

NIE LUPE
CHAIRMAN

Executive Office of the Chairman
WHITE MOUNTAIN APACHE TRIBE

Resolution No. 85-305

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

CONSUMMATION OF FRAUDULENT DESTRUCTION
OF THE FORT APACHE INDIAN RESERVATION

WHEREAS, the White Mountain Apache Tribe, Fort Apache Indian Reservation, White River, Arizona, has held title to the Fort Apache Indian Reservation, and has beneficially used the waters of the Salt River which rises upon Tribe's Reservation since time immemorial; 1/ and

WHEREAS, Secretary of the Interior, Donald P. Hodel, predecessors and subordinates of that official, since 1903 or before that date, have consistently mismanaged the Fort Apache Indian Reservation, not for the benefit of the White Mountain Apache Tribe, but fraudulently for the benefit of the Salt River Federal Reclamation Project and now the Central Arizona Federal Reclamation Project; and

WHEREAS, Secretary Donald P. Hodel, adhering to that official's policy of planned mismanagement of Tribe's Reservation, is aggressively and illegally seeking to confiscate the Salt River Reserved Rights of the White Mountain Apache Tribe for the benefit of the above-mentioned Federal Reclamation Projects, thereby vastly reducing the economic viability of Tribe's Reservation with the objective of ultimately forcing the White Mountain Apache Tribe from its Reservation. It is an undeniable truism in the arid West that "Water is Life Itself," and lands without water are uninhabitable--facts well known to Hodel.

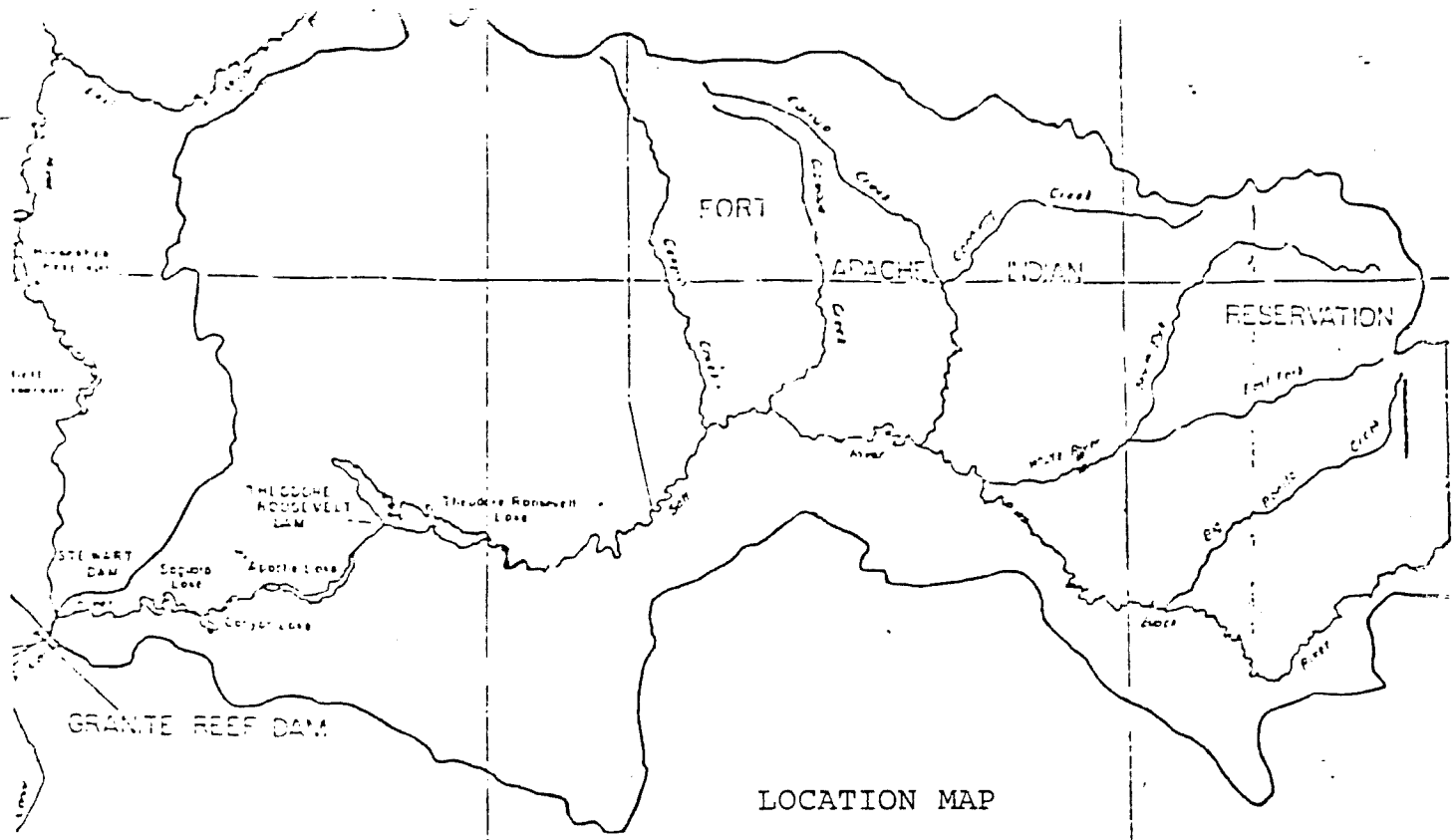
WHEREAS, there are four separate grossly illegal and totally immoral ongoing acts by Donald P. Hodel, Secretary, which are today in the process of being consummated. Those acts involve the following policy objectives:

1. Enlargement of Roosevelt Dam and Reservoir on the Salt River which has its source on the White Mountain Apache Tribe's Fort Apache Indian Reservation;

2. The filing by James H. Stevens, Area Director BIA, subordinate of Donald P. Hodel, on November 29, 1985, of an illegal claim in the Arizona State Water Adjudication W-1 Proceedings, purportedly on behalf of the White Mountain Apache Tribe;

1/ On the page which follows is a Location Map setting forth relevant physical features to which reference is made in this RESOLUTION.





3. The fraudulent November 29, 1985 filing of the Water Rights Claim by Hodel intentionally:
 - a. Abandons annually 200,000 acre feet of Salt River water to which the White Mountain Apache Tribe is legally entitled;
 - b. Omits any claim for the rights to the use of water for Miner Flat Dam, the construction of which--by the White Mountain Apache Tribe--is underway;
4. Hodel's 1985 Fort Apache Indian Reservation Forestry Management Plan is the consummation of long-term Secretarial policy to destroy the White Mountain Apache Tribe's Reservation, to enhance the flow of Salt River water away from Tribe's Reservation by:
 - a. Completing the ongoing destruction of the growing capacity of the White Mountain Apache Tribal forests;
 - b. Completing the ongoing destruction of the quality of the timber produced in the White Mountain Apache Tribal forests;
 - c. Consummating the destruction of the White Mountain Apache Tribe's forests by Hodel fully complements Hodel's ongoing destruction of Tribe's grazing lands, all as will be reviewed; and

HODEL PRACTICES FRAUD AGAINST CONGRESS
AND TRIBE TO FUND ROOSEVELT DAM ENLARGEMENT

WHEREAS, Hodel, predecessors of Hodel and subordinates of that official are destroying White Mountain Apache Tribe's Fort Apache Indian Reservation by intentional mismanagement of Tribe's reserved Salt River rights, its grazing lands and its forest lands to enhance the flow of the Salt River water away from Tribe's Reservation down to Roosevelt Dam and Reservoir, a major component of the non-Indian Federal Reclamation Projects, Hodel is likewise practicing fraud upon Congress in seeking "Non-reimbursable Funding" from Congress pursuant to the Safety of Dams Laws; 2/ and

WHEREAS, while Hodel seeks unconscionably to have Congress vastly subsidize through the use of non-reimbursable funds, the reconstruction of Roosevelt Dam, Hodel is simultaneously suppressing the utilization by the White Mountain Apache Tribe of its reserved Salt River rights by:

1. Drastically reducing Tribe's reserved Salt River rights through fraudulent formulation of "economic feasibility" criteria for the determination of Tribe's irrigable acres, all as set forth in the subsequently referred to November 29, 1985 Water Rights Claim; 3/
2. Fraudulently imposing economic and physical feasibility criteria respecting Tribe's Miner Flat Dam with the objective of preventing Tribe's construction of that greatly needed dam to the end that the Miner Flat Dam water would flow down to and be impounded in the non-Indian Roosevelt Dam which has been and is being grossly subsidized by Congress; and

WHEREAS, Hodel's present misconduct simply implements the long-term systematic suppression of all water use on the Fort Apache Indian Reservation with the objective of enhancing the Salt River water flow away from the White Mountain Apache Tribe for impoundment and use at Roosevelt Dam and below; and

FRAUDULENT FILING OF NOVEMBER 29, 1985 TO EFFECTUATE
HODEL'S ANTI-WHITE MOUNTAIN APACHE TRIBE POLICY

WHEREAS, in furtherance of the Hodel Policy of illegally suppressing White Mountain Apache Tribal use of Salt River water and the illegal seizure of both the natural and artificial flow of the Salt River away from the Fort Apache Indian Reservation

2/ See, Location Map, page 2 above.

is being effectuated by the illegal, needless and corrupt filing on November 29, 1985, of a "water rights claim" in the Arizona State Water Rights Adjudication W-1 Proceedings--purportedly on behalf of the White Mountain Apache Tribe--by James H. Stevens, Phoenix Area Director of the Bureau of Indian Affairs, under the direction of Steven Carroll of the Department of Justice; and

WHEREAS, by that fraudulent "water rights claim," James H. Stevens and Steven Carroll, on behalf of Secretary Hodel, committed the following crimes against the White Mountain Apache Tribe:

1. Intentionally abandoned rights to approximately 200,000 acre feet of water annually from the Salt River and its tributaries, title to which resides in the White Mountain Apache Tribe;
2. Presented fraudulent claims in the State Court W-1 Proceedings--which lack jurisdiction--in quantities so diminutive that viable crop production cannot be successfully prosecuted;
3. As part of Hodel's fraud upon the White Mountain Apache Tribe, Stevens and Carroll have grossly exaggerated and wholly perverted evaporation losses, seeking thereby further to diminish Tribe's Salt River reserved rights;
4. By that fraudulent claim, Stevens and Carroll, on behalf of Hodel, seek effectively to seize and confiscate not only the White Mountain Apache Tribe's invaluable and life-sustaining reserved rights to the use of water in the Salt River, but likewise to render uninhabitable the lands comprising the Fort Apache Indian Reservation by rendering them totally uneconomic; and

WHEREAS, at great cost to itself, the White Mountain Apache Tribe funded the construction in 1980 of the Canyon Day Irrigation Project and has actually subjected to irrigation 885 acres of land requiring annually 5.4 acre feet of White River water to produce greatly needed alfalfa for livestock feed; and

WHEREAS, the irrigation of the 885 acres of land within the Canyon Day Project is the initial undertaking of that phase of 6,500 acres of land ultimately to be irrigated by the enlarged Canyon Day Project, 3,000 acres of which will be irrigated upon the completion of Miner Flat Dam, subject to existing rights; and

WHEREAS, storage of water on the North Fork of the White River at Miner Flat Dam, to control and utilize approximately 25,000 acre feet of water, is an imperative necessity to provide a full and adequate water supply for the 3,000 acres referred to above; and

WHEREAS, the White Mountain Apache Tribe obtained from Congress an appropriation of \$4,500,000 to initiate the construction of Miner Flat Dam; and

WHEREAS, after three years of bureaucratic delays stemming from conditions imposed by the above-mentioned James H. Stevens, Area Director, with which there has been complete compliance by the White Mountain Apache Tribe, the Tribe is today expeditiously proceeding with the initial construction of the dam; and

WHEREAS, James H. Stevens and Steven Carroll directed the preparation of the fraudulent Water Rights Claim, filed by Stevens in the State Court W-1 Proceedings, with full, explicit knowledge and information respecting:

1. The Canyon Day Irrigation Project and plans for the enlargement of that Project;
2. The Miner Flat Dam, an integral part of the Canyon Day Irrigation Project, Stevens and Carroll, for and on behalf of Secretary Hodel, intentionally and fraudulently failed:
 - a. To make a claim for a full and adequate supply of water for the lands being presently irrigated within the Canyon Day Irrigation Project as it exists today;
 - b. Intentionally abandoned a water supply adequate to irrigate the planned enlargement of the Canyon Day Irrigation Project;
 - c. Totally omitted making a claim for Miner Flat Dam in which to store and control the 25,000 acre feet of water annually required for the Canyon Day Irrigation Project, all as set forth above; and

INTENTIONAL DESTRUCTION OF VEGETATIVE COVER
OF GRAZING LANDS BY SECRETARY HODEL,
PREDECESSORS AND SUBORDINATES, TO ENHANCE
SALT RIVER FLOW AWAY FROM THE RESERVATION

WHEREAS, when Secretary Hodel recently requested funds from Congress to enlarge Roosevelt Dam and Reservoir for the benefit of the Salt River and Central Arizona Federal Reclamation Projects, Hodel was consummating the illegal, immoral and confiscatory plan to impound the Salt River water illegally induced by Hodel's subordinates to flow off and away from the Fort Apache Indian Reservation, and otherwise illegally to seize, to manage, and to utilize all of the natural and induced runoff in the Salt River for the benefit of the above-mentioned Federal Reclamation Projects; and

WHEREAS, an integral part of Hodel's planned illegal and fraudulent mismanagement of the Fort Apache Indian Reservation is:

1. To suppress all Salt River water development on the Fort Apache Indian Reservation for the benefit of the Federal Reclamation Projects;
2. To induce artificially upwards to 100,000 acre feet of water to enter the Salt River and its tributaries, over and above the runoff of the Salt River and its tributaries which occurs naturally on Tribe's Reservation, through the systematic destruction of the fine grazing land within the Fort Apache Indian Reservation at the time of its creation. That destruction of the White Mountain Indian Tribe's grazing lands by Hodel, predecessors of Hodel and subordinates, is virtually complete with the attendant disastrous consequences for the White Mountain Apache Tribe, and must be considered as part of the overall plan of Hodel to maximize the Salt River runoff away from the Reservation, which plan includes the destruction of Plaintiff Tribe's forests which is ongoing; and

WHEREAS, unconscionably subordinates of Secretary Hodel destroyed all vegetative cover, brush, and trees bordering all of the streams within the Fort Apache Indian Reservation further to enhance artificially the runoff of water away from the Reservation, giving rise to the degradation to bedrock of the stream channels, the drainage of groundwater out of the valleys intersected by the streams, the destruction of existing irrigation systems, largely built by the Tribe itself, and otherwise destroying the productivity of the numerous valleys throughout the Fort Apache Indian Reservation; and

WHEREAS, by the systematic destruction of the natural forage on the Reservation by successive Secretaries of the Interior, there ensued sheet and gully erosion which is rampant throughout the Reservation and which, unless controlled, will literally wash away the Reservation; and

WHEREAS, Secretary Hodel, predecessors and subordinates of that official, in clear violation of the Congressional will, have illegally and fraudulently expended funds appropriated by Congress for the benefit of the White Mountain Apache Tribe for the intentional destruction of the natural growth on the Reservation, solely for the purpose of artificially inducing stream flow away from the Reservation and into Roosevelt Dam and Reservoir; 4/ and

4/ Supra., at p. 2.

INTENTIONAL DESTRUCTION OF TRIBAL FORESTS TO ENHANCE
SALT RIVER FLOW AWAY FROM TRIBE'S RESERVATION IS
CONSUMMATED BY SECRETARY HODEL'S "1985 FORT APACHE
INDIAN RESERVATION FOREST MANAGEMENT PLAN"

WHEREAS, Hodel's fraudulent water policy set forth in the November 29, 1985 "Water Rights Claim" 5/ is to be consummated by the 1985 Forest Management Plan, which plan has as its objective:

1. The destruction of the growing capacity of the White Mountain Apache Tribe's forests; and
2. The destruction of the quality of timber production 6/

vastly to enhance the flow of Salt River water away from Tribe's Fort Apache Indian Reservation with the objective of obtaining the maximum runoff of Salt River water to be impounded in the enlarged Roosevelt Dam and Reservoir to be used by Hodel's Reclamation Projects; and

WHEREAS, Hodel's 1985 Forest Management Plan will literally cut in half the sawtimber stocking in Tribe's forests with the objective set forth in that 1985 Forest Management Plan which is to reduce Tribe's forests "...to 45-55 square feet of basal area of sawtimber stocking" 7/ --the optimum basal area for the production of Salt River runoff from Tribe's forests; and

WHEREAS, Hodel's ongoing timber operations within Tribe's forests have resulted in overcutting of Tribe's forests at a rate up to 84 percent in excess of growth, clearly violating the sustained-yield concepts mandated by Congress, with the primary objective of enhancing stream flow for Hodel's downstream Reclamation Projects; and

WHEREAS, if the 1985 Forest Management Plan is permitted to be effectuated, Tribe's East Side Forests will be reduced by more than one-half the present sawtimber stocking, with the attendant destruction of those forests; and

WHEREAS, Hodel's 1985 Forest Management Plan admits with surprising candor that the West Side Forests have been overcut to an extent that--to avoid total destruction of those West Side Forests--timber harvest must be drastically curtailed for a period of at least 35 years with the attendant severe financial losses to the White Mountain Apache Tribe; 8/ and

5/ Supra., at p. 3.

6/ 1985 Fort Apache Indian Reservation Forest Management Plan, p. 111-7.

7/ Ibid., at p. 111-10.

8/ Ibid., at p. 111-6.

Hodel's Planned Destruction of Growth Capacity of Tribe's Forests

WHEREAS, Hodel's 1985 Fort Apache Indian Reservation Forest Management Plan is based upon intentional distortion of concepts respecting optimum growing stock, as set forth in the following quotations from the 1985 Forest Management Plan:

"A weighted calculation of desirable growing stock levels was made by assigning a growing stock level to each of three site quality designations, as follows:

Site 4	5,000 BM/acre
Site 5	3,500 BM/acre
Site 6	2,000 BM/acre

Stocking levels are weighted by acres to obtain weighted averages of 3,386 BM/acre for the West Zone and 3,515 for the East Zone. These weighted averages fall into the optimum growing stock levels calculated from Meyer's Normal Yield Tables, and are used in the Reservation Allowable Cut Calculation." 9/

and

WHEREAS, the Hodel 1985 Fort Apache Indian Reservation Forest Management plan utilized erroneous concepts for determining the annual growth of the forests, based upon pure speculation and conjecture, as set forth below:

"Optimum growth values, recommended by Gilbert H. Shubert, were assigned to three different site quality designations as follows:

Site 4	250 BM/acre/year
Site 5	150 BM/acre/year
Site 6	75 BM/acre/year

....These predicated growth figures were not derived from local studies on the Fort Apache Indian Reservation, but are consistent with growth now occurring in the 1 and 2 age classes, especially on the East Zone." 10/

and

WHEREAS, the White Mountain Apache Tribe's examination of the 1968 and 1974 continuous forest inventory (cfi) data of the Bureau of Indian Affairs discloses that as stocking level increases, growth increases proportionally. Hodel's 1985 Forest Management Plan fails to consider the cfi data and has rejected previous work by the Bureau of Indian Affairs in cooperation with

Hammon, Jensen and Wallen, as set forth in a 1961 Report. By its own investigations, the Tribe has exposed the speculative, conjectural, and fraudulent growth rates upon which Hodel's 1985 Forest Management Plan is predicated; and

WHEREAS, by adhering to Hodel's policy as set forth immediately above there will be a sharp reduction of the forest canopy and water using root system for the purpose of enhancing stream flow away from the Reservation and into an enlarged Roosevelt Reservoir; and

WHEREAS, the White Mountain Apache Tribe's analysis of the East Zone continuous forest inventory plots establishes indisputably that the Bureau of Indian Affairs is aggressively cutting Tribal timber far in excess of growth. This violation of the Congressional mandate for sustained-yield management has been ongoing since 1903, the date of Secretarial approval of the Salt River Reclamation Project. The Bureau of Indian Affairs' projections in regard to growth are in total and complete error based on the Tribe's investigations; and

Hodel's Destruction of Quality Within the Diminished Forest

WHEREAS, the Hodel 1985 Fort Apache Indian Reservation Forest Management Plan has as its objective, among other things, the conversion of the Tribe's forests from a source of quality saw logs to the production of fiber. Adherence to that policy will result in a drastic reduction of income to the White Mountain Apache Tribe to its irreparable damage; and

WHEREAS, the cutting beyond sustained yield not only has the result of the ultimate destruction of the Tribe's forests, as intended by Hodel's 1985 Forest Management Plan, it would also vastly reduce the present forest products industry on the Fort Apache Indian Reservation to an uneconomical operation; and

An Element in Hodel Forest Destruction is Prescribed Burning

WHEREAS, the Hodel 1985 Fort Apache Indian Reservation Forest Management Plan provides for the violation of the Congressional mandated sustained-yield requirements through overcutting as a means of expediting the destruction of Tribe's forests, it is not the sole method utilized by Hodel to accomplish the basic purpose of enhancing Salt River stream flow away from the Reservation by forestry mismanagement. By a broad program of prescribed burning, now being forced upon the White Mountain Apache Tribe, the Hodel forestry plan:

1. Damages standing timber;
2. Decimates previously thinned stands; and
3. Effectively and intentionally destroys regeneration of the forests; 11/ and .

WHEREAS, a critical element in the Hodel prescribed burning program is to destroy the moisture-holding capacity of the forest floor, further expediting the runoff away from the Reservation. That course of conduct has, as intended in the Hodel plan, disastrous consequences for the entire forest eco-system; and

HODEL'S NOVEMBER 29, 1985 WATER RIGHTS CLAIM COALESCES
EFFECTIVELY WITH HODEL'S FOREST MANAGEMENT PLAN TO
DESTROY THE FORT APACHE INDIAN RESERVATION AND
THE WHITE MOUNTAIN APACHE TRIBE ITSELF

WHEREAS, the integrated character of Hodel's planned destruction of the Reservation is well demonstrated by the intentional destruction of the entire residual stand of timber of the West Side Forests within the Carrizo watershed by the Bureau of Indian Affairs, which destruction coincides with the "watershed management area" of 100,000 acres of land in the Carrizo drainage in which the United States Geological Survey conducted its program to manipulate all vegetative cover with the objective of enhancing the flow of Salt River water away from the Reservation; and

WHEREAS, Hodel's mismanagement of the White Mountain Apache Tribe's Reservation has been directed to Tribe's natural resources, great pressure was likewise imposed upon the Fort Apache Lumber Company wholly owned and operated by the White Mountain Apache Tribe--forcing it to expand its manufacturing facilities to process 93 million board feet of lumber each year--far in excess of the Congressional sustained-yield mandate--at a cost to the White Mountain Apache Tribe of \$20,000,000 for the equipment to process sawlogs of quality historically received from the forest. The Bureau of Indian Affairs forced the expansion of Tribe's lumber manufacturing capacity--which was adequate to process the sustained yield harvest--unless the Tribe agreed to processing the excessive cutting up to 93,000,000 board feet to which the Tribe strenuously objected but were, nevertheless forced to accede or the lumber would be sold to lumber mills off the Reservation; and

WHEREAS, irrespective of Tribe's good faith expenditure of \$20,000,000 out of its own funds to install equipment to process quality saw logs, Hodel's 1985 Forest Management Plan seeks to force the Tribe to abandon the production of quality saw logs and in lieu thereof to produce low quality fiber from which the Tribe will not earn a reasonable return, tribal income will be drastically reduced, labor and employment opportunities will be stifled, and a principal basis for the economy of the Reservation will be destroyed;

BE IT RESOLVED THAT THE WHITE MOUNTAIN APACHE TRIBE ACTING BY AND THROUGH ITS TRIBAL COUNCIL in the exercise of its inherent sovereign power under its Constitution, laws, and customs, and the Constitution and Laws of the United States of America, proclaims its will and full commitment to survive as a distinct and independent people surrounded by a corrupt and hostile Federal Bureaucracy and to achieve these ends:

I.

- A. Rejects as fraudulent and refuses to be bound by the November 29, 1985 "Amended Water Rights Claim of the United States as Trustee for the White Mountain Apache Tribe," filed over Tribe's emphatic protests by James H. Stevens, Area Director, Bureau of Indian Affairs, acting for and on behalf of Secretary Donald P. Hodel, United States Department of the Interior, in the Superior Court of Maricopa County, State of Arizona, Water Rights Adjudication W-1 Proceedings; and
- B. Directs Chairman Lupe, while at all times denying that the State Court Water Rights Adjudication W-1 Proceedings has jurisdiction over either the White Mountain Apache Tribe or its Salt River reserved rights:
- (1) To bring to the attention of the last-mentioned Court this Resolution and Tribe's charges of fraud in connection with the Hodel Water Rights Claim, with emphasis on the fully documented factual recitations contained in this Resolution, establishing beyond contradiction the grossly illegal fraud and sham practiced upon the White Mountain Apache Tribe by Secretary Hodel and Stevens respecting the preparation and filing of the "Water Rights Claim" with that Court;
 - (2) To stress that the Court being apprised of Hodel's fraudulent misconduct should itself reject the "Water Rights Claim;" and
- C. Chairman Lupe, while reaffirming the lack of jurisdiction in the State Court Water Rights Adjudication W-1 Proceedings over the Tribe or its reserved Salt River rights, should advise that Court of the ongoing Federal Judicial Proceedings in which the White Mountain Apache Tribe is fully charging Secretary Hodel, subordinates of Hodel, Attorney General Edwin Meese III, and subordinates of Meese, all as reviewed in this Resolution, with acting fraudulently:
- (1) To confiscate Tribe's Salt River reserved rights by the Water Rights Claim filed with that Court and otherwise;

- (2) To destroy Tribe's forests;
 - (3) To destroy Tribe's grazing lands, all with the objective of illegally seizing and taking from Tribe its reserved Salt River rights, emphasizing that the State Court Water Rights Adjudication W-1 Proceedings lacks jurisdiction over the controversy between the Tribe and the above-named Federal officials, which controversy is constricted to the Federal Courts; and
- D. Directs Chairman Lupe further to emphasize, as part of his denial of the jurisdiction of the State Court, that unless and until the ongoing Federal Judicial Proceeding is concluded by a Federal Court of last resort, it is wholly improper and contrary to the express language and rationale of the McCarran Amendment, 43 U.S.C. 666, assuming its applicability, which is denied, to consider the fraudulent November 29, 1985 Water Rights Claim, much less dignify that claim by an attempt to adjudicate Tribe's reserved rights in the Salt River on the basis of it; and

II.

- A. Rejects as fraudulent Hodel's 1985 Fort Apache Indian Reservation Forest Management Plan as being contrived by Hodel and subordinates to destroy the White Mountain Apache Tribe's forests, to render totally uneconomic the Fort Apache Indian Reservation by the destruction of its principal source of income, vastly to enhance the flow of Salt River water away from the Fort Apache Indian Reservation and by that method attempt further to denigrate and to diminish the White Mountain Apache Tribe's Salt River rights, all as recited in this Resolution; and
- B. Directs that experts, Dean Stowell and/or Beatty and Associates, employed by the White Mountain Apache Tribe formulate the White Mountain Apache Tribal Forest Management Plan pursuant to which the Tribe's forests and its forest products industry can be managed in perpetuity fully in conformity with the sustained-yield management concepts mandated by Congress, and that the Tribe's Forest Plan be formulated strictly for the benefit of the Tribe; and
- C. Directs Chairman Lupe aggressively to prosecute to final judgment in a Federal Court of last resort the ongoing Federal Judicial Proceeding referred to in paragraph I above to the end that Hodel's

destruction of Tribe's forests can be declared grossly illegal and to enjoin further misconduct by Hodel and subordinates in connection with the mismanagement of Tribe's forests.

III.

BE IT FURTHER RESOLVED that the Tribal Council of the White Mountain Apache Tribe directs all necessary actions be taken to insure that its forests are harvested in compliance with the Congressional requirement that Indian forests be administered on a sustained yield basis and the foregoing Resolution having set forth facts which conclusively established that the Bureau of Indian Affairs has failed utterly in its obligation as Trustee to comply with that Congressional mandate as evidenced by the proposed Limestone Timber Sale Contract, prepared by the Bureau of Indian Affairs which, if consummated, will result in the destruction of that portion of the Tribe's forest to which the Limestone Contract pertains by cutting the residual volume of that timber by 50%.

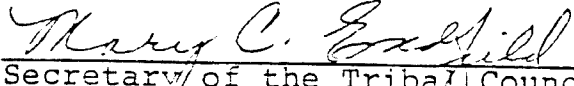
BE IT FURTHER RESOLVED that the Tribal Council reiterates and reaffirms its rejection of the aforesaid Limestone Sale Timber Contract prepared by the Bureau of Indian Affairs.

BE IT FURTHER RESOLVED, Chairman Lupe is directed, forthwith, to bring to the attention of the members of Congress and their appropriate committees, the intentional violation by Secretary Hodel, acting through subordinates, of the sustained yield mandate respecting the management of Indian forests with particular reference to the fact that Hodel's intentional ongoing destruction of the Tribe's forests, all as alleged and documented above, has as its principal objective to induce artificially a vast enhancement of Salt River water to flow away from the Tribe's reservation for the benefit of the Salt River and Central Arizona Federal Reclamation Projects, administered by Secretary Hodel.

BE IT FURTHER RESOLVED that Chairman Lupe stress to the Congressional delegations and committees that Hodel is seeking to terminate the White Mountain Apache Tribe through the intentional destruction of its economic base, all as stressed in this resolution.

The foregoing resolution was on December 19, 1985, duly adopted by a vote of // 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), (b), (c), (e), (f), (h), (i), (s), and (u), of the Amended Constitution and Bylaws 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

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IN THE SUPERIOR COURT OF
MARICOPA COUNTY, STATE OF ARIZONA

IN THE MATTER OF THE DETERMINATION)
OF CONFLICTING RIGHTS TO THE USE OF)
WATER FROM THE SALT RIVER ABOVE)
GRANITE REEF DAM AND ITS TRIBUTARIES)
INCLUDING TONTO CREEK, EXCLUDING THE)
VERDE RIVER AND ITS TRIBUTARIES.)
SALT RIVER VALLEY WATER USERS')
ASSOCIATION, PETITIONERS.)

MARICOPA COUNTY COURT NO. W-1

(IN RE: THE GENERAL ADJUDICATION)
OF ALL RIGHTS TO USE WATER)
IN THE GILA RIVER SYSTEM)
AND SOURCE)
Nos. W-1, W-2, W-3, and W-4))

SUGGESTION THAT THIS COURT LACKS JURISDICTION OVER
THE WHITE MOUNTAIN APACHE TRIBE AND ITS RESERVED SALT RIVER RIGHTS
BY REASON OF THE FRAUDULENT FILING OF THE "AMENDED WATER RIGHTS
CLAIM OF THE UNITED STATES AS TRUSTEE
FOR THE WHITE MOUNTAIN APACHE TRIBE"

DATED: December 18, 1985

Ronnie Lupe
Chairman

1 IN THE SUPERIOR COURT OF
2 MARICOPA COUNTY, STATE OF ARIZONA

3 IN THE MATTER OF THE DETERMINATION)
4 OF CONFLICTING RIGHTS TO THE USE OF)
5 WATER FROM THE SALT RIVER ABOVE)
6 GRANITE REEF DAM AND ITS TRIBUTARIES)
7 INCLUDING TONTO CREEK, EXCLUDING THE)
8 VERDE RIVER AND ITS TRIBUTARIES.)

) MARICOPA COUNTY COURT NO. W-1

9 SALT RIVER VALLEY WATER USERS')
10 ASSOCIATION, PETITIONERS.)

11 (IN RE: THE GENERAL ADJUDICATION)
12 OF ALL RIGHTS TO USE WATER)
13 IN THE GILA RIVER SYSTEM)
14 AND SOURCE)

15 Nos. W-1, W-2, W-3, and W-4))
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13 SUGGESTION THAT THIS COURT LACKS JURISDICTION OVER
14 THE WHITE MOUNTAIN APACHE TRIBE AND ITS RESERVED SALT RIVER RIGHTS
15 BY REASON OF THE FRAUDULENT FILING OF THE "AMENDED WATER RIGHTS
16 CLAIM OF THE UNITED STATES AS TRUSTEE
17 FOR THE WHITE MOUNTAIN APACHE TRIBE"
18

19 I, Ronnie Lupe, Chairman of the White Mountain Apache Tribe,
20 Fort Apache Indian Reservation, Whiteriver, Arizona, solely for the
21 purpose of comity and courtesy, and without in any way submitting to
22 the jurisdiction of this Court, but rather denying that this Court
23 has jurisdiction over the United States of America, the White
24 Mountain Apache Tribe, or the Tribe's invaluable and life-sustaining
25 reserved rights to the use of water in the Salt River and

I.

FRAUD HAS BEEN PRACTICED UPON THIS COURT
AND THE WHITE MOUNTAIN APACHE TRIBE

On behalf of the White Mountain Apache Tribe, I refer to the fact that there was illegally filed in this Court on November 29, 1985, over the strenuous objections of my Tribe, a document fraudulently entitled "Amended Water Rights Claim of the United States Trustee for the White Mountain Apache Tribe." My Tribe has directed me to advise this Court that the White Mountain Apache Tribal Council rejects that "Water Rights Claim" and that the Tribe refuses to be bound by it.

II.

On December 5, 1985, the Tribal Council of the White Mountain Tribe had for the first time an opportunity to review and to consider the nature and extent of the fraud willfully practiced upon the Tribe by Secretary Donald P. Hodel, United States Department of the Interior, subordinates of that official, Attorney General Edwin Meese III, United States Department of Justice, acting through subordinates James H. Stevens, Area Director, Bureau of Indian Affairs, and Steven E. Carroll, Indian Claims Section, Department of Justice. Repeatedly, the White Mountain Apache Tribe had petitioned the Department of Justice and the Department of the Interior fully to inform the Tribe of the content and magnitude of the "Water Rights Claim" which those agencies were in the process of formulating for filing with this Court and thereby forcing unwanted, rejected, and grossly inadequate representation by those agencies and their personnel upon the White Mountain Apache Tribe.

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III.

In total good faith, I personally repeatedly requested Assistant Attorney General Henry Habicht, subordinates of Habicht, and officials in the Bureau of Indian Affairs to inform the White Mountain Apache Tribe respecting the "Water Rights Claim." On November 7, 1985, I met in Denver, Colorado, with members of the Tribal Council, with Mr. Carroll, numerous employees of the Departments of Interior and Justice, and their experts with the objective of ascertaining the nature, extent, and basis upon which the "Water Rights Claim" would be formulated. I was advised at that meeting that on November 22, 1985, the White Mountain Apache Tribe would be informed of the content of and the basis upon which the "Water Rights Claim" was formulated.

IV.

It was not until December 3, 1985, subsequent to the November 29, 1985 filing, that a subordinate of the Solicitor's Office of the Department of the Interior supplied to the Tribe a copy of the "Water Rights Claim" to which this Suggestion pertains. On December 5, 1985, the Tribal Council having been fully advised of the grossly inadequate, indeed, the implausible character of the "Water Rights Claim" that was actually filed here, I demanded and obtained for the White Mountain Apache Tribal Council a meeting with James H. Stevens, Area Director, Bureau of Indian Affairs, and members of Stevens' staff. Unable to explain the Water Rights Claim," based upon my interrogation as Chairman of the Tribe, Mr. Stevens and his staff walked out of the meeting, having promised,

1 however, that the Department of Justice and its experts would meet
2 with representatives of the White Mountain Apache Tribe on
3 December 18, 1985, to discuss the claim and the criteria upon which
4 it was based, refusing, nevertheless, to permit their experts to
5 be deposed.

6 V.

7 On December 9, 1985, the White Mountain Apache Tribe
8 inquired as to the December 18, 1985 meeting with the "experts"
9 who formulated the "Water Rights Claim." Mr. Carroll for the
10 Department of Justice cancelled the meeting, declaring that the
11 meeting would be held sometime after the 1st of January, 1986.

12 VI.

13 To date, irrespective of unvarying and repeated demands
14 that the Department of Justice and the Department of the Interior
15 explain the basis upon which the "Water Rights Claim" was formu-
16 lated, those Departments steadfastly "stonewalled" in their coverup
17 respecting the grossly fraudulent claim filed with this Court.

18 VII.

19 On December 5, 1985, the White Mountain Apache Tribal
20 Council adopted a Resolution rejecting the "Water Rights Claim"
21 and refusing to be bound by that fraudulent document. A copy of
22 that Resolution is attached to this Suggestion and made a part of
23 it by reference to the same extent and with the same effect as if
24 set forth herein in full. Respecting that "Water Rights Claim"
25 filed here on November 29, 1985, I, on behalf of the White Mountain
26 Apache Tribe, make these specific charges of fraud:

1 1. Secretary Hodel, acting through James H. Stevens, Area
2 Director, intentionally, by the "Water Rights Claim":

3 a. Abandoned 200,000 acre feet of Salt River water
4 annually, title to the rights of which resides in the White Mountain
5 Apache Tribe, omitting to claim reserved rights for approximately
6 24,000 acres of irrigable land and further asserting a fraudulent
7 water duty of 1.9, far less than the quantity of water required for
8 each acre of land to farm successfully; 1/ and

9 b. Abandoned 100,000 acre feet of Salt River water
10 annually, which water is artificially and illegally induced by
11 Secretary Hodel and subordinates to run off and away from Tribe's
12 Fort Apache Indian Reservation for the benefit of Hodel's Federal
13 Reclamation Projects through the intentional and systematic destruc-
14 tion by Secretary Hodel of (1) Tribe's forests and (2) Tribe's
15 grazing lands; 2/ and

16 c. Abandoned reserved rights to the use of reserved
17 Salt River water presently being exercised by the White Mountain
18 Apache Tribe for Tribe's Canyon Day Irrigation Project and failed
19 to claim an adequate supply of water for that Project as ultimately
20 planned by the White Mountain Apache Tribe; 3/ and

21 d. Failed to claim a right to 25,000 acre feet of water
22 annually for storage and use at Miner Flat Dam, irrespective of
23

24 1/ Resolution, p. 2, et seq.

25 2/ Ibid., at p. 5, et seq., and p. 7, et seq.

26 3/ Ibid., at p. 4, et seq.

1 having been fully advised of the imperative necessity of making a
2 claim for Miner Flat Dam, funds for which were approved by Congress
3 and construction of which is presently under way; 4/ and

4 e. Fraudulently asserted the "Annual Diversion" in
5 acre feet of a quantity of water so grossly inadequate that crop
6 production cannot possibly be successfully conducted by the White
7 Mountain Apache Tribe, that inadequate claim being a contributing
8 factor to the abandonment of 200,000 acre feet of water annually,
9 as stated above; 5/ and

10 f. Failed to include in the "Water Rights Claim" a large
11 proportion of the lands actually irrigable in character to which
12 the White Mountain Apache Tribe has valid reserved rights to the
13 use of water in the Salt River; (Resolution, pp. 3, et seq.) and

14 g. Set forth exaggerated and totally fabricated evap-
15 oration losses respecting power and recreation projects that cannot
16 properly be sustained.

17 2. Secretary Hodel has filed with this Court the fraudulent
18 "Water Rights Claim" so patently inadequate and so grossly in error
19 that the claim cannot be effectively supported by evidence, fully
20 explaining the refusal of Mr. Stevens and Mr. Carroll to meet with
21 the Tribe to explain the "Water Rights Claim," all as set forth
22 above.

24
25 4/ Ibid.

26 5/ Ibid., at p. 3, et seq.

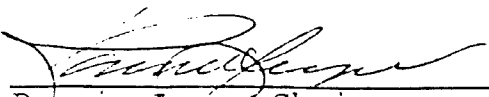
1 The White Mountain Apache Tribe in the preceding paragraphs
2 has fully described the dilemma with which it is confronted. It is
3 seeking to have resolved in the Federal Courts the irreconcilable
4 conflict between the Tribe and Secretary Hodel over the Tribe's
5 reserved rights to the use of water in the Salt River and its
6 tributaries which Secretary Hodel is seeking systematically to
7 seize.

8 I respectfully bring to your attention the fact that the
9 White Mountain Apache Tribe and the United States of America are
10 immune from suit and that this Court lacks jurisdiction to hear,
11 adjudicate, and determine the Federal controversy which is ongoing
12 between the Tribe and Secretary Hodel.

13 I respectfully urge you out of comity and courtesy to
14 refrain from considering the fraudulent claim to which this Sugges-
15 tion pertains until that controversy between the Tribe and Hodel
16 has been finally resolved in a Federal Court of last resort, for
17 without that final resolution, it is totally impossible to present
18 to this Court or elsewhere a proper claim of the White Mountain
19 Apache Tribe to reserved rights to the use of water in the Salt
20 River.

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22
23 Respectfully submitted on behalf of
24 the White Mountain Apache Tribe

25 DATED: December 18, 1985

26 
Ronnie Lupe, Chairman

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CERTIFICATE OF SERVICE

I, Lona Ethelbah, Executive Secretary to the Chairman of the White Mountain Apache Tribe of the Fort Apache Indian Reservation, hereby certify that on December 19, 1985, I caused to be mailed, a copy of the foregoing SUGGESTION THAT THIS COURT LACKS JURISDICTION OVER THE WHITE MOUNTAIN APACHE TRIBE AND ITS RESERVED SALT RIVER RIGHTS BY REASON OF THE FRAUDULENT FILING OF THE AMENDED WATER RIGHTS CLAIM OF THE UNITED STATES AS TRUSTEE FOR THE WHITE MOUNTAIN APACHE TRIBE and Tribal Council Resolution attached thereto, postage prepaid, in an envelope addressed to:

The Honorable Stanley Z. Goodfarb
Judge of the Superior Court
Division 16, Maricopa County
101 West Jefferson
Phoenix, Arizona 85003

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Assistant Attorney General
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Phoenix, AZ 85007

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Arizona State Land Department
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12 White Mountain Apache Tribe
P.O. Box 700
13 Whiteriver, Arizona 85941

14 DATED this 19th day of December, 1985.

15
16 Lona Ethelbah
Lona Ethelbah

17
18 STATE OF ARIZONA)
19) ss.
County of Navajo)

20 Subscribed and sworn to before me this 19th day of
21 December, 1985.

22
23 Mary Anne Brown
24 Notary Public

25 My commission expires:

26 Oct. 10, 1989
27
28