

Holding the Headwaters: Northern California Indian Resistance to State and Corporate Water Development

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Abstract

In the context of historic and ongoing California Indian resistance to displacement at the headwaters of California's immense State Water Project and federal Central Valley Project, we foreground Native land histories to unsettle the logic and perceived permanence of contemporary neocolonial water institutions. Centering California Indian voices on the histories and futures of the headwaters, we disrupt the imperial narrative of these waters and lands as American territories needing development and conservation, replacing it with the reality of these sites as Native Californian lands requiring restitution, protection, and recognition. Beginning with an overview of the history that led to the development of quasi-public projects on Native lands, we offer three case studies of Indigenous resistance and re-framing: the Winnemem Wintu struggle to stop the proposed raise of Shasta Dam; the Maidu Summit's work to regain ownership of former Pacific Gas & Electric company lands established within their homeland; and the Pit River Tribe's decades-long struggle to protect the sacred Medicine Lake Highlands from government-approved corporate exploitation of geothermal resources. *Holding the Headwaters* directly challenges embedded injustices in natural resource policymaking and offers alternative visions for a future that addresses historic injustices and centers California Indian relationships to place.

Keywords: California Indian, justice, resistance, water

Of course, no one bothered to consider our tribal rights when the government took our land, killed our salmon runs and flooded our homes... We, the tribes, should have the "first in time, first in use" water rights that... should allow us to have a voice in what is happening to California's water.¹

Chief Caleen Sisk (Winnemum Wintu)

Introduction

California's two massive water projects—the State Water Project (SWP) and the federal Central Valley Project (CVP)—share a common myopic attention to limited political economic values that perpetuate entrenched business interests and ongoing environmental and cultural injustice. Native nations at the headwaters continue to resist state and federal incursions on their communities, lands and livelihoods. Native legal and political organizing strategies in these regions have led to successful land and water restitution. The leadership of these headwaters' nations offers generative visions for systemic reform of large-scale water and land stewardship.

Both the CVP and the SWP were developed to address the perceived issues of temporal and spatial incompatibility in California's water supply: namely, that the majority of the population and agricultural land is in the south, with the greatest need in the dry summer and fall, while most of the precipitation falls in the north, in the winter and spring.² Early engineers and water developers were committed to creating water storage and conveyance systems that would allow the maximum amount of water to be captured and stored in order to provide regulated and regular water deliveries to the San Francisco Bay Area (hereafter, Bay Area) and southern California agricultural, industrial, and residential customers.³ Hydropower production companies saw the opportunity to harness the energy from water falling through the canyons of the Sierra Nevada and Coast mountain ranges on its way to the Sacramento-San Joaquin Valley.⁴ Dams built initially for hydropower production at the turn of the century to sell electricity to the emerging markets in the Bay Area, the Central Valley, and southern California, and to store water for irrigation near the

¹ Sisk, Caleen (2/24/2014) "Affirm Tribal Water Rights to Help Fix California's Manmade Drought," *Indian Country Today Media Network*.

² For an overview of studies documenting this perceived incompatibility, see Graham, Leland O. (1950), "The Central Valley Project: Resource Development of a Natural Basin," *California Law Review* 38(4): 588-590.

³ In a corporate history of the Pacific Gas & Electric Company, Charles Coleman describes how Julius M. Howells saw Big Meadows in the late 1880s and was struck by its hydroelectric potential: "Howells believed that in the Feather River, backed by ample water storage in Big Meadows, he had found one of the finest potential sources of hydroelectric power in all the state" (Coleman, Charles M. (1952) *PG&E of California: The Centennial Story of Pacific Gas & Electric Company 1852-1952*: 212).

⁴ For example, Great Western Power Company, which had developed the reservoir at Lake Almanor/ Big Meadows that would later become PG&E's largest reservoir, located just upstream of the principle State Water Project facility of Oroville Dam, predicted in 1923 that California's development "has been and will in the future be predicated upon hydroelectric power." "Great Western Power Company of California" [advertisement] 6/20/1924. Filed in Erwin Cooper Papers, Box 12, MS 79/2, 7, Water Resources Center Archives (WRCA), UC Riverside.

Central Valley, became the skeleton of the huge state and federal water storage and conveyance projects. These projects were built on Indian land seized from northern California tribes in a violent era in which the non-ratified treaties and the lack of recognition of many Native nations at the headwaters meant that tribal members had little space for negotiation to protect cultural places and lifeways.⁵ Today, their descendants continue to fight for recognition of those illegal takings, and for restitution and repatriation of lands and waters seized without their ancestors' consent.

We focus on the work of three headwaters nations--Pit River, Winnemem Wintu, and Mountain Maidu--to protect and sustain their homelands at the top of the State's political and economic water empire. The Pit River tribal territory is defined as the 100-mile square ancestral boundary in far northeastern California, between Mount Shasta to the west, Lassen to the south, and the Warner Range to the east. Snowmelt from the high mountain peaks and groundwater percolating up from springs in Pit River territory flow into the the Pit River, which feeds Shasta Lake at the top of the CVP. Pit River neighbors to the southwest, the Winnemem Wintu, are from another tributary that flows into the CVP--the McCloud River, and trace their emergence to a spring on Mt. Shasta. Southeast of Winnemem Wintu, the Mountain Maidu homeland encompasses a series of high mountain meadows, all crossed by streams that are tributaries to the north fork Feather River, the headwaters of the SWP. Our abbreviated case studies of the work of these three nations at the headwaters of the State's two largest water projects exemplify both the multiple challenges tribes face in the context of state water management and conveyance, as well as effective deployment of sophisticated legal and political strategies. Examples from Maidu, Pit River, and Wintu organizing offer practical visions of decolonized landscapes at the headwaters.

Building California's water infrastructure: Federal and State Denial of Indigenous Rights

At their foundation, California state and federal water projects are colonial operations that deny Indigenous presence, sovereignty, and future. Federal water projects in the American West were funded by the seizure and sale of Indian lands to non-Indians. According to 1901 hearings on the proposed Reclamation Act, "receipts from the sales of public lands in the arid and semiarid regions of the US" will be put "to the exclusive purposes of irrigation,"⁶ specifically placed in an "arid

⁵ For more information on the violence and terrorism against California Indians in this period, see, for example, Heizer, Robert F. (1974, 1993) *The Destruction of California Indians*, University of Nebraska Press; Hoopes, Chad E. (1975) *Domesticate or Exterminate*, Redwood Coast Publications; Johnston-Dodds, Kimberly (2002) *Early Laws and Policies Related to California Indians*. California Research Bureau: California State Library; Lindsay, Brendan (2012) *Murder State: California's Native American Genocide, 1846-1873*, University of Nebraska Press; and Trafzer, Clifford E. and Joel R. Hyer (1999) *Exterminate Them! Written Accounts of the Murder, Rape and Enslavement of Native Americans During the California Gold Rush, 1848-1868*, Michigan State University Press.

⁶ Dept. of the Interior, General Land Office, Washington DC, "Construction of Reservoirs, etc.: Report to accompany S. 5833," 2/7/1901, 56th Congress, 2nd Session, Report No. 2308, filed in B. Abbot Goldberg Papers, MS 85/2, Box 1, Folder 3, WRCA.

land reclamation fund.”⁷ As such, Indian lands were annexed into both federal and later private (under state jurisdiction) land bases and developed into projects that violated the rights of Indigenous peoples and the ecology of ancestral lands. Showing the ways in which state and federal parties worked together alongside private agricultural and development interests, in a 1966 Press Release Congressman and Chair of the House Appropriations Committee Michael Kirwan lauded California’s investments in State water works, and its cooperation with the federal government:

All of the things they have accomplished in California have been coordinated with the federal programs for the conservation and utilization of our water resources. In building California and the West, we really are building America.⁸

California is an ideal location for understanding the coloniality of American water management and the power of contemporary Indigenous movements for protecting, accessing, stewarding, and recognizing Native lands and waters.

Planning for the redistribution of California water began in the latter half of the 19th century, as the population grew and the state began to attempt to centralize water planning, largely to support future economic growth. However, the two large California water projects were not formally approved until the mid- to late- 20th century: CVP in 1933 and the SWP with the passage of the California Water Bond in 1960.⁹ The reauthorization of the CVP as a federal project in 1937 clearly contemplated the transformation of specifically Indian lands to achieve development goals:

That the entire CVP, California...is hereby reauthorized and declared to be for the purposes of improving navigation...controlling floods, providing for storage and for the delivery of the stored waters thereof, for the *reclamation of arid and semi-arid lands and lands of Indian reservations*... [emphasis mine]¹⁰

While the CVP, and the SWP, were distinct and at times competitive projects, with largely separate funding sources and facilities, many of the large agriculture, utility, and development beneficiaries were the same,¹¹ and both projects disregarded Indian land and water rights.

⁷ Committee on Irrigation of Arid Lands, “Reclamation of Arid Lands: Report to accompany H.R. 14241,” 2/20/1901, 56th Congress, 2d session, Report No. 2927. Specifically, this include funds received from public lands sold in the states of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. According to the Bureau of Reclamation’s “Brief History,” Texas was added to the list in 1906. Filed in B. Abbot Goldberg Papers, MS 85/2, Box 1, Folder 3, WRCA.

⁸ Press Release- JA – 1009, Governor Edmond G. Brown, 9/15/1966. Filed in MS 76/10, Box 8, WRCA.

⁹ The CVP was initially approved by the State legislature in 1933 with the Central Valley Project Act (Cal. Stats. 1933, Ch. 1042, Cal. Water Code, Div. 6, Pt. 3), and became a federal project in the 1935 Rivers and Harbors Act (P.L. 409) and its 1937 reauthorization (50 Stat. 844, 850).

¹⁰ 50 stat. 844, 850

¹¹ For example, a 2016 story of The Wonderful Company owners Lynda and Stewart Resnick described them as “building canals to connect the [Kern Water] bank to the state and federal water systems” (Harkinson, Josh, 8/9/2016, “Meet the California Couple Who Uses More Water Than Every Home in Los Angeles Combined”); and the 1992 Central Valley Project Improvement Act (Public Law 102-575)

The California Legislature and the new State Water Resources Board (established under the 1945 State Water Resources Act¹²) funded the comprehensive development of the State Water Plan, which inventoried California water resources, examined current and future needs, and developed a plan for water management and transport.¹³ The phased studies found vast potential for economic growth: up to 13 million more acres were irrigable, and up to 7.9 more kw of hydropower could be generated. In a January 1960 address to urge voters to support the California Water Bond, then-Gov. Edmond J. Brown posed California's water problems as particularly urgent, arguing that Northern California was "wasting huge quantities of water" in the form of floods and by letting water escape to the ocean, "completely unused," while central and southern California were regularly facing "critical" water shortages.¹⁴ This view, that all available water could be put to a "productive" use of development and agriculture, controlled by storage to ensure availability throughout the year and to reduce flood risk, ignored ecological needs including in-stream flows, the life cycles of culturally-important anadromous fish, the diverse cultural-ecological systems and stewardship practices of California Indian peoples, and essential legal and political rights of California Native nations.

Brown's 1960 bond would fund the completion of the SWP had already begun with the preparations for construction of Oroville Dam. From Lake Oroville, which flooded Concow Maidu homelands, water would be released to the Delta, and, from the Delta, it would be sent down the South Bay Aqueduct (to serve Alameda and Santa Clara counties) and down the North Bay Aqueduct (to serve Marin, Napa, Sonoma, and Solano counties), south to the San Luis Reservoir, to store water for export to the southern San Joaquin Valley and Southern California, to be pumped over the Tehachapis into the West Branch Aqueduct to serve Los Angeles County and into the East Branch Aqueduct to serve Riverside, San Bernardino, and San Diego counties. The Bond would also fund local water development projects in northern California.¹⁵ Despite the wrangling between state and federal interests at the outset of the SWP, some of the funding for the massive

enabled water transfers, allowing CVP contractors to sell or trade water with SWP contractors, such as Metropolitan Water District (see Boronkay, Carl and Timothy Quinn, (1997) "The Passage of the CVPIA, 1991-1992: The Metropolitan Water District Perspective," Interview by Malca Chall, Regional Oral History Office, Berkeley, CA; and "State Water Resources Control Board: Water Transfer Program Information,"

http://www.waterboards.ca.gov/waterrights/water_issues/programs/water_transfers/docs/transproginfo.pdf

¹² Chapter 1514, Statutes of 1945

¹³ These are State Water Resources Board Bulletins No. 1 ("Water Resources of California), 2 ("Water Utilization and Requirements of California"), and 3, overview available in Division of Water Resources Staff, CA Dept. of Public Works, for the Assembly, CA Legislature, "Water Problems of California and Plans for their Solution," 4/28-30, 1955. Filed in Cooper MS 76/10, Box 8, WRCA.

¹⁴ Brown, Edmond G., "California Water Program Bond Issue," NBC TV and Radio network Broadcast, 1/20/60. Filed in Cooper MS 76/10, Box 8, WRCA.

¹⁵ State of California, Dept. of Water Resources, "The Burns-Porter Act," 8/28/1959. Filed in Cooper MS 76/10, Box 8, WRCA.

SWP came from the federal CVP to contribute to additional flood control to protect agricultural¹⁶ and residential interests in the upper Sacramento Valley.¹⁷

The CVP is a federal project constructed and operated by the Bureau of Reclamation, and consisting of several divisions that including Shasta, Trinity, Sacramento, American, Friant, Delta, and San Luis. The largest facility of the CVP is the 4.5-million-acf¹⁸ Shasta Reservoir on the Sacramento River, which floods northern Wintu homelands and impacts the traditional lifeways of Wintu, Pit River, Shasta, Modoc and other nations who rely on the salmon that used to migrate upstream past the dam, and whose homelands were flooded by the massive reservoirs in the CVP system. The CVP encompasses a 400-mile, statewide network of flood management, hydroelectric generation, and water conveyance infrastructure in the Sacramento and San Joaquin watersheds. Drawing on the waters of Wintu, Hupa, Pit River, Shasta, and Karuk homelands in the north (the McCloud, Pit, Upper Sacramento, and Trinity Rivers and their tributaries), the CVP conveys water all the way to Kumeyaay country (greater San Diego county) in the south. Work began on the CVP in 1937, water began collecting in Shasta and Friant reservoirs in 1943, and the first power was generated from the project in 1944.¹⁹

Winnemem Wintu Tribe²⁰

The Winnemem Wintu originate from the the McCloud River watershed region. *Winnemem* means Middle Water—the McCloud River lies between the upper Sacramento River and the Pit River—and *Wintu* means People—thus, they are the *Middle River People*.²¹ The Winnemem Wintu people believe in a Creator who gave life and breath to all things. The Winnemem Wintu creation story tells of the connection between the Winnemem and the Salmon:

¹⁶ For example, the “Peach Bowl” in the Oroville-Marysville-Yuba City region, see State Water Resources Board (May 1951) “Report on the Feasibility of Feather River Project and Sacramento-San Joaquin Delta Diversion Projects Proposed as Features of the California Water Plan,” filed in the John Stalker Longwell Papers: San Joaquin Delta, Box 13, Issue 30, call number MS 80/12, WRCA.

¹⁷ *Ibid.*, see pages 59 and 63 regarding specifics on the impact of Shasta Reservoir on downstream flood control, and pg. 64 regarding the comparative benefits of the Shasta Reservoir on the Upper Sacramento and the proposed Oroville Reservoir on the Feather and mid- to lower- Sacramento, respectively.

¹⁸ This figure represents the capacity of the dam, not the amount of water it holds at any given time.

¹⁹ SWRB 1951: 17, *supra* note 16.

²⁰ The first and second portions of this section have been adapted from the August 2016 Testimony of Gary Mulcahy, the Governmental Liaison for the Winnemem Wintu Tribe. This testimony was provided to the California State Water Resources Board, and is available at <http://www.restorethedelta.org/wp-content/uploads/2016/08/Gary-Mulcahy-Testimony-SIGNED.pdf>

²¹ The Winnemem Wintu are also known as: Northern Wintoon, Baird Indians, McCloud River Indians, McCloud Wintu, Okwanuchu (a Shasta Indian word for people of the north), Oylaca (un-ratified Cottonwood Treaty of 1851), Wailacca (various spellings meaning northern people), Northern Wintu, Baird Auxiliary and many others, but their traditional name is Winnemem Wintu. Mulcahy, Gary (June 2016), personal communication.

The Creator brought forth the people from a sacred spring on Mt. Shasta. The people were pretty helpless; they couldn't speak and appeared to be generally insignificant. But the Salmon, the *Nur*, took pity on the people and gave them their voice and, in return, the Winnemem promised to always speak for them. Side-by-side, the Winnemem Wintu and the Nur have depended on each other for thousands of years—the Winnemem speaking, caring, and trying to protect the salmon; and the salmon giving of themselves to the Winnemem to provide sustenance throughout the year.²²

Ceremonies, songs, dances, and prayers of the relationship between the salmon and the Winnemem Wintu are intricately woven into the very fabric of Winnemem Wintu culture and spirituality.

The Winnemem ancestral territory includes the east side of the upper Sacramento River watershed, the entire McCloud River and Squaw Creek watersheds, and approximately 20 miles of the Pit River from confluence of the McCloud River, Squaw Creek, and Pit River up to Big Bend. California and the United States have a long history of making water resource management decisions that adversely impact the Tribe's cultural resources, sacred sites, village sites, burial grounds, and subsistence gathering.²³ The Tribe asserts that any and all new water rights allocations are illegal, as the State and federal government have consistently failed to address the inherent water rights of Indigenous peoples including the Winnemem. State and federal actions have destroyed millions of acres of Indigenous cultural lands, including sacred sites, village sites, burial grounds and medicinal gathering areas, by allowing them to be paved, excavated, planted over, dammed, flooded, logged, and polluted.

The proposed raising of Shasta Dam has the potential to destroy the remaining lands and sacred sites of the Winnemem.²⁴ In order to better understand the Winnemem Wintu Tribe's struggle, a struggle for their very existence, this section will provide an overview of the impacts wrought by the construction of Shasta Dam; the legal and political position of the Winnemem Wintu as a result of the taking of their land to develop the CVP; current threats to the Winnemem way of life; and next steps in the continued battle to protect, preserve, and restore the McCloud watershed.

*Winnemem Struggle: Context*²⁵

The Winnemem Wintu Tribe signed a Treaty of Peace and Friendship on August 16, 1851 at Reading's Ranch in Cottonwood. This Treaty promised a 25-square mile reservation which included land along the Pit, McCloud and Sacramento Rivers. This reservation was to be established in consideration for the ceding of all other tribal lands to the Federal Government. However, following lobbying by the State legislature against the treaties, President Millard

²² G. Mulcahy Testimony, August 2016, *supra* note 20.

²³ *Supra* n. 9; and Shasta Dam Fish Passage Evaluation at <https://www.usbr.gov/mp/bdo/shasta-dam-fish-pass.html>

²⁴ Shasta Lake Water Resources Investigation, Environmental Impact Statement, at <http://www.usbr.gov/mp/slwr/index/html>

²⁵ Adapted from G. Mulcahy Testimony, August 2016, *supra* note 20.

Fillmore refused to ratify this treaty, and all of the 17 others signed by California Tribes between 1851 and 1852. The 18 unratified treaties were then hidden for over 50 years, and did not surface again until 1905, after adoption of the Indian Appropriations Act of March 3, 1871,²⁶ which ended treaty making between Native American tribes and the federal government.

Despite never ratifying the treaties, the State of California and the US Government proceeded as if the land had been ceded, leaving the Indigenous populations homeless. The Winnemem Wintu Tribe continued to live along the McCloud River in its ancestral territory. In 1872, the US Fish Commission (now US Fish and Wildlife Service) began construction of a salmon egg collection facility on the McCloud River about two miles above the confluence of the McCloud and Pit Rivers. Livingston Stone, a fish culturist and Deputy Commissioner for the US Fish Commission, developed and directed the salmon egg collection at this new facility. The facility was known as the McCloud River Facility and later as the Baird Fish Hatchery. Livingston Stone had been dispatched to California to procure Pacific salmon eggs for planting into eastern U.S. Rivers, as the native Atlantic salmon stocks had been depleted.²⁷ The Baird Hatchery sent salmon eggs all over the world, including to New Zealand, where no native salmon populations existed. The salmon eventually established in the New Zealand rivers, these native McCloud salmon now thrive there. Meanwhile, the Winnemem are fighting to return wild salmon to the McCloud River, which no longer has salmon as a result of the construction of Shasta Dam.²⁸

Congress authorized the CVP in 1935 (49 Stat. 115) and 1937 (50 Stat. 850), including the authorization to construct Shasta Dam. The 1941 Central Valley Project Indian Land Acquisition Act (Public Law 198) authorized the Secretary of the Interior to designate Indian lands for use in project development, with a provision for payments to the affected tribes and individuals, which would have included the Indians of the McCloud River, the Winnemem Wintu.²⁹ The legislation promised to provide for a new reservation, a cemetery to be placed in trust for the Tribe, and additional resources. However, the federal government ignored its obligation to the tribal people as set forth in the act, leaving many of the Winnemem people homeless, and with no recourse when the government took possession of the land where Shasta Dam now stands. The Winnemem

²⁶ According to the Indian Appropriations Act of Mar. 3, 1871, ch. 120 16 Stat. 466 (1871) (codified at sec. 2079 of the Revised Statutes, now 25 U.S.C. sec. 71(1971)) “No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an Independent nation, tribe, or power with whom the United States may contract by treaty.”

²⁷ US Fish Commission Reports: Stone 1874-1897; www.nefsc.noaa.gov/history/timeline Hedgpeth, Joel W. (July 1941), “Livingston Stone and Fish Culture in California,” in California Fish and Game, “Conservation of Wild Life Through Education” 27(8), San Francisco; also see the *Winnemem Wintu Salmon Restoration Plan: McCloud River*, submitted to the Bureau of Reclamation (BOR) as an alternative to the Draft Pilot Implementation Plan for Shasta Dam Fish Passage Evaluation issued on January 14, 2016. The Winnemem Plan is located online at www.water.ca.gov/fishpassage/docs on the California Department of Water Resources website.

²⁸ Salmon Return; the Story of the New Zealand McCloud Salmon at <http://www.winnememwintu.us/mccloud-salmon-restoration>; Doolittle, Will (Dir.) (2012) *Dancing the Salmon Home*.

²⁹ Central Valley Project Indian Acquisition Act of 1941, 55 Stat. 612

Wintu people have never ceded this land and continue to assert their rights to practice their religion and protect the resources within the watershed.³⁰

Fighting to stop the dam raise and bring the salmon home

For decades the federal government, agriculture interests, development and water agencies in Southern California have proposed a project to raise Shasta Dam. The proposal would raise the dam by 18.5 feet and increase the water storage capacity of Shasta Lake by 634,000 acre feet. Shasta Lake is already California's largest reservoir. Environmental groups and tribes generally oppose the project, while agricultural interests, developers, and water agencies in Southern California generally support the project. The argument in support of the dam raise centers on the need for more water in a drought-ridden state with increasing development, a growing population, and extensive agricultural and industrial sectors.

The dam raise however, will cause a large area along the Shasta Lake shore to flood, and will flood nearly a mile of the McCloud River. The State of California opposes the dam raise as the McCloud River is protected under California's Wild and Scenic Rivers Act. John Laird, the secretary of the California Resources Agency, sent a letter to members of Congress in March 2018 asking that they "not pursue" the project. The federal government, although not having officially authorized the project, did allocate \$20 million for design and preliminary work. Department of Interior Secretary Zinke has put the Shasta Dam raise at the top of the list for water reclamation projects, even though the project violates California state law, would destroy tribal sacred sites, and harm fish and wildlife (specifically salmon and other fish habitat).³¹

The Winnemem Wintu have opposed the proposed dam raise for as long as it has been discussed by proponents. The Winnemem continue this fight today, opposing the federal government's renewed proposal to raise Shasta Dam. The proposed raise of Shasta Dam would likely flood and destroy the remaining Winnemem Wintu sacred places. The Winnemem Wintu people made a sacred promise to protect and defend the Salmon, the sacred places, and the whole of the McCloud Watershed. In 2004, the Winnemem Wintu held the first *H'up Chonas* or War Dance since the 1800s.³² This dance was not so much a declaration of war, but "a sacred promise to protect and defend" the McCloud Watershed, "to resist against the dam raise and the forces that would cause destruction through it."³³

What is it that the Winnemem Wintu made a sacred promise to protect and defend? The War Dance was for the Salmon (*Nur*), the Sacred Places (*Sawal*), and the continued existence, and

³⁰ "At War Against the Dam, Tribe Turns to Old Ways", *New York Times*, September 13, 2004

³¹ June 6, 2018, California State Officials Voice Concerns Over a Federal Plan to Raise the Shasta Dam, Pacific Standard Magazine at <https://psmag.com/environment/the-controversy-around-heightening-the-shasta-dam>; also see Report to the House and Senate Committee on Appropriations, Distribution of Fiscal Year 2017 Funding for Water Conservation and Delivery, Pub. L. 114-322 (Section 4007), Water and Related Resources, Bureau of Reclamation and Discussion of Criteria and Recommendation January 2018.

³² Winnememwintu.us Shasta Dam Raise, see also media coverage listed here: <https://www.indybay.org/newsitems/2012/05/28/18714272.php>.

³³ Calleen Sisk, Chief and Spiritual Leader of the Winnemem Wintu Tribe (2012), *Dancing the Salmon Home* film.

survival of the people (*Winnemem Wintu*). The Winnemem Wintu promised to be the *Nur*'s voice—to bring them home to the McCloud River, and to always fight for their continued survival. The *Nur* are at the very foundation of Winnemem Wintu spiritual and cultural practices. The Winnemem Wintu believe that, when the Salmon are no longer, the people are not far behind. The Winnemem Wintu also promised to protect, preserve and care for these sacred places for all the generations to come. The sacred places teach the Winnemem Wintu how to be good people, how to honor creation, how to live life in a good way, and that all of creation matters. The Winnemem Wintu promised to all the generations that came before and all that will come after to ensure that the Winnemem Wintu spiritual and cultural life ways will have the opportunity to always continue.³⁴

Just as the Winnemem Wintu people promised to protect the salmon, the salmon promised to return to the McCloud watershed. Shortly after the *H'up Chonas* or War Dance occurred in 2004 on Shasta Dam, the Winnemem Wintu people were contacted by the Māori people of New Zealand. The Maori informed the Winnemem Wintu that they had their salmon and were keeping them safe until they could return to the McCloud River.³⁵ Winnemem Wintu representatives traveled to New Zealand to meet with the Maori, to share ceremony and to dance for the salmon's return. The Winnemem Wintu people found their salmon and, in collaboration with the Maori people, are on a journey to "dance the salmon home."³⁶

Shortly after returning from their journey across the Pacific Ocean, the Winnemem Wintu set to work on returning their salmon to the McCloud River. A series of meetings with the Bureau of Reclamation (BOR) and the National Oceanic and Atmospheric Administration (NOAA) representatives occurred in Sacramento and Redding, California. A Memoranda of Understanding was developed that would include the Winnemem Wintu Tribe, the Maori of New Zealand, BOR, and NOAA as signatories. The purpose of the MOU was to have all parties work collaboratively to develop a plan to bring the native salmon that had been transported to New Zealand back home to the McCloud River. Unfortunately, this plan has yet to be realized as, almost a decade later, the Winnemem Wintu people continue to struggle with the internal federal bureaucracy that continues to set policy and promote implementation of plans that work to the detriment of promoting return of wild salmon to the rivers of Northern California.

The Winnemem Wintu Tribe submitted a plan for fish passage and return of the New Zealand Salmon to the McCloud Watershed as an alternative for the BOR plan that relies on hatchery fish and a truck-and-haul system to carry the fish above the Shasta rim dam.³⁷ The Winnemem Wintu Tribe continues to seek a position on the steering committee formed pursuant to the Reasonable and Prudent Alternatives (RPA) in order to ensure that salmon return to the river in the right way. The RPA was adopted as part of the biological opinion that requires the federal

³⁴ *Ibid.*

³⁵ *Ibid* at *Dancing the Salmon Home* (2012).

³⁶ *Ibid*; and see also, "Tribe Travels Across Pacific to Recover Lost Salmon Species" (8/31/2011), *Huffington Post*.

³⁷ Winnemem Wintu Salmon Restoration Plan McCloud River submitted to the Bureau of Reclamation (BOR) as an alternative to the Draft Pilot Implementation Plan for Shasta Dam Fish Passage Evaluation issued on January 14, 2016. The Winnemem Plan is located online at www.water.ca.gov/fishpassage/docs on the California Department of Water Resources website.

agencies (BOR and NOAA) to develop a fish passage program and reintroduce salmon above the Shasta rim dam.³⁸ The federal agencies refuse to acknowledge the necessity of Winnemem Wintu participation in this process, primarily citing to the lack of the Tribe's federal recognition and equating the Tribe to a "public stakeholder".³⁹

The Winnemem Wintu people lost, not only their sacred sites and salmon, but their rights under federal law with the raising of Shasta Dam. The Central Valley Project Indian Land Acquisition Act did not specifically name the Winnemem Wintu people as intended beneficiaries of the Act, and therefore the obligations under the Act became empty promises. Although the Winnemem Wintu Tribe has been acknowledged by the state of California as a Native Tribe, is listed by the California Native American Heritage Commission (NAHC),⁴⁰ and has been recognized by federal agencies as a consulting party on projects within their ancestral territory under Section 106 of the National Historic Preservation Act (NHPA), as well as recognized by the United Nations⁴¹ as having rights to protect their homeland and culture, the federal government continues to leave the Tribe disenfranchised through its refusal to recognize the Winnemem Wintu Tribe as a federally recognized tribe.

The federal refusal to recognize the Winnemem Wintu creates a significant barrier to full participation in the planning and development of the mechanisms for returning salmon to the McCloud River. The federal government continues to negate the importance of the Tribe's participation in the process, and continually forces the Tribe to have to come up with unique and creative strategies to ensure their participation. The Tribe continues to stress the importance of bringing wild salmon home to the McCloud River watershed. The Winnemem Wintu Tribe also insists that the agencies ensure adequate fish passage, allowing the fish to get above the rim dam⁴² on their own without having to rely on truck-and-haul mechanisms. The federal government is proposing a project that would place test populations of hatchery salmon above the rim to see if the fish could survive. However, this plan is flawed and set up to fail from the start. The project

³⁸ See V. Fish Passage Program at <https://www.usbr.gov/mp/bdo/docs/nmfs-action-v-fish-passage.pdf>

³⁹ See letter from BOR to Winnemem Wintu dated March 31, 2015.

⁴⁰ AJR No. 39 Relative to the Winnemem Wintu Tribe, filed with the Secretary of State September 5, 2008; and NAHC Letter of Support of Federal Recognition for the Winnemem Wintu Tribe dated March 24, 2005

⁴¹ Shadow Report submitted by the Winnemem Wintu Tribe in response to the US June 12, 2013 Periodic Report to the UN Committee on the Elimination of Racial Discrimination Concerning the International Convention on the Elimination of all forms of Racial Discrimination, dated May 6, 2014.

⁴² The Federal Guidelines for Dam Safety (Guidelines), Glossary of Terms April 1, 2004 defines a Reservoir Rim as the boundary of the reservoir including all areas along the valley sides above and below the water surface elevation associated with the routing of the IDF [Inflow Design Flood]. See the same for definition of Inflow Design Flood - the flood flow above which the incremental increase in downstream water surface elevation due to failure of a dam or other water impounding structure is no longer considered to present an unacceptable additional downstream threat. The IDF of a dam or other water impounding structures is the flood hydrograph used in the design or evaluation of a dam, its appurtenant works, particularly for sizing the spillway and outlet works, for determining maximum height of a dam, freeboard, and flood storage requirements. The upper limit of the IDFs is the probable maximum flood.

does not include fish passage therefore the fish will have no physical way to swim up the river. The federal government is proposing to place the fish in a truck and transport them up and down the river to get around the dam. This proposal does not allow for fish passage, nor could it result in the development of healthy fish populations. The Tribe believes that the only way to sustain a healthy and viable salmon population is for that population to be able to swim upstream, not be carried.⁴³

The Winnemem Wintu people will continue their work to bring their salmon home despite the obstacles that arise. The Winnemem people know that their survival as a people is connected to the salmon and their obligations to protect one another. With little monetary resources and great perseverance, the Winnemem Wintu people will succeed in bringing their salmon home and keeping their promise to the Nur.

If the Salmon are returned to the McCloud river with a fish passage (swim-way) around the dam—then the promise made by the Winnemem to the Nur in the H’up Chonas will have been fulfilled

If the Sawal—the sacred places can be protected, preserved and placed under the care of the Winnemem Wintu—then the promise made in the H’up Chonas will have been fulfilled. If the Winnemem Wintu once again has tribal land held in their name, unfettered access to Winnemem Wintu Sacred and Cultural sites, and the ability to attain self-sufficiency—then the promise made in the H’up Chonas will have been fulfilled.⁴⁴

Maidu Summit Consortium & Conservancy

Maidu Summit: Context

The Mountain Maidu homeland is located at the headwaters of the north Fork Feather River, encompassing all of present-day Plumas County and parts of Lassen and Butte counties. The land is characterized by a series of mountain valleys, or *koyo*, including Indian Valley, American Valley (*Silom Koyo*), Humbug Valley (*Tasmam Koyo*), and others; mountain peaks; fast-moving, clear streams; and steep timbered slopes. It is a spiritual landscape where one can see markers of the Worldmaker’s journey as he traveled through the canyons, valleys, and mountains to make the world safe for humans.⁴⁵

Mountain Maidu people are not federally recognized as a nation, nor do they have a collective land base. Following the non-ratification of treaties negotiated with California Indians in 1851-1852,⁴⁶ Mountain Maidu people had no recognized land rights, and the principle

⁴³ Supra note 27

⁴⁴ Caleen Sisk, Chief and Spiritual Leader of the Winnemem Wintu Tribe; Supra note 27

⁴⁵ See, for example, Morales, Ron, Steve Camacho, and Viola Williams, eds. (2005) *Creation: As Told by Leona Peconam Morales*. Lassen Yah-Monee Maidu Bear Dance Foundation: Susanville, California; and Theodoratus Cultural Research (October 1986) “Cultural Resources of the Indian Creek Water Power Project: Plumas County, California.” Submitted to Jones and Stokes Associates, Inc., Sacramento, CA.

⁴⁶ According to an account of the history of the Lowry family, in the treaty of 1851, a Kooyonkawi Maidu headman from Oroville area represented the Mountain Maidu without their authorization (English,

opportunities for obtaining land came with applying for land allotments on the public domain following the 1887 Dawes Act,⁴⁷ or receiving Rancheria land purchased with federal appropriations beginning in 1914 (38 Stat. 582-589) and culminating in the 1922 “Purchase of Land for homeless Indians of California” (42 Stat. 559-567). In 1923, the California State Assembly also passed A.B. 1333 to set aside land for the tribes in Plumas, Lassen, and Modoc Counties. These appropriations and bills enabled the purchase of the Taylorsville (1923) and Susanville (1924) Rancherias. The Greenville Rancheria has a different history, in that it is composed of lands originally set aside for the Greenville Indian Industrial Training School.⁴⁸

Today, there are two federally recognized nations that include Mountain Maidu people—Greenville and Susanville rancherias—and tribes petitioning for federal recognition that also include Mountain Maidu people—including United Maidu Nation and Tsi’Akim Maidu. These four entities and five others—three non-profit organizations (Roundhouse Council Indian Education Center, Inc., Maidu Culture and Development Group, and Tásam Kojóm Foundation) and two community organizations (Big Meadows/ Nakam Koyom Maidu Historical Preservation and Mountain Maidu Historical Preservation Association)—joined together in 2002 to create the Maidu Summit (now the Maidu Summit Consortium and Conservancy) to protect the Maidu homeland.⁴⁹ The Summit’s first major effort was to stop vehicular traffic to Homer Lake, a sacred lake near Greenville, California. Beginning in 2004, the Summit became involved in the Pacific Watershed Lands Stewardship Council process, which was overseeing the divestiture of former PG&E lands throughout the state—including approximately 50,000 acres in the Maidu homeland.

History and context of hydropower development

At the turn of the 20th century, when Maidu children were being forcibly taken to boarding schools including the Greenville Indian Industrial Training School in Greenville, California,⁵⁰ and Maidu families were fighting to hang on to allotments authorized in the 1890s but in danger of

Dorette Quintana (March 10, 2004) “Maidu History: One Family’s Story.” *Feather River Bulletin*), however other Maidu recalled that Sihulem/Servilican, the signatory for their region in Treaty G, was, in fact, a prominent headman and authorized to treat on Maidu behalf (2 anonymous interviewees and Farrell Cunningham, personal communication, 2006-2008).

⁴⁷ Over 700 allotments were approved in Plumas and Lassen counties. For a partial history of Mountain Maidu allotments, see Middleton, Beth Rose. “Seeking Spatial Representation: Mapping Mountain Maidu Allotment Lands.” *Ethnohistory* 57(3): 363-387. Summer 2010.

⁴⁸ A 3/25/1960 letter from a U.S. Department of the Interior employee to Herbert Young explains the status of the lands: “...the Greenville Rancheria does not belong to any named Indians...It belongs to the United States and unlike most of the other rancherias in California, it was not originally bought as a homesite for landless Indians; it was set aside for school purposes. When it was no longer used as a school site, the Government allowed the Indians in the area to move onto the land and live there.” Filed in Greenville; Central California Agency; Records of the Bureau of Indian Affairs; Record Group 75; National Archives, Pacific Region [San Francisco], San Bruno, California.

⁴⁹ See, for example, Middleton, Beth Rose. “Recognition and Restitution: the Maidu Summit Seeks PG&E Lands.” *Regeneration*, 7(2): Summer 2007.

⁵⁰ See, for example, Lippard, Lucy R. (1999) “Judith Lowry: Aiming for the Heart,” in *Illuminations: Paintings of Judith Lowry*. Wheelwright Museum of the American Indian: Santa Fe: pgs. 33-34; and Giles-Rankin, Juliann Elizabeth (1983) *An Ethnohistorical Reconstruction of the Greenville Indian Industrial School*. Master’s Thesis: California State University, Chico: pg. 5.

trespass and cancellation for timber and hydroelectric development,⁵¹ the founders of Great Western Power Company filed for water rights in Big Meadows and the upper Feather River Canyon, and incorporated as a company.⁵² From 1900 to 1930, when it became PG&E, Great Western Power Company steadily developed the infrastructure that would form the basis of the State Water Project, including the series of dams and power plants in the North Fork Feather River Canyon.

The federal and state governments were also interested in the potential of developing these Sierra streams; in 1901 the US Geological Survey began gauging flows on the Feather River⁵³ and calculating the impact of the upstream diversions and initial impoundments.⁵⁴ In 1931, the State Engineer formally recommended the construction of Oroville dam,⁵⁵ and by 1941 the Legislature had adopted the plan.⁵⁶ Studies continued in the 1940s, California Department of Water Resources (DWR) sought funding in the 1950s and began initial land acquisitions, and the project was funded with the 1959 California Water Resources Development Bond Act.⁵⁷ Throughout the process, the efficiency of the State Water Project was examined based upon maintaining the maximum amount of power generation via PG&E. In fact, one study galvanized support by documenting the amount of power that could have been generated and water that could have been made available for irrigation if Oroville dam had been in place 1921-1947.⁵⁸

PG&E continued to grow steadily throughout the 1950s, reporting record-high operating revenues,⁵⁹ and referring to its hydroelectric system as "...the largest investor-owned hydroelectric system in the United States."⁶⁰ The Company also continued to work closely with both the federal and state governments, and the agreement to manage the power (inputs and outputs) supporting the Central Valley Project was extended from the original 1951-1959 period to 1971. The relationship between governments and the Company was a delicate one, as the Company relied on a favorable regulatory environment. PG&E also faced concern from some members of the public

⁵¹ See, for example, Middleton 2010, *supra* note 45.

⁵² For an overview of this history, see Coleman 1952, *supra* note 3.

⁵³ SWRB 1951: 21, *supra* note 16.

⁵⁴ SWRB 1951: 23, *supra* note 16.

⁵⁵ Bulletin No. 25, Division of Water Resources, 1931 report to the California State Legislature.

⁵⁶ SWRB 1951: 3, *supra* note 16.

⁵⁷ CA Stats. 1959, ch. 1762

⁵⁸ SWRB 1951: 32, 36, *supra* note 16.

⁵⁹ PG &E, "Report of the Directors of PG&E: To the Stockholders," in PG&E Annual Report 1954, dated 2/18/1955. Filed in JS Longwell (MS 80/12), Box 1, folder 2.4; PG&E. "Highlights of the Year's Operations," in PG&E Annual Report 1956. Filed in WRCA, Hans Albert Einstein (MS 80/8), Box 5, folder 15.2; "To Our Stockholders," in *Pacific Gas and Electric Company, Annual Report 1959*, dated 2/18/1960: pg. 3.

⁶⁰ Pacific Gas & Electric Company, "Feather River Development," circa 1957, WRCA, Hans Albert Einstein (MS 80/8), Box 5, folder 15.2.

that publicly funded systems should not benefit quasi-private utility companies.⁶¹ Indeed, it was PG&E's complex relationship with the State that led to the Company's bankruptcy proceedings in 2000.

Specifically, in 1996, the Gov. Pete Wilson administration attempted to transition California utilities into a more competitive market structure, allowing other energy providers to enter the market to sell power to the regulated utilities (such as PG&E) at market price. These regulated utilities became concerned that the generating costs of some of their facilities would exceed their revenue in this new system.⁶² When the cost of wholesale power went up in 2000, but PG&E was not able to raise its rates, the company declared bankruptcy in 2001, citing millions of dollars in unrecovered power costs.⁶³ Prior to, and as part of its proposed reorganization strategy, PG&E proposed to sell 142,000 acres of watershed lands that were non-essential to utility operations. Following opposition from numerous parties, including government agencies and non-profit environmental groups concerned about the potential development of these lands, US Bankruptcy Judge Dennis Montali ordered the California Public Utilities Commission and PG&E into negotiations,⁶⁴ resulting in the negotiation of a Modified Settlement Agreement in 2003, which led to the creation of the Pacific Watershed Lands Stewardship Council to oversee the Land Conservation Commitment⁶⁵ aspect of the Settlement.

Under this Land Conservation Commitment, PG&E is required to place conservation easements on 140,000 acres of watershed lands not essential to power production, and to donate 44,000 of those acres for conservation and public benefit. The "public benefit" is specified in six beneficial public values, or BPVs: protection of natural fish, wildlife and plant habitat; preservation of open space; public outdoor recreation; sustainable forestry; agriculture; and preservation of history. A total of 53,185 acres of PG&E land in this process are located in Upper Feather River Planning Unit, which includes portions of Plumas, Lassen, Butte, and Tehama counties, all within the Maidu (Mountain Maidu in the upriver portions and Concow Maidu in the lower north fork Feather River canyon and near Lake Oroville) homeland. These lands include those surrounding the reservoir sites of Mountain Meadows, Lake Almanor, Butt Valley, and Bucks Lake, and power operation sites in the Feather River Canyon.

Working to reclaim Maidu homelands and waters

⁶¹ See, for example "Searchlight on Central Valley!" Statement of Mrs. Grace McDonald, Executive Secretary, California Farm Research & Legislative Committee, to House Committee on Government Operations Sub-Committee on Public Works and Resources, Honorable Earl Chudoff, Chairman, 1955. Filed in Malca Call Research Collection, issue/copy 62, Water Resources Center Archives, University of California, Riverside.

⁶² See *Southern California Edison v. Peevey* (August 21, 2003), 31 CAL. 4TH 781, 74 P.3D 795, UTIL. L. REP. P 26, 855, 03 CAL. DAILY OP. SERV. 7580, 2003 DAILY JOURNAL D.A.R. 9474.

⁶³ See also CNN Money, "PG&E Seeks Bankruptcy," 4/6/2001.

⁶⁴ McHugh, Paul (4/2/2004) "Monumental deal for PG&E land / 140,000 acres of utility's upper watershed to be protected for wildlife, outdoor enthusiasts," SF Gate.

⁶⁵ "Opinion Modifying the Proposed Settlement Agreement of PG&E Company, PG&E Corporation and the Commission Staff, and Approving the Modified Settlement Agreement." Decision 03-12-035. December 18, 2003, before the Public Utilities Commission of the State of California.

Both the federal Central Valley Project and California's State Water Project stopped the passage of salmon from the Sacramento Valley up to the spawning grounds on the Feather, McCloud, Pit, and other rivers. According to a 1996 letter from Lorena Gorbet and Thomas Merino on behalf of the Maidu Culture and Development Group (MCDG):

There is a general agreement among the Maidu people that a great deal of damage has been done by the construction of the powerhouses and dams in the Feather River Canyon and the Maidu people, especially, have lost a part of a way of life. We also realize the damage in the watershed area by misuse and mismanagement of the land, water, plants, and animals. A part of the circle of life for the Maidu was the annual trek to the canyon for the harvesting of salmon and eels. Besides the loss of the fish, eels, turtles, river otters, beavers, etc., is the loss of the ceremonies and religious sites associated with the harvesting. When we lost the salmon habitat we lost the spiritual relationship that existed with the salmon. We have also lost other food animals within the watershed (bears, cougars, etc.) who used the salmon as a food source.⁶⁶

The Maidu Summit is working to restore aspects of that way of life by bringing together dispersed Maidu families, organizations, and federally and non-federally recognized tribes to regain title to former PG&E lands surrounding Lake Almanor and in the Humbug Valley, which was once proposed for hydropower but was never flooded. These Maidu homelands provide a place for Maidu land stewardship and the practice of Maidu culture without fear of eviction or retaliation.

The Maidu Summit submitted an initial proposed land management plan to the Stewardship Council in 2006, a Statement of Qualifications in 2009, incorporated as a nonprofit organization under California law in 2010, and continued to respond to Stewardship Council requests for additional documents and activities to prove "capacity" to take title to and manage the land in accordance with the BPVs.⁶⁷ In November 2013, the Stewardship Council voted to recommend donation of 2,325 acres of Humbug Valley to the Maidu Summit Consortium, and this was followed by subsequent votes to transfer an additional 684 acres around Lake Almanor/ Big Meadows to the Summit.⁶⁸ These lands will be subject to conservation easements held by Feather River Land Trust and, in the case of Humbug, also the California Dept. of Fish and Wildlife,⁶⁹ but

⁶⁶ Letter from Lorena Gorbet, MCDG Steering Committee Member, and Tommy Merino, MCDG Steering Committee Chair, to Plumas National Forest Supervisor Mark Madrid, regarding the USFS 4E Conditions: PG&E Rock Creek-Cresta Power Project No. 1962 North Fork of the Feather River, Plumas County, dated August 26, 1996.

⁶⁷ For additional overview of this history, see Little, Jane Braxton (March 13, 2014) "Return to Humbug Valley: An unusual partnership leads to the Mountain Maidu reclaiming a piece of their ancestral homeland," *Chico News and Review*.

⁶⁸ Pacific Watershed and Lands Stewardship Council, "Status of Donated and Retained Land Transactions," updated 5/2/2018, http://www.stewardshipcouncil.org/documents/land_conservation/Summaries/Status%20of%20Retained%20and%20Donated%20Transaction%205-2-18.pdf

⁶⁹ Pacific Watershed and Lands Stewardship Council, "Recommended Conservation Easement Holders as of September 20, 2017,"

the fee title will be invested in the Maidu Summit. This will be the first time in history that land has been transferred to a collective Maidu group.⁷⁰

Maidu Summit co-founder Farrell Cunningham described the potential of these lands, once back in Maidu hands, as follows:

The Maidu Summit envisions these lands as a vast and unique park dedicated to the purposes of education, healing, protection, and ecosystem management, based upon the Maidu cultural and philosophic perspectives as expressed through traditional ecology.⁷¹

Current Maidu Summit Executive Director Kenneth Holbrook, guided by a Board of Directors that includes elected representatives of each of the nine Maidu Summit member organizations, is working to fulfill this vision and develop the Tásmam Kojóm Maidu Cultural Park. Holbrook emphasized the importance of the development of a new model of collaborative, Maidu-led land stewardship in an August 2016 meeting of the Environmental Resource Group, a convening of partners (including representatives from federal and state agencies, as well as members of the Maidu Summit) to support the Summit's development of the Land Management Plan for Humbug Valley/ Tasmam Koyom:

Here's a great opportunity for the rest of world to see—Western science can work with Traditional Ecological Knowledge...there is so much opportunity for mutual learning and teaching...What we are doing here will support opportunities for co-management throughout the rest of California.⁷²

With funding from the Stewardship Council, the Summit and consultants Ascent Environmental completed an extensive Land Management Plan for Tásmam Kojóm in 2017 in accordance with Council requirements. The process of transferring the entire 3,009 acres (Tásmam Kojóm and parcels around Lake Almanor) to the Summit transfer is proceeding and the organization hopes to see the transfers finalized in 2019. According to Beverly Ogle (Maidu, Pit River), longtime steward of Tásmam Kojóm/ Humbug Valley and Maidu historian: "This gives me the urge to go out and

http://www.stewardshipcouncil.org/documents/land_conservation/Summaries/Summary%20of%20Recommended%20CE%20Holders.pdf

⁷⁰ As journalist Jane Braxton Little wrote in a 6/20/2018 Sacramento Bee article, "The unanimous recommendation by the Pacific Forest and Watershed Lands Stewardship Council marks the first time ancestral lands in California have been returned to a Native American tribe not recognized by the federal government."

⁷¹ Maidu Summit Consortium (July 2011), *Maidu Summit Consortium Land Management Plan Proposal for North Fork Feather River Planning Unit (Round 2)*: 6. Mountain Maidu *yeponim* Farrell Cunningham, who wrote the initial land management plans, passed away in August 2013, just months before the Stewardship Council voted to donate the lands to the Maidu Summit Consortium in November 2013. The Maidu Summit portion of this narrative is dedicated to his memory.

⁷² Holbrook, Kenneth (8/18/16), Maidu Summit Environmental Resource Group Meeting 1, Chester, California.

tell the valley – the forest, the birds and the meadow – that Humbug Valley is once again Maidu land.”⁷³

Medicine Lake - *Saht Tit Lah*

Located in far northeastern California, the Medicine Lake volcanic caldera and surrounding forested Highlands feed the headwaters of the CVP. The Pit River Nation in Northern California has always held Medicine Lake or *Saht Tit Lah* as one of their most sacred places. The Medicine Lake Highlands rests within the Cascade Range in Northern California, northeast of Mount Shasta and south of Klamath Falls.⁷⁴ The Pit River Tribe, Karuk Tribe, Wintu Tribes, Shasta Indian Nation, and Modoc and Klamath Tribes of Oregon maintain important cultural and spiritual connections for time immemorial to the Medicine Lake Highlands. The Pit River Tribe creation story tells of the Creator and his son bathing in the lake after creating earth, thus leaving behind some of Creator’s power in the water of the Lake,⁷⁵ giving it powerful healing properties. The Pit River people -- Is 'Awe continue to honor Medicine Lake as a spiritual place intricately connected to their traditional and spiritual life ways.

The Bureau of Land Management (BLM) and United States Forest Service (USFS) decision to permit the Calpine Energy Corporation Geothermal Project threatens the Medicine Lake Highlands. This project was partially funded by the California Energy Commission, and, if built, would create a network of geothermal power plant facilities to produce electricity to export to Bonneville Power Administration for consumers primarily in Idaho, Oregon and Washington. The federal public land managers (USFS and BLM) charged with stewardship of the Medicine Lake Highlands have now approved (since 1996) energy leases and development to Calpine Energy Corporation that will allow a wholesale transformation of this sacred landscape into a sprawling industrial production complex dominated by towering emission plumes, continuous industrial noise and lighting, and hundreds of miles of electrical lines, piping, fencing, and roads.

The Medicine Lake Highlands

Medicine Lake Highlands (MLH) is roughly 200 square miles, includes portions of the Modoc, Klamath, and Shasta-Trinity national forests, and encloses a large volcanic landscape formed by eruptions of the Medicine Lake Volcano⁷⁶ roughly 11,000 years ago. This Volcano is the largest identified volcano within California, and recognized by the National Forest Service as one of the

⁷³ Quoted in Little, Jane Braxton (11/21/2013), “Maidu Group Poised to Regain Ownership of Ancestral Land,” Sacramento Bee.

⁷⁴ The Medicine Lake Highlands, California USA – Sacred Place, Submitted by the Pit River Nation and its Allies, attached to letter from the Pit River Tribe to Chairman Donaldson of the Advisory Council on Historic preservation dated February 25, 2013.

⁷⁵ See Presentation to California State Agencies, by Morning Star Gali, Tribal Historic Preservation Office, dated April 25, 2016; and *Medicine Lake Highlands Historic Properties Management Program: Including a Cultural Assessment and Guidelines for Management* (HPMP) April 2007:20.

⁷⁶ HPMP 2007: 2-8.

most unique and diverse geologic features in North America.⁷⁷ The Pit River Tribe has and continues to hold cultural and historic ties to the MLH, in particular the Ajumawi and Atwamsini bands.⁷⁸

Two general areas define the MLH, which are distinguished by elevation; the Caldera and the Central Highlands. The Caldera consists of approximately 33,000 acres, rests at the highest elevations, and contains most of the area identified as a Traditional Cultural District in 1999 by the federal government. It surrounds Medicine Lake and includes a number of water bodies used for spiritual cleansing and healing by the Pit River people. Vast buttes and mountains within the Caldera represent power places for the Pit River people. Traditional resource gathering and spiritual activities within the Caldera are also associated with the unique geologic features and obsidian glass flows.⁷⁹ Twenty-one individual properties within the Caldera have been deemed eligible for the National Register. These individual properties contribute to the cultural significance of the area, allowing for its designation as a National Register District. The California State Historic Preservation Office (SHPO), the Advisory Council on Historic Preservation (ACHP), and the Keeper of the National Register (the Keeper) all concurred on the determination of the Caldera's eligibility for the National Register, and considered the extent of the District recognized "to be only a minimum representation of the potential extent of the 'area of traditional cultural significance.'"⁸⁰ The Central Highlands consists of approximately 73,000 acres of land surrounding the Caldera that slope down to 6000' in elevation. This area is contained within the Area of Traditional Cultural Significance and considered part of the Cultural Assessment that led to development of the Historical Properties Management Plan (HPMP).⁸¹ The HPMP is the result of a MOA between the federal agencies and the Tribe.

The MLH is considered one of the most important centers of ceremonial life for the Pit River people. The Pit River people historically utilized the MLH as an economic, spiritual, and ceremonial center. The Pit River people refer to the MLH as the "place where all the water comes from." Indeed, this is the area where the wellspring forms the headwaters of the Pit River which flows into the Sacramento Rivers. This traditional territory is the heart of the Pit River people and cannot be replaced; harm to this place equates to harm to the people themselves. The Pit River creation stories tell how the Creator made the world from Mount Shasta and left instructions on how to live in the features of the Medicine Lake Highlands. Archeological evidence indicates continuous habitation for over 10,000 years by Indigenous peoples. The Pit River people have been entrusted with the responsibility to protect this sacred territory and will continue to do so.⁸²

Euro-Americans first entered the area in 1826. Conflict between tribes and Euro-Americans came to a head during the Modoc War from 1872-1873. In 1887, Congress enacted the Dawes Act with a goal to end tribal governments and assimilate Indigenous peoples into American

⁷⁷ Visitor Guide to the Medicine Lake Highlands Volcanic Area, McCloud Station, Shasta-McCloud Management Unit, Shasta-Trinity National Forest.

⁷⁸ *Supra* note 75.

⁷⁹ *Supra* note 76.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² Gemmill, Mickey (April 25, 2016), conversation with and presentation to California state agencies.

society by breaking up tribal land basis that were held communally. Individual Pit River people received public domain allotments pursuant to the Act, but many of these parcels were lost to timber and hydroelectric companies, and ranching interests. PG&E in particular pursued and acquired much of the Pit River Tribal lands from 1917-1930.⁸³

In 1919, the Pit River Tribe sought to regain their lost land through filing suit in federal court. In 1946, Congress adopted the Indian Claims Commission Act, authorizing Tribes to file monetary claims for the unlawful taking of their land without just compensation.⁸⁴ In 1958, the Indian Claims Commission recognized the Pit River Tribe's land claim of 100 miles square; the Pit River Tribe's ancestral territory. The Indian Claims Commission urged California tribes to accept a compromise settlement as compensation for this lost land. The Pit River people opposed the settlement, continue to assert its illegality, and continue to recognize and maintain their right to jurisdiction over the land, water, and resources within the 100-mile-square area of their ancestral territory, including the Medicine Lake Highlands.⁸⁵

The Medicine Lake Volcano Aquifers: An Important Source of Water for California

The Medicine Lake Highlands hold a critical source of water supply for California. The volcanic rock surface of the MLH absorbs the regional snowmelt which cumulatively contributes to the roughly 20-40 million acre-feet of stored groundwater beneath the MLH. This water percolates rapidly along the volcanic mountains as shallow groundwater, feeding California's largest spring water system, the Fall River Springs,⁸⁶ which flows into the Pit River and then into Shasta Lake Reservoir. From Shasta Lake, this water then travels down the Sacramento River and into the California Aqueduct, to be conveyed throughout California.⁸⁷ This water is unlike other major water supplies in California, as it is available in both wet and dry years.⁸⁸ This data supports the Pit River saying that the MLH is "where all the water comes from."

⁸³ HPMP 2007: 20.

⁸⁴ The Pit River Tribe's claim can be found at the Indian Claims Commission (ICC) Docket 347.

⁸⁵ The Pit River Tribe's ancestral territory includes areas in what today is recognized as the Modoc, Klamath, Lassen, and Shasta-Trinity national forests, and Modoc and Siskiyou counties, California. See the Pit River Tribe Constitution; Indian Claims Commission Docket 347; HPMP 2007: 20-27; and Gali 2016 (*supra* note 75).

⁸⁶ According to Dr. Robert Curry, author of the Hydrogeological Report, the Fall River Spring flows (1-1.4 million acre-feet of water annually) are amongst the largest in the world, and extremely important to the baseline quantity and quality of California's water supply. Based on current data reviewed by Curry, as much as 80% of the precipitation in the MLH recharges groundwater that feeds directly to Fall River Springs. The MLH groundwater provides almost half of the drought year monthly total flows from the Pit River to Shasta Lake.

⁸⁷ *California's Water Future, Hydrogeological Report on the Risks to the Medicine Lake Volcano Aquifers Associated with Geothermal Development* by Robert Curry, Registered California Geologist (3295), University of California emeritus professor, March 2014 (Hydrogeological Report).

⁸⁸ *Ibid.*

This critical water supply stored in the MLH is at risk of depletion and contamination if geothermal development occurs in the MLH. The development of geothermal resources requires pumping of water from water-supply wells to production wells and to circulate the water in order to recover steam. The MLH has no sustainable surface water supply, nor does it have a reliable groundwater source as the water supply within the region (snowmelt) is carried through a groundwater system that supplies water to the Fall River Springs. In order to develop a geothermal power source in the MLH, Calpine has proposed to inject hydrofluoric and hydrochloric acids into the production wells under high pressure, forcing the acids into clay-filled fractures in the hot volcanic rocks.⁸⁹ Hydrofluoric acid is extremely toxic and has the potential to contaminate local, regional, and statewide water supply.

In addition, the data utilized by Calpine and the BLM to assess the geothermal proposal is outdated. Curry's Hydrogeological Report concludes that additional data and assessment concerning geothermal development must occur in order to protect the underground aquifer. The evidence appears to support the premise that the initial reports relied upon by Calpine and BLM are insufficient and do not adequately reflect the potential for adverse impacts in the region. This is true not only because of the new data identified since the 1990's, but also due to the significant increase in the size of the proposed project from two 49.9 MW plants to several plants producing approximately 480 MW.⁹⁰ Curry's Report concludes that there is no adequate baseline information for inclusion in a new EIS/EIR that would address the expanded project scope of 480MW. The MLH water resources represent a critical component of California's overall water resources. A complete and unbiased assessment of the potential to contaminate or deplete this critical resource must occur prior to any development of geothermal resources in the MLH.

The Medicine Lake Highlands Historic Properties Management Plan

In the mid-1980s, the BLM issued leases for geothermal development in the Medicine Lake area. The BLM subsequently renewed the leases in 1998. Pursuant to the National Environmental Policy Act (NEPA) two environmental impact statements (EIS) for the Fourmile Hill and Telephone Flat geothermal projects within the Medicine Lake Highlands were prepared by the BLM. The agencies conducted a Section 106 review of both projects, resulting in a memorandum of agreement (MOA) signed in 2000. Through the MOA, the Forest Service and BLM initially denied the Telephone Flat geothermal project. However, the Fourmile Hill project was permitted

⁸⁹ According to Dr. Curry's report and the EIS prepared by the BLM.

⁹⁰ The Hydrogeological Report recommends the following research needs prior to any further consideration of geothermal development in the MLH: evaluation of the amount of recharge that supplies the Fall River Springs in order to assess sources and risks; evaluation of sources and volumes of groundwater for geothermal drilling and steam production; evaluation of technical assessments regarding contamination possibilities of MLH, Modoc Plateau, McCloud River, and Fall River Springs; evaluation of potential for cross-contamination between deeper zones of acid-injection and/or induced fracture permeability to the shallower groundwater aquifers and the Fall River Springs; development of regional water balance models, including drought periods and above normal snowfall periods that encompass various source area concepts (Fall River Springs sources, eastern McCloud River sources, Modoc Plateau contributions, etc.); and the creation and implementation of a thorough pre-project monitoring plan. *Supra* note 87.

to go forward. In 2002, the Bush administration reversed the denial of the Telephone Flat project, granting Calpine the authority to move forward despite the significant adverse impacts to the MLH.

The Modoc National Forest took the lead in pursuing the determination of eligibility. In 1999, the Keeper formally recognized as eligible for the National Register 21 interconnected sites located both in and near the Medicine Lake Caldera as the Medicine Lake Area Traditional Cultural Places District.⁹¹ The Keeper designated the District as consisting of a minimum size of 22,000 acres and recommended that the Forest Service make an inquiry into the extent of important traditional places within the MLH. An additional determination was made in 2005 recognizing the entire MLH uplift above 6,000 feet in elevation as eligible for the Federal Register, an area of approximately 73,000 acres (about 113 square miles).⁹² The Medicine Lake Area Traditional Cultural Places District meets criteria for listing, both because of importance in spiritual beliefs and practices for local tribes, and its historical importance in American Indian economies related to trade in obsidian.⁹³

Eligibility for the MLH was finally achieved in response to the proposed Fourmile Hill and Telephone Flat geothermal developments. However, the newly designated eligibility would not allow for an automatic exclusion of geothermal development.⁹⁴ The MLH remain threatened by the Calpine Energy Corporation proposal to build a network of geothermal power plant facilities to produce electricity for export. The federal public managers charged with stewardship of the MLH have now approved (since 1996) 66 square miles of energy leases and development (Calpine Energy Corporation) that will allow a wholesale transformation of this sacred landscape.

These proposed geothermal developments would introduce large-scale, polluting, fragmenting and unsightly industrial elements into this natural area valued for its beauty, geological uniqueness, silence and purity—all qualities that are essential to the spiritual and cultural practices of the impacted Indigenous Nations. The findings of the environmental reports determined that geothermal mining in the Medicine Lake region would result in the release of toxins, such as hydrogen sulfide, arsenic, mercury and other carcinogens into the environment. These toxins have the potential to result in adverse health outcomes for exposed populations, including kidney damage and cancer. The Indigenous people who continuously return to the environment for religious, cultural, and ceremonial purposes will have disproportionate levels of exposure. The Pit River Nation and other affected Indigenous Peoples did not provide free, prior and informed consent to geothermal development; a violation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).⁹⁵ The Pit River people oppose the proposed violation of their Sacred Medicine Lake Highlands.⁹⁶

⁹¹ Gali 2016, *supra* note 75.

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ United Nations General Assembly (resolution adopted September 13, 2007), *United Nations Declaration on the Rights of Indigenous Peoples*.

⁹⁶ Gali 2016, *supra* note 75.

Recognizing the Importance of the Medicine Lake Highlands

The threat of geothermal development in the MLH in the 1990s led to an effort led by the Pit River People, other local tribes, and supporting organizations to protect MLH.⁹⁷ Despite this listing in the Federal Register, Calpine Corporation and the BLM⁹⁸ continued to pursue authorization for geothermal exploration in the Medicine Lake Highlands. Geothermal exploration in this sensitive area means destruction of the Lake and the Highlands. The area would be closed off to the Native people, the water would likely be contaminated with toxic pollutants, and plant and wildlife in the area would be harmed in the development process. Even though the federal government's own assessment determined geothermal would cause significant adverse impacts that could not be mitigated to this unique and sensitive landscape, the BLM continued to insist on allowing geothermal development in the MLH. As a result of a MOA signed in 2000 between the BLM, USFS, the California State Historic Preservation Office, and the Pit River Tribe, the *Medicine Lake Highlands Historic Properties Management Program: Including a Cultural Assessment and Guidelines for Management* (HPMP) was finalized in 2007, but this was not adequate to stop development. In order to protect this sacred place, the Pit River Tribe, along with other northern California tribes and environmental groups, filed suit in federal court against the BLM, US Dept. of the Interior, USFS, US Dept. of Agriculture, and Calpine Corporation.⁹⁹

The Tribe filed two lawsuits, one in 2002 and one in 2004, in the Federal District Court, Eastern District of California seeking to invalidate BLM's lease extensions to Calpine Corp. The District Court initially ruled against the Pit River Tribe. On appeal, the Ninth Circuit of Appeals reversed the District Court finding that BLM did have discretion in granting the lease extensions and therefore must first comply with the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and its fiduciary trust obligations to the Tribe.¹⁰⁰ The second action brought in 2004 by the Tribe challenged BLM's 1998 decision to extend 26 non-producing leases by 40 years (*Pit River v. BLM*, Case No. S-04-0956, E.D. Cal., filed May 17, 2004, *Pit River II*).¹⁰¹ The District Court granted the defendants' (BLM, DOI, USFS, USDA, and Calpine) motion for summary judgment. In granting the motion for summary judgment, the District Court held that the Pit River Tribe lacked standing to bring suit under the Geothermal Steam Act, 30 U.S.C. sections 1001-1028; and that the 40-year lease additions were automatically mandated by the Geothermal Steam Act. The Court also held that BLM had no discretion to issue the extensions

⁹⁷ 2005 California Geothermal Summit, PIER Consultation Report, California Energy Commission, November 2005, <http://www.energy.ca.gov/2005publications/CEC-500-2005-176/CEC-500-2005-176.PDF>.

⁹⁸ The BLM is the permitting agency for geothermal development.

⁹⁹ *Pit River Tribe v. Bureau of Land Management*, case number 13-16961, D.C. No. 2:04-cv-00956-JAM-JFM.

¹⁰⁰ *Pit River v. U.S. Forest Service*, 469 F.3d 768, 780-88 (2006) (*Pit River I*).

¹⁰¹ This case was consolidated with a third case brought by the Save Medicine Lake Coalition and Medicine Lake Citizens challenging the same 1998 decision by the BLM.

therefore NEPA, the NHPA, and the federal government's fiduciary trust responsibility were not applicable.¹⁰²

The Ninth Circuit Court of Appeals again reversed the District Court finding that the Tribe did have standing to bring its action against the defendants. The Ninth Circuit declined to rule on the merits of the Tribe's claims and directed the District Court to rule on the Tribe's Geothermal Steam Act claims.¹⁰³ Upon remand, the District Court granted the Pit River Tribe's summary judgment motion on its first cause of action. The court also ordered the parties to submit briefing on the proper remedy. After considering the parties' briefs, the Court held that the extension of the 26 leases in Glass Mountain Geothermal Unit of the MLH for up to 40 years was vacated. However, the Court remanded to the BLM the decision of whether to extend or cancel the 26 leases. The Court held that, to the extent BLM reconsiders extension of the leases, it must do so in accordance with the 2015 Ninth Circuit Court of Appeals decision.¹⁰⁴

This litigation has been ongoing for years without resolution. In fact, the most recent ruling of the District Court has the potential to start a whole new round of litigation with no certainty in sight for the Tribe. The Tribe technically won in the District Court on remand, however the District Court granted BLM's request to have the matter remanded to the agency—essentially, the court granted BLM a “do-over” which provides the Agency an opportunity to correct any errors in its prior decision that would likely withstand further judicial scrutiny. The BLM could issue a ministerial approval without any environmental review, or tribal consultation under section 106 of the NHPA.¹⁰⁵

Next Steps: The Battle to Save Medicine Lake Continues

The Pit River Tribe has not only pursued justice in the US court system, but also at the United Nations. The Tribe submitted a petition to the UN Committee on Human Rights requesting that the United States honor its agreement to abide by the UNDRIP. The United States as a party to UNDRIP should honor its promise to respect the rights of Indigenous peoples to continue their way of life, to afford Indigenous peoples the right to prior informed consent as to development within their traditional areas, and to respect Native religions.

The Tribe has also sought assistance from the Bureau of Indian Affairs (BIA) and requested that the BLM cancel all leases in the MLH, recognize its cultural significance to the Pit River Tribe and other northern California tribes, and to provide for meaningful co-management of the MLH. To date, these matters are unresolved, however the Tribe will continue to fight for the protection of the MLH. This may mean another 20-year court battle.

The destruction caused or threatened to be caused by non-Indigenous peoples over a short period of time has the potential to destroy a unique and irreplaceable resource that has evolved

¹⁰² *Pit River Tribe v. BLM*, Case No. S-04-0956 (E.D. Cal, filed May 17, 2004).

¹⁰³ *Pit River Tribe v. BLM*, 793 F. 3d 1147 (9th Cir. 2015)

¹⁰⁴ See *Pit River Tribe v. BLM*, Case No. 2:04-cv-00956 Order re: Cross Motions for Summary Judgment and Remedy Order, dated August 1, 2016.

¹⁰⁵ See Letter to Chairman Donaldson, Advisory Council on Historic Preservation from Tribal Chair Dolores Raglin, regarding United Nations Declaration on the Rights of Indigenous Peoples and the National Historic Preservation Act of 1966 dated February 25, 2013, *supra* notes 3, 26, and 27.

over a million years. This resource includes a critical water supply for the state of California. In order to sustain life, our governments must prioritize preservation of natural resources and sacred places.

Conclusion: Holding the Headwaters

Critical race scholars Eve Tuck & Wayne Yang define decolonization as necessarily including “the repatriation of land.”¹⁰⁶ Following Fanon,¹⁰⁷ Tuck & Yang remind us that coming to critical consciousness—to *seeing* that there are other ways of seeing the land and one’s self in relationship to it and understanding that settler “objectivity” is merely veiled epistemological and material colonization—is just the first step. We cannot become self-congratulatory once we simply understand that what is happening is wrong. The second step, to undo the trajectory of attempted colonialism, is an actual un-settling of accepted institutions and arrangements: “Until stolen land is relinquished, critical consciousness does not translate into action that disrupts settler colonialism.”¹⁰⁸

These three case studies of Winnemem, Maidu, and Pit River struggles at the headwaters of some of the largest state and federal water projects in the nation exemplify both the ongoing impacts of settler colonialism, and pathways to decolonization. From the settler colonial framework that established the projects to “reduce waste” of water into the ocean and build up the industrial and population centers of California, or to create new sources of power for users within and out of state, there has been no regard to Indigenous land and water rights, responsibilities, and continuance. As such, all of these projects result in ongoing Indigenous displacement and ecological catastrophe (the latter including warming streams, declining water quality, and species extirpation). We also see Maidu, Pit River, and Winnemem leadership--regionally, nationally, and internationally--in the development of innovative solutions that repatriate land to communities that have never left and offer specific plans for comprehensive ecological restoration efforts from cultural, place-specific perspectives.

Necessarily, a de-colonizing approach to these water and geothermal projects interrogates the framing of public values and the processes of scientific decision making that perpetuate them as institutions. The water and energy management planning that guided the build-out and ongoing expansion of the SWP and the CVP, and later, the geothermal projects at the MLH, all rely on limited assumptions of benefit to a narrow segment of the public, while ignoring the cultural and community survival of California’s first peoples, as well as the importance of California’s unique ecology and geology. Even when Indigenous land and water rights have been briefly recognized by settler institutions, the results have been limited. For example, in 1953, the Dept. of the Interior responded to the Federal Power Commission and the Water Project Authority of the State of CA regarding Feather River Project (License 2100) near Oroville. The Interior endorsed the project as it had in 1952, and responded to two of the Authority’s stipulations, one of which dealt with leaving enough water for fisheries downstream, and the second dealt with compensation for damage to

¹⁰⁶ Tuck, Eve, and K. Wayne Yang (2012) “Decolonization is not a Metaphor,” *Decolonization: Indigeneity, Education, and Society* 1(1): 7.

¹⁰⁷ Fanon, Frantz (1963) *The Wretched of the Earth*. Grove Press: New York.

¹⁰⁸ Tuck & Yang 2012: 19.

Indian lands. Regarding the latter point, compensation for Indian lands was to be provided for two specific parcels affected by Oroville Reservoir: one held by Enterprise Rancheria and the other by an individual allottee. The BIA was to survey and appraise these lands and then take steps to compensate the owners, with the Secy. of the Interior's approval. Such a narrow notion of affected Indian lands and required compensation meant that changes to land and culture would continue to be wrought by SWP without compensation to Indian people suffering the project impacts.¹⁰⁹

On June 11, 1959, PG&E Chief Engineer and Asst. to the Vice President Joe Bonner gave a talk entitled "Teamwork in Water Work" to the Commonwealth Club of California. He noted that "Water conservation got its start in the Sierras with the gold rush to the Mother Lode"¹¹⁰—unbeknownst to him this statement is accurate for the ways in which water manipulation and conveyance associated with the colonial violence of the Gold Rush period extends from past to present. The seizure and transformation of the state's water resources that began during the Gold Rush continues with present-day water infrastructure, which severely hampers Indigenous decolonization of the landscape.

With a focus on Maidu, Pit River, and Winnemem Wintu organizing and advocacy in a context of willful disregard for Indian land and water rights, we highlight their leadership in offering alternative perspectives on the proper stewardship of the headwaters of the nation's largest water and power conveyance systems—California's CVP and the SWP. The spiritual, cultural, ecological, economic, and political impacts of these projects continue to be profound and far-reaching. However, even in the face of such adverse institutions, California's first peoples continue to hold the headwaters. Maidu, Pit River, and Winnemem peoples uphold their commitments to protect non-human and human relatives and continue to resist ongoing efforts at colonization.

¹⁰⁹ Letter from Fred G. Aandahl, Acting Secretary of the Interior, to Mr. Jerome F. Kuykendall, Chairman, Federal Power Commission (November 5, 1953). Filed in Erwin Cooper papers, MS 76/10, Box 8, WRCA.

¹¹⁰ Bonner, John F. (6/11/1959) "Teamwork in Water Work," presented to the Section on Water Problems, Commonwealth Club of California. Filed in JS Bain papers (Folder 14), WRCA.