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Innovative Strategies to Protect Ratepayers from Unlimited Wildfire Fund Contributions

I. Overview / Problem Statement

California's current wildfire liability framework produces painful outcomes for every key stakeholder — ratepayers, investor-owned utilities (IOUs), property owners, and insurers alike. The high volatility in costs and exposes these stakeholders, and the State, to recurring financial instability.

Inverse condemnation imposes strict liability on investor-owned utilities when utility equipment is involved in a wildfire, regardless of fault. This rule disconnects liability from conduct and drives insurance withdrawal, credit downgrades, and rapid rate increases. The 2019 Wildfire Fund reduced near-term volatility by providing short-term liquidity, but did not rebalance risk, address long-term affordability, or fix the underlying structure.

In addition to placing caps on how much a utility can recover from the wildfire fund, it is beyond time to study alternatives to the fund. The combination of inverse condemnation, fragmented risk allocation, and overlapping cost recovery mechanisms has rendered the system financially unsustainable and socially inequitable. Comprehensive reform is urgently needed to stabilize liability exposure, preserve affordability, and re-establish public confidence in the State's approach to wildfire risk.

Several states use models that distribute wildfire risk more evenly through fault-based liability, statutory caps, state backstops, and streamlined claims processes.
No other state applies a strict-liability regime to private electric utilities for wildfire damages.

States such as Colorado, New Mexico, Washington, and Oregon use fault-based rules, targeted statutory frameworks, and safety compliance standards to determine liability. These models offer reference alternatives for California to study as the State evaluates reforms that protect ratepayers by reducing rate pressure, distribute catastrophic risk more equitably, and improve long-term stability.

II. Proposed Focus / Research Question

This contribution urges the Study Team to evaluate models that rebalance wildfire risk responsibility between utilities, ratepayers, and the State, while exploring long-term alternatives to the existing Wildfire Fund. Specifically: How can California design a durable liability and recovery system that equitably distributes wildfire costs and prevents cascading ratepayer impacts?

III. Proposed Approaches and Model for Examination

A. Tort Reform: Revisiting Inverse Condemnation

California should consider replacing strict liability with a contributory negligence framework that ties recovery to fault and shared responsibility. Colorado-style liability caps could limit exposure while maintaining accountability.

California should also consider capping attorney's fees. Such reform would discourage litigation inflation and align cost responsibility with actual risk creation. Comparative analysis of Colorado's negligence model, proportional-fault regimes in New Mexico, operational compliance structures in Washington and Oregon, and public catastrophe backstops in states with high natural-disaster risk provides a practical starting point.

1. Colorado's Negligence-Based Structure

Colorado applies a negligence-based standard for utility wildfire liability. Utilities are liable when they fail to meet the standard of reasonable care. Colorado does not impose strict liability for electric-utility ignitions. Colorado courts have affirmed this approach in multiple decisions. Colorado's negligence framework reduces exposure to catastrophic losses when utilities follow approved safety practices — when a utility follows vegetation-management rules, inspection cycles, and weather-based operational adjustments, its exposure is narrower. This structure gives regulators authority to set operational expectations while allowing courts to evaluate compliance case by case.

2. New Mexico's Comparative-Fault System

New Mexico uses a comparative negligence system for wildfire liability where liability depend on proof of breach of duty and is proportionate to responsibility unless specific exceptions apply. Utilities are not automatically responsible for wildfire damages unless they breach a duty of care. Claims follow standard tort principles, and damages are allocated proportionally. This model separates unavoidable wind events, third-party vegetation intrusions, and other causes from utility-caused failures. It gives utilities predictable exposure and allows insurers to price risk more accurately.

3. Compliance-Based Liability (Oregon and Washington)

Oregon and Washington also do not impose strict liability on utilities. Claims proceed under negligence standards absent a specific statutory provision. California can evaluate how these regimes maintain strong incentives for safety while avoiding the destabilizing effects of strict liability. A contributory or comparative negligence framework would allow courts to allocate damages according to fault, reducing the disproportionate burden placed on ratepayers.

The Oregon Public Utility Commission has stated that utilities must operate reasonably but are not automatically responsible for wildfire damages. The Oregon model integrates operational standards, oversight, and risk-reduction programs rather than relying on strict liability to drive behavior.

Likewise, Washington Administrative Code sets vegetation, inspection, and infrastructure requirements, and litigation focuses on whether utilities complied with these standards. These rules require utilities to adopt detailed vegetation-management and inspection programs. Washington's framework combines fault-based liability with regulatory oversight. Washington applies negligence standards for most wildfire claims. Courts require proof of unreasonable conduct. It aims to reduce ignitions through operational controls rather than strict liability. This improves predictability for utilities and insurers.

B. State as Insurer of Last Resort

The State — not ratepayers — should bear residual wildfire liability through a pooled structure funded by a mixture of progressive income and estate taxes. This approach would socialize the most catastrophic risks across a broader base, improving both affordability and equity while preserving financial viability for IOUs and insurers.

Several states rely on government-funded backstops for catastrophic natural-disaster losses. Florida's Citizens Property Insurance Corporation and the Florida Hurricane Catastrophe Fund offer examples of state-sponsored risk pooling to stabilize insurance markets. These entities spread extreme-event risk across broad populations while preserving affordability. Although these programs address hurricanes rather than wildfires, the structural logic applies. Catastrophic losses exceed what utilities and ratepayers can absorb. A state-based insurance mechanism funded by progressive taxes, general-fund appropriations, or other mechanisms would reduce utility rate pressure and create long-term stability.

A California wildfire backstop could operate as reinsurance triggered when damages surpass thresholds tied to safety compliance, weather conditions, or prudence findings. Funding could include general-fund appropriations, progressive revenue sources, or other methods issued at the state level. This approach would remove the sharpest tail risk from ratepayers while maintaining incentives for utilities to reduce ignitions. It would also

give insurers more confidence in California's long-term stability, improving availability and pricing of coverage for utilities and homeowners. A California state backstop could offer reinsurance for utility wildfire liability once losses exceed a threshold linked to prudence, compliance with safety rules, or weather conditions. This approach would align residual risk with the State, which is best positioned to diversify and finance systemic hazards. Such a model builds on lessons from statewide catastrophe programs while addressing wildfire-specific dynamics.

C. Limiting Ignition Risk Through Operational Controls

Expanded and targeted used of Enhanced Powerline Safety Settings (EPSS) and Public Safety Power Shutoffs (PSPS) can reduce ignition probability, particularly during high-risk conditions. While unpopular, many ratepayers may prefer temporary service interruptions over continued cost escalation. This tradeoff warrants structured study within a balanced liability framework.

Several states rely on operational controls rather than strict liability to reduce ignition risk. Colorado's utilities deploy Public Safety Power Shutoffs during high-risk conditions. Washington and Oregon require vegetation management and infrastructure inspection regimes. Structured use of PSPS, weather-adaptive protection settings, and targeted line hardening reduces the probability of catastrophic fires. California already utilizes both, but pairing liability reform with operational controls provides a layered approach: utilities reduce risk through prevention while liability mechanisms align responsibility with fault.

D. Affordability and Regulatory Integration

All wildfire-related rate impacts should be consolidated into the General Rate Case (GRC) process to ensure full transparency, avoid duplicative cost recovery, and enable holistic evaluation of utility financials. Integrating these threads would simplify oversight and reinforce the principle that wildfire risk management is an inherent cost of service.

Wildfire mitigation costs, insurance premiums, and risk-transfer expenditures appear in multiple CPUC proceedings. Consolidating wildfire-related costs into General Rate Cases would enable the CPUC to evaluate the full financial picture of utilities. Colorado, Oregon, and Washington review wildfire-mitigation spending within their general rate frameworks. This practice improves transparency and prevents duplicative recovery. Integration strengthens oversight and ensures ratepayers pay only for prudent, cost-effective mitigation.

Integrating wildfire expenditures into General Rate Cases supports transparent evaluation of prudence and cost-effectiveness. Ratepayers benefit from a consistent method for comparing investments, insurance costs, and operational changes. Utilities receive clearer expectations regarding cost recovery. This model aligns with risk-informed regulation used in several states.

IV. Anticipated Outcomes / Policy Relevance

This contribution supports the study's core objective: identifying sustainable, equitable approaches to wildfire cost allocation. By testing tort reform, public risk pooling, and integrated regulatory treatment, California can move from fragmented crisis response toward a coherent liability model that protects ratepayers, stabilizes IOUs, and restores fairness to the system. A balanced framework would align responsibility with actual risk creation, reduce volatility, protect ratepayers from increasing wildfire-related surcharges, and preserve the financial stability of utilities and insurers.

V. Conclusion

California faces persistent wildfire risk driven by climate, geography, and legacy infrastructure. Strict liability amplifies this risk beyond sustainable levels. Other states show how fault-based liability, regulatory oversight, and public-sector backstops distribute wildfire costs more evenly. Colorado's negligence standard, Oregon's integrated regulatory approach, and New Mexico's proportional liability offer models for reform.

A state insurer-of-last-resort structure would further stabilize catastrophic exposure. California has multiple viable pathways to build a fair, durable liability system that protects ratepayers, sustains utilities, and aligns responsibility with actual risk creation.