Tule River Indian Tribe Water Settlement

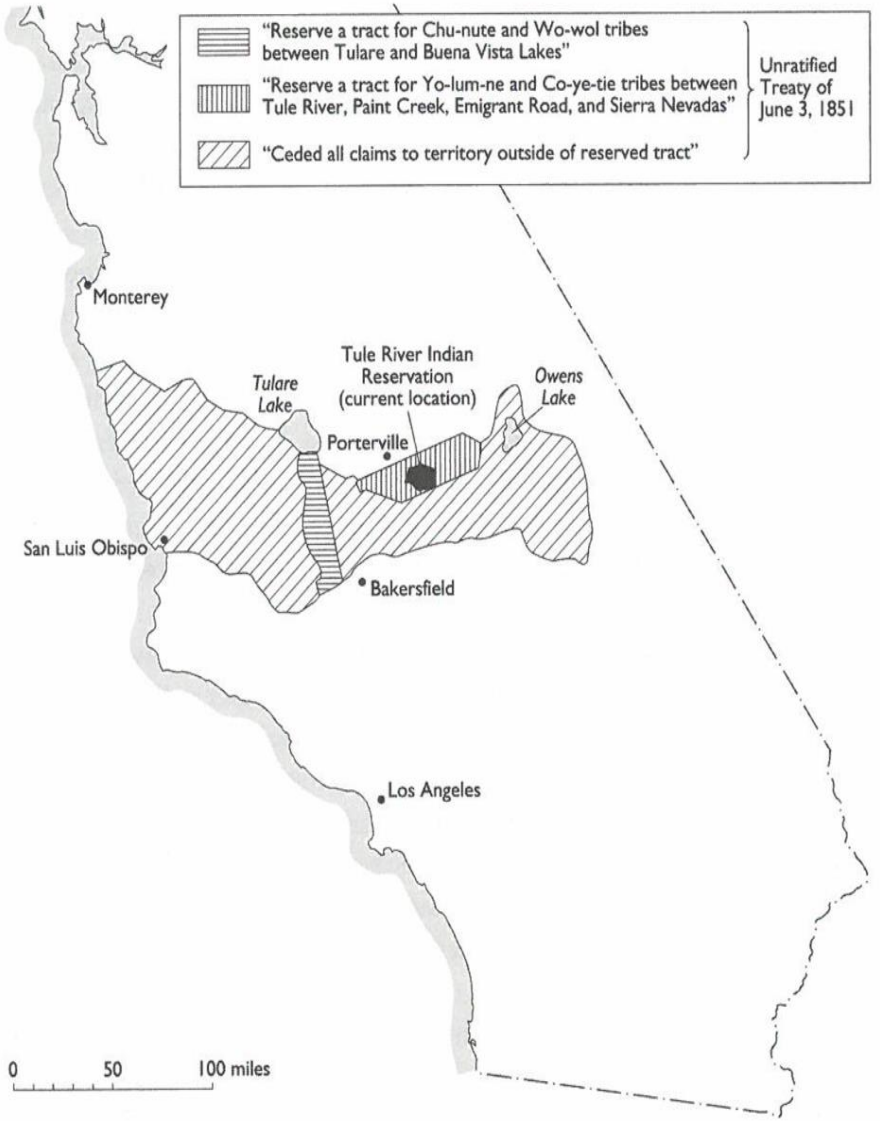
PRESENTED BY: the Tule River Tribe; Tom Rodgers; the Native American Rights Fund; GEI; and NRCE

9/24/2013

California Indian History

- 1848
  - Treaty of Guadalupe Hidalgo, which recognized the California Indians' aboriginal title to the land and gave the U.S. control of California and other areas
- 1850
  - California became a state
- 1851
  - Eighteen Treaties were negotiated with the 139 different Indian groups of California
  - Tule River ancestors signed the Treaty of Paint Creek
  - The 18 Treaties, including the Treaty of Paint Creek were never ratified

Paint Creek Treaty Lands



Map 5. Territory reserved to the Yowlumne and Koyeti tribes by the unratified Treaty of Paint Creek, June 3, 1851, based on Eighteenth Annual Report of the Bureau of American Ethnology, 1896–1897.

Creation of the Tule River Reservation

- 1854
  - Tejon Reservation was established by the U.S. at the southern end of the San Joaquin Valley, near Ft. Tejon. The reservation was occupied by members of the Yokuts.
- 1856
  - The Original Tule River Indian Reservation was established north of the Tejon Reservation.

Original Tule River Indian Reservation

- The original Reservation included 2,240 acres of prime San Joaquin Valley farmland located in Tulare County, California.
- This land is transected along the Southwest corner by Tule River, what is now the Eastern side of Porterville.
- The location of this original Reservation was selected by the federal government to provide the Tribe with a permanent homeland.

The Madden Farm

- 1857 - Thomas Madden and two other local Indian agents illegally secured state patents and title to most of the original Tule River Reservation.
  - The original Tule River Reservation became known as the Madden Farm.
- 1858 – Notwithstanding a Federal investigation into Madden's actions, the U.S. Treasury Dep't ignores the conclusions of fraud.
  - Thomas Madden leased the lands at exorbitant rates back to the United States, while at the same time he continued to use the Natives to cultivate the land.
  - The following map shows the original reservation in relation to the current reservation.

TULE RIVER TRIBAL COUNCIL

MADDEN FARM

Madden Farm Agriculture

- 1857 - 1860
  - On the Madden Farm, Indians cultivated the land and raised crops
  - Indians began digging a ditch to take water from the Tule River for irrigation.
  - 800 acres of federal gov't land adjacent to the Madden farm, which was cultivated by the Indians, produced peaches, figs, and grapes, among other crops.

Madden Farm Agriculture

- Grains were the primary crops raised on the Madden Farm, supplemented by vegetables and fruits.
- The most important agency crop was wheat, followed by barley.

Porterville, CA

Closure of The Tejon Reservation

- 1863
  - The federal Gov't closed the Tejon Reservation south of Bakersfield, because of crop failures and loss of title to land to a private party.
  - The Tejon Indians were relocated to the Tule River Reservation, which was, at that time, the Madden Farm.
  - Hostility grew between the Indians and white settlers due to the prime agricultural nature of the Madden Farm.

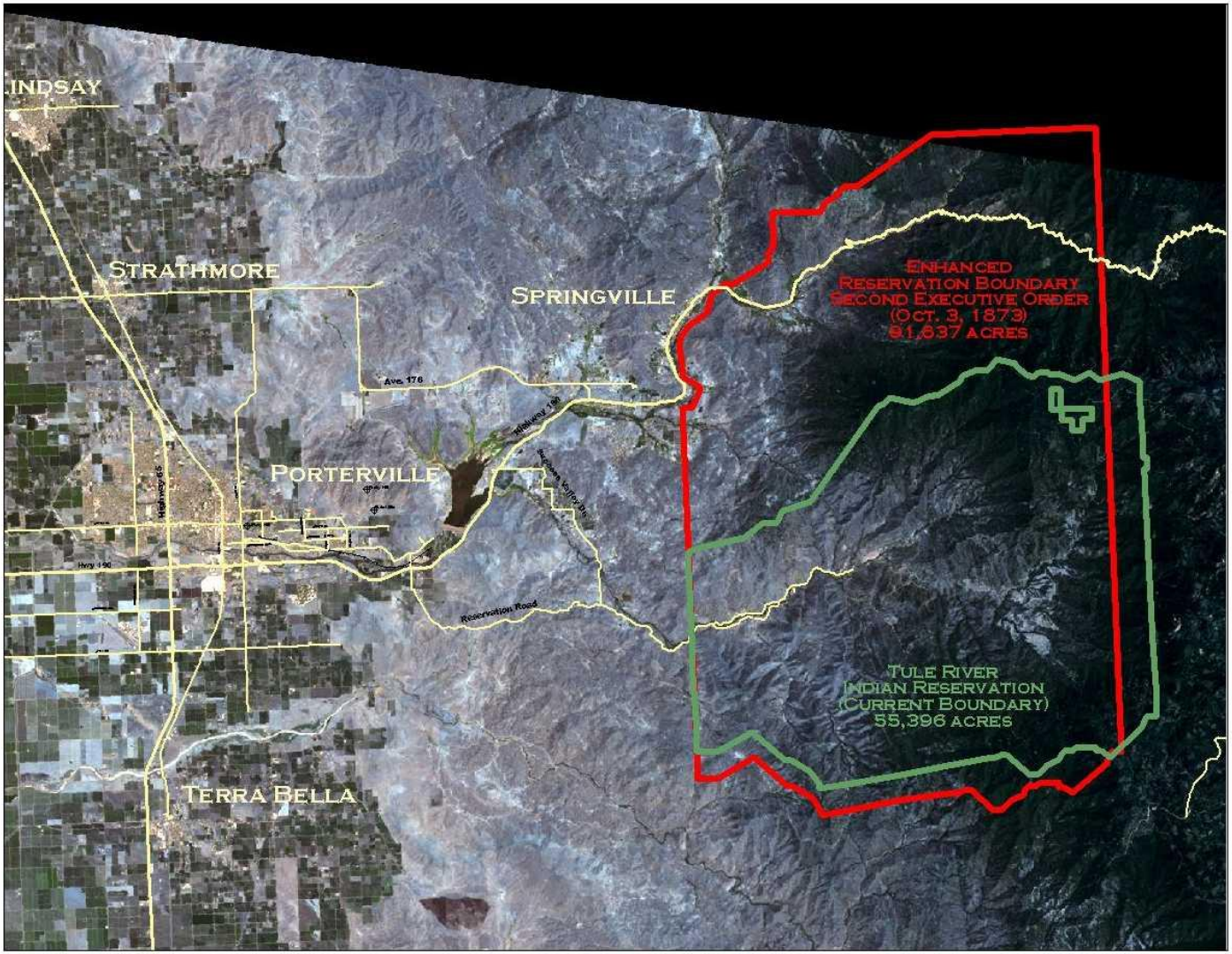
Indian Removal from the Madden Farm

- 1873
  - A new 48,000 acre Reservation is established due to hostility between the settlers and Indians over the prime agricultural land on the Madden Farm. Only a small portion of the new land is suitable for agricultural development.
  - A conflict arose because the Indians refused to abandon their crops for the lands of the new reservation.
- 1876
  - As a result of the conflict, the Indians on the Madden Farm are forcefully and violently removed to the new reservation.

Tule River Reservation

- January 9, 1873
  - President Ulysses S. Grant establishes a new 48,000 acre Tule River Reservation through Executive Order.
- 1873
  - Later that year, President Grant doubles the Reservation's size to 91,837 acres in recognition of the unsuitable agricultural nature of the land on the new Reservation.
- 1878
  - President Hayes issues a third Executive Order that reduced the size of the Reservation back to its approximately original size. [The President lacked the authority under federal law to reduced the size of the Reservation.]

Enhanced Reservation Boundary



TULE RIVER TRIBAL COUNCIL

Legend

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

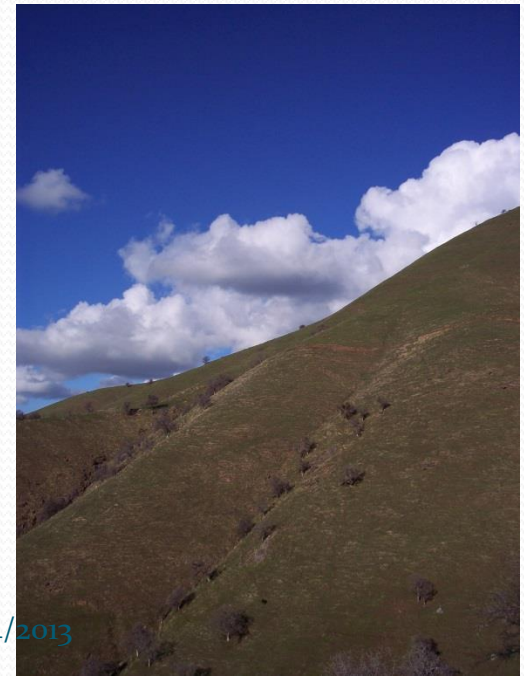
N
W E
S

2 0 2 4 6 Miles

Tule River Reservation
Agriculture Development

- Early reports indicated that there were only 250 acres of relatively flat, irrigable land available for farming. This land was scattered throughout the reservation.
- New irrigation ditches were promised to help the Indians reestablish themselves as successful farmers.
- The new Reservation was not sufficient to create a permanent homeland for the Tule River Tribe without access to sufficient water or irrigation ditches.

Views of the Reservation



9/24/2013

Tule River Reservation
Agriculture Development

- Tribal Members developed and persisted in maintaining their ditches.
- The Tribe's farming efforts were disadvantaged due to the distance it had to deliver its grains from the reservation to flour mills and markets.
- Tribal members were eventually overtaken by the demands of a cash economy and their inability support themselves on poorly irrigated land.

The 1922 Agreement

- In 1922, the Secretary of Interior, acting on behalf of Tule River Tribe, entered into an agreement with the South Tule Independent Ditch Company ("STIDC").
- The Agreement apportioned the flow of the South Tule River under shortage conditions.

1922 Agreement

The Tule River Tribe is entitled to divert from the natural flow of the South Fork Tule River, on the Reservation, as follows:

- 1 cubic feet per second ("cfs") when the flow is less than 3 cfs.
- 1.5 cfs when the flow is greater than or equal to 3 cfs but less than 5 cfs.
- 2 cfs when the flow is greater than or equal to 5 cfs but less than 10 cfs.
- "Any amount desired" when the flow is 10 cfs or more.
- The measuring point is the diversion point of the STIDC.
- Contains the phrase:

  Nothing herein shall be construed to restrict the reasonable and economic use of water for domestic and stock purposes upon the reservation.

Damages Claim – U.S. Failed to:

- protect the Tribe's possession and use of its original Reservation - the Madden Farm - in the San Joaquin Valley;
- provide an adequate reservation when the Tribe was forced from its original Reservation;
- protect the Tribe's possession and use of the expanded reservation established by President Grant's second Executive Order in 1873; and
- 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.

Damages Claim

- Unemployment and mortality rates are substantially higher
- Standards of living are substantially lower
- The estimated poverty rate on the Reservation is 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.

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**

Contemporary Efforts and Settlement Discussions

- **1971** – Tule River representatives commence efforts to secure a water storage project on the reservation, thus securing the Tribe's federal reserved water rights under the *Winters* doctrine
- **1995** – Practicably Irrigation Acre Study
- **1997** – Tule River Indian Tribe Overall Economic Development Program
- **1998** – Active negotiations begin between the Tribe, STIDC, and the Tule River Association ("TRA")
- **1998** – Bureau of Reclamation ("BOR") Preliminary Assessment of Three Dam Sites

Contemporary Efforts and Settlement Discussions

- **1998** – Water Needs Assessment ($50,000)
- **1999** – Natural Resources Consulting Engineers, Inc. ("NRCE"), Potential for Groundwater Development on the Tule River Indian Reservation Reconnaissance Level Investigation ($30,000)
- **1999** – Dam Cost Estimate ($34,600)
- **1999** – Water Allocation Model, First Development ($15,000)
- **1999-** Water Quality Impacts of a Proposed Dam ($15,000)

Contemporary Efforts and Settlement Discussions

- **2000** – WAM Refined and Model Runs ($7,300)
- **2002** – WAM Refined and Model Runs ($6,000)
- **2002** – Physical Model of Reservation ($5,000)
- **2002** – Crop Water Req's ($5,000)
- **2003** – Hydrologic Study and Record Extension ($13,900)
- **2003** – WAM Refined and Model Runs ($13,000)
- **2004** – Update Hydrologic Record Extension, Crop Water Req's, and WAM Runs ($20,000)

Contemporary Efforts and Settlement Discussions

- **2004** – Indian Health Services study on Tule River Water Improvements
- **2004** – Biological Evaluation of Reservoir Project ($20,000)
- **2005** – Phase I Water Project Cost Estimates ($20,800)
- **2006** – Update Hydrologic Record Extension, Crop Water Req's, and WAM Runs ($20,000)
- **2006** – Evaporation Station ($15,400)

Contemporary Efforts and Settlement Discussions

- **2007** – a Settlement Agreement is reached regarding the Tribe's storage project and water rights
- **2007** – NRCE updated Phase I Water Project Cost Estimate ($40,600)
- **2008** – Update Hydrologic Record Extension, Crop Water Req's, and WAM Runs ($40,000)
- **2008** – NRCE updated South Fork Tule River Flow Extension analysis
- **2008** – Dam Cost Comparison ($3,000)
- **2009** – BOR Tule River Proposed Storage Project Review

Contemporary Efforts and Settlement Discussions

- **2008-2010** – The Tribe attempts to enact a feasibility study bill to authorize the appropriation of $3 million to enable the Tribe to conduct necessary studies for the planning of the water storage project
- **2010** – BOR Proposed Water Storage Project DEC Review
- **2010** – Develop Dam Consultant RFQ, Interview, and Evaluate Consultants ($10,000)
- **2010** – BOR Engineering Geologic Inspection of Potential Dam Sites on South Fork Tule River
- **2010** – BOR Tule River Indian Reservation Proposed Water Storage Project Dam Site Selection Criteria

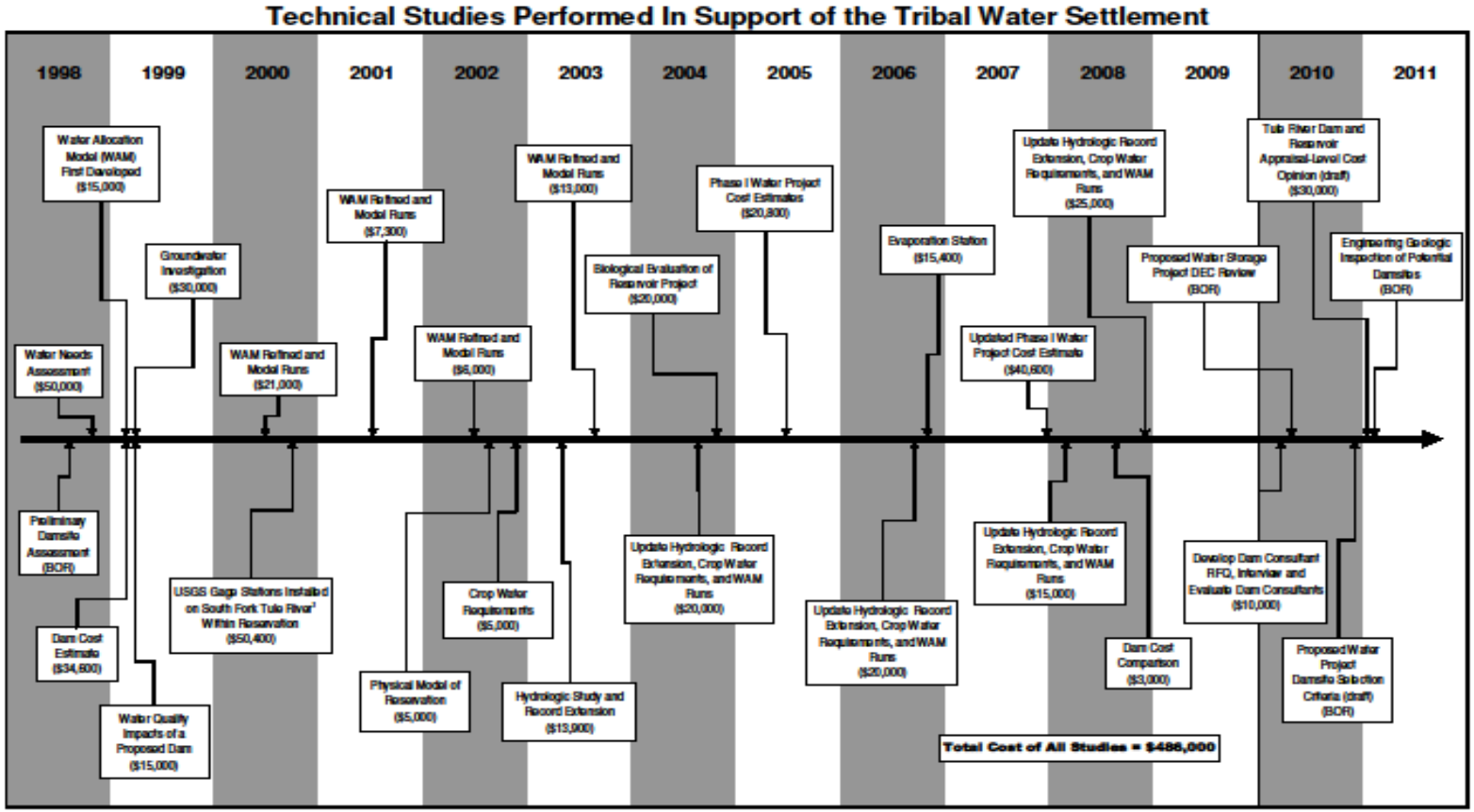
Contemporary Efforts and Settlement Discussions

- **2011** - Reservoir Appraisal-Level Cost Opinion ($30,000)
- **2011** – BOR Engineering Geologic Inspection of Potential Dam Sites
- Total spent through 2011 = at least $486,000

Contemporary Efforts and Settlement Discussions

- **2012** – Unable to enact a feasibility study bill, the Tribe enters into a 638 Contract with BOR to conduct the water settlement technical study for $168,000
- **2012** – NRCE Irrigation Water Requirements Investigations
- **2013** – Finalized Water Settlement Technical Report forthcoming (waiting on BOR)

Contemporary Efforts and Settlement Discussions



Contemporary Efforts and Settlement Discussions

No.	Study	Original Date	Updated?	Cost	Date Submitted to U.S.
1	Preliminary Damsite Assessment (BOR)	Jun-98			This study was performed by BOR. Unknown when it was received by BIA but Doug Garcia confirmed he has this report
2	Water Needs Assessment	Dec-98		$50,000	December 1998 (report submitted to James Roberts, BOR)
3	Dam Cost Estimate	Mar-99	superceded by Phase I Project Cost Estimate	$34,600	
4	Water Allocation Model	Mar-99	various	$87,300	June 2003 (Model presented to Tom Ballinger of BOR); April 2005 (input/output files and descriptions submitted to Amy Aufdemberge, SOL); June 2007 (input/output files, model results, Powerpoint presentation of model submitted to Doug Garcia, BIA); June 2009 (input/output files, model results submitted to Chris Bujalski, BIA)
5	Water Quality Impacts of Proposed Dam	Apr-99		$15,000	??
6	Groundwater Investigation	Apr-99		$30,000	??
7	USGS Streamgage Installation	Oct-00		$20,400	NA
8	Federal Assessment Team Report - Recommendation for a Federal Negotiation Team	Dec-01	Jul-03	??	Study prepared by the Federal Assessment Team (Includes an updated water needs assessment)
9	Physical Model of Reservoir	Aug-02		$5,000	NA
10	Crop Water Requirements	Nov-02		$20,000	April 04 (submitted to Doug Garcia, BIA)
11	Hydrologic Study and Record Extension	Apr-03	various	$43,900	April 04 (submitted to Doug Garcia, BIA); June 2009 (submitted to Chris Bujalski, BIA)
12	Reservoir Operation Rules	Feb-99	various	*	April 04 (submitted to Doug Garcia, BIA)
13	Biological Evaluation of Reservoir Project	Sep-04		$20,000	February 2007 (submitted to Doug Garcia, BIA)
14	Phase I Project Cost Estimate	Jun-05	Dec-07	$61,400	June 2009 (via NARF)
15	Evaporation Station	Oct-06		$15,400	NA
16	Mapping of Phase 1 Project and So. Fork Tule River Basin	various		*	February 2008 (maps sent to Doug Garcia, BIA
17	Dam Cost Comparison	Jul-08		$3,000	
18	Tule River Tribe Proposed Water Storage Project DEC Review (BOR)	Nov-09	Apr-10		Performed by BOR
19	Develop Dam Consultant RFQ; Interview and Evaluate Dam Consultants	Nov-09 - Apr-10		$10,000	NA
20	Tule River Indian Reservation Proposed Water Storage Project Damsite Selection Criteria (draft) (BOR)	Dec-10			Performed by BOR
21	Tule River Dam and Reservoir Appraisal-Level Cost Opinion (draft)	Jan-11		$30,000	not yet submitted (Apr. 2011)
22	Engineering Geological Inspection of Potential Damsites on South Fork Tule River (BOR)	Feb-11			Performed by BOR
	Total			**$486,000**	
23	USGS Streamgage O&M (to date)			$286,060	
	Total including USGS Streamgage O&M			**$772,060**	

*These studies developed over several years as part of NRCE's general technical support to the Tribe.

Settlement Agreement

- Agreement is between the Tule River Indian Tribe, the Tule River Association, and the South Tule Independent Ditch Company.
  - These are the major water users, and represent a majority of the water users, of the South Fork Tule River
- Recognizes the Tribe's right to water in the amount of **5,828** acre feet per year to be stored in a reservoir
- Governs spring and well diversions, accounting for use, and operation of releases
- Creates committee to oversee dam operations
- Limits where use of water can take place

Tule River Reservation Existing Water Supply

- The present maximum daily available water supply for the main community water system is about 455,000 gallons per day ("gpd").
- The average annual water supply from the existing spring system is assumed to be **145** ac-ft/yr (129,000 gpd).
- Current water use is seasonal in nature and varies from about 125,000 gpd to the maximum supply of 455,000 gpd.
- In years of average and below average precipitation, the community water supply falls below need during mid- to late-summer and community members have suffered water shortages.
- Groundwater is limited both by quantity and quality.

Conclusions of the Settlement Report

- Future water demand in 2112 = 7,103 acre feet per year ("afy")
  - 1,974 afy = DCMI
  - 5,129 afy = irrigation
- To meet the demand, the Tribe proposes developing a dam and reservoir project in conjunction with other infrastructure
- Dam will impound 5,000 acre-foot reservoir
- Preferred location is where the Lower Bear Creek enters the South Fork Tule River

Lower Bear Creek

Proposed Settlement Package

- Total proposed Settlement Agreement Package with the U.S. includes:
  - Waiver of all claims by Tribe to damages against the U.S.
  - Water Storage Project Cost = $250 Million
  - Present value of O & M = $40 Million
  - Tribal Economic Development Fund = $50 Million
  - Federal Land Acquisition = $10 Million
    - Fee to Trust transfers
  - TOTAL = $350 Million

Benefits of Settlement

- Project will provide a reliable source of water to the Tribe, which it has yet to obtain
  - Domestic, economic development, irrigation, stock
- All the water users are in an amicable agreement, and have a good working relationship
- Avoid extensive litigation costs of two potential suits
  - Damages suit
  - Stream adjudication
- Tribe avoids frequent water conservation restrictions, or hauling water onto reservation in dry months

QUESTIONS?

THANK YOU