

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

- WHEREAS,** the United States Department of the Interior has adopted criteria and procedures for the participation of the federal government in negotiations for the settlement of Indian water rights claims as published in the Federal Register on Monday, March 12, 1990, in Volume 55, No. 48; and
- WHEREAS,** said criteria and procedures were developed by the Working Group on Indian Water Settlements from the Department of the Interior; and
- WHEREAS,** said criteria and procedures were drafted and adopted by the Department of Interior without any participation or prior consultation with Indian Tribes; and
- WHEREAS,** the Department of the Interior is the principal agent of the trustee United States and in that capacity the Secretary of the Interior has the trust obligation to define, develop, and protect prior rights that Indian Tribes might have had in waters that flow through or border their reservations as guaranteed by the Winters Doctrine in the United States Supreme Court case entitled Winters v. United States, 207 U.S. 564 (1908); and
- WHEREAS,** the protection and development of Indian water rights pursuant to the Winters Doctrine by the Secretary of the Interior and trustee, United States, is distinguished historically by the abject failure of the trustee United States to protect Indian water rights on respective reservations; and
- WHEREAS,** it was the official policy of the Department of Interior following the post World War II period to suppress and otherwise obstruct, hinder, and delay any development of the water rights of the White Mountain Apache Tribe in favor of downstream water users, specifically, the Salt River Project of the Bureau of Reclamation; and

WHEREAS, the theft, artificially induced runoff, and involuntary servitude imposed upon the Fort Apache Indian Reservation for the benefit and use of the Salt River Project and Salt River Water Users Association since 1912 and which has continued to date has been encouraged and allowed by the trustee United States; and

WHEREAS, the experience of the White Mountain Apache Tribe in the suppression of its water rights by the trustee United States through its principal agent, the Secretary of Interior, is not unlike the experience of many other Indian Tribes in the western United States; and

WHEREAS, the trustee United States through the Department of Interior and Justice Department has perpetuated the wrongful use and taking of Indian water rights and in particular those of the White Mountain Apache Tribe by submitting the Tribe to the state court W-1 Proceedings now pending in the Maricopa County Superior Court and have filed in that Court a claim over the protest of the White Mountain Apache Tribe in furtherance of the design of the Department to truncate and otherwise denigrate and diminish the Winters Doctrine; and

WHEREAS, the Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims presumes that the United States as trustee will not act as an advocate for Indian water rights but would act as a neutral bystander to facilitate settlements with the very non-Indian users whose water rights were enhanced or granted by the Department of Interior at the expense of various Indian Tribes; and

WHEREAS, a negotiating team or panel comprised of members of the Justice Department and Department of Interior merely perpetuates the intolerable conflict of interest that continues to fester within the Department of Interior which has always succumbed to the will and goals of the Bureau of Reclamation in favor of non-Indian water development to the detriment of Indian Water Development Projects; and

WHEREAS, until such time as reparations have been made to the White Mountain Apache Tribe and other Indian Tribes for the wrongful taking and suppression of their reserved water rights, the very concept of negotiating a settlement cannot be seriously considered; and

- WHEREAS,** the continuing suppression of the White Mountain Apache Tribe's reserved water rights is manifest in the present dispute with the Bureau of Indian Affairs over the construction of the Miner Flat Dam on the Fort Apache Indian Reservation regarding the economic analysis of the use of the Miner Flat Dam waters for irrigated crops on the reservation; and
- WHEREAS,** the Bureau of Indian Affairs continues to insist on an economic analysis and use of the water from the Miner Flat Dam in conformity with the position taken by the Justice Department in the W-1 Proceedings, a position vigorously opposed by the White Mountain Apache Tribe; and
- WHEREAS,** the Department of Interior's Criteria and Procedure on Indian Water Negotiations injects the issue of economic development in a shape and form which will denigrate and undercut the Winters Rights Doctrine and in a way which was never applied to non-Indian irrigated farming or water development as manifested by massive subsidies to irrigated non-Indian farming and the elimination and waiver of payment of interest on Salt River Project Construction loans; and
- WHEREAS,** the Tribal Council of the White Mountain Apache Tribe is well aware of the transformation that took place a decade ago when the United States Government, as trustee, refused to further finance any water rights litigation on behalf of Tribes and instead restricted federal funding for negotiations; and
- WHEREAS,** ten years later, many Indian Tribes, with the trustee United States' elimination of federal funding for water rights litigation have been forced to negotiate away their reserved water rights; and
- WHEREAS,** the history of Indian Water Rights Settlements indicates that frequently Congress does not appropriate money for several years to the Indian Tribes and that generally the delivery of water and systems to reservations has not been completed or even begun in some instances; and
- WHEREAS,** the White Mountain Apache Tribal Council has reviewed the position paper drafted by the Native American Rights Fund and expresses its appreciation to the Native American Rights Fund for its leadership role in advising Tribes and in bringing together a consensus of Indian Tribes in opposition to the Criteria and Procedures adopted by the Department of Interior; and

WHEREAS, although the Tribal Council is supportive of the views espoused in the NARF position paper it nevertheless cannot agree to a position which accepts the principle of negotiation without first requiring the United States as trustee to fully account to the White Mountain Apache Tribe and the various Indian Tribes for the abject neglect and intentional suppression of the Winters Doctrine or until the United States, as trustee, can resolve its conflict of interest in respect to the interest of the Indian Tribes versus that of the Bureau of Reclamation and the non-Indian irrigation projects it has sponsored; and, further not until the United States as trustee, can guarantee to the White Mountain Apache Tribe and the other tribes a reserve water right which would meet the present and future needs of the White Mountain Apache Tribe and other Indian Tribes.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby opposes and demands rescission of the Criteria and Procedures adopted by the Department of Interior for Federal Participation in Indian Water Settlement Negotiations for the following reasons:

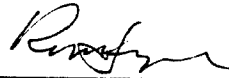
1. Indian Tribes did not participate in nor were they consulted prior to adoption of the criteria and procedures;
2. Said criteria perpetuates an insidious conflict of interest which has resulted in the suppression of the Winters Doctrine and the taking of reserved water rights from the White Mountain Apache Tribe and other Indian Tribes;
3. Said criteria injects economic considerations as a primary focus rather than establishment and protection of reserved water rights for Indian Tribes and their respective homelands;
4. Said criteria contemplates an abdication of the Department of Interior's obligation as trustee for Indian Tribes;
5. Said criteria ignores the sullied history of the United States in respect to its failure as trustee to protect the reserved water rights of the White Mountain Apache Tribe and other Indian Tribes;
6. Said criteria infuses economic requirements not required of non-Indian irrigation or water development projects;

7. Said criteria does not provide for reparations or compensation to Indian Tribes for the wrongful suppression by the trustee, United States, of the protection and development of Indian reserved water rights.

BE IT FURTHER RESOLVED by the Tribal Council that it requests that Secretary of Interior Lujan rescind the adopted criteria and procedures and open up a dialogue with the White Mountain Apache Tribe and other Indian Tribes for the purpose of resolving conflicts between the Secretary of Interior and the Indian Tribes in respect to quantification and protection of reserved water rights.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby requests that Senator Inouye, Chairman of the Senate Select Committee on Indian Affairs, hold committee hearings on the insidious conflict of interest existing within the Department of Interior which has resulted in the wholesale theft of Indian water by the Bureau of Reclamation in favor of non-Indian irrigation projects and to investigate the ongoing policy of the Department of Interior to suppress any development of water resources on, about or within Indian Reservations as specifically manifested by the Department of Interior's forced representation of the White Mountain Apache Tribe in the W-1 General Stream Adjudication now pending in the Arizona State Court and the present impasse hindering construction of the Miner Flat Dam on the Fort Apache Indian Reservation.

The foregoing resolution was on November 21, 1990, 1990, duly adopted by a vote of nine for and zero against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (i) 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).

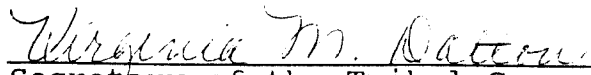


Chairman of the Tribal Council

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FORT APACHE INDIAN AGENCY
WHITERIVER, ARIZONA



Secretary of the Tribal Council