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

15	STATE OF CALIFORNIA, <i>et al.</i> ,	
16		No. 4:19-cv-00872-HSG
17	Plaintiffs,	No. 4:19-cv-00892-HSG
18	v.	
19	DONALD J. TRUMP, <i>et al.</i> ,	JOINT STATUS REPORT
20	Defendants.	PROPOSING BRIEFING
21		SCHEDULE FOR SUMMARY
22		JUDGMENT MOTIONS ON
23	SIERRA CLUB, <i>et al.</i> ,	CLAIMS RELATED TO 10 U.S.C.
24		§ 2808
25	Plaintiffs,	
26	v.	
27	DONALD J. TRUMP, <i>et al.</i> ,	
28	Defendants.	

1 On July 18 and 19, 2019, this Court issued separate orders in the above-captioned cases
 2 staying the summary judgment briefing schedule for claims based on 10 U.S.C. § 2808 and
 3 instructed the parties to submit a proposed schedule for briefing on such claims within 10 days
 4 of a decision by the Acting Secretary of Defense concerning § 2808 border-barrier projects. *See*
 5 Order Staying Summary Judgment Briefing Schedule on Claims Related to 10 U.S.C. § 2808,
 6 ECF No. 200 in 4:19-cv-00872 and ECF No. 197 in 4:19-cv-00892-HSG.

7 On September 3, 2019, Defendants filed a notice of the decision by the Secretary of
 8 Defense to authorize eleven border barrier projects in California, Arizona, New Mexico, and
 9 Texas pursuant to 10 U.S.C. § 2808. *See* Notice of Decision by the Department of Defense to
 10 Authorize Border Barrier Projects Pursuant to 10 U.S.C. §2808, ECF No. 206 in in 4:19-cv-
 11 00872 and ECF No. 201 in 4:19-cv-00892-HSG. This filing represents that ground-disturbing
 12 activities in the first border barrier project authorized pursuant to 10 U.S.C. § 2808 within the
 13 boundaries of the Plaintiff States is San Diego Project 4. *See id.*, Ex. 3 ¶ 10.b. The soonest any
 14 ground-disturbing activity will begin for San Diego Project 4 is November 22, 2019. *See id.*

15 On September 12, 2019, the parties conferred and largely agreed on a briefing schedule
 16 and page limits for summary judgment motions on Plaintiffs’ claims relating to 10 U.S.C.
 17 § 2808, but were unable to reach agreement on the date for Plaintiffs’ opening brief. The
 18 proposed schedule along with competing dates for Plaintiffs’ opening brief is as follows:
 19

DATE	EVENT
September 16	Lodge Administrative Record
Plaintiff States’ proposed date: October 11 Defendants’ proposed date: October 7	Plaintiffs’ Motions for Summary Judgment (35 pages)
October 25	Defendants’ Cross-Motions for Summary Judgment and Oppositions to Plaintiffs’ Motion (35 pages)
Nov. 1	Plaintiffs’ Replies and Oppositions to Defendants’ Motions (25 pages)
Nov. 8	Defendants’ Replies (25 pages)
Nov. 18	Hearing

1 The parties' respective positions on the date for Plaintiffs opening brief are set forth
2 below and a proposed order is attached.

3 Organizational Plaintiffs' Position

4 The Organizational Plaintiffs consent to proceed under either the State Plaintiffs'
5 proposed schedule or the Defendants' proposed schedule.

6 Plaintiff States' Position

7 Plaintiff States request that their opening brief be due on October 11. Plaintiff States
8 must evaluate, for the first time, eleven different border barrier projects and numerous defunded
9 military construction projects. While the Defendants request approximately three weeks for
10 each side to file their briefs, the access to information regarding these projects has not been
11 equal. Plaintiff States have had no information about the eleven different border barrier
12 projects or the numerous defunded military construction projects prior to September 3. Even
13 now, Plaintiff States have requested additional information from Defendants regarding the
14 border barrier projects and do not have an administrative record to evaluate. In contrast,
15 Defendants announced their general intent to defund these military construction projects and
16 build these border barriers pursuant to 10 U.S.C. § 2808 back in February 2019, yet they have
17 only provided notice of these projects as of ten days ago, with the first ground-disturbing
18 activity to occur in one of Plaintiff States as early as November 22. The speed with which this
19 briefing must occur is thus a problem of Defendants' own creation, and which
20 disproportionately disadvantages the Plaintiffs States. Given the short timeframe in which
21 ground-disturbing will likely occur, Plaintiffs States are working as expeditiously as possible to
22 accommodate a full briefing schedule in this time but respectfully request until October 11 to
23 file their opening brief given the complexity of issues, the number of projects to evaluate, and
24 the multiple parties in this lawsuit.

25 Defendants' Position

26 Defendants request that Plaintiffs file their opening briefs on October 7. Defendants are
27 expediting compilation of the administrative record for lodging on September 16 and the
28 submission of the record on that date will provide Plaintiffs with three full weeks to review the

1 record prior to filing their opening briefs on October 7. Similarly, this schedule will provide
2 Defendants with just shy of three weeks to respond to Plaintiffs' briefs. Plaintiffs have been
3 aware of the locations of the § 2808 border barrier projects since Defendants' September 3 notice
4 and a filing date of October 7 will provide Plaintiffs with more than a month to prepare
5 declarations and other supporting materials necessary for their opening motion. In light of the
6 fact that Plaintiffs intend to file two separate briefs that may challenge up to eleven different
7 border barrier projects, Defendants anticipate that those submissions are likely to be voluminous
8 and contain many fact-specific declarations to which Defendants may need to
9 respond. Plaintiffs' proposed schedule would provide Defendants with only two weeks to
10 respond to those materials while giving Plaintiffs approximately six weeks to prepare them. The
11 schedule should not be tilted that far in Plaintiffs' favor. Defendants' proposal equitably
12 provides Plaintiffs with three weeks to submit their opening brief after the submission of the
13 administrative record and provides Defendants with approximately three weeks to
14 respond. Defendants' proposed schedule thus provides an even distribution of time to both sides.
15 Accordingly, the Court should set the deadline for Plaintiffs' opening briefs for October 7.

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1 DATE: September 13, 2019

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