



January 13, 2023

Public Comment on Mill Fee Assessment Study: Mill Alternatives Concept Paper

Dear Crowe and DPR Mill Fee Assessment Team,

Thank you for developing the “[Mill Alternatives Concept Paper](#)” (“the Report”) and for the opportunity to submit feedback. It is clear that all parties agree that the Department of Pesticides (DPR) needs a sustainable funding source to enact its statutory mandates and necessary program areas.

However, we are concerned that funding options that separate the Department’s funding from pesticide sales are not addressed in any meaningful way. The Mill Fee as the primary funding source for the Department is an inherent conflict of interest and is unsustainable. The DPR’s soon-to-be-released Sustainable Pest Management Roadmap calls for a 90% reduction of use of an as-yet undefined category of hazardous pesticides, along with many more alternatives to chemical pesticides, and a major increase in the technical assistance needed for farmers to make the transition away from applying toxic chemicals. If the Roadmap is implemented successfully, pesticide application and sales should significantly decrease over the next 5-30 years. The new and bolstered programs and activities suggested in the SPM Roadmap far exceed the Department’s current budget and, combined with an expected dramatic reduction in mill fee proceeds, would create a significant and unsustainable funding deficit over the long-term. We continue to strongly recommend the divorce of the mill fee as the Department’s primary funding source as soon as possible.

We are concerned that Crowe’s framing of the questions and options for determining a new Mill Fee Structure prevent consideration of real alternative funding sources for the Department. Within the framework provided by Crowe, we offer the following comments.

Mill Setting

**Legal Authority**

We recommend that the Mill Fee minimum level and basic structure be in statute as a directive and that the Mill fee levels and detailed structure be determined in regulation. In addition, we recommend a *minimum* rate in the Food and Agriculture Code (FAC), rather than a maximum as

is currently the case. We also recommend that the minimum set in statute be no less than a Consumer Price Index percentage adjustment to the mill fee that was last updated in 2004.

### Alignment

We identified redundancies between the alignment options given: statutory mandates and regulations, program expenditures, and sustainable pest management (SPM). Upon examining the 6 primary statutory mandates and regulations from FAC Section 11501 (page 17) in relation to the Programmatic Expenditures in Exhibit 9 (page 19) and SPM, it is clear that they are all one and the same. Please see Exhibit 1, below, where we have illustrated the overlap.

#### Exhibit 1

DPR's regulations are primarily coded within Title 3 CCR. FAC Section 11501 sets forth DPR's six (6) primary mandates:

1. To provide for the proper, safe, and efficient use of pesticides essential for production of food and fiber and for protection of public health and safety  
\* Pesticide registration, Human health and environmental assessments, Mill assessment
2. To protect the environment from environmentally harmful pesticides by prohibiting, regulating, or ensuring proper stewardship of those pesticides  
\*Monitoring and surveillance, Pesticide use reporting, Enforcement, County Ag Commissioners (CACs)
3. To assure agricultural and pest control workers of safe working conditions where pesticides are present  
\*Mitigation of human health risk, Licensing and certification
4. To permit agricultural pest control by competent and responsible licenses and permittees under strict control of DPR and the County Agricultural Commissioners.  
\*Licensing and certification, Enforcement, CACs
5. To assure consumers and users that pesticides are properly labeled and appropriate for the use designed by the label that [the] state or local government dissemination of information on pesticide uses of any registered pesticide product is consistent with the uses for which the product is registered  
\*Pesticide Registration, Enforcement, Pesticide use reporting, CACs
6. To encourage the development and implementation of pest management systems, stressing application of biological and cultural pest control techniques with selective pesticides when necessary to achieve acceptable levels of control with the least possible harm to the public health, nontarget organisms, and the environment.  
\*[Sustainable] Pest management, CACs, Mitigation of human health risk, Mitigation of environmental hazard

\*Blue highlight are additions demonstrating the program expenditures (as listed in Exhibit 9, pg.19 of the Report) and SPM falling neatly into statutory mandate and regulation

(source: pg. 17, Mill Fee Alternatives Report)

As stated above, we encourage exploring creative additional funding options and novel reallocations for the Department, including investigating program areas that have their own revenue source - such as pesticide registration and licensing and certification - to adjust their fees, permits, etc, to create programmatic self-sufficiency. This could allow the mill fee funds that have historically gone towards those program areas to be distributed to other program/statute areas that don't have dedicated funding sources.

## **Revenue Stabilization**

Without a doubt, DPR needs stable revenue to efficiently and effectively carry out its required and necessary mandates. We support all three options provided (page 20):

- additional mill (or more) allocated to maintain an appropriate threshold implemented by a set trigger level,
- annual increases of the mill fee, and
- gradual increases from the General Fund.

However, DPR needs a different source than the Mill Fee as their primary source of funding, particularly given the direction of the Sustainable Pest Management Roadmap and efforts to reduce the pounds of pesticides sold and applied annually in California.

## Structure

### **Mill Fee Funding Models/Fee Construction**

We recommend a Tiered Fee Model based on Pesticide Product Workload. We additionally suggest that the list of workload activities provided is not yet comprehensive and should be expanded upon to at least include health and environmental monitoring and mitigation.

This tiered structure should assess pesticides approved for use in organic production at the lowest fee. Organic-approved pesticides are reviewed every five years by the United States Department of Agriculture, in consultation with the Department of Health and Human Services and the Environmental Protection Agency. DPR should categorize organic-approved pesticides as the lowest workload burden and assess these pesticides accordingly .

### **Reserve Mechanism**

Given the complexity of the proposed SPM implementation and the expectation that Mill Fee generated funds for the department will decline post-2025, we support the “Funded Reserve Mechanism” explained in Exhibit 14, with the additional recommendation not to reduce the additional one (1) mill of fee when the reserve reaches \$20 million, but to reallocate that mill into an endowment used for activities listed under “Positive Incentives”. An example could be developing aspects of the SPM Roadmap that have yet to be implemented, such as incentives to research for safer alternatives to existing pesticides, or peer-to-peer learning networks of on-the-ground practitioners.

## Mill Usage

We are greatly concerned by the categories under Usage. The Programmatic Needs do not seem to be appropriately categorized or grouped. DPR’s mission is *“to protect human health and the environment by regulating pesticide sales and use, and by fostering reduced-risk pest management.”* This illustrates that “Program SPM Needs” and “Environmental and Human Health Monitoring” are essential Program Core Needs, rather than elective auxiliary Positive Incentives. Additionally, both are represented in numbers 2,3, and 6 of DPR’s Statutory Mandates found in FAC Section 11501 and shown in Exhibit 1, above, clearly placing those activities within “Statutory Mandates and Regulation”. Additionally, although we would like to see research and development of “new alternative products” incentivized, there is no reason

why the programmatic activities of their registration should not fall into Program Core Needs, which includes pesticide registration.

### **Program Core Needs**

We urge Crowe and DPR to critically examine and creatively develop alternative sources other than the Mill Fee to fund DPR's work. There are certainly other mechanisms to grow the Department's revenue to meet its expenditures while also modernizing the Mill Fee.

DPR is one of many departments within the California Environmental Protection Agency. Each Department is funded separately, often through their own permitting and other distinct revenue sources, as well as supplemented by the General Fund. DPR should comprehensively understand and potentially develop analogous funding streams, taking into account lessons learned.

For instance, as posed in section 5.B Funding Sources, the Report cites that registration, licensing and certification fees are additional revenue sources for DPR. The recently updated \$1150 and \$1525 fees to register a new pesticide and to renew registration, respectively, are nominal compared to the administrative cost and workload of the Department. Like one of the options for tiering the mill fee, we recommend that the registration rates are dictated by the department's workload. This would assist in any gap in funding generated by the mill fee or general funds, as well as encourage the concept of "essentiality" and lower toxicity when considering new pesticides.

### **Program SPM Needs**

The Mill Fee should support SPM Needs. However, we are concerned about the designation and segregation of programs and activities listed. When reviewing the activities categorized in Exhibit 20, it is clear that various aspects should be listed under DPR's Core Program Needs - most notably activities under the Pesticide Registration and Evaluation Branches and Human Health Assessment Branch, which are mandated, non-elective roles the Department needs to accomplish to meet its mission. "Prioritizing review for safer, more sustainable products" and "Enhanced registration processes to support transitions" are frameworks for the Department to implement rather than a standalone activity. DPR's SPM Program Needs should include new programs and activities listed in the SPM Roadmap and under the "Other positive incentives" listed on page 34.

### **CAC Needs**

Enforcement at both the State and local levels is critical to enforcing laws and regulations aimed at keeping the public and environment safe from the considerable risk that pesticides pose. Therefore we are concerned about the findings in the 2019 "Governance on the Ground" Report from UCLA that identifies multiple substantial deficiencies in the CACs' approach to cumulative exposure and alternatives evaluation<sup>1</sup>, both of which are their statutory mandate. DPR needs to develop a comprehensive job description that includes measures of success for

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<sup>1</sup>[https://law.ucla.edu/sites/default/files/PDFs/Publications/Emmett%20Institute/\\_CEN\\_EMM\\_PUB\\_Governance%20on%20the%20Ground.pdf](https://law.ucla.edu/sites/default/files/PDFs/Publications/Emmett%20Institute/_CEN_EMM_PUB_Governance%20on%20the%20Ground.pdf)

CACs. Mill allocation to the CACs then needs to be contingent on performing their mandated roles, increasing transparency and being accountable to all stakeholders, not just the agriculture industry. If enforcement obligations are not met, the mill allocation should be reduced and DPR should assume enforcement responsibilities.

### Mill Implementation

#### **Fee Review, Monitoring, and Future Adjustments**

We disagree that three of the options presented on page 38 are mutually exclusive. We recommend that the Mill Fee be adjusted at set intervals and when the revenue/expenditure balance exceeds a threshold. Additionally, we recommend that the initial adjustment is set based on the increase of inflation since the last update in 2004, in combination with the workload based tiering structure. With our previous recommendation of the Mill Fee Setting, we recommended that Statute sets a minimum rather than a maximum fee level. This provision would assist in the Department's regulatory prerogative to adjust the fee level at set intervals and when triggered by a low balance.

Thank you for the opportunity to comment.

Sincerely,



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