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

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

No. 4:20-cv-01563-HSG
 No. 4:20-cv-01494-HSG

**NOTICE OF MODIFICATION TO
 FISCAL YEAR 2020 BORDER
 BARRIER PROJECTS
 UNDERTAKEN PURSUANT TO
 10 U.S.C. § 284**

1 Defendants hereby provide notice to the Court and parties in the above-captioned cases of a
2 recent decision by the Secretary of Defense to modify the support provided by the Department of
3 Defense (DoD) to the Department of Homeland Security (DHS) pursuant to 10 U.S.C. § 284 in fiscal
4 year 2020.

5 On February 7, 2020, the Secretary of Defense approved construction of 31 border barrier
6 project segments pursuant to § 284 utilizing \$3.831 billion in funds transferred pursuant to DoD's
7 general transfer authority under § 8005 of the DoD Appropriations Act, 2020, *see* Pub. L. No. 116-93,
8 133 Stat 2317, Div. A, and § 1001 of the National Defense Authorization Act for Fiscal Year 2020
9 (NDAA), *see* Pub. L. No. 116-92, 133 Stat. 1198, Title X, and DoD's special transfer authority under
10 § 9002 of the FY20 DoD Appropriations Act and § 1520A of the FY20 NDAA. *See* Administrative
11 Record at 1–6. Due to the difficult terrain at some of the approved project locations, contractor
12 pricing for certain projects and segments was higher than expected. *See* Third Declaration of Brigadier
13 General Glenn Goddard ¶ 5 (attached as Exhibit 1). Based on these higher-than-expected prices, the
14 U.S. Army Corps of Engineers concluded it would not be able to undertake the Yuma A (Segment 1)
15 project within the \$3.831 billion budgeted for construction. *Id.* On May 18, 2020, the Secretary of
16 Defense authorized the Corps not to undertake contracting actions for this project pursuant to § 284
17 using the transferred funds. *Id.* In light of this decision, the *Sierra Club* plaintiffs' request to enjoin
18 construction of this project is moot. *See, e.g., Jones v. Williams*, 791 F.3d 1023, 1031 (9th Cir. 2015).¹

19 Additionally, the Secretary of Defense approved DHS's requested modifications to the
20 locations of several § 284 projects. *See* Third Goddard Decl. ¶ 4. As noted in Defendants' cross-
21 motions for summary judgment, DHS submitted a revised request for assistance in April 2020
22 requesting changes to the scope of several projects. *See California*, ECF No. 62 at 4 n.1, ECF No. 66-
23 1 ¶ 5; *Sierra Club*, ECF No. 30 at 3 n.2; ECF No. 30-1 ¶ 5. On May 18, 2020, the Secretary of Defense
24 approved these requested changes. Goddard Decl. ¶ 4. The revised coordinates for the modified
25 projects and segments are listed below:

26
27
28 ¹ The States do not challenge construction of the Yuma A (Segment 1) project. *See California*,
ECF No. 55 at 9.

Project Name	Coordinates	Miles (approx.)
Tucson B	Start: 31.421325, -111.351619 End: 31.33253, -111.01233	approximately 21 miles
Yuma B (Segment 1)	Start: 32.71813, -114.728515 End: 32.71872, -114.720282	total of approximately .5 miles
Yuma B (Segment 2)	Start: 32.719041, -114.727431 End: 32.719132, -114.720119	
El Paso D	Start: 31. 752848, -106.418442 End: 31.552981, -106.26213	approximately 17 miles
El Centro Project A	Start: 32.627285, -115 .993205 End: 32.631489, -115.93903	approximately 3.17 miles

DATE: May 20, 2020

Respectfully submitted,

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