

The Proper Legal Standard For Inverse Condemnation Caused By Water Damage To Property

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Filing a lawsuit against a government entity can be a daunting task given the complexities of tort claims requirements and governmental immunities. A recent decision by the Court of Appeal in *Pacific Shores Property Owners Association v. Department of Fish & Wildlife*, Case No. C07020 (Jan. 20, 2016), provided welcome clarification as to the proper legal standard for an inverse condemnation action based upon activities of a government entity which cause water damage to private property.

Over the past 50 years, there have been countless court decisions concerning water damage claims against government entities caused by various conditions, such as ruptured pipes, seepage from leaking reservoirs or dams, breached levees, and garden variety blocked drainage easements. Of course, a cause of action for inverse condemnation is the preferred claim when private property is damaged by some act related to the operation of a public improvement. Such claims trigger a right to recovery of attorneys' fees by the prevailing property owners.

Since at least 1965, the general legal standard for inverse condemnation liability resulting from physical damage to private property is strict liability. (See, e.g., *Albers v. County of Los Angeles* (1965) 62 Cal.2d 250.) In 1994, however, an exception to the general rule was carved out in instances where water damage to property was occasioned by the failure of a "flood control" facility or water draining into a natural watercourse. (See *Locklin v. City of Lafayette* (2015) 7 Cal.4th 327.) In those limited circumstances, the legal standard becomes one of reasonableness, akin to negligence, as opposed to strict liability. Indeed, in 2015, the Court of Appeal in *Contra Costa County v. Pinole Point Property, Inc.* (2015) 235 Cal.App.4th 914, affirmed the use of a reasonableness standard when assessing liability for water damage caused by a blocked drainage easement resulting from sediment deposits and overgrown vegetation. A threshold issue the Court of Appeal did not address, however, was whether the existence of a drainage easement in and of itself should be considered a "flood control" facility in the first instance.

In January 2016, the Court of Appeal used the *Pacific Shores* decision to make a key distinction between what is considered a "flood control" facility subject to a reasonableness standard and what is considered a "water delivery system" subject to strict liability. In *Pacific Shores*, even though the public improvement was a sandbar used to protect property that was historically subject to flooding, the Court of Appeal determined that strict liability applied because: (1) the public entity "intentionally diverted" water onto private property beyond what historically occurred at the site, and (2) the project was used to protect other environmental resources and not to advance flood control purposes.



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What can be learned from these recent cases is that the type, scope and function of any flood control or water delivery facility must be analyzed carefully to determine whether strict liability applies, or whether the rule of reasonableness will be used. The distinction is critical in establishing liability for water damage to private property.

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