

Calendar No. 30

108TH CONGRESS
1ST SESSION**S. 162****[Report No. 108–17]**

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

MARCH 10, 2003

Reported by Mr. CAMPBELL, without amendment

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”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 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.

3 **SEC. 2. FINDINGS.**

4 Congress finds that—

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

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

1 (3) in Gila River Pima-Maricopa Indian Com-
2 munity v. United States, 29 Ind. Cl. Comm. 144
3 (1972), the Indian Claims Commission held that the
4 United States, as trustee, was liable to the Commu-
5 nity with respect to the claims made in Docket No.
6 236-C;

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

12 (5) with the approval of the Community under
13 Community Resolution GR-98-98, the Community
14 entered into a settlement with the United States on
15 April 27, 1999, for claims made under Dockets Nos.
16 236-C and 236-D for an aggregate total of
17 \$7,000,000;

18 (6) on May 3, 1999, the United States Court
19 of Federal Claims ordered that a final judgment be
20 entered in consolidated Dockets Nos. 236-C and
21 236-D for \$7,000,000 in favor of the Community
22 and against the United States;

23 (7)(A) on October 6, 1999, the Department of
24 the Treasury certified the payment of \$7,000,000,

1 less attorney fees, to be deposited in a trust account
 2 on behalf of the Community; and

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

6 (8) in accordance with the Indian Tribal Judg-
 7 ment Funds Use or Distribution Act (25 U.S.C.
 8 1401 et seq.), the Secretary is required to submit an
 9 Indian judgment fund use or distribution plan to
 10 Congress for approval.

11 **SEC. 3. DEFINITIONS.**

12 In this Act:

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

15 (A) is 18 years of age or older as of the
 16 date on which the payment roll is approved by
 17 the Community; or

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

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

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

1 (A) funds held in trust by the Secretary as
 2 of the date of enactment of this Act that may
 3 be made available to make payments under sec-
 4 tion 101; or

5 (B) revenues held by the Community
 6 that—

7 (i) are derived from trust resources;

8 and

9 (ii) qualify for an exemption under
 10 section 7 or 8 of the Indian Tribal Judg-
 11 ment Funds Use or Distribution Act (25
 12 U.S.C. 1407, 1408).

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

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

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

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

1 (8) PAYMENT ROLL.—The term “payment roll”
 2 means the list of eligible, enrolled members of the
 3 Community who are eligible to receive a payment
 4 under section 101(a), as prepared by the Community
 5 under section 101(b).

6 (9) SECRETARY.—The term “Secretary” means
 7 the Secretary of the Interior.

8 **TITLE I—GILA RIVER JUDGMENT** 9 **FUND DISTRIBUTION**

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

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

23 (b) PREPARATION OF PAYMENT ROLL.—

24 (1) IN GENERAL.—The Community shall pre-
 25 pare a payment roll of eligible, enrolled members of

1 the Community that are eligible to receive payments
2 under this section in accordance with the criteria de-
3 scribed in paragraph (2).

4 (2) CRITERIA.—

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

10 (i) All enrolled Community members
11 who are eligible to be listed on the per cap-
12 ita payment roll that was approved by the
13 Secretary for the distribution of the funds
14 awarded to the Community in Docket No.
15 236–N (including any individual who was
16 inadvertently omitted from that roll).

17 (ii) All enrolled Community members
18 who are living on the date of enactment of
19 this Act.

20 (iii) All enrolled Community members
21 who died—

22 (I) after the effective date of the
23 payment plan for Docket No. 236–N;
24 but

1 (II) on or before the date of en-
2 actment of this Act.

3 (B) INDIVIDUALS INELIGIBLE TO RECEIVE
4 PAYMENTS.—The following individuals shall be
5 ineligible to be listed on the payment roll and
6 ineligible to receive a per capita payment under
7 subsection (a):

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

12 (ii) Any minor who relinquishes mem-
13 bership in the Community, or whose parent
14 or legal guardian relinquishes membership
15 on behalf of the minor, before the date on
16 which the minor reaches 18 years of age.

17 (iii) Any individual who is disenrolled
18 by the Community for just cause (such as
19 dual enrollment or failure to meet the eligi-
20 bility requirements for enrollment).

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

1 (I) awarded to another commu-
 2 nity, Indian tribe, or tribal entity; and

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

5 (v) Any individual who is not enrolled
 6 as a member of the Community on or be-
 7 fore the date that is 90 days after the date
 8 of enactment of this Act.

9 (c) NOTICE TO SECRETARY.—On approval by the
 10 Community of the payment roll, the Community shall sub-
 11 mit to the Secretary a notice that indicates the total num-
 12 ber of individuals eligible to share in the per capita dis-
 13 tribution under subsection (a), as expressed in subdivi-
 14 sions that reflect—

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

17 (2) the number of shares that are attributable
 18 to deceased individuals, legally incompetent individ-
 19 uals, and minors.

20 (d) INFORMATION PROVIDED TO SECRETARY.—The
 21 Community shall provide to the Secretary enrollment in-
 22 formation necessary to allow the Secretary to establish—

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

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

3 (e) DISBURSEMENT OF FUNDS.—

4 (1) IN GENERAL.—Not later than 30 days after
5 the date on which the payment roll is approved by
6 the Community and the Community has reconciled
7 the number of shares that belong in each payment
8 subdivision described in subsection (c), the Secretary
9 shall disburse to the Community the funds necessary
10 to make the per capita distribution under subsection
11 (a) to eligible living adult members of the Commu-
12 nity described in subsection (c)(1).

13 (2) ADMINISTRATION AND DISTRIBUTION.—On
14 disbursement of the funds under paragraph (1), the
15 Community shall bear sole responsibility for admin-
16 istration and distribution of the funds.

17 (f) SHARES OF DECEASED INDIVIDUALS.—

18 (1) IN GENERAL.—The Secretary, in accord-
19 ance with regulations promulgated by the Secretary
20 and in effect as of the date of enactment of this Act,
21 shall distribute to the appropriate heirs and legatees
22 of deceased individuals described in subsection (c)(2)
23 the per capita shares of those deceased individuals.

24 (2) ABSENCE OF HEIRS AND LEGATEES.—If the
25 Secretary and the Community make a final deter-

1 mination that a deceased individual described in sub-
 2 section (c)(2) has no heirs or legatees, the per capita
 3 share of the deceased individual and the interest
 4 earned on that share shall—

5 (A) revert to the Community; and

6 (B) be deposited into the general fund of
 7 the Community.

8 (g) SHARES OF LEGALLY INCOMPETENT INDIVID-
 9 UALS.—

10 (1) IN GENERAL.—The Secretary shall deposit
 11 the shares of legally incompetent individuals de-
 12 scribed in subsection (c)(2) in supervised IIM ac-
 13 counts.

14 (2) ADMINISTRATION.—The IIM accounts de-
 15 scribed in paragraph (1) shall be administered in ac-
 16 cordance with regulations and procedures established
 17 by the Secretary and in effect as of the date of en-
 18 actment of this Act.

19 (h) SHARES OF MINORS.—

20 (1) IN GENERAL.—The Secretary shall deposit
 21 the shares of minors described in subsection (c)(2)
 22 in supervised IIM accounts.

23 (2) ADMINISTRATION.—

24 (A) IN GENERAL.—The Secretary shall
 25 hold the per capita share of a minor described

1 in subsection (c)(2) in trust until such date as
 2 the minor reaches 18 years of age.

3 (B) NONAPPLICABLE LAW.—Section
 4 3(b)(3) of the Indian Tribal Judgment Funds
 5 Use or Distribution Act (25 U.S.C. 1403(b)(3))
 6 shall not apply to any per capita share of a
 7 minor that is held by the Secretary under this
 8 Act.

9 (C) DISBURSEMENT.—No judgment funds,
 10 nor any interest earned on judgment funds,
 11 shall be disbursed from the account of a minor
 12 described in subsection (c)(2) until such date as
 13 the minor reaches 18 years of age.

14 (i) PAYMENT OF ELIGIBLE INDIVIDUALS NOT LIST-
 15 ED ON PAYMENT ROLL.—

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

21 (A) the Community makes the per capita
 22 distribution under subsection (a); and

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

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

5 (3) MINORS, LEGALLY INCOMPETENT INDIVID-
6 UALS, AND DECEASED INDIVIDUALS.—In a case in
7 which a payment described in paragraph (2) is to be
8 made to a minor, a legally incompetent individual, or
9 a deceased individual, the Secretary—

10 (A) is authorized to accept and deposit
11 funds from the payment in an IIM account or
12 estate account established for the minor, legally
13 incompetent individual, or deceased individual;
14 and

15 (B) shall invest those funds in accordance
16 with applicable law.

17 (j) USE OF RESIDUAL FUNDS.—On request by the
18 governing body of the Community to the Secretary, and
19 after passage by the governing body of the Community
20 of a tribal council resolution affirming the intention of the
21 governing body to have judgment funds disbursed to, and
22 deposited in the general fund of, the Community, any
23 judgment funds remaining after the date on which the
24 Community completes the per capita distribution under
25 subsection (a) and makes any appropriate payments under

1 subsection (i) shall be disbursed to, and deposited in the
2 general fund of, the Community.

3 (k) REVERSION OF PER-CAPITA SHARES TO TRIBAL
4 OWNERSHIP.—

5 (1) IN GENERAL.—In accordance with the first
6 section of Public Law 87–283 (25 U.S.C. 164), the
7 share for an individual eligible to receive a per-cap-
8 ita share under subsection (a) that is held in trust
9 by the Secretary, and any interest earned on that
10 share, shall be restored to Community ownership if,
11 for any reason—

12 (A) subject to subsection (i), the share
13 cannot be paid to the individual entitled to re-
14 ceive the share; and

15 (B) the share remains unclaimed for the 6-
16 year period beginning on the date on which the
17 individual became eligible to receive the share.

18 (2) REQUEST BY COMMUNITY.—In accordance
19 with subsection (j), the Community may request that
20 unclaimed funds described in paragraph (1)(B) be
21 disbursed to, and deposited in the general fund of,
22 the Community.

1 **SEC. 102. RESPONSIBILITY OF SECRETARY; APPLICABLE**
 2 **LAW.**

3 (a) RESPONSIBILITY FOR FUNDS.—After the date on
 4 which funds are disbursed to the Community under sec-
 5 tion 101(e)(1), the United States and the Secretary shall
 6 have no trust responsibility for the investment, super-
 7 vision, administration, or expenditure of the funds dis-
 8 bursed.

9 (b) DECEASED AND LEGALLY INCOMPETENT INDIVIDUALS.—Funds subject to subsections (f) and (g) of
 10 section 101 shall continue to be held in trust by the Sec-
 11 retary until the date on which those funds are disbursed
 12 under this Act.

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

19 **TITLE II—CONDITIONS RELAT-**
 20 **ING TO COMMUNITY JUDG-**
 21 **MENT FUND PLANS**

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

24 (a) DEFINITION OF PLAN.—In this section, the term
 25 “plan” means the plan for the use and distribution of
 26 judgment funds awarded to the Community in Docket No.

1 228 of the United States Claims Court (52 Fed. Reg.
2 6887 (March 5, 1987)), as modified in accordance with
3 Public Law 99–493 (100 Stat. 1241).

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

8 (1) APPLICABILITY OF OTHER LAW RELATING
9 TO MINORS.—Section 3(b)(3) of the Indian Tribal
10 Judgment Funds Use or Distribution Act (25
11 U.S.C. 1403(b)(3)) shall not apply to any per capita
12 share of a minor that is held, as of the date of en-
13 actment of this Act, by the Secretary.

14 (2) SHARE OF MINORS IN TRUST.—The Sec-
15 retary shall hold a per capita share of a minor de-
16 scribed in paragraph (1) in trust until such date as
17 the minor reaches 18 years of age.

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

23 (4) USE OF REMAINING JUDGMENT FUNDS.—
24 On request by the governing body of the Commu-
25 nity, as manifested by the appropriate tribal council

1 resolution, any judgment funds remaining after the
 2 date of completion of the per capita distribution
 3 under section 101(a) shall be disbursed to, and de-
 4 posited in the general fund of, the Community.

5 **SEC. 202. PLAN FOR USE AND DISTRIBUTION OF JUDG-**
 6 **MENT FUNDS AWARDED IN DOCKET NO.**
 7 **236–N.**

8 (a) DEFINITION OF PLAN.—In this section, the term
 9 “plan” means the plan for the use and distribution of
 10 judgment funds awarded to the Community in Docket No.
 11 236–N of the United States Court of Federal Claims (59
 12 Fed. Reg. 31092 (June 16, 1994)).

13 (b) CONDITIONS.—

14 (1) PER CAPITA ASPECT.—Notwithstanding any
 15 other provision of law, the Community shall modify
 16 the last sentence of the paragraph under the heading
 17 “Per Capita Aspect” in the plan to read as follows:
 18 “Upon request from the Community, any residual
 19 principal and interest funds remaining after the
 20 Community has declared the per capita distribution
 21 complete shall be disbursed to, and deposited in the
 22 general fund of, the Community.”.

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

1 (A) modify the third sentence of the first
 2 paragraph under the heading “General Provi-
 3 sions” of the plan to strike the word “minors”;
 4 and

5 (B) insert between the first and second
 6 paragraphs under that heading the following:

7 “Section 3(b)(3) of the Indian Tribal Judgment
 8 Funds Use or Distribution Act (25 U.S.C.
 9 1403(b)(3)) shall not apply to any per capita share
 10 of a minor that is held, as of the date of enactment
 11 of the Gila River Indian Community Judgment
 12 Fund Distribution Act of 2003, by the Secretary.
 13 The Secretary shall hold a per capita share of a
 14 minor in trust until such date as the minor reaches
 15 18 years of age. No judgment funds, or any interest
 16 earned on judgment funds, shall be disbursed from
 17 the account of a minor until such date as the minor
 18 reaches 18 years of age.”.

19 **TITLE III—EXPERT ASSISTANCE** 20 **LOANS**

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

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

23 Notwithstanding any other provision of law—

24 (1) the balance of all outstanding expert assist-
 25 ance loans made to the Community under Public

1 Law 88–168 (77 Stat. 301) and relating to Gila
2 River Indian Community v. United States (United
3 States Court of Federal Claims Docket Nos. 228
4 and 236 and associated subdockets) are canceled;
5 and

6 (2) the Secretary shall take such action as is
7 necessary—

8 (A) to document the cancellation of loans
9 under paragraph (1); and

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

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