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May 14, 2020

U.S. Customs and Border Protection
U.S. Border Patrol Headquarters
U.S. Border Patrol Headquarters
1300 Pennsylvania Avenue, 6.5E Mail Stop 1039
Washington DC 20229-1100
YumaComments@cbp.dhs.gov

Re: Comments Regarding "Yuma Border Barrier Projects March 2020" and the Area on and near the West Cocopah Reservation

To Whom it May Concern:

I. Introduction

Our office represents the Cocopah Indian Tribe ("Cocopah" or "Tribe"), a federally recognized Indian Tribe, and we provide this response to the Federal Register publication of a request for comments regarding the Customs and Border Protection ("CBP") Yuma Border Barrier Projects March 2020. Cocopah is disappointed that the Tribe was not provided any direct communication from CBP, Department of Homeland Security ("DHS"), or any other agency of the federal government regarding a proposal to place a portion of the CBP border wall across the West Cocopah Reservation. Such silence and surreptitious publication of the current Yuma Border Wall proposal is not indicative of a desire for a constructive and cooperative relationship between the two governmental entities. In order to gain additional information regarding this proposed CBP project, on April 2, 2020 the Tribe submitted a Freedom of Information Act ("FOIA") request to DHS and CBP to gain the documents surrounding the project proposed on the West Reservation; however, the DHS indicated an inability to respond to our request until May 27, 2020 (after the deadline for comments). Accordingly, Cocopah reserves the right to supplement these comments following the FOIA response from the DHS.

As noted below, Cocopah has previously provided CBP significant concerns regarding the presence of a constructed barrier on the West Cocopah Reservation preventing access to the

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Colorado River, and the significant harm that would occur to the Tribal Community as a result of such activity. These concerns remain and cannot be overstated.

Cocopah has sought a cooperative relationship with CBP and its mission, notwithstanding the extraordinary impact that CBP has had on the West Cocopah Reservation and on the Cocopah people. When the CBP sought improved access to the West Cocopah Reservation in 2008 and the construction of a barrier to vehicular crossings, Cocopah informally cooperated with CBP by allowing the improvement of a CBP patrol road and the placement of a “Normandy Fence” along the west portion of that road. This cooperation was part of a governmental discretionary allowance and at the time, Cocopah demanded no compensation for the activity. During the discussions regarding CBP’s desire to create a barrier to transit on the West Reservation, the Cocopah representatives were very clear that regular access to the Colorado River was integral to the Tribe’s culture, community and way of life. Removal of that access would not be considered by the Tribe. This position has not changed.

While the Cocopah Tribe has not been provided any recent proposal for a CBP project on the West Cocopah Reservation, the graphic materials accompanying the federal register notice regarding the Yuma Border Barrier Projects included a verbal description of “replacing approximately seven (7) miles of existing vehicle barrier with new steel bollard fencing. . .” and a graphic depiction showing a 6.8 mile length of “New Border Barrier.” It appears that these references are to the West Cocopah Reservation; however, neither depiction acknowledges that this section of the proposed border barrier occurs on the West Cocopah Reservation and would sever approximately one-third of the acreage of the West Cocopah Reservation from the Cocopah Tribal Community, altering the configuration of the congressionally established reservation. The federal government has not consulted with the Cocopah Tribe regarding this proposed project, or even communicated with the Tribal Government regarding the proposal for a project across its sovereign land. As noted below, any proposal to alter the configuration of the West Cocopah Reservation or to conduct a project such as that apparently proposed in the Federal Register notice can only be conducted by permission of the Cocopah Tribal Government or specific congressional act. Neither action has occurred and **CBP and its contractors and agents are not authorized to take any action on the West Cocopah Reservation** (this includes the recent “inadvertent” incursion at the north end of the West Cocopah reservation which was halted by the Tribe).

II. Cocopah History and Connection to the River



They call themselves “Xawitł Kwñchawaay” -- “People of the River.”

And so it is not surprising that the official seal of the Cocopah Indian Tribe uses that term and depicts a tribal member standing on the bank of the Colorado River spearfishing, with his catch at his feet. As the tribal seal graphically shows, and as Customs and Border Protection must understand, the histories and the future of the lower Colorado delta and the Cocopah people are inextricably linked.

For hundreds, perhaps thousands of years, the Cocopah Indian Tribe has lived along the banks of the Colorado River. As descendants of a traditional Yuman linguistic family, the Cocopah people have occupied lands at the southernmost part of the Colorado River delta since time immemorial. For centuries, the Cocopah People have maintained their traditional cultural beliefs through varying political environments. Throughout that time – up until today – the river has provided the basis for the Tribe’s economic, cultural and spiritual existence.

The first European acknowledgement of Native American use and occupancy of these lands came in 1540, when Hernando de Alarcón left his ship at the head of what is now known as the Gulf of California and took two small boats up the river. There, he encountered large groups of Native people who were first hostile to the Spaniards’ incursion into their territory, but who eventually became friendly and helpful to these explorers. Later, in 1604 and 1605, the first governor of New Mexico, Don Juan de Oñate took an expedition down the river. At that time, the priest accompanying Oñate recorded in his journal that they encountered the “Cocapa,” a group of perhaps 5,000 people actively engaged in fishing on and agriculture along the river. And later still, in the 1770’s, another Spanish priest – Father Francisco Garcés – traveled among the “Cucapa,” as he called them, along the lower Colorado, trying unsuccessfully to find a location to establish a Spanish Mission.

The Cocopah People’s use of and reliance on river resources has always been of economic importance to the Cocopah people. During the last half of the 19th century, steamer vessels traveling to and from Fort Yuma opened important trade routes along the river. Because of their

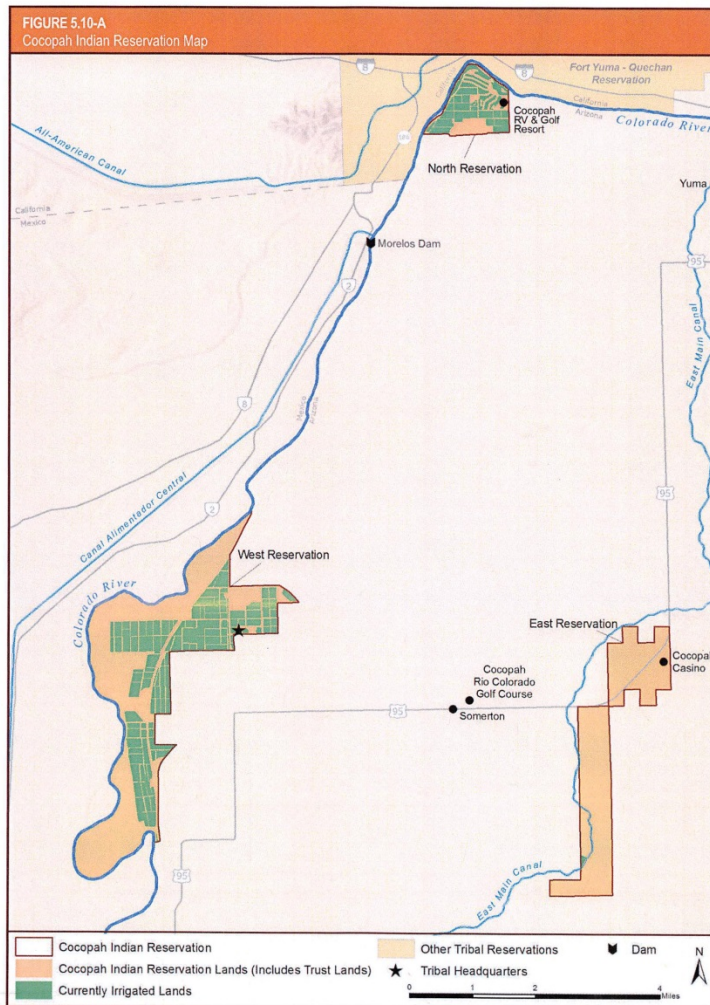
familiarity with the river, Cocopah men often served as pilots and guides on these boats and, between 1858 and 1865, two different steamers carried the name “Cocopah” on their hulls. Yet, throughout this time, the Tribe effectively resisted assimilation and maintained its social, religious and cultural identities.

Finally, in recognition of the Tribe’s aboriginal claim to the lower Colorado River, in 1917 President Woodrow Wilson established the first Cocopah Reservation – now called the West Reservation – along the banks and to the center line of the river south of Yuma, Arizona. The People of the River now had a federally-protected homeland. The extent of the West Cocopah Reservation to the middle of the Colorado River has since been independently confirmed by the Department of Interior and adopted by congressional action.

As recently as the 1960s, a number of tribal families lived in traditional arrow weed-thatched homes along the River. But in the late 1970s and 1980s, the Tribe began acquiring additional land, constructing homes, installing utilities, developing infrastructure and irrigation systems and initiating economic development including extensive agricultural use of the West Reservation. Still, the Cocopah People maintain their reliance on the natural river system.

The natural (non-agricultural) portion of the West Cocopah Reservation remains vital to current Tribal activities, including the nurturing of the few remaining cottonwood, willow and scrubine mesquite populations on the reservation which are vital for materials required in traditional cultural structures and articles and they create the habitat supporting other plants that are used in traditional basketry and other cultural activities. These areas also support a seasonal dove hunting tradition and business. It is not surprising that the Tribe has worked cooperatively with federal agencies to maintain the health of the natural river woodlands. The Tribe is currently in the third year of a 4 year fuel management and river restoration project in the natural river area—The Southern Border Fuels Management Initiative. The Initiative, funded by the Department of Interior, was created in a cooperative effort between the Cocopah Tribe, Bureau of Indian Affairs, and the Department of Homeland Security, Customs and Border Patrol. The project spans approximately 1,359 acres– 36% of the West Reservation’s land mass– and extends along the length of the west portion of the reservation. The project thins invasive brush and woodland that will allow the improved health of culturally important riparian plants and trees, while improving visibility within the river area, assisting CBP’s mission. In addition, the thinning activity will reduce the risk of high-temperature fires which can eliminate culturally important cottonwood, willow and mesquite stands. It also provides fuel control training opportunities for regional fire departments. The restoration area will also be used as a cultural gathering place by both the Cocopah and Quechan tribal communities, providing a source of mesquite wood used in burial rites and the one location the Tribes can connect directly with the river, as these *People of the River* have done since creation.

Colorado River Basin Ten Tribes Partnership Tribal Water Study



5.10-2

Cocopah Indian Tribe

December 2018

See the Disclaimer and Introduction to Chapter 5.0.

Today, approximately 1,000 enrolled Cocopah tribal members live and work in the area, and the Reservation has been expanded to include about 6,500 acres in three non-contiguous locations, as reflected on the attached map. Yet, the West Reservation – the area upon which the federal government now proposes to build a barrier that would separate the Cocopah People from their river – remains the cultural and spiritual heart of the Cocopah homeland. And it is that homeland that the Cocopah Tribe seeks to protect through these comments.

III. Border Wall Impacts to Cocopah Community

During the 2008 discussions with CBP regarding its request for a new border structure on the West Reservation, the Cocopah Tribe provided CBP their significant concerns regarding the presence of a constructed barrier on the West Reservation preventing access to the Colorado River, and the significant harm that would occur to the Tribal Community as a result of such activity. Direct, regular access to the river is critical and nonnegotiable for the Tribe. It is part of their community and self being. In that instance, the Tribe agreed to a vehicle barrier known as the “Normandy Fence” which would maintain accessibility to the River by the Tribal community while preventing vehicular access. The structure has successfully deterred border crossing activity.

The importance of the connection to the river was acknowledged in the original establishment of the West Cocopah Reservation in 1917, stating the Reservation extends to the waters of the Colorado River. This importance was included in numerous documents supporting the 1917 reservation establishment and this intent was confirmed by the Department of Interior in 1972, and codified by Congress in 1985. The creation of a border wall across the West Cocopah Reservation would sever any connection between the Tribal Community and the river and would sever approximately one-third of the acreage of the West Cocopah Reservation from the Cocopah Tribal community. As noted previously, this area, statutorily held in trust for the Cocopah Indians, is critical to the current active uses by the Tribe, and supports the long term cultural and economic base of the Tribe. In addition to the current uses, the Tribe has the ability to expand its agriculture operations westward and has plans for locating Tribal amenities including a new cemetery and mesquite grove area on the lands that would be severed by the wall.

The Cocopah are a binational people with a significant population south of the border. While an international border was created within historically recent times, the Cocopah People of the River arose and existed for thousands of years across the lower river delta. The Cocopah traditional lands and current relatives span the border area and know no country. This is precisely the concern raised in the National Congress of American Indians Resolution #ECWS-17-002, which explained the broad biological, cultural and humanistic impacts arising from a border wall that separates tribal communities. The wall would separate Cocopah’s culturally tied relatives, negating a familial connection that is similar to the barrier created by the Berlin Wall.

The totality of cultural impacts arising from the proposed border wall would be significant and are summarized in the attached document assembled by the Cocopah Cultural Department.

The construction of the wall would also eliminate the Tribe’s involvement in the Southern Border Fuels Management Initiative which will frustrate the larger coalition of cooperating agencies and fire departments, even though one of the partners and beneficiaries is the CBP. The creation of a border wall on the reservation would eliminate the ability to complete the project, and subvert all of intended benefits arising from the project. In addition, the construction of a wall isolating this area from the rest of the Reservation would lead to degradation of the river system by precluding the management of the riparian woodland area. The lack of a management system is what led to the need for the fuel management project, and the system would revert to a degraded state. Moreover, the area would become more likely to be degraded by staged border crossers, who would gather west of the fence, damaging the system with trampling, debris, and potential fires which could not be

controlled from the U.S. side of the border. There is no potential mitigation for this significant biological impact to these areas. It is important to note that extremely constrained presence facilitated by placing limited “gates” along the wall will not remedy these problems.

If ever approved, the involuntary creation of the border wall would decrease the land mass of the West Cocopah Reservation by nearly one third by eliminating reasonable access to these areas. The severance of these areas would also segregate the Tribe from its riparian rights, access to the river, and gathering, hunting and fishing rights. This elimination of Tribal lands would have immediate economic and cultural impacts on the Tribal Community, and significantly curtail its ability to provide for future generations. Diminishing the Tribe’s land base decreases federal and state funding opportunities and provides fewer opportunities for future agricultural, recreational and cultural programs.

The Department of Homeland Security has also not followed its own publicized process for the proposed border wall on the Cocopah Reservation. In its April 26, 2019 DHS Waiver Announcement for this Yuma project, DHS stated that it “has been coordinating and consulting, and intends to continue doing so, with other federal and state resource agencies to ensure that impacts to the environment, wildlife, and cultural and historic artifacts are analyzed and minimized, to the greatest extent possible.” The Tribe is not aware of any of these activities. The CBP further states on its website that:

When operating under waivers authorized by Congress and issued by the Secretary of the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) prepares Environmental Stewardship Plans (ESPs) that summarize the natural and cultural resource surveys conducted during project planning and estimate the potential environmental impacts based on the initial design. During construction, environmental monitors ensure implementation of the Best Management Practices developed and recorded in ESPs and report on any deviations from the Best Management Practices.

Environmental Stewardship Summary Reports (ESSRs) document the final “footprint” of segments constructed under the waiver. These reports incorporate construction changes approved after the ESPs were prepared that may have resulted in changes to the predicted impacts, as well as summarize the results from environmental monitor reports during construction.

Cocopah is not aware of any ESP or ESSR related to the proposed project on the West Cocopah Reservation on the CBP website, and the CBP website states “[i]f no ESSRs are listed for a Sector, this indicates that there are no ESSRs applicable for the Sector.” Clearly, no ESP has been conducted or considered for a project on the West Cocopah Reservation. As a result, it is clear that CBP has not yet investigated or inquired as to the environmental and cultural impacts associated with the proposed border wall on the reservation. Perhaps this is the rationale for the current public notice requesting information (the federal register did not state what, if any document would be prepared in response to the comments received). Nevertheless, Cocopah has learned that there are engineering drawings for the proposed wall across the Reservation and earlier this year, CBP’s contractor entered onto the Reservation and began wall construction onto the Reservation (stopped by Cocopah governmental officials). This provides a strong indication that the current comment period is a futile exercise, and due consideration of the Tribe’s comments is not anticipated.

The DHS Tribal Consultation policy directs the Department to take affirmative steps to solicit and incorporate input from affected Tribal Governments prior to taking actions. Meaningful consideration of Cocopah's comments and engaging in Tribal Consultation is required under the Policy prior to taking any actions that may have Tribal Implications. Seeking to remove one-third of the land mass of the West Cocopah Reservation from the tribe's use is a self-evident "tribal implication." However, to date, no consultation has occurred between DHS and the Cocopah Tribal Council. The CBP should not even consider the prospect of wall construction on the Cocopah Reservation until it has engaged in formal consultation as required by Executive Order 13175 so that CBP can fully understand the Tribe's concerns regarding the CBP's proposed actions. EO 13175 recognizes Indian tribes exercise inherent sovereign powers over their members and territory, and the CBP is obligated to respect those powers. Given the gravity of the potential outcome of the CBP's proposed project, Cocopah requests that immediate consultation between the Cocopah Tribal Council and the DHS at the national level be initiated.

IV. Cocopah Position Regarding the Border Wall on the Reservation

For over a dozen years, the Cocopah Tribal Council has made it clear that it does not accede to the construction of a wall across the West Cocopah Reservation. The issue should stop there, and the federal government should respect that Tribal governmental decision. Unfortunately, the CBP has not done so. Notwithstanding the Tribe's very clear statements that that it will not approve a wall across the reservation, the CBP continues to produce documents showing the wall going across the reservation, including the instant federal register notice. In addition, Cocopah has learned that the Army Corps of Engineers has already developed detailed engineering plans for the construction of the wall across the reservation.

The CBP is not authorized to alter a congressionally created reservation. Congressional power over Tribal lands does not extend so far as to allow the Government to appropriate tribal lands for its own purposes without just compensation (*US v. Sioux Nation*, 448 US 371, 408 (1980)). Congressionally created reservation lands like the West Cocopah reservation may only altered by action of Sovereign government (with approval by the BIA), an act of congress or by an eminent domain action. Such an eminent domain action must be specifically authorized by congress, would include the assessment of the public need for the taking and the private harm to the Tribe from the taking, and must specifically identify all of the property and property rights being taken by the action. No such authorization or assessment has occurred.

In 1907, President Roosevelt reserved from entry and set apart as a public reservation all public lands within 60 feet of the international boundary between the United States and Mexico within the State of California and the Territories of Arizona and New Mexico. Known as the "Roosevelt Reservation," this land withdrawal was found "necessary for the public welfare ... reserved from the operation of the public land laws and *kept free from obstruction* as a protection against the smuggling of goods between the United States and said Republic." (Emphasis added; Proclamation 758, May 27, 1907; 35 Stat. 2136). This proclamation has been cited by CBP in its virtually all of the documents supporting the construction of the Border Wall, but without the benefit of the italicized section regarding these areas being kept free from obstructions. The plain meaning of this proclamation is that it precludes the development of a border wall (an obstruction) within 60 feet of the border to allow for CBP monitoring. This distinction is important because many

borderlands that are defined by waterways necessarily carry with them hunting, fishing and water rights for the border property owner. Keeping the proclamation reservation area free from obstructions would not eliminate these rights; however, the construction of an obstruction (e.g. border wall) would eliminate these rights. There is nothing within the Proclamation that hints to the intention of the federal government to extinguish such rights or to take such property through the exercise of the proclamation.

If the 1907 proclamation is later judged to have included the ability to build a border wall (an interpretation that should require judicial review), the use of the Proclamation must also include the relevant exceptions to the authority. These include excepting all lands “within any withdrawal or reservation for any use or purpose to which this reservation for customs purposes is repugnant.” The taking of up to 1/3 of the land base of a Tribal Reservation which was created specifically to maintain a connection with the Colorado River, and severing the Tribe’s connection with that river, and severing the Tribe’s hunting, fishing and water rights from the Tribal Reservation without any compensation would certainly qualify as a “repugnant.”

It is also unclear whether CBP and the Department of Defense are authorized by Congress to expend funds for the construction of the border wall on the Cocopah Reservation. The money for the Yuma Border Wall Project stems from a \$2.5 billion account that was redirected by the Department of Defense toward border wall construction under 10 U.S.C. 284, a provision that allows the pentagon to build barriers in high drug trafficking areas along the border. However, it is the Tribe’s experience that the West Cocopah Reservation is not a high trafficking area, and the CBP has provided no documentation that it is. This is supported by the February 13, 2020 seventh declaration of Assistant Secretary of Defense of Homeland Security and Global Security, which approved the use of the 284 funds for other portions of the Yuma Border Wall project, but did not include in the directive any portion of the West Cocopah Reservation. This follows the DHS January 15, 2020 request for the use of these funds which identified what DHS considered high drug trafficking areas and also excluded from the request any lands on the West Cocopah Reservation. *[note: The February 20, 2020 Federal Register DHS Notice of Determination to waive certain laws and request assistance from the Department of Defense in construction appears to include the West Cocopah Reservation in a description of part of the project area (FR Doc 202-03452, filed Feb. 18, 2020); however, the notice did not identify any area as the Cocopah Reservation and it is unclear if the Department of Defense provided a subsequent approval of 284 funds in response to this request.]*

Moreover, there are reasonable alternatives for protection of border security that do not require the severance of one-third of the reservation and other Tribal rights. There is a multitude of electronic, seismic, and remote sensing capabilities that are and can be used within the western portion of the West Cocopah Reservation, in conjunction with the existing Normandy Fence to detect and control both foot and vehicular traffic. The Tribal Public Safety Department has been cooperative with CBP to report and root out illegal crossings when they occur. Moreover, detection is uncomplicated by the significant agricultural fields adjacent to the border area, which improves visibility for CBP officers. In the defined location of the reservation river boundary, these measures and others yet proposed could be used as a less impactful alternative and should be the subject of the yet to be calendared Tribal Consultation with DHS.

V. Indirect Effects from Border Wall Constructed Off of the Cocopah Reservation

While much of this letter addresses the direct effect of the proposed border wall, if constructed, on the West Cocopah Reservation, it is important to also include the indirect effects that the CBP border wall has had on the Tribal Community in constructing the Wall in areas adjacent to the reservation and within the Tribe's traditional cultural area. As previously mentioned, the Cocopah people have always lived throughout the lower Colorado River delta. Their customs and traditions, their ancestors and their cultural resources, and the materials that they use for their traditional activities ranged throughout the delta. These materials and uses are not confined to the current Cocopah reservations. The border wall constructed to date has eliminated that Tribe's access to over 95% of these resources by segregating the river from the Tribe for miles.

This diminishment in the availability of these resources to the Tribal government has crippled the education, cultural, and natural medicinal capabilities of the Tribe. The passing on of traditional ways is impossible without the resources necessary to teach traditional practices. Without the reeds, grasses and woods of the riparian habitat, traditional materials such as baskets, funerary objects, and food products cannot be made. The isolation of these areas also hinders the Tribe's ability to steward these resources, which are becoming increasingly rare.

Finally, the manner in which the border wall has been constructed to surround the West Cocopah Reservation appears to be an intentional strategy to create an untenable situation for the Tribe caused by potential increased cross-border pedestrian traffic on the Reservation, in hopes of coercing the Tribe to agree to the construction of the wall on its lands. However, the Federal government must still recognize that it has a trust responsibility on Tribal lands, and intentional damage to the Tribe's lands for such an untoward purpose would be a breach of that fiduciary duty. The Tribe is also concerned that this passive aggressive activity will lead to active facilitation of armed anti-immigrant groups descending upon the Tribal Community causing political and social tension. We implore the CBP to take steps to preclude this type of activity as it conducts consultation with the Tribal Council in order to determine a more appropriate resolution to the CBP goals within the region.

We are prepared to initiate meaningful government to government consultation with the national levels of the Department of Homeland Security at your earliest convenience.

Very truly yours,



Theodore J. Griswold

TJG:rsb

Cultural Impacts of Border Wall Construction on the Cocopah people:

Impacts to Culturally Significant Plants:

The river provides the source for a variety of culturally significant plants that have been used both historically and in contemporary Cocopah life. The most visible would be the x'a tree (Common Name(CN): Frémont's cottonwood, Scientific Name(SN): *Populus fremontii*). This are used to build traditional homes and more commonly ramadas, an important part of social and ceremonial life for the Cocopah people. Additionally, the leaves of the tree are used as medicine to treat contusions. Below the x'a, grows the eesh and añall (CN: Screwbean Mesquite, SN: *Prosopis pubescens*; CN: Honey Mesquite, SN: *Prosopis glandulosa*). These trees provide pods used to make flour and tea, their wood is used in traditional cremations, their roots are used to make shinny sticks and cradleboards, their sap is used to die hair and as pigments in paints and traditional tattoos. Eesh has seen massive population declines and a rapidly contracting range, suggesting that these trees should be listed as a threatened species. The river is absolutely critical for the ayaa (CN: Goodding's Black Willow, SN: *Salix gooddingii*; CN: Desert Willow, SN: *Chilopsis linearis*). These trees provide the wood for shinny sticks, fibers for traditional skirts, branches for traditional basket drums, and anti-fungal medicines. Along the floodplain of the river grows cha'aam (CN: Arrowweed, SN: *Pluchea sericea*) a critically important plant that is used in cremation ceremonies, home ceremony, as well as for the construction of ramadas and arrows.

Many of these plants require that tribal members hike to find an appropriate shape of tree or gender of plant before they can harvest. Harvesting, especially of logs, is hard enough with the current vehicle barrier. A wall would all but destroy our ability to harvest these plant species with regularity or natural access. Furthermore, these plants need to be tended to. Oral and written histories have shown that Cocopah people spend a great deal of time engineering the ecosystem to be healthy and productive. The use of fire ecology by Cocopahs was noted over a century ago. A wall will prevent any forest health management by preventing the safe employment of controlled burns, the maintenance of low fuel loads to keep naturally occurring fires from burning too hot, and the maintenance of trunk straightness through pruning. A border wall will also limit access to community members, requiring them to either seek permission to import these natural resources from the Mexico side of the river or abandon traditional cultural practices that require the river.

Impacts to Culturally Significant Animals:

Construction of any type in the Colorado River riparian habitat is of great environmental concern, and a wall more so because of its potential effects on free movement of species and alteration of critical habitat characteristics. This area has been designated by the Federal Government a critical habitat for the Yellow Billed Cuckoo (*Coccyzus americanus*), an endangered species. It is also a known occupied habitat for the Yuma Clapper Rail (*Rallus longirostris yumanensis*) and Southwestern Willow Flycatcher (*Empidonax traillii extimus*), also federally protected endangered species. As a culture, Cocopah give great reverence to birds who are seen as teachers. Our songs are known as Bird Songs for this reason. The river is historically

the habitat for the endangered Razorback sucker (*Xyrauchen texanus*) & Bonytail chub (*Gila elegans*), culturally significant species. The hydrologic effects of sediment erosion during construction will disturb already fragile habitats along the remaining course of the river. The wall itself alters the distribution of shade and vertical perches, giving raptors and advantage that will see the destruction and dislocation of a number of prey species.

Impacts to Culturally Sensitive & Important Objects:

Culturally the areas of construction and proposed construction of border wall has a high likelihood of cultural objects and burials being found during excavation. Oral traditions and modern habitation place Cocopah settlements as far north as Black Mountain, Pilot Knob, and the North Reservation. One cemetery just north of Morales Dam will be in the visual shadow of the border wall being constructed by Morelos Dam. Cremations traditionally occurred at the place of residence. After the monsoon season subsided, Cocopah often lived right alongside the river for ease of access to water, fish, and wood. This places thousands of cremations along its banks over the preceding centuries, a concentration of graves that will not come through wall construction undamaged. Culturally significant objects such as manos, metates, pottery, and stone tools are incredibly important for us to protect, as much of the material culture of the Cocopah people was constructed of biodegradable materials, limiting the access we have to ancestral objects. Furthermore, the individual who made these objects is imbued within them. Pottery has fingerprints for example and should be considered at that remains of a person who has passed on. This project has already caused irreparable harm to our shared ancestral remains at Organ Pipe Cactus National Monument.

Impacts to Culturally Significant Landscapes:

The location of border wall construction crosses a number of culturally significant landscapes. The river is the most significant for the Cocopah or as we are described in our language, Xawill Kwñchawaay, the people who live alongside the river. The river is the deepest part of our culture. It is the place our creators placed us in the creation stories. It is the place from which all of our people arise and return, the clay itself making the Cocopah people. To lose further access to the river would be an act of cultural destruction, eroding the very core of our people. As we look up from the river across the landscape, we see the mountains that guide and unify us as a people. To the south we see Wii Shpa, Eagle Mountain (El Mayor Peak), the place where our souls go to pass on to the next world. To the southwest we see Wii Ni, Whale Mountain (Cerro Prieto), a place that reminds us of the courage of whale to stand up for his community. To the west we see, Eagle Mountain's brother, Wii Shpa Echéss, Little Eagle Mountain (Mt. Signal), a place that guides us to the Kumeyaay lands, a place for spiritual ceremony, and a place for graves. Of this mountain, our late former chairperson Mr. Dale Phillips said in a 2013, during an ethnographic interview:

"Wiishpa echéss" (Little Eagle Mountain or Mt. Signal), is one of our boundaries to the north. I'm told that my grandfather is buried there. He was called the Robin Hood of Cocopahs because he robbed from the Mexican ranchers and gave back to the Cocopah people. I went to meet him once and he told me he would probably not see me again because he was wanted by the

Mexican police. He was captured and killed by them eventually and I never saw him again. He is buried below the mountain."

"My grandfather, Enriquez was part Cocopah, and he was like Robin Hood, the Robin Hood of Cocopah people, a hero to our people. He took cattle and gave them to Cocopah. He came to Somerton, riding a horse. He picked me up and said, 'Mijo.' He told us that the Federales were chasing him, close to him. He went off west toward Little Eagle Mountain. They caught him just below Little Eagle Mountain and hanged him. He is buried there near Little Eagle Mountain. When I was there, I felt him around me."

"Wiishpa echéss is a guiding post that Cocopah used when traveling. They traveled across Lake Cahuilla to Rincon, the land of the Luiseños, the Cahuillas, and beyond. The Cocopah Sierras are our ancestral home and they have sacred places for healing. Cocopah used the hot springs there for this purpose. Much ceremony is associated with Wiishpa echéss. You can pick a point on the mountain and concentrate on it, sing and pray and go to that point in the mind, and move into the spiritual world. This is very hard to do. There is a hunger among Cocopah kids today to know who they are, to know the stories of the mountains, and where to go to get into the spiritual world. The mountains are very sacred."

To the north is Wii Kuñur (Pilot Knob), a place with deep importance for Cocopah, Quechan, and Kumeyaay alike. Oral tradition tells us that this was a place of meeting and peace between the tribes. It is a guidepost and provides protection for the Cocopah who live in its shadow. As we look to the south east we see two locations that have significance historically and culturally. The Five Points are a grouping of small hills used to navigate, shelter, and store foods during journeys into Piipaash and Tohono O'odham lands for trade and socializing. Tinajas Altas is also a location used by these three tribes while traveling for rest and hydration. Quitobaquito Springs was a resting place and trading place with our Hia C-ed O'odham and Tohono O'odham allies and friends. These landscapes are deeply rooted; they are the basis for our culture and our indigeneity. Building a wall will leave a permanent scare on the land and by that fact on our people and culture. When the wall is no longer used, its effects will still be felt.



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ECWS-17-002

TITLE: Border Security and Immigration Enforcement on Tribal Lands

EXECUTIVE COMMITTEE

PRESIDENT
Brian Cladoosby
Swinomish Tribe

FIRST VICE-PRESIDENT
Fawn Sharp
Quinault Indian Nation

RECORDING SECRETARY
Aaron Payment
*Sault Ste. Marie Tribe of Chippewa
Indians of Michigan*

TREASURER
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Jamestown S'Kallam Tribe

REGIONAL VICE- PRESIDENTS

ALASKA
Jerry Isaac
Native Village of Tanacross

EASTERN OKLAHOMA
Joe Byrd
Cherokee Nation

GREAT PLAINS
Leander McDonald
Spirit Lake Nation

MIDWEST
Roger Rader
Pokagon Band of Potawatomi

NORTHEAST
Lance Gumbs
Shinnecock Indian Nation

NORTHWEST
Mel Sheldon, Jr.
Tulalip Tribes

PACIFIC
Jack Potter, Jr.
Redding Rancheria

ROCKY MOUNTAIN
Darrin Old Coyote
Crow Nation

SOUTHEAST
Larry Townsend
Lumbee Tribe

SOUTHERN PLAINS
Liana Onnen
Prairie Band of Potawatomi Nation

SOUTHWEST
Joe Garcia
Ohkay Owingeh Pueblo

WESTERN
Bruce Ignacio
Ute Indian Tribe

EXECUTIVE DIRECTOR
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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, in 1854 the United States created an international boundary with Mexico that divides tribal lands and tribal historic and culturally sensitive sites (NCAI Resolution #ECWS-08-001); and

WHEREAS, tribal nations have citizens on both sides of the southern and northern borders of the United States who cross for cultural, religious, employment, and other purposes; the borders now divide many tribal communities, separates tribal members from cultural sites and ceremonies, and blocks access to much needed health care, housing, transportation and other governmental services (NCAI Resolutions #REN-13-078 and #ECWS-08-001); and

WHEREAS, tribal members also experience direct negative impacts from illegal immigration and drug trafficking across the international boundary, including violence and crime, damage to cultural resources, increased demands on tribal law enforcement, illegal dumping, and environmental degradation; and

WHEREAS, unlike national forests, wilderness areas, and other federal lands on the Canadian and Mexican borders, Indian reservations are not public land, they are reserved for the benefit of the tribes and their members, and the tribes have a duty to ensure that tribal members' rights and the tribes' sovereignty are protected; and

WHEREAS, while Executive Order No. 13175, "Consultation and Coordination with Indian Tribal Governments," presidential memorandums, and departmental and agency policies require executive branch agencies and officials to consult and collaborate with affected Indian tribes on federal policies and actions having a substantial direct effect on tribes, in some cases, the DHS has implemented border security measures having a substantial direct effect on Indian tribes but has not consulted or collaborated with tribes (NCAI Resolutions #TUL-05-103 and #ECWS-08-001); and

WHEREAS, tribal governments incur significant expenses on border law enforcement efforts, including in partnership with the DHS and its agencies, and authorize border security measures designed to counter drug- and human-trafficking and other border crimes when those measures protect tribal members, lands and resources, and the security of the United States while respecting tribal sovereignty and members' rights; and

WHEREAS, on January 25, 2017, President Trump issued Executive Order 13767, "Border Security and Immigration Enforcement Improvements," directing the construction of a physical wall on the United States' southern border with Mexico (Executive Order 13767, Section 2(a) and Section 4(a)); and

WHEREAS, a continuous, physical wall on the southern border would

- further divide historic tribal lands and communities;
- prevent tribal members from making traditional crossings for domestic, ceremonial, and religious purposes;
- prevent wildlife from conducting migrations essential for survival and general life, health and existence;
- injure endangered species such as the jaguar and other wildlife sacred to tribes;
- destroy endangered and culturally significant plants;
- militarize the lands on the southern boundary;
- disturb or destroy tribal archeological, sacred sites, and human remains; and

WHEREAS, numerous non-Indian border communities would also be negatively impacted by a physical wall on federal, state, and private lands on the Mexican border and oppose its construction; and

WHEREAS, the NCAI has likewise opposed the waiver of federal, state, and other laws under section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), as amended, for the construction of border fencing and roads as unnecessary, destructive, and in violation of the federal obligation to interact with Indian tribes on a government-to-government basis and to respect tribal sovereignty and self-determination (NCAI Resolution #ECWS-08-001 and #REN-08-002); and

WHEREAS, resources for tribes to secure their own lands and government-to-government coordination, consultation, notification, and agreements between tribes and the federal government are critical to border security efforts (NCAI Resolution #REN-13-078).

NOW THEREFORE BE IT RESOLVED that NCAI supports

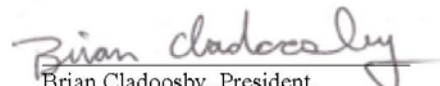
- (1) consultation, collaboration, and direct tribal participation by all affected tribes in the development of the DHS Secretary's comprehensive study of the security of the southern border and any policies or actions implementing Executive Order 13767 and other border security measures;
- (2) government-to-government agreements with the DHS at a tribe's request to improve on-reservation border security coordination and respect for tribal sovereignty and jurisdiction on tribal lands;
- (3) adequate funding for the maintenance and repair of reservation roadways used by DHS; and
- (4) funding to fill on-reservation public safety radio coverage gaps and allow for tribal law enforcement to communicate directly with CBP and other law enforcement partners.

BE IT FURTHER RESOLVED that the NCAI opposes

- (1) the construction of a physical wall on the southern border of the United States on tribal lands without the consent of affected tribes; and
- (2) the application of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 Section 102(c) waivers of federal and other laws on tribal lands.

CERTIFICATION

The foregoing resolution was adopted by the Executive Committee at the 2017 Executive Council Winter Session of the National Congress of American Indians, held at the Capital Hilton, February 13-16, 2017, with a quorum present.

ATTEST:
Aaron Payment, Recording Secretary
Brian Cladoosby, President