



**GOOD NEIGHBOR
ENVIRONMENTAL BOARD**

*Presidential advisory committee on
environmental and infrastructure issues
along the U.S. border with Mexico*

Chair

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President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20006

Dear Mr. President:

The Good Neighbor Environmental Board (GNEB), your advisory committee on environmental issues along the U.S.-Mexico border, is pleased to provide its recommendations regarding the environmental effects of the construction and maintenance of the U.S.-Mexico border fence and associated infrastructure. GNEB has members who reside in border communities from San Diego to Brownsville, work on environmental issues on both sides of the border, and are well acquainted with circumstances regarding the fence.

GNEB discussed issues associated with the construction of the border fence in its 2006 and 2007 annual reports (9th and 10th) to the President and Congress. We acknowledged the importance of security at the nation's borders and noted the need for better control of the movement of people and vehicles across the border in order to protect cultural sites and ecosystems from the effects of both unauthorized transit and law enforcement activities. We also recommended that a mix of technology and personnel be deployed along rural border areas to protect habitat connectivity and fragile species.

While we recognize that the Department of Homeland Security (DHS) was mandated by Congress to rapidly build the border fence, and that the border fence has had some positive outcomes and is appropriate in targeted areas, the construction has caused negative impacts to natural and cultural resources, as is described below in the background section. While we commend the recent decision by Secretary of Homeland Security Janet Napolitano to place a moratorium on further fence construction, we offer the following recommendations regarding border fence infrastructure projects:

- 1) *Require that all border security infrastructure projects fully comply with the National Environmental Policy Act (NEPA) as well as all other laws including environmental, historic, and archeological preservation laws.*
- 2) *Work with Congress to amend the REAL ID Act of 2005 to remove the provisions allowing the Secretary of Homeland Security to waive legal requirements.*
- 3) *Fully incorporate adequate environmental review, public participation, and scientific analysis into the design and implementation of all border security infrastructure projects.*
- 4) *Facilitate review by the International Boundary and Water Commission (IBWC) of projects that may cause deflection or obstruction of the normal flow of rivers or their flood flows, ensuring continued compliance with the 1970 Boundary Treaty between the U.S. and Mexico and other international agreements.*
- 5) *Systematically monitor the entire fence and supporting infrastructure for effects resulting from its construction and develop actions to modify, redesign, or mitigate the negative outcomes realized or anticipated by the existing construction.*
- 6) *Provide sufficient annual funding via the DHS budget for monitoring, research, and mitigation of the environmental impacts of the border fence.*
- 7) *Obtain adequate local stakeholder input for all fence construction, mitigation, and maintenance as well as for associated infrastructure projects, including access roads.*
- 8) *In sensitive rural areas that are important wildlife corridors, use barriers and technology that prevent vehicular traffic, control pedestrian incursion, and allow wildlife movement.*
- 9) *Aggressively explore the use of information and remote sensing technologies that will enhance border security while reducing the physical footprint of interdiction activities along the border.*
- 10) *Ensure adequate funding to DHS/Customs and Border Protection for ongoing training for border security personnel about the local natural environment and significant natural and cultural resources.*
- 11) *Identify and implement best management practices to prevent and mitigate the erosion resulting from fence construction and associated infrastructure.*
- 12) *Charge the National Academy of Sciences to conduct a study on the binational environmental effects of the border fence and associated infrastructure.*

Background

In the 1990s, large numbers of undocumented immigrants crossing the land boundary and a growing concern with international drug trafficking produced a series of programs to enhance border enforcement through infrastructure construction and added personnel. These included Hold the Line (El Paso 1993), Gatekeeper (San Diego 1994), Safeguard (southern Arizona 1995), and Rio Grande (South Texas 1997). Increasing violence related to human smuggling and drug trafficking and the terrorist attacks of September 11, 2001, saw the U.S. border with Mexico emerge as a critical component in the defense against terrorism. The push to harden the border through construction of fences, barriers, access roads, and other components as well as adding large numbers of law enforcement personnel often brought security agencies into conflict with federal, state, and local land managers whose core mission was to preserve the land and its ecosystems. Many stakeholder groups, including several border communities, accustomed to active participation in land-use planning and environmental policy formulation, opposed the large infrastructure projects.

Much of the stakeholders' concern centered on the waiver provisions contained in the REAL ID Act passed by Congress in 2005. These provisions allow the Secretary of Homeland Security to waive all legal requirements, including environmental and conservation laws, deemed necessary to ensure expeditious construction of the border fence. The provisions were in response to frustration with the delays in construction of a 14-mile, triple-layered fence along the border near San Diego. The construction, mandated by Congress in 1996, impacted the Border Field State Park and the Tijuana River Estuary. Following passage of the Act, former Secretary Michael Chertoff used the waiver provisions to allow the completion of the fence. After authorization in 2006 of the construction of 700 miles of fencing, in 2007 former Secretary Chertoff invoked the waiver provisions to allow construction in the San Pedro Riparian National Conservation Area and the Barry M. Goldwater Air Force Range in Arizona. In 2008, he again invoked the same provisions to waive compliance with 35 laws for the completion of approximately 500 miles of border fence. Each time a waiver was exercised, the environmental review process was at a different stage. In some cases the NEPA process was almost finished; in others, it was at an earlier stage and the environmental process that continued was not labeled NEPA. Links to public comments submitted in the environmental processes, responses to those comments, and other environmental documents are all publicly available at http://www.cbp.gov/xp/cgov/border_security/ti/ti_docs/sector. By mid-2009, about 670 miles of the border fence had been constructed with construction proceeding at various points along the 1,951-mile long border. Only some 30 miles remain to be installed.

Another consideration is compliance with the 1970 Boundary Treaty between the U.S. and Mexico. Under the Treaty, the IBWC is charged with maintaining the Rio Grande and the Colorado River as the international boundary. To carry out this responsibility, the treaty specifies that the Commission shall prohibit construction of works that would obstruct or deflect the normal or flood flows of those rivers. To ensure treaty compliance, the DHS in recent years has provided the U.S. Section with fence plans prior to construction so that border fencing can be erected in a manner that is compatible with the missions of both agencies.

There have been both positive and negative outcomes from the installation of border fence and associated infrastructure, which we outline below.

Vehicle barriers and pedestrian fences, along with increased personnel on the ground, have significantly reduced unauthorized vehicle and foot traffic in some areas with sensitive habitat, species, or cultural resources. Examples of areas that have benefited from reduced traffic include the Tijuana Estuary and its nesting areas of endangered bird species; the Cleveland National Forest of Southern California; and areas along the Arizona-Sonora border such as Organ Pipe Cactus National Monument, the Tohono O'odham Nation, the Cabeza Prieta National Wildlife Refuge, the Buenos Aires National Wildlife Refuge, and the Coronado National Forest.

The fence and associated infrastructure were installed in some areas in ways that minimized environmental effects and in a manner that is compatible with local perceptions and practices. In the Animas Valley, in the Bootheel of New Mexico, the Normandy-type vehicle barriers installed may have enabled migration of critical species such as antelope and the jaguar. In this case, through the efforts of the Malpai Borderlands Group and local ranchers working with DHS and the fence contractors, the fence was erected with minimal permanent damage to the environment. The width of access roads was minimized, staging and work areas were reclaimed, and the old border barbed wire fencing was removed.

At other locations along the border, fence design, construction, and maintenance activities negatively impact natural resources. Negative impacts include the loss of critical habitat, fragmentation of wildlife corridors, and destruction of wilderness areas. For example, in San Diego County, construction of the border fence subsumed 53 acres of the Border Field State Park, contributing to the loss of rare coastal wildlife habitat. Otay Mountain in Southern California is a federally protected wilderness and is an important ecosystem that is home to sensitive plant and animal species. It now contains access roads and the fence in areas that previously contained only natural vegetation on steep mountain slopes. A "temporary" Normandy-style vehicle barrier across the San Pedro River and approximately two miles of fence within the San Pedro Riparian National Conservation Area have fragmented critical wildlife corridors for jaguars, black bear, coatimundi, and many other species, and blocked numerous desert washes feeding the San Pedro River and floodplain. The San Pedro River is the last free-flowing river in Arizona. For Southmost Preserve, located near Brownsville, the proposed fence would be on a strip of land running through the reserve, stranding some 700 acres of the reserve between the fence and Mexico. In addition to groves of rare Sabal Palms, the preserve provides habitat for Texas' highly imperiled wildcats, the ocelot and jaguarundi. In the Lower Rio Grande region, parts of the fence cut across pristine and restored habitat that is home to endangered species of flora and fauna and has a very rich biodiversity. Driving on thousands of miles of unpaved access roads constructed along the border fence has also contributed to particulate matter air quality problems throughout the border region.

Construction activities also resulted in damage to cultural resources and sacred sites. For example, in southern Arizona construction workers disturbed Native American burials in Tohono O'odham ancestral lands, including burials in the San Pedro Riparian National Conservation

Area. Tecate Peak, a sacred cultural site of the Kumeyaay of Southern California and northern Baja California, was damaged by access road and fence construction across formerly pristine vegetation. In some areas, such as the Coronado National Forest, fence construction has damaged, and access roads have increased traffic to, archaeological sites.

Poorly designed fencing has not provided migratory routes and instead has led to an increase in dangerous confrontations. The gaps in the border fence do not always accommodate the migration of wildlife, while some locations do provide a funnel for larger, more aggressive groups of human migrants and drug traffickers, placing law enforcement agents in more dangerous confrontational situations.

Fencing was associated with some hydrological problems such as erosion or blocking of watercourses. U.S. and Mexican stakeholders have alleged that the U.S. border fencing has obstructed stormwater flow and caused flooding at Nogales, Sonora; Sonoyta, Sonora; and Palomas, Chihuahua. In 2008, a storm at Lukeville, Arizona, and Sonoyta, Sonora, caused flooding on both sides of the border after debris blocked openings in the pedestrian fence in Organ Pipe Cactus National Monument. Floodwaters that normally flow from north to south flowed to the east along the fence and into the Mexican Port of Entry.

Federal, state, and local government agencies have expressed concerns regarding the potential for increased flooding and sediment loading into the Tijuana River Estuary that have not been addressed. Some of them, including California State Parks, the California State Coastal Conservancy, the California Regional Water Quality Control Board, the City and County of San Diego, and State Senator Denise Ducheny have submitted written comments to DHS expressing concern over the environmental impacts related to fence construction on the Tijuana River National Estuarine Research Reserve. These comments included concerns regarding a comprehensive description of DHS's sediment-control plan. We are also not aware of what type of monitoring is being implemented to determine the plan's efficacy. Furthermore, the hydrologic studies prepared during the design phase of the project have not been made available for public review, making it impossible to determine what the project's impact will be on downstream erosion and flooding. These issues are the subject of ongoing litigation.

In addition to the negative impacts of the fence infrastructure, invoking the waiver of environmental and cultural and archeological preservation laws has produced a strong reaction in many border communities. Border residents have become accustomed to active participation in environmental and land-use review processes in their communities and in playing a part in the decisions that are important for quality of life where they live and work. Invoking the waiver for border fence construction has alienated local stakeholders in the border region, stakeholders who are normally important participants in policy formulation. Despite the efforts of DHS to reach out to border communities, waiving environmental and other laws, in particular NEPA, has had the effect of creating a negative perception in the region. There is a strong and widely held perception in the border region that the public's participation in the consultation process associated with building the fence has been inadequate.

GNEB is confident that addressing concerns raised by local stakeholders through well-tested methods of community outreach, public participation, and other established environmental review processes will restore confidence in border communities regarding the role of the federal government in protecting the environment.

Sincerely yours,



Paul Ganster, Chair
Good Neighbor Environmental Board

Attachment (1)

Note: Federal agency members of GNEB recuse themselves from this advice letter.

cc: The Honorable Joe Biden
The Vice President of the United States

The Honorable Nancy Sutley
Chair, Council on Environmental Quality

The Honorable Janet Napolitano
Secretary, Department of Homeland Security

The Honorable Lisa P. Jackson
Administrator, Environmental Protection Agency

The Honorable Ken Salazar
Secretary, Department of Interior

ATTACHMENT 1

Photo 1



Photo 2

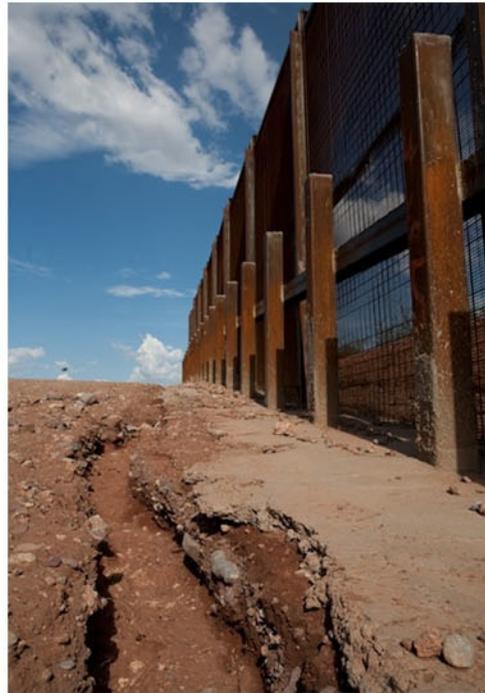


Photo 1: Construction of access roads for border wall machinery. Otay Mountain Wilderness. January 2009.

Photo 2: Border fence adjacent to San Pedro River corridor, Arizona, six months after construction. July 2008.

Photo 3: Construction of access road and border fence at Smuggler's Gulch near the Tijuana estuary. January 2009.

Photo 3



Photo 4



Photo 5



Photos 4 and 5: Border fence on the south slope of Tecate Peak, sacred mountain of the Kumeyaay people. California. March 2009

Photo 6



Photo 6: Mule deer approaching the border wall in the San Pedro region of southeastern Arizona. 2008.

Photo 7 (Before)



Photo 8 (After)



Photos 7 and 8: Historical site near the Arizona-Sonora border before and after construction of the border wall. An adobe structure visible in photo 7 taken October 2006 has nearly disappeared in photo 8, taken December 2007.