

108TH CONGRESS
1ST SESSION

S. 162

To provide for the use and distribution of certain funds awarded to the Gila River Pima-Maricopa Indian Community, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 15, 2003

Mr. MCCAIN introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To provide for the use and distribution of certain funds awarded to the Gila River Pima-Maricopa Indian Community, 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. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Gila River Indian Community Judgment Fund Distribu-
6 tion Act of 2003”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Definitions.

TITLE I—GILA RIVER JUDGMENT FUND DISTRIBUTION

Sec. 101. Distribution of judgment funds.

Sec. 102. Responsibility of Secretary; applicable law.

TITLE II—CONDITIONS RELATING TO COMMUNITY JUDGMENT
FUND PLANS

Sec. 201. Plan for use and distribution of judgment funds awarded in Docket No. 228.

Sec. 202. Plan for use and distribution of judgment funds awarded in Docket No. 236–N.

TITLE III—EXPERT ASSISTANCE LOANS

Sec. 301. Waiver of repayment of expert assistance loans to Gila River Indian Community.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) on August 8, 1951, the Gila River Indian
4 Community filed a complaint before the Indian
5 Claims Commission in Gila River Pima-Maricopa In-
6 dian Community v. United States, Docket No. 236,
7 for the failure of the United States to carry out its
8 obligation to protect the use by the Community of
9 water from the Gila River and the Salt River in the
10 State of Arizona;

11 (2) except for Docket Nos. 236–C and 236–D,
12 which remain undistributed, all 14 original dockets
13 under Docket No. 236 have been resolved and dis-
14 tributed;

15 (3) in Gila River Pima-Maricopa Indian Com-
16 munity v. United States, 29 Ind. Cl. Comm. 144
17 (1972), the Indian Claims Commission held that the
18 United States, as trustee, was liable to the Commu-

1 nity with respect to the claims made in Docket No.
2 236–C;

3 (4) in *Gila River Pima-Maricopa Indian Com-*
4 *munity v. United States*, 684 F.2d 852 (1982), the
5 United States Claims Court held that the United
6 States, as trustee, was liable to the Community with
7 respect to the claims made in Docket No. 236–D;

8 (5) with the approval of the Community under
9 Community Resolution GR–98–98, the Community
10 entered into a settlement with the United States on
11 April 27, 1999, for claims made under Dockets Nos.
12 236–C and 236–D for an aggregate total of
13 \$7,000,000;

14 (6) on May 3, 1999, the United States Court
15 of Federal Claims ordered that a final judgment be
16 entered in consolidated Dockets Nos. 236–C and
17 236–D for \$7,000,000 in favor of the Community
18 and against the United States;

19 (7)(A) on October 6, 1999, the Department of
20 the Treasury certified the payment of \$7,000,000,
21 less attorney fees, to be deposited in a trust account
22 on behalf of the Community; and

23 (B) that payment was deposited in a trust ac-
24 count managed by the Office of Trust Funds Man-
25 agement of the Department of the Interior; and

1 (8) in accordance with the Indian Tribal Judgment
 2 Funds Use or Distribution Act (25 U.S.C.
 3 1401 et seq.), the Secretary is required to submit an
 4 Indian judgment fund use or distribution plan to
 5 Congress for approval.

6 **SEC. 3. DEFINITIONS.**

7 In this Act:

8 (1) ADULT.—The term “adult” means an indi-
 9 vidual who—

10 (A) is 18 years of age or older as of the
 11 date on which the payment roll is approved by
 12 the Community; or

13 (B) will reach 18 years of age not later
 14 than 30 days after the date on which the pay-
 15 ment roll is approved by the Community.

16 (2) COMMUNITY.—The term “Community”
 17 means the Gila River Indian Community.

18 (3) COMMUNITY-OWNED FUNDS.—The term
 19 “Community-owned funds” means—

20 (A) funds held in trust by the Secretary as
 21 of the date of enactment of this Act that may
 22 be made available to make payments under sec-
 23 tion 101; or

24 (B) revenues held by the Community
 25 that—

- 1 (i) are derived from trust resources;
2 and
3 (ii) qualify for an exemption under
4 section 7 or 8 of the Indian Tribal Judg-
5 ment Funds Use or Distribution Act (25
6 U.S.C. 1407, 1408).

7 (4) IIM ACCOUNT.—The term “IIM account”
8 means an individual Indian money account.

9 (5) JUDGMENT FUNDS.—The term “judgment
10 funds” means the aggregate amount awarded to the
11 Community by the Court of Federal Claims in Dock-
12 ets Nos. 236–C and 236–D.

13 (6) LEGALLY INCOMPETENT INDIVIDUAL.—The
14 term “legally incompetent individual” means an in-
15 dividual who has been determined to be incapable of
16 managing his or her own affairs by a court of com-
17 petent jurisdiction.

18 (7) MINOR.—The term “minor” means an indi-
19 vidual who is not an adult.

20 (8) PAYMENT ROLL.—The term “payment roll”
21 means the list of eligible, enrolled members of the
22 Community who are eligible to receive a payment
23 under section 101(a), as prepared by the Community
24 under section 101(b).

1 (9) SECRETARY.—The term “Secretary” means
 2 the Secretary of the Interior.

3 **TITLE I—GILA RIVER JUDGMENT**
 4 **FUND DISTRIBUTION**

5 **SEC. 101. DISTRIBUTION OF JUDGMENT FUNDS.**

6 (a) PER CAPITA PAYMENTS.—Notwithstanding the
 7 Indian Tribal Judgment Funds Use or Distribution Act
 8 (25 U.S.C. 1401 et seq.) or any other provision of law
 9 (including any regulation promulgated or plan developed
 10 under such a law), the amounts paid in satisfaction of an
 11 award granted to the Gila River Indian Community in
 12 Dockets Nos. 236–C and 236–D before the United States
 13 Court of Federal Claims, less attorney fees and litigation
 14 expenses and including all accrued interest, shall be dis-
 15 tributed in the form of per capita payments (in amounts
 16 as equal as practicable) to all eligible enrolled members
 17 of the Community.

18 (b) PREPARATION OF PAYMENT ROLL.—

19 (1) IN GENERAL.—The Community shall pre-
 20 pare a payment roll of eligible, enrolled members of
 21 the Community that are eligible to receive payments
 22 under this section in accordance with the criteria de-
 23 scribed in paragraph (2).

24 (2) CRITERIA.—

1 (A) INDIVIDUALS ELIGIBLE TO RECEIVE
2 PAYMENTS.—Subject to subparagraph (B), the
3 following individuals shall be eligible to be listed
4 on the payment roll and eligible to receive a per
5 capita payment under subsection (a):

6 (i) All enrolled Community members
7 who are eligible to be listed on the per cap-
8 ita payment roll that was approved by the
9 Secretary for the distribution of the funds
10 awarded to the Community in Docket No.
11 236–N (including any individual who was
12 inadvertently omitted from that roll).

13 (ii) All enrolled Community members
14 who are living on the date of enactment of
15 this Act.

16 (iii) All enrolled Community members
17 who died—

18 (I) after the effective date of the
19 payment plan for Docket No. 236–N;
20 but

21 (II) on or before the date of en-
22 actment of this Act.

23 (B) INDIVIDUALS INELIGIBLE TO RECEIVE
24 PAYMENTS.—The following individuals shall be
25 ineligible to be listed on the payment roll and

ineligible to receive a per capita payment under subsection (a):

(i) Any individual who, before the date on which the Community approves the payment roll, relinquished membership in the Community.

(ii) Any minor who relinquishes membership in the Community, or whose parent or legal guardian relinquishes membership on behalf of the minor, before the date on which the minor reaches 18 years of age.

(iii) Any individual who is disenrolled by the Community for just cause (such as dual enrollment or failure to meet the eligibility requirements for enrollment).

(iv) Any individual who is determined or certified by the Secretary to be eligible to receive a per capita payment of funds relating to a judgment—

(I) awarded to another community, Indian tribe, or tribal entity; and

(II) appropriated on or before the date of enactment of this Act.

(v) Any individual who is not enrolled as a member of the Community on or be-

1 fore the date that is 90 days after the date
2 of enactment of this Act.

3 (c) NOTICE TO SECRETARY.—On approval by the
4 Community of the payment roll, the Community shall sub-
5 mit to the Secretary a notice that indicates the total num-
6 ber of individuals eligible to share in the per capita dis-
7 tribution under subsection (a), as expressed in subdivi-
8 sions that reflect—

9 (1) the number of shares that are attributable
10 to eligible living adult Community members; and

11 (2) the number of shares that are attributable
12 to deceased individuals, legally incompetent individ-
13 uals, and minors.

14 (d) INFORMATION PROVIDED TO SECRETARY.—The
15 Community shall provide to the Secretary enrollment in-
16 formation necessary to allow the Secretary to establish—

17 (1) estate accounts for deceased individuals de-
18 scribed in subsection (c)(2); and

19 (2) IIM accounts for legally incompetent indi-
20 viduals and minors described in subsection (c)(2).

21 (e) DISBURSEMENT OF FUNDS.—

22 (1) IN GENERAL.—Not later than 30 days after
23 the date on which the payment roll is approved by
24 the Community and the Community has reconciled
25 the number of shares that belong in each payment

1 subdivision described in subsection (c), the Secretary
 2 shall disburse to the Community the funds necessary
 3 to make the per capita distribution under subsection
 4 (a) to eligible living adult members of the Commu-
 5 nity described in subsection (c)(1).

6 (2) ADMINISTRATION AND DISTRIBUTION.—On
 7 disbursement of the funds under paragraph (1), the
 8 Community shall bear sole responsibility for admin-
 9 istration and distribution of the funds.

10 (f) SHARES OF DECEASED INDIVIDUALS.—

11 (1) IN GENERAL.—The Secretary, in accord-
 12 ance with regulations promulgated by the Secretary
 13 and in effect as of the date of enactment of this Act,
 14 shall distribute to the appropriate heirs and legatees
 15 of deceased individuals described in subsection (c)(2)
 16 the per capita shares of those deceased individuals.

17 (2) ABSENCE OF HEIRS AND LEGATEES.—If the
 18 Secretary and the Community make a final deter-
 19 mination that a deceased individual described in sub-
 20 section (c)(2) has no heirs or legatees, the per capita
 21 share of the deceased individual and the interest
 22 earned on that share shall—

23 (A) revert to the Community; and

24 (B) be deposited into the general fund of
 25 the Community.

1 (g) SHARES OF LEGALLY INCOMPETENT INDIVID-
2 UALS.—

3 (1) IN GENERAL.—The Secretary shall deposit
4 the shares of legally incompetent individuals de-
5 scribed in subsection (c)(2) in supervised IIM ac-
6 counts.

7 (2) ADMINISTRATION.—The IIM accounts de-
8 scribed in paragraph (1) shall be administered in ac-
9 cordance with regulations and procedures established
10 by the Secretary and in effect as of the date of en-
11 actment of this Act.

12 (h) SHARES OF MINORS.—

13 (1) IN GENERAL.—The Secretary shall deposit
14 the shares of minors described in subsection (c)(2)
15 in supervised IIM accounts.

16 (2) ADMINISTRATION.—

17 (A) IN GENERAL.—The Secretary shall
18 hold the per capita share of a minor described
19 in subsection (c)(2) in trust until such date as
20 the minor reaches 18 years of age.

21 (B) NONAPPLICABLE LAW.—Section
22 3(b)(3) of the Indian Tribal Judgment Funds
23 Use or Distribution Act (25 U.S.C. 1403(b)(3))
24 shall not apply to any per capita share of a

1 minor that is held by the Secretary under this
2 Act.

3 (C) DISBURSEMENT.—No judgment funds,
4 nor any interest earned on judgment funds,
5 shall be disbursed from the account of a minor
6 described in subsection (c)(2) until such date as
7 the minor reaches 18 years of age.

8 (i) PAYMENT OF ELIGIBLE INDIVIDUALS NOT LIST-
9 ED ON PAYMENT ROLL.—

10 (1) IN GENERAL.—An individual who is not
11 listed on the payment roll, but is eligible to receive
12 a payment under this Act, as determined by the
13 Community, may be paid from any remaining judg-
14 ment funds after the date on which—

15 (A) the Community makes the per capita
16 distribution under subsection (a); and

17 (B) all appropriate IIM accounts are es-
18 tablished under subsections (g) and (h).

19 (2) INSUFFICIENT FUNDS.—If insufficient judg-
20 ment funds remain to cover the cost of a payment
21 described in paragraph (1), the Community may use
22 Community-owned funds to make the payment.

23 (3) MINORS, LEGALLY INCOMPETENT INDIVID-
24 UALS, AND DECEASED INDIVIDUALS.—In a case in
25 which a payment described in paragraph (2) is to be

1 made to a minor, a legally incompetent individual, or
2 a deceased individual, the Secretary—

3 (A) is authorized to accept and deposit
4 funds from the payment in an IIM account or
5 estate account established for the minor, legally
6 incompetent individual, or deceased individual;
7 and

8 (B) shall invest those funds in accordance
9 with applicable law.

10 (j) USE OF RESIDUAL FUNDS.—On request by the
11 governing body of the Community to the Secretary, and
12 after passage by the governing body of the Community
13 of a tribal council resolution affirming the intention of the
14 governing body to have judgment funds disbursed to, and
15 deposited in the general fund of, the Community, any
16 judgment funds remaining after the date on which the
17 Community completes the per capita distribution under
18 subsection (a) and makes any appropriate payments under
19 subsection (i) shall be disbursed to, and deposited in the
20 general fund of, the Community.

21 (k) REVERSION OF PER-CAPITA SHARES TO TRIBAL
22 OWNERSHIP.—

23 (1) IN GENERAL.—In accordance with the first
24 section of Public Law 87–283 (25 U.S.C. 164), the
25 share for an individual eligible to receive a per-cap-

1 ita share under subsection (a) that is held in trust
 2 by the Secretary, and any interest earned on that
 3 share, shall be restored to Community ownership if,
 4 for any reason—

5 (A) subject to subsection (i), the share
 6 cannot be paid to the individual entitled to re-
 7 ceive the share; and

8 (B) the share remains unclaimed for the 6-
 9 year period beginning on the date on which the
 10 individual became eligible to receive the share.

11 (2) REQUEST BY COMMUNITY.—In accordance
 12 with subsection (j), the Community may request that
 13 unclaimed funds described in paragraph (1)(B) be
 14 disbursed to, and deposited in the general fund of,
 15 the Community.

16 **SEC. 102. RESPONSIBILITY OF SECRETARY; APPLICABLE**
 17 **LAW.**

18 (a) RESPONSIBILITY FOR FUNDS.—After the date on
 19 which funds are disbursed to the Community under sec-
 20 tion 101(e)(1), the United States and the Secretary shall
 21 have no trust responsibility for the investment, super-
 22 vision, administration, or expenditure of the funds dis-
 23 bursed.

24 (b) DECEASED AND LEGALLY INCOMPETENT INDIV-
 25 IDUALS.—Funds subject to subsections (f) and (g) of

1 section 101 shall continue to be held in trust by the Sec-
 2 retary until the date on which those funds are disbursed
 3 under this Act.

4 (c) APPLICABILITY OF OTHER LAW.—Except as oth-
 5 erwise provided in this Act, all funds distributed under
 6 this Act shall be subject to sections 7 and 8 of the Indian
 7 Tribal Judgment Funds Use or Distribution Act (25
 8 U.S.C. 1407, 1408).

9 **TITLE II—CONDITIONS RELAT-** 10 **ING TO COMMUNITY JUDG-** 11 **MENT FUND PLANS**

12 **SEC. 201. PLAN FOR USE AND DISTRIBUTION OF JUDG-** 13 **MENT FUNDS AWARDED IN DOCKET NO. 228.**

14 (a) DEFINITION OF PLAN.—In this section, the term
 15 “plan” means the plan for the use and distribution of
 16 judgment funds awarded to the Community in Docket No.
 17 228 of the United States Claims Court (52 Fed. Reg.
 18 6887 (March 5, 1987)), as modified in accordance with
 19 Public Law 99–493 (100 Stat. 1241).

20 (b) CONDITIONS.—Notwithstanding any other provi-
 21 sion of law, the Community shall modify the plan to in-
 22 clude the following conditions with respect to funds dis-
 23 tributed under the plan:

24 (1) APPLICABILITY OF OTHER LAW RELATING
 25 TO MINORS.—Section 3(b)(3) of the Indian Tribal

Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)) shall not apply to any per capita share of a minor that is held, as of the date of enactment of this Act, by the Secretary.

(2) SHARE OF MINORS IN TRUST.—The Secretary shall hold a per capita share of a minor described in paragraph (1) in trust until such date as the minor reaches 18 years of age.

(3) DISBURSAL OF FUNDS FOR MINORS.—No judgment funds, nor any interest earned on judgment funds, shall be disbursed from the account of a minor described in paragraph (1) until such date as the minor reaches 18 years of age.

(4) USE OF REMAINING JUDGMENT FUNDS.—On request by the governing body of the Community, as manifested by the appropriate tribal council resolution, any judgment funds remaining after the date of completion of the per capita distribution under section 101(a) shall be disbursed to, and deposited in the general fund of, the Community.

SEC. 202. PLAN FOR USE AND DISTRIBUTION OF JUDGMENT FUNDS AWARDED IN DOCKET NO. 236-N.

(a) DEFINITION OF PLAN.—In this section, the term “plan” means the plan for the use and distribution of

1 judgment funds awarded to the Community in Docket No.
 2 236–N of the United States Court of Federal Claims (59
 3 Fed. Reg. 31092 (June 16, 1994)).

4 (b) CONDITIONS.—

5 (1) PER CAPITA ASPECT.—Notwithstanding any
 6 other provision of law, the Community shall modify
 7 the last sentence of the paragraph under the heading
 8 “Per Capita Aspect” in the plan to read as follows:
 9 “Upon request from the Community, any residual
 10 principal and interest funds remaining after the
 11 Community has declared the per capita distribution
 12 complete shall be disbursed to, and deposited in the
 13 general fund of, the Community.”.

14 (2) GENERAL PROVISIONS.—Notwithstanding
 15 any other provision of law, the Community shall—

16 (A) modify the third sentence of the first
 17 paragraph under the heading “General Provi-
 18 sions” of the plan to strike the word “minors”;
 19 and

20 (B) insert between the first and second
 21 paragraphs under that heading the following:

22 “Section 3(b)(3) of the Indian Tribal Judgment
 23 Funds Use or Distribution Act (25 U.S.C.
 24 1403(b)(3)) shall not apply to any per capita share
 25 of a minor that is held, as of the date of enactment

1 of the Gila River Indian Community Judgment
 2 Fund Distribution Act of 2003, by the Secretary.
 3 The Secretary shall hold a per capita share of a
 4 minor in trust until such date as the minor reaches
 5 18 years of age. No judgment funds, or any interest
 6 earned on judgment funds, shall be disbursed from
 7 the account of a minor until such date as the minor
 8 reaches 18 years of age.”.

9 **TITLE III—EXPERT ASSISTANCE**

10 **LOANS**

11 **SEC. 301. WAIVER OF REPAYMENT OF EXPERT ASSISTANCE**

12 **LOANS TO GILA RIVER INDIAN COMMUNITY.**

13 Notwithstanding any other provision of law—

14 (1) the balance of all outstanding expert assist-
 15 ance loans made to the Community under Public
 16 Law 88–168 (77 Stat. 301) and relating to Gila
 17 River Indian Community v. United States (United
 18 States Court of Federal Claims Docket Nos. 228
 19 and 236 and associated subdockets) are canceled;
 20 and

21 (2) the Secretary shall take such action as is
 22 necessary—

23 (A) to document the cancellation of loans
 24 under paragraph (1); and

- 1 (B) to release the Community from any li-
- 2 ability associated with those loans.

○