

U.S. Senators Tom Udall & Martin Heinrich

Security Provisions in the Organ Mountains–Desert Peaks Conservation Act



Organ Mountains-Desert Peaks, PHOTO: Conservationlands.org

Bottom Line

- The primary difference between previously introduced bills and the upcoming bill is that neither a National Monument nor a National Conservation Area is proposed. Based substantially on Senator Udall's and Senator Heinrich's legislation introduced in 2013, President Obama designated the Organ Mountains-Desert Peaks as a National Monument in May 2014. The upcoming legislation preserves all provisions and map delineations agreed to with Border Patrol and others in previous years, but addresses primarily wilderness designation and the release of Wilderness Study Areas. Only Congress has the authority to enact these provisions related to wilderness.

Background and Provisions for Border Patrol

- The West Potrillo Mountains Wilderness Study Area (WSA) in Doña Ana County was first designated in the 1980s under the Reagan Administration and later recommended for full wilderness protection by President George H.W. Bush.
- Under current law, the existing wilderness study area provides the Border Patrol and other law enforcement agencies with a buffer of only 1/3 of a mile from the international border. It also limits the ability to conduct routine vehicle patrols and install infrastructure north of Highway 9.
- Working closely with Border Patrol, Senators Udall and Heinrich drafted legislation that strengthens the ability of Border Patrol to operate near the border beyond existing law, and creates new opportunities for expanded surveillance, pursuit, and patrol. The following provisions were strongly supported by local agents as well as by former Customs and Border Patrol (CBP) Commissioner Alan Bersin and Acting Commissioner Thomas Winkowski as they "would significantly enhance the flexibility of U.S. Customs and Border Protection to operate in this border area."
 - The bill expands the existing buffer from 1/3 of a mile to approximately 5 miles from the international border. This includes 3 miles of non-wilderness land excluded in the original bill and an additional 2-mile buffer area described as "Parcel A" in the current draft legislation. This buffer area would prohibit motorized access off-road by the general public, but would permit the Border Patrol and other law enforcement entities to conduct routine patrols and construct communication and surveillance infrastructure as it would on undesignated lands. Over 30,000 acres of existing wilderness study area would be released in order to facilitate border security, monitoring and law enforcement along and near the U.S.-Mexico border.

Section 4(b): (1) *WITHDRAWAL.*—The area identified as “Parcel A” on the map entitled “Potrillo Mountains Complex” and dated April 18, 2016, is withdrawn in accordance with section 5(d)(1).

(2) *ADMINISTRATION.*—Except as provided in paragraphs (3) and (4), the Secretary shall administer the area described in paragraph (1) in a manner that, to the maximum extent practicable, protects the wilderness character of the area.

(3) *USE OF MOTOR VEHICLES.*—The use of motor vehicles, motorized equipment, and mechanical transport shall be prohibited in the area described in paragraph (1) except as necessary for—

- (A) the administration of the area (including the conduct of law enforcement and border security activities in the area); or
- (B) grazing uses by authorized permittees.

- The wilderness boundary excludes specific sites that Border Patrol identified for use by its Mobile Surveillance System (MSS) vehicles and a communications tower that the Dona Ana County Sheriff’s Office identified as critical in closing radio coverage gaps for officer effectiveness and safety. As well, additional infrastructure installation for law enforcement purposes is allowed Parcel A.

Section 4(b)(4): *EFFECT OF SUBSECTION.*—Nothing in this subsection precludes the Secretary from allowing within the area described in paragraph (1) the installation and maintenance of communication or surveillance infrastructure necessary for law enforcement or border security activities.

- The Border Patrol also requested special access to an east-west route within the Potrillo Mountains Wilderness to allow Border Patrol and other law enforcement to conduct border security operations (i.e., leap frogging) while closing it to the public to reduce the presence of non-relevant indications of people in the area. The bill establishes this route.

Section 4(c): *RESTRICTED ROUTE.*—The route excluded from the Potrillo Mountains Wilderness identified as “Restricted—Administrative Access” on the map entitled “Potrillo Mountains Complex and dated April 18, 2016 shall be—

- (1) closed to public access; but
- (2) available for administrative and law enforcement uses, including border security activities.

- The legislation clarifies that the designation of wilderness does not affect Border Patrol’s ability to conduct border security activities in the wilderness areas, including overflights above the wilderness areas and use of motorized vehicles while in pursuit of a suspect. These authorities are clear in law, BLM policy and interagency memoranda of understanding (MOUs) but the legislative language is intended to highlight that and reduce confusion for agents and officers. Additionally, this bill does not affect the applicability of Section 4(c) of the Wilderness Act to all law enforcement and other entities. Section 4(c) allows for exceptions to typical wilderness management in any situation involving the health and safety of persons in the area. This applies to hot pursuit, search and rescue, body recoveries, and other emergencies.

Section 4(a): *IN GENERAL.*—Nothing in this Act—

- (1) *prevents the Secretary of Homeland Security from undertaking law enforcement and border security activities, in accordance with section 4(c) of the Wilderness Act (16 U.S.C. 1133(c)), within the areas designated as wilderness by this Act, including the ability to use motorized access within a wilderness area while in pursuit of a suspect;*
- (2) *affects the 2006 Memorandum of Understanding among the Department of Homeland Security, the Department of the Interior, and the Department of Agriculture regarding cooperative national security and counterterrorism efforts on Federal land along the borders of the United States; or*
- (3) *prevents the Secretary of Homeland Security from conducting any low-level overflights over the wilderness areas designated by this Act that may be necessary for law enforcement and border security purposes.”*

Section 4(c) of The Wilderness Act of 1964 (*emphasis added*): *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.*

- The western boundary of the West Potrillo Mountains Wilderness Study Area excludes Indian Basin Road which Border Patrol identified as a main route for drug traffickers attempting to elude law enforcement.
- A large area between the Robledo and Sierra de las Uvas Mountains that was originally proposed for wilderness designation has become part of the national monument but is no longer proposed as wilderness, to ensure that Border Patrol can prevent avoidance of the checkpoint near Radium Springs and have additional flexibility for frequent sensor use and relocation.
- All cherry stemmed roads within wilderness (roads drawn out of the wilderness areas in the legislative maps so that they remain open) would be available for vehicular use by CBP, other law enforcement entities, grazing permittees, and the general public and are treated as open roads in the national monument.
- Designation of wilderness establishes 30 foot buffers on each side of unimproved routes left open to vehicular use in order to facilitate parking, turning around, and road maintenance. It also establishes 100 and 300 foot buffers on either side of improved roads and highways. Currently, there is no buffer outside the actual footprint of roads themselves in Wilderness Study Areas. This is reflected in the legislative maps rather than the language.

Additional Provisions for All Law Enforcement, Including Local Law Enforcement

- This proposed legislation does not change the jurisdiction or authority of local law enforcement to enter the monument or wilderness at any time via any method, without requiring prior approval from the BLM if they are in hot pursuit or in the case of emergencies, search and rescue, or body recovery,

etc. These activities also fall under the allowances made in Section 4(c) of the Wilderness Act (text above) for the health and safety of people in a wilderness area.

- The legislation does not change the authority of local, state, or other law enforcement to continue to routinely patrol on open roads and the restricted route using motor vehicles, or to patrol anywhere via foot or horseback. There is no authority for law enforcement agencies to use motor vehicles off of designated routes for routine patrol purposes on federal public lands in Dona Ana County.
- Parcel A and the restricted route (*see text above*) are designed to improve flexibility for all law enforcement near the international border, and the exceptions are made for all law enforcement entities.
- Nothing changes the ability or authority of the BLM or law enforcement agencies to enter into new agreements should additional cooperation or clarification be helpful. As well, all agencies are encouraged to provide input into the Resource Management Plan (RMP) for the Organ Mountains-Desert Peaks National Monument (once the planning process begins, see text below) and any amendments that might be necessary to accommodate this legislation.

The Organ Mountains-Desert Peak National Monument

- The BLM may allow additional roads to be built in the monument, if necessary for administration or public safety. Generally, road access remains very similar if not the same after a monument designation. However, monument road decisions are made through the RMP, which includes multiple rounds of public input and consultation with local government which includes law enforcement entities.

Proclamation page 6: Except for emergency or authorized administrative purposes, motorized vehicle use in the monument shall be permitted only on designated roads, and non-motorized mechanized vehicle use shall be permitted only on roads and trails designated for their use; provided, however, that nothing in this provision shall be construed to restrict the use of motorized vehicles in wilderness study areas beyond the requirements of section 603 of the Federal Land Policy and Management Act. No additional roads or trails shall be established for motorized vehicle or non-motorized mechanized vehicle use unless necessary for public safety or protection of the objects identified above.

- The proclamation includes language clarifying the continued ability of law enforcement agencies to operate within the national monument.

Page 6: Nothing in this proclamation shall be deemed to affect the provisions of the 2006 Memorandum of Understanding between the U.S. Department of Homeland Security, the U.S. Department of the Interior, and the U.S. Department of Agriculture regarding "Cooperative National Security and Counterterrorism Efforts on Federal Lands along the United States' Borders.

- The proclamation encourages public involvement in the management planning process including from government entities.

Page 6: For purposes of protecting and restoring the objects identified above, the Secretary, through the BLM, shall prepare and maintain a management plan for the monument and shall provide for maximum public involvement in the development of that plan including, but not limited to, consultation with tribal, State, and local governments."