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Flood Control System Failure, Property Damage, and Theories of Liability - Inverse Condemnation or Mere Negligence, if Any

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This article discusses three recent cases concerning the scope of public entity liability in inverse condemnation for damages associated with the rupture of flood control structures and resulting harm: Paterno v. State Arreola v. County of Monterey and Tilton v. Reclamation Dist. No. 800. In general, such cases are premised upon the failure of public improvements built to control flood water.

These three cases, which are quite fact-specific, essentially draw a distinction between negligence associated with a public entity's "deliberate plan" relative to public works construction and maintenance, on the one hand, and negligence that results in harm due to operation or maintenance of public works after construction, on the other. Damage resulting from the former kind of negligence is compensable under the theory of inverse condemnation; but damages due to the latter are not. Those damages may be recoverable under the theory of negligence—if at all.

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