Legislative Solutions to Unlimited Wildfire Liability:

A Survey of Approaches

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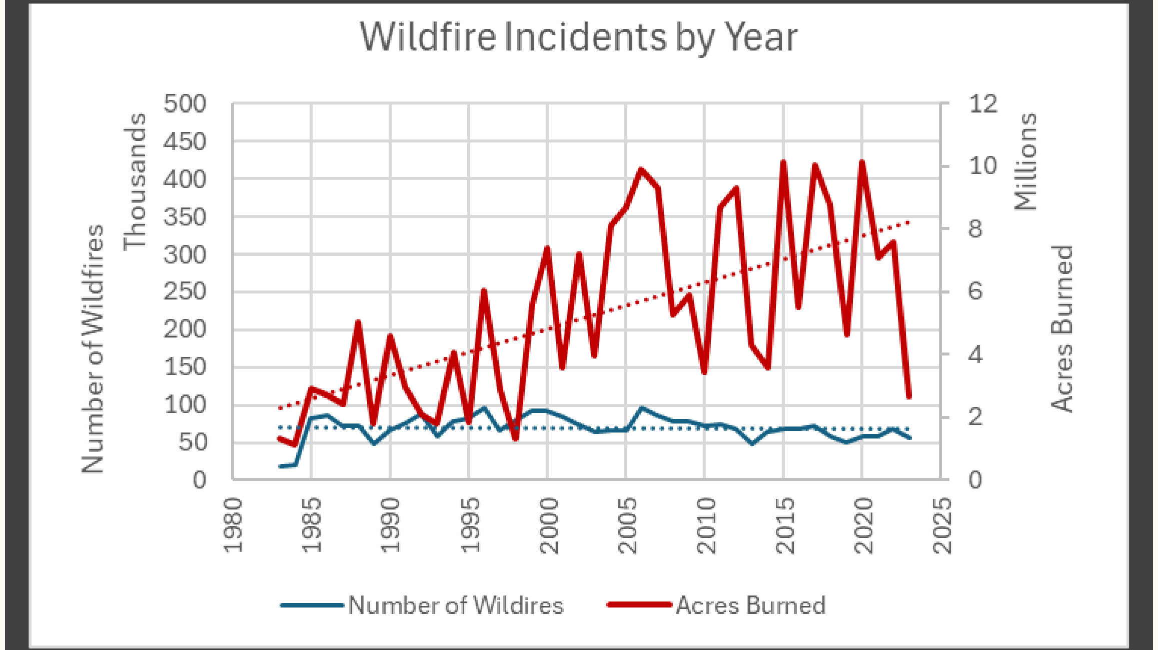
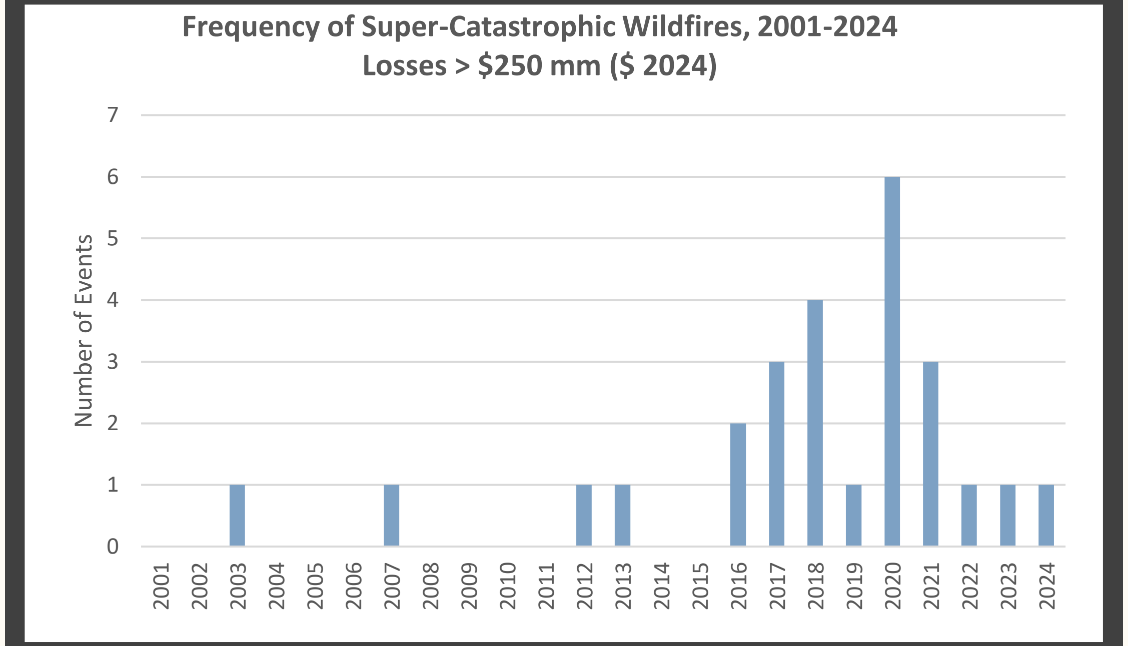
Wildfire Risk Is Growing Across the Western U.S.





"Utilities operating in Alberta, Arizona, California, Colorado, Florida, Idaho, Nevada, New Mexico, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington and Wyoming are all experiencing increasing wildfire risks, raising the utility's credit risks."

– S&P, July 18, 2024

Wildfire Risk Is Growing Across the Western U.S.

- **January 2025 Los Angeles Fires (Palisades and Eaton)**
  - 2nd (Eaton) and 3rd (Palisades) most physically destructive fires in CA history
  - Eaton: 14,000+ acres, 9,400+ structures, 19 lives lost
  - Pacific Palisades: 23,000+ acres, 6,800+ structures, 12 lives lost
    - **<u>Los Angeles not previously considered susceptible to catastrophic fire</u>**

- **August 2023 Maui Fires**
  - 2,200+ structures
  - 6,900+ acres
  - 102 lives lost
  - Fifth deadliest fire in U.S. history
    - **<u>Hawaii not widely considered at risk for catastrophic wildfire</u>**

Wildfire Risk Mitigation Is Not Enough By Itself

<u>Utilities' ability to mitigate physical and financial risk from wildfires using traditional tools is limited</u>

- **Wildfire mitigation cannot fully eliminate risk of utility-implicated fires**
  - Wildfire Mitigation Plans ("WMPs") involve cost/benefit trade-offs, long-term projects, and huge scope
  - Utility's ability to influence other actors that contribute to fire risk is limited
    - Land use planning, land management, firefighting resources, emergency response
  - External factors outside of utility control
    - Climatological and environmental conditions (e.g., drought, increased fire weather days, strong winds)

- **Traditional financial mechanisms are no longer enough**
  - Commercial insurance: shrinking availability, increasing cost
  - Regulatory recovery of costs to resolve claims is uncertain
  - The scope of potential damage can be huge

One Approach: Legislative Reform

- **"A robust policy framework that addresses liability exposure and incorporates legal and financial safeguards against extreme event risks is vital to protect utility credit quality and retain investor confidence in the event of catastrophic wildfires."** ***Moody's,*** **November 7, 2024.**

- **Reform legislation can include or combine three elements:**
  - Create funding to resolve wildfire claims (e.g., a wildfire fund)
  - Limit liability or remedies against utilities for wildfire claims (e.g., a liability cap)
  - Create new, innovative approaches that solve wildfire problems at a societal level

Arguments for Legislative Reform

Practical Arguments

- **Necessary to protect finances of regulated utilities, preserve integrity of electric service, protect ratepayers, facilitate infrastructure investments**
  - Wildfires have caused utilities to be downgraded to non-investment grade; led to PG&E's bankruptcy; and can make it difficult and expensive to raise debt
  - Increased cost of capital means higher electricity rates
  - Affects utility's ability to provide reliable services
    - Jeopardizes long-term state energy goals
    - Creates challenges raising capital for wildfire mitigation efforts
  - Can affect investments in utility—which are often owned by current or former employees.
- "[A]n investor-owned utility's credit rating and its access to capital are of critical importance to its ability to provide the infrastructure it needs to meet its customer service obligations." - California Public Utilities Commission.

Arguments for Legislative Reform

Fairness Arguments

- **Regulated electric utilities have a duty to serve even high-wildfire-risk areas—they cannot mitigate risk the way a private company would;**
- **Factors outside of a utility’s control have increased the risk of ignition and scope:**
  - Climate factors (e.g. unprecedented winds) can cause ignitions;
  - Those same climate factors can lead to unprecedent scope—spreading fires far and fast;
  - Land management practices can impact spread;
  - Human development in the wildland urban interface has increased;
  - Fire suppression and emergency management outside utility control;
- **Tort law does not, on its own, effectively account for these many factors**

Arguments for Legislative Reform

Fairness Arguments (cont')

- Under the regulatory compact, reasonable and prudent costs of preparing for or responding to wildfire claims should be passed on to ratepayers
  - Electric utilities cannot operate without any wildfire risk – even when they are reasonable and prudent
  - That means that preparing for and responding to wildfires is a "cost of service"
  - Regulated utilities must be able to pass on such reasonable and prudent costs to ratepayers
- **Public entities often have immunities that can protect them from liability in similar situations;**
  - These immunities reflect policy choices that:
    - In some case, the state must offer vital services, and should not be deterred from doing so through suit;
    - Taxpayers should not shoulder the burden of those suits.
  - But those same arguments often apply to public utilities providing vital services

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Legislative Reform 1: Wildfire Funds

Key design questions include:

- Insurance style fund, administrative claims fund, or both?
- What is the amount of the fund, and how is that determined?
- Is there a process for increasing the amount of the fund based on later events?
- How is the fund capitalized: taxpayers, ratepayers, shareholders?
- Is the fund created by the legislature, PUC, or a hybrid approach?
- Is it a pooled-risk fund, with multiple utilities, or electric-utility-specific?
- Must contributors have wildfire mitigation plans?
- Does the fund have a process for review of utility prudence after an event?

Wildfire Funds - Examples

- **California AB 1054 (2019)—created $21B wildfire fund for California's three largest utilities**
  - Fund operates like insurance: covers settlements and judgments
  - Fund attachment point is greater of $1B or utility's insurance
  - Shareholders/ratepayers 50/50 split
  - California PUC can order utility to reimburse the fund, up to a cap, for imprudence
  - <u>**No provision for supplemental payments, no limits on liability**</u>

- **California SB 254 (Sept. 2025 in response to LA fires)**
  - Creates a further $18B fund that covers only fires ignited after effective date
  - Shareholders/ratepayers 50/50 split (with some nuance)
  - California PUC can order utility to reimburse the fund, up to a cap, for imprudence
  - SCE may securitize bonds for Eaton costs exceeding original fund—subject to potential ratepayer credit

Wildfire Funds - Examples

- **Utah SB 224 (Mar. 2024)—authorizes utility to create a fund paid for through a ratepayer surcharge, for wildfire claims**
  - Large-scale utility applies to create its own fund (~$1b-$1.5b for Utah's largest electric utility)
  - Utah PUC can order utility to reimburse fund, up to cap, if settlement amount unreasonable

- **Hawaii Act 258/SB 897 (July 2025)—directs PUC to conduct study in 2025 on wildfire fund**
  - Goals: (1) efficient compensation from utility-caused fire; (2) protect financial integrity of utilities;
  - Study examines at least:
    - How fund would impact utility credit rating and customer costs;
    - Size of fund
    - How to capitalize fund
    - Whether to include administrative claims process;
    - Who should participate

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Wildfire self-insurance - Examples

- **California—$1B in self-insurance for PG&E and SCE (both 2023) with shareholder co-insurance payments required**
  - Replaces commercial wildfire insurance
- **Nevada (application pending)—$500M in self-insurance for two utilities with shareholder co-payment required,**
  - Excess to commercial insurance
  - In July 2025, PUC issued order finding additional $500M in insurance reasonable and prudent, with directions for further filing
- **Texas HB 145 (June 2025)—authorizes commission to create self-insurance without shareholder payment**
  - No statutory limit to amount of self-insurance
  - No self-insurance for wildfire caused “intentionally, recklessly, or with gross negligence.”

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Key design questions – limits on liability

- **Laws can reduce the cost of resolving claims in multiple ways**
  - *"Limitation on liability" may not be appropriate name for all of them*
  - Limit when the utility can substantively be held liable (i.e., no strict liability; no liability for WMP compliance)
  - Limit the damages available against a utility if it is substantively found liable under the law
    - E.g., cap non-economic damages;
    - Limit overall damages to a set amount;
  - Create processes that allow for less expensive claims resolution (arguably not "liability limit")
    - Administrative claims process;

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Limit utility liability for wildfire claims

Laws can revise the standard for liability for utility wildfire claims or create wildfire mitigation plan shields

- **North Dakota SB 2339 (Apr. 2025)**
  - No strict liability
  - Compliance with WMP creates rebuttable presumption of reasonable care
- **Arizona HB 2201 (May 2025)**
  - Compliance with WMP is defense to a negligence claim; failure to comply is not per se negligence
- **Montana HB 490 (May 2025)**
  - Substantial compliance with WMP creates rebuttable presumption of reasonable care
- **Wyoming HB 0192 (Mar. 2025)**
  - Requires showing of gross negligence, malice, or criminal intent if a utility substantially complies with a WMP

Limit remedies against electric utilities for wildfire claims

Laws can limit an individual's damages

- **Utah SB 224**
  - limits economic damages for real property loss to the lesser of (1) the cost to rebuild or (2) the loss in fair market value of the property
  - Caps non-economic damages: $100k non physical injury; $450k physical injury (no cap for wrongful death)

- **Idaho SB 1183 (Apr. 2025)**
  - Non-economic damages subject to cap of ~490k, but n/a for willful acts, reckless misconduct, or felonies

- **Wyoming HB 0192, Montana HB 490**
  - Eliminate noneconomic damages except for bodily injury or death

Limit remedies against electric utilities for wildfire claims

Laws can limit aggregate damages from a wildfire

- **Aggregate damages caps were included in the Price-Anderson Act (capping nuclear liability at available collective insurance), and in post-9/11 legislation, capping liability of airlines, airports, and local governments to existing insurance coverage limits**
- **Hawaii Act 258/SB 897 - Public utilities commission will initiate rule-making procedure to create aggregate limit on economic property damages to electric utility from wildfire.**
    - Commission must determine maximum amount utility can pay “without harming ratepayers or materially impacting [the] electric utility’s ability to provide adequate and safe service consistent with the public interest.”
    - May consider flat dollar limits or percentage of utility market cap or rate base
    - May determine whether to set a cap that is per fire; or for all fires within a set period of time.
    - Commission shall consider factors including impact on utility’s credit rating and how to help improve that rating and lower costs to customers, the impact on the insurance market, and impact on plaintiffs.
  - All civil cases in same circuit: court enforces cap, including by approving settlements and judgments.

Reduce costs of resolving claims

- **Administrative claims process—contemplated by Hawaii Act 258/SB 897—can allow for efficient, speedy resolution of claims;**
- **California SB 254: provides IOU with a right of first refusal for the sale of insurance subrogation claims.**
  - Property insurers must offer to settle their subrogation claims with IOUs on the same terms and conditions of any sale of the claims to a non-insurer third party before selling the claims to a non-insurer third party.
- **Wyoming HB 1092: before landowners may file suit, they must negotiate in good faith with utility and submit itemized damages, and the utility must respond within 90 days.**

Solve broader societal problems stemming from wildfire risk

- **CA SB 254 – directs California Wildfire Fund Administrator to prepare report on new models or approaches to address risk and harms from climate-fueled wildfires, for consideration by CA Legislature in 2026.**
  - Report shall include recommendations on at least:
    - (1) alternative structures to socialize risk of natural catastrophes;
    - (2) limitations on liability, including limits on attorney's fees, economic and non-economic damages (including claims by insurers), public entity claims, claims by those outside the fire perimeter, and aggregate limitations on liability per event;
    - (3) **new models to replace the California wildfire fund, including state-sponsored property insurance, mutual insurance, a publicly supported financial safety net, and also improvements to the fund to enhance durability**