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BPFTI PMO
FM&E

PF225 Pending Litigation Executive Summary

The purpose of this white paper is to provide an overview of the ongoing litigation of the condemnation cases associated with the border fence construction project, "PF225". Overall, there were approximately 400 land acquisitions, of which 330 were condemnation cases. As of March 2014, there are currently 165 open cases remaining that are pending settlement.

Of note, a majority of these condemnation cases are with private land owners but may also include municipalities and trusts. The condemnation cases cover multiple land tracts with each tract having one or several land owners. Additionally, we pay for multiple tracts, where one or more are fee, perpetual easement and temporary easement making it difficult to parse out individual tracts from the total payment. Therefore, the BPFTI PMO Real Estate Specialists are working closely their US Army Corps of Engineer counterparts to derive an accurate per acre cost for these tracts that is solely attributed to the cost of the land.

Condemnation can be categorized in to three main buckets, friendly, adversarial or unknown land owner. The timelines for condemnation cases vary drastically from weeks to years depending on several factors. In unknown or adversarial condemnations, the court must issue an order of possession for construction on the project to start. Even though the project is Real Estate Certified for construction, the condemnation litigation is not closed out until the court renders a Final Judgment, the government pays any remaining liabilities and/or the court acknowledges the stipulated settlement. It is possible for Final Real Estate close-out to occur several years after the construction projected is completed.

The two main factors that affect the PF225 condemnation timelines can be attributed to title clean-up and protracted settlement negotiations. Virtually all of the PFF225 condemnations had title issues that required further clarification of legal descriptions. After title research, it was also determined that certain condemnation cases needed to be split, merged or have parties added and/or removed. The protracted settlement negotiations were due but not limited to land owners seeking damages, the Government having to purchase of uneconomic remainders, and access cures such as the purchase of fee-under-levee in Rio Grande Valley (RGV).

These condemnation cases are primarily in RGV Sector for fence segments O-1 through O-21 in southern Texas. In RGV alone, there were 280 land acquisitions, of which 273 were condemnations. There are now currently 158 cases pending litigation in RGV. Of the 158 open cases, 44 cases pertain to fence segments O-1 through O-3 which have not yet been constructed. There are only seven (7) cases remaining in litigation outside of RGV with; four (4) in Del Rio, Texas, one (1) case in El Paso, Texas, and the remaining two (2) in Tucson Arizona respectively.

The conservative rough order of magnitude budget for the PF225 Real Estate is (b) (5). This includes the land and the administrative costs associated with the land acquisition. The current funding on hand is \$31.3 million leaving a (b) (5) shortfall. The funding being added in this current modification will cover the shortfall and will provide additional funding for any cost overruns that may occur in the litigation process.