

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

GREG ABBOTT, in his capacity as
GOVERNOR OF THE STATE OF TEXAS,
and THE STATE OF TEXAS,

Defendants.

Case No. 1:23-cv-00853-DAE

**PLAINTIFF UNITED STATES' NOTICE OF SURVEY
BY THE INTERNATIONAL BOUNDARY AND WATER COMMISSION**

Plaintiff United States hereby notifies the Court of developments germane to this litigation. Yesterday, August 14, 2023, the International Boundary and Water Commission (IBWC) finalized, and authorized the United States to make public, the results of IBWC's binational topographical survey of the floating barrier that Defendants deployed in the Rio Grande. The U.S. Section and the Mexican Section of the IBWC jointly conducted the survey on July 27 and 28, 2023, after the United States had filed its motion for a preliminary injunction in this suit. Pena Suppl. Decl. ¶ 2. The results of the joint topographical survey became final on August 14, 2023, upon the concurrence of the U.S. Commissioner and the Mexican Commissioner. *Id.* ¶ 10. The Mexican Commissioner further approved the U.S. Commissioner's request to allow the United States to make public the final survey results. *Id.* ¶ 11.*

* The IBWC has been designated as a public international organization within the meaning of the International Organizations Immunities Act, 22 U.S.C. § 288 et seq. *See* Exec. Order 12467 § 1 (Mar. 2, 1984). That designation applies to actions undertaken by the U.S. Section of the Commission in respect of Commission matters that are not

The IBWC survey establishes that the chain of floating buoys deployed by Defendants is approximately 995 feet long. Pena Suppl. Decl. ¶ 5. Comparing the survey results against the International Boundary Line (IBL) between the United States and Mexico, the survey as concurred in by both IBWC Commissioners reflects that the buoy chain crosses the IBL, and that a majority of the floating barrier (approximately 787 feet of the buoy chain) is located within the territory of Mexico. *Id.* ¶ 7; *see also id.* Ex. B (map showing approximate location of barrier in relation to IBL). The Governments of the United States and Mexico are in discussions on how to proceed with respect to the portion of the floating barrier that is located within the territory of Mexico.

Plaintiff will address the relevance of these facts to its motion for preliminary injunction in the reply brief to be filed by or on August 16, 2023. *See* ECF 18.

within the U.S. Section's "exclusive control, supervision or jurisdiction, or within the sole discretion of the United States Commissioner." *Id.* § 2. The joint binational survey was not a matter within the U.S. Section's exclusive control, supervision, or jurisdiction, nor was it within the sole discretion of the U.S. Commissioner. Pena Suppl. Decl. ¶¶ 2, 9.

Respectfully submitted,

Dated: August 15, 2023

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CERTIFICATE OF SERVICE

I certify that on August 15, 2023, a copy of this filing was served on counsel of record through the Court's electronic filing system.

/s/ Andrew D. Knudsen
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