

# State seeks to dismiss wildfire fund challenge

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The state attorney general and Public Utilities Commission are seeking to dismiss a lawsuit challenging the constitutionality of the wildfire liability funding bill, claiming they are protected by sovereign immunity and arguing the state's expenditures for the fund protects the public, despite the plaintiffs' claims.

The state's motions, filed Sept. 26, argue a challenge to Assembly Bill 1054 by plaintiffs' attorney Michael J. Aguirre of Aguirre & Severson LLP is riddled with speculative concerns about events that have not occurred and are really just a general disagreement "with the wisdom of the state Legislature's policy choices."

AB 1054 was signed into law by Gov. Gavin Newsom on July 12. Its authors say it aims to: create additional safety oversight and processes for electrical utility infrastructure, recast wildfire damages cost recoveries, and authorize a fund to address future wildfire-related liabilities.

According to the state, the bill won't affect civil liabilities for past wildfire-related damages.

Aguirre sued the state in July, claiming the bill makes it easier for utilities to spike customer rates to recover uninsured wildfire expenses. He cited the takings clause of the U.S. Constitution.

Aguirre also claims the bill did away with the prudent manager standard by which a utility must demonstrate to the commission it acted reasonably in order to recover wildfire-related costs, replacing it with a weaker standard more favorable to utilities. *Cannara and Nelson v. California Department of Water Resources Director Karla Nemeth* 19-CV-04171 (N.D. Cal., filed Jul. 19, 2019).

In their motions for dismissal, commission counsel Christofer C. Nolan and Deputy Attorney General Gabrielle D. Boutin claim Aguirre's suit fails to allege any injury imminent from AB 1054, nor do his clients allege any property has been taken from them.

"Each of the harms alleged in the complaint is merely a generalized grievance based on plaintiffs' status as California taxpayers and utility consumers," Boutin's motion said.

None of the harms alleged in the suit — such as unjust utility rates, rate charges approved by the commission to capitalize the wildfire fund, issuance of state bonds or expenditures of state taxpayer funds to pay for said bonds — are specific to the plaintiffs, Boutin added.

Aguirre contended in a phone conversation Monday the commission has gone from protecting customers to becoming a guarantor of utility company profits. He also said he plans to file a legal response and looks forward to taking the issues to trial.

“We hope to get the discovery phase going to get sworn testimony and depositions showing that AB 1054 was an illegal scheme from the get-go,” he said.

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