

## **Appendix E      Biological Assessment**

## **E. Biological Assessment**

### ***E.1. Introduction***

The Calexico West Port of Entry (POE) is located in southern California in the border city of Calexico, approximately 95 miles east of San Diego in Imperial County (Figure E-1). The POE is in an agricultural and urban area with 27,000 inhabitants in Calexico and approximately 765,000 in Mexicali, directly across the border in Baja California, Mexico.

Geographically, the current Calexico West POE facilities occupy approximately 2.3 acres (102,040 sq ft) at the southern end of downtown Calexico, bounded on the east by Heffernan Avenue, on the north by First Street, on the west by the Imperial Highway (SR-111), and on the south by the U.S.-Mexican border (Figure E-2).

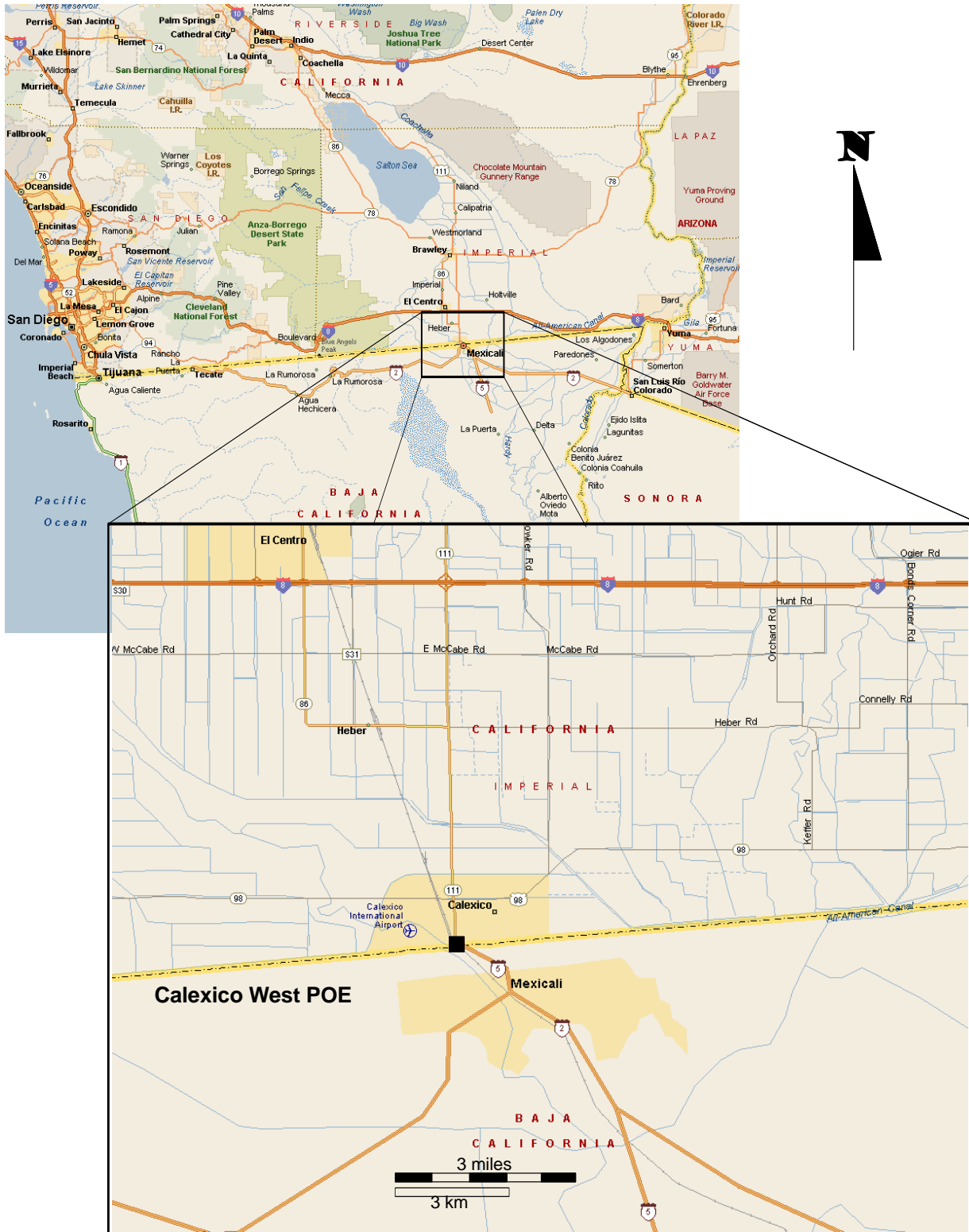
The General Services Administration (GSA) owns a 10.6 acre (460,760 sq ft) parcel immediately to the west of the current POE site, bordered on the east by Imperial Highway and the Southern Pacific Railroad right of way, on the north by Second Street, and on the south by the U.S.-Mexico border. The western edge of this area abuts private property.

Two adjacent privately owned parcels are being evaluated for inclusion in the proposed action. The first is a vacant 1.9 acre (81,604 sq ft) triangular lot south of the New River, north of the U.S.-Mexico border, and east of the west boundary. The second is a 0.5 acre (23,171 sq ft) triangular parcel bounded by the Southern Pacific Railroad on the southwest, Second Street on the north, and Imperial Avenue on the east. This latter parcel is currently occupied by the duty free store. The land on both parcels of privately owned land has been previously been disturbed.

The purpose of this biological assessment is to review a GSA proposal to expand the Calexico West POE in sufficient detail to determine to what extent the proposed action may affect any of the threatened, endangered, proposed, or candidate species listed below. This biological assessment is prepared in accordance with legal requirements set forth under Section 7 of the *Endangered Species Act*. [16 U.S.C. 1536 (c)].

### ***E.2. Proposed Action***

The General Services Administration (GSA) proposes to reconfigure the current Calexico West POE facility for pedestrian and bus crossings only, and construct a new vehicle-only inspection facility on adjacent land to the west. The proposed action would include realignment of vehicle traffic. The proposed action would: reduce inspection times, thereby reducing vehicle and pedestrian queues; increase space available for inspection areas, allowing for installation of technologically-advanced inspection devices; provide for increased personnel and public security and safety; and comply with seismic design requirements.



**Figure E-1. Current Calexico West Port of Entry and Surrounding Area**



**Figure E-2. Current Calexico West POE and Site Boundaries**

### **E.3. Consultation to Date**

For the EIS, consultation under Section 7 of the *U.S. Endangered Species Act* was initiated with the U.S. Fish and Wildlife Service (USFWS) with a **TBD**, letter sent to their office in Carlsbad, California, requesting a list of endangered, threatened, and other species of concern that may occur or are known to occur at the Calexico West POE.

### **E.4. Existing Conditions**

#### **A. Vegetation**

A pedestrian biological survey was conducted at the Calexico West POE on October 18, 2006. The survey recorded the vegetation types, fauna, and habitats. The POE is located in an urban part of the Sonoran Desert on previously disturbed, predominantly, flat terrain with much of the area consisting of compacted soil bearing a strong resemblance of a vacant dirt parking lot (Figure E-3). Prior to urban development, this general area probably contained a Sonoran desert scrub community with a thin strip of Sonoran riparian deciduous forest and woodlands community present along the New River (Brown 1982).

The survey focused primarily on the 10.6 acre vacated commercial POE, consisting of previously disturbed land, where vegetation and wildlife were present, and to a lesser degree on two adjacent parcels of privately-owned land (approximately 2.4 acres), which have been disturbed by grading or commercial development. The vacated, former commercial POE has been bladed periodically for the security purpose of physically removing weeds and other plants that might conceal individuals illegally entering the United States at this location.



Legend:

Government Owned Land \_\_\_\_

Privately-owned Land \_ \_ \_

**Figure E-3. Aerial Photo of Calexico POE**



Almost no vegetation is present in the region of influence with the exception of grass and a few eucalyptus (*Eucalyptus* sp.) near a security fence. Bermuda grass (*Cynodon* sp.) was observed near the Hazardous Materials Office. Salt cedar (*Tamarix* sp.) and oleander (*Nerium oleander*) were seen on a steep bank of the vacated commercial POE. Mesquite (*Prosopis* sp.) was observed near the New River.

Vegetation along the New River is periodically removed for security purposes. Two small isolated patches of the following wetland plants were observed: common reed (*Phragmites* sp.) and a sedge (*Scirpus* sp.). Further investigation would be required to determine whether jurisdictional wetlands are present.

## **B. Wildlife**

There is minimal wildlife habitat in the region of influence. Wildlife species observed during a pedestrian survey at the Calexico West POE included domestic pigeon (*Columba livia*), Brewer's blackbird (*Euphagus cyanocephalus*), and snowy egret (*Leucophoyx thula*).

The Calexico POE Reach of the New River is approximately 600 feet in length. There are no managed fisheries in the region of influence, although fish occur in the New River. Plastic containers and bags were seen floating in the river, which had a strong smell of sewage. An Agency for Toxic Substances and Disease Registry report recommended against consumption of wildlife from the New River. Fish in the New River are contaminated with metals, pesticides, PCBs, VOCs, and pathogenic microbes present in the river water. This contamination results from municipal, commercial, and industrial discharge, as well as agricultural runoff from the Mexicali and Imperial Valleys (CH2M Hill 2003). The City of Mexicali has been the largest contributor of nitrogen- and phosphorus-based nutrients, selenium, pesticides, and municipal waste discharged into the New River. However, a waste treatment project initiative in Mexicali is intended to reduce these contaminants being discharged into the New River and may make this river more conducive for fish populations in the future (CH2M Hill 2003).

## **C. Special Status Species**

The *Endangered Species Act* (16 U.S.C. §§1531-1544) provides Federal protection for threatened and endangered species. Section 3 of the *Endangered Species Act* defines endangered species as any animal or plant species in danger of extinction throughout all or a significant portion of its range. This Act further defines threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Under NEPA, both candidate and proposed species require analysis to the same level of detail as listed species. However, species that are Federal candidates for listing as threatened or endangered do not receive legal protection under the *Endangered Species Act*. The United States Fish and Wildlife Service (USFWS) species of concern category includes a broad realm of plants and animals whose conservation status may be of concern to the USFWS, but do not have official status.

The *California Endangered Species Act* (California Fish and Game Code §§2050-2098) includes provisions intended to protect threatened and endangered species that may be affected by

development projects subject to the *California Environmental Quality Act* (CEQA 1984). California species of special concern identify species that the California Department of Fish and Game have identified as in three risk categories ranging from small size, to declining population size, to immediate extirpation of at least the entire California breeding population or even the entire California population. Information on California Species of Special Concern is intended for use as a management tool and for information; since species of special concern have no special legal status (CDFG 2006a).

All of the bird species listed in Table E-1 also receive protection under the *Migratory Bird Treaty Act* (16 U.S.C. §§703-711) and Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds). This law governs the taking, killing, possessing, transporting, and importing of migratory birds, their eggs, parts, and nests.

Federally-listed endangered, threatened, and candidate species in Imperial County CA with the potential to occur in the region of influence were obtained from the Carlsbad FWS Office website (Carlsbad FWSO 2006). State-listed threatened and endangered species, as well as species of concern that may occur in the region of influence were obtained online from the California Natural Diversity Data Base (CNDDB) for both Imperial County, as well as the Calexico Quad in which the Calexico West POE is located. (CNDDB 2006).

Table E-1 presents a list of Federal and California endangered, threatened and other special status animal species known to occur in the Calexico Quad and its adjacent continuous neighbors, which include Heber, El Centro, Holtville West, Holtville East, and Bonds Corner Quads. No Federally- or California-listed plant species occur in the Calexico Quad and its adjacent continuous neighbors.

The burrowing owl (*Athene cunicularia*), a California species of special concern, was the only special status animal species included in Table E-1 that was observed during a biological survey conducted at the Calexico POE on October 18, 2006 (CDFG 2006d). Burrowing owls are typically found in grasslands, or agricultural and range lands, although they can also be found in vacant lots in urban areas (Brown 2006). A single adult burrowing owl was observed near an abandoned small mammal burrow located between metal pylons in a curbed gravel area near the former Hazardous Materials Office. Burrowing owls frequently use abandoned ground squirrel or prairie dog burrows as nests, although neither these, nor other, rodent species were observed during the survey.

None of the other species in Table E-1 were observed during the site survey, with suitable habitat lacking, or at best being suboptimal, at the Calexico West POE. Table E-2 presents Federally- and California-listed species reported (or monitored for) in Imperial County.

The following section discusses the potential for Federally- and California-listed species in Table E-2 to occur in the proposed project area, although the highly disturbed nature of the region of influence makes their presence unlikely.

**Table E-1. Special-Status Animal Species Previously Reported From the Calexico and Adjacent Quads (Imperial County, CA)**

Common Name	Scientific Name	Status	Habitat
<b>Amphibians</b>			
Colorado River toad	<i>Bufo alvarius</i>	SOC, CSSC	Breeds in temporary pools and irrigation ditches from southeastern CA to southwestern NM
<b>Reptiles</b>			
Flat-tailed horned lizard	<i>Phrynosoma mcalli</i>	PFT(WD), CSSS	Sandy areas in desert scrub of southern CA and southwestern AZ into northwestern Mexico
<b>Birds</b>			
Burrowing owl	<i>Athene cunicularia</i>	SOC, CSSS	grasslands, agricultural fields, vacant urban areas
Yellow warbler	<i>Dendroica petechia brewsteri</i>	CSSS	Bushes, swamp edges, streams, and gardens
Yuma clapper rail <sup>1</sup>	<i>Rallus longirostris yumanensis</i>	E, CT	Marshes with dense vegetation; requires mudflats, sandbars, and woody vegetation for nesting
<b>Mammals</b>			
American badger	<i>Taxidea taxus</i>	CSSS	Non-cultivated land, particular grasslands, savannahs, & mountain meadows
Big free-tailed bat	<i>Nyctinomops macrotis</i>	CSSS	Relatively rocky areas in arid SW U.S.; prefers to roost in cliff crevices

<sup>1</sup>Reported from Bonds Corner Quad to the East of Calexico Quad. E—endangered under *Endangered Species Act*; CT—California endangered species; CSSS—California species of special concern; PT(WD)—proposed threatened (Withdrawn); SOC—Federal species of concern. Sources: Carlsbad FWSO(USFWS) 2006; California Dept of Fish and Game (CDFG) 2006a, b, c; California Natural Diversity Data Base 2006.

### **Federally-Listed Endangered Species**

#### ***California brown pelican (Pelecanus occidentalis californicus)* [Federally endangered; California endangered]**

The California brown pelican has been observed foraging on fish at the Salton Sea and the Finney-Ramer Lakes Wildlife Management Area north of Brawley. A small number of this species has been breeding at the Salton Sea (CH2M Hill 2003). However, it is not likely that the Brown pelican would occur at the Calico West POE due to unfavorable foraging and nesting habitat.



**Table E-2. Federally- and California-Listed Species for Imperial County and Potential for Their Being Impacted by the Proposed Action**

Common Name	Scientific Name	Status <sup>a</sup>	Habitat <sup>b</sup>	Present in ROI	Potential for Being Impacted
<b>Fish</b>					
Bonytail	<i>Gila elegans</i>	FE, CE	A	N	None
Colorado squawfish	<i>Ptychocheilus lucius</i>	FE, CE	A		
Desert pupfish	<i>Cyprinodon macularius</i>	FE, CE	A	N	None
Razorback sucker	<i>Xyrauchen texanus</i>	FE, CE	A	N	None
<b>Reptiles</b>					
Desert tortoise	<i>Gopherus agassizi</i>	FT, CT	D	N	None
<b>Birds</b>					
California brown pelican	<i>Pelecanus occidentalis californicus</i>	FE, CE	A, W	N	None
Greater sandhill crane	<i>Grus canadensis tabida</i>	CT	Ag, W	N	None
California black rail	<i>Laterallus jamaicensis coturniculus</i>	CT	W	N	None
Yuma clapper rail	<i>Rallus longirostris yumacensis</i>	FE, CT	W	N	None
California least tern	<i>Sterna antillarum browni</i>	FE	A, W	N	None
Bald eagle	<i>Haliaeetus leucocephalus</i>	FT/PD, CE	A, W	N	None
Swainson's hawk	<i>Buteo swainsoni</i>	CT	R, Ag	N	None
Elf owl	<i>Micranthene whitneyi</i>	CE	D	N	None
Western yellow-billed cuckoo	<i>Coccyzus americanus occidentalis</i>	FC,CE	R	N	None
Gila woodpecker	<i>Melanerpes uropygialis</i>	CE	R	N	None
Gilded northern flicker	<i>Colaptes auratus chrysoides</i>	CE	R	N	None
Southwestern willow flycatcher	<i>Empidonax traillii extimus</i>	FE, CE	R	N	None
Arizona Bell's vireo	<i>Vireo belli arizonae</i>	CE	R	N	None
Least Bell's vireo	<i>Vireo bellii pusillus</i>	FE	R	N	None
<b>Mammals</b>					
Jaguar	<i>Panthera onca</i>	FE	G	N	None
Peninsular bighorn sheep	<i>Ovis canadensis</i>	FE	D	N	None

Common Name	Scientific Name	Status <sup>a</sup>	Habitat <sup>b</sup>	Present in ROI	Potential for Being Impacted
<b>Plants</b>					
Peirson's milk-vetch	<i>Astragalus magdalenae</i> var. <i>peirsonii</i>	FT, CE	D	N	None

Legend:

<sup>a</sup>Status Codes:

SC: Species of Concern

CSC: California Species of Special Concern

AWC: Arizona Wildlife of Concern

CE: California endangered

CH: Critical habitat

CT: California threatened

FC: Federal candidate

FE: Federally endangered

FT: Federally threatened

PT: Proposed federally threatened

PD- Proposed for federal de-listing

FC: Proposed candidate for federal listing

FP: California Fully Protected

PD: Proposed Delisted

<sup>b</sup>Habitat Codes

A: Aquatic

Ag: Agricultural fields

D: Desert

G: Generalist at this level and/or requires specific

Microhabitat to persist in area

R: Riparian

W: Wetland

N: No

Y: Yes

### ***California least tern (Sterna antillarum browni)* [Federally endangered]**

The California least tern nests on coastal beaches and estuaries near shallow waters. The terns prefer open areas where they have good visibility for long distances to see the approach of both ground and avian predators. The substrate is usually sand or fine gravel and can be mixed with shell fragments (CH2M Hill 2003). It is not likely that California least terns would occur within the New River at the Calico West POE. Therefore, it is not likely that the California least tern would occur at the Calico West POE.

### ***Least Bell's vireo (Vireo bellii pusillus)* [Federally endangered]**

The least Bell's vireo occurs in riparian areas along the lower Colorado River. Nesting habitat of the least Bell's vireo typically consists of well-developed overstories and understories, and low densities of aquatic and herbaceous cover. Least Bell's vireo occurs accidentally in the Salton Sea and New River area during migration. This low level of use is reflected by only two observations of this species at the Salton Sea National Wildlife Refuge (CH2M Hill 2003).

***Yuma clapper rail (Rallus longirostris yumanensis)* [Federally endangered, California threatened]**

The Yuma clapper rail is a marsh species that is known to occur in wetlands and managed duck clubs near the outlet of the New River at the Salton Sea and has been reported by the from Bonds Corner Quad east of Calexico (CH2M Hill 2003, CNDDDB 2006). Rails utilize freshwater marsh habitat, such as cattail and bulrush stands with extensive shallow water. Clapper rails are strongly associated with cattail stands for nesting, and neither cattail nor bulrush is present along the New River at the Calexico West POE (CH2M Hill 2003).

***Southwestern willow flycatcher (Empidonax traillii extimus)* [Federally endangered, California endangered]**

The southwestern willow flycatcher occurs in riparian areas along the lower Colorado River. The southwestern willow flycatcher nests in riparian habitat characterized by a dense stand of intermediate sized shrubs or trees, such as willows (*Salix sp.*) or salt cedar (*Tamarix sp.*), and usually with an overstory of scattered larger trees, such as cottonwoods (*Populus fremontii*) (CH2M Hill 2003). It is unlikely this species would be found in the project area, since preferred southwestern willow flycatcher breeding habitat is not present at the Calexico West POE.

***Jaguar (Panthera onca)* [Federally endangered]**

Jaguars once ranged from southern Argentina, up along the coasts of Central America and Mexico and into the southwestern United States (Rizzo 2005). However, jaguars had disappeared from the United States as a result development and hunting. It is unlikely this species would be found in the project area, since the California Natural Diversity Data Base has not reported this species from Imperial County, with the closest documented sightings occurring at an undisclosed location on the Arizona-Mexico Border by the Jaguar Detection Project (Rizzo 2005).

***Peninsular bighorn sheep (Ovis canadensis)* [Federally endangered]**

Peninsular bighorn sheep live on dry, rocky, low-elevation desert slopes, canyons, and washes from Palm Springs, California south into Baja California, Mexico. They eat primarily grasses, shrubs, and forbs (CH2M Hill 2003). This species is not expected to be found in the project area.

***Razorback sucker (Xyrauchen texanus), Colorado squawfish (Ptychocheilus lucius), Bonytail (Gila elegans)* [all 3 species Federally endangered and California endangered]**

Razorback sucker, Colorado squawfish, and bony tail are endangered fish species of the lower Colorado River. These species are not known or expected to be found at the Calexico West POE or other locations along the New River (CH2M Hill 2003).

***Desert pupfish (Cyprinodon macularius)* [Federally endangered, California endangered]**

The desert pupfish is a small freshwater fish known to occur in isolated southwestern desert drainage systems including tributaries to the Salton Sea. Desert pupfish also breed and forage in the mouths of drainage ditches entering the Salton Sea and in shallow waters behind barnacle

bars that are form by wind driven waves along the Salton Sea shoreline. Desert pupfish are not known to occur nor are they expected to occur in the New River and, therefore, would not be expected to be observed at the Calexico West POE (CH2M Hill 2003).

### **Federally Listed Threatened Species**

#### ***Bald eagle (Haliaeetus leucocephalus)* [Federally threatened/proposed delisted, California endangered]**

The bald eagle visits the Salton Sea area during annual migrations to forage on fish and other food resources along the shoreline of the sea. Breeding does not occur in the Salton Sea area (CH2M Hill 2003). Bald eagles occur around the Salton Sea and would not be expected to occur at the Calexico West POE due to the lack of suitable foraging habitat.

#### ***Desert tortoise (Gopherus agassizii)* [Federally- and California-threatened]**

Desert tortoise populations are known from many locations throughout the Mojave and Sonoran deserts of the Southwest. The desert tortoise occupies a variety of habitats throughout its range. In the Sonoran Desert of Arizona, the tortoise typically occurs in the palo verde-cacti-mixed scrub series (CH2M Hill 2003). Suitable habitat for this species does not occur in the project area and the species would not be expected to be found in the vicinity of the project site.

#### ***Pierson's milk-vetch (Astragalus magdalenae var. peirsonii)* [Federally threatened, California endangered]**

Pierson's milk-vetch occurs on well-developed desert dunes. In the United States, the plant is known only from the Algodones Dunes in southeastern Imperial County (CH2M Hill 2003, Phillips et al. 2006). Suitable habitat for this species does not occur in the project area and the species would not be expected to be found in the vicinity of the border at Calexico.

### **California Listed Endangered Species**

#### ***Elf owl (Micrathene whitney)***

The elf owl is limited in California to the cottonwood-willow and mesquite riparian zone along the Lower Colorado River between the Picacho State Recreation Area north to nine miles north of Needles. The two primary sites where elf owls have been found are unique stands of large mesquite trees now found nowhere else on the California side of the Colorado River (CDFG 2006e). Cottonwoods and willows are lacking along the New River at the Calexico West POE. It is unlikely the elf owl would be found at the Calexico site due to the lack of suitable habitat.

#### ***Western yellow-billed cuckoo (Coccyzus americanus occidentalis)* [Federal candidate]**

The western yellow-billed cuckoo's natural nesting habitat is in cottonwood-tree willow riparian forest, although it nests in almond and walnut orchards in California. This species is now likely restricted to the Lower Colorado, the upper Sacramento Valley portion of the Sacramento River, the Feather River in Sutter County, and the south fork of the Kern River in Kern County. Flood control, camping, and urban and suburban development have resulted in loss and degradation of

this bird's habitat (CDFG 2006f). It is unlikely the western yellow-billed cuckoo would be found at the Calexico site due to the lack of suitable habitat.

***Arizona Bell's vireo (Vireo bellii arizonae)***

Arizona Bell's vireo is a summer resident in the willow-mesquite thickets along the lower Colorado River. It is currently found only at a few sites on the California side of the River near and south of Needles in San Bernardino and Riverside counties and near Laguna Dam in Imperial County. (CDFG 2006g). The New River at the Calexico West POE lacks willow-mesquite thickets. ). It is unlikely the Arizona Bell's vireo would be found at the Calexico West POE site due to the lack of suitable nesting habitat.

***Gila woodpecker (Melanerpes uropygialis)***

The Gila woodpecker is a permanent resident of mature cottonwood-tree willow riparian forest and mesquite riparian woodland. Currently, this species is known in California only at scattered locations along the California side of the Colorado River between Needles and Yuma (CDFG 2006h). Mature cottonwood-tree willow riparian forest and mesquite riparian woodland is lacking along the New River at the Calexico West POE. It is unlikely the Gila woodpecker would be found at the Calexico West POE site due to the lack of suitable habitat.

***Gilded northern flicker (Colaptes auratus chrysoides)***

The gilded northern flicker is a primary cavity nester (i.e., it excavates its own nest cavities in the trunks of trees) in mature cottonwood-willow riparian forests that once extended along the length of lower Colorado River in Arizona and California. Today, the bird is found only at several sites on the California side of the Colorado River north of Blythe in Riverside County (CDFG 2006i). Mature cottonwood-tree willow riparian forest is lacking along the New River at the Calexico West POE. It is unlikely the gilded northern flicker would be found at the Calexico West POE site due to the lack of suitable nesting habitat.

**California Listed Threatened Species**

***California black rail (Laterallus jamaicensis coturniculus)***

The California black rail prefers wetlands with shallow water and dense stands of marsh vegetation bulrush and cattail. The closest populations to Calexico are on the Salton Sea and Lower Colorado River (CH2M Hill 2002). It is unlikely the California black rail would be found at the Calexico West POE due to the lack of suitable habitat.

***Greater sandhill crane (Grus canadensis tabida)***

In California, the greater sandhill crane presently nests in Lassen, Modoc, Plumas, Shasta, Sierra, and Siskiyou Counties. The greater sandhill crane in California tends to nest in rather open habitat; however, in certain areas, they nest in association with a dense cover of bulrush and burreed. This species often seeks roost sites in cereal grain crops where possible, and uses an open expanse of shallow water for community roosting sites (CDFG 2006j). It is unlikely the

sandhill crane would be found at the Calexico West POE due to the lack of suitable nesting and foraging habitat.

### ***Swainson's hawk (Buteo swainsoni)***

The Swainson's hawk nests in mature riparian forests, oak groves, or in lone trees near foraging areas such as agricultural fields. In Southern California, this species has disappeared except as a transient during spring and fall migrations (CH2M Hill 2002, A-40). It is unlikely the Swainson's hawk would be found at the Calexico West POE due to the lack of suitable foraging habitat.

## **E.5. Impacts from the Proposed Action**

None of the proposed action activities at the Calexico West POE are anticipated to adversely affect Federally- and California-listed species in Table E-2, because none are present at the site, and habitat is either unsuitable, or at best suboptimal.

However, the burrowing owl was noted during the biological survey conducted on October 18, 2006. This species does not currently receive Federal protection from *Endangered Species Act* (ESA) or the *California Endangered Species Act* (CESA) as a listed species. However, it has been designated as Federal species of concern by the ESA, and a California species of special concern by the CESA. The Federal species of concern category includes a broad realm of plants and animals whose conservation status may be of concern to the USFWS, but do not have official status. Data on California species of special concern are intended for use as a management tool and for information, since species of special concern have no special legal status (CDFG 2006a).

Should burrowing owl populations in California decline further, it is possible that this species may be listed by either the USFWS or the CDFG. GSA may wish to apply for a permit for incidental take of the burrowing owl should it become listed as threatened or endangered under the *ESA* any time prior to construction for the proposed action being completed.

The *Migratory Bird Treaty Act* governs the taking, killing, possessing, transporting, and importing of migratory birds (such as the burrowing owl), their eggs, parts, and nests. Burrowing owls could be adversely impacted, if still present at the Calexico West POE at the time the proposed construction begins, if certain mitigative actions are not taken.

The lack of Federal and California endangered, threatened, and candidate species at the Calexico West POE can be partially explained by its location in a highly disturbed, and commercially developed area, that is isolated from undisturbed areas of the Sonoran Desert where much larger numbers of plant and animal species can be found. Further, the Imperial County General Plan designates the area around Calexico West POE as urban or agricultural where land use practices are unfavorable for many special status species (Imperial County 1993). A recent environmental assessment for a new wastewater treatment plant south of the Calexico West POE considered 11 Federally endangered and 3 Federally threatened species from Imperial County and adjacent areas in Arizona and Mexico (CH2M Hill 2003). None of these special status species were



considered likely to be present along the portion of the New River where the Calexico West POE is located.

### **E.6. Conservation and Mitigation**

Prior to construction, a qualified biologist should conduct a survey at the Calexico West POE to determine if the burrowing owl noted is still present, or if others have subsequently nested at the site.

If any burrowing owls are determined to still be present at the Calexico West POE, then passive relocation would be scheduled to avoid the burrowing owl nesting breeding season (February 1 through August 31) and the winter residency period (December 1 through January 31). The Calexico site is located in an area of the United States where burrowing owls are considered year round residents (Lewis 2005). Since the burrowing owl is protected from take by the *Migratory Bird Treaty Act*, a USFWS permit would be required for disturbance of any active nests. The burrowing owl is also protected from take by Section 3503.5 of the California Fish and Game Code (CDFG 1995).

The USFWS may determine that artificial owl nests should be constructed as a mitigation measure to minimize the impact to burrowing owls from the proposed action. If artificial nests are required, then selecting another location with an established artificial burrowing owl nesting program might result in a more effective mitigation measure, due to the heavily disturbed nature of the existing Calexico West POE and the projected increase in site activity from the proposed action (Mission College 2006, Clark 2001).

### **E.7. Conclusion and Determination**

Under the proposed action, construction and other activities are not likely to affect Federally- or California-listed threatened or endangered species, since none of these species was noted during a survey of the site, with habitat being unsuitable, or at best suboptimal, for nesting and/or foraging.

However, proposed action construction and other activities could affect, the burrowing owl, which is an unlisted species, but has been designated as a Federal species of concern and California species of special concern, and also receives protection from the *Migratory Bird Treaty Act*. A pre-construction survey and the passive relocation of any burrowing owls present, as described in Section E.6 above would minimize the potential for individuals of this species being killed.

## E.8. References

16 U.S.C. §§307-311	Title 16, United States Code (U.S.C.) <i>Migratory Bird Treaty Act</i> , (obtained online at <a href="http://www.law.cornell.edu/uscode/html/uscode16/usc_sup_01_16_10_7_20_II.html">http://www.law.cornell.edu/uscode/html/uscode16/usc_sup_01_16_10_7_20_II.html</a> )
16 U.S.C. §§1531-1544	Chapter 35, “ <i>Endangered Species Act</i> ”; Title 16 Conservation; United States Code, Washington, D.C.; December 28, 1973, as amended.
66 Fed. Reg. 58	66 Fed. Reg. 58. Executive Order 13186. Responsibilities of Federal Agencies to Protect Migratory Birds. pp. 3853-3856. January 2001.
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