



**TESTIMONY OF  
VICE CHAIRMAN LESTER SHINE NIETO,  
TULE RIVER INDIAN TRIBE OF CALIFORNIA  
SUBCOMMITTEE ON WATER, WILDLIFE AND FISHERIES,  
U.S. HOUSE OF REPRESENTATIVES  
IN SUPPORT OF H.R.8920**

**I. Introduction**

Greetings Chairman Bentz and members of the Subcommittee on Water, Wildlife and Fisheries. 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 Vice Chairman of the Tule River Tribal Council. I come before you today to share Tule River’s greetings and strong support for legislation currently pending before the House, H.R. 8920, which will approve the settlement of the water right claims of the Tule River Tribe. H.R. 8920 will approve a settlement agreement (“Settlement”) reached with the broader coalition of community members in the San Joaquin Valley called the South Fork Tule River Alliance. While it is imperative for the survival of my people that our Settlement becomes law, passage of this 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 three years faced catastrophic wildfires as well as record breaking drought and flooding.

I would like to thank Representative Fong, Representative LaMalfa and their staff for their solid support for our efforts. I would also like to thank Chairman Westerman for his commitment to settle Indian water rights. When the House Committee on Natural Resources considered the Save Our Sequoias Act, I was honored to testify in support of that proactive bill and had the great pleasure of working with Chairman Westerman. The effort demonstrated Tule River’s commitment to bipartisan solutions that meet all objectives fairly. Now the House Committee on Natural Resources can further gain traction and recognition for its support of Indian Country by passing the Tule River Water Settlement out of committee and recommend an expedited hearing on the House floor. Finally, I would like to thank Chairman Bentz, and the Staff Director for this subcommittee, Annick Miller. Without their effective leadership, we would not be here

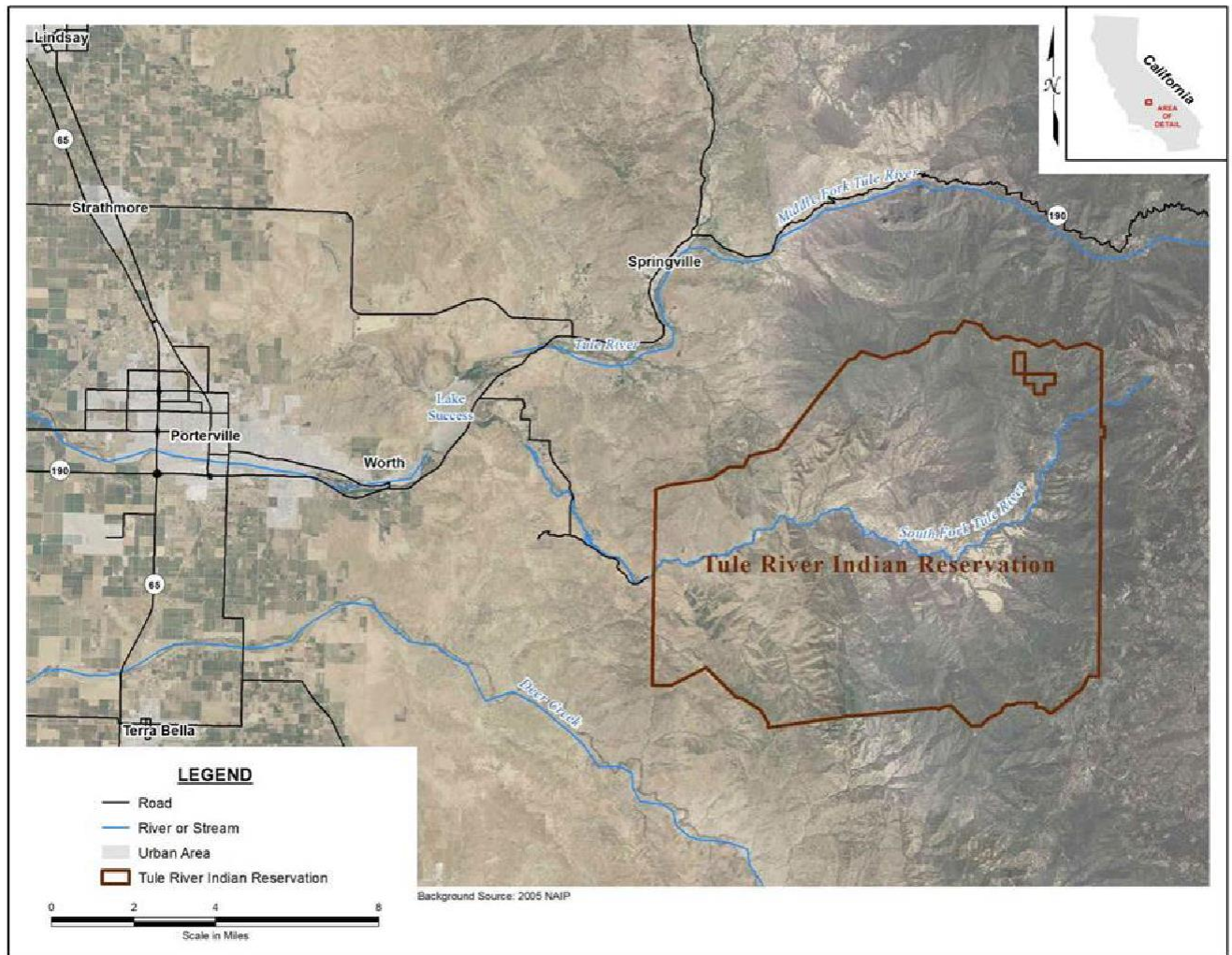
today.

## **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 it is this water source that will be subject to the Tule River Tribe’s federal reserved Indian water rights. Since the establishment of the Reservation, 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.

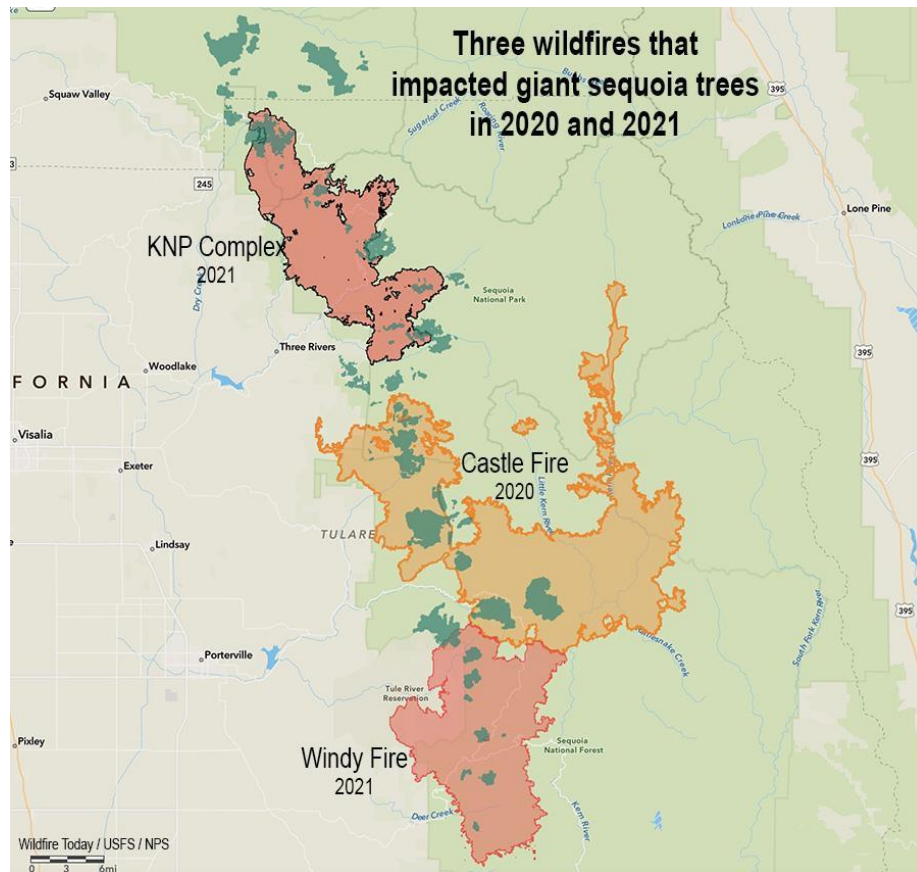
In relation to recent severe drought, we have had major fires in the last decade. (See Attachment 3). The Windy Fire of 2021 burned 97,528 acres of the neighboring Sequoia National Forest and 19,325 acres of our Reservation. When we utilize our water system to suppress fire, it completely depletes our 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, like last year, 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>

Last year, 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.

---

<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. Last summer we 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

---

<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.

---

<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. History of the Tule River Reservation and the Struggle of Tule River to Secure a Sustainable Homeland**

### ***A. The Unratified Treaty of Paint Creek***

The Tule River Reservation is part of our ancestral homeland. We are Yokuts Indians and have occupied the San Joaquin Valley in California for thousands of years. Following the discovery of gold in the late 1840s, there was massive immigration into California from the eastern U.S. In the first two years of the gold rush, it is estimated that 100,000 native people were killed.<sup>5</sup>

To legally obtain the lands that the Tribal Nations held, the U.S. negotiated 18 treaties with native people in California. One such treaty was the Treaty of Paint Creek that was signed on June 3, 1851. In that Treaty our ancestors reserved large tracts of land for our people. With California statehood and the desire for gold, however, there was enormous pressure on Congress to reject the 18 treaties negotiated with the Tribal Nations in California. Congress yielded to this pressure and in 1852 rejected the 18 treaties, including the Treaty of Paint Creek. The treaties were subsequently placed under an order of secrecy and hidden in the Senate’s records for over 50 years.<sup>6</sup> Our ancestors

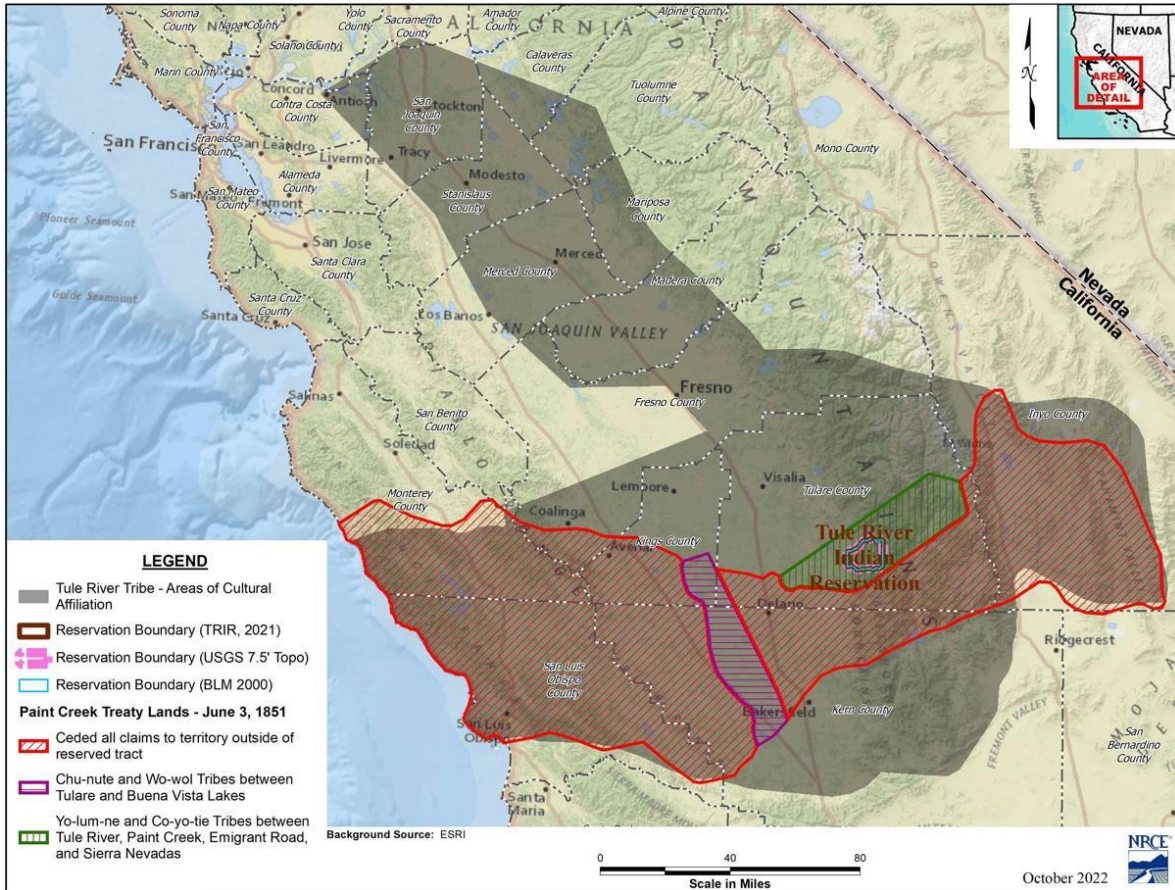
---

<sup>5</sup> *Id.*

<sup>6</sup> See Miller, Larisa K., “The Secret Treaties with California’s Indians,” Archives, Hoover Institution at Stanford University, (2013), <https://www.archives.gov/files/publications/prologue/2013/fall-winter/treaties.pdf> (last accessed Sept. 28, 2022).

were never informed the treaties we negotiated with the federal government were not ratified.

Below is a map of the lands our ancestors reserved for our people in the Treaty of Paint Creek, which includes much of the agricultural hub of the central valley in California. (See also Attachment 5, Timeline of the Tule River Tribe Water Rights.)



**Figure 2: Map depicting area of traditional cultural affiliation for the Tule River Tribe of Yokut Indians as well as the lands ceded and retained in the Paint Creek Treaty of 1851.**

### ***B. Establishment of the Original Reservation through Fraud***

After failing to ratify the treaties, Congress established the Superintendency of Indian Affairs in California in 1853 to relocate Indians to reservations. In 1856, the California Superintendency established our reservation pursuant to the 1853 authority, on approximately 2,440 acres of prime San Joaquin Valley farmland in Tulare County. The southwest corner of the land was transected by the mainstem of the Tule River. It included part of what is today the eastern portion of the City of Porterville. Despite being significantly smaller than what was reserved in the treaty, the location of this original

Reservation was selected by the federal government to provide Tule River with the arable land and water resources needed to establish a self-sufficient homeland for our people.

Upon being promised this land as our homeland - ostensibly forever - we built homes and began to actively cultivate crops. Despite our relative prosperity in those years, two of the federal Indian agents assigned to reservations in the area decided to capitalize on the distance and ignorance of the officials in Washington, D.C. Thomas Madden, a federal Indian agent assigned to the neighboring Tejon Indian Reservation, applied for, and was issued a fraudulent public land school warrant for 1,280 acres of the Tule River Reservation from the State of California.<sup>7</sup> Four years later, and under a similar illegal arrangement, a land warrant for 1,160 acres of Tule River Reservation was issued to Mr. John Benson, another Indian Agent. These two state land warrants encompassed all our Reservation lands.

The federal government was fully aware that these lands were expressly reserved to us, but it made no effort to challenge the Madden and Benson land warrants - despite an investigation in 1858 confirming the fraudulent nature of the agents' land claims. Because the lands had been set aside for the Tribe, the State of California had no legal basis upon which to issue the warrants. The land transfers were also a violation of the federal Trade and Intercourse Act, which expressly prohibited Indian agents from having "any interest or concern in any trade with the Indians," *Indian U.S. v. Hutto*, 256 U.S. 524, 525 (1921), and prohibited the sale of Indian lands except by treaty. 25 U.S.C. § 177. Instead of setting aside the issuance of these warrants, the federal government actually paid rent to Agents Madden and Benson for at least a dozen years to enable our ancestors to continue farming what was our land.<sup>8</sup>

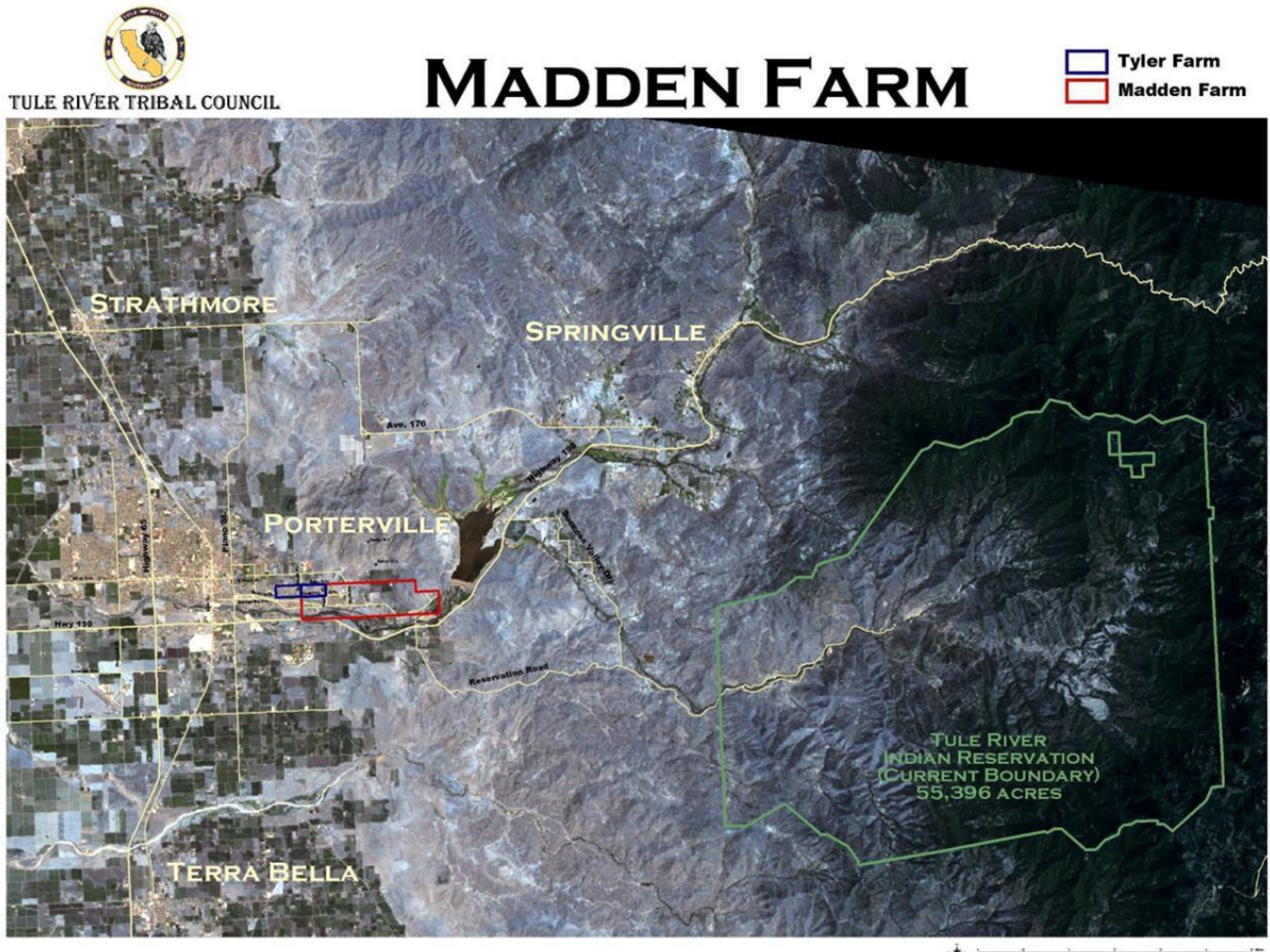
Gradually, over the years, hostility increased in general between the Indian farmers and the settlers in the area. In response to the tension, and rather than enforcing our rights to what was our Reservation land, in January 1873, President Grant issued an Executive Order creating a new reservation for the Tule River Tribe. It was comprised of mostly mountainous, rocky lands located about fifteen miles to the east of our original

---

<sup>7</sup> Frank, Gelya and Carole Goldberg, *Defying the Odds: The Tule River Tribe's Struggle for Sovereignty in Three Centuries*, p. 41-55, 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>8</sup> J. B. Vosburgh to CIA, September 4, 1875, Annual Report of the Commissioner of Indian Affairs (ARCIA), 1875, *HED* 1, 44th Congress, 1<sup>st</sup> Session, serial l680, p. 730-731.

Reservation. The Tule River Indians and the Indian agent at the time, Agent J.B. Vosburgh, protested the forced removal as the new lands would be difficult to cultivate.



**Figure 3: Map depicting the Tyler/Benson and Madden Farms in relation to current Tule River Reservation.**

Agent Vosburgh, stated in his annual report to the Commissioner of Indian Affairs:

There was very little to be seen at the new agency to commend it for the purposes to which it was set apart. ... By far the most valuable part of the reserve is upon the mountains in the extreme eastern portion, where there are extensive forests of pine available for the production of lumber, which would find a ready market among the settlers on the plains below.<sup>9</sup>

<sup>9</sup> J. B. Vosburgh to CIA, September 9, 1874, ARCIA, 1874, House Executive Document HED 1, 43rd Congress, 2nd Session, serial 1639, p. 623. Note: The acreage figure that Agent Vosburgh reflects the acreage in the January 9 executive order and not the acreage for the October 3, executive order that enlarged the reservation.

He further requested that the government inquire into the legality of the Madden and Benson land warrants and, if necessary, for the federal government to purchase the property from them for the benefit and use of the Indians.

No such action was taken by the federal government, and our people were forcibly removed from their homes and cultivated fields. The removal was very hard on our people. One tribal member alive then, Mary Santiago, who was born about 1859 and participated in the removal, recalled hiding in a cave as she and her brother “watched soldiers run over women and children killing some, cutting down their jerky lines, burning their tule huts that they lived in. Mostly killing men and young boys.”<sup>10</sup>

The new Reservation, while it contained 48,000 acres, was determined by the federal agents, based on the knowledge and technology of the time, to be insufficient to provide for us. An Indian agent reported, year-by-year our number had decreased by death and removal, until at this point there were only 143 Indians, embraced in 39 different families, residing on the reservation.<sup>11</sup>

Our situation was so dire that, in response, President Grant, in October 1873 – just nine months after the initial Executive Order – signed another Executive Order almost doubling the Reservation’s size to 91,837 acres.<sup>12</sup> In August 1878, President Hays issued yet another Executive Order unlawfully reducing the reservation back to the January 1873 size of 48,000 acres.

---

<sup>10</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).

<sup>11</sup> H.R. 123, H.R. 2498 and H.R. 2534, Legislative Hearing before the Subcommittee on Water and Power of the Committee on Natural Resources, U.S. House of Representatives, 110<sup>th</sup> Congress, 1<sup>st</sup> Session (Sept. 25, 2007), Serial No. 110-45, Testimony of Kenneth McDarment on behalf of the Tule River Tribe of California In Support of H.R. 4685, the Tule River Indian Reservation Land Trust, Health, and Economic Development Act; citing *Reports of Agents in California*, Tule River Agency, The Commissioner on Indian Affairs, United States Indian Agent C.G. Belknap (August 11, 1883) 18-20.

<sup>12</sup> *Id.*

# ENHANCED RESERVATION BOUNDARY



TULE RIVER TRIBAL COUNCIL

## Legend

- Reservation Boundary
- Historical Boundaries per NRCE
- M October 3, 1873 Boundary



**Figure 4: 1873 and 1878 Reservation Boundaries created by Executive Order.**

### C. The 1922 Agreement

The only known adjudication of water rights on the South Fork of the Tule River is *Poplar Irrigation Co. v. A.A. Howard*, No. 7004, Book 14, page 195, Superior Court of Tulare County, State of California, Dept. No. 2 (1916). In the proceedings, the U.S. created uncertainty when it failed to consider, evaluate, or defend any potential pre-1873 claims of the Tule River Tribe to the South Fork of the Tule River. Without involvement or consent from the Tule River Tribe, the court found that the South Tule Independent Ditch Company (STIDC) had the most senior rights, dating from 1854. The Court never made the Tule River Tribe a party to the case despite their clear water right interests.

In 1922 the U.S. perpetuated this error and, in violation of their trust duties to the Tribe, the Secretary of the Interior, acting on behalf of the Tule River Tribe, entered an agreement with STIDC to ensure certain water deliveries reached STIDC’s diversion without the Tribe’s consent (Attachment 6). The Agreement apportioned the flow of the South Fork of the Tule River under low flow conditions that guaranteed water to STIDC, even when doing so would not benefit the Tribe.

Further, in the 1922 Agreement the U.S. promised to develop Tule River's reservation with the utilization of a permanent water right. The U.S., however, has not fulfilled its obligation to fully develop the reservation or the water resources necessary to make the reservation a permanent homeland as was promised. We continue to live under the terms of the 1922 Agreement today. We have honored the obligations made by the U.S., on our behalf and without our consent, while receiving little to none of the benefits promised.

For over a century, we have lived on the Reservation established in 1873, a mountainous land where, because of the failure of the U.S. to provide adequate water storage and irrigation facilities, we have been unable to fully achieve the agricultural homeland promised to us in the Paint Creek Treaty and partially performed in our original 1856 Reservation. The Tule River people are a proud people, and I tell this story not to complain or to blame anyone for these past injustices. They do, however, show that it is appropriate for the U.S. to now enact the Settlement into law. Passing such legislation will finally provide the Tule River Tribe a viable homeland and will thereby reduce financial impacts to taxpayers and alleviate any potential associated litigation risk.

## **VI. 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 7). 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 the Tule River Association. 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>

---

<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. Just last fall 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 and highlights 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

---

<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.

## **VII. Conclusion**

The Tule River Tribe is in a water crisis. The crisis was, in part, created by broken promises and previous failures of the U.S. to act. Had action been taken even as far back as the 1870s to address this situation, we would not be here today. Let us delay no longer. The time for action is now to address the emergency conditions on our Reservation and for our federal partners to join us in providing the resources necessary to ensure a sustainable future for the Tule River Tribe. 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.

We respectfully request that the House Subcommittee on Water, Wildlife and Fisheries recommend passage of H.R. 8920 in the House of Representatives. I thank Chairman Bentz 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.