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

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

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

**NOTICE OF UPDATED
 INFORMATION REGARDING
 OBLIGATION OF FUNDS FOR
 FISCAL YEAR 2020 BORDER
 BARRIER PROJECTS
 UNDERTAKEN PURSANT TO 10
 U.S.C. § 284**

1 Defendants hereby provide notice to the Court and parties in the above-captioned cases of
2 recent actions by the Department of Defense (DoD) to award contracts and task orders for the border
3 barrier projects undertaken pursuant to 10 U.S.C. § 284 in fiscal year 2020.

4 In the cross-motions for summary judgment Defendants filed on April 17, 2020 in *California*
5 (ECF Nos. 62, 62-2), and May 1, 2020 in *Sierra Club* (ECF Nos. 30, 30-4), Defendants provided the
6 most recent information at that time regarding the status of DoD's efforts to obligate funds for the
7 § 284 projects. As of May 1, 2020, approximately \$1.6 billion had been obligated on contracts for the
8 fiscal year § 284 projects, leaving an unobligated balance of approximately \$2.2 billion remaining from
9 the \$3.831 billion approved by the Secretary of Defense. *See Sierra Club*, ECF No. 30-4 ¶ 8; *see also*
10 *California*, ECF No. 62-2 ¶ 8 (stating that as of April 17, 2020, approximately \$1.3 billion had been
11 obligated). Since May 1, the Department of Army has taken several contract actions to obligate
12 additional funds. *See* Second Declaration of Andrew J. Short ¶ 6.a–f (attached as Exhibit 1). As of
13 May 29, 2020, approximately \$3.55 billion has been obligated on contracts for § 284 projects, leaving
14 an unobligated balance of approximately \$245 million. *Id.* ¶ 7.

15 The Department of the Army is also preparing to exercise modifications for electrical
16 attributes on three existing contracts and de-obligate certain contract line items for several § 284 task
17 orders. *See* Second Short Decl. ¶ 6.a, b, g. These modifications are expected to be complete on or
18 about May 30, 2020. *Id.* Once those actions are complete, the obligated amount will be approximately
19 \$3.58 billion and the unobligated amount will be approximately \$213 million. *Id.* ¶ 7.

20 As explained in Defendants' prior submissions, a permanent injunction that prohibits contract
21 performance on the § 284 projects would require the Government to pay millions of dollars in costs
22 and fees per month to the contractors during any period of inactivity. *See* Second Short Decl. ¶ 8; *see*
23 *also California*, ECF No. 62-2; *Sierra Club*, ECF No. 30-4. In light of these additional contract actions,
24 if all contractor performance is suspended, it is estimated costs will accrue at a combined total rate of
25 \$3,639,594 per day and a combined \$110,643,649 per month. *See* Second Short Decl. ¶ 8.

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DATE: May 29, 2020

Respectfully submitted,

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