

The Border Wall vs. Property Rights

In order to build the border wall the federal government has initiated **condemnation lawsuits against more than 300 Texas landowners**. In California, Arizona, and New Mexico the federal government already owns a 60-foot wide strip of land along the border called the Roosevelt Reservation. But in Texas, where the Rio Grande marks the international boundary, private and municipal property extends to the riverbank.

The border wall project has plunged landowners all along the Rio Grande into a nightmare scenario. In case after case, the Department of Homeland Security (DHS) has offered only to pay for the exact footprint of the border wall (typically, a 60-foot wide strip) as it passes through a parcel of land. In their simplistic calculations, the agency has completely discounted the hardships that the border wall will bring to Texas landowners, such as the devaluation of contiguous property, problems accessing land and homes, impacts on livelihood, and the importance of cultural heritage. Despite the range and complexity of these issues, **DHS has steadfastly refused to enter into meaningful negotiations** with property owners.

These problems are compounded by the positioning of the border wall in south Texas. In this low-lying river delta, a U.S.-Mexico treaty prohibits construction between the levee and the river, as a structure immediately adjacent to the river could cause flooding and shift the river's course, resulting in a change in the international boundary. So, to comply with the treaty, the border wall is being built into, on, or behind the flood-control levee that parallels the river rather than immediately adjacent to it. This levee is located up to two miles north of the river, leaving **significant areas of U.S. territory, much of it privately owned, behind the border wall**.

Because of this position, the border wall bisects contiguous property in many places or cuts off access to significant portions of property, yet **DHS has not offered compensation for the devaluation of land** on either side of the wall. In other areas, the wall passes through residential neighborhoods, and at times through people's backyards, yet DHS has made no dispensation for the steep decline in the market value of homes that the border wall will cause with its stadium lights and heavy Border Patrol traffic.

Eloisa Tamez' property has been in her family since the King of Spain issued the San Pedro Carracitos Land Grant in 1763. In 2007 DHS demanded access to her property for border wall surveys, then initiated condemnation proceedings. Dr. Tamez enlisted the Center for Human Rights and Constitutional Law and initiated a class-action lawsuit alleging that DHS has refused to negotiate with landowners before condemning their property, as the law requires. On April 15, 2009 DHS won the condemnation suit to take Dr. Tamez' land.

In 2008 the Texas Border Coalition, which is made up of mayors and other border community leaders, initiated a suit on similar grounds. Chad Foster, mayor of Eagle Pass and President of the Texas Border Coalition, said, "We will not sit idly by while our property is seized by the federal government to build an expedient, but useless, expensive, and potentially damaging wall across the Texas-Mexico border."

In South Texas, where the border wall is being built along the levees, there are homes, businesses, lands and privately-owned nature preserves that will be walled off entirely, **trapped between the border wall and the Rio Grande**. DHS has refused to grant any compensation whatsoever for these properties. Indeed, because DHS is focused solely on the wall's exact footprint, they have failed to even make contact with some of the landowners with property behind the wall. One family did not discover that their home was being cut off by the border wall until construction had begun and they were confronted on their way home by a Border Patrol agent who told them the area in which they lived was being closed off.

To date, DHS has failed to explain how owners will **access property that is behind the border wall**. They claim that there will be access gates, but cannot say who will be able to open them and at what

times. For farmers and ranchers, the land closest to the river is often the most productive, and their operations require unimpeded access. The Rio Grande is also the primary source of water for irrigation and drinking water along its length. DHS has yet to explain how farmers and municipal water districts will be able to access their intake pumps for maintenance and emergency repair.

Homeowners who will be living behind the wall have not been told how they will commute to work or go to the grocery store. Will they be given keys to the gates, or will they have to call the Border Patrol and wait for their arrival? There is also no word as to how emergency personnel, such as ambulances and fire fighters, will be able to reach their homes.

Property owners who were promised convenient gates to access their fields are finding that the infrequently positioned gates will cause them to take a circuitous, time-consuming route to access land that was once immediately accessible. These could also delay emergency personnel. Lack of immediate access may make the **property uninsurable and unusable**, rendering it both worthless to the current owner and impossible to sell.

Land nearest the Rio Grande has always been prized because of the rich soil and the year-round availability of water in a semi-arid region. Many families along its banks still hold lands that were **granted to their ancestors by the King of Spain as early as the 1740's**, decades before the United States and Mexico became sovereign nations, and more than a century before the Rio Grande became their shared border. For these owners, the land is a priceless monument of their family's history, yet DHS has callously disregarded the land's value as cultural heritage.

The Department of Homeland Security has repeatedly claimed that they have consulted with landowners and local officials regarding border wall construction. But when the Texas Border Coalition repeatedly invited DHS and Customs and Border Protection officials to **"walk the line"** and see the impacts that the border wall will have on specific communities, they responded that they would only do so if the owners of the property that they would be crossing were kept away.

The Nature Conservancy's Southmost Preserve maintains one of the last remaining Sabal Palm forests along the banks of the Rio Grande. The border wall will bisect the preserve, cutting off more than 700 acres along with an equipment barn, office, and caretaker's residence. The property was purchased in 1999 for \$2.6 million, but DHS has only offered to pay \$114,000 for the wall's footprint, a strip of land 60 feet wide and 6,000 feet long.

The neighboring Sabal Palm Audubon Center preserves another 557 acres of sabal palm forest, which will also be behind the border wall. Because the wall will be built a few feet to the north of their property line, DHS has not offered Audubon any compensation whatsoever. Both Audubon and the Nature Conservancy have said that restricted access for their employees, as well as for emergency personnel, may force them to cut their operations. Audubon has announced that on May 15, 2009 they will close to the public for at least the next 6 months.

For border residents, especially those who own property near or adjacent to the international boundary, border security is not an abstract concept, but a real necessity. If the border wall represented improved security for their families and property, Texas landowners would overwhelmingly support it, despite the numerous hardships it caused them. There would be no need for DHS to pursue hundreds of land condemnation lawsuits. But their lifetime of experience on the border has taught them that **the wall will not make them more secure**. If the Department of Homeland Security were chiefly interested in protecting all U.S. citizens and preserving their quality of life, rather than ramming through a useless, politically-motivated project, they would not be callously ignoring the hardships of border residents.

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