

No Inverse Condemnation Liability for Sewer Backups Where Property Owner Failed to Follow the Law

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ATTORNEYS

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Public agencies are not liable in inverse condemnation for property damage from a sewer backup where the property owner failed to have a legally required backwater valve. “Public entities are not strictly or otherwise automatically liable for any conceivable damage bearing some kind of connection, however remote, to a public improvement,” according to the unanimous decision of the California Supreme Court in City of *Oroville v. Superior Court*.

To reach this significant decision for public agencies, the Court ruled that the “damage to private property must be substantially caused by an inherent risk presented by the deliberate design, construction, or maintenance of the public improvement.” Central to its decision was evidence that the property owner failed to have a backwater valve which was required for its property under the Uniform Plumbing Code, adopted by local ordinance, and testimony by the city’s experts that the sewage backup incident could have been averted had there been a backwater valve. The Court recognized that the city sewer system depended, in part, on property owners installing backwater valves required by law. The risk of damage was created by the property owner’s failure, not the city’s sewer system, the Court held.

The long-awaited *Oroville* decision is of great significance for public agencies and fills a void in the law. Sewer backups are commonplace occurrences, yet they have been converted into constitutional claims with attendant exposure to attorneys’ fees if the owner prevails. The case brings clarity for Public Works Departments across the state. More broadly, the Court’s careful and clear articulation of the rule applies equally to inverse condemnation claims for physical damage from other non-flood control related public improvements.

If you have any questions, or would like more information about inverse condemnation law, please contact **Saskia Asamura**.