

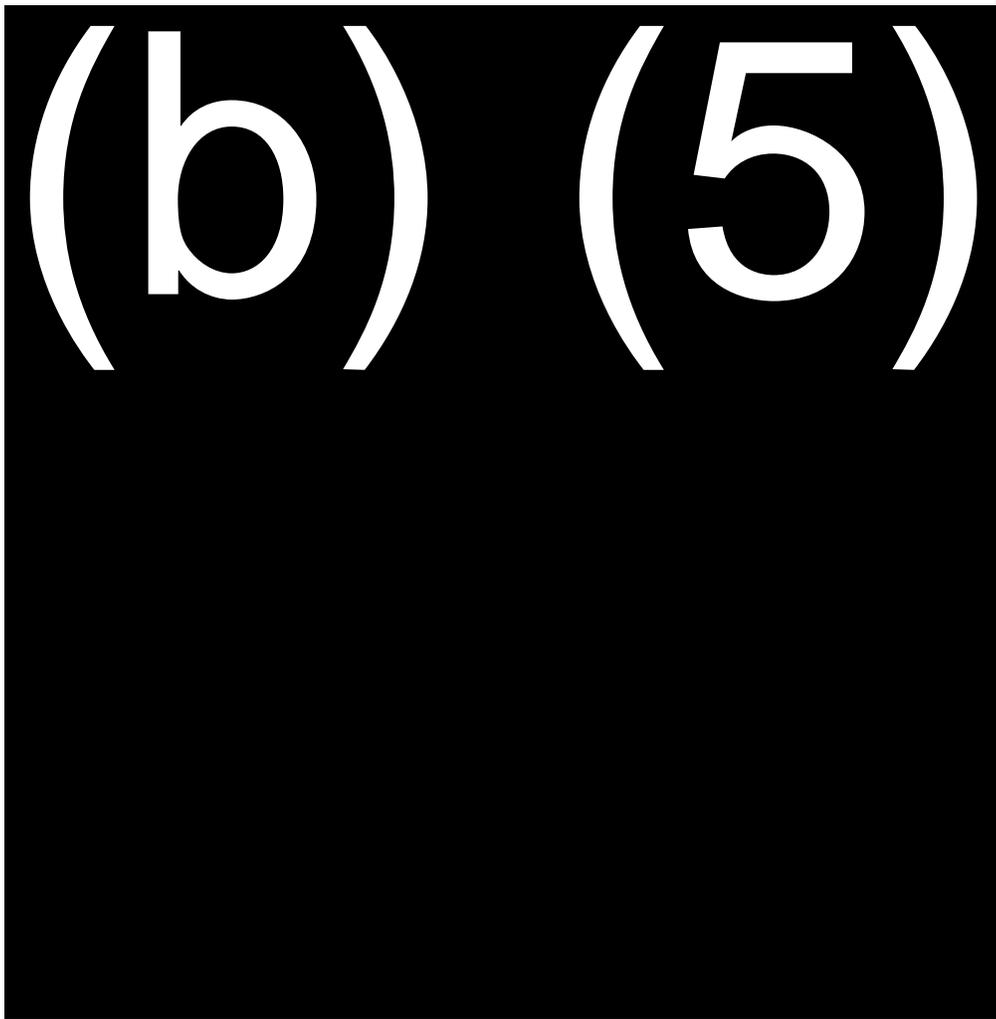


Office of Public Affairs

Public Affairs Guidance

Border Wall – San Diego Waiver

Background



Commented [FMF(1)]: Is this still needed? Or is this PAG just covering San Diego Waiver?

Commented [FMF(2)]: As noted in the waiver document, this waiver covers multiple projects in the project area, including prototype construction and replacement of 20 miles of primary pedestrian fence.

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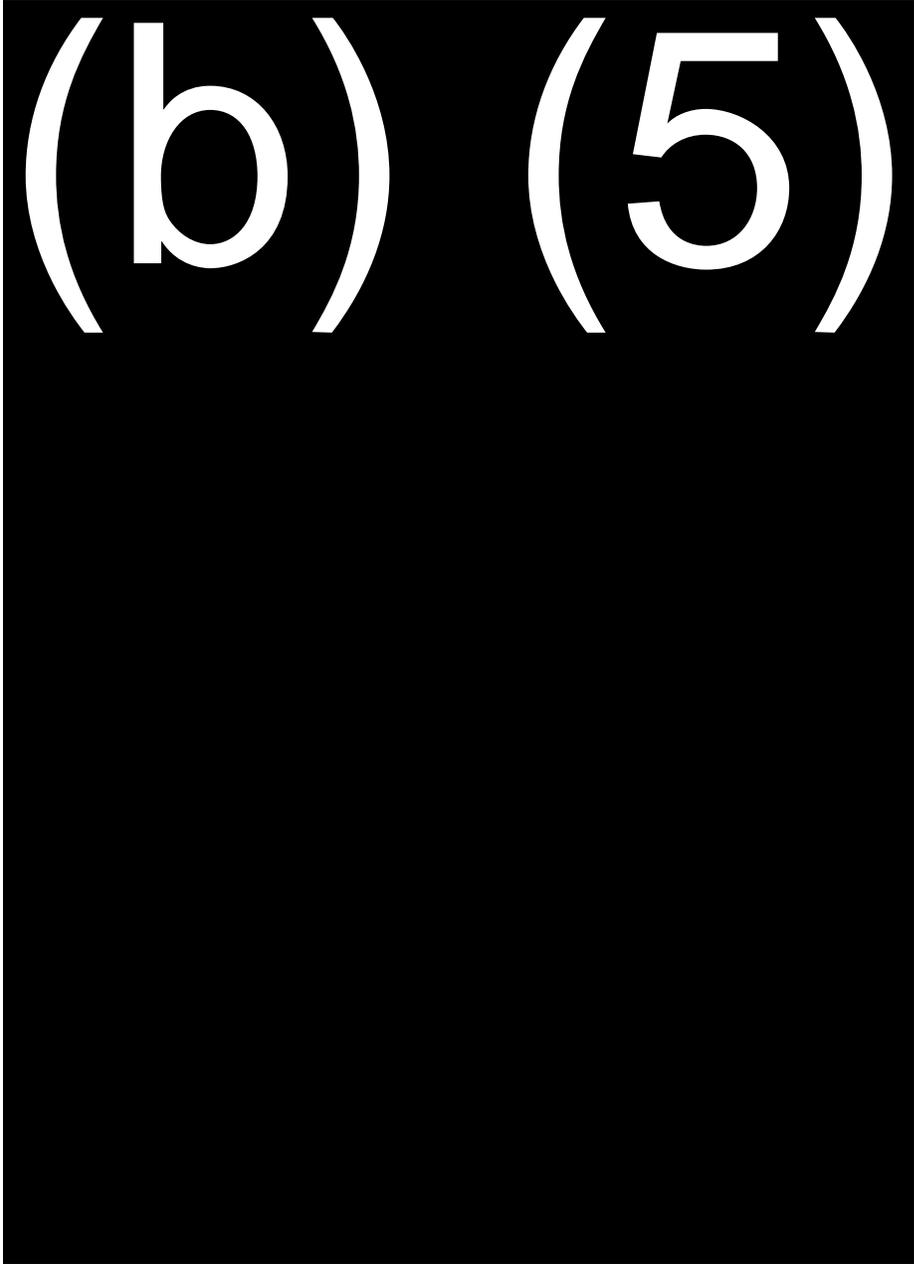
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(b) (5)

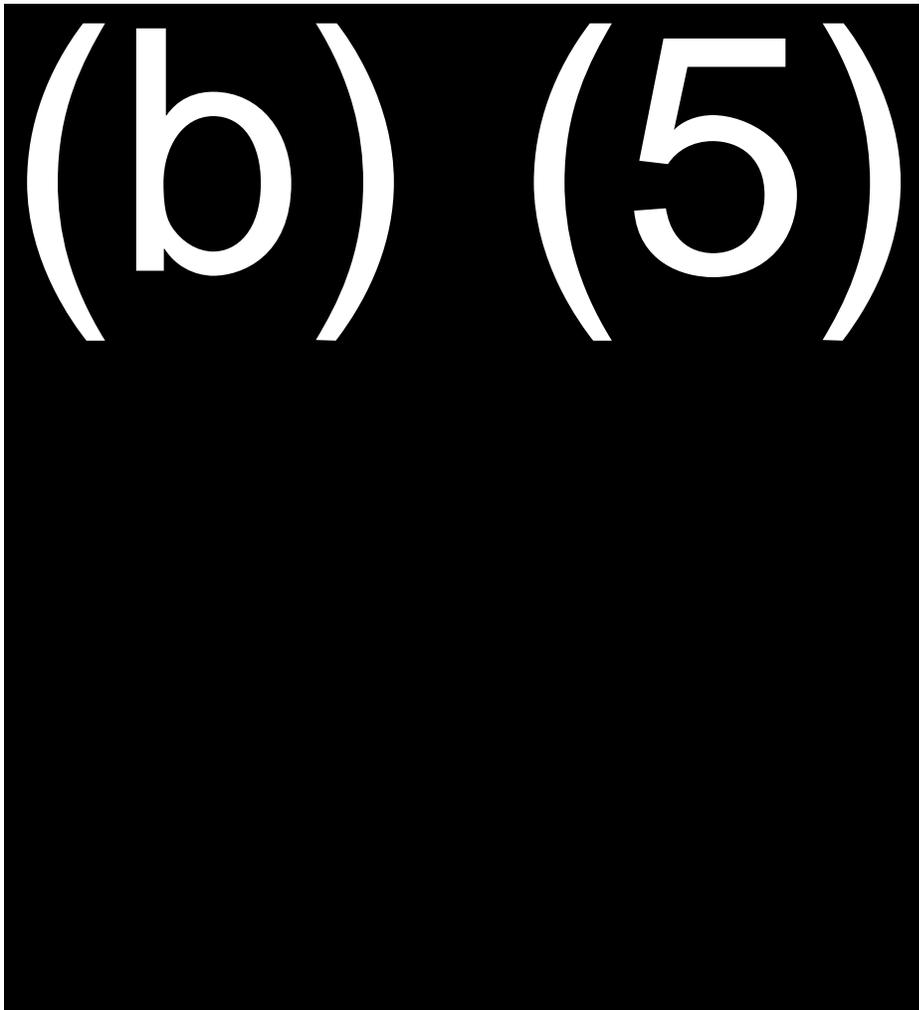
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Commented [FMF(3)]: Is this a step too far? While we are committed to stewardship, this statement begs the (b) (5)

Commented [FMF(4)]: Will CBP continue to work with these entities for projects covered by this waiver? If so, should state that.

Questions and Answers

Q1: Will CBP follow the National Environmental Protection Act (NEPA) process for the projects covered by this waiver prototype and other construction projects related to the Wall?

A1: ~~CBP is currently assessing its options with respect to environmental compliance for prototype and other border infrastructure. At this time, no decisions have been made as to whether CBP will follow the traditional NEPA process or request that the Secretary exercise his authority to waive certain legal requirements. This waiver specifically covers border projects in San Diego at a segment of approximately (b) (7)(E) within the San Diego Sector. This segment starts at the (b) (7)(E)~~

Commented [FMF(5)]: Attempting to make the question specific to this waiver.

and extends eastward to approximately (b) (7)(E). While the waiver eliminates CBP's obligation to comply with NEPA for these projects, CBP remains committed to environmental stewardship. As such, CBP will continue to assess potential impacts, coordinate with relevant stakeholders, and to the extent possible, offset or mitigate potential impacts.

Q2: Given the waiver of environmental laws, will DHS implement any environmental planning/evaluation of possible impacts and mitigation for those impacts?

A2: Yes. DHS is committed to responsible environmental stewardship. Thus, in the spirit of NEPA, and as was the case with past projects covered by a waiver, DHS will continue to evaluate the potential impacts of the border infrastructure that is planned for the project area. Among other things, DHS will conduct new environmental surveys of the project area as well as utilize existing data, performed and reviewed environmental surveys, coordinated and consulted with local, state and federal stakeholders, and analyzed potential impacts. Reports can be found in the link below.

<https://www.cbp.gov/about/environmental-cultural-stewardship/nepa-documents/esp-essr>

Q3: Will DHS and CBP consider environmental impacts as a result of prototype construction?

A3: DHS has concluded that the currently planned prototype project will not result in significant environmental impacts. As a result, for this particular project, DHS is not planning for mitigation. DHS' commitment to responsible environmental stewardship will be carried forward with the construction of additional border infrastructure.

Q4: What is the waiver?

A4: The Secretary of Homeland Security's waiver authority is set out in Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended ("IIRIRA"). The waiver authority allows the Secretary to waive all legal requirements the Secretary deems necessary to construct barriers and roads border infrastructure that is necessary to deter illegal entry into the United States.

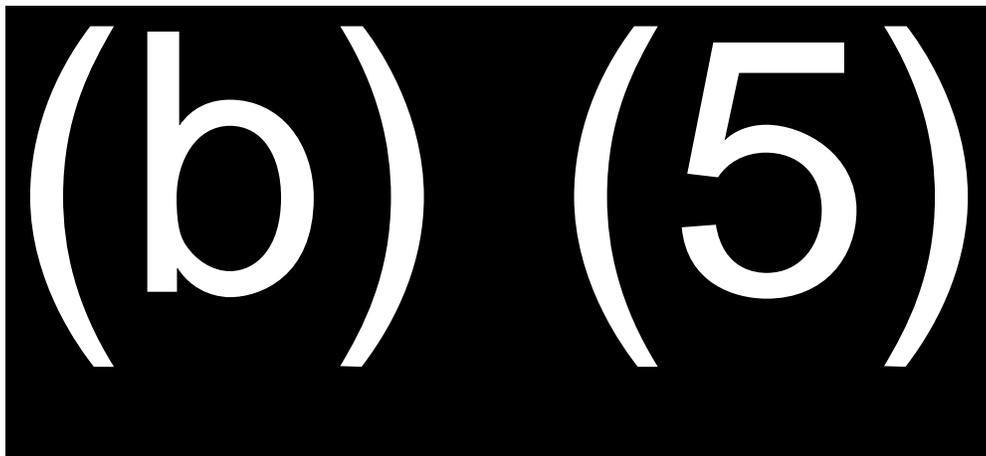
Q5: What gives the Secretary authority to issue a waiver?

A5: The Secretary's waiver authority is derived from Section 102(c) of IIRIRA, an authority granted to the Secretary by Congress. The waiver authority allows the Secretary to waive all legal requirements the Secretary deems necessary to construct border infrastructure that is barriers and roads necessary to deter illegal entry into the United States.

Q6: What does the waiver gain DHS?

A6: The Secretary's waiver authority allows DHS to expeditiously construct the border infrastructure that is necessary barriers and roads to deter illegal entry into the United States by minimizing the risk of administrative delays and delays or stoppages as a result of litigation. Prior waivers have in fact facilitated the expeditious construction of existing border barriers and roads. The waiver authority has been instrumental to DHS's ability to construct border infrastructure that has made a real and material difference in deterring illegal entry into the United States.

****NOT FOR USE UNTIL WAIVER SIGNED & PUBLISHED****



Commented [FMF(6)]: Revised to track language of waiver authority.

Q9: Does the waiver address the laws or processes concerning that acquisition of private property?

A9: No. The waiver does not impact the process required for the acquisition of private property.

Q10: Does the waiver address procurement laws?

A10: No. The July, 2017 waiver does not include any statutes, regulations, or other legal requirements that govern federal procurement.

Q11: Why does DHS need to issue a waiver for ~~these~~ these ~~projects~~ projects ~~initial effort~~ in San Diego?

A11: The President's January 25, 2017, Executive Order entitled, "Border Security and Immigration Enforcement Improvements," makes clear that achieving operational control of the border is a priority for this Administration. To achieve operational control of the border DHS must, consistent with existing law, build the physical infrastructure necessary to secure the southern border of the United States. ~~These current~~ projects ~~are~~ is ~~a~~ a ~~critical~~ critical ~~early~~ early ~~steps~~ steps in what will be a sustained effort to construct that physical infrastructure. Utilizing the authority provided by Congress in Section 102 of IIRIRA, the Secretary's waiver ~~authority for this initial effort~~ minimizes the risk of delay and, in turn, puts DHS in a better position to continue to progress towards a secure southern border.

Q12: How many times has the Secretary issued a waiver of environmental laws?

A12: The Secretary has issued five previous waivers. The five previous waivers were issued between 2005 and 2008.

Q13: Does this waiver repeal ~~supersede~~ all prior waivers?

A13: No. The Secretary's July 26, 2017 does not repeal any of the five previous waivers. ~~waiver explicitly states that it does not supersede or modify any of the previous waivers.~~

Q14: What environmental impacts does DHS anticipate as a result of these border barrier projects ~~border wall construction~~?

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A14: ~~At this early stage, DHS cannot reasonably forecast what the environmental impacts of a wall might be. As noted, however, Notwithstanding the waiver, DHS is committed to responsible environmental stewardship with respect to these projects and will continue to assess potential impacts, coordinate with relevant stakeholders, and to the extent possible, offset or mitigate potential impacts. That means that DHS will continue to assess potential impacts, coordinate with relevant stakeholders, and to the extent possible, offset or mitigate potential impacts.~~

Additional Information

ENVIRONMENTAL LAWS WAIVED

~~The July 26, 2017 waiver Per the signed waiver pursuant to section 102(e) of HIRIRA, the Secretary for Homeland Security waived the following laws: in their entirety, with respect to the construction of roads and physical barriers (including, but not limited to, accessing the Project Area, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, and safety features) in the Project Area, the following statutes, including all federal, state, or other laws, regulations and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended:~~

- ~~• The National Environmental Policy Act (NEPA)~~
- ~~• The Endangered Species Act (ESA)~~
- ~~• The Federal Water Pollution Control Act (commonly referred to as the Clean Water Act)~~
- ~~• The National Historic Preservation Act (NHPA)~~
- ~~• The Migratory Bird Treaty Act (MBTA)~~
- ~~• The Migratory Bird Conservation Act~~
- ~~• The Clean Air Act (CAA)~~
- ~~• The Archeological Resources Protection Act (ARPA)~~
- ~~• The Paleontological Resources Preservation Act~~
- ~~• The Federal Cave Resources Protection Act of 1988~~
- ~~• The National Trails System Act~~
- ~~• The Safe Drinking Water Act (SDWA)~~
- ~~• The Noise Control Act~~
- ~~• The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA)~~
- ~~• The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)~~
- ~~• The Archaeological and Historic Preservation~~
- ~~• The Antiquities Act~~
- ~~• The Historic Sites, Buildings, and Antiquities Act~~
- ~~• The Wild and Scenic Rivers Act~~
- ~~• The Farmland Protection Policy Act~~
- ~~• The Coastal Zone Management Act (CZMA)~~
- ~~• The Wilderness Act~~
- ~~• The Federal Land Policy & Management Act (FLPMA)~~
- ~~• The National Wildlife Refuge System Administration Act~~

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- The National Wildlife Refuge System Improvement Act of 1997
- The National Fish and Wildlife Act of 1956
- The Fish and Wildlife Coordination Act
- The Wild Horse and Burro Act
- An Act of Oct. 30, 2000, Pub. L. 106-398, § 1, 114 Stat. 1654 (enacting into law § 2848 of Part II of Subtitle D of Title XXVIII of Division B of H.R. 5408 (114 Stat. 1654A-426), as introduced on Oct. 6, 2000)
- The Administrative Procedure Act (APA)
- The Otay Mountain Wilderness Act of 1999
- Sections 102(29) and 103 of Title I of the California Desert Protection Act
- Rivers and Harbors Act of 1899
- The Eagle Protection Act
- The Native American Graves Protection and Repatriation Act (NAGPRA)
- The American Indian Religious Freedom Act
- The Religious Freedom Restoration Act

~~The National Environmental Policy Act (Pub. L. 91-190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 et seq.))~~

~~The Endangered Species Act (Pub. L. 93-205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 et seq.))~~

~~The Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (33 U.S.C. 1251 et seq.))~~

~~The National Historic Preservation Act (Pub. L. 89-665, 80 Stat. 915 (Oct. 15, 1966), as amended, repealed, or replaced by Pub. L. 113-287 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 470 et seq., now codified at 54 U.S.C. 100101 note and 54 U.S.C. 300101 et seq.))~~

~~The Migratory Bird Treaty Act (16 U.S.C. 703 et seq.)~~

~~The Migratory Bird Conservation Act (16 U.S.C. 715 et seq.);~~

~~The Clean Air Act (42 U.S.C. 7401 et seq.);~~

~~The Archeological Resources Protection Act (Pub. L. 96-95 (16 U.S.C. 470aa et seq.));~~

~~The Paleontological Resources Preservation Act (16 U.S.C. 470aaa et seq.);~~

~~The Federal Cave Resources Protection Act of 1988 (16 U.S.C. 4301 et seq.);~~

~~The National Trails System Act (16 U.S.C. 1241 et seq.);~~

~~The Safe Drinking Water Act (42 U.S.C. 300f et seq.);~~

~~The Noise Control Act (42 U.S.C. 4901 et seq.);~~

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~~The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.)~~

~~The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.)~~

~~The Archaeological and Historic Preservation Act (Pub. L. 86-523, as amended, repealed, or replaced by Pub. L. 113-287 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 469 et seq., now codified at 54 U.S.C. 312502 et seq.))~~

~~The Antiquities Act (formerly codified at 16 U.S.C. 431 et seq., now codified 54 U.S.C. § 320301 et seq.)~~

~~The Historic Sites, Buildings, and Antiquities Act (formerly codified at 16 U.S.C. 461 et seq., now codified at 54 U.S.C. 3201-320303 & 320101-320106)~~

~~The Wild and Scenic Rivers Act (Pub. L. 90-542 (16 U.S.C. 1281 et seq.)), the Farmland Protection Policy Act (7 U.S.C. 4201 et seq.)~~

~~The Coastal Zone Management Act (Pub. L. 92-583 (16 U.S.C. § 1451 et seq.))~~

~~The Wilderness Act (Pub. L. 88-577 (16 U.S.C. 1131 et seq.))~~

~~The Federal Land Policy and Management Act (Pub. L. 94-579 (43 U.S.C. 1701 et seq.))~~

~~The National Wildlife Refuge System Administration Act (Pub. L. 89-669 (16 U.S.C. 668dd-668ee))~~

~~The National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105-57)~~

~~National Fish and Wildlife Act of 1956 (Pub. L. 84-1024 (16 U.S.C. 742a, et seq.))~~

~~The Fish and Wildlife Coordination Act (Pub. L. 73-121 (16 U.S.C. 661 et seq.))~~

~~The Wild Horse and Burro Act (16 U.S.C. 1331 et seq.), an Act of Oct. 30, 2000, Pub. L. 106-398, § 1, 114 Stat. 1654 (enacting into law § 2848 of Part II of Subtitle D of Title XXVIII of Division B of H.R. 5408 (114 Stat. 1654A-426), as introduced on Oct. 6, 2000)~~

~~The Administrative Procedure Act (5 U.S.C. 551 et seq.)~~

~~The Otay Mountain Wilderness Act of 1999 (Pub. L. 106-145), sections 102(29) and 103 of Title I of The California Desert Protection Act (Pub. L. 103-433)~~

~~The Rivers and Harbors Act of 1899 (33 U.S.C. 403)~~

~~The Eagle Protection Act (16 U.S.C. 668 et seq.)~~

~~The Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.)~~

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The American Indian Religious Freedom Act (42 U.S.C. 1996), and the Religious Freedom Restoration Act (42 U.S.C. 2000bb)

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