

III. SUMMARY OF TULE RIVER TRIBE'S HISTORIC AND FUTURE MONEY DAMAGES CLAIMS AGAINST THE UNITED STATES

In 1856 the California Superintendent of Indian Affairs established a Reservation for the Tule River Indians on approximately 2,240 acres of prime San Joaquin Valley farmland located in Tulare County, California, which bisected the main stem of the Tule River. It included part of what is today the eastern portion of the City of Porterville. The location of this original Reservation was purposefully selected by the federal government to provide the Tule River Tribe with the land and water resources necessary for the Tribe to establish a self-sufficient homeland for its people.

Through fraudulent means illegal under federal law, three local Indian agents secured title to most of the original Tule River Reservation lands, and at least one of them leased these same lands back to the United States for continued use by the Tribe for several years. The Tribe and local Indian agents protested but nothing was done to correct the fraud. Gradually, hostility increased over the use of this land between tribal farmers and the settlers in the area. The one agent, Thomas Madden, also significantly increased the rental rate on the land. Rather than simply enforcing the Tribe's rights to the land, to alleviate the hostility and avoid the high rental charges, the United States forcibly moved the Tribe to a new reservation, created by the issuance of an Executive Order by President Grant in January 1873. The new reservation, located about fifteen miles to the east of the original Reservation, was comprised of mostly mountainous lands. The Tribe and, indeed, one local Indian agent protested the removal. The new reservation lands were not adequate to meet the original intentions of agricultural self-sufficiency, a fact which soon became apparent to the Tribe and the local federal agents.

In response, President Grant – just 9 months after the initial Executive Order – signed another Executive Order almost doubling the Reservation's size to 91,837 acres. While only a small portion of this additional acreage was deemed by the federal agents at the time to be suitable for agriculture, this arable land was coveted by settlers, and the history of dispossessing the Tribe to satisfy the interests of non-Indian settlers repeated itself. In August 1878, President Hays issued an Executive Order reducing the reservation back approximately to the January 1873 size.

Through this era of malfeasance, then, the federal government knowingly and deliberately failed to: (1) protect the Tribe's possession and use of its original 1856 Reservation land in the San Joaquin Valley; (2) provide an adequate reservation when the Tribe was forced from its 1856 Reservation; (3) protect the Tribe's possession and use of the expanded reservation established by President Grant's second Executive Order in 1873; and (4) appropriately assist with the beneficial development of the Tribe's resources, most notably the failure to construct adequate water storage and delivery systems for irrigation on the Tribe's current Reservation established in 1873.

As a result, during the almost 150 years since the establishment of the original Tule River Reservation, the Tule River people have been plagued with unemployment

and mortality rates substantially higher and standards of living substantially lower than those experienced by surrounding non-Indian communities. While the on-Reservation socio-economic conditions for the Tribe have improved over time, as recently as 1999 the estimated poverty rate on the Reservation was still almost 50% higher than for Tulare County as a whole (U.S. Census 2000). To this day the Reservation's residents suffer from a relatively low standard of living in part due to the absence of an adequate and reliable potable water supply and system. [Can we get pictures of people hauling water or something? There is a powerful picture I remember from Navajo – kids drawing where water came from and they drew a picture of a truck. Not a faucet, or a river, or a lake, but a truck with a big tank on the back.]

These damages are the result of the United States' failure to fulfill its trust responsibility to the Tribe to provide an adequate homeland, to protect land and water resources for tribal purposes and to meet its commitment to assist with the maximum beneficial use by the Tribe of those resources. As a result, the Tribe has suffered serious economic injury.

The estimated damages associated with each of these claims outlined above for damages against the United States, in historic and future damages, is \$512 million. This includes foregoing water claims and saved litigation costs to the United States.



Damages Claim

Claim	Total Historical Damages (Millions of 2007 Dollars)	Total Future Damages (Millions of 2007 Dollars)
1. 1873 Removal	\$286.0	\$15.1
2. 1878 Reduction	\$41.9	\$52.2
3. Irrigation System	\$25.6	\$6.5
4. Foregone Water Claims		\$70.0
5. Avoided Litigation Costs		\$15
Total	\$353.50	\$158.80
Total Historical and Future		\$512.30

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IV. SUMMARY OF THE TULE RIVER INDIAN TRIBE WATER RIGHTS SETTLEMENT AGREEMENT BETWEEN THE TRIBE, THE TULE RIVER ASSOCIATION AND THE SOUTH TULE INDEPENDENT DITCH COMPANY

A. Introduction

In November of 2007, the Tule River Tribe Reserved Water Rights Settlement Agreement (“Agreement”) was signed after nine years of negotiations. The Agreement was entered into by the Tule River Indians of California (“Tribe”), the Tule River Association (“TRA”), and the South Tule Independent Ditch Company (“STIDC”), for the purpose of legally quantifying and establishing all of the reserved water rights of the Tribe. The following is a summary of the provisions of the Agreement.

B. Major Agreed-Upon Settlement Provisions

1. The Tribe's total federally reserved water right is 5,828 acre feet per year (“afy). The Tribe will be able to construct an on-Reservation reservoir not to exceed 5000 afy. A reservoir operations rules committee composed of three members representing the Tribe, TRA, and STIDC respectively will be formed to oversee and manage the operation of the reservoir pursuant to the agreed-upon rules set forth in the Agreement.
2. The Tribe may use its reserved water right for any purpose on the Original 1873 Reservation and the Tribe may use up to 2000 afy of its reserved water right for any purpose on Tribally owned lands located off the Original 1873 Reservation and within a defined area of the South Fork Tule River Basin.
3. The intent of parties that the 1922 Water Allocation Agreement between the STIDC and the United States is honored through required minimum releases from the on-Reservation Phase I reservoir and through limitations on Tribal diversions from surface and ground water.
4. The Agreement sets out a schedule for reservoir filling structured to minimize adverse impact to the TRA members.
5. Subject to Congressional approval of the Agreement, any disputes that may arise concerning the interpretation or enforcement of the Agreement may be submitted to the United States District Court for the Eastern District of California for resolution.

C. Synopsis Of The Settlement Agreement

a. Tribal Water Rights

The Agreement provides that the Tribe may divert, use, or permit the diversion or use of up to 5,828 afy of surface water from the South Fork Tule River for any beneficial purpose as defined by Tribal law, subject to the terms and conditions of the Agreement. The Tribe may use all of the 5,828 afy water supply within the Original 1873 Reservation boundaries. The Tribe may use up to 2000 AFY of its reserved water right for any purpose on Tribally owned lands located off the Original 1873 Reservation.

The Tribal water right may be used by the Tribe and all persons authorized by the Tribe, subject to the terms of the Agreement. The Tribe's water rights shall be administered in accordance with the terms of the Agreement, not according to priority date. Generally, the Tribe may not transfer its water right, except as may be provided for in the Agreement, including any amendments. The Tribe's water right is not subject to doctrines of state water law; non-use of the Tribe's water right shall not constitute relinquishment, forfeiture, or abandonment of the right. The Secretary of Interior will hold the Tribe's water right in trust in perpetuity.

The terms of the Agreement of May 3, 1922, between the United States of America and the South Independent Ditch Company will remain in effect until the Phase I Reservoir becomes operational, at which time the terms of the new Agreement shall supersede the 1922 Agreement. In the event the new Agreement is invalidated, the 1922 Agreement shall be reinstated.

b. Federal Contribution to Settlement

The United States will provide funds for a Phase I Dam and DCMI Water Supply System Fund and a Tule River Water Right Development Fund. The United States will provide funds to construct a Phase I Dam and DCMI water distribution system adequate to meet the Tribe's settled amount of 5,828 afy. The United States will also pay for annual operation and maintenance costs associated with the Dam and water supply system, including operation and maintenance of gauges and other measuring devices.

The Tule River Water Right Development Fund will be used to develop the Tribe's federally reserved water right. The Tribe may expend the Tribal Water Right Development Fund pursuant to a management and expenditure plan approved by the Secretary. No part of the Fund will be distributed on a *per capita* basis to members of the Tribe.

c. Disclaimers and Reservations

The Agreement provides for the following disclaimers. The Agreement does not limit the rights of any party to litigate any issues or questions not resolved by the Agreement. It does not create or deny substantive rights through headings or captions in the Agreement. It does not preclude the Tribe from acquiring other water rights in the future. It does not prohibit the Tribe or the United States from objecting to any stream adjudication in California courts to water rights not protected in the Agreement. It does

not preclude the acquisition of a right to use of water by the Tribe or its members. The Agreement is not a waiver of sovereign immunity by the Tribe or the United States, except as expressly set forth in the Agreement. The Tribe may file an action in any court of competent jurisdiction to prevent any party from interfering with the Tribe in the enjoyment of any water right set forth in the Agreement.

d. Federal Legislation

The parties agree to support and seek enactment of any federal legislation necessary to ratify the Agreement, effectuate the provisions and purposes of the Agreement, and defend the provisions and purpose of the Agreement from all challenges.

The parties agree to support language in the ratifying federal legislation that authorizes and funds a Tribal municipal, rural, and industrial water system adequate to meet the current and future DCMI water needs of the Tribe as well as fulfill its agreed upon rights of 5,828 afy. Moreover, the parties agree to support language in the legislation that authorizes the parties to amend the Agreement by unanimous consent of the parties without further ratification by Congress. Also, the parties agree the legislation will (1) confer jurisdiction on the United States Court for the Eastern District of California (Court) to issue a final decree approving or disapproving the Agreement; and (2) not take effect until the Agreement is incorporated by the Court in a final consent decree.

e. Finality, Settlement of Claims, and Effectiveness of Agreement

The Agreement shall become effective on the later of the following dates: either (1) when federal funds are appropriated and paid to the Tribe; or (2) when the Agreement has been approved by the Court through a final judgment and decree.

The Tribe and the United States, acting as trustee for the Tribe, agree to release all water related claims against the TRA and its successors and assigns, the STIDC Company and its successors and assigns, and any other parties who sign the Agreement. The Tribe agrees to waive all water related claims against the United States government. The settling parties agree to waive their claims related to water rights against the Tribe and the United States Government.

The parties retain all rights not expressly waived in the Agreement. This includes but is not limited to all claims for: (1) water rights or injuries to water sources other than the water rights on the South Fork of the Tule River and its tributaries; (2) the enforcement of the Agreement or the final decree; (3) the quality of water or relating to activities affecting the quality of water; and (4) all rights, remedies, privileges, immunities and powers not specifically waived in the Agreement or final decree.

The parties agree to seek a Congressional act ratifying the Agreement with the following provisions: (1) that makes congressional ratification contingent upon a final judgment and decree approving the Agreement, (2) directs the Secretary of Interior to file

suit in the United States District Court of Eastern District of California requesting the entry of a final court judgment and decree, (3) directs the Secretary to sign the agreement, (4) declares the Agreement to have the force and effect of Federal law, and (5) declares the jurisdiction of the United States District Court for the Eastern District of California to be exclusive.

Once the Agreement is approved by Congress and executed by the Secretary of the Department of Interior it becomes binding on all signatories and any person or entity whatsoever using, claiming, or in any manner asserting any rights under the authority of the Tribe, the United States, and all non-tribal signatories.

f. Dispute Resolution

In the event of a dispute arises concerning the interpretation or enforcement of the terms of the Agreement the parties agree to make a diligent good faith effort to resolve the dispute by agreement. If such negotiations fail, any party may petition the United States Court for the Eastern District of California to resolve the dispute. The parties agree to seek language in the ratifying act that confers jurisdiction to the court and that waives the sovereign immunity of the United States for purposes of such actions.

The parties must enter into negotiations for the purpose of establishing operation rules for any reservoir on the Reservation, other than Phase I Reservoir. If a party fails to join the negotiations or if the negotiations fail, any party may petition the United States District Court for the Eastern District of California to appoint a mediator to facilitate the negotiation process according to a set of procedures established in the agreement.