

#65.25

2/26/70

Memorandum 70-20

Subject: Study 65.25 - Inverse Condemnation (Water Damage; Land Stability)

Both the Senate Judiciary Committee and the Senate Finance Committee have approved the concurrent resolution that would extend the Commission's authority to expand the inverse condemnation study to include the study of the law relating to private persons in similar situations.

At the hearing of the Senate Finance Committee, the Legislative Analyst pointed out that the Commission was assigned the task of preparing legislation on water damage several years ago and that the potential liability may involve millions of dollars. He also previously advised me that the standards for the design of water projects will depend on the extent of liability. In addition, the feasibility of undertaking a particular water project may depend upon the extent of potential liability. The general reaction was that the Commission should give this study a top priority.

The staff recommends that the Tentative Recommendation attached to Memorandum 69-134 be sent out for comment to a very restricted distribution list--only those persons who receive all meeting materials and the State Bar Committee. In our cover letter (see Exhibit I), we would ask them to assume that the recommended legislation would be made applicable to private persons as well as public entities.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

2/26/70

EXHIBIT I

The Law Revision Commission has been directed by the Legislature to study inverse condemnation law and has been asked to give priority to the problem of inverse condemnation liability for water damage.

Enclosed is a tentative recommendation relating to inverse condemnation liability for water damage and interference with land stability. The Commission has requested that the Legislature expand the scope of the inverse condemnation study to include the law that applies to private persons under similar circumstances. Accordingly, in commenting on the enclosed tentative recommendation, please assume that the recommended rules would be made equally applicable to private persons.

The Commission solicits your comments on the following questions:

1. Do you believe legislation is needed to provide rules governing liability for water damage?
2. Is the general approach of the tentative recommendation sound? If not, what approach do you recommend?
3. What exceptions to the general rule of liability do you recommend?
4. What procedural provisions (such as provisions relating to the computation of interest, and the like) do you recommend, if any?

The Commission will appreciate receiving your views of the above questions and any other comments you have on the tentative recommendation. We need to have your comments in our hands not later than June 1, 1970.