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***TESTIMONY IN SUPPORT OF JOINT
APPLICATION FOR AUTHORITY TO ESTABLISH
A WILDFIRE EXPENSE BALANCING ACCOUNT
TO RECORD FOR FUTURE RECOVERY
WILDFIRE-RELATED COSTS***

Before the

Public Utilities Commission of the State of California

Rosemead, California

August 31, 2009

**TESTIMONY IN SUPPORT OF JOINT APPLICATION FOR
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ACCOUNT TO RECORD FOR FUTURE RECOVERY WILDFIRE-
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I.

POLICY TESTIMONY

Executive Summary

- The California Public Utilities Commission (CPUC or Commission) should authorize recovery in rates of costs of uninsured wildfire claims, to the same extent that such claims would have been covered by insurance policies the Utilities historically have been able to purchase.
 - Insurance carriers have dramatically limited coverage in response to claims experience and a negative perception of a legal doctrine known as “inverse condemnation.”
 - Utilities are thus exposed to uninsured claims that could be substantial.
- Wildfires are inevitable. Like other natural disasters, the magnitude of damage depends on factors outside the Utilities’ control, such as weather, demography, and local fire-fighting capabilities.
- Insurance costs have traditionally been recovered in rates, as have extraordinary costs resulting from natural disasters. Uninsured wildfire claims should likewise be recoverable.
- The risk of fire is inherent in the provision of utility service. Because that risk cannot be entirely avoided, the costs of claims for wildfires allegedly caused by utility property are properly recoverable.
- Large uninsured wildfire claims could threaten the Utilities’ financial integrity, contrary to the public interest.
- Whether a utility is subject to penalties for violating a General Order (GO) is a separate question from whether a utility should recover costs from wildfires, and a penalty decision should not be allowed to undermine cost recovery.

1 **A. Introduction**

2 In this Application, San Diego Gas & Electric Company (SDG&E), Southern California Gas
3 Company (SoCalGas), Southern California Edison Company (SCE) and Pacific Gas and Electric
4 Company (PG&E) (together the Utilities and individually a Utility) ask the Commission to authorize
5 recovery in rates of wildfire-related costs.¹

6 This application is prompted by major changes in the insurance market. In the past, the Utilities
7 were able to purchase liability insurance covering wildfires of between \$650 million and \$1.2 billion,
8 with the premium amounts recovered through authorized rates. The amount of insurance available
9 today, however, has been substantially reduced. Insurers with a perception of increased risks are
10 dramatically limiting wildfire liability coverage, offering substantially less insurance for a much higher
11 price. Although the insurers' concern initially focused on fires outside urban centers, they are limiting
12 coverage for major urban fires as well.

13 The insurers' actions leave the Utilities exposed to claims arising from wildfires associated with
14 utility facilities. These uninsured claims have the potential to adversely affect the financial condition of
15 the Utilities, to the detriment of customers and shareholders alike. The lack of coverage is particularly
16 problematic now because increasing risk of large claims arising from wildfires, especially in
17 Southern California, suggests a need for more coverage, not less. The Utilities must, in effect, now
18 self-insure for all wildfire claims above the shrinking liability coverage obtained from insurers.

19 Wildfires have always been part of California's landscape due to the state's geography and
20 weather patterns. However, recent experience suggests that the risk of large claims from wildfires has
21 increased due to population growth in fire-prone areas and changing weather conditions. In
22 October 2003, in the worst fire outbreak up to that point, 14 major wildfires raged across
23 Southern California, destroying 3,700 homes, burning over 750,000 acres, and taking 24 lives.² Just

¹ See Chapter 4 for the precise boundaries of the cost recovery request.

² For a detailed discussion of the 2003 fires, see *California Fire Siege 2003: The Story, October 21-November 4, 2003*, California Department of Forestry and Fire Protection <www.fire.ca.gov/fire_protection/downloads/2003FireStoryInternet.pdf> (as of Aug. 17, 2009).

1 four years later, drought conditions and hot, dry Santa Ana winds again spawned fires across
2 Southern California. Fire resources were stretched thin as eight fires broke out within 24 hours,
3 multiplying to 16 locations within days. The October 2007 fires ultimately burned over 500,000 acres,
4 destroying some 3,000 buildings and costing 17 lives.³

5 Less than a year later, in June 2008, Northern California faced its own wildfire crisis. Dry
6 lightning and drought conditions contributed to the worst fire outbreak in California history based on
7 acres burned. Over 50 major fires blazed across Northern California's forests and foothills, ultimately
8 burning more than 1 million acres.⁴ Continuing the trend, the 2009 fire season has started unusually
9 early. In mid-May, dry winds spread fire across the hills above the city of Santa Barbara, destroying
10 80 homes. This wildfire, unintentionally sparked by an individual operating vegetation removal
11 equipment, spread under conditions bearing the hallmarks of recent major fires: high temperatures,
12 strong winds, low humidity and dense vegetation.

13 These events have created a heightened awareness of wildfire risks on the part of utility insurers.
14 Prior to the 2007 fires, their loss experience from utility wildfire claims was modest.⁵ This fact is not
15 surprising based on a review of historical wildfire statistics. According to California Department of
16 Forestry and Fire Protection (CAL FIRE) data, approximately 5,000 wildfires start annually,⁶ most of
17 which are promptly extinguished, and CAL FIRE attributes only 3 percent of these fires to power lines.⁷
18 Although wildfire liability is more commonly associated with electric facilities than with gas facilities,

³ *California Fire Siege 2007 – An Overview*, California Department of Forestry and Fire Protection (CAL FIRE), Governor's Office of Emergency Services (OES), and the United States Department of Agriculture (U.S. Forest Service) with the cooperation of other local, state and federal agencies <http://www.fire.ca.gov/fire_protection/downloads/siege/2007/Overview_CompleteFinal.pdf> (as of Aug. 17, 2009)..

⁴ *California Wildfires, FEMA EM - 3278 - CA, Total Incidents from 6/22/08-8/11/08*, (2008) California Governor's Office of Emergency Services (OES) <http://www.fire.ca.gov/downloads/incidents/All_statewide_Fires_0622_081108_a.pdf> (as of Aug. 17, 2009)..

⁵ See Chapter 3 of this testimony for discussions of the Utilities' loss experiences.

⁶ Between 2001 and 2005, an average of 5,685 fires occurred annually in CAL FIRE's jurisdiction. *CDF Jurisdiction Fires, Dollar Damage and Structures Destroyed* (Aug. 2006) California Department of Forestry <http://www.fire.ca.gov/about/downloads/firestats8_06.pdf> (as of Aug. 17, 2009).

⁷ *Percent of Fires By Cause, Statewide 5-Year Average 2000-2005, CDF Jurisdiction*, California Department of Forestry and Fire Protection <http://cdfdata.fire.ca.gov/admin/cdf/images/incidentstatsevents_106.pdf>.

1 this application seeks cost recovery for gas utility operations as well. Though less frequent, gas facilities
2 can also be associated with a wildfire. PG&E and SDG&E gas and electric operations are covered by
3 the same policies, so the limited availability of insurance to cover wildfire liabilities affects gas and
4 electric operations equally. SoCalGas owns some electric distribution facilities and is insured under the
5 same policies as SDG&E.

6 Recent experience shows that fires ignited during adverse weather conditions can result in
7 extensive damage and utility equipment may contribute to the fire. As a result of damage claims from
8 the 2007 wildfires, insurers are now focused on this risk. In addition, as discussed in Section E below, a
9 California Court of Appeal ruling currently being cited by plaintiffs' lawyers increases the potential for
10 sizeable wildfire damage payouts based on the theory of inverse condemnation. Insurers fear that this
11 theory imposes strict liability on the utilities, making them responsible for property damage from any
12 fire associated with utility equipment, even if there is no proof of utility negligence. Uncertain about the
13 risk they face, insurers have chosen to reduce or withdraw wildfire liability coverage in California, and
14 to increase the cost of available coverage.

15 Each of the Utilities renews its liability insurance policies on a different schedule. SDG&E and
16 SoCalGas completed their 2009 renewals in June. They were only able to obtain one-third of the
17 wildfire coverage they bought in 2008 (\$399 million vs. \$1.2 billion) at four times the cost (\$55.2
18 million vs. \$13.6 million). The insurers' anticipated loss experience from the 2007 San Diego fires is
19 without doubt a contributor to this result; however, as discussed in Chapter 2 of this testimony, insurers'
20 general reassessment of wildfire risks has negatively affected the market as a whole.

21 PG&E completed its 2009 policy renewals on August 1. Although PG&E's recent loss
22 experience was similar to its prior years' experience, PG&E saw a \$150 million reduction in its policy
23 limits (from \$1.1 billion to \$950.0 million), and a doubling of its premiums from \$8.8 million to
24 \$17.0 million. SCE also expects to pay substantially more for less insurance when it finalizes its
25 renewals in September.

26 The lack of sufficient coverage as the 2009 fire season begins poses significant financial risks.
27 As discussed in detail below, this application requests quick Commission action to assure that the

1 Utilities will continue to have the financial means to provide reliable service in the aftermath of one or
2 more major wildfires.

3 Although this filing only deals with cost recovery, it is part of a broader set of ongoing
4 Commission activities addressing wildfires. In November 2008, the Commission opened a rulemaking
5 to consider changes to the rules governing the design, construction, and maintenance of overhead supply
6 and telecommunication lines to reduce wildfire risks.⁸ A recent decision in Phase I of that proceeding
7 contains new vegetation management rules with implementation to begin before the fall. Phase II will
8 address longer-term actions to further reduce wildfire risks. While these actions can help over the long
9 run, none of them can eliminate the risk of a catastrophic fire, nor can they resolve the possibility that
10 wildfire claims will greatly exceed available insurance. Insurance coverage alone may no longer protect
11 the Utilities against financial losses stemming from wildfires. Prompt Commission action is necessary
12 to ensure the Utilities' continued financial and operational strength.

13 **B. Cost Recovery Approach**

14 Insurance costs have long been recovered in rates as an ordinary and necessary component of
15 utility operating costs. As discussed further in Section D, the Commission recognizes that insurance
16 premiums and insurance deductibles are ordinary costs of business and includes those costs in rates
17 through General Rate Case (GRC) proceedings. Prior to 2007, there had not been large wildfire liability
18 claims against the Utilities, and sizeable liability coverage was available to each company.⁹ As a result,
19 the Commission has not had to consider rate recovery for the cost of self-insuring for wildfire claims in
20 excess of liability insurance coverage. The current unavailability of sufficient insurance at a reasonable
21 cost, however, makes this action necessary now.

22 Chapter 4 of this testimony describes a detailed cost recovery mechanism. The primary costs
23 addressed are wildfire claims by third parties resulting in costs that are not paid by insurance,¹⁰

⁸ *Order Instituting Rulemaking to Revise and Clarify Commission Regulations Relating to the Safety of Electric Utility and Communications Infrastructure Provider Facilities*, R.08-11-005.

⁹ In 2008, the Utilities obtained liability coverage with limits between \$650 million and \$1.2 billion.

¹⁰ The insurance carriers have defined the term "wildfire" broadly. For example, the 2009 policy of AEGIS Insurance Services, Inc., the lead utility insurer, defines "wildfire" to include "any wild fire, wildland fire, forest fire, brush fire,

(Continued)

1 including claims for property or resource damages, fire suppression costs, the costs of defense of such
2 claims and other wildfire-related costs such as changes in liability insurance premiums and deductibles.
3 The Utilities request that the Commission authorize them to record these costs to a Wildfire Expense
4 Balancing Account (WEBA) and to recover the WEBA balance in rates. If the WEBA balance is large,
5 the Utilities will work with other stakeholders to lower the rate impact through passage of legislation
6 allowing issuance of securitized debt based on a dedicated rate component. This financing approach has
7 been used successfully by the Utilities to reduce customer costs in other situations and is similar to that
8 used by utilities in Florida to recover costs from hurricane damage.¹¹ If securitization is unavailable, the
9 Utility may file an application for authority to issue additional debt and/or equity to finance wildfire
10 costs and may ask the Commission for authority to record higher financing costs to the WEBA.

11 Recovery of wildfire costs not paid by insurance should be based upon the same criteria used in
12 insurance policies for payment of liability claims: costs are recoverable so long as the event is not the
13 result of acts or omissions intentionally engaged in or directed by utility management with intent to
14 cause harm or with knowledge that harm was substantially certain to result.

15 There are several reasons why this insurance-based cost recovery principle is appropriate, each
16 of which is discussed further below:

- 17 • Unlike insurance carriers, who can limit their risk by choosing whom to cover, the
18 Utilities have an obligation to serve all customers in their service territories and cannot

Continued from the previous page

vegetation fire, grass fire, peat fire, bushfire, hill fire, or any other uncontrolled fire which can also consume houses, buildings or other structures and agricultural resources in each occurring over an area that is larger than one acre (exclusive of the Insured's premises).” This definition encompasses large urban fires as well as fires in rural and semi-rural areas. The extent of the uninsured costs, and thus the recovery sought, is determined by the insurers’ definition of “wildfire.” Accordingly, the Utilities use the term “wildfire” in this Application to refer to all fires that fall within the AEGIS definition. If the insurers change their definition of “wildfire” in the future, the extent of rate recovery would conform to the new definition.

¹¹ The Commission has substantial experience with securitization through the Rate Reduction Bonds and PG&E’s Energy Recovery Bonds. See Chapter 4 of this testimony for a brief discussion of securitization. Florida’s investor owned utilities have legislative authority to issue securitized debt to pay for hurricane recovery and to fund reserves against future hurricane costs. Interest and principal on the debt are repaid through a dedicated rate component. Fla. Stat. § 366.8260.

1 withdraw from fire-prone areas. Wildfire risks come with the utility franchise and, as
2 such, must be addressed in rates.

- 3 • Major wildfires are natural disasters stemming from factors such as climatic conditions,
4 geography and demography over which the utilities have no control. The costs of natural
5 disasters are routinely included in rates.
- 6 • The Commission recognizes that insurance costs and claims are part of the reasonable
7 cost of providing public utility service; the Commission treats self-insurance costs the
8 same way.
- 9 • Significant uncompensated costs could threaten the Utilities' financial strength and their
10 ability to provide reliable service, contrary to the Commission's and Legislature's
11 policies in support of the Utilities' financial creditworthiness.
- 12 • The Utilities are responsible for maintaining thousands of miles of lines and millions of
13 poles; imposing on the Utilities broad responsibility for wildfire claims would hold them
14 to a standard of perfection the Commission has expressly recognized is unattainable.
- 15 • The Commission can meet its goals of reliability and safety by continuing its current
16 investigation and penalty policies, so long as investigations are not allowed to undermine
17 the principle of rate recovery for wildfire costs that would have been covered by
18 insurance.

19 In addition to uninsured wildfire claims costs and related expenses, the Utilities also propose to
20 record in the WEBA any changes in wildfire insurance premiums from amounts authorized in the
21 Utilities' General Rate Cases. Like wildfire claims costs, insurance premium costs are now
22 unpredictable and volatile, making balancing account treatment appropriate. In order to obtain the
23 benefit of input from customer representatives in the decisions to procure insurance, the Utilities
24 propose to consult with customer representatives during the annual insurance procurement process. As
25 discussed in Chapter 3D, the Utilities ask the Commission to approve the establishment of a consultative
26 process that would include the Division of Ratepayer Advocates, Energy Division, and other stakeholder
27 groups.

1 **C. Major Wildfires Are Natural Disasters**

2 Wildfires have always been a danger in California due to climatic and geographic conditions.
3 The state as a whole is subject to distinct wet and dry seasons, with the vast majority of precipitation
4 occurring in the late fall through spring. High winds and low humidity often coincide at the end of the
5 dry season, and these winds are concentrated in the canyons and hillsides common to each Utility's
6 service territory. Wind speeds at the mouths of some canyons can accelerate greatly, creating the
7 potential for a single spark to escalate into a fire storm. With low humidity and little summer rainfall,
8 the state's natural vegetation ignites quickly, producing embers that spread fire rapidly in high winds.¹²
9 Wildfire risks will only increase to the extent climate change results in higher temperatures and drier
10 vegetation. Both the Commission's Consumer Protection and Safety Division and the Commission itself
11 have recognized a link between global warming and increased danger from wildfires.¹³ The risk of
12 extensive damage from wildfires has increased as populations have spread to canyons and other
13 fire-prone areas, or areas with limited local fire-fighting resources.

14 Although state and local laws have tightened building and vegetation clearance requirements
15 with the aim of limiting fire losses, not all homes meet current codes nor can all meet recommended
16 standards for vegetation clearance.¹⁴ Furthermore, in recent years the state has faced multiple fires at
17 once, stretching firefighting resources to the limit.

18 As Figure 1-1 shows, the vast majority (97 percent) of wildfires tracked by CALFIRE each year
19 result from sources other than power lines. Yet, by providing electric service to customers in the

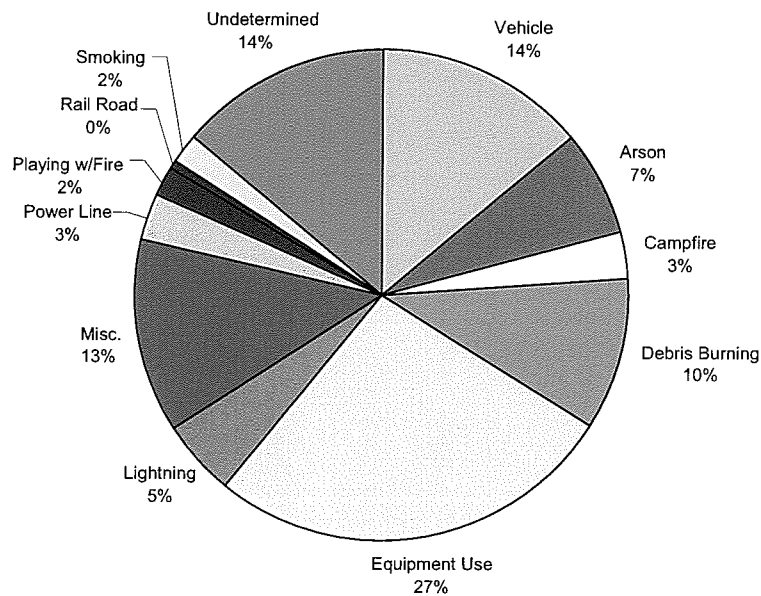
¹² *General Guidelines for Creating Defensible Space* (February 8, 2006) State Board of Forestry and Fire Protection (BOF), California Department of Forestry and Fire Protection <http://www.fire.ca.gov/CDFBOFDB/pdfs/Copyof4291finalguidelines9_29_06.pdf> (as of Aug. 17, 2009).

¹³ See *The Consumer Protection and Safety Division's Proposed Rules to Be Implemented in Time for the 2009 Fall Fire Season*, R.08-11-005 (Cal. P.U.C., March 9, 2009), pp. 16-17 <<http://docs.cpuc.ca.gov/efile/REPORT/98373.pdf>> (as of Aug. 17, 2009); and *Interim Opinion on Phase 1 Issues: Greenhouse Gas Emissions Performance Standard*, D.07-01-039, p. 214.

¹⁴ California Public Resources Code (PRC) § 4291 expands vegetation clearance requirements maintained around buildings and structures from 30 feet to a distance of 100 feet. However, property owners are not required to clear vegetation beyond their property line, regardless of the distance. *General Guidelines for Creating Defensible Space* (Feb. 8, 2006) California Department of Forestry, p. 2 <http://www.fire.ca.gov/cdfbofdb/PDFS/4291finalguidelines2_23_06.pdf>.

1 developments now spreading across California’s fire-prone foothills, the Utilities face an unavoidable
 2 risk that their equipment will contribute to a major wildfire. The high winds that can transform a small
 3 fire into a fire storm also increase the likelihood that trees or vegetation will blow into power lines, as
 4 well as the potential that poles or wires may fail under the strain irrespective of compliance with
 5 applicable installation and inspection rules.

Figure I-1
California Wildfires By Cause, 2000-2005(a)
California Department of Forestry and Fire Protection Jurisdiction(b)



(a) *Percent of Fires By Cause, Statewide 5-Year Average 2000-2005, CDF Jurisdiction, California Department of Forestry and Fire Protection, <http://cdfdata.fire.ca.gov/admin/cdf/images/incidentstatevents_106.pdf>.*

(b) Note that Cal Fire appears to attribute power lines as the “cause” of a fire any time power lines are involved in a fire (e.g., if a car knocks over a power pole causing a spark that ignites a fire). The Utilities do not agree with this definition of causation.

6 Like other natural phenomena such as tornados and earthquakes, fire is highly unpredictable. As
 7 exemplified by the October 2007 fire siege, fires may be ignited under similar circumstances, yet lead to
 8 vastly different results.¹⁵ Though occurring during the same time frame and under similar weather
 9 conditions, each of the sixteen October 2007 wildfires had unique features. Some were contained within

¹⁵ See *California Fire Siege 2007 – An Overview*, footnote 3, *supra*, at Appendix II for descriptions of each major fire.

1 hours, causing minimal damage, while others took well over a week to contain, taking lives and burning
2 thousands of acres and hundreds of structures. Although power lines were associated with some fires,
3 others stemmed from equipment use and arson. The fires' sources bear no discernable relationship to
4 the extent of damages. For example, of the fires associated with power lines, the Sedgwick fire burned
5 only 700 acres and destroyed no structures while the Witch fire destroyed over 1,500 structures and
6 covered nearly 200,000 acres, underscoring fire's capricious nature.

7 While many wildfires cause only modest damage, some wildfires can have catastrophic
8 consequences. For example, restated in 2008 dollars the insured property damage from the
9 October/November 2003 San Diego fire was \$1.2 billion and from the October 1991 Oakland fire was
10 \$2.7 billion.¹⁶

11 The factors that influence the course of major wildfires once ignited—weather, geography,
12 building standards, vegetation density, and available local firefighting resources¹⁷—are all beyond the
13 Utilities' control. As a result, the Commission should permit the Utilities to recover wildfire-related
14 costs in rates, consistent with the treatment of other natural disasters, including earthquakes, tornados,
15 and major storms.

16 **D. Historically, The Commission Has Authorized The Utilities To Recover Costs Associated**
17 **With Wildfires And Other Disasters**

18 As noted, until now the Utilities have been able to purchase reasonably priced insurance in
19 amounts they have deemed adequate to cover the risks associated with wildfires and, until 2007, there
20 had not been large losses. As a result, there has been no need for the Commission to address cost
21 recovery for wildfire claims outside of policy limits. However, precedents for both natural disasters and

¹⁶ *Wildland Fires*, Insurance Information Institute, <<http://www.iii.org/media/facts/>> and select Wildland Fires from list (222660.html) (as of Aug. 18, 2009).

¹⁷ For example, a May 29, 2008 San Diego Grand Jury Report found San Diego County “does not comply with [national] standards for emergency response time or emergency response locations,” and is “woefully unprepared” for a major fire. *The Fire Next Time - Will We be Ready?*, San Diego County Grand Jury 2007 - 2008, pp. 1, 13 <http://www.signonsandiego.com/news/metro/images/080529fire_report.pdf>. The complete report is attached as Attachment A.

1 insurance make clear that such costs should be treated as a cost of ongoing business operations and
2 recovered in rates.

3 **1. Allowing The Utilities To Recover The Costs Of Wildfire Claims Is Consistent With**
4 **Commission Treatment Of Other Natural Disasters**

5 The Utilities recover costs from storms and other natural disasters in two ways,
6 depending on the magnitude and predictability of the event. Weather-related costs due to wind, heat,
7 rain, or lightning storms, including damage to utility facilities and claims by customers, are common
8 enough to be forecast in GRCs. The Commission approves an annual amount based on historical data
9 that is expected to recover such costs on average over time.

10 For natural disasters, which by their nature occur infrequently and cannot be predicted,
11 the Commission authorizes the Utilities to record and recover costs to restore utility service through the
12 Catastrophic Event Memorandum Account (CEMA). The Commission authorized the establishment of
13 CEMAs by all utilities in 1991. These accounts were a response to regulatory and ratemaking issues
14 that arose after the Loma Prieta earthquake.¹⁸ The legislature codified disaster cost recovery through
15 CEMA in Section 454.9 of the Public Utilities Code in 1994.

16 As the Commission explained, the resolution authorizing utilities to establish CEMA was
17 intended “to preserve the opportunity for utilities incurring unusual and extraordinary costs to seek their
18 recovery subsequently.”¹⁹ CEMA currently only addresses the costs of restoring service, repairing
19 damaged utility facilities, and complying with government orders; thus, it does not apply to third-party
20 claims. However, the principles embodied in CEMA are applicable to wildfire claims: natural disasters
21 cannot be predicted; therefore, it is appropriate to include costs resulting from these events in rates after
22 the fact rather than on a forecast basis.

¹⁸ Resolution E-3238 *Order Authorizing All Utilities to Establish Catastrophic Event Memorandum Accounts* (Cal. P.U.C., July 24, 1991), *codified as* Cal. Pub. Util Code § 454.9.

¹⁹ *Rulemaking on the Commission’s Own Motion for the Purpose of Determining Any Necessary Modification to the Commission’s Rules of Practice and Procedure to Comply with Section 325 of the Public Utilities Code*, D. 93-11-071, Cal. PUC LEXIS 799; 52 Cal.P.U.C.2d 223, p. 5.

1 **2. Commission Policies Recognize That Insurance Costs And Claims Are Part Of The**
2 **Reasonable Cost Of Providing Public Utility Service**

3 The Utilities maintain insurance coverage to protect them from the cost of large,
4 infrequent and unpredictable losses. Each Utility purchases liability insurance because events leading to
5 third party claims, including those resulting from employee accidents or errors, are an unavoidable part
6 of operating a business. Liability insurance costs, including the cost of policies covering wildfire
7 claims, are recovered in GRCs. The Utilities forecast insurance premium levels in their GRCs as part of
8 their test-year cost of service, and the Commission authorizes the inclusion of premium costs in
9 customer rates.

10 The Utilities' insurance policies typically require that a deductible be met before the
11 insurer pays claims. Accidents and uncontrollable events can and do happen, and some amount of
12 claims within the deductible amount will be paid each year. As a result, GRC revenues also incorporate
13 cost recovery of annual expense for estimable insurance deductibles. Forecasts of these insurance
14 deductible expenses, a cost of self-insurance, are based on historical losses.²⁰

15 The ratemaking for the two categories of natural disasters provides a guide to the
16 appropriate treatment for deductibles and wildfire costs exceeding insurance coverage: The costs of
17 storms whose occurrence can be predicted are forecast and recovered in GRCs, whereas the costs of
18 unpredictable disaster events are recovered through CEMA accounts. Correspondingly, any wildfire
19 claims expense deductibles that are forecast and authorized for rate recovery in GRCs would not be
20 recovered through the balancing account mechanism proposed here. Wildfire claims expenses
21 exceeding insurance coverage that cannot be readily predicted are not appropriate for test-year
22 ratemaking and should be afforded separate balancing account treatment.

23 By providing for the recovery of insurance premiums in rates, the Commission
24 recognizes that liability for claims by third parties resulting from wildfires is an ordinary, unavoidable
25 cost of doing business. The Utilities will continue to rely on insurance to the extent it can be obtained at

²⁰ The Utilities' practices regarding test-year forecasts of deductibles vary based on their insurance programs or other factors.

1 a reasonable price; however, to the extent insurance coverage is insufficient to cover wildfire claims, the
2 Commission needs to provide a different cost recovery mechanism, as proposed in this application.

3 **E. Inverse Condemnation Theory Has The Potential to Increase Claims Costs Regardless Of**
4 **Utility Actions**

5 Under the California constitution, private parties are entitled to compensation when their
6 property is damaged for “public use.” One way property owners enforce this right is by bringing an
7 action in civil court under the legal doctrine of inverse condemnation.²¹ Traditionally, the courts have
8 awarded damages under the inverse condemnation doctrine when government-owned facilities,
9 operating as they were deliberately designed and constructed, damage private property. Damages have
10 been awarded even in the absence of a showing of negligence.

11 In 1999, a California Court of Appeal ruled that an investor-owned utility (IOU) was effectively
12 a governmental entity and could be held liable under the inverse condemnation doctrine for damage to
13 private property caused by a fire whose source was utility facilities. The premise of the court’s decision
14 to extend inverse condemnation liability to IOUs in this circumstance was that IOUs can pass through to
15 their customers the amount they are required to pay to property owners. As the court stated: “The
16 fundamental policy underlying the concept of inverse condemnation is to spread among the benefiting
17 community any burden disproportionately borne by a member of that community, to establish a public
18 undertaking for the benefit of all.”²²

19 As a result of this decision, private property owners have brought inverse condemnation claims,
20 as well as traditional negligence claims, against IOUs for property damaged in fires allegedly caused by
21 utility facilities operating as they were deliberately designed and constructed. Although the Utilities
22 continue to contest this theory of liability, plaintiffs’ claims in this regard have increased insurers’
23 concerns that the Utilities are now at risk for substantial damage claims payouts. In addition, successful

²¹ The term “inverse condemnation” is used to describe a claim that the government has taken or damaged private property for public use without paying just compensation, even though it has not explicitly condemned the property through eminent domain.

²² *Barham v. Southern California Edison Co.* (1999) 74 Cal.App.4th 744, 752.

1 inverse condemnation plaintiffs are entitled to attorneys' fees and pre-judgment interest, which not only
2 add to the total litigation cost, but also encourage plaintiffs to sue.

3 Even if a utility was in full compliance with the Commission's safety regulations and there was
4 no proof of negligence, when utility equipment or facilities start a fire, the utility faces the prospect of
5 inverse condemnation claims for all the ensuing damages. For a major wildfire, those claims can easily
6 total billions of dollars. As discussed above, the magnitude of the damage caused by wildfires depends
7 on factors such as weather conditions, population density, geography, and local fire fighting resources,
8 which are beyond the control of any utility. In this way, inverse condemnation has the potential to
9 dramatically increase claims regardless of whatever precautionary measures the utilities take.

10 **F. The Commission Should Continue Its Policy Of Allowing The Utilities To Recover Costs**
11 **Associated With Wildfires**

12 **1. Wildfire Risks Come With The Utility Franchise, And As Such, Must Be Addressed**
13 **In Rates**

14 Supplying customers with gas or electricity brings with it an inherent risk of fire. The
15 Utilities can and do take measures to reduce this risk, but they cannot eliminate it. Measures to mitigate
16 the risk of fires have limits. Some limits are financial—for example, the Commission does not authorize
17 the Utilities to collect revenue in rates for every conceivable risk management project, only for those
18 deemed cost effective or necessary for business purposes. Some limits are physical. In order to provide
19 electrical services, the Utilities must operate and maintain power lines and other energized equipment
20 that have the potential to cause a fire. And unlike ordinary businesses, which can choose whether to
21 take on the risks associated with selling a product, the Utilities have an obligation to provide service to
22 all customers throughout their service territories, including customers who choose to live in fire-prone
23 areas.

24 When the risk of fire materializes, third parties may assert claims; and when utilities are
25 held liable for such claims, the resulting payments are an unavoidable cost of providing utility service.
26 The Utilities are entitled to recover such costs, just as they are entitled to recover all other costs
27 necessary to carry out their mission, as part of the regulatory compact. In exchange for providing utility

1 service under regulated rates, long-standing regulatory policies provide that utilities are entitled to an
2 opportunity to recover their operating costs plus a reasonable return.

3 **2. The Need For Financial Strength To Maintain Utility Operations And Reliable**
4 **Service Has Been Recognized Both By The Commission And The Legislature**

5 With the possibility of fire comes the threat that any single fire can escalate into a
6 disaster, with potentially enormous consequences both for property owners and for any utility that may
7 be liable for the costs. In this way, wildfires pose a unique threat to the Utilities' financial integrity.
8 California has already learned the bitter lesson of what happens when the financial condition of the
9 Utilities is impaired. After 2001, the Commission, working in partnership with the Legislature and the
10 Utilities, has helped the Utilities regain their financial health by working to restore the confidence of
11 financial markets, leading rating agencies to upgrade the Utilities' credit ratings which in turn has
12 reduced costs to customers. Now the Commission needs to take strong and certain measures to protect
13 the Utilities from another significant threat to their financial strength.

14 "Reasonable financial health is necessary so that each utility may serve reliable, safe and
15 adequate electricity at just and reasonable rates."²³ Key to that financial health is creditworthiness, as
16 lack of access to credit significantly impedes the Utilities' ability to procure and supply electricity at
17 reasonable cost. Both the Legislature and the Commission recognized this in the aftermath of the energy
18 crisis. The Legislature passed Assembly Bill (AB) 57, directing the Commission to review procurement
19 plans with the goal of enhancing utility financial stability and creditworthiness. The Commission also
20 acknowledged that restoring the affected Utilities to investment-grade creditworthiness was in the public
21 interest, as it was necessary to "protect consumers from the potential impact of . . . volatility in
22 electricity prices and unreliable service," as well as to enable the Utilities to fulfill their obligation to
23 provide service.²⁴

²³ *Interim Opinion Modifying Decision 01-03-082 To Change Restriction On Use of Surcharge Revenues*, D.02-11-026, p. 4.

²⁴ Stipulated Judgment (U.S.D.C., C.D.Cal., Oct. 5, 2001, No. 00-12056) at p.2, Ex.A at 3:14-19 (SCE Settlement Agreement).

1 The financial health of the Utilities is so critical to their mission that the Commission has
2 stated that it must be protected, even at the cost of higher rates: “While authorizing refunds and
3 reducing rates might appear to benefit ratepayers, ratepayers and the economy are actually harmed when
4 utilities are unable to procure and deliver reliable, safe and adequate electricity. No party presents a
5 convincing argument that financially ill utilities are able to fulfill these public utility responsibilities and
6 obligations.”²⁵

7 Uninsured wildfire claims expose the Utilities to significant financial risk. It is important
8 for the Commission to act now to provide assurance that the Utilities’ financial well-being will be
9 protected. Uncertainty about the Utilities’ ability to obtain full recovery of wildfire costs could
10 undermine third-party confidence in California’s regulatory regime and the ability of the Utilities to
11 withstand the cost of a catastrophic fire should one occur. Such uncertainty could once again hurt
12 Utility creditworthiness and the Utilities could face higher borrowing costs and other obstacles in their
13 efforts to contract for power and sustain operations for the benefit of customers.

14 As both the Commission and the Legislature have recognized, this long-term detriment
15 would more than offset any short-term advantage to customers of lower rates. To prevent this outcome,
16 it is essential that the Commission act now, before a major fire occurs, to maintain the confidence of
17 lenders and investors in the stability of the financial condition of the Utilities. The Commission should
18 act to assure that an insurance crisis does not become a Utility financial crisis, and it can do so by
19 providing a strong assurance of cost recovery.

20 **G. The Insurance Standard For Cost Recovery Is Appropriate**

21 The Utilities have in their care thousands of miles of lines, millions of poles, and countless trees.
22 Any one of the millions of components under the Utilities’ care could start a fire. The Utilities take
23 operational and design steps to mitigate wildfire risks, but attempts to completely eliminate those risks
24 would be cost prohibitive and ultimately futile. Utility poles, lines and other facilities are exposed to the
25 elements and can be impacted by others’ actions (e.g., Mylar balloons, animal contact). In providing

²⁵ D.02-11-026, footnote 23, *supra*, at p. 10.

1 electric service, the Utilities must meet not only the goal of safe and reliable service, but also the goal of
2 providing service at reasonable cost. Unlike insurance carriers, who are limiting their risks by choosing
3 to limit their coverage, the Utilities have an obligation to serve all customers in their service territories
4 and thus cannot withdraw from fire-prone areas.

5 The Commission has already recognized, in the context of compliance with General Orders, that
6 it is not possible to attain perfection while keeping the goals of safe and reliable service and reasonable
7 cost in balance. Instead, the Commission focuses on utility knowledge and opportunity to cure, so that
8 the Utilities have “an incentive to engage in maximally effective preventive maintenance.”²⁶ The
9 Commission has also acknowledged that a utility “cannot maintain its distribution system so that there
10 are no GO 95 and 128 violations at a given time.”²⁷

11 Having already recognized that “100% compliance . . . at all times is not realistic,”²⁸ the
12 Commission should likewise protect the Utilities from the unreasonable expectation that they can
13 completely eliminate the risk of Utility-related fires. Because, as noted above, many of the factors that
14 contribute to a major fire—including weather, population density, construction materials used by third
15 parties and local fire-fighting resources—are beyond utility control, perfect fire avoidance is no more
16 likely than perfect compliance with the Commission’s General Orders. Indeed, it is for this very reason
17 that the Utilities have traditionally purchased insurance for fire risk. The Commission should not allow
18 the actions of third parties (i.e., insurance companies, plaintiffs and courts) that are outside the
19 Commission’s and the Utilities’ control to place the Utilities in a more vulnerable position than they
20 have traditionally been in.

21 Until now, insurance companies, paid by premiums recovered through rates, have borne the risk
22 of wildfire claims arising from the Utilities’ acts or omissions unless they result from willful
23 misconduct, that is, acts or omissions intentionally engaged in or directed by management with an intent
24 to cause harm or with knowledge that harm was substantially certain to result. Unfortunately, the

²⁶ *Order Instituting Investigation Into Southern California Edison*, D.04-04-065, pp. 31, 38.

²⁷ *Id.*, at p. 38.

²⁸ *Id.*, at p. 31.

1 insurance carriers are no longer making an adequate level of insurance available on reasonable terms.
2 The Commission should not allow a change in insurance coverage to also change the financial risks
3 faced by the Utilities. Allowing the Utilities to recover their wildfire claims costs through rates would
4 not be a change in policy; rather it would be an extension of the current system in a different form.

5 Because liability for wildfires is an unavoidable cost of providing utility service, and because,
6 until recently, such costs were covered by insurance, the Commission should allow recovery in rates of
7 costs that would have traditionally been recoverable either as operating expenses or from insurance. In
8 other words, the Commission should ensure that the protection the Utilities' rates currently provide
9 through insurance continues despite the unilateral action of the insurance companies.

10 Allowing cost recovery for excess claims will not jeopardize public safety any more than liability
11 insurance does. The costs of claims could have a significant impact on the financial health of the
12 Utilities, but ensuring the Utilities' ability to recover such costs will not diminish their compliance with
13 safety rules. The Commission already has in place a process for investigating possible violations of
14 General Orders, thus providing the oversight of utility diligence with respect to the safety of their
15 facilities. The mechanism for recovering costs arising from wildfires should be separate from that
16 investigative process.

17 The Commission's Order Instituting Investigation (OII) process addresses whether utilities are
18 out of compliance with construction or maintenance standards and whether to impose penalties.
19 Because penalties are designed to deter, they should only be imposed, as the Commission has said,
20 "where (a) there is a violation of a GO of which the utility either knows or should have known; and
21 (b) after acquiring either actual or constructive knowledge of the violation, the utility fails to cure it
22 within a reasonable period."²⁹ This approach allows the Commission to focus its enforcement power on
23 utility behavior rather than on circumstances beyond utility control. As an example, the Commission
24 has explained that "under this approach we would not fine a utility for an injury caused when a passerby
25 touches a power line downed by a storm before the utility learned of the damage. On the other hand, if

²⁹ *Id.*, at pp. 15-16.

1 the utility knew of the downed line and unreasonably delayed sending a crew to repair it, we would
2 impose a fine.”³⁰

3 Cost recovery and penalties serve different purposes. The purpose of ratemaking is to give
4 utilities the opportunity to recover costs that are necessarily incurred in the provision of service to
5 customers. The purpose of penalties, by contrast, is to punish past violations that were within the
6 utility’s control to prevent and to deter future noncompliant behavior by utilities. The amount of the
7 penalty should not be calibrated to the magnitude of fire damage, which is not within the utility’s
8 control. In light of these different purposes for cost recovery and penalties, the Commission should not
9 deny cost recovery as a means of penalizing the utility for failing to comply with Commission
10 requirements. Allowing cost recovery for wildfire costs traditionally covered by insurance, while
11 retaining oversight of utility practices and discretion to adopt appropriate penalties according to its usual
12 criteria, maintains the Commission’s status quo. It ensures both that the Utilities make safety the high
13 priority it should be and that the Utilities are not financially impaired by the capriciousness of a wildfire.

14

³⁰ *Id.*, at p. 16.

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ATTACHMENT A
To Chapter I

THE FIRE NEXT TIME – WILL WE BE READY?

SUMMARY

The San Diego region has suffered two devastating wildfires within the last five years. This necessitated a response far beyond the capabilities of local agencies in terms of fire fighting resources, mass evacuations, care and sheltering. According to the San Diego County After Action Report "Firestorms 2003," the Cedar Fire of October 25-27, 2003 burned 376,237 acres, destroyed 3,241 structures and claimed the lives of 15 citizens and one firefighter. The 2007 San Diego County Firestorms After Action report states the Witch Creek/Guejito fire of October 21-25, 2007 burned 368,340 acres, destroyed 2,653 structures, claimed the lives of 10 citizens, caused 23 citizen injuries and 89 firefighter injuries. According to researchers, fire season has grown two months longer and destroys 6.5 times more land than in the 1970s. Given the existing high-risk conditions that are projected to continue into the future, destructive firestorms will certainly occur again. Yet, even armed with this knowledge and after the Cedar Fire wake-up call, the San Diego region is woefully unprepared, prompting a local academic to refer to San Diego as "... serial non-learners when it comes to fire preparation."

Fire fighting and crime are two topics that everyone has a comment or opinion on, whether it's to solve deficiencies or to criticize the budget. Whatever opinions or comments have been offered, problems continue unresolved and emergency requirements of residents throughout the county are not being served. Budget issues on crime have been addressed and funding identified. Firefighting issues need to be raised to at least the same level of appropriate funding interest. This cannot be treated as a political issue. A budget with sustainable funding needs to be put in place as soon as possible.

A citizen solution to the problem is similar to the "Old West," when people banded together and formed groups to protect themselves. That's exactly what has happened with firefighting; volunteer fire protection districts have been formed to respond and protect citizens in emergencies. Because of the existence of volunteer districts, public officials have not yet addressed funding responsibilities for fire protection in unincorporated areas. The Local Agency Formation Commission (LAFCO) stated in their report that many problems need to be resolved before a total fix of the system, that currently exists, can be redefined to better serve the public.

When firefighters raise the issue of additional stations, equipment or personnel, the politicians' response is: how much is it going to cost and who is going to pay for it? If the needs require funding, it is part of their job to find the means and establish continued funding. Public safety in an emergency is a defined need that deserves funding and support.

Organized firefighting in the unincorporated areas of San Diego County is fractured. Coverage and response time is not uniform for all residents, dispatching is not consolidated, not all Fire Protection Districts are manned around the clock, and Volunteer Districts are not under the Office of Public Safety.

PURPOSE

The purpose of this investigation is:

- To examine and review the efforts, cooperation, and results of actions taken by authorities and personnel in charge of management and response to emergency disasters;
- To assess what lessons were learned;
- To make recommendations for improving the ability of the community to respond to the threat of wildfire;
- To recommend suggestions for improving response efforts in emergencies;
- To commend the exemplary actions of front line responders who serviced the needs of 500,000 people affected by the wildfires.

PROCEDURES

Members of the 2007/2008 San Diego County Grand Jury:

- Interviewed Fire Chiefs representing different regions throughout the County.
- Visited the County's Office of Emergency Services, met with its senior staff and toured the County Emergency Operations Center.
- Interviewed management staff at two mega-shelters; the City's at Qualcomm Stadium, and the County's at the Del Mar Fairgrounds.
- Interviewed a Cedar Fire Survivor.
- Toured the City operated Local Assistance Center in Rancho Bernardo, which also included support provided by County staff.
- Visited two fire and medical emergency dispatch centers.
- Reviewed both the County of San Diego and the City of San Diego After Action Reports for the 2007 wildfires.
- Interviewed senior staff of the County Department of Animal Services.
- Interviewed management staff of Volunteer San Diego.
- Interviewed Fire Prevention Staff in the County Dept. of Planning and Land Use.
- Interviewed members and staff of the Local Agency Formation Commission (LAFCO) on plans to consolidate Fire Districts in the County.
- Reviewed LAFCO May 2007 Micro Report: Reorganization of Structural Fire Protection and Emergency Medical Services in Unincorporated San Diego County.
- Reviewed the transcript of LAFCO's December 3, 2007 Meeting-Agenda, titled End of Year Update Reorganization of Fire Agencies - Phase I.
- Reviewed the County's Operational Area Emergency Plan and selected annexes.
- Reviewed emergency standard operating procedures for 13 of the County's 18 cities.
- Reviewed the Governor's September 2004 Blue Ribbon Fire Commission Report.
- Reviewed the 2008 reports of the City of San Diego's Independent Budget Analyst.

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SAN DIEGO COUNTY GRAND JURY 2007—2008 (filed May 29, 2008)

- Reviewed the 2003 San Diego County Fire Siege Fire Safety Review.
- Attended the February 2008 San Diego Regional Fire Safety Forum.
- Compared 2003 Cedar Fire with 2007 Witch Creek/Guejito /Harris Fire After-Action Reports.
- Consulted newspaper articles from the San Diego Union Tribune, Los Angeles Times, Voice of San Diego, North County Times and USA Today.
- Reviewed the statement from the office of the Under Secretary for Natural Resources and Environment, US Department of Agriculture.
- Reviewed Independent Budget Analyst (IBA) Report #08-15 -- Fire-Rescue Helicopter Acquisition.
- Reviewed IBA Report #08-12 -- Preliminary Report on Fire-Rescue Needs and Funding Plan.

DISCUSSION #1 – Lessons Learned from the Cedar Fire?

During “A Working Emergency Planning and Preparedness Forum: Including People with Disabilities” attended by Grand Jury members, it was stated: “Planners cannot foresee every outcome and Incident Managers cannot anticipate every scenario. While disasters have a language of their own and no plan guarantees success; inadequate plans are proven contributors to failure.”

Recommendations from the City of San Diego’s 2003 Cedar Fire After-Action Report that were not fully implemented and remained issues during the 2007 Wildfires include:

- 1) Fund, develop and train to National Wildfire Coordinating Group (NWCG) standards eleven different staff functions such as Command positions, dispatchers, field observers, Incident Commanders, etc. Not completed due to funding issues.
- 2) Fund staffing and resources needed for extended duration incidents. Not completed due to funding. Partially mitigated by Federal Emergency Management Agency reimbursement.
- 3) Fund and develop staffing to ensure the timely implementation of an Incident Safety Officer. Not completed due to funding.
- 4) Train all personnel for risk/benefit analyses, fatigue, personal protective equipment and span of control. Not completed due to funding.
- 5) Remove open cab apparatus from service. Partially completed for the 2007 Wildfires.
- 6) Fund additional staffing and training for:
 - The Public Information Officer (PIO) to include support staff and uniformed personnel. Not completed due to funding.

- o The roles of a functional Department Operations Center (DOC). In the process of being completed.
- 7) Review and revise recall procedures. Not completed due to staffing.
 - 8) Fund, develop and train adequate personnel to function at all Logistics Section Unit Leader levels. Not completed due to funding.
 - 9) Develop logistical plans and organization charts for storage at the Department Operations Center (DOC). Not completed due to funding.
 - 10) Locate the Logistics Section Chief in the DOC to coordinate incident needs with the Planning, Operations and Finance Section Chief. Not completed due to funding.
 - 11) Locate the functional units of the Logistics Section in the vicinity of the Repair Facility. Not completed due to funding.
 - 12) Issue credit cards to all Battalion and Deputy chiefs for necessary first responder support. Partially completed due to lack of staff for policy development.
 - 13) Address the inventory to equip stripped engines through a thorough review of SDFD's engine fleet. Only partially completed due to funding.
 - 14) Review the storeroom inventory to ensure proper levels to emergency equip firefighters at an incident. Not completed due to funding.
 - 15) Replace all staff sedans with command Sport Utility Vehicles (SUVs). Only partially completed due to funding.
 - 16) Perform a review of SDFD's water application capabilities to determine the need for additional apparatus. Not completed due to funding.
 - 17) Fund appropriate staffing levels of the Repair Facility. Not completed due to funding.
 - 18) Develop plans for the rapid assignment of unit identifiers to improve resource/personnel tracking at the FCC. Not completed due to staffing.
 - 19) Incorporate and utilize a Demobilization Plan for all state or federal reimbursement incidents. Not completed due to funding and staffing.
 - 20) Develop and review the capabilities of local military air resources to be incorporated appropriately into local response plans through Firefighting Resources of California Organized for Potential Emergencies (FIRESCOPE). Discussions held State and Federal Government coordination required.

- 21) Develop and implement a plan to establish a fleet of three fire-rescue helicopters under a regional program. Permanent funding sources not secured.

The County of San Diego's 2003 After-Action Report also contained several high priority recommendations that had not been fully implemented by 2007. These were primarily concerned with the equipping of personnel and apparatus and the development of comprehensive plans for wildlife management.

DISCUSSION #2 – Needs v. Wishes

Our investigation revealed that County Supervisors refer to fire fighting/emergency response as a separate service, as if it is not directly related to the public safety services provided by the county sheriff and judicial systems. Public safety is, and must continue to be the responsibility of the county supervisors. They need to publicly clarify that it includes safety, security and know that emergency needs will be met by police or fire/paramedic professionals whenever and wherever they occur in the county. The 500,000 residents evacuated and those who remained in-place, but also were affected by the wildfires in San Diego County, pay taxes to receive full service public safety. Since early in 2004, firefighting professionals have been asked the same questions multiple times. The responses have always been the same. They express their needs for equipment and personnel and to have emergency stations located in the areas they serve in order to provide acceptable response times. The wildfires in 2007 have exposed additional fire safety deficiencies that must be addressed. The after-action reports for 2007 continue to list deficiencies in staffing and funding fire protection districts. Budgetary short falls or restrictions should not override safety.

In reports since 1998, San Diego Local Agency Formation Commission (LAFCO) has been publicly assessing the issue of public safety and firefighting. The December 2007 report, available on-line, suggests different ways to improve and fund fire protection in San Diego County; it offers at least a minimal start to correct old problems. In 2008 this report was open to public opinion and scrutiny by the electorate.

DISCUSSION #3 –Brush Management

There are code enforcement inspections of privately owned property. City and county owned properties, also subject to code enforcement, are rarely inspected for brush clearance.

On March 28, 2008, San Diego Mayor Jerry Sanders announced an aggressive cleanup program for city canyons and open space. These areas are fire hazards that threaten surrounding homes and private property. For years, this program has been insufficiently funded. However, the Mayor intends to use \$3.9 million from the city's general fund, over a 2-year period, to clear 1,180 acres of open space. The \$3.9 million is in addition to a \$2.3 million federal grant earmarked for brush clearance. Six additional code-compliance officers for the city Fire-Rescue Department will be added to the two-officer staff to monitor brush and weed abatement on private property. Thirteen employees will

be added to the city Park and Recreation Department's staff of seven, focusing specifically on brush management. Additionally, contract companies will continue to work with these employees. The brush management problem has been known to city officials for decades as a serious fire hazard. In fact, in 2005 a former Fire Chief advised officials that 590 acres should be cleared annually, in contrast to the 70 that was the practice.

In the past the County of San Diego, through its probation department, operated inmate work camps whose tasks included brush management. Some individuals have expressed concern that closure of inmate work camps had a direct correlation on the severity of wildfires. Our investigation revealed that probation officers who supervised work camp crews have been warning officials of the danger of closing these camps for the last decade.

In an effort to save money, county officials began closures of work camps in the 1980s. The last closure was in 2001. Fire experts advised that brush along with high winds and low humidity was the major factor in the 2003 and 2007 fires.

After last year's wildfires, County Board of Supervisors members discussed using "inmate labor crews," to clear brush, but abandoned the plan because of logistical problems.

DISCUSSION #4 – Funding Fire Protection

Since 2003, fire professionals in San Diego County have been asked what they need to do their job, not just for a simple wish list. Obtaining the resources needed by our firefighters has to be our primary concern. This section deals with some of those needs in both the City and the County of San Diego and suggests possible ways to fund them.

The City of San Diego

Even though the City of San Diego lies within an area prone to wildfires, it is not accredited by the Commission on Fire Accreditation International (CFAI) because the City's Fire Rescue Department does not meet national standards. Twelve of the City's 45 engine districts exceed the standard nine square mile service area. Forty-six percent of the time the department cannot meet the national five-minute response time. Rancho Bernardo, the San Diego community that lost 365 homes in the last fire, has one fire station that was built in 1969. It serves 28 squares miles, the largest response area in the City. It was designed to house one engine and three fire fighters. It now houses three engines and six fire fighters per shift. According to national standards, three fire stations are required for an area of this size.

In assessing the City's ability to meet the fire service needs of the community, the CFAI concluded that there exists:

- Serious reduction of service levels.

- Serious gaps in coverage: inadequate number of fire stations, engines, trucks and staffing.
- Few measurable objectives regarding response to coverage.
- No comprehensive plan to improve coverage.
- No objectives in place to capture qualitative data relative to measuring performance effectiveness.
- Insufficient staff to analyze data such as response times, compliance with goals and objectives, incident reporting and trends.
- The Fire Department is not involved in the City planning process.

Following the November 27, 2007 meeting of the U.S. Senate Interior Appropriations Subcommittee, chaired by a California Senator, a council member requested a study from the Independent Budget Analyst (IBA). This study addresses a "list of alternative measures and relevant costs to implement the Fire-Rescue Department Station Master Plan to eliminate the City's fire station deficits within the next ten years."

Preliminary Report #08-12 on Fire-Rescue Needs and Funding Plan from the IBA provides an overview of past studies that have addressed the Fire-Rescue Department needs and considered potential sources of funding. A report released by the City Manager in the spring of 2004 led to the City Council approving two ballot measures: Proposition C in the March 2004 election and Proposition J in the November 2004 election. Both of these measures proposed a 2.5% increase in the Transient Occupancy Tax (TOT) which would have increased the tax on hotel and motel rooms from 10.5% to 13%. The TOT is one of the largest sources of revenue for the City's General Fund.

Proposition C on the March 2, 2004 ballot said "Shall the City increase the transient occupancy tax (TOT) paid by hotel and motel visitors by 2.5% and shall these funds, along with current TOT funds, be earmarked to fund Fire-Rescue and Police emergency services, equipment and facilities, road improvements, park and coastal improvements; tourist promotion; and library and arts programs; and shall public audits be conducted of the uses of these funds?" Because funds were earmarked for specific purposes, this measure required a 66.7% majority vote, which it failed to receive. If the measure had passed, it is estimated that it would have provided approximately \$26 million in additional revenue with approximately \$8 million for the Fire-Rescue Department.

Proposition J on the November 2, 2004 ballot said "Shall the City Charter and the San Diego Municipal Code be amended to increase the transient occupancy tax (TOT) paid solely by hotel and motel visitors from 10.5% to 13% to be used for general governmental purposes?" While Proposition J required only a simple majority, it also failed to pass.

On December 4, 2007, just weeks after the wildfires, the hotel industry persuaded the City Council to establish a "Tourism Marketing District." This action permitted a two percent increase in the room tax at larger hotels. This will allow certain hotel owners to increase the room tax without taxpayer approval and use the revenue generated, approximately \$20 – 30 million annually, to promote tourism. Some of these dollars may

have been a potential source for serving public safety needs. This measure was adopted by the City Council.

A California legislator is seeking an amendment to the State Constitution, which would allow local jurisdictions to raise taxes for firefighting with 55% of the vote instead of 66.7%.

The County of San Diego

At a recent congressional hearing, a local fire chief criticized County officials for historically and currently failing to provide the resources necessary to protect residents and visitors during significant firestorms. It was noted that the County has made some progress since the Cedar fires in implementing a reverse 911 calling system and adopting stricter building codes. However, San Diego County, as stated at the hearing, spends only \$8.5 million annually on fire protection as opposed to Orange County which spends \$260 million and Los Angeles County that spends \$860 million. According to 2007 State of California estimates, San Diego County has over 3 million people and covers 4,200 square miles. For comparison purposes, Orange County has an estimated 3 million people and covers 790 square miles, while Los Angeles County has approximately 10 million people and covers 4,060 square miles. However, historically San Diego County has had a lower tax base than the other two counties.

In spite of Santa Ana conditions, insufficient rainfall, longer fire seasons and urban sprawl, the County remains without a unified fire protection agency and no central command. Assessments following the Cedar Fire and the Witch Creek/Guejito fire have consistently called for a better-organized and more responsive system in the unincorporated area where wildfire tends to originate. Many believe that a unified county fire protection agency would result in a more stable system and more efficient and effective use of resources. It would also enable the County to respond with mutual aid when other jurisdictions are overwhelmed.

Potential funding sources under discussion for consolidation of the 65 fire departments under a County department and the additional fire fighting resources needed might be partially provided by the County reserve fund or perhaps interest from the fund, a reallocation of Proposition 172 funds, or a ballot measure proposing a ½ cent sales tax increase. Additionally, LAFCO suggested using county Supervisor's discretionary funds for this purpose.

San Diego County has a reserve fund of approximately \$725 million. The Board of Supervisors is unlikely to tap into this fund because they consider it essential to maintaining the County's strong financial position. However, the interest on this fund may be a possible source of funding.

Proposition 172, the Local Public Safety Protection and Improvement Act was passed by 58% of California voters in 1993. It replaced local property tax revenues with a ½ cent sales tax to be expended on public safety services, which included sheriffs, police, fire, county district attorneys, corrections and lifeguards. Although police and fire fighting

services were used extensively in the marketing campaign for the tax initiative, Board of Supervisors Policy #A-126 Proposition 172 and New Program Revenues in the Sheriff's Department, Office of the District Attorney and the Probation Department fails to mention fire services. The program allocation for Proposition 172 funds established by the Board on December 14, 1993, allocated 72.4 % of the revenue to the Sheriff, 20.4% to the District Attorney, and 7.2% to the Probation Department.

The purpose of Proposition 172 was to create a permanent source of funds for public safety purposes. In the aftermath of two massive wildfires, it would be difficult to argue that fire safety should not be included in the distribution of these funds. If Proposition 172 funds were reallocated to shift 20% of the funds from the Sheriff to fire services, this could potentially provide more than \$40 million to a serious public safety threat. The Board of Supervisors has the authority to allocate these funds at its discretion. This policy was to be reviewed for continuance by December 31, 2001, but this has not occurred.

Funding for consolidation of the 65 fire departments and the additional fire fighting resources needed might be provided by County reserve fund or perhaps interest from the fund, a reallocation of Proposition 172 funds, and/or a ½ cent sales tax increase. Prop 172 generates approximately \$230 million annually. At least \$110 million is needed to maintain a fully consolidated county fire department, based on previous statements by a member of the formation commission studying consolidation.

At the State level, the Governor has proposed a Wildland Firefighting Initiative which would be financed through an annual 1.25 % surcharge on all property owners statewide, a cost of approximately \$10 - \$12 per property owner each year. This would raise nearly \$100 million for CAL FIRE, the Office of Emergency Services and the California National Guard to strengthen the state's wildland firefighting capability.

FACTS/FINDINGS

Fact: The City of San Diego Fire-Rescue Department is not accredited because it is unable to meet national standards in delivering day-to-day emergency response and fire protection services citywide.

Finding #01: The City of San Diego needs to address the gaps in emergency and fire protection services.

Fact: Proposition 172 was passed in 1993 to offset partially the loss of local property tax revenue shifted to the State to augment educational funding. The revenue generated by the additional ½ cent sales tax was intended to fund local public safety agencies.

Fact Firefighting agencies are considered public safety agencies.

Fact: At the time Prop 172 was passed the County of San Diego had no fire agency to which sales tax revenue could be allocated.

Finding #02: The 2003 and 2007 wildfires have demonstrated a need for the creation of a consolidated County fire agency.

Finding #03: The use of Proposition 172 money to fund a County fire agency is appropriate.

Finding #04: Due to the size and composition of a county that includes 18 cities, solutions need to be proposed and implemented as soon as possible.

RECOMMENDATIONS

The 2007/2008 San Diego County Grand Jury recommends that the Mayor and City Council of the City of San Diego:

08-105: Prepare a ballot measure to propose an increase in the Transient Occupancy Tax to be used solely for the purpose of improving fire protection levels including additional stations, engines, firefighters, training, equipment, etc. as outlined in the After Action Reports. We believe a 2.5% should be considered.

08-106: Reallocate existing funds and develop new revenue streams.

The 2007/2008 San Diego County Grand Jury recommends that the County Board of Supervisors:

08-107: Review the County Board of Supervisors Policy A-176 on the allocation of Proposition 172 funds with the objective of earmarking a portion of these funds for firefighting purposes.

DISCUSSION #5 – Consolidation of County Fire Agencies

Within the last five years, San Diego County has experienced two of the most devastating wildfires in California history. Significant firefighting assistance cannot be expected from areas to the East, South or West. During the fire season, immediate assistance from the North is often unavailable since resources are being used to fight wildfires there. Assistance from State and Federal agencies is often not available in the first 48 hours after the outbreak of a major wildfire. San Diego is the largest County in the State of California without a consolidated County firefighting agency.

Firefighting in San Diego County is a patchwork quilt of City fire departments, local fire protection special districts, volunteer fire departments and County Service Areas. The majority of wildfires originate in rural areas of the county where Fire agencies are chronically under-funded. These agencies have to depend on available grants for acquiring equipment and on local fund-raisers to finance ongoing expenses. Response

time to fires and medical emergencies in many of the rural communities is significantly slower than the national standard of five to seven minutes from the receipt of a call for assistance. This potentially jeopardizes the ability of the responding agency to prevent loss of life and property. Not all of the volunteer departments have the personnel to staff fire stations around the clock seven days a week, thus further increasing response times in the areas they cover.

While the previous discussion is primarily concerned with funding options for a region-wide County fire agency, this section deals with efforts currently under way to consolidate 13 rural fire districts under a centralized command and control. In the words of one fire professional interviewed by the Grand Jury, "Incremental improvement is preferable to the paralysis of perfection."

In November 2004, a year after the 2003 wildfires, residents of the unincorporated areas were asked through a ballot measure (Proposition C) whether they would support consolidation of the 35 fire protection agencies that serve those areas. This advisory measure passed soundly with 81% of the vote. In the words of one official, the residents "recognized that this region can no longer afford to have a fractured and inequitable fire protection system." Shortly thereafter the County Board of Supervisors requested that the Local Agency Formation Commission (LAFCO) initiate the process to consolidate the fire protection agencies in the unincorporated area of the County. Per section 56001 of the California Government Code, LAFCO is the governmental body responsible for reviewing jurisdictional lines and services and which has the power to initiate and implement a reorganization of public services. Approval of the County Board of Supervisors is required.

In the aftermath of the Cedar Fires, federal grants of approximately \$40 million were received by the County, to which they added \$5 million, to remove over a half-million dead, dying and diseased trees on back country land. A Fire Prevention Unit in the County Department of Planning and Land Use (DPLU) was the coordinating agency for this important fire safety and fuels reduction program. On July 1, 2007, the Fire Prevention Unit of The Department of Public Works and Land Use (DPLU) took over the management of seven County Service Areas having fire responsibilities. Six of these County Service Areas have volunteer fire departments. The Fire Prevention Unit in DPLU, with a staff of eight, is the closest thing we have to a County fire agency. It administers the \$8.5 million Fire Enhancement Program, under which contracted fire protection agencies can be reimbursed for certain expenses, such as utility payments and workers' compensation insurance. It also has entered into agreements with the California Dept. of Forestry and Fire Protection (CAL FIRE) to staff ten of its stations. These stations are to be staffed on a year-round basis, not just during fire season. Such agreements are called "Amador Agreements." Funding for these agreements is included in the \$8.5 million Fire Enhancement Program.

County Service Areas (CSAs) are geographic districts established in unincorporated areas, with the approval of LAFCO. The County provides an extended service funded by a tax levy paid by residents of the area, usually in the form of a special assessment added

to real property taxes. Examples of services provided are extended police protection, structural fire protection, water and sewer services, etc. County Service Areas are formed under the provisions of Government Code Sections 25210.1 through 25210.9c. The County Board of Supervisors has ultimate legal and fiscal control of each CSA. Structural fire protection is defined in the code to include fire prevention, hazard abatement and enforcement of fire codes.

In addition to the seven CSAs for fire protection, there is CSA 135 established to govern the San Diego County-Imperial County Regional Communications System. LAFCO is capable of expanding the services covered under CSA 135 to include fire protection by a consolidated County fire agency. This is one of three governance models that have been proposed for such an agency.

After several years of work, on December 3, 2007, LAFCO approved what it calls Phase I of the reorganization plan for county fire departments. The County Board of Supervisors received the Phase I proposal on January 29, 2008, and directed the Chief Administrative Officer to evaluate it and return in 120 days with recommendations. The Grand Jury recommends adoption of Phase I, or any like plan, which incorporates the following:

- Utilization of existing volunteer fire departments with no reduction in funding.
- Uniting of the 13 Phase I fire agencies under one command structure.
- Ability to man no fewer than 28 rural fire stations around the clock with a combination of volunteers and professional fire fighting and paramedic staff.
- Reciprocal working agreements between CAL FIRE and the County fire agency.
- Centralized command and control for acquiring and deploying resources.
- Central authority for brush management and inspection activities.
- Governance model based on the County Service Area concept with a possible expansion of the scope of County Service Area 135.
- Creation of one new property Tax Rate Area for parcels within the area covered by the 13 participating fire districts.
- Coordination of evacuation notifications.
- Coordination and control of dispatch activities.
- Coordination of training for all participating departments.
- Incorporation of the existing funding, staff and functions of the Fire Prevention Unit in DPLU, including the Fire Enhancement Program.
- Establishment of the Office of the San Diego County Fire Commander as an independent office, not as a component of the Department of Planning and Land Use.
- Creation of the position of San Diego County Fire Commander, either on the level of a Deputy Chief Administrative Officer or reporting directly to the Deputy Chief Administrative Officer for Public Safety.

FACTS/FINDINGS

Fact: The National Fire Protection Association (NFPA) suggests appropriate response time to emergencies be within 5 to 7 minutes. To meet that standard, Fire Stations/Emergency Response Centers need to serve areas within a radius of five miles of the station.

Finding #05: The County of San Diego does not comply with NFPA standards for emergency response time or emergency response locations.

Fact: Fire Fighters are expected to respond to medical and life safety emergencies in addition to fire emergencies.

Finding #06: Emergency medical or life safety calls outnumber fire calls by three to one or at least 75% of calls for emergency assistance to Fire Fighters.

Finding #07: Higher than average response times reduce the ability of responding agencies to prevent loss of life and property.

Fact: Six volunteer fire departments are in County Service Areas under the San Diego County Department of Planning and Land Use.

Fact: The Fire Prevention Unit in the Department of Planning and Land Use has experience in managing fuels reduction programs and in administering the Fire Enhancement Program.

Finding #08: The staff of the Fire Prevention Unit in the Department of Planning and Land Use have sufficient expertise to serve as staff for a newly created fire agency.

RECOMMENDATIONS

The 2007/2008 San Diego County Grand Jury recommends that the San Diego County Board of Supervisors:

- 08-108:** Approve and fund the consolidation of fire agencies according to the Phase I plan of the Local Agency Formation Commission or a substantially similar plan.
- 08-109:** Create the position of San Diego County Fire Commander, either as a Deputy Chief Administrative Officer or to report directly to the Deputy Chief Administrative Officer for Public Safety.

DISCUSSION # 6 – Sheltering

The October 2007 Wildfires not only ravaged San Diego County, it set records for the number of residents evacuated. The American Red Cross was overwhelmed by the massive need for assistance. If not for local governmental agencies and community volunteers setting up additional shelters, the fires could have been worse for the residents who had to evacuate their homes.

The care and shelter component of the County's Operational Area Emergency Plan is contained in Annex G to that plan, entitled "Care and Shelter Operations." This annex sets forth the operational procedures for the provision of food, clothing and shelter, on a mass care basis, to victims of natural disasters or other emergencies who are unable to provide for themselves. Disaster planning professionals estimate that approximately 10% of victims require mass care. The vast majority are either able to find shelter with friends or relatives or have sufficient resources to finance their own temporary housing. In the 2007 wildfires, approximately 500,000 people were under mandatory evacuation orders. This translates into an estimated 50,000 people requiring emergency mass shelter in this incident.

Annex G designates the San Diego/Imperial Counties Chapter of the American Red Cross as the manager of disaster response for mass care and sheltering. The authority for this designation is the Federal Disaster Relief Act of 1974, reinforced locally by a memorandum of understanding dated April 10, 1979, between the local Red Cross chapter and San Diego County Board of Supervisors. The director of the County Health and Human Services Agency (HHSA) is designated as County Care and Shelter Coordinator, while each of the 18 cities is expected to have a City Care and Shelter Coordinator. Annex G does not define the terms "manager" and "coordinator" but makes it clear that the Red Cross is the lead agency. HHSA is charged in the plan with providing care and shelter if the catastrophic nature of the event prevents the Red Cross from meeting the immediate needs of all disaster victims. Also, HHSA is charged with providing trained personnel at shelters upon request of the Red Cross. County officials are satisfied with the recent performance of the local Red Cross, but acknowledge there have been problems of coordination and service delivery in the past.

During the 2007 fires, 46 shelters opened in the County, and at least 21 were opened by entities other than the Red Cross. These include two mega-shelters, shelters for evacuees with special needs, and animal shelters. The ability of evacuees to bring their animals to shelters was vastly improved over 2003. County of San Diego personnel staffed the mega-shelter at the Del Mar Fairgrounds, while the City of San Diego managed and staffed the mega-shelter at Qualcomm Stadium. Neither the County nor the City has specific procedures for the operation of mega-shelters. Many smaller shelters were opened by faith-based organizations.

The local Red Cross was able to shelter about 6,500 persons during the 2003 wildfires and improved its capacity to over 16,000 in 2007. However, it did not have the ability –

either in staffing or resources- to meet the immediate needs of over 50,000 evacuees requiring shelter in the first 48 hours.

The National Red Cross management team did not arrive in San Diego County with additional supplies and staff until the third day of the fire. By the fourth day, the national Red Cross volunteers were able to supplement staff at almost all of the 46 shelters, many of which were starting to wind down operations as evacuation orders began to be lifted. Also, the local Red Cross was able to train about 2,400 volunteers, most of whom were referred through Volunteer San Diego, in a short time. Only 800 of these volunteers were actually used.

Volunteer management was cited as an area of concern by both City and County staff who had experience in 2007 shelter operations. Volunteer San Diego has expertise in registering and assigning volunteer staff, as well as the capacity to expand its own operations during a disaster. Hence, the Grand Jury is recommending that San Diego County complete a memorandum of understanding with Volunteer San Diego and incorporate that agency as part of the Area Emergency Operations Center and include Volunteer San Diego staff in the training exercises conducted by the Office of Emergency Services.

After action reports cited the inability of staff at most of the shelters to communicate with evacuees who speak a language other than English or who are hearing impaired. It is imperative that agencies charged with operating shelters identify those trained shelter staff who can communicate in more than one language or in American Sign Language. The rosters of trained shelter workers should list their ability in other languages and be sorted by the home zip code of those workers to facilitate their rapid assignment to the shelter nearest their homes.

FACTS/FINDINGS

Fact: All eighteen cities in the County of San Diego were asked by the Grand Jury for copies of their Standard Operating Procedure Manual for Emergencies (SOP).

Finding #09: Sixteen cities responded to the Grand Jury's request for copies of their Standard Operating Procedures Manual for Emergencies (SOP). Two cities in the county, La Mesa and Imperial Beach did not.

Fact: The Cedar Fires presented unforeseen difficulties for emergency personnel. As a result, many of the existing disaster procedures were changed to accommodate weather, terrain and evacuation of inhabitants.

Fact: Many of the "Emergency Disaster Procedure Plans" were developed after the Cedar Fires and finalized in September 2006 by the county and most of the cities in the county. However, a few are still incomplete.

Fact: The Red Cross has limited ability to meet the sheltering needs of all evacuees within the first 48 hours of a major disaster.

Fact: The County of San Diego is responsible for meeting the sheltering needs not provided by the Red Cross.

Finding #10: The County of San Diego needs an understanding of the sheltering capacity of the local Red Cross during the first 48 hours of a major disaster.

Finding #11: Neither the County of San Diego nor any of the cities, including the City of San Diego, had a standard operating procedure for the operation of a mega-shelter.

RECOMMENDATIONS

The 2007/2008 San Diego County Grand Jury recommends that the San Diego County Office of Emergency Services:

- 08-110:** Include the Executive Director of Volunteer San Diego, or designee, as a participant in Office of Emergency Services training exercises and as a representative at the Operational Area Emergency Operations Center in actual incidents.
- 08-111:** Revise the County's Memorandum of Understanding with the San Diego/Imperial Counties Chapter of the American Red Cross to include a quantification of its ability to staff and equip emergency shelters, especially in the first 48 hours of a major disaster.
- 08-112:** Maintain at the Office of Emergency Services a complete roster, broken down by zip code, of County staff that has been trained in shelter operations. Roster should also indicate languages spoken other than English.
- 08-113:** Request that the Red Cross roster of trained shelter staff be coded to identify language skills.
- 08-114:** Revise Annex G of the Operational Area Emergency Plan to include a plan for the establishment and operation of a mega-shelter.

The 2007/2008 San Diego County Grand Jury recommends that the Office of Homeland Security of the City of San Diego:

- 08-115:** Adopt an Emergency Care and Sheltering Plan for the City of San Diego which includes a plan for the establishment and operation of a mega-shelter, with particular application to the Qualcomm Stadium facility.

COMMENDATIONS

The 2007/2008 San Diego County Grand Jury wishes to commend:

All of the firefighters, professional and volunteer, who put their lives on the line in the assault against the 2007 wildfires. This includes both our local firefighters and those from outside jurisdictions who answered the call for aid.

All of the thousands of volunteers who staffed emergency shelters, telephone information lines and other disaster aid operations; also the citizens of San Diego who donated time, money, goods, services, etc.

The management and staff of the City Office of Homeland Security for its establishment and management of the mega-shelter at Qualcomm Stadium on short notice and with no standard operating procedures in place.

The management and staff of the County Office of Emergency Services for its establishment of the mega-shelter at the Del Mar Fairgrounds on short notice and with no specific operating procedures for a mega-shelter in place.

The Office of Administration of the City of San Diego Mayor for its prompt activation and efficient management of the Rancho Bernardo Local Assistance Center. This commendation also applies to the City and County staff that worked long hours at all four Local Assistance Centers and other assigned facilities. Also the County Health and Human Services Agency for its management of those centers operated by the County.

The Food Services Division of the San Diego County Sheriff's Department for expanding and re-deploying its feeding capacity to include field meals of emergency responders, the National Guard and fire victims at evacuation facilities. In addition to their regular workload, these include almost 15,000 meals supplied to the Red Cross for the feeding of evacuees.

The Court Services Division of the San Diego County Sheriff's Department for its ability to re-assign deputies promptly to security and traffic control functions in the evacuated areas.

COMPLETE RECOMMENDATIONS

The 2007/2008 San Diego County Grand Jury recommends that the Mayor and City Council of the City of San Diego:

- 08-105:** Prepare a ballot measure for the proposing a 2.5% increase in the Transient Occupancy Tax to be used solely for the purpose of improving fire protection levels including additional stations, engines, firefighters, training, equipment, etc. as outlined in the After Action Reports.

08-106: Reallocate existing funds and develop new revenue streams.

The 2007/2008 San Diego County Grand Jury recommends that the San Diego County Board of Supervisors:

08-107: Review the County Board of Supervisors Policy A-176 on the allocation of Proposition 172 funds with the objective of earmarking a portion of these funds for firefighting purposes.

08-108: Approve and fund the consolidation of fire agencies according to the Phase I plan of the Local Agency Formation Commission or a substantially similar plan.

08-109: Create the position of San Diego County Fire Commander, either as a Deputy Chief Administrative Officer or to report directly to the Deputy Chief Administrative Officer for Public Safety.

The 2007/2008 San Diego County Grand Jury recommends that the San Diego County Office of Emergency Services:

08-110: Include the Executive Director of Volunteer San Diego, or designee, as a participant in Office of Emergency Services training exercises and as a representative at the Operational Area Emergency Operations Center in actual incidents.

08-111: Revise the County's Memorandum of Understanding with the San Diego/Imperial Counties Chapter of the American Red Cross to include a quantification of its ability to staff and equip emergency shelters, especially in the first 48 hours of a major disaster.

08-112: Maintain at the Office of Emergency Services a complete roster, broken down by zip code, of County staff that has been trained in shelter operations. Roster should also indicate languages spoken other than English.

08-113: Request that the Red Cross roster of trained shelter staff be coded to identify language skills.

08-114: Revise Annex G of the Operational Area Emergency Plan to include a plan for the establishment and operation of a mega-shelter.

The 2007/2008 San Diego County Grand Jury recommends that the Office of Homeland Security of the City of San Diego:

08-115: Adopt an Emergency Care and Sheltering Plan for the City of San Diego which includes a plan for the establishment and operation of a mega-shelter, with particular application to the Qualcomm Stadium facility.

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the

elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<u>Responding Agency</u>	<u>Recommendations</u>	<u>Date</u>
Mayor, City of San Diego	08-105, 08-106	8/31/08
City Council, City of San Diego	08-105, 08-106	8/31/08
San Diego County Board of Supervisors	08-107, 08-108, 08-109	8/31/08
San Diego County Office of Emergency Services	08-110, 08-111, 08-112, 08-113, 08-114	8/31/08
Office of Homeland Security, City of San Diego	08-115	8/31/08