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WE DIDN’T START THE FIRE . . . DID WE? ANALYZING WHY CALIFORNIA CANNOT SEEM TO EXTINGUISH ITS WORSENING WILDFIRE PROBLEM

I. INTRODUCTION

An old California legend tells the story of how a lumber mill crew in the 1850s looked out over tall evergreens on a summer day and declared, “this is paradise.”1 As fate would have it, the area of land that enthralled the crew with its beauty would later be named Paradise.2 Whether this legend accurately depicts the origin of Paradise’s name is debatable, but for approximately twenty-seven thousand people, this town was once paradise, or at the very least, home.3 Paradise’s website promises scenic nature, recreational activities, and most of all, “an engaging environment.”4 Any visitor now though would be quick to see that the residents have all evacuated – their homes and businesses reduced to ashes.5 Paradise is just one of the many casualties of the California wildfires.6

The wildfires ravaged both northern and southern parts of California, leaving the state and its citizens struggling in the aftermath.7 The fires claimed lives and decimated communities and environments.8 As a result, Californians are keen on ensuring calamities do not escalate to this magnitude again.9 While naturally

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2. Id. (implying lumber mill crew foreshadowed town being named Paradise).
4. Id. (describing Paradise).
6. Id. (detailing how wildfires destroyed Paradise).
7. Id. (describing fire dangers all over California).
8. Id. (discussing wildfire’s impact).
occurring wildfires do arise, many environmentalists believe there is nothing “natural” about these disasters, attributing human activity as the source igniting these flames. With this in mind, California’s largest utility provider, Pacific Gas and Electric (“PG&E”), is facing immense scrutiny for its involvement in past fires. In 2017 alone, the electric company caused sixteen fires. In light of these findings, Californians affected by the wildfires are pressuring political figures to hold PG&E accountable instead of protecting it from liability.

This Comment explores the factors intensifying California’s wildfire crisis and how the state seeks to remedy those mistakes. Part II describes California’s history with wildfires, including the damage caused by the record-breaking fires of 2017 and 2018. The discussion in Part III focuses on PG&E and its role in the recent wildfires. Part IV provides an overview of California’s wildfire regulation and how different political figures have impacted legislation. Finally, Part V expounds on how climate change, PG&E, and California have contributed to the severity of the wildfires and why this crisis demands change.


11. Ayer & Glover, supra note 9 (discussing critics’ feelings towards PG&E in connection with California wildfires).

12. CAL FIRE Investigators Determine Cause of Four Wildfires in Butte and Nevada Counties, CAL FIRE (May 25, 2018), http://files.constantcontact.com/fac05d5d601/84b6787760c5-489b-ac2-bc1-c33df067.pdf (determining PG&E caused four fires in 2017); CAL FIRE Investigators Determine Causes of Twelve Wildfires in Mendocino, Humboldt, Butte, Sonoma, Lake, and Napa Counties, CAL FIRE (June 8, 2018), https://www.fire.ca.gov/media/5100/2017_wildfiresiege_cause.pdf (determining PG&E caused twelve 2017 wildfires).


14. For a discussion of what factors affected California’s wildfire crisis, see infra notes 222-236 and accompanying text.

15. For a discussion of California’s history with wildfires, see infra notes 19-69 and accompanying text.

16. For a discussion of what actions PG&E has taken to start and prolong wildfires, see infra notes 70-142 and accompanying text.

17. For a discussion of California’s policy on wildfire regulations, see infra notes 143-202 and accompanying text.

18. For a discussion of accountability for the wildfires, see infra notes 203-242 and accompanying text.
II. The Evolution of Wildfires in California

Fuel, oxygen, and a heat source – known as the fire triangle among firefighters – combine to ignite and sustain wildfires. California has an abundance of “trees, grasses, brush, and even homes,” which are, essentially, kindling for wildfires. The state also has dry weather and droughts, which make vegetation even more flammable.

Despite the media coverage of the 2017 and 2018 wildfires, the occasional forest fire in California is not a new phenomenon. Wildfires occur naturally and can play an important role in ecosystems, enriching soil by “burning dead or decaying matter . . . [and] removing disease-ridden vegetation and harmful insects.” In addition, these wildfires help sunlight reach plants on the forest floor by removing dense canopies and undergrowth. Unlike these naturally-occurring wildfires, the human-propagated ones to which California has grown accustomed are more catastrophic than beneficial.

A. The “New Normal”: How Rising Temperatures Lead to More Fires

While California has always been a hotbed for wildfires, it has never experienced them at the frequency and intensity of the past few years. According to the California Department of Forestry and Fire Protection (CAL FIRE), the entity investigating the wildfires, fifteen of the twenty largest fires in California occurred within

20. Id. (listing what materials could provide fuel for wildfires).
21. Id. (discussing how weather conditions in California help exacerbate wildfire formation).
22. See Irfan, supra note 10 (explaining occurrence of naturally caused wildfires in nature).
23. Wolters, supra note 19 (discussing naturally occurring wildfires’ integral role in environment).
24. Id. (describing benefit of naturally-occurring wildfire).
25. See Irfan, supra note 10 (characterizing increase in wildfires as growing trend).
the past twenty years. Wildfires are striking more often, and “the average wildfire season now lasts at least [two-and-a-half] months longer than it did in the early 1970s.” As a result, wildfires are no longer limited to burning only between mid-summer and early autumn, which Californians used to recognize as wildfire season. These facts show how wildfires have become an ongoing concern rather than a seasonal risk. Former California Governor Jerry Brown best described California’s worsening wildfire conditions when he famously referred to them as “a new normal.”

Climate change is causing wildfires to become noticeably more commonplace. Higher temperatures during the spring and summer seasons and premature snowmelt lead to dry soil and periods of drought. Drier conditions are particularly dangerous in forests, where branches and plants act as fuel for fires. While these factors - drier conditions, drought, and excess vegetation - are more than sufficient to make a fire lethal, Santa Ana winds further exacerbate a wildfire’s intensity. Santa Ana winds refer to winds that

28. Berke & Varinsky, supra note 26 (explaining how climate change is to blame for increase in wildfires).
30. Berke & Varinsky, supra note 26 (describing wildfire season as now being year-round).
33. Id. (explaining how climate change makes land more susceptible to wildfires).
heat up and lose moisture as they speed down mountain passes. Though they typically only blow for a few days, these fast-moving winds turn small flames into monstrous fires in areas where conditions are already unusually warm and moisture-deprived. Scientists predict that if these conditions worsen, the average area burned could increase by seventy-seven percent. Greenhouse gases are at the root of this problem, as their emissions create a vicious cycle of warming temperatures and fires.

B. The 2017 Wildfires

As California saw in 2017, wildfires are no longer limited to a specific season. Despite December usually functioning as the advent of California’s wet season, the Creek, Rye, and Lilac Fires burned approximately 25,700 acres in southern California. These fires came shortly after the Tubbs Fire, which devastated northern California. The Tubbs Fire burned parts of Napa, Sonoma, and Lake Counties, nearly eviscerating the city of Santa Rosa.

The largest fire of the year was the Thomas Fire, which began in early December and burned approximately 281,893 acres in Ventura and Santa Barbara Counties. Strong Santa Ana winds predicted worse wildfires if greenhouse gas emissions continue to rise. Scientists predict that if these conditions worsen, the average area burned could increase by seventy-seven percent. Greenhouse gases are at the root of this problem, as their emissions create a vicious cycle of warming temperatures and fires.

36. Id. (describing distinct features of Santa Ana winds, such as lack of moisture).
37. Id. (describing how dry Santa Ana winds can rapidly turn flames into larger, deadlier wildfires).
41. Id. (describing damage caused by fires in December).
44. Dakin Andone, The Largest Wildfire in California’s Modern History is Finally Out, More Than 6 Months After it Started, CNN (June 2, 2018, 5:13 PM), https://
vented containment, allowing the Thomas Fire to remain active well into the new year.\footnote{Id. (describing arduous process of containing Thomas Fire).} The Thomas Fire became one of the largest ever in California until 2018, which proved wildfires could get much bigger and deadlier.\footnote{Id. (describing arduous process of containing Thomas Fire).}

C. The 2018 Wildfires

2018 marked a historic year for wildfires, as numerous wildfires spread across the state before ending in Butte County.\footnote{See generally Fire Tracker, S.F. CHRON., https://projects.sfchronicle.com/trackers/california-fire-map/2018-county-fire (last visited July 14, 2019) (listing 2018 California wildfires).} The most prominent fires were the Woolsey and Camp Fires, which began in November and grew more destructive than the fires preceding them.\footnote{See Cleve R. Wootson Jr., The Deadliest, Most Destructive Wildfire in California’s History Has Finally Been Contained, WASH. POST (Nov. 26, 2018), https://www.washingtonpost.com/nation/2018/11/25/camp-fire-deadliest-wildfire-california-history-has-been-contained/?noredirect=on&amp;utm_term=.4b45a6824f9d (discussing Camp Fire damage); Matt Stiles & Jon Schleuss, Woolsey Fire Likely Worst Ever to Hit Malibu, With Home Losses Topping $1.6 Billion, L.A. TIMES (Dec. 3, 2018), https://www.latimes.com/projects/la-me-malibu-woolsey-destruction-map/ (discussing when residents first saw flames from Woolsey Fire).} The Woolsey Fire devastated the Malibu area of southern California.\footnote{Id. (describing effects of Woolsey Fire in Malibu).} At the same time, the Camp Fire raged through northern California.\footnote{See Fire Tracker Camp Fire, S.F. CHRON., https://projects.sfchronicle.com/trackers/california-fire-map/2018-camp-fire (last visited July 14, 2019) (showing location of Camp Fire).} It claimed eighty-five lives and destroyed nearly nineteen thousand structures, a majority of which were residential homes.\footnote{CAL FIRE Investigators Determine Cause of the Camp Fire, Cal. Fire (May 15, 2019), https://www.fire.ca.gov/media/5038/campfire_cause.pdf (describing Camp Fire statistics).} The Camp Fire grew at an unprecedented rate and reduced the town of Paradise to ashes within a single day.\footnote{James Sergent, Damon Arthur, & Karl Gelles, Paradise Lost; Its Residents Found, USA TODAY (Jan. 8, 2019), https://www.usatoday.com/in-depth/news/2018/12/24/camp-fire-tracking-where-paradises-residents-have-gone/240608402/ (detailing how acres burned by Camp Fire grew more than 350 percent from first day to second day).}
D. Living in the Aftermath

Though California has contained all the 2017 and 2018 wildfires, it still faces a difficult and lengthy road to recovery. The Camp Fire displaced about thirty-five thousand people, adding to the number of Californians already displaced by previous fires. The wildfires thus forced the state, particularly northern California, into a housing shortage, with many families relying on the Federal Emergency Management Agency ("FEMA") for temporary housing. Victims will likely rely on FEMA and its resources indefinitely, as it could take time to rebuild all the homes lost to the fires. Furthering their distress, President Donald J. Trump has threatened this relief, tweeting that he "ordered FEMA to send no more money." Though the President has not followed through on his threat, California is not receiving the federal aid it seeks despite congressional negotiations. Early in 2018, Congress and the President failed to reach an agreement on California’s request for nine billion dollars in wildfire relief.

In addition to funding for wildfire victims, cleaning the debris and rebuilding structures will be a costly venture. In 2017, the insurance industry paid a record $11.8 billion to northern California fire victims, while disaster relief officials billed debris removal at around $1.3 billion for this area alone. The insurance payouts of the 2018 wildfires are expected to be even greater, with state and


54. Id. (discussing housing prospects of displaced individuals).

55. Id. (describing how FEMA provides money to temporarily house displaced families).

56. Id. (highlighting need for temporary housing).

57. Donald J. Trump (@realDonaldTrump), Twitter (Jan. 9, 2019, 7:25 AM), https://twitter.com/realdonaldtrump/status/1083022011574747137?ref_src=twsrc%5Etfw%7Ctwcamp%5Edefault%7Ctwterm%5EDonaldTrump%7Ctwcon%5E1 (claiming to have ceased funding for FEMA).


59. Id. (stating California request for aid overlooked in negotiations).


61. Id. (claiming insurance and cleanup costs were at record-high in 2017).
federal authorities estimating clean-up costs will exceed three billion dollars.62

To make matters worse, health experts expect the deteriorating air quality stemming from the fires to adversely affect Californians’ health for years to come.63 In the weeks immediately following the Camp Fire, northern California’s air quality mirrored the conditions of notoriously smoggy and populated countries, such as India and China.64 While “[r]esearch into the long-term health effects of large wildfires is still new[,] . . . a growing body of science shows how inhalation of minuscule particles from wood fires can nestle in the folds of lung tissue and do harm to the human immune system.”65 The health effects have already begun to manifest, with city officials encouraging evacuees to wear face masks and increasing amounts of people becoming hospitalized for respiratory issues.66 In the coming years, California could experience a rise in days with diminished air quality, a prospect that further intensifies the respiratory issues Californians are already facing.67 According to Stanford pulmonologist and allergist, Dr. Sharon Chinthrajah, “California . . . is being reset to a new reality[,]” one where the human body must adapt to climate change.68 The negative effects of the wildfires on both humans and the environment highlight the need for better wildfire prevention.69

62. Id. (discussing expectations for 2018 wildfire costs).
64. Id. (stating smog has adversely affected pollution levels in northern California enough to reflect levels of those in China and India); see also Dolye Rice, Wildfire Smoke Brings World’s Worst Air Quality to Northern California, USA TODAY (Nov. 15, 2018, 4:04 PM), https://www.usatoday.com/story/news/nation/2018/11/15/california-fires-worlds-worst-air-quality-smoke-masks/2014817002/ (reiterating pollution from wildfires parallels world’s most polluted countries).
65. Id. (predicting long-term health effects of heightened pollution levels).
66. Id. (describing effects of breathing toxic air).
67. Francie Diep, California’s Fires are Affecting Cities’ Air Quality Dozens of Miles Away, PAC. STANDARD (Aug. 3, 2018), https://psmag.com/environment/californias-fires-are-affecting-cities-air-quality-dozens-of-miles-away (describing how people suffer from chronic smoke inhalation). The exposure to the toxic air can potentially be so severe that it may be necessary for communities to “designate clean air centers where residents can spend time in filtered air for free.” Id. (discussing potential solution to long-term air pollution from forest fires).
68. See Turkewitz & Richtel, supra note 63 (discussing effects of poor air quality on immune system). Extremely poor air quality can elicit a strong immune response and is particularly more detrimental for people predisposed to asthma or allergy. Id. (describing people most susceptible to harm).
69. See id. (discussing how California faces new danger of diminished air quality).
If climate change is the gasoline, then human activity is the spark that ignites the flame. After being linked to numerous wildfires, the company taking the most blame for the disasters is California’s largest utility provider, PG&E. The San Francisco-based company “provides natural gas and electric service to approximately [sixteen] million people throughout a [seventy thousand]-square-mile service area” in California. Although delivering energy is a necessary service, this fact alone is not enough to be PG&E’s saving grace. CAL FIRE has subjected PG&E to wildfire investigations on numerous occasions, and with each confirmation of PG&E’s involvement, wildfire victims become more determined to make the company pay.

A. Early Mishaps

PG&E is no stranger to controversy and has been under scrutiny for its safety compliance for years before the wildfires. The company gained notoriety on September 9, 2010, when one of their natural gas transmission pipelines in San Bruno ruptured and released natural gas into the air. Chaos ensued when the escaping gas initiated fires in the community surrounding the pipeline. The explosion caused eight deaths and fifty-one injuries, in addition to destroying thirty-eight homes. The subsequent investigations of the San Bruno pipeline explosion have revealed a pattern of safety lapses and regulatory failures by PG&E.

70. Irfan, supra note 10 (stating eighty-four percent of wildfires are caused by humans).
71. See CAL FIRE Investigators Determine Cause of Four Wildfires in Butte and Nevada Counties, supra note 12 (discussing fires started by PG&E); see also CAL FIRE Investigators Determine Causes of Twelve Wildfires in Mendocino, Humboldt, Butte, Sonoma, Lake, and Napa Counties, supra note 12 (attributing multiple fires to PG&E).
73. See id. (describing type of service provided); see also Sam Brock & David K. Li, Raucous Protests Against California Utility PG&E that is Facing Wildfire Claims, NBC News (Jan. 10, 2019, 6:06 PM), https://www.nbcnews.com/news/us-news/raucous-protests-against-california-utility-pg-e-facing-wildfire-claims-r957351 (discussing protesters’ discontent over PG&E).
74. Id. (highlighting protesters’ pleas for no PG&E bailout).
76. Id. (describing how explosion started).
77. Id. (discussing how fires erupted in nearby communities following explosion).
78. Id. (describing consequences of explosion).
tions resulted in reports of PG&E’s inadequate adherence to safety regulations.\(^79\) In one of the preliminary investigations of the incident, the National Transportation Safety Board (“NTSB”) reported that PG&E’s records for the pipeline contradicted the NTSB’s findings at the rupture site.\(^80\) A federal jury later found PG&E guilty of six counts, including intentionally hiding information about two past leaks and attempting to obstruct the NTSB investigation.\(^81\) In sentencing the company, Judge Thelton Henderson best captured the resulting devastation of PG&E’s non-compliance:

PG&E violated the sacred trust placed in it by every person living in or merely passing through Northern California to follow minimum standards of safety in operating its natural gas pipelines - pipes that transport highly explosive material under the public’s homes, freeways, and businesses. Its deliberate and repeated choices not to do so were motivated by the desire to maximize profits instead of safety - in other words, greed. The San Bruno explosion was not an “accident”; it was a matter of time. And PG&E’s efforts to corruptly mislead the federal investigation of the explosion highlight its status as a bad corporate citizen.\(^82\)

Despite the Judge’s pointed words and sentence, which included a three million dollar fine, the California Public Utilities Commission (CPUC) investigated PG&E for falsifying gas pipeline records again in 2018.\(^83\) CPUC found PG&E violated rules “requiring utilities to locate and mark natural gas pipelines to make sure other companies [do not] accidentally damage them during construction and other projects that involve digging.”\(^84\) In other words, despite PG&E’s alleged commitment to “accurate and thor-

\(^79\) See id. (stating findings of explosion investigations).
\(^80\) Pacific Gas & Electric Pipeline Rupture in San Bruno, CA, supra note 75 (noting inconsistencies in PG&E’s pipeline records).
\(^84\) Id. (describing CPUC findings).
ough reporting and record-keeping” following the 2010 explosion, it had maintained similar unsafe practices.85

Though it has been nearly a decade since the San Bruno pipeline explosion, PG&E has not redeemed itself of “its status as a bad corporate citizen.”86 On January 30, 2019, United States District Judge William Alsup found PG&E had “violated the terms of . . . [its] probation by not communicating with its probation supervisors about a legal settlement regarding a 2017 California wildfire.”87 During their probation hearing, the Judge admonished PG&E for its lack of commitment to safety and vehemently expressed concerns about PG&E continuing its business in such a manner.88

B. Involvement in the 2017 Wildfires

PG&E’s superficial adherence to safety compliance is also apparent in the way it maintains its powerlines.89 After thorough investigations of the 2017 wildfires, CAL FIRE found PG&E was responsible for sixteen of the fires in total.90 A year after the fires, CAL FIRE released findings regarding the four wildfires in Butte and Nevada Counties.91 For the Lobo, Honey, and McCourtney Fires, CAL FIRE determined PG&E violated Public Resources Code Section 4293.92 This regulation delineates the minimum distance from which utility providers must keep their powerlines away from trees.93 For the Lobo and Honey Fires, CAL FIRE found PG&E acted in violation of Section 4293 by failing to provide “adequate

85. See id. (contrasting PG&E’s alleged commitment to safety against practices).
87. Id. (detailing how PG&E violated probation terms).
88. Id. (highlighting Judge Alsup’s concern for PG&E practices).
90. CAL FIRE Investigators Determine Cause of Four Wildfires in Butte and Nevada Counties, supra note 12 (summarizing CAL FIRE findings); CAL FIRE Investigators Determine Causes of Twelve Wildfires in Mendocino, Humboldt, Butte, Sonoma, Lake, and Napa Counties, supra note 12 (listing causes of additional fires).
91. CAL FIRE Investigators Determine Cause of Four Wildfires in Butte and Nevada Counties, supra note 12 (stating causes of Butte and Nevada counties wildfires).
92. Id. (finding PG&E violated California code).
93. CAL. PUB. RES. CODE § 4293 (West, Westlaw through Ch. 215 of 2019 Reg. Sess.) (requiring powerlines to be sufficient distance from trees).
clearance between trees and powerlines.\footnote{CAL FIRE Investigators Determine Cause of Four Wildfires in Butte and Nevada Counties, supra note 12 (finding PG&E failed to maintain distance of powerlines).} PG&E also violated Section 4293 when it failed to remove a tree from the proximity of a powerline, which CAL FIRE found to be the origin of the McCourtney Fire.\footnote{Id. (finding PG&E failed to remove fallen tree).} In addition, CAL FIRE determined PG&E owned the powerline that started the La Porte Fire, though PG&E was not cited with a violation.\footnote{Id. (determining branches falling on PG&E equipment caused La Porte Fire).} Under California’s inverse condemnation doctrine, utility companies like PG&E are still liable for wildfires, absent a code violation, if their equipment is involved.\footnote{Jeff St. John, PG&E Accused of Violating State Law in 8 Northern California Wildfires, GREEN TECH MEDIA (June 11, 2018), https://www.greentechmedia.com/articles/read/pge-accused-of-violating-state-law-in-8-northern-california-wildfires#gs.XZmT9tPw (stating PG&E can be liable under inverse condemnation).}

For the other twelve fires attributed to PG&E, CAL FIRE linked the utility company’s equipment to the wildfires’ origins.\footnote{CAL FIRE Investigators Determine Causes of Twelve Wildfires in Mendocino, Humboldt, Butte, Sonoma, Lake, and Napa Counties, supra note 12 (discussing fires caused by PG&E’s equipment failures).} For many of them, PG&E’s powerlines ignited fires after a “tree or parts of trees” fell onto them.\footnote{Id. (finding trees hitting powerlines caused many fires).} Both the Redwood and Atlas Fires began in this manner and claimed the lives of fifteen civilians in total.\footnote{Id. (stating fire causes and casualties).} Fallen trees or tree parts hitting PG&E powerlines also caused the Norrbom, Adobe, Patrick, and Nuns Fires.\footnote{Id. (listing series of fires and their causes).} These fires merged together into one large fire and claimed three civilian lives.\footnote{Id. (describing damage caused by fires).}

In other cases, PG&E’s equipment failures initiated the fires.\footnote{Id. (stating fire causes and casualties).} For instance, the Sulphur Fire began when a PG&E owned power pole failed, causing powerlines and equipment to detach and fall.\footnote{Id. (listing series of fires and their causes).} Similarly, the Blue Fire began when a PG&E “[powerline] conductor separated from a connector, causing it to fall to the ground.”\footnote{Id. (describing formation of Sulpher Fire).}
ground, starting the fire.”  

To PG&E’s relief, CAL FIRE found that the company’s facilities were not responsible for the infamous Tubbs Fire. The Tubbs Fire, one of the largest infernos in 2017, burned 36,807 acres and ravaged entire neighborhoods in Santa Rosa. CAL FIRE determined a malfunction of a private electric system caused the fire, leading to the deaths of twenty-two civilians and injured one firefighter.

C. Scrutiny in 2018

After a thorough investigation, CAL FIRE confirmed what many had long suspected: PG&E’s equipment caused “the deadliest and most destructive fire in California history.” The fire earning such an infamous title is the Camp Fire, which left 153,336 acres scorched in its aftermath. Early in its investigations, CAL FIRE reported two Camp Fire origin points, both involving PG&E facilities. One of the origin points was PG&E’s Caribou-Palermo transmission line, and the other was PG&E’s Big Bend distribution line. The first sign of trouble was when PG&E discovered a malfunction at its Caribou-Palermo transmission line. CAL FIRE reported the Camp Fire began fifteen minutes after this outage.

105. CAL FIRE Investigators Determine Causes of Twelve Wildfires in Mendocino, Humboldt, Butte, Sonoma, Lake, and Napa Counties, supra note 12 (describing formation of Blue Fire).

106. Id. (describing fires started by PG&E’s faulty distribution lines).


108. Id. (stating acreage burned by Tubbs Fire); Morris & Johnson, supra note 43 (describing Tubbs Fire devastation in Santa Rosa).

109. Id. (describing Tubbs Fire casualties).

110. See CAL FIRE Investigators Determine Cause of the Camp Fire, supra note 51 (confirming PG&E involvement in Camp Fire).

111. Id. (describing Camp Fire damage).


113. Id. (describing PG&E’s facilities near Camp Fire origin points).

114. Id. (stating first malfunction on day of Camp Fire).

tion line, which sparked another fire. The original fire consumed the subsequent flames, creating one large inferno. It burned rapidly through Butte County and drew strength from the area’s “strong winds, low humidity, and warm temperatures.” Although the weather conditions exacerbated the situation, PG&E did not deny the role of its equipment in initiating the fires.

D. Bankruptcy and the Fallout of the Investigations

Amidst scrutiny emanating from the wildfires, PG&E signaled it was realizing the consequences of its role in the disasters. At the beginning of 2019, Geisha Williams stepped down as PG&E’s Chief Executive Officer, and the board named former General Counsel John Simon as interim CEO. This change in leadership, along with three other top executives stepping down, signified prominent attempts at reforming PG&E in response to the wildfires.

On January 29, 2019, PG&E filed for bankruptcy in San Francisco. The company sought Chapter Eleven protections, making it “one of the largest corporate-reorganization cases in years,” and the sixth largest bankruptcy filing of all time. It is uncommon for a utility provider to file for bankruptcy because its status as a natural monopoly guarantees financial returns. The most recent filing represents the second time PG&E has filed for bankruptcy in less than twenty years, and it has done so due to the litigation from

116. See Li, supra note 112 (discussing second outage at Big Bend distribution line).
117. See CAL FIRE Investigators Determine Cause of the Camp Fire, supra note 51 (discussing Camp Fire’s rapid growth).
118. Id. (explaining conditions promoting Camp Fire).
121. Id. (discussing CEO resignation).
123. Id. (discussing PG&E bankruptcy decision).
124. Id. (describing significance of second PG&E bankruptcy).
125. Blunt & Gold, supra note 120 (highlighting monopolistic nature of utility providers).
Despite financial uncertainty, PG&E has expressed its top priority is to “keep the lights on,” and Judge Montali has been sympathetic to this goal. The Judge issued an interim order permitting the company to spend $1.5 billion of a $5.5 billion bank loan to prevent service disruption during the bankruptcy proceedings. Judge Montali also granted PG&E’s request to pay employees approximately $235 million in bonuses, which PG&E claimed will be used to “achiev[e] safety goals and . . . promote stability in the workforce amid the chaos surrounding the company.”

While exoneration for the Tubbs Fire grants PG&E some relief, the company could still face massive liabilities. A bankruptcy court may provide additional relief for PG&E, but this comes at a cost for both the utility provider and its consumers. For instance, PG&E attempted to cancel numerous contracts committing it to purchasing solar, wind, and other renewable energy for use all over

126. See id. (discussing impact of potential liabilities on company).
127. Id. (discussing extent of potential liabilities).
129. Id. (describing Judge Montali’s PG&E reorganization in 2001).
133. Blunt & Gold, supra note 120 (detailing liabilities despite Tubbs Fire finding).
California. PG&E committed to these “power purchase agreements” years ago to transition to more renewable energy sources and conform with California’s environmental goals. As a result of its unprecedented liabilities, PG&E requested that the bankruptcy court “bar federal regulators from requiring that its contracts be left intact.” If permitted to cancel the contracts, PG&E would save money that could be used to stay in business, but it would be at the cost of foregoing potentially sustainable resources and practices for the future.

When a sizable corporation like PG&E suffers, so do the thousands of people who rely on it. Californians who survived the wildfires could find their recovery burdened by the bankruptcy. PG&E’s filing could hinder the ability of fire victims to recover losses and increase already inflated electricity rates for existing customers. Conflicting interests will inevitably converge, as consumers resist paying higher prices and creditors pressure the company for financial viability.

IV. California Wildfire Regulation: Then and Now

As PG&E’s bankruptcy proceedings continue, the challenge is balancing the interests of victims, consumers, creditors, environmentalists, and the company itself. The overwhelming interests of these parties place pressure on the California legislature and other notable politicians. To understand fully California’s wild-

135. Id. (discussing PG&E’s decision to cancel contracts for sustainable technology).
137. Rogers, supra note 134 (discussing contract cancellation in bankruptcy).
138. Id. (discussing PG&E’s strategy to avoid commitments and save costs).
139. Blunt & Gold, supra note 120 (discussing bankruptcy’s negative effect on PG&E consumers).
140. Id. (predicting negative consequences of bankruptcy).
141. Id. (explaining how fire victims and customers will pay for bankruptcy).
143. See id. (discussing difficulty of resolving conflicting interests).
fire crisis, it is important to know how the state previously tried to mitigate against wildfires started by utility providers. Former Governor Jerry Brown’s attempts to remedy the damage, and incumbent Governor Gavin Newsom’s assurances that PG&E will be held accountable, are also significant in understanding California’s present landscape for wildfire regulation.

A. Inverse Condemnation

CAL FIRE reported PG&E’s equipment started fires, despite not citing the company with a violation of California’s Public Resources Codes. Under the state’s inverse condemnation doctrine, PG&E is still liable to wildfire victims because its equipment was involved. States have typically used inverse condemnation to hold government agencies accountable when they “damage private property while providing a public service.” California courts have expanded this doctrine to allow property owners to hold both public and private utilities accountable when their equipment causes damages. The rationale behind this policy is that the state authorizes utilities “to provide a vital public service.”

The court of appeals in Barham v. Southern California Edison Co. applied California’s inverse condemnation in finding Southern California Edison Company (“SCE”) liable for wildfire damage. SCE experienced an overhead powerline equipment failure, which ignited the Mill Creek Fire. After the fire destroyed their homes, many property owners sought to recover their losses from the utility company. The district court applied inverse condemnation to award the plaintiffs damages from SCE, and the court of appeals

145. Id. (describing Newsom’s promises regarding utility company accountability).
146. See id. (discussing difficulty Newsom administration faces with PG&E).
147. For a discussion of when PG&E equipment started wildfires, see supra notes 98-106 and accompanying text.
149. Id. (explaining typical inverse condemnation application).
150. Id. (detailing California’s unique application for doctrine).
151. Id. (explaining California’s justification for expanding inverse condemnation).
153. Id. (reasoning inverse condemnation applicable).
154. Id. at 748-49 (discussing factual background).
155. Id. at 747-48 (explaining plaintiffs’ interest in applying inverse condemnation).
affirmed.156 The court of appeals ruled “[a]n inverse condemnation action is an eminent domain action by one whose property was taken for public use.”157 It further found “condemning private property for the transmission of electrical power” constituted a public use.158 Even though SCE was a private company, the court subjected it to inverse condemnation liability because its role was to provide electrical power, which is a public use.159

Unsurprisingly, utility providers are averse to the inverse condemnation doctrine, and PG&E even credits California’s interpretation of the doctrine for its bankruptcy.160 Former PG&E CEO Geisha Williams called inverse condemnation “simply bad public policy[,]” blaming it for falling stock prices and the decision to suspend dividends to shareholders.161 Courts, on the other hand, think it is more equitable for utility providers, who have more money than disaster victims, to pay damages that would not have happened without their equipment.162 PG&E argues that despite its size, generating the money to pay for these damages is complicated, especially because they do not determine “whether the money comes from customers or investors.”163 Instead, CPUC decides where the funds can be taken from.164 PG&E has challenged the extent of CPUC’s control because the company faces enormous liabilities, and CPUC prevents them from charging customers higher rates to help mitigate these costs.165 Based on this reasoning, PG&E challenged California’s inverse condemnation doctrine

156. Id. at 747 (outlining procedural background).
158. Id. (characterizing providing electrical services as public use).
159. Id. at 752-53 (rejecting SCE’s argument that inverse condemnation is not applicable to private companies).
161. Id. (explaining impact of inverse condemnation on PG&E’s financial performance).
163. Id. (explaining PG&E’s lack of control in decision-making).
164. Id. (highlighting CPUC’s power over PG&E).
in the state’s supreme court.\textsuperscript{166} In its court filing, PG&E asserted that California courts assume utilities are just like government entities that can spread their costs among the public by manipulating taxes.\textsuperscript{167} However, PG&E does not have this ability, as CPUC has discretion on this matter.\textsuperscript{168} According to PG&E, it is “caught in a whipsaw between unlimited strict inverse condemnation liability . . . and the CPUC’s refusal to take that liability into account in rate recovery.”\textsuperscript{169} PG&E argues the result of their circumstances is bankruptcy derived from exponential liability and an inability to pursue the appropriate means of reducing it.\textsuperscript{170}

\section*{B. Governor Brown’s Enactment of Senate Bill 901}

In the final months of Governor Brown’s term, he faced the difficult task of deciding what to do with PG&E amidst contentious years of wildfires.\textsuperscript{171} Before leaving office, Governor Brown signed Senate Bill 901 into law, which addressed some of PG&E’s concerns regarding its inability to charge higher rates.\textsuperscript{172} Senate Bill 901 specifically permits CPUC to “allow cost recovery if the costs and expenses are just and reasonable, after consideration of the conduct of the utility.”\textsuperscript{173} The legislation also lists twelve factors CPUC can use to determine whether PG&E acted reasonably in maintaining its equipment.\textsuperscript{174} If PG&E meets this “reasonableness” standard,

\begin{itemize}
\item \textsuperscript{166} See id. (blaming lack of control over rates for financial trouble).
\item \textsuperscript{167} See id. (characterizing courts’ premise for admonishing PG&E as incorrect).
\item \textsuperscript{168} See id. (explaining courts’ and CPUC’s adverse impact on PG&E recovery).
\item \textsuperscript{169} Id. at 11 (asserting PG&E burdened because CPUC and courts lack insight into its ability to pay liabilities).
\item \textsuperscript{170} See Petition for Review, supra note 165, at 18 (concluding PG&E lacks recourse without ability to spread costs among public).
\item \textsuperscript{172} See generally 2017 CA S.B. 901 (Cal. 2018) (allowing PG&E to charge higher consumer rates under certain circumstances).
\item \textsuperscript{173} Id. § 26 (describing when CPUC should allow PG&E to charge higher rates).
\item \textsuperscript{174} See id. (emphasizing PG&E must meet standard to increase rates). To determine whether the “costs and expenses are just and reasonable[,]” CPUC must consider the following:
\begin{enumerate}
\item The nature and severity of the conduct of the electrical corporation and its officers, employees, contractors, and other entities with which the electrical corporation forms a contractual relationship, including systemic corporate defects.
\item Whether the electrical corporation disregarded indicators of wildfire risk.
\item Whether the electrical corporation failed to design its assets in a reasonable manner.
\item Whether the elec-
CPUC will allow recovery through consumer rates.\(^{175}\) In addition, for the 2017 wildfires, the bill instructs CPUC to consider PG&E’s “financial status and determine the maximum amount the corporation can pay without harming ratepayers or materially impacting its ability to provide adequate and safe service.”\(^{176}\) Costs that exceed this determined amount “would be allowed to be covered through bonds issued by PG&E and backed by increased rates on customers.”\(^{177}\) Supporters of the bill seek the longevity of PG&E, as they believe its financial ruin could have tumultuous economic and energy-related effects in the long run.\(^{178}\)

In contrast, some Californian constituents have expressed concerns over Senate Bill 901.\(^{179}\) Opponents of the bill called it a “bailout” for PG&E, believing it is a way for the company to pass wildfire costs onto consumers.\(^{180}\) While this bill allows PG&E to use consumer rates to pay liabilities under the appropriate circum-

\[^{175}\] Id. (explaining grounds for allowing recovery through consumer rates).

\[^{176}\] Id. § 27 (detailing CPUC considerations).


\[^{178}\] See id. (stating bill supporters’ concerns over PG&E bankruptcy).

\[^{179}\] Avalos, supra note 171 (describing opponents’ characterizing legislation as bailout).

\[^{180}\] Id. (discussing opponents’ belief bill constitutes bailout).
stances, there is a major setback for the company. Senate Bill 901 does not include the 2018 wildfires. In other words, PG&E is not immune from any of the costs associated with the Camp Fire.

Another important aspect of Senate Bill 901 is its efforts to expand utility companies’ existing wildfire mitigation requirements. For instance, electrical corporations will now be required to submit wildfire mitigation plans to CPUC, which CPUC must review and approve within three months of submission. Additionally, the bill requires increased communication between CPUC and CAL FIRE so that they work in conjunction to monitor the conditions of fire-prone areas before a blaze starts. This legislation also creates a new department, the Commission on Catastrophic Wildfire Cost and Recovery, designed specifically to examine the propensity of utility infrastructure in starting catastrophic wildfires. Throughout Governor Brown’s term in office, Californians considered him an ally to utilities, and the former Governor’s decision to sign this bill was consistent with that reputation.

C. Governor Newsom’s “Accountability” Approach to Wildfire Liability

Governor Gavin Newsom took office in early 2019, and with assurances from his campaign that PG&E would be held accountable, the current Governor will have a different relationship with PG&E than his predecessor. Governor Newsom has a history with the company that began when he served as mayor of San Francisco, where PG&E is based. As mayor, Governor Newsom was “friendly with the company[,]” and PG&E and its top executives

182. Id. (explaining Senate Bill 901 overlooks 2018 wildfires).
183. See id. (describing financial concerns due to unfavorable legislation).
184. See generally 2017 CA S.B. 901 (discussing changes to wildfire mitigation).
185. Id. § 38 (requiring new submission process). Electrical corporations are to submit their wildfire mitigation plans to CPUC according to a schedule determined by CPUC. Id.
186. Id. § 41 (discussing increased communication between organizations).
187. Id. (creating new commission).
189. Id. (predicting Governor Newsom’s relationship with PG&E).
190. Id. (providing background on Newsom’s term as San Francisco mayor).
were even known to donate to his gubernatorial campaign.\footnote{191} However, the Governor was also firm with PG&E regarding certain issues and rebuked the utility for multiple equipment failures, including one that sparked an explosion and seriously injured a pedestrian.\footnote{192} Later, when Governor Newsom served as California’s lieutenant governor, he used his authority over PG&E to close the state’s last nuclear plant.\footnote{193}

In addition to accountability, Governor Newsom expressed concerns over PG&E’s solvency to the extent it affects California residents.\footnote{194} The Governor’s office is collaborating with regulators and PG&E personnel to find a solution to the embattled company’s financial troubles.\footnote{195} Governor Newsom expressed his desire to keep PG&E financially secure enough to continue its services.\footnote{196} In furtherance of this goal, the Governor appointed three people to the five-member Commission on Catastrophic Wildfire Cost and Recovery, which was formed under Senate Bill 901.\footnote{197} The Commission - now consisting of a former state Insurance Commissioner, San Francisco attorney, and former CPUC member - must produce a detailed report for the Governor and the California Legislature that recommends changes to ensure “equitable distribution of costs” following the fires.\footnote{198} Governor Newsom also made his first appointment to CPUC with Genevieve Shiroma, a member of California’s Agriculture Labor Relations Board who has experience working with air quality.\footnote{199}

In addition to these appointments, “Newsom also signed an executive order to prioritize state emergency management spending

\footnote{191. Id. (stating friendly relations between Newsom and PG&E).  
192. Id. (describing instances Newsom reprimanded company).  
195. Id. (describing collaborative efforts between Newsom and PG&E).  
196. See id. (claiming Newsom wants PG&E financial viability for state’s residents).  
198. Id. (describing duties of new appointments).  
on communities at high risk during natural disasters." The Governor also "signed a second executive order to better streamline the procurement for state emergency agencies modernizing their equipment." Although Governor Newsom voiced his commitment to wildfire victims, Californians have high expectations for the Governor that include: fulfilling his assurances of accountability, calling for PG&E transparency, approaching remedial efforts by PG&E with skepticism, and insisting on CPUC reform.

V. Who Started the Fire?

The question of who is responsible for the California wildfires is a contentious inquiry, yielding not one definite culprit but multiple. With CAL FIRE’s numerous reports of PG&E’s involvement, many Californians blame PG&E. PG&E opponents seek to make an example out of the utility provider and allow its financial ruin to be retribution for its disregard of safety. Judge Alsup best captured the anger against PG&E when he faced the company for its probation hearing:

To my mind, there’s a very clear-cut pattern here: that PG&E is starting these fires[.] . . . What do we do? Does the judge just turn a blind eye and say, ‘PG&E, continue your business as usual. Kill more people by starting more fires’? . . . Will we be seeing headlines: ‘PG&E has done it again[’] . . . Started another fire and some other town burned down because you didn’t turn the power off or you didn’t cut the trees?

200. Phil Willon, Gov. Gavin Newsom Announces Plans to Improve California’s Wildfire Prevention Efforts, L.A. TIMES (Jan. 8, 2019, 4:40 PM), https://www.latimes.com/politics/la-pol-ca-governor-gavin-newsom-wildfires-20190108-story.html (explaining how executive order will help wildfire prevention). Some of these communities are areas that “based on geography, are more disaster-prone or that have more vulnerable populations – including the elderly, who have more difficulty evacuating.” Id.

201. Id. (describing purpose of second executive order).


203. For a discussion of the varying accounts of what started the wildfires, see infra notes 222-236 and accompanying text.

204. Ayer & Glover, supra note 9 (highlighting anger directed at PG&E for involvement in wildfires).

205. See Avalos, supra note 171 (describing anger at Senate Bill providing relief for PG&E).

On the other hand, PG&E and its sympathizers are also correct in crediting climate change with creating a hostile environment that breeds wildfires.207 Those dismayed by PG&E’s bankruptcy call it a “the first major corporate casualty of climate change.”208 They believe PG&E’s troubles began because it was overwhelmed by extreme weather conditions that dramatically increase the risk of fire, such as prolonged droughts and high temperatures.209 In their opinion, PG&E never stood a chance against climate change on its own.210 As a result, they also blame the State of California.211 PG&E’s proponents question how California expected one company to oversee one hundred twenty million trees across one hundred twenty-five thousand miles of powerlines.212 They criticize the state for using its inverse condemnation doctrine to force PG&E to pay for liabilities it did not cause and for allowing CPUC to determine how PG&E uses its money.213 Essentially, PG&E must pay for non-negligent liabilities with limited funds, while simultaneously trying to meet the state’s demands for greener technology.214 PG&E’s bankruptcy has opened opportunities for other electrical companies to take its place, but even they have been unable to assume all PG&E’s responsibilities.215 San Francisco began switching portions of the city from PG&E’s electrical services to CleanPowerSF, which derives almost half of its power from renewable

208. Id. (attributing PG&E’s turmoil to climate change victim).
209. Id. (arguing PG&E could not keep up with climate change).
211. See id. (explaining state’s unrealistic expectations for PG&E).
212. Id. (arguing impossible for PG&E to provide energy services to all customers and maintain each powerline).
213. For a discussion of CPUC’s discretion over PG&E’s finances, see supra notes 163-165 and accompanying text.
214. For a discussion of PG&E’s contentions with California’s inverse condemnation doctrine, see supra notes 160-170 and accompanying text.
While CleanPowerSF is increasing the number of households served, it relies on PG&E to help with matters such as distribution and outages, supporting the argument that maintaining PG&E’s infrastructure is an arduous task.\footnote{Id. (differentiating CleanPowerSF from PG&E).}

In addition, other critics, such as President Trump, believe the state should have taken more responsibility in its forest management.\footnote{See id. (suggesting CleanPowerSF incapable of handling PG&E’s infrastructure).} After his visit to Paradise, President Trump tweeted, “[b]illions of dollars are given each year, with so many lives lost, all because of gross mismanagement of the forests.”\footnote{Id. (blaming gross mismanagement of forests for wildfires).} Some forestry experts agree with President Trump’s controversial assertion, claiming communities sat idly while California forests grew thick with trees and their wood debris, which were perfect for fueling wildfires.\footnote{See Donald J. Trump (@realDonaldTrump), TWITTER (Nov. 10, 2018, 3:08 AM), https://twitter.com/realDonaldTrump/status/1061168803218948096?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1061168803218948096&ref_url=https%3A%2F%2Fwww.cnn.com%2F2018%2F11%2Fpolitics%2Fcalifornia-wildfires-trump-tweets%2Findex.html (suggesting state is at fault).}

Different perspectives yield different sources of the 2017 and 2018 California wildfires, but ultimately, there is truth in each assertion.\footnote{Id. (crediting climate change for wildfire crisis); Kraus, supra note 89 (describing CAL FIRE reports confirming PG&E caused 2017 wildfires); Mui, supra note 210 (arguing high California expectations for PG&E to maintain all powerlines and monitor outages).} The wildfires resulted not from a single source, but from a totality of different factors exacerbating each other over the years.\footnote{See Berke & Varinsky, supra note 26 (crediting climate change for wildfire crisis); Kraus, supra note 89 (describing CAL FIRE reports confirming PG&E caused 2017 wildfires); Mui, supra note 210 (arguing high California expectations for PG&E to maintain all powerlines and monitor outages).} In other words, climate change, PG&E, and California itself are all culpable in their own distinct ways.\footnote{See Irfan, supra note 10 (arguing humans cause fires in areas where climate change increased risk).}

The effects of climate change made areas in California exponentially more susceptible to wildfires.\footnote{For a discussion of how aggravating factors triggered intense wildfires, see infra notes 224-235 and accompanying text.} As a result, wildfires began to burn more frequently and out of the traditional wildfire...
Parts of Australia are similarly experiencing conditions that promote wildfires, strongly supporting the argument that California is not an anomaly and climate change is in fact causing wildfires. The National Climate Change Adaptation Research Facility in Australia reported that the country’s heat waves have become an annual ordeal, instead of being limited to its summer months – December, January, and February. Like California, rising temperatures in Australia are causing several wildfires to burn at once, exposing vulnerable parts of the country to unprecedented damage.

However, climate change does not exclude PG&E from blame. The company has a history of cutting corners when it comes to safety and purposefully defying regulations designed to prevent wildfires. PG&E has not shied away from recognizing its own culpability, especially when it assumed responsibility for the Camp Fire long before CAL FIRE’s official determination.

In addition, the need for better wildfire regulation implicates the state and highlights its role in the wildfire crisis. Some Californians perceive Senate Bill 901 and Governor Newsom’s accountability platform as policies that should have been in place years ago to avoid the most recent calamities. California is partially at fault because despite signs suggesting PG&E was struggling...
for years, the state failed to see the company’s shortcomings were part of a larger systemic problem. The remedial measures of both Governors Brown and Newsom prove California is only now noticing how overwhelmed PG&E was in maintaining its massive infrastructure amidst worsening environmental conditions. While business executives and politicians are eager to point fingers at one another, there is simply no single identifiable source, as they all played a significant role in the wildfire crisis.

Without implementing changes, such as slowing down climate change and enforcing safety compliance, the wildfires will worsen. Their destruction hurts everyone – the state, residents, and businesses. PG&E surrendered most of its control to a bankruptcy court, while California struggles to rebuild after the wildfires. Unfortunately, the people who suffer the most are the surviving victims of the wildfires. A housing crisis, potential long-term health ailments, and little opportunity for recompense hinder

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234. See Mui, supra note 210 (claiming climate change inflicts near-term pain for businesses).

235. Id. (discussing hardships PG&E faced because of climate change). In response to political pressure, PG&E spent $435 million to clear dead trees and removed about four hundred thousand trees, in addition to the 1.4 million trees it prunes annually. Id. (describing PG&E efforts to offset climate change consequences). Because of climate change, however, the company’s efforts had little impact. Id. (suggesting PG&E could not maintain every tree in California).

236. Id. (suggesting California’s expectations for PG&E were unrealistic); DeVore, supra note 232 (arguing new laws could have alleviated California’s wildfire damage sooner).

237. Is Global Warming Fueling Increased Wildfire Risks?, supra note 32 (stating high chances for more wildfires if no reduction in greenhouse gasses); Pierre-Louis & Popovich, supra note 39 (concluding more wildfires will lead to increased emissions).

238. California Wildfire Costs Soar Past Last Year’s Records, supra note 60 (detailing financial burden of wildfires on state); Wildfire Victims Thrust into Northern California Housing Shortage, supra note 53 (stating displaced families unsure of housing); Blunt & Gold, supra note 120 (concluding wildfire liabilities pushed PG&E into bankruptcy).

239. Id. (detailing PG&E’s bankruptcy); see also Kopan, supra note 58 (stating California’s request for wildfire relief rejected).

their ability to heal. 241 It will likely take at least a decade before they can look at their homes and think, “this is paradise.” 242

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241. For a discussion of hardships victims face following the wildfires, see supra notes 53-69 and accompanying text.

242. See Wildfire Victims Thrust into Northern California Housing Shortage, supra note 53 (predicting years will pass before destroyed towns are rebuilt).

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