

Congress of the United States
Washington, DC 20515

August 7, 2026

The Honorable Marco Rubio
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

The Honorable Markwayne Mullin
Secretary
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Avenue SE
Washington, DC 20528

The Honorable Rodney S. Scott
Commissioner
U.S. Customs and Border Protection (CBP)
1300 Pennsylvania Avenue NW
Washington, DC 20229

The Honorable W. C. "Chad" McIntosh
United States Commissioner
International Boundary and Water Commission, United States Section
4171 North Mesa Street, Suite C-100
El Paso, Texas 79902

Dear Secretary Rubio, Secretary Mullin, Commissioner Scott, and Commissioner McIntosh:

We write with urgency about one specific segment of the border infrastructure program now moving forward in CBP's Big Bend Sector, the proposed new patrol road inside Big Bend National Park. The route over the mountain is on CBP's Smart Wall website. It indicates that the current plan includes building a new road over Mariscal Mountain. Publicly available information has not provided sufficient detail regarding the proposed alignment. We ask that no work begin on road building across Mariscal Mountain until several issues are addressed and questions answered.

This should be of acute interest to the International Boundary and Water Commission. Blasting a road across the mountain could send spoil toward, and potentially into, the Rio Grande. If spoil

disposal or other construction activities could deflect, obstruct, or otherwise alter the river's normal flow, Article IV of the 1970 Boundary Treaty appears to require review by the International Boundary and Water Commission. These potential impacts warrant careful examination before construction proceeds.

It is hard to understand the added value of a patrol road across Mariscal Mountain. The existing road just north of the mountain is regularly patrolled and sufficient for Border Patrol operations. This new, proposed road would sit 1,700 feet above the border in one of the least trafficked stretches of the entire southern border, where anyone crossing would first climb 1,400-foot cliffs to approach the road. This poses no benefit to border security and would only cause irrevocable damage to the mountain.

CBP's published border infrastructure mapping shows a patrol road alignment through the Mariscal Canyon area, connecting the existing Talley and Solis river access roads. The terrain of Mariscal Mountain, through which the Canyon cuts, would require that the new road be dynamited and bulldozed across Mariscal Mountain along and back from the canyon rim, including its highest cliffs. The prime contractor for the Big Bend work, Southwest Valley Constructors, a Kiewit subsidiary, received a contract valued at approximately \$1.72 billion on May 11, 2026. On June 8, 2026, the Department of Homeland Security waived a large body of federal environmental and resource protection law to expedite construction in Big Bend National Park and Big Bend Ranch State Park.

What the public record does not contain is the engineering. We have not seen a centerline alignment, cut and fill quantities, a blasting plan, or, most importantly to the IBWC's interests, a plan for the disposal of excavated and blasted material. Mariscal Canyon is narrow, and its walls rise roughly 1,400 feet above the Rio Grande. Rock removed to carry a road across the rim above that canyon has to go somewhere. On steep ground the ordinary and least expensive method is cut and fill with side casting, in which excavated material is pushed over the downhill edge rather than hauled off the mountain. The same contractor used that method on comparably steep ground at Guadalupe Canyon, Arizona, in 2020, where debris was documented crossing into Mexican territory.

The consequences of such a plan at Mariscal would be devastating. Once blasted limestone is in the canyon and the river, no remedy restores the river's prior condition. Material placed in a channel that narrow does not merely obstruct flow, it can relocate the line of the deepest channel, and the international boundary in this reach is the middle of the channel occupied by the river's normal flow. Changes to the channel may raise boundary-management issues that may also fall within the Commission's jurisdiction.

The International Boundary and Water Commission traces its origin to the Convention of March 1, 1889. The Treaty of February 3, 1944, relating to the utilization of the waters of the Colorado and Tijuana Rivers and of the Rio Grande, reconstituted it under its present name in Article 2 and, in Article 24, vested it with the powers and duties necessary to apply the treaty, including the duty to settle all differences arising between the two governments over the treaty's interpretation or application. Article 25 provides for the binding bilateral instruments, called Minutes, through which the Commission acts. The Commission is the principal bilateral institution charged with addressing questions concerning the application of these treaties. The provision directly at issue here is Article IV of the Treaty of November 23, 1970, to Resolve Pending Boundary Differences and Maintain the Rio Grande and the Colorado River as the International Boundary. Article IV obliges each country to **prohibit** the construction of works in its territory which, in the judgment of the Commission, may cause deflection or obstruction of the normal flow of the river or of its flood flows, and it provides that works found to have that effect must be removed or modified at the expense of the constructing country, with repair of or compensation for resulting damage.

Congress implemented that treaty in the American-Mexican Boundary Treaty Act of 1972. The statute, codified at 22 U.S.C. § 277d-34, directs the Secretary of State, acting through the United States Commissioner, to acquire lands and interests in lands required, among other purposes, to preserve the Rio Grande and the Colorado River as the boundary by preventing the construction of works which may cause deflection or obstruction of the normal flow of the rivers or of their flood flows. That is Congress's own statement of the purpose the United States Commissioner is there to serve.

This authority has been exercised against border barrier construction before, and recently. In November 2019 the United States Section instructed a private contractor building near the Rio Grande to stop work until its plans had been reviewed, cited the compensation exposure created by Article IV, and subsequently brought suit in the United States District Court for the Southern District of Texas alleging a treaty violation. The Commission's jurisdiction over construction affecting the river is settled practice, asserted by the United States Section itself.

The Department of Homeland Security's waiver authority under Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act does not and cannot waive these treaty responsibilities and obligations. We are unaware of any published Department determination asserting that it does. The waiver determinations published in the Federal Register enumerate domestic statutes; neither the 1944 Water Treaty nor the 1970 Boundary Treaty appears in any of them.

Mexico cannot exercise the rights that obligation gives it if it does not know what is planned. Mexico has objected to comparable works before, through the Mexican Section in 2011 regarding barrier designs in Hidalgo and Starr counties, and again more recently regarding waterborne barriers at Eagle Pass and construction in the Tijuana River. In each instance the objection came after the fact, or after the plans had already been fixed. There is no reason to repeat that sequence here, and considerable reason not to. Given the treaty framework and the Commission's bilateral responsibilities, the United States should ensure that the Mexican Section is informed of any proposed works that may affect the river.

We therefore ask the United States Section to transmit formal notice of the Mariscal Mountain alignment to the Mexican Section, and to place the matter before the Commission. Because the United States Section operates under the foreign policy guidance of the Department of State, we ask the Secretary to see that this is done. Congress and the American public should be informed of the specific plans as well. The blasting of a mountain that could alter the course of the Rio Grande and damage both sides of the border is of great concern to citizens of both countries.

We also point out that the proposed route is within wilderness recommended by the National Park Service; that Mariscal Canyon contains the highest density of nesting peregrine falcons in the state of Texas; and that most of the illegal migrants that do cross the Rio Grande in Big Bend National Park are apprehended without difficulty on the existing road north of Mariscal Mountain mentioned above. This road is unnecessary, highly destructive, and will cause tremendous controversy for DHS and CBP. It can all be avoided.

We hope your answer to our questions is to say publicly that while such a plan has been proposed, it has already been rejected by U.S. Customs and Border Protection. If that is not the answer, the engineering details should be provided without delay.

We ask for written responses to the following by August 14, 2026, and for a staff briefing at the earliest date your offices can accommodate.

To the Department of Homeland Security and Customs and Border Protection:

1. Has CBP, the U.S. Army Corps of Engineers, or any contractor submitted to the United States Section of the Commission any plans, alignments, hydraulic analyses, or spoil disposal plans for the Mariscal Mountain segment or for any other segment within Big Bend National Park? Please provide all correspondence relating to treaty review, spoil disposal, river impacts, or coordination with the IBWC since January 1, 2026.

2. Please provide the design documentation for the Mariscal alignment, including the centerline alignment and stationing, cut and fill quantities, maximum cut heights, the blasting plan, and the plan for disposal of excavated and blasted material, together with the horizontal and vertical distance from each proposed disposal location to the ordinary high water mark of the Rio Grande.
3. Does the Department contend that the Section 102(c) waiver authority reaches obligations arising under the 1944 Water Treaty or the 1970 Boundary Treaty? If so, please provide the legal basis in writing. If not, please describe the process by which CBP intends to obtain the Commission's approval, and the schedule on which it will do so.
4. Please provide the task orders and pay item schedules under the Southwest Valley Constructors contract for the Big Bend segments, including any line items for rock excavation, controlled blasting, drilling and shooting, vibration monitoring, or embankment placement.
5. Please identify by name and title the official at CBP responsible for treaty compliance on the Big Bend segments.

To the United States Section of the International Boundary and Water Commission:

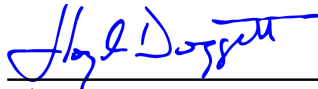
6. Has the United States Section received notice of the Mariscal Mountain alignment from any source? If so, when, from whom, and in what form?
7. Has the United States Section transmitted notice of the alignment to the Mexican Section? If so, please provide it. If not, when will it do so?
8. Will the United States Section evaluate the project under Article IV prior to ground disturbance, and if so, what procedures will it follow in making that determination?
9. Does the United States Section agree that the Section 102(c) waiver does not extend to obligations arising under the 1944 or 1970 treaties?

To the Department of State:

10. Will the Department see that notice of the proposed works is conveyed to the Government of Mexico through appropriate channels, and by what date?
11. Has the Department provided advice to the Department of Homeland Security, to Customs and Border Protection, or to the United States Section regarding the effect of the Section 102(c) waiver on obligations under the 1944 or 1970 treaties? If so, please provide it. If not, does the Department intend to?

We appreciate your prompt attention and look forward to your responses.

Sincerely,



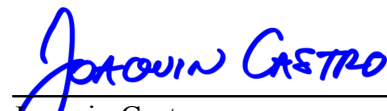
Lloyd Doggett
Member of Congress



Jared Huffman
Member of Congress



Greg Casar
Member of Congress



Joaquin Castro
Member of Congress



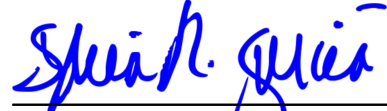
Jasmine Crockett
Member of Congress



Veronica Escobar
Member of Congress



Lizzie Fletcher
Member of Congress



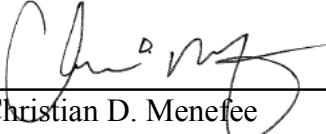
Sylvia R. Garcia
Member of Congress



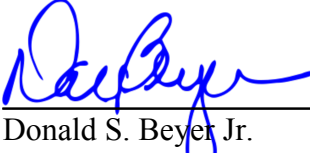
Vicente Gonzalez
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Julie Johnson
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Christian D. Menefee
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Donald S. Beyer Jr.
Member of Congress