

# Calendar No. 643

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2016

To authorize the exchange of lands between an Alaska Native Village Corporation and the Department of the Interior, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 14, 2002

Mr. MURKOWSKI introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

OCTOBER 8, 2002

Reported by Mr. BINGAMAN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

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## A BILL

To authorize the exchange of lands between an Alaska Native Village Corporation and the Department of the Interior, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DEFINITIONS.**

4        For the purposes of this Act, the term—

5            (1) “Identified lands” means approximately  
6        5,580 acres of lands (including surface and sub-

1 surface) designated as “FWS West” upon a map en-  
 2 titled “Proposed Newtok Exchange,” dated March  
 3 17, 2000, and available for inspection in the Anchor-  
 4 age office of the United States Fish and Wildlife  
 5 Service;

6 (2) “Newtok” means Newtok Native Corpora-  
 7 tion, an Alaska Native Corporation established pur-  
 8 suant to the Alaska Native Claims Settlement Act  
 9 (ANCSA) of 1971 (85 Stat. 688), as amended;

10 (3) “Newtok lands” means approximately  
 11 11,105 acres of lands (including conveyed lands and  
 12 land selections) identified as “Aknerkochik” on the  
 13 map referred to in paragraph (1);

14 (4) “limited general warranty deed” means a  
 15 general warranty deed which is, with respect to its  
 16 warranties, limited to that portion of the chain of  
 17 title from the moment of conveyance from the  
 18 United States to Newtok to and including the mo-  
 19 ment at which such title is validly reconveyed to the  
 20 United States of America and its assigns; and

21 (5) “Secretary” means the Secretary of the In-  
 22 terior.

23 **SEC. 2. LANDS TO BE EXCHANGED.**

24 (a) **LANDS EXCHANGED TO THE UNITED STATES.—**

25 (1) If, after a final value is assigned to the Identified lands

1 and to the Newtok lands, Newtok expresses to the Sec-  
2 retary in writing an intent to enter into a land exchange  
3 with the United States, the Secretary shall accept from  
4 Newtok a conveyance by limited general warranty deed of  
5 those tracts of the Newtok lands necessary to equalize the  
6 value of the Identified lands.

7       (2) A value shall be a final value for purposes of para-  
8 graph (1) if—

9           (A) the Secretary has assigned a value to tracts  
10       within the Identified lands and the Newtok lands in  
11       accordance with section 3 and if all rights to appeal  
12       the determination, or to request a review, rehearing,  
13       or redetermination of the matter that is the subject  
14       of the determination, have been exhausted, have  
15       lapsed or have been expressly waived by Newtok, or

16           (B) the value is determined by binding arbitra-  
17       tion under section 3.

18       (3) The Newtok lands shall be included in the Yukon  
19 Delta National Wildlife Refuge as of the date of the ac-  
20 ceptance of the conveyance of those lands from Newtok,  
21 except that residents of the Village of Newtok, Alaska  
22 shall retain access rights guaranteed under the Alaska Na-  
23 tional Interest Lands Conservation Act (ANILCA) section  
24 811 (16 U.S.C. 3121) for subsistence fishing, hunting and

1 gathering as defined in ANILCA section 803 (16 U.S.C.  
2 3113).

3 (b) ~~LANDS EXCHANGED TO NEWTOK.~~—In exchange  
4 for the Newtok lands conveyed under subsection (a)(1),  
5 the Secretary shall, subject to valid existing rights and  
6 notwithstanding any other provision of law, convey to  
7 Newtok surface and subsurface rights to the Identified  
8 lands. Such conveyance shall be by quitclaim deed, based  
9 upon a metes and bounds description of the land to be  
10 conveyed. Identified lands shall not be subject to section  
11 22(e) of ANCSA.

12 **SEC. 3. APPRAISALS.**

13 (a) Not later than 60 days after the date of the enact-  
14 ment of this Act, the Secretary and Newtok shall meet  
15 to determine the identity of a qualified appraiser who shall  
16 perform an appraisal of the Newtok lands and the Identifi-  
17 ed lands. Such appraiser shall be selected by the mutual  
18 agreement of the Secretary and Newtok, or if such agree-  
19 ment is not reached within 60 days after such initial meet-  
20 ing, then the Secretary and Newtok, no later than 90 days  
21 after such initial meeting, shall each designate an ap-  
22 praiser who is qualified to perform the appraisal. The two  
23 appraisers so identified shall select a third qualified ap-  
24 praiser who shall perform the appraisal. Within 120 days  
25 after the selection of the third appraiser, a written ap-

1 praisal report setting out the values of the Newtok lands  
2 and the Identified lands, and the methodology used to ar-  
3 rive at the values, shall be delivered to the Secretary and  
4 to Newtok.

5 (b) Appraisals under this subsection shall be per-  
6 formed in conformity with the Uniform Appraisal Stand-  
7 ards for Federal Land Acquisitions. Any special instruc-  
8 tion regarding the performance of the appraisals shall be  
9 issued only upon the mutual agreement of Newtok and  
10 the Secretary.

11 (c) Within 60 days after the receipt of the appraisal  
12 report described in paragraph (1), the Secretary shall de-  
13 termine the value of the Newtok lands and the Identified  
14 lands shall immediately notify Newtok of such determina-  
15 tion. If Newtok does not agree with the value as deter-  
16 mined by the Secretary, the Secretary and Newtok shall  
17 submit the matter to binding arbitration.

18 **SEC. 4. CONVEYANCE.**

19 (a) CONVEYANCE BY NEWTOK.—Newtok shall have  
20 one hundred and eighty (180) days after the date the val-  
21 ues are final under section 2(a)(2) to notify the Secretary  
22 of its intent to enter into the exchange and convey to the  
23 Secretary the appropriate tracts within the Newtok Lands.  
24 The Secretary may extend such time for good cause.

1       (b) CONVEYANCE BY THE SECRETARY.—The Sec-  
2 retary shall convey to Newtok the Identified lands pursu-  
3 ant to section 2(b) within one hundred and eighty (180)  
4 days after the approval of the Newtok conveyance pursu-  
5 ant to subsection (a).

6 **SECTION 1. FINDINGS.**

7       *Congress finds that:*

8           (1) *The continued existence of the village of*  
9 *Newtok, Alaska is threatened by the eroding banks of*  
10 *the Ninglick River.*

11           (2) *A relocation of the village will become nec-*  
12 *essary for the health and safety of the residents of*  
13 *Newtok within the next 8 years.*

14           (3) *Lands previously conveyed to the Newtok Na-*  
15 *tive Corporation contain habitat of high value for wa-*  
16 *terfowl.*

17           (4) *An opportunity exists for an exchange of*  
18 *lands between the Newtok Native Corporation and the*  
19 *Yukon Delta National Wildlife Refuge that would ad-*  
20 *dress the relocation needs of the village while enhanc-*  
21 *ing the quality of waterfowl habitat within the bound-*  
22 *aries of the Refuge.*

23           (5) *An exchange of lands between Newtok and the*  
24 *United States on an other than equal value basis pur-*  
25 *suant to the terms of this Act is in the public interest.*

1 **SEC. 2. DEFINITIONS.**

2 *For the purposes of this Act, the term—*

3 (1) “ANCSA” means the Alaska Native Claims  
4 Settlement Act of 1971 (43 U.S.C. 1601 et seq.);

5 (2) “ANILCA” means the Alaska National Inter-  
6 est Lands Conservation Act of 1980 (16 USC 410hh–  
7 3233, 43 USC 1602 et seq.);

8 (3) “Calista” means the Calista Corporation, an  
9 Alaska Native Regional Corporation established pur-  
10 suant to ANCSA;

11 (4) “Identified Lands” means approximately  
12 10,943 acres of lands (including surface and sub-  
13 surface) designated as “Proposed Village Site” upon  
14 a map entitled “Proposed Newtok Exchange,” dated  
15 September, 2002, and available for inspection in the  
16 Anchorage office of the United States Fish and Wild-  
17 life Service;

18 (5) “limited warranty deed” means a warranty  
19 deed which is, with respect to its warranties, limited  
20 to that portion of the chain of title from the moment  
21 of conveyance from the United States to Newtok to  
22 and including the moment at which such title is val-  
23 idly reconveyed to the United States of America and  
24 its assigns;

1           (6) “Newtok” means the Newtok Native Corpora-  
2           tion, an Alaska Native Village Corporation estab-  
3           lished pursuant to ANCSA;

4           (7) “Newtok lands” means approximately 12,101  
5           acres of surface estate comprising conveyed lands and  
6           selected lands identified as Aknerkochik on the map  
7           referred to in paragraph (4) and that surface estate  
8           selected by Newtok on Baird Inlet Island as shown on  
9           said map; and

10          (8) “Secretary” means the Secretary of the Inte-  
11          rior.

12 **SEC. 3. LANDS TO BE EXCHANGED.**

13          (1) *LANDS EXCHANGED TO THE UNITED STATES.*—  
14 *If, within 180 days after the date of enactment of this Act,*  
15 *Newtok expresses to the Secretary in writing its intent to*  
16 *enter into a land exchange with the United States, the Sec-*  
17 *retary shall accept from Newtok a valid, unencumbered con-*  
18 *veyance, by limited warranty deed, of the Newtok lands pre-*  
19 *viously conveyed to Newtok. The Secretary shall also accept*  
20 *from Newtok a relinquishment of irrevocable prioritized se-*  
21 *lections for approximately 4,956 acres for those validly se-*  
22 *lected lands not yet conveyed to Newtok. The reconveyance*  
23 *of lands by Newtok to the United States and the prioritized,*  
24 *relinquished selections shall be 1.1 times the number of acres*  
25 *conveyed to Newtok under this Act. The number of acres*



1 reconveyed to the United States and the prioritized, relin-  
 2 quished selections shall be charged to the entitlement of  
 3 Newtok.

4 (b) *LANDS EXCHANGED TO NEWTOK.*—In exchange for  
 5 the Newtok lands conveyed and selections relinquished  
 6 under subsection (a), the Secretary shall, subject to valid  
 7 existing rights and notwithstanding section 14(f) of  
 8 ANCSA, convey to Newtok the surface and subsurface estate  
 9 of the Identified Lands. The conveyance shall be by interim  
 10 conveyance. Subsequent to the interim conveyance, the Sec-  
 11 retary shall survey the Identified Lands at no cost to  
 12 Newtok and issue a patent to the Identified Lands subject  
 13 to the provisions of ANCSA and this Act. At the time of  
 14 survey the charge against Newtok’s entitlement for acres  
 15 conveyed or irrevocable priorities relinquished by Newtok  
 16 may be adjusted to conform to the standard of 1.1 acres  
 17 relinquished by Newtok for each one acre received.

18 **SEC. 4. CONVEYANCE.**

19 (a) *TIMING.*—The Secretary shall issue interim con-  
 20 veyances pursuant to subsection 3(b) at the earliest possible  
 21 time after acceptance of the Newtok conveyance and relin-  
 22 quishment of selections under subsection 3(a).

23 (b) *RELATIONSHIP TO ANCSA.*—Lands conveyed to  
 24 Newtok under this Act shall be deemed to have been con-  
 25 veyed under the provisions of ANCSA, except that the provi-

1 *sions of 14(c) of ANCSA shall not apply to these lands, and*  
2 *to the extent that section 22(g) of ANCSA would otherwise*  
3 *be applicable to these lands, the provisions of 22(g) of*  
4 *ANCSA shall also not apply to these lands. Consistent with*  
5 *section 103(c) of ANILCA, these lands shall not be deemed*  
6 *to be included as a portion of the Yukon National Wildlife*  
7 *Refuge and shall not be subject to regulations applicable*  
8 *solely to public lands within this Conservation System*  
9 *Unit.*

10 *(c) EFFECT ON ENTITLEMENT.—Nothing in this Act*  
11 *shall be construed to change the total acreage of land to*  
12 *which Newtok is entitled under ANCSA.*

13 *(d) EFFECT ON NEWTOK LANDS.—The Newtok Lands*  
14 *shall be included in the Yukon Delta National Wildlife Ref-*  
15 *uge as of the date of acceptance of the conveyance of those*  
16 *lands from Newtok, except that residents of the Village of*  
17 *Newtok, Alaska, shall retain access rights to subsistence re-*  
18 *sources on those public lands as guaranteed under ANILCA*  
19 *section 811 (16 U.S.C. 3121), and to subsistence uses, such*  
20 *as traditional subsistence fishing, hunting and gathering,*  
21 *consistent with ANILCA section 803 (16 U.S.C. 3113).*

22 *(3) ADJUSTMENT TO CALISTA CORPORATION ANCSA*  
23 *ENTITLEMENT FOR RELINQUISHED NEWTOK SELEC-*  
24 *TIONS.—To the extent that Calista subsurface rights are af-*  
25 *ected by this Act, Calista shall be entitled to an equivalent*

1 acreage of in-lieu subsurface entitlement for the Newtok se-  
2 lections relinquished in the exchange as set forth in sub-  
3 section 3(a) of this Act. This additional entitlement shall  
4 come from subsurface lands already selected by Calista, but  
5 which have not been conveyed. If Calista does not have suffi-  
6 cient subsurface selections to accommodate this additional  
7 entitlement, Calista Corporation is hereby authorized to  
8 make an additional in lieu selection for the deficient acre-  
9 age.

10 (f) *ADJUSTMENT TO EXCHANGE.*—If requested by  
11 Newtok, the Secretary is authorized to consider and make  
12 adjustments to the original exchange to meet the purposes  
13 of this Act, subject to all the same terms and conditions  
14 of this Act.

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OCTOBER 8, 2002

Reported with an amendment