

July 25, 2012

Commissioner Edward Drusina  
U.S. Section  
International Boundary and Water Commission  
The Commons Building C, Suite 310  
4171 N. Mesa Street  
El Paso, TX 79902 - 1441

Dear Commissioner Drusina:

I am writing on behalf Public Employees for Environmental Responsibility (PEER) concerning the approval by the United States Section of the International Boundary and Water Commission (USIBWC) for the construction of border walls in the Rio Grande floodplain adjacent to Roma, Rio Grande City, and Los Ebanos, Texas.

As we understand it, the three border wall sections would total 14 miles in length. We further understand that these sections were not built when other parts of the Rio Grande Valley were walled off because of the serious danger they pose to communities on both sides of the river. On the U.S. side they could block the exit of flood water into the Rio Grande, bottling it up in towns and farm land. They could also deflect flood waters towards Mexico, worsening flooding in Mexican communities. Deflection might even cause the river to settle into a new channel farther to the south, which would effectively change the location of the border.

All three of the new border wall sections would also slice through the Lower Rio Grande Valley National Wildlife Refuge, threatening the extinction of critically endangered ocelot and jaguarundi.

USIBWC had previously agreed to consider only a plan that involved portable barriers that could be removed in the event of a flood, something the approved DHS plans do not allow. At a citizens' forum in McCallen Texas in July 2008, USIBWC Principal Engineer Al Riera stated

"If they (DHS) don't show us they have something in place to guarantee removal of the (fence) panels ... the commission would never agree to something like that."

Since 2007, USIBWC had consistently refused to approve construction of border walls in the floodplain, because they would violate the Treaty with Mexico, cause extensive environmental damage, and increase the danger of flooding in border communities. As you know, the 1970 boundary treaty obligates each nation to prevent any construction in the floodplain that could obstruct the flow of the Rio Grande. USIBWC regulations similarly prohibit the agency from

issuing a permit for such construction. Other relevant laws require federal agencies to examine the potential environmental impacts of their decisions.

Although the Mexico Section of the IBWC continues to strongly oppose the barriers, the U.S. section recently announced that it has approved the DHS plans. In a February 15, 2012 letter John Merino, Principal Engineer for the USIBWC, quietly gave CBP the green light, saying, “the USIBWC has no objection to the erection of the fence segments within the limits of the Rio Grande floodplain.” Reversing a five year long united IBWC stance, Mr. Merino dismissed the possibility that walls would deflect or obstruct flood waters, and stated flatly that USIBWC did not examine potential environmental impacts.

Flooding of the lower Rio Grande is common during hurricane season, beginning in June of each year, and the frequency and destructive potential of such events has been increasing, likely due to global warming. In addition, USIBWC maintains two gigantic storage dams on the Rio Grande, which the agency has conceded pose extreme threats of massive downstream flooding. PEER is concurrently suing the USIBWC to release reports concerning the admittedly hazardous and unsafe conditions of these dams, as well as inundation maps for the communities that lie downstream.

Since USIBWC made no public announcement of its reversal of position and its approval of structures inside the Rio Grande floodplain, I am writing to ask that you explain this action. In particular –

1. How does this action comply with the 1970 treaty, especially given the continued Mexican IBWC objections? Notes that whatever waiver authority that the Department of Homeland Security (DHS) may exercise does not extend to decisions made by the USIBWC. Moreover, DHS has never attempted to waive compliance with the 1970 Treaty, and has not waived any laws since 2008.
2. How does IBWC intend to enforce the two conditions contained in Mr. Merino’s letter of approval? In that letter he stipulated that DHS:

“1. Implement a maintenance program to remove any trash and/or debris found along the alignment of each fence including the approaches to the fence on a regular basis, especially after a storm event.

2. To the USIBWC's satisfaction, provide any future repair along the adjacent banks pertinent to the fence segments mentioned above, should any damage occur.”

USIBWC imposed no monitoring or reporting requirement on DHS. Further, Mr. Merino did not specify any consequences for DHS violation of these conditions.

3. Has USIBWC done its own inquiry on whether these structures would exacerbate flooding dangers? If not, what material did it rely upon supporting its action of approval?

4. While DHS may contend it need not comply with environmental laws because Congress gave DHS the power to waive any such laws, this waiver did not extend to the USIBWC. Yet, Mr. Marino admits in his letter that “USIBWC did not review these fence projects for any potential environmental impacts...” How then did the USIBWC comply with its legal obligations under the National Environmental Policy Act and the Endangered Species Act in granting this approval?
5. According to your own “Criteria for Construction Activities within the Limits of USIBWC Floodways”:

“License or permit is required from the USIBWC for any proposed activities crossing or encroaching upon the floodplains of USIBC Flood Control projects and Rights-of-Way.”

These proposed DHS activities appear to fit this requirement precisely, so why then has USIBWC not required a license or permit?

We anxiously await the answers to these questions. Moreover, we will endeavor to make sure that your answers are widely publicized with communities of interest.

Sincerely,

Jeff Ruch  
Executive Director

Cc. Secretary of State Clinton  
Ambassador Earl Anthony Wayne