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H. R. 2076

To provide for the establishment of a border protection strategy for the international land borders of the United States, to address the ecological and environmental impacts of border security infrastructure, measures, and activities along the international land borders of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 23, 2009

Mr. GRIJALVA (for himself, Mr. BACA, Mr. BRADY of Pennsylvania, Mr. HINCHEY, Mrs. CAPPS, Mr. BLUMENAUER, Mr. REYES, Ms. LINDA T. SÁNCHEZ of California, Mr. ORTIZ, and Ms. ROYBAL-ALLARD) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committees on Armed Services and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for the establishment of a border protection strategy for the international land borders of the United States, to address the ecological and environmental impacts of border security infrastructure, measures, and activities along the international land borders of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Border Security and
3 Responsibility Act 2009”.

4 **SEC. 2. PURPOSE.**

5 The purposes of this Act are to provide a means
6 whereby Federal lands and resources along the United
7 States-Mexico border are provided the highest protection
8 possible from the effects of unauthorized immigration,
9 human and drug smuggling, and border enforcement ac-
10 tivities, while ensuring that all operations necessary to
11 achieve border security are undertaken.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

14 (a) INDIAN TRIBE.—The term “Indian tribe” has the
15 meaning given such term in section 4 of the Indian Self-
16 Determination and Education Assistance Act (25 U.S.C.
17 450b).

18 (b) SECRETARY.—The term “Secretary” means the
19 Secretary of Homeland Security.

20 (c) SECRETARY CONCERNED.—The term “Secretary
21 concerned” means the Secretary of Agriculture with re-
22 spect to land under the jurisdiction of the Secretary of
23 Agriculture, the Secretary of the Interior with respect to
24 land under the jurisdiction of the Secretary of the Interior,
25 the Secretary of Defense with respect to land under the
26 jurisdiction of the Secretary of Defense or the secretary

1 of a military department, or the Secretary of Commerce
2 with respect to land under the jurisdiction of the Secretary
3 of Commerce

4 **SEC. 4. BORDER PROTECTION STRATEGY.**

5 (a) BORDER PROTECTION STRATEGY.—

6 (1) IN GENERAL.—Not later than September
7 30, 2009, the Secretary, the Secretary of the Inte-
8 rior, the Secretary of Agriculture, the Secretary of
9 Defense, and the Secretary of Commerce, in con-
10 sultation with tribal, State, and local officials, shall
11 jointly develop and submit to Congress a border pro-
12 tection strategy for the international land borders of
13 the United States.

14 (2) ELEMENTS OF THE STRATEGY.—The strat-
15 egy developed in accordance with paragraph (1) shall
16 include the following components:

17 (A) A comparative analysis of the levels of
18 operational control, based on auditable and
19 verifiable data, achievable through alternative
20 tactical infrastructure and other security meas-
21 ures. Measures assessed shall include, at a min-
22 imum—

23 (i) pedestrian fencing;

24 (ii) vehicle barriers, especially in areas
25 in the vicinity of existing or planned roads;

1 (iii) additional Border Patrol agents;

2 (iv) efficacy of natural barriers and
3 open space in response to unauthorized or
4 unlawful border crossing;

5 (v) fielding of advanced remote sens-
6 ing and information integration technology,
7 including the use of unmanned aerial vehi-
8 cles and other advanced technologies and
9 systems, including systems developed and
10 employed, or under development, for tac-
11 tical surveillance, multi-source information
12 integration, and response analysis in dif-
13 ficult terrain and under adverse environ-
14 mental conditions;

15 (vi) regional as well as urban and
16 rural variation in border security meth-
17 odologies, and incorporation of natural
18 barriers;

19 (vii) enhanced cooperation with, and
20 assistance to, intelligence, security, and
21 law enforcement agencies in Mexico and
22 Canada in detecting, reporting, analyzing,
23 and successfully responding to unauthor-
24 ized or unlawful border crossings from or
25 into Mexico or Canada; and

1 (viii) removal of obstructive non-native
2 vegetation.

3 (B) A comprehensive analysis of cost and
4 other impacts of security measures assessed in
5 subparagraph (A), including an assessment
6 of—

7 (i) land acquisition costs, including re-
8 lated litigation and other costs;

9 (ii) construction costs, including both
10 labor and material costs;

11 (iii) maintenance costs over 25 years;

12 (iv) contractor costs;

13 (v) management and overhead costs;

14 (vi) the impacts on wildlife, wildlife
15 habitat, natural communities, and func-
16 tioning cross-border wildlife migration cor-
17 ridors and hydrology (including water
18 quantity, quality, and natural hydrologic
19 flows) on Federal, tribal, State, local, and
20 private lands along the border;

21 (vii) costs of fully mitigating the ad-
22 verse impacts to Federal, tribal, State,
23 local, and private lands, waters (including
24 water quality, quantity, and hydrological
25 flows), wildlife, and wildlife habitats, in-

cluding, where such action is possible, the full costs of the replacement or restoration of severed wildlife migration corridors with protected corridors of equivalent biological functionality, as determined by each Secretary concerned, in consultation with appropriate authorities of tribal, State, and local governments and appropriate authorities of Mexico and Canada; and

(viii) the impacts on culture, safety, and quality of life on residents in the vicinity of the border.

(C) A comprehensive compilation of the fiscal investments in acquiring or managing Federal, tribal, state, local, and private lands and waters in the vicinity of, or ecologically related to, the land borders of the United States that have been acquired or managed in whole or in part for conservation purposes (including the creation or management of protected wildlife migration corridors) in—

(i) units of the National Park System;

(ii) National Forest System land;

(iii) land under the jurisdiction of the Bureau of Land Management;

1 (iv) land under the jurisdiction of the
2 United States Fish and Wildlife Service;

3 (v) other relevant land under the ju-
4 risdiction of the Department of the Inte-
5 rior or the Department of Agriculture;

6 (vi) land under the jurisdiction of the
7 Department of Defense or the individual
8 military department;

9 (vii) land under the jurisdiction of the
10 Department of Commerce;

11 (viii) tribal lands;

12 (ix) State and private lands; and

13 (x) lands within Mexico and Canada.

14 (D) Recommendations for strategic border
15 security management based on comparative se-
16 curity as detailed in subparagraph (A), the
17 cost-benefit analysis as detailed in subpara-
18 graph (B), as well as protection of investments
19 in public lands specified in subparagraph (C).

20 (3) TRAINING.—

21 (A) REQUIRED TRAINING.—The Secretary,
22 in cooperation with the Secretary concerned,
23 shall provide—

24 (i) natural resource protection train-
25 ing for Customs and Border Protection

1 agents or other Federal personnel assigned
2 to plan or oversee the construction or oper-
3 ation of border security tactical infrastruc-
4 ture or to patrol land along or in the vicin-
5 ity of a land border of the United States;
6 and

7 (ii) cultural resource training for Cus-
8 toms and Border Protection agents and
9 other Federal personnel assigned to plan
10 or oversee the construction or operation of
11 border security tactical infrastructure or to
12 patrol tribal lands.

13 (B) ADDITIONAL CONSIDERATIONS.—In
14 developing and providing training under clause
15 (i) of subparagraph (A), the Secretary shall co-
16 ordinate with the Secretary concerned and the
17 relevant tribal government to ensure that such
18 training is appropriate to the mission of the rel-
19 evant agency and is focused on achieving border
20 security objectives while avoiding or minimizing
21 the adverse impact on natural and cultural re-
22 sources resulting from border security tactical
23 infrastructure, operations, or other activities.

1 **SEC. 5. ACTIONS TO GAIN OPERATIONAL CONTROL OF THE**
2 **INTERNATIONAL LAND BORDERS OF THE**
3 **UNITED STATES.**

4 (a) IN GENERAL.—Section 102 of the Illegal Immi-
5 gration Reform and Immigrant Responsibility Act of 1996
6 (Public Law 104–208; 8 U.S.C. 1103 note) is amended
7 to read as follows:

8 **“SEC. 102. IMPROVEMENT OF OPERATIONAL CONTROL OF**
9 **BORDER.**

10 “(a) IN GENERAL.—The Secretary of Homeland Se-
11 curity shall take such actions as may be required to gain
12 operational control of the international land borders of the
13 United States. Such actions may be taken only in accord-
14 ance with the border protection strategy developed under
15 section 4(a) of the Border Security and Responsibility Act
16 of 2009.

17 “(b) PRIORITY OF METHODS.—In carrying out the
18 requirements of subsection (a), the Secretary of Homeland
19 Security shall, where practicable, give first priority to the
20 use of remote cameras, sensors, removal of non-native
21 vegetation, incorporation of natural barriers, additional
22 manpower, unmanned aerial vehicles, or other low impact
23 border enforcement techniques.

24 “(c) CONSULTATION.—

25 “(1) IN GENERAL.—In carrying out this sec-
26 tion, the Secretary of Homeland Security shall con-

1 sult with the Secretary of the Interior, the Secretary
2 of Agriculture, the Secretary of Defense, Secretary
3 of Commerce, States, local governments, tribal gov-
4 ernments, and private property owners in the United
5 States to minimize the impact on the environment,
6 culture, commerce, safety, and quality of life for the
7 communities and residents located near the sites at
8 which actions under subsection (a) are proposed to
9 be taken.

10 “(2) RULE OF CONSTRUCTION.—Nothing in
11 this subsection may be construed to—

12 “(A) create or negate any right of action
13 for a State, local government, tribal govern-
14 ment, or other person or entity affected by this
15 subsection;

16 “(B) affect the eminent domain laws of the
17 United States or of any State; or

18 “(C) waive the application of any other ap-
19 plicable Federal, State, local, or tribal law.

20 “(3) LIMITATION ON REQUIREMENTS.—Not-
21 withstanding subsection (a), nothing in this section
22 shall require the Secretary of Homeland Security to
23 install fencing, physical barriers, roads, lighting,
24 cameras, or sensors in a particular location along an
25 international border of the United States if the Sec-

1 retary determines that the use or placement of such
2 resources is not the most effective and appropriate
3 means to achieve and maintain operational control
4 over the international border at such location, or if
5 the Secretary determines that the direct and indirect
6 costs of or the impacts on the environment, culture,
7 commerce, safety, or quality of life for the commu-
8 nities and residents along the border likely to result
9 from the use or placement of such resources out-
10 weigh the benefits of such use or placement.”.

11 (b) PRECONDITIONS.—In fulfilling the requirements
12 of section 102 of the Illegal Immigration Reform and Im-
13 migrant Responsibility Act of 1996, as amended by this
14 section, the Secretary of Homeland Security shall not com-
15 mence any construction of fencing, physical barriers,
16 roads, lighting, cameras, sensors, or other tactical infra-
17 structure along or in the vicinity of an international land
18 border of the United States, or award or expend funds
19 pursuant to any contract or other agreement related there-
20 to, prior to 90 days following the submission to Congress
21 of the border protection strategy required under section
22 4(a) of this Act.

23 **SEC. 6. BORDERLANDS MONITORING AND MITIGATION.**

24 (a) IN GENERAL.—The Secretary, in consultation
25 with the Secretary of the Interior, the Secretary of Agri-

1 culture, the Secretary of Defense, the Secretary of Com-
2 merce, and the heads of appropriate State and tribal wild-
3 life agencies and entities, shall develop and implement a
4 comprehensive monitoring and mitigation plan to address
5 the ecological and environmental impacts of border secu-
6 rity infrastructure, measures, and activities along the
7 international land borders of the United States.

8 (b) REQUIREMENTS.—The mitigation plan required
9 under subsection (a) shall include, at a minimum, meas-
10 ures to address and mitigate the full range of ecological
11 and environmental impacts of border security infrastruc-
12 ture, measures, and activities, including—

13 (1) preserving, maintaining, and, if necessary,
14 restoring wildlife migration corridors, key habitats,
15 and the ecologically functional connectivity between
16 and among key habitats sufficient to ensure that
17 species (whether or not designated as rare, pro-
18 tected, or of concern) remain viable and are able to
19 adapt to the impacts of climate change;

20 (2) addressing control of invasive species and
21 implementing measures necessary to avoid the
22 spread of such species;

23 (3) maintaining hydrological functionality, in-
24 cluding water quantity and quality;

1 (4) incorporating adaptive management, includ-
2 ing detailed provisions for long-term monitoring of
3 the mitigation plan's effectiveness and for necessary
4 adjustments to such plan based on such monitoring
5 results; and

6 (5) protection of cultural and historical re-
7 sources.

8 (c) PREEMPTION.—

9 (1) IN GENERAL.—Notwithstanding any other
10 provision of law, the Secretary may, subject to para-
11 graph (2), carry out the mitigation plan required
12 under subsection (a) on any Federal, State, local,
13 tribal, or private lands in the vicinity of or eco-
14 logically related to an international land border of
15 the United States regardless of which individual,
16 agency, or entity has ownership of or principal re-
17 sponsibility for the management of any such lands.

18 (2) CONDITIONS.—Activities carried out pursu-
19 ant to paragraph (1) in connection with the mitiga-
20 tion plan shall be carried out in full consultation
21 with, and with the concurrence of, the owner of, or
22 entity with principal responsibility for, the manage-
23 ment of the lands described in such paragraph.

24 (d) ADMINISTRATION.—

1 (1) AUTHORIZATION.—The Secretary of Home-
2 land Security may transfer funds of the Department
3 of Homeland Security to other Federal agencies
4 for—

5 (A) expenditure under programs (including
6 any international programs) of such agencies
7 that are designed to fund conservation related
8 activities (directly or through grants or similar
9 mechanisms) on non-Federal lands, including
10 land acquisition programs; and

11 (B) mitigation activities on Federal lands
12 managed by such agencies, if such activities are
13 required to implement the mitigation plan re-
14 quired under subsection (a) and if the costs of
15 such activities are higher than the costs associ-
16 ated with managing such lands in the absence
17 of such activities.

18 (2) EXEMPTION FROM REPROGRAMMING RE-
19 QUIREMENTS.—Funds transferred pursuant to the
20 authorization under paragraph (1) shall not be sub-
21 ject to reprogramming requirements.

22 (3) ACCEPTANCE AND USE OF DONATIONS.—
23 The Secretary may accept and use donations for the
24 purpose of developing and implementing the mitiga-
25 tion plan required under subsection (a), and may

1 transfer such funds to any other Federal agency for
2 expenditure under such plan pursuant to paragraph
3 (1).

4 (e) AUTHORIZATION OF APPROPRIATIONS.—Notwith-
5 standing any other provision of law, funds appropriated
6 to the Department of Homeland Security for border secu-
7 rity infrastructure and activities may be used by the Sec-
8 retary to develop and implement the mitigation plan re-
9 quired under subsection (a).

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