COMMENTS

ELECTRIC UTILITY-CAUSED WILDFIRE DAMAGES: STRICT LIABILITY UNDER ARTICLE I, SECTION 19 OF THE CALIFORNIA CONSTITUTION*

I. INTRODUCTION

On November 8, 2018, at 6:15 a.m., Pacific Gas & Electric (PG&E) experienced an outage on a Butte County, California, electrical transmission line.1 Approximately fifteen minutes later, PG&E’s equipment malfunctioned and the Camp Fire began.2 The state’s most catastrophic fire burned for seventeen days, spreading over one hundred and fifty thousand acres of the arid foothills of the Sierra Nevada Mountains, killing at least eighty-six individuals, and destroying over eighteen thousand buildings in and around Paradise, California.3

The California Constitution provides an aggrieved Paradise homeowner with a clear avenue for recovery where other causes of action may fail. She could try to assert a tort claim—negligence or trespass, for example—but she would have the burden of demonstrating that the owner of the downed power lines acted either intentionally or unreasonably in starting the fire.4 The homeowner would fail to show that her property has been “taken” under the Takings Clause of the Fifth Amendment to the U.S. Constitution, which only recognizes intentional, substantial, and continuous injuries to property.5 However, by simply including the words “or damaged” in article I, section 19 of the California Constitution, the state’s Takings Clause analog, the framers cleared the homeowner’s avenue to recovery, regardless of whether the wildfire was caused intentionally or unreasonably.

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2. Id.


5. See infra Part II.C for a discussion of the takings-to-tort gap in providing remedies to the owners of property damaged by public infrastructure.
California courts have interpreted article I, section 19 liberally to impose strict liability on public entities through inverse condemnation claims for damages they inflict in the design, construction, operation, or maintenance of public infrastructure. Fairness drives this interpretation, as article I, section 19 guarantees that negative externalities from public infrastructure do not overburden individual property owners. Instead, the provision uniquely requires that such burdens be spread broadly throughout the public, which is in a better position to absorb the costs.

California’s inverse condemnation law is also unique because California’s investor-owned electric utilities are held strictly liable for the wildfire damages that arise from the malfunctioning of their electrical infrastructure. California courts have found that electric utilities may be held strictly liable under the provision because of their state-protected monopoly status. This liability has left these utilities in a tough spot: they are required to pay just compensation for wildfire damage they cause regardless of whether they complied with state utility-safety regulations and otherwise acted reasonably. Further, such utilities cannot distribute this liability to their ratepayers without approval from a state regulatory agency, the California Public Utilities Commission (CPUC). This results in a massive gap of liability that utilities must absorb.

Coupled with the ongoing arid and hot conditions as well as persistent residential development in California’s wildland-urban interface (WUI), this gap of uncovered liability has left such utilities on financially shaky grounds. In recent years, many have sought to abolish strict liability for wildfire damage under article I, section 19 out of concern for the precarious financial footing of PG&E and other investor-owned utilities. Recently, a state “strike force” published a report proposing better wildfire prevention and response tactics, clean energy policies to mitigate climate change, and “[f]air

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7. See McNichols, supra note 6, at 84.
8. See Albers, 398 P.2d at 137.
11. See Pac. Bell Tel. Co., 146 Cal. Rptr. 3d at 574–76.
12. See CAL. PUB. UTIL. CODE § 451.1(b) (West 2019) (requiring a utility to petition CPUC to recover wildfire liability upon a showing that its “conduct . . . related to the ignition was consistent with actions that a reasonable utility would have undertaken”).
Among the report’s recommendations was the modification of the standard of liability for utilities under article I, section 19—from strict liability to a “fault-based standard.”

In July 2019, Governor Gavin Newsom signed Assembly Bill 1054, which established a fund up to $21 billion to help utilities cover wildfire costs. Half of the fund is financed through an extension of a small fee on statewide electric ratepayers’ bills. The state’s investor-owned electric utilities match the other half. A utility must demonstrate its reasonableness to access the fund, but the law affords the utility a presumption of reasonableness if it can demonstrate that it received an annual safety certification from the state. The regulatory scheme therefore shifts a significant portion of the burden of wildfire damage from reasonable utilities to the state’s ratepayers. Yet the legislature again declined to limit the strict liability under article I, section 19 imposed on such utilities.

The California wildfire crisis raises the tough question of how the burdens of providing electrical service throughout the state—and particularly to the most wildfire-vulnerable areas of the WUI—should be fairly allocated between property owners, utilities, and ratepayers. This Comment argues that Assembly Bill 1054 optimally distributes the state’s wildfire risk. Section II traces the history and development of article I, section 19 of the California Constitution. Section II further explores the strict liability standard that California courts have adopted for inverse condemnation claims. Section III describes the California wildfire liability crisis and the application of strict liability to electric utility-caused wildfire damages. Section IV
asserts that Assembly Bill 1054 struck an appropriate balance by retaining the strict liability standard and optimally allocating the burden of electrical service to the WUI.

II. THE DEVELOPMENT OF CALIFORNIA’S STATE CONSTITUTIONAL DAMAGINGS JURISPRUDENCE

California is among twenty-seven states that provide additional protections to property owners through their own constitutions by requiring that public entities provide just compensation when property is “damaged” or “injured” by “public use.”24 Property owners have relied upon state constitutional damagings provisions to seek compensation for damage inflicted by a wide variety of public infrastructure projects, including street construction and regrading,25 subway construction,26 flood water diversion,27 water-main breaks,28 sewage overflow,29 and, recently, wildfire damage from electrical transmission.30 Damagings clauses fill a gap in legal protection: a public entity’s mere damaging of property generally does not rise to the requisite level of interference to be deemed a “taking” under the Fifth Amendment, and state sovereign immunity often bars or limits common law tort claims for damages.31

Part II.A discusses the underlying policy of ensuring fairness in distributing the burdens of public infrastructure through inverse condemnation claims. Part II.B details the resulting development of state constitutional damagings provisions. Part II.C explains the remedy gap that such provisions fill, where tort law and Fifth Amendment takings jurisprudence fall short. Part II.D outlines the doctrinal development of inverse condemnation jurisprudence under article I, section 19 of the California Constitution.


31. See infra Part II.D.
A. Fairness in Inverse Condemnation Claims

Inverse condemnation is a cause of action frequently associated with the Fifth Amendment Takings Clause. The Takings Clause acknowledges that the government can appropriate, or “take,” private property through its formal exercise of eminent domain but only if for “public use” and if the property owner is provided with “just compensation.”32 However, when the government takes property without acknowledgment through formal condemnation proceedings, property owners can sue the government to recover just compensation for their property deprivation under a theory of inverse condemnation.33

Fairness is the underlying principle behind inverse condemnation doctrine.34 The Takings Clause does not affirmatively empower the government to take property, as that power was already vested.35 Rather, the Takings Clause prevents the government from taking property in an unfair way—without providing “just compensation” to the property owner.36 As Justice Black noted in Armstrong v. United States,37 the Takings Clause “was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.”38 Inverse condemnation actions exist to ensure that private property owners are not saddled with the costs of a public undertaking.39 The principle of distributing burdens through inverse condemnation claims cannot be absolute, however, as governments could hardly enact any regulations if they were required to compensate property owners for all resulting diminutions in values.40 Therefore, the “government’s well-established power to ‘adjus[t] rights for the public good’”41 hangs in the balance with an “individual’s right to retain the interests and exercise the freedoms at the core of private property ownership.”42

B. The Spread of State Damagings Clauses

States have historically provided protection against uncompensated takings of property through their own constitutions.43 Even before the Supreme Court incorporated the Fifth Amendment Takings Clause through the Fourteenth Amendment to apply to

32. U.S. Const. amend. V.
34. See Armstrong v. United States, 364 U.S. 40, 49 (1960).
36. U.S. Const. amend. V.
38. Armstrong, 364 U.S. at 49.
39. See id.
40. See Pa. Coal Co. v. Mahon, 260 U.S. 393, 413 (1922) (“Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law.”).
42. Id. (citing Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1028 (1992)).
43. Brady, supra note 24, at 355.
states in 1897, nearly all state constitutions contained parallel counterparts. Professor Maureen E. Brady meticulously traced the history of the adoption of state constitutional damagings clauses in her article The Damagings Clauses. Illinois was the first state to adopt such a provision during its constitutional convention of 1870. During floor debate at the convention, several delegates referenced situations where owners would otherwise be uncompensated for the devaluation of their property due to street regrading and railroad construction. The Illinois constitutional damagings provision was influential, starting a forty-year period where twenty-four other states incorporated similar provisions in their constitutions. Like Illinois, many early states contemplated the negative externalities of the rapid development of public infrastructure when adopting damagings clauses, often citing examples of houses that lost street-front access due to street regrading and railroad construction. Constitutional damagings provisions have been generally met with approval, as all but one of the states that have joined the Union since 1870 have incorporated such a provision.

The language of damagings provisions varies slightly from state to state. Like the Fifth Amendment Takings Clause, they exist within constitutional articles delineating individual rights. Most provisions state that property shall not be “taken or damaged” (following Illinois’s language) or that property shall not be “taken, injured or destroyed” (following Pennsylvania’s language), with a few exceptions. Though the particular phrasing has not been shown to affect state court interpretations of such

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44. Chi., Burlington & Quincy R.R. Co. v. Chicago, 166 U.S. 226 (1897).
45. Brady, supra note 24, at 355.
46. Id. at 355–60.
47. Id. at 356.
48. Id.
49. See id. at 357–58. West Virginia was the second state to adopt a constitutional damagings provision in 1872. Id. at 357. Between 1874 and 1879, damagings provisions spread to nine additional states, starting with Arkansas and Pennsylvania in 1874 and advancing west to Texas and Colorado in 1876 and then California in 1879. Id. at 357–58. Constitutional incorporation of damagings clauses continued in the early twentieth century, with states like Oklahoma, Arizona, and New Mexico, adding some variation of the clause. Id. at 358. Outside of the approximately forty-year period from 1870 to 1912, only two states have adopted damagings clauses: Alaska in 1959 and Hawaii in 1968. Id.
50. See id. at 362–63. “Nineteenth century newspapers and court records are filled with individuals trying—and often failing—to receive compensation for having their homes either left in midair or buried by mountains of dirt filling in the streets.” Id. at 354.
51. Id. at 357–58 (finding evidence of only “a small handful of states debating and rejecting the language”). The single exception is Idaho, which neither considered nor adopted a damagings provision. Id. at 358 n.85.
52. Id. at 359–60.
53. Of the twenty-seven states with constitutional damagings provisions, such provisions exist within the “Declaration of Rights” section in twenty-five states. See supra note 24 for a list of all such provisions. The two exceptions are Pennsylvania, PA. CONST. art. X, § 4, and Alabama, ALA. CONST. art. XII, § 235, in which the damagings provision exists within sections entitled “Private Corporations.”
54. ILL. CONST. art. I, § 15; see also Brady, supra note 24, at 359.
55. PA. CONST. art. X, § 4; see also Brady, supra note 24, at 359.
56. For example, Minnesota and Texas provide similar variations of the phrase that property shall not be “taken, damaged or destroyed,” MN. CONST. art. I, § 13; TEX. CONST. art. I, § 17, and Arkansas prohibits property from being “taken, appropriated or damaged,” ARK. CONST. art. II, § 22.
phrases, state courts frequently look to how other states with similar language in their constitutional damagings clauses interpret such provisions as persuasive authority.57

C. The Gap Between Tort Law and Federal Takings Law

Despite the relative lack of scholarship about state constitutional damagings clauses, such provisions afford legal protection to property owners where a gap would otherwise exist. Without such provisions, claims for publicly inflicted property damages generally fall into the “Takings-to-Tort Gap”; they are not cognizable as takings claims under the Fifth Amendment and are often hampered as common law tort actions by state sovereign immunity.58

Though a physical invasion can be something less than a permanent appropriation of property,59 courts interpreting the Takings Clause have nonetheless sought to distinguish physical invasions that are “substantial and frequent enough to rise to the level of a taking” from mere actions that resemble torts.60 The U.S. Supreme Court recently clarified in Arkansas Game & Fish Commission v. United States61 that temporary physical invasions of a property may be compensable takings but set forth several limiting factors that distinguish torts from takings.62 First, although the damage need not constitute a permanent appropriation, the Court limited its holding to recurrent invasions and moreover stated that “time is indeed a factor” in distinguishing a taking from a tort.63 This limitation seems to suggest that a single physical invasion may be insufficient to state a claim.64 Second, a property owner must demonstrate that the “invasion [was] intended or . . . the foreseeable result of authorized government action.”65 Also relevant to the inquiry is “the character of the land at issue and the owner’s ‘reasonable investment-backed expectations’ regarding the land’s use” as well as the severity of the property damage.66

The U.S. Court of Appeals for the Federal Circuit has since held that a property owner must demonstrate that an affirmative government action caused the damage.67 In

57. See, e.g., Bakke v. State, 744 P.2d 655, 657 (Alaska 1987) (relying on California damaging jurisprudence as persuasive authority); Henderson v. City of Columbus, 827 N.W.2d 486, 495 (Neb. 2013) (relying on Texas damaging jurisprudence as persuasive authority).
59. See Saxer, supra note 58 (manuscript at 18).
62. See, e.g., Ark. Game & Fish Comm’n, 568 U.S. at 38–39 (finding that courts must consider “the degree to which the invasion is intended or is the foreseeable result of authorized government action”).
63. Id. at 38.
64. For example, the Court framed the question as “whether a taking may occur . . . when government-induced flood invasions, although repetitive, are temporary.” Id. at 26 (emphasis added). Moreover, the flooding in Arkansas Game & Fish Commission occurred regularly over the course of seven years. Id.
65. Id. at 39.
66. Id. (quoting Palazzolo v. Rhode Island, 533 U.S. 606, 618 (2001)).
St. Bernard Parish Government v. United States, the Federal Circuit declined to award just compensation to New Orleans property owners who suffered flooding damage from Hurricane Katrina as a result of the government’s failure to “maintain or to modify” the Mississippi River-Gulf Outlet. The court explained that “[w]hile the theory that the government failed to maintain or modify a government-constructed project may state a tort claim, it does not state a takings claim.” St. Bernard Parish has been criticized, but the Supreme Court declined to review the decision which leaves the state of the law unclear. Together, then, the holdings of Arkansas Game & Fish Commission and St. Bernard Parish indicate that a property owner cannot recover under the Fifth Amendment Takings Clause from (1) a single, isolated government invasion; (2) an invasion that was not intended nor foreseeable; or (3) an invasion that occurred as a result of government inaction.

On the other end of the gap, state sovereign immunity frequently limits state common law tort claims for damages. Every state has waived absolute immunity to some extent through tort claims acts, but citizens are still hampered by strict procedural requirements and damage caps on tort claims arising from state-inflicted property damage. In contrast to tort claims, state courts have widely held that sovereign immunity does not apply to inverse condemnation claims based on state constitutional provisions, as constitutional command supersedes the principle of sovereign immunity.

D. California Damagings Jurisprudence

Article I, section 19 of the California Constitution provides, in part, that “[p]rivate property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner.” California courts have interpreted this provision to allow property owners to recover on a theory of strict liability, with narrow exceptions, regardless of whether the public actor intentionally or negligently inflicted the damage.

68. 887 F.3d 1354 (Fed. Cir. 2018).
69. St. Bernard Par. Gov’t, 887 F.3d at 1357.
70. Id. at 1360.
71. See Saxer, supra note 58 (manuscript at 16–17).
72. See Masso, supra note 35, at 269.
76. See Masso, supra note 35, at 283–84; see also Rose v. State, 123 P.2d 505, 510 (Cal. 1942).
1. Framing California’s Damagings Provision

California added the “or damaged” language to article I, section 19 following the California Constitutional Convention of 1878–1879. There is a sparse record of the framers’ debate about the provision at the convention, but the minutes of the framers’ debate on January 28, 1879, lend some insight into their intentions for including this phrase. Delegate John Hager introduced the provision, referencing similar provisions in the constitutions of Missouri and Illinois. Hager cited an instance where property owners went uncompensated after the legislature authorized the cutting of a San Francisco municipal street, which “left the houses on either side high in the air, and wholly inaccessible.” Other delegates reasoned that fairness dictated just compensation in such situations. As Delegate Estee stated, “[W]hen a man’s property is damaged, it ought to be paid for. . . . I think that is the best we can get.”

The California damagings provision was not without its critics, however. Several delegates expressed concern that the provision could be construed broadly, hampering the government’s ability to build public infrastructure—that the provision would “open[] up a new question which has no limit,” as one delegate said. Such objections were ultimately unsuccessful, as the convention approved the provision sixty-two to twenty-eight.

A mere six years later, the Supreme Court of California first considered the scope of its constitutional damagings provision in Reardon v. City & County of San Francisco. In the process of raising the grade of a street and constructing a sewer, the municipal government displaced dirt and damaged the foundations of houses adjoining the street. The court determined that the constitutional provision provided property owners with a distinct cause of action and was not merely a waiver of sovereign immunity for preexisting common law actions. Rather, the court explained that the constitutional framers purposefully intended to protect property owners by providing a new constitutional guarantee:

“We cannot think that the convention inserting in the constitution of this state the word “damaged” in the connection in which it is found, and the people in ratifying the work of the convention, intended to limit the effect of

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80. DEBATES AND PROCEEDINGS, supra note 79, at 1190.
81. Id.
82. See id.
83. Id.
84. Id. (remarks of Mr. Wilson).
85. See id.
86. 6 P. 317 (Cal. 1885).
87. Reardon, 6 P. at 317.
88. Id. at 325 (“We are of opinion that the right assured to the owner by this provision of the constitution is not restricted to the case where he is entitled to recover as for a tort at common law.”).
this word to cases where the party injured already had a remedy to recover compensation. They engaged in no such empty and vain work. It was intended to give a remedy as well where one existed before as where it did not; to superadd to the guaranty found in the former constitution of this state, and in nearly all of the other states, a guaranty against damage where none previously existed.89

Notably, the Reardon court held that damages arising from a public use were compensable under the California constitutional damagings clause, regardless of “whether [the work] is done carefully and with skill or not.”90

Despite Reardon’s liberal interpretation, two cases severely limited its strict liability standard for public damagings in the following several decades. First, in Gray v. Reclamation District No. 1500,91 the court exempted damage inflicted as a part of a necessary exercise of the state’s police powers from constitutional protection.92 Later, in Archer v. City of Los Angeles,93 the Supreme Court of California carved another major exception into Reardon by holding that the government did not owe just compensation for damnum absque injuria—damage that a private actor would lawfully be permitted to inflict.94 In Archer, after the city government widened a creek, water overflowed onto nearby properties in the Venice neighborhood of Los Angeles and flooded them to a depth of at least six feet for four days.95

In denying recovery, the Archer court found that the California constitutional damagings provision only provided relief where an action would exist at common law, expressly contradicting, though not overruling, Reardon.96 Because the city would have had the right to inflict the water damage under the “common enemy” rule of surface water disposal,97 the court held that the damage was not compensable.98 However, several opinions after Gray and Archer supported Reardon’s strict liability standard,99 indicating confusion and inconsistency among California courts during this time.100

89. Id. at 325–26.
90. Id. at 325.
91. 163 P. 1024 (Cal. 1917).
92. Gray, 163 P. at 1032.
93. 119 P.2d 1 (Cal. 1941), overruling recognized by Locklin v. City of Lafayette, 867 P.2d 724 (Cal. 1994) (en banc).
94. See Archer, 119 P.2d at 4.
95. Id. at 3.
96. See id. at 4.
97. The “common enemy” rule provides, with some qualifications, that “diffused surface water is considered to be the common enemy, and each landowner is deemed to be entitled to protect himself, regardless of the consequences to others.” See generally Jill M. Fraley, Water, Water, Everywhere: Surface Water Liability, 5 MICH. J. ENVTL. & ADMIN. L. 73, 94 n.123 (2015) (quoting 6 THOMPSON ON REAL PROPERTY § 50.20(g) (David A. Thomas ed., 1994)). For more on the “common enemy” rule, see generally id. at 93–97.
100. See McNichols, supra note 6, at 80–82 (finding that California damagings jurisprudence based on water damage from 1945 to 1961 “lacked uniformity, consistency and predictability”).
2. The Albers v. County of Los Angeles Strict Liability Standard

In 1965, the Supreme Court of California clarified the interpretation of the California constitutional damagings provision in favor of the Reardon rule, establishing the strict liability standard for California inverse condemnation claims that exists today and narrowing the holdings of Archer and Gray as exceptions.101 Albers v. County of Los Angeles102 established the modern rule: “[A]ny actual physical injury to real property proximately caused by the improvement as deliberately designed and constructed is compensable . . . whether foreseeable or not.”103

The Albers court explained that its liberal reading of the damagings clause best serves the underlying principles of eminent domain by "distrib[ing] throughout the community the loss inflicted upon the individual by the making of the public improvements."104 The court rejected the notion that a compensable damage must be coupled with a public benefit, finding that the focus in inverse condemnation claims lies in the character of the loss to the owner and not the nature of the public benefit derived therefrom.105 Concerned with “[t]he tendency under our system . . . to sacrifice the individual to the community,”106 the court noted that the main consideration in such claims should be “whether the owner of the damaged property if uncompensated would contribute more than his proper share to the public undertaking.”107 The Albers court, however, recognized the potential for a broad strict liability rule to raise costs and deter public entities from carrying out infrastructure improvements.108

After weighing these conflicting principles, the court provided five reasons why strict liability is appropriate:

First, the damage . . . , if reasonably foreseeable, would have entitled the property owners to compensation. Second, the likelihood of public works not being engaged in because of unseen and unforeseeable possible direct physical damage to real property is remote. Third, the property owners did suffer direct physical damage to their properties as the proximate result of the work as deliberately planned and carried out. Fourth, the cost of such damage can better be absorbed, and with infinitely less hardship, by the taxpayers as a whole than by the owners . . . . Fifth, . . . "the owner of the damaged property if uncompensated would contribute more than his proper share to the public undertaking."109

101. See Albers v. County of Los Angeles, 398 P.2d 129, 137 (Cal. 1965) (en banc).
102. 398 P.2d 129 (Cal. 1965) (en banc).
103. Albers, 398 P.2d at 137.
104. Id. at 136–37 (quoting Bacich, 144 P.2d at 823).
105. See id. at 136 (citing House v. L.A. Cty. Flood Control Dist., 153 P.2d 950, 956 (Cal. 1944) (Traynor, J., concurring)).
106. Id. at 137 (quoting Bacich, 144 P.2d at 823).
107. Id. at 136–37 (quoting Clement v. State Reclamation Bd., 220 P.2d 897, 905 (Cal. 1950) (en banc), abrogation recognized by Belair v. Riverside Cty. Flood Control Dist., 764 P.2d 1070 (Cal. 1988) (en banc)).
108. See id. at 136 (acknowledging “fears . . . that compensation allowed too liberally will seriously impede, if not stop, beneficial public improvements” (quoting Bacich, 144 P.2d at 823)).
109. Id. at 137 (quoting Clement, 220 P.2d at 905).
Later courts have revisited those reasons—the *Albers* factors—to determine whether a situational exemption, like those discussed below, should be made to the general strict liability rule.\(^{110}\)

The *Albers* court did not explicitly refer to the inverse condemnation liability standard under article I, section 19 as strict liability,\(^{111}\) but such a standard has been imposed when a public use damages property.\(^{112}\) Article I, section 19 allows property owners to recover just compensation regardless of whether the government intentionally or even negligently inflicted damage.\(^{113}\) With two exceptions, to prevail on an inverse condemnation claim, a plaintiff need only demonstrate that a public entity deliberately planned, designed, constructed, maintained, or operated public infrastructure in a manner that substantially caused an actual physical injury to the plaintiff’s real property.\(^{114}\) Thus, “[t]he concepts of negligence, . . . foreseeability, and predictability . . . have no place in inverse condemnation cases.”\(^{115}\) However, as explained below, the court’s recent clarification of the causation element in *City of Oroville v. Superior Court*\(^{116}\) has thrown the future of the strict liability standard into doubt.

*Albers* recognized two exceptions where governments will not be strictly liable in inverse condemnation claims for damaging private property.\(^{117}\) First, courts will not award just compensation in certain instances when the government acts to carry out its police powers as a matter of urgent public necessity.\(^{118}\) Originating from the *Gray* exception, the government will be immune from inverse condemnation liability when it acts “under the pressure of public necessity and to avert impending peril.”\(^{119}\) For example, in *Customer Co. v. City of Sacramento*,\(^{120}\) a convenience store was unable to recover just compensation from damage resulting from a police chase that ended in the store.\(^{121}\)

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\(^{110}\) See, e.g., *Locklin v. City of Lafayette*, 867 P.2d 724, 749–50 (Cal. 1994) (en banc) (considering the *Albers* factors in determining whether strict liability or reasonableness should apply to damage caused by a stormwater drainage system).

\(^{111}\) California courts first used the phrase “strict liability” to characterize the level of government culpability under the damagings provision five years later in *Holtz v. Superior Court*, 475 P.2d 441, 446 (Cal. 1970) (en banc).

\(^{112}\) *E.g.*, *Pac. Shores Prop. Owners Ass’n v. Dep’t of Fish & Wildlife*, 198 Cal. Rptr. 3d 72, 97–99 (Cal. Ct. App. 2016).

\(^{113}\) *See City of Oroville v. Superior Court*, 446 P.3d 304, 312 (Cal. 2019).

\(^{114}\) *Id.* at 307.

\(^{115}\) McNichols, *supra* note 6, at 103 (citing *Albers v. County of Los Angeles*, 398 P.2d 129, 136–37 (Cal. 1965) (en banc)).

\(^{116}\) 446 P.3d 304 (Cal. 2019).


\(^{118}\) *Customer Co. v. City of Sacramento*, 895 P.2d 900, 909–10 (Cal. 1995) (en banc).


\(^{120}\) 895 P.2d 900 (Cal. 1995) (en banc).

\(^{121}\) *Customer Co.*, 895 P.2d at 902–03, 909–10.
Courts have also declined to impose strict liability in certain situations where a government entity inflicts water damage on a property, instead opting for a reasonableness standard.122 Flowing from the exception that the Albers court carved out,123 California courts will not award just compensation for damage that a reasonable action of a public entity causes under two circumstances:

1. where property historically subject to flooding in the absence of the project is damaged by the failure of a public improvement intended to protect the damaged property; and
2. where riparian owners are damaged because a public entity utilizes a natural watercourse—not a public improvement—for drainage of surface water.124

Flood-control projects such as dams and stormwater drainage systems are commonly the subject of this second exception.125 In the immediate wake of Albers, government entities were wholly immune from inverse condemnation liability from such projects, as courts rested their constitutional interpretations on common law riparian rights.126 In Belair v. Riverside County Flood Control District,127 the Supreme Court of California rejected such reliance, finding that, although common law water rights may be instructive, constitutional principles should be the court’s focus when considering damage caused by flood-control projects.128 However, the Belair court feared that imposing strict liability on flood-control projects in areas prone to historic flooding would deter public entities from building them and thus applied a reasonableness standard to such works.129 Accordingly, courts will weigh the gravity of the damage against the public need for the flood-control project to determine whether a property owner is due just compensation under article I, section 19.130

California courts appear to consider eleven factors derived from two cases in determining reasonableness, of which some factors overlap131—the five Albers factors as well as the following six considerations set forth in Locklin v. City of Lafayette132:

1. The overall public purpose being served by the improvement project;
2. the degree to which the plaintiff’s loss is offset by reciprocal benefits;
3. the availability to the public entity of feasible alternatives with lower risks; (4) the severity of the plaintiff’s damage in relation to risk-bearing capabilities; (5) the extent to which damage of the kind the plaintiff sustained

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122. See, e.g., Locklin v. City of Lafayette, 867 P.2d 724, 749–50 (Cal. 1994) (en banc) (finding compensation caused by a stormwater draining system to be necessary “only if the agency exceeds the privilege by acting unreasonably with regard to other riparian owners”).
123. See Albers v. County of Los Angeles, 398 P.2d 129, 137 (Cal. 1965) (en banc).
124. McNichols, supra note 6, at 103–04.
125. See id. at 79 n.28 (characterizing the situations in which California courts will apply a reasonableness standard to claims of water damage inflicted by public entities under article I, section 19 of the California Constitution).
126. Id. at 85–87.
127. 764 P.2d 1070 (Cal. 1988) (en banc).
129. Id. at 1079 (finding that “a public agency that undertakes to construct or operate a flood control project clearly must not be made the absolute insurer of those lands provided protection”).
131. See McNichols, supra note 6, at 94–95.
132. 867 P.2d 724 (Cal. 1994) (en banc).
is generally considered as a normal risk of land ownership; and (6) the degree
to which similar damage is distributed at large over beneficiaries of the project
or is peculiar only to the plaintiff.133

Flood-control and water diversion projects are distinguished from other public
infrastructure projects, and thus subject to the reasonableness standard, for two reasons.
First, such projects present logistical concerns, as they are notably expensive and often
must be built in phases, thereby leaving nearby property vulnerable to potentially
catastrophic damage while under construction.134 Second, such projects typically convey
a reciprocal benefit to the owners of property near the projects as they often are able to
develop a greater portion of their property that would otherwise be subject to periodic
flooding.135

California is not alone in imposing strict liability through its state constitutional
damagings provision.136 Though a significant number of state courts elsewhere have
interpreted such provisions to deny just compensation unless the government inflicts
property damage intentionally or as a necessarily unavoidable byproduct of a public
infrastructure project.137

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133. Locklin, 867 P.2d at 750.
134. McNichols, supra note 6, at 91.
135. Id. at 105.
136. The Alaska Supreme Court directly relied on Albers in adopting California’s view that a property
    owner asserting an inverse condemnation claim need not demonstrate that the government damaged her property
    liability through a slightly different approach, interpreting the state’s damagings provision to create an implied
    contract between the state and property owners, thus eliminating the need for property owners to show that the
    interpreted its constitutional damagings provision to provide a similar implied contract. AGCS Marine Ins. Co.
    v. Arlington County, 800 S.E.2d 139, 163 (Va. 2017). Several other states have adopted similar liberal
    interpretations. See, e.g., Wireman v. City of Greenup, 582 S.W.2d 48, 50 (Ky. Ct. App. 1979) (“[T]here need
    be no showing of negligence at all . . . .”); McLemore v. Miss. Transp. Comm’n, 992 So. 2d 1107, 1110 (Miss.
    2008) (finding article III, section 17 of the Mississippi Constitution to be “words . . . without limitation,”
    providing compensation “for all damages to . . . property that may result from works for public use” (quoting
    City of Vicksburg v. Herman, 16 So. 434, 435 (Miss. 1894))); Krier v. Dell Rapids Twp., 709 N.W.2d 841, 847
    (S.D. 2006) (stating that article VI, section 13 of the South Dakota Constitution “should be given a liberal
    construction” to provide “remedy to incidental or consequential injuries to property” (quoting Searle v. City of
    Lead, 73 N.W. 101, 103 (S.D. 1897))).
137. See, e.g., Robinson v. City of Ashdown, 783 S.W.2d 53, 56 (Ark. 1990) (holding that the necessary
    level of government intent in a damagings claim is akin to the intent necessary in a private nuisance action as
    derived from Restatement (Second) of Torts); Angelle v. State, 34 So. 2d 321, 323 (La. 1948) (finding that article
    I, section 4(B) of the Louisiana Constitution only provides protection against damage arising from the
    “intentional or purposeful expropriation or appropriation of private property for a public use or convenience”;
    Henderson v. City of Columbus, 827 N.W.2d 486, 492–94 (Neb. 2013) (relying on the Fifth Amendment Takings
    Clause analysis in Arkansas Game & Fish Commission, 568 U.S. 23 (2012), for the proposition that government
    invasions must be intentional and last for a significant duration of time to be actionable under Nebraska’s
    damagings provision); City of Dallas v. Jennings, 142 S.W.3d 310, 314 (Tex. 2004) (requiring that compensable
    damage be “necessarily an incident to, or necessarily a consequential result of the government’s action”
    (quoting Tex. Highway Dep’t v. Weber, 219 S.W.2d 70, 71 (Tex. 1949))).
3. The State of Strict Liability After City of Oroville v. Superior Court

In its first opportunity to address inverse condemnation liability under article I, section 19 in over twenty years, the Supreme Court of California tightened the element of causation in a way that casts uncertainty on the future of the Albers strict liability rule. Prior to City of Oroville, a plaintiff could satisfy the causation element by showing that there was a “substantial cause-and-effect relationship” between the government entity’s actions and the damage to their property that “exclud[es] the probability that other forces alone produced the injury.”138 Moreover, the government had the burden of demonstrating the existence of an intervening act that cut off causation.139 Despite considering a narrow question in City of Oroville,140 the Supreme Court of California took the opportunity to clarify that a property owner must demonstrate more than a mere causal connection between the public improvement and the damage; it “must be substantially caused by an inherent risk presented by the deliberate design, construction, or maintenance of the public improvement.”141

Thus, causation in inverse condemnation requires consideration of both “[t]he concepts of ‘inherent risk’ and ‘substantial causation[,]’ . . . somewhat overlapping considerations [that] play distinct roles.”142 The court explained that such inherent risks may be present when a “public entity[] adopt[s] . . . a comparatively lower cost plan to create the public improvement” or “construct[s] a public improvement and then entirely neglect[s] any kind of preventive monitoring or maintenance for the improvement.”143 The inherent risks, moreover, must substantially cause the property damage.144 The court explained that this element requires a demonstration of “physical, but-for causation . . . to link the public improvement and the damage.”145 That is, according to the court, “[t]he damage must be the ‘necessary or probable result’ of the improvement, or . . . the immediate, direct, and necessary effect’” of the public improvement’s design, construction, or maintenance.146

City of Oroville’s impact on California inverse condemnation law has yet to be seen, but it could be significant. Narrowly, City of Oroville could be viewed as merely reinforcing the causation requirement. Even if its impact were that narrow, however, the revamped causation test could have a chilling effect on inverse condemnation claims by heightening the pleading requirement for such claims and resting the burden of proof on

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140. The court framed the question presented as “whether the City is liable in inverse condemnation where sewage backs up onto private property because of a blockage in the City’s sewer main and the absence of a backwater valve that the affected property owner was legally required to install and maintain.” City of Oroville v. Superior Court, 446 P.3d 304, 309 (Cal. 2019).
141. Id. at 312.
142. Id.
143. Id. at 313.
144. Id. at 312–13.
145. Id. at 314.
146. Id. (emphasis omitted).
the plaintiff. And it is possible that the Supreme Court of California in City of Oroville signaled a future shift away from strict liability in inverse condemnation claims. For example, the court recognized that its new causation test “avoids treating inverse condemnation as a species of strict or ‘absolute liability’ that would avoid the necessary analysis of inherent risks and substantial causation, frustrating the development of public improvements because of the increased costs to public entities.” The court also ostensibly suggested that the government can now avoid liability by showing a property owner’s comparative negligence. The court further seemed to consider the reasonableness of the city in expecting the property owner to comply with its sewer system design regulation. However, the court only overruled two cases insofar as they applied the previously accepted causation standard. So, for the time being, strict liability still appears to be the rule.

III. The California Wildfire Crisis

Wildfires caused by California electrical infrastructure malfunctions have devastated the state in recent years. Typically, these wildfires start when high winds cause electrical wires to break, fall, or “slap together,” and the resulting sparks ignite nearby dry vegetation. The wind, in turn, spreads the wildfire conflagration. Wildfires started this way are therefore particularly difficult to contain, as “the conditions that cause power lines to start wildfires are the exact same conditions that make them spread rapidly.” For example, at its peak the Camp Fire burned at a rate of eighty football fields per minute; firefighters estimated that it destroyed the entire town of Paradise in four hours.

Although they represent only five percent of the wildfires in the state, wildfires started by power lines are more frequently catastrophic. The California Department of Forestry and Fire Protection has found that almost all of the ten most destructive wildfires

147. See Gus Sara, California Clarifies Its Inverse Condemnation Standard, SUBROGATION STRATEGIST (Oct. 8, 2019), http://subrogationstrategist.com/2019/10/08/california-clarifies-its-inverse-condemnation-standard/ (“The City of Oroville case establishes that, in California, a mere showing of ordinary negligence is insufficient to prove inverse condemnation against a public entity.”).


149. City of Oroville, 446 P.3d at 314.

150. See id. at 315–16 (explaining that the trial court erred by failing to consider the property owner’s failure to install a legally required backflow preventer); Sara, supra note 147.

151. See City of Oroville, 446 P.3d at 315–16 (finding no reason to “doubt that the City made reasonable assumptions in reaching its decision for the design, construction or maintenance of the sewer system”); Kuhn, supra note 148.

152. City of Oroville, 446 P.3d at 315 n.3.


154. See KOUSKY ET AL., supra note 14, at 3; Atleework, supra note 153.

155. KOUSKY ET AL., supra note 14, at 3.

156. Boghani, supra note 3.

157. KOUSKY ET AL., supra note 14, at 3.
since 2015 have started this way.\textsuperscript{158} The Camp Fire, which started due to a faulty PG&E-operated power line, was the most destructive wildfire in the state, killing at least eighty-six people and destroying the homes of over thirty thousand people in and around the town of Paradise in November 2018.\textsuperscript{159}

The equipment of Southern California Edison Company (SoCal Edison), another investor-owned electric utility,\textsuperscript{160} also caused two massive Southern California wildfires.\textsuperscript{161} Fire investigators determined that crossed electrical lines operated by SoCal Edison started the 2017 Thomas Fire, which killed two individuals, destroyed over one thousand structures in Ventura and Santa Barbara Counties, and led to mudslides in the area of the burn scar that killed at least twenty people and further damaged more homes.\textsuperscript{162} SoCal Edison is also suspected of starting the 2018 Woolsey Fire, which destroyed over one thousand homes in Los Angeles and Ventura Counties.\textsuperscript{163}

In addition to the loss of human lives, these fires have caused exorbitant property damage. Under prevailing California inverse condemnation law, a utility whose equipment starts a wildfire is strictly liable to the owners of damaged property.\textsuperscript{164} Because utilities are restricted in their ability to raise rates to offset this liability, they are saddled with unsustainable amounts of liability, which forced PG&E, the state’s largest investor-owned electric utility, into bankruptcy.\textsuperscript{165} The financial vulnerability of the state’s investor-owned utilities, coupled with climate conditions and human development patterns that are likely to create more fires, force the state to contend with how the costs of the wildfires should be allocated among the utilities, their ratepayers, and aggrieved property owners.\textsuperscript{166}

This Section examines the California wildfire liability crisis by focusing on its causes, its effects, and the legislative response. Part III.A explores the causes that have contributed to the increased incidence and severity of utility-caused wildfires. Part III.B traces the California courts’ application of strict inverse condemnation liability to the state’s investor-owned electric utilities and recent judicial challenges to this standard.

\begin{itemize}
\item \textsuperscript{158} See \textit{Top 20 Most Destructive California Wildfires}, CAL FIRE (Aug. 8, 2019), https://www.fire.ca.gov/media/5511/top20_destruction.pdf [https://perma.cc/EQ2J-T59T].
\item \textsuperscript{159} See supra note 3 and accompanying text.
\item \textsuperscript{164} See infra Part III.B.
\item \textsuperscript{165} See infra Part III.C.
\item \textsuperscript{166} See, e.g., GABRIEL PETEK, CAL. LEGISLATIVE ANALYST’S OFFICE, ALLOCATING UTILITY WILDFIRE COSTS: OPTIONS AND ISSUES FOR CONSIDERATION 10 (2019), http://lao.ca.gov/reports/2019/4079/allocating-wildfire-costs-062119.pdf [https://perma.cc/KCN7-XFQZ] (explaining that the wildfire liability “will ultimately be borne by some combination of utility ratepayers, utility shareholders (as well as bondholders), insurers, property owners, and/or governments (taxpayers)”).
\end{itemize}
Part III.C describes the effects of the increased liability on the state and its utilities. Part III.D then recounts the legislative response to the crisis over the past two years.

A. The Causes of the California Wildfire Liability Crisis

Wildfires have always been a natural part of California’s ecology, but they have increased in frequency and intensity due to recent climate change and increased development of the WUI—the transition zone between human development and undeveloped wildland, comprised of communities like Paradise that are interspersed within the state’s forests, grasslands, and scrublands.167 There has been an unprecedented amount of wildfire damage in California in recent years: Of the twenty most destructive wildfires in the state’s history, fifteen have occurred since 2000 and ten have occurred since 2015.168 The most destructive wildfire season occurred in 2018, in which over 7,600 wildfires burned over 1.8 million acres of the state.169

Much of California has a Mediterranean climate, which means it has distinct seasons—hot, dry summers and rainy winters.170 California’s typical wildfire season begins in late summer when strong, dry winds sweep down from the Great Basin Desert and across the Golden State.171 Dry vegetation at the end of California’s summer acts as natural fuel that, when combined with the dry winds, leads to regular conflagration in the late summer and early fall.172 Increasing temperatures,173 volatile precipitation amounts,174 and increased disease and insect infestations in California’s forests—conditions attributed to climate change—cause wildfires to start more frequently and spread more quickly.175 As a result, wildfire season begins earlier each year and lasts longer176: some counties experience wildfire-prone conditions from

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167. See STRIKE FORCE REPORT, supra note 15, at 1–2; Meigs, supra note 13.
168. See Top 20 Most Destructive California Wildfires, supra note 158.
171. See id.
172. Id.
mid-May through mid-December, while other counties experience wildfire risk year-round.\textsuperscript{177} \textit{California's Fourth Climate Change Assessment} predicted that the average area burned each year will increase by seventy-seven percent by 2100, and extreme wildfires will occur fifty percent more often.\textsuperscript{178}

Increased development in the wildfire-prone areas of California’s WUI has further exacerbated the California wildfire crisis.\textsuperscript{179} One-quarter of Californians live in high-risk fire areas in or near the WUI—an estimated eleven million people in 4.5 million homes.\textsuperscript{180} Homes built in the WUI are at the highest risk for wildfire damage because they are located closest to dry vegetation, which acts as fuel.\textsuperscript{181} People nonetheless move to these wildfire-prone areas for a variety of reasons including proximity to nature, comparatively lax building codes,\textsuperscript{182} and the lack of affordable housing in metropolitan areas such as San Francisco and Los Angeles, which pushes development into cheaper, “peripheral” areas with higher wildfire risk.\textsuperscript{183} Despite the increased wildfire risk, residential development in California’s WUI has been persistent; roughly one-half of all homes built in the state between 1990 and 2010 are in the WUI.\textsuperscript{184}

The lack of readily available, cost-effective, preventative safety solutions further compounds the wildfire crisis. The extensiveness of the network of approximately 176,000 miles of overhead electrical wires required to serve the state makes any systematic preventative safety enhancement cost prohibitive.\textsuperscript{185} Burying electrical lines, or “undergrounding” them, is one alternative to overhead electrical lines that could significantly mitigate the risk of wildfires, but undergrounding is fairly cost prohibitive—$2.3 million per mile of electrical line as opposed to $800,000 per mile in

\begin{footnotesize}
\begin{enumerate}
\item See generally Heather Ana Kramer et al., \textit{High Wildfire Damage in Interface Communities in California}, 28 \textit{INT'L J. WILDLAND FIRE} 641 (2019) ("Because ignitions are overwhelmingly human-caused, wildfire ignitions are more likely with WUI expansion and even more so as the entire wildfire season lengthens owing to more ignitions and climate change." (citations omitted)).
\item See California Proclamation of State of Emergency, supra note 179.
\end{enumerate}
\end{footnotesize}
overhead electrical wires, as estimated by PG&E.\textsuperscript{186} Systematic clearings of vegetation around electrical lines also impose a heavy cost burden on such utilities due to the sheer breadth of the number of miles of lines that they must treat.\textsuperscript{187}

B. Strict Liability Applied to Electric Utility-Caused Wildfire Liability

In two California Court of Appeal decisions, the Albers strict liability standard has been extended to require California’s investor-owned electric utilities to provide just compensation to the owners of property damaged by wildfires caused by downed power lines.\textsuperscript{188} In Barham v. Southern California Edison Co.,\textsuperscript{189} the Fourth District of the California Court of Appeal held that investor-owned electric utilities carry out a “public use” within the scope of article I, section 19 by providing electrical service.\textsuperscript{190} The Barham court reasoned that the utilities are subject to the provision because they are state-sanctioned monopolies and are empowered to exercise eminent domain to take property to erect electrical infrastructure.\textsuperscript{191} Further, the court reasoned, a “public utility may not properly claim prerogatives of ‘private autonomy’ because such investor-owned utilities were carrying out this public function.”\textsuperscript{192} Therefore, the state “generally expects a public utility to conduct its affairs more like a governmental entity than like a private corporation.”\textsuperscript{193} California is unique in this regard, as only one other state has applied its constitutional damagings provision to require privately owned utilities to pay just compensation.\textsuperscript{194}

In Pacific Bell Telephone Co. v. Southern California Edison Co.,\textsuperscript{195} the Second District Court of Appeal affirmed that the strict liability standard, not the reasonableness standard applied to flood-control projects under Belair, should apply to wildfire damage caused by electrical infrastructure.\textsuperscript{196} The court noted that the Supreme Court of California had carefully crafted the reasonableness standard for flood-control projects due to the “unique policy concerns relevant to a ‘common enemy.’”\textsuperscript{197} Flood-control projects are distinguishable from electrical infrastructure, the court explained, because

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\textsuperscript{189} 88 Cal. Rptr. 2d 424 (Cal. Ct. App. 1999).
\textsuperscript{190} Barham, 88 Cal. Rptr. 2d at 430–31.
\textsuperscript{191} Id. at 429–30 (citing CAL. PUB. UTIL. CODE § 612 (West 1975)).
\textsuperscript{192} Id. at 430 (quoting Gay Law Students Ass’n v. Pac. Tel. & Tel. Co., 595 P.2d 592, 599 (Cal. 1979)).
\textsuperscript{193} Id. (quoting Gay Law Students Ass’n, 595 P.2d at 599).
\textsuperscript{194} Alabama is the only other state that applies its constitutional damagings provision to privately owned utilities. See Jefferson County v. S. Nat. Gas Co., 621 So. 2d 1282, 1287 (Ala. 1993) (holding that utilities that are statutorily entitled to take property through eminent domain may also be held liable in inverse condemnation claims).
\textsuperscript{195} 146 Cal. Rptr. 3d 568 (Cal. Ct. App. 2012).
\textsuperscript{196} Pac. Bell Tel. Co., 146 Cal. Rptr. 3d at 573–74.
\textsuperscript{197} Id. at 575.
\end{flushright}
the risk of water damage would often exist even without the flood-control project whereas the presence of electrical infrastructure creates the wildfire risk.\textsuperscript{198} The court further noted that the Supreme Court of California has not extended the reasonableness standard outside of the narrow context of water damage.\textsuperscript{199} Therefore, the court concluded, there was “no indication . . . that the Supreme Court intended to replace the strict liability standard . . . outside the flood control context.”\textsuperscript{200} The Supreme Court of California has never considered whether electric utilities should be held strictly liable for wildfire damage under article I, section 19.

The application of strict inverse condemnation liability to wildfire damages caused by malfunctioning electrical infrastructure has left California’s investor-owned electric utilities in a tough place because the state restricts their ability to pass the costs of the damage along to their ratepayers.\textsuperscript{201} The California Public Utility Commission (CPUC) must approve any rate increase.\textsuperscript{202} CPUC has been hesitant to allow utilities to pass along their costs from such fires and has only allowed utilities to pass along costs if they can demonstrate they acted as a “prudent manager” of their equipment—that is, if they acted reasonably.\textsuperscript{203} Thus, such privately owned electric utilities are often forced to sustain significant amounts of liability without the ability to seek compensation themselves.\textsuperscript{204} California investor-owned electric utilities’ recent attempts to challenge applications of strict liability to wildfire damages under article I, section 19 have been unsuccessful. Utilities have argued that the application of strict liability is unfair because, unlike a traditional public use actor such as a government entity, they are restricted in their ability to pass along the costs of their liability to their ratepayers in the form of a rate hike.\textsuperscript{205} Since Barham and Pacific Bell, however, utilities have had little luck persuading the Supreme Court of California or lower appellate courts to consider their challenges to the strict liability standard.\textsuperscript{206} For example, after CPUC declined to allow the utility to pass along $379 million in liability from the 2007 Witch, Guejito, and Rice Fires to its customers in the form of rate hikes,\textsuperscript{207} San Diego Gas & Electric appealed the ruling. The utility argued that the strict liability standard, coupled with its inability to freely distribute its costs, amounts to an unconstitutional taking against the utility under the Fifth Amendment of the U.S. Constitution.\textsuperscript{208} The California Court of Appeal

\textsuperscript{198} See id.
\textsuperscript{199} Id.
\textsuperscript{200} Id.
\textsuperscript{201} See CAL. PUB. UTIL. CODE § 451.1 (West 2019).
\textsuperscript{202} See id.
\textsuperscript{203} See, e.g., Decision Denying Application, Decision No. 17-11-033, CAL. PUB. UTIL. COMMISSION (Dec. 12, 2017), http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M200/K045/200045020.PDF [https://perma.cc/M7DZ-RRX4] (denying an application from San Diego Gas & Electric to raise rates to cover $379 million in liability from damages caused by a 2007 wildfire).
\textsuperscript{204} See KOUSKY ET AL., supra note 14, at 8.
\textsuperscript{207} Decision Denying Application, supra note 203.
\textsuperscript{208} Petition for a Writ of Certiorari, supra note 205, at 11–14.
declined to consider the merits of the utility’s federal constitutional claim,209 the Supreme Court of California summarily denied review,210 and the U.S. Supreme Court ultimately denied the utility’s petition for certiorari in October 2019.211

PG&E recently had its day in court by taking the unusual step of attempting to challenge the application of strict inverse condemnation liability in U.S. Bankruptcy Court.212 In its pending bankruptcy proceedings,213 the utility sought to discharge liability from any inverse condemnation claims against it for recent wildfire damages it caused by arguing, among other things, that the Supreme Court of California would not apply strict liability to them in this scenario, and so the bankruptcy court should not either.214 The bankruptcy court denied relief, reasoning that the Supreme Court of California would not be likely to deviate from the application of strict inverse condemnation liability in Barham and Pacific Bell, especially since the high court would consider that the legislature had considered but later declined to enact legislation to alter the inverse condemnation standard during the 2019 summer.215

C. Effects of the California Wildfire Liability Crisis

The state’s investor-owned utilities are potentially liable for enormous amounts of wildfire damage from the past several years. PG&E has estimated its liability from recent fires, including the Camp Fire, to be around $30 billion, so much that it filed for bankruptcy in January 2019.216 The utility’s bankruptcy has led to a contentious fight between the utility and the state over how the company should reorganize.217 The Bankruptcy Court for the Northern District of California approved a proposed settlement over PG&E’s wildfire liability from the Camp Fire and other fires it caused in 2017 and 2018, including $13.5 billion to property owners and $11 billion to insurance providers.218 PG&E’s bankruptcy is contingent on the state’s approval, however, because PG&E must rely on the wildfire insurance fund that Assembly Bill 1054 created, which in turn requires that CPUC approve the company’s reorganization plan. This has set up a standoff between the state and its largest investor-owned electric utility. Governor Newsom has rebuked the company’s reorganization plans for their failure to prioritize

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212. See In re PG&E Corp., No. 19-30088, slip op. at 2 (Bankr. N.D. Cal. Nov. 27, 2019).
213. See infra Part III.C for a discussion of PG&E’s January 2019 bankruptcy and pending reorganization efforts.
214. See In re PG&E Corp., slip op. at 6–8.
215. See id. at 11.
216. See Saxer, supra note 58 (manuscript at 32).
safety measures to hold itself accountable. The governor has further mused, as many have argued, that in light of PG&E’s recent troubles, the state should take it over.

California’s other large investor-owned electric utilities, San Diego Gas & Electric and SoCal Edicon, are likewise on precarious financial footing. Losses from the Woolsey Fire, which is speculated to have been caused by SoCal Edicon’s electrical lines, are estimated to be well over $4 billion. Victims have also filed $1.7 billion in insurance claims arising from the Thomas Fire and the subsequent mudslide, which was linked to SoCal Edicon’s equipment. And both companies serve millions of customers in the WUI, so one major fire incident could likewise be devastating.

Recently, utilities have preemptively de-energized their electrical lines during conditions with high wildfire threats in attempts to prevent wildfires from igniting due to downed wires. While utilities occasionally used public safety power shutoffs before 2018 when a utility deemed it necessary, these outages have been occurring more often and with an unprecedented scope: PG&E initiated five rounds of shutoffs across Central and Northern California in October 2019, at one point shutting off the power of nearly 2.5 million people. The shutoffs have been criticized for their impact on elderly and disabled residents whose medical care depends on refrigerated medications and electrically powered medical equipment. The shutoffs have also caused widespread


223. Serna, supra note 162.

224. See Lin, supra note 221.


economic losses for which, unlike liability from wildfire damage, PG&E is not responsible financially.228

PG&E’s October 2019 shutoffs have drawn public ire for the lack of notice provided to affected residents229 and scrutiny over whether the utility preemptively shut off its power solely to protect its financial wellbeing.230 As CPUC reiterated in a recent ruling, a utility is only permitted to shut off power to customers “as a measure of last resort,” and shutoffs are not permissible when used “as a means of reducing [a utility’s] own liability risk.”231 Accordingly, the agency announced that it was investigating PG&E’s October 2019 shutoffs to scrutinize the utility’s shutoff breadth and notification processes as well as to “ensure that utility decisions to shut off power to prevent wildfires are only made when absolutely necessary and are based on actual and substantiated conditions.”232 Despite the public scrutiny, PG&E has projected that such shutoffs will be necessary for another decade while it attempts to rebuild its infrastructure.233

D. Legislative Responses to the California Wildfire Crisis

Wildfire liability allocation has dominated California public policy debate in recent years. Electric utilities have lobbied the legislature to supplant strict liability with a reasonableness standard, while homeowner groups, insurance companies, and ratepayer advocacy groups have opposed any changes.234 As this Part explains, legislative efforts to change the strict liability standard by which property owners recover failed in the last two years. Instead, in 2019, the California legislature created a wildfire insurance fund

228. See, e.g., Bill Swindell, Survey: Early October PG&E Outage Resulted in $50 Million to $70 Million in Losses for Sonoma County, PRESS DEMOCRAT (Nov. 21, 2019), http://www.pressdemocrat.com/business/10346651-181/survey-early-october-pge-outage [https://perma.cc/3AQL-ZPFZ]; Worth & Pinchin, supra note 225 (“Just the first few days of power outages cost $400 million and $600 million in lost economic output, according to an estimate by Moody’s Analytics.”); see also Saxer, supra note 58 (manuscript at 68) (arguing that an electric utility should consider the “cost to customers in terms of loss of productivity, damaged goods, and health and safety considerations” before shutting off its electrical grid).

229. See, e.g., Har, supra note 227.

230. See Worth & Pinchin, supra note 225 (“[M]any of the company’s customers, watchdogs, and regulators have expressed skepticism around the company’s motives [for initiating shutoffs]. . . . Analysts have noted that in addition to safety concerns, PG&E also has a financial incentive to cut power.”); see also Luna, supra note 227.

231. Decision Adopting De-Energization (Public Safety Power Shut-Off) Guidelines (Phase 1 Guidelines), Decision No. 19-05-042, CAL. PUB. UTIL. COMMISSION (May 30, 2019), http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M296/K598/296598822.PDF [https://perma.cc/QQ55-GL45]; see also Worth & Pinchin, supra note 225.

232. Order Instituting Investigation on the Commission’s Own Motion on the Late 2019 Public Safety Power Shutoff Events, No. 1. 19-11-013, CAL. PUB. UTIL. COMMISSION (Nov. 13, 2019), http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M319/K821/319821875.PDF [https://perma.cc/W2HD-8QQL].


234. See infra Part III.D.1.
1. The Public Policy Debate over Modifying the Strict Liability Standard

Many argue that it is unfair to hold a privately owned electric utility liable that complied with CPUC regulations and otherwise acted reasonably, especially because such utilities do not have control over many factors that contribute to wildfire-prone conditions, such as climate conditions, land use regulations, property maintenance, and building codes. Further, critics argue, the underlying policies of imposing strict liability on government actors do not necessarily apply to privately owned electric utilities. Imposing strict liability on an actor is generally premised on its ability to spread its costs broadly among the beneficiaries of its activities. Unlike government entities, privately owned electric utilities cannot spread the costs of wildfire damage to their customers through rate hikes without CPUC approval, thus leaving them solely responsible for significant amounts of liability. Opponents, however, argue that strict liability is preferable to reasonableness because it ensures that injured property owners are made whole after sustaining wildfire damage. Critics of proposals to alter the strict liability standard also contend that a reasonableness standard would decrease electric utilities’ pecuniary incentive to engage in safer practices.

Wildfire liability had been dominating California’s legislative debate well before the Camp Fire. Electric utilities seeking relief from strict inverse condemnation liability lobbied the California legislature heavily. PG&E led the way, spending over $11 million on lobbying activities in 2018.
million in political contributions during the 2017–2018 legislative session.244 PG&E, along with SoCal Edison and San Diego Gas & Electric joined forces with various labor, business, and energy sector groups to form the Building Resilient Infrastructure for Tomorrow’s Economy Coalition,245 which spent over $2 million to run television commercials246 to sway public opinion in favor of limiting wildfire liability for utilities.247 Up from the Ashes, an advocacy group that trial lawyers and aggrieved homeowners formed, and Stop the Utility Bailout, a group that insurance companies formed, joined forces with the California State Association of Counties to oppose legislative changes to the standard of liability.248 These groups argued that the strict liability standard is necessary to ensure that aggrieved homeowners receive just compensation after suffering wildfire damages249 and the proposed legislation to alter the standard would be a “bailout” for the state’s investor-owned electric utilities.250

2. Governor Brown’s 2018 Proposed Reasonableness Standard

Legislative attempts to supplant the strict liability standard imposed on electric utilities with a reasonableness standard have fallen flat in recent years. First, in July 2018, then-Governor Jerry Brown advocated for legislation that would have eased the standard applied to electric utilities in a letter to the Conference Committee on Wildfire Preparedness and Response.251 The proposal required that electric utilities formulate and implement plans to prevent future wildfire damages, subject to CPUC’s approval and oversight.252 Most controversially, the proposed legislation would have instructed California courts to decline to hold a utility liable upon a showing that the utility acted...
reasonably by weighing a series of factors that “balance the public benefit of the electrical infrastructure with the harm caused to private property.”

Ironically, then-Governor Brown’s proposal made its rounds in Sacramento while a wildfire burned nearby, causing a thick haze to surround the state house. Legislators largely panned his proposal, finding modifications to the strict liability standard by which their constituents would recover potential wildfire damages particularly unpalatable given damage caused by recent fires. Instead, the California legislature enacted Senate Bill 901 in September 2018, which created a regulatory scheme that allows electric utilities more liberty to raise their rates to offset liability. Specifically, the legislation created a requirement for electric utilities to submit wildfire safety plans to CPUC for review and approval. Upon a showing to CPUC that it did not act unreasonably in causing the fires, an electric utility can enact rate hikes to offset the costs of such wildfire damage.

Under Senate Bill 901, CPUC considers a series of factors, including an electric utility’s compliance with its approved wildfire safety plan, in determining whether it acted reasonably and could pass along the liability from the wildfire. Many argued that the legislation did not sufficiently alleviate the financial squeeze that an electric utility that CPUC deems to have acted unreasonably could face in future fires.

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253. Id. The legislation would have created five factors by which the reasonableness of a utility’s conduct would be measured:

(1) Nature of the utility’s conduct.
(2) Nature of the harm to private property.
(3) Compliance with regulations, laws, Public Utilities Commission orders, and the utility’s fire mitigation plans . . .
(4) Nature of the system that caused the harm and whether alternatives or mitigation measures are available.
(5) Other circumstances that contributed to the fire or the extent of harm caused by the fire.


259. Id.

Unsatisfied with the legislation, PG&E’s lobbying efforts for a reasonableness standard continued after the legislative session ended, well into the 2018 wildfire season.261

3. Assembly Bill 1054

The Camp Fire, and PG&E’s subsequent bankruptcy, followed shortly thereafter, reinvigorating the debate of how the state will pay for wildfire damages. Recently elected Governor Newsom featured the issue prominently in his first State of the State Address, announcing the creation of a strike force to find solutions to the state’s wildfire crisis.262 In April 2019, the strike force published its report that proposed, among other things, better wildfire prevention and response tactics, clean energy policies to mitigate climate change, and “[f]air [a]location of [c]atastrophic [w]ildfire [d]amages.”263 The report recommended modifying the standard of liability for utilities under article I, section 19 from strict liability to a “fault-based standard” but also advanced two proposals to establish publicly financed funds that utilities faced with wildfire liability could access.264

In July 2019, Governor Newsom signed Assembly Bill 1054, the culmination of the strike force’s report. The bill established a $21 billion fund to help the state’s investor-owned electric utilities cover wildfire costs.265 Half of the fund is bankrolled through a bond that will be financed by a fifteen-year extension of a $2.50 fee in electric customers’ monthly bills statewide.266 The utilities match the other half and will be able to recoup liability from the damage their infrastructure causes, so long as they meet certain conditions.267 The utilities need to commit $5 billion towards “hardening” their electrical infrastructure pursuant to safety plans submitted to CPUC.268 Moreover, to recover from the fund, PG&E must exit bankruptcy before June 2020.269

Under the new law, a utility may still only recover for wildfire damage if it demonstrates by a preponderance of the evidence that it acted reasonably.270 However, the bill afforded the utility a presumption of reasonableness if it can demonstrate that it complied with the bill’s increased safety standards and received an annual safety certification from the state.271 Only if a party to the proceeding “creates a serious doubt
as to the reasonableness of the electrical [utility’s] conduct” will the utility have the burden of demonstrating its reasonableness. The regulatory scheme therefore shifts the burden of wildfire damage from a reasonable utility to ratepayers throughout the state. Because of this aspect of the law, some legislators and advocates have criticized the bill as a “bailout” for the utilities. However, the legislature yet again declined to limit strict liability under article I, section 19 imposed on such utilities.

IV. DISCUSSION

Despite recent criticism that strict liability is “arcane” and impractical, the standard promotes fairness in distributing the burdens of electrical infrastructure and efficiency in the predictable resolution of claims. Part IV.A argues that strict liability is the appropriate standard of liability for inverse condemnation claims arising from electric utility-caused wildfire damage under article I, section 19 of the California Constitution. However, it is financially unsustainable to wholly prevent California’s privately owned electric utilities from distributing those burdens throughout the public. Accordingly, Part IV.B concludes that the California legislature struck the appropriate balance with Assembly Bill 1054 by retaining the strict liability standard while allocating the burdens between the state’s property owners, utilities, and ratepayers.

A. Strict Liability Is the Best Interpretation of Article I, Section 19

Strict liability is necessary to ensure that the burdens of electrical infrastructure are distributed fairly and not borne by the owners of property that wildfires damaged. Fairness is the foregoing principle of inverse condemnation jurisprudence. The strict liability imposed on public utilities under article I, section 19 best serves this principle by ensuring that an award turns not on the character of the government action but rather the nature and extent of the damage the property owner suffered. If the owners of

272. Id.
273. See Nikolewski, supra note 22.
274. Daniels, supra note 250; see also Nikolewski, supra note 22.
275. See The Times Editorial Board, supra note 23; see also Pickoff-White & Orr, supra note 18.
277. See infra Part IV.A.
278. See supra Part III.C for a discussion of the overwhelming amount of liability from wildfires incurred by investor-owned electric utilities.
279. See Armstrong v. United States, 364 U.S. 40, 49 (1960); see also supra Part II.A.
280. See Saxer, supra note 58 (manuscript at 74).
property damaged by a public use went uncompensated, they would be unfairly burdened as they would contribute far more than their fair share to the public undertaking.\textsuperscript{281}

California courts avoid this outcome by spreading “the cost of such damage[, which] can better be absorbed, and with infinitely less hardship, by the taxpayers as a whole than by the owners of the individual parcels damaged.”\textsuperscript{282} Withholding just compensation upon a property owner’s inability to demonstrate an electric utility’s unreasonableness frustrates the underlying policies of protecting individual rights through eminent domain law. Strict liability therefore further promotes fairness by alleviating the practical burdens of pleading an inverse condemnation claim,\textsuperscript{283} since a property owner need not establish with her own evidence the electric utility’s unreasonableness. Instead, such property owners must merely establish “substantial causation” between the damage to their properties and the government action.\textsuperscript{284}

As a judicial standard, applying strict liability to public entities under state constitutional damagings provisions is straightforward and simple, promoting efficiency and predictability. In contrast, imposing a requirement that injured property owners demonstrate a public entity’s unreasonableness would necessitate longer and more extensive adjudication, as it would require significantly more factfinding on the intent or reasonableness of a public entity.\textsuperscript{285} Strict liability is also more predictable because it does not require an opaque balancing of factors.\textsuperscript{286} Determining reasonableness often requires courts to employ a more fluid multifactor standard.\textsuperscript{287} When applying the flood-control project exception to the general rule of strict liability, California courts employ a murky reasonableness standard in which courts consider eleven somewhat overlapping factors.\textsuperscript{288} Or take, for example, former Governor Brown’s proposed reasonableness standard and its accompanying factors: What weight should be placed on the “nature of the utility’s conduct” as compared to the “nature of the harm” to the

\textsuperscript{281}. See Albers v. County of Los Angeles, 398 P.2d 129, 136 (Cal. 1965) (en banc) (considering whether “the owner of the damaged property if uncompensated would contribute more than his proper share to the public undertaking” (quoting Clement v. State Reclamation Bd., 220 P.2d 997, 905 (Cal. 1950), abrogation recognized by Belair v. Riverside Cty. Flood Control Dist., 764 P.2d 1070 (Cal. 1988) (en banc))).

\textsuperscript{282}. Id. at 137.

\textsuperscript{283}. See McNichols, supra note 6, at 77; see also CSAC Letter, supra note 242.

\textsuperscript{284}. See City of Oroville v. Superior Court, 446 P.3d 304, 311 (Cal. 2019).


\textsuperscript{286}. See McNichols, supra note 6, at 77. Using multifactor tests to determine reasonableness in damaging claims can lead to less predictable results:

The benefit of this large number of factors [in determining the reasonableness of a flood-control project] is that the trial courts have wide discretion in deciding the question of reasonableness. However, the severe disadvantage is that they might cast the net too wide, undermining consistency and predictability. Reducing the number of factors, or at least clarifying the weight to be given various factors, would likely increase the predictability of the results in these cases.

\textsuperscript{287}. See id.

\textsuperscript{288}. See id.
property owner? What “other circumstances” must a court consider?\textsuperscript{289} Strict liability avoids this amorphous balancing in favor of a bright-line rule. Thus, under a strict liability scheme, if an electric utility’s infrastructure causes a wildfire, the utility would be able to more accurately predict its liability and incorporate that liability more effectively into its budget.

Imposing strict liability on investor-owned electric utilities for wildfire damage caused by their infrastructure is doctrinally sound when considered against the backdrop of the state’s prior article I, section 19 jurisprudence. As the California Court of Appeal noted in \textit{Pacific Bell}, the Supreme Court of California has largely declined to employ a reasonableness standard in determining whether just compensation is due under this provision outside of the context of flood-control and water diversion infrastructure.\textsuperscript{290} Further, the unique theoretical and pragmatic justifications for the reasonableness standard for flood-control and water diversion projects do not exist with electrical infrastructure.\textsuperscript{291} As the \textit{Pacific Bell} court acknowledged, the risk of wildfire would not exist but for the presence of the public entity’s electrical lines, whereas the risk of natural water damage to private property already exists without public improvement.\textsuperscript{292}

Strict inverse condemnation liability is necessary for electric-utility caused wildfire damage claims because denying just compensation to the impacted property owners would ignore the “fiscal illusion” problem—electric service in California is a greater public burden than is currently reflected in ratepayers’ bills.\textsuperscript{293} It is more appropriate to view the strict inverse condemnation liability imposed on investor-owned electric utilities as a realization of the true cost of developing infrastructure in the WUI as opposed to additional liability attributable to the utility or a property owner.\textsuperscript{294} Strict inverse condemnation liability simply reflects that the burden of public infrastructure includes both budgetary costs as well as the burden of negative externalities of public infrastructure in decisionmaking.\textsuperscript{295} In this sense, strict liability alleviates the fiscal illusion problem—that governments “ignore costs not reflected in budgets.”\textsuperscript{296}

\begin{table}[h]
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\hline
\textbf{Year} & \textbf{Event} \\
\hline
2020 & Electric Utility-Caused Wildfire Damages \\
\hline
\end{tabular}
\caption{Electric Utility-Caused Wildfire Damages Table}
\end{table}

\textsuperscript{289} See supra notes 251–253 and accompanying text for an explanation of then-Governor Brown’s proposed 2018 legislation that would have supplanted the strict liability standard under article I, section 19 of the California Constitution as applied to electric utility-caused wildfire damage with a reasonableness standard.
\textsuperscript{291} See id. For further discussion of the unique factual circumstances of flood-control and stormwater diversion projects necessitating a reasonableness standard, see McNichols, supra note 6, at 104–05.
\textsuperscript{292} See Pac. Bell Tel. Co., 146 Cal. Rptr. 3d at 576 (distinguishing electrical infrastructure from flood control projects, in which a landowner is exposed to a risk that would not exist absent the public improvement).
\textsuperscript{293} See Brady, supra note 24, at 403.
\textsuperscript{294} See Customer Co. v. City of Sacramento, 895 P.2d 900, 935 (Cal. 1995) (en banc) (Baxter, J., dissenting) (finding that public entities that are strictly liable for damaging private property are “simply being assessed for the true cost of the public enterprise in which, by its own choice, it was originally engaged”); see also Brady, supra note 24, at 403; Masso, supra note 35, at 291.
\textsuperscript{295} See Brady, supra note 24, at 403 (“If compensation is required . . . then government will only engage in a confiscatory act when it is truly beneficial, since it will bear more of the costs of its decisions.”).
\textsuperscript{296} Id.
government would, at worst, be zero." Inverse condemnation claims arising from public utility-caused wildfire damage therefore should not be viewed as adding additional cost burdens on the public; strict liability merely imposes upon the public the true cost of the planning, construction, operation, and maintenance of electrical service in the WUI.

B. Assembly Bill 1054 Optimally Allocates the Wildfire Liability Burden

By leaving the strict inverse condemnation liability standard in place while broadening the avenue for investor-owned electric utilities to recover wildfire costs, Assembly Bill 1054 struck the appropriate balance between ensuring fairness to the owners of wildfire-damaged property and spreading the burden throughout the state. Allowing a utility to pass along the costs of its wildfire liability when it acts reasonably comports with the burden-spreading policies underlying inverse condemnation doctrine. An extension of a monthly fee of a few dollars “can better be absorbed, and with infinitely less hardship, by the taxpayers as a whole” as compared to the few owners of homes destroyed by wildfires.

Strict liability, and the financial incentive therewith, also prevents the state from treating wildfire liability as a fiscal illusion and instead forces the state to proactively address its wildfire crisis. Assembly Bill 1054 left the state ample opportunities to encourage the development of safer electrical infrastructure and hold the state’s investor-owned electric utilities accountable. The California legislature has broad authority to mandate more rigorous electric utility preventative safety measures, such as cutting back vegetation, monitoring conditions near power lines, or undergrounding power lines, where feasible. The legislature could mitigate the inherent risks of human development in the WUI that contribute to wildfires. For example, the legislature could enact tighter building-safety and land-use standards and limit human development in some of the most wildfire-prone areas of the WUI. By ensuring that this burden is distributed throughout the state, Assembly Bill 1054 places the political pressure to address these issues and make tough decisions on the California legislature, which often has a broader perspective on the wildfire crisis than the state’s local government bodies.

298. See Saxer, supra note 58 (manuscript at 74) (“Ratepayers and taxpayers will need to bear much of the cost for receiving public benefits. Just as with insurance policy costs, utility rates and taxes should reflect the increased risk of living in disaster-prone areas.”).
299. See Albers v. County of Los Angeles, 398 P.2d 129, 137 (Cal. 1965) (en banc).
301. See supra Part III.A for a brief discussion of potential wildfire mitigation tactics that California investor-owned electric utilities could utilize.
302. See, e.g., Ball, supra note 182 ("Even in the wake of the most recent fires, some local California jurisdictions are streamlining the issuance of permits to rebuild to help homeowners, though wildfires often return to the same places, suggesting the spots that have burned before may burn again."); Lowrey, supra note 182 (reporting that a retired Sonoma County planner could not recall an instance in which approval for a residential development had been denied because of the project’s potential wildfire risk); Smith, supra note 180.
Though outside the scope of this Comment, it is worth noting that legislatively altering the standard of liability for inverse condemnation claims under article I, section 19 would frustrate separation of powers principles.\textsuperscript{303} The Supreme Court of California has long determined that article I, section 19 is a self-executing provision, and, therefore, the California Constitution restricts the legislature’s ability to regulate within its domain.\textsuperscript{304} While the legislature may enact reasonable regulations to facilitate the enforcement of the provision, such as allocating the burden of proof or imposing a statute of limitations,\textsuperscript{305} the California courts have exclusive authority to determine the substantive scope of the right conferred by article I, section 19.\textsuperscript{306} Because the legislature may not limit the scope of article I, section 19’s protection, it therefore may not dictate the standard of liability that California courts must apply to claims brought under that provision\textsuperscript{307}—especially since California appellate courts have considered and rejected creating a categorical exception for electric utility-caused wildfire damage.\textsuperscript{308} Rather, to alter the scope of strict liability under article I, section 19, the state must amend its constitution.\textsuperscript{309}

\section*{V. CONCLUSION}

In passing Assembly Bill 1054, the California legislature properly addressed how Californians must pay for wildfire damages, not whether aggrieved property owners should be denied just compensation altogether. Strict liability ensures that courts give full force to the protection that article I, section 19 of the California Constitution has historically provided property owners. This approach is far more equitable, both substantively and procedurally, than a reasonableness standard and ensures swifter, more predictable resolutions of wildfire damages caused by investor-owned electric utilities. With over a quarter of the population living in the wildfire-prone WUI, compensating homeowners for wildfire damage—and preventing future wildfires from occurring—will

\begin{itemize}
\item \textsuperscript{303} See Memorandum from Cal. State Ass’n of Counties et al. to Members of the Cal. State Senate & Assembly (Aug. 6, 2018) [hereinafter CSAC Memo], http://www.counties.org/sites/main/files/file-attachments/memo_re_gov_proposal_on_utility_liability_for_wildfires.pdf [https://perma.cc/X354-JGNK] (arguing that the then-Governor Brown’s proposal to direct courts to impose a reasonableness standard is unconstitutional).
\item \textsuperscript{304} See Rose v. State, 123 P.2d 505, 513 (Cal. 1942) (“[T]he legislature by statutory enactment may not abrogate or deny a right granted by the Constitution.”); see also Van Alstyne, supra note 78, at 784.
\item \textsuperscript{305} See Van Alstyne, supra note 78, at 784.
\item \textsuperscript{306} See Rose, 123 P.2d at 513; cf. Midway Orchards v. County of Butte, 269 Cal. Rptr. 796, 803 (Cal. Ct. App. 1990) (“It is not within the legislative power . . . to modify, curtail, or abridge a self-executing grant of constitutional power.”).
\item \textsuperscript{307} See Rose, 123 P.2d at 513; see also Van Alstyne, supra note 78, at 784.
\item \textsuperscript{308} See supra Part III.B for a discussion of two California appellate court decisions that established the strict liability standard imposed on privately owned electric utility-caused wildfire damage under article I, section 19 of the California Constitution.
\item \textsuperscript{309} See CSAC Memo, supra note 303.
\end{itemize}
be increasingly expensive for Californians. Imposing strict liability on electric utilities for wildfire damages merely forces the public to account for this.