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

18 **STATE OF CALIFORNIA et al.;**
 19
 20 Plaintiffs,
 21
 22 **DONALD J. TRUMP, in his official**
capacity as President of the United States
 23 **of America et al.;**
 24 Defendants.

Case No. 4:19-cv-00872-HSG
**PLAINTIFF STATES OF CALIFORNIA,
 COLORADO, HAWAII, MARYLAND,
 NEW MEXICO, NEW YORK,
 OREGON, VIRGINIA, AND
 WISCONSIN’S RESPONSE TO THE
 COURT’S NOVEMBER 20, 2019
 ORDER REQUESTING ADDITIONAL
 INFORMATION ABOUT MILITARY
 INSTALLATIONS**
 Date: November 20, 2019
 Time: 10:00 am
 Judge: Honorable Haywood S. Gilliam,
 Jr.
 Trial Date: None Set
Action Filed: February 18, 2019

1 Plaintiff States of California, Colorado, Hawaii, Maryland, New Mexico, New York,
2 Oregon, and Wisconsin, and the Commonwealth of Virginia (the States) hereby submit the
3 following response to the questions posed by the Court about military installations during the
4 November 20, 2019 hearing in the above-captioned case.

5 The States do not dispute the factual claims made in Defendants' November 25, 2019
6 Response to the Court's November 20, 2019 Order Requesting Additional Information about
7 Military Installations, *California v. Trump (California)* No 19-cv-872 (Nov. 25, 2019), ECF 251
8 (Defendants' Additional Information Filing). However, Defendants' attempt to use their authority
9 renders the "military construction" condition of 10 U.S.C. § 2808 superfluous. *See* Plaintiff
10 States' Reply in Support of Motion for Partial Summary Judgment Regarding Section 2808 and
11 NEPA, and Opposition to Defendants' Motion for Partial Summary Judgment, *California* (Nov.
12 1, 2019), ECF 241, 6-7. Defendants acknowledge that under their interpretation, any real property
13 may become part of a military installation and thus part of a military construction project, even if
14 it is not owned by the United States. Defendants' Additional Information Filing, Exhibit 1,
15 Second Beehler Decl. ¶¶ 4(b)(iii), 7. As such, Defendants still fail to provide any limiting factor
16 on what constitutes "military construction" under § 2808.

17 Nothing stated in Defendants' Additional Information Filing cures the legal deficiencies
18 with Defendants' divert and build scheme as identified in this Court's earlier preliminary ruling
19 on Defendants' use of § 2808, and accordingly, this Court should grant Plaintiffs' Notice of
20 Motion and Motion for Partial Summary Judgment Regarding Section 2808 and NEPA,
21 *California* (Oct. 11, 2019), ECF No. 220.

1 Dated: November 26, 2019

Respectfully submitted,

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ATTESTATION OF SIGNATURES

I, Heather C. Leslie, hereby attest, pursuant to Local Civil Rule 5-1(i)(3) of the Northern District of California that concurrence in the filing of this document has been obtained from each signatory hereto.

/s/ Heather C. Leslie

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