

- 1) The San Diego Sector remains an area of high illegal entry and is one of the busiest Sectors in the Nation. In fiscal year 2016 alone, the United States Border Patrol apprehended over 31,000 illegal aliens and seized approximately 9,167 pounds of marijuana and approximately 1,317 pounds of cocaine in the San Diego Sector. Border infrastructure has improved border security.
- 2) To achieve operational control of the border DHS must, consistent with existing law, build the physical infrastructure necessary to secure the southern border of the United States, Executive Order 13767 "Border Security and Immigration Enforcement Improvements" became effective on January 25, 2017. CBP continually works to fulfill the requirements within this Executive Order for the immediate plan, design, construction and replacement of border infrastructure with new and more effective systems and the hiring of new agents and officers into the CBP ranks.
- 3) The Secretary of Homeland Security has determined, as authorized by Congress in Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), that it is necessary to waive certain laws, regulations and other legal requirements (37) in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border of the United States near the city of San Diego in the state of California.
- 4) An Environmental Waiver was signed on July 26, 2017. This waiver covers approximately 15 miles of geographic area in San Diego Sector.
- 5) The waiver is intended to cover three projects (14 miles of primary fence replacement, secondary fence replacement, and prototype) and eliminates the possibility of delays associated with NEPA requirements and litigation as well as other environmental challenges.
- 6) Notwithstanding the waiver, the U.S. Customs and Border Protection (CBP) remains committed to environmental and cultural stewardship and will work diligently to integrate responsible environmental practices – including incorporating sustainable practices. CBP will perform all important surveys for biological and natural resources, wetlands, culturally significant sites, and environmentally sensitive areas. In addition, CBP will coordinate and consult with federal, state, and local stakeholders to identify and measure the potential for any impacts to resources present and develop appropriate mitigation strategies.
- 7) Customs and Border Protection works in coordination with the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, the National Park Service and many other organizations to ensure the protection of the variety of ecosystems throughout the U.S. Border with Mexico. These consultations have resulted in the development of environmental best management practices which are implemented during project design and construction to reduce potential impacts on wildlife. Examples include:
  - a. In order to address the needs and concerns of FWS, Bureau of Land Management, New Mexico Department of Game and Fish, and local ranchers, CBP designed and installed a (b) (7)(E), or "(b) (7)(E)," in the Normandy-style vehicle fence that was installed in the (b) (7)(E) Station Area of Responsibility to keep cattle from moving

north-south but (b) (7)(E) safe unimpeded passage in key movement corridors.

b. CBP worked with FWS in the Yuma and Rio Grande Valley sectors to (b) (7)(E)

- 8) CBP will continue to evaluate and consider impacts to natural resources and culturally sensitive areas before, during and after the construction of the projects covered by this waiver.
- 9) The waiver does not impact the process required for the acquisition of private property.

#### **ADDITIONAL INFORMATION - ENVIRONMENTAL LAWS WAIVED**

The July 26, 2017 waiver waived the following laws:

- The National Environmental Policy Act (NEPA)
- The Endangered Species Act (ESA)
- The Federal Water Pollution Control Act (commonly referred to as the Clean Water Act)
- The National Historic Preservation Act (NHPA)
- The Migratory Bird Treaty Act (MBTA)
- The Migratory Bird Conservation Act
- The Clean Air Act (CAA)
- The Archeological Resources Protection Act (ARPA)
- The Paleontological Resources Preservation Act
- The Federal Cave Resources Protection Act of 1988
- The National Trails System Act
- The Safe Drinking Water Act (SDWA)
- The Noise Control Act
- The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA)
- The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- The Archaeological and Historic Preservation
- The Antiquities Act
- The Historic Sites, Buildings, and Antiquities Act
- The Wild and Scenic Rivers Act
- The Farmland Protection Policy Act
- The Coastal Zone Management Act (CZMA)
- The Wilderness Act
- The Federal Land Policy & Management Act (FLPMA)
- The National Wildlife Refuge System Administration Act
- The National Wildlife Refuge System Improvement Act of 1997
- The National Fish and Wildlife Act of 1956
- The Fish and Wildlife Coordination Act
- The Wild Horse and Burro Act
- An Act of Oct. 30, 2000, Pub. L. 106-398, § 1, 114 Stat. 1654 (enacting into law § 2848 of Part II of Subtitle D of Title XXVIII of Division B of H.R. 5408 (114 Stat. 1654A-426), as introduced on Oct. 6, 2000)

- The Administrative Procedure Act (APA)
- The Otay Mountain Wilderness Act of 1999
- Sections 102(29) and 103 of Title I of the California Desert Protection Act
- Rivers and Harbors Act of 1899
- The Eagle Protection Act
- The Native American Graves Protection and Repatriation Act (NAGPRA)
- The American Indian Religious Freedom Act
- The Religious Freedom Restoration Act