

Public Water Running Through a Privately-Owned Pipe is Not Sufficient to Impose Liability on a Public Entity

The County of San Diego could not be held liable for damage caused by leakage from a privately-owned storm drain

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pipe.

Plaintiffs filed an inverse condemnation action seeking just compensation, arguing that by using the pipe for 50 years as part of the public drainage system, the County had accepted a drainage easement and had a concomitant duty to maintain the pipe. Plaintiffs also alleged that the County should be held liable because it acted unreasonably by discharging water through the plaintiffs' pipe without inspecting or maintaining the pipe. The appellate court held there was insufficient evidence to support a finding that the County impliedly accepted an easement through the pipe. A public entity's use of private land over a period of time may constitute implied acceptance of an offer of dedication if the entity takes steps to exhibit control over the property, such as assisting in improving, maintaining, or repairing an improvement on the land. In this case, the County had no right of access to the Ruiz pipe and had not participated in planning, constructing, maintaining, inspecting, or repairing the pipe. Also, by declining the offer of dedication, the County demonstrated it was not accepting any maintenance obligation. The court concluded that the facts of the case could not be distinguished from prior case

law holding that public water flowing through the watercourse, without more, is insufficient to establish implied acceptance of a drainage system. The court also found that the evidence did not support the conclusion that the County acted unreasonably in allowing surface water to drain into the watercourse that included plaintiffs' pipe. A public entity may be liable for inverse condemnation if it makes unreasonable alterations to its upstream property that result in increased volumes of water that cause damage to a downstream property. But liability is only for the proportion of the damage attributable to the public entity's conduct. Here, plaintiffs' expert testified that a "fair amount" of the water in the watercourse originated from private, upstream owners, and the expert did not conduct the hydrology study necessary to apportion the damage among the public and private parties. Because it was Ruiz's burden to establish the proportion of damage attributable to the public entity, the absence of any evidence sufficient to make that determination precluded a damages award.

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