

Border Wall Lawsuits in the Rio Grande Valley:

With the Consolidated Appropriations Act, 2019 (known by some as the “Wall Bill”), approved by Congress and signed by President Trump on February 15, 2019, acquisition of land by the Federal Government for the border wall will not only continue, but should in fact increase at a swift pace.

The Wall Bill provides that \$1,375,000,000 is being appropriated for the “construction of primary pedestrian fencing, including levee pedestrian fencing, in the Rio Grande Valley Sector.” See Consolidated Appropriations Act, 2019, H.J. Res. 31, 116th Cong. Div. A, Title II, § 230, at 33 (2019). Some members of Congress have indicated that this appropriation would allow for 55 miles of new border infrastructure to be constructed.

That being said, the Wall Bill, as currently written, provides certain safeguards for environmentally sensitive areas in the Rio Grande Valley.

The Wall Bill specifically states:

9 SEC. 231. None of the funds made available by this
10 Act or prior Acts are available for the construction of pe-
11 destrian fencing—
12 (1) within the Santa Ana Wildlife Refuge;
13 (2) within the Bentsen-Rio Grande Valley State
14 Park;
15 (3) within La Lomita Historical park;
16 (4) within the National Butterfly Center; or
17 (5) within or east of the Vista del Mar Ranch
18 tract of the Lower Rio Grande Valley National Wild-
19 life Refuge.

Id. at § 231, at 34.

The Wall Bill also imposes additional requirements on the Department of Homeland Security to meet and confer with “local elected officials” in an effort to achieve a mutual agreement regarding the “design and alignment of physical barriers within that city...” Id. at § 232, at 34-35. These additional requirements are made applicable to property within the city limits of the following cities: Roma; Rio Grande, City; Escobares; La Grulla; and the census designated place of Salineno. See id. at 35-36. However, the Wall Bill fails to specify any such meet and confer requirement for the “taking” of property for the construction of physical barriers in areas outside the identified cities and census designated place. The Wall Bill provides that the

consultations between the Department of Homeland Security and local elected officials shall continue until September 30, 2019, and may be extended beyond that day by agreement of the parties. See *id.* at 35. However, the Wall Bill does not explain what will happen if the deadline expires and an agreement has not been reached. One can assume from the absence of a specified protocol, that if an agreement is not reached the general condemnation process will be followed.

In addition to the meet and confer requirements set forth above, The Wall Bill also provides for a timeline during which the Federal Government will issue notices for public comment “regarding construction of pedestrian fencing” in Roma, Rio Grande, City, Escobares, La Grulla, and the census designated place of Salineno. *Id.* No later than 90 days following the end of the public comment period, the “Department shall publish in the Federal Register its response to the comments received along with its plans for construction in the areas identified in the notice to which it is responding.” *Id.*

Generally speaking, the initial plans showed that the physical barriers would closely follow the bank of the Rio Grande River. However, due to flooding concerns related to the River (and in part due to the excessive amount of rain the Rio Grande Valley received last year), it appears, at least in the rural areas of the Rio Grande Valley, that the Federal Government now intends to seek a substantial setback between the physical barriers and the River.

All that being said, the future remains unclear for the border wall. It is yet to be determined when or how President Trump’s declaration of a national emergency will affect the above-referenced restrictions and requirements in relation to the border infrastructure to be constructed in the Rio Grande Valley. Regardless of what that specific impact is, however, it should not alter a landowner’s right to just compensation for the “taking” of their property and, in some cases, remainder or “severance damages.”

If you are interested in reading the full Consolidated Appropriations Act you can click on the following link: <https://docs.house.gov/billsthisweek/20190211/CRPT-116hrpt9.pdf>

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Disclaimer: While every effort has been made to ensure the accuracy of this article, it is not intended to provide legal advice as individual situations will differ.