

## SECURING OUR BORDERS AND WILDERNESS ACT

DECEMBER 10, 2018.—Committed to the Committee of the Whole House of the State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,  
submitted the following

### R E P O R T

together with

### DISSENTING VIEWS

[To accompany H.R. 3593]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3593) to amend the Wilderness Act to authorize U.S. Customs and Border Protection to conduct certain activities to secure the international land borders of the United States, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Securing Our Borders and Wilderness Act”.

#### SEC. 2. U.S. CUSTOMS AND BORDER PROTECTION ACCESS TO WILDERNESS AREAS.

Section 4(d) of the Wilderness Act is amended by adding at the end the following:

“(8) U.S. CUSTOMS AND BORDER PROTECTION ACCESS.—

“(A) PERMISSIBLE ACTIVITIES.—Notwithstanding any other provision of this Act, the Commissioner of U.S. Customs and Border Protection may conduct the following activities within a wilderness area for the purpose of securing the international land borders of the United States:

“(i) Access structures, installations, and roads.

“(ii) Execute search and rescue operations.

“(iii) Use motor vehicles, motorboats, and motorized equipment.

“(iv) Conduct patrols on foot and on horseback.

“(v) Notwithstanding any other law or regulation relating specifically to use of aircraft in a wilderness area or in the airspace above a wilderness area, use aircraft, including approach, landing, and takeoff.

“(vi) Deploy tactical infrastructure and technology.

“(vii) Construct and maintain roads and physical barriers.

“(B) PROTECTION OF WILDERNESS CHARACTER.—Any activity conducted by the Commissioner of U.S. Customs and Border Protection under subparagraph (A) shall be carried out in a manner that, to the greatest extent possible, protects the wilderness character of the area.”.

#### PURPOSE OF THE BILL

The purpose of H.R. 3593 is to amend the Wilderness Act to authorize U.S. Customs and Border Protection to conduct certain activities to secure the international land borders of the United States.

#### BACKGROUND AND NEED FOR LEGISLATION

Federal- and tribal-owned land represent approximately 693 miles, or about 35 percent, of the Southern border, the overwhelming majority of which is managed by the Department of the Interior (DOI) and the U.S. Forest Service (USFS).<sup>1</sup> The rugged, isolated character of most federally-owned borderland<sup>2</sup> makes patrolling and the installation and maintenance of security infrastructure difficult. Regulatory delays and reliance on federal land managers for appropriate access to federally-owned borderland further hampers Border Patrol’s efforts to adequately patrol, as well as build and maintain border security infrastructure. The same factors that hinder CBP’s operations make federally-owned borderland a popular, but dangerous, crossing point for cross-border violators (CBV), such as illegal immigrants and drug traffickers.

The CBP is tasked with gaining “operational control” of the international borders of the United States. Operational control is statutorily defined as “the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.”<sup>3</sup> In the years following September 11, 2001, Congress has authorized large increases in manpower and equipment for the CBP.<sup>4</sup>

The REAL ID Act of 2005 granted the Secretary of Homeland Security authority to waive all legal requirements deemed necessary to “ensure expeditious construction of [border] barriers and roads” in areas of high illegal entry.<sup>5</sup> While this waiver authority applies to border barrier construction, maintenance of existing infrastructure or roads can become a challenge for the CBP. Except for this waiver authority, Congress has largely left in place regulatory obstacles that can deter obtaining operational control of the border.

In August 2006, the Department of Homeland Security (DHS), DOI, and the Department of Agriculture (USDA) entered into a Memorandum of Understanding (MOU) to establish “consistent

<sup>1</sup>Memorandum from Carol Hardy Vincent, Specialist in Natural Resources Policy, Congressional Research Service, to Staff, Oversight and Investigations Subcommittee., H. Comm. on Natural Resources (Nov. 9, 2017) (on file with H. Comm. on Natural Resources); see also U.S. Gov’t Accountability Office, GAO–11–38, *supra* note 1 at 4.

<sup>2</sup>The borderlands region encompasses the area extending from the United States-Mexico border north to 100 miles.

<sup>3</sup>8 U.S.C. § 1103 note (Section 102(b)(1) and (b)(3)); see also Exec. Order No. 13767, 82 Fed. Reg. 8793, 8794 (Jan. 30, 2017) available at <https://www.whitehouse.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/>.

<sup>4</sup>U.S. Border Patrol Fiscal Year Budget Statistics (FY 1990–2017), U.S. Customs and Border Protection, Dep’t of Homeland Security (Dec. 12, 2017), available at <https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Budget%20History%201990-2017.pdf>.

<sup>5</sup>8 U.S.C. § 1103 note; see also *Defenders of Wildlife v. Chertoff*, 527 F. Supp. 2d 119, 129–30 (D. D.C. 2007), cert. denied, 554 U.S. 918 (2008) (finding waiver authority constitutional).

goals, principles, and guidance related to border security,” between the three departments.<sup>6</sup> The MOU “provides guidance in the development of individual agreements, where appropriate, between [CBP] and the land management agencies.”<sup>7</sup> While the MOU allows for CBP to conduct motorized pursuits in exigent or emergency situations within wilderness or wilderness study areas, the CBP must file a report with the federal land manager after each instance.<sup>8</sup> Otherwise, CPB agents can generally patrol by foot or by horseback without prior authorization from the federal land manager.<sup>9</sup>

Any additional CBP access to federal lands is “subject to such terms and conditions that are mutually developed” by the CBP and federal land managers.<sup>10</sup> In practice, this gives federal land managers a veto over CBP activities. For instance, CBP must receive permission to patrol areas not designated for off-road use and to install tactical security infrastructure, such as roads, motion sensors, cameras, and vehicle barriers.

Under the MOU, after receiving CBP’s written request, federal land managers have 90 days to execute a local agreement.<sup>11</sup> Negotiating a mutually acceptable agreement, however, can cause delays, which would ultimately disadvantage the CBP from successfully executing their mission. The power disparity between CBP and federal land management agencies is further exemplified through the numerous instances where DHS has agreed to fund environmental mitigation projects on land managed by USDA and DOI.<sup>12</sup>

CBP agents are oftentimes most constrained in federally-designated wilderness areas. In general, the Wilderness Act<sup>13</sup> prohibits using motor vehicles, motorized equipment, landing of aircraft, and any form of mechanical transport in designated wilderness areas.<sup>14</sup> Therefore, even when the CBP is authorized by the National Park Service to patrol or erect infrastructure in wilderness areas, transportation, equipment, and tools can be limited to non-motorized or non-mechanical devices.<sup>15</sup> Undoubtedly, as professional drug or human smugglers, CBVs, do not observe such Wilderness Act restrictions to leave such areas unimpaired for the future use and enjoyment of others or preserve and protect natural conditions.

Therefore, the MOU robs the CBP agents of the operational flexibility essential to their mission of securing our borders. CBP agents have expressed frustration due to delayed approvals from federal land managers to remediate drug trafficking tunnels, repair exist-

<sup>6</sup>Memorandum of Understanding Among U. S. Department of Homeland Security and U. S. Department of the Interior and U. S. Department of Agriculture Regarding Cooperative National Security and Counterterrorism Efforts on Federal Lands along the United States’ Borders 1 (Mar. 2006) (on file with author).

<sup>7</sup>*Id.* at 2.

<sup>8</sup>*Id.* at 6.

<sup>9</sup>*Id.* at 4.

<sup>10</sup>*Id.* at 6.

<sup>11</sup>*Id.* at 5.

<sup>12</sup>U.S. Gov’t Accountability Office, GAO–11–38, *supra* note 1 at 56; see also Press Release, National Park Service, Dep’t of the Interior, DHS and DOI Sign Agreement for Mitigation of Border Security Impact on the Environment, (Jan. 15, 2009) (last edited Apr. 4, 2016), available at [https://www.doi.gov/news/pressreleases/2009\\_01\\_15\\_releaseB](https://www.doi.gov/news/pressreleases/2009_01_15_releaseB).

<sup>13</sup>16 U.S.C. 1131 et seq.

<sup>14</sup>16 U.S.C. 1133(c).

<sup>15</sup>*Id.*

ing roads, and install tactical security infrastructure.<sup>16</sup> At times, CBP agents working with land management agencies can experience lengthy delays in approval of tactical infrastructure road maintenance and repair projects.<sup>17</sup>

H.R. 3595 addresses these restrictions created by the Wilderness Act that are adversely impacting border security efforts. This legislation amends the Wilderness Act to empower the CBP to conduct necessary border security activities in designated wilderness areas. These border security activities are specifically listed in this legislation and include granting access to existing structures, permitting the use of motor vehicles and aircraft, and allowing for the deployment of temporary infrastructure in emergency situations. The bill requires the CPB to carry out these actions in a way that preserves wilderness areas to the best of CBP's ability, as circumstances permit.

#### COMMITTEE ACTION

H.R. 3593 was introduced on July 28, 2017, by Congressman Mike Johnson (R-LA). The bill was referred primarily to the Committee on Natural Resources and additionally to the Committee on Homeland Security. Within the Committee on Natural Resources, the bill was referred to the Subcommittee on Federal Lands. On November 15, 2018, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Congressman Mike Johnson offered an amendment designated #1; it was adopted by voice vote. No additional amendments were offered, and the bill, as amended, was ordered favorably reported to the House of Representatives by a roll call vote of 19 yeas and 12 nays as follows:

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<sup>16</sup> Discussions with various Border Patrol agents, Congressional Delegation Bishop in Tucson Sector, Arizona. (Feb. 2018).

<sup>17</sup> *Id.*

## Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 11.15.18

Recorded Vote #:2

Meeting on / Amendment on: FC Markup Favorably Report HR 3593 (Rep. Mike Johnson)

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
<b>Mr. Bishop, UT, Chairman</b>	X			<b>Mr. Cook, CA</b>	X		
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. McEachin, VA</i>			
<b>Mr. Young, AK, Chairman Emeritus</b>				<b>Mr. Westerman, AR</b>	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. Brown, MD</i>			
<b>Mr. Gohmert, TX, Vice Chairman</b>	X			<b>Mr. Graves, LA</b>	X		
<i>Ms. Bordallo, Guam</i>		X		<i>Mr. Clay, MO</i>		X	
<b>Mr. Lamborn, CO</b>	X			<b>Mr. Hice, GA</b>	X		
<i>Mr. Costa, CA</i>				<i>Mr. Gomez, CA</i>		X	
<b>Mr. Wittman, VA</b>	X			<b>Mrs. Radewagen, AS</b>	X		
<i>Mr. Sablan, CNMI</i>				<i>Ms. Velázquez, NY</i>			
<b>Mr. McClintock, CA</b>	X			<b>Mr. Webster, FL</b>	X		
<i>Ms. Tsongas, MA</i>				<b>Mr. Bergman, MI</b>	X		
<b>Mr. Pearce, NM</b>				<b>Ms. Cheney, WY</b>			
<i>Mr. Huffman, CA</i>		X		<b>Mr. Johnson, LA</b>	X		
<b>Mr. Thompson, PA</b>	X			<b>Ms. González-Colón, PR</b>			
<i>Mr. Lowenthal, CA</i>		X		<b>Mr. Gianforte, MT</b>	X		
<b>Mr. Gosar, AZ</b>	X			<b>Mr. Curtis, UT</b>	X		
<i>Mr. Beyer, VA</i>		X					
<b>Mr. Labrador, ID</b>							
<i>Mr. Gallego, AZ</i>		X					
<b>Mr. Tipton, CO</b>	X						
<i>Ms. Hanabusa, HI</i>		X					
<b>Mr. LaMalfa, CA</b>	X						
<i>Ms. Barragán, CA</i>		X					
<b>Mr. Denham, CA</b>							
<i>Mr. Soto, FL</i>		X		<b>TOTAL:</b>	19	12	

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

## COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, November 19, 2018.*

Hon. ROB BISHOP,  
*Chairman, Committee on Natural Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3593, the Securing Our Borders and Wilderness Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Janani Shankaran.

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

*H.R. 3593—Securing Our Borders and Wilderness Act*

H.R. 3593 would authorize Customs and Border Protection to conduct certain activities in designated wilderness areas along the international land border that are managed by the Department of the Interior and the Forest Service. Under current law, the three agencies coordinate such activities through a memorandum of understanding. The bill might change the timing of CBP activities in those areas, but CBO does not expect it would significantly change CBP's operations. Accordingly, we estimate that implementing the bill would have no significant costs.

Enacting H.R. 3593 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 3593 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 3593 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Janani Shankaran. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to authorize U.S. Customs and Border Protection to

conduct certain activities to secure the international land borders of the United States.

#### EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

#### COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

#### COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

#### PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

#### WILDERNESS ACT

\* \* \* \* \*

#### USE OF WILDERNESS AREAS

SEC. 4. (a) The purposes of this Act are hereby declared to be within and supplemental to the purposes for which national forest and units of the national park and national wildlife refuge systems are established and administered and—

(1) Nothing in this Act shall be deemed to be in interference with the purpose for which national forests are established as set forth in the Act of June 4, 1897 (30 Stat. 11), and the Multiple-Use Sustained-Yield Act of June 12, 1960 (74 Stat. 215).

(2) Nothing in this Act shall modify the restrictions and provisions of the Shipstead-Nolan Act (Public Law 539, Seventy-first Congress, July 10, 1930; 46 Stat. 1020), the Thye-Blatnik Act (Public Law 733, Eightieth Congress, June 22, 1948; 62 Stat. 568), and the Humphrey-Thye-Blatnik-Andresen Act (Public Law 607, Eighty-fourth Congress, June 22, 1956; 70

Stat. 326), as applying to the Superior National Forest or the regulations of the Secretary of Agriculture.

(3) Nothing in this Act shall modify the statutory authority under which units of the national park system are created. Further, the designation of any area of any park, monument, or other unit of the national park system as a wilderness area pursuant to this Act shall in no manner lower the standards evolved for the use and preservation of such park, monument, or other unit of the national park system in accordance with section 100101(b)(1), chapter 1003, and sections 100751(a), 100752, 100753, and 102101 of title 54, United States Code, the statutory authority under which the area was created, or any other Act of Congress which might pertain to or affect such area, including, but not limited to, section 3(2) of the Federal Power Act (16 U.S.C. 796(2)); and chapters 3201 and 3203 of title 54, United States Code.

(b) Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

#### PROHIBITION OF CERTAIN USES

(c) Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.

#### SPECIAL PROVISIONS

(d) The following special provisions are hereby made:

(1) Within wilderness areas designated by this Act the use of aircraft or motorboats, where these uses have already become established, may be permitted to continue subject to such restrictions as the Secretary of Agriculture deems desirable. In addition, such measures may be taken as may be necessary in the control of fire, insects, and diseases, subject to such conditions as the Secretary deems desirable.

(2) Nothing in this Act shall prevent within national forest wilderness areas any activity, including prospecting, for the purpose of gathering information about mineral or other resources, if such activity is carried on in a manner compatible with the preservation of the wilderness environment. Furthermore, in accordance with such program as the Secretary of the Interior shall develop and conduct in consultation with the Secretary of Agriculture, such areas shall be surveyed on a planned, recurring basis consistent with the concept of wilderness preservation by the Geological Sur-



vey and the Bureau of Mines to determine the mineral values, if any, that may be present; and the results of such surveys shall be made available to the public and submitted to the President and Congress.

(3) Notwithstanding any other provisions of this Act, until midnight December 31, 1983, the United States mining laws and all laws pertaining to mineral leasing shall, to the same extent as applicable prior to the effective date of this Act, extend to those national forest lands designated by this Act as "wilderness areas"; subject, however, to such reasonable regulations governing ingress and egress as may be prescribed by the Secretary of Agriculture consistent with the use of the land for mineral location and development and exploration, drilling, and production, and use of land for transmission lines, waterlines, telephone lines, or facilities necessary in exploring, drilling, producing, mining, and processing operations, including where essential the use of mechanized ground or air equipment and restoration as near as practicable of the surface of the land disturbed in performing prospecting, location, and, in oil and gas leasing, discovery work, exploration, drilling and production, as soon as they have served their purpose. Mining locations lying within the boundaries of said wilderness areas shall be held and used solely for mining or processing operations and uses reasonably incident thereto; and hereafter, subject to valid existing rights, all patents issued under the mining laws of the United States affecting national forest lands designated by this Act as wilderness areas shall convey title to the mineral deposits within the claim, together with the right to cut and use so much of the mature timber therefrom as may be needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available, and if the timber is cut under sound principles of forest management as defined by the national forest rules and regulations, but each such patent shall reserve to the United States all title in or to the surface of the lands and products thereof, and no use of the surface of the claim or the resources therefrom not reasonably required for carrying on mining or prospecting shall be allowed except as otherwise expressly provided in this Act: *Provided*, That, unless hereafter specifically authorized, no patent within wilderness areas designated by this Act shall issue after December 31, 1983, except for the valid claims existing on or before December 31, 1983. Mining claims located after the effective date of this Act within the boundaries of wilderness areas designated by this Act shall create no rights in excess of those rights which may be patented under the provisions of this subsection. Mineral leases, permits, and licenses covering lands within national forest wilderness areas designated by this Act shall contain such reasonable stipulations as may be prescribed by the Secretary of Agriculture for the protection of the wilderness character of the land consistent with the use of the land for the purposes for which they are leased, permitted, or licensed. Subject to valid rights then existing, effective January 1, 1984, the minerals in lands designated by this Act as wilderness areas are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

(4) Within wilderness areas in the national forest designated by this Act, (1) the President may, within a specific area and in accordance with such regulations as he may deem desirable, authorize prospecting for water resources, the establishment and maintenance of reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest, including the road construction and maintenance essential to development and use thereof, upon his determination that such use or uses in the specific area will better serve the interest of the United States and the people thereof than will its denial; and (2) the grazing of livestock, where established prior to the effective date of this Act, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture.

(5) Commercial services may be performed within the wilderness areas designated by this Act to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.

(6) Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(7) Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests.

(8) *U.S. CUSTOMS AND BORDER PROTECTION ACCESS.—*

(A) *PERMISSIBLE ACTIVITIES.—Notwithstanding any other provision of this Act, the Commissioner of U.S. Customs and Border Protection may conduct the following activities within a wilderness area for the purpose of securing the international land borders of the United States:*

(i) *Access structures, installations, and roads.*

(ii) *Execute search and rescue operations.*

(iii) *Use motor vehicles, motorboats, and motorized equipment.*

(iv) *Conduct patrols on foot and on horseback.*

(v) *Notwithstanding any other law or regulation relating specifically to use of aircraft in a wilderness area or in the airspace above a wilderness area, use aircraft, including approach, landing, and takeoff.*

(vi) *Deploy tactical infrastructure and technology.*

(vii) *Construct and maintain roads and physical barriers.*

(B) *PROTECTION OF WILDERNESS CHARACTER.—Any activity conducted by the Commissioner of U.S. Customs and Border Protection under subparagraph (A) shall be carried out in a manner that, to the greatest extent possible, protects the wilderness character of the area.*

\* \* \* \* \*

## DISSENTING VIEWS

H.R. 3593 is another attempt by House Republicans to promote toxic and misleading rhetoric on immigration and border security. The bill amends the Wilderness Act to authorize broad access for U.S. Customs and Border Protection (CPB). This is unnecessary and potentially problematic.

There are 15 designated wilderness areas within 20 miles of the Mexican border, and 5 wilderness areas abutting the border (for a total of approximately 96 linear miles). While proponents of this legislation claim that wilderness designation impedes CBP access, the Wilderness Act authorizes motorized access for emergencies. Beyond that, the authorizing legislation for most border adjacent wilderness includes specific language authorizing access for law enforcement and border patrol.

In addition to the exemptions authorized by the Wilderness Act itself and the specific exemptions in wilderness authorizing language, the Department of Homeland Security, the Department of the Interior, and the US Department of Agriculture signed a nationwide Memorandum of Understanding (MOU) for cooperative management related to border security within federal lands. The purpose of the MOU was to ensure interagency coordination of operations and provide guidance to CBP to prevent damage to natural and cultural resources on federal lands.

In a statement submitted for the record for a 2016 hearing with this committee, CBP highlighted the MOU as an effective tool for ensuring the simultaneous and effective pursuit of the three agencies' unique missions:

Perhaps the most significant example of our commitment to interagency collaboration on federal lands is the March 2006 MOU that describes cooperative national security and counterterrorism efforts on federal lands along U.S. borders . . . This collaboration is based on mutual respect for each other's missions and it continues in many forms. Specific initiatives have been developed to address collaboration on enforcement, as well as on environmental and cultural stewardship.

During that same hearing, DOI's Interagency Borderlands Coordinator testified about the effectiveness of the MOU:<sup>1</sup>

Our goal is to provide flexibility and realistic options for patrol and infrastructure access to Interior lands by CBP while continuing to maintain an emphasis on protection of federal trust resources such as endangered species, cul-

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<sup>1</sup> Statement of Jon Andrews, Interagency Borderlands Coordinator, Department of the Interior before the House Subcommittee on Oversight and Investigations, Committee on Natural Resources. Apr 28, 2016. [https://naturalresources.house.gov/uploadedfiles/testimony\\_andrew.pdf](https://naturalresources.house.gov/uploadedfiles/testimony_andrew.pdf).

tural resources, tribal interests, national wildlife refuges, national parks, public lands, and designated wilderness. We believe the guidelines contained in the MOU have been effective in providing both Interior and CBP with the necessary framework to strike this important balance.

Furthermore, in 2010, the Government Accountability Office found that most border patrol officials do not view wilderness and other laws that apply to federal land management as an impediment to securing the border. This report found that 22 of 26 CBP agents-in-charge did not believe their jurisdiction was affected by land management laws so much as the ruggedness and remoteness of the terrain they guard. Even the people on the front lines of border protection agree that, unsurprisingly, foundational conservation laws DO NOT limit our Country's safety.

Despite the abundant evidence that amending the Wilderness Act is not necessary, Republicans are pushing this vast overreach of already extensive authorities simply to undermine the Wilderness Act. H.R. 3593 is a solution in search of a problem that uses immigration and border security as an excuse to gut the Wilderness Act, one of our most iconic and successful conservation laws.

RAÚL M. GRIJALVA,  
*Ranking Member.*  
GRACE F. NAPOLITANO.  
ALAN LOWENTHAL.  
JARED HUFFMAN.  
DARREN SOTO.

ROB BISHOP OF UTAH  
CHAIRMAN

CODY STEWART  
STAFF DIRECTOR

COMMITTEE CORRESPONDENCE

**U.S. House of Representatives**  
Committee on Natural Resources  
Washington, DC 20515

RAÚL GRIJALVA OF ARIZONA  
RANKING MEMBER

DAVID WATKINS  
DEMOCRATIC STAFF DIRECTOR

December 3, 2018

The Honorable Michael T. McCaul  
Chairman  
Committee on Homeland Security  
176 Ford House Office Building  
Washington, D.C. 20515

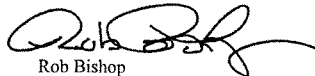
Dear Mr. Chairman:

On November 15, 2018, the Committee on Natural Resources ordered H.R. 3593, the Securing Our Borders and Wilderness Act, favorably reported. This bill was additionally referred to the Committee on Homeland Security.

I ask that you allow the Committee on Homeland Security to be discharged from further consideration of the bill so that it may be scheduled by the Majority Leader. This discharge in no way affects your jurisdiction over the subject matter of the bill, and it will not serve as precedent for future referrals. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on Homeland Security represented on the conference committee. Finally, I would be pleased to include this letter and your response in the bill report and in the Congressional Record.

Thank you for consideration of my request, and I look forward to further opportunities to work with you the remainder of this Congress.

Sincerely,



Rob Bishop  
Chairman  
Committee on Natural Resources

MICHAEL T. MCCAUL, TEXAS  
CHAIRMAN



BENNIE G. THOMPSON, MISSISSIPPI  
RANKING MEMBER

One Hundred Fifteenth Congress  
U.S. House of Representatives  
Committee on Homeland Security  
Washington, DC 20515

December 4, 2018

The Honorable Rob Bishop  
Chairman, Committee on Natural Resources  
1334 Longworth House Office Building  
Washington, D.C. 20515

Dear Chairman Bishop,

I am in receipt of your request regarding H.R. 3593 the "Securing Our Borders and Wilderness Act." The bill includes provisions that fall within the jurisdiction of the Committee on Homeland Security.

I recognize and appreciate the desire to bring this legislation before the House of Representatives in an expeditious manner, and accordingly, the Committee on Homeland Security will forego action on this bill. However, this is conditional based on our mutual understanding that by foregoing consideration of H.R.3593 at this time does not prejudice this Committee with respect to the appointment of conferees or to any future jurisdictional claim over the subject matter contained in this bill or similar legislation.

This waiver is also given with the understanding that the Committee on Homeland Security expressly reserves its authority to seek conferees on any provision within its jurisdiction during any House-Senate conference that may be convened on this or similar legislation, and requests your support for such a request.

I ask that a copy of this letter and your response be included in the *Congressional Record* during consideration of this bill on the House floor. I look forward to working with the Committee on Natural Resources as this bill moves through the legislative process.

Sincerely,

A handwritten signature in black ink that reads "Michael T. McCaul".

MICHAEL T. MCCAUL  
Chairman

cc: The Honorable Paul D. Ryan, Speaker,  
The Honorable Raul M. Grijalva, Ranking Member, Committee on Natural Resources  
The Honorable Bennie G. Thompson, Ranking Member, Committee on Homeland  
Security  
Mr. Thomas J. Wickham, Jr., Parliamentarian