

Up from the Ashes

A COALITION OF VICTIMS AGAINST UTILITY ABUSE

May 14, 2019

The Honorable Gavin Newsom
Governor, State of California
State Capitol, Room 1173
Sacramento, CA 95814

Dear Governor Newsom,

As the state's leading voice for the victims of utility-caused wildfires, we respectfully submit the following four-point plan, which has been designed to resolve the increasingly desperate plight of current wildfire victims, prevent future fires, protect ratepayers, promote the fiscal health and safe operation of the utilities, and help the state reach its climate change goals.

Our plan includes some of the recommendations offered by your Strike Team, along with provisions of current legislation now pending and additional ideas for resolving the current crisis in a way that is fair to all.

Our four-part plan:

1. Provide immediate relief for wildfire victims

The Legislature should adopt the Strike Team's proposed liquidity "bridge" fund to provide immediate compensation for wildfire victims who suffered loss from the 2017 and 2018 utility-caused fires. PG&E should not be allowed to issue its requested profits or executive bonuses until the fund is fully repaid to the state.

Wildfire victims have been struggling personally and financially for years as a result of their devastating losses — living in temporary housing, often in areas that are unfamiliar and far from their workplace or their children's school. Homeowners have limited access to "alternative living expenses" (ALE), which may last from only one to two years, so the quick and fair resolution of underinsured losses is vital. Without reimbursement from responsible IOUs, the overwhelming majority simply cannot rebuild — ever.

2. Immediately reduce the risk of future fires

The best way to protect Californians from utility-caused wildfires is to adopt effective new fire safety and prevention measures like "de-energizing," in which a utility turns off power when high winds or other fire conditions are predicted, and to strictly monitor and enforce their implementation. In this regard, we strongly support Judge Alsup's key recommendations for independent monitors and quarterly reports on safety improvements.

The root cause of past catastrophic wildfires has been the gross mismanagement of known risk. This is supported by findings of the CPUC, whose audits since 2010 have repeatedly criticized PG&E's board for mismanagement. (Strike Team report, pgs 15-17) This is why aggressive oversight is essential.

We reject the prevailing assumptions that new fire prevention upgrades and practices will take too long to implement, and that the risk and severity of catastrophic wildfires will not soon abate.

SDG&E has proven that these assumptions are wrong. Since the 2007 fires, the utility has taken aggressive action to dramatically reduce fire risk by de-energizing, installing 167 new wind measuring devices, hiring three meteorologists and four experienced fire professionals to assist in providing fire risk evaluation and mitigation, and by improving its fire modeling with an emphasis on fire progression.

The CPUC concluded that those measures alone “provide[d] substantial benefit to wild fire risk mitigation.” (Strike Team report, pgs 10-11)

Ironically, PG&E has admitted that new weather stations in high fire threat areas would “bolster wild fire prevention and response efforts and keep our customers safe.” (Strike Team report, pg 11)

Since SDG&E adopted its de-energization policies in 2014, only one wildfire over ten acres has occurred in its territory — and was contained before reaching 300 acres. SDG&E has repeatedly been rightly praised as setting the gold standard for wildfire risk management standards. (Strike Team report, pgs 13-14)

In contrast, 68 wildfires over ten acres occurred in PG&E's territory — not including the Camp and North Bay Fires — before it adopted a de-energizing policy starting in 2019.

3. Create a four-level wildfire catastrophic loss fund

We have long supported creation of a catastrophic wildfire fund that offers a level of financial security and stability for both victims, ratepayers and the utilities. We understand that funding mechanisms will be difficult, that additional discussions with all parties will be required, and that the "devil is in the details."

To start the discussion, we propose creating four levels of funding to cover catastrophic wildfire losses:

- Level 1 would require each utility to pay for the first \$500 million in fire losses. With PG&E's recently adopted de-energizing policy, fires surpassing this amount should be rare.

- Level 2 would require each utility to self-insure for \$3 billion to cover the cost of liabilities exceeding \$500 million.
- Level 3 would create a \$9 billion fund to cover losses exceeding \$3.5 billion, funded by the utilities using either loans, stock, securities and/or bonds. Tort victims would apply directly to the fund for compensation. The utilities would be required to replenish the fund for the amount of the losses resulting from negligence.
- Level 4 would be a towered insurance plan for losses exceeding \$12.5 billion, to be paid for by the utilities, which could pass this cost to ratepayers, but only with CPUC approval. Because this is essentially a policy with a \$12.5 billion deductible, premium costs would be exceedingly low. But again, with de-energizing and other aggressive fire safety and prevention measures, the use of such insurance would be rare, if at all.

4. Preserve liability protection for victims

We remain steadfastly opposed to weakening the significant protection inverse condemnation provides for property owners. However, we do support changing the "prudent manager" standard, shifting the burden of proof for establishing negligence to the CPUC, and empowering it to reach these decisions more quickly, as referenced in the Strike Team's report.

Inverse condemnation gives property owners the ability to enforce their constitutional right of eminent domain, which is why the courts would rule any attempt by the Legislature to weaken or destroy this essential protection as unconstitutional.

The courts have ruled that private utilities enjoying monopoly and eminent domain powers must be treated the same as other public entities.

As a result, inverse condemnation keeps pressure on the utilities to prevent wildfires by operating safely, as SDG&E has done. Moreover, eliminating inverse condemnation would not save the utilities money, since all the cases would become negligence cases. This is significant because there is no utility-caused fire on record in which negligence has not been part of the findings.

Without inverse condemnation, fire victims would have no choice but to sue the utility under negligence standards for the same compensation, forcing them into a longer and more costly process, which would further delay reimbursement for their losses.

We appreciate your leadership on this issue, and look forward to working with you to help California's current fire victims — and prevent future victims.

Sincerely,



Patrick McCallum
Co-Chair
Up from the Ashes
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