State of California

Memorandum

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To : COMMISSIONERS
Delta Protection Commission

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Subject : Summary of Akins v. State of California (Flooding Case)

At the Commission's March 28, 1996 meeting, I provided a brief overview of the recent decision in Akins v. State of California (1996) 42 Cal.App.4th 928. The purpose of this memo is to provide a more detailed summary of the Akins case and its implications. Per the stated wishes of several commissioners at the March meeting, this matter has been put on the Commission's April 25th agenda for further consideration.

Facts

Akins arose out of the substantial rain and snowstorms Northern California endured in February 1986. The resulting runoff exceeded 200-year flood levels and, consequently, the design standards of the Sacramento River Flood Control Project (the Project). The Project is an extensive and complex system of major dams, levees, weirs, channels, reservoirs, bypasses and canals built in phases beginning in 1911. The Project is designed to provide flood protection for the greater Sacramento area.

Plaintiffs own property along the periphery of the Project in Sacramento and southern Sutter Counties. Those properties were flooded during the record 1986 storms, when water levels exceeded the Project's design standards and overflowed Project levees. Plaintiffs sued several public agencies, including the State of California, Reclamation District 1000, and the American River Flood Control District, seeking compensation for their property damage under a theory of inverse condemnation. The trial court ruled for plaintiffs (imposing fiscal liability on the government defendants estimated at $11 million), and defendants appealed.

The Court of Appeal Decision

The Court of Appeal for the Third Appellate District, in a 2-to-1 decision, affirmed the trial court ruling. The majority opinion of the Court of Appeal made the following, key rulings:

1) The government defendants are strictly liable for the unintended[1] flood damage caused by the 1986 floods, when the Project was forced to operate above its design capacity;

2) This strict liability in inverse condemnation applies without the need for evidence of unreasonable conduct by defendants, or of a causal connection between defendants' operation of the project and plaintiffs' flooding damage;

3) The fact that plaintiffs' property would have flooded even in the absence of the Project was irrelevant to a finding of government liability, as was the fact that Project failure (i.e., overflow of the levee system) occurred only when its design capacity was exceeded.

The majority noted that the Project operated successfully to prevent damage to the Sacramento area that would otherwise have exceeded $7 billion and perhaps reached $13.4 billion. Nevertheless, ruled the court, the defendants were liable for the property damage which these plaintiffs incurred.

Justice Brown (who has since been nominated to the California Supreme Court by Governor Wilson) dissented in Akins. She noted that the majority's ruling contradicted recent decisions of the California Supreme Court, which impose a "reasonableness" standard in assessing government's liability for flood damage. Justice Brown wrote that this reasonableness standard requires "a balancing of public need against the gravity of private harm."

The Petitions for Review

The State of California, Reclamation District 1000 and the American River Flood Control District ("petitioners") have each filed petitions for review with the California Supreme Court. Those petitions ask the Supreme Court to accept and decide the

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1. The Court of Appeal ultimately concluded that the flooding could be considered "intentional," but only by equating an intention to divert water to reclaim land with an intention to flood adjacent and unreclaimed land (i.e., the plaintiffs'). There was no evidence that defendants' ever "intended" to flood plaintiffs' property as that term is commonly understood, a point the Akins decision acknowledges.

Akins case on its merits. (The California Supreme Court is not required to hear the Akins case; it will only exercise its discretion to do so if it believes the issues raised are of sufficient importance, or if the Court of Appeal decision is in conflict with other lower court decisions. This office believes both of these criteria are met here.)

In order to convince the Supreme Court that it should hear and decide the Akins case, interested third parties are allowed under Supreme Court rules to write letter briefs to the Court as "friends of the court" (amicus curiae). So far, the Sacramento Area Flood Control Agency has filed such a friend-of-the-court brief, and the Association of California Water Agencies is expected to do so.

Potential Impacts of the Akins Decision

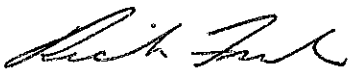
Left unreviewed, the Court of Appeal's Akins decision has serious fiscal and policy consequences for flood control projects throughout California, as well as for the government agencies which operate them. This is particularly problematic in the Sacramento-San Joaquin Delta, where longstanding reclamation and flood control projects have greatly modified the natural water regime. As recent Delta flooding events have demonstrated, occurrences such as a levee break on one island can have significant impacts on adjacent areas and, indeed, even on non-proximate portions of the region.

The Akins decision, in effect, makes public flood control entities the absolute insurers of lands protected by, and adjacent to, flood control projects. Ignoring principles of reasonableness which applied under California law before Akins, the Court of Appeal has marked public entities engaged in flood control activities as potentially liable for all flood damage--even if that damage is only marginally related to flood control projects, and even if those entitles have undertaken reasonable efforts to avoid such damage. Additionally, the Akins decision provides a strong disincentive to construct new and beneficial flood control works, no matter how much sense they might make from a fiscal and engineering standpoint.

Conclusion

This office has copies of both the Court of Appeal's decision in Akins and the petitions and related materials that have been filed to date with the California Supreme Court. We would be happy to provide copies to any commissioner who desires them.

We look forward to discussing this matter with you further at the Commission's April 25th meeting.



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cc: Margit Aramburu