The newly released immigration proposal would broaden the DHS Secretary’s already unprecedented authority to exempt wall and road construction from legal requirements. It would also prioritize construction of ineffective, expensive, damaging fencing as a preferred border strategy.

We’ve seen the impacts of the removal of laws from our borderlands: dangerous and damaging floods in border communities; wildlife migration pathways severed, our treasured national parks and wilderness areas cut by roads and other infrastructure, all in absence of laws and public input that should have protected the American people and our land.

To date, 37 federal laws have been waived along the border to build about 650 miles of walls and other barriers without regard to environmental protection or public health and safety, and without any public review or comment. There is little evidence that waivers and walls have been effective at stopping border crossers. However, it is evident that these expensive measures pose a grave threat to America’s unique and fragile borderlands environment, putting communities, wildlife, and wildlands at risk.

Waiving Laws Harms Border Environment, Hinders Border Security
The Secretary of Homeland Security currently has the power to waive all legal requirements to construct barriers and roads, providing authority for what the Congressional Research Service has characterized as the largest waiver of law in American history.

Since 2005, waivers have been invoked five times, eliminating 37 local, state and federal laws for the construction of hundreds of miles of border barriers and roads. These laws include:

- **Clean Air Act and Clean Water Act**: meant to protect the health of border communities;
- **Endangered Species Act**: meant to protect imperiled species like Sonoran pronghorn and jaguar;
- **Archaeological Resources Protection Act**: meant to safeguard Native Nation’s sacred sites and our cultural heritage, and;
- **National Environmental Policy Act**: which mandates “look before you leap” analysis and provides an opportunity for meaningful public input on federal actions that affect local communities.

Use of waivers is ongoing, and has even undermined Border Patrol’s own infrastructure, with walls toppling over and roads washing away during normal flooding events due to poor engineering and lax oversight. Building and rebuilding of infrastructure is both costly to the taxpayer, and damaging to the land—a direct result of the waiver of laws at the border. For this reason, a majority of the American public opposes waiving laws along the border. Instead of repealing or narrowing this egregious waiver authority the proposed legislation actually expands it to include additional infrastructure. The waiver is a hindrance, not a help, to the enforcement of the nation’s laws and to the security of the U.S. citizens who rely on those laws for protection.
Border Fencing Damages Public and Private Lands, Fragments Wildlife Habitat
The legislation requires the development of a “Southern Border Fencing Strategy” separate from a comprehensive border security strategy, elevating above all other strategies an approach that causes the most damage and is likely the least effective tool available for border security. The approximately 650 miles of barriers already constructed have resulted in serious environmental and economic impacts due to massive flooding, debris, and associated changes in hydrology. Wall construction has damaged:

- Private property
- Commercial businesses
- Roads
- Public lands
- Wildlife habitat and corridors

Further, reports by the General Accountability Office and others have not shown that the wall has made a significant contribution to border security.

Border Patrol has Immediate Access to Public Lands
This bill includes a provision providing Border Patrol immediate access to all federal lands within 100 miles of the Arizona border. Border Patrol already has full access to these lands, with a 2006 interagency agreement between the departments of Homeland Security, Agriculture and the Interior clearly allowing Border Patrol access to all areas, including wilderness areas and wilderness study areas. Further emphasis of powers already given will only serve to further eviscerate the voice of Interior and Agriculture to care for our public lands. Forward operating bases, surveillance, and emergency assistance towers are already constructed on public lands using the existing broad authority of DHS—an authority illustrated by the thousands of miles of off-road travel documented by Border Patrol agents in such areas as the Cabeza Prieta National Wildlife Refuge Wilderness.

The True Cost of Border Enforcement
In 2012, the U.S. spent $18 billion on immigration and border enforcement, more than all other federal law enforcement combined. In defending our country’s territorial integrity, we need not eliminate one of the pillars of this country’s character – that we are a nation of laws. No agency should be encouraged to operate outside of the law, especially law enforcement agencies.

Works Cited: “Immigration Enforcement in the United States: The Rise of a Formidable Machinery,” Migration Policy Institute, January, 2013. GAO-09-244R “Secure Border Initiative Fence Construction Costs,” January, 2009. The 2012 Colorado College “State of the Rockies: Conservation in the West” poll showed that voters across the political spectrum overwhelmingly agree it is unnecessary to suspend environmental laws along U.S. borders to address immigration issues; 73% of Arizona voters said as much, a higher percentage than any other western state polled. (http://www.coloradocollege.edu/dotAsset/fbb7ed74-f201-4473-9403-1f30b7d14d06.pdf)