



Report on Oroville Spillway Litigation

Legal and Claims Committee

Item 7a

March 13, 2018

Background: What Happened

- In early 2017, record rainfall in Feather River basin brought high inflows to Lake Oroville
- Releases from the reservoir caused extensive damage to both the main and emergency spillways







What Happened

- Over 180,000 people had to be temporarily evacuated



What Happened

- Both the surrounding communities and areas miles downstream were adversely impacted





© AFP/Getty Images

Costs Incurred to Date

- DWR estimates \$870M in total costs
 - Emergency Response: \$160 million
 - Recovery Work: \$210 million
 - Spillway Construction Work: \$500 million
- DWR has requested federal funds for response costs
 - FEMA reimburses up to 75% of eligible costs
 - So far: \$116M submitted, \$87M approved, \$69M paid
- Awaiting FEMA review of Forensic Team Report before submitting requests for recovery and reconstruction costs
- Unknown whether:
 - Payments to third parties would be eligible
 - Any claims filed against DWR also submitted to FEMA

Claims Filed Against DWR

- Any claim for money or damages against a state or local agency must be submitted to that agency for review
- Maximum deadline for claims: 1 year from date of incident
- To date, 400+ claims have been filed against DWR seeking >\$1 billion in damages and compensation
- One year deadline has passed; do not anticipate many more monetary claims
- However, there is no claims requirement for inverse condemnation, environmental damage or non-monetary relief

SUMMARY OF CLAIMS

CATEGORY OF CLAIMANTS	NUMBER OF CLAIMS	NATURE OF CLAIMS	APPROXIMATE RANGE OF DAMAGES
Individuals / Residents (Class Action)	~ 300	Personal / Real Property Damages Lost Income / Wages Evacuation-Related Expenses Pain and Suffering	\$500 -- \$200,000
Farming-Related Entities	~ 60	Personal / Real Property Damages Crop Losses / Damages Lost Income / Profits / Goodwill	\$6,000 -- \$1 billion*
Local Businesses	~ 40	Personal / Real Property Damages Lost Income / Profits / Goodwill	\$4,000 -- \$1 million
Government Agencies	9	Lost Income / Profits Response Costs	\$10,000 -- \$4 million
Power Companies	5	Personal / Real Property Damages Lost Income / Profits Response Costs	\$1 million -- \$9 million
NGOs	3	Environmental Remediation Costs Damage to Aquatic Species and Habitat Water Quality Impacts	\$10+ million

Lawsuits Filed Against DWR

- A lawsuit seeking money or damages must be filed within 6 months after rejection of the claim
- Other lawsuits are governed by the applicable statute of limitations, which typically is 4 years or less
- To date, 7 lawsuits have been filed, including one seeking >\$50 billion in civil penalties
- Lawsuits cover a subset of claims submitted, so more are anticipated

Whitney v. DWR

Tehama County Sup. Ct. Case No. 17CI00209

Description:

- Plaintiff: Owner of an RV park located in Corning, California, which is situated ~25 miles northwest of Oroville
- Alleges RV facilities were damaged from flooding caused by the spillway incident
- Claims both property damage and loss of rental income
- Asserts single cause of action for inverse condemnation

Monetary Amount: Not specified

Status: Demurrer filed; hearing scheduled for March 19

Francis Bechtel, et al. v. DWR

Butte County Sup. Ct. Case No. 17 CV 00298

Description:

- Plaintiffs: Class action on behalf of 188,000 residents ordered to evacuate during spillway incident
- Seeks compensation for loss of use, diminution in property values, and relocation expenses
- Asserts causes of action for private and public nuisance (permanent and continuing)

Monetary Amount: Not specified

Status: Case transferred to Sacramento; awaiting Plaintiffs' first amended complaint

South Feather Water & Power Agency, et al. v. DWR

Butte County Sup. Ct. Case No. 18 CV 0110

Description:

- Plaintiffs: SFWPA and its insurance carrier
- Alleges spillway debris created dam in Feather River, causing flooding in and damage to Kelley Ridge Powerhouse
- Asserts causes of action for dangerous condition of public property; inverse condemnation; nuisance; equitable subrogation (insurance claim)

Monetary Amount: \$1+ million

Status: Plaintiffs considering stipulation to change venue to Sacramento; response to complaint due March 22



People v. DWR

Butte County Sup. Ct. Case No. 18CV00415

Description:

- Plaintiff: Butte County District Attorney
- Alleges DWR released 1.7 million cubic yards of material “deleterious to fish, plant life, mammals, and bird life” into Feather River in violation of F&G Code §5650
- Seeks civil penalties; restitution; public resource damages; injunctive relief

Monetary Amount: \$34 - \$51 billion (civil penalties only)

Status: AG investigating conflicts of interest; response to complaint due March 12





City of Oroville v. DWR

Butte County Sup. Ct. Case No. 18 CV 00163

Description:

- Plaintiff: City of Oroville
- Alleges mismanagement and corruption by DWR resulted in inadequate maintenance of Oroville facilities
- Asserts causes of action for dangerous condition of public property; private and public nuisance; premises liability
- Seeks wide array of damages

Monetary Amount: Not specified

Status: Plaintiffs won't stipulate to change of venue to Sacramento; response to complaint due March 30

JEM Farms LP, et al. v. DWR

Butte County Sup. Ct. Case No. 18CV00324

Description:

- Plaintiffs: 42 farmers and local businesses
- Allegations essentially identical to *City of Oroville* complaint
- Asserts causes of action for dangerous condition of public property; private and public nuisance; premises liability; inverse condemnation
- Seeks wide array of damages

Monetary Amount: Not specified

Status: Plaintiffs won't stipulate to change of venue to Sacramento; response to complaint due March 30

Akers, et al. v. DWR

Butte County Sup. Ct. Case No. 18CV00449

Description:

- Plaintiffs: 8 farmers, businesses and residents
- Allegations essentially identical to *City of Oroville* and *JEM Farms* complaints
- Asserts causes of action for dangerous condition of public property; private and public nuisance; premises liability; inverse condemnation
- Seeks certification based on 3 classes: Diminution, Property Loss and Business Loss

Monetary Amount: Not specified

Status: Plaintiffs will not stipulate to a change of venue motion; response due March 14

Provision in the State Water Contract

- Article 13(b) of the long-term water delivery contract provides:
 - “Neither the District nor any of its officers, agents, or employees shall be liable for the control, carriage, handling, use, disposal, or distribution of project water before such water has passed the delivery structures established in accordance with Article 10; nor for claim of damage of any nature whatsoever, including by not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water before it has passed said delivery structures.”

Questions