THE TIMELINESS OF FILING INVERSE CONDEMNATION CLAIMS FOR CONTINUING OR REPEATED INJURY TO LAND: THE CALIFORNIA RESOLUTION

When a governmental entity takes or damages a landowner's real property, the affected landowner can generally bring an inverse condemnation claim to recover the loss or damage incurred.[1] While an outright taking of private property is not without hard issues and procedural difficulties,[2] certain unique and difficult problems arise when a private party seeks recovery for continuous or repeated damage

---

1. The power of eminent domain permits a state or a state-designated agency to take private property for a public use. The eminent domain power is typically exercised through a judicial condemnation decree in which the landowner is fully compensated for his losses. Official governmental condemnation of land usually precedes the actual taking. *See generally* 2 P. NICHOLS, EMINENT DOMAIN (3d rev. ed. 1963); Harrison & Kratovil, *Eminent Domain — Policy and Concept*, 42 CALIF. L. REV. 596 (1954). If the governmental entity fails to condemn the land by an eminent domain action, the landowner can sue to obtain the just compensation assured him by the constitution when his property has been taken or damaged for a public use without prior payment. Inverse condemnation is the name generally ascribed to this remedy. Sheffet v. Los Angeles County, 3 Cal. App. 3d 720, 84 Cal. Rptr. 11 (Dist. Ct. App. 1970). *See generally* Mandelker, *Inverse Condemnation: The Constitutional Limits of Public Responsibility*, 1966 WIS. L. REV. 3; Van Alstyne, *Inverse Condemnation: Unintended Physical Damage*, 20 HASTINGS L.J. 431 (1969); Van Alstyne, *Taking or Damaging by Police Power: The Search for Inverse Condemnation Criteria*, 44 S. CAL. L. REV. 1 (1971); Van Alstyne, *Statutory Modification of Inverse Condemnation: Deliberately Inflicted Injury or Destruction*, 20 STAN. L. REV. 617 (1968); Van Alstyne, *Statutory Modification of Inverse Condemnation: The Scope of Legislative Power*, 19 STAN. L. REV. 727 (1967).

There are two generally recognized exceptions to the requirement that compensation be paid for damages to property. *See* Van Alstyne, *Inverse Condemnation: Unintended Physical Damage*, *supra*, at 442. One applies when property is damaged through the proper exercise of the police power. This exception will only apply when the physical damage to private property could not have reasonably been avoided. *See, e.g.*, Gray v. Reclamation Dist. No. 1500, 174 Cal. 622, 163 P. 1024 (1917). The second exception occurs when the governmental entity has a legal right to inflict damage to the same extent as a private person. For example, a private riparian landowner has a right to collect the surface water on his land and channel it into the stream into which it would naturally drain even though this results in the flooding of lower lands. Since this common law right exists for private landowners, the state cannot be held liable for a similar act. Albers v. County of Los Angeles, 62 Cal. 2d 250, 261, 398 P.2d 129, 135, 42 Cal. Rptr. 89, 95 (1965).

2. When property is taken by a public entity, one recurring problem is the determination of the exact date on which the property was taken. *See* Pierpont Inn, Inc. v. State, 70 Cal. 2d 282, 449 P.2d 737, 74 Cal. Rptr. 521 (1969). In addition, since the right of eminent domain means the right of the governing body to take private property for the public use or public

absent an outright taking.[3] When a private landowner suffers damage from a continuous or repeated course of conduct on the part of a governmental entity, he is faced with a set of legal rules, not all in accord, regarding the appropriate time of filing his claim.[4] Since failure to file a timely claim may limit[5] or totally preclude[6] recovery for damages sustained, the issue is critical to the injured landowner.

In *Amador Valley Investors v. City of Livermore*[7] plaintiffs owned a substantial tract of land that was scheduled for residential development.[8] Pursuant to a county flood control regulation, plaintiffs were required, as a condition precedent to development, to widen and deepen several

---

benefit, an issue often arises whether the taking is, in reality, for the public use or benefit. *See, e.g.*, Filbin Corp. v. United States, 265 F. 354, 355 (E.D.S.C. 1920).

3. Before a property owner can seek recovery for damages, he must first comply with the statutory claims requirement. Generally he is required to file a claim for damages with the governmental entity which caused his damages. For cases holding that compliance with the claims requirement is a condition precedent to suit for damages in California see Rose v. State, 19 Cal. 2d 713, 725, 123 P.2d 505, 513 (1942); Powers Farms, Inc. v. Consolidated Irrigation Dist., 19 Cal. 2d 123, 126, 119 P.2d 717, 720 (1941); Dorrow v. Santa Clara County Flood Control Dist., 4 Cal. App. 3d 380, 391, 84 Cal. Rptr. 518, 520 (Dist. Ct. App. 1970); Bleamaster v. County of Los Angeles, 189 Cal. App. 2d 274, 279, 11 Cal. Rptr. 214, 219 (Dist. Ct. App. 1961); Veterans' Welfare Bd. v. City of Oakland, 74 Cal. App. 2d 818, 826, 169 P.2d 1000, 1006 (Dist. Ct. App. 1946). The claim must also be filed within a certain time period in order to preserve the right to sue. *See* CAL. GOV'T CODE § 911.2 (Deering 1973) (filing required within one year after the accrual of the cause of action). The difficult issue is the time at which a cause of action accrues for a specific governmental act which is causing continuous or repeated damage. *See* Amador Valley Investors v. City of Livermore, 43 Cal. App. 3d 483, 489-91, 117 Cal. Rptr. 749, 752-53 (1974); Bellman v. County of Contra Costa, 54 Cal. 2d 363, 353 P.2d 300, 5 Cal. Rptr. 692 (1960).

4. Prior cases have not presented a consistent rule concerning the appropriate time of filing a claim. *Compare* Powers Farms Inc. v. Consolidated Irrigation Dist., 19 Cal. 2d 123, 119 P.2d 717 (1941) (when time and extent of an injury are uncertain, the statutory period in which a claim must be filed begins to run when the fact that damage is occurring becomes both apparent and discoverable, even though the extent of damage may still be unknown), *with* Natural Soda Prods. Co. v. City of Los Angeles, 23 Cal. 2d 193, 143 P.2d 12 (1943) (when a continuing injury exists, statutory period for filing does not begin to run until the injury is complete).

5. When the actions of the public entity result in earth slippage from the landowner's property, it has been held that failure to file a timely claim would limit the landowner's recovery to only the damage suffered within the applicable time period prior to the date of filing. Bellman v. County of Contra Costa, 54 Cal. 2d 363, 353 P.2d 300, 5 Cal. Rptr. 692 (1960).

6. Powers Farms, Inc. v. Consolidated Irrigation Dist., 19 Cal. 2d 123, 119 P.2d 717 (1941) (failure to file a claim wholly precluded the landowner's right to recover).

7. 43 Cal. App. 3d 483, 117 Cal. Rptr. 749 (Dist. Ct. App. 1974).

8. *Id.* at 488, 117 Cal. Rptr. at 751.

creeks on their property.[9] To avoid the considerable expense of pumping out the creeks, plaintiffs planned to begin work in the spring when they reasonably anticipated that the creek beds would be dry.[10] They discovered, however, that the defendant was discharging approximately two million gallons of treated sewage water daily, much of which flowed into plaintiffs' creeks.[11] Unable to persuade the City to cease discharging[12] or to find an alternate means of disposal, plaintiffs proceeded with the necessary work but at a cost considerably higher than originally anticipated.[13] Upon completion, and over one year subsequent to commencement of the project, plaintiffs filed suit for damages against defendant for the increased costs of pumping out the treated sewage water.[14]

The trial court allowed plaintiffs to recover the increased construction costs.[15] On appeal, the court rejected the City's contention that plaintiffs' action was barred by failure to file a timely claim,[16] holding that filing cannot be postponed after the damage becomes "apparent and discoverable *unless* the invasion or injury is continuing or repeated."[17] The *Amador* court held that a cause of action arose with each discharge of sewage water.[18] Plaintiffs could therefore recover for damages accruing within one year prior to filing their claim.[19]

---

9. The Alameda County Flood Control and Water Conservation District imposed the requirement to protect against flooding. *Id.*

10. *Id.* Plaintiffs were advised by the county flood control district that the work could be undertaken after the rainy season when the winter storm runoffs would cease. *Id.*

11. *Id.*

12. *Id.*

13. The increased expenses amounted to $93,182.14. *Id.*

14. Plaintiffs first became aware of the sewage water flowing into their creeks in May 1967. In June 1967, plaintiffs discussed the problem with the City, but the City refused to take any action. Plaintiffs proceeded with their project and filed a claim with defendant City on June 28, 1968. *See id.* at 488, 496-97, 117 Cal. Rptr. at 751, 756.

15. *Id.* at 488, 117 Cal. Rptr. at 751.

16. *Id.* at 489-90, 117 Cal. Rptr. at 752.

17. *Id.* at 490, 117 Cal. Rptr. at 752.

18. *Id.* at 490, 117 Cal. Rptr. at 753.

19. The court ruled on several issues. First, the court found that the City's conduct in dumping treated sewage water was actionable rather than privileged as the City contended. *Id.* at 491, 117 Cal. Rptr. at 753. Second, evidence was sufficient to sustain the trial court's finding that the City's discharge of the treated sewage water was the proximate cause of the landowner's damages. *Id.* at 493, 117 Cal. Rptr. at 754-55. Finally, the court held that the landowners were not estopped from asserting their claim due to their acceptance of a loan of equipment from the City to dissipate the excess water and their failure to inform the City

Both the California[20] and federal constitutions[21] impose an obligation upon public entities to pay just compensation to property owners injured as a result of certain governmental action.[22] A property owner may also bring an inverse condemnation action if his land is damaged,[23]

---

of their continuing problems. *Id.* at 493, 117 Cal. Rptr. at 755. The case was remanded to the trial court to recompute the damage occurring one year before the claim was filed. *Id.* at 496-97, 117 Cal. Rptr. at 756.

20. CAL. CONST. art. I, § 14: "Private property shall not be taken or damaged for public use without just compensation . . . ."

21. The due process clause of the fourteenth amendment makes applicable to the states the constitutional principle of the fifth amendment: "nor shall private property be taken for public use, without just compensation." Chicago, B.&Q.R.R. v. City of Chicago, 166 U.S. 226 (1897).

22. The scope of liability under the California Constitution is broader than under the due process clause of the fourteenth amendment, since the former, unlike the latter, requires payment of just compensation when private property is either damaged or taken for public use. *See* Reardon v. City & County of San Francisco, 66 Cal. 492, 6 P. 317 (1885); *cf.* Albers v. County of Los Angeles, 62 Cal. 2d 250, 398 P.2d 129, 42 Cal. Rptr. 89 (1965). *See generally* Van Alstyne, *Modernizing Inverse Condemnation: A Legislative Prospectus*, 8 SANTA CLARA LAW. 1 (1967). Approximately one-half of the states have constitutional clauses that require compensation for damage as well as taking. 2 P. NICHOLS, EMINENT DOMAIN § 6.1 (3d rev. ed. 1963).

23. Although the *Amador* court refers to plaintiffs' claim as an action for damages, 43 Cal. App. 3d at 493, 117 Cal. Rptr. at 754, inverse condemnation is the name generally given to this remedy. Inverse condemnation actions for damages to real property can result from various governmental actions:

(1) Demolition to prevent the spread of conflagration. *See, e.g.*, Bowditch v. Boston, 101 U.S. 16 (1879); Surocco v. Geary, 3 Cal. 70 (1853); Hall & Wigmore, *Compensation for Property Destroyed to Stop The Spread of Conflagration*, 1 ILL. L. REV. 501 (1907).

(2) Construction or maintenance of public improvements. *See, e.g.*, Albers v. County of Los Angeles, 62 Cal. 2d 250, 398 P.2d 129, 42 Cal. Rptr. 89 (1965); Breidert v. Southern Pac. Co., 61 Cal. 2d 659, 394 P.2d 719, 39 Cal. Rptr. 903 (1964); House v. Los Angeles County Flood Control Dist., 25 Cal. 2d 384, 153 P.2d 950 (1944). *See generally* R. NETHERTON, CONTROL OF HIGHWAY ACCESS (1963).

(3) Compelled relocation of utility structures. *See, e.g.*, Southern Cal. Gas Co. v. City of Los Angeles, 50 Cal. 2d 713, 329 P.2d 289 (1958).

(4) Restrictive zoning and land use controls. *See generally* Sax, *Taking and the Police Power*, 74 YALE L.J. 36 (1964).

(5) Noise disturbances surrounding airports. *See, e.g.*, Griggs v. Allegheny County, 369 U.S. 84 (1962); United States v. Causby, 328 U.S. 256 (1946); Batten v. United States, 306 F.2d 580 (10th Cir. 1962); Aaron v. City of Los Angeles, 40 Cal. App. 3d 471, 115 Cal. Rptr. 162 (Dist. Ct. App. 1974); Smith v. Lockheed Propulsion Co., 247 Cal. App. 2d 774, 56 Cal. Rptr. 128 (Dist. Ct. App. 1967); *see* Comment, *The Jet-Set and the Law: A Summary of Recent Developments in Noise Law as it Relates to Airport and Aircraft Operations in California*, 1 PACIFIC L.J. 581, 588-96 (1970); 8 URBAN L. ANN. 229 (1974).

For cases in which courts have found that the landowner's property was damaged see Holtz v. Superior Court, 3 Cal. 3d 296, 475 P.2d 441, 90 Cal. Rptr. 345 (1970); Albers v. County of Los Angeles, 62 Cal. 2d 250, 398 P.2d 129, 42 Cal. Rptr. 89 (1965); Jacobsen v. Superior Court, 192 Cal. 319, 219 P. 986 (1923); Parking Authority v. Nicovich, 32 Cal. App. 3d 420, 108 Cal. Rptr. 137 (Dist. Ct. App. 1973); Granone v. County of Los Angeles,

though not formally appropriated, for a public use.[24] Prior to bringing an inverse condemnation action, a landowner must file a timely claim with the governmental unit that caused the damage.[25] Two reasons are presented for the necessity of filing a timely claim. First, the governmental entity will be afforded an opportunity to investigate and possibly avoid the expense of litigation through settlement.[26] Secondly, notification may give the public agency an opportunity to prevent further damage.[27]

In California, determining whether a claim is timely has been a recurring problem.[28] In *Powers Farms, Inc. v. Consolidated Irrigation District*[29] plaintiff brought an action for damage to his land resulting from water seepage from governmental irrigation canals. The court held that the failure to file a timely claim[30] precluded plaintiff's recovery.[31]

---

231 Cal. App. 2d 629, 42 Cal. Rptr. 34 (Dist. Ct. App. 1965). *But see* Shaeffer v. State, 22 Cal. App. 3d 1017, 99 Cal. Rptr. 861 (Dist. Ct. App. 1972); Mancino v. Santa Clara County Flood Control & Water Dist., 272 Cal. App. 2d 678, 77 Cal. Rptr. 679 (Dist. Ct. App. 1969).

24. The term "public use" has been defined as a public benefit, utility, or advantage. *See, e.g.*, State *ex rel.* Manhattan Constr. Co. v. Barnes, 22 Okla. 191, 195, 97 P. 997, 999 (1908).

25. For cases holding that a claims requirement is valid see Ambassador Holding Corp. v. City of Los Angeles, 7 Cal. 2d 104, 59 P.2d 1001 (1936); Poher v. Ames, 43 Cal. 75 (1872); Bleamaster v. County of Los Angeles, 189 Cal. App. 2d 274, 11 Cal. Rptr. 214 (Dist. Ct. App. 1961).

26. *See* Natural Soda Prods. Co. v. City of Los Angeles, 23 Cal. 2d 193, 143 P.2d 12 (1943); Western Salt Co. v. City of San Diego, 181 Cal. 696, 186 P. 345 (1919); Huffaker v. Decker, 77 Cal. App. 2d 383, 175 P.2d 254 (Dist. Ct. App. 1946); Sandstoe v. Atchison, T.&S.F. Ry., 28 Cal. App. 2d 215, 82 P.2d 216 (Dist. Ct. App. 1938).

27. *See* Natural Soda Prods. Co. v. City of Los Angeles, 23 Cal. 2d 193, 205, 143 P.2d 12, 19-20 (1943) (Shenk, J., dissenting); Powers Farms, Inc. v. Consolidated Irrigation Dist., 19 Cal. 2d 123, 119 P.2d 717 (1941).

28. *See* Comment, *California Claims Statutes — "Traps for the Unwary,"* 1 U.C.L.A.L. REV. 201 (1953).

29. 19 Cal. 2d 123, 119 P.2d 717 (1941).

30. The Irrigation District Liability Law, ch. 833, § 2, [1935] Cal. Stat. 2250 (repealed 1943):

> Whenever it is claimed that any person or property has been injured or damaged as a result of any dangerous or defective condition of any property owned or operated or under the control of any irrigation district or its officers and employees and/or the negligence or carelessness of any officer or employee of an irrigation district, a verified claim for damages shall be presented in writing and filed with such officer or employee and the secretary of said board within ninety days after such accident or injury has occurred. Such claim shall specify the name and address of the claimant, the date and place of the accident or injury or damage and the nature and extent of the injury or damages claimed. The foregoing shall be a condition precedent to the filing or maintaining of any action for said injury or damages.

31. The result in *Powers Farms* was consistent with prior California cases holding that filing of a claim was a prerequisite to bringing suit. *See* note 3 *supra*.

The court suggested that when the time and extent of an injury are uncertain, the statutory period of limitation begins to run when the fact that damage is occurring becomes both apparent and discoverable, even though the extent of damage may still be unknown.[32]

Two years later the Supreme Court of California, in *Natural Soda Products Co. v. City of Los Angeles*,[33] refused to apply the *Powers Farms* dicta.[34] In *Natural Soda Products Co.*, the City permitted large amounts of water to flow into a previously dry lake bed, continuing to discharge water into the lake intermittently for several months.[35] Concerning the claims requirement,[36] the court held that when a continuing injury exists, the statutory period for filing did not begin to run until the injury was complete.[37]

---

32. The purpose of the claims statute, as stated by the court, was prompt notification to prevent further damages from accruing. 19 Cal. 2d at 128, 119 P.2d at 721. Requiring the claimant to file as soon as possible ensures prompt notification. Even if the injury is continuous or the extent of the damage unascertained, the period of limitation still begins to run when the landowner first becomes aware of the damage. *Id.* An application of the *Powers Farms'* dicta to the *Amador* facts would have precluded Amador's recovery, since plaintiffs did not file their claim within a year after the damage was first discovered.

33. 23 Cal. 2d 193, 143 P.2d 12 (1943).

34. *Id.* at 203, 143 P.2d at 19.

35. *Id.* at 196, 143 P.2d at 15.

36. Section 363 of the Charter of Los Angeles provided: "Every claim and demand against the city shall be first presented to and approved in writing by the board, officer, or employee authorized by this charter to incur the expenditure or liability represented thereby." *Id.* at 201, 143 P.2d at 18. Section 376 added:

> No suit shall be brought or any claim for money or damages against the city of Los Angeles, or any officer or board of the city, until a demand for the same has been presented as herein provided, and rejected in whole or in part . . . Except in those cases where a shorter period is otherwise provided by law, all claims for damages must be presented within six (6) months after the occurrence from which the damage arose.

Id. at 201-02, 143 P.2d at 18.

37. The court declared that the purpose of the claims requirement was to provide the city with sufficient information to allow for settlement of claims without resorting to costly litigation. *Id.* at 203, 143 P.2d at 18. The statutory purpose would not be achieved if the landowner had to file a claim as soon as damage occurred and the extent of damage was still unknown. By allowing the landowner to wait until the damage has been completed, a claim for the full amount can then be made. This approach, however, provides no incentive for the landowner to notify the city earlier, which might prevent additional damages from resulting.

The dissent realized that the majority's view of the purpose of the act was too narrow and argued that the purpose was to give the city an opportunity to prevent further damages should it deem itself liable. Therefore, the dissent advocated the *Powers Farms'* rule because it would not allow the landowner to remain silent while the damage increased. *Id.* at 205, 143 P.2d at 20. Under the *Natural Soda Products* majority, plaintiffs' claim in

In *Bellman v. County of Contra Costa*[38] the Supreme Court of California again refused to follow *Powers Farms*.[39] The owner of hillside land brought an action for damages caused by earth slippage resulting from the destruction of lateral support by the county.[40] The applicable statute[41] required that a claim be filed within one year after the last item of damage accrued.[42] Initially the *Bellman* court held that a new and separate cause of action arose with each new subsidence.[43] Thus any applicable limitations statute would begin to run separately with each individual subsidence.[44] The court then held that all damage occurring within the statutory period prior to the date of filing the required claim was recoverable.[45] Further, the landowner would not be required to file additional claims for damage that continued to accrue.[46]

The issue of a claim's timeliness was again faced in *Pierpont Inn, Inc. v. State*.[47] The cause of action resulted not from damage to property, but from the actual taking of land for a freeway.[48] Although the statute, in effect, stated that a claim must be filed within two years after it first

---

Amador would be timely as long as it was filed within one year after the completion of the damage.

38. 54 Cal. 2d 363, 353 P.2d 300, 5 Cal. Rptr. 692 (1960).

39. *Id.* at 369, 353 P.2d at 305, 5 Cal. Rptr. at 697.

40. *Id.* at 365, 353 P.2d at 302, 5 Cal. Rptr. at 694 (county constructing a highway).

41. Section 29704 of the Government Code then in effect provided: "Any claim against the county . . . payable out of any public fund under the control of the board, whether founded upon contract . . . or upon any act or omission of the county . . . shall be presented to the board before any suit may be brought thereon. . . ." Act of May 29, 1947, ch. 424, § 29704, [1947] Cal. Stat. 1233 (repealed 1959). Section 29702 specified that, "A claim must be filed within a year after the last item accrued." Act of May 29, 1947, ch. 424, § 29702, [1947] Cal. Stat. 1233 (repealed 1959).

42. 54 Cal. 2d 363, 369, 353 P.2d 300, 304, 5 Cal. Rptr. 692, 696 (1960).

43. *Id.*

44. The *Bellman* decision that a separate limitation period runs with each new subsidence is supported by the Restatement of Torts. "The statute of limitations does not begin to run until a subsidence occurs, and it runs then only for that subsidence." RESTATEMENT OF TORTS, Explanatory Notes § 817, comment i, at 193 (1939).

45. 54 Cal. 2d 363, 369, 353 P.2d 300, 305, 5 Cal. Rptr. 692, 697.

46. *Id.*

47. 70 Cal. 2d 282, 449 P.2d 737, 74 Cal. Rptr. 521 (1969).

48. *Id.* at 285, 449 P.2d at 739-40, 74 Cal. Rptr. at 523-24. An action for damages will lie whether the landowner's property has been damaged or taken without prior compensation. *See* note 22 *supra*. When an action for eminent domain does not precede the taking of land for public use, a damage suit will allow the landowner to recoup the value of his land. *See* Harrison & Kratovil, *supra* note 1.

arose,[49] the court held that a claim filed prior to the actual taking of the land was timely.[50]

The *Amador* court confronted the same issue of timeliness that had caused previous courts so much difficulty. Rather than being faced with an outright taking, plaintiffs were damaged by the City's repeated course of conduct. Amador's claim was filed more than one year after the problem was discovered.[51] The statute required that a claim be filed within one year of the cause of action's accrual.[52]

The *Amador* court held that once damage becomes apparent, the filing must not be delayed unless the invasion or injury is continuous or repeated.[53] The court rejected the City's contention that the creation of the sewage treatment system was the act triggering the one year period.[54]

---

49. Section 644 of the Government Code then in effect required that a claim be presented to the State Board of Control "within two years after the claim first arose." 70 Cal. 2d at 286, 449 P.2d at 740, 74 Cal. Rptr. at 524. *See* Act of July 9, 1959, ch. 1715, § 644, [1959] Cal. Stat. 4118 (repealed 1963).

50. 70 Cal. 2d at 294, 449 P.2d at 745, 74 Cal. Rptr. at 529. When the basis of the claim is a taking rather than damages, a different evaluation must result. Damage to property is apparent when the damaging process first begins and can be continuous. The taking or acquisition of land, however, occurs at only one point in time. The land may be utilized, but the taking is not complete until the portion of the project that acquires the land is complete. Therefore, a claim for the acquisition of land should not be required until then. Prior to that point, the landowner may not know whether his land will actually be taken.

51. *See* note 14 *supra*.

52. CAL. GOV'T CODE § 911.2 (Deering 1973):

> A claim relating to a cause of action . . . for injury . . . to personal property or growing crops shall be presented . . . not later than the 100th day after the accrual of the cause of action. A claim relating to any other cause of action shall be presented . . . not later than one year after the accrual of the cause of action.

CAL. GOV'T CODE § 901 (Deering 1973):

> For the purpose of computing the time limits prescribed by Sections 911.2 . . . the date of accrual of a cause of action to which a claim relates is the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable thereto if there were no requirement that a claim be presented to and be acted upon by the public entity before an action could be commenced thereon.

When a governmental agency causes water damage to private property (*e.g.*, flooding or polluting), the statute of limitations begins to run when the activity (the flooding or polluting) begins. When the damage is continuing, the statute does not run from the time of the first harm except as to the harm then caused. *Cf.* RESTATEMENT OF TORTS, Explanatory Notes § 899, comment d (1939). Therefore, absent a claims requirement, the statute of limitations for the damage caused in *Amador* would run from the date of the first damage and encompass only that damage.

53. 43 Cal. App. 3d 483, 490, 117 Cal. Rptr. 749, 752.

54. *Id.* at 490, 117 Cal. Rptr. at 753. If the damage is not continuous, the landowner must file within one year of the date on which the damage becomes apparent to preserve his right

Relying on *Bellman*, the court decided that a cause of action emanated from each discharge and the cost resulting from each discharge would furnish the primary items of damage.[55] Since each discharge created its own cause of action, all causes of action that accrued within the one year period prior to filing were recoverable. The claim thus was timely for all damages that occurred within the prior year.[56]

The *Amador* resolution of the timeliness issue presents California local governments, landowners and courts with a necessary, definite rule. When injury or invasion to land is continuous or repeated, the landowner may recover for all damages occurring within one year prior to filing. If the injury or invasion occurs only once, a claim must be filed within one year after the damage becomes apparent.[57]

The *Amador* rule distinguishes between one-time injuries to land and those that are continuous or repeated. Failure to file within one year

---

to bring suit, should the claim be rejected.

Liability in damages for a nuisance only begins when the interference causes substantial harm. W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 89, at 595 (4th ed. 1971). A cause of action for damage to land, therefore, accrues when substantial harm occurs.

55. 43 Cal. App. 3d at 490, 117 Cal. Rptr. at 753; *see* notes 38-46 and accompanying text *supra*.

56. 43 Cal. App. 3d at 490, 117 Cal. Rptr. at 753; *see* note 52 *supra*. A similar solution was reached much earlier by the Pennsylvania courts. In a suit for damages resulting from a borough's diversion of water from a creek running through the landowner's property, the court held that the six year statute of limitations would operate only to limit the period for which damages could be recovered to six years prior to the commencement of the action. Hannum v. Borough of West Chester, 63 Pa. 475, 479 (1870).

The same solution has also been reached by the Tennessee courts. A Tennessee statute provides that owners of land appropriated for public use must bring suit within one year "after the land has been actually taken possession of, and the work of the proposed internal improvement begun." TENN. CODE ANN. § 23-1424 (1955). The word "taken" in the statute has been read broadly by the Tennessee courts. For a "taking" to occur, it is not necessary for the owner to be entirely deprived of the use of the property. Any destruction, restriction or interruption of the beneficial use may constitute a "taking." Lea v. Louisville & N.R.R., 135 Tenn. 560, 188 S.W. 215 (1916). Therefore, when surface water was diverted onto a landowner's property through a drainage system created by the city, the court held that "[t]he nuisance created and maintained by the city [was] temporary and continuous in character, and the very continuation of the nuisance is a new offense entitling [the landowner] to recover damages accruing within the statutory period preceding the suit, although more than the statutory period had elapsed since the creation of the nuisance." Kind v. Johnson City, 63 Tenn. App. 666, 672, 476 S.W.2d 63, 66 (1970).

57. If a one-time injury occurs on January 1, 1976, and a claim is not filed by January 1, 1977, a suit for damages will be barred. If a continuous or repeated injury commences on January 1, 1976, and continues until March 1, 1976, a claim filed before January 1, 1977, will be timely for all damages sustained. If the claim is filed on March 1, 1977, however, the landowner can only recover those damages which occurred after March 1, 1976, one year prior to when the claim was filed.

after a single injury is discovered or discoverable will completely bar the landowner's recovery. The landowner who suffers damage from continuous or repeated activity, however, acquires a new cause of action with each incidence of damage. He may thus recover for all damage occurring within one year prior to filing his claim regardless of when the situation was first discovered. The incentive for the earliest possible notification to the governmental entity in the latter situation — one of the purposes of the statute[58] — is slightly diminished. Nonetheless, to bar recovery completely in the event of continuous or repeated injury to land would clearly be harsh and unreasonable. One can easily envision a situation in which a long-term, continuing injury was suffered by a landowner, the effects of which were so slight at first that the resulting damages were negligible and ignored by the landowner. In the long run, however, the cumulative effects could be disastrous. In such an instance procedural rigidities should not completely bar the landowner. The United States Supreme Court has mandated that in actions for damage to property, such harsh rigidities should be avoided.[59] The *Amador* rule, which merely limits the landowner to recovery for continuous damages that occurred within one year before his claim was filed, is reasonable and in accord with the view of the Supreme Court.

Lee A. Lazar

---

58. *See* notes 26-28 and accompanying text *supra*.

59. United States v. Dickinson, 331 U.S. 745, 749 (1947).