

CASE NO. B353410

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR**

CITY OF LOS ANGELES ACTING BY AND THROUGH
THE LOS ANGELES DEPARTMENT OF WATER AND
POWER, a government entity; CITY OF LOS ANGELES, a
government entity,

Petitioners,

v.

SUPERIOR COURT OF THE STATE OF
CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent,

v.

DANIEL GRIGSBY et al.,

Real Parties in Interest.

**APPLICATION OF AMICI CURIAE
ASSOCIATION OF CALIFORNIA WATER AGENCIES, THE
ASSOCIATION OF METROPOLITAN WATER AGENCIES,
CALIFORNIA URBAN WATER AGENCIES, THE WESTERN
URBAN WATER COALITION, AND
NATIONAL WATER RESOURCES ASSOCIATION
IN SUPPORT OF PETITIONERS
CITY OF LOS ANGELES AND LOS ANGELES
DEPARTMENT OF WATER AND POWER FOR PERMISSION
TO FILE AMICI CURIAE BRIEF; AMICI CURIAE BRIEF**

Original Proceeding In The Superior Court For The County
Of Los Angeles Case No. 25-STCV-00832 Honorable
Samantha P. Jessner

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Water Resources Association

COURT OF APPEAL Second APPELLATE DISTRICT, DIVISION Four	COURT OF APPEAL CASE NUMBER: B353410
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 287751 NAME: Alyssa D. Bell FIRM NAME: Cohen Williams LLP STREET ADDRESS: 724 South Spring Street, 9th Floor CITY: Los Angeles STATE: CA ZIP CODE: 90014 TELEPHONE NO.: (213) 232-5160 FAX NO.: (213) 232-5167 E-MAIL ADDRESS: abell@cohen-williams.com ATTORNEY FOR (name): Amici Curiae	SUPERIOR COURT CASE NUMBER: 25STCV00832
APPELLANT/ CITY OF LOS ANGELES and LOS ANGELES DEPARTMENT OF PETITIONER: WATER AND POWER RESPONDENT/ SUPERIOR COURT OF THE STATE OF CALIFORNIA REAL PARTY IN INTEREST: FOR THE COUNTY OF LOS ANGELES	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS	
(Check one): ☒ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE	
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1. This form is being submitted on behalf of the following party (name): Association of California Water Agencies

2. a. ☒ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1)	
(2)	
(3)	
(4)	
(5)	

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: August 21, 2026

Alyssa D. Bell
(TYPE OR PRINT NAME)


 (SIGNATURE OF APPELLANT OR ATTORNEY)

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1. This form is being submitted on behalf of the following party (name): The Association of Metropolitan Water Agencies
2. a. ☒ There are no interested entities or persons that must be listed in this certificate under rule 8.208.
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1. This form is being submitted on behalf of the following party (name): California Urban Water Agencies

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1. This form is being submitted on behalf of the following party (name): Western Urban Water Coalition

2. a. ☒ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1) The Los Angeles Department of Water and P	Member utility in the Western Urban Water Coalition
(2)	
(3)	
(4)	
(5)	

☐ Continued on attachment 2.

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1. This form is being submitted on behalf of the following party (name): National Water Resources Association

2. a. ☒ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

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Date: August 21, 2026

Alyssa D. Bell
 (TYPE OR PRINT NAME)


 (SIGNATURE OF APPELLANT OR ATTORNEY)

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**APPLICATION FOR PERMISSION TO FILE AMICI
CURIAE BRIEF AND STATEMENT OF INTEREST OF
AMICI CURIAE**

**Association of California Water Agencies
Statement of Interest**

Pursuant to California Rules of Court, rule 8.200(c), the Association of California Water Agencies (“ACWA”) respectfully requests permission to file the attached amici curiae brief in support of the Los Angeles Department of Water and Power (“LADWP”) and the City of Los Angeles’s petition for a writ of mandate.

ACWA is the largest statewide coalition of public water agencies in the United States, organized and existing under the laws of the State of California since 1910. ACWA represents approximately 470 member agencies that are responsible for delivering about 90 percent of the water to communities, farms, and businesses in California. ACWA and its members are dedicated to providing a high-quality, reliable water supply in an environmentally sustainable and fiscally responsible manner. ACWA’s Legal Affairs Committee, comprised of attorneys from each of ACWA’s ten regional divisions throughout California, monitors litigation and has determined that this case involves issues of significance to ACWA’s member agencies.

The trial court’s order overruling Petitioners’ demurrer to Plaintiffs’ inverse condemnation claim threatens every one of ACWA’s member agencies. Public water systems throughout California are built and financed to deliver a reliable water supply to their users—not to serve as an insurer of last resort against the

unbounded destruction of catastrophic wildfire. If a water utility can be held constitutionally liable in inverse condemnation whenever a wildfire outpaces the capacity of its system, then every public water agency in the State becomes a potential defendant after every major fire, regardless of fault.

ACWA seeks to file the attached brief to explain why that result is foreclosed by more than a century of California precedent, and why the pleading stage—not trial, after years of costly discovery—is the correct and necessary point to resolve that purely legal question. Because ACWA believes its brief will assist the Court in resolving the critical, impactful issues this case presents, it respectfully requests this Court’s permission to file it.

The Association of Metropolitan Water Agencies
Statement of Interest

The Association of Metropolitan Water Agencies (“AMWA”) is a non-profit tax-exempt trade association representing more than 170 of the largest publicly-owned drinking water systems in the United States. AMWA’s members provide more than 140 million people across the country with safe drinking water. AMWA’s members include municipal agencies and special purpose districts and commissions serving customers on either a local or regional basis. Some are wholesalers providing water to other utilities, some serve end-use customers directly, and some do both. AMWA members are responsible for constructing and operating water resource, storage, treatment and distribution systems necessary to provide water to their communities in accordance with local, state and federal mandates and requirements. Most, if

not all, AMWA members supply water used for routine fire suppression in their communities. A decision in this case adverse to LADWP will have adverse implications for AMWA's 23 California member utilities that collectively serve almost 40 million Californians. Such a decision would also likely trigger litigation against many AMWA members in other states that experience periodic wildfires affecting urban areas. The costs of such litigation will ultimately be borne by water customers already confronting water affordability challenges in many communities.

California Urban Water Agencies
Statement of Interest

California Urban Water Agencies ("CUWA") is a non-profit association representing the largest publicly owned urban water suppliers in California. CUWA's members provide drinking water, wastewater, recycled water, and related services to approximately two-thirds of California's population. Established in 1990, CUWA advances the development of reliable, sustainable, and cost-effective water resource management policies through collaborative engagement on issues affecting California's urban water sector. CUWA has a substantial interest in the legal issues presented in this case because the outcome could establish precedent with far-reaching consequences for public water agencies throughout California, potentially reshaping the legal and financial responsibilities of water suppliers and affecting the communities that depend on them for safe, reliable, and affordable water service.

CUWA's members operate water systems designed and regulated primarily to provide potable water and other authorized public services, while also assisting localized, single-structure fire protection needs in accordance with applicable standards, planning assumptions, and local agency coordination. These systems are not designed, sized, or funded to guarantee the availability, pressure, or delivery of water necessary to suppress large-scale wildfires occurring under extreme conditions that are beyond the control of water utilities. Imposing inverse condemnation liability based on the adequacy of water available for firefighting under such circumstances could expose public water agencies and their ratepayers to extraordinary financial burdens, diverting limited resources from essential investments in water reliability, infrastructure maintenance, public health protection, drought resilience, and climate adaptation. CUWA therefore has a strong interest in ensuring that inverse condemnation doctrine is applied consistently with established California law and is not extended to impose liability on municipal water systems based on the physical limitations of infrastructure not designed, sized, or funded to suppress catastrophic natural disasters.

The Western Urban Water Coalition
Statement of Interest

The Western Urban Water Coalition ("WUWC") is a coalition of public utilities dedicated to providing a reliable, high-quality urban water supplies for present and future generations in the largest cities in the western United States. WUWC's members

together serve more than 40 million water consumers in 18 major metropolitan areas.¹ WUWC members rely on a vast array of water storage and supply infrastructure to deliver water where it is most needed. WUWC is committed to presenting innovative perspectives on water management to address the West's unique water supply and water quality challenges. As operators of public water supply systems, WUWC's members serve the health, environmental, and economic needs of their communities around the clock every day of the year. WUWC advocates effective and practicable approaches to authorization, construction, and operation of the water supply infrastructure critical to economic growth, sustainability, and quality of life in the western states.

National Water Resources Association
Statement of Interest

National Water Resources Association ("NWRA") is a nonprofit, voluntary organization of individual members and state water associations, whose members include cities, towns, water conservation and conservancy districts, irrigation and reservoir companies and districts, ditch companies, farmers, ranchers, and others with interests in water issues in the Western states. Many of these members rely on federal water projects for water supplies. NWRA has member associations in Arizona, California, Colorado,

¹ The Los Angeles Department of Water and Power is a member utility in the WUWC but abstained from any involvement in WUWC's participation as an amicus on this brief including no involvement in the preparation or funding of this brief.

Idaho, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, and Washington.

DATED: August 21, 2026

COHEN WILLIAMS LLP

By: _____



Alyssa D. Bell

Attorneys for Amici Curiae
Association of California Water
Agencies, The Association of
Metropolitan Water Agencies,
California Urban Water
Agencies, The Western Urban
Water Coalition, and National
Water Resources Association

AMICI BRIEF

INTRODUCTION

The demurrer to Plaintiffs’ inverse condemnation claim should have been sustained. Plaintiffs’ own pleading concedes that Los Angeles Department of Water and Power’s (LADWP) water service system lacked the capacity to meet the extraordinary, simultaneous firefighting demand created by the January 2025 Palisades Fire. That is precisely the claim California courts have rejected for more than a hundred years: a claim that a water utility is liable because it did not supply enough water to stop a fire. Relabeling the claim as inverse condemnation does not change that fact. No amendment and no amount of discovery can transform that theory into a viable one, because the defect is legal— not factual— and it is evident from the complaint itself.

Two independent and well-established lines of authority compelled dismissal at the pleading stage. First, an unbroken line of decisions beginning with *Niehaus Bros. Co. v. Contra Costa Water Co.* holds that water utilities owe no legal duty— contractual, statutory, or constitutional— to supply any particular quantity of water for firefighting, and cannot be held liable for failing to do so. Plaintiffs cannot avoid that rule merely by pleading their claim as inverse condemnation rather than tort. Second, even taken on its own terms, Plaintiffs’ inverse condemnation theory fails under this Court’s framework in *City of Oroville v. Superior Court*, because a water system’s inability to meet extraordinary firefighting demand during a wildfire is not an “inherent danger” of the water system that “materialized” to cause

the damage but, rather, is a vulnerability to a natural hazard independent of the system's own design. Neither the presence nor absence of water is the cause of wildfires.

Two further considerations, grounded in the same body of law, compel the same result. Water agencies exist by statute and regulatory design to deliver water to their users—not to suppress wildfire—and their infrastructure is neither built nor legally required to stop these large-scale and fast moving blazes. Even if a water agency wished to insure against catastrophic wildfire risk, raising revenue for this purpose would likely be inconsistent with the intent of Proposition 218, limiting how agencies can absorb the very liability the trial court's ruling could impose. Both considerations confirm that this is precisely the kind of purely legal question that should be resolved by demurrer at the pleading stage.

The stakes of permitting this litigation to proceed are incalculably high for the amici water suppliers. For example, the Association of California Water Agencies' (ACWA) 470 member agencies serve roughly 90 percent of California's population, and virtually every one of them faces the same potential financial exposure that LADWP faces here. Allowing claims of this kind to survive a demurrer—and to proceed through years of discovery and trial before the threshold legal question is finally resolved—would impose crushing costs on ratepayer-funded utilities across the State, without regard to whether the underlying legal theory has merit. The Court should hold that the demurrer should have been sustained.

ARGUMENT

I. THE DEMURRER SHOULD HAVE BEEN SUSTAINED BECAUSE CALIFORNIA LAW HAS LONG FORECLOSED LIABILITY FOR A WATER SYSTEM'S SHORTFALL IN FIRE-SUPPRESSION SUPPLY

A. *Niehaus* and Its Progeny Establish That Water Utilities Owe No Duty to Supply Sufficient Water for Firefighting

Over a century ago, the California Supreme Court held that “*there is nothing*” in the California Constitution or its statutes that imposes on a water utility any obligation to furnish a municipality or its inhabitants with a specified quantity of water, or water for any particular purpose, including firefighting. (*Niehaus Bros. Co. v. Contra Costa Water Co.* (1911) 159 Cal. 305, 312.) Absent such a duty, the Court refused to recognize tort liability for a water utility’s failure to maintain a water supply adequate to extinguish a fire. (*Id.* at pp. 312–313.) Since *Niehaus*, the Supreme Court and the Courts of Appeal have uniformly reaffirmed that no California water utility, public or private, faces tort exposure simply because the water actually delivered during a fire turns out to be inadequate to put it out. (See, e.g., *Stang v. City of Mill Valley* (1952) 38 Cal.2d 486, 487–492; *Heieck and Moran v. City of Modesto* (1966) 64 Cal.2d 229, 230–233; *Luis v. Orcutt Town Water Co.* (1962) 204 Cal.App.2d 433, 438; *Stuart v. Crestview Mutual Water Co.* (1973) 34 Cal.App.3d 802, 809; *White v. Southern Cal. Edison Co.* (1994) 25 Cal.App.4th 442, 449.)

The California Supreme Court has also explained that furnishing water for firefighting purposes is a governmental function, and that offering a general water supply does not, by itself, saddle a utility with a separate obligation aimed specifically at extinguishing fires. (*Town of Ukiah City v. Ukiah Water & Improvement Co.* (1904) 142 Cal. 173, 177–178.) That rule is reinforced by statute: the Legislature has immunized public entities from liability for failing to provide fire protection services or to maintain sufficient firefighting facilities. (Gov. Code, §§ 850, 850.2; see *Heieck and Moran, supra*, 64 Cal.2d at p. 230; *New Hampshire Insurance Co. v. City of Madera* (1983) 144 Cal.App.3d 298, 304–305; *Lainer Investments v. Department of Water & Power* (1985) 170 Cal.App.3d 1, 6, 8.) The policy underlying this century of authority remains fully applicable today: a water utility cannot set rates that account for a risk of unknown and potentially ruinous magnitude if that risk depends entirely on how large a future wildfire happens to be. (*Niehaus, supra*, 159 Cal. at p. 320.)

**B. Plaintiffs Cannot Circumvent This Settled Rule
Merely by Relabeling Their Claim as Inverse
Condemnation**

Plaintiffs have not alleged a tort claim against Petitioners premised on an insufficient water supply because, under *Niehaus* and its progeny, no such claim exists. Instead, Plaintiffs pleaded the identical theory as a constitutional inverse condemnation claim. Nothing in the reasoning of *Niehaus* or its progeny supports treating that relabeling as consequential. *Niehaus* rejected liability based on the fundamental “status of water companies in

this state,” and on the recognition that a utility cannot rationally price its rates around an open-ended risk of catastrophic fire loss it cannot predict or control. (*Niehaus, supra*, 159 Cal. at pp. 316, 320.) Those concerns apply with equal, if not greater, force to a constitutional inverse condemnation claim, which—unlike an ordinary tort claim—carries strict liability and entitles a prevailing plaintiff to attorney’s fees, costs, and prejudgment interest. (See *Customer Co. v. City of Sacramento* (1995) 10 Cal.4th 368, 390–391.) Permitting Plaintiffs to obtain in inverse condemnation what they could never obtain in tort would not merely create an exception to the settled rule—it would swallow it, because every potential plaintiff could simply replead the same allegations as a taking. No court has ever endorsed that result.

II. PLAINTIFFS’ INVERSE CONDEMNATION THEORY INDEPENDENTLY FAILS UNDER THIS COURT’S OROVILLE FRAMEWORK, AND THAT DEFECT WAS APPARENT ON THE FACE OF THE COMPLAINT

A. Under *Oroville*, Liability Attaches Only When a Danger Inherent in a Public Improvement’s Design Actually Comes to Pass and Causes the Harm

Inverse condemnation liability requires “more than just a causal connection between the public improvement and the damage to private property.” (*City of Oroville v. Super. Ct.* (2019) 7 Cal.5th 1091, 1105.) The damage must result from the “inherent dangers of the public improvement,” and those dangers must “materialize[] and [be] the cause of the property damage.” (*Id.* at

pp. 1106–1108.) That standard is satisfied only where the improvement itself “create[s] some risk . . . of damage” that later materializes and inflicts the harm (*Holtz v. Super. Ct.* (1970) 3 Cal.3d 296, 310), or, put differently, where the improvement “subject[s]” property to a danger “that was not a risk it was exposed to in the absence of” the improvement. (*Pacific Bell v. City of San Diego* (2000) 81 Cal.App.4th 596, 614–615.) By contrast, no inverse liability arises from a public improvement’s failure to mitigate a hazard it did not itself generate. (*Wildensten v. East Bay Regional Park Dist.* (1991) 231 Cal.App.3d 976, 981.)

**B. A Water System’s Inability to Stop Wildfire
Destruction Is Not an “Inherent Danger” of the
System Within the Meaning of *Oroville***

Plaintiffs’ own allegations confirm that the danger that caused their damage was the wildfire itself—a hazard originating entirely outside LADWP’s water system. The complaint alleges that the water system “could not keep pace with the demand placed on the water supply” as the fire spread, and that reduced water pressure hindered firefighting efforts. But an inability to supply unlimited water during a wildfire is not an inherent danger “introduced” by the water system—it is, at most, a limitation on the system’s capacity to counteract a danger having nothing to do with the system’s own design. That is fundamentally different from the inverse condemnation case paradigm on which *Oroville* rests, where the public improvement, itself, introduced the risk that materialized: excavation that undermined a building’s foundation (*Holtz, supra*, 3 Cal.3d at pp. 299, 309–310), excavation

that triggered a landslide (*Albers v. County of Los Angeles* (1965) 62 Cal.2d 250, 254–255, 262), or a corroded water pipe whose failure caused flooding that would not have occurred but for the pipe’s existence (*Pacific Bell, supra*, 81 Cal.App.4th at pp. 598–600, 607, 614–615). In each of those cases, the public improvement was, itself, the source of the risk. Here, by contrast, the wildfire—not the water system— was the source of the risk, and the water system’s alleged shortfall is, at most, the inability to fully counteract a danger from another source.

Simply put, the inverse condemnation doctrine does not apply where the public improvement played no role in creating the risk that materialized. (*See Holtz, supra*, 3 Cal.3d at p. 303 [the inverse condemnation doctrine exists “to distribute throughout the community the loss inflicted upon the individual by the making of public improvements,” not to spread risk external to those improvements].) There is no legal basis for inverse condemnation liability in this case.

C. The Deficiency Is Legal, Not Factual, So the Demurrer Should Have Been Sustained

The trial court acknowledged “the important policy considerations” counseling against a rule that would effectively convert public water agencies into insurers of neighboring private property whenever fire outpaces a system’s capacity, but declined to resolve the demurrer on that basis, reasoning that “policy issues” should await development of an evidentiary record. That reasoning misconceives the nature of the defect. Whether a water system’s incapacity to counteract wildfire can, as a matter of law,

constitute an “inherent danger” that “materialized” within the meaning of *Oroville* is a legal question resolvable on the allegations of the complaint. No amount of additional factual development changes the legal character of the risk Plaintiffs describe: an external natural hazard that overwhelmed a system built for ordinary customer demand, not a risk of the system’s own making. That legal conclusion follows from the complaint’s own allegations, so the trial court should have sustained the demurrer without further factual development.

**III. WATER AGENCIES’ STATUTORY AND
CONSTITUTIONAL ROLE IS TO PROVIDE WATER
TO THEIR CUSTOMERS, NOT TO SUPPRESS
WILDFIRES, AND THEIR INFRASTRUCTURE IS
NEITHER DESIGNED NOR LEGALLY EXPECTED
TO MITIGATE CONFLAGRATION**

The trial court’s ruling treats LADWP’s water system as though it were a firefighting utility that failed its central purpose. That inverts the legal and physical reality of California’s public water systems. By statute, regulation, and design, water agencies exist to deliver a safe, reliable supply of water to their users—not to suppress or combat catastrophic wildfire. Water agencies plan, finance, and construct their systems accordingly, and the law does not ask them to do otherwise.

A. California Law Confirms That Water Service and Fire Service Are Distinct, and That Water Systems Are Designed and Regulated for Customer Delivery, Not Wildfire Suppression

The Legislature has already recognized, in existing law, that “fire service is a different and distinct service from water service,” and that water service is, at most, a “property-related service[] that aids in the provision of fire service”—it is not fire service itself. (Gov. Code, § 53750.5, subd. (a)(1).) The Legislature’s core regulatory scheme for public water systems, the California Safe Drinking Water Act, defines the duties of a “public water system” exclusively in terms of drinking-water quality and reliability: to comply with primary and secondary drinking water standards, avoid backflow, and “provide[] a reliable and adequate supply of pure, wholesome, healthful, and potable water.” (Health & Saf. Code, § 116555, subd. (a).) Nothing in that statute, or in the Act’s extensive definitions, identifies wildfire suppression as a function of a public water system. (*Id.*, § 116275.)

State design standards confirm the same limited purpose. Water distribution systems must maintain a minimum operating pressure of 20 pounds per square inch under normal conditions, and new systems must be designed for 40 pounds per square inch — but only “excluding fire flow.” (Cal. Code Regs., tit. 22, § 64602, subds. (a)-(b).) California’s own engineering standard for water distribution systems does not require, and is not designed to achieve, the sustained high-volume flow needed to fight a wind-driven wildfire consuming an entire region.

Where the Legislature has wanted a water agency to take on firefighting responsibility, it has said so explicitly and made that responsibility a separate, elective power—not an inherent attribute of delivering water. A municipal water district, for example, “may exercise” fire protection powers under the Fire Protection District Law, but only if it affirmatively elects to do so, and even then it has no authority over fire prevention or suppression in territory served by another local fire agency absent that agency’s consent. (Wat. Code, § 71680.) The limited role of water suppliers is further emphasized in pending legislation, which would codify that “the inability of any public water system to maintain water supply or water pressure during a wildfire shall not be considered a substantial cause of the damages resulting from a wildfire.” (Sen. Bill No. 1153 (2025-2026 Reg. Sess.) as amended June 22, 2026, § 2, proposed Gov. Code, § 8607.3, subd. (b).) That bill’s findings explain that fire hydrants “are not intentionally designed or constructed for wildfire defense or suppression,” and that designing water systems to function as wildfire suppression systems “would be physically impracticable and financially infeasible, and may compromise the quality of water for human consumption and the affordability of drinking water for ratepayers.” (*Id.*, § 1, subds. (e)-(f).) While SB 1153 has not been enacted, its findings reflect what California law has always assumed: a public water system’s legal function is to deliver water to its customers, not to serve as a firefighting utility.

Even existing fire-safety codes confirm as much. State officials report that the amount of water a system must make

available for firefighting under National Fire Protection Association standards (*i.e.*, the Fire Safe Regulations in Title 14 of the California Code of Regulations and the California Fire Code in Title 24 of the California Code of Regulations) is sized to the construction type and square footage of an individual building, calibrated to suppress a localized structure fire within a matter of hours—not to suppress a wildfire conflagration moving through an entire regional landscape. (Cal. Environmental Protection Agency et al., Memo: Palisades Fire and Water Supply Analysis, Nov. 20, 2025, p. 9.) No state or federal standard requires, or has ever required, greater firefighting capacity.²

The trial court’s ruling invites exactly that unprecedented obligation—not through legislation or rulemaking, but through a single inverse condemnation judgment.

B. LADWP’s System Performed the Function It Was Designed For, and the Palisades Fire’s Extraordinary, Simultaneous Demand—Not Any Defect in the System’s Design—Caused the Loss of Pressure

Although these proceedings arise from a demurrer that should be resolved on the allegations of the complaint alone, the broader context confirms why Plaintiffs’ theory misunderstands

² Indeed, researchers who recently surveyed the field found that no jurisdiction in the country has attempted statewide oversight of community water systems’ wildfire-fighting capacity. (UCLA Luskin Center for Innovation, Considerations and Pathways for Potential State Oversight of Community Water Systems’ Wildfire Fighting Efforts in California (2026), p. 1.)

how pressurized water distribution systems behave under wildfire conditions—context this Court may find useful background in evaluating the purely legal question presented.

State agencies that examined the Palisades Fire found that Southern California’s major reservoirs were 77 to 97 percent full when the fire ignited. (Cal. Environmental Protection Agency et al., Memo: Palisades Fire and Water Supply Analysis (Nov. 20, 2025)³ pp. 7–8.) There was no regional water shortage. What limited the system was not a lack of water, but the finite flow-rate capacity of pipes and pumps operating at full tilt. LADWP pumped roughly 37,000 gallons per minute through its main pipeline toward the fire—the pipe’s maximum physical capacity, and four times its normal delivery rate. (*Id.* at p. 9.) Meanwhile thousands of pipes (including hydrants, broken home fixtures, and sprinkler systems left running) opened at once, while water escaped through destroyed interior plumbing of the 6,845 structures destroyed by the 23,448-acre wildfire.⁴ The demand for water therefore far exceeded what any urban distribution system could supply. Moreover, the loss of water through burned homes and businesses is not incidental: as a structure burns, its interior piping is destroyed and left open, and on hillside terrain like the Palisades, that open connection drains water toward the lowest point in the

³ *Available at:* <https://calepa.ca.gov/wp-content/uploads/2025/11/Final-clean-Palisades-Fire-and-Water-Supply-Analysis.pdf> (last accessed August 11, 2026).

⁴ California Department of Forestry and Fire Protection Palisades Fire incident, *available at:* <https://www.fire.ca.gov/incidents/2025/1/7/palisades-fire> (last accessed August 11, 2026).

system, compounding the pressure loss elsewhere in the network. (Cal. Environmental Protection Agency et al., Memo, *supra*, p. 9.) As the responsible state agencies concluded, water systems “are designed to meet their primary purpose of providing clean drinking water, which limits the types of engineering considerations that would likely be needed for a water system capable of combatting large conflagrations engulfing hundreds of structures.” (*Id.* at p. 8.)

That is not a design limitation unique to LADWP’s design—the same loss of hydrant pressure has recurred in wildfire after wildfire elsewhere, including the 2017 Tubbs Fire in Santa Rosa, the 2018 fires in Paradise and Redding, the 2021 Marshall Fire in Colorado, and the 2023 Lahaina Fire in Maui. (*Id.* at p. 9.) It is the physical reality of any pressurized distribution network asked to do something it was never designed, approved and built to do. (Accord UCLA Luskin Center for Innovation, Water Systems’ Wildfire Fighting Capacities and Expectations: Workshop Synthesis Report (2026), p. 7 [statewide water and fire experts concluding that “no water system can reasonably be expected to ‘stop’ large urban wildfires” because “hydrants are not designed to meet the demand.”].)

Nor did LADWP create the condition Plaintiffs complain of. The Santa Ynez Reservoir was offline because federal and state drinking-water law required LADWP to drain it to repair a tear in its protective cover—a repair necessary to prevent contamination of the potable water supply. (Cal. Environmental Protection Agency et al., Memo, *supra*, at pp. 5–7; accord UCLA Luskin

Center for Innovation, Water Supply Systems, Fire, and Finance: A Workshop Synthesis Report (2026), p. 17 [reservoir “was drained to meet drinking water quality compliance standards”].) Taking the reservoir offline was compelled by the same statutory scheme that defines a water agency’s core legal duty as delivering safe drinking water. (Health & Saf. Code, § 116555, subd. (a)(2)-(3).)

All water utilities operate as pressured systems and face the same operational constraints. A water agency doing exactly what the law requires—protecting the safety of the drinking water supply—cannot be said to have designed a risk of fire damage into its system; if anything, the water system was itself a victim of the fire, not its cause.

IV. IMPOSING INVERSE CONDEMNATION LIABILITY HERE WOULD FORCE RATEPAYER-FUNDED WATER AGENCIES TO ABSORB CATASTROPHIC WILDFIRE RISK THEY MAY HAVE NO PRACTICAL ABILITY TO MITIGATE

A. Unlike an Insurer, Water Agencies Cannot Underwrite Catastrophic Wildfire Risk, and Forcing Them to Bear It Threatens the Affordability of Water Service and the Solvency of Public Agencies Statewide

The California Supreme Court recognized more than a century ago that water rates “fix the compensation to be paid the company for furnishing water to consumers as a commodity” and “are not fixed as a consideration under which the company obligates itself to furnish water for the extinguishment of fires

with a corresponding liability for failure to do so.” (*Niehaus, supra*, 159 Cal. at p. 317.) That insight reflects basic insurance economics that apply with even greater force today. An insurer prices catastrophic risk by pooling it across a broad base, reinsuring it in capital markets, and adjusting premiums to the probability and severity of loss. A water agency does none of these things—and, as explained below, constitutional restrictions on water rates and charges added through Proposition 218 may significantly complicate a water agency’s ability to try. A water agency establishes rates to recover the cost of delivering water, and while this may include a wide range of expenses, it should not be expected to internalize and insure against the risk of regionwide devastation from catastrophic wildfires.

This case illustrates the immediate and severe consequences of ignoring that distinction. A major credit rating agency has already pointed to the trial court’s ruling as one reason for downgrading the City’s and LADWP’s credit, which raises the cost of the capital these agencies depend on to maintain and improve their water systems—a cost ultimately passed on to ratepayers. If sustained, the trial court’s reasoning would expose every water agency in the State to open-ended constitutional liability after every major wildfire, without regard to fault, forcing agencies to either raise rates beyond what ordinary ratepayers can bear in an attempt to reserve against a risk they cannot actuarially price, or risk insolvency. Neither outcome serves the public. An agency driven toward insolvency by wildfire-related liabilities jeopardizes its core service obligations, with consequences that can extend to

the creditworthiness of the State and its political subdivisions generally. (Gov. Code, § 53600.6.) For example, ACWA's approximately 470 member agencies serve roughly 90 percent of California's population; the trial court's ruling places all of them at risk of that outcome.

Moreover, even if a water agency wished to price catastrophic wildfire risk into its rates, state constitutional restrictions added by Proposition 218 in 1996 subject such additional costs to great legal scrutiny that could drag water providers into protracted litigation. Retail water service fees are "property related fees" under article XIII D of the California Constitution, and are subject to substantive limits: revenue from the fee "shall not exceed the funds required to provide the property related service," and the fee "shall not exceed the proportional cost of the service attributable to the parcel." (Cal. Const., art. XIII D, § 6, subds. (b)(1), (3).) Critically, "no fee or charge may be imposed for general governmental services including . . . police, *fire*, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners." (*Id.*, § 6, subd. (b)(5) [emphasis added].) In order to generate revenue for catastrophic wildfire risk, therefore, a water agency would have to demonstrate that this sort of cost falls within the meaning of water service, and would not cause rates imposed on other parcels to exceed the proportional cost of service. Given Proposition 218 shifts the burden of proof on the public agency to demonstrate compliance with Proposition 218's substantive limits, doing so raises agencies' legal exposure.

These are not hypothetical concerns, and many of the amici curiae’s members include far more than large metropolitan utilities like LADWP. After the Eaton Fire, wildfire-driven customer displacement eroded at least one small Altadena water company’s revenue base at the very moment its repair and operating costs spiked, forcing it to impose a new “fire recovery fee” on remaining customers just to continue operating, and multiple small systems in the same area have since explored consolidation simply to survive. (UCLA Luskin Center, Water Supply Systems, *supra*, at pp. 14–15.) Small and medium-sized water agencies, which make up the large majority of ACWA’s membership, are especially exposed to this dynamic, because they lack the customer base to spread costs or absorb revenue losses. (*Ibid.*) For many of those agencies, a single adverse inverse condemnation judgment would not merely be expensive—it could be the difference between continuing to deliver safe drinking water and bankruptcy.

V. RESOLVING THIS PURELY LEGAL QUESTION AT THE PLEADING STAGE IS NECESSARY TO PROTECT WATER AGENCIES STATEWIDE FROM YEARS OF UNWARRANTED, COSTLY LITIGATION

Because the non-viability of Plaintiffs’ inverse condemnation claim is a legal question resolvable on the face of the complaint—one foreclosed by a century of precedent and by *Oroville*’s substantial-causation framework—the demurrer stage is not merely an appropriate decision point, but the necessary one. Deferring resolution until after discovery and trial imposes exactly

the kind of prolonged, resource-intensive litigation on a non-viable theory that the demurrer procedure exists to prevent, multiplied across every public water agency that may face a similar claim after a future wildfire, and funded by ratepayers struggling to afford their water bill as is.

This Court should find that the demurrer to Plaintiffs' inverse condemnation claim should have been sustained.

CONCLUSION

For the foregoing reasons, Amici Curiae Association of California Water Agencies, The Association of Metropolitan Water Agencies, California Urban Water Agencies, The Western Urban Water Coalition, and National Water Resources Association respectfully request that this Court hold that the demurrer to Plaintiffs' inverse condemnation claim should have been sustained.

DATED: August 21, 2026

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**CERTIFICATE OF COMPLIANCE PURSUANT TO
CALIFORNIA RULES OF COURT RULE 8.204(c)(1)**

Pursuant to California Rules of Court Rule 8.204(c)(1), I
certify that according to Microsoft Word the attached brief is
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Pursuant to California Rules of Court, rule 8.200(c)(3), no party or counsel for a party in the pending appeal authored this brief, in whole or in part, or made any monetary contribution intended to fund the preparation or submission of this brief. No other person or entity, other than the amici curiae, its members, or its counsel in the pending appeal, made any monetary contribution intended to fund the preparation or submission of this brief.

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