

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DEFENDERS OF WILDLIFE and SIERRA)
CLUB;) Case No: 07-1801 (ESH)
)
Plaintiffs,)
) **PLAINTIFFS' REPLY IN SUPPORT OF**
) **MOTION FOR TEMPORARY**
vs.) **RESTRAINING ORDER IN RELATION**
) **TO BORDER WALL AND ROAD**
) **CONSTRUCTION ON THE SAN PEDRO**
BUREAU OF LAND MANAGEMENT; U.S.) **RIPARIAN NATIONAL**
DEPARTMENT OF THE INTERIOR; U.S.) **CONSERVATION AREA**
ARMY CORPS OF ENGINEERS; and U.S.)
DEPARTMENT OF HOMELAND)
SECURITY)
)
Defendants.)
)
)
_____)

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INTRODUCTION

In their response to plaintiffs’ motion for a temporary restraining order, defendants ask this Court to permit them to continue in their rush to build a border wall and road within the San Pedro Riparian National Conservation Area (“San Pedro NCA”) without complying with fundamental procedures and statutes designed to insure that agencies carefully consider the environmental consequences of their actions. See, e.g., Baltimore Gas & Elec. Co. v. Natural Res. Def. Council, 462 U.S. 87, 97 (1983). While defendants claim that their actions on the San Pedro NCA—which contains only 2 miles of the U.S. Mexico border—should be allowed to proceed, they fail to justify why such construction must be completed now, rather than awaiting the resolution of a temporary restraining order, preliminary injunction, or even until the Court can resolve the case on the merits. As plaintiffs have demonstrated that the construction will cause irreparable environmental injury and runs counter to the public interest, and defendants have failed to articulate a compelling countervailing interest that would outweigh these harms, a temporary restraining order should be granted to plaintiffs in this case.

Moreover, defendants’ response further highlights the serious legal issues plaintiffs have raised concerning defendants’ compliance with the National Environmental Policy Act (“NEPA”) and the Arizona-Idaho Conservation Act of 1998. Indeed, as we will explain, the Biological Opinion defendants have submitted, see Def. Ex. 3, only serves to confirm plaintiffs’ contention that a meaningful environmental analysis of this project must include consideration of the other, nearby fence projects that, taken together, will have critical cumulative impacts on the flora and fauna in the Arizona borderlands. See, e.g., Defenders of Wildlife v. Babbitt, 130 F. Supp. 2d 121, 135-139 (D.D.C. 2001). Similarly, defendants’ brief entirely fails to respond to plaintiffs’ arguments that an Environmental Impact Statement (“EIS”) is required because

several of the CEQ's "significance" factors are triggered, TRO Memo. at p. 15-18, and also fails to justify defendants' utter failure, even in the "Border Fence EA", to meaningfully analyze the environmental impacts of the fence, rather than making conclusory statements characterizing the kind of impacts that are likely. See, e.g., Sierra Club v. Mainella, 459 F. Supp. 2d 76 (D.D.C. 2006).

Accordingly, until defendants comply with NEPA, this Court should issue an injunction to prevent the agencies from continuing to destroy this sensitive area blind to environmental concerns. Sierra Club v. Marsh, 872 F.2d 497, 504 (1st Cir. 1989) (Breyer, J.) ("the risk implied by a violation of NEPA is that real environmental harm will occur through inadequate foresight and deliberation. The difficulty of stopping a bureaucratic steam roller, once started, still seems to us . . . a perfectly proper factor for a district court to take into account in assessing that risk, on a motion for a preliminary injunction").

ARGUMENT

I. THE BALANCE OF HARMS FAVORS PLAINTIFFS

A. Irreparable Harm Will Occur Without a Temporary Restraining Order

In its opposition, the government alleges that plaintiffs have not established irreparable environmental injury because they "have not shown that the San Pedro project would precipitate significant environmental impacts." Gov't Opp. at p. 24. An inquiry into the significance of impacts, however, is appropriate in deciding the merits of plaintiffs' NEPA claims on summary judgment, not as a standard for a temporary restraining order. By conflating these two standards, the government would turn the definition of irreparable injury on its head for, as the Supreme Court has recognized, "environmental injury, by its nature, can seldom be adequately remedied

by money damages and is often . . . irreparable.” Amoco Production Co. v. Village of Gambell, 480 U.S. 531, 545 (1987).

Thus, for example, the District of Columbia District Court has consistently found that harm to wildlife constitutes irreparable injury. See, e.g., Fund for Animals v. Clark, 27 F. Supp. 2d 8 (D.D.C. 1998) (enjoining bison hunt that would kill approximately 8 percent of the wild population pending NEPA compliance); Fund for Animals v. Norton, 281 F. Supp. 2d 209 (D.D.C. 2003) (enjoining the state of Maryland from acting on the mute swan depredation permit issued by the Fish and Wildlife Service); Greater Yellowstone Coalition v. Bosworth, 209 F. Supp. 2d 156, 164 (D.D.C. 2002) (enjoining livestock grazing for harm to bison, as well as destruction of wetlands and accompanying deterioration in water quality). Plaintiffs have presented substantial evidence of irreparable harm to wildlife populations, and the environment generally, within the San Pedro NCA from border fence and road construction, and thus their motion for a temporary restraining order should be granted.

For example, plaintiffs provided substantial photographic evidence of construction that has already occurred on the San Pedro NCA, including significant clearing of native vegetation in preparation for road construction, as well as trenching in preparation for erection of border fencing. See Clark Decl. figures 3-6. Furthermore, plaintiffs’ expert declarations demonstrate that this vegetation clearing will have irreparable effects on wildlife.¹ As stated by Avila:

Habitat fragmentation and destruction are serious threats to wild felines, such as jaguars, mountain lions, bobcats, and ocelots . . .

¹ Notably, the Ninth Circuit Court of Appeals has held that simple clearing of native vegetation itself constitutes irreparable harm. S.E. Ak. Conservation Council v. Army Corps of Eng’rs., 472 F.3d 1097, 1100 (“SEACC has demonstrated that construction of a permanent dam . . . will adversely affect the environment by destroying trees and other vegetation, and by killing aquatic life.”) (9th Cir. 2006); see also W. Watersheds Project v. BLM, 2006 U.S. Dist. LEXIS 76717 *6 (D. Nev. Oct. 20, 2006) (finding irreparable harm where project would “destroy native vegetation and result in the displacement and/or direct mortality of small mammals and birds.”).

Felines prefer well-covered, dense vegetation for protection of their litters, ambushing prey, feeding, and migrating corridors. Activities of construction of a barrier, such as DHS' proposed pedestrian fence, clearing of vast areas, destruction of vegetation cover, change in topographic features, such as land-filling of canyons, or water streams, will affect cat populations in the border region, even before the fence is in place, regardless of what side of the border they are in.

Avila Decl. ¶ 21 (emphasis added). Plaintiffs' declarations further establish not only the presence of wild felines and many other wildlife species generally, but the Clark Declaration contains direct evidence of contemporaneous usage of the San Pedro NCA within proposed construction areas by bobcat and mountain lion. Clark Decl. ¶ 2, p. 9 & figure 2.

Moreover, since the filing of plaintiffs' complaint and motion last Friday, defendants DHS and Army Corps have conducted extensive additional construction, resulting in further irreparable environmental harm. See Ahren Decl. ¶ 14, 22 (DHS official noting 80 percent of road completed and 60-foot easement completed); Odle Decl. (Plf. Exh. 3). The rapid pace of construction within the San Pedro NCA underscores a simple fact: if a temporary restraining order is not granted, construction of the border fence and road within this protected area will be completed long before the merits of plaintiffs' claims are heard and ruled upon—likely within a matter of days. Thus, for purposes of assessing irreparable harm, the Court should focus its inquiry not only on the actions that defendants are taking right now—although these actions alone are more than sufficient to establish such harm—but the effects of the completed project.

As established by plaintiffs' declarations and the BLM's own analysis in the Border Fence EA, the completed border fence and road will have significant and far-reaching negative consequences on cross-border wildlife movements, as well as the San Pedro River and its native vegetation. Contrary to defendants' assertions that "plaintiffs have not shown or even alleged that the San Pedro fencing project would harm a rare or threatened plant or animal population at

all, let alone harm those species beyond renewal,” Gov’t Opp. at p. 24, plaintiffs have established that the fence and road will significantly and irreparably harm a wide diversity of mammalian species, including imperiled species such as jaguar. For example, the Hass declaration notes that many “subtropical species reach the northern extent of their ranges in this area, including jaguars, ocelots, white-nosed coatis, hooded skunks, Mexican fox squirrels, Merriam’s deermice, Coue’s deer, white-sided jackrabbits, Sonoran subspecies of the Virginia opossum, a large variety of birds and reptiles [and] a diverse flora.” Hass is clear that the proposed fence and road construction will likely have negative and even profound effects on this unique assemblage of biological diversity:

The biological integrity of the whole Madrean Archipelago region relies on genetic interchange throughout the region—by both plants and animals. Barriers to this genetic interchange may influence the long-term viability of populations, especially north of the border. Construction of border fencing and barriers presents three serious threats to long-term survival of wildlife on the border: fences that are impermeable to wildlife, thus allowing no gene flow at all; increased human foot traffic into areas with vehicle barriers; and roads that bring in more recreational users and illegal vehicle traffic close to the border.

Hass Decl. ¶ 13; see also Avila Decl. ¶ 22 (border infrastructure “threaten[s] the survival of jaguars in the United States, endanger[s] the establishment of individuals and/or a viable breeding population and block the passages that jaguars, as well as other big, medium, and small sized mammals use to reach the habitats where they naturally occur. Proposed infrastructure will disrupt, segment and isolate wildlife populations in both sides of the border.”). Because plaintiffs have established irreparable harm, a temporary restraining order should be granted. See, e.g., Cuomo v. United States Nuclear Regulatory Comm’n, 772 F.2d 972, 974 (D.C. Cir.

1985) (the injunction test “is not a wooden one, and relief may be afforded with either a high probability of success and some injury, or vice versa.”)(internal citations omitted).²

B. The Public Interest Favors a Temporary Restraining Order

The government’s reply asserts that the public interest counsels against a temporary restraining order because “delaying the completion of the San Pedro border fence would impair important border and related national security interests,” specifically high levels of illegal entry into the United States and consequent environmental harm. Gov’t Opp. at p. 26.

Plaintiffs readily acknowledge that significant environmental harm has arisen from high levels of undocumented immigration and other illegal activities. However, it is important to note that this harm is the direct result of government border security efforts undertaken in urban areas such as San Diego, California and El Paso, Texas, shifting immigration flows to Arizona without comprehensive planning or prior consultation with federal land managers. See Def. Exh. D at 12 (“Land management and Border Patrol officials attribute the increased illegal activity on federal lands to the Border Patrol’s strategy of concentrating resources primarily in populated areas, thus shifting much of the illegal traffic to less patrolled federal lands.”); id. at 23 (“According to land management agency officials . . .the Border Patrol did not coordinate with them when it began implementing its strategy.”). Moreover, in this case, the BLM predicts that construction of fencing will have an adverse environmental effect by shifting traffic into the San Pedro River

² In marked contrast to the irreparable harm demonstrated by plaintiffs, defendants argue that because they have rushed to complete approximately 80 percent of the proposed road and “already . . . scraped” the 60-foot easement, enjoining the project will cause environmental harm by causing an “erosion problem” and a “safety hazard.” Gov’t Opp. at p. 27. Here, defendants engage in the worst kind of bootstrapping, arguing that their attempt to moot plaintiffs’ suit, and the clear irreparable environmental harm of their construction, should essentially be rewarded by the Court. Moreover, defendants fail to acknowledge that their stated concerns are easily remedied by far less drastic measures that completing the border fence and road, such as simply covering the trenches.

corridor. Border Fence EA at p. 22-23 (noting that “there is expected to be an increase [sic] pedestrian traffic being funneled into the river corridor,” although under the chosen Alternative, “there will be more openings,” and thus “the funneling . . . will be spread out to more areas.”).

Additionally, the government does not address how the undisputed irreparable harm to this protected area is outweighed by the temporary suspension of construction activities, and preservation of the status quo, until the Court can hear and rule upon the merits of plaintiffs’ request for a preliminary injunction. Especially in light of the border fence construction being undertaken all along the Arizona border, as well as several other areas of the U.S.-Mexico border, the government has provided no reasonable argument that the immediate walling off of this small, 2-mile section of the border serves an essential public interest.³

II. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

A. Defendants Are Violating NEPA

In their opening brief, plaintiffs argued that the San Pedro fence and road project is part of a larger effort to wall much of the Arizona border, and that BLM, other land management agencies, and DHS were improperly segmenting their NEPA analysis for these projects and thus not considering their larger cumulative effects. In response, the government argues that plaintiffs’ arguments have “at least two fatal defects”: (1) an alleged improper reliance on “declarations not in the administrative record”; and (2) a failure to establish a “mandatory NEPA

³ If DHS truly believes that wall and road construction on the San Pedro NCA is a national emergency, then it has the authority to invoke section 102 of the REAL ID Act, 8 U.S.C. § 1103, note, to waive laws pertaining to it that it determines necessary to ensure such expeditious construction. However, unless and until it does so, it cannot use its claim of urgency as an excuse to skirt the nation’s environmental laws, which remain in effect.

requirement mandating a regional EIS.” Gov’t Opp. at p. 9-11. For the reasons below, defendants’ arguments are misplaced.

First, plaintiffs here have filed their case and immediately moved for a temporary restraining order, and thus the government has not yet produced an administrative record. Moreover, the government’s criticism of plaintiffs for their reliance on expert affidavits to bolster their arguments that the San Pedro project and other proposed and ongoing wall construction will have cumulative effects on wildlife on natural resources is clearly groundless. As defendants provided the public with no notice or opportunity for public comment or other involvement in the Border Fence EA (itself a violation of NEPA), plaintiffs cannot now be faulted for going outside of the “administrative record.” Indeed, it is well-recognized both that a court may consider extra-record evidence (1) where plaintiffs claim an agency ignored environmental impacts under NEPA; and (2) in considering the equities in support of a request for an injunction. Esch v. Yeutter, 876 F.2d 976, 991 (D.C. Cir. 1989); see also Carlton v. Babbitt, 26 F. Supp.2d 102, 107 (D.D.C. 1998) (same).

Second, defendants’ arguments against a regional EIS entirely fail to address plaintiffs’ arguments that (a) an EIS is required for this project and (b) the Border Fence EA is patently deficient under NEPA.⁴ As to the EIS, the BLM’s Finding of No Significant Impact (“FONSI”) fails to make the required “convincing case” that no EIS is required. Indeed, it fails to even discuss the “significance” factors, let alone meaningfully explain why no EIS is necessary. 40 C.F.R. § 1508.13 (“‘Finding of no significant impact’ means a document by a Federal agency

⁴ Defendants’ argument that the agency is not required to prepare a “Programmatic EIS,” Gov’t Opp. at p. 9, is particularly irrelevant at this early stage of this proceeding. Regardless of whether the Court ultimately determines that the broader EIS is required, at this point all the Court needs to consider is whether an EIS may be necessary for this specific project, and whether in the EA and FONSI plaintiffs are challenging, the agency took a “hard look” at the cumulative impacts of this particular fence segment. Grand Canyon Trust, 290 F.3d 333, 340 (D.C. Cir. 2002). Plainly, it did not.

briefly presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared.”) (emphasis added); Grand Canyon Trust, 290 F.3d at 340 (EA must make a “convincing case for its finding” that no EIS is required).

With regards to the Border Fence EA, even if the Court does not agree with plaintiffs’ argument that a regional EIS must be prepared, defendants’ brief certainly fails to demonstrate that it meets the D.C. Circuit’s four-part test for a sufficient Environmental Assessment—i.e., whether the agency has (a) “accurately identified the relevant environmental concern”; (b) “taken a ‘hard look’ at the problem”; (c) made a “convincing case for its finding” that no EIS is required; and (d) demonstrated that any necessary mitigation will “sufficiently reduce the impact to a minimum” so as to support a FONSI. Id. Indeed, the agency has soundly failed the first prong of the test by limiting its analysis to “the San Pedro River watershed,” Border Fence EA at 20, rather than including the larger area that includes other segments of the fence which, taken together, will have demonstrable, cumulative impacts on desert wildlife and vegetation. TRO memo. at p. 11-14.

Thus, while defendants argue that BLM sufficiently considered cumulative impacts, Gov’t Opp. at 21, even a cursory review of the Border Fence EA pages (p. 20-23) to which defendants cite reveals that the Border Fence EA does not even begin to address the cumulative impacts of this fence project with the other fence projects in the area.⁵ Moreover, defendants own Exhibit B—a Biological Opinion (“Bi-Op”) from the U.S. Fish and Wildlife Service

⁵ See e.g., Sept. 17, 2007 Environmental Assessment for the Proposed Installation of 5.2 Miles of Primary Fence Near Lukeville, Arizona (Organ Pipe Cactus National Monument); Sept. 11, 2007 Environmental Assessment for Construction and Maintenance of 2.4 Miles of Primary Fence Along the U.S.-Mexico Border Near Nogales, Arizona; July 2007 Environmental Assessment for Pedestrian Fence Near Sasabe, Arizona (Buenos Aires National Wildlife Refuge) (documents available at: <http://ecso.swf.usace.army.mil/>).

(“FWS”) addressing impacts of this fence in conjunction with other fence segments in this area—further demonstrates that the “relevant environmental concern” here, Grand Canyon Trust, 290 F.3d at 340, is not solely limited to the San Pedro River, but to the flora and fauna that are being impacted by this fence segment in conjunction with the other nearby fence segments also being constructed. Thus, in stark contrast to the Border Fence EA, which only considered less than 2 miles of this overall fencing system, the Bi-Op considered three sections of fence that will total 31 miles, Def. Ex. B at p. 8, recognizing that the overall fence will have common impacts on protected species. Id. at p. 16 (defining the “action area”). See Natural Res. Def. Council v. Hodel, 865 F. 2d 288, 297 (D.C. Cir. 1988) (purpose of NEPA’s cumulative effects requirement “is to prevent agencies from dividing one project into multiple individual actions.”).

Unless and until the defendants consider the environmental impacts of these fence areas together, it will have not fulfilled its basic obligations under NEPA. See, e.g., Defenders of Wildlife v. Babbitt, 130 F. Supp. 2d 121, 135-139 (D.D.C. 2001). In Defenders, this Court concluded that various agencies had violated NEPA by considering the impacts of their own activities on the endangered Sonoran Pronghorn, but refusing to consider the impacts of nearby agency actions on the species. Id. Similarly, here, irrespective of whether BLM is required to prepare an EIS, at bare minimum its EA must address the cumulative impacts of this fence, together with other segments of the overall fence being constructed, to the extent that these segments, taken together, will have “cumulative or synergistic environmental impact[s]” on the environment. Friends of the Earth v. U.S. Army Corps of Eng’rs., 109 F. Supp. 2d 30, 41 (D.D.C. 2000) (citations omitted).

The agency also plainly failed to take the “hard look” that NEPA requires for an EA. See, e.g., Sierra Club v. Mainella, 459 F. Supp. 2d 76 (D.D.C. 2006). Thus, as Judge Bates

explained in reviewing three Park Service EAs, an agency has failed the “hard look” requirement when the EA lacks “explanations supporting its conclusions” and describes impacts “using conclusory labels . . . without explanation.” *Id.* at 108. Here, for example, with regard to impacts of the fence on wildlife, the agency recognizes that “[t]he proposed action may have a short term effect of disturbance of local wildlife due to construction activities”; “[t]here will be wildlife mortality”; and the fence “has the potential to separate portions of wildlife populations from existing watering points, which will potentially change wildlife distributions and population levels,” Border Fence EA at 11, but the agency nowhere analyzes the extent of those impacts, and the long-term effect they may have on the wildlife itself, the ecosystem of which that wildlife is a part, or impact on the visiting public who travel to this area to view wildlife in its natural habitat, see Bahr Decl, Miller Decl., Neeley Decl.; see also Border Fence EA at 5 (acknowledging the area “attracts birders from all over the world”). Mainella, 459 F. Supp. 2d at 100 (“An unbounded term cannot suffice to support an agency’s decision because it provides no objective standard for determining what kind of differential makes one impact more or less significant than another.”).⁶

For those environmental impacts and issues that are acknowledged by the Border Fence EA, there is no “full and fair discussion” of the mitigation measures claimed by BLM to offset these impact, to say nothing of the required “concise, clear, and to the point” analysis “supported by evidence” with “reference . . . to the scientific or other sources relied upon for the [agency’s] conclusions.” 40 C.F.R. §§ 1502.1; 1502.24. Rather, the Border Fence EA simply provides a list of various mitigation measures—which may or may not reduce the environmental impact of

⁶ The same problem is present in the agency’s other impact analysis sections. See, e.g. EA at 9 (discussing unquantified “increased erosion” on “downstream vegetation”; other impacts that “could negatively impact this upstream vegetation” and lead “to destabilization to riparian habitat”; and the likelihood of “excess sediment in drainages from storm runoff”).

the project—to support the conclusion that an EIS is not required. Border Fence EA at p. 23-24; Gov’t Opp. at p.14-15; see also Robertson v. Methow Valley, 490 U.S. 332, 351-52 (1989) (“mitigation [must] be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated”); Neighbors of Cuddy Mountain v. U.S. Forest Service, 137 F.3d 1372, 1380 (9th Cir. 1998) (“an EIS ‘shall include discussions of . . . means to mitigate adverse environmental impacts’”) (quoting 40 C.F.R. § 1502.16(h)).

Under District of Columbia Circuit Court precedent, “if the agency does find an impact of true significance, preparation of an EIS can be avoided only if the agency finds that the changes or safeguards in the project sufficiently reduce the impact to a minimum.” Grand Canyon Trust, 290 F.3d at 341 (quoting Sierra Club v. United States Dep’t of Transportation, 753 F.2d 120, 126, 127 (D.C. Cir. 1985)); see also Maryland-Nat’l Capital Park and Planning Comm’n v. U.S. Postal Serv., 487 F.2d 1029, 1040 (D.C. Cir. 1973) (“changes in the project are not legally adequate to avoid an impact statement unless they permit a determination that such impact as remains, after the change, is not ‘significant.’”). Here, BLM has not demonstrated, with any certainty, that its list of mitigation measures will render the enumerated environmental impacts insignificant. For example, the Border Fence EA specifically acknowledges that with respect to the impact of the project on the wetlands, riparian zones and vegetation “there is a large degree of uncertainty concerning the effectiveness of the some [sic] of the proposed mitigation for erosion as many of the details have not been determined.” Border Fence EA at p.10. Moreover, the measures that are included in the Border Fence EA are voluntary and may not be fully implemented by the agency. See Corinne Purtill, Border fence stirs wildlife worries, The Arizona Republic, Oct. 6, 2007 (“The right-of-way permit included several such requests to protect the riparian area, . . . [b]ut the recommendations are not binding under the permit’s terms,

said Lorraine Buck, spokeswoman for the BLM's Tucson office.”)(Plf. Exh. 1); April Reese, Groups appeal BLM decision to allow border fence through Ariz. conservation area, Land Letter, Oct., 4, 2007 (“While DHS and the corps do not have a legal obligation to adhere to BLM’s recommendations, they have been ‘very cooperative.’”)(Plf. Exh. 2).

Finally, the government failed to adequately respond to plaintiffs’ arguments that the lack of any public involvement in the Border Fence EA constitutes a violation of NEPA. For the reasons set forth in plaintiffs’ initial memo, defendants’ failure is unlawful.

B. Defendants Have Violated the Arizona-Idaho Conservation Act of 1988

Pursuant to the Arizona-Idaho Conservation Act of 1988, 16 U.S.C. § 460xx, BLM is charged with managing the San Pedro NCA “in a manner that conserves, protects, and enhances the riparian area and the aquatic, wildlife, archeological, paleontological, scientific, cultural, educational, and recreational resources of the conservation area,” id. § 460xx-1(a), and may “only allow such uses of the conservation area as [it] finds will further [these] primary purposes.” Id. § 460xx-1(b). Yet, despite this clear mandate, and notwithstanding the government’s implication that the “emergency” provisions of the Act apply, and the tortured extension of the Border Fence EA to include such an analysis, see Gov’t Opp. at 22-23, BLM has issued the right of way without specific consideration being given to the negative impact of the action on the NCA, its resources or values. See Def. Exh. D at 3 (noting that federal land managers “view constructing barriers primarily in keeping with the Border Patrol’s border security mission and generally not consistent with land management agencies’ missions of protected people and resources.”).

REQUESTED RELIEF

For the foregoing reasons, the Motion for a Temporary Restraining Order should be granted.

Respectfully Submitted this 9th day of October, 2007.

_____/s/_____
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CERTIFICATE OF SERVICE

I HEREBY that service of the foregoing plaintiffs' Reply in Support of Temporary Restraining Order has been made through the Court's electronic transmission facilities on this 9th day of October, 2007.

/s/

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