

MYTHS and FACTS

About Utility Liability & Inverse Condemnation

August 7, 2018

MYTH:

Utilities are required to pay for damages caused by wildfires even if they followed the law.

FACT:

Utilities can recover damages from ratepayers under current liability laws. If Utilities are found liable for damages under an inverse condemnation claim and they were determined to have followed the law, there is a process at the California Public Utilities Commission that allows Utilities to recover these costs from their ratepayers if they acted reasonably. They are NOT allowed to recover costs if they are found liable under inverse condemnation and acted unreasonably.

MYTH:

Climate change is causing increased wildfires, and Utilities should not be held responsible.

FACT:

In light of climate change, the current liability standard is one of the very best tools to incentivize utilities to invest in increased prevention and safety measures. Strong incentives are needed to compel Utilities to join the state in reducing the risk of climate change, and adapting to our changing environment by increasing safety measures. For example, after the 2007 wildfires in San Diego, SDG&E rose to the challenge of climate change by investing in the basic preventative measures that we know prevent wildfires. The company increased vegetation management, updated high wind and power down policies, and improved physical infrastructure. SDG&E did so under the current liability structure.

MYTH:

Utilities cannot shoulder the financial burden of utility-caused wildfires.

FACT:

The Legislature is reviewing proposals that could help Utilities pay their debts. While the financial burden related to wildfires can be significant, the Governor's proposal is not retroactive to 2017 and therefore does nothing to alleviate Utilities' financial concerns related to last year's fires.

When examining Utilities' cost pressures, it should be noted that PG&E increased executive compensation leading up to and around the time of the 2017 fires. According to the *San Francisco Business Times* and a recent PG&E SEC filing, PG&E doubled executive compensation in 2017, increasing CEO compensation more than 100 percent from \$4.16 million in 2016 to \$8.56 million last year. Among the nine top executives listed in the filings, six received pay increases –including PG&E's President and Chief Operating Officer, who saw his compensation rise from \$3.93 million to \$6.42 million.

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MYTH:

Local governments are made whole after disasters by insurance, and state and federal funds.

FACT:

This not true. Local government costs from damages to roads, water supply and treatment, erosion control, and natural habitat and open space are among several expenses that are not compensated by the state or federal government or insurance. In addition, local agency staff time is not compensated by CAL OES or FEMA. For example, in the first year following the Butte Fire, Calaveras County staff spent over \$1.1 million in regular staff time on Butte Fire response and recovery activities, equal to 15,000 hours or seven full time positions for one year.

MYTH:

Changing utility liability laws won't impact fire victims.

FACT:

Changes to liability rules could have far-reaching unintended consequences for victims. Liability rules provide certainty that fire victims will be taken care of and to incentivize Utilities to be as safe as possible. Changes to inverse condemnation laws will result in additional lawsuits, invite more complex and longer trials against more parties, and expose state and local government to new costs and liability. The end result will hurt victims.

MYTH:

The Governor's proposal to change liability laws is constitutional.

FACT:

The Governor's proposal is unconstitutional. 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 Legislature does not have the ability to amend the Constitution without a vote of the people.

Drafted by the California State Association of Counties (CSAC), Urban Counties of California (UCC), Rural County Representatives of California (RCRC), and the League of California Cities (LCC).