



July 10, 2018

The Honorable Edmund G. Brown, Jr.
Governor, State of California
State Capitol Building, First Floor
Sacramento, California 95814

Honorable Bill Dodd
California State Senate
Co-Chair, Conference Committee on Wildfire Preparedness and Response
State Capitol, Room 5064
Sacramento, CA 95814

Honorable Chris Holden
California State Assembly
Co-Chair, Conference Committee on Wildfire Preparedness and Response
State Capitol, Room 5132
Sacramento, CA 95814

Re: Wildfire Preparedness & Response Conference Committee

Dear Governor Brown and Conference Committee Members:

As we enter full force into another wildfire season, we appreciate your focus on wildfire preparedness with the establishment of a Wildfire Preparedness and Response Conference Committee. Local governments across California have long been at the forefront of this issue with the trends of increasing wildfire severity and our growing tree mortality crisis in California. Cities and counties across the state have been impacted by wildfire and are responding, adapting and becoming more resilient to these disasters through enhanced planning and emergency preparedness efforts.

Our organizations strongly support the call to action to strengthen our fire prevention activities and become more resilient as a state to the increased threat of wildfire. We stand ready to work the Legislature and the Administration to address the root causes of the growing threat of catastrophic wildfire. We strongly support the Governor's May 2018 Executive Order to combat dangerous tree mortality, increase the ability of our forests to capture carbon, and systematically improve forest management. Climate change alone is not causing these fires, and we strongly believe that we are not helpless to change the intensity of these events and become more resilient to them.

We are encouraged to see this Committee focused on how utilities can also strengthen policies to protect against wildfire and other natural disasters, including updating and enhancing policies around

vegetation management, infrastructure maintenance and resiliency, and safety and emergency preparedness plans. However, we must express our strong concerns about potential efforts to revise constitutional protections under “inverse condemnation” laws and other 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. 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 courts and subsequently the Legislature to private utilities. Thus, a utility can’t enjoy the power of eminent domain without also bearing the risk of liability in inverse condemnation if its actions damage property.

This legal standard is critically important for several reasons. First, we believe inverse condemnation works to provide a strong incentive for utilities to take action and invest in critical safety and resiliency measures to protect the ratepayers and residents of the areas we collectively serve. Second, local governments and private citizens use inverse condemnation as a legal standing to bring large, well-funded utilities to the table to settle for damages rather than languish in court under negligence suits. Utilities can be held liable under negligence claims, and often are. However, as result of the standing under inverse condemnation liability applicable to wildfires started by utility companies, utilities are more likely to settle large fire-related litigation rather than seek a judgment in court. We strongly believe our liability laws level the playing field, bringing billion-dollar companies to the table with less-powerful victims.

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. Thus, this legal tool provides a strong incentive for utilities to invest in safety while still providing them the ability to spread the cost to rate payers.

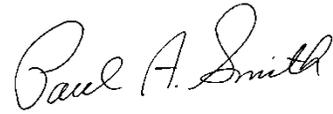
Even if changes to inverse condemnation are not retroactive, we strongly believe that any prospective changes to liability laws undertaken in response to one set of fires will have a lasting impact on current and future events and our ability to be made whole after disasters. CAL Fire officials have determined that 16 of the 2017 fires were caused by utility equipment, and 11 of those cases have been referred to prosecutors for criminal investigation. We, therefore, believe it is highly inappropriate to suggest changes to liability laws without first fully examining safety requirements and standards. **We strongly urge you to resist the request to change the rules for the utilities.**

Local governments stand ready to partner with the Administration and this Committee to reduce the risk of wildfire and establish policies that improve the safety of our communities. We look forward to working with you on the critical issue.

Sincerely,



Graham Knaus
Executive Director
California State Association of Counties



Paul Smith
Vice President of Government Affairs
Rural County Representatives of California



Carolyn Coleman
Executive Director
League of CA Cities



Jolena Vorhis
Executive Director
Urban Counties of California

Cc: Honorable Speaker Anthony Rendon, California State Assembly
Honorable President pro Tempore, Toni Atkins, California State Senate
Honorable Members, Conference Committee on Wildfire Preparedness and Response
Honorable Members, California State Assembly
Honorable Members, California State Senate
Office of Governor Brown, Camille Wagner, Legislative Affairs Secretary
Office of Governor Brown, Catalina Hayes-Bautista, Deputy Legislative Secretary
Gabrielle Zeps, Chief Policy Consultant, Office of Speaker Anthony Rendon
Kip Lipper, Chief Policy Advisor, Office of President pro Tempore Toni Atkins