

Calendar No. 658

105TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 105-349

TO REMOVE THE RESTRICTION ON THE DISTRIBUTION OF CERTAIN REVENUES FROM THE MINERAL SPRINGS PAR- CEL TO CERTAIN MEMBERS OF THE AGUA CALIENTE BAND OF CAHUILLA INDIANS

SEPTEMBER 28, 1998.—Ordered to be printed

Mr. CAMPBELL, from the Committee on Indian Affairs,
submitted the following

REPORT

[To accompany H.R. 700]

The Committee on Indian Affairs to which was referred the bill (H.R. 700) to remove the restrictions on the distribution of certain revenues from the Mineral Springs parcel to certain members of the Agua Caliente Band of Cahuilla Indians, having considered the same, reports favorably thereon with an amendment, in the nature of a substitute, and recommends that the bill (as amended) do pass.

PURPOSE

The purpose of H.R. 700 is to amend the Agua Caliente Equalization Act of 1959 (P.L. 86-339) to remove a provision of that Act that restricts the distribution of any net revenues from a tribally-owned tract of land known as "Parcel B" to 85 allottees or their heirs. Removal of this restriction will enable the Agua Caliente Band of Cahuilla Indians of California to make future distributions of net tribal revenues from Parcel B, or from any other source of tribal revenue, in equal amounts to all members of the Band.

BACKGROUND AND NEED

The need for H.R. 700 stems from the long and contentious process through which the United States sought to allot to individual Indians the Palm Springs Reservation that was established for the Agua Caliente Band pursuant to the Mission Indian Relief Act of 1891 (26 Stat. 712). Part of this reservation is located in the heart

of the City of Palm Springs, and the remainder consists of checkerboarded alternate sections that surround the city and extend into the Santa Rosa Mountains.

The 1891 Act, as well as the Act of March 2, 1917 (39 Stat. 969, 976), provided authority and direction to the Secretary of the Interior to allot Palm Springs Reservation land to individual Indians for agricultural and grazing purposes. Allotments were limited to a total of 160 acres. To prevent any one person from selecting a disproportionate part of the most valuable land, selections were required to be in three parts: an A selection consisting of a 2-acre town lot; a B selection consisting of 5 acres of irrigable land; and a C selection consisting of 40 acres of dry land.

Following the initial allotments of Palm Springs Reservation land in 1923, disputes arose over the validity of various allotment selections and over the relative value of the initial and subsequent allotments. These disputes resulted in extensive litigation that was not concluded until 1956, when the Ninth Circuit Court of Appeals in *United States v. Pierce*, 235 F. 2d 885 (9th Cir. 1956) affirmed the trial court in *Segundo et al. v. United States*, 23 F. Supp. 554 (1954).¹ A key issue in the case was a request by the plaintiffs for a declaratory judgment that, as a matter of law, they were entitled to equalization of the value of their allotments. On this issue, the trial court entered a judgment as follows:

“* * * plaintiffs are entitled to, and shall have allotted to them, their just and equitable share of the tribal lands; and each plaintiff entitled to make further selections for allotments may make and file such selections from any and all lands of said reservation available for allotment, and defendant United States of America shall allot to each such plaintiff total lands of approximately equal value to the lands allotted to each other member of said band of Indians, so that when the allotment and equalization process is completed each qualified plaintiff will have been allotted land of as nearly equal value as practicable to the land allotted to each of the other members of said band. * * * The Court hereby retains jurisdiction of this action and the parties thereto and the subject matters thereof, for the purpose of effectuating its judgment and decree in all respects, including the rights of the plaintiffs * * * (3) to make further selections for the purpose of equalizing the values of the lands allotted to plaintiffs with the lands allotted to the several members of the band.”²

This part of the judgment was affirmed by the court of appeals in *Pierce* in the following language: “while we think equalizing would best be left to the Indian Service, we hold that the court can and should proceed to do it unless the court is assured that the Service will proceed with diligence”.

Pursuant to the court’s holding, the Secretary of the Interior in June, 1957, submitted legislation to the Congress that would have put all of the Band’s assets in the hands of a tribal corporation or trustee and distributed income on an equalized basis, but the Congress found the proposal unacceptable. In March, 1959, Representative D.S. Saund (D-CA) introduced H.R. 5557. This bill provided

¹For a description of the litigation, see H. Rpt. 86-903, pp. 4-6.

²Ibid.

for closing the roll of Band members who were entitled to allotments and for most of the Band's remaining assets to be distributed to members who had not received an allotment. At the Band's request, the bill set aside as "tribal reserves" a church and a cemetery; four mountain canyon areas of historical and cultural significance to the Band, and the Mineral Springs area, which consisted of 2.77 acres with a spring (Parcel A) and 6 adjacent acres that were under a lease and a lease option for a hotel development (parcel B).

At hearings before the House Committee on Interior and Insular Affairs in June and July of 1959, the witness for the Department of the Interior (hereinafter "the Department") testified in support of H.R. 5557, with a notable exception. Although the Department agreed that Parcel A had religious significance to the Band and should not be allotted, the Department strongly favored allotting Parcel B, which then was the site of some soon-to-be-demolished administration buildings and a commercial parking lot. The Department argued for allotting Parcel B on the grounds that it would be not only unfair to the allottees with the lower-valued allotments to withhold from the equalization process any substantial part of the Band's assets, but also that to do so would be inconsistent with the court's directive to raise the value of the Agua Caliente allotments to the highest value possible.

In August, 1959, Representative Saund introduced H.R. 8587. This bill, which was very similar to H.R. 5557, embodied an agreement between Representative Saund, the Band and the Department that excluded Parcel B from allotment and added a provision which required that any net revenue from Parcel B would be distributed only to members of the Band who were entitled to equalization allotments. Later in August, the House Committee on Interior and Insular Affairs considered and reported H.R. 8587 after rejecting a proposed Department amendment that would have provided for the sale of parcel B. In September, the House passed H.R. 8587 without amendment, as did the Senate. On September 21, 1959, President Eisenhower signed the legislation, entitled "The Agua Caliente Equalization Act (ACEA), into law.

On March 2, 1960, the Secretary published regulations in the Federal Register that set forth procedures for the equalization of allotments on the Agua Caliente Reservation. Using appraisals conducted in 1957 and 1958 that valued the allotments of 104 living allottees at between \$74,500 and \$629,000, the Department proceeded to allot 23,660 acres of property of the Band valued at \$12,800,000. This property was allotted to the 85 members of the Band whose allotments were the lowest valued allotments. As a result, these 85 allotments were "equalized" at a value of \$335,000 each. The other 19 allottees whose allotments were valued above \$335,000 received no additional value from the equalization process. Of these 19, nine had allotments ranging in value from \$335,000 to \$400,000; six were valued between \$400,000 and \$500,000; one was valued at \$510,000; and three were valued between \$600,000 and \$629,000. In December, 1961, the Department declared that the equalization process had been completed, with all

of the Band's members having allotments valued at a minimum \$335,000.³

Part 124.9 of the March 2, 1960, regulation provided for "Disposition of Income from Parcel B" and stated that such income "shall be deposited in the Treasury of the United States in a special account. Such fund may be used for the payment of administrative expenses of the Band." In April, 1960, the Band sought to clarify that, consistent with its agreement with the Department of the Interior and Congressman Saund prior to introduction of H.R. 8587, the term "administrative expenses" was meant to include tribal improvement projects designed to develop the tribal reserves.⁴ On July 22, 1960, the Department published notice of an amendment to 25 CFR 124.9 that "is necessary to restate the purposes for which the fund referred to in the first sentence of the section may be used. The present language places restrictions on the use of the fund which are not intended". The amendment stated, in pertinent part, that "Such fund may be used for such purposes as may be designated by the governing body of the Band and approved by the Secretary, except that such fund may be distributed only to those enrolled members who are entitled to an equalization allotment.
* * *"

From 1959 to the present, there have been no per capita distributions of any revenues from the account set up under 25 CFR 124.9 to receive Parcel B revenues. At the Committee's July, 1998, hearing on H.R. 700, Agua Caliente Tribal Chairman Richard M. Milanovich testified that until 1995, the revenue from economic activity on Parcel B was insufficient to meet the operating requirements of the tribal government, and that since 1995, any revenues from Parcel B activity have been designated for use only to meet tribal government purposes. Deputy Assistant Secretary of the Interior Michael J. Anderson testified that the total administrative revenues that may have been expended from the account amounts to about \$50,000 over the last 37 years. The Committee is unaware of any evidence or allegation that the Secretary approved any expenditure from this account for any purposes that was not duly designated by the governing body of the Band and approved by the Secretary as required by the amended regulations.

On March 16, 1983, the Secretary published notice in the Federal Register rescinding the regulations governing the equalization of allotments on the Agua Caliente Reservation. The notice stated that "the purpose of the law upon which this part is based has been accomplished. In line with 25 U.S.C. 953(c),⁵ the purpose of the Act was achieved on October 5, 1961, when Secretarial approval was granted to the schedule of equalization allotments. For this reason these regulations are no longer needed." The Federal Register notice was consistent with section 7 of the ACEA, which states that "allotment in accordance with the provisions of this subchapter shall be deemed complete and full equalization of allotments on the Agua Caliente Reservation."⁶

³Letter of December 6, 1961 from Leonard Hill, Area Director, Bureau of Indian Affairs, to the Regional Solicitor, Department of the Interior.

⁴Letter of April 13, 1960, from Eileen Miguel to Congressman D.S. Saund.

⁵Section 953(c) provided the authority for the equalization for living members by allotment without regard to acreage limitations.

⁶25 U.S.C. 957.

In 1990, the Agua Caliente Band requested clarification from the Department of the Interior as to whether the restriction on net revenues set forth in 25 U.S.C. 953(b) was still in effect, notwithstanding the rescission of the equalization regulations in 1983. The request was prompted by the facts that the ACEA is silent with respect to the duration of the right set forth in section 953(b), and the legislative history of the ACEA is devoid of any mention or discussion of the intent of Congress as to the duration of section 953(c). In a July 29, 1992, opinion by the Acting Regional Solicitor, Interior Deputy Solicitor Martin J. Suuberg wrote that “the lack of any limitations leaves the proviso requirement of indefinite duration. The restrictions last as long as 25 U.S.C. 953(b) exists without amendment”⁷.

In the mid-1990’s, the Band established a gaming enterprise on Parcel B. Unless the restriction in section 953(b) is removed, the Band can distribute revenues from this enterprise only to the 85 allottees or their heirs whose allotments were equalized pursuant to the ACEA. The restriction thus would preclude a substantial number of the Band’s current membership of more than 340 members from receiving any distribution of net revenues derived from Parcel B. These allottees and their heirs, whose allotments were valued at more than \$335,000 in 1960 and who did not receive any additional value as a result of the equalization process under the ACEA, are for that reason only barred from receiving any share of revenue from what is not the principal source of the Band’s income. The Band represents that it regards such an outcome as discriminatory and unfair, particularly to those members of the Band who were born after 1959 and were not eligible either for allotments or equalization, and certain to create unnecessary divisions and animosities among the Band’s membership. To avoid such an outcome and to be able to share its Parcel B revenues with all of its members, the Agua Caliente Band has not made any per capita distributions of Parcel B revenue and has requested that the Congress repeal 25 U.S.C. 953(b).

LEGISLATIVE HISTORY

In the 104th Congress, Representative Sonny Bono (R-CA) introduced H.R. 3408, a bill that provided for the repeal of section 953(b) and for a one-time payment of \$22,000 to each of the Band members or their heirs entitled to equalization under the ACEA. The bill further provided that, with repeal, any future distributions of net tribal revenues from Parcel B or revenues from any other tribal property would be made equally to all members of the Band. The House passed H.R. 3408, but the Senate failed to take up the bill prior to adjournment of the 104th Congress.

In February, 1997, Representative Bono introduced H.R. 700, which also would repeal section 953(b). In June, 1997, the House Resources Committee held a hearing at which Administration and Band witnesses testified in support of the bill. No witness testified on behalf of the allottees or their heirs who were the intended beneficiaries of section 953(b). The Resources Committee subsequently amended H.R. 700 to condition the repeal of section 953(b)

⁷Memorandum of July 29, 1992, page 2.

upon the Band's payment of the \$22,000 amount to the allottees and their heirs who were entitled to equalization under the 1959 Act. On September 8, 1997, the House passed H.R. 700, as amended.

On July 8th, 1998, the Committee on Indian Affairs held a meeting on H.R. 700. Witnesses for the Administration and for the Agua Caliente Band testified in favor of an amendment-in-the-nature-of-a-substitute to H.R. 700 proposed by the Band. The Committee also received oral and written testimony on behalf of five individual Indians (four of whom are Band members), who are allottees or heirs of allottees who were among the intended beneficiaries of section 953(b), and who are opposed to the bill and to the proposed substitute. The Committee also received a letter of support from the House sponsors of H.R. 700, Representatives Mary Bono (R-CA) and Dale Kildee (D-MI).

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Committee on Indian Affairs, in an open businesses session on July 13, 1998, adopted an amendment-in-the-nature-of-a-substitute to H.R. 700 by voice vote and ordered the bill, as amended, reported favorably to the Senate.

SUBSTITUTE AMENDMENT

H.R. 700 as passed by the House of Representatives consists of one section comprised of two subsections. Subsection (a) would amend the ACEA of 1959 by striking the restriction on distribution of revenues from Parcel B that is set forth in 25 U.S.C. 953(b). Subsection (b) would condition the effectiveness of the amendment in subsection (a) on the payment of a lump sum of money to each of the 85 allottees or their heirs who are entitled to distribution of net revenues from Parcel B under 25 U.S.C. 953(b).

The substitute amendment adopted by the Committee on Indian Affairs includes the language of subsection (a) of the House-passed version of H.R. 700 but omits the language of subsection (b) that conditions the removal of 25 U.S.C. 953(b) upon a payment by the Band. The substitute amendment adds nine findings, deems the equalization contemplated by section 7 of the ACEA to have been completed, and deems that with the completion of such equalization the entitlement of holders of equalized allotments to net revenues from Parcel B expired as of March 31, 1983, the date that the Department's equalization regulations were rescinded. To ensure nondiscriminatory treatment to all members of the Band with respect to any distribution of tribal revenues, the amendment requires the Band to make and future per capita distributions of tribal revenue in equal amounts to all members of the Band.

EXPLANATION

As part of its consideration of H.R. 700, the Committee reviewed the legislative history of the ACEA, particularly with respect to the intent of Congress regarding the ACEA and section 953(b) in particular. None of the relevant documents reviewed by the Committee, nor testimony from any witness provided any specific statement or reference regarding the intended duration of section

953(b). This lack of any record of intent, together with the passage of nearly 37 years since the Department of the Interior completed the equalization of the Band's allotments, made it necessary and appropriate for the Committee to consider section 953(b) in the context of the legislative history of the ACEA and subsequent history. In the following paragraphs detailing that consideration, except for references to court decisions, certain words and phrases have been italicized for emphasis.

Regarding the purposes of the ACEA, the House and Senate Committee reports on H.R. 8587 use nearly identical language to explain the bill. Both note that the *Segundo* and *Pierce* rulings regarding equalization of the Agua Caliente allotments posed serious administrative problems:

to equalize the value of all allotments with the most valuable tract chosen by any one single allottee would more than exhaust the lands available. The prevailing limitation on the amount of land an allottee might take (160 acres regardless of value), the requirement that each allottee be permitted to select his own lands in the first instance, and attempts to provide each allottee with an equal basic allotment of city land (2 acres), irrigable land (5 acres) and dry land (40 acres), though judicially approved, made complete equalization virtually impossible.⁸

Having described complete equalization as “virtually impossible,” both reports went on to describe “the problem” which the legislation was intended to address as “to find an effective way of securing a reasonable degree of equalization without disturbing those allotments that have already been made, without putting an impossible administrative burden on the Secretary of the Interior and without breaking up certain tribal holdings that it wishes to keep intact or that are in public use as a complete bloc.” Both reports cite “the only feasible route” for accomplishing these objectives as that provided in H.R. 8587, “which will supplement and, in some respects, supersede existing law by providing that the roll of those entitled to allotments shall be closed; that most of the remaining assets of the tribe shall be distributed to those who have not already received an allotment at values determined by appraisals that have already been made; that certain lands shall be reserved for tribal use with a provision, applicable to certain of those lands, that any distribution of the income derived from them shall be made only to those who are entitled to equalization under the bill; and that cash shall be paid to a few prospective allottees whose land is occupied by, and will probably have to be sold for, the Palm Springs airport”.

With respect to section 953(b), the House and Senate committee reports on H.R. 8587 contain only the following identical explanatory language in the Sectional Analysis:

The Mineral Springs site is divided into two parcels, one of which is reserved for the tribe in all respects, the second to a more limited degree. The first of these parcels is under lease to a private business which also has, in effect,

⁸S. Rept. 86-866, p.2; H. Rept. 86-903, p.2.

an option on the second. The committee was advised that it would be impossible for the prospective lessee to proceed with his plans with respect to the second parcel if title to it is broken up among individual allottees. The bill provides, however, that any net rents, profits, or other revenues derived from this parcel shall, if distributed, be distributed only to those enrolled members who are entitled to equalization allotments. The importance of this restriction is evident from the fact that the parcel is estimated to be worth \$5,000 per allottee.

The reports each note that Parcel B had been appraised at a value of \$400,000. Thus, the statement as to the parcel's value of \$5,000 to each allottee evidently was arrived at by dividing \$400,000 by 80, which was an estimate of the number of allottees whose allotments would be subject to equalization. This statement in the reports is the only reference anywhere in the legislative history of H.R. 8587 that suggests a value in connection with section 953(b). Absent any other relevant explanatory statements or statutory language, the Committee finds that this statement alone cannot be reasonably interpreted as a clear statement by the Committees that section 953(b) was intended to ensure or guarantee each allottee would receive \$5,000 or any other specific amount of money.

It is clear that whatever value section 953(b) might ultimately provide to its intended beneficiaries was dependent on factors beyond the authority or control of the Congress, such as when, how, and even whether Parcel B would be developed, and whether such development that did occur would generate gross revenues sufficient not only to cover the Band's administrative expenses but also to leave "net" revenues to distribute to equalized allottees. As indicated in the report language quoted above, the Committees were at the time aware only of plans of a prospective lessee, a private business, to develop Parcel B.

That the Committees regarded the benefits to be realized from section 953(b) as speculative can be reasonably inferred by the report language which refers to "revenues derived from this second parcel (Parcel B) shall, if distributed, be distributed only to those enrolled members who are entitled to equalization allotments". It can further be reasonably inferred that the Committees and the Congress simply did not know whether or not section 953(b) would result in any distributions of net revenues from Parcel B. This may be one reason why section 7 of the ACEA does not include any reference to the distribution of any amount of net revenues pursuant to section 953(b) as a requirement for achieving full equalization. Section 7 states only that "allotments in accordance with the provisions of this subchapter shall be deemed complete and full equalization of allotments on the Agua Caliente Reservation".

It is also clear that, by enacting the ACEA, the Congress did not intend to guarantee that allottees who would be entitled to equalization of their allotments would be entitled to allotments of any specific minimum value. Both committee reports include the text of an April 17, 1959, letter from Roger Ernst, Assistant Secretary of the Interior, to Representative Wayne Aspinall, Chairman of the House Committee on Interior and Insular Affairs, which states:

It is assumed that this acreage and valuation, if distributed to the lower valued living allottees would enable us to achieve an equalization value of approximately \$350,000 for approximately 80 individuals. These estimates are, of course, subject to change by virtue of deaths, the addition of newborn children, and the selection of allotments for the five newborn unallotted children who are now living.

The Committee notes that the \$350,000 figure put forward by the Department was an estimate that was subject to a final determination as to how many allottees would be entitled to equalization. It is clear that the Department and the Congress understood that the subsequent changes in the ACEA that reserved Parcel B from allotment and added section 953(b) would also affect the ultimate equalization amount. Taken together, these changes resulted in the final equalization amount being less than the Department's initial estimate. However, this reduction was of an estimated, not a guaranteed, amount, and it applied equally to the allotments of all of the allottees entitled to equalization. Similarly, the lack of any distribution of any net revenues from Parcel B was experienced equally by all of the allottees and their heirs who were entitled to equalization.

When the Department of the Interior completed the allotment of all 23,660 acres of the Band's unreserved property in 1961, a little more than a year after enactment of the ACEA, every member of the Band held an allotment valued at a minimum of \$355,000. That 19 of the 104 allotments of living Band members had values in excess of \$355,000 was consistent with the recognition by the Congress that factors limiting the Band's assets available for allotment "made complete equalization virtually impossible." It is therefore reasonable for the Committee to conclude that the equalization process set forth by the ACEA indeed fulfilled the expressed intent of Congress to secure "a reasonable degree of equalization without disturbing those allotments that have already been made, without putting an impossible administrative burden on the Secretary of the Interior and without breaking up certain tribal holdings that it wishes to keep intact or that are in public use in a complete bloc."

The Committee recognizes that the adoption by the Congress of section 953(b) in conjunction with the designation of Parcel B as a tribal reserve may have created expectations among holders of equalized allotments that they would receive distributions of some unspecified amounts of revenue at some date in the future. However, the Committee finds no evidence in the legislative history of the ACEA to indicate any intent by the Congress to provide a guarantee or assurance that any such distributions would occur, nor is there any evidence to suggest that the entitlement to receive distributions of Parcel B revenues was intended to be perpetual. The fact that no such distributions occurred over the course of the first 23 years after enactment of the ACEA or, indeed, in the intervening years, does not serve to transform these expectations into interests that require compensation by the Congress or by the Band. The Committee observes that, to the extent that revenues from Parcel B constituted part of the Band's budget approved by the Secretary for expenditure on behalf of all members of the Band, the

holders of equalized allotments received benefit from those revenues as a result of their membership in the Band.

The Committee concurs with the view of the Department, as expressed in the Executive Communication printed in this report, that the entitlement to net revenues from Parcel B set forth in 25 U.S.C. 953(b) constitutes an inchoate interest which, in the absence of any *per capita* distribution of revenue from Parcel B, at no time ripened into a vested interest.

The Committee observes that Federal Indian policy in 1959, as expressed by Congress in adopting H. Con. Res. 108 in 1953, was to terminate the Federal Government's trust relationship with tribes. More than 25 years ago, the Congress abandoned the termination policy in favor of a policy of Indian self-determination that continues to be the policy of the United States. This policy emphasizes tribal economic self-sufficiency and strengthening the government-to-government relationship between tribes and the United States. Consistent with that policy, the Committee and the Congress encourage tribes in their efforts to develop their respective trust assets to advance and enhance the well-being of all of their members.

By acting to reserve Parcel B from allotment under the ACEA, the Agua Caliente Band was able to retain for the benefit of all its members property which in 1959 constituted less than one percent of the Band's trust land base and about three percent of its value. By restricting the distribution of only net revenues from Parcel B to those Band members whose allotments were subject to equalization, the Congress recognized the Band's desire and intent, first, to use some if not all of whatever revenues were derived from Parcel B for the benefit of all Band members.

In adopting H.R. 700, as amended, the Committee concurs with the Band that the effect of the restriction on Parcel B revenues under present circumstances would not result in any additional "equalization" as that term was understood in 1959. Rather, it would result in significantly unequal distribution of Band revenue by precluding a significant portion of the 340-plus members of the Band, many of whom were born after 1959 and thus are not entitled to an allotment or equalization, from sharing directly in any of the revenue from what has become the Band's principal source of tribal income. Such a result would be not only inequitable and contrary to the wishes of a majority of the Band as expressed by resolution of its governing body, but also contrary to the purposes of current Federal Indian policy. The Committee notes that the Band has represented to the Committee that the overwhelming majority of Band members, including those who are entitled to receive net Parcel B revenue under existing law, support repeal of 25 U.S.C. 953(b).

The purpose of the substitute amendment to H.R. 700 is, in effect, to adjust and update the concept of equalization to the changes in the Band's circumstances and Federal policy since the enactment of the ACEA in 1959. With enactment of the substitute, every member of the Band, whether he or she was a member or an heir of a member whose allotment was equalized pursuant to the ACEA, or whether he or she was born after the ACEA was enacted and thus is ineligible for an allotment or equalization or net

revenue from Parcel B, will be on an equal footing with all other Band members with respect to per capita distributions from all sources of revenue available to the Band, including all of the lands designated as “tribal reserves” by the ACEA. Heirs or descendants of heirs of members whose allotments were equalized, but who are not members themselves because they do not qualify for membership in the Band under the terms of the Band’s constitution, would in no way be precluded from sharing in distributions by gift or inheritance.

SECTION-BY-SECTION ANALYSIS

Section 1—Findings

The first finding is that the Agua Caliente Equalization Act of 1959 (ACEA) was intended to provide for a reasonable degree of equalization of the value of allotments made to members of the Agua Caliente Band of Cahuilla Indians;

The second finding is that the ACEA was enacted in response to the litigation in the case of *Segundo, et al v. United States*, 123 F. Supp 554 (1954);

The third finding states that the *Segundo* case was appealed under the case name *United States v. Pierce*, 235 F. 2d 885 (1956) and that case affirmed the entitlement of certain members of the Band to allotments of approximately equal value to lands allotted to other members of the Band;

The fourth finding states that (A) to achieve the equalization referred to in the third finding, section 3 of the ACEA provided for the allotment or sale of all remaining tribal lands, with the exception of several specifically designated parcels, including 2 parcels in the Mineral Springs area known as parcel A and parcel B; that (B) section 3 of the Act restricted the distribution of any net rents, profits, or other revenues derived from parcel B to members of the Band and their heirs entitled to equalization of the value of the allotments of those members; that (C) from 1959 through 1984, each annual budget of the Band, as approved by the Bureau of Indian Affairs, provided for the expenditure of all revenues derived from both parcel A and parcel B solely for tribal governmental purposes; and (D) that as a result of the annual budgets referred to in (C), no net revenues from parcel B were available for distribution to tribal members entitled to equalization under section 3 of the Act referred to in the first finding;

The fifth finding states that by letter of December 6, 1961, the Director of the Sacramento Area Office of the Bureau of Indian Affairs (BIA) informed the regional solicitor of the BIA that the equalization of allotments on the Agua Caliente Reservation with respect to those members of the Band who were eligible for equalization had been completed using all available excess tribal land consistent with the decree of the court in *Segundo* and with the ACEA;

The sixth finding states that in 1968 the files of the Department of the Interior with respect to the *Pierce* case, the closure of which was contingent upon completion of the equalization program, were retired to the Federal Record Center, where they were destroyed;

The seventh finding states that on March 16, 1983, the Secretary of the Interior published notice in the Federal Register that full equalization had been achieved within the meaning of section 7 of the Act (25 U.S.C. 957).

The eighth finding cites the full text of Section 7 of the ACEA as follows: "Allotments in accordance with the provisions of this subchapter shall be deemed complete and full equalization of allotments on the Agua Caliente Reservation"; and,

The ninth finding states that the regulations governing the equalization of allotments under the ACEA were rescinded by the Secretary of the Interior effective March 31, 1983.

Section 2—Definitions

This section provides definitions of the terms "Band," "Parcel B", and "Secretary".

Section 3—Equalization of allotments

Subsection (a) of this section states that the full equalization of allotments within the meaning of section 7 of the ACEA is deemed to have been completed.

Subsection (b) of this section states that by reason of the achievement of the full equalization of allotments described in subsection (a), the entitlement of holders of equalized allotments to distribution of net revenues from parcel B under section 3(b) of the ACEA, shall be deemed to have expired.

Section 4—Removal of restriction

Subsection (a) of this section amends the ACEA by striking the language in section 3(b) of that Act which restricts the distribution of any net revenues from parcel B to holders of equalized allotments and their heirs.

Subsection (b) states that the amendment made by subsection (a) of this section shall apply if this section had been enacted on March 31, 1983.

This provision is intended to make the repeal of section 953(b) of Title 25, United States Code coincident with the date of repeal of the regulations promulgated by the Secretary of the Interior in 1960 to implement the provisions of the ACEA. Absent any evidence of Congressional intent with respect to the duration of the entitlement set forth in section 953(b), the Committee finds it reasonable and appropriate to deem that entitlement to have expired upon the same date that the Secretary published notice that the purpose of the equalization process established pursuant to the ACEA had been accomplished.

Subsection (c) provides that any per capita distribution of tribal revenues of the Band that the Band may make after the date of enactment of this Act shall be made to all members of the Band in equal amounts.

The Committee intends and understands this subsection to mean that any per capita distribution by the Agua Caliente Band after the date of enactment of this Act of any revenue derived from the lands designated in section 953(b) of Title 25, United States Code, as tribal reserves, or from any other source, shall be made to all members of the Band in equal amounts.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for H.R. 700, as amended, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 22, 1998.

Hon. BEN NIGHTHORSE CAMPBELL,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 700, an act to remove the restriction on the distribution of certain revenues from the Mineral Springs parcel to certain members of the Agua Caliente Band of Cahuilla Indians.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kristen Layman.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 700—An act to remove the restriction on the distribution of certain revenues from the Mineral Springs parcel to certain members of the Agua Caliente Band of Cahuilla Indians

H.R. 700 would remove a restriction on the distribution of revenues generated by the Mineral Springs parcel of land to certain members of the Agua Caliente Band of Cahuilla Indians. CBO estimates that enacting H.R. 700 would have no impact on the federal budget because the funds and revenues that the bill would affect are nonfederal moneys. Because H.R. 700 would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

H.R. 700 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. Enacting H.R. 700 would allow the band to use the revenues derived from the Mineral Springs parcel to fund tribal programs.

The CBO staff contact is Kristen Layman. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill H.R. 700, as amended. The Committee finds that the regulatory impact of H.R. 700, as amended, will be minimal.

EXECUTIVE COMMUNICATIONS

The Committee received the statement of Michael J. Anderson, Deputy Assistant Secretary for Indian Affairs, Department of the Interior, on July 8, 1998, and a letter dated August 28, 1998, from

Acting Assistant Secretary of the Interior Linda L. Richardson to Chairman Campbell, regarding H.R. 700.

STATEMENT OF MICHAEL J. ANDERSON, DEPUTY ASSISTANT
SECRETARY FOR INDIAN AFFAIRS

Good morning, Mr. Chairman and members of the Committee. Thank you for the opportunity to present the views of the Department of the Interior on H.R. 700, a bill to remove the restriction on the distribution of revenues from the Mineral Springs parcel B to certain members of the Agua Caliente Band of Cahuilla Indians. The Department supports enactment of this bill.

In 1959, Congress determined that a true equalization of allotments to the Agua Caliente Band could not be made due to the issuance of some high value allotments and the Band's interest in having a tribal reserve. (S. Rep. No. 866, 86th Cong., 1st Sess. 2, 1959; H.R. Rep. No. 903, 86th Cong., 1st Sess. 2, 1959). To address the discrepancy in the value of the allotted lands, Congress limited any distribution of the revenues and profits of "parcel B" of the Mineral Springs lot to those enrolled members and their heirs who were entitled to an equalization allotment on the date of the Act (September 21, 1959). Congress did not mandate that the Tribe make a distribution to those eligible for equalization under the Act, however, and to this date, the Tribe has made no distribution of funds from the revenues of parcel B.

In implementing the Act, the Department determined that a value of \$335,000 was the correct equalization amount. In 1961, the Secretary of the Interior approved a schedule of equalization allotments for the 85 members of the Agua Caliente Band who were entitled to receive such an allotment. The individuals received land or cash or both to reach the determined equalization value of \$335,000. In 1983, the Secretary rescinded the regulations governing the equalization of allotments under the Act since the requirements of the Act had been met and the regulations were no longer necessary.

The Department believes that all of the members of the Agua Caliente Band who were entitled to receive an equalization allotment have received such an allotment and that the purposes of the 1959 Act—to equalize the value to the extent practicable of all allotments issued as of September 21, 1959, to the Band—have been met. Since the purposes of the Act have been fulfilled, the restrictions on the distribution of revenues from parcel B are no longer necessary. In fact, these restrictions have hampered the Tribe's ability to provide assistance to members of the Band who would benefit from a distribution. The administration supports the Senate Committee's amendment to H.R. 700 that would enable the Tribe to make per capita distributions to all members of the Tribe.

As we stated before the House Committee on Resources in June of 1997, the Department continues to rely upon

the legal analysis made by the Justice Department on the version of this bill that was passed by the House during the 104th Congress, then numbered H.R. 3804. In that analysis, the Department of Justice found that the bill would eliminate an inchoate interest in real property that has not ripened into a vested interest. Furthermore, the Department based its analysis on the following: (1) the 1959 Act does not require that the Band distribute revenues derived from parcel B; (2) the distribution provision is more in the nature of a government benefit, and nothing in the 1959 Act suggests that Congress intended to create an interest independent of Congress' continuing authority to alter that benefit to address the needs of the Tribe and individual allottees in furtherance of the federal trust responsibility to Indians; (3) the Band, by not making a distribution over the past 39 years, has not independently created an interest in such a distribution; and (4) the bill merely expands the number of tribal members who are eligible for a distribution of the revenues from parcel B and, as such, falls within Congress' broad authority to expand the beneficiaries of allotment schemes.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, August 28, 1998.

Hon. BEN NIGHTHORSE CAMPBELL,
U.S. Senate,
Washington, DC.

DEAR SENATOR CAMPBELL: Thank you for your letter dated June 18, 1998, requesting the Department's view on H.R. 700. The legislation would remove the restriction on the distribution of certain revenues from the Mineral Springs parcel to certain members of the Agua Caliente Band of Cahuilla Indians.

As stated at the hearing before the Senate Committee on Indian Affairs on July 8, 1998, the Department of the Interior supports enactment of the legislation. The Department is of the opinion that all members of the Agua Caliente Band who were entitled to receive an equalization allotment have received such an allotment and that the purposed of the 1959 Act have been met.

We appreciate your interest in Indian affairs and trust that this information will be beneficial to you.

Sincerely,

LINDA L. RICHARDSON,
Acting Assistant Secretary—Indian Affairs.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of the XXVI of the Standing Rules of the Senate, the Committee states that enactment of H.R. 700, as amended, will result in the following amendment to P.L. 86-339, (25 U.S.C. 951 et seq.). Deletions are in brackets; new material is in italic.

(b) Lands not subject to allotment; distribution of revenues from Mineral Springs parcel.

In no event shall the following tribal lands be subject to allotment, and they shall henceforth be set apart and designated as tribal reserves for the benefit and use of the band:

Cemetery numbered 1, block 235, section 14, township 4 south, range 4 east.

Cemetery numbered 2, as now constituted pursuant to secretarial order, comprising approximately two acres.

Roman Catholic Church, as now constituted pursuant to secretarial order, comprising approximately two acres.

Mineral Springs, lots 3a, 4a, 13, and 14, section 14, township 4 south, range 4 east[:]. **【Provided, That not distribution to member of the band of the net rents, profits, and other revenues derived from that portion of these lands which is designated as "parcel B" in the supplement dated September 8, 1958, to the lease by and between the Agua Caliente Band of Mission Indians and Palm Springs Spa dated January 21, 1958, or of the net income derived from the investment of such net rents, profits, and other revenues or from the sale of said lands or of assets purchased with the net rents, profits, and other revenues aforesaid or with the net income from the investment thereof shall be made except to those enrolled members who are entitled to an equalization allotment or to a cash payment in satisfaction thereof under this subchapter or, in the case of such a member who died after September 21, 1959, to those entitled to participate in his estate, and any such distribution shall be per capita to living enrolled members and per stirpes to participants in the estates of a deceased member.】**

San Andreas Canyon, west half southeast quarter, southeast quarter, southeast quarter section 3, township 5 south, range 4 east.

Palm Canyon, south half and south half north half section 14, township 5 south, range 4 east; all section 24, township 5 south, range 4 east.

Tahquitz Canyon, southwest quarter section 22, township 4 south, range 4 east; north half section 28, township 4 south, range 4 east.

Murray Canyon, east half section 10, township 5 south, range 4 east.