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

16 STATE OF CALIFORNIA, *et al.*,

17 Plaintiffs,

18 v.

19 DONALD J. TRUMP, *et al.*,

20 Defendants.

No. 4:19-cv-00872-HSG

No. 4:19-cv-00892-HSG

**NOTICE OF DECISION BY THE
 DEPARTMENT OF DEFENSE TO
 AUTHORIZE BORDER BARRIER
 PROJECTS PURSUANT TO 10
 U.S.C. § 2808**

23 SIERRA CLUB, *et al.*,

24 Plaintiffs,

25 v.

26 DONALD J. TRUMP, *et al.*,

27 Defendants.
 28

1 Defendants hereby notify the Court and parties in the above-captioned cases that, on
2 September 3, 2019, the Secretary of Defense authorized eleven border barrier projects in
3 California, Arizona, New Mexico, and Texas pursuant to 10 U.S.C. § 2808. A description of the
4 project locations and estimated cost of each project is attached as Exhibit 1. *See* Memorandum
5 from the Secretary of Defense re: Guidance for Undertaking Military Construction Projects
6 Pursuant to Section 2808 of Title 10, U.S. Code (Sept. 3, 2019). In accordance with 10 U.S.C.
7 § 2808(b), the Secretary of Defense has notified Congress of his decision to undertake military
8 construction projects authorized by Section 2808. *See, e.g.*, Letter from Secretary of Defense
9 Mark Esper to Sen. James Inhofe (Sept. 3, 2019) (attached as Exhibit 2).

10 To fund these projects, the Secretary of Defense has authorized the Department of the
11 Army to expend up to \$3.6 billion in unobligated military construction funds. *See id.* The
12 Secretary of Defense has further directed that, initially, only funds associated with deferred
13 military construction projects located outside of the United States will be provided to the
14 Department of the Army. *See id.* Deferred military construction projects outside of the United
15 States account for \$1.8 billion of the required funds. *See id.* The remaining \$1.8 billion
16 associated with deferred military construction projects located in the United States (including
17 U.S. territories) will be made available to the Secretary of the Army when it is needed for
18 obligation. *See id.* Defendants will provide the Court and parties with the list of unobligated
19 military construction projects currently identified for deferral as soon as congressional
20 notifications are complete but no later than Friday, September 6, 2019.

21 The timeline for obligating funds and beginning construction of the Section 2808 projects
22 depends on type of expenditure and the project's location. *See* Declaration of Brigadier General
23 Glenn Goddard ¶¶ 7–12 (attached as Exhibit 3). The U.S. Army Corps of Engineers (USACE)
24 has identified four types of expenditures associated with the projects. *See id.* ¶¶ 7–10. First,
25 USACE expects to begin incurring project-related administrative costs as soon as funds are made
26 available. *See id.* ¶ 7. These costs include labor costs for USACE employees, travel costs, and
27 other overhead costs related to the approved projects. *Id.* Because it has not yet identified the
28 number of personnel or the amount of their time needed to manage these projects, USACE is

1 unable to provide a precise estimate of the amount of money it would need for these
2 administrative costs. *Id.* USACE is developing a staffing plan and a precise budget for its
3 administrative costs, but based on experience from other border barrier projects, once fully
4 staffed, USACE estimates the likely administrative costs will be approximately \$1 million per
5 week. *Id.*

6 Second, USACE estimates it will spend approximately \$500,000 on costs associated with
7 initial real estate activities necessary to acquire or obtain administrative jurisdiction of land not
8 currently under the jurisdiction of the Department of Defense (DoD). *See id.* ¶ 8. Some of the
9 project areas are on land not currently under the control of DoD, thus DoD must acquire
10 administrative jurisdiction over the land and add it to the Department of the Army's real property
11 inventory, either as a new military installation or as part of an existing military installation. *See*
12 Exhibit 1. As part of that process, USACE must acquire, among other things, preliminary title
13 evidence on all lands necessary for the projects. *See* Goddard Decl. ¶ 7. USACE expects to
14 begin obligating and expending funds for this category of expenses starting on September 23 and
15 continuing over the course of the next several months. *See id.*

16 Third, USACE will use funds made available for the approved Section 2808 projects to
17 provide just compensation to landowners for land acquired through negotiated purchases or
18 condemnation, for payments of relocation assistance benefits, and for the provision of substitute
19 facilities, where appropriate. *See id.* ¶ 9. USACE does not expect to expend any funds for these
20 purposes before April 2020. *Id.*

21 Fourth, USACE will use Section 2808 funds for barrier constriction contracts. *See id.*
22 ¶ 10. The timeline for obligating funds for construction contracts and beginning construction
23 depends on the location of each project. *Id.* The project locations generally fall into three
24 categories, as explained below.

25 **A. Projects on the Barry M. Goldwater Range**

26 Two border barrier projects (Yuma 2 and Yuma 10/27) are located on the Barry M.
27 Goldwater Range, an existing military installation in Arizona that is under the administrative
28 jurisdiction of the Department of the Navy. *See id.* ¶ 10.a. USACE will not award a contract

1 (thereby obligating funds for all contract costs) for border barrier construction on the Goldwater
 2 Range earlier than October 3, 2019. *Id.* The contract for these two barrier-construction projects
 3 is estimated to cost \$567 million. *Id.* No ground-disturbing activities, including geotechnical
 4 borings and clearing and grubbing, will occur before 20 days after the date of contract award. *Id.*
 5 The earliest date on which substantial construction could occur for these projects is 40 days after
 6 contract award. *Id.*

7 **B. Projects on Federal Public Domain Land**

8 There are seven projects located, at least in part, on Federal public domain land currently
 9 under the administrative jurisdiction of the Department of the Interior. *See id.* ¶ 10.b. The
 10 projects and estimated costs are: Yuma 3 (\$630 million); Yuma 6 (\$65 million); San Diego 4
 11 (\$67 million); San Diego 11 (\$57 million); El Paso 2 (\$476 million); El Paso 8 (\$164 million);
 12 and El Centro 9 (\$286 million). *Id.* Yuma 3 and San Diego 4 are exclusively on Federal public
 13 land. *Id.* The remaining five projects involve various combination of Federal public domain
 14 land; Federal non-public domain land that can be transferred between Federal agencies under the
 15 Federal Property and Administrative Services Act of 1949, as amended (the Property Act); and
 16 non-Federal land.¹ The Department of the Army anticipates obtaining administrative jurisdiction
 17 over the portions of these seven projects that are on Federal public domain land no earlier than
 18 30 days after the Secretary's decision. *Id.* The processes required for USACE to obtain
 19 jurisdiction over Federal non-public domain land and non-Federal land will require additional
 20 time and are not expected to conclude before April 2020. *Id.* The earliest date on which USACE
 21 could award a construction contract and obligate funds for any of these projects is 30 days after
 22 the Department of the Army has accepted administrative jurisdiction and recorded the property
 23 in its records as a military installation. *Id.* USACE would not need to acquire all of the land in a
 24 project area before awarding a contract and may proceed with contract award for a project once
 25 some portion of the land is under the administrative jurisdiction of the Department of the Army.

26
 27
 28 ¹ USACE's understanding of the current land status of the seven project areas is based on
 the best information available at this time. *See* Goddard Decl. ¶ 10.b.

1 *Id.* USACE anticipates that the construction contracts for Yuma 3 and San Diego 4 will be the
2 first of these seven projects ready for award and obligation. *Id.* The earliest date on which any
3 ground-disturbing activities could occur for these projects is 20 days after contract award. *Id.*
4 The earliest date on which substantial construction could occur for these projects is 40 days after
5 contract award. *Id.*

6 **C. Projects Exclusively on Non-Public Land**

7 The remaining two projects (El Centro 5 and Laredo 7) are located entirely on Federal
8 non-public domain land and non-Federal land. *See id.* ¶ 10.c. To obtain administrative
9 jurisdiction over non-Federal land will require either purchase or condemnation. *Id.* As
10 explained above, USACE does not expect to expend funds for either purchase or condemnation
11 before April 2020. *Id.* Similarly, USACE does not expect to obtain jurisdiction of Federal non-
12 public domain land before April 2020. *Id.* The earliest date on which the Task Force could
13 award a construction contract for these projects is 30 days after the Department of the Army has
14 recorded the property in its records as a military installation. *Id.* The earliest date on which any
15 ground-disturbing activities could occur for these projects is 20 days after contract award. *Id.*
16 The earliest date on which substantial construction could occur for these projects is 40 days after
17 contract award. *Id.* The estimated costs for construction of these projects is \$20 million for El
18 Centro 5 and \$1.268 billion for Laredo 7. *Id.*

19 ***

20 In sum, the soonest any ground disturbing activity will begin for any of the Section 2808
21 projects is October 23, 2019 for the two projects on BMGR (Yuma 2 and Yuma 10/27). *Id.* ¶ 11.
22 The Corps anticipates that ground disturbing activities for the Yuma 3 and San Diego 4 projects
23 would begin next, approximately 30 days later. *Id.* The timetable for ground disturbing
24 activities on the remaining projects is uncertain, but will not occur earlier than as indicated for
25 Yuma 2, Yuma 10/27, Yuma 3, and San Diego 4. *Id.*

26 With respect to the obligation of funds, money for the projects will be drawn initially
27 only from funds associated with deferred military construction projects located outside of the
28 United States. *See* Exhibit 2. The Corps will begin immediately incurring project-related

1 administrative costs that are expected to be no more than \$1 million per week. *See* Goddard
2 Decl. ¶ 12. Beginning no sooner than September 23, 2019, the Corps will start expending
3 additional funds, not expected to exceed \$500,000, on initial real estate activities necessary to
4 acquire or obtain administrative jurisdiction of non-DoD land. *Id.* The earliest contract award
5 and obligation of funds for construction will occur no sooner than October 3, 2019, for the two
6 projects on BMGR (Yuma 2 and Yuma 10/27), which are estimated to cost \$567 million. *Id.* It
7 is expected that the next construction contracts to be awarded and obligated will be Yuma 3
8 (\$630 million) and San Diego 4 (\$67 million), approximately 30 day later. *Id.* The timetable for
9 award and obligation of the remaining contracts is uncertain, but will not occur earlier than as
10 indicated for Yuma 2, Yuma 10/27, Yuma 3, and San Diego 4. *Id.*

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14 DATE: September 3, 2019

Respectfully submitted,

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