

# South Bay Cities Council of Governments

August 12, 2019

TO: SBCCOG Steering Committee

FROM: Jacki Bacharach, SBCCOG Executive Director

RE: Request from Cal Water for Support on Wildfire Liability Issue

## Adherence to Strategic Plan

**Goal B:** Regional Advocacy. Advocate for the interests of the South Bay.

## BACKGROUND

The South Bay Cities Council of Governments (SBCCOG) has received a request from Cal Water to support them on an issue of wildfire liability. Currently, the state's drinking water suppliers are potentially held liable for fires they have no role in starting. Fact sheet attached.

This predicament stems from a lawsuit against the Yorba Linda Water District (Water District) in relation to the Freeway Complex Fire, which was started by a broken-down vehicle. The Water District was held financially responsible for some of the fire damage – almost \$70 million – not because it started the fire but because the fire damaged some of the Water District's facilities, preventing it from pumping water to one neighborhood. In this case, a victim of the fire – the Water District – was held responsible for the damage caused by the fire as a result of the current application of the legal theory of inverse condemnation. Similar logic is now being used in lawsuits against other public drinking water suppliers, and additional lawsuits may be forthcoming as we experience more wildfires.

## DISCUSSION

The League of California Cities, California Association of Counties and The Association of California Water Agencies have all signed an amicus brief supporting the Yorba Linda Water District. Locally, the City of Lomita and the Chambers of Commerce of Torrance, Palos Verdes Peninsula, Redondo Beach, Carson and Hermosa Beach as well as Golden State Water Company are all supportive of this initiative.

## RECOMMENDATION:

That the Steering Committee recommend that the SBCCOG Board send the attached letter of support.



# THE COALITION FOR **FIRE PROTECTION** **ACCOUNTABILITY**

As wildfire risks increase across California, the safety and reliability of our drinking water supply is under increasing threat, too.



## **SAFE COMMUNITIES** DEPEND ON **STRONG WATER SYSTEMS**

*Without common sense reforms, public drinking water systems – and their customers – potentially face lawsuits for damage caused by fires they didn't start. Water systems found responsible under California's strict liability standard could be forced to foot the bill for damage caused by wildfires, even if they don't do anything wrong. This unsustainable standard could force public drinking water suppliers into bankruptcy, threatening the tens of thousands of jobs they provide and the safety and reliability of the drinking water that sustains our communities.*

*Our diverse coalition of public drinking water suppliers, labor, and other organizations has come together to protect California's drinking water systems – the lifeblood of every community and an essential first line of defense for firefighters.*

### **WATER SUPPLIERS AND THEIR CUSTOMERS STUCK WITH WILDFIRE BILLS**

Following the Freeway Complex Fire, the Yorba Linda Water District was slapped with a \$69 million judgement, despite the Superior Court determining that the Water District did nothing wrong and had nothing to do with starting the fire.

The District had to pay tens of millions of dollars because the fire – which was caused by a disabled vehicle – damaged the water supplier's pumps, which then couldn't be used to help fight the fire. The Water District – and the people who depend on it – were victimized first by the fire and again when they got stuck with the bill.

The same logic used against Yorba Linda Water District is now being used in suits across the state against other public drinking water suppliers. These risks will be magnified if the Governor and Legislature do not act to protect the safety of communities who depend on strong water systems.



[www.firesafecalifornia.org](http://www.firesafecalifornia.org)



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[@firesafe\\_ca](https://twitter.com/firesafe_ca)

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The current interpretation of inverse condemnation, **holding utilities strictly liable for any wildfire** caused by utility equipment **regardless of standard of care or negligence, imperils** the viability of the state's utilities, **customers' access to affordable energy and clean water**, and the state's climate and clean energy goals; it also, does not equitably socialize the costs of utility-caused wildfires.

*Commission on Catastrophic Wildfire Cost & Recovery  
June 2019*

## DIRE CONSEQUENCES OF INACTION

Without common sense reforms, lawsuits against public drinking water suppliers for wildfire damages could:

- Drain millions of dollars needed to build and maintain water infrastructure – putting clean, safe drinking water at risk for Californians;
- Jeopardize the financial stability of public drinking water suppliers, limiting their ability to adapt to climate change and help the state achieve its greenhouse gas emission reduction goals;
- Put ratepayers and taxpayers on the hook for costs that aren't their fault and force water rates higher; and
- Threaten the jobs of the tens of thousands workers who operate drinking water systems.

# POLICY PRINCIPLES

## SAFETY & ACCOUNTABILITY

To reduce the chances of catastrophic wildfires, there should be an enhanced focus on ensuring:

- Compliance with wildfire mitigation plans; and
- Prudent maintenance and operation of electric infrastructure.

## FAIRNESS

- Establish clear and fair rules of responsibility to help victims quickly recover from wildfires; and
- Implement reforms that prevent the tools firefighters use to battle fires, including public drinking water systems, from being blamed and held responsible for fires they don't start.

## EMERGENCY RESPONSE

To maximize each community's fire protection capabilities, public drinking water suppliers should:

- Be encouraged to establish protocols for wildfire response in their Emergency Response Plans; and
- Coordinate the preparation of their Emergency Response Plans with first responders, including local fire departments.



July XX, 2019

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

The Honorable Toni Atkins  
President Pro Tempore, California Senate  
Room 205, State Capital  
Sacramento, CA 95814

The Honorable Anthony Rendon  
Speaker, California Assembly  
Room 219, State Capitol  
Sacramento, CA 95814

**Re: Wildfire Liability, Public Drinking Water Suppliers, & Fire Safety**

The undersigned cities, counties, and community organizations – including the constituents we serve – receive water utility service from California Water Service (Cal Water), one of California's largest public drinking water suppliers and the largest regulated by the California Public Utilities Commission. In light of the growing threat posed by wildfires in California, we are very concerned about the consequences that could befall our communities if the state's drinking water suppliers continue to be potentially held liable for fires they have no role in starting. Ironically, holding drinking water suppliers financially responsible for these wildfires could, inadvertently, increase the risks our communities face from more traditional urban fires.

This predicament stems from a lawsuit against the Yorba Linda Water District (Water District) in relation to the Freeway Complex Fire, which was started by a broken-down vehicle. The Water District was held financially responsible for some of the fire damage – almost \$70 million – not because it started the fire but because the fire damaged some of the Water District's facilities, preventing it from pumping water to one neighborhood. In this case, a victim of the fire – the Water District – was held responsible for the damage caused by the fire as a result of the current application of the legal theory of inverse condemnation. Similar logic is now being used in lawsuits against other public drinking water suppliers, and additional lawsuits may be forthcoming as we experience more wildfires.

Rather perversely, holding public drinking water suppliers potentially responsible for fires they do not start could make our communities less safe. The recently-issued report from the Commission on Catastrophic Wildfire Cost and Recovery highlights that this type of application of the inverse condemnation doctrine threatens to choke off capital needed to make continued

investments in utility infrastructure: investments that are critical to the continued safety and reliability of California's drinking water systems. Because they are interconnected, reducing the reliability of California's drinking water systems could undermine the reliability of our fire protection systems, actually increasing the dangers posed by fires, even in more traditional urban fire scenarios.

To ameliorate these risks, we respectfully encourage the Legislature and Administration to implement common sense reforms that make clear public drinking water suppliers are not responsible for the damage from fires they and their facilities do not start. Such a narrowly tailored reform would not unduly affect the rights of homeowners and other fire victims in other circumstances, while at the same time it would help to ensure the continued safety of California's drinking water and reliability of our fire protection systems.

Sincerely,

Cc: The Honorable Bill Dodd, Chair, Senate Select Committee on Governor's Wildfire Report  
The Honorable Ben Hueso, Chair, Senate Committee on Energy, Utilities, & Communications  
The Honorable Henry Stern, Chair, Senate Committee on Natural Resources & Water  
The Honorable Chris Holden, Chair, Assembly Committee on Utilities & Energy  
The Honorable Eduardo Garcia, Chair, Assembly Committee on Water, Parks, & Wildlife