

## OPTIONS AND LEGAL TOOLS FOR SECURITY WITH ENVIRONMENTAL PROTECTION\*

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*Rick Van Schoik*

The Department of Homeland Security (DHS) did abide by the National Environmental Protection Act (NEPA), with a couple of exclusions and exemptions. Because it's the newest federal department, it has a very different way of conducting its environmental review. DHS does environmental appraisals and environmental assessments, which are different from the traditional studies that NEPA has mandated in the past. They produce a final assessment score that is very similar to DHS's red, orange, yellow, and green alert system. So, at the end of an entire systemic environmental review, they come up with just a color, green, yellow, or red, for the actions that DHS wants to engage in. Unfortunately, they've gotten mostly green lights and a few of yellow.

In essence, the work on the San Diego section was authorized over a decade ago, and I think ironically the Department of Homeland Security or DHS would probably have it built cheaper, quicker, and with more political amiability had they cooperated with the environmental agencies, but they chose instead to fight uphill against those regulations and concerns.

Borders represent the end of our sovereignty. Everyone evokes sovereignty as a sacred thing, and to some degree it is. It means, for example, the end

of our environmental responsibility. But the U.S. Supreme Court has many times, for both the Endangered Species Act, and most recently for Greenhouse Gases, confirmed that there is a responsibility outside the United States for its government's actions.

The Real ID Act of two years ago authorized environmental waivers and they have been used three times now (October 2007). Last year, 850 miles of the fence were authorized, and Congress appropriated enough funding to finish the 14 mile San Diego-Tijuana section and begin another sections of the fence. This construction is imminent.

## DOMESTIC LEGAL MECHANISMS AND TYPES OF FENCES

The fence is constructed in what's known as the Roosevelt Reservation, which are federal lands. The Federal Government, regardless of who owns, maintains or manages that land deeds it to the Department of Homeland Security. When the construction needs to happen on private lands, there's a combination of purchasing and condemnation of lands so DHS can build on them. They establish various Memoranda of Understanding (MoU) with state and local agencies to enable the Department of Homeland Security to do what it would like to do.

There are a number of different types of fences and walls being proposed, most of them permanent, but some of them temporary. The triple fence was actually designed by one of our research laboratories, Sandia National Laboratories. However, there are options to the physical barriers. The head of the Customs and Border Protection (CBP) talks about the success he hopes these virtual walls will have. They're known as the Boeing Virtual Fence, because that's the contractor's name, or SBI (Secure Border Initiative).

The example of how extensive virtual fencing can be is in the tethered radar balloons that the United States has had for a long time, looking for planes carrying drugs. Recently DHS has announced that in the several dozen miles around Sasabe, Arizona they're going to construct nine, thirty-meter high, unmanned towers that will be equipped with radars, sensors, and a number of infrared and reel cameras. The advantage is that they're not fences. This layer of technology needs a lot of support and a lot of people object to the visual aspect of it, but it's not a fence bisecting the habitat.

## NEW APPROACHES TO SECURITY WITH ENVIRONMENTAL RESPONSIBILITY

Let me turn to describing the beginning of an opportunity: the exchange of intelligence back and forth about who is crossing, where they're coming from, and the things they might or might not be bringing with them. A second possibility is the layering or the zoning of security, so it isn't all manifest right on the border or within a hundred meters on either side of the line. By sharing information, security throughout both Mexico and the United States can be enhanced. The influence of the U.S. into a foreign territory, in this case Mexico, through some sovereignty bargaining can promote safety and health, and vitality on both sides.

Again, the irony of the current situation is that DHS could have cooperated with environmental regulations and built a structure cheaper and quicker. In that respect, an interesting proposal has been called the Security Environmental Responsibility Act, which Congressman Filner has offered to carry. It parallels a Military Environmental Responsibility Act that he has promoted in the U.S. Congress for years. IN many ways, since Environmental Management Systems usually have a security chapter, there can be a Security Management System that has an environmental chapter.

One huge opportunity that remains to be matured is in conducting and notifying about trans-boundary environmental impact assessments (T.E.I.A.). There is indeed a critical capacity to do this has been in place for over a decade, there are national and international organizations experienced enough to lead the effort and the appropriate formats for this. We just haven't done it yet.

In relation to border security, Canada prompted the U.S. to consider something besides fences. Hence the possibility for Mexico to at least get the U.S. to consider T.E.I.A.s for the infrastructure that the U.S. wants to construct. From the U.S. perspective this might be as simple as strategic environmental assessments which are greater, more comprehensive, more strategically oriented than the current programmatic and project oriented E.I.R.s and E.I.S.s that the agencies do right now. So there's an entrée into T.E.I.A.s through these S.E.A.s that would not be too "foreign" to the U.S. system.

