

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. 1:23-cv-00853
)	
v.)	
)	
GREG ABBOTT, in his capacity as GOVERNOR)	
OF THE STATE OF TEXAS, and THE STATE OF)	
TEXAS,)	
)	
Defendants.)	
)	

COMPLAINT

Plaintiff, the United States of America, through its undersigned counsel, by the authority of the Attorney General of the United States, and at the request of the Secretary of the Army acting through the United States Army Corps of Engineers (“Corps”), files this Complaint and alleges as follows:

NATURE OF THE ACTION

1. The United States brings this civil enforcement action under sections 12 and 17 of the Rivers and Harbors Appropriation Act of 1899 (“RHA” or “Rivers and Harbors Act”), 33 U.S.C. §§ 406 and 413, against Defendants Greg Abbott, in his official capacity as Governor of the State of Texas, and the State of Texas.

2. As alleged below, Defendants have built structures in the Rio Grande, a navigable water of the United States, without the Corps’ authorization, in violation of RHA section 10, 33 U.S.C. § 403. These structures include a floating barrier and related infrastructure.

3. As alleged below, Defendants' structures also constitute an unauthorized obstruction to the navigable capacity of waters of the United States in violation of RHA section 10, 33 U.S.C. § 403.

4. In this action, the United States seeks: (1) to enjoin the building of structures in navigable waters and the obstruction to the navigable capacity of the waters of the United States in violation of the RHA, 33 U.S.C. § 403; and (2) to require Defendants, at their own expense and cost, to remove all structures and obstructions, including a floating barrier and all infrastructure related to the floating barrier, in the Rio Grande.

JURISDICTION AND VENUE

5. This Court has subject-matter jurisdiction pursuant to 33 U.S.C. § 406 and 28 U.S.C. §§ 1331, 1345 and 1355.

6. Venue is proper in the Western District of Texas, Del Rio Division, pursuant to 33 U.S.C. § 406 and 28 U.S.C. § 1391(b) and (c), because the unauthorized structures and obstruction exist in the Rio Grande in the vicinity of Eagle Pass, Texas, which lies within this District, and the events giving rise to the cause of action alleged below occurred in the Rio Grande in the vicinity of Eagle Pass, Texas, which lies within this District.

7. Venue also is proper in the Western District of Texas, Austin Division, because Austin is the state capital and Defendant Greg Abbott is located in Austin, the unauthorized structures and obstruction exist in the Rio Grande in the vicinity of Eagle Pass, Texas, which lies within this District, and the events giving rise to the cause of action alleged below occurred in the Rio Grande in the vicinity of Eagle Pass, Texas, which lies within this District. The United States is filing suit in the Western District of Texas, Austin Division, because it is the capital and where a Defendant resides, and a related case is pending there. That case, *Epi's Canoe & Kayak Team, LLC v. State of Texas*, No. 1:23-cv-00836-DII, was removed to federal court by Governor Greg

Abbott, the State of Texas, and state agencies and officials on July 21, 2023. The plaintiffs in *Epi's Canoe* claim that the floating barrier in the Rio Grande in the vicinity of Eagle Pass, Texas, is unlawful and pray for, among other things, an injunction to restrain Governor Abbott, the State of Texas, and the other state defendants from installing the floating barrier.

THE PARTIES

8. Plaintiff is the United States of America. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519 and 33 U.S.C. § 413.

9. Defendants are Greg Abbott, in his official capacity as Governor of the State of Texas, and the State of Texas.

10. At all times relevant to the Complaint, Defendants caused and/or controlled the placement and/or construction activities that occurred or are occurring in the Rio Grande and are the subject of this complaint.

RIVERS AND HARBORS ACT STATUTORY AND REGULATORY BACKGROUND

11. RHA section 10, 33 U.S.C. § 403, prohibits the “creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States.” 33 U.S.C. § 403.

12. RHA section 10, 33 U.S.C. § 403, independently prohibits “build[ing] or commenc[ing] the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army.”

13. A Corps permit is required under RHA section 10, 33 U.S.C. § 403, for structures or work in or affecting navigable waters of the United States. 33 C.F.R. § 322.3(a).

14. “Navigable waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity.” 33 C.F.R. § 329.4.

15. A “structure” includes, but is not limited to, “any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other obstacle or obstruction.” 33 C.F.R. § 322.2(b).

16. RHA section 12, 33 U.S.C. § 406, provides that “the removal of any structures or parts of structures erected in violation of the provisions of [33 U.S.C. § 403 and other specified statutory sections] may be enforced by the injunction of any district court exercising jurisdiction in any district in which such structures may exist, and proper proceedings to this end may be instituted under the direction of the Attorney General of the United States.”

GENERAL ALLEGATIONS

17. The Rio Grande in the vicinity of Eagle Pass, Texas, is a navigable water of the United States. *See* U.S. Army Corps of Engineers, Fort Worth District, Navigable Waters of the United States in the Fort Worth, Albuquerque, and Tulsa Districts Within the State of Texas at p. 1 (Dec. 20, 2011), Attachment 1¹; U.S. Coast Guard, Memo from 8th District Commander re:

¹ This document also is publicly available at: www.swf.usace.army.mil/Portals/47/docs/regulatory/NavList2011.pdf. As such, the Court may take judicial notice of it. *See, e.g., Hawk Aircargo, Inc. v. Chao*, 418 F.3d 453, 457 (5th Cir. 2005).

Navigability Determination (Oct. 19, 1984), Attachment 2; Decl. of Capt. Brandy Parker Regarding Navigability Determination of the Rio Grande (July 24, 2023), Attachment 3.

18. Beginning on or before July 10, 2023, and continuing through at least July 17, 2023, the Defendants, and/or persons acting on their behalf or at their direction, placed a floating barrier in the Rio Grande approximately two miles south of the Camino Real International Bridge, Eagle Pass, Texas (hereinafter the “Floating Barrier”). Declaration of Abraham Garcia ¶¶ 2-3 & Ex. 1-2 (July 24, 2023), Attachment 4. The Floating Barrier appears to include associated infrastructure designed to anchor or fix it in place in the Rio Grande. *Id.* Ex. 1.

19. The Floating Barrier consists of a string of buoys each of which is between 4 and 6 feet in diameter. According to a June 8, 2023, press statement by Governor Abbott, this string of buoys may stretch for at least 1,000 feet.²

20. Defendants do not have authorization from the Corps pursuant to 33 U.S.C. § 403 or 33 C.F.R. § 322.3 for the Floating Barrier or for any associated infrastructure.

21. Defendants did not seek authorization from the Corps prior to installing the Floating Barrier.

22. Governor Abbott stated publicly on June 8, 2023, that Texas may seek to build similar floating barriers within the Rio Grande along the United States-Mexico border in Texas in addition to the one then contemplated, and now constructed, in the vicinity of Eagle Pass, Texas.³

23. Because Texas installed the Floating Barrier without seeking the Corps’ authorization, the Corps and other relevant federal agencies were deprived of the opportunity to evaluate risks the barrier poses to public safety and the environment, mitigate those risks as

² See <https://gov.texas.gov/news/post/governor-abbott-signs-sweeping-package-of-border-security-legislation>.

³ See <https://gov.texas.gov/news/post/governor-abbott-signs-sweeping-package-of-border-security-legislation>.

necessary through the permitting process, and otherwise evaluate whether the project is in the public interest.

24. Governor Abbott has stated publicly that the Floating Barrier is part of a broader effort called “Operation Lone Star.”⁴ According to Governor Abbott, Operation Lone Star also includes the placement of concertina wire near the U.S.-Mexico border.⁵ With respect to the placement of concertina wire, Governor Abbott has stated: “We aren’t asking for permission.”⁶

25. On July 20, 2023, United States Assistant Attorney General Todd Kim and United States Attorney Jaime Esparza wrote Governor Abbott and Texas Provisional Attorney General Angela Colmenero, giving the Texas officials notice that the Floating Barrier violates federal law and inviting the State in response to commit to expeditiously remove the Barrier and related structures. On July 24, 2023, the Governor responded with a letter addressed to President Biden. Attachment 5. The Governor’s letter acknowledges “the floating marine barriers we have deployed in the Rio Grande River in Eagle Pass” and states that “Texas will see you in court, Mr. President.” *Id.* at 1.

COUNT 1: VIOLATION OF THE RIVERS AND HARBORS ACT

26. The United States repeats the allegations set forth in Paragraphs 1 through 25 of this Complaint.

⁴ See <https://gov.texas.gov/news/post/operation-lone-star-boosts-border-response-with-new-marine-barriers>.

⁵ See *id.*

⁶ See https://twitter.com/GregAbbott_TX/status/1638306917939380224?t=BB0rNKcTgwyDn0j8qRiQKQ&s=19.

27. The Floating Barrier, as constructed, installed, and placed by Defendants (and/or persons acting on their behalf or at their direction) wholly or partially in navigable waters of the United States, constitutes a “structure” within the meaning of RHA section 10, 33 U.S.C. § 403.

28. The Floating Barrier, as constructed, installed, and placed by Defendants (and/or persons acting on their behalf or at their direction) wholly or partially in navigable waters of the United States, constitutes a “structure,” as that term is defined in 33 C.F.R. § 322.2(b).

29. The Floating Barrier is an obstruction to the navigable capacity of the Rio Grande, a navigable water of the United States.

30. The Floating Barrier required authorization under RHA section 10, 33 U.S.C. § 403, and the Corps’ implementing regulations at 33 C.F.R. Part 322, including 33 C.F.R. § 322.3(a), for its construction, installation, and placement in navigable waters of the United States.

31. Defendants did not obtain a Corps permit or otherwise obtain the Corps’ permission for the construction, installation, or placement of the Floating Barrier in the Rio Grande as required by RHA section 10, 33 U.S.C. § 403.

32. The unauthorized construction, installation, and placement of the Floating Barrier structure in navigable waters of the United States violates RHA section 10, 33 U.S.C. § 403.

33. The Floating Barrier’s unauthorized obstruction to the navigable capacity of navigable waters of the United States violates RHA section 10, 33 U.S.C. § 403.

34. Defendants have violated and continue to violate RHA section 10, 33 U.S.C. § 403, by: (a) the construction, installation, and placement of the Floating Barrier in the Rio Grande without a Corps permit; and (b) the creation of an unauthorized obstruction to the navigable capacity of navigable waters of the United States.

PRAYER FOR RELIEF

35. WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court order the following relief:

a. Enjoin Defendants from further constructing, installing, placing, or maintaining structures in waters of the United States, except in compliance with the RHA and all other applicable law;

b. Enjoin Defendants from creating or maintaining obstructions in or affecting the navigable waters of the United States, except in compliance with the RHA and all other applicable law;

c. Compel Defendants to promptly remove the Floating Barrier and any related unauthorized structures from waters of the United States pursuant to the RHA, 33 U.S.C. § 401 *et seq.*, and in accordance with all other requirements of law and consultation with the relevant authorities, including the Corps;

d. Compel Defendants to promptly remove the unauthorized obstruction to the navigable capacity of navigable waters of the United States pursuant to the RHA 33 U.S.C. § 401 *et seq.*, and in accordance with all other requirements of law and consultation with the relevant authorities, including the Corps;

e. Award the United States its costs and disbursements; and

f. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

TODD KIM
ASSISTANT ATTORNEY GENERAL
Environment & Natural Resources Division

Dated: July 24, 2023

By: Brian H. Lynk
BRIAN H. LYNK, D.C. Bar. No. 459525

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Attachment 1

U.S. Army Corps of Engineers Navigable Waters List



**US Army Corps
of Engineers**
Fort Worth District

**Navigable Waters of the United States in the
Fort Worth, Albuquerque, and Tulsa
Districts Within the State of Texas**

December 20, 2011



For purposes of Section 10 of the Rivers and Harbors Act of 1899, navigable waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently being used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce (33 CFR 329.4). Navigable waters include lakes and other on-channel impoundments of navigable rivers. Under Section 10, the U.S. Army Corps of Engineers (USACE) regulates any work in or affecting navigable waters of the United States. The following waters are considered to be navigable waters of the United States and thus fall within the jurisdiction of the USACE in the Fort Worth, Albuquerque, and Tulsa districts. Navigable waters in the Galveston District are determined on a case-by-case basis and, therefore, are not included in this list. The USACE district(s) within which these navigable waters lie are indicated as: SWF (Fort Worth District), SWT (Tulsa District), and SPA (Albuquerque District).

- Angelina River:** From Sam Rayburn Dam in Jasper County upstream to U.S. Highway 59 in Nacogdoches and Angelina counties and all USACE lands associated with B.A. Steinhagen Lake in Jasper and Tyler counties, Texas. [SWF]
- Big Cypress Bayou:** From the Texas-Louisiana state line in Marion County, Texas, upstream to Ellison Creek Reservoir in Morris County, Texas. [SWF]
- Brazos River:** From the point of intersection of Grimes, Waller, and Washington counties upstream to Whitney Dam in Hill and Bosque counties, Texas. [SWF]
- Colorado River:** From the Bastrop-Fayette county line upstream to Longhorn Dam in Travis County, Texas. [SWF]
- Neches River:** USACE lands associated with B.A. Steinhagen Lake in Jasper and Tyler counties, Texas. [SWF]
- Red River:** From the U.S. Highway 71 bridge at the Texas-Arkansas state line upstream to the Oklahoma-Arkansas state line and from Denison Dam on Lake Texoma upstream to Warrens Bend, approximately 7.25 miles north-northeast of Marysville, in Cooke County, Texas. [SWT]
- Rio Grande:** From the Zapata-Webb county line upstream to the point of intersection of the Texas-New Mexico state line and Mexico. [SWF, SPA]
- Sabine River:** From the point of intersection of the Sabine-Vernon parish line in Louisiana with Newton County, Texas upstream to the Sabine River-Big Sandy Creek confluence in Upshur County, Texas. [SWF]
- Sulphur River:** From the Texas-Arkansas state line upstream to Wright Patman Dam in Cass and Bowie counties, Texas. [SWF]
- Trinity River:** From the point of intersection of Houston, Madison, and Walker counties upstream to Riverside Drive in Fort Worth, Tarrant County, Texas. [SWF]

Attachment 2

U.S. Coast Guard Navigability Determination

U.S. Department
of Transportation
United States
Coast Guard



COMMANDER
EIGHTH COAST GUARD DISTRICT
HALE BOGGS FEDERAL BLDG.

500 CAMP ST.
NEW ORLEANS, LA. 70130
STAFF SYMBOL:
PHONE:

(d1)
(504)589-6188

16731
OCT 19 1984

From: Commander, Eighth Coast Guard District
To: Commanding Officer, Marine Safety Office Corpus Christi, TX
Subj: Navigability Determination, Rio Grande River, TX
Ref: (a) Commanding Officer, MSO Corpus Christi ltr 16730 of 15
December 83
(b) COMDTINST 16210.1B

1. From 1947 to 1975 the Rio Grande River was listed among the navigable waters of the United States pursuant to treaties with Mexico and for Coast Guard regulatory purposes. This determination covers the river "for the entire distance where it forms the international boundary, to a point near El Paso, Texas" or from its mouth at the Gulf of Mexico (mile 0.0 to mile 1247). This finding was published at 33 C.F.R. § 2.66-5 until 1976 when the practice of publishing lists of waters determined to be navigable for Coast Guard jurisdictional purposes was discontinued.

2. Under the rule that, despite artificial or natural obstructions, once a stream has been found to be of navigable use it remains so, the designated stretch of the Rio Grande River remains a navigable waterway of the United States. See Economy Light Co. v. U.S., 256 U.S. 113 (1921). The vessel manning and inspection laws of the United States apply to vessels operating on it. Obviously, whether a vessel is subject to those laws is a function of its tonnage, cargo, route, etc.

3. This represents the opinion of the Coast Guard only as to the extent of its own jurisdiction, and does not address the jurisdiction of other agencies.

T. W. SNOOK
By direction

Copy to: CCGD8 (obr)
COMDT (G-M-TH-4/13)
COMDT G-LMI

From: Commander, Eighth Coast Guard District
To: Commanding Officer, Marine Safety Office Corpus Christi, TX
Subj: Navigability Determination, Rio Grande River
Ref: (a) Commanding Officer, MSO Corpus Christi ltr 16730 of 15
December 83
(b) COMDTINST 16210.1B

1. On 29 August 1947, Commander, Eighth Coast Guard District, determined that the Rio Grande River was part of the navigable waters of the U.S. for Coast Guard regulatory purposes "for the entire distance where it forms the international boundary, to a point near El Paso, Texas." This finding was published at 33 C.F.R. { 2.66-5 until 1976 when the practice of publishing lists of waters determined to be navigable for Coast Guard jurisdictional purposes was discontinued.
2. Under the rule that, despite artificial or natural obstructions, once a stream has been found to be of navigable use it remains so, the Rio Grande River from the Gulf of Mexico to El Paso remains a navigable waterway of the United States. See Economy Light Co. v. U.S., 256 U.S. 113 (1921). The vessel manning and inspection laws of the United States apply to vessels operating on it. Obviously, whether a vessel is subject to those laws is a function of its tonnage, cargo, route, etc.
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Thomas W. Snook
By direction

From: Commander 8th Coast Guard District (dl)
To: Commandant (G-MTH-4/13)

Attachment 3

U.S. Coast Guard Authentication Declaration

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No.
)	
v.)	
)	
GREG ABBOTT, in his capacity as GOVERNOR)	
OF THE STATE OF TEXAS, and THE STATE OF)	
TEXAS,)	
)	
Defendants.)	

**DECLARATION OF CAPT BRANDY PARKER REGARDING NAVIGABILITY
DETERMINATION OF THE RIO GRANDE RIVER**


1. My name is Brandy Parker. I am either personally acquainted with the facts herein stated or have otherwise been made aware of them through the course of my duties, and declare as follows:
2. I am employed by the United States Coast Guard within the Department of Homeland Security and am located in New Orleans, Louisiana. I have served in the Coast Guard for 26 years.
3. I am currently assigned as the Staff Judge Advocate in Coast Guard District 8 (“CGD8”), which is the Coast Guard area of responsibility that encompasses the Rio Grande River. In this position, I am responsible for providing legal advice to the Commander, CGD8, managing a staff of attorneys in the performance of their duties, and maintaining records of navigability determinations.
4. As part of my duties, I routinely review Coast Guard navigability determinations for waterways within the CGD8 area of responsibility.
5. Navigable waters of the United States are defined in 33 C.F.R. § 2.36. Navigability determinations of specific waterways are routinely made and reviewed by the Coast Guard in order to determine its jurisdiction. *See* 33 C.F.R. § 2.40. “Copies of these determinations are maintained

by the [Coast Guard] District Commander in whose district the waterway is located.” *Id.*

6. Exhibit A is a copy of the public record of the 1984 Rio Grande River navigability determination. It is maintained in the district in which that river is located by the District Commander of CGD8. This public record was made by the Coast Guard office—CGD8—with the legal authority to make such a determination. These types of determinations are a regularly conducted activity of this office. Upon review, the 1984 navigability determination is still in effect. Accordingly, the Rio Grande River remains navigable waters of the United States.

I hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge and information.

Dated this 24 day of July 2023.



Brandy Parker, Captain
United States Coast Guard

EXHIBIT A

U.S. Department
of Transportation
United States
Coast Guard



COMMANDER
EIGHTH COAST GUARD DISTRICT
HALE BOGGS FEDERAL BLDG.

500 CAMP ST.
NEW ORLEANS, LA. 70130
STAFF SYMBOL:
PHONE:

(d1)
(504)589-6188

16731
OCT 19 1984

From: Commander, Eighth Coast Guard District
To: Commanding Officer, Marine Safety Office Corpus Christi, TX
Subj: Navigability Determination, Rio Grande River, TX
Ref: (a) Commanding Officer, MSO Corpus Christi ltr 16730 of 15
December 83
(b) COMDTINST 16210.1B

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2. Under the rule that, despite artificial or natural obstructions, once a stream has been found to be of navigable use it remains so, the designated stretch of the Rio Grande River remains a navigable waterway of the United States. See Economy Light Co. v. U.S., 256 U.S. 113 (1921). The vessel manning and inspection laws of the United States apply to vessels operating on it. Obviously, whether a vessel is subject to those laws is a function of its tonnage, cargo, route, etc.

3. This represents the opinion of the Coast Guard only as to the extent of its own jurisdiction, and does not address the jurisdiction of other agencies.

T. W. SNOOK
By direction

Copy to: CCGD8 (obr)
COMDT (G-M-TH-4/13)
COMDT G-LMI

From: Commander, Eighth Coast Guard District
To: Commanding Officer, Marine Safety Office Corpus Christi, TX
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December 83
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2. Under the rule that, despite artificial or natural obstructions, once a stream has been found to be of navigable use it remains so, the Rio Grande River from the Gulf of Mexico to El Paso remains a navigable waterway of the United States. See Economy Light Co. v. U.S., 256 U.S. 113 (1921). The vessel manning and inspection laws of the United States apply to vessels operating on it. Obviously, whether a vessel is subject to those laws is a function of its tonnage, cargo, route, etc.
3. This represents only the opinion of the Coast Guard as to the extent of its own jurisdiction, and does not address jurisdiction of other agencies.

Thomas W. Snook
By direction

From: Commander 8th Coast Guard District (dl)
To: Commandant (G-MTH-4/13)

Attachment 4

U.S. Customs & Border Patrol Photo-Authentication Declaration

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No.
)	
v.)	
)	
GREG ABBOTT, in his capacity as GOVERNOR)	
OF THE STATE OF TEXAS, and THE STATE OF)	
TEXAS,)	
)	
Defendants.)	

DECLARATION OF ABRAHAM GARCIA

1. My name is Abraham Garcia. I am currently a Supervisory Border Patrol Agent (SBPA) at the Eagle Pass North Station (EGT) in Eagle Pass, Texas. I have held this position since July 18, 2021. As a SBPA, my duties involve supervising Border Patrol Agents (BPAs), as well as regular patrol of the area along the Rio Grande in and around Eagle Pass, Texas.
2. On July 10, 2023, on or about 2:45 p.m. Central Time, I launched a United States Border Patrol (USBP) owned Small Unmanned Aircraft System (SUAS) from my position on the ground and proceeded to take three photographs of the buoy deployment at or near the Heavenly Farms in the vicinity of Texas Loop 480 in Eagle Pass, Texas. A true and accurate copy of those three photographs are attached as Exhibit 1.
3. On July 17, 2023, at about 3:00 p.m. Central Time, I launched a USBP owned Small Unmanned Aircraft System (SUAS) from my position on the ground and proceeded to take three photographs of the buoy deployment to provide an update to my station leadership. These

photographs were taken at or near the Heavenly Farms in the vicinity of Texas Loop 480 in Eagle Pass, Texas. A true and accurate copy of those three photographs are attached as Exhibit 2.

I hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge and information.

EXECUTED ON this 24th day of July 2023.



Abraham Garcia
Supervisory Border Patrol Agent

EXHIBIT 1







EXHIBIT 2







CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
U.S. Dept. of Justice, Environmental Defense Section
P.O. Box 7611, Washington, DC 20044; 202-514-6187

DEFENDANTS

Greg Abbott, in his official capacity as Governor of Texas,
and the State of Texas
County of Residence of First Listed Defendant Travis
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
The Honorable Angela Colmenero, Interim Attorney General
300 West 15th Street, Austin, TX 78701

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standard Act <input type="checkbox"/> 720 Labor/Management Relation <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Action	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodation <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
The Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. §§ 406 and 413
Brief description of cause:
Complaint seeks injunctive and other relief for violation of section 10 of the Rivers and Harbors Act, 33 U.S.C. § 403

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ Docket II _____ DOCKET NUMBER 1:23-cv-00836

DATE: July 24, 2023 SIGNATURE OF ATTORNEY OF RECORD: JAMES DINGIVAN

Digitally signed by JAMES DINGIVAN
Date: 2023.07.24 14:20:10 -0500

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RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____