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

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| 16 STATE OF CALIFORNIA, <i>et al.</i> , 17 Plaintiffs, 18 v. 19 DONALD J. TRUMP, <i>et al.</i> , 20 Defendants. 21 | No. 4:19-cv-00872-HSG No. 4:19-cv-00892-HSG |
| 22 SIERRA CLUB, <i>et al.</i> , 23 Plaintiffs, 24 v. 25 DONALD J. TRUMP, <i>et al.</i> , 26 Defendants. 27 28 | <p>DEFENDANTS' RESPONSE TO THE COURT'S NOVEMBER 20, 2019 ORDER REQUESTING ADDITIONAL INFORMATION ABOUT MILITARY INSTALLATIONS</p> |

State of California, et al. v. Donald J. Trump, et al., 4:19-cv-00872-HSG – Defs.’ Response to Court’s Nov. 20 Order
Sierra Club et. al. v. Donald J. Trump, et al., 4:19-cv-00892-HSG – Defs.’ Response to Court’s Nov. 20 Order

1 Defendants hereby submit the following response to the questions posed by the Court about
2 military installations during the November 20, 2019 hearing in the above-captioned cases.

3 **1. The Process and Authority for Establishing a Military Installation**

4 The process of establishing a military installation involves two steps. First, the Department
5 of Defense (DoD) must obtain jurisdiction over the land where the installation will be located.
6 Second, DoD must designate the land as part of either a new or existing military installation in
7 accordance with DoD’s internal policies and regulations. *See* Second Declaration of Alex A. Beehler
8 ¶¶ 3–7 (Exhibit 1).

9 With respect to the first step, DoD must bring the real property on which the installation will
10 be located “under the jurisdiction of the Secretary of a military department.” 10 U.S.C. § 2801(c)(4)
11 (defining “military installation” as “a base, camp, post, station, yard, center, or other activity under the
12 jurisdiction of the Secretary of a military department”); Second Beehler Decl. ¶ 4. For the border
13 barrier projects at issue in these cases, the authorization in 10 U.S.C. § 2808 for DoD to engage in
14 “military construction” includes “any acquisition of land.” 10 U.S.C. § 2801(a); Second Beehler Decl.
15 ¶ 4.b.i.¹ Pursuant to this authority, DoD is acquiring jurisdiction over the land for the § 2808 border
16 barrier projects through a combination of (1) transfers of administrative jurisdiction over federal land
17 from other federal agencies; and (2) negotiated purchases or condemnation of non-federal land. *See*
18 Defs.’ Motion for Summary Judgment (ECF No. 236 at 8–9, 14–15 in No. 19-cv-872; ECF No. 236
19 at 8–9, 18–19 in No. 19-cv-892).

20 The process required to bring land under the jurisdiction of a military department varies
21 depending on the type of land at issue. *See* Second Beehler Decl. ¶ 4. For federal land that can be
22 transferred under the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701 *et seq.*,
23 the military department submits a withdrawal application to the Department of the Interior (DoI) in
24

25 ¹ In addition to § 2808, DoD has other statutory authorities to acquire real property. *See, e.g.*,
26 10 U.S.C. § 2663 (land acquisition authorities); 10 U.S.C. § 18233 (authorization to acquire land for
27 reserve components); John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub.
28 L. 115-232, Div. B, 132 Stat. 1636 (Aug. 13, 2018) (annual authorization for military departments to
undertake military construction projects and land acquisition).

1 accordance with 43 U.S.C. § 157 or 43 C.F.R. § 2310. *See* Second Beehler Decl. ¶ 4.a.i. If the
2 application is granted, DoI withdraws the land from other forms of use under the public land laws
3 and transfers administrative jurisdiction to the requesting military department by publication of a
4 Public Land Order. *See id.*; *see also* Public Land Order Nos. 7883–87, 84 Fed. Reg. 50063–65 (Sept. 24,
5 2019).² For federal land subject to the Federal Property and Administrative Services Act, as amended,
6 40 U.S.C. §§ 101 *et seq.*, the transfer of custody and accountability among agencies occurs by the
7 General Services Administration (GSA) executing a letter effectuating transfer. *See* Second Beehler
8 Decl. ¶ 4.a.ii; *see also* 40 U.S.C. § 521 (“The Administrator of General Services shall . . . provide for the
9 transfer of excess property . . . among federal agencies”); 41 C.F.R. § 102-75.175 (requiring GSA
10 approval “[b]efore property can be transferred among Federal agencies”); 41 C.F.R. § 102-75.1285
11 (GSA transfers property “via letter assigning ‘custody and accountability’ for the property to the
12 requesting agency. Title to the property is held in the name of the United States; however, the
13 requesting agency becomes the landholding agency. . . .”). For property not already owned by the
14 United States, the process for bringing real property under the jurisdiction of the Secretary of a military
15 department begins by obtaining ownership over the real property in the name of the United States.
16 *See* Second Beehler Decl. ¶ 4.b. Real property not owned by the United States may be acquired by a
17 military department in the name of the United States through purchase, donation, exchange, or
18 condemnation. *See id.* ¶ 4.b.ii. Once the military department acquires the real property, the military
19 department has administrative jurisdiction and real property accountability on behalf of the U.S.
20 Government. *See id.* ¶ 4.b.iii.

21 After DoD obtains administrative jurisdiction over the land, in order to manage and account
22 for the real property under its jurisdiction, the military department may either designate the property
23 as a new military installation or assign the property to an existing installation. *See* Second Beehler
24 Decl. ¶ 5 (citing Chapter 159 of Title 10 U.S. Code and DoD Directive 4165.06, *Real Property*). Under
25

26 ² While the DoI may withdraw Federal land and transfer jurisdiction in accordance with
27 FLPMA, 43 U.S.C. § 1714, withdrawals of Federal land greater than 5,000 acres in the aggregate for
28 any one defense project or facility, including transfers of administrative jurisdiction to a military
department require an Act of Congress. *See* 43 U.S.C. § 156.

1 Army procedures established by General Orders No. 2019-01, *Assignment of Functions and Responsibilities*
2 *Within Headquarters, Department of the Army*, such organizational designations relating to installations are
3 directed by a General Order signed by the Secretary of the Army and registered in the DoD official
4 real property database of record as required by DoD policy. *See* Second Beehler Decl. ¶ 6; *see also*
5 General Order No. 2019-36, Assignment of Southwest Border Sites (ECF No. 236-7 in No. 19-cv-
6 872; ECF No. 236-7 No. 19-cv-892).

7 **2. Geographically Separate Sites of a Military Installation**

8 The Court also asked about the authority for two references in the Administrative Record
9 stating that land DoD acquires for a military installation is designated either “as its own installation or
10 as part of an existing, nearby military installation.” *See* AR at 3, 40 (ECF No. 212 in 19-CV-872; ECF
11 No. 206 in 19-CV-892). There is no legal, regulatory, or policy requirement for geographically separate
12 sites to be assigned to a “nearby” military installation. Second Beehler Decl. ¶ 8. Nor is there any
13 legal, regulatory, or policy requirement for all the sites or lands that comprise a given military
14 installation to be located in the same State or within a certain distance of other sites associated with
15 the military installation. *Id.* In the Secretary of Defense’s September 3, 2019, memorandum to the
16 Secretary of the Army (AR at 9–10), the Secretary of Defense directed the Department of the Army
17 to “add such land to the Department of the Army’s real property inventory, either as a new installation
18 or as part of an existing military installation,” without conditions on the location of the existing
19 installation to which the land could be added. *Id.*

20 The Department of the Army, on behalf of the United States, owns and uses many parcels of
21 land that are not contiguous to other portions of a military installation and that are not considered
22 separate military installations. Second Beehler Decl. ¶ 9. The same is true for other military
23 departments. *Id.* Such locations are referred to as “sites.” *Id.* DoD Instruction 4165.14, *Real Property*
24 *Inventory (RPI) and Forecasting*, defines a site as a “physical (geographic) location that is, or was owned
25 by, leased to, or otherwise possessed by a DoD Component on behalf of the United States. Each site
26 (except for leased) is assigned to a single installation.” *Id.* A site may exist as “land only, where there
27 are no facilities present,” “facility or facilities only, where the underlying land is neither owned nor
28 controlled by the government,” or “land and the facilities thereon.” *Id.*

1 Each site is assigned to a military installation for real property accountability purposes and is
2 considered part of that installation, even if located remotely from the Army Garrison. Second Beehler
3 Decl. ¶ 10. The Garrison is the Army organizational unit that is responsible for installation
4 management across the installation sites. *Id.* (citing Army Regulation 405-70, *Utilization of Real Property*).
5 Sites can be in States other than the one in which the Army Garrison unit is located, and the distance
6 between various sites can vary significantly. *Id.* For example, Fort Campbell is located in both
7 Kentucky and Tennessee; the Green River Test Complex site in Utah is part of White Sands Missile
8 Range in New Mexico; the Special Forces site in Key West, Florida, is part of Fort Bragg, North
9 Carolina; six different Navy Outlying Landing Field sites in Alabama are part of Naval Air Station
10 Whiting Field, Florida; a new National Geospatial Intelligence Agency West Campus being
11 constructed in Missouri is part of Scott Air Force Base, Illinois; the Pentagon Reservation includes
12 the Pentagon building and Mark Center in Virginia as well as the Raven Rock Complex in Maryland
13 and Pennsylvania; and among other Army examples, Fort Carson, Fort Belvoir, Fort Bliss, Joint Base
14 Lewis McChord, Fort Benning, Fort Greely, and Fort Detrick all include various geographically
15 separate sites. *Id.*

16 The § 2808 project locations were assigned to Fort Bliss because it is the largest, most capable
17 active Army installation in the vicinity of the southern border. Second Beehler Decl. ¶ 11. Fort Bliss
18 has a sizable existing installation management office with experience addressing various land
19 management issues and experience working with the U.S. Army Corps of Engineers on military
20 construction projects. *Id.* The Department of the Army also determined that it is more efficient for
21 command of all the real property associated with the projects undertaken pursuant to § 2808 to be
22 vested in one Army installation, given the similar nature and scope of all such § 2808 projects. *Id.* In
23 addition, Fort Bliss has an existing support relationship with the U.S. Border Patrol, which maintains
24 a regional office on the installation. *Id.*

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Respectfully submitted,

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