

ELECTRICITY RELIABILITY AND FOREST PROTECTION  
ACT

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JUNE 12, 2017.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. BISHOP of Utah, from the Committee on Natural Resources,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1873]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1873) to amend the Federal Land Policy and Management Act of 1976 to enhance the reliability of the electricity grid and reduce the threat of wildfires to and from electric transmission and distribution facilities on Federal lands by facilitating vegetation management on such lands, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Electricity Reliability and Forest Protection Act”.

**SEC. 2. VEGETATION MANAGEMENT, FACILITY INSPECTION, AND OPERATION AND MAINTENANCE ON FEDERAL LANDS CONTAINING ELECTRIC TRANSMISSION AND DISTRIBUTION FACILITIES.**

(a) IN GENERAL.—Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.) is amended by adding at the end the following new section:

**“SEC. 512. VEGETATION MANAGEMENT, FACILITY INSPECTION, AND OPERATION, AND MAINTENANCE RELATING TO ELECTRIC TRANSMISSION AND DISTRIBUTION FACILITY RIGHTS-OF-WAY.**

“(a) GENERAL DIRECTION.—In order to enhance the reliability of the electricity grid and reduce the threat of wildfires to and from electric transmission and distribution rights-of-way and related facilities and adjacent property, the Secretary,

with respect to public lands and other lands under the jurisdiction of the Secretary, and the Secretary of Agriculture, with respect to National Forest System lands, shall provide direction to ensure that all existing and future rights-of-way, however established (including by grant, special use authorization, and easement), for electrical transmission and distribution facilities on such lands include provisions for utility vegetation management, facility inspection, and operation and maintenance activities that, while consistent with applicable law—

“(1) are developed in consultation with the holder of the right-of-way;

“(2) enable the owner or operator of a facility to operate and maintain the facility in good working order and to comply with Federal, State and local electric system reliability and fire safety requirements, including reliability standards established by the Electric Reliability Organization as defined under 16 U.S.C. 824o(a) and plans to meet such reliability standards;

“(3) minimize the need for case-by-case or annual approvals for—

“(A) routine vegetation management, facility inspection, and operation and maintenance activities within existing electrical transmission and distribution rights-of-way; and

“(B) utility vegetation management activities that are necessary to control hazard trees within or adjacent to electrical transmission and distribution rights-of-way; and

“(4) when review is required, provide for expedited review and approval of utility vegetation management, facility inspection, and operation and maintenance activities, especially activities requiring prompt action to avoid an adverse impact on human safety or electric reliability to avoid fire hazards.

“(b) VEGETATION MANAGEMENT, FACILITY INSPECTION, AND OPERATION AND MAINTENANCE PLANS.—

“(1) DEVELOPMENT AND SUBMISSION.—Consistent with subsection (a), the Secretary and the Secretary of Agriculture shall provide owners and operators of electric transmission and distribution facilities located on lands described in such subsection with the option to develop and submit a vegetation management, facility inspection, and operation and maintenance plan, that at each transmission or distribution owner or operator’s discretion may cover some or all of the owner or operator’s transmission and distribution rights-of-way on Federal lands, for approval to the Secretary with jurisdiction over the lands. A plan under this paragraph shall enable the owner or operator of a facility, at a minimum, to comply with applicable Federal, State, and local electric system reliability and fire safety requirements, as provided in subsection (a)(2). The Secretaries shall not have the authority to modify those requirements.

“(2) REVIEW AND APPROVAL PROCESS.—The Secretary and the Secretary of Agriculture shall jointly develop a consolidated and coordinated process for review and approval of—

“(A) vegetation management, facility inspection, and operation and maintenance plans submitted under paragraph (1) that—

“(i) assures prompt review and approval not to exceed 90 days;

“(ii) includes timelines and benchmarks for agency comments to submitted plans and final approval of such plans;

“(iii) is consistent with applicable law; and

“(iv) minimizes the costs of the process to the reviewing agency and the entity submitting the plans; and

“(B) amendments to the plans in a prompt manner if changed conditions necessitate a modification to a plan.

“(3) NOTIFICATION.—The review and approval process under paragraph (2) shall—

“(A) include notification by the agency of any changed conditions that warrant a modification to a plan;

“(B) provide an opportunity for the owner or operator to submit a proposed plan amendment to address directly the changed condition; and

“(C) allow the owner or operator to continue to implement those elements of the approved plan that do not directly and adversely affect the condition precipitating the need for modification.

“(4) CATEGORICAL EXCLUSION PROCESS.—The Secretary and the Secretary of Agriculture shall apply his or her categorical exclusion process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to plans developed under this subsection on existing transmission and distribution rights-of-way under this subsection.

“(5) IMPLEMENTATION.—A plan approved under this subsection shall become part of the authorization governing the covered right-of-way and hazard trees adjacent to the right-of-way. If a vegetation management plan is proposed for an existing transmission or distribution facility concurrent with the siting of a

new transmission or distribution facility, necessary reviews shall be completed as part of the siting process or sooner. Once the plan is approved, the owner or operator shall provide the agency with only a notification of activities anticipated to be undertaken in the coming year, a description of those activities, and certification that the activities are in accordance with the plan.

“(6) DEFINITIONS.—In this subsection:

“(A) VEGETATION MANAGEMENT, FACILITY INSPECTION, AND OPERATION AND MAINTENANCE PLAN.—The term ‘vegetation management, facility inspection, and operation and maintenance plan’ means a plan that—

“(i) is prepared by the owner or operator of one or more electrical transmission or distribution facilities to cover one or more electric transmission and distribution rights-of-way; and

“(ii) provides for the long-term, cost-effective, efficient and timely management of facilities and vegetation within the width of the right-of-way and adjacent Federal lands to enhance electricity reliability, promote public safety, and avoid fire hazards.

“(B) OWNER OR OPERATOR.—The terms ‘owner’ and ‘operator’ include contractors or other agents engaged by the owner or operator of a facility.

“(C) HAZARD TREE.—The term ‘hazard tree’ means any tree inside the right-of-way or located outside the right-of-way that has been designated, prior to tree failure, by either the owner or operator of a transmission or distribution facility, or the Secretary or the Secretary of Agriculture, to be likely to fail and cause a high risk of injury, damage, or disruption within 10 feet or less of an electric power line or related structure if it fell.

“(c) RESPONSE TO EMERGENCY CONDITIONS.—If vegetation on Federal lands within, or hazard trees on Federal lands adjacent to, an electrical transmission or distribution right-of-way granted by the Secretary or the Secretary of Agriculture has contacted or is in imminent danger of contacting one or more electric transmission or distribution lines, the owner or operator of the transmission or distribution lines—

“(1) may prune or remove the vegetation or hazard tree to avoid the disruption of electric service and risk of fire; and

“(2) shall notify the appropriate local agent of the relevant Secretary not later than 24 hours after such removal.

“(d) COMPLIANCE WITH APPLICABLE RELIABILITY AND SAFETY STANDARDS.—If vegetation on Federal lands within or adjacent to an electrical transmission or distribution right-of-way under the jurisdiction of each Secretary does not meet clearance requirements under standards established by the Electric Reliability Organization as defined under 16 U.S.C. 824o(a), or by State and local authorities, and the Secretary having jurisdiction over the lands has failed to act to allow a transmission or distribution facility owner or operator to conduct vegetation management activities within 3 business days after receiving a request to allow such activities, the owner or operator may, after notifying the Secretary, conduct such vegetation management activities to meet those clearance requirements.

“(e) REPORTING REQUIREMENT.—The Secretary or Secretary of Agriculture shall report requests and actions made under subsections (c) and (d) annually on each Secretary’s website.

“(f) LIABILITY.—An owner or operator of a transmission or distribution facility shall not be held liable for wildfire damage, loss or injury, including the cost of fire suppression, if—

“(1) the Secretary or the Secretary of Agriculture fails to allow the owner or operator to operate consistently with an approved vegetation management, facility inspection, and operation and maintenance plan on Federal lands under the relevant Secretary’s jurisdiction within or adjacent to a right-of-way to comply with Federal, State or local electric system reliability and fire safety standards, including standards established by the Electric Reliability Organization as defined under 16 U.S.C. 824o(a); or

“(2) the Secretary or the Secretary of Agriculture fails to allow the owner or operator of the transmission or distribution facility to perform appropriate vegetation management activities in response to a hazard tree as defined under subsection (b)(6), or a tree in imminent danger of contacting the owner’s or operator’s transmission or distribution facility.

“(g) TRAINING AND GUIDANCE.—In consultation with the electric utility industry, the Secretary and the Secretary of Agriculture are encouraged to develop a program to train personnel of the Department of the Interior and the Forest Service involved in vegetation management decisions on rights-of-way relating to transmission and distribution facilities to ensure that such personnel—

“(1) understand electric system reliability and fire safety requirements, including reliability standards established by the Electric Reliability Organization as defined under 16 U.S.C. 824o(a);

“(2) assist owners and operators of transmission and distribution facilities to comply with applicable electric reliability and fire safety requirements; and

“(3) encourage and assist willing owners and operators of transmission and distribution facilities to incorporate on a voluntary basis vegetation management practices to enhance habitats and forage for pollinators and for other wildlife so long as the practices are compatible with the integrated vegetation management practices necessary for reliability and safety.

“(h) IMPLEMENTATION.—The Secretary of the Interior and the Secretary of Agriculture shall—

“(1) not later than one year after the date of the enactment of this section, prescribe regulations, or amend existing regulations, to implement this section; and

“(2) not later than two years after the date of the enactment of this section, finalize regulations, or amend existing regulations, to implement this section.

“(i) EXISTING VEGETATION MANAGEMENT, FACILITY INSPECTION AND OPERATION AND MAINTENANCE PLANS.—Nothing in this section requires an owner or operator to develop and submit a vegetation management, facility inspection, and operation and maintenance plan if one has already been approved by the Secretary or Secretary of Agriculture before the date of the enactment of this section.”

(b) CLERICAL AMENDMENT.—The table of sections for the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.), is amended by inserting after the item relating to section 511 the following new item:

“Sec. 512. Vegetation management, facility inspection, and operation and maintenance relating to electric transmission and distribution facility rights-of-way.”

#### PURPOSE OF THE BILL

The purpose of H.R. 1873 is to amend the Federal Land Policy and Management Act of 1976 to enhance the reliability of the electricity grid and reduce the threat of wildfires to and from electric transmission and distribution facilities on Federal lands by facilitating vegetation management on such lands.

#### BACKGROUND AND NEED FOR LEGISLATION

The goal of H.R. 1873 is to ensure reliable electricity service and reduce the risk of fires and fire hazards caused by inadequate vegetation management in and adjacent to power line rights-of-way (ROW) on some federally managed lands. H.R. 1873 seeks to reduce such wildfires, in part, by promoting federal consistency, accountability, and timely decision-making as it relates to protecting electricity transmission and distribution lines on some federal lands from hazard trees. The bipartisan Western Governors Association wrote, in supporting this legislation, that “[o]ne of our forest management priorities is fire prevention, particularly as we enter wildfire season. Reliability of the region’s electrical transmission grid is also a critical interest. This legislation would play an important role in both.”<sup>1</sup> This legislation is the result of oversight and legislative hearings spanning multiple Administrations.

This bill deals specifically with electricity ROWs on U.S. Forest Service (Forest Service) and Bureau of Land Management (BLM) lands. Forest Service lands include 3,000 authorized electric transmission and distribution facilities, accounting for nearly 18,000 miles of electric ROWs.<sup>2</sup> BLM has over 71,613 miles of electricity

<sup>1</sup>Western Governors Association Letter from Governors Mathew Mead and Steve Bullock to Congressman Ryan Zinke and Kurt Schrader, August 27, 2015, p.2.

<sup>2</sup>Testimony of Mr. Jim Pena, Associate Deputy Chief of the National Forest System, U.S. Forest Service, House Committee on Natural Resources, Oversight Hearing on “*Keeping the Lights*

transmission and distribution lines.<sup>3</sup> The costs of operating, maintaining and repairing electricity lines on these ROWs on federal land are borne by utility companies and their electricity ratepayers.

A properly maintained electricity ROW can have multiple benefits. While one benefit is a linear path for delivering electricity from a generation source to electricity ratepayers, another beneficial purpose is the creation of wildlife corridors. According to the National Wild Turkey Foundation, “the most important turkey use of a ROW is for reproduction. Several studies have found that many hens selected old field vegetation on a ROW for nesting . . . the close proximity of the forest and old field habitat offers a variety of resources (e.g. food) for turkeys and other wildlife . . . the food chain begins with grasses and forbs, which are eaten by rats and rabbits, which are eaten by predators, who might also eat turkey eggs, poults, and adults.”<sup>4</sup>

In addition, properly managed ROWs can provide a source of domestic food supply. According to the North American Pollinator Protection Campaign:

Millions of acres of utility ROW habitat crisscross all types of ecosystems as they bring energy to our homes and businesses. If these ROW are managed with an integrated vegetation management program, they can attract and sustain millions of native wild bees, butterflies and beetles and other animals that pollinate and can insure the reproduction of over 75% of all flowering plants. . . . Pollinating animals assist plants in reproduction by transferring pollen, allowing those plants to produce seeds, berries, nuts and other foods important to the survival of many species of wildlife, and to the production of an estimated 1/3 of the human food supply.<sup>5</sup>

Electricity ROWs are usually in need of active vegetative management since they can be surrounded by living, dead or dying trees that can make contact with a power line if not properly maintained. Vegetative management is a critical tool for safeguarding electricity infrastructure and wildlife habitat on ROWs located on federal and other lands. The goals of vegetative management are to ensure electricity line reliability to prevent tree-related fires and keep the public and habitat safe. A typical vegetative management program carried out by an electric utility with above-ground transmission or distribution lines includes tree pruning and removal, manual or mechanical vegetation control around poles or substations, tree-planting or transplanting, and tree inventories. The standard utility practice for managing these ROWs is called Integrated Vegetative Management (IVM), which is generally defined as the “practice of promoting desirable, stable, low-growing plant communities—that will resist invasion by tall-growing tree spe-

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*On and Reducing Catastrophic Forest Fire Risk: Proper Management of Electricity Rights of Way on Federal Lands,* May 7, 2014, p. 2.

<sup>3</sup>Department of Energy: “*Report to Congress: Corridors and Rights-of-Way on Federal Lands,*” p. 2, available at: <http://energy.gov/sites/prod/files/oepr/DocumentandMedia/congress-020906.pdf>.

<sup>4</sup>George A. Hurst, “*Rights-of-Way for Wildlife,*” NWTf Wildlife Bulletin No. 19, The National Wild Turkey Federation, available at: <https://www.mdwfp.com/media/7662/rights-of-way.pdf>.

<sup>5</sup>*Id.*

cies—through the use of appropriate, environmentally sound, and cost-effective control methods.”<sup>6</sup>

As noted above, there are almost 90,000 miles of electric transmission and distribution lines on Forest Service and BLM lands. In order to perform infrastructure inspections and operate and maintain power lines on these lands, electric utilities seek permission and approval from the appropriate federal land management agency, which will typically use processes under the National Environmental Policy Act of 1969 to assess whether the proposed vegetative management measures comply with federal environmental laws. Despite these electricity corridors being “less than a fraction of a percent” of overall federal lands, the consequences of not effectively managing the electricity ROWs can be significant and catastrophic if fire spreads to the surrounding lands.<sup>7</sup>

When a ROW is not properly maintained, a tree can grow into or fall on a power line, causing fires and a domino effect of electricity blackouts. For example, on August 10, 1996, three power lines in the Pacific Northwest sagged on to untrimmed trees, causing a massive electricity blackout that impacted 7.5 million people across 14 western states, two Canadian provinces and part of Mexico.<sup>8</sup> An August 14, 2003, blackout caused by a falling tree led to an outage for 50 million electricity customers.<sup>9</sup>

As a result of the 2003 blackout and ongoing reliability concerns, what was then the North American Electric Reliability Council finalized vegetative management standards and guidelines for the electric industry in 2005.<sup>10</sup> In the same year, Congress passed and the President signed the Energy Policy Act of 2005 (Public Law 109–58), which focused on creating nationwide mandatory electricity reliability standards to avoid widespread electricity blackouts.<sup>11</sup> Section 1211 contains the following reliability provision:

Federal agencies responsible for approving access to electric transmission or distribution facilities located on lands within the United States shall, in accordance with applicable law, expedite any Federal agency approvals that are necessary to allow the owners or operators of such facilities to comply with any reliability standard, approved by the Commission under section 215 of the Federal Power Act, that pertains to vegetation management, electric service restoration, or resolution of situations that imminently endanger the reliability or safety of the facilities.<sup>12</sup>

A decade since the passage of the Energy Policy Act of 2005, properly maintaining an electricity ROW is still an important issue. For example, the Department of Energy’s 2015 Quadrennial Energy Review stated:

<sup>6</sup> “Integrated Vegetation Management (IVM) Fact Sheet”, U.S. EPA, PestWise Program, available at: [http://www.epa.gov/pest/htmlpublications/ivm\\_fact\\_sheet.html](http://www.epa.gov/pest/htmlpublications/ivm_fact_sheet.html).

<sup>7</sup> Testimony of Mr. Michael Neal, Manager of Forestry and Special Programs for Arizona Public Service, House Committee on Natural Resources, Oversight Hearing on “Keeping the Lights On and Reducing Catastrophic Forest Fire Risk: Proper Management of Electricity Rights of Way on Federal Lands,” May 7, 2014, p. 2.

<sup>8</sup> The U.S.-Canada Power System Outage Task Force, “August 14th Blackout: Causes and Recommendations,” (April 2004). Available at: <http://energy.gov/sites/prod/files/oeprod/DocumentsandMedia/BlackoutFinal-Web.pdf>.

<sup>9</sup> Devon Peacock, “2003 Blackout: 10 Years Later,” CFPL AM, Aug. 14, 2013, available at: <http://www.am980.ca/2013/08/14/blackout-10-years/>.

<sup>10</sup> Federal Energy Regulatory Commission, FAC–003–2.

<sup>11</sup> P.L. 109–190, 120 Stat. 298.

<sup>12</sup> *Id.* at Sec. 215.

Reliability and resilience projects have also included operations and maintenance activities, such as aggressive vegetation management. While it might be considered low-tech, vegetation management is an essential activity; both the 1996 West Coast and 2003 East Coast-Midwest power outages started from trees along transmission lines.<sup>13</sup>

Despite such attention, vegetation continues to interact with power lines. Indeed, the Forest Service reported 113 and 232 wildfires in 2013 and 2012, respectively, caused by contact between power lines and trees on its lands.<sup>14</sup> Federal land agencies have been subject to criticism for not allowing utilities to carry out vegetative management policies on a consistent and timely basis. Specifically, some electricity providers and the International Brotherhood of Electrical Workers have voiced concerns that federal land managers carry out policies contradictory from one another, that there is no timely decision-making process for removing dangerous trees and that redundancy in reviews and work requirements add unnecessary delay. As an example, Mr. Bobby Bright, the former Chief Executive Officer of the San Miguel Power Association in southwestern Colorado, testified about his interaction with the Forest Service to the House Resources Committee in 2006:

There is little consistency from agency to agency, district to district, or even within the same offices. There seems to be no standard operating procedure. . . . We are not asking for a free pass to build whatever we want wherever we want it. We are asking for a streamlined process with consistent procedures and requirements. . . . It would also relieve some of the staffing shortfalls that these agencies are experiencing.<sup>15</sup>

Similarly, at a Natural Resources Committee hearing in May 2014, Mr. Randall Miller of PacifiCorp testified about federal staffing inconsistencies:

The inconsistent viewpoints of Federal land managers create difficulties for utilities because local authorities are empowered to make their own decisions for what is or is not appropriate in their jurisdictions. The arrangement creates unpredictable directives regarding what is or what is not authorized on utility corridors on Federal lands—in spite of land managers ostensibly working with the same policies and procedures.<sup>16</sup>

The delay caused by these inconsistencies poses significant financial issues for smaller utilities. Mr. Mark Hayden, the General Manager of Missoula Electric Cooperative, testified on a previous version of this legislation:

In some cases, it can take months or a year or more to obtain approval on Major Operation and Maintenance activities. Such approvals are necessary to assuring electricity service is not

<sup>13</sup>U.S. Department of Energy: *2015 Quadrennial Energy Review*, Ch. 2, p.15.

<sup>14</sup>Testimony of Mr. Jim Pena, Associate Deputy Chief of the National Forest System, U.S. Forest Service, House Committee on Natural Resources, Oversight Hearing on *“Keeping the Lights On and Reducing Catastrophic Forest Fire Risk: Proper Management of Electricity Rights of Way on Federal Lands,”* May 7, 2014, p. 2.

<sup>15</sup>Testimony of Mr. Bobby Bright, CEO, San Miguel Power Association, House Committee on Natural Resources, Subcommittee on Water and Power, Subcommittee on Forests and Forest Health, Oversight Hearing on *“The Need for Proper Forest Management on Federal Rights of Way to Ensure Reliable Electricity Service,”* May 3, 2006.

<sup>16</sup>Testimony of Mr. Randall Miller, Director of Vegetative Management, PacifiCorp, House Committee on Natural Resources, Oversight Hearing on *“Keeping the Lights On and Reducing Catastrophic Forest Fire Risk: Proper Management of Electricity Rights of Way on Federal Lands,”* May 7, 2014, p. 6.

jeopardized as a result of work needed on rights-of-way. It is this inconsistency and the unnecessary financial risk placed on my cooperative and other cooperatives that cause me and other co-op managers in the State of Montana significant concern.<sup>17</sup>

H.R. 1873 attempts to provide consistency by requiring the Secretaries of the Interior and Agriculture to allow electricity ROW holders on BLM and Forest Service lands the option of submitting utility vegetation management, facility inspection and operation and maintenance plans for such lands for approval, and to develop a coordinated process for review and approval for such plans. The Committee heard testimony that some local Forest Service and BLM districts and regions are working well with utilities and that some plans already exist and have been approved by the agencies. The purpose of H.R. 1873 is not to mandate that every utility submit such plans to the agencies, as that could be very costly for the utilities and the agencies. Rather, one goal is to have the agencies jointly develop guidelines and consistency so that utilities have more predictability when and if they submit such plans.

Electric utilities are not only focused on managing vegetation on a ROW, but are also concerned about adjacent high-risk and hazardous trees outside the corridor. Many electric utilities remain threatened with liability for fires on federal lands caused by nearby trees outside the ROW that could fall on power lines.<sup>18</sup> Despite being potentially liable for trees that are outside of the ROW but are on federal lands, utilities may encounter opposition and lengthy delay from some Forest Service and BLM personnel to remove the high risk trees. As an example, Mr. Mike Easely, who represented a rural electric cooperative in Wyoming, testified on the following liability issue:

Carbon Power and Light (Carbon) had been conducting regular maintenance and clearing of rights of way (ROW). Personnel noticed several trees outside of the ROW (Forest Service trees) and noted if the trees fell, they would fall into their power lines. The cooperative took the initiative to contact officials in the Medicine Bow National Forest to bring this problem to their attention. Among other things they were told that if a tree outside their ROW fell into the lines and caused a fire, the cooperative would be held liable for damages! It should be noted that most, if not all, of the trees being cleared, or needing to be cleared, were dead due to beetle kill and were not viable living trees. Carbon had to jump through many bureaucratic hoops, conducting one study after another that delayed the clearing of ANY trees for over two years and at a cost of over \$1.6 million to their member-owners. Because of the delays, the cooperative was not able to clear all of the trees needed in one season. We were all very fortunate that a forest fire was not ignited by one of these dead trees falling into a wire.<sup>19</sup>

<sup>17</sup>Testimony of Mr. Mark Hayden, General Manager, Missoula Electric Cooperative, House Committee on Natural Resources, Legislative Hearing on H.R. 2358, May 20, 2015, p. 2.

<sup>18</sup>Testimony of Mr. Steven Eldrige, General Manager and CEO, Umatilla Electric Cooperative, House Committee on Natural Resources, Subcommittee on Water and Power, Subcommittee on Forests and Forest Health, Oversight Hearing on *"The Need for Proper Forest Management on Federal Rights of Way to Ensure Reliable Electricity Service"*, May 3, 2006.

<sup>19</sup>Testimony of Mr. Mike Easely, CEO Powder River Energy Corporation, House Committee on Natural Resources Oversight Hearing on *"Keeping the Lights On and Reducing Catastrophic"*



Trees have indeed fallen on power lines even after the Forest Service disapproved of pruning the trees and some utilities are left with the bill. As Mr. Dave Markham, President and CEO of the Central Electric Cooperative, Inc., testified on a nearly identical bill last Congress:

Midstate Electric Cooperative in La Pine, Oregon, requested the trimming of selective trees along the rights-of-way on USFS land for fear the trees were a hazard. This request was denied. Predictably, a tree fell into a power line, sparking a wildfire. Because the electric cooperative was held strictly liable, they had to pay firefighting costs of \$326,850. This legislation's provision shifting the liability away from the utility if the agency denies permission to manage the vegetation is needed and long overdue.<sup>20</sup>

H.R. 1873 addresses this issue to ensure that a utility is not liable if the federal government failed to allow the utility to manage vegetation on or adjacent to the ROW. As analyzed by the Congressional Budget Office, this provision will have a “negligible impact” on federal costs since “it is unlikely that an agency would deny a request to clear vegetation that might subsequently result in a wildfire” under the bill.<sup>21</sup> However, a utility would still be liable if its lines or facilities spark a fire not related to the federal government’s decision or indecision on vegetative management.

Many of those impacted directly by the current federal policies and who work on ROWs on federal lands on a daily basis support this bill. The International Brotherhood of Electrical Workers, the National Rural Electric Cooperative Association, the Edison Electric Institute, the American Public Power Association, the Northwest Public Power Association, the Southern California Public Power Association, and the Colorado River Energy Distributors Association are just a few of the organizations representing utilities and their employees who experience the need for this bill and support its passage.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

This section states the title of the bill as the “Electricity Reliability and Forest Protection Act”.

##### *Section 2. Vegetation management, facility inspection, and operation and maintenance on Federal lands containing electric transmission and distribution facilities*

Section 2 adds a new section (Section 512) to the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1761 et seq.). The following describes the new text to be added to this law.

New FLPMA Section 512(a) requires the Secretary of the Interior and Secretary of Agriculture to provide direction to allow electricity ROW holders on BLM and Forest Service lands the option of sub-

*Forest Fire Risk: Proper Management of Electricity Rights-of-Way on Federal Lands,* May 7, 2014, p. 1.

<sup>20</sup>Testimony of Mr. Dave Markham, President and CEO of the Central Electric Cooperative, House Committee on Natural Resources, Legislative Hearing on H.R. 2358, May 20, 2015, p. 2.

<sup>21</sup>Congressional Budget Office, “H.R. 2358, *Electricity Reliability and Forest Protection Act,*” Sept. 15, 2015, available at: <https://www.cbo.gov/publication/50822>, p. 2.

mitting utility vegetation management, facility inspection and operation and maintenance plans on such lands for approval. As amended, this direction shall be developed in consultation with ROW holders and allow an owner or operator to maintain facilities to comply with federal, State, and local electric system reliability and fire safety standards, including those established by the Electric Reliability Organization (ERO), as defined under 16 U.S.C. 824o(a).

The direction shall minimize the need for case-by-case or annual approvals for routine vegetation management, facility inspection, and operation and maintenance activities within existing electrical ROWs and utility vegetation management activities that are necessary to control hazard trees within or adjacent to electrical ROWs on federal land. The subsection stipulates that when such review is required, the Secretaries shall provide for expedited review and approval of utility vegetation management, facility inspection, and operation and maintenance activities, especially activities requiring prompt action to avoid an adverse impact on human safety or electric reliability to avoid fire hazards.

Subsection (b) requires the Secretaries to allow electricity ROW owners and operators the option to develop and submit vegetation management, facility inspection and operation and maintenance plans for the appropriate Secretary's approval, and to develop a coordinated process for review and approval for such plans. This subsection also requires these plans to comply with federal, State, and local electrical system reliability and fire safety standards, and prohibits the Secretaries from changing such standards. The Committee understands that such plans are currently being implemented in some circumstances; however, given repeated witness testimony that federal agencies have been inconsistent and not timely in approving such plans, this subsection is intended to require the agencies to coordinate their activities on these matters.

As such, this subsection requires the Secretaries to develop a joint consolidated and coordinated process for review and approval of the plans. This process shall assure prompt review and approval within 90 days, include timelines and benchmarks for approval of such plans, be consistent with applicable law, minimize the costs of the reviewing agency and the entity submitting the plans and allow the agencies to consider plan amendments in a prompt manner if changed conditions necessitate a modification to a plan. The subsection further stipulates that the process shall include notification by the agency of any changed conditions that warrant a modification to a plan, provide an opportunity for the owner or operator to submit a proposed plan amendment to address directly the changed condition and allow the owner or operator to continue to implement those elements of the approved plan that do not directly and adversely affect the condition precipitating the need for modification.

Subsection (b) also requires the Secretaries to apply the existing categorical exclusion process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to plans developed under the authority of this bill. If a plan is proposed for an existing transmission or distribution facility concurrent with the siting of a new transmission or distribution facility, necessary reviews shall be completed as part of the siting process or sooner. Once the plan is

approved, the owner or operator shall provide the agency a description of those activities, and certification that the activities are in accordance with the plan.

Subsection (b) also defines the terms “vegetation management, facility inspection, and operation and maintenance plan” and “owner or operator”. As amended, it defines “hazard tree” as “any tree inside the right-of-way or located outside the right-of-way that has been designated, prior to tree failure. . .to be likely to fail and cause a high risk of injury, damage, or disruption within 10 feet or less of an electric power line or related structure if it fell.” The Committee included this definition to reflect the generally accepted industry standards for tree care practices. Termed the American National Standards Institute A300 standards, these consensus-based objectives are based on current research and sound practices for writing specifications to manage trees, shrubs, and other woody plants.

Under subsection (c), if a hazard tree on BLM or Forest Service lands has made contact with or is in imminent danger of making contact with a transmission or distribution electricity line, the owner or operator of that line may prune or remove the vegetation or hazard tree to avoid the disruption of electric service and risk of fire and shall notify the appropriate local agent of the relevant Secretary not later than 24 hours after such removal. This provision is intended to codify ongoing federal arrangements which allow utility owners and operators to respond to emergency circumstances without prior approval from the land management agency.

Subsection (d) allows the owner or operator to conduct vegetation management activities three days after a request has been made to the appropriate Secretary if vegetation within or adjacent to the ROW does not meet the ERO clearance requirements or those established by State and local authorities. The owner or operator may then, after notifying the appropriate Secretary, conduct management activities to meet those requirements.

Subsection (e) requires the Secretaries to report requests and actions made under subsections (c) and (d) annually on their respective websites.

Subsection (f) limits the owner or operator’s liability in the event that it is not allowed to trim hazard trees in imminent danger of contacting electricity lines on BLM and Forest Service lands. Specifically, if the appropriate Secretary fails to allow an owner or operator to manage vegetation on federal lands within or adjacent to a ROW consistent with an approved vegetation management plan, or if the owner or operator is prevented by one of the Secretaries from responding to an identified hazard tree or a tree in imminent danger of contacting an electricity line, the owner or operator shall not be liable for wildfire damage and loss or injury resulting from such contact. The Committee believes that it is unjust to hold utility owners and operators liable for damages caused by the inaction or delay of the federal agency. The purpose of this section is to release electric utility owners and operators from liability only in specific circumstances where the federal government prevents the utility from conducting necessary and appropriate vegetation management. This section is not intended, however, to release a utility from liability if in the process of conducting vegetation manage-

ment activities the utility or its agents act in a manner inconsistent with the standard of care required for conducting such an activity.

Subsection (g) encourages the Secretaries to develop a training program for personnel of the Interior Department and the Forest Service involved in vegetation management decisions on ROWs relating to transmission and distribution facilities on federal lands. Such a program should ensure that personnel understand electric system reliability and fire safety requirements, and how to assist owners and operators to comply with those standards. The training program required by this subsection will also encourage willing owners and operators of electricity transmission and distribution lines to incorporate, on a voluntary basis, practices which would enhance habitat and forage for pollinators and other wildlife.

Subsection (h) requires the Secretaries to prescribe regulations or amend existing regulations to implement the authorities created by this bill. Such regulations must be final no later than two years after the section's enactment. The Committee understands that much of this regulatory framework is currently in place; however, it is carried out on an inconsistent basis. Thus, the Committee does not expect the Secretaries to expend unreasonable time and funding to provide consistent regulatory approaches.

Subsection (i) ensures that nothing in the section requires an owner or operator to develop and submit a new plan if one already has been approved by the appropriate Secretary before the date of enactment of this section. Subsection (i) also makes a clerical amendment to the FLPMA table of contents.

#### COMMITTEE ACTION

H.R. 1873 was introduced on April 4, 2017, by Congressman Doug LaMalfa (R-CA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittees on Water, Power and Oceans and Federal Lands. The bill was additionally referred to the Committee on Agriculture. On April 26, 2017, the Full Natural Resources Committee met to consider the bill. The Subcommittees on Water, Power and Oceans and Federal Lands were discharged by unanimous consent. Congressman LaMalfa offered an amendment designated #1; it was agreed to by voice vote. Congressman Scott R. Tipton (R-CO) offered and withdrew an amendment designated 015. No additional amendments were offered and on April 27, 2017, the bill was ordered favorably reported by a bipartisan roll call vote of 24 ayes and 14 nays, as follows:

## Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 04-27-17

Recorded Vote #: 8

Meeting on / Amendment on: FC Mark Up on 13 bills: **On Favorably Reporting** H.R. 1873 (Rep. Doug LaMalfa),  
 "Electricity Reliability and Forest Protection Act"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
<b>Mr. Bishop, UT, Chairman</b>				<b>Mr. Cook, CA</b>	X		
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. Soto, FL</i>	X		
<b>Mr. Young, AK, Chairman Emeritus</b>	X			<b>Mr. Westerman, AR</b>	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. Panetta, CA</i>	X		
<b>Mr. Gohmert, TX, Vice Chairman</b>	X			<b>Mr. Graves, LA</b>	X		
<i>Ms. Bordallo, Guam</i>		X		<i>Mr. McEachin, VA</i>		X	
<b>Mr. Lamborn, CO</b>	X			<b>Mr. Hice, GA</b>	X		
<i>Mr. Costa, CA</i>	X			<i>Mr. Brown, MD</i>		X	
<b>Mr. Wittman, VA</b>	X			<b>Mrs. Radewagen, AS</b>	X		
<i>Mr. Sablan, CNMI</i>				<i>Mr. Clay, MO</i>		X	
<b>Mr. McClintock, CA</b>	X			<b>Mr. LaHood, IL</b>	X		
<i>Ms. Tsongas, MA</i>		X		<b>Mr. Webster, FL</b>	X		
<b>Mr. Pearce, NM</b>	X			<b>Mr. Rouzer, NC</b>	X		
<i>Mr. Huffman, CA</i>		X		<b>Mr. Bergman, MI</b>	X		
<b>Mr. Thompson, PA</b>	X			<b>Ms. Cheney, WY</b>	X		
<i>Mr. Lowenthal, CA</i>		X		<b>Mr. Johnson, LA</b>			
<b>Mr. Gosar, AZ</b>	X			<b>Ms. González-Colón, PR</b>			
<i>Mr. Beyer, VA</i>		X					
<b>Mr. Labrador, ID</b>							
<i>Mrs. Torres, CA</i>		X					
<b>Mr. Tipton, CO</b>	X						
<i>Mr. Gallego, AZ</i>		X					
<b>Mr. LaMalfa, CA</b>	X						
<i>Ms. Hanabusa, HI</i>		X					
<b>Mr. Denham, CA</b>	X						
<i>Ms. Barragán, CA</i>		X		<b>TOTAL:</b>	24	14	

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

## COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 22, 2017.*

Hon. ROB BISHOP,  
*Chairman, Committee on Natural Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1873, the Electricity Reliability and Forest Protection Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

KEITH HALL.

Enclosure.

*H.R. 1873—Electricity Reliability and Forest Protection Act*

Summary: H.R. 1873 would allow electric utilities to submit to the Forest Service and the Bureau of Land Management (BLM) long-term plans that would guide vegetation management and maintenance activities on or adjacent to rights-of-way containing electrical infrastructure on federal lands. Under the bill, the affected agencies would be required to review and respond to each plan within 90 days. Under the bill electric utilities that have notified those agencies of vegetation that could come into contact with a transmission line would be exempt from legal liability in the event of a subsequent wildfire.

Based on information provided by the affected agencies and assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would cost \$12 million over the 2018–2022 period. H.R. 1873 would affect direct spending by reducing the amount of damages the federal government would collect from private firms in the event of certain fires; therefore, pay-as-you-go procedures apply. However, CBO estimates that any such effects would be negligible. Enacting the bill would not affect revenues.

CBO also estimates that enacting H.R. 1873 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1873 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 1873 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—						
	2017	2018	2019	2020	2021	2022	2017–2022
INCREASES IN SPENDING SUBJECT TO APPROPRIATION							
Estimated Authorization Level .....	0	3	3	2	2	2	12
Estimated Outlays .....	0	3	3	2	2	2	12

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted near the end of 2017. Estimated outlays are based on historical spending patterns for similar activities.

H.R. 1873 would require the Forest Service and BLM to review and respond within 90 days to plans submitted by electric utilities to manage and maintain vegetation that could affect federal rights-of-way. Based on information provided by the Forest Service, BLM, and various electric utilities, CBO estimates that the additional staffing required to meet that 90-day deadline would cost about \$2 million annually over the 2018–2022 period; spending would be subject to the availability of appropriated funds.

The bill also would require the affected agencies to draft new regulations and procedures related to the submission, review, and approval of vegetation management plans within two years. CBO estimates that the additional staffing required to carry out that provision would cost about \$1 million per year in 2018 and 2019; spending would be subject to the availability of appropriated funds.

Pay-as-you-go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues.

H.R. 1873 would affect direct spending by reducing the amount of damages the federal government would collect from private firms in the event of certain fires. Under the bill, an electric utility would be exempt from legal liability if the utility informs the administering agency that vegetation in a right-of-way poses an imminent risk of fire, the agency does not allow the utility to conduct activities to eliminate that risk, and the vegetation is later determined to have caused a wildfire. Based on information provided by the affected agencies, CBO expects that an agency denying such a request would be unlikely. Thus, we estimate that enacting this provision would have a negligible effect on the amount the federal government would receive from damages resulting from a fire caused under those circumstances. Enacting the bill would not affect revenues.

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 1873 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

Intergovernmental and private-sector impact: H.R. 1873 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Jeff LaFave; Impact on State, Local, and Tribal Governments: Jon Sperl; Impact on the Private Sector: Amy Petz.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Federal Land Policy and Management Act of 1976 to enhance the reliability of the electricity grid and reduce the threat of wildfires to and from electric transmission and distribution facilities on Federal lands by facilitating vegetation management on such lands.

#### EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

#### COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

#### COMPLIANCE WITH H. RES. 5

Directed Rule Making. Section 2 requires the Secretary of the Interior and the Secretary of Agriculture to either amend existing regulations or promulgate new ones to implement the bill within two years of the date of enactment of this bill.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

#### PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):



**FEDERAL LAND POLICY AND MANAGEMENT ACT OF  
1976**

TABLE OF CONTENTS

\* \* \* \* \*

TITLE V—RIGHTS-OF-WAY

Sec. 501. Authorization to grant rights-of-way.

\* \* \* \* \*

Sec. 512. *Vegetation management, facility inspection, and operation and maintenance relating to electric transmission and distribution facility rights-of-way.*

\* \* \* \* \*

TITLE V—RIGHTS-OF-WAY

\* \* \* \* \*

**SEC. 512. VEGETATION MANAGEMENT, FACILITY INSPECTION, AND OPERATION, AND MAINTENANCE RELATING TO ELECTRIC TRANSMISSION AND DISTRIBUTION FACILITY RIGHTS-OF-WAY.**

(a) *GENERAL DIRECTION.*—*In order to enhance the reliability of the electricity grid and reduce the threat of wildfires to and from electric transmission and distribution rights-of-way and related facilities and adjacent property, the Secretary, with respect to public lands and other lands under the jurisdiction of the Secretary, and the Secretary of Agriculture, with respect to National Forest System lands, shall provide direction to ensure that all existing and future rights-of-way, however established (including by grant, special use authorization, and easement), for electrical transmission and distribution facilities on such lands include provisions for utility vegetation management, facility inspection, and operation and maintenance activities that, while consistent with applicable law—*

(1) *are developed in consultation with the holder of the right-of-way;*

(2) *enable the owner or operator of a facility to operate and maintain the facility in good working order and to comply with Federal, State and local electric system reliability and fire safety requirements, including reliability standards established by the Electric Reliability Organization as defined under 16 U.S.C. 824o(a) and plans to meet such reliability standards;*

(3) *minimize the need for case-by-case or annual approvals for—*

(A) *routine vegetation management, facility inspection, and operation and maintenance activities within existing electrical transmission and distribution rights-of-way; and*

(B) *utility vegetation management activities that are necessary to control hazard trees within or adjacent to electrical transmission and distribution rights-of-way; and*

(4) *when review is required, provide for expedited review and approval of utility vegetation management, facility inspection, and operation and maintenance activities, especially activities requiring prompt action to avoid an adverse impact on human safety or electric reliability to avoid fire hazards.*

(b) **VEGETATION MANAGEMENT, FACILITY INSPECTION, AND OPERATION AND MAINTENANCE PLANS.**—

(1) *DEVELOPMENT AND SUBMISSION.*—Consistent with subsection (a), the Secretary and the Secretary of Agriculture shall provide owners and operators of electric transmission and distribution facilities located on lands described in such subsection with the option to develop and submit a vegetation management, facility inspection, and operation and maintenance plan, that at each transmission or distribution owner or operator's discretion may cover some or all of the owner or operator's transmission and distribution rights-of-way on Federal lands, for approval to the Secretary with jurisdiction over the lands. A plan under this paragraph shall enable the owner or operator of a facility, at a minimum, to comply with applicable Federal, State, and local electric system reliability and fire safety requirements, as provided in subsection (a)(2). The Secretaries shall not have the authority to modify those requirements.

(2) *REVIEW AND APPROVAL PROCESS.*—The Secretary and the Secretary of Agriculture shall jointly develop a consolidated and coordinated process for review and approval of—

(A) vegetation management, facility inspection, and operation and maintenance plans submitted under paragraph (1) that—

(i) assures prompt review and approval not to exceed 90 days;

(ii) includes timelines and benchmarks for agency comments to submitted plans and final approval of such plans;

(iii) is consistent with applicable law; and

(iv) minimizes the costs of the process to the reviewing agency and the entity submitting the plans; and

(B) amendments to the plans in a prompt manner if changed conditions necessitate a modification to a plan.

(3) *NOTIFICATION.*—The review and approval process under paragraph (2) shall—

(A) include notification by the agency of any changed conditions that warrant a modification to a plan;

(B) provide an opportunity for the owner or operator to submit a proposed plan amendment to address directly the changed condition; and

(C) allow the owner or operator to continue to implement those elements of the approved plan that do not directly and adversely affect the condition precipitating the need for modification.

(4) *CATEGORICAL EXCLUSION PROCESS.*—The Secretary and the Secretary of Agriculture shall apply his or her categorical exclusion process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to plans developed under this subsection on existing transmission and distribution rights-of-way under this subsection.

(5) *IMPLEMENTATION.*—A plan approved under this subsection shall become part of the authorization governing the covered right-of-way and hazard trees adjacent to the right-of-way. If a vegetation management plan is proposed for an existing transmission or distribution facility concurrent with the siting of a new transmission or distribution facility, necessary reviews shall be completed as part of the siting process or sooner. Once

*the plan is approved, the owner or operator shall provide the agency with only a notification of activities anticipated to be undertaken in the coming year, a description of those activities, and certification that the activities are in accordance with the plan.*

(6) **DEFINITIONS.**—*In this subsection:*

(A) **VEGETATION MANAGEMENT, FACILITY INSPECTION, AND OPERATION AND MAINTENANCE PLAN.**—*The term “vegetation management, facility inspection, and operation and maintenance plan” means a plan that—*

*(i) is prepared by the owner or operator of one or more electrical transmission or distribution facilities to cover one or more electric transmission and distribution rights-of-way; and*

*(ii) provides for the long-term, cost-effective, efficient and timely management of facilities and vegetation within the width of the right-of-way and adjacent Federal lands to enhance electricity reliability, promote public safety, and avoid fire hazards.*

(B) **OWNER OR OPERATOR.**—*The terms “owner” and “operator” include contractors or other agents engaged by the owner or operator of a facility.*

(C) **HAZARD TREE.**—*The term “hazard tree” means any tree inside the right-of-way or located outside the right-of-way that has been designated, prior to tree failure, by either the owner or operator of a transmission or distribution facility, or the Secretary or the Secretary of Agriculture, to be likely to fail and cause a high risk of injury, damage, or disruption within 10 feet or less of an electric power line or related structure if it fell.*

(c) **RESPONSE TO EMERGENCY CONDITIONS.**—*If vegetation on Federal lands within, or hazard trees on Federal lands adjacent to, an electrical transmission or distribution right-of-way granted by the Secretary or the Secretary of Agriculture has contacted or is in imminent danger of contacting one or more electric transmission or distribution lines, the owner or operator of the transmission or distribution lines—*

*(1) may prune or remove the vegetation or hazard tree to avoid the disruption of electric service and risk of fire; and*

*(2) shall notify the appropriate local agent of the relevant Secretary not later than 24 hours after such removal.*

(d) **COMPLIANCE WITH APPLICABLE RELIABILITY AND SAFETY STANDARDS.**—*If vegetation on Federal lands within or adjacent to an electrical transmission or distribution right-of-way under the jurisdiction of each Secretary does not meet clearance requirements under standards established by the Electric Reliability Organization as defined under 16 U.S.C. 824o(a), or by State and local authorities, and the Secretary having jurisdiction over the lands has failed to act to allow a transmission or distribution facility owner or operator to conduct vegetation management activities within 3 business days after receiving a request to allow such activities, the owner or operator may, after notifying the Secretary, conduct such vegetation management activities to meet those clearance requirements.*

(e) *REPORTING REQUIREMENT.*—The Secretary or Secretary of Agriculture shall report requests and actions made under subsections (c) and (d) annually on each Secretary’s website.

(f) *LIABILITY.*—An owner or operator of a transmission or distribution facility shall not be held liable for wildfire damage, loss or injury, including the cost of fire suppression, if—

(1) the Secretary or the Secretary of Agriculture fails to allow the owner or operator to operate consistently with an approved vegetation management, facility inspection, and operation and maintenance plan on Federal lands under the relevant Secretary’s jurisdiction within or adjacent to a right-of-way to comply with Federal, State or local electric system reliability and fire safety standards, including standards established by the Electric Reliability Organization as defined under 16 U.S.C. 824o(a); or

(2) the Secretary or the Secretary of Agriculture fails to allow the owner or operator of the transmission or distribution facility to perform appropriate vegetation management activities in response to a hazard tree as defined under subsection (b)(6), or a tree in imminent danger of contacting the owner’s or operator’s transmission or distribution facility.

(g) *TRAINING AND GUIDANCE.*—In consultation with the electric utility industry, the Secretary and the Secretary of Agriculture are encouraged to develop a program to train personnel of the Department of the Interior and the Forest Service involved in vegetation management decisions on rights-of-way relating to transmission and distribution facilities to ensure that such personnel—

(1) understand electric system reliability and fire safety requirements, including reliability standards established by the Electric Reliability Organization as defined under 16 U.S.C. 824o(a);

(2) assist owners and operators of transmission and distribution facilities to comply with applicable electric reliability and fire safety requirements; and

(3) encourage and assist willing owners and operators of transmission and distribution facilities to incorporate on a voluntary basis vegetation management practices to enhance habitats and forage for pollinators and for other wildlife so long as the practices are compatible with the integrated vegetation management practices necessary for reliability and safety.

(h) *IMPLEMENTATION.*—The Secretary of the Interior and the Secretary of Agriculture shall—

(1) not later than one year after the date of the enactment of this section, prescribe regulations, or amend existing regulations, to implement this section; and

(2) not later than two years after the date of the enactment of this section, finalize regulations, or amend existing regulations, to implement this section.

(i) *EXISTING VEGETATION MANAGEMENT, FACILITY INSPECTION AND OPERATION AND MAINTENANCE PLANS.*—Nothing in this section requires an owner or operator to develop and submit a vegetation management, facility inspection, and operation and maintenance

*plan if one has already been approved by the Secretary or Secretary of Agriculture before the date of the enactment of this section.*

\* \* \* \* \*

ROB BISHOP OF UTAH  
CHAIRMAN

JASON KNOX  
STAFF DIRECTOR

RAUL GRIJALVA OF ARIZONA  
RANKING MEMBER

DAVID WATKINS  
DEMOCRATIC STAFF DIRECTOR

**U.S. House of Representatives**  
**Committee on Natural Resources**  
**Washington, DC 20515**

May 22, 2017

The Honorable K. Michael Conaway  
Chairman  
Committee on Agriculture  
1301 Longworth HOB  
Washington, DC 20515

Dear Mr. Chairman:

On April 27, 2017, the Committee on Natural Resources ordered reported as amended H.R. 1873, the Electricity Reliability and Forest Protection Act, by a bipartisan roll call vote of 24 to 14. The bill was referred primarily to the Committee on Natural Resources, with an additional referral to the Committee on Agriculture.

I ask that you allow the Committee on Agriculture to be discharged from further consideration of the bill so that it may be scheduled by the Majority Leader. This discharge in no way affects your jurisdiction over the subject matter of the bill, and it will not serve as precedent for future referrals. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on Agriculture represented on the conference committee. Finally, I would be pleased to include this letter and any response in the bill report filed by the Committee on Natural Resources to memorialize our understanding.

Thank you for your consideration of my request and for the extraordinary cooperation shown by you and your staff over matters of shared jurisdiction. I look forward to further opportunities to work with you this Congress.

Sincerely,



Rob Bishop  
Chairman  
Committee on Natural Resources

cc: The Honorable Paul D. Ryan, Speaker  
The Honorable Kevin McCarthy, Majority Leader  
The Honorable Raul Grijalva, Ranking Member, Committee on Natural Resources

K. MICHAEL CONAWAY, TEXAS,  
CHAIRMAN  
GLENN THOMPSON, PENNSYLVANIA,  
VICE CHAIRMAN  
BOB GOODLATTE, VIRGINIA  
FRANK D. LUCAS, OKLAHOMA  
STEVE KING, IOWA  
MIKE ROGERS, ALABAMA  
BOB GIBBS, OHIO  
AUSTIN SCOTT, GEORGIA  
ERIC A. "BOB" CRAWFORD, ARKANSAS  
SCOTT DEWARLAIN, TENNESSEE  
VICKY HARTZLER, MISSOURI  
JEFF DENHAM, CALIFORNIA  
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ROX W. ALLEN, GEORGIA  
MIKE BOST, ILLINOIS  
DAVID ROZTER, NORTH CAROLINA  
RALPH LEE ABRAHAM, LOUISIANA  
TRENT KELLY, MISSISSIPPI  
JAMES COMEL, KENTUCKY  
ROGER W. MARSHALL, KANSAS  
DON EACON, NEBRASKA  
JOHN J. FASO, NEW YORK  
NEAL P. DUNN, FLORIDA  
JODEY C. ARRINGTON, TEXAS

**U.S. House of Representatives**  
**Committee on Agriculture**  
Room 1301, Longworth House Office Building  
Washington, DC 20515-6001

(202) 226-2171

May 19, 2017

The Honorable Rob Bishop  
Chairman  
Committee on Natural Resources  
U.S. House of Representatives  
1324 Longworth House Office Building  
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing concerning H.R. 1873, the Electricity Reliability and Forest Protection Act. It is my understanding that, on April 27, 2017, the Committee on Natural Resources ordered the bill reported with amendments.

This legislation contains provisions within the Committee on Agriculture's Rule X jurisdiction. As a result of your having consulted with the Committee and in order to expedite this bill for floor consideration, the Committee on Agriculture will forego action on the bill. This is being done on the basis of our mutual understanding that doing so will in no way diminish or alter the jurisdiction of the Committee on Agriculture with respect to the appointment of conferees, or to any future jurisdictional claim over the subject matters contained in the bill or similar legislation.

I would appreciate your response to this letter confirming this understanding, and would request that you include a copy of this letter and your response in the Committee Report and in the *Congressional Record* during the floor consideration of this bill. Thank you in advance for your cooperation.

Sincerely,

  
K. Michael Conaway  
Chairman

cc: The Honorable Raul Grijalva  
The Honorable Collin C. Peterson  
The Honorable Paul Ryan, Speaker  
Mr. Thomas J. Wickham, Parliamentarian

COLLIN C. PETERSON, MINNESOTA  
RANKING MINORITY MEMBER  
DAVID SCOTT, GEORGIA  
JIM COSTA, CALIFORNIA  
TIMOTHY J. WALZ, MINNESOTA  
MARCO L. FUDGE, OHIO  
JAMES P. McGOVERN, MASSACHUSETTS  
FLEMING VELA, TEXAS  
VICE RANKING MINORITY MEMBER  
MICHELLE LILLIAN GRISHAM, NEW MEXICO  
ANN M. KUSTER, NEW HAMPSHIRE  
RICHARD M. NOLAN, MINNESOTA  
CHERI BUSTOS, ILLINOIS  
SEAN PATRICK MALONEY, NEW YORK  
STACY E. PLASKETT, VIRGIN ISLANDS  
ALMA S. ADAMS, NORTH CAROLINA  
DWAYNE EVANS, PENNSYLVANIA  
AL LAWSON, JR., FLORIDA  
TOM O'HALLERAN, ARIZONA  
JIMMY PANETTA, CALIFORNIA  
DARRIN SOTO, FLORIDA  
LISA BLUNT ROCHESTER, DELAWARE

MATTHEW S. SCHERTZ  
STAFF DIRECTOR  
ANNE SIMMONS,  
MINORITY STAFF DIRECTOR

## DISSENTING VIEWS

We expressed disappointment when Republicans refused to address our concerns with this bill and forced it through the Committee last Congress because we agreed with the concept: improve coordination between federal land management agencies and utility companies that hold transmission rights-of-way (ROW) on U.S. public lands. Doing this would help utilities prevent fires sparked by fires contacting their power lines, and eliminate the need for last-minute work resulting from deferred maintenance. In turn, it would help the Forest Service (FS) and the Bureau of Land Management (BLM) respond more quickly and consistently for requests to access and maintain ROWs on public lands, while at the same time protecting public natural resources from damage.

However, H.R. 1873 would do little to solve the problem of poor coordination because instead of making up-front planning for ROW maintenance a requirement for utilities, H.R. 1873 makes such planning optional, just as it is now. Further, the bill allows states and localities to dictate how U.S. public lands are managed and shifts liability for wildfire damage from utility companies to the taxpayers. Instead of accepting our offer to work through these issues and develop a non-controversial version of the bill, the Majority chose to force the same language through the Committee again.

Particularly given the concerns raised by the Forest Service, the Bureau of Land Management, and the conservation community, we cannot support this legislation without modifications. We stand ready to work with Republicans to make those changes in advance of this bill reaching the floor.

RAÚL M. GRIJALVA,  
*Ranking Member, House  
Committee on Natural Re-  
sources.*

JARED HUFFMAN,  
*Ranking Member, Sub-  
committee on Water, Power  
and Oceans.*

GRACE F. NAPOLITANO,  
*Member of Congress.*

COLLEEN HANABUSA,  
*Member of Congress.*

NANETTE DIAZ BARRAGÁN,  
*Member of Congress.*

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