



Burning Questions: Legal Duties and Risks for Water Agencies in Fire-Prone California

Water agencies in California face complex challenges at the intersection of wildfire liability and their roles as landowners, asset owners, and water suppliers. As climate change increases wildfires, understanding legal obligations and risks is critical.

This presentation explores the legal framework, examines liability theories, and offers strategies for risk mitigation. We'll distinguish between wildland and urban fires, property owner versus water supplier liability, and address the Wildland - Urban Interface (WUI).

Meet Our Panel



Claire Collins

Partner & Water Law Valkyrie
Hanson Bridgett LLP

With over 20 years of experience advising public infrastructure agencies, Claire is basically a legal Swiss Army knife—with a flow chart and a bit of sass. She serves as General Counsel to Irvine Ranch Water District, Trabuco Canyon Water District, and Vallejo Flood & Wastewater District, and as special counsel to agencies across California on public revenues, real estate, joint powers authorities, clean water law, and ethics.

A proud member of the ACWA Legal Affairs Committee, Claire is fierce, feisty, and famously prepared. Claire brings sharp insight, quick wit, and a color-coded binder to every legal challenge.



Laura Ratcliffe

Senior Counsel & Public Property Guru
Hanson Bridgett LLP

When it comes to public agency law, Laura's the one you want in your corner—especially if your corner involves easements, cell towers, or wildfire risk maps. She helps public and private entities wrangle real estate, environmental, water, and governance matters with surgical precision and a spark of mischief.

From negotiating rights of way to navigating Proposition 218, Laura's handled it all—often with a legal pad full of perfectly bullet-pointed brilliance and a sixth sense for spotting hidden liability. She's also on the front lines helping agencies prevent wildfire liability before sparks fly, proving that a good agreement can be just as important as a good fire line.



Kayla Villa

Litigation Manager & Risk Whisperer
ACWA JPIA

As Litigation Manager at the JPIA, Kayla navigates high-stakes claims and legal complexities for California's water agencies—especially when the heat is on. With a background as outside defense counsel, she brings courtroom savvy to every file, from trip-and-falls to wildfire liability and mitigation strategy.

A firm believer that good risk management can prevent bad headlines, Kayla tackles tough issues with sharp insight and even sharper heels. Saving the day may be part of the job, but doing it in stilettos? That's just style.



Andy

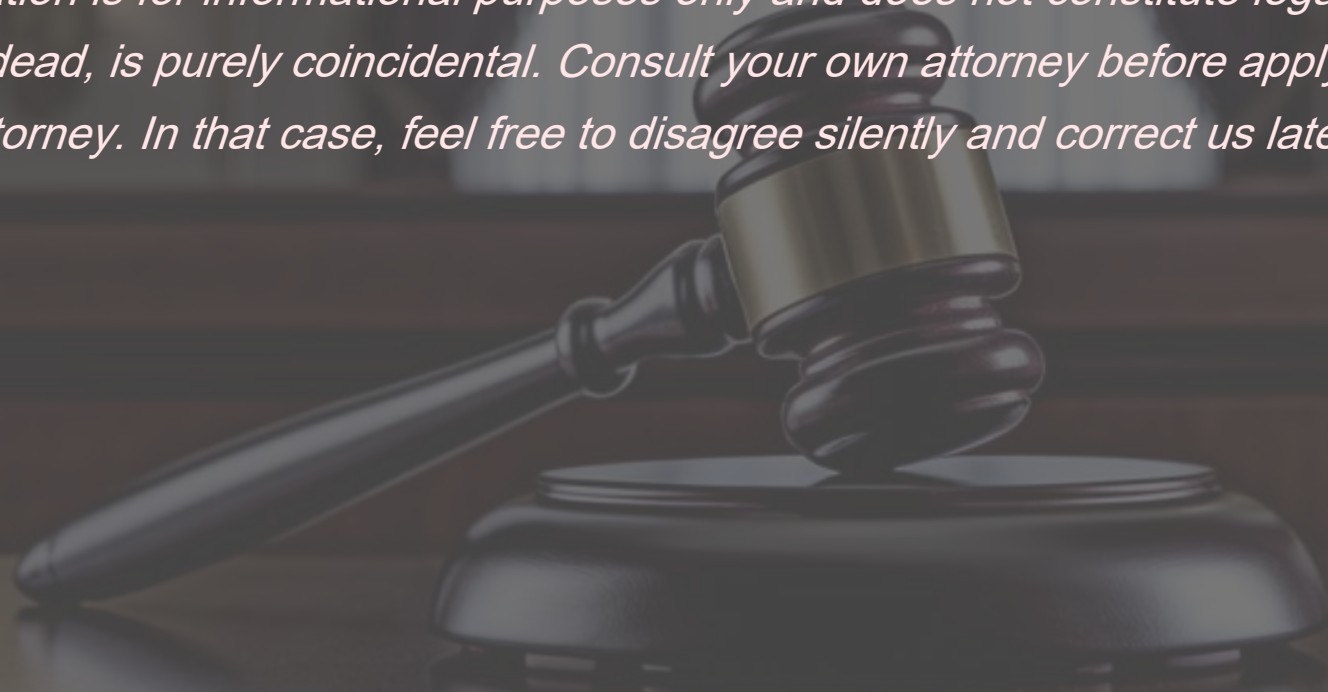
Chief Vegetation Officer (CVO)
ACWA JPIA

When it comes to fire risk, Andy doesn't *kid* around. As the official mascot and honorary Chief Vegetation Officer of our organization, Andy is on a mission to munch his way to a safer California. With a palate for perilous underbrush and a passion for preventative grazing, Andy has become a four-hooved hero in the world of wildfire mitigation.

When he's not leading the charge on vegetation management, Andy enjoys headbutting bureaucracy, climbing to new heights (literally), and advocating for eco-friendly solutions—one blade of grass at a time. He may chew with his mouth open, but he always speaks the language of risk reduction.

Legal Disclaimer:

The following presentation is for informational purposes only and does not constitute legal advice. Any resemblance to actual legal advice, living or dead, is purely coincidental. Consult your own attorney before applying anything herein —unless, of course, you are the attorney. In that case, feel free to disagree silently and correct us later over drinks.



Understanding Fire Types and Liability Contexts in California

Different fire scenarios create distinct liability challenges for water agencies across California's diverse landscapes.



Wildland Fires

Wildfires often occur in undeveloped areas with natural vegetation and spread rapidly due to wind and dry conditions. Water agencies face specific regulatory frameworks and liability considerations when operating in these areas.



Urban Fires

Typically originate in buildings or infrastructure and spread through constructed environments. Different firefighting approaches and legal frameworks apply, with water agencies potentially implicated in these scenarios.



Wildland - Urban Interface (WUI)

Represents areas where human development meets or intermingles with undeveloped wildland, creating particularly vulnerable zones for fire transmission. Water agencies in WUI zones face heightened scrutiny and complex liability questions that span both contexts.

California's Legal Landscape for Water Agencies

California's changing climate has dramatically increased both the frequency and intensity of wildfires, creating new challenges for water agencies statewide.



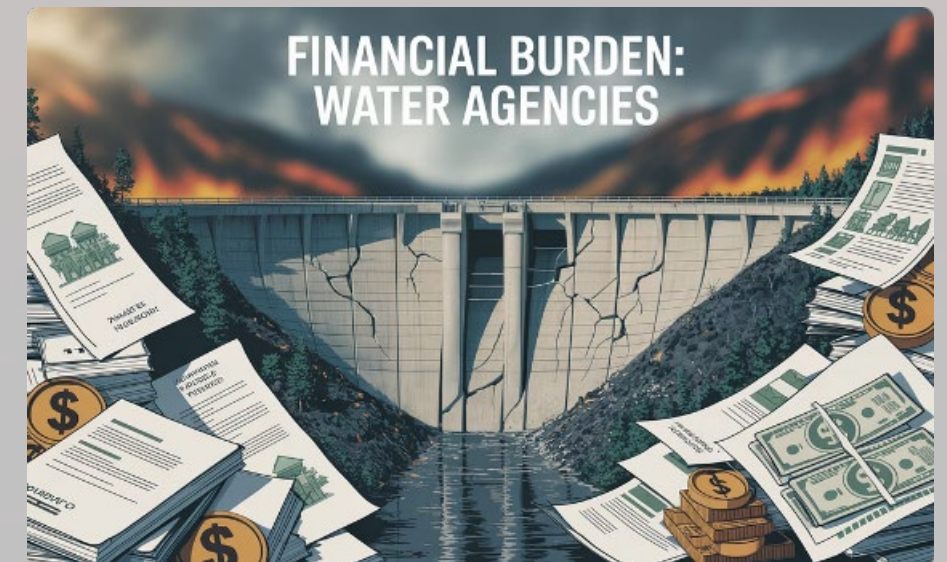
Escalating Risk Environment

Climate change has dramatically increased both wildfire frequency and intensity, creating unprecedented operational challenges for water agencies.



Heightened Scrutiny

Water agencies face increased legal scrutiny regarding wildfire prevention measures, emergency response capabilities, and infrastructure maintenance practices.



Financial Implications

Evolving responsibilities carry significant financial impacts, including higher insurance premiums, potential litigation costs, and capital expenditures for fire-resistant upgrades.

Trivia Time with Andy!



Key Risk Factors for Water Agencies

Financial Limitations

Agencies must balance infrastructure investment with other operational needs.

Infrastructure Impacts

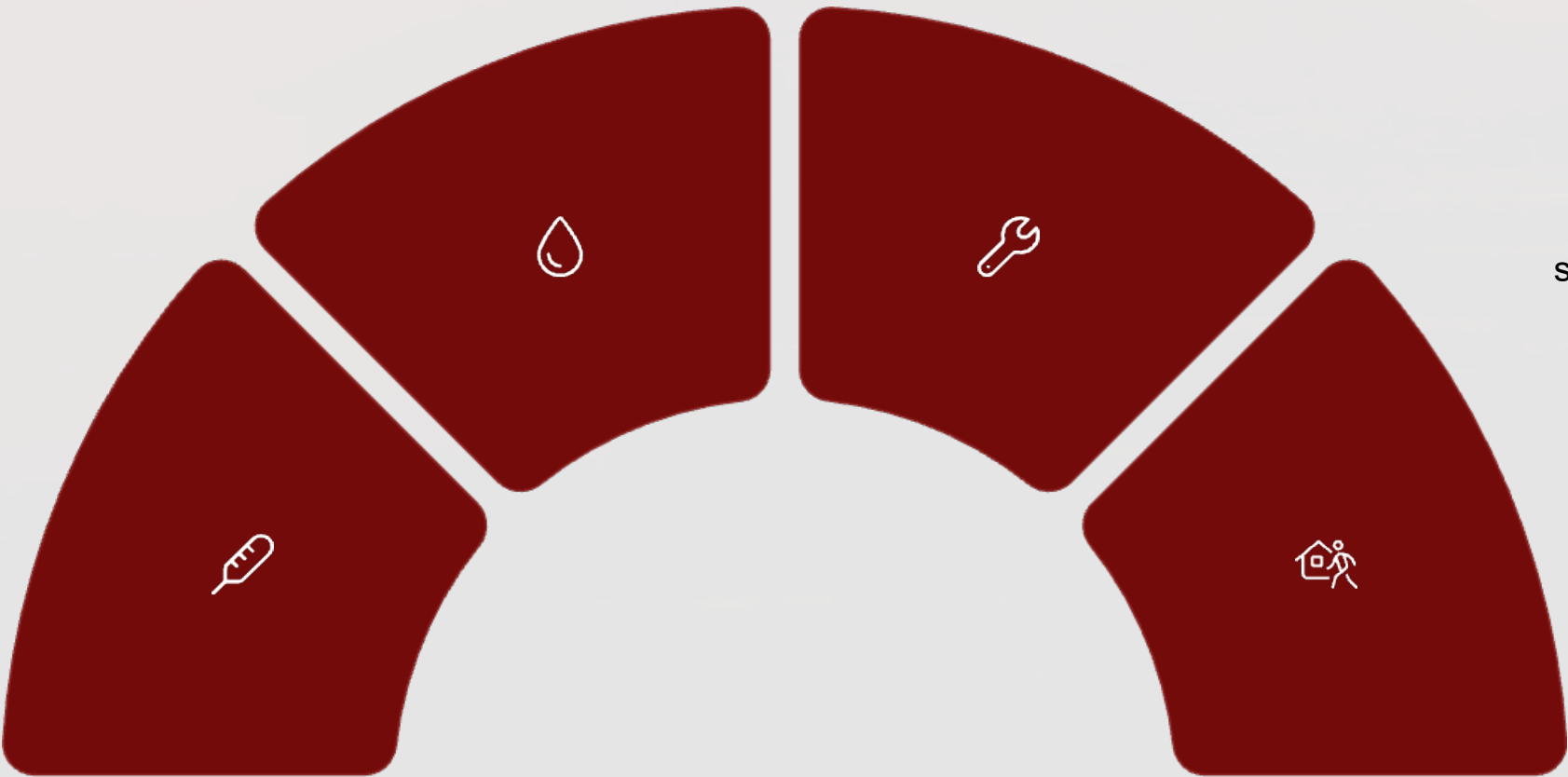
Infrastructure may fail under extreme conditions during wildfire events; Fires can cause water system contamination.

Climate Change and Drought

Increasing wildfire frequency and severity, creating unprecedented demands on water systems.

Legal and Regulatory Impacts

Agencies are facing increased scrutiny; facing new legislation and lawsuits.



Legal Risks as Water Supplier



Contractual Obligations

Agencies must supply water according to established contractual agreements with customers and communities they serve.



Common Law Obligations

Water providers are bound by common law requirements governing service provision and reliability standards.



Constitutional Constraints

Agencies must avoid actions that could constitute unlawful taking of property for public use without proper compensation.

Legal Responsibilities in P r o p e r t y M a n a g e m e n t f o r W a t e r A g e n c i e s

P r o p e r t y O w n e r D u t i e s

California public agencies must maintain property in a reasonably safe condition to prevent foreseeable harm. Legal liability may arise from failure to address known hazardous conditions or neglecting to conduct regular inspections.



Liability Theories Affecting Water Agencies



Water agencies face liability under multiple legal theories. For dangerous condition claims, agencies must have had notice of the condition and failed to address it. Inverse condemnation requires showing a clear causal connection between agency actions and property damage. (See Gov. Code Sections 830(a), 835)

Important immunities exist under Government Code Sections 850 - 850.6, which can protect agencies from certain tort claims related to firefighting equipment and facilities.

Dangerous Condition of Public Property

Elements Required to Establish Liability - Government Code Section 830, *et.seq.*



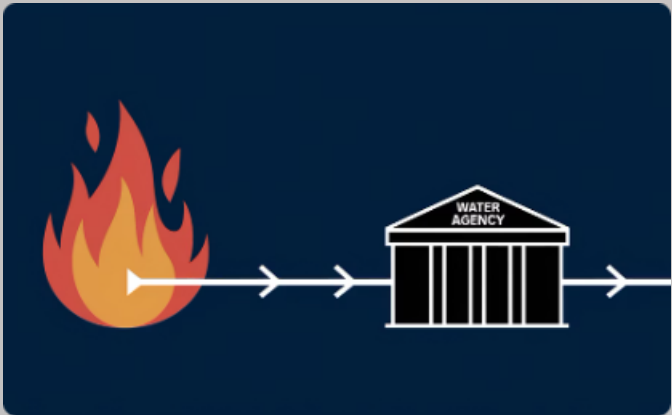
Public Property in Dangerous Condition

The public entity's property was in a dangerous condition at the time of the injury or damage (Gov. Code Section 830)



Actual or Constructive Notice

The public agency had either actual or constructive notice of the dangerous condition a sufficient time prior to the incident. (Gov. Code Section 835.2)



Proximate Causation

The injury or damage was proximately caused by the dangerous condition (Gov. Code Section 835)



Foreseeable Risk

The kind of injury that occurred was reasonably foreseeable as a consequence of the dangerous condition (Gov. Code Section 835)

Water agencies must demonstrate reasonable inspection and maintenance practices to defend against these claims. Failure to address known hazards can significantly increase liability exposure. BUT Courts have long held that Government Code Section 835 "...cannot be given [an] application that would render the municipality an insurer against accidents..." (*Drummond v. Redondo Beach* (1967) 255 Cal.App.2d 180)

Governmental Immunities

California law provides limited protections for water agencies related to firefighting activities:



Government Code Section 850

"Neither a public entity nor a public employee is liable for failure to establish a fire department or otherwise to provide fire protection service."



Government Code Section 850.2

"Neither a public entity that has undertaken to provide fire protection service, nor an employee of such a public entity, is liable for any injury resulting from the failure to provide or maintain sufficient personnel, equipment or other fire protection facilities."



Government Code Section 850.4

"Neither a public entity, nor a public employee acting in the scope of his employment, is liable for any injury resulting from the condition of fire protection or firefighting equipment or facilities or... for any injury caused in fighting fires."

Trivia Time with Andy!



Landowner & Asset Owner Responsibilities



Defensible Space

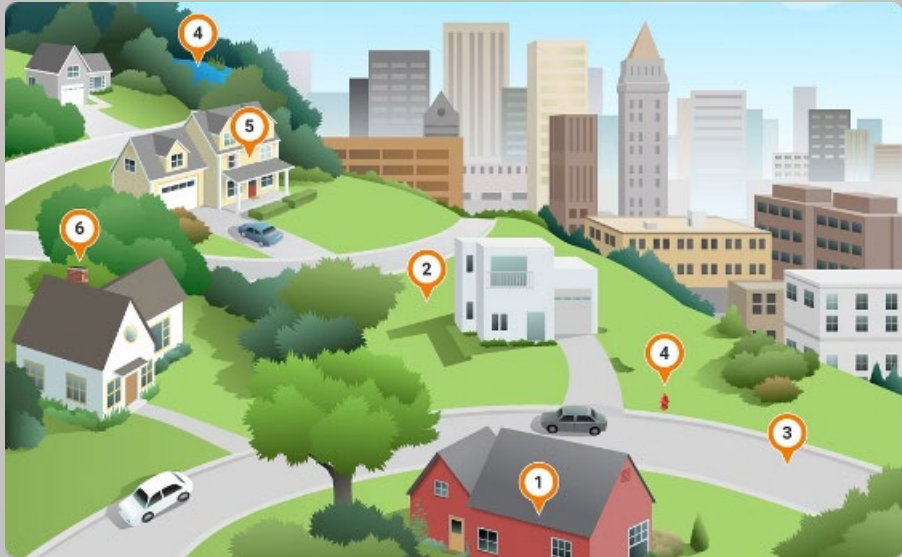
Create and maintain buffer zones around structures to reduce fire hazards. This includes clearing flammable vegetation, debris, and creating separation between trees and shrubs according to state and local regulations.

Property owners must comply with California's fire safety regulations and may be held liable for damages if inadequate maintenance contributes to fire spread or intensification.



Vegetation Management

Implement strategic maintenance plans for vegetation on property, including regular trimming, use of goats for grazing, removal of dead plants, proper spacing of trees, and selection of fire-resistant species where appropriate.



Building and Zoning Code Changes

Municipalities are beginning to adopt land use regulations, such as the International Wildland - Urban Interface Code (IWUIC), for structures in the WUI including ignition-resistant construction; emergency vehicle access; water supply and sprinklers, etc.

maintenance contributes to fire

Risk Transfer

When hiring third -party contractors to assist with defensible space and vegetation management, water agencies should implement proper risk transfer strategies to protect against liability.

- 1

Additional Insured Endorsements

Request contractors to name your client's agency as an additional insured on their liability policies, ensuring coverage extends to claims arising from their work on your agency's property. Ensure a copy of the actual endorsement is received prior to the start of work.
- 2

Minimum Coverage Requirements

Establish comprehensive minimum insurance requirements including general liability, workers' compensation, and professional liability coverage with appropriate limits based on project scope and risk assessment.
- 3

Indemnification Provisions

Include strong indemnification language in contracts that transfers liability from the water agency to the contractor for claims arising from the contractor's negligence or workmanship.
- 4

Documentation Verification

Implement a systematic process to collect, verify, and maintain current contracts, additional insured endorsements and other risk transfer documentation before work begins and throughout the contract period, including a full copy of the operative insurance policy.
- 5

Written Health & Safety Plan

Request submission of a written Health & Safety Plan from contractor that includes a Fire Protection and Prevention Plan, where warranted.

Trivia Time with Andy!



Water Supplier Liability:

C o n t r a c t u a l L i a b i l i t y E x p o s u r e s f o r W a t e r A g e n c i e s

Water agencies face specific contractual liability risks that require careful management:



Contract / Service Agreements

Contracts with municipalities, developers, or other entities may contain terms that expand liability beyond statutory requirements, especially regarding water pressure and availability during fire events.

Fire Infrastructure Contracts

Agreements related to installation, maintenance, or operation of fire suppression systems can create additional duties that might not otherwise exist under general law.

Indemnification Clauses

Contractual indemnity provisions may shift risk to water agencies even when the agency is not the primary cause of damage or service interruption during a wildfire event.

Careful contract review and negotiation is essential to prevent unintended expansion of liability beyond statutory obligations.

Sovereign Immunity and Tort Claims

Sovereign immunity provides significant protection for water agencies against common law liability theories such as negligence and nuisance.



Statutory Basis Requirement

For liability to attach to a water agency, there must be a specific statutory basis that creates the legal duty and right to recovery. (Gov. Code Section 815)



California Tort Claims Act

All monetary tort claims against water agencies are subject to the California Tort Claims Act, which establishes strict procedural requirements and timelines for filing claims.



Limited Waiver of Immunity

The Act represents a limited waiver of governmental immunity, establishing both the boundaries of potential liability and important procedural safeguards.



Inverse Condemnation Doctrine

Overview of Cause of Action

Inverse condemnation is a legal action brought by property owners against governmental entities when property is taken or damaged for public use without formal eminent domain proceedings or just compensation.

California Constitution, Article I, Section 19(a): " *Private property may be taken or damaged for public use and only when just compensation, ascertained by a jury unless waived, has first been paid to... the owner...* "

Ownership of private property by the plaintiff

Property was taken or damaged for public use

Causal connection between public improvement and property damage

Property owner suffered damages

No requirement to prove negligence (strict liability standard)
(*Barnham v. Southern Cal. Edison Co.* (1999) 74 Cal.App.4th 744.)

Water Agency Exposure: Inverse C o n d e m n a t i o n R i s k s

Water agencies face legal vulnerability through inverse condemnation claims arising from wildfire events:



Strict Liability Standard

Unlike negligence claims, inverse condemnation operates under strict liability principles that offer minimal immunity protections to water agencies.



Attorney's Fees

A successful plaintiff can generally recover their reasonable attorney's fees and costs, including expert witness fees, as part of the judgment or settlement. (Code of Civ. Proc. Section 1036)



Preventative Documentation

Comprehensive records of infrastructure maintenance, testing, and compliance with standards are critical defenses against inverse condemnation claims.

Unlike traditional tort claims, inverse condemnation bypasses many governmental immunity protections, creating exposure for water agencies for claims relating to wildfire events. (Gov. Code Section 905.1)



Case Studies and Legal Precedents



2008 Freeway Complex Fire

Yorba Linda Water District case highlighted difficulties with maintaining functioning infrastructure during wildfires.



City of Oroville Case

Significant ruling affecting application of inverse condemnation to public agencies.



Recent LA Fire Cases

City named in over 50 suits, some alleging inverse condemnation for water supply issues.

Legal precedents continue to evolve as courts address wildfire liability. The 2008 Freeway Complex Fire case involving Yorba Linda Water District highlighted challenges in maintaining adequate water pressure during extreme events. Recent Los Angeles cases demonstrate the ongoing liability risks for water providers.



2008 Freeway Complex F i r e

C a s e O v e r v i e w

- Numerous homeowners and insurance carriers sued YLWD following the 2008 Freeway Complex Fire, alleging inadequate water supply for firefighting due to the failure of the booster pump station.
- Suit alleged a cause of action for Dangerous Condition of Public Property and Inverse Condemnation. District prevailed at the Demurrer stage relating to Dangerous Condition of Public Property (immunities applied). Case proceeded on the theory of Inverse Condemnation.
- Case was heard through an Order of Reference (CCP Section 638) by the Honorable Justice Trotter (ret. judge). In the Judgment issued by Ret. Judge Trotter, he determined that the water district was liable under inverse condemnation for insufficient water pressure during extreme fire conditions although equipment was damaged as a result of the fire and noting that the District did not cause the fire.
- Case highlighted challenges water agencies face in maintaining infrastructure during catastrophic events.



City of Oroville Case

Key Clarification on Inverse Condemnation Requirements

The City of Oroville case established that there must be more than just a "causal connection" between the public improvement and damage to private property. (*City of Oroville v. Superior Court* (2019) 7 Cal.5th 1091)

Substantial Causation Required

1

Damage must be substantially caused by an *inherent risk* presented by the deliberate design, construction, or maintenance of the public improvement.

2

Deliberate Planning Standard

The case emphasized that liability attaches to deliberate governmental actions, not merely coincidental connections between public works and private damage.

3

Impact for Water Agencies

This higher standard provides important protection for water agencies facing claims related to wildfire events where multiple factors contributed to property damage.

Case Studies: ACWA JPIA Claims



Vegetation Management Claim

A water district faces allegations of negligent vegetation maintenance after a fire that began off site spread through their property and onto adjacent residential areas resulting in the total destruction of two homes. Total Cost of Claim - Pending



Hydrant Supply

A water agency faced claims that there was insufficient water pressure and accessibility issues with hydrants during a wildfire response resulting from pump failures, allegedly contributing to increased property damage. Total Cost of Claim - Approx. \$60M



Employee Negligence

District employee struck a power line, sparking a grass fire on private property. Fire rapidly spread ultimately damaging the third - party's barn and home. - Total Cost of Claim - Approx. \$1M



Infrastructure Failure Claim

Claims arising from mudslides that occurred after destructive fires. Plaintiffs alleged that the District's main broke which contributed to the mudslides, resulting in fatalities and damages to over 100 structures. Total Cost of Claim (defense costs only) - \$2.7M

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14	COUNTY OF LOS ANGELES
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16	HEIDI PRATT, AN INDIVIDUAL;
17	WILLIAM PRATT, AN INDIVIDUAL;
18	JANET PRATT, AN INDIVIDUAL;
19	DAN TRAPP, AN INDIVIDUAL;
20	ZACH QUITTMAN, AN INDIVIDUAL;
21	NICOLE DIACO, AN INDIVIDUAL;
22	MICHAEL BURGESS, AN INDIVIDUAL;
23	JOANNE GARY, AN INDIVIDUAL;
24	FRANK LONGO, AN INDIVIDUAL;
25	GINA GIGLIOTTI, AN INDIVIDUAL;
26	BERNARD GIGLIOTTI, AN INDIVIDUAL;
27	AELINA LONGO, AN INDIVIDUAL;
28	MARCO LONGO, AN INDIVIDUAL;
	HOVSEP KOUZOUYAN, PRINCIPAL OF
	20300 PACIFIC COAST HIGHWAY, LLC;
	NICHOLAS PICCIRILLO, AN INDIVIDUAL;
	CATHERINE MONTGRAIN, AN INDIVIDUAL;
	JANET BROWN, AN INDIVIDUAL;
	CHUCK MINIUM, AN INDIVIDUAL;
	CASE NO.: 258TCV01720
	COMPLAINT FOR DAMAGES:
	1. Inverse Condemnation
	Demand for Jury Trial
	COMPLAINT FOR DAMAGES
	1

Recent Los Angeles Fire Cases

The City of Los Angeles (Department of Water and Power) has been named as a defendant in over 50 lawsuits related to recent wildfire events.



Inverse Condemnation Claims

Many lawsuits allege inverse condemnation, claiming the City's infrastructure or operations contributed to property damage.



Water Supply Challenges

Similar to the Freeway Complex Fires, plaintiffs are focusing on alleged inadequacies in water supply systems during fire events.

Recent Los Angeles Fire Cases

1 52. Defendants’ operation of its water supply and related infrastructure was a
2 substantial cause of Plaintiffs’ damages. They constitute a public improvement for a public use.

3 53. Defendants’ facilities, reservoir, water supply system, hydrants, infrastructure and
4 other public improvements, as deliberately designed and constructed, presented an inherent danger
5 and risk of fire to private property. In acting in furtherance of the public objective of supplying
6 water, the Defendants took and did take on or about January 7, 2025, and in the days thereafter
7 and for about a year before, a known, calculated risk that private property would be damaged and
8 destroyed by fire.

9 54. On or about January 7, 2025, and in the days thereafter, the inherent and foreseeable
10 risk of a fire exacerbated by Defendants’ water supply management and infrastructure occurred
11 when the Palisades Fire burned and spread, which directly and according to law resulted in the
12 taking of Plaintiffs’ private property.

13 55. Defendants’ reservoir, water supply system, hydrants, and other infrastructure were
14 designed, engineered, constructed, used, operated, maintained by Defendants. That operation
15 caused damages to Plaintiffs’ property and the Defendants’ conduct as described herein constitutes
16 an improper taking or condemnation of their property under Article I § 19 of the California
17 Constitution and Public Utilities Code § 612.

18 56. The conduct as described here was a substantial factor in causing damage to a
19 property interest protected by the Fifth Amendment to the United States Constitution and Article
20 I, Section 19, of the California Constitution, which entitles Plaintiffs to just compensation
21 according to proof at trial for all damages incurred.

22 57. The above-described damage to Plaintiffs’ property was proximately and
23 substantially caused by the actions of Defendants, and each of them, in that Defendants’



Use of *Oroville* Standard for Causation

- Alleges that the “deliberate design and construction” of the water system presented an “inherent risk” to private property.
- “Defendants designed the water supply system such that it would not have enough water pressure to fight an **urban fire** .”
- Discussion of offline reservoir, the result of a cost-cutting measure



Ongoing Legal Development

These cases represent an evolving area of liability risk for municipal agencies and water providers across California.

Trivia Time with Andy!





Legislative and Regulatory Challenges

Water agencies face increasing scrutiny over pump station and hydrant failures during wildfire events, triggering new legislative responses.

- 1
- Assembly Bill 367
- As proposed, requires water districts in Ventura County to ensure prompt backup power is available to keep pumps working after power shutoffs, ensure water tanks are full upon receipt of notifications of severe weather alerts, among other things. Could potentially be scaled statewide.
- 2
- Liability Considerations
- Importance of assessing critical liability issues that could significantly impact water agencies.
- 3
- Funding Challenges
- Public agencies continue to struggle with funding concerns related to infrastructure improvements required to meet potential new standards .
- 4
- Risk Pools v. Traditional Insurance
- Public agencies are likely members of a risk pool rather for liability coverages. Thus, losses are funded directly through public agency funding, i.e., ratepayers .

Mitigation Strategies



Infrastructure Improvements

System hardening, backup power for pump stations, automatic shutoff, backflow prevention, and strategic water storage enhancements.



Proactive Water Management

Improved storage and demand management practices to ensure adequate fire flows during emergencies.



Vegetation Management

Fuel reduction around critical assets, forest management, and stream restoration to improve watershed health.



Risk Pool Resources

Risk advisors, hazard mitigation plans

Best Practices for Reducing Risk

1

Develop Comprehensive Emergency Plans

Create detailed response protocols specifically for wildfire scenarios, including staff safety measures and communication procedures.

2

Coordinate With Local Fire Authorities

Establish clear agreements on hydrant maintenance, water pressure expectations, and mutual aid arrangements for emergency response.

3

Implement Innovative Solutions

Consider advanced technologies like HeliHydrants, HeloPods, certified fire safe councils, and hazard mitigation plans to enhance preparedness.

Looking ahead, water agencies must prepare for evolving wildfire threats and potential changes in liability standards. Ongoing investigations into wildfire causes will likely influence future legislation and regulatory requirements.

The public policy message is clear: water agencies should not be scapegoats for fire damage. Expanded immunities and reasonable requirements are needed to balance public safety with sustainable operations and fair rates.

Best Practices for Water Agencies

Conduct Regular System Audits

Focus on fire flows, pressure, and equipment reliability to ensure optimal system performance during emergencies.



Educate Stakeholders

Inform board members, staff, and the community on wildfire risks and agency preparedness efforts to build awareness and support.

Enhance Communication Strategies

Develop robust communication plans with customers regarding water use during wildfire events to promote safety and conservation.



Now What? Let's Prevent Water Agencies from Becoming the ScapeGOAT for Wildfires

1 Advocacy Initiatives

- Establishing stronger immunities for public water agencies
- Securing clarification on hydrants as water versus fire infrastructure
- Kessner/Prop 218
- Opposing burdensome requirements that escalate operational costs and may put staff in danger

2 Financial Implications

- Strategic importance of risk pooling - increasing contributions or diminishing coverage availability
- Funding challenges for essential infrastructure upgrades
- Potential rate increases affecting residential and commercial customers
- Availability of grant programs to assist public agencies

Questions?



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