

Chertoff Waives Laws for Border Fence

Associated Press
SUZANNE GAMBOA
Oct 22, 5:53 PM EDT

WASHINGTON (AP) -- Homeland Security Secretary Michael Chertoff on Monday invoked his power to bypass certain laws to restart construction of a fence on the Arizona-Mexico border.

Chertoff's action allows construction to go forward on about seven miles of fence in the San Pedro Riparian National Conservation Area near Naco, Ariz.

Work on nearly two miles of the fence had been suspended since Oct. 10, when a federal district judge ordered a delay on its construction.

She ruled the federal government did not fully study the environmental impact of the fence.

Congress gave Chertoff the power to waive environmental and other laws to build border barriers when it passed the REAL ID Act in 2005.

The REAL ID Act requires standards for driver's licenses that will be required as identification to board planes and enter federal buildings. The standards are still being developed.

This is the third time Chertoff has used the waiver power. He also used it Sept. 22, 2005 to finish building 14 miles of fence in San Diego, and on Jan. 19 for fencing in the Barry M. Goldwater Air Force Range in Arizona.

Chertoff said he was not invoking the power simply to brush aside environmental laws.

"We are trying to respect the substance of the environmental process and we are using the waiver authority where it looks like people are simply trying to stop or slow us down by throwing up procedural obstacles" and using litigation, Chertoff told The Associated Press in a phone interview.

A few of the environmental laws waived are the National Environmental Policy Act, the Endangered Species Act and the Solid Waste Disposal Act.

Chertoff also waived conservation laws, such as the National Historic Preservation Act and the Antiquities Act.

Defenders of Wildlife and the Sierra Club, who had sued to delay the fence construction, criticized Chertoff's decision in a joint statement.

They said Chertoff has acknowledged inherent failures with using a border fence to curb illegal immigration. His decision also contradicts his decision to do a more in-depth environmental study for fence construction on the Texas border, the groups said.

"It isn't too much to ask that DHS and other government agencies comply with our nation's environmental laws in Arizona, particularly where international treasures like the San Pedro

River are at stake," said Robert Dreher, vice president for conservation law for Defenders of Wildlife.

Chertoff said his agency has "exhaustively examined" environmental issues in the area.

The latest review was preceded by a 1994 study of the entire U.S.-Mexico border by the now-defunct Immigration and Naturalization Service. Homeland Security did another, more focused study on the San Pedro conservation area in 2001. Both were open to the public for comment and review, Chertoff said.

Chertoff argued that there were 19,000 arrests in the Arizona conservation area in the 2007 fiscal year that ended Sept. 30. DHS said that was a significant increase over 2006.

Also, 14 people died crossing illegally into the U.S. in the conservation area in fiscal year 2007. Illegal roads affect natural water flow, trash and human waste accumulate and wildfires are caused by border crossers' campfires. Recently the Bureau of Land Management has restricted public recreation in the Arizona conservation area because of smuggling activity, car thefts and assaults there, Chertoff said.

In addition, the agency has taken steps to mitigate effects on habitat and wildlife by the fence.

"After considering all the work ... it seems to me the time is appropriate for a waiver," he said.

Last year, President Bush signed into law legislation calling for 700 miles of fencing on the U.S.-Mexico border. The proposed fence has triggered opposition, particularly in Texas, from environmentalists, land owners, commerce and city and community officials.

Chertoff said using his waiver authority is an option in Texas too, but "I certainly view it as a last resort or close to a last resort."