

Committee on Natural Resources  
Oversight Hearing  
“Walls and Waivers: Expedited Construction of the  
Southern Border Wall and Collateral Impacts to Communities and the Environment”  
Monday, April 29<sup>th</sup>, 2008  
10:00 a.m.  
SETB Lecture Hall

Good Morning Chairman Grijalva and Madam Chair Bordallo and members of the joint oversight committee. Thank you for this invitation to testify before you on this very important issue.

The first topic you have asked me to address was the level of consultation between the Department of Homeland Security and our university to review and revise project segments slated to cross our campus and the surrounding community.

As background, I will provide a quick timeline of the events that have transpired over the last year.

Early last summer, we were notified of plans by the Department of Homeland Security to build a fence 18 feet high on top of the levee north of the university’s International Technology Education and Commerce campus (ITEC), essentially placing ITEC on the Mexican side of the fence. In addition, the plans would also build a fence 18 feet high on top of the levee just south of the University baseball field and of the Education and Business Complex parking lot, essentially placing our golf course on the Mexican side of the fence, literally dividing our campus.

In October, we received a letter from U.S. Customs and Border Protection asking for the right of entry onto University property. The request sought access to survey University land for the possible construction of the fence, to store equipment and supplies, take samples and to do any other work they found necessary for the proposed construction of the fence.

The same document informed us that there was some question as to whether they would be responsible for any damage done during this time by their activities. Finally, the letter stated that should they determine a need for any University land, the University would be paid market value for the land.

I did not sign the document that would have granted access for several reasons. I felt the action posed serious harm to the University on many fronts, including risk to property investment, student safety, execution of our mission, disruption of the university ecosystem and the region’s ecotourism industry, as well as damage to the historical nature of the campus.

Because we could not in good conscience sign the document granting right of entry, the Department of the Army Corps of Engineers notified us in December 2007 of potential litigation to gain entry to the campus.

What was being demanded, under threat of legal action, was unimpeded access by military and civilian agencies to a UT System campus and its state and locally financed buildings for an extended period of time for purposes of determining if land and buildings would be condemned and seized.

The only public hearing we were afforded was held on December 12 at the Brownsville Events Center where we were required to submit our feedback through a computer terminal or through a court reporter surrounded by armed agents.

In January, despite requests from our attorney for extensions of time to engage in discussions of alternatives, we were notified that a suit had been filed in federal court because of our failure to sign the original Right of Entry request (ROE). This heavy handedness and unwillingness to genuinely discuss alternatives to the ROE's conditions was sufficient cause for serious concern.

Yet we continued to meet with various representatives from the federal government including the local Border Patrol officials, the Department of Homeland Security, and the Army Corps of Engineers. While it was frustrating at times, when the various federal agencies did not have knowledge of the others' activities, we persisted, believing that a compromise could be reached that would allow the Department of Homeland Security to proceed with its goal of better securing the border, while at the same time allowing the university to preserve the integrity of our region and our educational mission and moreover, protect the safety and welfare of our students, faculty and staff. However, we feel that the purpose of meetings from the government's standpoint was simply another opportunity for them to tell us of their intention to build a fence, rather than to explore alternatives.

After days of intense negotiations between the University and United States Department of Justice attorneys, an agreed settlement was reached on March 19<sup>th</sup>, just hours before the federal hearing was to take place.

Federal Judge Andrew S. Hanen approved the agreement, which states the following:

- The University has agreed to a limited right of entry to DHS for six months for the purpose of studying the implementation of security measures on the border in the campus area.
- DHS will work with the University to jointly assess alternatives to a physical barrier.
- DHS has been authorized to conduct such studies, including environmental assessments, as required to consult with the University regarding alternatives to a physical barrier.
- DHS will consider the University's unique status as an institution of higher education and will take care to minimize impact on its environment and culture.

- DHS will conduct investigations to minimize the impact of any tactical infrastructure on commerce and the quality of life for the communities and residents located near the University.
- DHS will take all reasonable action to promote safety and minimize any impact on the University's educational activities.
- DHS will coordinate all entry to the campus and give prior notice of all activities on campus to Campus Police.
- DHS has agreed that should damage to University property occur they will repair or make an appropriate fair market value settlement.
- DHS has agreed to hire contractors that carry sufficient liability insurance.
- DHS has agreed to not clear land, mow grass or otherwise alter the physical landscape of University property without the University's consent.
- The University retains the right to assert statutory and/or constitutional challenges to future government actions affecting University property.

During the hearing, Judge Hanen thanked both the University and the federal government for working hard to reach an equitable solution. He felt that the dialogue between the two sides would hopefully lead to a better resolution regarding this temporary easement, as well as any potential future barrier. Judge Hanen also stated that the agreed settlement could, perhaps, be used as a template for working with other landowners involved.

While we have often felt during this process that the Department of Homeland Security was unwilling to openly and legitimately consult with local communities regarding the effects an 18-foot high wall would have on our region, we are pleased that the court system fulfilled the purpose our forefathers had planned. It brought together two parties to be fairly represented and heard.

Since the hearing the Department of Homeland Security, through the US Border Patrol, has notified the University of various archeological and environmental surveys and/or assessments that have taken place. While we have received notification from the federal government that they are conducting surveys and/or assessments on IBWC and University property we have not been provided the opportunity to jointly participate in assessing alternatives to a physical barrier. There is a meeting between representatives of the University and DHS scheduled for tomorrow, and we are hopeful that will be the beginning of the joint assessment, and not simply a repeat of the previous unproductive one-way communications.

## **Potential Impact on property investment and safety**

As a native of this community, I can speak to the fact that every piece of infrastructure you see in the Rio Grande Valley today was hard fought. We didn't have a university in the Lower Rio Grande Valley until 1991 when UT Brownsville was established. We still do not have a veteran's hospital closer than San Antonio. The lack of infrastructure is compounded by our rapidly growing population, and the need for expanded trade and commerce.

Seizing land for a border fence poses a great risk to our property investment. In the case of our university, our campus is one of the fastest growing in the UT System with an enrollment of 17,000 and expected to grow to 20,000 within five years. The campus currently has 8 construction projects in different stages of development for a total investment by the taxpayers of the local community and of the state of more than \$140 million dollars in new construction alone. Allowing the DHS unlimited access to a large portion of the campus has the potential of jeopardizing a significant public investment that it is our duty as stewards to protect.

It is also my responsibility as President to guard and protect the safety of our students. If I am aware of a potential danger to them, I am required to take necessary action to ensure their safety.

DHS had repeatedly reported to us that the plan to build a fence on the levee was for the purpose of channeling illegal activity to a point presumably for easy apprehension. That point in the proposed fence, is the same opening used for entry and exit to the golf course. The golf course is home not only to our Scorpion golf team, but also to members of the community including other school children. This site serves as a laboratory for learning in our community, just as any other facility on our campus.

The current plans call for an opening in the 18-foot high fence for the purpose of channeling all illegal activity, into the heart of our campus right next to classroom buildings, the library, the Recreation, Education and Kinesiology Center, the baseball park, and the new soccer field would greatly endanger our students and jeopardize campus security and safety.

## **Potential Impact on the Academic Environment**

In addition, the building of a fence on this campus or adjacent to the campus runs counter to our mission, which is in part to convene the cultures of its community, foster an appreciation of the unique heritage of the Lower Rio Grande Valley, encourage the development and application of bilingual abilities in its students and provide academic leadership to the intellectual, cultural, social and economic life of the bi-national urban region it serves.

To support a plan that would build an 18-foot-high steel barrier between two friendly countries would be to directly contravene our mission and destroy the campus climate that has been so painstakingly and carefully created.

## **Potential Impact on the Environmental and Historic Environment**

The University has become a key player in the promotion of the ecotourism industry and in the reclamation of important wildlife areas inclusive of the thousands of acres of the Bahia Grande area. Many have worked for decades to design a campus that is respectful of the natural and rich environment of this special ecological zone. We also strive for the development of a campus environment that fosters the physical and mental well-being of our students. To create this environment we are designing and constructing bike trails, jogging paths and eco-trails.

In our master plan, which was created four years ago, we defined our core values which include:

- Respecting the Educational Nature of the Campus
- Providing a Safe and Secure Environment
- Encouraging Community Involvement
- Providing Accessibility
- Creating Harmony in Design
- Planning for Openness in Design and Space
- Creating Intimate Gathering Areas
- Providing an Inviting Ambiance
- Respecting the Historical Nature of the Campus
- Being sensitive to the Ecology
- Incorporating the Region's Unique Cultural Character

Clearly, an 18-foot high wall running through our campus would negate all that we have worked so hard to create.

UTB/TSC has a unique cultural nature. The campus encompasses several significant historical sites, including historic Fort Brown and Fort Texas.

Of course, we believe in protecting our borders.

Of course, we believe in strong immigration policy.

But we also understand that a process of intended or unintended intimidation is no substitute for either.

Every attempt we have made up until this week has proved fruitless in discovering common ground for a solution.

I love our country and the best that it represents of an experiment to govern a free people. My life's work has been spent trying to guarantee that the next generation has access to an education and becomes vested in protecting, participating in and defending this democracy. It has been my duty to be a good steward not only of the resources entrusted to me, but also of the values and principles of our democracy.

I remain hopeful that we can make genuine progress toward a meaningful, consultative conversation and that the Agreed Order with the conditions specified has for the first time, the

potential to discover an innovative and effective manner to achieve the mutual goals of the DHS and of the University.