clarification of the certification/recertification, if necessary, within a specified period of time (seven calendar days). No additional medical information may be requested in the authentication and clarification process.

Second/Third Medical Opinions

If a second or third medical opinion is required (at the District's expense) and allowed by law, you or your family member must authorize the health care provider to release relevant medical information requested by the second/third opinion health care provider. Your medical information will not be released to the District. The District may deny your request for leave if you or your family member refuses to release relevant medical information requested by the second/third opinion health care provider. You may receive a copy of the second/third medical opinion upon request.

Return to Work/Fitness for Duty Certification

If a medical provider has provided you a note removing you/limiting you at work for your own medical circumstances and the legislation enabling the leave allows, you will be required to provide a return-to-work certificate upon return to work from a CFRA leave or PDL. You will be required to provide medical certification confirming your ability to return to work to perform the essential functions of your position with or without reasonable accommodation. There will be a delay in your return to work until you provide this certification.

Certification Following Pregnancy Disability Leave

Medical documentation that certifies that you are no longer disabled due to pregnancy, childbirth, and/or related medical condition is needed to begin Child Bonding Leave as provided for under CFRA and PFL.

SECTION 6 Integration

As a District employee, you may accrue vacation, sick, flex, accrued holiday, compensated time off (CTO), and donated leave from the Sick Leave Pool. Collectively, these are known as Accrued Paid Leave Balances (APLB). You are not required to use (run concurrently/at the same time) available District APLB during your leave. However, there are advantages for employees to integrate their APLB during a leave. Employees on “paid leave status” continue to accrue vacation, sick, accrued holiday, and flex, earn District seniority, and seniority towards salary step increases and increased vacation accruals as allowed in the Memoranda of Understanding (MOUs).

IMPORTANT: Following the exhaustion of your CFRA and/or PDL entitlement, Leave without pay status may affect your group health insurance benefits.

California Insured Leave

You may also want to consider applying for State Disability Insurance (SDI) or Paid Family Leave (PFL) benefits programs which are administered through California’s Employment Development Department (EDD). These state programs are designed to provide eligible employees with partial wage replacement for a specified period of time for family and medical reasons, allowing you to use your District APLB on a pro-rated basis. SDI and PFL do not provide job protection.

Should you elect to participate in these programs, your District APLB when eligible, appropriate, and available, can be integrated with the SDI/PFL supplemental benefit if you choose.

State Disability Insurance (SDI)

Employees are encouraged, but not required, to utilize State Disability Insurance (SDI) benefits when appropriate. SDI can reduce the amount of District APLB used when an employee is out for extended medical leave.

Eligible Employees

In order to be eligible for State Disability Insurance benefits, you must:

- Be unable to do your regular or customary work for at least eight days.
- Have lost wages because of your disability.
- Have earned at least \$300 from which State Disability Insurance (SDI) deductions were withheld during your base period.
- Be under the care and treatment of a licensed physician/practitioner or accredited religious practitioner within the first eight days of your disability. The date your claim begins can be adjusted if it does not meet this requirement. You must remain under care and treatment to continue receiving benefits.
- Complete and submit your claim form no earlier than nine days after your first day of disability begins but no later than 49 days after your disability begins or you may lose benefits.
- Have your physician/practitioner complete the medical certification portion of your disability claim.

Note: An independent medical examination to determine your initial or continuing eligibility may be required by EDD. Required documentation is determined by the State of California Employment Development Department.

Qualifying Reasons for LOA

Disability is an illness or injury, either physical or mental, which prevents you from performing your regular and customary work. Disability also includes elective surgery, pregnancy, childbirth, or other related medical conditions.

Length and Amount of Benefit Payments

Benefits are payable for a maximum of 52 weeks. Your weekly benefit amount is approximately 60 to 70 percent (depending on income) of wages earned 5 to 18 months prior to your claim start date. The District coordinates with EDD and employees may use APLB to receive up to 100% of normal gross weekly wages for the benefit period as long as APLB remains.

Note: The Human Resources Office can provide information on how to file for SDI benefits. For specific information on the SDI program, contact the Human Resources Office or California's Employment Development Department at www.edd.ca.gov or 1-800-480-3287. Eligibility and requirements are determined solely by the State of California Employment Development Department.

Paid Family Leave (PFL)

Employees are encouraged, but not required, to utilize Paid Family Leave (PFL) benefits when appropriate. PFL can reduce the amount of District APLB used when an employee is out for extended leave while caring for certain family members.

Eligible Employees

In order to be eligible for PFL benefits, you must:

- Be unable to do your regular or customary work due to the need to provide care for a seriously ill family member or to bond with a new child.
- Have lost wages because you were caring for a seriously ill family member or bonding with a new child.
- Have earned at least \$300 from which SDI deductions were withheld during your base period.
- Complete and submit your claim form no earlier than the first day your family LOA begins, but no later than 41 days after your family LOA begins or you may lose benefits.
- Provide a medical certificate on your care claim for the seriously ill family member. The certificate must be completed by the care recipient's physician/practitioner.

Note: An independent medical examination to determine your initial or continuing eligibility may be required by EDD. Required documentation is determined by the State of California Employment Development Department.

Qualifying Reasons for Leave

A serious health condition means an illness, injury, impairment, or physical or mental condition of a patient that involves any period of incapacity (e.g., inability to work or perform other regular daily activities) or inpatient care in a hospital, hospice, or residential medical care facility and any subsequent treatment in connection with such inpatient care; or continuing treatment by a physician/practitioner. Unless complications arise, cosmetic treatments, the common cold, influenza, earaches, upset stomach, minor ulcers, and headaches other than migraines, are examples of conditions that do not meet the definition of a serious health condition for purposes of PFL.

Length and Amount of Benefit Payments

Benefits are payable for a maximum of 8 weeks. PFL does not need to be taken all at once and can be split over a 12-month period. Child Bonding Leave must be taken within the first twelve (12) months of the child entering the family.

Your weekly benefit amount is approximately 60 to 70 percent (depending on income) of wages earned 5 to 18 months prior to your claim start date. The District coordinates with EDD and employees may use appropriate APLB in order to receive up to 100% of normal gross weekly wages for the benefit period as long as APLB remains.

Note: The Human Resources Office can provide information on how to file for PFL benefits. For specific information on the PFL program, contact the Human Resources Office or California's Employment Development Department at www.edd.ca.gov or 1-800-480-3287. Eligibility and requirements are determined solely by the State of California Employment Development Department.

Paid Family Leave (PFL) Military Assist

Employees are encouraged, but not required, to utilize PFL Military Assist benefits when appropriate. PFL Military Assist can reduce the amount of District APLB used when an employee is out for extended leave while dealing with exigent circumstances connected to a military member's foreign deployment. PFL Military Assist will run concurrently with CFRA Military Exigency Leave.

Eligible Employees

To be eligible for PFL Military Assist benefits, you must:

- Be unable to do your regular or customary work and have lost wages due to the need to address issues arising from a family military member's foreign deployment.
- Have earned at least \$300 from which SDI deductions were withheld during your base period.
- Complete and submit your claim form no earlier than the first day your exigency leave begins, but no later than 41 days after your exigency leave begins or you may lose benefits.
- Provide a copy of the covered active-duty orders and/or other documentation issued by the military, as applicable.
-

Qualifying Reasons for Leave

For the purpose of the PFL Military Assist program, a family member is defined as a spouse, domestic partner, child, or parent. A qualifying exigency means any of the following when related to the covered active duty or call to covered active duty of the family member:

- Activities taken within 7 calendar days from the date that a family member has been notified of an impending call or order to covered active duty in the U.S. Armed Forces to address any issue that arises from the call or order.
- Attendance at an official ceremony, program, or event, or attendance at a family support or assistance program and informational briefing sponsored or promoted by the military, military service organizations, or the American Red Cross.
- Any of the following activities related to a child:
 - Arranging for or providing childcare.
 - Enrolling or transferring a child to a new school or daycare facility.
 - Attending meetings with staff at a child's school or daycare facility.
- Making or updating financial or legal arrangements to address the family member's absence.
- Acting as the family member's representative before a federal, state, or local agency for purposes

- of obtaining, arranging, or appealing military service benefits.
- Attending counseling provided by someone other than a health care provider, for oneself, for the family member in the U.S. Armed Forces, or for the family member's child.
- Accompanying a family member in the U.S. Armed Forces while that individual is on short-term, temporary, rest and recuperation leave during the period of deployment in a foreign country.
- Attending arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days after the termination of the active duty.
- Addressing issues that arise from the death of the family member in the U.S. Armed Forces while on covered active-duty status, including meeting and recovering the family member's body, making funeral arrangements, and attending funeral services.
- Any of the following activities related to the parent of the family member in the U.S. Armed Forces while the family member's parent is incapable of self-care by requiring active assistance or supervision over daily self-care in 3 or more of the activities of daily living or instrument activities of daily living:
 - Arranging for or providing care.
 - Admitting or transferring the parent to a care facility.
 - Attending meetings with staff at the parent's care facility, including, but not limited to, meetings with hospice or social service providers of the parent.
- Any other activities to address other events that arise out of the active duty of the family member in the U.S. Armed Forces, if the employer and employee agree that this qualifies as an exigency and agree to both the timing and duration of this leave.

Length and Amount of Benefit Payments

Benefits are payable for a maximum of 8 weeks total between PFL and PFL Military Assist. PFL Military Assist does not need to be taken all at once and can be split over a 12-month period. The District coordinates with EDD and employees may use appropriate APLB in order to receive up to 100% of normal gross weekly wages for the benefit period as long as APLB remains.

Note: The Human Resources Office can provide information on how to file for PFL Military Assist benefits. For specific information on the PFL Military Assist program, contact the Human Resources Office or California's Employment Development Department at www.edd.ca.gov or 1-800-480-3287. Eligibility and requirements are determined solely by the State of California Employment Development Department.

Table 3 – Possible Leave Scenarios

Weeks	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	...	50	51	52																				
Reason	Care for family member / Military Caregiver / Child Bonding / Military Exigency																																																				
Protected leave	CFRA																																																				
Partial Paid Leave	PFL																																																				
Reason	Pregnancy / Birth / Child Bonding																																																				
Protected leave	Pregnancy Disability Leave																	CFRA																																			
Partial Paid Leave	SDI																	PFL																																			
Reason	Employee's own health issue																																																				
Protected leave	CFRA																																																				
Partial Paid Leave	SDI																																																				
Gaps between partial paid leave and full pay, as well as between the end of partial paid leave and the end of protected leave may be filled with APLB if the employee so chooses.																																																					

SECTION 7 Benefits Coverage

Maintenance of Benefits While on Leave

Your group health insurance coverages (health, dental, vision, life) will be maintained while you are on protected leave under the same terms and conditions as if you had continued to work.

Ineligible/Unpaid Leave Status

If you are ineligible for a protected leave or you remain out on leave beyond your leave entitlement in an unpaid leave status (e.g., leave without pay), **you may have to make special payment arrangements to continue your group health insurance premiums out-of-pocket.**

The District will pay the premiums for up to 30 days per 12-month period for employees on unprotected/unpaid leave. The 12-month period will be calculated using the rolling look-back method.

You must contact the Human Resource Office to make arrangements to continue your health insurance premiums.

Note: Should you fail to return from leave, you may be required to reimburse the District for the share of health insurance premiums paid on your behalf during your leave. For more information regarding your health insurance coverage, contact the Human Resources Office.

SECTION 8 Employee/Employer Obligations

Employee Responsibilities

Providing Notice/Requesting Leave

You must promptly inform your supervisor and the Human Resources Office of your need for, and the duration of, such leave if known. You may do this by requesting a leave specifically and completing a *Request for Leave (FML Form 1)* or by providing sufficient information that allows the District to determine that your absence may be due to an FML qualifying reason.

Note: Employees must respond to the District's questions designed to determine whether the requested leave is for a qualified reason under /CFRA and/or PDL. The District may deny leave if it is unable to make this determination because of failure to respond to the District's questions.

Foreseeable Leave

When seeking to use leave, you are responsible for providing a 30-day advance notice of the need to take the leave to your supervisor and Human Resources when the need is foreseeable (e.g., expected birth, child bonding, planned medical treatment) and such notice is practicable. Failure to provide a 30-day notice for foreseeable leave may result in the leave being delayed until 30 days after the date you provide notice.

Unforeseeable LOA

If your leave is unforeseeable, you must provide notice to your supervisor and Human Resources as soon as practicable (same day or next business day after you know) when 30-days' notice is not foreseeable.

Absences Following a CFRA Leave

Should you have subsequent absences (due to the same reason/medical condition) following your return from a CFRA leave, you **must** specifically advise your supervisor and Human Resources and reference that the reason for your absence is due to your qualifying CFRA condition. Simply calling in "sick" without providing a reason for the needed absence will not be sufficient notice for a CFRA leave. (See following example)

Example: Jenny's time off work for 3 weeks in March was designated as a CFRA leave. In July, Jenny was absent for 2 days and 5 additional days in August. Jenny advised her supervisor and Human Resources on both occasions that her inability to work was due to the same qualifying reason (medical condition) for which her leave was previously approved. As such, these 7 days were counted against Jenny's 12-week CFRA entitlement.

Reporting Leave Time

You must always comply with the District's "call-in" and leave request guidelines. Be sure you discuss your leave and how your leave should be recorded on your timesheet with your supervisor.

Note: If applicable, employees may want to consider completing their timesheet(s) prior to the commencement of their leave.

Employer Responsibilities

Eligibility Notification and Designation of Leave

The District is required to provide notice and information about Family and Medical Leaves to its employees upon hire. Additionally, FMLA, CFRA, and PDL posters are displayed in designated areas within each work location.

Employees requesting leave are entitled to receive written notice of:

- Leave eligibility within five (5) business days of receipt of your request for leave or knowledge that your absence may be for a qualifying reason; and, if not eligible, a reason as to why you are not eligible (e.g., required work hours not met)
- The certification/documentation required to designate/approve the leave
- Your rights and responsibilities in connection with your leave

Additionally, employees are entitled to receive written notice of:

- Leave status (e.g., approval/denial) within 5 business days of receipt of the required certification/documentation; and, if not approved, a reason for the delay (e.g., certification deficiencies) or denial.

Note: A certification can be deemed incomplete or insufficient if the information is vague, ambiguous, or non-responsive. Deficiencies not cured within the specified period of time allowed may result in the denial of the leave. (See Required Certification, Section 5)

Retroactive Designation of Leave

An absence may be retroactively designated as a CFRA leave and/or PDL when the District has enough information that your leave is/was due to a qualifying CFRA and/or PDL reason/medical condition. If applicable, and with appropriate written notice to you, your absence will be retroactively designated and counted against your CFRA and/or PDL leave entitlement. (See example)

Example: While Mary is on vacation, she advises her supervisor that she has been hospitalized since the first day of her vacation. Following proper written notification (Notification of Eligibility, FML Form 2) and receipt of a complete and sufficient certification, the District may retroactively designate her leave as CFRA leave and/or PDL by issuing Mary a Designation of Leave Notice (FML Form 6).

SECTION 9 Frequently Asked Questions

1. Am I eligible to take an FMLA or CFRA Leave?

District employees are not eligible for FMLA leaves. You are eligible to take a CFRA unpaid leave if you have worked for the District for at least 12 months in the past seven years and have worked at least 1,250 hours during the 12 months prior to the commencement of the leave. Work hours are defined by the Fair Labor Standards Act (FLSA). APLB and unpaid leave (including CFRA leave and PDL), are not included.

2. Can I choose not to exhaust my own APLB before beginning or during my CFRA leave or PDL? Can I choose not to have my LOA designated CFRA leave or PDL?

You are not required to exhaust your APLB. APLB, if taken, will run concurrently with your CFRA leave and/or PDL.

You *cannot* choose to be on a CFRA leave or PDL. If the reason for your absence is due to a CFRA or PDL qualifying condition/reason, the District will properly notify you and designate your absence as a CFRA or PDL leave with receipt of an acceptable certification/document from your health care provider. Under certain circumstances, the District may designate your absence as a CFRA leave or PDL upon the knowledge that you are/have been hospitalized. Failure to cooperate with the certification process may result in a leave without job protection and/or pay status.

3. How much leave am I entitled to under the CFRA?

Eligible employees are entitled to up to 12 workweeks of CFRA leave for certain qualifying family and medical reasons during a 12-month period. It may also be used for different and separate medical conditions. However, an employee may not be granted more than 12 workweeks of CFRA leave in one 12-month period. However, employees may be eligible for up to 29.33 weeks of total leave under Pregnancy Disability Leave (17.33 weeks) and subsequent CFRA leave for Child Bonding (12 weeks).

4. How is the 12-month period calculated under CFRA?

The District uses a 12-month period measured backward ("look back") from the date you use CFRA leave (e.g., 3/30/2010 back through 4/01/2009).

5. How does a CFRA leave or PDL benefit me?

The following benefits will apply if you qualify for leave under CFRA:

- Up to 12 weeks of unpaid, job-protected LOA per 12-month period, maintenance of health care benefits, and job restoration upon return from CFRA leave. Employees on PDL can receive up to 4 months (17.33 weeks) of unpaid, job-protected leave and job restoration including maintenance of health care benefits.

Note: Employees on unpaid leave or who remain out on leave beyond their CFRA and/or PDL entitlement may have to make special payment arrangements to continue your group health insurance premiums out-of-pocket. The District will not pay medical premiums for more than 30 days per 12-month period for employees on unpaid leave. The 12-months will be calculated using the rolling look-back method. Days of unpaid leave beyond 30 in a 12-month period will require a prorated premium payment by the employee.

6. Does industrial sick leave (workers' compensation) count against my CFRA leave entitlement?

Yes. CFRA leave and industrial sick leave run concurrently, provided that the reason for your absence is due to a qualifying serious illness or injury.

7. Do I have to qualify for Pregnancy Disability Leave (PDL)?

No. If you are a District employee and disabled due to pregnancy, childbirth, or a related medical condition, you qualify for up to 4 months (17.33 weeks) of unpaid job-protected LOA, job restoration, and maintenance of health care benefits under PDL.

8. Can I use leave after the birth of my child? How is PDL applied? How and when is CFRA leave applied?

Yes. You may use PDL during the period of your disability due to pregnancy/childbirth up until the time you are released from medical care by your health care provider or you have exhausted your PDL entitlement, and then commence using CFRA Child Bonding Leave.

You can begin using CFRA leave (if available) to child bond when medical documentation is received releasing you from your pregnancy disability/childbirth (generally 6-8 weeks post-partum). Child Bonding Leave under CFRA can be taken within one (1) year of the child's birth.

CFRA Leave (if eligible) can be taken to care for your spouse or registered domestic partner who is disabled due to pregnancy/childbirth/related medical condition and for the birth of the child (Child Bonding) within one (1) year of the child's birth.

9. If my Agency fails to tell me that my leave is a qualifying family medical leave, can they count the time I have already been off against the 12 workweeks of CFRA and/or 4 months (17.33 weeks) of PDL retroactively?

Yes, in some situations. If the District was unaware that the reason for your absence was a CFRA- or PDL-qualifying reason and/or subsequently acquires information from you (such as when you request additional or extensions of absence), your absence may be designated as a CFRA leave or PDL retroactively. This can occur while you are on leave, or upon the knowledge that the reason for the absence was a CFRA- or PDL-qualifying condition/reason and with proper notification to you.

10. Are my periodic flare-ups, related medical appointments, and/or visits to a physical therapist, considered as qualifying for CFRA leave?

Yes. The CFRA permits you to take leave to receive "continuing treatment by a health care provider," which can include recurring absences for therapy treatments such as those ordered by a doctor for physical therapy after a hospital stay or for treatment of your medical condition.

11. How much notice do I have to provide before taking CFRA leave?

When the need for leave is foreseeable (e.g., based on an expected birth, placement for adoption or foster care, planned medical treatments), you must give at least 30-days' notice. If a 30-day notice is not possible, you are required to provide notice "as soon as practicable." This also applies to employees seeking leave due to a Military Exigency, regardless of how far in advance such leave is foreseeable.

12. If I am a full-time employee and can return to work four (4) hours per day (temporary modified work assignment), can the remainder of the day be considered as CFRA leave?

Yes, provided the reason for the temporary modified work assignment/shortened workday is due to your qualifying CFRA condition.

Note: An employee may be entitled to a reasonable accommodation if his/her temporary disability and/or short-term impairment is of short duration (i.e., less than six months) and "substantially limiting" pursuant to the expanded definition of "disability" under the Americans with Disabilities Act (final regulations effective March 25, 2011). Employees who fall within this category should contact the Human Resources Office.

13. What happens if the District says my medical certification is incomplete or insufficient?

You will receive written notification and be allowed a reasonable opportunity (seven calendar days unless seven days is not practicable) to correct the deficiency.

14. May the District contact my health care provider about my serious health condition?

A: Yes, under certain circumstances. Your health care provider can be contacted for authentication or clarification of the medical certification by the Human Resources Office. In no case may your direct supervisor contact your health care provider. In order to address your privacy concerns, the CFRA provides that in order for an employee's HIPAA-covered health care provider to provide an employer with individually-identifiable health information, you must first provide authorization to your health care provider (i.e. release of medical information form) allowing disclosure of such information. A completed and signed District Consent to Release Medical Information form can also be provided to your health care provider.

Additionally, the District may not ask your health care provider for additional information beyond that contained on the medical certification form. Should the District wish to obtain another medical opinion, you may be required to obtain additional medical certification at the District's expense, or recertification (as allowed) during a period of CFRA leave.

Accordingly, the District may ask you questions to confirm whether the leave needed or being taken qualifies for CFRA or PDL purposes and may require periodic reports on your status and intent to return to work.

15. Will I be paid while on a CFRA Military Exigency Leave?

The CFRA only requires employers to provide eligible employees with unpaid, job-protected leave. You are not required to use applicable District APLB, when eligible and available, during your Military Exigency Leave. However, you may apply for and be qualified for the EDD's PFL Military Assist program.

Leave without pay status may affect your group health insurance benefits (following the exhaustion of your CFRA entitlement).

16. Can I carry-over unused weeks of CFRA leave from one 12-month period to another?

No. If you do not use your entire 12-workweek leave entitlement during the 12-month period encompassing the leave, the remaining workweeks of leave are forfeited.

17. Will I lose my job if I take CFRA leave or PDL?

No. It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided under the CFRA, and/or PDL; nor can the taking of such LOA result as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions.

However, if your employment status would have been impacted had you not been on CFRA leave and/or PDL (e.g., through a reduction in force or a pending disciplinary action), your being on CFRA leave and/or PDL will not protect your job.

18. Are there other circumstances in which the District can deny me reinstatement to my job?

Employees who are unable to return to work following their CFRA leave or PDL no longer have job protection under these state leaves. However, employees may continue off work utilizing leaves as provided for under the MOU. Employees who give unequivocal notice that they do not intend to return to work lose their entitlement to CFRA leave and PDL. Additionally, failure to provide the required release from a medical provider will cause the employee's reinstatement to be delayed or denied.

Forms, Notices, and Procedures

Family and Medical Leave forms and procedures can be easily obtained from the Human Resources Office.

- Request for Leave (FML Form 1) - To be completed by an employee requesting a foreseeable CFRA leave or PDL and submitted to the Human Resources Office.
- Notice of Eligibility (FML Form 2 – HR Use Only) – Provided to employees who have
 - a) requested FML; or
 - b) when the Human Resources Office knows that an employee's absence may be related to a qualifying leave.
- Certification of Health Care Provider (Employee/Family Member) (FML Form 3a) or (Military Member) (FML Form 3b) - To be completed by the health care provider and submitted to the Human Resources Office to verify a serious health condition as defined under CFRA or for disability due to pregnancy, childbirth/related condition under PDL or Military Caregiver Leave.
- Consent to Release Medical Information (Employee) (FML Form 4a) or Family Member (FML Form 4b) – to be completed by the employee or family member and given to the Health Care Provider.
- Certification for Military Exigency Leave (FML Form 5) - To be completed by an employee requesting a Military Exigency Leave and submitted to the Human Resources Office.
- Designation of Leave (FML Form 6- HR Use Only) - Provided to employees who have
 - a) requested FML; or
 - b) when the Human Resources Office knows that an employee's absence may be related to a qualifying leave.

This notification advises employees of their eligibility, certification requirements, and rights and responsibilities under CFRA and/or PDL.

- Leave Status (FML Form 7) - Notification provided to employees to verify Return-To-Work or when circumstances of their leave change.

Resources

Human Resources Office

Always contact the Human Resources Office for information on leave benefits or other disability-related matters.

Memorandum of Understanding

Employees are strongly encouraged to review their specific Memorandum of Understanding (MOU) for important information regarding specific leave benefits.

Department of Fair Employment and Housing (DFEH)

For specific information/provisions regarding the California Family Rights Act (CFRA) or Pregnancy Disability LOA (PDL), visit the Department of Fair Employment and Housing at www.dfeh.gov.

Department of Labor (DOL)

For specific information/regulations regarding the federal Family Medical Leave Act (FMLA), visit the Department of Labor at www.dol.gov.

SECTION 10 Definitions/Key Terms

Accrued Paid Leave Balance (APLB): Any accumulated vacation, sick, flex, accrued holiday, compensated time off, and Sick Leave Pool allocation that is eligible and available. Sick leave is not allowed to be used for non-medical leaves.

Adoption: legally and permanently assuming the responsibility of raising a child as one's own. The source of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave.

Certification: documentation or medical documentation (written communication) issued by the employee's/family member's health care provider to support an employee's leave request.

California Family Rights Act (CFRA): the Moore-Brown-Roberti California Family Rights Act of 1993. (California Code of Regulations, Sections 12945.1 and 12945.2, Title 2; Division 4 – Fair Employment and Housing Commission, Subchapter 12).

Child: a biological, adopted, or foster child, a stepchild, a legal ward, a child of a domestic partner, or a child of a person standing "in loco parentis".

Covered active duty (Military Exigency Leave): for military members of a regular component of the Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country. For military members of the reserve components of the Armed Forces (members of the U.S. National Guard and Reserves), duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation.

Covered military member (Military Exigency Leave): an employee's spouse, son, daughter, or parent who is on covered active duty in the Armed Forces.

Domestic Partner: the person named on the employee's Certificate of Registered Domestic Partnership on file with the State of California.

Eligible Employee: a full or part-time employee with more than 12 months of GBUAPCD service and who has worked (within the meaning of the Fair Labor Standards Act, 29 CFR Part 785) at least 1,250 hours during the 12-month period immediately preceding the date the leave is to commence. An employee disabled by pregnancy, childbirth, or a related condition is eligible for LOA under California's Pregnancy Disability Act with no minimum service or hour requirement.

Employment in the same or comparable position – employment in a position that has the same or similar duties and pay that can be performed at the same or similar geographic location as the position held before the leave.

Family Medical Leave (FML): for the District purposes, CFRA and PDL are known as Family and Medical Leaves (FML) and provide job protected leave to eligible employees.

Family Medical Leave Act (FMLA): The Family and Medical Leave Act of 1993, as amended. (Public Law 103-3, 107 Stat. 6; Title 29, Chapter V, United States Code of Federal Regulations, Part 825).

Foster care: a 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care and involves an agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

Grandchild: child of the employee's child.

Grandparent: parent of the employee's parent.

Health Care Provider: a "health care provider" is defined as:

- A Doctor of Medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or
- Any other person determined by the Secretary to be capable of providing health care services. Others "capable of providing health care services" include only:
 - Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;
 - Nurse practitioners, nurse midwives, clinical social workers, and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;
 - Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement;
 - Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept the certification of the existence of a serious health condition to substantiate a claim for benefits; and
 - A health care provider listed above who practices in a country other than the United States, who is authorized to practice under the law of that country, and who is performing within the scope of his or her practice as defined under such law.

Note: The phrase "authorized to practice in the State" as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions.

In loco parentis: - Persons who are “in loco parentis” include those with day-to-day responsibilities to care for and financially support a child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

Note: Verification of a person standing “in loco parentis” would include documentation of any nature that demonstrates that an “in loco parentis” relationship, as defined by law, existed (e.g., between grandmother while the employee was a child.)

Next of kin (Military Caregiver Leave): the nearest blood relative other than the covered military member’s spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered military member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered military member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of Military Caregiver Leave. When no such designation is made and there are multiple family members with the same level of relationship to the covered military member, all such family members shall be considered the covered military member’s next of kin and may take leave to provide care to the covered military member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered military member’s only next of kin.

Paid Family Leave (PFL): benefit program that provides partial wage replacement but not job protection to eligible individuals to care for a seriously ill family member, to bond with a new child, or for qualifying military exigency leave.

Parent: a biological, adoptive, step- or foster father or mother, legal guardian, or any other individual who stood “in loco parentis” to the employee when the employee was a child. This term does not include parents “in law.”

Pregnancy Disability Leave (PDL): due to pregnancy, childbirth, or related condition pursuant to California’s Pregnancy Disability Act, (California Code of Regulations, Section 12926, Subdivision (f), Title 2; Division 4 – Fair Employment and Housing Commission, Subchapter 6A).

Qualifying Exigency: circumstances arising out of the fact that an employee’s spouse, son, daughter, or parent is a covered military member on covered active duty in the Armed Forces including:

- Issues arising from a covered military member’s short-notice deployment (i.e. deployment on seven or fewer days of notice) for a period of *seven* days from the date of notification;
- Military events and related activities, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross;
- Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or daycare facility, and attending certain meetings at a school or a daycare facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member;
- Making or updating financial and legal arrangements to address a covered military member’s absence;

- Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active-duty status of the covered military member;
- Taking up to five (5) days of LOA to spend time with a covered military member who is on short-term, temporary rest and recuperation LOA during deployment;
- Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's active-duty status, and addressing issues arising from the death of a covered military member;
- Any other event that the employee and employer agree is a qualifying exigency.

Reasonable Accommodation: under the federal Americans with Disabilities Act (ADA) and California's Fair Employment and Housing Act (FEHA), an employee may need an accommodation to perform the essential functions of the job. Reasonable accommodation may include but is not limited to making existing facilities readily accessible, job restructuring, modifying work schedules, re-assignment to a vacant position, acquiring or modifying equipment or devices.

Serious Health Condition: a "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either:

1. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; or
2. Continuing treatment by a health care provider. This includes:
 - (a) A period of incapacity lasting more than three (3) consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, which also includes:
 - (b) treatment two (2) or more times by or under the supervision of a health care provider (i.e. in-person visits, the first within seven (7) days and both within 30 days of the first day of incapacity); or
 - (c) one (1) treatment by a health care provider (i.e. an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (e.g., prescription medication, physical therapy); or
 - (d) Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; or
 - (e) Any period of incapacity or treatment for a chronic serious health condition that continues over an extended period of time requires periodic visits (at least twice a year) to a health care provider and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; or
 - (f) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or
 - (g) Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three (3) days if not treated.

Note: Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for CFRA leave.

Serious Injury or Illness (Military Caregiver Leave): as defined in Section 565(a)(18) of the National Defense Authorization Act of 2010, a 1) serious injury or illness that was incurred by a current member of the Armed Forces, in the line of duty on active duty or 2) a serious injury or illness that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

For a veteran, a serious (qualifying) injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

Son or daughter (military leaves): a biological, adopted, or foster child, stepchild, legal ward, or a child for whom the subject stood in loco parentis, and who is of any age.

Spouse: a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage or domestic partnership in States where it is recognized.

State Disability Insurance (SDI): benefit program that provides partial wage replacement but not job protection to eligible California workers who are unable to work due to a non-work-related illness, injury, or pregnancy.

Twelve workweeks: the equivalent of twelve (12) of an employee's normally scheduled workweeks.



GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT

157 Short Street, Bishop, California 93514-3537

Tel: 760-872-8211 Fax: 760-872-6109

BOARD REPORT

Mtg. Date: January 7, 2021

To: District Governing Board

From: Phillip L. Kiddoo, Air Pollution Control Officer
Ann Logan, Deputy Air Pollution Control Officer

Subject: Approval of District Mutual Settlement Program Policy

Summary:

California Health and Safety Code Section 42403 grants authority to local Air Quality Districts to impose civil penalties for violations and provides guidance for assuring that penalties are commensurate with the severity of the violation. This authority includes the ability to settle violations without resorting to litigation. Except under egregious cases, the District's policy is to offer the opportunity to settle enforcement actions without expensive and time-consuming litigation. California Health and Safety Code specifies different violation categories as well as criteria that shall be considered when assessing penalties (see Attachment 2). District staff prepared a draft Mutual Settlement Program Policy that the Board reviewed at the November 5, 2020 Governing Board Meeting. Staff have incorporated feedback from the Board as well as additional edits from Inyo County Counsel and the District's SB270 legal counsel in an updated policy (Attachment 1). The policy will ensure clarity and consistency in determining penalty amounts under the District Mutual Settlement Program into the future.

Fiscal Impact:

None.

Board Action:

Staff recommends the Board approve the District Mutual Settlement Program Policy.

Attachments:

1. Draft Mutual Settlement Program Policy
2. California Health and Safety Code List of Potential Violations and Associated Penalties



GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT

157 Short Street, Bishop, California 93514-3537 Tel: 760-872-8211 www.gbuapcd.org

MUTUAL SETTLEMENT PROGRAM POLICY

January 7, 2021

Background and Purpose

The Great Basin Unified Air Pollution Control District (District) is responsible for enforcing federal laws that are delegated to the state for enforcement, as well as state and local air quality laws and regulations. Under California Health and Safety Code Section 42403, the District is authorized to assess penalties for violations issued by the District. The Mutual Settlement Program allows the District and sources to settle violations and associated penalties without the time and expense of litigation. The Mutual Settlement Program also allows the District to evaluate each case individually and ensure the penalty is consistent and commensurate with the violation.

Mutual Settlement Program

For District issued Notices of Violation, District staff will review the violation(s) and determine the appropriate action from the following:

1. Mutual Settlement: Proceed with resolving the case via the Mutual Settlement Program. If appropriate, multiple violations by the same violator may be combined into a single settlement.
2. Counsel Referral: Refer the case to the District Legal Counsel, the District Attorney's Office, or the California Attorney General for prosecution and/or to assist the District in determining what further actions the District will pursue. Cases that are referred to counsel for consideration for prosecution may include serious violations such as those with clear evidence of negligence, willful disregard for public health, or repeat offenders. For instances of potential criminal violations, the case may be referred to the District Attorney, the California Attorney General's Office, or other prosecutors for criminal prosecution.
3. Rescission of the Notice of Violation: Rescind the violation if the District determines the notice was issued in error.

For cases referred for the Mutual Settlement Program, District staff will review and document the violation(s). The District staff report will generally include information regarding the regulations violated, a synopsis of relevant events and information, a detailed chronology, summary of past violations by the violator, and all applicable exhibits to the case including any violations, inspection reports, correspondence, pictures, etc. The staff report is generally confidential and exempt from production under the California Public Records Act. Nevertheless, the District retains the sole and complete discretion to disclose the penalty calculation as part of its enforcement process.

Penalty Assessment Criteria

Under California Health and Safety Code Section 42400.8, all relevant circumstances should be considered in determining the amount of penalties to be assessed, including but not limited to: the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, the frequency of past violations, the record of maintenance, the unproven or innovative nature of the control equipment, any action taken by the defendant to mitigate the violation, and the financial burden to the violator.

The District will evaluate each violation individually with consideration to all known facts and circumstances. Applying the Section 42400.8 penalty factors, the District will generally utilize the following three steps to determine an initial penalty amount. The District may also require corrective action or other injunctive relief.

- 1. Violation Category:** The District will determine the applicable California Health and Safety Code violation category or equivalent and determine any applicable minimum or maximum penalties for the violation type.
- 2. Factors:** The District will evaluate the following aggravating and mitigating factors as required by California Health and Safety Code. Each of the aggravating and mitigating factors will be weighted using a gravity level of high, medium, low, or not applicable. Staff have the sole discretion to assign a gravity level to each aggravating or mitigating factor and will document the evidence or justification for the determination for each factor in the staff report.

Aggravating Factors	Mitigating Factors
1. Extent of harm caused by the violation 2. Nature & persistence of the violation 3. Length of time the violation occurred 4. Past violations 5. Economic benefit of noncompliance	1. Degree and record of maintenance 2. Innovative control equipment 3. Action taken to mitigate the violation 4. Good faith effort to comply 5. Financial burden to the violator

Gravity Levels Definitions	
<i>High</i>	Actions with severe negative potential consequences on public health, air quality, and/or the environment.
<i>Medium</i>	Actions with moderately negative potential consequences on public health, air quality, and/or the environment.
<i>Low</i>	Actions with low negative potential consequences on public health, air quality, and/or the environment.
<i>Not Applicable</i>	Not applicable to factor.

- 3. Source Classification:** If the violator is a resident or small business the penalty amount may be reduced unless District staff determines circumstances do not merit a reduction.

Settlement Process

After review of the case and calculation of the appropriate penalty amount, District staff will generally prepare a settlement offer for internal review. The District will issue a settlement offer letter to the violator to inform them of the basic facts associated with the violation, specify the penalty amount, and propose the terms upon which the District is willing to settle the violation. The District Air Pollution Control Officer (APCO) or APCO designee must approve the terms contained in the settlement offer letter. The settlement offer letter will typically specify options the violator has to: 1) accept the settlement offer, 2) reject the settlement offer, or 3) have a settlement discussion. If no response is received from the violator within the specified timeframe, the settlement offer will be deemed rejected, and the matter may be referred to the District Legal Counsel, the District Attorney's Office, or the California Attorney General's Office for further enforcement action. The settlement offer letter will inform the violator the case will be referred for further enforcement action if they fail to respond to the offer.

The Mutual Settlement Program allows a violator to settle violations by accepting the District's settlement offer or presenting evidence or argument in favor of a reduced penalty. Reductions may be granted where the violator can demonstrate with credible evidence that the factors specified in state law and District policy apply to mitigate the penalty.

Case Closure or Referral for Prosecution

Acceptance of the settlement offer by a fully-paid penalty and agreement to any corrective action will generally result in closure of the case. Installment payments may be allowed under certain circumstances of demonstrated financial hardship if requested by the violator and approved by the APCO. The District shall issue written notification of closure after the settlement is paid in full. Cases that cannot be settled by the Mutual Settlement process will generally be referred for prosecution and further enforcement action.

Applicability

The policies and procedures set out in this document are intended solely as guidance for District personnel and regulated parties when applicable to settlement negotiations. They are not intended and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the District, the People of the State of California or any federal, state or local agency. These policies and procedures are also not intended for use and cannot be used in pleading, as evidence, at hearing or at trial. The District reserves the right to act at variance with these policies and procedures based upon the specific facts presented and to change them at any time without public notice to reflect changes and to update or modify the text.



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List of Potential Violations and Associated Penalties

California Health & Safety Code Section 42409. Every district shall publish in writing and make available to any interested party a list which describes potential violations subject to penalties under this article. The list shall also include the minimum and maximum penalties for each violation which may be assessed by a district pursuant to this article.

Any violation of a Great Basin Unified Air Pollution Control District rule or permit condition may be subject to civil penalties. This summary of civil penalties is in accordance with California Health and Safety Code (CH&SC) wherein the maximum civil liability for air violations is established. The CH&SC establishes penalties per day per violation.

The following is a summary of the maximum liabilities for various categories of violations as set forth in the CH&SC:

- \$5,000 per day is the maximum liability for air quality violations with “strict liability.” This includes violation of any provision of the CH&SC, and any rule, regulation, permit or order of the state board or the district. It does not matter if there were emissions or any intent to violate the law.
- \$10,000 per day is the maximum liability for any strict liability violation; the violator can establish that the violation was not the result of intentional or negligent conduct.
- \$10,000 per day is the maximum liability for a violation of any measure or order imposed by the District to the City of Los Angeles pursuant to CH&SC Section 42316 (SB 270).
- \$15,000 per day is the maximum liability for any person who owns or operates any source of emission contaminants in violation of HSC Section 41700 that causes actual injury.
- \$25,000 per day is the maximum liability for the negligent emission of an air contaminant in violation of state law, any rule, regulation, permit or order of the state board or the district. This covers any violation due to careless, inattentive, or inadvertent release of air pollutants.
- \$25,000 per day is the maximum liability for the operation of any source of air contamination in violation of state law, any rule, regulation, permit or order of the state board or the district which causes actual injury to a considerable number of persons or the public.

- \$35,000 per day is the maximum liability for the falsification of any document required to be kept pursuant to any rule, regulatory permit, or order of state or District boards.
- \$40,000 per day is the maximum liability for the negligent emission of an air contaminant in violation of state law, any rule, regulation, permit or order of the state board or the district when the violator knew of the emission, but failed to take corrective action.
- \$75,000 per day is the maximum liability for an intentional and willful emission of an air contaminant in violation of state law, any rule, regulation, permit or order of the state board or the district.
- \$100,000 per day is the maximum liability for any person who negligently emits an emission contaminant in violation of HSC Section 41700 that causes great bodily injury to any person or causes the death of any person.
- \$125,000 per day is the maximum liability for any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury to, or the death of, any person, emits an air contaminant in violation of HSC Section 41700 that results in an unreasonable risk of great bodily injury to, or death of, any person. If the violator is a corporation, the maximum penalty may be up to five hundred thousand dollars (\$500,000).
- \$250,000 per day is the maximum liability for any person who owns or operates any source of emission contaminants in violation of HSC Section 41700 that causes great bodily injury to any person or causes the death of any person, and knew of the emission, but failed to take corrective action in a reasonable time.
- \$250,000 per day is the maximum liability for any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury to, or the death of, any person, emits an air contaminant in violation of HSC Section 41700 that causes great bodily injury to, or death of, any person. If the violator is a corporation, the maximum penalty may be up to one million dollars (\$1,000,000).



GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT

157 Short Street, Bishop, California 93514-3537
Tel: 760-872-8211 Fax: 760-872-6109

BOARD REPORT

Mtg. Date: January 7, 2021

To: District Governing Board

From: Phillip L. Kiddoo, Air Pollution Control Officer
Ann Logan, Deputy Air Pollution Control Officer

Subject: Consideration of Governing Board Resolution to Waive District Asbestos Fees Associated with Community Wildfire Cleanup

Summary:

Great Basin Unified Air Pollution Control District is delegated to enforce the Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP). To protect public health and as set by the Asbestos NESHAP and District Rule 1002 – National Emission Standards for Hazardous Air Pollutants - Asbestos, there are notification and work practices to be followed for demolitions and renovations meeting certain criteria. District Rule 309 – Asbestos Removal And Demolition Fees sets fees for regulated asbestos removal and demolition projects to recover the District's costs for the review and management.

The Mountain View Fire, which swept through the community of Walker, California in Mono County in November 2020, destroyed 96 homes and damaged various other facilities and structures. As part of the community cleanup effort, significant demolition and renovations may occur for structures regulated under the Asbestos NESHAP. As a community assistance measure, staff recommends the Board pass Resolution 2021-01 giving the Air Pollution Control Officer authority to waive District Rule 309 fees for cleanup associated with the Mountain View Fire, as well as for future wildfires. Pending APCO approval, the waiver would only be for applicable fees and would not change the requirement to comply with District Rule 1002 and the Asbestos NESHAP, as the notification and work practice removal requirements are critical to protecting public health.

Fiscal Impact:

Adoption of the fee waiver resolution will reduce General Fund revenue. For the 2020-2021 Fiscal Year to date, the District has collected \$5,500.00 in asbestos fees. In the preceding four fiscal years, asbestos fee revenue has ranged from a low of \$2,965.00 (FY 18-19) to a high of \$9,750.00 (FY 16-17). Fees associated with District Rule 309 are shown below. District staff does not have enough information to estimate the total asbestos fees associated with the Mountain View Fire and obviously cannot project future wildfire impacts. However, as the waiver is only for wildfire cleanup, it will not impact revenue for other asbestos projects and should not have a significant impact on the budget.

Consideration of Governing Board Resolution to Waive District Asbestos Fees
Associated with Community Wildfire Cleanup (Action)
January 7, 2021 – Agenda Item No. 5 – Page 1

District Rule 309 - Asbestos Removal and Demolition Fees			
Linear Feet	Square Feet	Cubic Feet	Fees*
0-259	0-159	0-34	\$460
260-499	160-499	35-109	\$460
500-999	500-999	110-218	\$665
1,000-2,499	1,000-2,499	219-547	\$980
2,500-4,999	2,500-4,999	548-1,094	\$1,400
5,000-9,999	5,000-9,999	1,095-2,188	\$1,930
10,000 or more	10,000 or more	2,189 or more	\$2,455

*Current Fee schedule with CPI adjustment

Board Action:

Approve Resolution 2021-01 authorizing the APCO the authority to waive applicable fees under District Rule 309 – Asbestos Fees for cleanup and renovation for homes, structures, and facilities directly damaged or destroyed by the Mountain View Fire, as well as for future wildfires, within the District.

Attachments:

1. Resolution 2021-01
2. District Rule 309 – Asbestos Removal and Demolition Fees

RESOLUTION 2021-01

RESOLUTION OF THE GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT WAIVER OF DISTRICT ASBESTOS FEES FOR EMERGENCY WILDFIRE CLEANUP

WHEREAS, the Mono County Board of Supervisors proclaimed a local state of emergency on November 17, 2020, and the Governor issued a Proclamation of a State of Emergency on November 19, 2020, due the Mountain View Fire, which destroyed 96 homes and damaged various other structures, in the Walker area of Mono County; and

WHEREAS the potential for widespread toxic exposures and threats to public health and the environment exists in the aftermath of a major wildfire disaster, and

WHEREAS, Great Basin Unified Air Pollution Control District is delegated to enforce the Asbestos National Emission Standards for Hazardous Air Pollutants, and

WHEREAS, District Rule 1002 requires specific work practices for asbestos to be followed during regulated demolitions and renovations as required by the Asbestos National Emissions Standards for Hazards Air Pollutants, and

WHEREAS, District Rule 309 sets fees related to regulated asbestos removal and demolition projects to recover the District's costs for the review and management of the demolition and renovation projects;

NOW, THEREFORE BE IT RESOLVED, as a community assistance measure, the Great Basin Unified Air Pollution Control District Governing Board hereby give the Air Pollution Control Officer the authority to waive asbestos fees as required by District Rule 309 for demolitions or renovations of public or private structures and facilities that have been directly impacted by the Mountain View Fire, and

BE IT FURTHER RESOLVED, the Governing Board hereby give the Air Pollution Control Officer authority to waive asbestos fees for any future wildfire events located in the District, and

BE IT FURTHER RESOLVED, the waiver shall only apply to District Rule 309 asbestos fees associated with cleanup and renovations for homes, structures and facilities directly damaged or destroyed by wildfire as determined by the Air Pollution Control Officer, and all applicable asbestos notification and work practice removal requirements for regulated projects shall still be upheld by the District to protect public health.

DONE by the Governing Board of the Great Basin Unified Air Pollution Control District this 7th day of January 2021.

AYES:

NOES:

ABSENT:

ABSTAIN:

Tori DeHaven, the Clerk of the Governing Board of the Great Basin Unified Air Pollution Control District, hereby certifies that the above foregoing resolution was duly and regularly adopted by said District at a regular meeting thereof held on the 7th day of January 2021 and passed by a _____ vote of said board.

IN WITNESS WHEREOF I have here unto set my hand and seal this January 7, 2021.

Tori DeHaven, Clerk of the Governing Board

RULE 309. ASBESTOS REMOVAL AND DEMOLITION FEES

Adopted & Effective: 01/16/09

A. PURPOSE

The purpose of this rule is to recover the District's costs for the review and management of asbestos removal and demolition projects as required by the National Emissions Standards for Hazardous Air Pollutants, which were adopted by reference as District Rule 1002.

B. APPLICABILITY

The National Emission Standards for Hazardous Air Pollutants and these fees are applicable to:

1. All demolitions whether or not asbestos is present; and
2. Renovations in which 260 linear feet, 160 square feet, or 35 cubic feet or more of regulated asbestos containing materials are disturbed.

C. EXEMPTIONS

Asbestos-related renovation or demolition fees will not be charged for the renovation or demolition of residences comprised of four or fewer dwelling units, unless such renovation or demolition is subject to the current National Emission Standards for Hazardous Air Pollutants established by the federal government.

D. FEES

Any person filing a notification for an asbestos removal or demolition project that is subject to the requirements of the National Emission Standards for Hazardous Air Pollutants (Rule 1002) shall pay the applicable fee at the time the notification is submitted to the Air Pollution Control Officer. The total fee for any project shall be the sum of the applicable fee components below, but in no case shall the fee exceed the maximum fee listed in the following fee schedule.

ASBESTOS PLAN FEE SCHEDULE—RENOVATION AND DEMOLITION PROJECTS

Units of Regulated Asbestos Containing Material to be Removed/Disturbed			
Linear Feet	Square Feet	Cubic Feet	Fee**
0-259*	0-159*	0-34*	\$435*
260-499	160-499	35-109	Fee schedule changes yearly with the CPI. Contact us for current fee schedule at 760.872.8211
500-999	500-999	110-218	
1,000-2,499	1,000-2,499	219-547	
2,500-4,999	2,500-4,999	548-1,094	
5,000-9,999	5,000-9,999	1,095-2,188	
10,000 or more	10,000 or more	2,189 or more	\$2,335

* This category applies to demolition projects only, whether or not asbestos is present.

** If materials are in more than one category, the higher fee will apply.

E. FEE ADJUSTMENTS

Beginning on July 1, 2010, all asbestos notification fees shall be adjusted annually in accordance with California Health and Safety Code Section 42311 to account for changes in the annual California Consumer Price Index. The actual fees charged shall be rounded to the nearest five dollar (\$5) increment.

F. LATE FEES

If payments of any charges levied under this rule are not received by the APCO within 30 days of the date the Air Pollution Control Officer is required to be notified of the asbestos removal or demolition project, the charges shall be increased by one half the amount.



GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT

157 Short Street, Bishop, California 93514-3537

Tel: 760-872-8211 Fax: 760-872-6109

BOARD REPORT

Mtg. Date: January 7, 20201

To: District Governing Board

From: Phillip L. Kiddoo, Air Pollution Control Officer
Susan Cash, Administrative Projects Manager

Subject: Consideration and Approval of Clean Air Projects Program (CAPP) II
Distributions, Guidelines, and Criteria (Action)

Summary:

The Governing Board and staff held a workshop at the November 5th Governing Board meeting, to discuss the Clean Air Projects Program (CAPP) II. Instruction was given to staff by the board to return at the January 20201 meeting with program distributions, guidelines, and criteria for approval for CAPP II in the amount of \$3,000,000.

1. \$1,4000,000 Competitive Grant Program for projects that reduce air pollution in the Owens Valley Planning Area, to be administered by Inyo County.

Staff has been working with Inyo County regarding this portion of CAPP II. The scope of work and contract between the District and Inyo County is currently being drafted with a goal to have the contract available for Board approval consideration at our March meeting.

2. \$100,000 Woodstove Replacement Program to be administered by the District to clear the already-existing waiting list from the 2019 California Air Resources Board program.

The guidelines for the program are attached. There are no substantive changes from the 2019 CARB program.

3. Block grants to each of the four agencies with membership on the District Board for projects that reduce air pollution.
 - \$820,063 Inyo County
 - \$263,892 Mono County
 - \$51,956 Alpine County
 - \$364,089 Town of Mammoth Lakes

The guidelines for the block grants are attached. The guidelines are substantially the same as the CAPP I Block Grant Guidelines. Agencies will need APCO approval for projects to be paid with Block Grant funds. It is expected that all funds will be utilized by June 30, 2022, although the APCO can use his discretion to extend that deadline.

Fiscal Impact:

The project is fully funded by the CAPP Trust Fund.

Board Action:

Request the board approve the CAPP II Distributions, Guidelines, and Criteria, and authorize the APCO to sign all documents pertaining to CAPP II.

Attachments:

1. Woodstove Replacement Program Guidelines
2. Block Grant Guidelines

Woodsmoke Reduction Program

Program Guidelines

Clean Air Projects Program

January 2021

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EXECUTIVE SUMMARY

The Woodsmoke Reduction Program is part of the Great Basin Air Pollution Control District's Clean Air Projects Program funded by the 2018 Order to Pay issued by the District to the Department of Los Angeles Water and Power for non-compliance in the Phase 7a and Phase 7a Transition Area best Available Control measure Manages Vegetation. Funds from the Order to Pay have been directed by the District's Governing Board to exhaust an already-existing waiting list of woodstove replacements that was created in the last California Climate Investment program from the State of California.

The Program is designed to help households replace an uncertified wood stove, wood insert, or fireplace used as a primary source of heat with a cleaner burning and more efficient device. The replacement devices emit less greenhouse gases (GHG) and other air pollutants; they also are less likely to start fires than old stoves that may have been improperly installed. The Program will offer incentives towards the purchase and installation of the qualifying device. District residents using uncertified wood stoves or wood inserts, manufactured before July 1, 1988, or fireplaces as a primary heat source are eligible for this Program. The incentive amount will vary depending on the location of the residence and the household income, with some households qualifying for full replacement cost. The Program will include an educational component to ensure that households make informed decisions about how to burn and what to burn in order to maximize the efficiency of the device and minimize pollution. This Program will reduce GHG emissions, improve air quality, and protect the health, safety, and well-being of District residents.

I. STOVE ELIGIBILITY AND PERFORMANCE STANDARDS

A. Existing Wood Stove

To be eligible for the Program, Applicant must be currently relying on a stove or insert that is uncertified, operational, and used as a primary source of heat in the residence. An uncertified stove or insert is one that has not been certified by the U.S. EPA to comply with the performance and emission standards as defined in Title 40 Code of Federal Regulations, Part 60, Subpart AAA, February 28, 1988, or any subsequent revisions. In order to determine if the existing stove is uncertified, Applicant may do the following:

- Determine when the stove was installed. Stoves installed before July 1, 1988 do not comply with the particulate emission standards and therefore qualify for this Program.

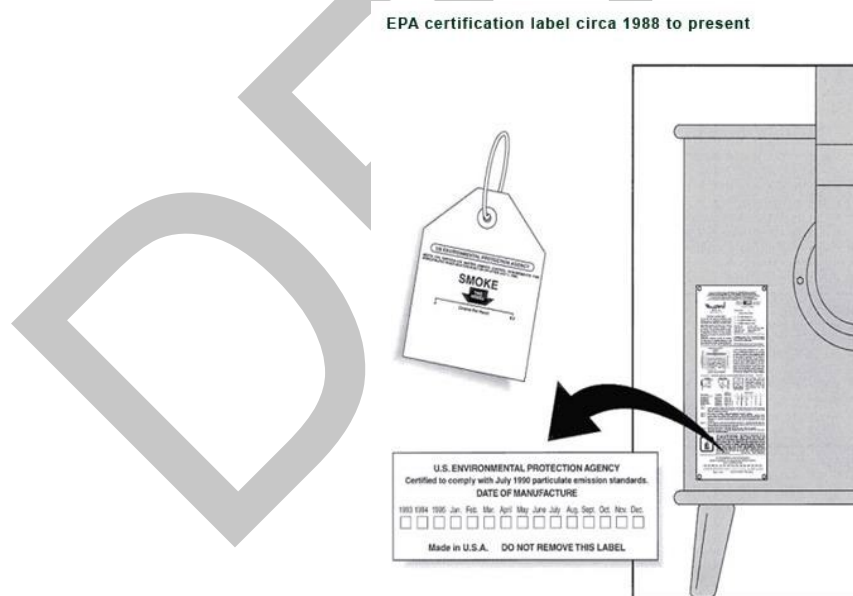
- Check the stove model against the U.S. EPA current¹ and historical² list of certified wood heaters. If the stove's manufacturer and model is not on the current and historical lists, the stove is considered uncertified.
- Check the back of the stove for a certification label. Stoves which do not have any label describing particulate matter emission standards qualify for this Program. Wood stoves certified by the U.S. EPA to comply with any of the particulate emission standards are not eligible for replacement through this Program. These stoves will have a label, similar to that pictured in Figure 1, permanently affixed to them stating that the stove is certified to comply with the 1988, 1990, 2015, or 2020 U.S. EPA standards.

Applicants will determine the eligibility of their current wood stove. Applications will be reviewed by the District to determine if preliminary qualification requirements have been met. The stove's eligibility will be verified by the Installer during an in-home estimate.

To qualify for this Program, Applicants must document using a fireplace as a primary source of heat. Section III, Eligible Home Heating Replacements, includes more information on how to qualify for this type of change-out.

Only operational devices, currently installed in a residence, and used as a primary source of heat qualify for this Program. Applicants who remove the device prior to an in-home estimate will be disqualified.

Figure 1. U.S. EPA Stove Certification Label



¹ Current list of U.S. EPA certified wood heaters: <https://www.epa.gov/compliance/list-epa-certified-wood-stoves>

² Historical list of U.S. EPA certified wood heaters: <https://www.epa.gov/compliance/historical-list-epa-certified-wood-heaters>

B. Replacement Device

The uncertified wood stove or fireplace must be replaced by a cleaner-burning and more efficient alternative. Table 1 lists Program-eligible replacement devices. Only wood heating devices with particulate matter emission rates not exceeding 2.0 grams/hours, that are certified to U.S. EPA “Step 2” NSPS, will be eligible for the Program.³ The non-wood burning devices listed in Table 1 are eligible for the duration of the Program.

Table 1. Replacement devices eligible for the Program

Wood stove, wood insert, pellet stove, or pellet insert with particulate matter emission rates not exceeding 2.0 g/hr, that are certified to U.S. EPA “Step 2” NSPS
Natural gas stove or insert
Propane stove or insert
Electric stove or insert
Ductless mini-split heat pump

The replacement device must be permanently installed by a professional, appropriately licensed Installer participating in this Program. A list of participating Installers will be established by the District. Self-installation of heating devices will not be allowed under this Program. Portable home heating devices, not permanently affixed to the home structure, are not eligible replacement options. Any building permits or other required approvals shall be obtained per local or State ordinances and shall be the responsibility of the Installer or the Applicant. The District will be responsible for verifying that each change-out is permitted and inspected in accordance with State or local ordinances before payment is issued to the Installer.

II. ELIGIBLE CHANGE-OUTS

Applicants interested in upgrading their uncertified wood stove or wood insert to a U.S. EPA certified wood stove or other cleaner, more efficient heating device qualify for this Program if they meet all of the requirements listed below:

- Currently use wood as a primary fuel;
- Use an uncertified wood stove, currently operational, as a primary source of heat;
- Select a replacement device which meets stove eligibility in Section II;
- Plan to have the replacement device professionally installed by a participating Installer;

³ The list of Step 2 compliant heaters can be found at <https://www.epa.gov/compliance/list-epa-certified-wood-stoves>. U.S. EPA has requested comment on postponing the compliance deadline for retail of non-Step 2-compliant heaters and pellet stoves and inserts (83 Fed. Reg. 61,574 (Nov. 30, 2018)). Regardless of any postponement of the compliance deadline, the Woodsmoke Reduction Program will only offer incentives toward change-outs with Step 2-compliant devices after May 15, 2020.

- Agree to receive training on proper wood storage and wood burning practices (if applicable) and device operation and maintenance; and
- Surrender their old wood stove or insert to the Installer who will render it permanently inoperable and recycle it, if recycling is available in the area.

This Program provides incentives for one replacement per household. Households that previously received replacement incentives from the District are not eligible. The replacement device must be a primary source of heat in the house. The Program is available for residences occupied by owners or long-term renters. In the case of rental properties, formal approval from both the property owner and the renter will be required as part of the approval process. In order to qualify for an incentive, the owner will have to agree to not raise the rent of the unit for a period of two years or evict the unit's residents because of increased value of the unit due solely to the newly installed home heating device. Retroactive rebates are not available under this program, so Applicants who remove the old device or purchase a new replacement device prior to being approved for this Program will be disqualified. The old, uncertified device must be rendered permanently inoperable and recycled, if recycling is available in the area, before payment can be issued to the Installer.

Burning wood in a fireplace is very inefficient for home heating purposes; fireplaces are therefore not typically used as a primary source of heat. In rare situations, when an Applicant uses a fireplace as a primary source of heat, the Applicant may qualify for the Program. If the existing fireplace is structurally sound, the Program may offer an incentive to be used towards purchase and installation of a fireplace insert utilizing wood, natural gas, propane, or electricity. However, if the fireplace is lacking structural integrity, the incentive could be used towards the purchase of an eligible free-standing home heating device. In this case, the fireplace and chimney must be rendered permanently inoperable to prevent use of the fireplace. Verification of inoperability would be the responsibility of the Installer.

Installers interested in participating in this Program must agree to the Program's terms and conditions by signing an agreement with the District. In order to participate in the Program, the Installer will be required to agree to the following:

- Abide by the terms and conditions of the Program;
- Verify that the old device and the replacement device qualify for the Program;
- Conduct professional installation of the qualified device in compliance with all applicable State, county, or city codes/ordinances;
- Provide residents with training on device operation and maintenance and, if applicable, for wood burning devices, best practices in wood storage and wood burning; and
- Render the old device inoperable and recycle it, if recycling is available in the area.

Only Installers who have a signed agreement with the District will be eligible to participate in the Program. Installers will be responsible for ensuring that all

installations are done in accordance with any applicable State, county, or city codes/ordinances, including obtaining any applicable permits and having the installation inspected.

III. ELIGIBLE COST

Eligible change-outs costs include the cost of the new device including sales tax, installation including any parts, materials, permits, or labor required for the safe and legal installation of the new device, and removal and disposal of the old wood stove or insert. The Installer will be required to provide a base estimate for the installation of a basic model that will be safe, clean-burning, and efficient. Upgrades above the base estimate will be paid by the Applicant. The District will pay the Installer the approved incentive amount once the requirements have been met. Any additional balance due will be paid by the Applicant.

Applicants who remove the high-polluting device or purchase a new device prior to being approved for this Program will be disqualified from obtaining compensatory funds. Wood stoves or inserts designed exclusively for aesthetic and decorative use are not eligible for this Program.

All eligible costs must be supported by appropriate documentation. Any cost that is not directly related to the change-out, including cost of remodeling work beyond what is required to complete the change-out, is not eligible for an incentive.

IV. ELIGIBILITY

Households using uncertified wood stoves, wood inserts, or fireplaces as a primary heat source are eligible for an incentive towards replacing their old heating device with a cleaner option. The general structure of incentives must adhere to the following rules:

- Low-income households and households located in disadvantaged or low-income communities will be eligible to replace their heating device for little or no cost. They will qualify for a higher incentive (Enhanced Incentive). The maximum allowable Enhanced Incentive level is \$4,000;
- All other households, regardless of their income, will qualify for a smaller incentive (Standard Incentive) to be applied towards the purchase and installation of the new device. The maximum allowable Standard Incentive level, not to exceed \$2,000.

Every Applicant using an uncertified wood stove or fireplace as a primary source of heat for their home qualifies for a Standard Incentive without any need for income verification. To qualify for the higher Enhanced Incentive, the Applicant must reside in a disadvantaged or a low-income community or demonstrate a household income not exceeding a low-income threshold specified below. Income verification will not be required for Applicants residing in disadvantaged or low-income communities.

Applicants residing outside of disadvantaged and low-income communities wishing to be considered for Enhanced Incentives are required to demonstrate that their household income does not exceed one of the following thresholds:

- 1) 80 percent of the Statewide Median Household Income (MHI);⁴ or
- 2) County-specific California Department of Housing and Community Development (HCD) low-income limits.⁵

The District will be responsible for verifying household income eligibility. The District can qualify an Applicant based on the higher allowable maximum income (80 percent MHI or HCD low-income limits).

For purposes of the Woodsmoke Reduction Program, there are multiple methods to demonstrate household income eligibility. Applicants may demonstrate eligibility by presenting tax returns for each person living in the residence to District personnel for verification and, if qualifying using the HCD low-income limits, reporting the number of people in the household.

Eligibility may also be established through proof of participation in an existing federal or State low-income assistance program, several examples of which are listed below. In cases where an Applicant chooses to demonstrate eligibility through participation in an alternate low-income program, Districts will work with the alternate program's staff to verify that the alternate program's income limits do not exceed Enhanced Incentive income limits for their area.

- U.S. Department of Agriculture Women, Infants and Children (WIC) Program;
- U.S. Department of Health and Human Services Low Income Energy Assistance Program (LIHEAP);
- California Alternate Rates for Energy (CARE) Program with a participating California utility company.

V. APPROVAL PROCESS

In order to participate in the Program, Applicants will be required to complete an application. Applicants must agree to provide information to the District and allow the District and/or Installer to verify that information. Applicants must agree to receive training on proper wood storage and wood burning practices (if applicable) and device operation and maintenance. The District or Installer will be responsible for verifying the following:

⁴ U.S. Census Bureau, American Community Survey , 5-year Estimates available at: <https://www.census.gov/quickfacts/table/PST045215/06>

⁵ California Department of Housing and Community Development Official State Income Limits available at: <http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml>.

- Eligibility of the existing device - ensuring that the existing wood stove, wood insert, or fireplace is uncertified, operational, and used as a primary heat source in the house;
- Eligibility of the replacement stove – ensuring that the replacement device is eligible for the Program as described in Section II; and
- If applying for the Enhanced Incentive, eligibility as a resident of a disadvantaged or low-income community or a low-income household.

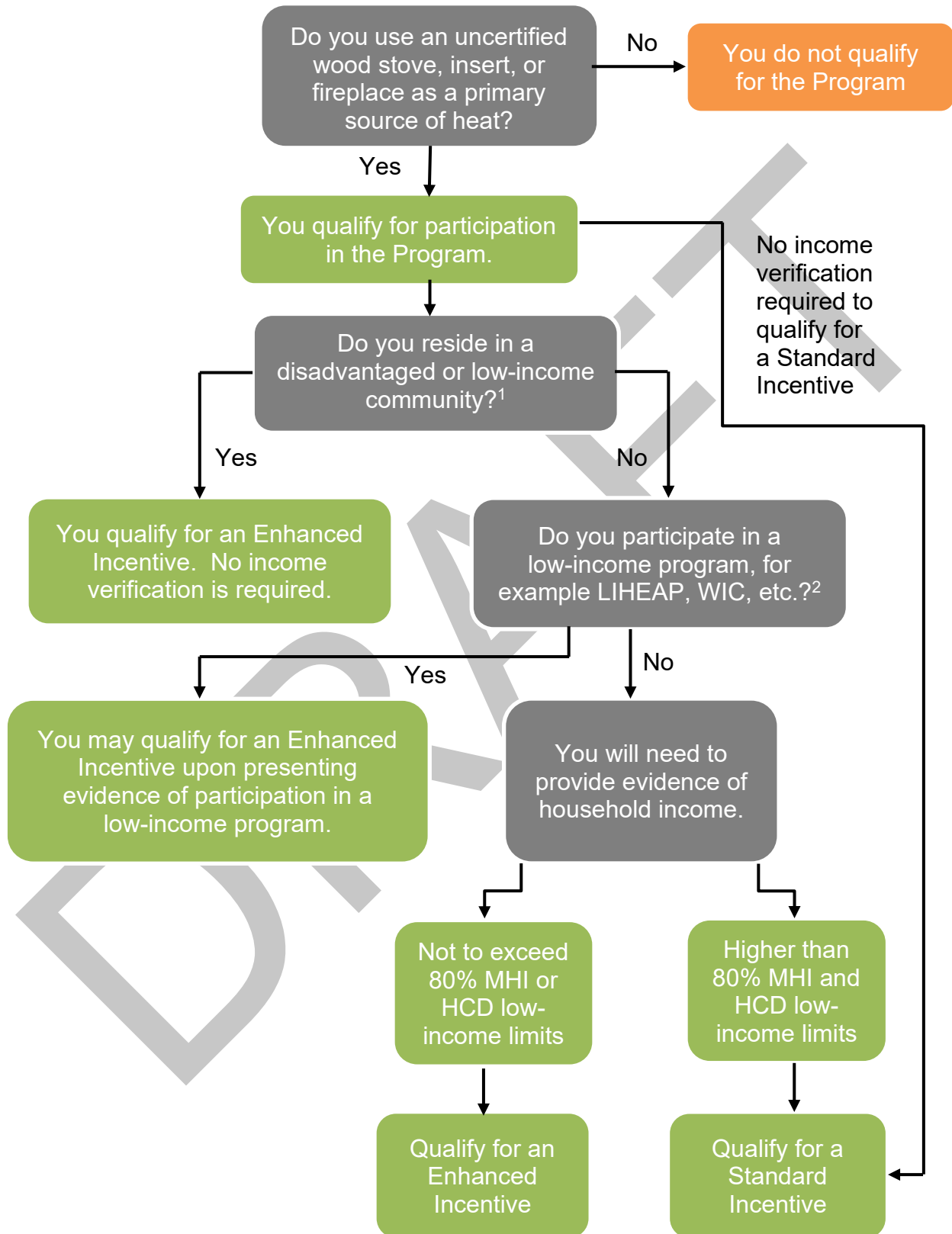
The application will be reviewed to determine if the preliminary qualification requirements have been met. Figure 2 (next page) illustrates the approval process and helps determine Program eligibility. The District will notify the Applicant whether the application was approved for participation in the Program. Districts must inform Applicants that applications will be treated in accordance with Public Records Act requirements and that certain information, subject to those requirements, may be publicly disclosed.

Once approved, the Applicant will schedule an in-home estimate with a participating Installer. The Installer will verify the stove's eligibility and present an estimate to the Applicant. Applicants are issued vouchers by the District that provide an instant discount of the cost of purchase, installation, and disposal of a qualifying device. Installers must assert that the old device was eligible, deemed permanently inoperable, and recycled if recycling is available in the area, before the District will issue payment for the change-out.

VI. EDUCATION

The Program requires an educational component to ensure that the new home heating devices, particularly wood stoves, are properly operated and maintained to maximize energy efficiency and achieve the lowest possible emission rates. With proper burning techniques and properly seasoned wood, the amount of wood used could be significantly reduced. While a new wood stove typically pollutes less than an old one, user operation is important for achieving estimated reductions. The District requires verification that the Installers have trained homeowners following the installation.

Figure 2. Approval Process





GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT

157 Short Street, Bishop, California 93514-3537

Tel: 760-872-8211 www.gbuapcd.org

CAPP II Block Grant Guidelines

January 2021

At its January 7, 2021 meeting, the Governing Board of the Great Basin Unified Air Pollution Control District (District) approved CAPP II block grants for payment to the four agencies represented on the Board. The following amounts are now available to each agency:

Inyo County: **\$820,063.**

Mono County: **\$263,892.**

Alpine County: **\$51,956.**

Town of Mammoth Lakes: **\$364,089.**

To be eligible for payment, a qualified agency representative must agree and adhere to the following guidelines:

- CAPP Block Grant funds are payable one time only and must be spent by June 30, 2022.
- CAPP Block Grant funds must be spent on projects that will or could result in real and local air quality improvement.
- CAPP Block Grant funds may be used to comply with existing air quality regulations and requirements.
- CAPP Block Grant funds may not be used to backfill previous expenditures, including any owed reimbursements.
- Prior to disbursing any CAPP Block Grant funds to a participating agency, the agency must provide CAPP administration with a brief project description, including estimated costs.
- Following the District Air Pollution Control Officer's (APCO) approval of project description, project funds will be paid to the agency for immediate use as approved.
- If the total balance of an agency's awarded amount is not committed, payments may be made incrementally with remaining amounts payable upon request and approval.

CAPP II Block Grant Guidelines - continued

- All project expenditures financed by CAPP II Block Grants must be tracked by the participating agency for general reporting purposes. Brief project summaries must be provided to the District's CAPP Administrator bi-annually and following the conclusion of the project's full implementation. Reports are due by July 31 for the period January-June, and January 31 for the period July-December.
- The District reserves the right to contact relevant agency staff for more frequent, informal updates and reporting if necessary.
- Participating agencies agree to provide the CAPP Administrator with all program cost and expense information as requested by the District.
- Any unspent CAPP II Block Grant funds remaining after June 30, 2022 shall be returned to the District to fund air pollution reduction projects unless the APCO extends the deadline in writing.

Please complete, sign and date below and provide original to CAPP Administrator.

Participating District Agency:

Agency Representative's Name:

Agency Representative's Title:

Agency Representative's Signature:

Date:

Return to: Susan Cash, CAPP Administrator
157 Short Street
Bishop, CA 93514
scash@gbuapcd.org



GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT

157 Short Street, Bishop, California 93514-3537

Tel: 760-872-8211 Fax: 760-872-6109

BOARD REPORT

Mtg. Date: January 7, 2021

To: District Governing Board

From: Susan Cash, Administrative Projects Manager

Subject: Appropriation for CAPP II Funding in the Amount of \$1,600,000

Summary:

Funding for CAPP II was not included in the District Budget for Fiscal Year 2020-2021. The District cannot utilize these funds without the explicit approval of the Governing Board.

Fiscal Impact:

This is an appropriation of and approval to spend trust funds for the specific purpose of the trust. There is no new fiscal impact.

Board Action:

Staff recommends the Board approve:

1. Appropriation from the \$1,600,000 CAPP II Trust for Fiscal Year 2020-2021
2. Approve expenditure of up to \$1,500,000 for Block Grants, and
3. Approve expenditure of up to \$100,000 for Woodstove Replacements



GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT

157 Short Street, Bishop, California 93514-3537

Tel: 760-872-8211 Fax: 760-872-6109

BOARD REPORT

Mtg. Date: January 7, 2021

To: District Governing Board

From: Tori DeHaven, Clerk of the Board

Subject: Consider Appointing One Person to the Great Basin Unified APCD's Hearing Board

Summary:

The District has three arms with different functions: the Governing Board, the Hearing Board and the Air Pollution Control Officer (APCO). The Hearing Board is a quasi-judicial body that hears appeals from decisions of the APCO and grants temporary variances from District Rules and Regulations. The District's five-member Hearing Board is appointed by the Governing Board as provided by California Health & Safety Code Section 40800. Hearing Board members serve three-year terms and consists of members from all three District counties. With the resignation of Mr. Michael Ahles from the Hearing Board, there is one opening specifically for Inyo County. Staff advertised in the Daily Independent and the Inyo Register, in November. We received one response from Xiang Mei Zhang, a resident of Keeler, on November 30, 2020. The four current members of the Hearing Board are: Mr. Peter Pumphrey (Mono County), Ms. Betty Hylton (Mono County), Mr. John Dukes (Inyo County) and Mr. Tom Sweeney (Alpine County).

Fiscal Impact:

Board members are paid a stipend of \$100 per meeting attended as well as mileage.

Board Action:

Staff recommends the Board consider and appoint one interested person to the vacant position for the District's five-member Hearing Board.

Attachment:

1. Letter of Interest from Xiang Mei Zhang

Consider Appointing One Person to the Great Basin Unified APCD's Hearing Board (Action)

January 7, 2021 – Agenda Item No. 8 – Page 1

Nov 23, 2020

Dear Tori, Phil, Anne and Grace:

You four, I have had the pleasure of talking with over last few years. Thank you for answering my questions and concerns regarding different issues that was on my/our minds, in Keeler area. I admire the energy and commitment you all put in personally as well as professionally.

This intend to be my letter of interest, for the hearing ①

board position you advertized
on Inyo Register Classifieds (Nov 17,
2020).

I moved to this valley in 2009
for good, after visitj it often
since 2003. I knew the mountain
was callj me home.

Back a little bit, I was born
and raised in Xian, China, got
My BA in China, MA in CSUSB
here in San Bernardino, CA. My
workj history mainly involved
workj for/with children/people.

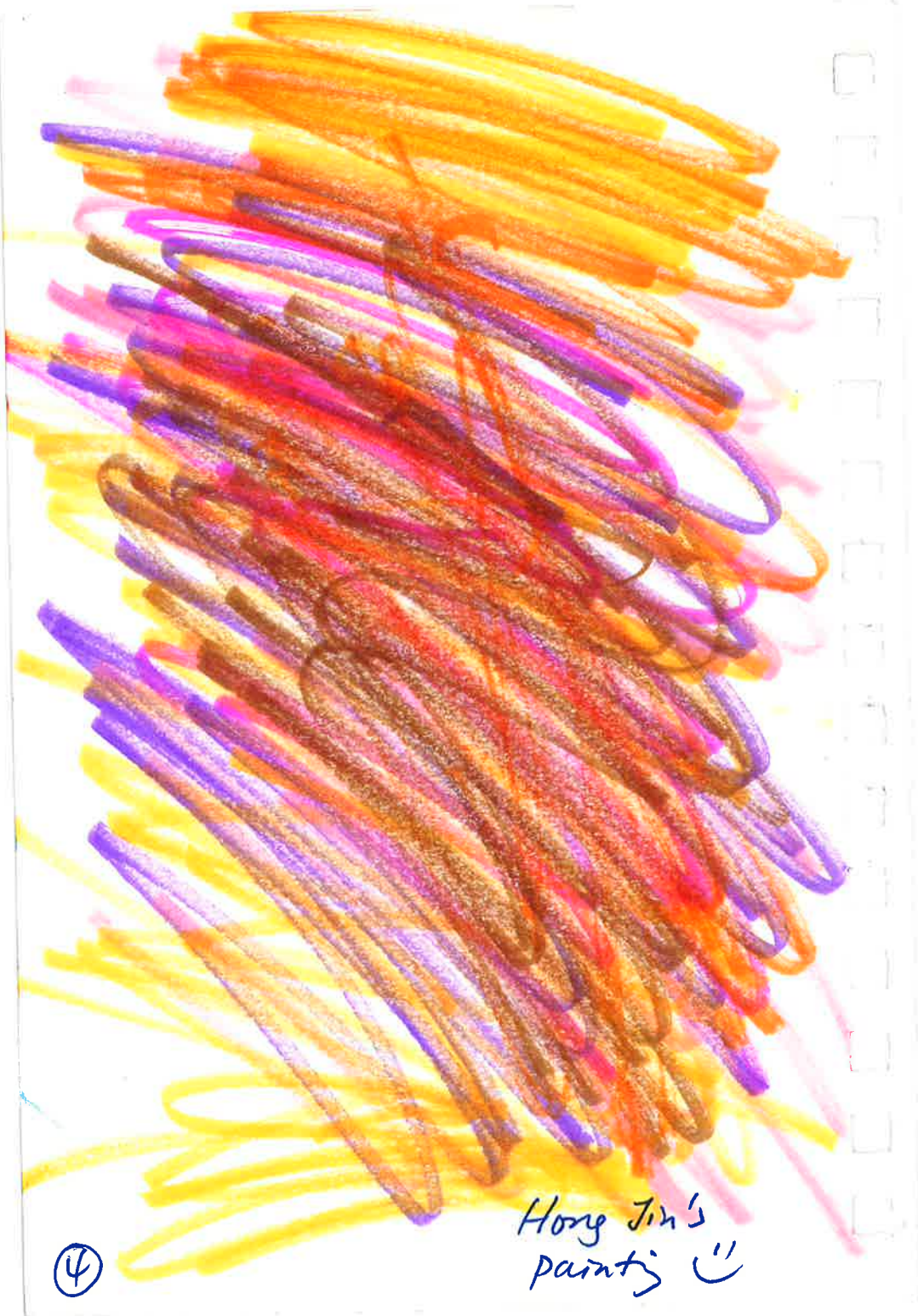
Last one here was workj for
the juvenile hall, in Independence
for the Inyo county probation Dept.
②

I enjoy working with people. I especially enjoy most of the people here, in this valley that tried to do the most for this valley, as well as for this community.

I love the history of this valley, I fancy that I might develop some ounce of "pioneer spirit," or at least can make a decent pie crust !!

This year has been a teacher to me, from it, I learned that we really couldn't take anything for granted any more —
The fresh air, clear water,
a sense of well-being —

(3)

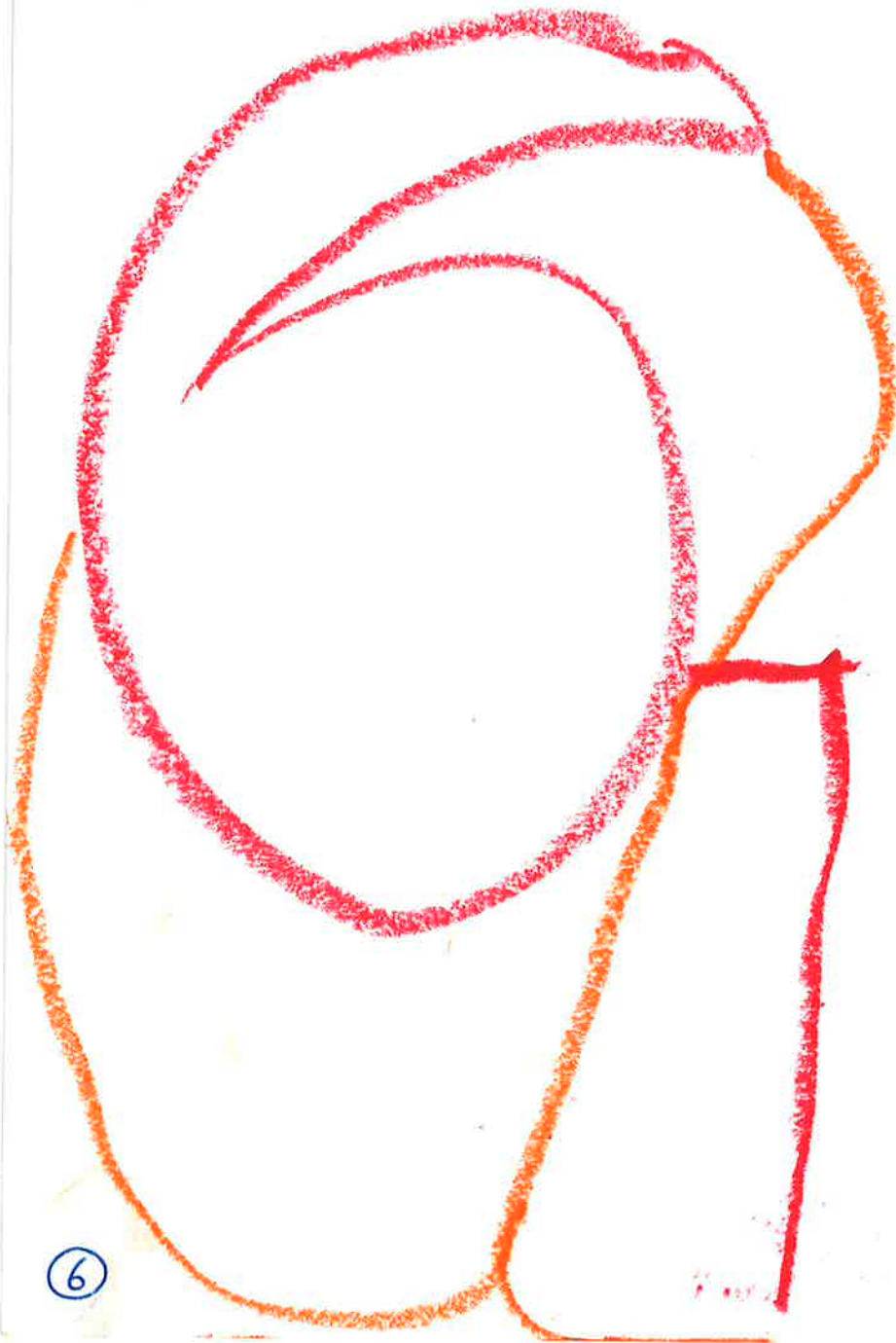


I would be honored to be part of the hearing board. Get involved, and hopefully be of help to the current board.

Here are some of my character traits that might be beneficial to the board. I'm kind natured, honest, good listener, good fact-finding, have a sense of humor, enjoy good company.

Jim and I share a daughter, Hong Jin, who'll be 5 soon. I would like to be considered for this valuable position, which can be a door, that she can peek through, ^{with} my eyes, ^{with} our eyes, what we can all do to keep

⑤



This amazing valley the way it is
for many years to come -

I value your consideration, and
would be very happy to share with
you, any question or concerns that
you might have.


Our home phone # 760-876-5817
My email:

Xiangmei Zhang 2000@yahoo.
com

I appreciate any assistance that
you might provide in advance.

Take care,
and cheers,

Xiangmei Zhang


11/23/2020

⑦

RECEIVED

NOV 30 2020

Initials: Sc
Great Basin Unified APCD



GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT

157 Short Street, Bishop, California 93514-3537

Tel: 760-872-8211 Fax: 760-872-6109

BOARD REPORT

Mtg. Date: January 7, 2021

To: District Governing Board

From: Tori DeHaven, Clerk of the Board

Subject: Consideration of Rescheduling the Regularly Scheduled Board Meetings for March 4, 2021 and September 2, 2021

Summary:

At the request of Board Member Hames, the Board is being asked to consider rescheduling the March 4, 2021 and September 2, 2021 regular Governing Board meetings to avoid a scheduling conflict with the Sierra Nevada Conservancy (SNC) Board meeting, to which he has been appointed.

Resolution 2018-03 does give the Board the authority to cancel and reschedule regular and special meetings and has been provided as an attachment for your reference. It is important to note that each entity represented on this Governing Board also has an alternate available to fill in when regular members are unable to attend, and a quorum of the Board is four of the seven members. Staff also builds workloads and coordinates time off around the regular Governing Board meeting schedule.

One of the meetings being considered for rescheduling (March) is when the first of two required public hearings must occur to consider and approve the District's 2021-2022 Budgets and Fee Assessment. Staff would respectfully encourage the Board to utilize alternates rather than changing the regular meeting in consideration of the time-sensitive noticing requirements as well as the time necessary for staff to produce the draft and final budgets. The budget process will be particularly challenging this year as it is a collaborative effort that must be done remotely. It must also be noted that although the CH&SC requires no less than two weeks in between the two required public hearings, the SB270 draft and final assessment is required to be available 30 days prior to each hearing; the second hearing is currently scheduled to occur at the May 6, 2021 regular Governing Board meeting.

Board Action:

1. Consider cancelling the March 4, 2021 regular Governing Board meeting and scheduling a special meeting for a date to be determined by the Governing Board. Because of the legal timelines for publishing the final budget and assessment prior to consideration, the rescheduled meeting and draft budget and assessment hearing must occur before April 5, 2021. Staff is not able to accelerate the budget process to publish

Consideration of Rescheduling the Regularly Scheduled Board Meetings for March 4, 2021
and September 2, 2021 Meeting (Action)
January 7, 2021 - Agenda Item No. 9 - Page 1

a draft budget and assessment prior to the currently anticipated February 2, 2021 due date for the March 4, 2021 meeting. If the meeting is to be cancelled and a special meeting scheduled, it must be scheduled between February 3, 2021 and April 5, 2021.

2. Consider cancelling the September 2, 2021 regular Governing Board meeting and scheduling a special meeting for a date to be determined by the Governing Board.

Attachments:

1. Resolution 2018-03
2. 2021 regular meeting schedule of the Governing Board

RESOLUTION NO. 2018-03

RESOLUTION OF THE GOVERNING BOARD
OF THE GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT
SETTING THE TIME AND PLACE FOR REGULAR BOARD MEETINGS

WHEREAS, pursuant to California Government Code Section 54951, the Great Basin Unified Air Pollution Control District is deemed a local agency for purposes of the Ralph M. Brown Act, the California Public Records Act, and the Political Reform Act of 1974; and

WHEREAS, pursuant to California Government Code Section 54952, the Great Basin Unified Air Pollution Control District Governing Board is deemed a legislative body for purposes of the Ralph M. Brown Act, the California Public Records Act, and the Political Reform Act of 1974; and

WHEREAS, pursuant to California Government Code Section 54954, the Great Basin Unified Air Pollution Control District Governing Board is required to set forth by ordinance, resolution, bylaw, or by whatever other rule is required for the conduct of business by this body, a time and place for holding regular meetings; and

WHEREAS, pursuant to California Government Code Section 54954, the Great Basin Unified Air Pollution Control District Governing Board is permitted to set regular and special meetings within the boundaries of the territory over which Great Basin Unified Air Pollution Control District exercises jurisdiction.

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

1. Regular Meetings shall be held on the first Thursday of every odd month at 10:00 AM.
2. Meetings shall be held in the following locations:
 - a. Alpine County Board of Supervisors Chambers, located at 99 Water Street, Markleeville, CA 96120.
 - b. Mono County Board of Supervisors Chamber (2nd Floor), located at Mono County Courthouse, 278 Main Street (U.S. Highway 395) Bridgeport, CA 93517.
 - c. Inyo County Board of Supervisors Chambers, located at 224 N. Edwards Street, Independence, CA 93526.
 - d. Town of Mammoth Lakes Council Chambers, located at 437 Old Mammoth Road Suite Z, Mammoth Lakes, CA 93546.
 - e. City of Bishop Council Chambers, located at 377 West Line Street Bishop, California 93514.
 - f. City of Los Angeles Department of Water and Power Administrative Building Training Room 134A, located at 111 Sulfate Road Keeler, California 93530.
 - g. Any other location within the jurisdiction of the Great Basin Unified Air Pollution Control District as deemed necessary by the Great Basin Unified Air Pollution Control District Governing Board.
3. All regular meeting agendas shall be noticed by the Clerk of the Board no less than 72 hours prior to regular meetings on the public bulletin board at the Great Basin Unified Air Pollution Control District Office located at 157 Short Street Bishop, California 93514-3537, at the actual location of the meeting, and on the Great Basin Unified Air Pollution Control District website.

FURTHERMORE, BE IT RESOLVED by the Great Basin Unified Air Pollution Control District Governing Board that a notice of cancellation shall be posted in the same manner as the agenda for regular meetings in the event that there is no business to conduct; and

FURTHERMORE, BE IT RESOLVED by the Great Basin Unified Air Pollution Control District Governing Board that special meetings shall be called in the event that an issue requires immediate action; and

FURTHERMORE, BE IT RESOLVED by the Great Basin Unified Air Pollution Control District Governing Board that any regularly scheduled meeting may be adjourned to an alternate time and place specified in the order of adjournment. The Clerk of the Board shall cause to be posted a copy of the order or notice of adjournment on the public bulletin board at the Great Basin Unified Air Pollution Control District Office located at 157 Short Street Bishop, California 93514-3537, on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held, at the actual location of the meeting, and on the Great Basin Unified Air Pollution Control District website within 24 hours after the time of the adjournment. The notice shall specify the other location of the meeting and time thereof.

AYES: Board Members – Griffith, Hames, Wentworth, Peters

NOES: 0

ABSENT: Board Members – Corless, Stump, Kingsley, Totheroh

ABSTAIN: 0

STATE OF CALIFORNIA
COUNTY OF ALPINE

Tori DeHaven, the Clerk of the Governing Board of the Great Basin Unified Air Pollution Control District, hereby certifies that the above foregoing resolution was duly and regularly adopted by said District at a regular meeting thereof held on the 12th day of July, 2018, and passed by a 4/0 vote of said Board.

IN WITNESS WHEREOF I have hereunto set my hand and seal this July 12, 2018.


Clerk of the Governing Board

Regular Meetings of the GBUAPCD Governing Board
1st Thursday of odd Months
Adopted July 12, 2018

JANUARY

s	m	t	w	t	f	s
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31						

FEBRUARY

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MARCH

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APRIL

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MAY

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30	31					

JUNE

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JULY

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AUGUST

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29	30	31				

SEPTEMBER

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OCTOBER

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24	25	26	27	28	29	30
31						

NOVEMBER

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20	21	22	23	24	25	26
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DECEMBER

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11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Great Basin Unified APCD
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BOARD REPORT

Mtg. Date: January 7, 2021

To: Governing Board

From: Tori DeHaven, Clerk of the Board

Subject: Travel Report

Summary:

No out of District travel occurred.

Board Action:

None. Informational only.



GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT

157 Short Street, Bishop, California 93514-3537

Tel: 760-872-8211 Fax: 760-872-6109

BOARD REPORT

Mtg. Date: January 7, 2021

To: District Governing Board

From: Phillip L. Kiddoo, Air Pollution Control Officer

Subject: Air Pollution Control Officer Report

A verbal report will be given at the meeting.