

## **Coburn Amendment 1361 Provide Border Patrol Access to federal lands.**

This amendment would allow US Customs and Border Protection to access federal lands within 100 miles of the border.

It would allow CBP access to lands controlled by the US Secretary of Interior and Agriculture, as well as Indian reservation lands.

If needed, CBP would be allowed to use this access to construct roads, build barriers, conduct vehicle patrols and install surveillance equipment.

The amendment would strike language in S. 744 giving increased access only to federal land in Arizona, and replaces it with language covering all federal land.

### **Border Patrol agents are overly limited when operating on federal lands.**

Many Americans might be surprised to know that Border Patrol agents are not given full access to all federal lands in carrying out their border security mission.

Under current law, while CBP is responsible for border security, there are large federal borderlands under the control of the USDA and the Department of the Interior.<sup>1</sup>

According to GAO, national forests and parks on the U.S. border cover 800 miles of the Southern border with Mexico and 1,000 miles of the northern border with Canada.<sup>2</sup>

For both the northern and southern borders, the USDA and DOI are responsible for all law enforcement activities on land they control.<sup>3</sup>

However, the USDA and DOI are also responsible for environmental protection on these lands as well.

---

<sup>1</sup> <http://www.gao.gov/assets/660/653037.pdf>

<sup>2</sup> <http://www.gao.gov/assets/320/312517.pdf>

<sup>3</sup> <http://www.gao.gov/assets/660/653037.pdf>

It is the responsibility of DHS, USDA and DOI to coordinate their various missions.

However, this has often meant that border security is given short shrift.

A March 2013 report by GAO found that much more needed to be done by these agencies to ensure border security.

GAO found that information was not always shared with DHS in a timely way, which limited its ability to know about threats.

As a result, in the Spokane sector on the northern border CBP was “precluded” from being able “to fully assess cross-border threats, such as air smuggling of high-potency marijuana.”<sup>4</sup>

There is even evidence that Border Patrol agents are being blocked outright from accessing lands along the border.

Rep. Rob Bishop has been investigating this issue for a long time and found significant evidence that USDA and DOI use environmental regulations to keep the Border Patrol out.<sup>5</sup>

Often, this has taken the form of forcing the Border Patrol to follow environmentally-sensitive rules, such as ditching their motor vehicles and instead going on foot or horseback.<sup>6</sup>

In a 2009 letter written to Rep. Bishop by DHS Secretary Janet Napolitano, she wrote the following:

“The USBP, in accordance with the 2006 MOU, makes every reasonable effort to use the least impacting means of transportation within wilderness; however along the southwest border it can be detrimental to the most effective accomplishment of the mission. For example, it may be inadvisable for officer safety to wait for the arrival of horses for pursuit purposes, or to attempt to apprehend smuggling

---

<sup>4</sup> <http://www.gao.gov/assets/660/653037.pdf>

<sup>5</sup> <http://naturalresources.house.gov/info/borderoverview.htm#Access>

<sup>6</sup> <http://thehill.com/blogs/congress-blog/homeland-security/233447-bolstering-border-security-on-federal-lands>

vehicles within wilderness with a less capable form of transportation.”<sup>7</sup>

In meetings with members of the Border Patrol, my office has been told that the ability to lay down gravel roads and use vehicles would be a huge boon.

We owe it to the Border Patrol agents who put their lives on the line to make their job easier.

More still, we owe it to the citizens of this nation not to knowingly create gaps in our border security by these short-sighted rules.

**Border Patrol agents are also restricted in their ability to secure portions of the border on Indian tribal lands.**

Similarly, Border Patrol agents are restricted in how they can protect border areas within tribal land.

A report by GAO on April 5, 2013, noted that “the security of Indian reservations is a key part of the overall integrity of U.S. borders.”<sup>8</sup>

This is because 154 miles of the United States’ border is located within Indian tribal lands.<sup>9</sup>

Eighty-six miles of the northern border and 68 miles of the southern border are on 13 Indian reservations, according to GAO.<sup>10</sup>

To protect the border, ICE and CBP are allowed to operate on these lands, but must do so with the “consultation and collaboration” with tribal governments.<sup>11</sup>

GAO found that this has created challenges that expose to border to vulnerabilities, which this amendment would fix.

---

<sup>7</sup> <http://thehill.com/blogs/congress-blog/homeland-security/233447-bolstering-border-security-on-federal-lands>

<sup>8</sup> <http://www.gao.gov/assets/660/653590.pdf>

<sup>9</sup> <http://www.gao.gov/assets/660/653590.pdf>

<sup>10</sup> <http://www.gao.gov/assets/660/653590.pdf>

<sup>11</sup> <http://www.gao.gov/assets/660/653590.pdf>

For example, GAO interviewed Border Patrol officials from one sector who said tribal restrictions mean they could not patrol the area as frequently as they felt necessary.<sup>12</sup>

Moreover, because tribal members opposed the Border Patrol coming onto tribal land, CBP was impeded from securing a major smuggling route.<sup>13</sup>

Border Patrol agents in another sector reported that tribal leaders restricted where they could place vehicle-mounted radar systems.<sup>14</sup>

As a result, CBP was forced to deploy their systems to “a tactically less advantageous position.”<sup>15</sup>

The result of these impediments is that our border is less secure, and criminals are given easier access to our country.

**Stopping criminals from illegal crossings will do more to protect the environment than stopping CBP agents.**

The chief reason for the problems on federally owned lands is concern that Border Patrol will trample the environment.

However, it is drug smugglers who are the biggest threat to the environment.

According to the investigation by Rep. Bishiop: “The Arizona Department of Environmental Quality estimates that drug cartels or human smugglers leave close to 2,000 tons of trash each year in Arizona alone.”

Under this amendment, the Department of Homeland Security will still be obligated to conduct its law enforcement activities in a manner that seeks to minimize or mitigate any negative environmental impact.

---

<sup>12</sup> <http://www.gao.gov/assets/660/653590.pdf>

<sup>13</sup> <http://www.gao.gov/assets/660/653590.pdf>

<sup>14</sup> <http://www.gao.gov/assets/660/653590.pdf>

<sup>15</sup> <http://www.gao.gov/assets/660/653590.pdf>

When we debated a similar amendment in 2009, we found that significant damage was being done by those crossing the border illegally.

Reports showed that people entering Arizona illegally cut down 150-year-old cactuses to block the road to inhibit anybody following them.

Majestic, 100-year-old cactuses, which are protected, are intentionally being destroyed to protect the smugglers.

**These federally managed lands have become havens for crime and illegal border crossings.**

Finally, it should be noted that these areas which are restricted to the Border Patrol are effectively safe ports for criminals, who know they won't be bothered much by law enforcement.

According to a report by GAO, delivered to the Senate Homeland Security Committee on March 14, 2013, federal lands are threatened by illegal border crossings.

The report finds the following:

“Illegal cross-border activity remains a significant threat to federal lands protected by DOI and USDA law enforcement personnel on the southwest and northern borders and can cause damage to natural, historic, and cultural resources, and put agency personnel and the visiting public at risk.”<sup>16</sup>

As Congressman Bishop writes: “Drug and human trafficking has become so prevalent on public lands that warning signs dot the region, cautioning visitors that they may encounter drug smugglers.”

**The Senate accepted a similar amendment by voice vote during the last debate on immigration reform.**

In 2009, I offered a similar amendment to require the Secretary of the Interior to allow CBP access to lands controlled by the department.

---

<sup>16</sup> <http://www.gao.gov/assets/660/653037.pdf>

It was accepted unanimously in the Senate and accepted by voice vote.

That amendment was supported in 2009 by the National Border Patrol Council of the American Federal of Government Employees.

In a letter of support from September 24, 2009, they wrote: “Bureaucratic regulations that prevent Border Patrol agents from utilizing vehicles and technology on public lands should be the least of their concerns, but unfortunately are not.”

This common-sense amendment would allow the Border Patrol to do their job—including stopping illegal entries as well as humanitarian search and rescue operations.

We will never have a secure border if we prevent Border Patrol from doing their jobs on the millions of acres of federal lands.