

**TESTIMONY OF RICK SCHULTZ, NATIONAL BORDERLAND  
COORDINATOR, DEPARTMENT OF THE INTERIOR, BEFORE THE  
SUBCOMMITTEES ON NATIONAL PARKS, FORESTS, AND PUBLIC LANDS;  
AND FISH, WILDLIFE AND OCEANS OF THE HOUSE COMMITTEE ON  
NATURAL RESOURCES, REGARDING “WALLS AND WAIVERS:  
EXPEDITED CONSTRUCTION OF THE SOUTHERN BORDER WALL AND  
COLLATERAL IMPACTS TO COMMUNITIES AND THE ENVIRONMENT”**

April 28, 2008

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Mr. Chairman, Ms. Chairwoman, and Members of the Subcommittees, I am Rick Schultz, National Borderland Coordinator, Department of the Interior (DOI).

I appreciate the opportunity to provide the Interior Department’s view on the construction of border security infrastructure along our Nation’s southwest border. As manager of one in every five acres of the United States, the DOI’s land managing agencies, the Bureau of Land Management, the National Park Service, the U.S. Fish and Wildlife Service, and the Bureau of Indian Affairs, take very seriously our responsibility to administer uniquely beautiful and environmentally sensitive lands along the southwest border. Recognizing the significant ecological and cultural values of extensive lands managed by Interior near this border, we strive to maintain their character and fulfill our mission to protect and preserve these assets on behalf of the American people.

The safety of both visitors and employees on DOI lands has been significantly compromised by drug trafficking and the illegal, cross-border flow of people. These unsafe conditions were markedly illustrated by the tragic deaths of Mr. Kris Eggle, a National Park Service Ranger, at Organ Pipe Cactus National Monument in 2002 and of Luis Aguilar, a senior U.S. Border Patrol agent, earlier this year at the BLM’s Imperial Sand Dunes Recreation Area in California. Many of the natural and cultural resources under our responsibility have also been adversely affected by the illegal activities. These impacts include but are not limited to destruction of wildlife habitats; trampling of vegetation and increased soil erosion; and the deposition of human trash and vehicles along the border, including within wilderness areas.

We recognize the need for our Nation to enhance its border security. In this regard, we acknowledge the border security issues facing the Department of Homeland Security (DHS). DHS fulfills a critical mission for the Nation.

Several years ago, DOI, USDA, and DHS recognized the need to coordinate management of border security with the management of DOI and USDA managed lands near the border. Consequently, a Memorandum of Understanding (MOU) between DHS, the Department of Agriculture, and DOI was entered into in 2006. This MOU, which is focused on land management and law enforcement related issues, has served to set the tone for ongoing dialogue and a positive relationship between DHS and DOI.

## **Consultation with DHS**

Due to our significant interests in the southwest border, Interior has made it a priority to work closely with DHS as DHS seeks to construct 670 miles of border fence by December 2008. In particular, Interior has strived to assist DHS in minimizing impacts on wildlife, ecosystems, and cultural resources. Building border infrastructure, an undertaking with numerous players and many moving parts, would present significant challenges even under normal conditions. These challenges are heightened given the short timeframe mandated by law for completing border fencing. Despite these circumstances, DHS has included Interior in discussions focused on constructing border security infrastructure in a manner that minimizes its impact upon environmental and cultural resources.

Consultation between DHS and DOI on border environmental and cultural resource issues occurs both at the national and field levels. We have regular and open dialogue with DHS concerning a variety of issues. Recently, DOI established the position of National Borderland Coordinator, the position I currently occupy. My primary responsibilities are to work with DHS to address environmental and cultural resource issues that otherwise could not be resolved at the field level. My presence and involvement in border security activities have been well-received within DHS. This connection has helped strengthen the working relationship between our respective agencies.

I have found both leadership and staff in DHS headquarters to be sensitive to DOI's mission, responsibilities, and related concerns. Where avoidance or minimization of impact upon environmental and cultural resources was not possible, DHS has demonstrated its commitment to mitigating these impacts. Several examples within this testimony illustrate this commitment.

Still, there have been some challenges related to DHS's extremely compressed time frame, their use of several contractors and subcontractors, and the complexity of issues. These factors have challenged our managers as they strive to fulfill their missions and uphold their statutory responsibilities. In many cases, including the construction of the border fence within the Lower Rio Grande Valley, the infrastructure was modified to accommodate DOI concerns.

We appreciate the hard work and dedication of our field managers as they have strived to address border security issues affecting their units. Our managers operate in often risky circumstances along the border. They share the Nation's desire for a secure and safe border. At the same time, they are dedicated to fulfilling this Department's mission and upholding our statutory and regulatory responsibilities.

Working with DHS remains a priority, one that continues following Secretary Michael Chertoff's decision to invoke Real ID Act waivers of certain environmental, DOI-administered, and other statutes in April of 2008. DHS remains committed to working with DOI to address complex border issues, including environmental issues. We see the

continuing need for a long and productive relationship between our respective agencies that extends far beyond the construction of border security infrastructure.

When DHS Secretary Chertoff invoked two Real ID Act waivers for the expedited construction of border security infrastructure, he reaffirmed DHS's commitment to environmental stewardship. This commitment, as it applies to DOI-administered lands and programs, included mitigation funding up to \$50 million for threatened and endangered species. Projects to be funded are conservation measures previously identified by Fish and Wildlife Service (Service) field biologists in cooperation with others. DHS also identified the need for wetland and cultural resource mitigation. In addition to these funding provisions, Secretary Chertoff has also reaffirmed DHS's commitment to solicit and respond to the needs of State, local, and tribal governments, other agencies of the federal government, and local residents. Overall, these measures represent a very positive commitment by DHS in recognizing its environmental stewardship responsibilities for endangered species, wetlands, and cultural resources.

Securing our Nation's border is our collective challenge. How do we best enhance our Nation's border security while maintaining the integrity of these ecologically and culturally sensitive lands? Although we have yet to fully address all of these issues, we believe we are on the right track in developing open dialogue, tangible mitigation alternatives, and a strong relationship with our colleagues within DHS.

## **DOI Experiences**

As you requested, I would like to provide several examples that illustrate our collective efforts at the border.

**Example 1. U.S. Fish and Wildlife Service IPaC System.** The Service is currently working with DHS on ways to streamline and enhance the endangered species consultation process. As part of this effort, the Information Planning and Consultation (IPaC) system is being developed, with some funding provided by DHS. This online system will result in timely input and faster decisions associated with threatened and endangered species. In addition, the preparation of biological assessments and associated biological opinions for future border security activities will be streamlined.

**Example 2. Sonoran Pronghorn Mitigation.** As mitigation for construction of a hybrid pedestrian fence on the Barry M. Goldwater Range and for a vehicle fence on Cabeza Prieta National Wildlife Refuge, the Service and DHS reached agreement in 2006 on conservation measures for the Sonoran pronghorn that inhabits the area. More specifically, \$811,980 will be provided to the Service for development of three wells, three forage enhancement plots, and associated water supplies. DOI is currently working with DHS on the potential impacts to the pronghorn in other areas. For example, we are currently in discussions with DHS regarding the significant adverse effects that towers proposed on the Cabeza Prieta National Wildlife Refuge would have on the Sonoran pronghorn. We have

provided DHS with options for relocating these towers to an area that would minimize their effects, but still address border security concerns.

**Example 3. San Pedro National Riparian Conservation Area.** The Real ID Act waiver of certain Federal environmental laws and select DOI-administered statutes in October 2007 allowed construction of a pedestrian fence on this Bureau of Land Management (BLM) unit to move forward on schedule. The Secretary invoked his waiver authority to ensure the expeditious construction of the fencing in light of a lawsuit filed by the Defenders of Wildlife alleging the inadequacy of the National Environmental Policy Act review of this project. Despite the waiver and as a result of close coordination with DOI, a historic corral and one prehistoric Native American village and burial site located within the footprint of the fence construction activities were not disturbed during construction because DHS developed and implemented a data recovery plan that was completed at a cost of over \$800,000. Currently, the BLM, which is responsible for administering the Native American Graves Protection and Repatriation Act in this area, is properly caring for the remains from the disturbed grave sites. We believe this experience highlights the benefits of effective field level coordination between DHS and DOI for projects of this nature.

**Example 4. Buenos Aires National Wildlife Refuge.** In 2007, DHS proposed to construct 0.8 miles of pedestrian fence across Buenos Aires National Wildlife Refuge in Arizona. Its footprint, including the access road, was located outside the Roosevelt Reservation and comprised approximately 5.8 acres. Since the construction of the fence would be inconsistent with the National Wildlife Refuge System Administration Act, the Service and DHS reached agreement to execute a land exchange for the property in question. Currently, potential lands for this exchange have been identified and appraisals of these properties are in process. The benefit to the Service was an agreement with DHS to replace adversely affected acreage with land of equal monetary value and possibly higher quality habitat.

**Example 5. Remediation of Cultural Resource Sites.** A cultural resource site located near Columbus, New Mexico, was inadvertently damaged by a National Guard unit working on behalf of DHS in the fall of 2006. DHS reached an agreement with the BLM under which DHS committed to paying the full cost of restoring this site. Funds amounting to approximately \$250,000 from DHS have been made available for this remediation.

Inadvertent damage to a second cultural resource site was also discovered in southeastern Arizona on BLM lands. Work is proceeding in cooperation with DHS to fully remediate this site as well.

**Example 6. Lower Rio Grande National Wildlife Refuge.** The Service has been working very closely with DHS to minimize impacts to threatened and endangered species from the proposed pedestrian fence on the Lower Rio Grande

National Wildlife Refuge. Several field meetings were held and, initially, fence design and locations were modified to either avoid or minimize impacts particularly as they related to the wildlife corridor. Where avoidance or minimization was not achieved, the Service proposed the acquisition of an additional 1,700 acres of land to offset the impacts of the proposed pedestrian fence. The cost of these lands is estimated at \$7 million which DHS has committed to providing as part of the \$50 million set aside for threatened and endangered species mitigation projects.

**Example 7. Organ Pipe Cactus National Monument.** The southeastern portion of this unit of the National Park Service (NPS) was identified for pedestrian fence near the Lukeville, Arizona, Port of Entry. Of particular concern to NPS was the impact of this proposed fence and its access road on ecological communities located on Monument Hill. From the DHS security perspective, control of illegal entry within this area using pedestrian fence was very important. After extended negotiations at the field level, DHS was permitted to construct the fence in exchange for mitigation. To offset the environmental impacts of this infrastructure, DHS committed to funding conservation measures amounting to \$964,000 (as part of their commitment to fund up to \$50 million for threatened and endangered species). These conservation measures were largely determined by Service biologists in consultation with the NPS and DHS engineers.

**Example 8. Lower Colorado River Limitrophe.** High numbers of rapes, robberies, and assaults on immigrants and border patrol agents were occurring on BLM and Bureau of Reclamation-managed lands located in the Lower Colorado River Limitrophe in Arizona (on the border by Baja, California, Mexico). Heavy vegetation provided cover to drug traffickers and other criminals. In April 2007, BLM led a cooperative effort to begin expeditious removal of invasive salt cedar that was providing cover for this criminal activity. The multi-agency team, including the BLM, Reclamation, DHS, the Fish and Wildlife Service, the State of Arizona, Yuma County, and the Cocopah Tribe, are continuing this effort to treat the remaining 1,895 acres of DOI-managed lands, 3,020 acres of Cocopah tribal land, and 337 acres of private land.

### **Impacts upon National Wildlife Refuges and Federal Treaty Obligations**

As indicated above, the construction of border security infrastructure on public lands, national parks, national wildlife refuges, and tribal lands results in a mixed bag of environmental benefits and adverse environmental effects. On one hand, valuable wildlife habitats and ecological communities may benefit from the infrastructure by reducing illegal, cross-border immigration. On the other hand, the construction of pedestrian barriers also inhibits the movement of large mammals, some of which are threatened or endangered species. To a certain degree, DOI-recommended modifications to fence designs or fence locations have minimized the adverse effects of the fence on these species. In other cases, offsetting mitigation measures are required to reduce the overall impact of the border security infrastructure.

Within national wildlife refuges and wilderness areas, our governing statutes prohibit us from permitting the construction of certain border security infrastructure as proposed by DHS. In light of this, we informed DHS of these facts as they were preparing to construct infrastructure on these lands. Ultimately, DHS chose to exercise its authority under the Real ID Act to waive these and other statutes associated with the administration of DOI lands.

During our discussions, DHS was made aware of our responsibilities for migratory bird species under the Migratory Bird Treaty Act. Although additional work needs to be completed in this area, several best management practices developed in cooperation with DHS for threatened and endangered species also apply to migratory birds. At a minimum, use of these best management practices will reduce the impact of the border infrastructure on these species.

### **Closing Comments**

In an ideal world and under differing circumstances, the need would not exist to construct border fences and related infrastructure to enhance our Nation's security or reduce the influx of drug trafficking. In reality, however, Congress has directed DHS to construct border security infrastructure. A project of this scope cannot be accomplished without affecting both environmental and cultural resources. The challenges for DOI and DHS are complex. On the negative side, we have some adverse environmental impacts. On the positive side, border infrastructure, including pedestrian and vehicle fences, is expected to increase our visitor and employee safety, reduce drug trafficking, reduce the deposition of human trash, and in some cases lessen adverse environmental effects to wildlife habitats and related ecological communities. We also appreciate DHS's commitment to provide funding for mitigation activities, and pledge to use those funds to implement critical measures that will help minimize possible adverse impacts to natural and cultural resources.

In closing, I want to thank you, Mr. Chairman, and you, Ms. Chairwoman, for the opportunity to express our views. As stated above, both DHS and DOI have faced some complex challenges in balancing our Nation's security with maintaining the quality of our environment. We do not expect these challenges to diminish, which means that our close working relationships will continue to be crucial to our effectiveness far into the future.