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Statement of
Honorable Robert H. McMahon
Assistant Secretary Of Defense
(Sustainment)

Before the House Committee on Appropriations
Subcommittee on Military Construction, Veterans Affairs, and Related Agencies

on the

The 2019 National Emergency Declaration to Build a Border Wall & its Effect on Military
Construction and Readiness

February 27, 2019

Introduction

Chairwoman Lowey, Ranking Member Granger, Chairwoman Wasserman Schultz, Ranking Member Carter, and distinguished members of the Subcommittee: thank you for the opportunity to testify today on the Department of Defense's (DoD) support to the Department of Homeland Security's (DHS) U.S. Customs and Border Protection (CBP) mission to secure the southern border of the United States.

On April 4, 2018, the President directed the Secretary of Defense to support the Department of Homeland Security (DHS) in securing the southern border, including assistance to "stop the flow of deadly drugs and other contraband, gang members and other criminals, and illegal aliens into the country." The Department's Border Security Support Cell, chaired by the Assistant Secretary of Defense for Homeland Defense & Global Security, is the focal point for coordinating this support, with Sustainment in a supporting role.

10 USC 2808 authorities

On February 15, 2019, the President declared that a national emergency exists at the southern border of the United States that requires the use of the armed forces, making available certain emergency authorities, including Section 2808 of Title 10, U.S. Code. Elements of the armed forces have been deployed to the southern border since April 2018. This deployment follows previous troop deployments to the southern border during Operation Jump Start from 2006 to 2008, and during Operation Phalanx from 2010 to 2016. Currently, at the southern border, USNORTHCOM Joint Task Force North supports U.S. Federal law enforcement efforts to interdict narcotics shipments into the United States as well. Employing military personnel, unique technologies, and specialized skill sets developed in contingency operations overseas, this joint task force provides critical support to Federal law enforcement interdiction missions operations.

Section 2808 provides that, in the event of a national emergency declaration requiring use of 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."

At this time, the Acting Secretary has not decided whether use of Section 2808 authorities is necessary. No military construction funds may be obligated under Section 2808 unless the Acting Secretary determines that military construction projects are necessary to support the use of the armed forces in addressing the national emergency for which the armed forces are required. To inform his decision, the Acting Secretary has requested from DHS a list of proposed border barrier construction projects, prioritized in order of effectiveness, that DHS considers to be most effective in improving the effectiveness and efficiency of DoD personnel supporting Customs and Border Protection (CBP) and securing the southern border. DoD is awaiting DHS's response.

In support of the Acting Secretary's consideration of Section 2808, DoD is conducting a deliberate process to identify MILCON projects that could be used as funding sources, if necessary, for MILCON projects to support the use of the armed forces in connection with the national emergency. Should the Acting Secretary determine that use of Section 2808 authorities is necessary, we will provide you the information on affected projects as soon as it is available.

In order to protect military readiness, the projects that are most likely to be temporarily delayed include those that pose no or minimal operational or readiness risks if deferred, projects that were already scheduled to be awarded in the last six months of the fiscal year, and recapitalization projects of existing facilities that can be temporarily deferred for a period of months.

The Department is not including in this consideration any family housing projects as funding sources for Section 2808. Further, the Fiscal Year 2020 budget request will include funds to replenish funding for any MILCON projects that are deferred to fund MILCON projects to support the use of the armed forces at the southern border. As such, should Congress appropriate this funding before the new Fiscal Year begins on October 1, 2019, any contract award for an affected project would only be deferred, not cancelled.

Sustainment Actions in Support of Acting SecDef decision

This process is ongoing, and I stand ready to execute the necessary actions once a decision has been made. In carrying out this mission, I will continually assesses the DoD capabilities and resources necessary to meet these mission requirements, while mitigating impacts on military readiness and considering ongoing and future operational commitments.

Conclusion

Chairwoman Lowey, Ranking Member Granger, Chairwoman Wasserman Schultz, Ranking Member Carter, and distinguished members of the Subcommittee: thank you again for the opportunity to testify today. I look forward to your questions.