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1ST SESSION

H. R. 547

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

FEBRUARY 6, 2013

Mr. GRIJALVA introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committees on Armed Services, Agriculture, and Natural Resources, 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 of 2013”.

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. FINDINGS.**

13 Congress finds the following:

14 (1) Federal lands managed by the Department
15 of the Interior and the Department of Agriculture
16 encompass over 40 percent of the 1,900 miles of
17 southwestern border in Arizona, California, New
18 Mexico, and Texas.

19 (2) Over the last five years, the Border Patrol
20 has nearly doubled the number of its agents on pa-
21 trol, constructed hundreds of miles of border fence
22 and vehicle barriers, and installed surveillance equip-
23 ment on and near lands managed by the Depart-
24 ment of the Interior and the Department of Agri-
25 culture along the southwestern border.

1 (3) When operating on Federal lands, the Bor-
2 der Patrol has responsibilities under several Federal
3 land management laws, including the National Envi-
4 ronmental Policy Act of 1969, the National Historic
5 Preservation Act of 1966, the Wilderness Act of
6 1964, and the Endangered Species Act of 1973.

7 (4) In March 2006, the Department of the In-
8 terior, the Department of Homeland Security, and
9 the Department of Agriculture entered into a Memo-
10 randum of Understanding (MOU) entitled the “Co-
11 operative National Security and Counterterrorism
12 Efforts on Federal Lands along the United States’
13 Borders”. This MOU contains provisions related to
14 the development of an efficient means of commu-
15 nication, cooperative identification of patrol routes
16 and operations, conduct of joint enforcement oper-
17 ations, cooperation in the development of environ-
18 mental and cultural resources awareness training,
19 access by United States Customs and Border Pro-
20 tection (CBP) agents to Federal lands along the bor-
21 der, and guidance on construction and maintenance
22 of tactical infrastructure.

23 (5) Since entering into the 2006 MOU, the
24 three departments have continually and successfully
25 worked together to carry out the tenets outlined in

1 the MOU at both the departmental and field levels,
2 and have worked to address concerns regarding co-
3 ordination to continually improve efforts to secure
4 the borders while conserving the environment.

5 (6) A 2008 MOU between the three depart-
6 ments bridges communication gaps and provides
7 radio interoperability between Border Patrol agents
8 and their law enforcement partners in the Depart-
9 ment of the Interior and the Department of Agri-
10 culture.

11 (7) Since fiscal year 2006, apprehensions of un-
12 documented immigrants along the southwestern bor-
13 der have declined, reaching a low of 327,577 in fis-
14 cal year 2011. This decrease has occurred along the
15 entire border, with every sector reporting fewer ap-
16 prehensions in fiscal year 2011 than in fiscal year
17 2006.

18 (8) CBP partners with Federal, tribal, State,
19 and local entities to benefit border security and pro-
20 tection of the environment and cultural resources on
21 Federal lands. The mission of the Department of
22 Homeland Security, the Department of the Interior,
23 and the Department of Agriculture along the border
24 are inextricably linked in protecting and strength-
25 ening United States communities.

1 (9) A report by the Government Accountability
2 Office found that Border Patrol agents in charge of
3 Border Patrol stations reported that the overall se-
4 curity status of their jurisdictions is not affected by
5 land management laws. Instead, factors other than
6 access delays or restrictions, such as the remoteness
7 and ruggedness of the terrain or dense vegetation,
8 have had the greatest effect.

9 **SEC. 4. DEFINITIONS.**

10 In this Act:

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

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

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

1 with respect to land under the jurisdiction of the Secretary
2 of Commerce

3 **SEC. 5. BORDER PROTECTION STRATEGY.**

4 (a) BORDER PROTECTION STRATEGY.—

5 (1) IN GENERAL.—Not later than 180 days
6 after the date of the enactment of this Act, the Sec-
7 retary, the Secretary of the Interior, the Secretary
8 of Agriculture, the Secretary of Defense, and the
9 Secretary of Commerce, in consultation with tribal,
10 State, and local officials, shall jointly develop and
11 submit to Congress a border protection strategy for
12 the international land borders of the United States.

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

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

22 (i) pedestrian fencing;

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

25 (iii) additional Border Patrol agents;

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

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

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

18 (vii) enhanced cooperation with, and
19 assistance to, intelligence, security, and
20 law enforcement agencies in Mexico and
21 Canada in detecting, reporting, analyzing,
22 and successfully responding to unauthor-
23 ized or unlawful border crossings from or
24 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 soils, wildlife, wild-
15 life habitat, natural communities, and
16 functioning cross-border wildlife migration
17 corridors 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-

1 cluding, where such action is possible, the
2 full costs of the replacement or restoration
3 of severed wildlife migration corridors with
4 protected corridors of equivalent biological
5 functionality, as determined by each Sec-
6 retary concerned, in consultation with ap-
7 propriate authorities of tribal, State, and
8 local governments and appropriate authori-
9 ties of Mexico and Canada; and

10 (viii) the impacts on the economy, cul-
11 ture, safety, and quality of life on residents
12 in the vicinity of the border.

13 (C) A comprehensive compilation of the
14 fiscal investments in acquiring or managing
15 Federal, tribal, state, local, and private lands
16 and waters in the vicinity of, or ecologically re-
17 lated to, the land borders of the United States
18 that have been acquired or managed in whole or
19 in part for conservation purposes (including the
20 creation or management of protected wildlife
21 migration corridors) in—

22 (i) units of the National Park System;

23 (ii) National Forest System land;

24 (iii) land under the jurisdiction of the
25 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. 6. ACTIONS TO SECURE THE INTERNATIONAL LAND**
2 **BORDERS OF THE UNITED STATES.**

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

7 **“SEC. 102. IMPROVEMENT OF BORDER SECURITY.**

8 “(a) IN GENERAL.—The Secretary of Homeland Se-
9 curity shall take such actions as may be required to secure
10 the international land borders of the United States. Such
11 actions may be taken only in accordance with the border
12 protection strategy developed under section 5(a) of the
13 Border Security and Responsibility Act of 2013.

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

21 “(c) CONSULTATION.—

22 “(1) IN GENERAL.—In carrying out this sec-
23 tion, the Secretary of Homeland Security shall con-
24 sult with the Secretary of the Interior, the Secretary
25 of Agriculture, the Secretary of Defense, the Sec-
26 retary of Commerce, States, local governments, trib-

1 al governments, and private property owners in the
2 United States to minimize the impact on the envi-
3 ronment, culture, commerce, safety, and quality of
4 life for the communities and residents located near
5 the sites at which actions under subsection (a) are
6 proposed to be taken.

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

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

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

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

17 “(3) LIMITATION ON REQUIREMENTS.—Not-
18 withstanding subsection (a), nothing in this section
19 shall require the Secretary of Homeland Security to
20 install fencing, physical barriers, roads, lighting,
21 cameras, or sensors in a particular location along an
22 international border of the United States if the Sec-
23 retary determines that the use or placement of such
24 resources is not the most effective and appropriate
25 means to secure the international border at such lo-

1 cation, or if the Secretary determines that the direct
2 and indirect costs of or the impacts on the environ-
3 ment, culture, commerce, safety, or quality of life for
4 the communities and residents along the border like-
5 ly to result from the use or placement of such re-
6 sources outweigh the benefits of such use or place-
7 ment.”.

8 (b) PRECONDITIONS.—In fulfilling the requirements
9 of section 102 of the Illegal Immigration Reform and Im-
10 migrant Responsibility Act of 1996, as amended by sub-
11 section (a) of this section, the Secretary of Homeland Se-
12 curity shall not commence any construction of fencing,
13 physical barriers, roads, lighting, cameras, sensors, or
14 other tactical infrastructure along or in the vicinity of an
15 international land border of the United States, or award
16 or expend funds pursuant to any contract or other agree-
17 ment related thereto, prior to 90 days following the sub-
18 mission to Congress of the border protection strategy re-
19 quired under section 5(a) of this Act.

20 **SEC. 7. BORDERLANDS MONITORING AND MITIGATION.**

21 (a) IN GENERAL.—The Secretary, in consultation
22 with the Secretary of the Interior, the Secretary of Agri-
23 culture, the Secretary of Defense, the Secretary of Com-
24 merce, and the heads of appropriate State and tribal wild-
25 life agencies and entities, shall develop and implement a

1 comprehensive monitoring and mitigation plan to address
2 the ecological and environmental impacts of border secu-
3 rity infrastructure, measures, and activities along the
4 international land borders of the United States.

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

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

17 (2) addressing control of invasive species and
18 implementing measures necessary to avoid the
19 spread of such species;

20 (3) maintaining hydrological functionality, in-
21 cluding water quantity and quality;

22 (4) incorporating adaptive management, includ-
23 ing detailed provisions for long-term monitoring of
24 the mitigation plan’s effectiveness and for necessary

1 adjustments to such plan based on such monitoring
2 results; and

3 (5) protection of cultural and historical re-
4 sources.

5 (c) PREEMPTION.—

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

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

21 (d) ADMINISTRATION.—

22 (1) AUTHORIZATION.—The Secretary of Home-
23 land Security may transfer funds of the Department
24 of Homeland Security to other Federal agencies
25 for—

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

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

14 (2) EXEMPTION FROM REPROGRAMMING RE-
15 QUIREMENTS.—Funds transferred pursuant to the
16 authorization under paragraph (1) shall not be sub-
17 ject to reprogramming requirements.

18 (3) ACCEPTANCE AND USE OF DONATIONS.—
19 The Secretary may accept and use donations for the
20 purpose of developing and implementing the mitiga-
21 tion plan required under subsection (a), and may
22 transfer such funds to any other Federal agency for
23 expenditure under such plan pursuant to paragraph
24 (1).

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

○