

**A written testimony of Mark M. South, member of a committee representing the Southern Arizona Cattleman's Association and the National Association of Retired Border Patrol Officers, to the Subcommittee on National Parks, Forests, and Public Lands Natural Resources Committee, United States House of Representatives concerning the hearing on H.R. 3287, the Tumacacori Highlands Wilderness Act of 2007 to be held on Tuesday 13 November 07.**

Mr. Chairman, Members of the Committee: good afternoon, and thank you for the opportunity of being able to speak to you concerning this important matter.

My name is Mark South, a retired U.S. Forest Service Official of 28 years and my assistant, Zach Taylor a retired U.S. Border Patrol Official of 26 years, both live in Rio Rico, AZ, which is adjacent to the proposed wilderness area. Many of us who live within the area are opposed to H.R. 3287. We feel that this initiative is not in the best interest of the area. The reasons that we are opposed are as follows:

**Homeland Security:**

If H.R. 3287 is passed, motorized vehicles and equipment will not be allowed in the wilderness designation, thereby leaving our border vulnerable to smugglers, terrorists, and contraband. Enacting this legislation will only hinder Homeland Security in their job of protecting the United States/Mexico Border. Section (i) of the H.R. 3287 states "...border enforcement operations are common management actions throughout the area encompassing the covered wilderness areas. This Act recognizes the need to continue such management actions so long as such management actions are conducted in accordance with the Wilderness Act (16 U.S.C 1131 et seq.) and existing inter-agency agreements...". What H.R. 3278 says, as per the Wilderness Act of 1964, that law enforcement agencies will not be able to use motor vehicles, motorized equipment, or landing of aircraft or any other form of mechanical transport to complete their duties such as curtailing the flow of undocumented individuals, reducing the threat of terrorists from coming into the U.S., and stemming the flow of illegal drugs.

Another proposed bill, H.R. 2593, The Borderlands Conservation & Security Act of 2007, will also strengthen the exclusion of motorized vehicles along the border. Under Section 5, Border Barrier Construction part (3) paragraph D implies the exclusion of motorized vehicles by recommending the use of remote equipment to track illegal entry into the U.S. This will help, but there still is a need to have motor vehicles within the designated area to deter criminal activity and to apprehend the violators from progressing any further north. Lack of law enforcement signals the cross-border violators that they can now extend the Mexico/U.S. Border another 30 miles north of the existing boundary.

Not only does the Wilderness Act and future legislation prohibit the use of motorized vehicles/equipment in a wilderness area, but non-inventoried 4x4 roads used by law enforcement and the public will be eliminated. Existing numbered roads will be cherry stemmed, but what about all the other 4x4 roads that are not on existing Forest Road inventories? They will be blocked off and rehabilitated. This will even further limit the

access of law enforcement, but give the green light to illegal activities coming across the border. This legislation will create safe havens and safe environments for criminals that smuggle humans and narcotics into the United States.

In the last 4 years, several major access points used by law enforcement have been blocked by private land owners, thus denying access to law enforcement. Extreme violent criminal activity has increased in the proposed boundaries of the wilderness commensurate to the lack of access for law enforcement. Just this year, numerous murders and drug rip offs have taken place in communities adjacent to the proposal. We have seen armed criminals intercept entrants smuggling loads and shoot into drug hauling vehicles, killing people in the smuggling load. There was also a shoot out between drug smugglers while several fire agencies were trying to suppress a wildfire. On a daily basis, the news recounts details on shootings, deaths, drug seizures, break-ins, property damage and the influx of undocumented individuals. Criminal activity originating along the proposed wilderness areas extend north into the neighborhoods of Tubac, Amado, Arivaca, Green Valley, Tucson, Phoenix and points beyond creating serious situations.

All of these criminal activities originate along the Mexican Border. We should not hinder law enforcement agencies in carrying out their duties of protecting the U.S. citizens. We need to give them all the tools they need in order to stop the flow of drugs and undocumented individuals. If we can't do that, then do away with agencies responsible for Border Security and save millions of dollars on this effort. Allowing cross-border violators has become more economically based than protecting the environment.

### **Existing Protection**

The Tumacacocori's, Pajarito's and the Atascosa's are already protected by the US Forest Service and are backed by a host of environmental laws. A few of these laws include; Multiple-Use Sustained –Yield Act of 1960, The Endangered Species Act of 1973, Antiquities Act of 1906, Archaeological Resources Protection Act of 1979, the Archeological and Historic Preservation Act of 1960, the National Environmental Policy Act of 1969, Chapter 70 – Wilderness Evaluation of the FS Handbook, and the Wilderness Act of 1964.

Before any project can be initiated on public land, the National Environmental Policy Act of 1969 must be followed. An Environmental Impact Statement or an Environmental Assessment document must be written and approved before any project can be started. Both environmental documents contain alternatives to the proposed action and any adverse environmental effects which cannot be avoided. They utilize all the environmental disciplines along with public input to come up with a project that all can agree upon. If no solution can be found between all parties, then the project can be appealed.

Another environmental safeguard is the Endangered Species Act of 1973. Before a project can start, a Biological Opinion must be written. This involves surveying the area

for any possible threatened and endangered species with a document being submitted to the US Fish & Wildlife Service for approval/disapproval. This adds another level of protection to the environment.

## **Grazing**

The cattle ranchers in this area are good stewards of the land. They have a great relationship with the Forest Service and strive to improve the land they lease. Enacting this legislation will disrupt this relationship between the environment, Forest Service and the rancher.

Ranchers with experience in Wilderness Areas are bitter about the enactments. Managing ranch operations will become much harder if not impossible if burdened by a whole new layer of regulations that include prohibiting the use of motorized equipment or transport. Special use permits require a lengthy environmental assessment and approval by both the District and Regional offices. So-called “primitive two-track roads,” the jeep trails they use to reach isolated improvements, will be closed. Where once ranchers had access to clean out a dirt tank with mechanized equipment or use a chain saw to cut brush from a fence line, they now are being told to get a special use permit. Often this takes months with no guarantee that they will receive the permit to use mechanized equipment. The question is, why should modern day ranchers try to manage a business under wilderness standards when the rest of the world is using 21<sup>st</sup> Century techniques? The pressure of a diverse interpretation of regulations can be a slow death “of a thousand head cuts of cattle.”

## **Plants and Wildlife along the Border**

A wilderness designation is not needed to protect plants and animals in this H.R. 3287 proposal. The plants and animals in the proposed area are not only found in the U.S., but can also be found in Mexico. There are unique species that many say are only indigenous to the Pajaritos on the U.S. side, but in reality they are also found on the Mexican side. Section 72.31-Factors item 4 of the FS Handbook states that when evaluating a wilderness area to provide a refuge for those species that have demonstrated an inability to survive in less than primitive surroundings, then protection should be provided. A wilderness is not needed to protect species that can be found in both countries. The same species of plants and wildlife can be found on both sides of the border.

## **Presidential Special Provisions**

Having a wilderness designation does not always guarantee that the land will remain pristine. There are several exemptions that are listed within the Wilderness Act of 1964 that would allow development within the area by Presidential declaration. Under Special Provisions of the Act, Section 3, mineral exploration and leasing can still occur. In Section 4, “...the President may authorize power projects, transmission lines, and other facilities needed in the public interest, including construction and maintenance essential to development and use thereof; upon his determination this will better serve the interests

of the United States and the people...”. For example, originally, H.R. 3287 came out of resistance by the local community of Tubac to stop the installation of a needed overhead powerline to Nogales, AZ. If the wilderness is approved, the President could still approve an electrical transmission line to Nogales, AZ.

### **Cherry Stemming Roads**

Cherry stemming of the existing 20-30 roads will not always give the protection to wilderness as some proponents suggest. Nogales Ranger District Officials set the boundaries for both the Mt. Wrightson and Pajarita Wilderness Areas in the early 80's and were told to set the wilderness boundaries just a mere 66 feet off center line of existing roads. This became a management night mare for Forest Service Officials in trying to enforce no off-road vehicles in favorite camping spots just off the road. Closing off the hundreds of campsites along Ruby Road and other access points will be quite an undertaking. Where will the money and enforcement come for this action? The Forest Service didn't receive any extra money in the 80's for the wilderness fencing or enforcement. How can one have a true wilderness experience if all they see are clouds of dust coming from vehicles on dirt roads just a few feet from the wilderness?

A wilderness criterion says that wilderness areas should not contain roads. This criterion can be found in the Forest Service Handbook, Chapter 71.1 – Inventory Criteria of Wilderness Evaluation states that under evaluation criteria. "...Areas do not contain Forest roads (36 CFR 212.1) or other permanently authorized roads, except as permitted in areas east of the 100<sup>th</sup> meridian...". However, the Ruby and Summit Motor Roads dissect all three portions of H.R. 3287 proposed wilderness area. To the south of Ruby Road and west of Motor Summit Motor Way, there is the existing Pajarita Wilderness. Then to the south of Ruby Road and east of Summit Motor Way there will be the Pajarito Wilderness. The creators of the bill(s) are just changing the last vowel of Pajarito to get away with having additional acres. Then the Tumacacori Highlands will just be north of Ruby Road, clearly adjacent to the two to the south. We are sure that the boundaries of all three wilderness areas will be just a mere 66 foot off center of the existing well traveled roads.

### **Existing Electronic Site and Helispot**

Access must still be allowed for the helispot at Atascosa Lookout which is used by the Forest Service and the many Homeland Security agencies to access their solar powered electronic radio equipment at the lookout. This is a historic use for the site.

### **Pristine Attributes Trashed**

The area along the border is becoming a trash heap from the refuse left behind by the cross-border violators. The Wilderness Act states that the areas is to be untrammled by humans. The Coronado National Forest struggles now with maintaining the wilderness areas along the border in a pristine condition from the influx of cross-border violators coming from Mexico. What kind of beauty is there in looking at discarded clothing,

plastic bags, cans, plastic water jugs, Red Bull cans, human waste, abandoned campfires, and deep rutted human made trails created by groups of people that have entered the U.S. illegally? How much worse will it look if H.R. 3287 is passed?

### **Solitude Spoiled by Cross-Border Violators**

Solitude in the area is often spoiled by smugglers and by large group of illegal's coming across the border. I have been in the area thinking I was alone only to find out that a smuggler is watching every move I make. Or how about the many Homeland Security Sensors along the border that can be tripped by anyone only to have a Black-hawk helicopter swoop down on them to verify their intentions. Is this the wilderness experience we want visitors to come away with? We would hope not. The Coronado National Forest has placed signs at major access points into the proposed wilderness area(s) advising visitors of dangerous illegal border activities. At one time many of us would have had no reservations about camping with our families in the proposed wilderness area, but now, none of us would take our families for a camping trip. Now when recreational people visit the area, they are often faced with providing food and water to the border crossers who usually are lost, sick and tired. Knowing that the border is regularly patrolled can bring visitors some peace of mind as they visit our national forests on the border.

On behalf of the Arizona Cattleman's Association and the National Association of Retired Border Patrol Officers, I would like to thank you for allowing us to express our concerns about H.R. 3287. We ask that you vote no against this proposal that will limit law enforcements ability to protect our Nation's Border.