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COMMITTEE ON EDUCATION AND LABOR  
Subcommittee on Healthy Families and Communities  
Subcommittee on Early Childhood, Elementary  
and Secondary Education

COMMITTEE ON SMALL BUSINESS  
Subcommittee on Finance and Tax  
Subcommittee on Investigations and Oversight

October 15, 2007

Michael Chertoff  
Secretary  
Department of Homeland Security  
Washington, D.C. 20528

Dear Secretary Chertoff:

I am writing to you with regard to the recent temporary restraining order on border fence construction in the San Pedro National Riparian Conservation Area issued by the District Court in Washington, D.C. on October 11. While you consider further action in this matter, I urge you not to invoke a waiver under the REAL ID Act of 2005 for continued and future border fence construction in Arizona. Instead, I respectfully request that you follow existing federal laws for the protection of the environment, health and human safety along the border.

A waiver for construction in the National Conservation Area would be wholly inappropriate for several reasons. During debate on the REAL ID Act in 2005, sponsors and proponents of the bill uniformly described section 102 of REAL ID as necessary solely to finish a small portion of the 14-mile long section of triple-layer border fence in California, describing the provision only as "necessary to ensure the expeditious construction of *the San Diego border fence*." U.S. Senate Republican Policy committee, Conference Report Highlights of H.Rept 109-72 (May 9, 2005) (emphasis added). Members of Congress did not contemplate extending the authority to waive laws hundreds of miles away in a remote part of the Arizona desert during debate on this bill.

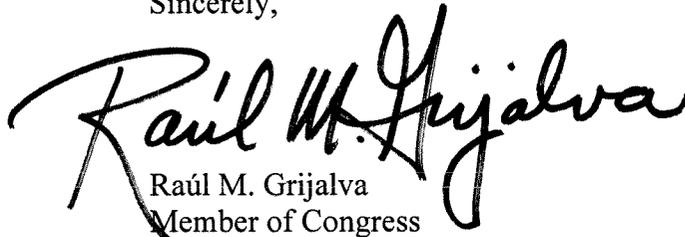
Secondly, the Department of Homeland Security should take extreme care in constructing infrastructure within the San Pedro National Riparian Conservation Area. The San Pedro Riparian NCA was designated to protect one of the last free flowing desert rivers in the United States. The San Pedro is an extremely fragile ecosystem, which, for the first time, ran dry last year. The river and its environs provide critical and irreplaceable habitat for thousands of migratory and endemic bird species, mammals and other living things. Many endangered, threatened or otherwise imperiled species depend on this ecosystem for their very survival. The Department of Homeland Security should use extreme caution when contemplating actions that would do irreversible and unnecessary damage to the fragile resources of the area.

Instead of invoking additional waivers of important federal laws, the Department should conduct a regionally focused Environmental Impact Statement, complete with full environmental analysis, consultation with local officials, and public comment before continuing any wall construction in Arizona. In Texas, the Department has initiated an EIS process for wall construction there. There is no conceivable reason why an EIS should be required for Texas but not for Arizona.

Consultation with local officials and engagement of the public will ensure that border security projects are done in a manner that provides for national security while simultaneously protecting the particular environment you are working within. I urge you use collaboration and careful environmental analysis to craft a workable solution, instead of utilizing a "one fence fits all" approach.

Please have your staff contact Gloria Montañó, my Chief of Staff, at (202) 225-2435 to discuss this matter as soon as possible.

Sincerely,



Raúl M. Grijalva  
Member of Congress  
(AZ-07)