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Tom Welsh
Chief Executive Officer and Administrator of the Wildfire Fund
California Earthquake Authority
400 Capitol Mall, Suite 1200
Sacramento, CA 95814

Laurie A. Johnson PhD FAICP
Research Study Director, SB 254 Natural Catastrophe Resiliency Study
California Earthquake Authority
400 Capitol Mall, Suite 1200
Sacramento, CA 95814

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

Dear SB 254 Study Team,

The California Municipal Utilities Association (CMUA) respectfully submits these recommendations in response to the California Earthquake Authority's (CEA's) *Call for Contributions in Support of Study on New Models and Approaches to Complement or Replace the Wildfire Fund*, issued on September 30, 2025. CMUA strongly supports the goals of Senate Bill (SB) 254 (stats. 2025) and agrees that it is essential for California to develop a comprehensive report that evaluates and proposes recommendations for new approaches to reduce the risk of catastrophic wildfires as well as equitably address the challenges of liability associated with wildfire. California's current strict liability construct has led to increased costs that burden ratepayers and interferes with utility wildfire mitigation efforts. It is essential that the state act now to implement reforms that properly recognize, encourage, and complement utility investments in wildfire mitigation and infrastructure resiliency while still fairly compensating the victims of catastrophic wildfires.

CMUA is a statewide organization of local public agencies that provide energy and water service to California consumers. CMUA membership includes publicly-owned electric utilities (POUs) that operate electric distribution and transmission systems, as well as water agencies. In total, CMUA members serve approximately 25 percent of the state's electricity load and provide water services to 75 percent of Californians. POU's develop wildfire mitigation plans (WMPs) under the guidance of their locally elected governing boards and submit their WMPs to the Wildfire Safety Advisory Board (WSAB) for review and recommendations. California's POU's are very

diverse in size, geography, customer make-up, and wildfire risk profiles. POU service territories range from urban utilities with fully undergrounded distribution systems to rural utilities in heavily forested, mountainous terrain. It is essential that any evaluation and recommendations in the CEA Study fully consider the impacts to the unique needs of this diverse group.

In this paper, CMUA makes the following recommendations:

- **Economic Impacts to POU Communities:** The CEA should evaluate the financial harm caused by the current strict liability framework on the ratepayers of POUs and public water agencies.
- **Liability Reform Options:** The CEA should evaluate the benefits and harms that would result from a range of reforms to the current strict liability structure, with a focus on changes that can be made through legislation and readily implemented.
- **Wildfire Fund Alternatives:** A simple expansion of the current Wildfire Fund would not provide a viable solution to the costs and risks faced by POUs and public water agencies. The CEA should study a broad range of alternatives to the current Wildfire Fund, including structures that would provide meaningful protections for all participating public agencies without exposing these agencies to shared risks with the investor-owned utilities (IOUs).
- **State-led Wildfire Mitigation Actions:** The CEA Study should also identify additional state-funded efforts and resources that can support wildfire mitigation efforts for utilities and communities, such as the current Wildfire Forecast and Threat Intelligence Integration Center (WFTIIC).

1. Economic Impacts of Strict Liability Standard on POUs and Public Water Agencies

An essential component of any analysis of new proposals to replace or complement the Wildfire Fund is a comprehensive understanding of the harms and costs that result from the current approach. California's doctrine of inverse condemnation for wildfire-related damages imposes strict liability for property damage caused by an electric utility's equipment, regardless of whether any action the utility took or failed to take would have avoided the wildfire. This structure results in costs for electric utilities that have negative consequences to ratepayers irrespective of the utility's commitment or investments to wildfire mitigation and system hardening. While the impacts of these harms may be well understood for the customers of the IOUs, it is not clear that the same is true for POUs. Because of their fundamental differences in ownership and governance, these cost impacts are significantly different for customers in POU communities. As public agencies, POU ratepayers bear the full cost of such liabilities, in addition to the ongoing cost of mitigation measures and increasing costs of insurance. CMUA urges the CEA to fully analyze and account for the particular harms to POUs and their customers in any analysis of alternative approaches to the current Wildfire Fund.

Beyond the substantial direct financial risks that a POU would face if its equipment was determined to cause a wildfire, there are a wide range of indirect costs that utilities face simply because of the increased liability risks. These costs include the following:

- **Increasing insurance costs:** To address wildfire liability, POUs generally purchase insurance and other financial instruments or utilize self-insurance funds. The magnitude and unpredictability of wildfire losses, which have been exacerbated by climate change, have both reduced the availability of third-party insurance and driven substantial increases in the costs of the insurance products that are available.
- **Credit and borrowing cost pressures:** Because of the wildfire liability risks that are not entirely linked to the POU's wildfire mitigation practices, credit rating agencies have (or are considering) lowering utility credit ratings. This increases the cost of borrowing for infrastructure investments, including wildfire mitigation measures.
- **Diversion of critical funding:** A key effect of the current strict liability construct is increased insurance and liability costs for utilities, which ultimately means less funds are available to re-invest in the POU's electric infrastructure without further rate increases for utility customers. This limits the funds that are available for additional investments in wildfire mitigation as well as investments in other priorities, such as system upgrades, infrastructure improvements, and decarbonization efforts.

While these increasing costs of wildfire liability impact both POUs and IOUs, there are unique challenges facing POUs that call for innovative solutions. One key difference is that public agencies do not have shareholders that can defray these costs. That means that all cost increases must be borne by electricity ratepayers. Furthermore, POUs have more concentrated service areas and smaller rate-bases than the three large IOUs. Smaller utilities have fewer cost-effective options for addressing liability risks than their larger counterparts because they lack the scale necessary to spread these costs or because institutions may be unwilling to develop products for them. In addition, because many POUs are city-owned, a POU's financial health and cost of addressing risk are inextricably linked with the financial solvency and stability of the city itself. The adverse impacts of these increasing costs are exponentially felt by POUs with a high percentage of low-income customers or customers living in disadvantaged and vulnerable communities because those customers are simply unable to absorb any increased cost burdens.

As an integrated and integral part of their local communities, POUs have historically invested in the reliability and safety of their electric systems and will continue to do so. Unfortunately, the cost of potential wildfire liability associated with these systems, under the state's current application of inverse condemnation, restricts the ability of public agencies to invest in initiatives that support their communities and other state policies. This highlights the programmatic need to address the wildfire liability paradigm all utilities are facing. As described above, POUs are more vulnerable to the impact of such liability and its attendant costs, and in developing its proposals, the CEA should quantify these impacts to POUs and consider approaches that would reduce the unique risks faced by POUs and their ratepayers.

2. Liability Reform

Inverse condemnation is a legal concept that entitles property owners to “just compensation” if their property is damaged by a public use.¹ California’s courts have applied a “strict liability” rule in inverse condemnation actions involving utilities, imposing liability regardless of fault or reasonableness on the part of the utility. Entities subject to inverse condemnation include governmental entities, including POU, as well as IOUs.² The CEA Study should identify potential liability reforms that can be implemented through legislation rather than requiring an amendment to the state Constitution, and which can be timely implemented. These proposals should include a range of options, from major reforms to more targeted fixes. Specifically, the CEA should evaluate the potential for each liability reform (both in isolation and in combination with other reforms) to reduce the costs to public agencies and IOUs with a focus on those costs that result in the most harm to ratepayers and actions that are not associated with negligence on the part of the utility. Examples of reforms that the CEA should consider include:

- **Calculation of Damages:** Evaluate different limitations on how damages are calculated for strict liability, including restricting damages to those that directly cover the specific property loss.
- **Comparative Fault:** Evaluate the impacts of applying comparative fault to inverse condemnation claims.³ Under this option, a utility would only be liable for the portion of the damages attributable to the utility equipment.
- **Limiting Subrogation:** Evaluate additional limits on subrogation beyond those imposed by SB 254 and SB 1054.
- **Encouraging Settlement:** Consider additional reforms that would encourage early settlement, help reduce litigation costs, and accelerate recovery efforts.

Many other states have adopted legislation to address utility wildfire liability. While the courts of the other states apply standards different from California, there is still value in having the CEA Study include an analysis of other state proposals to determine if elements can be adapted to the California context. CMUA has provided a table in Appendix A that summarizes key recent legislation in other states.

3. Options that Provide Benefits for POU and Public Water Agencies

A straightforward expansion of the current Wildfire Fund is not a workable solution for most POU and any new fund options need to be designed to account for the uniqueness of publicly owned entities and minimize costs and risks to POU ratepayers. The CEA should provide a

¹ See generally, Jacoby, Ariel, *Burning Down the House: Analyzing California’s Inverse Condemnation Strict Liability Rule For Utility-Caused Wildfires*, SOUTHERN CALIFORNIA INTERDISCIPLINARY LAW JOURNAL, Vol. 31, No.1, available at <https://gould.usc.edu/why/students/orgs/ilj/assets/docs/31-1-Jacoby.pdf>.

² See *Barham v. S. Cal. Edison Co.*, 74 Cal. App. 4th 744, 753 (1999).

³ For example, as proposed in AB 436 (2013) (https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201320140AB436) and AB 328 (2011) (https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB328).

comparative ratepayer benefit-cost analysis for any financial tool that is recommended so that clear decisions can be made in the best interest of the impacted ratepayers. A critical consideration is program funding. Any capitalization that a POU would make to a Wildfire Fund would only be able to come from ratepayer funds because public agencies do not have shareholders to share this burden. Further, any fund that the POUs would potentially join must include protections that prevent POU ratepayer funds from subsidizing other stakeholders, such as IOU shareholders or insurance companies. As we have seen from recent events, a single IOU-caused wildfire could completely deplete a fund, eliminating any potential benefit of participating in such a fund.

As the CEA Study evaluates other options to complement the Wildfire Fund, the analysis should consider options that are viable for public agencies. At a minimum, these alternatives should include the following:

- **Voluntary Fund Optionality:** The CEA should evaluate a range of alternative fund structures, including a wildfire fund, as well as a broader fund to address climate-driven natural disasters that extend beyond wildfire but threaten California ratepayers. A key characteristic that any such fund should include is optionality. POUs face diverse risks and any one POU should not be obligated to participate in a fund that does not provide a warranted net benefit to its ratepayers and communities. Additionally, the CEA should evaluate the benefits and costs of different fund structures in light of the varying sizes and risk attributes of the various POUs. These different fund structures and design elements could include (i) potential limitations on utilizing contributions from other participants, (ii) requirements to replenish funds that are used to pay claims, (iii) limits on the types of entities that can participate in a fund, (iv) identifying who would manage any such fund, (v) identifying ways to leverage capital from private entities that are developing new distribution or transmission assets, and (vi) any backstop or initial funding that can come from the state.
- **State-backed Insurance Products:** To help address the costs of insurance for utilities, the state could offer specialized cost-effective insurance products to utilities meeting certain standards or thresholds.
- **State Liability Bonds:** California could issue bonds on behalf of POUs to address future wildfire liability or to pay for damages from a prior wildfire.
- **Clarification of Public Agency Bond Authority:** The CEA could evaluate how legislation could be used to expand public agency bonding authority to include options like Catastrophe Bonds. This authority could provide alternatives or complements to traditional insurance products.
- **Consideration of Public Water Agencies:** The CEA should evaluate the wildfire-related risks and financial impact on public water agencies, including potential costs associated with damage to water infrastructure (pipelines, conveyance structures, pumping infrastructure, meters, fire hydrants, etc.), costs associated with property damage, and costs associated with impacts to water supply.

4. Potential State-Led Actions to Support Wildfire Risk Mitigation Programs

There are many actions that the state could take that would support the wildfire risk mitigation and recovery efforts of POU. This could include support to reduce insurance and reinsurance costs, reductions in permitting and environmental regulations that impede wildfire risk mitigation activities, and an expansion of efforts like the WFTIIC that would provide funding for risk assessment and weather monitoring. The CEA should evaluate current efforts and identify where additional state support could have meaningful impacts on statewide wildfire risk mitigation. This should include:

A. Permitting Reforms

- Meaningful reforms to the current permitting requirements and expanded California Environmental Quality Act (CEQA) exemption for wildfire risk mitigation activities, such as a reduction of permitting fees, timelines, and costs.
- Reforms to allow for immediate infrastructure hardening to be a key feature of post-wildfire rebuilding activities.

B. Wildfire Risk Information Data Gathering and Sharing

- Advanced weather monitoring technology and investments in increased numbers of Full-Time Equivalents (FTEs) at the California division of the National Weather Monitoring Service in order to more fully predict red-flag related events.
- State-funded data gathering efforts (e.g., cameras, satellites, weather monitoring stations) and the processing of this data, making data available to utilities.
- The creation of a central repository for utilities to candidly share cause analyses and lessons learned in a timely manner without exposure to penalties or liability.

C. Wildfire Preparedness and Tactical Firefighting Response Efforts

- Promote planning and funding for fire fuel mitigation, including through brush clearance and prescribed burns.
- State-funded helicopter dip tanks geared towards reducing the spread of wildfires in rural or remote locations.

D. Wildfire-focused Strategic Community Planning

- State-funded university programs that develop new tools and technologies for climate resilience, data analysis, and wildfire prevention—designed to meet the unique needs of communities served by public utilities.
- State-created programs that support POU undergrounding initiatives to accelerate fire-area undergrounding of electric infrastructure and authorize state-backed bonds, grants, or low-interest financing to reduce ratepayer impact of such programs.
- Funding for Public Water Agencies to deploy back-up power resources to ensure ongoing functionality of critical water infrastructure during de-energization events.

- Funding and regulatory reforms to support fire fuel mitigation through brush clearance and prescribed burns.
- Evaluate opportunities to support the efforts of Fire Safe Councils in developing requirements for home hardening and defensible space.
- State funded grants or other mechanisms to help residents and homeowners harden their homes and property to reduce wildfire fuels.

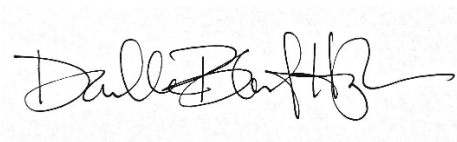
5. Conclusion

California faces an increasingly urgent need to modernize its approach to wildfire liability and risk financing as climate-driven wildfire threats intensify. The state's current strict liability framework and existing wildfire financing tools place disproportionate financial burdens on POU's and public water agencies, diverting limited public resources away from providing additional wildfire mitigation, infrastructure resilience, and essential community services.

The CEA Study presents a critical opportunity to evaluate and recommend solutions that are equitable, practical, and responsive to the unique governance structures and financial realities of public agencies. CMUA respectfully urges the CEA to ensure that the study meaningfully examines the impacts of wildfire liability on POU's and public water agencies.

CMUA appreciates the opportunity to provide these recommendations and looks forward to continued collaboration with the CEA.

Sincerely,

A handwritten signature in black ink, appearing to read 'Danielle Blacet-Hyden', with a stylized flourish at the end.

Danielle Blacet-Hyden
Executive Director
California Municipal Utilities Association

Appendix A: Summary of Wildfire Liability Reform Legislation

State	Legislation	Summary
Utah	Senate Bill 224 (2024) ⁴	Requires that third-party claims must be brought within two years of a fire. Restricts economic losses to the lesser of replacement costs or the difference between pre and post fire fair market value. Limits Damages for a party with physical injuries and a non-economic claim to \$450,000, and damages to a party with no physical injuries and a non-economic claim to \$100,000. These limits are not applicable to wrongful death claims.
Idaho	Senate Bill 1183 (2025) ⁵	Requires electric corporations regulated by Idaho’s public utilities commission to submit a wildfire mitigation plan for commission approval and implement the plan (with annual updates) covering risk-areas, infrastructure inspections/maintenance, vegetation management, weather monitoring, de-energization protocols, and public communication. If a wildfire occurs, SB 1183 creates a rebuttable presumption of non-negligence if the utility “reasonably” followed its approved plan.
Wyoming	House Bill 0192 (2025) ⁶	Requires public utilities to prepare and submit wildfire mitigation plans. If the mitigation plan is approved and followed, the bill creates a presumption that the utility acted prudently and shifts the burden of proof of wrongdoing to the plaintiff.
North Dakota	Senate Bill 2339 (2025) ⁷	Provides an option for privately owned electric utilities to submit a wildfire mitigation plan to the state commission and for publicly owned utilities and cooperative to submit plans to their governing boards. If a utility follows its wildfire mitigation plan, SB 2339 creates a rebuttable presumption that the utility exercised a reasonable standard of care.
Montana	House Bill 490 (2025) ⁸	Requires utilities to submit wildfire mitigation plans to the state public utilities commission for approval. If the utility follows an approved plan, it creates a rebuttable presumption of reasonableness.
Arizona	House Bill 2201 (2025) ⁹	Requires large electric utilities to develop and submit wildfire mitigation plans to the Arizona Corporation Commission or other applicable governing body. Utilities that follow an approved plan are deemed to meet the reasonableness standard of care and significantly limits damages that can be recovered for damages resulting from a wildfire caused by an electric utility.

⁴ Available at: <https://le.utah.gov/~2024/bills/static/SB0224.html>.

⁵ Available at: <https://legiscan.com/ID/bill/S1183/2025>.

⁶ Available at: <https://www.wyoleg.gov/Legislation/2025/HB0192>.

⁷ Available at: <https://ndlegis.gov/assembly/69-2025/regular/documents/25-1247-04000.pdf>. 777

⁸ Available at: <https://fastdemocracy.com/bill-search/mt/2025/bills/MTB00014293/?report-bill-view=1>.

⁹ Available at: <https://www.azleg.gov/legtext/57leg/1r/laws/0167.htm>.