

# California Department of Forestry & Fire Protection (CAL FIRE)



## Civil Cost Recovery Program

Annual Report to the Legislature | Fiscal Year 2020-2021

## **BACKGROUND**

The Department of Forestry and Fire Protection (CAL FIRE) is responsible for providing fire protection, fire prevention, forest and range protection, and enhancement activities upon the State Responsibility Areas (SRA) of the state, consisting of approximately 31 million acres. Further, the Department is responsible for enforcing forest and fire laws of the State.

The Department supports multiple different activities to accomplish its fire prevention responsibility, including fire engineering, vegetation management, fire planning, education, and law enforcement. These combined programs reduce unintentional wildland fires throughout California, increasing public safety, protecting property, improving air quality, and protecting watershed lands. The philosophy of fire prevention is premised on the idea that the best way to suppress a fire is to not have the fire in the first place.

California Health and Safety Code Section 13009 authorizes fire agencies to recover suppression and related administrative costs from anyone who starts a fire negligently or in violation of law. This benefits the State and its taxpayers by appropriately allocating suppression costs to the individuals who negligently caused the fires. This authorization also provides a vital fire prevention tool and is one of the ways the Department seeks to reduce human caused fires within the SRA.

The purpose of the Cost Recovery program is further identified within the State Administrative Manual (SAM), which supports the program by mandating recovery of costs for State-provided services (SAM Section 8752). In addition, for fires where the State has received federal assistance from the Fire Management Assistance Grants Program (FMAG), contractual and legal obligations require the Department to investigate and seek fire suppression cost recovery (44 CFR Chapter 1, Section 204.62(a)). The federal government requires the State to seek reimbursement of those funds for fires caused by negligence or violation of law. If the Department does not make a legitimate effort to recover such funds, the State can be held responsible for the amount fronted by the federal government. This is also true for Federal Emergency Management Agency reimbursements, and in some instances, for federal or local assistance provided under a service or cost-apportionment contract.

The Department has utilized civil cost recovery as a fire prevention tool for many years, but averaged less than six cases per year prior to 2008. To meet the regulatory and contractual obligations discussed above, and in recognition of its effectiveness to yield greater wildfire prevention outcomes compared with administrative or criminal deterrents, the program has expanded. Following legislative approval, the Department implemented a statewide fire suppression civil cost recovery pilot program in Fiscal Year (FY) 2008-09. In recognition of the program's success, whereby the program tripled the number of cases resolved, the Legislature made the program permanent in FY 2010-11. In FY 2011-12, the Legislature approved an increase to the civil cost recovery program staff and made these changes permanent in FY 2013-14.

On August 22, 2014, Governor Brown approved SB 1075 (Knight), a bill that added Section 707.1 to the Public Resources Code (PRC) and requires a report to the Legislature regarding any moneys recovered by the Department in a civil action.

### **CIVIL COST RECOVERY PROCESS**

The Department, or a county assuming fire suppression and prevention responsibilities (PRC Section 4129), by policy or contract and in recognition of its statutory responsibilities, investigates the cause of every fire occurring within the SRA. If the fire is determined to have started as the result of negligence, or because of a violation of law, and the responsible party can be identified, the Department or county evaluates, based on the individual circumstances, the most effective disposition to the case. Potential dispositions include administrative remedies, criminal complaints, civil cost recovery or a combination of the three. In those instances, where the Department or county selects to pursue recovery of the costs expended in the suppression of the fire, a case manager is assigned to facilitate the process.

Per Department policy, any fire occurring within any of CAL FIRE's 21 Administrative Units which resulted in Emergency Fund expenditures and found to be caused by negligence or violation of law is referred from the responsible Unit to one of the two Regional offices for Region Case Manager assignment. Overall Cost Recovery Program management, consultation, and oversight is provided from Program staff, located in Sacramento.

For the six contract counties, where the State pays the counties to assume responsibility for the prevention and suppression of all fires in SRA in the county (PRC 4129), the county has the option to independently pursue cost recovery on behalf of the State, in consultation with the applicable Region Case Manager. When a county chooses not to pursue cost recovery on behalf of the State, the case is referred to the county's Administrative Unit (the Department Unit that manages the contract with each county) and is managed as described above.

The assigned case manager reviews the details and circumstances of the case, as provided by the case officer. Case viability is considered and the case manager ultimately determines if the referred case becomes a "Cost Recovery" case. If it is determined the case will proceed as a "Cost Recovery" case, the case manager requests specialized staff to thoroughly review fire suppression cost documentation to establish a defensible cost the Department paid in the suppression of the fire. Once this cost is determined, the case manager informs the responsible party of the cost and requests payment.

In some instances, the responsible party immediately acknowledges their negligence and/or violation of law which contributed to the cause of the subject fire. In these cases, the responsible party pays the costs in full or requests the Department develop a payment plan which allows the responsible party to reimburse the State over a period, at a level they feel can be sustained for the

term of the agreement. In other cases, the responsible party neither accepts or denies their responsibility and submits the Department's claim to their respective insurance companies. The Department then seeks reimbursement through the insurance claim adjuster, subject to policy coverages, limits, and restrictions. In other instances, the responsible parties and/or their insurance companies disagree with either their culpability in the cause of the fire or their responsibility to pay. In these instances, the Department attempts to work with the responsible parties and/or their representatives to bring resolution to the matter; however, if resolution cannot be obtained, the Department will initiate civil action in the applicable Superior Court by enlisting services from the California Attorney General's Office.

Once the Department receives payment for the costs of suppressing a fire, the money is deposited as a reimbursement into the State's Treasury. Where FMAG funds were received, the Department reimburses FMAG consistent with contractual agreements generally through the Office of Emergency Services (OES). Costs recovered that were incurred by other agencies, but made a party to the recovery effort are similarly distributed. If the reimbursement is timely, the balance of the funds is utilized to abate the costs incurred in the actual suppression of the fire. If the reimbursement occurs after three years, the balance of the funds is made a credit to the General Fund where they are displayed as "miscellaneous revenue" in the State's financial statements.

### **REPORTING INFORMATION**

The attached spreadsheet details every emergency wildland fire incident that resulted in moneys recovered during FY 2020-21, pursuant to the Department's cost recovery efforts. The start dates of these incidents range from 2003 to 2021, as it can take several years to successfully recover funds spent in the suppression of wildland fires. The spreadsheet shows:

- The incident name, incident number, start date, and location.
- The total cost of the incident, as recorded in the final Activity Reporting and Costs Summary (ARC).
- The date of the judgment, signed settlement agreement, or initial repayment check in the absence of a written agreement.
- The CAL FIRE administrative level (Unit, Region, or Headquarters) that approved the settlement or agreement (if applicable).
- The dollar amount of the judgment, settlement, or agreement.
- Whether the agreement included a monthly payment plan.
- FMAG funds received and/or reimbursed.

In addition to the information above, the spreadsheet shows how and where recovered funds were accounted for and how they provided for reimbursement within Calstars and Fi\$Cal, the State's accounting systems. All moneys recovered are entered into the State's accounting system and tracked by receipt of collection, transaction, and deposit reporting. Pursuant to that system,

moneys recovered are used as abatements to “reimburse” the following Department operating accounts and appropriations:

- The General Fund for all expenses incurred prior to FY 2018-19.
- The CAL FIRE Emergency Fund for those expenses incurred between FY 2018-19, and FY 2020-21.
- The CAL FIRE Base Budget for those expenses incurred between FY 2018-19, and FY 2020-21.

The Base Budget provides funding for personnel and resources used to provide an initial attack when a fire occurs, with the goal of extinguishing the fire quickly and keeping the fire to ten acres or less. This fund essentially provides for the Department’s day to day activities. The Emergency Fund provides funding for suppression costs on fires when the fire suppression efforts needed to control the fire exceeds CAL FIRE’s base budgeted resources and may be used to fund fire detection, and related emergency re-vegetation costs. The Emergency Fund and the Base Budget are generally funded from the General Fund.

**DISCUSSION**

All moneys received in FY 2020-21, for incidents that occurred before FY 2018-19, (June 30, 2018, and before) went directly to the State Treasury and into the General Fund. This treatment is consistent with collection of years where the accounting books have closed as described and directed in SAM, Section 10473.

Moneys received for incidents occurring between FY 2018-19, through FY 2020-21, were abated against either the Base Budget or the Emergency Fund. The amount of abatement is determined by the percentages of each fund expended in fighting the fire, split as a percentage of the total. For example, if 50% of the total suppression costs for a fire were spent from the Base Budget and 50% was spent from the Emergency Fund, the recovered amounts are disbursed back to those funds in the same percentages. The funding source for the Department’s fire suppression efforts (both Base Budget and Emergency Fund) is the General Fund.

No money was received from or reimbursed to any State entity for incidents included in this report.

The total amount received from responsible parties in FY 2020-21, for civil action on wildland fires was \$ 18,601,172.47 The following table summarizes the reimbursements for FY 2020-21.

<i>General Fund Reimbursement</i>	<i>FMAG Reimbursement</i>	<i>Emergency Fund Reimbursement</i>	<i>Base Budget Reimbursement</i>	<i>Total Amount Recovered</i>
<b>\$ 16,404,926.51</b>	<b>\$ 0</b>	<b>\$ 1,526,108.58</b>	<b>\$ 670,137.38</b>	<b>\$ 18,601,172.47</b>

*\*Reimbursements are reflected in the Department’s main appropriation, versus the E-Fund appropriation.*

In FY 2020-21, suppression costs were recovered for 35 fires. The largest recovery for a case with a disposition in FY 2020-21, was the Marshes Fire. The Marshes Fire occurred on September 26, 2016, in Tuolumne County and was caused by hot exhaust from a vehicle igniting dry vegetation. The fire burned 1080 acres of annual grasses and brush. CAL FIRE expended \$ 7,479,053.07 to suppress the fire. The Department, with assistance from the State Attorney General's Office, settled the case on March 5, 2020, for \$ 6,000,000.00.

For the 35 fires where suppression costs were recovered in FY 2020-21, the median recovery was \$ 531,462.05. Approximately 30 % percent of these fires have a payment plan requirement as part of a settlement agreement.

As of 9/30/2021

Fiscal Year 2020-21 Fire Suppression Costs Recovered from Responsible Parties

July 1, 2020- June 30, 2021

INCIDENT NAME	INCIDENT #	UNIT	TOTAL COST (1)	FMAAG RECEIVED (2)	REMITTED TO OES for FMAAG (3)	SETTLEMENT DATE	SETTLEMENT APPROVAL LEVEL	TOTAL SETTLEMENT AMOUNT	PAYMENT PLAN (Y)	TOTAL AMT RECOVERED IN FY20 FROM PRE-FY18 INCIDENTS	TOTAL AMT RECOVERED IN FY20 FROM POST-FY17 INCIDENTS	REIMBURSED TO EMERGENCY FUND	REIMBURSED TO BASE FUND
Hunter	CAWMU 008974	MMU	\$ 5,294,176			09/22/18	HQ	\$ 40,000	Y	0			
Luthers	CA5KU 004865	SKU	\$ 3,033			03/05/14	REGION	\$ 3,033	Y	6,500			
Reed	CAHUU 004672	HUU	\$ 51,613			03/08/17	HQ	\$ 46,452	Y	0			
Sand 2	CAAEU 023133	AEU	\$ 82,633			06/16/15	HQ	\$ 37,500	Y	6,000			
Reese	CAUUN 007290	UNU	\$ 2,192,537			12/19/19	HQ	\$ 1,250,000	Y	1,500,000			
Mageshita	CA5RC 005572	SRC	\$ 2,133,478			03/02/20	HQ	\$ 2,500,000	Y	6,900,000			
Ward	CAFCU 014405	FCU	\$ 2,133,518			09/09/20	HQ	\$ 6,900,000	Y	24,000			
Ward	CAFCU 002815	FCU	\$ 1,212,681			05/19/20	HQ	\$ 64,000	Y	500,000			
Pacheco	CAFCU 007241	FCU	\$ 729,909			08/18/20	HQ	\$ 600,000	Y	600,000			
Poly	CA5LU 011022	5LU	\$ 540,950			09/03/20	HQ	\$ 2,400,000	Y	2,400,000			
Waverly	CAFCU 007477	FCU	\$ 815,086			08/31/20	HQ	\$ 55,000	Y	55,000			
De Luz	CAWVU 008736	WVU	\$ 80,922			10/27/20	HQ	\$ 55,000	Y	28,602			
Saddle	CAEPU 002734	BEU	\$ 27,321			11/19/20	HQ	\$ 27,321	Y	7,500			
River	CAWVU 002775	WVU	\$ 10,474			02/01/21	REGION	\$ 11,085	Y	4,800			
General	CAFCU 007704	FCU	\$ 41,969			06/10/19	HQ	\$ 41,969	Y	69,086			
Quail	CAFCU 008249	FCU	\$ 107,393			02/17/21	REGION	\$ 69,086	Y	3,505,000			
Garza	CAFCU 008755	FCU	\$ 16,284,292			10/27/20	HQ	\$ 3,505,000	Y	10,000			
Palmer	CAFRU 108660	FRU	\$ 1,072,276			12/06/19	HQ	\$ 100,000	Y	850,000			
Flat	CAFRU 012465	FRU	\$ 1,497,636			02/23/21	HQ	\$ 880,000	Y	9,287			
Estate	CAUUN 001450	UNU	\$ 93,653			03/11/21	REGION	\$ 9,287	Y	85,000			
Oakwood	CAWVU 015818	WVU	\$ 1,249,978			04/27/21	HQ	\$ 85,000	Y	1			
Oak	CAWVU 015818	WVU	\$ 2,671,701			06/08/21	HQ	\$ 1	Y	350			
Gobbie	CAFRU 007366	FRU	\$ 51,035			04/22/20	HQ	\$ 2,500	Y	16,405,278			
<b>TOTAL AMOUNT RECOVERED FROM RESPONSIBLE PARTIES FOR PRE-2018-19 (FY18) FIRES</b>													

The following is a key to the three letter unit identifiers used above:

- AU - Amador/El Dorado Unit
- AVU - San Bernardino Unit
- BBU - San Bernardino Unit
- ORC - Orange County Fire Authority
- BTU - Butte Unit
- FRU - Riverside Unit
- FCU - San Mateo/Santa Cruz Unit
- SEC - Santa Barbara County Fire Department
- FNU - Fresno/Kings Unit
- SCU - Santa Clara Unit
- HNU - Humboldt/Deer Lake Unit
- SHU - Shasta/Triunity Unit
- KNU - Kern County Fire Department/SKU - Siskiyou Unit
- LCU - Los Angeles County Fire Dept/SKU - Santa Luis Obispo Unit
- LNU - Lassen/Madoc Unit
- TUC - Tuolumne/Calaveras Unit
- LUU - Sonoma-Lake/Napa Unit
- TGU - Tehama/Gleichen Unit
- MEU - Mendocino Unit
- TUC - Tulare Unit
- MNU - Mendocino/Merced VNC - Ventura County Fire Department
- MNU - Marin County Fire Department

- (1) Total fire suppression costs as recorded on the final Activity Reporting and Costs Summary (ARC).
- (2) Federal Management Assistance Grants Program (FMAAG) provide grants from the Federal Government that fund the majority of eligible fire suppression costs.
- (3) The Governor's Office of Emergency Services (OES) manages the FMAAG process on behalf of the State. As such, reimbursements due for FMAAG grants are remitted to OES for

INCIDENT NAME	INCIDENT #	FIRE DATE	UNIT	TOTAL COST (1)	FMAAG RECEIVED (2)	REMITTED TO OES for FMAAG (3)	SETTLEMENT DATE	SETTLEMENT APPROVAL LEVEL	TOTAL SETTLEMENT AMOUNT	PAYMENT PLAN (Y)	TOTAL AMT RECOVERED IN FY20 FROM PRE-FY18 INCIDENTS	TOTAL AMT RECOVERED IN FY20 FROM POST-FY17 INCIDENTS	REIMBURSED TO EMERGENCY FUND	REIMBURSED TO BASE FUND
Market	CAVCU 000930	10/24/18	TUU	\$ 110,916			07/28/20	HQ	\$ 100,000	Y				
Greek	CA5CU 005546	08/04/18	5CU	\$ 95,252			08/19/20	REGION	\$ 95,252	Y				
McMillan	CA5CU 007884	06/12/19	5LU	\$ 347,514			08/31/20	HQ	\$ 270,000	Y				
Hubb	CA5KU 008482	05/24/19	SKU	\$ 21,580			10/20/20	HQ	\$ 15,500	Y				
Rocky	CA5KU 004484	06/14/19	SKU	\$ 95,076			10/07/20	HQ	\$ 80,500	Y				
Garabe	CAUUN 013377	08/30/18	UNU	\$ 39,425			10/28/20	HQ	\$ 29,412	Y				
Gentry	CA5CU 005218	07/22/18	5CU	\$ 683,548			11/30/20	HQ	\$ 500,000	Y				
Goss	CAEPU 005911	10/02/19	BEU	\$ 33,627			02/02/21	REGION	\$ 33,627	Y				
Palm	CAFRU 014378	09/29/19	FRU	\$ 30,478			01/20/21	REGION	\$ 27,602	Y				
Ranch 2	CAFCU 000350	07/01/19	TUU	\$ 68,389			02/01/21	REGION	\$ 57,258	Y				
Reai	CA5RC 013465	10/17/19	5RC	\$ 293,438			03/10/21	HQ	\$ 293,438	Y				
Lyette	CAFCU 011434	09/22/19	TCU	\$ 34,557			05/19/21	REGION	\$ 34,557	Y				
Dodds	CA5LU 009796	07/22/19	5LU	\$ 4,000			06/02/21	REGION	\$ 4,000	Y				
Spring	CA5LU 009544	09/02/18	5LU	\$ 42,232			06/29/20	HQ	\$ 38,750	Y				
Idra	CAEPU 003882	07/12/18	BEU	\$ 345,510			05/27/20	HQ	\$ 132,000	Y				
Greek 4	CAVCU 000684	08/31/19	TUU	\$ 1,423,470			03/10/21	HQ	\$ 484,000	Y				
<b>COLUMN TOTALS</b>											16,405,276	2,155,886	1,525,928	669,967
<b>TOTAL AMT RECOVERED IN FY20 FROM PRE-FY18 INCIDENTS</b>											16,405,276			
<b>TOTAL AMT RECOVERED IN FY20 FROM POST-FY17 INCIDENTS</b>											2,155,886			
<b>TOTAL AMT RECOVERED IN FY20</b>											18,601,172			