United States Senate Committee on Energy and Natural Resources

Testimony of Mark C. Hayden
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"Vegetation management requirements for electricity assets located on federal lands"

September 19, 2017

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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