

United States Senate

WASHINGTON, DC 20510

December 10, 2018

The Honorable James N. Mattis
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Secretary Mattis:

We write to you with concerns about planned activities on the Barry M. Goldwater Range now that the John S. McCain National Defense Authorization Act for Fiscal Year 2019, the Department of Defense Appropriations Act, 2019, and the Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2019 have been signed into law. Assessing further upgrades of that Range's fencing remain a wasteful and unjustified expenditure, which only serves to take away from more important priorities, namely military readiness and lethality.

The Navy has recently initiated studies on building more than 31 miles of barriers along the Range, despite its inability to provide our Committees with a clear justification or a compelling argument for diverting as much as \$450 million in future funding to this project. Information provided by the Department of Defense to the congressional oversight committees indicates that construction of additional barriers to the portions of the Range that adjoin the border are of low priority: one section rates only tenth in priority out of seventeen projects considered by Customs and Border Protection, and the other section rates substantially lower.

This appears to directly contradict guidance you issued to the Department on March 26, in which you acknowledge the Department's significant appropriation increase and required that, "every decision we make must focus on lethality and affordability as we rebuild readiness and provide the combat capabilities required to provide for the security of our Nation." Moreover, it is unclear why the Navy should spend \$4.4 million on environmental studies, and millions more on surveys and other reports to be furnished by military contractors, when the Department of Defense made no proposals, and made no effort, to have this matter addressed in any of the authorizing or appropriating legislation that was recently signed into law.

We believe the Department of Defense lacks any authorization or appropriations needed to move this project into any stage of construction during fiscal year 2019. Nowhere in the Department's 2019 budget plans was there any proposal to spend nearly half a billion taxpayer dollars to increase security at a bombing range that is already protected by a barrier. Therefore, none of the authorizing or appropriating legislation provides for such a construction project to move forward. Lacking this authorization for such a project, and in light of the Department's understanding that such a project would be controversial, the planned expenditures would be better focused on meeting the readiness and lethality needs that you requested Congress to support in your budget request. This would preserve the Department's promise to be a good steward of taxpayer dollars and our congressional oversight responsibility.

We note that other controversial construction projects were duly presented in the Department's budget proposals to Congress, where the projects were the subject to scrutiny and debate – in particular, your 2019 request included \$69 million for a new detention facility at Guantanamo. While this item was not funded by the Congress, we commend you for proposing this project in a manner that embraced regular order, rather than seeking extraordinary waivers, reprogrammings, or other maneuvers intended to short-circuit a thorough review by a co-equal branch of Government.

Additionally, we understand that the Department is currently examining other authorities for this roughly \$450 million project outside of the budget request process, specifically the potential use of 10 U.S.C. 2808 and 10 U.S.C. 284. As you know, outside of a few small locations requiring security measures for weapons of mass destruction shortly after 9/11, 10 U.S.C. 2808 has never been used inside the United States. We urge you in the strongest possible fashion to refrain from considering using this authority or 10 U.S.C. 284 for this potential \$450 million border wall project.

We appreciate your attention to these matters, and look forward to receiving your fiscal year 2020 budget request in the coming months.

Sincerely,



Richard J. Durbin
United States Senator



Jack Reed
United States Senator



Patrick Leahy
United States Senator



Brian Schatz
United States Senator

cc: The Honorable Mick Mulvaney