

Union Calendar No. 424106TH CONGRESS
2^D SESSION**H. R. 3291****[Report No. 106-743]**

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

JULY 17, 2000

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on November 10, 1999]

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,*

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 Act”.*

4 **SEC. 2. FINDINGS.**

5 *Congress finds the following:*

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

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

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

19 *(4) The Act of March 3, 1891, provided for the*
20 *temporary support of the Shebit (or Shivwits) tribe of*
21 *Indians in Washington County, Utah, and appro-*
22 *propriated moneys for the purchase of improvements on*
23 *lands along the Santa Clara River for the use of said*
24 *Indians. Approximately 26,880 acres in the same*
25 *area were set aside as a reservation for the Shivwits*
26 *Band by Executive order dated April 21, 1916. An*

1 *additional 1,280 acres were added to the reservation*
2 *by Congress on May 28, 1937.*

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

24 (6) *On July 21, 1980, the State of Utah, pursu-*
25 *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 *(7) 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 17,*
12 *1987, the United States filed a Statement of Water*
13 *User Claim asserting water rights and aboriginal*
14 *claims for the benefit of the Shivwits Band to water*
15 *from the Santa Clara River System; said claim cov-*
16 *ered all potential water rights for Indian tribes or*
17 *bands in the Virgin River System.*

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

24 *(9) After lengthy negotiation, which included*
25 *participation by representatives of the United States*

1 *Government for the benefit of the Shivwits Band, the*
2 *State of Utah, the Shivwits Band, the Washington*
3 *County Water Conservancy District, the city of St.*
4 *George, and others on the Santa Clara River System,*
5 *the parties have entered into agreements to resolve all*
6 *water rights claims between and among themselves*
7 *and to quantify the water right entitlement of the*
8 *Shivwits Band, and to provide for the construction of*
9 *water projects to facilitate the settlement of these*
10 *claims.*

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

18 *(11) To advance the goals of Federal Indian pol-*
19 *icy and consistent with the trust responsibility of the*
20 *United States to the Shivwits Band, it is appropriate*
21 *that the United States participate in the implementa-*
22 *tion of the St. George Water Reuse Project Agreement,*
23 *the Santa Clara Project Agreement, and the Settle-*
24 *ment Agreement in accordance with this Act.*

1 **SEC. 3. PURPOSES.**

2 *The purposes of this Act are—*

3 *(1) to achieve a fair, equitable, and final settle-*
4 *ment of all claims to water rights in the Santa Clara*
5 *River for the Shivwits Band, and the United States*
6 *for the benefit of the Shivwits Band;*

7 *(2) to promote the self-determination and eco-*
8 *nomie self-sufficiency of the Shivwits Band, in part*
9 *by providing funds to the Shivwits Band for its use*
10 *in developing a viable reservation economy;*

11 *(3) to approve, ratify, and confirm the St.*
12 *George Water Reuse Project Agreement, the Santa*
13 *Clara Project Agreement, and the Settlement Agree-*
14 *ment, and the Shivwits Water Right described there-*
15 *in;*

16 *(4) to authorize the Secretary of the Interior to*
17 *execute the St. George Water Reuse Project Agreement,*
18 *the Santa Clara Project Agreement, and the Settle-*
19 *ment Agreement, and to take such actions as are nec-*
20 *essary to implement these agreements in a manner*
21 *consistent with this Act; and*

22 *(5) to authorize the appropriation of funds nec-*
23 *essary for implementation of the St. George Water*
24 *Reuse Project Agreement, the Santa Clara Project*
25 *Agreement, and the Settlement Agreement.*

1 **SEC. 4. DEFINITIONS.**

2 *In this Act:*

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

5 (2) *UTAH.*—*The term “Utah” means the State of*
6 *Utah, by and through its Department of Natural Re-*
7 *sources.*

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

16 (4) *PAIUTE INDIAN TRIBE OF UTAH.*—*The term*
17 *“Paiute Indian Tribe of Utah” means the federally*
18 *recognized Indian Tribe organized under section 16 of*
19 *the Indian Reorganization Act of June 18, 1934 (48*
20 *Stat. 987; 25 U.S.C. 476), and the Act of April 3,*
21 *1980 (94 Stat. 317), comprised of five bands of South-*
22 *ern Paiute Indians (Shivwits, Indian Peaks, Cedar,*
23 *Koosharem, and Kanosh Bands).*

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

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

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

9 (8) *ST. GEORGE WATER REUSE PROJECT AGREE-*
10 *MENT.*—*The term “St. George Water Reuse Project*
11 *Agreement” means the agreement among the United*
12 *States for the benefit of the Shivwits Band, Utah, the*
13 *Shivwits Band, and St. George City, together with all*
14 *exhibits thereto, as the same is approved and executed*
15 *by the Secretary of the Interior pursuant to section*
16 *8 of this Act.*

17 (9) *SANTA CLARA PROJECT AGREEMENT.*—*The*
18 *term “Santa Clara Project Agreement” means the*
19 *agreement among the United States for the benefit of*
20 *the Shivwits Band, Utah, the Shivwits Band, the*
21 *Washington County Water Conservancy District, St.*
22 *George City, the New Santa Clara Field Canal Com-*
23 *pany, the St. George Clara Field Canal Company, the*
24 *Ivins Irrigation Company, the Southgate Irrigation*
25 *Company, Bloomington Irrigation Company, Ed*

1 *Bowler, and the Lower Gunlock Reservoir Company,*
2 *together with all exhibits thereto, as the same is ap-*
3 *proved and executed by the Secretary of the Interior*
4 *pursuant to section 8 of this Act.*

5 (10) *SETTLEMENT AGREEMENT.*—*The term “Set-*
6 *tlement Agreement” means that agreement among the*
7 *United States for the benefit of the Shivwits Band,*
8 *Utah, the Shivwits Band, the Washington County*
9 *Water Conservancy District, St. George City, the New*
10 *Santa Clara Field Canal Company, the St. George*
11 *Clara Field Canal Company, the Ivins Irrigation*
12 *Company, the Southgate Irrigation Company, Bloom-*
13 *ington Irrigation Company, Ed Bowler, and the*
14 *Lower Gunlock Reservoir Company, together with all*
15 *exhibits thereto, as the same is approved and executed*
16 *by the Secretary of the Interior pursuant to section*
17 *8 of this Act.*

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

23 (12) *SHIVWITS BAND TRUST FUND.*—*The term*
24 *“Shivwits Band Trust Fund” means the Trust Fund*

1 *authorized in section 11 of this Act to further the pur-*
2 *poses of the Settlement Agreement and this Act.*

3 (13) *VIRGIN RIVER RESOURCE MANAGEMENT AND*
4 *RECOVERY PROGRAM.—The term “Virgin River Re-*
5 *source Management and Recovery Program” means*
6 *the proposed multiagency program, to be adminis-*
7 *tered by the United States Fish and Wildlife Service,*
8 *Bureau of Land Management, National Park Service,*
9 *Utah, and the District, whose primary purpose is to*
10 *prioritize and implement native fish recovery actions*
11 *that offset impacts due to future water development in*
12 *the Virgin River basin.*

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

14 (a) *ST. GEORGE WATER REUSE PROJECT.—The St.*
15 *George Water Reuse Project shall consist of water treatment*
16 *facilities, a pipeline, and associated pumping and delivery*
17 *facilities owned and operated by St. George, which is a com-*
18 *ponent of, and shall divert water from, the Water Reclama-*
19 *tion Facility located in St. George, Utah, and shall trans-*
20 *port this water for delivery to and use by St. George and*
21 *the Shivwits Band. St. George shall make 2,000 acre-feet*
22 *of water available annually for use by the Shivwits Band*
23 *in accordance with the St. George Water Reuse Project*
24 *Agreement and this Act.*

1 (b) *PROJECT CONSTRUCTION OPERATION AND MAIN-*
2 *TENANCE.—(1) St. George shall be responsible for the de-*
3 *sign, engineering, permitting, construction, operation,*
4 *maintenance, repair, and replacement of the St. George*
5 *Water Reuse Project, and the payment of its proportionate*
6 *share of these project costs as provided for in the St. George*
7 *Water Reuse Project Agreement.*

8 (2) *The Shivwits Band and the United States for the*
9 *benefit of the Shivwits Band shall make available, in ac-*
10 *cordance with the terms of the St. George Water Reuse*
11 *Agreement and this Act, a total of \$15,000,000 to St. George*
12 *for the proportionate share of the design, engineering, per-*
13 *mitting, construction, operation, maintenance, repair, and*
14 *replacement of the St. George Water Reuse Project associ-*
15 *ated with the 2,000 acre-feet annually to be provided to the*
16 *Shivwits Band.*

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

18 (a) *SANTA CLARA PROJECT.—The Santa Clara Project*
19 *shall consist of a pressurized pipeline from the existing*
20 *Gunlock Reservoir across the Shivwits Reservation to and*
21 *including Ivins Reservoir, along with main lateral pipe-*
22 *lines. The Santa Clara Project shall pool and deliver the*
23 *water rights of the parties as set forth in the Santa Clara*
24 *Project Agreement. The Santa Clara Project shall deliver*
25 *to the Shivwits Band a total of 1,900 acre-feet annually*

1 *in accordance with the Santa Clara Project Agreement and*
2 *this Act.*

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

8 (c) *PROJECT FUNDING.*—*The Utah Legislature and the*
9 *United States Congress have each appropriated grants of*
10 *\$750,000 for the construction of the Santa Clara Project.*
11 *The District shall provide a grant of \$750,000 for the con-*
12 *struction of the Santa Clara Project. The District shall pro-*
13 *vide any additional funding required for the construction*
14 *of the Santa Clara Project.*

15 (d) *PROJECT CONSTRUCTION, OPERATION, AND MAIN-*
16 *TENANCE.*—*The District shall be responsible for the permit-*
17 *ting, design, engineering, construction, and the initial oper-*
18 *ation, maintenance, repair, and replacement of the Santa*
19 *Clara Project. Operation, maintenance, repair, and replace-*
20 *ment activities and costs of the Santa Clara Project shall*
21 *be handled in accordance with the terms of the Santa Clara*
22 *Project Agreement.*

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

24 (a) *IN GENERAL.*—*The Shivwits Band and its mem-*
25 *bers shall have the right in perpetuity to divert, pump, im-*

1 *pound, use, and reuse a total of 4,000 acre-feet of water*
2 *annually from the Virgin River and Santa Clara River sys-*
3 *tems, to be taken as follows:*

4 (1) *1,900 acre-feet annually from the Santa*
5 *Clara River System, with an 1890 priority date in*
6 *accordance with the terms of the Santa Clara Project*
7 *Agreement.*

8 (2) *2,000 acre-feet of water annually from the*
9 *St. George Water Reuse Project as provided for in the*
10 *St. George Water Reuse Project Agreement. The*
11 *Shivwits Band shall have first priority to the reuse*
12 *water provided from the St. George Water Reclama-*
13 *tion Facility .*

14 (3) *100 acre-feet annually, with a 1916 priority*
15 *date, from groundwater on the Shivwits Reservation.*

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

22 (c) *SETTLEMENT.—The Shivwits Band may use water*
23 *from the springs and runoff located on the Shivwits Res-*
24 *ervation. The amount used from these sources will be re-*
25 *ported annually to the Utah State Engineer by the Shivwits*

1 *Band and shall be counted against the annual 4,000 acre-*
2 *feet Shivwits Water Right.*

3 (d) *ABANDONMENT, FORFEITURE, OR NONUSE.—The*
4 *Shivwits Water Right shall not be subject to loss by aban-*
5 *donment, forfeiture, or nonuse.*

6 (e) *USE OF LEASE.—The Shivwits Band may use or*
7 *lease the Shivwits Water Right for either or both of the fol-*
8 *lowing:*

9 (1) *For any purpose permitted by tribal or Fed-*
10 *eral law anywhere on the Shivwits Band Reservation.*
11 *Once the water is delivered to the Reservation, such*
12 *use shall not be subject to State law, regulation, or ju-*
13 *risdiction.*

14 (2) *For any beneficial use off the Shivwits Res-*
15 *ervation in accordance with the St. George Water*
16 *Reuse Agreement, the Santa Clara Project Agreement,*
17 *the Settlement Agreement, and all applicable Federal*
18 *and State laws.*

19 *No service contract, lease, exchange, or other agreement en-*
20 *tered into under this subsection may permanently alienate*
21 *any portion of the Shivwits Water Right.*

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

23 *Except to the extent that the St. George Water Reuse*
24 *Project Agreement, the Santa Clara Project Agreement, and*
25 *the Settlement Agreement conflict with the provisions of this*

1 *Act, such agreements are hereby approved, ratified, and*
2 *confirmed. The Secretary is hereby authorized to execute,*
3 *and take such other actions as are necessary to implement,*
4 *such agreements.*

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

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

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

21 *(2) interpreted or construed to prevent or pro-*
22 *hibit the Shivwits Band from participating in the fu-*
23 *ture in other water projects, or from purchasing addi-*
24 *tional water rights for their benefit and use, to the*
25 *same extent as any other entity.*

1 (b) *RELEASE.*—By the approval, ratification, and con-
2 *firmation herein of the St. George Water Reuse Project*
3 *Agreement, the Santa Clara Project Agreement, and the Set-*
4 *tlement Agreement, the United States executes the following*
5 *waiver to be effective upon satisfaction of the conditions set*
6 *forth in section 14 of this Act. For purposes of this section—*

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

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

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

19 (1) *All claims for water rights or injuries to*
20 *water rights for lands within the Shivwits Reserva-*
21 *tion that accrued at any time up to and including*
22 *the effective date determined by section 14 of this Act,*
23 *and any continuation thereafter of any of these*
24 *claims, that the United States for the benefit of the*
25 *Shivwits Band may have against Utah, any agency*

1 *or political subdivision thereof, or any person, entity,*
2 *corporation, or municipal corporation.*

3 *(2) All claims for water rights or injuries to*
4 *water rights for lands outside of the Shivwits Res-*
5 *ervation, where such claims are based on aboriginal*
6 *occupancy of the Shivwits Band, its members, or their*
7 *predecessors, that accrued at any time up to and in-*
8 *cluding the effective date determined by section 14 of*
9 *this Act, and any continuation thereafter of any of*
10 *these claims, that the United States for the benefit of*
11 *the Shivwits Band may have against Utah, any agen-*
12 *cy or political subdivision thereof, or any person, en-*
13 *tity, corporation, or municipal corporation.*

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

18 *(d) SAVINGS PROVISION.—In the event the authoriza-*
19 *tions contained in subsection (d) of this section do not be-*
20 *come effective pursuant to section 14, the Shivwits Band*
21 *and the United States shall retain the right to assert past*
22 *and future water rights claims as to all lands of the*
23 *Shivwits Reservation, and the water rights claims and de-*
24 *fenses of all other parties to the agreements shall also be*
25 *retained.*

1 **SEC. 10. WATER RIGHTS AND HABITAT ACQUISITION PRO-**
2 **GRAM.**

3 (a) *IN GENERAL.*—*The Secretary is authorized to es-*
4 *tablish a water rights and habitat acquisition program in*
5 *the Virgin River Basin—*

6 (1) *primarily for the benefit of native plant and*
7 *animal species in the Santa Clara River Basin which*
8 *have been listed, are likely to be listed, or are the sub-*
9 *ject of a duly approved conservation agreement under*
10 *the Endangered Species Act; and*

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

16 (b) *WATER AND WATER RIGHTS.*—*The Secretary is*
17 *authorized to acquire water and water rights, with or with-*
18 *out the lands to which such rights are appurtenant, and*
19 *to acquire shares in irrigation and water companies, and*
20 *to transfer, hold, and exercise such water and water rights*
21 *and related interests to assist the conservation and recovery*
22 *of any native plant or animal species described in sub-*
23 *section (a).*

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

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

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

8 (3) *All water rights shall be transferred and ad-*
9 *ministered in accordance with any applicable State*
10 *law.*

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

17 (1) *Habitat property acquired must satisfy eligi-*
18 *bility criteria adopted by the Secretary.*

19 (2) *Habitat property purchases shall be only*
20 *from willing sellers, but the Secretary may target*
21 *purchases in areas deemed by the Secretary to be most*
22 *beneficial to the habitat acquisition program estab-*
23 *lished by this section.*

24 (e) *CONTRACT.—The Secretary is authorized to admin-*
25 *ister the water rights and habitat acquisition program by*

1 *contract or agreement with a non-Federal entity which the*
2 *Secretary determines to be qualified to administer such pro-*
3 *gram. The water rights and habitat acquisition program*
4 *shall be administered pursuant to the Virgin River Re-*
5 *source Management and Recovery Program.*

6 (f) *AUTHORIZATION.—There is authorized to be appro-*
7 *priated from the Land and Water Conservation Fund in*
8 *fiscal year 2003 or any year thereafter, a total of*
9 *\$3,000,000 for the water rights and habitat acquisition pro-*
10 *gram authorized in this section. The Secretary is authorized*
11 *to deposit and maintain this appropriation in an interest*
12 *bearing account, said interest to be used for the purposes*
13 *of this section. The funds authorized to be appropriated by*
14 *this section shall not be in lieu of or supersede any other*
15 *commitments by Federal, State, or local agencies. The funds*
16 *appropriated pursuant to this section shall be available*
17 *until expended, and shall not be expended for the purpose*
18 *set forth in subsection (a)(2) until the Secretary has evalu-*
19 *ated the effectiveness of the instream flow required and pro-*
20 *vided by the Santa Clara Project Agreement, and has as-*
21 *ured that the appropriations authorized in this section are*
22 *first made available for the purpose set forth in subsection*
23 *(a)(1).*

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

2 (a) *ESTABLISHMENT OF TRUST FUND.*—*There is es-*
3 *tablished in the Treasury of the United States a fund to*
4 *be known as the “Shivwits Band Trust Fund” (hereinafter*
5 *called the “Trust Fund”). The Secretary shall deposit into*
6 *the Trust Fund the funds authorized to be appropriated in*
7 *subsections (b) and (c). Except as otherwise provided in this*
8 *Act, the Trust Fund principal and any income accruing*
9 *thereon shall be managed in accordance with the American*
10 *Indian Trust Fund Management Reform Act (108 Stat.*
11 *4239; 25 U.S.C. 4001 et seq.).*

12 (b) *AUTHORIZATION.*—*There is authorized to be ap-*
13 *propriated a total of \$20,000,000, in the 2001, 2002, or*
14 *2003 fiscal years for the following purposes:*

15 (1) *\$5,000,000, which shall be made available to*
16 *the Shivwits Band from the Trust Fund for purposes*
17 *including but not limited to those that would enable*
18 *the Shivwits Band to put to beneficial use all or part*
19 *of the Shivwits Water Right, to defray the costs of*
20 *any water development project in which the Shivwits*
21 *Band is participating, or to undertake any other ac-*
22 *tivity that may be necessary or desired for implemen-*
23 *tation of the St. George Water Reuse Project Agree-*
24 *ment, the Santa Clara Project Agreement, the Settle-*
25 *ment Agreement, or for economic development on the*
26 *Shivwits Reservation.*

1 (2) \$15,000,000, which shall be made available
2 by the Secretary and the Shivwits Band to St. George
3 for the St. George Water Reuse Project, in accordance
4 with the St. George Water Reuse Project Agreement.

5 (c) *SHARE OF CERTAIN COSTS.*—There is authorized
6 to be appropriated to the Trust Fund in fiscal year 2001,
7 2002, or 2003 a total of \$1,000,000 to assist with the
8 Shivwits Band’s proportionate share of operation, mainte-
9 nance, repair, and replacement costs of the Santa Clara
10 Project as provided for in the Santa Clara Project Agree-
11 ment.

12 (d) *USE OF THE TRUST FUND.*—Except for the
13 \$15,000,000 appropriated pursuant to subsection (b)(2), all
14 Trust Fund principal and income accruing thereon may
15 be used by the Shivwits Band for the purposes described
16 in subsection (b)(1). The Shivwits Band, with the approval
17 of the Secretary, may withdraw the Trust Fund and deposit
18 it in a mutually agreed upon private financial institution.
19 That withdrawal shall be made pursuant to the American
20 Indian Trust Fund Management Reform Act of 1994 (25
21 U.S.C. 4001 et seq.). If the Shivwits Band exercises its right
22 pursuant to this subsection to withdraw the Trust Fund
23 and deposit it in a private financial institution, except as
24 provided in the withdrawal plan, neither the Secretary nor
25 the Secretary of the Treasury shall retain any oversight over

1 *or liability for the accounting, disbursement, or investment*
2 *of the funds.*

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

8 (f) *LIMITATION.*—*The moneys authorized to be appro-*
9 *priated under subsections (b) and(c) shall not be available*
10 *for expenditure or withdrawal by the Shivwits Band until*
11 *the requirements of section 14 have been met so that the*
12 *decree has become final and the waivers and releases exe-*
13 *cuted pursuant to section 9(b) have become effective. Once*
14 *the settlement becomes effective pursuant to the terms of sec-*
15 *tion 14 of this Act, the assets of the Trust Fund belong to*
16 *the Shivwits Band and are not returnable to the United*
17 *States Government.*

18 **SEC. 12. ENVIRONMENTAL COMPLIANCE.**

19 (a) *NATIONAL ENVIRONMENTAL POLICY ACT.*—*Execu-*
20 *tion by the Secretary of the St. George Water Reuse Project*
21 *Agreement, the Santa Clara Project Agreement, or the Set-*
22 *tlement Agreement shall not constitute major Federal action*
23 *under the National Environmental Policy Act of 1969 (42*
24 *U.S.C. 4321 et seq.).*

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

8 **SEC. 13. MISCELLANEOUS PROVISIONS.**

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

16 (b) *PRECEDENT.*—*Nothing in this Act shall be con-*
17 *strued or interpreted as a precedent for the litigation of re-*
18 *served water rights or the interpretation or administration*
19 *of future water settlement Acts.*

20 (c) *WAIVER OF SOVEREIGN IMMUNITY.*—*Except to the*
21 *extent provided in subsections (a), (b), and (c) of section*
22 *208 of the Department of Justice Appropriation Act, 1953*
23 *(43 U.S.C. 666), nothing in this Act may be construed to*
24 *waive the sovereign immunity of the United States. Fur-*
25 *thermore, the submission of any portion of the Settlement*

1 *Agreement to the District Court in the Virgin River Adju-*
2 *dication shall not expand State court jurisdiction or ex-*
3 *pend in any manner the waiver of sovereign immunity of*
4 *the United States in section 666 of title 43, United States*
5 *Code, or any other provision of Federal law.*

6 (d) *APPRAISALS.*—*Notwithstanding any other law to*
7 *the contrary, the Secretary is authorized to approve any*
8 *right-of-way appraisal which has been completed in accord-*
9 *ance with the provisions of the Santa Clara Project Agree-*
10 *ment.*

11 **SEC. 14. EFFECTIVE DATE.**

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

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

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

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

1 (4) *the Santa Clara Project Agreement has been*
2 *modified to the extent it is in conflict with this Act*
3 *and has been executed by all parties thereto;*

4 (5) *the Settlement Agreement has been modified*
5 *to the extent it is in conflict with this Act and has*
6 *been executed by all parties thereto;*

7 (6) *the State Engineer of Utah has taken all ac-*
8 *tions and approved all applications necessary to im-*
9 *plement the provisions of the St. George Water Reuse*
10 *Agreement, the Santa Clara Project Agreement, and*
11 *the Settlement Agreement, from which no further ap-*
12 *peals may be taken; and*

13 (7) *the court has entered a judgment and decree*
14 *confirming the Shivwits Water Right in the Virgin*
15 *River Adjudication pursuant to Utah Rule of Civil*
16 *Procedure 54(b), that confirms the Shivwits Water*
17 *Right and is final as to all parties to the Santa Clara*
18 *Division of the Virgin River Adjudication and from*
19 *which no further appeals may be taken, which the*
20 *United States and Utah find is consistent in all ma-*
21 *terial aspects with the Settlement Agreement and with*
22 *the proposed judgment and decree agreed to by the*
23 *parties to the Settlement Agreement.*

24 (b) *DEADLINE.—If the requirements of paragraphs (1)*
25 *through (7) of subsection (a) are not completed to allow the*

1 *Secretary's statement of findings to be published by Decem-*
2 *ber 31, 2003—*

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

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

Union Calendar No. 424

106TH CONGRESS
2D SESSION

H. R. 3291

[Report No. 106-743]

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.

JULY 17, 2000

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed