INVERSE CONDEMNATION FACT SHEET

INVERSE CONDEMNATION

Inverse condemnation is a legal concept that entitles property owners to just compensation if their property is damaged by a public use. This liability rule applies to all government agencies, as well as utilities. After a wildfire, inverse condemnation is the way that victims of fires (residents, businesses, and local agencies) recover their costs.

HOW INVERSE CONDEMNATION WORKS

Inverse condemnation has its roots in the Takings Clauses of the U.S. and California Constitutions as the flip side of eminent domain, the process by which a government agency can take property for public benefit as long as the property owner is adequately compensated. The "inverse" means that if property is damaged by a public benefit (i.e. providing electricity), damages can be sought and awarded. The power of eminent domain, along with the potential for inverse condemnation damages, has been extended by the courts to private utilities that have eminent domain authority. Thus, a utility cannot enjoy the power of eminent domain without also bearing the risk of liability in inverse condemnation if its actions damage property.

UTILITIES CAN PASS ON COSTS TO RATEPAYERS

During ratemaking proceedings, the California Public Utilities Commission (CPUC) can establish rates that allow an investor-owned utility to recover certain costs from ratepayers. This can include costs of wildfire, if the utility acted reasonably. California Public Utilities Code § 463 only disallows costs associated with unreasonable errors or omissions in planning, construction, or operation of the utility's plant.

PROPOSALS TO CHANGE

Investor-owned utilities have argued that the liability rules for wildfire should change to a "reasonableness test". Governor Brown also proposed changes to the liability rules that would allow a court to assign "proportionate fault" to multiple parties. Such changes are likely unconstitutional because they (1) violate the individual right to receive just compensation and (2) the Legislature does not have the authority to substitute their interpretation of the Constitution for that of the Courts.

WHY IT MATTERS TO LOCAL AGENCIES

While a "reasonableness test" or "proportionate fault" may sound simple, it will complicate lawsuits for victims and bring in new parties to litigation, including local agencies. Changes would over-complicate the legal process, invite more complex and longer trials against more parties, and expose state and local government to new costs and liability.

These proposals open the door to allow utilities to pass off liability to other entities and reduce the amount of award victims would receive. Victims of fires, including local agencies, have a right to receive just compensation for damage incurred.

CHANGES ARE PREMATURE

Liability rules serve important purposes to provide certainty that fire victims will be taken care of and to incentivize investor-owned utilities to be as safe as possible. Changes to these rules could have far-reaching unintended consequences. With very limited time left in the legislative session, consequences of changes to liability rules cannot be fully considered.

It is premature to change the rules based on one fire season, particularly when CAL FIRE has yet to issue reports on the cause of key fires in late 2017. Furthermore, CAL FIRE officials have determined that 16 of the 2017 fires were caused by utility equipment, and 11 of those cases have been referred to prosecutors for criminal investigation. It is highly inappropriate to suggest changes to liability laws without first fully examining safety requirements and standards.