

John Fiske Testimony- March 13, 2019- Redding, CA
Commission on Catastrophic Wildfire Cost and Recovery

My name is John Fiske, and I am a lawyer representing the following public entities in wildfire litigation against PG&E and Southern California Edison:

Town of Paradise, Butte County, Paradise Parks and Recreation District, Sonoma County, Napa County, Yuba County, Nevada County, Lake County, Mendocino County, City of Napa, City of Clearlake, City of Santa Rosa, County of Santa Barbara, County of Ventura, City of Santa Barbara, City of Ventura, Montecito Water District, Carpinteria-Summerland Fire Protection District, Montecito Fire Protection District, and Calaveras County Water District, and thousands of individual victims.

Inverse condemnation is the constitutional, no fault cause of action that helps facilitate efficient resolution in the aftermath of utility-caused wildfires. Homeowners have limited ALE “alternative living expenses” that may last only one or two years, and it is vitally important that homeowners achieve efficient resolution of claims for underinsured losses in order to rebuild and recover. Without reimbursement from responsible IOUs, the overwhelming majority of property owners simply cannot rebuild. This prevents communities from regaining its tax basis for important public works projects.

Public entities receive initial help from federal or state funds. However, even after all state and federal funds are paid, local public entities are still out tens if not hundreds of millions of dollars because federal and state funds categorically do not include certain losses, and the local cost share in federal and state programs is itself millions of dollars. Parks, roads, sidewalks, tree removal, overtime, watershed restoration, and water contamination are just some examples of uncovered taxpayer losses.

Inverse condemnation is a property owner’s ability to enforce its constitutional eminent domain rights.

The standard on inverse condemnation is whether “the injury resulted from the intended use and design of the electrical system.” If the injury did not result from the intended use and design of the electrical system, then inverse condemnation does not apply. For example, if a drunk driver (or a spaceship for that matter) swerves 100 yards off the road and crashes into a utility pole, there is no liability

under inverse condemnation because the injury did not result from the intended use and design of the electrical system.

Inverse condemnation requires a showing that the intended use and design was a substantial factor in causing the injury. It is simply not true that “if PG&E is 1% at fault they are responsible for 100% of the damages under inverse condemnation”—that example is simply false. That concept of apportionment of fault applies to negligence. Inverse condemnation requires that (1) the intended use and design was (2) a substantial factor in causing the injury. It is a no fault system of liability that arises while an IOU exercises its eminent domain power, granted by the state.

Last year, certain investor-owned utilities launched an aggressive campaign to eliminate the constitutional property rights of wildfire victims. The IOUs sought to eliminate inverse condemnation as late as August 2018. However, a coalition of public entities, wildfire victims, and insurance companies fought back to maintain the rights of Article I, Section 19 of the California Constitution. SB901 passed in August 2018, decidedly without affecting inverse condemnation. Less than three months later, in November 2018, PG&E’s equipment ignited the largest, most destructive, and deadliest wildfire in California history—killing 86 people and rendering 14,000 families homeless. On the same day, SCE started the Woolsey fire, causing additional billions of dollars in damage. If the IOUs had been successful just three months earlier, where would the Town of Paradise and Malibu victims be today?

It is incredibly important that the members of this commission understand that Article I, Section 19 protects families and property owners already under threat of multi-billion dollar for-profit corporations that have the power and ability to prevent utility-caused wildfires. Eliminating inverse condemnation means further hobbling communities struggling to get back on their feet. We urge this commission to recognize this important constitutional property right, and support victims and communities throughout California, now and into the future.