

108TH CONGRESS
1ST SESSION

S. 1770

To establish a voluntary alternative claims resolution process to reach a settlement of pending class action litigation.

IN THE SENATE OF THE UNITED STATES

OCTOBER 21, 2003

Mr. CAMPBELL (for himself, Mr. INOUE, and Mr. DOMENICI) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To establish a voluntary alternative claims resolution process to reach a settlement of pending class action litigation.

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.**

4 This Act may be cited as the “Indian Money Account
5 Claim Satisfaction Act of 2003”.

6 **SEC. 2. FINDINGS; PURPOSE.**

7 (a) FINDINGS.—Congress finds that—

8 (1) since the 19th century, the United States
9 has held Indian funds and resources in trust for the
10 benefit of Indians;

1 (2) in 1996, a class action was brought against
 2 the United States seeking a historical accounting of
 3 balances of individual Indian money accounts;

4 (3) after 8 years of litigation and the expendi-
 5 ture of hundreds of millions of dollars of Federal
 6 funds, it is clear that the court-ordered historical ac-
 7 counting will require significant additional resources
 8 and years to accomplish and will not result in sig-
 9 nificant benefits to the members of the class; and

10 (4) resolving the litigation in a full, fair, and
 11 final manner will best serve the interests of the
 12 members of the class and the United States.

13 (b) PURPOSE.—The purpose of this Act is to provide
 14 a voluntary alternative claims process to reach settlement
 15 of the class action litigation in *Cobell v. Norton* (No.
 16 96cv01285, D.D.C.).

17 **SEC. 3. DEFINITIONS.**

18 In this Act:

19 (1) ACCOUNTING.—The term “accounting”—

20 (A) with respect to funds in an individual
 21 Indian money account that were deposited or
 22 invested on or after the date of enactment of
 23 the Act of June 24, 1938 as provided in the
 24 first section of that Act (25 U.S.C. 162a),
 25 means a demonstration, to the maximum extent

1 practicable, of the monthly and annual balances
2 of funds in the individual Indian money ac-
3 count; and

4 (B) with respect to funds in an individual
5 Indian money account that were deposited or
6 invested between 1887 and the day before the
7 date of enactment of the Act of June 24, 1938,
8 means a demonstration of the probable balances
9 of funds in an individual Indian money account
10 that were deposited or invested.

11 (2) CLAIM.—

12 (A) IN GENERAL.—The term “claim”
13 means a legal or equitable claim that has been
14 brought or could be brought, asserting any duty
15 claimed to be owed by the United States under
16 any statute, common law, or any other source
17 of law to an individual Indian money account
18 holder that pertains in any way to the account
19 holder’s account, including the duty to—

20 (i) collect and deposit funds in the ac-
21 count;

22 (ii) invest funds in the account;

23 (iii) make disbursements from the ac-
24 count;

1 (iv) make and maintain records of ac-
 2 tivity in the account;

3 (v) provide an accounting; and

4 (vi) value, compromise, resolve, or
 5 otherwise dispose of claims relating to the
 6 account.

7 (B) INCLUSION.—The term “claim” in-
 8 cludes a claim for damages or other relief for
 9 failure to perform, or for improper performance
 10 of, any duty described in subparagraph (A).

11 (3) CLASS ACTION.—The term “class action”
 12 means the civil action Cobell v. Norton (No.
 13 96cv01285, D.D.C.).

14 (4) DE MINIMIS INDIVIDUAL INDIAN MONEY AC-
 15 COUNT.—The term “de minimis individual Indian
 16 money account” means an individual Indian money
 17 account that contains less than \$100.

18 (5) ELIGIBLE INDIVIDUAL.—The term “eligible
 19 individual” means—

20 (A) a living individual who is or has been
 21 an individual Indian money account holder, ex-
 22 cept any such individual whose account holds or
 23 held funds only from the distribution of a judg-
 24 ment fund or a per capita distribution; and

1 (B) the estate of a deceased individual
2 who—

3 (i) was living on the date of enact-
4 ment of the American Indian Trust Fund
5 Management Reform Act of 1994 (25
6 U.S.C. 4001 et seq.); and

7 (ii) held an individual Indian money
8 account on that date or at any time subse-
9 quent to that date, except any such indi-
10 vidual whose account holds or held funds
11 only from the distribution of a judgment
12 fund or a per capita distribution.

13 (6) IMACS TASK FORCE.—The term “IMACS
14 Task Force” means the Indian Money Account
15 Claim Satisfaction Task Force established by
16 section 4.

17 (7) INDIVIDUAL INDIAN MONEY ACCOUNT.—
18 The term “individual Indian money account” means
19 an account that contains funds held in trust by the
20 United States, established and managed by the
21 United States on behalf of an individual Indian.

22 (8) SECRETARY.—The term “Secretary” means
23 the Secretary of the Interior.

1 (9) TRIBUNAL.—The term “Tribunal” means
 2 the Indian Money Claims Tribunal established by
 3 section 5.

4 **SEC. 4. INDIAN MONEY ACCOUNT CLAIM SATISFACTION**
 5 **TASK FORCE.**

6 (a) ESTABLISHMENT.—There is established the In-
 7 dian Money Account Claim Satisfaction Task Force.

8 (b) MEMBERSHIP.—

9 (1) IN GENERAL.—The IMACS Task Force
 10 shall be comprised of not fewer than 9 members, ap-
 11 pointed jointly by the majority leader and minority
 12 leader of the Senate and the Speaker and minority
 13 leader of the House of Representatives.

14 (2) QUALIFICATIONS.—

15 (A) BACKGROUND.—Members of the
 16 IMACS Task Force shall be selected from pri-
 17 vate enterprise and academia and shall not be
 18 employees of the United States.

19 (B) EXPERTISE.—Of the members ap-
 20 pointed to the IMACS Task Force—

21 (i) 2 shall have expertise in the field
 22 of forensic accounting;

23 (ii) 2 shall have expertise in the field
 24 of Federal Indian law;

1 (iii) 2 shall have expertise in the field
2 of commercial trusts;

3 (iv) 1 shall have expertise in the field
4 of mineral resources;

5 (v) 1 shall have expertise in the field
6 of economic modeling and econometrics;
7 and

8 (vi) 1 shall have expertise in the field
9 of complex civil litigation.

10 (3) IMACS TASK FORCE LEADER.—An IMACS
11 Task Force Leader shall be chosen by majority vote
12 of the members of the IMACS Task Force.

13 (c) COMPENSATION AND TRAVEL EXPENSES.—A
14 member of the IMACS Task Force shall be entitled to—

15 (1) compensation, at a rate that does not ex-
16 ceed the daily equivalent of the annual rate of basic
17 pay prescribed under level V of the Executive Sched-
18 ule under section 5316 of title 5, United States
19 Code, for each day the member is engaged in the
20 performance of duties the IMACS Task Force; and

21 (2) travel expenses, including per diem in lieu
22 of subsistence, in the same manner as persons em-
23 ployed intermittently in Government service under
24 section 5703 of title 5, United States Code.

1 (d) INFORMATION AND SUPPORT.—The Secretary of
2 the Interior shall provide the IMACS Task Force—

3 (1) access to all records and other information
4 in the possession of or available to the Secretary re-
5 lating to individual Indian money accounts; and

6 (2) such personnel, office space and other facili-
7 ties, equipment, and other administrative support as
8 the IMACS Task Force may reasonably request.

9 (e) CONFIDENTIAL INFORMATION.—Section 10(b) of
10 the Federal Advisory Committee Act (5 U.S.C. App.) shall
11 not apply to the IMACS Task Force.

12 (f) DUTIES.—

13 (1) IN GENERAL.—The IMACS Task Force
14 shall—

15 (A) not later than 1 year after the date of
16 enactment of this Act, complete an analysis of
17 records, data, and other historical information
18 with regard to the conduct of an historical ac-
19 counting submitted by the parties in the class
20 action to the district court in January 2003;
21 and

22 (B) not later than 60 days after com-
23 pleting the analysis under subparagraph (A),
24 hold meetings with representatives of—

25 (i) the plaintiffs in that civil action;

1 (ii) the Department of Justice and the
2 Department of the Interior; and

3 (iii) any other parties that, in the dis-
4 cretion of the IMACS Task Force, are nec-
5 essary to allow the IMACS Task Force to
6 carry out its duties under this Act.

7 (2) ACCOUNT BALANCES.—

8 (A) METHODOLOGIES OR MODELS.—The
9 IMACS Task Force shall develop 1 or more ap-
10 propriate methodologies or models to conduct
11 an accounting of the individual Indian money
12 accounts.

13 (B) DETERMINATION.—Using methodolo-
14 gies or models developed under subparagraph
15 (A), the IMACS Task Force shall conduct an
16 accounting to determine in current dollars the
17 balances of—

18 (i) first, all individual Indian money
19 accounts opened in or after 1985;

20 (ii) second, all individual Indian
21 money accounts opened on or after the
22 date of enactment of the first section of
23 the Act of June 24, 1938 (25 U.S.C.
24 162a), and before 1985; and

1 (iii) third, all individual Indian money
2 accounts opened before the date of enact-
3 ment of the first section of the Act of June
4 24, 1938 (25 U.S.C. 162a).

5 (C) NOTICE OF DETERMINATION.—On
6 making a determination of the balance in the
7 individual Indian money account of an eligible
8 individual, the IMACS Task Force shall provide
9 notice of the determination to the eligible indi-
10 vidual and the Secretary.

11 (g) ACCEPTANCE OR NONACCEPTANCE BY ELIGIBLE
12 INDIVIDUAL.—

13 (1) ACCEPTANCE.—If an eligible individual ac-
14 cepts the determination by the IMACS Task Force
15 of the balance in the individual Indian money ac-
16 count of the eligible individual—

17 (A) not later than 60 days after the date
18 on which the eligible individual receives notice
19 of the determination, the eligible individual
20 shall submit to the Secretary a notice that the
21 eligible individual accepts the determination of
22 the balance;

23 (B) not later than 30 days after the Sec-
24 retary receives the notice of acceptance under
25 subparagraph (A), the Secretary shall make any

1 adjustment in the records of the Secretary to
2 reflect the determination;

3 (C) based on the adjustment made pursu-
4 ant to paragraph (B), the Secretary shall make
5 full payment to the eligible individual of the
6 balance in the individual Indian money account
7 of the eligible individual in satisfaction of any
8 claim that the individual may have;

9 (D) the eligible individual shall provide the
10 Secretary an accord and satisfaction of all
11 claims of the eligible individual, which shall be
12 binding on any heirs, transferees, or assigns of
13 the eligible individual; and

14 (E) the eligible individual shall be dis-
15 missed from the class action.

16 (2) NONACCEPTANCE.—If an eligible individual
17 does not accept the determination by the IMACS
18 Task Force of the balance in the individual Indian
19 money account of the eligible individual, the eligible
20 individual may—

21 (A) have the amount of the balance deter-
22 mined through arbitration by the Tribunal; or

23 (B) remain a member of the class in the
24 class action.

1 **SEC. 5. INDIAN MONEY CLAIMS TRIBUNAL.**

2 (a) ESTABLISHMENT.—There is established the In-
3 dian Money Claims Tribunal.

4 (b) MEMBERSHIP.—The Tribunal shall be comprised
5 of 5 arbitrators drawn from the list of arbitrators main-
6 tained by the Attorney General.

7 (c) ELECTION TO ARBITRATE.—If an eligible indi-
8 vidual elects to have the amount of the balance in the indi-
9 vidual Indian money account determined through arbitra-
10 tion by the Tribunal—

11 (1) not later than 60 days after receiving the
12 notice of determination under section 4(f)(2)(C), the
13 eligible individual shall submit to the Tribunal, in
14 such form as the Tribunal may require, all claims of
15 the eligible individual, with an agreement to be
16 bound by any determination made by the Tribunal;
17 and

18 (2) the United States shall be bound by any de-
19 termination made by the Tribunal.

20 (d) REPRESENTATION.—

21 (1) IN GENERAL.—An eligible individual may be
22 represented by an attorney or other representative in
23 proceedings before the Tribunal.

24 (2) ATTORNEY'S FEE.—No legal representative
25 retained by an eligible individual for purposes of
26 proceedings before the Tribunal may collect any fee,

1 charge, or assessment that is greater than 25 per-
2 cent of the amount of the balance in the individual
3 Indian money account of the eligible individual de-
4 termined by the Tribunal.

5 (e) TIMING.—To the extent practicable, the Tribunal
6 shall—

7 (1) schedule any proceedings necessary to de-
8 termine a claim to occur not later than 180 days
9 after the date on which the eligible individual sub-
10 mits the claim; and

11 (2) make a determination of the claim, and pro-
12 vide the eligible individual and the Secretary notice
13 of the determination, not later than 30 days after
14 the conclusion of the proceedings.

15 (f) ACTION FOLLOWING DETERMINATION.—Not
16 later than 30 days after the Secretary receives the notice
17 of determination under subsection (e)(2)—

18 (1) the Secretary shall make any adjustment in
19 the records of the Secretary to reflect the determina-
20 tion;

21 (2) based on the adjustment made pursuant to
22 paragraph (1), the Secretary shall make full pay-
23 ment to the eligible individual of the balance in the
24 individual Indian money account of the eligible indi-

1 vidual in satisfaction of any claim that the eligible
2 individual may have;

3 (3) the individual Indian money account of the
4 eligible individual shall be closed;

5 (4) the eligible individual shall provide the Sec-
6 retary an accord and satisfaction of all claims of the
7 eligible individual, which shall be binding on any
8 heirs, transferees, or assigns of the eligible indi-
9 vidual; and

10 (5) the eligible individual shall be dismissed
11 from the class action.

12 **SEC. 6. JUDGMENT FUND AVAILABILITY.**

13 The funds for any payment made pursuant to section
14 4(g)(1)(C) or 5(f)(2) shall be derived from the permanent
15 judgment appropriation under section 1304 of title 31,
16 United States Code (commonly known as the “Judgment
17 Fund”), without further appropriation.

18 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

19 There are authorized to be appropriated—

20 (1) to carry out section 4, \$10,000,000 for each
21 of fiscal years 2004 and 2005; and

22 (2) to carry out section 5, \$10,000,000 for each
23 of fiscal years 2006 and 2007.

○