



1 (2) Period of more than one year.—Where the period for which interest is owed  
2 is more than one year, interest for the first year shall be calculated in accordance with  
3 paragraph (1) and interest for each additional year shall be calculated on the amount  
4 by which the award of compensation is more than the deposit referred to in section  
5 3114 of this title, plus accrued interest, at an annual rate equal to the weekly average  
6 one-year constant maturity Treasury yield, as published by the Board of Governors of  
7 the Federal Reserve System, for the calendar week preceding the beginning of each  
8 additional year.

9 40 U.S.C. § 3116(a). A court is not bound by the statutory interest rate if it determines “the statutory  
10 formula is constitutionally inadequate given the factual circumstances of the case.” *United States v.*  
11 *50.50 Acres of Land*, 931 F.2d 1349, 1355 (9th Cir. 1991). In that instance, the court must determine  
12 an “appropriate rate to be used,” which is measured by what a reasonably prudent investor would  
13 receive when “investing funds so as to produce a reasonable return while maintaining safety of  
14 principal.” *Id.* (quoting *United States v. 429.59 Acres of Land*, 612 F.2d 459 (9th Cir. 1980). An  
15 appropriate rate would include “a diverse group of securities, including Treasury bills.” *Id.*

16 The Port argues the DT Act rate does not apply when a significant amount of time has lapsed  
17 between the time of taking and the payment of just compensation. The cases cited by the Port,  
18 however, are inverse condemnation cases rather than direct taking cases, and do not require deviation  
19 from the DT Act rate simply because of the lapse of time. *See Tulare Lake Basin Water Storage Dist.*  
20 *v. United States*, 61 Fed. Cl. 624 (2004); *Ark. Game & Fish Comm’n v. United States*, 87 Fed. Cl. 594  
21 (2009).

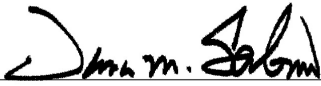
22 The Port further argues that a reasonably prudent investor would not, over five years, invest  
23 in the manner contemplated by the DT Act rate. In other words, a reasonably prudent investor would  
24 not purchase a 1-year Treasury Bill and, upon expiration of that note, purchase another 1-year Treasury  
25 Bill and continue in that manner for five years. (*See Browne Decl.* ¶ 11.) Rather, a reasonably prudent  
26 investor would invest in a variety of securities having varying maturity dates in order to obtain higher  
27 interest rates. (*Id.* at ¶¶ 11-12.) The Port seeks to use either the Barclays U.S. Government:  
28 Intermediate Index or the Barclays Intermediate Government/Credit Index as the appropriate  
benchmark for a prudent investor standard.

The two indices proposed by the Port would result in a higher interest payment to the Port than  
would the DT Act rate. Nevertheless, the DT Act rate is not constitutionally inadequate under the

1 circumstances of this case. The DT Act provides for variable interest rates, which reflect the differing  
2 economic conditions over the last several years. While the Port's proposed indices outpace the DT  
3 Act rate as a whole, there are times throughout the period in which the DT Act rate produced higher  
4 returns than the proposed indices. (See U.S. Opp'n Br. at 5.) Accordingly, the Court does not find the  
5 DT Act rate unreasonable or constitutionally inadequate. The parties shall submit a proposed Final  
6 Judgment, in accordance with this Order, on or before August 20, 2010.

7 **IT IS SO ORDERED.**

8 DATED: August 5, 2010



10 HON. DANA M. SABRAW  
11 United States District Judge

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