

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

July 3, 2019

U.S. Customs and Border Protection
U.S. Border Patrol Headquarters
1300 Pennsylvania Avenue
6.5E Mail Stop 1039
Washington, D.C. 20229-1100

Re: Pima and Cochise Counties Border Infrastructure Projects

To Whom it May Concern:

I am writing to express my strong opposition to U.S. Customs and Border Protection's (CBP) Pima and Cochise Counties Border Infrastructure Projects. Since 1996, CBP has constructed over 650 miles of border barriers (hereupon referred to as "border wall") along the U.S.-Mexico border.¹

The Pima and Cochise Counties Border Infrastructure Projects will involve replacement of 63 miles of vehicle and pedestrian fencing with 18 to 30-foot-tall concrete-filled steel bollards that are 6"x6" in diameter each. The targeted location of the border wall replacement consists primarily of public lands, including the Cabeza Prieta National Wildlife Refuge, Organ Pipe National Monument, San Bernardino National Wildlife Refuge, and a small section of the Coronado National Memorial.²

These public lands are prized and protected for their highly sensitive and fragile southwestern desert ecosystems, as well as important cultural resources. The Cabeza Prieta National Wildlife Refuge alone is home to 275 wildlife species. The Organ Pipe National Monument is an International Biosphere reserve, representing a pristine example of an intact Sonoran Desert ecosystem. The San Bernardino National Wildlife Refuge protects what remains of the largest, most extensive wetland in the region. In addition to these important natural landscapes, community residents own land and business along the targeted border replacement area.

The existing border wall has already drastically disrupted border community members' lives and irreparably damaged the surrounding environment. As outlined below, additional border wall construction will only exacerbate these harms and continue to perpetuate the hate-filled, racist

¹P.L. 104-208, div. C, §102(a)-(c), as amended by the REAL ID Act of 2005, P.L. 109-13, div. B, §102; the Secure Fence Act of 2006, P.L. 109-367, §3; and the Consolidated Appropriations Act, 2008 P.L. 110-161, div. E, §564(a)

² Media Advisory, U.S. Customs and Border Protection, Department of Homeland Security, "Public Comment Notice: Comments requested for Pima and Cochise Counties border infrastructure projects" (May 7, 2019).

rhetoric that has been the foundation of the Trump administration's shamelessly flawed immigration and border security policies.

Border wall construction in Pima and Cochise Counties will continue to shun the rule of law.

Pursuant to the REAL ID Act of 2005, the Secretary of Homeland Security has authority to waive "all legal requirements" when constructing barriers and roads. These legal requirements include basic environmental, public health, and safety laws that have been put in place to protect communities and the environment from undue harm. This broad, sweeping authority provisioned to a single member of the executive branch is unprecedented; a 2011 analysis deemed the waiver unconstitutional.³

Since the waiver authority was enacted, it has been used 18 times, thirteen of which have occurred during the Trump administration (see list below). In using this authority, the Trump administration has waived 52 different laws and legal requirements, including the Clean Air Act, the Clean Water Act, and the Endangered Species Act, among others. On May 15, 2019, the Department of Homeland Security published a notice of determination to use the waiver authority for border wall construction in Pima and Cochise County.

Use of Waiver Authority for Border Wall Construction during the Trump Administration: Date of Federal Register Notice and Location of Construction⁴

Aug. 2, 2017	San Diego, CA	Apr. 24, 2019	Luna & Dona Ana Counties, NM
Sept. 12, 2017	Calexico, CA	Apr. 24, 2019	Yuma County, AZ
Jan. 22, 2018	Near Santa Teresa port of entry (NM)	May 15, 2019	Pima & Cochise Counties, AZ
Oct. 10, 2018	Cameron County, TX	May 15, 2019	Imperial County, CA
Oct. 11, 2018	Hidalgo County, TX	May 15, 2019	Tecate & Calexico, CA
Feb. 8, 2019	San Diego, CA	July 1, 2019	Starr County, TX
Apr. 24, 2019	San Luis, AZ		

One statute of particular importance that has been waived is the National Environmental Policy Act (NEPA). In brief, NEPA mandates three important requirements for major infrastructure projects: 1) the federal government must be transparent in informing the public about the project, 2) the federal government must conduct an environmental review to determine the project's impacts, 3) the federal government must give affected communities the opportunity to provide input into the project.

³ J. Neely, *Over the line: Homeland Security's unconstitutional authority to waive all legal requirements for the purpose of building border infrastructure*. ARIZONA JOURNAL OF ENVIRONMENTAL LAW & POLICY (2011).

⁴ U.S. National Archives. Search conducted in the Federal Register as of June 28, 2019.
<https://www.federalregister.gov/>

With NEPA waived, a full and comprehensive analysis of the potential damage caused by the border wall replacement proposed in this project is impossible. The only avenue for assessing potential damage of new construction is to rely on evidence of damage that has already occurred. However, doing so is inevitably incomplete, particularly because the new border wall will be substantially greater in scale and more intrusive to the landscape than the existing vehicle and pedestrian fencing. By failing to fully account for and predict the environmental, economic, and social harms of this project, the consequences will inevitably be costlier and more destructive.

New border wall construction will worsen the environmental damage caused by the existing wall.

The effects of the existing border wall on the environment are numerous and devastating, particularly in a landscape as diverse and fragile as the southwestern border. The border wall bisects the natural range of a variety of animal species, interrupting migration patterns and restricting animals' access to water sources. It is estimated that over 1,500 species of animals and plants have ranges that overlap the US-Mexico border,⁵ including a number of species that are considered endangered or threatened under the Endangered Species Act and other entities. The jaguar, which typically migrates from Southern Arizona to Mexico is one such species. This is especially problematic in areas in which vehicle fencing—which animals can sometimes crawl over or under—is replaced with a bollard-style wall.

The border wall also makes animals vulnerable to natural disasters, such as floods or wildfires, if they cannot retreat to safer territory when needed.⁶ A year after a levee-wall was completed in the Rio Grande Valley, the river flooded. The U.S. Fish and Wildlife Service later reported:

“The floodwall blocked almost all egress for terrestrial wildlife species. ... Hundreds of shells of Texas Tortoise have been found demonstrating the probability of mortality for species which could not retreat from rising water levels. The Service fears any ocelots or jaguarundi that may have been caught in these areas when water began to rise may have been malnourished, injured, or perished.”⁷

In cases where the border wall has been built across rivers and flash flood zones, it has caused flooding or damming, altering the normal flow of water. At a minimum, this causes soil erosion and vegetative damage, but the consequences can and have been much more severe. In 2008, for

⁵ Robert Peters, William J. Ripple, and Christopher Wolf, et al., *Nature Divided, Scientists United: US–Mexico Border Wall Threatens Biodiversity and Binational Conservation*, BIOSCIENCE, vol. 68, no. 10 (October 2018).

⁶ P. Doyle, *Unintended consequences: The environmental impact of border fencing and immigration reform*, ARIZONAL JOURNAL OF ENVIRONMENTAL LAW & POLICY (2014).

⁷ U.S. Fish and Wildlife Service, Corpus Christi Ecological Services Field Office, *Rationale and Justification for Conservation Measures Rio Grande Valley Sector* (Mar. 9, 2011).

https://www.dhs.gov/sites/default/files/publications/bw11_foia_cbp_006916_-_006935.pdf

example, flooding caused by the border wall in Nogales, Sonora destroyed 578 homes, caused \$8 million in damage, and resulted in two drowning fatalities.⁸

At Organ Pipe Cactus National Monument in Arizona, a 5.2 mile stretch of fencing was built despite warnings from Organ Pipe officials that the fence would impede rainwater flow. In July 2008, a monsoon storm caused redirection of flashflood waters, costing private property and business owners up to \$6 million in damage.⁹ After repeated flooding, the Army Corps of Engineers installed liftable gates that were designed to prevent the problem from re-occurring. But in August 2011, those gates were not lifted properly during a storm and the 40-foot section of the fence collapsed.¹⁰

In addition to flooding, construction of the border wall often requires extensive drilling and blasting of rock, causing major disruption to the surrounding ecosystem, particularly in highly sensitive areas. In the Otay Mountain Wilderness, for example, around 530,000 cubic yards of rock had to be removed to construct the fence.¹¹ Rare Tecate cypress trees were also cut down and important root systems were removed.¹² Doing so resulted in significant erosion and sedimentation in the area. Erosion dust caused problems for the remaining Tecate cypress in that area.¹³ At a final price tag of \$16 million per mile, the cost of this destruction was exorbitant.¹⁴

New border wall construction will exacerbate the social and economic harms caused by the existing wall.

Communities along the U.S.-Mexico border are not often neatly divided between the two countries; residents may work or live on one side and socialize or visit family on the other. For example, an average of 400 people cross the border between Nogales, Arizona and its larger sister city, Nogales, Sonora every hour.¹⁵ The border wall creates a literal concrete barrier to these interactions. Although travelers may use designated ports of entry to cross, these ports are often

⁸ Brady McCombs, *Mexico ties flooding in Nogales to U.S. Border Patrol-built wall*, ARIZONA DAILY STAR (Jul. 23, 2008) https://tucson.com/news/local/border/mexico-ties-flooding-in-nogales-to-u-s-border-patrol/article_a11265b0-17c3-5bed-b50a-72e5d17e1369.html

⁹ Brady McCombs, *Rain washes away 40 feet of US-Mexico border fence*, ARIZONA DAILY STAR (Aug. 10, 2011) https://tucson.com/news/local/border/rain-washes-away-feet-of-us-mexico-border-fence/article_9eaead31-14eb-5474-a5c5-564a980049b2.html

¹⁰ *Id.*

¹¹ Richard Marosi, *\$57.7-million fence added to an already grueling illegal immigration route*, LOS ANGELES TIMES (Feb. 15, 2010), <https://www.latimes.com/archives/la-xpm-2010-feb-15-la-me-fence15-2010feb15-story.html>

¹² Stephanie Innes, *Beyond the Wall: Costly answer in California altering the landscape*, ARIZONA DAILY STAR (Jul. 11, 2016), https://tucson.com/special-section/beyond-the-wall/beyond-the-wall-costly-answer-in-california-altering-the-landscape/article_3e98d5b6-399e-11e6-b2e9-3b2bb4d07c90.html

¹³ J. Neely, *Over the line: Homeland Security's unconstitutional authority to waive all legal requirements for the purpose of building border infrastructure*. ARIZONA JOURNAL OF ENVIRONMENTAL LAW & POLICY (2011).

¹⁴ Stephanie Innes, *Beyond the Wall: Costly answer in California altering the landscape*, ARIZONA DAILY STAR (Jul. 11, 2016) https://tucson.com/special-section/beyond-the-wall/beyond-the-wall-costly-answer-in-california-altering-the-landscape/article_3e98d5b6-399e-11e6-b2e9-3b2bb4d07c90.html

¹⁵ Paul Kuhne, *The dangerous economics of a militarized border*, TUSCON SENTINEL (Feb. 7, 2019) http://www.tucsonsentinel.com/opinion/report/020719_border_biz_op/the-dangerous-economics-militarized-border/.

understaffed resulting in excessively long wait times. The long lines deter individuals from crossing the border to spend money in the U.S.

The border is also home to many tribal communities including ancestral lands, sacred sites, and cultural resources that are vulnerable to damage by the wall. For the Tohono O'odham Nation, whose tribal members live on either side of the border, the ability to cross the border in order to access education or health care services is essential.¹⁶ In addition, the Tohono O'odham conduct the ceremonial salt pilgrimage for which they must cross the border in the area of the proposed wall.¹⁷

The broad authority of the waiver and eminent domain statutes provide little incentive or need for the federal government to consult with property owners or businesses when constructing the border wall. As a result, private property has been split or otherwise damaged by the border wall, decreasing both usability of the property and its value. Documents obtained through a Freedom of Information Act request found that CBP has found avenues for avoiding formal appraisal of private property in the past, thereby increasing the risk of insufficient payment to private landowners.¹⁸

Finally, undermining sound management of wildlife and habitat on federal lands can have detrimental economic impacts on local communities. For example, Organ Pipe National Monument tourism generated \$23.4 million in 2018 for the surrounding communities and supported 226 jobs.¹⁹ Coronado National Memorial generated \$7.7 million and supported 93 jobs.²⁰

The border wall is unnecessary and perpetuates dangerous, racist rhetoric.

Not only does the border wall cause significant damage to wildlife and border communities, it is ineffective. A group of Stanford researchers determined that the nearly 550 miles of border wall built from 2007-2010 had very little effect on unauthorized migration but had an overall negative effect on the economy.²¹ CBP has yet to provide any evidence to the contrary; according to a 2017

¹⁶ Kate Kilpatrick, *U.S.-Mexico border wreaks havoc on lives of an indigenous desert tribe*, AL JAZEERA AMERICA, (May 25, 2014) <http://america.aljazeera.com/articles/2014/5/25/us-mexico-borderwreakshavocwithlivesofanindigenousdesertpeople.html>.

¹⁷ Dianna Nández, *How tribal leaders and conservationists are trying to stop the Trump border wall*, THE REPUBLIC, (May 23, 2017) <https://www.azcentral.com/story/news/politics/border-issues/2017/05/24/how-tribal-leaders-and-conservationists-trying-stop-trump-border-wall/341340001/>.

¹⁸ T. Christian Miller, *If Trump's border wall becomes reality, here's how he could easily get private land for it*, PROPUBLICA, (Mar. 25, 2019) <https://www.propublica.org/article/if-trumps-border-wall-becomes-reality-heres-how-he-could-easily-get-private-land-for-it>

¹⁹ National Park Service, U.S. Department of the Interior, 2018 NATIONAL PARK VISITOR SPENDING EFFECTS, (May 2019) available at

https://www.nps.gov/nature/customcf/NPS_Data_Visualization/docs/NPS_2018_Visitor_Spending_Effects.pdf.

²⁰ *Id.*

²¹ Treb Allen, Caue Dobbin, and Melanie Morten, *Border walls*, Working Paper, STANFORD INSTITUTE FOR ECONOMIC POLICY RESEARCH (Nov. 2018) <https://siepr.stanford.edu/sites/default/files/publications/18-037.pdf>.

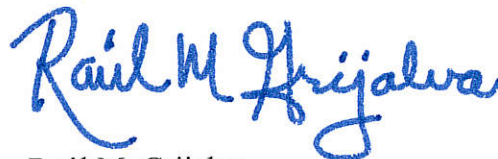
GAO report, the agency does not have the data needed to determine the border wall's impact on diverting unauthorized entries or apprehension rates over time.²²

President Trump has repeatedly asserted that the border wall is necessary to prevent criminals and drug smugglers from crossing the border, a claim that has been repeatedly debunked.²³ Multiple studies have concluded that undocumented immigration does not increase crime and that cities with larger proportions of immigrants often have lower crime rates. In addition, the vast majority of drugs are smuggled through ports of entry, not the remote stretches of land where the border wall is being built.

It is clear that President Trump's continued obsession with building that wall—even without Mexico paying for it—is not motivated by facts or sound policy. It is fueled by fear mongering and hate-filled, racist stereotypes that he has used to militarize border communities and strip residents of their most basic environmental, public health, and public safety rights. The President and his wall vilify real people who are often risking their lives to escape the violence and poverty of their home countries or reunite with their families--people who are seeking a better life.

A border wall never has been and never will be the answer. Continuing to spend taxpayer dollars on the President's ludicrous campaign promise is not only a waste of money, it is a proven danger to our wildlife, our public lands, and our border communities.

Sincerely,



Raúl M. Grijalva
Chair
Committee on Natural Resources
U.S. House of Representatives

²² Government Accountability Office, ADDITIONAL ACTIONS NEEDED TO BETTER ASSESS FENCING'S CONTRIBUTIONS TO OPERATIONS AND PROVIDE GUIDANCE FOR IDENTIFYING CAPABILITY GAPS, (Feb. 2017) <https://www.gao.gov/assets/690/682838.pdf>.

²³ Hope Yen, Colleen Long, and Calvin Woodward, AP fact check: Trump's shift on a concrete border wall, Associated Press (Jan. 28, 2019) <https://www.pbs.org/newshour/politics/ap-fact-check-trumps-shift-on-a-concrete-border-wall>.