



June 8, 2018

The Honorable Edmund G. Brown  
Governor of California  
State Capitol, Suite 1173  
Sacramento, CA, 95814

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

The Honorable Brian Dahle  
Assembly Republican Leader  
State Capitol, Room 3104  
Sacramento, CA 95814

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

The Honorable Patricia Bates  
Senate Republican Leader  
State Capitol, Room 305  
Sacramento, CA 95814

**RE: Proposals to Revise or Reduce Wildfire Liabilities for Responsible Parties**

Dear Governor Brown and Legislative Leaders:

We, the undersigned organizations, write to express our collective concern about potential efforts to revise constitutional protections under the “inverse condemnation” laws and long-standing liability statutes related to the causes of wildfires.

For decades, local governments could rely on the law and the courts to make cities and counties, and their constituents and businesses, whole after a disaster caused by a utility. Now a recent letter from the private utilities, and some of their public counterparts, seeks legislative action to reduce their liability. This is alarming as it attempts to change our long-standing constitutional protections.

Inverse condemnation is protected by our state’s constitution as the flip side of eminent domain, the process by which a government agency can take property for public benefit as long as the property owner is adequately compensated. The inverse means that if property is damaged by a public benefit (i.e. providing electricity), damages can be sought and awarded. The power of eminent domain, along

with the potential for inverse condemnation damages, has been extended by the Legislature to private utilities. Thus, a utility can't enjoy the power of eminent domain without also bearing the risk of liability for a taking if its actions damage property.

Furthermore, the utilities describe inverse condemnation as "no-fault" liability. This is not the case. If a utility's equipment was the cause of a fire, liability can be assigned under inverse condemnation even if the utility acted reasonably and prudently. However, that liability can be transferred to their rate payers if the California Public Utilities Commission (CPUC) determines that the utility did, in fact, act reasonably. This system works to provide a strong incentive for utilities to ensure that all measures are taken to provide adequate clearances and safety measures to protect the ratepayers and residents of the areas we collectively serve.

As our climate continues to warm, and we work diligently to reduce our greenhouse gas (GHG) emissions, we must also work to become more resilient in the face of extreme weather events, forest fires, flooding and other natural disasters. Local governments have been experiencing these challenges for some time. The drought California recently suffered began several years ago and was followed by an extraordinarily wet winter season. These extreme weather events have caused challenges for local government emergency services, public works and public safety for years. However, we continue to learn from the challenges and implement new policies, evolving with these events, to stay prepared.

For example, the dramatic rise in tree mortality spurred many County Boards of Supervisors to declare local states of emergencies, which then prompted the Governor to declare a state of emergency in California to address this rising crisis. The Administration convened a Task Force to address this issue three years ago, and we have been working together since then to implement policies and direct resources to better prepare and protect our communities and our environment. We agree with the Governor's March 13<sup>th</sup> press release that more collectively needs to be done to bolster climate resilience and improve disaster planning, management and response. We stand ready to partner with the state and all other stakeholders to do more to protect all Californians from the threat of natural disasters and climate change. We also believe that utilities can and should do more to protect against wildfire and other natural disasters, such as increased tree-trimming and establishing de-electrifying policies.

Climate change may contribute to the behavior of fires after they start, but the cause in nearly every case is failure to abide by Public Resources Code 4293 which states: *any person that owns, controls, operates, or maintains any electrical transmission or distribution line... maintain a clearance... in all directions between all vegetation and all conductors which are carrying electric current...Dead trees, old decadent or rotten trees, trees weakened by decay or disease and trees or portions thereof that are leaning toward the line which may contact the line from the side or may fall on the line shall be felled, cut, or trimmed so as to remove such hazard.*

Please consider the historical context of major fires in the last decade:

- ✓ The 2007 fires in San Diego County were caused by utility violations of state law.
- ✓ The 2015 Butte Fire was caused by utility violation of state law.
- ✓ Three of the four October 2017 fires – whose investigations Cal Fire released two weeks ago – were found to be started as a result of utility violations of state law.

While we wait for the final CalFire report on the investigation of the cause of the North Bay and Southern California fires, we already know that three of the four 2017 fires in Butte and Nevada Counties are directly attributable to a utility not complying with current law. We, therefore, believe it is highly inappropriate to suggest legal changes that could deny the rights of those who sustained losses from the fires before a full assessment of cause and determination can be made.

We strongly urge you to resist the request to change the rules for the utilities, particularly before a full investigative report of cause and determination is issued. We look forward to working with the Legislature and the Governor's Office on this critical issue.

Sincerely,

California State Association of Counties  
Rural County Representatives of California  
Urban Counties of California  
California Special Districts Association  
County of Sonoma  
Mendocino County  
Shasta County  
Fresno County  
Humboldt County  
Nevada County  
Santa Barbara County

cc: Members of the California Assembly and Senate