



1-27-2020

## We Didn't Start the Fire...Did We? Analyzing Why California Cannot Seem to Extinguish Its Worsening Wildfire Problem

Rizzlyn Terri M. Melo

Follow this and additional works at: <https://digitalcommons.law.villanova.edu/elj>



Part of the [Environmental Law Commons](#)

---

### Recommended Citation

Rizzlyn T. Melo, *We Didn't Start the Fire...Did We? Analyzing Why California Cannot Seem to Extinguish Its Worsening Wildfire Problem*, 31 Vill. Envtl. L.J. (2020).

Available at: <https://digitalcommons.law.villanova.edu/elj/vol31/iss1/5>

This Comment is brought to you for free and open access by the Journals at Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Villanova Environmental Law Journal by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.

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.”<sup>1</sup> As fate would have it, the area of land that enthralled the crew with its beauty would later be named Paradise.<sup>2</sup> 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.<sup>3</sup> Paradise’s website promises scenic nature, recreational activities, and most of all, “an engaging environment.”<sup>4</sup> Any visitor now though would be quick to see that the residents have all evacuated – their homes and businesses reduced to ashes.<sup>5</sup> Paradise is just one of the many casualties of the California wildfires.<sup>6</sup>

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

---

1. Associated Press, *Remembering Paradise, A Town Wiped Out by the Northern California Wildfire*, STAR ADVERTISER (Nov. 16, 2018, 10:42 AM), <https://www.staradvertiser.com/2018/11/16/breaking-news/remembering-paradise-a-town-wiped-out-by-the-northern-california-wildfire/> (describing legend presumed to be origin of Paradise’s name).

2. *Id.* (implying lumber mill crew foreshadowed town being named Paradise).

3. *About Paradise*, TOWN OF PARADISE CAL., <https://www.townofparadise.com/index.php/visitors/about-paradise> (last visited Feb. 14, 2019) (estimating population of Paradise).

4. *Id.* (describing Paradise).

5. Steven Kiggins, Alyana Shulman, David Benda, Mike Chapman, & Caroline Simon, *Destroyed: In Paradise, California, Entire Community of 27,000 Was Ordered to Evacuate*, USA TODAY (Nov. 9, 2018, 7:27 AM), <https://www.usatoday.com/story/news/nation/2018/11/09/camp-fire-paradise-california-destroyed-evacuations/1940450002/> (describing destruction of Paradise’s community).

6. *Id.* (detailing how wildfires destroyed Paradise).

7. *Id.* (describing fire dangers all over California).

8. *Id.* (discussing wildfire’s impact).

9. See Madeleine Ayer & Scott Glover, *California’s Largest Utility Provider’s Role in Wildfires is Under Scrutiny*, CNN (Dec. 19, 2018, 8:47 PM), <https://www.cnn.com/2018/12/19/us/camp-fire-pge-invs/index.html> (describing Californians’ desire for PG&E accountability).

occurring wildfires do arise, many environmentalists believe there is nothing “natural” about these disasters, attributing human activity as the source igniting these flames.<sup>10</sup> 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.<sup>11</sup> In 2017 alone, the electric company caused sixteen fires.<sup>12</sup> 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.<sup>13</sup>

This Comment explores the factors intensifying California’s wildfire crisis and how the state seeks to remedy those mistakes.<sup>14</sup> Part II describes California’s history with wildfires, including the damage caused by the record-breaking fires of 2017 and 2018.<sup>15</sup> The discussion in Part III focuses on PG&E and its role in the recent wildfires.<sup>16</sup> Part IV provides an overview of California’s wildfire regulation and how different political figures have impacted legislation.<sup>17</sup> 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.<sup>18</sup>

---

10. Umair Irfan, *California’s Wildfires Are Hardly “Natural” –Humans Made Them Worse at Every Step*, Vox (Nov. 19, 2018, 8:14 AM), <https://www.vox.com/2018/8/7/17661096/california-wildfires-2018-camp-woolsey-climate-change> (asserting humans ignite eighty-four percent of wildfires).

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/fac05d5d601/84b67f87-60c5-489b-ac2c-bc1c33dfd067.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](https://www.fire.ca.gov/media/5100/2017_wildfiresiege_cause.pdf) (determining PG&E caused twelve 2017 wildfires).

13. Jonathan J. Cooper, *New California Law Helps Utilities with Wildfire Lawsuits*, U.S. NEWS (Sept. 21, 2018, 4:33 PM), <https://www.usnews.com/news/best-states/california/articles/2018-09-21/new-california-law-helps-utilities-with-wildfire-lawsuits> (discussing Governor Brown’s decision to sign Senate Bill 901 into law).

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.<sup>19</sup> California has an abundance of “trees, grasses, brush, and even homes,” which are, essentially, kindling for wildfires.<sup>20</sup> The state also has dry weather and droughts, which make vegetation even more flammable.<sup>21</sup>

Despite the media coverage of the 2017 and 2018 wildfires, the occasional forest fire in California is not a new phenomenon.<sup>22</sup> 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.”<sup>23</sup> In addition, these wildfires help sunlight reach plants on the forest floor by removing dense canopies and undergrowth.<sup>24</sup> Unlike these naturally-occurring wildfires, the human-propagated ones to which California has grown accustomed are more catastrophic than beneficial.<sup>25</sup>

## 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.<sup>26</sup> 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

---

19. Claire Wolters, *Wildfires, Explained*, NAT’L GEOGRAPHIC, <https://www.nationalgeographic.com/environment/natural-disasters/wildfires/> (last visited Jan. 19, 2019) (explaining conditions necessary for wildfire to form).

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).

26. Jeremy Berke & Dana Varinsky, *California’s Devasting Wildfires Are Part of an Alarming Trend – Here’s Why They’ve Gotten So Much Worse*, BUS. INSIDER (Nov. 9, 2018, 6:43 PM), <https://www.businessinsider.com/ventura-county-la-fires-california-worsening-trend-2017-12> (comparing frequency of wildfires before 2000 to now).

the past twenty years.<sup>27</sup> 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.”<sup>28</sup> 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.<sup>29</sup> These facts show how wildfires have become an ongoing concern rather than a seasonal risk.<sup>30</sup> Former California Governor Jerry Brown best described California’s worsening wildfire conditions when he famously referred to them as “a new normal.”<sup>31</sup>

Climate change is causing wildfires to become noticeably more commonplace.<sup>32</sup> Higher temperatures during the spring and summer seasons and premature snowmelt lead to dry soil and periods of drought.<sup>33</sup> Drier conditions are particularly dangerous in forests, where branches and plants act as fuel for fires.<sup>34</sup> 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.<sup>35</sup> Santa Ana winds refer to winds that

---

27. *Top Twenty Largest California Wildfires*, CAL FIRE, [https://www.fire.ca.gov/media/5510/top20\\_acres.pdf](https://www.fire.ca.gov/media/5510/top20_acres.pdf) (last visited Jan. 19, 2019) (listing largest California wildfires by acres burned with 2018 wildfire listed as number one).

28. Berke & Varinsky, *supra* note 26 (explaining how climate change is to blame for increase in wildfires).

29. Erik Ortiz, *There’s No More Typical California Wildfire Season. It May Be Year-round, Experts Warn*, NBC NEWS (Nov. 9, 2018, 2:13 PM), <https://www.nbcnews.com/news/us-news/there-s-no-more-typical-wildfire-season-california-it-may-n934521> (crediting climate change as reason for frequency of wildfires occurring out of season).

30. Berke & Varinsky, *supra* note 26 (describing wildfire season as now being year-round).

31. Jose A. Del Real & Inyoung Kang, *California Today: Returning to Redding After the Carr Fire*, N.Y. TIMES (Aug. 6, 2018), <https://www.nytimes.com/2018/08/06/us/california-today-redding-carr-fire.html> (describing Governor Brown’s address to Californians on impending wildfires).

32. *Is Global Warming Fueling Increased Wildfire Risks?*, UNION OF CONCERNED SCIENTISTS: GLOBAL WARMING (July 24, 2018), <https://www.ucsusa.org/global-warming/science-and-impacts/impacts/global-warming-and-wildfire.html#.XFtIR6pKgdW> (attributing rise in greenhouse gases to increase in frequency and severity of wildfires).

33. *Id.* (explaining how climate change makes land more susceptible to wildfires).

34. See A.L. Westerling & B.P. Bryant, *Climate Change and Wildfire in California*, U.C. SAN DIEGO (Dec. 12, 2007), [http://tenaya.ucsd.edu/tioga/pdffiles/Westerling\\_wildfire\\_jan2008.pdf](http://tenaya.ucsd.edu/tioga/pdffiles/Westerling_wildfire_jan2008.pdf) (describing flammability of vegetation).

35. Rebecca Worby, *What Are the Santa Ana Winds, and Why Are They Such a Wildfire Hazard?*, PAC. STANDARD (Nov. 9, 2018), <https://psmag.com/environment/what-are-the-santa-ana-winds> (describing Santa Ana winds’ role in wildfire formation).

heat up and lose moisture as they speed down mountain passes.<sup>36</sup> 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.<sup>37</sup> Scientists predict that if these conditions worsen, the average area burned could increase by seventy-seven percent.<sup>38</sup> Greenhouse gases are at the root of this problem, as their emissions create a vicious cycle of warming temperatures and fires.<sup>39</sup>

## B. The 2017 Wildfires

As California saw in 2017, wildfires are no longer limited to a specific season.<sup>40</sup> 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.<sup>41</sup> These fires came shortly after the Tubbs Fire, which devastated northern California.<sup>42</sup> The Tubbs Fire burned parts of Napa, Sonoma, and Lake Counties, nearly eviscerating the city of Santa Rosa.<sup>43</sup>

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.<sup>44</sup> Strong Santa Ana winds pre-

---

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).

38. *Wildfire*, CAL.'S FOURTH CLIMATE CHANGE ASSESSMENT, <http://www.climateassessment.ca.gov/state/overview/> (last visited Mar. 2, 2019) (predicting worse wildfires if greenhouse gas emissions continue to rise).

39. See Kendra Pierre-Louis & Nadja Popovich, *Climate Change is Fueling Wildfires Nationwide, New Report Warns*, N.Y. TIMES (Nov. 27, 2018), <https://www.nytimes.com/interactive/2018/11/27/climate/wildfire-global-warming.html> (explaining how wildfires worsen climate change).

40. See Kevin Byrne, *California's 2017 Wildfire Season to Rank Among Most Destructive, Costly on Record*, ACCUWEATHER (July 3, 2019), <https://www.accuweather.com/en/weather-news/californias-2017-wildfire-season-to-rank-among-most-destructive-costly-on-record/70003704> (discussing how destructive wildfires occurred outside of season).

41. *Id.* (describing damage caused by fires in December).

42. Kurtis Alexander, Evan Sernoffsky & Lizzie Johnson, *Tubbs Fire: State Blames Private Electrical Equipment for Deadly Wine Country Blaze*, S.F. CHRON. (Jan. 24, 2019, 7:26 PM), <https://www.sfchronicle.com/california-wildfires/article/Tubbs-Fire-State-blames-private-electrical-13559073.php> (describing Tubbs Fire's reach).

43. J.D. Morris & Lizzie Johnson, *After Long Wait for Tubbs Fire Report, Santa Rosa Tries to Move Forward*, S.F. CHRON. (Jan. 27, 2019, 4:00 AM), <https://www.sfchronicle.com/california-wildfires/article/After-long-wait-for-Tubbs-Fire-report-Santa-Rosa-13564530.php> (discussing how Tubbs Fire destroyed Santa Rosa and left thousands of residents homeless).

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.<sup>45</sup> The Thomas Fire became one of the largest ever in California until 2018, which proved wildfires could get much bigger and deadlier.<sup>46</sup>

### C. The 2018 Wildfires

2018 marked a historic year for wildfires, as numerous wildfires spread across the state before ending in Butte County.<sup>47</sup> The most prominent fires were the Woolsey and Camp Fires, which began in November and grew more destructive than the fires preceding them.<sup>48</sup> The Woolsey Fire devastated the Malibu area of southern California.<sup>49</sup> At the same time, the Camp Fire raged through northern California.<sup>50</sup> It claimed eighty-five lives and destroyed nearly nineteen thousand structures, a majority of which were residential homes.<sup>51</sup> The Camp Fire grew at an unprecedented rate and reduced the town of Paradise to ashes within a single day.<sup>52</sup>

---

[www.cnn.com/2018/06/02/us/thomas-fire-officially-out/index.html](http://www.cnn.com/2018/06/02/us/thomas-fire-officially-out/index.html) (characterizing Thomas Fire as largest wildfire in California's modern history).

45. *Id.* (describing arduous process of containing Thomas Fire).

46. For a discussion of the overwhelming damage caused by the 2018 wildfires in comparison to previous wildfires, see *infra* notes 47-62 and accompanying text.

47. 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).

48. 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-californias-history-has-been-contained/?noredirect=on&utm\\_term=.4b45a6824f9d](https://www.washingtonpost.com/nation/2018/11/25/camp-fire-deadliest-wildfire-californias-history-has-been-contained/?noredirect=on&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).

49. *Id.* (describing effects of Woolsey Fire in Malibu).

50. 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).

51. *CAL FIRE Investigators Determine Cause of the Camp Fire*, CAL FIRE (May 15, 2019), [https://www.fire.ca.gov/media/5038/campfire\\_cause.pdf](https://www.fire.ca.gov/media/5038/campfire_cause.pdf) (describing Camp Fire statistics).

52. 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/2406084002/> (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.<sup>53</sup> The Camp Fire displaced about thirty-five thousand people, adding to the number of Californians already displaced by previous fires.<sup>54</sup> 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.<sup>55</sup> Victims will likely rely on FEMA and its resources indefinitely, as it could take time to rebuild all the homes lost to the fires.<sup>56</sup> Furthering their distress, President Donald J. Trump has threatened this relief, tweeting that he “ordered FEMA to send no more money.”<sup>57</sup> Though the President has not followed through on his threat, California is not receiving the federal aid it seeks despite congressional negotiations.<sup>58</sup> Early in 2018, Congress and the President failed to reach an agreement on California’s request for nine billion dollars in wildfire relief.<sup>59</sup>

In addition to funding for wildfire victims, cleaning the debris and rebuilding structures will be a costly venture.<sup>60</sup> 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.<sup>61</sup> The insurance payouts of the 2018 wildfires are expected to be even greater, with state and

---

53. See *Wildfire Victims Thrust into Northern California Housing Shortage*, CBS NEWS (Dec. 26, 2018, 12:05 PM), <https://www.cbsnews.com/news/california-wildfire-victims-thrust-into-northern-california-housing-shortage/> (detailing effects of wildfire on Californians and how repercussions will last years).

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

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

56. See *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%5Etweetembed%7Ctwterm%5E1083030331798757382&ref\\_url=https%3A%2F%2Fwww.usatoday.com%2Fstory%2Fnews%2Fpolitics%2F2019%2F01%2F09%2Fdonald-trump-fema-california-wildfires%2F2523581002%2F](https://twitter.com/realDonaldTrump/status/1083022011574747137?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1083030331798757382&ref_url=https%3A%2F%2Fwww.usatoday.com%2Fstory%2Fnews%2Fpolitics%2F2019%2F01%2F09%2Fdonald-trump-fema-california-wildfires%2F2523581002%2F) (claiming to have ceased funding for FEMA).

58. Tal Kopan, *California Wildfire Aid Left Out of Congressional Shutdown Deal*, S.F. CHRON. (Feb. 12, 2019, 4:43 PM), <https://www.sfchronicle.com/politics/article/California-wildfire-aid-left-out-of-congressional-13610323.php> (discussing inability to reach deal on wildfire relief).

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

60. *California Wildfire Costs Soar Past Last Year’s Records*, NBC NEWS (Dec. 12, 2018, 2:07 AM), <https://www.nbcnews.com/news/us-news/california-wildfires-costs-soar-past-last-year-s-records-n946856> (predicting cleanup costs for 2018 wildfires will exceed 2017).

61. *Id.* (claiming insurance and cleanup costs were at record-high in 2017).



federal authorities estimating clean-up costs will exceed three billion dollars.<sup>62</sup>

To make matters worse, health experts expect the deteriorating air quality stemming from the fires to adversely affect Californians' health for years to come.<sup>63</sup> 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.<sup>64</sup> 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."<sup>65</sup> 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.<sup>66</sup> 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.<sup>67</sup> 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."<sup>68</sup> The negative effects of the wildfires on both humans and the environment highlight the need for better wildfire prevention.<sup>69</sup>

---

62. *Id.* (discussing expectations for 2018 wildfire costs).

63. Julie Turkewitz & Matt Richtel, *Air Quality in California: Devastating Fires Lead to a New Danger*, N.Y. TIMES (Nov. 16, 2018), <https://www.nytimes.com/2018/11/16/us/air-quality-california.html> (explaining how toxins from smoke could be potentially problematic to human health).

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).

## III. PG&amp;E UNDER FIRE

If climate change is the gasoline, then human activity is the spark that ignites the flame.<sup>70</sup> After being linked to numerous wildfires, the company taking the most blame for the disasters is California's largest utility provider, PG&E.<sup>71</sup> 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.<sup>72</sup> Although delivering energy is a necessary service, this fact alone is not enough to be PG&E's saving grace.<sup>73</sup> 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.<sup>74</sup>

## A. Early Mishaps

PG&E is no stranger to controversy and has been under scrutiny for its safety compliance for years before the wildfires.<sup>75</sup> 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.<sup>76</sup> Chaos ensued when the escaping gas initiated fires in the community surrounding the pipeline.<sup>77</sup> The explosion caused eight deaths and fifty-one injuries, in addition to destroying thirty-eight homes.<sup>78</sup> The subsequent investiga-

---

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).

72. *Company Profile*, PG&E, [https://www.pge.com/en\\_US/about-pge/company-information/profile/profile.page](https://www.pge.com/en_US/about-pge/company-information/profile/profile.page) (last visited Feb. 1, 2019) (describing breadth of PG&E's services).

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-n957351> (discussing protesters' discontent over PG&E).

74. *Id.* (highlighting protesters' pleas for no PG&E bailout).

75. See *Pacific Gas & Electric Pipeline Rupture in San Bruno, CA*, PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMIN., <https://www.phmsa.dot.gov/safety-awareness/pipeline/pacific-gas-electric-pipeline-rupture-san-bruno-ca> (last visited Jan. 27, 2019) (discussing San Bruno pipeline explosion).

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.<sup>79</sup> 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.<sup>80</sup> 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.<sup>81</sup> 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.<sup>82</sup>

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.<sup>83</sup> 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."<sup>84</sup> 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).

81. *United States v. Pac. Gas & Elec. Co.*, 2016 WL 6804575, at \*1-4 (N.D. Cal. Nov. 17, 2016) (describing counts against PG&E).

82. *United States v. Pac. Gas & Elec. Co.*, 2017 WL 1434572, at \*10 (N.D. Cal. Jan. 9, 2017) (berating PG&E for safety non-compliance).

83. Sammy Roth, *PG&E Falsified Gas Pipeline Records for Years After Deadly Explosion, Regulators Say*, L.A. TIMES (Dec. 14, 2018, 4:40 PM), <https://www.latimes.com/business/la-fi-pge-safety-investigation-20181214-story.html> (describing new investigations into PG&E pipeline recording); CAL. PUB. UTIL. COMMISSION, <http://www.cpuc.ca.gov/> (last visited Jan. 31, 2019) (describing CPUC duties).

84. *Id.* (describing CPUC findings).

ough reporting and record-keeping” following the 2010 explosion, it had maintained similar unsafe practices.<sup>85</sup>

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.”<sup>86</sup> 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.”<sup>87</sup> 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.<sup>88</sup>

#### B. Involvement in the 2017 Wildfires

PG&E’s superficial adherence to safety compliance is also apparent in the way it maintains its powerlines.<sup>89</sup> After thorough investigations of the 2017 wildfires, CAL FIRE found PG&E was responsible for sixteen of the fires in total.<sup>90</sup> A year after the fires, CAL FIRE released findings regarding the four wildfires in Butte and Nevada Counties.<sup>91</sup> For the Lobo, Honey, and McCourtney Fires, CAL FIRE determined PG&E violated Public Resources Code Section 4293.<sup>92</sup> This regulation delineates the minimum distance from which utility providers must keep their powerlines away from trees.<sup>93</sup> 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).

86. Pac. Gas & Elec. Co., 2017 WL 1434572, at 10 (highlighting PG&E’s lack of corporate responsibility); Katherine Blunt & Russell Gold, *PG&E Violated Probation, Federal Judge Says in Heated Hearing*, WALL ST. J. (Jan. 30, 2019, 6:13 PM), <https://www.wsj.com/articles/pg-e-violated-probation-federal-judge-says-in-heated-hearing-11548877120> (discussing PG&E’s probation following conviction).

87. *Id.* (detailing how PG&E violated probation terms).

88. *Id.* (highlighting Judge Alsup’s concern for PG&E practices).

89. *See* Matt Kraus, *CalFire Concludes PG&E Violations Caused 2017 Wildfires*, ELEC. CONTRACTOR (May 2018), <https://www.ecmag.com/section/systems/calfire-concludes-pge-violations-caused-2017-wildfires> (finding PG&E powerlines started many 2017 wildfires).

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.”<sup>94</sup> 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.<sup>95</sup> 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.<sup>96</sup> 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.<sup>97</sup>

For the other twelve fires attributed to PG&E, CAL FIRE linked the utility company’s equipment to the wildfires’ origins.<sup>98</sup> For many of them, PG&E’s powerlines ignited fires after a “tree or parts of trees” fell onto them.<sup>99</sup> Both the Redwood and Atlas Fires began in this manner and claimed the lives of fifteen civilians in total.<sup>100</sup> Fallen trees or tree parts hitting PG&E powerlines also caused the Norrbom, Adobe, Patrick, and Nuns Fires.<sup>101</sup> These fires merged together into one large fire and claimed three civilian lives.<sup>102</sup>

In other cases, PG&E’s equipment failures initiated the fires.<sup>103</sup> For instance, the Sulphur Fire began when a PG&E owned power pole failed, causing powerlines and equipment to detach and fall.<sup>104</sup> Similarly, the Blue Fire began when a PG&E “[powerline] conductor separated from a connector, causing it to fall to the

94. *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).

95. *Id.* (finding PG&E failed to remove fallen tree).

96. *Id.* (determining branches falling on PG&E equipment caused La Porte Fire).

97. 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).

98. *CAL FIRE Investigators Determine Causes of Twelve Wildfires in Mendocino, Humboldt, Butte, Sonoma, Lake, and Napa Counties*, *supra* note 12 (determining causes of twelve 2017 wildfires).

99. *Id.* (finding trees hitting powerlines caused many fires).

100. *Id.* (stating fire causes and casualties). The Cherokee and Pocket Fires also began when parts of tree fell and made contact with PG&E powerlines, though no injuries were reported. *Id.* (stating fallen tree limbs and top of tree as causes of respective fires).

101. *Id.* (listing series of fires and their causes).

102. *Id.* (describing damage caused by fires). The Pythian Fire also merged with the Norrbom, Adobe, Patrick, and Nuns Fire. *Id.* (listing Pythian Fire in conjunction with others). Unlike the other fires involving trees, however, the Pythian Fire began “after PG&E attempted to reenergize” a downed powerline. *Id.* (attributing Pythian Fire cause to PG&E’s electrical malfunction).

103. *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).

104. *Id.* (describing formation of Sulphur Fire).

ground, starting the fire.”<sup>105</sup> PG&E’s faulty distribution lines ignited the Thirty-Seven Fire.<sup>106</sup>

To PG&E’s relief, CAL FIRE found that the company’s facilities were not responsible for the infamous Tubbs Fire.<sup>107</sup> The Tubbs Fire, one of the largest infernos in 2017, burned 36,807 acres and ravaged entire neighborhoods in Santa Rosa.<sup>108</sup> CAL FIRE determined a malfunction of a private electric system caused the fire, leading to the deaths of twenty-two civilians and injured one fire-fighter.<sup>109</sup>

### 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.”<sup>110</sup> The fire earning such an infamous title is the Camp Fire, which left 153,336 acres scorched in its aftermath.<sup>111</sup> Early in its investigations, CAL FIRE reported two Camp Fire origin points, both involving PG&E facilities.<sup>112</sup> One of the origin points was PG&E’s Caribou-Palermo transmission line, and the other was PG&E’s Big Bend distribution line.<sup>113</sup> The first sign of trouble was when PG&E discovered a malfunction at its Caribou-Palermo transmission line.<sup>114</sup> CAL FIRE reported the Camp Fire began fifteen minutes after this outage.<sup>115</sup> PG&E then experienced a second outage at its Big Bend distribu-

---

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).

107. *See CAL FIRE Investigators Determine the Cause of the Tubbs Fire*, CAL FIRE (Jan. 24, 2019), <https://www.fire.ca.gov/media/5032/tubbscause1v.pdf> (determining private electrical system caused Tubbs Fire).

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).

112. Ronald Li, *Numerous PG&E Employees Saw Flames Soon After Camp Fire Started*, S.F. CHRON. (Dec. 31, 2018, 7:58 PM), <https://www.sfchronicle.com/california-wildfires/article/Numerous-PG-E-employees-saw-flames-soon-after-13501188.php> (stating Camp Fire origin points).

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

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

115. *See* Maria Armental, *PG&E Says Equipment Failed Just Before California Wildfire*, WALL STREET J. (Nov. 13, 2019, 9:19 PM), <https://www.wsj.com/articles/pg-e-says-equipment-failed-just-before-california-wildfire-1542161992> (describing when Camp Fire started).

tion line, which sparked another fire.<sup>116</sup> The original fire consumed the subsequent flames, creating one large inferno.<sup>117</sup> It burned rapidly through Butte County and drew strength from the area's "strong winds, low humidity, and warm temperatures."<sup>118</sup> Although the weather conditions exacerbated the situation, PG&E did not deny the role of its equipment in initiating the fires.<sup>119</sup>

#### 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.<sup>120</sup> 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.<sup>121</sup> This change in leadership, along with three other top executives stepping down, signified prominent attempts at reforming PG&E in response to the wildfires.<sup>122</sup>

On January 29, 2019, PG&E filed for bankruptcy in San Francisco.<sup>123</sup> 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.<sup>124</sup> It is uncommon for a utility provider to file for bankruptcy because its status as a natural monopoly guarantees financial returns.<sup>125</sup> 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).

119. See Peter Eavis, *PG&E Says It Probably Caused the Fire That Destroyed Paradise, Cal.*, N.Y. TIMES (Feb. 28, 2019), <https://www.nytimes.com/2019/02/28/business/energy-environment/pge-camp-fire.html> (discussing PG&E's assertion it started Camp Fire).

120. See Katherine Blunt & Russell Gold, *PG&E Files for Bankruptcy Following California Wildfires*, WALL ST. J. (Jan. 29, 2019, 1:06 PM), <https://www.wsj.com/articles/pg-e-files-for-bankruptcy-following-california-wildfires-11548750142> (discussing PG&E's bankruptcy filing amidst lawsuits).

121. *Id.* (discussing CEO resignation).

122. *Id.* (discussing PG&E's plans to change board after wildfires); J.D. Morris, *Three PG&E Electric Executives Departing Amid Ongoing Wildfire Scrutiny*, S.F. CHRON. (Jan. 8, 2019, 9:27 PM), <https://www.sfchronicle.com/california-wildfires/article/3-PG-E-electric-executives-departing-amid-ongoing-13517735.php> (discussing top PG&E executives' retirements).

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).

the wildfires.<sup>126</sup> The company stated it faces complaints from thousands of wildfire victims, resulting in thirty billion dollars in potential liability.<sup>127</sup> Judge Dennis Montali presides over PG&E's current bankruptcy proceedings.<sup>128</sup> This is not Judge Montali's first time overseeing the company's reorganization, as he also presided over PG&E's bankruptcy in 2001.<sup>129</sup>

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.<sup>130</sup> 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.<sup>131</sup> 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."<sup>132</sup>

While exoneration for the Tubbs Fire grants PG&E some relief, the company could still face massive liabilities.<sup>133</sup> A bankruptcy court may provide additional relief for PG&E, but this comes at a cost for both the utility provider and its consumers.<sup>134</sup> 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).

128. Joel Rosenblatt, *PG&E Bankruptcy is Deja vu for Judge Who Handled 2001 Filing*, BLOOMBERG (Jan. 29, 2019, 8:49 AM), <https://www.bloomberg.com/news/articles/2019-01-29/pg-e-bankruptcy-is-deja-vu-for-judge-who-handled-2001-filing> (describing judge's connection to PG&E).

129. *Id.* (describing Judge Montali's PG&E reorganization in 2001).

130. Nick Zieminski, *Bankrupted by Deadly Wildfires, PG&E Vows to Keep the Lights On*, YAHOO FINANCE (Jan. 30, 2019), <https://finance.yahoo.com/news/bankrupted-deadly-wildfires-pg-e-152227764.html> (describing PG&E's vow to continue services).

131. *Bankruptcy Judge Issues Interim Orders Allowing PG&E to Continue Operations*, S.F. GATE (Jan. 31, 2019, 8:33 PM), <https://www.sfgate.com/news/bayarea/article/Bankruptcy-Judge-Issues-Interim-Orders-Allowing-13579426.php> (discussing interim orders).

132. Dale Kasler, *Judge Ok's \$235 Million in Bonuses for PG&E Employees, as Company Struggles with Bankruptcy*, SACRAMENTO BEE (April 23, 2019, 4:20 PM), <https://www.sacbee.com/latest-news/article229603929.html> (discussing approval of employee bonuses and intended purpose).

133. Blunt & Gold, *supra* note 120 (detailing liabilities despite Tubbs Fire finding).

134. *See* Paul Rogers, *Are California's Solar and Wind Projects at Risk in PG&E Bankruptcy?*, MERCURY NEWS (Jan. 30, 2019, 7:00 AM), <https://www.mercurynews.com/2019/01/30/what-happens-to-californias-solar-and-wind-energy-with-pge-bankruptcy/> (explaining how bankruptcy jeopardizes prospects for sustainability).



California.<sup>135</sup> PG&E committed to these “power purchase agreements” years ago to transition to more renewable energy sources and conform with California’s environmental goals.<sup>136</sup> 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.”<sup>137</sup> 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.<sup>138</sup>

When a sizable corporation like PG&E suffers, so do the thousands of people who rely on it.<sup>139</sup> Californians who survived the wildfires could find their recovery burdened by the bankruptcy.<sup>140</sup> PG&E’s filing could hinder the ability of fire victims to recover losses and increase already inflated electricity rates for existing customers.<sup>141</sup> Conflicting interests will inevitably converge, as consumers resist paying higher prices and creditors pressure the company for financial viability.<sup>142</sup>

#### 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.<sup>143</sup> The overwhelming interests of these parties place pressure on the California legislature and other notable politicians.<sup>144</sup> To understand fully California’s wild-

---

135. *Id.* (discussing PG&E’s decision to cancel contracts for sustainable technology).

136. *Id.* (describing PG&E’s decision to enter contracts). California planned to rely entirely on zero-emission energy sources for its electricity by 2045. Camila Domonoske, *California Sets Goal of One Hundred Percent Clean Electric Power by 2045*, NPR (Sept. 10, 2018, 3:59 PM), <https://www.npr.org/2018/09/10/646373423/california-sets-goal-of-100-percent-renewable-electric-power-by-2045> (outlining California’s goals for greener future).

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).

142. Ivan Penn, *PG&E Bankruptcy Filing Creates ‘A Real Mess’ for Rival Interests*, N.Y. TIMES (Jan. 29, 2019), <https://www.nytimes.com/2019/01/29/business/energy-environment/pge-file-bankruptcy.html> (describing divergent interests of consumers and creditors).

143. *See id.* (discussing difficulty of resolving conflicting interests).

144. Phil Willon, *Newsom Tested Right Out of the Gate with Teacher’s Strike and PG&E Crisis*, L.A. TIMES (Jan. 28, 2019, 12:05 AM), <https://www.latimes.com/politics/la-pol-ca-governor-gavin-newsom-crisis-strike-utility-20190128-story.html> (describing public pressure on Governor Newsom to act).

fire crisis, it is important to know how the state previously tried to mitigate against wildfires started by utility providers.<sup>145</sup> 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.<sup>146</sup>

#### 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.<sup>147</sup> Under the state's inverse condemnation doctrine, PG&E is still liable to wildfire victims because its equipment was involved.<sup>148</sup> States have typically used inverse condemnation to hold government agencies accountable when they "damage private property while providing a public service."<sup>149</sup> California courts have expanded this doctrine to allow property owners to hold both public and private utilities accountable when their equipment causes damages.<sup>150</sup> The rationale behind this policy is that the state authorizes utilities "to provide a vital public service."<sup>151</sup> The court of appeals in *Barham v. Southern California Edison Co.*<sup>152</sup> applied California's inverse condemnation in finding Southern California Edison Company ("SCE") liable for wildfire damage.<sup>153</sup> In *Barham*, SCE experienced an overhead powerline equipment failure, which ignited the Mill Creek Fire.<sup>154</sup> After the fire destroyed their homes, many property owners sought to recover their losses from the utility company.<sup>155</sup> 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.

148. David R. Baker, *The California Rule that Doomed PG&E: Inverse Condemnation*, BLOOMBERG (Jan. 15, 2019, 11:45 AM), <https://www.bloomberg.com/news/articles/2019-01-15/the-california-rule-that-doomed-pg-e-inverse-condemnation> (discussing holding companies liable under inverse condemnation).

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).

152. *Barham v. S. Cal. Edison Co.*, 74 Cal. App. 4th 744, 752 (Cal. Ct. App. 1999) (describing property owners' suit against SCE).

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.<sup>156</sup> The court of appeals ruled “[a]n inverse condemnation action is an eminent domain action by one whose property was taken for public use.”<sup>157</sup> It further found “condemning private property for the transmission of electrical power” constituted a public use.<sup>158</sup> 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.<sup>159</sup>

Unsurprisingly, utility providers are averse to the inverse condemnation doctrine, and PG&E even credits California’s interpretation of the doctrine for its bankruptcy.<sup>160</sup> 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.<sup>161</sup> 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.<sup>162</sup> 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.”<sup>163</sup> Instead, CPUC decides where the funds can be taken from.<sup>164</sup> 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.<sup>165</sup> Based on this reasoning, PG&E challenged California’s inverse condemnation doctrine

156. *Id.* at 747 (outlining procedural background).

157. *Barham*, 744 Cal. App. 4th at 752 (defining inverse condemnation).

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).

160. Taryn Luna, *Let PG&E ‘Off the Hook’ for Wildfire Costs? If Not, Your Utility Bills Could Rise*, SACRAMENTO BEE (Apr. 10, 2018, 11:40 AM), <https://www.sacbee.com/news/politics-government/capitol-alert/article208200204.html> (discussing PG&E challenging inverse condemnation).

161. *Id.* (explaining impact of inverse condemnation on PG&E’s financial performance).

162. Peter Bradford, *Making PG&E Pay More Than its Fair Share of Fire Damage Could Backfire on the State*, SACRAMENTO BEE (May 31, 2018, 8:00 PM), <https://www.sacbee.com/opinion/california-forum/article212316269.html> (explaining courts’ justification for inverse condemnation).

163. *Id.* (explaining PG&E’s lack of control in decision-making).

164. *Id.* (highlighting CPUC’s power over PG&E).

165. See Petition for Review at 8-18, *Pac. Gas & Elec. Co. v. Super Ct. of Cal. for Cty. S.F.*, No. S251585 (Cal. Sept. 27, 2018), [http://s1.q4cdn.com/880135780/files/doc\\_downloads/2018/wildfire/10/Inverse-Writ-Supreme-Court-Petition-for-Review-FINAL.PDF](http://s1.q4cdn.com/880135780/files/doc_downloads/2018/wildfire/10/Inverse-Writ-Supreme-Court-Petition-for-Review-FINAL.PDF) (discussing how litigation costs cannot be mitigated through consumer rates).

in the state's supreme court.<sup>166</sup> 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.<sup>167</sup> However, PG&E does not have this ability, as CPUC has discretion on this matter.<sup>168</sup> 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."<sup>169</sup> 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.<sup>170</sup>

#### 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.<sup>171</sup> 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.<sup>172</sup> 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."<sup>173</sup> The legislation also lists twelve factors CPUC can use to determine whether PG&E acted reasonably in maintaining its equipment.<sup>174</sup> If PG&E meets this "reasonableness" standard,

---

166. *Id.* (blaming lack of control over rates for financial trouble).

167. *See id.* (characterizing courts' premise for admonishing PG&E as incorrect).

168. *See id.* (explaining courts' and CPUC' adverse impact on PG&E recovery).

169. *Id.* at 11 (asserting PG&E burdened because CPUC and courts lack insight into its ability to pay liabilities).

170. *See* Petition for Review, *supra* note 165, at 18 (concluding PG&E lacks recourse without ability to spread costs among public).

171. *See* George Avalos, *Brown Signs Wildfire Safety Bill Blasted as PG&E Bailout*, MERCURY NEWS (Sept. 21, 2018, 11:56 AM), <https://www.mercurynews.com/2018/09/21/brown-signs-bill-allowing-utilities-to-pass-costs-of-wildfire-lawsuits-onto-consumers/> (describing backlash of Governor Brown's legislation).

172. *See generally* 2017 CA S.B. 901 (Cal. 2018) (allowing PG&E to charge higher consumer rates under certain circumstances).

173. *Id.* § 26 (describing when CPUC should allow PG&E to charge higher rates).

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:

- (1) 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.
- (2) Whether the electrical corporation disregarded indicators of wildfire risk.
- (3) Whether the electrical corporation failed to design its assets in a reasonable manner.
- (4) Whether the elec-

CPUC will allow recovery through consumer rates.<sup>175</sup> 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."<sup>176</sup> 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."<sup>177</sup> 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.<sup>178</sup>

In contrast, some Californian constituents have expressed concerns over Senate Bill 901.<sup>179</sup> 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.<sup>180</sup> While this bill allows PG&E to use consumer rates to pay liabilities under the appropriate circum-

---

trical corporation failed to operate its assets in a reasonable manner. (5) Whether the electrical corporation failed to maintain its assets in a reasonable manner. (6) Whether the electrical corporation's practices to monitor, predict, and anticipate wildfires, and to operate its facilities in a reasonable manner based on information gained from its monitoring and predicting of wildfires, were reasonable. (7) The extent to which the costs and expenses were in part caused by circumstances beyond the electrical corporation's control. (8) Whether extreme climate change conditions at the location of the wildfire's ignition, including humidity, temperature, or winds occurring during the wildfire, contributed to the fire's ignition or exacerbated the extent of the damages. The electrical corporation shall provide the commission with specific evidence and data demonstrating the impact of climate conditions on the severity of the wildfire. (9) The electrical corporation's compliance with regulations, laws, commission orders, and its wildfire mitigation plans prepared pursuant to Section 8386, including its history of compliance. (10) Official findings of state, local or federal government offices summarizing statutory, regulatory, or ordinance violations by any actor that contributed to the extent of the damages. (11) Whether the costs and expenses were caused by a single violation or multiple violations of relevant rules. (12) Other factors the commission finds necessary to evaluate the reasonableness of the costs and expenses, including factors traditionally relied upon by the commission in its decisions.

175. *Id.* (explaining grounds for allowing recovery through consumer rates).

176. *Id.* § 27 (detailing CPUC considerations).

177. Jeff St. John, *California Lawmakers Pass PG&E Wildfire Relief Bill, Let Grid Regionalization Expire*, GREENTECH MEDIA (Sept. 4, 2018), <https://www.greentechmedia.com/articles/read/california-passes-pge-wildfire-relief-bill-but-grid-regionalization-fails#gs.yDXPqPbs> (explaining how PG&E will pay for liabilities).

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.<sup>181</sup> Senate Bill 901 does not include the 2018 wildfires.<sup>182</sup> In other words, PG&E is not immune from any of the costs associated with the Camp Fire.<sup>183</sup>

Another important aspect of Senate Bill 901 is its efforts to expand utility companies' existing wildfire mitigation requirements.<sup>184</sup> 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.<sup>185</sup> 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.<sup>186</sup> 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.<sup>187</sup> 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.<sup>188</sup>

### 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.<sup>189</sup> Governor Newsom has a history with the company that began when he served as mayor of San Francisco, where PG&E is based.<sup>190</sup> As mayor, Governor Newsom was "friendly with the company[,] and PG&E and its top executives

---

181. See John Myers, *One Small Change to California's Wildfire Prevention Law Could Spark a Huge Political Fight in Sacramento*, L.A. TIMES (Dec. 3, 2018, 8:00 AM), <https://www.latimes.com/politics/la-pol-ca-wildfire-legislature-utilities-cost-20181203-story.html> (describing gap in Senate Bill 901).

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).

188. See David R. Baker, *Embattled PG&E Has Long History with California's New Governor*, BLOOMBERG (Dec. 2, 2018, 6:00 AM), <https://www.bloomberg.com/news/articles/2018-12-02/embattled-pg-e-has-long-history-with-california-s-new-governor> (describing Governor Brown's reputation with PG&E).

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.<sup>191</sup> 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.<sup>192</sup> 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.<sup>193</sup>

In addition to accountability, Governor Newsom expressed concerns over PG&E's solvency to the extent it affects California residents.<sup>194</sup> The Governor's office is collaborating with regulators and PG&E personnel to find a solution to the embattled company's financial troubles.<sup>195</sup> Governor Newsom expressed his desire to keep PG&E financially secure enough to continue its services.<sup>196</sup> 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.<sup>197</sup> 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.<sup>198</sup> 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.<sup>199</sup>

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

---

191. *Id.* (stating friendly relations between Newsom and PG&E).

192. *Id.* (describing instances Newsom reprimanded company).

193. Baker, *supra* note 188 (describing Newsom's role in closing PG&E's nuclear plant).

194. J.D. Morris, *Newsom Weighs in on PG&E's Murky Future in Wake of Camp Fire*, S.F. CHRON. (Jan. 9, 2019, 3:27 PM), <https://www.sfchronicle.com/california-wildfires/article/Newsom-weighs-in-on-PG-E-s-murky-future-in-the-13521704.php> (addressing Newsom's plans to promote PG&E solvency).

195. *Id.* (describing collaborative efforts between Newsom and PG&E).

196. *See id.* (claiming Newsom wants PG&E financial viability for state's residents).

197. Alexei Koseff, *Gov. Gavin Newsom Names Three to California Wildfires Panel*, S.F. CHRON. (Jan. 23, 2019, 2:51 PM), <https://www.sfchronicle.com/california-wildfires/article/Gov-Gavin-Newsom-names-three-to-California-13556130.php> (discussing new CPUC appointment).

198. *Id.* (describing duties of new appointments).

199. Kathleen Ronayne, *Newsom Announces Nominee for California Utility Regulator*, NBC SAN DIEGO (Jan. 23, 2019, 5:34 AM), <https://www.nbcsandiego.com/news/california/Newsom-Announces-Nominee-for-California-Utility-Regulator-504739812.html> (discussing Shiroma's appointment).

on communities at high risk during natural disasters.”<sup>200</sup> The Governor also “signed a second executive order to better streamline the procurement for state emergency agencies modernizing their equipment.”<sup>201</sup> 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.<sup>202</sup>

## 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.<sup>203</sup> With CAL FIRE’s numerous reports of PG&E’s involvement, many Californians blame PG&E.<sup>204</sup> 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.<sup>205</sup> 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?<sup>206</sup>

---

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).

202. Sacramento Bee Editorial Board, *PG&E’s Crimes and Negligence Demand Action*, SACRAMENTO BEE (Jan. 11, 2019, 11:50 AM), <https://www.sacbee.com/opinion/editorials/article224290720.html> (listing actions Newsom can take to decrease chances of wildfires).

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).

206. Richard Gonzales, *Federal Judge Blasts PG&E’s Commitment to California Wildfire Safety*, NPR (Jan. 30, 2019, 10:17 PM), <https://www.npr.org/2019/01/30/>



On the other hand, PG&E and its sympathizers are also correct in crediting climate change with creating a hostile environment that breeds wildfires.<sup>207</sup> Those dismayed by PG&E's bankruptcy call it a "the first major corporate casualty of climate change."<sup>208</sup> 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.<sup>209</sup> In their opinion, PG&E never stood a chance against climate change on its own.<sup>210</sup> As a result, they also blame the State of California.<sup>211</sup> 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.<sup>212</sup> 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.<sup>213</sup> Essentially, PG&E must pay for non-negligent liabilities with limited funds, while simultaneously trying to meet the state's demands for greener technology.<sup>214</sup> 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.<sup>215</sup> 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

---

690196239/federal-judge-blasts-pg-es-commitment-to-california-wildfire-safety (quoting Judge Alsup in PG&E's probationary hearing).

207. Russell Gold, *PG&E: The First Climate-Change Bankruptcy, Probably Not the Last*, WALL STREET J. (Jan. 18, 2019, 9:00 AM), <https://www.wsj.com/articles/pg-e-wildfires-and-the-first-climate-change-bankruptcy-11547820006> (arguing climate change is largely to blame for wildfires).

208. *Id.* (attributing PG&E's turmoil to climate change victim).

209. *Id.* (arguing PG&E could not keep up with climate change).

210. See Chunka Mui, *PG&E is Just the First of Many Climate Change Bankruptcies*, FORBES (Jan. 24, 2019, 10:14 AM), <https://www.forbes.com/sites/chunkamui/2019/01/24/pge-is-just-the-first-of-many-climate-change-bankruptcies/#fb03de07e5ff> (explaining difficult nature of 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.

215. See Dominic Fracassa, *CleanPowerSF Tripling Households Served with Municipal Electricity*, S.F. CHRON. (Feb. 14, 2019, 4:56 PM), [https://www.sfchronicle.com/bayarea/article/CleanPowerSF-tripling-households-served-with-13618155.php?utm\\_source=newsletter&utm\\_medium=email&utm\\_content=headlines&utm\\_campaign=sfc\\_morningfix](https://www.sfchronicle.com/bayarea/article/CleanPowerSF-tripling-households-served-with-13618155.php?utm_source=newsletter&utm_medium=email&utm_content=headlines&utm_campaign=sfc_morningfix) (describing CleanPowerSF's reliance on PG&E in its business).

sources.<sup>216</sup> 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.<sup>217</sup>

In addition, other critics, such as President Trump, believe the state should have taken more responsibility in its forest management.<sup>218</sup> 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.”<sup>219</sup> 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.<sup>220</sup>

Different perspectives yield different sources of the 2017 and 2018 California wildfires, but ultimately, there is truth in each assertion.<sup>221</sup> The wildfires resulted not from a single source, but from a totality of different factors exacerbating each other over the years.<sup>222</sup> In other words, climate change, PG&E, and California itself are all culpable in their own distinct ways.<sup>223</sup>

The effects of climate change made areas in California exponentially more susceptible to wildfires.<sup>224</sup> As a result, wildfires began to burn more frequently and out of the traditional wildfire

---

216. *Id.* (differentiating CleanPowerSF from PG&E).

217. *See id.* (suggesting CleanPowerSF incapable of handling PG&E's infrastructure).

218. *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](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).

219. *Id.* (blaming gross mismanagement of forests for wildfires).

220. *See* Peter Fimrite & Kurtis Alexander, *California's Year-Round Wildfire Threat: Why Aren't Communities Doing More?*, S.F. CHRON. (Nov. 10, 2018), <https://www.sfchronicle.com/california-wildfires/article/California-s-year-round-wildfire-threat-Why-13379734.php> (discussing argument California failed to maintain forests).

221. *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).

222. *See* Irfan, *supra* note 10 (arguing humans cause fires in areas where climate change increased risk).

223. For a discussion of how aggravating factors triggered intense wildfires, see *infra* notes 224-235 and accompanying text.

224. For a discussion of how climate change leads to increase in wildfires, see *supra* notes 32-39 and accompanying text.

season.<sup>225</sup> 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.<sup>226</sup> The National Climate Change Adaption 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.<sup>227</sup> Like California, rising temperatures in Australia are causing several wildfires to burn at once, exposing vulnerable parts of the country to unprecedented damage.<sup>228</sup>

However, climate change does not exclude PG&E from blame.<sup>229</sup> The company has a history of cutting corners when it comes to safety and purposefully defying regulations designed to prevent wildfires.<sup>230</sup> 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.<sup>231</sup>

In addition, the need for better wildfire regulation implicates the state and highlights its role in the wildfire crisis.<sup>232</sup> 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.<sup>233</sup> California is partially at fault because despite signs suggesting PG&E was struggling

225. Berke & Varinsky, *supra* note 26 (explaining why wildfires burn out of season).

226. See Jamie Tarabay, *Across Australia, Yet Another Scorching Summer*, N.Y. TIMES (Jan. 25, 2019), <https://www.nytimes.com/2019/01/25/world/australia/heat-wave-horses.html?module=inline> (discussing wildfires in Australia).

227. *Id.* (linking wildfires to heat waves); SEASONS, AUSTRAL. GOV'T BUREAU OF METEOROLOGY, <http://www.bom.gov.au/climate/glossary/seasons.shtml> (last visited Feb. 16, 2019) (stating summer months in Australia).

228. See Tarabay, *supra* note 226 (describing number of wildfires in Australia).

229. See CAL FIRE Investigators Determine Cause of Four Wildfires in Butte and Nevada Counties, *supra* note 12 (listing PG&E's faults in 2017 wildfires); see also CAL FIRE Investigators Determine Causes of Twelve Wildfires in Mendocino, Humboldt, Butte, Sonoma, Lake, and Napa Counties, *supra* note 12 (listing PG&E's faults in additional wildfires).

230. For a discussion of PG&E's wrongdoings, see *supra* notes 75-106 and accompanying text.

231. See Eavis, *supra* note 119 (discussing PG&E's assuming responsibility for Camp Fire).

232. See Chuck DeVore, *Trump's Right About California Wildfires: It Wasn't Climate Change; Two New California Laws Prove it*, FORBES (Nov. 27, 10:43 AM), <https://www.forbes.com/sites/chuckdevore/2018/11/27/trumps-right-about-californias-fires-it-wasnt-climate-change-two-new-california-laws-prove-it/#2baa0a5b22e3> (arguing new wildfire bill supports argument state is to blame).

233. See *id.* (suggesting California could have avoided wildfires if policies were in place years ago).

for years, the state failed to see the company's shortcomings were part of a larger systemic problem.<sup>234</sup> 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.<sup>235</sup> 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.<sup>236</sup>

Without implementing changes, such as slowing down climate change and enforcing safety compliance, the wildfires will worsen.<sup>237</sup> Their destruction hurts everyone – the state, residents, and businesses.<sup>238</sup> PG&E surrendered most of its control to a bankruptcy court, while California struggles to rebuild after the wildfires.<sup>239</sup> Unfortunately, the people who suffer the most are the surviving victims of the wildfires.<sup>240</sup> A housing crisis, potential long-term health ailments, and little opportunity for recompense hinder

---

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).

240. See Alexandra Yoon-Hendricks, *Camp Fire Victims Have Been Through "Hell." As Last Shelter Closes, Where Will They Go?*, SACRAMENTO BEE (Jan. 30, 2019, 3:30 AM), <https://www.sacbee.com/news/local/homeless/article225194350.html> (detailing harrowing experiences of Camp Fire victims and continuing struggles to find housing).

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

*Rizzlyn Terri M. Melo\**

---

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).

\* J.D. Candidate, May 2020, Villanova Charles Widger School of Law, B.S., Business Administration, Economics Minor, 2017, Montclair State University. I would like to thank my friends and family for their love and encouragement. I would especially like to thank my parents, Edwin and Marlyn Melo. Thank you for all that you do, and I am proud to share every achievement with you. I love you both. I dedicate this comment to my grandfather, Andres Macavinta. Your commitment to your family and love of education have made me into the person I am today. You continue to inspire me and all your grandchildren every day.