

# Unresolved Issues In Calexico Inverse Condemnation Ruling

By **Debra Garfinkle and Brad Kuhn** (January 21, 2021)

Public entities that need real property usually attempt to negotiate with the property owners and other interested parties.

If that fails, they may file an eminent domain action. They are counseled to name all potentially interested parties in the eminent domain complaint, including the property owner, any easement holders and lienholders, and usually businesses on the premises, especially if those businesses are impacted by the acquisition or have a leasehold interest in the property.



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If an interested party is not named and does not appear in the condemnation lawsuit, it could later file an inverse condemnation action for the taking of its property interest. Public entities usually are not liable for other parties' attorney fees in eminent domain actions, but may be liable for them in inverse condemnation actions, meaning the failure to name a party in a direct condemnation proceeding could significantly expose the agency.[1]



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If the agency fails to name an interested party, how long does that party have to pursue an inverse condemnation action?

This question was recently addressed by the U.S. District Court for the Southern District of California in *Calexico Auto Dismantlers Inc. v. City of Calexico*, where an interested party who was not named in the prior eminent domain action filed an inverse condemnation action.

In that case, the city of Calexico had condemned property leased by Calexico Auto Dismantlers Inc., a vehicle repair shop, without serving the business with any pleadings in the eminent domain action.

The business subsequently sued the city for inverse condemnation and other claims. Despite the lack of notice to the business in the eminent domain action, the district court dismissed its inverse condemnation suit on the basis that it was untimely, holding that the suit should have been filed within two years of the final condemnation order issued in the eminent domain action.

## Case Background

In 2015, the city of Calexico filed an eminent domain action against a property owner in order to acquire part of the property to widen a street.

Although Calexico Auto Dismantlers had leased the property since 2011, the city never named it in the eminent domain action or served it with any pleadings, including the complaint, the motion for prejudgment possession of the property, the court order authorizing the city to take possession, the stipulated judgment with the property owner, or the January 2017 final order of condemnation transferring the property to the city.

In 2018, the city took possession of a portion of the premises to begin construction of its public project, which concluded in 2019.

In September 2020, Calexico Auto Dismantlers filed a complaint in district court, alleging inverse condemnation under Title 42 of the U.S. Code, Section 1983, and three state law claims. The business alleged, among other things, that it lost revenues because larger vehicles could no longer enter its premises for repairs.

### **The Court's Ruling and Reasoning**

The district court granted the city's motion to dismiss the inverse condemnation claim as untimely. It rejected the business's contention that its interest was unimpaired because the city failed to name and serve it in the condemnation action. The court deemed this issue inconsequential to the determination of the statute of limitations.

The court determined the statute of limitations for the Section 1983 action by looking to the forum state's statute of limitations for personal injury actions. Since the statute of limitations in California is two years after the personal injury action accrues, the court concluded that a federal inverse condemnation action must be filed within two years of its accrual.

The court next turned to federal law, stating that an action accrues on the date the plaintiff can file suit and obtain relief, and that an inverse condemnation lawsuit accrues when a taking occurs.

The court rejected Calexico Auto Dismantlers' argument that the taking occurred once construction began on the property and the business lost its right of possession. Instead, the court held that the taking occurred no later than January 2017, when the final order of condemnation was entered and title transferred to the city. At that time, the business's lease of the portion of the property that was condemned terminated by operation of law.

The court reasoned that because the inverse condemnation action was predicated on the leasehold interest in the property, the action accrued when that interest terminated. The court dismissed the inverse condemnation action with prejudice because it was filed over two years after entry of the final order of condemnation. The court then declined to exercise jurisdiction over the state law claims.

### **Analysis of the Decision**

Clearly, a fee owner's property is taken when title changes hands via entry of a final order of condemnation, if not earlier when the taking or damage occurs before final order. It seems much less clear that, as the district court held, the leasehold interest also is taken when the property is condemned.

After all, a tenant may suffer no loss when a portion of its leasehold interest changes ownership. Calexico Auto Dismantlers argued it was not deprived of property interests until the city took physical possession of the premises to begin construction.

California law requires that occupants of property subject to eminent domain actions be notified of motions for prejudgment possession and orders granting possession, at least when the acquisition may impact the tenant or impair its leasehold interest.[3]

The business occupying the property in this case was given no such notice, nor was it served with the eminent domain lawsuit or the final order of condemnation. The district court's ruling that the lack of notice was irrelevant seems incongruous with its

determination that the date of the final order of condemnation is relevant to whether the subsequent inverse condemnation claim was timely filed.

Although it had not been served with the eminent domain pleadings, Calexico Auto Dismantlers may have had actual knowledge of the proceedings or the taking for the public project. Under general legal principles, even if an entity is not provided with formal notice, its deadline to file a lawsuit may begin once it has informal notice or reason to know about the adverse events affecting it.

The court's opinion did not address this issue; and if there was a genuine dispute about whether the business had actual notice, it would be improper to resolve this factual issue through a motion to dismiss.

Calexico Auto Dismantlers could potentially continue to pursue its state law claims, as the statute of limitations period for inverse condemnation claims is longer under California law. In addition, the business may have recourse against the property owner that leased it the property and received payment in the city's eminent domain action; the statute of limitation also may be longer if there was a breach of a written lease.

### **Guidance for Tenants and Public Agencies**

Even if they have not been served with eminent domain pleadings, tenants who believe they may be affected by a taking should consider making inquiries with the property owner and governmental agencies, and researching the public project. In addition, during lease negotiations, tenants may want to prioritize the right to share in compensation awarded in an eminent domain action involving the leased property.

Public entities should try to obtain cooperation of all interested parties at the outset and, if an eminent domain action is necessary, provide notice to all parties who may be affected by the condemnation.

Generally, it is preferable to seek permission first via an eminent domain action rather than forgiveness later via an inverse condemnation suit, not only to avoid the possibility of paying other parties' attorney fees, but because early buy-in from everyone involved may prevent problems and lawsuits from arising before, during and after construction of the public project.

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[1] See, e.g., Cal. Code Civ. Proc. § 1036.

[2] Calexico Auto Dismantlers, Inc. v. City of Calexico (S.D. Cal. Nov. 20, 2020, 3:20-cv-01822-BEN-RBM), \_\_\_ F. Supp. \_\_\_ [2020 WL 6871026].

[3] Cal. Code Civ. Proc. §§ 1255.410, subd. (b), and 1255.450, subd. (b).