



Highlights of [GAO-04-923](#), a report to the Chairman, Committee on Appropriations, U.S. Senate

## Why GAO Did This Study

In 1906, the Alaska Native Allotment Act authorized the Secretary of the Interior to allot individual Alaska Natives (Native) a homestead of up to 160 acres. The validity of some of Copper Valley Electric Association's (Copper Valley) rights-of-way within Alaska Native allotments is the subject of ongoing dispute; in some cases the allottees assert that Copper Valley's electric lines trespass on their land. The Department of the Interior's (Interior) Bureau of Land Management (BLM) and Bureau of Indian Affairs (BIA) are responsible for granting rights-of-way and handling disputes between allottees and holders of rights-of-way.

GAO determined (1) the number of conflicts between Native allotments and Copper Valley rights-of-way and the factors that contributed to these conflicts, (2) the extent to which existing remedies have been used to resolve these conflicts, and (3) what legislative alternatives, if any, could be considered to resolve these conflicts.

## What GAO Recommends

GAO recommends that BIA develop a training module for its realty service providers in Alaska on the types of evidence that should be developed before pursuing an alleged trespass involving rights-of-way.

Interior agreed with GAO's recommendation.

[www.gao.gov/cgi-bin/getrpt?GAO-04-923](http://www.gao.gov/cgi-bin/getrpt?GAO-04-923).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Barry T. Hill at (202) 512-3841 or [hillbt@gao.gov](mailto:hillbt@gao.gov).

# ALASKA NATIVE ALLOTMENTS

## Conflicts with Utility Rights-of-way Have Not Been Resolved through Existing Remedies

### What GAO Found

There are 14 cases where conflict exists regarding Copper Valley's rights-of-way within Native allotments. In most of these cases, Copper Valley has been found by Interior to be in trespass because its rights-of-way have been determined to be invalid. The root of some of these conflicts is Interior's application of the so-called "relation back" doctrine. In these instances, Interior invalidated Copper Valley rights-of-way because it found that allottees' rights to the land began when they first used or occupied the land, predating when Copper Valley obtained its right-of-way and when the allotment application was made. Federal courts have dismissed legal challenges to the relation back doctrine because the U.S. government has not allowed itself to be sued with regard to this issue. In other cases, conflict exists because Interior does not recognize state issued rights-of-way that fall within certain highway easements granted to the state by the federal government. There are another 4 cases where a BIA realty service provider has requested that Copper Valley obtain rights-of-way even though GAO believes it lacks evidence that the electric lines are in trespass. While BIA has recognized the need to provide realty training, its March 2004 training course did not include information on the types of evidence that should be developed before pursuing an alleged trespass involving rights-of-way.

While a resolution to a number of these conflicts has been intermittently pursued since the mid-1990s, only a few cases have been resolved using existing remedies. Copper Valley has three remedies to resolve these conflicts: (1) negotiating rights-of-way with Native allottees in conjunction with BIA; (2) relocating its electric lines outside of the allotment; or (3) exercising the power of eminent domain, also known as condemnation, to acquire the land. Copper Valley has ceased trying to resolve these conflicts because it maintains that the existing remedies are too costly, impractical, and/or potentially damaging to relationships with the community. More importantly, Copper Valley officials told GAO that on principle they should not have to bear the cost of resolving conflicts that they believe the federal government caused by applying the relation back doctrine and by not recognizing their state issued rights-of-way.

Several legislative remedies have been identified to resolve these conflicts, including legislation to: (1) change Interior's application of the relation back doctrine so that the date an allotment application is filed, rather than the date an allottee claimed initial use and occupancy of the land, is used to determine the rights of allottees and holders of rights-of-way; (2) allow the U.S. government to be sued regarding Alaska Native allotments so that legal challenges can be heard in federal court; (3) ratify the rights-of-way granted by the State of Alaska within federally granted highway easements; or (4) establish a federal fund to pay for rights-of-way across Native allotments. While GAO did not determine the financial costs or the legal ramifications on the property rights of the Alaska Native allottees associated with any of these options, the costs and legal ramifications would need to be assessed.