

# MONTEREY COUNTY

Attachment 2



AGRICULTURAL COMMISSIONER/SEALER OF WEIGHTS & MEASURES  
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July 18, 2018

Mr. Brian R. Leahy, Director  
California Department of Pesticide Regulation  
1001 "I" Street  
P.O. Box 4015  
Sacramento, CA 95812-4015

## **RE: Distribution of Funding Derived from the County Share of Mill Assessment 2018**

Dear Director Leahy:

As you know Monterey County was one of 16 counties that committed errors with the reporting of mill criteria for the collection period from March 1, 2017, through February 28, 2018. Subsequently, one county was overpaid \$1,067,454.87 and 15 counties, including Monterey, were underpaid. Monterey County was underpaid \$352,040.50. While I cannot speak for the other 14 counties, I request the Department of Pesticide Regulation (DPR) allow Monterey County to correct the error by reporting mill criteria from line item California Code of Regulations (CCR) section 6393(b)(7) for the collection period. Additionally, I request the DPR reimburse Monterey County the \$352,040.50. If left uncorrected, I fear the significant reduction in funding will have an adverse impact on Monterey County's Pesticide Use Enforcement program in FY 2018-19.

The decision by the DPR and the California Agricultural Commissioners and Sealers Association (CACASA) Board of Directors described in your May 30, 2018, letter to Fresno County Agricultural Commissioner Les Wright, and CACASA Executive Director Sandy Elles to address only the Fresno error and ignore the error committed by the other 15 counties is subjective, inconsistent and inequitable. The decision provides the overpaid funds to counties that had already received their full allocation of mill tax and takes the mill tax reimbursement from the 15 counties that were underpaid. In addition, by not allowing the 15 counties to submit the mill criteria for line item 6393(b)(7), the DPR is allowing an inaccurate record of county costs, pesticide regulatory activities, workload and performance for the collection period from March 1, 2017, through February 28, 2018.

While the counties are responsible for submitting the mill tax reimbursement criteria, the DPR is responsible for the distribution of the mill tax. The fact that the DPR did not adequately review the reimbursement criteria data submitted by CACs resulted in the \$1,067,454.87 Fresno County overpayment and the underpayment to the other 15 counties. While Enforcement Letter 2002-030 says that the Report 5 Application was corrected to prevent errors of the nature that incorrect data can result in, it also establishes that the DPR can and will correct errors the next year.



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The following is a chronology of events leading to this letter:

On March 16, 2018, you received a letter from the CACASA recommending a 32.9 % increase over each county's FY 2016-17 pesticide mill assessment funding amount after the application of CCR section 6393.

On March 28, 2018, the Monterey County Agricultural Commissioner's Office received a letter dated March 22, 2018, from the DPR with "Pesticide Mill Assessment and Gas Tax Payments to Counties" in the subject line. The letter said that a payment of \$1,974,418.59 represented Monterey County's portion of the pesticide mill assessment collections from March 1, 2017, through February 28, 2018. The \$1,974,418.59 is \$355,618.88 less than the \$2,330,037.47 received by Monterey County the previous year.

On April 25, 2018, I met with DPR Enforcement Branch Chief Donna Marciano. Ms. Marciano shared copies of spreadsheets used by the DPR to calculate the allocation of pesticide mill assessment funds for each county's pesticide use enforcement program costs, pesticide regulatory activities, workload, and performance as set forth by CCR section 6393.

The spreadsheet for FY 2016-17 shows the number 13,021 for Monterey County's pesticide mill criteria 6393(b)(7). Pesticide mill criteria 6393(b)(7) is a 21% apportionment for the total number of restricted material permits and amendments issued by each county, the number of sites identified on those permits and amendments, and the number of notices of intent reviewed. For comparison, in FY 2015-16 Monterey County had a total number of 46,937 for mill criteria 6393(b)(7) for a difference of 33,916 from FY 2016-17. It was obvious that the difference of 33,916 in mill criteria 6393(b)(7) from one year to the next was a major reason Monterey County's mill assessment allocation was significantly less than the previous year.

The Pesticide Regulatory Activities Monthly Report (PRAMR) is used by county agricultural commissioners (CAC) to report their respective pesticide regulatory activities to the DPR on a fiscal year basis and is used by the DPR to determine mill assessment distribution. Ms. Marciano reviewed the PRAMR for Monterey County for FY 2016-17 and shared that the field to report total annual sites in section IV, sub-section E, was blank. For Monterey County, the number of total annual sites is a significant number due to the intense multi-cropping pattern of vegetable crops grown in Monterey County. This finding made it clear why Monterey County's overall number for criteria 6393(b)(7) was 33,916 less for FY 2016-17 than the previous year.

Ms. Marciano shared that many other counties made this same error. She also shared that Fresno County made an error that resulted in an overpayment. I asked Ms. Marciano why the errors were not caught by the DPR. As a comparison, I pointed out that the California Department of Food and Agriculture (CDFA), in their management of the unclaimed gas tax (UGT), requires CACs to explain changes of 30% or more from the previous year's numbers in their respective Annual Financial Reports, and that the CDFA sometimes asks for explanations of changes less than 30%. Ms. Marciano said she would have caught the errors had she still been managing the program.

I expressed a need for DPR to correct the error and reimburse Monterey County the corrected amount of mill tax. Ms. Marciano said CACASA would need to be involved in a discussion about correcting the Monterey County error. Ms. Marciano shared Enforcement Letter ENF 2002-030 dated June 26, 2002, describing how incorrect data was used in FY 2000-01 to calculate each county's portion of the mill assessment disbursement. The letter explains that the incorrect data resulted in most counties receiving slightly less than they should have

received with Fresno and Kings Counties being impacted the most. The letter went on to say that after discussion with CACASA, it was decided to make the adjustment to each county's disbursement the following fiscal year. Additionally, the letter says that the Report 5 application was corrected to prevent errors of this nature in the future.

On May 1, 2018, I contacted Ms. Marciano via email and expressed my belief that although we had spoken about CACASA's involvement in this issue, I believed the issue was between Monterey County and the DPR. In my email, I offered to speak with Ms. Marciano or other DPR staff regarding Monterey County.

On May 14, 2018, after no reply was received from Ms. Marciano, I contacted DPR County/State Liaison Joe Marade and inquired why he had not received a reply from Ms. Marciano.

On May 15, 2018, Ms. Marciano contacted me via email to schedule a phone call discussion as a result of my request. Ms. Marciano said Acting Chief of Audits Leslie Ford would join the call. She also wrote that the mill disbursement was changed to an administrative function and that she no longer worked on the program.

On May 17, 2018, during a conference call with Ms. Marciano, Ms. Ford, and Mr. Marade, I expressed my belief that the issue of Monterey County being short in FY 2016-17 mill assessment disbursement was between Monterey County and DPR and not CACASA. DPR staff did not agree.

On May 18, 2018, in an email sent by then CACASA President Marty Settevendemie to CACASA members, Mr. Settevendemie shared that there was an error in this year's mill distribution that resulted in an overpayment to Fresno County of \$1,067,454.87. Further, that the overpayment to Fresno County would be redistributed to the remaining counties through CACASA. Since the correction of the Monterey County error was not mentioned, I utilized reply all and shared that Monterey County was significantly underpaid due to an error. I asked that this opportunity be used to make Monterey County whole.

On May 19, 2018, using the Total Annual Sites number of 32,194 that Monterey County should have reported for FY 2016-17, Mr. Gonzales determined the amount Monterey County was underpaid. In a second email reply to the email sent by CACASA President Settevendemie on May 18, 2018, I shared that Monterey County did not report the Annual Total Sites, and that Monterey County was underpaid by \$352,040.50.

On May 23, 2018, at the CACASA Spring Conference, the Residual Mill Subcommittee (RMS) considered a DPR proposal to allow the 15 counties that omitted entering data for criteria 6393(b)(7) to submit their data. After which the \$1,067,454.87 from the Fresno County overpayment could be redistributed to all counties except Fresno. Instead, the RMS agreed to propose that the CACASA Board of Directors adopt a DPR proposal to correct errors in PRAMR lines 118 and 120 (site reporting) by all counties and redistribute the \$1,067,454.87 from the Fresno County error. Also, that the DPR will recalculate the data proportionately and direct the CACASA by guidance letter to distribute the refund of \$1.067M from Fresno County to the remaining counties. No counties would lose funds from this year or next year's future distribution.

On May 25, 2018, during the CACASA Board of Directors meeting, it was announced that the DPR had withdrawn their original proposal made to the RMS on May 13, 2018. Another proposal was made and adopted by the CACASA Board of Directors. The adopted proposal did not allow for the 15 counties to correct their Total Annual Sites omission and instead would redistribute the \$1,067,454.87 Fresno County error to all the remaining counties without corrections.



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On May 30, 2018, the DPR sent a letter with Mill Redistribution Guidance Document Letter in the subject line to Fresno County Agricultural Commissioner Les Wright and the CACASA Executive Director Sandy Elles. The letter says that an error was identified with the reporting of the mill criteria from line item 6393(b)(7) that resulted in an overpayment to Fresno County. The letter does not mention the error of omission committed by the other 15 counties in not reporting mill criteria from criteria line item 6393(b)(7) (Total Annual Sites) nor offer a correction as with the Fresno County error.

Please contact me regarding your decision and any questions.

Sincerely,



Henry S. Gonzales  
Agricultural Commissioner

c: Matthew Rodriguez, Secretary  
California Environmental Protection Agency

California Agricultural Commissioner's and Sealers Association

Sandy Elles, Executive Director  
Ruben Arroyo, President  
Tim Pelican, President-Elect  
Paul Kjos, Vice President, Weights and Measures  
Joe Deviney, Vice President, Agriculture  
Stevie McNeil, Treasurer  
Lisa Herbert, Secretary  
Martin Settevendemie, Immediate Past President  
David Robinson, Chair, Subcommittee on Mill

Department of Pesticide Regulation

Jesse Cuevas, Assistant Director  
Anise Severns, Assistant Director  
Rudy Artau, Chief Information Officer  
Leslie Ford, Acting Chief of Audits, Fiscal Services Branch  
Joe Marade, County/State Liaison