

that? . . . Sure. . . Of course I will. Of course! If you are kind enough to create such opportunities, I should be gracious enough to offer you what I can in return . . . No, no, no . . . Don't be silly, we depend on each other. Without you I couldn't be here . . . And you couldn't be where you are . . . Alright, thanks for calling. Bye."

That was America calling. She calls on me as she does all of us to take advantage of her innumerable opportunities. Now, more than ever, the chance for America to answer her call is marvelous. These opportunities are practically flung at America, so how could anyone resist answering America's call?

America was founded over 200 years ago on the principle of life, liberty, and freedom, and she calls on us to take advantage of these principles. In regards to life, the chance is ours to live where we want, how we like, and with as much education as we would like to receive. Of course in doing this we must also respect other Americans' rights to live as they choose. We are offered excellent free public education. We are offered financial assistance when we stumble. The life America offers is unique from that of all other countries. Nowhere else in the world is there such a diversity of talent, culture, and experience.

We are granted liberty—the opportunity for us to live with rights not granted by other countries. We may speak freely as long as we do not take license which injures others in doing so. America welcomes refugees whether that are political prisoners, prisoners of war, or those who are oppressed by the economic shackles that have bound them in their native lands. In America, we can speak out to government about issues that concern us.

Along with liberty, we are granted freedom—freedom to exercise our rights to pursue the religion of our choice, to elect the candidate we support, and to assemble at will. We have the right to publish our ideas and share them with other Americans, no matter how orthodox or unorthodox they may be. We can also create groups to reform government or educate the community on the issues of concern.

It can clearly be seen that America's opportunities are hard to turn down! But America doesn't just call on us to take advantage of her bounty, she also asks us to help sustain her services by giving back to her something in return. By doing this we keep America in balance. Without contributions from America, she is incapable of fulfilling the promise of life, liberty, and freedom. She needs our help.

One way we help is through the financial contributions we make each April—those infamous taxes which fund the services America offers. Another way we contribute is in the form of direct service. Some of us are called to serve in the military to fight to defend America, while others of us are asked to serve in the community by volunteering our time and skills to assist those in need.

And America, most of all, requests the moral support of her citizens. We sing the National Anthem before sporting events to remember the efforts of those who defended our country. We also build national spirit by observing holidays such as Veterans Day, Independence Day, and Presidents Day. We display our national pride by hanging our American Flag as a symbol of unity and spirit.

I, too, have answered America's call. I have taken a citizen's role in government through my work canvassing for the Sierra Club on environmental protection issues. I have also served America by giving my time at a convalescent home where I assisted the elderly with their art activities. I have donated time at a local soup kitchen, serving meals to the homeless. I have further involved myself in working for the environment by being on my

school's Green Team, which collects recyclable in the school. My team's efforts enabled us to earn a can crusher this year to further our recycling activities. This work led me to volunteer at a local recycling center where I have spoken to the community about keeping open recycling centers which were scheduled to close.

America has kept her promise of life, liberty, and freedom. She gives us the right to voice our opinions on our government. She gives us the freedom to pursue our goals and to reach for excellence. She gives us the opportunity for education and success. She only asks that we answer her call by giving her our time, service, and talents in return. So, the next time America calls, don't hang up.

## STRICT LIABILITY/RIGHTS OF WAY LEGISLATION

HON. WES COOLEY

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, May 1, 1996*

Mr. COOLEY of Oregon. Mr. Speaker, today I am introducing the Rural Right-of-Way Fairness Act to make small but necessary adjustments to the way the Government manages right-of-ways [ROW] over Federal land. The provisions of the bill address situations involving right-of-way fees and liability standards affecting rural electric cooperatives and other ROW lessees.

These situations constitute examples of all too typical insensitivity on the part of Federal land regulators—particularly felt in the Western States where high percentages of Federal land ownership require rural citizens to depend on land management agencies to operate as good neighbors. Unfortunately, it appears that with regard to the management of right-of-ways for the transmission and distribution wires needed to bring electricity to the rural West, the Forest Service and the Bureau of Land Management have chosen, in some instances, to make life rough for the private citizens who live next door.

The first section of the bill deals with strict liability standards included in the contracts between the Forest Service and the Bureau of Land Management and ROW lessees. The provisions of those contracts set out the responsibility of each party for things that may go wrong on a Federal right-of-way.

Unfortunately, from time to time, things do go wrong. It would seem to make common sense that the responsibility for picking up the pieces in those instances should lie with those shown to be at fault. However, common sense seems to play little part in the calculation. In fact, as a matter of being able to qualify for use of a Federal right-of-way, rural electric cooperatives and other lessees are currently forced to take responsibility for anything that may happen on those right-of-ways whether they were at fault or not.

The 1976 Federal Land Policy and Management Act provided the Federal agencies with the authority to impose strict liability for costs associated with hazards on Federal lands. Prior to 1976, agencies recovered costs associated with hazards, such as costs required to put out a fire, through normal negligence. The agencies use crossing permits, which are a grant of right-of-way for a certain period of time, as the method for imposing strict liability.

Strict liability means that costs associated with a hazard are recovered from the holder of the rights-of-way without regard to who is re-

sponsible for the hazard or whether or not any negligence was involved. Normal negligence requires that costs associated with a hazard are recovered from whomever is responsible for that hazard.

Mr. Speaker, let me illustrate how this works on the ground by telling a story involving Midstate Electric Cooperative located in LaPine, OR. As a matter of prudent maintenance practice, Midstate Electric trims or removes trees on right-of-ways that pose a risk of falling onto electric lines. On Federal ROW's, the cooperative consults with the appropriate land management agency—who has ultimate authority to approve such actions.

After having proposed the removal of a number of trees on a Forest Service ROW in 1984, Midstate was told by the agency that it could cut some down, but had to leave other specified trees standing. Of course the predictable happened—one of the trees that Midstate had proposed cutting, which the Forest Service had refused to allow removed, fell into a power line and started a fire. It cost over \$350,000 to put that fire out—a bill that was eventually forwarded to Midstate Electric. Knowing that the fire resulted from a management decision of the Forest Service, Midstate was forced to initiate court action to attempt to appropriately assign the financial liability of fighting the fire. It lost that action because of a ruling which interpreted ROW contracts as holding the co-op—and other ROW lessees—to a "strict" liability standard.

The legislation that I am introducing today removes that strict liability standard for a more commonsense one—returning to a normal negligence standard that is routinely used in private ROW contracts. In essence, the new standard will say: if you caused it, you are responsible for it. By enforcing any standard more rigid than that, the Federal Government is purposefully transferring costs to private citizens. The minimum impact of the current strict liability policy is higher electric rates for those rural communities unfortunate enough to live adjacent to public lands. The possibility exists, however, of even more punitive impacts in the form of the loss of insurance coverage for entities with Federal right-of-way liability.

Utilities, telecommunications providers, and others in the West find it impossible to avoid Federal lands in providing area coverage. In some cases, the Federal agencies are the users of the services that require crossing permits across Federal lands.

No other landowner in the United States has the power to impose strict liability for hazard costs for grants of rights-of-ways. The Federal Government can do it because it owns so much land in the West and has the power to pass laws and regulations. Normal negligence is seen as adequate protection for landowners and for holders of non-Federal rights-of-way in the United States. The Federal Government should live by that same standard.

The second section of my bill deals with ROW fees for rural electric and telephone cooperatives. In 1984, Congress passed and President Reagan signed PL 98-300, an act clarifying that rural electric and telephone utilities were to be exempted from Federal ROW fees. The legislation was put forward out of frustration that the Forest Service and BLM were not using existing authority granted to

them in 504(g) of Federal Land Protection and Management Act [FLPMA] to reduce or waive right-of-way fees for nonprofit organizations found to operate in the public's interest.

This congressional fix has not proved entirely successful. Unfortunately, as in the case with the strict liability issue, the example is a utility located in my district.

Oregon Trail Electric Cooperative [OTEC] of Baker City, OR, has the distinction of being the newest formed rural electric cooperative in the United States. It was created by private citizens who formed a cooperative to buy out the facilities of an investor-owned utility which had found that serving rugged, rural territory is not a profitable venture. The buyout served to ensure continued electric service for the citizens of that part of Oregon and, significantly, was achieved without relying on government financing.

It is this last fact that is at the root of the issue. Instead of being rewarded for avoiding the use of government financing, the Forest Service has sought to penalize OTEC. The vehicle they are using is the language included in PL 98-300 which describes fee exempted cooperatives as "financed pursuant to The Rural Electrification Act of 1936." What had been a convenient way to describe cooperatives in 1984—because 100 percent were REA-financed—no longer holds true. Despite the obvious congressional intent in PL 98-300 of exempting all cooperatives; despite the numerous attempts to get the agency to utilize other administrative authorities; the Forest Service is now charging OTEC full ROW fees. Ironically, one of the ROW's is used to serve a Forest Service Office.

As an example of the attempts to reason with the Forest Service, I ask unanimous consent that a letter to the Forest Service from the Pacific Northwest Generating Cooperative on OTEC's behalf be inserted in the RECORD after my statement.

The language of my bill is simple and straightforward. It would change FLPMA to exempt from ROW fees those electric and telephone utilities that are eligible for rural utility service financing rather than those utilizing it. In this era of budget consciousness, the last thing we need is to continue a monetary incentive to perpetuate reliance on government funding. We should be congratulating the OTEC's of the world rather than burdening them with ROW fees that other, government-financed, co-ops are exempted from.

Mr. Speaker, as you can see, my bill attempts to correct yet two more examples of the Federal bureaucracy run amok. I believe that the Forest Service and BLM already have the administrative authority to solve the problems that I have identified. Unfortunately, they have refused to do so. Rural citizens who want nothing more than to have access to reasonably priced electric and telephone service have to appeal to the jurisdiction of last resort—Congress.

It is my hope that the Resources Committee will take up this legislation, whether as a free-standing measure or as an amendment to another bill. As public servants who understand the challenges of country life and the importance of keeping the lights on in areas that are rural, small, and distant, I trust that the members of the committee will ensure that a measure of common sense prevails with regard to Federal right-of-way policies.

PACIFIC NORTHWEST  
GENERATING COOPERATIVE,  
Portland, OR, July 20, 1994.

Mr. JIM GALABA,  
U.S. Forest Service, Pacific Northwest Region,  
Portland, OR.

DEAR JIM: Thank you for taking the time to meet with me during my recent trip to Portland. As I mentioned last week, both the Pacific Northwest Generating Cooperative (PNGC) and Oregon Trail Electric Cooperative (OTEC) are very interested in revisiting the issue of whether Forest Service right-of-way fees should be waived for OTEC electric transmission lines.

I appreciated your willingness to run through the Forest Service regulations in an effort to help me understand earlier Forest Service decisions to charge OTEC right-of-way fees and to help explore areas of possible compromise. Per your request, I have attached several documents detailing the Congressional history surrounding the enactment of P.L. 98-300—the Federal Lands Policy and Management Act (FLPMA) amendment requiring that ROW fees be waived for rural electric and telephone systems financed by the Rural Electrification Administration (REA).

#### LEGISLATIVE HISTORY

As you can see from the enclosed Senate Energy Committee report, at the time of the bill's consideration, both the Forest Service and the Bureau of Land Management (BLM) opposed the legislation because of their feeling that "there is no equitable basis for granting rural electric or telephone cooperatives free access and use of the public lands, especially when regulated private utilities and their customers are treated differently." At issue was the BLM and Forest Service's failure to waive right-of-way fees for cooperatives under the existing FLPMA section 504 (g).

The prevailing concern articulated by the agencies was that cooperatives engage in "practices comparable to private commercial enterprise." It is interesting to note that this is the same basis upon which OTEC's request of a fee waiver has been so far denied. In enacting P.L. 98-300, Congress explicitly rejected the agencies' reasoning in favor of holding down the cost of electric and telephone service to rural consumers. It is also interesting to note that Senator Hatfield, who supports a fee waiver for OTEC, was a member of the Senate Energy Committee at the time of its consideration of the waiver legislation.

While the legislative history does make a number of references specifically to entities funded through the REA, the enclosed floor statements from Senator Baucus and Congressmen Lujan, Oberstar, and Boucher make clear that Congress's prime concern was supporting rural electric and telephone consumers that receive service from member-owned cooperatives. Mr. Oberstar's statement includes the sentence: "It makes little sense for a Federal agency to impose new charges on these companies, most of whom borrow from REA to build and improve their systems." Mr. Boucher refers to Congressional intent, in passing FLPMA, to "exempt or reduce fees for nonprofit utilities."

As I mentioned during our visit, we believe that Congress, in enacting P.L. 98-300, sought to clarify their intention that the Forest Service and the BLM waive right-of-way fees for rural electric cooperatives—regardless of their financing. The goal, as evidenced by the testimony, was to help keep electric and telephone costs down for rural consumers. This is precisely the reason REA exists in the first place. It is contradictory to charge fees to the types of non-profit associations that are so worthy in the eyes of

Congress as to spawn a subsidized loan program. It is important to remember that OTEC remains eligible for REA financing because it is helping to fulfill the REA's mandate of rural electrification.

A further irony is that OTEC does not now have any REA loans in an effort to keep their costs as low as possible to their members—the exact goal in mind when Congress passed the amendment. OTEC should not be penalized for pursuing that end.

#### EXISTING ADMINISTRATIVE DISCRETION

P.L. 98-300 was clearly an attempt to clarify whether rural electric cooperatives provided a public benefit sufficient to warrant a waiver of their right-of-way fees. The legislation originated out of frustration that the agencies were not properly utilizing administrative discretion already enacted by Congress in FLPMA. The Senate report states that "both FLPMA and the regulations contain a provision which explicitly grants discretionary authority to the relevant Secretary (Agriculture or Interior) to issue rights of way to nonprofit organizations for such lesser (or zero) charge as the Secretary finds equitable and in the public interest."

Even if the Forest Service continues to deny OTEC a fee waiver under P.L. 98-300 based on a strict reading of the statute rather than its intent, it is clear the Congress believes that the agencies have broader administrative discretion to grant the waiver under existing FLPMA section 504(g). Accordingly, we would be active in urging the Forest Service to exercise that discretion in favor of a fee waiver. Oregon Trail is a nonprofit association that provides substantial benefit both to the public and (because they serve the Forest Service) the programs of the Secretary. However, we believe a more immediate decision favorable to OTEC is warranted given that the legislative intent of P.L. 98-300 was to provide a fee waiver to all rural electric cooperatives.

#### SCOPE OF DECISION

As I mentioned during our meeting, the impact of granting OTEC a waiver, does not set a large precedent. Nationwide, out of roughly 1,000 existing rural electric cooperatives, only approximately 32 do not have REA financing. Of these, the majority are located in the Midwest and South. Only a handful are located in public land states and fewer still have service territory comprised of large amounts of Federally owned acreage. While the amount of money at stake is minuscule in terms of any impact on the Federal Treasury, it is important to the customers of Oregon Trail.

Again, thank you for taking the time to visit with me. Your willingness to review OTEC's waiver request and to explore a solution to this problem is very much appreciated. If I can provide additional information or be helpful in any other way, please feel free to contact me at either 202/857-4876 or 503/288-1234.

Sincerely,

R. PATRICK REITEN.  
Director of Government Relations.

#### MEDIGAP PROTECTION ACT OF 1996

HON. KEN BENTSEN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. BENTSEN. Mr. Speaker, I rise today to introduce vital consumer protection legislation, H.R. 3374, for Medicare beneficiaries. H.R. 3374, the Medigap Protection Act of 1996, will provide real freedom to senior citizens to