

# Electric Utility Sector Wildfire Administrative Priorities

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## EXPEDITE PERMITTING AND APPROVALS:

Electric utilities operating within the national forest system can face permitting and approval delays of months or even years for hazard tree removals, routine vegetation management, right-of-way access, and electrical infrastructure upgrades. Every delay jeopardizes affordability and reliability of the electric grid and increases wildfire risk to utility systems and the communities they serve. The Forest Service should leverage all available authorities and recent executive orders on wildfire, land management, and energy to expedite permitting and approvals for utility wildfire mitigation activities. This includes:

- Expediting NEPA processes by:
  - Using guidance and authorities granted under the President's *Declaring a National Energy Emergency and Unleashing American Energy* executive orders.
  - Narrowing the scope of NEPA analyses pursuant to recent court decisions, including *Seven County Infrastructure Coalition v. Eagle County*.
  - Expanding the use of existing categorical exclusions, including those that are listed in another agency's NEPA procedures (consistent with 42 USC 4336(c)), and developing new categorical exclusions as appropriate to include operations and maintenance activities and wildfire mitigation activities within existing rights-of-way.
  - Utilizing programmatic NEPA analyses and master special use plans whenever possible and creating a dedicated team for the electric sector within the Forest Service to support their approval and implementation.
  - Supporting and encouraging the use of cost recovery agreements to help ensure that permit applications can be reviewed and promptly approved.
- Expediting Endangered Species Act and National Historic Preservation Act processes by:
  - Using authorities and guidance granted under the President's *Declaring a National Energy Emergency and Unleashing American Energy* executive orders.
  - Providing clear guidance that right-sizes the Area of Potential Effects under section 106 of the National Historic Preservation Act by clarifying that the "undertaking" is limited to only that portion of a project or specific project activity requiring federal permit, license, or approval.

### **LIABILITY LIMITATION:**

Utilities are subject to numerous liabilities after a wildfire occurs—even if they are not at fault—potentially resulting in bankruptcy, increased electricity rates for consumers, and reduced access to capital needed to meet skyrocketing demand. Comprehensive reforms to reduce liabilities are necessary to ensure reliability, affordability, and resilience of the grid moving forward. The Forest Service should:

- Maintain its commitment to not increase the \$1 million strict liability cap. To solidify this commitment, the Forest Service should withdraw the increase proposed in its March 2023 notice of proposed rulemaking on Land Uses; Special Uses; Cost Recovery, Strict Liability Limit, and Insurance, 88 Fed. Reg. 14517 (March 9, 2023).
- Work with the Department of Justice to eliminate strict liability requirements as appropriate under the Federal Land Management and Policy Act (FLPMA) and 36 C.F.R. §§ 251.56(d) and 251.56(h)(9) for utility special use authorization holders without finding of fault. In the meantime, the Forest Service should utilize its discretion to lower the amount levied on utilities for wildfire events.
- The Forest Service should use memoranda of understanding and other authorities to allow utilities to remove felled timber and slash from in and around their rights-of-way without a timber sales agreement.
- The Forest Service should work with utilities to reduce natural resources damages where appropriate; and to increase transparency in the fire investigation and natural resources determination processes.

### **INCREASE PROCESS CONSISTENCY:**

Utilities must navigate inconsistent permitting and approval processes across multiple forest service regions and federal agencies. A single linear project can cross multiple jurisdictions with differing permitting and approval processes. The Forest Service should:

- Ensure permitting and approval processes and policies are consistently and reasonably implemented among its regions for wildfire mitigation projects.
- Coordinate with the Bureau of Land Management, the National Park Service, the Fish and Wildlife Service, and other government stakeholders, as applicable, where possible, to ensure more consistent policies and practices for utilities operating across the public lands system, and develop instructional memorandums<sup>1</sup> that are consistent across agencies, especially regarding operations and maintenance activities.

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<sup>1</sup> See the Bureau of Land Management's Permanent Instructional Memorandum PIM2025-007.