

**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. 235 I/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-foot 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 nonirrigation 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 in stream flow of 3.0 cubic feet per second (cfs) year-round for the fish, immediately below the dam. Also, section IO 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.