COUNTY OF SONOMA
BOARD OF SUPERVISORS
575 ADMINISTRATION DRIVE, RM. 100A
SANTA ROSA, CALIFORNIA 95403
(707) 565-2241
FAX (707) 565-3778

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April 26, 2019

Ms. Carla Peterman
Chair, Commission on Catastrophic Wildfire Cost and Recovery
Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

Submitted via email: wildfirecommission@opr.ca.gov

RE: Response to Commission on Catastrophic Wildfire Cost and Recovery Request for Comments

Dear Chair Peterman,

Thank you for the opportunity to provide comments and recommendations to the Commission on Catastrophic Wildfire Cost and Recovery (Commission). In October 2017, Sonoma County experienced what was, at the time, the most destructive wildfires in California's history. The fires ravaged through our community at an unprecedented rate, devastating lives, homes, livelihoods, and the natural landscape. These fires, and other catastrophic wildland interface firestorms, call for a new approach to prevention and resiliency. While Sonoma County appreciates the critical infrastructure utilities provide in our communities and their efforts to establish their own financial resiliency and market stability, any regulatory or legislative approach must address community needs first.

With respect to the specific questions posed by the Commission, the County of Sonoma joins in the April 22, 2019 comments submitted by the California State Association of Counties, Rural County Representatives of California (RCRC), and League of California Cities. The County of Sonoma also supports the March 28, 2019 recommendations submitted by RCRC.

In addition, we have identified five areas in the attached Wildfire Legislative Priorities that, given appropriate resources, can promote significant steps toward wildfire and disaster response resiliency. With State support we can act now to recover and become more resilient to future disasters. Any regulatory or legislative solution which attempts to provide increased financial stability to utilities must be balanced by addressing community needs for wildfire financial and technological resiliency.

A key priority of Sonoma County's Legislative Platform is to advocate for the allocation of available funds toward local recovery and resiliency efforts. Our future success depends on current investments toward a truly resilient community.

Sincerely,

DAVID RABBITT, Chair
Sonoma County Board of Supervisors

Attachments:

CSAC, RCRC, and LCC Comment Letter dated April 22, 2019
RCRC Comment Letter dated March 28, 2019
Sonoma County Wildfire Legislative Priorities

CC: Sonoma County Board of Supervisors
The Honorable Mike McGuire, California State Senate
The Honorable Bill Dodd, California State Senate
The Honorable Marc Levine, California State Assembly
The Honorable Jim Wood, California State Assembly
The Honorable Cecilia Aguiar-Curry, California State Assembly
Paul Yoder and Karen Lange, Shaw/Yoder/Antwih Inc.

Sonoma County Wildfire Legislative Priorities

Spring 2019

In October 2017, Sonoma County experienced what was, at the time, the most destructive wildfires in California's history. The fires ravaged through our community at an unprecedented rate, devastating lives, homes, livelihoods, and the natural landscape. These fires, and other catastrophic wildland interface firestorms, call for a new approach to prevention and resiliency. While Sonoma County appreciates the critical infrastructure utilities provide in our communities and their efforts to establish their own financial resiliency and market stability, any legislative approach must address community needs.

We have identified five areas that, given appropriate resources, can promote significant steps toward wildfire and disaster response resiliency. With State support we can act now to recover and become more resilient to future disasters. Our future success depends on current investments toward a truly resilient community.

1. Construction Wildfire Hardening Program

During the October 2017 wildfires, high winds and flying embers destroyed homes over a mile from the fire. In Sonoma County over 5,300 homes were destroyed and, 18 months post disaster, only about 5% have been rebuilt. Our community observed first hand, the need to "harden" homes with ember-resistant building materials. It is critical that current build and rebuild efforts include home hardening in addition to improving existing homes in the Wildland Urban Interface (WUI) and other high risk hazard locations with greater local hazard resiliency. The facilitation of construction hardening techniques appropriate for structures in the WUI and seismic retrofits for building/rebuilding homes through education and grant programs is severely needed.

We propose that a wildfire home hardening inspection and retrofit program be instituted in California in Wildland Urban Interface areas. Sonoma County has designed such a program and is pursuing FEMA Hazard Mitigation Grant funding, however, even for agencies that pursue this funding the local/property owner match can be a challenge. By way of scale, a State contribution of $5 million for the implementation of a wildfire home hardening inspection and retrofit program would allow the County to reach approximately 400 property owners.

2. Insurance Availability/Discounts for Home Hardening

Many fire survivors continue to struggle with issues such as underinsurance and the significantly increased cost, and/or lack of options, for reinsuring their homes. Funding approaches (such as home hardening) are needed to incentivize insurers to participate competitively in the market. A statewide home hardening program in Colorado ("Wildfire Partners") helped stem the exodus of insurance companies and kept premiums in the area competitive. The State should establish and implement a statewide home hardening insurance program wherein property owners in the Wildland Urban Interface are offered discounts and/or rebates on property insurance policies if substantial home improvements are made increasing resiliency to future wildfires. Similar to the "Wildfire Partners" program

implemented in Colorado, homes would need to pass a rigorous inspection prior to being certified by the program warranting eligibility for discounts.

3. Fuels Reduction and Landscape Resiliency

The 2017 wildfires swept through our community with an unprecedented speed and ferocity that stunned residents, emergency responders, and local officials. The subsequent burn scar only demonstrates a small percentage of the lands and populations at risk of wildfire in Sonoma County. Risk factors include increased residential land use in wildland areas, homes built without fire resistant construction materials and practices, insufficient defensible space, and excessive vegetation fuels within and near residential areas. Countywide, approximately 165,000 residents live within the defined Wildland-Urban Interface.

The County of Sonoma has initiated a Fuels Reduction and Landscape Resiliency Campaign to respond to the increasing wildfire probability and consequent harm to the County's residents, economy and ecosystems. The Campaign encourages the use of the best practices and available science to address and mitigate risks and focuses on three major national and state wildfire hazard strategies: Resilient Landscapes; Fire-Adapted Communities; and Effective Fire Response. The State should provide local governments support to move forward with the following elements of the Fuels Reduction and Landscape Resiliency Campaign over the next two years: development of a countywide programmatic CEQA analysis for vegetation management activities; establishment of a sustainable cost recovery fund to support enforcement vegetation management laws; development of structural options for sustainable adaptive manage of working and natural lands; and integration of best available science into decision support tools.

4. Fire Cameras

The rate at which the 2017 wildfires swept through our region made situational awareness and management nearly impossible. Shortly after the disaster, the Sonoma County Water Agency (Sonoma Water) partnered with the University of Nevada, Reno and the University of California, San Diego to install eight fire cameras in Sonoma County.

Early detection is key to preventing the rapid spreading of wildfires such as the 2017 October wildfires and to providing critical situational awareness for emergency responders. In other areas, such as San Diego County, near-infrared fire detection cameras have proven to provide early detection of fires day or night. These tools have provided both precise fire locations and have the ability to immediately transmit accurate information to dispatchers to direct firefighter and other resources. Emergency operations managers can also use this data to assess the behavior and degree of risk and view real time developments to provide early evacuation warnings to the public.

A statewide fire camera system that independently detects fires at the time of ignition would enable emergency personnel to rapidly and effectively respond. Operational control of this statewide system by CalOES and CalFire, rather than dispersed, separate groups of cameras, would dramatically increase efficiency and effectiveness of operations and significantly reduce the scale and damage of future wildfires while protecting lives, critical assets and infrastructure. Adequate funding commitment is needed to support the creation, operation, and maintenance of a statewide fire camera network to bring wildfire detection and response into the 21st century.

5. 2-1-1 - Services and Future Expansion

During the 2017 wildfires, community members in several counties reported difficulties in obtaining accurate, reliable, and centralized information that threatened their safety and well-being. 2-1-1 services provide a designated information and referral call center to connect residents in need to non-emergency but critical health and human service resources and programs. Even where such services exist, such as in Sonoma County, in a major disaster such services are strained by limited capacity as well as lack of access to modern, updated technology tools to access and share critical information with the public.

Post disaster assessments identify enhancement of 2-1-1 systems as critical to addressing disaster response and recovery needs. 2-1-1 system enhancement opportunities include increased capacity, expanded area of coverage, streamlining access to resources, and providing additional services such as donation and volunteer management and mental health services during and after a disaster. 2-1-1 can also serve to increase the often underserved needs of individuals with disabilities and others with access and functional needs, including individuals with limited English proficiency or non-English speaking, in recovery and disaster preparedness. An enhanced 2-1-1 system could also be initiated to better serve the community during utility planned Public Safety Power Shutoffs (de-energization) which are anticipated to increase in future fire seasons. The State should implement a grant program with sufficient funds to facilitate the implementation and operation of enhanced 2-1-1 systems to serve local communities in addition to providing regional support during disasters.

Conclusion

Any legislative solution which attempts to provide increased financial stability to utilities must be balanced by addressing community needs for wildfire financial and technological resiliency such as the approaches listed above.

RCRC
RURAL COUNTY REPRESENTATIVES OF CALIFORNIA

March 28, 2019

Ms. Carla Peterman
Chair, Commission on Catastrophic Wildfire
Cost and Recovery
Governor's Office of Planning and Research
1400 Tenth St.
Sacramento, CA 95814

Dear Chair Peterman:

On behalf of the Rural County Representatives of California (RCRC), I am writing to offer several recommendations related to wildfire, utilities, and forest management germane to the Commission on Catastrophic Wildfire Cost and Recovery (Commission). RCRC is an association of thirty-six rural California counties, and the RCRC Board of Directors is comprised of elected supervisors from those member counties.

RCRC member counties contain much of California's forested lands, including more than 70 percent of the State's national forest lands. Wildfire risk is no longer just a concern in our remote, rural areas, but is becoming a wider public safety concern as the wildland urban interface spreads over larger areas of the State and beyond forested areas. Recent years have shown that a combination of wildfire prevention, forest management, fuels treatment, and emergency preparedness measures will be vital to California's communities in the wildland urban interface in order to mitigate the type of catastrophic damage demonstrated by the Camp, Woolsey, and Carr Fires, to name just a few.

Senate Bill 901 (Dodd, 2018) was a landmark for bipartisan legislation to enable forest restoration, fuels treatment, biomass utilization, and many other components that need to be in place for California to realize the entire life cycle of forest and wildland management for a healthier, more resilient state. The bill not only committed an unprecedented $1 billion from the Greenhouse Gas Reduction Fund to forest health programs but provided a number of statutory changes to enable more immediate attention to the health and restoration needs of our forests, as well as forming the Commission on Catastrophic Wildfire Cost and Recovery. As a product of SB 901, RCRC offers the following recommendations to the Commission.

<u>Wildfire Prevention and Forest Health</u>

RCRC is a long-time advocate for enhanced forest management, watershed restoration, and wildfire prevention activities in California. In fact, it is our strong belief that at least some of the devastating wildfire activity we have seen in the past decade could have been prevented had both state and federal land managers acted more expeditiously to

improve the health and resilience of California's forests and wildlands, particularly in light of our changing climate and years of extreme drought conditions. While we absolutely support short-term actions to safeguard communities from wildfire such as enhanced defensible space inspections, home hardening programs and community fuel breaks, we cannot lose sight of the long term need to make our forests and wildlands more resilient to wildfire as well.

Not only are wildfires a threat to public safety, but they are an imminent threat to the State's greenhouse gas (GHG) emissions reduction and carbon sequestration goals. The California Air Resources Board (CARB) estimates that wildfires contribute more than half of California's annual black carbon emissions, a number that will continue to increase as the State's forests continue to burn.[1] As we continue to see expanded wildfires into more urbanized areas, reduction of GHG and other criteria pollutant emissions from wildfires will become even more vital to public health.

To address GHG emissions from wildfire, RCRC believes that the goals outlined in the State's Forest Carbon Plan should be codified as a commitment to the management of the State's forests and wildlands. RCRC was a member of the Forest Climate Action Team and contributed to the development of the Forest Carbon Plan. While we would have liked to have seen even more advanced goals for the management of our state's forested lands, we believe that the policies and efforts outlined in the final Forest Carbon Plan can truly change the landscape of our wildlands if state and federal land managers continue to work together to meet those goals.

CARB should also include natural and working lands in its next Assembly Bill 32 (Nuñez, 2006) Scoping Plan, another component RCRC has been asking for since the bill was signed into law. CARB has resisted including greenhouse gas emissions from wildfire in its statewide carbon inventory and Scoping Plan under the guise that wildfire emissions aren't anthropogenic. In fact, CARB, along with the California Environmental Protection Agency, California Natural Resources Agency, California Department of Food and Agriculture, and Strategic Growth Council, released a draft California 2030 Natural and Working Lands Climate Change Implementation Plan still without plans to incorporate the forest and wildlands sector into the larger AB 32 scope -- despite estimating a possible 137 million metric tons of greenhouse gas emissions reductions from the sector by 2030 depending on management practices used.[2]

California must also continue to work toward a collaborative relationship with federal land managers, who control more than 40 percent of the State's land mass. Regardless of political differences, the State's first consideration must be the welfare of its residents living near federally managed lands. While we understand that USDA Forest Service (USFS) lands are in dire need of better management and fuels treatment, it behooves California to work cooperatively with both the USFS and other federal agencies such as the Bureau of Land

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[1] California Air Resources Board. (2015) Draft Short-Lived Climate Pollutant Reduction Strategy, Appendix A: California SLCP Emissions. Retrieved from http://www.arb.ca.gov/cc/shortlived/2015appendixa.pdf.

[2] "California 2030 Natural and Working Lands Climate Change Implementation Plan." Page 12, California Environmental Protection Agency, et al., https://www.arb.ca.gov/cc/natandworkinglands/draft-nwl-ip-1.7.19.pdf

Management to enter into Good Neighbor Authority agreements to help ensure that work is done on those lands to mitigate wildfire risk and minimize harm to California residents.

Recommendations: California cannot implement short-term wildfire protection measures at the expense of long-term forest health and resilience activities. The State should codify the goals in the Forest Carbon Plan, and the California Air Resources Board should include natural and working lands in its next AB 32 Scoping Plan. California must work collaboratively with federal land managers, including increasing the use of Good Neighbor Authority to reduce fuel loads on federal lands.

Land Use Restrictions in the Wildland Urban Interface

One of the most common topics so far in 2019 surrounding wildfire has been whether local governments should be allowed to develop in the wildland urban interface (WUI), and if so, what restrictions should be placed on land use planning in the future. Many rural counties have been making thoughtful decisions with regard to planning in the WUI over the past decade of increasingly devastating wildfires and adhere very carefully to state building standards and planning guidelines in fire prone areas. However, many counties realize the need for even more consideration to wildfire risk as climate change increases the plausibility of more frequent ignitions in the future and are willing to continue working with the State on how to make those decisions with maximum public safety in mind.

However, restrictions or even a moratorium on building in the WUI are infeasible for a few reasons, which is why counties are committed to continuing smart development. First, disallowing building on privately owned property would be tantamount to a taking under eminent domain. Property owners have a reasonable expectation that they will be able to develop those lands in the future, and without extreme changes to eminent domain statute, eliminating those development rights is a tenuous proposal at best. RCRC recommends working with local governments on how to continue to refine development in the WUI to better protect public safety by ensuring community fire protection elements are built into any new developments.

Second, California remains in desperate need of new housing, and local governments are under strict mandates to develop and provide affordable housing units across the State. Under the Regional Housing Needs Assessment (RHNA), local governments are regionally mandated to develop specific numbers of housing units and are currently facing strict penalties from the Administration if these requirements aren't met—up to and including withholding of vital Senate Bill 1 fuel tax funding for maintenance of roads and infrastructure. Even though much discussion has centered around stopping development in the WUI, those leading the charge on housing requirements have shown little to no appetite for reallocating RHNA units within regions in the WUI. Therefore, even in the most fire-prone areas, we still have strict requirements in place for housing units that must be built under penalty for not meeting RHNA requirements. For example, Paradise, California, which was devastated by the 2018 Camp Fire, currently has a RHNA allocation number of 800 units. If we are not allowed to shift those units elsewhere within the same region, Butte County will be obligated to provide 800 additional housing units over and above the housing that currently needs to be rebuilt for displaced residents from the fire. Other wildfire-prone areas in the WUI are subject to similar RHNA requirements and are prohibited from shifting those units to less fire-prone areas.

Finally, we must remember that not all communities in the WUI were developed during the current wildfire-prone condition of our state's forests and wildlands. Many of these communities, particularly where the homes are in intermix areas, are surrounded by forests and wildlands that have been mismanaged under outdated ideas of how these lands should be managed. These lands are overly dense due to decades of misunderstanding good fire versus bad fire on the landscape, as well universal confusion over what a truly healthy forest needs to remain resilient to wildfire. In these older communities, local governments now face the funding challenges of ensuring adequate ingress and egress in the event of a wildfire as well as establishing community fire breaks and helping enforce state defensible space mandates while we all work together on making our forests more resilient to fire.

Recommendation: RCRC recommends working with local governments to establish best practices on development in the WUI to protect public safety by ensuring community fire protection elements in any new developments. The State must resolve housing requirements in the WUI and allow local governments to shift units to less fire-prone areas within the same region. RCRC also recommends funding for local governments to address ingress/egress issues for older developments.

Homeowners Insurance Cancelations and Non-Renewals in Wildfire Risk Areas

Homeowners' insurance cancelations and nonrenewals have been increasing in areas impacted by tree mortality and wildfire risk in recent years, even for those property owners who employ wildfire mitigation techniques to "fire harden" their homes. Even when homeowners are able to find alternate coverage, many have reported that they are not able to find adequate insurance to cover the value of their homes and property or cannot afford the coverage long-term because of the cost. Homeowners that own their homes outright are often choosing to go without insurance coverage to avoid the high cost of maintaining a policy in the WUI.

In order to seek a collaborative, consensus solution to the fire insurance problem, RCRC actively participated in the Insurance Subgroup formed under the Tree Mortality Task Force for several months to attempt to work with the insurance industry and policyholder advocates. While industry representatives were present and participated in the group, little progress was made toward any real compromise to help alleviate the difficulties homeowners are facing in high wildfire risk areas. The group ended when the Task Force converted in June 2018 to the Forest Management Task Force and a similar forum has yet to be established to endeavor to work through these issues between policyholders and the industry. The subgroup did, however, identify potential issues with the models used by insurers to identify wildfire risk, as well as difficulties homeowners might face in certain socioeconomically disadvantaged areas affording policies provided by the State's FAIR Plan.

In the meantime, while RCRC member counties have been presented with anecdotal evidence of this insurance shrinkage for several years in the wake of the last decade of catastrophic wildfires, the California Department of Insurance (CDI) studied homeowners insurance cancelations and non-renewals at the behest of the Tree Mortality Task Force and released a report in December 2017 entitled, "The Availability and Affordability of Coverage for Wildfire Loss in Residential Property Insurance in the Wildland-Urban Interface and Other

High-Risk Areas of California: CDI Summary and Proposed Solutions" which verified the increased difficulties for homeowners in the WUI to find insurance coverage.

Among other things, the CDI report contained findings that several major insurers had been pulling back from writing new policies in the WUI, and while some of those customers were able to find other insurance, many had to resort to the State's FAIR Plan and/or the surplus-lines market to find insurance coverage. The report also found that insurance premiums and surcharges have increased significantly in high wildfire risk areas, and that while most insurance carriers utilize fire risk models to assess premiums, there are no specific statutory standards in place to ensure the models' accuracy or reliability in rating and underwriting of homeowners' insurance. Unfortunately, there is no mechanism in place for consumers to appeal a wildfire risk model score to avoid a higher premium, even if the homeowner has done due diligence with defensible space and home hardening.

The biggest issue currently is that the insurance industry continues to avoid working with policyholders to address cancelations, non-renewals, and skyrocketing premiums in high wildfire risk area. Now, in the wake of the latest round of massive wildfires in 2018, we have seen evidence that policyholders are not only being canceled and non-renewed, but that those who have experienced losses were underinsured or are having difficulties with some insurance companies in communicating with adjustors to receive their compensation. While RCRC and our member counties have continually reached out to the industry, we continue to feel resistance to any change or compromise that would help solve some of the ongoing issues facing policyholders in the WUI.

The CDI report offered several recommendations for possible solutions to some of the issues facing policyholders in the WUI; most notably, a legislative framework that would do the following:

- Offer homeowners' insurance in the WUI if the insured conducts specific wildfire mitigation, but also permit the insurer to avoid the requirement of offering homeowners' insurance in the WUI if the insurer instead offers a "difference in conditions" policy or a "premises liability" policy;
- Offer a mitigation premium credit for those property owners that conduct proper mitigation;
- Obtain approval for wildfire-risk models used in rating or underwriting;
- Allow for an appeal process before an adverse decision is finalized; and
- Stabilize the rating structure in order to ensure that homeowners' insurance rates and premiums are adequate, but not excessive, for the true wildfire risk.[3]

RCRC supported CDI's recommendations, and would advise the Commission to thoroughly vet the report for potential legislative recommendations. RCRC would also recommend that CDI convene a working group with policyholder advocates, local governments and the insurance industry to explore whether solutions can be agreed upon without legislative action.

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[3] "The Availability and Affordability of Coverage for Wildfire Loss in Residential Property Insurance in the Wildland-Urban Interface and Other High-Risk Areas of California: CDI Summary and Proposed Solutions." Page 3, California Department of Insurance, December 2017, http://www.insurance.ca.gov/0400-news/0100-press-releases/2018/upload/nr002-2018AvailabilityandAffordabilityofWildfireCoverage.pdf

Recommendation: RCRC recommends a thorough vetting of the solutions proposed in the December 2017 CDI report for potential additional legislative action. CDI should convene a working group with insurance policyholder advocates, local governments and the insurance industry to explore potential solutions that can be agreed upon between all parties.

Inverse Condemnation Reform for Investor-Owned Utilities

While RCRC sympathizes with the current fiscal calamity of certain investor-owned utilities (IOUs), particularly in the wake of the latest round of major wildfire investigations such as the Thomas Fire and the fires related to the Tubbs Fire, RCRC strongly opposes any reform or relief of the IOUs' liability under inverse condemnation statute. Local governments are also subject to inverse condemnation and must face the entirety of the liability when they cause damage to private property in the course of providing a public service. In the case of wildfires such as the Camp Fire, not only could negligence by IOUs have caused property damage, but potentially the deaths of 86 people in Butte County if they are found responsible for igniting the blaze.

RCRC fully recognizes the need of the State to explore financial avenues for keeping the IOUs whole, especially in the wake of the bankruptcy filing by the Pacific Gas and Electric Company earlier this year. However, wildfire victims should continue to have the ability to seek restitution for their suffering through inverse condemnation, and whatever method the State uses to mitigate the financial hardship on the IOUs should have as little impact on ratepayers as possible.

Recommendation: IOUs should be given no relief from their liability under inverse condemnation statute.

Investor-Owned Utilities Wildfire Mitigation Plans

RCRC has a broad interest in the implementation of SB 901, including investor-owned utility's (IOUs) Wildfire Mitigation Plans (WMPs). Generally, in our view the Legislature did not intend to guarantee cost recovery to ratepayers for WMP compliance. The only appropriate venue to thoroughly vet impacts on ratepayers is through a General Rate Case Proceeding. Any action recommended by the Commission should be mindful of ratepayers and not bear a disproportionate impact on non-coastal areas of the State. Rural and Central Valley residents have borne a disproportionate burden of higher electricity rates than their urban counterparts and have lived with the impacts of poor IOU regulatory compliance, such as underwhelming vegetation management efforts purported to minimize wildfire ignitions, minimal undergrounding of distribution lines in high fire threat districts, and unsophisticated roll-outs of Public Safety Power Shut-Offs or de-energization events.

In addition to system hardening for IOUs, we urge the Commission to recommend telecommunications companies to similarly ensure public safety by undergoing system hardening efforts and completing a WMP. Fire-prone communities should rest assured that they will receive emergency evacuation orders should a catastrophic wildfire ignite. Unfortunately, telecommunications went completely dark when the Camp Fire broke out in Butte County, ultimately claiming 86 lives—the deadliest fire in California's history. Rural counties are heavily reliant upon landlines and significantly disadvantaged by inadequate

telecommunications coverage, including expansive areas of under- and unserved broadband connectivity. These gaps are exacerbated by wildfire emergencies when there are no communication redundancies in place to assist elderly, rural populations to reach safety.

Recommendation: Ratepayer impacts should be vetted through General Rate Case Proceedings and should not disproportionately impact non-coastal areas of the State. Telecommunications companies should also undergo system hardening efforts to ensure communications systems remain operable during emergencies.

Commission Meeting Dates

While RCRC commends the Commission for holding meetings outside of Sacramento, the dates have been in conflict with important Legislative activities on the same topic. For example, the February 25, 2019 meeting took place on the same day as a joint hearing by the Assembly Natural Resources Committee and the Assembly Local Government Committee on improving fire prevention in California. The March 13, 2019 meeting was in direct conflict with a joint hearing by the Senate Natural Resources and Water Committee and the Senate Governance and Finances Committee on future development in fire prone areas. Finally, the April 3, 2019 will conflict with the Senate Rules Committee confirmation hearing of Chief Thomas Porter as the next Director of the California Department of Forestry and Fire Protection. While we realize that it is nearly impossible to avoid every conflict, it is extremely difficult for small entities that want to engage in the Commission's process while also engaging with these Legislative activities.

Recommendation: Commission meetings should be held on Fridays to enable and encourage greater public participation and avoid conflicts with the Legislature on similar subject matter.

RCRC appreciates your consideration of our comments and recommendations. Please do not hesitate to contact me with any questions or concerns you may have.

Sincerely,

STACI HEATON
Regulatory Affairs Advocate

cc: The Honorable Gavin Newsom, Governor, State of California
The Honorable Ricardo Lara, California Insurance Commissioner, California Department of Insurance
Wade Crowfoot, Secretary, California Natural Resources Agency
Jared Blumenfeld, Secretary, California Environmental Protection Agency
Members of the Commission on Catastrophic Wildfire Cost and Recovery

April 22, 2019

Ms. Carla Peterman
Chair, Commission on Catastrophic Wildfire Cost and Recovery
Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814
Submitted via email: wildfirecommission@opr.ca.gov

RE: Request for Comment – Commission on Catastrophic Wildfire Cost and Recovery

Dear Chair Peterman,

On behalf on of the undersigned local government associations, we would like to submit comments to the Commission on Catastrophic Wildfire Cost and Recovery regarding changing the strict liability standard for utilities, also known as inverse condemnation.

Local governments across California have long been at the forefront of wildfire and disaster preparedness and response. With the trends of increasing wildfire severity and longer wildfire seasons, protecting against these disasters are critical.

Question 1. Wildfire Liability Regime

Inverse condemnation is a constitutional property right that entitles property owners and victims to fair and prompt compensation if their property is damaged by *Investor Owned Utility (IOU)*-caused wildfire. Inverse condemnation allows victims of fires including residents, businesses, and local agencies to recover costs after wildfires. Inverse condemnation has its roots in the Takings Clauses of the U.S. and California Constitutions 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 to private utilities that have eminent domain authority. Thus, a utility cannot enjoy the power of eminent domain without also bearing the risk of liability in inverse condemnation if its actions damage property. In addition, 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.

This constitutionally derived standard protects local governments, ratepayers, and victims from bearing the financial burden of liability for a *utility caused* wildfire. This is especially important to local governments because not all costs related to wildfire disasters are covered by state and federal disaster reimbursement. Many of these disaster reimbursement programs require local matching funds which come directly out of local agency budgets. Certain disaster related costs for parks, roads, sidewalks, tree removal, overtime, watershed restoration, and water contamination are just a few examples of costs to local agencies that are not covered by disaster relief funds. Inverse condemnation allows local agencies to recover these outstanding costs thereby making efficient use of taxpayer resources.

In addition to helping local agencies and wildfire victims recover after a disaster, the inverse condemnation standard also incentivizes IOUs to invest in safety and wildfire hazard mitigation measures. SDG&E has invested $1 billion over the past 10 years in an effort to improve safety and prevention of wildfire in order to protect the surrounding public and reduce their potential exposure to inverse condemnation claims. The current liability structure of inverse condemnation incentivized SDG&E to invest in prevention and safety and should remain in place to serve as an incentive to other IOUs to invest in similar measures.

Changing this standard to something else will have serious consequences as it will lengthen the process for victims to receive due compensation awarded in negligence lawsuits. If the law were changed to a "fault-based" standard, time intensive litigation would be required to determine the extent of an IOU liability. This would give an advantage to well capitalized corporations that can wait out smaller entities through extended legal proceedings, eventually forcing settlement claims for far less than the actual costs and impact to victims. We recognize the concerns that the IOUs have about their exposure, but our associations strongly support keeping the inverse condemnation standard intact and would oppose efforts to change this standard.

It is incredibly important that the members of this commission understand that Article I, Section 19 protects victims, property owners and local agencies from multi-billion dollar for-profit corporations that have the power and ability to prevent *utility-caused* wildfires. Eliminating inverse condemnation means further hindering communities that are 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.

Recommendation: Keep the constitutional inverse condemnation standard as is. Inverse condemnation incentivizes public and private utilities alike to focus on safety and requires them to pay damages to fire victims, including residents and local governments that suffer losses resulting from a utility fire.

Question 4. Community and Wildfire Victim Impacts

Wildfire victims are ratepayers and taxpayers too. When a community suffers a devastating wildfire, caused by a utility, victims are impacted in four ways:

1. Loss of real property, personal property, life, or injury;
2. Loss of community resource benefits, including natural and public resources; and an increase in homelessness, crime, cost of living, etc.;
3. Increased/wasted taxes due to loss/expenditure of local and statewide governmental resources;
4. Potential for increase in rates, as IOU ratepayers from all income strata.

Communities and victims of catastrophic wildfires need timely and just recovery payments after a fire. Most homeowner insurance policies include ALE "alternative living expense" terms that expire after two years of benefits—some policies expire sooner. As construction costs increase, as housing costs increase, and as governments strain to rebuild communities in the aftermath of fires, it is vital to provide individuals and public entities resources as soon as possible after a wildfire.

Inverse condemnation encourages rapid payment to victims. Utilities that cause wildfires are obligated to compensate victims without having to go through a drawn out litigation process. If the inverse condemnation standard were to change, these victims and their devastated communities would have more uncertainty in who will pay and when. The victims of these fires cannot afford to wait for a legal battle to unfold to determine who is at fault and to what degree.

Recommendation: To ensure that the needs of wildfire affected victims and communities are met, utilities need to be held financially liable for causing a wildfire and administer expeditious and fair compensation. Any wildfire funding mechanism must take the standard two year ALE related deadlines into account.

We appreciate the Commission allowing us to submit comments. Our associations remain ready and willing partners to help the state, wildfire affected communities and victims address this greatly important topic.

Sincerely,

Derek Dolfie
Legislative Representative
League of California Cities

Cara Martinson
Senior Legislative Representative
California State Association of Counties

Staci Heaton
Regulatory Affairs Advocate
Rural County Representatives of California

cc. Members of the Commission on Catastrophic Wildfire Cost and Recovery