

SHIVWITS BAND OF THE PAIUTE INDIAN TRIBE OF UTAH  
WATER RIGHTS SETTLEMENT ACT

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JULY 17, 2000.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. YOUNG of Alaska, from the Committee on Resources,  
submitted the following

R E P O R T

[To accompany H.R. 3291]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 3291) to provide for the settlement of the water rights claims of the Shivwits Band of the Paiute Indian Tribe of Utah, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act”.

**SEC. 2. FINDINGS.**

Congress finds the following:

(1) It is the official policy of the United States, in keeping with its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle the water rights claims of Indian tribes to avoid lengthy and costly litigation.

(2) Any meaningful policy of Indian self-determination and economic self-sufficiency requires the development of viable Indian reservation economies.

(3) The quantification of water rights and the development of water use facilities is essential to the development of viable Indian reservation economies, particularly in the arid Western States.

(4) The Act of March 3, 1891, provided for the temporary support of the Shebit (or Shivwits) tribe of Indians in Washington County, Utah, and appropriated moneys for the purchase of improvements on lands along the Santa Clara River for the use of said Indians. Approximately 26,880 acres in the same area were set aside as a reservation for the Shivwits Band by Executive order dated April 21, 1916. An additional 1,280 acres were added to the reservation by Congress on May 28, 1937.

(5) The waters of the Santa Clara River are fully appropriated except during high flow periods. A water right was awarded to the United States for the benefit of the Shivwits Band in the 1922 adjudication entitled *St. George Santa Clara Field Co., et al. v. Newcastle Reclamation Co., et al.*, for “1.38 cubic feet of water per second for the irrigation of 83.2 acres of land and for culinary, domestic, and stock watering purposes”, but no provision has been made for water resource development to benefit the Shivwits Band. In general, the remainder of the Santa Clara River’s flow is either diverted on the reservation and delivered through a canal devoted exclusively to non-Indian use that traverses the reservation to a reservoir owned by the Ivins Irrigation Company; dedicated to decreed and certificated rights of irrigation companies downstream of the reservation; or impounded in the Gunlock Reservoir upstream of the reservation. The Band’s lack of access to water has frustrated its efforts to achieve meaningful self-determination and economic self-sufficiency.

(6) On July 21, 1980, the State of Utah, pursuant to title 73, chapter 4, Utah Code Ann., initiated a statutory adjudication of water rights in the Fifth Judicial District Court in Washington County, Utah, Civil No. 800507596, which encompasses all of the rights to the use of water, both surface and underground, within the drainage area of the Virgin River and its tributaries in Utah (“Virgin River Adjudication”), including the Santa Clara River Drainage (“Santa Clara System”).

(7) The United States was joined as a party in the Virgin River Adjudication pursuant to section 666 of title 43, United States Code. On February 17, 1987, the United States filed a Statement of Water User Claim asserting water rights and aboriginal claims for the benefit of the Shivwits Band to water from the Santa Clara River System; said claim covered all potential water rights for Indian tribes or bands in the Virgin River System.

(8) The Virgin River Adjudication will take many years to conclude, entail great expense, and prolong uncertainty as to the availability of water supplies, and thus the parties have sought to settle their dispute over water and reduce the burdens of litigation.

(9) After lengthy negotiation, which included participation by representatives of the United States Government for the benefit of the Shivwits Band, the State of Utah, the Shivwits Band, the Washington County Water Conservancy District, the city of St. George, and others on the Santa Clara River System, the parties have entered into agreements to resolve all water rights claims between and among themselves and to quantify the water right entitlement of the Shivwits Band, and to provide for the construction of water projects to facilitate the settlement of these claims.

(10) Pursuant to the St. George Water Reuse Project Agreement, the Santa Clara Project Agreement, and the Settlement Agreement, the Shivwits Band will receive the right to a total of 4,000 acre-feet of water annually in settlement of its existing State law claims and Federal reserved water right claims.

(11) To advance the goals of Federal Indian policy and consistent with the trust responsibility of the United States to the Shivwits Band, it is appropriate that the United States participate in the implementation of the St. George Water Reuse Project Agreement, the Santa Clara Project Agreement, and the Settlement Agreement in accordance with this Act.

### **SEC. 3. PURPOSES.**

The purposes of this Act are—

(1) to achieve a fair, equitable, and final settlement of all claims to water rights in the Santa Clara River for the Shivwits Band, and the United States for the benefit of the Shivwits Band;

(2) to promote the self-determination and economic self-sufficiency of the Shivwits Band, in part by providing funds to the Shivwits Band for its use in developing a viable reservation economy;

(3) to approve, ratify, and confirm the St. George Water Reuse Project Agreement, the Santa Clara Project Agreement, and the Settlement Agreement, and the Shivwits Water Right described therein;

(4) to authorize the Secretary of the Interior to execute the St. George Water Reuse Project Agreement, the Santa Clara Project Agreement, and the Settlement Agreement, and to take such actions as are necessary to implement these agreements in a manner consistent with this Act; and

(5) to authorize the appropriation of funds necessary for implementation of the St. George Water Reuse Project Agreement, the Santa Clara Project Agreement, and the Settlement Agreement.

### **SEC. 4. DEFINITIONS.**

In this Act:

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

(2) UTAH.—The term “Utah” means the State of Utah, by and through its Department of Natural Resources.

(3) SHIVWITS BAND.—The term “Shivwits Band” means the Shivwits Band of the Paiute Indian Tribe of Utah, a constituent band of the Paiute Indian Tribe of Utah, a federally recognized Indian tribe organized under section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476), and the Act of April 3, 1980 (94 Stat. 317).

(4) PAIUTE INDIAN TRIBE OF UTAH.—The term “Paiute Indian Tribe of Utah” means the federally recognized Indian Tribe organized under section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476), and the Act of April 3, 1980 (94 Stat. 317), comprised of five bands of Southern Paiute Indians (Shivwits, Indian Peaks, Cedar, Koosharem, and Kanosh Bands).

(5) DISTRICT.—The term “District” means the Washington County Water Conservancy District, a Utah water conservancy district.

(6) ST. GEORGE.—The term “St. George” means St. George City, a Utah municipal corporation.

(7) VIRGIN RIVER ADJUDICATION.—The term “Virgin River Adjudication” means the statutory adjudication of water rights initiated pursuant to title 73, chapter 4, Utah Code Ann. and pending in the Fifth Judicial District Court in Washington County, Utah, Civil No. 800507596.

(8) ST. GEORGE WATER REUSE PROJECT AGREEMENT.—The term “St. George Water Reuse Project Agreement” means the agreement among the United States for the benefit of the Shivwits Band, Utah, the Shivwits Band, and St. George City, together with all exhibits thereto, as the same is approved and executed by the Secretary of the Interior pursuant to section 8 of this Act.

(9) SANTA CLARA PROJECT AGREEMENT.—The term “Santa Clara Project Agreement” means the agreement among the United States for the benefit of the Shivwits Band, Utah, the Shivwits Band, the Washington County Water Conservancy District, St. George City, the New Santa Clara Field Canal Company, the St. George Clara Field Canal Company, the Ivins Irrigation Company, the Southgate Irrigation Company, Bloomington Irrigation Company, Ed Bowler, and the Lower Gunlock Reservoir Company, together with all exhibits thereto, as the same is approved and executed by the Secretary of the Interior pursuant to section 8 of this Act.

(10) SETTLEMENT AGREEMENT.—The term “Settlement Agreement” means that agreement among the United States for the benefit of the Shivwits Band, Utah, the Shivwits Band, the Washington County Water Conservancy District, St. George City, the New Santa Clara Field Canal Company, the St. George Clara Field Canal Company, the Ivins Irrigation Company, the Southgate Irrigation Company, Bloomington Irrigation Company, Ed Bowler, and the Lower Gunlock Reservoir Company, together with all exhibits thereto, as the same is approved and executed by the Secretary of the Interior pursuant to section 8 of this Act.

(11) SHIVWITS WATER RIGHT.—The term “Shivwits Water Right” means the water rights of the Shivwits Band set forth in the Settlement Agreement and as settled, confirmed, and ratified by section 7 of this Act.

(12) SHIVWITS BAND TRUST FUND.—The term “Shivwits Band Trust Fund” means the Trust Fund authorized in section 11 of this Act to further the purposes of the Settlement Agreement and this Act.

(13) VIRGIN RIVER RESOURCE MANAGEMENT AND RECOVERY PROGRAM.—The term “Virgin River Resource Management and Recovery Program” means the proposed multiagency program, to be administered by the United States Fish and Wildlife Service, Bureau of Land Management, National Park Service, Utah, and the District, whose primary purpose is to prioritize and implement native fish recovery actions that offset impacts due to future water development in the Virgin River basin.

#### SEC. 5. ST. GEORGE WATER REUSE PROJECT.

(a) ST. GEORGE WATER REUSE PROJECT.—The St. George Water Reuse Project shall consist of water treatment facilities, a pipeline, and associated pumping and delivery facilities owned and operated by St. George, which is a component of, and shall divert water from, the Water Reclamation Facility located in St. George, Utah, and shall transport this water for delivery to and use by St. George and the Shivwits Band. St. George shall make 2,000 acre-feet of water available annually for use by the Shivwits Band in accordance with the St. George Water Reuse Project Agreement and this Act.

(b) PROJECT CONSTRUCTION OPERATION AND MAINTENANCE.—(1) St. George shall be responsible for the design, engineering, permitting, construction, operation, maintenance, repair, and replacement of the St. George Water Reuse Project, and the

payment of its proportionate share of these project costs as provided for in the St. George Water Reuse Project Agreement.

(2) The Shivwits Band and the United States for the benefit of the Shivwits Band shall make available, in accordance with the terms of the St. George Water Reuse Agreement and this Act, a total of \$15,000,000 to St. George for the proportionate share of the design, engineering, permitting, construction, operation, maintenance, repair, and replacement of the St. George Water Reuse Project associated with the 2,000 acre-feet annually to be provided to the Shivwits Band.

**SEC. 6. SANTA CLARA PROJECT.**

(a) **SANTA CLARA PROJECT.**—The Santa Clara Project shall consist of a pressurized pipeline from the existing Gunlock Reservoir across the Shivwits Reservation to and including Ivins Reservoir, along with main lateral pipelines. The Santa Clara Project shall pool and deliver the water rights of the parties as set forth in the Santa Clara Project Agreement. The Santa Clara Project shall deliver to the Shivwits Band a total of 1,900 acre-feet annually in accordance with the Santa Clara Project Agreement and this Act.

(b) **INSTREAM FLOW.**—The Santa Clara Project shall release instream flow water from the Gunlock Reservoir into the Santa Clara River for the benefit of the Virgin Spinedace, in accordance with the Santa Clara Project Agreement and this Act.

(c) **PROJECT FUNDING.**—The Utah Legislature and the United States Congress have each appropriated grants of \$750,000 for the construction of the Santa Clara Project. The District shall provide a grant of \$750,000 for the construction of the Santa Clara Project. The District shall provide any additional funding required for the construction of the Santa Clara Project.

(d) **PROJECT CONSTRUCTION, OPERATION, AND MAINTENANCE.**—The District shall be responsible for the permitting, design, engineering, construction, and the initial operation, maintenance, repair, and replacement of the Santa Clara Project. Operation, maintenance, repair, and replacement activities and costs of the Santa Clara Project shall be handled in accordance with the terms of the Santa Clara Project Agreement.

**SEC. 7. SHIVWITS WATER RIGHT.**

(a) **IN GENERAL.**—The Shivwits Band and its members shall have the right in perpetuity to divert, pump, impound, use, and reuse a total of 4,000 acre-feet of water annually from the Virgin River and Santa Clara River systems, to be taken as follows:

(1) 1,900 acre-feet annually from the Santa Clara River System, with an 1890 priority date in accordance with the terms of the Santa Clara Project Agreement.

(2) 2,000 acre-feet of water annually from the St. George Water Reuse Project as provided for in the St. George Water Reuse Project Agreement. The Shivwits Band shall have first priority to the reuse water provided from the St. George Water Reclamation Facility.

(3) 100 acre-feet annually, with a 1916 priority date, from groundwater on the Shivwits Reservation.

(b) **WATER RIGHTS CLAIMS.**—All water rights claims of the Shivwits Band, and the Paiute Indian Tribe of Utah acting on behalf of the Shivwits Band, are hereby settled. The Shivwits Water Right is hereby ratified, confirmed, and shall be held in trust by the United States for the benefit of the Shivwits Band.

(c) **SETTLEMENT.**—The Shivwits Band may use water from the springs and runoff located on the Shivwits Reservation. The amount used from these sources will be reported annually to the Utah State Engineer by the Shivwits Band and shall be counted against the annual 4,000 acre-feet Shivwits Water Right.

(d) **ABANDONMENT, FORFEITURE, OR NONUSE.**—The Shivwits Water Right shall not be subject to loss by abandonment, forfeiture, or nonuse.

(e) **USE OF LEASE.**—The Shivwits Band may use or lease the Shivwits Water Right for either or both of the following:

(1) For any purpose permitted by tribal or Federal law anywhere on the Shivwits Band Reservation. Once the water is delivered to the Reservation, such use shall not be subject to State law, regulation, or jurisdiction.

(2) For any beneficial use off the Shivwits Reservation in accordance with the St. George Water Reuse Agreement, the Santa Clara Project Agreement, the Settlement Agreement, and all applicable Federal and State laws.

No service contract, lease, exchange, or other agreement entered into under this subsection may permanently alienate any portion of the Shivwits Water Right.

**SEC. 8. RATIFICATION OF AGREEMENTS.**

Except to the extent that the St. George Water Reuse Project Agreement, the Santa Clara Project Agreement, and the Settlement Agreement conflict with the

provisions of this Act, such agreements are hereby approved, ratified, and confirmed. The Secretary is hereby authorized to execute, and take such other actions as are necessary to implement, such agreements.

**SEC. 9. SATISFACTION OF CLAIMS.**

(a) **FULL SATISFACTION OF CLAIMS.**—The benefits realized by the Shivwits Band and its members under the St. George Water Reuse Project Agreement, the Santa Clara Project Agreement, the Settlement Agreement, and this Act shall constitute full and complete satisfaction of all water rights claims, and any continuation thereafter of any of these claims, of the Shivwits Band and its members, and the Paiute Indian Tribe of Utah acting on behalf of the Shivwits Band, for water rights or injuries to water rights under Federal and State laws from time immemorial to the effective date of this Act. Notwithstanding the foregoing, nothing in this Act shall be—

(1) deemed to recognize or establish any right of a member of the Shivwits Band to water on the Shivwits Reservation; or

(2) interpreted or construed to prevent or prohibit the Shivwits Band from participating in the future in other water projects, or from purchasing additional water rights for their benefit and use, to the same extent as any other entity.

(b) **RELEASE.**—By the approval, ratification, and confirmation herein of the St. George Water Reuse Project Agreement, the Santa Clara Project Agreement, and the Settlement Agreement, the United States executes the following waiver to be effective upon satisfaction of the conditions set forth in section 14 of this Act. For purposes of this section—

(1) “water rights” means rights under State and Federal law to divert, pump, impound, use, or reuse, or to permit others to divert, pump, impound, use or reuse water; and

(2) “injuries to water rights” means the loss, deprivation, or diminution of water rights.

(c) **WAIVER AND RELEASE.**—Except as otherwise provided in the Settlement Agreement, this Act, or the proposed judgment and decree referred to in section 14(a)(7) of this Act, the United States, on behalf of the Shivwits Band and the Paiute Indian Tribe of Utah acting on behalf of the Shivwits Band, waives and releases the following:

(1) All claims for water rights or injuries to water rights for lands within the Shivwits Reservation that accrued at any time up to and including the effective date determined by section 14 of this Act, and any continuation thereafter of any of these claims, that the United States for the benefit of the Shivwits Band may have against Utah, any agency or political subdivision thereof, or any person, entity, corporation, or municipal corporation.

(2) All claims for water rights or injuries to water rights for lands outside of the Shivwits Reservation, where such claims are based on aboriginal occupancy of the Shivwits Band, its members, or their predecessors, that accrued at any time up to and including the effective date determined by section 14 of this Act, and any continuation thereafter of any of these claims, that the United States for the benefit of the Shivwits Band may have against Utah, any agency or political subdivision thereof, or any person, entity, corporation, or municipal corporation.

(3) All claims for trespass to lands on the Shivwits Reservation regarding the use of Ivins Reservoir that accrued at any time up to and including the effective date determined by section 14 of this Act.

(d) **SAVINGS PROVISION.**—In the event the authorizations contained in subsection (d) of this section do not become effective pursuant to section 14, the Shivwits Band and the United States shall retain the right to assert past and future water rights claims as to all lands of the Shivwits Reservation, and the water rights claims and defenses of all other parties to the agreements shall also be retained.

**SEC. 10. WATER RIGHTS AND HABITAT ACQUISITION PROGRAM.**

(a) **IN GENERAL.**—The Secretary is authorized to establish a water rights and habitat acquisition program in the Virgin River Basin—

(1) primarily for the benefit of native plant and animal species in the Santa Clara River Basin which have been listed, are likely to be listed, or are the subject of a duly approved conservation agreement under the Endangered Species Act; and

(2) secondarily for the benefit of native plant and animal species in other parts of the Virgin River Basin which have been listed, are likely to be listed, or are the subject of a duly approved conservation agreement under the Endangered Species Act.

(b) **WATER AND WATER RIGHTS.**—The Secretary is authorized to acquire water and water rights, with or without the lands to which such rights are appurtenant, and to acquire shares in irrigation and water companies, and to transfer, hold, and exercise such water and water rights and related interests to assist the conservation and recovery of any native plant or animal species described in subsection (a).

(c) **REQUIREMENTS.**—Acquisition of the water rights and related interests pursuant to this section shall be subject to the following requirements:

(1) Water rights acquired must satisfy eligibility criteria adopted by the Secretary.

(2) Water right purchases shall be only from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to the water rights acquisition program established by this section.

(3) All water rights shall be transferred and administered in accordance with any applicable State law.

(d) **HABITAT PROPERTY.**—The Secretary is authorized to acquire, hold, and transfer habitat property to assist the conservation and recovery of any native plant or animal species described in section 10(a). Acquisition of habitat property pursuant to this section shall be subject to the following requirements:

(1) Habitat property acquired must satisfy eligibility criteria adopted by the Secretary.

(2) Habitat property purchases shall be only from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to the habitat acquisition program established by this section.

(e) **CONTRACT.**—The Secretary is authorized to administer the water rights and habitat acquisition program by contract or agreement with a non-Federal entity which the Secretary determines to be qualified to administer such program. The water rights and habitat acquisition program shall be administered pursuant to the Virgin River Resource Management and Recovery Program.

(f) **AUTHORIZATION.**—There is authorized to be appropriated from the Land and Water Conservation Fund in fiscal year 2003 or any year thereafter, a total of \$3,000,000 for the water rights and habitat acquisition program authorized in this section. The Secretary is authorized to deposit and maintain this appropriation in an interest bearing account, said interest to be used for the purposes of this section. The funds authorized to be appropriated by this section shall not be in lieu of or supersede any other commitments by Federal, State, or local agencies. The funds appropriated pursuant to this section shall be available until expended, and shall not be expended for the purpose set forth in subsection (a)(2) until the Secretary has evaluated the effectiveness of the instream flow required and provided by the Santa Clara Project Agreement, and has assured that the appropriations authorized in this section are first made available for the purpose set forth in subsection (a)(1).

#### **SEC. 11. SHIVWITS BAND TRUST FUND.**

(a) **ESTABLISHMENT OF TRUST FUND.**—There is established in the Treasury of the United States a fund to be known as the “Shivwits Band Trust Fund” (hereinafter called the “Trust Fund”). The Secretary shall deposit into the Trust Fund the funds authorized to be appropriated in subsections (b) and (c). Except as otherwise provided in this Act, the Trust Fund principal and any income accruing thereon shall be managed in accordance with the American Indian Trust Fund Management Reform Act (108 Stat. 4239; 25 U.S.C. 4001 et seq.).

(b) **AUTHORIZATION.**—There is authorized to be appropriated a total of \$20,000,000, in the 2001, 2002, or 2003 fiscal years for the following purposes:

(1) \$5,000,000, which shall be made available to the Shivwits Band from the Trust Fund for purposes including but not limited to those that would enable the Shivwits Band to put to beneficial use all or part of the Shivwits Water Right, to defray the costs of any water development project in which the Shivwits Band is participating, or to undertake any other activity that may be necessary or desired for implementation of the St. George Water Reuse Project Agreement, the Santa Clara Project Agreement, the Settlement Agreement, or for economic development on the Shivwits Reservation.

(2) \$15,000,000, which shall be made available by the Secretary and the Shivwits Band to St. George for the St. George Water Reuse Project, in accordance with the St. George Water Reuse Project Agreement.

(c) **SHARE OF CERTAIN COSTS.**—There is authorized to be appropriated to the Trust Fund in fiscal year 2001, 2002, or 2003 a total of \$1,000,000 to assist with the Shivwits Band’s proportionate share of operation, maintenance, repair, and replacement costs of the Santa Clara Project as provided for in the Santa Clara Project Agreement.

(d) **USE OF THE TRUST FUND.**—Except for the \$15,000,000 appropriated pursuant to subsection (b)(2), all Trust Fund principal and income accruing thereon may be

used by the Shivwits Band for the purposes described in subsection (b)(1). The Shivwits Band, with the approval of the Secretary, may withdraw the Trust Fund and deposit it in a mutually agreed upon private financial institution. That withdrawal shall be made pursuant to the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.). If the Shivwits Band exercises its right pursuant to this subsection to withdraw the Trust Fund and deposit it in a private financial institution, except as provided in the withdrawal plan, neither the Secretary nor the Secretary of the Treasury shall retain any oversight over or liability for the accounting, disbursement, or investment of the funds.

(e) **NO PER CAPITA PAYMENTS.**—No part of the principal of the Trust Fund, or of the income accruing thereon, or of any revenue generated from any water use sub-contract, shall be distributed to any member of the Shivwits Band on a per capita basis.

(f) **LIMITATION.**—The moneys authorized to be appropriated under subsections (b) and (c) shall not be available for expenditure or withdrawal by the Shivwits Band until the requirements of section 14 have been met so that the decree has become final and the waivers and releases executed pursuant to section 9(b) have become effective. Once the settlement becomes effective pursuant to the terms of section 14 of this Act, the assets of the Trust Fund belong to the Shivwits Band and are not returnable to the United States Government.

#### **SEC. 12. ENVIRONMENTAL COMPLIANCE.**

(a) **NATIONAL ENVIRONMENTAL POLICY ACT.**—Execution by the Secretary of the St. George Water Reuse Project Agreement, the Santa Clara Project Agreement, or the Settlement Agreement shall not constitute major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) **OTHER REQUIREMENTS.**—The Secretary shall comply with all other aspects of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and other applicable environmental laws in implementing the terms of the St. George Water Reuse Agreement, the Santa Clara Project Agreement, the Settlement Agreement, and this Act.

#### **SEC. 13. MISCELLANEOUS PROVISIONS.**

(a) **OTHER INDIAN TRIBES.**—Nothing in the Settlement Agreement or this Act shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims, or entitlements to water of any Indian tribe, pueblo, or community, other than the Shivwits Band and the Paiute Indian Tribe of Utah acting on behalf of the Shivwits Band.

(b) **PRECEDENT.**—Nothing in this Act shall be construed or interpreted as a precedent for the litigation of reserved water rights or the interpretation or administration of future water settlement Acts.

(c) **WAIVER OF SOVEREIGN IMMUNITY.**—Except to the extent provided in subsections (a), (b), and (c) of section 208 of the Department of Justice Appropriation Act, 1953 (43 U.S.C. 666), nothing in this Act may be construed to waive the sovereign immunity of the United States. Furthermore, the submission of any portion of the Settlement Agreement to the District Court in the Virgin River Adjudication shall not expand State court jurisdiction or expand in any manner the waiver of sovereign immunity of the United States in section 666 of title 43, United States Code, or any other provision of Federal law.

(d) **APPRAISALS.**—Notwithstanding any other law to the contrary, the Secretary is authorized to approve any right-of-way appraisal which has been completed in accordance with the provisions of the Santa Clara Project Agreement.

#### **SEC. 14. EFFECTIVE DATE.**

(a) **IN GENERAL.**—The authorization contained in section 9(b) of this Act shall become effective as of the date the Secretary causes to be published in the Federal Register a statement of findings that—

- (1) the funds authorized by section 11 (b) and (c) have been appropriated and deposited into the Trust Fund;
- (2) the funds authorized by section 10(c) have been appropriated;
- (3) the St. George Water Reuse Project Agreement has been modified to the extent it is in conflict with this Act and has been executed by all parties thereto;
- (4) the Santa Clara Project Agreement has been modified to the extent it is in conflict with this Act and has been executed by all parties thereto;
- (5) the Settlement Agreement has been modified to the extent it is in conflict with this Act and has been executed by all parties thereto;
- (6) the State Engineer of Utah has taken all actions and approved all applications necessary to implement the provisions of the St. George Water Reuse

Agreement, the Santa Clara Project Agreement, and the Settlement Agreement, from which no further appeals may be taken; and

(7) the court has entered a judgment and decree confirming the Shivwits Water Right in the Virgin River Adjudication pursuant to Utah Rule of Civil Procedure 54(b), that confirms the Shivwits Water Right and is final as to all parties to the Santa Clara Division of the Virgin River Adjudication and from which no further appeals may be taken, which the United States and Utah find is consistent in all material aspects with the Settlement Agreement and with the proposed judgment and decree agreed to by the parties to the Settlement Agreement.

(b) DEADLINE.—If the requirements of paragraphs (1) through (7) of subsection (a) are not completed to allow the Secretary's statement of findings to be published by December 31, 2003—

(1) except as provided in section 9(c), this Act shall be of no further force and effect; and

(2) all unexpended funds appropriated under section 11 (b) and (c), together with all interest earned on such funds shall revert to the general fund of the United States Treasury on December 31, 2004.

#### PURPOSE OF THE BILL

The purpose of H.R. 3291 is to provide for the settlement of the water rights claims of the Shivwits Band of the Paiute Indian Tribe of Utah, and for other purposes.

#### BACKGROUND AND NEED FOR LEGISLATION

On July 21, 1980, the State of Utah initiated a statutory adjudication of water rights within the drainage of the Virgin River, including the Santa Clara River. The United States was joined as a party in the Virgin River Adjudication and filed a claim on its own behalf and on behalf of the Shivwits Band of Paiute Indian Tribe as their trustee. However, due to the time and expense of such adjudication, the parties have entered into agreements to resolve the water rights claims by construction of two water projects and guaranteeing 4,000 acre-feet of water per year to the Shivwits. These projects are particularly necessary due to the variability of water flows in the Santa Clara River.

First, the St. George Water Reuse Project, consisting of water treatment facilities, a pipeline, and other associated facilities, would be built to provide reuse water to St. George, Utah, and provide 2,000 acre-feet annually to the Shivwits Band. Construction cost for the project, amounting to \$15 million, would be provided by the Shivwits Band and the United States pursuant to this legislation.

Second, the Santa Clara Project, a pressurized pipeline, would pool and deliver water, including 1,900 acre-feet in an average or above average year to the Shivwits Band. Additionally, the Santa Clara Project would release instream flow water from the Gunlock Reservoir for the benefit of the Virgin Spinedace, a fish. Utah, the United States, the Washington County Water Conservancy District would each contribute a grant of \$750,000 for the construction of this project. The District will provide any additional funding required for the construction of the project. The United States would make available to the Shivwits Band \$1 million to cover the Shivwits' proportionate share of the operation, maintenance repair and replacement costs of the Project.

Third, the Shivwits would receive the right to 100 acre-feet annually of groundwater produced from wells on the Shivwits Reservation. A \$5 million Trust Fund is established for the Shivwits

for the purposes of using the Shivwits water, defraying other water development project costs or for economic development on the reservation.

Finally, this legislation authorizes the Secretary of the Interior to establish a water right and habitat acquisition program in the Virgin River Basin for the benefit of native plant and animal species, which have been listed, are likely to be listed, or are the subject of a conservation agreement under the Endangered Species Act. Acquisition of water rights and habitat property must be primarily in the Santa Clara River Basin and secondarily in other parts of the Virgin River Basin, be from willing sellers and would be funded by an appropriation of \$3 million.

#### COMMITTEE ACTION

H.R. 3291 was introduced on November 10, 1999, by Congressman James V. Hansen (R-UT). The bill was referred to the Committee on Resources. On April 4, 2000, the Full Committee on Resources held a hearing on the bill. On May 24, 2000, the Full Resources Committee met to consider the bill. Congressman Hansen offered an amendment in the nature of a substitute which, along with technical corrections to the bill, did four things. First, it dictated that the requirements of section 14 of the bill be met before funds are available. Second, it stated that nothing in the bill may be construed as expanding the waiver of U.S. sovereign immunity provided for in 43 U.S.C. 666. Third, it established a deadline to limit the further funding of the project if the requirements of section 14 of the bill is not met. Fourth, it authorized to be appropriated from the Land and Water Conservation Fund in fiscal 2003 a total of \$3 million for the water rights and habitat acquisition program authorized in the bill.

The main objective of these changes is to clarify intent and conform the language to existing statutory law and practice. The amendment was the result of discussions between the Department of the Interior, the Shivwits Band of the Paiute Indian Tribe of Utah, the Department of Justice, the State of Utah, the City of St. George and the Washington County Water Conservancy District. The amendment was adopted by voice vote. The bill as amended was then ordered favorably reported to the House of Representatives by voice vote.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

The short title of the bill is the Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act.

##### *Section 2. Findings*

This section provides 11 findings.

##### *Section 3. Purposes*

The main purpose of H.R. 3291 is to resolve and settle all water right claims of the Shivwits Band and the United States for the benefit of the Shivwits Band on the Santa Clara River system.

*Section 4. Definitions*

This section defines 13 terms used in the bill.

*Section 5. St. George Water Reuse Project*

The St. George Water Reuse Project will consist of water treatment facilities, a pipeline, and associated pumping and delivery facilities owned and operated by City of St. George, Utah. These facilities will divert water from the Water Reclamation Facility near St. George, Utah, and transport this water for delivery and use by St. George and Shivwits Band. St. George will make 2,000 acre feet of water available annually to the Shivwits Band at the eastern boundary of the Shivwits Reservation and shall be responsible for the construction, operation and maintenance, repair and replacement of the St. George Water Reuse Project. The Shivwits Band, and the United States on behalf of the Shivwits, is obligated to pay \$15 million to St. George for the Shivwits proportionate share of the construction, operation, maintenance, repair and replacement of the St. George Water Reuse Project.

*Section 6. Santa Clara project*

The Santa Clara Project pools the water from the water rights of the St. George Clara Field

Canal Company, the New Santa Clara Field Canal Company, the Ivins Irrigation Company and the Lower Gunlock Reservoir Corporation and the Shivwits Band. This pooled water is then distributed to the pooling parties. Pursuant to the Santa Clara Project Agreement, the Shivwits Band will receive 1900 acre feet annually from the Santa Clara River in an average water year.

All users will take proportionate reductions in below-average water years. Surface water rights will be supplemented by underground water rights of the parties, including St. George, in below-average years.

*Section 7. Shivwits water right*

The total water right of the Shivwits Band under the settlement agreements is 4,000 acre-feet per year. The water will be provided from three projects or sources, which are: 2,000 acre-feet from the St. George Water Reuse Project; 1,900 acre-feet from the Santa Clara Project; and 100 acre-feet from wells on the Shivwits reservation.

*Section 8. Ratification of agreements*

Except to the extent that the St. George Water Reuse Project Agreement, the Santa Clara Project Agreement, and the Settlement Agreement conflict with the provisions of this bill, this section approves, ratifies and confirms those agreements.

*Section 9. Satisfaction of claims*

The benefits realized by the Shivwits Band and its members under the settlement agreements and this bill constitute full and complete satisfaction of all water rights claims of the Shivwits Band and its members.

On behalf of the Shivwits Band, and the Paiute Indian Tribe of Utah acting on behalf of the Shivwits Band, the United States waives all claims for water rights or injuries to those rights within

the Shivwits Reservation or lands outside the reservation where such claims are based on aboriginal occupancy of the Shivwits Band, that accrued up to and including the effective date determined by section 14 of this bill, that they may have against the State of Utah, any agency or political subdivision thereof, or any person, entity, corporation, or municipal corporation.

*Section 10. Water rights and habitat acquisition program*

Under existing practices, the Santa Clara River below the Gunlock Reservoir is generally dry during the non-irrigation season. The River is habitat for the Virgin Spinedace. Under this section, the Secretary of the Interior is authorized to establish a water rights and habitat acquisition program. This section authorizes to be appropriated from the Land and Water Conservation Fund in fiscal years 2003 or thereafter a total of \$3 million for the water rights and habitat acquisition program. These funds are non-lapsing.

*Section 11. Shivwits Band Trust Fund*

It is established in the Treasury of the United States a fund that will be known as the Shivwits Band Trust Fund. There is authorized to be appropriated a total of \$20 million in the 2001, 2002, and 2003 fiscal years, for this fund. This fund shall be managed in accordance with the American Indian Trust Fund Management Reform Act (25 U.S.C. 4001).

From the Shivwits Band Trust Fund, \$15 million shall be made available by the Secretary and Shivwits Band to St. George for the St. George Water Reuse Project. The remaining \$5 million should go toward putting to beneficial use the Shivwits water rights or any water development projects the tribe is participating in, or for economic development on the Shivwits Reservation.

There is also authorized to be appropriated to the Trust Fund in fiscal year 2001, 2002, or 2003 a total of \$1 million to assist with the Shivwits Band's proportionate share of operation, maintenance, repair, and replacement costs of the Santa Clara Project.

No part of the Shivwits Trust Fund or income accruing thereon may be distributed to any member of the Shivwits Band on a per capita basis.

*Section 12. Environmental compliance*

Execution by the Secretary of the St. George Water Reuse Project Agreement, the Santa Clara Project Agreement, or the Settlement Agreement does not constitute major federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

*Section 13. Miscellaneous provisions*

Nothing in the bill may be construed as waiving or expanding the waiver of U.S. sovereign immunity as provided for in 43 U.S.C. 666 or as a precedent for the litigation of reserved water rights or the interpretation or administration of future water settlement acts. Nothing in this bill or the Settlement Agreement be construed to affect land and water rights claims of a Indian tribe, pueblo, or community, other than the Shivwits Band and the Paiute Indian Tribe of Utah acting on behalf of the Shivwits Band.

The Secretary of Interior is authorized to approve right-of-way appraisals completed in accordance with the provisions of the Santa Clara Project Agreement.

*Section 14. Effective date*

The authorization contained in section 9(b) of this bill shall become effective once the requirements of section 14 are met. If the requirements of this section are not met by December 31, 2003, the authorization contained in section 9(b) of this bill shall not take effect and all unexpended funds appropriated or otherwise generated under subsections 11(b) and (c), shall revert to the general fund of the United States Treasury on December 31, 2004.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. *Cost of Legislation.* Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. *Congressional Budget Act.* As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. *Government Reform Oversight Findings.* Under clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on this bill.

4. *Congressional Budget Office Cost Estimate.* Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
 Washington, DC, June 15, 2000.

Hon. DON YOUNG,  
 Chairman, Committee on Resources,  
 House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3291, the Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lanette Keith (for federal costs) and Majorie Miller (for the impact on state, local, and tribal governments).

Sincerely,

BARRY B. ANDERSON  
 (For Dan L. Crippen, Director).

Enclosure.

*H.R. 3291—Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act*

Summary: H.R. 3291 would provide for the settlement of water rights claims of the Shivwits Band of the Paiute Indian Tribe, pending final approval by the tribe and the state of Utah. The bill would authorize appropriations for the Department of the Interior (DOI) to implement the agreement, but these funds could not be spent until the agreement is approved by a Utah court. H.R. 3291 would create the Shivwits Band Trust Fund and would allow the tribe to spend amounts appropriated to the fund. In addition, the bill would authorize funding to acquire water rights and wildlife habitat in the Virgin River Basin.

Based on information from DOI, CBO estimates that implementing H.R. 3291 would cost \$24 million over the 2001–2005 period, assuming the appropriation of the authorized amounts. Enacting H.R. 3291 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 3291 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Any costs resulting from the settlement agreement would be incurred voluntarily by the state, local, and tribal government as parties to that agreement.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3291 is shown in the following table. The costs of this legislation would be discretionary and would fall within budget function 450 (community and regional development).

	By fiscal year, in millions of dollars—					
	2000	2001	2002	2003	2004	2005
SPENDING SUBJECT TO APPROPRIATION						
Authorization level .....	0	0	0	24	0	0
Estimated outlays .....	0	0	0	22	1	1

*Basis of estimate*

H.R. 3291 would authorize the appropriation of \$24 million over the 2001–2003 period; however, no funds could be spent until all requirements in section 14 are satisfied, including approval of the

water rights settlement agreement by all parties to the agreement and by a Utah court. Based on information from the tribe, other parties to the agreement and DOI, CBO expects that the parties would approve the settlement during fiscal year 2001. For this estimate, CBO assumes the authorized funds would be appropriated in 2003 because, under the provisions of the bill, no funds would be available until an appropriation has been provided for the water rights and habitat acquisition program, which is authorized to commence in 2003.

**Shivwits Band Trust Fund.**—H.R. 3291 would authorize the appropriation of \$21 million to the Shivwits Band Trust Fund over the 2001–2003 period. This amount includes \$15 million for the St. George Water Reuse Project, \$1 million for operation, maintenance and repair of the Santa Clara Project, and \$5 million for the tribe. After the settlement agreement is approved, funds deposited into this trust fund would become the tribe’s property. Thus, assuming that appropriations of \$21 million are provided in 2003, outlays of that amount would be recorded in that year.

**Water Rights and Habitat Acquisition Program.**—H.R. 3291 would authorize the appropriation of \$3 million in 2003 for DOI to develop a water rights and habitat acquisition program for the purpose of conserving native plant and animal species within the Virgin River Basin. None of these funds could be spent until the settlement agreement is approved. This appropriation would not be deposited into the trust fund, so spending would occur as the program is implemented over the 2003–2005 period.

Pay-as-you-go considerations: None.

Estimated impact of State, local, and tribal governments: H.R. 3291, contains no intergovernmental mandates as defined in UMRA. Any costs resulting from the settlement agreement would be incurred voluntarily by the state, local, and tribal governments that are parties to that agreement. The tribe has agreed to release the United States from all claims relating to its water rights in exchange for the benefits to be provided by this bill. The state of Utah and the affected local governments have agreed to make financial contributions in support of the projects covered by this agreement.

Estimated impact on the private sector: This bill contains no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Lanette Keith; impact on State, local, and tribal governments: Marjorie Miller; impact on the private sector: Natalie Tawil.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

#### COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

#### CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.