

California's quest to recover fire fees questioned

By Kevin Yamamura, Sacramento Bee

The fire started with an anchor bolt on a hot October day at a Ventura County reservoir.

A laborer took his chop saw to the half-inch-thick piece of metal, creating a spark that landed on dry brush.

"This thing just took off like a bomb," recalled Manuel Mendez, whose family concrete business worked on a boat ramp that day at Lake Piru.



No one has been found culpable for the 2007 Angora Fire in Lake Tahoe.

All told, 63,000 acres burned in the 2003 Piru Fire. In 2009 and 2010, Mendez spent more than \$2 million compensating federal and state firefighting agencies for the damage, an amount he says left his business "hanging by a thread."

"We admitted guilt, that one of my guys did start it," he said. "But I thought it was crazy the amounts they were charging."

For the last eight years, the state has more aggressively gone after businesses and individuals it blames for starting wildfires. Now those it has targeted are pushing back, arguing that fire officials are overreaching in an effort to secure more money for the state.

At first, fire officials established an off-the-books account in 2005 that paid for specialized training and technical equipment, funded by a portion of wildfire settlements. That only became widely known this year.

In 2008, the state created a squadron of lawyers, fire accountants and investigators now known as the Civil Cost Recovery Program. In state budget circles, the unit is considered a financial success for its high return on investment – so much so that Gov. Jerry Brown is asking lawmakers in his new budget to expand the permanent staff from 14 to 24.

Sen. Jim Nielsen, R-Gerber, who represents a vast section of forestland in Northern California, said the state should limit its recovery to situations where it is “irrefutable beyond a reasonable doubt” that someone caused a fire.

“It’s clearly being abused,” he said. “The state is going to try to identify as many sources of revenue for government as it possibly can, and that’s what’s driving it.”

Officials of CalFire say the special unit is sticking up for taxpayers by demanding money from people who carelessly sparked wildfires that required tens of millions of dollars to extinguish. They also say cost-sharing agreements with federal and local agencies require the state to pursue money from those who start fires.

The state pays its share of emergency firefighting out of its general fund, and annual costs over the last decade averaged \$249 million.

Not all of that money can be recovered. Fire officials like to say you can't bill God for lightning strikes.

But the department recovered less than \$2 million annually from 2001 through 2003.

As the state faced a deep budget deficit, the unit recouped a record \$35.6 million in 2010-11. The state at the time spent less than \$3 million annually on the 14-person program.

"Our ultimate goal is to return the most money to the taxpayers who paid to suppress these fires," said Cal Fire spokeswoman Janet Upton.

Timber industry resists

Environmentalists who battle with timber companies on a range of issues support CalFire's drive to collect money.

"If they cause forest fires, they bear the burden of the cost of those fires, and not the public, especially if they are doing activities that increase the chance of fires," said Susan Robinson, an activist with Ebbets Pass Forest Watch.

But the aggressive approach has drawn criticism from defendants, especially those in the timber industry fighting the state in court.

The state and California's largest landowner, Sierra Pacific Industries, are facing off in Plumas Superior Court over the 2007 Moonlight Fire, which burned 65,000 acres.

In that case, Sierra Pacific and its subcontractors argue that the state manipulated evidence and targeted deep-pocketed businesses able to pay tens of millions of dollars. The state is seeking \$15 million from Sierra Pacific and other defendants for firefighting costs, legal fees and interest.

The company settled last year with the federal government over the same blaze for \$122.5 million in cash and land, but

disputes that it was responsible.

“The defense contends that the explanation for the blatant and intentional failure of CalFire to fully investigate other potential causes of the Moonlight Fire is that its investigators were driven to place blame on Sierra Pacific, a ‘deep pocket,’” summarizes Richard Linkert, an attorney for another defendant, in a Jan. 31 court filing.

Sierra Pacific lead attorney William Warne declined to comment on the case last month, and Linkert was unavailable Friday. One of their central arguments is that CalFire investigators were driven to pursue big judgments because they were directing a portion of the money to an account that financed conference travel and expensive digital cameras.

Chris Parker, a former CalFire administrator who oversaw investigations before retiring in 2006, says his old department is taking an unfair beating.

It was Parker’s idea to create the Wildland Fire Investigation Training and Equipment Fund in 2005 after years of seeing his own investigators struggling to build credible cases that would stand up in court against top-shelf lawyers. Before the investigation fund and Civil Cost Recovery Program, CalFire officials had little formal training and treated investigative work as a secondary concern behind their other duties, Parker and Upton said.

“We felt there was an overwhelming amount not being recovered,” Parker recalled.

“I said, ‘Wait a minute, we need more help,’” he said. “‘It’d be a lot less work if I had top-notch investigations, if people had all the equipment they needed. The cameras, the GPS stuff, the training – state-of-the-art training.’”

Parker said his idea for the account came from seeing other agencies use settlement money to pay for training and future

investigations. The California District Attorneys Association agreed to manage the fund in exchange for fees that totaled \$373,565 over eight years.

The prosecutors group also manages settlement accounts for other state enforcement purposes, such as a training fund for consumer-related prosecutors, as well as funds for environmental prosecutors to work in rural counties, said CDAA assistant CEO Martin Vranicar. Those accounts have the imprimatur of state statutes or court dictates.

Parker said he believed the CalFire account was completely aboveboard, too. A draft audit from 2009 said otherwise.

New audit launched

CalFire auditors found the department had not obtained Department of Finance approval to keep the fund outside state coffers. But the audit also warned that if CalFire went to Finance officials four years after starting the fund, the department might have to repay the money to the state general fund, or its budget could be reduced.

The department removed that finding from a final audit that appeared later on a state website.

CalFire continued using the fund, under new guidelines, ultimately collecting \$3.66 million.

The account is being dissolved this month at the request of the District Attorneys Association, in part because the organization faced legal scrutiny last year as part of the Moonlight fire suit. The Finance Department has launched a new audit.

Parker said he didn't consider asking lawmakers for more money directly.

"What's the quickest way to do it? If you want to ask for increased staffing, three years minimum. If you want to

increase equipment, you're talking three years. Here you have courts saying, 'We want to help you improve investigations.' I didn't see that as a violation."

After creating the investigation fund, CalFire doubled its wildfire recoveries from \$2.8 million in 2004 to \$5.6 million in 2005.

And the department saw an opportunity to collect more money. In 2007, when CalFire proposed the special cost recovery unit, it said in its formal request, "For about the last two years, CalFire has embarked on a self-initiated aggressive civil cost recovery effort. Initial indications are that this effort has paid off handsomely. ... Unfortunately, CalFire has reached the limits of its capabilities."

The proposal did not mention the investigation account.

The Civil Cost Recovery Program reaped bigger returns for the state after dedicating 14 staff members to the task. In its first year, 2008-09, it recovered \$11.8 million. Then \$16.6 million in 2009-10, \$35.6 million in 2010-11 and \$25.9 million in 2011-12.

In his latest budget, Brown asks the Legislature for \$1.7 million for 10 more permanent positions, which he says would result in a return of \$6.8 million. The governor wants to fund the program using a new fire fee on mostly rural property owners.

CalFire requested more time to produce a list of all parties who have paid the state for firefighting costs. But a list of those who paid settlement money into the fund includes the state's major utility companies – Sempra Energy, Pacific Gas & Electric and Southern California Edison. Upton and Parker said power lines have been among the biggest wildfire risks in the past.

Also on the list: Mendez Concrete, which paid \$557,454 into

the investigation fund, the third-highest total.

Unlike timber defendants in the Moonlight case, Mendez acknowledges his company's role in sparking the 2003 Piru Fire. But he contends that the state inflated costs and wasn't concerned about saving money when it housed firefighters in hotels on standby.

At 10 employees, his Santa Paula-based firm has one-fifth the staff it once did, thanks to the lawsuit and the recession, Mendez said.

He said he never before considered how much financial risk his company faced from wildfire liability.

"This was a learning experience for me. Believe me, it turned my world upside down."