

COUNTY OF NEVADA
STATE OF CALIFORNIA
BOARD OF SUPERVISORS



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June 12, 2018

The Honorable Edmund G. Brown
Governor of California
State Capitol, Suite 1173
Sacramento, CA, 95814

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

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

The Honorable Patricia Bates
Senate Republican Leader
State Capitol, Room 305
Sacramento, CA 95814

The Honorable Brian Dahle
Assembly Republican Leader
State Capitol, Room 3104
Sacramento, CA 94814

RE: Letter of Opposition to Proposals to Revise or Reduce Wildfire Liabilities for Responsible Parties

Dear Governor Brown and Legislative Leaders:

On behalf of the Nevada County Board of Supervisors, I am sending you this letter to express our concern about potential efforts to revise constitutional protections under the "inverse condemnation" laws and long-standing liability statutes related to the causes of fire. Our concerns are also echoed by the California State Association of Counties (CSAC) and the Rural County Representatives of California (RCRC).

For decades, local governments could rely on the law and the courts to make cities and counties, and their constituents and businesses, whole after a disaster caused by a utility. Now a recent letter from the private utilities, and some of their public counterparts, seeks legislative action to reduce their liability. This is alarming as it seeks to change our long-standing constitutional protections.

Inverse condemnation is protected by our constitution as the flip side of eminent domain, the process by which a government agency can take property for public benefit as long as

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the property owner is adequately compensated. The inverse means that if property is damaged by public benefit-providing electricity, damages can be sought. Our courts have applied this principle to private utilities as they share the benefits and privileges of government-owned electric service providers. This provision creates a strong incentive for utilities to ensure that all measures are taken to provide adequate clearances and safety measures to protect the ratepayers and residents of the areas we collectively serve.

We must work to become more resilient in the face of extreme weather events, forest fires, flooding and other natural disasters. Local governments have been experiencing these challenges for some time. The drought California recently suffered began several years ago and was followed by an extraordinarily wet winter season. These extreme weather events have caused challenges for local government emergency services, public works and public safety for years. However, we continue to learn from the challenges and implement new policies, evolving with these events, to stay prepared.

For example, the dramatic rise in tree mortality spurred many County Boards of Supervisors to declare local states of emergencies, including Nevada County, which then prompted the Governor to declare a state of emergency in California to address this rising crisis. The Administration convened a task force to address this issue three years ago, and we have been working together since then to implement policies and direct resources to better prepare and protect our communities and our environment. We agree with that more collectively needs to be done to bolster disaster planning, management and response. Prioritizing the implementation of existing County policies and programs to reduce the risk of wildfire and the effects of wildfire on life, property, and the environment is a Nevada County Priority A Objective. We stand ready to partner together to do more to protect our County from the threat of natural disasters and ever-increasing emergencies.

Please consider the historical context of major fires in the last decade:

- ✓ Both fires in October 2017 in Nevada County were found to be the result of violations of state law.
- ✓ The 2007 fires in San Diego County were caused by utility violations of state law.
- ✓ The 2015 Butte Fire was caused by utility violation of state law.
- ✓ Three of the four October 2017 fires (including the aforementioned fires in Nevada County above) – whose investigations Cal Fire released last Friday – were found to be started as a result of violations of state law.

The cause in nearly every major wildfire disaster is public utilities failure to abide the Public Resources Code 4293 which states, “...*any person that owns, controls, operates, or maintains any electrical transmission or distribution line... maintain a clearance... in all directions between all vegetation and all conductors which are carrying electric current...Dead trees, old decadent or rotten trees, trees weakened by decay or disease and trees or portions thereof that are leaning toward the line which may contact the line from the side or may fall on the line shall be felled, cut, or trimmed so as to remove such hazard.*”

The two fires that swept through Nevada County are directly attributable to a utility not complying with current law. Therefore, we believe it highly inappropriate to suggest legal changes that could deny the rights of those who sustained losses from the fires. Furthermore, as our private utilities share the rights and privileges of their governmental counterparts, we believe that no changes are necessary to the inverse condemnation laws unless changes to their “public” status are also considered.

Therefore, on behalf of the Nevada County Board of Supervisors, I strongly urge you to resist the request to change the rules for the utilities, particularly before a full investigative report of cause and determination is issued. We look forward to working with the Legislature and the Governor’s Office on this critical issue.

Sincerely,

Ed Scofield
Chair, Board of Supervisors