

Written Testimony of the Honorable Ned Norris, Jr., Chairman  
Tohono O’odham Nation  
to the  
Subcommittee on Fisheries Wildlife and Oceans and  
Subcommittee on National Parks, Forests, and Public Lands of the  
House Committee on Natural Resources

April 28, 2008 Joint Oversight Hearing  
“Walls and Waivers: Expedited Construction of the Southern Border Wall and Collateral  
Impacts to Communities and the Environment.”

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INTRODUCTION

S-ke:g si’alim. Bañ ce:gig Ned Norris, Jr. Good morning Chairman Grijalva, Chairwoman Bordallo, and distinguished subcommittee members. My name is Ned Norris, Jr. and I am the Chairman of the Tohono O’odham Nation. Thank you for the opportunity to testify today.

**I. The Tohono O’odham Nation is negatively impacted by the border and has worked closely with Customs and Border Protection to find appropriate alternatives that will improve border security.**

In the words of the United States Supreme Court, Indian tribes “predate” the United States. We are older than the international boundary with Mexico and had no role in creating the border. But our land is now cut in half, with O’odham communities, sacred sites, salt pilgrimage routes, and families divided. We did not cross the 75 miles of border within our reservation lands. The border crossed us.

And the border comes at a price.

According to Customs Border Protection (“CBP”) estimates, there were 15,500 illegal entries on the Tohono O’odham Nation in March alone. The O’odham suffer from break-ins and other crimes committed by undocumented aliens and drug traffickers, damage to our cultural resources, increased demands on tribal law enforcement and health services, migrant waste, stolen vehicles that are abandoned by smugglers and often disabled by federal agents, and environmental degradation from vehicles driven by smugglers and CBP agents alike.

Each year, \$3 million of the Nation’s limited law enforcement funds are spent on our unfunded mandate to secure the border, which we all know is a federal, not a tribal, obligation.

In response to the border crisis, the Nation has repeatedly partnered with CBP and actively supported alternative strategies to walls, including vehicle barriers, towers, checkpoints, integrated camera-radar systems, and other measures that reduce negative impacts on tribal lands while still achieving the overarching goal of increased border security.

## **II. The Department of Homeland Security's rush to install border security infrastructure and waive critical laws has seriously damaged environmental and archeological resources.**

Despite the Nation's willingness to work cooperatively, DHS's inflexible desire to move forward within an unreasonable timeframe has unnecessarily damaged the environment and cultural resources.

When the Nation objected to construction methods within a known jaguar habitat near the reservation's eastern boundary, the CBP told Nation's officials during an August 2007 meeting that the project could be postponed for two weeks for further review, and then proceeded as planned a few days later.

After the Nation approved the construction of barriers to block illegal vehicle traffic but allow animal migration, CBP contractors failed to cap bollards at border construction sites, resulting in bird kills in violation of the Migratory Bird Treaty Act and the project's Final Environmental Assessment.

When Environmental Assessments were conducted on ancestral O'odham lands between Naco and Douglas, archeological sites were identified within the border construction zone. During an October 2007 field visit to the Christiansen Ranch site, Site AZ FF:9:10, fragments of human remains were observed in the tire tracks of the heavy construction equipment. Barriers and the border road now cross the site.

Imagine a bulldozer parking in your family graveyard, turning up bones. This is our reality.

As Secretary Chertoff has increasingly exercised his Section 102 waiver authority the destruction on federal lands has likewise increased. After the 2007 waiver was applied to traditional Hia Ced O'odham lands on the Barry M. Goldwater Range, a Boeing Company subcontractor widened 15 miles of the El Camino del Diablo, a desert crossing route listed on the National Register of Historic Places, without first performing an archaeological clearance. Two known Hohokam archaeological sites were damaged from the blading.

Today, it is as if the Congress never passed NEPA or acted to protect lands within the waiver zones, and as if the numerous agreements between the Nation and the CBP never existed.

## **III. The Department of the Interior violated its duty to Indian tribes and the lands under its jurisdiction by supporting Section 102 waivers.**

The Department of Homeland Security is, of course, not the only federal agency on the border. The Department of the Interior has jurisdiction over nearly 800 miles of the border. Interior's mission is to protect our common natural and cultural heritage, and it is mandated by Executive Order 13175 to recognize tribes' "inherent sovereign powers over their members and territory."

Interior has, however, abandoned its mission.

In a March 20, 2008 letter, the Department of the Interior acknowledged that its' legal obligations under the Wilderness Act and other statutes prevented it from approving DHS's proposed border security infrastructure. But Interior supported the DHS waiver of these very laws. Twelve days later, Secretary Chertoff issued a waiver that is applicable on 470 miles of the border, including 55 miles on our reservation. Interior never consulted us before turning its back on the Nation or the land it is sworn to protect.

Nor did DHS consult with the Nation before issuing that waiver. In doing so, the DHS undermined our partnership and the Nation's resolution supporting vehicle barriers, which expressly required federal officers to "perform cultural resource clearance and fully comply with the National Environmental Policy Act." (Tohono O'odham Legislative Council Resolution No. 04-095.) Has the Nation's sovereign power to make laws also been waived?

**IV. Indian tribes across the United States support legislation to repeal the Secretary of Homeland Security's Section 102 waiver authority, mandate consultation, and restore the rule of law.**

For all these reasons, the Nation, the Inter Tribal Council of Arizona, and the National Congress of American Indians support H.R. 2593, the Borderlands Conservation and Security Act of 2007, and other legislation that would repeal the DHS Secretary's Section 102 waiver authority, require consultation with tribes and border communities, and otherwise respect existing laws and citizens' rights in the effort to secure the border.

We know from our own experience living on the border that security can be improved while respecting the rights of tribes and border communities, while fulfilling our duty to the environment and to our ancestors, and without granting any person the power to ignore the law.

**CONCLUSION**

Chairman Grijalva and Chairwoman Bordallo, I am here to provide the Nation's unqualified support for H.R. 2593 and to urge you to restore the rule of law on the border. We support border security but not at the price that is now being paid.

Thank you.

Attachments to Written Testimony of the Honorable Ned Norris, Jr., Chairman  
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- Tohono O’odham Legislative Council Resolution No. 04-095, “Supporting Vehicle Barriers and All-Weather Road Project Along the International Boundary Within the Tohono O’odham Nation”
- March 20, 2008 Letter from Associate Deputy Secretary James E. Cason to Homeland Security Secretary Michael Chertoff
- National Congress of American Indians’ Resolution # ECWS-08-001, “Supporting Amending Secure Fence Act and Requiring DHS Secretary to Consult and Coordinate with Tribes in Jointly Developing a Border Strategy for Tribal Lands along the United States’ International Borders”