

**Statement of  
Chad Calvert  
Principal Deputy Assistant Secretary  
Land and Minerals Management  
U.S. Department of the Interior  
Senate Energy & Natural Resources Committee  
Subcommittee on Public Lands and Forests  
S. 3000, the Copper Valley Native Allotment Resolution Act  
September 27, 2006**

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify on S. 3000, the "Copper Valley Native Allotment Resolution Act of 2006." As discussed in more detail below, the Department supports the goals of S. 3000, which would grant rights-of-way for electric transmission lines over certain Alaska Native allotments.

### **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. S. 3000 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. Finally, 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.