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10 Attorney for Plaintiff

11 **UNITED STATES DISTRICT COURT**
 12 **SOUTHERN DISTRICT OF CALIFORNIA**

13	UNITED STATES OF AMERICA,)	
14)	Case No. EDCV 16-1131-GW(KKx)
15	Plaintiff,)	
16)	
17	v.)	FINDINGS OF FACT
18)	AND CONCLUSIONS OF LAW
19	20.00 ACRES OF LAND, MORE)	
20	OR LESS, SITUATE IN SAN)	
21	BERNARDINO COUNTY, STATE)	
22	OF CALIFORNIA; THE OLLIE)	
23	SMITH LIVING TRUST;)	
24	UNKNOWN OWNERS;)	Trial: November 9, 2017
25	STATE OF CALIFORNIA; AND)	Time: 8:30 a.m.
26	SAN BERNARDINO COUNTY)	
27	TAX COLLECTOR, et al.,)	
28)	The Honorable George H. Wu
	Defendants.)	

29 Trial by narrative statement pursuant to Local Rule 43-1 commenced on
 30 November 9, 2017 at 8:30 a.m. Plaintiff, United States submitted its Trial Brief
 31 and the Declaration of Robert W. Colangelo, and appeared by Trial Attorney Marc

1 Gordon. No answer or appearance was made by any named defendant. Having
2 reviewed the pleadings and papers filed herein, and argument of counsel having
3
4 been heard, the Court makes these Findings of Fact and Conclusions of Law
5 pursuant to Fed. R. Civ. P. 52.

6
7 **I. FINDINGS OF FACT**

8 **A. THE SUBJECT PROPERTY**

9
10 1. This is an action by the United States to condemn real property. The
11 property is described as follows (“Subject Property”):

12 The West ½ of the Northwest ¼ of the Southeast ¼ of Section
13 5, Township 31 South, Range 46 East, Mount Diablo Meridian,
14 County of San Bernardino, State of California, according to
15 United States Government Township Plat.

16 This Tract No. 366 is also known as Assessor’s Parcel Number
17 0507-081-04-0000, containing 20.00 acres, more or less.

18 Dkt. 1, Schedule B.

19
20 2. The estate taken by the United States in the Subject Property is:

21 fee simple title to the land, subject however, to existing
22 easements for public roads and highways, public utilities,
23 railroads and pipelines; excepting and excluding therefrom an
24 undivided ½ interest in all oil and mineral and the rights
25 appurtenant thereto which are outstanding in parties other than
the surface owners.

26 Dkt. 1, Schedule C.
27
28

1 3. Prior to the institution of this action, the Subject Property was owned
2 by Ollie I. Smith as Trustee of the Ollie I. Smith Living Trust dated August 3,
3
4 1996. *See* Declaration of Robert W. Colangelo (“Colangelo Decl.”) ¶ 5, Exhibit 2.

5 4. Plaintiff’s agency, the United States Army Corps of Engineers
6 (“Corps or COE”) was informed that Mr. Smith had died. The Corps was
7
8 unsuccessful in finding a successor owner. *Id.*

9 5. The Corps obtained an appraisal which valued the property at
10 \$11,000. Colangelo Decl. at ¶ 4, Exhibit 1.

11 6. The Corps was unable to negotiate a purchase of the Subject Property
12 because it was unable to find the owner or a successor owner.
13

14
15 **B. PROCEDURAL HISTORY**

16 7. This action was filed on May 31, 2016. Dkt. 1.

17 8. The deposit of estimated just compensation of \$11,000.00 was made
18 on June 1, 2016. Dkt. 8.
19

20 9. The Declaration of Taking was filed on September 15, 2016. Dkt. 15.

21 10. Notice of Filing Proof of Service by publication was filed on January
22 17, 2017. Dkt. 21.
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24 11. Notice of Filing Proof of service by certified mail was filed on
25 January 19, 2017. Dkt. 22.
26

27 12. No defendants have answered or appeared.
28

1 **II. CONCLUSIONS OF LAW**

2 13. The Court has jurisdiction over this action pursuant to 28 U.S.C. §
3
4 1358.

5 14. Title to the property and estate as described in the complaint and
6
7 Declaration of Taking vested in the United States upon the filing of the Declaration
8 of Taking and the deposit of estimated just compensation. *See* 40 U.S.C. §
9 3114(b).

10
11 15. The United States has not demanded a jury trial. No other party has
12 answered or appeared. Accordingly, this action may proceed to trial before the
13 bench without a jury. *Zahn v. Geren*, 245 Fed. Appx. 696, 697 (9th Cir. 2007).

14
15 16. Pursuant to Fed. R. Civ. P. 71.1 and the Declaration of Taking Act, 40
16 U.S.C. § 3114, the two issues before the Court are: (1) the amount of just
17 compensation to be paid by the United States for this taking; and (2) the
18 distribution of the just compensation. The Court has the authority to determine to
19 whom and how much an award in condemnation should be paid and it has the
20 authority to apportion the award. *See United States v. 14.02 Acres*, 547 F.3d 943,
21 956 (9th Cir. 2008) (“In the absence of a contractual arrangement among property
22 owners, it was proper for the district court to apportion the total amount of just
23 compensation by ‘judicial intervention.’”), *citing United States v. 1.377 Acres of*
24
25
26
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1 *Land*, 352 F.3d 1259, 1269 (9th Cir. 2003). *See also* Fed. Rule. Civ. P. 71.1(h)
2 (the court tries all issues unless a jury is demanded or a commission appointed).
3

4 17. Federal condemnation actions are functions essential to the federal
5 sovereign. *Kohl v. United States*, 91 U.S. 367, 371 (1875). Due to its essential
6 nature and constitutional underpinnings, “federal law rules” both in determining
7 the right of the United States to acquire property and in the determination of just
8 compensation. *See United States v. 93.970 Acres of Land*, 360 U.S. 328, 332-333
9 (1959). Under federal law, the landowner bears the burden of proof in establishing
10 the amount of just compensation. *See United States v. 4.0 Acres of Land*, 175 F.3d
11 1133, 1140 (9th Cir. 1999).
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15 The property was appraised for \$11,000. Colangelo Decl. at ¶ 4, Exhibit 1.
16 The United States deposited the appraised amount as estimated just compensation.
17 No owner having appeared or answered, the Court finds that the appraised value,
18 \$11,000.00 should be held to be the just compensation due for the taking of the
19 Subject Property.
20
21

22 18. Judgment shall be entered against the United States of America in the
23 amount of \$11,000.00 in favor of Defendants.
24

25 19. Plaintiff has fully satisfied the Judgment by its deposit of the full
26 amount of just compensation, \$11,000.00, into the Registry of the Court.
27
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1 20. Service having been properly made, and no other parties having
2 appeared in this action, it is proper for this Court to find that the owner of the
3 property, as of the date title vested in the United States, September 15, 2016, was
4 Ollie I. Smith as Trustee of the Ollie I. Smith Living Trust dated August 3, 1996,
5 and/or the successor of Ollie I. Smith. The Clerk of the Court is ordered to retain
6 the deposited funds for five years following entry of judgment and provide that
7 Ollie I. Smith as Trustee of the Ollie I. Smith Living Trust dated August 3, 1996,
8 and/or the successor of Ollie I. Smith may submit claims to the Court, and upon
9 full proof of the right thereto, obtain an order directing payment of the funds the
10 Court has found them entitled to. Further, pursuant to 28 U.S.C. § 2042, the
11 judgment should direct the Clerk to thereafter deposit those funds into the Treasury
12 in the name and to the credit of the United States and provide that thereafter any
13 claimant entitled to any such money may, on petition to the court and upon notice
14 to the United States Attorney and full proof of the right thereto, obtain an order
15 directing payment.
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22 DATED: November 9, 2017



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25 GEORGE H. WU, U.S. DISTRICT JUDGE
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Respectfully submitted,

/s/
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