

**PETITION TO INCLUDE THE
EL PINACATE AND GRAN DESIERTO DE ALTAR
BIOSPHERE RESERVE WORLD HERITAGE SITE ON THE
LIST OF WORLD HERITAGE IN DANGER**

May 23, 2017



On behalf of:
Center for Biological Diversity
Tohono O'odham of Sonora
Greenpeace México
Centro Mexicano de Derecho Ambiental
Fronteras Comunes
Wildlands Network
Conservation of Marine Mammals of Mexico

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Pronghorn: Miguel Ángel Sicilia Manzo/Conabio
Deer: Carlos Javier Navarro Serment/Conabio
Barrier: Alejandro Olivera/Center for Biological Diversity
Pygmy owl: Manuel Grosselet/Conabio
Jaguar: Noé Felipe Vargas González/Conabio

EXECUTIVE SUMMARY

Pursuant to the World Heritage Convention, Mexico's El Pinacate and Gran Desierto de Altar Biosphere Reserve World Heritage property ("El Pinacate Site") was inscribed on the World Heritage List in 2013, in part, to protect the area's extraordinary "biodiversity and threatened species." This diversity includes numerous, cross-border Sonoran Desert wildlife species like imperiled Sonoran pronghorn, bighorn sheep, pygmy owl, and jaguar. The El Pinacate Site's roughly 180-kilometer northern boundary aligns with the Mexico-United States border, and the U.S. border areas have been deemed critical to El Pinacate's "integrity and ecological connectivity" and to the survival and recovery of many Sonoran species.

Unfortunately, Mexico's El Pinacate World Heritage Site and much of its incredible wildlife are now threatened by U.S. President Donald Trump's proposed border wall, which is intended to prevent immigration between the two nations. This 30-foot (9m) high, solid wall will stretch the entire length of El Pinacate's northern border, creating a permanent, impassable barrier for El Pinacate's wildlife and dividing the Sonoran ecosystem in two, potentially forever.

Under the World Heritage Convention, the World Heritage Committee may list a World Heritage property as "in Danger" if it is "threatened by serious and specific dangers." These dangers can include "major public work[s]" deteriorating the property's beauty or scientific value, human encroachment on boundaries, or "planned . . . development projects" that threaten the property or its wildlife.

As detailed in the Petition below, Mexico's El Pinacate Site and its Outstanding Universal Values, including the property's unique wildlife populations, are now threatened by the United States government's proposed border wall, as well as by enhanced U.S. security efforts, which will prevent cross-border wildlife migration and habitat use. The United States' ecologically irresponsible decision to build a border wall risks serious deterioration of the El Pinacate Site's integrity and the extraordinary Sonoran wildlife the Site was inscribed to protect.

Accordingly, Petitioners formally request that the World Heritage Committee list the El Pinacate and Gran Desierto de Altar Biosphere Reserve World Heritage property as "World Heritage in Danger" pursuant to Article 11 of the World Heritage Convention. Listing the property as "in Danger" would bring worldwide attention to this important conservation issue and also highlight the threats the United States' border wall poses to indigenous peoples who rely on and consider the Site sacred.

PETITIONERS

The **Center for Biological Diversity** is a non-profit, non-governmental organization incorporated in the United States, with an office and staff located in La Paz, Mexico. With over 1.3 million members and supporters around the world, the Center's primary mission is to protect threatened and endangered species and their habitats both in the United States and abroad. The Center's headquarters are located in Tucson, Arizona in the United States, and we have long worked to protect wildlife inhabiting the U.S.-Mexico borderlands, including seeking protections for Sonoran pronghorns, jaguars, ferruginous pygmy owls, and other species that will be harmed by the United States' proposed construction and expansion of a border wall.

El Tribu de los O’odham en Sonora (“The O’odham Tribe in Sonora”) are transnational indigenous peoples, most of whom are legal members of the Tohono O’odham Nation (a U.S. federally recognized tribe located in Arizona, USA); are related by blood to families in the Tohono O’odham Nation; and share one and the same culture and historical traditional territory with members of the Tohono O’odham Nation. The O’odham Tribe in Sonora are represented by their elected Traditional O’odham Leaders from the following communities: Son: Odiak (Sonoyta), Ge Ka:ck (Pto.Peñasco), A:l Ka:wolk (Caborca), Pi’ichkin (Pitiquito), Wo’oson (El Bajío), Gu:dagi Wahia (Pozo Verde), Cu:wi Gersk (San Francisquito), and S’cuk Su:dagi (Pozo Prieto), Ocuca (San Manuel), and Imuris, and San Matilde. The traditional O’odham leaders in Sonora have repeatedly been recognized as the representatives of their communities over time by Legislative Council of the Tohono O’odham Nation in a series of legal resolutions: 43 -79 (1979), 95-562 (1995), and 05-725 (2015). The current Governor General José Martín García Lewis and Lieutenant Governor Nora Judith Canez Parra of The O’odham in Sonora Tribe, having been duly elected on 29 Nov. 2015, are the authorized petitioners for The O’odham in Sonora Tribe. The El Pinacate and Gran Desierto de Altar World Heritage Site holds tremendous historic and present-day cultural importance for the Tohono O’odham of Sonora, who still regularly use the Site for ceremonial purposes, as detailed in the petition.

Greenpeace México, A.C. is a non-profit, non-governmental organization with 24 years of public work in Mexico that acts to change attitudes and behavior, to protect and conserve the environment, and to promote peace. Greenpeace México is economically and politically independent and does not accept donations or pressure from governments, political parties, or companies, and in Mexico is funded by the contributions of 75,000 people. Greenpeace México is an active member of Greenpeace, the global organization that comprises 26 independent national/regional offices in over 55 countries across Africa, Europe, the Americas, Asia, and the Pacific, as well as a coordinating body, Greenpeace International.

Centro Mexicano de Derecho Ambiental (“CEMDA”) is a non-governmental and non-profit organization that has been working for the defense of the environment and natural resources for 24 years. CEMDA is one of the main organizations of environmental civil society in Mexico whose fundamental work is the strengthening, consolidation, harmonization, application, and effective compliance of the current legal-environmental system.

Fronteras Comunes is an organization that promotes the exercise of the right to information in communities that have been affected by pollution or are at risk of being contaminated by industrial activities. Fighting for environmental justice is the basis of remediation actions on pollution and repair of damage by hazardous waste and industrial emissions.

Wildlands Network is an international organization dedicated to reconnecting nature throughout North America. We provide the science and vision necessary to preserve large-scale ecosystems for species that need vast spaces to migrate, disperse, and adapt to climate change.

Conservation of Marine Mammals of Mexico is a Mexican organization dedicated to the protection and conservation of marine biodiversity and its ecosystems, since 2000.

ARGUMENT

I. LEGAL BACKGROUND

A. The World Heritage Convention

The Convention for the Protection of the World Cultural and Natural Heritage (“the World Heritage Convention”), signed in 1972, is the primary, international legal instrument for preserving the world’s most important and irreplaceable natural and historic sites. The Convention recognizes that natural and cultural heritage “are increasingly threatened with destruction” and this “deterioration . . . constitutes a harmful impoverishment of the heritage of all the nations of the world.”¹ Accordingly, the Convention establishes a system whereby “the international community as a whole . . . participate[s]” in the “collective protection of the cultural and natural heritage of outstanding universal value.”² There are currently 193 Parties to the World Heritage Convention, including both Mexico and the United States.

To implement the treaty, the Convention establishes the Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, referred to as “the World Heritage Committee.”³ The Committee is composed of 21 State Parties, or members, who rotate terms.⁴

Based on Parties’ submissions of properties within their jurisdiction that constitute natural or cultural heritage, the Committee establishes a “World Heritage List.”⁵ Listed properties must have “outstanding universal value” (“OUV”), which means “cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity.”⁶ At the time of listing, the Committee must adopt a Statement of Outstanding Universal Value, “which will be the key reference for the future effective protection and management of the property.”⁷

Under the Convention, Parties commit to protect and manage World Heritage properties to “ensure that their Outstanding Universal Value . . . are sustained or enhanced over time.”⁸ Specifically, “each State Party . . . shall endeavor, in so far as possible, . . . to take the appropriate

¹ See Convention Concerning the Protection of the World Culture and Natural Heritage, Nov. 16, 1972, 27 U.S.T. 37, at Preamble.

² *Id.*; WHC Operational Guidelines, at I(B)(4).

³ World Heritage Convention, at Art. 8.

⁴ WHC Operational Guidelines, at I(E)(19), (21).

⁵ World Heritage Convention, at Art. 3; 11(1), (2).

⁶ *Id.* at Art. 11(2); WHC Operational Guidelines, at II(A)(49); II(D)(77) (listing criteria for OUV, including properties that “contain the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of Outstanding Universal Value from the point of view of science or conservation,” “contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance,” and are “outstanding examples representing significant on-going ecological and biological processes”).

⁷ WHC Operational Guidelines, at II(A)(51).

⁸ *Id.* at II(F)(96); World Heritage Convention, at Art. 4 (each Party has a duty to ensure “protection, conservation, . . . and transmission to future generations of” the heritage in its territory).

legal, scientific, technical, administration and financial measures necessary for the . . . protection, conservation . . . and rehabilitation of [its] heritage.”⁹

Additionally, the treaty recognizes that “it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage . . . , by the granting of collective assistance” to complement actions of Parties within whose jurisdiction World Heritage sites are located.¹⁰ Accordingly, *all* Parties to the Convention “undertake . . . to give their help” in protecting and conserving other nations’ heritage, and each Party “undertakes not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage . . . situated on the territory of other State Parties.”¹¹

B. The List of World Heritage “in Danger”

To assist in the protection of World Heritage properties, the World Heritage Committee “shall establish . . . [a] ‘list of World Heritage in Danger,’” including properties for “which major operations are necessary” for the properties’ conservation.¹² If a property deteriorates “to the point where it has irretrievably lost those characteristics which determined its inscription on the List,” the property may be deleted from the World Heritage List.¹³

The World Heritage Committee’s Operational Guidelines for the Implementation of the World Heritage Convention provide further guidance for the “in Danger” listing process. For natural properties, a property may be listed as “in Danger” if:

- (a) The property faces an “Ascertained Danger,” meaning it “is faced with specific and proven imminent danger, such as:
 - ...
 - (ii) Severe deterioration of the natural beauty or scientific value of the property, as by . . . major public works,
 - (iii) Human encroachment on boundaries . . . which threaten the integrity of the property,” or
- (b) The property faces a “Potential Danger,” meaning it “is faced with major threats which could have deleterious effects on its inherent characteristics. Such threats are, for example: . . .
 - (ii) planned . . . development projects within the property or so situated that the impacts threaten the property.”¹⁴

When considering whether to list a property as “in Danger,” the World Heritage Committee “shall request” that the Secretariat “ascertain . . . the present condition of the property” and its

⁹ World Heritage Convention, at Art. 5(d), (c).

¹⁰ *Id.* at Preamble.

¹¹ *Id.* at Art. 6(2), (3).

¹² *Id.* at Art. 11(4); WHC Operational Guidelines, at I(C)(15)(h).

¹³ WHC Operational Guidelines, at IV(A)(176)(d); IV(C).

¹⁴ *Id.* at IV(B)(180)(a), (b).

threats, and the Committee may send a monitoring mission to evaluate the property.¹⁵ If listed, the Committee must then adopt a “programme for corrective measures.”¹⁶

II. FACTUAL BACKGROUND

A. The El Pinacate and Gran Desierto de Altar Biosphere Reserve World Heritage Site

Mexico nominated its El Pinacate and Gran Desierto de Altar Biosphere Reserve for inscription on the World Heritage List in 2012.¹⁷ In 2013, the IUCN evaluated the nomination and recommended inscription,¹⁸ and at its July 2013 meeting, the World Heritage Committee officially inscribed the property on the World Heritage List.¹⁹

The El Pinacate and Gran Desierto de Altar Biosphere Reserve World Heritage property (“El Pinacate”) encompasses an approximately 714,566 hectare-area in the Sonoran Desert of northwestern Mexico.²⁰ The property, which covers a large and remarkably undisturbed area of high-quality desert habitat, is comprised of a large dormant volcanic area in the east (the Pinacate Shield) and North America’s largest field of active sand dunes to the west (the Gran Altar Desert).²¹ The same area was declared a Biosphere Reserve and Natural Protected Area by the Mexican government in 1993.²²

The northern border of the El Pinacate property aligns with the United States-Mexico border;²³ however, the broader Sonoran Desert and its extraordinary habitat extend far into the United States. In its 2013 evaluation, the IUCN noted that the El Pinacate property is part of “the largest contiguous desert protected area complex in North America,” which includes Mexico’s Alto Golfo de California and Delta del Rio Colorado National Biosphere Reserve to El Pinacate’s south and the United States’ Cabeza Prieta National Wildlife Refuge, Organ Pipe Cactus National

¹⁵ *Id.* at IV(B)(184).

¹⁶ *Id.* at IV(B)(183).

¹⁷ See National Commission of Protected Natural Areas, *Nomination Format for Natural Property El Pinacate y Gran Desierto de Altar Biosphere Reserve for Inscription on the World Heritage List* (Mar. 2012) (“WH Nomination”). Available at: <http://whc.unesco.org/en/list/1410/documents/>.

¹⁸ See IUCN, *World Heritage Nomination – IUCN Technical Evaluation: El Pinacate y Gran Desierto de Altar Biosphere Reserve (Mexico) – ID No. 1410* (Apr. 2013) (“IUCN Evaluation”). Available at: <http://whc.unesco.org/en/list/1410/documents/>.

¹⁹ World Heritage Committee Decision 37 COM 8B.16, *Decisions Adopted by the World Heritage Committee at its 37th Session (Phnom Penh, 2013)*, WHC-13/37.COM/20, Paris, 5 July 2013 (“WHC Decision 37 COM 8B.16”). Available at: <http://whc.unesco.org/en/list/1410/documents/>.

²⁰ *Id.* An official map of the property and its boundaries is available here:

http://whc.unesco.org/en/list/1410/multiple=1&unique_number=1858.

²¹ *Id.* at 37.

²² Mexican Federal Register. Diario Oficial de la Federación. June 10th 1993. DECRETO por el que se declara área natural protegida con el carácter de Reserva de la Biosfera, la región conocida como El Pinacate y Gran Desierto de Altar, ubicada en los municipios de Plutarco Elías Calles, Puerto Peñasco y San Luis Río Colorado, Son. http://dof.gob.mx/nota_detalle.php?codigo=4744601&fecha=10/06/1993

²³ IUCN Evaluation, at 88.

Monument, and Barry M. Goldwater Range to the north.²⁴ These U.S. border areas “contribut[e] to the integrity and ecological connectivity” of the El Pinacate World Heritage property.²⁵

B. El Pinacate and the Broader Sonoran Desert’s Wildlife

The El Pinacate area’s diverse landscape provides “extraordinary habitat diversity,”²⁶ hosting over 540 species of vascular plants, 44 mammal species, 225 bird species, and over 40 reptile species, including species endemic only to the Sonoran Desert.²⁷ In its nomination documents for the property, Mexico highlighted the area’s habitat for the Sonoran pronghorn, bighorn sheep, ferruginous pygmy owls and other owls, jaguar, desert pupfish, mule deer, gray fox, several bats, cactus, and other species.²⁸

Of particular importance, the Mexican government emphasized El Pinacate’s habitat for the “endemic Sonoran Pronghorn, which is only to be found in northwestern Sonora and in southwestern Arizona (USA).”²⁹ The Sonoran pronghorn is “the fastest land mammal in America and the second worldwide.”³⁰ Unfortunately, Sonoran pronghorn have suffered steep declines, and only approximately 979 Sonoran pronghorn existed as of 2014 in Mexico and the United States combined, declining due to historic hunting, livestock grazing, drought, and habitat fragmentation.³¹ Sonoran pronghorn are protected as “critically endangered” in Mexico and under the United States’ Endangered Species Act.³²

Mexico further highlighted the Site’s historic and present-day cultural importance for the indigenous people of the Tohono O’odham, whose traditional lands extend across the modern-day U.S.-Mexico border. The El Pinacate Site is sacred to the Tohono O’odham because the origin of their creation “occurred in El Pinacate peak.”³³ An exceptional knowledge of the local wildlife, hydrology, and geography was critical to the O’odham people’s survival in the area’s inhospitable landscape.³⁴

Ancestors of the Tohono O’odham began inhabiting the Site around 5,000 years ago, and the area still contains many significant archaeological remains of the ancient Tohono O’odham people, because, unlike many areas, the archaeological evidence of human occupation has remained

²⁴ *Id.* at 88, 90.

²⁵ *Id.*

²⁶ WHC Decision 37 COM 8B.16, at 168.

²⁷ IUCN Evaluation, at 88.

²⁸ Mexico WH Nomination, at 61 (highlighting at-risk species that inhabit El Pinacate), 255.

²⁹ *Id.* at 61, 62, 65.

³⁰ *Id.* at 96.

³¹ U.S. Fish & Wildlife Service. 2016. Recovery Plan for the Sonoran pronghorn (*Antilocapra americana sonoriensis*), Second Revision. U.S. Fish and Wildlife Service, Southwest Region, Albuquerque, New Mexico, USA, at 11, 3 (“Final U.S. Pronghorn Recovery Plan”).

³² *Id.* at 97; NORMA Oficial Mexicana NOM-059-SEMARNAT-2010, Protección ambiental-Especies nativas de México de flora y fauna silvestres-Categorías de riesgo y especificaciones para su inclusión, exclusión o cambio-Lista de especies en riesgo. Available at:

http://dof.gob.mx/nota_detalle_popup.php?codigo=5173091; 32 Fed. Reg. 4001 (March 11, 1967); *see also* 76 Fed. Reg. 25,610 (May 5, 2011).

³³ Mexico WH Nomination, at 19.

³⁴ *See id.* at 74.

“virtually unchanged by erosion.”³⁵ This includes Tohono O’odham “geoglyphs, intaglio, camp clearings, sleeping quarters, trails, mortars and petroglyphs.”³⁶

While the Site is not currently inhabited full-time by the O’odham, the O’odham still regularly use the Site for ceremonial purposes and as an essential passage area “on their trip to the Gulf of California to collect salt and sea shells.” Overall, the area “holds an exceptional testimony of the presence of O’odham and their ancestors.”³⁷ Accordingly, authorities from the Tohono O’odham in Mexico and the Tohono O’odham Nation in the United States have “committed to protect and preserve the area,” and O’odham community members participate on the Advisory Council for the protected area’s management.³⁸ More details on the Tohono O’odham, their history, and their long-standing and current uses of the El Pinacate Site are included in Exhibit A, the Statement of José Martín García Lewis, Governor General of the O’odham in Sonora, Mexico.

1. IUCN Assessment of the El Pinacate Property

In 2013, the IUCN evaluated Mexico’s nomination of El Pinacate for World Heritage listing. The IUCN found the El Pinacate property meets three World Heritage listing criteria, including: (1) Criteria vii: “Superlative natural phenomena or natural beauty” for the property’s volcanic and dune landforms that result in a “stunning desert landscape,” (2) Criteria viii: “Earth’s history and geological features,” including volcanic and dunes landforms “of great scientific interest,” and critically, (3) Criteria x: “Biodiversity and threatened species,” due to the area’s high species diversity.³⁹ Among the threatened species inhabiting the property, the IUCN particularly highlighted “the Sonoran Pronghorn, an endemic subspecies of Pronghorn restricted to Southwestern Arizona and Northwestern Sonora and threatened by extinction.”⁴⁰

In its 2013 assessment, the IUCN acknowledged several already-existing “[t]hreats” to the property, including “increasing concerns about the connectivity of the land both with[in] Sonora and across the international border, including for Sonoran Pronghorn and Desert Bighorn Sheep.”⁴¹ The IUCN explained:

[T]he Sonoran Desert is bisected by the international border. [While] the border was no obstacle whatsoever until very recently . . . [t]his changed over the last years, when physical barriers were erected and border control was tightened. In the Northwest of the nominated property, a high metal barrier prevents migration from and to the Barry M. Goldwater Range. Elsewhere, the physical infrastructure is restricted to vehicle barriers which are in principle permeable for wildlife.⁴²

Additionally, highlighting the importance of “[t]ransboundary cooperation to maintain and enhance the management of the property,” the IUCN warned that:

³⁵ *Id.* at 69.

³⁶ *Id.*

³⁷ *Id.* at 111.

³⁸ *Id.* at 114.

³⁹ IUCN Evaluation, at 93.

⁴⁰ *Id.*

⁴¹ *Id.* at 91.

⁴² *Id.*

[N]ew physical infrastructure, a high wall along the border, and augmented security activities on the U.S. side, have generated negative impacts and have also introduced a new barrier for wildlife movements. It is hoped that the present governmental focus on security issues will not undermine the encouraging and functional working relationships across the border.⁴³

Accordingly, the IUCN formally:

Encourage[d] the State Parties of Mexico and the United States of America to strengthen cooperation on the conservation and management of the shared Greater Sonoran Desert Ecosystem, building upon the existing agreements and working relationships at all levels, which may eventually lead to the formal establishment of a transboundary protected area;

Encourage[d] the State Parties of Mexico and the United States of America to further cooperate on saving the Sonoran Pronghorn from possible extinction;

Encourage[d] the State Party, and the neighbouring State Party of the United States of America to fully consider environmental concerns in security efforts along the international border that forms the northern boundary of the property.⁴⁴

Finally, the IUCN's evaluation recognized the importance of the Site for the Tohono O'odham people living on both sides of the border, noting "the nominated property [is] part of their native homeland and a spiritual place of origin, celebrated in sacred ceremonies."⁴⁵ The IUCN noted that all management of the Site must be coordinated with the Tohono O'odham, as well as representatives' concerns regarding their ongoing ability to participate in traditional "ceremonies in the area, such as the revival of salt pilgrimages to the Gulf of California through the nominated property."⁴⁶

2. World Heritage Inscription

Supported by the IUCN's recommendation, the World Heritage Committee inscribed the El Pinacate property on the World Heritage List in 2013.⁴⁷ Based on the IUCN's analysis, the Committee found the El Pinacate area meets all three listing criteria, including Criteria x for sites containing "biodiversity and threatened species."⁴⁸ In its official "Statement of Outstanding Universal Values" ("OUV") for the Site, the Committee highlighted the area's "extraordinary habitat diversity," including "diversity of life across many different taxa . . . with many species endemic to the Sonoran Desert,"⁴⁹ including the "more than 540 species of vascular plants, 44 mammals, more than 200 birds, over 40 reptiles." The Committee specifically highlighted "the Sonoran Pronghorn,

⁴³ *Id.*

⁴⁴ *Id.* at 95.

⁴⁵ *Id.* at 90.

⁴⁶ *Id.*

⁴⁷ WHC Decision 37 COM 8B.16, at 167.

⁴⁸ *Id.* at 168.

⁴⁹ *Id.*

an endemic subspecies restricted to the South-western Arizona and North-western Sonora and threatened by extinction,” as part of the Site’s OUV.⁵⁰

The Committee further adopted the IUCN’s recommendations, specifically “encourag[ing]” strengthened cooperation on Sonoran Desert conservation and management, cooperation on “saving the Sonoran pronghorn from possible extinction,” and “full[] consider[ation of] environmental concerns in security effects along the international border” by both Mexico and the United States.⁵¹

III. Border Management along the El Pinacate World Heritage Site

A. Current U.S. Fencing along the El Pinacate Site’s Northern Border

Since approximately 1990, the United States has constructed various types of fencing to physically separate its border from Mexico.⁵² As noted above, the portion of the United States that abuts the El Pinacate World Heritage Site is comprised of three U.S. protected areas, contiguously covering El Pinacate’s roughly 180-kilometer northern border. While the United States has constructed various types of fencing along the border of these protected areas, most of that fencing is low and permeable, allowing passage of both pedestrians and critically, wildlife. *See* Ex. B (detailed map showing the various types of fencing along the El Pinacate-U.S. border).

Specifically, in its Organ Pipe Cactus National Monument, the United States installed a 50 kilometer-long “vehicle barrier” in 2006 stretching nearly the length of Monument’s boundary with Mexico to prohibit illegal off-road vehicle activity and thus promote, or at least not impair, conservation.⁵³ This low, steel fence is designed to be passable to pedestrians, water, and wildlife, specifically “allow[ing] . . . the highly endangered Sonoran Pronghorn to safely roam its natural range uninterrupted.”⁵⁴ *See* Photo 1 below; Ex B. However, a small, roughly 8-kilometer section of higher fencing, impenetrable to pedestrians and wildlife, exists on both sides of the San Pedro River. *See* Ex. B.

⁵⁰ *Id.* at 168-69.

⁵¹ *Id.* at 169-70.

⁵² While fencing has been constructed along much of El Pinacate’s border with the United States, largely to protect the designated conservation areas, the majority of the U.S.-Mexico border has no barrier at all. As of 2015, along the entire approximately 1,950-mile (3,138-kilometer) U.S.-Mexico border, 653 miles (1,050-kilometers) of border fencing had been constructed. U.S. Congressional Research Service. Border Security: Immigration Enforcement Between Ports of Entry. Apr. 19, 2016, at 15. Available at: <https://fas.org/sgp/crs/homsec/R42138.pdf>.

⁵³ U.S. National Park Service, International Border Vehicle Barrier. Available at: <https://www.nps.gov/orpi/planyourvisit/barrier.htm>.

⁵⁴ *Id.*



Photo 1: Vehicle barrier in Organ Pipe NM.
Photo credit: National Park Service

In the Cabeza Prieta National Wildlife Refuge, a similar, 53-kilometer vehicle barrier was constructed, stretching along the majority of the Refuge’s border with Mexico.⁵⁵ Like the fence in Organ Pipe, the fence along the Cabeza border is low and permeable to wildlife. *See* Photo 2 below. Additionally, several sections of the Cabeza border have no barriers whatsoever. *See* Ex. B.



Photo 2: Vehicle barrier in Cabeza Prieta NWR

Finally, in the Barry M. Goldwater Air Force Range, a military bombing and gunnery range, the United States has constructed “PF70” fencing along approximately 50 kilometers of the Range’s roughly 65-kilometer border with El Pinacate. *See* Ex. B. PF70 fencing is a relatively high wall, preventing passage of both pedestrians and wildlife. *See* Photo 3; Ex. B.



Photo 3: Fencing in Barry Goldwater Range
Photo Credit: Mike Christy

⁵⁵ *See* Psomas, Federal Projects: Cabeza Prieta Vehicle Barrier Fence Design-Build. Available at: <http://psomas.com/markets/cabeza-prieta-vehicle-barrier-fence-design-build/>.

Accordingly, as the IUCN noted in its 2013 evaluation of the property, along most of El Pinacate's northern border with the United States, "physical infrastructure is restricted to vehicle barriers which are in principle permeable for wildlife;" however, "a high metal barrier prevents migration from and to the Barry M. Goldwater Range."⁵⁶ In total, approximately two-thirds of El Pinacate's northern border currently allows relatively free passage of wildlife between the U.S. and Mexican sides of the Sonoran ecosystem.

IV. U.S. President Trump's Proposed Border Wall

Just five days after his inauguration and following through on campaign promises to build an "impenetrable, physical, tall, powerful, beautiful, southern border wall,"⁵⁷ U.S. President Donald Trump formally directed U.S. agencies to "immediately contract[] a physical wall on the southern border" of the United States.⁵⁸ In a formal Executive Order ("EO") issued on January 25, 2017, President Trump directed that the U.S. Secretary of Homeland Security "shall immediately . . . take all appropriate steps to immediately plan, design, and construct a physical wall along the southern-border."⁵⁹

The "wall" referenced in the EO "shall mean a contiguous, physical wall or other similarly secure, contiguous, and impassable physical barrier," stretching along the entire "contiguous land border between the United States and Mexico."⁶⁰ In addition, the EO directed the construction and operation of new detention facilities "at or near the land border with Mexico," and the hiring of "5,000 additional border agents."⁶¹ And to further tighten security, U.S. federal land management agencies must permit and enable immigration officers to access and "perform such actions" on all federal lands – including the three U.S. protected areas bordering El Pinacate – as needed.⁶²

On February 20, 2017, U.S. Secretary of Homeland Security John Kelly issued an official Memorandum entitled Implementing the President's Border Security and Immigration Enforcement Improvement Policies.⁶³ The Memorandum directs that the U.S. Customs and Border Patrol ("CBP"), the U.S. immigration and border security agency, "shall immediately begin planning, design, construction and maintenance of a wall, including attendant lighting, technology . . . , as well as patrol and access roads, along the land border with Mexico."⁶⁴

⁵⁶ IUCN Evaluation, at 91.

⁵⁷ BBC, Donald Trump's Mexico Wall: Who Is Going to Pay for It? Feb. 6, 2017. Available at: <http://www.bbc.com/news/world-us-canada-37243269>.

⁵⁸ Executive Order: Border Security and Immigration Enforcement Improvements (Jan. 24, 2017), Sec. 2(a). Available at: <https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements>.

⁵⁹ *Id.* at Sec. 4(a).

⁶⁰ *Id.* at Sec. 3(e), (b).

⁶¹ *Id.* at Secs. 5(a), 8.

⁶² *Id.* at Sec. 12(a), (b).

⁶³ Secretary John Kelly, Implementing the President's Border Security and Immigration Enforcement Improvement Policies (Feb. 20, 2017). Available at: https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf.

⁶⁴ *Id.* at 5.

On March 17, 2017, CBP issued two “Requests for Proposals” (“RFPs”) seeking proposals for contracts for the design and construction of border wall prototypes, including a “Solid Concrete Border Wall Prototype” and an “Other Border Wall Prototype” to be constructed with non-concrete materials. The published specifications for both types of walls require the walls to be: (1) at least 18-foot (5.5m) high, but optimally up to 30 feet (9.1m), (2) sunk 6-feet (1.8m) underground, (3) impossible for a human to scale unaided, (4) generally able to prevent a “physical breach . . . by sledgehammer, car jack, pick axe, . . . Oxy/acetylene torch or other similar hand-held tools,” and (5) the “north side of wall (i.e. U.S. facing side) shall be aesthetically pleasing.”⁶⁵ Proposals for prototypes of the walls were originally due March 29, 2017, and if selected, prototypes will be required to be built within 30 days.

In general, the United States has strong environmental laws protecting both wildlife and protected heritage areas, which would normally require extensive review, evaluation, and consultation of a border wall’s impacts.⁶⁶ However, in 2005, the United States legislature passed a law referred to as the “Real ID Act,” which allows the U.S. Secretary of the Department of Homeland Security to “waive *all* legal requirements,” including *all* environmental laws, as “necessary to ensure expeditious construction of the barriers and roads” in “areas of high illegal entry” on the border.⁶⁷ The U.S. Secretary of Homeland Security used this authority to waive environmental laws before constructing the existing wall along the Barry M. Goldwater Range’s border with the El Pinacate Site in 2007.⁶⁸ It is anticipated that the Secretary will similarly waive otherwise-applicable environmental laws for the newly proposed border wall construction.

V. REQUEST TO LIST MEXICO’S EL PINACATE WORLD HERITAGE PROPERTY AS “IN DANGER” DUE TO THE UNITED STATES’ BORDER WALL EXPANSION AND INCREASED BORDER SECURITY EFFORTS

Petitioners hereby formally request that the World Heritage Committee list the El Pinacate and Gran Desierto de Altar Biosphere Reserve World Heritage property as “World Heritage in Danger” pursuant to Article 11, Paragraph 4 of the World Heritage Convention and request assistance to remedy the threats to this property.⁶⁹ As described above, the El Pinacate property was inscribed in part to protect the Site’s Outstanding Universal Value of providing “extraordinary habitat diversity,” including “more than 540 species of vascular plants, 44 mammals, more than 200 birds, over 40 reptiles” with particular emphasis on the endangered Sonoran pronghorn.⁷⁰

⁶⁵ Solid Concrete Border Wall Prototype RFP, Amendment 7 (Apr. 1, 2017), at C.3.1(2). Available at: https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=68315a606ffc9ea04dc62b4d6b3ede69&_cview=0; Other Border Wall Prototype , Amendment 7 (Apr. 1, 2017). Available at: https://www.fbo.gov/index?s=opportunity&mode=form&id=5eb4c7553ad9aeb62ad3ecf7f216ef3c&tab=core&_cview=1.

⁶⁶ These laws include, among others, the Endangered Species Act (requiring consideration and mitigation of effects on imperiled species), the National Environmental Policy Act (requiring public notice and full evaluation of all environmental impacts of U.S. projects), and the National Historic Preservation Act (requiring evaluation of impacts of U.S. actions on World Heritage sites).

⁶⁷ See P.L. 109-13 (2005) (emphasis added).

⁶⁸ 72 Fed. Reg. 2,535 (Jan. 19, 2007).

⁶⁹ World Heritage Convention, at Art. 11(4).

⁷⁰ WHC Decision 37 COM 8B.16, at 167-69.

However, the El Pinacate property and its OUVs are now threatened by “serious and specific dangers” from the United States government’s proposed construction of an impermeable border wall and enhanced security efforts that will prevent cross-border migration and habitat use by Sonoran wildlife.⁷¹ Despite the Mexican government’s generally commendable conservation and management of the El Pinacate property, the United States’ ecologically irresponsible decision to build a wall risks serious deterioration of the Site’s wildlife and integrity, threatening the Site’s OUVs. Accordingly, the El Pinacate and Gran Desierto de Altar Biosphere Reserve World Heritage property qualifies for “in Danger” listing.

A. Legal Standard for an “in Danger” Listing

As detailed above, under the World Heritage Convention, a World Heritage property may be listed as “in Danger” if it is “threatened by serious and specific dangers.”⁷² The World Heritage Committee’s Operational Guidelines state that a property may be listed if:

- (1) The property faces an “Ascertained Danger,” meaning it “is faced with specific and proven imminent danger, such as:
...
(ii) Severe deterioration of the natural beauty or scientific value of the property, as by . . . major public works,

(iii) Human encroachment on boundaries . . . which threaten the integrity of the property,” or
- (c) The property faces a “Potential Danger,” meaning it “is faced with major threats which could have deleterious effects on its inherent characteristics. Such threats are, for example: . . .

(ii) planned . . . development projects within the property or so situated that the impacts threaten the property;”⁷³

Finally, “major operations” must be “necessary” to conserve the property from its threats.⁷⁴

B. The World Heritage Property and Its OUV Species, including the Sonoran Pronghorn, are “Threatened by Serious and Specific Dangers”

The United States’ imminent construction and expansion of an impermeable border wall along the entire length of the U.S.-El Pinacate border and its planned enhanced border security efforts constitute “serious and specific dangers” that threaten the El Pinacate property and its OUVs.⁷⁵ In contrast to the current fencing along much of the border that was intentionally constructed to be permeable to wildlife, the new, potentially 9-meter high, solid, impenetrable wall

⁷¹ World Heritage Convention, at Art. 11(4).

⁷² *Id.*

⁷³ *Id.* at IV(B)(180)(a), (b).

⁷⁴ World Heritage Convention, at Art. 11(4).

⁷⁵ *Id.* at Art. 11(4).

will create a permanent, impassable barrier for wildlife, dividing the Sonoran ecosystem in two, potentially forever.⁷⁶

1. The Border Wall's Impacts on Sonoran Wildlife and Biodiversity

As detailed above, the Sonoran Desert ecosystem extends well-beyond the Mexican border, approximately 250 kilometers north into the United States. Unrestricted movement of wildlife across the border has allowed the continuity of ecological and evolutionary processes for all borderlands species for millions of years.⁷⁷ A solid wall along El Pinacate's northern border would prevent this historic movement, possibly leading to a cascade of negative effects for El Pinacate and the greater Sonoran Desert's wildlife.

In general, border fences – particularly impermeable border fences – “can cause declines and even local disappearance of species.”⁷⁸ These barriers impede mobility that is essential for many species' dispersal, seasonal migration, search for food and water, and escape from predators; fragment habitat and populations; and can even cause direct mortality.⁷⁹ Limiting species' dispersal can cause population level effects by “reduc[ing] gene flow between populations . . . , which can lead to genetic divergence between populations and rapid loss of genetic diversity in small populations.”⁸⁰ In fact, “[e]ven slight decreases in dispersal may have large consequences for species' populations,” and “smaller isolated populations may . . . be subject to an increased risk of extinction.”⁸¹ “Human disturbance, vegetation removal and additional barriers, roads and lighting that accompany fences likely further reduce border permeability” for wildlife.⁸²

Habitat connectivity is particularly important in the Sonoran Desert region, as geography, elevation, and moisture gradients severely limit the range of many Sonoran species.⁸³ The species most affected by the construction of the wall will be terrestrial species that have restricted habitats, low reproductive capacity, require large territories, and/or exist in low densities. As such, large carnivores and large herbivores will be impacted most severely,⁸⁴ especially at-risk species like

⁷⁶ Solid Concrete Border Wall Prototype RFP, Amendment 7 (Apr. 1, 2017), at C.3.1(2); Other Border Wall Prototype, Amendment 7 (Apr. 1, 2017).

⁷⁷ Cordova, A. & C.A. del la Parra. 2007. A Barrier to our Shared Environment: The Border Fence between the United States and Mexico, at 79. Available at:

<http://www.inecc.gob.mx/descargas/publicaciones/519.pdf>.

⁷⁸ Trouwborst, A., F. Fleurke, & J. Dubrelle. 2016. Border Fences and their Impacts on Large Carnivores, Large Herbivores and Biodiversity: An International Wildlife Perspective. *RECIEL* 25(3) 2016. DOI: 10.1111/reel.12169.

⁷⁹ *Id.*; Cordova & del la Parra (2007), at 78.

⁸⁰ Lasky, J.R., W. Jetz, & T.H. Keitt. 2011. Conservation biogeography of the US-Mexico border: a transcontinental risk assessment of barriers to animal dispersal. *Diversity Distrib.* (2011) 1-15. DOI: 10.1111/j.1472-4642.2011.00765x.

⁸¹ *Id.*

⁸² *Id.*

⁸³ Flesch, A.D., C.W. Epps, J.W. Cain, M. Clark, P.R. Krausman, & J.R. Morgart. 2009. Potential Effects of the United States Border Fence on Wildlife. *Conserv. Biol.* 24: 171-181. doi:10.1111/j.1523-1739.2009.01277.x.

⁸⁴ Trouwborst, et al. 2016.

Sonoran pronghorn, bighorn sheep, jaguar, and others.⁸⁵ However, barriers can also “affect small creatures like reptiles, insects, and . . . birds,” including ferruginous pygmy owls, and even plants “by affecting processes like seed dispersal and pollination.”⁸⁶

The World Heritage Committee inscribed the El Pinacate property, in part, due to the area’s tremendous “biodiversity and threatened species,”⁸⁷ including “more than 540 species of vascular plants, 44 mammals, more than 200 birds, over 40 reptiles.”⁸⁸ Several of these species migrate across the El Pinacate/U.S. border and will be severely impacted by the border wall.⁸⁹

Sonoran pronghorn

The Sonoran pronghorn (*Antilocapra americana sonoriensis*) exists only in one place on Earth – in the Sonoran Desert of southwestern Arizona and northwestern Mexico. Unfortunately, the Sonoran pronghorn is among the most endangered mammals, having suffered steep declines.⁹⁰ Prior to European settlement, scientists estimate that around 35 million pronghorn, comprised of five subspecies, inhabited North America,⁹¹ but as of 2014, only approximately 979 individual Sonoran pronghorn remain, occupying only approximately 12% of its historical range.⁹² The Sonoran pronghorn’s decline was caused by historic hunting, livestock grazing, drought, and habitat fragmentation.⁹³

Due to these declines, Mexico protects the Sonoran pronghorn as “critically endangered” under its NOM-059-SEMARNAT-2010.⁹⁴ The Sonoran pronghorn was protected as “endangered” in the United States in 1967.⁹⁵ In 2011, in an effort to re-establish a pronghorn population outside its then-current range, the Service introduced “a nonessential experimental population” in a defined area of Arizona. Pronghorn in this bounded area are generally treated as “threatened” under the U.S. Endangered Species Act, and under U.S. Fish and Wildlife Service regulations, hunting and direct take of this population is generally prohibited.⁹⁶

⁸⁵ López-González, C. A., N. E. Lara-Díaz, D- Ávila-Aguilar & M. F. Cruz-Torres. 2012. Áreas de interés binacional para mantener la conectividad de poblaciones de fauna silvestre compartida con potenciales afectaciones por la construcción del muro fronterizo. Informe Final de la Universidad Autónoma de Querétaro al Instituto Nacional de Ecología. 292 pp y 3 anexos digitales.

⁸⁶ Trouwborst, et al. 2016.

⁸⁷ *Id.* at 168.

⁸⁸ WHC Decision 37 COM 8B.16, at 1668.

⁸⁹ Mexico WH Nomination, at 61 (highlighting at-risk species that inhabit El Pinacate), 255.

⁹⁰ Klimova, A. 2013. Diversidad Genética y Diferenciación Poblacional de Dos Subespecies amenazadas del Berrendo (*Antilocapra americana*). Thesis. Available at: <http://biblio.uabcs.mx/tesis/te2892.pdf>.

⁹¹ Final U.S. Pronghorn Recovery Plan, at 10.

⁹² *Id.* at 11, 7.

⁹³ *Id.* at 3.

⁹⁴ NORMA Oficial Mexicana NOM-059-SEMARNAT-2010, Protección ambiental-Especies nativas de México de flora y fauna silvestres-Categorías de riesgo y especificaciones para su inclusión, exclusión o cambio-Lista de especies en riesgo. Available at: http://dof.gob.mx/nota_detalle_popup.php?codigo=5173091.

⁹⁵ 32 Fed. Reg. 4001 (March 11, 1967). The Sonoran pronghorn was listed under the predecessor statute to the Endangered Species Act (“ESA”), and was later included as an endangered species when the ESA was enacted in 1973.

⁹⁶ 76 Fed. Reg. 25,610 (May 5, 2011).

Mexico's original proposal for the El Pinacate World Heritage Site, the IUCN's evaluation of the Site, and the World Heritage Committee's ultimate inscription of the Site all specifically highlighted the Sonoran pronghorn as a key species on the Site.⁹⁷ Most importantly, in inscribing the property and recognizing the area's "extraordinary habitat diversity" as one of the Site's official OUVs, the Committee specifically highlighted "the Sonoran Pronghorn" as one of the key species for which El Pinacate provides habitat.⁹⁸

However, both the survival and the recovery of the Sonoran pronghorn are threatened by the imminent construction of the U.S. border wall, as well as by substantially increased border security activities. Pronghorn require "vast areas of unencumbered open range" that allow pronghorn to "freely travel long distances between localized, seasonally sporadic rainfall" in search of food.⁹⁹ Habitat fragmentation remains a key threat to the species, including fragmentation caused by "physical barriers," such as "border infrastructure, fences, . . . [and] roads."¹⁰⁰ Fences are a "particular" concern because pronghorn rarely jump fences, although they may try to crawl underneath. Accordingly, unless a fence is raised 16 inches above the ground, it is "impassable to pronghorn."¹⁰¹

The current international border fence in the pronghorn's habitat "is primarily a vehicle barrier fence that is passable" by the animals.¹⁰² However, the United States' proposed 18- to 30-foot (5.5- to 9-m) high, impermeable border wall, dug six-feet into the ground, will unquestionably be impassable to Sonoran pronghorn, permanently cutting off the species' northern and southern populations, preventing dispersal and much-needed gene flow. Particularly because the existing Sonoran pronghorn population is already small, at-risk, and will now be further isolated, the border wall threatens the existence and certainly the recovery of the Sonoran pronghorn.¹⁰³ As the United States' wildlife protection agency, the U.S. Fish and Wildlife Service ("the Service"), has noted, a "reduction in the amount of usable pronghorn habitat *or any loss in habitat connectivity* would reduce the resiliency of each population and increase the risk of extinction, especially during severe drought."¹⁰⁴

In addition to the border wall, increased border security activities along the U.S.-Mexico border will harm and harass the existing Sonoran population, particularly because pronghorn are extremely sensitive to disturbance. In its Recovery Plan, the Service listed "Border Activities" as one of the top factors threatening the pronghorn's existence, noting evidence of pronghorn "avoiding areas of high cross-border violator traffic and law enforcement activities."¹⁰⁵ During an observation of border impacts from aircraft and vehicles in 2013, the Service reported that "Sonoran pronghorn experienced some form of border-related potential disturbance once every 4 hours of observation,"

⁹⁷ See Mexico WH Nomination, at 61, 96-97, 99, 116, 121, 126; IUCN Evaluation, at 91.

⁹⁸ *Id.* at 168-69.

⁹⁹ Final U.S. Pronghorn Recovery Plan, at 90.

¹⁰⁰ *Id.* at 44.

¹⁰¹ *Id.* at 45, citing Brown, D. E., and R. A. Ockenfels. 2007. Arizona's pronghorn antelope: a conservation legacy. Arizona Antelope Foundation, Phoenix, Arizona, USA.190 pp.

¹⁰² *Id.*

¹⁰³ See Lasky (2011).

¹⁰⁴ Final U.S. Pronghorn Recovery Plan, at 103.

¹⁰⁵ *Id.* at 36, 70.

by either running or exhibiting a vigilance stance.¹⁰⁶ Accordingly, the Service’s Sonoran pronghorn recovery plan specifically recommended the “minimiz[ation] and mitigat[ion of] impacts of border-related activity on Sonoran pronghorn habitat.”¹⁰⁷ However, the proposed increased border security activity by the United States will only increase disturbance to the existing Sonoran pronghorn in the El Pinacate Site and broader borderlands region.

In evaluating and later inscribing the El Pinacate property, both the IUCN and the World Heritage Committee were highly aware of the impacts of then-existing border activities/barriers and associated decreased habitat connectivity on Sonoran pronghorn. As noted above, the IUCN’s 2013 assessment of the Site specifically acknowledged “increasing concerns about the connectivity of the land both with Sonora and across the international border, including for Sonoran Pronghorn” as an already-existing “threat” to the Site.¹⁰⁸ Thus the World Heritage Committee formally “encourage[d]” Mexico and the United States to strengthen cooperation on “saving the Sonoran pronghorn from possible extinction” and “fully consider environmental concerns in security effects along the international border.”¹⁰⁹ Unfortunately, by proposing and soon constructing a massive border wall along the El Pinacate site, the United States is realizing and dramatically intensifying these acknowledged threats.

Desert bighorn sheep

Similar to impacts on Sonoran pronghorn, the proposed U.S. border wall and security activities will also threaten desert bighorn sheep (*Ovis canadensis*). In its nomination documents for the property, Mexico specifically highlighted the area’s habitat for bighorn sheep.¹¹⁰ Similarly, in its 2013 assessment discussing the already-existing “[t]hreats” to the El Pinacate site, the IUCN noted “increasing concerns about the connectivity of the land both with Sonora and across the international border, including for . . . Desert Bighorn Sheep.”¹¹¹ And bighorn sheep were no doubt among the “44 mammals” the Committee referenced in establishing the OUV for the El Pinacate property.¹¹²

Desert bighorn sheep were once broadly distributed in northern Mexico and in the southwestern United States but declined severely due to hunting and fragmentation and loss of habitat. The desert bighorn sheep is “subject to special protection” in Mexico,¹¹³ and the Cabeza Prieta National Wildlife Refuge was established, in part, to protect the species. In order to maintain viable populations, this “species must extend to both sides of the border.”¹¹⁴

¹⁰⁶ *Id.* at 70.

¹⁰⁷ *Id.* at 121.

¹⁰⁸ IUCN Evaluation, at 91.

¹⁰⁹ WHC Decision 37 COM 8B.16, at 169-70.

¹¹⁰ Mexico WH Nomination, at 61 (highlighting at-risk species that inhabit El Pinacate).

¹¹¹ IUCN Evaluation, at 93 (emphasis added).

¹¹² *Id.*

¹¹³ Mexico WH Nomination, at 61.

¹¹⁴ Cordova & del la Parra (2007); Pelz-Serrano, K., E. Ponce-Guevara, R. Sierra-Corona, R. List and G. Ceballos. 2006. Recent records of Desert Bighorn Sheep (*Ovis canadensis mexicana*) in eastern Sonora and Northwestern Chihuahua, Mexico. *The Southwestern Naturalist* 51:430-434.

In their 2009 paper, Flesch et al. assessed the potential effects of construction of a U.S.-Mexico border wall on wildlife by focusing on two Sonoran species – the desert bighorn sheep and the ferruginous pygmy-owl.¹¹⁵ At the time of the study, nine of eleven Sonoran Desert bighorn sheep populations were “linked by gene flow and male dispersal” across the border.¹¹⁶

Flesch et al. noted that “[b]ecause populations of bighorn sheep are often small and fragmented, connectivity among them is particularly important.” Accordingly, construction of an impermeable border fence between Mexico and the United States “would disrupt an extensive population network of desert bighorn sheep. In addition to preventing transboundary movements,” the wall would “eliminate or weaken linkages among some populations on both sides of the border,” leading to potentially small population sizes at risk of extinction.¹¹⁷ A border wall “would also reduce probability of recolonization after local extinction, compounding effects of changing resource availabilities due to climate change.” The authors further noted that, while their paper focused on “physical barriers” on the border, “associated lighting, vehicle traffic, and human activity may further degrade connectivity and warrant detailed consideration.”¹¹⁸

Construction of a border wall and the attendant increased border security activities would harm and threaten desert bighorn sheep, one of the key species the El Pinacate World Heritage Site was inscribed to protect.

Ferruginous Pygmy-Owl

The proposed U.S. border wall and security activities will also threaten the ferruginous pygmy-owl (*Glaucidium brasilianum*), a tiny owl that could fit in the palm of a human’s hand. In its nomination documents for the property, Mexico specifically highlighted the area’s habitat for ferruginous pygmy-owls, as well as other owls.¹¹⁹ Owls were certainly among the “more than 200 birds” the Committee referenced in establishing the OUV for the El Pinacate property.¹²⁰ Ferruginous pygmy-owls are “threatened” under Mexican conservation law,¹²¹ and the species “has declined to endangered levels in Arizona.”¹²²

While it is easy to envision how a border wall blocks connectivity for large, terrestrial mammals, landscape connectivity for birds is often assumed. However, recent studies demonstrate that vegetation gaps can slow or limit movements, especially by nonmigratory birds such as pygmy-owls, whose flights involve steep descents from low perches followed by direct-level flight near the ground.¹²³ As noted above, Flesch et al. (2009) evaluated the effects of a border wall on pygmy-owls

¹¹⁵ Flesch et al (2009).

¹¹⁶ *Id.*

¹¹⁷ *Id.*; see also Cordova & del la Parra (2007) (concluding that, if constructed, “the natural recovery of the bighorn in northern Mexico and the viability of its populations in the border region would suffer”).

¹¹⁸ *Id.*

¹¹⁹ Mexico WH Nomination, at 63 (highlighting at-risk species that inhabit El Pinacate).

¹²⁰ WHC Decision 37 COM 8B.16, at 169-70.

¹²¹ Mexico WH Nomination, at 63.

¹²² Flesch et al. (2009).

¹²³ Enríquez-Rocha, P. y Rangel, J. L. 2008. Ficha técnica de *Glaucidium brasilianum*. En: Escalante-Pliego, P. (compilador). Fichas sobre las especies de Aves incluidas en el Proyecto de Norma Oficial Mexicana PROY-NOM-ECOL-2000. Parte 2. Instituto de Biología, Universidad Nacional Autónoma de México. Bases de datos SNIBCONABIO. Proyecto No. W042. México, D.F.

and found that their flights reached only 1.4 meters above the ground on average, and only 23% of flights exceeded 4 meters, the height of existing border fences (the U.S. proposal is for 5.4 to 9.1 m wall).¹²⁴ Flesch concluded that “large vegetation gaps coupled with tall fences may limit transboundary movements of pygmy owls,” reducing dispersal. Because pygmy owl populations in Arizona are low compared to Sonoran populations, “maintaining a transboundary connectivity” is important to “recovery of owl populations.”¹²⁵

Jaguar

Jaguars (*Panthera onca*) are one of the most iconic Sonoran species,¹²⁶ and in 2016, two jaguars were documented as having crossed the border from Mexico into the United States. While the most important corridors for jaguars between Mexico and Arizona are likely outside of the El Pinacate Site, jaguars were noted in Mexico’s World Heritage nomination documents for the Site due to their at least intermittent presence in the area.¹²⁷ However, construction of a border wall would “separate the small segment of the borderlands [jaguar] population in Arizona from those in northeastern Sonora, Mexico, thereby eliminating dispersal and preventing recovery in jaguar numbers or range north of the border.”¹²⁸ Natural recovery of jaguars in the United States – and further recovery of jaguars within Mexico – requires cross-border migration.¹²⁹

Other Sonoran Species

Many of the other “44 mammals, more than 200 birds, [and] over 40 reptiles” recognized as part of the El Pinacate World Heritage Site’s OUV will be impacted by the United States’ proposed border wall.¹³⁰

The Sonoran or Couse white-tailed deer (*Odocoileus virginianus couesi*) occurs in multiple, seemingly isolated, populations in the borderlands region. For example, a population persists in the Ajo Mountains within Organ Pipe National Monument, while a somewhat larger population occurs in the Cubabi Mountains 30 kilometers away in Sonora. Natural connectivity of these populations is already limited, and due to the animals’ small size, even relatively low barriers may be an obstacle to dispersal. Construction of a border wall would completely and irrevocably isolate populations in the United States from those in Mexico.¹³¹

¹²⁴ Flesch et al. (2009).

¹²⁵ *Id.*

¹²⁶ Mexico’s proposal for El Pinacate’s World Heritage listing noted the Sonoran habitat for the jaguar. Mexico WH Nomination, at 255.

¹²⁷ *Id.*

¹²⁸ McCain, E. B., & Childs, J. L. (2008). Evidence of Resident Jaguars (*Panthera onca*) in the Southwestern United States and the Implications for Conservation. *Journal of Mammalogy*, 89(1), 1–10. <http://doi.org/10.1644/07-MAMM-F-268.1>

¹²⁹ Cordova & del la Parra (2007); Flesch et al. (2009).

¹³⁰ WHC Decision 37 COM 8B.16, at 168.

¹³¹ López-González, C. A., N. E. Lara-Díaz, D- Ávila-Aguilar y M. F. Cruz-Torres. 2012. Áreas de interés binacional para mantener la conectividad de poblaciones de fauna silvestre compartida con potenciales afectaciones por la construcción del muro fronterizo. Informe Final de la Universidad Autónoma de Querétaro al Instituto Nacional de Ecología. 292 pp y 3 anexos digitales.

Mexico's El Pinacate nomination proposal also noted that endangered desert pupfish (*Cyprinodon macularius*) are present on the Site in a channel of the Sonoyta River.¹³² Much of the Sonoyta River's high basin is located in the United States, contributing to water flow further south. However, the current base flow of the main riverbed of the Sonoyta River as it crosses the border into Sonoyta, Mexico is already greatly reduced.¹³³ A border wall will likely function as a dam for many waterways crossing border areas, including the Sonoyta River, and will almost certainly alter the hydrology of waterways within the Site that have consistent flow, as well as intermittent washes or drainages.¹³⁴ If water is obstructed or water availability changes due to the U.S. border wall, the desert pupfish of the Sonoyta River will be affected.

In addition, a 2011 paper published by Lasky et al. identified 313 other species, including numerous Sonoran Desert species, that would be "potentially at risk from current border dispersal barriers."¹³⁵ Flesch et al. also noted desert tortoise and other non-migratory birds such as wild turkeys and quail may be affected by a border wall.

2. The El Pinacate Site Is Threatened by U.S. Construction and Expansion of its Border Wall and Qualifies as World Heritage "in Danger"

The United States' construction of a border wall, as well as its planned enhanced border security efforts, constitute "serious and specific dangers" that threaten the El Pinacate Site. The United States' actions are a "specific and proven imminent danger" to the El Pinacate property because the U.S. actions constitute: (1) "major public work[s]" that will cause "[s]evere deterioration of the natural beauty or scientific value of the property," and (2) "[h]uman encroachment on boundaries . . . which threaten the integrity of the property," including its OUV-recognized wildlife species like the Sonoran pronghorn, desert bighorn sheep, and ferruginous pygmy-owl. Additionally and alternatively, the United States' construction of a border wall and enhanced border security activities are "major threats which could have deleterious effects on [the property's] inherent characteristics" because they constitute "planned . . . development projects . . . so situated that the impacts threaten the property" and its OUV-recognized wildlife.¹³⁶ Accordingly, the El Pinacate and Gran Desierto de Altar Biosphere Reserve World Heritage property qualifies for "in Danger" listing.

Additionally, "major operations" are "necessary" to conserve the El Pinacate property and its OUVs from the serious threats presented above.¹³⁷ While individuals and organizations within both Mexico and the United States are advocating against the wall's construction, international

¹³² Mexico WH Nomination, at 64, 101; *see also* De Lourdes, M. & M. Ruiz, *El Agua en la Reserva de la Biosfera el Pinacate y Gran Desierto de Altar, Sonora, México: Comunidades, Vida Silvestre y la Frontera con Estados Unidos*. *Natural Resources Journal*, Vol. 40, Spring 2000. Endemic Fish: 420-421.

¹³³ Pinacate Biosphere Reserve and the Great Altar Desert Management Plan. Comisión Nacional de Areas Naturales Protegidas. December 1995.

¹³⁴ For example, in 2008, a U.S. concrete barrier constructed in a border storm water tunnel to prevent immigration likely caused a flood in Nogales, Mexico, costing over \$8 million in damage, including to 578 homes. An aboveground border to east "further escalated the damage" by stopping water that would have flowed into the United States. *See* Brady McCombs. Mexico ties flooding in Nogales to U.S. Border Patrol-built wall. *ARIZONA STAR*. July 23, 2008. Available at: http://tucson.com/news/local/border/mexico-ties-flooding-in-nogales-to-u-s-border-patrol/article_a11265b0-17c3-5bed-b50a-72e5d17e1369.html.

¹³⁵ Lasky et al. (2011).

¹³⁶ *Id.* at IV(B)(180)(a), (b).

¹³⁷ World Heritage Convention, at Art. 11(4).

attention on this important conservation issue is essential to ensure that President Trump’s wall and/or other border barriers are not built in a location or manner that impairs the El Pinacate Site and the wildlife and other OUVs the Site is designated to protect.¹³⁸ The Committee’s involvement and recommendations regarding this Site and the threats associated with the United States’ construction of a border wall are especially critical, since the Trump Administration has authority to – and is likely to – exempt itself from any U.S. laws that would otherwise require consideration, avoidance, and/or mitigation of the wall’s impacts on wildlife, the environment, or the El Pinacate World Heritage Site.¹³⁹

Finally, we believe sending a monitoring mission to “ascertain . . . the present condition of the property” and its threats would bring valuable attention to the issues and provide additional and needed information regarding the implementation and enforcement of existing protective measures.¹⁴⁰

3. The Border Wall Will Harm the Tohono O’odham and Their Cultural Practices

In addition to the threats to the El Pinacate Site’s recognized OUVs, the proposed U.S. border wall will also severely harm the Tohono O’odham indigenous peoples and impair their long-standing religious and cultural practices both on the Site and in Arizona. As described above, both Mexico’s nomination document and the IUCN recognized the Site’s historic and present-day cultural importance for the Tohono O’odham, whose traditional lands are split by the U.S.-Mexico border.¹⁴¹ Both Mexico and IUCN noted the Site is sacred and still regularly used for ceremonial purposes.¹⁴²

As further detailed in the Statement of José Martín García Lewis, Governor General of the O’odham in Sonora, Mexico, submitted concurrently as Exhibit A with this petition:

[The O’odham’s] customary uses of Schuk Toak (Pinacate Mountain) and its surrounding desert stretching into . . . Arizona encompass all aspects of O’odham life, from our creation to burial . . . At the Pinacate, our creator made and then defended us against destructive forces before finally leaving us with a ceremony to remember the creator by. In the Pinacate, since time immemorial, O’odham have carried out ceremonies, including the Men’s Salt Ceremony and Pilgrimage, which continues today in 2017.¹⁴³

Recognizing the importance of these ceremonies and the necessity for passage along the border, a 2007 Tohono O’odham Nation Resolution (No. 07-714), specifically “calls for protecting salt

¹³⁸ *Id.*

¹³⁹ *See* P.L. 109-13 (2005) (emphasis added). Even if construction of the wall on the northern border of the Site moves forward, involvement of the Committee could also help lessen or mitigate the impacts of such construction on the Site and its OUVs. Mitigation could include wildlife crossing structures, fence gaps large enough to accommodate small and larger wildlife, and maintaining vegetation for owls near the border, among other measures.

¹⁴⁰ *Id.* at IV(B)(184).

¹⁴¹ Mexico WH Nomination, at 19, 4, 69, 111, 114; IUCN Evaluation, at 90.

¹⁴² Mexico WH Nomination, at 75; IUCN Evaluation, at 111.

¹⁴³ Ex. B.

pilgrimage routes including but not limited to ‘the Salinas and traditional salt pilgrimage routes in Organ Pipe National Monument, Cabeza Prieta National Wildlife Refuge, the Barry M. Goldwater Range, the El Pinacate-Gran Desierto de Altar Biosphere Reserve, and the Alto Golfo del California Biosphere Reserve.’”¹⁴⁴

The O’odham’s customary use of the Site “is directly threatened by further United States militarization of the binational border . . . in the form of a wall.”¹⁴⁵ As Governor General Garcia describes, “a wall would deny the O’odham mobility . . . A wall constructed among our O’odham people will deny us our human heritage: spiritual, cultural, social, and political” and harm “our right to openly practice our religion, to care and manage for desert resources including species that comprise our Himdag (culture), to maintain our family ties, . . . secure access to our material culture in the Sonoran Desert,” among other issues.¹⁴⁶ Thus the O’odham “steadfastly oppose any physical barriers that would hinder physical access for us O’odham in Sonora, Mexico and for Tohono O’odham in the United States . . . for we are one O’odham people.”

VI. CONCLUSION

As detailed above, Petitioners formally request that the World Heritage Committee request assistance for and list the El Pinacate and Gran Desierto de Altar Biosphere Reserve World Heritage Site as “World Heritage in Danger” pursuant to the World Heritage Convention.¹⁴⁷ The El Pinacate property was inscribed in part in recognition of the area’s “extraordinary habitat diversity.”¹⁴⁸ However, the property and its OUVs face “serious and specific dangers” from the harm that will be caused to the property and its wildlife from the United States’ construction of a “secure, contiguous, and impassable physical barrier” along the entire El Pinacate-U.S. border.¹⁴⁹

We ask that the Committee act quickly to review this Petition, in hopes that it may warrant substantial discussion at the Committee’s next session to be held in Krakow, Poland in July of this year. If you have any questions regarding this Petition or would like additional information, we welcome and encourage you to contact us anytime.

Sincerely,



Sarah Uhlemann
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¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at Art. 11(4).

¹⁴⁸ *Id.*

¹⁴⁹ World Heritage Convention, at Art. 11(4); WHC *Operational Guidelines*, at IV(B)(177) (listing “in Danger” criteria); Executive Order: Border Security and Immigration Enforcement Improvements, Sec. 3(e), (b).

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Exhibit A:

Statement of José Martín García Lewis,
Governor General of the O'odham in Sonora, Mexico

Dividing the O'odham Homeland;

Regarding the Trump Administration's Proposed Border Wall

Statement of José Martín Garcia Lewis,
Governor General of the O'odham in Sonora, Mexico

April 26, 2017

Schuk Toak (Pinacate) photo:
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Dividing the O'odham Homeland Regarding the Trump Administration's Proposed International Wall

The Pinacate, located in Northern Sonora, México is bordered on the North by three special ecological and public use zones in Arizona, USA: the Barry M. Goldwater Military Range, the Cabeza Prieta National Wildlife Refuge, and the Organ Pipe National Monument. Together the four special areas comprise the international border between the United States and Mexico, a border that physically bisects the traditional O'odham homeland into two pieces. That total area is part of the original O'odham homeland.

O'odham customary use of the Pinacate and Desierto Gran Altar Biosphere Reserve and UNESCO International Heritage Site is directly threatened by further United States militarization of the binational border for O'odham in the form of a wall. We steadfastly oppose any physical barriers that would hinder physical access for us O'odham in Sonora, Mexico and for Tohono O'odham in the United States to the area of our original homeland, including the Pinacate; for we are one O'odham people.

Some 2/3rds of the 2,000 O'odham in Sonora remain as legal members of the Tohono O'odham Nation (TON), and the additional O'odham in Sonora unaffiliated with the TON are descendants of O'odham by community and family ties. As the Governor General of the O'odham in Sonora, I support The Tohono O'odham Nation's Resolution no. 07-714 (Nov. 5th, 2007) which calls for protecting salt pilgrimage routes including but not limited to "the Salinas and traditional salt pilgrimage routes in Organ Pipe National Monument, Cabeza Prieta National Wildlife Refuge, the Barry M. Goldwater Range, the **El Pinacate-Gran Desierto de Altar Biosphere Reserve**, and the Alto Golfo del California Biosphere Reserve." [bold added].

A wall would deny the O'odham mobility, another in a long history of such denials. O'odham have the right to move freely in our homeland - equal to all other citizens of the world in the exercise of their patrimony. A wall constructed among our O'odham people will deny us our human heritage: spiritual, cultural, social, and political. It will constitute an act of ecocide for species living in the Pinacate and its perimeter, and commit cultural genocide against the O'odham in Mexico who live in the Pinacate's near environs covering four municipalities of Gral. Plutarco Elías Calles, Puerto Peñasco, San Luis Colorado, and Altar.

We will defend those sovereign rights as indigenous peoples recognized by the United States under the Obama administration which pledged to uphold the 2007 United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP 2007). In addition to violating the norms of a UNESCO International Heritage Site, a border wall will violate our rights under the United Nations UNDRIP 2007, articles 8, 11, 12, 13, 18, 19, 29, 30, 31, and 36 (see sections 2.1, 2.2, and 2.4 below).

As the Governor General of the O'odham in Mexico, I will defend our right to openly practice our religion, to care and manage for desert resources including species that comprise our Himdag (culture), to maintain our family ties, defend joint O'odham political principles with the TON, secure access to our material culture in the Sonoran Desert, and support international law in the near border area of the US and Mexico; the traditional O'odham Homeland. I therefore oppose

Dividing the O’odham Homeland Regarding the Trump Administration’s Proposed International Wall

the construction of any more barriers and walls between the Monument, Wildlife Refuge, Range, and Pinacate Reserve.

Our O’odham communities on both sides of the border are quite aware of the deliberate US strategy to funnel immigrants into the desert away from the border cities. Furthermore, we demand that the United States Government stop using the Tohono O’odham Nation and O’odham in Mexico border communities as a national border laboratory for US militarization, that it specifically not award contracts to any US military contractors like Raytheon, Boeing, Mexican contractors like Cemex, or foreign ones like the Israeli company, Elbit, since we are not related to any of them them, and they are not protecting us.

We are already paying an unequal price for the failure of US national security in this regard; because the US border strategy has absolutely increased the physical insecurity of the O’odham peoples in the border area of Arizona, USA and Sonora, Mexico. A wall will only increase our insecurity.

1.1 Call for Investigation into the Pinacate World Heritage Site

1. Therefore, with our courageous and steadfast partner, the Center for Biological Diversity, we O’odham in Sonora, Mexico ***call on the UNESCO International Heritage Site Committee to undertake an immediate investigation into threats from a proposed wall by the US Executive Administration*** against our customary uses of the Pinacate; specifically, our spiritual, ecological, cultural, social, and political practices as part of that heritage represented by the Pinacate-Gran Desierto de Altar Biosphere Reserve.

2. We further ***call for the integration of a team of O’odham tribal members from Sonora and Arizona be deployed as environmental and cultural monitors*** for the sake of safeguarding the Pinacate Reserve; the lands our ancestors entrusted us with. The 1994 Pinacate management plan was to “promote and implement research of archeological, historical, and cultural patrimony of the Pinacate and Desierto Gran Altar region based on the conservation and uses of it by the O’odham culture”¹. The O’odham cannot be part of a management plan if they are denied entry into Pinacate biosphere reserve. Thus any denial of O’odham in their attempts to physically access the Pinacate across the international United States-Mexico border require recording and reporting by O’odham environmental and cultural monitors to the International Heritage Site Committee, and the UN High Commission on Human Rights, including the Permanent Forum for Indigenous Rights, and the Office of the UN Special Rapporteur for Indigenous Rights.

¹ Programa de Manejo, Reserva de la Biosfera El Pinacate y Gran Desierto Alta, Municipios de Puerto Peñasco, General Plutarco Elías Calles, y San Luis de Colorado, Sonora, México. Agosto, 1994, 86. Author’s translation from Spanish.

Dividing the O’odham Homeland Regarding the Trump Administration’s Proposed International Wall

3. ***We call for funding of four O’odham monitors annually from international environmental donors to safeguard this monitoring measure*** from United States governmental budgetary tactics related to international wall building that seeks to divide the O’odham customary territory of the Pinacate, their use of it, and the O’odham themselves.

2.0 O’odham Customary Uses of the Sonoran Desert in Four Ecological Zones

O’odham traditions related to the Pinacate are numerous and remain at the heart of O’odham Himdag (culture). It is an area that the O’odham have continually traversed in prehistoric times, a place Hia Ched O’odham inhabited for over four thousand years²; an area we still use despite threats and the passing presence of Spanish, Apache, Mexican, and now American presence.

Our customary uses of **Schuk Toak** (Pinacate Mountain) and its surrounding desert stretching into the range, refuge, and park in Arizona encompass all aspects of O’odham life, from our creation to burial. O’odham do not separate themselves from the ecology of the Pinacate, nor their culture from its ecology, or its ecology from their spiritual practices, these are all one in the same. Each pre-historic and historic sites visited by O’odham in the Pinacate, as well as our continued presence in the Pinacate, are all sacred. This is why the Pinacate is an unparalleled cultural site. It is, in fact, one of two sites that constitute the centers of O’odham origin³. The other site is *Babwuj* or Baboquivari Mountain on the Tohono O’odham Reservation, in Arizona, USA. At the Pinacate, our creator made and then defended us against destructive forces before finally leaving us with a ceremony to remember the creator by. In the Pinacate, since time immemorial, O’odham have carried out ceremonies, including the Men’s Salt Ceremony and Pilgrimage, which continues today in 2017. The current Salt Ceremonial leader, Ken José Maria, noted that in 1871 an O’odham who documented O’odham participation in the Salt Ceremony Pilgrimage. (see: Ken Josemaria’s statement.)

Other non-O’odham naturalists historically also documented salt harvesting (Lumholtz, 1912). My own fathers’ relative, *Chihil Kahio “Scissor Leg”* told me about our O’odham who went on horseback traversing the desert to reach the salt lakes by the Sea of Cortez and return with salt to our villages.

Natural rock formations that create living water tanks on the east side of the Pinacate are known to O’odham as Moitjútjupo (many pools). Where the lava and dunes come together on the Southwest side of the Pinacate range lays a formerly inhabited place, called Hótunikat, or Sunset Crater.⁴ Our O’odham Himdag (culture) is present throughout the Pinacate Biosphere: geoglyphs, intaglio, camp clearings, sleeping quarters, trails, mortars and petroglyphs.⁵ We

² Programa de Manejo, 49.

³ Programa de Manejo, *ibid*, 52-55.

⁴ Julian D. Hayden, *Changing Place Names in the Pinacate*, p. 579-580, 2007, *Dry Borders, Great Natural Reserves of the Sonoran Desert*, Richard Stephan Felger, Bill Broyles, University of Utah Press.

⁵ Programa de Manejo, *ibid*, 45-46.

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abundantly share the Pinacate with our relatives, the 560 plant species of vascular plants, 37 mammals, and over 230 birds and 42 reptiles and four amphibians⁶, and especially the Bighorn Sheep, Mule deer, Pronghorn Antelope, Golden Eagle, Great Horned Owl, Pygmy Owl, Desert Tortoise, and Gila Monster, among many others.

The Pinacate was designated by the Federal Mexican Government as a biosphere in 1993⁷. All the O’odham patrimony mentioned were mentioned in the original nomination⁸ for the World Heritage Listing in 2013 with UNESCO⁹ and officially seen as a contribution of O’odham “rational and traditional use of natural resources which have contributed to the general conservation of the region, and in particular, of the Pinacate and the Desierto Gran Altar”. Out of 34 proposed sites heritage sites, it is one of only six such sites designated in Mexico.

It is at the heart of the traditional O’odham territory which both Mexico and the United States took without consultation, and is still part of our patrimony as original peoples of the Sonoran Desert. Both in the nomination documentation as a World Heritage Site and in the subsequent management plan¹⁰, *O’odham are named as partners in its preservation, which is tacit recognition our historic presence.*

2.1 Suppression of O’odham Spiritual, Ecological, and Cultural Practices

Among the O’odham are those who freely participate in religions that hold their unique places of worship in sacred regard. In that vein, any unwarranted incursion into such places where prayers are held, birth rituals are performed, the faithful are confirmed, and where deaths are consecrated, would be a violation of their constitutional right to practice their religion. It would be a major human rights violation if they were prevented from participating in their major religious ceremonies; Christmas, Passover, or Ramadan in churches, temples, or mosques, respectively.

I have never heard of a United States Government invading those houses of worship in order to then divide them in two by building a physical barrier, let alone a permanent wall inside. Clearly, such a wall for the traditional spiritual practices of O’odham in Mexico would block those faithful from hearing or reciting prayers, attending an all-night sing, from accessing a ritual celebrating O’odham childbirth, from attending Native American Church ceremonies, or our two major native ceremonies, the wine ceremony and the Vi:gita, from being in contact with their spiritual leaders to plan spiritual gatherings, from planning and participating in traditional runs, or support

⁶ Programa de Manejo, *ibid*, 23,24, 25

⁷ Programa de Manejo, Reserva de la Biosfera El Pinacate y Gran Desierto Alta, Municipios de Puerto Peñasco, General Plutarco Elías Calles, y San Luis de Colorado, Sonora, México. Agosto, 1994, p. 10.

⁸ [Nomination Format for Natural Property, EL Pinacate y Gran Desierto de Altar, Biosphere Reserve](#), For inscription on the World Heritage List, p. 6 . Accessed 4-14-17

⁹ Nomination Format for Natural Property, *ibid*. p. 68.

¹⁰ Programa de Manejo, *ibid*. See page 2. For research and documentation of “arqueological, historical, and cultural patrimony, based on O’odham resource conservation and cultural practices” [unofficial translation], see p. 86.

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or participate in the O’odham Men’s Salt Ceremony and Pilgrimage. We identify the Pinacate as one of two most holy O’odham places where the creation took place, no less holy to us than *the Western Wall* is for Jewish peoples, or *the Church of the Most Holy Sepulture* is for Christians who make pilgrimages there, or *Mecca* is for Muslims who hope to visit there at least once in their lifetime.

We venerate the Pinacate.

So I ask President Trump of the United States Government, *is he going to build a wall in all such places of worship, or only in ours?*

By constructing a wall on the North side of the Pinacate and Gran Desierto de Altar Bio-sphere, *Schuk Toak* will be cut off from another portion of the traditional O’odham homeland, now occupied by three other special US conservation zones. The United States will deny O’odham from Mexico free access into those US conservation zones, and O’odham in the United States free access into the Pinacate in Mexico. Exclusionary colonial religious practices informed the formation of the UNDRIP (2007) and thus foresaw and now prohibits such denial of religious rights:

Article 12

1. Indigenous peoples have the right to *manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.* (italics added).

Our right is not limited to past or present spiritual practices alone. Just as peoples of other religious practices hope to instill values inherent to their beliefs in their children, so too do the O’odham. Articles 11 and 13 of the UNDRIP extend that protection to future generations:

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate

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and retain their own names for communities, places and persons.

2.2 O’odham Legal Rights in Light of US Border Militarization

The United States Government has repeatedly mischaracterized its actions in the traditional O’odham homeland as domestic security measures, when in fact they are military in nature. A series of US administrations have now carried out accumulative military actions in the past sixteen years to date in O’odham communities and on the international border, including but hardly limited to: scraping off vegetation for road building; installing ground sensors, installing metal barriers, nocturnal vehicle patrols at high speeds, drones, satellites, helicopters, construction of forward operating bases, placement of an armed paramilitary force in our communities (Border Patrol), placing cameras in cacti, installing mountain top cameras, fifteen surveillance towers (recently approved for construction), the use of radio waves within the Tohono O’odham Nation, highway checkpoints, and a highly restrictive and prohibitory territorial control¹¹. As previously stated, some 1,000 -1,300 O’odham in Sonora are legal members of the Tohono O’odham Nation, and recognized by the Bureau of Indigenous Affairs, under the Department of the Interior, US Federal Government, and are therefore affected by those actions carried out by especially but not limited to the Department of Homeland Security of the US government on the Tohono O’odham Nation.

United Nations DRIP 2007, Article 30 states:

Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

The United States government may have forgotten its original act, the Treaty of Mesilla, which separated the O’odham homeland in 1852, but we haven’t. UNDRIP Article 30 Section 2 makes an exception for “relevant public interest” for state military actions on indigenous lands, but such a justification was not publically demonstrated for the complex of military installations and implemented security protocols prior to or in the post September 11, 2001 period to date on the Tohono O’odham’s southern border. Furthermore, the Traditional O’odham Government in Mexico has not been consulted about the effects on us as part of the O’odham peoples impacted by military activities using our lands or territories. Articles clearly state that as *representational*

¹¹ See: Todd Miller, Border Patrol Nation, Chapter Five: Unfinished Business in Indian Country, City Lights Books, 2014. 115-150.

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traditional government, the Traditional O’odham Leaders in Sonora, México, which is a government repeatedly recognized by the Tohono O’odham Nation in a series of legislative resolutions, has the absolute political right to remain part of the Tohono O’odham Nation’s political representation.¹² As well, even though the United States Government conveniently forgets about the O’odham in Mexico, which in effect the United States forcedly and illegally separately from O’odham in the United States in the XIX Century, even now in 2017, under UNDRIP 2007, the US Federal Government has an international obligation to consult us, as stated in Article 36, Sections 1 and 2:

1.
Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2.
States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Our traditional O’odham Representatives have not been consulted about military activities affecting our homeland, including the most recent potential threat of a border wall with its anticipated horrendous effects on the Pinacate and Gran Desierto Altar Biosphere. We have not been informed about their military actions, nor have we consented to them. The United States Government is bound by Articles 18 and 19 to seek our free and informed consent:

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

¹² See [Tohono O’odham Legislative Council Resolutions](#): 43 -79 (1979) 95-562 (1995), and 05-725 (2015).

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Given that the O’odham in Mexico did not collectively choose to be separated from their co-tribal members in 1852, but were separated by legal fiat, and the United States Government did not then consult our elected traditional leaders, nor does it now in 2017 consult with our institutional representation, the Traditional O’odham Leaders of Sonora, let alone respect or protect our rights under UNDRIP (2007), a border wall would further separate us and force us to assimilate into being non-O’odham citizens in Mexico, and deny our rights as citizens of the Tohono O’odham Nation. That action would constitute violation of Article 8: Sections a, b, c, and d.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
 - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
 - (d) Any form of forced assimilation or integration;

2.3 United States Disloyalty to the O’odham People

Paradoxically, since first contact, we have respected the security needs of the United States. O’odham have served in most US wars abroad. We protected Tucson in 1873 when the Department of War requested we supply 150 warriors at San Xavier de Bac.¹³ We have never been at war with the United States or any state therein. The Tohono O’odham Cultural Center and Museum at Topawa (TON) displays some of our warriors’ proud past service to the United States Armed Services.

The United States’ Government’s utter disregard for our sacred way of life is astounding. Such disloyalty on the part of the US government to the O’odham people creates far more insecurity than that posed by poor immigrants, because they have sown distrust and while they seek and engage in cooperative security agreements with the Federal Mexican Government, they disregard the damage done to O’odham in particular. Generally, they are, as a matter of policy, demonstrating to all other indigenous nations globally how our loyalty to the United States Government is being repaid.

¹³ Edward Spicer, *Cycles of Conquest*, University of Arizona, 1962, 134.

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2.4 Threats to Biological Species & O’odham Traditional Knowledge

Related to the spiritual, cultural, and political violations mentioned above, the Border Wall proposed by the United States denies our ecologically derived and customary mobility and migration throughout the Sonoran Desert in México and the United States. For several millenium, O’odham ecological practices have sustained, with other beings, the natural resources of the Sonoran Desert. However, United States’ militarization of the US southern border in the past sixteen years has diminished our customary access to natural resources, denied our sustainable and shared ecological management practices with other beings in the Sonoran Desert, and has degraded Sonoran Desert environs to areas of unsustainable habitat which reduces species. In totality, we are witnesses to an on-going act of ecocide by the United States’ government. Under UNDRIP Article 29, our own rights to natural resource conservation have been violated.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. . .
[partially cited].





The border wall proposal has been promoted with a careless disregard for what effects a border wall would have on our legal rights of conservation and protection of the environment, those to maintain and protect our cultural heritage, traditional knowledge, expressions, and related oral traditions in the Pinacate, practices that we also promoted in cooperation with other organizations. We anticipate a constructed wall would deny O’odham access to seeds and plant medicines, delimit further generation of our scientific knowledge of fauna and flora in the Pinacate. These are all rights protected under UNDRIP articles 29 and 31:

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, . . . their sciences . . . , seeds, medicines, knowledge of . . . of fauna and flora, oral traditions. . . They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions. [partially cited].





In Appendix 1 below, we list some (but not all) endemic, threated, or endangered plant, mammal, aviary, and aquatic species of grave concern to the O’odham contained within and in the peripheral areas to the Pinacate. We also document natural aquatic-hydrologic features under threat.

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Appendix I: Species in the Pinacate: Endemic, threatened, endangered, under protective status .	
Endemic Plant Species ¹⁴	
Croton wigginsii (Dune Croton)	
Dimorphocarpa pinnatifida (spectacle pod)	
Eriogonum deserticola (desert buckwheat)	
Euphorbia platysperma	
Heterotheca thiniicola	
Pholisma sonorae	
Pholisma sonorae	
Stephanomeria schottii	

¹⁴ Botanical Diversity of the Southwestern Arizona and Northwestern Sonora, Dry Borders, Great Natural Reserves of the Sonoran Desert, Richard Stephen Felger, et al. 2007, 208.

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Threatened ^ ,endangered, and culturally relevant ∇ Succulent Species ¹⁵	
<p><i>echinomastus erectocentra acunensis</i> Pin cushion cactus.</p>	
<p><i>Carnegiea gigantea</i> ∇ Saguaro ∇</p>	<p><i>Carnegiea gigantea</i> ∇ Sahuaro ∇</p> <div style="text-align: center;">  <p>(photot: WClarke -, CC BY-SA 3.0,https://commons.wikimedia.org/w/index.php?curid=53486726)</p> </div>
<p><i>Stenocereus thurberi</i> Pitaya ∇</p>	
Threatened^ ,Endangered ^ , or Special Protective Status< Mammal Species ¹⁶ :	
<p><i>Leptonycteris curasoae yerbabuenae</i> ^ Long-nosed bat ^</p>	<p><i>Leptonycteris curasoae yerbabuenae</i> ^ Murciélago ^</p>
<p><i>Ovis canadensis</i> ^ Cimarron Borrego ^</p>	<p><i>Ovis canadensis</i> ^ Bighorn Sheep ^</p> <div style="text-align: center;">  </div>
<p><i>Antilocapra americana sonoriensis</i>^ Borrendo sonorensis^</p>	<p><i>Antilocapra americana sonoriensis</i>^ Pronghorn^</p> <div style="text-align: center;">  </div>
<p><i>Taxidea taxus</i> ^ Tejón ^</p>	<p><i>Taxidea taxus</i> ^ American Badger^</p>
Threatened^ ,Endangered ^ , or Special Protective Status< Aviary Species ¹⁷ :	
<p><i>Aguila chrysaetos</i> ^ Golden Eagle ^</p>	<p><i>Aguila chrysaetos</i> ^ Aguila Dorada ^</p>
<p><i>Parabuteo unicintus</i> ^ Harris Hawk^</p>	<p><i>Parabuteo unicintus</i> ^ Halcón de Harris ^</p>
<p><i>Buteo jamaicensis</i>< Red Tail Hawk<</p>	<p><i>Buteo jamaicensis</i>< Halcón de cola roja<</p>

¹⁵ Programa de Manejo, Reserva de la Biosfera El Pinacate y Gran Desierto de Altar, Municipios de Puerto Peñasco, Gral. Plutarco Elías Calles y San Luis Rio Colorado, Sonora, México. Agosto, 1994. 26.

¹⁶Programa de Manejo, Ibid, 25.

¹⁷ Programa de Manejo, Ibid, 26.

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Bubo virginianus Great Horned Owl	Buho	
Threatened[^], Endangered[^], or Special Protective Status^{<} Fish species¹⁸ :		
Agosia chrysogaster [^] Gila Longfin Dace [^]	Agosia chrysogaster [^] Charalito de Aleta Larga [^]	
Cyprinodon eremus [^] Pup fish [^]	Cyprinodon eremus [^] Pupo del Desierto [^]	
Fragile Landscape Hydrologic Features¹⁹:		
1. Beaches (unusual and shallow inland lakes): Playa Diaz, of "The Old Glasses near the Cerro Colorado Crater", and those formed in the Large craters like El Elegante and El McDougal. (author translation).	1. Playas (lagos intemos someros y poco usuales): Playa Diaz, de “Los Vidrios Viejos cerca del crater Cerro Colorado”, y aquellas que se forman en los grandes cráteres como El Elegante y El McDougal.	
	<p style="text-align: center;">Los vidrios. (photo: geoarcheological XRF lab) http://www.swxrflab.net/los_sitios_d_el_agua.htm</p>	
2. Intermittent tinaja.	1. Tinajas intermitentes (depósitos naturales en las rocas de las montañas)	
2. 23 Perennial and historic tinajas, including but not limited to “Papago Tinaja” used by O’odham traditionally.	3. 23 tinajas perennes e históricas usados por los O’odham de costumbre, incluso pero no solo lo del “Pápago”.	
3. Pits (natural deposits in the clay of the baffles) or tanks: [the dew and the tanks kiss].	4. Charcos (depósitos naturales en la arcilla de los vafles) o tanques: [el rocío s y los tanques beso”.	
4. Springs	5. Manantiales	

¹⁸ María De Lourdes Murguía Ruiz, El Agua en la Reserva de la Biosfera el Pinacate y Gran Desierto de Altar, Sonora, México: Comunidades, Vida Silvestre y la Frontera con Estados Unidos. Natural Resources Journal, Vol. 40, Spring 2000. Endemic Fish: 420-421., Plan de Manejo, ibid, 29.

¹⁹ Maria De Lourdes Murguía Ruiz, 2000, ibid. For playas, tinajas, charcos, manantiales, ojos de agua y pozos, See: 418-421. Salt lakes were also described by O’odham Salt Ceremony and Pilgrimage leader Ken Josemaria, April 20, 2017, e-mail correspondence with Blake Gentry.

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5. Artesian spring or wells (a form of artesian spring located along the area between tides of the Gulf).	6. Ojos de agua o pozos (una forma de manantial artesiano localizado a lo largo de la zona de entre mareas del Golfo).
7. “Agua Dulce”, the most prominent portion of the river that extends over 3 kilometres and covers a total of 39 has. Besides being a source of water for the species that inhabit or move around this reserve, the outcrops of permanent surface water throughout the year, originated the so-called “pools” or “pozas”, known to O’odham as Bacs/Wacs/Vacs ,a.k.a “seeps”. This is located in the El Refugio- Agua Dulce Ranch within the Biosphere on private land.	7. "Agua Dulce", la parte más prominente del río Sonoyta que se extiende sobre 3 kilómetros y cubre un total de 39 ha. Además de ser una fuente de agua para las especies que habitan o se mueven alrededor de esta reserva, los afloramientos de agua superficial permanente a lo largo del año, originaron las llamadas "piscinas" o "pozas", conocidas por O'odham como Bacs / Wacs / Vacs, también conocido como "seeps". Se encuentra ubicado en el Refugio Rancho El Refugio -Agua Dulce dentro de la Biosfera en terrenos privados.
8. Salt lake Tres Ojitos ²⁰	8. Salinas Tres Ojitos
9. San Jorge Salt Lake.	9. Salinas San Jorge

²⁰ Maria De Lourdes Murguía Ruiz, 2000, *ibid.*419.

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**Appendix II: Statement of Tohono O'odham Tribal Member, Ken Josemaria,
regarding the Pinacate**

April 12th, 2017

My name is Ken Josemaria and I am a tribal member of the Tohono O'odham Nation in Sells Arizona. I am currently a leader of the Tohono O'odham Men's Salt Pilgrimage ceremony which has been happening once a year for the past 7 years. Historically in Jose Lewis Meranda's journal dated 1871 "Going for Salt" he writes about his personal experience participating in the Salt Pilgrimage ceremony. This journal is available at the Smithsonian Institute in Washington DC. There is also a copy of Jose Lewis Meranda's journal at the Him dag Ki Museum in Topawa Arizona.

The Salt Pilgrimage ceremony starts in Arizona and we travel into Sonora Mexico, Pinacate Biosphere, to the ocean and the salt fields along the coast of the Sea of Cortez and back to our start in Tohono O'odham Nation Arizona.

Regarding the unfortunate abuse of natural resource in a "protected area" Pinacate Biosphere this year I was surprised and bothered when we witnessed off-road recreational vehicles in the area of the Salt. There are signs posted all along the coastal road way stating "No off road vehicles in the Pinacate Biosphere ".

Recently pictures I saw from the salt area called Salinas Grande showed earth moving heavy equipment and piles of salt that had been sorted. I understand these salt fields are protected by the "World Heritage" recognition that this biosphere has.

I would request that the initial reasoning for this status of World Heritage would be realized again this day and every Tohono O'odham and Hia'ced O'odham sacred site, tinaja, fresh water spring, archaeological and burial site would be all equally protected from any intrusion what so ever indefinitely.

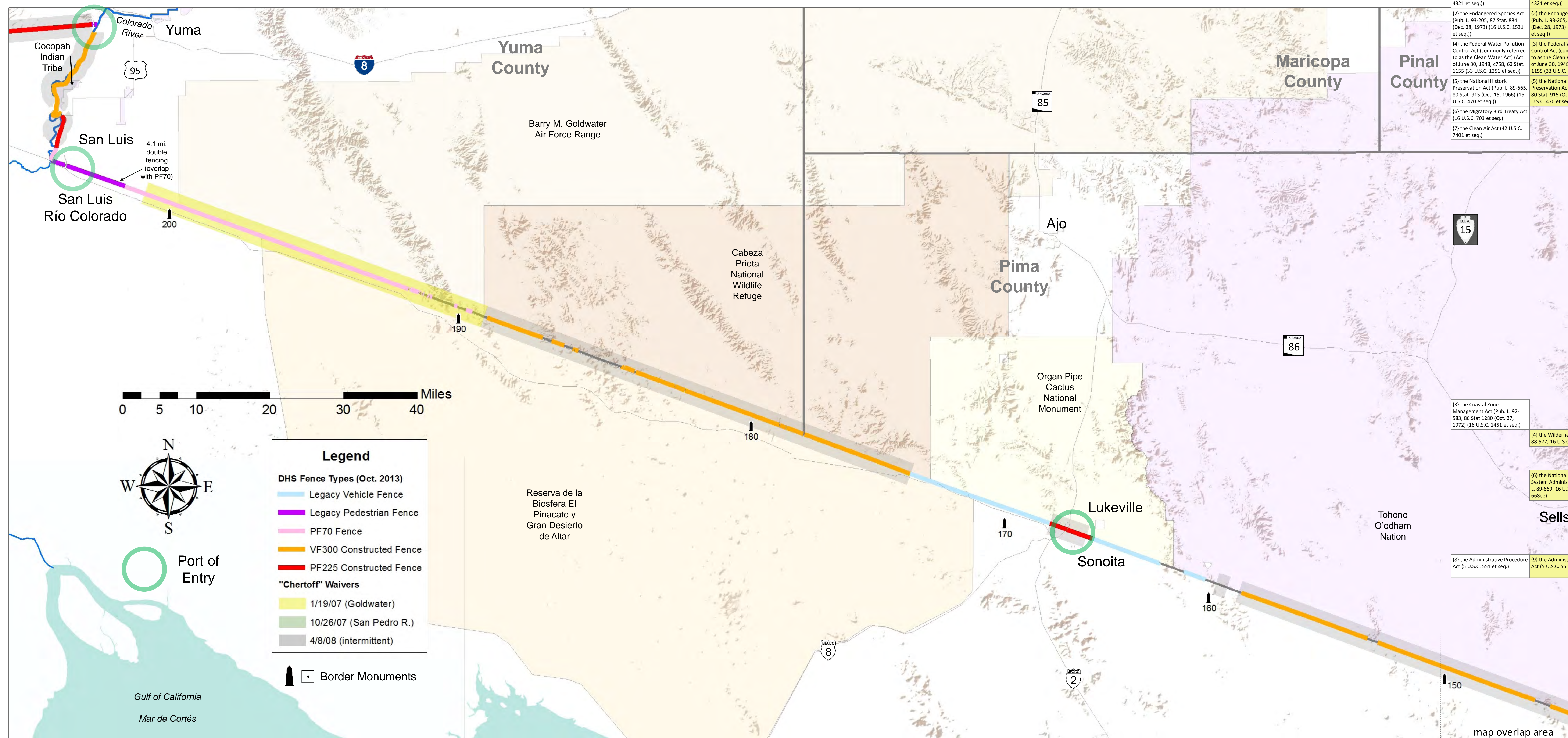
As a US citizen I must rely and depend on the conscience of the people in the Mexican Federal Government and their stewards to reassert and maintain the protection provided to Pinacate Gran Desierto de Altar Biosphere by its World Heritage status. I pray this is all reconsidered immediately.

Ken Josemaria
Tohono O'odham Nation Men's Salt Pilgrimage

Exhibit B:

Map of Border Barriers along El Pinacate World Heritage Site

Arizona Border Barriers



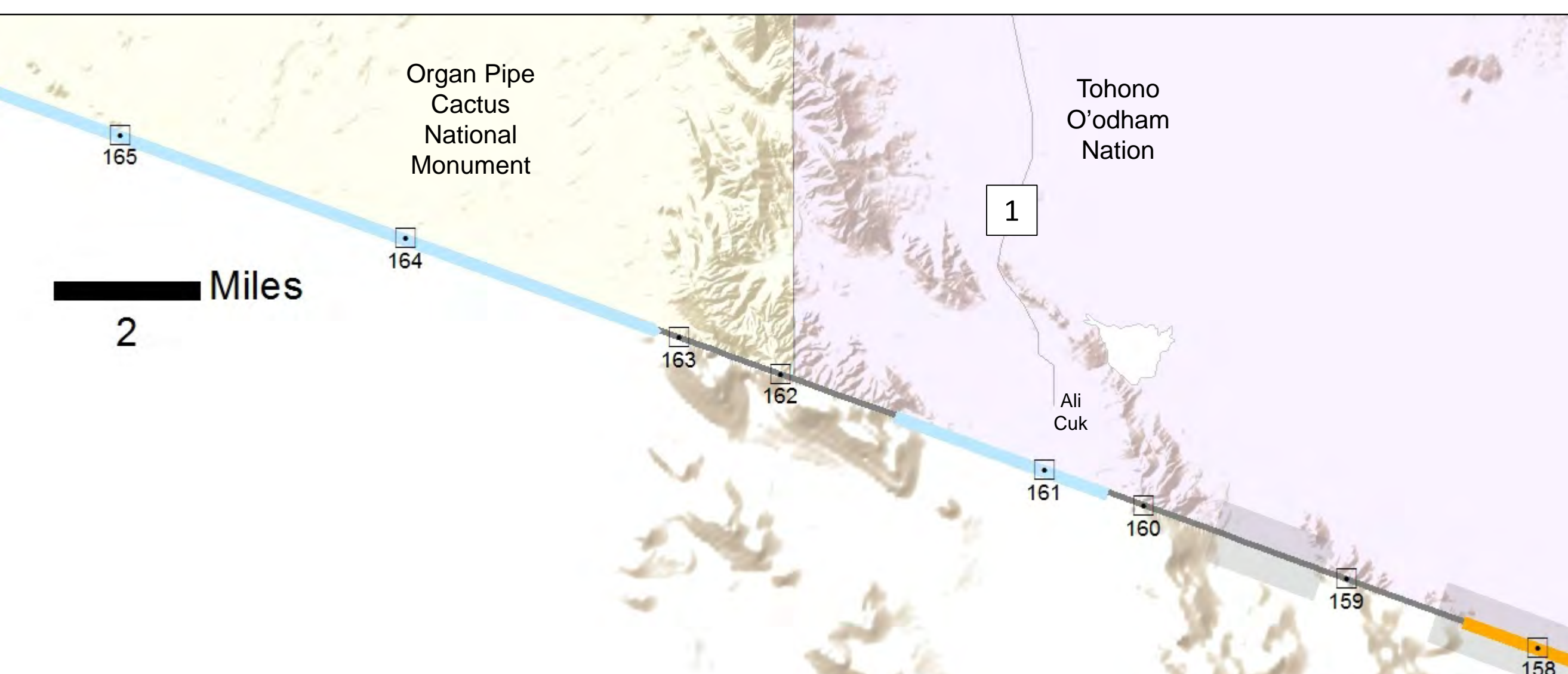
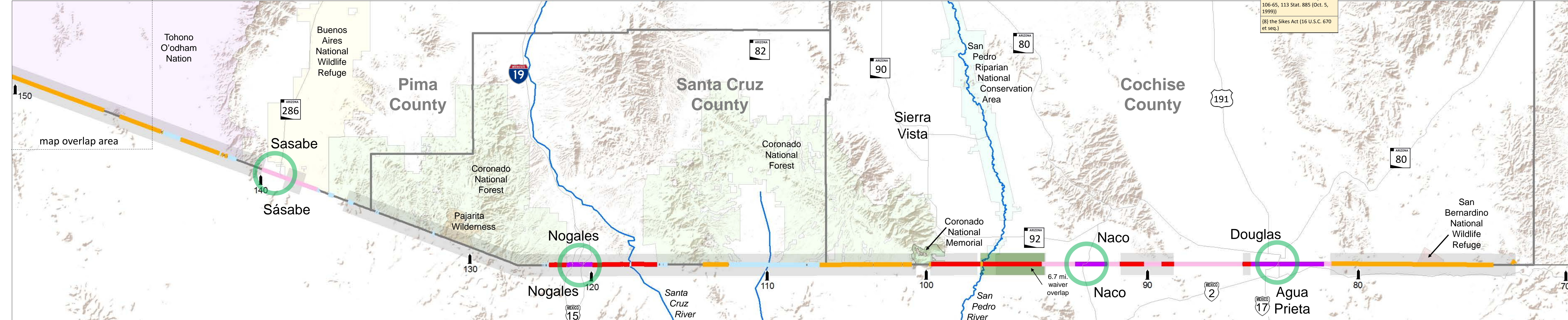
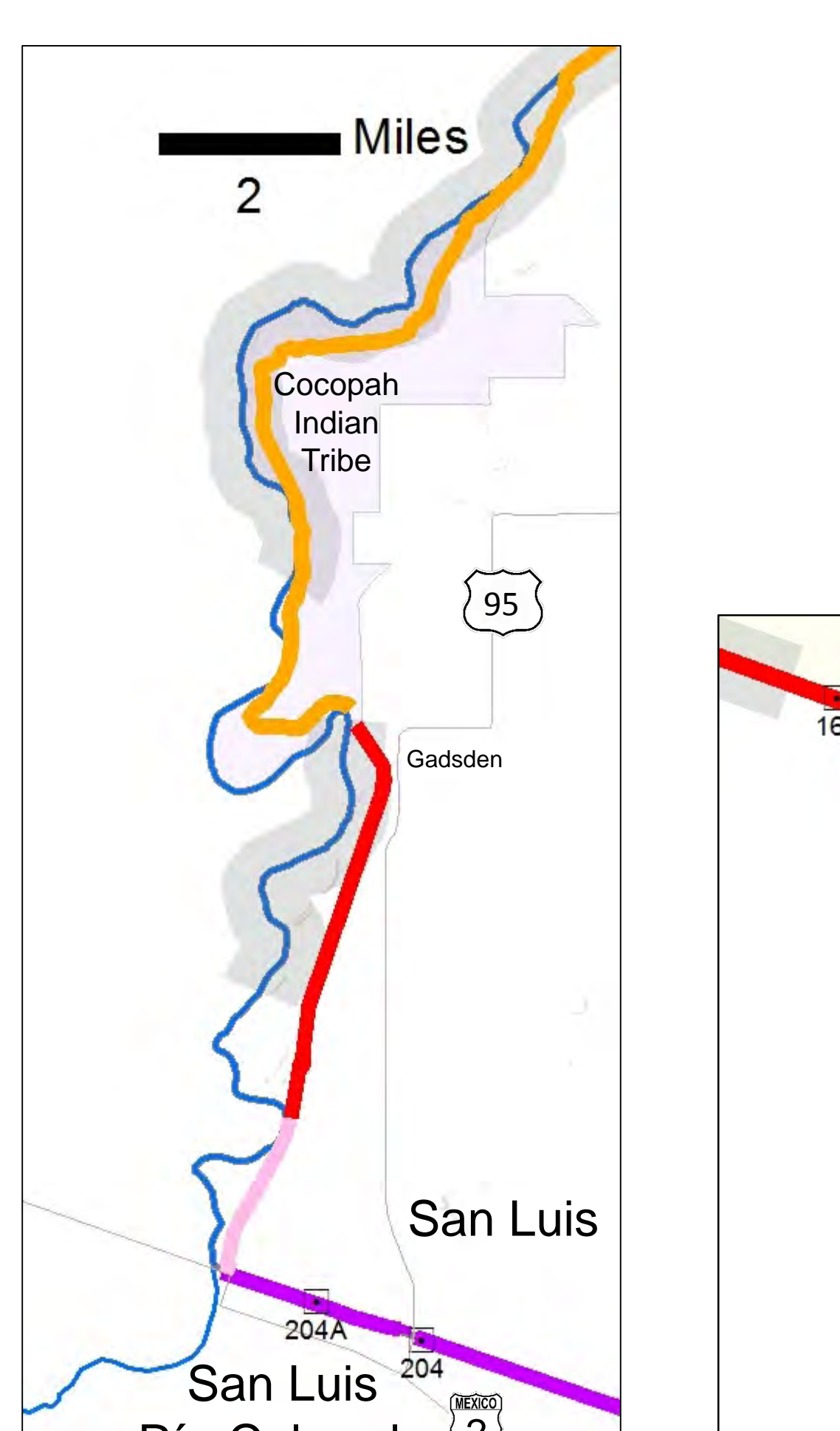
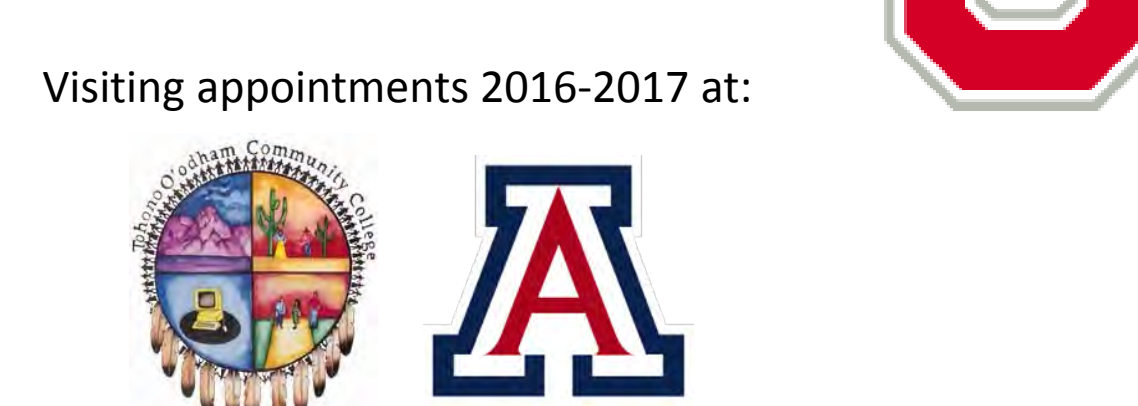
Secretary of Homeland Security Waivers Compared

By dominant geography and date Chertoff's notice of determination was published in the Federal Register. Order re-arranged to facilitate comparison.

9/22/05	1/19/07	10/26/07	4/8/08	4/8/08
(1) The National Environmental Policy Act (Pub. L. 91-190, 88 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 et seq.))	(1) The National Environmental Policy Act (Pub. L. 91-190, 88 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 et seq.))	(1) The National Environmental Policy Act (Pub. L. 91-190, 88 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 et seq.))	(1) The National Environmental Policy Act (Pub. L. 91-190, 88 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 et seq.))	(1) The National Environmental Policy Act (Pub. L. 91-190, 88 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 et seq.))
(2) The Endangered Species Act (Pub. L. 93-205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 et seq.))	(2) The Endangered Species Act (Pub. L. 93-205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 et seq.))	(2) The Endangered Species Act (Pub. L. 93-205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 et seq.))	(2) The Endangered Species Act (Pub. L. 93-205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 et seq.))	(2) The Endangered Species Act (Pub. L. 93-205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 et seq.))
(4) The Federal Water Pollution Control Act (commonly referred to as the Clean Water Act) (Act of June 30, 1948, 75th Cong., 62 Stat. 1153 (16 U.S.C. 1251 et seq.))	(4) The Federal Water Pollution Control Act (commonly referred to as the Clean Water Act) (Act of June 30, 1948, 75th Cong., 62 Stat. 1153 (16 U.S.C. 1251 et seq.))	(4) The Federal Water Pollution Control Act (commonly referred to as the Clean Water Act) (Act of June 30, 1948, 75th Cong., 62 Stat. 1153 (16 U.S.C. 1251 et seq.))	(4) The Federal Water Pollution Control Act (commonly referred to as the Clean Water Act) (Act of June 30, 1948, 75th Cong., 62 Stat. 1153 (16 U.S.C. 1251 et seq.))	(4) The Federal Water Pollution Control Act (commonly referred to as the Clean Water Act) (Act of June 30, 1948, 75th Cong., 62 Stat. 1153 (16 U.S.C. 1251 et seq.))
(5) The National Historic Preservation Act (Pub. L. 89-665, 80 Stat. 915 (Oct. 15, 1966) (16 U.S.C. 470 et seq.))	(5) The National Historic Preservation Act (Pub. L. 89-665, 80 Stat. 915 (Oct. 15, 1966) (16 U.S.C. 470 et seq.))	(5) The National Historic Preservation Act (Pub. L. 89-665, 80 Stat. 915 (Oct. 15, 1966) (16 U.S.C. 470 et seq.))	(5) The National Historic Preservation Act (Pub. L. 89-665, 80 Stat. 915 (Oct. 15, 1966) (16 U.S.C. 470 et seq.))	(5) The National Historic Preservation Act (Pub. L. 89-665, 80 Stat. 915 (Oct. 15, 1966) (16 U.S.C. 470 et seq.))
(6) The Migratory Bird Treaty Act (16 U.S.C. 702 et seq.)	(6) The Migratory Bird Treaty Act (16 U.S.C. 702 et seq.)	(6) The Migratory Bird Treaty Act (16 U.S.C. 702 et seq.)	(6) The Migratory Bird Treaty Act (16 U.S.C. 702 et seq.)	(6) The Migratory Bird Treaty Act (16 U.S.C. 702 et seq.)
(7) The Clean Air Act (42 U.S.C. 7401 et seq.)	(7) The Clean Air Act (42 U.S.C. 7401 et seq.)	(7) The Clean Air Act (42 U.S.C. 7401 et seq.)	(7) The Clean Air Act (42 U.S.C. 7401 et seq.)	(7) The Clean Air Act (42 U.S.C. 7401 et seq.)
(8) The Archaeological Resources Protection Act (Pub. L. 96-95, 16 U.S.C. 470aa et seq.)	(8) The Archaeological Resources Protection Act (Pub. L. 96-95, 16 U.S.C. 470aa et seq.)	(8) The Archaeological Resources Protection Act (Pub. L. 96-95, 16 U.S.C. 470aa et seq.)	(8) The Archaeological Resources Protection Act (Pub. L. 96-95, 16 U.S.C. 470aa et seq.)	(8) The Archaeological Resources Protection Act (Pub. L. 96-95, 16 U.S.C. 470aa et seq.)
(9) The Safe Drinking Water Act (42 U.S.C. 300f et seq.)	(9) The Safe Drinking Water Act (42 U.S.C. 300f et seq.)	(9) The Safe Drinking Water Act (42 U.S.C. 300f et seq.)	(9) The Safe Drinking Water Act (42 U.S.C. 300f et seq.)	(9) The Safe Drinking Water Act (42 U.S.C. 300f et seq.)
(10) The Noise Control Act (42 U.S.C. 4901 et seq.)	(10) The Noise Control Act (42 U.S.C. 4901 et seq.)	(10) The Noise Control Act (42 U.S.C. 4901 et seq.)	(10) The Noise Control Act (42 U.S.C. 4901 et seq.)	(10) The Noise Control Act (42 U.S.C. 4901 et seq.)
(11) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.)	(11) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.)	(11) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.)	(11) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.)	(11) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.)
(12) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.)	(12) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.)	(12) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.)	(12) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.)	(12) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.)
(13) The Archaeological and Historic Preservation Act (Pub. L. 86-523, 16 U.S.C. 469 et seq.)	(13) The Archaeological and Historic Preservation Act (Pub. L. 86-523, 16 U.S.C. 469 et seq.)	(13) The Archaeological and Historic Preservation Act (Pub. L. 86-523, 16 U.S.C. 469 et seq.)	(13) The Archaeological and Historic Preservation Act (Pub. L. 86-523, 16 U.S.C. 469 et seq.)	(13) The Archaeological and Historic Preservation Act (Pub. L. 86-523, 16 U.S.C. 469 et seq.)
(16) The Antiquities Act (16 U.S.C. 431 et seq.)	(16) The Antiquities Act (16 U.S.C. 431 et seq.)	(16) The Antiquities Act (16 U.S.C. 431 et seq.)	(16) The Antiquities Act (16 U.S.C. 431 et seq.)	(16) The Antiquities Act (16 U.S.C. 431 et seq.)
(17) The Historic Sites, Buildings, and Antiquities Act (16 U.S.C. 461 et seq.)	(17) The Historic Sites, Buildings, and Antiquities Act (16 U.S.C. 461 et seq.)	(17) The Historic Sites, Buildings, and Antiquities Act (16 U.S.C. 461 et seq.)	(17) The Historic Sites, Buildings, and Antiquities Act (16 U.S.C. 461 et seq.)	(17) The Historic Sites, Buildings, and Antiquities Act (16 U.S.C. 461 et seq.)
(18) The Arizona-Idaho Conservation Act of 1988 (Pub. L. 100-696, 16 U.S.C. 460a et seq.)	(18) The Arizona-Idaho Conservation Act of 1988 (Pub. L. 100-696, 16 U.S.C. 460a et seq.)	(18) The Arizona-Idaho Conservation Act of 1988 (Pub. L. 100-696, 16 U.S.C. 460a et seq.)	(18) The Arizona-Idaho Conservation Act of 1988 (Pub. L. 100-696, 16 U.S.C. 460a et seq.)	(18) The Arizona-Idaho Conservation Act of 1988 (Pub. L. 100-696, 16 U.S.C. 460a et seq.)
(19) The Wild and Scenic Rivers Act (Pub. L. 90-542, 16 U.S.C. 1281 et seq.)	(19) The Wild and Scenic Rivers Act (Pub. L. 90-542, 16 U.S.C. 1281 et seq.)	(19) The Wild and Scenic Rivers Act (Pub. L. 90-542, 16 U.S.C. 1281 et seq.)	(19) The Wild and Scenic Rivers Act (Pub. L. 90-542, 16 U.S.C. 1281 et seq.)	(19) The Wild and Scenic Rivers Act (Pub. L. 90-542, 16 U.S.C. 1281 et seq.)
(20) The Farmland Protection Policy Act (7 U.S.C. 4201 et seq.)	(20) The Farmland Protection Policy Act (7 U.S.C. 4201 et seq.)	(20) The Farmland Protection Policy Act (7 U.S.C. 4201 et seq.)	(20) The Farmland Protection Policy Act (7 U.S.C. 4201 et seq.)	(20) The Farmland Protection Policy Act (7 U.S.C. 4201 et seq.)
(21) The Coastal Zone Management Act (Pub. L. 92-589, 16 U.S.C. 1601 (Oct. 27, 1972) (16 U.S.C. 1451 et seq.))	(21) The Coastal Zone Management Act (Pub. L. 92-589, 16 U.S.C. 1451 et seq.)	(21) The Coastal Zone Management Act (Pub. L. 92-589, 16 U.S.C. 1451 et seq.)	(21) The Coastal Zone Management Act (Pub. L. 92-589, 16 U.S.C. 1451 et seq.)	(21) The Coastal Zone Management Act (Pub. L. 92-589, 16 U.S.C. 1451 et seq.)
(4) The Wilderness Act (Pub. L. 89-571, 16 U.S.C. 1131 et seq.)	(4) The Wilderness Act (Pub. L. 89-571, 16 U.S.C. 1131 et seq.)	(4) The Wilderness Act (Pub. L. 89-571, 16 U.S.C. 1131 et seq.)	(4) The Wilderness Act (Pub. L. 89-571, 16 U.S.C. 1131 et seq.)	(4) The Wilderness Act (Pub. L. 89-571, 16 U.S.C. 1131 et seq.)
(6) The National Wildlife Refuge System Administration Act (Pub. L. 89-669, 16 U.S.C. 6688-6688f)	(6) The National Wildlife Refuge System Administration Act (Pub. L. 89-669, 16 U.S.C. 6688-6688f)	(6) The National Wildlife Refuge System Administration Act (Pub. L. 89-669, 16 U.S.C. 6688-6688f)	(6) The National Wildlife Refuge System Administration Act (Pub. L. 89-669, 16 U.S.C. 6688-6688f)	(6) The National Wildlife Refuge System Administration Act (Pub. L. 89-669, 16 U.S.C. 6688-6688f)
(14) The Fish and Wildlife Coordination Act (Pub. L. 73-121, 16 U.S.C. 661 et seq.)	(14) The Fish and Wildlife Coordination Act (Pub. L. 73-121, 16 U.S.C. 661 et seq.)	(14) The Fish and Wildlife Coordination Act (Pub. L. 73-121, 16 U.S.C. 661 et seq.)	(14) The Fish and Wildlife Coordination Act (Pub. L. 73-121, 16 U.S.C. 661 et seq.)	(14) The Fish and Wildlife Coordination Act (Pub. L. 73-121, 16 U.S.C. 661 et seq.)
(8) The Administrative Procedure Act (5 U.S.C. 551 et seq.)	(8) The Administrative Procedure Act (5 U.S.C. 551 et seq.)	(8) The Administrative Procedure Act (5 U.S.C. 551 et seq.)	(8) The Administrative Procedure Act (5 U.S.C. 551 et seq.)	(8) The Administrative Procedure Act (5 U.S.C. 551 et seq.)
(9) The Administrative Procedure Act (5 U.S.C. 551 et seq.)	(9) The Administrative Procedure Act (5 U.S.C. 551 et seq.)	(9) The Administrative Procedure Act (5 U.S.C. 551 et seq.)	(9) The Administrative Procedure Act (5 U.S.C. 551 et seq.)	(9) The Administrative Procedure Act (5 U.S.C. 551 et seq.)
(21) The Administrative Procedure Act (5 U.S.C. 551 et seq.)	(21) The Administrative Procedure Act (5 U.S.C. 551 et seq.)	(21) The Administrative Procedure Act (5 U.S.C. 551 et seq.)	(21) The Administrative Procedure Act (5 U.S.C. 551 et seq.)	(21) The Administrative Procedure Act (5 U.S.C. 551 et seq.)
(22) The Rivers and Harbors Act of 1899 (33 U.S.C. 403)	(22) The Rivers and Harbors Act of 1899 (33 U.S.C. 403)	(22) The Rivers and Harbors Act of 1899 (33 U.S.C. 403)	(22) The Rivers and Harbors Act of 1899 (33 U.S.C. 403)	(22) The Rivers and Harbors Act of 1899 (33 U.S.C. 403)
(23) The Eagle Protection Act (16 U.S.C. 668 et seq.)	(23) The Eagle Protection Act (16 U.S.C. 668 et seq.)	(23) The Eagle Protection Act (16 U.S.C. 668 et seq.)	(23) The Eagle Protection Act (16 U.S.C. 668 et seq.)	(23) The Eagle Protection Act (16 U.S.C. 668 et seq.)
(24) The Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.)	(24) The Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.)	(24) The Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.)	(24) The Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.)	(24) The Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.)
(25) The American Indian Religious Freedom Act (42 U.S.C. 1996)	(25) The American Indian Religious Freedom Act (42 U.S.C. 1996)	(25) The American Indian Religious Freedom Act (42 U.S.C. 1996)	(25) The American Indian Religious Freedom Act (42 U.S.C. 1996)	(25) The American Indian Religious Freedom Act (42 U.S.C. 1996)
(26) The Religious Freedom Restoration Act (42 U.S.C. 2000bb)	(26) The Religious Freedom Restoration Act (42 U.S.C. 2000bb)	(26) The Religious Freedom Restoration Act (42 U.S.C. 2000bb)	(26) The Religious Freedom Restoration Act (42 U.S.C. 2000bb)	(26) The Religious Freedom Restoration Act (42 U.S.C. 2000bb)
(35) The National Forest Management Act of 1906 (16 U.S.C. 1601 et seq.)	(35) The National Forest Management Act of 1906 (16 U.S.C. 1601 et seq.)	(35) The National Forest Management Act of 1906 (16 U.S.C. 1601 et seq.)	(35) The National Forest Management Act of 1906 (16 U.S.C. 1601 et seq.)	(35) The National Forest Management Act of 1906 (16 U.S.C. 1601 et seq.)
(36) and the Multiple Use and Sustained Yield Act of 1960 (16 U.S.C. 528-533)	(36) and the Multiple Use and Sustained Yield Act of 1960 (16 U.S.C. 528-533)	(36) and the Multiple Use and Sustained Yield Act of 1960 (16 U.S.C. 528-533)	(36) and the Multiple Use and Sustained Yield Act of 1960 (16 U.S.C. 528-533)	(36) and the Multiple Use and Sustained Yield Act of 1960 (16 U.S.C. 528-533)
(27) The Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6303-6305)	(27) The Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6303-6305)	(27) The Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6303-6305)	(27) The Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6303-6305)	(27) The Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6303-6305)
(7) The Military Lands Withdrawal Act of 1993 (Pub. L. 106-65, 113 Stat. 885 (Oct. 5, 1999))	(7) The Military Lands Withdrawal Act of 1993 (Pub. L. 106-65, 113 Stat. 885 (Oct. 5, 1999))	(7) The Military Lands Withdrawal Act of 1993 (Pub. L. 106-65, 113 Stat. 885 (Oct. 5, 1999))	(7) The Military Lands Withdrawal Act of 1993 (Pub. L. 106-65, 113 Stat. 885 (Oct. 5, 1999))	(7) The Military Lands Withdrawal Act of 1993 (Pub. L. 106-65, 113 Stat. 885 (Oct. 5, 1999))
(8) The Sites Act (16 U.S.C. 670 et seq.)	(8) The Sites Act (16 U.S.C. 670 et seq.)	(8) The Sites Act (16 U.S.C. 670 et seq.)	(8) The Sites Act (16 U.S.C. 670 et seq.)	(8) The Sites Act (16 U.S.C. 670 et seq.)

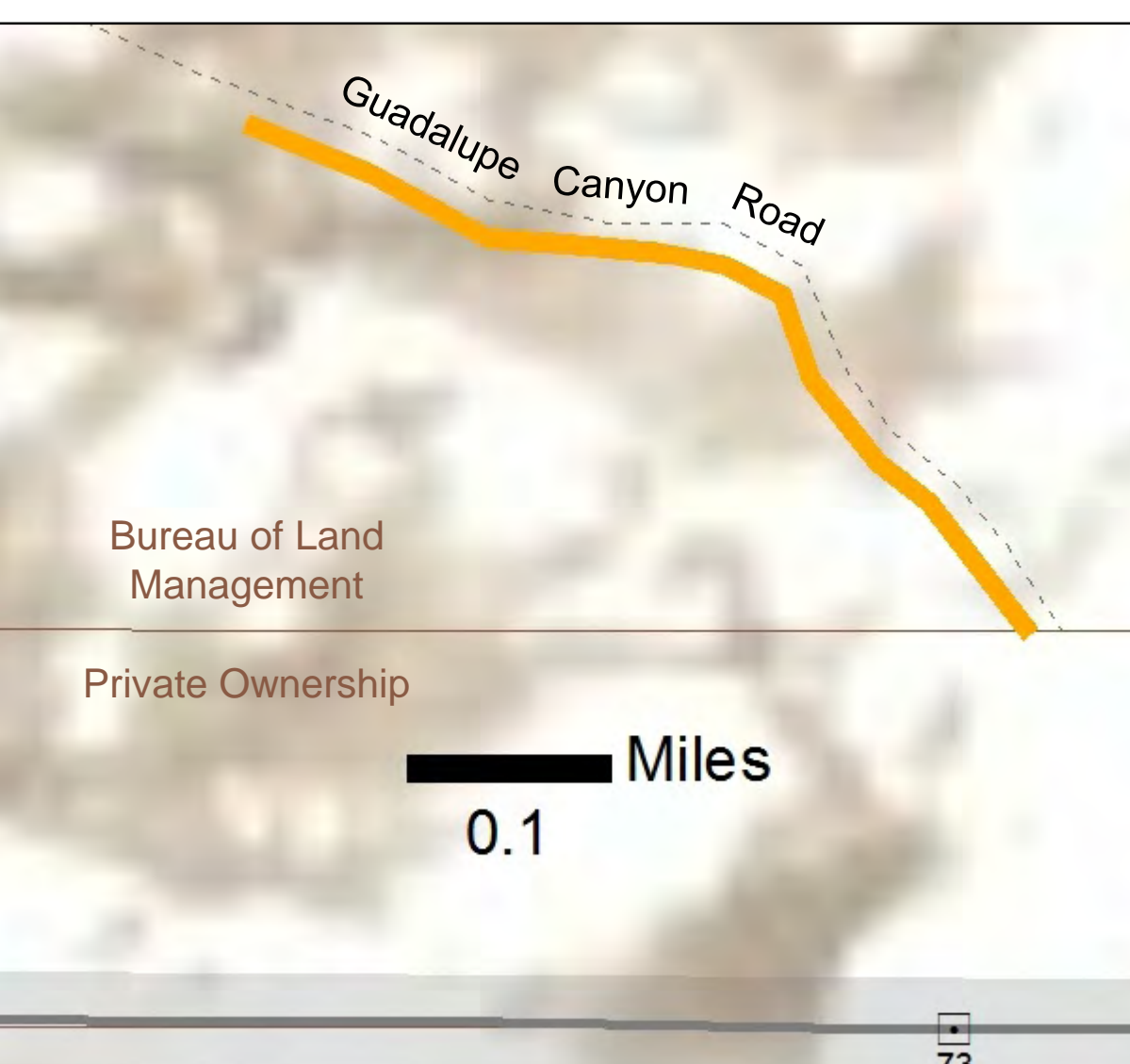


Cartography, Waiver Comparisons, Photos
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Observations:

- * barriers cover 361 out of 443 miles of Arizona's border with Mexico (81%)
- * "legacy" fences were those constructed before the Secure Fence Act of 2006
- * PF70 = primary (pedestrian) fence (70 miles planned nationally, 78 actually built in Arizona); relatively easy and pre-planned fencing put up shortly after the Secure Fence Act passed
- * PF225 = pedestrian fence (225 miles planned nationally, 44 in Arizona); 2007 and later
- * VF300 = vehicle fence (300 miles planned nationally, 160 in Arizona); 2007 and later
- * double-fencing is rare in Arizona (generally near ports-of-entry) and is not mapped here except 4.1 mi. east of San Luis
- * vehicle barriers generally require less disturbance and allow greater passage of wildlife
- * pedestrian barriers are generally found close to urban areas and relatively accessible rural locations
- * a substantial network of all-weather roads was built-up for these construction projects
- * stretches of border not presently covered by barriers are generally in remote areas with rough terrain
- * there are a variety of fence types within each of these categories; photos are illustrative rather than exhaustive
- * waivers cover 333 out of 443 miles of Arizona's border with Mexico (75%)
- * one area west of Naco is covered by two different waivers (6.7 mi. overlap)
- * there are several places where post-Secure Fence Act construction extends beyond Waivers (i.e. Cocopah Indian Tribe; Organ Pipe Cactus National Monument; between Naco and Douglas)
- * CBP frequently "voluntarily" complied with waived laws under the Obama administration
- * the Tohono O'odham Nation required full compliance with waived laws and only allowed vehicle barriers



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