

Secretary

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



Homeland Security

October 2, 2009

The Honorable Doc Hastings
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Representative Hastings:

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

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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.