

RESOLUTION OF THE WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION, WHITERIVER, ARIZONA

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JUL 23 1982

PLANNED SECRETARIAL VIOLATION OF
WHITE MOUNTAIN APACHE SALT RIVER RIGHTS

FORT APACHE INDIAN
AGENCY
WHITERIVER, ARIZ

CAP Environmental Impact Statement Premised
Upon False And Fraudulent "Sequence"

WHEREAS, There has been issued by James G. Watt, Secretary of the United States Department of Interior, through that Department's Bureau of Reclamation, the "Final, Environmental Impact Statement, Water Allocations & Water Service Contracting, Central Arizona Project," hereafter referred to as the "CAP Environmental Impact Statement"; and

WHEREAS, Under the heading "Summary: I. PURPOSE AND NEED," it is declared that:

The Secretary of the Interior proposes to allocate waters developed by the Central Arizona Project (CAP) and to enter into water service contracts for the delivery of such water. Through a system of pumping plants, canals, dams, and reservoirs, the CAP will deliver Arizona's remaining entitlement to Colorado River water as well as develop locally available surface waters from the Gila River and its tributaries; 1/ and

WHEREAS, The Salt River and its tributaries are the principal affluents of the Gila River, which the Secretary proposes to "develop" as part of the supply of the Central Arizona Federal Reclamation Project for which the available Colorado River water is grossly deficient; and

WHEREAS, It is likewise declared in the CAP Environmental Impact Statement that "estimates as to the availability of Colorado River water had to be made" and that "Differences exist between the Arizona Department of Water Resources (DWR) and the Bureau of Reclamation (Bureau)," Department of Interior. Among other things, it is further declared that:

It was agreed that a Bureau sequence [whatever that means] would be used to estimate water availability, provided that the chosen sequence produced a long term average supply approximating the DWR [Arizona Department of Water Resources] estimate. The sequence chosen for this EIS produces a long term average Colorado River water availability of 1,298,000 acre-feet per year; 2/ and

1/ CAP Environmental Impact Statement, at p. 1. (Emphasis supplied).

2/ Ibid., "II. DISCUSSION OF ALTERNATIVES."

WHEREAS, In sharp contradiction to the "sequence chosen... of 1,298,000 acre-feet," in a document entitled "Summary Of Bureau Of Reclamation Reservoir Operation And Water Supply Studies [Averages for 60-year period 1906-65, inclusive, in thousands of acre-feet]," it is declared that, in the year 2030, there will be available 723,000 acre-feet annually, which figure is further qualified by this statement made by the Bureau of Reclamation:

Although the average yield under year 2,030 condition would be 723,000 acre-feet, the assured yield would be less than 1/2 of this figure and would be devoted to municipal and industrial use; 3/ and

WHEREAS, The hydrological investigations of the White Mountain Apache Tribe, respecting the availability of water for the Central Arizona Project from the Colorado River reveal that, for the period from 1930 through 1982, the average quantity of water available at Lee Ferry was from 27% less than the figures officially adopted by the Bureau of Reclamation, which figures, although bloated, are manifestly more accurate than those used by the Bureau of Reclamation in the CAP Environmental Impact Statement, to which reference is here made; and

WHEREAS, The White Mountain Apache Tribe has been advised that a Secretarial decision has been made as follows:

The Secretary of the Interior has elected to allocate waters developed by the Central Arizona Project (CAP) and to proceed with water service contracting with Indian and non-Indian users for the delivery of Arizona's remaining entitlement to Colorado River water. This decision allocates 309,828 acre-feet annually of water for Indian use and 640,000 acre-feet annually for municipal and industrial (M&I) use, with the remaining supply for non-Indian agricultural use; and

WHEREAS, Adhering to the false "sequence," utilized in the CAP Environmental Impact Statement, an equally false and fraudulent Secretarial allocation of CAP water among the Indian Tribe is to be as follows:

1/ See, Senate Report No. 408, 90th Congress, First Session, Central Arizona Project, dated June 26, 1967; see, also, Senate Miscellaneous Reports of Public Bills, Senate Report Nos. 273-466, 90th Congress, First Session, at p. 36. (Emphasis supplied).

CAP WATER ALLOCATIONS
 INDIAN COMMUNITIES

Units: Acre-feet

<u>Entity</u>	<u>Irrigation</u>	<u>Tribal Homeland</u>	<u>Total</u>
Ak Chin	58,300		58,300
Camp Verde		1,200	1,200
Fort McDowell		4,300	4,300
Gila River	173,100		173,100
Papago-Chuichu	8,000		8,000
Papago-San Xavier		27,000	27,000
Papago-Schuk Toak		10,800	10,800
Pasqua Yaqui		500	500
Salt River	13,300		13,300
San Carlos	2,700	10,000	12,700
Tonto Apache		128	128
Yavapai		500	500
Total	255,400	54,428	309,828

WHEREAS, It is indisputable that, in making the allocation to Indian tribes on the mainstream of the Salt River, the Verde River and the Salt River Groundwater Basin, the Secretary must necessarily be committing Salt River water, both now and in the future, which violates the prior and paramount rights of the White Mountain Apache Tribe in the Salt River and the tributaries of that stream; and

WHEREAS, It is equally clear that the Secretary of Interior, by reason of the gross deficiency of Colorado River water for the Central Arizona Federal Reclamation Project, is likewise committing to non-Indian water users Salt River water, the rights to which reside in the White Mountain Apache Tribe;

White Mountain Apache Tribe Holds Title To Salt River Rights To The Use Of Water With A Priority Date From Time Immemorial To Meet Its Present And Future Water Requirements, Which Secretary Watt Intends To Violate

WHEREAS, The White Mountain Apache Tribe holds full equitable title to the Fort Apache Indian Reservation, carved out of the Tribe's ancient tribal homeland; and

WHEREAS, The White Mountain Apache Tribe holds full equitable title to rights to the use of water in the Salt River and its tributaries, which arise upon, traverse, border or underlie the Fort Apache Indian Reservation with a priority from time immemorial and in quantities sufficient to meet the Tribe's present and future water requirements to maintain an economically viable reservation in perpetuity; and

WHEREAS, The White Mountain Apache Tribe has at all times rejected the efforts of the Secretaries of Interior to negotiate away, bargain, sell, diminish, violate or denigrate the Tribe's invaluable and life-sustaining rights to the use of water in the Salt River and its tributaries, and has successfully resisted all attempts of the Secretary of Interior to force upon the Tribe negotiated settlements in connection with the Central Arizona Federal Reclamation Project; and

WHEREAS, The White Mountain Apache Tribe has rejected and continues to reject any effort on the part of the Secretary of Interior, the Attorney General or the staffs of those officials to in any way act in regard to the Tribe's rights to the use of water in the Salt River and its tributaries; and

WHEREAS, Both the Secretary of Interior and the Attorney General have been put fully on notice that the Tribe will take all necessary action to preserve and protect its rights to the use of water against invasion by those officials, directly or indirectly;

Present Secretarial Plans For CAP Accentuate Threat To
The Tribe From The Grossly Erroneous "Water Rights
Claim Of The United States As Trustee For The White
Mountain Apache Tribe"

WHEREAS, The CAP Environmental Impact Statement, the facts upon which it is predicated and the intention manifested by Secretary Watt to commit Indian rights to the use of water in the Salt River and the Gila River for use in connection with the Central Arizona Federal Reclamation Project accentuate and underscore the threat that there will be used by the Secretary against the Tribe the flagrantly erroneous "Water Rights Claim Of The United States As Trustee For The White Mountain Apache Tribe," which "Water Rights Claim" was prepared by subordinate employees of the Attorney General and the Secretary of Interior; and

WHEREAS, On repeated occasions, the White Mountain Apache Tribe has demonstrated the errors in the "Water Rights Claim" and has petitioned the Court in the case of United States v. White Mountain Apache Tribe, Civil No. 81-1606-PCT-VAC, to grant the Tribe's the right to be heard in regard to its "bad faith" charges against the Secretary of Interior and the Attorney General arising from the "Water Rights Claim"; and

WHEREAS, The Department of Justice vigorously objects to the "bad faith" hearing in the case of United States v. White Mountain Apache Tribe, while continuing to assert the validity of the "Water Rights Claim," which the Tribe is prepared to prove is flagrantly erroneous; and

WHEREAS, If the "Water Rights Claim" or the data upon which it is predicated is utilized in constricting the Tribe's Salt River rights for the benefit of the Central Arizona Federal Reclamation Project, the Tribe will suffer irreparable and continuing damage;

Conflicts Of Interest Permeate The Conduct Of Secretary James G. Watt And Attorney General William French Smith And Their Staffs, Precluding Them From Taking Action In Regard To The Tribe's Salt River Rights

WHEREAS, The White Mountain Apache Tribe, by repeated resolutions and letters directed to the Secretaries of Interior and the Attorneys General, has stressed that conflicts of interest permeate the conduct of those officials, precluding them from exercising authority in regard to the Tribe's Salt River rights to the use of water; and

WHEREAS, The United States Court of Appeals for the Ninth Circuit, in the recent Northern Cheyenne decision, 4/ under the heading "Conflicts of Interest," specifically declared, citing the Manygoats decision and others, that the conflicts of interest preclude the Secretary of Interior and the Attorney General from acting in regard to the rights of the Tribe under the circumstances prevailing here; 5/ and

WHEREAS, It would be grossly improper, under the prevailing circumstances, for the Secretary of Interior, the Attorney General or the staffs of either of those officials to take any action that would in any way affect the Salt River rights to the use of water of the White Mountain Apache Tribe; and

WHEREAS, The White Mountain Apache Tribe specifically places the Secretary of Interior and the Attorney General on notice that they and their staffs will be held personally liable for monetary damages if they undertake to act in regard to the Tribe's Salt River rights under the prevailing circumstances; and

4/ 668 F.2d 1080, 1089 (CA 9, 1982), Petition for Certiorari filed May 21, 1982, No. 81-2188.

5/ See, Manygoats v. Kleppe, 558 F.2d 556 (CA 10, 1977).

WHEREAS, The Tribe is prepared to prove, in the aforesaid case of United States v. White Mountain Apache Tribe, Civil No. 81-1606-PCT-VAC, that the bad faith attacks by members of the Secretary's staff upon the Tribe's Salt River rights stem from the attempted seizure and diminution of the Tribe's rights for the benefit of the Central Arizona Federal Reclamation Project and for other non-Indian projects and purposes; and

WHEREAS, The Tribe's investigations reveal a national scandal in the planned construction of the Central Arizona Federal Reclamation Project by reason of the grave shortage of Colorado River water for that project, resulting in the intention of the Secretary of Interior to sacrifice all of the Indian rights in Central Arizona for the benefit of the non-Indian communities and water users, who are the beneficiaries of the Central Arizona Federal Reclamation Project; and

WHEREAS, It is manifest to the White Mountain Apache Tribe that Congress should investigate the gross and shameful waste of federal funds and the crimes being committed against the Central Arizona tribes by the Secretary of Interior and his staff in furtherance of the Central Arizona Federal Reclamation Project and the attendant destruction of the Central Arizona tribes in furtherance of that project,

NOW, THEREFORE, BE IT RESOLVED THAT the Tribal Council, governing body of the White Mountain Apache Tribe, which Tribal Council has the obligation of preserving and protecting the natural resources of the White Mountain Apache Tribe, including the Tribe's invaluable and life-sustaining rights to the use of water in the Salt River and its tributaries, the extent of those Salt River rights, full equitable title to which resides in the Tribe, being adequate to meet the present and future water requirements of the Tribe, hereby

SERVES NOTICE UPON Secretary of Interior James G. Watt and Attorney General William French Smith and the staffs of those officials that, though they are constituted principal agents of the United States, trustee for the White Mountain Apache Tribe, their conflicting and grossly disparate interests in the Salt River and its tributaries legally preclude them from taking any action that in any way affects, defines, limits, diminishes or denigrates the Tribe's rights to the use of water in the Salt River and its tributaries; and

BE IT FURTHER RESOLVED THAT The White Mountain Apache Tribe demands that Secretary of Interior James G. Watt, Attorney General William French Smith and members of their staffs, in their efforts to implement the plans to provide a supply of water for the Central Arizona Federal Reclamation Project by developing "locally available surface waters" in the Salt River and its tributaries and by contracting with non-Indian and Indian claimants to water from that project, at all times refrain from taking any action that would purport to define, limit, denigrate, diminish, violate,

encumber or in any way affect the rights to the use of water of the White Mountain Apache Tribe in the Salt River and its tributaries; and


BE IT FURTHER RESOLVED THAT Secretary James G. Watt and Attorney General William French Smith and their staffs should forthwith reject the "Water Rights Claim Of The United States As Trustee For The White Mountain Apache Tribe" as grossly in error and admit that all of the data utilized in the preparation of the "Water Rights Claim" is gravely deficient and wholly inadequate as a basis for formulating the Tribe's claim to rights to the use of water in the Salt River and its tributaries; and

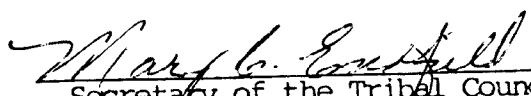
BE IT FURTHER RESOLVED THAT, If the "Water Rights Claim" is not rejected, the White Mountain Apache Tribe demands that Attorney General Smith and members of his staff, who initiated the case of United States v. White Mountain Apache Tribe, Civil No. 81-1606-PCT-VAC, either forthwith proceed to trial on the merits of that case, which stem from the bad faith, arbitrary and capricious conduct and abuses of discretion by members of Secretary Watt's staff involving the Tribe's Salt River rights; or, alternatively, agree to dismiss with prejudice the case of United States v. White Mountain Apache Tribe; and

BE IT FURTHER RESOLVED THAT, Due to the historic and on-going bad faith and arbitrary and capricious conduct involving abuses of discretion by successive Secretaries of Interior and Secretary Watt and members of that officer's staff and the bad faith and arbitrary and capricious conduct involving abuses of discretion of successive Attorneys General, including Attorney General William French Smith and his staff, involving the Salt River rights to the use of water of the White Mountain Apache Tribe, those officers and their staffs are hereby notified by this Resolution that the Tribe will hold them personally liable for monetary damages if they take any action that in any way affects, defines, limits, diminishes or denigrates the Tribe's rights to the use of water in the Salt River and its tributaries.

CERTIFICATION

The foregoing Resolution was on the 7th day of July 1982, 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, h, & 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).


Chairman of the Tribal Council


Secretary of the Tribal Council

RESOLUTION OF THE WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION, WHITERIVER, ARIZONA

OPPOSITION TO DOWNSTREAM SETTLEMENTS
AFFECTING THE TRIBE'S RIGHTS TO THE USE OF WATER
IN THE SALT RIVER OR ITS TRIBUTARIES

- WHEREAS, The Salt River rises at the point of confluence of the White and Black Rivers on the Fort Apache Indian Reservation, comprising a portion of the ancient homeland of the White Mountain Apache Tribe, in which streams and their tributaries the Tribe has vested in it invaluable rights to the use of water, its rights on those streams being prior and paramount with a priority date of time immemorial, which entitle the Tribe to divert and utilize water sufficient to meet its requirements for all purposes both now and in the future; and
- WHEREAS, Successive Secretaries of Interior, including the incumbent Secretary James G. Watt, and successive Attorneys General, including the incumbent Attorney General William French Smith, and their respective staffs have consistently attempted to diminish, limit, denigrate and violate the Tribe's rights to the use of water in the Salt River and its tributaries for the benefit of the downstream Salt River Federal Reclamation Project to the irreparable and continuing damage of the Tribe; and
- WHEREAS, The Secretary of Interior, finding the Colorado River grossly inadequate as a source of water for the Central Arizona Federal Reclamation Project, working in conjunction with the Attorney General, seeks to commit water from the Salt River and its tributaries to augment the drastically short supply of Colorado River water for that project and, in so doing, seeks to diminish, limit, denigrate and violate the Tribe's rights to the use of water; and
- WHEREAS, The Secretary of Interior has purportedly allotted Central Arizona Project water, including waters to be derived from the Salt River and its tributaries, to certain non-Indian water users and entities; and
- WHEREAS, The Secretary of Interior has attempted to settle adverse claims to water from the Salt River and its tributaries with Indian tribes whose reservations are located downstream on the Salt River or on tributaries of the Salt River and has undertaken to allocate to those tribes alleged quantities of water allegedly to be made available to the Indian tribes, all as set forth in the tabulation appearing immediately below:

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AGENCY
WHITERIVER ARIZ

CAP WATER ALLOCATIONS
INDIAN COMMUNITIES

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<u>Entity</u>	<u>Irrigation</u>	<u>Tribal Homeland</u>	<u>Total</u>
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Tonto Apache		128	128
Yavapai		500	500
Total	255,400	54,428	309,828

WHEREAS, The White Mountain Apache Tribe has specifically informed Secretary of Interior Watt, members of his staff, Attorney General William French Smith and members of his staff that, by reason of their conflicts of interest, which permeate all the activities of those officers in the Salt River and its tributaries, they cannot legally make any arrangements in regard to Salt River water and waters from the tributaries of that stream that can be binding upon the White Mountain Apache Tribe and the White Mountain Apache Tribe by this resolution specifically rejects any and all settlements or contracts with either Indians or non-Indians purporting to involve rights to the use of water in the Salt River and its tributaries; and

WHEREAS, The White Mountain Apache Tribe has been informed and believes that there are existing arrangements either entered into by or approved by the Secretary of Interior pursuant to which Black River water is exported out of the Black River, in which the White Mountain Apache Tribe holds prior and paramount rights;


NOW, THEREFORE BE IT RESOLVED THAT The White Mountain Apache Tribe serves notice upon all parties contracting with the Secretary of Interior respecting water either for the Salt River Federal Reclamation Project or the Central Arizona Project, that the White Mountain Apache Tribe has not agreed to the use by anyone of the waters of the Salt River or its tributaries, and that the Tribe will not be bound by any action taken by Secretary James G. Watt, members of his staff, Attorney General William French Smith or members of his

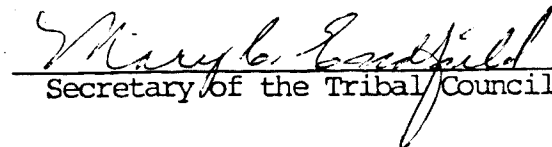
staff, or by any successors to the office of Secretary of Interior or to the office of Attorney General; and

BE IT FURTHER RESOLVED THAT Secretary of Interior James G. Watt, his subordinates and employees, Attorney General William French Smith, his subordinates and employees are not empowered to act for or on behalf of the White Mountain Apache Tribe and that any contract, arrangement, limiting agreement or other document relating to the waters of the Salt River and its tributaries or the rights to the use of water from those sources is null and void and of no force and effect in regard to the White Mountain Apache Tribe.

CERTIFICATION

The foregoing Resolution was on the 7th day of July, 1982, 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, h, & 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 (28 Stat. 984).


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