



CALIFORNIA WATER SERVICE

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March 21, 2019

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

Commission on Catastrophic Wildfire Cost & Recovery
1400 Tenth Street
Sacramento, CA 95184

Dear Governor Newsom and Commissioners:

In light of the historically destructive wildfires the State has faced over the last several years, the work being undertaken by the Governor's Office, the Legislature and the Commission on Catastrophic Wildfire Cost and Recovery is critically important to every Californian. Obviously, the wellbeing of the thousands of families that have been impacted by these wildfires – and the steps that need to be taken to protect the State's residents from future fires – is and should continue to be at the forefront of these discussions.

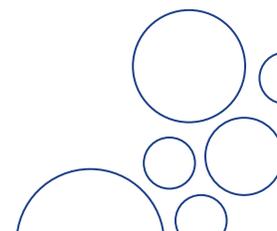
Less obvious, though, is the interrelationship between wildfires, the hundreds of drinking water suppliers in California, and their ability to serve their customers. In short, each drinking water supplier in the State could be exposed to significant liability for wildfires they had no part in starting, which could jeopardize their ability to provide customers with safe, reliable drinking water. We write to you to respectfully encourage you to analyze and address this matter as you consider wildfire policies for the State of California.

On March 12, 2019, a lawsuit was filed against the City of Ventura in connection with the Thomas Fire, a fire it played no role in starting. Casitas Municipal Water District has also been named in a separate Thomas Fire suit. Although these cases have yet to play out, the untenable nature of the status quo is best exemplified by a nearly \$70 million judgement against the Yorba Linda Water District ("the Water District" or "YLDWD") in the aftermath of the Freeway Complex Fire.¹

The Water District was not deemed liable because it caused the fire. Quite the opposite. This fire was caused by a broken down car, and it was determined that "neither the Plaintiffs nor the YLDWD (or any YLDWD public improvement) caused the Freeway Complex Fire."

Similarly, the Water District was not held liable because it was negligent. In this case, the same fire that destroyed several hundred homes also damaged one of the Water District's pumping facilities, which caused a subsequent interruption in water service to nearby fire hydrants. It

¹ Itani v. Yorba Linda Water Dist. (Super Ct. Orange County, July 13, 2012).





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was determined that the “interruption of water service was an accident that was not desired or intended by anyone. The service interruption was not caused by a decision of YLWD’s Board of Directors.”

In this instance, even though the Water District did not act negligently, was not responsible for starting the fire, and was, in fact, one of the fire’s many victims, it had to pay out a nearly \$70 million judgment because the fire triggered a water supply interruption. The decision notes that “the fact that other circumstances or forces combined to cause the damage does not relieve the public entity of full liability.”

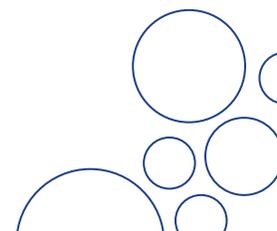
Unfortunately, this is not a minor issue for California’s drinking water suppliers. Given the increased frequency, intensity, and destructiveness of wildfires in California, the existence of many of the State’s drinking water suppliers may be threatened by the proliferation of the legal theory used against the Yorba Linda Water District, the Casitas Municipal Water District, and the City of Ventura:

Inverse condemnation is an evolving exposure that may intensify in frequency, gravity, and consequence . . . With overwhelming financial ramifications, inverse condemnation represents an existential threat to public water systems. The situation will exacerbate should the standard of strict liability, as opposed to reasonableness, be imposed for failure of fire suppression systems during wildfires.² [emphasis added]

Saddling California’s water suppliers with this type of liability will jeopardize their collective ability to provide safe, reliable drinking water to customers. Lawsuits like these make it that much more difficult to close the infrastructure investment gap in California and raise the billions of dollars of capital that will be needed to maintain and upgrade the State’s water systems. More ominously, these types of lawsuits siphon away funds that could be used to help the hundreds of communities and approximately one million Californians that do not currently have access to water that is safe to drink.

California’s water suppliers go to great lengths to operate drinking water systems that can assist first responders suppress and extinguish urban fires. Unfortunately, it is simply not feasible to design, construct, and maintain water systems that would be able to combat most wildfires. For example, at its height, the 2018 Camp Fire was burning the equivalent of a football field every second. There is not a drinking water system in the world, let alone California, that has sufficient facilities to combat a wildfire of this magnitude. Even attempting to design and build

² Paul Fuller, “Inverse Condemnation and Public Water Systems: A Legal Nexus of Complexity, Exposure, and Uncertainty,” Public Law Journal, Summer / Fall, 2019.





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one is, for all intents and purposes, impossible. To hold drinking water suppliers responsible for the destruction caused by wildfires under these circumstances would be unreasonable.

It is even more unfathomable that drinking water suppliers could be held responsible for the destruction caused by a wildfire when the water system itself is damaged and disabled by that very same wildfire, even though the water supplier was not negligent in its design, construction, operation, or maintenance of the system. Yet, this is precisely what happened to the Yorba Linda Water District and what could happen to other water suppliers across California unless a more fair and equitable framework is established.

We recognize the many factors you must take into account in addressing the problem of wildfires. We strongly urge you to address their damage to water suppliers and their ability to provide safe, reliable drinking water. Please let us know if we can provide any additional information to help analyze and fashion a solution to this matter.

Sincerely,

Fire Chief Gerald Simon (*ret. Oakland*)
VP, Chief Safety, Security, &
Emergency Preparedness Officer

Shannon Dean
VP of Corporate Communications &
Community Affairs

Fire Chief Al Terrell (*ret. Sonoma County*)
Safety Program Manager

Cc: The Honorable Toni Atkins, Senate President Pro Tempore
The Honorable Anthony Rendon, Speaker of the Assembly
The Honorable Ben Hueso, Chair, Senate Energy Utilities & Communications Committee
The Honorable Chris Holden, Chair, Assembly Utilities & Energy Committee
The Honorable Henry Stern, Chair, Senate Natural Resources & Water Committee
The Honorable Eduardo Garcia, Chair, Assembly Water, Parks & Wildlife Committee

