

106TH CONGRESS
2^D SESSION

H. R. 3291

IN THE SENATE OF THE UNITED STATES

JULY 26, 2000

Received

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

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

5 **SEC. 2. FINDINGS.**

6 Congress finds the following:

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

13 (2) Any meaningful policy of Indian self-deter-
14 mination and economic self-sufficiency requires the
15 development of viable Indian reservation economies.

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

20 (4) The Act of March 3, 1891, provided for the
21 temporary support of the Shebit (or Shivwits) tribe
22 of Indians in Washington County, Utah, and appro-
23 priated moneys for the purchase of improvements on
24 lands along the Santa Clara River for the use of
25 said Indians. Approximately 26,880 acres in the
26 same area were set aside as a reservation for the

1 Shivwits Band by Executive order dated April 21,
2 1916. Additional lands were added to the reservation
3 by Congress on May 28, 1937.

4 (5) The waters of the Santa Clara River are
5 fully appropriated except during high flow periods. A
6 water right was awarded to the United States for
7 the benefit of the Shivwits Band in the 1922 adju-
8 dication entitled St. George Santa Clara Field Co.,
9 et al. v. Newcastle Reclamation Co., et al., for “1.38
10 cubic feet of water per second for the irrigation of
11 83.2 acres of land and for culinary, domestic, and
12 stock watering purposes”, but no provision has been
13 made for water resource development to benefit the
14 Shivwits Band. In general, the remainder of the
15 Santa Clara River’s flow is either diverted on the
16 reservation and delivered through a canal devoted
17 exclusively to non-Indian use that traverses the res-
18 ervation to a reservoir owned by the Ivins Irrigation
19 Company; dedicated to decreed and certificated
20 rights of irrigation companies downstream of the
21 reservation; or impounded in the Gunlock Reservoir
22 upstream of the reservation. The Band’s lack of ac-
23 cess to water has frustrated its efforts to achieve
24 meaningful self-determination and economic self-suf-
25 ficiency.

1 (6) On July 21, 1980, the State of Utah, pur-
2 suant to title 73, chapter 4, Utah Code Ann., initi-
3 ated a statutory adjudication of water rights in the
4 Fifth Judicial District Court in Washington County,
5 Utah, Civil No. 800507596, which encompasses all
6 of the rights to the use of water, both surface and
7 underground, within the drainage area of the Virgin
8 River and its tributaries in Utah (“Virgin River Ad-
9 judication”), including the Santa Clara River Drain-
10 age (“Santa Clara System”).

11 (7) The United States was joined as a party in
12 the Virgin River Adjudication pursuant to section
13 666 of title 43, United States Code. On February
14 17, 1987, the United States filed a Statement of
15 Water User Claim asserting a water right based on
16 State law and a Federal reserved water rights claim
17 for the benefit of the Shivwits Band to water from
18 the Santa Clara River System. This was the only
19 claim the United States filed for any Indian tribe or
20 band in the Virgin River Adjudication within the pe-
21 riod allowed by Title 73, Chapter 4, Utah Code
22 Ann., which bars the filing of claims after the time
23 prescribed therein.

24 (8) The Virgin River adjudication will take
25 many years to conclude, entail great expense, and

1 prolong uncertainty as to the availability of water
2 supplies, and thus, the parties have sought to settle
3 their dispute over water and reduce the burdens of
4 litigation.

5 (9) After lengthy negotiation, which included
6 participation by representatives of the United States
7 Government for the benefit of the Shivwits Band,
8 the State of Utah, the Shivwits Band, the Wash-
9 ington County Water Conservancy District, the city
10 of St. George, and others on the Santa Clara River
11 System, the parties have entered into agreements to
12 resolve all water rights claims between and among
13 themselves and to quantify the water right entitle-
14 ment of the Shivwits Band, and to provide for the
15 construction of water projects to facilitate the settle-
16 ment of these claims.

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

24 (11) To advance the goals of Federal Indian
25 policy and consistent with the trust responsibility of

1 the United States to the Shivwits Band, it is appro-
2 priate that the United States participate in the im-
3 plementation of the St. George Water Reuse Project
4 Agreement, the Santa Clara Project Agreement, and
5 the Settlement Agreement in accordance with this
6 Act.

7 **SEC. 3. PURPOSES.**

8 The purposes of this Act are—

9 (1) to achieve a fair, equitable, and final settle-
10 ment of all claims to water rights in the Santa Clara
11 River for the Shivwits Band, and the United States
12 for the benefit of the Shivwits Band;

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

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

22 (4) to authorize the Secretary of the Interior to
23 execute the St. George Water Reuse Project Agree-
24 ment, the Santa Clara Project Agreement, and the
25 Settlement Agreement, and to take such actions as

1 are necessary to implement these agreements in a
2 manner consistent with this Act; and

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

7 **SEC. 4. DEFINITIONS.**

8 In this Act:

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

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

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

22 (4) PAIUTE INDIAN TRIBE OF UTAH.—The term
23 “Paiute Indian Tribe of Utah” means the federally
24 recognized Indian Tribe organized under section 16
25 of the Indian Reorganization Act of June 18, 1934

1 (48 Stat. 987; 25 U.S.C. 476), and the Act of April
2 3, 1980 (94 Stat. 317), comprised of five bands of
3 Southern Paiute Indians (Shivwits, Indian Peaks,
4 Cedar, Koosharem, and Kanosh Bands).

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

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

11 (7) VIRGIN RIVER ADJUDICATION.—The term
12 “Virgin River Adjudication” means the statutory ad-
13 judication of water rights initiated pursuant to title
14 73, chapter 4, Utah Code Ann. and pending in the
15 Fifth Judicial District Court in Washington County,
16 Utah, Civil No. 800507596.

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

1 (9) SANTA CLARA PROJECT AGREEMENT.—The
2 term “Santa Clara Project Agreement” means the
3 agreement among the United States for the benefit
4 of the Shivwits Band, Utah, the Shivwits Band, the
5 Washington County Water Conservancy District, St.
6 George City, the New Santa Clara Field Canal Com-
7 pany, the St. George Clara Field Canal Company,
8 the Ivins Irrigation Company, the Southgate Irriga-
9 tion Company, Bloomington Irrigation Company, Ed
10 Bowler, and the Lower Gunlock Reservoir Company,
11 together with all exhibits thereto, as the same is ap-
12 proved and executed by the Secretary of the Interior
13 pursuant to section 8 of this Act.

14 (10) SETTLEMENT AGREEMENT.—The term
15 “Settlement Agreement” means that agreement
16 among the United States for the benefit of the
17 Shivwits Band, Utah, the Shivwits Band, the Wash-
18 ington County Water Conservancy District, St.
19 George City, the New Santa Clara Field Canal Com-
20 pany, the St. George Clara Field Canal Company,
21 the Ivins Irrigation Company, the Southgate Irriga-
22 tion Company, Bloomington Irrigation Company, Ed
23 Bowler, and the Lower Gunlock Reservoir Company,
24 together with all exhibits thereto, as the same is ap-

1 proved and executed by the Secretary of the Interior
2 pursuant to section 8 of this Act.

3 (11) SHIWITS WATER RIGHT.—The term
4 “Shiwits Water Right” means the water rights of
5 the Shiwits Band set forth in the Settlement Agree-
6 ment and as settled, confirmed, and ratified by sec-
7 tion 7 of this Act.

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

12 (13) VIRGIN RIVER RESOURCE MANAGEMENT
13 AND RECOVERY PROGRAM.—The term “Virgin River
14 Resource Management and Recovery Program”
15 means the proposed multiagency program, to be ad-
16 ministered by the United States Fish and Wildlife
17 Service, Bureau of Land Management, National
18 Park Service, Utah, and the District, whose primary
19 purpose is to prioritize and implement native fish re-
20 covery actions that offset impacts due to future
21 water development in the Virgin River basin.

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

23 (a) ST. GEORGE WATER REUSE PROJECT.—The St.
24 George Water Reuse Project shall consist of water treat-
25 ment facilities, a pipeline, and associated pumping and de-

1 livery facilities owned and operated by St. George, which
2 is a component of, and shall divert water from, the Water
3 Reclamation Facility located in St. George, Utah, and
4 shall transport this water for delivery to and use by St.
5 George and the Shivwits Band. St. George shall make
6 2,000 acre-feet of water available annually for use by the
7 Shivwits Band in accordance with the St. George Water
8 Reuse Project Agreement and this Act.

9 (b) PROJECT CONSTRUCTION OPERATION AND MAIN-
10 TENANCE.—(1) St. George shall be responsible for the de-
11 sign, engineering, permitting, construction, operation,
12 maintenance, repair, and replacement of the St. George
13 Water Reuse Project, and the payment of its propor-
14 tionate share of these project costs as provided for in the
15 St. George Water Reuse Project Agreement.

16 (2) The Shivwits Band and the United States for the
17 benefit of the Shivwits Band shall make available, in ac-
18 cordance with the terms of the St. George Water Reuse
19 Agreement and this Act, a total of \$15,000,000 to St.
20 George for the proportionate share of the design, engineer-
21 ing, permitting, construction, operation, maintenance, re-
22 pair, and replacement of the St. George Water Reuse
23 Project associated with the 2,000 acre-feet annually to be
24 provided to the Shivwits Band.

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

2 (a) SANTA CLARA PROJECT.—The Santa Clara
3 Project shall consist of a pressurized pipeline from the ex-
4 isting Gunlock Reservoir across the Shivwits Reservation
5 to and including Ivins Reservoir, along with main lateral
6 pipelines. The Santa Clara Project shall pool and deliver
7 the water rights of the parties as set forth in the Santa
8 Clara Project Agreement. The Santa Clara Project shall
9 deliver to the Shivwits Band a total of 1,900 acre-feet an-
10 nually in accordance with the Santa Clara Project Agree-
11 ment and this Act.

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

17 (c) PROJECT FUNDING.—The Utah Legislature and
18 the United States Congress have each appropriated grants
19 of \$750,000 for the construction of the Santa Clara
20 Project. The District shall provide a grant of \$750,000
21 for the construction of the Santa Clara Project. The Dis-
22 trict shall provide any additional funding required for the
23 construction of the Santa Clara Project.

24 (d) PROJECT CONSTRUCTION, OPERATION, AND
25 MAINTENANCE.—The District shall be responsible for the
26 permitting, design, engineering, construction, and the ini-

1 tial operation, maintenance, repair, and replacement of the
2 Santa Clara Project. Operation, maintenance, repair, and
3 replacement activities and costs of the Santa Clara Project
4 shall be handled in accordance with the terms of the Santa
5 Clara Project Agreement.

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

7 (a) IN GENERAL.—The Shivwits Band and its mem-
8 bers shall have the right in perpetuity to divert, pump,
9 impound, use, and reuse a total of 4,000 acre-feet of water
10 annually from the Virgin River and Santa Clara River sys-
11 tems, to be taken as follows:

12 (1) 1,900 acre-feet annually from the Santa
13 Clara River System, with an 1890 priority date in
14 accordance with the terms of the Santa Clara
15 Project Agreement.

16 (2) 2,000 acre-feet of water annually from the
17 St. George Water Reuse Project as provided for in
18 the St. George Water Reuse Project Agreement. The
19 Shivwits Band shall have first priority to the reuse
20 water provided from the St. George Water Reclama-
21 tion Facility.

22 (3) 100 acre-feet annually, with a 1916 priority
23 date, from groundwater on the Shivwits Reservation.

24 (b) WATER RIGHTS CLAIMS.—All water rights claims
25 of the Shivwits Band, and the Paiute Indian Tribe of Utah

1 acting on behalf of the Shivwits Band, are hereby settled.
2 The Shivwits Water Right is hereby ratified, confirmed,
3 and shall be held in trust by the United States for the
4 benefit of the Shivwits Band.

5 (c) SETTLEMENT.—The Shivwits Band may use
6 water from the springs and runoff located on the Shivwits
7 Reservation. The amount used from these sources will be
8 reported annually to the Utah State Engineer by the
9 Shivwits Band and shall be counted against the annual
10 4,000 acre-feet Shivwits Water Right.

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

14 (e) USE OR LEASE.—The Shivwits Band may use or
15 lease the Shivwits Water Right for either or both of the
16 following:

17 (1) For any purpose permitted by tribal or Fed-
18 eral law anywhere on the Shivwits Band Reserva-
19 tion. Once the water is delivered to the Reservation,
20 such use shall not be subject to State law, regula-
21 tion, or jurisdiction.

22 (2) For any beneficial use off the Shivwits Res-
23 ervation in accordance with the St. George Water
24 Reuse Agreement, the Santa Clara Project Agree-

1 ment, the Settlement Agreement, and all applicable
2 Federal and State laws.

3 No service contract, lease, exchange, or other agreement
4 entered into under this subsection may permanently alien-
5 ate any portion of the Shivwits Water Right.

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

7 Except to the extent that the St. George Water Reuse
8 Project Agreement, the Santa Clara Project Agreement,
9 and the Settlement Agreement conflict with the provisions
10 of this Act, such agreements are hereby approved, ratified,
11 and confirmed. The Secretary is hereby authorized to exe-
12 cute, and take such other actions as are necessary to im-
13 plement, such agreements.

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

15 (a) FULL SATISFACTION OF CLAIMS.—The benefits
16 realized by the Shivwits Band and its members under the
17 St. George Water Reuse Project Agreement, the Santa
18 Clara Project Agreement, the Settlement Agreement, and
19 this Act shall constitute full and complete satisfaction of
20 all water rights claims, and any continuation thereafter
21 of any of these claims, of the Shivwits Band and its mem-
22 bers, and the Paiute Indian Tribe of Utah acting on behalf
23 of the Shivwits Band, for water rights or injuries to water
24 rights under Federal and State laws from time immemo-

1 rial to the effective date of this Act. Notwithstanding the
2 foregoing, nothing in this Act shall be—

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

6 (2) interpreted or construed to prevent or pro-
7 hibit the Shivwits Band from participating in the fu-
8 ture in other water projects, or from purchasing ad-
9 ditional water rights for their benefit and use, to the
10 same extent as any other entity.

11 (b) WAIVER AND RELEASE.—By the approval, ratifi-
12 cation, and confirmation herein of the St. George Water
13 Reuse Project Agreement, the Santa Clara Project Agree-
14 ment, and the Settlement Agreement, the United States
15 executes the following waiver and release in conjunction
16 with the Reservation of Rights and Retention of Claims
17 set forth in the Settlement Agreement, to be effective upon
18 satisfaction of the conditions set forth in section 14 of this
19 Act. Except as otherwise provided in the Settlement
20 Agreement, this Act, or the proposed judgment and decree
21 referred to in section 14(a)(7) of this Act, the United
22 States, on behalf of the Shivwits Band and the Paiute In-
23 dian Tribe of Utah acting on behalf of the Shivwits Band,
24 waives and releases the following:

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

10 (2) All claims for water rights or injuries to
11 water rights for lands outside of the Shivwits Res-
12 ervation, where such claims are based on aboriginal
13 occupancy of the Shivwits Band, its members, or
14 their predecessors, that accrued at any time up to
15 and including the effective date determined by sec-
16 tion 14 of this Act, and any continuation thereafter
17 of any of these claims, that the United States for
18 the benefit of the Shivwits Band may have against
19 Utah, any agency or political subdivision thereof, or
20 any person, entity, corporation, or municipal cor-
21 poration.

22 (3) All claims for trespass to lands on the
23 Shivwits Reservation regarding the use of Ivins Res-
24 ervoir that accrued at any time up to and including

1 the effective date determined by section 14 of this
2 Act.

3 (c) DEFINITIONS.—For purposes of this section—

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

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

10 (d) SAVINGS PROVISION.—In the event the waiver
11 and release contained in subsection (b) of this section do
12 not become effective pursuant to section 14, the Shivwits
13 Band and the United States shall retain the right to assert
14 past 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 native plant and
24 animal species in the Santa Clara River Basin which
25 have been listed, are likely to be listed, or are the

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

3 (2) secondarily for the benefit of native plant
4 and animal species in other parts of the Virgin River
5 Basin which have been listed, are likely to be listed,
6 or are the subject of a duly approved conservation
7 agreement 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 native plant or animal species described in sub-
15 section (a).

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

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

21 (2) Water right purchases shall be only from
22 willing sellers, but the Secretary may target pur-
23 chases in areas deemed by the Secretary to be most
24 beneficial to the water rights acquisition program es-
25 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 native plant or
7 animal species described in section 10(a). Acquisition of
8 habitat property pursuant to this section shall be subject
9 to the following 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 Resource Management and Recovery Program.

24 (f) AUTHORIZATION.—There is authorized to be ap-
25 propriated from the Land and Water Conservation Fund

1 for fiscal years prior to the fiscal year 2004, a total of
2 \$3,000,000 for the water rights and habitat acquisition
3 program authorized in this section. The Secretary is au-
4 thorized to deposit and maintain this appropriation in an
5 interest bearing account, said interest to be used for the
6 purposes of this section. The funds authorized to be appro-
7 priated by this section shall not be in lieu of or supersede
8 any other commitments by Federal, State, or local agen-
9 cies. The funds appropriated pursuant to this section shall
10 be available until expended, and shall not be expended for
11 the purpose set forth in subsection (a)(2) until the Sec-
12 retary has evaluated the effectiveness of the instream flow
13 required and provided by the Santa Clara Project Agree-
14 ment, and has assured that the appropriations authorized
15 in this section are first made available for the purpose set
16 forth in subsection (a)(1).

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

18 (a) ESTABLISHMENT OF TRUST FUND.—There is es-
19 tablished in the Treasury of the United States a fund to
20 be known as the “Shivwits Band Trust Fund” (herein-
21 after called the “Trust Fund”). The Secretary shall de-
22 posit into the Trust Fund the funds authorized to be ap-
23 propriated in subsections (b) and (c). Except as otherwise
24 provided in this Act, the Trust Fund principal and any
25 income accruing thereon shall be managed in accordance

1 with the American Indian Trust Fund Management Re-
2 form Act (108 Stat. 4239; 25 U.S.C. 4001 et seq.).

3 (b) AUTHORIZATION.—There is authorized to be ap-
4 propriated a total of \$20,000,000, for fiscal years prior
5 to the fiscal year 2004 for the following purposes:

6 (1) \$5,000,000, which shall be made available
7 to the Shivwits Band from the Trust Fund for pur-
8 poses including but not limited to those that would
9 enable the Shivwits Band to put to beneficial use all
10 or part of the Shivwits Water Right, to defray the
11 costs of any water development project in which the
12 Shivwits Band is participating, or to undertake any
13 other activity that may be necessary or desired for
14 implementation of the St. George Water Reuse
15 Project Agreement, the Santa Clara Project Agree-
16 ment, the Settlement Agreement, or for economic de-
17 velopment on the Shivwits Reservation.

18 (2) \$15,000,000, which shall be made available
19 by the Secretary and the Shivwits Band to St.
20 George for the St. George Water Reuse Project, in
21 accordance with the St. George Water Reuse Project
22 Agreement.

23 (c) SHARE OF CERTAIN COSTS.—There is authorized
24 to be appropriated to the Trust Fund in fiscal years prior
25 to the fiscal year 2004 a total of \$1,000,000 to assist with

1 the Shivwits Band's proportionate share of operation,
2 maintenance, repair, and replacement costs of the Santa
3 Clara Project as provided for in the Santa Clara Project
4 Agreement.

5 (d) USE OF THE TRUST FUND.—Except for the
6 \$15,000,000 appropriated pursuant to subsection (b)(2),
7 all Trust Fund principal and income accruing thereon may
8 be used by the Shivwits Band for the purposes described
9 in subsections (b)(1) and (c). The Shivwits Band, with the
10 approval of the Secretary, may withdraw the Trust Fund
11 and deposit it in a mutually agreed upon private financial
12 institution. That withdrawal shall be made pursuant to the
13 American Indian Trust Fund Management Reform Act of
14 1994 (25 U.S.C. 4001 et seq.). If the Shivwits Band exer-
15 cises its right pursuant to this subsection to withdraw the
16 Trust Fund and deposit it in a private financial institu-
17 tion, except as provided in the withdrawal plan, neither
18 the Secretary nor the Secretary of the Treasury shall re-
19 tain any oversight over or liability for the accounting, dis-
20 bursement, or investment of the funds.

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

1 (f) LIMITATION.—The moneys authorized to be ap-
2 propriated under subsections (b) and (c) shall not be avail-
3 able for expenditure or withdrawal by the Shivwits Band
4 until the requirements of section 14 have been met so that
5 the decree has become final and the waivers and releases
6 executed pursuant to section 9(b) have become effective.
7 Once the settlement becomes effective pursuant to the
8 terms of section 14 of this Act, the assets of the Trust
9 Fund belong to the Shivwits Band and are not returnable
10 to the United States Government.

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

12 (a) NATIONAL ENVIRONMENTAL POLICY ACT.—
13 Signing by the Secretary of the St. George Water Reuse
14 Project Agreement, the Santa Clara Project Agreement,
15 or the Settlement Agreement does 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 aspects of the National Environmental
20 Policy Act of 1969 (42 U.S.C. 4321 et seq.), and other
21 applicable environmental laws in implementing the terms
22 of the St. George Water Reuse Agreement, the Santa
23 Clara Project Agreement, the Settlement Agreement, and
24 this 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 and the Paiute Indian Tribe of Utah acting on be-
8 half of the Shivwits Band.

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

13 (c) WAIVER OF SOVEREIGN IMMUNITY.—Except to
14 the extent provided in subsections (a), (b), and (c) of sec-
15 tion 208 of the Department of Justice Appropriation Act,
16 1953 (43 U.S.C. 666), nothing in this Act may be con-
17 strued to waive the sovereign immunity of the United
18 States. Furthermore, the submission of any portion of the
19 Settlement Agreement to the District Court in the Virgin
20 River Adjudication shall not expand State court jurisdic-
21 tion or expand in any manner the waiver of sovereign im-
22 munity of the United States in section 666 of title 43,
23 United States Code, or any other provision of Federal law.

24 (d) APPRAISALS.—Notwithstanding any other law to
25 the contrary, the Secretary is authorized to approve any
26 right-of-way appraisal which has been completed in ac-

1 cordance with the provisions of the Santa Clara Project
2 Agreement.

3 **SEC. 14. EFFECTIVE DATE.**

4 (a) IN GENERAL.—The waiver and release contained
5 in section 9(b) of this Act shall become effective as of the
6 date the Secretary causes to be published in the Federal
7 Register a statement of findings that—

8 (1) the funds authorized by sections 11(b) and
9 11(c) have been appropriated and deposited into the
10 Trust Fund;

11 (2) the funds authorized by section 10(f) have
12 been appropriated;

13 (3) the St. George Water Reuse Project Agree-
14 ment has been modified to the extent it is in conflict
15 with this Act and is effective and enforceable accord-
16 ing to its terms;

17 (4) the Santa Clara Project Agreement has
18 been modified to the extent it is in conflict with this
19 Act and is effective and enforceable according to its
20 terms;

21 (5) the Settlement Agreement has been modi-
22 fied to the extent it is in conflict with this Act and
23 is effective and enforceable according to its terms;

24 (6) the State Engineer of Utah has taken all
25 actions and approved all applications necessary to

1 implement the provisions of the St. George Water
2 Reuse Agreement, the Santa Clara Project Agree-
3 ment, and the Settlement Agreement, from which no
4 further appeals may be taken; and

5 (7) the court has entered a judgment and de-
6 cree confirming the Shivwits Water Right in the Vir-
7 gin River Adjudication pursuant to Utah Rule of
8 Civil Procedure 54(b), that confirms the Shivwits
9 Water Right and is final as to all parties to the
10 Santa Clara Division of the Virgin River Adjudica-
11 tion and from which no further appeals may be
12 taken, which the United States and Utah find is
13 consistent in all material aspects with the Settlement
14 Agreement and with the proposed judgment and de-
15 cree agreed to by the parties to the Settlement
16 Agreement.

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

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

23 (2) all unexpended funds appropriated under
24 section 11(b) and (c), together with all interest
25 earned on such funds shall revert to the general

1 fund of the United States Treasury on October 1,
2 2004.

Passed the House of Representatives July 25, 2000.

Attest: JEFF TRANDAHL,
Clerk.