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10 Attorney for Plaintiff

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

13	UNITED STATES OF AMERICA,	)	
14		)	Case No. EDCV 16-1191-GW(KKx)
15	Plaintiff,	)	
16		)	FINDINGS OF FACT
17	v.	)	AND CONCLUSIONS OF LAW
18		)	
19	160.00 ACRES OF LAND, MORE	)	
20	OR LESS, SITUATE IN SAN	)	
21	BERNARDINO COUNTY, STATE	)	
22	OF CALIFORNIA; CONSTANCIO	)	
23	G. OROGO; UNKNOWN	)	
24	OWNERS; STATE OF	)	
25	CALIFORNIA; AND SAN	)	
26	BERNARDINO COUNTY TAX	)	Trial: November 9, 2017
27	COLLECTOR, et al.,	)	Time: 8:30 a.m.
28		)	
	Defendants.	)	The Honorable George H. Wu

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 Southeast ¼ of Section 16, Township 31 South,  
13 Range 46 East, Mount Diablo Base and Meridian, County of  
14 San Bernardino, State of California, according to the Official  
15 Plat thereof.

16 Excepting all oil, gas, oil shale, coal, phosphate, sodium,  
17 gold silver and all other mineral deposits contained in said land,  
18 together with the right to drill for an extract such deposits of oil  
19 and gas, or gas, and to prospect for, mine, and remove such  
20 deposits of other minerals from said land, and to occupy and  
21 use so much of the surface of said land as may be required  
22 therefor, upon compliance with the conditions and subject to  
23 the provisions and limitations of Chapter 5, Part I, Division 6 of  
24 the Public Resources Code, as reserved to the State of  
25 California by Patent dated August 7, 1953 and Recorded  
26 September 23, 1953 in book 3246, page 65 Official Records.

27 This Tract No. 313 is also known as Assessor’s Parcel  
28 Number 0507-091-18-0000, containing 160.00 acres, more or  
less.

Dkt. 1, Schedule B.

1           2.     The estate taken by the United States in the Subject Property is:  
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3           fee simple title to the land, subject however, to existing  
4           easements for public roads and highways, public utilities,  
5           railroads and pipelines; excepting and excluding from the  
6           taking all interests in oil, gas, oil shale, coal, phosphate,  
7           sodium, gold, silver and all other mineral deposits which are  
8           outstanding in parties other than the surface owners, the  
9           appurtenant rights for the exploration, development and  
10          removal of said minerals, and the right of the people to fish as  
11          reserved in the patent from the State of California.

12          Dkt. 1, Schedule C.

13           3.     Prior to the institution of this action, the Subject Property was owned  
14          by Julie Orogo Luna (aka Julie Luna Orogo), as to an undivided ¼ interest; and  
15          Fred J. Davidson (aka Fred J. Davison), a widower, James F. Davidson (aka James  
16          F. Davison) and Donna M. Davidson (aka Donna M. Davison), his wife, as their  
17          interests may appear of record, as to the remainder. Declaration of Robert W.  
18          Colangelo (“Colangelo Decl.”) at ¶ 9.

19           4.     In August, 2011, Plaintiff’s agency, the United States Army Corps of  
20          Engineers (“Corps or COE”) entered into an Accepted Offer whereby the  
21          Davidsons agreed to sell the Subject Property to the Corps for the sum of  
22          \$200,000.00. Colangelo Decl. at ¶ 4, Exhibit 1.

23           5.     The Corps was unable to complete the transaction because it was  
24          unable to locate Constancio G. Orogo, the former husband of Julie L. Orogo, who  
25          was listed as an owner on the title report. Colangelo Decl. at ¶ 5, Exhibit 2.

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**B. PROCEDURAL HISTORY**

6. This action was filed on June 7, 2016. Dkt. 1.

7. The deposit of estimated just compensation of \$200,000.00 was made on July 20, 2016. Dkt. 8.

8. The Declaration of Taking was filed on September 19, 2016. Dkt. 13.

9. Notice of Filing Proof of Service by publication was filed on January 17, 2017. Dkt. 24.

10. Notice of Filing Proof of service by certified mail was filed on January 19, 2017. Dkt. 25.

11. No defendants have answered or appeared.

**II. CONCLUSIONS OF LAW**

12. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1358.

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

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

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5           15.    Pursuant to Fed. R. Civ. P. 71.1 and the Declaration of Taking Act, 40  
6 U.S.C. § 3114, the two issues before the Court are: (1) the amount of just  
7 compensation to be paid by the United States for this taking; and (2) the  
8 distribution of the just compensation. The Court has the authority to determine to  
9 whom and how much an award in condemnation should be paid and it has the  
10 authority to apportion the award. *See United States v. 14.02 Acres*, 547 F.3d 943,  
11 956 (9th Cir. 2008) (“In the absence of a contractual arrangement among property  
12 owners, it was proper for the district court to apportion the total amount of just  
13 compensation by ‘judicial intervention.’”), *citing United States v. 1.377 Acres of*  
14 *Land*, 352 F.3d 1259, 1269 (9th Cir. 2003). *See also* Fed. Rule. Civ. P. 71.1(h)  
15 (the court tries all issues unless a jury is demanded or a commission appointed).

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18           16.    Plaintiff entered into an Accepted Offer to sell Real Property in the  
19 amount of \$200,000.00, an amount greater than the Corps’ appraisal of the  
20 property. Colangelo Decl. at ¶ 4, Exhibit 1. It is well-established that pre-  
21 condemnation contracts, like the one in the case at bar, are enforceable in a  
22 condemnation proceeding and bind the parties as to the amount of compensation.  
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28 *See United States v. 114.64 Acres of Land*, 504 F.2d 1098, 1100 (9th Cir. 1974),

1 *citing Danforth v. United States*, 308 U.S. 271, 282-83 (1939); *Albrecht v. United*  
2 *States*, 329 U.S. 599, 602-04 (1947). The United States is bound by the Accepted  
3 Offer. Therefore the full and just compensation for the Subject Property is  
4 \$200,000.00.  
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7 17. Judgment shall be entered against the United States of America in the  
8 amount of \$200,000.00 in favor of Defendants.

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10 18. Plaintiff has fully satisfied the Judgment by its deposit of the full  
11 amount of just compensation, \$200,000.00, into the Registry of the Court.

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13 19. Service having been properly made, and no other parties having  
14 appeared in this action, it is proper for this Court to find that title was held by Julie  
15 Orogo Luna (aka Julie Luna Orogo), as to an undivided  $\frac{1}{4}$  interest; and Fred J.  
16 Davidson (aka Fred J. Davison), a widower, James F. Davidson (aka James F.  
17 Davison) and Donna M. Davidson (aka Donna M. Davison), his wife, as their  
18 interests may appear of record, as to the remainder.  
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21 20. The Clerk of the Court shall pay seventy-five percent (75%) of the  
22 deposited funds (\$150,000.00), plus 75% of any interest accrued thereon while  
23 within the Registry of the Court, less any authorized fees or costs, jointly to:  
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25 James F. Davidson, Fred J. Davidson and Donna M. Davidson  
26 c/o James F. Davidson  
27 5451 Twin Lakes Drive  
28 Cypress, CA 90630

