

# Congress of the United States

Washington, DC 20515

August 9, 2011

The Honorable Janet Napolitano  
Secretary  
U.S. Department of Homeland Security  
108 Federal Office Building  
Washington, D.C. 20502

Dear Secretary Napolitano,

Last month, the House Committee on Natural Resources held a hearing on H.R. 1505, the “National Security and Federal Lands Protection Act.” This bill provides the Department of Homeland Security (DHS) with a sweeping waiver from over 30 separate environmental protection laws during border patrol operations within 100 miles of any maritime or terrestrial border. Accordingly, it is important to understand whether such statutory changes are needed or desired by the DHS. I therefore request your Department’s views on this bill, which will provide important information as the Congress continues to debate the passages of this legislation.

In addition to requesting the Departments views on H.R. 1505, I am also requesting certain detailed information related to border security in order to better understand the challenges of securing the border on both Federal public lands, on State owned lands, and on private property. I ask that you respond to the following questions by close of business on Friday, September 2, 2011:

- 1) Under the Secure Fence Act of 2006,<sup>1</sup> “operational control” of the border means “the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.” Is the Border Patrol aware of any locations or situations along the United States where, but for the existence of environmental restrictions on public lands, operational control could be achieved as defined under this Act?
- 2) Under the 2006 Memorandum of Understanding<sup>2</sup> between the Border Patrol, the Department of Interior, and the Department of Agriculture, the Border Patrol may conduct motorized pursuits in wilderness areas. The MOU requires the parties to consult if such pursuits are causing significant impacts on the wilderness resources and to enter into consultations to address these impacts. Since the signing of the 2006 MOU, have there been instances where the Department of Interior or Agriculture have requested

---

<sup>1</sup> Public Law 109-367.

<sup>2</sup> [http://www.doi.gov/watch\\_office/about\\_olesem/DHS-DOI-USDA\\_border\\_security\\_MOU.pdf](http://www.doi.gov/watch_office/about_olesem/DHS-DOI-USDA_border_security_MOU.pdf)

- consultations to address impacts to wilderness. If so, please provide a detailed account of each instance that consultation has been required?
- 3) The 2006 MOU states, "Nothing in this MOU is intended to prevent CBP-BP agents from exercising exigent/emergency authorities to access lands..." Has CBP experienced circumstances where federal land managers impeded or delayed border patrol agents from exercising their exigent/emergency authority to access federal lands?
  - 4) Under H.R. 1505, environmental laws would be waived within 100 miles of the U.S. border for Authorized Activities "including access to maintain and construct roads, construct a fence, use vehicles to patrol, and set up monitoring equipment." Since the 2006 MOU was signed, have there been instances where Border Patrol's ability to conduct these Authorized Activities has been significantly impaired by environmental restrictions on public lands? Please provide your response listing both the activity and the following geographic criteria: Border Patrol activities between 0-2 miles from the U.S. border, 2-5 miles from the U.S. border, 5-10 miles from the U.S. border, and 10-100 miles from the U.S. border.
  - 5) According to a GAO report, the Border Patrol has the lowest level of operational control of the border in the Marfa, Del Rio, Laredo, and Rio Grande Valley sectors.<sup>3</sup> Does the Border Patrol believe that environmental restrictions on public lands have contributed to the low level of operational control in these four sectors? If so, please explain how these environmental restrictions have lowered the rate of operational control.

I ask that you please provide a full and complete response to the questions contained in this letter by close of business on September 2, 2011. Should you have any questions about this request, please have your staff contact Brett Hartl or Jacqueline Lavelle of the Natural Resources Committee Democratic Staff at 202-225-6065.

Sincerely,



Edward J. Markey  
Ranking Member  
Natural Resources Committee

---

<sup>3</sup> Preliminary Observations on Border Control Measures for the Southwest Border. Statement of Richard M. Stana, Director Homeland Security and Justice Issues. Testimony before the Subcommittee on Border and Maritime Security, Committee on Homeland Security. February 15, 2011.