

EXHIBIT 1

**UNITED STATES DISTRICT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

SIERRA CLUB, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

No. 4:20-cv-01494-HSG

CALIFORNIA, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

No. 4:20-cv-01563-HSG

SECOND DECLARATION OF ANDREW J. SHORT

I, Andrew J. Short, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. This declaration is based on my personal knowledge and information made available to me in the course of my official duties.
2. I am a Colonel in the United States Army, and I am currently the Commanding Officer for the South Pacific Border District (“Border District”) for the U.S. Army Corps of Engineers (“Corps”), South Pacific Division. I am stationed in Phoenix, Arizona.
3. The Border District’s primary mission is to plan, design, and construct border barrier fencing projects approved by the Secretary of Defense on the southern border of the United States.
4. In my capacity as the Commanding Officer of the Border District, I have overall responsibility for, and authority over, the Border District and its operations, consistent with relevant policy, regulations, and laws. In this respect, my responsibilities include providing oversight, direction, and management of all systems and personnel, including contracting officers involved in executing the Border District’s mission. In particular, I currently oversee

performance of work on border barrier construction projects either under contract or soon to be awarded, and that are funded under the authority of 10 U.S.C. § 284.

5. The purpose of this declaration is to provide an update about the Corps' efforts in May 2020 to award contracts and task orders for Section 284 border barrier construction projects approved by the Secretary of Defense in fiscal year (FY) 2020.

6. As stated in my prior declaration of May 1, 2020, in *Sierra Club v. Trump*, Case No. 4:20-CV-1494-HSG, as of May 1, 2020, \$1,595,369,770 had been obligated on contracts for FY 2020 Section 284 construction projects, leaving an unobligated balance of \$2,235,630,230 remaining from the \$3.831 billion approved by the Secretary of Defense. Since May 1, 2020, the Corps has taken the following contracting actions:

a. On May 2, 2020, the Department of the Army issued a new task order under a previously awarded multiple award task order contract to Fisher Sand & Gravel in the amount of \$215,000,000 for work on El Paso A. The funds were fully obligated at the time the task order was awarded. Subsequently, the Corps de-obligated certain contract line item numbers from this task order. This modification is expected to be completed by May 30, 2020, and will de-obligate a total of approximately \$10,000,000.

b. On May 6, 2020, the Department of the Army issued a new task order under a previously awarded multiple award task order contract to Fisher Sand & Gravel in the amount of \$1,275,000,000 for work on Tucson B (Segments 1, 3, 4, and 5) and Tucson C (Segments 1, 3, and 4). The funds were fully obligated at the time the task order was awarded. Subsequently, the Corps de-obligated certain contract line item numbers from this task order. This modification is expected to be completed by May 30, 2020, and will de-obligate a total of approximately \$43,000,000.

c. On May 18, 2020, the Department of the Army exercised an option under a previously awarded task order contract to SLSCO, Ltd. in the amount of \$132,000,000 for work on El Paso D (Segment 3). The funds were fully obligated at the exercise of the option.

d. On May 21, 2020, the Department of the Army exercised an option under a previously awarded task order contract to Southwest Valley Constructors Co. in the amount of \$193,269,350 for work on Tucson A (Segment 5). The funds were fully obligated at the exercise of the option.

e. On May 21, 2020, the Department of the Army exercised an option under a previously awarded task order contract to Southwest Valley Constructors Co. in the amount of \$97,730,650 for work on Tucson B (Segment 6). The funds were fully obligated at the exercise of the option.

f. On May 28, 2020, the Department of the Army issued a new task order under a previously awarded multiple award task order contract to LGC Global, Inc., in the amount of \$46,725,331 for work on Del Rio A and B. The funds were fully obligated at the time of the task order award.

g. The Department of the Army is preparing to exercise modifications for electrical attributes on three existing contracts. Negotiations are currently underway and the three modifications are expected to be complete on or about May 30, 2020, with an estimated cost not

to exceed \$85,000,000. The funds will be fully obligated when the options are exercised. The segments and contractors involved are:

(1) Yuma A (Segment 2), Yuma B (Segments 1 and 2), and El Centro A and San Diego A (Segments 1 and 3), all under contract to BFBC, LCC.

(2) Tucson A (Segments 1 through 5) and Tucson B (Segment 6) under contract to Southwest Valley Constructors Co.

(3) El Paso B (Segment 6), under contract to SLSCO, Ltd.

7. As of May 29, 2020, \$3,554,825,101 has been obligated on contracts for FY 2020 Section 284 construction projects, leaving an unobligated balance of \$245,174,899. When the pending de-obligations and modifications in paragraphs 6.a., 6.b., and 6.g. are complete, the obligated amount will be \$3,586,825,101 and the unobligated balance will be \$213,174,899. The unobligated balance does not include approximately \$31,000,000 in anticipated labor and government oversight costs for the FY 2020 284 program.

8. As explained in my prior declaration, a permanent injunction that prohibits contract performance on the Section 284 projects would require the Government to pay millions of dollars in costs and fees per month to the contractors during any period of inactivity. If all contractor performance is suspended, it is estimated costs will accrue at a combined total rate of \$3,639,594 per day and a combined \$110,643,649 per month. These costs will rapidly draw down the remaining balance of funds, with the Government receiving nothing of value in exchange.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 29th Day of May 2020.

SHORT.ANDREW.J
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Andrew J. Short
Colonel, United States Army