

The Real ID Act and San Diego-Tijuana Border Fencing: The New Politics of Security and Border Environmental Protection

(Revised version posted May 15, 2005)

Paper presented at the Annual Conference of the Association for Borderlands Studies, Phoenix, Arizona, April 19-22, 2006

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Introduction

On May 11, 2005, President George W. Bush signed a most inaptly named piece of legislation, the Real ID Act of 2005, into law (PL109-13). With a stroke of the presidential pen important achievements in environmental protection along the U.S.-Mexican border were thrust into jeopardy. Remarkably, aside from a small set of local environmental activists, this bill, H.R. 1268 in its final form, H.R. 418 in the original, passed into law with scarcely a peep from national environmental groups, or border level organizations outside the San Diego area. This was not for lack of serious concern once the deed was done. The truth is, environmental groups had been caught napping or, more accurately, preoccupied, with other battles. They were outflanked by a clever maneuver in the House Rules Committee and stymied politically by arguments for homeland and border security. And the U.S.-Mexican border is worse for it.

Why did this occur, and what does it mean? From a political science/policy studies perspective we might reasonably attribute this policy outcome to the well recognized pattern of punctuated equilibrium, a situation where an opposition political coalition adroitly maneuvers to switch consideration of a policy matter to another, more favorable, congressional committee or committees in congress; in other words, a sharp shift in policy-decision venue that alters the policy outcome (Baumgartner and Jones, 1991: 1046-1051). Such an assumption presumes, however, that the issue in question—border environmental protection—was dominated by a defined policy subsystem and contested by competing policy coalitions. In this instance, however, that assumption is questionable. The congressional venues for development of border environmental policy are of relatively recent origin with roots in the 1970's. What appears more likely is that the coalition or coalitions supporting environmental improvement on the U.S.-Mexican border were simply side-stepped by a coalition favoring border security and immigration restriction that also, for the most part, were willing to subordinate environmental concerns to security considerations. In other words, the battle between pro-environment and

anti-environment coalitions was never directly engaged. Environmentalists' concerns were simply trumped by security concerns; or, to borrow from the language of comparative politics, materialist values (security) triumphed over post-materialist values (environment). They simply never had much of an opportunity to join the argument and were thus easily vanquished by this classic act of legislative legerdemain.

This paper reports on this important political development and reflects on its implications for environmental protection in the border area. The first part briefly describes what transpired in the run-up to congressional adoption of the Real ID legislation. The second section reviews its implications and consequences. The final section advances a few thoughts on what might be done to counter the adverse impact of Real ID legislation on border environmental protection.

The Real ID Act of 2005: Political and Legislative Background

The compelling problems of national security since the fatal events of September 11, 2001 unquestionably refocused U.S. national priorities, presenting a serious challenge to other domestic and international policy commitments. The U.S.-Mexican border, which as a front-line region receives a disproportionate share of national security attention, has taken much of the brunt of this reprogramming of national priorities. Considerable effort and expense has been put into reinforcing border security and interdicting human migration along the 1967-mile international line separating Mexico from the United States. Environmental protection is clearly one of these policy casualties.

To appreciate this situation one has to place recent developments against the backdrop of the remarkable strengthening of environmental cooperation in the border region in the 1990=s. The North American Free Trade initiative mobilized environmental concern with border conditions to an unprecedented degree, resulting in a range of new environmental programs and institutions and a strengthening of old ones. After 1993, these programs and institutions, to include the binational program for border environmental protection, Border XXI, and the linked agencies for border environmental infrastructure development, the Border Environmental Cooperation Commission and North American Development Bank, produced an infusion of efforts and investments for environmental improvement in the border region (USEPA, 2000; Spalding, 2000).

Greater attention was devoted to assessing environmental threats and strengthening stakeholder involvement in environmental protection building on domestic law in both countries and a range of binational agreements already in force.

The federal retreat from U.S. commitment to binational environmental cooperation was underway already underway when the 9/11 events occurred. Federal financing of border environmental programs had declined by 2001 when

the U.S. and Mexico agreed to reconsider the mandate and operations of the BECC-NADB agencies (Ellingwood, 2001a; 2001b). Not all of this was negative, but it did reflect policy dissatisfaction with the performance of both agencies, NADB in particular was criticized for its sluggishness in funding needed projects. Internal review resulted in both a broadening of their mandate and an extended geographic range into Mexico (Abel, 2002). When the national environmental agencies announced a successor to the Border XXI Program, the new Border 2012 Program placed greater weight on state and local participation in policy development (USEPA, 2003), not a bad thing in itself, but signaling less federal involvement in border financing. This, in turn, was followed with a ratcheting down of U.S. commitment to the Border Environmental Infrastructure Fund (BEIF), operationally housed at NADB and the primary vehicle for subsidizing investments in BECC certified environmental infrastructure projects (GNEB, 2005: dos Santos, 2004). Not long after 9/11 the two governments agreed to undertake an intensive program review of both BECC and NADB, a review that eventually resulted in blending their Boards of Directors and backing away from stakeholder accountability at the agencies (Abel, 2002; Reed, 2002). Binational relations generally suffered from the Bush administration's neglect of Mexican concerns in its single-minded effort to ramp up national security (Starr, 2004). During this period a major dispute over Mexico's treaty water obligations on the Rio Grande also for a time proved a major diplomatic irritant (GNEB, 2005).

It is in this state of frayed U.S.-Mexican relations and diminished attention to border environment interests that the Real ID Act arises. In 1996, the Illegal Immigration and Immigrant Responsibility Act (IIRIRA) authorized the U.S. Attorney General to construct fences and roads "in the vicinity of the U.S.-Mexican border" to thwart illegal immigration (Section 102 (a)). A 14 mile triple barrier fence to secure the border at San Diego was also authorized (Section 102 (b)). Section 102 (c) of that legislation allowed the Attorney General to waive the Endangered Species Act of 1973 and the National Environmental Policy Act of 1969 (Nunez-Neto and Vina, 2005: 3).

After 9-11, responding, in part, to the alarmist rhetoric of the War on Terror, immigration restrictionists in Congress, buoyed by populist demonstrations and vigilantism on the Mexican border, intensified efforts to strengthen the enforcement of national immigration law. In 2002, the newly established Department of Homeland Security (DHS) assumed authority over border enforcement through its operational agency, the Bureau of Customs and Border Protection (CBP). When CBP moved to build the final 3.5 miles of the fence at San Diego, it was stymied by environmental lawsuits and a review of the matter by the California Coastal Commission (CCC).

Politically, the debate over immigration intensified due to evidence of rising numbers of undocumented aliens resident in the United States after IIRIRA (Camarota, 2005). In 2002, the Mexican government stepped up issuing its external identification card, the *matricula consular*, in an effort to provide undocumented migrants in the United States a mechanism for accessing

drivers= licenses, health, and financial services.¹ The *matricula* cards, issued by Mexican consulates nationwide, were controversial. They attracted the attention of prominent congressional restrictionists like Colorado congressman Tom Tancredo who challenged their reliability.

Shortly after the 108th Congress re-convened in February 2004, the Bush Administration introduced a major legislative proposal for comprehensive immigration reform. The President's plan was built around a substantial new guest worker provision coupled to an expedited pathway to citizenship for legally resident aliens (White House, 2004). The proposal got a lukewarm reception at best in Congress. James Sensenbrenner of Wisconsin, the chairman of the House Judiciary Committee, made known he would sponsor an effort to rein in use of the *matricula* document nationwide to strengthen national security and border enforcement. This initiative was controversial for several reasons, not the least of which was its clear intrusion on state prerogative to set the terms for issuance of drivers= licenses and other credentials for access to state and state administered federal services. Even so, the measure was written into an omnibus intelligence reform bill in 2004. The Senate subsequently removed the immigration provisions of the intelligence bill (PL 108-458, 2004; CQ Weekly, 2005b: 402).

Sensenbrenner and other restrictionists were also concerned with what they perceived as the slow pace of implementing certain IIRIRA provisions. One of these authorized the construction of a 14 mile stretch of fencing along Tijuana-San Diego reach of the international line. The fencing project had gone forward except for a 3.5 mile span that threatened the sustainability of the Tijuana River estuary, a major coastal protected zone abutting the border immediately south of San Diego (Stern, 2005a: 443). Even after the creation of the Department of Homeland Security, ecological resistance by preservationists and environmental groups had held up further development. These parties challenged the project drawing on the National Environmental Protection Act, the Clean Water Act, the Endangered Species Act, and other federal and state statutes.

The debate over the president=s proposed guest worker policy and the *matriculas* and how to deal with them continued through the spring and summer of 2004, politicized further by the pending general election that November. In Arizona, a highly restrictive state initiative, Proposition 200, was placed on the ballot, a proposal that required proof of citizenship to access state services (Proposition 200, 2004). It passed and became law in 2005.

¹. Mexico=s Secretariat of Foreign Relations has issued *matricula* cards since 1871 (SRE, 2004).

In this politically charged climate, Sensenbrenner extracted a commitment from Republican Party house leaders to append his anti-*matricula* bill to the first guaranteed-to-pass legislation in the 109th Congress, a supplemental appropriations bill funding the war in Iraq. Shortly after HR 418 the anti-*matricula* bill dubbed the Real ID Act of 2005 was introduced, it was amended by House Judiciary Committee in February 2005 (most probably at the instigation of California representative Duncan Hunter acting through California Congressman Daryl Issa, a Judiciary committee member) to incorporate a remarkably broad provision ostensibly for purposes of hastening construction of the Tijuana River section of the San Diego border fence (CQ Weekly, 2005a: 442). This provision exempted the Department of Homeland Security from all domestic legislation that would conceivably prevent or hinder it from building interdiction infrastructure along the U.S. international border with Canada and Mexico, not just the San Diego region.

Specifically, the bill's language provides that the Secretary of Homeland Security shall have "the authority to waive, and shall waive, all laws," that he "determines necessary to ensure expeditious construction of the barriers and roads" along the international borders of the United States (CQ Weekly, 2005a: 442). As analysts at the *Congressional Quarterly* noted at the time, with this language, the only thing standing between the Department of Homeland Security and a fence building project is the Secretary's determination and the appropriations process. The draconian provision trumped all federal, state, tribal, and municipal law, utterly exempting DHS from either the environmental impact statement process or any other public disclosure required by the National Environmental Policy Act, even in the planning process.

This remarkable measure did not entirely proceed unchallenged. When HR 418 was appended to the Iraq War supplemental, HR 1268, senators amended the section to add a provision for federal court review on constitutional grounds (CQ Weekly, 2005c). As amended and eventually passed and signed into law on May 11, 2005, the legislation read,

"(1) In general. Notwithstanding any other provision of law, the Secretary of Homeland Security shall have the authority to waive all legal requirements such Secretary, in such Secretary's sole discretion, determines necessary to ensure expeditious construction of barriers and roads under this section. Any such decision by the Secretary shall be effective upon being published in the Federal Register."

(2) Federal court review.

"(A) In general. The district courts of the United States shall have exclusive jurisdiction to hear all causes or claims arising from any action undertaken, or an decision made, by the Secretary of Homeland Security pursuant to paragraph (1). A cause of action or claim may only be brought alleging a violation of the Constitution of the United States. The court

shall not have jurisdiction to hear any claim not specified in this subparagraph.”

”(B) Time for filing of complaint. Any cause or claim brought pursuant to subparagraph (A) shall be filed not later than 60 days after the date of action or decision made by the Secretary of Homeland Security. A claim shall be barred unless it is filed within the time specified” (PL 109-13, 2005: 3).

The remarkable aspect of this legislative history is that despite the unprecedented scope and nature of these provisions the Congressional Research Service attested it had found no other instance of a law ever that permitted a federal agency to so completely and unilaterally avoid the requirements of other federal statutes (CQ Weekly, 2005a: 443) these provisions became law in the absence of any serious public debate or congressional discussion of the environmental implications or impacts. What is more, no environmental group inside the Beltway appeared to testify against the bill or could be found mentioned in the congressional record questioning the bill. At the time the bill was under discussion, only one national environmental organization, the Wilderness Society, even reported on the Homeland Security provisions of HR 418/HR 1268 (Wilderness Society, 2005). Virtually every other big ten environmental group, including such heavyweights as the National Wildlife Federation, Sierra Club, Natural Resources Defense Council, Defenders of Wildlife, and Environmental Defense, remained silent.² To add force to this assessment, it is worth noting that a review of the committee hearings for the Senate Foreign Affairs Committee, the House International Relations Committee, and the House Committee on Homeland Security for 2005 and through April 2006 found no hearing focused on the environmental implications of homeland security or border security, and no environmental witnesses or testimony or submitted statements by environmental organizations.³ In other words, environmentalists were absent from this entire debate.

². The Sierra Club had joined a lawsuit in 2004 against extension of the border fence at San Diego with several local and California state level environmental organizations. Both the Wilderness Society and Defenders of Wildlife publically criticized the Real ID Act after its passage. After Michael Chertoff invoked the Real ID Act’s authority in September 2005, Defenders’ attorney Brian Segee denounced the decision as an “enormous and unnecessary precedent” (Yahoo News, 2005).

³. Hearings were surveyed for these committees using a Lexis/Nexis Congressional search of all committee hearings. Scheduled witnesses for all committee hearings for 2005-2006 are listed these were reviewed by the author. The only testimony mentioning the environment at the border is by Richard Skinner, Inspector General of Homeland Security, on December 2005, well after the Real ID Act became law. In his testimony, Skinner’s remarks center on the

Various explanations may be given for this lapse of environmental concern. National environmental organizations were reeling from the Bush administration's second term electoral victory (Kriz, 2005b; Simendinger, 2005). Congressional conservatives opened the 109th Congress with broad-gauged attacks on the Endangered Species Act and ANWR, the Arctic National Wildlife Reserve (Kriz, 2005a; 2005b). The policy imperative of strengthening America's response to global warming also dominated environmental concern. The scramble to address these issues certainly consumed the efforts of the leading environmental groups. It may also be true that environmentalists simply didn't want to be tagged by conservatives as "soft on terror." And, after the Sierra Club's divisive 2004 battle over immigration, many environmentalists preferred to remain an arm's length from that issue. Whatever the reasons, when the 109th Congress took up the Real ID Act, environmentalists were not at the table.

Is this a case of punctuated equilibrium? It does bear some resemblance. It is clear that congressional advocates of completing the border fence at San Diego chaffed at environmental opposition to the project. And it is certainly true that these immigration restrictionists and the Republican leadership of the House and the Senate made little effort to engage the issue in any of the historic committees and subcommittees tasked with considering federal environmental concerns (a list of these committees is found in Rosenbaum, 2002: 68-69), nor were they forced to do so by congressional leaders or procedural committees like the House Rules Committee. A review of environment related committee hearings and debate in the 109th Congress found no reference or mention of the environmental impact of HR 418 or any other immigration legislation. The immigration restrictionists simply bypassed any consideration of the environmental aspects of border fencing, framing the issue as a local issue while advocating comprehensive language that applied borderwide. Whether advertent or inadvertent, environmental concerns were sidestepped and ignored.

The policy effect of the Real ID Act is certainly comprehensive, exceeding the scope of the 1996 legislation (IIRIRA). Not only does the Act confer on the Secretary of Homeland Security, currently Michael Chertoff, the ability to construct roads, barriers, or fencing at will along the border—contingent on congressional funding, but it appears to mean that any binational environmental project or program of a transboundary nature that might be affected by such infrastructure will need to have the approval of the DHS to proceed; even then, DHS appears to have complete discretion to withdraw its support from such projects should it determine that national security should prevail. For the first

remaining administrative incumbrance for Homeland Security initiatives arising from environmental legislation. See, Skinner, 2005: 6.

time ever in this nation=s history, environmental concerns may be dismissed at will at the determination of a single agency.

It should be noted that there is precedent for waiving the requirements of U.S. domestic law on diplomatic grounds at the border. Historically, the IBWC was exempted from the application of the U.S. Clean Water Act and the U.S. Clean Air Act in developing diplomatic solutions to border water and sanitation problems along the U.S.-Mexican border. The rationale for this was the need to cooperate with Mexico on these projects, recognizing that Mexican domestic law and administrative requirements might vary from those in the U.S. Moreover, as seen above, the IIRIRA began the process of extending waiver authority to federal security officials. The Real ID Act, however, has nothing to do with binational cooperation and cuts a much wider policy swath. It trumps virtually every other domestic law in force on the U.S. side of the border and, as a practical matter, applies to projects (roads, barriers, sensors, lighting) that will be much more geographically extensive than any of the IBWC=s projects. This fact inevitably raises concerns as to what the actual impacts are likely to be, and whether environmental protection and security are in any sense compatible at the border.

The Real ID Act=s Environmental Impact: The Tijuana River Estuary and the Border at Large

That the Real ID Act will adversely impact the border environment is a given. Restrictionists in Congress have seized on the act to try to gain funding authority for as much as 700 miles of border fencing divided in at least five segments in the so-called Sensenbrenner bill, HR 4437, that passed the House in December 2005 (HR 4437, 2005). While the degree of adverse impact depends in good measure on the type of infrastructure actually constructed, there is little doubt that construction and traffic will worsen air quality in all border adjacent areas where roads are built. Conventional fences will impede or prevent wildlife flows and their construction may well impact endangered or threatened species. Fences, even permeable fences or a series of posts, will disrupt watersheds and runoff, altering patterns of percolation and absorption, changing patterns of germination and seed dispersal, and altering natural habitat.

None of this, of course, has been studied or examined in depth, nor are any binational workgroups or teams or studies currently established to investigate this impact.

What we do know is that border fencing has a long and rather sordid political history on the border with Mexico. During the Eisenhower Administration, Robert Hill, the U.S. Ambassador to Mexico, famously described an existing barrier between El Paso and Cd. Juarez as “an insult to Mexico,” and successfully lobbied the State Department to have the barrier removed (cited in Stoddard, Martinez, and Martinez-Lasso, 1979: 15). In the 1970’s, when restrictionists again fastened on fencing, the so-called “Tortilla Curtain”

generated an international outcry (Stoddard, Martinez, and Martinez-Lasso, 1979: 18-20). Domestic demand for fencing and fencing construction renewed at El Paso-Cd. Juarez and San Diego-Tijuana in the 1980's, strengthening in the 1990's, but never without intense controversy (Brooks, 1993: B-1). From the 1950's onward fencing has been likened to an American Berlin Wall, symbolizing America's exclusionist and unilateral orientation towards the rest of the Americas.

We also know that since 1994, the U.S. Border Patrol's Southwest Border Strategy woefully neglected the environmental impacts of its interdiction activities, as its tightening of screws at major ports of entry forced unauthorized immigrants into the desert interior of the U.S. border states. The agency's reluctance to consult with federal and state environmental authorities and land managers may have worsened after it was folded into the new Department of Homeland Security (Segee and Neeley, 2006: 23-25; Vanderpool, 2006).

San Diego-Tijuana. The only locality on the U.S.-Mexico border where the Real ID Act has been seriously debated and investigated is the San Diego-Tijuana reach of the international boundary where delay finishing the 14 mile border fence provoked the legislation to begin with. While fencing has been used for interdiction along this stretch of the border for decades, reinforced after Operation Gatekeeper in 1994, in 1996, the IIRIRA authorized construction of a much more elaborate double barrier fence extending roughly 9 miles east of the San Ysidro border crossing and 4 miles west to the Pacific ocean (Yozwiak, 1996). The section 9 miles east of San Ysidro was finished shortly after 2001 but most of the extension westward was halted in 2004 when the California Coastal Commission refused to grant CBP permits for the project, citing potentially adverse environmental effects (Nunez-Neto and Vina, 2004: 4; LA Times, 2005). In September 2005, Michael Chertoff, DHS Secretary, exercised his authority under the Real ID Act and waived all environmental regulations, thus clearing the way for completion of the fence.⁴ In his announcement, Chertoff promised to "act in an environmentally responsible manner consistent with the security needs of the nation" (Neuman, 2005; Yahoo News, 2005). Funding was no constraint, as monies had already been appropriated.

The new double layer fence essentially runs parallel to the existing Seabee landing mat fence but in a nearly perfect straight line cutting through five canyons west of Interstate 5 and just south of Dairy Mart road. To construct the fence the CBP will level the mesa tops above the canyons, including the notorious Smuggler's Gulch, and use the debris as fill to level the base for the two tiers of fencing and road that will run down the middle. The aim is both to erect barriers that will prevent any crossing and maintain a clear field of vision

⁴. Cory Briggs, an attorney for the Center for Biological Diversity, argues the waiver should not apply as the lawsuit backed by the Sierra Club, San Diego Audubon Society, San Diego Baykeeper, Center for Biological Diversity, California Native Plant Society, and the Southwest Wetlands Interpretative Association (LA Times, 2005).

and ready access to anyone who should pass the southern-most barriers. The fencing extends a short distance beyond the high tide line into the ocean.

Both the process of construction and the built structure have major environmental ramifications. The 3.5 mile fence extension cuts along the south side of the Tijuana Estuary National Wildlife Refuge, the Tijuana River National Estuarine Research Reserve, Border Field State Park, and the San Diego County Regional Park. These public preserves and parks are the result of more than half a century of local effort to set aside public domain and preserve one of the last undeveloped coastal wetlands remaining in Southern California. Local activists have tallied half a billion dollars of public investments in acquiring and preserving this public endowment with all its fauna and flora (Michel, 2005). Over 370 avian species utilize this wetland on a seasonal or permanent basis, as well as various species of animals and fish (TRNERRS, 2005). The estuary counts several threatened and endangered species among its permanent residents. Such efforts have been internationally recognized. In what is nothing short of remarkable irony, the United Nations designed the estuary as a RAMSAR wetland of international importance in April 2005 (Michel, 2005).

Environmentalists believe construction alone will dump tons of sediments and debris into the wetland, altering patterns of habitat and reproduction for resident wildlife. Destruction of the mesa tops may eliminate or drastically reduce several unique species of plants. As currently proposed, for example, the fence eliminates the last known patch of maritime succulent scrub in California. Even when construction is finished, constant traffic will churn up plumes of dust adding to an already serious air pollution and particulate problem at the border.

Beyond these concerns, what is perhaps most troublesome in the Tijuana estuary case is that proponents of border fencing have been unwilling and disinterested in exploring other alternatives to border security and immigration management. Fixing on the fact that the earlier generation of fences at San Diego, El Paso, and elsewhere significantly reduced cross-border traffic at those locations, pushing the flows elsewhere, there has been practically no consideration of other alternatives that would be more environmentally friendly. Local environmentalists note that DHS-CBP has failed to provide detailed assessments of policy alternatives, even in terms of alleged migration effects. Local activists have advanced alternative proposals only to be rebuffed by CBP.

Border at Large. If the federal response to environmental concerns San Diego is indicative of what the public should expect border-wide, the environmental impact at the U.S. - Mexico border could be substantial. The Sensenbrenner bill passed in December 2005 proposes a five segment, 700 mile set of fences including practically the whole Arizona border with Mexico, some 380 miles itself, and 200 miles from Laredo to Brownsville in Texas. It is worth reflecting on some of the ecological values these areas contain.

As seen in Table 1, at least 13 major protected zones may be found in the U.S. immediately contiguous to the international boundary and this list does not include all private or state government reserves (DOI-USGS, 2006). As many as 450 rare or endemic species, and 85 threatened or endangered species may be found along the international boundary, many inhabiting these protected areas (Ingram, 1998: 5). In addition to problems outlined above with respect to the Tijuana estuary, any fence built along the Arizona border or the Rio Grande should be assumed to have adverse environmental consequences and particularly so when accompanied by roads, stadium lights, remote sensing monitoring systems, helicopter landing pads and other security infrastructure. The Center for Biological Diversity notes, for instance, that Sonoran Pronghorn antelope numbers are already declining; fewer than 300 may be found on either side of the border (Center, 2006). Species like the Masked Bobwhite quail are now being reintroduced on the Arizona border (FWS, 2006) and such programs will be threatened if not eliminated by these border security measures.

Table 1. Partial List of Protected Areas on the U.S. side of the U.S.-Mexican Border (Public and Private)

California:

- \$ Tijuana River National Estuarine Research Reserve
- \$ Cleveland National Forest

Arizona

- \$ Quitobaquito Springs
- \$ Cabeza Prieta National Wildlife Refuge
- \$ Organ Pipe Cactus National Monument
- \$ Buenos Aires National Wildlife Refuge
- \$ San Pedro River National Riparian Area
- \$ Grey Ranch (Nature Conservancy)
- \$ Coronado National Monument/Forest

New Mexico

- \$ Sierra de San Luis (in Mexico, adjacent to BLM land north of the border)
- \$ Sierra de San Antonio (in Mexico, adjacent to BLM land north of the border)

Texas

- \$ Big Bend National Park
- \$ Amistad National Recreation Area
- \$ Rio Grande National Wildlife Refuge
- \$ Laguna Madre

Sources: Moctezuma and Miller (1998); United States Geological Survey. 2006. Resources. Washington, D.C.: U.S. Department of the Interior, USGS, U.S.-Mexico Border Field Coordinating Committee.

Table 2. Tribal Reservations in the Border Region*

All Reservations	Reservations Abutting the Border or Nearest the border
<p>Arizona</p> <p>\$ Cocopah</p> <p>\$ Pascua Yaqui</p> <p>\$ Quechan</p> <p>\$ Tohono O=odham</p> <p>California</p> <p>\$ Barona</p> <p>\$ Campo</p> <p>\$ Capitan Grande</p> <p>\$ Cuyapaipe</p> <p>\$ Inaja & Cosmit</p> <p>\$ Jamul Indian Village</p> <p>\$ La Jolla</p> <p>\$ La Posta</p> <p>\$ Los Coyotes</p> <p>\$ Manzanita</p> <p>\$ Mesa Grande</p> <p>\$ Pala</p> <p>\$ Pauma & Yuima</p> <p>\$ Pechanga</p> <p>\$ Rincon</p> <p>\$ San Pasqual</p> <p>\$ Santa Ysabel</p> <p>\$ Sycuan</p> <p>\$ Torres-Martinez</p> <p>\$ Viejas</p> <p>Texas</p> <p>\$ Kickapoo</p> <p>\$ Ysleta de Sur Pueblo</p>	<p>\$ Campo</p> <p>\$ Cocopah (5 miles north of San Luis, Arizona)</p> <p>\$ Tohono O=odham</p> <p>\$ Ysleta del Sur Pueblo (Just over a mile north of the border in El Paso, Texas)</p> <p>\$ Kickapoo</p>

*Border region as defined in La Paz Agreement (1983).

Source: United States Geological Survey. 2006. Resources. Washington, D.C.: U.S. Department of the Interior, USGS, U.S.-Mexico Border Field Coordinating Committee.

Along the Rio Grande, a vast, interconnected network of wildlife habitats comprise the Lower Rio Grande Valley National Wildlife Refuge, home to 1,100 plants, 287 butterflies, and nearly 900 vertebrates including 465 types of birds. The U.S. Fish and Wildlife Service describes the refuge as one of the most biologically diverse wildlife corridors in the continental United States (Brown, 1998). These habitat zones span the international boundary and are sure to be impaired by the fencing project.

The fencing project not only impacts protected zones but will also scar and disrupt reserved tribal lands (see Table 2). Of the 27 Native American tribes inhabiting the border region (GNEB 2005: 8), at least 4 have lands directly abutting the international boundary. Tribal leaders have expressed their desire to preserve the environmental, ecological, and historic endowments of their domains and are concerned that national security not be achieved disproportionately at their expense. Most of these tribal units have historic, cross-border cultural ties with sister communities in Mexico who also depend on a common ecological endowment bisected by the international line.

Nor are the costs of border securitization strictly ecological. They are also institutional. It is clear that the Bush administration and its allies in congress have proceeded virtually unilaterally in pushing these unprecedented measures forward. The institutional apparatus for environmental cooperation has been pushed aside in the process. At the level of the Border 2012 program there is no provision for debating or discussing or even obtaining citizen=s input on the ecological and environmental impact of border security, despite the fact this could well prove to be the most environmental damaging and costly border program in history. The Good Neighbor Environmental Board (GNEB), a federal advisory body established in 1992 to advise the president and congress on border environmental affairs, has dealt with security-environment issues very superficially to date and has yet to directly address the opportunity costs and unintended adverse effects of building security and migration infrastructure on the border. It=s latest report, however, for the first time, does delicately mention the security-fence issue, framing the problem, with a gift for understatement, as a question of conflicting agency priorities (GNEB, 2006: 39). The Board has agreed to take up the security question as its guiding theme for 2007 (Ganster, 2006). At the trinational level, even though national security and migration clearly has region-wide impacts, the issue has likewise gone unheeded. At best these binational and trinational programs and institutions have been placed in a highly reactive situation and it is uncertain whether they will gain much of a role at all in mitigating these security impacts on the border environment.

In sum, it is hard to imagine that fencing on the scale now entrusted to DHS and currently advocated in Congress will not have extraordinary impact on the border environment, related preservationist concerns, and institutional affairs. Most environmentalists would agree that the environmental progress realized at the border over the past three decades must not be surrendered or compromised in a panicked rush driven by fears of terrorism and unauthorized

migration. Nor should these values be set aside or otherwise disarticulated from security discussions in the nation=s capital and statehouses. It is vital, then, that border environmental policy and environmental policy writ large have a seat at the table when infrastructural changes of the current magnitude are under discussion. How, then, should this be done?

Surviving Venue Shift: Can Environmentalists Regain Momentum?

Congressional adoption of the Real ID Act appears to be similar to, perhaps a subspecies of, venue shift, whether the intent to bypass or modify the application of domestic environmental law was deliberate or inadvertent. It has certainly taken most border environmentalists by surprise; only in the past year, 2005-2006, are the potential dangers beginning to be reckoned. At this point both the national and border environmental communities have yet to fashion a broad gauged coalition to challenge these draconian securitization initiatives.

The remarkable end run by immigration restrictionists at the expense of the border environment is unprecedented and historic. It is, to quote Peter Douglas, executive director of the California Coastal Commission, Aa monument to the politics of fear@ (Broder, 2005). It reflects the successful policy conflation of anti-terrorist rhetoric and immigration restriction expressed as a need for heightened border enforcementBparticularly the interdiction of unauthorized human transit across the international boundary. At this moment it is hard to see how it might be reversed or modified short of a constitutional challenge, itself unlikely, or congressional reassessment, also unlikely in the current climate of national security and migration concerns.

What is clear is that environmental advocacy organizations interested in border environmental protection and binational cooperation cannot follow the normal pathways of policy influence where national security and nativism are concerned. Several assumptions should guide environmental efforts to regain their footing on border environmental affairs in the new ambit of national security and nativist fears.

First, environmentalists must learn to speak the language of comprehensive security and comprehensive approaches to migration. Comprehensive approaches look beyond border enforcement to the causes of emigration to the United States and entertain the option of dealing with migration as a development problem, which opens to the door to considering immigration in a regional, North American, sustainable development framework. Approaching security and immigration in this comprehensive and regional frame offers a long-term, enduring solution to the underlying problem of migration and affords an opportunity to look at environmental protection as an integral part of of an overall solution for North American development and security (Pastor, 2005).

Second, environmentalists must aggressively insert themselves into the policy debate over infrastructure. They must be prepared to review and recommend alternative designs for fencing and other proposed infrastructure and bring these to the attention of DHS and its related agencies and to congressional committees. They should insist on being represented on a panel of experts to review the utility and effectiveness of border security infrastructure proposed by DHS officials.

Third, they must mobilize and demand that national security at the border incorporate consideration of environmental and social values (civil liberties). They must make common cause with other social interests adversely affected by the securitization coalitions now dominating border policy. Environmental organizations in the Beltway and along the border should clamor now for insuring that DHS border infrastructure authority and appropriations at the very least receive a hearing in substantive environmental committees in Congress, both the House and the Senate.

Fourth, they must focus greater attention on the current array of border programs and institutions. They, in tandem with the GNEB, should insist that Border 2012 establish a Policy Forum and regional Task Forces for discussions of securitization policy and its environmental and public health effects on border areas and communities. Security discussions in the context of Border 2012 have to date largely centered on the emergency preparedness and response border-wide working groups and task forces. This is clearly insufficient in the current policy environment.

Fifth, environmentalists and citizens at large must continue to use such legal and political mechanisms as may be available to challenge destructive projects advanced security interests and immigration restrictionists. This process is underway in San Diego and warrants the support of the national environmental establishment. While the Real ID Act certainly endows DHS with extraordinary power in the matter of border infrastructure development, it has yet to be tested fully in the courts or the court of political opinion. Even its advocates concede that if DHS were to indiscriminately override all other concerns on the U.S. and Canada borders, the public reaction might well force the government to reconsider and revise this legislation. Local communities must be prepared to mobilize to resist restrictionist extremism and unwarranted unilateral infrastructure decisions by DHS.

In sum, there is much to be done in responding to the new politics of homeland security and the border environment. The fete accompli of 2005 cannot be allowed to proceed uncontested and unmodified by the environmental community at either the national or regional and local levels. Too much is at stake. The challenge ahead is to craft a new policy relationship with DHS to mitigate the serious environmental damage that is sure to follow from unrestricted infrastructure authority along the U.S.-Mexican border and broaden the security-immigration debate in a comprehensive direction. Only in this way

may we be sure that critical environmental values will be protected and sustained at the border.

REFERENCES:

- Abel, Andrea. 2002. "The Monterrey Commitments: What they Mean for the Border Environment," *Americas Program Feature*. Silver City, NM: Interhemispheric Resources Center, March 28: 1-4.
- Ackleson, Jason. 2005. *Fencing in Failure: Effective Border Control is Not Achieved by Building More Fences*. Washington, D.C.: Immigration Policy Center, Immigration Policy Brief, April.
- Baumgartner, Frank R. and Bryan D. Jones. 1991. "Agenda Dynamics and Policy Subsystems," *Journal of Politics*, Vol. 53:4 (November) 1044-1074.
- Broder, John. 2005. "With Congress=s Blessing, a Border Fence May Finally Push Through to the Sea," *New York Times*, July 4.
- Brooks, Laura. 1993. "Steel wall creates own problems at the border," *Arizona Daily Star*, March 7: B-1.
- Brown, Nancy C. 1998. "Lower Rio Grande Valley National Wildlife Refuge," *Endangered Species Bulletin*. Accessed on the Web at: <http://findarticles.com/>
- Camarota, Steven A. 2005. *Immigrants at Mid-Decade: A Snapshot of America=s Foreign-Born Population in 2005*. Washington, D.C.: Center for Immigration Studies, December.
- Center for Biological Diversity. 2006. *Borderlands and Boundary Waters*. Accessed on the Web at: <http://www.biologicaldiversity.org/swcbd/programs>
- Dlouhy, Jennifer A. 2005a. "Immigration Fight Looms," *CQ Weekly*, January 31, 2005.
- Dlouhy, Jennifer A. 2005b. "Lawmakers Spar Over Asylum," *CQ Weekly*, February 14: 402-403.
- Dlouhy, Jennifer A. 2005c. "Critics Blanch at Dodging Laws to Build Border Wall," *CQ Weekly*, February 21: 442-443.
- dos Santos, Placido. 2004. Letter to the President, Vice-President, Speaker of the U.S.-House of Representatives, May 7, pps. 31-33 in *Good Neighbor*

- Environmental Board, *Children=s Environmental Health*. Washington, D.C.: GNEB, 7th Report to the President and the Congress of the United States, EPA 130-R-04-001, February.
- Ellingwood, Ken. 2001a. "U.S.-Mexico Bank Fizzling," *Los Angeles Times*, July 15. Available on the web at: www.latimes.com
- Ellingwood, Ken. 2001b. "Bush Urged to Heed Residents on Border Pollution," *Los Angeles Times*, July 27. Available on the web at: www.latimes.com
- Ganster, Paul. 2006. Good Neighbor Environmental Board Chair=s conversation with the author at the annual meeting of the Association for Borderlands Studies, April 22. Phoenix, Arizona.
- Good Neighbor Environmental Board. 2005. *Water Resources Management on the U.S.-Mexico Border*. Washington, D.C.: GNEB, 8th Report to the President and Congress of the United States, EPA 130-R-05-001, February.
- Good Neighbor Environmental Board. 2006. *Air Quality and Transportation & Cultural and Natural Resources*. Washington, D.C.: GNEB, 9th Report to the President and Congress of the United States, EPA 130-R-06-002, March.
- Ingram, Helen. 1998. "Planning for >Natural= Disaster: Unsustainable Development of the U.S./Mexico Border," pps. 3-13 in *Cross-Border Waters: Fragile Treasures for the 21st Century*. Proceedings of the 9th U.S./Mexico Border States Conference on Recreation, Parks, and Wildlife. Sponsored by the U.S. Department of Agriculture, U.S. Forest Service, Rocky Mountain Research Station. Tucson, Arizona, June 3-6.
- Kriz, Margaret. 2005a. "Key Issues= Tapping Pristine Territories," *National Journal Magazine*, January 8. Available online at the National Journal Group.
- Kriz, Margaret. 2005b. "Cover Story--Out of the Loop," *National Journal Magazine*, February 5. Available online at the National Journal Group
- Michel, Suzanne. 2005. Alternative to the Proposed Triple Border Fence. San Diego: San Diego State University, Department of Marine and Environmental Studies, unpublished paper, May 2. Available from the author.
- Moctezuma, Oscar and Matthew J. Miller. 1998. What to Protect in Chihuahua and Sonora,@ pps. 82-89 in *Cross-Border Waters: Fragile Treasures for the 21st Century*. Proceedings of the 9th U.S./Mexico Border States Conference on Recreation, Parks, and Wildlife. Sponsored by the U.S.

Department of Agriculture, U.S. Forest Service, Rocky Mountain Research Station. Tucson, Arizona, June 3-6.

- Neuman, Johanna. 2005. "U.S. Acts to Finish Divisive Border Fence," *Los Angeles Times*, September 15.
- Nunez-Neto, Blas and Stephen R. Vina. 2005. *Border Security: Fences Along the U.S. International Border*. Washington, D.C.: Congressional Research Service, CRS Order Code RS22026, Updated May 9.
- Pastor, Robert A. 2005. A North American Community Approach to Security. Testimony invited by the Subcommittee on the Western Hemisphere, U.S. Senate Foreign Relations Committee, June 9.
- Public Law 109-13 [H.R. 1268]. 2005. An Act Making Emergency Supplemental Appropriations for Defense, the Global War on Terror, and Tsunami Relief, for the fiscal year ending September 30, 2005, and for other purposes. May 11.
- Reed, Cyrus. 2002. Fact Sheet: NABank/Becc Reform. Austin: Texas Center for Policy Studies. March 25. Posted on Beccnet, March 25, 2002.
- Rosenbaum, Walter R. *Environmental Politics and Policy*, 5th ed. Washington, D.C.: CQ Press.
- Secretaria de Relaciones Exteriores. 2004. Most Frequently Asked Questions about the Matricula Consular. Mexico, D.F.: Instituto de Mexicanos en el Exterior.
- Segee, Brian P. and Jenny L. Neeley. 2006. On the Line: The Impacts of Immigration Policy on Wildlife and Habitat in the Arizona Borderlands. Washington, D.C.: Defenders of Wildlife. Available online at Defenders of Wildlife website.
- Simendinger, Alex. 2005. "1600 Pennsylvania Avenue: Earth to George," *National Journal Magazine*. Available online at the National Journal Group.
- Skinner, Richard L. 2005. Statement of Richard L. Skinner, Inspector General of the U.S. Department of Homeland Security, before the Subcommittee on Management, Integration, and Oversight, Committee on Homeland Security, U.S. House of Representatives, 109th Congress, 1st Session, December 16.
- Spalding, Mark. 2000. "The NAFTA Environmental Institutions and Sustainable Development along the U.S.-Mexico Border," in Lawrence Herzog, ed.,

- Shared Space: Rethinking the U.S.-Mexico Border Environment. La Jolla: Center for U.S.-Mexican Studies, University of California, San Diego.
- Starr, Pamela K. 2004. "U.S.- Mexican Relations.@ *CSIS Hemisphere Focus*, Volume XII, Issue 2, January 9.
- Stern, Seth. 2005a. "Birds and Bulldozers," *CQ Weekly*, February 21, 2005: 443.
- Stern, Seth. 2005b. "Sensenbrenner=s Win on Immigration," *CQ Weekly*, May 9: 1241.
- Stoddard, Elwyn, Oscar Martinez, and Miguel Angel Martinez-Lasso. 1979. *El Paso-Ciudad Juarez Relations and the Tortilla Curtain: a study of local adaptation to federal border policies*. El Paso: El Paso Council on the Arts and Humanities. September.
- Tijuana River National Estuarine Research Reserve System. 2005. Tijuana River Reserve, California. San Diego: U.S. National Oceanic and Atmospheric Administration, TRNERRS. Available on the Web at: <http://nerrs.noaa.gov/TijuanRiver/Fauna.html>
- U.S. Environmental Protection Agency. 2000. U.S.-Mexico Border XXI Program Progress Report. Washington, D.C.: EPA-160-R-00-001.
- U.S. Environmental Protection Agency. 2003. Border 2012: U.S.-Mexico Environmental Program. Washington, D.C.: EPA-160-R-03-001, April.
- United States Geological Survey. 2006. Resources. Washington, D.C.: U.S. Department of the Interior, USGS, U.S.-Mexico Border Field Coordinating Committee. Available on the Web at: <http://cerc.usgs.gov/FCC/resources>
- United States House of Representatives. 2005. HR 4437, Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005. A LexisNexis Congressional Document.
- Vanderpool, Tim. 2006. "Borderline Tragedy," *Tucson Weekly*, May 11: 1.
- White House. 2004. Remarks by the President on Immigration Policy. Office of the Press Secretary. January 7. Available at: <http://www.whitehouse.gov/news/releases/2004/01/200440107-3.html>
- Wilderness Society. 2005. Tip Sheet: Border Fight. Washington, D.C.: The Wilderness Society. Available on the web at: <http://www.wilderness.org/NewsRoom/TipSheets/20050415.cfm>

Yahoo News. 2005. "Federal Authority Trumps Environmental Concerns,"
September 15. Available on the Web at:
http://news.yahoo.com/s/kgtv/200509/lo_kgtv/2938522

Yozwiak, Steve. 1996. "Environment rules waived along the border, patrol can
build in 50-mile area," *Arizona Republic*, October.

Zimmerman, Eilene. 2006. "Border protections imperil environment; last
wilderness area south of San Diego could be damaged," *San Francisco
Chronicle*, February 27: A1.