

**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of Indian Affairs requested that a tract of land, approximately the six-by-six mile area of the current reservation, be withdrawn and reserved until allotments were made.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 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, 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 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 offreservation 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.

- + 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 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 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.