

**TULE RIVER TRIBE RESERVED WATER RIGHTS SETTLEMENT
AGREEMENT BETWEEN THE TULE RIVER INDIAN TRIBE,
THE TULE RIVER ASSOCIATION, AND
THE SOUTH TULE INDEPENDENT DITCH COMPANY**

This Water Rights Settlement Agreement is entered into by and between the TULE RIVER INDIAN TRIBE OF CALIFORNIA, the TULE RIVER ASSOCIATION, and the SOUTH TULE INDEPENDENT DITCH COMPANY, for the purpose of legally quantifying and establishing all of the reserved water rights of the Tule River Indian Tribe of the Tule River Reservation, California.

ARTICLE 1 – PREAMBLE

- 1.1 Pursuant to the Act of April 8, 1864, 13 Stat. 39, the President of the United States, by a series of three Executive Orders, on January 9, 1873, October 3, 1873, and August 3, 1878, set aside and defined the boundaries of the original Tule River Indian Reservation for the purpose of providing a permanent and sustainable homeland for the Tule River Indians of California (Tribe).
- 1.2 Pursuant to the doctrine of federally reserved water rights, the Tribe has a right to water sufficient to ensure that the Reservation provides a permanent and sustainable homeland for the Tribe.
- 1.3 Since 1971, the Tribe has diligently worked to establish its federally reserved water rights in order to ensure that the Tribe has sufficient water to meet its current and future water needs.
- 1.4 The Tribe's right to water can best be resolved by a single, comprehensive settlement agreement entered into by and between the Tribe and other affected water users impacted by the Tribe's use of its water right, which Agreement will be subsequently ratified by the United States Congress.
- 1.5 The Tule River Association and the South Tule Independent Ditch Company possess, either directly or indirectly, claims of water rights on the South Fork of the Tule River.
- 1.6 It is the intent of the parties that the water allocation agreements memorialized in the Agreement of May 3, 1922 continue to be fulfilled under this Settlement Agreement when the Tribal reservoir or reservoirs contemplated by this Settlement Agreement are constructed. This will be accomplished through the implementation of agreed-upon mitigating provisions designed to compensate for the changed circumstances resulting from the construction of the contemplated reservoir or reservoirs on the Reservation.
- 1.7 It is the intent of the parties to this Agreement to determine finally and forever all rights of the Tule River Tribe to water on, under, adjacent to, or otherwise appurtenant to the original Tule River Reservation, to settle existing disputes and remove causes of future controversy between the Tribe and other parties to this Agreement concerning use of the water of the South Fork of the Tule River and its tributaries, and to settle claims by the Tribe against the United States regarding past water rights related damages. Therefore, the parties agree as follows.

ARTICLE 2 – DEFINITIONS

The following definitions shall apply for purposes of this Agreement:

- 2.1 "Acre-foot" or "af" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet or 325,850 gallons of water.
- 2.2 "Acre feet per year" or "AFY" means a quantity of water measured in acre feet over a twelve month period beginning on October 1 and ending on September 30 of the following year.

- 2.3 "Agreement of 1922" or "1922 Agreement" means the Agreement of May 3, 1922, between the United States of America, acting through the Secretary of the Interior on behalf of the Tule River Tribe, and the South Tule Independent Ditch Company.
- 2.4 "Average daily flow" means the flow at a particular gaging station calculated as the average of the recorded 15-minute flows over a continuous 24 hour period.
- 2.5 "Consume" means to use water in a manner that makes it unavailable for use by others.
- 2.6 "Cubic feet per second" or "cfs" means a rate of water discharge equivalent to approximately 448.8 gallons per minute or slightly more than 646,300 gallons per day.
- 2.7 "Dead pool" means that volume of water in a reservoir which is below the invert of the lowest outlet conduit and not susceptible to release.
- 2.8 "DCMI" means "domestic, commercial, municipal, & industrial".
- 2.9 "Divert" means to remove water from its natural course or location by means of a ditch, canal, flume, bypass, pipeline, conduit, well, pump, or other, structure or device, or act of a person.
- 2.10 "Domestic use" means the diversion of water by one or more individuals, family units or households for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of a family garden, lawn, or landscaping.
- 2.11 "Federally reserved water rights" or "reserved water rights" means water rights existing by necessary implication from the setting aside of a reservation by the United States for an Indian tribe; such rights are rooted in the Supreme Court decision in *Winters v. United States*, 207 U.S. 564 (S.Ct. 1908).
- 2.12 "Gage 11203580" or "Gage 3580" means the water flow measurement gage owned by the Tule River Tribe, maintained by the United States Geological Survey pursuant to an annual contract with the Tribe, and located on the South Fork Tule River near the Cholollo Campground and upstream of the proposed Tribal Phase I reservoir.
- 2.13 "Gage 11204100" or "Gage 4100" means the water flow measurement gage owned by the Tule River Tribe, maintained by the United States Geological Survey pursuant to an annual contract with the Tribe, and located on the South Fork Tule River near the west Reservation boundary.
- 2.14 "Minimum pool" means that quantity of water in a storage reservoir which, under the operation rules of the reservoir, is exempt from release to downstream users.
- 2.15 "Mitigation" or "Mitigating provisions" or "mitigating agreements" means measures agreed to by the parties to this Settlement Agreement in order to lessen adverse impacts upon downstream water users resulting from the exercise of the Tribe's rights under this Settlement Agreement.
- 2.16 "Original Reservation" means the reservation set aside for the Tribe by a series of Executive Orders on January 9, 1873, October 3, 1873, and August 3, 1878, as depicted on the map attached hereto as Exhibit A and is used in this Agreement for purposes of defining the on-Reservation place of use of the Tribe's federally reserved water rights.
- 2.17 "Outflow" means the water that is discharged from a reservoir and includes reservoir spills.
- 2.18 "Parties" means the Tule River Tribe, the South Tule Independent Ditch Company, and the Tule River Association.

- 2.19 "Person" means an individual, a partnership, a trust, an estate, a corporation, a municipal corporation, a state or any political subdivision or instrumentality thereof, the United States or any political subdivision or instrumentality thereof, or any other public or private entity.
- 2.20 "Secretary" means the Secretary of the Department of the Interior or his/her designee.
- 2.21 "Settlement Agreement" means this Agreement entitled "Tule River Tribe Reserved Water Rights Settlement Agreement Among the Tule River Indians of California, the Tule River Association, and the South Tule Independent Ditch Company, including exhibits A – E attached hereto.
- 2.22 "South Tule Independent Ditch Company" means the non-profit mutual water company incorporated in 1895 which provides water diverted from South Fork of the Tule River to its shareholders on lands downstream from the Tule River Reservation. The South Tule Independent Ditch Company's claims to water rights in the South Fork of the Tule River were adjudicated and fixed by a judgment of the Superior Court of Tulare County in the case of the Poplar Irrigation Company vs. A.A. Howard et al., dated September 11, 1916, a case in which neither the Tule River Tribe nor the United States were parties. Unless otherwise indicated, for purposes of notification, "South Tule Independent Ditch Company" means the President of the Company or his/her designee.
- 2.23 "South Fork Tule River Basin" means that area of land, depicted on the map attached hereto as Exhibit B, within which the Tule River Tribe may use federally reserved water rights subject to the terms of this Settlement Agreement.
- 2.24 "Transfer" means any authorization for delivery or use of water whether by a joint venture, service contract, lease, or other similar time-limited agreement.
- 2.25 "Tule River Tribe" or "Tribe" means the Tule River Indians of California, a federally recognized Indian tribe, occupying the Tule River Indian Reservation. Unless otherwise indicated, for purposes of notification, "Tule River Tribe" or "Tribe" means the Chairman of the Tule River Tribal Council or his/her designee.
- 2.26 "Tribal Water Right" means cumulatively all those reserved water rights of the Tule River Tribe which are confirmed by Article 3 of this Agreement.
- 2.27 "Tribal Water Right cap" means the maximum amount of water from the South Fork Tule River and its tributaries that the Tribe has a right annually to divert and use, or permit the diversion and use of, subject to the terms and conditions of this Settlement Agreement; this maximum amount is set by this Agreement at 5,828 AFY.
- 2.28 "Tule River Association" means the association formed by agreement in 1965, the members of which are representatives of all pre-1914 appropriative and certain riparian water right holders of the Tule River at and below the Success Dam and Reservoir. The Tule River Association includes the Pioneer Water Company, Vandalia Irrigation District, Porterville Irrigation District, and Lower Tule River Irrigation District. Unless otherwise indicated, for purposes of notification, "Tule River Association" means the Secretary of the Association/Water Master of the Tule River or his/her designee.
- 2.29 "United States" means the federal government and all its officers, agents, agencies, departments and political subdivisions thereof. Unless otherwise indicated, for purposes of notification, "United States" means the Secretary of the Department of the Interior or his/her designee.

ARTICLE 3 – TRIBAL WATER RIGHT

The federally reserved water rights of the Tule River Tribe are set forth in this article.

3.1 **1922 Agreement Superseded**

The Agreement of May 3, 1922, between the United States of America, acting in behalf of the Tribe, and the South Independent Ditch Company shall remain in effect until the Phase I Reservoir becomes operational at which time this Settlement Agreement shall supersede the 1922 Agreement. In the event this Settlement Agreement is invalidated for any reason by a court of competent jurisdiction anytime after its effective date, the 1922 Agreement shall be reinstated.

3.2 **Quantification, Diversion, and Use**

A. **Surface Water**

(1) **Diversion Right**

Subject to the terms and conditions set forth in this Agreement, the Tule River Tribe shall have the right to divert or use or permit the diversion or use of up to 5,828 AFY of surface water from the South Fork Tule River.

(2) **Limitations.**

(a) Once the Phase I Reservoir becomes operational, the Tribe shall not divert nor permit the diversion of surface water from the South Fork of the Tule River and its tributaries upstream of the Phase I Reservoir; nor shall the Tribe divert or permit the diversion of surface water from the South Fork of the Tule River and its tributaries downstream of the Phase I Reservoir to the western boundary of the Original Reservation, *provided that,*

(i) *di minimus* diversions shall be permitted for stock watering purposes; and

(ii) reasonable diversions shall be permitted for emergency purposes such as firefighting or a temporary failure in the municipal delivery system; however, during low flow periods, as described in Exhibit E.I.A., when diversions for emergency purposes continue beyond a twenty-four (24) hour period, the Tribe shall, beginning with the first daily Reservoir release adjustment following the end of the twenty-four (24) hour period, release an additional amount of water from the Phase I Reservoir equivalent to the amount diverted during that period; such additional releases shall continue in the same manner until the emergency diversion or the low flow period ends.

(b) Once the Phase I Reservoir becomes operational, Tribal diversions from the South Fork Tule River shall not exceed the state-law based appropriative right or riparian water right attached to the land; however, if the Tribe acquires fee or trust title to land between the western boundary of the Original Reservation and STIDC's point of diversion, the Tribe shall obtain the consent of STIDC before diverting surface water from this reach of the South Fork of the Tule River.

B. **Springs**

The Tribe shall have the right to divert or use or permit the diversion or use of all water from springs originating within the exterior boundaries of the Original Reservation,

subject to the terms and conditions stated in this Agreement, including the following provisions.

(1) Existing Spring Diversions.

The Tribe shall have the right to continue existing diversions of water from springs within the exterior boundaries of the Original Reservation. A map depicting the location of existing springs with diversion rates and annual usage is attached hereto as Exhibit C. Such continued diversions and uses of water from existing springs shall not provide grounds for amendment of the Phase I Operation Rules.

(2) New Spring Diversions

(a) Within the Original Reservation

The Tribe shall have the right to new diversions of water from springs within the exterior boundaries of the Original Reservation subject to the following limitations.

(i) Spring water diverted and used for water bottling purposes shall be limited to 100 AFY; and

(ii) Any spring water diversion where the point of diversion is located within the zone depicted on the map attached hereto as Exhibit D shall be limited to 200 gpm (0.45 cfs).

(b) Off the Original Reservation

New diversions of water from springs located on lands owned by the Tribe off the Original Reservation between the western boundary of the Original Reservation and South Tule Independent Ditch Company's point of diversion and within the zone depicted on the map attached hereto as Exhibit D shall be limited to 200 gpm (0.45 cfs).

(3) Accounting for Spring Water Diversions.

All diversions of water from springs located on lands owned by the Tribe within the Original Reservation boundaries shall be accounted for and the amount diverted shall be charged against the Tribal Water Right cap; *provided that*, spring water diverted for domestic use by occupants of seasonal, vacation, or other temporary residences shall not be measured nor otherwise accounted for nor charged against the Tribal Water Right cap. For spring water diversions that are not measured by a meter or gage or other similar device, the accounting shall be in accordance with the following:

(a) Livestock Watering Use

The amount of spring water diverted for livestock watering shall be deemed to be 12 gallons per day per animal unit as defined in the Tribe's range ordinance.

(b) Domestic Use

The amount of spring water diverted for domestic use by an occupant or occupants of a single family permanent residence shall be deemed to be 0.3 AFY; *provided that*, diversions of water from a single spring for use by

occupants of four or more single family permanent residences shall be measured by an appropriate measuring device.

(c) Other Uses

The amount of spring water diverted for uses other than those specified in 3(a) and 3(b) above shall be accounted for by an appropriate measuring device and shall be charged against the Tribal Water Right cap.

C. Groundwater Withdrawals

(1) On the Original Reservation

(a) Subject to the terms and conditions of this Agreement; the Tribe shall have the following rights:

(i) To withdraw and use or permit the withdrawal and use of groundwater originating within the exterior boundaries of the Original Reservation; and

(ii) To withdraw water from all existing wells at the pumping rates listed in Exhibit C attached hereto.

(b) The Tribe shall not drill any new wells within the Groundwater-Surface Water Interaction Zone depicted on the map attached as Exhibit D; however, new wells may be drilled outside those zones as depicted on the map attached as Exhibit D.

(c) Groundwater withdrawn from wells located within the Groundwater-Surface Water Interaction Zone depicted on the map attached as Exhibit D shall be measured and counted against the Tribal Water Right cap; groundwater withdrawn from all other wells shall not be measured and counted against the Tribal Water Right cap.

(2) Off the Original Reservation

The drilling of new wells on lands owned by the Tribe off the Original Reservation and located between the western boundary of the Original Reservation and South Tule Independent Ditch Company's point of diversion and within the Groundwater-Surface Water Interaction Zone Extended depicted on the map attached as Exhibit D shall be subject to the consent of the South Tule Independent Ditch Company.

D. Storage

The Tribe shall have the right to store, or permit the storage of water sufficient to enable the Tribe to put its quantified right to use from the flow of the South Fork of the Tule River subject to the terms and conditions set forth in this Settlement Agreement.

E. Conveyance Losses

Losses due to the conveyance of water from a point of diversion shall be counted against the Tribal Water Right cap by measuring the quantity of water diverted at the point of diversion.

§ 3.3 Place of Use

- A. The Tribe shall have the right, with no restriction on purpose of use, to use or permit the use of up to 5,828 AFY of surface water from the South Fork Tule River and its tributaries anywhere within the Original Reservation; and
- B. The Tribe shall have the right, with no restriction on purpose of use, to use or permit the use of up to 2000 AFY, of the 5,828 AFY cap, from surface water from the South Fork Tule River and its tributaries off the Original Reservation to serve lands owned in fee or in trust by the Tribe at the time this Agreement is approved by Congress, or subsequently acquired by the Tribe within the South Fork Tule River Basin depicted on the map attached hereto as Exhibit B, *provided that*,
 - (1) any off Original Reservation use shall be counted against the Tribe's 5,828 AFY cap; and
 - (2) any delivery of water from an on-Original-Reservation reservoir to an off-Original-Reservation parcel shall be by off-stream conveyance; and

3.4 **Storage**

A. The Storage Right

The Tribe shall have the right to construct reservoirs on the Original Reservation for the purpose of utilizing its Tribal Water Right subject to the terms and conditions set forth in this § 3.4.

B. Phase I Reservoir

The Tribe shall have the right to construct a Phase I reservoir on the Original Reservation for DCMI and irrigation purposes with a capacity not to exceed 5,000 af, subject to operation rules agreed to by the parties to this Settlement Agreement.

(1) Phase I Reservoir at Confluence of Cedar Creek and the South Fork of the Tule River

The site initially selected for construction of the Phase I Reservoir is at the confluence of Cedar Creek and the South Fork of the Tule River.

(a) Phase I Reservoir Operation Rules Application and Effectiveness.

(i) Application

The Reservoir Operation Rules set forth as Exhibit E, attached hereto, shall apply to the Phase I Reservoir proposed to be constructed at the confluence of Cedar Creek and the South Fork of the Tule River.

(ii) Effectiveness

The Phase I Reservoir Operation Rules shall become effective when the Phase I Reservoir becomes operational.

(b) Phase I Reservoir Operation Rules Committee

(i) Creation.

A Phase I Reservoir Operation Rules Committee is hereby created to enable amendment of the Phase I Reservoir Operation Rules, in accordance with the terms set forth in 3.4. B.(1)(b)(iv).

(ii) Membership.

The Committee shall consist of three members. The Tule River Tribe, the Tule River Association, and the South Tule Independent Ditch Company shall each appoint one member, and an alternate who shall be available to serve in the absence of the Party's member. The Tribe, the Tule River Association, and the South Tule Independent Ditch Company shall notify each of the other parties in writing of the names of the appointed member and alternate.

(iii) Action.

The Phase I Reservoir Operation Rules Committee shall decide by unanimous vote.

(iv) Enumerated Powers.

The Phase I Reservoir Operation Rules Committee shall have the power to make changes to the Phase I Reservoir Operation Rules only in the following enumerated areas:

- [a] Periodically review the determination of the October – February cumulative flow at gage 3580 that corresponds to the sixty percent (60%) exceedance flow and make adjustments; and
- [b] Periodically review the methodology for predicting “dry years” (currently by cumulating October-February flow at gage 3580 and comparing this value to the sixty percent (60%) exceedance flow) and change as appropriate if a better methodology is agreed upon by the Committee; and
- [c] Periodically review the accuracy and reporting of the pertinent flow/diversion/storage/release measurements and make modifications, if necessary.
- [d] Authorize any emergency operation measures for safety/fire reasons.
- [e] Periodically review the estimate of reservoir evaporation and make modifications, if necessary.

(2). Phase I Reservoir at Substitute Site

- (a) If the site at the confluence of Cedar Creek and the South Fork of the Tule River is not a feasible site for the Phase I Reservoir and the Tribe identifies a substitute site or sites, the parties shall negotiate, in good faith, mutually acceptable operation rules which will apply to the reservoir or reservoirs to be constructed at the substitute site or sites.

Such negotiations shall be initiated upon the request of the Tribe and shall proceed expeditiously.

(b) The reservoir operation rules to be negotiated for the Phase I Reservoir at the substitute site or sites shall be consistent with the following terms, conditions, and principles:

(i) The operation rules should result in a flow in the South Tule River which honors the diversion limits set forth in the 1922 Agreement. Minimum releases from the Tribal reservoir or reservoirs shall be negotiated as necessary to achieve this result.

(ii) A Reservoir Operation Rules Committee shall be created to enable limited amendment of the Reservoir Operation Rules applicable to the Phase I Reservoir at the substitute site or sites.

[a] The Reservoir Operations Rules Committee shall consist of three members with the Tule River Tribe, the Tule River Association, and the South Tule Independent Ditch Company appointing one member each, and an alternate who shall be available to serve in the absence of the appointed member. The Tribe, the Tule River Association, and the South Tule Independent Ditch Company shall notify each of the other parties in writing of the names of the appointed member and alternate.

[b] The Reservoir Operation Rules Committee shall have the power to make changes to the Phase I Reservoir Operation Rules only in those areas specifically listed by the parties in the Reservoir operation rules.

[c] The Reservoir Operation Rules Committee shall decide by unanimous vote.

(iii) Any instream releases from the Phase I Reservoir at the substitute site or sites may be suspended by the Tribe when the water level in the reservoir reaches the dead pool level plus 120 af, so long as the Tribe's water use has not exceeded 5,828 AFY pursuant to the terms and conditions of this Agreement pertinent to accountability of water use.

(iv) The outflow from the Phase I Reservoir at the substitute site or sites shall be measured at the outlet works of the dam or in the South Fork Tule River immediately downstream of the Phase I reservoir at the discretion of the Tribe.

(c) If an impasse is reached in negotiations of reservoir operation rules applicable to the Phase I Reservoir at a substitute site or sites due to the failure of the Tribe, South Tule Independent Ditch Company, or the Tule River Association to enter into negotiations; or, once negotiations commence, if an impasse is reached due to a failure by one or more of the three parties specified above to agree on such operation rules, the impasse shall be resolved in accordance with Article 8, Dispute Resolution.

C. Future New or Enlarged Reservoirs

- (1) The Tribe shall have the right to construct a new reservoir or reservoirs, or to enlarge an existing reservoir or reservoirs, so long as such reservoir or reservoirs do not cause the Tribe's surface water use to exceed 5,828 AFY pursuant to § 3.2.A.(1) of this Agreement.
- (2) The operation rules for any such new or enlarged reservoir or reservoirs shall be negotiated in good faith among the Tribe, the Tule River Association, and the South Tule Independent Ditch Company. Such negotiations shall be initiated upon the request of the Tribe and shall proceed expeditiously. The operation rules as negotiated shall result in a flow in the South Tule River which honors the diversion limits set forth in the 1922 Agreement. Minimum releases from the Tribal reservoir or reservoirs shall be negotiated as necessary to achieve this result. If an impasse is reached due to the failure of any party to enter into negotiations or, during negotiations, to reach agreement on such operation rules, the impasse shall be resolved in accordance with Article 8, Dispute Resolution.

D. Accounting for Evaporation and Conveyance Losses.

(1) Evaporation Losses from Phase I Reservoir.

- (a) Losses of stored water due to evaporation attributable to that proportion of the Phase I reservoir which is necessary to serve the Tribe's Phase I project water demand of 1,830 AFY shall be charged against the Tribal Water Right cap, and losses due to evaporation attributable to that proportion of the Phase I reservoir which is necessary to comply with mitigation agreements set forth in the Phase I Reservoir Operation Rules shall not be charged against the Tribal Water Right cap.
- (b) Evaporation losses from the Phase I Reservoir shall be calculated using a method agreed upon by the Phase I Reservoir Operations Committee. The amount of evaporation loss to be charged against the Tribal Water Right shall be the total amount of evaporation losses less 22 AFY, which represents the amount of reservoir evaporation chargeable to mitigating agreements set forth in the Phase I Reservoir Operation Rules.

(2) Evaporation Losses from Future Reservoir(s).

The administration of evaporation losses from future new or enlarged reservoirs shall be negotiated in good faith among the Tribe, the Tule River Association, and the South Tule Independent Ditch Company during the planning and design stage of the project.

(3) Conveyance Losses.

Losses due to the conveyance of water from the Phase I Reservoir to the various service locations shall be counted against the Tribal Water Right cap.

3.5 **Administration and Transfer of Tribal Water Right**

- A. Priority Date. The Tribal Water Right shall be administered exclusively in accordance with the terms of this Settlement Agreement and not according to priority date.

B. Purpose of Use. The Tribe shall have the right to divert, store, and consume, or permit the diversion, storage or consumption, of the Tribal Water Right for any beneficial purpose as defined by Tribal law, subject to the terms and conditions of this Settlement Agreement.

C. Persons entitled to Use the Tribal Water Right. The Tribal Water Right may be used by the Tribe and all persons authorized by the Tribe, subject to the terms of this Settlement Agreement.

D. Transfer of the Tribal Water Right.

The Tribe shall not transfer the Tribal Water Right, except as may be provided in this Settlement Agreement, including any amendment thereto.

E. Effect of Non-Use of the Tribal Water Right. Non-use of all or any of the Tribal Water Right shall not constitute a relinquishment, forfeiture, abandonment of the right. Except as specifically provided herein, state law doctrines relating to the use of water rights, including but not limited to relinquishment, forfeiture, or abandonment, do not apply to the Tribal Water Right..

F. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust in perpetuity by the United States for the benefit of the Tribe.

G. Measuring Devices: Accessibility and Inspection of Records

(1) Gage Stations: Prior to the construction of the Phase I Reservoir, the Tribe shall be responsible for the operation and maintenance associated with gage stations 3580 and 4100. Once the Phase I Reservoir is constructed, the United States Geological Service (USGS) shall be responsible for operation and maintenance associated with gage station 3580. However, with regard to gage station 4100, the USGS shall be responsible for operation and maintenance associated with that gage station for a minimum period of one year from the date construction of the Phase I Reservoir is completed. Gage station 3580 shall be operated and maintained indefinitely. Gage station 4100 may be discontinued by the USGS after a period of one year from the date construction of the Phase I Reservoir is completed.

(2) Other Measuring Devices: Once the Phase I Reservoir is constructed, the USGS shall be responsible for operation and maintenance associated with the reservoir storage gage, the dam outflow gage, the Tribal water system gage, and the Reservoir evaporation gage.

(3) Maintenance of Records from Gages and Other Measuring Devices Operated by the USGS:

With regard to gage station 3580 and other measuring devices listed in (2) above, the USGS shall continuously maintain or cause to be maintained daily records produced by those devices. With regard to gage station 4100, the USGS shall maintain or cause to be maintained daily records produced by that gage for one year after the Phase I Reservoir is constructed.

(4) Inspection of Tribal Diversions and Measuring Devices Operated by the Tribe

(a) Inspection

Any party to this Settlement Agreement shall be allowed to inspect:

- (i) Gages; and
- (ii) Other measuring devices operated by the Tribe; and
- (iii) All Phase I Reservoir storage records, including records of operation, inflow, outflow, and evaporation, *provided that*, such inspections shall not occur during weekends, holidays and other days that the Tribal offices are closed; and
- (iv) The River channel of the South Fork of the Tule River downstream from the reservoir outlet works to the western Original Reservation boundary, and, the river channel between the western Original Reservation boundary and STIDC's diversion point, to the extent that the Tribe in the future acquires ownership of land riparian to the River between the western Original Reservation boundary and STIDC's diversion point.

(b) Advance Notice to Tribe

- (i) Before undertaking to access and inspect any records pertaining to water measuring devices in the Tribe's custody, see (i) – (iv) of 3.5 G.(4)(a) above, the inspecting party or parties shall provide the Tribe with advance notice of at least 48 hours excluding weekends and holidays, and
- (ii) Before undertaking to access and inspect measuring devices or water diversions covered by 3.5 G.(4)(a)(i),(ii) and (iv) above, and, in consideration of Tribal safety and security concerns, the inspecting party or parties shall provide the Tribe with advance notice of at least 3 hours.

(5) Tribal Contact for Purposes of Accessing and Inspecting Gages: For purposes of providing advance notice of inspection of gages and records, parties to this Settlement Agreement shall contact the Tribal Chairman or his delegate. If the Tribal Chairman delegates this function, he/she shall provide written notice to all parties to this Settlement Agreement of the contact person.

H. Tribal Water Code: Subject to the limitations imposed by this Agreement and federal law, the use of the Tribal Water Right may be administered by the Tribe pursuant to a Tribal Water Code.

I. Enforcement of Diversion Restrictions by the Tribe

The Tribe shall enforce the restrictions on diversions set forth in this Agreement on lands owned by the Tribe, whether in fee or in trust, and located upstream of South Tule Independent Ditch Company's point of diversion. The aforementioned restrictions on diversions shall be enforced as to all persons on such Tribal lands.

ARTICLE 4 – FEDERAL CONTRIBUTION TO SETTLEMENT

4.0 Federal Contribution to Settlement

The parties agree to recommend the following funding for administration and mitigation necessary to implement the Agreement to the Congress for appropriation on a schedule consistent with implementation as contemplated in this Agreement:

4.1 Phase I Dam and DCMI Water Supply System Fund

- A. The United States will provide funds to construct a Phase I Dam and DCMI water distribution system adequate to meet the future DCMI water needs of the Tribe.
- B. 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 gages and other measuring devices. Such costs for annual operation and maintenance shall be included in the annual programmatic budget for the Department of the Interior.

4.2 Provision of a Tule River Tribe Water Right Development Fund

The United States will provide a Tribal Water Right Development Fund in an amount agreed upon by and between the Tribe and the United States. These funds shall not be distributed on a per capita basis to members of the Tribe and shall only be used to develop the Tribe's federally reserved water right confirmed by this agreement. The Tribe may expend the Tribal Water Right Development Fund pursuant to a management and expenditure plan approved by the Secretary.

ARTICLE 5 – DISCLAIMERS AND RESERVATIONS

5.1 General Disclaimers.

Nothing in this Agreement shall be so construed or interpreted:

- A. To preclude the acquisition of a right to the use of water by the Tribe or by any member of the Tribe outside the Original Reservation whether the right is acquired directly by purchase, or through the acquisition of land or by other types of acquisition; however, it is agreed that the Tribe will make no downstream claims to the minimum water releases from its Phase I Reservoir, described in §§ I. A. and B. of Exhibit E, except to the extent that such claims are based upon the Tribe's rights as a shareholder of the South Tule Independent Ditch Company.
- B. To determine the relative rights *inter sese* of persons using water under the authority of the State or the Tribe;
- C. To limit in any way the rights of the parties or any other person to litigate any issues or questions not resolved by this Agreement;
- D. To create or deny substantive rights through headings or captions used in this Agreement;
- E. To preclude or to discourage the Tribe from acquiring, by contracting or by other means, water rights in addition to the rights acquired under this Agreement from any existing or future federal storage facilities off the Reservation;
- F. To prohibit the Tribe, or the United States on behalf of the Tribe, from objecting in any stream adjudication in California courts to any claims to water rights not protected by this Agreement, or to prohibit any other party to this agreement from asserting any claim or defense in any such adjudication;
- G. To constitute a waiver of sovereign immunity by the Tribe or United States, except as expressly set forth in this Agreement or as set forth in federal law, including; but not limited to, circumstances where the Tribe or the United States exercise their rights to

object to, or intervene in, any stream adjudication in California courts pursuant to 5.1. F above;

- H. Unless otherwise provided by Congress, to prevent the United States, as trustee for the Tribe, or the Tribe itself, from filing an action in any court of competent jurisdiction, to prevent any party from interfering with the Tribe in the enjoyment of any water right in this Agreement.

5.2 Rights Reserved

The parties expressly reserve all rights not granted, recognized or relinquished in this Agreement.

ARTICLE 6 – FEDERAL LEGISLATION

- 6.1 All parties agree to cooperatively support and seek enactment of any federal legislation necessary to ratify this Agreement; to effectuate all provisions and purposes of this Agreement; and to defend the provisions and purposes of this Agreement from all challenges; *provided that*, no provision of this Agreement shall be modified by any such legislation as to substance except as may be provided herein.
- 6.2 All parties agree to cooperatively support and seek enactment of language in the federal legislation ratifying this Agreement that authorizes and funds a Reservation municipal, rural and industrial water system adequate to meet the current and future DCMI water needs of the Tribe, according to the needs and population projections as set forth in the *Water Needs Assessment for the Tule River Indian Reservation*.
- 6.3 All parties agree to cooperatively support and seek language in the federal legislation ratifying this Agreement that expressly authorizes the parties to amend this Agreement in accordance with any terms and limitations in the Agreement without further ratification by Congress. Except as otherwise provided by this Settlement Agreement, any amendment of the Agreement shall be by unanimous consent of the parties to this Agreement.
- 6.4 All parties agree to cooperatively support and seek language in the federal legislation ratifying this Agreement that (1) confers jurisdiction on the United States District Court for the Eastern District of California to review and consider whether to approve or disapprove this Settlement Agreement and to issue a final decree approving or disapproving the Agreement; and (2) requires that the Settlement Agreement shall not take effect and be binding upon the parties to the Agreement until the approved Settlement Agreement is incorporated by the Court in a final consent decree.
- 6.5 Article 6 shall take effect upon signing by all parties to this Settlement Agreement.

**ARTICLE 7 – FINALITY, SETTLEMENT OF CLAIMS,
AND EFFECTIVENESS OF AGREEMENT**

7.1 Ratification and Effectiveness of Agreement

With the exception of the stipulations in Article 6, the contingency set forth in § 7.2, and the stipulations in §§ 8.1.B and 8.2.B., and except as may be otherwise specifically provided in this Agreement, this Agreement shall become effective on the later of the following dates: (1) the date the federal funds, required by §§ 4.1.A and 4.2, are authorized by the federal act ratifying act are fully appropriated and paid to the Tribe, or (2) the date on which the Settlement Agreement has been approved by a final judgment and decree of the United States District Court for the Eastern District of California pursuant to § 7.4.A. of this Agreement. Article 6 and § 7.2, and §§ 8.1.B. and 8.2.B. shall take effect immediately upon the signing of this Settlement Agreement by the parties.

7.2 **Tribal Performance of Obligations Contingent**

Tribal performance of any obligation assumed under this Agreement which depends upon the appropriation of funds by Congress and the payment of such funds to the Tribe shall be contingent on such appropriation and payment; *except that*, once the Phase I Reservoir is operational, the Tribe shall release the minimum flow required by Exhibit E without regard to the availability of federal funds. No liability shall accrue to the Tribe for failure to perform an obligation under this Agreement where funds necessary to enable such performance are not appropriated or paid.

7.3 **Waiver and Release of Claims**

A. By the Tule River Tribe

The Tribe, in consideration of benefits realized under this Agreement and under the Acts of Congress ratifying this Agreement, authorizing the appropriation of funds, and appropriating such funds, hereby waives and releases the following claims:

(1) Against the Settling Parties

- (a) All claims, counterclaims, defenses, or causes of action related to federally reserved water rights arising on the Original Reservation that the Tribe or the United States as trustee for the Tribe could assert in any court proceeding against the Tule River Association and its successors and assigns; the South Tule Independent Ditch Company and its successors and assigns, and any and all other parties who sign this Settlement Agreement; and
- (b) All claims, counterclaims, defenses, or causes of action for damages, losses or injuries to federally reserved water rights arising on the Original Reservation that accrued up to and including the effective date of this Agreement or the entry of a final decree approving this Agreement by the United States District Court for the Eastern District of California, whichever is later, that may or may not be fully known, that the Tribe or the United States as trustee for the Tribe either asserts or could have asserted in any court proceeding against the Tule River Association and its successors and assigns; the South Tule Independent Ditch Company and its successors and assigns, and any and all other parties who sign this Settlement Agreement.

(2) Against The United States

- (a) All claims, counterclaims, defenses, or causes of action that the Tribe may have against the United States, its agencies, or employees, arising out of claims of rights to federally reserved water rights arising on the Original Reservation that the United States could have asserted in any court proceeding;
- (b) All claims, counterclaims, defenses, or causes of action for damages, losses or injuries to federally reserved water rights arising on the Original Reservation, including claims of unlawful interference, diversion or taking of water; or claims of failure to protect such rights, that accrued up to and including the entry of a final decree by the

United States District Court for the Eastern District of California, that may or may not be fully known, that the Tribe may have or could have asserted against the United States, its agencies, or employees in any court proceeding;

- (c) All claims, counterclaims, defenses, or causes of action arising out of, resulting from or relating in any manner to the negotiation, execution or adoption of this Settlement Agreement, exhibits or appendices to the Settlement Agreement, a final decree entered by the United States District Court for the Eastern District of California, or any specific terms and provisions thereof, that the Tribe may have or could have asserted against the United States, its agencies, or employees in any court proceeding.

B. By Settling Parties Against the Tribe and the United States

The Tule River Association and its successors and assigns; the South Tule Independent Ditch Company and its successors and assigns, and any and all other parties who sign this Settlement Agreement, in consideration of benefits realized under this Agreement and under the Acts of Congress ratifying this Agreement, authorizing the appropriation of funds and appropriating such funds, hereby waive and release the following claims:

- (1) All claims, counterclaims, defenses, or causes of action related to waters rights in the South Fork of the Tule River and its tributaries, that the Tule River Association and its successors and assigns; the South Tule Independent Ditch Company and its successors and assigns, and any and all other parties who sign this Settlement Agreement may assert or could have asserted in any court proceeding against the Tribe or the United States as trustee for the Tribe; and
- (2) All claims, counterclaims, defenses, or causes of action for damages, losses or injuries to water rights in the South Fork of the Tule River and its tributaries, or claims of interference or taking of such rights that accrued up to and including the effective date of this Agreement pursuant to § 7.1 of this Agreement, that may or may not be fully known, that the Tule River Association and its successors and assigns; the South Tule Independent Ditch Company and its successors and assigns, and any and all other parties who sign this Settlement Agreement may assert or could have asserted against the Tribe or the United States as trustee for the Tribe in any court proceeding.

C. Reservation of Rights not Waived

Notwithstanding the waivers and releases set forth above, the Tribe and the United States as trustee for the Tribe, the Tule River Association and its successors and assigns; the South Tule Independent Ditch Company and its successors and assigns, and any and all other parties who sign this Settlement Agreement shall retain:

- (1) All claims of water rights or injuries to water rights for water sources other than water rights in the South Fork of the Tule River and its tributaries;
- (2) All claims for enforcement of this Settlement Agreement or the final decree entered by the United States District Court for the Eastern District of California, through such legal and equitable remedies as maybe be available under this Agreement or other applicable law;
- (3) All claims relating to the quality of water or relating to activities affecting the quality of water;

- (4) All rights, remedies, privileges, immunities and powers not specifically waived and released under the terms of this Settlement Agreement or the final decree entered by the United States District Court for the Eastern District of California.

D. Effective Date of Waivers and Releases

The waivers and releases described in this section shall take effect on the date that this Settlement Agreement becomes binding and effective pursuant to § 7.1 of this Agreement.

7.4 **Binding Effect**

A. Judicial Approval of Settlement Agreement

This Settlement Agreement shall be reviewed and either approved or disapproved by the United States District Court for the Eastern District of California. Accordingly, the parties agree to seek to include provisions in the congressional act ratifying this Settlement Agreement that:

- (1) makes congressional ratification contingent upon a final judgment and decree approving this Settlement Agreement entered by the United States District Court for the Eastern District of California; and
- (2) directs the Secretary of the Interior to file suit in the United States District Court for the Eastern District of California requesting the entry of a final court judgment and decree approving the Agreement; and
- (3) directs the Secretary of the Interior, upon entry of a final judgment and decree approving the Agreement, to sign it; and
- (4) declares the Settlement Agreement to have the force and effect of Federal law for the purposes of judicial approval of the Agreement and of enforcement of the rights and obligations of the parties; and
- (5) declares that the jurisdiction of the United States District Court for the Eastern District of California shall be exclusive.

B. Parties Bound. Upon the effectiveness of any provision of this Agreement, the terms of that provision will be binding:

- (1) Upon the Tribe and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the Tribe to the use of the Tribe's federally reserved water rights, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribe; *provided that*, the validity of consent, ratification or authorization by the Tribe is to be determined by tribal law; and
- (2) Upon the United States and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the United States to the use of water in the State of California; *provided that*, the validity of consent, ratification or authorization by the United States is to be determined by federal law; and *further provided that*, nothing contained in this Agreement affects any claim of any Indian tribe other than the Tule River Tribe, or of persons claiming water through any such other Indian tribe, or the right of any

Indian tribe other than the Tule River Tribe, or persons claiming water through any such other Indian tribe, to pursue a claim to any water from any source based on any theory of right or entitlement.

- (3) Upon all non-tribal persons who are signatories to this agreement and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of such non-tribal signatories to the use of water in the State of California.

ARTICLE 8 – DISPUTE RESOLUTION

8.1 Actions Seeking Interpretation or Enforcement of the Settlement Agreement

- A. If a dispute concerning the interpretation or enforcement of the terms of this Settlement Agreement arises among the parties to this Agreement, the parties shall make a diligent good faith effort to resolve the dispute among them by agreement. However, if after diligent good faith negotiations, the parties are unable to reach agreement, any party may petition the United States District Court for the Eastern District of California to resolve the dispute.
- B. The parties agree to seek language in the act ratifying this Settlement Agreement conferring jurisdiction on the United States District Court for the Eastern District of California over any cause of action initiated by any party to this Settlement Agreement arising from a dispute over the interpretation of this Settlement Agreement, and any cause of action initiated by any party to this Settlement Agreement for the enforcement of this Settlement Agreement. The parties agree to support language in the act ratifying this Settlement Agreement which waives the sovereign immunity of the United States for purposes of such actions.

8.2 Actions Seeking Relief from Failure to Negotiate or to Agree on Operation Rules

- A. If any party to this Settlement Agreement fails to enter into negotiations with the other parties for the purpose of establishing operation rules for any reservoir on the Reservation, other than the Phase I Reservoir; or if after diligent good faith negotiations, the parties fail to reach agreement on operation rules for any reservoir, any party may petition the United States District Court for the Eastern District of California to appoint a mediator to resolve the impasse as set forth in B. next.
- B. The parties agree to seek language in the act ratifying this Settlement Agreement which accomplishes the following:
- (1) Confers jurisdiction on the United States District Court for the Eastern District of California over any cause of action initiated by any party to this Settlement Agreement arising from the failure of any party to enter into negotiations in good faith for an agreement establishing operation rules for any reservoir to be constructed on the Reservation, or, after diligent good faith negotiations, the failure of the parties to reach agreement on operation rules for any reservoir; and
 - (2) Establishes a procedure under which a mediator is appointed by the Court to assist the parties in resolving issues regarding operation rules for any reservoir, if the Court finds that that either
 - (a) a party or parties did not respond in good faith to a request to negotiate reservoir operation rules; or

(b) the parties entered into good faith negotiations for a reasonable amount of time but failed to reach agreement on operation rules for any reservoir.

(3) Authorizes the Court, if Court appointed mediation does not, after a reasonable amount of time as determined by the Court, result in an agreement among the parties, to select a set of reservoir operation rules from among sets of reservoir operation rules submitted by the parties, and notify the parties of such selection.

(a) The Court, after hearing evidence submitted by the parties to this Agreement, shall employ the following standard in determining which set of reservoir operation rules shall be selected: the Court shall select the proffered set of operation rules which, if implemented, would be the most effective:

(i) in regulating the flows in the South Tule River to comply with the following diversion limits:

Where the South Tule Independent Ditch Company's point of diversion is the point of measurement and where the natural flow of the river is:	The Tribe has a right to:
<3 cfs	1 cfs
≥ 3 cfs and < 5 cfs	1½ cfs
≥ 5 cfs and <10 cfs	2 cfs
≥ 10 cfs	any amount

(ii) in minimizing adverse impact on the non-Tribal parties to this Agreement.

(iii) in maintaining the Tribe's right to the reasonable and economic use of water for domestic and stock purposes upon the reservation

(b) Once the Court selects operation rules pursuant to the standard set forth in subsection (a) above, such rules shall thereafter control and shall be implemented by the parties pursuant to the terms directed by the court.

- (b) Once the Court selects operation rules pursuant to the standard set forth in subsection (a) above, such rules shall thereafter control and shall be implemented by the parties pursuant to the terms directed by the court.

ARTICLE 9 - EXECUTION AND CERTIFICATION

The foregoing Agreement is hereby executed between the parties.

TULE RIVER INDIAN TRIBE OF CALIFORNIA


BY NEIL PEYRON, CHAIRMAN

November 13, 2007
DATE

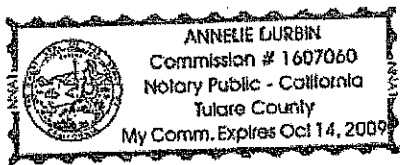
STATE OF CALIFORNIA)
)ss.
COUNTY OF TULARE)

Subscribed and sworn to before me on this 13 day of NOV, 2007, by

NEIL PEYRON who PROVED TO be The person who
APPEARED before ME.
WITNESS my hand and official seal.

My Commission expires: Oct 14, 2009


Notary Public



TULE RIVER ASSOCIATION

Don Macmillan
BY DON MacMILLAN
CHAIRMAN

R.L. Schaffer
BY R.L. SCHAFER
SECRETARY-WATERMASTER

11-14-07
DATE

11-14-07
DATE

STATE OF CALIFORNIA)
)ss.
COUNTY OF TULARE)

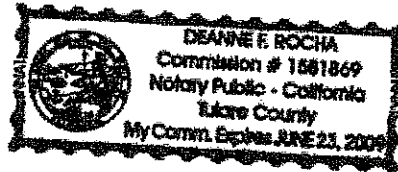
Subscribed and sworn to before me on this 14 day of Nov., 2007, by

Deanne F. Rocha

WITNESS my hand and official seal.

My Commission expires: June 23, 2009

Deanne F. Rocha
Notary Public



SOUTH TULE INDEPENDENT DITCH COMPANY

Philip G. Larson
BY PHILIP G. LARSON
PRESIDENT AND SECRETARY

Keith L. Watkins
BY KEITH L. WATKINS
VICE-PRESIDENT

11-20-2007
DATE

11/21/07
DATE

STATE OF CALIFORNIA)
)ss.
COUNTY OF TULARE)

Subscribed and sworn to before me on this 21 day of Nov, 2007, by

Deanne F. Rocha

WITNESS my hand and official seal.

My Commission expires: June 23, 2009

Deanne F. Rocha
Notary Public

