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

16 SIERRA CLUB, *et al.*,
17
18 Plaintiffs,
19
20 v.
21 DONALD J. TRUMP, *et al.*,
22
23 Defendants.
24

No. 4:19-cv-00892-HSG

**SECOND DECLARATION OF
KENNETH P. RAPUANO**

Hearing Date: May 17, 2019
Time: 10:00 a.m.
Place: Oakland Courthouse
Courtroom 2, 4th Floor

1 Defendants hereby submit the Second Declaration of Kenneth P. Rapuano, Assistant
2 Secretary of Defense for Homeland Defense and Global Security, dated May 13, 2019.

3 Mr. Rapuano previously submitted a declaration dated April 25, 2019 (ECF No. 64-8), that
4 explained the status of the Department of Defense's (DoD) support to the Department of
5 Homeland Security (DHS) pursuant to 10 U.S.C. § 284 in response to a February 25, 2019, request
6 from DHS for assistance in blocking up to 11 specific drug-smuggling corridors along certain
7 portions of the southern border of the United States. *See* First Rapuano Decl. ¶¶ 3-12. The
8 declaration explained that the Acting Secretary of Defense agreed to provide assistance to DHS to
9 construct fencing to block drug-smuggling corridors in three project areas along of the southern
10 border of the United States. *Id.* ¶ 4. The declaration stated that that the project identified as Yuma
11 Sector Project 2 would be constructed pursuant to 10 U.S.C. § 284 with money transferred pursuant
12 under section 8005 of the Department of Defense Appropriations Act, 2019, and section 1001 of
13 the John S. McCain National Defense Authorization Act for Fiscal Year. *Id.* ¶¶ 4-6, 9. Mr.
14 Rapuano's second declaration provides updated information about this project and states that the
15 U.S. Army Corps of Engineers has decided not to fund or construct Yuma Project 2 under these
16 authorities. *See* Second Rapuano Decl. ¶ 4.

17 Mr. Rapuano's first declaration also explained that DoD was in the process of conducting a
18 review of funding that might be available to support up to \$1.5 billion of additional § 284 projects
19 requested by DHS, and that decisions regarding future transfer of funds and approval of additional
20 DHS-requested projects under § 284 were expected in May 2019. *See* First Rapuano Decl. ¶ 11. Mr.
21 Rapuano's second declaration explains that, on May 9, 2019, the Acting Secretary of Defense
22 authorized the funding of four additional projects. *See* Second Rapuano Decl. ¶ 6. One project is
23 located in California (El Centro Project 1), and three projects are located in Arizona (Tucson Sector
24 Projects 1, 2, and 3). *Id.*; *see also* First Rapuano Decl., Ex. A (describing project locations). To fund
25 these four projects, the Acting Secretary of Defense decided to use DoD's general transfer authority
26 under section 8005 of the Department of Defense Appropriations Act, 2019, and section 1001 of
27 the John S. McCain National Defense Authorization Act for Fiscal Year 2019, as well as DoD's
28 special transfer authority under section 9002 of the Department of Defense Appropriations Act,

1 2019, and section 1512 of the John S. McCain National Defense Authorization Act for Fiscal Year
2 2019, to transfer \$1.5 billion between DoD appropriations. *See* Second Rapuano Decl. ¶ 7. On
3 May 10, 2019, the funds were transferred to the U.S. Army Corps of Engineers. *Id.* ¶ 9. The U.S.
4 Army Corps of Engineers expects to award contracts for the four projects by May 16, 2019, and
5 construction will begin no earlier than 45 days after the award of the contracts. *Id.* ¶¶ 10-11.

6
7 DATE: May 13, 2019

Respectfully submitted,

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9 Deputy Assistant Attorney General

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14 /s/ Andrew I. Warden
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