



CONSENT CALENDAR

Agenda Item # 9

AGENDA REPORT SUMMARY

Meeting Date: June 25, 2019

Subject: Wildfire Liability, Public Drinking Water Suppliers and Fire Safety letter

Prepared by: Jon Maginot, Deputy City Manager

Approved by: Chris Jordan, City Manager

Attachment(s):

1. Draft letter

Initiated by:

California Water Service

Previous Council Consideration:

None

Fiscal Impact:

None

Environmental Review:

Not applicable

Policy Question(s) for Council Consideration:

- Does the Council wish to authorize the Mayor to send a letter to Governor Newsom regarding wildfire liability?

Summary:

- CalWater has asked all cities within their Bay Area service areas, including Los Altos, to send the attached letter to Governor Newsom

Staff Recommendation:

Authorize the Mayor to send a letter on behalf of the City to Governor Newsom regarding the liability of public drinking water suppliers during wildfires

Reviewed By:

City Manager

CJ

City Attorney

CD

Finance Director

SE

June 26, 2019

The Honorable Gavin Newsom
Governor, State of California
Governor's Office, State Capitol
Sacramento, CA 95814

The Honorable Toni Atkins
President Pro Tempore, California Senate
Room 205, State Capital
Sacramento, CA 95814

The Honorable Anthony Rendon
Speaker, California Assembly
Room 219, State Capitol
Sacramento, CA 95814

Re: Wildfire Liability, Public Drinking Water Suppliers, & Fire Safety

The undersigned cities, counties, and community organizations – including the constituents we serve – receive water utility service from California Water Service (Cal Water), one of California's largest public drinking water suppliers and the largest regulated by the California Public Utilities Commission. In light of the growing threat posed by wildfires in California, we are very concerned about the consequences that could befall our communities if the state's drinking water suppliers continue to be potentially held liable for fires they have no role in starting. Ironically, holding drinking water suppliers financially responsible for these wildfires could, inadvertently, increase the risks our communities face from more traditional urban fires.

This predicament stems from a lawsuit against the Yorba Linda Water District (Water District) in relation to the Freeway Complex Fire, which was started by a broken-down vehicle. The Water District was held financially responsible for some of the fire damage – almost \$70 million – not because it started the fire but because the fire damaged some of the Water District's facilities, preventing it from pumping water to one neighborhood. In this case, a victim of the fire – the Water District – was held responsible for the damage caused by the fire as a result of the current application of the legal theory of inverse condemnation. Similar logic is now being used in lawsuits against other public drinking water suppliers, and additional lawsuits may be forthcoming as we experience more wildfires.

Rather perversely, holding public drinking water suppliers potentially responsible for fires they do not start could make our communities less safe. The recently-issued report from the Commission on Catastrophic Wildfire Cost and Recovery highlights that this type of application of the inverse condemnation doctrine threatens to choke off capital needed to make continued investments in utility infrastructure: investments that are critical to the continued safety and reliability of California's drinking water systems. Because they are interconnected, reducing the reliability of California's drinking water systems could undermine the reliability of our fire protection systems, actually increasing the dangers posed by fires, even in more traditional urban fire scenarios.

To ameliorate these risks, we respectfully encourage the Legislature and Administration to implement common sense reforms that make clear public drinking water suppliers are not responsible for the damage from fires they and their facilities do not start. Such a narrowly tailored reform would not unduly affect the rights of homeowners and other fire victims in other circumstances, while at the same time it would help to ensure the continued safety of California's drinking water and reliability of our fire protection systems.

Sincerely,

Cc: The Honorable Bill Dodd, Chair, Senate Select Committee on Governor's Wildfire Report
The Honorable Ben Hueso, Chair, Senate Committee on Energy, Utilities, & Communications
The Honorable Henry Stern, Chair, Senate Committee on Natural Resources & Water
The Honorable Chris Holden, Chair, Assembly Committee on Utilities & Energy
The Honorable Eduardo Garcia, Chair, Assembly Committee on Water, Parks, & Wildlife