

**Testimony of Alec Garfield on behalf of the Tule River Tribe of California**  
**In Support of H. R. 2535, the Tule River Tribe Water Development Act**

**Introduction**

Good morning Chairwoman Napolitano and Ranking Member McMorris-Rodgers, and fellow members of the committee. My name is Alec Garfield, and I serve as the Director of the Water Resources Department of the Tule River Tribe, as well as the Chairman of the Tule River Water Rights Negotiation Team. I also send greetings and best wishes from Chairman Neil Peyron and all the members of the Tribal Council. We are very grateful for the expeditious scheduling of this hearing on H.R. 2535, the Tule River Tribe Water Development Act. We also appreciate the opportunity to appear before the Water and Power Subcommittee of the House Natural Resources Committee to present testimony supporting H.R. 2535. This bill authorizes funding necessary for the Secretary of Interior to conduct a study on the feasibility and suitability of constructing a storage reservoir, outlet works and a water delivery system on the Tribe's Reservation in Tulare County, California. H.R. 2535 is consistent with and an effectuation of the United State's trust responsibility to Indian tribes, to protect and advance their reserved water rights under the *Winters* doctrine. *Winters v. United States*, 207 U.S. 564 (1908).

For several years the Tribe has negotiated with the representatives of the Departments of Interior and Justice, including Interior's Bureau of Reclamation, and local water interests represented by the Tule River Association and the South Tule Independent Ditch Company. Very recently the Tribe and the local water users reached a settlement which embodies the shared goals and visions for the future of the community of parties who live together in the South Fork Tule River watershed. This settlement is quite unique – indeed, it is one of the very few Indian water settlements ever achieved without a Tribe or the United States on its behalf filing litigation to enforce its federal water rights. Despite this unique feature, once the settlement is fully carried out, the Tribe will join other Indian nations in the United States, by turning its “paper” federal reserved rights to water from the South Fork Tule River into actual “wet” water.

We anticipate that this settlement agreement will also be considered in the forthcoming months for Congressional approval. The Tule River Water Development Act, under consideration by you today, is the first step in implementing that settlement agreement. We ask the Subcommittee to favorably and swiftly mark-up and pass H.R. 2535 on to the full Committee. Once enacted and signed into law, H.R. 2535 will enable the Tribe and its neighbors to complete the necessary technical background work to bring the final settlement agreement to life.

**The Struggle of the Tule River Tribe to Secure a Sustainable Homeland**

Prior to discussing the terms of the bill, I would like to take a brief minute to educate the Subcommittee about the history of the Tule River Tribe and Reservation, to help illustrate the need for The Tule River Water Development Act in our community. I have also attached a two-page historical timeline which chronicles our efforts to secure a sustainable homeland with the necessary water supplies. (Exhibit A.)

The Tule River Reservation is the homeland of the Tule River Tribe. We are descendants of the Yokuts Indians, a large group of linguistically-related people who occupied the San Joaquin Valley in California for thousands of years prior to contact with Euroamerican settlers. Following the discovery of gold, and California becoming a state in 1850, there was enormous pressure on Congress to reject the 18 treaties negotiated with the several hundred Indian tribes found there. Congress relented to this pressure and in 1852 rejected these 18 treaties, including the Treaty of Paint Creek of June 3, 1851, which included leaders from our Tribe. In 1853, however, Congress established the Superintendency of Indian Affairs in California, to relocate Indians to reservations. In 1856, the California Superintendency established our reservation pursuant to the 1853 authority, on approximately 2,240 acres of prime San Joaquin Valley farmland in Tulare County. The land was transected on the southwest corner by the mainstem 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 our Tribe with the arable land and water resources necessary to establish a self-sufficient homeland for its people. Upon being promised this land as our homeland – ostensibly forever – we built homes and began to actively cultivate crops. It was a relatively prosperous period of time for our people.

Despite our relative prosperity in those years, two of the federal Indian agents assigned to reservations in the area nonetheless saw fit to capitalize upon the distance and ignorance of the Indian officials in Washington, D.C. Thomas Madden, a federal Indian agent assigned to the neighboring Tejon Indian Reservation, applied for and was issued a land patent under fraudulent circumstances to 1,280 acres of the Tule River Reservation land from the State of California. Four years later under a similar arrangement another land patent for 1,160 acres of Tule River Reservation land was issued to Mr. John Benson, another Indian Agent. These two state land grants encompassed all of 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 grants. Because the lands had been set aside for the Tribe, the State of California, of course, had no legal basis upon which to issue the patents. The land transfers were also a violation of the federal Trade and Intercourse Acts, which expressly prohibited Indian agents from having "any interest or concern in any trade with the Indians." Rather than setting aside the issuance of these patents, the federal government actually paid rent to Madden and Benson for at least a dozen years to enable my ancestors to continue farming what was in actuality our land.

Gradually, over the years, hostility increased between the Indian farmers and the settlers in the area. In response to the tension, and rather than enforcing our rights to what should have been 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 lands located about fifteen miles to the east of our original Reservation. The Tule River Indians and the Indian agent protested the removal; the new lands would be difficult to cultivate. The Indian agent, J.B. Vosburgh, stated "The new reservation is not suited to the wants of the Indians for whose benefit it has been set apart, if the intention be, as heretofore, to teach them to become self supporting by means of agriculture, the soil of the reservation being insufficient both in quantity and quality for their need." He further requested that the government inquire into the legality of Madden and Benson land patents and, if necessary, requested the federal government to purchase

the property from them for the benefit and use of the Indians. However, no such action was taken, and our people were forcibly removed away from their homes and cultivated fields.

The removal was very hard on our people. The new Reservation, though it contained 48,000 acres, was determined by the federal agents, based on the knowledge and technology of the time, to have scarcely 100 acres of arable land. Even that land was deemed by the agents to be of poor quality, and thought to be able to support only six families, far below the needs of our people. An Indian agent reported, "Year by year our number has decreased by death and removal, until now there are only 143 Indians, embraced in 30 different families, residing on the reservation." Our situation was so dire that, in response, President Grant, in October 1873 – just 9 months after the initial Executive Order – signed another Executive Order almost doubling the Reservation's size to 91,837 acres. Again, very little of these additional lands were deemed by the federal agents to be suitable for agriculture, and the few acres which were proven arable were coveted or settled by settlers, and history again repeated itself. In August 1878, President Hays issued an Executive Order reducing the reservation back to the January 1873 size.

For over a century, then, we have lived on the Reservation established in 1873, a mountainous land where because of the failure of the United States to provide adequate water storage and irrigation facilities, we have been unable to fully reap the benefits of the agricultural homeland promised to us through the 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, make a compelling argument that now is the time for the United States to help begin the healing process through the enactment of HR 2535. HR 2535 is the first step in enabling the Tribe to bring water to our lands in sufficient quantities to make our new homeland – not the one promised to us originally in the mid-19<sup>th</sup> Century – a viable homeland now and forever.

### **The Modern-Day Tule River Indian Reservation**

Today, our current Reservation includes about 58,000 acres. The reservation is located in south-central California, approximately 75 miles south of Fresno and 45 miles north of Bakersfield in Tulare County. The Reservation is situated on the western slope of the Sierra Nevada Mountains, east of Porterville, and lies almost entirely within the South Fork Tule River drainage basin. The topography is generally steep, with elevations ranging from about 900 to 7500 feet above sea level. Most of the inhabited land is along the lower reach of the South Fork Tule River on the western side of the Reservation. The Reservation is drained by the South Fork Tule River. The South Fork Tule River flows into the Tule River at Success Reservoir, at a distance of about ten miles west of the Reservation. There are no significant uses of water upstream of the Reservation. (Exhibit B.)

The estimated average annual flow of the South Fork Tule River at the western boundary of the Reservation is 38,500 acre-feet per year, with a probability of 24,600 acre-feet over 50% of the time, and 11,800 acre-feet available over 80% of the time. Surface water supplies consist of the flow available from the South Fork Tule River and its tributaries on the Reservation, while underground supplies consist of a groundwater aquifer and springs. The groundwater sources have managed barely to serve the current needs of the Tribal community on the Reservation.

There are growing concerns about the long-term reliability of these sources, both in terms of quantity and quality. The hydrology of the South Fork is similar to most western rivers in that the flows are generally much higher in the spring months than the rest of the year, other than occasional high water events following rainstorms. Over time, too, the hydrology of the South Fork is marked by periods of drought during which the entire flow of the river is significantly depressed by the lack of rain for long periods of time, sometimes spanning several years. These two general characteristics are depicted on the two graphs attached to this testimony. (Exhibit C.)

The injustices and inequities of the past are still present and are still affecting our people. We have been plagued with unemployment and mortality rates substantially higher, and a standard of living substantially lower, than is experienced by the surrounding non-Indian communities. While the on-Reservation socio-economic conditions have improved over time, as recently as 1999 the estimated poverty rate on the Reservation was still 50% higher than Tulare County as a whole. To this day, the Reservation residents generally continue to suffer from a relatively low standard of living in substantial part due to the absence of an adequate and reliable potable water supply and system.

### **Contemporary Negotiations to Secure a Reliable Source of Water for the Tribe**

To address the inter-related issues of lack of water and resulting economic, political and social limitations facing the Tribe, we have spent several years assessing its future water needs for domestic, commercial, municipal, industrial and agricultural purposes. We concluded that, in view of existing uses downstream of the Reservation, the Tribe could not meet its water needs, especially over the long-term, without the construction of a reservoir or reservoirs on the Reservation. Given that our Reservation sits at the headwaters of the South Fork Tule River, it made perfect sense to us to build a water storage project to capture the high flows of the river when downstream users were not capturing or using those flows.

We approached the solutions to our problems with the attitude that we wanted to work with, and not at odds with, our downstream non-Indian neighbors. Too often – in the more typical situation where a general stream adjudication is commenced in a given state – the Indian and non-Indian interests are pitted against one another. Here, by reaching out to our neighbors with the intent of respecting their needs and looking for solutions to our own, we were able to avoid the costs, delays and disruptions of water rights litigation. We entered into negotiations with interested parties seeking to establish the Tribe's reserved water rights through an agreement settling our federal reserved water rights claims.

For nine years, the settling parties have diligently negotiated the terms of a settlement agreement which, upon Congressional approval, will finally establish the federally reserved water rights of the Tule River Tribe. The negotiations have been very productive. The settling parties have been able to reach an agreement-in-principle on all major issues, including the magnitude of the Tribe's reserved water right, the Tribe's rights to use water both on and off the Reservation, and the operation rules of on-Reservation storage reservoirs, including the near-term Phase I Reservoir primarily intended to serve municipal and domestic water needs. We are

very proud of the settlement agreement we have reached, which allows the South Fork Tule River water users to continue their historic uses while providing the Tribe with a firm water supply, primarily for its domestic, commercial and municipal needs.

The remaining major issue prior to submitting the agreement to Congress is securing the support of the Department of the Interior, and the Administration, to authorize and fund the construction, operation and maintenance facilities anticipated by the settlement agreement and to compensate the Tribe for releasing water related claims against the United States.

### **H.R. 2535 Lays the Foundation for Moving Forward With the Settlement of the Tule River Indian Tribe's Water Rights**

Moving to the terms of the bill under consideration today, H.R. 2535 authorizes the Secretary of Interior to conduct a study on the feasibility and suitability of constructing a storage reservoir, outlet works, and delivery system on the reservation. H.R. 2535 also authorizes the appropriation of \$3 million to the Bureau of Reclamation to fund the study. The storage facility feasibility study is the most recent step in a several-decades-long effort by the Tribe to secure both title to and quantification of its federal reserved water rights, and to actually deliver "wet" water to our members for domestic, agricultural, municipal, commercial and industrial purposes. Notably, the eventual construction of a water storage project will enable us to meet our needs without disrupting the current water uses of the South Tule River.

As part of our lengthy and detailed negotiations with our neighbors and with the United States spanning the past decade, we have commissioned technical studies of the South Fork Tule River watershed within our Reservation boundaries. This analysis by the firm of Natural Resources Consulting Engineers of Ft. Collins, Colorado and Oakland, California, led us to the present site of a proposed water storage project at the confluence of Cedar Creek and the mainstem of the South Fork Tule River. The site of the proposed project, and the existing and proposed expansion to the Tribe's water service area, are depicted on the map marked as Exhibit D.

In short, the analysis we have commissioned to date, while rigorous and thorough, is not sufficiently detailed to support and justify a final decision to authorize and appropriate federal funds from which to initiate actual construction activities. Thus, the authority and funding delivered through H.R. 2535 would enable the Tribe, acting in concert with the Department of the Interior and its Bureau of Reclamation, to ensure that this Cedar Creek site is the optimal site at which to build the project.

We are pleased to report to the Subcommittee that we have gained the endorsement of the National Congress of American Indians and the Southern California Tribal Chairman's Association, for the enactment of H.R. 2535. Copies of the resolutions of these organizations are also attached to my testimony to be made a part of the record. (Exhibits E and F.) We have also provided the Subcommittee with letters and resolutions of support from the City of Porterville, CA; the Tulare County, CA Board of Supervisors, the Tule River Association and the South Tule Irrigation Ditch Company, and we believe these documents are being made a part of the record of this hearing.

### **Conclusion**

It is now time for our federal partners to join us in securing a brighter future for the Tule River Tribe and its people by supporting H.R. 2535. I thank the Subcommittee for the opportunity to express the Tule River Tribe's support of H.R. 2535.

In closing, I would ask that my testimony and supporting materials be made a part of the record of this hearing by unanimous consent.

I, or my associates here at the witness table with me, would be happy to respond to any questions which the members of the Subcommittee might have.