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12UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Case No. 2:15-cv-01743-MMD-NJK

Plaintiff,

ORDER

v.

400 ACRES OF LAND, more or less,  
situate in Lincoln County, State of Nevada;  
and JESSIE J. COX, et al.,

Defendants.

13 The Court granted the government's motion to appoint a land commission, finding  
14 that such appointment is appropriate in light of the parties' disparate positions on highest  
15 and best use and the remote, backcountry character of the property at issue. (ECF No.  
16 497 at 8.) The Court also appointed three qualified and disinterested individuals as  
17 Commissioners. (ECF No. 522.) The Court now determines how the costs of the  
18 Commission should be apportioned among the parties. The Court reviewed the parties'  
19 briefing on this issue (ECF Nos. 509, 510) following discussion at a status conference on  
20 September 6, 2019 (ECF No. 501).

21 The Court finds that costs of the Commission should be divided among the parties  
22 with the government bearing 75% of the costs and Landowners bearing 25% of the costs.  
23 The Court finds that the government should bear the bulk of the costs based on their  
24 implication at an earlier hearing that they would be willing to pay such costs. Costs of the  
25 Commission surfaced as an issue when the Court heard argument on July 1, 2019 on the  
26 government's motion to appoint a land commission. (ECF No. 493 (minutes of  
27 proceeding); ECF No. 496 (transcript).) Landowners opposed the government's motion  
28 based in part on their concern that the Commission would be too costly. (ECF No. 496 at

1 51, 56-57.) The government addressed Landowners' concern by stating  
2 "[o]rdinarily . . . the parties would split the costs, but if the Court were to order otherwise  
3 and make the United States pay, then we would pay those costs." (Id. at 57-58.) The clear  
4 implication at the hearing was that Landowners' concern about cost is invalid because the  
5 government was willing to pay the Commission costs. Nevertheless, the transcript does  
6 not show that the government would acquiesce to such an order without objection. And  
7 the Court finds that it is appropriate for the Landowners to bear some of the costs in order  
8 to incentivize them to present evidence and argument judiciously and expediently. The  
9 course of this litigation has shown that Landowners occasionally file motions that  
10 needlessly cause the Court to expend judicial resources. For example, Landowners filed  
11 numerous motions to strike the government's motions in limine that "border[ed] on being  
12 frivolous." (ECF No. 496 at 3.)

13 Landowners argue that the government must pay all costs associated with the  
14 Commission based on the Advisory Committee Notes to Federal Rule of Civil Procedure  
15 71.1(l), but the Court is unpersuaded. The note in question states in relevant part:

16 Costs of condemnation proceedings are not assessable against the  
17 condemnee, unless by stipulation he agrees to assume some or all of them.  
18 Such normal expenses of the proceeding as bills for publication of notice,  
19 commissioners' fees, the cost of transporting commissioners and jurors to  
take a view, fees for attorneys to represent defendants who have failed to  
answer, and witness' fees, are properly charged to the government, though  
not taxed as costs.

20 Fed. R. Civ. P. 71.1, Note to Subdivision (l). The government points out that this portion  
21 of the note quotes a Lands Division Manual that is almost eighty years old. (ECF No. 510  
22 at 5.) The government notes that practices have changed and cites three recent orders in  
23 which courts required parties to share Commission costs. (Id. at 5-6.) The Court takes  
24 judicial notice of those cases, which are attached as exhibits to the government's brief.  
25 (ECF Nos. 510-3, 510-4, 510-5.) Accordingly, the Court rejects Landowners' argument  
26 based on the Advisory Committee Note.

27 Landowners further argue that they cannot afford the costs of the Commission. But  
28 that assertion is inconsistent with the way this case has been litigated. Landowners have

1 hired numerous experts and filed numerous non-essential motions that have at times  
2 bordered on being frivolous. The Court is unpersuaded that Landowners cannot afford the  
3 costs of the Commission.

4 It is therefore ordered that the government will bear 75% of the costs of the  
5 Commission and Landowners will bear 25% of the costs of the Commission.

6 DATED THIS 26<sup>th</sup> day of September 2019.

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MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE