

ORAL TESTIMONY
FOR
THE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
&
THE COMMITTEE ON NATURAL RESOURCES

PRESENTED BY:

MR. GENE WOOD

APRIL 15, 2011

Good Morning: Chairman Chaffetz and Chairman Bishop. Distinguished members of the Committees. Thank you for allowing me to testify on behalf Mr. Bishop's draft legislation.

My name is Gene Wood. As a retired member of the U.S. Border Patrol, and founding member of the National Association of Former Border Patrol Officers (NAFBPO), it is a distinct honor for me to testify today on the merits of proposed legislation titled "National Security and Border Patrol Protection Act."

I do not represent the active Border Patrol in today's proceedings. Instead my testimony will rely largely on personal knowledge and experience and from support of the National Association of Former Border Patrol Officers (NAFBPO) and their membership throughout the United States. Their many years of collective experience, I believe, will enhance my ability to present to you, informative, accurate information and conclusions.

The Border Patrol was established on May 24, 1924, and for nearly 87 years Agents and their supervisors have successfully developed techniques and strategies to prevent the illegal entry of persons and contraband into the United States. One of the most effective of these techniques has been that of deterrence. It has proven to be a desirable strategy because it does not involve the dangers present in physical apprehension, nor does it involve costs always incurred in the detention and removal of those apprehended.

Today, I would like to address part of my testimony to enforcement efforts in the Tucson Sector of the U.S Border Patrol. I have chosen that sector since I served there as Deputy Chief Patrol Agent, and because it is one of the country's largest, with 261 miles of common border with Mexico. Additionally, the Sector area of responsibility contains large areas **with** various restrictive land use designations.

Since 2004, leadership of that sector has changed frequently with successive assignments of some of the most distinguished and experienced Chiefs in the Border Patrol. With the support of Congress the agency workforce has been increased, and the acquisition of the latest technology has

been made possible. There have also been experiments made by the intermittent assignment of National Guard troops.

I believe, as does the National Association of Former Border Patrol Officers, that the difficulties encountered by the Border Patrol to gain operational control are not the result of poor management or lack of resources. It is simply an issue of denied access. Unfortunately, our Country's willingness to accept these unwise restrictions **has been aggravated** in recent years by the unrelenting pressure of drug cartels and other international criminal enterprises.

That brings us to one of the most difficult questions facing present border patrol supervisors and agents assigned to the various sectors along our border. That question is: How do we protect our National Security **successfully** in these highly restricted areas? The time proven and effective techniques gained through years of experience are severely limited, or at times completely eliminated **because of these self-imposed restrictions**. Expensive technologies cannot be efficiently implemented, and manpower assets become more difficult to utilize **successfully**.

It is for these reasons that the leadership of the National Association of Former Border Patrol Officers enthusiastically endorses the decisive remedies proposed by Congressman Bishop. This includes the 100 mile limits and waiver of all of the restrictions listed in that legislation. We believe it has a high probability of success, and is an absolute necessary first step to **achieve** the goal of operational control. We also believe that approval of this proposed legislation will help convince the American public that Congress is now seriously seeking remedies to improve national security and the public safety of our citizens. They also make perfect sense.

Proponents of wilderness designations claim that exceptions to the exclusionary provisions of that law can be negotiated. They are correct. As an example, after two years of consultations, meetings between various federal agencies, field hearings, and border tours, **the following was achieved:** a five mile wide strip was to be allowed. This was to be the sole access for enforcement along a 25 mile portion of the Mexican border in New Mexico on the southern end of a 359,600 acre wilderness area as was proposed in S.1689.

It is actions such as this that **legitimize** the passage of legislation we are discussing today.

For clarity, I believe it is important to describe, in a condensed form, provisions of the Wilderness Act of 1964 as defined in P.L. 88-577 (16U.S.C. 1131 – 1136). Specifically, that law **prohibits** temporary roads, use of motor vehicles, motorized equipment or motor boats. No landing of aircraft, or other forms of mechanical transport, and no structure or installation within any area designated as Wilderness. Clearly, this is a direct contradiction to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103) which directs that the Department of Homeland Security maintain operational control of the borders of the United States.

Proponents often refer to a Memorandum of Understanding (MOU) between agencies dated in March 2006 to help justify wilderness designations. They represent it to be the mechanism to resolve all of the conflicts between Agencies. Nothing could be further from the truth. To give those on the committee a real world perspective of what effect this MOU has had on the Agencies involved, I have attached to this testimony a **written** communication by the Regional Director of the U.S. Department of the Interior, Fish and Wildlife Service to the Chief Patrol Agent of the Tucson, Arizona Border Patrol Sector. This documents relates to Border Patrol access for enforcement purposes into the San Bernardino National Wildlife Refuge in Cochise County, Arizona. Even a casual reading of this letter clearly demonstrates a demanding, confrontational, and threatening attitude toward CBP enforcement operations. I hope Committees will agree that environmental considerations should never be allowed to **supersede** legitimate efforts to secure our borders and protect the safety of all citizens.

It has not gone **unnoticed** to those of us who have studied this document that it contains nine pages of single spaced script. **In contrast** the federal statute that allows Border Patrol unrestricted entry within a distance of 25 miles from any external boundary and to have access to private lands but not dwellings for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States contains only four lines of paragraph (a)(3) of Section Sec., 287 of the INA. (8U.S.C. 1357)

Proponents of wilderness consistently maintain that Border Patrol Agents “have been interviewed, and are satisfied with the restrictions imposed by those designations”. To help determine the validity of these claims, on August 7, 2010, NAFBPO made a FOIA request to CBP seeking among other things, copies of records pertaining to communications or meetings between the Department of Homeland Security, the Department of the Interior, and any members of the US. Congress to include staffers from January 20, 2009 to present relating to Senate Bill 1689 and Wilderness land proposals within the state of New Mexico since January 20 2009. On February 23, 2010 our organization was advised by CBP that our request had produced approximately 570 pages of pertinent information. I regret to advise you that although all 570 pages were paid for pursuant to their requirements, subsequent requests from us have been ignored, and now, more than seven months later, only 77 heavily redacted pages have been released to us.

I have personally reviewed all the pages thus far furnished by CBP, and even with the very limited response there was some useful information. (1) There is no evidence in any of the documents that any Border Patrol field Agent was ever interviewed by congressional staff as claimed. (2) There was evidence however, that Senior members of the Border Patrol at the Sector level did fully inform Congressional staffers and others of the restrictions encountered in every Wilderness designation. There may be additional information in the documents that CBP have thus far refused to release.

Within days following the March 10, 2010 murder of rancher Robert Krantz , the New Mexico Congressional delegation requested the Secretary of Homeland Security to establish forward operating bases (FOB) in the area described as the **Bootheel of** New Mexico. The purpose of

these forward operating bases was to provide a deterrent to the illegal entry of aliens, and to provide protection of American citizens residing in that part of the state. Ironically, those same individuals who were supporting legislation to add additional wilderness designations on the border were the same as those recommending the establishment of **high** visibility forward operation bases.

Of special concern to us as former agents is the prospect of violent reactions as criminal enterprises fight to protect what until now has been almost exclusively their turf. Recent drug related murders of Border Patrol Agents Brian Terry, Robert Rosas and Luis Aguilar are sobering reminders that protection of our sovereignty is not without cost.

In addition to the enforcement constraints listed above, devastation to natural habitat and other aspects of the environment in general has been well documented. Border wilderness areas, without exception, demonstrate all of the unintended consequences of the intent of the wilderness concept. However, even these unintended consequences seem insignificant in national importance when compared to the potential dangers that exists if our nation is unable to finally gain sustainable control of our borders.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

P.O. Box 1306
Albuquerque, New Mexico 87103

In Reply Refer To:
FWS/R2/NWRS-SUPV/041063

MAY 29 2009

Mr. Robert W. Gilbert
Chief Patrol Agent
U.S. Customs and Border Protection
2430 South Swan Road
Tucson, Arizona 85711

Dear Chief Gilbert:

The issue of emergency vehicle access by the U.S. Customs and Border Protection (CBP) on San Bernardino National Wildlife Refuge (Refuge), Cochise County, Arizona, has been in dispute over the past few months. The recent exchange of letters from our respective offices failed to clearly identify the needs of our two agencies and reach agreement on how best to proceed. I am proposing the following structured emergency vehicle access onto the Refuge as a means by which we can get beyond our current impasse and proceed with the important work of border security and the conservation and protection of our natural resources.

By way of this letter, we are documenting our expectations of the circumstances under which the CBP will utilize emergency vehicular access on San Bernardino National Wildlife Refuge. For the purpose of this access, we understand that emergency circumstances exist only when human life, health, and safety of persons within the area must be immediately addressed. Access to the Refuge by CBP for emergency purposes will be limited to use of established administrative roads (see enclosed map). CBP may continue to access any part of the Refuge on foot or on horseback at any time to patrol, pursue or apprehend suspected cross-border violators.

In the instance where emergency vehicular access to the Refuge is required, the CBP will report directly in writing or electronically to Refuge Manager William R. Radke within 3 days following the incident. These reports will include detailed information on the nature of the specific emergency response, from initiation through final outcome. When emergency circumstances require off-road vehicle use within the Refuge, CBP will provide the Refuge Manager with a written or electronic report regarding this activity within 24 hours of the incident. To facilitate the emergency CBP vehicle access onto the Refuge, we will permit the placement of a CBP lock (Master Lock Pro Series 6327 or comparable) on the green Refuge entrance gate located near Geronimo Trail Road.

On a 6-month cycle, the U.S. Fish and Wildlife Service (Service) will conduct an overall assessment of the instances in which CBP conducted emergency vehicular access on the Refuge.

Mr. Robert W. Gilbert

2

Should the predominance of these instances of vehicular access to the Refuge not constitute true emergency incidents, the Service will suspend CBP access. The CBP will then be required to submit a request for any future access to the Refuge Manager for evaluation under the Special Use Permit process.

If you concur with these conditions of access, please sign the enclosed duplicate copy of this letter and return it to the attention of Mr. Chris Pease, Assistant Regional Director of Refuges, at the above address. If you have additional questions, please contact Mr. Pease at 505-248-7419.

Sincerely,



Regional Director

Enclosures

Concurrence: _____ Date: _____
Sector Chief Robert W. Gilbert

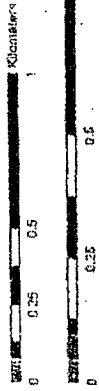
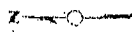
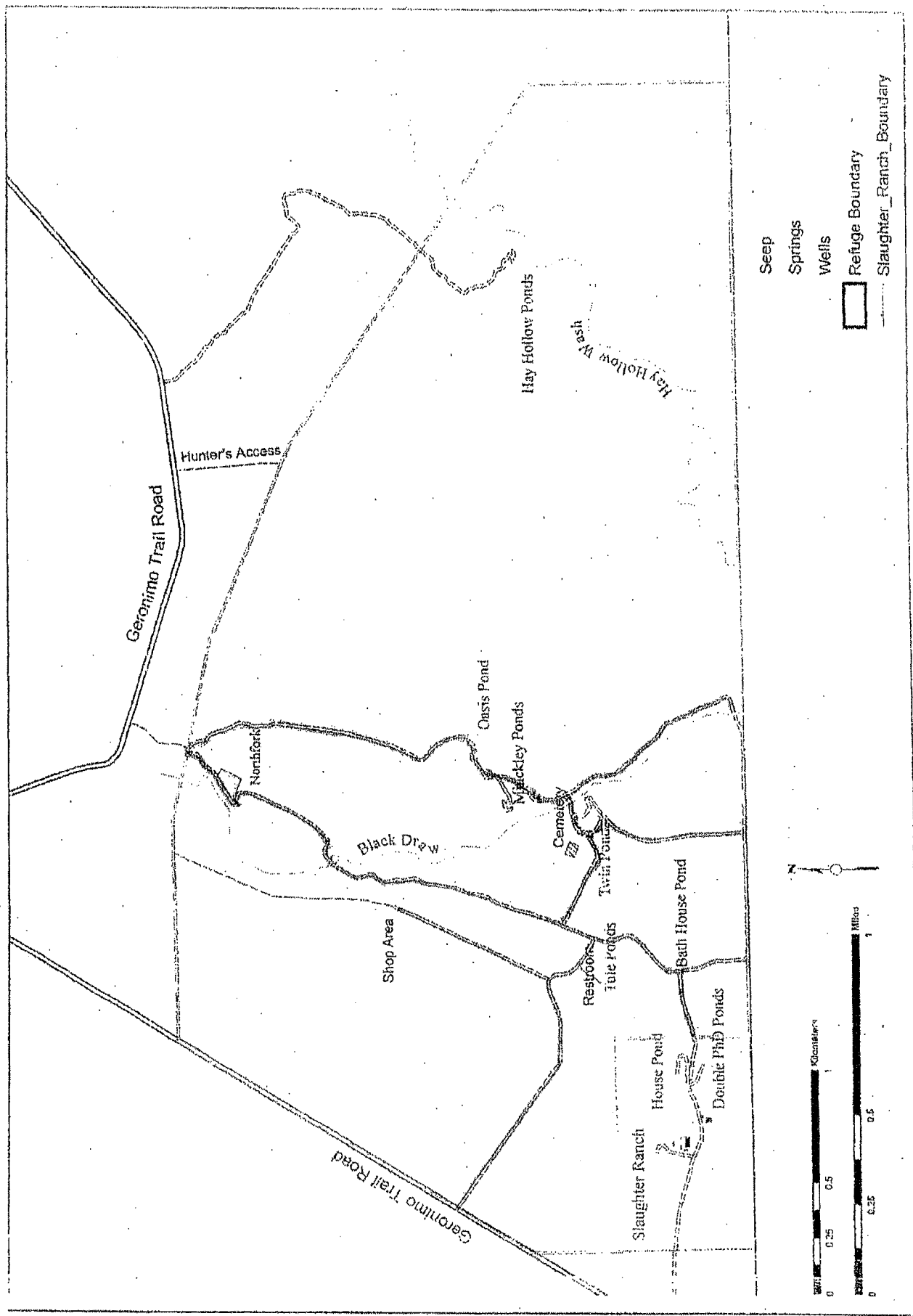
Mr. Robert W. Gilbert

3

cc: Refuge Manager, San Bernardino/Leslie Canyon NWRs
Rick Schultz, U.S. Department of the Interior



San Bernardino National Wildlife Refuge



- Seep
- Springs
- Wells
- Refuge Boundary
- Slaughter Ranch Boundary



United States Department of the Interior

FISH AND WILDLIFE SERVICE

P.O. Box 1306

Albuquerque, New Mexico 87103

In Reply Refer To:
FWS/R2/NWRS-SUPV/042858

OCT 23 2009

Mr. Robert W. Gilbert
Chief Patrol Agent
U.S. Customs and Border Protection
2430 South Swan Road
Tucson, Arizona 85711

Dear Chief Gilbert:

Over the past several months, U.S. Fish and Wildlife Service (Service) staff and U.S. Customs and Border Protection (CBP) Douglas Station agents have continued to meet and discuss ways to resolve our common objectives to prevent negative impacts to the landscape while providing for emergency vehicular access by CBP agents onto the San Bernardino National Wildlife Refuge (Refuge) in southeastern Arizona. Through this letter, I describe a structured procedure to help both agencies meet their individual legal mandates while at the same time establishing a process for emergency vehicular access onto the Refuge by CBP.

In general, the Service and CBP should mutually agree that an emergency is defined as a life-threatening circumstance that requires an immediate action to ensure the safety of humans within the Refuge. CBP may continue to access the Refuge on foot or on horseback at any time to patrol, pursue, or apprehend suspected cross-border violators.

To facilitate emergency vehicular access by CBP onto the Refuge, the Service will permit placement of a CBP combination lock on the green Refuge entrance gate located adjacent to Geronimo Trail Road. The combination on the CBP padlock will be changed at least annually to help ensure Refuge security. In instances where emergency vehicular access onto the Refuge is required, CBP should not delay in responding to an emergency. As soon as possible following an emergency response, CBP must contact the Refuge Manager, Mr. Bill Radke, at 520-364-2104 ext 101 during normal business hours.

Through the existing CBP radio dispatch system, an electronic log will be used to document any emergency vehicular access by CBP agents onto the Refuge. I understand this system ensures that a CBP supervisor follows up on any emergency access to document who, what, when, where, why, and how the access occurred. Within 2 days following an emergency response, CBP should provide the Service with as much detail as possible about the location and severity of the emergency incident and the CBP response.

On no more than a 6-month cycle, the Service will conduct an overall evaluation of the instances in which CBP used vehicles to respond to emergencies on the Refuge. If the majority of these instances of vehicular access onto the Refuge do not constitute true emergency incidents, the

Mr. Robert W. Gilbert

2

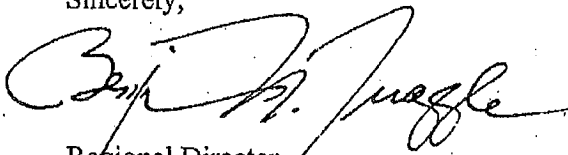
Service will suspend CBP vehicular access and CBP will then be required to apply to the Service for a Special Use Permit, which will require an appropriateness finding and possibly, a compatibility determination.

The Refuge, along with designated critical habitat, was initially established in 1982 in order to conserve several fish species that are Federally listed as threatened or endangered. The Endangered Species Act (Act) of 1973, as amended, ensures interagency cooperation by requiring all Federal agencies to consult with the Service on any agency action that is likely to adversely affect any threatened or endangered species or critical habitat of such species. The Service recognizes that during emergency events, protecting human life must come first every time, and during any emergency situation, a primary objective of the Service is to provide recommendations to avoid and minimize adverse effects to listed species without impeding response efforts. A Section 7 consultation is not required to address the emergency itself; rather, consultation is conducted to address the agency response to the emergency. Therefore, any emergency vehicular access onto the Refuge by CBP would be addressed by emergency consultation as described.

In an instance where emergency vehicular access onto the Refuge is required, CBP should not delay in responding to the emergency. After an emergency access event, the Refuge Manager will determine if there have been any potential adverse effects on threatened or endangered species or their habitats. In the event adverse effects are preliminarily determined, the Refuge Manager will notify the Service's Ecological Services Office to coordinate an emergency Section 7 consultation with CBP and Refuge personnel. The Service recognizes that take of a listed species is sometimes unavoidable. If incidental take of a listed species occurs during the emergency event, the Service will provide an incidental take statement for the CBP emergency action as part of a biological opinion, which would subsequently be developed to help document the issue.

If you have additional questions, please contact me at 505-248-6282.

Sincerely,



Ben H. Magle

Regional Director

Mr. Robert W. Gilbert

3

cc: Refuge Manager, San Bernardino/Leslie Canyon NWRs
ARD-Ecological Services, Region 2
Field Supervisor-Arizona ESFO, Region 2
Susan Sferra, Arizona ESFO, Region 2



United States Department of the Interior

FISH AND WILDLIFE SERVICE

P.O. Box 1306

Albuquerque, New Mexico 87103

In Reply Refer To:
FWS/R2/NWRS-SUPV/040778

APR 30 2009

Mr. Robert W. Gilbert
Chief Patrol Agent, U.S. Customs and
Border Protection
2430 South Swan Road
Tucson, Arizona 85711

Dear Chief Gilbert:

We are in receipt of your letter dated April 15, 2009, to Refuge Manager William R. Radke requesting non-emergency motor vehicle access by U.S. Border Patrol Douglas Station onto San Bernardino National Wildlife Refuge (Refuge) in Cochise County, Arizona. During our April 13, 2009, conference call you indicated you would be forwarding the U.S. Fish and Wildlife Service (Service) a written request for access to the Refuge for emergency purposes. However, in your letter dated April 15, you requested access to the Refuge "in the form of a Border Patrol lock on the refuge access gate off of Geronimo Trail Road for the purposes stated in paragraph IV.B.3 of the 2006 MOU." Paragraph IV.B.3 pertains only to requests for the purposes of "routine patrols" and "non-emergency operational access." Since your request was limited to non-emergency purposes, Service policy requires the Refuge Manager to conduct an evaluation to determine if the proposed activity would constitute an appropriate use of the Refuge.

For an adequate evaluation of your request for non-emergency, routine access, we need more details regarding your request. Specifically, we require more information justifying why your request is being made, identifying which personnel and when they may be accessing the Refuge, and specifying where and how such access is proposed. Providing this information will allow a more thorough, efficient, and timely evaluation by the Service and help document our decisionmaking process.

Regarding emergency situations, we wish to reiterate that protecting human life must come first every time. Emergency access onto the Refuge may occur by removing a portion of the Refuge boundary fence or by other means you deem necessary to respond to an emergency. After an emergency event, the Refuge Manager must be contacted as soon as possible to provide specific information about the location and severity of the emergency and nature of your response.

We look forward to further coordination with you to evaluate your vehicle access proposal. If you have additional questions, please contact Refuge Manager Radke at 520-364-2104 x101 or Refuge Supervisor Thomas Harvey at 505-248-6650.

Sincerely,


ACTING Regional Director

Mr. Robert W. Gilbert

2

cc: Refuge Manager, San Bernardino/Leslie Canyon NWRs
Rick Schultz, U.S. Department of the Interior