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County of Del Norte v. Crescent City, 84 Cal. Rptr. 2d 179 (Cal. Ct. App. 1999)

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County of Del Norte v. Crescent City, 84 Cal. Rptr. 2d 179 (Cal. Ct. App. 1999) (holding that an unincorporated area outside the city limits, which had received water from the city pursuant to city's water appropriation permit, did not have the right to new water service hookups, and the city's water service limitation was not arbitrary).

The County of Del Norte ("County") petitioned for writ of mandamus to compel the City of Crescent City ("City") to continue providing new water service connections outside of the city limits. The Superior Court of Del Norte County granted the petition. The California Court of Appeals reversed.

In the 1950's, the City bought and operated a water system for the benefit of its residents as well as for service to private customers and several water districts n the unincorporated area of the County. In July 1997, the City enacted a policy that it would "no longer allow new utility connections outside its incorporated territory . . . ." This policy was based on the assumption that by providing outside hookups, the City encouraged development of new business and residential units there, while discouraging growth within the City. In June 1994, the City entered into a revenue sharing agreement with the County in which the City would share in County sales tax revenue. The County withdrew from this agreement in June 1997. On July 10, 1997, the city council had a special meeting to consider alternatives for operation and expansion of its water system and wastewater facilities. The city manager recommended that the City should stop providing water or sewer connections outside City limits.

The first issue was whether the City had a duty to provide new water hookups to the County. The County argued that the City had a duty to provide new water hookups on a nondiscriminatory basis without regard to territorial boundaries under the permit. The court held that the permit was a permit to appropriate unappropriated water. The "place of use" authorized by the permit was not the equivalent of the "service area" associated with the privately owned public utility. The State Water Resources Control Board that issued the permit did not require the City to serve the entire "place of use," therefore, the court held that the City did not violate the terms of the permit. The "service area" is an area served by such utility "in which the facilities have been dedicated to public use and in which territory the utility is required to render service to the public." Therefore, the court held that those persons coming into unincorporated lands within the "place of use" do not have a vested right to new service under the terms of the permit.

The second issue was whether the City's policy confining new water hookups to properties within its borders was arbitrary or palpably unreasonable. The County argued that the City's policy was "arbitrary" because it denied water to potential users in the unincorporated area "solely for the reason that they were outside rather than inside the City's corporate boundaries." The water ordinances enacted by the

two parties compelled the City to supply water to properties within corporate limits, but vested discretion in the city council to designate any areas it would serve beyond its borders. The court held that the City not only had authority to designate the areas outside its borders, but also had a financial incentive to deny new hookups after the County withdrew from the revenue sharing agreement. The court held that the City could use the utilities as a tool to manage growth because its first obligation was to its own residents, who funded the system. The court then reversed the trial court's judgment.

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Paterno v. California, 87 Cal.Rptr.2d 754 (Cal. Ct. App. 1999)
(holding that: (1) the then-announced Locklin factors needed to be retroactively applied on remand; (2) negligent maintenance in aid of a public flood control project was insufficient to establish takings liability; (3) evidence that the levee failure was caused by rapid failure from hydrofracture and that such hydrofracture was not predictable corroborated a finding that the defendants did not create a dangerous condition of public property; and (4) the plaintiff did not establish prejudice stemming from the dismissal of the nuisance claim as being duplicative of the negligence claim).

Flooding in the Sacramento Valley is common. In February 1986, a turbulent storm hit areas of California and remained for more than a week. The Linda levee, located in Yuba County, was at issue in this case. The state was ultimately responsible for the Linda levee; however, the local district had control over the daily maintenance and operation of the levee, subject to federal and state standards. The state was required to inspect the levee twice a year. On February 20, 1986, Eddie Bolton rode his bike on the levee and noticed boils on the landside. A boil occurs when water is piped from the riverside to the landside of the levee. Some boils carry a soil and water mixture that removes support from the levee. The boils at issue were of such a character. He reported the boils that evening. Approximately forty minutes after he reported the boils, the levee buckled. The present case arose from this collapse, which resulted in extensive flooding and property damage.

Paterno alleged that all of the following contributed to the Linda levee's failure: rodent burrows, boils, a forgotten concrete pipe, and a nearby gravel pit that perforated the subsurface layers and permitted water to flow underneath the levee. Paterno brought suit alleging that the state inadequately maintained, inspected, and operated the levee.

An owner may sue for inverse condemnation, when the government takes or damages property without first paying for the right to do so. Generally, strict liability applies when the government