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7
8 IN THE UNITED STATES DISTRICT COURT
9 IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 .41 ACRES OF LAND, MORE OR LESS, IN
THE COUNTY OF SUTTER; ELIZABETH
15 GIANELLA; SEAN CARBERRY;
SACRAMENTO AND SAN JOAQUIN
16 DRAINAGE DISTRICT; STEVEN HARRAH,
SUTTER COUNTY TREASURER/TAX
17 COLLECTOR and UNKNOWN OWNERS,

18 Defendants.

Case No. 2:10-cv-791 LKK KJN

ORDER FOR DELIVERY OF POSSESSION

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20 Plaintiff United States of America has filed an ex parte application for an order for the surrender
21 of the possession of the .41 acres of property described in the Complaint in Condemnation filed in this
22 action. Entry of an order for possession is appropriately done via ex parte application. *United States v.*
23 *0.95 Acres of Land*, 994 F. 2d 696, 698 (9th Cir. 1993). Based on Plaintiff's Memorandum of Points and
24 Authorities filed with the motion and the original complaint and declaration of taking and exhibits filed
25 therewith, the United States is entitled to possession of said property.

26 On April 2, 2010, the United States filed a Declaration of Taking and deposited three thousand
27 one hundred forty dollars into the registry of the Court. Under the Declaration of Taking Act, 40 U.S.C.
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1 section 3114 (formerly 40 U.S.C. section 258a), upon the filing of the Declaration of Taking and the
2 deposit of estimated just compensation, title to the property described in the declaration is vested in the
3 United States. The primary purpose of the Declaration of Taking Act is to give the government
4 immediate possession of the property and give the owner immediate compensation, in the form of
5 estimated value in return for title to the land. *United States v. Miller*, 317 U.S. 369, 381 (1943).
6 Thus, upon the filing of the Declaration of Taking, the United States is entitled to possession. *United*
7 *States v. Cobb*, 328 F. 2d 115, 116 (9th Cir. 1964); *Narramore v. United States*, 960 F. 2d 1048, 1050
8 (9th Cir. 1992).

9 The United States confirms that it needs immediate possession of the property because
10 the Department of Energy wants to immediately commence and continue with construction of the power
11 transmission system of the Central Valley Project, of which the line over the condemned property is an
12 integral part. The construction contract has been awarded and the Department of Energy, through the
13 Western Area Power Administration, is prepared to move forward with construction immediately but
14 cannot begin construction without access to and possession of the property.

15 Accordingly, IT IS HEREBY ORDERED AND ADJUDGED that all defendants in this action,
16 and all persons in possession or control of the property, described in the Complaint in Condemnation,
17 shall immediately surrender possession of said property to Plaintiff upon service of a copy of this Order.

18 IT IS FURTHER ORDERED that plaintiff shall provide defendant with 72 hours notice before
19 the commencement of construction on her property.

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21 Date: June 7, 2010.

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LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT