

EXAMINING WILDFIRES & UTILITY LIABILITY

By Mike Dailey of the Arizona
Corporation Commission





Like other states in the West, Arizona continues to experience larger and more frequent wildfires throughout its diverse geographical landscape. From 2010 to 2025, over 500 large fires greater than 100 acres in size burned across Arizona near electrical service providers' territories and associated electrical infrastructure. We are witnessing increasing trends in the size and frequency of wildfires.

Sources indicate that the large weather patterns driven by La Nina in the Southwest in the first half of 2026 will cause extreme heat waves and drought which will result in more extreme temperature records, which have already extremely escalated in Arizona for the last three years.



Arizona saw what happened in California and Oregon and acted before a catastrophic utility wildfire created a multibillion-dollar liability crisis for customers, shareholders, and grid reliability.



Arizona created a proactive wildfire planning framework



HB 2201 (now ARS 37-1311) requires electric utilities to prepare and submit wildfire mitigation plans to the State Forester by May 1, 2026, and every even-numbered year thereafter.



The plans must address risk areas, inspection standards, de-energization and public safety power shutoff procedures, vegetation management, restoration procedures, public outreach, and compliance monitoring.

- Preventive actions
- Protective equipment
- Monitoring programs
- Infrastructure inspection
- Power line de-energization
- Vegetation management
- Post-wildfire system restoration



The Arizona Corporation Commission did not get a chance to participate in the new legislation before it was introduced in early 2025.

The Arizona Corporation Commission suggested that the reviewing agency for wildfire mitigation plans be the Arizona Department of Forestry and Fire Management (DFFM). The DFFM has strong working relationships with County, State and Federal agencies tasked with often cross County, State and Federal forestry and wildfire management and prevention, and it has hundreds of experts and staff already dedicated to the same.



The State Forestry (DFFM) now plays a central review role

The Arizona Department of Forestry and Fire Management must provide public notice, solicit local government comment, hold public meetings and review the plan. If the State Forester does not request changes within 120 days, the plan is deemed administratively approved.



2026 saw the first wildfire mitigation plans being filed, and that information including details of Arizona's wildfire prevention efforts and the new law can be found at:

<https://dffm.az.gov/wildfire-mitigation-plan-program>



Links to submitted or pending wildfire mitigation plans filed by Arizona Public Service, Salt River Project, Sulphur Springs Valley Electric Cooperative, Inc., Tucson Electric Power and UNS Electric, Novapache Electric Cooperative, and Mohave Electric Cooperative are also found on this page.

APS's fire mitigation program is built on the following five key pillars:



Vegetation Management – the appropriate clearing of utility right of ways (ROWs) and lines to avoid contact between vegetation and live electric lines.



Grid Hardening – updating and replacing electric grid equipment with newer technology to make the system less likely to spark ignitions and more resilient to wildfire.



Asset Inspection – using a variety of methods to inspect equipment in high fire risk areas to ensure the health of those assets.



Monitoring and Awareness – deploying technology to improve and increase situational awareness of environmental conditions which could contribute to wildfire as well as implementing modeling systems that give the Fire Mitigation Team the ability to better predict wildfire potential and growth Comprehensive Wildfire Mitigation Plan.



Operational Mitigations – developing and implementing changes to normal operational processes and procedures during times of higher wildfire risk. APS also supports fire management operations that include prescribed fire treatments as well as large-scale forest restoration treatments around power line ROWs in an effort to protect infrastructure and reintroduce fire into the ecosystem to prevent catastrophic wildfire events.

The law gives utilities strong but not absolute liability protection



A utility that complies with an approved wildfire mitigation plan is deemed to have met the standard of care for a reasonably prudent electric utility.

The law blocks the California-style inverse-condemnation trap



Arizona's law states that inverse-condemnation claims do not exist against electric utilities for wildfire-related damages.



That is a major policy choice because California's inverse-condemnation doctrine has imposed strict liability on utilities for property damage caused by fires started by utility equipment.

Arizona learned from California's PG & E bankruptcy

California's framework helped produce enormous liability exposure. The Fire Victim Trust was established through PG&E's bankruptcy to compensate victims of the 2015 Butte, 2017 North Bay, and 2018 Campfires.

California's Legislative Analyst's Office described the problem bluntly: inverse condemnation makes utilities liable for all property damage associated with fires started by their equipment.



Arizona also learned from Oregon's PacifiCorp experience

PacifiCorp has faced massive wildfire litigation from the 2020 Labor Day fires. Recent reporting notes that Berkshire estimated the exposure could reach tens of billions, with roughly \$1.1 billion already awarded in completed trials before a 2026 Oregon appellate ruling disrupted the class-action framework.

The U.S. Department of Justice also announced a \$575 million PacifiCorp settlement for federal wildfire damages in California and Oregon.



The Arizona policy balance is prevention first, litigation second

The law does not excuse bad conduct.

But it requires utilities to file a serious plan, submit to State Forester review, implement the plan, manage vegetation, inspect infrastructure, prepare shutoff protocols, educate the public—and if you do that, Arizona will not let hindsight litigation bankrupt a utility after the fact.



Ratepayer protection is powerful



A utility bankruptcy is not just a shareholder problem. It can threaten credit ratings, capital access, infrastructure investment, insurance costs, and ultimately it raises customer rates.

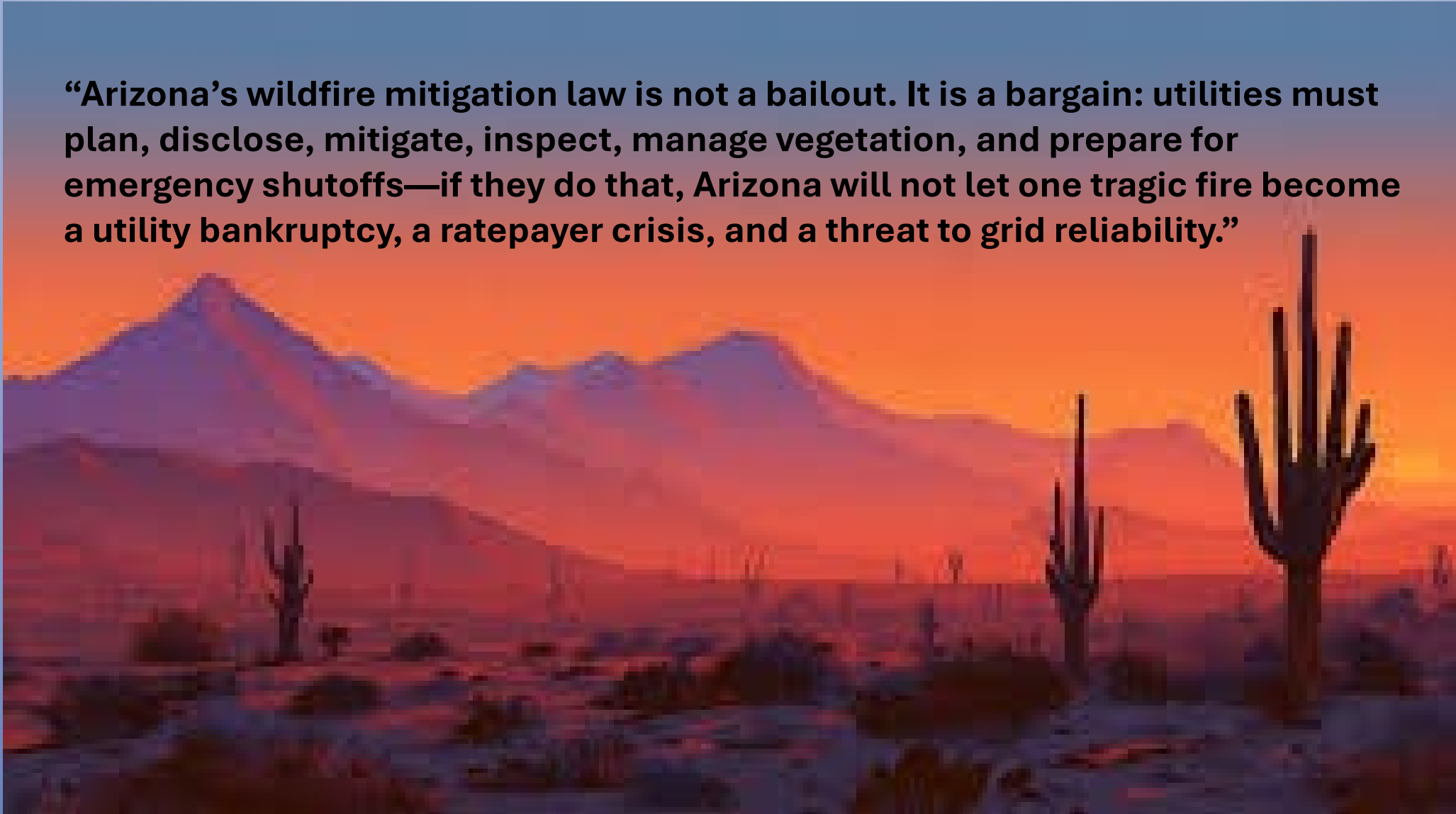


Arizona's approach likely reduces the risk that a catastrophic wildfire creates a PG&E-style or PacifiCorp-style financial spiral for APS, TEP, UniSource, cooperatives, and other utilities.



The law is strongly pro-ratepayer.

“Arizona’s wildfire mitigation law is not a bailout. It is a bargain: utilities must plan, disclose, mitigate, inspect, manage vegetation, and prepare for emergency shutoffs—if they do that, Arizona will not let one tragic fire become a utility bankruptcy, a ratepayer crisis, and a threat to grid reliability.”



Arizona Liability for Causing Wildfires Under New Law

Amended Fact Sheet for H.B. 2201

April 22, 2025, found at:

https://www.azleg.gov/legtext/57leg/1R/summary/S.2201FIN_ASPASSED_COW.DOCX.htm

ARIZONA STATE SENATE
Fifty-Seventh Legislature, First Regular Session

AMENDED
FACT SHEET FOR H.B. 2201

~~technical correction: electricity: power authority~~
(NOW: wildfire mitigation planning: utilities: approval)



Liability for Causing Wildfires

27. Specifies that the statutory wildfire mitigation planning requirements establish the exclusive means of recovery from a public power entity or electric utility for claims or damages resulting from wildfires, except as otherwise agreed to in writing or established by federal law.
28. Specifies that, for a cause of action for negligence against a public power entity or electric utility related to wildfire, a public power entity or electric utility that acts in compliance with an approved wildfire mitigation plan is deemed to meet the standard of care for a reasonably prudent entity or utility.
29. Specifies that a public power entity or electric utility that engages in wilful, intentional or reckless misconduct that causes a wildfire is deemed to not meet the standard of care for a reasonably prudent public power entity or electric utility.
30. Requires a party that asserts a cause of action to prove that a failure to comply with an approved wildfire mitigation plan was the proximate cause of any loss, injury or other harm alleged.
31. Specifies that a failure to comply with an approved wildfire mitigation plan does not constitute negligence per se.
32. Prohibits a public power entity's or electric utility's wildfire mitigation plan from being admissible as evidence against another entity or utility in a civil action arising out of a wildfire.
33. Prohibits a public power entity or electric utility from being apportioned any proportion of any fault for:
 - a) the ignition of a wildfire from sources outside the entity's or utility's control, including lightning strikes or actions by third parties; or
 - b) vegetation of other wildfire risks outside the entity's or utility's right-of-way, lease or other property rights or areas in which the entity has been delayed in accessing or denied access to for purposes of performing vegetation management if the delay or denial is outside the entity's or utility's control.
34. Prohibits a claim for condemnation or inverse condemnation from existing against a public power entity or electric utility related to wildfires.
35. Prohibits exemplary or punitive damages of any kind from being recovered in an action to recover damages resulting from wildfire against an electric utility, only provided that after it has been established that the utility, except an electric cooperative, is liable for personal injury or bodily harm resulting from wildfire, such damages may be sought if the plaintiff proves by clear and convincing evidence that the utility's conduct was both:
 - a) outrageous, oppressive or intolerable; and
 - b) consciously pursued knowingly or with intentional disregard that the conduct created a substantial risk of significant physical injury to others.
36. Requires, for the purpose of determining liability in a cause of action against a parent, subsidiary or other corporate affiliate that is related to a wildfire, the parent, subsidiary or other corporate affiliate of the public power entity or electric utility to be treated the same as and considered equivalent to a public power entity.
37. Requires, for the purpose of determining liability in a cause of action against a public power entity or electric utility that is related to a wildfire, an attachor to be considered a public power entity or electric utility and covered by the entity's or utility's wildfire mitigation plan with respect to any liability that may be alleged to have arisen out of the attachor's equipment.