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Good afternoon Chairman Gallego, Ranking Member Cook and distinguished Members of the Subcommittee. It is an honor to have the opportunity to testify before you today regarding the environmental consequences of border security construction in Arizona.

My name is Steve Hodapp, for the last 10 years, until my retirement last March, I was working as a Contractor supporting the environmental compliance efforts of the US Customs and Border Protection (CBP), primarily in the State of Arizona. The major point of my testimony is that in the execution of its border security mission, CBP fully complies with all applicable laws as provided in the REAL ID Act, and in fact, often exceeds the legal requirements. Adverse impacts of CBP construction activities have often been grossly mis-characterized. In 2016, the House Natural Resources Committee requested that the Department of the Interior provide a list of peer-reviewed publications which document the impacts of CBP actions on natural resources. The Department of the Interior could not identify a single peer-reviewed study in 6 months' time. In fact, a majority of the citations provided by the Department were not even from peer-reviewed publications. CBP has completed a number of important conservation measures in the State of Arizona in recent years (see attached).

First, it is important to understand that the environmental waiver authorized on a bi-partisan basis by Congress in the REAL ID Act only applies to construction of border barriers, and such roads as are required for border barrier construction. All other CBP construction activities: for roads, towers, bridges, operations, border patrol stations, lighting, etc. must be completed in full compliance with all applicable environmental laws. Congress only provided the statutory waiver to a small subset of border security construction activities. In fact, effective border security requires a combination of deterrence factors, including: a barrier, technology to determine when the barrier has been breached, enforcement personnel, adequate access for enforcement personnel to reach the border and prompt adjudication procedures. If Congress desires to enhance border security further, then these same statutory authorities should be applied to other border construction activities.

Second, while the REAL ID Act authorizes a complete waiver of environmental or other statutes, as determined in the sole discretion of the Secretary of the Department of Homeland Security, in practice, CBP complies with the substantive provisions of the various environmental laws. For example, CBP still undertakes cultural resource surveys in areas where there will be ground disturbance. And, if cultural resources are discovered during the surveys, those resources are treated in accord with accepted practice. In other words, any significant cultural resources identified will either be collected for future study and placed with an appropriate entity for curation, or if collection is impracticable, the resources will be documented in place in accord with accepted practice.

While CBP does not formally consult with the State Historic Preservation Officer (or in this case the Tribal Historic Preservation Officer) if the National Historic Preservation Act is waived, CBP still solicits their input; as well as input from the public, and other interested parties regarding border barrier

projects. Any input received is carefully reviewed by CBP and used to ensure that potential impacts on natural and cultural resources are minimized to the extent possible. On May 6, 2019, CBP broadly issued a letter seeking comments on the proposed bollard wall in Pima and Cochise Counties. The letter detailed how to provide comments which were accepted from interested parties on this project until July 5, 2019 (see CBP National Environmental Policy Act webpage)

CBP is concerned about potential impacts of its activities on cultural resources of concern to the Tohono O'odham Nation, and has taken, and continues to take all possible steps to minimize the impact of its activities on tribal cultural resources consistent with its border security responsibilities. In fact, according to the Tribal Historic Preservation Officer, CBP has conducted more extensive archeological surveys on the Tohono O'odham Nation lands than anyone else (including the Tribe).

CBP and the Tohono O'odham Nation have been working cooperatively on border security for many years. For the last 10 years, CBP and the Tribe have been working on the deployment of a surveillance tower system across the Nation's lands. Several years ago, CBP's contractor was in the field conducting test borings to evaluate the engineering feasibility of certain tower sites. During this activity, the contractor inadvertently knocked over 2 saguaro cacti, a species which is considered sacred to the Tribe. CBP took immediate action to shut down the contract and to provide remedial training to the contractor, and enhance the monitoring protocol to ensure future incidents were avoided. CBP erected and stabilized the cacti which were damaged, and provided additional saguaro cacti at a 2:1 replacement ratio. This mitigation approach was agreed to by the Tribe.

CBP fully coordinated the environmental assessment for this tower project with the Tribe, and all tower sites and roads to be upgraded were approved by the Tribal Historic Preservation Officer, Peter Steere. CBP even went beyond the traditional visual archeological surveys and performed ground penetrating radar surveys of sites where visual surveys were inconclusive, including an additional site as requested by the Tribal Historic Preservation Officer.

Despite the completion of surveys before the final site selection decision was made, additional cultural resources were discovered when construction crews went to the field last fall. CBP and the Tribal Historic Preservation Officer agreed on techniques to protect cultural resources within the road prism, and CBP changed one of its tower sites to a location where cultural resources were not present.

In addition to this survey for the tower project, CBP has completed surveys of approximately 220 miles of roads on the Tohono O'odham lands which are needed for border patrol purposes. The purpose of these surveys was to enable CBP to conduct future maintenance of these roads, which would benefit both Tribal access and border security. During these surveys, several dozen cultural resource sites, a number of which are significant sites, were located. Although these surveys were completed nearly 6 years ago in 2014, these sites remain unprotected today and are being impacted by ongoing road traffic.

With specific regard to the cultural significance of Monument Hill, I point out the following:

1. 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. 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.

2. 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. 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.
3. 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.
4. 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 and the adjacent road on Monument Hill. The Tribe provided no comment on this environmental assessment regarding the cultural significance of Monument Hill.

Only the Tohono O'odham Nation can provide an explanation regarding why there has been no comment on the cultural significance of Monument Hill prior to the most recent solicitation for comment in May of 2019. It is likely that construction of a border barrier will have some impact on the culturally significant Monument Hill and that no mitigation is likely to achieve both complete protection of this site and border security objectives. Procedures adopted by CBP to mitigate impacts on cultural resources as described above will reduce the overall impact of this project on this significant site.

The Quitobaquito Spring which exists in the monument today is a cattle pond constructed by a rancher in the 1860's. The precise configuration of the spring prior to the 1860's is unknown. According to the US Geological Survey (Hydrogeology of the Quitobaquito Springs and La Abra Plain area, Organ Pipe Cactus National Monument, Arizona, and Sonora, Mexico Water-Resources Investigations Report 95-4295), the source for this spring is the highly fractured rock northeast of the springs (within the monument). These USGS studies suggest that any pumping south of the re-charge area have not been demonstrated to have an impact on the spring.

Since Quitobaquito Spring is one of few natural water sources in the monument vicinity, it has long been an important source of water. Quitobaquito Spring also provides habitat for two listed species, the Quitobaquito pupfish and the Sonoita mud turtle. Although this spring is only about a quarter mile north of the US/MX border which is traveled by CBP agents during patrol there is no evidence that either of these species have been impacted by CBP activity. Pursuant to a 2009 biological opinion (AESO 22410-2009-F-0368), CBP does not patrol within a 40-acre buffer area around this spring. For these reasons, no biological impacts to Quitobaquito Spring are anticipated from this project. Any isolated cultural resources near Quitobaquito Spring will be addressed in a similar manner to any isolated resources located on Monument Hill.

## **Significant Conservation Actions Undertaken by CBP in Arizona Since 2010**

\*CBP has conducted the most extensive archeological surveys of the Tohono O’odham Nation lands ever undertaken. This includes surveys along more than 250 miles of roads and more than a dozen tower sites. The information collected in these surveys has been used by CBP to reduce or eliminate potential impacts of tactical infrastructure on cultural resources. For example, CBP recently abandoned a preferred tower site due to the presence of significant cultural resources at that site.

During these cultural resource surveys, CBP discovered several dozen historic and pre-historic archeological sites along, and within, the road corridors. A number of the sites were determined to be culturally significant. Since the discovery of these sites in 2014, the Tribe has taken no action to conserve these sites, and the sites continue to degrade due to ongoing vehicular traffic.

\*CBP provided \$2.9M to the National Park Service to restore Sonoran Desert habitat impacted by past illegal vehicle border crossings.

\*CBP has provided more than \$2M for jaguar conservation. This funding has been used for surveying and monitoring jaguars as well as a broad public education campaign.

\*CBP has provided \$2.8M for Sonoran pronghorn conservation and recovery. These funds have been used to establish a captive breeding population, establish a second pronghorn population on Kofa National Wildlife Refuge, inventory and monitoring of pronghorn, studies of potential impacts of human activities on the species and other high priority conservation actions. CBP funding has been a key factor in the ongoing recovery of this species.

\*CBP has provided \$1.3M for conservation and recovery of lesser long nosed bat. Funding provided by CBP has been instrumental in the discovery of additional lesser long nosed bat colonies which has supported efforts by USFWS to de-list this species.

\*CBP provided funding to install a well to secure the habitat for the endangered San Bernardino spring snail.

\*CBP provided funding to establish new wetlands at San Bernardino National Wildlife Refuge.

\*CBP provided more than \$500K to secure the habitat of listed fish at San Bernardino National Wildlife Refuge. Actions implemented with these funds include: construction of a fish barrier to prevent upstream migration of exotic species and erosion control measures along Black Draw and Hay Hollow to reduce sedimentation impacts on listed fish in ephemeral streams.

\*Due to the CBP border security efforts in the vicinity of Organ Pipe Cactus National Monument, the National Park Service was able to open 70% of the monument which had been closed to public use for more than 11 years (2003 to 2014).

