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

16 STATE OF CALIFORNIA, <i>et al.</i> ,
17 Plaintiffs,
18 v.
19 DONALD J. TRUMP, <i>et al.</i> ,
20 Defendants.
21
22
23 SIERRA CLUB, <i>et al.</i> ,
24 Plaintiffs,
25 v.
26 DONALD J. TRUMP, <i>et al.</i> ,
27 Defendants.
28

No. 4:19-cv-00872-HSG
 No. 4:19-cv-00892-HSG

**NOTICE REGARDING
 AUTHORIZATION OF
 ADDITIONAL BORDER
 BARRIER PROJECTS
 PURSUANT TO 10 U.S.C. § 284**

1 Defendants hereby notify the Court and parties in the above-captioned cases that the
2 Department of Defense (DoD) has authorized the funding and construction of additional border
3 barrier projects pursuant to 10 U.S.C. § 284.

4 On January 15, 2020, the Department of Homeland Security (DHS) submitted a request to
5 DoD for assistance in constructing 13 border barrier projects located in drug-smuggling corridors
6 along the southern border. *See* Seventh Declaration of Kenneth Rapuano, Assistant Secretary of
7 Defense for Homeland Defense and Global Security ¶ 3 (Exhibit 1). The request sought construction
8 of new fencing as well as the replacement of existing vehicle barriers and dilapidated fencing, the
9 construction of new and improvement of existing patrol roads, and the installation of lighting, all of
10 which would be on Federal land. *Id.* The 13 requested projects consist of 38 discrete construction
11 segments. *See id.*, Ex. A.

12 On February 13, 2020, the Secretary of Defense approved construction and funding for 31
13 segments within the 13 project areas. *See* Seventh Rapuano Decl. ¶ 4 & Ex. B. The approved projects
14 are summarized below:

- 15 1. **San Diego A:** 3 miles of new primary pedestrian fencing and 14 miles of replacement
16 pedestrian fencing in San Diego County, CA (Segments 1–3);
- 17 2. **El Centro A:** 10 miles of new pedestrian fencing in Imperial County, CA (Segment 1);
- 18 3. **Yuma A:** 7 miles of vehicle barriers replaced with new pedestrian fencing and 9 miles of
19 replacement secondary pedestrian fencing in Yuma County, AZ (Segments 1–2);
- 20 4. **Yuma B:** 0.5 miles of replacement primary pedestrian fencing and 0.5 miles of new secondary
21 pedestrian fencing located in Imperial County, CA on the Quechan Reservation (Segments 1–
22 2);
- 23 5. **Tucson A:** 24 miles of replacement primary pedestrian fencing, 1 mile of replacement
24 secondary pedestrian fencing, and 4.5 miles of new primary pedestrian fencing in Cochise
25 County, AZ (Segments 1–5);
- 26 6. **Tucson B:** 2 miles of replacement primary pedestrian fencing and 27.5 miles of new
27 pedestrian fencing in Santa Cruz and Cochise Counties, AZ (Segments 1, 3–6);
- 28 7. **Tucson C:** 7 miles of replacement primary pedestrian fencing and 9 miles of new primary
pedestrian fencing in Santa Cruz and Pima Counties, AZ (Segments 1, 3–4);

- 1 8. **El Paso A:** 20 miles of replacement primary pedestrian fencing in El Paso County, TX
2 (Segment 1);
- 3 9. **El Paso B:** 2 miles of new pedestrian fencing in Luna County, NM (Segment 6);
- 4 10. **El Paso C:** 10 miles of replacement pedestrian fencing in Dōna Ana and Luna Counties, NM
5 (Segments 1–2);
- 6 11. **El Paso D:** 3 miles of replacement secondary pedestrian fencing and 18 miles of replacement
7 primary pedestrian fencing in El Paso County, TX, and 0.5 miles of new primary pedestrian
8 fencing in Dōna Ana County, NM (Segments 1–4);
- 9 12. **Del Rio A:** 2 miles of replacement pedestrian fencing in Maverick County, TX (Segment 1);
- 10 13. **Del Rio B:** 2 miles of replacement pedestrian fencing in Val Verde County, TX (Segment 1).

11 To fund these projects, the Secretary of Defense authorized the transfer of \$3.831 billion to
12 the counter narcotics support line of the Drug Interdiction and Counter-Drug Activities, Defense,
13 account. *See* Seventh Rapuano Decl. ¶ 5. The Secretary directed the transfer of funds pursuant to
14 DoD’s general transfer authority under § 8005 of the DoD Appropriations Act for Fiscal Year 2020,
15 *see* Pub. L. No. 116-93, 133 Stat 2317, Div. A, Title VIII, and § 1001 of the National Defense
16 Authorization Act for Fiscal Year 2020 (NDAA), *see* Pub. L. No. 116-92, 133 Stat. 1198, Title X, and
17 DoD’s special transfer authority under § 9002 of the FY20 DoD Appropriations Act and § 1520A of
18 the FY20 NDAA. *Id.* The source accounts for the transferred funds are described in Exhibit C to
19 the Seventh Rapuano Declaration. *Id.*

20 The U.S. Army Corps of Engineers anticipates that it will award contracts and fully obligate
21 the necessary funds for the new § 284 projects no earlier than March 15, 2020. *See* Second Declaration
22 of Jill Stiglich, Director of Contracting for the U.S. Army Corps of Engineers ¶ 4 (Exhibit 2). Several
23 of the new § 284 projects are in close proximity to the prior § 284 projects approved in fiscal 2019,
24 and the U.S. Army Corps of Engineers intends modify the existing § 284 contracts to add the new
25 project work. *Id.* ¶ 5.a. Because the contractors working on the prior § 284 projects are already
26 mobilized in close proximity to the new project areas, ground-disturbing activities and substantial
27 construction may begin as soon as the contract modifications are executed, that is, no earlier than
28 March 15, 2020. *Id.* The U.S. Army Corps of Engineers is working to determine which, if any, of the
additional § 284 projects to undertake using this contract modification process. *Id.*

1 For the remaining § 284 projects that are not executed through the contract modification
2 process described above, the U.S. Army Corps of Engineers intends to undertake a competitive
3 contract award process and award task orders to qualified contractors holding a multiple award task
4 order contract. *See* Stiglich Decl. ¶ 5.b. The U.S. Army Corps of Engineers anticipates that it will
5 award the first of these task orders and fully obligate the necessary funds for these additional § 284
6 projects no earlier than April 7, 2020. *Id.* For these projects, the U.S. Army Corps of Engineers will
7 be prepared to begin ground-disturbing activities as early as five days after task order award and
8 substantial construction as early as ten days after task order award. *Id.*

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11 DATE: February 13, 2020

Respectfully submitted,

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