Questions for the Record by Republican Members

Questions from Rep. Bishop for Mr. Steve Hodapp, Retired Independent Contractor & Environmental Specialist:

1. Lands within the Roosevelt Reservation are not within Organ Pipe Cactus National Monument, is that correct?

   Border barrier construction by the Department of Homeland Security on federal land in Pima County, Arizona is confined to the Roosevelt Reservation. The Roosevelt Reservation is a 60-foot wide strip of public land which was set aside in a Presidential Proclamation by Theodore Roosevelt in 1907 for border security purposes. When Organ Pipe Cactus National Monument was established by Presidential Proclamation in 1937, it was established subject to prior public land withdrawals. In fact, the 1937 monument establishment proclamation specifically recognizes the 1907 Roosevelt Reservation withdrawal. Therefore, the Roosevelt Reservation is entirely outside the boundary of Organ Pipe Cactus National Monument, and construction of the border barrier within the Roosevelt Reservation will have no direct effect on the monument.

2. Your testimony suggests that impacts from CBP projects have been exaggerated or mischaracterized. Can you provide any example of this?

   The media and federal agencies have continually mis-characterized and exaggerated the actual impacts of CBP projects and activities. Examples of these mis-characterizations include:

   (a) US Fish and Wildlife Service determined that construction of fixed towers under the Tucson West and Ajo 1 tower projects would result in take of 4.8 lesser long-nosed bats per tower per year due to bats colliding with fixed towers (see Biological Opinions 22410-2008-F-0373 dated Sept 4, 2008 and 22410-F-2009-0089-R2 dated December 10, 2009 respectively). US Customs and Border Patrol was therefore required to monitor this take for a period of 5 years. Over the next 5 years, CBP spent more than $600,000 on contractors searching for bat carcasses at these towers. No bat carcasses were ever located. The impact predicted by the US Fish and Wildlife Service was based on studies of bat mortality at a wind farm located in West Virginia. Further, the US Fish and Wildlife Service never determined that any cell phone tower, radio tower, TV tower, electrical tower, and other fixed tower constructed within the range of the lesser long-nosed bat in southern Arizona would result in take of the species.

   (b) US Fish and Wildlife Service determined that CBP maintenance of 100 miles of existing, unpaved roads on federal lands would result in incidental take of Sonoran pronghorn due to collisions with maintenance vehicles and harassment (see Biological Opinion 02EAAZ00-2012-F-0170 dated November 6, 2012). There are approximately 1,300 miles of existing, unpaved roads within the range of the pronghorn. These roads have been maintained and/or repaired by National Park Service, US Fish and Wildlife Service, Department of Defense and Bureau of Land Management since 1968 when the pronghorn was listed. In no consultation with any of these other agencies has US Fish and Wildlife Service ever

determined that road maintenance or repair would result in incidental take of pronghorn. In fact, there has never been a collision with a Sonoran pronghorn reported in Arizona on an unpaved road.

(c) In a letter dated December 17, 2009 from the AZ Fish and Wildlife Service Field Supervisor to the Tucson Sector Chief Patrol Agent, US Fish and Wildlife Service requested CBP immediately initiate Section 7 consultation regarding road dragging of the Geronimo Trail "in order to prevent the significant, and perhaps irreversible, environmental damage we believe is imminent." The imminent damage cited by US Fish and Wildlife Service was sedimentation of listed fish habitat within Black Draw which US Fish and Wildlife Service determined was occurring from ongoing dragging of Geronimo Trail. At the time of this letter, US Fish and Wildlife Service had no data to support these dire predictions and relied on studies of non-relevant species in unrelated ecosystems. Despite this lack of data, US Fish and Wildlife Service advocated for changes to CBP patrol activities. The University of Arizona later completed studies funded by CBP which documented that the source of sediment into the Black Draw was private ranching lands located north of the Geronimo Trail, and that sediment from CBP road dragging resulted in no measurable contribution to sedimentation within the stream.

3. What do you mean when you testify that CBP complies with the "substantive provisions of the environmental laws"?

   In Section 102 of the REAL ID Act, Congress authorized the complete waiver of any law as determined in the sole discretion of the Secretary of the Department of Homeland Security when required to enable border barrier construction on a timely basis. Since the first application of the waiver authority, the Department of Homeland Security has been dedicated to "responsible environmental stewardship" in the construction of border barriers where ever the waiver authority was exercised.

   For example, CBP conducts archeological surveys which meet the standards set forth in the National Historic Preservation Act prior to surface disturbance. Similarly, CBP conducts surveys for species listed under the Endangered Species Act. CBP seeks input from regulatory agencies in the development of best management practices. CBP consults with affected federal land managers and tribal leaders to seek their input on methods to minimize environmental impacts from border barrier construction. CBP completes documentation which quantifies the actual impact of its construction activities and makes that information available to interested parties. These are all examples which illustrate how CBP has complied with the substantive provisions of various environmental laws which have been waived.

4. What is the purpose of the environmental monitors used by CBP?

   The purpose of the environmental monitors is to ensure the best management practices adopted by CBP are fully implemented (see response to question #6). These monitors are responsible to report any violations of best management practices to the government so that real-time corrective action can be taken.

5. What measures are in place to ensure water flow at Quitobaquito Spring are not impacted by this project?

   Quitobaquito Spring has been substantially altered in recent history. Water from the spring is currently contained in an impoundment constructed to serve cattle in the 1800's. Water is delivered to this impoundment from the spring via a concrete-lined channel. The National Park Service has constructed a small (approximately 20-car capacity) parking lot at the impoundment and interpretive trail around it.

   US Geological Survey has completed studies in the past which determined that the source of water for the spring is located within the monument north of the current spring outfall. The National Park Service and US Fish and Wildlife requested that no groundwater be withdrawn within 5 miles of the spring. CBP has agreed not to withdraw any water within 7 miles of the spring. In addition, the US Geological Survey is performing real-time water flow monitoring of the spring flow when these CBP wells are active. If there is any diminution of flow during construction, then construction can be halted until mitigation measures can be developed.

6. What Best Management Practices are used by CBP to minimize the impacts from border wall construction?

   CBP has completed a number of border barrier projects over the years. During these numerous projects, a standard set of Best Management Practices (BMPs) has been developed. The following list of BMPs were developed for another border barrier project in Arizona. The actual BMPs to be applied for projects adjacent to Organ Pipe Cactus National Monument will reflect a minor modification of these BMPs to reflect local conditions.

   General Best Management Practices
   The following best management practices (BMPs) should be implemented to avoid or minimize impacts associated with the Project during construction. These represent project objectives for implementation to the extent possible and will be incorporated into construction and monitoring contracts.

   1. The perimeter of all areas to be disturbed during construction or maintenance activities in Sections D-5B and D-6 will be clearly demarcated using flagging or temporary construction fence, and no disturbance outside that perimeter will be authorized.

   2. CBP will develop (in coordination with U.S. Fish & Wildlife Service [USFWS]) a training plan regarding Trust Resources for construction personnel. At a minimum, the program will include the occurrence of the listed and sensitive species in the area, their general ecology, sensitivity of the species to human activities, protection afforded these species, and project features designed to reduce the impacts to these species and promote continued successful occupation of the project area environments by the species. Included in this program will be color photos of the listed species, which will be shown to the employees. Following the education program, the

photos will be posted in the office of the contractor and resident engineer, where they will remain through the duration of the project. The selected construction contractor will be responsible for ensuring that employees are aware of the listed species.

3. Project Reports. For construction and maintenance projects (e.g., fences, towers, stations, facilities) within 3 months of project completion, a Project Report will be developed that details the BMPs that were implemented, identifies how well the BMPs worked, discusses ways that BMPs could be improved for either protection of species and habitats or implementation efficiency, and reports on any federally listed species observed at or near the project site. If site restoration was included as part of the project, the implementation of that restoration and any follow-up monitoring will be included. Annual reports could be required for some longer-term projects. The project and any annual reports will be made available to the USFWS.

4. Biological Surveys for each Project. CBP will either assume presence of a federally listed species based on suitable habitat or known presence, and implement appropriate measures or will, as part of project design and planning, perform reconnaissance-level preconstruction surveys to validate presence of suitable habitat.

5. Relocation of individuals of federally listed plants found in the project area is generally not a suitable activity. Relocation of aquatic species such as the water umbel and ladies'-tresses is not appropriate. Relocation of small cacti has not been very successful, and is not recommended. A salvage plan will be developed and approved by the government prior to the action. The CBP biological monitor will identify a location for storing any salvaged cactus and/or agaves. For particular actions, the USFWS will advise CBP regarding the relocation of plants.

6. Individual federally listed animals found in the project area will be relocated by a qualified biologist to a nearby safe location in accordance with accepted species-handling protocols to the extent practicable.

7. All construction projects in habitats of federally listed species will have a qualified designated biological monitor on site during the work. The biological monitor will document implementation of construction-related BMPs designed for the project to reduce the potential for adverse effects on the species or their habitats. Weekly reports from the biological monitor should be used for developing the Project Report.

8. Where, based on species location maps or results of surveys, individuals of a federally listed species could be present on or near the project site, a designated biological monitor will be present during construction activities to protect individuals of the species from harm. Duties of the biological monitor will include ensuring that activities stay within designated project areas, evaluating the response of individuals that come near the project site, and implementing the appropriate BMP. The designated biological monitor will notify the construction manager of any activities that might harm or harass an individual of a federally listed species. Upon such notification, the construction manager may temporarily suspend all activities in question and notify the Contracting Officer, the Administrative Contracting Officer, and the Contracting

Officer's Representative of the suspense so that the key U.S. Army Corps of Engineers (USACE) personnel can be notified and apprised of the situation and the potential situation can be resolved.

9. Where a construction project could be located within 1 mile of occupied species habitats but the individuals of the species are not likely to move into the project area, a biological monitor is not needed. However, the construction monitor will be aware of the species-specific BMPs and ensure that BMPs designed to minimize habitat impacts are implemented and maintained as planned. This category includes the lesser long nosed bat and all aquatic species.

10. Particular importance is given to proper design and location of roads so that the potential for road bed erosion into federally listed species habitat will be avoided or minimized.

11. Particular importance is given to proper design and location of roads so that the potential for entrapment of surface flows within the roadbed due to grading will be avoided or minimized. Depth of any pits created will be minimized so animals do not become trapped.

12. Particular importance is given to proper design and location of roads so that the widening of existing or created roadbed beyond the design parameters due to improper maintenance and use will be avoided or minimized.

13. Particular importance is given to proper design and location of roads so that excessive use of unimproved roads for construction purposes that results in their deterioration that affects the surrounding federally listed species habitat areas will be minimized. Road construction and use for construction will be monitored and documented in the Project Report.

14. Particular importance is given to proper design and location of roads so that the fewest roads needed for construction will be developed and that these are maintained to proper standards. Roads no longer needed by the government should be closed and restored to natural surface and topography using appropriate techniques. The Global Positioning System (GPS) coordinates of roads that are thus closed should be recorded and integrated into the USBP Geographic Information System (GIS) database. A record of acreage or miles of roads taken out of use, restored, and revegetated will be maintained.

15. The width of all roads that are created or maintained by CBP for construction purposes will be measured and recorded using GPS coordinates and integrated into the USBP GIS database. Maintenance actions should not increase the width of the road bed or the amount of disturbed area beyond the roadbed.

16. Construction equipment will be cleaned using BMPs prior to entering and departing the project corridor to minimize the spread and establishment of non-native invasive plant species.

17. Surface water from untreated sources, including water used for irrigation purposes, will not be used for construction or maintenance projects located within 1 mile of aquatic habitat for

federally listed aquatic species. Groundwater or surface water from a treated municipal source will be used when close to such habitats. This is to prevent the transfer of invasive animals or disease pathogens between habitats if water on the construction site was to reach the federally listed species habitats.

18. Materials such as gravel or topsoil will be obtained from existing developed or previously used sources, not from undisturbed areas adjacent to the project area.

19. If new access is needed or existing access requires improvements to be usable for the Project, related road construction and maintenance BMPs will be incorporated into the access design and implementation.

20. When available, areas already disturbed by past activities or those that will be used later in the construction period will be used for staging, parking, and equipment storage, where practicable.

21. Within the designated disturbance area, grading or topsoil removal will be limited to areas where this activity is needed to provide the ground conditions needed for construction or maintenance activities. Minimizing disturbance to soils will enhance the ability to restore the disturbed area after the project is complete.

22. Removal of trees and brush in habitats of federally listed species will be limited to the smallest amount needed to meet the objectives of the project. This type of clearing is likely to be a permanent impact on habitat.

23. Water for construction use will be from wells or irrigation water sources at the discretion of the landowner (depending on water rights). If local groundwater pumping creates an adverse effect on aquatic-, marsh-, or riparian-dwelling federally listed species, treated water from outside the immediate area will be utilized.

24. Surface water from aquatic or marsh habitats will not be used for construction purposes if that site supports aquatic federally listed species or if it contains nonnative invasive species or disease vectors and there is any opportunity to contaminate a federally listed species habitat through use of the water at the project site.

25. Water tankers that convey untreated surface water will not discard unused water where it has the potential to enter any aquatic or marsh habitat.

26. Water storage on the project area should be in closed on-ground containers located on upland areas, not in washes.

27. Pumps, hoses, tanks, and other water storage devices will be cleaned and disinfected with a 10 percent bleach solution at an appropriate facility before use at another site. If untreated surface water was used (this water is not to enter any surface water area). If a new water

source is used that is not from a treated or groundwater source, the equipment will require additional cleaning. This is important to kill any residual disease organisms or early life stages of invasive species that could affect local populations of federally listed species.

28. CBP will develop and implement storm water management plans for every project.

29. All construction will follow DHS management directive 5100 for waste management.

30. A CBP-approved spill protection plan will be developed and implemented at construction and maintenance sites to ensure that any toxic substances are properly handled and that escape into the environment is prevented. Agency standard protocols will be used. Drip pans underneath equipment, containment zones used when refueling vehicles or equipment, and other measures are to be included.

31. Nonhazardous waste materials and other discarded materials, such as construction waste, will be contained until removed from the construction site. This will assist in keeping the project area and surroundings free of litter and reduce the amount of disturbed area needed for waste storage.

32. To eliminate attracting predators of protected animals, all food-related trash items such as wrappers, cans, bottles, and food scraps will be disposed of in closed containers and removed daily from the project site.

33. Waste water is water used for project purposes that is contaminated with construction materials, or was used for cleaning equipment and thus carries oils or other toxic materials or other contaminants in accordance with state regulations. Waste water will be stored in closed containers on site until removed for disposal. Concrete wash water will not be dumped on the ground, but is to be collected and moved offsite for disposal. This wash water is toxic to aquatic life.

34. If an individual of a federally listed species is found in the designated project area, work will cease in the area of the species until either a qualified biological monitor can safely remove the individual, or it moves away on its own, to the extent practicable, construction schedule permitting.

35. Construction speed limits will not exceed 35 miles per hour (mph) on major unpaved roads (graded with ditches on both sides) and 25 mph on all other unpaved roads. Nighttime travel speeds will not exceed 25 mph, and might be less based on visibility and other safety considerations. Construction at night will be minimized.

36. No pets owned or under the care of the construction contractor or any and all construction workers will be permitted inside the project's construction boundaries, adjacent native habitats, or other associated work areas. This BMP does not apply to any animals under service to the USBP (such as canine and horse patrols).

37. If construction or maintenance activities continue at night, all lights will be shielded to direct light only onto the area required for worker safety and productivity. The minimum wattage needed will be used and the number of lights will be minimized.

38. Light poles and other pole-like structures will be designed to discourage roosting by birds, particularly ravens or raptors that may use the poles for hunting perches.

39. Noise levels for day or night construction and maintenance will be minimized. All generators will be in baffle boxes (a sound-resistant box that is placed over or around a generator), have an attached muffler, or use other noise-abatement methods in accordance with industry standards.

40. Transmission of disease vectors and invasive nonnative aquatic species can occur if vehicles cross infected or infested streams or other waters and water or mud remains on the vehicle. If these vehicles subsequently cross or enter uninfected or non-infested waters, the disease or invasive species could be introduced to the new area. To prevent this, crossing of streams or marsh areas with flowing or standing water will be avoided by construction vehicles and equipment, and, if not avoidable, the construction vehicle/equipment will be sprayed with a 10 percent bleach solution.

41. Materials used for onsite erosion control in uninfested native habitats will be free of nonnative plant seeds and other plant parts to limit potential for infestation. Since natural materials cannot be certified as completely weed-free, if such materials are used, there will be follow-up monitoring to document establishment of nonnative plants, and appropriate control measures will be implemented for a period of time to be determined in the site restoration plan.

42. Fill material brought in from outside the project area will be identified as to source location and will be weed-free to the extent practicable.

43. For purpose of construction, infrastructure sites will only be accessed using designated roads. Parking will be in designated areas. This will limit the development of multiple trails to such sites and reduce the effects to federally listed habitats in the vicinity.

44. Appropriate techniques to restore the original grade, replace soils, and restore proper drainage will be implemented for areas to be restored (e.g., temporary staging areas).

45. A site restoration plan for federally listed species and habitat will be developed during project planning and provide an achievement goal to be met by the restoration activity. If seeding with native plants is identified as appropriate, seeding will take place at the proper season and with seeds from nearby stocks, to the extent practicable. It is understood that some sites cannot be restored, and the project planning documents should acknowledge this.

46. During follow-up monitoring and during maintenance activities, invasive plants that appear on the site will be removed. Mechanical removal will be done in ways that eliminate the entire

plant and remove all plant parts to a disposal area. All chemical applications on refuges must be used in coordination with the Integrated Pest Management Coordinator to ensure accurate reporting. Herbicides can be used according to label directions. The monitoring period will be defined in the site restoration plan. Training to identify non-native invasives will be provided for CBP contractor personnel, as necessary.

47. Maintenance activities in cactus and agave habitat will not increase the existing disturbed areas. Use of existing roads and trails will be maximized in areas of suitable habitat for cactus and agaves. Protection of the cactus will be stressed in environmental education for contractors involved in construction or maintenance of facilities.

48. To prevent entrapment of wildlife species during emplacement of vertical posts/bollards, all vertical fence posts/bollards that are hollow (i.e., those that will be filled with a reinforcing material such as concrete), will be covered so as to prevent wildlife from entrapment. Covers will be deployed from the time the posts or hollow bollards are erected to the time they are filled with reinforcing material.

49. To prevent entrapment of wildlife species during the construction of the project, all excavated, steep-walled holes or trenches will either be covered at the close of each working day by plywood or provided with one or more escape ramps constructed of earth fill or wooden planks. The ramps will be located at no greater than 1,000-foot intervals and will be sloped less than 45 degrees. Each morning before the start of construction and before such holes or trenches are filled, they will be thoroughly inspected for trapped animals. Any animals so discovered will be allowed to escape voluntarily (by escape ramps or temporary structures), without harassment, before construction activities resume, or removed from the trench or hole by the biological monitor and allowed to escape unimpeded.

BMPs for Temporary Impacts

1. Site restoration of temporarily disturbed areas such as staging areas and construction access routes will be monitored as appropriate.

2. During follow-up monitoring of any restoration areas, invasive plants that appear on the site will be removed. Mechanical removal will be done in ways that eliminate the entire plant and remove all plant parts to a disposal area. All chemical applications on refuges must be used in coordination with the NPS Integrated Pest Management Coordinator to ensure accurate reporting. Herbicides can be used according to label directions. The monitoring period will be defined in the site restoration plan. Training to identify nonnative invasive plants will be

Species-Specific BMPs

(Note the species-specific BMPs will be uniquely developed for each species potentially found in the vicinity of the project. In this case, the BMPs for Lesser long-nosed bat a formerly listed species in the project area are representative of the BMPs which would be developed for species in the project area).

Lesser Long-Nosed Bat

1. When planning activities, avoid, to the extent practicable, areas containing columnar cacti (e.g., saguaro and organ pipe) or agaves that provide the forage base for the bat.

2. Maintenance activities for facilities can occur at any time; however, for major work on roads or fences where significant amounts of equipment will be required, the October to April period is the preferred period for such activities

3. If construction or maintenance activities continue at night, all lights will be shielded to direct light only onto the work site and the area necessary to ensure the safety of the workers.

7. Can you provide any additional details about the cultural resources identified in the 2019 survey by the National Park Service? Has there been previous border security work completed in proximity to or on Monument Hill in which you have been involved?

The 2019 National Park Service archeological survey was conducted along approximately 11 miles of border near Quitobaquito Spring. The National Park Service has not reported any recent archeological surveys on Monument Hill. Details from the 2019 National Park Service survey have been redacted and are not available to the public.

In 2003, the National Park Service issued an environmental assessment for construction of a border barrier and adjacent 30-foot wide road along 35 miles of monument boundary, including Monument Hill and Quitobaquito Spring. The National Park Service completed an archeological survey of the project site and determined no significant cultural resources would be impacted. The Tohono O'odham Tribe provided no comments on the environmental assessment regarding potential impacts from either road construction or border barrier construction on either Monument Hill or Quitobaquito Spring.

In 2007, CBP issued an environmental assessment for 5.2 miles of mesh pedestrian fence centered on Lukeville, and located about 3 feet north of the National Park Service-constructed vehicle fence (within the Roosevelt Reservation). This project included 0.65 miles of primary pedestrian fence on Monument Hill. The disturbance corridor for this project was expanded from the 30-foot wide corridor under the 2003 National Park Service environmental assessment to the full 60-foot wide Roosevelt Reservation. CBP conducted an archeological survey of the project site and the environmental assessment found no potential impacts on cultural resources. The Tribe made no comment about cultural significance of Monument Hill after this environmental assessment was publicly released.

In 2009, CBP issued an environmental assessment for construction of 10 surveillance and communication towers within and adjacent to the monument, including one tower within two miles of Monument Hill. The Tribe made no comment on this environmental assessment regarding the cultural significance of Monument Hill.

In 2012, CBP issued an environmental assessment addressing maintenance and repair of all existing CBP tactical infrastructure (roads, fences, bridges, lighting, vegetation control, drainage

structures, surveillance towers, etc.) in Arizona. The proposed action included maintenance of the border fence constructed by the National Park Service, the pedestrian fence on Monument Hill constructed by CBP and the adjacent road on Monument Hill. The Tribe provided no comment on this environmental assessment regarding the cultural significance of Monument Hill.

The current CBP project on Monument Hill is located within the Roosevelt Reservation and includes the areas addressed under the previous environmental assessments referenced above. It is unknown why the Tohono O'odham Tribe never expressed their concern about the sacred nature of Monument Hill or Quitobaquito Spring during any of these previous environmental compliance efforts.

8. Was there a study or survey conducted at that location prior to construction activities occurring? Was the tribe involved in that process?

   The Roosevelt Reservation in the vicinity of both Quitobaquito Spring and Monument Hill has been surveyed on multiple occasions in the past. See response to Question #7.

9. Is there evidence that the border wall will impact listed species such as the Sonoran pronghorn?

   There are Sonoran pronghorn populations both north and south of the US/MX border. In the last decade, movement of a number of pronghorn from the US population have been monitored by GPS-enabled collars. Data collected from these GPS collars confirms that movement of pronghorn across the currently permeable vehicle barrier along the border is extremely rare. Once the border wall is completed, no further movement of pronghorn across the border will occur. The current recovery plan for the Sonoran pronghorn does not anticipate movement of pronghorn between the US and Mexico populations. Rather, the recovery plan anticipates recovery will be accomplished entirely within the US. Therefore, construction of the border wall is not anticipated to impact survival or recovery of the Sonoran pronghorn.