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Deputy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CITY OF OROVILLE, *Petitioner*

v.

SUPERIOR COURT OF BUTTE COUNTY, *Respondent*

CALIFORNIA JOINT POWERS RISK
MANAGEMENT AUTHORITY et al., *Real Parties in Interest*

OPENING BRIEF ON THE MERITS

After an Unpublished Decision of the Court of Appeal
Third District Court of Appeal, Case No. C077181
Arising from Butte County Superior Court, Case No. 152036
The Honorable Sandra L. McLean, Judge

*MARK A. HABIB (150087)
mhabib@peterslawchico.com
LIA M. JUHL-RHODES
(268816)
ljuhl@peterslawchico.com
**PETERS, HABIB,
MCKENNA
& JUHL-RHODES, LLP**
414 Salem Street
P.O. Box 3509
Chico, CA 95927-3509
Telephone: (530) 342-3593
Facsimile: (530) 342-4742

MICHAEL G.
COLANTUONO (143551)
mcolantuono@chwlaw.us
JENNIFER PANCAKE
(138621)
jpancake@chwlaw.us
**COLANTUONO,
HIGHSMITH &
WHATLEY, PC**
420 Sierra College Dr.,
Ste. 140
Grass Valley, CA 95945
Telephone: (530) 432-7357
Facsimile: (530) 432-7356

SCOTT HUBER
(227196)
Oroville City Attorney
shuber@cotalawfirm.com
**COTA COLE &
HUBER LLP**
2261 Lava Ridge Court
Roseville, CA 95661
Telephone: 916.780.9009
Facsimile: 916.780.9050

Attorneys for Petitioner City of Oroville

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SCOTT HUBER
(227196)
Oroville City Attorney
shuber@cotalawfirm.com
**COTA COLE &
HUBER LLP**
2261 Lava Ridge Court
Roseville, CA 95661
Telephone: 916.780.9009
Facsimile: 916.780.9050

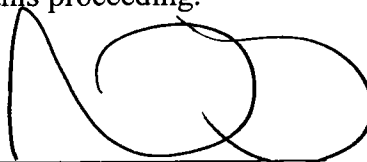
Attorneys for Petitioner City of Oroville

CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

I know of no interested entities or persons as defined in California Rules of Court, Rule, 8.208, other than parties to this proceeding, that have a financial or other kind of interest in the outcome of this proceeding.

Dated: 10/28/17

By:

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a series of loops and curves, positioned above a horizontal line.

MARK A. HABIB

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LEGAL ISSUES PRESENTED FOR REVIEW

1. Whether inverse condemnation liability against a public entity for sewage backup into real property should be applied where the design and operation of the sewer system is defeated by plaintiffs' violations of state and local building code ordinances requiring the installation and maintenance of functioning backwater valves on private property sewer laterals to prevent sewage backups onto private property.
2. Whether strict liability can be applied against a public entity when sewage intrudes on private property without evidence of a design or construction defect in the sewer system, without evidence of a deficient or unreasonable plan of maintenance by the public entity, and where a backwater valve is not installed and maintained on private property by owners as legally required by state and local building codes.
3. Whether a public entity is strictly liable in inverse condemnation whether its properly designed and constructed public improvements function as intended, or fail to function as intended.

I.

INTRODUCTION

Inverse condemnation is based on a public agency's deliberate taking of private property. The rule in property damage cases is that damage from a public improvement functioning as deliberately designed and constructed constitutes inverse condemnation. Inverse condemnation liability should not apply to a sewage overflow when plaintiffs defeat the design of the city's sewer system by violating multiple city and state codes, by failing to have a legally required backwater valve¹

¹ The backwater valve under discussion is a valve that is often required to be

in place to prevent sewage from entering their building. Yet, there is confusion and inconsistent results in lower courts in cases like this one, involving sewer overflows into properties that are in violation of the California Plumbing Code's requirement to install and maintain backwater valves. Backwater valves are designed to prevent damage from sewer overflows by directing discharge to streets, where wastewater can be contained, collected and treated before it damages more sensitive property.

This Court can, and should, clarify existing law governing inverse condemnation in cases such as this, to conclude that damages caused by property owners' violations of plumbing standards on which public sewer agencies are entitled to rely does not result in inverse condemnation. Any other rule amounts not only to strict liability for sewer agencies, but an invitation to property owners and their licensed contractors throughout the State to ignore well-established building and plumbing code requirements.

The root of the confusion that brings this case to bar is unfortunate language

installed on a private sewer lateral under the California Building and Plumbing Codes, typically installed where the private sewer lateral connected to a municipality's sewer main enters the private building. (Vol.6, Ex.38, pp. 1256, 1282, 1310.) While various types of BWV's could be used, they generally consist of a "coupling" type fitting with a flap that opens and closes, allowing affluent from the private structure to exit the structure into the sewer lateral flowing towards the sewer main and then the flap closes, preventing effluent from the private sewer lateral and municipal mainline to enter the building. (See generally Vol.6, Ex.38, pp. 1256, 1299.) The coupling device is normally accompanied by an access box type structure that has an above ground lid allowing access to the valve to clean and maintain the backwater valve as required, to ensure its continued operation. (Vol.6, Ex.38, p. 1311.) Plaintiffs and their representatives did not include the required backwater valve on plans submitted to the City of Oroville. Determining the necessity of a backwater valve requires a private survey or other determination by property owners of the elevation of the top of the public sewer main, in relation to the elevation of plumbing fixtures (tops of toilets, shower drains, sink drains, etc.) planned for in the private structure. (See Vol.6, Ex.38, p. 1261.)

in *California State Auto Ass'n Inter-Insurance Bureau v. City of Palo Alto* (“CSAA”) (2006) 138 Cal.App.4th 474. Some lower courts read CSAA to impose what amounts to strict liability on sewer system operators for wastewater overflows — inverse condemnation liability without considering the claimants’ violation of the California Plumbing Code, or the reasonableness of the parties’ conduct. Under the lower courts’ view in this particular case, liability accrues to the public entity even if a sewer system is designed, constructed, and maintained flawlessly, whether or not the plaintiff property owner takes reasonable steps to protect her property, and whether or not she flouts California Building and Plumbing Code ordinances requiring backwater valve installations. This creates perverse incentives for private property owners and their licensed contractors, allowing them to evade the relatively small cost to install and maintain backwater valves and impose on the public the much higher cost to repair damaged property when an overflow occurs. Such a rule does not serve the intent of the inverse condemnation provision of our Constitution, or the historical development of case law.

CSAA erroneously eliminated the deliberateness requirement by grafting the *Belair v. Riverside County Flood Control Dist.* (1989) 47 Cal.3d 550 (“*Belair*”) flood control proximate cause test of whether damage was caused by a public improvement “failing to function as intended” as the sole requirement to establish inverse condemnation liability. Compounding that error, CSAA omitted *Belair*’s additional requirements of an independent force and unreasonable conduct by the public entity. Outside of flood control cases, inverse condemnation cannot be established without damage caused by some deliberately deficient act of the public entity, whether it be in the design, construction, or plan of maintenance.

Thus, the City of Oroville should prevail here, whether this Court merely clarifies the law muddled by the language of CSAA, or extends the reasoning of modern storm water flooding cases to the sewer overflow context.

II.

FACTUAL SUMMARY

A. Overview

On December 29, 2009, sewage from the City of Oroville's (CITY) sewer main entered a building located at 3579 Oro Dam Boulevard, through the building's private sewer lateral that did not have a backwater valve installed as required by Code. (Vol. 1, Ex. 3, p. 23; Vol. 2, Ex. 8, pp. 378-379.)² In response, CITY's Public Works crew discovered and removed root growth partially blocking flow through the sewer main. The CITY had never experienced an overflow in this section of sewer main between 1986, when Plaintiffs constructed and began occupying their building, until the 2009 incident. The CITY had serviced the line only two months or so before the incident. (Vol. 1, Ex. 3, pp. 22-23; Vol. 2, Ex 9, p. 440.)

Plaintiffs are three dentists — Timothy Wall, Sims W. Lowry, and William A. Gilbert, individually and doing business as WGS DENTAL COMPLEX (collectively "WGS Plaintiffs"), and the CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY ("CJPRMA"), subrogated to the claims of the WGS Plaintiffs' insurer. The WGS Plaintiffs and the insurer in whose shoes CJPRMA stands are collectively identified as "Plaintiffs" here. CJPRMA is the CITY's risk pool.

WGS Plaintiffs did not present admissible evidence in the trial court of a deliberately deficient maintenance plan on CITY's part. Nor did they challenge the sewer main's design and construction. (Vol. 2, Ex. 8, p. 378; Vol. 2, Ex. 9, pp. 432, 434, 435.) Plumbing codes and CITY ordinances in place when the WGS Plaintiffs constructed their building in 1985 and 1986 required the installation and ongoing maintenance of a backwater valve on WGS Plaintiffs' private sewer lateral because

² References to the record submitted with the petition for writ to the Court of Appeal are in the form: Vol. X, Exhibit Y, pp. #-#.

they installed plumbing fixtures at an elevation lower than the next uphill manhole. (Vol. 2, Ex. 8, pp. 348-349; Vol. 2, Ex. 8, p. 386; Vol. 2, Ex. 9, p. 397; Vol. 2, Ex. 5, pp. 213-215.) Such a valve allows sewage to only flow away from a property, and is legally required as part of the standard design of sewer systems that rely on manholes to limit the consequences of sewer system backups and overflows. Specifically, Part 6 of the CITY's Ordinance No. 1450 adopting the 1982 edition of the Uniform Plumbing Code, provides at section 409:

Drainage piping serving fixtures which have flood level rims located below the elevation of the next upstream manhole cover of the public sewer serving such drainage piping shall be protected from backflow of sewage by installing an approved type backwater valve.

(Vol. 2, Ex. 5, pp. 240, 268.)

On August 3, 1985, only a month or so after buying their undeveloped property, the WGS Plaintiffs' agent and immediate predecessor in interest that sold them the property, Gerald DeRoco, applied on their behalf for a building permit and a permit to connect to the CITY's sewer system, promising to abide by all ordinances and state laws relating to building construction. (Vol. 2, Ex. 5, pp. 213-215, 227-229, 234-235, 237.) The plans submitted to CITY did not include the required backwater valve. No backwater valve was ever installed or maintained on the property. CITY first learned a backwater valve was missing from the WGS Plaintiffs' property in 2012 during discovery in this case. (Vol. 2, Ex. 8, p. 379.) Accordingly, WGS's building constituted a public nuisance under the CITY's municipal code at all times relevant to the case. (Vol. 2, Ex. 5, pp. 287, 290, 293.)

The CITY's sewer system relies on adherence to building and plumbing codes and includes manholes for access and to allow for the escape of sewage from manholes immediately upstream of any sewer line blockage. This is the accepted

and proper design of sanitary sewage systems. (Vol. 1, Ex. 3, p. 22; Vol. 2, Ex. 5, pp. 218, 346.)

B. The CITY Sewer Main Line

The CITY owns and maintains the sewer main section identified as JJ-10 and JJ-11 located beneath Oro Dam Boulevard, adjacent to and serving the WGS Plaintiffs' property. (Vol. 2, Ex. 5, p. 213.) The sewer main was designed, approved, and constructed in accordance with CITY engineering standards in the late 1950's, by CITY employees exercising discretionary authority to establish such standards and to approve such designs and construction. (Vol. 2, Ex. 5, pp. 216–217, 346.) The sewer system is a typical gravity flow system (i.e., one that relies on gravity rather than pumps to convey wastewater) to carry sewage down Oro Dam Boulevard and eventually to the regional sewage treatment facility owned and operated by the Sewage Commission Oroville Region ("SCOR"), an entity distinct from the CITY. (Vol. 2, Ex. 5, p. 218.)

The line is designed so that in the event of a blockage, wastewater will stay confined in the main (a "backup") or will exit from the next manhole upstream of the blockage (an "overflow"), rather than entering a residence or other building. (Vol. 1, Ex. 3, p. 22; Vol. 2, Ex. 5, pp. 218, 346.) The system is specifically designed and continues to function as intended when blockages occur in the main line – waste water backs up in the main and is carried away from private laterals and to the nearest uphill manhole. This requires compliance with backwater code provisions. (Vol. 1, Ex. 3, p. 22.)

Users are required to design their buildings and connect to sewer mains in accordance with the CITY's building codes, which adopt the California Building Standards Codes, which, in turn, are based on triennial updates of the privately published Uniform Plumbing Code and other such codes. (Vol. 2, Ex. 5, p. 218, Line 11; Vol. 2, Ex. 9, p. 419.) (See Health & Safety Code, § 17921; Cal. Municipal

Law Handbook (Cont.Ed.Bar. 2017) Land Use, § 10.244–10.245, pp. 1133–1134.) When the codes and regulations require a backwater valve, such as for Plaintiffs’ building, users must be in compliance, otherwise the design of the CITY’s sewer system is defeated.

Manhole No. JJ-11 is the first manhole upstream from the connection of the WGS Plaintiffs’ private sewer lateral to the sewer main. (Vol. 2, Ex. 5, p. 218.) That manhole is 303.59 feet above sea level. The lowest plumbing fixture in WGS’ Plaintiffs’ building is a toilet with a flood level rim elevation of 301.2 feet — 2.39 feet below the flood level rim of manhole JJ-11. Surveys of the WGS Plaintiffs’ property during this litigation discovered that **all** plumbing fixtures in their building were below the upstream manhole. Thus, the building was always required by CITY’s Plumbing Code (§409 of the 1982 Uniform Plumbing Code) and Ordinance No. 1450, section 6-6, to have a backwater valve. The WGS Plaintiffs and their contractors failed to design for, install, or maintain the required backwater valve. (Vol. 6, Ex. 38, pp.1400-1401, ¶ 8.)

C. CITY Ordinances Required the WGS Plaintiffs to Install and Maintain a Backwater Valve

The WGS Plaintiffs’ office building is located within the CITY limits and therefore subject to its land use and building regulations. (Vol. 2, Ex. 5, pp. 212–213.) When the building was constructed, these regulations included the 1982 editions of the Uniform Building Code and Uniform Plumbing Code, which the CITY adopted April 14, 1984, by Ordinance No. 1450. (Vol. 2, Ex. 5, pp. 214–215.) Section 409 of the Uniform Plumbing Code required the WGS Plaintiffs and their contractors who designed and constructed the building to determine if any plumbing fixture had a lower elevation than the overflow elevation of the next upstream manhole, and if so, to install and maintain a backwater valve. (Vol. 2, Ex. 5, p. 215, ¶ 17.) Although CITY building officials review plans and issue plumbing, building,

and other permits, and inspect construction for conformance to codes, they are not guarantors of all private construction and are not all-knowing. There is no evidence in this record that the plans submitted to the CITY by WGS Plaintiffs in 1985 and 1986 alerted CITY officials to the low elevation of this site in relation to the nearest manhole. In any event, it is plain that no backwater valve was installed on this property. (Vol. 6, Ex. 38, pp. 1400-1401, ¶ 8.)

The CITY considers its building regulations to be extremely important and therefore adopted an ordinance that states that buildings in violation of the CITY's building codes, including the plumbing code, constitute a public nuisance. CITY Ord. No. 1719 states that it is unlawful and declared a public nuisance for any person owning, leasing, renting, occupying or having charge or possession of any premises in the CITY to allow such premises to be in any condition in violation of Chapter 6 of the Oroville Municipal Code (pertaining to building regulations). (Vol.2, Ex.5, p.214-215; Vol.2, Ex.5, p.486-490.) Since plaintiffs' building was built in contravention of UPC §409 and remained so at the time of the incident, it was a public nuisance under the CITY's Municipal Code.

Responsibility for the maintenance and safety of private property remains with private property owners, bolstered by the requirements of their insurers. Indeed, the Government Claims Act immunizes cities and counties for liability for permitting and inspection work, lest the risk of public safety regulation be prohibitive and to avoid socializing all risk arising from the construction and maintenance of private property. (Gov. Code, §§ 818.2 [law enforcement immunity], 818.4 [permitting immunity], 818.6 [inspection immunity].)

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D. The WGS Plaintiffs Constructed Their Dental Offices in 1985 and 1986, Omitting a Backwater Valve

The WGS Plaintiffs constructed their building in 1985 and 1986, dividing it into three dental office suites. As is typical, they connected their building to the City's sewer main via a private lateral installed in that initial construction. (Vol. 2, Ex. 5, pp.213, 237.) The WGS Plaintiffs' immediate predecessor in title and agent for the site development, Gerald N. DeRoco, applied for the building permit to develop WGS Plaintiffs' building on August 3, 1985. (Vol. 2, Ex. 5, pp. 213, 227-229, 237.) He applied for a sewer connection approval five days later. (Vol. 2, Ex. 5, pp. 213, 237.) The CITY's building permit application form required owners and/or their contractors to affirm they would comply with all CITY building codes. The WGS Plaintiffs retained a civil engineer and licensed contractors, including a licensed plumbing contractor, to plan, design, and construct their building. (Vol. 2, Ex. 5, pp. 213, 272-274.) Nevertheless, these professionals omitted the necessary backwater valve on their building plans and the property for reasons not apparent in this record developed decades later. (Vol. 6, Ex. 38, pp. 1400-1401.)

CITY representatives do not survey elevations or investigate ground or sewer main elevations to determine if backwater valves are required on buildings. (Vol. 2, Ex. 5, p. 219, ¶ 32.) Surveying every private construction project would be costly and that cost, of course, would have to be recouped from those who develop, making development even more costly than it is. (See *County of Orange v. Barratt America, Inc.* (2007) 150 Cal.App.4th 420 [generally discussing cost recovery via building permit fees as controlled by statute].) Accordingly, like most cities and counties, the CITY relies on developers and their professional contractors to comply with construction codes and to develop the site survey and other data necessary to do so. CITY did not waive the WGS Plaintiffs' obligations to comply with codes generally and to install and maintain a backwater valve specifically. (Vol. 2, Ex. 5,

p. 219, ¶ 32.)

A professional survey performed for the CITY in discovery in this case established that the flood level rim of every plumbing fixture in the building is below that of the next upstream manhole cover. (Vol. 2, Ex. 5, pp. 348-349; Vol. 6, Ex. 40, pp. 1428-1429.) The lowest plumbing fixture has a flood level rim that is 2.39 feet below the next uphill manhole cover. (Vol. 2, Ex. 5, pp. 348-349.) Based on the survey, the WGS Plaintiffs' toilets would need to have been nearly four feet tall (taller than sink counters) to be above the next uphill manhole cover. WGS Plaintiff's property was an accident waiting to happen.

E. The 2009 Sewer Backup

The WGS Plaintiffs occupied their property from 1986 until December 29, 2009, without any apparent incident or problem associated with their sewer lateral or the main sewer line. On December 29, 2009, however, sewage flowed from CITY's sewer main into the building's plumbing fixtures through WGS Plaintiffs' private lateral. The CITY's Public Works crew later discovered and removed a root mass in the sewer main between manholes JJ-10 and JJ-11, which partially blocked the line. A properly maintained and functioning backwater valve would have protected Plaintiffs' property, forcing wastewater to flow out of the next upstream manhole, where it could have been contained in the street. (Vol. 6, Ex. 40, pp. 1456, 1458-1459.) Indeed, the trial court specifically found no deficiency in the CITY's maintenance of its main, which had been inspected just months earlier, and concluded that the reasonable design of the CITY's sewer system - relying on manholes to protect property - was defeated by the absence of a backwater valve on the WGS Plaintiffs' property. (Vol. 4, Ex. 32, p. 1011.)

III.

STATEMENT OF THE CASE

The WGS plaintiffs and TDIC, their insurer appearing as a plaintiff in intervention, sued the CITY in inverse condemnation to recover their loss from the sewage overflow. They moved pursuant to Code of Civil Procedure 1260.040 for a determination of CITY's liability. This procedure, unique to eminent domain and inverse condemnation, allows an early determination of legal issues, including liability, by the court before a jury is empaneled. Akin to summary judgment, it is well described in *Dina v. People ex rel. Dept. of Transp.* (2007) 151 Cal.App.4th 1029 ("*Dina*"). The trial court granted the motions, finding CITY liable for inverse condemnation. (Vol. 4, Ex. 32, pp. 995-1011.) The case was set for jury trial on liability and damages on the remaining nuisance claim and damages on the inverse claim.

The CITY timely petitioned the Third District Court of Appeal for an appellate writ to review the inverse condemnation liability determination. That court issued an alternative writ and stayed the trial. After briefing and argument, the Court of Appeal issued an unpublished decision denying the writ and affirming the trial court's finding of liability against the CITY. The CITY's successful petition for review by this Court followed.

IV.

STANDARDS OF REVIEW

Generally, a trial court's factual findings are reviewed for substantial evidence and legal issues are reviewed de novo. (*Gutierrez v. County of San Bernardino* (2011) 198 Cal.App. 4th 831, 844 [review of non-suit on inverse

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claim].) “The application of the appropriate legal standard to the facts properly found by the trial court is a legal question.” (*Ibid.*) *Dina, supra*, 151 Cal.App.4th at pp. 1047–1048, applied non-suit standards on review of an Order under Code of Civil Procedure section 1260.040, accepting as true all facts asserted in an opening statement and indulging inferences from those facts to determine that no substantial evidence could support a judgment for the plaintiff. Yet, there, as here, the stringent standard of review still permits a ruling for the defendant agency when the law will not permit liability on the facts shown.

In any event, the issues on review here do not turn on disputed facts. It is plain that a blockage occurred in the CITY’s main, sewage overflowed into the WGS Plaintiffs’ properties, and plaintiffs would have come to no harm had they installed and maintained a backwater valve as required by law.

V.

LEGAL ARGUMENT

A. **CSAA Established Confusing and Erroneous Standards for Inverse Condemnation Liability in Sewage Overflow Cases**

1. **CSAA’s “Failed to Function as Intended” Test is Erroneous, Particularly in Sewage Backup Cases Where Backwater Valves are Legally Required but Missing from Private Property.**

CSAA primarily applied flood control case law to address legal requirements for imposing liability against a public entity in a sewer backup context. CSAA did not involve the issue of a legally required but missing backwater valve (which is at issue here). Elsewhere in this brief, we explain why the CITY is not liable even if the “failed to function as intended” test were to apply. However, first, and most fundamentally, the “failed to function as intended” test should not apply to sewage backup cases.

The general rule of inverse condemnation imposes liability only when a

public project functioning as intended causes damage. (*Albers v. County of Los Angeles* (1965) 62 Cal.2d 250, 261-262 (“*Albers*”).) Flood control cases are an exception because flood control measures are intended to protect land historically subject to flooding, and they encourage public entities to build flood control projects despite potential exposure to inverse condemnation claims; thus, unique flood control rules evolved. If a flood control project, such as a levee, is designed to withstand a 25-year storm, the public entity is not liable for failure caused by a 50-year storm, even though failure to prevent all flooding from a 50-year storm would be inherent to the design. Instead, the public entity is potentially liable if the levee fails against a 10 or 20-year storm, i.e., the levee does not function as intended and the entity had acted unreasonably. (See *Belair*, supra at 47 Cal.3d 550 556-561; *Bunch v. Coachella Valley Water Dist.* (1997) 15 Cal.4th 432, 454 (“*Bunch*”); also see *Biron v. City of Redding* (2014) 225 Cal. App. 4th 1264 (“*Biron*”).)

This unique standard for flood control cases should not apply here. After all, if the design of the sewer system was to overflow into plaintiffs’ property, such would manifestly be an inverse condemnation taking. It cannot also be true that a taking occurs if the overflow into plaintiffs’ property occurs because the system fails to function as intended due to plaintiffs’ non-compliance with established state and local building codes. If a city were liable for an overflow caused either by the system failing to function as intended or by the system functioning as intended, the city would always be liable, even if its design is (as here) specifically defeated by the very plaintiffs making a claim.

The fundamental necessary element of inverse condemnation is damage caused by a public project functioning as designed. The proposition that inverse condemnation liability also occurs when a project does not function as designed could mean that the public entity is virtually always liable in inverse condemnation and would render the discussions in numerous cases moot, and the holdings of many

of those cases wrong. For example, the discussion and holding in *Pacific Bell v. City of San Diego* (2000) 81 Cal.App.4th 596 regarding the “fix it when it breaks” maintenance plan would have been utterly superfluous. Moreover, cases subsequently discussing *Pacific Bell’s* theory of inverse condemnation, and cases prior to *Pacific Bell*, would be irrelevant. (See e.g. *Tilton v. Reclamation Dist. No. 800* (2006) 142 Cal.App.4th 848 (“*Tilton*”); and *Arreola v. County of Monterey* (2002) 99 Cal.App.4th 722 (“*Arreola*”); see also *Paterno v. State of California* (1999) 74 Cal.App.4th 68 (“*Paterno*”); *Hayashi v. Alameda County Flood Control* (1959) 167 Cal.App.2d 584 (“*Hayashi*”).)

By applying *Belair’s* “failed to function as intended” test to sewage backup cases without the attendant requirements of an independent force and unreasonable conduct by the public entity, *CSAA* and the lower courts in this case have created a type of super inverse condemnation liability in which the public entity is always liable, regardless of whether the public improvement functions as intended or does not function as intended, and even if the public entity acts reasonably and the plaintiff acts unreasonably (and unlawfully). Certainly that cannot and should not be the law.

2. CSAA Confused the Cause of Sewer Backup with the Cause of Harm to an Inverse Condemnation Plaintiff

The decisions for the WGS Plaintiffs below extend and misapply *CSAA*. The lower courts erred because they focused on the cause of the sewer blockage, rather than the cause of the damage to Plaintiffs — the issue which animates inverse condemnation law. The *CSAA* parties disputed the cause of the sewer blockage. (*Id.* at pp. 481–483.) However, the Court of Appeal twice acknowledged that “[h]ow or why the blockage occurred is irrelevant.” (*Id.* at pp. 483, 484.) The relevant inquiry is whether the blockage in the City’s sewer main caused sewage to back into the plaintiff’s home. (*Ibid.*) It is *CSAA’s* unfortunate language that invites this

confusion:

But our Constitution does not require that [proof of how a blockage occurred]. It only requires proof of a substantial cause of the damage, indeed as was said by our Supreme Court in *Belair* ““a substantial” cause-and-effect relationship which excludes the probability that other forces alone produced the injury.”” (*Belair, supra*, 47 Cal.3d at p. 559.) In this case, there was a substantial cause and effect relationship between factors entirely within the City’s control, namely, tree roots, slope and standing water in the main that contributed to the backup; there is no need to distinguish among them to specifically determine ‘how and why’ the blockage occurred.

(*CSAA, supra*, 138 Cal.App.4th at p. 484, quoting *Belair v. Riverside County Flood Control Dist.* (1989) 47 Cal.3d 550.)

The *CSAA* court found Palo Alto liable because it could not show that other forces alone produced plaintiff’s damage. However, *CSAA* did not involve the issue of a missing but legally required backwater valve. In the context of this case, blockages, in and of themselves, will not cause harm to users if legally required backwater valves are in place and maintained. This is because the system is engineered so that when backups occur, effluent should either stay within the main line or overflow safely through the upstream manhole into a public right of way. The system function is reliant on compliance with backwater valve codes. Thus, CITY urges this Court to clarify *CSAA* by noting that government is not liable in inverse condemnation unless its actions or inactions legally cause the plaintiff’s damages.

Indeed, the *CSAA* court found:

CSAA did everything in its power to address the [plaintiff] McKenna’s plumbing issue, even going so far as to replace the entire lateral pipe from McKenna’s home to the City’s sewer main, including the portion owned and operated by the City. There was nothing more *CSAA* could do to protect the homeowners from sewage backup. *CSAA* paid the costs to repair the portion of