

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

WHEREAS, William H. Veeder, Water Rights Attorney for the White Mountain Apache Tribe, on May 22, 1981, pursuant to a Resolution of the White Mountain Apache Tribal Council, filed a lawsuit against William French Smith, Attorney General of the United States and James G. Watt, Secretary of the Interior for the purpose of enjoining the United States Government from subjecting the extent of the water rights of the White Mountain Apache Tribe to be decided by the Arizona State Court in Maricopa County, State of Arizona; and

WHEREAS, William H. Veeder was directed to file the foresaid lawsuit by Resolution No. 81-111 for the reasons set out in said resolution which is attached hereto and incorporated by reference; and

WHEREAS, a hearing was held in the United States District Court for the District of Columbia to determine whether or not a temporary restraining order should issue against the Attorney General and the Secretary of the Interior prohibiting them from purporting to represent the Water Rights of the White Mountain Apache Tribe in the litigation designated W-1 presently in the Arizona State Court in Maricopa County, State of Arizona; and

WHEREAS, Steven E. Carroll, an Attorney with the Department of Justice Land and Natural Resources Division, representing both the Attorney General of the United States of America and James G. Watt, Secretary of the United State of America Department of Interior, during the hearing for a temporary restraining order, made representations to the Judge of the United States District Court for the District of Columbia, in Civil No. 81-1205, that the Department of Justice would not file a claim or appearance on behalf of the White Mountain Apache Tribe by June 1, 1981, as instructed to do so by the Honorable Stanley Goodfarb; and

WHEREAS, because of this verbal representation made by Justice Department Attorney, Steven E. Carroll, to the Judge of the Federal District Court, the Court decided that a temporary restraining order was not necessary and therefore did not issue a restraining order against the Defendants, Attorney General of the United States and James G. Watt, Secretary of the United States Department of Interior, to restrain them from making an appearance or otherwise subjecting the water rights of the White Mountain Apache Tribe to the Arizona State Court in Maricopa County; and

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WHEREAS, the Tribal Council believes that it is mandatory that its Water Rights Attorney, William H. Veeder, bring this misrepresentation, betrayal of the fiduciary duty, and damaging legal position of the Department of Justice to the attention of the District Court of the District of Columbia; and

WHEREAS, the Tribal Council is further convinced that the history of the legal relationship between the U.S. Government and the Indian Tribes as evidenced by the lack of advocacy by the Justice Department for the Indian Tribes because of political considerations necessitates non-legal as well as a staunch legal advocacy of its position in regards to the protection of its WINTERS RIGHTS.

BE IT RESOLVED BY the Tribal Council of the White Mountain Apache Tribe that it hereby directs its Attorney, Williams H. Veeder, to pursue aggressively and vigorously the protection of its water rights in whatever forum he is compelled to appear before in order to protect those rights.

BE IT FURTHER RESOLVED that William H. Veeder, Attorney for the White Mountain Apache Tribe is further directed to pursue whatever appeals are necessary from any adverse rulings in the District Court of the District of Columbia if any, should occur, be it an appeal to the Circuit Court of Appeals or to the United States Supreme Court in order to protect the most precious rights and indeed the very future existence of the White Mountain Apache itself.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs its Attorney, William H. Veeder, to bring to the attention of the congressional delegation the abject deceit and legal sophistry engaged in by the Department of Justice and the profoundly unethical conflict of interest perpetrated by the Department of Justice and the Department of Interior in its attempt to extinguish forever the WINTER RIGHTS of the White Mountain Apache Tribe.

The foregoing resolution was on June 2, 1981, duly adopted by a vote of eight for and zero against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in

WHEREAS, contrary to the representations made by Steven E. Carroll, Justice Department Attorney, to the Federal Judge of the United States District Court for the District of Columbia, he has infact filed in the water adjudication proceeding known as W-1, in the Superior Court of the State of Arizona, a response to that Court's Order of February 23, 1981, giving notice to the court a list of Federal Agencies and Indian Tribes for which it may file claims in the W-1 Proceedings including the Water Rights and Claims of the White Mountain Apache Indian Reservation, the exact wording of which is herein set out in IN HAEC VERBA:

"IN THE SUPERIOR COURT FOR MARICOPA COUNTY  
COUNTY, STATE OF ARIZONA"

IN RE:

A general adjudication of the right to use water in the Salt River Watershed above Granite Reef Dam, excluding the Verde River tributary No. W-1: Response of the United States to the Court Order of February 23, 1981.

The United States files this response to this Court Order of February 23, 1981, which required the United States to submit a list of..."agencies, beneficiaries, and others bearing a relationship to the United States"... for which the United States would ultimately file a claim in this proceeding.

The United States by filing this document does not concede that this Court has jurisdiction over the United States, its agencies, beneficiaries, or others bearing a relationship to the United States, since this action may well not conform to the requirements of 43 USC 666, the McCarran Amendment. The United States would also point out that the doctrine of Tribal sovereign immunity, as explicated in the case of Santa Clara Pueblo vs Martinez, 436 US 49 (1978), would oust this Court of jurisdiction over the Indian Tribes listed herein.

The United States is still troubled by the scope of this proceeding. There has been no definitive statement by petitioner or the State of Arizona concerning what geographic area and what interest in water -surface and sub-surface - are intended to be adjudicated herein. Until such a definitive statement is made, the United States is powerless to challenge the jurisdiction of the Court, since we cannot assert that this is not a general adjudication until we know what is to be adjudicated.

Given these uncertainty's the United States supplies the following list of Federal agencies and Indian Tribes for which it may file claims in these proceedings:

United States of the Interior

- (1) Bureau of Land Management
- (2) Water & Power Resources Service
- (3) National Park Service
- (4) Fish & Wildlife Service

Department of Defense

- (1) United States Air Force
- (2) United States Army

Department of Agriculture

- (1) National Forest Service

Indian Reservations

- (1) San Carlos Apache Indian Reservation
- (2) White Mountain Apache Indian Reservation
- (3) Tonto Apache Indian Reservation
- (4) Fort McDowell Indian Reservation
- (5) Yavapai Prescott Indian Reservation
- (6) Salt River Indian Reservation

- (7) Gila River Indian Reservation
- (8) Gila Bend - Papago Reservation
- (9) Akchin - Pima-Maricopa Indian Reservation
- (10) Camp Verde Indian Reservation

Depending upon the geographic scope of these proceedings, and depending upon the interests to be adjudicated herein, the United States may or may not make claims on behalf of all the entities listed above.

The United States will file claims for the Indian Reservations listed for the United States' legal interests as a trustee of the water rights of the respective reservations. The Indian Tribes have separate equitable interests in the water rights of their reservations. The United States believes that certain of the Indian Tribes may file claims in this proceeding which may differ from the claims that the United States will make for its interest as trustee."

END

and,

WHEREAS, in the above response filed by Steven B. Carroll, on behalf of the United States, he states that "The United States will file claims for the Indian Reservations listed for the United States' Legal interests as a Trustee of the Water Rights of the respective reservations. The Indian Tribes have separate equitable interests in the water rights of the Indian Reservations. The United States believes that certain of the Indian Tribes may file claims in this proceeding which may differ from the cliams that the United States will make for its interest as Trustee", (emphasis supplied); and

WHEREAS, the Justice Department by arguing the above is stating that there is a difference between the legal title and equitable title to the water rights of the White Mountain Apache Tribe; and

WHEREAS, this is contrary to the legal arguments set forth by Steven B. Carroll, Attorney for the Department of Justice in his Motion to Dismiss the Lawsuit filed by the White

Mountain Apache Tribe against the Attorney General of the United States and the Secretary of the United States Department of Interior, on Page 12 of said Motion, beginning at Line 21 through 25 in which he made the following argument: "This would lead to the extinguishment of the Tribe's beneficial interest as well, since it has been held that if the United States interest and trust property is adjudicated, the beneficial interest of either Tribe is adjudicated as well. Citing United States vs. Candelaria 271US.432 (1926)": and

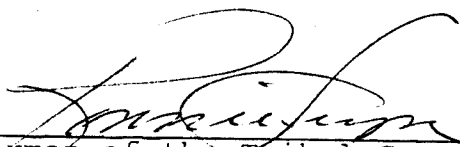
WHEREAS, said legal arguments above filed by Justice Department Attorney Steven Carroll wholly contradicts the statement he made when he filed his response and list of Agencies and Tribes which he purported to represent in the W-1 proceeding; and

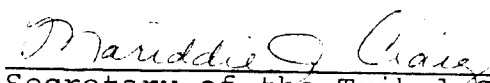
WHEREAS, the Tribal Council of the White Mountain Apache Tribe hereby publicly condemns the legal sophistry, trickery, and deceit practiced by the Department of Justice on the District Court for the District of Columbia by misrepresenting to that court that it would not file a claim on behalf of the White Mountain Apache Tribe then subsequent to said hearing filed a claim on behalf of the White Mountain Apache Tribe in the W-1 proceedings; and

WHEREAS, the Tribal Council further deplores the legal position taken by the Justice Department before the District Court for the District of Columbia in which it argues that the legal and beneficial interest of the Water Rights of the White Mountain Apache Tribe and the U. S. Government are inseparable and that extinguishment of one extinguishes the other when contrary to that position it files a claim before the State Superior Court in the State of Arizona in the W-1 proceedings and purports to argue that the legal Title held by the United States Government is infact separate from and different from the equitable interest in the Water Rights held by the White Mountain Apache Tribe; and

WHEREAS, the Tribal Council concludes that such contrary legal positions are typical of the type of legal representation that the Justice Department has given to the White Mountain Apache Tribe and other Indian Tribes throughout the United States and throughout the history of the relationship between the United States Government and the various Indian Tribes and Nations throughout the United States; and

it by Article V, Section 1 (a), (f), (i), (t), 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

ACTING   
Secretary of the Tribal Council

RESOLUTION NO. 81-144

Resolution No. 81-111

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

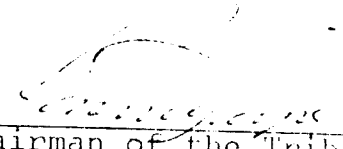
WHEREAS, the Department of the Interior's refusal to so instruct the Department of Justice not to file a claim or a notice of appearance on behalf of the White Mountain Apache Tribe on June 1, 1981, constitutes a gross violation of that Department's fiduciary duty to the White Mountain Apache Tribe and 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

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WASHINGTON, D.C.

  
Secretary of the Tribal Council

REsolution No. 81-111