



November 3, 2025

Tom Welsh, Chief Executive Officer
California Earthquake Authority
801 K St Ste 1000
Sacramento, CA 95814

RE: Call for Contributions in Support of Study on New Models and Approaches to Complement or Replace the Wildfire Fund

Dear Mr. Welsh:

The California Water Association and Association for California Water Agencies sincerely appreciate the opportunity to contribute to the California Earthquake Authority's study on new models and approaches to complement or replace the Wildfire Fund. As part of this critical work, we urge you to consider the far-reaching impacts of California's inverse condemnation doctrine on all utilities across the state, including public drinking water suppliers.

As much as climate change drives the increasing frequency and severity of wildfires, California's law on inverse condemnation, unique among the states, has compounded the financial and operational risks borne by utilities. Under this doctrine, utilities can be held liable for all property damage caused by wildfires if failure of their infrastructure is found to be a cause, regardless of foreseeability or fault. This framework, while intended to ensure compensation for victims, now undermines system reliability and affordability, particularly in the face of climate-driven disasters.

The Growing Impact of Inverse Condemnation on Water Utilities

The dangers of the current liability system are vividly illustrated by the Yorba Linda Water District (YLWD) case following the 2008 Freeway Complex Fire. Although the Superior Court found that neither YLWD nor its facilities caused the fire, YLWD was ordered to pay nearly \$70 million in damages simply because the fire damaged its water system, which in turn interrupted water flow to hydrants in one neighborhood. This case cannot be cited as binding precedent in other cases, as it was a trial court decision.

Similarly, the City of Ventura faced lawsuits arising from the 2017 Thomas Fire, where water pumping was disrupted after Southern California Edison's power outages prevented water systems that are dependent on electricity from maintaining hydrant pressure. Ventura, like YLWD, is accused not of starting the fire, but of failing to prevent its spread, a function outside the design and purpose of public water systems.

Most recently, inverse condemnation lawsuits have been filed against water providers related to the Palisades fire, as property owners have argued that the water providers did not have sufficient water supply available to stop the spread of the wildfires.

Such outcomes demonstrate the perverse incentives created by applying inverse condemnation to public water agencies: systems designed for reliable drinking water service, not wildfire suppression, are being penalized for circumstances beyond their control.

Legal Context: The Oroville Decision and Evolving Precedent

The California Supreme Court's decision in *City of Oroville v. Superior Court of Butte County* (2019) adds crucial perspective to this debate. In *Oroville*, the Court clarified that inverse condemnation liability applies only where a public improvement's deliberate design, construction, or operation was a substantial cause of the damage. The Court emphasized that liability is not automatic merely because a public improvement exists; rather, the plaintiff must show that the damage was a foreseeable result of the public improvement's deliberate design or operation.

This reasoning supports the position long advanced by public water suppliers and supported by decades of established caselaw: drinking water systems are not deliberately designed or constructed to fight wildfires nor would such a design be feasible. Extending strict liability to them for fire-related damages contradicts both the spirit of *Oroville* and the principles of equitable risk-sharing central to modern infrastructure law.

Policy Implications and the Los Angeles Wildfire Narrative

The recent Los Angeles wildfires, including those in the San Gabriel and Ventura regions, underscore the compounding risks of climate stress and untenable liability exposure. Public agencies and utilities have invested in their emergency response plans to address the risks of wildfire, including the integration of backup power sources amid soaring insurance and bond costs. Yet the inverse condemnation regime effectively designates these public entities as the "reinsurers of last resort" for community-wide disasters, even when they too are victims.

Without reform, the financial burden on ratepayers and the threat of municipal or investor-owned utility insolvency will only intensify.

Recommendations

To ensure the state's future wildfire and disaster liability framework is fair, sustainable, and consistent with public policy, we recommend that the California Earthquake Authority's study:

1. Acknowledge the distinct role of public water systems: Drinking water infrastructure is designed to ensure health and reliability and to fight individual structural fires, not to prevent or extinguish wildfires.
2. Incorporate the *Oroville* precedent: Recognize that liability should attach only where a water system's deliberate design or unreasonable conduct causes damage related to the purpose of the system in providing reliable, safe drinking water.

3. Evaluate legislative options, including:

- Clarifying “substantial cause” to exempt systems not responsible for starting or exacerbating the spread of wildfires.
- Clarifying “deliberately designed and constructed” to reflect that water systems are not designed or built for wildfire suppression.
- Applying a reasonableness test, similar to the flood control context in *Locklin v. City of Lafayette* (1994), limiting liability to instances of unreasonable conduct.

4. Promote parity in liability reform: If electric and gas utilities receive tailored protections, equivalent consideration must extend to California’s public water agencies to avoid shifting risk disproportionately to ratepayers or customers.

5. Encourage resilience investments: Align liability reform with incentives for hardening infrastructure, integrating microgrids, and developing regional firefighting water partnerships.

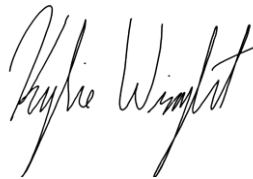
Conclusion

California’s inverse condemnation doctrine, once a tool for fairness, has become a destabilizing force in an era of climate volatility. Reforming this doctrine is not about excusing negligence, it’s about ensuring that vital public services can survive the growing challenges of fire, drought, and climate change. We respectfully urge the California Earthquake Authority to address these issues in its study and to recommend a clear, equitable liability standard that protects both communities and the essential public utilities that serve them.

Sincerely,



Jennifer Capitolo
Executive Director
California Water Association
jcapitolo@calwaterassn.com
(916)402-1155
555 University Ave, Suite 230
Sacramento, CA 95825



Kylie Wright
Policy Advocate
Association of California Water Agencies
kyliew@acwa.com
(916) 441-4545
980 9th Street, Suite 1000
Sacramento, CA 95814