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# **Background: Using Defense Funds for Construction in a National Emergency**

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# DOD Context

- Two Presidents have invoked the NEA and cited Title 10 U.S.C. §2808 to carry out otherwise unauthorized construction with military construction funds:
  - Operation Desert Shield, EO 12734 of November 14, 1990
  - 9/11, EO 13235 of November 16, 2001. Under this, the president was required and able to renew the authority.
- Recent Border Operations – under Title 32
  - Operation Jumpstart, 2006 – 2008, \$1.2B, Title 32
  - Operation Phalanx, 2010-2016, \$.15B – 2010-2011, Title 32

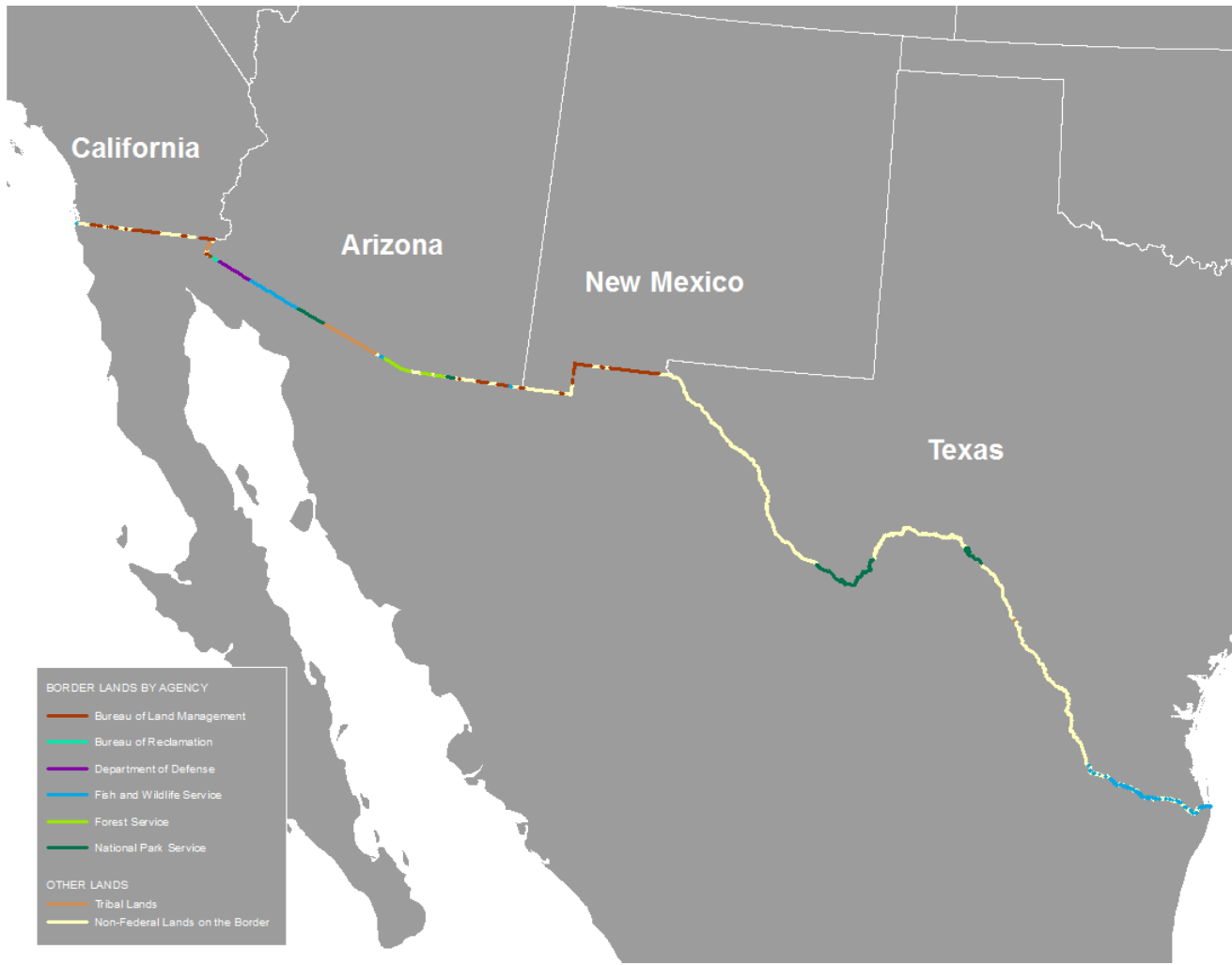


# Defense Actors

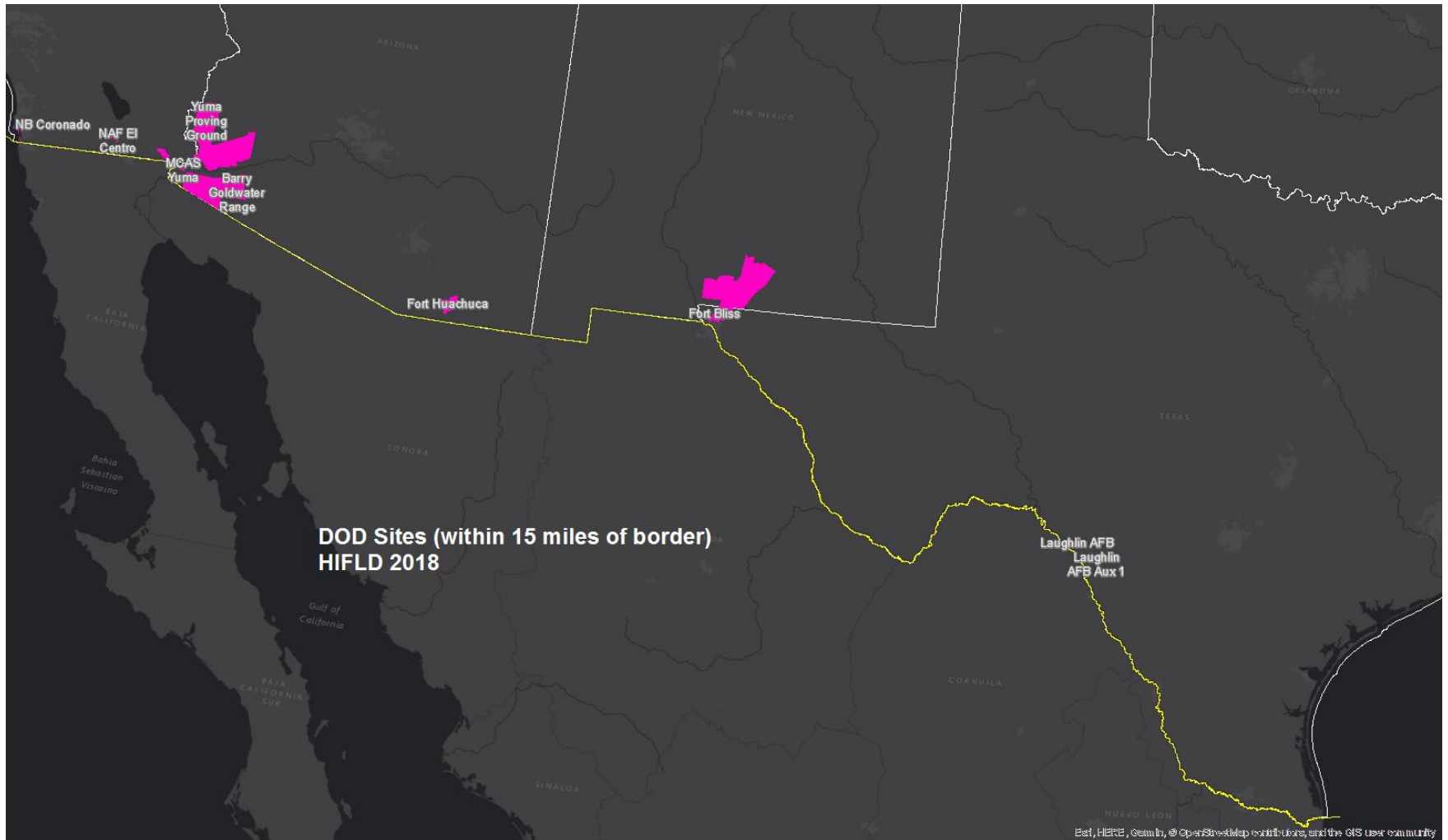
Secretary of Defense: 10 USC §113	Mission: To provide the military forces needed to deter war and to protect the security of the United States. The department's headquarters is at the Pentagon
Commander, USNORTHCOM: 10 USC 164	Mission: To conduct homeland defense, civil support and security cooperation to defend and secure the United States and its interests.
U.S. Army Corps of Engineers (USACE)	Mission: To deliver vital public and military engineering services; partnering to strengthen national security, energize the economy, and reduce disaster-related risks.
U.S. Army North (ARNORTH)	Mission: conduct homeland defense, civil support operations and theater security cooperation activities.
U.S. Marine Forces Northern Command	Mission: To execute antiterrorism program and force protection responsibilities; advise on proper employment of USMC Forces; coordinate with and support USMC Forces when attached to USNORTHCOM



# Geography: Border Lands by Agency



# Geography: DOD lands



# Further Reading

- The U.S. Army on the Mexican Border: A Historical Perspective, [https://www.armyupress.army.mil/Portals/7/combat-studies-institute/csi-books/Matthews\\_op22.pdf](https://www.armyupress.army.mil/Portals/7/combat-studies-institute/csi-books/Matthews_op22.pdf).
- Drugs on the Border: The Role of the Military, Parameters Magazine, Winter 1991-92, <https://ssi.armywarcollege.edu/pubs/Parameters/articles/1991/1991%20brown.pdf>.
- After Desert Storm, The U.S. Army and the Reconstruction of Kuwait, <https://apps.dtic.mil/dtic/tr/fulltext/u2/a531941.pdf>.



## Selected Statutes for Discussion

- **Title 10 §2808** - Construction authority in the event of a declaration of war or national emergency
- **Title 33 §2293** - Reprogramming during national emergencies
- **Title 10 §284** - Support for counterdrug activities and activities to counter transnational organized crime



# Title 10 §2808

## Construction authority in the event of a declaration of war or national emergency

- (a) In the event of a declaration of war or the declaration by the President of a national emergency in accordance with the National Emergencies Act (50 U.S.C. 1601 et seq.) that requires use of the armed forces, the Secretary of Defense, without regard to any other provision of law, may undertake military construction projects, and may authorize the Secretaries of the military departments to undertake military construction projects, not otherwise authorized by law that are necessary to support such use of the armed forces. Such projects may be undertaken only within the total amount of funds that have been appropriated for military construction, including funds appropriated for family housing, that have not been obligated.
- (b) When a decision is made to undertake military construction projects authorized by this section, the Secretary of Defense shall notify, in an electronic medium pursuant to section 480 of this title, the appropriate committees of Congress of the decision and of the estimated cost of the construction projects, including the cost of any real estate action pertaining to those construction projects.
- (c) The authority described in subsection (a) shall terminate with respect to any war or national emergency at the end of the war or national emergency.





# Title 33 §2293

## Reprogramming during national emergencies

- **(a) Termination or deferment of civil works projects; application of resources to national defense projects**

In the event of a declaration of war or a declaration by the President of a national emergency in accordance with the National Emergencies Act [50 U.S.C. 1601 et seq.] that requires or may require use of the Armed Forces, the Secretary, without regard to any other provision of law, may (1) terminate or defer the construction, operation, maintenance, or repair of any Department of the Army civil works project that he deems not essential to the national defense, and (2) apply the resources of the Department of the Army's civil works program, including funds, personnel, and equipment, to construct or assist in the construction, operation, maintenance, and repair of authorized civil works, military construction, and civil defense projects that are essential to the national defense.

- **(b) Termination of state of war or national emergency**

The Secretary shall immediately notify the appropriate committees of Congress of any actions taken pursuant to the authorities provided by this section, and cease to exercise such authorities not later than 180 calendar days after the termination of the state of war or national emergency, whichever occurs later.



# Title 10 §284

## Support for counterdrug activities and activities to counter transnational organized crime

(a) SUPPORT TO OTHER AGENCIES.—The Secretary of Defense may provide support for the counterdrug activities or activities to counter transnational organized crime of any other department or agency of the Federal Government or of any State, local, tribal, or foreign law enforcement agency for any of the purposes set forth in subsection (b) [...]

(b) TYPES OF SUPPORT FOR AGENCIES OF UNITED STATES.- [...]

(7) Construction of roads and fences and installation of lighting to block drug smuggling corridors across international boundaries of the United States. [...]

### **FY2019 DOD Appropriations for “Drug Interdiction and Counter-Drug Activities” (P.L. 115-245)**

\$881.5 million, of which:

- ✓ \$517.2 million for counter-narcotics support
- ✓ \$121.9 million for drug demand reduction program
- ✓ \$217.2 million for National Guard counter-drug program
- ✓ \$25.3 million for National Guard counter-drug schools program

*For FY2019, DOD requested \$130.3 million for “domestic support.”*

