Statement of
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Before the
House Committee on Resources
Legislative Hearing on
H.R. 5617, 13th Regional Corporation Land Entitlement Act
And
H.R. 5781, the Copper Valley Native Allotment Resolution Act

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Mr. Chairman and Members of the Committee, I am Jim Hughes, Deputy Director of the Bureau of Land Management in the Department of the Interior. I thank you for the opportunity to testify on these two Alaska-related bills: H.R. 5617, a bill that would establish a land entitlement under the Alaska Native Claims Settlement Act (ANCSA) for the 13th Regional Corporation, and H.R. 5781, the "Copper Valley Native Allotment Resolution Act of 2006." As discussed in more detail below, the Department does not support H.R. 5617, but supports the goals of H.R. 5781, which would grant rights-of-way for electric transmission lines over certain Alaska Native allotments.

H.R. 5617, The 13th Regional Corporation Land Entitlement Act

Background

The Bureau of Land Management (BLM) is the Department of the Interior's designated land survey and title transfer agent. The BLM in Alaska manages the largest land conveyance program in the United States – one that requires the survey and conveyance of more than 150 million acres of Alaska's 365 million-acre land base.

Congress enacted ANCSA in 1971 to settle aboriginal land claims in Alaska by providing for a fixed quantity of land and monetary payments to Alaska Native Corporations created by the Act. Under ANCSA, Alaska Natives were awarded approximately 46 million acres of land and nearly $1 billion. Alaska Natives who were permanent residents of Alaska were enrolled in one of twelve regional corporations. Non-resident Alaska Natives were given the option of enrolling in one of the twelve regions or in a 13th region to be established for non-residents. Under the terms of ANCSA, the 13th Regional Corporation would only be established if a majority of the non-resident enrollees elected to enroll in a 13th region, a region that would receive monetary benefits but no land. If a 13th Regional Corporation were created, ANCSA provided a different benefits formula for it than for the other 12 regions. Enrollees in the 13th Regional Corporation understood that by choosing the higher monetary award from the $1 billion fund they were not entitled to and would not receive land.

Well-defined amounts of land and money were designated for distribution through the State-chartered corporations. With the passage of time it has become clear that the choice to enroll as shareholders of the 13th Regional Corporation did not provide the hoped-for remunerative advantage.

As provided for by ANCSA, Non-resident Natives voted on the question of creating and enrolling in a 13th region. The Department of the Interior concluded that a majority of the voting non-residents had not elected to enroll in a 13th region. As a result of the Department's ruling, non-resident Natives therefore had to enroll in one of the 12 regions created in ANCSA.

Two groups, the Alaska Native Association of Oregon and the Alaska Federation of Natives, International, subsequently sued the Department of the Interior in U.S. District Court seeking establishment of a 13th region. The groups believed that they would receive greater benefits as shareholders of a 13th Regional Corporation even though that corporation would receive no land and its income would be limited to the monetary benefits paid out under the $1 billion Alaska Native Fund. Before and during the litigation, the Department made attempts to address the comparative benefits of enrolling in one of the twelve regional

corporations. Nevertheless, as a result of the litigation, a 13th Regional Corporation was created for those non-residents who chose to be in it.

Discussion
H.R. 5617 would give the 13th Regional Corporation 7 years to select 1.5 million acres of land in Alaska from public lands previously withdrawn or otherwise made available for selection. Land selections made by the 13th Regional Corporation would require the prior written approval of the Regional Corporation in which the lands are located. Under the bill, lands located in National Forests, Conservation System Units as defined by the Alaska National Interest Lands Conservation Act, military withdrawals, or the National Petroleum Reserve would not be available for selection. Lands which can be selected include public lands administered by the BLM in Alaska, including the Steese National Conservation Area and the White Mountains National Recreation Area. Of the 1.5 million acres selected, BLM would convey 1,162,710 acres to the 13th Regional Corporation, increasing the total amount of land to be conveyed under ANCSA to 47 million acres.

As discussed further below, the Department does not support H.R. 5617 for a number of reasons, including that it represents a significant departure from the original ANCSA; it will allow the groups which originally declined land in favor of money to change their minds thirty-five years later; the proposed land entitlement is not equitable to other Regional Corporations; it increases the time it will take to complete federal land transfer obligations in Alaska; and, it will be costly and difficult to implement.

The bill is intended to provide a distribution of land to shareholders of the 13th Regional Corporation. We note that only 6 of the 12 Regional Corporations received any land under Sec. 12(c) of ANCSA. With the proposed entitlement of nearly 1.2 million acres, the 13th Regional Corporation would receive the 4th largest entitlement under Sec. 12(c) although it is only the 9th largest in number of shareholders.

H.R. 5617 does not conform to Public Law 108-452, the Alaska Land Transfer Acceleration Act (Acceleration Act), which the Department has previously interpreted as a clear Congressional direction to complete the federal government's land transfer obligations in Alaska as quickly as possible and to establish final land ownership patterns by 2009. The intent of H.R. 5617 appears to be that no entity with a prior land entitlement will be adversely affected by this new land conveyance by requiring the 13th Regional Corporation to be the "last of the last" to receive its land. However, the BLM still owes village corporations 3.3 million acres of land, regional corporations 4.5 million acres of land under the original ANCSA, and the State of Alaska 12 million acres under the Alaska Statehood Act. For vast areas of previously conveyed State and ANCSA lands, federal surveys and patents remain to be completed and patents must be issued. Thus, the land transfer is not without cost. In the likely event that no Regional Corporation allows the 13th Regional Corporation to file land selections or select land of any real value, it is unclear how the 13th Regional Corporation would be compensated.

An anticipated, desirable outcome of the Acceleration Act is the removal of excess land selections from the public lands so that those lands can be managed for the benefit of the public including exploration for minerals and energy and for transportation needs, including construction of an Alaska Gas Pipeline. H.R. 5617 would cause public lands in Alaska to remain segregated from such uses during the seven-year selection period in order to preserve selection options for the 13th Regional Corporation. In addition, the Department of Justice has raised a constitutional concern with the fact that the bill provides benefits to Alaska Natives and, because of the way the term "Native" is defined in ANCSA, that classification may be viewed as a classification based on race or ethnicity, rather than tribal status (including membership in a federally recognized corporation or village), and thus would be subject to strict scrutiny under Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 235 (1995).

H.R. 5781, The Copper Valley Native Allotment Resolution Act
Background
The issues related to this bill are described in detail in a September 2004 Government Accountability Report titled "Alaska Native Allotments: Conflicts with Utility Rights-of-Way Have Not Been Resolved Through Existing Remedies" (GAO-04-923). As noted in the GAO Report, the Department and the State

of Alaska have granted rights-of-way for a variety of uses, including electrical transmission lines, and some of these rights-of-way cross Alaska Native allotments, giving rise to conflicts between Alaska Natives and holders of rights-of-way. One such holder is Copper Valley, a rural nonprofit electric cooperative which provides electricity to about 4,000 members in Alaska's Valdez and Copper River Basin areas. According to the Report, as early as 1958, Copper Valley obtained rights-of-way permits from Interior, and later from the State of Alaska, to construct and maintain electric lines. However, in some instances it has been determined (either by the Department or the Alaska Realty Consortium, which provides realty services for over 160 Native allotments in south-central Alaska) that Copper Valley is trespassing or allegedly trespassing across Alaska Native allotments.

Since the late 1980s, the Department has applied the "relation back" doctrine when addressing disputes between Alaska Native allotments and rights-of-way holders. Under that doctrine, the rights of Alaska Native allottees relate back to when each first started using the land, not when the allotment was filed or granted. Prior to that time, Alaska Native allotments generally were subject to rights-of-way existing at the time the allotment was approved. Federal courts have dismissed legal challenges to Interior's use of the relation back doctrine because of sovereign immunity.

Discussion

The GAO identified 14 specific allotments where Copper Valley's rights-of-way conflict with Native Allottee ownership. H.R. 5781 would resolve the dispute by granting to Copper Valley a right-of-way over the specific allotments listed in the bill; the bill would also ratify any existing right-of-way within a federally-granted highway easement granted by the State to Copper Valley before the date of enactment. In exchange for the rights-of-way granted across each of the properties, owners of the listed allotments would each be compensated based on the results of an appraisal conforming with the Uniform Appraisal Standards for Federal Land Acquisitions, plus interest, from the date of first entry of Copper Valley on the allotment. We have not yet conducted any appraisals, but we do not expect these costs to be significant. Compensation would be paid from the Judgment Fund (31 U.S.C. 1304).

As noted above, the Department supports the resolution of this matter. With this in mind, however, we do have some concerns with the bill. Specifically, we recommend that section 3(c)(1) be deleted. The provision addresses a property dispute between the State and the federal government based on highway easements, and has nothing to do with conflicts between Copper Valley and owners of Alaska Native allotments. In fact, this section would reverse a longstanding Departmental interpretation upheld by the Ninth Circuit Court (See *United States v. Gates of the Mountains Lakeshore Homes, Inc.*, 732 F.2d 1411 (9th Cir. 1985)), and could be cited by the State as a precedent in future disputes with the BLM. In addition, we have concerns about whether this is an appropriate use of the Judgment Fund. We also believe that section 3(c)(1) is unnecessary, as section 3(a) provides the ratification being sought by Copper Valley. In addition, we note that there are alternative methods for calculating the value of the property interest granted to Copper Valley that could result in different amounts of compensation being awarded to allotment owners. We think this is an important issue and one that should be addressed. We look forward to working with you on this and other technical issues.

Conclusion

Thank you, Mr. Chairman, for the opportunity to present this testimony. I will be pleased to answer any questions you and other Members of the Committee may have.