

PERMITTING FURTHER DAMAGING BORDER WALL CONSTRUCTION

Failed: 50-50

SUMMARY

The Senate rejected an amendment opposing Biden administration actions to cancel contracts with private companies for border wall construction, which has damaged the environment and communities along the U.S.-Mexico border. (*February 5, 2021, Roll Call No. 33*)

BACKGROUND

Nearly one-third of the 1,953-mile U.S.-Mexico border lies within military, tribal and public lands including wilderness areas, national wildlife refuges, national forests, national parks, national monuments and state parks. Spectacular and imperiled cross-border species like Mexican wolves, jaguars, ocelot, bighorn sheep, Sonoran pronghorn and hundreds of bird species depend on these protected public lands to survive.

President Trump used more than \$16 billion to build hundreds of miles of wall along the border at a cost of up to \$30 million per mile, mostly with funds diverted from the Department of Defense (DOD). Prior to the Trump administration, nearly 700 miles of wall had been built along the border, primarily under President George W. Bush's administration. Construction of the border wall and related infrastructure can be exempted from all federal, state or local laws under waiver authority provided to the Secretary of Homeland Security by the 2005 REAL ID Act, which has been used to waive 84 federal laws—including the Endangered Species Act, the National Environmental Policy Act, the Clean Water Act and the National Wildlife Refuge Improvement Act—under both the Trump and Bush administrations.

The damage that has been done and will be done to the people, communities, land and wildlife along the border is incalculable. The wall is bisecting some of the most sensitive and biodiverse habitat in the U.S. including many of our nation's most prized national wildlife refuges, forests, parks and wilderness areas, which encompass the ranges of more than 1,500 plants and animals--83 of them listed under the Endangered Species Act. Walls increase the mortality of endangered and vulnerable species, blocking wildlife migration routes, trapping animals in flood waters and fragmenting habitat. In a peer-reviewed article, more than 2,700 scientists from 43 countries declared the wall a disaster for biodiversity.

On January 20, 2021, President Biden issued a proclamation terminating the declaration under the National Emergencies Act that had been used by President Trump to divert much of the DOD funding for the wall and directed the Secretaries of Defense and Homeland Security to assess the legality of the funding and contracting methods used to construct the wall and to develop a plan to include consideration of terminating or repurposing contracts with private contractors engaged in wall construction. On April 30, 2021, DOD directed the cancellation of contracts for all border barrier construction projects paid for with funds originally appropriated for

other military missions and functions and the return of remaining, unobligated funds to their original sources. On June 11, the Department of Homeland Security announced that it would redirect some non-DOD appropriated wall construction funds to address and remediate urgent life, safety and environmental issues resulting from the Trump administration's border wall construction. In addition, President Biden's FY 2022 budget proposed the cancellation of all border wall construction funds that remain unobligated by the end of FY 2021.

During consideration of S. Con. Res. 5, the FY 2021 Congressional Budget Resolution, Senator Ron Johnson (R-Wy.) offered an amendment that sought to prohibit the Biden administration from using funds to cancel contracts with private companies for border wall construction along the U.S.-Mexico border and to prohibit the use of funds for payment of related penalties for contract cancellation.

OUTCOME

On February 5, 2021, the Senate rejected the Johnson amendment, 50-50. "Nay" was the pro-conservation vote.