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May 8, 2019

Via email and first-class mail

Paul Enriquez, Real Estate and
Environment Director
Border Wall Program Management Office
U.S. Customs and Border Protection
1300 Pennsylvania Avenue NW
Washington, DC 20229-1100

Dear Mr. Enriquez:

This letter responds to your correspondence dated April 8, 2019 requesting input concerning the stated plans of U.S. Customs and Border Protection (CBP) to build bollard walls along two sections of the U.S.-Mexico border in Luna and Doña Ana Counties in New Mexico.

New Mexico State Land Office

The New Mexico State Land Office is an independent state agency responsible for administering nine million acres of surface and 13 million acres of subsurface estate for the beneficiaries of the state land trust, which include public schools, universities, hospitals and other important public institutions. New Mexico acquired much of its state trust land under the Ferguson Act of 1898 and the Enabling Act of 1910, with additional lands obtained through subsequent conveyances and exchanges.

As New Mexico's Commissioner of Public Lands, it is my duty to optimize revenue for New Mexico schoolchildren and other beneficiaries while protecting the health of state trust lands for future generations. By leasing state trust lands for a wide array of uses, the State Land Office generates hundreds of millions of dollars each year to support the trust beneficiaries.

The State Land Office manages over a dozen tracts of land on or immediately adjacent to the U.S.-Mexico border, including over 29,000 acres presently leased for ranching within CBP's

project footprint. As the public official responsible for the wise and sustainable management of these lands, I have serious concerns about the federal government's decision to ignore numerous environmental and cultural resource protection laws to speed construction activity along the border. I also write to urge CBP to act with greater transparency and commitment to public accountability by providing the important and so-far-unexplained details of how it will oversee its construction project along the border. In the absence of any environmental planning document or even a meaningful construction proposal, all available information indicates that CBP's plans will cause unnecessary and lasting harm to rangeland, economic development and the environment in the borderlands of Luna and Doña Ana Counties.

Encroachment on State Trust Lands During Construction

CBP has stated its plans to construct two non-contiguous segments of "vehicle barrier replacement" along the border, "El Paso Project 1" and "El Paso Project 2." According to the Department of Homeland Security, "El Paso Project 1" includes 46 miles of barrier construction "beginning 17.5 miles west of the Columbus Port of Entry continuing east in non-contiguous segments to approximately 35 miles east of the Columbus Port of Entry," in Luna and Doña Ana Counties. "El Paso Project 2" includes 23.5 miles of barrier construction in three non-contiguous segments in Hidalgo and Luna Counties. *February 25, 2019 memorandum from Department of Homeland Security to Department of Defense, "Request for Assistance Pursuant to 10 U.S.C. § 284,"* at 9.

In your April 8, 2019 letter, you indicate that "[m]ore detailed information about the proposed border barrier project location and design is enclosed." That "more detailed information," however, is limited to a two-page attachment with a graphic indicating the approximate mileage of border wall construction in each of our two affected counties, and a schematic map with no scale and very few features depicted. CBP has not informed the public about the duration of CBP's planned construction, the number of personnel that will occupy border areas, the siting of power lines and lighting, location of staging areas, points of ingress and egress, and other details critical to any reasoned assessment of the impact of this construction project on the environment and on property owners along the border. I urge you to quickly correct this troubling lack of information.

In the absence of tangible information about "El Paso Project 1," the State Land Office and other stakeholders, including border communities, must examine the details of CBP's past ventures along the U.S.-Mexico border. CBP's plan for a different section of border wall construction (in Dona Ana County near the port of Santa Teresa, east of "El Paso Project 1") stated that the agency would construct "six staging areas totaling approximately 24.6 acres outside the Roosevelt Reservation ... to facilitate operation of equipment, staging of materials, and construction, and three existing access roads totaling approximately 6.5 miles will be used to access the project corridor." Department of Homeland Security, U.S. Customs and Border Protection, *Environmental*

Stewardship Plan for Replacement, Operation and Maintenance of Tactical Infrastructure (March 2018) (“ESP”) at CS-1. Notably, the 1907 proclamation that President Roosevelt issued reserving to the United States a sixty-foot strip along the border (commonly called the “Roosevelt Reservation”) provides that the reserved land is “set apart as a public reservation [and] may be used for public highways but for no other purpose whatsoever.” See Proclamation 758, *Setting Apart as Public Lands a Strip of Land on the Mexican Frontier* (1907). CBP’s imminent construction of a 46-mile border wall, presumably with ancillary infrastructure, is not consistent with the sole lawful purpose permitted by the very proclamation upon which CBP relies to assert control over lands along most of the border in Luna and Doña Ana Counties.

With respect to “El Paso Project 1,” CBP has not revealed the locations of its staging areas, or for road access to its 46-mile long construction site. CBP has not obtained any easement for use of state trust lands for staging areas, for the construction of new roads, or for the siting of power lines or other infrastructure, and since I began my service as Commissioner of Public Lands your agency has not contacted me or my staff for such permission. CBP’s unauthorized use of state trust lands for these purposes would be a serious and actionable violation of law. I urge CBP to communicate openly with the State Land Office regarding its operational plans and the impact that its construction activities will have on state trust lands.

Long-Term Impacts to State Trust Lands

Even if CBP’s wall-building does not directly trespass on state trust lands – a determination that cannot accurately be made at this point in time, since CBP has released so little information about its plans – the intended wall project will have lasting and negative implications for state trust lands that are close as sixty feet to the construction site.

Removal of current sections of fencing, and installation of the new wall material, will require digging, excavating, and trenching, destroying forage and eroding soils. CBP has not explained the intensity of vehicle traffic that will be required to accomplish its stated objectives, but the scope of the intended project would require the use of heavy earthmoving equipment for an extended period of time along the border, which we expect to have a negative impact on air quality as well as surface resources. Pile driving, welding, and cutting will create metal shavings and other waste that may contaminate soil and water in the area. Although CBP does not elaborate on any road building or upgrading it plans to conduct in support of its wall-building, any construction of a new road will likely result in additional surface disturbance and generate pollutants. In addition, new roadways will likely increase storm water runoff and therefore may pose a threat to water quality in the project area. CBP has not disclosed its plans for power lines or other infrastructure that may create additional surface disturbance, air pollution, and habitat disruption.

The two-page attachment to your April 8, 2019 letter states that the new bollard wall will

also include LED lighting and unspecified “detection technology,” and states that CBP “will work with the appropriate stakeholders to develop solutions to avoid excess lighting beyond the existing patrol road.” To date, the State Land Office has not received any information from CBP about your agency’s plans for mitigating light pollution along the approximately 46 miles of new construction. Without any description of the specific light sources, frequency or intensity that CBP intends to use, it is impossible to make any precise analysis of the severity of this trespass on immediately adjacent state trust lands.

Lasting Damage to Habitat and Threatened Species

CBP has agreed that it “will be responsible for any applicable environmental planning and compliance to include stakeholder outreach and consultation associated with the [border wall construction].” *February 25, 2019 Memorandum from Department of Homeland Security to Department of Defense, “Request for Assistance Pursuant to 10 U.S.C. § 284,”* at 2. To date, CBP has not engaged in any outreach and consultation with the State Land Office, or to my knowledge with other communities or organizations in New Mexico that will be affected by this massive construction project. There is no publicly available evidence that CBP has engaged in any environmental planning for its imminent wall-building project.

Although CBP has presented no evaluative study on the environmental impacts of “El Paso Project 1,” a number of scientists, advocates and community members have done so. An analysis co-authored by Stanford University biologists Paul Ehrlich and Rodolfo Dirzo concluded that border wall construction is “reducing the area, quality, and connectivity of plant and animal habitats and [is] compromising more than a century of binational investment in conservationThe border wall threatens some populations by degrading landscape connectivity. Physical barriers prevent or discourage animals from accessing food, water, mates, and other critical resources by disrupting annual or seasonal migration and dispersal routes.” See Robert Peters et al., “Nature Divided, Scientists United: US-Mexico Border Wall Threatens Biodiversity and Binational Conservation,” *BioScience*, Vol. 68, No. 10 (Oct. 2018) at 740. Aggressive border wall construction will likely harm endangered or threatened species in New Mexico including the Mexican gray wolf. *Id.* at 741. New Mexico State University professor Gary Roemer, who has conducted extensive fieldwork in the New Mexico borderlands, confirms that “border walls sever wildlife connectivity.”

Although local advocacy organizations like the Center for Biological Diversity and Southwest Environmental Center have undertaken thoughtful analysis of the dangers that border wall construction poses to wildlife, your fellow federal agencies also have sounded the alarm. As you are likely aware, a September 2017 draft letter addressed to you from the U.S. Fish and Wildlife Service’s Southwest Regional Office warned that “the Service recommends considering technology, additional border patrols agents and other mechanisms, instead of installation of levee or bollard walls” due to reduction of habitat connectivity.

The environmental harms that CBP's bollard wall threatens are not limited to habitat fragmentation. The sparse information CBP has shared with New Mexicans indicates that your agency plans to flood the border wall with high-intensity lighting. In 1999, New Mexico enacted the Night Sky Protection Act "to preserve and enhance the state's dark sky while promoting safety, conserving energy and preserving the environment for astronomy." NMSA 1978, § 74-12-2. The prospect of constant and intensive illumination along 46 miles of border will impair this carefully crafted balance. As the U.S. Fish and Wildlife Service concluded, "[i]ncreased lighting at night, along the wall, will likely have negative impacts on ocelot, jaguarondi and other nocturnal species," and urged CBP to more carefully analyze the effects of lighting to nocturnal wildlife. CBP does not appear to have accepted this professional assessment.

Perhaps most troubling, while your April 8, 2019 letter states CBP's desire to consider environmental impacts and conduct environmental site assessments, the Department of Homeland Security has exempted itself (including its operational components like CBP) from all environmental and cultural resource protection laws in the planning and construction of border wall in Luna and Doña Ana Counties. It is difficult to understand how the Department of Homeland Security and its components can act in an environmentally responsible manner when the Department has authorized itself to ignore landmark protections like the Endangered Species Act, the National Environmental Policy Act, the Clean Water Act, the National Fish and Wildlife Act, and the Federal Land Policy and Management Act without any apparent consequences.

These environmental risks are a serious concern to me because my responsibility is not only to maximize revenue for the trust beneficiaries but to do so sustainably. The State Land Office must continue to honor its duty to the trust and it can only do so if it protects the integrity and value of its lands for future generations. Responsible land stewardship requires, at a minimum, extensive and careful evaluation of the numerous risks posed by CBP's border wall plans before ground is broken.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephanie", with a long, sweeping horizontal line extending to the right.

Stephanie Garcia Richard
Commissioner of Public Lands