

Committee on Natural Resources

Rob Bishop, Chairman
Markup Memorandum

April 24, 2017

To: All Natural Resources Committee Members

From: Majority Committee Staff
Subcommittee on Water, Power and Oceans (x5-8331)

Mark-Up: **H.R. 1873 (Reps. Doug LaMalfa, R-CA and Kurt Schrader (D-OR))**, 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.
April 26-27, 2017 1324 Longworth House Office Building

H.R. 1873 (Reps. Doug LaMalfa, R-CA and Kurt Schrader, D-OR), “*Electricity Reliability Forest Protection Act*”

Bill Summary:

In order to help ensure reliable electric service and to reduce fire hazards that result from inadequate vegetation management adjacent to some power lines, H.R. 1873 promotes federal land management agency consistency, accountability, and timely decision-making as it relates to protecting electricity transmission and distribution lines and habitat on federal lands. In light of federal electricity reliability standards, vegetative management on and adjacent to power lines has been widely recognized as an important tool towards ensuring grid reliability, allowing for the transmission of electricity resources, and protecting humans, flora and fauna.¹

Cosponsors:

Reps. Liz Cheney (R-WY), Jim Costa (D-CA), Tom O’Halloran (D-AZ), Kurt Schrader (D-OR), and Bruce Westerman (R-AR).

Background:

Federal Land Management Agencies and Electricity Rights of Way

The U.S. Forest Service (Forest Service) manages 155 National Forests and 20 National Grasslands, encompassing 192 million acres throughout the United States.² Forest Service lands include 2,700 authorized electric transmission and distribution facilities and account for nearly

¹ Department of Energy: *2015 Quadrennial Energy Review*, Ch. 2, p. 15
<http://energy.gov/epa/downloads/quadrennial-energy-review-full-report>

² Testimony of Mr. Joel Holthrop, Deputy Chief, National Forest System, U.S. Dept. of Agriculture, House Committee on Natural Resources, 109th Cong., Water and Power Oversight Hearing on “*The Need for Proper Forest Management on Federal Rights of Way to Ensure Reliable Electricity Service*” May 3, 2006.

18,000 linear miles of electrical rights-of-way (ROW).³ Similarly, the Bureau of Land Management (BLM) administers 245 million acres, including over 71,613 miles of electrical transmission and distribution lines and over 15,000 authorizations for electric transmission and distribution facilities.⁴ The costs of operating, maintaining, and repairing these electricity lines on these ROW are borne by utility companies and their electricity ratepayers.

An electricity right-of-way can have multiple benefits. While an obvious benefit is to provide 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.”⁵ In addition, according to the North American Pollinator Protection Campaign, “...ROW habitat crisscrosses 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.”⁶

The Need to Maintain Electricity Rights-of-Way

Many ROW are surrounded by living, dying or dead trees that can make contact with an electricity line if not properly maintained. Vegetative management is a critical tool for safeguarding electricity infrastructure and wildlife habitat on ROW located on federal and other lands. The goals of vegetative management are to ensure electricity line reliability, preventing tree-related fires, and keeping the public and habitat safe.

A typical vegetative management program carried out by an electric utility with above-ground transmissions 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

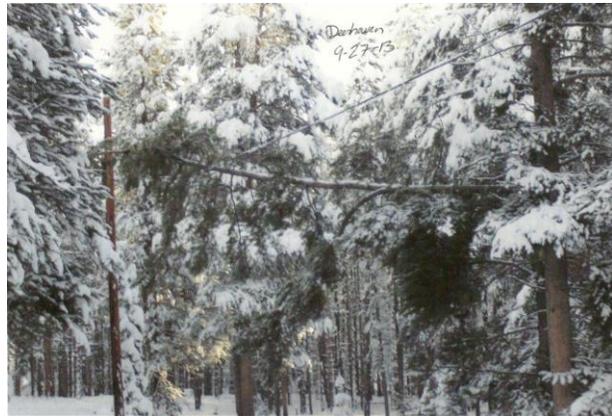


Photo 1: Tree Leaning on Distribution Line in the Big Horn National Forest. Source: Big Horn REA

³ Testimony of Mr. Gregory Smith, Director, Lands and Realty Management, U.S. Forest Service, House Committee on Natural Resources, 114th Cong., Water, Power and Oceans Legislative Hearing on “*The Electricity Reliability and Forest Protection Act*” May 20, 2015, p. 3

⁴ Testimony of Ms. Karen E. Mouritsen, Deputy Assistant Director, Energy, Minerals, and Realty Management, Bureau of Land Management, Department of the Interior, House Committee on Natural Resources, 114th Cong., Water, Power and Oceans Legislative Hearing on “*The Electricity Reliability and Forest Protection Act*” May 20, 2015, p. 1.

⁵ http://www.nwtf.org/conservation/bulletins/bulletin_19.pdf

⁶ http://www.nwtf.org/conservation/bulletins/bulletin_19.pdf

ROW 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 species -- through the use of appropriate, environmentally sound, and cost-effective control methods.”⁷

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 IVM activities, conduct infrastructure inspections and operate and maintain power lines on these lands, electric utilities must seek permission and approval from the appropriate federal land management agency, which will typically use processes under the National Environmental Policy Act 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 right-of-way can be significant and catastrophic.⁸

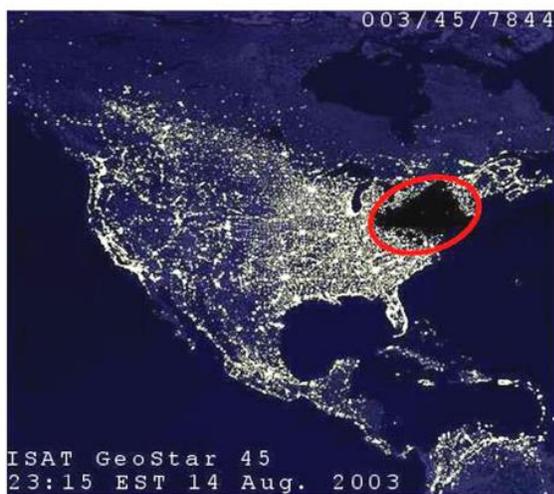


Photo 2: Satellite Photo Impacts of the August 14, 2003 Electricity Blackout. Source: AM980.ca

When a right-of-way is not properly maintained, a tree can grow into or fall on to 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 fourteen western states, two Canadian provinces and part of Mexico.⁹ An August 14, 2003 blackout caused by a fallen tree led to an outage for 50 million electricity customers in the eastern U.S. (see Photo 2).¹⁰

As a result of the 2003 blackout and ongoing reliability concerns, what was then the North American Electric Reliability Council (NERC) finalized vegetative management standards and guidelines for the electric industry in

2005.¹¹ In the same year, Congress passed and the President signed the Energy Policy Act of 2005 (P.L. 109-190), which focused on creating nationwide mandatory electricity reliability standards to help avoid widespread electricity blackouts.¹²

⁷ http://www.epa.gov/pesp/htmlpublications/ivm_fact_sheet.html

⁸ Testimony of Mr. Michael Neal, Manager of Forestry and Special Programs for Arizona Public Service, House Committee on Natural Resources, 113th Cong., Water and Power Oversight Hearing, “*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

⁹ <http://energy.gov/sites/prod/files/oeprod/DocumentsandMedia/BlackoutFinal-Web.pdf>

¹⁰ <http://www.am980.ca/2013/08/14/blackout-10-years/>

¹¹ Federal Energy Regulatory Commission FAC-003-2

¹² Pub. L. 109-190, 120 Stat. 298.

Over a decade later, vegetative management is still an ongoing issue. For example, the Department of Energy's 2015 Quadrennial Energy Review (QER), states:

*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.*¹³

The Challenges of Maintaining Electricity Rights-of-Way and Adjacent Hazard Trees on Federal Lands

Despite the 2005 federal law to help maintain electricity reliability, federal land agencies have been subject to criticism for not allowing vegetative management policies to be carried out in a consistent and timely basis. Specifically, some electricity providers 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. Randall Miller of PacifiCorp testified to the House Natural Resources Committee in the 113th Congress 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.*¹⁴

Electric utilities are not only focused on managing vegetation on ROW, but are also concerned about adjacent high-risk and hazardous trees outside the corridor. Many electric utilities remain threatened with not only liability for fires on federal lands caused by nearby, but also outside the ROW trees falling on power lines.¹⁵ 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 personnel to remove the high risk trees. At a Water, Power and Oceans Subcommittee legislative hearing on a nearly identical bill last year, Mr. Dave Markham of the Central Oregon Cooperative testified:

¹³ Department of Energy: *2015 Quadrennial Energy Review*, Ch. 2, p.15
<http://energy.gov/epa/downloads/quadrennial-energy-review-full-report>

¹⁴ Testimony of Mr. Randall Miller, Director of Vegetative Management, PacifiCorp, House Committee on Natural Resources Committee, 113th Cong., Water and Power Oversight Hearing "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

¹⁵ Testimony of Mr. Steven Eldrige, General Manager and CEO, Umatilla Electric Cooperative, House Committee on Natural Resources, 109th Cong., Water and Power Oversight Hearing on "The Need for Proper Forest Management on Federal Rights of Way to Ensure Reliable Electricity Service" May 3, 2006.

*Years ago, 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.*¹⁶

This liability framework results in a situation where federal officials are unwilling to take measures to maintain trees on lands they manage, but the cost of that negligence ultimately could and does fall on ratepayers. H.R. 1873 addresses this to ensure that a utility is not liable if the federal government fails to allow the utility to manage vegetation on or adjacent to the right-of-way. 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.

The Forest Service reported 113 and 232 wildfires, respectively in 2013 and 2012, caused by contact between power lines and trees on its lands.¹⁷ 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 federal lands from trees. The Forest Service and BLM have maintained that they have and are working on partnerships with utilities to maintain rights-of-way.¹⁸ Indeed, the Forest Service has promoted its so-called "Desk Guide" for vegetative maintenance near power lines. According to the agency, the document "emphasizes that where transmission lines face imminent threat from vegetation, utilities may treat that vegetation without waiting for Forest Service approval."¹⁹ The agency also signed an interagency Memorandum of Understanding with utilities in October 2016.²⁰ Both agencies also maintain they need adequate funding to process permits and oversee utility activities; however, some utilities have argued that it is more a question of agency accountability and lack of timelines.²¹

Major Provisions/Analysis of H.R. 1873:

The bill adds a new section (section 512) to the end of the Federal Land Management and Policy Act of 1976.

¹⁶ Testimony of Mr. Dave Markham, President/CEO of the Central Oregon Cooperative, Committee on Natural Resources, 114th Cong., Water, Power and Oceans Legislative Hearing on "*The Electricity Reliability and Forest Protection Act*" May 20, 2015, p. 3

¹⁷ Testimony of Mr. Jim Pena, Associate Deputy Chief of the National Forest System, U.S. Forest Service, House Committee on Natural Resources, 113th Cong., Water and Power Oversight Hearing "*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

¹⁸ Id.

¹⁹ Id.

²⁰ Memorandum of Understanding among the Edison Electric Institute, U.S. Forest Service; Bureau of Land Management, U.S. Fish and Wildlife Service, National Park Service, and the U.S. Environmental Protection Agency. http://www.eei.org/ourissues/TheEnvironment/Land/Documents/EEI_MOU_FINAL_5-25-06.pdf

²¹ House Committee on Natural Resources, "*Keeping the Lights On and Reducing Catastrophic Forest Fire Risk: Proper Management of Electricity Rights of Way on Federal Lands*" 113th Cong., May 7, 2014, found in hearing transcript, Pp. 27-28.

Section 512(a) General Directions to Enhance Reliability. This subsection requires the Interior Secretary (hereinafter referred to as the Secretary) and Secretary of Agriculture to provide direction to ensure that all existing and future rights-of-way for electrical transmission and distribution facilities on federal lands include provisions for utility vegetation management, facility inspection and operation and maintenance.

Section 512(b) Vegetation Management, Facility Inspection and Operation and Maintenance Plans. This subsection requires the Secretary and Secretary of Agriculture to afford owners and operators of ROWs the option of developing and submitting plans for the proper Secretary's approval, and to develop a coordinated process for review and approval for such plans – assuring prompt review not to exceed 30 days. 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 amending these standards. The subsection also defines “Hazard Tree” as “any tree inside the right-of-way or located outside the right-of-way that has been found...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,” and requires the Secretary and the Secretary of Agriculture to apply his or her categorical exclusion process under the National Environmental Policy Act of 1969 to plans developed for existing transmission ROW.

Section 512(c) Response to Emergency Situations. Under this subsection, if a hazard tree has made contact with or is in imminent danger of making contact with a transmission or distribution line, the owner or operator of that line may trim or remove the hazardous condition, and shall within 24 hours notify the appropriate local agent of the relevant Secretary.

Section 512(d) Compliance with Reliability Standards. If vegetation within or adjacent to the ROW does not meet NERC clearance requirements or those established by state and local authorities, and the Secretary or Secretary of Agriculture has failed to act to allow the owner or operator of the ROW to conduct vegetation management activities three days after a request has been made, an owner or operator may, after notifying the appropriate Secretary, conduct management activities to meet those requirements.

Section 512(e) Reporting Requirement. Requires the Secretaries to report requests and actions made under subsections (c) and (d) annually on their respective websites.

Section 512(f) Liability. If the appropriate Secretary fails to authorize a transmission or distribution facility owner or operator to manage vegetation on federal lands within or adjacent to a ROW, and the vegetation causes or contributes to wildfire damage, loss, or injury, the owner or operator of the facility shall not be liable to the United States or other parties directly.

Section 512(g) Training and Guidance. The Secretaries are encouraged to develop a training program for personnel of the department involved in vegetation management decisions relating to transmission and distribution facilities on Federal lands. Such plans should ensure that personnel understand electric system reliability and fire safety requirements, and how to assist owners and operators of ROWs to comply with those standards. The training program 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.

Section 512(h) Implementation. Not later than one year after the enactment of Sec. 512, the Secretaries shall, prescribe regulations or amend existing regulations to implement the section, and shall make those regulations final no later than two years after the section’s enactment.

Section 512(I) Existing Vegetation Management, Facility Inspection and Operation and Maintenance Plan. 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.

Cost:

The Congressional Budget Office (CBO) has not completed a cost estimate of this bill at this time; however, its cost estimate of a nearly identical bill in the last Congress (H.R. 2358), CBO indicated that implementing the bill’s deadlines would cost \$2 million annually over the 2016-2020 period. Additionally, CBO estimated that implementing the provision that ensures that a utility is not held liable if the federal government fails to allow a utility to manage vegetation on or adjacent to the ROW will have a ‘negligible impact’ on federal costs because ‘it is unlikely that an agency would deny a request to clear vegetation that might subsequently result in a wildfire’ under the bill.²²

Administration Position:

Unknown.

Anticipated Amendments:

There will likely be amendments to the bill.

Effect on Current Law (Ramseyer):

Showing Current Law as Amended by H.R. 1873 (as introduced)
[new text highlighted in yellow; text to be deleted bracketed and highlighted in blue]

Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.)

(a) Authorized purposes

The Secretary, with respect to the public lands (including public lands, as defined in section 1702(e) of this title, which are reserved from entry pursuant to section 24 of the Federal Power Act (16 U.S.C. 818)) and, the Secretary of Agriculture, with respect to lands within the National

²² 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

Forest System (except in each case land designated as wilderness), are authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for-

(1) reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water;

(2) pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;

(3) pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) systems for generation, transmission, and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act, including part 1¹ thereof (41 Stat. 1063, 16 U.S.C. 791a-825r).;²

(5) systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communication;

(6) roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System; or

(7) such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through such lands.

(b) Procedures applicable; administration

(1) The Secretary concerned shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose those plans, contracts, agreements, or other information reasonably related to the use, or intended use, of the right-of-way, including its effect on competition, which he deems necessary to a determination, in accordance with the provisions of this Act, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way.

(2) If the applicant is a partnership, corporation, association, or other business entity, the Secretary concerned, prior to granting a right-to-way³ pursuant to this subchapter, shall require the applicant to disclose the identity of the participants in the entity, when he deems it necessary to a determination, in accordance with the provisions of this subchapter, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way. Such disclosures shall include, where applicable: (A) the name and address of each partner; (B) the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote; and (C) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

(3) The Secretary of Agriculture shall have the authority to administer all rights-of-way granted or issued under authority of previous Acts with respect to lands under the jurisdiction of

the Secretary of Agriculture, including rights-of-way granted or issued pursuant to authority given to the Secretary of the Interior by such previous Acts.

(c) Permanent easement for water systems; issuance, preconditions, etc.

(1) Upon receipt of a written application pursuant to paragraph (2) of this subsection from an applicant meeting the requirements of this subsection, the Secretary of Agriculture shall issue a permanent easement, without a requirement for reimbursement, for a water system as described in subsection (a)(1) of this section, traversing Federal lands within the National Forest System ("National Forest Lands"), constructed and in operation or placed into operation prior to October 21, 1976, if-

(A) the traversed National Forest lands are in a State where the appropriation doctrine governs the ownership of water rights;

(B) at the time of submission of the application the water system is used solely for agricultural irrigation or livestock watering purposes;

(C) the use served by the water system is not located solely on Federal lands;

(D) the originally constructed facilities comprising such system have been in substantially continuous operation without abandonment;

(E) the applicant has a valid existing right, established under applicable State law, for water to be conveyed by the water system;

(F) a recordable survey and other information concerning the location and characteristics of the system as necessary for proper management of National Forest lands is provided to the Secretary of Agriculture by the applicant for the easement; and

(G) the applicant submits such application on or before December 31, 1996.

(2)(A) Nothing in this subsection shall be construed as affecting any grants made by any previous Act. To the extent any such previous grant of right-of-way is a valid existing right, it shall remain in full force and effect unless an owner thereof notifies the Secretary of Agriculture that such owner elects to have a water system on such right-of-way governed by the provisions of this subsection and submits a written application for issuance of an easement pursuant to this subsection, in which case upon the issuance of an easement pursuant to this subsection such previous grant shall be deemed to have been relinquished and shall terminate.

(B) Easements issued under the authority of this subsection shall be fully transferable with all existing conditions and without the imposition of fees or new conditions or stipulations at the time of transfer. The holder shall notify the Secretary of Agriculture within sixty days of any address change of the holder or change in ownership of the facilities.

(C) Easements issued under the authority of this subsection shall include all changes or modifications to the original facilities in existence as of October 21, 1976, the date of enactment of this Act.

(D) Any future extension or enlargement of facilities after October 21, 1976, shall require the issuance of a separate authorization, not authorized under this subsection.

(3)(A) Except as otherwise provided in this subsection, the Secretary of Agriculture may terminate or suspend an easement issued pursuant to this subsection in accordance with the procedural and other provisions of [section 1766 of this title](#). An easement issued pursuant to this subsection shall terminate if the water system for which such easement was issued is used for any purpose other than agricultural irrigation or livestock watering use. For purposes of subparagraph (D) of paragraph (1) of this subsection, non-use of a water system for agricultural

irrigation or livestock watering purposes for any continuous five-year period shall constitute a rebuttable presumption of abandonment of the facilities comprising such system.

(B) Nothing in this subsection shall be deemed to be an assertion by the United States of any right or claim with regard to the reservation, acquisition, or use of water. Nothing in this subsection shall be deemed to confer on the Secretary of Agriculture any power or authority to regulate or control in any manner the appropriation, diversion, or use of water for any purpose (nor to diminish any such power or authority of such Secretary under applicable law) or to require the conveyance or transfer to the United States of any right or claim to the appropriation, diversion, or use of water.

(C) Except as otherwise provided in this subsection, all rights-of-way issued pursuant to this subsection are subject to all conditions and requirements of this Act.

(D) In the event a right-of-way issued pursuant to this subsection is allowed to deteriorate to the point of threatening persons or property and the holder of the right-of-way, after consultation with the Secretary of Agriculture, refuses to perform the repair and maintenance necessary to remove the threat to persons or property, the Secretary shall have the right to undertake such repair and maintenance on the right-of-way and to assess the holder for the costs of such repair and maintenance, regardless of whether the Secretary had required the holder to furnish a bond or other security pursuant to subsection (i) of this section.

(d) Rights-of-way on certain Federal lands

With respect to any project or portion thereof that was licensed pursuant to, or granted an exemption from, part I of the Federal Power Act [16 U.S.C. 791a et seq.] which is located on lands subject to a reservation under section 24 of the Federal Power Act [16 U.S.C. 818] and which did not receive a permit, right-of-way or other approval under this section prior to October 24, 1992, no such permit, right-of-way, or other approval shall be required for continued operation, including continued operation pursuant to section 15 of the Federal Power Act [16 U.S.C. 808], of such project unless the Commission determines that such project involves the use of any additional public lands or National Forest lands not subject to such reservation.

(Pub. L. 94-579, title V, §501, Oct. 21, 1976, 90 Stat. 2776 ; Pub. L. 99-545, §1(b), (c), Oct. 27, 1986, 100 Stat. 3047, 3048; Pub. L. 102-486, title XXIV, §2401, Oct. 24, 1992, 106 Stat. 3096 .)

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 North American Electric Reliability Corporation 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 owner or operator's transmission 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 and 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 found 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 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 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 North American Electric Reliability Corporation, 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 North American Electric Reliability Corporation; 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 an identified 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 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 North American Electric Reliability Corporation;

(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.

REFERENCES IN TEXT

The Federal Power Act, referred to in subsecs. (a)(4) and (d), is act June 20, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§791a et seq.) of Title 16, Conservation. Part I of the Act is classified generally to subchapter I (§791a et seq.) of chapter 12 of Title 16. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

This Act, referred to in subsecs. (b)(1) and (c)(3)(C), is Pub. L. 94–579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1992-Subsec. (a). Pub. L. 102–486, §2401(1), inserted "(including public lands, as defined in section 1702(e) of this title, which are reserved from entry pursuant to section 24 of the Federal Power Act (16 U.S.C. 818))".

Subsec. (a)(4). Pub. L. 102–486, §2401(2), substituted "Federal Energy Regulatory Commission under the Federal Power Act, including part 1 thereof (41 Stat. 1063, 16 U.S.C. 791a–825r)." for "Federal Power Commission under the Federal Power Act of 1935 (49 Stat. 847; 16 U.S.C. 791)". The substitution was made to reflect the probable intent of Congress, in the absence of closing quotations designating the provisions to be struck out.

Subsec. (d). Pub. L. 102–486, §2401(3), added subsec. (d).

1986-Subsec. (b)(3). Pub. L. 99–545, §1(c), added par. (3).

Subsec. (c). Pub. L. 99–545, §1(b), added subsec. (c).

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with land use permits for other associated land uses issued under sections 1761, and 1763 to 1771 of this title, and such functions of Secretary or other official in Department of the Interior related to compliance with land use permits for temporary use of public lands and other associated land uses, issued under sections 1732, 1761, and 1763 to 1771 of this title, with respect to pre-construction, construction, and initial operation of transportation systems for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the