

Calendar No. 205

108TH CONGRESS
1ST SESSION**S. 924****[Report No. 108–97]**

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

IN THE SENATE OF THE UNITED STATES

APRIL 11, 2003

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

JULY 11, 2003

Reported by Mr. DOMENICI, with an amendment

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

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. FINDINGS.**
- 4 ~~Congress finds that:~~

1 (1) The continued existence of the village of
2 Newtok, Alaska is threatened by the eroding banks
3 of the Ningliak River.

4 (2) A relocation of the village will become nec-
5 essary for the health and safety of the residents of
6 Newtok within the next 8 years.

7 (3) Lands previously conveyed to the Newtok
8 Native Corporation contain habitat of high value for
9 waterfowl.

10 (4) An opportunity exists for an exchange of
11 lands between the Newtok Native Corporation and
12 the Yukon Delta National Wildlife Refuge that
13 would address the relocation needs of the village
14 while enhancing the quality of waterfowl habitat
15 within the boundaries of the Refuge.

16 (5) An exchange of lands between Newtok and
17 the United States on an other than equal value basis
18 pursuant to the terms of this Act is in the public in-
19 terest.

20 **SEC. 2. DEFINITIONS.**

21 For the purposes of this Act, the term—

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

1 (2) “ANILCA” means the Alaska National In-
 2 terest Lands Conservation Act of 1980 (16 U.S.C.
 3 ~~410hh-3233~~, 43 U.S.C. 1602 et seq.);

4 (3) “Calista” means the Calista Corporation, an
 5 Alaska Native Regional Corporation established pur-
 6 suant to ANCSA;

7 (4) “Identified Lands” means approximately
 8 10,943 acres of lands (including surface and sub-
 9 surface) designated as “Proposed Village Site” upon
 10 a map entitled “Proposed Newtok Exchange,” dated
 11 September, 2002, and available for inspection in the
 12 Anchorage office of the United States Fish and
 13 Wildlife Service;

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

21 (6) “Newtok” means the Newtok Native Cor-
 22 poration, an Alaska Native Village Corporation es-
 23 tablished pursuant to ANCSA;

24 (7) “Newtok lands” means approximately
 25 12,101 acres of surface estate comprising conveyed

1 lands and selected lands identified as Aknerkochik
 2 on the map referred to in paragraph (4) and that
 3 surface estate selected by Newtok on Baird Inlet Is-
 4 land as shown on said map; and

5 (8) “Secretary” means the Secretary of the In-
 6 terior.

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

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

9 If, within 180 days after the date of enactment of this
 10 Act, Newtok expresses to the Secretary in writing its in-
 11 tent to enter into a land exchange with the United States,
 12 the Secretary shall accept from Newtok a valid,
 13 unencumbered conveyance, by limited warranty deed, of
 14 the Newtok lands previously conveyed to Newtok. The Sec-
 15 retary shall also accept from Newtok a relinquishment of
 16 irrevocable prioritized selections for approximately 4,956
 17 acres for those validly selected lands not yet conveyed to
 18 Newtok. The reconveyance of lands by Newtok to the
 19 United States and the prioritized, relinquished selections
 20 shall be 1.1 times the number of acres conveyed to Newtok
 21 under this Act. The number of acres reconveyed to the
 22 United States and the prioritized, relinquished selections
 23 shall be charged to the entitlement of Newtok.

24 (b) **LANDS EXCHANGED TO NEWTOK.—**In exchange
 25 for the Newtok lands conveyed and selections relinquished

1 under subsection (a), the Secretary shall, subject to valid
 2 existing rights and notwithstanding section 14(f) of
 3 ANCSA, convey to Newtok the surface and subsurface es-
 4 tate of the Identified Lands. The conveyance shall be by
 5 interim conveyance. Subsequent to the interim conveyance,
 6 the Secretary shall survey the Identified Lands at no cost
 7 to Newtok and issue a patent to the Identified Lands sub-
 8 ject to the provisions of ANCSA and this Act. At the time
 9 of survey the charge against Newtok's entitlement for
 10 acres conveyed or irrevocable priorities relinquished by
 11 Newtok may be adjusted to conform to the standard of
 12 1.1 acres relinquished by Newtok for each one acre re-
 13 ceived.

14 **SEC. 4. CONVEYANCE.**

15 (a) **TIMING.**—The Secretary shall issue interim con-
 16 veyances pursuant to subsection 3(b) at the earliest pos-
 17 sible time after acceptance of the Newtok conveyance and
 18 relinquishment of selections under subsection 3(a).

19 (b) **RELATIONSHIP TO ANCSA.**—Lands conveyed to
 20 Newtok under this Act shall be deemed to have been con-
 21 veyed under the provisions of ANCSA, except that the pro-
 22 visions of 14(c) of ANCSA shall not apply to these lands;
 23 and to the extent that section 22(g) of ANCSA would oth-
 24 erwise be applicable to these lands, the provisions of 22(g)
 25 of ANCSA shall also not apply to these lands. Consistent

1 with section ~~103(c)~~ of ANILCA, these lands shall not be
 2 deemed to be included as a portion of the Yukon National
 3 Wildlife Refuge and shall not be subject to regulations ap-
 4 plicable solely to public lands within this Conservation
 5 System Unit.

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

9 (d) EFFECT ON NEWTOK LANDS.—The Newtok
 10 Lands shall be included in the Yukon Delta National Wild-
 11 life Refuge as of the date of acceptance of the conveyance
 12 of those lands from Newtok, except that residents of the
 13 Village of Newtok, Alaska, shall retain access rights to
 14 subsistence resources on those public lands as guaranteed
 15 under ANILCA section 811 (16 U.S.C. 3121), and to sub-
 16 sistence uses, such as traditional subsistence fishing, hunt-
 17 ing and gathering, consistent with ANILCA section 803
 18 (16 U.S.C. 3113).

19 (e) ADJUSTMENT TO CALISTA CORPORATION ANCSA
 20 ENTITLEMENT FOR RELINQUISHED NEWTOK SELEC-
 21 TIONS.—To the extent that Calista subsurface rights are
 22 affected by this Act, Calista shall be entitled to an equiva-
 23 lent acreage of in-lieu subsurface entitlement for the
 24 Newtok selections relinquished in the exchange as set
 25 forth in subsection 3(a) of this Act. This additional entitle-

1 ment shall come from subsurface lands already selected
 2 by Calista, but which have not been conveyed. If Calista
 3 does not have sufficient subsurface selections to accommo-
 4 date this additional entitlement, Calista Corporation is
 5 hereby authorized to make an additional in lieu selection
 6 for the deficient acreage.

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

12 **SECTION 1. DEFINITIONS.**

13 *For the purposes of this Act, the term:*

14 (1) “ANCSA” means the Alaska Native Claims
 15 Settlement Act (43 U.S.C. 1601 et seq.);

16 (2) “ANILCA” means the Alaska National Inter-
 17 est Lands Conservation Act (16 U.S.C. 3101 et seq.);

18 (3) “Calista” means the Calista Corporation, an
 19 Alaska Native Regional Corporation established pur-
 20 suant to ANCSA;

21 (4) “Identified Lands” means approximately
 22 10,943 acres of lands (including surface and sub-
 23 surface estates) designated as “Proposed Village Site”
 24 on a map entitled “Proposed Newtok Exchange,”
 25 dated September, 2002, and available for inspection

1 *in the Anchorage office of the United States Fish and*
 2 *Wildlife Service;*

3 (5) “*limited warranty deed*” means a warranty
 4 *deed which is, with respect to its warranties, limited*
 5 *to that portion of the chain of title from the moment*
 6 *of conveyance from the United States to Newtok to*
 7 *and including the moment at which such title is val-*
 8 *idly reconveyed to the United States;*

9 (6) “*Newtok*” means the Newtok Native Corpora-
 10 *tion, an Alaska Native Village Corporation estab-*
 11 *lished pursuant to ANCSA;*

12 (7) “*Newtok lands*” means approximately
 13 *12,101 acres of surface estate comprising conveyed*
 14 *lands and selected lands identified as Aknerkochik on*
 15 *the map referred to in paragraph (4) and that surface*
 16 *estate selected by Newtok on Baird Inlet Island as*
 17 *shown on the map; and*

18 (8) “*Secretary*” means the Secretary of the Inte-
 19 *rior.*

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

21 (a) *LANDS EXCHANGED TO THE UNITED STATES.—*
 22 *If, within 180 days after the date of enactment of this Act,*
 23 *Newtok expresses to the Secretary in writing its intent to*
 24 *enter into a land exchange with the United States, the Sec-*
 25 *retary shall accept from Newtok a valid, unencumbered con-*

veyance, by limited warranty deed, of the Newtok lands previously conveyed to Newtok. The Secretary shall also accept from Newtok a relinquishment of irrevocable prioritized selections for approximately 4,956 acres for those validly selected lands not yet conveyed to Newtok.

(b) *LANDS EXCHANGED TO NEWTOK.*—In exchange for the Newtok lands conveyed and selections relinquished under subsection (a), the Secretary shall, subject to valid existing rights and notwithstanding section 14(f) of ANCSA, convey to Newtok the surface and subsurface estates of the Identified Lands. The conveyance shall be by interim conveyance. Subsequent to the interim conveyance, the Secretary shall survey identified Lands at no cost to Newtok and issue a patent to the Identified Lands subject to the provisions of ANCSA and this Act.

SEC. 3. CONVEYANCE.

(a) *TIMING.*—The Secretary shall issue interim conveyances pursuant to subsection 2(b) at the earliest possible time after acceptance of the Newtok conveyance and relinquishment of selections under subsection 2(a).

(b) *RELATIONSHIP TO ANCSA.*—Lands conveyed to Newtok under this Act shall be treated as having been conveyed under the provisions of ANCSA, except that the provisions of 14(c) and 22g of ANCSA shall not apply to these lands. Consistent with section 103(c) of ANILCA, these

1 *lands shall not be included as a portion of the Yukon Delta*
 2 *National Wildlife Refuge and shall not be subject to regula-*
 3 *tions applicable solely to public lands within this Conserva-*
 4 *tion System Unit.*

5 (c) *EFFECT ON ENTITLEMENT.—Except as otherwise*
 6 *provided, nothing in this Act shall be construed to change*
 7 *the total acreage of land to which Newtok is entitled under*
 8 *ANCSA.*

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

19 (e) *ADJUSTMENT TO CALISTA CORPORATION ANCSA*
 20 *ENTITLEMENT FOR RELINQUISHED NEWTOK SELEC-*
 21 *TIONS.—To the extent that Calista subsurface rights are af-*
 22 *ected by this Act, Calista shall be entitled to an equivalent*
 23 *acreage of in lieu subsurface entitlement for the Newtok se-*
 24 *lections relinquished in the exchange as set forth in sub-*
 25 *section 2(a) of this Act. This equivalent entitlement shall*

1 *come from subsurface lands already selected by Calista, but*
2 *which have not been conveyed. If Calista does not have suffi-*
3 *cient subsurface selections to accommodate this additional*
4 *entitlement, Calista Corporation is hereby authorized to*
5 *make an additional in lieu selection for the deficient acre-*
6 *age from lands within the region but outside any conserva-*
7 *tion system unit.*

8 (f) *ADJUSTMENT TO EXCHANGE.—If requested by*
9 *Newtok, the Secretary may consider and make adjustments*
10 *to the exchange to meet the purposes of this Act, subject to*
11 *all the same terms and conditions of this Act.*

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