



**TESTIMONY OF  
CHAIRMAN LESTER SHINE NIETO,  
TULE RIVER INDIAN TRIBE OF CALIFORNIA  
SUBCOMMITTEE ON INTERIOR, ENVIRONMENT,  
AND RELATED AGENCIES OF  
THE U.S. HOUSE OF REPRESENTATIVES  
AMERICAN INDIAN AND ALASKA NATIVE PUBLIC WITNESS DAYS**

**I. Introduction**

Greetings Chairman Simpson, Ranking Member Pingree, and members of the Subcommittee on Interior, Environment, and Related Agencies. My name is Lester Shine Nieto and it is an honor to appear before you today. I am a member of the Tule River Indian Tribe (“Tule River”) located in central California, where I serve as the Chairman of the Tule River Tribal Council. I come before you today to share Tule River’s greetings and strong support for federal reserved Indian water right settlements generally, and specifically our own Tule River Tribe’s Water Right Settlement.

Indian water right settlements can provide for actual wet water delivery, more flexible and localized solutions in administering water rights, certainty and economic development potential, while fulfilling the federal trust responsibility to promote Indian self-determination and economic self-sufficiency. These settlements are multi-party negotiated agreements that arise through federal rights. Settlements are not a handout and are not derived from any government program. Rather, Indian water right settlements allow necessary parties to finally resolve long-standing, contractual legal claims. Through the process of reaching settlement, the parties agree to specific terms in exchange for various promises, such as funding for infrastructure and the relinquishment of further litigation. Congressional approval of these types of settlements addresses the outstanding legal claims of Tribal Nations who have long fought to achieve secure water access for their people – water legally reserved to us by the United States at the time we entered into treaties and other agreements in exchange for the relinquishment of vast amounts of land. Settlement has long been viewed by the federal government, Tribal

Nations, and other parties as a cost-effective and time-efficient approach that ensures stability for all water users, and safeguards against the economic impacts of threatened water supplies.

The water right claims of the Tule River Tribe are currently subject to a settlement agreement in principle that we reached with a broader coalition of community members in the San Joaquin Valley. While it is imperative for the survival of my people that our settlement becomes law, passage of a bill will be a true success for all the communities involved, not just Tule River. It is really everyone's settlement. And it will ensure water security across a wide range of interests now and into the future in an area that in the last few years has faced catastrophic wildfire, record breaking drought and flooding, and severe water insecurity - both in terms of water quantity as well as water quality.

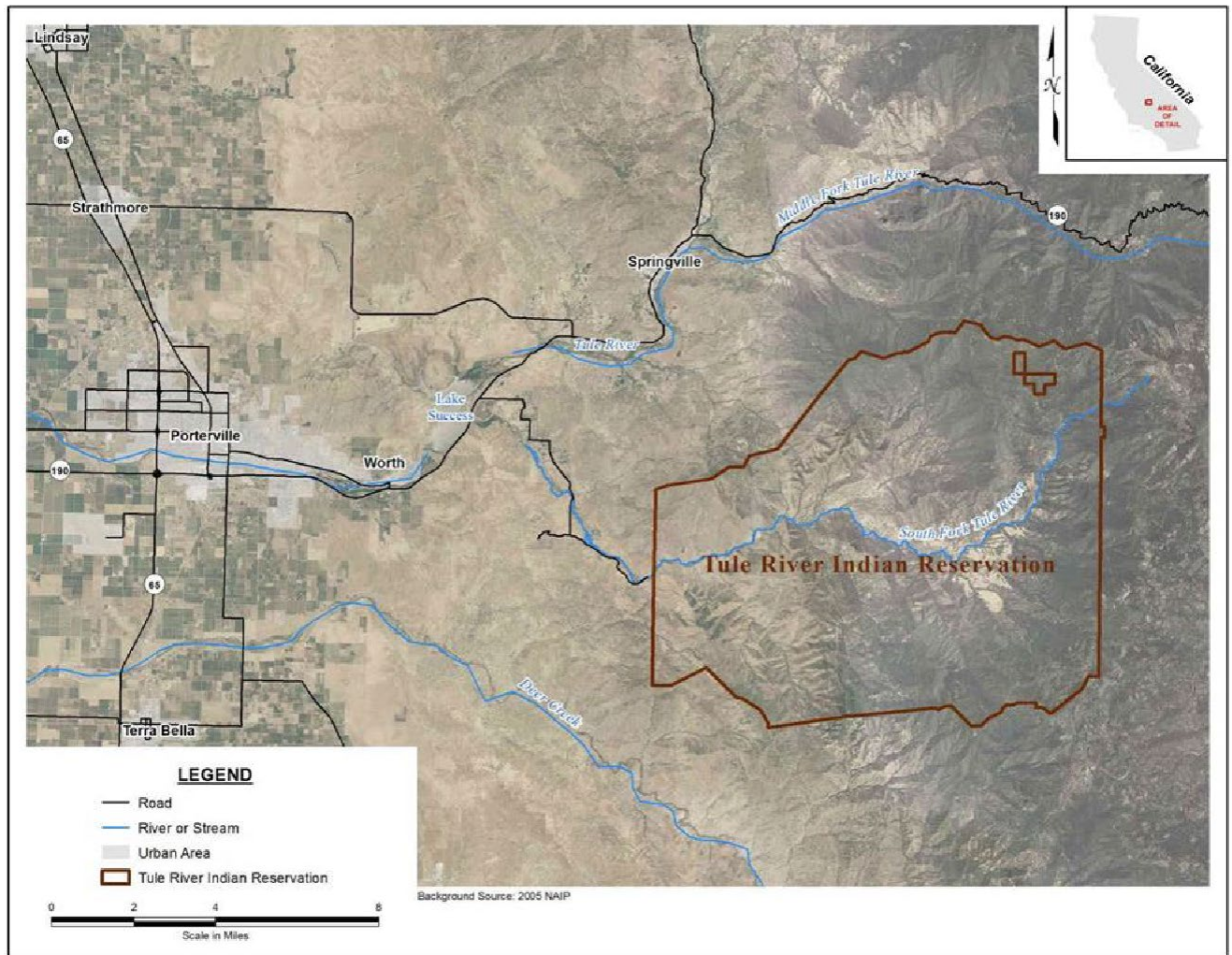
Companion water settlement bills were introduced in a bi-partisan fashion in the last session of Congress. H.R. 8920 was introduced by Representative Fong and S. 306 by Senator Padilla.

## **II. Tule River Indian Reservation**

The Tule River Indian Reservation is located in south central California and covers approximately 85 square miles (55,395-acres) of rugged foothill terrain in the Sierra Nevada Mountains in the Tulare Basin of the Central Valley. The topography of the Reservation is generally steep, with elevations ranging from about 900 to 7,500 feet above sea level. Many of the roads on the reservation reach grades of 7-18%, including those used to access tribal member homes. The South Fork of the Tule River runs through the Reservation, which then flows into the Tule River at Success Lake, about ten miles west of the Reservation. There are no significant uses of water upstream of the Reservation.

The Tule River Tribe was removed to its current Reservation near Porterville in 1873 by a Presidential Executive Order, which replaced a previous reservation that provided us more suitable lands for habitation closer to the valley floor. We currently house 1,990 members on the Reservation and have a waiting list of other tribal members who would like to live on the Reservation. Without water, though, we are unable to accommodate them. It is estimated that only 56% of our population lives on the Reservation, which is confirmed by the length of our waiting list. A Bureau of Reclamation Technical Evaluation Report for the Settlement indicated that by the year 2112 the Tribe's total membership will reach about 6,860 people. (See Attachment 1, p. 3-2).

Below is a map of the Reservation. The Reservation's eastern boundary abuts the Forest Service's Giant Sequoia National Monument. Just west of the Reservation is the Army Corps of Engineer's Lake Success, a dammed water body used for flood control and downstream irrigation, which is fed by the Tule River.



**Figure 1: Reservation Location Map**

### **III. The Need for Water on the Reservation – Fire Suppression and a Homeland**

There is a lack of sufficient water supply for the Reservation. We have worked for decades to proactively address our federally reserved Indian water rights so that we can develop the necessary water resources to make our Reservation a permanent homeland. The current water supply is intermittent and suffers from water quality issues. The Reservation water system relies on a series of wells, springs, and water drawn directly from the South Fork Tule River, which is treated to meet potable water standards. Actual water demand far exceeds documented water use, which is constrained by both water availability and the water distribution system itself. (See Attachment 1, 2-1 at § 2.1.1).

The South Fork provides the Tribe with about 80% of its water. It flows through the Reservation and is subject to the Tule River Tribe’s federal reserved Indian water rights. However, our Tribe is unable to use most of the river flow. To make use of the water in a meaningful way, it must be captured and stored, as the river runs low or even

goes dry several months of the year. The hydrology of the South Fork is like most western rivers in that the flows are generally much higher in the spring months than the rest of the year. The hydrology of the South Fork is also marked by periods of drought during which the entire flow of the river is significantly reduced for long periods of time, sometimes spanning several years. These two general characteristics are depicted on the two graphs attached to this testimony. (See Attachment 2).

For the past 15-20 years, persistent drought caused water reductions as well as complete shutoffs. Homes typically run out of water during peak summer months and members must travel to trucked-in water stations to bathe and obtain bottled water for their home use. When there are outages people cannot cook, or bathe, and members must rely on bottled water for basic needs. They may miss work and/or school. Residents are asked to limit water use, sometimes drinking donated bottled water for months at a time. In the hottest parts of the summer, we open government buildings to provide refuge for elders, who rely on water for their swamp coolers. During water-short times we regularly experience interruptions in critical services like education programs, including the Towanits Elementary School, emergency services, elder care, justice center and government functions. The shortages impact not only our people's physical well-being, it also is detrimental to our economy.



**Image 2:** Tribal Members bathing from water tanks.



**Image 3:** Dry South Fork of the Tule River.

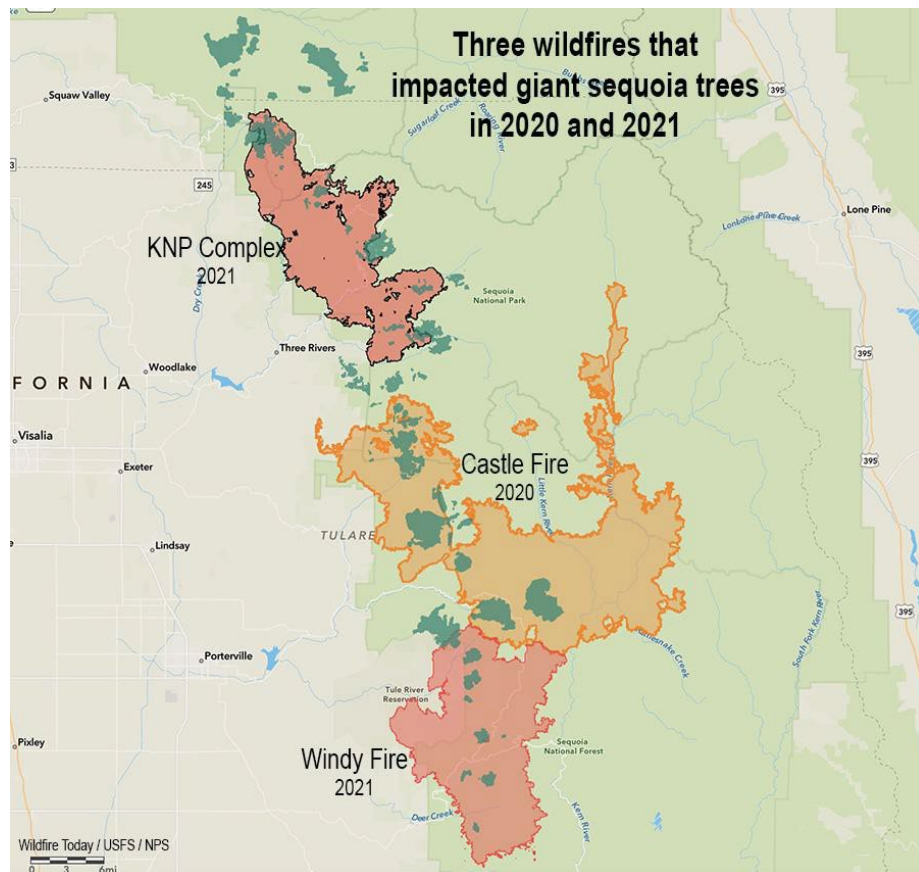
In relation to recent severe drought, we have had major fires in the last decade. (See Attachment 3). The Windy Fire of 2021 burned 97,528 acres of the neighboring Sequoia National Forest and 19,325 acres of our Reservation. When we utilize our water system to suppress fire, it completely depletes our supply, meaning we are back into the cycle described above. In the event of a wildfire, water to fight fires must therefore be imported from off the Reservation. During the Windy Fire, near vertical, rocky terrain and a lack of high elevation dipping pools for fire protection on the Reservation complicated suppression efforts. The fire killed many old growth giant sequoia trees – thousands of years in the making, and sacred to us culturally – incinerated tens of millions of board feet of timber and contributed to flooding and erosion throughout the spring of 2023. Future ignitions in remote areas continue to threaten the Reservation and neighboring communities. Catastrophic wildfire spreads quickly and can easily burn entire towns and forest stands within a 24-hour period.



**Images 4 & 5: Wildfire smoke and flames on Tule River Reservation.**



**Image 6: Windy Fire**



**Image 7: Map of Windy Fire**

The Tribe's water treatment plant currently has the capacity to provide 501,700 gallons per day (562 acre-feet per year) at maximum production. We have to run the treatment plant at maximum capacity and use groundwater sources to make up shortfalls. Many years we have not had adequate water supplies in the late summer and early fall to meet the current minimum 100,000 gallons per day of water demand. In addition, recent flooding impacted our ability to operate the water treatment plant efficiently and requires the use of a patchwork system of generators. When the generators fail the daily functioning of government services on the Reservation are again shut down.

Water cisterns containing emergency stored water are difficult to access, and water delivery pipelines installed by the Indian Health Service ("IHS") decades ago are of inadequate size to deliver water reliably. In seeking information about the installation of these pipes, we were told by IHS that an "as-built" plan for the system is not available, making updating it even more time-consuming and difficult. Meanwhile, the elevation difference between our water sources and end-users causes naturally occurring sulfur in our groundwater supplies to rise above the water as it gets pushed through the pipes, resulting in noxious sulfur odors polluting homes prior to the much-needed water arriving. The sulfur odors have made homes unlivable in some instances. Other homes are currently experiencing such water deficits that tribal members are unable to flush toilets, making their homes uninhabitable. Many members must live in recreational vehicles due to finances, but HUD informed us it cannot make water deliveries to RVs. "Many of the residents on the Reservation continue to have a relatively low standard of living in substantial part due to the absence of an adequate and reliable potable water supply and delivery system. Inadequate water supplies have resulted in reduced opportunities for economic development on the Reservation and prevent off-Reservation Tribal members from relocating to the Reservation."<sup>1</sup>

On August 17, 2023, our Tribe declared a state of emergency. (See Attachment 4). Severe water shortages began when a lightning strike shorted out the power for the Reservation's water treatment plant, which was already struggling to treat our main water source. The South Fork of the Tule River had become excessively dirty from runoff associated with the spring's extreme flooding, making the treatment plant work overtime already. In addition, the pump for the Reservation's backup well was shorted by a power surge. The resulting crisis led our people to conserve water and stop all unnecessary water use - including limited water for toileting, showering, and laundry.

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<sup>1</sup> Tule River Tribe, Water Settlement Technical Report (2013) ([https://tulerivertribe-nsn.gov/wp-content/uploads/2022/09/20130600technical\\_report.pdf](https://tulerivertribe-nsn.gov/wp-content/uploads/2022/09/20130600technical_report.pdf)) (last accessed 10/12/2023).

Meeting basic water needs is foundational to any society, and it is directly linked to our ability to exist as a sovereign nation. In these last years, we have learned more than ever that water is sovereignty. Our Settlement reconciles over 100 years of the effects of forced removals of the Tule River people, even at gunpoint, and the unratified 1851 Treaty of Paint Creek relied upon by our people in good faith.<sup>2</sup> The history of Tule River, and our forced removal onto the Reservation, sadly tracks the troubled history of the U.S. and its relations with native people. But the history in California is one of the darker pages.<sup>3</sup> The Tule River Water Settlement and accompanying legislation offers a unique opportunity to correct these past wrongs.

#### **IV. Tule River’s Settlement Benefits All Surrounding Communities and Satisfies All Requirements**

Indian water settlements are traditionally negotiated through the Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims (“Criteria and Procedures”). We have worked hard for decades to codify the agreement we have with our neighbors – the South Tule Independent Ditch Company (“STIDC”) and the Tule River Association (“TRA”). TRAs members represent all pre-1914 water rights holders of the Tule River at and below the Richard L. Schafer Dam and Reservoir (formerly Success Dam). TRA includes the Pioneer Water Company, Vandalia Irrigation District, Porterville Irrigation District, and Lower Tule River Irrigation District. Settling with these parties implicates many interests beyond the individual entities, as all are major players in the agricultural economy and their livelihood is critical to the local community and beyond.

We have also satisfied each of the requirements of the Criteria and Procedures. If we were to file a lawsuit, that could tie up existing water rights for decades. As a result, we knew that a settlement outside of court is in everyone’s best interests. The favorability of settlement over decades of litigation is further evidenced by the support of our neighbors – the downstream state-based water right holders. Ultimately, approving the Settlement rather than going to court is in the best interests of the Tribe, our neighbors in

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<sup>2</sup> Frank, Gelya and Carole Goldberg, *Defying the Odds: The Tule River Tribe’s Struggle for Sovereignty in Three Centuries*, p. 54, New Haven and London: Yale University (2010). Available at the National Indian Law Library (NILL) at the following link - <https://nill.softlinkliberty.net:443/liberty/OpacLogin?mode=BASIC&openDetail=true&corporation=NARF&action=search&queryTerm=uuid%3D%225c659d6f0af12b193f2f1f287c6e356b%22&operator=OR&url=%2Fopac%2Fsearch.do>.

<sup>3</sup> See Castillo, Edward D. (*Cahuilla-Luiseno*), State of California Native American Heritage Commission, California Indian History, “Short Overview of California Indian History,” <https://nahc.ca.gov/resources/california-indian-history/> (last accessed Sept. 28, 2022).



the central valley in California, and taxpayers at large. Any litigation will be drawn out and expensive, with outcomes unknown and therefore risky. In addition, taxpayers have already seen negative impacts from not finalizing the Settlement. In recent years, they've had to contribute towards increased wildfire suppression efforts, help pay for bottled water deliveries, and assist in replacing outdated water delivery infrastructure and repairing washed out roads. If these impacts continue, taxpayers and the communities near the Reservation will be faced with the fallout from displacement caused by lack of reliable water access on the Reservation.

We seek commonsense, bipartisan outcomes, and passing our Settlement into law offers a unique opportunity for all to achieve success. It will allow the Tribe to finally have a functioning homeland and will ensure access to clean water for our long-struggling people. It will allow the U.S. to meet its obligations agreed to in contract, Executive Orders, and unsigned treaties. It will ensure water certainty for all the downstream state-based water users. It will impound water at high elevation, which is exactly the kind of drought solution called for by the Central Valley agricultural industry. It will also provide an advantageous dipping pool in the event of a wildfire. Furthermore, the Settlement will provide water certainty in times of drought and will ensure greater safety in times of flooding, both on and off the Reservation.<sup>4</sup>

Our Settlement was first reached in 2007 without the need for costly litigation and has since waited for full federal support and passage by Congress into law. We are here today because we have worked through all the concerns of our assigned federal negotiating team. We completed twenty-five years of study on the feasibility and various alternatives to secure our water rights, and we have addressed every issue that arose during our many years of negotiations. The Settlement also has broad local support. It memorializes our agreement with the STIDC and TRA, organizations that support the dairy, citrus, and other agricultural industries of the Central Valley of California.

Had our Settlement been implemented by Congress after it was reached in 2007, the last three years of drought, catastrophic wildfire, and extreme flooding would have been mitigated and the dire situation we find ourselves in today largely avoided. Instead, that potential source of life-sustaining water simply vanished downstream in the record setting flooding of the spring of 2023, eroding the only access road to the Reservation at great expense to ourselves and Tulare County.

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<sup>4</sup> KWPR, Kerry Klein, "Evacuations ordered as Porterville lake fills beyond capacity, water is released" (March 15, 2023) ([Evacuations ordered as Porterville lake fills beyond capacity, water is released \(kvpr.org\)](https://www.kvpr.org/evacuations-ordered-as-porterville-lake-fills-beyond-capacity-water-is-released)) (last accessed Oct. 10, 2023).



**Image 1.** South Fork Tule River in Flood of 2003. Source Caption: “The South Fork of the Tule River overflowed its banks, flooding the Tule River Indian Reservation in March.”

Source: KVPR, Ester Quintanilla, “Tule River Indian Reservation recovering after storms disrupt infrastructure” (April 5, 2023) (<https://www.kvpr.org/local-news/2023-04-05/tule-river-indian-reservation-recovering-after-storms-disrupt-infrastructure>) (last accessed Oct. 10, 2023).

## V. Overview of Settlement Terms and Proposed Legislation

We spent over twenty years studying how to best harness the water of the South Fork Tule River to meet our Tribe’s needs. From a water needs assessment to a water allocation model, from a groundwater investigation to a water quality impact study for stored water, from creating a physical model of our Reservation to hydrologic studies and biological evaluations of a reservoir project, from dam cost comparisons to analysis of water supply alternatives, from an engineering geologic inspection of potential dam sites to a value planning study, and from an appraisal level dam project technical evaluation report to a hydrology and yield analysis, we have worked hard to objectively and thoroughly understand our water needs, potential solution options, and the costs involved. (Attachment 5). With help from the Bureau of Reclamation, we concluded that a reservoir that can store up to 5,000 acre-feet is the most realistic and cost-effective option to us, which will net the greatest benefit through the least amount of harm.

A site just downstream of the confluence of the South Fork of the Tule River with one of its tributaries, Lower Bear Creek, was identified as the most likely and optimal location. This site is geologically robust, with granite rock, steep unvegetated slopes, and a narrow canyon cross-section. The site will also allow for access and construction staging areas. (Attachment 1 at p. 5-11). In addition to the reservoir and raw water transmission mainline, the project will also improve and update existing delivery and water treatment systems. (Attachment 1 at p. 5-15).

Storing the water of the South Fork will also make it possible for us to consistently deliver water downstream to state-based water users. We spent fourteen years negotiating with the downstream water users, STIDC and TRA. As a result of our work together, in 2007 we came to a settlement agreement (“2007 Agreement”) with STIDC and TRA, which is reflected in the terms of our proposed legislation, currently pending before the Senate as S. 306. The 2007 Agreement offers flexible and realistic terms and provides built-in mechanisms to ensure fairness. The Settlement was achieved without costly litigation that could otherwise lock up the invaluable water in the Tule River basin for decades.

The 2007 Settlement and accompanying legislation respects existing downstream water rights as agreed to by all the parties, and thus benefits everyone. The Tule River water storage project will capture early season runoff and make it available year-round, creating consistency for not only our Reservation, but also the state-based water users downstream. The operation rules for the future Tule River water storage project will mandate minimum releases for the benefit of downstream users. In addition, the Tribe will limit our use of river flow during what is typically the drier portion of the year to account for downstream uses. The Tribe will rely primarily on reservoir storage, which is filled during the high-flow season. In addition, storing water in the future reservoir can also allow it to be used to enhance downstream flows during dry periods. The Tribe will also share water shortages with the downstream users during dry years. Finally, the Settlement includes provisions for record keeping, inspections, and cooperative technical decision making, which will be to everyone’s benefit by increasing accuracy and thereby the wise use of water.

Based on a Bureau of Reclamation technical evaluation report, the Tribe has estimated the reservoir would likely cost \$568 million for a roller-compacted concrete dam, road improvements, raw water transmission line, water treatment plant expansion, expanded distribution system, and operation, maintenance, and replacement costs.<sup>13</sup> As this is a fund-based settlement, with a one-time payment, the Tribe is taking on considerable risk due to the rapidly increasing material and construction costs we have recently witnessed. As a comparison, improvements to the downstream Schaffer Dam at Lake Success Reservoir, which entails widening the dam’s spillway and improving flow control, is estimated to total \$135.5 million alone.<sup>14</sup>

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<sup>13</sup> Bureau of Reclamation, “Tule River Indian Water Rights Settlement – Technical Evaluation Report” 53-61 (September 2016).

<sup>14</sup> Gutierrez, Danielle, “Second Phase of Schafer Dam has Begun” The Sun Gazette (August 22, 2022) (<https://thesungazette.com/article/news/2022/08/27/second-phase-of-schafer-dam-project-has-begun/>).

Given the risk, as well as the emergency water crisis facing the Reservation, the Tribe seeks the funding on a mandatory basis, with part of the funding (\$20 million) available immediately to allow technical studies and investigations still needed to begin the preparation process for building the reservoir. While Indian water right settlements have sometimes been subject to discretionary spending, according to the Congressional Research Service, “Congress also has authorized mandatory funding for Indian water rights settlements.”<sup>15</sup> Seeking a mandatory amount now will proactively prevent a backlog of U.S. moneys owed later, and it will reduce the cost, expense, and time for all involved in repeatedly seeking an appropriation from Congress in the future. It will also allow us to begin the work of securing a water source for our people immediately. With the passage of the Settlement into law, we will have achieved a durable solution to our water crisis.

The proposed legislation to implement the Settlement also includes a transfer of land into trust of ~ 825 acres from the Bureau of Land Management, ~1,837 acres of tribally owned fee land, and ~9,000 acres from the Giant Sequoia National Monument for Tule River, thereby also reducing impacts to taxpayers. The Giant Sequoia lands are at the headwaters of the South Fork of the Tule River and their management is critical to the success of the proposed reservoir. When the Windy Fire burned 34% of our 55,356- acre Reservation, runoff from the burn area created a siltation overload in our water treatment system. The event highlighted the need for reforestation efforts and ongoing management, which the Tribe is poised to provide with over a thousand years of experience in observing and understanding the ecosystem and developing sustainable management techniques. We also negotiated with the USDA and Sequoia National Forest to establish better and more formal co-stewardship provisions that will complement the land transfer. This effort is the culmination of a concerted effort to build high quality relationships by all interested parties. In fact, one of our former Tule River Tribal Councilmembers is now the Tribal Relations Specialist for the Sequoia National Forest. Being a team player with our neighboring land managers will also mean the reservoir can provide more immediate access to an emergency water supply in the face of wildfire to the benefit of all landowners and managers in the area.

The land transfer will redress the 1873 Executive Order of President Hayes that unlawfully reduced our Reservation. It will more accurately account for the land lost to the Tribe because of the past fraudulent land warrants and due to the U.S. decision to relocate the Tribe to our current location without our consent. With the transfer of the

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<sup>15</sup> Congressional Research Service, “Indian Water Rights Settlements” (Updated January 18, 2022) (<https://crsreports.congress.gov/product/pdf/R/R44148>). The report discusses each type of source of mandatory funding in greater detail.

land back to the Tule River's direct use and management, the Tribe will also be able to protect its main source of water more fully.

## **VI. Conclusion**

As President Trump and you, the members of Congress, proceed toward the goal of making the Federal Government more efficient, accountable, and responsive to taxpayers, I would like to reiterate that Indian water right settlements are not social programs, but are a cost-effective way to resolve long-standing legal claims. We share in your goals of prosperity, opportunity, and progress for the future of our great Nation.

The Tule River Tribe has thoughtfully negotiated this settlement agreement at the local and Federal level with the goals of achieving self-sufficiency and economic independence. We seek your continued support for protecting the long-standing right for tribes to settle water right claims in this fashion. Doing so will also benefit the communities outside our reservation, providing greater water security and ensuring clarity of title to existing state-based water rights.

I thank the Chairman and the other members of the Subcommittee for the opportunity to fully express the importance to all in resolving the Tule River Tribe's federal reserved Indian water right claims.