

From: (b) (6), (b) (7)(C)
To: (b) (6), (b) (7)(C)
Subject: RE: Legal Issues
Date: Friday, February 03, 2017 11:31:57 AM

I can take the first pass at the design and construction risks this weekend-I assume this effort is at the programmatic level-correct?.

Also, are we planning to develop PRDs for each project (not segment)? I recommend we do so as they are all (especially new fence) going to be very challenging to execute for potentially lots of different reasons and having a sound approach, schedule, budget and risk mitigation plan is critical.

Finally-what about the draft Programmatic PMP? Do we want to finish? It's probably a 80-90% document now and would a good place to document our program level baseline scope, schedule and costs as well as the initial risk registrar discussed above. It also defines roles and responsibilities and we could attach the new design standards to it (our complete game plan per se). Completing it might be a good agenda item for the next workshop with the Corps.

From: (b) (6), (b) (7)(C)
Sent: Friday, February 3, 2017 11:21 AM
To: (b) (6), (b) (7)(C)
Subject: [EXTERNAL] RE: Legal Issues

Can we add all of our collective sanity to the risk log?

No (b) (6), (b) (7)(C) – not yet. I suggest that we canvass the IPT leads to collect risks as well. Staffing needs to be one of them....

(b) (6), (b) (7)(C)
Branch Chief, Communications and Workforce Strategy
Border Patrol & Air and Marine Program Management Office
Facilities Management and Engineering
Office of Facilities and Asset Management
(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)
Sent: Friday, February 03, 2017 11:15 AM
To: (b) (6), (b) (7)(C)
Subject: RE: Legal Issues

Oh boy...a risk log...that could be a substantive document!

From: (b) (6), (b) (7)(C)
Sent: Friday, February 3, 2017 11:14 AM
To: (b) (6), (b) (7)(C)
Subject: [EXTERNAL] RE: Legal Issues

Thanks (b) (6), (b) (7) – we can add this to a risk log.

(b) (6), (b) (7) – has anyone pulled anything together yet? If no, I'll do that today/this weekend.

Thanks!

(b) (6), (b) (7)(C)

Business Operations

OFAM / BPAM PMO

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)

Sent: Friday, February 03, 2017 9:05 AM

To: (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Subject: FW: Legal Issues

FYSA

From: (b) (6), (b) (7)(C)

Sent: Friday, February 3, 2017 9:33 AM

To: (b) (6), (b) (7)(C)

Cc: (b) (6), (b) (7)(C)

Subject: [EXTERNAL] RE: Legal Issues

(b) (6), (b) (7)(C) as requested, below are bullets regarding RE Issues, followed by a more detailed explanation (i.e. Background Information) on each issue:

BULLETS:

RGV:

1. **TITLE ISSUES:** Inadequately maintained public land records compelled condemnation actions for all acquisitions in order to clear title/ownership, with only a handful of exceptions. We remain in court with over 90 owners for cases filed in 2008, still working to resolve these complex title issues.
2. **TREATY WITH MEXICO:** The 1970 Boundary Treaty between the U.S. and Mexico governing construction in the floodplain caused unavoidable significant delays to determining an amenable alignment, and thus delays to completing required condemnation actions.
3. **RELOCATIONS:** For as-yet unconstructed Segments (O-1,2,3), we currently estimate there will be approximately (b) (5) residential and commercial relocations; primarily to the northward shift of the IBWC-approved alignment instituted to avoid violation of the 1970 Boundary

Treaty with Mexico.

4. **SEVERING PROPERTY:** Due to the fact that fence in RGV must be constructed north of floodplain, thousands of acres of privately owned land was left between the fence and river.

(b) (5)

5.

(b) (7) (E)

6. **INVERSE CONDEMNATION SUIT – HIDALGO LEVEE WALL:** Real estate was not acquired to construct PF225 segments (O-4 thru O-10), which is a flood control levee wall with steel bollards atop of it that was essentially cut into the existing levee in Hidalgo County. There is now an ongoing lawsuit by a handful of owners who are suing the government claiming what is called “inverse condemnation” - insisting that the land should be acquired and property value damages be compensated.

WEST OF RGV:

1. **TOHONO O’ODHAM NATION (TON):** (b) (7)(E), (b) (5)

BACKGROUND INFORMATION:

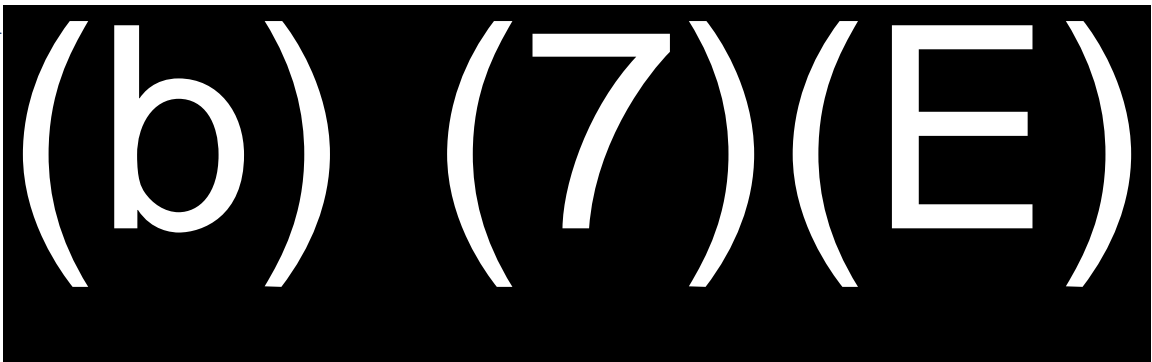
RGV:

7. **TITLE ISSUES:** Any land acquired by the U.S. Government must meet the standards outlined Counties in the Uniform Appraisal Standards for Federal Land Acquisition, also known as the Yellow Book. These standards are promulgated and enforced by the Department of Justice (DOJ). With only a few exceptions, all properties that were required to support PF225 fence construction in RGV failed to meet those standards, and required condemnation litigation to resolve ownership. The primary cause of this issue is the substandard quality of the property records at the County level – RGV includes Starr County (segments O-1,2), Hidalgo County (O-3 thru O-10) and Cameron County (O-11 thru O-21). We remain in litigation with over 90 owners from cases that were originally filed in 2008, primarily due to the complexities of resolving land ownership of the property the government condemned.
 - a. **NOTE:** Beyond RGV, this title issue will arise in other Texas counties for any future fence constructed, particularly in the Del Rio and Laredo areas.
8. **TREATY WITH MEXICO:** The 1970 Boundary Treaty between the U.S. and Mexico governs that any new construction within the flood plain along the international border by either nation’s government must be approved by the other nation. The purpose for such an agreement to address the impact of the flooding of the river, a disproportionate amount of water could be diverted to the other side. In the case of planned segments (O-1,2,3), there

is no flood control levee, therefore all of the original alignment was in the FEMA 100-year floodplain. U.S. International Boundary and Water Commission (IBWC) did not approve construction until February 2012, when a redesign effort finally reached an alignment that sufficiently reached a near-zero flood diversion effect. Essentially, the alignment was shifted to the north, made more parallel to the river, and (b) (7)(E) in the fence were incorporated. Therefore, most of the land originally condemned for construction does not fall within the newly approved alignment. All of the original condemnation cases along (O-1,2,3) were placed on hold when this issue arose, and the cases were only recently revived and are being litigated to their conclusion. Condemnation of the property located along the new alignment will require new title research and new condemnation filings.

9. **RELOCATIONS:** For Segments (O-1,2,3) we currently estimate there will be approximately (b) (5) residential and commercial relocations; primarily to the northward shift of the IBWC-approved alignment instituted to avoid violation of the 1970 Boundary Treaty with Mexico.
10. **SEVERING PROPERTY:** Due to the fact that fence in RGV must be constructed north of floodplain, thousands of acres of privately owned land was left between the fence and river. Ongoing condemnation litigation continues in large part because of disputes over the amount to which the fence diminished the value of what we refer to as the “riverside remainder.”

11



12. **INVERSE CONDEMNATION SUIT – HIDALGO LEVEE WALL:** PF225 segments (O-4 thru O-10) were not a free-standing fence as in the rest of the border. They were built as a flood control levee wall that was essentially cut into the existing levee in Hidalgo County. In order to have the barrier meet Border Patrol’s (b) (7)(E) requirement, the height was extended in most areas of the wall with steel bollards installed into the top of the wall. Because the primary purpose of the wall was flood protection, real estate was not acquired for construction – the IBWC’s levee easement allowed for construction, maintenance and operation of flood control infrastructure. However, there is now an ongoing lawsuit by a handful of owners who are challenging that determination, insisting that the land should have been acquired outright, and that they are also entitled to compensation for depreciated value to their riverside remainder property.

WEST OF RGV: Beyond some challenging individual landowners, PF225 & VF300 did not encounter widespread real estate issues west of RGV. This is because the fence was generally constructed in the 60’ Roosevelt Reservation, an area reserved by a 1907 Executive Order for the use of the federal government. This reservation of rights did not apply to Texas, because it is a river border, and because most of the property in Texas was already privately owned, versus in the western states where most of the land along the border still had not generally been patented for private use.

2. **TOHONO O'ODHAM NATION (TON):**

(b) (7)(E), (b) (5)

[REDACTED]

v/r

(b) (6), (b) (7)(C)

[REDACTED]

From: (b) (6), (b) (7)(C)

Sent: Friday, February 03, 2017 7:53 AM

To: (b) (6), (b) (7)(C)

Subject: FW: Legal Issues

(b) (6), (b) (7)(C)

[REDACTED]

From: (b) (6), (b) (7)(C)

Sent: Friday, February 03, 2017 6:19 AM

To: (b) (6), (b) (7)(C)

Subject: Legal Issues

(b) (6), (b) (7)(C)

For clarification, Deputy Provost is requesting the following for her S1 brief on Monday (due this morning):

Legal Issues

What are the pitfalls of the last fence installation (Secure Fence Act)?

She is requesting some high level bullets.

Thank you for your help,

(b) (6), (b) (7)(C)