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Testimony
Before the Committee on Resources
United States House of Representatives

Hearing on
H.R. 5781 Copper Valley Allotment Resolution Act

September 13, 2006

Mr. Chairman, Honorable members of the Subcommittee, my name is Robert Wilkinson. I am from Glennallen, Alaska, and serve as Chief Executive Officer of the Copper Valley Electric Association. CVEA is a non-profit, member-owned, rural electric cooperative founded in 1954 by the residents of Glennallen in the Copper River Basin region of Alaska. Thank you for this opportunity to testify on H.B. 5781, the Copper Valley Native Allotment Resolution Act of 2006. This bill is very important to the 3,600 members of this Cooperative and will resolve a long standing problem which has been created by an unfortunate disconnect between Congressional passage of the Alaska National Interest Lands Conservation Act in 1980 and subsequent federal administrative rulings by the Department of Interior, Interior Board of Land Appeals.

CVEA provides electric service to a large geographic area along 240 miles of the Glenn and Richardson Highways in eastern Alaska. This area was one of the earliest settled areas in the State and has the oldest public road, the Richardson Highway running from tidewater to the Interior of the state. CVEA is headquartered in Glennallen, Alaska, and maintains a district office in Valdez.

CVEA's mission is to provide exceptional customer service through safe, reliable, cost-effective electric service and programs. The native allotment issue is contrary to a number of core cooperative principles including a requirement that customers provide easements without cost to the Association. Second, cooperatives operate at cost and purchasing rights of way from allottees will increase the cost to provide service. Finally, cooperatives strive to serve customers in a nondiscriminatory manner. Purchasing rights of way from allotment owners creates an unfair advantage at the expense of other customers who have to foot the bill. H.B. 5781 corrects longstanding problems, allows us to operate consistent with our core 50-year old principles, and we strongly support the passage of H.B. 5781 this session.

Background

H.B. 5781 addresses a problem created by an inadvertent combination of federal law and Interior Department administrative rulings that have created a conflict for 14 Alaska native allotments located in the Copper River Basin. This conflict was not intended by the Congress, and CVEA is the unintended victim of the conflict. This problem jeopardizes the validity of electric transmission lines and rights of way, all of which Congress intended to protect as valid existing rights when it passed ANILCA in 1980. CVEA has invested millions of dollars in these transmission lines in reliance on BLM decisions to grant these rights of way. After many years of fruitless ongoing discussions concerning the problem, a detailed study was conducted by the Government Accountability Office: *Alaska Native Allotments: Conflicts with Utility Rights-of-Way Have Not Been Resolved through Existing Remedies*, [GAO-04-923](#), September 7, 2004. The GAO report identified several alternative solutions which have been incorporated into H.B. 5781, which was introduced by Senators Stevens and Murkowski on May 24, 2006. CVEA strongly endorses this legislation and urges its swift passage.

The Inadvertent Problem

Much of the factual record is documented by the GAO in the background section of its report.

The GAO found the following:

CVEA located, applied for and was granted proper transmission line easements and rights of way both prior to and following Alaska's admission to the Union in 1959. The rights of way were confirmed by the BLM and permits were issued to cover these rights of way.

In 1971, Congress repealed the Alaska Native Allotment Act, but many native allotments were not adjudicated prior to repeal which was part of the Alaska Native Claims Settlement Act.

In 1980, Congress legislatively approved all but a few pending allotments because the BLM adjudication process was bogged down and would take decades to conclude. These allotments were approved subject to valid existing rights of which CVEA's rights of way were assumed to be.

In 1986, the Interior Board of Land Appeals, an administrative court of the Department of Interior applied the doctrine of "relation back" to rights of way such as CVEA's to Alaska native allotments. This decision, according to the IBLA, effectively voids CVEA rights of way where native use and occupancy is claimed to predate the date CVEA was granted its right of way. There are 14 such cases where the theory of the relation-back principle has been applied.

Since the IBLA rulings, the Bureau of Indian Affairs has engaged in periodic efforts to levy trespass claims against CVEA. The BIA, through real estate contractors, has also periodically threatened litigation to either void these rights of way or to collect on alleged trespass claims. This has been very costly and disruptive to CVEA.

Over the years, CVEA has also made good faith efforts to resolve this problem by using the BIA's regulatory processes. However, these processes are extremely cumbersome, slow, and expensive, require the continuous involvement of lawyers and land consultants, and have not achieved a satisfactory resolution of CVEA's easement problems.

This cumbersome process, and the threatened litigation by the BIA and others, has resulted in substantial administrative cost and legal bills to defend against these claims brought against CVEA, and ultimately has led CVEA to ask Congress to correct this inequity through legislation.

Furthermore, it has created member relation problems for the Cooperative. As a non-profit cooperative electric utility, CVEA's Bylaws prohibit paying any customer for a right of way to provide service to that customer. Therefore, we are in a no-win position that we cannot provide service to some allotment owners because so long as this conflict continues, CVEA cannot get a right of way from the allottee even if the allottee wants to provide it. That decision is left in the hands of the BIA as allotment trustee. This is yet one more troubling and difficult problem created as a result of the IBLA's application of the relation-back doctrine to rights of way granted to CVEA.

H.B. 5781

After consultation with Senator Stevens, following release of the GAO report, it was determined that the problem cannot be solved by existing remedies. The only alternative is federal legislation.

The terms of H.B. 5781 are simple. All CVEA past and present rights of way for electric transmission lines in conflict as identified by the GAO report are confirmed legislatively as was intended by ANILCA. A compensation procedure is established to compensate any allottee affected by this legislative action. The appropriate compensation will be determined by the BLM and paid to the allottee. The rights of other property owners to other lands is protected in this legislation.

CVEA strongly supports this legislation and urges its rapid passage into law.

Conclusion

Mr. Chairman, this problem is a local issue limited to 14 native allotments in the Copper Basin in eastern interior Alaska. As demonstrated by the GAO report, this problem needs a solution that only Congress can provide. CVEA cannot properly serve its customers until this problem is solved. CVEA is a small, non-profit, rural electric cooperative. CVEA has expended significant resources to solve these problems over a period of many years, and we remain threatened with imminent trespass litigation if this problem is not corrected.

We cannot afford time consuming and costly litigation, and we can no longer withstand the continuing threat of litigation.

In that regard, and on behalf of the 3,600 members of Copper Valley Electric Association, I urge this Committee and the Congress to solve this longstanding problem by passing this legislation as rapidly as possible. Thank you for the opportunity to testify on H.B. 5781. I will be happy to answer any questions you may have regarding my testimony.