

**DUCHESNE CITY WATER RIGHTS CONVEYANCE
ACT AND SHIVWITS BAND OF THE PAIUTE
INDIAN TRIBE OF UTAH WATER RIGHTS SET-
TLEMENT ACT**

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON

S. 2350/H.R. 3468

**TO DIRECT THE SECRETARY OF THE INTERIOR TO CONVEY TO
CERTAIN WATER RIGHTS TO DUCHESNE CITY, UT**

S. 2351/H.R. 3291

**TO PROVIDE FOR THE SETTLEMENT OF THE WATER RIGHTS CLAIMS
OF THE SHIVWITS BAND OF THE PAIUTE INDIAN TRIBE OF UTAH**

**MAY 2, 2000
WASHINGTON, DC**



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**DUCHESNE CITY WATER RIGHTS CONVEY-
ANCE ACT AND SHIVWITS BAND OF THE
PAIUTE INDIAN TRIBE OF UTAH WATER
RIGHTS SETTLEMENT ACT**

TUESDAY, MAY 2, 2000

**U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
*Washington, DC.***

The committee met, pursuant to notice, at 10:11 a.m. in room 485, Russell Senate Building, Hon. Orrin G. Hatch (acting chairman of the committee) presiding.

Present: Senators Hatch, Inouye, and Bennett.

**STATEMENT OF HON. ORRIN G. HATCH, U.S. SENATOR FROM
UTAH, ACTING CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS**

Senator HATCH. If we can, we'll get going here.

I appreciate, Senator Inouye, the Democrat leader on the committee, being patient here.

Today's hearing will examine S. 2530 and S. 2531, both of which address Indian water rights issues in the State of Utah.

I would like to take this opportunity to thank Chairman Campbell and the ranking member, Senator Inouye, for scheduling this hearing today and for assisting us to expedite consideration of this legislation.

We will first hear testimony on the Duchesne City Water Rights Conveyance Act. The legislation resolves a longstanding question of water rights for the city of Duchesne.

In 1905, when the city was established, water for municipal and domestic use was appropriated to the city by the United States Indian Service, which held title to these rights. However, before the title could be transferred to Duchesne, the agency was replaced by the Bureau of Indian Affairs [BIA]. The name change has proven to be an obstacle to the legal transfer of water rights to the city, so I hope this legislation will finally get the city out of legal limbo with regard to their water rights.

We will then hear testimony on the Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act. The Shivwits' water bill will provide for the settlement of water rights issues of the Santa Clara River in Washington County, UT. The bill authorizes and funds two water development projects that will help to finalize the settlement by balancing the competing needs of the

Shivwits Band, the city of St. George, the water conservancy district, and the threatened or endangered species in the region.

The importance of this legislation is heightened by the fact that Washington County is the driest county in Utah, which is the second-driest State in the Union.

Again, I want to thank the chairman and ranking member for their courtesies, and I also want to welcome our witnesses this morning. I certainly look forward to hearing all of your testimonies.

[Text of S. 2350, H.R. 3468, S. 2351, H.R. 3291 follow:]

106TH CONGRESS
2D SESSION

S. 2350

To direct the Secretary of the Interior to convey to certain water rights
to Duchesne City, Utah.

IN THE SENATE OF THE UNITED STATES

APRIL 4, 2000

Mr. HATCH (for himself and Mr. BENNETT) introduced the following bill;
which was read twice and referred to the Committee on Energy and Nat-
ural Resources

A BILL

To direct the Secretary of the Interior to convey to certain
water rights to Duchesne City, Utah.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Duchesne City Water
5 Rights Conveyance Act”.

6 **SEC. 2. CONVEYANCE OF WATER RIGHTS TO DUCHESNE**
7 **CITY, UTAH.**

8 (a) CONVEYANCE.—The Secretary of Interior, subject
9 to subsection (b), shall convey to Duchesne City, Utah,
10 or a water district created by Duchesne City, all right,

1 title, and interest of the United States in and to those
2 water rights appropriated under the laws of the State of
3 Utah by the United States Indian Service and identified
4 as Water Rights Nos. 43-180 (Certificate No. 1034) and
5 43-203 (Certificate No. 1056) in the records of the State
6 Engineer of Utah.

7 (b) REQUIRED TERMS.—

8 (1) IN GENERAL.—As terms of any conveyance
9 under subsection (a), the Secretary shall require
10 that Duchesne City, a water district created by
11 Duchesne City, or their successors or assigns—

12 (A) shall allow the Ute Indian Tribe of the
13 Uintah and Ouray Reservation, its members,
14 and any person leasing or utilizing land that is
15 held in trust for the Tribe by the United States
16 and is located within the Duchesne City water
17 service area (as such area may be adjusted
18 from time to time), to connect to the Duchesne
19 City municipal water system;

20 (B) shall not require such Tribe, members,
21 or person to pay any water impact or connec-
22 tion fee for such connection; and

23 (C) shall not require such Tribe, members,
24 or person to deliver or transfer any water or
25 water rights for such connection.

1 (2) LIMITATION.—Paragraph (1) shall not be
2 construed to prohibit Duchesne City, a water district
3 created by Duchesne City, or their successors or as-
4 signs, from charging any person that connects to the
5 Duchesne City municipal water system pursuant to
6 paragraph (1) reasonable and customary fees to re-
7 cover costs of the operation and maintenance of the
8 water system to treat, transport, and deliver water
9 to the person.

○

106TH CONGRESS
1ST SESSION

H. R. 3468

To direct the Secretary of the Interior to convey to certain water rights
to Duchesne City, Utah.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 1999

Mr. CANNON introduced the following bill; which was referred to the
Committee on Resources

A BILL

To direct the Secretary of the Interior to convey to certain
water rights to Duchesne City, Utah.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Duchesne City Water
5 Rights Conveyance Act”.

6 **SEC. 2. CONVEYANCE OF WATER RIGHTS TO DUCHESNE**
7 **CITY, UTAH.**

8 (a) CONVEYANCE.—The Secretary of Interior, subject
9 to subsection (b), shall convey to Duchesne City, Utah,
10 or a water district created by Duchesne City, all right,

1 title, and interest of the United States in and to those
2 water rights appropriated under the laws of the State of
3 Utah by the United States Indian Service and identified
4 as Water Rights Nos. 43-180 (Certificate No. 1034) and
5 43-203 (Certificate No. 1056) in the records of the State
6 Engineer of Utah.

7 (b) REQUIRED TERMS.—

8 (1) IN GENERAL.—As terms of any conveyance
9 under subsection (a), the Secretary shall require
10 that Duchesne City—

11 (A) shall allow the Ute Indian Tribe of the
12 Uintah and Ouray Reservation, its members,
13 and any person leasing or utilizing land that is
14 held in trust for the Tribe by the United States
15 and is located within the Duchesne City water
16 service area (as such area may be adjusted
17 from time to time), to connect to the Duchesne
18 City municipal water system;

19 (B) shall not require such tribe, members,
20 or person to pay any water impact or connec-
21 tion fee for such connection; and

22 (C) shall not require such tribe, members,
23 or person to deliver or transfer any water or
24 water rights for such connection.

1 (2) LIMITATION.—Paragraph (1) shall not be
2 construed to prohibit Duchesne City from charging
3 any person that connects to the Duchesne City mu-
4 nicipal water system pursuant to paragraph (1) rea-
5 sonable and customary fees to recover costs of the
6 operation and maintenance of the water system to
7 treat, transport, and deliver water to the person.

○

106TH CONGRESS
2D SESSION

S. 2351

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.

IN THE SENATE OF THE UNITED STATES

APRIL 4, 2000

Mr. HATCH (for himself and Mr. BENNETT) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

7 **SEC. 2. FINDINGS.**

8 Congress finds that—

9 (1) on July 21, 1980, the State of Utah, pursu-
10 ant to title 73, chapter 4, Utah Code Ann. initiated

1 a statutory adjudication of water rights in the Fifth
2 Judicial District Court in Washington County, Utah,
3 Civil No. 800507596, which encompasses all of the
4 rights to the use of water, both surface and under-
5 ground, within the drainage area of the Virgin River
6 and its tributaries in Utah (“Virgin River Adjudica-
7 tion”), including the Santa Clara River Drainage
8 (“Santa Clara System”);

9 (2) the United States was joined as a party in
10 the Virgin River Adjudication pursuant to section
11 666 of title 43, United States Code. On February
12 13, 1987, the United States filed a Statement of
13 Water User Claim asserting a water right based on
14 State law and a Federal reserved water rights claim
15 on its own behalf and on behalf of the Shivwits
16 Band to water from the Santa Clara River System;

17 (3) the Virgin River Adjudication will take
18 many years to conclude, entail great expense, and
19 prolong uncertainty as to the availability of water
20 supplies, and thus the parties have sought to settle
21 their dispute over water and reduce the burdens of
22 litigation;

23 (4) after lengthy negotiation, which included
24 participation by representatives of the United States
25 Government, the State of Utah, the Shivwits Band,

1 the Washington County Water Conservancy District,
2 the city of St. George, and other water users on the
3 Santa Clara River System, the parties have entered
4 into agreements to resolve all water rights claims be-
5 tween and among themselves and to quantify the
6 water right entitlement of the Shivwits Band, and to
7 provide for the construction of water projects to fa-
8 cilitate the settlement of these claims;

9 (5) pursuant to the St. George Water Reuse
10 Project Agreement, the Santa Clara Project Agree-
11 ment, and the Settlement Agreement, the Shivwits
12 Band will receive the right to a total of 4,000 acre-
13 feet of water annually in settlement of their existing
14 State law claims and Federal reserved water right
15 claims;

16 (6) it is the official policy of the United States,
17 in fulfillment of its trust responsibility to Indian
18 tribes, to promote Indian self-determination and eco-
19 nomic self-sufficiency, and to settle the water rights
20 claims of Indian tribes to avoid lengthy and costly
21 litigation;

22 (7) any meaningful policy of Indian self-deter-
23 mination and economic self-sufficiency requires the
24 development of viable Indian reservation economies;

1 (8) the quantification of water rights and the
2 development of water use facilities is essential to the
3 development of viable Indian reservation economies,
4 particularly in the arid western States; and

5 (9) to advance the goals of Federal Indian pol-
6 icy and to fulfill the trust responsibility of the
7 United States to the Shivwits Band, it is appro-
8 priate that the United States participate in the im-
9 plementation of the St. George Water Reuse Project
10 Agreement, the Santa Clara Project Agreement, and
11 the Settlement Agreement in accordance with this
12 Act.

13 **SEC. 3. PURPOSES.**

14 The purposes of this Act are—

15 (1) to achieve a fair, equitable, and final settle-
16 ment of all claims to water rights in the Santa Clara
17 River for the Shivwits Band, and the United States
18 for the benefit of the Shivwits Band;

19 (2) to approve, ratify, and confirm the St.
20 George Water Reuse Project Agreement, the Santa
21 Clara Project Agreement, and the Settlement Agree-
22 ment, and the Shivwits Water Right described there-
23 in;

24 (3) to authorize the Secretary of the Interior to
25 execute the St. George Water Reuse Project Agree-

1 ment, the Santa Clara Project Agreement, and the
2 Settlement Agreement, and to take such actions as
3 are necessary to implement these agreements in a
4 manner consistent with this Act; and

5 (4) to authorize the appropriation of funds nec-
6 essary for implementation of the St. George Water
7 Reuse Project Agreement, the Santa Clara Project
8 Agreement, and the Settlement Agreement.

9 **SEC. 4. DEFINITIONS.**

10 In this Act:

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

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

16 (3) SHIVWITS BAND.—The term “Shivwits
17 Band” means the Shivwits Band of the Paiute In-
18 dian Tribe of Utah, a constituent band of the Paiute
19 Indian Tribe of Utah, a federally recognized Indian
20 tribe organized under section 16 of the Indian Reor-
21 ganization Act of June 18, 1934 (48 Stat. 987; 25
22 U.S.C. 476), and the Act of April 3, 1980 (94 Stat.
23 317).

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

4 (5) ST. GEORGE.—The term “St. George”
5 means St. George City, a Utah municipal corpora-
6 tion.

7 (6) VIRGIN RIVER ADJUDICATION.—The term
8 “Virgin River Adjudication” means the statutory ad-
9 judication of water rights initiated pursuant to title
10 73, chapter 4, Utah Code Ann. and pending in the
11 Fifth Judicial District Court in Washington County,
12 Utah, Civil No. 800507596.

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

20 (8) SANTA CLARA PROJECT AGREEMENT.—The
21 term “Santa Clara Project Agreement” means the
22 agreement among the United States, Utah, the
23 Shivwits Band, the Washington County Water Con-
24 servancy District, St. George City, the town of Ivins,
25 the town of Santa Clara, the New Santa Clara Field

1 Canal Company, the St. George Clara Field Canal
2 Company, the Ivins Irrigation Company, the
3 Southgate Irrigation Company, Bloomington Irriga-
4 tion Company, Ed Bowler, and the Lower Gunlbeck
5 Reservoir Company, together with all exhibits there-
6 to, as the same is approved and executed by the Sec-
7 retary of the Interior pursuant to section 8 of this
8 Act.

9 (9) SETTLEMENT AGREEMENT.—The term
10 “Settlement Agreement” means that agreement
11 among the United States, Utah, the Shivwits Band,
12 the Washington County Water Conservancy District,
13 St. George City, the town of Ivins, the town of
14 Santa Clara, the New Santa Clara Field Canal Com-
15 pany, the St. George Clara Field Canal Company,
16 the Ivins Irrigation Company, the Southgate Irriga-
17 tion Company, Bloomington Irrigation Company, Ed
18 Bowler, and the Lower Gunlock Reservoir Company,
19 together with all exhibits thereto, as the same is ap-
20 proved and executed by the Secretary of the Interior
21 pursuant to section 8 of this Act.

22 (10) SHIVWITS WATER RIGHT.—The term
23 “Shivwits Water Right” means the water right of
24 the Shivwits Band set forth in the Settlement Agree-

1 ment and as settled, confirmed, and ratified by sec-
2 tion 7 of this Act.

3 (11) SHIVWITS BAND WATER DEVELOPMENT
4 TRUST FUND.—The term “Shivwits Band Water De-
5 velopment Trust Fund” means the Trust Fund au-
6 thorized in section 11 of this Act to further the pur-
7 poses of the Settlement Agreement and this Act.

8 **SEC. 5. ST. GEORGE WATER REUSE PROJECT.**

9 (a) ST. GEORGE WATER REUSE PROJECT.—The St.
10 George Water Reuse Project shall consist of water treat-
11 ment facilities, a pipeline, and associated pumping and de-
12 livery facilities owned and operated by St. George which
13 is a component of and which shall divert water from the
14 Water Reclamation Facility located in St. George, Utah,
15 and shall transport this water for delivery and use by St.
16 George and the Shivwits Band. St. George shall make
17 2,000 acre-feet of water available annually to the Shivwits
18 Band at the eastern boundary of the Shivwits Reservation
19 from the St. George Water Reuse Project and in accord-
20 ance with the St. George Water Reuse Project Agreement
21 and this Act.

22 (b) PROJECT CONSTRUCTION OPERATION AND MAIN-
23 TENANCE.—(1) St. George shall be responsible for the en-
24 gineering, permitting, construction, operation, mainte-
25 nance, repair, and replacement of the St. George Water

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

4 (2) The Shivwits Band and the United States on be-
5 half of the Shivwits Band shall make available, in accord-
6 ance with the terms of the St. George Water Reuse Agree-
7 ment and this Act, a total of \$15,000,000 to St. George
8 for the proportionate share of the engineering, permitting,
9 construction, operation, maintenance, repair, and replace-
10 ment of the St. George Water Reuse Project associated
11 with the 2,000 acre-feet annually to be provided to the
12 Shivwits Band.

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

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

24 (b) **INSTREAM FLOW.**—The Santa Clara Project shall
25 release instream flow water from the Gunlock Reservoir

1 into the Santa Clara River for the benefit of the Virgin
2 Spinedace, in accordance with the Santa Clara Project
3 Agreement and this Act.

4 (c) PROJECT FUNDING.—The Utah Legislature and
5 Congress have each appropriated grants of \$750,000 for
6 the construction of the Santa Clara Project. The District
7 shall provide a grant of \$750,000 for the construction of
8 the Santa Clara Project. The District shall provide any
9 additional funding required for the construction of the
10 Santa Clara Project. The parties to the Santa Clara
11 Project Agreement, except the Paiute Indian Tribe of
12 Utah, Shivwits Band, and the United States on behalf of
13 the Shivwits Band, shall pay the District their propor-
14 tionate share of costs advanced by the District for the con-
15 struction of the project in excess of the Federal, State,
16 and District grants.

17 (d) PROJECT CONSTRUCTION, OPERATION, AND
18 MAINTENANCE.—The District shall be responsible for the
19 permitting, engineering, construction, and the initial oper-
20 ation and maintenance of the Santa Clara Project. Oper-
21 ation, maintenance, repair, and replacement activities and
22 costs of the Santa Clara Project shall be handled in ac-
23 cordance with the terms of the Santa Clara Project Agree-
24 ment.

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

2 The Shivwits Band and its members shall have the
3 following rights to water, which are hereby settled, rati-
4 fied, and confirmed and which shall be held in trust by
5 the United States on behalf of the Shivwits Band and its
6 members:

7 (1) The Shivwits Band shall have the right in
8 perpetuity to a total of 1,900 acre-feet annually
9 from the Santa Clara River System as set forth in
10 the Santa Clara Project Agreement. The priority of
11 the Shivwits Band Water Right from the Santa
12 Clara River shall be 1890.

13 (2) The Shivwits Band shall have the right in
14 perpetuity to 2,000 acre-feet of water annually from
15 the St. George Water Reuse Project as provided for
16 in the St. George Water Reuse Project Agreement.
17 The Shivwits Band shall have first priority to the
18 water generated by the St. George Water Reuse
19 Project.

20 (3) The Shivwits Band shall have a right in
21 perpetuity to 100 acre-feet annually from ground-
22 water on the Shivwits Reservation. The priority of
23 the Shivwits groundwater right shall be 1916.

24 (4) The Shivwits Water Right shall not be sub-
25 ject to loss by abandonment or forfeiture for nonuse.

1 (5) The Shivwits Band may use the Shivwits
2 Water Right for either or both of the following:

3 (A) For any purpose anywhere on the
4 Shivwits Band Reservation. Once the water is
5 delivered to the Reservation, such use shall not
6 be subject to State law, regulation, or jurisdic-
7 tion.

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

13 No service contract, lease, exchange, or other agree-
14 ment entered into under this subsection may perma-
15 nently alienate any portion of the Shivwits Water
16 Right.

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

18 Except to the extent that the St. George Water Reuse
19 Project Agreement, the Santa Clara Project Agreement,
20 and the Settlement Agreement conflict with the provisions
21 of this Act, such agreements are hereby approved, ratified,
22 and confirmed. The Secretary is authorized to execute,
23 and take such other actions as are necessary to implement,
24 such agreements.

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

2 (a) **FULL SATISFACTION OF CLAIMS.**—The benefits
3 realized by the Shivwits Band and its members under the
4 St. George Water Reuse Project Agreement, the Santa
5 Clara Project Agreement, the Settlement Agreement, and
6 this Act shall constitute full and complete satisfaction of
7 all water rights claims of the Shivwits Band and its mem-
8 bers for water rights or injuries to water rights under Fed-
9 eral and State laws from time immemorial to the effective
10 date of this Act. Notwithstanding the foregoing, nothing
11 in this Act shall be—

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

15 (2) interpreted or construed to prevent or pro-
16 hibit the Shivwits Band from participating in the fu-
17 ture in other water projects, or from purchasing ad-
18 ditional water rights for their benefit and use, to the
19 same extent as any other entity.

20 (b) **RELEASE.**—The Shivwits Band on behalf of itself
21 and its members, the Paiute Indian Tribe of Utah on be-
22 half of itself and its members in the Santa Clara River
23 System, and on behalf of the Shivwits Band, and the Sec-
24 retary on behalf of the United States, are authorized as
25 part of the performance of the obligations under the St.
26 George Water Reuse Project Agreement, the Santa Clara

1 Project Agreement, and the Settlement Agreement, to exe-
2 cute a waiver and release, except as provided in the agree-
3 ments, of all claims of water rights or injuries to water
4 rights from time immemorial to the effective date of this
5 Act, which the Shivwits Band and its members may have
6 against the United States, the State of Utah or any agen-
7 cy or political subdivision thereof, or any other person,
8 corporation, or municipal corporation, arising under the
9 laws of the United States or the State of Utah.

10 (c) SAVINGS PROVISION.—In the event the authoriza-
11 tions contained in subsection (b) of this section do not be-
12 come effective pursuant to section 14, the Shivwits Band
13 and the United States shall retain the right to assert past
14 and future water rights claims as to all lands of the
15 Shivwits Reservation, and the water rights claims and de-
16 fenses of all other parties to the agreements shall also be
17 retained.

18 **SEC. 10. WATER RIGHTS AND HABITAT ACQUISITION PRO-**
19 **GRAM.**

20 (a) IN GENERAL.—The Secretary is authorized to es-
21 tablish a water rights and habitat acquisition program in
22 the Virgin River Basin—

23 (1) primarily for the benefit of species and
24 plants in the Santa Clara River Basin which have
25 been listed, are likely to be listed, or are the subject

1 of a duly approved conservation agreement under
2 the Endangered Species Act; and

3 (2) secondarily for the benefit of species and
4 plants in other parts of the Virgin River Basin
5 which have been listed, are likely to be listed, or are
6 the subject of a duly approved conservation agree-
7 ment under the Endangered Species Act.

8 (b) WATER AND WATER RIGHTS.—The Secretary is
9 authorized to acquire water and water rights, with or with-
10 out the lands to which such rights are appurtenant, and
11 to acquire shares in irrigation and water companies, and
12 to transfer, hold, and exercise such water and water rights
13 and related interests to assist the conservation and recov-
14 ery of any species or plant described in subsection (a).

15 (c) REQUIREMENTS.—Acquisition of the water rights
16 and related interests pursuant to this section shall be sub-
17 ject to the following requirements:

18 (1) Water rights acquired must satisfy eligi-
19 bility criteria adopted by the Secretary.

20 (2) Water right purchases shall be only from
21 willing sellers, but the Secretary may target pur-
22 chases in areas deemed by the Secretary to be most
23 beneficial to the water rights acquisition program es-
24 tablished by this section.

1 (3) All water rights shall be transferred and ad-
2 ministered in accordance with any applicable State
3 law.

4 (d) **HABITAT PROPERTY.**—The Secretary is author-
5 ized to acquire, hold, and transfer habitat property to as-
6 sist the conservation and recovery of any species or plants
7 described in section 10(a). Acquisition of habitat property
8 pursuant to this section shall be subject to the following
9 requirements:

10 (1) Habitat property acquired must satisfy eli-
11 gibility criteria adopted by the Secretary.

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

17 (e) **CONTRACT.**—The Secretary is authorized to ad-
18 minister the water rights and habitat acquisition program
19 by contract or agreement with a non-Federal entity which
20 the Secretary determines to be qualified to administer
21 such program. The water rights and habitat acquisition
22 program shall be administered pursuant to the Virgin
23 River Management Program.

24 (f) **AUTHORIZATION.**—There is authorized to be ap-
25 propriated \$3,000,000 for the water rights and habitat ac-

1 quision program authorized in this section. The funds
2 authorized to be appropriated by this section shall not be
3 in lieu of or supersede any other commitments by Federal,
4 State, or local agencies.

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

6 (a) **ESTABLISHMENT OF TRUST FUND.**—There is es-
7 tablished in the Treasury of the United States a fund to
8 be known as the “Shivwits Band Trust Fund” (herein-
9 after called the “Trust Fund”). The Secretary shall de-
10 posit into the Trust Fund the funds authorized to be ap-
11 propriated in subsections (b) and (c). Except as otherwise
12 provided in this Act, the Trust Fund principal and any
13 income accruing thereon shall be managed in accordance
14 with the American Indian Trust Fund Management Re-
15 form Act (108 Stat. 4239; 25 U.S.C. 4001 et seq.).

16 (b) **AUTHORIZATION.**—There is authorized to be ap-
17 propriated a total of \$20,000,000, in 2 equal annual in-
18 stallments in the 2001 and 2002 fiscal years for the fol-
19 lowing purposes:

20 (1) \$5,000,000 which shall be made available to
21 the Shivwits Band from the Trust Fund for pur-
22 poses including but not limited to those that would
23 enable the Shivwits Band to put to beneficial use all
24 or part of the Shivwits Water Right, to defray the
25 costs of any water development project in which the

1 Shivwits Band is participating, or to undertake any
2 other activity that may be necessary or desired for
3 implementation of the St. George Water Reuse
4 Project Agreement, the Santa Clara Project Agree-
5 ment, the Settlement Agreement, or for economic de-
6 velopment on the Shivwits Reservation.

7 (2) \$15,000,000 which shall be made available
8 by the Secretary and the Shivwits Band to St.
9 George for the St. George Water Reuse Project, in
10 accordance with the St. George Water Reuse Project
11 Agreement.

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

18 (d) USE OF THE TRUST FUND.—Except for the
19 \$15,000,000 appropriated pursuant to subsection (b)(2),
20 all Trust Fund principal and income accruing thereon may
21 be used by the Shivwits Band for the purposes described
22 in subsection (b)(1). The Shivwits Band, with the approval
23 of the Secretary, may withdraw the Trust Fund and de-
24 posit it in a mutually agreed upon private financial institu-
25 tion. That withdrawal shall be made pursuant to the

1 American Indian Trust Fund Management Reform Act of
2 1994 (25 U.S.C. 4001 et seq.).

3 (e) NO PER CAPITA PAYMENTS.—No part of the
4 principal of the Trust Fund, or of the income accruing
5 thereon, or of any revenue generated from any water use
6 subcontract, shall be distributed to any member of the
7 Shivwits Band on a per capita basis.

8 **SEC. 12. ENVIRONMENTAL COMPLIANCE.**

9 (a) NATIONAL ENVIRONMENTAL POLICY ACT.—Exe-
10 cution by the Secretary of the St. George Water Reuse
11 Project Agreement, the Santa Clara Project Agreement,
12 or the Settlement Agreement shall not constitute major
13 Federal action under the National Environmental Policy
14 Act of 1969 (42 U.S.C. 4321 et seq.).

15 (b) OTHER REQUIREMENTS.—The Secretary shall
16 comply with all other aspects of the National Environ-
17 mental Policy Act (42 U.S.C. 4321 et seq.), and other ap-
18 plicable environmental laws in implementing the terms of
19 the St. George Water Reuse Agreement, the Santa Clara
20 Project Agreement, the Settlement Agreement, and this
21 Act.

22 **SEC. 13. MISCELLANEOUS PROVISIONS.**

23 (a) OTHER INDIAN TRIBES.—Nothing in the Settle-
24 ment Agreement or this Act shall be construed in any way
25 to quantify or otherwise adversely affect the land and

1 water rights, claims, or entitlements to water of any In-
2 dian tribe, pueblo, or community, other than the Shivwits
3 Band.

4 (b) PRECEDENT.—Nothing in this Act shall be con-
5 strued or interpreted as a precedent for the litigation of
6 reserved water rights or the interpretation or administra-
7 tion of future water settlement Acts.

8 **SEC. 14. EFFECTIVE DATE.**

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

13 (1) the funds authorized by section 11 (b) and
14 (c) have been appropriated and deposited into the
15 Trust Fund;

16 (2) the funds authorized by section 10(c) have
17 been appropriated;

18 (3) the St. George Water Reuse Project Agree-
19 ment has been modified to the extent it is in conflict
20 with this Act and has been executed by all parties
21 thereto;

22 (4) the Santa Clara Project Agreement has
23 been modified to the extent it is in conflict with this
24 Act and has been executed by all parties thereto;

1 (5) the Settlement Agreement has been modi-
2 fied to the extent it is in conflict with this Act and
3 has been executed by all parties thereto;

4 (6) the State Engineer of Utah has taken all
5 actions and approved all applications necessary to
6 implement the provisions of the St. George Water
7 Reuse Agreement, the Santa Clara Project Agree-
8 ment, and the Settlement Agreement, from which no
9 further appeals may be taken; and

10 (7) the court has entered a decree confirming
11 the Shivwits Water Right in the Virgin River Adju-
12 dication.

○

106TH CONGRESS
1ST SESSION

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.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 10, 1999

Mr. HANSEN introduced the following bill; which was referred to the Committee on Resources

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Shivwits Band of the
5 Paiute Indian Tribe of Utah Water Rights Settlement
6 Act".

7 **SEC. 2. FINDINGS.**

8 Congress finds that—

9 (1) on July 21, 1980, the State of Utah, pursu-
10 ant to title 73, chapter 4, Utah Code Ann. initiated

1 a statutory adjudication of water rights in the Fifth
2 Judicial District Court in Washington County, Utah,
3 Civil No. 800507596, which encompasses all of the
4 rights to the use of water, both surface and under-
5 ground, within the drainage area of the Virgin River
6 and its tributaries in Utah (“Virgin River Adjudica-
7 tion”), including the Santa Clara River Drainage
8 (“Santa Clara System”);

9 (2) the United States was joined as a party in
10 the Virgin River Adjudication pursuant to section
11 666 of title 43, United States Code. On February
12 13, 1987, the United States filed a Statement of
13 Water User Claim asserting a water right based on
14 State law and a Federal reserved water rights claim
15 on its own behalf and on behalf of the Shivwits
16 Band to water from the Santa Clara River System;

17 (3) the Virgin River Adjudication will take
18 many years to conclude, entail great expense, and
19 prolong uncertainty as to the availability of water
20 supplies, and thus the parties have sought to settle
21 their dispute over water and reduce the burdens of
22 litigation;

23 (4) after lengthy negotiation, which included
24 participation by representatives of the United States
25 Government, the State of Utah, the Shivwits Band,

1 the Washington County Water Conservancy District,
2 the city of St. George, and other water users on the
3 Santa Clara River System, the parties have entered
4 into agreements to resolve all water rights claims be-
5 tween and among themselves and to quantify the
6 water right entitlement of the Shivwits Band, and to
7 provide for the construction of water projects to fa-
8 cilitate the settlement of these claims;

9 (5) pursuant to the St. George Water Reuse
10 Project Agreement, the Santa Clara Project Agree-
11 ment, and the Settlement Agreement, the Shivwits
12 Band will receive the right to a total of 4,000 acre-
13 feet of water annually in settlement of their existing
14 State law claims and Federal reserved water right
15 claims;

16 (6) it is the official policy of the United States,
17 in fulfillment of its trust responsibility to Indian
18 tribes, to promote Indian self-determination and eco-
19 nomic self-sufficiency, and to settle the water rights
20 claims of Indian tribes to avoid lengthy and costly
21 litigation;

22 (7) any meaningful policy of Indian self-deter-
23 mination and economic self-sufficiency requires the
24 development of viable Indian reservation economies;

1 (8) the quantification of water rights and the
2 development of water use facilities is essential to the
3 development of viable Indian reservation economies,
4 particularly in the arid western States; and

5 (9) to advance the goals of Federal Indian pol-
6 icy and to fulfill the trust responsibility of the
7 United States to the Shivwits Band, it is appro-
8 priate that the United States participate in the im-
9 plementation of the St. George Water Reuse Project
10 Agreement, the Santa Clara Project Agreement, and
11 the Settlement Agreement in accordance with this
12 Act.

13 **SEC. 3. PURPOSES.**

14 The purposes of this Act are—

15 (1) to achieve a fair, equitable, and final settle-
16 ment of all claims to water rights in the Santa Clara
17 River for the Shivwits Band, and the United States
18 for the benefit of the Shivwits Band;

19 (2) to approve, ratify, and confirm the St.
20 George Water Reuse Project Agreement, the Santa
21 Clara Project Agreement, and the Settlement Agree-
22 ment, and the Shivwits Water Right described there-
23 in;

24 (3) to authorize the Secretary of the Interior to
25 execute the St. George Water Reuse Project Agree-

1 ment, the Santa Clara Project Agreement, and the
2 Settlement Agreement, and to take such actions as
3 are necessary to implement these agreements in a
4 manner consistent with this Act; and

5 (4) to authorize the appropriation of funds nec-
6 essary for implementation of the St. George Water
7 Reuse Project Agreement, the Santa Clara Project
8 Agreement, and the Settlement Agreement.

9 **SEC. 4. DEFINITIONS.**

10 In this Act:

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

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

16 (3) SHIWITS BAND.—The term “Shivwits
17 Band” means the Shivwits Band of the Paiute In-
18 dian Tribe of Utah, a constituent band of the Paiute
19 Indian Tribe of Utah, a federally recognized Indian
20 tribe organized under section 16 of the Indian Reor-
21 ganization Act of June 18, 1934 (48 Stat. 987; 25
22 U.S.C. 476), and the Act of April 3, 1980 (94 Stat.
23 317).

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

4 (5) ST. GEORGE.—The term “St. George”
5 means St. George City, a Utah municipal corpora-
6 tion.

7 (6) VIRGIN RIVER ADJUDICATION.—The term
8 “Virgin River Adjudication” means the statutory ad-
9 judication of water rights initiated pursuant to title
10 73, chapter 4, Utah Code Ann. and pending in the
11 Fifth Judicial District Court in Washington County,
12 Utah, Civil No. 800507596.

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

20 (8) SANTA CLARA PROJECT AGREEMENT.—The
21 term “Santa Clara Project Agreement” means the
22 agreement among the United States, Utah, the
23 Shivwits Band, the Washington County Water Con-
24 servancy District, St. George City, the town of Ivins,
25 the town of Santa Clara, the New Santa Clara Field

1 Canal Company, the St. George Clara Field Canal
2 Company, the Ivins Irrigation Company, the
3 Southgate Irrigation Company, Bloomington Irriga-
4 tion Company, Ed Bowler, and the Lower Gunlock
5 Reservoir Company, together with all exhibits there-
6 to, as the same is approved and executed by the Sec-
7 retary of the Interior pursuant to section 8 of this
8 Act.

9 (9) SETTLEMENT AGREEMENT.—The term
10 “Settlement Agreement” means that agreement
11 among the United States, Utah, the Shivwits Band,
12 the Washington County Water Conservancy District,
13 St. George City, the town of Ivins, the town of
14 Santa Clara, the New Santa Clara Field Canal Com-
15 pany, the St. George Clara Field Canal Company,
16 the Ivins Irrigation Company, the Southgate Irriga-
17 tion Company, Bloomington Irrigation Company, Ed
18 Bowler, and the Lower Gunlock Reservoir Company,
19 together with all exhibits thereto, as the same is ap-
20 proved and executed by the Secretary of the Interior
21 pursuant to section 8 of this Act.

22 (10) SHIVWITS WATER RIGHT.—The term
23 “Shivwits Water Right” means the water right of
24 the Shivwits Band set forth in the Settlement Agree-

1 ment and as settled, confirmed, and ratified by sec-
2 tion 7 of this Act.

3 (11) SHIWITS BAND WATER DEVELOPMENT
4 TRUST FUND.—The term “Shiwits Band Water De-
5 velopment Trust Fund” means the Trust Fund au-
6 thorized in section 11 of this Act to further the pur-
7 poses of the Settlement Agreement and this Act.

8 **SEC. 5. ST. GEORGE WATER REUSE PROJECT.**

9 (a) ST. GEORGE WATER REUSE PROJECT.—The St.
10 George Water Reuse Project shall consist of water treat-
11 ment facilities, a pipeline, and associated pumping and de-
12 livery facilities owned and operated by St. George which
13 is a component of and which shall divert water from the
14 Water Reclamation Facility located in St. George, Utah,
15 and shall transport this water for delivery and use by St.
16 George and the Shiwits Band. St. George shall make
17 2,000 acre-feet of water available annually to the Shiwits
18 Band at the eastern boundary of the Shiwits Reservation
19 from the St. George Water Reuse Project and in accord-
20 ance with the St. George Water Reuse Project Agreement
21 and this Act.

22 (b) PROJECT CONSTRUCTION OPERATION AND MAIN-
23 TENANCE.—(1) St. George shall be responsible for the en-
24 gineering, permitting, construction, operation, mainte-
25 nance, repair, and replacement of the St. George Water

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

4 (2) The Shivwits Band and the United States on be-
5 half of the Shivwits Band shall make available, in accord-
6 ance with the terms of the St. George Water Reuse Agree-
7 ment and this Act, a total of \$15,000,000 to St. George
8 for the proportionate share of the engineering, permitting,
9 construction, operation, maintenance, repair, and replace-
10 ment of the St. George Water Reuse Project associated
11 with the 2,000 acre-feet annually to be provided to the
12 Shivwits Band.

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

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

24 (b) **INSTREAM FLOW.**—The Santa Clara Project shall
25 release instream flow water from the Gunlock Reservoir

1 into the Santa Clara River for the benefit of the Virgin
2 Spinedace, in accordance with the Santa Clara Project
3 Agreement and this Act.

4 (c) PROJECT FUNDING.—The Utah Legislature and
5 Congress have each appropriated grants of \$750,000 for
6 the construction of the Santa Clara Project. The District
7 shall provide a grant of \$750,000 for the construction of
8 the Santa Clara Project. The District shall provide any
9 additional funding required for the construction of the
10 Santa Clara Project. The parties to the Santa Clara
11 Project Agreement, except the Paiute Indian Tribe of
12 Utah, Shivwits Band, and the United States on behalf of
13 the Shivwits Band, shall pay the District their propor-
14 tionate share of costs advanced by the District for the con-
15 struction of the project in excess of the Federal, State,
16 and District grants.

17 (d) PROJECT CONSTRUCTION, OPERATION, AND
18 MAINTENANCE.—The District shall be responsible for the
19 permitting, engineering, construction, and the initial oper-
20 ation and maintenance of the Santa Clara Project. Oper-
21 ation, maintenance, repair, and replacement activities and
22 costs of the Santa Clara Project shall be handled in ac-
23 cordance with the terms of the Santa Clara Project Agree-
24 ment.

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

2 The Shivwits Band and its members shall have the
3 following rights to water, which are hereby settled, rati-
4 fied, and confirmed and which shall be held in trust by
5 the United States on behalf of the Shivwits Band and its
6 members:

7 (1) The Shivwits Band shall have the right in
8 perpetuity to a total of 1,900 acre-feet annually
9 from the Santa Clara River System as set forth in
10 the Santa Clara Project Agreement. The priority of
11 the Shivwits Band Water Right from the Santa
12 Clara River shall be 1890.

13 (2) The Shivwits Band shall have the right in
14 perpetuity to 2,000 acre-feet of water annually from
15 the St. George Water Reuse Project as provided for
16 in the St. George Water Reuse Project Agreement.
17 The Shivwits Band shall have first priority to the
18 water generated by the St. George Water Reuse
19 Project.

20 (3) The Shivwits Band shall have a right in
21 perpetuity to 100 acre-feet annually from ground-
22 water on the Shivwits Reservation. The priority of
23 the Shivwits groundwater right shall be 1916.

24 (4) The Shivwits Water Right shall not be sub-
25 ject to loss by abandonment or forfeiture for nonuse.

1 (5) The Shivwits Band may use the Shivwits
2 Water Right for either or both of the following:

3 (A) For any purpose anywhere on the
4 Shivwits Band Reservation. Once the water is
5 delivered to the Reservation, such use shall not
6 be subject to State law, regulation, or jurisdic-
7 tion.

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

13 No service contract, lease, exchange, or other agree-
14 ment entered into under this subsection may perma-
15 nently alienate any portion of the Shivwits Water
16 Right.

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

18 Except to the extent that the St. George Water Reuse
19 Project Agreement, the Santa Clara Project Agreement,
20 and the Settlement Agreement conflict with the provisions
21 of this Act, such agreements are hereby approved, ratified,
22 and confirmed. The Secretary is authorized to execute,
23 and take such other actions as are necessary to implement,
24 such agreements.

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

2 (a) **FULL SATISFACTION OF CLAIMS.**—The benefits
3 realized by the Shivwits Band and its members under the
4 St. George Water Reuse Project Agreement, the Santa
5 Clara Project Agreement, the Settlement Agreement, and
6 this Act shall constitute full and complete satisfaction of
7 all water rights claims of the Shivwits Band and its mem-
8 bers for water rights or injuries to water rights under Fed-
9 eral and State laws from time immemorial to the effective
10 date of this Act. Notwithstanding the foregoing, nothing
11 in this Act shall be—

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

15 (2) interpreted or construed to prevent or pro-
16 hibit the Shivwits Band from participating in the fu-
17 ture in other water projects, or from purchasing ad-
18 ditional water rights for their benefit and use, to the
19 same extent as any other entity.

20 (b) **RELEASE.**—The Shivwits Band on behalf of itself
21 and its members, the Paiute Indian Tribe of Utah on be-
22 half of itself and its members in the Santa Clara River
23 System, and on behalf of the Shivwits Band, and the Sec-
24 retary on behalf of the United States, are authorized as
25 part of the performance of the obligations under the St.
26 George Water Reuse Project Agreement, the Santa Clara

1 Project Agreement, and the Settlement Agreement, to exe-
2 cute a waiver and release, except as provided in the agree-
3 ments, of all claims of water rights or injuries to water
4 rights from time immemorial to the effective date of this
5 Act, which the Shivwits Band and its members may have
6 against the United States, the State of Utah or any agen-
7 cy or political subdivision thereof, or any other person,
8 corporation, or municipal corporation, arising under the
9 laws of the United States or the State of Utah.

10 (c) SAVINGS PROVISION.—In the event the authoriza-
11 tions contained in subsection (b) of this section do not be-
12 come effective pursuant to section 14, the Shivwits Band
13 and the United States shall retain the right to assert past
14 and future water rights claims as to all lands of the
15 Shivwits Reservation, and the water rights claims and de-
16 fenses of all other parties to the agreements shall also be
17 retained.

18 **SEC. 10. WATER RIGHTS AND HABITAT ACQUISITION PRO-**
19 **GRAM.**

20 (a) IN GENERAL.—The Secretary is authorized to es-
21 tablish a water rights and habitat acquisition program in
22 the Virgin River Basin—

23 (1) primarily for the benefit of species and
24 plants in the Santa Clara River Basin which have
25 been listed, are likely to be listed, or are the subject

1 of a duly approved conservation agreement under
2 the Endangered Species Act; and

3 (2) secondarily for the benefit of species and
4 plants in other parts of the Virgin River Basin
5 which have been listed, are likely to be listed, or are
6 the subject of a duly approved conservation agree-
7 ment under the Endangered Species Act.

8 (b) WATER AND WATER RIGHTS.—The Secretary is
9 authorized to acquire water and water rights, with or with-
10 out the lands to which such rights are appurtenant, and
11 to acquire shares in irrigation and water companies, and
12 to transfer, hold, and exercise such water and water rights
13 and related interests to assist the conservation and recov-
14 ery of any species or plant described in subsection (a).

15 (c) REQUIREMENTS.—Acquisition of the water rights
16 and related interests pursuant to this section shall be sub-
17 ject to the following requirements:

18 (1) Water rights acquired must satisfy eligi-
19 bility criteria adopted by the Secretary.

20 (2) Water right purchases shall be only from
21 willing sellers, but the Secretary may target pur-
22 chases in areas deemed by the Secretary to be most
23 beneficial to the water rights acquisition program es-
24 tablished by this section.

1 (3) All water rights shall be transferred and ad-
2 ministered in accordance with any applicable State
3 law.

4 (d) HABITAT PROPERTY.—The Secretary is author-
5 ized to acquire, hold, and transfer habitat property to as-
6 sist the conservation and recovery of any species or plants
7 described in section 10(a). Acquisition of habitat property
8 pursuant to this section shall be subject to the following
9 requirements:

10 (1) Habitat property acquired must satisfy eli-
11 gibility criteria adopted by the Secretary.

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

17 (e) CONTRACT.—The Secretary is authorized to ad-
18 minister the water rights and habitat acquisition program
19 by contract or agreement with a non-Federal entity which
20 the Secretary determines to be qualified to administer
21 such program. The water rights and habitat acquisition
22 program shall be administered pursuant to the Virgin
23 River Management Program.

24 (f) AUTHORIZATION.—There is authorized to be ap-
25 propriated \$3,000,000 for the water rights and habitat ac-

1 acquisition program authorized in this section. The funds
2 authorized to be appropriated by this section shall not be
3 in lieu of or supersede any other commitments by Federal,
4 State, or local agencies.

5 **SEC. 11. SHIWITS BAND WATER DEVELOPMENT TRUST**
6 **FUND.**

7 (a) **ESTABLISHMENT OF TRUST FUND.**—There is es-
8 tablished in the Treasury of the United States a fund to
9 be known as the “Shiwits Band Water Development
10 Trust Fund” (hereinafter called the “Trust Fund”). The
11 Secretary shall deposit into the Trust Fund the funds au-
12 thorized to be appropriated in subsections (b) and (c). Ex-
13 cept as otherwise provided in this Act, the Trust Fund
14 principal and any income accruing thereon shall be man-
15 aged in accordance with the American Indian Trust Fund
16 Management Reform Act (108 Stat. 4239; 25 U.S.C.
17 4001 et seq.).

18 (b) **AUTHORIZATION.**—There is authorized to be ap-
19 propriated a total of \$20,000,000, in 2 equal annual in-
20 stallments in the 2001 and 2002 fiscal years for the fol-
21 lowing purposes:

22 (1) \$5,000,000 which shall be made available to
23 the Shiwits Band from the Trust Fund for pur-
24 poses including but not limited to those that would
25 enable the Shiwits Band to put to beneficial use all

1 or part of the Shivwits Water Right, to defray the
2 costs of any water development project in which the
3 Shivwits Band is participating, or to undertake any
4 other activity that may be necessary or desired for
5 implementation of the St. George Water Reuse
6 Project Agreement, the Santa Clara Project Agree-
7 ment, the Settlement Agreement, or to fulfill the
8 purposes of this Act.

9 (2) \$15,000,000 which shall be made available
10 by the Secretary and the Shivwits Band to St.
11 George for the St. George Water Reuse Project, in
12 accordance with the St. George Water Reuse Project
13 Agreement.

14 (c) SHARE OF CERTAIN COSTS.—There is authorized
15 to be appropriated to the Trust Fund in fiscal year 2003
16 a total of \$1,000,000 to cover the present value of the
17 Shivwits Band's proportionate share of operation, mainte-
18 nance, repair, and replacement costs of the Santa Clara
19 Project as provided for in the Santa Clara Project Agree-
20 ment.

21 (d) USE OF THE TRUST FUND.—Except for the
22 \$15,000,000 appropriated pursuant to subsection (b)(2),
23 all Trust Fund principal and income accruing thereon may
24 be used by the Shivwits Band for the purposes described
25 in subsection (b)(1). The Shivwits Band, with the approval

1 of the Secretary, may withdraw the Trust Fund and de-
2 posit it in a mutually agreed upon private financial institu-
3 tion. That withdrawal shall be made pursuant to the
4 American Indian Trust Fund Management Reform Act of
5 1994 (25 U.S.C. 4001 et seq.).

6 (e) NO PER CAPITA PAYMENTS.—No part of the
7 principal of the Trust Fund, or of the income accruing
8 thereon, or of any revenue generated from any water use
9 subcontract, shall be distributed to any member of the
10 Shivwits Band on a per capita basis.

11 **SEC. 12. ENVIRONMENTAL COMPLIANCE.**

12 (a) NATIONAL ENVIRONMENTAL POLICY ACT.—Exe-
13 cution by the Secretary of the St. George Water Reuse
14 Project Agreement, the Santa Clara Project Agreement,
15 or the Settlement Agreement shall not constitute major
16 Federal action under the National Environmental Policy
17 Act of 1969 (42 U.S.C. 4321 et seq.).

18 (b) OTHER REQUIREMENTS.—The Secretary shall
19 comply with all other aspects of the National Environ-
20 mental Policy Act (42 U.S.C. 4321 et seq.), and other ap-
21 plicable environmental laws in implementing the terms of
22 the St. George Water Reuse Agreement, the Santa Clara
23 Project Agreement, the Settlement Agreement, and this
24 Act.

1 **SEC. 13. MISCELLANEOUS PROVISIONS.**

2 (a) OTHER INDIAN TRIBES.—Nothing in the Settle-
3 ment Agreement or this Act shall be construed in any way
4 to quantify or otherwise adversely affect the land and
5 water rights, claims, or entitlements to water of any In-
6 dian tribe, pueblo, or community, other than the Shivwits
7 Band.

8 (b) PRECEDENT.—Nothing in this Act shall be con-
9 strued or interpreted as a precedent for the litigation of
10 reserved water rights or the interpretation or administra-
11 tion of future water settlement Acts.

12 **SEC. 14. EFFECTIVE DATE.**

13 The authorization contained in section 9(b) of this
14 Act shall become effective as of the date the Secretary
15 causes to be published in the Federal Register a statement
16 of findings that—

17 (1) the funds authorized by section 11(b) and
18 (c) have been appropriated and deposited into the
19 Trust Fund;

20 (2) the funds authorized by section 10(c) have
21 been appropriated;

22 (3) the St. George Water Reuse Project Agree-
23 ment has been modified to the extent it is in conflict
24 with this Act and has been executed by all parties
25 thereto;

- 1 (4) the Santa Clara Project Agreement has
2 been modified to the extent it is in conflict with this
3 Act and has been executed by all parties thereto;
- 4 (5) the Settlement Agreement has been modi-
5 fied to the extent it is in conflict with this Act and
6 has been executed by all parties thereto;
- 7 (6) the State Engineer of Utah has taken all
8 actions and approved all applications necessary to
9 implement the provisions of the St. George Water
10 Reuse Agreement, the Santa Clara Project Agree-
11 ment, and the Settlement Agreement, from which no
12 further appeals may be taken; and
- 13 (7) the court has entered a decree confirming
14 the Shivwits Water Right in the Virgin River Adju-
15 dication.

○

Senator HATCH. On our first panel, the committee will hear from Senator Bennett of Utah, who will be here shortly, and David Hayes, the deputy secretary of the Interior. I am pleased that Senator Bennett will be able to be with us today. He is a cosponsor of both bills under consideration. He has played an invaluable role in their progress, and we'll call on him as soon as he gets here. But if we could have the testimony of Mr. Hayes first, we'd appreciate it.

We'll turn the panel over to you, Mr. Hayes.

Mr. HAYES. Good morning, Senator. Good morning, Senator Inouye.

Senator HATCH. Excuse me, Senator Inouye, do you have any comments? I apologize.

Senator INOUE. All I can say is I have been in the Congress 41 years and this is the first time I have participated in a hearing where no one is against anything.

Senator HATCH. That's just typical Utah.

Senator INOUE. Shall I just move to approve?

Senator HATCH. Why don't you do that? [Laughter.]

Senator INOUE. Congratulations. I commend the chairman here. He always comes up with something very good. Thank you.

Senator HATCH. Thank you.

Mr. Hayes.

STATEMENT OF DAVID HAYES, DEPUTY SECRETARY OF THE INTERIOR, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. HAYES. Thank you, Mr. Chairman.

I'd like to give brief oral remarks to supplement the written testimony that we've submitted for the record.

On behalf of the administration, Mr. Chairman and Senator Inouye, we are testifying in support of both S. 2350 and S. 2351. I'll speak first to the Duchesne City Water Rights Conveyance Act.

We are aware, of course, the city of Duchesne—and Mayor Hamlin is here today—has been working closely with the Ute Indian Tribe and with the department to clear up the ambiguity associated with the city of Duchesne's water rights, which, as the chairman mentioned in his opening statement, was subject to some confusion in 1905 when those rights anticipated to be used by the residents of the city of Duchesne were conveyed through the Indian agent.

I should note that the tribe has been heavily involved in these discussions, and we are persuaded that this is a good settlement for all parties. The Ute Tribe has had its full reserved water right ratified by the Congress. There is no question that its water rights are secure. The ambiguity associated with the city's water rights is a cloud that does not need to exist and should be lifted, so we are in favor of this piece of legislation.

We have identified a number of proposed revisions. We're happy to report that, after our testimony on the House side in front of Congressman Hanson, that there has been active work by his staff with our Department and other interested parties, and I think that we are very close, if not altogether in alliance, on recommended changes that are mutually agreeable to all parties.

Senator HATCH. So you don't have any problem. You think the minor problems will be resolved in the end?

Mr. HAYES. I am confident that they will, and we have been very pleased with our work with Congressman Hanson in that regard, Senator, and with your staff, as well.

Senator HATCH. Thank you very much.

Mr. HAYES. With regard to the Shivwits legislation, S. 2351, this is a very significant Indian water rights settlement which we are very pleased to testify on behalf of. The only major condition of our support is that the parties execute a final settlement agreement that will finally resolve their water rights in a legal way, and the parties are working very closely toward that end. In fact, it is my understanding that the parties will be meeting later this week in Salt Lake City and that they are clearly within striking distance of penning their signature to the final legal agreements.

This is a matter that I think represents the best of what we can do together in resolving Indian water rights claims. There has been terrific leadership in the community. Mayor McArthur is here, Ron Thompson of the Washington County Conservancy District. The Utah State engineer, Mr. Morgan, has been very helpful. I know we're going to hear from Mr. Bird this morning, as well. The tribe—and Chairman Rogers is here—has been working very closely with the State parties. And our own Federal team has been involved in very intense discussions, particularly over the last year.

This is a situation where we have a win/win for the community and for the tribe. The tribe will now have its secured water right of 4,000 acre feet. We are avoiding adjudication which had been interposed for the Santa Clara River with the tribal claim of two-thirds of the flow of the river, and, in place of that potentially divisive litigation, we have a settlement where the tribe gets a 4,000 acre foot settlement, and 2,000 acre feet of that water comes from a new reuse facility for the city of St. George, with significant financial support that will help generate for the water for the tribe but also help the city of St. George meet its long-term water needs, as well.

The total Federal contribution in the legislation of \$24 million is an amount that we believe is appropriate, given the importance and the difficulty of settling these water rights issues, particularly in this very dry area in southern Utah. This settlement also will provide the basis, we think, for the band to move towards economic self-sufficiency in accord with the policy of self-determination, and provide certainty for itself and also for its neighbors.

There are a number of minor changes that we recommend in the bill that we would want to work with your staffs, Senators Hatch and Inouye. We're confident that we can work through these without difficulty.

I'd like to close by first thanking the two Senators here for their leadership on these bills, and also ask that you stay tuned. We hope that we can bring through this committee a final resolution to the animus LaPlata project in Colorado to resolve the Southern Ute, Ute Mountain Ute longstanding claims. We are very hopeful that we have the basis for a consensus bill there. We are also working very feverishly with Senator Kyl and others in Arizona to try

to move towards settlement of the Gila River Indian Community's claim, and in the hope that we can move that through.

Thank you very much.

Senator HATCH. Great job.

[Prepared statement of Mr. Hayes appears in appendix.]

Senator HATCH. Let me just say that, with regard to the Duchesne bill, I'm wondering if you can help us understand why this issue could not have been solved administratively, so everybody will know.

Mr. HAYES. I'm not sure, Senator, if potentially it could have been solved administratively. I know that when there are questions of legal title, particularly with regard to potential Indian trust claims, that the prudent course is to legislate those changes so that there are no questions under the Non-intercourse Act. So perhaps it could have been done administratively, but we are pleased that this is the approach.

Senator HATCH. We're better off doing it legislatively?

Mr. HAYES. Yes.

Mr. HAYES. With regard to the Shivwits water settlement, the legislation authorizes \$3 million for an environmental mitigation fund. Over the years that I've fought for funding for the Virgin River endangered fishes recovery program—

Mr. HAYES. Right.

Senator HATCH. [continuing]. Which I consider to be a highly-successful and effective program, is there any reason this \$3 million could not be used for the recovery program?

Mr. HAYES. Well, it may ultimately be used for that purpose, Senator. The fund is being used to help ensure a base flow in the Santa Clara, and the Santa Clara, of course, is a tributary of the Virgin, and that base flow does help the Virgin, as well, and helps that recovery plan.

Our intent here is, frankly, to avoid a repeat of the problem we had in animus LaPlata, where we had a water rights settlement that then later hit the shoals of the Endangered Species Act, and we think basically this is a good insurance policy. Frankly, we may not need those funds, and we would be happy with some experience, if those funds are not needed for the base flow, to consider, under your guidance, the use of those funds over time, but we think it is an important insurance policy going in.

Senator HATCH. Thank you, Mr. Hayes.

Senator Inouye.

Senator INOUE. Thank you.

Mr. Secretary, I note that the band has set forth certain conditions before they feel that this bill can be finalized and put into effect, to wit, the finalization of the Santa Clara project agreement, the St. George reuse project agreement, the umbrella settlement agreement—

Mr. HAYES. Right.

Senator INOUE. [continuing]. The Lake Paul pipeline right of first refusal agreement, and two agreements concerning domestic water supplies.

Are you satisfied that these conditions will be met?

Mr. HAYES. Senator, I'm not aware of all five of those, personally. I'd be happy to talk to your staff about it. But I am confident that

the guts of the band's concern is the same as ours, which is that the final settlement, legal documents necessary to effectuate the settlement, be signed and executed as a prerequisite for this legislation, and all the parties have been working very hard toward that end.

So yes, the basic answer of the question is we agree with the band that those legal precedents are important to have in place, and we are all working toward that end.

Senator INOUE. Then may I congratulate you and the Senate delegation from Utah. Thank you.

Mr. HAYES. Thank you.

Senator HATCH. Thank you, Senator Inouye.

Thank you, Mr. Hayes. We appreciate your being here, and we appreciate your cogent testimony. It means a lot to us.

Mr. HAYES. Thank you. Thank you, Mr. Chairman.

Senator HATCH. I would like to welcome the next panel of witnesses, who will testify on behalf of the Duchesne City Water Rights Conveyance Act: Mayor Kim Hamlin of the City of Duchesne, and Craig Smith, attorney for the city.

We're delighted to have both of you here. I understand that a representative of the Ute Tribe was not able to attend this hearing today; however, Mr. O. Roland McCook, chairman of the Tribal Business Committee of the Ute Tribe, has forwarded a statement to me in which he states that the tribe does not oppose this legislation, and without objection I will make his statement a part of the record.

[Prepared statement of Mr. McCook appears in appendix.]

Senator HATCH. We will now hear from Kim Hamlin.

Mayor, we are happy to have you here, and we look forward to taking your testimony.

**STATEMENT OF KIM HAMLIN, MAYOR, CITY OF DUCHESNE,
DUCHESNE, UT**

Mr. HAMLIN. Thank you, sir.

I am Kim Hamlin, mayor of Duchesne, and I thank you, Mr. Chairman and Senator Inouye.

As mayor of Duchesne, I'd like to explain why this is very important. As with all communities, resources available to Duchesne are of paramount importance. Water is especially important. As you said, Utah is the second most arid State in the Nation, and it is very important that we have these water rights. We have been using this water. We thought it was ours since 1905.

The city of Duchesne has been trying now since 1946 to get a title on these water rights, and we hope that we are right to the point where we can do this, and we would appreciate and urge this committee to recommend the approval of S. 2350 and H.R. 3468.

I thank you very much.

Senator HATCH. Thank you, Mayor. We're glad to have you here.

[Prepared statement of Mr. Hamlin appears in appendix.]

Senator HATCH. We have Senator Bennett here. Do you care to make any remarks, Senator Bennett? We'd be happy to take them at this time. And then I have just a question or two for the two of you, if I can.

We'll take Senator Bennett's statement at this point.

**STATEMENT OF HON. ROBERT F. BENNETT, U.S. SENATOR
FROM UTAH**

Senator BENNETT. Thank you, Mr. Chairman.

I apologize for being 1 moment late. There is a traffic tie-up in the tunnel that's going to change the whole course of world history. [Laughter.]

I am pleased to be here to express my support of both S. 2350 and H.R. 3468. One is the Shivwits Band of Paiute Indian Tribe of Utah Water Rights Settlement, and the other one the Duchesne City Water Rights Conveyance Act.

As I'm sure you did before I came here, I want to welcome Mayor Kim Hamlin of Duchesne City, Craig Smith of Nielsen and Senior, who is serving as counsel for the city of Duchesne. I understand they are accompanied by Glen Rogers, chairman of the Shivwits Band of the Paiute Indian Tribe; and Mayor Daniel McArthur of the city of St. George—I was in St. George on Friday, and it is getting just as warm as usual; Darin Bird, the assistant director of the Utah Department of Natural Resources, who served on my staff, and therefore understands these issues better than anybody; and Ron Thompson of the Washington County Conservancy District.

Of these particular bills, let me speak first about the legislation affecting Duchesne. Ninety-five years have elapsed since Captain G. B. Hall of the 5th Cavalry filed two applications for appropriate water in Duchesne. I am pleased that Congress is now attempting to finally resolve this matter—95 years ought to be enough—transfer the rights from the United States Indian Service to the rightful owner, Duchesne City.

I thank both the Ute Indian Tribe and Duchesne City for working together on this matter so that it is not one of controversy. It is essentially a technical change. I hope the Senate will move quickly.

Now, on the Shivwits water rights settlement, this legislation is important for a number of reasons. First, it is a product of negotiation and not litigation, and I always like that. Second, it is truly win/win, because not only will the Shivwits Band benefit through the increased economic development and secured flows, but so will the city of St. George and the Virgin River Spinedace, which is an at-risk species.

So, in the driest county in the second-driest State in the Union, it is nice that an agreement could be reached on the allocation of water.

There is an old saying in Utah that it is better to be head of the ditch than head of the church. [Laughter.]

We need water so badly.

I appreciate the parties working together, developing the compromise, and I hope this will be a pattern for future water settlements.

I greatly appreciate the time and effort that the Shivwits Band and the Department of the Interior and the State of Utah, City of St. George, Washington County, all of these people have put into getting to this negotiated settlement.

Again, Mr. Chairman, my apologies for being tardy.

Senator HATCH. Thank you, Senator Bennett. We're delighted to have your remarks.

Mr. Smith, if you have any statement, we'd like to take it at this time.

STATEMENT OF CRAIG SMITH, ESQUIRE, NIELSEN AND SENIOR, COUNSEL FOR THE CITY OF DUCHESNE, SALT LAKE CITY, UT

Mr. SMITH. Thank you, Mr. Chairman, Mr. Inouye, Mr. Bennett, Senators, it is a pleasure and an honor to testify to this committee today.

As I have been introduced, my name is Craig Smith. I am a water attorney in Utah. I am special counsel for water matters to the city of Duchesne. When they retained me to look into this matter, it was a very interesting experience to delve into the history of Duchesne, as Senator Bennett has just alluded to, 95 years ago these water rights were filed upon by the captain of the cavalry, who was the acting Indian agent for the city of Duchesne, but since that time, even though the city has enjoyed the use of these water rights—and they are an integral, as you can imagine, part of their city infrastructure, serving the residents there and meeting their water needs—these water rights have been in the name of the United States for all those years.

In researching the history, it became very apparent that there was never an intention that this water be separated from the city. It was never an intention the water be used for another purpose. It was always the intention and had been the use of this water for all those years for the city.

So this legislation, in coming to a resolution of this problem, it really is a relic of history we are dealing with. In meeting with the parties and in looking at the history, it became very apparent to me, as a water lawyer, that this is something that needed to be remedied, and the city needed to have title to its water rights, as any city would want to have and needs to have when you're talking about something that is as important in Utah as water.

So I think it should be made very clear these are not part of any water rights claimed by the tribe. We've worked with the tribe and appreciate very much the tribe's cooperation with us. The legislation is drafted in a way that there are benefits to the tribe and its members from this water.

So we feel that all of the historical purposes of the settlement of Duchesne of having this water appropriated will be met by this legislation. We have been working with the Department of Interior, with your staffs, as well, to work out the language changes that the Department of Interior has requested, and I think we have come to agreement most of those changes and very close to agreement on the balance.

We are very appreciative of the effort and time of this committee and you, as United States Senators, for a very small town in the Uintah Basin of Utah, to take this on as a matter to correct this and then help the city to have title to its water. Thank you for this effort.

Senator HATCH. Thank you.

[Prepared statement of Mr. Smith appears in appendix.]

Senator HATCH. Thank you. We congratulate both of you for the work that you've done.

Mr. Smith, I know that Duchesne has possible amendments to the legislation with the Department of the Interior. In your opinion, what is the status of those discussions?

Mr. SMITH. I think most of the amendments the Department of Interior have requested we've already agreed to add into the legislation and will be adding in at the appropriate time.

Senator HATCH. Okay. Now, either of you could answer these questions. Could you explain why the water rights in question are important to the residents of Duchesne? And then, also, what are the benefits for the members of the tribe?

Mr. HAMLIN. The benefits, Mr. Chairman, to the tribe is, as you know, cities charge impact fees and connection fees, what have you. The Ute Tribe holds an awful lot of land and property in Duchesne City, and we've agreed with them that we will not charge them any impact fees, we will not charge them any hookup fees for any member or anyone that is doing business on Indian land, so they will be able to save quite a bit of money, and they agree with us. They support us 100 percent on this.

Senator HATCH. That's fine.

Senator Inouye.

Senator INOUE. I have no questions, sir.

Senator HATCH. Senator Bennett, any questions?

Senator BENNETT. No.

Senator HATCH. Well, we want to thank you both for being here. We want to especially thank you and the tribal members for the good way you've worked together to get this done, because these are not easy sometimes, and we are just very happy to be able to push this through for you.

Thank you for being here and thanks for taking the time.

Mr. SMITH. Thank you.

Mr. HAMLIN. Thank you very much.

Senator HATCH. We appreciate it.

Our final panel of witnesses will discuss S. 2351, the Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act.

I would like to welcome Chairman Glenn Rogers of the Shivwits Band of the Paiutes. Chairman Rogers, we welcome you. We are glad to have you here.

I'd like to also welcome Mayor Dan McArthur, who has worked very hard on this. We're happy to have you here, Mayor of St. George.

Darin Bird of the Utah Department of Natural Resources—Darin, we're happy to have you and the mayor here, as well.

Finally, we will hear from Ron Thompson of the Washington County Water Conservancy District, who, of course, there's hardly anything that has been happening in water in all the time I have been in the Senate that Ron hasn't had a lot to say on, and he has done a terrific job of helping to bring people together.

All four of you are critical people in this area, and we're just very grateful to you.

Chairman Rogers, I am very pleased that you were able to be here today. I know you have a particular interest in this legislation and have taken a very important leadership role in its develop-

ment, so I look forward to your testimony and we'll take your testimony at this time, Mr. Chairman.

STATEMENT OF GLENN ROGERS, CHAIRMAN, SHIVWITS BAND OF PAIUTE INDIANS OF UTAH, SANTA CLARA, UT, ACCOMPANIED BY PATRICK CHARLES, MEMBER, SHIVWITS BAND COUNCIL

Mr. ROGERS. Chairman Hatch, honorable members of the committee, my name is Glenn Rogers, chairman of the Shivwits Band of the Paiute Indian Tribe of Utah, and I'm here to testify on behalf of the band in support of S. 2351, for Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act.

I am accompanied today by Patrick Charles, a member of the Shivwits Band Council, and he has been a key participant in our water rights negotiations.

We do request that our written statement be included in the record.

Senator HATCH. Without objection, we will put it in the record.

Mr. ROGERS. Our band council strongly supports S. 2351, conditioned on satisfactory finalization of our written agreements with the State and local parties and the United States.

This is also based on our understanding that certain additions to the sections will be included when S. 2351 is marked up by the committee.

There are two additional findings and one additional purpose which more adequately reflect the historical context of this settlement and its intent to aid the economic development on the Shivwits Reservation.

The United States terminated recognition of our band in 1954 and restored it in 1980. Regaining Federal recognition was supposed to lead our recovery from the disastrous effects the last 150 years have had on our people, but it has not. Since the Restoration Act was passed in 1980, economic development on the Shivwits Reservation has been on hold due to lack of water.

Today, too many of our people have left the reservation to find jobs and better living conditions. With this settlement, we intend to create a self-sustaining economy on the reservation and to improve housing, education, and health care for our people. We want to increase our children's chance of competing on an equal footing with their non-Indian peers.

Reaching the settlement of the quantity of water rights and the sources of our water took many years and required several conflicting interests to come together, overcome our differences, and share our area's most important and scarce resource. With this settlement, our reservation can finally become the homeland that the United States intended it to be.

Specific benefits of the settlement to the band include a firm, reliable water supply which will be available within a short time frame and forever; a structural and operational system to deliver the water; a domestic water supply for our future needs, which will be secured under two separate new agreements that will be finalized with the county water conservancy district and the city of St. George prior to settlement; a right of first refusal to participate in future regional and water development projects under separate

agreements with the State and district; support from all parties of the band's right to lease the unused water supplies to other water users until we are ready to develop them; and better relations with the local interests and the State, which strongly support the settlement projects.

The band will receive \$6 million under this settlement, and we feel that this is a modest request, and that is the minimum necessary to justify settling our claims against the United States.

A \$1 million appropriation written in S. 2351 will pay approximately half the band's probable cost to participate in the Santa Clara pooling and pipeline project. Because all of the normal flow of the Santa Clara River has been appropriated, the only way the band could negotiate receipt of a fair share was to agree to participate in the Santa Clara pooling agreement and to pay the cost of delivering the water through the proposed pipeline, so this O&M fund is absolutely necessary to make the Santa Clara prong of the settlement provide a meaningful water right for the band.

The other \$5 million will go to a trust fund that the band will spend on economic development on the reservation to make up for the income we have lost from lack of water in previous years.

Consistent with the current Federal policy of promoting self-determination for Indian tribes, we will be able to apply the trust fund toward any economic development project that will build a self-sustaining economy on the Shivwits Reservation.

With S. 2351, the Shivwits Band will now have a realistic chance to create new and meaningful employment opportunities for Shivwits members and to provide a better future for our children.

Thank you for inviting me to testify. I request your support in enacting S. 2351 in the current session of Congress.

Senator HATCH. Thank you, Chairman Rogers.

[Prepared statement of Mr. Rogers appears in appendix.]

Senator HATCH. Mayor McArthur, we are always happy to see you. I know how important water issues are for the city of St. George, and we are delighted to have you here. We look forward to taking your testimony.

STATEMENT OF DANIEL D. McARTHUR, MAYOR, ST. GEORGE CITY, ST. GEORGE, UT

Mr. McARTHUR. Mr. Chairman, Senator Hatch, Senator Inouye, and Senator Bennett, it is good to be here. I appreciate the opportunity to come and testify before this committee.

I am Daniel McArthur, mayor of the city of St. George. I have been for the last 7 years, and have been involved for the last 16 years.

I would like to enter my printed document for the record.

Senator HATCH. Without objection.

Mr. McARTHUR. Thank you. And I'd like to summarize, basically, cut it a little shorter.

I want to say I have been involved for about 17 years in the development in Washington County. We have been one of the fastest-growing counties in the Nation over the last couple of decades, percentage-wise. I have seen the population of St. George go from about 13,000 during my tenure to over 50,000, and we are interested in seeing what the census will tell.

But let me tell you a little, brief history of the city of St. George. St. George was settled in 1862. Pioneers came into the valley in 1861. One of the first things they did was to try to get water out on the land, because it is, as has been mentioned several times, the driest county in Utah, and Utah is the second-driest State, with an average rainfall of around 7 inches per year. We can't always depend on that, and so there we have very erratic flows in our rivers and the Santa Clara.

I know that the pioneers first pulled that water out onto the land to try to take care of them, and they struggled very hard to do that, and then they started developing those waters.

We could not develop at the rate at which we have if we didn't have people—forefathers, really—in our community that looked for water development and tried to do it.

I know that St. George and Washington County have been among the fastest-growing areas in the country, as I said before, even putting more pressure on the available water resources in our area. Knowing how sacred these water rights are even makes this bill more impressive, this agreement, that the parties have been able to reach an acceptable agreement.

St. George has always tried to cooperate with our neighbors, especially in water development projects, and we have worked with the Shivwits Band in the past and are currently providing water to the homes on the reservation.

This project evolved because of the disputes of the several parties. Now, I've read, even in the cemetery reports in our city, there are several people in the cemetery because of disputes over water in the area, and so you can see how significant and important this is when we're talking about irrigation companies, the Shivwits Band, the city of St. George, several irrigation companies, and the water conservancy district, but we have all been able to come together.

Working over the last four years has been very difficult in these negotiations because of the special interests and how significant water is for each of the parties, but we have been able to come forward with an agreement that really benefits everyone. There is no one that is a loser in this development; therefore, I would urge your support for this legislation.

Senator HATCH. Thank you so much, Mayor.

[Prepared statement of Mr. McArthur appears in appendix.]

Senator HATCH. Mr. Bird, we are delighted to have you here representing the State of Utah, and we will take your testimony at this time.

**STATEMENT OF DARIN BIRD, ASSISTANT DIRECTOR, UTAH
DEPARTMENT OF NATURAL RESOURCES, SALT LAKE CITY, UT**

Mr. BIRD. Thank you, Mr. Chairman. I appreciate being here today representing the State of Utah, and I will summarize my testimony and ask that the full text be included in the record.

Senator HATCH. Without objection.

Mr. BIRD. Thank you. As has been mentioned, my name is Darin Bird, and I serve as the assistant director of the Utah Department of Natural Resources, which includes the State Engineer's Office.

As you are well aware, reserved water rights for Indian tribes is a very sensitive and, at times, divisive issue in the west, and this proposed legislation before you today is the result of a negotiated agreement to the reserved water right claims to the Shivwits Band of the Paiute Tribe and local water users in southwest Utah.

The Shivwits Reservation is located about 10 miles northwest of St. George in southwest Utah. In Washington County which is one of the fastest-growing areas in the State of Utah, water is a critical resource.

Having grown up in that area, I know that the water flow in the Santa Clara River is either a feast or famine type situation, depending on the years.

In spite of the inherent difficulties for these types of agreements, the parties have succeeded in reaching the agreement we are submitting to you today. The State of Utah fully supports and endorses this plan.

The history of the Shivwits Tribe has been mentioned. It was created by Executive order in 1916. It was disbanded in 1954, then reinstated in 1980. This history of the Shivwits Band raises numerous potential legal issues relating to the reserve of water rights claim, and many of these issues go unresolved under existing law. If litigated, the ensuing case could employ dozens of attorneys for many years. Whatever the outcome of that case, the relationship between the communities then would be adversarial for many years to come.

For this and other reasons, the State of Utah, through the leadership of Governor Leavitt, has taken the position that it would rather negotiate than litigate these types of matters. Although it is difficult at times and requires considerable effort with all parties involved, we believe good faith negotiations to be the best approach. It makes little sense to have Government agencies spending taxpayer dollars litigating matters such as this.

In my opinion, the State of Utah has had a proven track record in these types of negotiations. In 1980, the Utah legislature passed the Ute Indian Water Compact. In 1996, we signed the Zion National Park water rights settlement agreement. And just last month we signed Cedar Breaks National Monument and Hovenweep National Monument water rights settlement agreements.

The Santa Clara project we talk about today will consist of a pressurized pipeline from the existing Gunlock Reservoir on the Santa Clara River to the Ivins Reservoir, which was designed to save water and help alleviate the current water shortages. The project will pool the water rights of the St. George Santa Clara Fields Company, the new Santa Clara Field Company, the Ivins Irrigation Company Lower Gunlock Reservoir Corporation, and the Shivwits Band, and water will be delivered as provided in the agreement.

A major component of the Santa Clara project is the so-called "pooling agreement," and I believe it is important that everyone realize the commitments and financial contributions by the local water users for this settlement.

The band's 1,900 acre feet will have an 1890 priority date, which is equal to the primary rights on the river, although the reservation was established in 1916.

The Santa Clara project also provides supplemental groundwater to the parties involved in the agreement, and groundwater is very important in drought years when the adequate surface water is not available.

I've reviewed the information with you today to show the extent and reach of the project. It is my opinion that there are numerous benefits provided to the Shivwits Band that would be very expensive or institutionally difficult to accomplish without this cooperative agreement.

The settlement agreements, which are the foundation for the legislation we are discussing today, are the result of good faith efforts of the Shivwits Band, the Department of the Interior, St. George City, Washington County Water Conservancy District, and local water users.

On behalf of the State of Utah, I'd like to formally acknowledge their efforts and to offer our appreciation. Without a continued and diligent service, the settlement agreement would not have been completed.

The State of Utah is supportive of efforts to provide meaningful assistance to the Shivwits Band and allow them to realize some economic development on the reservation.

In my opinion, the proposed legislation provides much-needed opportunities to the band. We are hopeful that the implementation of this settlement will occur over the next 2 to 3 years.

We respectfully ask Congress to support this effective and reasonable solution to the complex Indian water rights issue.

In closing, it is our hope that you will support this important and meaningful legislation. We believe that the settlement is fair and equitable for all parties involved. It resolves the water rights claims of the Shivwits Band, while providing them with a firm water supply and economic development in the future.

The State of Utah acknowledges the compromises that were required from all participants, and we would like to thank you for this opportunity today. Thanks.

Senator HATCH. Thank you, Mr. Bird.

[Prepared statement of Mr. Bird appears in appendix.]

Senator HATCH. Mr. Thompson, we are always happy to see you. I know you've played a key role in the development of this settlement, and we really appreciate having you here once more. You have probably been here as much as anybody in Utah from time to time in various committees. We will turn the remaining time over to you.

STATEMENT OF RON THOMPSON, WASHINGTON COUNTY WATER CONSERVANCY DISTRICT, ST. GEORGE, UT

Mr. THOMPSON. Thank you, Senator Hatch, Senator Inouye, and Senator Bennett. I appreciate the opportunity of being here and with your staff.

I'd ask that my written comments be entered into the record. Maybe I could briefly summarize at least our view of the settlement, if that would be okay.

We in the district first became involved in Santa Clara in an effort to develop a conservation agreement that would take care of a species that was proposed to be listed as an endangered species. If you know the history of southern Utah, you know that the communities are all built along a stable supply for water.

In an early 1900 study by the USGS, they looked at how water was being distributed through the Virgin River basin in both Utah and southern Nevada and the Mesquite Bunkerville area, and in one of the sections of that report they talk about how disputes are resolved, and they indicated that there were very few disputes that came up in most of the Virgin River, and those few that did were usually handled by the county commissioners or ecclesiastical authorities, except for the Santa Clara River, and the problems there were so acute no one could solve them.

We think in this settlement that we've found a solution that not only balances some significant environmental needs, but provides a basis for sharing the water, both surplus and shortages, between important water user groups within our community.

In addition to the Federal contribution, there is a significant local contribution, not only in water but also from the water district and the State in paying substantial costs for the pipeline from Gunlock to Santa Clara, which really allows much of this water to come through conservation savings.

Three CFS of the State water will be put year round in the Santa Clara River to provide suitable habitat for the Virgin River Spinedace. Another 2,000 acre foot of the same water is going in to help secure the water rights of the Shivwits Band which will be shared with the other water users within the community.

We think this is a win/win for all the parties. I know many have suggested that litigation was more appropriate, and I would submit, being a lawyer, that this case could have been a lawyer's dream, but certainly those who have to deal with working together in communities through generations, litigation would only bring hard feelings and no clear winners. We think this provides an opportunity for everyone to share equally both the responsibilities, benefits, and burdens of a water system which can benefit everyone if it is properly managed.

We strongly support this legislation. We urge its adoption and the subsequent funding of the Federal share of this settlement so that we can move forward and provide the benefits, particularly to the band in an area where they certainly need the benefit of this agreement to move forward.

Thank you.

Senator HATCH. Thank you.

[Prepared statement of Mr. Thompson appears in appendix.]

Senator HATCH. Senator Inouye, do you have any questions?

Senator INOUE. All I want to do is to commend all of the principals involved in this agreement. I think it should be a model for other agreements. Congratulations.

Senator HATCH. Thank you, Senator.

Senator Bennett.

Senator BENNETT. I'll simply say amen to what my friend from Hawaii has said.

We have a lot of controversial issues in the west, and particularly in this part of Utah, and to see all of the parties come together in this kind of way without any prodding from the Federal Government is really, really delightful. We appreciate all that you have done, all of you.

Senator INOUE. May I ask a question?

Senator HATCH. Sure.

Senator INOUE. Senator Bennett, Utah is the second-driest State? Which is the first-driest State?

Senator BENNETT. Nevada.

Senator INOUE. Thank you.

Senator BENNETT. You in Hawaii who have rain every morning at 10 a.m. have no idea what it is like. [Laughter.]

Senator HATCH. Senator Inouye was telling me that they have had a drought this year—

Senator INOUE. That is right.

Senator HATCH [continuing.] And that they may have some difficulties with water.

Ron, we may have to ship you over there to Hawaii to help them with their problems. [Laughter.]

Senator INOUE. We are going to have a water settlement, too.

Senator HATCH. They're going to have a water settlement, too.

Well, I want to thank all of you for your thoughtful testimony. I know you've come a long way to participate. This is important, however.

Chairman Rogers, we appreciate your being here and your excellent remarks that you've made. I think you've covered most of the questions that I've had.

Mayor McArthur, we know what a great job you do down there in St. George, as well as the mayor in Duchesne. You guys deserve a lot of credit for what you do.

Darin, we're proud to have you at the State, after having worked for Senator Bennett for so many years. You're doing a good job.

Ron, nobody in Utah understands water rights and water problems as well as you do, as far as I'm concerned. That may irritate a few people. That's a very dumb thing to say by somebody who is up for reelection, but it is true. We appreciate all the work that you have done through the years and the way you have been able to resolve some of these very, very tense and difficult situations. I've watched you all these years, and you really deserve a lot of credit.

Senator Inouye has indicated to me that if these bills are ready to be marked up, we'll mark them up next Wednesday—not tomorrow, but 1 week from tomorrow—so we're hopeful that all of these problems can be solved.

I'm for marking both of them up next Wednesday, anyway, and if we still have to resolve some things we can get that done between there and the floor, but it would be better to have everything resolved if we can get it done by next Wednesday. If that is too soon, let us know, but that's what we intend to do.

Any other comments?

[No response.]

Senator HATCH. With that, then, we want to thank everybody for coming. Unless there are other questions or comments, we will recess until further notice.

I want to thank Senator Campbell for his cooperation here.

Thank you very much.

[Whereupon, at 10:55 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF O. ROLAND MCCOOK, CHAIRMAN, TRIBAL BUSINESS COMMITTEE, UTE INDIAN TRIBE, UNITAH AND OURAY RESERVATION

My name is O. Roland McCook, chairman of the Tribal Business Committee of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah. I am providing this written statement on the proposed conveyance of two state certified water rights from the United States Irrigation Service to Duchesne City. In 1905, the Acting U.S. Agent, in behalf of the Indians of the Uintah Indian Reservation, Utah, filed two applications, 43-180 and 43-203, under the laws of the State of Utah to appropriate certain water respectively "for irrigation and domestic supply for townsite purposes" in the townsite of Duchesne, and "for the purpose of irrigating Indian allotments on the Uintah Indian Reservation, Utah made under the act of May 27, 1902, and for an irrigating and domestic water supply for townsite purposes" in the townsite of Duchesne. In 1920, the United States sought and obtained the State's approval of a change in use which recognized that the waters were to be used for "municipal and domestic purposes" within the town of Duchesne. While clearly decreed for use within Duchesne City and having only been used within the City, the water rights continue to be held in the name of the United States Indian Service.

Given the history of these two water rights, as is more fully set forth in the version of this bill proposed by the Administration, the Tribe does not oppose the transfer of the two State water rights from the name United States to Duchesne City. However, the tribe's position is dependent upon the bill's language following the language proposed by the Administration, and the tribe will be required to reevaluate its position in light of any changes to that language.

On behalf of the Tribal Business Committee of the Ute Indian Tribe, I would like to express my gratitude to the committee for this opportunity to present the tribe's statement.

Thank you.

PREPARED STATEMENT OF KIM HAMLIN, MAYOR, DUCHESNE CITY, UT

As the mayor of Duchesne City, UT, it is my intention to explain the significance of S. 2350/H.R. 3468 to our city. I have lived in Duchesne for approximately 28 years. I am the owner of Hamlin Trucking, and in the past have served as the director of economic development for the Association of Government and as a board member of the Utah League of Cities and Towns. For the last 6½ years, I have served as mayor of the city. Before my service as mayor, I served on the city council for 8 years.

Duchesne City is a rural community, created in November 16, 1905, by Presidential Proclamation. Duchesne is located about 2½ hours east of Salt Lake City, UT, set just beneath the Uintah Mountains. The city's population is approximately 1,700.

As with all communities, resources available to Duchesne are of paramount importance. Water is especially important, particularly in Utah, one of the most arid States in the United States. There can be no doubt that this is what motivated G.B. Hall, Captain, 5th Calvary and acting Indian agent for the Uintah Indian Reservation to file two Applications to Appropriate Water with the Utah State Engineer: Application 43-180 and Application 43-203, after the townsite had been identified by the Commissioner of Indian Affairs as one open for settlement. In the application, Hall explained the purpose for Application 43-180: "This application is intended for irrigation and domestic supply for townsite purposes in the lands herein described." The purpose for Application 43-203 was explained in the following way: "The water applied for is for the purpose of irrigating Indian allotments on the Uintah Indian Reservation, Utah, made under the Act of May 27, 1902, and for an irrigating and domestic water supply for townsite purposes in the lands herein described." Although application 43-203 was originally intended to benefit both Indian allottees and the townsite, in November 24, 1920, prior to the perfection of the water right, the U.S. Indian Service submitted a change application which provided that the entire appropriation was to be used for "municipal and domestic purposes in the town of Duchesne, Utah." This change is reflected in the final Certificate of Appropriation.

Since their appropriation, these water rights have been used for water supply for Duchesne City. Although the water rights have always been used by Duchesne City, apparently because an Indian agent applied for the water rights, they have been titled in the United States Indian Service ever since 1905. Duchesne City has had significant concerns about the title of these rights for some time. Duchesne City would feel much more secure when it actually holds the title to the water it uses and relies upon. Obviously, there is no one living who can relate the events of the first decade of the twentieth century. As the purpose of the appropriation of this water becomes more obscure, there is a greater risk of loss of these rights to Duchesne City.

In 1946, the Duchesne City Council began inquiring about the title of the water rights. Duchesne City believed that the issue had been resolved in 1947. However, since that time numerous attempts have been made to change the title to Duchesne City to alleviate any question of ownership of the water and to firmly establish Duchesne City's right to use the water. Prior to the present effort, significant efforts to cause the records of the Utah State Engineer to reflect the true ownership of the water rights have occurred in 1966-70, 1976, and 1989-93. Despite all of these efforts, no change has occurred. Accordingly, following the suggestion of the Utah State Engineer we have appealed to this esteemed body to finally settle this matter by causing the water rights to be deeded to Duchesne City.

This is our latest effort to secure title to the water. I, along with other city officials, have engaged the services of the law firm of Nielsen & Senior, located in Salt Lake City, UT, to assist us in securing the rights. We have met with members of the Department of the Interior and with members of the Ute Indian Tribe. In meetings with the Ute Tribe Business Committee, it was apparent that the tribe understood the importance of owning or controlling a valuable resource such as water. Further, it was clear that they understood that these particular water rights were always meant for and used by Duchesne City. After the tribe discussed the matter with their special water counsel, Tod J. Smith, the Ute Tribe decided to support our efforts.

The Ute Tribe will be significantly benefited by S. 2350/H.R. 3468. In Utah, municipalities typically require a developer of land to pay an impact and connection fee to the city to defray the cost of accessing water to serve the development. The Ute Tribe has substantial holdings of undeveloped land in Duchesne City. The legislation provides for the use of this water in Duchesne City either by tribal members or on tribal property without the payment of an impact or connection fee.

S. 2350/H.R. 3468 is the culmination of our efforts to fully and finally resolve this matter. We have engaged in significant and prolonged negotiations with the United States Department of the Interior, the Ute Indian Tribe, and other entities having interest in these rights, which have all approved of the language in S. 2350/H.R. 3468. I respectfully urge this committee to recommend the approval of S. 2350/H.R. 3468.

PREPARED STATEMENT OF RONALD W. THOMPSON, DISTRICT MANAGER, WASHINGTON,
COUNTY WATER CONSERVANCY DISTRICT

The people of Southwestern Utah consider the wise and effective use of its water resources very important. Washington County is the driest county in the second dri-

est State in the United States and water is not only scarce but is the lifeblood of all of our communities.

The age old problem of allocating this scarce resource has always been a critically important issue in Washington County and, particularly along the Santa Clara River, which in addition to providing water to many users, is the home of the Shivwits Band of the Paiute Indian Tribe.

The Washington County Water Conservancy District has worked for many years as a facilitator to bring about a useful, acceptable settlement of the Shivwits water rights claim with the State of Utah and the water users along the Santa Clara River.

Initially, the United States as Trustee for the Shivwits Band, filed the water user claim in the ongoing statutory adjudication of water rights in Washington County claiming the right to 11,355 acre foot of water for the benefit of the Shivwits Band. Since this water right claim was for nearly the full annual flow of the Santa Clara River, it obviously caused a great deal of concern among the water user community within the Santa Clara River system. Much effort has gone into finding a mutually acceptable solution. Attempting to allocate an extremely scarce resource and take into consideration environmental needs along the Santa Clara River along with allowing the input of the water user community has been extremely challenging and required a great deal of time and effort of all the involved parties.

We believe the proposed settlement as outlined in S. 2351 and the settlement agreements allow the parties to not only meet their own water needs, but meet environmental needs found along the Santa Clara River system. This settlement proposal will provide 4,000 acre feet of water to the Shivwits Band. It will bring the Shivwits Band and other water users into a pooling agreement which will provide water for both. It will also allow them to share reservoir space, pipe water, implement aggressive water conservation practices, which will not only allow them to meet the irrigation needs of the water users but also to provide additional instream flows in areas which have historically been dewatered along the Santa Clara River.

The Santa Clara Settlement Agreement pools 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 Shivwits Band.

The water the Washington County Water Conservancy District delivers is provided for in the Santa Clara Agreement. Pursuant to that agreement, the Shivwits Band will receive 1,900 acre feet annually from the Santa Clara River in an average water year and all users will take proportionate reductions in below average years. Surface water rights will be supplemented by underground water rights of the parties, including St. George City, in below average years.

The United States, the State of Utah and the Washington County Water Conservancy District have contributed \$2,250,000 for the construction of the pipeline from Gunlock Reservoir to Ivins Reservoir which will provide the backbone for delivering the water to the Shivwits Band and to the other water users in the lower Santa Clara River. The Shivwits Band, along with the other Santa Clara Water Projects users, will pay their proportionate share of annual operation and maintenance costs for the project.

The project also provides significant environmental benefits such as water savings by use of the pipeline. This water will be released for the benefit of the Virgin River Spinedace. Also, the United States, on behalf of the Shivwits, will be obligated to pay \$15 million to the city of St. George for the Band's proportionate share of the construction, operation and maintenance of the St. George Water Reuse Plant, which will provide 2,000 acre feet of water annually to the Shivwits Band's eastern boundary on the Shivwits Reservation.

S. 2351 would approve, ratify and confirm the Santa Clara Project Agreement and the Shivwits Band's water right settlement for 4,000 acre feet of water. It would authorize the Secretary of the Interior to execute the settlement documents and appropriate funds necessary for the implementation of the St. George Water Reuse Agreement, and the Santa Clara Project Agreement.

The bill would also establish a trust fund in the Treasury of the United States for the benefit of the Shivwits Band of \$1 million to be made available to cover the Shivwits' proportionate share of long term operation and maintenance of the Santa Clara Project and an economic development fund to be used on the reservation in the amount of \$5 million to help the band enhance the economic conditions on the reservation.

The legislation also authorizes the Secretary of the Interior to establish a water rights and habitat acquisition program in the Santa Clara and Virgin River Basins for the benefit of species and plants which have been listed, are likely to be listed or are subject to a duly approved conservation agreement under the Endangered Species Act. The amount of the fund will be \$3 million, which will be appropriated

for this purpose. The fund will be administered pursuant to the terms and conditions of the Virgin River Management Program for water right and habitat acquisition.

The efforts of bringing the parties together to provide an adequate water supply to the Shivwits Band to meet the needs of the environment and the other local irrigators on this river system has been time consuming, however, this agreement brings an opportunity for a win-win resolution in this river system which was not on the horizon until recently. The Washington County Water Conservancy District supports this agreement and has committed to expend substantial funds in making sure the agreement moves forward and is implemented for the benefit of the irrigators including the band, the communities and the environment.

Thank you for your time and effort.

**STATEMENT
OF
DAVID J. HAYES, DEPUTY SECRETARY OF THE INTERIOR,
BEFORE THE SENATE INDIAN AFFAIRS COMMITTEE
ON S. 2351,
the "SHIVWITS BAND OF THE PAIUTE INDIAN TRIBE OF UTAH
WATER RIGHTS SETTLEMENT ACT"**

MAY 2, 2000

Good morning Mr. Chairman and members of the Committee. I am David J. Hayes, Deputy Secretary of the Interior. It is my pleasure to be here today to testify on behalf of the Administration on S. 2351, a bill to authorize a water rights settlement for the Shivwits Band of the Paiute Indian Tribe of Utah.

The Administration supports S. 2351 on one important condition and with recommended changes explained later in this testimony. Our support is conditioned on the parties' execution of a final settlement agreement, including subsidiary agreements, which resolves the Shivwits Band's water rights claims in the Virgin River System adjudication. It is my understanding that the parties are aware of the importance of a final executed settlement agreement and understand that full Administration support must be conditioned on such an agreement. I am informed that the parties will be meeting later this week (May 4-5) in Salt Lake City and are within striking distance of finalizing the settlement agreement in accordance with the principles set forth in S. 2351.

We are pleased with the substantive content of S. 2351 which is the product of an impressive cooperative effort among the Shivwits Band, the State of Utah, several local non-Indian entities, and the United States. The parties have worked non-stop over the last year to resolve a number of difficult issues and put the details of the settlement together. The Administration would like to thank Senators Hatch and Bennett for introducing the

bill. We also want to make clear our desire to work closely with the Committee once the settlement agreement is finalized to ensure that any necessary changes are made to the bill so that this important legislation can be enacted into law.

Background

The Shivwits Indian Reservation is located in Washington County, Utah, approximately 10 miles northwest of the city of St. George. The Reservation is within the Shivwits Band's aboriginal territory. The United States initiated establishment of the Reservation pursuant to an Act of Congress on March 3, 1891. The boundaries of the Reservation were first delineated by Executive Order in 1916. A 1937 Act of Congress extended those boundaries, increasing the Reservation's size to approximately 28,000 acres.

The Shivwits Band's history includes its involvement in the failed federal termination policy of the 1950s. In 1954, Congress terminated the Southern Paiute Tribe, including the Shivwits Band, while at the same time expressly preserving the Tribe's water rights. Recognizing that the termination policy was fundamentally flawed, Congress, in 1980, restored the Southern Paiute Tribe to federally recognized status (P.L. 96-227). Despite the hardships of the termination era, the Shivwits Band was able to maintain its entire Reservation land base so that the total Reservation was fully restored to trust status in 1980.

Of course, water is critical to the Shivwits Band's ultimate goal of developing a sustainable Reservation economy. The Band is made up of approximately 300 enrolled members and the Reservation population is projected to exceed 400 people within the next 30 years. The primary water resource is the Santa Clara River which flows through

the middle of the Reservation in a north to south direction before joining the Virgin River near St. George. In 1980, the State of Utah initiated an adjudication of all rights to the use of water in the Virgin River and its tributaries, including the Santa Clara River. In 1987, the United States filed claims on behalf of the Band to approximately two-thirds of the present day average annual flow of the Santa Clara River. Recognizing the benefits of negotiation over litigation, the parties initiated the settlement discussions that ultimately resulted in S. 2351.

S. 2351

Under the terms of S. 2351, Congress would approve and authorize federal participation in three agreements which constitute a final settlement of the water rights claims of the Shivwits Band and the United States on behalf of the Shivwits Band. In sum, the settlement agreement will secure a total of 4,000 acre-feet per annum (afa) for the Band's present and future uses. The water is provided primarily through the development of two small projects in which the Band will be a partner with its non-Indian neighbors. The first is the St. George water reuse project which will treat effluent discharged by the St. George Water Reclamation Facility and transport 2,000 afa of such effluent to the Shivwits Band for its use. The second facility is the Santa Clara project, consisting primarily of a pressurized pipeline to deliver water from Gunlock Reservoir. The pipeline will use water more efficiently and reduce water losses that exist in the present delivery system. As a result, 1,900 afa of water, including conserved water, will be used to settle the Shivwits Band's water rights claims and to provide year-round flows in the Santa Clara River for environmental purposes. The balance of the Band's settlement water budget (100 afa) is made up of groundwater withdrawals on the

Reservation.

S. 2351 would authorize a total federal contribution of \$24 million towards the settlement. Three million dollars of this amount would be made available for environmental needs. As a condition of the settlement, \$5 million would be placed in a trust fund to be made available to the Shivwits Band for economic development purposes consistent with the Act. Fifteen million dollars would be made available to the City of St. George to fund the Band's share of the reuse project. Finally, an additional \$1 million would be added to the trust fund to assist the Band with its share of operation, maintenance, repair, and replacement (OM&R) costs associated with the Santa Clara project.

S. 2351 ensures that water development as part of this settlement is consistent with environmental needs by authorizing appropriations of \$3 million for the Secretary to address Endangered Species Act concerns by acquiring water rights and habitat for the benefit of listed or candidate native plant and animal species in the Santa Clara River and Virgin River basins. This acquisition will provide a base flow in the Santa Clara River for environmental benefits. This base flow of 3 cfs is part of the Virgin River Resource Management and Recovery Program which is intended to prioritize and implement native fish recovery actions to offset the impacts of future water development in the Virgin River basin. Thus, the Administration supports the inclusion of this program in S. 2351 as a means of striking a balance between water development and species needs.

We have a concern that the \$ 1 million for OM&R would cover essentially all the Band's obligation for the project. As a matter of general policy, the Administration opposes paying full OM&R costs associated with tribal use of water secured in water

rights settlements. This policy reflects our view that it is appropriate for Tribes to pay for at least some of the annual costs associated with water service as a means to ensure settlement projects which are economically viable and efficient. Should Congress decide to retain the \$ 1 million appropriation for the Band's share of project OM&R, the bill needs to make clear that once enacted, the United States has no further obligation to pay any OM&R associated with the Santa Clara Project.

Except for the concern just raised, we believe the significant federal contribution contemplated in S. 2351 is appropriate to facilitate resolution of the Shivwits Band's claims. The settlement will release the United States from any potential damage claims that might be asserted by the Band and will relieve the government of the obligation to litigate, at significant cost and over many years, the Band's water rights claims. Moreover, the settlement is in keeping with the United States trust responsibility since it assists in securing a critical resource for the Shivwits Band. The water made available, along with the other settlement benefits, will allow the Band to move towards economic self-sufficiency in accord with the policy of Indian self-determination. At the same time, resolution of the Band's water rights claims will provide certainty to its neighbors, enabling them to plan and make necessary investments based on the assurance that they have secure and stable water rights.

Recommended Changes

While we strongly support the settlement in concept as set forth in S. 2351, we must recommend changes to the bill as introduced. These recommendations for changes were also made with respect to H.R. 3291, the companion settlement bill in the House of Representatives. It is my understanding that Congressman Hansen has offered

amendments to H.R. 3291 which incorporate our recommendations. We appreciate the opportunity to work cooperatively with the Congress to improve proposed legislation.

It is important to understand that the benefits accruing to the Band and other settling parties become available only after the entry of a final water rights decree by the adjudication court. Achieving this culmination of the settlement can sometimes be as complex as negotiating the settlement itself. While we do not question the commitment of the settling parties to finalizing the settlement, other factors can arise which may delay final court approval. Our experience has shown that including a deadline for settlement approval serves as positive motivation to keep the court process moving. We recommend such a deadline here. The bill should also contain specific consequences if the settlement is not approved such as the return of appropriated funds to the Treasury. The bill should further specify that once the settlement becomes effective pursuant to the requirements of section 14, however, the bill Trust Fund will be a Tribal asset. As an additional matter, the waivers and release provisions of section 9 must be expanded and clarified in a manner consistent with the settlement agreement once finalized. The exact changes needed in section 9 should be available after the Parties' negotiating session later this week.

As I noted earlier, we would like to work closely with the Committee to implement the necessary changes to S. 2351.

Conclusion

The water rights settlement to be ratified and approved by S. 2351 represents the best approach to resolving contentious issues surrounding water rights in the West. Negotiated agreements between Indian tribes, states, local parties, and the federal

government continue to be the most effective way to resolve reserved water right claims in a manner that secures tribal rights to assured water supplies for present and future generations while at the same time providing for sound water resource management. The known benefits of settlement far outweigh the uncertainties that are inherent in litigation. Accordingly, the Department of the Interior has been actively engaged in negotiating this settlement as well as other settlements in the West. We continue to work on implementation of the long-delayed 1988 Colorado Ute Water Rights Settlement which includes a significantly down-sized Animas-La Plata Project. In addition, we are working to resolve a number of water issues in Arizona that would facilitate several water rights settlements, including one involving the Gila River Indian Community which has one of the largest, if not the largest, Indian reserved water rights claim in the West. The Western Governors are supportive of these efforts as evidenced by Western Governors Association Resolution 98-029 (June 30, 1998) which reiterates support for negotiated settlements of Indian land and water claims. Enactment of S. 2351, in addition to its own benefits, builds upon the Indian water rights settlement groundwork laid by the Rocky Boys settlement (P.L. 106-163), and provides momentum for moving these other valuable settlements to completion.

As a final matter, I should note that the State and Shivwits Band will testify today that the Shivwits Band of Paiute Indian Tribe water rights settlement is broadly supported in the State of Utah. The Administration is excited about the prospect for enactment of another Western water settlement. We will work closely with the Committee to ensure that this non-controversial settlement can move swiftly through the legislative process once the settlement agreement is finalized.

ATTACHMENT

Text of initial changes recommended by the Department of the Interior to S. 2351, as attachment to Department testimony. Other changes will be necessary once the settlement agreement is finalized.

- Addition to Section 4. Definitions:

(12) VIRGIN RIVER RESOURCE MANAGEMENT AND RECOVERY PROGRAM. The term “Virgin River Resource Management and Recovery Program” means the proposed multi-agency program, to be administered by the United States Fish and Wildlife Service, Bureau of Land Management, National Park Service, State of Utah, Washington County Water Conservancy District, and Grand Canyon Trust whose purpose is to prioritize and implement native fish recovery actions that offset impacts due to future water development in the Virgin River basin.

- Addition to Section 11. Shivwits Band Water Development Trust Fund:

(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 and the Shivwits Band has executed the waivers and releases required under section 9(b). Once the settlement becomes effective pursuant to the terms of section 14, the assets of the trust fund belong to the Shivwits Band and are not returnable to the United States Government.

- Addition to Section 14. Effective Date:

(b) DEADLINE - In the event that the requirements of section 14(a) are not completed to allow the Secretary’s statement of findings to be published by December 31, 2003–

(1) the United States’ approval, ratification, and confirmation of the Agreements identified in section 8 shall be null and void;

(2) except as provided in section 9(c) and section 14(c) below, this Act shall be of no further force and effect.

(c) RETURN OF FUNDS TO THE TREASURY - In the event that the approval, ratification, and confirmation of the Agreements as set forth in section 8 becomes null and void under section 14(b), 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 Treasury 12 months after the expiration of the deadline established in section 14(b).

- Section 11(b) should be modified to refer to fiscal years 2002 and 2003, rather than 2001 and 2002.
- Addition to Section 13, Miscellaneous Provisions

(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 is solely to inform the Court of the specifics of this settlement and shall not expand State court jurisdiction or expand in any manner the waiver of sovereign immunity of the United States in 43 U.S.C. 666, or any provision of federal law.

- Technical change to Section 10(f)

There is authorized to be appropriated from the Land and Water Conservation Fund, \$3,000,000 for the water rights and habitat acquisition fund

Finally, we will provide shortly a copy of S. 2351 showing our amendments and with some other minor edits to ensure consistency between the bill and the Agreements.

**WRITTEN TESTIMONY of
J. CRAIG SMITH, Esquire**
of the law firm of
NIELSEN & SENIOR P.C.

to the

**UNITED STATES SENATE
COMMITTEE ON INDIAN AFFAIRS**

on behalf of

DUCHESNE CITY, UTAH

May 2, 2000

INTRODUCTION

To understand the need for S.2350/H.R. 3468, it is necessary to understand the history of Duchesne City and the Uintah and Ouray Reservation. The following testimony explains why in 1905 a Calvary Captain and Indian Agent applied for two state appropriated water rights for Duchesne City. This testimony will also explain the reason the two water rights belong to Duchesne City, the reason the Ute tribe supports S. 2350/H.R. 3468, and the reason S. 2350/H.R. 3468 is necessary.

I. GENERAL HISTORY OF DUCHESNE CITY

On October 3, 1861, President Abraham Lincoln designated "the entire valley of the Uintah River within Utah Territory, extending on both side of said river to the crest of the first range of contiguous mountains on each side" as an "Indian reservation," as "the valley and surrounding country [was] as yet unoccupied by settlements of [United States] citizens." 1 Charles J. Kappler, *Indian Affairs: Laws and Treaties* 900 (1904). The extent of the reservation encompassed approximately 2 million acres, see *Hagen v. Utah*, 510 U.S. 399, 402, 114 S. Ct. 958, 961 (1994), including land that is now the city of Duchesne, Utah, see Presidential Proclamation 34 Stat. 3139 (1905); *Ute Indian Tribe v. State of Utah*, 935 F. Supp. 1473, 1486 (D. Utah 1996), *rev'd in part and remanded*, 114 F.3d 1513 (10th Cir. 1997). Congress approved the action of President Lincoln in 1864. See Act of May 5, 1864, ch. 77, 13 Stat. 63.

In the latter part of the 19th century, federal Indian policy changed. Indians were no longer to inhabit communally owned reservations, but instead were to be given individual parcels of land; any remaining lands were to be opened for settlement by non-Indians. The General Allotment Act, Act of Feb. 8, 1887, ch. 119, 24 Stat. 388, granted the President authority "to allot portions of reservation land to tribal members and, with tribal consent, to sell the surplus land to [non-Indian] settlers, with the proceeds of these sales being dedicated to the Indians' benefit."

Hagen, 510 U.S. at 402, 114 S. Ct. at 961 (citations omitted). As a result of this Act, in 1894 the Congress directed the President to "appoint a commission," *inter alia*, to negotiate with those Indians on the Uintah Indian Reservation "for the relinquishment to the United States of" their interest "not needed for allotment in severalty to [the] Indians" in the reservation land. Act of August, 15, 1894, §§ 20, 22, 28 Stat. 337. Upon the failure of the first commission, the Congress again directed the President to appoint a commission to negotiate an agreement for the allotment of the Indian's interest in the land. See Act of June 4, 1898, ch. 376, 30 Stat. 429; *Hagen*, 510 U.S. at 402-03, 114 S. Ct. at 961. The commission was unable to negotiate an agreement. *Hagen*, 510 U.S. at 403, 114 S. Ct. at 961.

In 1902, Congress passed an Act which provided that if a majority of the adult male members of the Uintah . . . Indians consented, the Secretary of the Interior

should make allotments by October 1, 1903, out of the Uintah Reservation. Act of May 27, 1902, ch. 888, 32 Stat. 263. The allotments under the 1902 Act were to be 80 acres for each head of a family and 40 acres for each other member of the tribes. The Act also provided that when the deadline for allotments passed, "all the unallotted lands within said reservation shall *be restored to the public domain*" and *subject to homesteading* at \$1.25 per acre. The proceeds from the sale of lands restored to the public domain were to be used for the benefit of the Indians.

... On March 3, 1903, Congress directed the Secretary to allot the Uintah lands unilaterally if the Indians did not give their consent by June 1 of that year, and deferred the opening of the unallotted lands "as provided by the [1902 Act]" until October 1, 1904. Act of Mar. 3 1903, ch. 994, 32 Stat. 998. . . . In 1904, Congress passed another statute that appropriated additional funds to "carry out the purposes" of the 1902 Act, and deferred the opening date "as provided by the [1902 and 1903 Acts]" until Mar. 10, 1905. Act of April 21, 1904, ch. 1402, 33 Stat. 207.

In 1905, Congress again deferred the opening date, this time until September 1, 1905, unless the President were to establish an earlier date. Act of Mar. 3, 1905, ch. 1479, 33 Stat. 1069. . . . The Act . . . provided:

"[T]he manner of opening [reservation] lands for settlement and entry, and for disposing of the same, shall be as follows: *That the said unallotted lands . . . shall be disposed of under the general provisions of the homestead and town-site laws of the United States*, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied and entered by persons entitled to make entry thereon."

Id. at 403-05, 114 S. Ct. at 961-62 (footnotes & citations omitted; emphasis added).

"Several years before the opening of the Uintah Indian Reservation," A.M. (Al) Murdock, the first white settler in what is now Duchesne City, "secured a concession from the U.S. Indian Office to establish a small trading post to serve the Indians in the area." John D. Barton, *A History of Duchesne County* 180 (1998). Knowing that the area would soon become a part of the public domain, Murdock apparently "took advantage of [his] location" by increasing his supplies in an attempt to profit from the many people traveling the area looking for possible homestead locations. *Id.*; see also Mildred M. Dillman, *Early History of Duchesne County* 190 (1948). Apparently, many of the those who had come to look over the area stayed, and they had a general gathering on about June 1, 1905. See Dillman, *supra*, at 190. By June 6, 1905, Murdock "had pitched a large circus tent just west of the Murdock residence, and had it well supplied with hay, grain, and food supplies. There were 52 men, and one woman, Dora, daughter of Mr. Murdock, and *one Indian, Sugoosie Jack*. This was the beginning of the colonization of Duchesne." See *id.* (emphasis added); Barton,

supra, at 181. Those present organized themselves as a town, and apparently wanted it called Dora.¹ Dillman, *supra*, at 190-191.

On June 7, 1905, "the Secretary of the Interior directed the Commissioner of Indian Affairs to cause to be selected . . . one or more tracts of land, suitable for townsite purposes, in the Uintah Indian Reservation Lands [in order that they] might be reserved under the [townsite act provisions]." Presidential Proclamation, 34 Stat. 3139. On July 6, 1906, the Acting Commissioner of Indian Affairs informed the Secretary that three such sites had been found and recommended that they be reserved under the provisions of the townsite act. *See id.* Apparently, Murdock and others located in what is now Duchesne were instrumental in securing the Commissioner of Indian Affairs' recommendation. *See* Barton, *supra*, at 181; Dillman, *supra*, at 190-91.

Although the Indians never consented to the allotment provisions of the Act, President Theodore Roosevelt, proclaimed on July 14, 1905:

Whereas it was provided by the [1902 Act], among other things, that on October first, 1903, the unallotted lands in the Uintah Indian Reservation, in the State of Utah, "*shall be restored to the public domain*: Provided, That persons entering any of said lands under the homestead laws shall pay therefor at the rate of [\$1.25] per acre."

And, whereas, the time for the opening of said unallotted lands was extended to October 1, 1904, by the [1903 Act], and was extended to March 10, 1905, by the [1904 Act], and was again extended to not later than September 1, 1905, by the [1905 Act], which last named act provided, among other things: ["That the said unallotted lands . . . shall be disposed of under the general provisions of the homestead and townsite laws of the United States. . . ."]

Now therefore, I, Theodore Roosevelt, President of the United States of America, by virtue of the power in me vested by said Acts of Congress, do hereby declare and make known that all the unallotted lands in said reservation, excepting such as have at that time been reserved for military, forestry and other purposes, . . . will on and after the 28th day of August, 1905, in the manner hereinafter prescribed, and not otherwise, be opened to entry, settlement and disposition under the general provisions of the homestead and townsite laws of the United States; and it is further directed and prescribed that:

. . . .

¹ There is some confusion about the name of the town when it was settled. It was originally called Duchesne on the Field Notes of the survey done at the direction of the Department of the Interior. *See* Field Notes of the Survey of the Townsite of Duchesne (Sept. 28, 1905) (hereinafter referred to as "1905 Field Notes"). Apparently, the postal service objected to the name because it "conflict[ed] with nearby Fort Duchesne." John W. Van Cott, *Utah Place Names* 117 (1990). For a time the townsite was called Strawberry, then Dora, and then Theodore. *See id.*; Barton, *supra*, at 181; Dillman, *supra*, at 190-91, 205.

Any person or persons desiring to found, or to suggest establishing, a townsite upon any of the said lands, at any point, may, at any time before the opening herein provided for, file in the land office a written application to that effect, describing by legal subdivisions the necessity or propriety of founding or establishing a town at that place. The local officers will forthwith transmit said petition to the Commissioner of the General Land Office with their recommendation in the premises. Such Commissioner, if he believes the public interests will be subserved thereof, will, if the Secretary of the Interior approve thereof, issue an order withdrawing the lands described in such petition, or any portion thereof, from homestead entry and settlement and directing that the same be held for the time being for disposal under the townsite laws of the United States in such manner as the Secretary of the Interior may from time to time direct; and, if at any time after such withdrawal has been made it is determined that the lands so withdrawn are not needed for townsite purposes they may be released from such withdrawal and then disposed of under the general provisions of the homestead laws in the manner prescribed herein.

34 Stat. 3119-22.

Pursuant to Presidential Proclamation, on July 7 and 27, 1905, the Secretary of the Interior approved selections made by the Uintah Allotment Commission and reported by the Commissioner of Indian Affairs, for reservation as townsites. *See* 34 Stat. 3139. Consequently, on July 31, 1905, President Roosevelt reserved the land where the town of Duchesne, Utah, is located as a townsite. *See id.* A few days earlier, on July 26, 1905, the Commissioner of the General Land Office, had instructed that a survey be done. *See* 1905 Field Notes; Plat of the Reservation for the Townsite of Duchesne Utah (hereinafter referred to as "Plat"). The townsite plat was entered in the General Land Office on November 16, 1905. *See* Plat. Thus Duchesne City came into existence.

II. INDIAN IRRIGATION PROJECTS

The first federal venture in Indian irrigation was authorized by the Act of March 2, 1867, which appropriated fifty thousand dollars for the "expense of collecting and locating the Colorado River Indians in Arizona . . . including the expense of constructing a canal for irrigating said reservation." Construction was completed under supplementary appropriations, "but the project was abandoned later after several unsuccessful attempts to operate and maintain it."

In 1884, a general appropriation of fifty thousand dollars for irrigation to benefit Indians was authorized to be distributed at the discretion of the Secretary of the Interior. A similar approach followed in 1892 and, beginning in 1893, Congress annually made general appropriations under the description "Irrigation, Indian reservations" for reservations and purposes not provided for in specific appropriations. A later statute prohibited undertaking any new irrigation projects on an Indian reservation or land without specific authorization by Congress after presentation of estimated construction costs.

The Snyder Act of 1921 granted basic authority for irrigation expenditures on Indian reservations to the Bureau of Indian Affairs.

Felix S. Cohen, *Handbook of Federal Indian Law* 729 (1982).

Until 1902 reservation superintendents directed irrigation construction, maintenance, and operation with occasional assistance from temporarily employed engineers. The Appropriations Act of June 17, 1902, ch. 1093, § 4, 32 Stat. 388, 389 (codified as amended at 43 U.S.C. § 419), authorized the Secretary of the Interior to contract for construction of irrigation projects. A chief engineer was appointed for the BIA by the Appropriations Act of Mar. 3, 1905, ch. 1479, 33 Stat. 1028, 1049, and since that time a technical staff and organization have been developed to supervise and carry on Indian irrigation.

Id. at 729 n.14; see also Larry A. DiMatteo & Michael J. Meagher, *Broken Promises: The Failure of the 1920's Native American Irrigation and Assimilation Policies*, 19 Hawaii L. Rev. 1, 15 (1997). The Indian Irrigation Service was created in 1909. See DiMatteo & Meagher, *supra*, at 15.

The irrigation efforts of the Bureau of Indian Affairs were directly felt on the Uintah Indian reservation.

As early as the 1870s Indian agents assigned to the Uintah Indian Reservation recognized the need for irrigation canals if the land of the reservation was to be transformed into productive agricultural land. Little by little they and other Indian agents in the West secured small appropriations to construct irrigation canals on Indian reservations. By the 1890s more than a dozen small irrigation canals of various lengths and capacities had been built on the Uintah Indian Reservation. These canals included Number One, Bench, Henry Jim, Ouray School, Gray Mountain, U.S. Dry Gulch, Ouray Park, North Myton Bench, Lake Fork Ditch, Red Gap, and South Myton Bench canals. These canals watered about 3,000 acres of land from Tabiona to Ouray, with the possibility of irrigating many hundreds of acres more.

In 1891 Uintah-Ouray Indian Agent Robert Waugh urged that a more comprehensive and systematic approach be taken in the construction of Indian irrigation canals.

.....
In the summer of 1905, Indian agent H.P. Myton, *on behalf of hundreds of Indian allottees*, filed on hundreds of second-feet of water with the state engineer. These water filings were then distributed to the Indian allottees, who were responsible for demonstrating beneficial use.

Barton, *supra*, at 304-06 (emphasis added).

Later, in the middle of June 1906, Congress approved the Uintah Indian Irrigation Project.

The Uintah Indian Irrigation project was established and Congress agreed to appropriate \$600,000 for the project. [Act of June 21, 1906, 34 Stat. 375]. The federal government was to be reimbursed for the irrigation project from the sale of reservation land.

The bulk of the work to construct the project was done by local farmers. By 1913 the Uintah Indian Irrigation project provided water to 85,800 acres, of which 13,000 acres were irrigated. Most of these projects took place in what is now Uintah County

Id. Interestingly, the Act establishing the Uintah Indian Irrigation Project required that the Indian Agencies adhere to the laws of the state of Utah for the appropriation of waters.

Underlying this irrigation policy was the premise that assimilation of the Indians into white society was the most important goal of the United States government. "Congress . . . supported the point of view that allotment of land, even if opposed by the reservation Indians, must go forward." Gregory D. Kendrick, *Beyond the Wasatch* 20. To promote the assimilation of Indians into white society, "such allotments could be leased or sold to whites. . . . Interestingly enough, on the Uintah Reservation not only would Indian and white land be adjacent, but there would be a commingling of Indian-owned and white-owned water in jointly owned canals." *Id.*

III. TOWNSITE ACT

The Townsite Act to which the presidential proclamation establishing Duchesne Townsite makes reference provided that "[t]he President is authorized to reserve from the public lands, whether surveyed or unsurveyed, town-sites on the shores of harbors, at the junction of rivers, important portages, or any natural or prospective centers of population." Rev. Stat. § 2380 (1874). The purpose of this Act was to reserve such a site from entry by homestead or preemption.² Once a townsite was declared, the Secretary of the Interior was to "cause . . . such reservation[], or part thereof, to be surveyed into urban or suburban lots of suitable size, and to fix by appraisalment of disinterested persons their cash value, and to offer the same for sale at public outcry to the highest bidder." Rev. Stat. § 2381.

IV. HISTORY OF SUBJECT WATER RIGHTS

On July 25, 1905, almost two months after the Secretary of the Interior had instructed the Commissioner of Indian Affairs to recommend sites for reservation as townsites, nineteen days after the Commissioner had recommended Duchesne as a townsite, and one day before the General Land Office ordered a survey of Duchesne, G. B. Hall, Captain 5th Calvary and Acting Indian Agent for

² As discussed *supra* part II, it appears that a further purpose of creating the Duchesne Townsite was to create a community that could render services to the Indian community. Water was necessary to fulfill that purpose. Hence, government representative filed on water with the appropriate state official.

the Uintah Indian Reservation, filed two Applications to Appropriate Water with the Utah State Engineer: Application 43-180 and Application 43-203. In the Application, Hall explained the purpose for Application 43-180: "This application is intended for irrigation and domestic supply for townsite purposes in the lands herein described." The purpose for Application 43-203 was explained in the following way: "The water applied for is for the purpose of irrigating Indian allotments on the Uintah Indian Reservation, Utah, made under the Act of May 27, 1902, and for an irrigating and domestic water supply for townsite purposes in the lands herein described." Although application 43-203 was originally intended to benefit both Indian allottees and the townsite, in November 24, 1920, prior to the perfection of the water right, the U.S. Indian Service submitted a change application which provided that the entire appropriation was to be used for "municipal and domestic purposes in the town of Duchesne, Utah." This change is reflected in the final Certificate of Appropriation.

There appears to be no dispute that the water rights have been used since their appropriation for water supply for Duchesne City. Bernice P. Mecham, one of the original settlers of Duchesne explained that "[w]ater from the town of Duchesne was taken out in a ditch on the Duchesne river about one half mile above town in 1905." See Dillman, *supra*, at 215. Considering that in 1905 the main concentration of stores and related building was in the lower southeast corner of the townsite,³ the location of the original place of diversion of water right 43-180 places it approximately one-half mile up the Duchesne River. Further, in the letter from C.C. Mickelson, Duchesne City Councilman, to Ed Watson, State Engineer (May 20, 1947), Councilman Mickelson explains that "[w]hen the canals were built the Government put pad-locks on the gates in the fall of 1905 and in the spring took off the locks and turned all ditches over to the city of Duchesne. The City since this time has taken care of the water."

The United States Indian Service, Bureau of Indian Affairs, and Indian Irrigation Service (hereinafter collectively referred to as "Indian Agencies") have always acknowledged this fact. On two occasions in 1911, for instance, the United States Indian Service, Superintendent of Irrigation, sent letters to Caleb Tanner, Utah State Engineer, in which he acknowledged that water right no. 43-180 was intended to benefit only the Duchesne City townsite. See Letter from Superintendent of Irrigation, United States Indian Service, to Caleb Tanner, State Engineer (Nov. 10, 1911)⁴; Letter

³ Mecham explained that the "townsite was just above the junction of the Strawberry and Duchesne rivers." See Dillman, *supra*, at 205. Further, she says that Murdock's store and the Post Office were "at the bend of the Duchesne." See *id.* The Duchesne and Strawberry rivers converge just east of the townsite. See Plat. The bend just before the convergence is in the lower south east portion of the platted townsite. Pictures also demonstrate that the concentration of the town was in the lower southeast portion. See Dillman, *supra*, at 193.

Further evidence that the concentration of town was in the southeast portion is the 1917 plat subdividing the northeast section of town. See Plat of Part of the Townsite of Duchesne, Utah. The plat shows that only the southeast portion of the townsite had been subdivided in 1905. See *id.*

⁴ Interestingly, the November 11, 1911 letter appears to be a form letter addressed to a general extension of all water rights for which the Indian Agencies had applied in 1905. See

from Superintendent of Irrigation, United States Indian Service, to Caleb Tanner, State Engineer (Dec. 8, 1911). Although the Indian Agencies acknowledged that the Duchesne Townsite was to be benefited by these water rights, they were the agencies that pursued and finally obtained the perfected water rights in January of 1921. *See* Letter from the Utah State Engineer to Mr. Jes. M. Bryant, U.S. Indian Services (May 26, 1919); Certificates of Appropriation of Water Nos. 1034 & 1056.

Apparently no issue arose as to the ownership or status of these water rights again until approximately 1946. On June 10, 1946, Duchesne City Council Water Chairman, C. C. Mickelson wrote to the State Engineer's office inquiring about water rights 43-183 and 43-203. *See* Letter from C.C. Mickelson to State Engineer (June 10, 1946). The state engineer informed Mickelson that the water rights were in the name of the U.S. Indian Service. *See* Letter from State Engineer to C. C. Mickelson (June 14, 1946).

When in March 1947, Duchesne City applied for a permanent change of the point of diversion, *see* Application for Permanent Change of Point of Diversion, Place and Nature of Use of Water, a flurry of correspondence began. On March 11, 1947, the state engineer wrote to Duchesne City explaining that the U.S. Indian Service rather than Duchesne City was the proper entity to bring the application, and, therefore, the application would not be accepted from the City. *See* Letter from Ed. H. Watson, State Engineer, to Duchesne City Corporation (March 11, 1947).

On March 17, 1947, Mickelson wrote a letter to Superintendent Stone of the Uintah and Ouray Indian Agency explaining the situation. Stating that the Agency water engineer was "of the opinion that this water belonged to the City" because of the United States patents issued to the individual Duchesne city land owners, he asked for the Agency's cooperation. *See* Letter from C.C. Mickelson to Superintendent Stone (March 17, 1947). Superintendent Stone referred the matter to the Indian Office in Chicago, Illinois. *See* Letter from Forrest R. Stone to C.C. Mickelson (March 19, 1947).

Apparently, the Indian Agency approved the City making the change. In a letter to Ed Watson from Mickelson, Mickelson explained:

We submitted this application to the Uintah & Ouray Agency, Indian Department and they in turn submitted the question to the Attorney, who as we understand, informed them that this change could be made.

About two weeks ago Mr. William Preece and two representatives of the Indian Service were in my office here at Duchesne to look over the proposed change. I presented them with a photostatic copy of a patent issued by the United States conveying title to the lots in the City of Duchesne, along with the water rights. These men took this patent and as of April 23, I received a letter from Superintendent F.R. Stone of the Uintah & Ouray Agency, stating for us to proceed with our application. Therefore the same [is] being returned to you.

discussion *supra* part II. The letter references a project involving approximately 90,000 acres. Certainly, this was not referencing the townsite land. It is apparently speaking to the entire acreage appurtenant to all of the water rights for which the Indian Agencies had applied. *See* Kendrick, *supra*, at 25-27.

The City lots in question to be watered are all patented by the owners. The City of Duchesne ha[s] always taken care of the ditches and water system.

Letter from C.C. Mickelson to Ed Watson, Utah State Engineer (April 25, 1947).

The State Engineer's office then responded that it would consider Duchesne City as the "contract holder" of the water rights, and requested that the U.S. Indian Service designate its approval on the application. See Letter from Ed. H. Watson to C.C. Mickelson (May 9, 1947). Not content with this response, Mickelson again responded to the State Engineer stating that

Mr. Massey of the [U.S. Indian Service] informs me that according to the deeds (Patents) the department released their title if any on the filings when the patents were issued. This is what I have maintained all the time, that the water passed with the land. When the canals were built the Government put pad-locks on the gates in the fall of 1905 and in the spring took off the locks and turned all ditches over to the city of Duchesne. The City since this time has taken care of the water.

A copy of a patent is inclosed herewith which gives proof of water, and title to same.

Letter from C.C. Mickelson to Ed Watson (May 20, 1947). On May 26, 1947, the State Engineer relented and allowed the city to file the change application under its name. See Letter from Ed. H. Watson to C.C. Mickelson (May 26, 1947).

The issue of ownership did not arise again until 1966. Apparently, the U.S. Indian Service name was not removed from the water rights. E. J. Skeen, a noted Utah water lawyer and then water attorney for Duchesne City, sent a letter to the United States Indian Service, Fort Duchesne, Utah, inquiring about the water rights. See Letter from J. Stuart McMaster, Regional Solicitor, United States Department of the Interior, to E. J. Skeen (May 31, 1966). Stuart McMaster, Regional Solicitor of the U.S. Department of the Interior, explained that he would like to discuss with Skeen his basis for a claim of ownership, because McMaster was "unable to find any evidence of transfer or an intention to transfer any of these right to the Town of Duchesne." See *id.* For the first time, it "was suggested that the original intent of these applications envisioned an ultimate establishment of an Indian town such as occurred at Randlett, [Utah]." *Id.*

In 1969 and 1970, Skeen apparently attempted to perfect the City's title to the water rights by having all of the individuals in Duchesne City quit-claim their water rights which they received by patent from the United States pursuant to the Townsite Act. See Minutes of a Special Hearing Called by the Duchesne City Council, April 15, 1970, at 7 p.m.; Memorandum from Jerry Olds, State Hydrologic Engineer to the File (March 3, 1976). These deeds were all submitted to the State Engineer of Utah.

In 1989, Duchesne City submitted another change application. The application was submitted by the city of Duchesne in the name of United States Indian Irrigation Service - Owner⁵ c/o Duchesne City - User. See Application for Permanent Change of Water. It was approved August 3, 1993, without any objection by either the Ute Tribe or the federal government.

It is apparent that for many years the federal government has believed that it had no interest in the water rights at issue. The current Utah State Engineer "is aware of the issues concerning these water rights and is supportive of Duchesne City's efforts" to obtain "a conveyance from the United States." See Letter from Robert L. Morgan, P.E., State Engineer, to J. Craig Smith (Oct. 27, 1998). Others have been supportive as well, including individuals intimately involved with the federal government and Indian interest. See Memorandum from David Allison, Superintendent U&O Agency, Ft. Duchesne, to Phoenix Area Director; Letter from Gayle F. McKeachnie to William R. McConkie, Office of the Solicitor, Department of the Interior (Aug. 28, 1996).

V. APPLICATION OF HISTORY TO PRESENT CONTROVERSY

It seems apparent that when one considers the entire history of Duchesne City, the water rights at issue, the Indian Irrigation Projects, and the Townsite Act, the water rights rightfully belong to the city of Duchesne.

From 1861 to 1905, the land which now comprises Duchesne City was part of a vast Indian reservation. In 1903, Congress declared that the Indians on the reservation were to be given allotments and that all of the remaining unallotted lands were to enter the public domain. From 1903 until August 28, 1905, the Indian Agents on the land were aware that all Indian land that was unallotted would become part of the public domain, open to entry under the homestead and townsite acts existent at that time.

Pursuant to the townsite act's authority and knowing that the day was soon approaching that the land would be open to entry, on June 7, 1905, the Secretary of the Interior asked the Commissioner of Indian Affairs to recommend land that would be suitable for townsites. Townsites by definition would be land, in the public domain, exempted from homestead entry but subdividable and open for purchase by anyone. On July 6, 1905, the Acting Commissioner of Indian Affairs reported the action of the Uintah Allotment Commission recommending that the land now comprising Duchesne City be declared a townsite. That was approved. On July 25, 1905, a United States Cavalry Captain and agent of the United States Indian Service, applied for water rights to serve the Duchesne Townsite for the benefit of those who located their homes there. In the application for the townsite water rights, no mention was made that the water was to benefit any Indian allottees. Since 1921, when the water rights were perfected, the Indian Agencies have had little, if nothing, to do with these water rights. In fact, in 1947, it was their position that they had no claim to these water rights. That is still the position of both the Agencies and the Ute Tribe. See

⁵ It is important to note that the actual Certificate of Appropriation of Water states that the owner of both water rights is the U.S. Indian Service, not the Indian Irrigation Service. As discussed in part II *supra*, the Indian Irrigation Service was not created until 1909 so the Indian Irrigation Service could not have been the agency that applied for the rights.

November 19, 1998 letter,, from Harold A. Ranquist to Tod J. Smith (water counsel for the Tribe), David Allison (Superintendent, Ute Reservation), William R. McConkie (Regional Solicitor's Office, Interior Department), Lynn Hansen (Uintah Ouray Agency) confirming this position reaffirmed at a meeting with the recipients on November 13, 1998.

It has been suggested in two documents since 1966 that the reason that the water rights were applied for by the United States Indian Service was that they assumed that Duchesne was to become an Indian community. However, neither document cites any reason for this suggestion. The history of Duchesne City suggests just the opposite conclusion. By June 6, 1905, fifty-two white settlers, and one Indian, began to establish a town at the Duchesne Townsite. Murdock, who had years earlier obtained a concession from the United States Government to establish an Indian trading post at Duchesne, and some of the other white settlers, worked from June through the summer to obtain the government's approval for a townsite. Given this factual background, there is no reason for an Indian agent, who was certainly aware of Murdock and the others settling on the land and their involvement in getting the townsite declared, to assume that the townsite would become anything other than a Townsite for settlement by any who located and lived there, Indian and non-Indian.

The Secretary of the Interior specifically instructed the Commissioner of Indian Affairs to suggest places for townsites on the Uintah Indian Reservation. The establishment of a townsite provided was open to settlement by anyone including non-Indians. Thus, the Indian Agencies established the townsites on what would become public land pursuant to the Townsite Act. It makes sense that the Secretary of the Interior would ask the Indian Agencies to become involved, because, of course, (1) they were the ones negotiating with the Indians on the reservation land, (2) they were the ones that were allotting the lands to the Indians, (3) they were the ones who had been responsible for the administration of the lands, (4) they were the branch of the Interior Department, which was the Department responsible for the establishment of townsites, immediately in the vicinity of the land, and (5) the government was then pursuing a policy of assimilation which encouraged the mingling of white settlers with Indians.

Finally, what seems the most important fact against the suggestion that the water rights were to be only for the Indians located at the Duchesne townsite was that when the United States Indian Service applied for water rights for Indian allottees it specifically mentioned that it was doing so. For example, in application 43-203, the Indian agent applied for water rights for the Duchesne Townsite and then separately applied for the Uintah Indian reservation Indian allottees to be served by the water rights. In the case of applications 43-203 and 43-180 for the townsite water rights, the Indian Service asked for the appropriation for the benefit of the townsite only. No claim on Duchesne's water rights had ever been made by the Tribe or by the United States on behalf of the Tribe. In fact, in 1960 the claims of all water rights for the Tribe were made by the United States, with the Tribe's approval, in a report by E. L. Decker which has become known as "the Decker Report." This report does not include any Tribal claim to water rights 43-180 or 43-203, nor does the Ute Indian Water Compact. The Tribe is aware of and supports Duchesne City's efforts to resolve the title to Water Rights 43-180 and 43-203 and transfer the title to the City or a district created and controlled by it. See Letter from Tod J. Smith (Special Water Counsel of the Ute Indian Tribe) to Derril Jordan (Associate Solicitor for Indian Affairs, U.S. Department of the Interior) and

Cathy Wilson (Water Rights Specialist, Phoenix Area Office, Bureau of Indian Affairs) (Sept. 21, 1999).

CONCLUSION

When one views the historical context of the application for appropriations of water at issue and the history of that use since the application, it can reasonably be determined that the United States Indian Service applied for water rights solely for the benefit of the Duchesne Townsite with the knowledge that the townsite would be comprised mainly of non-Indian settlers and some Indians. Given these reasonable grounds and the positions of the various agencies involved, it is appropriate for the United States Congress to grant Duchesne's request for issuance of a deed to the water rights finally resolving this matter for the good. I respectfully urge this Committee to recommend the approval of S. 2350/H.R. 3468.

**TESTIMONY OF GLENN ROGERS, CHAIRMAN,
SHIVWITS BAND OF THE PAIUTE INDIAN TRIBE OF UTAH,
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS, MAY 2, 2000
IN SUPPORT OF S. 2351, "THE SHIVWITS BAND OF THE PAIUTE INDIAN
TRIBE OF UTAH WATER RIGHTS SETTLEMENT ACT"**

Chairman Campbell and Honorable Members of the Committee:

My name is Glenn Rogers, Chairman of the Shivwits Band of the Paiute Indian Tribe of Utah. Thank you for inviting me to testify concerning S. 2351. The Shivwits Band requests your support of this bill. It took many meetings and more than a decade of difficult negotiations to reach this settlement, and this package represents the coming together of several conflicting interests to share our area's most important and scarcest resource. It marks the first real chance for our Band to develop jobs and an economy for our people on our Reservation, and we hope it will end the 150 years of inequity between our people and our non-Indian neighbors.

MISMANAGEMENT OF THE BAND'S RESOURCES BY THE UNITED STATES

Our people have lived near the Santa Clara river for centuries. Archaeologists say we have been in the area since 1150 A.D. There is abundant documentation of our presence in the journals of the various anglo explorers who came across our desert in the late 18th century and early 19th century. Spanish explorers noted our presence in 1776. Jedediah Smith noted our presence, our irrigation structures, and our fields along the Santa Clara River in 1826. Scouts for the Church of Jesus Christ of Latter Day Saints reported our presence and our extensive irrigation systems and crops in 1848.

Our ancestors hunted and harvested wild food resources on the southern uplands including the Shivwits Plateau and the north rim of the Grand Canyon, but they mainly lived and farmed on the Santa Clara river. For many generations over hundreds of years, our people have cultivated corn, squash, beans, and melons. When the Mormons started colonizing the Santa Clara region in 1854, they preferred the Santa Clara's ample water supply and agricultural bottomlands, and we quickly lost most of our agricultural lands along the river, and our water.

In September of 1891, the Commissioner of Indian Affairs requested that a tract of land, approximately the six-by-six mile area of the current reservation, be withdrawn and reserved until allotments were made. Letter of September 24, 1891 from T.J. Morgan, Commissioner of Indian Affairs, to the Secretary of the Interior. The Secretary's withdrawal of these lands on the following day reserved appurtenant water rights under the Winters doctrine for the benefit of the Shivwits Band.

The United States intended for this Reservation to be a

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permanent homeland for the Shivwits, but it precluded this by allowing non-Indian diversions and dams to be built on and near our Reservation without ever securing an adequate water right to make our Reservation a "homeland." The United States officially authorized rights-of-way for water development structures on our lands without requiring compensation to the Band, and knowingly allowed trespasses of a non-Indian reservoir on the Reservation. Beginning in the late 1800s, non-Indian water users appropriated, under state law, virtually all of the natural flow of the Santa Clara River, leaving the Shivwits with only enough water to irrigate 80-90 acres. A diversion and canal were built on the Reservation in 1914 by a neighboring irrigation company without compensation to the Band or any allowance for us to receive water from the canal. A dam was built on the reservation in 1933, without compensation for the inundation of our lands or any share of water for the Band. Reservoirs were built on the river upstream from the Band, with U.S. knowledge, but no provision was made for storage for our benefit. A reservoir was built on the eastern edge of the Reservation in 1917 that partly trespasses on our land, with the U.S.' knowledge but without compensation for this use of our land or our water.

The Band has suffered and continues to suffer tremendously, financially and culturally, from the United States' failure to protect our water rights. The loss of water deprived the Shivwits Band of economic development opportunities. The economic damage to the Band is estimated at \$50,951,100.00. Meanwhile, we have watched our neighbors prosper.

RECENT HISTORY OF THE SHIVWITS BAND AND GOALS FOR RECOVERY

On September 1, 1954, Congress terminated federal recognition of the Shivwits Band and of three other bands of Southern Paiutes that are located in Utah. On April 3, 1980, Congress restored federal recognition of the Shivwits Band and of four other bands of Paiutes, individually, and grouped us together in one tribe called the Paiute Indian Tribe of Utah. P.L. 96-227 (25 U.S.C. § 761 et seq.).

Regaining federal recognition in 1980 was supposed to lead to a recovery from the disastrous effects of the last 150 years on our people, but it has not helped as much as we expected. In the 20 years since the Paiute Restoration Act was passed, our membership has grown tremendously. Forty five percent of our members are under age 20. But housing and employment opportunities have not increased accordingly. The Band's primary means of income have largely stayed the same: leasing our land for other people to run businesses that require little, if any,

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water and that provide few, if any, employment opportunities for Band members.

Today we have only 19 houses for the approximately 130 Band members residing on the Reservation, so each house is very crowded. The rest of our people have left the reservation to find jobs and better living conditions. The current rate of unemployment among adult Shivwits members is extremely high. Many of our Band members work in very low paying jobs off of the Reservation. Most of us who are working still live below poverty guidelines.

Economic development on the reservation has been on hold due to lack of water since the Band was restored in 1980. Today we are still facing the same problems we faced in 1980 and before.

We are very concerned with creating a homeland that meets the needs of the future generations of the Shivwits Band. We want to increase our children's chance of competing on an equal footing with their non-Indian peers. In order to improve education, housing and health care, we first need water and money to create jobs and a self-sustaining economy on the reservation.

The two current overriding desires of our membership are: (1) for the Shivwits Band to become self-sufficient, and (2) to build more houses on the reservation so that more members can move back home.

Many of the Shivwits members are also anxious to revive our traditional farming economy when this settlement is finally completed. The Shivwits Band has never recovered the thriving agricultural economy that we had prior to the late 1800s. We are ready to recover now - in agriculture and other projects that will create a self-sustaining economy on our reservation.

BROAD OUTLINE OF THE SETTLEMENT

In 1987, the United States filed a reserved water rights claim on behalf of the Shivwits Band in the basin-wide adjudication encompassing the Santa Clara River. The claim is for 11,355 acre feet with a time immemorial priority date. The State of Utah indicated that it would strongly contest this claim. No matter what the result in court, we faced a very low chance of being able to turn a significant paper water right into wet water without the cooperation of the state and local parties. All parties agreed to pursue a negotiated water rights settlement that would avoid litigation and minimize impact to non-Indian users while securing an adequate firm water supply for the Band

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to meet its current water needs and to make the Shivwits Reservation a viable homeland for future generations.

The settlement that is reflected in S. 2351 comes after many long years of difficult negotiations. It secures for the Band a reliable right to 4,000 acre feet annually and the right to full participation in future regional water development projects. 2,000 acre feet are from a firm supply which will not fluctuate in dry or wet years: the Band has the first priority to 2,000 acre feet annually of the water produced by the new reuse project that will be constructed in the City of St. George. This water cannot be used for domestic purposes, but is appropriate for other uses. 100 acre feet will come from groundwater from wells on the Reservation. The remaining 1,900 acre feet per year is a reliable supply from surface water of the Santa Clara River that flows through the Reservation. It will be supplemented with off-reservation groundwater wells in dry years. Pumping the supplemental ground water and paying the annual operational, maintenance, repair and replacement costs for the Santa Clara Project will be costly, and is partially covered by the separate allocation of \$1 million.

BENEFITS OF THE SETTLEMENT

The benefits of this settlement to the Band include:

- ◆ A firm, reliable water supply which will be available within a short time frame and for perpetuity. The United States and the Band have worked very hard to ensure that the two underlying project agreements (Reuse and Santa Clara) are enforceable and will actually provide a firm and reliable supply of water for the Band in perpetuity.

- ◆ Better relations with the local interests and the State, which strongly support the settlement projects. These entities have contributed monies to assist in project development.

- ◆ A significant water right for the Band from the river that flows through the reservation, along with financial assistance with the OM&R costs of participating in the Santa Clara Project.

- ◆ A structural, infrastructure and operational system to deliver the water to the Reservation or to the primary service area for water marketing.

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♦ Support from all parties of the Band's right to lease its high-value unused water supplies to other water users until it is ready to develop them. Eventually, more than 4000 acre feet per year will be necessary to serve the needs of the Band's members. The revenue from leasing today can be used to help us acquire the additional water supplies that the Band will need in the future.

♦ A base flow of 3 cubic feet per second in the Santa Clara river for environmental benefits, and authorization of \$3 million to acquire habitat and more water rights for the benefit of species and plants primarily in the Santa Clara River Basin.

The Band will receive \$6,000,000 under this settlement. \$5,000,000 will go to a trust fund that the Band will spend on economic development on the Reservation. This fund will partially compensate for the income lost due to the trustee's failing to protect the Tribe's water rights and allowing non-Indians to build water development structures across reservation lands without compensation to the Band. Creation of this fund will be followed by a release of the related claims by the Band against the federal government. The Band must be able to apply the trust fund toward economic development projects that will build a self-sustaining economy on the Shivwits Reservation -- and not be limited to water resource development projects. This is consistent with the current federal policy of promoting self-determination for Indian tribes. The State and local parties have all agreed to this use of the trust fund, and it is reflected in S. 2351.

The other \$1,000,000 is for partial assistance with the major costs of participating in the Santa Clara project. Now that all the flow of the Santa Clara river has been appropriated, the only way the Band can have a fair share of the river is to participate in this pooling agreement and to pay the costs of delivering the water through the proposed Project. The \$1 million appropriation written in S. 2351 for this purpose would pay approximately half of the Band's estimated cost to participate. Those costs were not known until the details of the Project were established in recent months. The Band cannot access the supplemental groundwater to reach 1900 acre feet in dry years unless it pays for pumping. This cost can be prohibitive, as shown by the Band's current inability to operate its sprinkler system due to the cost of diesel fuel for pumping. Even in average water years, the Band cannot receive any of its 1900 acre feet from the Santa Clara Project unless it pays its

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portion of the OM&R for the entire Project, which includes the future costs of maintaining the two reservoirs and the pipeline. Thus, the \$1,000,000 for O&M for the Santa Clara project is a modest request and is absolutely necessary for the proposed settlement to serve the Band's needs.

CONDITIONS FOR BAND SUPPORT FOR THE SETTLEMENT

The settlement package will not be complete until finalization of the Santa Clara Project Agreement, the St. George Reuse Project Agreement, the Umbrella Settlement Agreement, the Lake Powell Pipeline Right of First Refusal Agreement, a right of way for the Santa Clara pipeline, and two agreements concerning domestic water supplies.

The Band's future needs for domestic/potable water will be met under two separate new agreements with the Washington County Water Conservancy District and the City of St. George prior to settlement. The City has agreed to sell up to 100 acre feet annually of potable water to the Band, from the city water tank that is located on the Shivwits Reservation, at in-city rates. The Washington County Water Conservancy District has agreed to reserve 100 acre feet of water for the Band to begin purchasing 50 years from now.

The State and Water District have agreed to give the Band a right of first refusal to participate (on otherwise equal terms with other participants) in the anticipated Lake Powell Pipeline project and other potential future regional water development projects in southwest Utah.

The Band has made the above-described side agreements a condition precedent to accepting the settlement package.

Also, all parties have agreed on certain changes to the bill which were circulated in a memorandum dated March 24, 2000. Almost all of those changes were able to be made prior to introduction of S. 2351, and we greatly appreciate the efforts of Senator Hatch and his staff to accommodate those late changes. We understand that the bill will also be altered in markup to reflect the two new "findings" and one new "purpose" that the parties previously requested:

" [Finding] (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 monies for the purchase of improvements on lands along the Santa Clara River for the use of said Indians. Approximately

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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 1280 acres were added to the reservation by Congress on May 28, 1937.

[Finding] (5) The waters of the Santa Clara River are fully appropriated except during high flow periods. A water right was secured by the United States for the benefit of the Shivwits Band in the 1922 adjudication entitled St. George Santa Clara Fields 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.

[Purpose] (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;"

CONCLUSION

Thank you for allowing me to testify in support of this very important bill. We believe this water rights settlement will make the Shivwits Reservation a viable homeland for our people and allow us to provide a better future for our children. I request your support in enacting S. 2351 during this session of Congress.

Testimony of Daniel D. McArthur
Mayor, City of St. George, Utah

Before The
U. S. Senate
Senate Indian Affairs Committee

May 2, 2000

RE: S. 2351

**“Shivwits Band of the Paiute Indian Tribe of
Utah Water Rights Settlement Act”**

Mr. Chairman and Members of the Committee:

I would like to thank you so very much for this opportunity to provide testimony on this important water rights settlement agreement. My name is Daniel D. McArthur, and I am Mayor of the City of St. George, Utah, and I am here on the City's behalf today. This agreement is significant and most important to the City of St. George for many reasons which I will identify a little later in my testimony. This proposed settlement is the culmination of several years of hard, and sometimes controversial, negotiations between the parties before you today. I truly believe that this agreement represents a good faith effort by all parties to resolve these difficult issues in a mutually acceptable manner.

I would like to give a brief history of the City of St. George so that you may be able to gain a better perspective on why this issue is so important to the City, State, and Shivwits Band. The City of St. George was founded in 1862 by Mormon settlers sent to Southern Utah by Brigham Young. St. George is located in a desert with the average annual precipitation around seven inches. Water has been and will always be the most cherished resource in the area. The Virgin and Santa Clara Rivers were the lifeblood for the early settlers, and they still play a significant role in the development of our area. St. George and Washington County have been among the fastest growing areas in the country the past two decades, putting even more pressure on the available water resources in our area. Knowing how sacred these water rights are makes it even more impressive that the parties have been able to reach an acceptable agreement. St. George has always tried to cooperate with our neighbors, especially in water development projects. We have worked with the Shivwits Band in the past and are currently providing culinary water to the homes on the reservation.

This project evolved because of disputes between the several parties claiming water rights along the Santa Clara River. The Santa Clara River has erratic water flows and during most years does not have sufficient supply to satisfy all existing water rights. The Shivwits Band of the Paiute Indian Tribe, local irrigation companies, the State of Utah, the Washington County Water Conservancy District, and the City of St. George all have significant interests in resolving these issues. The proposed settlement would:

- (1) Provide the Shivwits Band with 4,000 acre feet of water - 2,000 acre feet from the St. George Water Reuse Project, 1,900 acre feet from the Santa Clara River project, and 100 acre feet of ground water on the reservation.
- (2) Settle the Shivwits water right claim issue.

- (3) Provide funding for the St. George Water Reuse project.
- (4) Provide economic development funds for the Shivwits Band to be used on their reservation.
- (5) Provide sufficient water to resolve the Virgin Spinedace in the Santa Clara River issue.
- (6) Provide a fund for water rights and habitat acquisition for the benefit of species and plants which have been listed, are likely to be listed, or are the subject of a duly approved conservation agreement under the Endangered Species Act.
- (7) Provide sufficient additional water into a drainage that has always had erratic flows and in most years does not have enough available flow to meet demands of existing water right owners.

Implementation of this settlement agreement would:

- (1) Establish a trust fund for the benefit of the Shivwits Band which would include \$15,000,000 to be made available by the Secretary of Interior and the Band to the City of St. George for completion, operation, and maintenance of the St. George Water Reuse Project. \$1,000,000 would be made available to cover the Shivwits proportionate share of the Santa Clara project. \$5,000,000 would be made available for economic development activities on the Shivwits reservation.
- (2) The City of St. George will be responsible for bidding, constructing, and maintaining the reuse line and be responsible to provide 2,000 acre feet of water to the Shivwits. The reuse project will involve additional treatment of the effluent water currently generated at the St. George Water Reclamation Plant to meet all applicable state and federal standards. The City will construct a pipeline for the reuse water delivering said water to the eastern boundary of the Shivwits reservation.
- (3) Completion of the Santa Clara project includes a pressurized pipeline from the Gunlock Reservoir on the Santa Clara River to the Ivins Reservoir which will save water and help with shortages. This project will pool water rights from the St. George Clara Field Canal

Company, the new Santa Clara Field Canal Company, the Ivins Irrigation Company, the Lower Gunlock Reservoir Corporation, and the Shivwits Band. The Santa Clara project also provides significant benefits to the environment. In-stream flows will be increased by water saved by the pipeline, thereby benefiting the Virgin Spinedace. The Shivwits Band will receive 1,900 acre feet of water as part of the settlement agreement. All parties involved in the Santa Clara project will pay their proportionate share of the annual operation and maintenance costs for the project, and equally share in shortages, should that occur during the season.

Approval of this historic settlement agreement now requires the next step. Legislation is required to approve and implement this settlement. S. 2351 has been introduced to accomplish this purpose. Approval of S. 2351 would ratify and confirm the St. George Reuse Agreement, the Santa Clara Project Agreement, settlement of the Shivwits water rights claim for 4,000 acre feet of water, authorize appropriate execution of agreements, and authorize appropriation of funds necessary for implementation of this settlement agreement.

Again, I would like to thank you, Mr. Chairman, and members of this Committee for the opportunity you have given me to present this testimony. I would strongly urge you to approve S. 2351 so this mutually beneficial water rights settlement agreement can go forward. Thank you.

**Testimony of
Darin Bird, Assistant Director
Utah Department of Natural Resources
Regarding S. 2351/H.R. 3291
May 2, 2000**

Chairman Campbell and members of the committee, I appreciate the opportunity to address the Senate Committee on Indian Affairs regarding S. 2351/H.R. 3291, entitled the *Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act*. By way of introduction, my name is Darin Bird, and I serve as Assistant Director of the Utah Department of Natural Resources. As you are well aware, the issue of reserved water rights for Indian tribes is a very sensitive and at times, a divisive issue in the west. The proposed legislation before you today is the result of a negotiated agreement to the reserved water right claims of the Shivwits Band of the Paiute Tribe and the local water users in southwestern Utah. The Shivwits Reservation is located about 10 miles northwest of the city of St. George in Washington County. Washington County is one of the fastest growing counties in the state of Utah and water is a critical resource to the continued growth of the area.

The Shivwits Reservation is situated in the Santa Clara River basin. Due to the hydrologic setting, flow rates of the basin are highly variable. The average flow of the river as measured at Gunlock, Utah is about 18,000 acre-feet per year. The measured annual flows have ranged from a high of 66,000 acre-feet to a low of only 4,700 acre-feet. For more than half of the years, the flow is less than 10,000 acre-feet. From these figures, it is evident that the water supply situation on the Santa Clara River is either feast or famine. Thus, reservoir storage or supplemental ground water is needed to ensure a firm long-term water supply. Due to the limited water supply available in the basin, it has been difficult to reach a mutually acceptable settlement to the reserved water claims of the Shivwits Band, and has required the cooperative efforts of all the water users in the lower Santa Clara River basin. In spite of the inherent difficulties, the parties have succeeded in reaching the agreement that we are submitting to you today. The state of Utah fully supports and endorses the agreement.

In the time allotted, I would like to review the general terms of the settlement agreement and then address several aspects of the Santa Clara Project, focusing on the significant contributions that are being made by the local water users in order to resolve this matter.

The Shivwits Reservation is relatively small, encompassing about 28,000 acres. It was created by Executive Order in 1916 by President Woodrow Wilson. At that time, much of the available water supply of the Santa Clara River had been developed and placed to beneficial use, except for high flows during wet years. The Band was terminated in 1954 and then reinstated in 1980. The history of the Shivwits Band raises numerous potential legal issues related to their reserved water rights claims. Many of these issues are unresolved under existing laws. If litigated, the ensuing

case could easily employ a dozen attorneys for ten years. Whatever the outcome of the case, the relationship between the communities would be adversarial in nature for generations. For this and other reasons, the state of Utah, through the leadership of Governor Leavitt, has taken the position that it would rather negotiate than litigate these types of matters. Although it is difficult at times and requires considerable effort from all parties involved, we believe good faith negotiations to be the best approach. It makes little sense to have government agencies spending tax dollars litigating matters such as this. In my opinion the state of Utah has a proven track record in these types of negotiations. In 1980, the Utah Legislature passed the *Ute Indian Water Compact*, in 1996 we signed the *Zion National Park Water Rights Settlement Agreement* and just last month we signed the *Cedar Breaks National Monument and Hovenweep National Monument Water Rights Settlement Agreements*. I refer to these previous settlements to point out the commitment on behalf of the state of Utah to settle these matters without litigation, if at all possible.

The total quantity of water allocated to the Shivwits Band under the settlement agreement is 4,000 acre-feet per year. The water will be provided from three projects or sources, which are: 1) 2,000 acre-feet from the St. George Reuse Project; 2) 1,900 acre-feet from the Santa Clara Project; and 3) 100 acre-feet from wells on the reservation. We believe the 4,000 acre-feet is a reasonable settlement amount on a river system as small and limited as the Santa Clara River and based on an objective evaluation of the Band's water right claims. The 2,000 acre-feet of reuse water is a very dependable water supply and will be available each and every year. The 100 acre-feet of ground water is to be developed from existing wells on the reservation. The Santa Clara Project will supply up to 1,900 acre-feet annually to the Band, which includes the 500 acre-feet under the water rights previously decreed to the United States in the Santa Clara River Decree in 1922. I would now like to describe the major features of the Santa Clara Project.

The Santa Clara Project will consist of a pressurized pipeline system from the existing Gunlock Reservoir on the Santa Clara River to the Ivins Reservoir, which is designed to save water and help alleviate current water shortages. The Project will pool the water rights of the St. George Clara Fields Canal Company, the New Santa Clara Field Canal Company, the Ivins Irrigation Company, the Lower Gunlock Reservoir Corporation and the Shivwits Band, and water will be delivered as provided for in the Santa Clara Project Agreement.

The Utah Legislature and Congress have each appropriated \$750,000 for the construction of the Santa Clara Project, and the Washington County Water Conservancy District is providing an additional \$750,000. The parties to the Santa Clara Project Agreement, except the Shivwits Band and United States, will pay their proportionate share of any additional costs required to construct the project. The Shivwits Band, along with the other parties to the Santa Clara Project Agreement, will pay their proportionate share of the annual operation and maintenance costs for the project.

A major component of the Santa Clara Project is the so called "pooling agreement". I believe it is important that everyone realize the commitments and financial contributions made by the local water users in providing for this settlement. The existing Gunlock Reservoir, which was constructed by the Lower Gunlock Corporation in 1970, is upstream from the reservation and has

an active storage capacity of about 6,780 acre-feet. Under the terms and conditions of the settlement agreement, this reservoir will be used to supply water to the Band, along with the other parties to the agreement. Under the settlement agreement, over twenty percent of the Band's water supply from the Santa Clara Project will be delivered from storage in Gunlock Reservoir.

The Band's 1,900 acre-feet will have a 1890 priority date which is equal to the primary water rights on the river, although the reservation was established in 1916. The Santa Clara Project also provides supplemental ground water to the parties involved in the agreement. Ground water is very important in drought years when adequate surface water is not available. Shortages will still be suffered by the water users, but they will be greatly reduced under the project. The ground water component only accounts for about 200 acre-feet on average of the Shivwits' 1,900 acre-feet diversion under the Santa Clara Project, but is as high as 800 acre-feet in the drought years.

I have reviewed this information with you, to show the extent and reach of the project. It is my opinion that there are numerous benefits provided to the Shivwits Band that would be very expensive or institutionally difficult to accomplish without a cooperative effort.

The settlement agreements which are the foundation for the legislation we are discussing today are the result of the good faith efforts of the Shivwits Band, the Department of Interior, St. George City, the Washington County Water Conservancy District and local water users. On behalf of the state of Utah, I would like to formally acknowledge their efforts and to offer our appreciation. Without their continued and diligent service, the settlement agreement would not have been completed.

The state of Utah is supportive of efforts to provide meaningful assistance to the Shivwits Band and allow them to realize some economic development on the reservation. In my opinion, the proposed legislation provides much needed opportunities to the Band. We are hopeful that the implementation of the settlement will occur over the next two to three years. We respectfully ask Congress to support this effective and reasonable solution to a complex Indian water rights issue.

Also requiring consideration, is the effect of the project(s) on the environment. Under existing practices, the Santa Clara River below Gunlock Reservoir is generally dry during the non-irrigation season. The river is habitat for the Virgin River Spinedace, a candidate for listing under the *Endangered Species Act*. The project will provide a minimum instream flow of 3.0 cubic feet per second (cfs) year-round for the fish, immediately below the dam. Also, section 10 of the legislation refers to a water rights and habitat acquisition program. The program provides that if the secretary believes there are adverse impacts from the implementation of the settlement, agreement funds under this section can be used to mitigate those impacts.

In closing, it is our hope that you will support this important and meaningful legislation. We believe the settlement is a fair and equitable solution for all parties involved. It resolves the reserved water right claims of the Shivwits Band, while providing them with a firm water supply and beneficial economic development on the reservation. The state of Utah acknowledges that compromises were required from all participants. We would like to take this opportunity to thank those who worked together to reach this agreement.