

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

- WHEREAS, the White Mountain Apache Tribe has been named a defendant in an alleged and purported general adjudication involving the rights to the use of water in Salt River entitled, Salt River Valley Water Users Association v. White Mountain Apache Tribe, et al., Maricopa County Superior Court No. W-1, presided over by the Honorable Stanley Z. Goodfarb, and
- WHEREAS, the White Mountain Apache Tribe has refused to enter an appearance in the above entitled and numbered action on the grounds that, inter alia, the Superior Court of the State of Arizona lacks jurisdiction over the Tribe to determine its water rights, and
- WHEREAS, in defiance of the resolution of the Tribal Council of the White Mountain Apache Tribe, the Department of Justice of the United States Government has appeared in the Superior Court for the purported express purpose of presenting the water claims of federal agencies and beneficiaries for Indian tribes including the White Mountain Apache Tribe, and
- WHEREAS, the position of the Justice Department by agreeing to submit itself and the White Mountain Apache Tribe to a state forum is contrary to the water rights' interests of the White Mountain Apache Tribe, and
- WHEREAS, the Justice Department has betrayed its fiduciary duty to the White Mountain Apache Tribe by failing to agree with the White Mountain Apache Tribe that it has a Winter's right in the water of the Salt River and its tributaries to the extent of its practicable irrigable acreage as determined by the White Mountain Apache Tribe, and
- WHEREAS, it is the position of the White Mountain Apache Tribe that there has been no taking or violation of the Tribe's Winter Doctrine rights in the Salt River and its tributaries, and
- WHEREAS, the White Mountain Apache Tribe is well aware of the fact that the Secretary of the Interior in 1903-1910, undertook the construction of the Salt River Federal Reclamation Project, and
- WHEREAS, there is evidence in the record that the Secretary of the Interior, or some of his personnel, have proceeded on the basis that the Tribe's rights to the use of water was committed for use in the Salt River Project, and
- WHEREAS, the Tribe is concerned that the Secretary of the Interior is presently undertaking the construction of the Central Arizona Federal Reclamation Project and on behalf of that project is likewise claiming substantial quantities of water from the Salt River, and

- WHEREAS, it is assumed that the Department of Justice is primarily representing the Secretary of the Interior and the Secretary of Agriculture, who administers the national forest, and
- WHEREAS, based on all of the above it is abundantly manifest that there is a striking conflict of interest within the Department of Justice, which is purportedly representing both the White Mountain Apache Tribe and adversary claimants to substantial quantities of water of the Salt River Stream System, and
- WHEREAS, the White Mountain Apache Tribe because of this inherent conflict of interest which it regards to be in flagrant violation of the canons of ethics for attorneys in that the Justice Department is representing conflicting claims in the state court water rights litigation, and
- WHEREAS, for that reason the White Mountain Apache Tribe has refused to file a notice of appearance or a notice of intention to file a claim, and
- WHEREAS, the Honorable Stanley Z. Goodfarb, the presiding state court judge in the water rights litigation, issued an order on February 23, 1981, requiring Indian tribes, such as the White Mountain Apache Tribe, to file a notice of appearance and a notice of intention to file a water rights claim by June 1, 1981, and
- WHEREAS, under the terms of Judge Goodfarb's order, an Indian tribe such as the White Mountain Apache Tribe which does not so commit itself to the jurisdiction of the state court by June 1, 1981, is thereafter foreclosed from asserting any claim in that state water adjudication proceeding, and
- WHEREAS, there is no legitimate state objective or any valid benefit to be achieved by requiring the Indian tribes to make a quick election, and
- WHEREAS, the United States Justice Department is not required to file claims on behalf of Indian tribes until January 4, 1982, and
- WHEREAS, until these claims are presented the Indian tribes cannot know whether they will be adequately presented, and
- WHEREAS, it is obvious that the only real purpose to be served by requiring the White Mountain Apache Tribe to appear on June 1, 1981, is to force the Tribe into the case before the Tribe can decide whether it should be in the case or not thereby causing the Tribe irrevocable harm without reason, and
- WHEREAS, the mandate from Judge Goodfarb forces the White Mountain Apache Tribe to make a fatal election before it can make the election intelligently, said dilemma being compounded by the inherent conflict of interest within the Justice Department which also represents water rights interests antagonistic to those of the White Mountain Apache Tribe, and

WHEREAS, Judge Goodfarb has also ordered that the tribes cannot file claims on January 4, 1982, or at any time, unless they file a notice of intention to do so by June 1, 1981, and

WHEREAS, the White Mountain Apache Tribe is deeply apprehensive at the prospect of litigating its most valued property rights before a state forum based upon the history of persistent encroachment and attempts therefore by the State of Arizona against the water rights of various tribes throughout the State of Arizona, and

WHEREAS, this official policy is evidenced at this time by a pending lawsuit by the Governor of Arizona against the Secretary of the Interior arising from official state resentment over the manner in which the Secretary has allocated Central Arizona Project water between the State's Indian and Anglo citizens by a suit filed with the Attorney General's Office of the State of Arizona, and

WHEREAS, the State Supreme Court has designated as a judge for this Salt River litigation one who previously worked for many years as an Assistant State Attorney General, and

WHEREAS, the Department of the Interior, which owes the highest fiduciary duty to the White Mountain Apache Tribe, had refused to date to state in writing or otherwise, that it has or will instruct the Department of Justice not to make an appearance for or file a claim on behalf of the White Mountain Apache Tribe by June 1, 1981, as mandated by Judge Goodfarb, and


WHEREAS, the Department of the Interior's refusal to so instruct the Department of Justice not to file a claim or a notice of appearance on behalf of the White Mountain Apache Tribe on June 1, 1981, constitutes a gross violation of that Department's fiduciary duty to the White Mountain Apache Tribe and places the Tribe in an extremely dangerous position whereby its Winter Rights may be severely damaged in and irrevocably lost, and

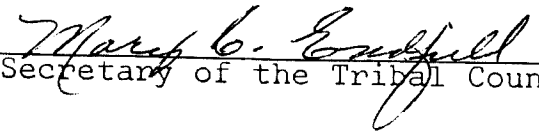
WHEREAS, the Tribal Council of the White Mountain Apache Tribe finds itself compelled to take legal action in order to protect the very future existence.

BE IT RESOLVED that the Tribal Council of the White Mountain Apache Tribe hereby directs special counsel for the Tribe, Mr. William H. Veeder, to take all appropriate action, including but not limited to administrative or judicial actions, against the Attorney General of the United States Government and the Secretary of the Department of the Interior, in order to prevent them from unlawfully submitting the White Mountain Apache Tribe's Winter Rights to a hostile state forum to be represented by the Department of Justice which suffers an irreconcilable conflict of interest because of its allegiance to elements within the Department of the Interior antagonistic to the water rights of the White Mountain Apache Tribe.

The foregoing resolution was on May 13, 1981, duly adopted by a vote of 9 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 (a, d, f, i and u) 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).

  
Chairman of the Tribal Council

  
Secretary of the Tribal Council

REsolution No. 81-111