



July 26, 2018

TO: THE HONORABLE GOVERNOR JERRY BROWN, JR.

MEMBERS, SB 901 CONFERENCE COMMITTEE

FR: Up From the Ashes, Consumer Watchdog, Consumer Attorneys of CA, Consumer Federation of CA, California State Association of Counties, League of CA Cities, American Insurance Association, CA Alliance for Retired Americans, Pacific Association of Domestic Insurance Companies, Personal Insurance Federation of California, Property Casualty Insurers of America, National Association of Mutual Insurance Companies

RE: **OPPOSE: Governor's Proposal to Change Inverse Condemnation Liability**

As the Legislature embarks upon its final month, we wanted to first thank all of you for seeking to address the critical issue of utility caused wildfires. We echo the sentiments, often emotional, of the conferees this week who have seen firsthand the devastation and deaths that resulted from recent horrendous wildfires. And we strongly agree that California's legislature must take steps now to make sure there are incentives and steps taken so that this devastation does not happen again.

The best, indeed only, way to avoid such tragedies in the future is to prevent them from happening, or to at least have preventative measures in place that will stop the scale of the fires California has witnessed. As was clearly apparent from last week's hearing, the CPUC cannot, with its existing structure and finances, regulate the safety and performance of IOUs nor protect the public. Moreover, it's time to move on many of the previous recommendations or proposals on steps related to fire-prevention and response. The Legislature must focus on:

- Prevention
- Safety
- Maintaining Legal Rights When Public Entities and Homeowners are Harmed
- Protecting Rate Payers from Paying for Utility Malfeasance.

We must work together on these key points. Therefore, we must strongly oppose the Governor's proposal which focuses on providing legal protection for utilities instead of focusing on prevention. First, the proposal is fundamentally unfair to public entities and to future victims as the current system of liability works. If a private utility receives the benefit of eminent domain to take a person's property, so too it must be accountable when the improvement it designed and constructed fails. Further, without inverse condemnation, a quick and fair result cannot be achieved—proving negligence in courts (as the proposal requires) would take years and years of court time and would give the utilities the means to repeatedly delay. Second, the Governor's proposal is unconstitutional and would be litigated for many years in the courts so at best it is an elusive promise of reform while wildfire victims are in limbo. Last, inverse condemnation is not a free ride for victims. Proving an inverse claim is a substantial hurdle in that must be proved. Victims must prove that (a) the instrumentality of harm was a public improvement for the benefit of the general public, (b) that the public improvement, as deliberately designed and constructed, caused the injury, and (c) the failure of the public improvement to perform as intended was a substantial cause of the injury. Thank you and we look forward to working together.