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ALASKA NATIVE VILLAGE CORPORATION

JULY 11, 2003.—Ordered to be printed

Mr. DOMENICI, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 924]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 924) to authorize the exchange of lands between the Alaska Native Village Corporation and the Department of the Interior, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. DEFINITIONS.

For the purposes of this Act, the term:

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

(2) "ANILCA" means the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.);

(3) "Calista" means the Calista Corporation, an Alaska Native Regional Corporation established pursuant to ANCSA;

(4) "Identified Lands" means approximately 10,943 acres of lands (including surface and subsurface estates) designated as "Proposed Village Site" on a map entitled "Proposed Newtok Exchange," dated September, 2002, and available for inspection in the Anchorage office of the United States Fish and Wildlife Service;

(5) "limited warranty deed" means a warranty deed which is, with respect to its warranties, limited to that portion of the chain of title for the moment of conveyance from the United States to Newtok to and including the moment at which such title is validly reconveyed to the United States;

(6) "Newtok" means the Newtok Native Corporation, an Alaska Native Village Corporation established pursuant to ANCSA;

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

(8) "Secretary" means the Secretary of the Interior.

SEC. 2. LANDS TO BE EXCHANGED.

(a) LANDS EXCHANGED TO THE UNITED STATES.—If, within 180 days after the date of enactment of this Act, Newtok expresses to the Secretary in writing its intent to enter into a land exchange with the United States, the Secretary shall accept from Newtok a valid, unencumbered conveyance, 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 the 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.—Land 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 22(g) of ANCSA shall not apply to these lands. Consistent with section 103(c) of ANILCA, these lands shall not be included as a portion of the Yukon Delta National Wildlife Refuge and shall not be subject to regulations applicable solely to public lands within this Conservation System Unit.

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

(d) EFFECT ON NEWTOK LANDS.—The Newtok Lands shall be included in the Yukon Delta National Wildlife Refuge as of the date of acceptance of the conveyance of those lands from Newtok, except that residents of the Village of Newtok, Alaska, shall retain access rights to subsistence resources on those Newtok lands as guaranteed under section 811 of ANILCA (16 U.S.C. 3121), and to subsistence uses, such as traditional subsistence fishing, hunting and gathering, consistent with section 803 of ANILCA (16 U.S.C. 3113).

(e) ADJUSTMENT TO CALISTA CORPORATION ANCSA ENTITLEMENT FOR RELINQUISHED NEWTOK SELECTIONS.—To the extent that Calista subsurface rights are affected by this Act, Calista shall be entitled to an equivalent acreage of in lieu subsurface entitlement for the Newtok selections relinquished in the exchange as set forth in subsection 2(a) of this Act. This equivalent entitlement shall come from subsurface lands already selected by Calista, but which have not been conveyed. If Calista does not have sufficient subsurface selections to accommodate this additional entitlement, Calista Corporation is hereby authorized to make an additional in lieu selection for the deficient acreage from lands within the region but outside any conservation system unit.

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

PURPOSE OF THE MEASURE

The purpose of S. 924 is to direct the Secretary of the Interior to complete a land exchange with Newtok Native Corporation, an Alaska Native Village Corporation.

BACKGROUND AND NEED

Newtok is located in the Yukon-Kuskokwim Delta of western Alaska. The people of this region are Yupik (Eskimo) and have lived along the Bering Sea coast for 2000 years. The present village has been occupied since 1949 after the villagers moved from another site that flooded.

There are approximately 300 residents of Newtok. The village is unincorporated and has no taxing authority. While some villagers are employed at the school, the clinic, by the Native corporation or as commercial fishermen, most villagers pursue a subsistence life-

style. Fifty percent of the villagers live below the poverty level. Most villagers are shareholders in the Newtok Native Corporation, which was organized pursuant to the Alaska Native Claims Settlement Act. Lands selected by Newtok under ANCSA were chosen to provide good hunting areas for the villagers. The Yukon Delta National Wildlife Refuge surrounds the village.

S. 924 is necessary because the Ninglick River is eroding the bank near the village, severely threatening the airport, homes, and other buildings. Each year since the early 1950s, the shifting course of the river has moved closer to the village. The erosion has been particularly rapid in the last decade. To save the village and its way of life, a new location for Newtok must be provided soon.

LEGISLATIVE HISTORY

S. 924 was introduced by Senator Murkowski on April 11, 2003. The Subcommittee on Public Lands and Forests held a hearing on S. 924 on June 4, 2003. The Committee ordered S. 490 favorably reported, with an amendment on July 25, 2003. Similar legislation S. 2016, was introduced in the 107th Congress on March 14, 2002. A joint hearing was held on S. 2016 on July 30, 2002 by the Committee on Energy and Natural Resources. The bill was reported with an amendment on October 3, 2002. No further action was taken on S. 2016 in the 107th Congress. S. 924 as introduced is identical to the amended bill reported in 2002.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on July 25, 2002, by unanimous consent of a quorum present, recommends that the Senate pass S. 924, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 924, the Committee adopted an amendment in the nature of a substitute. The substitute amendment is explained in the section-by-section analysis below.

SECTION-BY-SECTION ANALYSIS

Section 1 defines the key terms in the bill.

Section 2 directs the Secretary of the Interior to enter into a land exchange with the Newtok Native Corporation. Section (a) requires the Secretary to accept the 12,101 acres of Newtok lands (defined in section 1(7)). Subsection (b) requires the Secretary to convey 10,941 acres of "Identified Lands" (defined in section (1(4)) to the Newtok Native Corporation.

Section 3 provides additional terms and conditions for the land exchange. Subsection (a) requires the Secretary to convey the Identified Lands at the earliest possible time after accepting the Newtok lands. Subsection (b) specifies that the Identified Lands are to be treated as having been conveyed under the provisions of the Alaska Native Claims Settlement Act, except for the patenting requirements of sections 14(c) and 22(g) of that Act (16 U.S.C. 1613(c) and 1621(g)). Subsection (b) further specifies that the Identified Lands will not be included in the Yukon Delta National Wildlife Refuge. Subsection (c) provides that, except as otherwise pro-

vided, S. 924 does not change the total acreage of land to which Newtok is entitled under the Alaska Native Claims Settlement Act. Subsection (d) provides that the Newtok land will be included in the Yukon Delta National Wildlife Refuge, but that residents of the Village of Newtok will retain access rights to subsistence resource and subsistence uses. Subsection (e) provides for an adjustment to the subsurface selections that Calista Corporation is entitled to make under the Alaska Native Claims Settlement Act to the extent that its subsurface rights are affected by the exchange. Subsection (f) authorizes the Secretary to make adjustments to the exchange, subject to the terms and conditions of the Act, if requested by Newtok.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the costs of this measure has been provided by the Congressional Budget Office:

S. 924—A bill to authorize the exchange of lands between an Alaska Native Village Corporation and the Department of the Interior, and for other purposes

CBO estimates that enacting S. 924 would not significantly affect the federal budget. The bill could affect direct spending, but we estimate that any such effects would be negligible. S. 924 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

S. 924 would direct the Secretary of the Interior to convey the surface and subsurface estate to 10,943 acres of federal lands in Alaska to the Newtok Native Corporation. In exchange, the corporation would convey the surface estate to 12,101 acres of lands and relinquish its claim to 4,956 acres of other lands that it has selected under the Alaska Native Claims Settlement Act. Under S. 924, the Calista Regional Corporation, another Alaska Native corporation, could select additional subsurface rights to certain lands if the proposed land exchange affects that corporation's existing entitlement to certain subsurface rights.

Based on information from the U.S. Fish and Wildlife Service, CBO estimates that completing the proposed exchange would increase the agency's costs by less than $500,000, assuming appropriation of the necessary amounts. Conveying lands and interests to the tribal corporations could result in forgone offsetting receipts (a credit against direct spending) if, under current law, those lands and interests would generate income from programs to develop natural resources. According to the agency, however, the lands and interests that would be conveyed under the bill currently generate no significant receipts and are not expected to do so over the next 10 years. Hence, we estimate that any forgone offsetting receipts under S. 924 would be negligible.

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation

of the regulatory impact which would be incurred in carrying out S. 490. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 924.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of the Interior setting forth Executive agency recommendations related to S. 924 are set forth below:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, June 24, 2003.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter sets forth the views of the Department of the Interior on S. 924, a bill to authorize the exchange of lands between an Alaska Native Village Corporation and the Department of the Interior, and for other purposes,

S. 924 which would direct a land exchange between the Department of the Interior and Newtok Native Corporation. The purpose of this exchange is to provide a new site for the Native Village of Newtok, Alaska, on lands within the Yukon Delta National Wildlife Refuge on Nelson Island. The present village site is experiencing severe erosion along the banks of the Ninglick River. The average annual erosion rate is 90 feet per year, and it is expected that the land under the homes, schools, and businesses of Newtok will erode within seven years.

We support the desire of the residents of Newtok to relocate their village from its present site across the Ninglick River to an upland area on the Yukon Delta National Wildlife Refuge that is adjacent to other Newtok Village-owned lands on Nelson Island.

S. 924 represents the results of discussions that took place last year on S. 2016 in the 107th Congress. The Department had several concerns last year regarding the earlier version of the bill, including insufficient acres to support the future needs of the community, a complex appraisal process, and ambiguities regarding the effect of the exchange on Newtok's ANCSA entitlement and the United States' ability to protect valid existing rights and enforce treaty obligations. Since that time, we have worked cooperatively with Newtok representatives and the Committee to achieve consensus on a bill that will allow for the relocation and re-establishment of the Village to more suitable terrain and still protect the fish and wildlife resources and supporting habitat within the National Wildlife Refuge System.

We support S. 924. On further examination of the bill, however, we have suggestions for several minor technical clarifications to the bill, discussed below.

Under the terms of the exchange as proposed in S. 924, Newtok will give up approximately 11,105 acres of land referred to as the

Aknerkochik parcel and relinquish selection rights to approximately 996 acres on Baird Inlet Island. The Aknerkochik parcel lies about 14 miles northwest of the current community of Newtok and includes important wildlife habitat which will be restored to unencumbered refuge status. Baird Inlet Island lies between the current village of Newtok and the site proposed for relocation of the village. This island is the summer home to 4,500 pairs of Pacific brant which nest and brood their young there. The Baird Inlet Island brant population accounts for about one quarter of the entire Pacific brant population within the Yukon Delta National Wildlife Refuge. With the relinquishment of Newtok's selections, the U.S. Fish and Wildlife Service will be able to retain administrative jurisdiction over all of Baird Inlet Island thus assuring the ongoing protection of this important colony.

In exchange for these lands and selection rights, Newtok Native Corporation will receive title to approximately 10,943 acres of surface and subsurface estate on the northern shore of Nelson Island adjacent to lands already owned by the corporation. This proposal does not increase Newtok Native Corporation's ANCSA entitlement. The corporation will remain charged for lands which had previously been conveyed to it and will also be charged for the selections it relinquishes. Following survey of the lands on Nelson Island conveyed to Newtok under this proposal, the Bureau of Land Management will adjust Newtok's entitlement so that the corporation will ultimately be charged 1.1 acres for each acre to be conveyed under this bill. The additional charge of one tenth of an acre is to compensate the government for conveyance of the subsurface estate to Newtok Native Corporation, an additional benefit not extended to village corporations under the original ANCSA.

Approxiamtley 70 acres within the area to be conveyed to Newtok Native Corporation fall within the boundaries of the former Clarence Rhode National Wildlife Range. For that reason, these 70 acres would normally reman subject to statutory and regulatory restrictions imposed by Section 22(g) of ANCSA. Because such restrictions could limit Newtok's ability to develop these lands for their intended purpose, the Department agrees that the lands conveyed to Newtok should be free from restrictions imposed by Section 22(g) of ANCSA. The Department also agrees that it is appropriate for the conveyance to Newtok to be free from the standard 14(c) reconveyance requirements of ANCSA intended to benefit residents and communities occupying land as of 1971 and that the lands conveyed to Newtok shall no longer be considered part of the Yukon Delta National Wildlife Refuge.

When a village corporation such as Newtok Native Corporation exchanges selection rights prior to receiving title under ANCSA, there can be ambiguity as to the effect on the Regional Corporation whose right to equivalent subsurface acreage is derived from conveyance of the surface estate. The bill includes a provision that assures that Calista Corporation will not lose subsurface acreage as a result of this exchange.

Because detailed site plans and surveys for the new village have not yet been completed, the bill gives the Secretary of the Interior the flexibility to adjust the exchange to meet the intended purposes of the bill should Newtok determine at a later date that a larger site is needed for the relocated community.

The Department suggests five small technical amendments. (1) In section 4(b), add the word "Delta" to the name Yukon National Wildlife Refuge so it reads "Yukon Delta National Wildlife Refuge," the correct name. (2) In section 4(d), after "subsistence resources on", delete "those public lands" and add "those Newtok lands." This will be clearer and avoid ambiguity. (3) In section 4(e), second sentence, change "This additional entitlement" to read "This equivalent entitlement." This is a more accurate description of the entitlement. Also in section 4(e), third sentence, change "this additional entitlement" to "this equivalent entitlement." (4) Further, in section 4(e), at the end, after "acreage" add the phrase "from lands within the region but outside any conservation system unit." This will help clarify the areas from which lands may and may not be selected. Finally, in section 4(f), strike the word "original" before "exchange" and add the words "herein authorized" after "exchange," to clarify the exchange referenced. There is no "original" exchange.

We appreciate the opportunity to comment on S. 924. The Department is satisfied that S. 924, with the suggested clarifying technical amendments, will safeguard both the fish and wildlife resources of the Yukon Delta National Wildlife Refuge and Newtok's future as a viable community.

The Office of Management and Budget had advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

REBECCA WATSON,
Assistant Secretary for Land and Minerals Management.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 924, as ordered reported.

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