

Secretary

U.S. Department of Homeland Security
Washington, DC 20528



Homeland Security

October 2, 2009

The Honorable Rob Bishop
Ranking Member
Subcommittee on National Parks, Forests
and Public Lands
U.S. House of Representatives
Washington, DC 20515

Dear Representative Bishop:

Thank you for your July 31, 2009 letter regarding the Department of Homeland Security's (DHS) U.S. Customs and Border Protection (CBP) operations on federally protected lands. I appreciate your concern for effective CBP operations as DHS works to secure our Nation's borders and enforce laws that protect America's homeland. I have enclosed the answers to the specific questions you raised in your letter (see *Enclosure 1*).

DHS made commitments to the public, Congress, and Federal and state resource agencies regarding environmental stewardship and tactical infrastructure construction. CBP strongly supports this commitment and continues to work closely with the Department of the Interior (DOI) and its bureaus, the Department of Agriculture (USDA), and other land managing agencies to preserve land and habitat along the U.S.-Mexico border. CBP has entered into a number of agreements towards this end, including:

- a 2006 Memorandum of Understanding (MOU) between DHS, DOI, and USDA (see *Enclosure 2*), which is primarily of an operational nature;
- a radio interoperability MOU (see *Enclosure 3*), which provides a safer working environment for law enforcement officers, with demonstrable benefit to public safety; and
- a Memorandum of Agreement for natural and cultural resource mitigation (up to \$50 million in mitigations for construction of tactical infrastructure) (see *Enclosure 4*).

A 2007 joint memorandum from the Secretary of the Interior and the Secretary of Homeland Security to the President further demonstrates a commitment to interdepartmental cooperation (see *Enclosure 5*). Several similar documents are also attached (see *Enclosures 6, 7, and 8*).

In an environment in which the significance of the work performed along the border by the three departments is widely recognized, the mission overlap shared by DHS, DOI, and USDA must become more widely understood. It is my goal that there be no better professional relationships within our government than those of the law enforcement professionals protecting

The Honorable Peter King

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our country and the skilled land managers who depend on them to prevent destruction of the lands they manage.

Thank you again for your letter. Those Members who co-signed your letter will receive separate, identical responses. I hope to continue to foster a close working relationship with you on this and other homeland security matters. Should you need additional assistance, please do not hesitate to contact me at (202) 282-8203.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Janet Napolitano', with a long horizontal flourish extending to the right.

Janet Napolitano

Enclosures

Congressional Inquiry

Re: DHS Interactions with DOI and Forest Service

- 1. All Memoranda of Understanding between DHS (and its sub agency of Customs and Border Protection) and the Department of the Interior and the Forest Service from 2006 to present.**

See enclosures 2 and 3.

- 2. A list of the mitigation funds transferred from DHS to the Department of the Interior and the Forest Service from 2006 to present.**

Between September 2007 and the present, \$9,823,813 has been spent or committed to project mitigation or other significant environmental benefit. (The funding for USFWS's Information, Planning and Consultation System (IPaC) program provides for improved efficiency within both DOI and DHS. The Environmental Monitoring Protocol will be designed to provide scientific data of use for environmental benefit in the border regions). In addition, CBP is also finalizing an Interagency Agreement to begin transferring up to \$50,000,000 to DOI for the implementation of mitigation projects on CBP's behalf designed to off-set adverse effects related to the PF 70, PF 225, and VF 300 tactical infrastructure projects. This commitment will soon result in initial money transfers from DHS to DOI for approved mitigation projects. The process will occur over several years, as is appropriate to the types of projects under consideration.

DHS has previously provided funding directly to DOI (U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management), and USDA (Forest Service). The majority of funding listed below was provided to these agencies from U.S. Customs and Border Protection as a result of regulatory consultation or as part of our environmental stewardship commitments related to past and ongoing border security activities. DHS has provided funding directly to the agencies listed, as well as funding transferred and processed through the U.S. Army Corps of Engineers (USACE). The table provided below lists numerous funding initiatives between DHS and the land management agencies, and includes some of the projects planned for the up to fifty million dollars in mitigations for the previously mentioned fence projects along the southwest border.

In addition to the funding transfers listed below, CBP has expended considerable funding directly on mitigation and related activities such as surveys and habitat restoration. For example, during fiscal year 2008 CBP expended more than \$8,000,000 on surveys and mitigation efforts to benefit 33 species listed as Threatened or Endangered. This funding was not transferred to DOI or the Forest Service; rather it was expended directly by CBP or processed through USACE contract vehicles.

Item	Agency	Date	Amount
One DOI employee (TDY) for on-site subject matter expertise	Department of Interior	Jul-08 to present	\$200,000
Hazardous fuels catex	Bureau of Land Management	Dec-07	\$56,475
Limitrophe Environmental Assessment - 1392 acres	Bureau of Land Management	Dec-07	\$60,898
Water for TIWAZ #3	Bureau of Reclamation	Oct-07	\$1,440
Right of Way Permit	Bureau of Land Management	2008	\$6,000
IPaC System	US Fish & Wildlife	Sep-07 to present	\$6,700,000
BMGR/Cabeza Pronghorn BO	US Fish & Wildlife	Fall 08	\$811,000
Tucson West Mitigation	US Fish & Wildlife	Fall 08	\$1,800,000
Sasabe BO Mitigation (jaguar habitat)	US Fish & Wildlife	Pending transfer of up to \$50 mil	\$2,100,000
Lukeville BO Mitigation (lessor long nosed bat)	US Fish & Wildlife	Pending transfer of up to \$50 mil	\$980,000
Phillip Banco refuge RGV	US Fish & Wildlife	In process	\$138,000
Environmental Monitoring Protocol	US Geological Service	In process	\$50,000
TOTAL			\$12,910,815

CBP is currently working to transfer a 23-acre mitigation site to USFWS that was developed by CBP to offset impacts to 4 vernal pools, encompassing a total of 1.8 acres and occupied by fairy shrimp in San Diego and Riverside counties. The cost to initially develop this site was \$1,300,000; however the final cost of this land transfer is not yet available. Another noteworthy project was the data recovery excavations of two archaeological sites within the project area at the Border Field State Park. This mitigation project entails detailed site recording with subsequent capping of the site located on Lichty Mesa. Both are eligible for listing in the National Register of Historic Places and provided a wealth of historical research information. This data recovery effort was directly funded by CBP at a cost of \$1,000,000.

CBP continues to consult with USFWS on border security projects to avoid, minimize, or mitigate adverse effects to listed or sensitive species. One such project is the Ajo-1 SBI net sensor tower project. CBP is in the process of completing consultation with USFWS and NPS for the preparation of their biological opinion, which includes \$5,000,000 set aside for mitigation efforts to off-set adverse effects to Sonoran Pronghorn, as well as other listed and sensitive species.

Prior to the initiation of SBI, sector project delivery teams planned and delivered projects for the sectors, and mitigation needs were determined at the local level with the appropriate land and resource managers. The mitigations paid for the many projects accomplished in this manner amounted to millions of dollars.

3. Any documents, reports or communications related to deaths, apprehensions, criminal activity, rescues, or security issues that have occurred on federal lands that are designated as "Wilderness" from 2006 to present.

The amount and volume of correspondence relating to these issues would take a significant period of time and effort to collect, and would encompass documentation at the local level as well as at Headquarters. The data provided below requires an understanding of national collection methodology. While there were a few usable data points for this report collected as far back as the beginning of FY07, apprehensions have only been reported with mandatory capture of latitude and longitude data as of May 11, 2009. Prior to this, some sectors and stations did capture latitude and longitude data, however the data set was far from complete. This must be considered when viewing and comparing the past 90 days with the FY07 – present data. The latter data set is extremely incomplete, and is included only to demonstrate the implementation of the new data collection, which will be of value in providing useful data to the land managers related to the level of unauthorized use their lands receive. It is worth noting that the apprehensions nationally (all lands) have dropped to 474,658 apprehensions year to date in FY09 from 968,567 apprehensions for the same time frame in FY06. This represents a 51% drop in apprehensions, and indicates a significant drop in illegal cross border traffic. While these numbers are encouraging it is important to recognize that subsequent to obtaining a greater level of control in what were previously the highest traffic areas (due to the construction of a great deal of tactical infrastructure along the Southwest border) we could see a significant increase in the use of the more remote areas along the border by the smuggling organizations. The ability of the USBP to effectively patrol these areas has never been more critical.

National Activities

Border Patrol Apprehensions with Percentage Change Comparison FY2006 - FY2009 through July 31						
Data Source: Enforcement Integrated Database (UNOFFICIAL) as of 8/11/09						
FY2006	% CHG FY06 - FY07	FY2007	% CHG FY07 - FY08	FY2008	% CHG FY08 - FY09	FY2009
968,567	-21%	764,287	-18%	627,967	-24%	474,658

Wilderness Activities

Apprehensions	Assaults	Seizures	SIR	BSI	A&M Detection Points	
3523	1	79	15	19	6	Past 90 days
9162	6	135	84	110	24	FY07 - present

Definitions:

SIR – Significant Incident Report – indicates a reportable significant incident

BSI – Border Safety Initiative Report – indicates a medical rescue or death

Source information:

Criminal activity data downloaded from eGIS on August 10th, 2009

Wilderness land areas from the National Wilderness Preservation System

Spatial data downloaded from the National Atlas

4. Any documents, reports or communications related to difficulties, concerns, or obstacles to achieving operational control DHS has encountered on Department of the Interior or Forest Service lands from 2006 to present.

The amount and volume of correspondence relating to these issues would take a significant period of time and effort to collect, as this would encompass dialogue at the local level between individual Border Patrol Sectors, local and regional land managers and both headquarters entities. However, it would be useful to encapsulate some of the issues that have been the subject of correspondence, most of which both the Department of the Interior and Department of Homeland Security would agree have been resolved or are in the process of being resolved through the application of the 2006 Tri-Departmental MOU (Memorandum of Understanding Among U.S. Department of Homeland Security and U.S. Department of the Interior and U.S. Department of Agriculture Regarding Cooperative National Security and Counterterrorism Efforts on Federal lands along the United States' Borders) and well established environmental compliance processes.

For example, *SBI*net technology deployments along the southwest border will play a key role in helping to achieve effective border control. One major challenge in deploying *SBI*net technology to remote locations along the border is ensuring compliance with environmental regulations. There are multiple agencies and organizations responsible for administering and enforcing environmental compliance. They include the several agencies within the Department of the Interior (DOI) as well as the U.S. Forest Service. The deployment locations for *SBI*net sensor towers are based on unique operational requirements, such as maximizing a clear line of sight or monitoring a geographical corridor with a history of smuggling traffic. However, each selected tower location may conflict with various environmental regulations or constraints, which must be addressed and/or mitigated. In addition, the relevant environmental regulations may be subject to varied interpretations depending on what level of the agency or organization is involved, which frequently leads to additional time, effort, and cost to resolve before a project can proceed. *SBI*net is therefore routinely challenged with satisfying an array of environmental requirements while deploying technology at strategic locations that still fulfill its intended mission in helping to secure the border. *SBI*net and DOI organizations along with the U.S. Forest Service have been working closely together over the past 18 months to address and resolve these issues and concerns. It should be noted that the *SBI*net technology, along with the agents employing it, will provide resource protection based upon deterrence achieved through effective enforcement with a smaller footprint than that currently required without the focused interdiction *SBI*net will provide based upon known locations for violators. The establishment of Tactical Infrastructure to include fencing and roads along the southwest border has also been subject to the same processes and expenditures.

Maintenance of our operational effectiveness on wilderness lands has always been important to the USBP. Federal land managers understand the duties of the USBP with regard to operations on lands under their care, yet there remains a much higher level of difficulty associated with operations within wilderness and on other special land types. The purpose of the 2006 Tri-Departmental MOU is to resolve these difficulties. One issue affecting the efficacy of Border Patrol operations within wilderness is the prohibition against mechanical conveyances (land and air.) The USBP regularly depends upon these conveyances, the removal of such advantage being generally detrimental to its ability to accomplish the national security mission. While the USBP recognizes the importance and value of wilderness area designations, they can have a significant impact on USBP operations in border regions. This includes that these types of restrictions can impact the efficacy of operations and be a hindrance to the maintenance of officer safety. The USBP, in accordance with the 2006 MOU, makes every reasonable effort to use the least impacting means of transportation within wilderness; however along the southwest border it can be detrimental to the most effective accomplishment of the mission. For example, it may be inadvisable for officer safety to wait for the arrival of horses for pursuit purposes, or to attempt to apprehend smuggling vehicles within wilderness with a less capable form of transportation. However, it should be noted that the MOU makes allowances for emergency access to these areas under certain circumstances and involves certain notification processes. This type of access is coordinated locally between the USBP and local land managers.

Another example is interpretation and application of environmental laws and policies with regards to patrol within the USBP Spokane Sector. The sector is currently working with DOI and USFS regarding Endangered Species Act (ESA) issues related to Grizzly bear and road use on USFS managed lands. Government biologists claim agents in vehicles on some roads are detrimental to bears. The USBP offers the benefit of attentive law enforcement to expand the land manager's knowledge of activities in the region and to minimize environmental crime. Training by land managers should overcome any potential detrimental effect posed by the agents or vehicles, and the sector makes use of horse patrol when practicable. The USBP is most willing to work in a creative and careful manner, acknowledging their effectiveness along the northern border is not related to continual presence in an area, but to effective intelligence and good relationships with local communities. The sector, however, must occasionally have some motorized presence in those areas. A related and important issue is retaining access to critical areas. Where desired by the land managers, we encourage the closing of needed roads by gating rather than destruction of these valuable national assets. The sector must maintain the ability to respond via motor vehicle when required. Recent conversation between the Spokane Sector and local resource managers has demonstrated understanding of one another's missions and an eagerness to cooperatively resolve issues at the lowest possible level as required by good government.

References available at:

http://www.fs.fed.us/r1/kootenai/projects/planning/documents/forest_plan/amendments/griz/gb_ds_eis_2009.pdf

Draft Supplemental Environmental Impact Statement (DSEIS) for
the *Forest Plan Amendments for Motorized Access Management within the
Selkirk/Cabinet-Yaak Grizzly Bear Recovery Zones on the Kootenai, Lolo and Idaho
Panhandle National Forests*

<http://www.fs.fed.us/r1/kootenai/projects/projects/>

Motor Vehicle Use Map Project Environmental Assessment, Three Rivers Ranger District;
Kootenai National Forest; Lincoln County, Montana

A recent trend has been for the U.S. Fish and Wildlife Service (USFWS) to request the USBP enter into Section 7 (ESA) consultation in various areas for operations. The USBP has a long history of engaging in this consultation for projects; however such consultation for operations risks jeopardizing sensitive operational information. In an effort to comply with the ESA, the Section 7 process is currently and cautiously underway for an SBInet project in the Ajo, Arizona area. If this is accomplished successfully, the USBP will be able to responsibly develop a path forward for consultation in other areas determined by DHS biologists to require such consultation. A notable difference between enforcement operations and construction projects relates to their impacts. Overall, the removal of cross-border violators from public lands is a value to the environment as well as to the mission of the land managers. The USBP believes that operations are generally functionally equivalent to mitigation. Recognition of this equivalency could prevent what we see as unnecessary and potentially very large mitigation requirements.

The validity of this statement was evidenced recently when the vehicle fence project south of the Buenos Aires National Wildlife Refuge received praise from a Fish and Wildlife Biologist. The biologist was encouraged by the re-growth and rehabilitation taking place naturally to the north of the vehicle fence subsequent to its installation. The Coronado National Forest Supervisor has been very supportive of our projects, likely due to his recognition of their ability to reduce illegal cross-border traffic and minimize the operational footprint of the USBP simultaneously.

Further information regarding coordination between DHS entities and Federal land managers are available in reports generated by the Government Accountability Office in their audit entitled *Border Security: Agencies Need to Better Coordinate Their Strategies and Operations on Federal Lands GAO-04-590 June 16, 2004*. It should be noted that all the recommendations originally made in that 2004 report have been implemented by the pertinent agencies.

**Memorandum of Understanding
Among
U. S. Department of Homeland Security
and
U. S. Department of the Interior
and
U. S. Department of Agriculture
Regarding
Cooperative National Security and Counterterrorism
Efforts on Federal Lands along the United States' Borders**

I. Purpose and Scope

A. This Memorandum of Understanding (MOU) is made and entered into by the Department of Homeland Security (DHS), including and on behalf of its constituent bureau U.S. Customs and Border Protection (CBP) and the CBP Office of Border Patrol (CBP-BP); the Department of the Interior (DOI), including and on behalf of its constituent bureaus, the National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and the Bureau of Reclamation (BOR); and the Department of Agriculture (USDA), including and on behalf of its constituent agency the U.S. Forest Service (USFS). Throughout this MOU, these three Departments, including their constituent agencies, may be referred to as "the Parties." Any reference to a bureau, agency, or constituent component of a Party shall not be deemed to exclude application to any appropriate bureau or constituent component of that Party. DHS recognizes that the BIA enters into this agreement only on its own behalf and not on behalf of any Indian tribe.

B. The geographic and jurisdictional scope of this MOU is nationwide. The Parties recognize the national security and counterterrorism significance of preventing illegal entry into the United States by cross-border violators (CBVs), including but not limited to the following: drug and human smugglers and smuggling organizations, foreign nationals, and terrorists and terrorist organizations. The Parties further recognize that damage to DOI and USDA-managed lands and natural and cultural resources is often a significant consequence of such illegal entry. The Parties are committed to preventing illegal entry into the United States, protecting Federal lands and natural and cultural resources, and - where possible - preventing adverse impacts associated with illegal entry by CBVs.

C. This MOU is intended to provide consistent goals, principles, and guidance related to border security, such as law enforcement operations; tactical infrastructure installation; utilization of roads; minimization and/or prevention of significant impact on or impairment of natural and cultural resources; implementation of the Wilderness Act, Endangered Species Act, and other related environmental law, regulation, and policy across land management agencies; and provide for coordination and sharing information

on threat assessments and other risks, plans for infrastructure and technology improvements on Federal lands, and operational and law enforcement staffing changes. This MOU provides guidance in the development of individual agreements, where appropriate, between CBP and land management agencies to further the provisions contained herein.

D. This MOU is entered into pursuant to the governing statutory authorities of each of the Parties.

E. The Parties acknowledge that CBP operation and construction within the sixty-foot "Roosevelt Reservation" of May 27, 1907 (along the US-Mexico border) and the sixty-foot "Taft Reservation" of May 3, 1912 (along the US-Canada border) is consistent with the purpose of those reservations and that any CBP activity (including, but not limited to, operations and construction) within the sixty-foot reservations is outside the oversight or control of Federal land managers.

F. This MOU supersedes any conflicting provision of any prior MOU or Memorandum of Agreement between the Parties or their subordinate bureaus or components.

II. Background

A. DHS, through its constituent bureaus (including CBP and its CBP-BP), is statutorily mandated to control and guard the Nation's borders and boundaries, including the entirety of the northern and southern land and water borders of the United States.

B. DOI and USDA, through their constituent bureaus, are statutorily charged as managers of Federal lands throughout the United States, including DOI and USDA lands in the vicinity of international borders that are administered as wilderness areas, conservation areas, national forests, wildlife refuges, units/irrigation projects of the Bureau of Reclamation, and/or units of the national park system. Tribal governments have primary management roles over tribal lands; however, the United States, through the BIA, may also have a stewardship or law enforcement responsibility over these lands. Many of these Federal and tribal lands contain natural and cultural resources that are being degraded by activities related to illegal cross-border movements.

C. The volume of CBVs can and has, in certain areas, overwhelmed the law enforcement and administrative resources of Federal land managers. In order to more effectively protect national security, respond to terrorist threats, safeguard human life, and stop the degradation of the natural and cultural resources on those lands, DOI and USDA land managers will work cooperatively with CBP to benefit from the enforcement presence, terrorist and CBV interdiction, and rescue operations of CBP.

III. Common Findings and Affirmation of the Parties

A. The Parties to this MOU recognize that CBP-BP access to Federal lands can facilitate rescue of CBVs on Federal lands, protect those lands from environmental damage, have a role in protecting the wilderness and cultural values and wildlife resources of these lands, and is necessary for the security of the United States. Accordingly, the Parties understand that CBP-BP, consistent with applicable Federal laws and regulations, may access public lands and waterways, including access for purposes of tracking, surveillance, interdiction, establishment of observation points, and installation of remote detection systems.

B. The Parties recognize that DOI and USDA have responsibility for enforcing Federal laws relating to land management, resource protection, and other such functions on Federal lands under their jurisdiction.

IV. Responsibilities and Terms of Agreement

A. The Parties Agree to the Following Common Goals, Policies, and Principles:

1. The Parties enter into this MOU in a cooperative spirit with the goals of securing the borders of the United States, addressing emergencies involving human health and safety, and preventing or minimizing environmental damage arising from CBV illegal entry on public lands;
2. The Parties will strive to both resolve conflicts at and delegate resolution authority to the lowest field operational level possible while applying the principles of this MOU in such manner as will be consistent with the spirit and intent of this MOU;
3. The Parties will develop and consistently utilize an efficient communication protocol respecting the chain of command for each of the Parties that will result in the consistent application of the goals, policies, and principles articulated in this MOU, and provide a mechanism that will, if necessary, facilitate the resolution of any conflicts among the Parties. If resolution of conflict does not occur at the local level, then the issue will be elevated first to the regional/sector office; if not resolved at the regional/sector level, then the issue will be elevated to the headquarters level for resolution;
4. The Parties will cooperate with each other to complete, in an expedited manner, all compliance that is required by applicable Federal laws not otherwise waived in furtherance of this MOU. If such activities are authorized by a local agreement as described in sub-article IV.B below, then the DOI, USDA, and CBP will complete the required compliance before executing the agreement;

5. The Parties will cooperate with each other to identify methods, routes, and locations for CBP-BP operations that will minimize impacts to natural, cultural, and wilderness resources resulting from CBP-BP operations while facilitating needed CBP-BP access;
6. The Parties will, as necessary, plan and conduct joint local law enforcement operations consistent with all Parties' legal authorities;
7. The Parties will establish a framework by which threat assessments and other intelligence information may be exchanged, including intelligence training to be conducted by all parties so that the intelligence requirements of each may be identified and facilitated;
8. The Parties will establish forums and meet as needed at the local, regional, and national levels to facilitate working relationships and communication between all Parties;
9. The Parties will develop and share joint operational strategies at the local, regional, and national levels, including joint requests for infrastructure and other shared areas of responsibility;
10. The Parties will share the cost of environmental and cultural awareness training unless otherwise agreed; and
11. The Parties will, as appropriate, enter into specific reimbursable agreements pursuant to the Economy Act, 31 U.S.C. §1535 when one party is to furnish materials or perform work or provide a service on behalf of another party.

B. Responsibilities and Terms Specific to DOI and USDA. The DOI and the USDA hereby recognize that, pursuant to applicable law, CBP-BP is authorized to access the Federal lands under DOI and USDA administrative jurisdiction, including areas designated by Congress as wilderness, recommended as wilderness, and/or wilderness study areas, and will do so in accordance with the following conditions and existing authorities:

1. CBP-BP agents on foot or on horseback may patrol, or pursue, or apprehend suspected CBVs off-road at any time on any Federal lands administered by the Parties;
2. CBP-BP may operate motor vehicles on existing public and administrative roads and/or trails and in areas previously designated by the land management agency for off-road vehicle use at any time, provided that such use is consistent with presently authorized public or administrative use. At CBP-BP's request, the DOI and the USDA will provide CBP-BP with keys, combinations, or other means necessary to

access secured administrative roads/trails. CBP-BP may drag existing public and administrative roads that are unpaved for the purpose of cutting sign, subject to compliance with conditions that are mutually agreed upon by the local Federal land manager and the CBP-BP Sector Chief. For purposes of this MOU, "existing public roads/trails" are those existing roads/trails, paved or unpaved, on which the land management agency allows members of the general public to operate motor vehicles, and "existing administrative roads/trails" are those existing roads/trails, paved or unpaved, on which the land management agency allows persons specially authorized by the agency, but not members of the general public, to operate motor vehicles;

- 3 CBP-BP may request, in writing, that the land management agency grant additional access to Federal lands (for example, to areas not previously designated by the land management agency for off-road use) administered by the DOI or the USDA for such purposes as routine patrols, non-emergency operational access, and establishment of temporary camps or other operational activities. The request will describe the specific lands and/or routes that the CBP-BP wishes to access and the specific means of access desired. After receiving a written request, the local Federal land manager will meet promptly with the CBP-BP Sector Chief to begin discussing the request and negotiating the terms and conditions of an agreement with the local land management agency that authorizes access to the extent permitted by the laws applicable to the particular Federal lands. In each agreement between CBP-BP and the local land management agency, the CBP-BP should be required to use the lowest impact mode of travel and operational setup reasonable and practicable to accomplish its mission. The CBP-BP should also be required to operate all motorized vehicles and temporary operational activities in such a manner as will minimize the adverse impacts on threatened or endangered species and on the resources and values of the particular Federal lands. However, at no time should officer safety be compromised when selecting the least impactful conveyance or operational activity. Recognizing the importance of this matter to the Nation's security, the CBP-BP Sector Chief and the local Federal land manager will devote to this endeavor the resources necessary to complete required compliance measures in order to execute the local agreement within ninety (90) days after the Federal land manager has received the written request for access. Nothing in this paragraph is intended to limit the exercise of applicable emergency authorities for access prior to the execution of the local agreement. The Secretaries of the Interior, Agriculture, and Homeland Security expect that, absent compelling justification, each local agreement will be executed within that time frame and provide the maximum amount of access requested by the CBP-BP and allowed by law;

4. Nothing in this MOU is intended to prevent CBP-BP agents from exercising existing exigent/emergency authorities to access lands, including authority to conduct motorized off-road pursuit of suspected CBVs at any time, including in areas designated or recommended as wilderness, or in wilderness study areas when, in their professional judgment based on articulated facts, there is a specific exigency/emergency involving human life, health, safety of persons within the area, or posing a threat to national security, and they conclude that such motorized off-road pursuit is reasonably expected to result in the apprehension of the suspected CBVs. Articulated facts include, but are not limited to, visual observation; information received from a remote sensor, video camera, scope, or other technological source; fresh "sign" or other physical indication; canine alert; or classified or unclassified intelligence. For each such motorized off-road pursuit, CBP-BP will use the least intrusive or damaging motorized vehicle readily available, without compromising agent or officer safety. In accordance with paragraph IV.C.4, as soon as practicable after each such motorized off-road pursuit, CBP-BP will provide the local Federal land manager with a brief report;
5. If motorized pursuits in wilderness areas, areas recommended for wilderness designation, wilderness study areas, or off-road in an area not designated for such use are causing significant impact on the resources, or if other significant issues warrant consultation, then the Federal land manager and the CBP-BP will immediately meet to resolve the issues subject to paragraphs IV.A.2 and IV.A.3 of this MOU;
6. CBP may request, in writing, that the land management agency authorize installation or construction of tactical infrastructure for detection of CBVs (including, but not limited to, observation points, remote video surveillance systems, motion sensors, vehicle barriers, fences, roads, and detection devices) on land under the local land management agency's administrative jurisdiction. In areas not designated as wilderness, the local Federal land manager will expeditiously authorize CBP to install such infrastructure subject to such terms and conditions that are mutually developed and articulated in the authorization issued by the land management agency. In areas designated or managed as wilderness, the local Federal land manager, in consultation with CBP, will promptly conduct a "minimum requirement," "minimum tool," or other appropriate analysis. If supported by such analysis, the local Federal land manager will expeditiously authorize CBP to install such infrastructure subject to such terms and conditions that are mutually developed and articulated in the authorization issued by the land management agency;

7. The DOI and USDA will provide CBP-BP agents with appropriate environmental and cultural awareness training formatted to meet CBP-BP operational constraints. The DOI and USDA will work with CBP-BP in the development and production of maps for use or reference by CBP-BP agents including, as appropriate, site-specific and resource-specific maps that will identify specific wildlife and environmentally or culturally sensitive areas;
8. The DOI and USDA will, as applicable, provide CBP-BP with all assessments and studies done by or on behalf of DOI or USDA on the effects of CBVs on Federal lands and native species to better analyze the value of preventative enforcement actions;
9. The DOI and USDA will assist CBP-BP in search and rescue operations on lands within the respective land managers' administration when requested;
10. The CBP-BP and land management agencies may cross-deputize or cross-designate their agents as law enforcement officers under each other agency's statutory authority. Such cross-deputation or cross-designation agreements entered into by the local land management agency and the field operations manager for the CBP-BP shall be pursuant to the policies and procedures of each agency; and
11. DOI and USDA will work at the field operations level with affected local CBP-BP stations to establish protocols for notifying CBP-BP agents when DOI or USDA law enforcement personnel are conducting law enforcement operations in an area where CBP-BP and DOI/USDA operations can or will overlap.

C. Responsibilities and Terms Specific to the CBP. DHS hereby agrees as follows:

1. Consistent with the Border Patrol Strategic Plan, CBP-BP will strive to interdict CBVs as close to the United States' international borders as is operationally practical, with the long-term goal of establishing operational control along the immediate borders;
2. If the CBP-BP drag any unpaved roads for the purpose of cutting sign under provision IV.B.2 above, then CBP-BP will maintain or repair such roads to the extent that they are damaged by CBP-BP's use or activities;
3. If CBP-BP agents pursue or apprehend suspected CBVs in wilderness areas or off-road in an area not designated for such use under

paragraph IV.B.5, then the CBP-BP will use the lowest impact mode of travel practicable to accomplish its mission and operate all motorized vehicles in such a manner as will minimize the adverse impacts on threatened or endangered species and on the resources and values of the particular Federal lands, provided officer safety is not compromised by the type of conveyance selected;

4. CBP-BP will notify the local Federal land manager of any motorized emergency pursuit, apprehension, or incursion in a wilderness area or off-road in an area not designated for such use as soon as is practicable. A verbal report is sufficient unless either CBP-BP or the land managing agency determines that significant impacts resulted, in which case a written report will be necessary;
5. If motorized pursuits in wilderness areas, areas recommended for wilderness designation, wilderness study areas, or off-road in an area not designated for such use are causing significant impact on the resources as determined by a land manager, or if other significant issues warrant consultation, then the CBP-BP and Federal land manager will immediately meet to resolve the issues subject to paragraphs IV.A.2 and IV.A.3 of this MOU;
6. CBP will consult with land managers to coordinate the placement and maintenance of tactical infrastructure, permanent and temporary video, seismic and other remote sensing sites in order to limit resource damage while maintaining operational efficiency;
7. CBP-BP will ensure that current and incoming CBP-BP agents attend environmental and cultural awareness training to be provided by the land management agencies;
8. CBP-BP will provide land management agencies with appropriate and relevant releasable statistics of monthly CBV apprehensions, search and rescue actions, casualties, vehicles seized, drug seizures and arrests, weapons seizures and arrests, and other significant statistics regarding occurrences on the lands managed by the land manager;
9. CBP-BP will consult with land managers in the development of CBP-BP's annual Operational-Requirements Based Budgeting Program to ensure affected land managers can provide input and are, in the early stages of planning, made aware what personnel, infrastructure, and technology the CBP-BP would like to deploy along the border within their area of operation; and
10. CBP-BP will work at the field operations manager level with affected local land management agencies to establish protocols for notifying

land management agency law enforcement officers when BP is conducting special operations or non-routine activities in a particular area.

V. Miscellaneous Provisions

A. Nothing in this MOU may be construed to obligate the agencies or the United States to any current or future expenditure of funds in advance of the availability of appropriations, nor does this MOU obligate the agencies or the United States to spend funds for any particular project or purpose, even if funds are available.

B. Nothing in this MOU will be construed as affecting the authority of the Parties in carrying out their statutory responsibilities.

C. This MOU may be modified or amended in writing upon consent of all Parties, and other affected Federal agencies may seek to become a Party to this MOU.

D. The Parties shall retain all applicable legal responsibility for their respective personnel working pursuant to this MOU with respect to, *inter alia*, pay, personnel benefits, injuries, accidents, losses, damages, and civil liability. This MOU is not intended to change in any way the individual employee status or the liability or responsibility of any Party under Federal law.

E. The Parties agree to participate in this MOU until its termination. Any Party wishing to terminate its participation in this MOU shall provide sixty (60) days written notice to all other Parties.

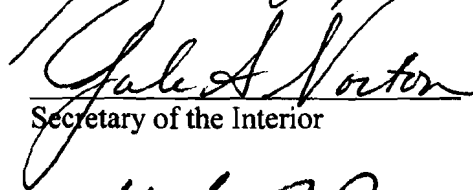
F. This document is an intra-governmental agreement among the Parties and does not create or confer any rights, privileges, or benefits upon any person, party, or entity. This MOU is not and shall not be construed as a rule or regulation.

In witness whereof, the Parties hereto have caused this Memorandum of Understanding to be executed and effective as of the date of the last signature below.

Date: 3/24/06


Secretary of Homeland Security

Date: 3/31/06


Secretary of the Interior

Date: 3/29/06


Secretary of Agriculture




U.S. Customs and
Border Protection

OBP 50/2.2

JUL 18 2008

MEMORANDUM FOR: All Chief Patrol Agents
All Division Chiefs

FROM:  David V. Aguilar
Chief
U.S. Border Patrol

SUBJECT Memorandum of Understanding Regarding Secure Radio
Communication

Attached to this memorandum is a copy of the Memorandum of Understanding (MOU) between the U.S. Department of Homeland Security (DHS), the U.S. Department of the Interior (DOI), and the U.S. Department of Agriculture (USDA) regarding secure radio communication.

The geographic and jurisdictional scope of this MOU is nationwide. This MOU is intended to provide guidance for sharing secure encrypted radio communication capabilities between Border Patrol agents and law enforcement officers within DOI and USDA, consistent with goals and principles related to border security.

Chief Patrol Agents are responsible for ensuring that Border Patrol agents under their supervision are aware of and comply with this memorandum and attached MOU. Chief Patrol Agents are also responsible for ensuring that DOI and USDA law enforcement components within their jurisdiction receive a current list of approved Border Patrol "Ten Codes."

Staff may direct questions to Assistant Chief Thomas Pocarobba at (202) 344-2766.

Attachment

Memorandum of Understanding
Among
U. S. Department of Homeland Security
and
U. S. Department of the Interior
and
U. S. Department of Agriculture
Regarding
Secure Radio Communication

I. Purpose and Scope

A. This Memorandum of Understanding (MOU) is entered into by the Department of Homeland Security (DHS), including and on behalf of its constituent bureau, U.S. Customs and Border Protection (CBP); the Department of the Interior (DOI), including and on behalf of its constituent bureaus the National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and the Bureau of Reclamation (BOR); and the Department of Agriculture (USDA), including and on behalf of its constituent agency the U.S. Forest Service (USFS). Throughout this MOU, these three Departments, including their constituent agencies, may be referred to as "The Parties."

B. This agreement is intended to apply exclusively to the Law Enforcement components of DOI and USDA Forest Service.

C. The geographic and jurisdictional scope of this MOU is nationwide. This MOU is intended to provide guidance for sharing secure encrypted radio communication capabilities between Border Patrol Agents and Law Enforcement Officers within DOI and USDA, consistent with goals and principles related to border security.

D. This MOU supersedes any conflicting provision of any prior MOU or Memorandum of Agreement between the Parties or their subordinate bureaus or components.

II. Background

Radio communications have long been an operational challenge between Border Patrol Agents in the field and their local law enforcements partners. In most locations, Agents and Law Enforcement Officers have had to conduct operations primarily in unsecured radio transmissions. Discussions between the Secretaries of the Department of Homeland Security and the Department of Interior have taken place regarding a joint effort to bridge the communication gaps and to provide radio interoperability.

III. Responsibilities and Terms of Agreement

- DOI and USDA will ensure that all of their Law Enforcement Officers are United States Citizens and have passed a Modified Background Investigation prior to receiving access to CBP radio encryption capabilities.
- DOI and USDA will provide subscribers compatibility with the network and encryption level specific to the sector in which they interoperate.
- The primary repeater channel for joint operations should be designated prior to any operation and separate from the Sector's commonly used tactical channel. Border Patrol Sector Enforcement Specialist's (SES) continuously monitor these channels.
- OTAR (keys) will be managed by the technical staff supporting the Border Patrol Network in accordance with defined standard operating procedures. Specifically:
 - All radios must have a unique identifiable "Alias" by which the SES will be able to identify the radio user communicating on the console. A radio call sign identifier should be established to provide a standard designation for all agency participants.
 - All radio users must follow the "lost/stolen" procedures (provided as an addendum) for reporting a lost or stolen radio. This requires an immediate notification to the SES at the Border Patrol Sector Communications Center.
 - All Parties are responsible for procurement, maintenance and programming of their own equipment.
- Communications via these radio frequencies using this encryption must be supporting mutual operations, including emergencies, between the Parties.

The Parties will be responsible for ensuring that all encrypted communications are protected.

IV. Encryption Key Solution:

The following is the encryption key and the functional description that will be available to support this interoperable agreement.

CBP-COMMON KEY – The CBP Common Key is the encryption key that will be made available to support this interoperable agreement. It may be displayed as OFO TAC and is available to all CBP entities. Authorized radios receive this nationally distributed key via OTAR over the USBP network and the National Communications (NCC) {Orlando} Network.

V. Miscellaneous Provisions

The Parties Agree to the Following Common Goals, Policies, and Principles:

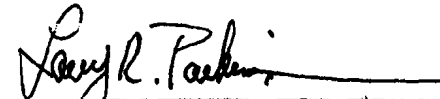
- A. The parties enter into this MOU in a cooperative spirit with the goal of providing secure communication amongst law enforcement officers in the course of accomplishing each Department's respective mission.
- B. Nothing in this MOU may be construed to obligate the Parties or the United States to any current or future expenditure of funds in advance of availability of appropriations, nor does this MOU obligate Parties or the United States to spend funds for any particular purpose, even if funds are available.
- C. The Parties will, as appropriate, enter into specific reimbursable agreements pursuant to the Economy Act, 31 U.S.C. sec. 1535, when one party is to furnish materials or perform work or provide a service on behalf of another party.
- D. The parties shall retain all applicable legal responsibility for their respective personnel working pursuant to this MOU. This MOU is not intended to change in any way the individual employee status or the liability or responsibility of any party under Federal law.
- E. Nothing in this MOU is intended to conflict with current law, regulation, directive, or other governing authority of any party to this MOU. If any term of this MOU is inconsistent with such authority, then that term shall not apply, but the remaining terms and conditions of the MOU shall remain in full force and effect.
- F. This document is an intra-governmental agreement among the Parties and does not create or confer any rights, privileges, or benefits upon any person or entity not a signatory hereto. This MOU is not and shall not be construed as a rule or regulation.
- G. This MOU may be modified or amended in writing upon consent of all Parties. The DOI and the USDA hereby recognize that, pursuant to applicable law, DHS reserves the right to rescind this agreement at any time for any reason. The DOI and the USDA individually reserve the right to withdraw from this agreement at any time for any reason.
- H. The OBP hereby agrees to provide upon request encryption keys and technical support allowing for secure communication with DOI and USDA within their Sectors.

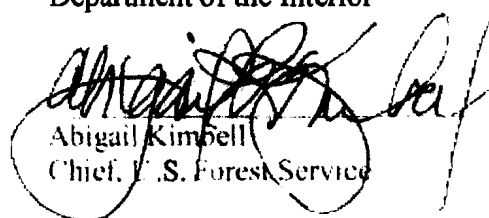
The DOI and USDA agree to provide their respective communication keys to CBP Sectors upon request.

- J. The DOI agrees to present all radios and associated equipment on loan, for annual and random inventory inspection. The inventory inspection will be conducted at the local Border Patrol Sector.
- K. This MOU shall be effective through December 31, 2012 and may be renewed for another five years upon mutual agreement of the Parties.

In witness whereof, the Parties hereto have caused this Memorandum of Understanding to be executed and effective as of the date of the last signature below.

Date: July 10, 2008 
David V. Aguilar
Chief, U.S. Border Patrol

Date: July 10, 2008 
Larry Parkinson
Deputy Assistant Secretary
Department of the Interior

Date: July 18, 2008 
Abigail Kimbrell
Chief, U.S. Forest Service

**Memorandum of Agreement
Between
U.S. Customs and Border Protection
And
U.S. Department of the Interior
Regarding
Natural and Cultural Resource Mitigation
Associated with Construction and Maintenance
of
Border Security Infrastructure along the Border
of the United States and Mexico**

I. Purpose and Scope

A. This Memorandum of Agreement (MOA) is made and entered into by the U.S. Customs and Border Protection (CBP), a component of the Department of Homeland Security (DHS), and the U.S. Department of the Interior (DOI), including and on behalf of its constituent bureaus, the National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and the Bureau of Reclamation (BOR). Throughout this MOA, these two Departments, including their constituent agencies, may be referred to as "the Parties." Any reference to a bureau, agency, or constituent component of a Party shall not be deemed to exclude application to any other appropriate bureau or constituent component of that Party. Both DOI and CBP recognize that the BIA enters into this agreement only on its own behalf and not on behalf of any Indian tribe.

B. This MOA is an agreement between the Parties for the mitigation of natural and cultural resource impacts that have occurred or may occur in connection with CBP construction activities to secure the borders of the U.S. from the threat of terrorism, the implements of terror, and illegal human and narcotics trafficking. It is specifically intended to address the actions CBP and DOI will take to minimize, avoid, or mitigate potential impacts to natural and cultural resources arising out of CBP border security projects.

C. This MOA is entered into pursuant to the governing statutory authorities of each of the Parties.

D. Nothing set forth herein is intended to supersede, amend, or replace any provision or agreement in the Memorandum of Understanding dated March 31, 2006, between DHS, DOI, and the Department of Agriculture entitled "Cooperative National Security and Counterterrorism Efforts on Federal Lands along the United States' Borders."

E. This MOA does not address the responsibilities of the Parties with regard to the mitigation of natural and cultural resource impacts that have occurred or may occur during the day to day execution of the basic law enforcement missions of any component of DOI or DHS.

II. Definitions

Best Management Practices (BMPs). Policies, practices, procedures, or structures implemented prior to, during, or after construction to avoid or minimize the adverse environmental effects of border security infrastructure on cultural and natural resources including animal and plant resources.

Border Security Infrastructure. Facilities, fencing, barriers, access roads, lighting, cameras, towers, sensors, checkpoints, and associated buildings and equipment installed in the vicinity of the borders of the United States for the purpose of preventing the entry of terrorists and terrorist weapons and aiding in the detection, interdiction, and apprehension of individuals and narcotics which illegally enter the United States.

Mitigation Measures. Cultural and natural resource projects that will be implemented where avoidance or minimization through BMPs was or is not possible and are designed to offset the impacts of border security activities on natural and cultural resources that are managed, protected, or under the jurisdiction of DOI.

III. Background

A. DHS, through its component CBP, is statutorily mandated to control and guard the Nation's borders and boundaries. It is the mission of CBP to prevent the entry of terrorists and terrorist weapons into the United States, while also facilitating the flow of legitimate trade and travel.

B. DOI, through its constituent bureaus, is mandated by statute to administer certain Federal and Indian lands in the vicinity of the United States borders. These lands consist of a variety of valuable ecological communities and are administered as wilderness areas, conservation areas, wildlife refuges, public lands, irrigation projects, and units of the national park system. Tribal governments have primary management responsibility over tribal lands; the United States, through the BIA, may also have trust responsibilities as well as stewardship and law enforcement responsibilities on some of these lands.

C. DOI, through its constituent bureaus, is responsible for administering a variety of natural and cultural resource statutes, which may be applicable irrespective of the ownership or jurisdictional status of land and waters impacted by the construction and maintenance of border security infrastructure.

IV. Common Findings and Affirmations by the Parties

A. Both Parties recognize that gaining and sustaining operational control of our borders are national priorities and are in our Nation's best interest.

B. Both Parties are committed to enhancing the national security of the United States and recognize DHS' and CBP's requirement to expeditiously construct border security infrastructure as a critical component of border security.

C. Both Parties recognize that construction and maintenance of border security infrastructure has the potential to adversely affect the natural and cultural resources along and in proximity to the borders of the United States. The Parties further recognize that border security infrastructure can also be beneficial to the protection of natural and cultural resources as it can preserve habitat and protect resources through the reduction of impacts caused by illegal entrants and illegal cross-border activity.

D. Both Parties agree that improved border security achieved through deployment of border security infrastructure is intended to significantly enhance the safety of members of the public as well as government employees accessing public lands. Reductions in illegal cross-border activity by inherently violent transnational criminal organizations should achieve this outcome.

E. Both Parties agree that early coordination and communication between CBP and DOI concerning border security infrastructure projects are in the best interests of both Parties.

F. Both Parties agree that a collaborative and cooperative approach to the avoidance and minimization, and if necessary, the mitigation, of adverse effects to natural and cultural resources is in the best interest of the United States.

G. Both Parties acknowledge that an ecosystem-based approach to the identification of impacts and implementation of mitigation measures and to environmental monitoring is in the best interest of the ecological communities along and in proximity to the borders of the United States.

V. Findings and Affirmations by CBP

A. DHS and CBP are committed to responsible environmental stewardship for all border security infrastructure projects. CBP therefore agrees to plan for, design, deploy, and maintain border security infrastructure components in cooperation with DOI in such a way as to avoid or minimize adverse effects to the natural and cultural resources in those areas where such border security infrastructure is to be constructed, operated, and maintained.

B. Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act, as amended (“IIRIRA”), 8 U.S.C. § 1103 note, the Secretary of Homeland Security has the authority to waive all legal requirements, including DOI-administered statutes and regulations, as such Secretary deems necessary to ensure the expeditious construction of border security infrastructure in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States.

C. For projects not subject to or covered by a waiver issued by the Secretary of Homeland Security pursuant to Section 102 of IIRIRA, CBP acknowledges its responsibility to coordinate and consult with DOI, subject to applicable law.

D. Consistent with its commitment to environmental stewardship, where appropriate, CBP will implement BMPs that are designed to avoid or minimize impacts to natural and cultural resources. Where avoidance or minimization of adverse effects cannot be achieved through the implementation of BMPs, CBP will, in accordance with the terms and conditions of this MOA and the legal requirements, make further efforts to mitigate the adverse effects caused by construction and maintenance of border security infrastructure upon the area’s natural and cultural resources.

E. Pursuant to Section 102(b)(1)(C)(i) of IIRIRA, 8 U.S.C. § 1103 note, CBP, as a component of DHS is responsible for consulting with DOI regarding, among other things, potential impacts to the environment resulting from the construction and maintenance of border security infrastructure. This MOA and the associated actions are one of the means by which DHS and CBP are fulfilling obligations under Section 102(b)(1)(C)(i) of IIRIRA.

VI. Findings and Affirmations Specific by DOI

A. DOI agrees to provide technical assistance to CBP as they identify alternatives or BMPs for border security infrastructure that avoid or minimize adverse effects to the natural and cultural resources of the area.

B. Where avoidance or minimization of adverse effects cannot be achieved, DOI agrees to provide technical assistance to CBP as they identify mitigation measures that will help offset the adverse effects of border security infrastructure.

VII. Agreement Concerning the Identification and Implementation of BMPs and Potential Mitigation Measures for CBP Border Security Infrastructure Projects

A. The Parties Agree to the Following Responsibilities and Terms Concerning the Identification of Mitigation Measures for CBP Projects Not Subject to the Secretary’s Waiver:

1. Both Parties agree to use of BMPs to avoid or minimize impacts to resources whenever possible.
2. Where avoidance or minimization of adverse effects cannot be achieved through the implementation of BMPs, statutory requirements may necessitate the development of mitigation measures.
3. Where the identification of mitigation measures is necessary, CBP will initiate coordination with DOI early and will identify appropriate mitigation measures in accordance with applicable law.
4. Both Parties agree that identified mitigation measures will be based on the best available science and natural and cultural resource conservation practices and will be designed to mitigate the adverse effects of border security infrastructure to the extent necessary to comply with applicable law.
5. Both parties agree to the expeditious identification of mitigation measures and, where feasible, mitigation measures will be identified and developed within the agreed upon timeframes.

B. The Parties Agree to the Following Responsibilities and Terms Concerning the Identification of Mitigation Measures for CBP Projects Where DOI-administered Statutes and Regulations Have Been Waived by the Secretary of Homeland Security Pursuant to IIRIRA:

1. Both Parties agree to use of BMPs to avoid or minimize impacts to resources whenever possible.
2. Both Parties agree that, where avoidance or minimization of adverse effects cannot be achieved through the implementation of BMPs, recommended mitigation measures beyond BMPs will be developed by CBP in consultation with DOI for the following resource categories:
 - a. Endangered and threatened species whose designated habitats, distribution, or population will be adversely affected by the deployment and maintenance of border security infrastructure.
 - b. Other fish and wildlife including migratory birds, resident species, and other members of the animal kingdom whose populations or habitats will be adversely affected by the deployment and maintenance of border security infrastructure.
 - c. Plant communities including wetlands and riparian areas that will be adversely affected by the deployment and maintenance of border security infrastructure.

- d. Adverse effects to other natural resources such as soils, hydrology and designated wilderness areas from the deployment and maintenance of border security infrastructure.
 - e. Cultural resources including Native American human remains and cultural items that will be adversely affected by the deployment and maintenance of border security infrastructure.
3. Both Parties agree that these mitigation measures will be specified by reference to relevant border security infrastructure projects.
 4. The Parties agree that for each DOI-recommended mitigation measure, DOI will provide a cost estimate, which will include the direct costs of the mitigation measure and any implementation costs.
 5. CBP asserts that it has no legal obligation to fund the cost of executing the identified mitigation measures and any decision to fund such costs is at the sole discretion of CBP.
 6. Both Parties agree that mitigation measures will be based on the best available science and natural and cultural resource conservation practices and will be designed to mitigate the adverse effects while recognizing beneficial impacts associated with the construction and maintenance of border security infrastructure.
 7. Both Parties agree that mitigation measures will be subject to review and discussion before implementation.
 8. Both Parties agree that in the interest of transparency, a list of adopted mitigation measures will be made available to the public.

C. The Parties Agree to the Following Responsibilities and Terms Concerning the Implementation of Mitigation Measures:

1. It is understood that CBP has previously committed to the implementation of mitigation measures designed to compensate for the impacts to natural and cultural resources managed, protected, or under the jurisdiction of DOI as a result of past border infrastructure projects. It is further understood that both Parties will work to ensure that any mitigation measure will not be duplicative of previously funded mitigation measures.
2. Both Parties agree that, where CBP determines it is the most practical and effective approach, it may request that DOI implement certain mitigation measures. Where DOI agrees to implement any mitigation measure, CBP will be responsible for funding the mitigation measures and DOI and/or its contractors will implement the measures.

3. Both Parties acknowledge that DOI and its constituent bureaus will not assess overhead charges for mitigation activities executed pursuant to the construction of PF-70, PF-225, and VF-300 projects as identified in the Letter of Commitment entered into by DOI and CBP on January 15, 2009. However, DOI is obligated to assess overhead charges for other agreements involving mitigation activities or the transfer of funding from CBP to DOI.
4. Where DOI will implement certain mitigation measures pursuant to the procedures set forth above, the Parties agree that they will expedite the process for executing the Economy Act agreements that will be necessary to transfer funds from CBP to DOI.
5. Where DOI agrees to implement mitigation measures, DOI will administer such projects and funds in a transparent manner. In particular, DOI will establish a team of employees that will effectively and efficiently administer mitigation funding and oversee the implementation of agreed upon mitigation measures.
6. As the implementation of mitigation measures by DOI on behalf of CBP is anticipated to take place over the course of several years, CBP and DOI agree to review completed projects and their impacts, both beneficial and adverse, annually to evaluate their effectiveness. On an annual basis, the DOI will provide a status report of activities conducted pursuant to this MOA.

X. Dispute Resolution

A. Both parties agree to implement all aspects of this MOA. The Parties will strive to resolve conflicts at the lowest field operational level possible while applying the principles of this MOA in such a manner as will be consistent with the spirit and intent of this MOA. If a conflict cannot be resolved at the field level, then the issue will be elevated to the regional/sector office. If not resolved at the regional/sector level, it will be elevated to the headquarters level for resolution.

XI. Miscellaneous Provisions

A. Nothing in this MOA shall be construed to obligate the agencies or the United States to any current or future expenditure of funds in advance of the availability of appropriations, nor does this MOA obligate the agencies or the United States to spend funds for any particular purpose.

B. The Parties will, as appropriate, enter into specific reimbursable agreements pursuant to the Economy Act, 31 U.S.C. § 1535, when one party is to furnish materials or perform work or provide a service on behalf of another party.

C. Nothing in this MOA will be construed as affecting the authority or obligations of the Parties in carrying out their statutory responsibilities.

D. This MOA may be modified or amended in writing upon consent of both Parties.

E. The Parties shall retain all applicable legal responsibility for their respective personnel working pursuant to this MOA with respect to *inter alia*, pay, personnel benefits, injuries, accidents, losses, damages, and civil liability. This MOA is not intended to change in any way the individual employee status or the liability or responsibility of any Party under Federal law.

F. The Parties agree to participate in this MOA for five years effective as of the date of the last signature below. This MOA may be renewed by mutual consent of both Parties. Either party may terminate its participation in this MOA upon providing sixty (60) days written notice to the other Party.

G. This document is an intra-governmental agreement among the Parties and does not create or confer any rights, privileges, or benefits upon any person, party, or entity. This MOA is not and shall not be construed as a rule or regulation.

XII. Signatories

In witness whereof, the Parties hereto have caused this Memorandum of Agreement to be executed and effective as of the date of the last signature below.

Date: January 14, 2009



Commissioner of U.S. Customs and
Border Protection

Date: JAN 15 2009





Secretary of the Department of the
Interior



September 18, 2007

MEMORANDUM FOR: The President

FROM: Dirk Kempthorne 
Secretary of the Interior

Michael Chertoff 
Secretary of Homeland Security

SUBJECT: Department of the Interior/Department of Homeland Security
Collaboration to Protect Public Lands at the Border

This memorandum describes substantial efforts by the Department of the Interior (DOI) and the Department of Homeland Security (DHS) to improve security and safety on DOI lands along the southwest border.

With your important focus on investments to gain control of the border, we have renewed and extended the commitment of our two departments to work jointly on these issues. Sustained collaboration is imperative to gain control of our borders, assure the security and safety of public lands for the visiting public, and for the DOI employees who work on public lands along the border.

DOI lands cover almost 800 miles (41 percent) of the southwest border, and include vast, uniquely beautiful and environmentally sensitive areas. Some of the tracts of greatest concern cover large portions of New Mexico and the Sonoran desert in Arizona.¹

Patterns and methods of illegal activity -- particularly drug trafficking, illegal entry and human smuggling -- have historically evolved as we have improved security and strengthened enforcement along specific portions of the border. As improvements in many areas have occurred, impacts have shifted to DOI-managed lands, posing dangers to visitors and employees.

¹ DHS border investments and ongoing enforcement operations touch the following DOI-managed and tribal lands: Organ Pipe Cactus National Monument; Cabeza Prieta National Wildlife Refuge; Buenos Aires National Wildlife Refuge; San Pedro Riparian National Conservation Area; San Bernardino National Wildlife Refuge; several BLM sections to the east of Naco and Douglas, Arizona; and the Tohono O'odham tribal reservation

For example, improvements in border security in the San Diego area led to a noticeable displacement of this illegal activity beginning in 1995 into the more remote areas of Arizona and a substantial increase in illegal border activity there. In 2005, five homicides occurred at Buenos Aires National Wildlife Refuge. Today, both DHS and DOI employees are the subjects of surveillance by drug smugglers, some of whom have established observation posts on our lands, and are equipped with assault weapons, encrypted radios, a network of signal repeaters hidden in the mountains, night vision optics and other sophisticated equipment. Nearly 600,000 pounds of marijuana and three thousand pounds of cocaine were seized on DOI-managed lands in 2006. National parks and wildlife refuge lands are supposed to be open to the public on the southwest border. Because visitors to public lands also face increased risk of harm, however, significant areas are being closed to the public, compromising public expectations and the mission of these public lands.

DOI dedicates as much as 50 percent of its budgets for those properties to security and law enforcement activities. DOI statistics show that total federal law enforcement apprehension of illegal aliens on DOI and tribal lands increased dramatically, from an estimated 17,000 arrests in 2001 to 240,000 arrests in 2006. That trend has begun to reverse in 2007, with apprehensions on DOI and tribal lands down by approximately 30,000 in the first six months of 2007. The illegal traffic has also resulted in significant physical damage to public land resources, sensitive fish and wildlife habitats, and valuable archeological resources.

As we continue to increase the size of the Border Patrol and bring on-line significant new investments with the Secure Border Initiative (SBI), we are gaining control of segments of the border that have been significant corridors for illegal activity. This will place greater pressure on the criminal organizations that move people and drugs. These organizations will no doubt evolve their own tactics and continue to deploy more sophisticated technologies and techniques to evade detection. In order to be nimble in containing illegal cross-border activity, DOI and DHS must continue to strengthen our work together. We must continue to secure the border and protect visitors and employees in areas along the border.

There is a strong history of cooperation in the field between Border Patrol and DOI law enforcement staff. DHS (and its legacy agencies) has established formal agreements with public land law enforcement personnel and agencies. For example, in 2006 DHS, DOI, and USDA signed a formal border cooperation agreement to strengthen enforcement. We plan to continue efforts to coordinate and share radio communications and encryption capability and protocols to improve law enforcement interoperability.

DHS, through the Border Patrol, initiated a Public Lands Liaison Agent program throughout its sectors. DOI personnel attended the training of these agents. As a result, the Border Patrol has engaged DOI in Borderlands Management Task Forces in locations west of Texas. The task forces assist our mutual work through regular meetings. To strengthen these efforts, CBP will initiate Borderlands Management Task Force efforts in Texas Border Patrol sectors, and DOI will include both law enforcement and resource management personnel as liaisons.

At the headquarters level, we are building on that partnership to manage these issues. DOI has established a multi-disciplinary senior leadership team to work with Customs and Border

Protection (CBP) to address the border issues of concern to DOI. We plan to identify a streamlined mechanism to address funding reimbursements for DOI support of DHS's SBI activities.

We both have increased collaboration of DHS and DOI law enforcement to achieve solid law enforcement alignment in the field. There is now routine coordination between CBP and DOI headquarters law enforcement leaders. Moreover, DOI is placing resource experts next month in the SBI headquarters office in Washington. This will further facilitate project design and construction of border technology and infrastructure investments, including DHS's fencing, vehicle barriers, ground-based radars, cameras and other sensors. DOI plans to work with CBP to make skilled DOI employees available for the environmental assessment process to facilitate and expedite reviews and to help ensure that the border control infrastructure decisions being made integrate DOI visitor security, employee safety and land management imperatives. DOI agencies will be named as formal cooperating agencies during the review of infrastructure and other projects at the border. DOI and DHS will collaborate upon a timeline for the investment of resources affecting DOI lands on the border.

In sum, DHS and DOI remain jointly committed to strong collaboration to achieve the goals of the border security initiative. DHS has the principal responsibility to control traffic across the U.S./Mexico border. DOI will continue its efforts to integrate DOI mission considerations, including the safety of DOI visitors and employees and the protection of sensitive land resources, into the SBI planning process and assist DHS in meeting its considerable obligations to ensure border security. DOI's FY2009 budget submission proposes increased funding to meet its obligations to protect public lands near the border as well as visitors and our employees, as part of the broad national focus on enhancing homeland security.

**DEPARTMENT OF HOMELAND SECURITY
U.S. CUSTOMS AND BORDER PROTECTION**

INTERAGENCY AGREEMENT

PART I

A D M I N I S T R A T I O N	U.S. Customs and Border Protection	Agreement No.	HSBP1208X01414	Modification No.	
		Option No.		Task Order No.	
	Statutory Authority Economy Act 31 U.S.C. 1535 & 1536		Requisition No.		Date Prepared
			0020032415		06/06/2008
	Name and Address of Customs Organization (Office or Division Responsible for Agreement) Department of Homeland Security Customs and Border Protection 1300 Pennsylvania Ave NW Room 7.2C Washington DC 20229			Performance Location See Attached Delivery Schedule	
	Participating Agency	Agreement No.	RABW0566	Modification No.	
		Option No.		Task Order No.	
	Statutory Authority		Requisition No.		Date Prepared
Name and Address of Participating Organization (Office or Division Responsible for Agreement) DEPT. OF INTERIOR - OFFICE OF LAW ENFORCE. SEC. & EMERG. MGMT. 1849 "C" STREET N.W. RM. 7354 WASHINGTON DC 20240-0001 US			Performance Location		

PART II

All regulations made under this Agreement shall comply with the Competition in Contracting Act, P.L. 96-389, and regulations pertaining thereto.

A G R E E M E N T	Scope of Work Department of Interior (DOI) will provide one full time person (GS 13 or 14) for the following: (1) Law Enforcement (LE) Liaison for both the Northern and Southern Borders; (2) Insight, knowledge and experience in DOI LE operations along the international borders as it relates to the deployment of Secure Border Initiative (SBI) technology and tactical infrastructure; (3) Facilitate coordination efforts in radio interoperability between CBP and DOI and develop programmatic support for CBPs Air and Marine Operations in support of SBI (4) Communicate and facilitate resolution between DOI and CBP regarding I.E. issues that occur regarding SBI objectives on DOI Managed lands Option Period: October 1, 2008 - September 30, 2009		Period of Performance From 07/20/2008 To 09/30/2008	
	Base Price of Funded IA:	\$200,000.00		
	Amount of this Modification:	\$0.00		
	Overhead:	\$0.00		
	Total Price of IA:	\$200,000.00		
Attachments	<input checked="" type="checkbox"/> Terms and Conditions of Agreement	<input checked="" type="checkbox"/> Statement of Work	<input type="checkbox"/> Quantity and Unit Price	
	<input type="checkbox"/> Determinations and Findings	<input type="checkbox"/> Option Period Dates	<input type="checkbox"/> Form 238A	
	<input type="checkbox"/> Market Research Findings	<input type="checkbox"/> Other		

PART III

Special instruction: U.S. Customs and Border Protection Interagency Agreement Number and Project Code must be referenced on every invoice/voucher.

PARTICIPATING AGENCY FUNDING	Include in accounting strip: PROJECT CODE/NO. - APC - BFY - FUND - BUDPLN - ORG - PROG - OCC - TOTAL
	<i>6051PBR05 H50566 52</i>
	GRAND TOTAL <u>\$200,000.00</u>
U.S. CUSTOMS AND BORDER PROTECTION FUNDING	Include in accounting strip: PROJECT CODE/NO. - APC - BFY - FUND - BUDPLN - ORG - PROG - OCC - TOTAL
	6100 2525USCSGLCS09000090002000R0735H01 SB1002525 200000.00
	GRAND TOTAL <u>\$200,000.00</u>

PART IV

Check Appropriate Boxes Transfer Appropriation Billing for actual cost incurred
 Other _____

Monthly Quarterly Semi-Annual Annual Advanced Reimbursable Direct Fund Cts

BILLING / PAYMENT	PARTICIPATING AGENCY	U.S. CUSTOMS AND BORDER PROTECTION
	Agency Locator Code: 14010001	Agency Locator Code: 70050800
	BPN No. 130907426	BPN No.: DUNS# 879824324
	Address: <i>NBC 7301 W Mansfield Ave MS 5-2705 Attn: Agreements Denver CO 80235</i>	Address: DHS - Customs & Border Protection National Finance Center PO Box 68908 Indianapolis IN 46268
	Point of Contact: Renee Marchesi	Point of Contact: Mark Voll
	Telephone No.: 303-969-5886	Telephone No. 317-614-4538
	FAX No.: 303-969-6631	FAX No. 317-298-1038
	E-Mail Address: renee_e_marchesi@cbp.gov	E-Mail Address: Mark.Voll@dhs.gov

APPROVALS

	PARTICIPATING AGENCY		U.S. CUSTOMS AND BORDER PROTECTION	
	PROGRAM OFFICE	Name: John Kovetz		Name:
	Title: Assistant Director Law Enforcement		Title:	
	Telephone No.: 202-208-5903		Telephone No.:	
	FAX No.: 202-219-1185		FAX No.:	
	E-Mail Address: john_kovetz@us.doi.gov		E-Mail Address:	
	Signature:	Date:	Signature:	Date:
C O T R	Name: Bruce Marto		Name: Adriana L. Ferrante	
	Title: Supervisor Special Agent		Title: Program Analyst	
	Telephone No.: 202-208-6891		Telephone No.: 202-344-3538	
	FAX No.: 202-219-1185		FAX No.: 202-344-3330	
	E-Mail Address: bruce_marto@us.doi.gov		E-Mail Address: adriana.l.ferrante@dhs.gov	
	Signature:	Date:	Signature: <i>Adriana L. Ferrante</i>	Date: 7/1/08
PROGRAM BUDGET OFFICE(R)	Name: Kurt Hahn		Name: Robert Brown	
	Title: Budget Officer		Title: Director of Business Operations	
	Telephone No.: 202-208-6443		Telephone No.: 202-344-2669	
	FAX No.: 202-219-4095		FAX No.: 202-344-1418	
	E-Mail Address: kurt_hahn@dhs.gov		E-Mail Address: robert.e.brown2@dhs.gov	
	Signature: <i>Kurt Hahn</i>	Date: 6/23/08	Signature:	Date:
BUDGET DIVISION (for 2X only)	Name:		Name:	
	Title:		Title:	
	Telephone No.:		Telephone No.:	
	FAX No.:		FAX No.:	
	E-Mail Address:		E-Mail Address:	
	Signature:	Date:	Signature:	Date:
CONTRACTING OFFICER	Name:		Name: M.L. McDaniel	
	Title:		Title: Contracting Officer	
	Telephone No.:		Telephone No.: 202-344-3877	
	FAX No.:		FAX No.: 202-344-2720	
	E-Mail Address:		E-Mail Address: miody.l.mcdaniel@dhs.gov	
	Signature:	Date:	Signature: <i>M.L. McDaniel</i>	Date: 6/24/08

INSTRUCTIONS

Instructions are provided for only those items that need explanation and clarification. Enter N/A where an answer is not applicable.

PART I - ADMINISTRATION

- Agreement Number - Interagency Agreement (IA) number is assigned by U.S. Customs and Border Protection Procurement Division.
- Option Number - Include if the IA contains options and an option is being exercised or modified.
- Task Order Number - Include if referenced in the Statement of Work.
- Statutory Authority - Define under what authority the IA is authorized
- Requisition Number - The Program Office assigns this number when appropriate.

PART II - AGREEMENT

- Scope of Work - Briefly summarize the statement of work. If the agreement is being modified, describe why the modification is being issued (*not the accounting strip*)
- Attachments - Check the appropriate boxes to indicate documents attached to CF238.

PART III - FUNDING

- (1) Include line item numbers, accounting strips, and price for each.
- (2) For modification show how the prices are changed for the line items and show the revised total.
- (3) Include in the price adjustments, for all prior modifications, (under the currently funded IA) to show logic of changes to the price of the IA.
- (4) Insert in the Grand Total block the total amount, or revised total of the funded IA.

PART IV - BILLING/PAYMENT

This part is self-explanatory.

PART V - APPROVALS

- U.S. Customs and Border Protection - Provide complete information for all required Approving Officials.
- Participating Agency - Include information requested only for those Approving Officials that are required by your organization.

STATEMENT OF WORK

Interagency Agreement Between U.S. Customs and Border Protection And the U.S. Department of the Interior

This interagency agreement is made and entered into by U.S. Customs and Border Protection and the Department of the Interior. This agreement covers the assignment of one DOI personnel to fill the referenced position within CBP-SBI office for a period of one fiscal year. The position is one (1) Law Enforcement Liaison who would have visibility over both the Northern and Southern Border areas.

A. Authority

The Economy Act of 1932 (31 USC 1535). The necessary transfer of funds shall be made pursuant to a separate Economy Act Agreement between the parties.

B. Objective/Purpose

DHS and CBP are working toward securing our nation's borders against terrorists and terrorist weapons and toward preventing illegal entry of persons and goods into the U.S. In many of the areas where CBP officers and agents operate, DOI has a responsibility to protect America's natural resources. In order for both agencies to fulfill their sometimes conflicting missions, agreement is required on how to fulfill environmental initiatives while building the infrastructure for border security.

DHS and DOI will work collaboratively to provide consistent goals, principles, and guidance relating to border security in the areas of law enforcement operations, tactical infrastructure installation, and utilization of roads, while minimizing and/or preventing significant impact on or impairment of natural and cultural resources in such areas of operations.

C. Scope

The Department of Interior will provide one full time DOI personnel (GS-13/14) to fill the following position description: (1) Law Enforcement Liaison for both the Northern and Southern Borders. This position will serve in the Office of SBI for the Fiscal Year 2008 and allow for valuable subject matter expertise to the SBI and *SBI_{net}* programs within CBP. This position will continue to be filled/funded for subsequent fiscal years until SBI and/or DOI no longer require their Headquarters on-site physical presence and expertise to conduct SBI and *SBI_{net}* related projects.

1. Tasks:

The Law Enforcement Representative will serve as primary point of contact and advocate for SBI Program Management Office with DOI in matters relating to LE. This advocate will serve as liaison between DOI and SBI providing insight, knowledge and experience in DOI LE operations along the international borders as it relates to the deployment of SBI technology and tactical infrastructure. He/she will facilitate coordination efforts in radio interoperability between CBP and DOI and develop programmatic support for CBP's Air and Marine Operations in support of SBI. He/she will communicate with and facilitate resolution between DOI and CBP regarding any LE issues that occur regarding SBI objectives on DOI-managed lands.

2. Estimated Cost Breakout:

Cost of personnel includes \$70,000.00 toward salary and benefits, LEAP (law enforcement availability pay) with a cap of \$130,000.00 toward move/relocation expenses. This funding is for the remainder of Fiscal Year 2008. DOI will absorb any remaining balance of salary benefits and/or move/relocation expenses. SBI will fund any SBI-related travel costs; however, no other costs shall be included or considered to be covered.

3. Deliverables

Provide both SBI and DOI Senior Management with bi-weekly status updates on individual projects; monthly updates on field coordination efforts; any additional reports and updates as needed.

D. Period of Performance

July – September 30, 2008

With continuation of service for FY09 dates: 10/1/08 - 09/30-2009

F. Funding

Fund: DR
Org Code: 6051
Budget Plan:
Program Code: 6051PBR05
Project Code:

F. Points of Contact

Phyllis Harvey (202) 208-5710, DOI
Wanda Moore (202) 344-3574, SBI

G. Participating Agency Information

Department of the Interior
1849 C St., NW
Washington, DC 20240
Phone: 202-208-3100
Fax:
Tax ID Number: 530196949
DUNS Number: 130907426
Agency Locator Code: 14-01-0001

Customs and Border Protection
1300 Pennsylvania Ave NW
Phone: 202-344-
Fax:
Tax ID Number: 73-1680959
DUNS Number: 879824324
Agency Locator code: 70050800

PAYABLE INTRA-GOVERNMENTAL TRANSACTIONS TERMS AND CONDITIONS

1. General

The Payable Intra-Governmental Transactions (IGT) Form, these Terms and Conditions, the Statement of Work (SOW), and any attachments constitute a Payable IGT between the requesting agency, U.S. Customs and Border Protection and the servicing agency, Department of the Interior. The agreement shall be effective on the date of the final signature by authorized officials of both agencies, and shall remain in effect for the period(s) stated on the form, or until terminated in accordance with Cancellation/Termination provisions of this document.

2. Definitions

COTR/POC: the requesting agency's Contracting Officer's Technical Representative/Point of Contact.

Requesting Agency: The Federal Agency requesting services or supplies.

Servicing Agency: The Federal agency that is performing services or providing goods under this agreement.

3. Competition Requirements for the Servicing Agency

All acquisitions awarded by the servicing agency in performance of this Payable IGT shall comply with the Competition in Contracting Act (CICA), Public Law 98-369.

4. Funding and Reimbursement

The servicing agency is limited to recovery of actual costs only. The servicing agency shall notify the requesting agency's COTR/POC in writing when the costs incurred and outstanding commitments equal 80% percent of the estimated total costs.

The servicing agency shall make no other commitments or expenditures beyond 100% of funds obligated and shall be excused from further performance of the work unless and until the requesting agency's Contracting Officer (CO), or other authorized official, increases the total obligation under this agreement by modification.

Special Terms for One-year Funding:

The total amount to be reimbursed shall not exceed the total amount obligated for the current fiscal year. If this agreement is issued under the authority of the Economy Act (31 U.S.C. 1535 and 1536 and the servicing agency uses in-house resources to perform part or all of the agreement, work must stop on September 30th of the current fiscal year, and any unexpended funds must be deobligated. In-house work to continue in the next fiscal year must be funded effective October 1st with the new fiscal year's funds. **If the servicing agency obligates the annualized funds by awarding a contract or delivery/task order prior to the expiration of the fiscal year, the funds will be protected and do not need to be deobligated after September 30.**

Special Terms for Greater Than One-year Funding:

For longer than one-year (e.g., two-year, no-year) funding availability, the dates are extended appropriately.

5. Billing Instructions/Support Documentation for Expenditures

Billing and reimbursement may be handled through the Intra-governmental Payment and Collection (IPAC) system, or the servicing agency may submit invoices when the work is completed or as otherwise authorized. The Payable IGT number, the Agency Locator Codes, appropriate accounting code(s), and associated dollar amounts must be referenced on all IPAC transactions or invoices.

If IPAC is used, the servicing agency shall provide documentation supporting all charges to the requesting agency's COTR/POC. In the event that advance payment is requested and authorized, the servicing agency shall furnish expenditure reports to the COTR/POC on a quarterly basis.

If invoices are used, the invoices, along with supporting documentation, shall be submitted to the requesting agency's payment office as shown on the Payable IGT form, with a copy furnished to the COTR/POC. Per the Economy Act and Federal Acquisition Regulation 17.505, bills or requests for advance payment will not be subject to audit or certification in advance of payment.

Both agencies agree to promptly discuss and resolve issues and questions regarding payments. The servicing agency will promptly initiate year-end and closeout adjustments once final costs are known.

6. Travel

All travel under this Payable IGT shall be in accordance with the Federal Travel Regulations.

7. Prompt Payment

The servicing agency shall not assess the requesting agency for any prompt payment interest charged to the servicing agency.

8. Modifications

When appropriate, a unilateral administrative modification will be issued by the requesting agency, e.g., to add funds with no change to the SOW, to change a COTR/POC name. A written bilateral modification (i.e., agreed to and signed by authorized officials of both parties) will be issued to change the Payable IGT, modify the SOW, etc.

9. Program Office/COTR Responsibilities

The requesting agency COTR/POC and the servicing agency program office shall be responsible for technical oversight of the specified product or service, as set forth in the SOW of this agreement. In carrying out these responsibilities, they will operate within the scope of applicable regulations, specifically delegated authorities, and the program authorities and funding limitations of the Payable IGT. The COTR/POC has no authority to make changes to the terms of the Payable IGT.

10. Property

Non-expendable property purchased from funds supplied under this agreement shall become an asset of the requesting agency unless otherwise agreed to in writing by both agencies. Purchase of equipment required for performance of the work must be authorized under this Payable IGT.

11. Third Party Liability

With respect to third-party liability for acts arising out of the performance of official duty by a government employee of the servicing agency, the servicing agency undertakes responsibilities for the investigation, adjudication, settlement, and payment of any claim asserted against the United States; except that, in all cases, the responsibility for the investigation, adjudication, settlement, and payment of any claim with respect to third-party liability arising out of the use, damage, or destruction of loaned personal property shall be the responsibility of the particular agency that has custody and control of the said personal property. In addition, the servicing agency representative shall have the duty of investigating and reporting, in accordance with the servicing agency's regulations and policies, incidents occurring on, or involving that servicing agency's real property, and the requesting agency agrees to cooperate fully in such investigations.

12. Disputes

Nothing in this agreement is intended to conflict with current requesting agency or Department of Homeland Security directives. However, should disagreement arise as to the interpretation of the provisions of this agreement that cannot be resolved between the servicing agency program office and the requesting agency COTR/POC, the area(s) of disagreement will be reduced to writing by each agency and presented to the authorized officials at both agencies for resolution. If settlement cannot be reached at this level, the disagreement will be raised to next level in accordance with servicing agency and requesting agency procedures for final resolution.

13. Cancellation/Termination

This agreement is subject to cancellation or termination, with at least 60 calendar days (unless the Statement of Work specifies a different period) advance written notice by either party. The servicing agency shall be reimbursed for the cost of all completed and partially completed work (up to the Payable IGT ceiling) as of the effective date of cancellation.

14. Project Completion and Closeout

When the requesting agency has accepted all deliverables related to the SOW, the servicing agency will provide a written project evaluation and final accounting of project costs to the requesting agency CO. The servicing agency account will then be closed and any remaining funds will be returned to the requesting agency immediately. After final accounting, the remaining balance in the project account will be deobligated by Payable IGT modification.

15. Accessibility of Electronic and Information Technology

Each Electronic and Information Technology (EIT) product or service furnished under this agreement shall comply with the Electronic and Information Technology Accessibility Standards (36 CFR 1194), which implements section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d).

LETTER OF COMMITMENT

U.S. Customs and Border Protection (CBP), a component of the Department of Homeland Security (DHS), and the Department of the Interior (DOI) agree to abide by the terms of this Letter of Commitment.

BACKGROUND

- Primary Fence 70 (PF-70), Primary Fence 225 (PF-225), and Vehicle Fence 300 (VF-300) are DHS projects to construct primary and vehicle fence and access roads along approximately 525 miles of United States – Mexico border;
- CBP and DOI have been working cooperatively to aid DHS in constructing PF-70, PF-225, and VF-300 in a way that minimizes their impact upon natural and cultural resources;
- Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act, as amended (“IIRIRA”), 8 U.S.C. § 1103 note, DHS Secretary Michael Chertoff exercised his authority to waive certain environmental and DOI-administered statutes (hereinafter “the waivers”) in order to gain expedited access to DOI lands for PF-225 and VF-300;
- DHS has maintained its strong commitment to environmental stewardship through the implementation of best management practices and by committing to providing funding for reasonable mitigation measures beyond best management practices;
- In support of the DHS commitment to environmental stewardship, CBP in coordination with DOI has prepared Environmental Stewardship Plans and Biological Resource Plans for PF-225 and VF-300 that identify anticipated impacts upon natural and cultural resources and associated mitigation actions. Environmental Assessments and, as appropriate, Biological Opinions were prepared for projects not subject to the Secretary of Homeland Security’s waiver;
- Pursuant to Section 102(b)(1)(C)(i) of IIRIRA, 8 U.S.C. § 1103 note, CBP is responsible for consulting with DOI regarding, among other things, potential impacts to the environment and cultural resources resulting from the deployment and maintenance of border security infrastructure;
- DOI has provided valuable technical assistance to CBP concerning its environmental stewardship responsibilities;
- DOI has the expertise to identify and implement mitigation measures designed to offset the impacts of the primary and vehicle fences and access roads caused by PF-70, PF-225, and VF-300 on DOI managed natural and cultural resources; and

- It is in the best interest of both CBP and DOI to work cooperatively on identifying and implementing these mitigation measures.

DEFINITIONS

Best Management Practices (BMPs). Policies, practices, procedures, or structures implemented prior to, during, or after construction to avoid or minimize the adverse environmental effects of border security infrastructure on cultural and natural resources including animal and plant resources.

Border Security Infrastructure. Facilities, fencing, barriers, access roads, lighting, cameras, towers, sensors, checkpoints, and associated buildings and equipment installed in the vicinity of the borders of the United States for the purpose of preventing the entry of terrorists and terrorist weapons and aiding in the detection, interdiction, and apprehension of individuals and narcotics which illegally enter the United States.

Mitigation Measures. Cultural and natural resource projects that will be implemented where avoidance or minimization through BMPs was or is not possible and are designed to offset the impacts of border security activities on natural and cultural resources that are managed, protected, or under the jurisdiction of DOI.

TERMS

To assist CBP in offsetting the adverse impacts of PF-70, PF-225 and VF-300 on DOI-managed resources, the parties agree as follows:

1. DOI, if provided with appropriate funding, agrees to implement the aforementioned mitigation measures on behalf of CBP.
2. CBP agrees to fund up to \$50 million in reasonable mitigation measures to offset the adverse effects of PF-70, PF-225 and VF-300 on DOI managed natural and cultural resources, as prioritized by DOI.
3. Any transfer of funds from CBP to DOI will be made in accordance with the Economy Act 31 U.S. C. 1535, as prioritized by DOI.
4. As previously agreed to, the cost of mitigation measures identified in the biological opinions for the pedestrian fence projects in or near Sasabe, Naco, and Douglas, Arizona (PF-70) and Lukeville, Arizona (Phase 1 – PF-225) will be deducted from this \$50 million commitment.
5. DOI will provide a prioritized list of mitigation measures for PF-225 and VF-300 to CBP no later than June 1, 2009. CBP and DOI will reconcile any differences on the list before any funding is transferred. CBP is under no obligation to fund any mitigation beyond \$50 million. In the event that the direct and implementation costs associated with agreed

upon mitigation for PF-70, PF-225, and VF-300 exceeds \$50 million, CBP and DOI will coordinate to support funding requests for additional mitigation funds.

6. The Environmental Stewardship Plans, Biological Resources Plans, and segment specific monitoring reports for PF-225 and VF-300 will serve as the primary planning documentation for the identification of appropriate mitigation measures. Effects analyses prepared by DOI agencies shall be equally considered during identification of appropriate mitigation measures.
7. As set forth in the waiver as referenced above, the Secretary of Homeland Security has waived certain laws for PF-225 and VF-300. Upon receipt of the necessary funding in accordance with paragraphs 2 and 3 above, in furtherance of CBP's commitment to environmental stewardship and DOI's commitment to assist in that effort, DOI shall implement the reasonable mitigation measures on behalf of CBP in those areas and for those waived projects. DOI will coordinate with CBP as it implements the reasonable mitigation measures on CBP's behalf.
8. CBP will fund the direct cost of the identified mitigation measures plus any DOI implementation costs. DOI will not assess overhead charges for the execution of mitigation activities.
9. The specific methodology, payment transfer schedules, and reporting requirements will be addressed in a subsequent Economy Act Agreement or Interagency Agreements between CBP and DOI. It is the goal of both CBP and DOI to complete this subsequent agreement on or before July 1, 2009.
10. It is the goal of both CBP and DOI to complete the aforementioned mitigation measures as soon as practicable but no later than January 1, 2018.

U.S. Customs and Border Protection:

By: 

Date: January 14, 2009

Department of the Interior:

By: 

Date: JAN 15 2009

MEMORANDUM OF AGREEMENT
for
Environmental Coordination and Review
Between the Department of the Interior and
U.S. Customs and Border Protection for the
Secure Border Initiative

This Memorandum of Agreement (“MOA”) is entered into by the U.S. Department of the Interior (“DOI”) on behalf of the following DOI bureaus: the National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management, Bureau of Reclamation, and the Bureau of Indian Affairs, (collectively the “DOI Bureaus”), and U.S. Customs and Border Protection (CBP), a component of the Department of Homeland Security (“DHS”). The DOI and CBP are collectively referred to herein as the “Parties.”

I. Purpose

This MOA is entered into in order to further effectuate the goals, principles, and objectives of the 2006 Memorandum of Understanding between DHS, DOI, and the Department of Agriculture entitled “Cooperative National Security and Counterterrorism Efforts on Federal Lands along the United States’ Borders.” The purpose of this MOA is to formalize the commitment among the Parties to coordinate the review of projects subject to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq., and Council on Environmental Quality (CEQ) Regulations implementing NEPA, 40 C.F.R. Parts 1500-1508. This agreement will facilitate a coordinated approach that ensures sound decisions based on concurrent and expedited agency reviews. This MOA shall be applicable to CBP projects that are undertaken for the purposes of securing the border, which may include, but are not limited to the construction, maintenance, and operation of borderland security fences, roads, towers, vehicle deterrent fences, remote detection systems, and other related tactical and technological infrastructure.

II. Background

The goal of the Secure Border Initiative is for CBP to obtain operational control of our Nation’s borders consistent with its Homeland Security mission. This will be accomplished in part through the construction, maintenance, and operation of various tactical and technological infrastructure along the United States–Mexico international border, including pedestrian and vehicle fences, roads, lighting systems, communication towers, remote detection systems, and electronic surveillance systems.

DOI has a longstanding responsibility for many cultural and natural resources in our Nation’s borderlands. The value of these interests is manifested to a significant degree in the borderlands and waters administered by DOI Bureaus and in Indian tribal lands. In particular, an array of valuable fish, wildlife, and plant communities coexist with important archaeological sites that collectively contribute to the fabric of the borderlands of the Southwest.

These important resources are being damaged or destroyed by large numbers of cross border violators entering the United States from Mexico. Likewise, Indian communities, visitors to DOI lands, and DOI employees are subject to increased danger to their well being due to the presence of criminal activity.

The need to coordinate the environmental review process for the planning, construction, and operation of borderland security projects is seen as necessary by the Parties to efficiently fulfill the mandates of NEPA.

III. Statutory and Regulatory Authority

WHEREAS, this MOA is entered into under the authority of NEPA , 42 U.S.C. §§ 4321 et seq., and the Council on Environmental Quality (CEQ) regulations implementing NEPA, 40 C.F.R. Parts 1500-1508;

WHEREAS, pursuant to NEPA, 42 U.S.C. § 4331(b), the Federal government shall use all practicable means to improve and coordinate Federal plans, functions, programs, and resources to enhance the quality of the environment;

WHEREAS, regulations implementing NEPA at 40 C.F.R. § 1501.6 emphasize interagency cooperation early in the environmental review process;

WHEREAS, if more than one Federal agency is involved in the same action, 40 C.F.R. § 1501.5 provides for the designation in writing of a lead agency that will supervise the preparation of an environmental impact statement. The other agencies are identified as cooperating agencies;

WHEREAS, pursuant to 40 C.F.R. § 1508.5, an Indian tribe may by agreement with the lead agency become a cooperating agency when the effects are on a reservation;

WHEREAS, consistent with the intent of the CEQ regulations, the Parties may designate a lead agency for all NEPA documents; and

WHEREAS, pursuant to 40 C.F.R. § 1501.6(c), a cooperating agency may, in response to a lead agency's request for assistance in preparing an environmental analysis, defer to the lead agency in preparing such analysis;

NOW, THEREFORE:

IV. Commitment of the Agencies

In the spirit of cooperation and collaboration, and with the mutual understanding that this is a flexible working agreement among the signatory agencies, the Parties hereby commit to the following responsibilities:

- A. To facilitate preparation of NEPA environmental documents, the Parties agree:

1. That CBP will serve as lead agency for all CBP border infrastructure projects (including, but not limited to Secure Border Initiative tactical and technological infrastructure) and will coordinate all NEPA document development and review;
2. That the DOI Bureaus involved in any CBP projects, by and through their respective offices and branches, and, where appropriate, Indian tribes, will serve as cooperating agencies for such projects, or in appropriate cases as joint lead; and
3. That each party will assume responsibility for its own actions.

B. As lead agency, CBP agrees:

1. To provide project information in a timely and thorough manner;
2. To invite cooperating agencies to coordination meetings and joint field reviews; and
3. To provide cooperating agencies an opportunity to comment on draft documents.

C. When serving as a cooperating agency, the DOI Bureaus agree:

1. To promptly provide comments on draft documents and otherwise fulfill the role of a cooperating agency as set forth at 40 C.F.R. Part 1501, in accordance with established Departmental procedures;
2. To provide technical assistance to CBP on tribal and non-tribal environmental and cultural resource issues; and
3. To the degree possible, seek ways to streamline and facilitate the completion of environmental and cultural compliance processes.

V. Miscellaneous Provisions

A. Nothing in this MOA may be construed to obligate the Parties or the United States to any current or future expenditure of funds in advance of availability of appropriations, nor does this MOA obligate the Parties or the United States to spend funds for any particular purpose, even if funds are available.

B. The Parties will, as appropriate, enter into specific reimbursable agreements pursuant to the Economy Act, 31 U.S.C. § 1535, when one party is to furnish materials or perform work or provide a service on behalf of another party.

C. The Parties shall retain all applicable legal responsibility for their respective personnel working pursuant to this MOA. This MOA is not intended to change in any way the individual employee status or the liability or responsibility of any party under Federal law.

D. Nothing in this MOA is intended to conflict with current law, regulation, directive, or other governing authority of any party to this MOA. If any term of this MOA is inconsistent with such authority, then that term shall not apply, but the remaining terms and conditions of the MOA shall remain in full force and effect.

E. This document is an intra-governmental agreement among the Parties and does not create or confer any rights, privileges, or benefits upon any person or entity not a signatory hereto. This MOA is not and shall not be construed as a rule or regulation.

F. This MOA may be modified or amended in writing upon the consent of all Parties, and other affected Federal or State agencies may seek to become a party to this MOA.

G. This MOA shall be effective through December 31, 2012, and may be renewed for another five years upon mutual agreement of the Parties. Any party to this MOA may terminate its participation in this MOA upon thirty (30) days written notice to the other Party.

H. This MOA becomes effective upon the date of signature by the last signatory.

VI. Conclusion

In signing this MOA, the undersigned recognize and accept the roles and responsibilities assigned to each party. Each of the Parties agrees to pursue maximum cooperation and communication to secure our Nation's borders and to eliminate the environmental degradation of DOI-administered lands by persons illegally entering the United States.

DEPARTMENT OF THE INTERIOR

By: James E. Cason Date: 1/11/08
James E. Cason, Associate Deputy Secretary

U.S. CUSTOMS AND BORDER PROTECTION

By: W. Ralph Basham Date: 1/18/08
W. Ralph Basham, Commissioner