
Appendix E
PUBLIC INVOLVEMENT

**Public Comments Resolutions to the Draft Supplemental Environmental Assessment
for Infrastructure within U.S. Border Patrol Naco-Douglas Corridor, Cochise
County, Arizona**

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MAY 22 AM 11:44

Emilie Vardaman
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Mr. Charles Parsons
Regional Environment Officer
24000 Avila Road
PO Box 30080
Laguna Niguel CA 92607-0080
17 May 2003

Dear Mr. Parsons,

I live in the Palominas area of southeastern Arizona. My house is approximately five miles north of our border with Mexico, near Naco. I moved to southeastern Arizona in 1973, and have lived at this address for about nine years. I chose this area because of its silence, its beauty, its fragility, and its proximity to Mexico. I love this desert around me, but unfortunately, it is being seriously degraded by the Border Patrol.

In the last several years, the number of agents in our area (Naco Station) has gone from under thirty to over four hundred. Four hundred men and women, their trucks, their four wheelers, their ATVs, their horses, their trailers that move the horses and ATVs – all of these people and their “tools” are destroying the desert.

EV-1

The Border Patrol claims they don't build new roads without an environmental impact statement and permission to construct a road. However, they use horses and ATVs on paths migrants use, which expand and widen the trails. Soon the trails are so wide due to Border Patrol activity that agents are able to use their trucks on the trails. Without an environmental impact statement, and without permission, new roads are being created almost daily. The damage they have done will take many, many years to repair itself, IF they stop using their illegal roads. Rather than add many miles of new roads to our area, I ask you to deny their request AND require that they stay on only roads they have received permission to use.

EV-2

Fencing is another problem in our area. The fence that has been constructed which divides the two halves of the Naco community is terrible. It was constructed of metal, is ugly, and is dangerous. People still attempt to climb it, and many have fallen and been injured. One man's back was broken in a fall. It was then further damaged when agents insisted that his friend drag him back into Mexico. Children attempt to climb the wall, and many of us fear a child will die in a fall one day. In addition to the danger of the wall and the terrible way it has severed a community, it also interferes with the migration of many animals, some of which are endangered. Please do NOT approve either the many miles of new fencing nor the area of double fencing currently requested by the Border Patrol.

EV-3

EV-4

Lighting is yet another problem on our border. Currently there is at least eight miles of lighting on the border. People who live south of the border have their homes flooded with light all night. In addition, night birds and mammals are terribly confused and disoriented by the night lighting. The current lights are already a problem. Please do not make this problem worse by adding miles of additional lighting.

EV-5

Our fragile desert environment is being destroyed. Migrants, of course, are a part of the problem, but is it compounded by miles of walls, miles of lighting, miles of roads, and agents who have no understanding of the fragility of the area. They ride their horses and vehicles just about anywhere they choose. More and more dust is created daily, and when they drag the roads near the border, so much dust is created that I have had to turn on my headlights in DAYtime to be sure I was visible to oncoming traffic. This is absolutely unacceptable, as well as dangerous and possibly illegal.

My beautiful desert is rapidly disappearing. Please, please, do not allow the Border Patrol to construct any more walls, construct any more roads, or install and more lighting. Don't allow them to destroy this area any more than they already have.

EV-6

Sincerely,



Emilie Vardaman

Emilie Vardaman

May 17, 2003

Comment Resolution

- EV-1** As stated in the Draft Supplemental Environmental Assessment for Infrastructure within U.S. Border Patrol Naco-Douglas Corridor, Cochise County, Arizona (SEA)“Naco Station has a patrol force of approximately 250 agents that patrol the border”, not over 400 agents. This figure was further revised downward to approximately 203 agents in the Final SEA. The reason for the increase in agents at this station is to combat the growing influx of Undocumented Aliens (IAs) and drug smugglers. This increased IA traffic results in an increase in the network of foot trails created throughout the desert, increased impacts to wildlife and native plants, increased soil erosion, and an increase in garbage, fecal material, and toilet paper in the desert deposited by the IAs. The USBP takes every precaution possible to limit their impact on the ecosystem during their patrol and apprehension duties. The majority of patrol activities are limited to the use of established paved roads, gravel roads, and hiking/horse/ATV trails.
- EV-2** The USBP follows all National Environmental Policy Act (NEPA), Federal, state, and local regulations through the planning, permitting, and construction processes for its proposed road, fence, surveillance, or other infrastructure projects.
- EV-3** Section 287(a)(3) of the INA gives the authority to USBP agents to enter any lands and/or facilities within 25 miles of the international borders, without prior approval of the property owner while in pursuit of IAs and/or drug traffickers. The USBP attempts to stay on established roads during their apprehension efforts to avoid environmental impacts, increase their own safety, and to reduce maintenance costs to vehicles. The proposed infrastructure is intended to reduce the current enforcement footprint by providing deterrence through barriers and more effective measures to respond to illegal entries.
- EV-4** The USBP has the responsibility to regulate and control illegal immigration. The purpose of the fence is to keep IAs and drug smugglers from entering the U.S. in areas where they can easily escape. The USBP agrees that while aesthetics are important in an urban area, recyclable materials (landing mat) were available to be used. Due to limited budgets, the landing mat was used rather than more expensive, non-recycled materials.
- In high IA vehicle traffic areas, the USBP installs primary vehicle barriers rather than fences. The primary vehicle barriers are wildlife friendly as they allow for the unimpeded movement of animal species. The barriers are typically constructed of welded railroad beams or pipe.
- Within the Town of Naco, animal migration is not slowed or impeded by fencing, but by the community itself. None of the existing border fences are installed in areas that support endangered species or within critical habitat.
- EV-5** IAs utilize the cover of darkness as camouflage to evade USBP agents and illegally enter the U.S. The presence of lighting increases the effectiveness of USBP operations, as well as providing an element of security and safety not only to USBP

agents in remote areas, but also may help to improve safety and security of residences in both countries.

As stated in the draft SEA, approximately 5 miles of permanent lighting has been installed within the project corridor. Approximately 2 miles of permanent lighting has been installed in the Naco AO and approximately 3 miles in the Douglas AO. Every attempt is made to reduce or eliminate lighting annoyances by shielding each light bulb on its north, east, and west sides. Shielding techniques combined with the spacing of light posts are effective in containing light annoyances, yet supplying adequate lighting for the safety for both the USBP and local citizens.

The effects of lighting were discussed in Section 3 of the SEA. Recent measurements taken from existing lighting in the Naco AO, revealed that the total illumination north of the pole, measured in Foot Candles (fc) is 0.93fc at 90 feet from the U.S.- Mexico border, 0.02 fc at 120 feet, and then less than 0.01fc at 145 feet. Given these new results, illumination impacts are expected to be even less than what was identified in the draft SEA.

- EV-6** Section 287(a)(3) of the INA provides the authority to USBP agents to enter any lands and/or facilities within 25 miles of the international borders, without prior approval of the property owner, in pursuit of IAs and/or smugglers. Patrol activities are conducted on established roads either paved, gravel, or dirt, or along established trails. On occasion, the USBP must pursue drug traffickers and IAs cross-country but typically this is done on foot. On average, drag roads are only dragged up to 3 times per day. The proposed project would eliminate much of the fugitive dust associated with current dragging schedules.

May 31, 2003

Mr. Charles Parsons
Regional Environmental Officer
24000 Avila Road
P.O. Box 30080
Laguna Niguel, CA 92607

RE: Draft Supplemental Environmental Assessment for Infrastructure Within U.S. Border Patrol Naco-Douglas Corridor, Cochise County, Arizona

With this draft the Department of Homeland Security (DHS) is in violation of the National Environmental Policy Act for failing to adequately analyze potential direct and indirect impacts, as well as the cumulative impacts of all federal and non-federal agencies. DHS is also in violation of the Endangered Species Act for failing to initiate consultation with the US Fish and Wildlife Service to address potential impacts to threatened and endangered species and their critical habitat. In addition this draft fails to adequately address the impacts the proposed actions would have on people (Environmental Justice concerns) and Indigenous communities. I contend that the Department of Homeland Security must follow the "No Action" alternative addressed in the Draft Environmental Assessment and not proceed with the proposed action.

MM-1
MM-2
MM-3
MM-4

This proposed fence and road construction, lighting and remote video cameras will have severe direct impacts to wildlife and the environment, fragmenting the habitat and migratory routes of endangered cross-border species such as the jaguar, ocelot and jaguarondi, and will result in the harassment of endangered species such as the lesser-long nosed bat. DHS claims that proposed developments will help the environment are spurious propaganda; more fences and lighting will only funnel destructive foot traffic into even more remote, pristine and inhospitable terrain.

MM-5

I reject the policies of population control that have been supported by Racist groups in Cochise County. Anti-immigrant and border policies perpetuated and exacerbated racist activities in Cochise County with impunity. These activities have redirected undocumented immigrants through Indigenous borderlands with lethal consequences and have divided the indigenous community, blaming the tribal government for people dying on Native Lands

MM-6

The Proposed Action also fails to adequately address the concerns of citizens, fails to justify the construction activities, and fails to instill in us the belief that all avenues for the border situation have been properly investigated. If that were true, community, environmental and Indigenous organizations would have had a significant part of this process of seeking viable solutions, and a reasonable alternative that would actually benefit all may have been developed. Solutions that seek to unify communities, not create divisions, fear, and oppression must be developed and implemented. Without this, we will continue to see a rise in division, fear, deaths on our borders, and human rights violations.

MM-7

It is obvious that the United States must develop a humane border policy that will not destroy our precious natural resources or trample the sovereignty and rights of Indigenous people. This is an issue I am very interested in and I would like to receive all future documents, Environmental Assessments, Environmental Impact Statements and notices regarding Department of Homeland Security, Border Patrol and Joint Task Force Six activities within the Tucson and Yuma Sectors.

MM-8

Sincerely,

Refer to List of Signatures

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Mass Mailing Comment letter**May 31, 2003****Comment Resolution**

- MM-1** The DHS and the USBP respectfully disagrees with your allegations. The Naco-Douglas SEA clearly presents how potential, direct, and indirect impacts of the proposed project were analyzed in Section 4 of the SEA.
- MM-2** The DHS respectfully disagrees with your allegations. As stated in the draft SEA in Section 6 “This chapter discusses consultation and coordination that has occurred during the preparation of the draft of this document.” Throughout the planning process, the USFWS and the AGFD were consulted on numerous occasions on the proposed project’s effect on wildlife and protected species in the project area. Surveys for Federal and state protected species and species habitat were conducted for this project.

As stated in the SEA in Section 3.9 “Coordination with the USFWS for this SEA can be found in Appendix B. Past coordination for this project can be found in the EA for JTF-6 Proposed Fence and Road Improvement Project, Naco, Cochise County, Arizona (USACE 2000) and the Corridor EA (INS 2000).” Section 3.9 also goes into detail discussing all Federally and state protected species that would potentially be found in the proposed project area.

As stated in the April 30,2003 letter to the USFWS in Appendix B, if necessary and prior to construction of the proposed project in the San Pedro watershed, a Biological Assessment (BA), which addresses the potential impacts to threatened and endangered species and their critical habitats, will be submitted to the USFWS for the purpose of obtaining a Biological Opinion.

- MM-3** Environmental Justice issues are discussed in Section 4.14 of the SEA. Preferred alternative
- MM-4** The comment was noted. However, the DHS disagrees. The preferred alternative meets the purpose and need to the fullest extent.
- MM-5** The USBP respectfully disagrees with your assessment. There are no fences currently proposed in areas that could affect migration of endangered animals. Vehicle barriers are proposed in the western reaches of the Naco AO where the potential is higher but still remote that the ocelot, jaguarundi and jaguar might occur. Vehicle barriers would have no effect on the species movements. Potential long-term effects, as well as indirect effects are discussed in Section 4.6 of the SEA.
- MM-6** The comment was acknowledged. However, DHS and the USBP do not have any control over non-governmental organizations that may exist in Cochise County or adjacent counties. The USBP has the responsibility to regulate and control immigration into the U.S. The USBP’s primary function is to detect and deter the unlawful entry of IAs and smuggling along the U.S. land borders and between the ports-of-entry. The purpose of the fences is to keep IAs and smugglers from entering the U.S.

- MM-7** Prior to the development of the draft SEA, the public was afforded the opportunity to participate in the scoping process. Two public meetings were held by the USBP to solicit public comments and concerns in reference to the alternatives proposed in this SEA. This process is described in Section 6 of the SEA.
- MM-8** The comment was acknowledged. Your name and address, if legible, was added the DHS/USBP distribution list.

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May 22, 2003

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U.S. Department of Homeland Security
Environmental Officer
Western Region
24000 Avila Road
P.O. Box 30080
Laguna Niguel, CA 92607-0080

Via Facsimile 949-360-2985

Dear Mr. Parsons:

Defenders of Wildlife respectfully requests that the Department of Homeland Security (DHS) extend the deadline for comment on the Draft Supplemental EA for infrastructure within U.S. Border Patrol Naco-Douglas Corridor Cochise County, Arizona, and the Draft Environmental Assessment for Nogales infrastructure improvements Tucson sector, Nogales station Santa Cruz County, Arizona, to July 21, i.e., another 45 days.

DOWER-1

A recent flurry of draft EA's regarding proposed border construction of various kinds make a thorough review very difficult, especially given the short comment period and the identical public comment deadline. (June 7, also a Sunday) Defenders of Wildlife (Defenders) is interested in, and affected by, this proposed action, and would like to comment on both EA's. We trust that INS will afford us that opportunity by granting the requested extension of 45 days. Extending the comment deadline will allow true public comment to proceed.

Additionally, both draft EA's are tied to other documents which need to be obtained and analyzed to assess the implications of aforementioned drafts. Without these documents, meaningful scientific analysis and accuracy is seriously challenged. Because neither of the above EA's state where each document to which each is tied is available, Defenders requires additional time to obtain and reference the earlier documents. See 40 C.F.R. § 1502.20 (requiring tiered documents to state where the earlier document is available).

Thus, we are also requesting copies of the Final Supplemental Programmatic Environmental Impact Statement for INS and JTF-6 Activities (USACE, June 2001) and of the Final Environmental Assessment for Infrastructure within U.S. Border Patrol Naco-Douglas Corridor, Cochise County, Arizona (TNS, August 2000). We intend that an additional 45 days is enough time to obtain and review

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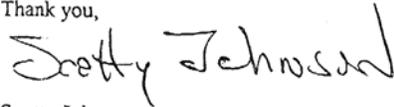
DEFENDERS SW OFFICE

PAGE 03

necessary previous documents since they were not supplied when DHS issued the draft SEA and EA under discussion.

Please inform us of your decision on our extension request at your earliest convenience by calling me at 520 623 9653 (103) or e-mailing me at sjohnson@defenders.org

Thank you,



Scotty Johnson
National Rural Outreach Campaign Associate

cc:

Mark Doles
USACE - Fort Worth District
817-886-6499 (fax)

Elizabeth Gaffin
US DOJ, INS, Office of General Counsel
202-514-0455 (fax)

**Defenders of Wildlife
Extension Request
May 22, 2003**

Comment Resolution

DOWER-1 The public comment period was extended until June 30, 2003.

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REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
HEADQUARTERS US ARMY GARRISON
2837 BOYD AVENUE
FORT HUACHUCA ARIZONA 85613-7001

30 MAY 2003

Office of the Garrison Commander

Mr. Charles Parsons
Western Region Environmental Officer
U.S. Department of Homeland Security
24000 Avila Road
Laguna Nigel, California 92677

Dear Mr. Parsons:

The purpose of this letter is to comment on the draft Supplemental Environmental Assessment (SEA) for Infrastructure within the USBP Naco-Douglas Corridor, Cochise County. Fort Huachuca fully supports the efforts of the Department of Homeland Security to make our border more secure. I am concerned, however, about the potentially significant impacts this project will have on federally-designated critical habitat for Mexican spotted owl and Huachuca water umbel on Fort Huachuca. Habitat for the endangered Sonora tiger salamander within the Fort boundaries may also suffer adverse impacts from this action. The draft SEA also does not address the potential impacts of this action on Fort Huachuca grasslands, which include 5000 acres of protected forage area and roost sites for the endangered lesser long-nosed bat. The absence of construction activities within these habitat regions does not mean there will not be significant environmental impacts from this proposed action.

FH-1

The SEA fails to address reasonably foreseeable indirect and cumulative environmental impacts on Fort Huachuca. It also fails to estimate the magnitude of increase in illegal pedestrian traffic through Fort Huachuca, a reasonably foreseeable effect of the proposed action that will have environmental impacts on lands administered by the United States Army. The USBP has sufficient evidence from past similar projects to make an estimate of the probable changes in pedestrian movement from this action, based on a number of factors that are quantifiable and readily available. Based in part on the information provided in the SEA, my staff estimates that this proposed action will significantly increase the number of illegal pedestrians on Fort Huachuca, which may result in significant impacts to the environment.

FH-2

I am disappointed that your agency has not coordinated this action with Fort Huachuca. The provisions of NEPA clearly require coordination efforts with other potentially affected federal entities, which includes Fort Huachuca. The obvious potential impacts of this increase in illegal pedestrian traffic on Fort Huachuca must be coordinated between our agencies prior to finalizing this SEA. In accordance with 40 CFR 1502.16, this coordination must include not only the potential impacts, but also the mitigation measures required to reduce those impacts.

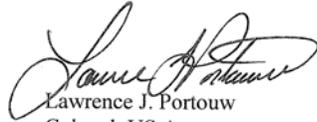
FH-3

-2-

I am forwarding a copy of this letter to those listed on enclosure.

Please contact Ms. Gretchen Kent on my staff at (520) 533-2549 to begin scheduling the coordination meetings.

Sincerely;



Lawrence J. Portouw
Colonel, US Army
Commander, US Army Garrison

Enclosure

Fort Huachuca
Gretchen Kent
May 30, 2003

Comment Resolution

FH-1 The DHS appreciates the full support of Fort Huachuca concerning mission of securing the U.S. border. During the planning stages of this project, the USBP consulted with federal and state agencies regarding the design of this project. In order to avoid or minimize impacts to protected species, critical habitat, and sensitive areas, the initial designs and alignments were altered so that they would not significantly impact such areas.

The DHS would like to add that in addition to issues that the USBP addressed above, the Lesser Long Nosed Bat was addressed within the draft SEA this document. The nearest known roost site was identified approximately 5 miles from the western extent of road improvement and vehicle barrier and approximately 15 miles from the nearest proposed lighting.

The DHS is in the process of tasking a biological assessment in order to obtain a biological opinion under formal consultation with USFWS. During this assessment all potentially affected species will be identified. Should this consultation result in further mitigation or measure to avoid impacts to the lesser long-nosed bat, the USBP would do so at that time.

FH-2 The DHS respectfully disagrees with Fort Huachuca. Indirect and cumulative impacts are addressed in Section 4 of the SEA. The USBP is not responsible for or able to predict IA traffic patterns. This is solely at the digression of the IAs themselves.

The DHS would like to point out that the Proposed Action would occur approximately 12 miles from the southern edge of the Fort Huachuca reservation. Upon implementation of this action; in order for illegal entrants to reach military land, they would first have to cross improved patrol roads with vehicle barriers on the west side of the San Pedro River, then cross extremely rugged terrain of the Huachuca Mountains that would be remotely monitored by a video system, and finally, they would have to cross one major highway and/or a major USFS road that crosses the Huachuca Mountains paralleling the U.S.-Mexico border.

FH-3 The DHS did not coordinate with Ft. Huachuca at the time that the Agency Scoping was conducted because the potential impacts to the region at that time did not warrant coordination with agencies that would not potentially be affected by the implementation of this action. The USBP does acknowledge that under Section 7 consultation regarding this project, there may be issues regarding ground water usage availability to the region. USBP is fully prepared to coordinate with Fort Huachuca on these issues should they become pertinent.

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 Telephone 505-248-0118
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June 30, 2003

Mr. Charles Parsons
 U.S. Department of Homeland Security
 Environmental Officer
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 24000 Avila Road
 Laguna Niguel, CA 92607

Via Mail and Facsimile (949-360-2985)

Re: Draft Supplemental Environmental Assessment for Infrastructure
 within the USBP Naco-Douglas Corridor, Cochise County,
 Arizona

Dear Mr. Parsons:

Thank you for the opportunity to provide comments on the draft Supplemental Environmental Assessment (SEA) for Infrastructure within the Naco-Douglas Corridor of the US-Mexico border. Defenders of Wildlife has a long-standing interest in the natural environment of the border regions of the southwestern United States. Activities of the Border Patrol (BP) have adverse impacts on many species and their habitat. We believe that these comments will inform the continued preparation of the alternatives, environmental consequences and mitigation measures for this proposed project.

The Department of Homeland Security (DHS) must issue a Draft Environmental Impact Statement (EIS). The SEA contains several significant defects. There is no baseline by which to judge potential environmental effects, and tiering to earlier NEPA documents is not appropriate. Discussions of alternatives and their environmental consequences are often incomplete or inconsistent. In addition, mitigation measures for the proposed action are inadequate.

DOW-1

Background

Section 102(2) of NEPA contains action-forcing provisions, aimed at fulfilling NEPA's intent, that require all federal agencies, in this case DHS, to prepare an environmental impact statement for "major Federal actions significantly affecting the quality of the human environment" that includes "the environmental impact of the proposed action," "any adverse environmental effects which cannot be avoided," and "alternatives to the proposed action." 42 U.S.C. § 4332(2)(C). An Environmental Assessment (EA) aids the agency's compliance with the National Environmental Policy Act (NEPA), but still must evaluate alternatives and the environmental impacts of the proposed action and

DOW-2

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alternatives. 40 C.F.R. § 1508.9.

Inadequate consideration and description of alternatives

Council on Environmental Quality (CEQ) regulations call on DHS to “[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated,” “[d]evote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits,” “[i]nclude the alternative of no action,” and “[i]nclude appropriate mitigation measures not already included in the proposed action or alternatives.” *Id.* § 1502.14 (emphasis added).

DOW-3

First, the No Action Alternative does not meet the definition of a No Action alternative. It is more appropriately named “Current Action Alternative,” as it proposes new activities¹. No Action is the ‘status quo’: there is no change from the current level of management intensity and any proposed project(s) do not go forward. *See* Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations, 46 Fed. Reg. 18026, 18027 (1981). The No Action Alternative should not include the infrastructure included in Table 2-1, but should include only infrastructure currently in place and infrastructure that has completed NEPA review – just as it was in the 2000 FEA. *See Association of Public Agency Customers, Inc. v. Bonneville Power Administration*, 126 F.3d 1158 (9th Cir. 1997) (holding that continuing present power sales contracts was an acceptable no action alternative).

DOW-4

Without a true No Action Alternative – one that proposes no actions – there is no description of the environmental baseline against which to measure the alternatives. *See Alaska Wilderness Recreation and Tourism Association v. Morrison*, 67 F.3d 723 (9th Cir. 1995) (stating that the no action alternative “serves as the benchmark by which effects of all action alternatives are measured”). Fundamentally, there is no assessment of the existing border infrastructure, rendering it impossible for both BP and the reader to evaluate the effectiveness or the impacts of the alternatives, the environmental impacts, or the appropriateness of tiering.

DOW-5

Second, there are inaccuracies and discrepancies in the descriptions of alternatives. For example, the No Action Alternative consists of projects identified in the Final Environmental Assessment (FEA) for Infrastructure within U.S. Border Patrol Naco-Douglas Corridor (August 2000) that have not yet been completed. According to Table 2-1 in the SEA, the FEA identified 11.5 miles of portable generator lights for the Naco Station. Of this, 10.5 miles were completed, but apparently none remain. The FEA also identified 73 portable generator lights for the Douglas Station, but there is no description of how many miles they were to encompass. In Table 2-2, Summary of Remaining Projects Identified under the No Action Alternative, there is no mention at all of any portable generator lights, although 73 lights for the Douglas Station and 1 mile for the Naco Station apparently remain to be completed. If this is correct, why are no

DOW-6

¹ The need for supplemental environmental analysis before these activities may proceed demonstrates that it is not truly “No Action.” *See infra* regarding tiering.

portable lights included in the No Action or Preferred Alternatives when they were identified in the FEA?

Similarly, there is a discrepancy between what was identified in the FEA and what is discussed in the Preferred Alternative. Section 2.2.2 discusses permanent lighting planned under the Preferred Alternative, stating that 3 miles of permanent lighting were previously addressed or installed in Douglas Station “as indicated under the No Action Alternative.” This directly contradicts the information in Tables 2-1 and 2-2, which show that 8 miles of permanent lighting were identified for Douglas Station, with 8 miles remaining.

DOW-7

Moreover, has BP truly considered why so many lights are needed? In the Douglas Station alone, there are 66 miles of portable generator lights, a total of 97 lights. (DPEIS at 2-14.) For an area with only 25 miles of border, this already seems excessive. Are additional permanent and/or portable lights truly necessary?

DOW-8

Third, the consideration of Alternatives is incomplete, because no Alternative describes ongoing or proposed operations. We recommend DHS reveal its operations for these alternatives – e.g., ongoing/proposed frequency and timing of patrolling of roads, of maintenance of roads; ongoing/proposed number of agents, vehicles, boats; the frequency, timing and duration of ground patrols; ongoing/proposed use (frequency, timing and duration) of vehicles or boats – so that the reader and DHS may honestly rate the alternatives and determine their impacts.

DOW-9

Relation to Draft Programmatic EIS for Arizona border

The Draft Programmatic EIS (DPEIS) for Border Patrol Activities within the Tucson and Yuma Sectors (October 2002) purportedly addresses “known or reasonably foreseeable infrastructure projects.” (DPEIS at iii.) Furthermore, the BP completed a Border Infrastructure Reference Document (BIRD) for the Tucson Sector in 2002 which is the cornerstone for infrastructure needs in the sector and the basis of the infrastructure proposed in the Preferred Alternative of the DPEIS. (DPEIS at 2-26.) Yet the SEA’s alternatives bear little relation to those in the DPEIS and hence the BIRD – what exactly does the BP plan for the Naco and Douglas stations?

DOW-10

- There are actions proposed in the SEA that are not proposed in the 2002 DPEIS².
- 6.5 steel landing mat fence in Naco
 - 3.25 (Table 2-1) plus 8.2 (Table 2-3) miles vehicle barriers in Naco
 - 73 portable generator lights in Douglas
 - 7.5 miles landing mat fence in Douglas

² What BP has proposed in the DPEIS is also unclear. The infrastructure proposed in DPEIS Table 2-1 often contradicts the infrastructure proposed (in the keys) in Figures 2-1 through 2-9 of the DPEIS. Generally, the Figures add the construction of a secondary pedestrian fence, construction of stadium lights, construction of RVS sites, construction of a service road, and low water crossings.

DOW-11

- 8 (Table 2-1) plus 6 (Table 2-3) miles permanent stadium-style lights in Douglas

There are actions proposed in the 2002 DPEIS but it is unclear whether they include those proposed in the SEA. The following list is illustrative:

- do the 29 miles of stadium style lights proposed in Naco in DPEIS Table 2-4 include the 3 miles in SEA Table 2-1 or the 7 miles in Table 2-3?
- do the 11 or 10 RVS sites in Douglas in DPEIS Table 2-4 include the 9 RVS sites in SEA Table 2-1?
- does the upgrade of 23 miles of border road in Douglas to all weather surface in Table 2-4 include the 25 miles in SEA Table 2-1?
- are the 22.4 miles of primary pedestrian fence (SEA Table 2-3) included in the 52 miles in Table 2-4?
- are the 18 miles of secondary pedestrian fence (SEA Table 2-3) included in the 53 miles in Table 2-4?

There are activities supposedly completed in Naco and Douglas stations (No Action Alternative, 2000 FEA) that are not reflected in the existing infrastructure Table 2-1 of the 2002 DPEIS.

- D-4 & D-4(a) (Table 4-1, 2000 FEA) installed 5 miles of stadium lights, while only 3 miles are shown in Table 2-1, 2002 DPEIS

There are activities that have been completed or are under construction (and have undergone NEPA compliance, *see* SEA Table 2-1) but it is unclear/unlikely that they are included in the existing infrastructure in Table 2-1 (DPEIS).

- 2.5 miles steel landing mat fence in Naco
- 7-8 RVS sites in Douglas

In toto, due to contradictory documents that do not tier to a logical point (that is, the PEIS, when final), it is impossible to understand (1) the baseline – what BP has already constructed and where, (2) the alternatives – what precisely BP proposes and why, (3) the site-specific environmental effects – what impacts will occur in light of the baseline and the alternatives, (4) the cumulative effects – what impacts will occur in light of the sum of BP’s activities, and (5) what is covered in which document.

With different descriptions of the existing infrastructure and proposed infrastructure, whether in one or many stations, neither the reader nor DHS can assess the environmental effects, particularly the cumulative impacts.

Inadequate Consideration of Environmental Consequences

The environmental consequences section “forms the scientific and analytic basis” for the comparison of alternatives. 40 C.F.R. § 1502.16. This section discusses the direct and indirect effects of the alternatives, the significance of the environmental effects, and the means to mitigate adverse impacts. *Id.* Direct effects are caused by the action and occur at the same time

DOW-12

DOW-13

DOW-14

and place, *id.* § 1508.8, and indirect effects are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” *Id.*

As an essential element of this analysis, NEPA’s implementing regulations also require agencies to thoroughly examine and assess the cumulative impacts of their activities – *i.e.*, “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency . . . or person undertakes such other actions.” 40 C.F.R. § 1508.7.

Direct Impacts to Threatened and Endangered Species and Other Wildlife Is Incomplete

Under NEPA, “conclusory remarks [and] statements that do not equip a decisionmaker to make an informed decision about alternative courses of action, or a court to review the Secretary’s reasoning” is insufficient. *Natural Resources Defense Council v. Hodel*, 865 F.2d 288, 298 (D.C. Cir. 1988). This is exactly the type of Environmental Impacts analysis (Section 4) that DHS has presented in this SEA.

Specifically, an EA must analyze the nature and severity of the environmental impacts. *See* 40 C.F.R. § 1502.16(a), (b) (environmental consequences shall include discussions of “effects and their significance”). DHS has not done this, but instead has listed activities that may affect or have the potential for adverse impacts, but does not analyze the type or extent of the adverse impact, for itself or for the reader. *See Defenders of Wildlife v. Babbitt*, 130 F.Supp. 121, 138 (D.D.C. 2001) (holding an EIS insufficient because it stated that noise would increase and pronghorn and their habitat would be disturbed, there was no analysis of the nature and extent of the impacts on the pronghorn) (citing *NRDC v. Hodel*, 865 F.2d at 299). “There must be an analysis of the status of the environmental baseline given the listed impacts, not simply a recitation of the activities of the agencies.” *Id.* at 128.

Mainly as a result of this problem, the SEA lacks any conclusions of ‘significant impact’ or ‘no significant impact.’ The introduction to Section 4 (Environmental Consequences) states that “the significance of the impacts on each resource will be described as either significant, moderate, minor (minimal), insignificant or no impact.” Several subsections use language other than these specific terms, and several subsections contain no conclusions at all about anticipated impacts on some or all of the resources mentioned. For example, for the Preferred Alternative alone, Sec. 4.4 (Geology, Soils and Prime Farmland), Sec. 4.5 (Vegetation), Sec. 4.7 (Aquatic Communities), Sec. 4.8 (Unique and Sensitive Areas), 4.9 (Protected Species and Critical Habitat), Sec. 4.10 (Cultural Resources), Sec. 4.12 (Water Resources), and Sec. 4.17 (Cumulative Effects) all lack conclusions regarding the impacts on at least one of the resources discussed in that subsection. The absence of conclusions regarding impact is not surprising, given the lack of information and analysis regarding impacts to endangered species and other natural resources. The lack of rigorous analysis robs the impacts assessment of any reliability.

The SEA’s conclusions that the potential loss of wildlife habitat will approximate 24 acres under the No Action Alternative (with no determination of significance), and about 526 acres under the Preferred Alternative (determined not to be significant) (4-13) are clearly false.

DOW-15

DOW-16

By checking Table 4-1 of the 2000 FEA, one can see that just one component of the No Action Alternative will impact 242.60 acres³ and all No Action Alternative infrastructure will impact about 737.75 acres – more than 700 acres above what the No Action Alternative is supposed to impact (and more than 200 acres greater than the Preferred Alternative). An EIS or EA must contain a “reasonably thorough discussion of the significant aspects of probable environmental consequences” and courts ensure that the agency took a “hard look” at these consequences. *Neighbors of Cuddy Mountain v. USFS*, 137 F.3d 1372, 1376 (9th Cir. 1998) (citing *Or. Natural Res. Council v. Lowe*, 109 F.3d 521, 526 (9th Cir. 1997)). DHS cannot, and has not, justified the removal of hundreds of impacted acres; habitat fragmentation and loss due to habitat made inaccessible and unsuitable by border infrastructure is a significant problem. By blatantly ignoring the FEA which this SEA is supplementing, DHS has clearly not taken a hard look at the environmental consequences, nor has the agency been reasonably thorough.

**DOW-16
Cont.**

Throughout the SEA, DHS notes that resources will be impacted, yet the reader does not know how. The reader, and DHS, need to know what “affected” or “impacted” means in order to analyze the impacts to the resource. Is the resource destroyed or damaged? Is vegetation ripped up? Is wildlife habitat restricted, blockaded, illuminated? For examples, see Sec. 4.5 (Vegetation), Sec. 4.7 (Aquatic Communities), Sec. 4.8 (Unique and Sensitive Areas), Sec. 4.10 (Cultural Resources), and Sec. 4.12 (Water Resources).

DOW-17

DHS must revise Section 4 so that for each resource, the reader and DHS are aware of the nature and extent of the impacts, i.e. reduced breeding habitat, loss of migratory corridors, etc. DHS must also, because it has failed to do so here, consider that impact in the context of the baseline and the impacted resource. 40 C.F.R. § 1508.27. Impacts to endangered species are held to a higher standard. 40 C.F.R. § 1508.27(b)(9). Only then can DHS conclude whether impacts are or are not significant.

DOW-18

There are several potentially severe negative impacts to threatened and endangered species that would result from the implementation of the proposed action. The most severe direct impacts include disruption of migration patterns of endangered cross-border species such as the jaguar, ocelot and jaguarundi and harassment of endangered nocturnal species, including the lesser long-nosed bat.

First, the SEA has completely omitted any discussion of impacts to the jaguar, jaguarundi and ocelot. Any reasonable assessment of adverse impacts of the No Action and Preferred Alternative on these very reclusive and largely nocturnal creatures must be studied.

DOW-19

For example, the proposed infrastructure may impede migratory routes and prevent the jaguar from accessing the northern tip of its historical range. Information provided by the Jaguar Conservation Team about potential jaguar habitat should have been incorporated into the SEA. JAG-CT is a multi-agency group that functions as an “ad hoc” recovery team for the federally listed jaguar (*panthera onca*). This group is comprised of diverse private and public stakeholders

³ See N-4 and N-4(a).

including 16 signatories from various agency and governmental entities. The group’s written goal is “to conserve naturally occurring jaguars in Arizona and New Mexico, and to encourage parallel conservation actions in Mexico.” (JAG-CT 1997 Memorandum of Understanding) JAG-CT tasked the Arizona Game and Fish Department with creating a suitable habitat report for the jaguar in Arizona. This report was released in January 2003. (Nongame Technical Report 203, characterizing and mapping potential jaguar habitat in Arizona.) The report identified potential jaguar habitat in Arizona and corridor connectivity to remnant breeding populations in northern Sonora, Mexico, clearly indicating areas within the Naco-Douglas Corridor that are suitable habitat for the jaguar. DHS received a copy of this report during the public comment period on the DPEIS in February 2003. This information should have been integrated into the direct, indirect and/or cumulative impacts analysis of the SEA. The JAG-CT, in a February 7, 2003, cover letter accompanying the habitat report, offered to “task our JAG-CT Habitat Subcommittee to work with our JAGSAG [Jaguar Scientific Advisory Group] to identify cross border migratory routes of special concern.” Neither BP nor DHS has responded to the JAG-CT. In addition, BP and DHS have frequently been invited to participate in the JAG-CT, but neither agency has chosen to do so.

DOW-19
Cont.

DOW-20

It is believed that ocelot and jaguarundi populations north of the border are replenished by individuals from northern Mexico. Similarly, there have been several documented sightings of jaguars in the U.S. near the border area, indicating that the cats are using cross-border wildlife corridors to utilize the northern edge of their range. Fences and high intensity lights could very well impede this replenishment and contribute to the further decline of U.S. populations of these species. Habitat fragmentation is of particular concern because impeding the cross-border movements of animals may interfere with species recovery efforts on both sides of the border. We recommend that Border Patrol engage the Jaguar Conservation Team and improve its knowledge of jaguar habitat needs as they are impacted by BP activities.

DOW-21

Inadequate Consideration of Indirect Impacts

As with the consideration of direct impacts, there seems to have been very little consideration of the nature and severity of indirect impacts that will result from this proposed project. For example, by moving migrant foot traffic out of the Naco corridor, BP could redirect this traffic into more environmentally sensitive areas, such as the nearby San Pedro National Resource Conservation Area and Coronado National Forest, thereby threatening the resources there. Simply saying that indirect impacts could happen, without description of what the effects might be, is not at all useful in determining the significance of the impacts. See Sec. 4.5.2 (Vegetation - Preferred Alternative), Sec. 4.7.1 (Aquatic Communities - No Action Alternative), Sec. 4.9.2 (Protected Species and Critical Habitat - Preferred Alternative), Sec. 4.17.1 (Cumulative Effects - No Action Alternative), Sec. 4.8.2 (Unique and Sensitive Areas - Preferred Alternative), and Sec. 4.8.3 (Unique and Sensitive Areas - Full Build Out Alternative).

DOW-22

Inadequate Analysis of Cumulative Impacts

DHS (as the Immigration and Naturalization Service) has previously estimated that the No Action Alternative, together with the baseline, impacts about 2,050 acres of wildlife habitat on the U.S. side of the border by the construction of miles of roads, fences, and vehicle barriers and the installation of hundreds of lights. Yet, there has been no meaningful analysis of the cumulative impacts these and all other past, present and future DHS projects will have on the wildlife dependant on the border region for survival. Furthermore, there is virtually no discussion of the cumulative impacts of all actions in the area, regardless of who undertakes the action.

DOW-23

An EIS must “catalogue adequately the relevant past projects in the area.” *City of Carmel-by-the-Sea v. U.S. Dep’t. of Trans.*, 123 F.3d 1142, 1160 (9th Cir. 1997). It must also include a “useful analysis of the cumulative impacts of past, present and future projects.” *Id.* This requires “discussion of how [future] projects together with the proposed . . . project will affect [the environment].” *Id.* The EIS must analyze the combined effects of the actions in sufficient detail to be “useful to the decisionmaker in deciding whether, or how, to alter the program to lessen cumulative impacts.” *Id.* at 1160 (internal citations omitted). “Detail is therefore required in describing the cumulative effects of a proposed action with other proposed actions.” *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 810 (9th Cir. 1999). See *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1379 (9th Cir. 1998); *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214-15 (9th Cir. 1998).

DHS has hindered its own and the public’s ability to accurately assess the significance of the impact of this proposed action, and thus the need for an EIS. See *id.* §§ 1500.1(b), 1508.9(a)(1) (an EA should “provide sufficient evidence and analysis” for determining whether an EIS or FONSI is appropriate). “Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment.” 40 C.F.R. § 1508.27(b)(7). DHS may not select its preferred alternative until all cumulative impacts are identified, assessed and recirculated for public comment.

DOW-24

This SEA purports to address impacts of BP and other entities’ projects (4-40) yet only briefly mentions those of ADOT (4-41).⁴ There are undoubtedly more entities incurring additional impacts along the 50 miles of border in the action area. Cumulative effects analysis must include consideration of all actions, “regardless of what agency or person” undertakes such action. Therefore, a proper analysis would have addressed a wide variety of activities affecting the environment, including, but not limited to, past and present mining, domestic livestock grazing, urban growth in nearby areas, and Joint Task Force-6 activities. Neither the 2000 FEA nor this SEA contains discussion of such activities or the impact these and other activities might have cumulatively on the natural resources in the area. Because the 2000 FEA failed to provide quantified and detailed information regarding such impacts, the present SEA must consider the site-specific direct, indirect and cumulative impacts. It has also failed to do so and thus fails to

DOW-25

⁴ This is surprising, because the 2002 DPEIS listed activities such as a truck bypass near Douglas, a Bisbee-Douglas airport, reactivation of the Southern Pacific railroad line. 2002 DPEIS at 5-6.

comply with NEPA.

For example, numerous parties have noted the lack of consideration given to the adverse impacts of DHS activities on wildlife corridors for cross-border migratory species such as the jaguar, ocelot and jaguarundi. Not only is such analysis missing from the environmental consequences section, but also from the cumulative impacts section. If DHS were to evaluate the impacts of its activities on the ability of migratory species to cross the border – such as the miles of border road, fencing and lights that BP has constructed in the Naco corridor alone – in addition to that of all other entities operating in the region, including but not limited to state and local roads, residential and industrial growth, and farming and ranching, the impacts would almost certainly be deemed ‘significant.’

**DOW-25
Cont.**

Tiering Is Not Appropriate

Neither the Preferred Alternative nor the Full Build Out Alternative can legitimately tier to the 2000 FEA, because each proposes activities wholly not considered in the earlier document. As NEPA regulations clearly state:

“Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action.” 40 C.F.R. § 1502.20 (emphasis added).

DOW-26

In addition, “when there is a programmatic EIS in place, an EA is required to determine whether the action is one anticipated in the EIS, consistent with the EIS, and sufficiently explored by the EIS.” *Sierra Club v. Espy*, 822 F. Supp. 356 (E.D. Tx. 1993) (emphasis added). Only the No Action Alternative is composed of activities considered in the 2000 FEA, and only activities within the No Action Alternative may tier to the 2000 FEA (if analyzed in a document that contains a true No Action Alternative). The analyses for the Preferred and Full Build Out Alternatives cannot rely on the 2000 FEA in any way, since they were neither anticipated in nor sufficiently explored (indeed, explored at all) by the EIS.⁵

Inadequate Mitigation Measures for Proposed Action

In addition to the adverse effects, DHS must discuss mitigation measures; it is implicit in

⁵ It is also questionable as to whether other documents claiming to tier from the 2000 FEA may legitimately do so. According to Table 2-1 (SEA), two NEPA documents (INS, June 2000 & USACE, July 2000) were issued before the FEA was final, and another (USACE, August 2000), the same month.

NEPA's command and the CEQ's regulations. The omission of reasonably complete discussion of mitigation measures would undermine NEPA's action forcing functions. Without such, interested parties cannot properly evaluate the severity of adverse impacts. Robertson v. Methow Valley Citizens Council, 490 U.S. 332 (1989).

Mitigation measures must cover the range of impacts of the proposal and must include such things as design alternatives, possible land use controls and other possible efforts. "Once the proposal itself is considered as a whole to have significant effects, all of its specific effects on the environment (whether or not "significant") must be considered, and mitigation measures must be developed where it is feasible to do so." Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 46 Fed. Reg. 18026 (March 23, 1981). See also 40 C.F.R. §§ 1502.14(f), 1502.16(h), 1508.14. DHS must propose alternatives that decrease construction impacts, esthetic intrusion, habitat destruction, adverse impact on endangered species and human presence/interference.

When developing alternatives and mitigation measures, DHS should keep the following priorities in mind: a) avoid the impact by not taking the action; b) minimize the impact by limiting the action; c) rectify the impact by rehabilitation; d) reduce the impact by maintenance; and e) compensate for the impact by replacement. 40 C.F.R. § 1508.20. Avoidance is the preferable course of action because a project such as placing high-intensity lights along the border can have numerous direct, indirect and cumulative impacts.

By failing to analyze and quantify the full extent of its adverse impacts, DHS has underestimated the significance of the agency's impact on the environment. Therefore, in addition to performing a cumulative impacts analysis that reveals the full range of impacts, BP must identify research and monitoring programs in order to improve future analyses of the environmental impacts of their actions, and specify the responsible party and when these programs will be implemented. See Considering Cumulative Impacts Under NEPA (CEQ 1997) at 3. In this situation, Section 5 of the EA contains no provisions for monitoring threatened and endangered species to detect adverse reactions to 10 miles of lighting, nor does it allow for changes in the placement, direction or style of lighting if listed species were adversely impacted.

Lastly, Section 5 cannot pass for mitigation simply due to the pervasive use of the subjunctive mood (e.g. "mitigation measure would require a specialized conservation plan" at 5-4; "potential measures and conceptual plans would be analyzed by USBP for suitability to mitigate" at 5-4). These statements do not rise to the level of commitments, and are certainly not incorporated into the proposed action. DHS must revise its alternatives to include operational modifications that could be implemented to minimize impacts, and any explanations as to (1) why or why not they are feasible, (2) whether they are sometimes feasible, and (3) that BP will implement them when feasible. BP should not postpone incorporation of unspecified mitigation measures until some unspecified later date to be developed by some unspecified entity.

DOW-27

DOW-28

Endangered Species Act Compliance

The Endangered Species Act (ESA) requires that "[e]ach federal agency shall, in

consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species . . .” 16 U.S.C. § 1536(a)(2). Until consultation is complete, at which time FWS issues a biological opinion detailing the agency’s impacts on the species, the agency may not ‘take’ listed species or take actions that might foreclose alternatives less harmful to the species. Id. §§ 1538, 1536(d). The Tucson sector is currently operating without a biological opinion, and has been for some time, and is in violation of the ESA.

Because BP has not even initiated consultation with the FWS, which it must do immediately, BP’s assertions that “[n]o protected species would be directly impacted” (4-20) and that “[n]o threatened or endangered species or critical habitat have been affected” (4-42) by the No Action Alternative are groundless. Likewise, its credibility in assuring that significant impacts from future actions of the Preferred Alternative will be mitigated via Section 7 consultation is negligible (4-20 & 5-5), given BP’s delay in initiating consultation.

DOW-29

Thank you again for this opportunity to comment on the draft SEA. Please send all subsequent public notices or documents concerning this and other proposed DHS projects to me, and please contact Kara Gillon at 505-248-0118 if you have any questions on this matter.

Sincerely,


Kara Gillon
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cc:

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**Defenders of Wildlife June 30, 2003/
Kara Gillon**

Comment Resolution

- DOW-1** The DHS respectfully disagrees with this assessment. The entire project corridor was surveyed for various resources. These data, as well as numerous secondary surveys, provide more than sufficient baseline conditions.
- DOW-2** The comment was noted, however DHS respectfully disagrees with your assessment. An EIS is not required for this action.
- DOW-3** The SEA provides a reasonable range of alternatives.
- DOW-4** The comment was noted, however the DHS disagrees. The actions identified under the No Action Alternative actually do identify the status quo. This document supplements (updates) the 2000 EA. The decision to proceed with those projects described in the SEA under the No Action Alternative is a continuation of that decision and the status quo. CEQ also states "...no action' is 'no change' from current management direction or level of management and intensity. Therefore, the No Action alternative may be thought of in terms of continuing the present course of action until that action is changed."
- DOW-5** See DOW-4. Furthermore, Figure 1-3 of the draft SEA provides data on IA apprehensions that shows a recent decrease in apprehensions, which have occurred as result of increases in personnel supported by improved infrastructure in urban areas such as Nogales, Naco, and Douglas. This SEA is tiered from the INS/JTF6 2000 Supplemental Programmatic EIS, which identified and addressed infrastructure projects such as those addressed in this SEA.
- DOW-6** The FEA in which this document is supplemented identified infrastructure projects that would continue under the No Action alternative. The FONSI stated that these activities (those identified in Table 2-1) would require site-specific analysis. Subsequently, this SEA accomplishes that task. The 73 portable lights identified within the FEA were not included in the No Action alternative under this SEA. This SEA identified only permanent infrastructure components in its analysis. The SEA will be revised to include additional impacts under the No Action Alternative for installation of 73 portable lights.
- DOW-7** This Section of the SEA will be revised to clearly explain that there are 3 of 5 miles of permanent style lighting installed in Douglas as approved under the Supplemental EA for proposed JTF-6 lightpole installation mission in March 1998. This area was approved prior to the issuance of the 2000 FEA but had not been constructed. Therefore, the 8 miles identified under the No Action Alternative had not been accounted for yet. The SEA will be revised to show that only 5 miles of lighting are remaining.
- DOW-8** The installation of 97 portable lights over a 25-mile corridor is not excessive; operation of portable lights would only require approximately 4 lights per mile. As stated earlier, 73 are proposed for use along the border in the Douglas AO. At the present time, only

18 miles of lights in the urban areas near the town of Naco and City of Douglas are proposed to secure the border.

- DOW-9** The USBP assesses its operational requirements on the Sector level. Currently, a revised DPEIS is being prepared that identifies operations and currently proposed infrastructure.
- DOW-10** The DHS acknowledges the comment, however the comment refers to the October 2002 DPEIS. This document is currently undergoing a revision that refocuses the PEIS to its original intent of addressing operations.
- DOW-11** See DOW-10.
- DOW-12** See response DOW-10. It should be noted that the SEA tiers from the INS/JTF-6 2001 SPEIS for infrastructure across the southwest border.
- DOW-13** See responses DOW-4, DOW-5 and DOW-10, above.
- DOW-14** The DHS respectfully disagrees with your analysis.
- DOW-15** The final SEA has been revised to make the verbiage more consistent. However, DHS disagrees with your allegations that no conclusions are drawn. Quantification of impacts were provided where possible and significance was discussed throughout the document.
- DOW-16** The DHS respectfully disagrees with your assessment. The calculation of wildlife impacts is accurate as they are based on actual habitat removal that would be required. The Purpose and Need statement in the SEA clearly identifies the need for infrastructure identified in the proposed action of the SEA. Furthermore, any impacts will be minimized and or mitigated to the extent practical.
- DOW-17** The DHS respectfully disagrees. The word “impacted” is described clearly. Section 4.5 explains that vegetation would to be permanently altered and removed. Section 4.6 further explains that wildlife individuals are expected to be lost as a result of habitat removal.
- DOW-18** The DHS has made revisions to Section 5 pertaining to design measures associated with Section 7 consultation with the USFWS.
- DOW-19** The DHS acknowledges that there are potential impacts to protected and endangered species within the San Pedro valley. Thus DHS will enter into Section 7 consultation with USFWS to address these issues. Due to the position of physical barriers and their relation to urban areas, the jaguar, ocelot, and jaguarundi are not expected to be affected. Thus, further discussion was not warranted.

The JAC-CT report clearly identifies the areas between Naco and Douglas as non-suitable habitat. Sections 3.9 and 4.9 of the SEA have been revised to include discussion of the jaguar and data from this report.

- DOW-20** The DHS has no record of invitations to participate in earlier the JAC-CT meetings. DHS representatives have attended recent meetings in Animas, New Mexico and will continue where practicable.
- DOW-21** There has only been one jaguar sighting in the past 3 years near Nogales, approximately 50 miles to the west of the project corridor. Prior the last confirmed sighting occurred in 1986. There are no documented sightings for ocelot jaguarondi.
- DOW-22** The DHS designed the preferred actions specifically to minimize impacts to sensitive areas, such as the San Pedro NCA the Coronado National Memorial, and Coronado National Forest. The USBP plans to improve single road access and vehicle barriers instead of fences and other major road construction. These designs would be used since the Coronado National Memorial and the Huachuca Mountains serve as a physical barrier. Indirect impacts are adequately explained in all of the subsections of Section 4.
- DOW-23** Cumulative impacts are presented in Section 14.17 of the Draft SEA. However discussions will be reviewed in the final SEA to included further investigation of all past, on-going, and reasonably foreseeable future projects that can be obtained by the NEPA team. The USBP is not responsible for or able to predict IA traffic patterns. This is solely at the digression of the IAs themselves
- DOW-24** The DHS respectfully disagrees. See response DOW-23, above.
- DOW-25** The project area is located largely in a remote area of Cochise County Arizona. The DHS acknowledges that the county, as well as the Town of Naco and the City of Douglas, may at any time make future development plans known. DHS will continue to attempt to identify future project plans. These plans, if identified, will be included in the final SEA.
- DOW-26** The SEA is not tiered from the 2000 FEA; rather, it is supplemented. The 2000 FEA identified possible border infrastructure that may be constructed within the foreseeable future. Furthermore, it identified a project area that existed along the border in the Naco-Douglas corridor.
- DOW-27** The DHS disagrees with your statement. The alternative in the SEA are specifically designed to reduce such impacts.
- DOW-28** The DHS is not required to mitigate for upland habitat that is not occupied by or designated as critical habitat for Federally protected species. Any impacts to jurisdictional wetlands would be mitigated as required. A Section 404 of the CWA will be initiated. Section 5 provides measures that would be implemented to mitigate (i.e. reduce) adverse impacts. Conservation measures to be implemented specifically for the species would be coordinated with the Section 7 consultation process.
- DOW-29** The DHS contacted the USFWS regarding Section 7 consultation prior to the release of the Draft SEA. Construction within areas that are occupied by or designated, as critical habitat would not be initiated prior to completion of this consultation. The USBP and USFWS are currently in consultation for all operations within the Tucson and Yuma sectors.

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Chiricahua-Dragoon Conservation Alliance
 P.O. Box 76
 Elfrida, AZ 85610
 (520) 824-3201
 asante@vtc.net

June, 29th, 2003

Mr. Charles Parsons
 Regional Environmental Officer
 24000 Avila Road
 P.O. Box 30080
 Laguna Niguel, CA 92607
 (949) 360-2985 fax

**Comments on the Draft Supplemental Environmental Assessment
 for Infrastructure Within U.S. Border Patrol
 Naco-Douglas Corridor, Cochise County, Arizona**

The draft EA, and the responsible agency—the Department of Homeland Security (DHS), is in violation of the National Environmental Policy Act for failing to adequately and accurately analyze potential direct and indirect impacts, as well as the cumulative impacts of all federal and non-federal agencies. DHS is also in violation of the Endangered Species Act for failing to initiate consultation with the US Fish and Wildlife Service to address potential impacts to threatened and endangered species and their critical habitat. The DHS has also failed to initiate and disclose any ongoing consultation with the environmental agencies of Mexico, as well as those departments of indigenous treaty nations located on both sides of the border. As such the DHS is in violation of international laws and sovereign treaties. The draft also fails to accurately and adequately address the impacts the proposed actions would have on people (Environmental Justice concerns) and Indigenous communities. As such the EA is an illegal document, in contravention with federal, international, and treaty laws, policies, and guidelines and must be withdrawn. A full, accurate, comprehensive EIS, with the involvement of indigenous peoples, Mexico, and conservation organizations is clearly the only legal process open to the DHS for continuing to address the significant issues, concerns, and impacts which may result from the implementation of its proposed border policies. The Department of Homeland Security is herein requested to refrain from implementing any of its proposed border actions, and instead requested to abide by federal laws, policies, treaties and international laws, as well as conservation goals and needs. We herein request the agency to study the many existent successful border resolution examples worldwide. Rather than impose an archaic, militarized, draconian wall, reminiscent of the Berlin Wall, the Wall of China, and Hadrian's Wall, the DHS needs to realistically, honestly, and historically assess and disclose the many ecological, democratic, and cooperative border alternatives which exist. Until such a comprehensive, accurate EIS is adequately conducted, the DHS must abide by the "No Action" alternative addressed in the Draft Environmental Assessment and not move forward with any of the proposed actions.

This proposed fence and road construction, lighting and remote video cameras will have severe direct impacts to wildlife and habitat, including fragmentation of habitat and disruption of species' migration patterns due to increased fencing and road-building, and harassment of nocturnal species due to installation of high-voltage lighting stations. These impacts will be particularly devastating to the endangered jaguar, a nocturnal cross-border species that is known to use this area as an important migration corridor. DHS claims that proposed developments will help the environment are not only spurious propaganda, such patently false claims are illegal under the NEPA; more fences and lighting will only funnel destructive foot traffic into even more remote, pristine and inhospitable terrain.

In addition, U.S. policy towards the nation's nearly 2 million Indians, Eskimos, and Aleuts has shifted back and forth over the years according to the political mood of the country. The belief in the inferiority of Indigenous people, in addition to the lack of consultation on matters that effect them, remains deeply embedded in dispossession and destruction of Indigenous territories and resources, political, religious

CDCA-1
 CDCA-2
 CDCA-3
 CDCA-4
 CDCA-5
 CDCA-6

and social systems. Since 1990, Indigenous peoples in the borderlands between the U.S. and Mexico have experienced many obstacles that continue to impede the ability of tribal members to conduct cross-border cultural, religious, family and business visits. This proposal would add to these obstacles.

**CDCA-6
cont**

U.S. border policies have consistently failed in their attempts to deter immigration, from their inception as well as their implementation. Routing migrants through dangerous terrain in order to deter future crossers with their deaths is a shameful policy. It has neither deterred nor stopped the immigrants who seek to better their economic situations. Studies indicate that over 2,000 deaths have occurred since the initiation of this deadly border policy. The infrastructure improvements proposed by this EA would further militarize the region, disrupting border communities, creating divisions among residents on both sides of the border, increasing violations of human rights, furthering the "coyote" industry, and adding to the rise of hate crimes and vigilantism.

CDCA-7

DHS and federal agencies have a legal, ethical, and moral responsibility to reject the policies of population control that have been supported by Racist groups in Cochise County. Anti-immigrant and border policies have perpetuated and exacerbated racist activities in Cochise County with impunity. These activities have redirected undocumented immigrants through Indigenous borderlands with lethal consequences and have divided the indigenous community, blaming the tribal government for people dying on Native Lands

CDCA-8

The Proposed Action also fails to adequately address the concerns of citizens, fails to justify the construction activities, and fails to meet NEPA's legal requirements that all avenues for the border situation have been properly investigated. Requisite to meeting these legal requirements is the sincere, open inclusion of community, environmental and Indigenous organizations as a significant part of this NEPA process of seeking viable solutions. A new, full legally compliant EIS must be conducted, including the formulation of a range of ecological and ethical reasonable alternatives that would actually benefit all (wildlife as well as humans on both sides of the border) must be developed. Solutions that seek to unify communities, not create divisions, fear, and oppression must be developed and implemented. Without this, we will continue to see a rise in division, fear, deaths on our borders, and human rights violations.

CDCA-9

It is obvious that the United States must develop a humane border policy that will not destroy our precious natural resources or trample the sovereignty and rights of Indigenous people.

Our organization is very concerned about this issue. We herein request copies of all future documents, Environmental Assessments, Environmental Impact Statements and notices regarding Department of Homeland Security, Border Patrol and Joint Task Force Six activities within the Tucson and Yuma Sectors. Timely notices and copies of all NEPA documents are requested to be sent to the address above, Thank you,

For Life in Balance with this Living Earth,



Asante Riverwind, Co-Director, and



Jean Eisenhower, Co-Director,
Chiricahua-Dragoon Conservation Alliance

Cc: BAN
SIA
CBD
EJ
WELC

Chiricahua-Dragoon Conservation Alliance
June 29, 2003
Asante Riverwind and Jean Eisenhower
Comment Resolution

CDCA-1 See MM-1.

CDCA-2 See MM-2.

CDCA-3 The DHS respectfully disagrees. We feel that since the proposed actions would not cause significant impacts and thus an EIS is not necessary. The SEA has been made available via the internet and local libraries to all interested parties regardless of their location or nationality. Scoping meetings, which are not required by NEPA for EA studies, were even conducted for this project, with very little public participation.

CDCA-4 See MM-4.

CDCA-5 See DOW-21.

CDCA-6 The 1794 Jay Treaty does allow for Native Americans to cross (Free Passage) international boundaries within their lands only. The comment and information will be incorporated as the following: "Citizens of the U.S. and Mexico are allowed to enter either country through designated Ports of entry. However, the 1794 Jay Treaty provides provisions to allow Native Americans to cross international boundaries within their lands only." However, no Native American lands exist within the project area."

CDCA-7 The USBP does not route anyone into any areas including areas with dangerous terrain. The IAs have complete control over their decision of when and where they choose to attempt to illegally enter the U.S. However, temporary campsites, helicopter reconnaissance and rescue beacons are established in desolate areas to prevent fatalities when IAs and smugglers illegally attempt to cross the border during the inhospitable summer months.

Infrastructure improvement projects have proven to reduce IA entrance, drug smuggling attempts, violent crimes, theft, etc. in areas where they are implemented.

CDCA-8 The comment was noted, however the DHs strongly disagrees with your allegations, The DHS has the responsibility to regulate and control illegal immigration and does so without prejudice.

CDCA-9 The USBP respectfully disagrees with your assessment. There are no fences currently proposed in areas that could affect migration of endangered animals. Vehicle barriers are proposed in the western reaches of the Naco AO where the potential is higher but still remote that the ocelot, jaguarondi and jaguar may occur. Vehicle barriers would have no effect on species movements. Potential long-term effects, as well as indirect effects are discussed in Section 4.6 of the SEA.

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FROM :

FAX NO. :

Jun. 30 2003 10:45AM P1

Mr. Charles Parsons
Regional Environmental Officer
24000 Avila Road
P.O. Box 30080
Laguna Niguel, CA 92607
(949) 360-2985 fax

**RE: Draft Supplemental Environmental Assessment
Infrastructure Within U.S. Border Patrol Naco-Douglas Corridor, Cochise Co, Az.**

It is more than a little obvious that the United States must immediately develop a humane border policy that will not destroy our precious natural resources or trample the sovereignty and rights of Indigenous people. Even McCain, Kolbe, and Grijalva are now calling for remedies to the failed border policies.

I want to receive all documents, Environmental Impact Statements, and notices regarding Department of Homeland Security, Border Patrol and Joint Task Force Six activities within the Tucson and Yuma Sectors. Please send them to me as soon as you have them ready as long as this horrendous Wall continues to be planned.

The Department of Homeland Security, in putting out this poorly written, vague draft, is in violation of the National Environmental Policy Act for failing to adequately analyze potential direct and indirect impacts, as well as the cumulative impacts of all federal and non-federal agencies. DHS has also violated our Endangered Species Act because they failed to initiate consultation with the US Fish and Wildlife Service in addressing potential impacts to endangered species and critical habitat. Also, this draft does not even adequately address the impacts proposed actions would have on people nor the environment nor the Indigenous communities. I think to follow present laws designed to keep such horrible consequences in check, that the Department of Homeland Security must follow the "No Action" alternative addressed in the Draft Environmental Assessment and not proceed with the proposed action.

ST-1

ST-2

The outrageous proposed fence and miles of new road construction, lighting and remote video cameras will absolutely directly negatively impact all wildlife and the environment, fragmenting the habitat and migratory routes of endangered cross-border species such as the jaguar, ocelot and jaguarondi, etc. resulting in further damage to our other endangered species such as the lesser-long nosed bat. DHS claims that proposed developments will help the environment (lights will make insects???) are spurious propaganda; more fences and lighting will only funnel destructive foot traffic into even more dangerous, remote, pristine and inhospitable terrain.

ST-3

Racist groups in Cochise County have run amuck with impunity threatening our communities along the border. Anti-immigrant groups, rogue border patrol, and inhumane border policies perpetuated and exacerbated racist activities in Cochise County. These activities have redirected undocumented immigrants through Indigenous borderlands with lethal consequences and have divided the indigenous community pitting indigenous brother against indigenous brother. This must stop!

ST-4

The EA draft doesn't address basic concerns of citizens, fails to justify the construction

ST-5

FROM :

FAX NO. :

Jun. 30 2003 10:46AM P2

activities, and fails to instill in me any belief that all avenues for the border situation have been properly investigated. I believe this is very disingenuous of those designing such policies and making such proposals. Instead, community, environmental and Indigenous organizations have had no significant part of this process to seek viable solutions and find reasonable alternatives that would actually benefit all. Solutions that might seek to unify communities, not create divisions, fear, and oppression must be developed and implemented. Otherwise, with more of the same extreme militaristic measures along our borders, we'll only see more deaths and human rights violations. We have already witnessed enough of this horrendous genocide such policies have produced killing the poor and desperate workers who have tried to cross the killing fields the INS pushed them into by such outrageous policies and the enforcement of the same.

ST-5

Sincerely,



Susan Thorpe
642 S. Rosemont
Tucson, Arizona 85711
(520) 750-9277

Susan Thorpe
June 30, 2003

Comment Resolution

ST-1 See MM-1.

ST-2 See MM-2.

ST-3 See MM-3.

ST-4 See MM-4.

ST-5 The USBP respectfully disagrees with your assessment. There are no fences currently proposed in areas that could affect migration of endangered animals. Vehicle barriers are proposed in the western reaches of the Naco AO where the potential is higher but still remote that the ocelot, jaguarondi and jaguar might occur. Vehicle barriers would have no effect on the species movements. Potential long-term effects as well as indirect effects are discussed in Section 4.6 of the SEA.

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DHS-ACLFRE

949 360 2985 P.04/05

June 30, 2003

Via Facsimile 949-360-2985

Mr. Charles Parsons
Regional Environmental Officer
24000 Avila Road
P.O. Box 30080
Laguna Niguel, CA 92607

**RE: Draft Supplemental Environmental Assessment for Infrastructure Within
U.S. Border Patrol Naco-Douglas Corridor, Cochise County, Arizona**

Dear Mr. Parsons:

With this draft the Department of Homeland Security (DHS) is in violation of the National Environmental Policy Act for failing to adequately analyze potential direct and indirect impacts, as well as the cumulative impacts of all federal and non-federal agencies. DHS is also in violation of the Endangered Species Act for failing to initiate consultation with the US Fish and Wildlife Service to address potential impacts to threatened and endangered species and their critical habitat. In addition this draft fails to adequately address the impacts the proposed actions would have on people (Environmental Justice concerns) and Indigenous communities. I contend that the Department of Homeland Security must follow the "No Action" alternative addressed in the Draft Environmental Assessment and not proceed with the proposed action.

PC-1

PC-2

This proposed fence and road construction, lighting and remote video cameras will have severe direct impacts to wildlife and the environment, fragmenting the habitat and migratory routes of endangered cross-border species such as the jaguar, ocelot and jaguarondi, and will result in the harassment of endangered species such as the lesser-long nosed bat. DHS claims that proposed developments will help the environment are spurious propaganda; more fences and lighting will only funnel destructive foot traffic into even more remote, pristine and inhospitable terrain.

PC-3

I reject the policies of population control that have been supported by Racist groups in Cochise County. Anti-immigrant and border policies perpetuated and exacerbated racist activities in Cochise County with impunity. These activities have redirected undocumented immigrants through Indigenous borderlands with lethal consequences and have divided the indigenous community, blaming the tribal government for people dying on Native Lands

PC-4

The Proposed Action also fails to adequately address the concerns of citizens, fails to justify the construction activities, and fails to instill in us the belief that all avenues for the border situation have been properly investigated. If that were true, community,

PC-5

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DHS-ACLFPE

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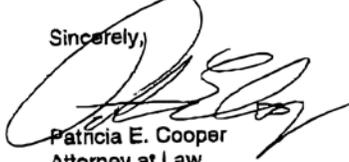
Mr. Charles Parsons
June 30, 2003
Page 2 of 2

environmental and Indigenous organizations would have had a significant part of this process of seeking viable solutions, and a reasonable alternative that would actually benefit all may have been developed. Solutions that seek to unify communities, not create divisions, fear, and oppression must be developed and implemented. Without this, we will continue to see a rise in division, fear, deaths on our borders, and human rights violations.

It is obvious that the United States must develop a humane border policy that will not destroy our precious natural resources or trample the sovereignty and rights of Indigenous people. This is an issue I am very interested in and I would like to receive all future documents, Environmental Assessments, Environmental Impact Statements and notices regarding Department of Homeland Security, Border Patrol and Joint Task Force Six activities within the Tucson and Yuma Sectors.

PC-5

Sincerely,



Patricia E. Cooper
Attorney at Law
P. O. Box 816
Benson, AZ 85602

Patricia Cooper
June 30, 2003

Comment Resolution

PC-1 See MM-1.

PC-2 See MM-2.

PC-3 See MM-3.

PC-4 See MM-4.

PC-5 See ST-5.

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June 30, 2003

Mr. Charles Parsons
Regional Environmental Officer
24000 Avila Road
P.O. Box 30080
Laguna Niguel, CA 92607
(949) 360-2985 fax

**RE: Draft Supplemental Environmental Assessment for Infrastructure Within U.S. Border
Patrol Naco-Douglas Corridor, Cochise County, Arizona**

I am concerned that with this draft the Department of Homeland Security (DHS) is in violation of the National Environmental Policy Act for failing to adequately analyze potential direct and indirect impacts, as well as the cumulative impacts of all federal and non-federal agencies. DHS is also in violation of the Endangered Species Act for failing to initiate consultation with the US Fish and Wildlife Service to address potential impacts to threatened and endangered species and their critical habitat. In addition this draft fails to adequately address the impacts the proposed actions would have on people (Environmental Justice concerns) and Indigenous communities. I contend that the Department of Homeland Security must follow the "No Action" alternative addressed in the Draft Environmental Assessment and not proceed with the proposed action.

EDB-1

EDB-2

This proposed fence and road construction, lighting and remote video cameras will have severe direct impacts to wildlife and the environment, fragmenting the habitat and migratory routes of endangered cross-border species such as the jaguar, ocelot and jaguarondi, and will result in the harassment of endangered species such as the lesser-long nosed bat. DHS claims that proposed developments will help the environment are spurious propaganda; more fences and lighting will only funnel destructive foot traffic into even more remote, pristine and inhospitable terrain.

EDB-3

I do not support the policies of population control that have been promoted by racist groups in Cochise County. Anti-immigrant and border policies perpetuated and exacerbated racist activities in Cochise County with impunity. These activities have redirected undocumented immigrants through Indigenous borderlands with lethal consequences and have divided the indigenous community, blaming the tribal government for people dying on Native Lands

EDB-4

The Proposed Action also fails to adequately address the concerns of citizens, fails to justify the construction activities, and fails to instill in us the belief that all avenues for the border situation have been properly investigated. If that were true, community, environmental and Indigenous organizations would have had a significant part of this process of seeking viable solutions, and a reasonable alternative that would actually benefit all may have been developed. Solutions that seek to unify communities, not create divisions, fear, and oppression must be developed and implemented. Without this, we will continue to see a rise in division, fear, deaths on our borders, and human rights violations.

EDB-5

It is obvious that the United States must develop a humane border policy that will not destroy our precious natural resources or trample the sovereignty and rights of Indigenous people. This is an

JUL-01-2003 10:51

INS ACLOSH

949 360 3071 P.23/61

issue I am very interested in and I would like to receive all future documents, Environmental Assessments, Environmental Impact Statements and notices regarding Department of Homeland Security, Border Patrol and Joint Task Force Six activities within the Tucson and Yuma Sectors.

} EDB-5

Sincerely,



Erica Dahl-Bredine
111 S. Church Ave.
Tucson, AZ 85701

Erica Dahl-Bredline

June 30, 2003

Comment Resolution

EDB-1 See MM-1.

EDB-2 See MM-2.

EDB-3 See MM-3.

EDB-4 See MM-4.

EDB-5 See ST-5.

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Border Action Network

PO Box 384 • Tucson, AZ • 85702
Ph 520.623.4944 • Fax 520.792.2097
ban@borderaction.org • www.borderaction.org

June 30, 2003

Mr. Charles Parsons
Environmental Officer
PO Box 30090
24000 Avila Road
Laguna Niguel, CA 92677-0080

Re: Comments on Draft Supplemental Environmental Assessment for Infrastructure within US Border Patrol Naco-Douglas Corridor, Cochise County, Arizona

Dear Mr. Parsons:

Thank you for the opportunity to provide comments on the Border Patrol's infrastructure plans for the Naco-Douglas corridor. The Border Action Network is a non-profit, community organization dedicated to protecting human rights, civil rights and the Sonoran desert along the Arizona-Mexico border. Our membership spans Tucson, Nogales and Douglas, Arizona. Because of this representation, we have a long-standing and distinct interest and concern in border enforcement activities in Cochise, Pima and Santa Cruz counties. The proposed activities in the draft Supplemental Environmental Assessment (SEA) cause us great concern, particularly on grounds of insufficient discussion and analysis on several levels: 1) international human rights implications; 2) civil rights implications; 3) environmental impacts to the Sonoran desert; and 4) violations of legal practices and procedures. These issues and concerns are explained below.

The Proposed Activities Violate International Human Rights Conventions

“Over the last two decades, the deepening domination of North countries over South countries, globalization, has increasingly blurred the differences between refugees and migrants. Forced displacement, whether by tanks or banks, results in communities being forced to abandon their homes; only some end up crossing international borders to survive.” (National Network for Immigrant and Refugee Rights, *A World on the Move*)

Both migrants and refugees have universally recognized rights and protections that should be upheld by international border enforcement and immigration policies and practices in the US. The SEA makes no mention of how the proposed activities are in compliance with internationally recognized rights and protections of migrants.

} BAN-1

Given the recent killing of Agua Prieta resident Ricardo Martinez and the dozens of shootings over the last four years (Tucson Citizen article, June 6,203) of other migrants,

it has become clear that border enforcement policies and practices need to demonstrate, at a minimum, respect for human life, but more broadly how the rights of migrants are being protected.

We expect the USBP to respond to the following list of human rights violations be claiming that SEA is only considering infrastructure activities. Yet, it is not clear when the operational needs to support and utilize the proposed infrastructure activities will be analyzed. It is clear that if the SEA proposes, for example, new roads, it is implied that we will experience an increase in USBP traffic and presence on those new roads. The same inference can be made to new wall construction (agents will be monitoring the wall), new surveillance equipment, and so on. There are two issues at hand here: 1) the SEA should also discuss the obvious operational impacts of the proposed infrastructure; and 2) the SEA needs to discuss the impacts of increased USBP interactions with migrants.

BAN-2

On the latter, given the recent and historical track record of USBP shootings, corruption (see Office of Inspector General quarterly reports to Congress for details of agent corruption), and abuse, the proposed activities will continue to violate human rights conventions and protocols as detailed below.

Proposed activities in the SEA violate key components of the International Convention for the Protection of Rights for All Migrant Workers and Members of Their Families. Among other rights, the Convention establishes the principle of equality of treatment. Migrant workers and their families are entitled to *equal rights as citizens in their host country*, in a number of areas such as legal rights, access to employment, and access to education for their children. (adopted December 18, 1990, entered into force July 1, 2003)

Part II: Non-discrimination

Article 7: Provides that non-discrimination with respect to rights shall exist without distinction of any kind on the basis of sex, race, color, language, religion or convictions, political or other opinion, national ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

BAN-3

- Current border enforcement policies and practices discriminate against migrants due to their economic position. U.S. immigration policy and border enforcement practices favors those with greater economic standing, resulting in impoverished migrants deciding to cross the border in dangerous, remote desert areas. Those that can pay for passports, visas, permits enter the country legally. Furthermore, the 10-15 year wait due to INS backlog for legal permanent residency contributes to migrants decision to cross through non-ports of entry.
- Current border enforcement policies and practices discriminate against migrants because of their race and nationality—Eighty percent of border enforcement efforts are concentrated on the US-Mexico border and specifically Latin American migrants even though only 40% of undocumented immigrants within the US are from Latin

America. **(NEED SOURCE!!)** This disproportionate allocation of resources to stop the migration of Mexican and Latin American migrants appears to be based on a discriminatory policy targeting these nationalities more than others.

Part III: Human Rights of All Migrant Workers and members of Their Families

Article 9: Right to life

- Current border enforcement policies and practices have intentionally militarized urban ports of entry and forced migration routes into dangerous desert terrain. As of June 20, 2003, the bodies of over 55 men, women and children who had scarcely other option but to cross the border through the Arizona desert have been found dead. This policy is denying migrants' right to life.
- Current border enforcement policies and practices that continue to tolerate agents to shoot-to-kill unarmed migrants as in the June 2003 case of Ricardo Martinez are denying migrants right to life. Additionally, the use of hollow shell bullets and other methods of excessive force are used by Border Patrol agents, resulting in needless deaths of migrants.

Article 10: No subjugation to torture or to cruel, inhuman or degrading treatment or punishment;

- Current border enforcement practices that deny detained migrants food and water constitute cruel treatment. The practice of forcing migrants to lay face down on the ground and then restraining them with an agents boot on the individuals neck, constitutes cruel, inhuman and degrading treatment. Shooting migrants who are fleeing apprehension constitutes cruel treatment or punishment. These are all practices that have been witnessed and reported by Arizona border residents.

Article 16: The rights to liberty and security of person and effective protection by the State against violence. Verification of identity must be carried out in accordance with the law. No individual or collective arbitrary arrest or detention. Information on the reasons for arrest shall be given in a language the detained understands.

- Current border enforcement practices that result in Border Patrol and Customs agents threatening to destroy legal permanent residents', visa holders', and citizens' identification violates the rights to liberty and security of person. This is based upon the personal reports of members of Border Action Network.

Article 21: It is unlawful other than by a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents. No authorized confiscation of such documents shall take place without delivery of a detailed receipt.

- Current border enforcement practices that result in migrants having to leave all the personal belongings, frequently including their identification, at the site of apprehension, results in unauthorized destruction of migrants identity documents.

Part IV:

BAN-3
continued

Article 39 provides for the right to liberty of movement in the territory of the State of employment without any restrictions except those provided by law and are necessary to protect national security and public order.

- Current border enforcement policies and practices that rely on the creation of roads and the use of checkpoints to randomly stop and question people violate migrants, documented and undocumented, right to liberty of movement.

Article 44: Recognizes that the family is the natural and fundamental group unit of society and is entitled to protection by society, and requires appropriate measures to ensure the protection of the unity of the family of the migrant worker.

- Current border enforcement policies and practices endanger the lives of men, women and children who cross the Arizona desert trying to reunite with family members living in the U.S. These same policies and practices are not protecting a family's rights to protection and unification.

BAN-3
continued

Proposed activities in the SEA violate the World Conference Against Racism Declaration and Program of Action on Migration, Refugees, Asylum and Internally Displaced Persons. These two documents are today's most comprehensive and widely supported international documents addressing migration. The Durban Declaration and Program of Action, approved by the UN General assembly in February 2002, establishes international consensus on the issues of racism, xenophobia, and intolerance.

Declaration,

Pp. 48 Strongly condemns acts of racism and stereotypes against migrants; reaffirms responsibilities of States to protect human rights of migrants, protect migrants from illegal, violent, and xenophobic acts, and stress the need for equitable treatment in society and workplace

- Current border enforcement policies and practices contribute to racism and stereotypes of migrants through the Border Patrol and other agency use of terminology such as "criminal alien", acronyms such as "UDA", and the labeling of individuals as "illegal". This language only serves to dehumanize migrants and creates an atmosphere where death, racism and violence against migrants is tolerated and even acceptable.
- Current border enforcement policies and practices have created a climate permitting a recent upsurge in anti-immigrant groups and citizen militias. Border enforcement agencies have not taken steps to protect migrants from unlawful citizen detentions and violence, let alone condemn these illegal, violent and xenophobic acts.

BAN-4

Program of Action

Pp. 30b Urges states to revise immigration policies and practices to be free of racial discrimination and uphold international human rights agreements

- Current border enforcement policies and practices are based upon racial profiles and categorizations that unfairly and indiscriminately target certain migrants based

upon appearance. This policy and practice violates the basic rights and freedoms of migrants as well as citizens.

Pp. 30d Urges states to ensure that migrants detained by public authorities, regardless of legal status, are treated with humanity and receive legal protection, and competent interpretation particularly during interrogation.

- Current border enforcement practices do not guarantee that migrants will be provided information about their apprehension, detention and deportation with competent interpretation or translation. Subsequently, many migrants have signed legal documents not knowing the implications of their consent.

Pp. 30e Urges states to ensure that police and immigration authorities treat migrants with dignity in accordance to international standards, and organize training courses for administrators, police officers, immigration officials and others

- Current border enforcement policies and practices do not ensure that migrants are treated with dignity. Training practices in human rights standards, or even use of minimal force, are apparently ineffective or non-existent.

Pp. 72 Urges states to design and enforce measures to eliminate "racial profiling."

- Current border enforcement policies and practices rely on the use of racial profiles. As a result, Latino/Hispanic border residents are routinely followed, stopped and questioned without cause, other than their appearance. This practice violates people's fundamental civil rights.

Pp. 183 Urges states to establish dialogues on the causes and consequences of migration focusing not only on border control or law enforcement, but also on the promotion of human rights of migrants, migration and development.

- Border enforcement consumes tens of millions of taxpayer dollars, despite its track record of ineffectiveness, corruption, and human and civil rights violations. Instead of continuing this failed approach, resources should be allocated towards understanding and addressing the causes and consequences of migration as well as promoting human rights of migrants, migration and development.

We also request that the following international instruments be considered:

Universal Declaration of Human Rights (adopted by the United Nations December 10, 1948) See articles 4, 20, 23, 24 and 25.

International Covenant on Economic, Social and Cultural Rights (adopted by UN December 16, 1966, entered into force January 3, 1976) See articles 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 15.

International Covenant on Civil and Political Rights (adopted December 16, 1966, entered into force March 23, 1976) See articles 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, 21, 22, 24, 26, 27.

BAN-4
continued

International Convention on the Elimination of All Forms of Discrimination Against Women (adopted December 18, 1979, entered into force September 3, 1981) See articles 3, 4, 5, 6, 11, 14, 15, 16.

International Convention on the Elimination of All Forms of Racial Discrimination (adopted December 21, 1965, entered into force January 4, 1969) See articles 1, 2, 4, 5, 6.

International Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (adopted December 10, 1984, entered into force on June 26, 1987) See articles 3, 13, 15.

International Convention on the Rights of the Child (adopted November 20, 1989, entered into force September 2, 1990) See articles 7, 8, 9, 10, 11, 15, 18, 19, 24, 27, 28, 29, 30, 32, 34, 35, 37, 39.

BAN-4
continued

The Proposed Activities Violate the Civil Rights of People Residing in the U.S.

The SEA does a curious explanation of who resides in Cochise County. The implications of this misrepresentation are explained in the Environmental Justice section below.

The EA is misleading in its portrayal of the racial composition and identity of the communities within the Douglas-Naco corridor. The report refers to 2000 Census data for Cochise County (Section 3.13.1 Population, p3-55-56) and states that the County is 76% Caucasian. However, in the previous paragraph, the report notes that Douglas is the only city within Douglas Station's AO and Naco as the only city in the Naco Station's AO. Why does the report use Census data for all of Cochise County that clearly does not accurately reflect the majority Hispanic or Latino populations of Naco and Douglas. From our own research of Census 2000 data, we found that Douglas reported a 86 % Hispanic or Latino population and Naco reported an 82.5% Hispanic or Latino population. The SEA's use of Cochise County population is skewed by the inclusion of Sierra Vista and Fort Huachuca.

BAN-5

There is also considerable discrepancy on this issue throughout the report. On page 3-56 it is claimed that Cochise County is mainly Caucasian (76%). Later, in the section on Environmental Justice (p4-34), that number has increased to 90% Caucasians. Interestingly, in section 5.10 (p5-8) it states that "because over 50% of the affected area is comprised of minorities, the population affected by the proposed action is considered a minority population." So which is it? Are there other population studies that aren't being cited? Perhaps more importantly, why is the agency trying to downplay the existence and prevalence of Hispanics and Latinos that live in the communities that are most affected by border enforcement activities?

In another curious downplaying of the Hispanic and Latino populations in Cochise County, the report states: "The town of Naco is mainly comprised of Caucasians (63%)

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and African-Americans (0.5%). The remaining 36.5% claims some other race, with a small portion split among Asian and Pacific Islanders and Native Americans." (p3-56) Does this mean that African-Americans are the second largest racial category in Naco at 0.5%? Does this mean that the 36.5% of undefined others consist of populations that are less than 0.5%? Why is there no mention of Hispanics or Latino populations for Naco?

BAN-5
continued

Environmental Justice Impacts to Border Communities is Insufficient

As stated in section 4.14, Executive Order 12898 requires federal agencies to identify and address, as appropriate, disproportionate adverse effects of its proposed actions on minority populations and low-income communities. Regardless of the report's inconsistent and misrepresentative portrayal of the size of the minority population in Douglas and Naco, the report fails to address the disproportionate impact that preferred alternative and other alternatives would have on the Hispanic and Latino populations in Douglas and Naco.

Border Action Network's membership is mostly Hispanic families that live within the Naco-Douglas corridor. Hispanic and Latino community members report incidents of civil rights violations by Border Patrol. Residents describe being stopped and questioned without cause and that agents ask intrusive and inappropriate questions. Many residents talk about their fear of their children being hit while playing in their neighborhoods by an agent's speeding vehicle. Others talk about the dust plumes created by agents speeding vehicles that exacerbate the already elevated occurrences of asthma and other respiratory illnesses. Others have family members or neighbors who have been fired upon by Border Patrol agents.

BAN-6

These incidents are not isolated occurrences, nor are they the result of merely one or two "bad apples" within the agency. Rather, there is a climate within the USBP that tolerates abuse of power against the mostly Latino and Hispanic residents of the Arizona border. Furthermore, agents' reliance on racial profiles results in indiscriminate rights violations of legal residents and citizens based solely upon their appearance. The activities proposed in the SEA will increase the presence of Border Patrol agents and the interactions of agents with residents. This causes disproportionate adverse impacts in these communities that are majority Hispanic or Latino. The SEA has not mention of these impacts, nor is there any discussion of ways to prevent, avoid or mitigate these adverse impacts.

Cultural Resources Section is Inadequate. No Native American Consultation or Notification.

The Cultural Resources section of the SEA makes no mention of whether Native American Tribes have been consulted. Cultural Resources is a category much broader than merely what is eligible for the National Register of Historic Places. Traditional Cultural Properties, for example, should also be considered in this section. TCPs include areas of past and present cultural and spiritual significance to Native American tribes. These sites may or may not have individual distinction and subsequently could not found by archeological consulting firms.

BAN-7

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That no Native American tribes were notified or consulted with calls into question whether adequate or sufficient analyses of the impacts to cultural resources have been completed. Table 1-1 lists the Native American Graves Protection and Repatriation Act, the Indian Sacred Sites Executive Order, Consultation and Coordination with Indian Tribal Governments E.O. and the Government-to-Government Relations with Native American Governments memorandum. However, we could not find any mention in the SEA as to how these federal statutes, executive orders and memorandums were being complied with. Given the rich and diverse history and contemporary use of the borderlands by several Native American groups, notification and consultation should be an important step completed *prior* to the release of the draft SEA.

BAN-7

In the SEA discussion of cultural resource investigations (p3-41 and 3-42) it is not clear whether the scope of previous and current investigations reflects the same lands that will potentially be impacted by the proposed activities. The SEA also fails to explain how determination was made that 10 of the 23 recorded archeological sites were found not to be eligible for listing in the NRHP.

Purpose and Need are not sufficiently explained

The SEA begins with a description of the USBP Organization and Authority. P 1-7 reads:

“Following the terrorist attacks on US soil on September 11, 2001, the US Attorney General emphasized the need to prevent terrorism... The deployment of operations, infrastructure and technology strategies along the US-Mexico border are... the USBP’s efforts to deter and prevent terrorists from entering the US.”

Drawing a comparison between the migration of workers and reunification of families to terrorists is a gross misrepresentation of the reality of migration. People who had legally entered the US and overstayed visas did the September 11th attacks. It is ridiculous to assume that terrorist plots will begin with a four-day trek through the scorching Arizona desert. The USBP’s attempt to link the two issues merely serves to stir up fear and insecurity.

Pg 1-19 “In response to these manpower increases UDA traffic has decreased, yet remain at unacceptable levels. ” What is an acceptable level? Have the numbers decreased or have migration routes simply been shifted to different sectors?

BAN-8

Pg. 1-19 Describes perceived social and economic costs of undocumented immigration and drug trafficking. However, the EA does not examine the costs associated with the proposed infrastructure. Without a cost analysis of the proposed activities and alternatives, how are we to determine whether this is the cost beneficial alternative?

BAN-9

Pg. 1-20 Describes how migration has “trampled vegetation and left litter and human excrement in an area that extends from...Guadalupe Canyon...to Coronado National Memorial south of Sierra Vista.” It is disingenuous to portray the impacts of migration

BAN-10

through fragile desert areas as a *need*, when in fact it has been an intentional USBP strategy to push migration routes away from the urban areas and into these same desert regions. How can the USBP claim that the intentional by-product of earlier border enforcement strategies is now being used as a need? As noted in more depth below, this example also illustrates the USBP's failure to offer solid analysis of cumulative as well as indirect impacts of proposed activities.

BAN-10

Pg. 1-21 EA states that there has been a 19% increase in drug seizures from 1998-1999. However, this statement does not indicate where the seizures have happened. The Drug Enforcement Agency reporting suggests that 80% of drug seizures happens at legal ports of entry (Latin American Working Group summary of DEA reports). If 80% of drugs are coming through the ports of entry, it is not clear why such significant technology, operations and deployment strategies are being placed in between the ports of entry in the name of seizing drugs.

BAN-11

The next statement in the SEA is a statistic regarding the value and number of seizures along the southwestern border. The report states 95 % of seizures and drug value are made by the USBP's efforts on the southwestern border (p. 1-21). Again, if this is meant to justify the need for the proposed infrastructure, the EA should put forward stronger statistics and arguments. USBP places over 80% of its resources on the southwestern border, so it is not surprising that 95% of their seizures would occur on the southwestern border. This is not sufficient justification for the extent of infrastructure proposed in the EA.

Insufficient Efforts for Public Involvement

Border Action Network (as SWARM) has expressed interest and stake in activities proposed along the Arizona-Mexico border since 2000. It is surprising, given our past submission of comments on other proposals, that we were not notified of the public scoping meetings held in November 2002 in Naco and Douglas. The EA notes that only one person commented at the Naco hearing and no one even attended the Douglas hearing. This obviously begs the question as to whether sufficient public notification occurred.

The Census 2000 data reveals that 83.7% of Naco residents report speaking a language other than English. Thirty-three percent report speaking English less than "very well." Douglas census figures are similar: 79.8% report speaking a language other than English and 32.6% report speaking English less than "very well." In both cities, Spanish is the primary language for one-third of the cities' residents. It would therefore be reasonable to expect that for adequate public notification, the public notices should have been posted in English and Spanish. Furthermore, the SEA should be made available in English as well as Spanish.

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Proposed Activities Violate the National Environmental Policy Act and Ignore Endangered Species Protections

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Background

Section 102(2) of NEPA contains action-forcing provisions, aimed at fulfilling NEPA's intent, that require all federal agencies, in this case the INS, to prepare an environmental impact statement for "major Federal actions significantly affecting the quality of the human environment" that includes "the environmental impact of the proposed action," "any adverse environmental effects which cannot be avoided," and "alternatives to the proposed action." 42 U.S.C. § 4332(2)(C). An Environmental Assessment aids the agency's compliance with NEPA, but still must evaluate alternatives and the environmental impacts of the proposed action and alternatives. 40 C.F.R. § 1508.9.

Inadequate consideration of alternatives

CEQ regulations call on the INS to "[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated," "[d]evote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits," "[i]nclude the alternative of no action," and "[i]nclude appropriate mitigation measures not already included in the proposed action or alternatives." Id. § 1502.14 (emphasis added).

First, the No Action Alternative does not meet the definition of a No Action alternative; it is more appropriately named "Current Action Alternative" (as done in the 2000 FEA). No Action is the 'status quo': no change from the current level of management intensity and proposed project(s) do not go forward. See Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18026, 18027 (1981). The No Action Alternative should not include the infrastructure included in Table 2-1, but should include only infrastructure currently in place and infrastructure that has completed NEPA review – just as it was in the 2000 FEA.

BAN-13

Without a true No Action Alternative, there is no description of the environmental baseline against which to measure the alternatives. Fundamentally, there is no assessment of the existing border infrastructure, rendering it impossible for both the BP and the reader to evaluate the effectiveness or the impacts of the alternatives, the environmental impacts, or the appropriateness of tiering.

Second, no Alternative describes ongoing or proposed operations. We recommend INS reveal its operations for these alternatives - e.g., ongoing/proposed frequency and timing of patrolling of roads, of maintenance of roads; ongoing/proposed number of agents, vehicles, boats; the frequency, timing and duration of ground patrols; ongoing/proposed use (frequency, timing and duration) of vehicles or boats - so that the reader and the INS may honestly rate the alternatives and determine their impacts.

BAN-14

Relation to Draft Programmatic EIS for Arizona border

The Draft Programmatic EIS (DPEIS) for Border Patrol Activities within the Tucson and Yuma Sectors (October 2002) purportedly addresses "known or reasonably foreseeable infrastructure projects." (DPEIS at iii.) Furthermore, the BP completed a Border

Infrastructure Reference Document (BIRD) for the Tucson Sector in 2002 which is the cornerstone for infrastructure needs in the sector and the basis of the infrastructure proposed in the Preferred Alternative of the DPEIS. (DPEIS at 2-26.) Yet the SEA's alternatives bear little relation to those in the DPEIS – what exactly does the BP plan for the Naco and Douglas stations?

There are actions proposed in the SEA that are not proposed in the 2002 DPEIS^[1].

- 6.5 steel landing mat fence in Naco
- 3.25 (Table 2-1) plus 8.2 (Table 2-3) miles vehicle barrier in Naco
- 73 portable generator lights in Douglas^[2]
- 7.5 miles landing mat fence in Douglas
- 8 (Table 2-1) plus 6 (Table 2-3) miles stadium style lights in Douglas

There are actions proposed in the 2002 DPEIS but it is unclear whether they include those proposed in the SEA.

- Do the 29 miles of stadium style lights proposed in Naco in DPEIS Table 2-4 include the 3 miles in SEA Table 2-1 or the 7 miles in Table 2-3?
- Do the 11 or 10 RVS sites in Douglas in DPEIS Table 2-4/Fig 2-XX include the 9 RVS sites in SEA Table 2-1?
- Does the upgrade of 23 miles of border road in Douglas to all weather surface in Table 2-4 include the 25 miles in SEA Table 2-1?
- 22.4 miles of primary pedestrian fence (SEA Table 2-3) in the 52 miles in Table 2-4
- 18 miles of secondary pedestrian fence (SEA Table 2-3) in the 53 miles in Table 2-4
- Ditto for all weather primary patrol roads, all weather maintenance roads, and drag roads

There are activities supposedly completed in Naco and Douglas stations (No Action Alternative, 2000 FEA) that are not reflected in the existing infrastructure Table 2-1 of the 2002 DPEIS.

- D-4 & D-4(a) (Table 4-1, 2000 FEA) installed 5 miles of stadium lights, while only 3 miles show up in Table 2-1, 2002 DPEIS.

There are activities that have been completed or are under construction (and have undergone NEPA compliance, see SEA Table 2-1) but it is unclear/unlikely that they are included in the existing infrastructure in Table 2-1 (DPEIS).

- 2.5 miles steel landing mat fence in Naco
- 7-8 RVS sites in Douglas

In toto, due to contradictory documents that do not tier to a logical point – the PEIS, when final – it is impossible to understand (1) the baseline -- what BP has already constructed and where, (2) the alternatives -- what precisely BP proposes, (3) the site specific environmental effects -- what impacts will occur in light of the baseline and the alternatives; (4) the cumulative effects -- what impacts will occur in light of the sum of BP's activities, and (5) what is covered in what document.

BAN-15

With diverging portrayals of the existing infrastructure and proposed infrastructure, whether in one or many stations, the reader cannot assess the environmental effects, particularly the cumulative impacts. If the DHS cannot keep consistent its proposed infrastructure, the BIRD is of little value. If DHS cannot include its own reasonably foreseeable actions, then the cumulative impacts analysis is wholly incorrect.

Inadequate Consideration of Environmental Consequences

The environmental consequences section "forms the scientific and analytic basis" for the comparison of alternatives. 40 C.F.R. § 1502.16. This section discusses the direct and indirect effects of the alternatives, the significance of the environmental effects, and the means to mitigate adverse impacts. *Id.* Direct effects are caused by the action and occur at the same time and place, *id.* § 1508.8, and indirect effects are "caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." *Id.*

As an essential element of this analysis, NEPA's implementing regulations also require agencies to thoroughly examine and assess the cumulative impacts of their activities – *i.e.*, "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency ... or person undertakes such other actions." 40 C.F.R. § 1508.7.

Direct Impacts to Threatened and Endangered Species and Other Wildlife Is Incomplete

Under NEPA, "conclusory remarks [and] statements that do not equip a decisionmaker to make an informed decision about alternative courses of action, or a court to review the Secretary's reasoning" is insufficient. *Natural Resources Defense Council v. Hodel*, 865 F.2d 288, 298 (D.C. Cir. 1988). This is exactly the type of Environmental Impacts analysis (Section 4) that DHS has presented in this SEA.

Specifically, an EA must analyze the nature and severity of the environmental impacts. See 40 C.F.R. § 1502.16(a), (b) (environmental consequences shall include discussions of "effects and their significance"). DHS has not done this, but instead has listed activities that may affect or have the potential for adverse impacts, but does not analyze the type or extent of the adverse impact, for itself or for the reader. See *Defenders of Wildlife v. Babbitt*, 130 F.Supp. 121, 138 (D.D.C. 2001) (holding an EIS insufficient because it stated that noise would increase and pronghorn and their habitat would be disturbed, there was no analysis of the nature and extent of the impacts on the pronghorn) (citing *NRDC v. Hodel*, 865 F.2d at 299). "There must be an analysis of the status of the environmental baseline given the listed impacts, not simply a recitation of the activities of the agencies." *Id.* at 128.

Mainly as a result of this problem, the SEA lacks any conclusions of 'significant impact' or 'no significant impact.' See *e.g.*, Sec. 4.9 (Protected Species and Critical Habitat). This is not surprising, given the lack of information and analysis regarding impacts to endangered species and other natural resources. The absence of rigorous analysis robs

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the impacts assessment of any reliability – the discussion on wildlife impacts (Sec. 4.6) is illustrative and, undoubtedly, not unique.

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The SEA's conclusions that the potential loss of wildlife habitat will approximate 24 acres under the No Action Alternative (no determination of significance), and about 526 acres under the Preferred Alternative (determined not to be significant) (4-13) are completely false. By simply checking Table 4-1 of the 2000 FEA, one can see that just one component of the No Action alternative will impact 242.60 acres^[3] and all No Action alternative infrastructure will impact about 737.75 acres – more than 700 acres above what the No Action Alternative is supposed to impact (and more than 200 acres greater than the Preferred Alternative). An EIS or EA must contain a "reasonably thorough discussion of the significant aspects of probable environmental consequences" and courts ensure that the agency took a "hard look." *Neighbors of Cuddy Mountain v. USFS*, 137 F.3d 1372, 1376 (9th Cir. 1998) (citing *Or. Natural Res. Council v. Lowe*, 109 F.3d 521, 526 (9th Cir. 1997). DHS cannot, and has not, justified the removal of hundreds of impacted acres; habitat fragmentation and loss due to habitat made inaccessible and unsuitable by border infrastructure is a significant problem. By blatantly ignoring the FEA which this SEA is supplementing, DHS has clearly not taken a hard look at the environmental consequences, nor has the agency been reasonably thorough.

BAN-18

Throughout the SEA, DHS notes that habitat will be impacted, yet the reader does not know how. The reader, and the DHS, need to know what "affected" or "impacted" means and analyze the impacts to the resource. Is the resource destroyed or damaged? Is vegetation ripped up? Is wildlife habitat restricted, blockaded, illuminated?

DHS must revise Section 4 so that for each resource, the reader and the DHS are aware of the nature and extent of the impacts, i.e. reduced breeding habitat, loss of migratory corridors, etc. DHS must also, because it has failed to do so here, consider that impact in the context of the baseline and the impacted resource. 40 C.F.R. § 1508.27. Impacts to endangered species are held to a different standard. 40 C.F.R. § 1508.27(b)(9). Only then can INS conclude whether impacts are or are not significant. There are several potentially severe negative impacts to threatened and endangered species that would result from the implementation of the proposed action. The most severe direct impacts include disruption of migration patterns of endangered cross-border species such as the jaguar, ocelot and jaguarundi and harassment of endangered nocturnal species, including the lesser long-nosed bat LIGHTS.

First, the SEA has completely omitted any discussion of impacts to the jaguar, jaguarundi and ocelot. Any reasonable assessment of adverse impacts of the No Action and Preferred Alternative on these very reclusive and largely nocturnal creatures must be studied. For example, the proposed infrastructure may impede migratory routes and prevent access of the jaguar to the northern tip of its historical range. The Fish and Wildlife Service has already raised this concern with specific regard to the area adjacent to the Coronado National Memorial. In a May 1999 review of the Joint Task Force-6 (JTF-6) activities the Service said, "The entire border area east of the memorial

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extending to the San Pedro River is the last relatively undeveloped corridor connecting the river and the Huachuca Mountains not bisected by roads and other high traffic uses . . . It is thought that Jaguars may occasionally use this area."

It is believed that ocelot and jaguarundi populations north of the border are replenished by individuals from northern Mexico. Similarly, there have been several documented sightings of jaguars in the U.S. near the border area, indicating that the cats are using cross-border wildlife corridors to utilize the northern edge of their range. Fences and high intensity lights could very well impede this replenishment and contribute to the further decline of U.S. populations of these species. Habitat fragmentation is of particular concern because impeding the cross-border movements of animals may interfere with species recovery efforts on both sides of the border.

BAN-19

Inadequate Consideration of Indirect Impacts

As with the consideration of direct impacts, there seems to have been very little consideration of indirect impacts that will result from this proposed project. For example, by moving migrant foot traffic out of the Naco corridor, it could redirect this traffic into more environmentally sensitive areas, such as the nearby San Pedro National Resource Conservation Area and Coronado National Forest, thereby threatening the resources there. Simply saying that indirect impacts could happen, without description of what the effects might be, is not at all useful in determining the significance of the impacts.

BAN-20

Inadequate Analysis of Cumulative Impacts

DHS (as INS) has previously estimated that the No Action, together with the baseline, impacts about 2,050 acres of wildlife habitat on the U.S. side of the border by the construction of miles of roads, fences, and vehicle barriers and the installation of hundreds of lights. Yet, there has been no meaningful analysis of the cumulative impacts these and all other past, present and future DHS projects will have on the wildlife dependant on the border region for survival. Furthermore, there is virtually no discussion of the cumulative impacts of all actions in the area, regardless of who undertakes the action.

BAN-21

An EIS must "catalogue adequately the relevant past projects in the area." *City of Carmel-by-the-Sea v. U.S. Dep't. of Trans.*, 123 F.3d 1142, 1160 (9th Cir. 1997). It must also include a "useful analysis of the cumulative impacts of past, present and future projects." *Id.* This requires "discussion of how [future] projects together with the proposed . . . project will affect [the environment]." *Id.* The EIS must analyze the combined effects of the actions in sufficient detail to be "useful to the decisionmaker in deciding whether, or how, to alter the program to lessen cumulative impacts." *Id.* at 1160 (internal citations omitted). "Detail is therefore required in describing the cumulative effects of a proposed action with other proposed actions." *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 810 (9th Cir. 1999). See *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1379 (9th Cir. 1998); *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214-15 (9th Cir. 1998).

DHS has hindered its own and the public's ability to accurately assess the significance of the impact of this proposed action, and thus the need for an EIS. *See id.* §§ 1500.1(b), 1508.9(a)(1) (an EA should "provide sufficient evidence and analysis" for determining whether an EIS or FONSI is appropriate). "Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment." 40 C.F.R. § 1508.27(b)(7). DHS may not select its preferred alternative until all cumulative impacts are identified, assessed and recirculated for public comment.

BAN-22

This SEA purports to address impacts of BP and other entities' projects (4-40) yet only briefly mentions those of ADOT (4-41).^[4] There are undoubtedly more entities incurring additional impacts along the 50 miles of border in the action area. Cumulative effects analysis must include consideration of all actions, "regardless of what agency or person" undertakes such action. Therefore, a proper analysis would have addressed a wide variety of activities affecting the environment, including, but not limited to, past and present mining, domestic livestock grazing, urban growth in nearby areas, and Joint Task Force-6 activities. Neither the 2000 FEA nor this SEA contains discussion of such activities or the impact these and other activities might have cumulatively on the natural resources in the area. Because the 2000 FEA failed to provide quantified and detailed information regarding such impacts, the present SEA must consider the site-specific direct, indirect and cumulative impacts. It has also failed to do so and thus fails to comply with NEPA.

BAN-23

For example, numerous parties have noted the lack of consideration given to the adverse impacts of INS activities on wildlife corridors for cross-border migratory species such as the jaguar, ocelot and jaguarundi. Not only is such analysis missing from the environmental consequences section, but also from the cumulative impacts section. If INS were to evaluate the impacts of its activities on the ability of migratory species to cross the border – such as the miles of border road, fencing and lights that BP has constructed in the Naco corridor alone – in addition to that of all other entities operating in the region, including but not limited to state and local roads, residential and industrial growth, and farming and ranching, the impacts would almost certainly be deemed 'significant.'

Tiering Is Not Appropriate

Neither the Preferred Alternative nor the Full Build Out Alternative can legitimately tier to the 2000 FEA because each proposes activities wholly not considered in the earlier document. As NEPA regulations clearly state:

"Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action." 40 C.F.R. § 1502.20 (emphasis added).

BAN-24

Only the No Action Alternative is composed of activities considered in the 2000 FEA, and only activities within the No Action Alternative may tier to the 2000 FEA. The analyses for the Preferred and Full Build Out Alternatives can not rely on the 2000 FEA in any way.^[5]

Inadequate Mitigation Measures for Proposed Action

In addition to the adverse effects, INS must discuss mitigation measures; it is implicit in NEPA's command and the CEQ's regulations. The omission of reasonably complete discussion of mitigation measures would undermine NEPA's action forcing functions. Without such, interested parties cannot properly evaluate the severity of adverse impacts. Roberston v. Methow Valley Citizens Council, 490 U.S. 332 (1989).

Mitigation measures must cover the range of impacts of the proposal and must include such things as design alternatives, possible land use controls and other possible efforts. "Once the proposal itself is considered as a whole to have significant effects, all of its specific effects on the environment (whether or not "significant") must be considered, and mitigation measures must be developed where it is feasible to do so." Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 46 Fed. Reg. 18026 (March 23, 1981). See also 40 C.F.R. §§ 1502.14(f), 1502.16(h), 1508.14. DHS must propose alternatives that decrease construction impacts, esthetic intrusion, habitat destruction, adverse impact on endangered species and human presence/interference.

When developing alternatives and mitigation measures, DHS should keep the following priorities in mind: a) avoid the impact by not taking the action; b) minimize the impact by limiting the action; c) rectify the impact by rehabilitation; d) reduce the impact by maintenance; and e) compensate for the impact by replacement. 40 C.F.R. § 1508.20. Avoidance is the preferable course of action because a project such as placing high-intensity lights along the border can have numerous direct, indirect and cumulative impacts.

By failing to analyze and quantify the full extent of its adverse impacts, DHS has underestimated the significance of the agency's impact on the environment. Therefore, in addition to performing a cumulative impacts analysis that reveals the full range of impacts, BP must identify research and monitoring programs in order to improve future analyses of the environmental impacts of their actions, and specify the responsible party and when (or by when) these programs will be implemented. Where uncertainties exist, adaptive management allowing for flexible project implementation should be part of the preferred alternative. See Considering Cumulative Impacts Under NEPA (CEQ 1997) at 3. In this situation, Section 5 of the EA contains no provisions for monitoring threatened and endangered species to detect adverse reactions to 10 miles of lighting, nor does it allow for changes in the placement, direction or style of lighting if listed species were adversely impacted.

Lastly, Section 5 cannot pass for mitigation simply due to the pervasive use of the subjunctive mood ("mitigation measure would require a specialized conservation plan" at 5-4; "potential measures and conceptual plans would be analyzed by USBP for

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suitability to mitigate" at 5-4). These statements do not rise to the level of commitments, and are certainly not incorporated into the proposed action. The DHS must revise its alternatives to include operational modifications that could be implemented to minimize impacts, and any explanations as to (1) why or why not they are feasible, (2) whether they are sometimes feasible, and (3) that BP will implement them when feasible. BP should not postpone incorporation of unspecified mitigation measures until some unspecified later date to be developed some unspecified entity.

BAN-26

Endangered Species Act Compliance

The Endangered Species Act (ESA) requires that "[e]ach federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species . . ." 16 U.S.C. § 1536(a)(2). Until consultation is complete, at which time the Fish and Wildlife Service (FWS) issues a biological opinion detailing the agency's impacts on the species, the agency may not 'take' listed species or take actions that might foreclose alternatives less harmful to the species. *Id.* §§ 1538, 1536(d). The Tucson sector is currently operating without a biological opinion, and has been for some time, and is in violation of the ESA. Because BP has not even initiated consultation with the FWS, which it must do immediately, BP's assertions that "[n]o protected species would be directly impacted" (4-20) and that "[n]o threatened or endangered species or critical habitat have been affected" (4-42) by the No Action alternative are groundless. Likewise, its credibility in assuring that significant impacts from future actions of the Preferred Alternative will be mitigated via Section 7 consultation is negligible (4-20 & 5-5), given BP's delay in initiating consultation.

BAN-27

We thank you in advance for your careful consideration of our comments. Please do not hesitate to contact us with any questions.

Sincerely,


Jennifer Allen,
Director

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Border Action Network
June 30, 2003

Comment Resolution

- BAN-1** Section 1.4, the SEA discusses all applicable environmental statutes and regulations that must be followed.
- BAN-2** Impacts of the Proposed Action are discussed in detail in Chapter 4 of the SEA. The purpose of the Proposed Action is to increase the deterrence rate in the Naco and Douglas areas, therefore decreasing interactions between IAs and USBP agents. However, the Proposed Action would also increase detection rate of those IAs who may attempt to enter the U.S., thus increasing the apprehension rate of IAs in these stations. IAs apprehended by USBP agents would be processed within the guidelines of the USBP policies.
- BAN-3** It is legal for migrants to work in the U.S. however, illegal immigrants have no rights to work, receive social benefits, or an education in the U.S. The focus of this SEA is on the potential impacts caused by the Proposed Action. The DHS disagrees with your allegation that USBP discriminates against persons due to their race, religion, economic standing, or appearance. Also, Section 4.14 of this SEA discusses environmental justice issues as related to the Proposed Action.
- BAN-4** The purpose of this SEA was not to discuss changes in immigration policies or laws. The focus of this document was to discuss potential impacts of the Proposed Action, which was to deter and detect illegal migration into the U.S. The DHS disagrees with your allegation that USBP discriminates against persons due to their race. The DHS recognizes and encourages legal migration into the U.S.
- BAN-5** Section 3.13 of the SEA discusses Hispanic and Latino populations according to NEPA requirements.
- BAN-6** The DHS disagrees with your allegation that USBP discriminates against persons due to their appearance. Furthermore, many of the USBP agents that work within the Naco and Douglas corridor have Hispanic origin. The DHS feels the proposed project would help protect the citizens of Naco and Douglas from illegal activities.
- BAN-7** The EA will be revised to show that consultation with Native American tribes is an ongoing process. In addition to initial coordination letters, Native American tribes receive draft and final copies of the EA and Cultural Resource Management reports for review. To date, no comments have been received from the Native American tribes.
- Additional information will be added to further explain the cultural resource investigations and findings.
- BAN-8** It is the mission of the USBP to detect and deter illegal immigration from occurring in the U.S. In areas where similar infrastructure has been employed, illegal entries, drug smuggling, and violent crimes have substantially declined. Illegal entrants have complete control over their decision to illegally enter the U.S.
- BAN-9** A cost analysis is not needed to know that with increased infrastructure the amount of

IAs entering the U.S. would decrease, thus reducing the drug smuggling activities, criminal activities, including the cost of apprehension, detention and incarceration of criminals, illegal participation in government programs and increased insurance costs, all of which burden U.S. citizens.

- BAN-10** The USBP does not push or force anyone into any areas. The illegal entrants have complete control over their decision of where they choose to attempt to illegal enter the United States. The USBP recognizes that IAs may alter their illegal entry routes and patterns; however, it is the mission of the USBP to deter illegal immigration and protect the welfare of citizens of the U.S.
- BAN-11** Section 1.2 of the SEA has been revised to further clarify that large amounts of drug seizures occur partially due to the high percentage total of USBP manpower required along the southwestern border.
- BAN-12** An ad was placed in both the Douglas Dispatch and the Tucson Citizen newspapers, which gave the date and location of the public scoping meeting. The Council on Environmental Quality does not require translation of an EA to other languages.
- BAN-13** Under the No Action Alternative, no new the DHS projects would take place within the Naco Douglas area. Projects analyzed by the 2000 Corridor EA would continue to be implemented as needed. These projects have been approved and do not constitute a change beyond current levels of operation.
- BAN-14** Ongoing and future projects within the Naco and Douglas corridor, as listed in Tables 2-1 and 2-2 of this SEA have been previous approved under the 2000 Corridor EA.
- BAN-15** The USBP acknowledges the comment, however the comment refers to the October 2002 DPEIS. This document is currently undergoing a revision that refocuses the PEIS to its original intent of addressing operations. Also, this Section of the SEA will be revised to clearly define the project components under each alternative. It should be noted that the SEA tiers from the INS/JTF-6 2001 SPEIS for infrastructure across the southwest border.
- BAN-16** Section 4.17 of this SEA discusses all past, present, and future cumulative impacts of this project.
- BAN-17** The DHS is in the process of tasking a biological assessment in order to obtain a biological opinion under formal consultation with USFWS. During this assessment all potentially affected species will be identified.
- BAN-18** Chapter 4 of this SEA gives very detailed descriptions of the impacts caused by the No Action, Preferred Action, and Full Build Out Alternatives.

- BAN-19** There has only been one jaguar sighting in the past 3 years near Nogales, approximately 50 miles to the west of the project corridor. Prior the last confirmed sighting occurred in 1986. There are no documented sightings for ocelot, or jaguarundi. The DHS would be glad to participate in the JAC-CT.
- BAN-20** The DHS designed the preferred actions specifically to minimize impacts to sensitive areas, such as the San Pedro National Conservation Area, the Coronado National Memorial, and Coronado National Forest. The USBP plans to improve single road access and vehicle barriers instead of fences and other major road construction in these areas. These designs would be used since the Coronado National Memorial and the Huachuca Mountains serve as a physical barrier. Indirect impacts are adequately explained in all of the subsections of Section 4.
- BAN-21** Cumulative impacts are presented in Section 14.17 of the Draft SEA. However discussions will be reviewed in the final SEA to included further investigation of all past, on-going, and reasonably foreseeable future projects that can be obtained by the NEPA team.
- BAN-22** The DHS respectfully disagrees. See response BAN-21, above.
- BAN-23** The project area is located largely in a remote area of Cochise County Arizona. The DHS acknowledges that the county as well as the town of Naco and the City of Douglas, may at any time make future development plans known. The DHS will continue to attempt to identify future project plans. These plans, if identified, will be included in the final SEA.
- BAN-24** The SEA is not tiered from the 2000 FEA, rather it supplements to the 2000 FEA. The 2000 FEA identified possible border infrastructure that may be constructed within the foreseeable future. Furthermore, it identified a project area that existed along the border in the Naco-Douglas corridor.
- BAN-25** The comment was acknowledged, however the DHS disagrees. The alternatives in the SEA are specifically designed to reduce such impacts.
- BAN-26** The DHS is not required to mitigate for upland habitat that is not occupied by or designated as critical habitat for Federally protected species. Any impacts to jurisdictional wetlands would be mitigated as required. A Section 404 of the CWA will be initiated. Section 5 provides measures that would be implemented to mitigate (i.e. reduce) adverse impacts. Conservation measures to be implemented specifically for the species would be coordinated with the Section 7 consultation process.
- BAN-27** The DHS contacted the USFWS regarding Section 7 consultation prior to the release of the Draft SEA. Construction within areas that are occupied by or designated, as critical habitat would not be initiated prior to completion of this consultation. The USBP and USFWS are currently in consultation for all operations within the Tucson and Yuma sectors.

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