

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

Background

- WHEREAS,** the White Mountain Apache Tribe occupies the Fort Apache Indian Reservation established in 1871, an area within the historical aboriginal territory of the White Mountain Apache Tribe (as depicted by the attached map incorporated by reference herein) and occupied by the Tribe since time immemorial; and
- WHEREAS,** the White Mountain Apache Tribe has unbroken chain of title from time immemorial to date to those lands now comprising the present day Fort Apache Indian Reservation, together with the totality of property rights appurtenant thereto including, but not limited to, rights to the use of all waters that underlie, traverse, border, and arise within said Reservation; and
- WHEREAS,** the White Mountain Apache Tribe, also known as the Agricultural Apaches, has never conveyed any property or water rights to the United States or to any other person or entity as said lands and water within the current Reservation were retained by the Tribe as a self-sustaining homeland for its people upon which they could pursue the arts of civilization, Apache culture and values, and exercise sovereignty, dominion and control over the land, water, flora and fauna therein; and
- WHEREAS,** the White Mountain Apache Tribe has relied upon the streams, springs, aquifers and other waters of the Fort Apache Indian Reservation as a spiritual and sacred source of life from time immemorial; and
- WHEREAS,** in 1913, the Secretary of the Interior acting through the Bureau of Reclamation, constructed the Theodore Roosevelt Dam in the Salt River Valley, and purportedly dedicated all of the waters of the Salt River and its tributaries to the Salt River Reclamation Project in contravention of the aboriginal, prior and superior rights of the White Mountain Apache Tribe to the use of water from the Salt River and its tributaries, including, but not limited to, the Black River, White River, Carrizo Creek, Cibecue Creek and Canyon Creek; and
- WHEREAS,** the Fort Apache Indian Reservation occupies Sixty Percent (60%) or more of the Salt River watershed including the headwaters and tributaries of the Salt River and provides the greatest contribution of streamflow from watersheds upstream from Phoenix and the surrounding environs; and

WHEREAS, water development on the Fort Apache Indian Reservation has been suppressed in favor of the downstream Salt River Reclamation Project, but the water rights of the White Mountain Apache Tribe have never been taken (*White Mountain Apache Tribe of Arizona v. U.S.*, 11 Cl.Ct. 614 (1987)); and

Uses of Water by White Mountain Apache Tribe

WHEREAS, the White Mountain Apache Tribe, despite opposition and lack of federal support, has developed and otherwise used its water resources for, among other things, the development of a major ski area with snow making capacity, an agricultural enterprise, the Fort Apache Timber Company, livestock industry, gravel and sand operations, an extensive outdoor recreation program, Native Apache trout recovery program, and two federal fish hatcheries which stock numerous lakes and several hundred miles of cold water streams within and without the Reservation for outdoor recreational purposes; and

WHEREAS, the White Mountain Apache Tribe is also in the process of restoring farmlands that have been irrigated for centuries within the several tributary watersheds of the Salt River within the Reservation that were previously damaged by federal government mismanagement practices in the early part of the Twentieth Century; and

WHEREAS, the White Mountain Apache Tribe has also developed the Canyon Day irrigation farm project which will encompass Three Thousand (3,000) acres and has identified Forty Six Thousand (46,000) additional acres on the Reservation for irrigated agricultural purposes; and

WHEREAS, in addition to the foregoing agricultural/livestock use, the White Mountain Apache Tribe requires water for a growing population and for industrial development and claims not less than a total of Two Hundred Sixty-Seven Thousand (267,000) acre feet as its quantified water right to be derived from both surface water and groundwater for all beneficial uses of water in support of civilization including those mentioned herein; and

State Water Right Adjudication

WHEREAS, the United States has been named as a party in the Arizona State Court Gila River and Little Colorado River General Stream Adjudications; and the United States Supreme Court has determined that Indian reserved water rights may be adjudicated in state water adjudication proceedings pursuant to the McCarran Amendment (43 U.S.C. 666); and

WHEREAS, the United States Bureau of Indian Affairs, as trustee for the White Mountain Apache Tribe, has filed a water rights claim over the objection of the Tribe in both the Little Colorado River and the Gila River General Stream Adjudications; and

- WHEREAS,** the United States Department of Justice represents the Bureau of Indian Affairs in the Little Colorado River and the Gila River General Stream Adjudications; and
- WHEREAS,** the White Mountain Apache Tribe has opposed the forced representation of the Department of Justice, and has objected to the inadequacy of the claim filed by the United States purportedly on behalf of the White Mountain Apache Tribe in the Little Colorado and Gila River General Stream Adjudications, as that claim is deficient because it does not address the groundwater upon which the Tribe relies, among other deficiencies; and
- WHEREAS,** the White Mountain Apache Tribe has not intervened in either State Court proceeding as the State Court proceedings lacked jurisdiction under the McCarran Act for failure to include the Coconino and other Aquifers, which underlie the Fort Apache Indian Reservation and aboriginal lands north of the Tribe's Reservation; and
- WHEREAS,** the Coconino Aquifer lies in both the Little Colorado River Basin and the Salt River watershed south of the Mogollon Rim, and discharge from the Coconino and other Aquifers north of the Mogollon Rim constitutes the source of the base flow for hundreds of springs and hundreds of miles of streams that arise upon, border, and traverse the Fort Apache Indian Reservation; and
- WHEREAS,** groundwater pumping from the Coconino and other Aquifers north of the Mogollon Rim threatens to diminish the base flow of the streams and springs within the Fort Apache Indian Reservation; and
- WHEREAS,** on November 19, 1999, the Arizona Supreme Court issued an Opinion that acknowledges Indian reserved rights to the use of groundwater and that holders of such Indian reserved rights to groundwater are entitled to greater protection from groundwater pumping than are water users who hold rights created by Arizona law; and
- WHEREAS,** the White Mountain Apache Tribe's right to the use of groundwater, which is the source of its springs and streams, does not depend upon the Arizona Supreme Court ruling as the Tribe reserved that right to itself when it ceded title to the United States to its aboriginal territory outside of the present boundaries of the Reservation in exchange and in consideration of retaining the current remnant of said aboriginal lands as a protected homeland for its people in order to pursue the arts of civilization; and
- WHEREAS,** the White Mountain Apache Tribe recognizes the Arizona Supreme Court's Opinion as an affirmation of the Tribe's right to the use of both surface water and groundwater and to protection from off Reservation groundwater pumping that may

threaten the Tribe's present and future use of water and base flow of the Tribe's streams; and

WHEREAS, it is urgent that the White Mountain Apache Tribe be informed if the United States intends to amend claims filed on behalf of the Bureau of Indian Affairs for the Tribe in both General Stream Adjudications, to include groundwater claims in the Coconino and other Aquifers which provide the base flow for hundreds of springs and hundreds of miles of rivers that arise on, border and traverse the Fort Apache Indian Reservation; and

CAP Allocation

WHEREAS, the White Mountain Apache Tribe is likewise concerned about the Secretary of Interior's proposal to reallocate Two Hundred Thousand (200,000) acre feet of non-Indian agriculture rights to Central Arizona Project water to facilitate settlement of Indian water rights of the Tohono O'odham Nation, Gila River Indian Community, and the San Carlos Apache Tribe, as the proposed reallocation appears to presume and not consider the upstream, prior and superior water rights of the White Mountain Apache Tribe, nor the impact of future depletion of Salt River flow by the Tribe on municipalities and industries within the Salt River Reclamation Project District, nor the impact on the White Mountain Apache Tribe of the reallocation of water away from Tribe's principal adverse claimants, placing greater reliance by those adverse claimants on Tribe's Salt River/Coconino water sources; and

WHEREAS, a copy of the Tribe's Scoping Comments on the proposed CAP reallocation are attached and incorporated by reference herein; and

WHEREAS, the Bureau of Reclamation (BOR) subsequent scoping report on the proposed reallocation is not responsive to the Tribe's Comments as it regards the concerns of the White Mountain Apache Tribe as "speculative" because the Tribe's rights have not been quantified, settled or adjudicated, and "no meaningful qualification or quantification of impacts" could be possible; and

WHEREAS, commentary by the Department of Interior's Bureau of Reclamation that the Tribe's water rights claims to the Salt River and its tributaries are "speculative" is contrary to the Reserved Water Rights Doctrine and the Winters Doctrine, and totally disregards claims filed in the State Court proceedings by the Department of Justice for the Bureau of Indian Affairs on behalf of the White Mountain Apache Tribe, even though said claims are inadequate and deficient in both magnitude and source of supply; and

WHEREAS, based on the Bureau of Reclamation's comments, the White Mountain Apache Tribe must conclude that the proposed reallocation of CAP water presumes that

there will be increased pressure upon the White Mountain Apache Tribe to limit the exercise of its prior and superior rights to minimal amounts of Salt River flow and said presumption must be clarified as it may imperil the water rights of the White Mountain Apache Tribe; and

WHEREAS, the Bureau of Reclamation has, within the last decade, increased the height of Roosevelt Dam and stored additional amounts of Salt River flow in the newly created zone for water conservation and has, to the detriment of the White Mountain Apache Tribe, contracted with downstream, junior, adverse claimants to the claims of the White Mountain Apache Tribe for the use of that newly conserved water supply, upon which the White Mountain Apache Tribe relies for present and future purposes; and

Trans-basin Diversions

WHEREAS, the White Mountain Apache Tribe has information that proposed settlement discussions in the Little Colorado River General Stream Adjudication contemplate surrender of Blue Ridge Reservoir by the Phelps-Dodge Corporation to the Navajo Nation thereby reducing the amount of water restored to the Salt River system in the East Fork of the Verde River to replace water taken by Phelps-Dodge Corporation from the Tribe's Black River for mining operations; and

WHEREAS, the Black River borders the Fort Apache Indian Reservation and the White Mountain Apache Tribe claims the right to the use of water therefrom; and

WHEREAS, the Little Colorado River settlement also contemplates that Show Low Lake be surrendered by the Phelps-Dodge Corporation to the City of Show Low and therefore present diversions from Show Low Lake into Corduroy Creek at Forestdale on the Fort Apache Indian Reservation would cease and deprive the Salt River system of thousands of acre feet of water taken from the Black River by the Phelps-Dodge Corporation without the consent of the White Mountain Apache Tribe; and

WHEREAS, non-restoration to the Salt River system of water pumped by the Phelps-Dodge Corporation from the Black River will create additional pressure on the White Mountain Apache Tribe not to develop its water rights from tributaries and waters of the Salt River which would deplete flow of the Salt River to the detriment of other junior, but powerful, adverse claimants in the Phoenix Valley and the Salt River Project area; and

WHEREAS, the Tribal Council concludes that it is imperative that the White Mountain Apache Tribe participate in a high level meeting with Secretary of Interior Bruce Babbitt and Attorney General Janet Reno, or their designees, to discuss the Tribe's water claims in the ongoing Little Colorado River and Gila River General Stream

Adjudications and that the Tribe be fully informed of the intentions of the United States to address deficiencies in its claims, including issues addressed by the Arizona Supreme Court in its November 19, 1999 groundwater opinion so that it can take whatever action necessary to protect its priceless right to the use of water which arises upon, traverses, underlies, and borders its aboriginal lands and homeland.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby requests that Secretary of the Interior Bruce Babbitt and Attorney General Janet Reno, through their respective designees, schedule a meeting, in early February 2000 with the White Mountain Apache Tribe through its designated representatives, to discuss the intentions of the Trustee United States following the Arizona Supreme Court's Opinion, holding groundwater is an Indian reserved right, to file an amended claim in the Little Colorado and Gila River general Stream Adjudications to include the Coconino and other Aquifers which are the source of base flow of springs and rivers that arise underlie, upon, border and traverse the Fort Apache Indian Reservation, and which lie north and south of the northern boundary of the Fort Apache Indian Reservation.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it respectfully requests that the Attorney General and Secretary of Interior be prepared to specifically discuss the implications of the Secretary's proposed reallocation of CAP water, the enlargement of Roosevelt Dam and the impact of said reallocation upon the use and further development by the White Mountain Apache Tribe of its water resources within the Fort Apache Indian Reservation.

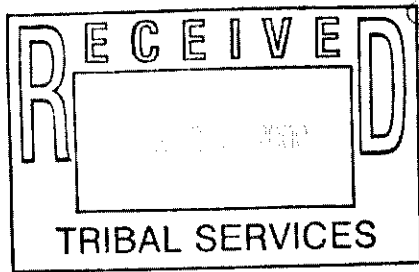
BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Tribe has interests of such nature and character in the Salt River, its tributaries and the Coconino and other aquifers that it must have and respectfully requests the cooperation of the Attorney General of the United States and the Secretary of the Interior to provide consultation to the Tribe as a party of interest with respect to any proposed settlement among parties other than the White Mountain Apache Tribe, Indian or non-Indian, that impact upon the Tribe's sources, including, but not limited to, proposed settlements relating to the Coconino Aquifer in the Little Colorado River Basin, proposed settlements relying upon the waters of the Salt River or tributaries or proposed settlements with provisions to alter or diminish trans-basin diversions from outside sources to the Salt River or its tributaries.

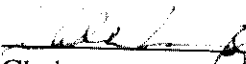
BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes and directs the Tribal Chairman to take all necessary procedural steps to transmit a copy of this Resolution to Attorney General Janet Reno and Secretary of Interior Bruce Babbitt, and to arrange a meeting in

Washington, D. C., or other mutually agreed upon meeting site, to discuss the critical water rights issues and Tribal concerns identified herein.

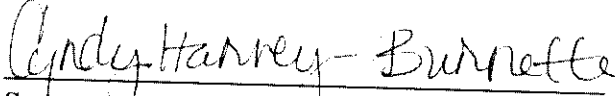
BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby reaffirms that it has no intention of relinquishing its aboriginal rights to a sufficient quantity of water necessary to fulfill the needs and purposes of the White Mountain Apache Tribe, as determined by the Tribe, for a self-sustaining homeland for present and future generations of the White Mountain Apache Tribe.

The foregoing resolution was on **December 8**, 1999, 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),(f),(g),(h),(i),(s),(t) and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).





Chairman of the Tribal Council



Secretary of the Tribal Council