

An aerial photograph of a rural landscape. In the foreground, a wide, light-colored dirt road curves along the right bank of a river. The river flows from the bottom left towards the middle right. The opposite bank is a mix of green fields and brown, tilled earth. In the distance, there are small clusters of buildings and more fields under a clear sky.

HSGAC

MINORITY STAFF REPORT ON THE

SOUTHERN BORDER WALL

Soaring Cost Estimates and Lack of Planning Raise Fundamental Questions About Administration's Key Domestic Priority

SOUTHERN BORDER WALL

Soaring Cost Estimates and Lack of Planning Raise Fundamental Questions about Administration's Key Domestic Priority

On January 25, 2017, President Donald Trump issued an executive order on border security and immigration enforcement. The President ordered the executive branch "to secure the southern border of the United States through the immediate construction of a physical wall on the southern border, monitored and supported by adequate personnel so as to prevent illegal immigration, drug and human trafficking, and acts of terrorism."¹

The Democratic staff of the Senate Committee on Homeland Security and Governmental Affairs is conducting ongoing oversight of the U.S. Department of Homeland Security (DHS) and its plans to construct a border wall. Democratic members and staff have repeatedly questioned the Trump Administration regarding the plans and costs of the border wall in nomination and oversight hearings, agency briefings, and investigative request letters. At the request of Ranking Member Claire McCaskill, this staff report summarizes information provided to the Committee to date.

KEY FINDINGS INCLUDE:

- **There is no reliable estimate of the cost of construction of the full border wall, but extrapolated estimates place the construction cost of the wall and associated technology and infrastructure at nearly \$70 billion. That amounts to a total cost to every American man, woman, and child of over \$200. A cost-benefit analysis of the project is not complete.**
- **The projected cost of construction for every mile is rapidly increasing to as much as \$36.6 million per mile. This does not include the costs of acquiring the land on which the wall will be built. It also does not include the maintenance costs of border barrier, which may total nearly \$150 million per year.**
- **The Department cannot provide a cost estimate of the anticipated land acquisition to the Committee. In the past, the U.S. government spent at least \$78 million to acquire land where fencing is currently in place.**
- **When the U.S. government has been forced to go to court, the costs of land acquisition can be much higher; in past land condemnation cases involving border fencing, the government spent more than \$11 million on acquiring 271 acres of land from private landowners, an average price of \$42,600 per acre. In one case in Cameron County, Texas, a landowner was initially offered \$233,000 for 3.1 acres. After a three-year legal battle, the government eventually paid at least \$4.7 million, a nearly 2,000 percent increase over the initial offer.**
- **Litigation to acquire the land to build the wall may last a decade or longer. Of the more than 300 condemnation cases related to past border fencing efforts filed before a district judge in Texas, the vast majority of which were filed in 2008, over 90 condemnation cases remain unresolved and fence has not been built in those locations.**
- **Concrete prototypes of the wall will be paid for by slashing the budget for mobile video surveillance.**

¹ Exec. Order 13767, 82 Fed. Reg 8793 (Jan. 25, 2017).

NO RELIABLE COST ESTIMATE

No reliable estimate of the cost of construction for the full border wall currently exists. In January 2017, U.S. Customs and Border Patrol (CBP) informed Democratic staff that “it is premature to provide cost estimates without official US Border Patrol fence requirements to include precise fence locations.”²

DHS Secretary John Kelly recently testified before the Committee, stating:

“There’s no way I can give the committee an estimate of how much this will cost. I mean, I don’t know what it will be made of, I don’t know how high it will be, I don’t know if it’s going to have solar panels on each side and what the one side’s going to look like and how it’s going to be painted -- have no idea. So I can’t give you any type of an estimate.”³



PHOTO: Secretary Kelly testifies before Senate Homeland Security & Governmental Affairs Committee

² E-mail from Office of Legislative Affairs, U.S. Department of Homeland Security, to Democratic Staff (Jan. 25, 2017).

³ Senate Committee on Homeland Security and Governmental Affairs, Testimony of General John F. Kelly, USMC (Ret.), *Hearing on Border Security and Public Safety* (Apr. 5, 2017).

According to the Government Accountability Office, primary pedestrian fencing in the past has cost \$6.5 million per mile; however, DHS notes there are “other factors” that may increase costs not included in that calculation. Agency officials explained:

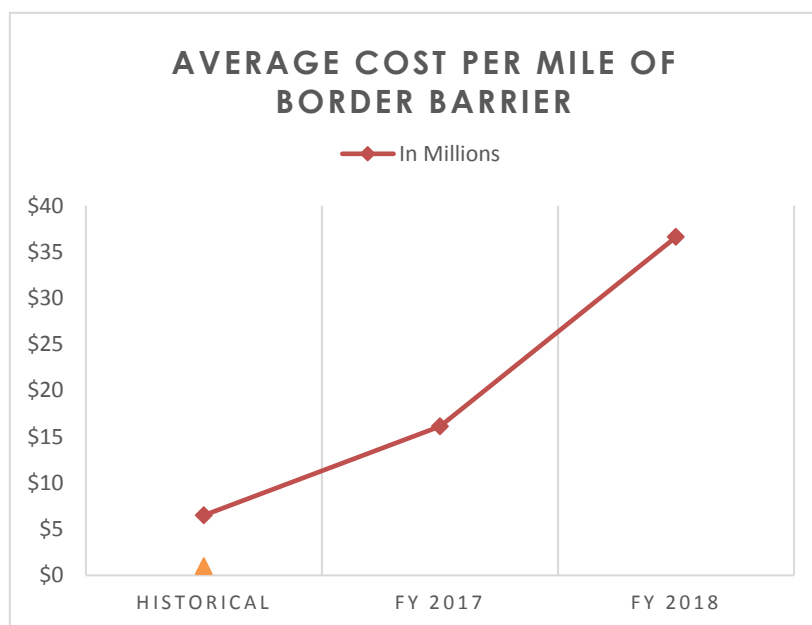
“The factors include but are not limited to real estate acquisition cost, risks associated with new construction in areas where there is currently no fence and the increased cost and risk of building fence on the south side of the Levee system in the flood plain. Other assumptions that will have to be considered are future market fluctuations (e.g. increased fuel costs, labor, raw materials, etc.). It is also important to note that estimates can fluctuate as USBP requirements are reviewed and finalized.”⁴

PROJECTED PER-MILE COSTS RAPIDLY INCREASING

CBP officials have provided select summary budget numbers to Committee staff that provide some information on projected wall construction costs. In the short term, DHS intends to reprogram \$20 million to construct multiple wall prototypes, devise wall design standards, and conduct real estate and environmental planning. This will also fund design for a levee wall and a new border barrier system in the Rio Grande Valley, and complete an enforcement zone in San Diego.⁵

CBP also briefed that the Administration’s Fiscal Year (FY) 2017 supplemental budget request for \$999 million would continue real estate and environmental planning and design for high priority areas. If funded, DHS will also construct 34 new miles of levee wall and border barrier system in the Rio Grande Valley, replace 14 miles of existing fencing in the San Diego sector, and build 14 miles of new border barriers in the San Diego sector.⁶ CBP also briefed that the DHS budget blueprint for FY 2018 will request approximately \$2.6 billion to construct approximately 71 miles of new border barrier and associated technology and infrastructure in the Rio Grande Valley, Tucson, and/or El Paso sectors.⁷

The per-mile cost of construction is increasing in each fiscal year. The per-mile cost of the construction extrapolated from the FY 2017 supplemental request totals \$16.1 million per mile and FY 2018 totals over \$36.6 million per mile. DHS officials have been unable to provide expected land acquisition costs for the additional construction.⁸



⁴ E-mail from Office of Legislative Affairs, U.S. Department of Homeland Security, to Democratic Staff (Jan. 25, 2017).

⁵ U.S. Customs and Border Protection, Briefing with Senate Committee on Homeland Security and Governmental Affairs Committee Staff (Mar. 27, 2017).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

CONSTRUCTION COST MAY TOTAL \$70 BILLION

The per-mile cost derived from information provided by DHS would result in a total cost of the construction of the border wall of nearly \$70 billion. CBP officials stated that only 127 miles of the border are considered unsuitable for construction. This includes 33 miles of bluffs in Big Bend Sector, 59 miles of lakes in Texas, and 35 miles in the Pacific Ocean and Gulf of Mexico.⁹ At \$36.6 million per mile, a 1,827 mile border wall could cost more than \$66.9 billion. That amounts to a total cost to every American man, woman, and child of over \$200 for border wall construction.

In addition to the calculation derived from FY 2018 budget numbers, Democratic staff has also calculated that wall construction could cost at least over \$64 billion and possibly over double that amount from information included in the contracting documents for the wall prototype. The cost presented in the two Requests for Proposal ranges from \$200,000 to \$500,000 for a single wall prototype 30 feet long.¹⁰ The lower cost range to construct a barrier would total at least \$64 billion if the prototype cost was applied to the full length of the border.

COST-BENEFIT ANALYSIS IS NOT COMPLETE



Although the Department has begun the acquisition process for wall prototypes, the Department has not completed a cost-benefit analysis for the project. A cost-benefit analysis is a quantitative method of assessing if a government project or policy is desired “when it is important to take a long view of future effects and a broad view of possible side-effects.”¹¹ In her nomination hearing, Elaine Duke, the nominee to become Deputy Secretary of the DHS, testified that a cost-benefit analysis “is in progress.”¹² CPB has informed the Democratic staff that the “U.S. Border Patrol is in the planning and development stage for a larger cost-benefit analysis.”¹³

Effectiveness of existing fencing will be an important component in the cost-benefit analysis conducted by the Department. The Government Accountability Office (GAO) has determined that CBP has not developed metrics that can be used to systematically measure the effectiveness of fencing in preventing the illegal entry of people, drugs, and other contraband into the United States.¹⁴

PHOTO: DHS Deputy Secretary Elaine Duke at Senate Homeland Security and Governmental Affairs Committee hearing

⁹ *Id.*

¹⁰ FedBizOpps.Gov, Design-Build Structure, (March 17, 2017) (online at https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=f61a85538f383ec3ed9cac3c9e21d6f1&_cview=0); FedBizOpps.Gov, Other Border Wall RFP, (March 17, 2017) (https://www.fbo.gov/index?s=opportunity&mode=form&id=c0cce0b2ef8d297b22dc251ea14c60d1&tab=core&_cview=0).

¹¹ Office of Management and Budget, *Circular A-94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs*.

¹² Testimony of Elaine C. Duke, *Hearing on Nomination of Elaine C. Duke to be Deputy Secretary, U.S. Department of Homeland Security* (Mar. 8, 2017).

¹³ E-mail from Office of Legislative Affairs, U.S. Department of Homeland Security, to Democratic Staff (Apr. 3, 2017).

¹⁴ Government Accountability Office, *Southwest Border Security: Additional Actions Needed to Better Assess Fencing’s Contributions to Operations and Provide Guidance for Identifying Capability Gaps* (GAO-17-331) (Feb. 2017).

WALL MAINTENANCE MAY COST NEARLY \$150 MILLION EACH YEAR

The Department may not be properly accounting for the costs of maintaining the border barrier. GAO has found that, in major DHS acquisition projects, "sustainment costs can account for more than 80 percent of total costs."¹⁵ CBP informed the Democratic staff that "Projected annual tactical infrastructure (TI) maintenance costs are unknown until the full complement of requirements has been determined and design for each requirement has been finalized."¹⁶ CBP currently maintains 654 miles of existing border fence and has informed the Democratic staff that it spends, on average, as much as "\$55 million per year to maintain and repair all of its tactical infrastructure, at the cost of \$85,000 per mile."¹⁷ These costs are associated with access roads, gates, light posts, drainage systems, acres of vegetation and other attendant infrastructure.¹⁸ It is logical that a barrier wall would have greater maintenance costs than fence, however, if the existing maintenance costs are applied to the 1,173 miles of unfenced suitable border the yearly maintenance costs would total \$99.7 million for the new areas of construction, totaling nearly \$150 million for maintenance along the entire border each year.

REQUIRED LAND IS OWNED BY PRIVATE INDIVIDUALS

The Democratic staff of the Committee has obtained extensive information concerning the difficulty in acquiring land necessary for barrier wall construction. CBP has acknowledged to the Democratic staff: "Real estate acquisition for border fence construction is a very complex issue."¹⁹ In her nomination hearing, Elaine Duke testified that land acquisition "is an important concern, and we expect that to be a major issue if additional wall is constructed."²⁰

CBP has explained that in the past, the government had to initiate approximately 400 land acquisitions for more than 200 miles of fence.²¹ Of those 400 acquisitions, 330 condemnations of property were required. In 122 cases, the government and the landowners could not reach an agreement on the fair market value of the seized property.²² The vast majority of those cases were filed in 2008.²³ According to CBP, the U.S. government has spent at least \$78 million to acquire land where existing fencing is in place.²⁴

CBP has not provided additional information to the Democratic staff regarding the condemnation cases. In order to obtain greater insight into past land condemnation cases involving border fencing, Democratic staff has reviewed information collected by NPR regarding more than 300 cases filed before a district judge in Texas.²⁵ NPR found 167 cases that have been resolved. Using NPR's data,

¹⁵ U.S. Government Accountability Office, *Homeland Security Acquisitions: DHS Should Better Define Oversight Roles and Improve Program Reporting to Congress* (GAO-15-292) (Mar. 2015).

¹⁶ E-mail from Office of Legislative Affairs, U.S. Department of Homeland Security, to Democratic Staff (Apr. 3, 2017).

¹⁷ E-mail from Office of Legislative Affairs, U.S. Department of Homeland Security, to Democratic Staff (Jan. 25, 2017).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Testimony of Elaine C. Duke, *Hearing on Nomination of Elaine C. Duke to be Deputy Secretary, U.S. Department of Homeland Security* (Mar. 8, 2017).

²¹ E-mail from Office of Legislative Affairs, U.S. Department of Homeland Security, to Democratic Staff (Jan. 25, 2017).

²² *Id.*

²³ *Id.*

²⁴ U.S. Customs and Border Protection, Briefing with Senate Committee on Homeland Security and Governmental Affairs Committee Staff (Mar. 27, 2017).

²⁵ *Landowners Likely to Bring More Lawsuits as Trump Moves on Border Wall*, NPR (Feb. 23, 2017).

Democratic staff has calculated that, of those resolved cases, the longest legal challenge lasted over eight years. The government spent more than \$11 million on acquiring the 271 acres of land. In total, the U.S. government paid an average price per acre of \$42,600. In one case in Cameron County, Texas, a landowner was initially offered \$233,000 for 3.1 acres. After a three-year legal battle, the government eventually paid at least \$4.7 million, a nearly 2,000 percent increase over the initial offer.²⁶

The remaining condemnation cases were required to establish land ownership.²⁷ CBP has informed Committee staff that in over 90 instances, condemnation cases remain unresolved nearly 10 years later and fence has not been built in those locations.²⁸ The potential liability of the pending condemnation cases is \$21 million.²⁹

Committee staff have been briefed by CBP that they anticipate land acquisition to last 12-24 months. CBP informed the Committee staff that they believe it is “too early to say” the cost of the land acquisition.³⁰ CBP informed the Committee staff that they cannot provide an upper cost estimate on costs until they “start investigating land acquisition.”³¹ CBP informed the Committee staff that they have not yet begun title research for the land.³² The agency anticipates it will need to hire 12 attorneys due to “an unprecedented increase in legal support in real property, procurement, fiscal law, as well as overall programmatic support to advance the construction of a physical wall.”³³

PAYING FOR WALL CONSTRUCTION WITH MONEY FROM TECHNOLOGY PROGRAMS

The Democratic staff has been informed that the \$15 million reprogramming for the wall prototypes are funds being spent from the Mobile Video Surveillance System (MVSS) within CBP.³⁴ This program provides Border Patrol with short and medium range mobile surveillance equipment mounted on telescoping poles.³⁵ The solicitations for wall prototypes do not include technology components. In responding to an industry question on their RFP, CBP confirmed that “no technology descriptions are required to be included in the Phase I response.”³⁶

Secretary Kelly testified on the importance of mobile surveillance before this Committee:

“[A] physical barrier in and of itself will not do the job. It has to be really a layered defense. If you were to build a wall from the Pacific to the Gulf of Mexico, you would still have to back that wall up with patrolling by human beings, by sensors, by observation devices.”³⁷

²⁶ *Landowners on border say they were shortchanged*, Associated Press (Oct. 15, 2012).

²⁷ E-mail from Office of Legislative Affairs, U.S. Department of Homeland Security, to Democratic Staff (Jan. 25, 2017).

²⁸ U.S. Customs and Border Protection, Briefing with Senate Committee on Homeland Security and Governmental Affairs Committee Staff (Mar. 27, 2017).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ U.S. Department of Homeland Security, *Fiscal Year 2017 Budget Amendment Congressional Justification*.

³⁴ *Id.*

³⁵ U.S. Department of Homeland Security, *Mobile Surveillance Capability* (online at <https://www.dhs.gov/keywords/mobile-surveillance-capability>).

³⁶ FedBizOpps.Gov, Other Border Wall RFP, (March 31, 2017) (online at https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=c9917a8474cbcbffd9a627d3c89fd03&_cview=0).

³⁷ Senate Committee on Homeland Security and Governmental Affairs, Testimony of General John F. Kelly, USMC (Ret.), *Hearing on Nomination of General John F. Kelly, USMC (Ret.) to be Secretary, U.S. Department of Homeland Security* (Jan. 10, 2017).