



**Board of Supervisors
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

KUYLER CROCKER
District One

PETE VANDER POEL
District Two

AMY SHUKLIAN
District Three

EDDIE VALERO
District Four

DENNIS TOWNSEND
District Five

AGENDA DATE: July 23, 2019

Public Hearing Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Published Notice Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Advertised Published Notice	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Meet & Confer Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Personnel Resolution attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
CONTACT PERSON: Julieta Martinez PHONE: 559.636.5000				

SUBJECT: Approve a Letter of Support - Cal Water

REQUEST(S):
That the Board of Supervisors:

1. Receive a presentation on Wildfire and Inverse Condemnation Liability for Community Water Systems; and
2. Approve sending a letter of support for California Water Service's (Cal Water) proposal to members of the California State Administration and State Legislature regarding Wildfire Liability, Public Drinking Water Suppliers, & Fire Safety.

SUMMARY:
In light of the growing threat of wildfires in California, there is concern about the consequences that could befall on communities if the state's drinking water suppliers continue to be potentially held liable for fires they have no role in starting. California Water Service is asking Tulare County to join their coalition and encourage the Legislature and Administration to implement common sense reforms that make clear public drinking water suppliers are not responsible for the damage from fires they and their facilities do not start. Such a narrowly tailored reform would not unduly affect the rights of homeowners and other fire victims in other circumstances, while at the same time it would help to ensure the continued safety of California's drinking water and reliability of our fire protection systems.

Included for further background is the Executive Summary of the Final Report of the Commission on Catastrophic Wildfire Cost and Recovery as published on June 18, 2019.

SUBJECT: Approve a Letter of Support - Cal Water
DATE: July 23, 2019

FISCAL IMPACT/FINANCING:

There is no net County cost to the General Fund.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

Approve a Letter of Support – Cal Water is linked to Quality of Life – Promote public health and welfare educational opportunities, natural resource management and continued improvement of environmental quality.

ADMINISTRATIVE SIGN-OFF:



Julieta Martinez
Chief of Staff

cc: County Administrative Office

Attachment(s) Letter of Support – Cal Water
Executive Summary
PowerPoint Presentation

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF APPROVE A LETTER)
OF SUPPORT – CAL WATER) Resolution No. _____
) Agreement No. _____
)

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD _____
_____, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JASON T. BRITT
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

1. Received a presentation on Wildfire and Inverse Condemnation Liability for Community Water Systems; and
2. Approved sending a letter of support for California Water Service's (Cal Water) proposal to members of the California State Administration and State Legislature regarding Wildfire Liability, Public Drinking Water Suppliers, & Fire Safety.

July 23, 2019

The Honorable Gavin Newsom
Governor, State of California
Governor's Office, State Capitol
Sacramento, CA 95814

The Honorable Toni Atkins
President Pro Tempore, California Senate
Room 205, State Capital
Sacramento, CA 95814

The Honorable Anthony Rendon
Speaker, California Assembly
Room 219, State Capitol
Sacramento, CA 95814

Re: Wildfire Liability, Public Drinking Water Suppliers, & Fire Safety

The County of Tulare – including the constituents we serve – receive water utility service from California Water Service (Cal Water), one of California's largest public drinking water suppliers and the largest regulated by the California Public Utilities Commission. In light of the growing threat posed by wildfires in California, we are very concerned about the consequences that could befall our communities if the state's drinking water suppliers continue to be potentially held liable for wildfires. Ironically, holding drinking water suppliers financially responsible for these wildfires could, inadvertently, increase the risks our communities face from more traditional urban fires.

This predicament stems from a lawsuit against the Yorba Linda Water District (Water District) in relation to the Freeway Complex Fire, which was started by a broken-down vehicle. The Water District was held financially responsible for some of the fire damage – almost \$70 million – not because it started the fire but because the fire damaged some of the Water District's facilities, preventing it from pumping water to one neighborhood. In this case, a victim of the fire – the Water District – was held responsible for the damage caused by the fire as a result of the current application of the legal theory of inverse condemnation. Similar logic is now being used in lawsuits against other public drinking water suppliers, and additional lawsuits may be forthcoming as we experience more wildfires.

Holding public drinking water suppliers potentially responsible for fires they do not start could make our communities less safe. The recently-issued report from the Commission on Catastrophic Wildfire Cost and Recovery highlights that this type of application of the inverse condemnation doctrine threatens to hold back capital needed to make continued investments in utility infrastructure: investments that are critical to the continued safety and reliability of California's drinking water systems. Because they are interconnected, reducing the reliability of California's drinking water systems could undermine the reliability of our fire protection systems, actually increasing the dangers posed by fires, even in more traditional urban fire scenarios.

To lighten these risks, we respectfully encourage the Legislature and Administration to implement common sense reforms that make clear public drinking water suppliers are not responsible for the damage from fires they and their facilities do not start. Such a narrowly tailored reform would not unduly affect the rights of homeowners and other fire victims in other circumstances, while at the same time it would help to ensure the continued safety of California's drinking water and reliability of our fire protection systems.

Sincerely,

Kuyler Crocker, Chairman
Tulare County Board of Supervisors

Pete Vander Poel, Vice Chairman
Tulare County Board of Supervisors

Amy Shuklian, District Three
Tulare County Board of Supervisors

Eddie Valero, District Four
Tulare County Board of Supervisors

Dennis Townsend, District Five
Tulare County Board of Supervisors

Cc: The Honorable Bill Dodd, Chair, Senate Select Committee on Governor's Wildfire Report
The Honorable Ben Hueso, Chair, Senate Committee on Energy, Utilities, & Communications
The Honorable Henry Stern, Chair, Senate Committee on Natural Resources & Water
The Honorable Chris Holden, Chair, Assembly Committee on Utilities & Energy
The Honorable Eduardo Garcia, Chair, Assembly Committee on Water, Parks, & Wildlife
Tulare County Delegation
Paul Yoder, Shaw/Yoder/Antwih, Inc.

Executive Summary

Last September, in the midst of the worst wildfire season in California's history, the legislature passed and then-Governor Brown signed Senate Bill 901. Among other things, the bill created a Commission on Catastrophic Wildfire Cost and Recovery to provide recommendations to the governor and legislature on how to manage the long-term costs and liabilities associated with utility-caused wildfires.

This Executive Summary provides an overview of the work and recommendations of the commission. The commission recommendations are drawn from three workpapers, each developed by two-member workgroups and supported by public testimony. Only the executive summary is expressive of commission intent, although the workgroup reports, attached in appendices, provide a necessary foundation in supporting the final recommendations.

I. Preface

The catastrophic wildfires of 2017 and 2018 took 139 lives, destroyed communities, temporarily displaced hundreds of thousands of Californians, burned more than 2.8 million acres, created short- and long-term health problems, and caused irreparable harm to the state's natural resources.

Wildfires have always been a part of California's natural landscape. However, climate change has resulted in a combination of hotter and drier conditions for longer periods of the year, along with interspersed years that are unusually wet. These extremes in precipitation have built up vegetation that then dries out in the hotter years, providing more fuel for California's fires and ultimately resulting in more frequent and severe wildfires. Fifteen of the twenty largest California wildfires,¹ as well as fifteen of the twenty most destructive,² have occurred since 2000.

This explosive growth in fire activity and accompanying destruction has been coupled with the growth in California's population and the steady incursion of human settlement into high fire risk areas, in part due to the lack of affordable housing available elsewhere in the state.

Together, increasing global temperatures and an increasing population have played direct roles in increasing the fire threat in California.

¹ [CAL FIRE Top 20 Largest California Wildfires](#). (last visited May 29, 2019)

² [CAL FIRE Top 20 Most Destructive Wildfires](#). (last visited May 29, 2019)

Over the course of the past five months and five public hearings, the Commission has heard from many victims, and learned of the untold damages these recent catastrophic fires have caused. As Shari McCracken of the Butte County Board of Supervisors told the commissioners of the recovery after the Camp Fire, “Though it is hard to quantify, there is a greater feeling of uncertainty and less hope for rebuilding in the Camp Fire than we have seen in other fires...It is the order of magnitude of destruction that people just can’t quite grasp. Second, the order of magnitude of the destruction is testing every level of government [...] The County will not be what it was.”³

California’s utilities have played a pivotal role in causing the state’s most destructive recent wildfires, and must take a leadership position in mitigating the risks created by this new reality. As the Governor’s Energy Strike Force noted in its April 2019 report, “California’s electric utilities must be part of the solution to this problem. In the past four years, equipment owned by California’s three largest investor-owned utilities sparked more than 2,000 fires.⁴ Utility-caused fires tend to spread quickly and be among the most destructive. Hundreds of thousands of miles of electrical transmission and distribution lines snake across the California landscape, often igniting fires during extreme wind events and in remote areas, making early detection and fire suppression extremely challenging. Longer fire seasons make utility-caused fires even more likely.”

At the same time, the current method of allocating costs for these fires—socialization through utilities and ratepayers—has destabilized the state’s energy sector, with the largest utilities facing increasing costs of capital and an imminent threat of bankruptcy. This background is fully addressed in the Governors Strike Force Report, so the commission will not repeat here except to say that these impacts burden ratepayers, wildfire victims, and the state’s overall progress towards our climate and clean energy goals.

SB 901, passed in 2018, aimed at addressing this challenge through four key measures: requiring the adoption of wildfire mitigation plans for all electric utilities, providing greater legislative guidance in the cost-recovery process at the California Public Utilities Commission, incorporating a “stress test” to help guide the CPUC in avoiding critical negative impacts on the health of the investor-owned utilities, and providing for securitization of 2017 wildfire expenses.

³ Shari McCracken. Public testimony to the commission, March 13, 2019.

⁴ Carolyn Kousky, et al., *Wildfire Costs in California: The Role of Electric Utilities* Wharton Risk Management and Decision Processes Center (Sept. 2018), riskcenter.wharton.upenn.edu/wp-content/uploads/2018/08/Wildfire-Cost-in-CA-Role-ofUtilities-1.pdf (last visited Apr. 10, 2019)

As highlighted by the Strike Force Report, the passage of SB 901 was followed by utility credit rating downgrades, indicating that **SB 901 does not do enough to manage the systemic risk from wildfire to the state’s major utilities.**

It is with this background in mind that the commission fulfills its mandate to look specifically at the intersection of wildfire and utilities, and to make “recommendations for changes to law that would ensure equitable distribution of costs among affected parties.”

The commission’s recommendations are summarized below. Full detail on each recommendation is included in the appendices.

II. Commission Process and Report Structure

The Commission on Catastrophic Wildfire approached its work in the spirit of collaboration and maximum public engagement. To this end, the commission met five times, at four locations across the state including cities that had either been recently impacted by wildfires, or that face a significant threat of future wildfires. The five meetings were held in the following cities:

Sacramento – February 25, 2019

Redding – March 13, 2019

Santa Rosa – April 3, 2019

Ventura – April 29, 2019

Sacramento – June 7, 2019

In the process, the commission received invaluable testimony from wildfire victims, local governments, utilities and other energy industry experts, ratepayer advocates, financial experts, and other members of the public. The commission received thousands of pages of thoughtful written testimony, accepted on a rolling basis, with a Request for Comment in April including specific questions to help guide the development of this final report. The commission is grateful for all who committed their time, energy, and expertise to this process.

Through this process, the commission has amassed a public record, which it has used to inform the recommendations contained here. Where possible commissioners have cited this public record to substantiate their recommendations. In addition, all written comments will be included in the final report for the record.

At its April 29th meeting in Ventura, the commission established three workgroups (each made up of two commissioners) to undertake drafting sections of the report, supported by commission staff. These workgroups included one focused on utility liability, one on funding mechanisms to handle damages from future wildfires, and one on issues related to the homeowners insurance market in high-risk fire areas.

This executive summary highlights the findings and recommendations of each of these workgroups.

At its final meeting on June 7th, the commission discussed the findings and recommendations contained in the executive summary. After some agreed-upon changes reflected herein, the commission unanimously approved the transmittal of this document, along with the workgroup reports, to the legislature and governor for further review and consideration. As mentioned above, only the executive summary is expressive of commission intent, although the workgroup reports provide a necessary foundation in supporting the final recommendations.

III. Findings

Utility Liability

Finding 1. California faces an unprecedented multi-dimensional emergency caused by catastrophic wildfires.

Finding 2. California has a decentralized system of regulating and governing the wildfire prevention and mitigation of its 56 public and private electrical utilities that creates inconsistent rules for addressing wildfire risk, and redundancy of effort, and squandering of scarce resources.

Finding 3. The current interpretation of inverse condemnation, holding utilities strictly liable for any wildfire caused by utility equipment regardless of standard of care or negligence, imperils the viability of the state's utilities, customers' access to affordable energy and clean water, and the state's climate and clean energy goals; it also, does not equitably socialize the costs of utility-caused wildfires.

Finding 4. The increasing costs of capital and the risk of bankruptcy associated with the strict liability interpretation of inverse condemnation doctrine for water companies, publicly-owned utilities, and investor-owned utilities is harmful to wildfire victims, ratepayers, and the utilities themselves.

Finding 5. The risk of utility bankruptcy harms both major classes of the victims of wildfires. Casualty victims (i.e., non-property loss victims) are unfairly forced to have their claims moved from civil court proceedings to bankruptcy jurisdiction. Property loss victims unfairly have their claims similarly moved to bankruptcy court where they lose many of the protections of civil court, may have their claims substantially reduced or extinguished by the bankruptcy court, and may be subordinated to post-bankruptcy victims' claims.

Finding 6. The current process and standard for determining cost recovery contributes to the uncertainty that utilities face, often increasing costs to ratepayers while resulting in insufficient investment in wildfire mitigation.

Funding Mechanisms

Finding 7. The financial mechanisms for paying wildfire liabilities associated with utility-caused fires are strained and not sustainable for victims, ratepayers and utility shareholders.

Finding 8. Wildfire risk is created by multiple parties who should all be incentivized to reduce risk and share in paying for wildfire damages.

Finding 9. The time required for, and the uncertainty of, investor-owned utility wildfire cost recovery from ratepayers reduces investor confidence in utilities, and limits utility access to capital after a major fire.

Finding 10. Californians' electric costs are increasing due to wildfire mitigation investments and other capital and regulatory requirements.

Finding 11. The liabilities associated with wildfire are challenging to model and not well understood.

Homeowner's Insurance

Finding 12. Admitted lines home insurance is becoming more difficult and more expensive to obtain in high wildfire risk areas in California.

Finding 13. As more homeowners in the WUI are unable to find home insurance from admitted carriers, more are having to purchase fire insurance from the surplus lines market or from the FAIR Plan.

Finding 14. Home insurance in the WUI is still largely available, although we are marching steadily toward a future where home insurance will be increasingly unavailable and/or unaffordable for many in the wildland urban interface in California. More destructive fires in the future of the sort we saw in 2017 and 2018 will only accelerate this trend.

Finding 15. California does not currently require a new government created insurance program beyond than the FAIR Plan to support home insurance availability in the WUI.

IV. Recommendations

As is clear from the findings above, the current wildfire situation in California requires a balancing act. Californians in the wildland-urban interface contribute to the economic and cultural vitality of the state and deserve adequate protection from wildfires. It is critical that not only utilities, but also homeowners, renters, federal, state and local government, and

others, act to reduce the risks of wildfires in the WUI. We must not incentivize risky behavior, including the risks many Californians take by continuing to move into the most fire-prone areas of the WUI; by remaining un- or underinsured; or by neglecting to maintain proper home hardening and fire safety standards. But we also cannot put the entire cost of wildfires onto ratepayers' backs. Cost recovery from utility-related fires must be spread across those with the responsibility to help reduce these wildfires in a way that is fair, does not incentivize risk, and does not overly burden utilities to the extent that they could be driven out of business.

This is not an easy task. Where the commission landed, after hours of testimony and expert consultation, is as follows:

The Commission recommends the prudent manager standard for electric utilities be modified to bring specificity, to the extent possible, to what constitutes prudent behavior in the context of wildfires.

The commission recommends that the current strict liability interpretation of inverse condemnation for utilities be replaced with a fault-based standard.

The commission recommends the creation of a Wildfire Victims Fund, adequately sized to the level of risk, to more quickly and equitably socialize wildfire costs. Such a fund would be structured to avoid subsidizing risk: it would only pay out settlements to claimants at the levels they would have received in the absence of the fund's creation, and will require substantial repayment by utilities not found to be prudent.

The commission recognizes some real challenges, risks, and downsides to this outcome – not least of which is that creation of a large fund might go against the overarching need to ensure that the state is not ultimately subsidizing risky behavior from homeowners, renters, federal and local officials, and utilities. The commission has attempted to address some of these concerns through the fund details but many questions and concerns remain.

Absent either reform of strict liability *or* the establishment of a wildfire fund, immediately revising the prudent manager standard and establishing a liquidity fund would resolve some of the issues currently facing the state's electric utilities.

The commission recommends a series of reforms related to the homeowner's insurance markets, to maintain availability and affordability of insurance in the wildland urban interface, while also ensuring that policy prices remain fundamentally tied to risk.

The commission urges that any changes to inverse condemnation, the prudent manager standard, cost recovery, or creation of a Wildfire Victims Fund be considered in a coordinated fashion. Interactions between the three frameworks are so direct and so strong that modification of one or more without close coordination is likely to lead to failure of policy effectiveness or other severe unintended consequences.

Utility Liability

The commission recommends the following as the clearest way to more equitably socialize costs, relieve the extreme burden of ratepayers, and meet the principles enumerated by the Governor's Energy Strike Force.⁵

Recommendation 1. Replace the current strict liability interpretation of inverse condemnation for electric and water utilities with a fault-based negligence standard.

The current liability regime stems from the constitutional doctrine of inverse condemnation. In applying this doctrine, courts have assigned liability to utilities even in the absence of a finding of negligence.

Converting this strict liability regime to a fault-based standard reduces the burden to ratepayers by removing significant wildfire liability, decreasing the cost of capital, and reducing the risk of bankruptcy, while maintaining a robust incentive for utilities to mitigate wildfire risk.^{6,7} The Commission notes that a change in this liability regime may transfer costs, not eliminate them, and that transfer may result in stakeholders responding accordingly.

Recommendation 2. Revise and clarify the prudent manager standard for utilities.

Refining the prudent manager standard used by the California Public Utilities Commission is a necessary additional step to provide clarity to utilities and their lenders regarding wildfire cost recovery. When utility equipment contributes to a wildfire, the CPUC must determine that the utility prudently managed its system before IOUs can recover liability costs from their electric customers. The commission received testimony that the current standard for determining prudence is unclear and protracted. This process has led to significant uncertainty in the capital

⁵ Governor Newsom's Strike Force. "Wildfires and Climate Change: California's Energy Future", pp 26-27

⁶ There remains significant uncertainty around the legal viability of changing the strict liability interpretation of inverse condemnation to a fault-based standard. Notably, in 2018, the Office of Legislative Counsel authored an opinion indicating that the legislature may not, by statute, alter judicial interpretation of the California Constitution.

⁷ The utility liability workgroup of this commission posited a legal approach on this issue at its final meeting, and this approach is outlined here for consideration. The question of whether the inverse condemnation strict liability standard applies to utilities has never been decided by the California Supreme Court or the Legislature. Nevertheless, two Courts of Appeal have so ruled. Both opinions are suspect. The first, Barham, was decided before California's new electricity deregulation scheme was implemented and the second, Pacific Bell, was based on the factually disproven assumption that the utility could pass its liability onto its ratepayers. The Legislature and Governor have the authority and basis to declare a wildfire emergency which threatens the safety and well-being of the State and to establish a legal and regulatory scheme setting forth their interpretation of the Constitution to respond to the emergency; see, e.g., Bunch and cases authorizing the Legislature to interpret the State constitution. The utility liability findings and recommendations in this Report would support such Legislation.

markets regarding the costs that utilities face, which in turn leads to increased costs for utility customers.

Regardless of whether the strict liability application of inverse condemnation remains the rule, the commission recommends modifications to the approach of determining prudence, in order to bring certainty to the process while still holding utilities responsible for imprudence of the utilities' management.

The objectives of this reform would be to 1) ensure that ratepayers pay for just and reasonable investments (such as investments in prevention and safety), but do not pay for avoidable, imprudent behavior and 2) ensure cost recovery reflects the host of factors—including risky homeowner or renter behavior—that contribute to the extent of wildfire damage, and does not hold utilities solely liable in cases where other factors contribute to the magnitude of the damages.

Below are three, not mutually exclusive, options for reforming the prudent manager standard.

Cost Recovery Option 1: Burden shifting. In order to increase the certainty that prudently incurred costs will be allowed in rates, CPUC process could be modified to allow for a presumption of prudence for a utility wildfire expense given a prima facie showing but still allow for a challenger to attempt to prove, by a preponderance of the evidence, that an expense was imprudently incurred.

And/Or

Cost Recovery Option 2: Further refinement of those SB901 factors the CPUC should consider when assessing disallowances, to give a higher weighting to those factors that acknowledge the unique, exogenous circumstances possibly present in a catastrophic wildfire.

If and only if a Wildfire Victims Fund is created and utility shareholders make a substantial upfront contribution to the Fund:

Cost Recovery Option 3: Maximize utility shareholder liability up to the point it harms ratepayers or impacts service. One option might be to have a predetermined maximum liability that shareholders may be subject to under the current (or an alternative) framework for prudence. This option should only be considered if shareholders make substantial upfront contributions to a fund.

Recommendation 3. Consolidate and strengthen the standards and processes for utility wildfire mitigation and response. One option for consideration is to establish an Electric Utility Wildfire Board, which consolidates governance of all utility catastrophic wildfire prevention and mitigation into a single entity separate from the California Public Utilities Commission.

The IOUs, POUs, and cooperatives are governed by separate wildfire prevention and mitigation rules. Moreover, there is no consolidated data gathering, best practices development, or other centralized efforts to maximize the state's fire prevention and mitigation efforts. This results in inconsistent policies, duplication of efforts, and lack of efficient coordination. The commission recommends considering the creation of a single, purpose-built state entity to have governing authority over all utility wildfire prevention and mitigation activities. The Electric Utility Wildfire Board, or other entity would set and enforce safety standards and implement, administer, and adjudicate fault-based standards for both IOUs and POUs. Any new state agency given these authorities must also be aligned with and consistent with the CPUC's processes and authorities. The commission envisions a robust entity with (a) data collection and other information technology efforts; (b) liability and conduct standards development activities; and (c) liability standards enforcement activities.

Taken together, these actions would significantly reduce the risk to ratepayers from overwhelming wildfire liability. **But taking these actions would not entirely eliminate that risk.** Utilities would continue to face liquidity challenges if they are perceived to face the risk of significant wildfire liabilities.

For this reason, the commission recommends that an additional funding mechanism be considered to create a buffer against the shock of liability from catastrophic fires. Such a mechanism is further described below. In the event that the inverse condemnation/strict liability standard were revised, such a fund would need to cover less liability, and would therefore require a smaller capitalization than if the current inverse doctrine were to stay in place.

Funding Mechanism: Wildfire Victims Fund

Catastrophe funds, such as a Wildfire Victims Fund, can be useful tools when rapid changes in perception of risk from a particular peril (wildfire, hurricane, earthquake) lead to disruptions in insurance markets or to a risk that traditional insurers are either unable or unwilling to manage through the normal underwriting process. The degree to which the State's utilities continue to face such a perception will determine whether a fund is needed, and if so, how large it should be.

The commission recommends that the legislature establish an adequately sized to risk and broadly sourced Wildfire Victims Fund to more quickly and equitably socialize wildfire costs. Ultimately, how such a reserve fund is structured, and how effective it is, depends on what other reforms the legislature adopts. To be most effective, a fund should be coupled to greater

investment in wildfire mitigation, and to reforms to the liability regime, cost recovery process, and property insurance markets.

At the same time, while this discussion focuses on a fund that would be designed to pay claims from wildfire victims, the commission believes that a smaller fund, designed to provide liquidity to utilities after large wildfires, could provide some but not all of the benefits of the larger claims-paying fund.

Recommendation 4. The legislature should consider establishing a broadly sourced Wildfire Victims Fund, adequately sized to the level of risk, to more quickly and equitably socialize wildfire costs, and maintain the health of the state's utilities.

This fund should be designed based upon the following objectives:

1. Pool risks broadly, and be sourced beyond electric ratepayers.⁸
2. Include contributions from utility shareholders and ratepayers that reflect differential risk
3. Limit risk pooling when the utility engages in imprudent behavior.
4. Treat wildfire victims fairly
5. Improve utility solvency and liquidity so that utilities may continue to offer reliable, affordable service to Californians and make progress towards California's clean energy goals.
6. Maintain incentives for all parties to pursue wildfire mitigation efforts.

Recommendation 5. The Wildfire Victims Fund, which should be created as soon as possible—ideally to cover potential 2019 fires, but if not the 2020 fire season and beyond—should be tax-exempt, and limited to "catastrophic" electric utility caused wildfires.⁹

The fund would ideally have the following attributes:

Participation and Capitalization: Participation in the Fund should be voluntary, with participants benefitting from changes to the cost-recovery standard. Participating utilities

⁸ The Commission believes the broadest socialization of utility-ignited wildfire costs is to socialize those costs across taxpayers; absent support for this concept, the Wildfire Fund Subgroup report provides further recommendations on cost socialization.

⁹ For detailed recommendations and considerations on these decision points, please see the Fund Workgroup Report. The commission also recommends that **the legislature should continue to monitor exposure faced by water utilities and consider in the future whether any additional financing mechanisms are needed to transfer risk and recover costs in that sector.**

must maintain a specified level of commercial wildfire liability or general liability, with a specified minimum deductible.

The Fund should be highly capitalized to survive anticipated third-party damages¹⁰ and with relatively equal contributions from ratepayers, shareholders, property owners (through a surcharge on property insurance) and the State of California (through forfeited tax revenue from the tax-exempt status of the Fund, and through statewide investments in mitigation).

Claims Payment: The Fund should pay claims in excess of the mandated, combined commercial insurance and deductible, up to a cap. Specifically, the Fund should pay a maximum amount per fire incident, and a maximum amount per utility in a given year. Any excess liability incurred by a utility would remain with that utility and be subject to CPUC prudence review and follow through cost allocation.

It is critical that the fund not have the perverse outcome of actually incentivizing risky behavior on the part of utilities or claimants. To that end, claimants to the Wildfire Victims Fund should not be entitled to larger settlements than they would have received in the absence of its creation. The fund should pay insured, underinsured, and uninsured losses from utility caused wildfires at values approximating their settlement value through predetermined discounts. Similarly, if a utility is found to be imprudent, or partially imprudent with respect to a wildfire, the fund should pay claims only up to a specified amount, directly tied to the level of up-front shareholder contributions to a fund.

In addition to claims payment, money contributed to or earned by a Wildfire Victims Fund should be used for a variety of purposes to further its goals, including purchase of reinsurance or other risk transfer, developing a better understanding of and recommendations for risk based approaches to wildfire mitigation, and public education on the risk of wildfire and the actions that can be taken to avoid or reduce vulnerability

Fund Duration: Finally, the need for the fund should be evaluated every five to ten years, with a planned mechanism to wind down Fund operations and return unused capital to all contributors in an equitable fashion.

Fines: The commission recommends reviewing the CPUC fine authority to issues fines for any violations. Revisions could include increasing the \$8 million cap on fines for citations related to wildfire mitigation, statutorily increasing the maximum fines allowed under PUC section 2107, and altering the disposition of fine revenue to the Wildfire Victims Fund or towards mitigation measures.

¹⁰ See (Wildfire Fund Workgroup Section) for a details discussion of fund capitalization and modeling needs.

Challenges in Creating a Wildfire Victims Fund

Establishing a Wildfire Victims Fund of adequate size and with adequate contributions, that does not perversely incentivize risky behavior on the part of homeowners, renters, federal, state and local officials, and utilities, is a daunting task. Creating a fund could have the unintended outcome of encouraging claimants to inflate their claims, for instance. Or, the presence of the fund as a backstop could encourage homeowners, renters, and local governments to pay less attention to important fire-prevention efforts. Balancing the objective of creating an adequately sized fund to meaningfully protect ratepayers, the importance of better socializing costs, and the imperative to reduce the overall risk of catastrophic wildfire presents important challenges.

Key among these is that the likely largest potential contributor to the fund, PG&E, is currently undergoing Chapter 11 reorganization, and its financial liabilities for fires in 2017 and 2018 have not been resolved. This reorganization, which will not be finished this legislative session, may have implications for the utility's available liquidity to contribute immediately to a fund. This is particularly concerning given the likely higher contribution expected from PG&E due to its territory size and recent wildfire history.

In addition, shareholders of all the state's IOUs may object to sizeable initial contributions to the fund, even though they will benefit from the risk pooling a fund creates as well as from associated cost recovery reform.

Maintaining payouts at current settlement values both for subrogation claims from insurers, and for payments to underinsured homeowners, also present both legal and implementation challenges. Moreover, once established, a fund would require some mechanism to ensure submitted claims for under- and un-insured homeowners are reasonable, given there is no intermediary such as the courts or an insurance company reviewing claims' veracity. Not maintaining payouts at current settlement values, and the potential for claims inflation, both will dramatically increase the cost of the fund and so compromises its likely usefulness.

Finally, there are important affordability challenges to consider in thinking through the potential of a Wildfire Victims Fund. The state has an overall goal of maintaining affordable electric utility rates, which could be increased as a result of utility contributions to such a fund. On the other hand, such a fund might be the least-worst option for utility customers in that it would render a future of escalating and unpredictable electricity bills somewhat less costly and much more predictable.

Further work is needed to identify the costs, consequences, and feasibility of parts of the proposal as presented here.

Insurance

Insurance is becoming more difficult and more expensive to obtain in high wildfire risk areas in California, and **while insurance is still largely available, it will be increasingly unavailable and/or unaffordable for many in the wildland urban interface in California.** More destructive fires in the future of the sort we saw in 2017 and 2018 will only accelerate this trend. The state should take measures to help bring stability to the market, while ensuring that the market accurately reflects the underlying risk.

The commission recommends the following:

Recommendation 6. California should preserve its risk-based approach to pricing insurance.

The commission strongly recommends that California maintain incentives created through risk-based pricing of insurance for all stakeholders to avoid and mitigate risk. Furthermore, the state should not act to suppress prices in high-wildfire risk areas by increased cross-subsidy from low-risk areas.

Recommendation 7. Improve the California FAIR Plan, California's last-resort basic home insurance, by increasing the coverage limit to \$3,000,000 and automatically increase the limit with an inflator annually. In addition, the commission believes that a targeted premium subsidy for existing homeowners in the WUI who are low income and for whom the FAIR Plan is the only option for insurance is justified.

Recommendation 8. Improve the California Insurance Guarantee Association by increasing the claims cap to \$1,000,000 and then increase annually by an inflation factor.

Recommendation 9. Require Fire Risk Underwriting Models used by insurers to be filed and approved by CDI.

Recommendation 10. Require insurers to file annually with CDI for review and approval the insurers' replacement cost estimating models/tools and the inputs they are using as well as a comparison of recent loss experience to estimates based on these tools.

Recommendation 11. Set home fire risk reduction and community risk reduction standards with input from insurers and require insurers to write insurance where home owner and community both meet standards.

Recommendation 12. Require insurers to implement a tiered mitigation credit based on the level of home hardening. This is presented as an alternative to Recommendation 11, but the Commission believes it would be far less effective than Recommendation 11 because it does not address the unavailability of insurance.

Recommendation 13. Require insurers to calculate and provide a replacement housing estimate in writing to insureds annually and before entering into insurance contract.

Recommendation 14. Require CDI to undertake a data call on the insurers' subrogation claims, as well as on the insurers reinsurance cost and availability.

Recommendation 15. Require homeowners insurers to offer a one-year notice of non-renewal, in addition to the existing 45-day notice, when there is no change in the risk presented at the insured property within the homeowner's control, or if the insured has been with the same insurer for five years or more.

Recommendation 16. Mandate that all homeowners insurers offer a "Difference in Conditions" policy or a Comprehensive Personal Liability/Residential Workers' Compensation coverage.

Recommendation 17. Require that there be a valid quote for insurance coverage before any real estate offer is accepted.

Reduction of Wildfire Risk in California

As noted at the outset, the commission recognizes that addressing the impact of wildfires on California's utilities requires both reducing fire risk on the front end, and fairly paying out for claims based on fire damages when they occur. While most of this report focuses on cost liability and cost recovery, we cannot lose sight of the critical need to mitigate the risk that these fires will become catastrophic. These final recommendations focus on this important point.

Recommendation 18. Establish a Wildfire Vulnerability Risk and Reduction Coordinator within the Governor's Office of Planning and Research. The Risk Reduction Coordinator would be charged with conducting research and providing regular recommendations to the legislature, governor, CPUC, Insurance Commissioner, and local governments on optimal levels of risk mitigation spending within the state by various parties.

Recommendation 19. Provide significant state investments in prevention and mitigation efforts, whether funded by a state tax and a specific fund in the state budget for direct mitigation or small grants for home hardening.

Recommendation 20. Take action to significantly increase consistency of private property maintenance laws by developing best practices or minimum standards for fire risk, and minimum allowed penalties for non-compliance.

Recommendation 21. The commission recommends that the state require that any municipality or government body that approves new development, including new construction on vacant land, is able to provide firefighting service to that property within a certain maximum time.

Recommendation 22. Development fee for new construction in the WUI. New development that will put more lives and property at risk ought to have an associated development impact fee, paid to the State of California by the applicant for the development permit, to help fund risk reduction efforts benefitting the new development.

V. Conclusion

In this report, the commission has attempted to address the current catastrophic wildfire liability situation in a way that recognizes the severity of the problem and its many different contributors; addresses the critical need to provide cost recovery for those with serious damages while not bankrupting utilities in the process; and highlights the importance of actively reducing wildfire risk while simultaneously structuring a system to pay for damages from these fires. Each of these solutions has implementation challenges which should be further considered in legislation development and monitoring of any new laws.

Bearing all these factors in mind, the commission recommends that the legislature immediately revise the CPUC's prudent manager standard and cost recovery process along the lines discussed above.

The commission further recommends a change to the current inverse condemnation/strict liability standard.

The commission recommends that the state create an adequately-sized Wildfire Victims Fund to cover reasonable costs incurred in catastrophic wildfires. However, the commission recognizes the challenges of capitalizing and standing up such a fund, and understands that in the short term a smaller bridge fund may be necessary, on the road to eventual longer term reforms.

Finally, the commission recognized that there are significant unknowns in the implementation of the measures outlined in this report. The legislature and relevant state agencies should monitor the consequences of these measures, and be prepared to make changes as needed.



Wildfire and Inverse Condemnation Risk for Community Water Systems

July 23, 2019

Quality. Service. Value.

Inverse Condemnation



No other state applies
inverse condemnation
in quite the same manner
that California does.

Inverse Condemnation



- **Inverse condemnation:** The government takes private property but fails to pay compensation as required by the 5th Amendment.
- The property owner sues to obtain the required just compensation.

Inverse Condemnation



- In CA, inverse condemnation also covers damaging of property.
- If a public agency damages property “for a public use,” then it owes the owner compensation (damages).
- Also applies to private and municipal utilities (possibly PUDs and CSDs, zones of benefit).

Inverse Condemnation



- Strict Liability: A public entity is liable for property damage substantially caused by a public improvement, regardless of foreseeability or fault.

Inverse Condemnation



- **2008 Freeway Complex Fire**
 - Orange County
 - Started by car
 - Yorba Linda Water District
 - \$69 million
- **2017 Thomas Fire**
 - Ventura and Santa Barbara Counties
 - Causes still being investigated
 - City of Ventura and Casitas Municipal Water District



Inverse Condemnation



Questions