

**Butte County RCD/Prescribed Burn Association
Liability Explainer
During Prescribed Burns and Other Activities**

PART 1: PBA RULES

All prescribed burns and other activities promoted and coordinated by the Butte County Resource Conservation District are governed by comprehensive agreements governing liability and responsibility. Here's how these agreements will allocate liability.

For all non-burn activities (including site prep):

- Landowners, hosts, and participants are responsible for their own actions.
- As a landowner, host, or participant, you will agree to waive any claims against other participants for damage or harm caused to you, unless someone acts in a manner that involved gross negligence or willful misconduct. This means that if you're accidentally injured on a landowner's property, you agree not to sue the landowner unless the landowner showed gross negligence or willful misconduct. The same applies in reverse if you are the landowner and a participant accidentally damages something of yours.
- You will also agree to indemnify the other parties if your actions cause damage or harm to a third-party (such as an adjacent, non-participating landowner). This means that if a third-party brings a lawsuit against all participants for harm or damage you cause, then you will be responsible for defending all participants in the lawsuit and paying any damages.

For prescribed burns:

- As a landowner, host, or participant, you will still agree to waive any claims against other participants for damage or harm caused to you, unless someone acts in a manner that involved gross negligence or willful misconduct.
- However, as a participant, the landowner or host will agree to indemnify you if your actions cause damage or harm to third-parties, unless you act in a manner that involves gross negligence or willful misconduct. This means that if the property of an adjacent, non-participating landowner is damaged in an escaped burn, you will not be responsible for defending the lawsuit or paying damages unless you act in a way that involves gross negligence or willful misconduct. BCRCDC does not act as a burn boss.
- As a landowner, host or participant, it is your responsibility to thoroughly check all BCRCDC-provided equipment **before** you use it. Use of shared burn equipment is at your own risk and you agree to indemnify BCRCDC from damages caused by faulty equipment.

This document is intended to explain the Butte County Prescribed Burn Association Assumption and Release of Liability Agreement. However, any conflicts between this explanation and that Agreement is to be resolved in favor of that Agreement. As such, all parties are strongly encouraged to carefully review the Agreement before signing.

PART 2: STATE OF CALIFORNIA RULES

When it comes to prescribed fire liability, California is a simple negligence state. That means some states have stricter liability laws than we do, but some states have more forgiving laws (from the landowner's perspective). California is in the middle.

If a prescribed fire on your land gets too big for you to handle and CAL FIRE must respond, you can be held liable for the suppression costs. But **only** if it can be shown that you were negligent in some way. The negligence does not have to be gross or malicious -- small lapses will do. However, if you had a burn plan, especially if it was approved by CAL FIRE, and you did not deviate from that burn plan, you have a very good argument that you should not be held liable for suppression costs.

You can reduce your risk of liability by:

- always having a written burn plan, even in winter when it is not strictly required;
- letting CAL FIRE know when and where you'll be burning so nobody gets surprised;
- notifying all your neighbors before the burn -- this is the law and again, you don't want your neighbors to be surprised when they see smoke. Remember, too much communication is always better than too little!
- Asking CAL FIRE to review your burn plan -- of course, this is the law between May 1st and the end of declared fire season. In winter, it is not the law -- you can legally burn your land without a permit then -- but it still doesn't hurt to get CAL FIRE's eyes on your plan. Keep in mind your local firefighters may or may not elect to review your plans during winter.
- Checking all your equipment before you start burning -- and document that you checked it!
- If you're a novice burner, asking for help from more experienced folks
- Getting an air quality permit, where required. (In Butte County, an AQ permit for burning is required anywhere below 1000', and any time you burn more than 10 acres at a time above 1000'.)
- Only burning on permissive burn days (again, this is the law).

Less than about 1.5% of prescribed fires escape, and most fires that do escape don't result in injury or structure loss. Notably, most fires that escape and cause damage were burn piles, not broadcast burns. If you light a burn pile, know that you are assuming the same responsibilities as if you light a broadcast burn. Bottom line: Be responsible and document that you were responsible.