

California Department of Forestry & Fire Protection (CAL FIRE)



Civil Cost Recovery Program

Annual Report to the Legislature | Fiscal Year 2022-2023

Public Resources Code Section 707.1

Executive Summary

Public Resources Code 707.1 Civil Cost Recovery Legislative Report

The California Department of Forestry and Fire Protection (CAL FIRE) 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 State Responsibility Area (SRA).

This report is required by Public Resources Code Section 707.1, which requires CAL FIRE to submit a report to the Legislature regarding any moneys recovered by the Department in a civil action.

The Department's Civil Cost Recovery Program (CCR) worked diligently with CAL FIRE and Department of Justice (DOJ) legal teams to recover funds over the past fiscal year. The total amount received from responsible parties in FY 2022-23, for civil action on wildland fires was \$80,558,061.04.

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 California's State Responsibility Areas (SRA), 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 (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 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 monies 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 investigation concludes that the fire occurred because of negligence or a violation of the law, and the responsible party can be identified, the Department or county determines the most effective disposition to the case based on individual circumstances. 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 is 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 nor 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 the FMAG funds consistent with contractual agreements, generally through the Office of Emergency Services (OES). Recovered costs incurred by other agencies that were made party to the Department's recovery effort are similarly distributed. If the reimbursement is timely, the balance of the monies 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 monies 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 funds recovered during FY 2022-23, pursuant to the Department's cost recovery efforts. The start dates of these incidents range from 2003 to 2023, 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.
- The dollar amount of 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 FISCAL, the State's accounting systems. All monies recovered are entered into the State's accounting system and tracked by receipt of collection, transaction, and deposit reporting. Pursuant to that system, monies recovered are used as abatements to "reimburse" the following Department operating accounts and appropriations:

- The General Fund for all expenses incurred prior to FY 2020-21.
- The CAL FIRE Emergency Fund for those expenses incurred between FY 2020-21 and FY 2022-23.
- The CAL FIRE Base Budget for those expenses incurred between FY 2020-21 and FY 2022-23.

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 daily operations. 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 monies received in FY 2022-23, for incidents that occurred before FY 2020-21 (June 30, 2020, 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.

Monies received for incidents occurring between FY 2020-21 and FY 2022-23 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 2022-23, for civil action on wildland fires was \$ 80,558,061.04. The following table summarizes the reimbursements for FY 2022-23.

<i>General Fund Reimbursement</i>	<i>FMAG** Reimbursement</i>	<i>Emergency Fund Reimbursement</i>	<i>Base Budget Reimbursement</i>	<i>Total Amount Recovered</i>
\$48,631,130.51	\$ 2,190,118.67	\$22,637,810.15	\$9,289,120.38	\$80,558,061.04

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

***FMAG reimbursement amount included in General Fund reimbursement total*

In FY 2022-23, suppression costs were recovered for 20 fires. The largest recovery for a case with a disposition in FY 2022-23 was the Zogg Fire. The Zogg Fire occurred on September 27, 2020, in Shasta County and was caused by a pine tree which fell toward and struck energized

electrical conductors, igniting surrounding vegetation. The fire burned 56,338 acres of natural vegetation with 231 structures being damaged or destroyed and caused four fatalities. CAL FIRE expended \$34,508,030.28 to suppress the fire. The Department, with assistance from the State Attorney General's Office, settled the case on November 16, 2022, for \$31,500,000.00. In addition to the Zogg Fire being the single largest incident for which payment was received, the Department received an installment payment of \$21,413,817.00 from a global settlement agreement reached with Pacific Gas and Electric for fires that occurred between 2015-2018*.

For the 20 fires where suppression costs were recovered in FY 2022-23, the median recovery was \$4,027,903.08. Approximately 25% percent of these fires have a payment plan requirement as part of a settlement agreement.

*The median recovery reflected above is skewed due to the large amounts collected on two of the cost recoveries within the data set.

CAL FIRE Civil Cost Recovery Report to the Legislature

July 1, 2022- June 30, 2023

Fiscal Year 2022-23 Fire Suppression Costs Recovered From Responsible Parties

INCIDENT NAME	INCIDENT #	FIRE DATE	UNIT	TOTAL COST (1)	FMAG RECEIVED (2)	REMITTED to OES for FMAG (3)	SETTLEMENT DATE	SETTLEMENT APPROVAL LEVEL	TOTAL SETTLEMENT AMOUNT	PAYMENT PLAN (Y)	TOTAL AMT RECOVERED IN FY22 FROM PRE-FY20 INCIDENTS	TOTAL AMT RECOVERED IN FY22 FROM POST-FY19 INCIDENTS	REIMBURSED TO EMERGENCY FUND	REIMBURSED TO BASE FUND
All recovered funds on page 1 of this report were reimbursed directly to the General Fund since the incidents occurred before FY 2020-21. All recovered funds on pages 2, 3, and 4, were abated against Department expenses either to the Emergency Fund or the Base Budget.														
2015-18 PGE Settlement Tracker	CACNR000302	07/01/15	CNR	\$ 70,828,958			03/02/22	HQ	\$ 70,828,958	Y	21,413,817			
Central	CATCU 007704	07/01/17	TCU	\$ 41,969			06/10/19	HQ	\$ 41,969	Y	4,830			
Cobble	CAFKU 007366	05/26/18	FKU	\$ 31,035			04/22/20	HQ	\$ 2,500	Y	300			
Sherpa	CASBC007344	06/13/16	SBC	\$ 12,158,907			07/12/22	HQ	\$ 16,150,000		16,161,876			
Easy	CAVNC 089158	10/30/19	VNC	\$ 2,945,386	\$2,920,158	\$2,190,119	11/09/22	HQ	\$ 3,800,000		2,404,562			
Topaz	CASLU 007269	06/12/20	SLU	\$ 56,197			11/29/22	REGION	\$ 5,500		5,500			
Cucamonga	CABDU 007762	06/10/20	BDU	\$ 25,833			04/21/22	REGION	\$ 16,288	Y	16,288			
Grant	CAAEU 016543	06/12/20	AEU	\$ 735,986			08/12/22	HQ	\$ 675,000		675,000			
Drum	CASBC 006759	06/14/20	SBC	\$ 320,438			03/31/23	HQ	\$ 285,000		285,000			
Gage Irving	CASLU 008112	06/28/20	SLU	\$ 315,230			09/20/22	HQ	\$ 213,978		213,978			
Hunter	CABEU 002957	06/21/20	BEU	\$ 1,485,610			08/29/22	HQ	\$ 500,000	Y	450,000			
Tenaja	CARRU 113828	09/04/19	RRU	\$ 7,481,051			06/08/23	HQ	\$ 7,000,000		7,000,000			
TOTAL AMOUNT RECOVERED FROM RESPONSIBLE PARTIES FOR PRE 20 - 21 (FY20) FIRES											48,631,131			

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

- AEU - Amador/Eldorado Unit
- BDU - San Bernardino Unit
- BEU - San Benito Monterey Unit
- BTU - Butte Unit
- CZU - San Mateo/Santa Cruz Unit
- FKU - Fresno/Kings Unit
- HUU - Humboldt/Del Norte Unit
- KRN - Kern County Fire Department
- LAC - Los Angeles County Fire Department
- LMU - Lassen/Modoc Unit
- LNJ - Sonoma-Lake/Napa Unit
- MEU - Mendocino Unit
- MMU - Madera/Mariposa/Merced Unit
- MRN - Marin County Fire Department
- MVU - San Diego Unit
- NEU - Nevada/Yuba/Placer Unit
- ORC - Orange County Fire Authority
- RRU - Riverside Unit
- SBC - Santa Barbara County Fire Department
- SCU - Santa Clara Unit
- SHU - Shasta/Trinity Unit
- SKU - Siskiyou Unit
- SLU - San Luis Obispo Unit
- TCU - Tuolumne/Calaveras Unit
- TGU - Tehama/Glenn Unit
- TUU - Tulare Unit
- VNC - Ventura 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 (FMAG) 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 FMAG process on behalf of the State. As such, reimbursements due for FMAG

INCIDENT NAME	INCIDENT #	FIRE DATE	UNIT	TOTAL COST (1)	FMAG RECEIVED (2)	REMITTED to OES for FMAG (3)	SETTLEMENT DATE	SETTLEMENT APPROVAL LEVEL	TOTAL SETTLEMENT AMOUNT	PAYMENT PLAN (Y)	TOTAL AMT RECOVERED IN FY22 FROM PRE-FY20 INCIDENTS	TOTAL AMT RECOVERED IN FY22 FROM POST-FY19 INCIDENTS	REIMBURSED TO EMERGENCY FUND	REIMBURSED TO BASE FUND
Copperhead	CABEU 005318	10/26/20	BEU	\$ 43,918			07/01/22	REGION	\$ 15,000			15,000		
Line	CATCU 00417	03/28/21	TCU	\$ 100,227			10/18/22	REGION	\$ 100,227			100,227		
Mormon	CAMMU 019023	08/30/21	MMU	\$ 111,374			11/01/22	REGION	\$ 108,570			108,570		
Zogg	CASHU 009978	09/27/20	SHU	\$ 34,208,090	\$25,260,923		11/16/22	HQ	\$ 31,500,000			31,500,000		
Madsen	CAFKU 014667	09/12/21	FKU	\$ 16,746			01/12/23	REGION	\$ 16,746			16,746		
Granite	CATCU 005786	05/08/21	TCU	\$ 42,611			12/20/22	REGION	\$ 42,611			42,611		
Mule	CASHU 009196	08/25/21	SHU	\$ 44,623			04/24/23	REGION	\$ 44,623			44,623		
Kings	CAFKU 009658	07/03/20	FKU	\$ 669,879			5/17/2023	HQ	\$ 99,154			99,154		
COLUMN TOTALS											48,631,131	31,926,931	-	-

TOTAL AMT RECOVERED IN FY22 FROM PRE-FY20 INCIDENTS	48,631,131
TOTAL AMT RECOVERED IN FY22 FROM POST-FY19 INCIDENTS	31,926,931
TOTAL AMT RECOVERED IN FY22	80,558,062

89999	Pre FY20	\$48,631,130.51
00900	Post FY19	
00900-99200-02350		
\$22,637,810.55	\$6,264,960.21	\$9,289,120.38
00900	02350	99200
Total Recovered		\$80,558,061.04
PRC 707		\$80,558,062.00
Deposit Log		\$80,558,061.04
Difference due to rounding		50.96