

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

PRESENTED BY:

MR. GENE WOOD

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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.