

1 XAVIER BECERRA  
 Attorney General of California  
 2 ROBERT W. BYRNE  
 SALLY MAGNANI  
 3 MICHAEL L. NEWMAN  
 Senior Assistant Attorneys General  
 4 MICHAEL P. CAYABAN  
 CHRISTINE CHUANG  
 5 EDWARD H. OCHOA  
 Supervising Deputy Attorneys General  
 6 HEATHER C. LESLIE  
 JANELLE M. SMITH  
 7 JAMES F. ZAHRADKA II  
 LEE I. SHERMAN (SBN 272271)  
 8 Deputy Attorneys General  
 300 S. Spring St., Suite 1702  
 9 Los Angeles, CA 90013  
 Telephone: (213) 269-6404  
 10 Fax: (213) 897-7605  
 E-mail: Lee.Sherman@doj.ca.gov  
 11 *Attorneys for Plaintiff State of California*

12  
 13 IN THE UNITED STATES DISTRICT COURT  
 14 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 15 OAKLAND DIVISION

16  
17 **STATE OF CALIFORNIA et al.;**

18 Plaintiffs,

19 v.

20 **DONALD J. TRUMP, in his official**  
 21 **capacity as President of the United States of**  
 22 **America et al.;**

23 Defendants.

Case No. 4:19-cv-00872-HSG

**REQUEST FOR JUDICIAL NOTICE IN**  
**SUPPORT OF PLAINTIFFS' NOTICE**  
**OF MOTION AND MOTION FOR**  
**PRELIMINARY INJUNCTION**  
**REGARDING EL CENTRO BORDER**  
**WALL PROJECT**

Judge: Honorable Haywood S. Gilliam, Jr.

Trial Date: None Set

Action Filed: February 18, 2019

1 Plaintiffs hereby respectfully request, pursuant to Federal Rule of Evidence 201, that this  
2 Court take judicial notice of the following documents.

- 3 • Attached hereto as **Exhibit 1** is a true and correct copy of an excerpt from a page of the U.S.  
4 Customs and Border Protection’s website. As of May 27, 2019, the full website is accessible  
5 at [https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/el-centro-](https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/el-centro-sector-california)  
6 [sector-california](https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/el-centro-sector-california).
- 7 • Attached hereto as **Exhibit 2** is a true and correct copy of an excerpt from a page of the U.S.  
8 Department of Defense’s website entitled “Contracts for May 15, 2019.” As of May 27,  
9 2019, the full website is accessible at [https://dod.defense.gov/News/Contracts/Contract-](https://dod.defense.gov/News/Contracts/Contract-View/Article/1848882/)  
10 [View/Article/1848882/](https://dod.defense.gov/News/Contracts/Contract-View/Article/1848882/).
- 11 • Attached hereto as **Exhibit 3** is a true and correct copy of an October 2, 2013, Order for  
12 Technically-Conditioned Certification from the California Water Boards to U.S. Customs and  
13 Border Protection. As of May 29, 2019, this document is posted on the California Water  
14 Boards’ website at  
15 [https://www.waterboards.ca.gov/coloradoriver/water\\_issues/programs/401\\_certification/#201](https://www.waterboards.ca.gov/coloradoriver/water_issues/programs/401_certification/#2013)  
16 [3](https://www.waterboards.ca.gov/coloradoriver/water_issues/programs/401_certification/#2013).
- 17 • Attached hereto as **Exhibit 4** is a true and correct copy of Imperial County Air Pollution  
18 Control District Rule 801. As of May 29, 2019, this document is posted on the Imperial  
19 County Air Pollution Control District’s website at  
20 <https://www.co.imperial.ca.us/AirPollution/RULEBOOK/RULES/1RULE801.pdf>.
- 21 • Attached hereto as **Exhibit 5** is a true and correct copy of a September 28, 2018 letter and  
22 memorandum from President Trump to the Speaker of the House of Representatives and  
23 President of the Senate relating to “Designation of Funding for Overseas Contingency  
24 Operations/Global War on Terrorism.” As of May 27, 2019, this document is posted on the  
25 White House’s website at [https://www.whitehouse.gov/wp-content/uploads/2018/09/OCO-](https://www.whitehouse.gov/wp-content/uploads/2018/09/OCO-Designation-Package-9.28.18_signed.pdf)  
26 [Designation-Package-9.28.18\\_signed.pdf](https://www.whitehouse.gov/wp-content/uploads/2018/09/OCO-Designation-Package-9.28.18_signed.pdf).

1        These exhibits are matters of public record and therefore subject to judicial notice. Fed. R.  
2 Evid. 201(b); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (a court may  
3 judicially notice matters of public record unless the matter is a fact subject to reasonable dispute).

4        These exhibits are judicially noticeable because government memoranda, bulletins, letters,  
5 statements and opinions are matters of public record appropriate for judicial notice. *See Brown v.*  
6 *Valoff*, 422 F.3d 926, 933 n.9 (9th Cir. 2005) (judicially noticing an administrative bulletin);  
7 *Mack v. S. Bay Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986) (court may take judicial  
8 notice of records and reports of state administrative bodies), *overruled on other grounds by*  
9 *Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104, 111 (1991); *Interstate Nat. Gas. Co. v.*  
10 *S. Cal. Gas. Co.*, 209 F.2d 380, 385 (9th Cir. 1953) (judicially noticing government agency  
11 records and reports); *Cnty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 520 nn.5, 8, 11 (N.D.  
12 Cal. 2017) (taking judicial notice of government memoranda and letters).

13        These exhibits are also judicially noticeable because they are posted on official government  
14 websites. *See Daniels–Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998–99 (9th Cir. 2010)  
15 (judicially noticing information contained on a government website); *Paralyzed Veterans of*  
16 *America v. McPherson*, No. C 06–4670 SBA, 2008 WL 4183981, at \*5 (N.D. Cal. Sept. 9, 2008)  
17 (finding that courts commonly take judicial notice of information and documents on government  
18 websites, citing cases from various jurisdictions). Thus, the statements of government  
19 departments and agencies contained within this exhibit are not subject to reasonable dispute, as  
20 the statements “can be accurately and readily determined from sources whose accuracy cannot  
21 reasonably be questioned.” Fed. R. Evid. § 201(b)(2).

1 Dated: May 29, 2019

Respectfully Submitted,

2  
3 XAVIER BECERRA  
Attorney General of California  
4 ROBERT W. BYRNE  
SALLY MAGNANI  
5 MICHAEL L. NEWMAN  
Senior Assistant Attorneys General  
6 MICHAEL P. CAYABAN  
CHRISTINE CHUANG  
7 EDWARD H. OCHOA  
Supervising Deputy Attorneys General  
8 HEATHER C. LESLIE  
JANELLE M. SMITH  
9 JAMES F. ZAHRADKA II

/s/ Lee I. Sherman

10 LEE I. SHERMAN  
11 Deputy Attorneys General  
Attorneys for Plaintiff State of California  
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## Exhibit 1

(<https://instagram.com/customsborder/>)

(<https://www.flickr.com/photos/cbpphotos/>)

(<https://twitter.com/cbp>)

(<https://www.linkedin.com/company/2997?trk=tyah>)

(<https://www.youtube.com/user/customsborderprotect>)



# U.S. Customs and Border Protection (/)

## El Centro Sector California

Welcome to the El Centro Sector of the United States Border Patrol.

El Centro Sector is located in Southern California in the Imperial Valley. El Centro's area of operation has diverse terrain - principally desert with some mountain ranges and wide areas of agricultural lands. The desert poses a danger for agents and potential border crossers as the summer heat can exceed 120 degrees. El Centro Sector has four Border Patrol stations. They are located in the cities of El Centro, Calexico, Indio, and Riverside. **The El Centro Sector is responsible for 70 miles of international border.**

In direct support of the Border Patrol's National Strategy, El Centro Sector works to protect the external boundaries of the United States to prevent, detect, apprehend, and interdict terrorists, illegal aliens, smugglers, contraband, and violators of other laws. This mission is being accomplished utilizing a deterrence-based enforcement strategy that employs a sophisticated blend of tactics, technology, and a highly visible deployment of agents. While new technologies and traditions are being created, the fundamental values of the Border Patrol still ring true, "Honor First."

This site provides Sector-related information, including Sector operations, Sector contact information, where our stations are located, and news.

Thank you for visiting the El Centro Sector webpage.

Overview	General Information	Challenge Coin

## Exhibit 2

# Contracts for May 15, 2019

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## ARMY

Southwest Valley Constructors, Albuquerque, New Mexico, was awarded a \$646,000,000 firm-fixed-price contract for design and build of Tucson Sector barrier wall replacement project. Four bids were solicited with four bids received. Work will be performed in Tucson, Arizona, with an estimated completion date of Jan. 31, 2020. Fiscal 2019 operations and maintenance, Army funds in the amount of \$646,000,000 were obligated at the time of the award. U.S. Army Corps of Engineers, Albuquerque, New Mexico, is the contracting activity (W912PL-19-C-0015).

BFBC LLC, Bozeman, Montana, was awarded a \$141,750,000 firm-fixed-price contract for design and build of El Centro Project 1 and Yuma Project 1 vehicle and pedestrian barrier replacement. Nine bids were solicited with four bids received. Work will be performed in El Centro, California; and Yuma, Arizona, with an estimated completion date of Jan. 31, 2020. Fiscal 2019 operations and maintenance, Army funds in the amount of \$141,750,000 were obligated at the time of the award. U.S. Army Corps of Engineers, Albuquerque, New Mexico, is the contracting activity (W912PL-19-C-0014).

Mitchco International Inc.,\* Louisville, Kentucky, was awarded a \$94,250,932 firm-fixed-price contract for full food services and dining facility attendants at Fort Sill, Oklahoma. Bids were solicited via the internet with seven received. Work locations and funding will be determined with each order, with an estimated completion date of May 14, 2024. U.S. Army Mission and Installation Contracting Command, Fort Sam Houston, Texas, is the contracting activity (W9124J-19-D-0012).

General Dynamics Ordnance and Tactical Systems, St. Petersburg, Florida, was awarded a \$92,400,000 modification (P00003) to Foreign Military Sales (Iraq) contract W15QKN-18-D0020 for 120mm munition high explosive with tracer tank ammunition cartridges. Work locations and funding will be determined with each order, with an estimated completion date of Oct. 16, 2022. U.S. Army Contracting Command, New Jersey, is the contracting activity.

Trend Construction Inc.,\* Orlando, Florida, was awarded a \$45,000,000 firm-fixed-price contract for general construction. Bids were solicited via the internet with 20 received. Work locations and funding will be determined with each order, with an estimated completion date of May 14, 2024. U.S. Army Corps of Engineers, Savannah, Georgia, is the contracting activity (W912HN-19-D-4000).

Jacobs Government Services Co., Arlington, Virginia, was awarded a \$15,394,247 firm-fixed-price contract for architect and engineering services. Bids were solicited via the internet with six received. Work will be performed in Arlington, Virginia, with an estimated completion date of June 14, 2026. Fiscal 2019 military construction; and other funds in the amount of \$15,394,247 were obligated at the time of the award. U.S. Army Corps of Engineers, Pyeongtaek, Republic of Korea, is the contracting activity (W912UM-19-C-0006).

Dubuque Barge & Fleeting Service Co., doing business as Newt Marine,\* Dubuque,

## Exhibit 3

**Colorado River Basin Regional Water Quality Control Board**

October 2, 2013

Mr. Paul Enriquez  
U.S. Customs and Border Protection  
24000 Avila Road, Suite 5020  
Laguna Niguel, CA 92677

**RE: ORDER FOR TECHNICALLY-CONDITIONED CLEAN WATER ACT SECTION  
401 WATER QUALITY CERTIFICATION FOR DISCHARGE OF DREDGED  
AND/OR FILL MATERIALS**

**PROJECT:** U.S. Customs and Border Protection (CBP) Project - West Desert All-  
Weather Road, Phase B, El Centro - Imperial County, WDID No.  
7A333133001

**APPLICANT:** U.S. Customs and Border Protection

- ACTION:**
1. ☐ Order for Standard Certification
  2. ☒ Order for Technically-Conditioned Certification
  3. ☐ Order for Denial of Certification

**STANDARD CONDITIONS:**

The following standard conditions apply to all certification actions, except as noted above under Action 3 for denials.

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and section 3867 of Title 23 of the California Code of Regulations (23 CCR).
2. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR

section 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

3. The validity of any non-denial certification action (Actions 1 and 2) shall be conditioned upon total payment of the full fee required under 23 CCR section 3833, unless otherwise stated in writing by the certifying agency.
4. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under State law. For purposes of Clean Water Act (CWA) section 401(d), the applicability of any State law authorizing remedies, penalties, process, or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Water Quality Certification (WQC).
  - a. In response to a suspected violation of any condition of this WQC, the Colorado River basin Regional Water Quality Control Board (Regional Water Board) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Water Board deems appropriate, provided that the burden, including cost of the reports, shall be in reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
  - b. In response to any violation of the conditions of this WQC, the Regional Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

#### **ADDITIONAL CONDITIONS:**

The following additional conditions apply to this certification:

1. This WQC applies towards the proposed project (Project) as described in the 401 application received by the Regional Water Board on May 17, 2013. The updated information was provided on September 27, 2013.
2. The Applicant shall provide the Regional Water Board and other interested agencies with written notification of any significant modifications made to the Project prior to implementation of the modifications.
3. This WQC does not convey any property rights of any sort or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

4. This WQC does not authorize the Applicant or any associated party to trespass on any land or property unless the applicant has obtained written authorization or acquired a special use authorization permit from the land or property owner.
5. A copy of this WQC shall be provided to the appropriate onsite Supervisor for the Project. All personnel performing work on the proposed Project shall be familiar with the content of this WQC. Copies of the WQC shall be readily available at the Project site at all times during periods of active work and shall be presented to regulatory agency representatives upon request.
6. The Applicant shall grant Regional Water Board staff, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to enter the Project site at reasonable times, to ensure compliance with the terms and conditions of this WQC and/or to determine the impacts the Project may have on waters of the United States.
7. The proposed Project shall not be enlarged or extend beyond the proposed Project impact area. The Applicant shall delineate the Project boundaries and staging areas with stakes, flags and/or temporary construction fencing.
8. The area of vegetation and soil disturbance shall be restricted to the smallest extent possible.
9. The Project shall not discharge substances in concentrations toxic to human, plant, animal, or aquatic life or that produce detrimental physiological responses.
10. The Project shall not discharge waste classified as "hazardous" as defined in Title 23 California Code of Regulations (CCR) section 2521, California Health and Safety Code section 25140, and Title 22, CCR, section 66260.10 et seq.
11. No oil, petroleum products, or rubbish shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into waters of the United States.
12. No equipment maintenance will be done within or near any stream channel where petroleum products or other pollutants from the equipment may enter waters of the United States.
13. Equipment refueling shall not occur within waters of the United States.
14. Any oil or grease leaks shall be immediately cleaned up.

15. The Applicant shall ensure that all contaminated material and/or contaminated soil removed or excavated from the Project site is properly loaded, transported, and disposed of in accordance with Federal, State, and local regulations.
16. Staging/storage areas for equipment and materials shall be located outside of waters of the United States.
17. The Applicant shall ensure that all disturbed and filled areas are adequately stabilized and protected from erosion and siltation by implementing appropriate soil stabilization, sedimentation and silt control measures.
18. Any flow diversion used during construction shall be designed in a manner to prevent pollution, minimize siltation, and shall provide flows to downstream reaches. Flows shall be maintained to support existing aquatic life and riparian wetlands and habitat that may be located upstream and downstream from any temporary diversion.
19. The Applicant shall restore drainages, to the greatest extent possible, to the original bank configuration, stream bottom width, and channel gradient.
20. All temporary facilities and impacts shall be removed and restored to the preexisting conditions and contours to the extent practicable.
21. Construction related materials and wastes shall be removed from the Project site upon completion of the Project.
22. The Applicant shall submit Notice to the Regional Water Board within 60-days of completion of the Project. The Notice shall include: 1) a detailed summary of the mitigation and restoration activities implemented during the Project and 2) provide photographic documentation that supports the information summarized in the Notice.
23. The Regional Water Board reserves the right to suspend, cancel, or modify and reissue this WQC, after providing notice to the Applicant and/or responsible Site-Supervisor, if the Regional Water Board determines that the Project fails to comply with any of the terms or conditions of this WQC.
24. The Applicant shall orally notify the Regional Water Board of any noncompliance that may impact the beneficial uses of waters of the United States, as soon as notification is possible and notification can be provided without substantially impeding measures necessary to address the noncompliance.

**REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:**

If you have any questions, please contact Jay Mirpour, Water Resources Control Engineer, at (760) 776-8981 or [jmirpour@waterboards.ca.gov](mailto:jmirpour@waterboards.ca.gov).

**WATER QUALITY CERTIFICATION:**

I hereby issue an order certifying that any discharge from the referenced Project will comply with the applicable provisions of sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law.

Except insofar as may be modified by any preceding conditions, all certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicants' Project description and the attached Project Information Sheet, and (b) compliance with all applicable requirements of the Regional Water Board's Water Quality Control Plan (Basin Plan).



ROBERT PERDUE, Executive Officer  
Colorado River Basin Regional Water Quality Control Board

JJM/

Enclosure: Project Information

cc: Lanika Cervantes, USACE Los Angeles District  
Bill Orme, SWRCB, Division of Water Quality, Water Quality Certification Unit  
Elizabeth Goldmann, U.S. Environmental Protection Agency, Region 9  
Thomas A. Vandenberg, Office of Chief Counsel, SWRCB

File: U.S. Customs and Border Protection (CBP) Project - West Desert All-Weather Road, Phase B, El Centro - Imperial County, WDID No. 7A333133001

### **PROJECT INFORMATION**

**Application Date:** Application was received by the Regional Water Board on May 17, 2013. The updated information was provided to our office on September 27, 2013.

**Applicant:** U.S. Customs and Border Protection  
Contact: Paul Enriquez, (949) 360-2382

**Applicant Representative:** CBP  
Contact: John Petrilla, (949) 360-2382

**Project Name:** U.S. Customs and Border Protection (CBP) Project - West Desert All-Weather Road, Phase B, El Centro - Imperial County, WDID No. 7A333133001

**Start and Completion:** The Project is scheduled to begin on October 1, 2013 and to be completed in February 2014.

**Project Description:** The purpose of the Project is to increase border security within the United States Border Patrol (USBP) - El Centro Sector with an ultimate objective of reducing illegal cross-border activity by providing safer and more efficient access for USBP agents along the U.S./Mexico border in the west desert area of the USBP - El Centro Station's area of responsibility. The primary need for the Project is because of the remoteness of the west desert area and the impassability of the existing road, which creates long drive times for agents to reach patrol areas and limits their ability to assist with interdictions and apprehensions. An additional need for the Project is to provide agents with the infrastructure necessary to carry out USBP's mission.

The Project includes the improvement and construction, operation, and maintenance of approximately 1.6 miles of all-weather roads. The Project involves the improvement of an existing border road and construction of a new access road to the top of BP Hill, where CBP operates a Remote Video Surveillance System (RVSS) tower. The border road would be improved to an all-weather surface road (1.4 miles long) approximately 20 feet wide with 2-foot shoulders and would

include any necessary drainage structures (i.e., culverts and low-water crossings).

In addition to the 1.4 miles of road improvement, a new access road (approximately 0.2 mile) leading to the BP Hill RVSS tower from the improved border road would be constructed. This road would be a 16-foot-wide road with necessary drainage structures and include all-weather surfacing. The total permanent footprint for the new access road to BP Hill would be 30 feet wide by 0.2 mile long. The temporary footprint would be 90 feet wide by 0.2 mile long. Upon completion of the improvements and construction activities, all temporarily disturbed areas would be rehabilitated per BLM guidelines.

**Project Location:**

City or Area: El Centro, County: Imperial  
Longitude/Latitude: Begins at N32° 38.89518, W115° 43.52994, Ends at N 32° 38.96544, W 115° 42.1974.  
Township/Range: Section 26, Township 17 South, Range 12 East, San Bernardino Meridian.

**Receiving Water(s):**

Pinto Wash is located north of the project area in the Salton Sea Watershed west of the Westside Main Canal and between the U.S./Mexico border and California State Route 98. Water may flow through this ephemeral wash into the Westside Main Canal, which eventually delivers water into the Salton Sea, or into delivery canals and through agricultural fields into drains and then into washes that flow to the New River and eventually into the Salton Sea.

**Project Impacts:**

The Project would not result in a permanent impact to any perennial or intermittent streams, as none are present within the project corridor. A total of six jurisdictional ephemeral Waters of the U.S. were identified during field surveys within the project corridor. The six ephemeral washes that are Waters of the U.S. would be traversed using concrete low-water crossings, reinforced concrete pipes, or box culverts. The expected total impact on those Waters of the U.S. is less than 0.35 acre. Tables below show the approximate permanent and temporary impacts in acres and linear feet to each Waters of the U.S.

### Linear Feet of Impacts on Waters of the U.S.

	Temporary (Feet)	Permanent (Feet)	Total (Feet)
Waters of the U.S. 1	174.88	79.48	254.36
Waters of the U.S. 2	140.28	99.45	239.73
Waters of the U.S. 3	49.38	93.91	143.28
Waters of the U.S. 4	89.00	47.45	136.45
Waters of the U.S. 5	158.69	72.42	231.11
Waters of the U.S. 6	106.90	49.19	156.09
Total	719.13	441.90	1,161.02

### Acreage of Impacts on Waters of the U.S.

	Temporary (Acre)	Permanent (Acre)	Total (Acre)
Waters of the U.S. 1	0.029	0.014	0.043
Waters of the U.S. 2	0.037	0.034	0.071
Waters of the U.S. 3	0.024	0.072	0.095
Waters of the U.S. 4	0.009	0.005	0.014
Waters of the U.S. 5	0.068	0.031	0.099
Waters of the U.S. 6	0.002	0.001	0.003
Total	0.169	0.156	0.326

The Project would not impact any surface water resource sites (i.e., lakes or permanent water sources) with the installation of the proposed roadway. Proper maintenance of construction equipment and the use of Best Management Practices (BMPs) during construction activities would minimize the possibility of accidental spills of petroleum, oil, and lubricants (POL) that, if they occurred, could affect surface water and groundwater quality. Operation and maintenance of the proposed roadways would have no effect on the region's surface water or groundwater supplies and/or quality.

#### Best Management Practices:

US Customs and Border Protection will implement the BMPs described in the Environmental Assessment Report.

BMPs such as the installation of straw bales and silt fences, will be employed to reduce or eliminate sedimentation or erosion as a result of the construction activities. Construction would not occur during the rainy season to avoid erosion and sedimentation issues.

CBP will avoid contaminating natural aquatic systems with runoff by limiting all equipment maintenance, staging, laydown, and dispensing of fuel, oil, etc., to designated upland areas.

No refueling or storage will take place within 100 feet of drainages.

Additionally, a Storm Water Pollution Prevention Plan and Spill Prevention Control and Countermeasure Plan will be developed and maintained to ensure that all are aware of its implementation requirements in the event of a spill.

All temporarily disturbed areas will be rehabilitated to its original condition.

Additionally, native organic material would be collected and stockpiled during construction to be used for erosion control after construction while the areas naturally rehabilitate.

Placement of riprap would reduce stream velocities and protect the drainage structure and downstream reaches from erosional forces.

**Federal Permit(s):**

This Project was determined to fall under the U.S. Army Corps of Engineers' Nationwide Permit Number 14 (Linear Transportation Projects).

**Status of CEQA:**

The Regional Water Board determined that the proposed project is categorically exempt from CEQA pursuant to CEQA Guidelines § 15301 (Cal. Code Regs., tit. 14, § 15301) (Existing Facilities) "Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety)."

In addition to this exemption, the Regional Water Board determined that the project is also categorically exempt from CEQA pursuant to CEQA Guidelines § 15302 (Replacement or Reconstruction) (Cal. Code Regs., tit. 14, § 15302). This exemption applies to the replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.

In accordance with CEQA Guidelines Section 15062, the Regional Water Board shall file a Notice of Exemption with the Office of Planning and Research upon approval of the Clean Water Act Section 401 Water Quality Certification.

## Exhibit 4

**RULE 801 CONSTRUCTION AND EARTHMOVING ACTIVITIES**  
(Adopted 11/08/2005)

**A. Purpose**

The purpose of this rule is to reduce the amount of fine Particulate Matter (PM-10) entrained in the ambient air as a result of emissions generated from Construction and other Earthmoving Activities by requiring actions to prevent, reduce, or mitigate PM-10 emissions.

**B. Applicability**

This rule applies to any Construction and other Earthmoving Activities, including, but not limited to, land clearing, excavation related to construction, land leveling, grading, cut and fill grading, erection or demolition of any structure, cutting and filling, trenching, loading or unloading of bulk materials, demolishing, drilling, adding to or removing bulk of materials from open storage piles, weed abatement through disking, back filling, travel on-site and travel on access roads to and from the site.

**C. Definitions**

The definitions of terms found in Rule 800 (General Requirements for Control of Fine Particulate Matter (PM-10)) shall apply to this rule.

**D. Exemptions**

In addition to the exemptions listed in Rule 800, Section E, the following exemptions are established for this rule:

D.1 Construction or demolition at existing single family residential dwellings.

D.2 The 20% opacity limit of Sections E.1.a and E.2.b shall not apply when Wind Gusts exceed 25 miles per hour, provided that at least one of the following control measures is implemented for each applicable Fugitive Dust source type:

D.2.a Cease dust generating activities for a period of one hour after Wind Gusts last exceed the threshold. If operations cease for the remainder of the day, stabilization measures must be implemented.

D.2.b Apply water or dust Suppressants once per hour.

D.2.c Apply water to maintain 12% soil moisture content.

D.2.d Construct fences 3-5 feet high with 50% or less porosity, and must

be done in conjunction with another measure, as above.

E. Requirements

E.1 Construction sites and Earthmoving Activities:

- E.1.a All Persons who own or operate a Construction site shall comply with the requirements of Section F.1 so as to limit VDE to 20% opacity and comply with the conditions for a Stabilized Surface when applicable.
- E.1.b All Persons who perform any Earthmoving Activities shall comply with the requirements of Section F.1 so as to limit VDE to 20% opacity.
- E.1.c All Persons who own or operate a Construction site of 10 acres or more in size for residential developments or 5 acres or more for non-residential developments shall develop a dust control plan. The dust control plan shall be made available to the APCD upon request. The dust control plan shall comply with the requirements of Section F.
- E.1.d The owner or operator required to develop a dust control plan shall provide written notification to the APCD within 10 days prior to the commencement of any Construction activities via fax or mail. The requirement to develop a dust control plan shall apply to all such activities conducted for residential and non-residential (e.g., commercial, industrial, or institutional) purposes or conducted by any governmental entity. Regardless of whether a dust control plan is in place or not the owner or operator is still subject to comply with all requirements of the applicable rules under Regulation VIII at all times.

F. Best Available Control Measures for Fugitive Dust (PM-10)

F.1 Construction and Earthmoving Activities shall comply with the following requirements:

F.1.a Pre-Activity:

- F.1.a.1 Pre-water site sufficient to limit VDE to 20% opacity, and
- F.1.a.2 Phase work to minimize the amount of disturbed surface area at any one time.

F.1.b During Active Operations:

- F.1.b.1 Apply water or Chemical Stabilization as directed by product manufacturer to limit VDE to 20% opacity, or
- F.1.b.2 Construct and maintain wind barriers sufficient to limit VDE to 20% opacity. If utilizing wind barriers, control measure F.1.b.1 above shall be implemented.
- F.1.b.3 Apply water or Chemical Stabilization as directed by product manufacturer to unpaved haul/access roads and Unpaved Traffic Areas sufficient to limit VDE to 20% opacity and meet the conditions of a Stabilized Unpaved Road.

F.1.c Temporary Stabilization During Periods of Inactivity:

- F.1.c.1 Restrict vehicular access to the area by fencing or signage; and
- F.1.c.2 Apply water or Chemical Stabilization, as directed by product manufacturer, sufficient to comply with the conditions of a Stabilized Surface. If an area having 0.5 acres or more of disturbed surface area remains unused for seven or more days, the area must comply with the conditions for a Stabilized Surface area.

F.1.d Track Out/Carry Out of Bulk Materials at the site shall be mitigated in compliance with Rule 803.

F.1.e Unpaved Roads and Unpaved Traffic Areas at the site shall comply with Rule 805.

F.1.f Bulk Material handling operations at the site shall comply with Rule 802.

F.1.g Material transport of Bulk Material to, from, or around the site shall comply with Rule 802.

F.1.h Haul trucks transporting Bulk Material to, from, or around the site shall comply with Rule 802.

F.2 Dust Control Plan:

F.2.a Retain a copy of the dust control plan at the project site.

F.2.b Comply with the requirements of the approved dust control plan.

F.2.c A dust control plan shall contain all of the following information:

1. Name, address, and phone number of the Person responsible for the preparation, submittal, and implementation of the dust control plan and responsible for the project site.
2. A plot plan which shows the type and location of each project.
3. The total area of land surface to be disturbed, estimated daily throughput volume of earthmoving in cubic yards, and total area in acres of the entire project site.
4. The expected start and completion dates of dust generating and soil disturbance activities to be performed on the site.
5. The actual and potential sources of Fugitive Dust emissions on the site and the location of Bulk Material handling and storage areas, Paved and Unpaved Roads, entrances and exits where Track Out/Carry Out may occur, and Unpaved Traffic Areas.
6. Dust Suppressants to be applied, including: product specifications; manufacturer's usage instructions (method, frequency, and intensity of application); type, number, and capacity of application equipment; and information on environmental impacts and approvals or certifications related to appropriate and safe use for ground application.
7. Specific surface treatment(s) and/or control measures utilized to control Track Out/Carry Out, and sedimentation where unpaved and/or access points join paved public access roads.
8. The dust control plan should describe all Fugitive Dust control measures to be implemented before, during, and after any dust generating activity.

G. Record of Control Implementation

Any Person subject to the requirements of this rule shall compile and retain records that provide evidence of control measure application (i.e., receipts and/or purchase records). Such Person shall describe, in the records, the type of

treatment or control measure, extent of coverage, and date applied. For control measures which require multiple daily applications, recording the frequency of application will fulfill the recordkeeping requirements of this rule (i.e., water being applied three times a day and the date) Records shall be maintained and be readily accessible for two years after the date of each entry and shall be provided to the APCD upon request.

H. Violations

Failure to comply with any provisions of this rule shall constitute a violation of Regulation VIII.

## Exhibit 5

THE WHITE HOUSE

WASHINGTON

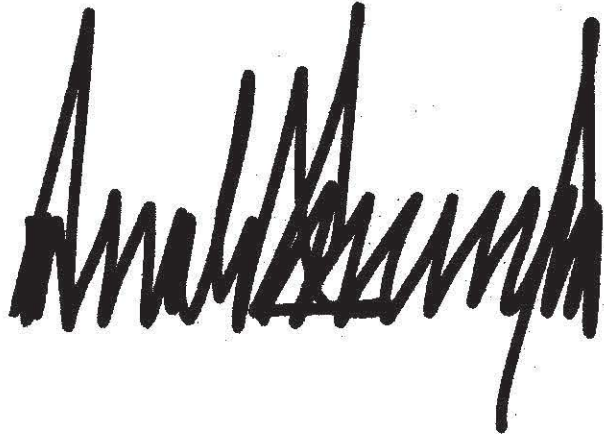
September 28, 2018

Dear Mr. Speaker:

In accordance with section 9023 of division A and section 113(b) of division C of the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 (H.R. 6157; the "Act"), I hereby designate for Overseas Contingency Operations/Global War on Terrorism all amounts (including rescissions) and contributions from foreign governments so designated by the Congress in the Act pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as outlined in the enclosed list of accounts.

The details of this action are set forth in the enclosed memorandum from the Director of the Office of Management and Budget.

Sincerely,

A large, bold, handwritten signature in black ink, characteristic of Donald Trump, positioned below the word "Sincerely,".

The Honorable Paul D. Ryan  
Speaker of the  
House of Representatives  
Washington, D.C. 20515



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

September 27, 2018

THE DIRECTOR

MEMORANDUM FOR THE PRESIDENT

FROM: Mick Mulvaney *[Signature]*  
Director

SUBJECT: Designation of Funding for Overseas Contingency Operations/Global War on Terrorism

Section 9023 of division A of the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 (H.R. 6157; the "Act") provides that the availability of amounts appropriated in such division of the Act that is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 ("BBEDCA") is contingent upon the President subsequently so designating all such amounts and transmitting such designations to the Congress. In addition, section 113(b) of division C of the Act provides that the availability of funds appropriated in such division of the Act that is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of BBEDCA is contingent upon the President subsequently so designating all such amounts and transmitting such designations to the Congress.

The amounts appropriated by the Act for Overseas Contingency Operations/Global War on Terrorism cover the military and civilian costs necessary to achieve U.S. national security goals in Afghanistan, the broader Middle East, and other designated conflict zones and to address other emergent crises. I recommend that you designate for Overseas Contingency Operations/Global War on Terrorism all amounts (including rescissions) and contributions from foreign governments so designated by the Congress in section 9023 of division A and section 113(a) of division C of the Act pursuant to section 251(b)(2)(A) of BBEDCA, as outlined in the enclosed list of accounts. Upon transmittal of these designations to the Congress, these funds will be available for obligation and expenditure on October 1, unless otherwise restricted in the Act. No further congressional action will be required.

The designation of these funds for Overseas Contingency Operations/Global War on Terrorism allows for adjustments to the discretionary spending limits in fiscal year (FY) 2019, as specified in section 251(b)(2)(A) of BBEDCA. These adjustments will be reflected when the Office of Management and Budget submits its final sequestration report for FY 2019 in accordance with section 254(f) of BBEDCA.

I have reviewed this proposed action and am satisfied it is necessary at this time. Therefore, I recommend that you make the requested funds available by signing the enclosed letters to the Speaker of the House of Representatives and the President of the Senate.

Enclosures

**Accounts in the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 (the "Act"), with Funding Designated by the President for Overseas Contingency Operations/Global War on Terrorism**

**Division A – Department of Defense Appropriations Act, 2019**

**Department of Defense**

**Military Personnel:**

- Military Personnel, Army
- Military Personnel, Navy
- Military Personnel, Marine Corps
- Military Personnel, Air Force
- Reserve Personnel, Army
- Reserve Personnel, Navy
- Reserve Personnel, Marine Corps
- Reserve Personnel, Air Force
- National Guard Personnel, Army
- National Guard Personnel, Air Force

**Operation and Maintenance:**

- Operation and Maintenance, Army
- Operation and Maintenance, Navy
- Operation and Maintenance, Marine Corps
- Operation and Maintenance, Air Force
- Operation and Maintenance, Defense-Wide
- Operation and Maintenance, Army Reserve
- Operation and Maintenance, Navy Reserve
- Operation and Maintenance, Marine Corps Reserve
- Operation and Maintenance, Air Force Reserve
- Operation and Maintenance, Army National Guard
- Operation and Maintenance, Air National Guard
- Afghanistan Security Forces Fund (including contributions)
- Counter-ISIS Train and Equip Fund (including contributions)

**Procurement:**

- Aircraft Procurement, Army
- Missile Procurement, Army
- Procurement of Weapons and Tracked Combat Vehicles, Army
- Procurement of Ammunition, Army
- Other Procurement, Army
- Aircraft Procurement, Navy
- Weapons Procurement, Navy
- Procurement of Ammunition, Navy and Marine Corps

- Other Procurement, Navy
- Procurement, Marine Corps
- Aircraft Procurement, Air Force
- Missile Procurement, Air Force
- Procurement of Ammunition, Air Force
- Other Procurement, Air Force
- Procurement, Defense-Wide

Research, Development, Test and Evaluation:

- Research, Development, Test and Evaluation, Army
- Research, Development, Test and Evaluation, Navy
- Research, Development, Test and Evaluation, Air Force
- Research, Development, Test and Evaluation, Defense-Wide

Revolving and Management Funds:

- Defense Working Capital Funds

Other Department of Defense Programs:

- Defense Health Program
- Drug Interdiction and Counter-Drug Activities, Defense
- Office of the Inspector General

General Provisions

Appropriation in section 9013 of title IX of division A:

- Ukraine Security Assistance Initiative

Appropriation in section 9018 of title IX of division A:

- Transfer to the operation and maintenance, military personnel, and procurement accounts to improve intelligence, surveillance, and reconnaissance capabilities of the Department of Defense

Rescissions in section 9021 of title IX of division A:

- Procurement of Ammunition, Navy and Marine Corps, 2017/2019
- Operation and Maintenance, Defense-Wide: Coalition Support Fund, 2018/2019
- Operation and Maintenance, Defense-Wide: DSCA Security Cooperation, 2018/2019
- Counter-ISIS Train and Equip Fund, 2018/2019
- Aircraft Procurement, Air Force, 2018/2020

Division C – Continuing Appropriations Act, 2019

Department of Homeland Security

- Coast Guard, Operating Expenses

Department of State

Administration and Foreign Affairs:

- Diplomatic and Consular Programs
- Office of Inspector General
- Embassy Security, Construction, and Maintenance

International Organizations:

- Contributions to International Organizations
- Contributions for International Peacekeeping Activities

**United States Agency for International Development**

Funds Appropriated to the President:

- Operating Expenses
- Office of Inspector General

**Bilateral Economic Assistance**

Funds Appropriated to the President:

- International Disaster Assistance
- Transition Initiatives
- Complex Crises Fund
- Economic Support Fund

Department of State:

- Migration and Refugee Assistance

**International Security Assistance**

Department of State:

- International Narcotics Control and Law Enforcement
- Nonproliferation, Anti-Terrorism, Demining and Related Programs
- Peacekeeping Operations

Funds Appropriated to the President:

- Foreign Military Financing Program

**General Provisions**

Section 7034(o)

- Use of prior-year OCO funds for purposes of loans or loan guarantees

THE WHITE HOUSE

WASHINGTON

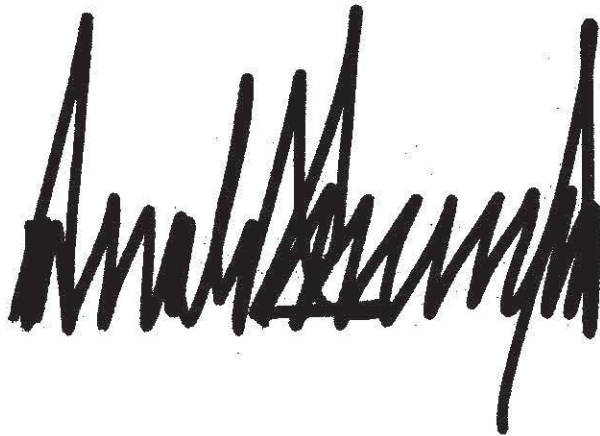
September 28, 2018

Dear Mr. President:

In accordance with section 9023 of division A and section 113(b) of division C of the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 (H.R. 6157; the "Act"), I hereby designate for Overseas Contingency Operations/Global War on Terrorism all amounts (including rescissions) and contributions from foreign governments so designated by the Congress in the Act pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as outlined in the enclosed list of accounts.

The details of this action are set forth in the enclosed memorandum from the Director of the Office of Management and Budget.

Sincerely,

A large, bold, handwritten signature in black ink, which appears to be "Donald Trump", is written over the signature line.

The Honorable Michael R. Pence  
President of the Senate  
Washington, D.C. 20510



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

September 27, 2018

THE DIRECTOR

MEMORANDUM FOR THE PRESIDENT

FROM:

Mick Mulvaney  
Director

SUBJECT:

Designation of Funding for Overseas Contingency Operations/Global War on Terrorism

Section 9023 of division A of the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 (H.R. 6157; the "Act") provides that the availability of amounts appropriated in such division of the Act that is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 ("BBEDCA") is contingent upon the President subsequently so designating all such amounts and transmitting such designations to the Congress. In addition, section 113(b) of division C of the Act provides that the availability of funds appropriated in such division of the Act that is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of BBEDCA is contingent upon the President subsequently so designating all such amounts and transmitting such designations to the Congress.

The amounts appropriated by the Act for Overseas Contingency Operations/Global War on Terrorism cover the military and civilian costs necessary to achieve U.S. national security goals in Afghanistan, the broader Middle East, and other designated conflict zones and to address other emergent crises. I recommend that you designate for Overseas Contingency Operations/Global War on Terrorism all amounts (including rescissions) and contributions from foreign governments so designated by the Congress in section 9023 of division A and section 113(a) of division C of the Act pursuant to section 251(b)(2)(A) of BBEDCA, as outlined in the enclosed list of accounts. Upon transmittal of these designations to the Congress, these funds will be available for obligation and expenditure on October 1, unless otherwise restricted in the Act. No further congressional action will be required.

The designation of these funds for Overseas Contingency Operations/Global War on Terrorism allows for adjustments to the discretionary spending limits in fiscal year (FY) 2019, as specified in section 251(b)(2)(A) of BBEDCA. These adjustments will be reflected when the Office of Management and Budget submits its final sequestration report for FY 2019 in accordance with section 254(f) of BBEDCA.

I have reviewed this proposed action and am satisfied it is necessary at this time. Therefore, I recommend that you make the requested funds available by signing the enclosed letters to the Speaker of the House of Representatives and the President of the Senate.

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Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 (the "Act"),  
with Funding Designated by the President for Overseas Contingency Operations/Global  
War on Terrorism**

**Division A – Department of Defense Appropriations Act, 2019**

**Department of Defense**

**Military Personnel:**

- Military Personnel, Army
- Military Personnel, Navy
- Military Personnel, Marine Corps
- Military Personnel, Air Force
- Reserve Personnel, Army
- Reserve Personnel, Navy
- Reserve Personnel, Marine Corps
- Reserve Personnel, Air Force
- National Guard Personnel, Army
- National Guard Personnel, Air Force

**Operation and Maintenance:**

- Operation and Maintenance, Army
- Operation and Maintenance, Navy
- Operation and Maintenance, Marine Corps
- Operation and Maintenance, Air Force
- Operation and Maintenance, Defense-Wide
- Operation and Maintenance, Army Reserve
- Operation and Maintenance, Navy Reserve
- Operation and Maintenance, Marine Corps Reserve
- Operation and Maintenance, Air Force Reserve
- Operation and Maintenance, Army National Guard
- Operation and Maintenance, Air National Guard
- Afghanistan Security Forces Fund (including contributions)
- Counter-ISIS Train and Equip Fund (including contributions)

**Procurement:**

- Aircraft Procurement, Army
- Missile Procurement, Army
- Procurement of Weapons and Tracked Combat Vehicles, Army
- Procurement of Ammunition, Army
- Other Procurement, Army
- Aircraft Procurement, Navy
- Weapons Procurement, Navy
- Procurement of Ammunition, Navy and Marine Corps

- Other Procurement, Navy
- Procurement, Marine Corps
- Aircraft Procurement, Air Force
- Missile Procurement, Air Force
- Procurement of Ammunition, Air Force
- Other Procurement, Air Force
- Procurement, Defense-Wide

Research, Development, Test and Evaluation:

- Research, Development, Test and Evaluation, Army
- Research, Development, Test and Evaluation, Navy
- Research, Development, Test and Evaluation, Air Force
- Research, Development, Test and Evaluation, Defense-Wide

Revolving and Management Funds:

- Defense Working Capital Funds

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- Drug Interdiction and Counter-Drug Activities, Defense
- Office of the Inspector General

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- Operation and Maintenance, Defense-Wide: DSCA Security Cooperation, 2018/2019
- Counter-ISIS Train and Equip Fund, 2018/2019
- Aircraft Procurement, Air Force, 2018/2020

**Division C – Continuing Appropriations Act, 2019**

**Department of Homeland Security**

- Coast Guard, Operating Expenses

**Department of State**

Administration and Foreign Affairs:

- Diplomatic and Consular Programs
- Office of Inspector General
- Embassy Security, Construction, and Maintenance

International Organizations:

- Contributions to International Organizations
- Contributions for International Peacekeeping Activities

**United States Agency for International Development**

Funds Appropriated to the President:

- Operating Expenses
- Office of Inspector General

**Bilateral Economic Assistance**

Funds Appropriated to the President:

- International Disaster Assistance
- Transition Initiatives
- Complex Crises Fund
- Economic Support Fund

Department of State:

- Migration and Refugee Assistance

**International Security Assistance**

Department of State:

- International Narcotics Control and Law Enforcement
- Nonproliferation, Anti-Terrorism, Demining and Related Programs
- Peacekeeping Operations

Funds Appropriated to the President:

- Foreign Military Financing Program

**General Provisions**

Section 7034(o)

- Use of prior-year OCO funds for purposes of loans or loan guarantees