

# ***Wildfires and Utility Liability: A Shifting Landscape***



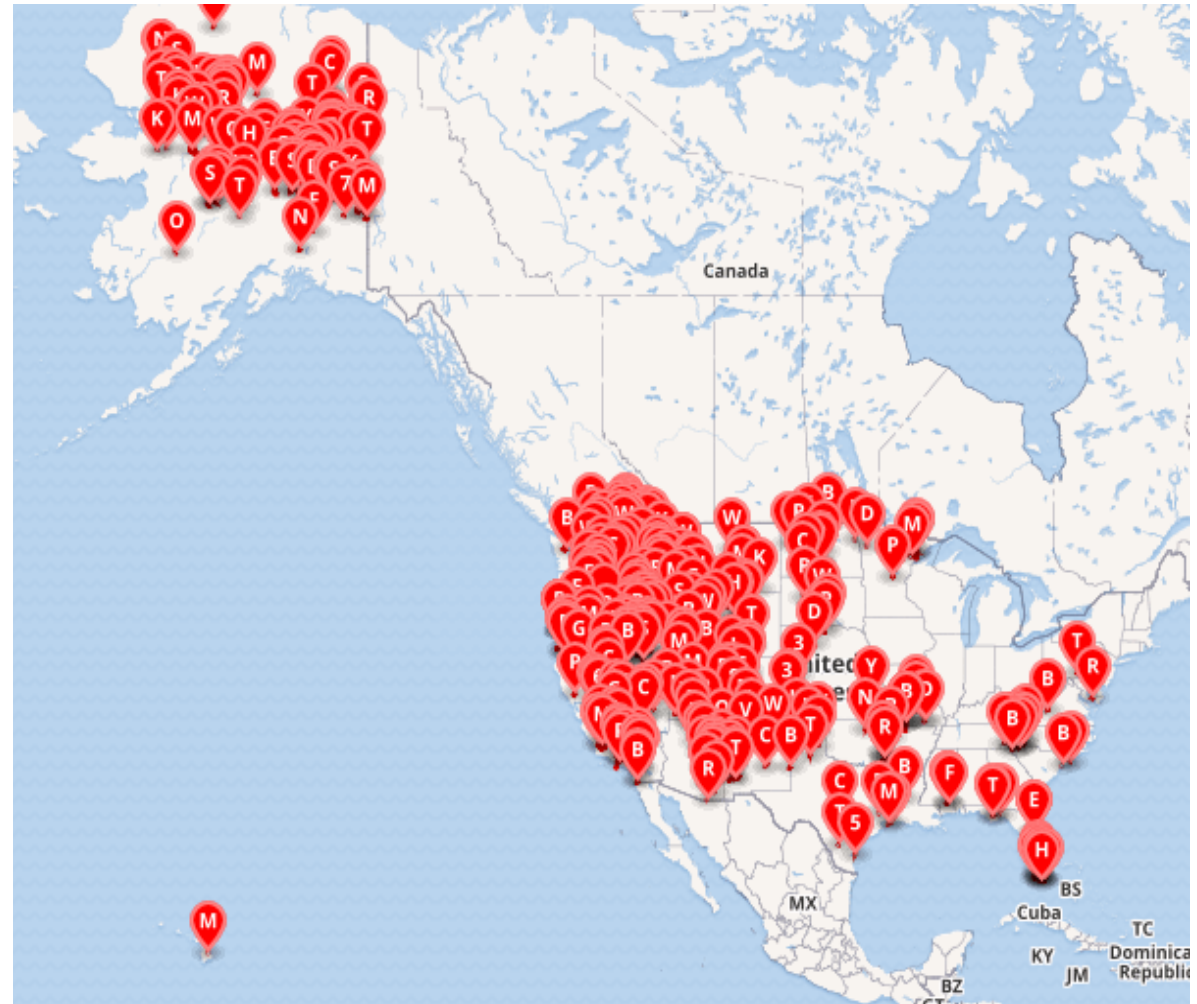
**2026 National Conference of  
Regulatory Attorneys**

# Nature of the Issue

- Wildfires Increasingly Linked to Electric Infrastructure
- Risks Can be Reduced But Not Eliminated
- Damages Can Reach \$\$\$ Billions
- Threatens Affordability, Reliability and Viability

# Wildfire Risk

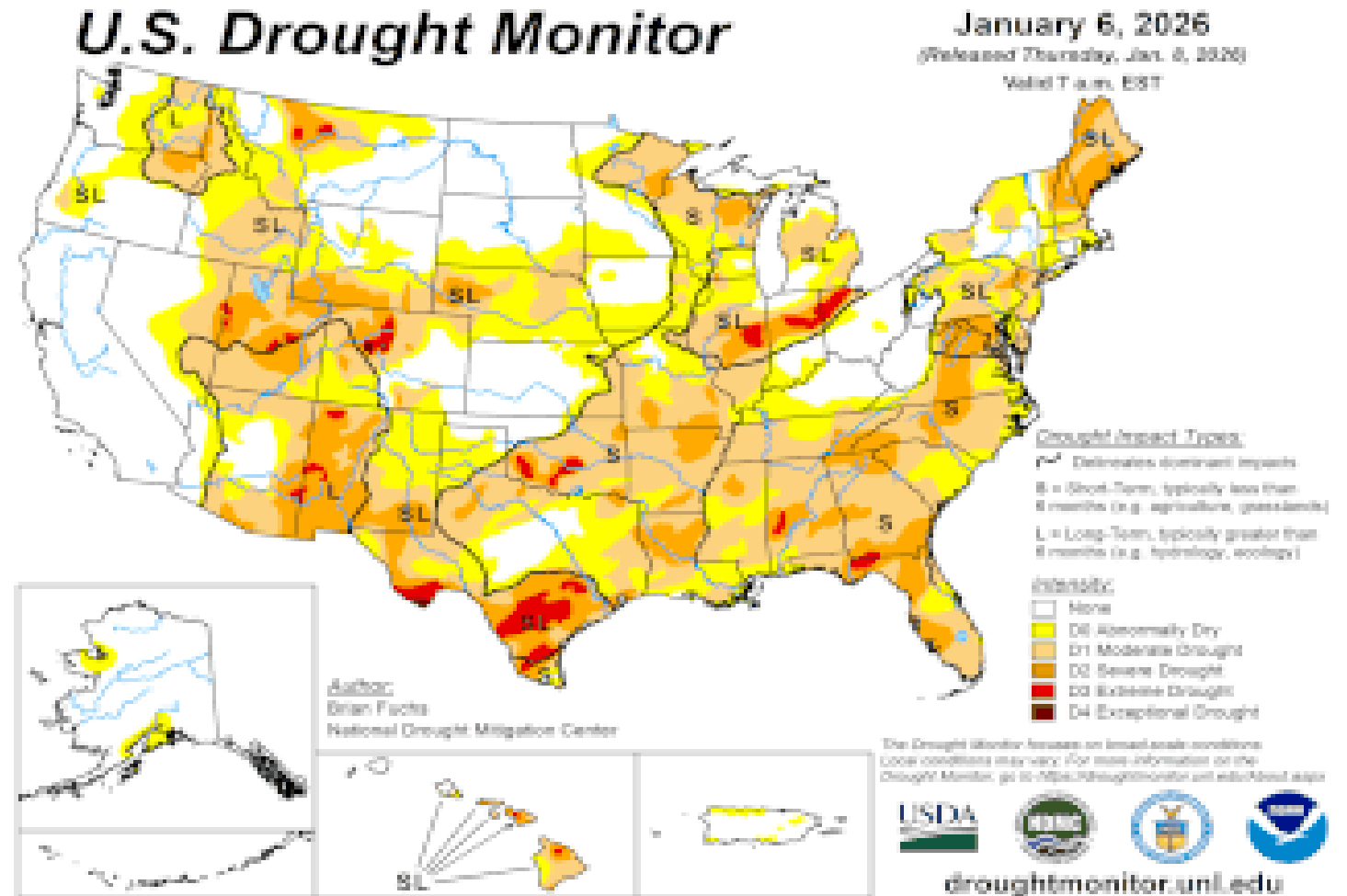
- 2025 Wildfires > 1000 acres
- 29 States
- 72,000 fires
- 5 million acres burned



# US Drought Forecast

## 2026 Forecast

- From Jan-Feb
- South has improved
- NW has worsened



# Oregon Outlook



# Utility Infrastructure Risk

## Ignition Causes

### **Downed Power Lines:**

Power lines can fall onto vegetation, creating an arcing hazard or igniting nearby materials.

### **Arcing:**

Lines can arc (release sparks) when in contact with vegetation, debris, or other objects

### **Overheating:**

Overheated lines can melt or ignite nearby dry vegetation, especially in hot and dry weather.

## Contributing Factors

### **Aging Infrastructure:**

Many systems are old and not be equipped with modern safety features or monitoring systems

### **Negligent Maintenance:**

Inadequate maintenance: poor vegetation management and lack of equipment inspections

### **Climate and Weather:**

Increased temperatures and drought; severe dry and windy weather

### **Land Use/Forest Management:**

Wildlands-Urban Interface; Fuel Loads, Right of Way

# Challenges

- ❖ Wildfire risk from utility infrastructure can be reduced **but not** eliminated
- ❖ Even if following all safety standards, sparks will occur
  - Trees outside right-of-way
  - Foreign objects
  - Manufacturer Defects
- ❖ Often multiple sources of fires – creating litigation uncertainty



# Impacts to Rates and Reliability

- **Investor concern**
  - In 2024 letter to investors, Warren Buffet reported that wildfire-related lawsuits have raised uncertainty “about the desirability of future [utility] investments.”
- **Increased Costs of Capital**
  - Credit downgrades; increased borrowing costs
- **Impacts Reliability**
  - More PSPSs and sensitive settings
- **Effects on Bankruptcy**
  - Risks remain after bankruptcy

# Legal Approaches

- Negligence-Based Liability
  - ✓ Most states
  - ✓ Utilities pay only if careless or reckless
  - ✓ Economic and non-economic damages
- Strict Liability
  - ✓ California (and formally South Dakota)
  - ✓ Utilities pay even without negligence
  - ✓ CA based on “Inverse Condemnation”



# Evolving Liability Frameworks

- New legal frameworks for utility-ignited wildfires
- Balance Between Accountability and Viability
  - Clearer Standards of Conduct
  - Reduced Liability
  - Legal Defenses
  - Access to Funds



# Fairness Arguments

- Duty to serve even high-wildfire-risk areas with limited ability to mitigate risk
- When a spark occurs, scope of the fire driven by factors outside of the utility's control (climate, land use, forest management, fire suppression)
- Public entities often have immunities that can protect them from similar liability
- Costs related to wildfire mitigation and risk generally passed on to ratepayers

# Standards of Conduct

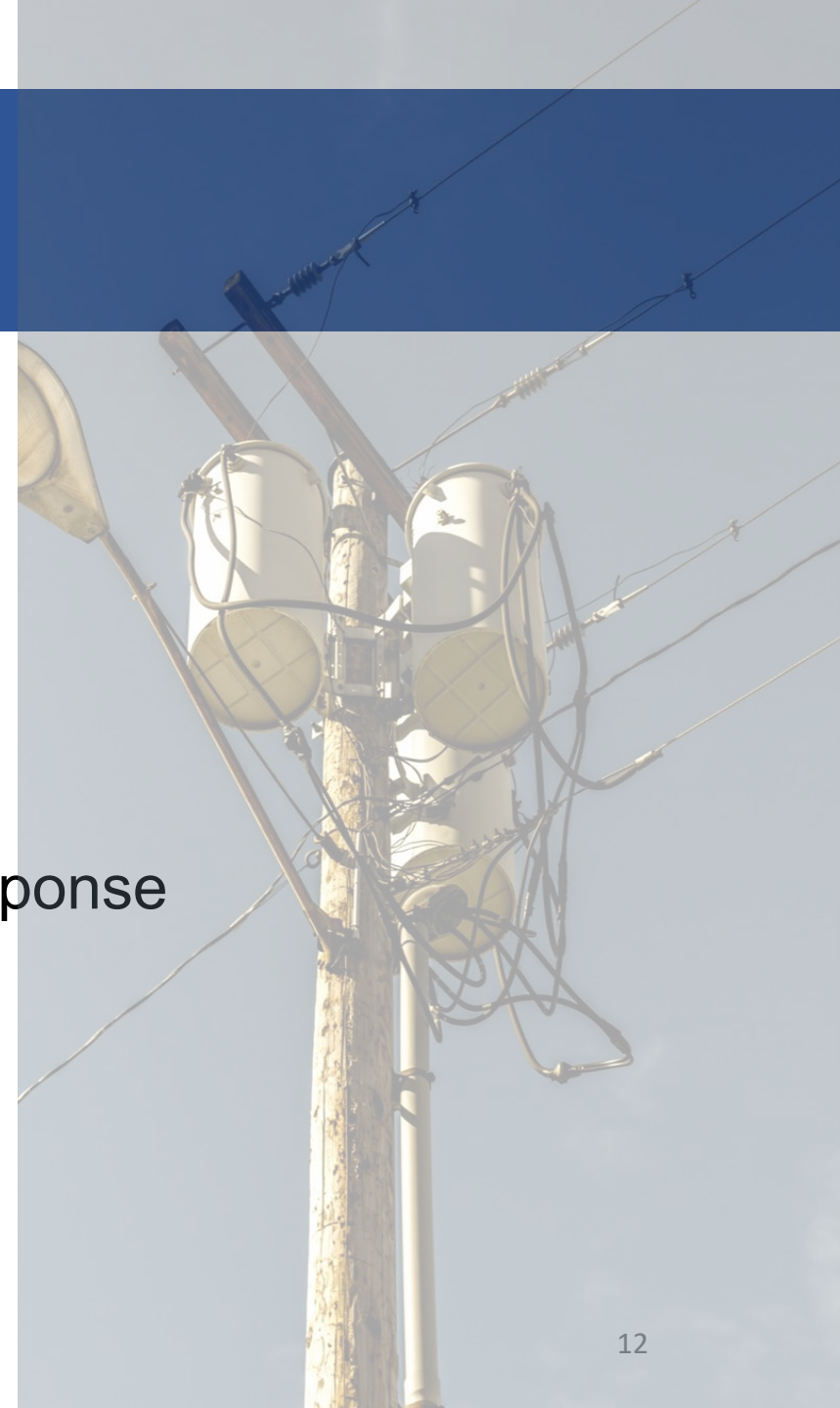
Ensure electric systems are built and operated to promote wildfire safety, prevention, and recovery

## Risk Based Wildfire Mitigation Plans

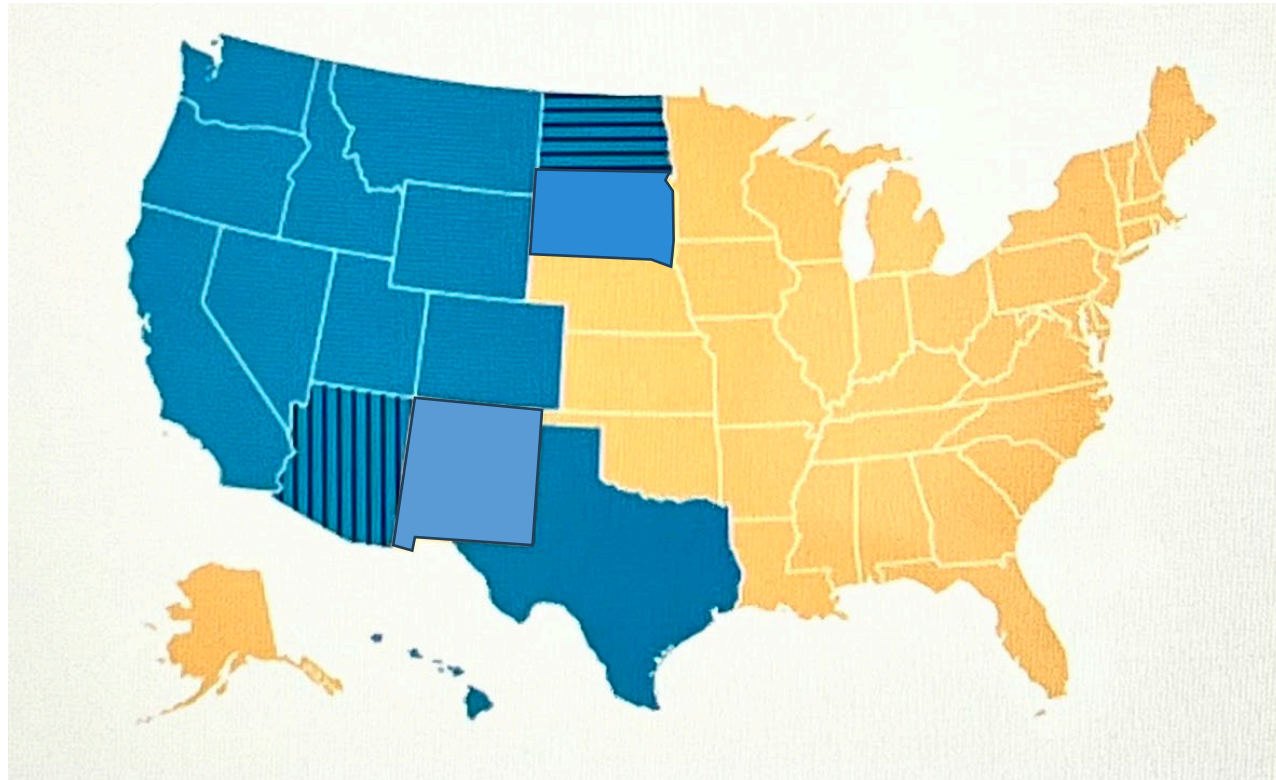
- System Hardening
- Vegetation management (tree trimming)
- System inspections, monitoring and emergency response
- Power shutoffs during high risk

## Safety Certifications

- Culture of Safety



# WMP State Requirements



 No Requirement

 State Requirement

North Dakota – no regulatory review

Arizona – can be approved without formal action

# Reduced Liability

## Caps on Damages:

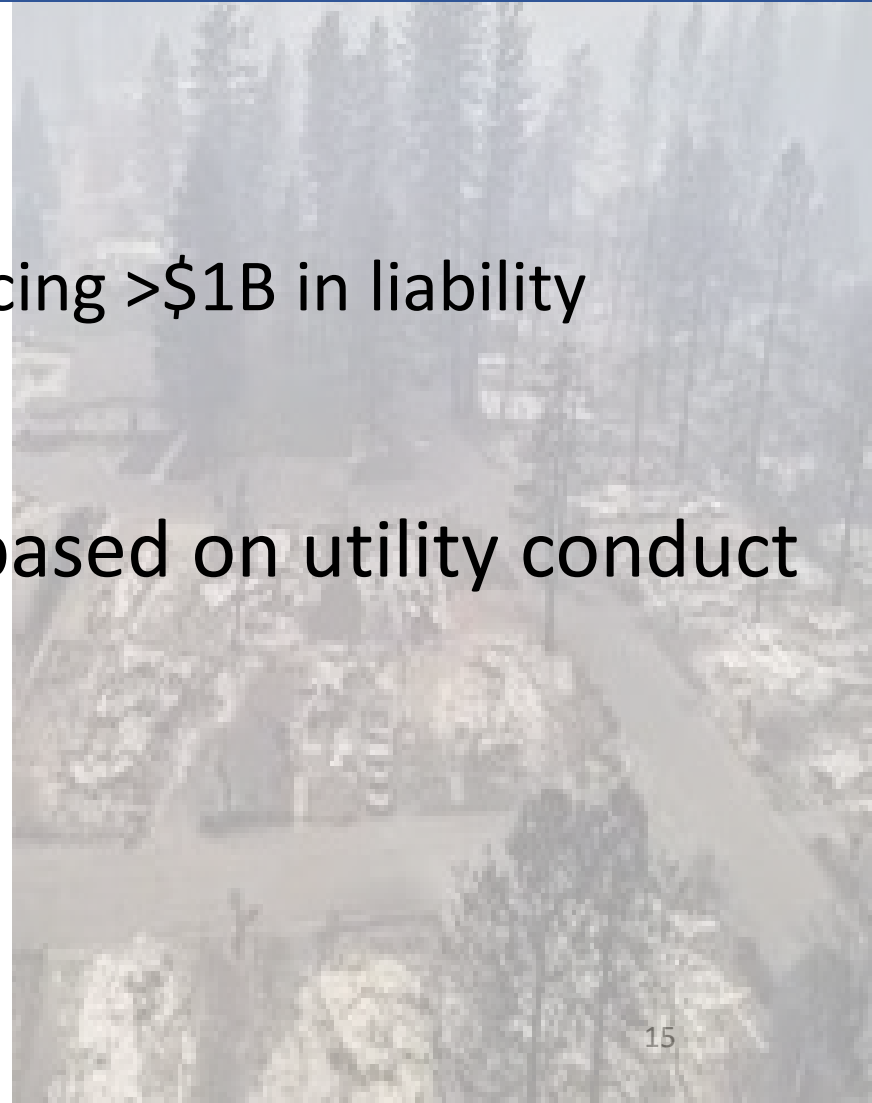
- Maximum amount for wildfire claims (Kansas)
- Caps for economic damages; higher required showing for punitive (Arizona, Idaho, Wyoming)

## Conditional Protection:

- Not negligent if acting under WMP (Utah)
- Presumption not liable if acting under WMP (Montana, North Dakota, Wyoming, New Mexico, South Dakota)

# Wildfire Compensation Funds

- California Wildfire Fund
  - No limit on liability or damages
  - Provides reimbursement to eligible utilities facing >\$1B in liability
- Funded by shareholders and ratepayers
- CPUC determines reimbursement of fund based on utility conduct
- Born from necessity
  - Inverse Condemnation
  - PG&E Bankruptcy



# Legislative Overview

		WMP Requirement	Increased liability protection	Caps or limits Damages
Arizona	HB 2201	Yes	Yes	Yes
Colorado	Bill 5	Yes	Yes	No
Hawaii	SB 897	Yes	No	Yes
Idaho	SB 1183	Yes	Yes	No
Kansas	HB 2107	No	No	Yes
Montana	HB 490	Yes	Yes	Yes
New Mexico	HB 267	Yes	Yes	Yes
North Dakota	SB 2339	Yes	Yes	No
Oregon	SB 762	Yes	No	No
South Dakota	SB 36	Yes	Yes	Yes
Texas	HB 145	Yes	Yes	No
Wyoming	HB 192	Yes	Yes	Yes

# Challenges

- Shifting Costs to Insurance Companies?
- Differing Treatment of Wildfire Victims?
- Reducing Overall Risks of Wildfires?
- Are Regulators Able to Determine Prudence?



Questions?

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