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12
13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION
16

17 **STATE OF CALIFORNIA; STATE OF**
18 **COLORADO; STATE OF**
19 **CONNECTICUT; STATE OF**
20 **DELAWARE; STATE OF HAWAII;**
21 **STATE OF ILLINOIS; STATE OF**
22 **MAINE; STATE OF MARYLAND;**
23 **COMMONWEALTH OF**
24 **MASSACHUSETTS; ATTORNEY**
25 **GENERAL DANA NESSEL ON BEHALF**
26 **OF THE PEOPLE OF MICHIGAN;**
27 **STATE OF MINNESOTA; STATE OF**
28 **NEVADA; STATE OF NEW JERSEY;**
STATE OF NEW MEXICO; STATE OF
NEW YORK; STATE OF OREGON;
STATE OF RHODE ISLAND; STATE OF
VERMONT; COMMONWEALTH OF
VIRGINIA; and STATE OF WISCONSIN

Plaintiffs,

v.

Case No. 4:19-cv-00872-HSG

**APPENDIX OF DECLARATIONS RE:
ENVIRONMENTAL HARMS IN
SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

Judge: Honorable Haywood S. Gilliam,
Jr.
Trial Date: None Set
Action Filed: February 18, 2019

1 **DONALD J. TRUMP**, in his official capacity
2 as President of the United States of America;
3 **UNITED STATES OF AMERICA; U.S.**
4 **DEPARTMENT OF DEFENSE; PATRICK**
5 **M. SHANAHAN**, in his official capacity as
6 Acting Secretary of Defense; **MARK T.**
7 **ESPER**, in his official capacity as Secretary of
8 the Army; **RICHARD V. SPENCER**, in his
9 official capacity as Secretary of the Navy;
10 **HEATHER WILSON**, in her official capacity
11 as Secretary of the Air Force; **U.S.**
12 **DEPARTMENT OF THE TREASURY;**
13 **STEVEN T. MNUCHIN**, in his official
14 capacity as Secretary of the Treasury; **U.S.**
15 **DEPARTMENT OF THE INTERIOR;**
16 **DAVID BERNHARDT**, in his official capacity
17 as Acting Secretary of the Interior; **U.S.**
18 **DEPARTMENT OF HOMELAND**
19 **SECURITY; KIRSTJEN M. NIELSEN**, in
20 her official capacity as Secretary of Homeland
21 Security;

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Defendants.

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DECLARATIONS CONCERNING ENVIRONMENTAL HARMS

Exhibit Number	Declarant
1	Diana Hadley (Tucson, Arizona)
2	Jesse Lasky (Penn State)
3	Christopher D. Nagano (Center for Biological Diversity)
4	Eleanore Nestlerode (New Mexico State Lands Office)
5	Myles Traphagen (Wildlands Network)
6	Raymond Trejo (Deming, Luna County, New Mexico)
7	Gabriel Vasquez (Las Cruces, Doña Ana County, New Mexico)

EXHIBIT 1

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18 **COLORADO; STATE OF**
19 **CONNECTICUT; STATE OF**
20 **DELAWARE; STATE OF HAWAII;**
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22 **MAINE; STATE OF MARYLAND;**
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STATE OF NEW MEXICO; STATE OF
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STATE OF RHODE ISLAND; STATE OF
VERMONT; COMMONWEALTH OF
VIRGINIA; and STATE OF WISCONSIN;

26 Plaintiffs,

27 v.
28

4:19-cv-00872-HSG

**DECLARATION OF DIANA HADLEY IN
SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

1 **DONALD J. TRUMP**, in his official capacity
2 as President of the United States of America;
3 **UNITED STATES OF AMERICA; U.S.**
4 **DEPARTMENT OF DEFENSE; PATRICK**
5 **M. SHANAHAN**, in his official capacity as
6 Acting Secretary of Defense; **MARK T.**
7 **ESPER**, in his official capacity as Secretary of
8 the Army; **RICHARD V. SPENCER**, in his
9 official capacity as Secretary of the Navy;
10 **HEATHER WILSON**, in her official capacity
11 as Secretary of the Air Force; **U.S.**
12 **DEPARTMENT OF THE TREASURY;**
13 **STEVEN T. MNUCHIN**, in his official
14 capacity as Secretary of the Treasury; **U.S.**
15 **DEPARTMENT OF THE INTERIOR;**
16 **DAVID BERNHARDT**, in his official capacity
17 as Acting Secretary of the Interior; **U.S.**
18 **DEPARTMENT OF HOMELAND**
19 **SECURITY; KIRSTJEN M. NIELSEN**, in
20 her official capacity as Secretary of Homeland
21 Security;

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Defendants.

1 I, Diana Hadley, declare as follows:

2 1. I am Diana Hadley. I have personal knowledge of the facts set forth in this
3 declaration. If called as a witness, I could and would testify competently to the matters set forth
4 below.

5 2. I am a founding board member and current president of the Northern Jaguar
6 Project, a nonprofit organization that manages a 55,000-acre wildlife reserve in Sonora, Mexico.

7 3. I am the former owner-operator of Guadalupe Canyon Ranch, a 20,000-acre family
8 ranch in Hidalgo County, along the New Mexico-Mexico border. After living on the ranch in a
9 region described as the "bootheel" of New Mexico for 15 years, running 250 head of cattle, I have
10 now passed my shares in the ranch in trust to my daughter.

11 4. Subsequently, I retired from the University of Arizona, where I was director of the
12 Arizona State Museum's Office of Ethnohistorical Research. While working at the university, I
13 specialized in the history of land use and ecological change in the southwestern U.S. and northern
14 Mexico. I published a number of technical studies for the Bureau of Land Management and the
15 U.S. Forest Service.

16 5. I hold B.A. and M.A. degrees in archaeology and history from Washington
17 University and the University of Arizona and have numerous certificates in education and
18 Spanish language. I have organized conferences on grassland restoration, Native American
19 sacred sites, deforestation of the Sierra Madres and restoration of the Santa Cruz River.

20 6. I have served on the board of directors of Native Seeds/SEARCH, the Audubon
21 Research Ranch, the Arizona-Sonora Desert Museum, the Friends of Tucson's Birthplace, the
22 Center for Desert Archaeology, Wildlands Network and am a commissioner on the Tucson-Pima
23 County Historical Commission.

24 7. Because of my involvement with wildlife and ranching in the ecologically
25 vulnerable bootheel of New Mexico, I have an acute awareness of the dangers human activities
26 and construction have had and will have on the native plants and animals that once thrived along
27 the border, where it is possible construction of a border wall may soon begin.
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1 8. I urge this court to reject federal moves to authorize construction of a border wall
2 in these circumstances and in this area. The semi-arid grasslands of Hidalgo County, NM rarely
3 have adequate stores of water for human inhabitants and frequently reach 100 degrees Fahrenheit.
4 Nonetheless, they have supported a regionally and globally unique mosaic of grasses and high-
5 elevation scrub that supports some of the last remaining populations of species and subspecies
6 that have become increasingly rare on both sides of the border. Many of these species have been
7 intensely studied with large amounts of funding devoted to their preservation, restoration and/or
8 reintroduction. These species include rare and endangered species of mammals, as well as many
9 other species of wildlife, whose survival would be severely negatively impacted by both the
10 existence of a wall and the process of construction. Construction of a border wall would adversely
11 affect the ability of all of these species to move between critical cross-border water sources, and
12 to seasonally translocate to a variety of mountain ranges strategically necessary for finding food
13 sources at various times of year.

14 9. For instance, the Northern Jaguar—renowned for its power, strength, beauty, and
15 grace—was largely extirpated in the US southwest as a result of federal predator control
16 programs, poaching, uncontrolled hunting and habitat destruction on the U.S. side of the border.
17 Jaguars are now classified as endangered and are legally protected in both the U.S. and Mexico.
18 The northernmost breeding population of jaguar on the planet struggles to survive in the Mexican
19 states of Sonora and Chihuahua, and during the past 15 years over 50 individual jaguars,
20 including females and cubs, have been documented on the Northern Jaguar Reserve
21 approximately 150 miles southwest from the New Mexico border. Since 1996 eight male jaguars
22 have been photographed on the U. S. side of the border, and one young male currently occupies
23 territory in the area of the U.S. declared as critical jaguar habitat.

24 10. The Northern Jaguar Reserve, which I was instrumental in founding, consists of 85
25 square miles 150 miles southwest of the New Mexico-Mexico border. The reserve has fostered the
26 survival of the northern Jaguar, whose range extends into Hidalgo and Luna counties in New
27 Mexico.
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1 11. The jaguar is solitary and wanders an immense documented range of hundreds of
2 miles, which they mark with urine and scent markings and by scratching trees, hunting and
3 mating at any time of year. Jaguars come together only for courtship and mating and are
4 otherwise isolated. The jaguar female is left alone to raise her cubs, which are born blind and
5 stay in the den for several weeks, learning to hunt after six months, and remaining dependent
6 upon and staying with their mothers for up to two years before finding their own territory. In the
7 wild, the average lifespan of a jaguar is 12 to 16 years.

8 12. Our binational efforts have begun a long preservation effort to counteract
9 dangerous human habits and hobbies and are having measured success. However, organized
10 efforts to build a border wall may overcome our progress in conserving wildlife and border
11 ecosystems. The Northern Jaguar is only one example of species of threatened animal that may
12 become extinct in the United States because of construction, vehicle traffic, noise and light
13 associated with human construction and habitation. A border wall would disrupt the breeding
14 grounds, habitat and migratory patterns of many species including the Northern Jaguar. Physical
15 barriers, roads, high-powered lighting, cameras and sensors have the potential to inflict serious
16 damage to all wildlife.

17 13. A fixed border wall has the obvious potential to cause irreparable harm for a
18 jaguar isolated from a mate prior to insemination or a cub separated from its mother prior to
19 acquiring hunting skills. Jaguars once ranged from California to Texas and as far north as
20 Colorado. The purpose of the declaration of critical jaguar habitat within the United States
21 (southern New Mexico and Arizona) is to protect jaguars in this country and encourage potential
22 reoccupation of former habitat.

23 14. Despite the fact that jaguar are powerful, strong climbers and rapid runners, they
24 tire quickly and rely on proximity rather than sustained speed while hunting deer, javelina, desert
25 bighorn sheep, birds, turtles, snakes and fish. A wall that prevents jaguars from hunting prey in
26 their customary range could prevent access to water sources, separate mothers from young, lead
27 to genetic isolation, and potentially starve individual jaguars.

1 15. The Chihuahuan pronghorn antelope, also found along New Mexico’s southern
2 border, is listed as endangered in Mexico. The fastest land animal in the Western hemisphere,
3 with a proven ability to run up to 60 miles per hour, pronghorn will be harmed by construction of
4 a border wall of any type because pronghorn rarely jump even low fences, preferring to crawl
5 under a fence.¹ Pronghorn have been known to collide with barricades and to become impaled in
6 fencing. A border wall impassable because of height or underground anchoring can separate a
7 pronghorn from mates or litters and, if an escape route is blocked, make them vulnerable to
8 predators. The pronghorn in the southwestern portion of Hidalgo County are the only U. S.
9 population of native, non-introduced Chihuahuan pronghorn with pure genetics. Their numbers
10 are increasing after three decades of study, large expenditures of funding and concerted protection
11 efforts. Studies have shown that pronghorn mortality, especially among fawns, is greatest in areas
12 where fences or walls have been constructed, as these structures limit the ability of pronghorn to
13 escape from predatory coyote packs.

14 16. Studies of black bear (*Ursus americanus amblyceps*) have revealed through DNA
15 testing that the populations in Chihuahua and New Mexico are genetically related and that
16 essential bear habitat extends to both sides of the border.

17 17. The endangered white-sided jack rabbit (*Lepus callotis*), found only in
18 southwestern New Mexico, is listed as a threatened species by the State of New Mexico. Its
19 population has plummeted in part as a result of impacts from speeding border patrol vehicles.
20 The jackrabbit relies on pure grassland habitat, is known to mate for life and to travel in pairs.
21 Isolation from a mate because of wall construction could kill some of the few individuals still
22 known to inhabit the United States—individuals believed to number fewer than 100. Further,
23 border patrol vehicles and construction equipment create threats to the survival of individuals and
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25 ¹ See Arizona Daily Sun, “Threats to pronghorn antelope,” Aug. 9, 2001, discussing
26 “antelope-friendly” smooth fencing installed no less than 16” above ground adopted by ranchers
27 for purposes of preservation of pronghorn antelope. https://azdailysun.com/threats-to-pronghorn-antelope/article_acc721b1-a23a-502d-85e7-ca7fdb6bee75.html

1 the species.²

2 18. Black-tailed prairie dogs (*Cynomys ludovicianus*) inhabit both sides of the border
3 and concerted restoration efforts have taken place in Hidalgo County. The presence of these small
4 ground squirrels is a scientifically known benefit to many other species.

5 19. The Sonoran possum has recently been viewed in near the Mexican border in
6 Hidalgo County, as have a pair of elk, which likely migrated southward from the Gila Wilderness.
7 Elk have not been sighted in northern Mexico for many decades and their return would be
8 enthusiastically welcomed. Their ability to cross the border and to reoccupy former habitat in the
9 mountains of northern Chihuahua would be eliminated by construction of a border wall.

10 20. A critically important feature of New Mexico's unique natural landscapes is the
11 open expanse of native grasslands, which will be interrupted by construction of any wall, blocking
12 the distribution of all grassland fauna larger than a kangaroo rat. In addition to supporting the
13 habitat of the Northern Jaguar, these grasslands support innumerable additional species including
14 many that are threatened or critically endangered.

15 21. During my years on the New Mexico ranch, I have grown accustomed to the
16 quietude of the area so sparsely populated by humans. The grasslands, uninterrupted by roads
17 and construction and accessible only on foot or horseback, support a lively community of
18 carnivores and herbivores, in large part because this land is not suitable for commercial farming
19 or extensive human habitation.

20 22. In the vast Chihuahuan Desert grassland, and in the Coronado National Forest,
21 thousands of diverse wildlife species thrive and migrate across our shared border with Mexico for
22 their survival. An early recognition of this unique biological diversity is the American Museum
23 of Natural History's establishment of its Southwestern Research Station in this area. The heart of
24 one of the largest and most ecologically diverse wildlife corridors in all of the Americas exists at
25 the center of the wall's proposed construction site across the continental divide. The southern end
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27 ² See [https://wildearthguardians.org/wildlife-conservation/endangered-species-](https://wildearthguardians.org/wildlife-conservation/endangered-species-list/mammals/white-sided-jackrabbit/)
28 [list/mammals/white-sided-jackrabbit/](https://wildearthguardians.org/wildlife-conservation/endangered-species-list/mammals/white-sided-jackrabbit/), noting that the white-sided jack rabbit is threatened with
extinction by "mortality due to collisions with Border Patrol vehicles alone."

1 of the Rocky Mountains, the northern end of the Sierra Madres, the edges of both the Sonoran and
2 Chihuahuan Deserts, and the Apacherian Savanna all intersect on New Mexico's southern border.

3 23. Regionally rare native species, including desert bighorn sheep, Chihuahuan
4 pronghorn, Coues deer, white-sided jack rabbit, Mearns quail, pygmy owl, jaguar, myriad game
5 and songbirds and non-game mammals and reptiles depend upon the unwalled border corridor for
6 their survival. These species migrate across the different existing international barriers in search
7 of food, mates, sources of water, and to ensure the survival of their species. Beyond our shared
8 responsibility to co-habitate with wildlife, these species also serve critical needs to the people of
9 New Mexico, including economic development through hunting, wildlife watching and other
10 passive recreation opportunities, and help ensure we keep our desert, grassland and forest
11 ecosystems in conditions that mitigate the impact of flash flooding and forest fires. Additionally,
12 the Mexican government has stated its opposition to the border wall on many grounds, including
13 the negative impacts on shared ecosystems and wildlife corridors along the border that the
14 countries mutually manage.

15 24. In addition, the Chiricahua leopard frog is listed under the Endangered Species Act
16 in Hidalgo County, NM. Because of a reduction in available water, the frog has vanished from an
17 estimated 80% of its New Mexico habitat.³ Using scarce water in New Mexico for wall
18 construction constitutes a threat to this endangered species.

19 25. The open expanses of the New Mexico desert drew cowboys and other westerners
20 to our county and state, as it has drawn my family and me. I have been privileged to run cattle
21 unconstrained by artificial barriers such as the one attendant to a border wall and to engage in
22 long-established Western traditions of cooperative, reciprocal cattle work with our neighbors
23 across the border in Mexico. Like most border residents, my children grew up acquiring
24 knowledge of viable economic livelihoods while participating in time-honored border customs,
25 speaking English and Spanish, sharing food traditions, and benefitting from the rich culture of the
26 U.S.-Mexico borderlands. In addition to extreme ecological disruption, wall construction would
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28 ³ Designation of Critical Habitat of the Chiricahua Leopard Frog, 50 CFR, Sec. 17 (2012),
Vol 77, No. 54 Federal Register.

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diminish these multiple economic benefits and cultural wealth.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on April 3, 2019, at Tucson, AZ.

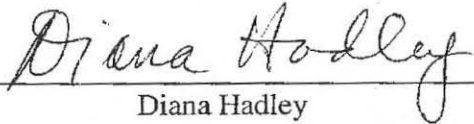

Diana Hadley

EXHIBIT 2

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24 **STATE OF NEW MEXICO; STATE OF**
NEW YORK; STATE OF OREGON;
25 **STATE OF RHODE ISLAND; STATE OF**
VERMONT; COMMONWEALTH OF
26 **VIRGINIA; and STATE OF WISCONSIN;**

27 Plaintiffs,
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4:19-cv-00872-HSG

**DECLARATION OF JESSE R. LASKY
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

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v.

DONALD J. TRUMP, in his official capacity as President of the United States of America; **UNITED STATES OF AMERICA; U.S. DEPARTMENT OF DEFENSE; PATRICK M. SHANAHAN**, in his official capacity as Acting Secretary of Defense; **MARK T. ESPER**, in his official capacity as Secretary of the Army; **RICHARD V. SPENCER**, in his official capacity as Secretary of the Navy; **HEATHER WILSON**, in her official capacity as Secretary of the Air Force; **U.S. DEPARTMENT OF THE TREASURY; STEVEN T. MNUCHIN**, in his official capacity as Secretary of the Treasury; **U.S. DEPARTMENT OF THE INTERIOR; DAVID BERNHARDT**, in his official capacity as Acting Secretary of the Interior; **U.S. DEPARTMENT OF HOMELAND SECURITY; KIRSTJEN M. NIELSEN**, in her official capacity as Secretary of Homeland Security;

Defendants.

1 I, JESSE R. LASKY, declare as follows:

2 1. I have personal knowledge of the facts set forth in this declaration. If called as a
3 witness, I could and would testify competently to the matters set forth below.

4 2. I have been an Assistant Professor of Biology at Pennsylvania State University
5 since 2015. I obtained an A.B. from Kenyon College and a Ph.D. from the University of Texas at
6 Austin. I was subsequently an Earth Institute Fellow at Columbia University and was awarded the
7 American Society of Naturalists Young Investigator Award in 2015. My scientific background is
8 in spatial ecology and evolution, including biogeography, animal dispersal, and conservation
9 biology. I have published over 40 peer reviewed papers, many in prestigious journals such as
10 *Science* and *Proceedings of the National Academies of Sciences*. I have previously published
11 peer-reviewed research in the journal *Diversity and Distributions* on the potential impacts to
12 animal conservation of barriers along the USA-Mexico border¹.

13 3. Major construction projects, border infrastructure, and physical barriers pose a
14 number of threats to wildlife. These threats range from short-term rapid destruction of animal
15 habitat and populations to longer-term threats of extinction. My research in this field has been
16 primarily focused on investigating the potential impacts of border barriers and associated
17 infrastructure on wildlife.

18 4. In addressing Defendants’ proposed “El Paso Project 1” border wall construction
19 project (“Project”), I begin with a brief overview of the conceptual background for conservation
20 implications of border barriers and associated infrastructure. I then discuss the consequential
21 environmental impacts stemming from the proposed Project.

22 5. Immediate, short-term threats of border barrier construction come partly from their
23 inevitable disturbance and destruction of natural habitats for wildlife. Much of the USA-Mexico
24 border runs through wilderness and natural habitats for diverse wildlife, including the proposed
25 Project region. To construct major barriers, such as a pedestrian fence, roads must be built and
26 maintained, often across uneven terrain. As a result, wide swathes of natural vegetation and

27 _____
28 ¹ Jesse R. Lasky *et al.*, *Conservation biogeography of the US–Mexico border: a transcontinental
risk assessment of barriers to animal dispersal*, 17 *Diversity & Distributions* 673, 687 (2011).

1 habitat for wildlife are destroyed. The rapid construction of roads over uneven terrain often
2 results in dramatic erosion, destroying additional vegetation in a dry region with sensitive
3 vegetation. Animal populations inhabiting these areas will be destroyed or displaced, either due to
4 injury from construction equipment or the destruction of their habitat. The long-term presence of
5 extensive bright lighting for border patrol and vegetation-free areas along border wall corridors
6 will also drive away many species of animals from these areas.

7 6. Border barriers pose an additional immediate threat to populations of large animals
8 that must move long distances to satisfy their needs for food, water, and mates, species which
9 would have no ability to fit through small openings between bollards. If populations of these
10 animals are blocked from foraging for food, water, and mates at the border, the result will likely
11 be death, reduced fertility, and population decline. Examples of such species in the area of the
12 proposed Project include Cougar, Bobcat, Mule and White-tailed Deer, Collared Peccary
13 (Javelina), American Badger, and Gray Fox. Although these species are not in danger of global
14 extinction, they play vital roles in their ecosystems. The addition of border barriers threatens their
15 populations and hence ecosystems in the border region.

16 7. There are multiple species of large mammal in the region of the proposed Project
17 whose populations are already officially threatened. Jaguar is considered Endangered by the US
18 Fish and Wildlife Service. Jaguars were formerly widespread in the southwest US, but were
19 extirpated by hunting. In recent decades, small numbers of individuals have dispersed north from
20 breeding populations in northern Mexico. Some of these jaguars have recently reached mountains
21 in southwestern New Mexico west of Luna county. If further long-term recolonization of jaguars
22 continues, areas in Doña Ana and Luna counties include suitable habitat. Construction of the
23 proposed Project would stop jaguar movement through the region, potentially limiting
24 recolonization. The Mexican wolf is also considered Endangered by US FWS. It was once widely
25 distributed across northwest Mexico and the southwest US. Today the species is limited to
26 mountains straddling the Arizona-New Mexico borders with some recent small reintroductions in
27 Mexico. Doña Ana and Luna counties as well as the locations across the border in Mexico contain
28 suitable habitat for Mexican wolf. The long-term recolonization and repopulation of the region

1 would be limited by border barriers in the region.

2 8. Border barriers stop animal dispersal and thus also pose long term threats of
3 extinction and population decline. There are two primary long-term threats of barriers. First,
4 reduced dispersal prevents the recolonization of appropriate habitat following local population
5 extinctions, which can lead to extinction of a whole metapopulation and the species. To explain:
6 many species exist as metapopulations, which are collections of individual separate populations
7 distributed across a landscape. These individual populations may disappear from time to time,
8 perhaps due to a local disease epidemic or myriad other forces. But animal dispersal across a
9 landscape allows these populations to be re-founded by individuals from surviving populations. If
10 dispersal is prevented at the border, this process stops, and can lead the entire set of populations
11 to go extinct over the long term. Second, preventing dispersal causes an erosion of genetic
12 diversity within populations. If border barriers isolate animal populations on either side, the
13 individual populations on a given side will lose genetic diversity over time. A loss of genetic
14 diversity makes populations more vulnerable to extinction because it limits their ability to adapt
15 to new diseases and changing environments, because deleterious mutations accumulate, and
16 because inbreeding often reduces fitness.

17 9. The height of the proposed Project's wall and lighting pose major problems for the
18 movement of birds and bats. Although these animals have the ability to fly over barriers, many
19 small birds and bats avoid flying high in order to avoid predators (*e.g.* hawks and owls). The
20 bollards of the proposed Project, at 30 feet high, would pose major barriers to many of these
21 species. For example, researchers found that Ferruginous Pygmy-Owls (a transboundary species)
22 in northern Sonora did not typically fly higher than 13 feet, and flights above vegetation were
23 extremely rare². Similarly, many birds and bats active at night avoid clearings with bright lights.

24 10. Species with small ranges are particularly vulnerable to extinction due to the
25 various threats above. If animal movement is stopped by the border, then the species ranges will
26 be effectively independent on either side, and the species' vulnerability to extinction will be

27 _____
28 ²Aaron D. Flesch *et al.*, *Potential Effects of the United States-Mexico Border Fence on Wildlife*,
24 Conservation Biology 171, 181 (2009).

1 determined by the size of the larger remaining sub-range (US or Mexican). I measured the larger
2 portion of the species range for each amphibian, reptile, and non-volant mammal on either side of
3 the border. The proposed Project intersects the range of 17 species whose largest remaining sub-
4 range is less than 500,000 km², a relatively small size associated with greater risk of extinction.
5 These species include three species whose largest remaining sub-range is less than 100,000 km²,
6 an even more threatening situation: Desert Pocket Gopher, New Mexico Whiptail, and Texas
7 Lyre Snake.

8 11. There are a large number of species potentially impacted by these barriers. This
9 region is one of the most biodiverse in the United States. This is particularly true of non-volant
10 terrestrial vertebrate species such as amphibians, reptiles, and non-flying mammals that are most
11 likely to be impacted by barriers to movement. Reptiles and mammal species of the borderlands
12 in particular reach peak diversity in this region. I found that the new barriers of the proposed
13 Project intersect the ranges of 53 non-volant mammal, 38 reptile, and 10 amphibian species.

14 12. The proposed Project runs directly through habitat and populations of Ornate Box
15 Turtle and the Desert Pocket Gopher, both of which are considered Near Threatened by the
16 International Union for Conservation of Nature (“IUCN”). Additionally, the project intersects the
17 range of the Banner-tailed Kangaroo Rat, which is considered Near Threatened by the IUCN and
18 individuals of which have been recently recorded in this region.

19 13. In Luna and Doña Ana counties, the locations of El Paso Project 1, there are 87
20 species of animals considered by the State of New Mexico to be Endangered, Endemic, Sensitive
21 taxa, Species of Greatest Conservation Need, or Threatened. These designations signal that these
22 species are potentially threatened by new major activities that destroy their habitat or limit their
23 dispersal. Thus the proposed Project poses an important threat to these species.

24 14. There are at least two plant species, both cactus, considered by the State of New
25 Mexico to be Endangered that are also found in the habitat surrounding El Paso Project 1:
26 Nightblooming Cereus and Dune Pricklypear. This designation signals that these already
27 imperiled species are severely threatened by habitat destruction and erosion that will be caused by
28 border wall construction and associated activities.

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15. In summary, the location of the proposed Project contains many species of wildlife potentially impacted by the Project. Many of these species are already under major threats of extinction and extirpation, thus the Project has the potential to do major damage to biodiversity and ecosystems in the region.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on April 4, 2019, at State College, Pennsylvania.



JESSE R. LASKY

EXHIBIT 3

1 XAVIER BECERRA
Attorney General of California
2 ROBERT W. BYRNE
SALLY MAGNANI
3 MICHAEL L. NEWMAN
Senior Assistant Attorneys General
4 MICHAEL P. CAYABAN
CHRISTINE CHUANG
5 EDWARD H. OCHOA
Supervising Deputy Attorneys General
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11 *Attorneys for Plaintiff State of California*

12
13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION
16

17 **STATE OF CALIFORNIA; STATE OF**
COLORADO; STATE OF
18 **CONNECTICUT; STATE OF**
DELAWARE; STATE OF HAWAII;
19 **STATE OF ILLINOIS; STATE OF**
MAINE; STATE OF MARYLAND;
20 **COMMONWEALTH OF**
MASSACHUSETTS; ATTORNEY
21 **GENERAL DANA NESSEL ON BEHALF**
OF THE PEOPLE OF MICHIGAN;
22 **STATE OF MINNESOTA; STATE OF**
NEVADA; STATE OF NEW JERSEY;
23 **STATE OF NEW MEXICO; STATE OF**
NEW YORK; STATE OF OREGON;
24 **STATE OF RHODE ISLAND; STATE OF**
VERMONT; COMMONWEALTH OF
25 **VIRGINIA; and STATE OF WISCONSIN;**

26 Plaintiffs,

27 v.

28 **DONALD J. TRUMP**, in his official capacity

4:19-cv-00872-HSG

**DECLARATION OF CHRISTOPHER D.
NAGANO IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

1 as President of the United States of America;
2 **UNITED STATES OF AMERICA; U.S.**
3 **DEPARTMENT OF DEFENSE; PATRICK**
4 **M. SHANAHAN**, in his official capacity as
5 Acting Secretary of Defense; **MARK T.**
6 **ESPER**, in his official capacity as Secretary of
7 the Army; **RICHARD V. SPENCER**, in his
8 official capacity as Secretary of the Navy;
9 **HEATHER WILSON**, in her official capacity
10 as Secretary of the Air Force; **U.S.**
11 **DEPARTMENT OF THE TREASURY;**
12 **STEVEN T. MNUCHIN**, in his official
13 capacity as Secretary of the Treasury; **U.S.**
14 **DEPARTMENT OF THE INTERIOR;**
15 **DAVID BERNHARDT**, in his official capacity
16 as Acting Secretary of the Interior; **U.S.**
17 **DEPARTMENT OF HOMELAND**
18 **SECURITY; KIRSTJEN M. NIELSEN**, in
19 her official capacity as Secretary of Homeland
20 Security;

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Defendants.

1 I, Christopher D. Nagano, declare as follows:

2 1. I have personal knowledge of the facts set forth in this declaration. If called as a
3 witness, I could and would testify competently to the matters set forth below. As to those matters
4 which reflect an opinion, they reflect my personal opinion and judgment on the matter.

5 2. I reside in Washougal, Washington.

6 3. I am a staff member of the Center for Biological Diversity, where I have served as
7 a senior scientist in the Center's Endangered Species Program since 2017. At the Center, I work
8 to protect imperiled species, particularly reptiles and invertebrates such as butterflies, lady
9 beetles, and tiger beetles. I work in conjunction with campaigners, lawyers, policy experts and
10 other scientists to achieve this goal.

11 4. Prior to coming to the Center, I worked for 27 years, from 1989 to 2016, as an
12 endangered species entomologist/ecologist, endangered species biologist, Endangered Species
13 Division Chief, and Deputy Assistant Field Supervisor with the U.S. Fish and Wildlife Service
14 ("FWS" or "Service") based in Carlsbad and Sacramento, California, and Albuquerque, New
15 Mexico. I was the Chief of the Endangered Species Division at the New Mexico Ecological
16 Services Office for 1 ½ years. I was responsible for the protection, conservation, and recovery of
17 endangered species throughout New Mexico, including the US/Mexico border area and Doña Ana
18 and Luna Counties. I also completed endangered species-related details in five other states.

19 5. Prior to going to the Service, I worked for several years in the mid-late 1980s as a
20 research associate in the Entomology Section at the Natural History Museum of Los Angeles
21 County.

22 6. I have a Master of Environmental Studies degree from the Yale School of Forestry
23 and Environmental Studies; for my graduate work I investigated the international trade in
24 butterflies. During this period, I was an intern working on endangered species issues at the
25 Environmental Defense Fund in Washington, D.C. for Michael J. Bean, now retired Deputy
26 Assistant Secretary for Fish, Wildlife and Parks at the Department of Interior.

27 7. In sum, I have dedicated my career to the scientific research and protection of
28 endangered and threatened species.

1 8. During my career with the FWS, I routinely reviewed projects proposed by
2 federal, state and local agencies, and non-governmental parties for their potential effects on
3 endangered and non-listed wildlife, plants, and their habitats pursuant to the National
4 Environmental Policy Act (“NEPA”), and the California Environmental Quality Act (“CEQA”).
5 My efforts involved assessments of project impacts on endangered and non-listed wildlife and
6 plants, and their habitats, as well as review of the proposed mitigations and development of
7 additional measures, if appropriate.

8 9. I also have an extensive working knowledge of endangered species. During my
9 27-year career with the FWS, I conducted hundreds of informal consultations and many dozens of
10 formal consultations pursuant to the Endangered Species Act with many Federal agencies ranging
11 from the Bureau of Reclamation to the National Park Service. These consultations involved
12 providing guidance to Federal agencies in determining whether and to what extent their projects
13 would have an effect on the survival and recovery in the wild of endangered species and whether
14 and to what extent Federal agencies’ projects would adversely modify or destroy the endangered
15 species’ critical habitat.

16 10. While at the U.S. Fish and Wildlife Service, I focused on, analyzed, and
17 encouraged other agencies to first avoid, and if that was not possible, to mitigate, the effect of
18 barriers, such as highways and roadways, on the long-term movement of endangered animals and
19 wildlife. The ability of many animals to move to new areas, areas containing habitat within their
20 range, or between portions of their home range is critical for ensuring they do not become extinct
21 or extirpated, and is important for reducing the possibility of genetic inbreeding and for avoiding
22 other biological and ecological problems.

23 11. Another issue that I focused on at the FWS was the indirect adverse effects of a
24 project on endangered animals and wildlife. Indirect effects are often not adequately analyzed by
25 federal agencies, but their impact on endangered species and wildlife can be far greater and much
26 longer lasting than the direct effects of a project.

27 12. I am gravely concerned by the failure of the Department of Defense (DOD),
28 Department of Homeland Security (“DHS”) and Customs Border Patrol (“CBP”) to comply with

1 NEPA for their proposed border wall in New Mexico. These agencies have failed to consider the
2 proposed border wall's effects on the endangered and Experimental Nonessential Populations¹ of
3 the Mexican wolf (*Canis lupus baileyi*) and the Aplomado falcon (*Falco femoralis*
4 *septentrionalis*), and failed to consult with the FWS on possible environmental and species
5 effects.

6 13. From decades of work with endangered and threatened species, as well as
7 experience dealing with the Mexican wolf and Aplomado falcon while I was stationed at the FWS
8 New Mexico Ecological Services Office, I recognize the threat that border wall construction and
9 maintenance, and associated operations pose to these two animals. The proposed construction of
10 the border wall in Doña Ana and Luna Counties and associated construction-related activities
11 may have a number of adverse effects on the Mexican wolf and Aplomado falcon. These include
12 direct effects, such as injury, death, harm, and harassment due to construction of the border wall
13 including linear vegetation clearing; road construction; grading and construction of equipment
14 storage and parking areas; off road movement of vehicle and equipment involved in construction;
15 and poisoning from chemical application (herbicides and pesticides). A series of indirect effects,
16 such as harassment, on the two endangered species also are possible, including, abandonment of
17 the area for essential behaviors such as feeding, resting, and mating due to night lighting; and
18 detrimental impacts caused by exotic invasive weeds introduced by construction and routine DHS
19 and CBP operations, which will eliminate food sources and habitat for rodents and other animals
20 utilized by the Mexican wolf and the Aplomado falcon. The combined direct and indirect effects
21 of a border wall would be additional pressures on the survival and recovery in the wild of these

22
23 ¹ "Nonessential Population" is the designation for members of a threatened or endangered
24 species who have been transported and released within suitable habitat within its probable
25 unoccupied historic range or in areas where the species did not formerly exist. An "Essential
26 Experimental Population" is one whose loss would be likely to appreciably reduce the survival of
27 the species in the wild, all other Experimental Populations are nonessential. Nonessential
28 Experimental Populations also intentionally have reduced protections in order to encourage public
and private landowners to assist in the recovery of the imperiled species. The purpose of
Experimental Populations is to establish populations of endangered or threatened species with the
intent of reducing the possibility of their extinction, improving their chances of recovery, and thus
the need for their continued protection under the Endangered Species Act. The authority for
Endangered Species Act (ESA) section 10(j) rules is given at 50 CFR § 1539(j).

1 two endangered species. The threats to the endangered Mexican wolf are of special concern,
2 given the dangers they face in the Republic of Mexico, and the need to maintain natural
3 connectivity for the animal between the United States and Mexico.

4 14. More specifically, the proposed border wall identified as El Paso Project 1 in the
5 February 25, 2019, memorandum from DHS to the DOD regarding a “Request for Assistance
6 Pursuant to 10 U.S.C. § 284” would interrupt the movement of the Mexican wolf across the
7 US/Mexico Border, including in Doña Ana and Luna Counties which is where El Paso Project 1
8 will be constructed. The Center for Biological Diversity has obtained information from the FWS
9 via the Freedom of Information Act (FOIA) on the cross international border movement of a
10 radio-collared Mexican wolf who was released in Mexico in 2017. It was first recorded on
11 January 21, 2017 in the United States, it was then recorded in the City of Las Cruces, Doña Ana
12 County, New Mexico, on January 23, 2017 and then last recorded on the outskirts of Ciudad
13 Juárez in the Mexican state of Chihuahua on January 25, 2017. The relevant information
14 obtained by the Center for Biological Diversity via this FOIA request is attached as Exhibit A to
15 this declaration.

16 15. The pedestrian border wall will adversely affect, and likely restrict or eliminate the
17 ability of Mexican wolves to move on their own volition between Mexico and the United States.
18 Since the pedestrian walls will be effective in prohibiting the entry of humans, they also will
19 restrict or prevent the movement of Mexican wolves between these two nations. The Mexican
20 wolf’s essential behavior of long distance movement in Doña Ana and Luna counties will be
21 blocked by the proposed border wall. The unimpeded movement of Mexican wolves between the
22 United States and Mexico is important for increasing and maintaining their genetic diversity. The
23 lack of genetic diversity for a species may result in physical malformities, behavioral problems,
24 reduced ability to successfully reproduce and produce viable offspring, reduced lifespan, reduced
25 ability to avoid predators, greater susceptibility to disease, and the reduced ability to survive
26 adverse environmental conditions, such as extremely cold winters or hot summers. The proposed
27 border wall could eliminate the possibility of the recovery of the endangered Mexican wolf and
28 preclude their delisting under the Endangered Species Act.

1
2 16. Further, construction the proposed border wall could result in the harassment of
3 endangered Mexican Aplomado falcons. Noise and other disturbance resulting from bulldozers
4 and other construction equipment and activities could cause the significant disruption of their
5 normal behaviors such as foraging and feeding.

6 17. There will be irreparable harm to the Mexican wolf and the Aplomado falcon
7 without proper NEPA review and the completion of section 7 consultation by these three federal
8 agencies as required by the Endangered Species Act.

9 18. The proposed border wall will also harm other species that are not federally
10 recognized as endangered or threatened. Given the lack of an adequate assessment of El Paso
11 Project 1 on the environment, the potential effects of the proposed project on sensitive habitats, as
12 well as non-listed, but imperiled species remains unknown. The border wall construction and
13 associated activities such as vehicle traffic, road building, horseback and quad patrols, night
14 lighting, and other associated human and law enforcement activities could permanently alter the
15 geography, and impact native vegetation and plant communities, especially by improving habitat
16 conditions for invasive weeds, and adversely impacting the existing natural ecosystems.

17 19. The earth moving and associated disturbance caused by border wall construction
18 will create habitat for invasive exotic plants and weeds which outcompete and replace native
19 plants. These exotic species initiate a downward spiral of increasingly destructive effects to
20 native plants, and native animals dependent on the native vegetation for food and the predators
21 that feed on them. The seeds of exotic weeds from other areas are easily transported within dried
22 mud or dirt on construction equipment, or unintentionally by CBP cars, trucks, horse trailers,
23 quads, and the hooves and fur of their patrol horses.

24 20. The Gila monster (*Heloderma suspectum*), the iconic large orange and black
25 colored venomous lizard, inhabits both sides of the international border from west of El Paso,
26 Texas, all through New Mexico, and into Arizona. This legendary reptile is listed as endangered
27 by the State of New Mexico. Its 2017 recovery plan issued by the New Mexico Department of
28 Game and Fish (Gila Monster (*Heloderma suspectum*) Recovery Plan by John Bulger dated April

1 5, 2017) includes information that the reptile has been collected or observed at six locations west
2 of El Paso and Las Cruces.

3 21. Gila monsters in New Mexico are typically found where Chihuahuan desert scrub
4 merges with desert grassland. Dominant vegetation in occupied and suitable sites includes
5 creosote bush, catclaw, snakeweed, ocotillo, mesquite, juniper, cacti, sotol, and numerous grasses.
6 Small trees, shrubs, and herbaceous vegetation provide important cover and food for the Gila
7 monster's prey. The recovery plan reported that Gila monsters in New Mexico prefer relatively
8 coarse gravelly conglomerate soils and areas of loam and sand. Of paramount importance is
9 availability of suitable refuge shelters, which occur in rock cavities and crevices, pack rat
10 mounds, and burrows created by other reptiles or mammals.

11 22. The recovery plan noted Gila monster home range sizes are highly variable,
12 ranging from <2.5 acres to 259 acres. Typically, Gila monsters center their activities and home
13 ranges on their refuge shelters. Individuals have tremendous fidelity to their home ranges, e.g.
14 they stay within their "home" area, according to one herpetologist (Daniel Beck. 2005. Biology of
15 Gila monsters and beaded lizards. University of California Press).

16 23. The low number of observations and records of the Gila monster west of El Paso
17 and Las Cruces in the recovery plan may be misleading. It does not demonstrate that the area is
18 not suitable for this reptile. Based on my experience at the FWS, I know Gila monsters are
19 extremely popular in the illegal reptile trade. Poachers and smugglers sell illegally collected
20 individuals for hundreds of dollars. Given their protected status by the State of New Mexico and
21 the Republic of Mexico where it is protected, it is unlikely that poachers who have taken Gila
22 monsters west of the El Paso area on either side of the US/Mexico border would make the
23 information public. This is because they do not want to be caught by law enforcement authorities
24 or reveal the locations where the animals were found to other poachers.

25 24. Given the amount of suitable habitat along the U.S./Mexico border in New Mexico
26 west of El Paso, the high value of the Gila monster by reptile collectors, and the biology and
27 ecology of the species, it is highly likely that this animal inhabits the area where the border wall is
28 proposed.

1 25. The threats from the proposed border wall to the Gila monster come in the form of
2 direct effects of wall construction such as their death or injury from construction operations,
3 falling into trenches or other holes and then dying of exposure or being buried alive; getting run
4 over by vehicles associated with the project; collected by construction personnel; and indirect
5 effects in the form of the border wall blocking their movement patterns or reducing the size of
6 individual animal's home ranges and eliminating the available food or shelter resources.

7 26. I am hopeful that NEPA and ESA analyses, if done properly and in good faith by
8 DOD, DHS and CBP, will ensure the survival and recovery in the wild of the endangered
9 Mexican wolf and endangered Aplomado falcon, and the New Mexico State-listed Gila monster,
10 in addition to maintaining the health of the greater ecosystem in the New Mexico borderlands
11 region. Requiring DOD, DHS and CBP to complete the NEPA process will surely redress the
12 irreparable harms to both federally-listed and state-listed species, wildlife, and the environment.

13 I declare under penalty of perjury under the laws of the United States that the foregoing is
14 true and correct.

15 Executed on April 3, 2019, at Portland, Oregon.

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CHRISTOPHER D. NAGANO

EXHIBIT A

From: [Dwire, Maggie](#)
To: b7C
Cc: [Sherry Barrett](#); [John Oakleaf](#)
Subject: Mexican wolf M1425
Date: Friday, January 27, 2017 10:22:50 AM
Attachments: [image.png](#)
[image.png](#)

Hi b7C

Our counterparts in Mexico have contacted us about GPS locations downloaded from a radio collar worn by a recently released wolf (M1425) in Mexico. The downloads from the animal's collar presumably show that it crossed the border into the US, went to Las Cruces, and returned across the border into Mexico. I attached below a screenshot of the downloads.

The first location in the US is at 8pm on January 21, and the location in Las Cruces is at 8am on the 23rd (a zoomed in map of this specific location is also below). The first location back into Mexico is at 8am on January 24th.

The last GPS download from this collar was on the outskirts of Juarez at 11am on the 25th. Mexico's field team heard the radio signal from Juarez on the evening of the 25th. The field team has not been able to locate the collar since, and the GPS has not downloaded since.

As you can see, some of the locations are in urban areas. It could be that the animal is alive and dispersing through these areas. Or, and to this point, Mexico has said "it could be that the collar (with or without carcass) is in hands of somebody that is carrying it around."

Mexico is trying to determine whether the collar is being worn by a live wolf, and will let us know any information they learn. Let us know if you have any questions.

Maggie

EXHIBIT A

CHRISTOPHER D. NAGANO

Ch Nagano

1 of 3

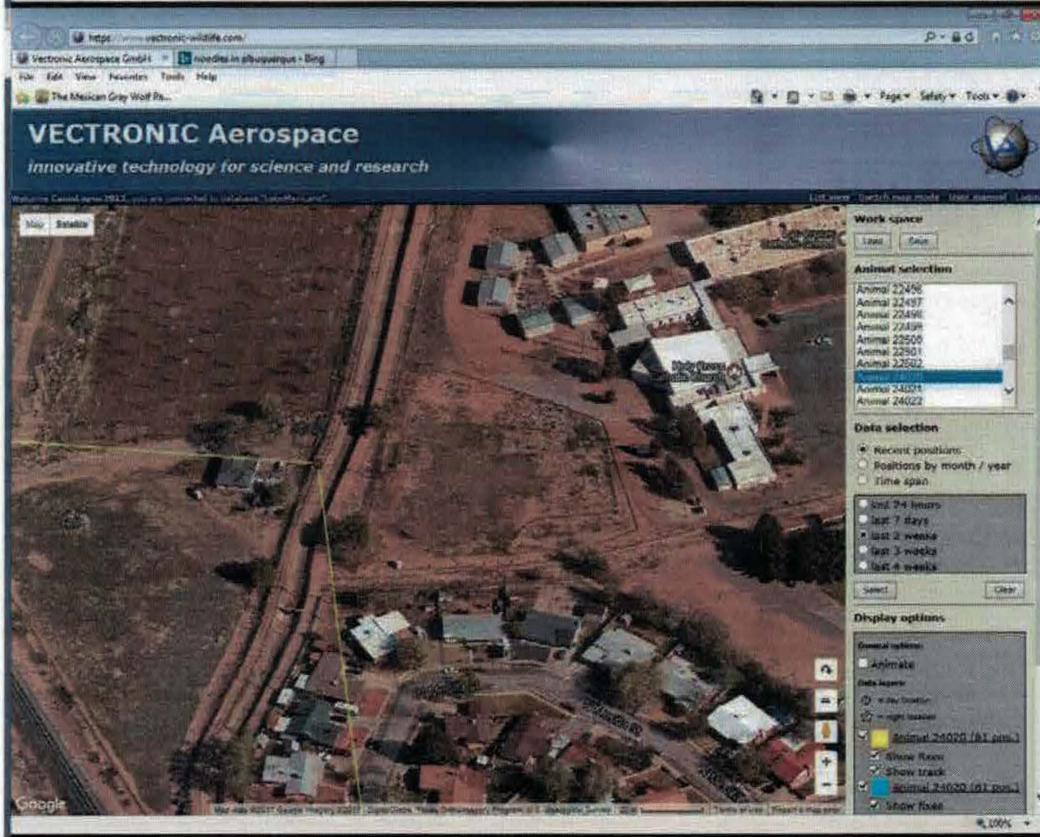
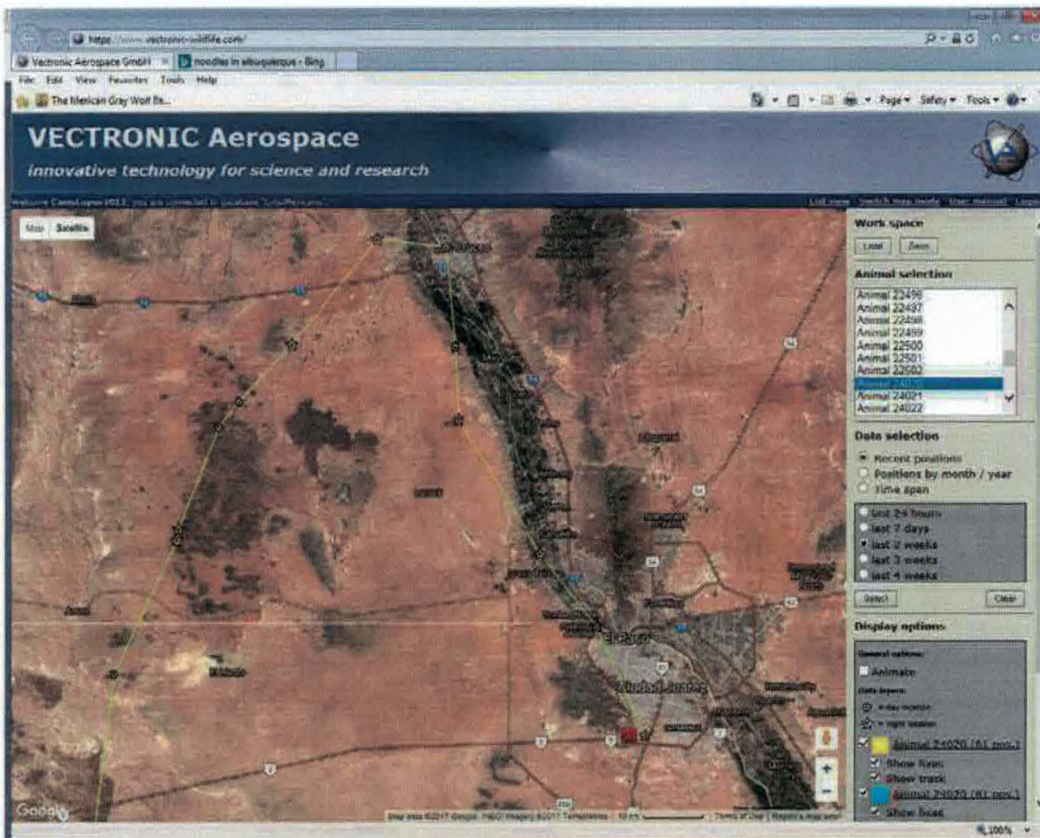


EXHIBIT A
 CHRISTOPHER NAGANO
 C/N Nagano
 2 OF 3

Maggie Dwire
Assistant Mexican Wolf Recovery Coordinator
U.S. Fish and Wildlife Service
2105 Osuna Road NE
Albuquerque, NM 87113
Ph (505) 761-4783

EXHIBIT A
CHRISTOPHER NAGANO
CfWaguo
3 of 3

EXHIBIT 4

1 XAVIER BECERRA
Attorney General of California
2 ROBERT W. BYRNE
SALLY MAGNANI
3 MICHAEL L. NEWMAN
Senior Assistant Attorneys General
4 MICHAEL P. CAYABAN
CHRISTINE CHUANG
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12
13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION
16

17 **STATE OF CALIFORNIA; STATE OF**
COLORADO; STATE OF
18 **CONNECTICUT; STATE OF**
DELAWARE; STATE OF HAWAII;
19 **STATE OF ILLINOIS; STATE OF**
MAINE; STATE OF MARYLAND;
20 **COMMONWEALTH OF**
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21 **GENERAL DANA NESSEL ON BEHALF**
OF THE PEOPLE OF MICHIGAN;
22 **STATE OF MINNESOTA; STATE OF**
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23 **STATE OF NEW MEXICO; STATE OF**
NEW YORK; STATE OF OREGON;
24 **STATE OF RHODE ISLAND; STATE OF**
VERMONT; COMMONWEALTH OF
25 **VIRGINIA; and STATE OF WISCONSIN;**

26 Plaintiffs,

27 v.
28

4:19-cv-00872-HSG

**DECLARATION OF ELEANORE
NESTLERODE IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

1 **DONALD J. TRUMP**, in his official capacity
2 as President of the United States of America;
3 **UNITED STATES OF AMERICA; U.S.**
4 **DEPARTMENT OF DEFENSE; PATRICK**
5 **M. SHANAHAN**, in his official capacity as
6 Acting Secretary of Defense; **MARK T.**
7 **ESPER**, in his official capacity as Secretary of
8 the Army; **RICHARD V. SPENCER**, in his
9 official capacity as Secretary of the Navy;
10 **HEATHER WILSON**, in her official capacity
11 as Secretary of the Air Force; **U.S.**
12 **DEPARTMENT OF THE TREASURY;**
13 **STEVEN T. MNUCHIN**, in his official
14 capacity as Secretary of the Treasury; **U.S.**
15 **DEPARTMENT OF THE INTERIOR;**
16 **DAVID BERNHARDT**, in his official capacity
17 as Acting Secretary of the Interior; **U.S.**
18 **DEPARTMENT OF HOMELAND**
19 **SECURITY; KIRSTJEN M. NIELSEN**, in
20 her official capacity as Secretary of Homeland
21 Security;

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Defendants.

1 I, Eleanore Nestlerode, declare as follows:

2 1. I am Eleanore Nestlerode. I have personal knowledge of the facts set forth in this
3 declaration. If called as a witness, I could and would testify competently to the matters set forth
4 below.

5 2. I am a staff member of the New Mexico State Land Office (SLO) and have worked
6 for SLO as IT/GIS Business Analyst since February 12, 2007.

7 3. One of my duties is locating and mapping state trust lands for the SLO.

8 4. I work at the Land Office Geographic Information Center of the SLO, where I
9 prepared the map attached as Exhibit A to this declaration. The map depicts New Mexico state
10 trust lands along the New Mexico-Mexico border and also identifies real property managed by the
11 federal government, as well as privately owned property.

12 5. The attached map illustrates New Mexico's specific interests in the state trust
13 lands outlined in the map, noting whether New Mexico has a surface interest (or "estate"), a
14 subsurface interest or estate, or both, in the state trust lands shown. Federal surface land
15 management is identified as being associated with the federal Bureau of Land Management
16 (BLM).

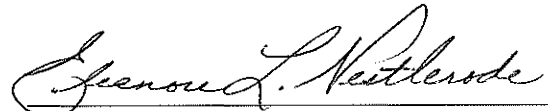
17 6. To prepare the map, I assembled the most up-to-date GIS ownership data layers
18 available to the New Mexico State Land Office, both of federal surface ownership, and of in-
19 house state trust lands surface and subsurface ownership, and overlaid these layers on a standard
20 topographic base map. I then analyzed the state trust lands located in the vicinity of coordinates
21 associated with the El Paso Sector Project 1 site by entering those coordinates that the
22 Department of Homeland Security (DHS) provided to the Department of Defense (DOD) in a
23 memorandum dated February 25, 2019, concerning DHS's "Request for Assistance Pursuant to 10
24 U.S.C. § 284" (DHS Memorandum).

25 7. The DHS Memorandum specifies that the El Paso Project 1 includes installation of
26 46 miles of pedestrian fencing beginning approximately 17.5 miles west of the Columbus Port of
27 Entry and continuing east in non-contiguous segments to approximately 35 miles east of the
28 Columbus Port of Entry within Luna and Dona Ana Counties, New Mexico. The Memorandum

1 indicates that the fencing will be constructed in two stretches, with one starting at coordinate
2 31.7837, -107.923151, and ending at 31.783689, -107.679049, and the second starting at
3 coordinate 31.783672, -107.573919, and ending at 31.783741, -107.038154.

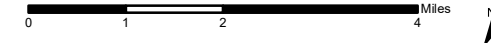
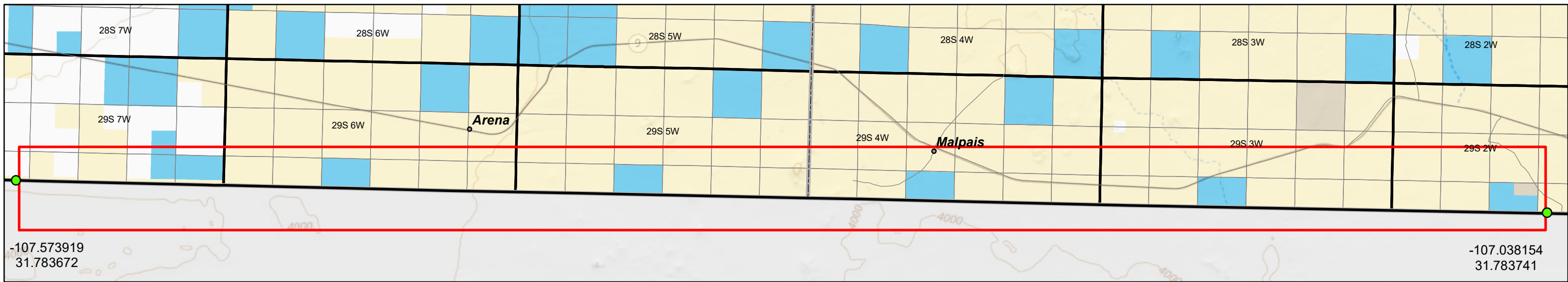
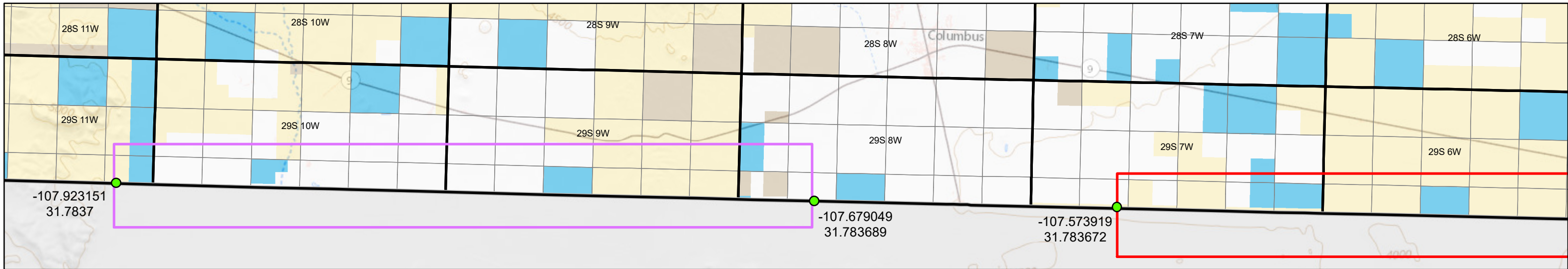
4 I declare under penalty of perjury under the laws of the United States that the foregoing is
5 true and correct.

6 Executed on April 3, 2019, at Santa Fe, New Mexico.

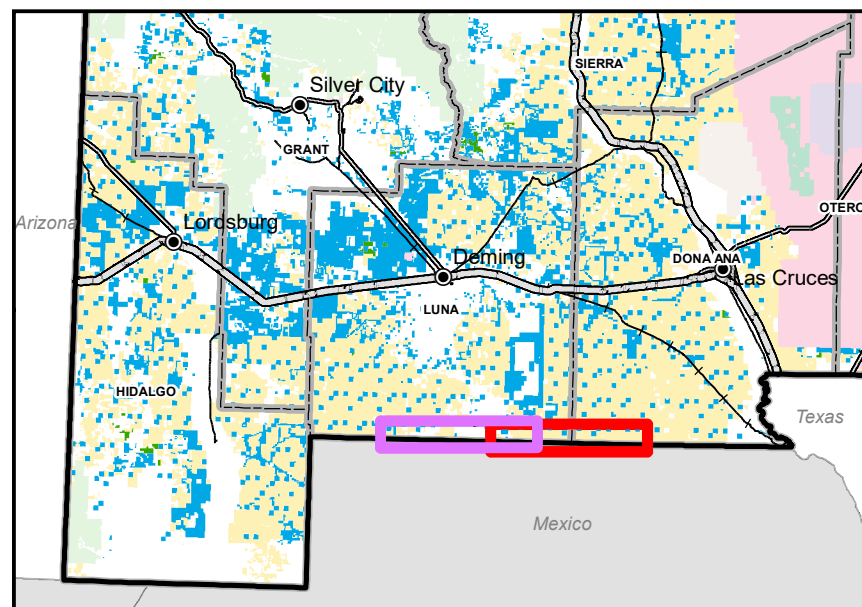
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EXHIBIT A



New Mexico State Trust Lands Status Along the Border with Mexico



Locator Map

- Cities and Towns
 - County Seats
 - Interstate
 - Highway
 - Local Roads
 - Railroads
 - County Lines
- State Trust Lands**
- Subsurface Estate
 - Surface Estate
 - Both Estates
- Federal Surface Management**
- Bureau of Land Management



Stephanie Garcia Richard
 Commissioner of Public Lands
 505-827-5761
www.nmstatelands.org

Note: state trust land ownership is adjacent to a 60-foot strip of land along the border with Mexico referred to as the Roosevelt Reservation, reserved in a 1907 Presidential Proclamation; this may not be visible due to scale limitations.

EXHIBIT 5

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Attorney General of California
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13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION
16

17 **STATE OF CALIFORNIA; STATE OF**
18 **COLORADO; STATE OF**
19 **CONNECTICUT; STATE OF**
20 **DELAWARE; STATE OF HAWAII;**
21 **STATE OF ILLINOIS; STATE OF**
22 **MAINE; STATE OF MARYLAND;**
23 **COMMONWEALTH OF**
24 **MASSACHUSETTS; ATTORNEY**
25 **GENERAL DANA NESSEL ON BEHALF**
26 **OF THE PEOPLE OF MICHIGAN;**
27 **STATE OF MINNESOTA; STATE OF**
28 **NEVADA; STATE OF NEW JERSEY;**
STATE OF NEW MEXICO; STATE OF
NEW YORK; STATE OF OREGON;
STATE OF RHODE ISLAND; STATE OF
VERMONT; COMMONWEALTH OF
VIRGINIA; and STATE OF WISCONSIN;

Plaintiffs,

v.

4:19-cv-00872-HSG

**DECLARATION OF MYLES B.
TRAPHAGEN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

1 **DONALD J. TRUMP**, in his official capacity
2 as President of the United States of America;
3 **UNITED STATES OF AMERICA; U.S.**
4 **DEPARTMENT OF DEFENSE; PATRICK**
5 **M. SHANAHAN**, in his official capacity as
6 Acting Secretary of Defense; **MARK T.**
7 **ESPER**, in his official capacity as Secretary of
8 the Army; **RICHARD V. SPENCER**, in his
9 official capacity as Secretary of the Navy;
10 **HEATHER WILSON**, in her official capacity
11 as Secretary of the Air Force; **U.S.**
12 **DEPARTMENT OF THE TREASURY;**
13 **STEVEN T. MNUCHIN**, in his official
14 capacity as Secretary of the Treasury; **U.S.**
15 **DEPARTMENT OF THE INTERIOR;**
16 **DAVID BERNHARDT**, in his official capacity
17 as Acting Secretary of the Interior; **U.S.**
18 **DEPARTMENT OF HOMELAND**
19 **SECURITY; KIRSTJEN M. NIELSEN**, in
20 her official capacity as Secretary of Homeland
21 Security;

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23
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26
27
28
Defendants.

1 I, Myles B. Traphagen, declare as follows:

2 1. I have personal knowledge of the facts set forth in this declaration. If called as a
3 witness, I could and would testify competently to the matters set forth below.

4 2. I am the Borderlands Program Coordinator for Wildlands Network in Tucson,
5 Arizona. I also serve as the Science Coordinator for the Malpai Borderlands Group based in
6 Douglas, Arizona. I reside in Tucson, Arizona.

7 3. I hold a Bachelor of Arts Degree from the University of California Santa Cruz in
8 Environmental Studies and a Master of Science Degree from the University of Arizona in
9 Geographic Information Systems. The research I conducted for my Master's Degree, "Habitat
10 connectivity for the white-sided jackrabbit (*Lepus callotis*) between the United States and
11 Mexico: The border divides a species," used Landsat satellite imagery over a 30-year period from
12 1984 to 2014 to evaluate whether connectivity existed between the U.S. and Mexico populations
13 of the white-sided jackrabbit.

14 4. Since 1996, I have conducted field surveys, inventories and research along the US
15 and Mexico border region and in Mexico. From 1996 to 1998 I worked for the U.S. Fish and
16 Wildlife Service ("Service" or "FWS") at San Bernardino National Wildlife Refuge in southeast
17 Arizona conducting bird surveys, native fish surveys and recovery of Rio Yaqui fishes which
18 reach their northernmost distribution in Cochise County of southeast Arizona.

19 5. From 1998 to 2008, I conducted research as a consultant for the U.S. Forest
20 Service Rocky Mountain Research Station and Malpai Borderlands Group on the effects of fire,
21 grazing and climate in the borderlands of southwest New Mexico and southeast Arizona. During
22 this time period I also began researching the white-sided jackrabbit (*Lepus callotis gaillardi*), a
23 State of New Mexico Threatened species that reaches its northern distribution in Hidalgo County,
24 New Mexico, commonly referred to as the "Bootheel."

25 6. From 2000 to 2008, I worked for both Turner Enterprises and the Turner
26 Endangered Species Fund in New Mexico inventorying vegetation, monitoring bison
27 reintroduction, prairie dog reintroduction and rewilding the Bolson tortoise from Durango,
28 Mexico. I have held permits from the New Mexico Department of Game and Fish to survey

1 mammals in the state.

2 7. From 2007 to 2014, I was a U.S. Bureau of Land Management (“BLM”)
3 Authorized Biologist and worked as a consultant on numerous renewable energy projects in
4 California and Nevada surveying and translocating desert tortoise.

5 8. In 2010 and 2011, I conducted research for the New Mexico Department of Game
6 and Fish to assess the population status of the white-sided jackrabbit in New Mexico. The results
7 of this survey suggested that roadkill by the U.S. Customs and Border Patrol (“CBP” or “Border
8 Patrol”) was a significant factor leading to a threefold population decline in less than decade.

9 9. I have led botanical survey crews in California, Nevada, Arizona, Nebraska, South
10 Dakota and New Mexico and have produced over 100 reports for agencies and private groups,
11 and have written several publications, book chapters and maps concerning wildlife and plant
12 species.

13 10. My current employment as Borderlands Program Coordinator with Wildlands
14 Network involves researching and advocating for wildlife corridors and connectivity. This entails
15 a significant amount of work in Mexico on projects such as trail camera trapping, mapping, and
16 designing projects for mitigating road and highway impacts to wildlife and enhancing habitat
17 connectivity.

18 11. As the Science Coordinator the Malpai Borderlands Group, I implement research
19 and monitoring projects such as climate and weather monitoring and fire and grazing research. I
20 also review and coordinate a large array of projects that relate directly to conservation projects in
21 the borderlands of Arizona and New Mexico.

22 12. I have analyzed the border-infrastructure projects outlined in the February 25,
23 2019, memorandum regarding “Request for Assistance Pursuant to 10 U.S.C. § 284” that the U.S.
24 Department of Homeland Security (“DHS”) directed to the U.S. Department of Defense
25 (“DOD”), in which DHS requests DOD’s assistance in constructing pedestrian fencing along
26 approximately 218 miles of the U.S.- Mexico border. DHS has identified eleven separate projects
27 for border areas located in California, Arizona and New Mexico (“Section 284 Projects”).

28 13. One of the Section 284 Projects, El Paso Project 1, is located in Doña Ana and

1 Luna Counties in New Mexico, and involves removing 46 miles of vehicle barrier fencing and
2 replacing it with pedestrian fencing. El Paso Project 1 also includes construction of roads and
3 installation of lighting.

4 14. In this declaration, I provide several examples specific to the El Paso Project 1
5 site, and to the border region more generally, to illustrate how the Section 284 Projects and El
6 Paso Project 1 will cause irreparable harm to wildlife, including to endangered species like the
7 Mexican Grey Wolf (*Canis lupus baileyi*).

8 15. The specific design of border walls and fences significantly affects how the
9 walls/fences will impact wildlife movement. There are numerous types of fencing that fall into
10 two categories according to what type of traffic they are intended to exclude or deter: vehicle and
11 pedestrian. Within those two types there are many designs depending upon when they were built.

12 16. Vehicle Fencing: Made of either short steel bollards or “Normandy-style” steel
13 crossbars, these are designed to deter “drive-thrus” of vehicles. They are the least detrimental to
14 wildlife because they allow most animals to cross under or between them. However, they can be a
15 formidable barrier for large animals like bison, Sonoran pronghorn or bighorn sheep. Pronghorn
16 do not jump and can have difficulty passing beneath the vehicle fencing. The Janos-Hidalgo bison
17 herd had roamed between southwest New Mexico and Chihuahua, Mexico for about 100 years,
18 but their movements were inhibited when the Normandy-vehicle barrier was installed along the
19 New Mexico-Mexico border. The herd has not been seen in several years.

20 17. Pedestrian fencing: This fencing is designed to deter and impede people, and
21 therefore it is effective at impeding most animals from passing through. It ranges from 10 to 18
22 feet high, although 30-foot replacement fencing is currently planned for San Diego and some
23 areas of Arizona. The style of pedestrian fencing that DHS currently favors is known as steel
24 bollard. The most common type employed is 6 x 6 inch diameter square steel posts filled with
25 concrete. The spacing between the steel posts is 4 inches. The height of the most recent border-
26 wall-infrastructure projects is 18 feet, but some recent plans for replacement fencing call for 30-
27 foot bollards. The bollard fencing recently installed in the twenty-mile section west of Santa
28 Teresa, New Mexico, an area that is adjacent to and just east of the El Paso Project 1 site, is 18

1 feet high with 4-inch gaps. The details of these fencing designs are extremely important to
2 understand in order to evaluate the effect they may have upon wildlife movement, migration and
3 connectivity.

4 18. Mexican Gray Wolf (*Canis lupus baileyi*): The Mexican gray wolf is the rarest
5 subspecies of gray wolf in North America. It was once common throughout the southwestern
6 U.S., but was nearly eliminated from the wild by the 1970s. The Mexican gray wolf is listed as
7 endangered under the Endangered Species Act (“ESA”) (80 FR 2488). El Paso Project 1 will
8 harm the Mexican gray wolf and significantly impact its recovery by dividing its habitat and
9 impeding the wolf’s movement.

10 19. For El Paso Project 1, the Trump administration plans to build an impermeable
11 bollard steel wall, precluding all animals greater than 4” wide from passing through. This wall
12 will prevent any connection between wolves from the U.S. and Mexico which is critical for the
13 wolf’s recovery. The Mexican Wolf Recovery Plan-First Revision, which is a wildlife plan the
14 Service approved under the ESA to facilitate the wolf’s revival, calls for a minimum of 320
15 wolves in the United States and 200 in Mexico to meet recovery goals. Ensuring that wolves can
16 access their entire range in the U.S. and Mexico is important to the wolf’s recovery because it
17 allows for greater utilization of habitat and prey availability and will promote the establishment of
18 meta-population connectivity.

19 20. Carroll et al (2014) state, “Restoring connectivity between fragmented populations
20 is an important tool for alleviating genetic threats to endangered species. Yet recovery plans
21 typically lack quantitative criteria for ensuring such population connectivity. We demonstrate
22 how models that integrate habitat, genetic, and demographic data can be used to develop
23 connectivity criteria for the endangered Mexican wolf (*Canis lupus baileyi*), which is currently
24 being restored to the wild from a captive population descended from 7 founders. We used
25 population viability analysis that incorporated pedigree data to evaluate the relation between
26 connectivity and persistence for a restored Mexican wolf meta-population of 3 populations of
27 equal size. Decreasing dispersal rates greatly increased extinction risk for small populations
28 (<150-200), especially as dispersal rates dropped below 0.5 genetically effective migrants per

1 generation.” Impeding connectivity between the U.S. and Mexican populations runs counter to
2 published research that advises otherwise. An impenetrable border wall hamstrings binational
3 efforts that have occurred for 30 years.

4 21. Under the ESA, critical habitat is sometimes designated for listed species. But for
5 the Mexican Wolf, the Service instead re-introduced the species to Arizona and New Mexico as
6 an ESA section 10(j) non-essential experimental population in order to allow for more flexibility
7 in the recovery process within the 5,000 square-mile Mexican Wolf Experimental Population
8 Area (“MWEPA”). On January 16, 2015, the Service revised the regulations for the non-essential
9 experimental population of the Mexican wolf under section 10(j) to improve the population’s
10 ability to contribute to recovery (80 FR 2512). With the encouragement of Southwestern states
11 including New Mexico, and based on the Service’s collaborative relationship with Mexico,
12 recovery planning was reinitiated in December 2015, focusing south of Interstate 40 in Arizona
13 and New Mexico and into Mexico, which encompasses the historical range of the Mexican wolf.

14 22. Newly Published Taxonomic Status of the Mexican Gray Wolf: On March 28,
15 2019, the National Academies of Sciences, Engineering, and Medicine released their findings on
16 *Evaluating the Taxonomic Status of the Mexican Gray Wolf and the Red Wolf*. The report
17 concludes that the Mexican gray wolf is a valid taxonomic subspecies of the gray wolf. The
18 Mexican gray wolf’s size, morphology (physical characteristics such as head shape), and color
19 distinguish it from other North American wolves. Genetic and genomic analyses confirm that the
20 Mexican gray wolf is the most genetically distinct subspecies of gray wolf in North America. The
21 Mexican gray wolf represents a smaller form of the gray wolf and inhabits a more arid ecosystem
22 than the gray wolf. Furthermore, the current managed population of Mexican gray wolves are
23 direct descendants of the last remaining wild Mexican gray wolves; the known history of current
24 Mexican gray wolves suggests that there is continuity between them and the historic lineage.
25 There is no evidence that the genome of the Mexican gray wolf includes DNA from domestic
26 dogs. Preserving and maintaining Mexican wolf habitat in Mexico and the U.S. is critical to
27 ensuring the survival of this unique and rare subspecies.

28 23. Long Distance International Wolf Dispersal, including in the El Paso Project 1

1 Site: Mexican gray wolf habitat exists on both sides of the U.S.-Mexico border, and wolves cross
2 the border to access this habitat. In January of 2017, a GPS-collared male Mexican Gray Wolf
3 (M1425), that was part of the U.S.-Mexico Bi-national Recovery Program in Mexico, crossed the
4 border from Chihuahua and spent four days in the U.S. before returning to its original starting
5 location in Mexico. While in the U.S., the wolf crossed the entire West Potrillo Mountains portion
6 of the Organ Mountains-Desert Peaks National Monument in New Mexico, and associated
7 wilderness areas and Areas of Critical Environmental Concern (“ACECs”) in New Mexico.
8 Additionally, it occupied both Zones 1 and 2 of the Mexican Wolf Experimental Population Area
9 in New Mexico. The entire journey totaled 600 miles, of which 100 were in the U.S. (See Exhibit
10 A attached to this declaration, which is a map I generated using GPS data to depict Wolf M1425’s
11 journey which also shows the El Paso Project 1 site).

12 24. The most important part of Wolf M1425’s epic excursion, in regard to this case, is
13 that it crossed the border at the proposed El Paso Project 1 site. Furthermore, it crossed back into
14 Mexico through an unfenced section of the border at El Paso-Juarez. This location is a steep and
15 rocky rugged mountain known as Mt. Cristo El Rey, and it has remained unfenced due to its
16 topography. If El Paso Project 1 is completed, then the prospects of Mexican Gray Wolves
17 dispersing and connecting to their northern counterparts will be next to zero, which will present
18 significant obstacles to the long-term genetic fitness of the species at large and decrease the
19 possibility that a healthy meta-population can grow (referenced above in paragraph 20 which
20 describes the work of Carroll et al).

21 25. Additional Mexican Wolves Dispersing to the U.S. from Mexico: Wolf M1425 is
22 not alone in making cross-border journeys between the U.S. and Mexico. In 2017, another
23 Mexican gray wolf was documented crossing the U.S.-Mexico border. Like Wolf M1425, this
24 second wolf also originated from Mexico and wore a GPS collar. This wolf, a female labeled
25 F1530, was born in 2016 at a captive-wolf-breeding facility in Cananea, Mexico, and was
26 released in October 2016 in Chihuahua, Mexico, approximately 90 to 100 miles south of the New
27 Mexico border. The last collar radio transmission from Mexico was from February 14, 2017, 21
28 miles south of the New Mexico international border, as at that time the GPS collar became

1 inoperable. She was later observed in the U.S. in March, 2017, and was captured by the
2 Interagency Wolf Field Team on March 26, 2017, near the Chiricahua Mountains in Cochise
3 County, Arizona. She was then relocated to a wolf-breeding facility at the Sevilleta National
4 Wildlife Refuge in New Mexico. This wolf likely crossed the border in the lower San Bernardino
5 Valley near San Bernardino National Wildlife Refuge in Arizona. This stretch of border currently
6 has a vehicle barrier, but under the proposed Tucson Project 3, one of the Section 284 Projects,
7 steel bollard-pedestrian fencing will be installed, which will preclude any animals larger than four
8 inches in width from crossing the border. The combined impact of the Section 284 Projects,
9 especially in Arizona and New Mexico, will have devastating impacts on the connectivity
10 between Mexican wolf habitat in the U.S. and Mexico and will harm the species' recovery.

11 26. Secondary effects of Border Patrol activities on wildlife: In addition to border
12 barriers, the uncontrolled perennial presence of Border Patrol can severely impact animals. I
13 recorded evidence of this harm to species in Hidalgo County, New Mexico in an area west of the
14 El Paso Project 1 site. In that area Border Patrol vehicles outnumbered private vehicles 37 to 2
15 during a survey I conducted on Hidalgo County Road 1. Border Patrol vehicles result in roadkill
16 deaths for numerous species such as the white-sided jackrabbit, which in the U.S. only occurs in
17 Hidalgo County. A rise in the number of Border Patrol Agents in this same area (from 50 in 2000
18 to 300 in 2010), also led to more roadkill incidents due to increased vehicle use. I expect the same
19 impacts will occur to species such as the Western Narrow-mouthed Toad (*Gastrophyrne*
20 *olivacea*), a listed endangered species in New Mexico, that was documented by the New Mexico
21 Game & Fish Department along Highway 9 in Luna County near the El Paso Project 1 site. The
22 improved roads planned for El Paso Project 1 will allow Border Patrol vehicles to travel at faster
23 speeds which will likely cause more roadkill to sensitive species like the Western Narrow-
24 mouthed toad which often occupies low-lying depressions in the road that fill after warm-season
25 monsoon rains that occur between June and September.

26 27. Wildlife Connectivity and Corridors: Wildlife connectivity and corridors should be
27 considered when evaluating a project's environmental impacts, including under the National
28 Environmental Policy Act ("NEPA"), because habitat connectivity is critical to many species'

1 survival. New Mexico recognizes the importance of wildlife connectivity, and on March 28,
2 2019, New Mexico’s Governor signed the Wildlife Corridors Act into law. The Wildlife
3 Corridors Act requires New Mexico state agencies to create a “wildlife corridors action plan” to
4 protect species’ habitat. Portions of El Paso Project 1 cross New Mexico State Trust Lands (as
5 shown in Exhibit B to this declaration), and the planned pedestrian fencing disrupts habitat
6 corridors in New Mexico—contrary to the Wildlife Corridors Act. Also, in my view the Mexican
7 gray wolf is a “species of concern” under the Act due to wolf mortality from vehicles on New
8 Mexico’s roads, which include roads along the border that will be constructed as part of El Paso
9 Project 1.

10 28. New Mexico’s State Trust Lands in and around the El Paso Project 1 site,
11 including within the Organ Mountains-Desert Peaks National Monument, the West Potrillo
12 Mountains Wilderness Study Area, and the Alden Lava Flow Wilderness Study Area, form an
13 important wildlife corridor for numerous species such as mule deer, javelina, pronghorn, bighorn
14 sheep, mountain lion, bobcat, coyote, bats, quail and other small game like rabbits. This area is
15 one of the largest undisturbed patches of Chihuahuan Desert grassland in the southwest and forms
16 an important ecosystem and crucial habitat for rare birds such as the Aplomado falcon, which is
17 present in both Luna and Doña Ana Counties, and Baird’s sparrow.

18 29. Organ Mountains-Desert Peaks National Monument: The BLM currently manages
19 all of the public lands within this new national monument for a range of multiple uses, including
20 grazing, conservation of natural and archeological resources, and outdoor recreation activities
21 such as hunting, hiking, biking, and camping. Statewide, BLM-New Mexico hosted 2.9 million
22 visitors at 28 recreation sites in fiscal year 2013. Recreation on BLM-managed lands and waters
23 in New Mexico supported more than 1,900 jobs and contributed more than \$172 million to the
24 state's economy in fiscal year 2012. The portions of this monument that would be impacted by a
25 border wall include the Greater Potrillo Mountains and Alden Lava Wilderness Study Areas,
26 which are both located approximately 30 miles southwest of Las Cruces. This monument and
27 BLM Wilderness Study Areas lie only ¼ mile north of the proposed El Paso Project 1 site. Within
28 this federally managed area there are 35 parcels of New Mexico State Trust Lands, which total

1 23,078 acres (See Exhibit B to this declaration).

2 30. New Mexico Game Management Unit 25: The large expanse of land ranging from
3 the proposed El Paso Project 1 site on the border, north to Interstate 10 near Deming (33 miles
4 north of the border), and east to Las Cruces, NM and the Texas border, constitutes a very large
5 New Mexico Game and Fish Department Game Management Unit known as GMU-25. It is over
6 2 million acres in size, of which about 1.25 million of are federal and state public lands. GMU-25
7 contains 337 parcels of New Mexico State Trust Land totaling 268,821 acres. (See Exhibit B to
8 this declaration). These State Trust Lands are a vital engine for the local economy. Important
9 game animals like mule deer and pronghorn rely upon this vast landscape that is connected to an
10 equally large unfragmented grassland in Mexico. Both countries act as sources and sinks for
11 wildlife, largely as a function of the highly variable rainfall that serves as one of the primary
12 drivers of local and regional animal distribution.

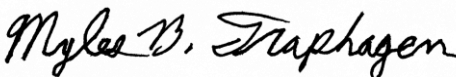
13 31. In a changing climate where drought has become a frequent occurrence in the
14 Southwest, wildlife corridors are more important than ever for ensuring species' survival. In
15 addition to the Mexican gray wolf discussed above, a perfect example in the region of interest to
16 this case, which will be impacted by the Section 284 Projects, is the pronghorn antelope
17 (*Antilocapra Americana*). The pronghorn relies upon "forbs" which are small annual plants that
18 are dependent upon seasonal rainfall. The West Potrillo mountains region, which is located in
19 Luna and Doña Ana Counties, along with the vast grasslands of Chihuahua to the south, is a large
20 area that is needed to fulfill the requirements of a species in search of infrequent and highly
21 variably distributed precipitation. In Mexico, the Chihuahuan subspecies of the American
22 pronghorn (*Antilocapra americana mexicana*) is listed as endangered. For millennia this species
23 has roamed the borderlands unimpeded by barriers. Major efforts are underway in Chihuahua to
24 recover the species, and re-introductions have occurred in the past year not far to the south. The
25 recovery of the Chihuahuan pronghorn in the region may be reliant upon its ability to be able to
26 roam long distances across the grasslands in search of forage.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on April 4, 2019, at Tucson, Arizona.

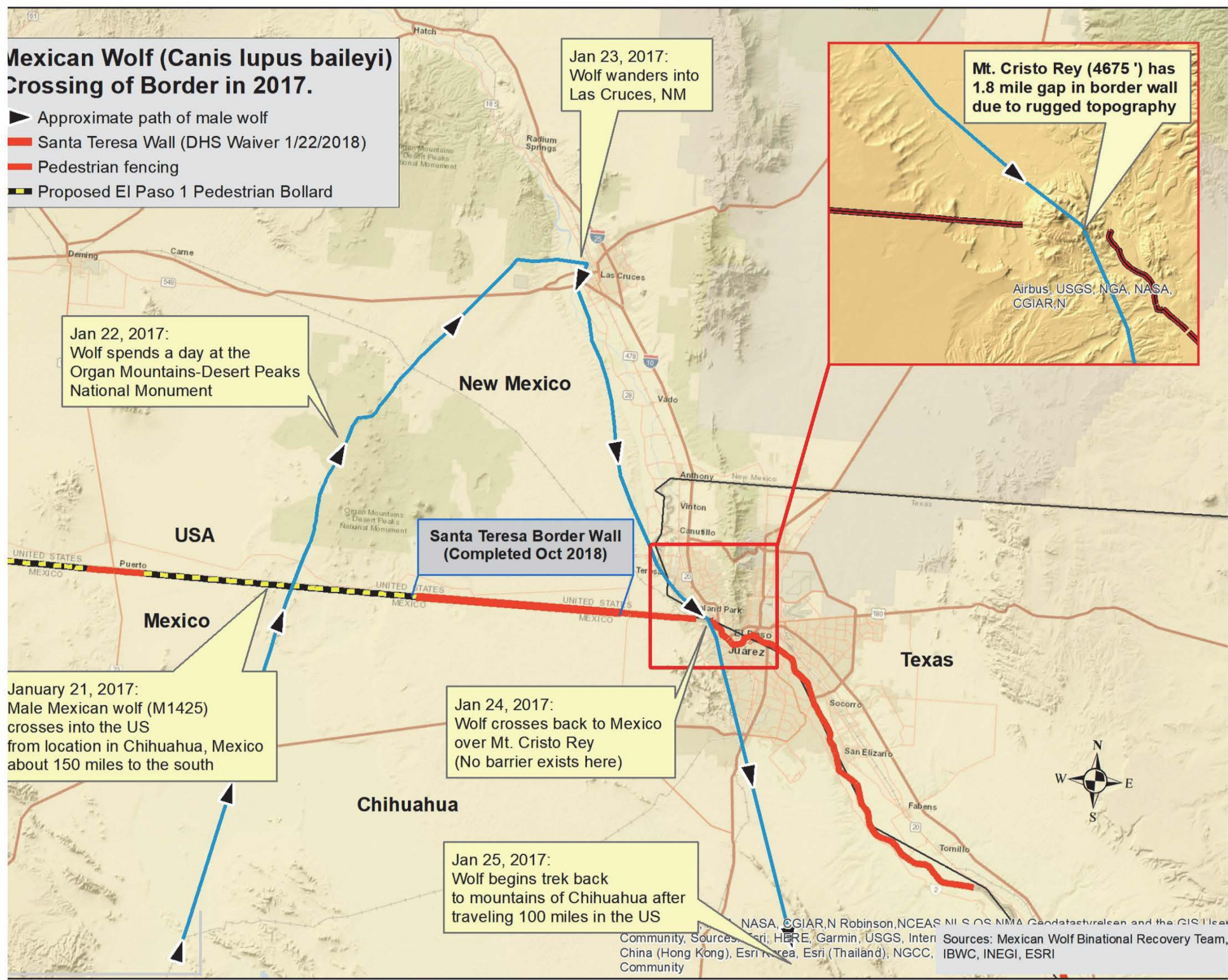


Myles B. Traphagen

EXHIBIT A

Mexican Wolf (*Canis lupus baileyi*) Crossing of Border in 2017.

- ▶ Approximate path of male wolf
- Santa Teresa Wall (DHS Waiver 1/22/2018)
- Pedestrian fencing
- Proposed El Paso 1 Pedestrian Bollard



Jan 22, 2017:
Wolf spends a day at the
Organ Mountains-Desert Peaks
National Monument

Jan 23, 2017:
Wolf wanders into
Las Cruces, NM

Mt. Cristo Rey (4675') has
1.8 mile gap in border wall
due to rugged topography

Airbus, USGS, NGA, NASA,
CGIAR,N

Santa Teresa Border Wall
(Completed Oct 2018)

January 21, 2017:
Male Mexican wolf (M1425)
crosses into the US
from location in Chihuahua, Mexico
about 150 miles to the south

Jan 24, 2017:
Wolf crosses back to Mexico
over Mt. Cristo Rey
(No barrier exists here)








Jan 25, 2017:
Wolf begins trek back
to mountains of Chihuahua after
traveling 100 miles in the US

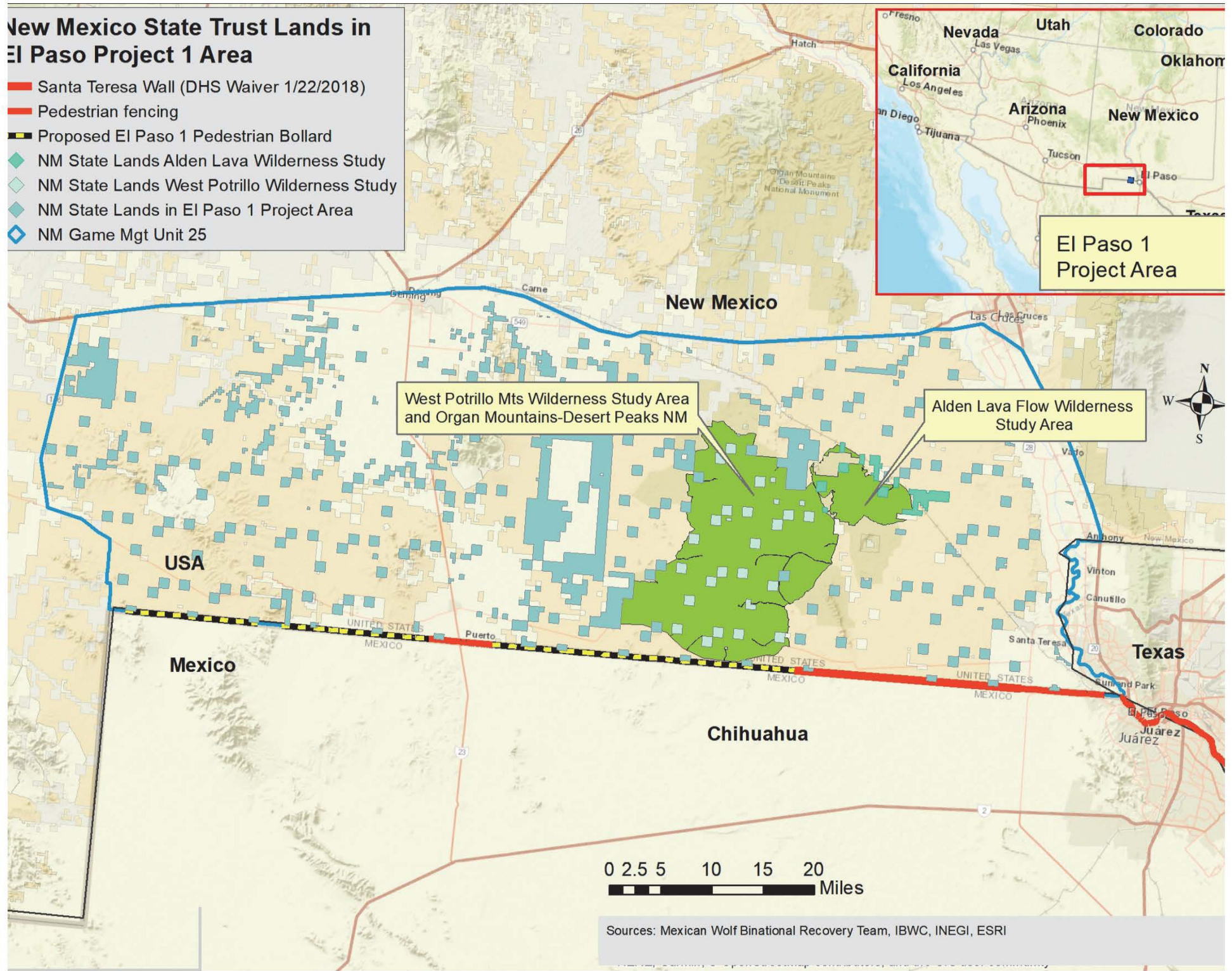


NASA, CGIAR,N Robinson,NCEAS,NI,S OS,NMA,Geodatastore,an and the GIS User
Community, Sources: Esri, HERE, Garmin, USGS, Inter Sources: Mexican Wolf Binational Recovery Team,
China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, IBWC, INEGI, ESRI
Community

EXHIBIT B

New Mexico State Trust Lands in El Paso Project 1 Area

-  Santa Teresa Wall (DHS Waiver 1/22/2018)
-  Pedestrian fencing
-  Proposed El Paso 1 Pedestrian Bollard
-  NM State Lands Alden Lava Wilderness Study
-  NM State Lands West Potrillo Wilderness Study
-  NM State Lands in El Paso 1 Project Area
-  NM Game Mgt Unit 25



Sources: Mexican Wolf Binational Recovery Team, IBWC, INEGI, ESRI

EXHIBIT 6

1 XAVIER BECERRA
Attorney General of California
2 ROBERT W. BYRNE
SALLY MAGNANI
3 MICHAEL L. NEWMAN
Senior Assistant Attorneys General
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13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION
16

17 **STATE OF CALIFORNIA; STATE OF**
COLORADO; STATE OF
18 **CONNECTICUT; STATE OF**
DELAWARE; STATE OF HAWAII;
19 **STATE OF ILLINOIS; STATE OF**
MAINE; STATE OF MARYLAND;
20 **COMMONWEALTH OF**
MASSACHUSETTS; ATTORNEY
21 **GENERAL DANA NESSEL ON BEHALF**
OF THE PEOPLE OF MICHIGAN;
22 **STATE OF MINNESOTA; STATE OF**
NEVADA; STATE OF NEW JERSEY;
23 **STATE OF NEW MEXICO; STATE OF**
NEW YORK; STATE OF OREGON;
24 **STATE OF RHODE ISLAND; STATE OF**
VERMONT; COMMONWEALTH OF
25 **VIRGINIA; and STATE OF WISCONSIN;**

26 Plaintiffs,

27 v.
28

4:19-cv-00872-HSG

**DECLARATION OF RAYMOND TREJO
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

1 **DONALD J. TRUMP**, in his official capacity
2 as President of the United States of America;
3 **UNITED STATES OF AMERICA; U.S.**
4 **DEPARTMENT OF DEFENSE; PATRICK**
5 **M. SHANAHAN**, in his official capacity as
6 Acting Secretary of Defense; **MARK T.**
7 **ESPER**, in his official capacity as Secretary of
8 the Army; **RICHARD V. SPENCER**, in his
9 official capacity as Secretary of the Navy;
10 **HEATHER WILSON**, in her official capacity
11 as Secretary of the Air Force; **U.S.**
12 **DEPARTMENT OF THE TREASURY;**
13 **STEVEN T. MNUCHIN**, in his official
14 capacity as Secretary of the Treasury; **U.S.**
15 **DEPARTMENT OF THE INTERIOR;**
16 **DAVID BERNHARDT**, in his official capacity
17 as Acting Secretary of the Interior; **U.S.**
18 **DEPARTMENT OF HOMELAND**
19 **SECURITY; KIRSTJEN M. NIELSEN**, in
20 her official capacity as Secretary of Homeland
21 Security;

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Defendants.

1 I, Raymond Trejo, declare as follows:

2 1. I am Raymond Trejo. I have personal knowledge of the facts set forth in this
3 declaration. If called as a witness, I could and would testify competently to the matters set forth
4 below.

5 2. I am a native son and lifelong resident of Deming, New Mexico, a community just
6 north of the Columbus Port of Entry in Luna County.

7 3. I am currently the Southern Outreach Coordinator for the New Mexico Wildlife
8 Federation (“NMWF”).

9 4. Prior to my work with the NMWF, I spent 26 years as a public-schools educator—
10 10 of those as a bilingual Spanish-English teacher and 16 as an administrator for Deming Public
11 Schools. As an administrator, I held several principalships, directorships and superintendent
12 positions.

13 5. I hold a Bachelor of Arts degree in Elementary Education, a Masters of Teaching
14 degree and a second Masters degree in Educational Leadership all from Western New Mexico
15 University.

16 6. My personal life, including my habits, hobbies and personal economy will be
17 affected by border wall construction identified as El Paso Projects 1 and 2 in the February 25, 2019,
18 memorandum from the U.S. Department of Homeland Security (DHS) to the Department of
19 Defense regarding a “Request for Assistance Pursuant to 10 U.S.C. § 284.” I understand that these
20 projects ultimately will stretch nearly 70 miles from far west to considerably east of Deming in
21 Luna County near the Columbus Port of Entry, and further east into Dona Ana County.

22 7. DHS plans to construct roads and install lighting, in addition to constructing new
23 pedestrian fencing designed to stop all crossings in Luna County. These lands are currently home
24 to wildlife such as quail, turkey, deer, cougar, bear and other species that mate and nest throughout
25 the area without the threat to their habitat from an impassable wall or the increase of human activity
26 required to build it.

27 8. I grew up in the area where El Paso 1 project is planned and have hunted here in
28 Luna and other New Mexico and Arizona counties throughout my life. Hunting is a deep-rooted
tradition for my family. I followed my grandfather around as a child as he hunted cottontail rabbits
for dinner. My father and uncles taught me to hunt for deer and now my children and grandchildren
do the same. Hunting has become part of my family's culture and we enjoy sitting down at the
dinner table to enjoy meals such as venison meatloaf, spaghetti and tacos.

1 9. I have hunted Coues deer, mule deer and black bear for meat for my family and
2 friends throughout my life. Hunting is not just a sport for me or my family and friends: it is an
3 economic necessity. I regularly keep venison for meals throughout the year and we turn the bear
4 meat into summer sausage for friends and family.

5 10. I have spent years training bird dogs for hunting along the border, and use them
6 almost exclusively to hunt for Montezuma quail. I typically keep three or four Pointers--big,
7 running dogs—as part of the family. I train and exercise them throughout the year in the open
8 spaces near the border to keep them fit and put them to work during hunting season.

9 11. Montezuma quail is found exclusively in southwest New Mexico, Southeastern
10 Arizona and parts of west Texas along the Mexican border. It was added to the federal endangered
11 species list in 1976 in Mexico¹ but is not so categorized in New Mexico.

12 12. The Montezuma quail requires grassland for nesting. However, grassland will
13 certainly be destroyed by the construction of a border wall and creation of more highway access
14 points.

15 13. Even though quail flies, as do other birds, it does so somewhat horizontally—and
16 relatively close to the ground. Therefore, a 30-foot border wall would block the flight path of quail,
17 limiting their ability to breed and escape predators. Even a shorter wall construction could lead to
18 extinction or a massive population decline for the Montezuma, which already faces drought along
19 the border and is threatened by rains during nesting season.

20 14. The Montezuma quail population has plummeted in the past and recovered. It is
21 likely to plummet again and may be unable to recover if construction of a massive wall goes forward
22 and is allowed to damage or destroy quail habitat.

23 15. The ability to disperse is critical for quail and other species, especially during
24 breeding season. Being able to disperse ensures the natural distribution of the quail gene pool as
25 well as protecting individuals from predators.

26 16. The ability to disperse is also critical for other wildlife in the Luna County area,
27 including the Sonoran pronghorn, the Mexican gray wolf, jaguar, javelina, Gould's turkey and
28 others.

¹ Glenn, C.R. 2006, "Earth's Endangered Creatures"; Merriam's Montezuma Quail Facts (online). Accessed 3/29/19 at www.earthsendangered.com

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17. Construction of a wall will threaten the existence of human communities as well as those of the animal kingdom. I have spent much of my time hunting in communities such as Sonoita and Patagonia, AZ— towns near the US-Mexico border. During hunting season, these and similar towns come alive. Every RV park, hotel and camping site is full for four months during the hunting season, as upland bird hunters from all over the country arrive.

18. These beautiful rural human communities will suffer irreparable harm, as will wildlife in this area, from construction of a border wall that blocks the flow of avid hunters as well as disturbing the habitat of the elusive Montezuma quail that makes its home on the border.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on March 30 2019, at Deming, Luna County, New Mexico.

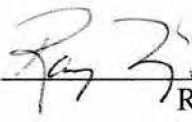

Raymond Trejo

EXHIBIT 7

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12
13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION
16

17 **STATE OF CALIFORNIA; STATE OF**
COLORADO; STATE OF
18 **CONNECTICUT; STATE OF**
DELAWARE; STATE OF HAWAII;
19 **STATE OF ILLINOIS; STATE OF**
MAINE; STATE OF MARYLAND;
20 **COMMONWEALTH OF**
MASSACHUSETTS; ATTORNEY
21 **GENERAL DANA NESSEL ON BEHALF**
OF THE PEOPLE OF MICHIGAN;
22 **STATE OF MINNESOTA; STATE OF**
NEVADA; STATE OF NEW JERSEY;
23 **STATE OF NEW MEXICO; STATE OF**
NEW YORK; STATE OF OREGON;
24 **STATE OF RHODE ISLAND; STATE OF**
VERMONT; COMMONWEALTH OF
25 **VIRGINIA; and STATE OF WISCONSIN;**

26 Plaintiffs,

27 v.
28

4:19-cv-00872-HSG

**DECLARATION OF GABRIEL
VASQUEZ IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

1 **DONALD J. TRUMP**, in his official capacity
2 as President of the United States of America;
3 **UNITED STATES OF AMERICA; U.S.**
4 **DEPARTMENT OF DEFENSE; PATRICK**
5 **M. SHANAHAN**, in his official capacity as
6 Acting Secretary of Defense; **MARK T.**
7 **ESPER**, in his official capacity as Secretary of
8 the Army; **RICHARD V. SPENCER**, in his
9 official capacity as Secretary of the Navy;
10 **HEATHER WILSON**, in her official capacity
11 as Secretary of the Air Force; **U.S.**
12 **DEPARTMENT OF THE TREASURY;**
13 **STEVEN T. MNUCHIN**, in his official
14 capacity as Secretary of the Treasury; **U.S.**
15 **DEPARTMENT OF THE INTERIOR;**
16 **DAVID BERNHARDT**, in his official capacity
17 as Acting Secretary of the Interior; **U.S.**
18 **DEPARTMENT OF HOMELAND**
19 **SECURITY; KIRSTJEN M. NIELSEN**, in
20 her official capacity as Secretary of Homeland
21 Security;

22
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Defendants.

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I, Gabriel Vasquez, declare as follows:

1. I am Gabriel Vasquez. I have personal knowledge of the facts set forth in this declaration. If called as a witness, I could and would testify competently to the matters set forth below.

2. I am a founding member of the Young Philanthropists of Southern New Mexico, a past board member of the Downtown Las Cruces Partnership, past secretary of the board of the Hispano Chamber of Commerce de Las Cruces, and a graduate of the Greater Las Cruces Chamber of Commerce Leadership Las Cruces 2010 class.

3. I am a public lands advocate and community organizer trained in media relations and public speaking through the University of Notre Dame-U.S. Hispanic Chamber of Commerce Training Program.

4. I have been vice president of communications at First Focus Campaign for Children in Washington, D.C., a field representative for southwest New Mexico for U.S. Senator Martin Heinrich, vice president of public relations at SameDay Security in Las Cruces, business editor of the Las Cruces Bulletin and executive director of the Hispano Chamber of Commerce de Las Cruces.

5. Currently, I am a Las Cruces, NM, City Councilor. Our city council has passed a formal resolution of opposition to erection of the border wall as a threat to the region’s economy, binational relations and family ties between Mexican and New Mexican residents.¹ The resolution requests the executive and legislative branches of the federal government to look at “more effective, comprehensive, and humane ways to address concerns about illegal immigration.”

6. I hold a Bachelor of Arts in English with a minor in journalism and public relations from New Mexico State University.

7. I am Secretary of the Board of Directors for Friends of the Organ Mountains-Desert Peaks (OMDP) monument. Friends of OMDP seeks to enrich our community and cultural diversity through advocacy, conservation and restoration of the Organ Mountains-Desert Peaks National Monument to the east of the City of Las Cruces. The monument was established in 2014 to protect

¹ See text of the February 21, 2017 resolution beginning at page 5, available at https://las-cruces.granicus.com/MetaViewer.php?view_id=2&clip_id=863&meta_id=72477

1 prehistoric, historic, geologic and biologic resources of scientific interest within the 496,330-acre
2 holding.

3 8. As a staff member of the New Mexico Wildlife Federation (NMWF), I have led
4 numerous expeditions to hunt, hike, and camp throughout the area along the New Mexico-Mexico
5 border where a border wall is likely to be built, and continue to do so in my personal capacity.

6 9. As the director of community relations for NMWF, I authored the organization's
7 2017 resolution opposing construction of the border wall, which was signed by 51 National Wildlife
8 Federation (NWF) state affiliates and which includes the information that our region "provides
9 habitat and movement pathways for a diverse complex of more than 700 neotropical wildlife
10 species (i.e., mammals, birds, fish, reptiles, amphibians, and insects) which frequently require
11 unrestricted movement across the U.S. and Mexico border to obtain critical sources of food and
12 water during seasonal changes."

13 10. The Coronado National Forest in New Mexico, connected to the Sky Island
14 mountain chain in Arizona, is on the US-Mexico border and is home to numerous endangered,
15 threatened and unique species, such as the jaguar,² the Santa Catarina geometer moth, the Sonoran
16 tiger salamander,³ the lesser-long nosed bat,⁴ rock-horned lizard, Tarahumara salamander, and the
17 file-tailed ground snake. The habitat of these species is found across the US-Mexico border and
18 their survival depends on their unrestricted movement across the U.S. and Mexico for food and
19 biodiversity.

20 11. Every one of NWF's affiliates signed the resolution and agreed that a contiguous
21 border wall across the U.S.-Mexico border would be detrimental to the conservation of wildlife
22 species and their habitat. Further, the resolution noted that a wall along the New Mexico-Mexico
23 border could harm outdoor recreation, as no one wants to hunt, hike, watch wildlife, or engage in
24 other outdoor activities in an active construction site.

25 ² The jaguar was added to the federal endangered species list in 1997. See
26 <https://defenders.org/jaguar/threats>

27 ³ New Mexico and Arizona created a recovery plan for this federally listed salamander.
28 See U.S. Fish and Wildlife Service, 1999. Sonora tiger salamander (*Ambystoma tigrinum
stebbinsi*) draft recovery plan. U.S. Fish and Wildlife Service, Phoenix, AZ. iv+90pp.,
https://www.fws.gov/southwest/es/arizona/Documents/SpeciesDocs/SonoraSalamander/Son_Tiger_Sal_RP_600.pdf

⁴ The bat was removed from the federal endangered species list only April 17, 2018 on
Bat Appreciation Day in the United States. <https://news.nationalgeographic.com/2018/04/lesser-long-nosed-bats-conservation-delisted-endangered-animals-spd/>

1 12. Citing adverse impacts to wildlife ranging from Sonoran pronghorn to Gould’s
2 turkey, the NWF has called the proposed barrier “one of the biggest potential ecological disasters
3 of our time,” noting that a border wall impassable to threatened and endangered wildlife such the
4 pronghorn and turkey as well as the Mexican gray wolf, jaguar, ocelots and desert bighorn sheep
5 would significantly fragment essential habitats along the U.S.-Mexico border. Further, fragmented
6 habitat could impact the ability of these species to survive, access resources and to interchange
7 genetic information required for survival and the maintenance of viable populations.

8 13. Empirical research has identified that barriers—even those permeable structures
9 such as bollard walls—have negative effects on wildlife populations due to “loss of population
10 connectivity” and “reduction in effective population sizes subsequent to loss of connectivity.”⁵ As
11 barriers such as walls interrupt or reduce the movement of nearby animals, migration is reduced.
12 The reduced physical range results in a reduction in the numbers and variety of potential mates.
13 Species with small isolated populations limited by a barrier can become extinct because the poor
14 dispersal across border ecosystems leads to reduced gene flow between populations and consequent
15 loss of genetic diversity.

16 14. I have hunted the Gould’s Turkey under the controls established by the New Mexico
17 Department of Game and Fish. The largest subspecies of wild turkey, Gould’s once was hunted to
18 near-extinction in southern Arizona and New Mexico but, due to conservation efforts, reached a
19 population of more than one thousand birds by 2014.⁶ Declared an endangered or threatened
20 species under New Mexico’s Wildlife Conservation Act, the turkey is now managed under a
21 recovery plan designed to restore or maintain viable populations.⁷ However, since wild turkeys are
22 generally ground nesters seeking areas with dense vegetation for nest construction, wall
23 construction could irreparably harm Gould’s breeding grounds and habitat. Further, the turkeys

24 ⁵ See Lasky, Jetz and Keitt, Conservation biogeography of the US-Mexico border: a
25 transcontinental risk assessment of barriers to animal dispersal, “Diversity and Distributions”
26 (first published May 3, 2011) pp. 673-687 accessed at
27 <https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1472-4642.2011.00765.x> .

28 ⁶ See National Wild Turkey Federation, <https://www.nwtf.org/conservation/article/sky-island-goulds>, describing a 20-year restoration effort.

⁷ See the WCA at NMSA 1978, §§ 17-2-37 to 17-2-46 and specific recovery plan requirements at NMSA 1978, § 17-2-40.1. See also <http://www.wildlife.state.nm.us/download/conservation/species/birds/management-recovery-plans/Goulds-Turkey-Recovery-Plan.pdf>

1 walk in order to migrate, so any type of border construction is likely to disrupt their movement,
2 thereby posing a threat to survival.⁸

3 15. Desert Bighorn sheep hunted at low elevations in New Mexico along the border are
4 skittish and wary of people. They are therefore likely to abandon any border areas where a wall is
5 constructed or where construction attracts additional humans. New Mexico's Desert Bighorn
6 population fell to fewer than 70 animals in 1980, leading the State to add the animal to its
7 endangered species list.⁹ Sheep numbers have increased in recent years, but a loss of habitat such
8 as that associated with wall construction, an increased number of humans and attendant noise, light
9 and activity could reduce the range of herds and ultimately irreparably harm the Desert Bighorn
10 Sheep's chances for survival.

11 16. I am also the founder and southern New Mexico coordinator of the Nuestra Tierra
12 Conservation project, a program that offers Hispanic and underserved youth opportunities to
13 explore New Mexico's iconic border-area landscapes through hiking, fishing, camping and hunting,
14 among other outdoor activities.

15 17. The purpose of the Nuestra Tierra program is to cultivate a passionate group of
16 young people to lead the next generation of conservation work, protecting our State's and our
17 nation's public lands and our most treasured cultural landscapes such as the desert areas along our
18 State's southern border. Building on the existence of multicultural, multinational and multilingual
19 aspects common to Latino and Hispanic communities of our region, participants advocate across
20 cultures, national boundaries and languages for preservation of public landscapes. Further, they
21 engage in educational activities, among them most recently viewing and discussing an Outside
22 Magazine documentary on the ecosystems and livelihoods affected by border wall construction.¹⁰

23 18. A reduction of the numbers and kinds of wildlife that can be anticipated if border
24 wall construction goes forward will also affect our Latino and Hispanic communities and our
25 traditional relationships across cultures, nations and languages—problems now being explored
26 through Nuestra Tierra Conservation Project.

27 ⁸ *Id.* at p. 12, 2.1.8, "Movement".

28 ⁹ [http://www.wildlife.state.nm.us/download/education/conservation/wildlife-
notes/mammals/Desert-bighorn-sheep.pdf](http://www.wildlife.state.nm.us/download/education/conservation/wildlife-notes/mammals/Desert-bighorn-sheep.pdf)

¹⁰ Outside Magazine March 14, 2019, "The River and the Wall" studied by Nuestra Tierra
participants, <https://www.outsideonline.com/2392023/the-river-and-the-wall-documentary-review>

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19. A border wall tends to be a priority because of security concerns that are considered paramount over most other considerations. Focusing on security may cause decision-makers to overlook potential impacts on wildlife, economy and outdoor recreation. However, those of us who live along the border are aware that security can be provided in many ways that do not destroy habitat. We urge the Court to direct security concerns away from policies and projects that could destroy wildlife habitat and ethnic community ties and traditions.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on March 25, 2019, at Las Cruces, NM.



Gabriel Vasquez