

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

**WHEREAS,** the Tribal Council has called a special meeting this date to discuss the ongoing problems and disruptions that have resulted from the failure of the Arctic Slope Company to timely complete BIA Project Consolidated No. 23, hereinafter FATCO Road Project; and

**WHEREAS,** the contract between the BIA and the Arctic Slope Company was approved September 1995, but the Notice to Proceed was not issued for almost nine months thereafter; and

**WHEREAS,** Arctic Slope, as General Contractor for FATCO Road, commenced work June 1996; said road was required to be completed per contract by October 14, 1996 and liquidated damages of \$735.00 per day have accumulated since that date, according to the contract terms; and

**WHEREAS,** the Tribal Safety Officer, Tribal Council, and the public at large are concerned that the bridge on FATCO Road may have been weakened by blasting and removal of concrete blocks from either side of the bridge; and

**WHEREAS,** delays in completing the FATCO Road Project have resulted in (1) rerouting FATCO logging trucks on a lengthy detour to avoid the road construction, (2) running public vehicle traffic through the FATCO yard for several weeks to bypass the construction area, (3) delays in deliveries and shipments because carriers could not find the detour to the mill, (4) FATCO has been forced to use heavy equipment to tow other trucks which have become stuck attempting to negotiate the detour, and (5) has caused damage to detour roads which were not meant to carry heavy logging trucks over the time period that delays on the FATCO Road Project have created; and

**WHEREAS,** on this date, Bud Brown, the Phoenix Area Contracting Officer for the FATCO Road Project, Fort Apache Superintendent of the Bureau of Indian Affairs, Ben Nuvamsa, and Clarence Begay, BIA Roads Manager, are in attendance with the Tribal Council to discuss the FATCO Road Project; and

**WHEREAS,** some of the recommendations discussed at this meeting by the Tribal Council are: (1) that the Trustee United States, through its principal agent, the Bureau of Indian Affairs should be held responsible for not enforcing contract compliance by Arctic Slope; (2) that the Trustee should not pay Arctic Slope until concrete and steel stress tests have been conducted on the bridge structure; (3) that the Trustee collect

liquidated damages and transfer or reprogram said damage funds from the FATCO Road Project for other road projects on the Reservation with a priority given to the repair of detour roads which have been damaged by logging trucks unable to use the FATCO Road; (4) that detoured roads be repaired; (5) that Arctic Slope be barred from further contracts on the Fort Apache Indian Reservation; (6) that all local contractors be paid as there is often confusion by the public regarding the separate identities of the Tribe and the BIA which results in a negative attitude that the Tribe was somehow at fault for any nonpayment by a BIA contractor; and (7) that the FATCO Road Project be finished immediately even if a new contractor must be procured; and

**WHEREAS,** the Tribal Council is also concerned about damages to FATCO homesite and industrial roadways due to the detour and land settling in approaches to the new bridge, and is alarmed that the Bureau of Indian Affairs Contracting Officer may have granted a winter shutdown to Arctic Slopes without first consulting the Tribe and without having all the facts necessary to make such a decision and further that the Contracting Officer may be considering a waiver of liquidated damages; and

**WHEREAS,** BIA Contracting Officer Bud Brown advises the Council that he will review the Tribal Council's concerns about the true function of the concrete slabs that were directed to be removed by the BIA from either side of the FATCO bridge, will check the structural integrity of the bridge, and will review the winter shutdown request and liquidated damages contract provisions.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby concludes, after lengthy discussion, that (1) the BIA as the Tribe's Trustee has a duty to check the structural integrity of the bridge; (2) the Trustee Bureau of Indian Affairs must determine the correct purpose of the concrete slabs that were removed from the bridge in both directions under BIA direction; (3) the Trustee BIA investigate reprogramming of liquidated damages incurred by Arctic Slope and utilize said funds for the repair of detoured roads at FATCO homesite and the industrial area; (4) the bonding company for Arctic Slopes be advised of the delays, liquidated damages, and problems with Arctic Slopes' completion of the contract; (5) if the winter shutdown was authorized by the Trustee BIA, that it be rescinded and that Arctic Slope not be allowed to shutdown until May 1997 as it is common knowledge that the temperatures in Whiteriver during the winter may easily exceed 40 or 50 degrees in the daytime which would allow for the pouring of asphalt and other temperature related construction activities on the FATCO Road; and (6) Arctic Slope be barred from any future contracts on the Fort Apache Indian Reservation, but not be released from its contractual obligations to complete FATCO Road, BIA Project Consolidated No. 23.

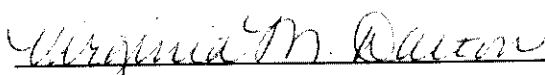
**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby gives notice to the Bureau of Indian Affairs, that as the trust beneficiary of the BIA's responsibility for roads on Indian reservations and, in particular, the Fort Apache Indian Reservation, the Tribal Council expects the Trustee to protect the Tribe from further financial injury and that it enforce all contract terms in accordance with the highest fiduciary standards.

**BE IT FURTHER RESOLVED** by the Tribal Council that it hereby advises the BIA that it holds the BIA jointly and individually responsible for any structural failure of the FATCO Road Bridge, now or in the future, that results from any negligent enforcement of the BIA's contract with Arctic Slope Company.

The foregoing resolution was on January 23, 1997 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 it by Article IV, Section 1 (a), (c), (h), (i), (s), (t) and (u) of the Constitution of the Tribe, ratified by the Tribe on September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

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Chairman of the Tribal Council

  
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Secretary of the Tribal Council