

S. 205 and H.R. 865 - Public Land Use Bills



Statement of Jim Hughes, Acting Director, Bureau of Land Management

U.S. Department of the Interior

Senate Energy & Natural Resources Committee Subcommittee on Public Lands and Forests
S. 205 and H.R. 865, the Copper Valley Native Allotment Resolution Act
May 3, 2007

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify on

S. 205 and H.R. 865, the “Copper Valley Native Allotment Resolution Act of 2007.” The Department supports the goals of this legislation, which would grant rights-of-way for electric transmission lines over certain Alaska Native allotments but, as discussed in more detail below, we do have some concerns with the bills.

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. 205 and H.R. 865 would resolve the dispute by granting to Copper Valley a right-of-way over the specific allotments listed in the bill. 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, using the date of enactment of this legislation as the date of valuation. We have not yet conducted any appraisals, but we do not expect these costs to be significant. Senate bill 205 provides that compensation would be paid from the Judgment Fund (31 U.S.C. 1304); the House bill is silent on this issue.

As noted above, the Department supports the resolution of this matter, and we appreciate changes made to the bills prior to their introduction this year. However, we do have some concerns with the legislation. As an initial matter, we have a concern in S. 205 regarding whether this is an appropriate use of the Judgment Fund. Alternatively, we note that H.R. 865, which has passed the House, does not identify a source for compensation payments. In the absence of a named source, we presume that any compensation awarded under this legislation would be taken from programmatic funding.

Additionally, we strongly recommend that the legislation contain language ensuring that the allottees are provided compensation for the past occupancy of the rights-of-way. We think this is an important issue and one that should be addressed to ensure that the allottees are fully compensated. We look forward to working with you on this matter.

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.