

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Yuba)

PETER PATERNO et al.,

Plaintiffs and Appellants,

v.

STATE OF CALIFORNIA et al.,

Defendants and Respondents.

C040553

CJJP No. 2104

**ORDER MODIFYING
OPINION AND DENYING
REHEARING;
NO CHANGE IN JUDGMENT**

APPEAL from judgment of the Judicial Council Coordination Proceeding. Yuba County, John J. Golden, Judge. Affirmed in part and reversed in part.

Desmond, Nolan, Livaich & Cunningham, Gary Livaich, David Collins, and Richard F. Desmond and Law Office of Clifford E. Hirsch; Howard, Rice, Nemerovski, Canady, Falk & Rabkin, Jerome B. Falk, Jr., and Simon J. Frankel for First Union Real Estate Equity & Mortgage Investments; Kronick, Moskovitz, Tiedemann & Girard and Lloyd Hinkelman; Law Offices Of Stanley Bell, Sally G. Bergman; Robins, Kaplan, Miller & Ciresi, and Scott G. Johnson; and Frederick A. Jacobsen for Plaintiffs and Appellants.

Bill Lockyer, Attorney General, Andrea Hoch, Chief Assistant Attorney General, Darryl Doke, Supervising Deputy Attorney General, Sterling A. Smith, Deputy Attorney General, for State of California; G. Steven Jones, and Carl R. Lindmark for Reclamation District 784, Defendants and Respondents.

THE COURT:

The opinion filed herein on November 26, 2003, is modified as follows:

1. On page 3, line 4 from bottom on page, insert the following language after " -- would violate *Locklin*." and before the sentence commencing with "We do not separately address":

A basic part of the State's flood plan was to accept existing levees as much as possible, to reduce the cost of an extensive, coordinated, flood-control system. The People benefited from that cost-saving feature. However, the record shows the State never tested the Linda levee, or reviewed the records of its construction, to see if it was as strong as the global plans assumed it was, and the State even ignored specific warnings about the levee's weaknesses. In such circumstance, the costs of the levee failure must be deemed part of the deferred costs of the project.

2. On page 9, line 1 of last paragraph, insert the words "to the proposed statement of decision," between the words "objections" and "Paterno" so that line reads:

In his objections to the proposed statement of decision, Paterno partly complained that there was

3. On page 31, line 8 of second full paragraph, delete the phrase "three-quarters of a century" and insert the word "decades" in its place so that line reads:

built. It operated the levee for decades

4. On page 33, lines 3 and 4 from the bottom of first full paragraph, delete the phrase "for the preceding 60 years" and insert the phrase "up to that point" so the lines read:

was ignorant of the condition of its own levee up to that point, after this letter the State had 15 years to

5. On page 47, lines 4 and 5 from top of page, delete the phrase "The 75 years" and insert the phrase "The many years" so the lines read:

that the only relevant shift of risk took place in 1904. The many years the State operated the levee is also relevant.

This modification does not change the judgment.

Respondent's petition for rehearing is denied.

FOR THE COURT:

SIMS, Acting P.J.

NICHOLSON, J.

MORRISON, J.