

Inverse Condemnation and Utility Liability

What is Inverse Condemnation?

- Inverse Condemnation is a legal concept that entitles property owners to just compensation if their property is damaged by a public use.

How does it work?

- Article One, Section 19 of the California Constitution states “*Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner*”. This clause includes requirements for the exercise of eminent domain; the taking of private property for public use. In 1885, the California Supreme Court held that this clause granted property owners the right to compensation in the event a public improvement did not physically take or purchase a property, but rather caused tangential harm to the property and losses to the property owner. (*Reardon v. San Francisco (1885) 66 Cal. 492, 501*)
- Entities subject to inverse condemnation include the government, municipally-owned public utilities and investor-owned utilities.

Why does it apply to private investor-owned utility companies?

- In California, existing law provides investor-owned utility companies with the ability to use eminent domain to condemn private property to construct and operate their gas and electrical infrastructure.
- In 1979, California Supreme Court held that an investor-owned utility was more like a government entity than a private employer, citing close regulation by CPUC as a key factor. (*Gay Law Students Association v. Pacific Telephone & Telegraph Co. (1979) 23 Cal.3d 458, 469*)
- In 1999, the California Supreme Court held an investor-owned utility liable for damages caused from a wildfire started by its powerlines under inverse condemnation. In the decision, the court cited the ability to condemn property through eminent domain as a key factor in its ruling that there was no significant difference between a publicly owned or privately owned electric utility for the purpose of finding inverse condemnation. (*Barham v. Southern California Edison Company (1999) 74 Cal. App 4th 744*)

Who bears the cost of compensation under Inverse Condemnation?

- Private/investor-owned utilities are regulated by the CPUC, and have shareholders who, pursuant to California law, are entitled to a reasonable return on that investment which is paid by the approved rates charged to ratepayers for the services provided by the utility.



- In the event that an investor-owned utility company is found liable for damages by inverse condemnation, the CPUC must determine whether passing the cost onto the ratepayer is “just and reasonable,” or if shareholders must shoulder the burden of the company’s liability.
- The CPUC has held that before ratepayers bear any costs incurred by the utility, those costs must be just and reasonable. That is, the costs must have been prudently incurred by competent management exercising the best practices of the era, and using well-trained, well-informed and conscientious employees and contractors who are performing their jobs properly.
- When that occurs, the Commission can find the costs incurred by the utility to be just and reasonable and can be recovered from ratepayers.

Why is it important for counties?

- If investor-owned utility actions are found just and reasonable in an inverse condemnation case, the utility can pass the cost of compensation onto the rate payer. If not, the shareholders bear the burden. Thus, inverse condemnation liability provides a strong incentive for investor-owned utilities to take action and invest in critical safety measures that protect ratepayers and residents.
- Inverse condemnation allows for more timely settlement negotiations with victims and local governments. Under negligence claims, corporations with vast financial and legal resources can simply extend costly proceedings against fire victims and local governments. Inverse condemnation is important tool for our communities to access a fair resolution after destruction from a utility caused wildfire.

Why do counties oppose a “reasonableness” standard for inverse condemnation?

- The Governor’s proposal to amend inverse condemnation takes directly from the 1994 California Supreme Court decision, *Locklin v. the City of Lafayette* (7 Cal.4th 327), which addressed public agency liability for flood control projects and applied a “reasonableness” standard in the *very* limited circumstance where a flood control prevention system was put in place, the system failed, and the properties damaged were historically subject to flooding.
- In this case, the courts had to balance the long history of water case, and specifically where parties are fighting the “common enemy” of water intrusion in storms, with inverse condemnation doctrine. The courts applied a limited reasonableness standard in this case to help strike a balance between liability and the ultimate purpose of the infrastructure to reduce harm that occurs naturally. The courts applied this modified standard as to no deter that effort –the development of flood protection infrastructure.
- Electric utilities infrastructure is not designed to prevent the injury at hand. And, we feel it inappropriate and unconstitutional to apply a standard specific to water law to electric



utilities.

- A modified inverse condemnation standard for utilities allocates risk from utilities to property owners, which socializes the risk without sharing the profits.
- Changes to inverse condemnation will strip property owners of their constitutional protections for compensation if their property is taken or damaged. And, we believe the Legislature does not have the authority to change the constitution in this manner.

Contact

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