



US-Mex Border Fence Completion Eludes Government

Judge wants answers: Government suffers setback in some US-Mexico border fence land cases

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Nearly six months after the U.S.-Mexico border fence ordered by the Bush administration was supposed to be finished, its completion is in limbo while a judge waits answers to questions about private property in the fence's path.

About 630 miles of the promised 670-mile-long vehicle and pedestrian barrier is complete, with the unfinished portion in deep south Texas where opposition is fierce and the government has struggled to get the land it needs.

The biggest unfinished segment is a 13-mile stretch that runs east of Brownsville through rich farmland toward the Gulf of Mexico.

While the government has taken steps to smooth the project's path — such as paying to relocate 300 native palm trees from a section near Brownsville — some of its promises are coming under intense scrutiny.

Government possession of several pieces of farmland needed for that final stretch was suspended last month by the judge.

Government lawyers are now scrambling to meet the judge's orders and provide written answers to landowners' most basic questions: What precisely is the government taking, and how will property owners access the thousands of acres of land stranded between the border fence and the Rio Grande?

The answers to those questions could have implications for the dozens of cases scheduled for trial next year to determine how much the government will pay landowners.

U.S. District Judge Andrew Hanen had, until recently, assumed — as did many landowners — that gates the government planned in the fence would always be there to provide access to property on the other side. The Rio Grande's sharp curves and the border fence's relatively straight path leave large swaths of farmland isolated between the river and the fence.

But lawyers for several landowners suggested that the government could someday close or remove the gates. The potential loss of access begged the question of whether the government should pay for not only the land under the fence but also the land stuck between the fence and river that would become worthless.

Hanen asked Justice Department lawyers to lay out the physical land they're taking as well as access to other land.

"Because if I can't get through it (the gate) or I can't get to it without driving 10 miles down the road, I mean, you've taken the back 40," Hanen said during a hearing last month. "If there's not going to be a gate, then that changes the rules."

In that case, Hanen said, every landowner would argue to a jury that the government was taking all of their land down to the riverbank.

"We felt absolutely compelled to raise these issues with the court and every landowner out there whose property is being taken by the government should do the same," Kimberli Loessin, attorney for several property owners covered by the judge's order, said in an e-mail Wednesday. "Otherwise, lawsuits move forward, fence gets built, and compensation gets determined without the government ever admitting to what it is really taking away from landowners."

Assistant U.S. Attorney Daniel Hu told Hanen last month that a delay could cost the government \$10,000 to \$15,000 per day because the construction contract was already awarded and crews were set to begin work. However, the government has itself now asked for an extension until June 19.

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