

LANDOWNER AND OPERATOR RESPONSIBILITIES

7726

(No. 2 June 1990)

Each person or party owning or controlling land has a basic responsibility to abate a fire nuisance on the property. According to PRC §4422

" . . . a person will not willfully or knowingly allow a fire to burn uncontrolled on land which he/she owns or controls, to escape to the lands of any person other than that of the owner."

Professional fire departments have been developed because it simply is not practical to rely entirely upon individual landholders to adequately protect the general community from excessive fire loss.

Nevertheless, the landowner or operator is expected to do what he/she reasonably can. The following procedures should be followed by CAL FIRE officers:

- If the responsible state fire official, upon arriving at the fire scene, observes that any local industrial operator has failed to take fire control action, the officer should make a written notation of such observations for transmittal to his/her supervisor. Any such report must be a careful, factual account of the prevailing situation.
- The state fire official will take charge of the direction of the control action to abate a wildfire upon arrival whenever the fire is so located that it would normally be CAL FIRE's primary responsibility.
- Whenever the state fire official decides that equipment or forces in addition to those of the state are required, he/she may request aid from a local owner or operator. The official should be very specific about the requested aid, as the local owner or operator may claim reimbursement for such assistance.
- No particular landowner may expect personal reimbursement for effort expended in the suppression of fires burning upon or immediately threatening the landowner's property.
- The state officer may, if confident in the operator or owner, transfer responsibility for patrol of a controlled fire line to that person. However, the state will continue to maintain general supervision of such patrol. Any such transfer of responsibility will be documented.

TAKING OF PRIVATE PROPERTY FOR FIRE SUPPRESSION

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Although there is no specific code authority for taking private water while engaged in fire fighting activities, there is case law INGRAM V. COLGAN (106 C 113), MCKAY JEWELERS INC V. BOWMAN (19 C2d 595), ROSE V. STATE (19 C2d 713, 730), ARCHER V. CITY OF LOS ANGELES (1941) (19 C2d 19, 23, 24) that pertain to this subject.

Generally speaking, the federal and state constitutions prohibit the taking of private property without due process and just compensation. Exceptions include:

- Where taking of private property is necessary for self preservation.
- For the safety of the people, to prevent loss of life, or to protect property.
- In cases of conflagration, private property may be temporarily used or damaged or even destroyed.

The key to being covered within the exceptions is necessity; there must be an essential need for the water taken. The following guidelines should help in the decision-making process when private water is taken.

Essential Need

- Private property, such as stored water, may be taken without the owner's permission and without the need for compensation when it is essential to fighting a wildfire or structure fire and there is no other known public source as convenient and available as the private source.
- Where there exists a question as to the level of necessity, such as a "mop-up" during rising winds and danger of escape, the property should always be taken; replacement or compensation can be arranged later.

Nonessential Need

- Where the need of private property cannot be categorized as essential--for example, water which is desirable for "mop-up" activities and there is no readily available public source--permission of the owner should be sought. There should be an offer to replace the water or, as a last resort, to compensate the owner.

- Where the owner is not on the property or cannot be quickly located, the property should be taken and an offer of replacement or compensation made later.

General

- Where challenged by the property owner, he or she should be informed of the need for the property and that replacement or compensation will be arranged; if the property owner is physically threatening, appropriate law enforcement officials should be notified and attempts made to locate alternate sources of the needed property pending arrival and resolution by law enforcement officials.
- As a matter of policy, replacement or compensation shall be offered where demanded in all cases of the taking of private property, except when the property is used to suppress or prevent fire on the property of the owner.
- Furthermore, it will be policy to first attempt replacement of the water through CAL FIRE resources or, if unavailable, by hired equipment. NOTE: If potable water is taken, be certain it is replaced with potable water, and transported in approved sanitary vessels.
- If compensation is demanded, reasonable measures of calculation shall be used. As an example, pumping costs and delivery costs where on-site sources are depleted would be reasonable. Any such costs would be considered unplanned fire suppression activities and are chargeable to the emergency fund.

See also [Section 3825](#) of the Incident Fiscal Management Procedures Handbook.

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