

January 17, 2019

Paul Enriquez
Environmental Branch Chief
Border Patrol Facilities and Tactical Infrastructure
Program Management Office
1300 Pennsylvania Avenue NW
Washington, DC 20229

Kevin K. McAleenan
Commissioner - U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, DC 20229

Carla L. Provost
Acting Chief - U.S. Border Patrol
1300 Pennsylvania Ave. NW
Washington, DC 20229

CC:

Kirstjen M. Nielsen
Secretary of Homeland Security
300 7th Street, SW
Washington, D.C. 20024

Re: San Diego Secondary Wall Construction Coalition Comments

Dear Mr. Enriquez,

These comments on the proposed construction of 12.6 miles of “secondary bollard wall” replacement and 1.6 miles of new “secondary bollard wall” construction in the United States Border Patrol (USBP) San Diego sector are submitted on behalf of the undersigned conservation, human rights, public interest, and faith-based organizations.

The construction of 30ft-high bollard-style border barriers in the locations proposed in U.S. Customs and Border Protection’s (CBP’s) December 18 notice would damage the environment and negatively impact the culture, commerce, and quality of life for communities and residents located near the project area. Similar border barrier projects have damaged and destroyed protected landscapes, interfered with binational conservation efforts, obstructed the movement of wildlife, and impacted neighboring communities.

The area of proposed construction for this project spans 14 miles and is within or in close proximity to coastal wetland habitat, seasonal wetland vernal pool habitat, and other occupied endangered species habitat. This includes habitat for some of the 85 species prioritized for protection by San Diego County Multiple Species Conservation Program (MSCP) and land protected by conservation easements and collaborative public and private sector efforts as a

result of the program. Proposed construction would also take place within or directly adjacent to designated critical habitat for numerous federally listed and protected endangered species including the Quino checkerspot butterfly, the San Diego fairy shrimp, the Riverside fairy shrimp, the coastal California gnatcatcher, and the least Bell's vireo.

Additionally, the proposed construction would occur near neighborhoods, commercial centers, and recreational areas on both sides of the border. The proposed project and further militarization of the border may also damage commerce, trade, and tourism in the region.

Before we discuss the potential harms caused by the proposed project, we must remind CBP that there is no evidence that the proposed project would achieve the agency's stated goals to "impede or deny illegal border crossings," as border walls of many designs have proven easily surmountable by people in a number of ways, including with a ladder or a rope.

We request that CBP carefully review and respond to the numerous concerns raised within the following sections of this letter before moving forward with any aspect of border barrier construction in the San Diego Sector. Additionally, we underscore our strong concerns and objections to the public comment process. CBP has not responded to a January 14, 2019 letter from 27 organizations requesting an extension of the comment period and to make public outreach more accessible. CBP's refusal to extend the public comment period, even in the midst of a government shutdown, further demonstrates the agency's complete lack of commitment to meaningfully engage the public and solicit a wide range of public comments. CBP's December 21, 2018 issuance of a \$131 million construction contract for the proposed project, just days after the public comment period was opened, clearly illustrates that CBP never had intentions of modifying or changing the proposed course of action based on input received.¹

As outlined in the January comment period extension request, a 30-day comment period is inadequate for the public to thoroughly review and provide comment on a project of this magnitude. CBP has made no discernable effort to alert the general public to this project as typically required for a proper public process pursuant to the National Environmental Policy Act (NEPA). It is likely that key stakeholders have been disregarded and federal requirements for coordination and/or consultation with other federal agencies, such as those within the Endangered Species Act (ESA), NEPA, and other relevant federal laws, have been ignored.

Inadequate Public Notice and Comment

Given the wide range of environmental, cultural, public safety, and economic impacts of the proposed project, the 30-day comment period is inadequate to provide the public with enough time to thoroughly review and meaningfully respond to the proposed project. A 30-day comment period is an extremely short amount of time to comment on a project that will fundamentally alter the environment and communities near the project area.

CBP has also neglected to hold even a single public meeting for local stakeholders and affected communities. This complete denial of a transparent public process strongly suggests that CBP has no sincere interest in obtaining thoughtful comments and broadly engaging with the diverse constituencies affected by the project. To gather sufficient, meaningful public input, CBP must

host a public comment forum in English and Spanish in the affected areas regarding the construction of border barriers through communities and protected lands.

We note that CBP has already awarded a construction contract for the proposed project, which suggests that no amount of public input, scientific data, or new information provided to agency officials and decision-makers would actually alter the proposed action or inform the development of alternatives. CBP must put the existing contract on hold until all relevant stakeholders have been consulted, public forums have been held, and public comments and concerns with the project—including the consideration of alternative courses of action—have been analyzed.

It should also be noted that the information provided within CBP's notice to comment is replete with vagueness and devoid of site-specific details. The map contained in the notice lacks basic landmarks, simple cadastral data, and even a rudimentary map legend and scale. To meaningfully comment on the impacts of this project, the public must first understand the specifics of the proposal, including a detailed and accurate description of where the proposed wall and associated infrastructure would be placed. It is impossible for the public to provide thoughtful comments when CBP's plans remain unarticulated and detailed maps of the proposed project have not been released.

Also, the proposed border wall construction and related activities require compliance with federal laws including, but not limited to, NEPA, the ESA, the Clean Water Act, the National Historic Preservation Act, the Migratory Bird Treaty Act, the Clean Air Act, the Coastal Zone Management Act, the Archaeological and Historic Preservation Act, the Historic Sites, Buildings, and Antiquities Act, the Religious Freedom Restoration Act, the National Wildlife Refuge System Administration Act, and the Administrative Procedure Act.

NEPA is a clear and well-established method of soliciting public comment, for which there is no substitute. Here, the public interest and the ultimate decision-maker will benefit from ensuring that this process moves forward under NEPA with the completion of an Environmental Impact Statement (EIS). Importantly, a NEPA-compliant EIS would ensure that the process is transparent and publicly accessible by providing notice to comment via Federal Register publication, local newspapers, and other means that are necessary to reach the communities that the proposed action would impact. The NEPA process would also cure the numerous and significant shortfalls with CBP's effort to notify and invite public comment for this project including the selective distribution of the notice and the faulty and inadequate maps included within the notice.

Lastly, a NEPA-compliant EIS would allow CBP to analyze the true purpose and need for the project and consider alternatives to the proposed project, including such alternatives that would be less costly to taxpayers and less harmful to the environment and neighboring communities. CBP has recently stated that the agency would conduct environmental planning and produce Environmental Stewardship Plans (ESPs) for border wall construction projects that would "look exactly like Environmental Assessments (EAs)" and "mirror" the intent of NEPA.² We note, however, that ESPs are not and will never be an adequate substitute for the NEPA process. ESPs fail to meet the rigor set forth by NEPA in numerous ways. As stated in the Council on Environmental Quality's regulations implementing the procedural provisions of NEPA, alternatives are "the heart of the environmental impact statement."³ Furthermore, whether in the

context of an EIS or an EA, NEPA requires agencies to “study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.”⁴

Prior ESPs prepared by DHS and CBP do not examine alternatives, and instead have been used to justify decisions already settled on for projects that were undertaken before the drafting or release of an ESP. This is most clearly evidenced by DHS’s August 1, 2017 decision to waive 37 environmental, public health, and cultural resource protection laws and break ground on 8 border wall prototypes and 16 miles of “primary” border wall construction in San Diego before conducting any sort of assessment on the potential harms of project. CBP did not complete an ESP for this project until 10 months after virtually all applicable environmental, public health, and cultural resource protection laws had been waived and construction was nearly complete.

For these reasons, before CBP moves forward with the proposed construction, we request that CBP (1) extend the comment period to a minimum of 30 days after providing additional specific details about the project as would be required in an EIS; (2) that CBP host a public forum in English and Spanish in the San Diego community; (3) that CBP release information to the public, including accurate, detailed maps, that would allow for informed public comment; and (4) that CBP conduct this project in compliance with federal laws including, but not limited to, NEPA, ESA, the Clean Water Act, the National Historic Preservation Act, the Migratory Bird Treaty Act, the Clean Air Act, the Coastal Zone Management Act, the Archaeological and Historic Preservation Act, the Historic Sites, Buildings, and Antiquities Act, the Religious Freedom Restoration Act, the National Wildlife Refuge System Administration Act, and the Administrative Procedure Act. CBP can start with the publication of a notice to comment on the proposal in the Federal Register that provides at least a 60-day comment period.

Destruction of Habitat and Impacts to Wildlife

Border walls are well understood to be ecological stressors that destroy habitat, divide genetic interchange, and impede wildlife migration.⁵ In July 2018, more than 2,500 scientists published a paper detailing the harms that border walls cause to habitat quality, stating: “Physical barriers prevent or discourage animals from accessing food, water, mates, and other critical resources by disrupting annual or seasonal migration and dispersal routes.”⁶ Existing border walls in the San Diego region and across the U.S.-Mexico borderlands have caused extensive and well-documented harm to wildlife and natural processes, including the destruction and fragmentation of habitat; interference with the flow of water and the exacerbation of flooding; and disturbances to wildlife during construction.

The San Diego/Tijuana region is among the most biologically diverse areas in North America, where coastal wetland, mountainous shrubland, chaparral grasslands, and other unique ecosystems coalesce. Together, Baja California, Mexico, and the U.S. State of California sustain over 400 species of plants and animals classified as endangered, threatened, or at risk, many of which converge along the U.S.-Mexico border region.⁷ The region is part of the larger California Floristic Province identified in 1996 by the International Union for the Conservation of Nature (IUCN) as one of the world’s most biologically important and imperiled areas.⁸

As biologically unique as the San Diego region is, the remaining habitat is under significant pressure from the rapid growth of the San Diego/Tijuana metropolitan area as well as pressures from increased border security activity and infrastructure, including existing border barriers. Experts estimate that at least 75 percent of the original habitat in the region has already been lost,⁹ making every remaining acre of native habitat in the region important for the survival of endangered species and overall health of the ecosystem.

Existing border security infrastructure, including miles of border barriers built with no environmental review, already poses a significant threat to fragile wildlife and conservation lands in and around the proposed project area. CBP's night-lighting, roads, round-the-clock patrols, and helicopter flights are already persistent disturbances to wildlife in the area. The proposed "secondary wall" project will only exacerbate existing damage and further degrade the unique and irreplaceable habitats within and near the project area. Any potential harm caused by the proposed project must be considered cumulatively with the existing stressors on species and habitat caused by border militarization and environmental degradation.

CBP's biological survey of the proposed project area, which was conducted for the construction of 8 border wall prototypes and 16 miles of "primary" barriers after the projects had commenced in 2018, attests to the high quality habitat in the proposed project area that would be imperiled if construction moves forward. The survey states: "Much of the Project Area, including the Tijuana River Valley and Otay Mesa, supports a diverse set of wildlife. The western portion of the Project Area is a relatively undeveloped southern California coastal habitat and is heavily used by both native and migratory birds."¹⁰ The same survey notes that 10 federally protected wildlife species are present within or near the project area. Even from the limited description provided in CBP's December 18 notice to comment, it is clear that the proposed construction would result in further disturbances to these sensitive species and the degradation and destruction of their habitats.

Many protected federal and state lands exist near CBP's proposed project area. Several small reserves near the western end of the proposed project area serve as important islands of wildlife habitat surrounded by human development, including the Tijuana River National Estuarine Research Reserve, the Tijuana Slough National Wildlife Refuge, and the State of California-owned Border Field State Park. The Otay Mountain Wilderness lies just to the east of the proposed project area, which Congress designated as wilderness in 1999 as one of the "last remaining pristine locations in San Diego County... internationally known for its diversity of unique and sensitive plants."¹¹ From the extremely low-resolution map CBP provided in the December 18 notice to comment, it appears that the project should avoid the Otay Mountain Wilderness, however this is difficult to discern from the scant map provided. Moreover, even if direct impacts to the Otay Mountain Wilderness may not occur, indirect and cumulative impacts, from activities such as night-time lighting, can still negatively impact the area. Such impacts must be analyzed and disclosed to the public and for the ultimate decision-maker. If CBP moves forward with the proposed project, the agency must analyze the impact of proposed construction on neighboring protected lands including the Otay Mountain Wilderness, the Tijuana River National Estuarine Research Reserve, and Tijuana Slough National Wildlife Refuge.

In addition to the grave harm the proposed project would inflict upon wildlife, there are also at least 10 federally protected plants within the project area that would be impacted by CBP's proposed construction. The disturbance of land, potential harms to air and water quality, and interference with natural water drainage and flow has high potential to harm these species and alter the area's flora, pushing threatened and endangered plants closer to extirpation. Ground disturbance resulting from the proposed project also raises concerns about the introduction of nonnative plants and erosion. Without plant cover to slow water flow and stabilize soils, rain would likely cause gullying and loss of topsoil, further degrading ecosystems within and adjacent to the proposed project area.

Apart from the low-resolution and inadequate map attached to CBP's notice to comment, no maps have been released that adequately detail the project area or assess the acreage of habitat that would be destroyed as a result of the project. It is CBP's responsibility, not the responsibility of the public, to compile and share detailed information on the proposed project *before* requesting the public to comment. CBP must provide detailed maps of the project area and extend the comment period to allow the public to make informed and specific comments *after* reviewing detailed and specific maps showing the extent of CBP's proposal.

Even based on the limited information CBP has provided, it is clear that the proposed project would harm native species and the natural environment. Despite this, CBP has not indicated that it would mitigate harm to wildlife, including threatened and endangered species, and their habitat. Even if CBP proposes mitigating actions, we are concerned by CBP's poor track record regarding promised mitigation.

For instance, in the Lower Rio Grande Valley National Wildlife Refuge, where CBP erected many miles of border wall and upgraded patrol roads in 2008, CBP prepared an ESP which determined that the most appropriate mitigation for destroyed or fragmented habitat would be the purchase of 4,600 acres of land that could serve as ocelot habitat to be added to the U.S. Fish and Wildlife Service (USFWS) refuge system. To date, CBP has purchased only 1,100 acres of potential ocelot habitat in South Texas. This is less than a quarter of the habitat that CBP committed to purchasing in the 2008 ESP to offset habitat destruction. This demonstrates 1) that CBP does not take mitigation commitments seriously and 2) that mitigation strategies and conservation measures outlined in ESPs are not adhered to by the agency, further demonstrating how ESPs are an inadequate substitute for NEPA. We are concerned that similar pledges of mitigation that might be made in the course of this proposed project may also be left unmet or ignored.

Failure to Address and Acknowledge the Multi Species Conservation Plan:

San Diego's Multiple Species Conservation Program (MSCP) was enacted in 1997 to preserve a network of habitat and open space, protect biodiversity and to enhance the quality of life in the San Diego region.¹² The program was developed by the City of San Diego in cooperation with wildlife agencies, property owners, developers and environmental groups. The City of San Diego is one of several jurisdictions participating in the MSCP program. The MSCP is an excellent example of science, local regulation and federal laws coming together to achieve conservation

and economic development goals that comply with national laws, regulations, and conservation objectives.

San Diego's MSCP identifies 85 priority species and prioritizes core biological resource areas called Multi-Habitat Planning Areas (MHPAs) for special protection. Through the MSCP, the city has entered into an agreement with both federal and state wildlife agencies to ensure the protection of these species and preservation of these priority areas. CBP's proposed "secondary wall" project would impact at least two of the core biological resource areas identified by MSCP: the Tijuana Estuary-River Valley MHPA and the Otay Mesa Vernal Pools MHPA, and has the high potential to harm numerous species protected under the plan.

CBP has not examined how the proposed "secondary wall" project would harm MSCP-protected species or the two MHPAs within the project's vicinity. Before moving forward with the proposed project, CBP must describe how proposed construction would fit within the goals of the San Diego MSCP, and how the two MHPA's and numerous MSCP priority species within the project area would be protected from harm.

Endangered Species:

Ten wildlife species protected under the ESA have been documented within or near the proposed project area: the arroyo toad (*Bufo californicus*), coastal California gnatcatcher (*Poliopitila californica californica*), least Bell's vireo (*Vireo bellii pusillus*), light-footed Ridgway's rail (*Rallus obsoletus levipes*), Pacific pocket mouse (*Perognathus longimembris pacificus*), Quino checkerspot butterfly (*Euphydryas editha quino*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Western snowy plover (*Charadrius alexandrinus nivosus*), and Western yellow-billed cuckoo (*Coccyzus americanus occidentalis*).¹³

Ten federally protected plant species have also been documented within or near the proposed project area: San Diego thornmint (*Acanthomintha ilicifolia*), San Diego ambrosia (*Ambrosia pumila*), Encinitas baccharis (*Baccharis vanessae*), Salt marsh bird's beak (*Chloropyron maritimum* ssp. *maritimum*), Otay tarplant (*Deinandra conjugens*), San Diego button-celery (*Eryngium aristulatum* var. *parishii*), Mexican flannelbush (*Fremontodendron mexicanum*), Spreading navarretia (*Navarretia fossalis*), California orcutt grass (*Orcuttia californica*), and Otay mesa mint (*Pogogyne nudiuscula*).¹⁴

To our knowledge, CBP has not initiated ESA formal consultation with USFWS to ensure that the proposed activities will not jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of endangered species habitat. There is no indication in the notice to comment or elsewhere that CBP intends to comply with the ESA or is taking into account the impacts of border wall construction on federally listed endangered species. If this project moves forward, failure to comply with the ESA would further endanger the recovery of the at least 20 federally protected threatened and endangered species present within or near the proposed project area.

Despite the extremely vague description of the proposed project in CBP's December 18 notice to comment, it is clear that the proposed construction would result in the removal and degradation of habitat and likely lead to direct wounding, harassment, killing, and/or other forms of "take" of listed species. The proposed construction would inevitably remove vegetation, create disturbances, and potentially restrict species' movement. CBP, as all other federal agencies, must also further the purposes of the ESA by ensuring its activities aid in the conservation and recovery of endangered and threatened species.¹⁵ We implore CBP to uphold its duties under the ESA and request that CBP engage in formal consultation with USFWS.

We have significant concerns about the proposed project's likelihood to harm the at least 20 threatened and endangered species present within or near the project area if this project moves forward. We have outlined our specific concerns for a number of species that stand to be most immediately harmed by the proposed project below:

1. Quino Checkerspot Butterfly (*Euphydryas editha quino*)

The San Diego region is home to at least 149 species of butterflies, including the federally protected Quino checkerspot butterfly, which is only found in portions of San Diego and Riverside Counties, as well as northern Baja California, Mexico. Quino checkerspot butterflies are exothermic and the species thrives in open scrubland habitat with ample sunshine. According to USFWS, the major threats to Quino checkerspot butterflies are "loss and fragmentation of habitat and landscape connectivity, invasion by nonnative plants, off-road vehicle activity, grazing, enhanced soil nitrogen, and increased atmospheric carbon dioxide concentration."¹⁶ More than 90 percent of the Quino checkerspot butterfly's range has been lost due to habitat degradation or destruction.¹⁷

Though it is difficult to tell based on the low-resolution map CBP provided, it appears that the proposed project will take place within designated Quino checkerspot butterfly critical habitat. A map created by the Center for Biological Diversity (*see Figure 1, below*), shows designated critical habitat for the species to the east of the existing border wall prototype site, where CBP is now proposing a 1.6-mile extension of the existing "secondary wall." CBP's 2018 Biological Survey of this area notes that "the Quino checkerspot butterfly has a moderate to high potential to occur within the Project Area" and that "there is suitable habitat for the Quino checkerspot butterfly within the Project Area."¹⁸ We are extremely concerned that this project will encroach upon critical habitat for the species and further degrade what little habitat is left. We urge CBP to cease any planned construction in designated critical habitat for the Quino checkerspot butterfly and consider less harmful alternatives.

As with many butterfly species, Quino checkerspot are highly dependent on a few species of obligate host plants on which to lay eggs. Obligate plants most frequently used by Quino checkerspot butterflies in the region are plantain (*Plantago erecta*) and owl's clover (*Castilleja exserta*),¹⁹ both of which are likely to be present in lands within or adjacent to the eastern end of the project area. If CBP moves forward with the proposed project, a survey of the area for these plants must be completed and CBP must ensure that no obligate plants are damaged or destroyed. CBP must also place a seasonal restriction on any construction activity in the vicinity of Quino

checkerspot butterfly habitat to avoid disturbing individuals when plants are flowering and butterfly activity is high between late February and mid-April.²⁰

In addition to the habitat destruction, degradation, and disturbance likely to occur as a result of CBP’s proposed project, the construction of a 30ft-high barrier may also interfere with the movement and migrations of Quino checkerspot butterflies. CBP is already in the process of constructing an 18ft-high “primary wall,” for which the agency never offered an opportunity for public comment or analyzed impacts of construction before breaking ground. The proposed 30ft-high “secondary wall” will further interfere with migrations and flight patterns of species like the Quino checkerspot butterfly, which generally avoids flying over objects taller than seven feet.²¹ Even though there are gaps between bollards in a bollard-style wall, the proposed wall, especially when considered cumulatively with the impacts of the existing 18ft-high “primary wall” and other infrastructure in the area, is likely to interfere with flight patterns and increase genetic isolation between the small U.S. population of butterflies and the larger population in Mexico.²²

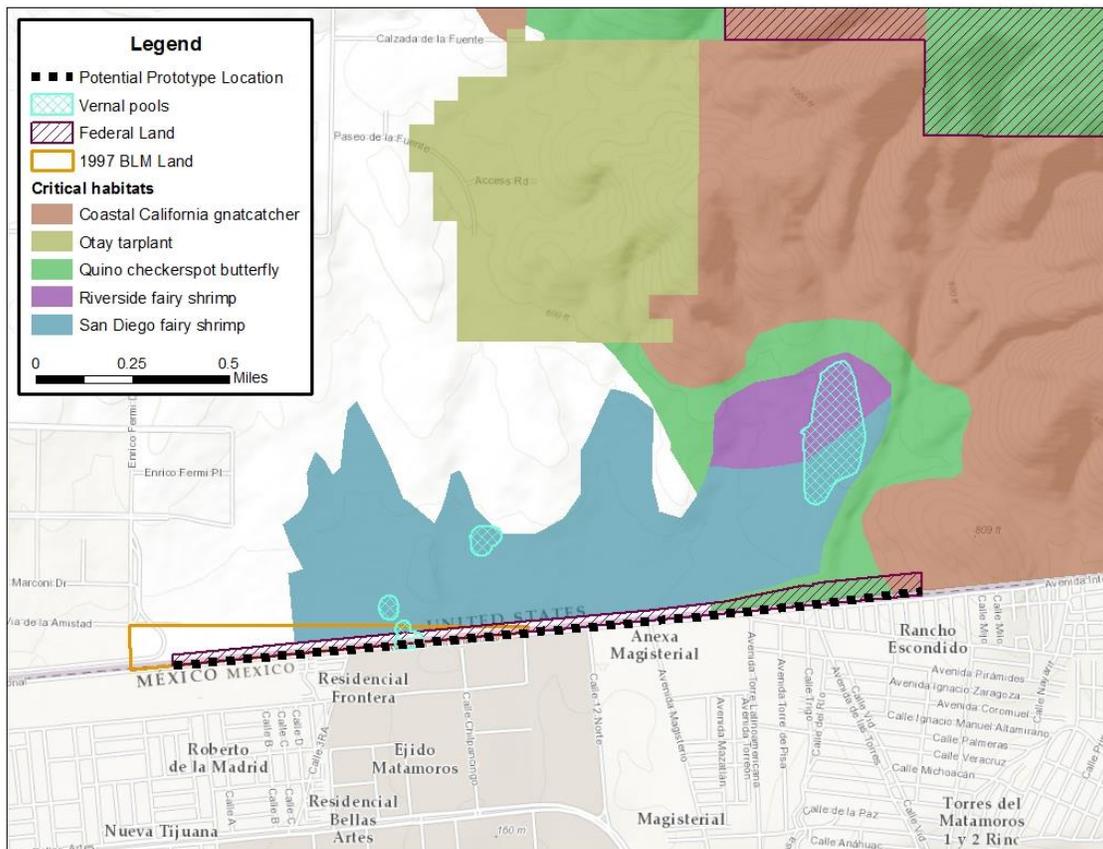


Figure 1: Critical habitat map of eastern end of proposed project area. Map by Kara Clauser, Center for Biological Diversity

2. San Diego Fairy Shrimp (*Branchinecta sandiegonensis*)

The San Diego fairy shrimp is a small aquatic crustacean generally restricted to vernal pools and other ephemeral basins in Orange County, San Diego County, and northwestern Baja California,

Mexico.²³ San Diego fairy shrimp are dependent on hydrologically-connected vernal pool complexes generally ranging from 5 to 50 pools, rather than individual vernal pools.²⁴ According to the USFWS, vernal pool complexes are best described from a watershed perspective, and vernal pool ecosystems include areas around and between pools needed to collect rainfall and fill the vernal pool basins.²⁵ Any analysis of potential harm the proposed project could incur on vernal pool habitats and any mitigation actions CBP may propose to protect these habitats must include measures that consider and protect areas surrounding and draining into pool complexes, in addition to the pools themselves.

The San Diego fairy shrimp is currently present in only 7 to 10 percent of its historical range in San Diego County, with similar declines elsewhere.²⁶ Critical habitat for the species was designated in 2012. USFWS designated critical habitat for the San Diego fairy shrimp overlaps with the proposed project area (*see Figure 1, above*). CBP's 2018 Biological Survey of the same proposed project area, which was conducted after construction on the border wall prototypes and primary fence replacement projects commenced, notes:

“The Project Area falls within the known range of San Diego fairy shrimp, and while there are no vernal pools within the Project Area, there are drainages and ephemeral wetlands which may have ponding long enough for fairy shrimp from nearby pools to have colonized and use. In addition, Critical Habitat for the species is located in the eastern end and south of the Pacific Gateway Park in the Project Area. Therefore, San Diego fairy shrimp has a high potential to occur in the Project Area.”²⁷

Specifically, Unit 5D, as described by the 2007 Final Rule listing the species, which has since been designated as critical habitat for the species, is likely to be harmed by CBP's proposed construction. At the time of listing, Unit 5D was occupied and contained the features essential to conservation of San Diego fairy shrimp. It is the southernmost unit of critical habitat, which USFWS has stated is “essential to the conservation of the San Diego fairy shrimp because it helps to maintain the ecological distribution and genetic diversity of the species.”²⁸ USFWS concluded “the conservation of the remaining vernal pools in this unit is essential to maintain continuity in the range between the U.S. and Mexico.”²⁹ Further, USFWS explicitly concluded that development related to border security operations threatens the species via destruction of vernal pools or their watersheds, isolation of pools and fragmentation of pool systems, and alterations in the hydrology of adjacent pools.³⁰

Any San Diego fairy shrimp present within or near the proposed project area are likely to be harmed by the proposed project. Any further destruction of vernal pool watersheds and wetlands, fragmentation of pool complexes, or alternations of hydrology or water flow could result in the species' extirpation from these population units. CBP has already acknowledged that ephemeral wetlands and drainages exist within the project area that are likely used by the species, and that designated critical habitat falls within the proposed project area. Because of this, CBP should refrain from any construction and other related activities in areas that fall within vernal pool watersheds and abandon any planned construction or related activities that could result in harm to these species and their habitat.

3. Riverside Fairy Shrimp (*Streptocephalus woottoni*)

Similar to the San Diego fairy shrimp, the Riverside fairy shrimp is a small crustacean that relies on vernal pool habitats. Riverside fairy shrimp rely on vernal pools greater than 12 inches in depth (30.5 cm).³¹ As with the San Diego fairy shrimp, the Riverside fairy shrimp depend on hydrologically-connected systems of vernal pools called vernal pool complexes, which are best described from a watershed perspective.

USFWS listed the Riverside fairy shrimp under the ESA on August 3, 1993 due mainly to habitat loss or destruction.³² At the time of listing, vernal pool habitat in San Diego County had declined by an estimated 97 percent with similar declines elsewhere.³³ By the time of listing, the species was documented to inhabit just five vernal pool complexes within the United States and two in Baja California, Mexico.³⁴ While each of these sites was considered to be under imminent threat of development and anthropogenic impacts, USFWS concluded that the vernal pools near Otay Mesa were the most imperiled of all of the sites in which Riverside fairy shrimp occurred.³⁵

These Otay Mesa vernal pools fall within or directly adjacent to the proposed project area. At least one documented Riverside fairy shrimp occurrence was recorded in March 2009 in the Otay Mesa vernal pool complex, just north of the proposed project area, according to California Department of Fish and Wildlife records.³⁶ CBP's 2018 Biological Survey of the area notes that designated critical habitat for Riverside fairy shrimp falls within the project area,³⁷ as demonstrated by the map attached (*see Figure 1, above*).

As with the San Diego fairy shrimp, any Riverside fairy shrimp present within or near the proposed project area are likely to be harmed by CBP's proposed project. Any further destruction of vernal pool watersheds, fragmentation of pool complexes, or alternations of hydrology or water flow could result in the species' extirpation from these population units. Because of this, CBP should refrain from any construction and other related activities in areas that fall within vernal pool watersheds and abandon any planned construction and related activities that could result in harm to these species and their habitat.

Impacts to the Tijuana River Estuary and Migratory Birds

CBP's proposed project is also likely to degrade and destroy habitat for both resident and migratory birds. The Tijuana River Estuary, which overlaps with the western end of the project area, hosts an incredible array of 370 species of birds, including 6 federally protected species.³⁸ The estuary serves as an important resting point along the Pacific flyway for migratory species that travel hundreds or even thousands of miles on their annual journeys and is one of the last remaining estuarine ecosystems in the region.³⁹ The Tijuana River Estuary holds some of the best remaining intact native plant communities in the San Diego region, and is one of the few locations in the region where predominately native vegetation still stretches all the way to the Pacific Ocean. The City of San Diego, along with local and state agencies and conservation partners, has invested more than half a billion dollars and decades of land acquisition efforts to protect and preserve the Tijuana River Estuary.⁴⁰

The construction of existing border barriers within the estuary—specifically the 2009 infilling of Smuggler’s Gulch with over 2 million cubic yards of dirt—has already had severe environmental impacts on the ecosystem, sending tons of dirt downstream and choking the area with sedimentation.⁴¹ To make matters worse, DHS waived all applicable environmental, public health, and cultural resource protection laws in order to circumvent permitting requirements and rush construction of this project. Because laws like the ESA, Migratory Bird Treaty Act, and Coastal Zone Management Act were ignored, many of the true impacts of prior border wall construction on the Tijuana River Estuary have not been properly documented, analyzed, or disclosed to the public.

In 2017, the State of California sued the federal government over the construction of new border walls and infrastructure in the San Diego region. The State’s complaint cited the impacts from existing walls through the estuary, stating: “Construction of the wall resulted in the destruction of sensitive upland and wetland habitats, the taking of endangered plant and animal species, the spread of invasive plant species, and the increase in sedimentation within Border Field State Park and the Tijuana Reserve.”⁴² The state argued that any additional construction, such as CBP’s proposed “secondary wall” project “will negatively impact sensitive biological habitats near the border as well as endangered and/or specially listed plant and animal species.”⁴³

CBP’s proposed “secondary wall” project clearly runs into the Tijuana River Estuary and will likely exacerbate existing erosion problems and worsen air and water quality near the project area. Again, any potential impacts that may result from the proposed project must be considered cumulatively with prior damage that has been incurred by past and existing border security installations and operations. A study of cumulative impacts is particularly important in areas like the Tijuana River Estuary, where environmental, public health, and cultural resource protection laws have been ignored for past projects and prior harms caused by the agency have not been properly analyzed and disclosed.

Due to the natural beauty of the estuary and the incredible diversity of both resident and migratory bird species, the Tijuana River Estuary is a popular birding and ecotourism destination. Because of this, degradation of habitat and impacts to wildlife in the area would not only threaten migratory birds and other wildlife, but would also harm the local economy. Sites like the Tijuana River National Estuarine Research Reserve, Tijuana Slough National Wildlife Refuge, and Border Field State Park draw wildlife-watchers and outdoor enthusiasts from all over the world. These tourists spend money in the South San Diego region. Because of the proposed project’s likelihood to degrade these ecotourism destinations and detract from the local economy, we urge CBP to consult with the Cities of San Diego, Chula Vista, Imperial Beach, and other neighboring communities to consider the project’s economic impacts before moving forward.

Broad Public Opposition to Border Walls in San Diego and throughout the Borderlands

It is also important to note that the overwhelming majority of borderland residents, the majority of Californians, and 60% of the American public oppose the border wall.⁴⁴ Opposition to the border wall in border communities is even higher than that in the rest of the country, with polls showing that 72% of borderland residents oppose the border wall.⁴⁵ In an explicit rejection of

CBP's proposed border wall construction, 36 cities, counties, and tribal nations in the borderlands have passed "No Border Wall" resolutions.⁴⁶

Importantly, the City of San Diego passed a "No Border Wall" resolution in September of 2017, unambiguously rejecting the havoc wrought by border walls and militarization upon the San Diego community and taking a firm and formal stance against the construction of new border barriers. San Diego's resolution states "the City stands in opposition to building a wall because it will destroy the vitality of the San Diego-Tijuana border and act as a separation to the unique, diverse, and beautiful region."⁴⁷ The resolution also discusses the deep economic and cultural ties the San Diego community shares with neighbors in Mexico, and how these connections would be further jeopardized by additional border wall construction. San Diego's "No Border Wall" resolution is a direct and public position taken by the city government. This resolution, and each of the 36 resolutions that have been passed against the border wall, should be considered by CBP as statement of direct opposition to the proposed project and all other border wall construction projects.

The fact that CBP only allowed a short 30-day comment period, which overlapped with the holidays and a government shutdown, as well as the fact that CBP has made no effort to host a public forum, suggests that CBP is making an intentional effort to suppress public input on this project. Considering that CBP knows that the public and locally elected officials in San Diego are overwhelmingly opposed to the border wall, this intentional suppression of public input seems likely.

CBP often argues that the border wall will benefit border communities like San Diego the most. If that were true, then it would be expected that communities such as San Diego would support border wall construction. The broad and vocal opposition from border communities, including the City of San Diego, demonstrates a different reality. The unambiguous opposition to the border wall expressed by communities across the borderlands shows that border communities neither want nor need additional miles of border walls. CBP has continually attempted to paint border communities as unsafe places while claiming that the construction of border barriers will reduce crime. We remind CBP that San Diego, like most border communities, has consistently lower crime rates than the national average.⁴⁸ CBP's portrayal of border communities as dangerous places is not only factually inaccurate, but also an offensive mischaracterization that further insults and profiles communities of color.

The opposition to border wall construction from the San Diego City Council and San Diego public at large reflects just how damaging this project would be to the local community. At a bare minimum, CBP must consult extensively with local communities by preparing a full EIS complete with public meetings and ample opportunities for the public and elected officials to understand the impacts and weigh in on the implications of the project before it moves forward in the planning process.

Unproven Purpose and Need for Project, Inefficacy of Border Barriers

CBP's December 18, 2018 notice to comment on the proposed "secondary wall" project fails to describe a purpose and need for the project and supplies no language as to why the project is

necessary in the first place. However, in CBP’s December 21, 2018 media release on the same project entitled “Border Wall Contract Awards in California,” the agency states that new wall construction will “improve each respective Sector’s ability to impede and deny illegal border crossings.”⁴⁹

We remind CBP that at this point in time, there is no conclusive data to suggest that border barriers actually reduce levels of undocumented border crossings. In fact, a 2017 Government Accountability Office (GAO) report noted that there is currently no way of documenting the role of border barriers in impeding border-crossers. The report recommended that CBP

“develop metrics to assess the contributions of pedestrian and vehicle fencing to border security along the southwest border and develop guidance for its process for identifying, funding, and deploying [Tactical Infrastructure] TI assets for border security operations.”⁵⁰

Until CBP develops these metrics to prove the efficacy of border barriers, it is inappropriate to suggest that the deployment of additional border barriers will have a meaningful effect of deterring border crossings.

Border barriers block most species of animals, impede natural flows of water, and even alter plant dispersal, but there is no evidence they stop people from crossing. A 2014 study of activity around border barriers in natural areas showed that terrestrial mammals were found in higher numbers in locations where no border barriers were present. The authors, however, found no difference in the number of border-crossing humans detected between areas with and without barriers, suggesting that barriers are not effective at deterring migrants, but do affect wildlife populations.⁵¹

The 2017 GAO report that establishes CBP has not proven border barriers to be an effective means for deterring border-crossings also sheds light on CBP’s overarching tactics of border barrier construction and border militarization. The report outlines CBP’s strategy of border wall construction as a tactic employed not necessarily to stop border crossings, but as an attempt “to divert illicit cross-border activities into more remote or rural environments, where illegal entrants may require hours or days to reach the nearest U.S. community.”

This tactic has proven ineffective at deterring border crossings. It has also led to the deaths of thousands of migrants who have been pushed into remote reaches of borderland deserts and perished in the elements while attempting to cross the border. CBP’s own statistics show that more than 7,000 people have died crossing the border between 1998 and 2017,⁵² though this count only reflect bodies that have been found and therefore is widely considered to be much lower than the true number of deaths.⁵³

From its conception, the construction of border barriers and militarization of border communities has been a part of a larger strategy to intentionally push border-crossers into remote desert environments where many die due to harsh conditions. This policy has led to a humanitarian crisis on our southern border. While it is unlikely that CBP’s proposed “secondary wall” project in San Diego will actually deter border crossings, it is conceivable that new miles of border walls

and increased border militarization could push migrants into harsher terrain and lead to their deaths.

Conclusion

We urge CBP to carefully review and respond to all concerns raised within this letter and to comply with all applicable federal laws before moving forward with the planning and execution of this project. As discussed above, we are extremely concerned that CBP does not appear to be conducting this project in compliance with NEPA or other applicable federal laws, as indicated by the fact that CBP has not initiated the NEPA process to begin gathering input on the project proposal. CBP's short 30-day comment period for this project, which was sent only to select individuals of the agency's choosing and took place over the holidays and during a government shutdown, is no substitute for meaningful public comment and is wholly inadequate to meet public consultation and informed decision-making requirements. Because of this, and the additional reasons detailed within the contents of this letter, CBP must cease all efforts towards constructing border barriers in the San Diego region until these numerous and significant issues are resolved.

Sincerely,

American Friends Service Committee – US-Mexico Border Program
Borderlands Restoration Network
Center for Biological Diversity
Coalición de Derechos Humanos
Colibrí Center for Human Rights
Defenders of Wildlife
Endangered Habitats League
Friends of Friendship Park
Great Old Broads for Wilderness
Hope Border Institute
National Parks Conservation Association
Rio Grande International Study Center
Sierra Club
Southern Border Communities Coalition
Southwest Environmental Center
Southwest Wetlands Interpretive Association
Wildlands Network

-
- ¹ U.S. Customs and Border Protection. 2018. Border Wall Contract Awarded in California. December 21, 2018. <https://www.cbp.gov/newsroom/national-media-release/border-wall-contract-awards-california>.
- ² Paul Enriquez, U.S. Customs and Border Protection. 2018. Statement made during webinar on Rio Grande Valley border wall construction. October 30, 2018.
- ³ 40 C.F.R. § 1502.14.
- ⁴ 42 U.S.C. § 4332(E).
- ⁵ Flesch, A.D., C.W. Epps, J.W. Cain, III, M. Clark, P.R. Krausman, and J.R. Morgart. 2010. Potential effects of the United States-Mexico border fence on wildlife. *Conservation Biology*, 24, 171–181.
- ⁶ Peters, R., W. J. Ripple, C. Wolf, M. Moskwik, G. Carreón-Arroyo, G. Ceballos, A. Córdova, R. Dirzo, P. R. Ehrlich, A. D. Flesch, R. List, T. E. Lovejoy, R. F. Noss, J. Pacheco, J. K. Sarukhán, M. E. Soulé, E. O. Wilson, J. R. B. Miller. 2018. Nature Divided, Scientists United: US–Mexico Border Wall Threatens Biodiversity and Binational Conservation, *BioScience*.
- ⁷ Stallcup, J.A., J.M. Randall, T. Smith, B.S. Cohen, C. Guerrero. Avila, M.A. Vargas and S.A. Morrison. 2015. *Las Californias Binational Conservation Initiative 2015: a decadal review of conservation status of the California—Baja California border region*. A report by the Conservation Biology Institute, Terra Peninsular, Pronatura Noroeste, and The Nature Conservancy. Accessed January 16, 2018. <http://consbio.org/products/reports/las-californias-binational-conservation-initiative-2015>.
- ⁸ Critical Ecosystem Partnership Fund (CEPF). 2017. “Where We Work.” Accessed November 8, 2017. <http://www.cepf.net/Pages/default.aspx>.
- ⁹ California Academy of Sciences. 2017. *Hotspot: California on the Edge*. U.S. National Park Service. Accessed January 16, 2018. <https://www.nps.gov/goga/learn/management/upload/-1214-HOTSPOT-California-On-The-Edge-1.pdf>.
- ¹⁰ U.S. Customs and Border Protection. 2018. Biological Survey Report – 14 Mile Fence Replacement. Appendix C to CBP Sand Diego Sector Fence Replacement Environmental Stewardship Plan. San Diego Sector. Feb 2018. https://www.cbp.gov/sites/default/files/assets/documents/2018-Jun/Appendix%20C_Biological%20Survey%20Report%20508.pdf.
- ¹¹ Pub. Law 106-145. Dec. 9, 1999. 113 Stat. 1711. An Act to designate a portion of the Otay Mountain region of California as wilderness. <https://www.wilderness.net/NWPS/documents/publiclaws/PDF/106-145.pdf>.
- ¹² City of San Diego, 1998. Final Multi Species Conservation Plan. August 1998. <https://www.sandiegocounty.gov/content/dam/sdc/pds/mscp/docs/SCMSCP/FinalMSCPProgramPlan.pdf>.
- ¹³ U.S. Customs and Border Protection. 2018. Biological Survey Report – 14 Mile Fence Replacement. Appendix C to CBP Sand Diego Sector Fence Replacement Environmental Stewardship Plan. San Diego Sector. Feb 2018.
- ¹⁴ *Ibid.*
- ¹⁵ 16 U.S.C. § 1531 (c)(1)
- ¹⁶ U.S. Fish and Wildlife Service, 2009. Quino Checkerspot Butterfly 5-Year Review, Summary and Evaluation. https://www.fws.gov/carlsbad/SpeciesStatusList/5YR/20090813_5YR_QCB.pdf.
- ¹⁷ *Ibid.*
- ¹⁸ *Ibid.*
- ¹⁹ Email correspondence with U.S. Fish and Wildlife agency scientist. Dated May 18, 2017.
- ²⁰ U.S. Customs and Border Protection. 2018. Biological Survey Report – 14 Mile Fence Replacement. Appendix C to CBP Sand Diego Sector Fence Replacement Environmental Stewardship Plan. San Diego Sector. Feb 2018.
- ²¹ U.S. Fish and Wildlife Service, 2009. Quino Checkerspot Butterfly 5-Year Review, Summary and Evaluation. https://www.fws.gov/carlsbad/SpeciesStatusList/5YR/20090813_5YR_QCB.pdf.
- ²² Stallcup, J.A. 2004. *Regional Conservation Significance of Jesus Maria Mesa*. Accessed January 31, 2018. https://d2k78bk4kdhbpr.cloudfront.net/media/content/files/Jesus_Maria_web.pdf.

-
- ²³ 62 Fed. Reg. 4925, 4925 (Feb. 3, 1997).
- ²⁴ U.S. Fish and Wildlife Service. 2008. Vernal Pools of Southern California Recovery Plan. https://www.fws.gov/carlsbad/SpeciesStatusList/RP/19980903_RP_Vernal%20Pools%20of%20Southern%20CA.pdf.
- ²⁵ U.S. Fish and Wildlife Service. 2008. Vernal Pools of Southern California Recovery Plan. https://www.fws.gov/carlsbad/SpeciesStatusList/RP/19980903_RP_Vernal%20Pools%20of%20Southern%20CA.pdf.
- ²⁶ 62 Fed. Reg. 4925, 4925 (Feb. 3, 1997).
- ²⁷ U.S. Customs and Border Protection. 2018. Biological Survey Report – 14 Mile Fence Replacement. Appendix C to CBP Sand Diego Sector Fence Replacement Environmental Stewardship Plan. San Diego Sector. Feb 2018.
- ²⁸ 72 Fed. Reg. 70648, 70673 (2007).
- ²⁹ *Ibid.*
- ³⁰ *Ibid.*
- ³¹ 77 Fed. Reg. 72070, 72077 (2012).
- ³² 58 Fed. Reg. 41384. (1993)
- ³³ U.S. Fish and Wildlife Service. 2008. Riverside Fairy Shrimp 5-Year Review.
- ³⁴ 58 Fed. Reg. 41384. (1993).
- ³⁵ *Ibid.*
- ³⁶ California Department of Fish and Wildlife. Accessed 2018. BIOS mapping tool. <https://map.dfg.ca.gov/bios/?al=ds45>, Element code: ICBRA07010.
- ³⁷ U.S. Customs and Border Protection. 2018. Biological Survey Report – 14 Mile Fence Replacement. Appendix C to CBP Sand Diego Sector Fence Replacement Environmental Stewardship Plan. San Diego Sector. Feb 2018.
- ³⁸ ACLU Border Rights Center. 2018. Death Damage and Failure: Past, Present, and Future Impacts of Walls on the U.S.-Mexico Border.
- ³⁹ *Ibid.*
- ⁴⁰ At The Edges. 2018. “Smugglers Gulch.” Accessed January 16, 2018. <http://www.attheedges.com/border-stories/smugglers-gulch/>.
- ⁴¹ E & E News. 2009. Border Fence: Smuggler’s Gulch project a ‘disaster’ for estuary, critics say. April Reese. Thursday January 15, 2009. <https://www.eenews.net/stories/73133>.
- ⁴² State of California v. United States. 2017. 3:17-cv-01911-W-BLM (S.D. Cal). Accessed January, 2019. https://oag.ca.gov/system/files/attachments/press_releases/Complaint%20for%20Declaratory%20and%20Inj.%20Relief.pdf.
- ⁴³ *Ibid.*
- ⁴⁴ CBS News. 2018. Americans Continue to Oppose U.S.-Mexico Border Wall: CBS News Poll. March 12, 2018.
- ⁴⁵ Cronkite News. 2016. Border Residents: Don’t Build a Wall Between Cities. July 17, 2016.
- ⁴⁶ No Border Wall Coalition. 2018. The Opposition webpage. Accessed January, 2019. <https://noborderwalls.org/opposition/>.
- ⁴⁷ City of San Diego. 2017. Resolution in opposition to a Border Wall. Councilmember Georgette Gomez, City of San Diego Ninth District. Accessed January, 2019. http://docs.sandiego.gov/councilcomm_agendas_attach/2017/bge_170802_2ppt.pdf.
- ⁴⁸ KPBS. 2018. Despite Increase In Violent Crime, San Diego Remains Safer Than Other U.S. Cities. Friday April 20, 2018. <https://www.kpbs.org/news/2018/apr/20/despite-increase-in-violent-crime-san-diego/>.
- ⁴⁹ U.S. Customs and Border Protection. 2018. Border Wall Contract Awarded in California. December 21, 2018. <https://www.cbp.gov/newsroom/national-media-release/border-wall-contract-awards-california>.
- ⁵⁰ U.S. Government Accountability Office. 2017. Southwest Border Security: Additional Action Needed to Better Assess Fencing’s Contributions to Operations and Provide Guidance for Identifying Capability Gaps. GAO-17-331.

⁵¹ McCallum J.W., J.M. Rowcliffe, I.C. Cuthill. 2014. Conservation on International Boundaries: The Impact of Security Barriers on Selected Terrestrial Mammals in Four Protected Areas in Arizona, USA. PLoS ONE 9(4): e93679. doi:10.1371/journal.pone.0093679.

⁵² U.S. Border Patrol. 2017. Southwest Border Deaths by Fiscal Year. Southwest Border Sectors. <https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Southwest%20Border%20Sector%20Deaths%20FY1998%20-%20FY2017.pdf>.

⁵³ Ortega, Bob. 2018. Border Patrol Failed to Count Hundreds of Migrant Deaths on U.S. Soil. CNN Investigates. Tuesday May 15, 2018. <https://www.cnn.com/2018/05/14/us/border-patrol-migrant-death-count-invs/index.html>.