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AN EXAMINATION OF VEGETATION MANAGEMENT REQUIREMENTS FOR ELECTRICITY ASSETS LOCATED ON FEDERAL LANDS, AND TO RECEIVE TESTIMONY ON SECTION 2310 OF S. 1460 AND H.R. 1873

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

TO

EXAMINE VEGETATION MANAGEMENT REQUIREMENTS FOR ELECTRICITY ASSETS LOCATED ON FEDERAL LANDS AND TO RECEIVE TESTIMONY ON SECTION 2310 OF S. 1460, THE ENERGY AND NATURAL RESOURCES ACT OF 2017, AND H.R. 1873, THE ELECTRICITY RELIABILITY AND FOREST PROTECTION ACT

SEPTEMBER 19, 2017



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CONTENTS

OPENING STATEMENTS

	Page
Murkowski, Hon. Lisa, Chairman and a U.S. Senator from Alaska	1
Cantwell, Hon. Maria, Ranking Member and a U.S. Senator from Washington	3
Daines, Hon. Steve, a U.S. Senator from Montana	4

WITNESSES

Casamassa, Glenn, Associate Deputy Chief, National Forest System, U.S. Department of Agriculture	5
Ruhs, John, Acting Deputy Director for Operations, Bureau of Land Management, U.S. Department of the Interior	9
Hayden, Mark C., General Manager, Missoula Electric Cooperative	17
Miller, Scott, Senior Regional Director, Southwest Region, The Wilderness Society	30
Rable, Andrew, Manager of Forestry and Special Programs, Arizona Public Service Company, on behalf of Edison Electric Institute	38

ALPHABETICAL LISTING AND APPENDIX MATERIAL SUBMITTED

Cantwell, Hon. Maria:	
Opening Statement	3
Casamassa, Glenn:	
Opening Statement	5
Written Testimony	7
Responses to Questions for the Record	58
Daines, Hon. Steve:	
Opening Statement	4
Hayden, Mark C.:	
Opening Statement	17
USDA Forest Service Notice of Indebtedness Letter for the Record	18
Benton Rural Electric Association Statement for the Record	23
Written Testimony	26
Responses to Questions for the Record	70
LaMalfa, Hon. Doug and Hon. Kurt Schrader:	
Letter for the Record	80
Miller, Scott:	
Opening Statement	30
Written Testimony	32
Responses to Questions for the Record	73
Murkowski, Hon. Lisa:	
Opening Statement	1
NorthWestern Corporation, d/b/a NorthWestern Energy:	
Statement for the Record	81

Page

Pacific Gas and Electric Company:
Letter for the Record 84
Rable, Andrew:
Opening Statement 38
Written Testimony 40
Responses to Questions for the Record 76
Ruhs, John:
Opening Statement 9
Written Testimony 11
Responses to Questions for the Record 64
Western Governors' Association:
Letter for the Record 88
Letter to Hon. Rob Bishop and Hon. Raul Grijalva 89
Policy Resolution 2017–10 91

The text for each of the bills which were addressed in this hearing can be found on the committee's website at: https://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=CF13EB5F-9A33-4FF8-AD65-25AAD698A628

AN EXAMINATION OF VEGETATION MANAGEMENT REQUIREMENTS FOR ELECTRICITY ASSETS LOCATED ON FEDERAL LANDS AND TO RECEIVE TESTIMONY ON SECTION 2310 OF S. 1460, THE ENERGY AND NATURAL RESOURCES ACT OF 2017, AND H.R. 1873, THE ELECTRICITY RELIABILITY AND FOREST PROTECTION ACT

TUESDAY, SEPTEMBER 19, 2017

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The Committee met, pursuant to notice, at 9:49 a.m. in Room SD–366, Dirksen Senate Office Building, Hon. Lisa Murkowski, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

The CHAIRMAN. The Committee will be back in order as we begin the full Committee hearing.

We are here to examine how the nation's utilities and our federal land managers work together to keep the lights on and to prevent wildfires.

We have certainly seen a lot of the wildfires in the news, certainly coming out of the State of Montana. It has been a tough, tough, tough season.

To me, this hearing represents the intersection of the energy and natural resources components of our Committee's jurisdiction. We can see that connection with our panelists. We have representatives from the U.S. Forest Service, the Bureau of Land Management, the Arizona Public Service Company, the Missoula Electric Cooperative and The Wilderness Society with us here this morning. Welcome to each of you.

Hurricanes Harvey and Irma have reminded us of the terrible damage that hurricanes can inflict on power lines and the very real hardships that people face without electricity.

I was just reading an article a couple days ago about the debate as to whether or not burying our utility lines can save us if we have hurricanes with high winds. Yes, it might, but then what happens when you have flooding? I think it is just a clear and direct reminder to us that natural disasters come in various forms and

the impact on our power generation is something that we need to know and understand and try to do everything that we can to ensure a level of resilience.

We have also spent considerable time examining the ever-evolving cyber threat to our nation's grid system. But it might surprise many to learn that the biggest danger that we might face in keeping the lights on is basic vegetation management around electricity transmission and distribution lines.

Back in August 2003, a single tree falling into a power line in Ohio started a cascading East Coast blackout that left 50 million people without power and cost billions in damages. It was this blackout event that led to the creation of the Electric Reliability Organization in the Energy Policy Act of 2005 and the imposition of mandatory reliability standards, including a vegetation management standard on the utility industry.

Failing to keep power lines free of vegetation and so-called hazard trees can also be a cause of wildfires which, again, have burned millions of acres in western states this year. With contact, a power line's energy can transfer to the vegetation causing sparks and potentially fire. Hundreds of wildfires have started on federal lands in this way.

Out West our federal forests are overstocked and stressed by prolonged drought, leaving millions of acres of dead and dying trees. And many of our Western forests are tinderboxes for wildfire and a result, while maybe predictable, is just absolutely devastating.

Given these public safety concerns, utilities face federal, state and local requirements to maintain their lines. At the federal level, utilities are subject to fines of up to $1 million per day for ERO standard violations and are strictly liable for damages that occur on federal lands.

So make no mistake, this is a significant undertaking. With 90,000 miles of transmission and distribution lines located on federal lands, utilities must cooperate with federal resource agencies to conduct this important work in a time-sensitive manner. Unfortunately the Federal Government is not exactly known for its time sensitivity, and we often find inconsistent procedures among the various field offices.

Still, under strict liability, a utility and, really, its customers, may have to pay for damages that were preventable.

Both chambers now have legislation, which we are considering today, that aim to facilitate vegetation management activities on federal lands in order to enhance electric reliability and reduce wildfires. Senator Cantwell and I have included text in our energy and natural resources bill. The House has passed its own bill, H.R. 1873, the Electricity Reliability and Forest Protection Act, with 300 votes from members on both sides of the aisle. I should note that then-Representative Zinke, now our Secretary of the Interior, sponsored the House bill in the last Congress, so I think we know that he, too, cares about this issue.

The House and Senate measures seek to bring greater certainty and timeliness to the federal process. Both provide for emergency situations. While not identical, S. 1460 and H.R. 1873 direct the agencies to consider the categorical exclusion process for routine

vegetation management work and attempt to bring fairness to the liability question.

These are significant issues, touching on electric system reliability, wildfire prevention, federal land management, regulatory compliance, and standards of liability. So, again, I want to thank our witnesses that are here to share their expertise with us as we consider them.

Senator Cantwell, thank you for your interest in this, and your comments please.

STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON

Senator CANTWELL. Thank you, Madam Chair.

I am glad we are holding this hearing to discuss real problems of the West, including the issues of wildfires and reducing blackouts. I also want to make sure that we are recognizing that we do need tools to continue to help us deal with some of the most devastating fire seasons that we have had over the last several years.

Earlier this month, when the fire season normally is coming to a close in Washington, most of Seattle awoke to find their cars covered with ash. So I am working with the Senators here and my colleague, Senator Murkowski, and others on what we call "fixing the fire-borrowing problem" and to proactively, under the pine pilot, help us do better forest management treatment.

I also want to make sure that we are looking at smart ways to help when fighting fires and when dealing with blackouts, and we are going to hear from many experts today about that. I still remember the blackout of the Northwest in 1996, and there are many issues related to it and other blackouts.

Operating our electricity grid has some inherent risks, but we need to make sure that these risks are minimized.

In the energy bill that Senator Murkowski and I put together, we included language to encourage the Forest Service and BLM to coordinate better with utilities. Our bill encourages utilities to develop a comprehensive management plan for vegetation, to expedite reviews by the Forest Service and BLM, and to make clear that trees posing an imminent threat to power lines can be cut immediately, with no prior approval needed. We apply the same liability standard that oil and natural gas pipelines receive on federal lands to power lines.

On the other hand, the House bill, I think, has some problems. For example, it waives all environmental review for major cuts in rights-of-way. It also waives liability for utilities in some cases, even when they are grossly negligent.

These issues are incredibly important to get right. I know that we can get them right. I am so pleased that we just passed out of the Senate the Sandy bill, which was, I consider, a related issue—that is FEMA's ability to get lifesaving communications up and running after a disaster. These communications are critical to first responders affected by communities during disaster recovery. We know that phone service, broadband and TV access are critical to saving lives and protecting property. This Sandy Act paves the way for communities to restore those communications and respond more quickly, certainly with the help of FEMA, and we know that this

is one of the additional challenges we see when transmission lines burn up during a fire and then we have no communication system.

We need new tools to fight fires. That is clear, and we need tools to minimize our risk.

I look forward to hearing from our colleagues. There are ways to address this, and I think my colleagues and I have worked on those. We would hope our House colleagues would become more serious about the recently passed Senate Energy bill and resolve many, many issues, including this one.

Thank you, Madam Chair.

The CHAIRMAN. Thank you, Senator Cantwell.

Again, a welcome to you, gentlemen.

We have before us Mr. Glenn Casamassa, who is the Associate Deputy Chief for the Forest Service at the U.S. Department of Agriculture. We have Mr. John Ruhs, who is the Acting Deputy for the Director of Operations at the Bureau of Land Management (BLM) at the Interior. Senator Daines, would you like to introduce our witness from Montana, Mr. Hayden, this morning?

STATEMENT OF STEVE DAINES,
U.S. SENATOR FROM MONTANA

Senator DAINES. I would, thank you Chair Murkowski, and thanks for having this very important hearing on an issue that is very near and dear to our hearts out in the West, and particularly in Montana, that is providing statutory relief for more responsible vegetation management around power lines.

This hearing, the legislative fixes explored today, cannot be more timely as wildfires in my state have burned well over a million acres, the equivalent the size of Delaware, and most of that has occurred on federal land. Over eight million acres across the West have burned this fire season.

While active treatment could not have prevented every wildfire, these wildfires are big, they threaten human life and property, and they also threaten habitat for our iconic wildlife.

Tragically, we have lost two brave firefighters in Montana this fire season and with about 18,000 miles of electric rights-of-way across Forest Service lands nationwide and over 70,000 miles of transmission distribution lines on BLM land—these fires and a lack of actively treating these trees also being a real risk to the reliability of electricity for Montana consumers.

I remember we had one of our many large fires burning in Montana in August. I spoke to one of our county commissioners in Southwest Montana. They were not able to get firefighters near one of our transmission lines, a high voltage line, because there was so much smoke and carbon in the air it could arc from the transmission line down on the ground, posing a threat to our firefighters. Once the fire began, we could not get in there and try to protect the transmission lines in that particular moment because of the threat to our firefighters. This is why it makes so much sense to be proactive and preventive, and that is why we are here today, one of the bills.

I am very happy to have Mark Hayden here today from Missoula. He brings firsthand expertise to this issue and will speak on the importance of H.R. 1873 today.

Our electric co-ops bring power to 40 percent of our state. Mark's co-op alone brings power to nearly 15,000 members in Western Montana and Idaho. Mark is here to speak on the importance of H.R. 1873, the Electricity Reliability and Forest Protection Act, to bring much needed clarity on vegetation treatment and rights-of-way. This bill passed through the House on June 21st, as the Chairman mentioned, with 300 votes, including 69 House Democrats.

I look forward to exploring the solution later on today and hearing Mark's and other witnesses' testimony.

Thank you, Chair Murkowski.

The CHAIRMAN. Great. Thank you Senator Daines, and welcome to you, Mr. Hayden.

The Committee is also joined this morning by Mr. Scott Miller, who is the Senior Regional Director of the Southwest Region for The Wilderness Society. Welcome. And the panel is rounded out with Mr. Andrew——

Mr. RABLE. Rable.

The CHAIRMAN. ——Rable, who is the Manager for the Forestry and Special Programs at Arizona Public Service.

We welcome each of you.

Mr. Casamassa, if you would like to lead off. We ask that you try to keep your comments to about five minutes to give us plenty of opportunity to ask questions afterwards. Your full statements will be included as part of the record.

Welcome.

STATEMENT OF GLENN CASAMASSA, ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEM, U.S. DEPARTMENT OF AGRICULTURE

Mr. CASAMASSA. Madam Chair, Ranking Member Cantwell and members of the Committee, thank you for the opportunity to discuss the efforts of the Forest Service to reduce the threat of wildfire to and from electrical transmission and distribution facilities on National Forest System lands.

Reliable delivery of electricity is essential. Fire and service disruptions resulting from contact between vegetation and power lines threaten public safety. Forest Service administers and authorizes for approximately 18,000 miles of power lines.

I know utilities are frustrated as a result of the responses from maintenance approvals and inconsistencies across our field offices. We are focused on addressing these concerns. In the past years, we've created guidance and provided guidance to the field on developing vegetative management plans.

We also completed a master agreement with Pacific Gas and Electric for the immediate removal of hazard trees within striking distance of their power lines. To date, Pacific Gas and Electric has felled 27,000 hazard trees on national forests within California.

We are working on our policy and procedures; however, not all the work can be accomplished administratively which is why I support the goals of the two pieces of legislation under consideration in this hearing, H.R. 1873 and Section 2310 of Senate bill 1460.

Both of these bills address environmental analysis requirements related to permits and liability concerns. I'd like to work with the

Committee to develop appropriate liability provisions and ensure that utilities can develop and implement operating and maintenance plans efficiently.

We want to be good neighbors and work collaboratively with both the utility companies and the communities we both serve. That includes vegetation management agreements that allow utilities to provide for reliability, minimize the risk of forest fires and comply with applicable federal, state and local requirements with minimal agency consultation and approval.

I'll continue to look for opportunities to streamline our process and become more efficient. Our goal is to make decisions that authorize projects in a more timely manner, eliminate unnecessary process and steps, and increase the scale of our analysis, thereby increasing the amount of on-the-ground work covered by our analysis and decision-making.

Thank you for the opportunity to present the testimony today, and I'd be happy to answer any questions you may have.

[The prepared statement of Mr. Casamassa follows:]

STATEMENT of
GLENN CASAMASSA
ASSOCIATE DEPUTY CHIEF
NATIONAL FOREST SYSTEM
UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
BEFORE THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
on
THE VEGETATION MANAGEMENT REQUIREMENTS FOR ELECTRICITY ASSETS LOCATED ON FEDERAL LANDS
SEPTEMBER 19, 2017

Madam Chairman and Members of the Committee, thank you for the opportunity to address the Committee on the USDA Forest Service's work on reducing the threat of wildfires to and from electric transmission and distribution facilities on Federal lands. We also appreciate the opportunity to address H.R. 1873, titled "Electricity Reliability and Forest Protection Act," and Section 2310 of S. 1460, titled "Energy and Natural Resources Act of 2017."

The Forest Service administers approximately 70,000 special use authorizations, including 2,700 authorizations for power lines, covering about 18,000 linear miles. Those facilities serve as critical links in the nation's electrical grid. Fire and service disruptions resulting from contact between vegetation and power lines threaten public safety and resources and can place a burden on rate payers. Helping to ensure authorized structures and adjacent natural resources are maintained in a way that protects them from damage or destruction is an important and challenging part of Agency operations.

The purpose of these bills is to amend the Federal Land Policy and Management Act of 1976 to enhance the reliability of the electrical grid and reduce the threat of wildfires to and from electric transmission and distribution facilities on Federal lands by facilitating vegetation management on those lands. We support the goals of these bills.

Most provisions in H.R. 1873 and Section 2310 of S. 1460 would improve the ability of USDA's Forest Service to address these issues in collaboration with electricity providers. However, USDA believes some of the provisions duplicate existing requirements in Forest Service policies and special use authorizations. In addition, the Agency would like to work with you to develop appropriate liability provisions and ensure that utilities can do necessary forest treatments through operating and maintenance plans and coordination with the Forest Service.

The Forest Service is confident that solutions to these concerns exist and that provisions can be established in partnership with Congress and electricity providers to better address forest health and hazardous fuel concerns that threaten the nation's electrical grid.

USDA is aware of the frustrations some utilities experience as a result of delayed responses for maintenance approvals and inconsistency across agency field offices and has been actively taking steps to address these concerns under existing authorities. The Forest Service has taken proactive measures to better address our shared concerns with management vegetation along energy corridors, including:

- Renewing the federal memorandum of understanding on vegetation management for powerline rights-of-way with the Edison Electric Institute.
- Completing a master agreement with Pacific Gas and Electric Company for the immediate removal of hazard trees within striking distance of its powerlines and replacement of deteriorating poles. Pacific Gas and Electric Company has felled 27,000 hazardous trees on National Forests within California.
- Reaching agreement with Bonneville Power Administration on a standard power line permit and operating and maintenance plan for all Bonneville Power Administration facilities on National Forest System lands.
- Disseminating to field units guidance on developing vegetation management plans for electric transmission line permits and easements.

In summary, the Forest Service will continue to work collaboratively with federally owned and privately owned utilities to develop vegetation management plans that allow right-of-way authorization holders to provide reliable service while minimizing the risk of forest fires and complying with applicable Federal, State, and local requirements.

USDA would welcome the opportunity to work with the Committee on this legislation.

Thank you for the opportunity to provide comments.

The CHAIRMAN. Thank you. We are pleased you are here.
Mr. Ruhs, welcome.

STATEMENT OF JOHN RUHS, ACTING DEPUTY DIRECTOR FOR OPERATIONS, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Mr. RUHS. Good morning, Chairman Murkowski, Ranking Member Cantwell and members of the Committee. I am John Ruhs, BLM's Acting Deputy Director for Operations. Thank you for the opportunity to discuss the very important issue of vegetation management requirements for electrical transmission rights-of-way and the legislation before the Committee today.

The BLM shares the sponsor's goals of enhancing electricity reliability and avoiding fire hazards, and we support both bills. We would like the opportunity to work with the sponsors on a few technical recommendations.

The BLM manages about 245 million surface acres and 700 million subsurface acres located primarily in the 12 Western states, including Alaska. In administering this diverse portfolio of public lands on behalf of the American people, the BLM is guided by its multiple use and sustained yield mission which is mandated by the Federal Land Policy and Management Act (FLPMA).

Under FLPMA, rights-of-way are identified as one of the principle uses of the public lands. As a result, the BLM has issued thousands of miles of rights-of-way for electricity transmission and distribution. Currently, the BLM administers almost 16,000 authorizations for such rights-of-way. This infrastructure is a significant component of our nation's interstate commerce providing power to communities and jobs for thousands of Americans.

In administering electrical rights-of-way, the BLM works to meet its obligations for the management and protection of natural and cultural resources on the public lands while minimizing wildfire risk and ensuring the reliability of the infrastructure.

Energy production and transmission are important sources of revenue and job growth in rural America, and capitalizing on opportunities to reduce permitting times is a major focus of this Administration. As directed by Secretary Zinke in Secretarial Order 3354, the BLM is committed to improving and streamlining its permitting processes, including for rights-of-way.

Under existing law the BLM coordinates closely with thousands of utility organizations and other federal agencies in its administration of electrical rights-of-way. This coordination, along with early and ongoing communication and planning, is essential for the vegetation management necessary to prevent infrastructure damage, power outages and wildfires.

The BLM has undertaken steps to provide greater predictability and clarity for the utilities it works with and we believe that thorough vegetation management plans provide the best opportunity to streamline the approval process, but BLM acknowledges that there may be aspects of the approval process that can be streamlined further and we welcome efforts to work with the Committee to make these critical improvements.

Given the volatile fire season impacting the West, working closely with our partners in industry to undertake appropriate vegeta-

tion management in electrical rights-of-way is more important than ever before. The reduction of fire risk is a high priority for the Secretary, as outlined in the recent directive on wildland fire. All of the Department's bureaus, including the BLM, have been tasked with adopting more aggressive practices to combat the spread of catastrophic wildfires through robust fuels reduction and pre-suppression techniques.

The legislation being considered at this hearing would expand the BLM's toolbox to help reduce the threat of catastrophic wildfires like those we are currently experiencing. The legislation under consideration today shares common goals and language for enhancing electric reliability, promoting public safety and avoiding fire hazards in electrical transmission rights-of-way. To accomplish these goals both pieces of legislation would amend FLPMA by adding new provisions regarding vegetation management, facility inspection and operation and maintenance activities.

The BLM supports the bill's goals of increasing coordination and efficiency regarding vegetation management and reducing wildfire risk. As such, we support both bills and would like to work with the sponsors on a few technical recommendations.

Thank you again for the opportunity to present this testimony. We look forward to working with Congress on the efficient protection of public safety and the reliability of infrastructure on the public lands.

I would be glad to answer any questions you may have.

[The prepared statement of Mr. Ruhs follows:]

Statement of
John Ruhs
Acting Deputy Director for Operation
Bureau of Land Management
U.S. Department of the Interior
Senate Committee on Energy and Natural Resources

Hearing on
"*Vegetation Management Requirements for Electricity Assets on Federal Lands*" and on Section 2310 of S. 1460, the Energy and Natural Resources Act, and H.R. 1873, the Electricity Reliability and Forest Protection Act

September 19, 2017

Chairman Murkowski, Ranking Member Cantwell, and members of the Committee, thank you for the opportunity to discuss the vegetation management requirements for electrical transmission rights-of-way (ROWs) on Bureau of Land Management (BLM)-managed public lands and Section 2310 of S. 1460, the Energy and Natural Resources Act, and H.R. 1873, the Electricity Reliability and Forest Protection Act. Both pieces of legislation would amend the Federal Land Policy and Management Act (FLPMA) by adding new provisions regarding vegetation management, facility inspection, and operation and maintenance activities within electricity transmission and distribution facility ROWs.

ROWs are an important part of the country's critical energy infrastructure, and the BLM administers them as part of its multiple use mission. The BLM coordinates closely with utility companies and understands that it is necessary to offer predictability and efficiency in its relationship with utilities in order to best serve communities, ensure grid reliability, and reduce wildfire risk. The Department of the Interior (Department or Interior) shares the goals common to the House and Senate legislation: to enhance electricity reliability, to promote public safety, and to avoid fire hazards. We support the legislation and would like to work with the bills' sponsors on some technical recommendations.

Background

The BLM manages about 245 million surface acres and 700 million subsurface acres, located primarily in 12 western states including Alaska. In administering this diverse portfolio of public lands on behalf of the American people, the BLM is guided by its multiple-use and sustained yield mission, which is mandated by FLPMA. Section 103 of FLPMA includes ROWs as one of the principal uses of the public lands. Governed by Title V of FLPMA, the BLM has issued thousands of miles of ROWs for electricity transmission and distribution, and currently

administers almost 16,000 authorizations for electricity transmission and distribution facilities on the nation's public lands. ROW infrastructure is a significant component of our nation's interstate commerce, providing power to communities and jobs for thousands of Americans. In administering electrical ROWs, the BLM also works to meet its obligations for the management and protection of natural and cultural resources on the public lands as well as protection of public safety, and reliability of infrastructure.

Energy production and transmission are important sources of revenue and job growth in rural America, and capitalizing on opportunities to reduce permitting times is a major focus of this Administration. The BLM is committed to improving and streamlining its permitting processes, including for rights-of-way, in the spirit of the Secretary's mandate contained in Secretarial Order 3354, *Supporting and Improving the Federal Onshore Oil and Gas Leasing Program and Federal Solid Mineral Lease Program*.

While FLPMA governs how the BLM administers many of its ROWs for electrical transmission and distribution, a significant number of ROWs were issued under various authorities before FLPMA was enacted in 1976. These pre-FLPMA ROWs were often issued for terms of 40 to 50 years, and typically did not contain vegetation management and reliability standards. When FLPMA was enacted, it repealed the prior authorities, but did not invalidate existing pre-FLPMA ROWs. BLM reauthorizes pre-FLPMA ROWs under Title V of FLPMA.

The BLM coordinates closely with thousands of public, private, and cooperative utility organizations, as well as other Federal agencies, in its administration of ROWs for electricity transmission and distribution. These relationships are governed by a number of authorities in addition to FLPMA, including a Federal Energy Regulatory Commission (FERC) order issued in September 2013 approving updated transmission vegetation management standards, and the Energy Policy Act of 2005. The requirements of these authorities encourage effective cooperation between the BLM and its partners, all of whom share the goals of enhancing the reliability of the electrical grid and reducing the risk of wildfires.

The updated vegetation management standards approved by FERC in September 2013 play an important role in maintaining electrical distribution and transmission infrastructure and preventing wildfire. Section 215 of the Federal Power Act (16 U.S.C. § 824o) requires that a FERC-certified electric reliability organization develop mandatory and enforceable reliability standards, which FERC then approves. In September 2013, FERC issued an order approving updated reliability standards submitted by the North American Electric Reliability Corporation, the electric reliability organization certified by FERC. The approved reliability standards, in part, address transmission vegetation management to improve the reliability of electricity transmission systems by preventing and minimizing outages from vegetation located in or near ROWs. The standards also address clearance between transmission lines and vegetation, and reporting

vegetation-related outages to the appropriate organizations, including the North American Electric Reliability Corporation.

Additionally, existing authorities like the Energy Policy Act have strengthened relationships between the BLM and its partners. Beginning in 2005, the BLM and other Federal agencies increased their collaboration with utilities in order to meet the Energy Policy Act mandate that Federal land management agencies expedite approval of certain actions that relate to vegetation management, electric service restoration, or are undertaken to address any situation that imminently endangers the reliability or safety of the facility.

The standards approved by FERC in 2013 fall under the purview of the Energy Policy Act of 2005, and the BLM is required to expedite approval of any actions undertaken by facility owners and operators to implement the 2013 standards. To accomplish this, the BLM is a party to – along with other Federal agencies and private organizations – a 2016 interagency Memorandum of Understanding (MOU) that formalizes a cooperative approach to streamlining the management of vegetation near utility facilities. The MOU facilitates the accomplishment of a variety goals, including maintaining reliable electrical service, improving safety, reducing the likelihood of wildfires, reducing soil erosion, reducing environmental risk, streamlining administrative processes, and incorporating integrated vegetation management practices intended to protect human health and the environment. Under the MOU, all parties agree to engage in timely communication and consistent management practices.

Another way the BLM streamlines its interactions with its partners is by working closely with utilities that hold many ROWs to establish master agreements that provide standard terms and conditions that can be applied to many ROW grants. This practice, in part, allows the BLM to engage in timely communication and consistent management as required by the MOU. These agreements not only enhance consistency across BLM offices, but they also create greater predictability and efficiency for the utility operators as they conduct business with the BLM.

Working closely with electrical ROW grant holders is important to the BLM not just because it is required by FLPMA, FERC, and the Energy Policy Act, but because without close coordination and frequent communication, effective vegetation management is not possible, and the consequences can be severe. If not managed properly, vegetation can damage infrastructure, leading to power outages and even wildfires. When a new ROW is issued or an existing ROW is renewed, the BLM considers, as part of the ROW, those activities that are necessary for the ongoing maintenance and operation of the electrical transmission lines in compliance with applicable environmental laws, including the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act, Section 7 of the Endangered Species Act.

In accordance with FLPMA and BLM's ROW regulations, the BLM also includes terms and conditions in ROW grants that cover the management of vegetation, which provides for predictability and clarity. These terms allow a utility company to conduct minor trimming, pruning, and weed management after notifying the BLM. The utility company can remove hazard trees through a streamlined process; timelines for approval vary by location and site-specific conditions. In situations that present an imminent hazard, no BLM pre-approval is necessary. For actions that fall outside the scope of the ROW grant and do not present an imminent threat, BLM approval is needed, and additional analysis may be required. This includes the cutting and removal of any timber or vegetative resource that has market value. Early and ongoing communication with the ROW holder can lead to expedited approval in some instances. The BLM acknowledges that there may be aspects of the approval process that can be streamlined further, and we welcome efforts to work with the Committee to make appropriate improvements.

Given the volatile fire season impacting the West, appropriate vegetation management of electrical transmission ROWs is critical because it protects vital infrastructure, and helps reduce wildfire risk. The BLM is committed to protecting people, infrastructure, and resources from the devastating effects of wildfires, as is outlined in the Secretary's recent directive on wildland fires. The reduction of wildfire risk is a high priority for the Secretary, who has tasked all of Interior's bureaus, superintendents, and land managers at all levels to adopt more aggressive practices, using the existing authority of the Department, to prevent and combat the spread of catastrophic wildfires through robust fuels reduction and pre-suppression techniques. The legislation being considered at this hearing would expand the BLM's toolbox to help reduce the threat of catastrophic wildfires like those we are currently experiencing.

The estimated number of human- and lightning-caused wildfires for Federal, state, and local jurisdictions for this year already exceeds 48,000. More than 8 million acres have burned across the United States, which is well above the annual average according to the National Interagency Fire Center. Hazardous fuels reduction treatments like mechanical thinning and mowing, herbicide use, salvage tree removal, and prescribed burns are a critical component of the BLM's strategy to reduce potential wildfire risk in forest management, as well as addressing potential issues when administering electric transmission ROWs. Utility companies are critical partners in this approach. They have assets to protect and customers to serve and they know catastrophic wildfires disrupt their ability to provide reliable and unfettered service. Additionally, electrical transmission and distribution ROWs can help the Department prioritize hazardous fuels reduction treatments in rural communities, because the presence of critical infrastructure is one of the factors the Department considers in prioritizing these projects.

H.R. 1873, Electricity Reliability & Forest Protection Act / Sec. 2310 of S. 1460, Energy & Natural Resources Act

H.R. 1873, the Electricity Reliability and Forest Protection Act, and Section 2310 of S. 1460, the Energy and Natural Resources Act, share common goals and language for enhancing electric reliability, promoting public safety, and avoiding fire hazards in electrical transmission ROWs. To accomplish these goals, both pieces of legislation would amend FLPMA by adding new provisions regarding vegetation management, facility inspection, and operation and maintenance activities within electric transmission and distribution facility rights-of-way.

Both H.R. 1873 and Section 2310 of S. 1460 require the Secretaries of the Interior and Agriculture to provide guidance to ROW grant holders on provisions regarding utility vegetation management, facility inspection, and operation and maintenance activities. The guidance would take into account all applicable law, local reliability and fire safety requirements, and the 2016 MOU that the BLM is a party to, and would be developed in consultation with the ROW grant holders.

The bills also provide electrical ROW grant holders the option to develop and submit a vegetation management, facility inspection, and operation and maintenance plan. The purpose of the plan is to provide a means of advance communication and streamlined interactions between the ROW grant holder and the BLM. Section 2310 lists what must be included in the plan, while H.R. 1873 refers to the plan more generally. Despite this difference, both pieces of legislation require that the Secretaries undertake a coordinated review and approval process of the plans – within 90 days under H.R. 1873 and within 180 days under Section 2310. The BLM supports the goals of increased coordination and efficiency that these plans represent, and we welcome the opportunity to work with the sponsors on the efficient protection of public safety and reliability of infrastructure.

H.R. 1873 and Section 2310 require the Secretaries to apply their respective categorical exclusion process under NEPA to any plan developed for existing ROWs. While Section 2310 does not make specific mention of hazard trees, it does address emergency conditions in much the same way that H.R. 1873 does. Namely, in cases where vegetation within ROWs or hazard trees adjacent to ROWs have contacted or are in imminent danger of contacting electric transmission lines, both pieces of legislation provide authority for grant holders to prune or remove the vegetation as long as they notify the appropriate agency within 24 hours afterwards. Under H.R. 1873, in cases that are not deemed as hazardous but where vegetation within or adjacent to ROWs does not meet the relevant standards, grant holders may conduct vegetation management activities to meet those clearance requirements if the agency fails to allow such activities within three business days after receiving a request for authorization to undertake them (in order to meet this requirement, the BLM would need to develop a categorical exclusion).

There is no parallel requirement in Section 2310. The BLM strongly supports efforts to reduce wildfire risk through vegetation management within the ROWs, particularly in emergency situations.

Finally, both bills impose an annual reporting requirement and encourage training. The Secretaries must report on responses to emergency conditions and compliance with applicable reliability and safety standards on their agency's websites. The bills also encourage both Secretaries to develop training programs for relevant employees regarding electric system reliability standards and fire safety requirements.

The BLM supports the legislation.

Conclusion

The BLM administers electrical transmission and distribution ROWs under FLPMA and other authorities in collaborative partnership with the holders of electrical transmission and distribution ROW grants. Well maintained ROWs ensure a reliable electrical grid that serves the community and reduces wildfire risk – important outcomes that the BLM continuously works to achieve more efficiently. The BLM supports Section 2310 of S. 1460 and H.R. 1873, and would appreciate the opportunity to work with the bill's sponsors on some technical recommendations.

The CHAIRMAN. Thank you, Mr. Ruhs.
Mr. Hayden, welcome.

STATEMENT OF MARK C. HAYDEN, GENERAL MANAGER, MISSOULA ELECTRIC COOPERATIVE

Mr. HAYDEN. Good morning, Chairman Murkowski, Ranking Member Cantwell and members of the Committee, and thank you to the Senator from Montana for his earlier introduction.

My name is Mark Hayden, and I'm the General Manager of Missoula Electric Cooperative (MEC) in Missoula, Montana.

MEC is a consumer-owned electric utility serving the distribution needs of approximately 15,000 meters in Western Montana and Eastern Idaho. We have 41 employees and approximately 2,000 miles of distribution line, nearly 300 miles of which cross federal land. MEC is a proud member of the National Rural Electric Co-ops Association, the Montana Electric Co-ops Association and the Northwest Public Power Association.

Montana's 2017 wildfire season has taken a devastating toll on our forests, our residents and our economy. More than a million acres have burned, lives and homes have been lost and hundreds of residents have been evacuated due to the threat of fire.

All of this highlights the importance of this hearing today because, while Montana's fires were all lightning-sparked, they serve as a vivid reminder of what could occur as a result of long delays in permit approvals and inconsistent application of policies by federal land managers. These actions place unnecessary risk on my cooperative and the entire public power community. In fact, the risk of fires as a result of hazardous trees is all too real across the West.

I know of one member-owned electric co-op in New Mexico that was held responsible for firefighting costs for a massive 152,000-acre fire caused by just one Aspen tree that fell on the power line in the co-op's Forest Service rights-of-way. The Forest Service sent the co-op a bill totaling more than $38.2 million; however, the co-op has only $20 million of liability insurance.

Another example of delays and inconsistencies is ongoing at Benton Rural Electric Association (BREA) in Washington State. BREA has waited 15 months to renew their special use permit for lines that have been in place for more than 70 years. Forest Service officials have now proposed nothing short of a full-blown environmental assessment which could cost the Association more than $100,000. In addition, BREA staff has historically been required to provide a list of danger trees for Forest Service inspection prior to their removal. Authorization can take three to six months, leaving an unnecessary risk of wildfire ignition while they wait.

Madam Chairman, I would request that two documents, one related to the New Mexico fire and the second, the Benton REA challenges, be placed into the hearing record.

The CHAIRMAN. Without objection.

[The information referred to follows:]

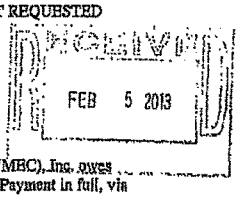
United States Department of Agriculture | Forest Service | Albuquerque Service Center Claims Management | 101 B San Avenue NE Albuquerque, NM 87109 1-877-372-7248

File Code: 6570

Date: January 31, 2013

Jemez Mountains Electric Cooperative, Inc.
ATTN: Ernesto A. Gonzales
19365 S.R. 84/285
Hernandez, NM 87537

CERTIFIED MAIL
RETURN RECEIPT REQUESTED



Re: Notice of Indebtedness to the USDA Forest Service

Dear Mr. Gonzales:

The Forest Service (FS) has determined that Jemez Mountains Electric Cooperative (JMEC), Inc. owes the United States $38,280,469.42. Enclosed are two copies of a bill for that amount. Payment in full, via check or money order, must be made within 30 days of the date of this letter to:

- USDA Forest Service, Albuquerque Service Center
  Attn: Unit Collection Officer
  101B San Avenue NE
  Albuquerque, NM 87109

Please return one copy of the bill with your payment. The second copy is for your records.

Basis of Indebtedness

The basis of this indebtedness is the direct costs incurred by the FS for the Las Conchas Fire, which was caused by down power lines owned by JMEC. According to the investigative report, on June 26, 2011, an aspen tree fell onto power transmission lines owned by JMEC causing the lines to burn and break resulting in the fire. The Las Conchas Fire burned approximately 152,012 acres of National Forest System (NFS) lands near New Mexico State Road 4 near the Las Conchas Trailhead located on the Jemez Ranger District of the Santa Fe National Forest.

Federal regulations prohibit causing a fire. Specifically, 36 C.F.R. §261.5(c) prohibits causing timber, trees, slash, brush or grass to burn except as authorized by permit.

In addition, the terms of JMEC's special use permit states that JMEC is liable for damages occurring under the terms of the permit, including fire suppression costs. Therefore, JMEC is liable for the costs of suppressing the fire. Documentation supporting the costs incurred by the FS is enclosed.

Interest, Penalties, and Administrative Costs

Pursuant to 31 U.S.C. 3717(b), 31 C.F.R. § 901.9 and 7 C.F.R. § 3.17, this debt is subject to interest, penalties, and administrative costs if it is not paid in full by the due date.

The current interest rate for delinquent debts owed the United States is 1.0 percent. If the debt is not paid in full within 90 days of the due date, you will also be charged a penalty of one percent per annum on the

amount overdue. Interest and penalty charges will be calculated from the date the bill was issued, and will continue to accrue until it is paid in full. Additionally, you will be charged applicable administrative costs to cover processing and handling of the overdue debt.

Reporting Requirement

Pursuant to 7 C.F.R. § 3.12, this debt may be reported to credit bureaus if it is over 60 days delinquent.

Additional Collection Measures

If you do not take one of the three actions described below within 30 days from the date of this notice, the FS will refer your debt to the United States Department of Justice (DOJ) pursuant to 7 C.F.R. § 3.21 for further collection action.

Action Necessary to Avoid Late Charges and Referral to DOJ

To avoid reporting to credit bureaus and referral to DOJ for litigation you must do one of the following within 30 days of the date of this notice:

1. Pay your debt in full, as provided above.
2. Agree to a payment plan. If you are unable to pay your debt in full, you must contact Loredia Brooks at the address above or by telephone at 505-563-7192, sign a payment plan agreement with the FS, and make payments as required in the agreement.
3. Document an automatic stay in a bankruptcy proceeding. If you have filed for bankruptcy and an automatic stay is in effect, please provide a copy of the bankruptcy petition containing the stamp of the clerk of the bankruptcy court to Loredia Brooks at the address above.

You have a right to inspect and copy the FS records related to this debt. You must pay for copying costs.

If you have insurance, you may want to consider referring this debt to your insurance carrier.

If you have any questions about this notice, please contact Loredia Brooks at 505-563-7192.

for A. LISA LUX
Branch Chief, Claims/Claims Officer

Enclosures

United States Department of Agriculture
Forest Service
FY 2013 TROB Summary Report for
LAS CONCHAS BAER, Santa Fe National Forest, 6-26-2011

Accounting Month: YTD
Last Month of TROB Data Imported for this fiscal year: OCT – 2013

Job Code: HNF5PS11

Program	Resource Type	Pay Hours	Pay Days	Obligations	Expenditures
WFSU	01 - MISC UNPLANNED	0.00	0.00	$0.00	$943.20
	02 - BASE PAY 1100	4,893.50	624.19	$0.00	$139,877.79
	03 - PREMIUM PAY 1100	9,472.00	1,184.00	$0.00	$151,184.09
	04 - OTHER PERSONNEL 1193	52.00	6.50	$0.00	$103,717.70
	05 - CONTRACTS 2600	0.00	0.00	$0.00	$1,099,252.67
	06 - AIRCRAFT 2541	0.00	0.00	$0.00	$8,428.92
	07 - FLEET 2513	0.00	0.00	$0.00	$7,321.66
	09 - MTRLS & SUPPLIES 2600	0.00	0.00	-$0.00	$76,883.34
	10 - RENT,COMM/UTIL 2300	0.00	0.00	$0.00	$36.26
	11 - TRANSPORTATION OF THINGS 2200	0.00	0.00	$0.00	$267.47
	12 - TRAVEL 2100	0.00	0.00	-$0.00	$64,805.63
HNF5PS11 Total		14,417.50	1,814.69	-$0.00	$1,648,478.75

Job Code: HNF5PS12

Program	Resource Type	Pay Hours	Pay Days	Obligations	Expenditures
WFSU	01 - MISC UNPLANNED	0.00	0.00	$0.00	$30.05
	02 - BASE PAY 1100	1,030.50	129.81	$0.00	$19,365.46
	03 - PREMIUM PAY 1100	416.25	51.91	$0.00	$6,994.33
	04 - OTHER PERSONNEL 1193	0.00	0.00	$0.00	$15,571.56
	05 - CONTRACTS 2600	0.00	0.00	$0.00	$4,200.00
	07 - FLEET 2513	0.00	0.00	$0.00	$68.79
	09 - MTRLS & SUPPLIES 2600	0.00	0.00	$0.00	$2,894.93
	12 - TRAVEL 2100	0.00	0.00	$0.00	$6,516.18
HNF5PS12 Total		1,445.75	180.72	$0.00	$55,641.10

Report Total		15,863.25	1,995.41	-$0.00	$1,704,119.85

United States Department of Agriculture
Forest Service
FY 2012 TROB Summary Report for
LAS CONCHAS, Santa Fe National Forest, 6-26-2011

Accounting Month: YTD
Last Month of TROB Data Imported for this fiscal year: SEP -- 2012

Job Code: PNF5PS11

Program	Resource Type	Pay Hours	Pay Days	Obligations	Expenditures
WFSU	01 - MISC UNPLANNED	0.00	0.00	$0.00	$50,179.55
	02 - BASE PAY 1100	109,186.50	21,149.19	$0.00	$4,865,505.69
	03 - PREMIUM PAY 1100	493,237.25	91,664.65	$0.00	$5,197,571.36
	04 - OTHER PERSONNEL 1193	55.00	7.25	$0.00	$1,188,720.84
	05 - CONTRACTS 2500	0.00	0.00	$0.00	$8,884,530.89
	06 - AIRCRAFT 2541	0.00	0.00	$0.00	$8,525,624.12
	07 - FLEET 2513	0.00	0.00	$0.00	$694,894.88
	08 - GRANTS & AGREEMENTS 4100-2551	0.00	0.00	$0.00	$2,674,798.69
	09 - MTRLS & SUPPLIES 2600	0.00	0.00	$0.00	$1,187,886.61
	10 - RENT,COMM/UTIL 2300	0.00	0.00	$0.00	$212,885.67
	11 - TRANSPORTATION OF THINGS 2200	0.00	0.00	$0.00	$36,800.69
	12 - TRAVEL 2100	0.00	0.00	$0.00	$1,223,267.17
PNF5PS11 Total		602,480.75	92,810.09	$0.00	$36,617,332.93

Job Code: PNF5PS12

Program	Resource Type	Pay Hours	Pay Days	Obligations	Expenditures
WFSU	01 - MISC UNPLANNED	0.00	0.00	$0.00	$5,133.41
	02 - BASE PAY 1100	1,282.75	161.59	$0.00	$28,823.05
	03 - PREMIUM PAY 1100	447.25	55.91	$0.00	$11,366.66
	04 - OTHER PERSONNEL 1193	0.00	0.00	$0.00	$10,438.04
	05 - CONTRACTS 2500	0.00	0.00	$0.00	$0.00
	07 - FLEET 2513	0.00	0.00	$0.00	$1,671.00
	09 - MTRLS & SUPPLIES 2600	0.00	0.00	$0.00	$946.17
	10 - RENT,COMM/UTIL 2300	0.00	0.00	$0.00	$195.19
	11 - TRANSPORTATION OF THINGS 2200	0.00	0.00	$0.00	$6.75
	12 - TRAVEL 2100	0.00	0.00	$0.00	$694.28
PNF5PS12 Total		1,740.00	217.50	$0.00	$59,016.84

Report Total		604,220.75	93,027.59	$0.00	$36,676,349.57

US FOREST SERVICE
BILL FOR COLLECTION

BILL DATE: 02/01/13 PAGE: 01

ENCLOSE A COPY OF THIS BILL WITH YOUR CHECK OR MONEY ORDER.
DO NOT SEND CASH. PLEASE INCLUDE BILL NO. AND PAYER CODE
ON YOUR CHECK.
MAKE CHECK PAYABLE TO:
US FOREST SERVICE

MAIL PAYMENT TO:
USDA FOREST SERVICE, ALBUQUERQUE SERVICE CNTR
ATTN UNIT COLLECTION OFFICER
101B SUN AVENUE
ALBUQUERQUE, NM 87109
OR PAY ONLINE AT WWW.FS.FED.US/BILLPAY

TO:

JEMEZ MTNS ELEC COOP INC
P O BOX 2939

ESPANOLA NM 87532

PAYER INDICATE
AMOUNT ENCLOSED:

NET AMOUNT DUE: $ 38,280,469.42

DUE DATE: 03/01/13

BILL NUMBER: AB CLH03LVB001

PAYER CODE: 850098061 A

AGREEMENT NO: CONTRACT NO: LBROOKS

DESCRIPTION: 2011 LAS CONCHAS FIRE

REMARKS:
RE: PAYER CODE: 850098061 A BILL NO: AB CLH03LVB001

NOTE:
PLEASE SEND ALL CORRESPONDENCE, INQUIRIES, AND CHANGE OF ADDRESS
TO:

US FOREST SERVICE, ABQ SRV CTR
101B SUN AVE NE - CCAIMS
ALBUQUERQUE, NM 87109
877-372-7248 BUDGET & FINANCE

PRINCIPAL:	$ 38,280,469.42
INTEREST:	
ADMINISTRATIVE COSTS:	
PENALTY:	
AMOUNT DUE:	$ 38,280,469.42
AMOUNT CREDITED:	
NET AMOUNT DUE:	$ 38,280,469.42

FAILURE TO MAKE PAYMENT BY THE DUE DATE WILL RESULT IN THE ASSESSMENT OF LATE PAYMENT CHARGES (INTEREST, ADMINISTRATIVE COST, AND/OR PENALTY CHARGES) IN ACCORDANCE WITH YOUR CONTRACT, PERMIT, OR THE DEBT COLLECTION ACT OF 1982, AS AMENDED. POSTMARKS ARE NOT HONORED. LATE FEES DO NOT APPLY FOR BILLINGS IN ADVANCE OF RECEIPT OF GOODS OR SERVICES

LINE: 001 ORG: 0310 JOB: FNF5P811
LINE: 002 ORG: 0310 JOB: HNF5P811

ON JUNE 26, 2011, THE LAS CONCHAS BURNED A TOTAL OF 152,012 ACRES OF NATIONAL FOREST SERVICE LANDS ON THE SANTA FE NATIONAL FOREST, JEMEZ RANGER DISTRICT. THE FIRE WAS CAUSED BY DOWNED POWER LINES OWNED BY JEMEZ MOUNTAINS ELECTRIC COOPERATIVE, INC.

ASC CLAIMS SPECIALIST: LOREDIA BROOKS 505-563-7192

LINE	ORG	JOB	AMOUNT
001	0310	FNF5P811	$ 36,576,349.57

LINE	ORG	JOB	AMOUNT
002	0310	HNF5P811	$ 1,704,119.85

LINE	ORG	JOB	AMOUNT

Caring for the Land and Serving People

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Benton REA
THE COOPERATIVE WAY!

BENTON RURAL ELECTRIC ASSOCIATION

402 7TH Street • P.O. BOX 1150 • PROSSER, WASHINGTON 99350 • 509/786-2913 • Fax: 509/786-0291

September 15, 2017

RE: Benton REA Statement of Experience regarding the ownership and permitting of facilities on (United States Forest Service) USFS lands.

Benton REA (BREA) has owned and operated an Electric Power Distribution and Transmission System on USFS land since the mid 1950's, and we currently serve 439 members through about 20 miles of poles and wires in a 30 foot right of way. BREA operated under a 20-year Special Use Permit (SUP) granted by the USFS until December 31, 2015, when the term of the permit expired. BREA has been operating under One-Year Temporary SUP's for the last two years as we attempt to secure a renewed long-term USFS SUP. BREA initiated a request to renew the SUP six months prior to its expiration, in the summer of 2015, and BREA staff has spent the last two years working in frustration to obtain a renewed USFS SUP.

Initially BREA submitted an Application (SF299) in August of 2015 and we were told that the USFS would develop a Scope of Work for the SUP Reissuance, and we were also told that we would need an operating plan put in place as well. Benton REA staff provided a draft Operating plan to the USFS that had been recently approved by the same USFS group in another area for another Electric Cooperative. Following months of phone calls to leave voice mail messages for the USFS, and after many months of unanswered emails, our frustration came to a head, and we requested a formal meeting with the District Ranger, since the December 31, 2015 deadline to renew the SUP was fast approaching. During this meeting with the District Ranger, we were assured that Benton REA would be issued a Temporary SUP for 2016 which would allow the USFS time to draft the above-mentioned Scope of Work.

The next six months proved to be a re-run of the first six months of dealing with this issue, with no contact made unless we made the call, and no response to our emails. Out of frustration, we tried a new tactic of not initiating any more contact with the USFS, and we planned to operate under the Temporary SUP until they contacted us and told us what they wanted in order for a reissuance of the regular SUP. After contacting the USFS again in November, and the requesting the Temporary SUP on December 12, 2016, they finally sent us a new Temporary SUP for 2017, and again assured us that a Scope of Work for Reissuance was imminent. Finally, in March of 2017 Benton REA received a Draft Scope of Work for SUP Reissuance.

We finally thought the process could get started, but after reading the Scope of Work described by the USFS, we requested an immediate meeting. The Scope of Work the USFS had outlined

was nothing short of a full blown Environmental Assessment, or EA, which would be required for a totally new project. Our facilities in the USFUS area have been in place there for almost 70 years, and we weren't proposing any action or impacts other than the right to continue serving the Benton REA cooperative members with electrical service as we had in the past. The Benton REA staff then requested the assistance of an Environmental Consultant to provide a cost estimate of the Scope of Work (issued by the USFS) with the assumption that Benton REA would follow all of the outlined steps listed in the Scope of Work document. The Consultant estimated that the cost could exceed $100,000 for Benton REA. Benton REA again requested a formal meeting with the District Ranger and her staff at that point.

During the meeting that was held with the District Ranger and her staff, they explained that it was their goal to include a newly described Operations and Maintenance Plan as part of the SUP, which they claimed would give us greater flexibility to manage the Danger Trees (dead trees outside of the powerline right-of-way), which we identify every two years using a certified Arborist. The previous USFS practice had been for them to obtain our list of Danger Trees, and then visit the locations of the listed trees to make a determination as to whether or not they should be removed, and then grant us authority to remove the trees that they felt needed to be removed. This process could take them three to six months to complete, leaving a high risk of wildfires to ignite from possible Danger Trees falling throughout the summer months.

Benton REA staff was not comfortable with the estimated cost of $100,000 for completing the Reissuance Scope of Work, and is skeptical about the USFS concept that it would speed up our ability to remove Danger Trees, because our experience with the USFS thus far has demonstrated otherwise. Our primary frustration is that when we look for Danger Trees we look at the area 50 feet from the centerline of our powerline, which if calculated for possible impacts from trees would total 100 feet by 20 miles, equaling 242.5 acres. A typical wildfire could easily burn that amount of acreage within the first half hour of starting, and on average would destroy thousands of acres once it got started. We struggle to understand how the USFS's insistence that conducting rigorous Mollusk, sensitive plant, endangered species, and etc., surveys and studies, on land where a powerline has been located for almost 70 years, makes sense.

Benton REA takes pride in providing reliable electrical power to those Benton REA members with electric accounts located within the boundaries of the USFS land, but would appreciate a realistic and commonsense approach being implemented that would allow Benton REA to acquire the required USFS Special Use Permit in a reasonable amount of time!

Sincerely,

Michael J. Bradshaw
General Manager/Executive Vice President

Mr. HAYDEN. My co-op, like so many parts of the West, has been adversely affected by the mountain pine beetle infestation. To maintain reliable service, especially to remote emergency equipment, MEC at one point had to cut, retrieve and deck, at considerable expense, a number of dead trees. MEC has never marketed a single log cut on Forest Service land nor would profiting from cutting trees ever be a motivating factor.

Given our beetle kill situation, it was decided in December 2013 to bury six miles of overhead line, and we were told by the Forest Service Office to expect approval in six months. As that deadline passed we made an appeal for help from then Congressman Daines, who brought our situation to the attention of House Committee on Natural Resources, Subcommittee on Water, Power and Oceans for later that year.

In May 2015 I was invited to provide testimony before that same Subcommittee regarding our project delay. In preparation, I placed one final call to the local district ranger to express my frustration and he indicated that if I wanted to see things change I should take my issue up with Congress, at which point I told him I intended to do so the following week. Two days later on a Saturday afternoon, MEC received an unofficial notice via email to proceed with our project. We waited nearly 18 months for approval of a project that qualified for categorical exclusion. I can only imagine the number of months or years project approval would have taken had more in-depth investigations applied.

We commend the House for recently passing H.R. 1873 that received strong, bipartisan support and this Committee for proposing meaningful reforms through language changes in the current energy bill.

I also want to recognize the efforts of Senator Daines for his continued strong involvement in this issue for the benefit of consumer-owned utilities across the nation. While the language may vary, some critical elements in the passage of any final legislation should include: optionality regarding vegetation management plans; firm deadlines on the agencies to ensure timely turnaround; categorical exclusion provisions must be included; liability relief should be granted for agency's failure to respond in a timely manner to utility request for authorization; and training provisions should encourage consistency.

Some have expressed concerns that legislative remedies, such as timelines, liability relief, are only setting our forests, our federal agencies, up for failure. While I'm not here today to pass judgment on current forest management practices, I would argue that current fuels reduction efforts, initial response plans that allow small fires to grow and long delays for agency approvals is only setting electric suppliers up for failure as well with devastating consequences to the forest and the utility.

Thank you again for the honor of testifying before this Committee, and I will be pleased to answer any questions.

[The prepared statement of Mr. Hayden follows:]

United States Senate Committee on Energy and Natural Resources

Testimony of Mark C. Hayden
General Manager, Missoula Electric Cooperative

"Vegetation management requirements for electricity assets located on federal lands"

September 19, 2017

Good Afternoon Chairman Murkowski, Ranking Member Cantwell, and members of the committee, my name is Mark Hayden, and I am the General Manager of Missoula Electric Cooperative (MEC) in Missoula, Montana.

Thank you for the opportunity to testify on the important issue of vegetation management for electricity assets on federal land. Today, our hearts go out to those affected by the devastating hurricanes in Texas and more recently in Florida. As residents of these states work to rebuild their homes, businesses and communities, I want to recognize the ongoing efforts of the thousands of utility employees that are working around the clock to safely restore power. It is during these difficult times that we are all reminded of the critical importance of our nation's energy infrastructure.

MEC is a consumer-owned electric utility serving the electric distribution needs of approximately 15,000 meters in Western Montana and Eastern Idaho. We are governed by a seven-member Board of Trustees that is democratically elected from the local communities in which they reside. Our workforce includes 41 skilled and dedicated employees committed to serving the energy needs of our member-owners. The nearly 2,000 miles of distribution line that we maintain deliver energy to some of the most wild and scenic locations in the country- nearly 300 miles of which cross federal land. MEC is a proud member of the National Rural Electric Cooperative Association, the Montana Electric Cooperatives' Association, and the Northwest Public Power Association. Simply put we exist for one reason- to enhance and improve the quality of life for the members we serve.

Montana, like so many western states, has experienced its own natural disasters in recent months. The 2017 wildfire season has had a devastating effect on our state and local economies. More than one million acres have burned, lives have been lost, homes have been lost, and hundreds of residents have been evacuated due to the threat of fire, including my own family. Montana is not alone in this challenge. Last week the Forest Service reported that spending on the 2017 wildfire season had topped $2 billion nationally, fighting 48,607 wildfires in forest so choked with trees that they are at "powder keg levels" according to one Forest Service ecologist. Some Committee members may have similar stories from the states they represent, and it highlights the importance of this hearing today.

I fully recognize that the fires burning in Montana today were all lightning sparked. But, for me, these fires serve as a vivid reminder and warning of what could occur as a result of long delays in permit approvals and inconsistent application of policies by federal land managers. These actions place an unnecessary risk on my cooperative and the entire pubic power community.

That is why I believe federal reforms are needed to cut red tape and make it easier to manage vegetation to limit downed power lines, prevent catastrophic fires, and respond to emergencies.

In fact, the risk of fires as a result of hazardous trees is all too real across the West. For example, I know of one member-owned electric cooperative in New Mexico that was held responsible for the costs of fighting a massive 152,012 acre fire caused by just one aspen tree that fell onto the power line in the co-op's Forest Service right of way. The Forest Service sent the co-op a bill totaling more than $38.2 million, however the co-op has only $20 million in liability insurance.

At MEC we are constantly working to improve system reliability, and vegetation management is a critical component of our program, both on and off federal land. We also work diligently to maintain good relations and open communications with the various Forest Service Offices and Ranger Districts with which we interact. In most cases, those district offices and the people that staff them live locally and have a vested interest in the health and welfare of the forest, and it shows. Unfortunately, many of these positions turn over frequently and decision makers move within the agency before relationships can be established.

A great example of good cooperation with federal land managers has occurred during the clearing of danger trees outside of our rights-of-way during routine Operations and Maintenance activities. Representatives from MEC and local Forest Service Officials have communicated and expectations are understood. As a result, managers and crews can adequately plan for the time and financial resources necessary to complete a project. Another positive example occurred during the summer of 2014 when a power line river crossing was toppled during spring runoff. Once emergency power restoration was complete, we requested burial of the line and approval was granted within hours, as it should be in the case of Emergency Operations and Maintenance activities.

But this positive situation is not found on all rights-of-way managed by the Forest Service. Other public power representatives have testified before Congress of inconsistent federal land management policies, long delays in approval and review times, and the unnecessary liability resulting from these delays.

One such example is ongoing at Benton Rural Electric Association (BREA) in Prosser, Washington. BREA's Special Use Permit that allows them right-of way access through federal land expired in December 2015, and an application for renewal was submitted in August of that same year. After waiting 15 months, Forest Service officials have now proposed nothing short of a full blown Environmental Assessment for which costs could exceed $100,000 for facilities that have been in place for more than 70 years. Reasons given include the need to implement a newly described Operations and Maintenance plan as part of the updated permit to manage Danger Trees. According to BREA, past practice has included providing the Forest Service with a list of Danger trees, after which a Forest Service staff member visits each site to grant authority for removal. This process typically takes three to six months to complete, leaving an unnecessarily high risk of wildfire ignition from Danger Trees toppling throughout the summer months.

For my co-op in Montana, our service area, like so many parts of the West, has been adversely affected by the Mountain Pine Beetle infestation and the dead and dying trees left in its wake.

One of the areas hardest hit is in the Swan Valley north of Seeley Lake, Montana. During the winter of 2009, hazard tree failure repeatedly interrupted service to an inaccessible emergency 911 tower location, and MEC tree crews felled numerous trees that further threatened this critical service, all of which were dead. When weather permitted, the agency required us to retrieve the downed timber using an expensive, labor intensive method to minimize impact to "flora and fauna" from mechanical equipment. Ironically, the Forest Service conducted a timber sale on the same tract later in the year using the exact mechanical forestry techniques that we were prohibited from employing. In essence, we were held to a higher standard than they held themselves. MEC cut, retrieved and decked at its own expense these dead trees, and no profit from the sale of any timber was ever received. In fact, to my knowledge MEC has never marketed a single log cut on Forest Service land. Our co-op does not yield profits from cutting these trees nor would it ever be a motivating factor. We are in the business of providing reliable electric service, and our only motivation to remove a tree is when that service is threatened.

Obviously, one of the most effective ways to improve service reliability and mitigate fire risk is to bury an overhead power line. As you can imagine, each instance of tree/power line contact can pose significant risk of wildfire ignition under the right environmental conditions. However, converting overhead distribution lines to underground is an expensive proposition, especially for a small cooperative like MEC, so this cannot be standard practice.

After considerable internal discussions regarding the beetle kill situation referred to above, the decision was made in December 2013 to request permission to bury approximately six miles of overhead three-phase line on Forest Service land. An application was submitted to the Forest Service district office having jurisdiction over the proposed project, and, just one month after submittal, we were notified that approval of our request was expected by June of 2014.

However, as the months progressed our hopes dimmed. Eventually, we made an appeal for help from then Congressman Daines, who brought our situation to the attention of the House Committee on Natural Resources, Subcommittee on Water, Power & Oceans later that year.

In May of 2015, I was invited to provide testimony before the same Subcommittee regarding the delay in approval of our project application. In preparation for my testimony, I placed one final call to the local Forest Service District Ranger to express my frustration just prior to the hearing. This local official indicated that if I wanted to see things change I should take up my issue with Congress, at which point I told him that I intended to the following week! Two days later on Saturday, May 16th at 4:06 p.m., the weekend prior to the hearing, MEC received unofficial notice via email that indicated all field work had been completed on our project, confirmed that our co-op had paid the Forest Service for all associated costs, and authorized us to begin construction.

In all, MEC waited nearly 18 months for approval on the Swan Valley project. Most troubling to me is that the project qualified for categorical exclusion, meaning neither an environmental assessment or environmental impact statement was required. I can only imagine the number of months or years project approval would have taken had those more in-depth investigations applied.

For that reason, we commend the House for recently passing H.R. 1873, the "Electricity Reliability and Forest Protection Act" that received strong bipartisan support. Likewise, this committee has proposed meaningful reforms through language changes in the current Energy Bill. I also wish to recognize the efforts that Sen. Daines had for bringing my issue to Washington in 2014, and appreciate his continued strong involvement in this issue for the benefit of not just cooperatives in Montana, but all consumer owned utilities across the nation. While the language may vary slightly in each of the bills introduced to date, the critical elements in the passage of any final legislation would include, but not be limited to the following:

- Optional participation provisions in the development of vegetation management plans must be included to ensure that small utilities that lack the resources to develop such plans are allowed to forgo that requirement
- Firm deadlines must be included to ensure timely turnaround on utility request
- Categorical Exclusion provisions must be included if time deadlines for the agencies are to be met
- Liability relief must be granted for an agencies failure to respond in a timely manner to utility request for authorization
- Exclusion for response to emergency conditions to eliminate fire, safety and reliability hazards
- Training provisions should encourage consistency across an agency workforce that experiences high turnover

As the manager of MEC, my primary duties are to protect the safety and security of my employees and the public we serve, to ensure system reliability, and to manage costs to the best of my ability- in that order. Decisions made by the Forest Service regarding fuels and vegetation management, how quickly they respond to wildfire events, and how timely and efficiently they respond to requests for right-of way maintenance and permit applications and amendments has a dramatic impact on all three.

During conversations over the past few years on this issue, some have expressed concerns that legislative remedies such as firm timelines for decision making, and liability relief if those timelines are not met, are only setting our federal agencies up for failure. I am certainly not here today to pass judgement on current forest management practices, but I would argue that fuels reduction efforts that have created "powder keg levels" of fuel, an initial response plan that allows small fires to grow, and long delays for agency approvals by utilities is only setting electric suppliers up for failure. Current management practices dictate that a powerline sparked wildfire that could have been managed and controlled in the past may be allowed to grow out of control with devastating consequences to the forest and the utility. We must remember that if either of us fails in our responsibility, it is the person at the end of the line that pays the price. The sooner we recognize that utilities and federal agencies are not at odds, but instead partners in solving this challenge, the better the long-term protection of our forest resources, and the health and welfare of the public we both serve.

Thank you again for the honor of testifying before this committee and I will be pleased to answer any questions.

The CHAIRMAN. Thank you, Mr. Hayden.
Mr. Miller.

STATEMENT OF SCOTT MILLER, SENIOR REGIONAL DIRECTOR, SOUTHWEST REGION, THE WILDERNESS SOCIETY

Mr. MILLER. Thank you, Chairman Murkowski, Ranking Member Cantwell and members of the Committee for the opportunity to testify today.

At the outset, I wanted to thank you for your comments earlier and Senator Heinrich about Senator Domenici. He was the Chairman for most of the time I worked for this Committee, and I wanted to express my condolences to his staff.

The Wilderness Society supports efforts to develop needed energy resources, where and when appropriate and when conducted in a responsible manner, especially the renewable wind, solar and geothermal resources found on our public lands.

As an aside I wanted to thank Senator Heinrich for his leadership with Senator Heller on the Public Lands Renewable Energy Development Act which is pending in this Committee.

Since this Committee's important work in the Energy Policy Act of 2005, utility vegetation management planning and practices have improved substantially. At the same time, the importance of strong utility vegetation management practices continues to grow as climate change is causing longer wildfire seasons; longer growing seasons; larger and more severe wildfires; changing plant species distributions; increased insect and disease activity; and more intense, more frequent and more longer-lasting drought, wetness, and weather events. These impacts and the related dynamics on utility vegetation management underscore the need for proactive, well-planned and adaptable utility vegetation management programs to ensure electric reliability and reduce wildfire risk. To do so, it's necessary for the utilities and federal land managers to work cooperatively to ensure their stewardship obligations are met.

The Wilderness Society opposes H.R. 1873 because it would frustrate rather than facilitate sound utility vegetation management, and it would undermine public land stewardship and the public interest. For example, as a result of its inconsistent, broad and contradictory provisions regarding the application of state and local requirements, H.R. 1873 could leave federal land managers and utilities in the untenable position of having to comply with conflicting, inapplicable or inadequate state and local requirements for fire safety and electric system reliability. H.R. 1873 provisions on liability could leave the agencies and ultimately the taxpayers to cover the damages caused by the utility's own negligence or even gross negligence. And the bill dramatically compounds its many problems by applying its provisions to all lands under the jurisdiction of the Secretary of the Interior, including our National Parks, National Wildlife Refuges and even trust and restricted-fee lands of Native American tribes and individuals.

Those are just a few of the concerns summarized in our written testimony. The BLM and the Forest Service raises still others in their testimony given during a hearing in the House.

Section 2310 of S. 1460, on the other hand, takes a much more thoughtful approach that corrects or avoids many of the flaws of

H.R. 1873. We would like to offer some suggestions to clarify and improve Section 2310. Section 2310 authorizes utilities to carry out certain activities if the agencies fail to respond to their requests in a timely manner. We agree that it's reasonable that the utilities ought to be able to expect timely responses from the federal land managers; however, we're concerned that the provision could have unintended consequences such as counterproductively resulting in planned schedules that result in unnecessary delays for routine approvals. Instead, we recommend that the bill impose a mandatory duty on the Secretaries to respond in accordance with the approved schedules. Consistent with points made in Mr. Rable's testimony and the Forest Service's testimony in the House, we recommend that the bill use hazard trees as a reference to clarify the scope of Section 2310's provisions relating to vegetation management adjacent to utility rights-of-way. And finally, clarifying that the authority of the Secretary and the utilities to make modifications of approved plans or withdraw approval, if necessary, would help to ensure adaptive management and that both parties retain the ability to effectively and efficiently meet their obligations.

Again, thank you for your good work on Section 2310 and the opportunity to testify on it. We'd welcome an opportunity to work with Committee staff on these and a few other suggestions, if the legislation moves forward.

I'd be happy to answer any questions you may have.

Thank you.

[The prepared statement of Mr. Miller follows:]

Testimony of
Scott Miller
Senior Regional Director, Southwest Region
The Wilderness Society
Before
Energy and Natural Resources Committee
United States Senate
On
Section 2310 of S. 1460, the Energy and Natural Resources Act of 2017, and H.R. 1873, the Electricity Reliability and Forest Protection Act.

Thank you Chairman Murkowski and Ranking Member Cantwell for the opportunity to provide testimony regarding vegetation management requirements for electricity assets located on federal lands.

The Wilderness Society works on behalf of its more than 1 million members and supporters to protect wilderness and inspire Americans to care for our wild places. We are dedicated to ensuring the conservation and sound management of our shared national lands.

We support efforts to develop needed energy resources where and when appropriate, and when conducted in a responsible manner. This includes responsibly developing the renewable wind, solar, and geothermal resources found on our public lands, including through the Public Lands Renewable Energy Development Act (S. 282), sponsored by Senators Heller, Heinrich, Gardner, Risch, Daines, and others. The Wilderness Society works closely with industry, the Federal land management agencies, and others to advocate for appropriate siting of electrical transmission infrastructure on public lands, especially when necessary to make the development of renewable energy possible. As with any form of development on public lands, the development and maintenance of renewable energy and electricity transmission infrastructure must take place in a responsible manner that protects the ecological integrity and many other public interests in our public lands.

Since this Committee's important work on utility vegetation management ("UVM") standards in the Energy Policy Act of 2005, UVM practices have improved substantially. At the same time, the importance of strong UVM practices continues to grow as climate change is causing longer wildfire seasons, larger and more severe wildfires, longer growing seasons, changing plant-species distributions, increased insect and disease activity, and more intense, more frequent and longer-lasting drought, wetness, and weather events. The impacts of these climate-related dynamics on UVM are well-established, and they underscore the need for pro-active, well-planned, and adaptable UVM programs to ensure reliability and reduce wildfire risk.

Utilities have important obligations to meet UVM standards and ensure reliable electricity transmission, and it is necessary for Federal land managers to work

cooperatively and consistently with utilities to allow them to carry out UVM to meet those obligations. At the same time, Federal land management agencies have important land management and public interest obligations to meet in managing utility rights-of-way and UVM, and it is necessary for utilities to work cooperatively with the agencies to ensure those stewardship obligations are met.

There are many examples of exemplary collaboration between utilities and Federal land managers to carry out effective UVM programs, and recent efforts by the utilities and agencies have expanded those efforts. At the same time, we understand that there is more that can be done to improve the management of rights-of way across Federal lands to ensure that utilities can and do meet their UVM obligations in a manner that is consistent with sound stewardship of our public lands. It also is important to recognize that the challenges in coordinating UVM between utility and landowner are not limited to Federal land managers; utilities often choose to site transmission lines on Federal lands because of the significant siting and maintenance challenges associated with private lands.

Cooperation is essential to any effective and sustainable UVM program, and we believe it should be the touchstone for any legislation to advance reliability, wildfire protection, and public land management in the context of UVM. We appreciate that the Federal land management agencies and utilities have embraced the importance of a cooperative approach to advancing UVM.[1] We also believe there is an important role for public participation in decisions affecting our public lands, and that role should be respected and protected in a manner that is consistent with the utilities' and agencies' ability to meet their UVM obligations.

The Wilderness Society opposes H.R. 1873 because it fails to appropriately recognize the Federal land management agencies' obligations or the public's interest in Federal land management and because it fails to provide for the necessary cooperation that will improve effective and sustainable UVM on Federal lands. H.R. 1873 would establish counterproductive limitations and obligations on both utilities and Federal land managers,

[1] The importance of a cooperative approach was embraced in testimony on the version of H.R. 1873 that was introduced in the 114th Congress (H.R. 2358) at a hearing in the House Natural Resources Committee's Subcommittee on Water, Power, and Oceans on May 20, 2015, by the BLM ("BLM appreciates any opportunity to work collaboratively with all our stakeholders and partners, including utility companies, and recognizes the value of advance planning for future maintenance needs when possible. Ongoing communication and coordination are also critical to ensuring that both the BLM and the utility can respond to vegetation management requirements in a timely manner."), the Forest Service ("To enhance cooperation and efficiency in maintenance of electric transmission and distribution line rights-of-way, the Agency encourages utilities to meet with field personnel, explain required actions, and work collaboratively to develop plans for getting work done."), and the Missoula Electric Cooperative ("We also work diligently to maintain good relations and open communications with the various Forest Service Offices and Ranger Districts with which we interact. In many cases, those district offices and the people that staff them live locally and have a vested interest in the health and welfare of the forest, and it shows. A great example of this level of cooperation occurs regularly during the clearing of danger trees outside of our rights-of-way during routine Operations and Maintenance activities.").

inappropriately shift costs from utilities to taxpayers and agencies, and undermine the public interest in the management of their public lands.

To the extent additional legislation is necessary, section 2310 of S. 1460, on the other hand, provides a strong foundation for improving coordination and cooperation between utilities and Federal land managers to ensure that utilities can effectively and appropriately meet their UVM obligations. While we would like to make a number of important suggestions—largely technical in nature—to improve section 2310, the bill provides a thoughtful framework for legislation to advance UVM on public lands. We would welcome the opportunity to work with the Committee on our suggestions if the legislation moves forward.

H.R. 1873: Electricity Reliability and Forest Protection Act

H.R. 1873 would amend the Federal Land Policy and Management Act by adding a new section 512 to address UVM on rights-of-way for electrical transmission and distribution facilities on National Forest System lands, public lands administered by the Bureau of Land Management ("BLM"), and other lands under the jurisdiction of the Secretary of the Interior.

Rather than foster the cooperation between utilities and Federal land managers that is essential for the development and implementation of sound vegetation management plans and practices, H.R. 1873 embraces a unilateral approach whereby utilities tell the agencies what they are going to do and the legislation directly authorizes the utilities to do it. For example, H.R. 1873 would prevent utilities and land managers from including activities in vegetation management plans that would require anything beyond annual notice, description, and certification by the utility for its planned activities. It also would give utilities (including those without approved plans), blanket approval to conduct vegetation management activities to meet clearance requirements, leaving the agencies with no authority but to allow such activities, and leaving the utilities with little incentive to cooperate or even prepare a vegetation management plan.

As a result of its inconsistent, broad, and contradictory provisions regarding the application of State and local requirements, H.R. 1873 also could leave utilities and Federal land managers in the untenable position of having to comply with conflicting, inapplicable, or inadequate State and local requirements for fire safety and electric system reliability. The application of Federal, State, and local requirements for UVM on Federal lands differs depending on the nature and location of the facility and the scope of the requirements. H.R. 1873 fails to appropriately deal with these differences and could significantly complicate—rather than facilitate—UVM as a result.

The effect of H.R. 1873's provisions mandating the application of a categorical exclusion process to vegetation management plans are, at best, unclear. To the extent the bill authorizes or mandates a blanket exemption for vegetation management plans from the requirements for public participation and environmental analysis under the National

Environmental Policy Act, H.R. 1873 would undermine sound stewardship of our public lands. We note that both the Forest Service and BLM have already established a number of categorical exclusions that apply to many routine UVM activities, and those authorities are routinely utilized by the agencies in the context of UVM.

H.R. 1873's provisions on liability also are overbroad and unclear. Proposed section 512(f) provides that utilities "shall not be held liable for wildfire damage, loss or injury, including the cost of fire suppression" if the Secretaries don't allow utilities to operate consistently with an approved vegetation management plan. But nothing in the bill states that the release of liability is limited to situations where the Secretaries' decisions are an actual and proximate cause of the damages, potentially leaving the agencies (and ultimately, taxpayers) to cover the damages caused by the utilities' negligence (or even gross negligence), for example. This is particularly troubling given that the actions could be contrary to Federal law and that the legislation provides utilities with blanket authority to unilaterally take actions to maintain clearance requirements.

Finally, H.R. 1873 dramatically compounds all of these problems by inappropriately broadening the application of its provisions. For example, the bill authorizes vegetation management plans to broadly apply to "adjacent" Federal lands, and the bill's liability and other provisions apply to preexisting vegetation management plans, regardless of whether those plans meet current or future standards.

Title V of the Federal Land Policy and Management only governs rights-of-way on public lands managed by the BLM and National Forest System lands (not including lands designated as Wilderness). Rights-of-way on lands administered by other agencies within the Department of the Interior are governed by other statutes and regulations that address the unique missions and obligations of those agencies.

Nevertheless, H.R. 1873 would apply the bill's new provisions through FLPMA to *all* lands under the jurisdiction of the Secretary of the Interior, including lands managed by the National Park Service, Fish and Wildlife Service, and Bureau of Reclamation, and potentially to trust and restricted fee lands of Native American Tribes and individuals (and other lands) that are under the jurisdiction of the Bureau of Indian Affairs as well.[2] So, for example, given that H.R. 1873 could be read to include Tribal and individual trust and restricted lands within its scope, the potential application of State and local requirements, the lack of consideration of Tribal requirements, and the broad waiver of liability would contravene important principles of Federal Indian law and policy.

For these and other reasons, The Wilderness Society opposes H.R. 1873.

[2] The "Background and Need" section of the House report on the bill states that the "bill deals specifically with electricity ROWs on U.S. Forest Service (Forest Service) and Bureau of Land Management (BLM) lands," but the text of the bill is explicit that it applies "to public lands [administered by the BLM] and other lands under the jurisdiction of the Secretary." H.R. Rept. 115-165 at 2, 4.

Section 2310 of S. 1460, the Energy and Natural Resources Act of 2017

The Wilderness Society appreciates the thoughtful approach reflected in section 2310 of S. 1460, which corrects the many flaws of H.R. 1873. We also appreciate the opportunity to make some suggestions for its improvement.

Like H.R. 1873, section 2310 would amend FLPMA to add a new section 512 covering UVM, but section 2310 would establish a process for developing and implementing vegetation management plans that would encourage cooperation between utilities and Federal land managers. The process leaves utilities and the agencies sufficient flexibility to develop plans to improve coordination, proactive planning, and adaptive management to ensure sound UVM that meets applicable requirements.

The Wilderness Society has some suggestions to clarify and improve a few provisions in the bill. Proposed section 512(f)(2) authorizes utilities to carry out certain activities if the agencies fail to respond in timely manner to a utility request in accordance with an approved vegetation management plan. It is reasonable for utilities to expect a timely response to requests made in accordance with an approved plan. However, agency personnel sometimes are called away on emergency assignments such as wildfires, for example, that might delay a response beyond what was anticipated in a plan's schedule. Utilities already have authority to conduct emergency UVM activities without prior agency approval (a practice confirmed by subsection (e)), and subsection (f) may counterproductively result in plan schedules that result in unnecessary delays for routine approvals. Alternatively (or at least in addition), section 2310 should impose a mandatory duty on the Secretaries to respond in accordance with the approved schedules to ensure that Federal land managers do not routinely fail to respond to utilities' requests.

Section 2310 contemplates that approved vegetation management plans include necessary activities adjacent to rights-of-way. Indeed, depending on the width of a right-of-way, it can be necessary to conduct UVM activities in the border zone adjacent to a right-of-way, particularly when hazard trees pose a risk to the facility. Given the inherent ambiguity of the term "adjacent", however, we suggest clarifying the intent of the relevant provisions by referring to hazard trees or other standard criteria used in UVM standards to define the scope of activities on adjacent lands that are necessary to meet applicable UVM standards.

Proposed section 512(c)(3)(E) requires vegetation management plans to describe processes for identifying changes in conditions and for modifying plans when necessary, but it leaves the utilities' and agencies' authorities to withdraw from a plan if modifications cannot be agreed to unclear. An explicit statement that the Secretary and the owner/operator may withdraw their approval for a plan that proves to be unworkable if modifications cannot be agreed to would help clarify the provision and ensure that both parties retain their ability to efficiently and effectively meet their obligations.

Again, thank you for the opportunity to testify. We would welcome the opportunity to work with Committee staff on these and a few other minor suggestions if the legislation moves forward.

The CHAIRMAN. Thank you, Mr. Miller, I appreciate it.
Mr. Rable.

STATEMENT OF ANDREW RABLE, MANAGER OF FORESTRY AND SPECIAL PROGRAMS, ARIZONA PUBLIC SERVICE COMPANY, ON BEHALF OF EDISON ELECTRIC INSTITUTE

Mr. RABLE. Chairman Murkowski, Ranking Member Cantwell and members of the Committee, my name is Andrew Rable, Manager of Forestry and Special Programs for Arizona Public Service (APS). I appreciate the opportunity to testify before you today on the importance of vegetation management to ensure the safety and reliability of energy infrastructure. APS is Arizona's largest and longest serving electric company and serves more than one million customers in 11 of the state's 15 counties. APS administers some 6,000 miles of transmission and 11,000 miles of distribution lines throughout Arizona, including federal lands managed by the U.S. Forest Service, Bureau of Land Management, and National Park Service. I am also testifying on behalf of the Edison Electric Institute (EEI), the Association that represents all U.S. investor-owned electric companies. EEI's members provide electricity for about 220 million Americans and operate in all 50 states and the District of Columbia.

Managing vegetation on electric transmission and distribution rights-of-way is a key part of electric company efforts to protect the security and reliability of the energy grid. Failure to properly manage vegetation can cause wildfires, lead to cascading power outages and jeopardize the physical integrity of energy infrastructure. For example, the August 2003 Northeast blackout was initially triggered by a contact between a power line and a tree. In response, Congress passed legislation in 2005 that established our current regime of mandatory and enforceable reliability standards, including standards for vegetation management.

To help reduce these risks, the electric companies need timely access to public and private lands on which power line rights-of-way are located to perform necessary vegetation management on adjacent to the rights-of-way. Particular challenges arise when the rights-of-way cross federal lands, largely due to significant delays companies face in getting multiple approvals from different federal agencies to access those rights-of-way or to perform integrated vegetation management activities.

These inconsistencies put utility companies in a tough position. Increased wildfire risk has elevated the need for companies to comprehensively address vegetation management. Courts have found companies liable for wildfire damages involving power line contact with vegetation despite their extensive, proactive vegetation management efforts offered in high hazard conditions. At the same time, companies are subject to significant fines or violations of NERC, FERC reliability standards.

We continue to seek ways to improve the process for accessing federal lands to remove forest debris, decrease fuel load and obtain authorizations to perform routine vegetation management. For example, in 2016 EEI signed a memorandum of understanding (MOU) with federal agencies and other stakeholders that will foster better cooperation and coordination between companies and federal

agencies, especially the Forest Service, to manage vegetation within and immediately adjacent to existing rights-of-way. While the MOU and other tools are positive steps, more needs to be done to ensure that federal agencies can and will act in a timely manner. That is why we support federal legislation in this area.

The House has already passed H.R. 1873, the bipartisan Electricity Reliability and Forest Protection Act, and we appreciate that Chairman Murkowski and Ranking Member Cantwell included a vegetation management provision when they reintroduced their Energy and Natural Resources Act this year as Section 1460. Both the House and Senate bills would provide a more streamlined and consistent process for vegetation management approvals. The bills are similar in many respects with each containing several noteworthy, beneficial features outlined in more detail in my written statement.

Both bills would significantly increase efficiencies and the federal review process, allow companies to voluntarily develop and file vegetation management plans to expedite necessary activities, and authorize categorical exclusions under NEPAs for existing rights-of-way. The bills include different but potentially complimentary approaches to providing limited liability protections to help reduce disincentives for companies that want to develop vegetation management plans or need to take proactive measures to address threats to reliability or unacceptable wildfire risk.

In conclusion, vegetation management is an important priority for EEI and its member companies to ensure the safety and reliability of the energy grid. We will continue to work with federal land management agencies to achieve effective, on-the-ground implementation of the MOU. We will also work with Congress to pass legislation to establish a better framework to promote federal land management consistency, accountability and timely decision-making, while respecting the mission of the federal management agencies to appropriately manage lands within their respective jurisdictions.

Thank you again for allowing me the opportunity to testify, and I look forward to answering any questions you may have.

[The prepared statement of Mr. Rable follows:]

Statement of

Andrew Rable
Manager of Forestry and Special Programs
Arizona Public Service Company

On Behalf of
Edison Electric Institute

Hearing on
"Vegetation Management Requirements for Electricity Assets Located on Federal Lands"
Section 2310 of S. 1460, *the Energy and Natural Resources Act of 2017*
H.R. 1873, *the Electricity Reliability and Forest Protection Act*

Committee on Energy and Natural Resources
United States Senate
September 19, 2017

Chairman Murkowski, Ranking Member Cantwell, and members of the Committee, my name is Andrew Rable, Manager of Forestry and Special Programs for Arizona Public Service (APS). I appreciate the opportunity to testify before you today on the importance of vegetation management to ensure the safety and reliability of energy infrastructure.

APS, Arizona's largest and longest-serving electric company, serves more than 1 million customers in 11 of the state's 15 counties. With headquarters in Phoenix, APS is the largest subsidiary of Pinnacle West Capital Corporation. In my job at APS, I administer some 6,000 miles of transmission and 11,000 miles of distribution lines throughout Arizona. APS' power lines cross five national forests, four Bureau of Land Management districts, four wildlife refuges, eleven units managed by the National Park Service, and three National Monuments managed by BLM (Agua Fria, Ironwood Forest, and Sonoran Desert).

I am also testifying on behalf of the Edison Electric Institute (EEI), the association that represents all U.S. investor-owned electric companies. EEI's members provide electricity for about 220 million Americans, and operate in all 50 states and the District of Columbia. As a whole, the electric power industry supports more than 7 million jobs in communities across the United States.

Managing vegetation on electric transmission and distribution rights-of-way (ROWs) is a key part of electric company efforts to protect the security and reliability of the energy grid. Failure to properly manage vegetation can cause wildfires, lead to power outages, and jeopardize the physical integrity of energy infrastructure. For example, the August 2003 Northeast blackout was initially triggered by contact between a power line and a tree, eventually leading Congress to enact legislation in 2005 that established our current regime of mandatory and enforceable

reliability standards—including vegetation management standards—for the electric power industry.

Electric companies must have timely access to both public and private lands on which power line ROWs are located, to perform necessary vegetation management on and adjacent to the ROWs, thus reducing risk to electric company facilities and the lands on which they are located. Electric companies need to be able to use integrated vegetation management (IVM) measures, which include use of appropriate vegetation combined with physical pruning and selective use of herbicides, to ensure proper distances are maintained between electric company facilities and nearby vegetation. Particular challenges arise when ROWs cross federal lands because electric companies often face significant delays in obtaining approvals from federal land management agencies to access their ROWs and implement IVM.

Transmission line ROWs crossing federal lands face multiple layers of jurisdiction and decision-making, which can hamper electric companies' ability to manage vegetation and reduce wildfire risk in a timely manner. In recent years, efforts to improve ROW access have been accompanied by significant burdens. For example, efforts to expedite IVM often are slowed down by costly and lengthy environmental studies and monitoring in order to obtain approvals from federal land managers.

This puts electric companies in a bind. Courts have found companies liable for wildfire damages involving power line contact with vegetation despite their extensive, proactive vegetation management efforts, often in high hazard conditions. At the same time, companies are subject to significant fines for violations of the mandatory reliability standards for vegetation management developed by the North American Electric Reliability Corporation (NERC) and approved by the Federal Energy Regulatory Commission (FERC). Increased wildfire risk has elevated the need for companies to address vegetation management proactively. Yet issues remain regarding how best to access federal lands cost-effectively to remove forest debris, obtain authorizations to perform routine vegetation management, and enhance liability protection.

One way industry has responded is through development of national consensus standards issued by the American National Standards Institute (ANSI), with participation by the U.S. Forest Service and National Park Service. The ANSI standards are a key component of the electric power industry's IVM practices to get ahead of potential fire hazards before they become critical. The Wildland Fire Directive issued by Interior Secretary Zinke on September 12 is also consistent with the IVM approach.

Another effort involves a 2016 Memorandum of Understanding (MOU) for Vegetation Management in Power Lines Rights-of-Way. Signed by EEI and federal agencies, the purpose of the MOU is to facilitate cooperation and coordination between the electric power industry and the federal land management agencies to manage vegetation within and immediately adjacent to existing ROWs. The MOU is designed to enable implementation of cost-effective and environmentally sound vegetation management plans, procedures and practices, while

enhancing the ability of EEI member companies to provide safe, reliable electricity to customers.

The Forest Service has been a valuable partner in implementing the MOU and integrating it into their Desktop Guide for Utility Vegetation Management. While the signing of the MOU clearly was a very positive step, more needs to be done to ensure that agencies are authorized and required to act in a timely manner, enabling EEI member companies to perform appropriate vegetation management on and near their ROWs with reasonable limits on liability for wildfires, especially if agencies prevent needed vegetation management measures.

That is why EEI supports federal legislation to improve the ability of electric companies to perform vegetation management on federal lands in order to enhance reliability and reduce wildfire risks. This year, the House of Representatives has passed the bipartisan LaMalfa-Schrader "Electricity Reliability and Forest Protection Act" (H.R. 1873), which provides for expedited and more consistent review processes for vegetation management on federal lands. It also directs the Secretaries of Interior and Agriculture to develop new categorical exclusions under the National Environmental Policy Act (NEPA) for existing transmission and distribution ROWs. Once created, these categorical exclusions will create significant efficiencies in the federal review process and allow electric companies to expedite their necessary vegetation management in a timely and cost-effective manner.

We appreciate that Chairman Murkowski and Ranking Member Cantwell also included a vegetation management provision, Section 2310, when they re-introduced their comprehensive energy bill this year, the "Energy and Natural Resources Act of 2017" (S. 1460). While the language in S. 1460 is similar to H.R. 1873 in many respects, including authority for NEPA categorical exclusions for existing ROWs, the House bill contains a number of noteworthy beneficial features, including shorter approval timelines (90 days versus 180 days), a "hazard tree" definition that provides additional clarity, references to current vegetation management technology (e.g., unmanned aircraft systems), and generally more flexible and less burdensome authorities. One positive feature of S. 1460 that is lacking in H.R. 1873 is a requirement that agency guidance take into account the EEI MOU with federal land management agencies. Both bills would provide a more streamlined and consistent process for vegetation management plan approvals.

The House and Senate bills each contain limited liability protections that are different, but potentially complementary, and that together could help reduce disincentives for electric companies seeking to proactively develop vegetation management plans or engage in appropriate vegetation management activities. H.R. 1873 would protect an electric company from wildfire liability to the United States if an agency fails to allow activities consistent with an approved vegetation management plan and necessary to comply with reliability and fire safety standards, or appropriate vegetation management activities to deal with a hazard tree or imminent danger of contact. S. 1460, on the other hand, would protect against strict liability in case of a land agency's unreasonable delay or failure to approve or adhere to a vegetation management plan or an MOU.

Conclusion

Vegetation management is an important priority for EEI and its member companies to ensure the safety and reliability of energy infrastructure.

We will continue to work with federal lands management agencies to achieve effective 'on-the-ground' implementation of the MOU and other means to improve vegetation management on and adjacent to ROWs across federal lands.

In addition, Congress should enact legislation to establish a better framework to promote federal land management consistency, accountability and timely decision-making as it relates to protecting power lines on federal lands and reducing the risk of wildfires, while respecting the mission of federal management agencies to appropriately manage lands within their respective jurisdictions. We look forward to working with this Committee and others in Congress to achieve this goal.

The CHAIRMAN. Thank you, Mr. Rable, and thank you all for your comments this morning. I appreciate that each of you has indicated a willingness to work with us on these issues as we advance them and recognize the significance of it.

I would like to ask a question, and I will throw it out to the entire panel here. It has been mentioned—the strict liability standard that FLPMA imposes on owners and operators of power lines that are located on federal lands. I have also mentioned the significant penalties for violating the state and federal or local requirements to clear the lines. I think it gets people's attention when you say it could be up to $1 million per day, per violation. And then you have your consumers effectively paying twice; once under strict liability and again for violating the ERO vegetation management standard. This can come about even if the utility has been blocked from taking preventative steps due to, oftentimes, federal land management agency inaction.

The question to each of you is whether or not strict liability is the appropriate standard for those utilities that are performing the vegetation management work, and do you agree that should be the case even where those damages, potential damages, might be preventable where you might have a federal agency's inaction in allowing a utility to go on to the federal land, to an existing right-of-way, to perform the necessary work to remove, whether it is a dead or dying tree, but in other words, prevent that utility from clearing the line? If we can speak to the standard that is out there right now under FLPMA and whether you think that is the appropriate standard and whether that holds if the damages could have been preventable?

I will start with you, Mr. Casamassa.

Mr. CASAMASSA. Yeah, thank you, Madam Chair.

Certainly, we are willing to and are ready to work with the Committee on coming up with, perhaps, a more reasonable approach in certain situations for the liability and a clearer definition of what that would mean both within and outside of the right-of-way.

So I think that there are opportunities for us to look at that and then be able to make some modifications to it as well.

The CHAIRMAN. Let me ask you then whether you think it should be Congress or the federal agency, in this case, BLM, determining the appropriate standard?

Mr. CASAMASSA. Well, I think that it's, again, it's a combination of the two. I think that certainly there are roles for both to provide some frame for it as it relates to what we can do administratively and then potentially to look at some adjustments being made through legislation.

The CHAIRMAN. Mr. Ruhs?

Mr. RUHS. Chairman Murkowski, as my colleague from the Forest Service mentioned, we look forward to working with the Committee on these kinds of issues. We strongly support these bills and I believe that, in regards to liability, there are opportunities for us to work together and find solutions.

The CHAIRMAN. The rest of the panel? Mr. Hayden?

Mr. HAYDEN. Well Chairman Murkowski, I absolutely agree that there should be liability relief for utilities if there are delays in the approval of a vegetation management plan. I also believe there

should be liability relief if we are not allowed to work consistently with the plan or if we are not allowed to cut hazard trees in accordance with the plan.

But I would take that one step further. If we are acting in accordance with the plan, not negligent in any way, I would say that strict liability provisions may be—there should be consideration given to removing that strict liability from us if we are acting in accordance with the plan because we can't be out there 24/7 determining when a new hazard tree crops up.

The CHAIRMAN. But I——

Mr. HAYDEN. And to your final question, I would just say that Congress should make that determination.

The CHAIRMAN. I appreciate that.

Mr. Miller.

Mr. MILLER. Thank you, Senator.

As a general rule, I think that strict liability is an appropriate standard for right-of-way holders on public lands; but in the context of utility electricity lines, I think it's important to recognize the public service that they provide, the important public service. And I don't think it's fair for Congress to impose standards that they must meet, and then prevent them from meeting them, and then impose strict liability for not meeting them.

So, in that case, I would just reiterate that I think the House bill's provisions are very troubling because they're overbroad and the Senate bill takes a much more thoughtful approach to the strict liability issue.

The CHAIRMAN. I appreciate that.

Mr. Rable.

Mr. RABLE. Yeah so, in agreement with Mr. Hayden and Mr. Miller, I would suggest that it would be a Congressional decision with input from both federal agencies and utilities. And as long as the provisions are being met as far as the vegetation management plan and we're following our plan, then liability would indeed be considered and waived.

The CHAIRMAN. Very good, thank you. Thank you each for that.

Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you.

I appreciate the question, Madam Chair, because that was the question that I had. And I agree with you, I think this is an area where I am hoping the federal agencies are willing to work to address the issue of strict liability, because I do not see how we can mandate a standard of strict liability when the utilities are prevented from being able to follow their management plan or they are blocked from doing so.

I am hoping that the federal agencies are willing to work through this issue and help us identify and figure out how we can maneuver through this issue of liability, because I think there has to be some liability, obviously. Somebody has to be held accountable to make sure that we are preventing any type of forest fires or that we are addressing and doing the cleanup that is necessary. But I also understand and have dealt with some of the federal agencies locally in the State of Nevada, and there is a frustration level.

And I appreciate, Mr. Hayden, your comments, because I have heard that from some of our similar utilities and agencies about asking for approval and not getting it and the delay, delay, delay that happens. So I am hoping there is more conversation regarding this issue, and that we can figure this out. I appreciate that.

One of the other areas, though, that there has been discussion is categorical exclusions for NEPA. I am hoping, Mr. Hayden, if you would be willing, and Mr. Rable, to talk a little bit more about that—what do you identify as categorical exclusions that you are seeking?

Mr. HAYDEN. Well, to address that question I would go back to—in my written testimony I provide an example of a six-mile plow, burying six miles of overhead line and converting it to underground. You know, that's a commonsense example of how we can get out of the forest into road right-of-way, but that's very expensive and we can't do that in every case.

The Forest Service absolutely needs a categorical exclusion to process these requests for vegetation management or burying a power line because, number one, I don't think the resources that they would need to go through full-blown assessments every time we submit one are possible.

And to the fact that a categorical exclusion isn't just signing a piece of paper and sending that off. With our categorical exclusion, we were also billed $8,800 and 23 days was spent on that; 2.3 days for ten people, on average, at a cost of $8,800, but it took 18 months to get that. So if we didn't have categorical exclusion, just think of the consequences of that.

Senator CORTEZ MASTO. Thank you.

And Mr. Rable and Mr. Miller as well, I'd be curious to hear your thoughts on it.

Mr. RABLE. Yeah, so just to reiterate that the categorical exclusion would not limit or hold the utilities unaccountable for the work that we're planning to do. What we're trying to do with the categorical exclusions is create significant efficiencies, create consistencies and additional flexibilities within the agencies and how they react to the work plans that we have identified annually.

Mr. MILLER. Thank you, Senator.

I would just comment that, to make clear, that there are a number of categorical exclusions that the agencies already have and use for routine vegetation management, and I think the benefit of the Senate bill would be that it encourages long-term planning. And most of these activities can and should be planned months and years ahead and that could facilitate appropriate environmental review.

Our main concern, again, is that the House bill would give a blanket categorical exclusion to everything and that's unnecessary and, I think, could lead to significant adverse effects on the environment.

Thank you.

Senator CORTEZ MASTO. Thank you. Thank you, gentlemen. And thank you, Madam Chair, for this conversation. I really appreciate it.

The CHAIRMAN. Thank you.

Senator Heinrich.

Senator HEINRICH. Thank you, Madam Chair.

Mr. Ruhs, I know we are here to discuss safe maintenance of our rights-of-way for electric lines today. I think it is an incredibly important issue. I want to especially thank the Chair and the Ranking Member for the work that they have put into the existing language in the Energy bill. I think we are making good progress on this.

However, with yesterday's news about the Secretary's recommendations to the President regarding national monuments, including two BLM monuments in New Mexico, I have to take the opportunity to raise a couple of questions with you.

I was incredibly concerned in reading the report summary on the two monuments in New Mexico. I note that there were more than a few simple, factual errors included. For example, there is a claim that roads have been closed in Rio Grande del Norte National Monument. I confirmed with BLM staff that that is not accurate. And there is a claim that ranchers have stopped ranching there because of those non-existing road closures. Also not true.

The report says that the Organ Mountains-Desert Peaks National Monument is on or abuts the U.S.-Mexico border. That is also not true, because on the recommendation of the U.S. Customs and Border Patrol, the boundary of the monument was actually established five miles north of the international border, actually north of New Mexico State Highway Nine. Finally, it says that both proclamations need to be amended to protect hunting and fishing rights when nothing could be further from the truth. I have had the opportunity, in fact, to hunt everything from Mearns' quail to javelina in the Organ Mountains-Desert Peaks National Monument. In addition, *Petersen's Hunting* magazine, just last month, listed that monument as one of the top ten public land destination hunts in the nation for quail.

As for the Rio Grande del Norte, I confirmed this morning with the largest membership sportsman's organization in New Mexico that hunting and fishing access have actually improved post-monument designation and that the monument even hosts a bighorn sheep hunt that did not exist before the monument designation.

These are some pretty basic facts to get wrong.

So I have to ask you, were the local BLM staff, who actually manage these two monuments on the ground on a daily basis, consulted by the Secretary's office regarding the facts on the ground in these monuments that they manage as part of that Secretarial process?

Mr. RUHS. Senator, I can assure you that I, myself, and the Bureau of Land Management were not part of the writing of the reports. We did answer questions and provide data as necessary. I haven't seen the report so I can't answer the questions up front, but I would be willing to take those questions and concerns back with me to the Department and ask.

Senator HEINRICH. I would appreciate that.

So you were actually not asked to fact check that document before it was shared with the White House?

Mr. RUHS. Correct, Senator. We provided information as requested and again, that's the limit of our——

Senator HEINRICH. The Secretary's office might ask you a specific question, but you were not given an opportunity to review that document for accuracy?

Mr. RUHS. Correct.

Senator HEINRICH. Okay.

So there is no way for you to know the sources of inaccurate facts in that report?

Mr. RUHS. Correct, sir.

Senator HEINRICH. Okay.

Do you have any idea if there is going to be a process to correct factual errors in that report and potentially change recommendations based on inaccurate information?

Mr. RUHS. Again, Senator, I am not involved with the development of the report, but my understanding, I guess, would be that, you know, our Secretary is pretty thorough on things and so I'm sure that if we've identified that there are inconsistencies and I take that information back, why, I'm sure that there would be an opportunity to fix those.

Senator HEINRICH. I look forward to putting together a fact sheet that is more consistent with the conditions on the ground. I will be happy to share that with you so that you can take it back to the Secretary.

I have to say that my constituents are incredibly upset by the fact that the future of their monuments could be determined by people sitting in offices in Washington, DC, who have not been out on the ground in those places, and at this point, seemingly, did not get their basic facts right. So I look forward to working with you. I look forward to working with the Secretary. And I certainly hope that before the President acts on any of these recommendations, the Secretary makes sure that he can get his facts straight.

The CHAIRMAN. Thank you, Senator Heinrich.

Senator Daines.

Senator DAINES. Thank you, Madam Chair.

I was going to ask about liability relief, but it sounds like that was covered. And all witnesses, especially the agencies, want to find a solution through legislation. So it is great to be of consensus here.

I was also going to talk about categorical exclusions. It sounds like Mr. Hayden has also spoken to the importance of categorical exclusions.

So given that those items have been covered very well prior to my questions, I am going to continue to move down this path of CE authority, though in a little more depth.

Mr. Casamassa, I have a question for you. Our witnesses have attested to the importance of the use of categorical exclusions for environmental review. Could you speak to the value of a CE, and is public input incorporated in a review under a CE?

Mr. CASAMASSA. Yeah, Senator.

Certainly, based on the routine and minor nature of some actions associated with the work that is being proposed by utility providers, there's an opportunity to potentially expand what kind of work they can do and work within the frame of the National Environmental Policy Act. So certainly a categorical exclusion that goes

beyond the scope of what we have right now would be advantageous for the agency.

Senator DAINES. Yes, and I think it is an important point that a categorical exclusion does not mean that public input is excluded.

Mr. CASAMASSA. Well certainly there is some level of notification and input that would be provided from communities of interest and constituents who are interested in that kind of work.

Senator DAINES. Yes.

Mr. CASAMASSA. I do want to point out though, that one of the things would be is that this would not be a categorical exclusion where we would exclude this from analysis. It's just a category within the analysis process that we do.

Senator DAINES. Alright. Thank you.

Mr. Rable, could you shed some light on the penalties utilities face to keep the grid reliable and how the lack of vegetation treatment poses a significant financial risk that you may ultimately pass on to ratepayers?

Mr. RABLE. Yeah.

So to build on what Chairman Murkowski mentioned earlier, the utilities are indeed based on FAC–003–4, subject to penalties up to and including $1 million per day, per violation. That, of course, is dependent on a couple of factors: the violation severity levels and the violation risk factors. So depending on the magnitude of the severity and the risk that the utility has assumed, those fines could be up to and including $1 million per day.

Senator DAINES. Thank you.

That is big money, real money, particularly thinking about the co-ops and so forth out in Montana that, you know, a lot of Montanans find out there is a longer month than there is a paycheck, and that is a very important point.

I made this point earlier when I was introducing Mr. Hayden, but let me just conclude by saying when I was here that first week of August, in fact, right here at this dais—on that particular day, Montana had 30 of the top 30 fires in the nation burning in our state. I had just gotten off the phone with one of our county commissioners from Southwest Montana where there is a very large BPA transmission line running near one of the fires, and the carbon that is emitted from the fire and the particulate in the air was such that it presented a risk to the firefighters on the ground from arcing from the high voltage line to the ground. At that point we could not even think about vegetation management along these power lines. We could not even get firefighters near the power lines to even fight the fire.

I think it highlights the importance that we need preventive measures and good, responsible, sound timber management practices here to ensure that we can keep the forest healthy and to protect these important assets that when the fire burns, it is often too late. That is why, I think, what we have here with this bill is good, commonsense forest management.

Thank you for your thoughtful testimony today from all the witnesses.

The CHAIRMAN. Thank you, Senator Daines, and thank you for your leadership on the forestry reform issues.

You know, you never want to have tragedy bring about the impetus to advance good policy and good legislation, but certainly the loss of property, the tragic loss of life that you have seen in your state alone this summer, has been something that reminds us all—there is responsibility that we can put forth from a policy perspective, that we might not be able to stop forest fires altogether, but hopefully working with smart initiatives, we can reduce some of that risk.

You have proposed doing so much of that with your initiative, and we really look forward to working with you to advance those.

Senator DAINES. Thank you, Chair Murkowski.

The CHAIRMAN. Senator Barrasso.

Senator BARRASSO. Well, thank you very much, Madam Chairman, and thank you for your continued leadership on this very timely matter. I agree exactly with what you said and the role of this Committee working to advance good policy and hate to see tragedy at play that brings about these sorts of hearings.

The EPW will be holding a hearing on some of the things that Senator Daines is proposing with his legislation next week, and I look forward to continuing to work with you closely on this. But every year this Committee grapples with forest management and preventing catastrophic fires like those that we have seen in Montana this year.

While we are not necessarily here today to discuss the larger issue of general forest management, I think it is worth noting that if federal forests were in better health, we may not be facing such an urgent need to actively, so actively, protect our electric grid. To be clear, this is not just a rural issue. One downed tree, one interrupted line, one fire could cause dramatic and drastic sweeping effects across wide areas of the country.

Mr. Ruhs, on September 12th Secretary Zinke issued a department-wide memorandum on wildland fire instructing your agency to "use the full range of existing authorities" and "use your existing policies more aggressively to combat the ever-growing threat of catastrophic wildfire." In practical terms, what does this mean for how the BLM will engage more with partners, like electric co-ops, to manage forested lands outside of rights-of-way?

Mr. RUHS. Senator, thank you for the question.

The BLM and our other federal partners work pretty hand-in-hand with the industry folks since the development of the Edison MOU in 2016. I think we've seen some improvements in our abilities to develop vegetative management plans and work together to support those. And I think that's one of the primary things that's going to carry us forward as we work together on those things.

I believe that the items that are in these bills, both of them, provide us with additional tools that will help us permit and process things faster.

So I think all those things help us to be more responsive and support our customer base better.

Senator BARRASSO. Mr. Casamassa, while Secretary Zinke's most recent memo does not apply to Forest Service staff, he, as well as Agriculture Secretary Purdue, did issue an earlier memo in June outlining the need to work more collaboratively on managing forests and preventing catastrophic wildfire.

In Wyoming, rural utilities are concerned that they are unable to adequately manage for risks to the power lines because the agency has not removed potentially hazardous trees outside of the right-of-way. If you have a tree outside of the right-of-way that is taller than the distance from the right-of-way boundary to the power line, obviously there is a risk to that power line.

So falling trees do pose a real risk because we have significant winds in Wyoming to say nothing of the risk posed by fast, hot, moving fires. Your agency has cited issues with disposal of these trees as a barrier to helping mitigate the risk.

In your testimony you mentioned that some provisions in this language are duplicative, but it seems there is a need to reinforce some of the Forest Service's tools. So in situations where utilities are under threat by conditions outside of the right-of-way, does the Forest Service have the tools it needs to address those conditions itself or to allow the utility to act in a timely manner?

Mr. CASAMASSA. Yeah, thank you, Senator.

We do have some tools available to us, certainly not within the context of what one would consider something categorically excluded.

I know, based on the work that has been done in parts of Wyoming, that a large area associated with the Medicine Bow and the Routt National Forests within Colorado and other forests in Colorado, we have taken a larger look at that landscape and provided for an opportunity for co-ops and large-scale utility providers to clear inside the right-of-way and then adjacent to the right-of-way, those trees that have been deemed hazards.

So there are some tools that are available and certainly there could be, and some additional tools that would be made available to the agency.

Senator BARRASSO. Thank you.

Finally for Mr. Rable and Mr. Hayden. The liability utilities face caused by poor vegetation management outside of the rights-of-way truly can be astounding. The way communities experience a blackout or other interruption in electric service, the impacts are swift. They are apparent. Hospitals, schools, grocery stores and homes lose power; loss of power in this scale can be, obviously, disruptive but also dangerous.

Senator Daines asked about the real cost of outages in terms of the fines, but what impact does this have for your ratepayers, you know, on a different scale?

Mr. HAYDEN. Well, in our community, fire was very nearby this year. And I'll tell you one dramatic impact is the firefighters, the property owners that were trying to protect their own homes, if we have to shut off power or power is interrupted, they can't fight fires with the water they need in certain cases. So that would be a direct impact.

But it's the cost of—we can't cover enough, we can't have enough insurance to cover some of these bills that have been sent out. So——

Senator BARRASSO. Mr. Rable?

Mr. RABLE. Yeah, thank you for the question.

To build on what Senator Daines mentioned earlier in the tracking of particulates and fires that are in and around our utility cor-

ridors, we have a number of examples at Arizona Public Service where we have de-energized lines in order to protect firefighter wildland safety and the protection of our customers as well. So we have de-energized lines in order for them to get access to our corridor.

Senator BARRASSO. Thank you.

Thank you, Madam Chairman.

The CHAIRMAN. Thank you, Senator Barrasso.

There has been a fair amount of discussion about the categorical exclusions and to follow on that, this is directed to both Mr. Casamassa and Mr. Ruhs. From your perspective, are there some types of vegetation management activities that are routine enough, we just see enough of them, that they could be categorically excluded under NEPA? I guess that is the first part of the question, and if you can identify what those might be, why haven't the agencies acted to specifically exclude them previously?

Mr. CASAMASSA. Madam Chair, certainly there are some, I'd say, vegetative community types that we think——

The CHAIRMAN. What does that mean, "vegetative community"?

Mr. CASAMASSA. Well, it's just a classification of the type of trees or vegetation——

The CHAIRMAN. Okay.

Mr. CASAMASSA. ——that are at a particular location.

The CHAIRMAN. Okay.

Mr. CASAMASSA. So I think that there are opportunities to ensure that that is the kind of activity that could be—clearing that vegetative community type could be an activity that should be provided to the utility companies. And certainly, that's a part of it.

The CHAIRMAN. So if it should be and it could be, why haven't you?

Mr. CASAMASSA. And we have, up to this point, been working within the context of the categories that we have done administratively and also looking at the full suite of CEs that are available to us through other pieces of legislation. But recognizing this is, I think, one of the areas that, given the large scale of insect outbreaks that have been occurring, particularly in the interior West, and the need for active management adjacent to or within the rights-of-way, there's an opportunity here to go beyond what we have presently, administratively, or what has been provided through legislation in terms of categorical exclusions.

The CHAIRMAN. It sounds like you are saying that you do have—you can clearly identify those types of activities that would be routine enough.

Mr. CASAMASSA. Yeah.

The CHAIRMAN. You just need to do it.

What about you, Mr. Ruhs, within BLM?

Mr. RUHS. Madam Chairwoman, I guess that I would say the same, kind of, holds for BLM.

We have, I think we've been focused primarily on developing vegetative management plans and working together along those lines and trying to streamline the processes that way.

And we do have some tools in the toolbox, categorical exclusions, but I don't think they get specific enough for some of the areas that we have.

So I think working together we can find those things if we continue to work with industry as well as with the Committee. I think we can refine what our needs are.

The CHAIRMAN. Well, let me ask the question because there has been some discussion brought up, primarily from Mr. Hayden and Mr. Rable, about inconsistent practices or procedures that lead to delays and planning difficulties. I guess the question—it certainly seems to me that from the utility side they are saying that these delays are real. We don't think many of them are reasonable. How do you respond to that? You say you are trying to work with everybody, but do you think that more needs to be done to ensure, not only streamlining, but a greater consistency to allow for better planning to best reduce the delay?

Mr. CASAMASSA. Well, Madam Chair, I agree.

I think that there has to be a bit of—there has to be more consistency in our approach to the way that we manage the areas within and outside of the rights-of-way. That certainly is something that we are working on.

I think it has to do not only with some of the clarity around some of the policy and procedures, but then also the recognition by the agency that a stance around leadership when it comes to these kinds of issues is really important that we recognize the value of ensuring that we're stewarding all of the lands for all of the uses in and outside of these rights-of-way. We're looking for, we want to look for opportunities for us to work better across this landscape.

The CHAIRMAN. Let me ask about that because you are saying all the right things. I don't think anyone would disagree with you but I think what you hear is the frustration saying, well the agency is saying the right thing, yet we are not seeing that translate. We are still continuing to see the delay; we are still continuing to see a conflict. Is there anything going on administratively right now or are you waiting for Congress to, kind of, sort things out and basically to tell you to do the right thing?

Mr. CASAMASSA. Well, certainly we are taking action in some areas as it relates to some routine removal of vegetation inside the rights-of-way. And so, that is, you know, there is some active management actually going on right now across the landscape. Is it consistent across every single district office or forest in the agency? I would say, no, and they're working toward that. But there is a considerable amount of work that's being done in cooperation with the utility companies.

The CHAIRMAN. Let me ask if Mr. Rable or Mr. Hayden agree? Are you seeing a change in relationship, a willingness to work with our land management, the local land managers, working with the federal land managers, or is it still the same old, same old?

Mr. RABLE. It continues to be fairly inconsistent. So the short answer to your question is sometimes yes and sometimes no. And oftentimes that's dependent on change in staff, so you may have staffing levels that at certain times are in agreement with routine vegetation management and what your prescription is that's been long established on existing corridors; and then with turnover in staff, they may have a difference of opinion about your approach.

The CHAIRMAN. Mr. Hayden, would you agree?

Mr. HAYDEN. I would completely agree and I would lean back to the Benton Rural Electric example that just hit my desk a couple days ago, that talks about their inconsistency.

I'd like to add that, you know, one of the greatest strengths of working with the Forest Service for us is this decentralized decision-making. Local people that are in our communities, they understand our struggles, are making decisions; but one of the greatest weaknesses is that same decentralized decision-making because they may have different interpretations of the rules. They may be afraid to make decisions at that local level, but we have this struggle where it's really great to be able to work locally with these people, and we struggle with that. So I would say that the inconsistency is still there.

The CHAIRMAN. Well, I think this is important for our agency folks, Mr. Casamassa and Mr. Ruhs, to hear and understand that we have a ways to go here to gain these efficiencies that we are all hoping for.

Senator Cantwell.

Senator CANTWELL. Thank you, Madam Chair. Again, I apologize for stepping out. We have had a couple of other hearings this morning, as you well know, and are balancing various things.

I wanted to go back to the BLM focus because last Congress BLM testified that it was concerned about the then-House legislation that was sponsored by then-Congressman Zinke, now Secretary Zinke. And BLM noticed that waiving the liability might conflict with the standard terms and conditions of the rights-of-way grants. The House bill still has these same provisions.

In your time at BLM, Mr. Ruhs, have you ever been in a situation where non-emergency issues had to wait longer than three days while you were dealing with a real emergency like a wildfire?

Mr. RUHS. Ranking Member Cantwell, I would say that in my time with the agency, I have seen times when we haven't been as efficient with our processes as we should be. I believe oftentimes we have competing laws and regulations, if you will, that we have to follow and sometimes they get in our way.

I think one of the things that we've seen since the previous Congress where we've testified on this, on the previous bill from the House, since that time we have a new MOU that, I think, has given us some new direction. I think that our agency is also working on some updated policy that will hopefully bring better consistency across the agency. Also, we have ongoing training that we're starting to do for our folks.

So I think all those things will help us as we better understand the issues and streamline our processes. Are we where we need to be? We aren't yet, but I believe we're getting there.

Senator CANTWELL. So is that a yes or no on your seeing something take longer than three days when there was a real emergency?

Mr. RUHS. Yes, ma'am, I've seen things take longer than three days when they shouldn't have.

Senator CANTWELL. When it was a real emergency?

Mr. RUHS. Yes.

Senator CANTWELL. Okay, if you could get us that information I would so appreciate it.

Does it make sense to release utilities from liability if it takes BLM, for example, four days to respond to a non-emergency request?

Mr. RUHS. Yes, and I believe that if we're working together on a vegetative management plan that hopefully we won't see those kind of situations as we go forward. I would like to think that as we work with the Committee that we can deal with those liability issues and certainly make them better for all concerned.

Senator CANTWELL. Well, I think we have over here—in the Senate bill. At least that's my opinion, so I think we have a lot of flexibility.

I wanted to ask about tribal issues. Obviously BLM covers a lot of land, but all lands under the jurisdiction of the Secretary of the Interior, including national parks and wildlife refuges and tribal lands could be eligible—the bill would require state and local governments to basically trump tribal requirements on some of those lands. Is that a problem, Mr. Miller or Mr. Hayden?

Mr. MILLER. Yeah, from my perspective it would be entirely inconsistent with the United States' trust responsibility to those tribes.

Senator CANTWELL. Mr. Hayden, any concerns there?

Mr. HAYDEN. Currently, I think tribal entities, as well as other entities, are consulted on many of the projects that take place in any case, correct? And I don't know how the Senate bill would influence that or impact that because as part of our categorical exclusion process today, tribal entities are consulted as it is.

Senator CANTWELL. Yes, we are talking about mostly the House bill.

Mr. Ruhs or Mr. Casamassa, do your agencies want to force tribes to accept emergency and fire policies of the state or counties which they are located in?

Mr. CASAMASSA. No.

Senator CANTWELL. Mr. Ruhs?

Mr. RUHS. I would agree with that.

Senator CANTWELL. Thank you.

Thank you, Madam Chair.

The CHAIRMAN. Thank you.

I just have one question that was prompted by reference to the memorandum of understanding with EEI, the Edison Electric Institute. There was a promise that within 18 months they would emphasize laws, regulations, and policies associated with vegetation management for power line rights-of-way on federal lands. And the agency also promises to work with non-governmental parties to develop a process for coordinating management of power rights-of-way on federal lands. This 18-month deadline, I understand, is up February of '18. Where are we in terms of the ability of the agencies to meet the deadline? Is this process underway? Just give me a quick update here.

Mr. CASAMASSA. Yeah, Madam Chair, from the perspective of the Forest Service, we are making some advancements when it comes to working with and under that memorandum of understanding. And I think that in the very near future we'll see some of those advancements come to fruition.

The CHAIRMAN. Mr. Ruhs?

Mr. RUHS. Madam Chair, we also are making progress. I can't tell you exactly where we're at, but again, we've—are in the process of developing new policy that takes the information out of the MOU and puts it in place so that we can be consistent across the agency, as well as implementation training for our folks so that they know exactly what it is we've committed to.

The CHAIRMAN. So you figure you are on track, insofar as meeting that deadline?

Mr. RUHS. Yes, ma'am.

The CHAIRMAN. Good, good. Thank you.

Gentlemen, thank you for your appearance here this morning and for the work that you are doing, certainly from the utilities' perspective, oversight perspective, and within our agencies. This is an issue that, I think, the Ranking Member and I, along with many of our colleagues here, particularly from the West, are trying to understand how we do better by our policies to ensure that we can move efficiently, effectively and without delay when it comes to things like vegetation management, keeping not only property better protected and safe, but also in an effort to ensure that lives are not at risk. Wildfires are unpredictable and we saw that play out certainly this last season.

Thank you for your participation, and I thank you each for your willingness to work with the Committee as we work to further enhance and build on these initiatives.

With that, the Committee stands adjourned.

[Whereupon, at 11:06 a.m. the hearing was adjourned.]

APPENDIX MATERIAL SUBMITTED

U.S. Senate Committee on Energy and Natural Resources
September 19, 2017 Hearing: ***To Examine Vegetation Management Requirements for Electricity Assets Located on Federal Lands and to Receive Testimony on Section 2310 of S. 1460, the Energy and Natural Resources Act of 2017, and H.R. 1873, the Electricity Reliability and Forest Protection Act***
Questions for the Record Submitted to Mr. Glenn Casamassa

Questions from Chairman Lisa Murkowski

Question 1: Currently, power line owners and operators must undertake a full environmental analysis under the National Environmental Policy Act (NEPA) – either an Environmental Impact Statement or and Environmental Assessment – to undertake vegetation management work on federal lands. Such analyses can take several years to complete, delaying work vital to public safety.

a. Please provide a list of the types of vegetation management activities that are routine enough that, from the agency's vantage point, they should be categorically excluded under NEPA.

b. Please provide a list of any existing CEs that are available for this type of work.

c. Will the Forest Service take administrative action to create CEs for utility vegetation management work on federal lands?

Response:

a. The Forest Service supports coordination with utility companies to balance regular and proactive vegetation management within transmission line rights-of-way with management of impacts on National Forest System resources. Routine vegetation management that could be categorically excluded from further review under NEPA in the absence of extraordinary circumstances include manual or non-mechanical removal of trees and other vegetation, controlled burning or mechanical treatment including mowing, pruning, and clearing to remove trees and other vegetation, removal of invasive species through clearing, mowing, or other approved non-mechanical treatments, and planting of native shrubs and grasses for restoration within and immediately adjacent to an authorized transmission line right-of-way where the permit holder has an approved operating plan that addresses vegetation management.

b. There is no Forest Service CE specifically addressing vegetation management within and immediately adjacent to transmission line rights-of-way. However, within specified parameters, harvest of live trees on up to 70 acres (36 CFR 220.6 (e)(12)), salvage of dead or dying trees on up to 250 acres (36 CFR 220.6(e)(13)), and commercial and noncommercial sanitation harvest of trees to control insects or disease on up to 250 acres (36 CFR 220.6 (e)(14)) are categorically excluded from documentation in an EA or EIS and could potentially apply to vegetation management within and adjacent to transmission line rights-of-way. The CE for insect and disease treatments authorized under the Agricultural Act of 2014 also could apply in certain cases to vegetation management within and adjacent to transmission line rights-of-way.

U.S. Senate Committee on Energy and Natural Resources
September 19, 2017 Hearing: ***To Examine Vegetation Management Requirements for Electricity Assets Located on Federal Lands and to Receive Testimony on Section 2310 of S. 1460, the Energy and Natural Resources Act of 2017, and H.R. 1873, the Electricity Reliability and Forest Protection Act***
Questions for the Record Submitted to Mr. Glenn Casamassa

c. The Forest Service is currently considering the development of draft CEs to address routine vegetation management and other maintenance activities in existing rights-of-way.

Question 2: We've received testimony of inconsistent practices/procedures of federal land managers at the local level – a lack of uniformity that can lead to planning difficulties for utilities and delays in clearing vegetation.

a. How do local land managers take into account a utility's regulatory reliability requirements?

b. Should federal land managers be required to implement all state and local requirements with respect to electric reliability and fire safety? What happens if state and local requirements conflict with federal law?

c. Is your agency timely responding to utility requests to enter on federal lands and maintain their rights of way? What do you consider timely?

Response:

a. Agency leadership has provided internal communication to increase awareness of regulatory reliability requirements and establish consistency in working with utilities regarding vegetation management procedures and practices to allow utilities to address hazard trees and other vegetation that may affect the reliability of transmission lines while minimizing resource impacts. The North American Electric Reliability Cooperation standards for utility rights-of-way are included in the agency's vegetation management guide and have been communicated to field staff with responsibility for administering transmission line authorizations.

b. Transmission line authorizations require compliance with applicable federal, state, county, and municipal laws, regulations, and other legal requirements to the extent they do not conflict with federal law, regulation, or policy.

c. The Forest Service strives to provide responsive service to all permit holders, contractors, visitors, partners, stakeholders, and state, local, and tribal governments. Due to the magnitude of Forest Service responsibilities, which span 193 million acres of National Forest System lands, and staffing challenges in many national forests and ranger districts, delays in responding to requests from utilities have occurred. The agency encourages administrative units and utilities to engage in early communication and planning to facilitate a clear understanding of proposed work and provide sufficient time to address

potential resource impacts and other legal requirements without causing delay. Collaboration between the agency and utilities in the development of operating plans, including vegetation management plans, is a key element in this approach.

Question 3: Under the Memorandum of Understanding (MOU) between the federal agencies and Edison Electric Institute, the agencies promise within 18 months to "emphasize laws, regulations, and policies associated with vegetation management for power line ROWs on Federal lands." The agencies also promise to "[w]ork with the non-governmental parties to develop a process for coordinating vegetation management of power line ROWs on Federal lands." The 18-month deadline will be in February of 2018.

a. Is the Forest Service on track to meet the deadline? What has been done to-date and what remains to be completed?

b. Has the Forest Service considered entering into a similar MOU with public power entities?

Response:

a. The Forest Service recently met with Edison Electric Institute and plans to meet with Bureau of Land Management personnel before the end of calendar year 2017 to discuss a process for coordinating vegetation management. We believe we are currently on track to meet the February 2018 deadline.

b. The agency is open to entering into a similar MOU with public power entities and cooperatives. Earlier this year, the Forest Service and Bonneville Power Administration executed an MOU updating existing decades-old MOUs and providing for greater coordination, consistency, and efficacy in meeting both agencies' goals with regard to vegetation management on National Forest System lands.

Questions from Ranking Member Maria Cantwell

Question 1: Why does the Forest Service currently require prior approval for some right-of-way maintenance activities, such as major ground-disturbing actions, under a utility's approved vegetation management plan, as opposed to authorizing all such activity in the future upon approval of the vegetation management plan?

Response: Routine activities within the scope of an authorized right-of-way that have been analyzed and approved in the operating plan, including vegetation management, do not require additional approval. However, before work begins, notification and coordination between

utilities and Forest Service permit administrators are required to address public safety concerns such as high fire danger; avoid conflict with other authorized activities such as movement of livestock, timber harvesting, or recreation events; and minimize impacts on National Forest System resources such as breeding wildlife. The agency encourages administrative units and utilities to engage in early communication and planning to provide sufficient time to address any access and operational issues in advance.

Question 2: If (1) the Forest Service must apply a categorical exclusion to a vegetation management plan that is part of a proposed renewal of a long-term right-of-way authorization that predates the Federal Land Policy and Management Act and the National Environmental Policy Act, and (2) the Forest Service is prohibited from requiring a utility to seek any further case-by-case approval for discrete vegetation management activities contemplated under that plan, then at what point would the Forest Service ever conduct a thorough analysis of the environmental effects of various ways to maintain the right-of-way?

Response: As stated above, there is no Forest Service CE specifically addressing vegetation management for transmission line rights-of-way. Forest Service CEs, including the previously cited CEs that may be available for this purpose and a new CE specific to vegetation management, apply only if there are no extraordinary circumstances related to the proposed action. To determine whether extraordinary circumstances exist, the Forest Service reviews a list of resource conditions contained in 36 CFR 220.6(b). The Forest Service considers whether there is a cause-and-effect relationship between the proposed action and the potential effect on these resource conditions, and if so, the degree of potential effect of the proposed action on these resource conditions to determine whether extraordinary circumstances exist. If a determination is made that extraordinary circumstances exist, the agency prepares an EA or an EIS. Consequently, the appropriate level of environmental analysis and documentation under the National Environmental Policy Act (NEPA) would be driven by the nature of the proposed action, the site-specific resources affected by the proposed action, and the degree of those effects. If extraordinary circumstances exist, a CE would not be available for reauthorization of an existing transmission line right-of-way that had never been subject to environmental analysis.

In this context it is important to note that establishment of mandatory timeframes for review and acceptance of proposed vegetation management for transmission line rights-of-way on National Forest System lands could create tension between compliance with NEPA and other applicable environmental law and the understandable goal for timely review and approval. That said, the Forest Service is taking steps to improve the timeliness and quality of environmental analysis and decision-making to meet the needs and expectations of authorization holders and other stakeholders.

Question 3: If the Forest Service, for good cause, prohibits a utility from conducting some type of vegetation management activity within a right-of-way that is otherwise consistent with the

utility's approved vegetation management plan, should the utility be released from any liability for damages caused by wildfires, including instances where the utility acted negligently, grossly negligently, or criminally?

Response: The Forest Service strives to administer utility right-of-way authorizations in a manner that allows for holders to conduct vegetation management to provide for safe and reliable operations. The Federal Land Policy and Management Act (FLPMA) authorizes the Forest Service to promulgate regulations addressing the liability of authorization holders and providing for liability without fault for high-risk activities like electric transmission and distribution lines. Consistent with FLPMA, Forest Service regulations address the liability of holders of special use authorizations, including authorizations for high-risk activities.

Questions from Senator Jeff Flake

Question 1: I often hear from the utility industry in Arizona and throughout the west that they are subject to ongoing work delays and stoppages relating to vegetation management along their transmission corridors. Given that these corridors are very dynamic environments with trees constantly growing, dying, moving in the wind, combined with sagging and rising wires also moving in the wind, I am concerned that the USFS is too slow in allowing the much-needed work to be accomplished. What risk analysis has the USFS done to ensure the USFS is not causing unnecessary hazards to life, property and localized or cascading power outages?

Response: The Forest Service has not conducted this type of risk analysis on responsiveness to requests for transmission line right-of-way vegetation management. The Forest Service acknowledges the need to maintain utility rights-of-way to provide for reliability and safety and continues to emphasize this need to agency personnel and utility representatives. The agency again stresses the importance of planning and regular communication between administrative units and utilities to provide sufficient time to address any access and operational issues without causing work delays.

Question 2: I am concerned that particular time-sensitive tasks within utility rights of ways are delayed by USFS actions. In one example with the Navopache Electric Cooperative (NEC), I understand that NEC hired a contractor to prepare an Environmental Assessment (EA) because the USFS thought the EA preparation might take nearly two years. After having a third party prepare the EA in just six months, the USFS reportedly took over eight months to review. Particularly in circumstances such as these where the corridor has already been disturbed, what authorities does the USFS have to speed up this process through the use of a categorical exclusion?

U.S. Senate Committee on Energy and Natural Resources
September 19, 2017 Hearing: ***To Examine Vegetation Management Requirements for Electricity Assets Located on Federal Lands and to Receive Testimony on Section 2310 of S. 1460, the Energy and Natural Resources Act of 2017, and H.R. 1873, the Electricity Reliability and Forest Protection Act***
Questions for the Record Submitted to Mr. Glenn Casamassa

Response: The Forest Service regrets the delay in this instance. Such delays are often due to the limited availability of key staff and the demands of multiple priorities. Other circumstances such as the thoroughness of third-party analyses and the need for additional information can lead to delays. CEs, where applicable, allow for review and approval of actions without complex documentation. As discussed above, there is no Forest Service CE specific to vegetation management for utility rights-of-way, although other Forest Service CEs may apply in the absence of extraordinary circumstances. The agency has drafted a CE for vegetation management for transmission rights-of-way that is under internal review. This CE would apply to work within already-disturbed corridors in the absence of extraordinary circumstances.

U.S. Senate Committee on Energy and Natural Resources
September 19, 2017 Hearing: To Examine Vegetation Management Requirements for Electricity Assets Located on Federal Lands and to Receive Testimony on Section 2310 of S. 1460, the Energy and Natural Resources Act of 2017, and H.R. 1873, the Electricity Reliability and Forest Protection Act
Questions for the Record Submitted to Mr. John Ruhs

Questions from Chairman Lisa Murkowski

Question 1: Currently, power line owners and operators must undertake a full environmental analysis under the National Environmental Policy Act (NEPA) – either an Environmental Impact Statement or and Environmental Assessment – to undertake vegetation management work on federal lands. Such analyses can take several years to complete, delaying work vital to public safety.

a. **Please provide a list of the types of vegetation management activities that are routine enough that, from the agency's vantage point, they should be categorically excluded (CE) under NEPA.**

The Bureau of Land Management (BLM) has a number of CEs that it regularly applies to certain vegetation management activities to speed NEPA compliance (see the list below offered in response to the following question).

More generally, the BLM is currently finalizing a report to the Secretary that identifies actionable items that would make the BLM's land use planning and NEPA processes faster, less costly, and more responsive to local needs.

As codified in Section 1508.4 of Chapter 40 of the Code of Federal Regulations (CFR), the BLM is unable to apply a BLM CE if "extraordinary circumstances" exist. For example, if the action under consideration will have a significant impact on an endangered or threatened species, or on historic or cultural resources, the BLM is precluded from applying a CE. (Section 46.215 of Chapter 43 of the CFR provides a list of the extraordinary circumstances under which actions otherwise covered by a CE require NEPA analysis.) While the BLM does have an existing CE that allows for the sale or removal of individual or small groups of trees that constitute a safety hazard, this CE cannot be applied if extraordinary circumstances exist.

The BLM is interested in considering the prospects of CE that can be applied to allow for the removal of hazard trees that threaten transmission and distribution lines, and are required by law or regulation to be removed by the utility, even if extraordinary circumstances are present. The BLM has undertaken a review of its NEPA process and may recommend the creation of additional CEs in the future, including a CE for utility vegetation management.

U.S. Senate Committee on Energy and Natural Resources
September 19, 2017 Hearing: To Examine Vegetation Management Requirements for Electricity Assets Located on Federal Lands and to Receive Testimony on Section 2310 of S. 1460, the Energy and Natural Resources Act of 2017, and H.R. 1873, the Electricity Reliability and Forest Protection Act
Questions for the Record Submitted to Mr. John Ruhs

b. Please provide a list of any existing CEs that are available for this type of work.

A number of existing CEs in the BLM's NEPA Handbook are applicable to vegetation management in electrical transmission right of ways (ROW). These CEs are listed below.

- Sale and removal of individual trees or small groups of trees which are dead, diseased, injured, or which constitute a safety hazard, and where access for the removal requires no more than maintenance to existing roads;
- Pre-commercial thinning and brush control using small mechanical devices;
- Harvesting live trees not to exceed 70 acres, requiring no more than 0.5 mile of temporary road construction, with some limitations;
- Salvaging dead or dying trees not to exceed 250 acres, requiring no more than 0.5 mile of temporary road construction, with some limitations; and
- Planned actions in response to wildfires, floods, weather events, earthquakes, or landslips that threaten public health or safety, property, and/or natural and cultural resources, and that are necessary to repair or improve lands unlikely to recover to a management approved condition as a result of the event, with some limitations.

c. Will BLM take administrative action to create CEs for utility vegetation management work on federal lands?

As directed in Secretarial Order 3355, the BLM has undertaken a review of its NEPA process and may recommend the creation of additional CEs in the future, including a CE for utility vegetation management.

<u>Question 2</u>: We've received testimony of inconsistent practices/procedures of federal land managers at the local level – a lack of uniformity that can lead to planning difficulties for utilities and delays in clearing vegetation.

U.S. Senate Committee on Energy and Natural Resources
September 19, 2017 Hearing: To Examine Vegetation Management Requirements for Electricity Assets Located on Federal Lands and to Receive Testimony on Section 2310 of S. 1460, the Energy and Natural Resources Act of 2017, and H.R. 1873, the Electricity Reliability and Forest Protection Act
Questions for the Record Submitted to Mr. John Ruhs

a. **How do local land managers take into account a utility's regulatory reliability requirements?**
The BLM's authorized officer discusses these regulatory requirements with the utility and captures them in the ROW grant. Modifications to ROW grant language can be made if regulatory requirements change.

In a further effort to provide consistency, the BLM works closely with utilities that hold many ROWs to establish master agreements. Master agreements provide standard terms and conditions that can be applied to many ROW grants, and allow the BLM to engage in timely communication and consistent management as required by the various authorities that guide the BLM in its administration of ROWs for electrical transmission.

b. **Should federal land managers be required to implement all state and local requirements with respect to electric reliability and fire safety? What happens if state and local requirements conflict with federal law?**
Yes. Conflicts between Federal and State or local laws on Federal lands are identified during the grant process. If conflicts are identified, the authorized officer will consult his or her regional solicitor for guidance.

c. **Is your agency timely responding to utility requests to enter on federal lands and maintain their rights of way? What do you consider timely?**
Yes. What constitutes "timeliness" is defined in the ROW grant or the vegetation management plan and is determined collaboratively by the BLM and the utility. If for some reason timeliness is not defined in the ROW grant or vegetation management plan, timeliness is determined by the exigency of the situation under consideration.

Question 3: Under the Memorandum of Understanding (MOU) between the federal agencies and Edison Electric Institute, the agencies promise within 18 months to "emphasize laws, regulations, and policies associated with vegetation management for power line ROWs on Federal lands." The agencies also promise to "[w]ork with the non-governmental parties to develop a process for coordinating vegetation

U.S. Senate Committee on Energy and Natural Resources
September 19, 2017 Hearing: To Examine Vegetation Management Requirements for Electricity Assets Located on Federal Lands and to Receive Testimony on Section 2310 of S. 1460, the Energy and Natural Resources Act of 2017, and H.R. 1873, the Electricity Reliability and Forest Protection Act
Questions for the Record Submitted to Mr. John Ruhs

management of power line ROWs on Federal lands." The 18-month deadline will be in February of 2018.

- **Is the Bureau on track to meet the deadline? What has been done to-date and what remains to be completed?**

  The BLM is on track to meet the deadline. The BLM is developing policy guidance to field staff through an Instruction Memorandum that will be issued by February 2018.

- **Has the Bureau considered entering into a similar MOU with public power entities?**

  The BLM is open to working with public power entities to develop similar MOUs. No efforts are currently underway, however.

Questions from Ranking Member Maria Cantwell

Question 1: Why does the BLM currently require prior approval for some right-of-way maintenance activities, such as major ground-disturbing actions, under a utility's approved vegetation management plan, as opposed to authorizing all such activity in the future upon approval of the vegetation management plan?

In order to comply with NEPA and other environmental laws, the BLM must, in some cases, conduct an environmental analysis before a utility undertakes a major ground-disturbing action. Whether or not the BLM undertakes an environmental analysis is highly site specific, and may differ from one area of a ROW grant to another, depending on the environmental conditions of each site and the scale of the ROW grant.

Question 2: If (1) the BLM must apply a categorical exclusion to a vegetation management plan that is part of a proposed renewal of a long-term right-of-way authorization that predates the Federal Land Policy and Management Act and the National Environmental Policy Act, and (2) the BLM is precluded from requiring a utility to seek any further case-by-case approval for discrete vegetation management

activities contemplated under that plan, then at what point would the BLM ever conduct a thorough analysis of the environmental effects of various ways to maintain the right-of-way?

A thorough analysis of environmental effects would be performed at the initiation of a ROW grant request, a modification of the existing ROW grant, or upon expiration/renewal of the ROW grant. For those ROW grants that predate NEPA and the Federal Land Policy and Management Act, an analysis would be performed for any modifications outside the scope of the original grant or upon renewal.

Question 3: If the BLM, for good cause, prohibits a utility from conducting some type of vegetation management activity within a right-of-way that is otherwise consistent with the utility's approved vegetation management plan, should the utility be released from any liability for damages caused by wildfires, including instances where the utility acted negligently, grossly negligently, or criminally?

As a general matter, a utility should not be released from liability if it has acted negligently, grossly negligently, or criminally. BLM is unaware of any authority that would allow it to impose strict liability on a utility for fire trespass. In general, however, the BLM works closely with prospective and current ROW grant holders to reduce the risk of catastrophic wildfire.

Question 4: Are there instances when it has taken the BLM more than 3 days to review and approve (or deny) a non-emergency request to maintain a right-of-way, and is 3 days a realistic or reasonable timeframe for such reviews?

Yes, there are often instances when it has taken the BLM more than three days to review and approve or deny a non-emergency request to undertake a maintenance activity in a ROW. The BLM works with the ROW grant holder to develop reasonable timeframes for review and approval of non-emergency requests to maintain the ROW, where approval is required. The length of these timeframes vary, but are determined and agreed upon by the BLM and the utility.

U.S. Senate Committee on Energy and Natural Resources
September 19, 2017 Hearing: To Examine Vegetation Management Requirements for Electricity Assets Located on Federal Lands and to Receive Testimony on Section 2310 of S. 1460, the Energy and Natural Resources Act of 2017, and H.R. 1873, the Electricity Reliability and Forest Protection Act
Questions for the Record Submitted to Mr. John Ruhs

Questions from Senator Martin Heinrich

Question 1: What are the sources for the claims in the monument review report?

The Department does not comment on leaked documents.

Question 2: How did the secretary ensure that information he was told by stakeholders was accurate before he relied on it in his report?

The Department does not comment on leaked documents.

Question 3: Will the factual errors in the report be corrected? And will the recommendations that rely on those errors be withdrawn?

The Department does not comment on leaked documents.

U.S. Senate Committee on Energy and Natural Resources
September 19, 2017 Hearing: ***To Examine Vegetation Management Requirements for Electricity Assets Located on Federal Lands and to Receive Testimony on Section 2310 of S. 1460, the Energy and Natural Resources Act of 2017, and H.R. 1873, the Electricity Reliability and Forest Protection Act***

Response to Questions for the Record
Submitted by Mr. Mark Hayden

Questions from Chairman Lisa Murkowski

Question 1: *As we have utility rights-of-way crisscrossing federal lands and we have tree contact with power lines as the cause of hundreds of fires, are federal agencies timely responding to utility requests to enter on federal lands and maintain their rights of way?*

In some districts responses are timely and in others they are not. It is this inconsistency from one district to another that adds unnecessary risk and added costs to our cooperatives and our members. Timelines that require action by the agency would provide more certainty to permit holders and reduce the incidents of vegetation coming into contact with electric facilities.

a. *Why are we not doing a better job and what do you need to enable federal agencies to do better?*

Ultimately, utilities and federal agencies that oversee public lands are partners in developing consistency and balance in these efforts. By protecting forest resources through proactive vegetation management in utility rights of way, the public and electric consumers mutually benefit from increased reliability and reduced risk of utility involved wildfires. Federal agencies need streamlined approval processes that are not subject to local interpretation and are applied consistently across the agencies. Firm timelines must be established and if those timelines are not met a utility should not be held strictly liable as a result. For that reason, we support language that addresses the following vegetation management issues:

- **Optional participation provisions in the development of vegetation management plans must be included to ensure that small utilities that lack the resources to develop such plans are allowed to forgo that requirement**
- **Firm deadlines must be included to ensure timely turnaround on utility request**
- **Categorical Exclusion provisions must be included if time deadlines for the agencies are to be met**

- **Liability relief must be granted for an agencies failure to respond in a timely manner to utility request for authorization**
- **Exclusion for response to emergency conditions to eliminate fire, safety and reliability hazards**
- **Training provisions should encourage consistency across an agency workforce that experiences high turnover**

This legislation would give electric utilities more consistent procedures and a streamlined process in order to better manage utility rights-of-way.

b. *Has your industry assigned a high-enough priority to resolving the problem of vegetation management in utility rights-of-way across federal lands?*

Electric cooperative core goals vary little across the country – we all strive to maximize safety and reliability while minimizing financial impact on the end consumer. A key component for driving success of reliability programs particularly as it relates to vegetation management, is operating on a level playing field with predictable expectations. Electric cooperatives and others in the public power community have worked tirelessly in recent years through the National Rural Electric Cooperative Association, the Northwest Public Power Association, and our statewide associations to draw attention to this important issue, and have placed a high priority on working with senate and house staff, committee staff and the regional delegation to articulate how important this issue is. The past three year's fires in the West continue to keep this issue and that of wildfire funding in the forefront of safety and reliability.

c. *How involved are senior managements and boards of directors in resolving this problem?*

I can tell you that the entire electric cooperative and public power community is engaged in this issue. As public power utilities, our boards of directors are all democratically elected from the members that we serve, and many of them live and work in the communities directly impacted by the threat of wildfire and related system reliability issues surrounding vegetation management. In turn, these locally elected boards represent our interests in our state associations, the Northwest Public Power Association, the National Rural Electric Cooperative Association, and the American Public Power Association. Each of these associations, and the board of directors that govern them, have placed the highest priority on resolving the issue of vegetation management on Federally managed land.

As a result, senior managers and board of directors from across the nation have worked to communicate our concerns with our ranger districts locally, agency headquarters in Washington D.C., directly with our congressional delegations, and by participating in numerous legislative hearings on the issue.

***Question 2**: The Edison Electric Institute and the federal agencies entered into a Memorandum of Understanding (MOU) in 2016 in which the agencies promise to "emphasize laws, regulations, and policies associated with vegetation management for power line ROWs on Federal lands." The agencies also promise to "work with the non-governmental parties to develop a process for coordinating vegetation management of power line ROWs on Federal lands." Have public power entities attempted to enter into a similar MOU with the federal agencies?*

To my knowledge public power entities have not approached, nor have they been approached by the federal agencies to establish a Memorandum of Understanding (MOU) regarding vegetation management activities on Federal Lands. Instead, the public power community has worked diligently to achieve a legislative solution to the problems relating to inconsistency and long delays to requests by utilities from federal land managers. This approach will ensure a statutory fix by establishing firm timelines and liability relief if those timelines are not met.

The Northwest Public Power Association has met with the USFS regarding the MOUs as proposed by EEI. At that time only one investor owned utility had actioned the MOU process. For most medium and small public power utilities the ability to develop the MOU as described would be difficult and costly at best. The legislation being proposed in the senate and the house are much more effective in setting timelines and consistencies than the MOU procedures.

Question from Ranking Member Maria Cantwell

***Question**: Are you aware of any instances in which a utility has been fined by the North American Electric Reliability Corporation for failing to meet clearance or other vegetation management standards in which the utility maintained that the failure was caused by a lack of permission by federal land managers to conduct maintenance activities on a right-of-way across federal lands?*

A quick search of the publicly posted Notice of Penalties (NOPs) returned at least five violations in recent years by National Rural Electric Cooperative Association members for the NERC FAC-003 Vegetation Management Standard, however, I am not personally aware that in any of these instances that the utility maintained that the failure was caused by a lack of permission or timeliness by federal land managers to conduct maintenance activities on a right-of-way across federal lands. This does however underscore the high-profile nature of vegetation management violations, as NERC designates this standard as "high risk" and it is monitored closely for the applicable entities.

U.S. Senate Committee on Energy and Natural Resources
September 19, 2017 Hearing: ***To Examine Vegetation Management Requirements for Electricity Assets Located on Federal Lands and to Receive Testimony on Section 2310 of S. 1460, the Energy and Natural Resources Act of 2017, and H.R. 1873, the Electricity Reliability and Forest Protection Act***
Questions for the Record Submitted to Mr. Scott Miller

Questions from Chairman Lisa Murkowski

Question 1: The implementing regulations of the Federal Land Policy and Management Act (FLPMA) impose strict liability on owners and operators of a power line located on federal lands for associated damages. At the same time, a utility can be subject to significant penalties for violating federal, state, or local requirements to clear those lines. The Electric Reliability Organization's penalty for noncompliance with its transmission standard is up to $1 million per violation/per day.

An electricity consumer, then, could end up paying twice – once, under strict liability, for damages occurring on federal land, and again for violating the ERO vegetation management standard – even if the utility was blocked from taking preventive steps due to federal land management agency inaction.

a. Do you believe strict liability is the appropriate standard for those utilities performing vegetation management work for power lines located on federal land?

   Answer: *As a general rule, we believe that strict liability is the appropriate standard for those utilities performing vegetation management work for power lines located on federal land.*

b. What about in cases where the damages were preventable? That is, if a federal agency's inaction in allowing the utility to go onto the federal land, to an existing ROW, and perform the necessary work (like removing a dead or dying tree) prevented a utility from clearing the power line?

   Answer: *If a federal agency's inaction in allowing the utility to go onto to an existing ROW to perform the necessary work (like removing a dead or dying tree) prevented a utility from clearing a power line, strict liability may or may not be the appropriate standard, depending on such factors as whether the utility had an approved vegetation management plan that covered such work, whether the utility had been reasonable in its monitoring responsibilities, and whether the utility's request for approval was timely and reasonable. More specifically, in those situations where damages to federal land and resources caused by owners and operators of power lines located on federal land are the proximate result of federal land managers unreasonably blocking the owner or operator from taking reasonable preventive steps to meet federal vegetation management standards, strict liability does not seem appropriate.*

c. Who do you think should determine the appropriate standard, Congress or the federal agency?

U.S. Senate Committee on Energy and Natural Resources
September 19, 2017 Hearing: ***To Examine Vegetation Management Requirements for Electricity Assets Located on Federal Lands and to Receive Testimony on Section 2310 of S. 1460, the Energy and Natural Resources Act of 2017, and H.R. 1873, the Electricity Reliability and Forest Protection Act***
Questions for the Record Submitted to Mr. Scott Miller

Answer: *In the Federal Land Policy and Management Act, Congress delegated authority to the BLM and Forest Service to determine the appropriate standards for liability (43 U.S.C. 504(h)), and the agencies have exercised that authority by promulgating comprehensive regulations. Congress also directed that "[s]uch regulations shall be regularly revised as needed." (43 U.S.C. 504(e)). As long as the standard is fair (to the utilities, federal land managers, and taxpayers) and the process for adopting it is thorough and transparent, The Wilderness Society believes it would be appropriate for either Congress or the federal agencies to determine the appropriate standard.*

Question 2: In your testimony, you assert that "H.R. 1873 would prevent utilities and land managers from including activities in vegetation management plans that would require anything beyond annual notice, description, and certification by the utility for its planned activities." Please provide a list of those activities that you would want included in a vegetation management plan that go beyond "notice, description, and certification."

Answer: *We believe that list is best left to be cooperatively developed by the agencies and the utilities based on site- and utility-specific conditions and circumstances. In some cases, such conditions and circumstances may most efficiently and effectively be dealt with through additional consultation, investigation, or analysis. For example, newly discovered resources (e.g. cultural or scientific resources, endangered species) or unexpected conditions (e.g. change in title, other project work, utility capacity or plans, or wildlife habitat or use) that could be adversely affected by standard vegetation management activities may call for additional investigation or alterations in the timing or techniques for vegetation management activities. Without the authority to include such provisions in a vegetation management plan, utilities and land managers likely would be forced to exclude important activities and circumstances from those vegetation management plans, thereby limiting the benefits the plans can provide to the utility and land managers.*

Question 3: Do you believe that Federal land managers should themselves pay prompt attention to keeping vegetation away from power lines? If so, how does placing strict liability on the utilities encourage those land managers to take prompt action?

Answer: *While Federal land managers should pay attention to keeping vegetation away from power lines, the utility should bear the primary responsibility for doing so. As a general rule, it would not be fair for American taxpayers to bear the primary responsibility for preventing damages caused by a utility's power line on federal land. Imposing strict liability on utilities for damages caused by their power lines and activities encourages the utilities to take that responsibility seriously and meet a correspondingly high standard of care. However, it may be appropriate to provide additional incentives (such as those in section 2310 of S. 1460) to*

U.S. Senate Committee on Energy and Natural Resources
September 19, 2017 Hearing: ***To Examine Vegetation Management Requirements for Electricity Assets Located on Federal Lands and to Receive Testimony on Section 2310 of S. 1460, the Energy and Natural Resources Act of 2017, and H.R. 1873, the Electricity Reliability and Forest Protection Act***
Questions for the Record Submitted to Mr. Scott Miller

Federal land managers to work with utilities to ensure they can effectively meet their vegetation management responsibilities.

Question 4: Currently, power line owners and operators must undertake a full environmental analysis under the National Environmental Policy Act (NEPA) – either an Environmental Impact Statement or and Environmental Assessment – to undertake vegetation management work on federal lands. Such analyses can take several years to complete, delaying work vital to public safety.

a. Please provide a list of the types of vegetation management activities that are routine enough that, from your vantage point, they should be categorically excluded under NEPA.

Answer: *At the outset, it is important to note that there are a number of existing categorical exclusions that are routinely applied to a variety of utility vegetation management activities (see answer to question 4.b. below), thereby avoiding the need to conduct an EA or EIS to undertake vegetation management work on federal land. Indeed, most utility vegetation management is already routinely carried out without delay or detailed analysis.*

The categories referred to in the answer below include a number of types of vegetation management activities that are routine enough to be categorically excluded. It may very well be that there are other categories of utility vegetation management activities that could appropriately be categorically excluded under NEPA; however, such categories should be identified and substantiated in accordance with CEQ guidance to ensure adequate public participation, the application of professional agency experience, consideration of mitigation, and analysis of cumulative effects, for example.

b. Please provide a list of any existing CEs that are available for this type of work.

Answer: *There are a number of existing CEs that are available for this type of work. They are included in Appendices 3 and 4 of BLM's* National Environmental Policy Act Handbook H-1790-1 *and in the Forest Service's* National Environmental Policy Act Handbook FSH 1909-15.

U.S. Senate Committee on Energy and Natural Resources
September 19, 2017 Hearing: ***To Examine Vegetation Management Requirements for Electricity Assets Located on Federal Lands and to Receive Testimony on Section 23109 of S. 1460, the Energy and Natural Resources Act of 2017, and H.R. 1873, the Electricity Reliability and Forest Protection Act***
Questions for the Record Submitted to Mr. Andrew Rable

Questions from Chairman Lisa Murkowski

Question 1: As we have utility rights-of-way crisscrossing federal lands and we have tree contact with power lines as the cause of hundreds of fires, are federal agencies timely responding to utility requests to enter on federal lands and maintain their rights-of-way?

As noted in my prepared statement, electric companies must have timely access to both public and private lands on which power line rights-of-way (ROWs) are located, to perform necessary vegetation management and management on and adjacent to the ROWs, thus reducing risk to electric company facilities, lands on which they are located, and neighboring communities. Electric companies need to be able to use integrated vegetation management (IVM) measures, which include use of appropriate vegetation, physical pruning and selective use of herbicides, to ensure proper distances are maintained between electric company facilities and nearby vegetation.

The goal of timely use of IVM is to reduce the risk of contact between electric facilities and nearby vegetation in order to reduce the potential for electric system outages, wildfires, and other possible impacts of such contact, recognizing that seasonal growth, disease, insects, and storm events increase the risk of contact. While the actual number of wildfires caused by such contacts is relatively small, the goal is to reduce that number and also to avoid the impacts wildfires can have on electric company facilities, communities and the environment. Particular challenges arise when ROWs cross federal lands because electric companies often face significant delays in obtaining approvals from federal land management agencies to access their ROWs and implement IVM and other maintenance activities.

Transmission line ROWs crossing federal lands face multiple layers of jurisdiction and decision-making, which can hamper electric companies' ability to manage vegetation and reduce wildfire risk in a timely manner. As implementation of the EEI-federal agencies Memorandum of Understanding on Vegetation Management for Powerline Right-of-way (MOU) broadens, we are seeing some signs of improvement. However, the timeliness of responses from federal land managers still can vary from one federal agency to the other, as well as one regional or local office within the same federal agency to another. In addition, efforts to expedite IVM often are slowed down by costly and lengthy environmental studies, without commensurate environmental benefit, in order to obtain approvals from federal land managers. EEI supports legislation to bring more transparency, efficiency and consistency to the review and approval processes.

a. Why are we not doing a better job and what do you need to enable federal agencies to do better?

The barriers to obtain approval to conduct ROW vegetation management on federal lands are most acute at the agency field level. Electric companies encounter inconsistent requirements from one field office to another within the same federal agency and between agencies, despite the fact some of

this work is routine maintenance activities. Some require costly and lengthy environmental studies, while others do not. Field staff must have a better understanding of the need for electric companies to maintain ROWs to prevent outages and reduce wildfire risks. Field staff also should utilize categorical exclusions (CEs) under the National Environmental Policy Act (NEPA) where appropriate. While the 2016 MOU goes a long way to improve the process, federal legislation is needed to provide more certainty, consistency and durability.

b. Has your industry assigned a high-enough priority to resolving the problem of vegetation management in utility rights-of-way across federal lands?

EEI has played, and continues to play, a lead role in the industry push for better access to utility ROWs across federal lands in order to manage vegetation. For more than a decade EEI has kept the issue front and center as a major policy issue for its membership, relying on a core group of vegetation managers within the utilities called the EEI Vegetation Management Task Force (VMTF).

Through the VMTF, EEI meets with federal land managers and advocates before Congress, the Administration, and other policymakers for better access to electric company ROWs on federal lands in order to ensure the delivery of reliable, safe, affordable and increasingly clean electricity. EEI led the creation of the first vegetation management MOU with federal agencies in 2006. EEI participated in a long MOU review and renewal process beginning in 2011. The result was a more comprehensive MOU signed in 2016. EEI and its member company staff are in the process of working with federal agencies to ensure proper and effective implementation of the renewed MOU.

In recent years, EEI members have testified multiple times before Congress on this issue, for instance, in 2014 before the House Committee on Natural Resources and this year in the Senate Energy and Natural Resources Committee. Helping to support member companies testifying at such hearings is one example of the many activities the VMTF has taken to educate policymakers on the difficulties encountered, and to support legislation that would expedite vegetation management on federal lands.

c. How involved are senior managements and boards of directors in resolving this problem?

With the increase in devastating wildfires, EEI CEOs and their senior management are very aware of the need for federal agency cooperation and access in facilitating and executing vegetation management on federal lands. Especially among EEI's western members, the CEOs are engaged in executive level discussions on the need for improvements in the efficiency of processes for authorizing vegetation management in power line rights-of-way. They understand it is a safety and reliability issue as well as a financial risk, primarily arising from increasing wildfire risk as a result of drought, disease, and insect infestations affecting vegetation on federal lands, which must be managed.

Question 2: Does EEI support both pieces of legislation – H.R. 1873 and section 2310 of S. 1460? Are there provisions in either of the bills that EEI prefers? Please explain.

As indicated in my testimony, we appreciate the inclusion of a vegetation management provision in S. 1460 when it was re-introduced this year. EEI supports the goals of both pieces of legislation, each of which contains beneficial features. Both bills would provide owners and operators the option

to develop and submit a vegetation management plan, along with a more streamlined and consistent process for plan approvals.

While the language in S. 1460 is similar to H.R. 1873 in many respects, including authority for NEPA categorical exclusions for existing ROWs, the House bill contains a number of noteworthy beneficial features that we prefer, including generally more flexible and less burdensome authorities (along with more specific process-improvement goals and directives to agencies), shorter approval timelines (90 days versus 180 days), references to current vegetation management technology (e.g., unmanned aircraft systems), and a "hazard tree" definition that provides additional clarity. On at least the latter point there seemed to be consensus agreement among the hearing witnesses.

One positive feature of S. 1460 that is lacking in H.R. 1873 is a requirement that agency guidance take into account the EEI MOU with federal land management agencies.

The House and Senate bills each contain limited liability protections that are different, but potentially complementary, and that together could help reduce disincentives for electric companies seeking to proactively develop vegetation management plans or engage in appropriate vegetation management activities. H.R. 1873 includes broader language that would protect an electric company from wildfire liability to the federal government if an agency fails to allow activities consistent with an approved vegetation management plan and necessary to comply with reliability and fire safety standards, or appropriate vegetation management activities to deal with a hazard tree or imminent danger of contact. S. 1460, on the other hand, would protect against strict liability in case of a land agency's unreasonable delay or failure to approve or adhere to a vegetation management plan or an MOU. We would support combining the two concepts, to ensure that electric companies are not held liable for events beyond their control, in particular lack of agency approval to undertake necessary IVM on and adjacent to ROWs on federal lands.

EEI would be happy to discuss the relative pros and cons of the different provisions in more detail with your staff.

Question 3: Under the Memorandum of Understanding (MOU) between the federal agencies and Edison Electric Institute, the agencies promise within 18 months to "emphasize laws, regulations, and policies associated with vegetation management for power line ROWs on Federal lands." The agencies also promise to "[w]ork with the non-governmental parties to develop a process for coordinating vegetation management of power line ROWs on Federal lands." The 18-month deadline will be in February 2018.

a. Are the agencies on track to meet the deadline? What has been done to-date and what remains to be completed?

The U.S. Forest Service has until March 29, 2018, to disseminate the MOU to federal agency field offices, and to emphasize the laws, regulations, and policies associated with vegetation management for powerline ROWs on federal lands. The Forest Service has informed EEI that it has shared the MOU with the Regional Special Use Managers, it has updated their Desktop Guide to Utility Vegetation Management to include the MOU, and it is preparing an implementation guidance letter to include in the next update to the Desktop Guide.

The Forest Service also has until March 29, 2018, to work with the non-government parties to develop a process for coordinating vegetation management of powerline ROWs on federal lands;

assess the effectiveness of this MOU; and document challenges, concerns, or opportunities for improvement in connection with the implementation of this MOU. EEI does not know the status of these activities.

The agencies may be able to provide more detailed responses to questions regarding their progress and activities to-date.

b. What efforts are underway by EEI to promote the Memorandum of Understanding cited in your testimony?

The Vegetation Management MOU is the result of collaboration between members of EEI's VMTF and the federal land management agencies. Many of the practices in the MOU were already being followed by EEI members companies. EEI has disseminated the MOU broadly among its membership and it is available to the public on the EEI website. EEI works with the Utility Arborists Association, a signatory to the MOU, to educate vegetation managers and utility contractors on the industry requirements enumerated in the MOU. EEI also works in conjunction with the Western Governors Association on the need for consistent policies around vegetation management on federal lands.

Question from Ranking Member Maria Cantwell

Question: Are you aware of any instances in which a utility has been fined by the North American Electric Reliability Corporation for failing to meet clearance or other vegetation management standards in which the utility maintained that the failure was caused by a lack of permission by federal land managers to conduct maintenance activities on a right-of-way across federal lands?

I am not personally aware of any such instances and my understanding is that the question seeks a level of detail that is not tracked by NERC and the Regional Entities.

However, it is important to keep in mind that one of the primary purposes of legislation such as H.R. 1873 or section 2310 of S. 1460 is to ensure that situations such as that described do not occur.

Congress of the United States
Washington, DC 20515

September 18, 2017

The Honorable Lisa Murkowski
Chairman
Senate Energy & Natural Resources Committee
304 Dirksen Senate Building
Washington, DC 20510

The Honorable Maria Cantwell
Ranking Member
Senate Energy & Natural Resources Committee
304 Dirksen Senate Building
Washington, DC 20510

Dear Chairman Murkowski and Ranking Member Cantwell:

As the sponsors of H.R. 1873, the Electricity Reliability and Forest Protection Act of 2017, we write to you today to offer our continuing support for the legislation in preparation of the Senate Energy & Natural Resources Committee hearing on Tuesday, September 19th. As you know, this bill passed the House of Representatives by an overwhelming bipartisan vote of 300 – 118 on June 21, 2017. A total of 231 Republicans and 69 Democrats supported a measure to expedite removal of trees at risk of falling on power lines sparking a wildfire.

The overwhelming support and successful passage of this bill in the House is recognition of the importance of grid reliability and reducing the threat of wildfires to this critical infrastructure. H.R. 1873 provides many positive benefits to utilities, the government, and ratepayers while protecting wildlife habitat and ensuring human safety. Specifically, the bill has several interlocking policy provisions to ensure the U.S. Forest Service (USFS) and Bureau of Land Management (BLM) make timely and consistent vegetation management decisions in coordination with electric utility companies.

Through better coordination with federal land managers and the development of vegetative management plans, we can ensure greater consistency under the law and a streamlined process so our electric utilities can better manage the rights of way through the reduction of dangerous delays that impedes their ability to remove dangerous vegetation. In addition, the liability portion of the bill will help federal officials better address hazardous tree removal requests while safeguarding federal agencies from wildfire damages not related to the federal government's decision or indecision on vegetation management.

We respectfully ask that the Committee give full and fair consideration to H.R. 1873 and help us take a proactive step toward reducing wildfires and electricity blackouts and ensuring grid reliability. We look forward to working with you to ensure this legislation is signed into law this Congress.

Sincerely,

DOUG LaMALFA
Member of Congress

KURT SCHRADER
Member of Congress

PRINTED ON RECYCLED PAPER

NorthWestern Energy
Delivering a Bright Future

Statement of NorthWestern Corporation,

a Delaware Corporation, d/b/a NorthWestern Energy

Submitted to the U.S. Senate Committee on Energy and Natural Resources

For the September 19, 2017 Hearing

To Examine the Vegetation Management Requirements for Electricity Assets Located on Federal Lands and to Receive Testimony on Section 2310 of S. 1460, the Energy and Natural Resources Act of 2017, and H.R. 1873, the Electricity Reliability and Forest Protection Act.

Chairman Murkowski, Ranking Member Cantwell, and members of the Committee, thank you for considering this Statement of NorthWestern Corporation, a Delaware Corporation, d/b/a NorthWestern Energy (NorthWestern) on this matter.

Introduction and Background

NorthWestern is a public utility and provides electricity and natural gas to approximately 709,600 customers in Montana, South Dakota, and Nebraska. We own, operate, and maintain 27,900 miles of electric lines in Montana and South Dakota, serving close to 421,800 electricity customers. In addition, we provide energy to Yellowstone National Park and its millions of visitors annually.

NorthWestern owns and operates numerous electric transmission and distribution lines crossing the various National Parks, National Forests, BLM lands, and other federally managed land in Montana. Much of Montana is forested and with that comes the need to manage the vegetation (trees and brush) located along electric transmission and distribution line rights-of-way. Because of this, NorthWestern is concerned about vegetation management issues as they impact its electric transmission and distribution lines located on these federal lands.

In particular, NorthWestern's concerns focus on vegetation management on federal lands adjoining, but outside the utility's rights-of-way for its electric transmission and distribution lines. The basis of our concerns is the condition of forests in Montana. Over the last ten to fifteen years, Montana forests have experienced an infestation of Mountain Pine Beetles, along with other beetle species. These beetles lay their eggs under the bark of pine trees, introducing

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a fungus which prevents the tree from transporting water and nutrients needed to survive. The trees die quickly after infestation. The dead trees remain in the forest, their needles turn red, fall off, and the trees are left to decay in place. The beetle infestation in Montana peaked in 2009, and by 2016 had killed trees covering over six million acres of land. While the peak of the infestation may have passed, the risk posed by the accumulation of standing, dead trees over the last decade or more is increasing, as the dead trees continue to decay, becoming more and more susceptible to falling. Many of these dead and decaying trees have become hazard trees – defined as a structurally defective tree that has a target, in this case a power line, when it eventually falls.

Because of the size of this beetle infestation, the sheer number of hazard trees located outside of NorthWestern's rights-of-way on federal land have increased over one-hundred fold. When ten years ago NorthWestern might clear thirty hazard trees per lineal mile of right-of-way, now over three thousand hazard trees per mile might require removal. What used to take a week to clear now takes a month and a half, due in part to the sheer number of hazard trees and in part to U.S. Forest Service requirements associated with removing them.

While over the last five to seven years NorthWestern's experience working with the Forest Service to obtain permits allowing NorthWestern to conduct vegetation management has been positive, requirements imposed by the Forest Service make NorthWestern's work take longer and cost more. In particular, the Forest Service requires that all hazard trees cleared by NorthWestern from outside the rights-of-way either be removed from the site, chipped and spread over the site, or gathered in slash piles and burned when conditions permit. In comparison, when beetle killed trees fall on their own, the Forest Service allows them to remain where they fell. These requirements hold NorthWestern to a higher standard than the standard to which the Forest Service holds itself. Nearly 70 percent of NorthWestern's costs result from these cleanup requirements in areas outside of its rights-of-way.

Economic Considerations

This unprecedented increase in the number of hazard trees and requirement to clear the areas from which hazard trees are removed increases the cost incurred by NorthWestern in conducting its vegetation management. NorthWestern is a regulated public utility, and for its Montana operations must obtain authorization from the Montana Public Service Commission to recover its expenses in rates through a rate case. Thus, before NorthWestern can recover the increased (and increasing) costs of clearing hazard trees from areas outside its rights-of-way, it must file a time-consuming and expensive rate case, and seek approval of these costs from the Montana Public Service Commission. Whether all, some, or any of these costs are approved is never a certainty.

Beetle infestation and the effect on forest health did not occur as the result of any act or omission of NorthWestern or its customers. Yet NorthWestern and its customers are asked to

shoulder the resulting economic burden. This is a societal problem, and not one NorthWestern or our customers should be asked to bear.

Liability Exposure

At the same time it is being asked to bear the increased economic burden of managing the forests outside of its rights-of-way, NorthWestern also bears the liability risk that, if a tree falls into its power line, the federal agency in charge of the land will look to NorthWestern to recover fire suppression costs. Fire suppression costs can be staggering. As of August 28, 2017, the estimated cost to fight the Lolo Peak Fire in Montana was $32 million, a full two weeks before cool, rainy weather helped slow the fire's growth. The Lolo Peak Fire was only one of sixty-four wildfires in Montana reported on the InciWeb website (https://inciweb.nwcg.gov/). It goes without saying that an increase in the number of dead trees along power line rights-of-way increases the risk of such incidents occurring. Whatever legislation is finally enacted should not increase a utility's liability risk. Rather, a utility that prudently carries out a federally-approved vegetation management plan should not be liable for any fires that might occur – particularly for fires resulting from a tree located outside its right-of-way falling into its lines.

Conclusion

Chairman Murkowski, Ranking Member Cantwell, and members of the Committee, thank you for the opportunity to submit this statement and your thoughtful consideration of NorthWestern's concerns. We look forward to working with you both and the Committee on this legislation.

PG&E Corporation

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September 19, 2017

The Honorable Lisa Murkowski
Chairman
Energy and Natural Resources Committee
United States Senate
304 Dirksen Senate Building
Washington, D.C. 20510

The Honorable Maria Cantwell
Ranking Member
Energy and Natural Resources Committee
United States Senate
304 Dirksen Senate Building
Washington, D.C. 20510

Dear Chairman Murkowski and Ranking Member Cantwell:

Pacific Gas and Electric Company (PG&E) writes to thank you for holding a hearing to "Examine the vegetation management requirements for electricity assets located on federal lands and to receive testimony on Section 2310 of S. 1460, the Energy and Natural Resources Act of 2017, and H.R. 1873, the Electricity Reliability and Forest Protection Act." We respectfully request that these remarks be included as part of the hearing record.

PG&E appreciates the time and consideration the Senate Committee on Energy and Natural Resources and the U.S. House of Representatives are giving to promote healthy public lands, especially in light of the aggressive and catastrophic wildfires and related tree mortality we are experiencing today. We are encouraged by your efforts and believe this hearing is an important step forward to further bolster wildfire risk management, ensure reliability and safety of electric operations assets, and protect the community, environment and natural and cultural resources in the impacted area.

PG&E is one of the largest combined natural gas and electric utilities in the United States. Based in California, with more than 23,000 employees, the company delivers some of the nation's cleanest energy to nearly 16 million people – or one in 20 Americans – throughout a 70,000-square-mile service area in Northern and Central California.

As one of California's largest land owners, PG&E owns and operates approximately 106,000 circuit miles of electric distribution lines and approximately 18,400 circuit miles of electric transmission lines that traverse unique and sensitive habitat on private lands and public lands, including areas within the jurisdiction of the U.S. Department of the Interior and U.S. Department of Agriculture (USDA), among others.

PG&E also manages more than 147 million trees on two-million properties in its service area. In 2016, due to unprecedented drought and the bark beetle epidemic, PG&E removed more than 236,000 hazard trees, a staggering increase over pre-drought levels ranging from 20,000 to 30,000 hazard tree removals-per-year. This work is in addition to pruning or removing approximately 1.2 million trees to prevent contact with power lines. On any given day, contract tree crews are working in PG&E's service area to prune limbs or remove trees that could come into contact with overhead power lines, including assets that are located in our national forests and parks, as well as on Bureau of Land Management (BLM) lands.

Such work is necessary and important, as trees that come into contact with wires can cause fires and ultimately pose a risk to the public and lead to power outages. PG&E is required by law to keep the lines clear. The North American Electric Reliability Corporation's (NERC's) Standard FAC-003-4 applies to bulk transmission lines and is intended to prevent a large scale transmission outage, such as the 2003 blackout on the east coast that affected 50 million people across eight states and a Canadian province.

Towards that end, PG&E actively manages its electric operations system to ensure the safety of the public and our workforce, modernize and improve the integrity of our core electric infrastructure, build a smarter grid, and protect natural resources.

As it stands today, however, it can take months for utilities to receive approval from federal agencies to conduct many routine maintenance activities. Examples of such work include: hazard tree removal for transmission and distribution lines rights-of-way access; and the ability to access road maintenance and pole replacements – in a timely manner – necessary to prevent wildfires and ensure public safety and reliability.

To overcome the existing inefficiencies within the federal agencies, PG&E is actively working with Region 5 of the USDA Forest Service on the development of a regional operation and maintenance (O&M) plan. To address the more urgent and immediate requirements, the Region 5 office partnered with utility industry in 2016-2017 to authorize a one year termed regional emergency O&M plan for hazard tree wood pole replacement activities in response to the severe drought conditions.

Meanwhile, at the national level, PG&E supported the development of Edison Electric Institute's Memorandum of Understanding with several agencies, including the BLM, USDA Forest Service, and others, to establish vegetation management plans with the utilities. Since this memorandum was initially established in 2006, and renewed in 2016, PG&E has successfully developed an O&M plan with one of the eleven national forests in its service area; however, no O&M plans have been established in the twelve BLM field offices where PG&E's facilities are located.

While some of these efforts mentioned above have been encouraging, the federal regulatory approval and integrated vegetation management processes still remain a significant challenge.

As such, immediate action at the federal level is necessary to reduce the risk of wildfires and maintain a safe and reliable electric grid for our customers.

PG&E appreciates all the efforts made to date by Congress and the federal government to reduce wildfire risk and advance electricity reliability through common sense hazard tree removal for transmission and distribution lines along rights-of-way. We applaud the incorporation of Section 2310 into bipartisan energy legislation (S. 1460, the Energy and Natural Resources Act of 2017), as well as the efforts of the House of Representatives to pass H.R. 1873, the Electricity Reliability and Forest Protection Act, by a bipartisan vote of 300-118. Such actions affirm Congress' overall commitment to the critical issue of responsibly addressing vegetation management for electric transmission and distribution line along rights-of-way on federal lands.

As a next step, we remain hopeful the Senate and House can take decisive action during the 115th Congress by negotiating a final, bipartisan vegetation management bill that can be presented to the president for his signature this calendar year. PG&E fully supports this process and will remain an active voice in the sharing of our experiences related to prioritizing and accelerating the federal rights-of-way permitting and renewal processes in an effective and environmentally sound manner.

To achieve these basic improvements, we encourage Congress to pass meaningful policy reforms based on the following four principles:

- **Rights-of-Way Permit Renewals**: Accelerate renewals of existing energy corridor rights-of-way, and incorporate integrated vegetation management practices and guidance for protection and conservation of the natural resources that balance benefits of pest control, cost, public health, environmental quality, and regulatory compliance.

- **Regional Operations and Maintenance Plans**: Promote coordination and cooperation by adopting regionally based templates for O&M plans, which establish consistent work practices with clear expectations of the federal land agencies and utilities. At the same time, it is important to clarify work-streams that can be performed with notifications and those which require prior agency review and approval. To the extent possible, steps should be taken to promote joint preparation of National Environmental Policy Act documents among federal agencies for routine maintenance activities to maximize efficiency and coordination, while ensuring consistency with applicable land management plans and policies, and applicable law.

- **Partnership Opportunities**: Identify and pilot-test public-private partnerships to maximize utilities' efforts and capabilities with the federal government that balance public and workforce safety, compliance, emergency preparedness, reliability, customer satisfaction and efficiency. Under this arrangement, utilities could foster a collaborative

approach and leverage resources to accomplish work across land ownership boundaries onto National Forest System lands and other public lands.

- **Liability Protection and Funding Support**: Local counties, USDA Forest Service, Caltrans, CAL FIRE, PG&E, and Southern California Edison are spending millions of dollars to remove dead or dying trees to prevent wildfires, property damage and personal injury, and traffic obstructions. According to the California Tree Mortality Task Force, in the last year, more than 51,600 miles of roads and power lines have been inspected and cleared of dead trees. There is more work on the horizon, but permitting, insurance liability, funding, and workforce availability present challenges. In order to accelerate additional job-creating and safety-enhancing activities, the federal government should consider repurposing existing funding for prevention and forest-thinning related activities, simplifying and accelerating permitting, and better dispersing liability and risk.

Thank you for convening the hearing and for the opportunity to submit this letter for the record. We look forward to working with Congress as you address these issues.

Sincerely,



WESTERN GOVERNORS ASSOCIATION

DENNIS DAUGAARD
GOVERNOR OF SOUTH DAKOTA
CHAIR

DAVID IGE
GOVERNOR OF HAWAII
VICE CHAIR

JAMES D. OGSBURY
EXECUTIVE DIRECTOR

September 19, 2017

Honorable Lisa Murkowski
Chairman
Committee on Energy and
Natural Resources
United States Senate
304 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Maria Cantwell
Ranking Member
Committee on Energy and
Natural Resources
United States Senate
304 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Murkowski and Ranking Member Cantwell:

Western Governors appreciate the attention you have brought to the issue of vegetation management requirements for electricity assets located on federal lands, and your full Committee hearing today to receive testimony on Section 2310 of S. 1460, the Energy and Natural Resources Act of 2017, and H.R. 1873, the Electricity Reliability and Forest Protection Act.

To assist the Committee's consideration of this matter, I request that the following attachments be included in the permanent record of today's hearing:

- First, a copy of an April 3, 2017 letter to the Chairman and Ranking Member of the House Natural Resources Committee requesting their expedited consideration of legislation supporting responsible vegetation management practices; and

- Second, a copy of Western Governors' Association Policy Resolution 2017-10, National Forest and Rangeland Management, which addresses vegetation management in section B, paragraph 9.

Thank you for your attention and consideration. With best wishes for success, I am

Respectfully,

James D. Ogsbury
Executive Director

Attachments

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April 3, 2017

Honorable Rob Bishop
Chairman
House Natural Resources Committee
1324 Longworth House Office Building
Washington, D.C. 20515

Honorable Raul Grijalva
Ranking Member
House Natural Resources Committee
1329 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Bishop and Ranking Member Grijalva:

We understand there are plans to reintroduce bipartisan legislation – the Electricity Reliability and Forest Protection Act – that would, if enacted, help ensure reliable electricity service and reduce the risk of fires and fire hazards that result from inadequate vegetation management on power line rights-of-way. Western Governors supported such legislation in the 114th Congress (H.R. 2358) and urge the Committee to give such legislation expedited review upon its reintroduction.

Western Governors recognize the importance of appropriate fire management and proactive wildfire mitigation. Additionally, we are committed to safeguarding and enhancing the reliability of the region's electric transmission grid. Western Governors' Association (WGA) Policy Resolution 2016-06, *Wildland Fire Management and Resilient Landscapes*, and the 2013 WGA Ten-Year Energy Vision further elaborate on these priorities. Legislation such as that advanced by the House last year can play an important role in realizing these imperatives.

Governors support legislation that recognizes the need for efficient cross-jurisdictional coordination and enables utilities to take necessary actions to enhance grid reliability and reduce the threat of wildfires to and from electric transmission and distribution rights-of-way. We suggest that the legislation include the following key elements:

- Provide electric utilities defined authority to remove dangerous trees even if they exist outside a designated right-of-way and allow pruning or removal of trees;

- Require that rights-of-way be developed in coordination with the right-of-way holder;

- Minimize the need for case-by-case or annual agency approval for routine vegetation management activities to facilitate inspection, operation and maintenance of the right-of-way and for activities necessary to control so-called "hazard trees" within or adjacent to the right-of-way;

- Require prompt review of vegetation management, facility inspection and operation and maintenance plans; and

- Require the relevant federal agency to apply National Environmental Policy Act categorical exclusion to plans developed in line with the legislation and on existing transmission and distribution rights-of-way.

Thank you for your leadership in advancing this important legislation, which seeks to provide another important tool for improving forest health across the West.

Respectfully,

Steve Bullock
Governor of Montana
Chair, WGA

Dennis Daugaard
Governor of South Dakota
Vice Chair, WGA

cc: House Natural Resources Committee Members

WESTERN GOVERNORS' ASSOCIATION

Western Governors' Association Policy Resolution 2017-10

National Forest and Rangeland Management

A. BACKGROUND

1. The American West encompasses a huge landmass representing 2.4 million square miles or over two-thirds of the entire country. Over 112 million people live in these states and they reside in large, densely populated cities, smaller cities and towns and in rural areas.

2. Perhaps more than any other region, terrain, forces of nature, and land ownership patterns in the West underscore the purpose and vital need for a more active federal role in forest management. Western states include more than 75 percent of our national forest and grassland system. These public lands serve as critical economic drivers, and they provide numerous conservation benefits, water supply, and recreational opportunities for Western communities and the nation.

3. States have a particular interest in improving the active management of federal forest lands. State governments have trust authority over water, wildlife and forest resources, along with primary authority and expertise to protect community health and safety. Poorly managed forests can have significant and broad impacts on the landscapes and communities of the West, including negative impacts to air quality and public health, degradation of rivers and streams and associated water quality (including drinking water), reduced forage for domestic livestock, impaired habitats for wildlife and fish, and the loss of forest products and associated jobs.

4. Relative to decades past and other forest landowners, forest managers today operate under a constrained decision space as they work to address contemporary issues such as climate change, invasive pests and diseases, habitat diversity, fuel build-ups and fire risk, and legacy impacts. Adding to this challenge are concerns about the economic and social vitality of rural communities that experience impacts from reduced timber supply and compromised forest health. Displaced workers, declines in school enrollment, aging demographics, property loss, business closures and revenue impacts due to wildfire, and high unemployment are not uncommon to these communities.

5. States are managers as well, and many Western states own extensive public land holdings that require forest products infrastructure to achieve community vitality and land management goals, including ecological restoration objectives and healthy and resilient forests.

6. The U.S. Forest Service business model has historically been based on a combination of federal appropriations that were supplemented with revenue from resource sales and fees. Until the early 1990s, the Forest Service was a net contributor to the Federal Treasury. Over the past 20 years, timber sales have dramatically declined.

7. In addition, the last decade has seen several large, very expensive wildfires, which have increased the U.S. Forest Service wildfire suppression costs from 13 percent of the agency's FY 1991 budget to nearly 50 percent over the last several fiscal years. Consequently, under the current agency budgeting framework, forest management, hazardous fuels reduction, habitat improvement, and outdoor recreation programs have been negatively impacted across national forests and Department of Interior lands.

8. An April 2015 study by the U.S. Forest Service, the *Collaborative Forest Landscape Restoration Program 5-Year Report, FY 2010 – 2014*, found that the past century of wildfire suppression and legacy management practices have contributed to forests being overstocked and primed for larger and more intense blazes, and that changes in land use and increasing social pressures make it difficult for the agency to let fire play its natural role of clearing the forest understory in certain forest types. Active forest management has historically played a pivotal role in the growth and mortality cycle of forests to manage fuel loading, which in turn can reduce fire-fighting costs and improve habitat resilience. Today, the U.S. Forest Service estimates that roughly 90,625 square miles – an area larger than Utah – is at high or very high risk of severe wildfire and in need of treatment.

9. Insect infestation and disease have damaged many of the forests throughout the West. Severe drought conditions that are impacting western states, particularly California, have only exacerbated insect infestations and tree mortality. The impacts go well beyond fire risk, and timber and fiber production are negatively impacted, threatening the viability of the surviving forest product infrastructure. The significant decline in forest health has also created serious threats and challenges to watershed integrity, wildlife and fisheries habitats, recreational uses, businesses and tourism. All of these impacts present substantial challenges for forest-dependent communities across the West.

10. The dire forest conditions, unmet management needs, and the failure to provide lasting protections for some landscapes have brought diverse stakeholders together to find solutions. Community collaboration on forest health projects is robust in numerous places across the West forging broad agreements among diverse stakeholders on projects that encompass fuels reduction, fiber production, habitat restoration, long-term protection for critical areas, and other community objectives. It is not uncommon to find mill owners, hunters and anglers, loggers, small business owners, conservationists, and local elected leaders working together around the table.

11. Collaborative planning and project implementation across National Forests and state and private forest lands on a larger scale allows for more diverse interests to address their particular needs for a landscape or a watershed. Taking a broad look at a landscape for planning purposes minimizes the challenges associated with managing lands for the benefit of a particular species or to address a specific need. Well-planned projects that are strategically placed across a landscape can result in a higher level of benefits than those that are more randomly or opportunistically placed. Processes associated with planning and implementing a project have become so time consuming and expensive for National Forests in particular that a disincentive often exists for their managers to proceed with management actions that are needed to attain desired ecological, social, and economic objectives.

12. Collaborative efforts have shown initial successes in reaching consensus, but there is a shortage of formal mechanisms that encourage their creation in areas with conflict or reward their success within the context of public process. Further, there is little to no formal incentive for the management agencies and collaboratives to ensure collaborative work happens in a timely and efficient manner that achieves a pace and scale of management that matches the ecological, social, or economic needs of public and private forestlands and surrounding communities.

13. Despite this good work the full benefits of these collaborative efforts have not been realized on the land. Working constructively with collaborators requires resources to be productive and the federal agencies often lack the necessary staff and funding. In addition, the federal agencies have sometimes been reluctant to embrace collaboration, because they either have unclear legal authority to favor collaborative efforts or don't welcome the input.

14. Further, and even when collaborative forest health projects enjoy broad support from diverse stakeholders and the agencies, administrative objections and litigation remain a too frequent outcome. One result is that community collaborative efforts become fatigued, and future opportunities are lost. Another outcome is that Forest Service restoration projects often go through exhaustive, time-consuming analysis, driving up costs and preventing the agency from scaling up management to meet the scope of the problem.

15. Today the costs associated with planning and implementing a management project on National Forest lands are significantly more than those of the private sector. This cost, along with the time associated with drafting, analyzing, incorporating public involvement, and responding to appeals and/or litigation at the project level, lead many federal managers to focus their limited staff, funds and time on projects with the least likelihood to be challenged. This approach does not adequately address the larger socio-economic and ecological needs of our National Forests and dependent communities.

16. The 2014 Farm Bill provided the Forest Service with several new tools to accelerate forest restoration. A Governor could nominate landscapes substantially affected or threatened by insects and disease to the Secretary of Agriculture for designation as Priority Areas for expedited NEPA and administrative process and judicial review. 16 Western Governors nominated areas for this designation, the vast majority of which were approved by the Secretary of Agriculture.

17. In addition, the new Farm Bill authorities provided for a categorical exclusion (CE) for insect and disease projects on areas as large as 3,000 acres that are the product of a collaborative effort. The new CE has the potential to greatly magnify the role of collaboration and strengthen the results of those efforts, and to reduce the time and cost for forest health projects, resulting in on-the-ground restoration work that is accomplished more quickly and across a larger landscape. Not yet in wide use, the Farm Bill also added expanded "Good Neighbor" authority that enhances the ability of states to partner with the Forest Service and implement projects on federal land.

18. The shortcomings of federal forest management have also impacted local governments directly. In 1908, when Congress created the National Forest System, it also passed the National Forest Revenue Act in 1908 directing the Forest Service to share 25 percent of gross revenues with local governments. Then in 1976, Congress passed "Payments in Lieu of Taxes" (PILT) legislation providing federal payments to local governments regardless of gross revenues that result from timber harvest and other forest management activities. After revenues from the sale of timber dropped substantially, Congress passed the Secure Rural Schools and Self Determination Act (SRS) in 2000, allowing counties to choose between a payment based on historical average and the 25 percent revenue share. SRS has expired several times, and PILT has been subject to funding uncertainty as well. Western Governors support efforts to ensure counties and states continue to receive payments under the Secure Rural Schools program, and that these payments should be based upon historic federal land management receipts. These payments are vital to providing state and county public goods and services, such as roads, emergency response, and wildlife and natural resources protection in communities adjacent to federal lands.

19. There have been several efforts in Congress to reform federal forest management, and recent legislation reflects the continued frustration of Congress as it attempts to find a path forward to address this issue in a productive, bipartisan manner.

B. GOVERNORS' POLICY STATEMENT

1. Western Governors support sound forest management policies that maintain and promote ecologic, economic and social balance and sustainability.

2. Today, the Forest Service's forest management program is primarily a byproduct of restoration projects intended to reduce wildfire risk and/or improve forest resilience, water quality, watershed health, key wildlife habitat, and/or intrinsic value. Western Governors recognize and support these forest values, but also believe it is reasonable to expect that some portion of the federal landscape will be focused on long-term, ecologically-sound forest management — where jobs, forest products, and revenues are priorities and generated through sound stewardship.

3. Western Governors encourage the Forest Service to develop and help fund new technologies and wood based markets for some non-traditional products. USDA's Forest Products Laboratory is a hub for research and innovation. We should continue to encourage the application of their knowledge and experience in a practical way in the western United States so that some of the federally funded infrastructure that develops from such efforts could first be demonstrated on private lands. Also, since federal forests are now more focused on large landscape forest health projects, there is a good opportunity to ensure we have a broader suite of outlets, in addition to traditional sawmills and existing biomass facilities.

4. We can achieve sustainable forest management across every acre of our federal and nonfederal forestlands while including an equitable mix of uses to meet many ecological, social, and economic needs.

5. Western Governors believe that our citizens are capable of rolling up their sleeves and working together with the federal agencies to address difficult issues such as forest management, and that not enough is done to incent and reward the current collaborative work that is occurring across the West.

6. It is important to retain citizens' rights to question governmental decisions through administrative and legal means. However, there are situations where the threat of litigation is a key factor resulting in either delay of agency activity and progress or the stifling of productive collaborative work. The lack of funding and resources for federal agencies is also a significant factor. Western Governors believe an effort needs to be made to better understand the scope and scale of this problem. There may be an opportunity to further streamline appeals and litigation associated with National Forest decision making in association with other changes designed to incent collaboration and provide more certainty as to outcomes.

7. The 2014 Farm Bill authorities are significant expansions of Forest Service authority and are powerful new tools to boost forest management, promote collaboration, and limit the impacts of administrative objections and litigation. Western Governors encourage federal agencies to fully implement the tools provided in the 2014 Farm Bill.

8. Western Governors are on record as strong supporters of ending the practice of fire borrowing, and Congress should pass legislation to fund federal wildfires off-budget as many states already do, and ensure the Forest Service budget for forest restoration, recreation, road maintenance, hazardous fuels reduction, and wildlife/watershed protection is fully restored.

9. Western Governors believe clear, coordinated and consistent application of federal vegetation management practices is integral to maintaining the health of western forests, preventing dangerous and damaging fires, and maintaining grid reliability. The Governors support effective and efficient cross-jurisdictional coordination that enables utilities to undertake necessary vegetation management actions on federal transmission rights-of-way – and to do so without fear of strict liability imposition for necessary vegetation management actions taken adjacent to transmission rights-of-way.

10. Western Governors are well-suited to engage in a productive and bipartisan dialogue on the broader topic of federal forest management reform, engaging westerners and examining on the ground realities across western landscapes. Western states are land owners and managers and well understand the challenges associated with forest management under changing social, economic and environmental conditions.

11. A meaningful and successful discussion of forestry reform in the West will require a transparent and inclusive process that engages those diverse interests who have a direct stake in forest management outcomes. The impacts of forest management are felt most directly by those who live, work and recreate in and adjacent to those forests, so the discussion needs to begin there. This is perhaps where Western Governors can provide the most productive bipartisan contribution to this national discussion. Our nation's forests belong to all Americans, and in the end and through their elected representation all Americans will determine the scope and success of any efforts to reform forest management.

12. There is significant dissatisfaction in the West among many stakeholders with the current level of National Forest management. There is a general sense that the current level of forest management is not meeting anyone's needs, whether it's putting logs on trucks, protecting water quality, addressing fire risk, protecting key habitats and landscapes, providing for recreation, or other important community needs. Successful forest management reform will achieve a balance among all of these important objectives, and provide the opportunity for certainty such that diverse interests will be encouraged to work together to achieve shared outcomes.

13. It is time to reconsider the business model of the U.S. Forest Service. Western Governors believe it may be possible to reform the Forest Service business model in a manner that reduces project planning costs, sources funds from non-federal partners and recognizes that the agency no longer generates large revenues from commodity programs.

14. Any discussion of forest management reform must include consideration of the financial relationship between the Federal and local governments, the existence of PILT, and the limited tax base for counties with significant federal ownership.

15. Western Governors support the recommendations identified over the course of the WGA National Forest and Rangeland Management Initiative, and incorporate the recommendations into this resolution by reference.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Governors direct the WGA staff, where appropriate, to work with Congressional committees of jurisdiction and the Executive Branch to achieve the objectives of this resolution including funding, subject to the appropriation process, based on a prioritization of needs.

2. Furthermore, the Governors direct WGA staff to develop, as appropriate and timely, detailed annual work plans to advance the policy positions and goals contained in this resolution. Those work plans shall be presented to, and approved by, Western Governors prior to implementation. WGA staff shall keep the Governors informed, on a regular basis, of their progress in implementing approved annual work plans.

Western Governors enact new policy resolutions and amend existing resolutions on a bi-annual basis. Please consult http://www.westgov.org/resolutions for the most current copy of a resolution and a list of all current WGA policy resolutions.