



OFFICE OF THE COMMISSIONER  
UNITED STATES SECTION

## INTERNATIONAL BOUNDARY AND WATER COMMISSION UNITED STATES AND MEXICO

January 11, 2023

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**Subject:** Violations of the International Boundary and Water Commission requirements for land use authorization of federal lands.

The U.S. Section of the International Boundary and Water Commission (USIBWC) is aware that various Texas entities, including the Texas Division of Emergency Management (TDEM) and the Texas Facilities Commission (TFC), are installing barriers and related activity along the United States/Mexico border and in some locations within the Rio Grande floodplain. Installation activity includes, but is not limited to, vehicular and personnel use of USIBWC levees, ramps and property, installation of temporary fencing, installation of bollard walls, and placement of concertina wire, and/or Conex boxes. It is our understanding that TDEM or TFC is funding some of these activities. We also understand that TFC is contracting for the installation of bollard walls – some of which have been installed at certain locations and others that are planned for installation at other locations. We are aware that the Texas Department of Public Safety (TDPS) and the Texas National Guard (TNG) are also present on USIBWC-controlled land. We have been informed that Colonel McCraw is to serve as Texas' point of contact for some or all of these activities. If this is incorrect, please provide whom should be Texas' appropriate POC.

We have received reports that Texas has been engaged in the following boundary barrier installation activities (also depicted on the attached map as **Attachment A**):

### **El Paso (Requires Permit and Submission of Hydraulic Modeling)**

- Texas National Guard has installed triple-strand concertina wire and pickets on USIBWC land along the boundary, up the river from Paso Del Norte Bridge, in the concrete channel. DPS and Texas National Guard troops and vehicles are on site and using USIBWC property/easement to access this work.
- 10 Conex boxes have been installed upriver of the concertina wire in the floodplain/levees on USIBWC property/easement.

### **Eagle Pass (Requires Submission of Hydraulic Modeling)**

- In Eagle Pass, USIBWC has confirmed the placement of 100 Conex boxes within the floodplain and near the Rio Grande main channel.

- Texas National Guard has placed a 6-foot hurricane fence with three-stranded barbed wire within the floodplain in Eagle Pass for approximately 5.9 miles in Eagle Pass, Texas. In some areas they have placed concertina wire on top of the barbed wire fence or on the fence itself.
- In some areas in Eagle Pass it appears that fill material has been brought in and the banks of the Rio Grande have been disturbed.

#### **Del Rio (Hydraulic Modeling Required)**

- A 6-foot Hurricane fence has been installed in Del Rio for approximately 6.2 miles, with barbed wire on top.
- We understand there are plans to install a 30-foot bollard wall.

#### **Los Indios & Brownsville (May Require Permit, Submission of Hydraulic Modeling and Restoration of USIBWC Property/Structure)**

- In the Lower Rio Grande Valley, upstream of Los Indios Bridge, Texas has installed silt fencing and the USIBWC river levee has been disturbed near the toe of the levee. We are determining to what extent this has damaged the integrity of the levee structure and if repair is needed. The installed work may require a permit if it is on the USIBWC levee easement. We are reviewing the easement survey at present.
- Texas has installed a bollard fence near San Benito pumping station.
- Texas has installed a 45' section of bollard fence in an 8' trench filled with concrete, which may interfere with USIBWC's levee rehabilitation project.
- USIBWC understands that Texas is planning to construct a 30-foot bollard fence near the Amigoland area in Brownsville, south of the IBWC levee in the floodplain. Survey stakes were found onsite that indicate that construction may begin soon.

#### **Anzalduas Dam, Mission (Requires Permit and Submission of Hydraulic Modeling)**

- Downstream of Anzalduas Dam, Texas has installed two rows of concertina wire stacked on top each of other. This was installed in the floodplain and extends from immediately downstream of Anzalduas Dam to the USIBWC gaging station (approximately 0.2 miles) and immediately upstream and downstream at Anzalduas International Bridge to the Common (River) Levee (approximately 2.2 miles).

#### **Other Locations (Under Investigation)**

- We are aware that a concertina fence has been placed in the San Ygnacio area, and new fence and concertina wire has been installed in the Rio Bravo area at Google coordinates 27.366864, -99.499684

USIBWC requires any entity using USIBWC-controlled property to apply for a permit from the USIBWC. USIBWC also requires that construction activities along the Rio Grande floodplain demonstrate compliance with the 1970 Boundary Treaty.

USIBWC's requirements are:

1. **A permit for activity on USIBWC-controlled land.** Any entity placing structures or engaging in an organized activity on USIBWC-controlled land must have a permit from USIBWC that authorizes such activity or structures. The USIBWC's permit process requires the entity to apply to USIBWC for a permit through USIBWC's realty office. The El Paso, USIBWC realty contact is Ramon Macias at [Ramon.Macias@ibwc.gov](mailto:Ramon.Macias@ibwc.gov) or (915) 832-4749.

All information and correspondence about these activities and structures should be routed through Mr. Macias. Until the USIBWC grants a permit, any activity or structures on USIBWC-controlled property constitute unauthorized activity and must cease immediately.

The USIBWC owns the land within the floodplain of the Rio Grande in El Paso, TX, and the levees and ramps that run parallel to the river where ongoing activity is occurring. (**Attachment B** – property documents). To date, the USIBWC has received communication from TDPS Capt. Vargas and Rodney Kelly. (**Attachment C**- copies of email/application materials received from Texas). However, the permit application is incomplete and does not detail all of the activity that is ongoing on USIBWC-controlled land. Moreover, TDPS must make clear that it is the appropriate applicant.

A more detailed explanation of the USIBWC's permit process is available at [www.ibwc.gov](http://www.ibwc.gov) in the United States Section of the website. Please contact Mr. Macias as soon as possible with any questions about USIBWC's permit process.

Please note that a proposed project may also require consultation with other agencies, such as the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and the Texas Commission on Environmental Quality. We strongly suggest reaching out to those agencies to determine if your project also falls within their jurisdiction.

2. **Hydraulic modeling for projects within a floodplain.** In order to ensure the U.S. Government's compliance with the Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary, U.S.-Mex, TIAS 7313 (Nov. 23, 1970) ("1970 Boundary Treaty"), the U.S. and Mexican Sections of the IBWC monitor construction activities along the Rio Grande floodplain. Pursuant to the 1970 Boundary Treaty, the IBWC identifies and prohibits the construction of any works in its area of responsibility which, in the judgment of the Commission, may cause deflection or obstruction of the normal flow of the Rio Grande River or of its flood flows.

To assure compliance to the 1970 Boundary Treaty, we require that any proponent considering a project in the floodplain submit to USIBWC a detailed hydraulic modeling of existing and proposed (with project) conditions, calculation of hydraulic impacts (to assess obstructions and deflections) and a detailed drainage report for any future projects that may be undertaken in the floodplain. Please contact us for specific details regarding the modeling and the submissions we are requesting. The following generally lists what must be submitted:

- A. The combined 1D/2D HEC-RAS hydraulic modeling methodology.
- B. Sample spreadsheet of percent flow deflection and Water Surface Elevation (WSE) rise calculations.
- C. Technical Report requirements.
- D. The schematics or design documents for the structure(s) in full build-out, including any anchoring that is plan

If the proposed infrastructure is constructed in multiple phases, the USIBWC requires the proponent to provide the existing condition, interim condition(s), and complete proposed condition (or full build out condition) models for review. The existing condition model shall include all existing infrastructure in the floodplain. For the interim condition model, the existing condition model is the starting point, and the interim construction condition should be reflected in the model. The complete proposed model needs to include all of the contemplated fence infrastructure that will be built in phases. Fence segments and/or any other proposed works that are not physically contiguous but are near other segments may be considered one project. Project proponents must coordinate with the USIBWC to determine if non-contiguous segments must be considered as one project. Also, please note that the succession of hydraulic models from the existing condition model to the proposed condition model shall show the cumulative infrastructure development within the floodplain.

In this respect it has come to our attention that the State of Texas has placed concertina wires and large shipping containers to create a steel wall barrier along a stretch of the Rio Grande in Eagle Pass and El Paso without advance review. Please note that this row of containers may deflect or obstruct the normal flow or flood flows of the Rio Grande in excess of threshold limits established by the USIBWC and may not meet the 1970 Boundary Treaty requirements. Alternately, if the buoyant forces of the flood waters dislodge the containers, they may float downstream and cause damage to the U.S. or Mexican sides or impact structures such as bridge piers downstream and may also pose a danger to human life. An evaluation is therefore required to assess the hydraulic impacts of the container system through modeling and engineering documents showing how the containers have been secured.

We strongly encourage meeting with USIBWC in advance of these projects to discuss site conditions and other issues which may require specific modeling requirements. Please comply with these requirement now as to all existing Texas structures. We require the digital hydraulic models along with the hydraulic impact calculations and technical report to be submitted as a complete package for review at least three (3) months before any proposed construction start date. This will allow time for the USIBWC to perform the technical review of the submittals and work with the proponent's team to seek clarifications or additional analyses to address the review comments; and confer with Mexico as required by the 1970 Boundary Treaty. Prior to any additional work within the Rio Grande floodplain, we require submittals of your project to Mr. Macias. The submittals are then distributed to various Divisions within the agency for review and comment. Typically, technical review comments are generated, which require a few iterations with the proponent's design team to address. Therefore, these submittals shall also be made well in advance of the proposed construction start date.

**No unauthorized access shall be made onto USIBWC-controlled land and no infrastructure should be placed on any part of the floodplain without prior approval by the USIBWC including but not limited to, concertina wire, chain link fencing, storage containers, vehicles, concrete barriers, or any other objects that could cause deflection of water within the floodplain. Any unauthorized access and any infrastructure installed, constructed, or otherwise placed on the floodplain may be considered an encroachment of federal property and may need to cease and/or may require immediate removal. Please note that some of these structures may have harmed USIBWC's flood control structures.**

Please note that on December 22, 2022, the Mexican Section of the International Boundary and Water Commission formally notified the USIBWC that the container barrier of more than 100 railway containers in the vicinity of the pilot channel of the Rio Grande River on the floodway could potentially cause an obstruction and deflection of the Rio Grande flows and potentially violate the 1970 Boundary Treaty. On January 2, 2023, the Mexican Section of the International Boundary and Water Commission further notified USIBWC that the containers in the El Paso/Ciudad Juarez area had the potential to cause obstruction and deflection of the Rio Grande runoff toward the Mexican side and could be dislodged causing accidents and loss of life for people

transiting that area. They have further objected that these the projects have not been submitted to the Commission for review as required under Article IV-B of the 1970 Boundary Treaty and requested USIBWC intervene to remove the barriers. The USIBWC has formally recognized this notification, and this letter address the Commission's authorities under the 1970 Boundary Treaty.

Finally, please clarify which Texas entities are financially and legally responsible for all of the structures placed on USIBWC land and confirm that you are the point of contact for all Texas boundary barrier installation activity.

We recognize the importance of these projects to the State of Texas and are willing to work with you to address federal requirements and mitigate any flooding impacts to either the United States or to Mexico.

If you have any questions regarding this process, please contact me at [ramon.macias@ibwc.gov](mailto:ramon.macias@ibwc.gov) or (915) 832-4749.

Sincerely,

Ramon Macias, III P.E.  
Principal Engineer

cc:

W. Nim Kidd, MPA, CEM Texas Division of Emergency Management

Attachments:

As Stated

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January 10, 2023

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