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14 IN THE UNITED STATES DISTRICT COURT  
 15 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 16 OAKLAND DIVISION

18 **STATE OF CALIFORNIA et al.;**  
 19 Plaintiffs,  
 20 v.  
 21 **DONALD J. TRUMP, in his official capacity**  
 22 **as President of the United States of America**  
 23 **et al.;**  
 24 Defendants.

Case No. 4:19-cv-00872-HSG  
**PLAINTIFF STATES OF CALIFORNIA  
 AND NEW MEXICO’S REQUEST FOR  
 JUDICIAL NOTICE IN SUPPORT OF  
 MOTION FOR PARTIAL SUMMARY  
 JUDGMENT REGARDING SECTIONS  
 284, 8005, AND 9002**  
 Judge: Honorable Haywood S. Gilliam,  
 Jr.  
 Trial Date: None Set  
 Action Filed: February 18, 2019

1 Plaintiffs hereby respectfully request, pursuant to Federal Rule of Evidence 201, that this  
2 Court take judicial notice of the following documents:

- 3 1. Attached hereto as **Exhibit 1** is a true and correct copy of a May 10, 2019, letter to David  
4 L. Norquist, Under Secretary of Defense, Comptroller, Department of Defense, from the  
5 House of Representatives Committee on Appropriations, concerning a requested  
6 reprogramming action, FY 19-02RA.
- 7 2. Attached hereto as **Exhibit 2** is a true and correct copy of an excerpt from a page of the  
8 U.S. Department of Defense’s website entitled “Contracts for May 15, 2019.” As of June  
9 11, 2019, the full website is accessible at  
10 <https://dod.defense.gov/News/Contracts/Contract-View/Article/1848882/>.
- 11 3. Attached hereto as **Exhibit 3** is a true and correct copy of an October 2, 2013, Order for  
12 Technically-Conditioned Certification from the California Water Boards to U.S. Customs  
13 and Border Protection.
- 14 4. Attached hereto as **Exhibit 4** is a true and correct copy of Imperial County Air Pollution  
15 Control District Rule 801. As of June 11, 2019, this document is posted on the Imperial  
16 County Air Pollution Control District’s website at  
17 <https://www.co.imperial.ca.us/AirPollution/RULEBOOK/RULES/1RULE801.pdf>.
- 18 5. Attached hereto as **Exhibit 5** is a true and correct copy of a page from the California Air  
19 Resources Board’s website entitled “Particulate Matter Program.” As of June 12, 2019,  
20 this page is accessible at <https://www.arb.ca.gov/pm/pm.htm>.
- 21 6. Attached hereto as **Exhibit 6** is a true and correct copy of an excerpt from the Flat-Tailed  
22 Horned Lizard Rangewide Management Strategy, 2003 Revision, prepared by members of  
23 the Flat-tailed Horned Lizard Interagency Coordinating Committee, which included  
24 representatives from the U.S. Fish and Wildlife Service and the U.S. Bureau of Land  
25 Management. As of June 11, 2019, the document is posted on the U.S. Fish and Wildlife  
26 Service’s website at  
27 [https://www.fws.gov/carlsbad/TEspecies/Documents/Flattailed\\_horned\\_lizard/PDFs/RMS](https://www.fws.gov/carlsbad/TEspecies/Documents/Flattailed_horned_lizard/PDFs/RMS)  
28 [%20-%20Final%202003.pdf](https://www.fws.gov/carlsbad/TEspecies/Documents/Flattailed_horned_lizard/PDFs/RMS%20-%20Final%202003.pdf).

- 1 7. Attached hereto as **Exhibit 7** is a true and correct copy of the High Wind Fugitive Dust  
2 Mitigation Plan for Doña Ana and Luna Counties. As of June 11, 2019, this document is  
3 posted on the New Mexico Environment Department’s website at  
4 [https://www.env.nm.gov/wp-](https://www.env.nm.gov/wp-content/uploads/2018/12/DAC_and_Luna_County_DMP.pdf)  
5 [content/uploads/2018/12/DAC\\_and\\_Luna\\_County\\_DMP.pdf](https://www.env.nm.gov/wp-content/uploads/2018/12/DAC_and_Luna_County_DMP.pdf).
- 6 8. Attached hereto as **Exhibit 8** is a true and correct copy of the Declaration of Paul  
7 Arcangeli, filed in *U.S. House of Representatives v. Mnuchin, et al.*, Case No. 1:19-cv-  
8 00969, Dist. D.C., ECF Document 44-1.
- 9 9. Attached hereto as **Exhibit 9** is a true and correct copy of a September 28, 2018 letter and  
10 memorandum from President Trump to the Speaker of the House of Representatives and  
11 President of the Senate relating to “Designation of Funding for Overseas Contingency  
12 Operations/Global War on Terrorism.” As of June 11, 2019, this document is posted on  
13 the White House’s website at [https://www.whitehouse.gov/wp-](https://www.whitehouse.gov/wp-content/uploads/2018/09/OCO-Designation-Package-9.28.18_signed.pdf)  
14 [content/uploads/2018/09/OCO-Designation-Package-9.28.18\\_signed.pdf](https://www.whitehouse.gov/wp-content/uploads/2018/09/OCO-Designation-Package-9.28.18_signed.pdf).

15 These exhibits are matters of public record and therefore subject to judicial notice. Fed.  
16 R. Evid. 201(b); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (a court may  
17 judicially notice matters of public record unless the matter is a fact subject to reasonable dispute).

18 **Exhibit 8** is judicially noticeable because it is a court record from a proceeding that  
19 addresses issues relevant to this litigation. *U.S. ex rel. Robinson Rancheria Citizens Council v.*  
20 *Boreno, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (holding that a court “may take notice of  
21 proceedings in other courts, both within and without the federal judicial system, if those  
22 proceedings have a direct relation to matters at issue”).

23 **Exhibits 1-7 and 9** are judicially noticeable because government memoranda, bulletins,  
24 letters, statements and opinions are matters of public record appropriate for judicial notice. *See*  
25 *Brown v. Valoff*, 422 F.3d 926, 933 n.9 (9th Cir. 2005) (judicially noticing an administrative  
26 bulletin); *Mack v. S. Bay Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986) (court may  
27 take judicial notice of records and reports of state administrative bodies), *overruled on other*  
28 *grounds by Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104, 111 (1991); *Interstate Nat.*

1 *Gas. Co. v. S. Cal. Gas. Co.*, 209 F.2d 380, 385 (9th Cir. 1953) (judicially noticing government  
2 agency records and reports); *Cnty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 520 nn.5, 8, 11  
3 (N.D. Cal. 2017) (taking judicial notice of government memoranda and letters).

4 **Exhibits 2, 4-7, and 9** are also judicially noticeable because they are posted on official  
5 government websites. *See Daniels–Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998–99 (9th Cir.  
6 2010) (judicially noticing information contained on a government website); *Paralyzed Veterans*  
7 *of America v. McPherson*, No. C 06–4670 SBA, 2008 WL 4183981, at \*5 (N.D. Cal. Sept. 9,  
8 2008) (finding that courts commonly take judicial notice of information and documents on  
9 government websites, citing cases from various jurisdictions). Thus, the statements of  
10 government departments and agencies contained within this exhibit are not subject to reasonable  
11 dispute, as the statements “can be accurately and readily determined from sources whose  
12 accuracy cannot reasonably be questioned.” Fed. R. Evid. § 201(b)(2).

13 **Exhibits 1-9** are judicially noticeable because the statements of government officials or  
14 entities contained within these exhibits are not subject to reasonable dispute, as the statements  
15 “can be accurately and readily determined from sources whose accuracy cannot reasonably be  
16 questioned.” Fed. R. Evid. § 201(b)(2).

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Dated: June 12, 2019

Respectfully submitted,  
  
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*/s/ Lee I. Sherman*  
  
LEE I. SHERMAN  
Deputy Attorneys General  
*Attorneys for Plaintiff State of California*

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# **EXHIBIT 1**

NITA M. LOWEY, NEW YORK, CHAIRWOMAN

MARCY KAPTUR, OHIO  
PETER J. VISCIOSKY, INDIANA  
JOSE E. SERRANO, NEW YORK  
ROSA L. DELAURO, CONNECTICUT  
DAVID E. PRICE, NORTH CAROLINA  
LUCILLE ROYBAL-ALLARD, CALIFORNIA  
SANFORD D. BISHOP, JR., GEORGIA  
BARBARA LEE, CALIFORNIA  
BETTY MCCOLLUM, MINNESOTA  
TOM RYAN, OHIO  
C. A. DUTCH RUPPERSBERGER, MARYLAND  
DEBBIE WASSERMAN SCHULTZ, FLORIDA  
HENRY CUJELLAR, TEXAS  
CHELLE PINGREE, MAINE  
MIKE QUIGLEY, ILLINOIS  
DEREK KILMER, WASHINGTON  
MATT CARTWRIGHT, PENNSYLVANIA  
GRACE MENG, NEW YORK  
MARK POCAN, WISCONSIN  
KATHERINE M. CLARK, MASSACHUSETTS  
PETE AGUILAR, CALIFORNIA  
LOIS FRANKEL, FLORIDA  
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NORMA J. TORRES, CALIFORNIA  
CHARLIE CRIST, FLORIDA  
ANNE KIRKPATRICK, ARIZONA  
ED CASE, HAWAII

Congress of the United States  
House of Representatives  
Committee on Appropriations  
Washington, DC 20515-6015

May 10, 2019

KAY GRANGER, TEXAS  
HAROLD ROGERS, KENTUCKY  
ROBERT B. ADERHOLT, ALABAMA  
MICHAEL K. SIMPSON, IDAHO  
JOHN R. CARTER, TEXAS  
KEN CALVERT, CALIFORNIA  
TOM COLE, OKLAHOMA  
MARIO DIAZ-BALART, FLORIDA  
TOM GRAVES, GEORGIA  
STEVE WOMACK, ARKANSAS  
JEFF FORTENBERRY, NEBRASKA  
CHUCK FLEISCHMANN, TENNESSEE  
JAMIE HERRERA BEUTLER, WASHINGTON  
DAVID P. JOYCE, OHIO  
ANDY HARRIS, MARYLAND  
MARTHA ROBY, ALABAMA  
MARK E. AMODEL, NEVADA  
CHRIS STEWART, UTAH  
STEVEN M. PALAZZO, MISSISSIPPI  
DAN NEWHOUSE, WASHINGTON  
JOHN R. MOOLENAAR, MICHIGAN  
JOHN H. RUTHERFORD, FLORIDA  
WILL HURD, TEXAS

SHALANDA YOUNG  
CLERK AND STAFF DIRECTOR  
(202) 226-2771

The Honorable David L. Norquist  
Under Secretary of Defense, Comptroller  
Department of Defense  
Washington, D.C. 20301

Dear Mr. Secretary:

The Committee has received and reviewed the requested reprogramming action, FY 19-02RA, submitted to the Committee on May 10, 2019, which proposes the transfer of \$1.5 billion from the following fiscal year 2019 accounts: all Military Personnel accounts, the Air Force procurement accounts, the Chemical Agent and Munitions account, and the Afghan Security Forces Fund to the Drug Interdiction and Counter Drug Activities account for the purposes of erecting a wall on the U.S. southern border.

The Committee denies the request.

The Defense Appropriations Act of 2019 was enacted on September 28, 2018, and inherent in the enactment is the specific allocation of appropriations and the execution of funds as called for under the Constitution between the Congress and the Executive branch. Article I states, "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law". The reprogramming transmitted by the Department denies the Congress and the Committee on Appropriations those stated Constitutional prerogatives; these funds were neither requested nor appropriated for the activities described in the reprogramming. With this unilateral action, the historic and unprecedented comity that has existed between the Committee and the Department has been breached.

Sincerely,



Peter J. Visclosky  
Chairman  
Defense Subcommittee.

# **EXHIBIT 2**



# Contracts for May 15, 2019

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## ARMY

Southwest Valley Constructors, Albuquerque, New Mexico, was awarded a \$646,000,000 firm-fixed-price contract for design and build of Tucson Sector barrier wall replacement project. Four bids were solicited with four bids received. Work will be performed in Tucson, Arizona, with an estimated completion date of Jan. 31, 2020. Fiscal 2019 operations and maintenance, Army funds in the amount of \$646,000,000 were obligated at the time of the award. U.S. Army Corps of Engineers, Albuquerque, New Mexico, is the contracting activity (W912PL-19-C-0015).

BFBC LLC, Bozeman, Montana, was awarded a \$141,750,000 firm-fixed-price contract for design and build of El Centro Project 1 and Yuma Project 1 vehicle and pedestrian barrier replacement. Nine bids were solicited with four bids received. Work will be performed in El Centro, California; and Yuma, Arizona, with an estimated completion date of Jan. 31, 2020. Fiscal 2019 operations and maintenance, Army funds in the amount of \$141,750,000 were obligated at the time of the award. U.S. Army Corps of Engineers, Albuquerque, New Mexico, is the contracting activity (W912PL-19-C-0014).

Mitchco International Inc.,\* Louisville, Kentucky, was awarded a \$94,250,932 firm-fixed-price contract for full food services and dining facility attendants at Fort Sill, Oklahoma. Bids were solicited via the internet with seven received. Work locations and funding will be determined with each order, with an estimated completion date of May 14, 2024. U.S. Army Mission and Installation Contracting Command, Fort Sam Houston, Texas, is the contracting activity (W9124J-19-D-0012).

General Dynamics Ordnance and Tactical Systems, St. Petersburg, Florida, was awarded a \$92,400,000 modification (P00003) to Foreign Military Sales (Iraq) contract W15QKN-18-D0020 for 120mm munition high explosive with tracer tank ammunition cartridges. Work locations and funding will be determined with each order, with an estimated completion date of Oct. 16, 2022. U.S. Army Contracting Command, New Jersey, is the contracting activity.

Trend Construction Inc.,\* Orlando, Florida, was awarded a \$45,000,000 firm-fixed-price contract for general construction. Bids were solicited via the internet with 20 received. Work locations and funding will be determined with each order, with an estimated completion date of May 14, 2024. U.S. Army Corps of Engineers, Savannah, Georgia, is the contracting activity (W912HN-19-D-4000).

Jacobs Government Services Co., Arlington, Virginia, was awarded a \$15,394,247 firm-fixed-price contract for architect and engineering services. Bids were solicited via the internet with six received. Work will be performed in Arlington, Virginia, with an estimated completion date of June 14, 2026. Fiscal 2019 military construction; and other funds in the amount of \$15,394,247 were obligated at the time of the award. U.S. Army Corps of Engineers, Pyeongtaek, Republic of Korea, is the contracting activity (W912UM-19-C-0006).

Dubuque Barge & Fleeting Service Co., doing business as Newt Marine,\* Dubuque,

# **EXHIBIT 3**

**Colorado River Basin Regional Water Quality Control Board**

October 2, 2013

Mr. Paul Enriquez  
U.S. Customs and Border Protection  
24000 Avila Road, Suite 5020  
Laguna Niguel, CA 92677

**RE: ORDER FOR TECHNICALLY-CONDITIONED CLEAN WATER ACT SECTION  
401 WATER QUALITY CERTIFICATION FOR DISCHARGE OF DREDGED  
AND/OR FILL MATERIALS**

**PROJECT:** U.S. Customs and Border Protection (CBP) Project - West Desert All-  
Weather Road, Phase B, El Centro - Imperial County, W DID No.  
7A333133001

**APPLICANT:** U.S. Customs and Border Protection

- ACTION:**
1.  Order for Standard Certification
  2.  Order for Technically-Conditioned Certification
  3.  Order for Denial of Certification

**STANDARD CONDITIONS:**

The following standard conditions apply to all certification actions, except as noted above under Action 3 for denials.

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and section 3867 of Title 23 of the California Code of Regulations (23 CCR).
2. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR

- section 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial certification action (Actions 1 and 2) shall be conditioned upon total payment of the full fee required under 23 CCR section 3833, unless otherwise stated in writing by the certifying agency.
  4. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under State law. For purposes of Clean Water Act (CWA) section 401(d), the applicability of any State law authorizing remedies, penalties, process, or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Water Quality Certification (WQC).
    - a. In response to a suspected violation of any condition of this WQC, the Colorado River basin Regional Water Quality Control Board (Regional Water Board) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Water Board deems appropriate, provided that the burden, including cost of the reports, shall be in reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
    - b. In response to any violation of the conditions of this WQC, the Regional Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

**ADDITIONAL CONDITIONS:**

The following additional conditions apply to this certification:

1. This WQC applies towards the proposed project (Project) as described in the 401 application received by the Regional Water Board on May 17, 2013. The updated information was provided on September 27, 2013.
2. The Applicant shall provide the Regional Water Board and other interested agencies with written notification of any significant modifications made to the Project prior to implementation of the modifications.
3. This WQC does not convey any property rights of any sort or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

4. This WQC does not authorize the Applicant or any associated party to trespass on any land or property unless the applicant has obtained written authorization or acquired a special use authorization permit from the land or property owner.
5. A copy of this WQC shall be provided to the appropriate onsite Supervisor for the Project. All personnel performing work on the proposed Project shall be familiar with the content of this WQC. Copies of the WQC shall be readily available at the Project site at all times during periods of active work and shall be presented to regulatory agency representatives upon request.
6. The Applicant shall grant Regional Water Board staff, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to enter the Project site at reasonable times, to ensure compliance with the terms and conditions of this WQC and/or to determine the impacts the Project may have on waters of the United States.
7. The proposed Project shall not be enlarged or extend beyond the proposed Project impact area. The Applicant shall delineate the Project boundaries and staging areas with stakes, flags and/or temporary construction fencing.
8. The area of vegetation and soil disturbance shall be restricted to the smallest extent possible.
9. The Project shall not discharge substances in concentrations toxic to human, plant, animal, or aquatic life or that produce detrimental physiological responses.
10. The Project shall not discharge waste classified as "hazardous" as defined in Title 23 California Code of Regulations (CCR) section 2521, California Health and Safety Code section 25140, and Title 22, CCR, section 66260.10 et seq.
11. No oil, petroleum products, or rubbish shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into waters of the United States.
12. No equipment maintenance will be done within or near any stream channel where petroleum products or other pollutants from the equipment may enter waters of the United States.
13. Equipment refueling shall not occur within waters of the United States.
14. Any oil or grease leaks shall be immediately cleaned up.

15. The Applicant shall ensure that all contaminated material and/or contaminated soil removed or excavated from the Project site is properly loaded, transported, and disposed of in accordance with Federal, State, and local regulations.
16. Staging/storage areas for equipment and materials shall be located outside of waters of the United States.
17. The Applicant shall ensure that all disturbed and filled areas are adequately stabilized and protected from erosion and siltation by implementing appropriate soil stabilization, sedimentation and silt control measures.
18. Any flow diversion used during construction shall be designed in a manner to prevent pollution, minimize siltation, and shall provide flows to downstream reaches. Flows shall be maintained to support existing aquatic life and riparian wetlands and habitat that may be located upstream and downstream from any temporary diversion.
19. The Applicant shall restore drainages, to the greatest extent possible, to the original bank configuration, stream bottom width, and channel gradient.
20. All temporary facilities and impacts shall be removed and restored to the preexisting conditions and contours to the extent practicable.
21. Construction related materials and wastes shall be removed from the Project site upon completion of the Project.
22. The Applicant shall submit Notice to the Regional Water Board within 60-days of completion of the Project. The Notice shall include: 1) a detailed summary of the mitigation and restoration activities implemented during the Project and 2) provide photographic documentation that supports the information summarized in the Notice.
23. The Regional Water Board reserves the right to suspend, cancel, or modify and reissue this WQC, after providing notice to the Applicant and/or responsible Site-Supervisor, if the Regional Water Board determines that the Project fails to comply with any of the terms or conditions of this WQC.
24. The Applicant shall orally notify the Regional Water Board of any noncompliance that may impact the beneficial uses of waters of the United States, as soon as notification is possible and notification can be provided without substantially impeding measures necessary to address the noncompliance.

**REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:**

If you have any questions, please contact Jay Mirpour, Water Resources Control Engineer, at (760) 776-8981 or [jmirpour@waterboards.ca.gov](mailto:jmirpour@waterboards.ca.gov).

**WATER QUALITY CERTIFICATION:**

I hereby issue an order certifying that any discharge from the referenced Project will comply with the applicable provisions of sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law.

Except insofar as may be modified by any preceding conditions, all certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicants' Project description and the attached Project Information Sheet, and (b) compliance with all applicable requirements of the Regional Water Board's Water Quality Control Plan (Basin Plan).



ROBERT PERDUE, Executive Officer  
Colorado River Basin Regional Water Quality Control Board

JJM/

Enclosure: Project Information

cc: Lanika Cervantes, USACE Los Angeles District  
Bill Orme, SWRCB, Division of Water Quality, Water Quality Certification Unit  
Elizabeth Goldmann, U.S. Environmental Protection Agency, Region 9  
Thomas A. Vandenberg, Office of Chief Counsel, SWRCB

File: U.S. Customs and Border Protection (CBP) Project - West Desert All-Weather Road, Phase B, El Centro - Imperial County, WDID No. 7A333133001

### PROJECT INFORMATION

**Application Date:** Application was received by the Regional Water Board on May 17, 2013. The updated information was provided to our office on September 27, 2013.

**Applicant:** U.S. Customs and Border Protection  
Contact: Paul Enriquez, (949) 360-2382

**Applicant Representative:** CBP  
Contact: John Petrilla, (949) 360-2382

**Project Name:** U.S. Customs and Border Protection (CBP) Project - West Desert All-Weather Road, Phase B, El Centro - Imperial County, WDID No. 7A333133001

**Start and Completion:** The Project is scheduled to begin on October 1, 2013 and to be completed in February 2014.

**Project Description:** The purpose of the Project is to increase border security within the United States Border Patrol (USBP) - El Centro Sector with an ultimate objective of reducing illegal cross-border activity by providing safer and more efficient access for USBP agents along the U.S./Mexico border in the west desert area of the USBP - El Centro Station's area of responsibility. The primary need for the Project is because of the remoteness of the west desert area and the impassability of the existing road, which creates long drive times for agents to reach patrol areas and limits their ability to assist with interdictions and apprehensions. An additional need for the Project is to provide agents with the infrastructure necessary to carry out USBP's mission.

The Project includes the improvement and construction, operation, and maintenance of approximately 1.6 miles of all-weather roads. The Project involves the improvement of an existing border road and construction of a new access road to the top of BP Hill, where CBP operates a Remote Video Surveillance System (RVSS) tower. The border road would be improved to an all-weather surface road (1.4 miles long) approximately 20 feet wide with 2-foot shoulders and would



include any necessary drainage structures (i.e., culverts and low-water crossings).

In addition to the 1.4 miles of road improvement, a new access road (approximately 0.2 mile) leading to the BP Hill RVSS tower from the improved border road would be constructed. This road would be a 16-foot-wide road with necessary drainage structures and include all-weather surfacing. The total permanent footprint for the new access road to BP Hill would be 30 feet wide by 0.2 mile long. The temporary footprint would be 90 feet wide by 0.2 mile long. Upon completion of the improvements and construction activities, all temporarily disturbed areas would be rehabilitated per BLM guidelines.

**Project Location:**

City or Area: El Centro, County: Imperial

Longitude/Latitude: Begins at N32° 38.89518, W115° 43.52994, Ends at N 32° 38.96544, W 115° 42.1974.

Township/Range: Section 26, Township 17 South, Range 12 East, San Bernardino Meridian.

**Receiving Water(s):**

Pinto Wash is located north of the project area in the Salton Sea Watershed west of the Westside Main Canal and between the U.S./Mexico border and California State Route 98. Water may flow through this ephemeral wash into the Westside Main Canal, which eventually delivers water into the Salton Sea, or into delivery canals and through agricultural fields into drains and then into washes that flow to the New River and eventually into the Salton Sea.

**Project Impacts:**

The Project would not result in a permanent impact to any perennial or intermittent streams, as none are present within the project corridor. A total of six jurisdictional ephemeral Waters of the U.S. were identified during field surveys within the project corridor. The six ephemeral washes that are Waters of the U.S. would be traversed using concrete low-water crossings, reinforced concrete pipes, or box culverts. The expected total impact on those Waters of the U.S. is less than 0.35 acre. Tables below show the approximate permanent and temporary impacts in acres and linear feet to each Waters of the U.S.

**Linear Feet of Impacts on Waters of the U.S.**

	Temporary (Feet)	Permanent (Feet)	Total (Feet)
Waters of the U.S. 1	174.88	79.48	254.36
Waters of the U.S. 2	140.28	99.45	239.73
Waters of the U.S. 3	49.38	93.91	143.28
Waters of the U.S. 4	89.00	47.45	136.45
Waters of the U.S. 5	158.69	72.42	231.11
Waters of the U.S. 6	106.90	49.19	156.09
<b>Total</b>	<b>719.13</b>	<b>441.90</b>	<b>1,161.02</b>

**Acreage of Impacts on Waters of the U.S.**

	Temporary (Acre)	Permanent (Acre)	Total (Acre)
Waters of the U.S. 1	0.029	0.014	0.043
Waters of the U.S. 2	0.037	0.034	0.071
Waters of the U.S. 3	0.024	0.072	0.095
Waters of the U.S. 4	0.009	0.005	0.014
Waters of the U.S. 5	0.068	0.031	0.099
Waters of the U.S. 6	0.002	0.001	0.003
<b>Total</b>	<b>0.169</b>	<b>0.156</b>	<b>0.326</b>

The Project would not impact any surface water resource sites (i.e., lakes or permanent water sources) with the installation of the proposed roadway. Proper maintenance of construction equipment and the use of Best Management Practices (BMPs) during construction activities would minimize the possibility of accidental spills of petroleum, oil, and lubricants (POL) that, if they occurred, could affect surface water and groundwater quality. Operation and maintenance of the proposed roadways would have no effect on the region's surface water or groundwater supplies and/or quality.

**Best Management Practices:**

US Customs and Border Protection will implement the BMPs described in the Environmental Assessment Report.

BMPs such as the installation of straw bales and silt fences, will be employed to reduce or eliminate sedimentation or erosion as a result of the construction activities. Construction would not occur during the rainy season to avoid erosion and sedimentation issues.

CBP will avoid contaminating natural aquatic systems with runoff by limiting all equipment maintenance, staging, laydown, and dispensing of fuel, oil, etc., to designated upland areas.

No refueling or storage will take place within 100 feet of drainages.

Additionally, a Storm Water Pollution Prevention Plan and Spill Prevention Control and Countermeasure Plan will be developed and maintained to ensure that all are aware of its implementation requirements in the event of a spill.

All temporarily disturbed areas will be rehabilitated to its original condition.

Additionally, native organic material would be collected and stockpiled during construction to be used for erosion control after construction while the areas naturally rehabilitate.

Placement of riprap would reduce stream velocities and protect the drainage structure and downstream reaches from erosional forces.

**Federal Permit(s):**

This Project was determined to fall under the U.S. Army Corps of Engineers' Nationwide Permit Number 14 (Linear Transportation Projects).

**Status of CEQA:**

The Regional Water Board determined that the proposed project is categorically exempt from CEQA pursuant to CEQA Guidelines § 15301 (Cal. Code Regs., tit. 14, § 15301) (Existing Facilities) "Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety)."

In addition to this exemption, the Regional Water Board determined that the project is also categorically exempt from CEQA pursuant to CEQA Guidelines § 15302 (Replacement or Reconstruction) (Cal. Code Regs., tit. 14, § 15302). This exemption applies to the replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.

In accordance with CEQA Guidelines Section 15062, the Regional Water Board shall file a Notice of Exemption with the Office of Planning and Research upon approval of the Clean Water Act Section 401 Water Quality Certification.

# **EXHIBIT 4**

RULE 801 CONSTRUCTION AND EARTHMOVING ACTIVITIES  
(Adopted 11/08/2005)

A. Purpose

The purpose of this rule is to reduce the amount of fine Particulate Matter (PM-10) entrained in the ambient air as a result of emissions generated from Construction and other Earthmoving Activities by requiring actions to prevent, reduce, or mitigate PM-10 emissions.

B. Applicability

This rule applies to any Construction and other Earthmoving Activities, including, but not limited to, land clearing, excavation related to construction, land leveling, grading, cut and fill grading, erection or demolition of any structure, cutting and filling, trenching, loading or unloading of bulk materials, demolishing, drilling, adding to or removing bulk of materials from open storage piles, weed abatement through disking, back filling, travel on-site and travel on access roads to and from the site.

C. Definitions

The definitions of terms found in Rule 800 (General Requirements for Control of Fine Particulate Matter (PM-10)) shall apply to this rule.

D. Exemptions

In addition to the exemptions listed in Rule 800, Section E, the following exemptions are established for this rule:

D.1 Construction or demolition at existing single family residential dwellings.

D.2 The 20% opacity limit of Sections E.1.a and E.2.b shall not apply when Wind Gusts exceed 25 miles per hour, provided that at least one of the following control measures is implemented for each applicable Fugitive Dust source type:

D.2.a Cease dust generating activities for a period of one hour after Wind Gusts last exceed the threshold. If operations cease for the remainder of the day, stabilization measures must be implemented.

D.2.b Apply water or dust Suppressants once per hour.

D.2.c Apply water to maintain 12% soil moisture content.

D.2.d Construct fences 3-5 feet high with 50% or less porosity, and must

be done in conjunction with another measure, as above.

E. Requirements

E.1 Construction sites and Earthmoving Activities:

E.1.a All Persons who own or operate a Construction site shall comply with the requirements of Section F.1 so as to limit VDE to 20% opacity and comply with the conditions for a Stabilized Surface when applicable.

E.1.b All Persons who perform any Earthmoving Activities shall comply with the requirements of Section F.1 so as to limit VDE to 20% opacity.

E.1.c All Persons who own or operate a Construction site of 10 acres or more in size for residential developments or 5 acres or more for non-residential developments shall develop a dust control plan. The dust control plan shall be made available to the APCD upon request. The dust control plan shall comply with the requirements of Section F.

E.1.d The owner or operator required to develop a dust control plan shall provide written notification to the APCD within 10 days prior to the commencement of any Construction activities via fax or mail. The requirement to develop a dust control plan shall apply to all such activities conducted for residential and non-residential (e.g., commercial, industrial, or institutional) purposes or conducted by any governmental entity. Regardless of whether a dust control plan is in place or not the owner or operator is still subject to comply with all requirements of the applicable rules under Regulation VIII at all times.

F. Best Available Control Measures for Fugitive Dust (PM-10)

F.1 Construction and Earthmoving Activities shall comply with the following requirements:

F.1.a Pre-Activity:

F.1.a.1 Pre-water site sufficient to limit VDE to 20% opacity, and

F.1.a.2 Phase work to minimize the amount of disturbed surface area at any one time.

F.1.b During Active Operations:

- F.1.b.1 Apply water or Chemical Stabilization as directed by product manufacturer to limit VDE to 20% opacity, or
  - F.1.b.2 Construct and maintain wind barriers sufficient to limit VDE to 20% opacity. If utilizing wind barriers, control measure F.1.b.1 above shall be implemented.
  - F.1.b.3 Apply water or Chemical Stabilization as directed by product manufacturer to unpaved haul/access roads and Unpaved Traffic Areas sufficient to limit VDE to 20% opacity and meet the conditions of a Stabilized Unpaved Road.
- F.1.c Temporary Stabilization During Periods of Inactivity:
- F.1.c.1 Restrict vehicular access to the area by fencing or signage; and
  - F.1.c.2 Apply water or Chemical Stabilization, as directed by product manufacturer, sufficient to comply with the conditions of a Stabilized Surface. If an area having 0.5 acres or more of disturbed surface area remains unused for seven or more days, the area must comply with the conditions for a Stabilized Surface area.
- F.1.d Track Out/Carry Out of Bulk Materials at the site shall be mitigated in compliance with Rule 803.
- F.1.e Unpaved Roads and Unpaved Traffic Areas at the site shall comply with Rule 805.
- F.1.f Bulk Material handling operations at the site shall comply with Rule 802.
- F.1.g Material transport of Bulk Material to, from, or around the site shall comply with Rule 802.
- F.1.h Haul trucks transporting Bulk Material to, from, or around the site shall comply with Rule 802.
- F.2 Dust Control Plan:
- F.2.a Retain a copy of the dust control plan at the project site.



F.2.b Comply with the requirements of the approved dust control plan.

F.2.c A dust control plan shall contain all of the following information:

1. Name, address, and phone number of the Person responsible for the preparation, submittal, and implementation of the dust control plan and responsible for the project site.
2. A plot plan which shows the type and location of each project.
3. The total area of land surface to be disturbed, estimated daily throughput volume of earthmoving in cubic yards, and total area in acres of the entire project site.
4. The expected start and completion dates of dust generating and soil disturbance activities to be performed on the site.
5. The actual and potential sources of Fugitive Dust emissions on the site and the location of Bulk Material handling and storage areas, Paved and Unpaved Roads, entrances and exits where Track Out/Carry Out may occur, and Unpaved Traffic Areas.
6. Dust Suppressants to be applied, including: product specifications; manufacturer's usage instructions (method, frequency, and intensity of application); type, number, and capacity of application equipment; and information on environmental impacts and approvals or certifications related to appropriate and safe use for ground application.
7. Specific surface treatment(s) and/or control measures utilized to control Track Out/Carry Out, and sedimentation where unpaved and/or access points join paved public access roads.
8. The dust control plan should describe all Fugitive Dust control measures to be implemented before, during, and after any dust generating activity.

G. Record of Control Implementation

Any Person subject to the requirements of this rule shall compile and retain records that provide evidence of control measure application (i.e., receipts and/or purchase records). Such Person shall describe, in the records, the type of

treatment or control measure, extent of coverage, and date applied. For control measures which require multiple daily applications, recording the frequency of application will fulfill the recordkeeping requirements of this rule (i.e., water being applied three times a day and the date) Records shall be maintained and be readily accessible for two years after the date of each entry and shall be provided to the APCD upon request.

H. Violations

Failure to comply with any provisions of this rule shall constitute a violation of Regulation VIII.

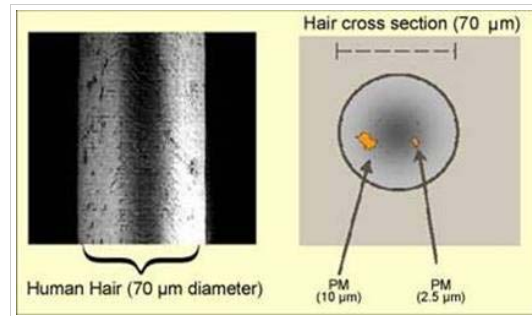
# **EXHIBIT 5**

# Particulate Matter Program

*This page last reviewed May 28, 2015*

## Background

PM<sub>10</sub> refers to particles with an aerodynamic diameter of 10 microns or smaller. For comparison, the diameter of a human hair is about 50 to 100 microns. Exposure to PM<sub>10</sub> aggravates a number of respiratory illnesses and may even cause early death in people with existing heart and lung disease. PM<sub>10</sub> includes the subgroup of finer particles with aerodynamic diameter of 2.5 microns and smaller (PM<sub>2.5</sub>). These finer particles pose an increased health risk because they can deposit deep in the lung



and contain substances that are particularly harmful to human health. PM is a mixture of substances that include elements such as carbon and metals; compounds such as nitrates, organic compounds, and sulfates; and complex mixtures such as diesel exhaust and soil. These substances may occur as solid particles or liquid droplets. Some particles are emitted directly into the atmosphere. Others, referred to as secondary particles, result from gases that are transformed into particles through physical and chemical processes in the atmosphere. Please consider joining one or more of the ARB's [Particulate Matter-related e-lists](#).

## WHAT'S NEW?

Estimate of Premature Deaths Associated with Fine Particle Pollution (PM<sub>2.5</sub>) in California Using a U.S. Environmental Protection Agency Methodology. [Press Release - August 2010](#)

### [Technical Report on the Characterization of PM<sub>10</sub> and PM<sub>2.5</sub> in California](#)

An assessment of PM<sub>10</sub> and PM<sub>2.5</sub> characteristics in each of California's air districts within each air basin.

### [Implementation of Senate Bill SB656, Sher 2003](#)

Information on activities regarding ARB and Air District measures to reduce PM.

## ADDITIONAL INFORMATION

The following links take you to ARB's reports on the PM<sub>2.5</sub> program and to additional information on PM<sub>10</sub> and PM<sub>2.5</sub> ambient air quality standards, air quality and emissions data, special studies, monitoring, health studies, planning, and control strategy development.

- > [Fine Particulate Matter Monitoring Program](#)  
Since 2003, ARB has released an annual report describing the major elements of the State's PM<sub>2.5</sub> monitoring program. These reports can be accessed from [ARB's Legislatively Mandated Reports](#) webpage.
- > [Ambient Air Quality Standards for PM<sub>10</sub> and PM<sub>2.5</sub>](#)

Information on both the national and State Ambient Air Quality Standards for PM.

→ [Area Designations](#)

Area designation maps for the current national and State PM10 standards and information on area designation activities.

→ [California Air Quality Data](#)

→ [California Almanac of Emissions and Air Quality](#)

Provides a compendium of PM10, PM2.5, and PM2.5 precursor emissions and air quality data.

→ [ADAM](#)

The interactive ADAM database allows users to review historical air quality data directly from ARB's ADAM air quality database.

→ [AQMIS](#)

The interactive AQMIS database allows users to review real-time air quality data directly from ARB's AQMIS ambient air quality database.

→ [California Emissions Data](#)

Provides emissions data of directly emitted PM10 and PM2.5 and of gaseous precursors of secondary PM2.5.

→ [CRPAQS](#)

The California Regional PM10/PM2.5 Air Quality Study is a multi-year effort of meteorological and PM air quality monitoring, emission inventory development, data analysis, and air quality modeling. Field work consisted of 14 months of monitoring, between December 1999 and February 2001.

→ [PM Monitoring](#)

Descriptions of air quality monitoring programs for PM including sampling/monitoring, laboratory analysis, and quality assurance.

→ [State and Local Air Monitoring Network](#)

Listing and description of ambient air quality air monitoring sites in California and the northern Baja California portion of Mexico. The monitoring sites in the network include instruments that measure ambient levels of gaseous and particulate air pollutants, and in some cases, meteorological parameters.

→ [PM2.5 Monitoring Network Design](#)

ARB, in partnership with California's air quality management districts, has developed a PM2.5 monitoring network to support and assess compliance with the PM2.5 ambient air quality standards; support the smoke management plan; assist in health effects studies and other ambient research activities; and assess regional haze.

→ [Health Research Program](#)

→ [Children's Health Study](#)

The Children's Health Study is the nation's first large-scale effort to explore the effects on school-aged children of long-term exposure to outdoor air pollution, including PM, in Southern California.

→ [F.A.C.E.S.](#)

The Fresno Asthmatic Children's Environment Study is a large epidemiological study of the effects of air pollution on children with asthma. The overall goal is to determine the effects of different PM components, in combination with other ambient air pollutants, on the natural history of asthma in young children.

→ [Fine and Ultrafine Particulate Matter Research](#)

Describes numerous research projects on PM2.5 (fine) and particles with aerodynamic diameter of less than 0.1microns (ultrafine).

- [State Implementation Plan](#)  
Provides access to selected State Implementation Plans (SIPs) required by the federal Clean Air Act, including plans in development and submitted plans.
- [Diesel Risk Reduction Plan](#)  
Information on ARB's comprehensive program to reduce PM emissions and resultant health risk from diesel-fueled engines and vehicles.
- [Fugitive Dust Handbook](#)  
This handbook discusses what fugitive dust is, fugitive dust pollution problems, clean operating tips, and the various controls available.
- [Regional Haze](#)  
U.S. EPA regulations require states to improve visibility in national parks and wilderness areas. California is working with other western states to understand and improve visibility.
- [Smoke Management Program](#)  
California's Smoke Management Program addresses potentially harmful smoke impacts from agricultural, forest, and range land management burning operations.

## OTHER RELATED LINKS

- [U.S. EPA's PM Page](#)
- [Southern California Particle Center and Supersite](#)
- [Fresno PM Supersite](#)
- [PM Supersites](#)

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# **EXHIBIT 6**

# **Flat-tailed Horned Lizard Rangewide Management Strategy, 2003 Revision**

An Arizona-California Conservation Strategy



*Prepared and edited by the*

Flat-tailed Horned Lizard Interagency Coordinating Committee  
May 2003



# EXECUTIVE SUMMARY

The Flat-tailed Horned Lizard Rangewide Management Strategy has been prepared to provide guidance for the conservation and management of sufficient habitat to maintain extant populations of flat-tailed horned lizards (FTHLs), *Phrynosoma mcallii*, in each of five Management Areas (MAS) in perpetuity. The species is found only in southwestern Arizona, southeastern California, and adjacent portions of Sonora and Baja California Norte, Mexico.

The USFWS proposed the species for listing as a threatened species on November 29, 1993. Human activities have resulted in the conversion of roughly 49% of the historic FTHL habitat to other uses, such as agriculture and urban development. Further evaluation of populations supported by remaining habitat is necessary. While initial evidence suggested that FTHL populations had declined in the Yuha Basin and northern East Mesa (Wright 1993; USFWS 1993), Wright (2002) recently found no significant trends in lizard encounter rates in Yuha Desert, East Mesa, or West Mesa from 1979-2001. The USFWS withdrew its proposed listing on January 3, 2003, based in part on protections offered by this Rangewide Management Strategy (RMS).

The 1997 edition of the RMS established five FTHL MAS — four in California and one in Arizona. Surface disturbing activities are limited in these areas. Although land alterations in FTHL habitat outside of the MAS are not limited, mitigation and compensation measures are applied. One research area (RA) was also established to support research in an active off-highway vehicle (OHV) recreation area. Conservation areas in the Coachella Valley were also established.

Wide-scale population estimates have, to date, been unreliable. While new techniques to estimate abundance continue to be evaluated, this revised document calls for monitoring changes in distribution over time in addition to monitoring changes in population size. Revised monitoring techniques have been established.

The RMS was prepared by representatives from federal, state, and local governments. It is designed to be used as the basis for a conservation agreement among the agencies. Signatory agencies will incorporate measures in the RMS into their land management plans. Compliance with the National Environmental Policy Act (NEPA) and other applicable federal and state law will be achieved through these management plans or revisions. The planned actions in the RMS are organized in a step-down format used by the USFWS in recovery plans.

# PREFACE

Dr. Larry D. Foreman and members of the Flat-tailed Horned Lizard Interagency Coordinating Committee (ICC) prepared the original *Flat-tailed Horned Lizard Rangewide Management Strategy* in 1997. Kevin V. Young<sup>1</sup> and Ty J. Gardner coordinated the 2003 revision (Arizona Game and Fish Department solicitation # QF02-040-S; funds made available by the U.S. Fish and Wildlife Service). The following members of the ICC and MOG (listed by agency) participated in writing and discussion until a consensus was reached:

Agency	ICC Member	MOG Member
Anza-Borrego State Park.....	Paul Jorgensen	Mark Jorgensen
Arizona Game and Fish, Yuma.....	Lin Piest	Larry Voyles
California Department of Fish and Game .....	Eddy Konno	Glenn Black
California State Parks, Ocotillo Wells .....	Eric Hollenbeck	Curt Itogawa
U.S. Bureau of Land Management, El Centro .....	Gavin Wright	Greg Thomsen
U.S. Bureau of Land Management, Palm Springs.....	Rachelle Huddleston-Lorton	Elena Misquez
U.S. Bureau of Land Management, Yuma .....	Fred Wong	Gail Acheson
U.S. Bureau of Reclamation, Yuma.....	Andrea Campbell	Cynthia Hoeft
U.S. Fish and Wildlife Service, Carlsbad.....	Sandy Vissman	Pete Sorensen
U.S. Fish and Wildlife Service, Phoenix.....	Mike Coffeen	Jim Rorabaugh
U.S. Marine Corps Air Station, Yuma .....	Bryan Morrill	Ron Pearce
U.S. Naval Air Facility, El Centro .....	Jim Collins	Carl David
U.S. Navy SW Division, San Diego.....	Trish Griffin	N/A

Cover Artwork: flat-tailed horned lizard in Sonora, Mexico. Courtesy of Jim Rorabaugh.

## Recommended Citation:

Flat-tailed Horned Lizard Interagency Coordinating Committee. 2003. Flat-tailed horned lizard rangewide management strategy, 2003 revision. 80 pp. plus appendices.

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<sup>1</sup>Young Environmental Services: 527 N. 400 E., Logan, UT 84321 [flattail@biology.usu.edu](mailto:flattail@biology.usu.edu) (435) 755-8339

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# LIST OF ACRONYMS

The following acronyms are used in this document:

ACEC.....	Area of Critical Environmental Concern
AGFD .....	Arizona Game and Fish Department
ABDSP .....	Anza-Borrego Desert State Park
BLM .....	United States Bureau of Land Management
BMGR.....	Barry M. Goldwater Range
BOR.....	United States Bureau of Reclamation
BP .....	Border Patrol
CDFG.....	California Department of Fish and Game
CNLM.....	Center for Natural Lands Management
CVMSHCP.....	Coachella Valley Multiple Species Habitat Conservation Plan and Natural Communities Conservation Plan
DOD .....	United States Department of Defense
EA.....	Environmental Assessment
FTHL.....	Flat-tailed horned lizard
GIS.....	Geographic Information System
ICC.....	Interagency Coordinating Committee
MA.....	Management Area
MCAS .....	Marine Corps Air Station, Yuma
MOG.....	Management Oversight Group
MOU.....	Memorandum of Understanding
NAF.....	Naval Air Facility
NEPA.....	National Environmental Policy Act
OHV .....	Off-highway vehicle
OWSVRA.....	Ocotillo Wells State Vehicular Recreation Area
RA.....	Research Area
ROW.....	Right of Way
SVL .....	Snout-Vent Length
USFWS.....	United States Fish and Wildlife Service

# OVERVIEW

## Species Description

### *Taxonomy*

The flat-tailed horned lizard (FTHL), *Phrynosoma mcallii*, was first described by Hallowell in 1852 as *Anota mcallii* after U.S. Army Colonel George A. M'Call who collected the type specimen (Johnson and Spicer 1985). Due to the lack of external ear openings, the FTHL was initially placed in a separate genus (*Anota*) from other horned lizards (Johnson and Spicer 1985). Norris and Lowe (1951) decided that similarities of *mcallii* to other horned lizards were greater than its differences and placed it into the genus *Phrynosoma*. The FTHL is one of 14 currently recognized species of horned lizard (eight of which occur in the U.S.) (Zamudio and Parra Olea 2000). It is believed to be most closely related to the desert horned lizard, *P. platyrhinos* (Reeder and Montanucci 2001). No subspecies of FTHL have been described (Funk 1981).

### *Field Characters*

The FTHL has the typical round, flattened body shape of horned lizards. It is distinguished from other species in its genus by its dark vertebral stripe; lack of external ear openings; long, broad and flattened tail; and comparatively long spines on the head (Funk 1981). The FTHL has two rows of fringed scales on each side of its body. The species is cryptic in color, ranging from pale gray to light rust brown dorsally, and white or cream (unspotted) ventrally with a prominent umbilical scar. The only apparent external difference between males and females is the presence of enlarged postanal scales in males, typical of Phrynosomatids. Maximum snout-vent length (SVL) for the species is 87 mm (Boundy and Balgooyen 1988), but 65-80 mm SVL is typical adult size (Young and Young 2000). Adult weight varies between 10 and 25 g. Hatchlings range from 30 to 38 mm and weigh about 1.5 g (Johnson and Spicer 1985; Young and Young 2000).

The only other horned lizard known to be sympatric with the FTHL is the desert horned lizard. The latter is distinguished from the FTHL by a combination of characters including absence of a dark vertebral stripe, an exposed tympanum, a spotted ventral surface in most individuals, a single row of fringed scales, and a narrower and less-flattened tail (Figure 1). Apparent hybrids between the two species, which exhibit a mix of morphological characteristics, have been observed near Ocotillo, California (Stebbins 1985) and on the BMGR near Yuma, AZ (Morrill, Young, pers. obs.). There has been at least one case of hybridization in captivity (Collet 2002).

**Figure 1. Comparative views of *Phrynosoma mcallii* (left) and *P. platyrhinos* (right) adults and hatchlings.**



### ***Distribution and Habitat Status***

The FTHL has the most limited distribution of any horned lizard species in the U.S. (Stebbins 1985). It is found in the extreme southwestern corner of Arizona, the southeastern corner of California, and adjoining portions of Sonora and Baja California, Mexico (Figure 2). In Arizona, the FTHL is found in southwestern Yuma County south of the Gila River and west of the Butler and Gila mountains. Estimates of historic habitat in Arizona range from 203,520 to 221,043 acres, and of current habitat from 135,900 to 176,000 acres (Johnson and Spicer 1985; Rorabaugh *et al.* 1987; Hodges 1995, 1997; Piest and Knowles 2002). Suitable habitat is found east and south of the city of Yuma outside of the Colorado and Gila River floodplains and adjoining croplands. Lands within the range of the FTHL in Arizona include federal lands administered by the Department of Defense (DOD) through Marine Corps Air Station at Yuma (MCAS-Yuma), the Bureau of Land Management (BLM), and the Bureau of Reclamation (BOR); state of Arizona lands; and private lands. The majority of the FTHL's range in Arizona is on the western Barry M. Goldwater Range (BMGR), managed by MCAS-Yuma. Records from Mexico Highway 2, just south of the International Boundary, suggest the species might be present in the area of Pinta Sands on the Cabeza Prieta National Wildlife Refuge, but searches in this area have only documented desert horned lizards (Rorabaugh 1996a, 1997).

The historical range of the FTHL in California encompasses approximately 1.8 to 2.2 million acres, primarily in Imperial County, but also in eastern San Diego County and central Riverside County (Turner *et al.* 1980; Rado 1981; Bolster and Nicol 1989; Hodges 1997). However, about 50% of the land within this range is now unsuitable, including the Salton Sea and urban and agricultural areas (Hodges 1997). Areas identified as especially important to the species in California encompass approximately 210,000 acres and are found primarily in four regions (Rado 1981; Turner *et al.* 1980). MAS were established in these areas and have been the focus of FTHL habitat conservation (see Management Areas, p. 49). The El Centro Resource Area (BLM, California Desert District) administers three of these areas: West Mesa MA, East Mesa MA, and Yuha Desert MA (the BLM and the U.S. Navy jointly manage portions of West Mesa and East Mesa). The California Department of Parks and Recreation (CDPR) manages Ocotillo Wells State Off-Highway Vehicle Area (OWSVRA) as a RA and a portion of Anza-Borrego Desert State Park (ABDSP) as the Borrego Badlands MA.

The northern margin of the species' range is in the Coachella Valley, an area where expansive agricultural and urban development has destroyed the vast majority of original FTHL habitat. The largest remaining, unfragmented habitat patch is approximately 3,900-4,200 acres in size, just 3-4% of the original habitat extent within the Coachella Valley (Barrows 2002). The Coachella Valley Multiple Species Habitat Conservation Plan and Natural Communities Conservation Plan (CVMSHCP) will protect approximately 44.5% of the remaining FTHL habitat in the valley.

Based on Figure 2, about half of the historical range of the FTHL is in Mexico, particularly in Sonora. In Baja California Norte, the range extends from the International Border west of Mexicali south to Laguna Salada. A specimen found south of Laguna Salada in 2001 (Rodríguez 2002) extended the known southern range limit in Baja by approximately 40 miles. It is unknown whether this population is connected to those to the north or is disjunctive. In Sonora, the species has been found in the sandy plains immediately south of and contiguous with habitat in Arizona, and east through the Pinacate Region to the sandy plains around Puerto Peñasco and Bahía de San Jorge (Johnson and Spicer 1985; Gonzáles-Romero and Álvarez-Cárdenas 1989; Rodríguez 2002). The FTHL is probably absent from the volcanic areas in the Pinacate Region and rare in the dune fields of the Gran Desierto (Rodríguez 2002).

### Map Creation

The current and historical distribution map (Figure 2) is designed to provide graphic representation of the approximate current and historical FTHL range boundaries. This map is not based on a predictive model, with the exception of the current range in the Coachella Valley (see below), and should not be viewed as such. ArcView (ESRI 1998) shape files (.shp) for the current and historical distributions recognized in this document are on file with ICC member agencies.

The historical distribution is based on a 750-foot contour interval across the majority of the range, particularly in the U.S. and the most northern portion of Mexico. There are several departures from this contour: 1) along the eastern boundary of the Algodones dune system the boundary is based on a microphyll/desert dry wash habitat (coverage provided by BLM-El Centro) because the habitats to the east of these are not likely to have been occupied by FTHLs at any time (contra Hodges 1997); 2) the boundary on the eastern side of the Yuma desert MA was defined as the edge of the rocky substrate, estimated as a fixed distance from the western slope of the Gila mountains,



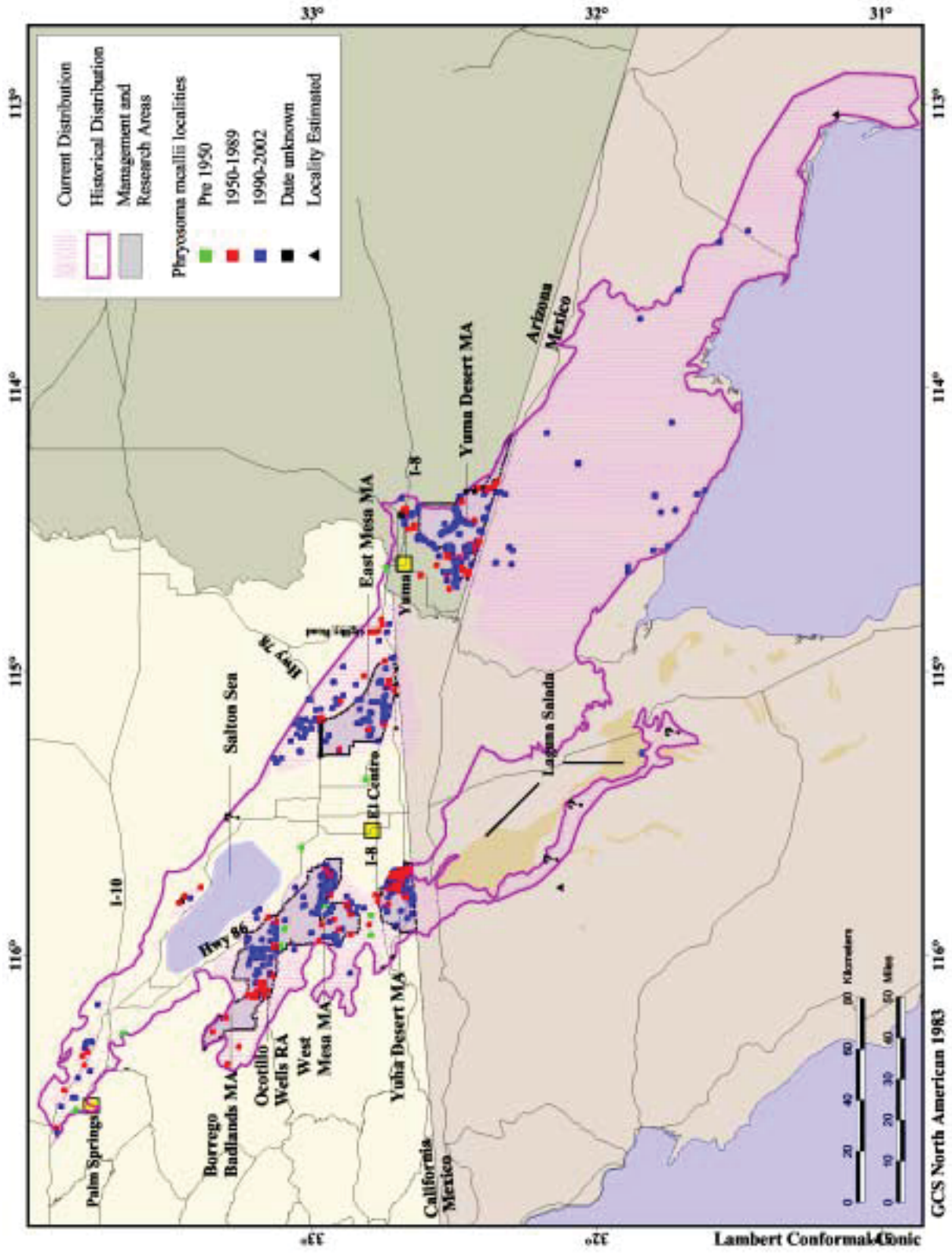
since this habitat is not occupied by FTHLs (Hodges 1995, Young and Young 2000); 3) much of the range in Sonora, Mexico is based on an ArcView coverage (obtained from <http://data.geocomm.com>) that delineates the boundaries between unconsolidated substrates (included) and inundated areas (excluded), but areas outside the unconsolidated substrates were included (e.g. mudhill habitat near El Golfo) where verified locality data were available (Rodríguez 2002); and 4) the distribution around Laguna Salada is based on the range map in Foreman (1997), recent localities (Rodríguez 2002) and mention of sightings on the eastern side where sand accumulates against the Sierra Cucapa (Lee Grismer, California State University San Diego, pers. comm.).

The current distribution (except the Palm Springs area) is a subset of the historical range map from which habitat that has been converted to urban, agricultural, or other such permanent disturbances has been removed. Data used to remove such areas include USGS maps, ArcView coverages of city streets, and aerial photographs of the East Mesa, West Mesa, and Yuha Desert MAs and surrounding areas (provided by BLM-El Centro). Features removed include, but are not limited to: Yuma, AZ; Ocotillo, Borrego Springs, and Salton City, California; the agricultural areas of the Imperial Valley, California and the Mexicali Valley, Baja Norte; and projects recognized on aerial photos in the Yuha Desert MA, north of the Yuha Desert MA, and near the Salton Sea Test Base.

The current distribution in the Coachella Valley area (Riverside Co., California) is the October 2002 draft (provided by the Coachella Valley Association of Governments) of the predicted portion of a FTHL habitat model produced for the CVMSHCP. This model includes habitat below the 700-foot contour interval. The model was refined by looking for vegetation community and soil type associations and deleting developed areas. The model includes habitat patches that are too small to maintain viable populations (Cameron Barrows, Center for Natural Lands Management (CNLM), pers. comm.). Further information is available through the Coachella Valley Association of Governments.

Further work is necessary to solidify the current distribution of the FTHL in the U.S. and Mexico. In particular, work is needed outside the MAs to firmly delineate the boundaries on the exterior portion of the range in the U.S. Such work, in conjunction with surveys within MAs, could help produce a habitat model that may more accurately describe the historical and current FTHL range. Areas of Mexico that remain uncertain and could benefit from further surveys and/or modeling include: 1) the southeast boundary in Sonora; 2) the extent of historical range in the Mexicali valley and the current range surrounding that area (including Mesa Andrade); 3) the extent of the current and historical ranges surrounding Laguna Salada; and 4) the degree of connectivity between portions of the current and historical ranges in Sonora, the Mexicali Valley, and surrounding Laguna Salada.

Figure 2. Approximate current and historical distribution of the flat-tailed horned lizard.



# MANAGEMENT PROGRAM

## Overall Goal

MAINTAIN SELF-SUSTAINING POPULATIONS OF FLAT-TAILED HORNED LIZARDS IN PERPETUITY.

## Management Objectives

- Continue to secure and/or manage sufficient habitat to maintain self-sustaining FTHL populations in each of the five designated MAs (Yuma Desert, East Mesa, West Mesa, Yuha Desert, and Borrego Badlands MAs) and in areas designated by the CVMSHCP.
- Maintain a "long-term stable" or increasing population of FTHLs in all MAs. A population that is stable over the long term exhibits no downward population trend after the effects of natural demographic and environmental stochasticity are removed.
- Continue to support research that promotes conservation of the species at OWSVRA and elsewhere throughout the range of the species.
- Within and outside of MAs, limit the loss of habitat and effects on FTHL populations through the application of effective mitigation and compensation.
- Encourage and assist Mexico in the development and implementation of a FTHL conservation program.

## Overview and Purpose

In 1994, the USFWS, BLM, BOR, DOD, and several other agencies signed a MOU "...on Implementation of the Endangered Species Act" that established a general framework for cooperation and participation among cooperators in the conservation of species tending toward federal listing as threatened or endangered under the Endangered Species Act. The MOU identified the development of conservation agreements as a valuable process for achieving conservation of species through voluntary cooperation. A conservation agreement is a formal, written document agreed to by the USFWS and other cooperators that identifies specific actions and responsibilities for which each party agrees to be accountable. The objective of a conservation agreement is to reduce threats to a candidate species or its habitat, possibly lowering the listing priority or eliminating the need to list the species.

This strategy formed the basis of a conservation agreement among the cooperators for management of FTHLs (Foreman 1997). The conservation agreement that was signed is included as Appendix 1. Although the USFWS determined that the conservation agreement was effective and that listing the FTHL was unnecessary, it retains the ability to reconsider the effectiveness of the agreement. Lack of compliance among the cooperators, a change of circumstances, or other reasons may alter the expected result of this strategy. If threats to the FTHL or its habitat are not reduced, the USFWS may proceed with another proposed or an emergency listing.

The purpose of this strategy is to provide a framework for securing and managing sufficient habitat to maintain several self-sustaining populations of the FTHL throughout the species' range in the U.S. (see *Habitat Management*, p. 49). A major step towards that objective was the establishment of five MAs encompassing large blocks of habitat where surface disturbing and

mortality causing activities are minimized. Prior to the RMS, management of federal lands within FTHL habitat was guided by several management plans, as discussed in Appendix 2. These plans cover federal lands both within and outside the MAS. When the MAS were established, this document became the standard for management and conservation of FTHL habitat. Signatory agencies have incorporated measures in the RMS into their land management plans to comply with the NEPA and state counterparts.

Outside of these MAS, FTHL habitat receives a degree of protection through mitigation and compensation and through the previously established habitat management plans that affect public lands outside of MAS (Appendix 2). Specifically, signatories to the conservation agreement ensure that adverse effects of projects they authorize outside of MAS are mitigated and that residual effects are compensated in accordance with a standard formula (see Mitigation and Compensation). The funds obtained through compensation are used to consolidate land ownership within the MAS or to enhance habitat.

As part of its adaptive management approach, programs for monitoring FTHL population, distribution, and habitat disturbance have been established (see Monitoring Program, p. 66 and Appendix 4 and Appendix 5). If population or distribution declines occur, the ICC shall investigate potential causes. If causes are anthropogenic in nature, the ICC shall make recommendations to the MOG for reversing the trend.

This document is the first revision of the 1997 RMS (Foreman 1997). Because the Implementation Schedule will expire in 2008, it is expected that the schedule will be revised at that time. Concurrently, the need for a revision of the entire document will be evaluated.

## **Planning Actions**

The following Planning Actions have been developed as recommendations to signatory agencies to ensure that the goal of maintaining a “long-term stable” population within each MA is achieved. The original Planning Actions from the 1997 RMS are repeated here, though some of these actions have been completed. Actions that have been identified since 1997 have been added. It is understood that implementation of these actions is subject to availability of funds and compliance with all applicable regulations. It is anticipated that specific actions may be modified based on information obtained from future monitoring, research, and evaluations of the effectiveness of this strategy. Annual evaluations and proposed modifications of this strategy shall be coordinated through the FTHL ICC. The MOG will meet as necessary to review recommendations of the ICC and may make corresponding modifications to Planning Actions in the RMS.

### **1. Delineate and designate five FTHL MAS and one FTHL RA. See Table 3 for a summary of land ownership within each MA. Boundary descriptions and geographic information system (GIS) maps are on file with land management agencies.**

- 1.1. Designate the Yuma Desert FTHL MA as shown in Figure 4. If the proposed Area Service Highway is constructed along a portion of the boundary of the MA, the east and south side of the ROW will be the new western and northern boundary of the MA, as appropriate.
- 1.2. Designate and complete NEPA process for the East Mesa FTHL MA as shown in Figure 5.

- 1.3. Designate and complete NEPA process for the West Mesa FTHL MA as shown in Figure 6.
- 1.4. Designate and complete NEPA process for the Yuha Desert FTHL MA as shown in Figure 7.
- 1.5. Designate and complete California Environmental Quality Act process for the Borrego Badlands FTHL MA as shown in Figure 8.
- 1.6. Designate the OWSVRA as the Ocotillo Wells FTHL RA as shown in Figure 9.
- 1.7. Continue to manage areas in the Coachella Valley that are capable of sustaining viable populations of FTHL by working with other agencies and organizations in finalizing a CVMSHCP (see Figure 10).

**2. Define and implement management actions necessary to minimize loss or degradation of habitat.**

- 2.1. Mitigate and compensate, as needed (Appendix 6), project impacts on FTHLs and their habitat both within and outside of MAs and the RA through humane and cost-effective measures.
  - 2.1.1 Apply mitigation measures as appropriate, based on the nature of the anticipated impacts (see Mitigation section).
  - 2.1.2 Require compensation for residual impacts remaining after application of other on-site mitigation measures (see Compensation section).
- 2.2. Limit land use authorizations that would cause surface disturbance within the MAs.
  - 2.2.1 Land use applications will continue to be reviewed on a case-by-case basis for impacts on FTHLs and their habitat. Every attempt shall be made to locate projects outside of MAs. New ROWs may be permitted only along the boundaries of MAs and only if impacts can be mitigated to avoid long-term effects on FTHLs in the MA. Where discretionary, other new authorizations may be permitted if the habitat disturbance does not pose a significant barrier to lizard movements. Disturbance shall be limited to 10 acres or less per authorization, if possible. If individual disturbances over 10 acres are necessary, the ICC and the MOG shall be contacted to provide suggestions for minimizing potential impacts to FTHLs. The cumulative new disturbance per MA since 1997 may not exceed 1% of the total acreage on federal land. The 1% cap on new surface disturbance within MAs will remain in effect for 5 years, after which the 1% cap will be reviewed by the MOG and amended, if necessary, based on more recent information. Each agency may permit disturbances of up to 1% of the land that the agency manages within the MA. Additions to the 242 Well Field by the BOR and existing, on-going activities at DOD facilities (for MCAS-Yuma, these activities are described in the EIS for the Yuma Training Range Complex) do not count towards this 1%. If disturbance greater than the 1% cap is desired, the agency may request use of the 1% disturbance allowance of other signatory agencies in the MA. All authorizations must be conducted in accordance with applicable mitigation and compensation.

- 2.2.2 All federally owned lands in the MAs shall be retained in federal ownership (except the patenting of mining claims pursuant to the General Mining Law of 1872). Lands in MAs owned by the state of California and managed as preserves, refuges, or parks shall be retained in state ownership.
  - 2.2.3 Maintenance of all existing ROW facilities may continue within MAs.
  - 2.2.4 The proposed Area Service Highway and its ROW are outside of the Yuma Desert MA. This and other new road construction along the boundary of the Yuma Desert MA shall require fencing to reduce access to the MA and lizard exclusion fencing (Appendix 7) to reduce lizard mortality.
- 2.3. Limit and/or reduce surface disturbance in MAs from discretionary minerals actions.
- 2.3.1 Allowable activities are the following: 1) leasing under the mineral leasing laws with no surface occupancy; 2) development and production in existing mineral material extraction sites in accordance with local, state, and federal laws and land-use plans, and subject to applicable mitigation; 3) new leases and permits for geothermal energy with stipulations of no surface occupancy (in California MAs only); and other mining and exploration activities authorized under the General Mining Law of 1872. Replacement wells and operation and maintenance of facilities shall be allowed on existing leases. The activities listed above shall be subject to applicable Mitigation (p. 60) and Compensation (p. 62).
- 2.4. Limit vehicle access and limit route proliferation within MAs.
- 2.4.1 Reduce new road construction to a minimum by coordinating access needs and avoiding conflicts and replication in road use, development, and management. Allow maintenance of roads on a case-by-case basis, recognizing that maintenance of some roads may be necessary to prevent proliferation of parallel routes. Any new surface disturbance associated with road maintenance shall require mitigation.
  - 2.4.2 All routes shall be designated either "closed" to motorized vehicles, "open" for general public use by all types of vehicles, or "limited" to a specific season, user, or vehicle type or number. Vehicle use shall be restricted to designated open and limited routes. Routes in MAs shall be given a high priority for signing. Routes shall be considered "closed" unless signed as "opened" or "limited".
  - 2.4.3 Reduce open and limited route density in MAs, particularly in portions of MAs where route density is high.
  - 2.4.4 Participating land managers shall coordinate with the U.S. BP to ensure cooperation with and enforcement of vehicle regulations in MAs and the RA to the maximum extent possible. Coordination shall include regularly scheduled meetings among signatory agencies and U.S. BP in the Yuma and El Centro Sectors to discuss management issues and ways to resolve those issues.
- 2.5. Limit the impacts of recreational activities within MAs.

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- 2.5.1 All types of vehicle-oriented recreation in compliance with current regulations may occur within the RA.
  - 2.5.2 Permit no competitive motorized vehicle recreational events within MAS. A competitive event is any event where speed or elements of competition (i.e., winning) are present in any form. Non-competitive events may be allowed on routes designated open for public use during the FTHL season of hibernation. Other types of vehicle-based recreation except camping (see action 2.5.4) in compliance with current regulations may occur within MAS.
  - 2.5.3 Allow currently authorized non-motorized recreational activities, such as rock hounding, hiking, backpacking, non-vehicle based camping, picnicking, bicycling, horseback-riding, hunting, bird watching, and nature study, in all MAS and the RA in accordance with existing regulations. Development of new recreational facilities, such as visitor centers, campgrounds, mountain bike trails, equestrian trails, shall not be allowed within MAS, if these would create new surface disturbance in excess of 1%. Installation of interpretive signing and informational kiosks is allowed.
  - 2.5.4 Allow vehicle-based camping only in developed campgrounds, designated camping areas, or within 50 feet from centerline of a designated open route within MAS. More restrictive measures may apply in certain areas. Non-vehicle camping may occur anywhere.
  - 2.5.5 No long-term camping areas shall be designated or developed in MAS.
  - 2.6. Authorize limited use of plants in MAS.
    - 2.6.1 Make no sales and allow no commercial collecting of native plant products (including whole plants, plant parts, flowers, and seeds) within MAS, except as needed for rehabilitation projects within the MAS.
    - 2.6.2 Authorize no livestock grazing in the MAS.
  - 2.7. Within the MAS, allow off-road military maneuvers and encampments only in designated sites. Allow other military activities on previously disturbed lands managed by DOD agencies consistent with normal operations and functions. Marine Corps activities on the BMGR shall be governed by Conference Opinion 2-21-95-F-114, dated April 17, 1996 (USFWS 1996a), as amended, whether or not the species is listed. This Conference Opinion is consistent with the goal and management objectives set forth in this RMS.
  - 2.8. Suppress fires in MAS and the BLM-administered lands in the RA using a mix of the following methods: 1) aerial attack with fire retardants, 2) crews using hand tools to create fire breaks, and 3) mobile attack engines limited to public roads, designated open routes, and routes authorized for limited-use. Do not allow earth-moving equipment (such as bulldozers) except in critical situations to protect life, property, or resources. Post-suppression mitigation shall include rehabilitation of firebreaks and other ground disturbances using hand tools.
  - 2.9. No pesticide treatments shall be applied within MAS. Use of specifically targeted, hand-applied herbicides (e.g. for tamarisk eradication projects) is allowed.

- 2.10. Within MAS, other discretionary land uses and activities not consistent or compatible with the above restrictions and the general RMS shall not be approved by the authorizing agency.
- 3. Within the MAS, rehabilitate damaged and degraded habitat, including closed routes and other small areas of past intense activity. Methods to be used may include, but are not limited to, a) ripping or scarifying compacted soils, b) recontouring the surface, c) pitting or imprinting the surface, d) seeding with native plants, e) planting seedlings, f) irrigating, and g) barricading. See Habitat Rehabilitation on page 69 for additional information.**
- 4. Attempt to acquire through exchange, donation, or purchase from willing sellers all private lands within MAS.**
  - 4.1. Establish and maintain with approval of the MOG (see Planning Action 6.1.1) a prioritized list of parcels or screening criteria for acquisition within each MA and habitat corridor.
  - 4.2. Seek funding to acquire key parcels within MAS.
  - 4.3. Using compensation and other funds, acquire land within MAS in accordance with established priorities and/or criteria.
  - 4.4. Participate in exchanges where opportunities arise to acquire key parcels within MAS.
- 5. Maintain or establish effective habitat corridors between naturally adjacent populations.**
  - 5.1. Activities in potential habitat corridors between MAS and the RA shall be regulated or mitigated so that at least occasional interchange of FTHLs occurs among adjacent populations. Potential habitat corridors include lands between West Mesa and Yuha Desert MAS and between West Mesa MA and Ocotillo Wells RA (see Corridors). In addition, activities in the Yuha Desert and Yuma Desert MAS that would prevent interchange of FTHLs across the International Border shall be prohibited.
  - 5.2. Coordinate conservation efforts with Mexico and the Immigration and Naturalization Service to ensure continued movement of FTHLs across the International Border in the Yuha Desert and Yuma Desert MAS.
- 6. Coordinate activities and funding among the participating agencies and Mexican agencies.**
  - 6.1. Maintain information exchange and coordination of monitoring, management activities, and research.
    - 6.1.1 Maintain a FTHL MOG consisting of management representatives from agencies participating in the conservation agreement (see Planning Action 6.2). The FTHL MOG shall provide management-level leadership, coordination, and oversight in the implementation of this RMS. The FTHL MOG shall review progress in implementing the conservation agreement, approve amendments to the RMS, set priorities, and recommend measures to resolve management issues relevant to implementation of the RMS. The FTHL MOG shall provide overall



policy guidance and coordination among the cooperators for the use of compensation funds.

- 6.1.2 Hold semi-annual meetings of the ICC. Each of the participating agencies shall designate a representative(s) to the ICC. Representatives from other agencies, organizations, and groups with special interests or knowledge of the FTHL may also be invited to ICC meetings. The ICC shall function as a forum for exchange of information on research results and proposals and for discussion of technical and management issues. The ICC may be assigned specific duties and responsibilities by the FTHL MOG.
- 6.1.3 Develop a forum for discussions with agencies and individual counterparts in Mexico to coordinate activities, provide information exchange, and promote and assist in development of a FTHL conservation program in Mexico.
- 6.2. Confirm commitment of agencies participating in this RMS through development and signing of a conservation agreement.
- 6.3. Incorporate management actions from this RMS when developing multi-agency, multi-species ecosystem plans for the ecoregions in the range of the FTHL incorporating management actions from this RMS.
  - 6.3.1 Incorporate actions in the development of the Western Colorado Desert Coordinated Management Plan (including the Yuha Desert, West Mesa, East Mesa, and Borrego Badlands MAS and Ocotillo Wells RA).
  - 6.3.2 Incorporate actions in the development of the CVMSHCP.
  - 6.3.3 Incorporate actions in the development of the Western Colorado Desert Route Designation.
- 6.4. Coordinate with the BP in developing mutual agreements for the conservation of natural resources.
  - 6.4.1 Encourage use of techniques that minimize BP OHV activity, such as remote cameras and vehicle barriers.
  - 6.4.2 Prepare an educational presentation for briefing BP agents.
- 7. Promote the purposes of the strategy through law enforcement and public education.**
  - 7.1. Provide law enforcement in MAS and the Coachella Valley FTHL conservation areas sufficient to ensure compliance with OHV and other regulations as described in the planned actions.
  - 7.2. Public information and education about the MAS and RA, including but not limited to interpretive signs and brochures, shall be made available to the public at the offices and interpretive centers of the participating agencies. Information provided shall describe the purposes of the MAS, the RA, and conservation areas within the Coachella Valley, and shall list all pertinent regulations.
- 8. Encourage and support research that will promote the conservation of FTHLs or desert ecosystems and will provide information needed to effectively define and implement necessary management actions. Research should be encouraged both**

**within and outside of MAS and the RA. Planning actions 8.3 and 8.4 shall be emphasized, as recommended by the ICC.**

- 8.1. All research shall be conducted under permit from the land management agency. Permits from the state game and fish agency may also be required, and from the USFWS if the species is listed.
- 8.2. The OWSVRA shall continue to budget for research for at least 5 years. A team of scientists and managers will recommend research designs. Results shall be distributed to other land management agencies.
- 8.3. Continue to refine cost-effective techniques for assessing FTHL abundance.
  - 8.3.1 Test trapping webs and other techniques to enumerate FTHLs directly.
  - 8.3.2 Determine effectiveness of relative enumeration techniques as an index of relative abundance using test plots of known density.
- 8.4. Determine the following life history and demographic parameters and how they vary with environmental conditions:
  - Age-specific mortality
  - Longevity
  - Clutch size
  - Age-specific number of clutches per year
  - Hatching success
  - Recruitment
  - Diet
  - Home range size
- 8.5. Determine effects of the following activities and factors on FTHL demographics and habitat:
  - Paved roads and highways
  - OHV use and associated activities
  - Geothermal development
  - Pesticide Use
  - Predation
  - Non-native plants
  - Fire
  - Wind turbines
- 8.6. Determine genetic variation among populations and the effects of barriers on movements.
  - 8.6.1 Determine genetic variation in populations in the different MAS.
  - 8.6.2 Determine effects of human-created barriers such as railroads, canals, paved roads, agricultural fields, and extensively denuded areas.
  - 8.6.3 Determine effects of natural barriers, such as the Colorado River.

8.7. Determine the effectiveness of the proposed mitigation measures.

**9. Continue inventory and monitoring.**

9.1. Continue to inventory lands within the range of FTHLS to clarify current range and habitat use.

9.2. Monitor habitat quality and population trends in five MAs, and additional MAs as designated, to determine progress toward overall management goal.

9.2.1 The ICC shall monitor implementation of this strategy.

9.2.2 Land management agencies shall monitor regional population trends using standardized techniques (see Appendix 4 and Appendix 5). Each MA shall be monitored using mark-recapture technique to estimate FTHL population size and determine a confidence interval, at least once every three years.

9.2.3 Land management agencies shall document habitat disturbance and loss; recording cumulative totals for percent and acreage of habitat lost. Land management agencies shall document a running total of compensation funds collected to date.

9.2.3.1 Signatory agencies shall conduct aerial reconnaissance and analysis of surface disturbance on the five MAs every five years.

9.2.4 The ICC shall prepare an annual report of monitoring results and progress on implementation of this RMS. The annual report shall be presented to the MOG for review and approval by the end of February each year and shall document implementation of Planning Actions in the previous calendar year. The report shall include a schedule of activities to be accomplished in the current calendar year, budget needs for the next fiscal year, and outyear budget needs for major projects. The report shall also include a summary of monitoring results and a discussion of the likely causes of any noted declines. Recommendations for reversing anthropogenic declines shall be made.

9.2.5 New inventory, monitoring, and research data shall be used in evaluations of the RMS and in assessing proposed changes to the RMS.

## **Summary of Management Strategy Implementation, 1997-2002**

This section summarizes the implementation of Planning Actions identified in the 1997 edition of the RMS. It covers the period from May 1997 through June 2002. Details of items listed in this section can be found in the ICC annual reports that were completed during this period.

### **1. Delineate and designate flat-tailed horned lizard MAs and a RA.**

**1.1-1.6.** Five MAs and one RA were mapped and precise boundary descriptions completed (see Figure 4 through Figure 9 and Appendix 3). Measures identified in the RMS were implemented within areas mapped as MAS. BLM-El Centro and BLM-Yuma drafted a document to implement the RMS: *The Proposed Amendment to the California Desert Conservation Area Plan and the Yuma District Resource Management Plan to Expand the East Mesa ACEC, West Mesa ACEC, and Gran Desierto Dunes ACEC Boundaries and to Implement the Flat-tailed Horned Lizard*

Management Strategy Implementation Schedule, 2003-2007											
Status	Priority	Action number	Planned action	Duration (yrs)	Resp agency	Total cost (\$000)	Cost estimates (\$000)				
							FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
⇒	2	9.1	Continue inventories	∞	ALL	125	25	25	25	25	25
⇒	2	9.2.1	Monitor implementation	∞	ICC	40	8	8	8	8	8
⇒	2	9.2.2	Monitor population trends	∞	ALL (MCAS)	320 (70)	70	105 (35)	70	105 (70)	70
⇒	1	9.2.3	Document habitat disturbance and loss	∞	ALL	40	8	8	8	8	8
⇒	1	9.2.3.1	Conduct aerial reconnaissance and analysis of surface disturbance on the five MAs every five years	∞	ALL	50					
⇒	2	9.2.4	Prepare annual monitoring/implementation report	∞	ICC	20	4	4	4	4	4
⇒	1	9.2.5	Use new inventory, monitoring, and research data in evaluations and proposed changes	∞	ALL	0					

## Habitat Management

### *Management Areas*

Each MA is controlled by multiple agencies and may include private inholdings (Table 3). MAs were designed to include most FTHL habitat identified as key areas in previous studies, even though the absolute densities of FTHLs within the MAs were not known. MAs were proposed based upon accepted principles of good preserve design, utilizing the best information available at the time. MAs included as large an area as possible, but avoided extensive, existing and predicted management conflicts (e.g., OHV open areas). Conflicts that are localized in nature (e.g., sand and gravel mines, military bombing targets) were accepted within some of the MAs. The MAs are the core areas for maintaining self-sustaining populations of FTHLs in perpetuity. Legal descriptions of the MAs and the RA are provided in Appendix 3, and maps (Figure 4 to Figure 10) are provided below. Maps do not show existing OHV trails, which are extensive in some MAs, except for major trails at OWSVRA.

The prescriptions that guide the management of lands within the MAs (see Planning Action 2, pg 27) were designed primarily to reduce surface disturbance and to promote reclamation of areas, such as duplicate roads that are no longer needed.

**Table 3. Overview of Acreage and Ownership of Management Areas.**

Management Area <sup>1</sup>	Federal Non-military <sup>2</sup>	Federal Military	State <sup>3</sup>	Private	Total
Yuma Desert <sup>4</sup> (Figure 4)	16,200	114,800 <sup>5</sup>	0	0	131,000
East Mesa (Figure 5)	99,900	8,500	0	6,900	115,300

West Mesa (Figure 6)	83,200	29,800	1,300	21,800	136,100
Yuha Basin (Figure 7)	57,200	0	0	3,000	60,200
Borrego Badlands (Figure 8)	0	0	36,500	5,900	42,400
<b>Total</b>	<b>256,500</b>	<b>153,100</b>	<b>37,800</b>	<b>37,600</b>	<b>485,000</b>

1 The existing Coachella Valley Preserve and Dos Palmas ACEC (not included in table) includes about 17,076 and 14,400 acres, respectively, administered by federal and state agencies and private organizations.

2 Includes lands administered by the BLM and BOR.

3 Includes lands administered by California Department of Parks and Recreation and California State Lands Commission

4 Pending designation of the proposed Area Service Highway. A portion of the Yuma Desert MA boundary will be formed by the Area Service Highway, if and when constructed (see Figure 4).

5 Lands administered by MCAS-Yuma

### ***Other Lands***

#### **Ocotillo Wells State Vehicular Recreation Area**

A RA was established in California (Figure 9) where FTHL research is encouraged and funded by the California Department of Parks and Recreation's Division of Off-Highway Motor Vehicle Recreation (Foreman 1997). The RA is about 77,000 acres in size. About 47,000 acres of the RA are owned by the state and 22,000 acres are owned by BLM, all of which are managed as OWSVRA. The State has applied to BLM under the Recreation and Public Purposes Act for transfer and patenting of all 22,000 acres of BLM land to OWSVRA. The State is also actively acquiring the remaining private lands (8,000 acres) within the RA.

OWSVRA is mandated to provide OHV recreation (free-play, racing, and touring) in a manner to sustain long-term use. Soil removal, artifact collecting, hunting, and shooting are prohibited within OWSVRA. No collecting of reptiles is allowed except under a scientific collecting permit issued by CDFG and approved by OWSVRA.

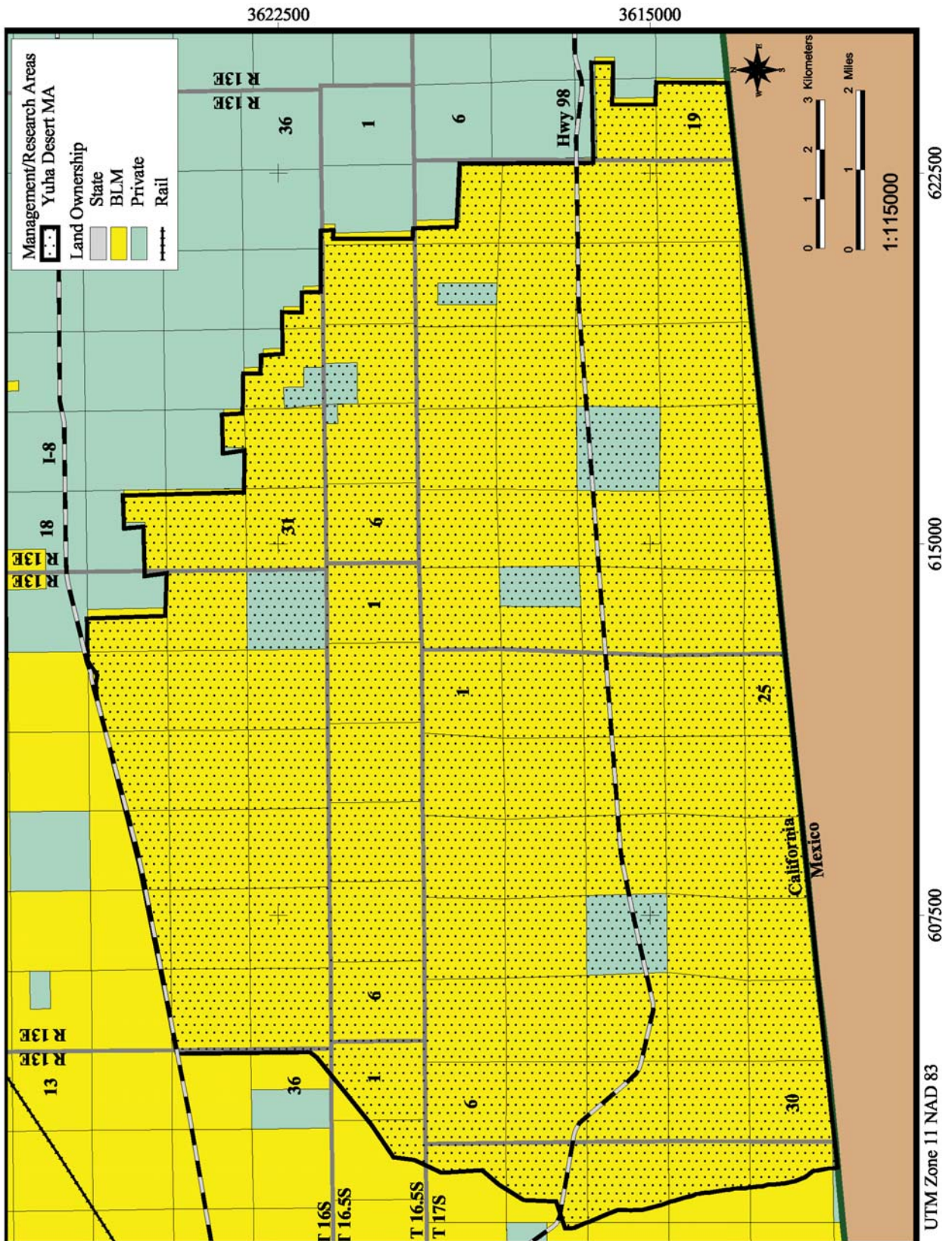
In 1991, an extensive wildlife survey and habitat protection plan (Kutilek *et al.* 1991; Wone *et al.* 1991) was completed in OWSVRA. The presence of FTHLs and the possibility of listing precipitated a study in 1994 (Wone *et al.* 1994) to develop methods for monitoring population trends in OWSVRA. In these studies, methods of monitoring FTHL population trends on permanent plots in OWSVRA and on control plots were assessed (Wone and Beauchamp 1995b; Wone *et al.* 1997). OWSVRA has since funded several studies (Young 1999; Setser and Young 2000; Setser 2001; T. Gardner 2002; Gardner in prep) investigating topics such as: demographics, habitat use (including investigation of the mud hills habitat type), movement patterns, and the effects of OHV activity on FTHLs and their habitat. OWSVRA has made a commitment to continue to support FTHL research through 2007.

#### **Anza-Borrego Desert State Park**

Lands within ABDSP are managed to conserve native plant and animal communities. Mining, soil removal, grazing, rock hounding, artifact collection, hunting, shooting, and other activities that could cause surface disturbances are prohibited in the park. FTHLs occur on an estimated 30,000 to 40,000 acres of the Park.

Within the 600,000-acre park, there is a system of primitive roadways about 500 miles in length. No vehicular activity is allowed off these roadways. Patrol rangers cite violators; the park's patrol aircraft provides backup. Designated roads that might impact sensitive natural or cultural

Figure 7. Yuha Desert Management Area.



# **EXHIBIT 7**

# High Wind Fugitive Dust Mitigation Plan

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## Doña Ana and Luna Counties

**NMED**  
New —  
Mexico —  
Environment  
Department



Air Quality Bureau | 525 Camino de los Marquez, Ste. 1, Santa Fe, NM 87505



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## **Purpose**

On September 16, 2016, the U.S. Environmental Protection Agency (EPA) finalized revisions to the 2007 Exceptional Events Rule, codified in 40 CFR Parts 50 and 51, that provide air quality agencies regulatory relief in situations when exceptional events cause an exceedance of a National Ambient Air Quality Standard (NAAQS). Exceptional events can be caused by human activity unlikely to recur or natural events. In New Mexico, natural events, such as windstorms and wildfires, cause exceedances of the particulate matter standards every year. Other exceptional events that may occur in New Mexico include tornadoes, firework displays, and chemical spills.

The revised rule includes requirements for states to prepare mitigation plans (40 CFR 51.930) for areas with recurring events (i.e., three similar events of the same type and pollutant in a three-year period). Luna County and the Anthony, NM PM<sub>10</sub> nonattainment area (i.e., Doña Ana County) were identified as areas subject to the mitigation plan requirements due to PM<sub>10</sub> exceedances from high winds. This plan has been developed to mitigate PM<sub>10</sub> and PM<sub>2.5</sub> emissions during high wind events in both Luna and Doña Ana counties.

## **Background**

The 3,804 square miles comprising Doña Ana County are topographically diverse and include mountain ranges, hills, valleys and deserts. The elevation range for the county is 3,730 feet at the valley floor in the south to 9,012 feet at the peak of the Organ Mountains. The Organ Mountains lie in a north-south direction along the eastern border of the county, separating the Mesilla Valley from White Sands Missile Range and White Sands National Monument. The western half of Doña Ana County is formed by an elevated desert plateau that extends west through Luna, Grant, and Hidalgo counties along the international border and into Arizona.

Where New Mexico, Texas and Mexico meet, Mount Cristo Rey lies south of Sunland Park between the Franklin Mountains on the east and the Sierra Juárez Mountains to the southwest. Previous air quality studies in the air shed indicate that this complex topography dictates wind flow patterns carrying air masses from El Paso and Ciudad Juárez into southern Doña Ana County.

Doña Ana County has a mild, semi-arid climate with light precipitation, abundant sunshine, low relative humidity, and a large daily and annual temperature range. Annual precipitation averages 9.35 inches, including 3.7 inches of snowfall in Las Cruces.

Luna County covers 2,965 square miles in southwestern New Mexico sharing 54 miles of international border with Mexico. Luna County is within the northern most part of the Chihuahuan Desert, with desert landscape as its most predominant feature. Several mountain

ranges are located within the county, including Cooke’s Range, the Florida Mountains, and the Tres Hermanas Mountains. Like Doña Ana County, Luna County has a semi-arid climate with light precipitation and low relative humidity. Annual precipitation averages 9.8 inches, including 1.6 inches of snowfall.

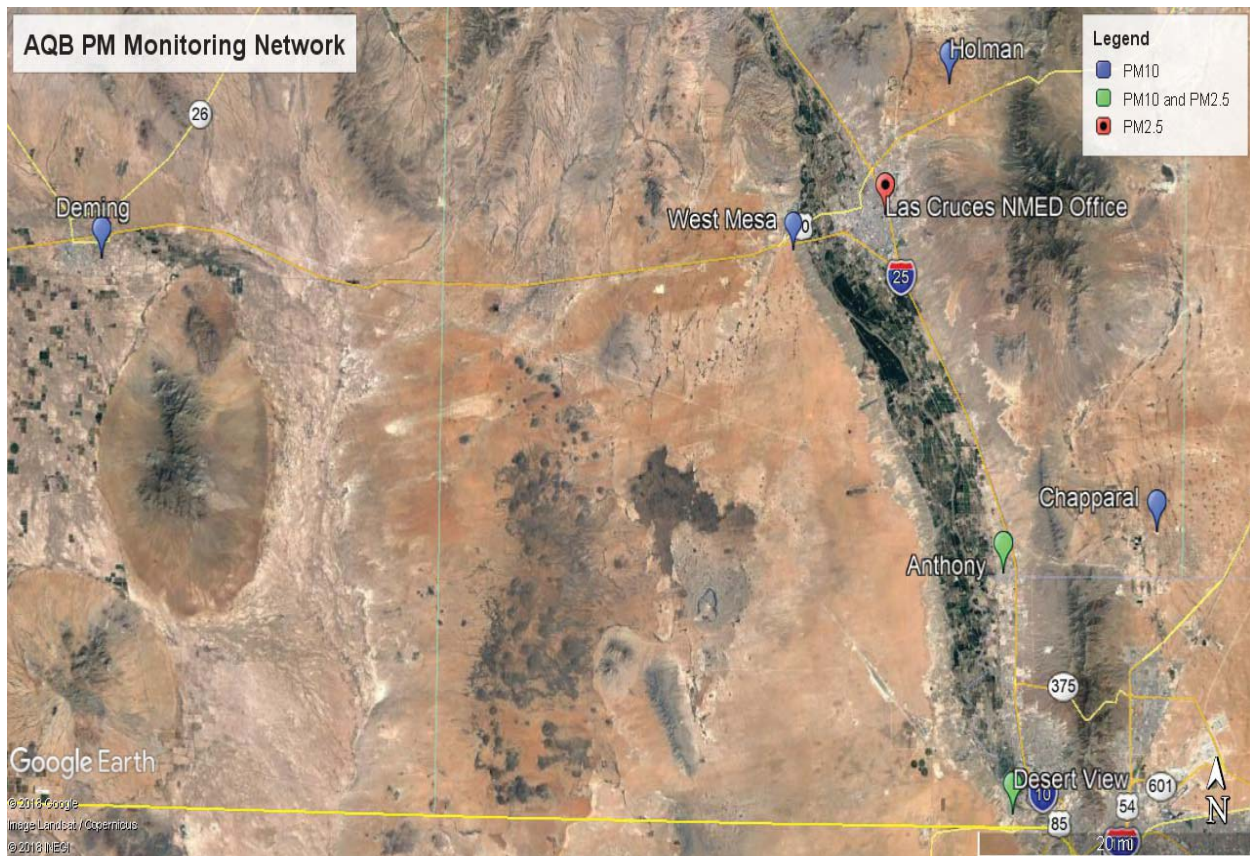
Windstorms are common during the late winter and spring months in both Luna and Doña Ana counties. Due to these high velocity winds, both counties experience the majority of PM<sub>10</sub> exceedances in the State. Synoptic scale weather activity, and to a lesser extent, mesoscale weather systems drive most of the frequent high wind events in the region. These periods of high wind may result in average hourly wind speeds exceeding 30 miles per hour for several hours and reach peak speeds of 60 miles per hour or more. Blowing dust and soil erosion originate from the numerous exposed and erodible desert areas. Winds predominantly blow from the southeast in summer, from the west in winter, and from the west-southwest in spring.

### **Air Monitoring Network**

The New Mexico Environment Department, Air Quality Bureau (AQB) regulates air quality to protect public health and the environment in the State of New Mexico, excluding Bernalillo County and tribal lands. Air monitoring data are required by regulation and are used to determine compliance with the NAAQS. The AQB operates a State and Local Air Monitoring Stations Network to measure the concentration of criteria pollutants, with six PM<sub>10</sub> and three PM<sub>2.5</sub> monitoring sites in Doña Ana and Luna counties that track windblown dust in southern New Mexico (Figure 1). These monitoring sites, except 6CM Anthony, have meteorological monitoring equipment that records wind speed, wind gust, 10 m temperature and 2 m temperature (Table 1).

<b>Site</b>	<b>AQS Site ID</b>	<b>Latitude</b>	<b>Longitude</b>	<b>Parameters</b>
6CM Anthony	35-013-0016	32.0033	-106.5992	PM <sub>10</sub> and PM <sub>2.5</sub>
6ZK Chaparral	35-013-0020	32.0409	-106.4095	PM <sub>10</sub> and Meteorology
6ZM Desert View	35-013-0021	31.7961	-106.5839	PM <sub>10</sub> , PM <sub>2.5</sub> and Meteorology
6ZL Holman Road	35-013-0019	32.4246	-106.6739	PM <sub>10</sub> and Meteorology
6Q Las Cruces	35-013-0025	32.3103	-106.7512	PM <sub>2.5</sub> and Meteorology
6WM West Mesa	35-013-0024	32.2781	-106.8649	PM <sub>10</sub> and Meteorology
7E Deming Airport	35-029-0003	32.2558	-107.7227	PM <sub>10</sub> and Meteorology

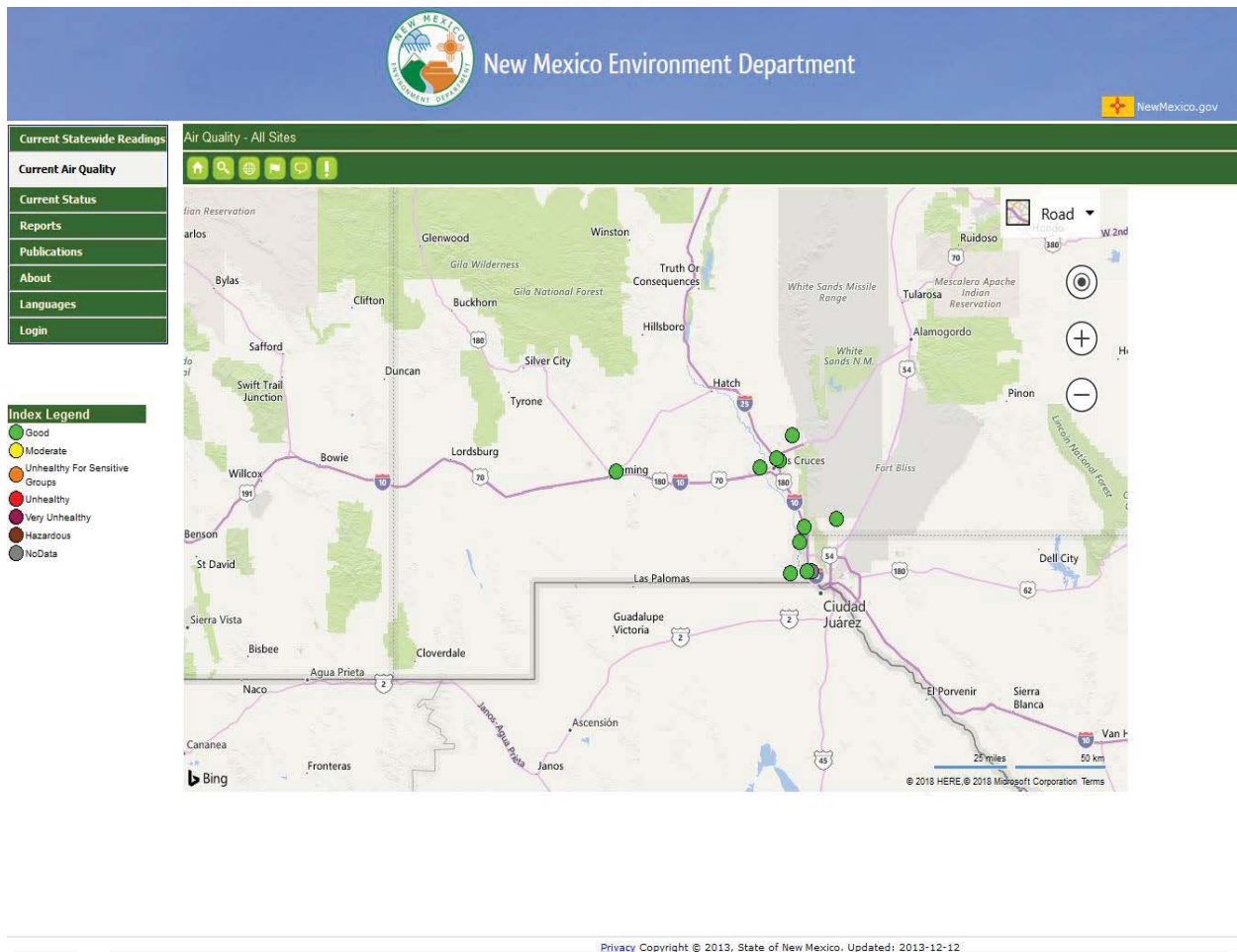
**Table 1. Particulate Matter monitoring network in Doña Ana and Luna Counties.**



**Figure 1: Luna and Doña Ana counties' PM Monitoring Network.**

## **Public Education and Notification**

The AQB will provide prompt public notification to and education programs for potentially affected communities whenever  $PM_{10}$  air concentrations exceed or are expected to exceed the NAAQS (40 CFR 51.930(b)(2)(i)). The AQB's monitoring website provides the public with near real-time air quality conditions at each monitoring site in the state (Figure 2) and can be accessed at [www.env.nm.gov/air-quality/air-monitoring-network-2/](http://www.env.nm.gov/air-quality/air-monitoring-network-2/). Other important uses of the air monitoring data include the production of a daily Air Quality Index, daily air quality forecast reports (e.g., AirNow/EnviroFlash), support of short and long-term health risk assessments, identification of localized health concerns, and tracking long-term trends in air quality.



**Figure 2. Screen shot of the AQB’s monitoring webpage, with green dots indicating monitoring site locations.**

The AQB’s Windblown Dust webpage provides another useful source of information and can be accessed at <https://www.env.nm.gov/air-quality/dust-main-page/>. Here the public can find answers to frequently asked questions, information on the health effects of dust, information on sources of dust and information on dust control methods. Draft and final Exceptional Events Demonstrations are also posted on this page (Figure 3).

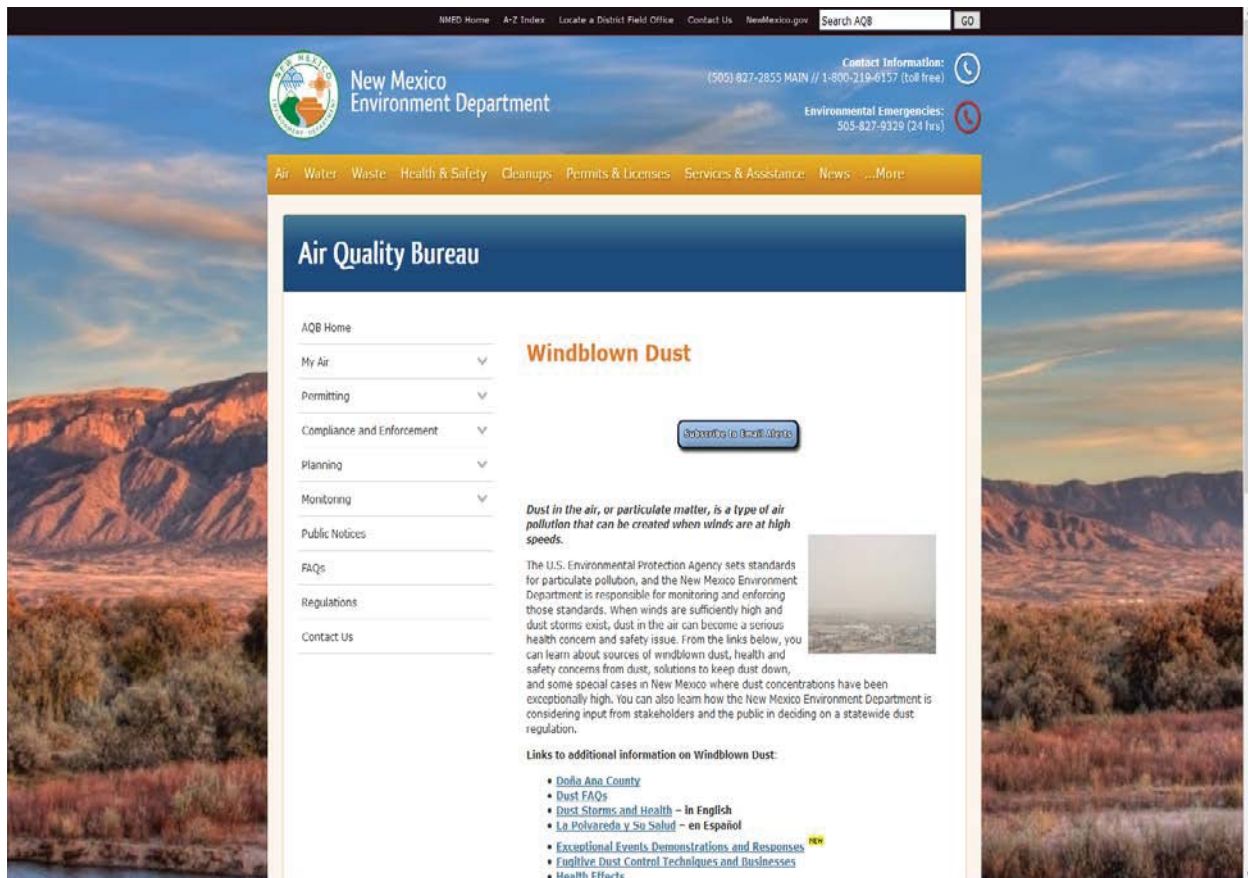


Figure 3. Screen shot of AQB’s Windblown Dust webpage.

The AQB is also developing an updated pamphlet on fugitive dust as a companion piece to this Dust Mitigation Plan that will be made available on the website and at multiple locations throughout both Doña Ana and Luna counties.

The AQB issues a press release at the start of each windy season to alert Doña Ana and Luna County residents of the risks associated with dust storms (Figure 4).



STATE OF NEW MEXICO

## Environment Department

**SUSANA MARTINEZ, GOVERNOR**

Butch Tongate, Cabinet Secretary

J.C. Borrego, Deputy Secretary

### **NEWS RELEASE**

*For Immediate Release*

**February 9, 2018**

*The Environment Department's mission is to protect and restore the environment and to foster a healthy and prosperous New Mexico for present and future generations.*

**Contact:** Allison Scott Majure, Communications Director  
New Mexico Environment Department  
505.231.8800 | [Allison.majure@state.nm.us](mailto:Allison.majure@state.nm.us)

### **NM Environment Dept. & Dept. of Transportation Alert Doña Ana and Luna County Residents of Risks Associated with Dust Storms**

**Santa Fe** – The New Mexico Environment Department and Department of Transportation, along with the cities of Las Cruces and Deming, and the counties of Doña Ana and Luna, is advising the citizens in those locales of the potential risks associated with dust storms.

**Figure 4. Joint press release issued by NMED and NMDOT at the beginning of the 2018 windy season.**

Because the AQB does not have a meteorologist on staff, it relies on alerts from the nearest National Weather Service weather forecast office (El Paso, TX) and the NM Department of Transportation (Figure 5) and relays this information via a Dust Alert listserv.

To enhance air quality awareness and reduce exposure to air pollution in the community, the AQB will work with local governments, businesses and school districts to establish air quality flag programs in the two counties. Through this program, colored flags are flown each day to alert communities to the quality of air they breathe. The flags correspond to the colors used for the Air Quality Index, thereby communicating air quality information to the community. For example, a green flag indicates good air quality whereas a red flag indicates unhealthy air quality. Additional details about the programs may be found on the AirNow website at [airnow.gov/index.cfm?action=aqibasics.aqi](http://airnow.gov/index.cfm?action=aqibasics.aqi).

**NATIONAL WEATHER SERVICE**  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

HOME FORECAST PAST WEATHER SAFETY INFORMATION EDUCATION NEWS SEARCH ABOUT

Local forecast by "City, ST" or ZIP code  
Enter location:  Go  
[Location Help](#)

**News Headlines**  
• The January 2018 Weather Digest is Ready for Viewing.

**NWS El Paso**  
[Weather.gov](#) > El Paso, TX

El Paso, TX  
Weather Forecast Office

Current Hazards Current Conditions Radar Forecasts Rivers and Lakes Climate and Past Weather Local Programs

**Customize Your Weather.gov**

CITY, ST  
Enter Your City, ST or ZIP Code  
 Remember Me  
**Get Weather**  
Privacy Policy

**Tuesday**

**WARM & WINDY**  
**Tuesday**




Well above normal temperatures  
West Winds 20 to 30 MPH  
Areas of Blowing Dust

Weather Forecast Office  
El Paso, TX  
Issued February 5, 2018 4:34 PM

68 Cliff 61 T or C 70 70 50  
Silver City Alamogordo  
71 Lordsburg 72 Las Cruces  
72 Deming DUST  
Animas El Paso 75 Dell City  
Sierra Blanca 72


[f](#) [t](#) [v](#) [NWSEIPaso](#) [weather.gov/apz](#)

An approaching upper level disturbance will bring warm windy weather under mostly sunny skies on Tuesday. Blowing dust will occur over a few locations.  
[Hide Caption](#)

 **NWS El Paso**   
@NWSEIPaso Follow 

437p Watch out for blowing dust along I-10 & Highway 70 in Hidalgo county. Sustained wind speeds up to 29 mph with gusts to 41 mph have been measured by [#NMDOT](#) weather stations on I-10 in the Animas valley this afternoon. [#nmwx](#)

3:39 PM - 10 Feb 2018

3 Retweets 5 Likes 




  3  5

Figure 5. Examples of area forecast products and social media alerts issued by the NWS El Paso Office.



The AQB consults with the NM Department of Health to ensure the listserv alerts include appropriate information regarding health advisories and actions to minimize exposure for sensitive populations (e.g., remain indoors, avoid vigorous outdoor activity, and avoid exposure to respiratory irritants). In addition to the Department of Health, the AQB also regularly consults with the EPA Region 6 Border Office and New Mexico State University (whose staff includes the NM State Climatologist) on educating the public in the border region, including supporting ongoing efforts by these agencies. Education and outreach material will be provided to the public in English and Spanish to the greatest extent possible.

## **Measures to Minimize Contributing Controllable Sources**

In developing the mitigation plan, the AQB must take steps to identify, study and implement mitigating measures (40 CFR 51.930(b)(2)(ii)). The AQB recently completed a Fugitive Dust Micro-Inventory of local sources surrounding the PM<sub>10</sub> monitoring sites in Doña Ana and Luna counties. Staff from the AQB used previous emission inventories for Doña Ana County, GIS mapping, satellite imagery and field data to identify sources within a 2-km radius of each site and potential control measures to include in a Fugitive Dust Control rule (see below). These measures are designed to abate or minimize contributing controllable sources of PM (40 CFR 51.930(b)(2)(ii)(A)).

### ***Mandatory Measures***

#### **Local Dust Control Ordinances**

The City of Las Cruces, Doña Ana County, and Luna County have existing dust ordinances for which the AQB has provided consultation. This Dust Mitigation Plan and associated Fugitive Dust Rule, discussed below, will enhance these ordinances, and provide coverage where there are gaps.

#### **20.2.23 NMAC, Fugitive Dust Control**

The AQB is concurrently developing a Fugitive Dust Control rule for adoption into the New Mexico Administrative Code. The rule will apply to certain sources of fugitive dust that are not required to obtain a construction permit from the AQB and will be applicable in any area of the state that experiences recurring high wind events where the PM<sub>10</sub> and/or the PM<sub>2.5</sub> NAAQS is exceeded. Sources of fugitive dust to be included in the draft rule include disturbed surface areas equal to or greater than 1.0 acre from construction/demolition activities, earthmoving (including weed abatement activities), and off-road vehicles/all-terrain vehicle activities. Control measures will be required to stabilize surfaces to ensure emissions are not crossing the property line or exceeding opacity limits. Commercial and industrial bulk material handling and storage will also require use of control measures. A list of potential sources of emissions and associated control

measures are included in Table 2 below. The Environmental Improvement Board granted the AQB a hearing for adoption of the rule in September 2018.

Source Category	Control Measures
Construction/Demolition	Water unpaved surfaces
	Limit on-site vehicle speed to 15 mph
	Apply dust suppressant to unpaved areas
	Prohibit activities during high winds
Materials Handling	Implement wet suppression
Wind Erosion (open area and storage piles)	Plant trees or shrubs as a windbreak
	Erect artificial wind barriers
	Apply dust suppressant or gravel
	Water exposed area before high winds
	Revegetate area with native plants

**Table 2. Candidate sources and associated control measures for fugitive dust control.**

### *Voluntary Measures*

#### Agricultural Conservation Measures

The AQB will rely on the conservation measures outlined by the United States Department of Agriculture Natural Resources Conservation Service (NRCS) to mitigate particulate matter emissions from agricultural land management, cropping operations, and livestock/poultry operations. When properly implemented, NRCS-approved conservation systems and activities may achieve levels of control comparable to those required by EPA for marginal PM<sub>10</sub> nonattainment areas. Implementation of conservation measures will be coordinated with producers, landowners, operators, state agencies, NRCS, and EPA to determine the most suitable and effective conservation measures for the counties. Control measures to be considered include:

- Maintaining soil surface cover;
- In-field pass reductions;
- Soil conditioning and timing of operations modifications;
- Wind barriers;
- Equipment modifications;
- Bulk material handling;
- Unpaved roadway management;
- Nutrition and feed management;
- Animal confinement;
- Manure management;
- Land application;
- Pasture and range management; and
- Mortality management.

#### Unpaved Travel Surfaces

The AQB will consult with the New Mexico Department of Transportation to develop guidance for dust control best management practices for maintenance of existing unpaved roadways.

Alternatives to paving will also be explored where material, chemical and administrative treatment methods may be applied for dust control.

### **Minimize Public Exposure to High Concentrations of PM**

Mitigation plans must include methods to minimize public exposure to high concentrations of PM (40 CFR 51.930(b)(2)(ii)(B)). The AQB will accomplish this through public notification, outreach education, air quality alerts, Fugitive Dust Control compliance education and inspections, and enforcement actions.

### **Processes to Collect and Maintain Data Pertinent to the Event**

The AQB has established an internal process to collect and maintain data pertinent to exceptional events flagging, which includes close coordination between the AQB’s Quality Assurance and Control Strategies sections (40 CFR 51.930(b)(2)(ii)(C)). This process is included in the Ambient Air Monitoring Quality Assurance Project Plan, which is reviewed annually. The AQB Quality Assurance Section is currently developing an Exceptional Events Documentation Standard Operating Procedure that will provide detailed procedures for documenting information on possible exceptional events beginning with the monitoring site operator through the quality assurance of monitored data.

For those data that are subsequently determined to have regulatory significance, the AQB Environmental Analyst in the Las Cruces field office will begin the data collection process to support an exceptional events demonstration. This data includes monitored PM concentrations, wind data, weather information, satellite data, and event reports.

### **Consultation with Other Air Quality Managers**

Often the same weather systems are responsible for dust storms and road closures along the Interstate 10 corridor in Arizona, New Mexico and Texas, highlighting the need for interstate consultation. The AQB will engage with other air quality management agencies (40 CFR 51.930(b)(2)(ii)(D)), primarily the Texas Commission on Environmental Quality (TCEQ) and the Arizona Department of Environmental Quality (ADEQ), to share exceptional event data and coordinate demonstrations for events that may affect the entire region. Contact information for TCEQ and ADEQ may be found below.

<b>Exceptional Events Contacts</b>	
ADEQ Air Quality Division Monitoring and Assessments (602) 771-7676 <a href="mailto:bb4@azdeq.gov">bb4@azdeq.gov</a>	TCEQ Air Quality Division Modeling and Data Analysis (512) 239-4900 <a href="mailto:monops@tceq.texas.gov">monops@tceq.texas.gov</a>

Information regarding exceptional events and dust mitigation will also be shared through the triannual meetings of the Joint Advisory Committee (JAC) for the improvement of air quality in the Paso del Norte Region (El Paso/Cd. Juárez/Doña Ana County). The JAC is a bi-national committee charged with facilitating pilot projects and identifying priority issues for consideration by the Air Policy Forum of EPA's Border 2020 program. The committee was established under the environmental treaty between the United States and Mexico, commonly referred to as the "La Paz" agreement. Its membership includes federal, state, and local government officials along with private citizens, university officials, and non-governmental organizations. The JAC has a total membership of twenty-two, with eleven members each from the United States and Mexico. More information about participating agencies and past activities of the JAC can be found at [www.cccjac.org](http://www.cccjac.org).

On the local level, biannual workshops will be held before the start of the spring windy season and after the monsoon season to foster communication amongst environmental, transportation, public safety, weather and academia officials. In-person meetings facilitate enhanced stakeholder cooperation and discussion of health and safety issues, enforcement of local rules, communication, research, mitigation projects, etc. A preliminary list of entities that will be invited to participate include the city of Las Cruces, city of Deming, Doña Ana County, Luna County, New Mexico Department of Public Safety, New Mexico Department of Transportation, State Climatologist/New Mexico State University, National Weather Service, EPA El Paso Border Office, Natural Resource Conservation Service, and the Bureau of Land Management. If resources allow, this could expand into a multi-day workshop where outreach and education efforts can be focused on and extended to the public and regulated community.

## **Periodic Review and Evaluation**

The AQB will review and evaluate this Dust Mitigation Plan and its implementation and effectiveness every two years (40 CFR 51.930(b)(2)(iii)). If additional particulate matter rulemaking occurs within the two-year period, the Dust Mitigation Plan will be updated accordingly and submitted to EPA Region 6 after the consideration of public comment.

## **Public Comment Documentation**

The draft Dust Mitigation Plan was posted on the AQB website on April 4, 2018, for an initial thirty-day public comment period. The department did not receive formal comments from stakeholders, but made minor changes to clarify the consultation mechanism the department plans on utilizing. Stakeholders were notified via listserv on August 1, 2018, that the final draft for public comment was posted on the AQB website and the department concluded the public comment period on September 14, 2018 (40 CFR 51.930(b)(2)(iii)(A)(1)). Appendix A contains copies of all public notices and listserv announcements associated with this plan. The AQB did

not receive public comment on the plan (40 CFR 51.930(b)(2)(iii)(A)(2)), therefore no response to comments is required (40 CFR 51.930(b)(2)(iii)(A)(3)).

### **Submission of Mitigation Plans**

The AQB submitted the Dust Mitigation Plans for Doña Ana and Luna Counties on September 28, 2018, meeting the required deadline of September 30, 2018 (40 CFR 51.930(b)(3)(i)). EPA intends to review each plan to ensure required components are included and will notify the AQB upon completion of such review (40 CFR 51.930(b)(3)(ii)). EPA does not intend to formally approve mitigation plans or require them as part of the New Mexico State Implementation Plan.

# **Appendix A – Public Notices**

0001385804-01

RECEIVED

JAN 4 2018

Air Quality Bureau



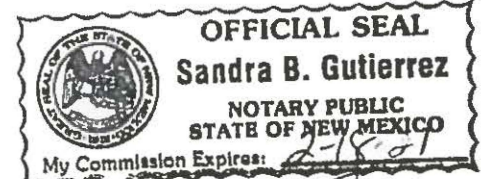
# AFFIDAVIT OF PUBLICATION

## STATE OF NEW MEXICO

County of Bernalillo SS

Bernadette Gonzales, the undersigned, on oath states that she is an authorized Representative of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

12/30/2017



*Sandra B. Gutierrez*

*Bernadette Gonzales*

Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this

30 day of December of 2017

PRICE \$130.67

Statement to come at the end of month.

ACCOUNT NUMBER 1007594

The New Mexico Environment Department will conduct public outreach meetings regarding the development of a dust mitigation plan, adoption of a fugitive dust rule, and repeal of the New Mexico Total Suspended Particulate Standard. These meetings will be held in Deming (1/9/2018), Las Cruces (1/10/2018), and Santa Fe (1/11/2018) where representatives of the Environment Department will provide background information and the required elements of a mitigation plan, rule adoption and rule repeal. Also, the department will solicit public input on the scope and objective of each action to guide the department in its efforts.

Public Outreach Meeting Schedule:

Tuesday, January 9, 2018, 5:30-7:00 p.m., NM Department of Transportation, 2912 E. Pine St., Deming, NM 88030. Phone: (575) 544-6530.

Wednesday, January 10, 2018, 5:30-7:00 p.m., NM Environment Department, 2301 Entrada del Sol, Las Cruces, NM 88001. Phone: (575) 544-6530.

0001385806-01

RECEIVED

JAN 4 2018

Air Quality Bureau



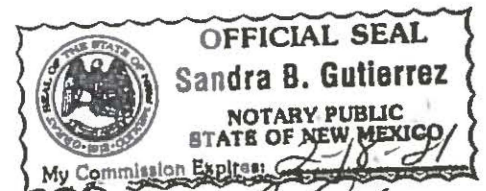
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12/30/2017



*Sandra B. Gutierrez*

*Bernadette Gonzales*

Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this

30 day of December of 2017

PRICE \$136.08

Statement to come at the end of month.

ACCOUNT NUMBER 1007594

El Departamento del Medio Ambiente de Nuevo México llevará a cabo reuniones públicas de divulgación con respecto al desarrollo de un plan de mitigación de polvo, adopción de una norma de polvo fugitivo y derogación del Estándar del total de partículas suspendidas de Nuevo México. Las reuniones se llevarán a cabo en enero de 2018 en Deming (el 9), Las Cruces (el 10) y en Santa Fe (el 11) y allí representantes del Departamento del Medio Ambiente proveerán los antecedentes y elementos que se requieren de un plan de mitigación, adopción de normas y derogación de normas. Igualmente, el departamento solicitará la opinión pública sobre el alcance y objetivo de cada acción para orientarse en sus esfuerzos.

Horario de las reuniones públicas:

Marles, 9 de enero del 2018, 5:30-7:00 p.m., Departamento de Transporte de Nuevo México, 2912 E. Pine St., Deming, NM 88030. Tel.: (575) 544-6530.

# HEADLIGHT

## PROOF OF PUBLICATION

I, being duly sworn, Rynni Henderson deposes and says that she is the President of the Deming Headlight, a newspaper published weekly in the county of Luna, State of New Mexico; that the 1227513 is an exact duplicate of the notice that was published once a week/day in regular and entire issue of said newspaper and not in any supplement thereof for 1 consecutive week(s)/day(s), the first publication was in the issue dated December 29, 2017 the last publication was December 29, 2017. Despondent further states this newspaper is duly qualified to publish legal notice or advertisements within the meaning of Sec. Chapter 167, Laws of 1937.

Signed



President  
Official Position

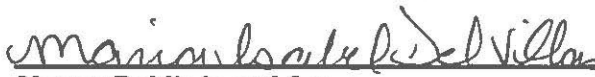
## STATE OF NEW MEXICO

ss.

County of Dona Ana

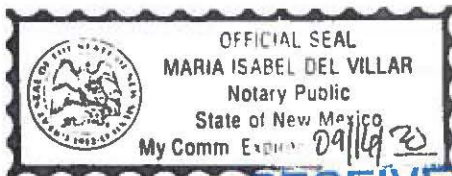
Subscribed and sworn before me this

3rd day of January 2018



Notary Public in and for  
Dona Ana County, New Mexico

September 16, 2020  
My Term Expires



RECEIVED

JAN 10 2018

Air Quality Bureau

The New Mexico Environment Department will conduct public outreach meetings regarding the development of a dust mitigation plan, adoption of a fugitive dust rule, and repeal of the New Mexico Total Suspended Particulate Standard. These meetings will be held in Deming (1/9/2018), Las Cruces (1/10/2018), and Santa Fe (1/11/2018) where representatives of the Environment Department will provide background information and the required elements of a mitigation plan, rule adoption and rule repeal. Also, the department will solicit public input on the scope and objective of each action to guide the department in its efforts.

### Public Outreach Meeting Schedule:

Tuesday, January 9, 2018, 5:30-7:00 p.m., NM Department of Transportation, 2912 E. Pine St., Deming, NM 88030. Phone: (575) 544-6530.

Wednesday, January 10, 2018, 5:30-7:00 p.m., NM Environment Department, 2301 Entrada del Sol, Las Cruces, NM 88001. Phone: (575) 288-2050.

Thursday, January 11, 2018, 2:00-3:30 p.m., NM Environment Department, Air Quality Bureau, 525 Camino de los Marquez, Santa Fe, NM 87505. Phone: (505) 476-4300.

If you plan to attend the meeting in Santa Fe, please notify Kerwin Singleton at (505) 476-4350 or [kerwin.singleton@state.nm.us](mailto:kerwin.singleton@state.nm.us).

For more information on blowing dust in New Mexico please visit our website at [www.env.nm.gov/air-quality/dust-main-page/](http://www.env.nm.gov/air-quality/dust-main-page/). For more information about mitigation plan requirements please visit [www.epa.gov/air-quality-analysis/treatment-air-quality-data-influenced-exceptional-events](http://www.epa.gov/air-quality-analysis/treatment-air-quality-data-influenced-exceptional-events).

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact:

Kristine Pintado, Non-Discrimination Coordinator  
New Mexico Environment Department  
1190 St. Francis Dr., Suite N4050  
P.O. Box 5469  
Santa Fe, NM 87502  
(505) 827-2855  
[nd.coordinator@state.nm.us](mailto:nd.coordinator@state.nm.us)

If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.

El Departamento del Medio Ambiente de Nuevo México llevará a cabo reuniones públicas de divulgación con respecto al desarrollo de un plan de mitigación de polvo, adopción de una norma de polvo fugitivo y derogación del Estándar del total de partículas suspendidas de Nuevo México. Las reuniones se llevarán a cabo en enero de 2018 en Deming (el 9), Las Cruces (el 10) y en Santa Fe (el 11) y allí representantes del Departamento del Medio Ambiente proveerán los antecedentes y elementos que se requieren de un plan de mitigación, adopción de normas y derogación de



# HEADLIGHT

normas. Igualmente, el departamento solicitará la opinión pública sobre el alcance y objetivo de cada acción para orientarse en sus esfuerzos.

**Horario de las reuniones públicas:**

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Para más información sobre el polvo suelto en Nuevo México, por favor visite nuestro sitio en la red: [www.env.nm.gov/air-quality/dust-main-page/](http://www.env.nm.gov/air-quality/dust-main-page/). Para más información sobre los requisitos del plan de mitigación, visite: [www.epa.gov/air-quality-analysis/treatment-air-quality-data-influenced-exceptional-events](http://www.epa.gov/air-quality-analysis/treatment-air-quality-data-influenced-exceptional-events).

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Kristine Pintado, Non-Discrimination Coordinator  
New Mexico Environment Department  
1190 St. Francis Dr., Suite N4050  
P.O. Box 5469  
Santa Fe, NM 87502  
(505) 827-2855 [nd.coordinator@state.nm.us](mailto:nd.coordinator@state.nm.us)

Si cree que ha sido discriminado-a con relación a un programa o actividad del NMED, se puede comunicar con la coordinadora antidiscriminación mencionada arriba o visitar nuestro sitio electrónico: <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> para aprender más sobre cómo y dónde presentar una queja de discriminación.

Pub#1227513  
Run Date: Dec. 29, 2017

# LAS CRUCES SUN-NEWS

## PROOF OF PUBLICATION

I, being duly sworn, Rynni Henderson deposes and says that she is the President of Las Cruces Sun-News, a newspaper published daily in the county of Dona Ana, State of New Mexico; that the 1227526 is an exact duplicate of the notice that was published once a week/day in regular and entire issue of said newspaper and not in any supplement thereof for 1 consecutive week(s)/day(s), the first publication was in the issue dated December 30, 2017, the last publication was December 30, 2017. Despondent further states this newspaper is duly qualified to publish legal notice or advertisements within the meaning of Sec. Chapter 167, Laws of 1937.

Signed

*Rynni Henderson*  
\_\_\_\_\_  
President  
Official Position

## STATE OF NEW MEXICO

ss.

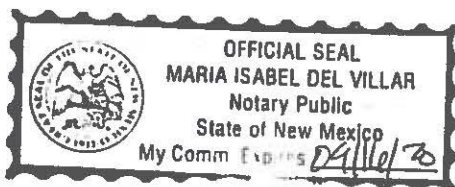
County of Dona Ana

Subscribed and sworn before me this

3<sup>rd</sup> day of January 2018

*Maria Isabel Del Villar*  
\_\_\_\_\_  
Notary Public in and for  
Dona Ana County, New Mexico

September 16, 2020  
\_\_\_\_\_  
My Term Expires



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P.O. Box 5469  
Santa Fe, NM 87502  
(505) 827-2855  
[nd.coordinator@state.nm.us](mailto:nd.coordinator@state.nm.us)

**RECEIVED**

**JAN 16 2018**

**Air Quality Bureau**

# LAS CRUCES SUN-NEWS

If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.

El Departamento del Medio Ambiente de Nuevo México llevará a cabo reuniones públicas de divulgación con respecto al desarrollo de un plan de mitigación de polvo, adopción de una norma de polvo fugitivo y derogación del Estándar del total de partículas suspendidas de Nuevo México. Las reuniones se llevarán a cabo en enero de 2018 en Deming (el 9), Las Cruces (el 10) y en Santa Fe (el 11) y allí representantes del Departamento del Medio Ambiente proveerán los antecedentes y elementos que se requieren de un plan de mitigación, adopción de normas y derogación de normas. Igualmente, el departamento solicitará la opinión pública sobre el alcance y objetivo de cada acción para orientarse en sus esfuerzos.

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para aprender más sobre cómo y dónde presentar una queja de discriminación.

Pub#1227526  
Run Date: Dec. 30, 2017

From: [New Mexico Environment Department](#)  
To: [Baca, Michael, NMENV](#)  
Subject: Dust Mitigation Plan and Fugitive Dust Control Rule  
Date: Wednesday, April 4, 2018 5:00:52 PM



## Air Quality Bureau

### Regulatory and SIP Bulletin

Having trouble viewing this email? [View it as a Web page.](#)

The Air Quality Bureau has developed a draft dust mitigation plan and proposed fugitive dust control rule for Doña Ana and Luna counties in southern New Mexico. Mitigation plans are required by the U.S. Environmental Protection Agency (EPA) in areas where recurring natural events (in this case, high winds resulting in blowing dust) cause exceedances of the health based national standards for Particulate Matter.

Some of the required elements of a mitigation plan include:

- Steps to identify and study sources of dust;
- Mandatory or voluntary control measures to abate sources of dust that cause or contribute to exceedances of the standards to better protect public health;
- Public education and notification programs aimed at reducing individuals' exposure to unhealthy levels of particulate matter in the air before, during, and after high wind events; and
- Public review and periodic evaluation of the mitigation plan.

Draft documents of the dust mitigation plan and fugitive dust control rule may be downloaded [here](#). The Air Quality Bureau will accept comments on the draft documents through April 30, 2018. Although this is considered an informal comment period, the Bureau plans to respond to every submission received and incorporate input as appropriate. A formal comment period will be held in conjunction with the rule making process and will be announced at a later date.

For more information on blowing dust in New Mexico please click [here](#). For more information about mitigation plan requirements please visit EPA's Exceptional

Events [website](#).

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For additional information concerning this bulletin and to submit comments on the draft documents, please contact Michael Baca at (575) 288-2050 or [michael.baca1@state.nm.us](mailto:michael.baca1@state.nm.us)

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NMED [Air Quality Bureau](#)

525 Camino de los Marquez, Suite 1

Santa Fe, New Mexico, 87505-1816

(505) 476-4300

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Stay Connected with New Mexico Environment Department

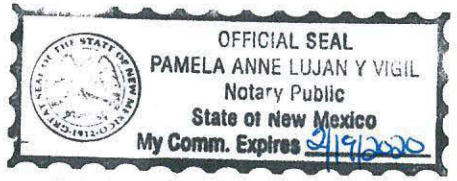
**Affidavit of Publication in New Mexico Register**

I, Matthew Ortiz, certify that the agency noted on Invoice # 3333 has published legal notice of rulemaking or rules in the NEW MEXICO REGISTER, VOLUME XXIX, that payment has been assessed for said legal notice of rulemaking or rules, which appears on the publication date and in the issue number noted on Invoice # 3333, and that Invoice # 3333 has been sent electronically to the person(s) listed on the *Billing Information Sheet* provided by the agency.

Affiant:   
Matthew Ortiz

Subscribed, sworn and acknowledged before me this 16<sup>th</sup> day of June, 2018.

Notary Public:   
My Commission Expires: 4/19/2020





NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD  
NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on September 28, 2018, at 9:30 a.m., at the New Mexico Farm and Ranch Heritage Museum, 4100 Tripping Springs Road, Las Cruces, New Mexico. The purpose of the hearing is to consider the matter of EIB 18-05(R), the proposed adoption of an Air Quality Control Regulation to be codified in the New Mexico Administrative Code (NMAC) at 20.23 NMAC, Fugitive Dust Control.

The proponent of this regulatory amendment is the New Mexico Environment Department ("NMED") Air Quality Bureau.

The U.S. Environmental Protection Agency published revisions to the Exceptional Events Rule on October 3, 2016, requiring mitigation plans in certain areas with recurring exceptional events of the same type and pollutant. The proposed regulation is a supporting element of the dust mitigation plan required by the federal Exceptional Events Rule. The proposed regulation will apply to sources of fugitive dust that are not required to obtain a construction permit from the NMED and will be applicable in any area of the state that experiences recurring high wind dust events where the PM10 and/or the PM2.5 NMACS is exceeded. Currently this includes Luna County and the Anthony M10 nonattainment area in Doña Ana County.

The full text of NMED's proposed regulation is available on the Air Quality Bureau's web site at <https://www.env.nm.gov/air-quality/proposed-regs/> or by contacting Michael Baca at 75-915-1091 or [michael.baca1@state.nm.us](mailto:michael.baca1@state.nm.us). The proposed regulation may also be examined during regular business hours at the Air Quality Bureau office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico, 87505.

The hearing will be conducted in accordance with Board Rulemaking Procedures (20.1.1 NMAC); the Environmental Improvement Act, Section 74-1-9 NMSA 1978; the Air Quality Control Act, Section 74-2-6 NMSA 1978; the State Rules Act, Section 14-4-5.3 NMSA 1978; and other applicable procedures.

Interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing; to introduce exhibits; and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written Notice of Intent to do so. The Notice of Intent shall:

- 1) identify the person for whom the witness(es) will testify;
- 2) identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background;
- 3) include a copy of the direct testimony of each technical witness in narrative form;
- 4) include the text of any recommended modifications to the proposed regulatory change; and
- 5) list and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

Notices of Intent to present technical testimony at the hearing must be received in the Office of the Board not later than 5:00 p.m. on September 7, 2018, and should reference the docket number, EIB 18-05(R), and the date of the hearing. Notices of Intent to present technical testimony should be submitted to:

Pam Castañeda, Administrator for Boards & Commissions  
New Mexico Environment Department  
P.O. Box 5469  
Santa Fe, NM 87502  
Phone: (505) 827-2425, Fax (505) 827-1628  
Email: [pam.castaneda@state.nm.us](mailto:pam.castaneda@state.nm.us)

Any member of the general public may testify at the hearing. Prior notification is required to present non-technical testimony at the hearing. Any such member may also offer non-technical exhibits in connection with their testimony, so long as the exhibit is not unduly repetitious of the testimony.

Any member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing at the above listed address, or submit it at the hearing.

Persons having a disability and requiring assistance, an interpreter, or an auxiliary aid or other service to participate in this hearing process should contact Pam Castañeda, Administrator for Boards & Commissions, at least ten days prior to the meeting or as soon as possible at the above address or e-mail [pam.castaneda@state.nm.us](mailto:pam.castaneda@state.nm.us). TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed regulation option at the conclusion of the hearing, or may convene a meeting after the hearing to consider action on the proposal.

**Office of Non-Discrimination**  
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Sumat: June 17, 2018

# AFFIDAVIT OF PUBLICATION

## STATE OF NEW MEXICO

### County of Bernalillo SS

Bernadette Gonzales, the undersigned, on oath states that she is an authorized Representative of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

06/17/2018

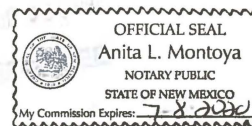
Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this

17 day of June of 2018

PRICE \$325.34

Statement to come at the end of month.

ACCOUNT NUMBER 1007594





JUNTA DE MEJORA AMBIENTAL DE NUEVO MÉXICO
AVISO DE AUDIENCIA SOBRE REGLAMENTACIÓN

La Junta de Mejora Ambiental de Nuevo México ("Junta") celebrará una audiencia pública el 28 de septiembre de 2018, a las 9:30 a.m., en New Mexico Farm and Ranch Heritage Museum, 4100 Dripping Springs Road, Las Cruces, New Mexico. El propósito de la audiencia es examinar el asunto de BEI 18-05 (R), la adopción propuesta de la codificación del Reglamento de Control de Calidad del Aire en el Código Administrativo de Nuevo México (NMAC) en 20.2.23 NMAC, Control de Polvo Fugitivo.

El autor de esta enmienda regulatoria es la Oficina de Calidad del Aire del Departamento de Medio Ambiente de Nuevo México ("NMED", por su sigla en inglés).

La Agencia de Protección Ambiental de EE. UU. publicó revisiones al Reglamento de Eventos Excepcionales el 3 de octubre de 2016, que requieren planes de mitigación en ciertas áreas con eventos excepcionales recurrentes del mismo contaminante y tipo. La regulación propuesta es un elemento de apoyo del plan de mitigación de polvo requerido por el reglamento federal de eventos excepcionales. La regulación propuesta se aplicará a las fuentes de polvo fugitivo que no requieren la obtención de un permiso de construcción de NMED y será aplicable en cualquier área del estado que experimente eventos recurrentes de polvo de vientos fuertes donde el PM10 y/o el PM2.5 NAACS es rebasado. Actualmente esto incluye el condado de Luna y el área de no cumplimiento PM10 de Anthony, en el condado de Doña Ana.

El texto completo de la regulación propuesta por NMED está disponible en el sitio web de la Oficina de Calidad del Aire en ht tps://www.env.nm.gov/air-quality/proposed-regs/ o comunicándose con Michael Baca, por teléfono 575-915-1091 o por correo electrónico michael.baca1@state.nm.us. La regulación propuesta también puede ser examinada durante horas hábiles en la Oficina de Calidad del Aire, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico, 87505.

La audiencia se llevará a cabo de acuerdo con los Procedimientos de Reglamentación de la Junta (20.1.1 NMAC); la Ley de Mejora Ambiental, Sección 74-1-9 NMSA 1978; la Ley de Control de Calidad del Aire, Sección 74-2-6 NMSA 1978; la Ley de Flujos del Estado, Sección 14-4-5.3 NMSA 1978; y otros procedimientos aplicables.

A todas las personas interesadas se les dará una oportunidad razonable en la audiencia para presentar evidencias, datos, puntos de vista y argumentos relevantes, oralmente o por escrito; presentar documentos y/u objetos de prueba; y examinar a los testigos. Las personas que deseen presentar un testimonio de carácter técnico deberán presentar por escrito a la Junta una Notificación de Intención de presentar dicho testimonio. La Notificación de Intención deberá:

- (1) identificar a la persona por la cual testificará el/los testigo/s;
(2) identificar a cada testigo técnico que la persona tiene la intención de presentar y establecer las cualificaciones de cada testigo, incluida una descripción de su historial académico y laboral;
(3) incluir una copia del testimonio directo de cada testigo técnico en forma narrativa;
(4) incluir el texto de cualquier modificación recomendada al cambio regulatorio propuesto; y
(5) hacer una lista y adjuntar todos los documentos y/u objetos de pruebas que se anticipa que esa persona ofrecerá en la audiencia, incluyendo cualquier declaración propuesta de motivos para la adopción de las reglas.

Las Notificaciones de Intención para presentar testimonio técnico en la audiencia deberán recibirse en la oficina de la Junta no más tarde de las 5:00 p. m. del día 7 de septiembre de 2018, y deben incluir como referencia el número de expediente EIB 18-05 (R) y la fecha de la audiencia. Las Notificaciones de Intención para presentar un testimonio técnico deben enviarse a:

Pam Castañeda, Administrator for Boards & Commissions
Environmental Improvement Board
c/o New Mexico Environment Department
P. O. Box 5469
Santa Fe, NM 87502
Phone: (505) 827-2425, Fax (505) 827-1629
email: pam.castaneda@state.nm.us

Cualquier miembro del público puede testificar en la audiencia. No se requiere notificación previa para presentar un testimonio técnico en la audiencia. Cualquiera de estos miembros también pueden ofrecer documentos y/u objetos de prueba que no sean de carácter técnico en relación con su testimonio, siempre y cuando los documentos y/u objetos de prueba no sean excesivamente repetitivos del testimonio.

Un miembro del público que desee presentar una declaración escrita para que conste en actas, en lugar de proporcionar una declaración oral en la audiencia, deberá presentar la declaración por escrito antes de la audiencia a la dirección mencionada anteriormente, o presentarla durante la audiencia.

Las personas que tienen una discapacidad y requieren asistencia, un intérprete, un dispositivo un auxiliar u otro servicio para participar en este proceso de audiencia debe comunicarse con Pam Castañeda, Administradora de Juntas y Comisiones, al menos diez días antes de la reunión o tan pronto como sea posible a la dirección anterior o por correo electrónico pam.castaneda@state.nm.us. Los usuarios de TTY pueden acceder a su número a través de la Red de Retransmisión de Nuevo México (New Mexico Relay Network) llamando al 1-800-659-8331.

La Junta puede tomar una decisión sobre la adopción del reglamento propuesto al final de la audiencia, o puede convocar una reunión después de la audiencia para considerar la acción a tomar sobre la propuesta.

Aviso de No Discriminación
El Departamento de Medio Ambiente de Nuevo México (NMED) no discrimina por motivos de raza, color, origen nacional, discapacidad, edad o sexo en la administración de sus programas o actividades, según lo exigido por las leyes y reglamentos correspondientes. NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de consultas relativas a los requisitos de no discriminación implementados por 40 C.F.R., partes 5 y 7, incluido el Título VI de la Ley de Derechos Civiles de 1964, según enmendada; Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, Título IX de las Enmiendas de Educación de 1972 y la Sección 13 de las Enmiendas a la Ley Federal de Control de Contaminación del Agua de 1972. Si usted tiene preguntas sobre este aviso o sobre cualquier programa, política o procedimiento de no discriminación de NMED, usted puede comunicarse con la Coordinadora de No Discriminación:

Kristine Pintado, Non-Discrimination Coordinator
New Mexico Environment Department
1190 St. Francis Dr., Suite N4050
P.O. Box 5469
Santa Fe, NM 87502
(505) 827-2855
nd.coordinator@state.nm.us

Si usted piensa que ha sido discriminado/a con respecto a un programa o actividad de NMED, puede comunicarse con la Coordinadora de No Discriminación antes indicada o visitar nuestro sitio web en https://www.env.nm.gov/non-employee-discrimination-complaint-page/ para aprender cómo y dónde presentar una queja de discriminación.

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO

County of Bernalillo SS

Bernadette Gonzales, the undersigned, on oath states that she is an authorized Representative of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefor has been made of assessed as court cost; that the notice, copy of which hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

06/17/2018

Signature of Bernadette Gonzales

Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 17 day of June of 2018

PRICE \$386.18

Statement to come at the end of month.

ACCOUNT NUMBER 1007594





# Deming Headlight

## AFFIDAVIT OF PUBLICATION

Ad No.  
0001250769

Carol Rideout  
NM ENVIROMENT DEPT/AIR QUALITY BUREAU  
525 CAMINO DE LOS MARQUEZ SUITE 1

SANTA FE NM 87507


I, a legal clerk of the **Deming Headlight**, a newspaper published weekly in the county of Luna, state of New Mexico and of general paid circulation in said county; that the same is a duly qualified newspaper under the laws of the State wherein legal notices and advertisements may be published; that the printed notice attached hereto was published in the regular and entire edition of said newspaper and not in supplement thereof on the date as follows, to wit:

06/15/18

Despondent further states this newspaper is duly qualified to publish legal notice or advertisements within the meaning of Sec. Chapter 167, Laws of 1937.

  
Legal Clerk

Subscribed and sworn before me this  
15th of June 2018.

  
State of WI, County of Brown  
NOTARY PUBLIC

  
My Commission Expires

Ad#:0001250769  
P O : 29214  
# of Affidavits :0.00

TARA MONDLOCH  
Notary Public  
State of Wisconsin

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on September 28, 2018, at 9:30 a.m., at the New Mexico Farm and Ranch Heritage Museum, 4100 Dripping Springs Road, Las Cruces, New Mexico. The purpose of the hearing is to consider the matter of EIB 18-05(R), the proposed adoption of an Air Quality Control Regulation to be codified in the New Mexico Administrative Code (NMAC) at 20.2.23 NMAC, Fugitive Dust Control.

The proponent of this regulatory amendment is the New Mexico Environment Department ("NMED") Air Quality Bureau.

The U.S. Environmental Protection Agency published revisions to the Exceptional Events Rule on October 3, 2016, requiring mitigation plans in certain areas with recurring exceptional events of the same type and pollutant. The proposed regulation is a supporting element of the dust mitigation plan required by the federal Exceptional Events Rule. The proposed regulation will apply to sources of fugitive dust that are not required to obtain a construction permit from the NMED and will be applicable in any area of the state that experiences recurring high wind dust events where the PM10 and/or the PM2.5 NAAQS is exceeded. Currently this includes Luna County and the Anthony PM10 nonattainment area in Doña Ana County.

The full text of NMED's proposed regulation is available on the Air Quality Bureau's web site at <https://www.env.nm.gov/air-quality/proposed-regs/> or by contacting Michael Baca at 575-915-1091 or [michael.baca1@state.nm.us](mailto:michael.baca1@state.nm.us). The proposed regulation may also be examined during regular business hours at the Air Quality Bureau office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico, 87505.

The hearing will be conducted in accordance with Board Rulemaking Procedures (20.1.1 NMAC); the Environmental Improvement Act, Section 74-1-9 NMSA 1978; the Air Quality Control Act, Section 74-2-6 NMSA 1978; the State Rules Act, Section 14-4-5.3 NMSA 1978; and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing; to introduce exhibits; and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written Notice of Intent to do so. The Notice of Intent shall:

(1) identify the person for whom the

witness(es) will testify;  
(2) identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background;  
(3) include a copy of the direct testimony of each technical witness in narrative form;  
(4) include the text of any recommended modifications to the proposed regulatory change; and  
(5) list and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

Notices of Intent to present technical testimony at the hearing must be received in the Office of the Board not later than 5:00 pm on September 7, 2018, and should reference the docket number, EIB 18-05(R), and the date of the hearing. Notices of Intent to present technical testimony should be submitted to:

Pam Castañeda, Administrator for Boards & Commissions  
Environmental Improvement Board  
c/o New Mexico Environment Department  
P. O. Box 5469  
Santa Fe, NM 87502  
Phone: (505) 827-2425, Fax (505) 827-1628  
email: pam.castaneda@state.nm.us

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer non-technical exhibits in connection with their testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing to the above listed address, or submit it at the hearing.

Persons having a disability and requiring assistance, an interpreter, or an auxiliary aid or other service to participate in this hearing process should contact Pam Castañeda, Administrator for Boards & Commissions, at least ten days prior to the meeting or as soon as possible at the above address or e-mail [pam.castaneda@state.nm.us](mailto:pam.castaneda@state.nm.us). TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed regulation adoption at the conclusion of the hearing, or may convene a meeting after the hearing to consider action on the proposal.

**Notice of Non-Discrimination**  
NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements im-

plemented by 40 C.F.R. Part 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact:

Kristine Pintado, Non-Discrimination Coordinator  
New Mexico Environment Department  
1190 St. Francis Dr., Suite N4050  
P.O. Box 5469  
Santa Fe, NM 87502  
(505) 827-2855  
nd.coordinator@state.nm.us

If you believe that you have been discriminated against with respect to an NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at to <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination. Pub#1250769 Run Dates: June 15, 2018

# Deming Headlight

## AFFIDAVIT OF PUBLICATION

Ad No.  
0001250771

Carol Rideout  
NM ENVIROMENT DEPT/AIR QUALITY BUREAU  
525 CAMINO DE LOS MARQUEZ SUITE 1

SANTA FE NM 87507

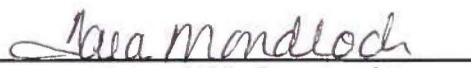
I, a legal clerk of the **Deming Headlight**, a newspaper published weekly in the county of Luna, state of New Mexico and of general paid circulation in said county; that the same is a duly qualified newspaper under the laws of the State wherein legal notices and advertisements may be published; that the printed notice attached hereto was published in the regular and entire edition of said newspaper and not in supplement thereof on the date as follows, to wit:

06/15/18

Despondent further states this newspaper is duly qualified to publish legal notice or advertisements within the meaning of Sec. Chapter 167, Laws of 1937.

  
Legal Clerk

Subscribed and sworn before me this  
15th of June 2018.

  
State of WI, County of Brown  
NOTARY PUBLIC

  
My Commission Expires

Ad#:0001250771  
P O : 29214  
# of Affidavits :0.00

TARA MONDLOCH  
Notary Public  
State of Wisconsin

## JUNTA DE MEJORA AMBIENTAL DE NUEVO MEXICO MEXICO AVISO DE AUDIENCIA SOBRE REGLAMENTACION

La Junta de Mejora Ambiental de Nuevo México ("Junta") celebrará una audiencia pública el 28 de septiembre de 2018, a las 9:30 a.m., en New Mexico Farm and Ranch Heritage Museum, 4100 Dripping Springs Road, Las Cruces, New Mexico. El propósito de la audiencia es examinar el asunto de BEI 18-05 (R), la adopción propuesta de la codificación del Reglamento de Control de Calidad del Aire en el Código Administrativo de Nuevo México (NMAC) en 20.2.23 NMAC, Control de Polvo Fugitivo.

El autor de esta enmienda regulatoria es la Oficina de Calidad del Aire del Departamento de Medio Ambiente de Nuevo México ("NMED", por su sigla en inglés).

La Agencia de Protección Ambiental de EE. UU. publicó revisiones al Reglamento de Eventos Excepcionales el 3 de octubre de 2016, que requieren planes de mitigación en ciertas áreas con eventos excepcionales recurrentes del mismo contaminante y tipo. La regulación propuesta es un elemento de apoyo del plan de mitigación de polvo requerido por el reglamento federal de eventos excepcionales. La regulación propuesta se aplicará a las fuentes de polvo fugitivo que no requieren la obtención de un permiso de construcción de NMED y será aplicable en cualquier área del estado que experimente eventos recurrentes de polvo de vientos fuertes donde el PM10 y/o el PM2.5 NAAQS es rebasado. Actualmente esto incluye el condado de Luna y el área de no cumplimiento PM10 de Anthony, en el condado de Doña Ana.

El texto completo de la regulación propuesta por NMED está disponible en el sitio web de la Oficina de Calidad del Aire en <https://www.env.nm.gov/air-quality/proposed-regs/> o comunicándose con Michael Baca, por teléfono 575-915-1091 o por correo electrónico michael.baca1@state.nm.us. La regulación propuesta también puede ser examinada durante horas hábiles en la Oficina de Calidad del Aire, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico, 87505.

La audiencia se llevará a cabo de acuerdo con los Procedimientos de Reglamentación de la Junta (20.1.1 NMAC); la Ley de Mejora Ambiental, Sección 74-1-9 NMSA 1978; la Ley de Control de Calidad del Aire, Sección 74-2-6 NMSA 1978; la Ley de Reglas del Estado, Sección 14-4-5.3 NMSA 1978; y otros procedimientos aplicables.

A todas las personas interesadas se les dará una oportunidad razonable en la audiencia para presentar evidencias, datos, puntos de vista y argumentos relevantes, oralmente o por escrito; presentar documentos y/u objetos de prueba; y examinar a los testigos. Las personas que deseen presentar un testimonio de carácter técnico deberán presentar por escrito a la Junta una Notificación de Intención de presentar dicho testimonio. La Notificación de Intención deberá:

- (1) identificar a la persona por la cual testificará el/los testigo/s;
- (2) identificar a cada testigo técnico que la persona tiene la intención de presentar y establecer las cualificaciones de cada testigo, incluida una descripción de su historial académico y laboral;
- (3) incluir una copia del testimonio directo de cada testigo técnico en forma narrativa;
- (4) incluir el texto de cualquier modificación recomendada al cambio regulatorio propuesto;
- y
- (5) hacer una lista y adjuntar todos los documentos y/u objetos de pruebas que se anticipa que esa persona ofrecerá en la audiencia, incluyendo cualquier declaración propuesta de motivos para la adopción de las reglas.

Las Notificaciones de Intención para presentar testimonio técnico en la audiencia deberán recibirse en la oficina de la Junta no más tarde de las 5:00 p. m. del día 7 de septiembre de 2018, y deben incluir como referencia el número de expediente EIB 18-05 (R) y la fecha de la audiencia. Las Notificaciones de Intención para presentar un testimonio técnico deben enviarse a:

Pam Castañeda, Administrator for Boards & Commissions  
Environmental Improvement Board  
c/o New Mexico Environment Department  
P. O. Box 5469  
Santa Fe, NM 87502  
Phone: (505) 827-2425, Fax (505) 827-1628  
email: pam.castaneda@state.nm.us

Cualquier miembro del público puede testificar en la audiencia. No se requiere notificación previa para presentar un testimonio no técnico en la audiencia. Cualquiera de estos miembros también pueden ofrecer documentos y/u objetos de prueba que no sean de carácter técnico en relación con su testimonio, siempre y cuando los documentos y/u objetos de prueba no sean excesivamente repetitivos del testimonio.

Un miembro del público que desee presentar una declaración escrita para que conste en actas, en lugar de proporcionar una declaración oral en la audiencia, deberá presentar la declaración por escrito antes de la audiencia a la dirección mencionada anteriormente, o presentarla durante la audiencia.

Las personas que tienen una discapacidad y requieren asistencia, un intérprete, un

dispositivo un auxiliar u otro servicio para participar en este proceso de audiencia debe comunicarse con Pam Castañeda, Administradora de Juntas y Comisiones, al menos diez días antes de la reunión o tan pronto como sea posible a la dirección anterior o por correo electrónico pam.castaneda@state.nm.us. Los usuarios de TDY pueden acceder a su número a través de la Red de Retransmisión de Nuevo México (New Mexico Relay Network) llamando al 1-800-659-8331.

La Junta puede tomar una decisión sobre la adopción del reglamento propuesto al final de la audiencia, o puede convocar una reunión después de la audiencia para considerar la acción a tomar sobre la propuesta.

#### Aviso de No Discriminación

El Departamento de Medio Ambiente de Nuevo México (NMED) no discrimina por motivos de raza, color, origen nacional, discapacidad, edad o sexo en la administración de sus programas o actividades, según lo exigido por las leyes y reglamentos correspondientes. NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de consultas relativas a los requisitos de no discriminación implementados por 40 C.F.R., partes 5 y 7, incluido el Título VI de la Ley de Derechos Civiles de 1964, según enmendada; Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, Título IX de las Enmiendas de Educación de 1972 y la Sección 13 de las Enmiendas a la Ley Federal de Control de Contaminación del Agua de 1972. Si usted tiene preguntas sobre este aviso o sobre cualquier programa, política o procedimiento de no discriminación de NMED, usted puede comunicarse con la Coordinadora de No Discriminación:

Kristine Pintado, Non-Discrimination Coordinator

New Mexico Environment Department

1190 St. Francis Dr., Suite N4050

P.O. Box 5469

Santa Fe, NM 87502

(505) 827-2855

nd.coordinator@state.nm.us

Si usted piensa que ha sido discriminado/a con respecto a un programa o actividad de NMED, puede comunicarse con la Coordinadora de No Discriminación antes indicada o visitar nuestro sitio web en <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> para aprender cómo y dónde presentar una queja de discriminación.

Pub#1250771 Run Dates: June 15, 2018

# LAS CRUCES SUN-NEWS

## AFFIDAVIT OF PUBLICATION

Ad No.  
0001250961

NEW MEXICO ENVIRONMENT DEPT  
1190 ST. FRANCIS

SANTA FE NM 87502

I, a legal clerk of the **Las Cruces Sun-News**, a newspaper published daily at the county of Dona Ana, state of New Mexico and of general paid circulation in said county; that the same is a duly qualified newspaper under the laws of the State wherein legal notices and advertisements may be published; that the printed notice attached hereto was published in the regular and entire edition of said newspaper and not in supplement thereof on the date as follows, to wit:

06/15/18

Despondent further states this newspaper is duly qualified to publish legal notice or advertisements within the meaning of Sec. Chapter 167, Laws of 1937.

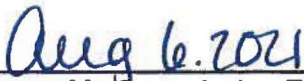


Legal Clerk  
STATE OF WISCONSIN      **SS.**  
County of Brown

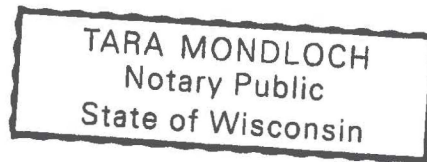
Subscribed and sworn before me this  
20th of July 2018.



NOTARY PUBLIC in and for  
Brown County, Wisconsin



My Commission Expires



**NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD  
NOTICE OF RULEMAKING HEARING**

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on September 28, 2018, at 9:30 a.m., at the New Mexico Farm and Ranch Heritage Museum, 4100 Dripping Springs Road, Las Cruces, New Mexico. The purpose of the hearing is to consider the matter of EIB 18-05(R), the proposed adoption of an Air Quality Control Regulation to be codified in the New Mexico Administrative Code (NMAC) at 20.2.23 NMAC, Fugitive Dust Control.

The proponent of this regulatory amendment is the New Mexico Environment Department ("NMED") Air Quality Bureau.

The U.S. Environmental Protection Agency published revisions to the Exceptional Events Rule on October 3, 2016, requiring mitigation plans in certain areas with recurring exceptional events of the same type and pollutant. The proposed regulation is a supporting element of the dust mitigation plan required by the federal Exceptional Events Rule. The proposed regulation will apply to sources of fugitive dust that are not required to obtain a construction permit from the NMED and will be applicable in any area of the state that experiences recurring high wind dust events where the PM10 and/or the PM2.5 NAAQS is exceeded. Currently this includes Luna County and the Anthony PM10 nonattainment area in Doña Ana County.

The full text of NMED's proposed regulation is available on the Air Quality Bureau's web site at <https://www.env.nm.gov/air-quality/proposed-regs/> or by contacting Michael Baca at 575-915-1091 or michael.baca1@state.nm.us. The proposed regulation may also be examined during regular business hours at the Air Quality Bureau office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico, 87505.

The hearing will be conducted in accordance with Board Rulemaking Procedures (20.1.1 NMAC); the Environmental Improvement Act, Section 74-1-9 NMSA 1978; the Air Quality Control Act, Section 74-2-6 NMSA 1978; the State Rules Act, Section 14-4-5.3 NMSA 1978; and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing; to introduce exhibits; and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written Notice of Intent to do so. The Notice of Intent shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background;
- (3) include a copy of the direct testimony of each technical witness in narrative form;
- (4) include the text of any recommended modifications to the proposed regulatory change; and
- (5) list and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

Notices of Intent to present technical testimony at the hearing must be received in the Office of the Board not later than 5:00 pm on September 7, 2018, and should reference the docket number, EIB 18-05(R), and the date of the hearing. Notices of Intent to present technical testimony should be submitted to:

Pam Castañeda, Administrator for Boards & Commissions  
Environmental Improvement Board  
c/o New Mexico Environment Department  
P. O. Box 5469  
Santa Fe, NM 87502  
Phone: (505) 827-2425, Fax (505) 827-1628  
email: pam.castaneda@state.nm.us

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer non-technical exhibits in connection with their testimony, so long as the exhibit is not unduly repetitious of the testimony.



A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing to the above listed address, or submit it at the hearing.

Persons having a disability and requiring assistance, an interpreter, or an auxiliary aid or other service to participate in this hearing process should contact Pam Castañeda, Administrator for Boards & Commissions, at least ten days prior to the meeting or as soon as possible at the above address or e-mail [pam.castaneda@state.nm.us](mailto:pam.castaneda@state.nm.us). TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed regulation adoption at the conclusion of the hearing, or may convene a meeting after the hearing to consider action on the proposal.

#### Notice of Non-Discrimination

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact:

Kristine Pintado, Non-Discrimination Coordinator  
New Mexico Environment Department  
1190 St. Francis Dr., Suite N4050  
P.O. Box 5469  
Santa Fe, NM 87502  
(505) 827-2855  
[nd.coordinator@state.nm.us](mailto:nd.coordinator@state.nm.us)

If you believe that you have been discriminated against with respect to an NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.

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#### JUNTA DE MEJORA AMBIENTAL DE NUEVO MÉXICO AVISO DE AUDIENCIA SOBRE REGLAMENTACIÓN

La Junta de Mejora Ambiental de Nuevo México ("Junta") celebrará una audiencia pública el 28 de septiembre de 2018, a las 9:30 a.m., en New Mexico Farm and Ranch Heritage Museum, 4100 Dripping Springs Road, Las Cruces, New Mexico. El propósito de la audiencia es examinar el asunto de BEI 18-05 (R), la adopción propuesta de la codificación del Reglamento de Control de Calidad del Aire en el Código Administrativo de Nuevo México (NMAC) en 20.2.23 NMAC, Control de Polvo Fugitivo.

El autor de esta enmienda regulatoria es la Oficina de Calidad del Aire del Departamento de Medio Ambiente de Nuevo México ("NMED", por su sigla en inglés).

La Agencia de Protección Ambiental de EE. UU. publicó revisiones al Reglamento de Eventos Excepcionales el 3 de octubre de 2016, que requieren planes de mitigación en ciertas áreas con eventos excepcionales recurrentes del mismo contaminante y tipo. La regulación propuesta es un elemento de apoyo del plan de mitigación de polvo requerido por el reglamento federal de eventos excepcionales. La regulación propuesta se aplicará a las fuentes de polvo fugitivo que no requieren la obtención de un permiso de construcción de NMED y será aplicable en cualquier área del estado que experimente eventos recurrentes de polvo de vientos fuertes donde el PM10 y/o el PM2.5 NAAQS es rebasado. Actualmente esto incluye el condado de Luna y el área de no cumplimiento PM10 de Anthony, en el condado de Doña Ana.

El texto completo de la regulación propuesta por NMED está disponible en el sitio web de la Oficina de Calidad del Aire en <https://www.env.nm.gov/air-quality/proposed-regs/> o comunicándose con Michael Baca, por teléfono 575-915-1091 o por correo electrónico

michael.baca1@state.nm.us. La regulación propuesta también puede ser examinada durante horas hábiles en la Oficina de Calidad del Aire, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico, 87505.

La audiencia se llevará a cabo de acuerdo con los Procedimientos de Reglamentación de la Junta (20.11 NMAC); la Ley de Mejora Ambiental, Sección 74-1-9 NMSA 1978; la Ley de Control de Calidad del Aire, Sección 74-2-6 NMSA 1978; la Ley de Reglas del Estado, Sección 14-4-5.3 NMSA 1978; y otros procedimientos aplicables.

A todas las personas interesadas se les dará una oportunidad razonable en la audiencia para presentar evidencias, datos, puntos de vista y argumentos relevantes, oralmente o por escrito; presentar documentos y/u objetos de prueba; y examinar a los testigos. Las personas que deseen presentar un testimonio de carácter técnico deberán presentar por escrito a la Junta una Notificación de Intención de presentar dicho testimonio. La Notificación de Intención deberá:

- (1) identificar a la persona por la cual testificará el/los testigo/s;
- (2) identificar a cada testigo técnico que la persona tiene la intención de presentar y establecer las cualificaciones de cada testigo, incluida una descripción de su historial académico y laboral;
- (3) incluir una copia del testimonio directo de cada testigo técnico en forma narrativa;
- (4) incluir el texto de cualquier modificación recomendada al cambio regulatorio propuesto; y
- (5) hacer una lista y adjuntar todos los documentos y/u objetos de pruebas que se anticipa que esa persona ofrecerá en la audiencia, incluyendo cualquier declaración propuesta de motivos para la adopción de las reglas.

Las Notificaciones de Intención para presentar testimonio técnico en la audiencia deberán recibirse en la oficina de la Junta no más tarde de las 5:00 p. m. del día 7 de septiembre de 2018, y deben incluir como referencia el número de expediente EIB 18-05 (R) y la fecha de la audiencia. Las Notificaciones de Intención para presentar un testimonio técnico deben enviarse a:

Pam Castañeda, Administrator for Boards & Commissions  
Environmental Improvement Board  
c/o New Mexico Environment Department  
P. O. Box 5469  
Santa Fe, NM 87502  
Phone: (505) 827-2425, Fax (505) 827-1628  
email: pam.castaneda@state.nm.us

Cualquier miembro del público puede testificar en la audiencia. No se requiere notificación previa para presentar un testimonio no técnico en la audiencia. Cualquiera de estos miembros también pueden ofrecer documentos y/u objetos de prueba que no sean de carácter técnico en relación con su testimonio, siempre y cuando los documentos y/u objetos de prueba no sean excesivamente repetitivos del testimonio.

Un miembro del público que desee presentar una declaración escrita para que conste en actas, en lugar de proporcionar una declaración oral en la audiencia, deberá presentar la declaración por escrito antes de la audiencia a la dirección mencionada anteriormente, o presentarla durante la audiencia.

Las personas que tienen una discapacidad y requieren asistencia, un intérprete, un dispositivo un auxiliar u otro servicio para participar en este proceso de audiencia debe comunicarse con Pam Castañeda, Administradora de Juntas y Comisiones, al menos diez días antes de la reunión o tan pronto como sea posible a la dirección anterior o por correo electrónico pam.castaneda@state.nm.us. Los usuarios de TDY pueden acceder a su número a través de la Red de Retransmisión de Nuevo México (New Mexico Relay Network) llamando al 1-800-659-8331.

La Junta puede tomar una decisión sobre la adopción del reglamento propuesto al final de la audiencia, o puede convocar una reunión después de la audiencia para considerar la acción a tomar sobre la propuesta.

Aviso de No Discriminación  
El Departamento de Medio Ambiente de Nuevo México (NMED) no

discrimina por motivos de raza, color, origen nacional, discapacidad, edad o sexo en la administración de sus programas o actividades, según lo exigido por las leyes y reglamentos correspondientes. NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de consultas relativas a los requisitos de no discriminación implementados por 40 C.F.R., partes 5 y 7, incluido el Título VI de la Ley de Derechos Civiles de 1964, según enmendada; Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, Título IX de las Enmiendas de Educación de 1972 y la Sección 13 de las Enmiendas a la Ley Federal de Control de Contaminación del Agua de 1972. Si usted tiene preguntas sobre este aviso o sobre cualquier programa, política o procedimiento de no discriminación de NMED, usted puede comunicarse con la Coordinadora de No Discriminación:

Kristine Pintado, Non-Discrimination Coordinator

New Mexico Environment Department

1190 St. Francis Dr., Suite N4050

P.O. Box 5469

Santa Fe, NM 87502

(505) 827-2855

nd.coordinator@state.nm.us

Si usted piensa que ha sido discriminado/a con respecto a un programa o actividad de NMED, puede comunicarse con la Coordinadora de No Discriminación antes indicada o visitar nuestro sitio web en <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> para aprender cómo y dónde presentar una queja de discriminación.

Pub# 1250961

Run Date: June 15, 2018

From: [New Mexico Environment Department](#)  
To: [Baca, Michael, NMENV](#)  
Subject: Notice of Rulemaking, Public Review and Comment Period  
Date: Wednesday, August 1, 2018 5:10:58 PM



## Air Quality Bureau

### Regulatory and SIP Bulletin

Having trouble viewing this email? [View it as a Web page.](#)

The Air Quality Bureau has developed a draft dust mitigation plan and proposed fugitive dust control rule for Doña Ana and Luna counties in southern New Mexico. Mitigation plans are required by the U.S. Environmental Protection Agency (EPA) in areas where recurring natural events (in this case, high winds resulting in blowing dust) cause exceedances of the health based national standards for Particulate Matter.

The Air Quality Bureau will accept comments on the draft mitigation plan through September 14, 2018. A public hearing for the adoption of the proposed fugitive dust control rule will be held on September 28, 2018 in Las Cruces. To review draft documents and for more information about the hearing and public participation, please visit our [proposed regulations website](#).

For more information on blowing dust in New Mexico please click [here](#). For more information about mitigation plan requirements please visit EPA's Exceptional Events [website](#).

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For additional information concerning this bulletin and participation opportunities, please contact: Michael Baca, 2301 Entrada del Sol, Las Cruces, NM, 88001, (575) 915-1091, [michael.baca1@state.nm.us](mailto:michael.baca1@state.nm.us).

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NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title IX of the Education Amendments of 1972; and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about

this notice or any of NMED's non-discrimination programs, policies or procedures, send an email to: [nd.coordinator@state.nm.us](mailto:nd.coordinator@state.nm.us).

If you believe that you have been discriminated against with respect to an NMED program or activity, you may contact the Non-Discrimination Coordinator identified above, or visit our website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.

---

NMED [Air Quality Bureau](#)

525 Camino de los Marquez, Suite 1

Santa Fe, New Mexico, 87505-1816

(505) 476-4300

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This email was sent to [michael.baca1@state.nm.us](mailto:michael.baca1@state.nm.us) using GovDelivery Communications Cloud on behalf of:  
New Mexico Environment Department · Harold L. Runnels Building · 1190 St. Francis Drive · Suite N4050 ·  
Santa Fe, New Mexico 87505



# **EXHIBIT 8**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES HOUSE OF  
REPRESENTATIVES,

*Plaintiff,*

v.

STEVEN T. MNUCHIN, in his official  
capacity as Secretary of the United States  
Department of the Treasury, *et al.*,

*Defendants.*

Case No. 1:19-cv-00969

**DECLARATION OF PAUL ARCANGELI**

I, Paul Arcangeli, pursuant to the provisions of 28 U.S.C. § 1746 declare and say:

1. I am the Staff Director of the House Armed Services Committee. I have worked for the Committee in various roles since 2004. In 2010, I was appointed Staff Director. From 2011 to 2018, I served as Minority Staff Director. I began serving again as Staff Director in January 2019.

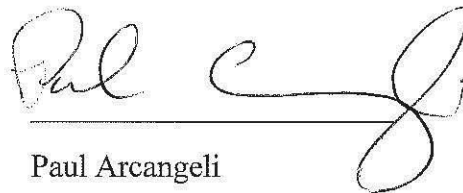
2. On April 25, 2019, the Department of Defense (DoD) submitted in writing to the Committee responses to various Committee requests for information. One of the Committee's questions was: "What is covered under GCC operational support? Are these 284 activities? Other authorities? Why is there such a significant jump from FY18 actuals to FY19 and FY20 for EUCOM, INDOPACOM and AFRICOM? Are FY18 actuals reflective of a shift to 333?" In response, DoD wrote:

A1. For most commands, the CD Project titled "GCC operational Support" refers to that portion of Geographic Combatant Commands' programs that support activities executed under §284(b) and §284(c). The exception is U.S.

SOUTHCOM, that also funds costs associated with §124 detection and monitoring operations within this Project. Regarding the increases between FY18 actuals and the FY19/20 levels for EUCOM, INDOPACOM and AFRICOM: Yes, some of this was due to shifting some efforts to §333 and the associated growing pains of working with the new Chapter 15 and 16 authorities. However, the primary factor that led to curtailed support in FY18 was a combination of a continuing resolution, followed by DoD Comptroller withholding over 84% (\$947 million) of CD appropriated funds for distribution until the 4<sup>th</sup> Quarter for possible use in supporting Southwest Border construction last fiscal year. The funding was ultimately released beginning in July, but the uncertainty generated caused planning, Congressional notification, and execution deadlines to be missed.

3. DoD's statement that the "DoD Comptroller with[held] over 84% (\$947 million) of [counter-drug] appropriated [FY 2018] funds for distribution until the 4th Quarter for possible use in supporting Southwest Border construction last fiscal year" suggests that DoD was considering using its counter-drug authority under 10 U.S.C. § 284 for southern border construction in early 2018.

4. I declare under penalty of perjury that the foregoing is true and correct. Executed on May 15, 2019, in Washington, D.C.

  
Paul Arcangeli



# **EXHIBIT 9**

THE WHITE HOUSE

WASHINGTON

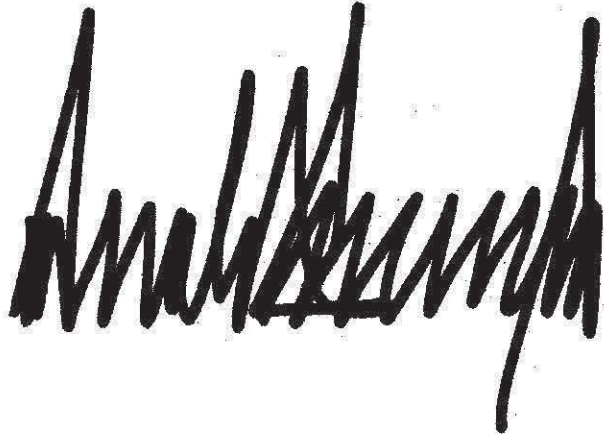
September 28, 2018

Dear Mr. Speaker:

In accordance with section 9023 of division A and section 113(b) of division C of the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 (H.R. 6157; the "Act"), I hereby designate for Overseas Contingency Operations/Global War on Terrorism all amounts (including rescissions) and contributions from foreign governments so designated by the Congress in the Act pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as outlined in the enclosed list of accounts.

The details of this action are set forth in the enclosed memorandum from the Director of the Office of Management and Budget.

Sincerely,

A large, bold, handwritten signature in black ink, appearing to be "Donald Trump", is written over the signature line.

The Honorable Paul D. Ryan  
Speaker of the  
House of Representatives  
Washington, D.C. 20515

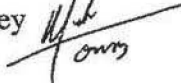


EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

September 27, 2018

THE DIRECTOR

MEMORANDUM FOR THE PRESIDENT

FROM: Mick Mulvaney   
Director

SUBJECT: Designation of Funding for Overseas Contingency Operations/Global War on Terrorism

Section 9023 of division A of the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 (H.R. 6157; the "Act") provides that the availability of amounts appropriated in such division of the Act that is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 ("BBEDCA") is contingent upon the President subsequently so designating all such amounts and transmitting such designations to the Congress. In addition, section 113(b) of division C of the Act provides that the availability of funds appropriated in such division of the Act that is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of BBEDCA is contingent upon the President subsequently so designating all such amounts and transmitting such designations to the Congress.

The amounts appropriated by the Act for Overseas Contingency Operations/Global War on Terrorism cover the military and civilian costs necessary to achieve U.S. national security goals in Afghanistan, the broader Middle East, and other designated conflict zones and to address other emergent crises. I recommend that you designate for Overseas Contingency Operations/Global War on Terrorism all amounts (including rescissions) and contributions from foreign governments so designated by the Congress in section 9023 of division A and section 113(a) of division C of the Act pursuant to section 251(b)(2)(A) of BBEDCA, as outlined in the enclosed list of accounts. Upon transmittal of these designations to the Congress, these funds will be available for obligation and expenditure on October 1, unless otherwise restricted in the Act. No further congressional action will be required.

The designation of these funds for Overseas Contingency Operations/Global War on Terrorism allows for adjustments to the discretionary spending limits in fiscal year (FY) 2019, as specified in section 251(b)(2)(A) of BBEDCA. These adjustments will be reflected when the Office of Management and Budget submits its final sequestration report for FY 2019 in accordance with section 254(f) of BBEDCA.

I have reviewed this proposed action and am satisfied it is necessary at this time. Therefore, I recommend that you make the requested funds available by signing the enclosed letters to the Speaker of the House of Representatives and the President of the Senate.

Enclosures

**Accounts in the Department of Defense and Labor, Health and Human Services, and  
Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 (the "Act"),  
with Funding Designated by the President for Overseas Contingency Operations/Global  
War on Terrorism**

**Division A – Department of Defense Appropriations Act, 2019**

**Department of Defense**

**Military Personnel:**

- Military Personnel, Army
- Military Personnel, Navy
- Military Personnel, Marine Corps
- Military Personnel, Air Force
- Reserve Personnel, Army
- Reserve Personnel, Navy
- Reserve Personnel, Marine Corps
- Reserve Personnel, Air Force
- National Guard Personnel, Army
- National Guard Personnel, Air Force

**Operation and Maintenance:**

- Operation and Maintenance, Army
- Operation and Maintenance, Navy
- Operation and Maintenance, Marine Corps
- Operation and Maintenance, Air Force
- Operation and Maintenance, Defense-Wide
- Operation and Maintenance, Army Reserve
- Operation and Maintenance, Navy Reserve
- Operation and Maintenance, Marine Corps Reserve
- Operation and Maintenance, Air Force Reserve
- Operation and Maintenance, Army National Guard
- Operation and Maintenance, Air National Guard
- Afghanistan Security Forces Fund (including contributions)
- Counter-ISIS Train and Equip Fund (including contributions)

**Procurement:**

- Aircraft Procurement, Army
- Missile Procurement, Army
- Procurement of Weapons and Tracked Combat Vehicles, Army
- Procurement of Ammunition, Army
- Other Procurement, Army
- Aircraft Procurement, Navy
- Weapons Procurement, Navy
- Procurement of Ammunition, Navy and Marine Corps

- Other Procurement, Navy
- Procurement, Marine Corps
- Aircraft Procurement, Air Force
- Missile Procurement, Air Force
- Procurement of Ammunition, Air Force
- Other Procurement, Air Force
- Procurement, Defense-Wide

Research, Development, Test and Evaluation:

- Research, Development, Test and Evaluation, Army
- Research, Development, Test and Evaluation, Navy
- Research, Development, Test and Evaluation, Air Force
- Research, Development, Test and Evaluation, Defense-Wide

Revolving and Management Funds:

- Defense Working Capital Funds

Other Department of Defense Programs:

- Defense Health Program
- Drug Interdiction and Counter-Drug Activities, Defense
- Office of the Inspector General

General Provisions

Appropriation in section 9013 of title IX of division A:

- Ukraine Security Assistance Initiative

Appropriation in section 9018 of title IX of division A:

- Transfer to the operation and maintenance, military personnel, and procurement accounts to improve intelligence, surveillance, and reconnaissance capabilities of the Department of Defense

Rescissions in section 9021 of title IX of division A:

- Procurement of Ammunition, Navy and Marine Corps, 2017/2019
- Operation and Maintenance, Defense-Wide: Coalition Support Fund, 2018/2019
- Operation and Maintenance, Defense-Wide: DSCA Security Cooperation, 2018/2019
- Counter-ISIS Train and Equip Fund, 2018/2019
- Aircraft Procurement, Air Force, 2018/2020

Division C – Continuing Appropriations Act, 2019

Department of Homeland Security

- Coast Guard, Operating Expenses

Department of State

Administration and Foreign Affairs:

- Diplomatic and Consular Programs
- Office of Inspector General
- Embassy Security, Construction, and Maintenance

International Organizations:

- Contributions to International Organizations
- Contributions for International Peacekeeping Activities

**United States Agency for International Development**

Funds Appropriated to the President:

- Operating Expenses
- Office of Inspector General

**Bilateral Economic Assistance**

Funds Appropriated to the President:

- International Disaster Assistance
- Transition Initiatives
- Complex Crises Fund
- Economic Support Fund

Department of State:

- Migration and Refugee Assistance

**International Security Assistance**

Department of State:

- International Narcotics Control and Law Enforcement
- Nonproliferation, Anti-Terrorism, Demining and Related Programs
- Peacekeeping Operations

Funds Appropriated to the President:

- Foreign Military Financing Program

**General Provisions**

Section 7034(o)

- Use of prior-year OCO funds for purposes of loans or loan guarantees

THE WHITE HOUSE

WASHINGTON

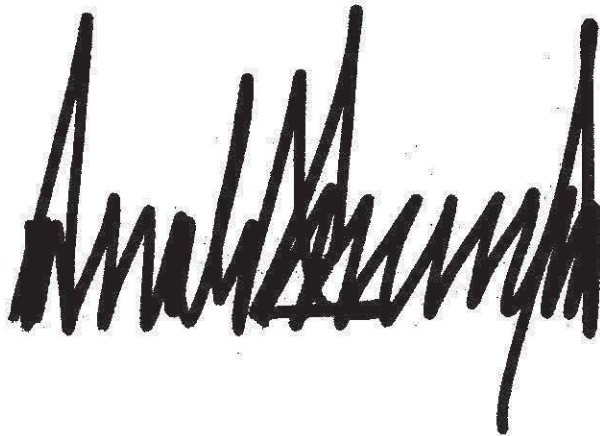
September 28, 2018

Dear Mr. President:

In accordance with section 9023 of division A and section 113(b) of division C of the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 (H.R. 6157; the "Act"), I hereby designate for Overseas Contingency Operations/Global War on Terrorism all amounts (including rescissions) and contributions from foreign governments so designated by the Congress in the Act pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as outlined in the enclosed list of accounts.

The details of this action are set forth in the enclosed memorandum from the Director of the Office of Management and Budget.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew B. Weiss". The signature is written in a cursive, somewhat stylized font with a large initial 'A'.

The Honorable Michael R. Pence  
President of the Senate  
Washington, D.C. 20510



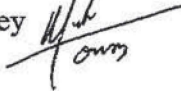


EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

September 27, 2018

THE DIRECTOR

MEMORANDUM FOR THE PRESIDENT

FROM: Mick Mulvaney   
Director

SUBJECT: Designation of Funding for Overseas Contingency Operations/Global War on Terrorism

Section 9023 of division A of the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 (H.R. 6157; the "Act") provides that the availability of amounts appropriated in such division of the Act that is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 ("BBEDCA") is contingent upon the President subsequently so designating all such amounts and transmitting such designations to the Congress. In addition, section 113(b) of division C of the Act provides that the availability of funds appropriated in such division of the Act that is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of BBEDCA is contingent upon the President subsequently so designating all such amounts and transmitting such designations to the Congress.

The amounts appropriated by the Act for Overseas Contingency Operations/Global War on Terrorism cover the military and civilian costs necessary to achieve U.S. national security goals in Afghanistan, the broader Middle East, and other designated conflict zones and to address other emergent crises. I recommend that you designate for Overseas Contingency Operations/Global War on Terrorism all amounts (including rescissions) and contributions from foreign governments so designated by the Congress in section 9023 of division A and section 113(a) of division C of the Act pursuant to section 251(b)(2)(A) of BBEDCA, as outlined in the enclosed list of accounts. Upon transmittal of these designations to the Congress, these funds will be available for obligation and expenditure on October 1, unless otherwise restricted in the Act. No further congressional action will be required.

The designation of these funds for Overseas Contingency Operations/Global War on Terrorism allows for adjustments to the discretionary spending limits in fiscal year (FY) 2019, as specified in section 251(b)(2)(A) of BBEDCA. These adjustments will be reflected when the Office of Management and Budget submits its final sequestration report for FY 2019 in accordance with section 254(f) of BBEDCA.

I have reviewed this proposed action and am satisfied it is necessary at this time. Therefore, I recommend that you make the requested funds available by signing the enclosed letters to the Speaker of the House of Representatives and the President of the Senate.

Enclosures

**Accounts in the Department of Defense and Labor, Health and Human Services, and  
Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 (the "Act"),  
with Funding Designated by the President for Overseas Contingency Operations/Global  
War on Terrorism**

**Division A – Department of Defense Appropriations Act, 2019**

**Department of Defense**

**Military Personnel:**

- Military Personnel, Army
- Military Personnel, Navy
- Military Personnel, Marine Corps
- Military Personnel, Air Force
- Reserve Personnel, Army
- Reserve Personnel, Navy
- Reserve Personnel, Marine Corps
- Reserve Personnel, Air Force
- National Guard Personnel, Army
- National Guard Personnel, Air Force

**Operation and Maintenance:**

- Operation and Maintenance, Army
- Operation and Maintenance, Navy
- Operation and Maintenance, Marine Corps
- Operation and Maintenance, Air Force
- Operation and Maintenance, Defense-Wide
- Operation and Maintenance, Army Reserve
- Operation and Maintenance, Navy Reserve
- Operation and Maintenance, Marine Corps Reserve
- Operation and Maintenance, Air Force Reserve
- Operation and Maintenance, Army National Guard
- Operation and Maintenance, Air National Guard
- Afghanistan Security Forces Fund (including contributions)
- Counter-ISIS Train and Equip Fund (including contributions)

**Procurement:**

- Aircraft Procurement, Army
- Missile Procurement, Army
- Procurement of Weapons and Tracked Combat Vehicles, Army
- Procurement of Ammunition, Army
- Other Procurement, Army
- Aircraft Procurement, Navy
- Weapons Procurement, Navy
- Procurement of Ammunition, Navy and Marine Corps

- Other Procurement, Navy
- Procurement, Marine Corps
- Aircraft Procurement, Air Force
- Missile Procurement, Air Force
- Procurement of Ammunition, Air Force
- Other Procurement, Air Force
- Procurement, Defense-Wide

Research, Development, Test and Evaluation:

- Research, Development, Test and Evaluation, Army
- Research, Development, Test and Evaluation, Navy
- Research, Development, Test and Evaluation, Air Force
- Research, Development, Test and Evaluation, Defense-Wide

Revolving and Management Funds:

- Defense Working Capital Funds

Other Department of Defense Programs:

- Defense Health Program
- Drug Interdiction and Counter-Drug Activities, Defense
- Office of the Inspector General

**General Provisions**

Appropriation in section 9013 of title IX of division A:

- Ukraine Security Assistance Initiative

Appropriation in section 9018 of title IX of division A:

- Transfer to the operation and maintenance, military personnel, and procurement accounts to improve intelligence, surveillance, and reconnaissance capabilities of the Department of Defense

Rescissions in section 9021 of title IX of division A:

- Procurement of Ammunition, Navy and Marine Corps, 2017/2019
- Operation and Maintenance, Defense-Wide: Coalition Support Fund, 2018/2019
- Operation and Maintenance, Defense-Wide: DSCA Security Cooperation, 2018/2019
- Counter-ISIS Train and Equip Fund, 2018/2019
- Aircraft Procurement, Air Force, 2018/2020

**Division C – Continuing Appropriations Act, 2019**

**Department of Homeland Security**

- Coast Guard, Operating Expenses

**Department of State**

**Administration and Foreign Affairs:**

- Diplomatic and Consular Programs
- Office of Inspector General
- Embassy Security, Construction, and Maintenance

International Organizations:

- Contributions to International Organizations
- Contributions for International Peacekeeping Activities

**United States Agency for International Development**

Funds Appropriated to the President:

- Operating Expenses
- Office of Inspector General

**Bilateral Economic Assistance**

Funds Appropriated to the President:

- International Disaster Assistance
- Transition Initiatives
- Complex Crises Fund
- Economic Support Fund

Department of State:

- Migration and Refugee Assistance

**International Security Assistance**

Department of State:

- International Narcotics Control and Law Enforcement
- Nonproliferation, Anti-Terrorism, Demining and Related Programs
- Peacekeeping Operations

Funds Appropriated to the President:

- Foreign Military Financing Program

**General Provisions**

Section 7034(o)

- Use of prior-year OCO funds for purposes of loans or loan guarantees

## CERTIFICATE OF SERVICE

Case Name: **California, et al. v Trump, et al.** No. **4:19-cv-00872**  
**(Border Wall 2019)**

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I hereby certify that on June 12, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

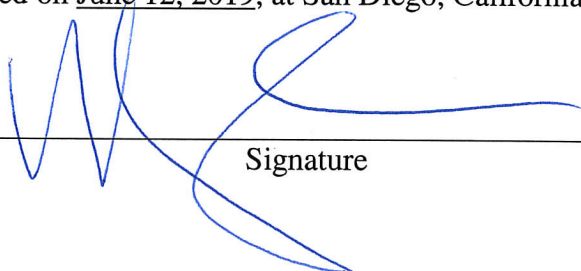
- **PLAINTIFF STATES OF CALIFORNIA AND NEW MEXICO'S NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING SECTIONS 284, 8005, AND 9002; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**
- **PLAINTIFF STATES OF CALIFORNIA AND NEW MEXICO'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING SECTIONS 284, 8005, AND 9002**
- **APPENDIX OF DECLARATIONS RE: ENVIRONMENTAL HARMS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING SECTIONS 284, 8005, AND 9002**
- **[PROPOSED] ORDER GRANTING PLAINTIFF STATES OF CALIFORNIA AND NEW MEXICO'S MOTION PARTIAL SUMMARY JUDGMENT REGARDING SECTIONS 284, 8005, AND 9002**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 12, 2019, at San Diego, California.

V. Brizuela  
Declarant

---

  
Signature

---