

RESOLUTION OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION

WHEREAS, it has come to the attention of the Tribal Council of the White Mountain Apache Tribe that there are seven applications for water rights or for the adjudication of priorities to water rights, to which the United States is a party, pending in various state district courts of the State of Colorado which have been combined for trial by a special master sitting at Glenwood Springs, Colorado. The first of said matters of litigation is entitled "In the Matter of the Application for Water Rights of the United States of America, in the District Court in and for Water Division No. 4, W-425 through W-438," and

WHEREAS, a final pre-trial order has been entered in said consolidated cases identifying the issues to be determined including numerous issues which could be seriously detrimental to Indian water rights if decided contrary to the position of the United States in said state courts and unless it were made abundantly clear that such determinations are not applicable to Indian water rights, and

WHEREAS, for example, some but not all of the issues stated in the pre-trial order which could have such serious adverse effects upon Indian water rights are.

1. Issue 4a, "Whether the United States may be granted a water right based on reservations from the public domain".
2. Issue 4c, "Whether the claims of the United States for reserved rights must be limited to the express purposes for which the reservation was made".
3. Issue 4e, "Whether the reserved rights doctrine permits or requires the granting of decrees for unspecified, unquantified future uses or purposes, or for uses or purposes not beneficial under Colorado law"
4. Issue 4f, "Whether the reserved right extends to certain uses, non-governmental or proprietary in nature".
5. Issue 4g, "Whether the uses and purposes for which the United States may be awarded a reserved water right, having a priority date as of the date of the reservation date, may include uses and purposes which were not extant at the time of the reservation". (This is particularly important).
6. Issue 4h, "Whether the United States may be awarded a reserved water right, having a priority date as of the reservation, for a quantity of water which was not in use at the time of the reservation?. (This also is of utmost importance).

7. Issue 6c, "Whether, if Federal law does exist and may be applied by a Colorado Court, the claims of the United States must be obtained in conformity with the laws of the State of Colorado or may be established in conformity with Federal law". (This also is of utmost importance).
8. Issue 6d, "Whether any claim of the United States in these proceedings entitles the United States to a priority date antedating the priorities of water rights previously adjudicated in the same Water District or Water Division". (Also important).
9. Issue 6e, "Whether the United States may be granted a water right for an open-ended or unquantified right to the use and benefit of water which may be needed at some future time, but the needs for which are not now known or anticipated by it".
10. Issue 6g, "Whether the United States has initiated an appropriation under Colorado law as to any water right claimed where the water has not been diverted and used or where the requisite intent to divert and use water has not been shown."
11. Issue 6h, "Whether for each water right claimed the United States must identify the specific point of diversion and state the amount diverted or to be diverted at such point".
12. Issue 6j, "Whether the United States must demonstrate due diligence or reasonable diligence, prior to the time of adjudication in the construction, completion or financing of a project, structure or water interest upon which its claims are based". (This again is of utmost importance).

There is also importance to issues 6k, 6l, 7e, 7f, and 7g, and

WHEREAS, despite the fact that no Indian lands or Indian water rights are directly involved in said combined cases, it is certain that the resolution of those issues will be argued as applicable to Indian rights to the extent that any of them are determined adverse to the interests of the United States as is evidenced in Appendix "A" to Motion to Dismiss filed with the Motion to Dismiss on behalf of the Colorado River Water Conservation District in United States of America v. Akin, et al., Civil Action No. 4497 in the United States District Court for the District of Colorado, a suit also filed by the United States for adjudication of water rights in the southwestern portion of the State of Colorado which in fact does involve Indian water rights and other claimed reserved rights of the United States and where, on pages 18 and 19 of said appendix, it is argued in effect that Indian rights claims are on the same basis as other claims of the United States for reserved rights, and

WHEREAS, it is the position of this Council that Indian water rights are not the same as rights reserved by the United States for other uses as clearly evidenced by the rationale employed by the United States Supreme Court in the landmark case of Winters v. United States, 207 U. S. 564 and as the doctrine of that case has been understood and applied in other instances. See particularly, Conrad Investment Company v. United States, 161 Fed. 829 (Ninth Cir., 1908), Skeem v. United States, 273 Fed. 93 (Ninth Cir., 1921), The United States v. McIntire, 101 F.2d 650 (Ninth Cir., 1939), United States v. Powers, 305 U.S. 527 (1939), The United States v. Walker River Irrigation District, 104 F.2d 334 (Ninth Cir., 1939), United States v. Ahtanum Irrigation District, 236 F.2d 321 (Ninth Cir., 1956), 330 F.2d 897, Cert. Denied, 381 U.S. 964. and

WHEREAS, the full nature and scope of Indian water rights was also considered by the court in Arizona v. California, 376 U.S. 340 (1964). and

WHEREAS, from these decisions it is clear that Indian water rights stem from the original ownership and control by Indians of the lands and waters and find their legal origin in the reservation to them of those waters and not by reason of any grant to them by the United States or by reason of any ownership or control of those waters by the United States, the Indian right to the use of water being a proprietary right of their own to be distinguished sharply from any concept of the reservation of waters by the United States for its governmental or public purposes.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Secretary of the Interior advise the Attorney General of the United States of the urgency of this matter and of its great importance to Indian people generally and that the said Attorney General take every step available to

1. Insure that, in the above-mentioned case pending in the Colorado State District Courts, it is not only recognized that Indian lands and waters are not involved but also that the decision on any issues contrary to the position of the United States is not binding on Indian lands or water rights, and
2. Insure that, in the above-mentioned case pending in the United States District for the District of Colorado, the differentiation between Indian water rights and other reserved rights of the United States is made clear and that the two types of rights are separately adjudicated.

The foregoing resolution was on March 7, 1973 duly adopted by a vote of 10 for and 0 against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (f) and (i) of the Amended Constitution and By-Laws of the Tribe, ratified by the Tribe June 27, 1958 and approved by the Secretary of the Interior on May 29, 1958, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).



Leo Johnson Sr.
ACTING Chairman of the Tribal Council

Mary C. Confield
Secretary of the Tribal Council