

1 JOSEPH H. HUNT  
 Assistant Attorney General  
 2 DAVID M. MORRELL  
 Deputy Assistant Attorney General  
 3 ALEXANDER K. HAAS  
 Director, Federal Programs Branch  
 4 ANTHONY J. COPPOLINO  
 Deputy Director, Federal Programs Branch  
 5 ANDREW I. WARDEN (IN #23840-49)  
 Senior Trial Counsel  
 6 KATHRYN C. DAVIS  
 7 MICHAEL J. GERARDI  
 8 LESLIE COOPER VIGEN  
 RACHAEL WESTMORELAND  
 9 Trial Attorneys  
 U.S. Department of Justice  
 10 Civil Division, Federal Programs Branch  
 11 1100 L Street, NW  
 Washington, D.C. 20530  
 12 Tel.: (202) 616-5084  
 Fax: (202) 616-8470  
 13 *Attorneys for Defendants*

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).<sup>1</sup>

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 <sup>1</sup> 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,

JOSEPH H. HUNT  
Assistant Attorney General

DAVID M. MORRELL  
Deputy Assistant Attorney General

ALEXANDER K. HAAS  
Director, Federal Programs Branch

ANTHONY J. COPPOLINO  
Deputy Director, Federal Programs Branch

/s/ Andrew I. Warden  
ANDREW I. WARDEN  
Senior Trial Counsel (IN Bar No. 23840-49)

RACHAEL L. WESTMORELAND  
KATHRYN C. DAVIS  
MICHAEL J. GERARDI  
LESLIE COOPER VIGEN  
Trial Attorneys  
U.S. Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street, NW  
Washington, D.C. 20530  
Tel.: (202) 616-5084  
Fax: (202) 616-8470  
E-Mail: Andrew.Warden@usdoj.gov

*Counsel for Defendants*