

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

- WHEREAS,** the White Mountain Apache Tribe on December 8, 1999 adopted Resolution 12-99-305, incorporated by reference herein, which requested Secretary of the Interior, Bruce Babbitt and Attorney General, Janet Reno, through their respective representatives, to meet with the White Mountain Apache Tribe to discuss the intentions of the Tribe's Trustee, the United States of America, to file an amended claim in the Little Colorado River and Gila River general stream adjudications to include the transbasin Coconino and other aquifers which are the source of the base flow of springs and rivers that arise upon, underlie, border and traverse the Fort Apache Indian Reservation, and which are present, continuous and connected both north and south of the northern boundary of the Fort Apache Indian Reservation; and
- WHEREAS,** Resolution 12-99-305 also requested that Secretary Babbitt and Attorney General Reno through their designees, be prepared to discuss the impacts and consequences of the Secretary's proposed reallocation of CAP water, the enlargement of Roosevelt Dam and subsequent additional contracting of Salt River water to competing users upon the use and future development by the White Mountain Apache Tribe of water resources within the Fort Apache Indian Reservation; and
- WHEREAS,** the White Mountain Apache Tribe further requested consultation with Secretary Babbitt and Attorney General Reno in respect to proposed settlements by selected parties to the Little Colorado River and Gila River general stream adjudications that may impact upon the Tribe's reserved water rights; and
- WHEREAS,** subsequent to the adoption of Resolution 12-99-305, representatives of the White Mountain Apache Tribe met on April 21, 2000 in Phoenix, Arizona, at the Western Regional Office of the Bureau of Indian Affairs with representatives of Secretary Babbitt and Attorney General Reno; and
- WHEREAS,** at the afore described meeting, Tribal representatives presented substantial information regarding the transbasin nature of the Coconino and Pinetop- Lakeside Aquifers that underlie the Little Colorado River and Salt River watersheds, as well as the Tribe's aboriginal and Reservation lands, and which constitute the source of the base flow and the only dependable flow as it is less subject to the vagaries of rain and snow than other water sources of the Tribe's springs and streams that

traverse the Tribe's Reservation lands; and

**WHEREAS,** Tribal representatives also demonstrated that the absence of the transbasin Coconino and other aquifers from the Little Colorado River and Gila River general stream adjudications would violate the jurisdictional requirements of a general stream adjudication under the McCarran amendment, as neither the Apache County nor the Maricopa County Superior Court could exercise complete personal and subject matter jurisdiction over pumping from said aquifers thereby rendering it impossible for either State Court to issue a comprehensive and enforceable decree adjudicating the rights of all claimants to the water source; and

**WHEREAS,** the Arizona Supreme Court has recently addressed groundwater finding that *...the trial court correctly determined that the federal reserved water rights doctrine applies not only to surface water but to groundwater...and...holders of federal reserved rights enjoy greater protection from groundwater pumping than do holders of state law rights...*; and

**WHEREAS,** to date, the Arizona Superior Courts have not considered the transbasin Coconino and other aquifers which constitute the base flow of the Tribe's springs and streams within the Salt River watershed and which also provide the base flow of springs and streams in the Little Colorado River basin and a source of water for numerous expanding groundwater pumpers north of the Fort Apache Indian Reservation and along its northern boundary; and

**WHEREAS,** in said April 21 meeting, Tribal representatives outlined and reviewed with federal officials the deficiencies in the Trustee's technical report in respect to the transbasin Coconino and other aquifers and the Trustee's conclusions respecting their contribution to the base flow of Reservation springs and streams, as well as impacts to the base flow from off Reservation groundwater pumping of the transbasin Coconino and other aquifers, and said groundwater findings and conclusions from the Trustee's technical reports, whether sound or unsound, are excluded from the United States' claim filed on behalf of the White Mountain Apache Tribe; and

**WHEREAS,** in the April 21 meeting, Tribal representatives explained in detail to the Departments of Interior and Justice significant differences between the practical irrigable acreage and other claims prepared by the Tribe and those prepared by the Department of Interior and filed in the State Court proceedings over the objections of the White Mountain Apache Tribe; and

**WHEREAS,** Tribal representatives also brought to the attention of the Departments of Interior and Justice, the response of the Bureau of Reclamation to the Tribe's comment on the Environmental Impact Statement for allocation of CAP water for Indian water

settlements, wherein the Tribe commented that assumptions used in conducting the analysis for the EIS do not, but, should account for the Trustee's (defective) claim for the White Mountain Apache Tribe's water rights in the Salt River basin; further, that the federal purpose of the EIS to reallocate CAP water to provide Indian and non-Indian water users sufficient water to overcome, at least partially, the impact of Indian reserved rights to the use of water is flawed absent proper consideration of the claim to which the Bureau of Reclamation responded in effect, that the success of the Trustee's claim for the White Mountain Apache Tribe would be so speculative that no meaningful qualification or quantification of impacts would be possible thereby denigrating the claim of the United States and underscoring the concerns of the White Mountain Apache Tribe over two decades that the United States has a defective claim and that the Bureau of Reclamation and other agencies of the United States are engaged to systematically diminish the importance of the rights to the use of water by the White Mountain Apache Tribe; and

**WHEREAS,** said response from the Bureau of Reclamation is contrary to and in violation of the trust obligation of the United States to protect the reserved water rights of the White Mountain Apache Tribe and demonstrates a complete disregard of the Tribe's claims to the use of water in the Salt River Basin which the Tribe has demonstrated as being 267,000 acre feet based on a practical irrigable acreage claim of 49,000 acres and municipal and industrial purposes, and for all other purposes consistent with beneficial use of water to promote the economy, health and welfare of the Tribe, as well as a disregard for the claim of the United States, albeit a defective claim; and

**WHEREAS,** the recent increase in the height of Roosevelt Dam, at considerable expense to the United States, has created new, dependable storage and an increase in hydropower production at Salt River Dams downstream from the Fort Apache Indian Reservation; and the Bureau of Reclamation has contracted with downstream, junior water users for the increase in dependable water supply but none of this increased capacity has been allocated with the view of offsetting the impact of future use of water by the White Mountain Apache Tribe thereby making it more difficult for the Tribe to develop its water due to the increased reliance on Salt River supplies by powerful downstream interests to which the Bureau of Reclamation is responsive, nor has any hydroelectric power or revenues derived therefrom been allocated or considered for allocation to a White Mountain Apache Tribe Water Development Fund; and

**WHEREAS,** the Tribal Council concludes that revenues generated by hydroelectric power derived from the Tribe's water resources and from federal investments that increase dependable water supplies in the Salt River should be deposited in an account for the White Mountain Apache Tribe to fund development of its water resources; and

**WHEREAS,** Tribal representatives also pointed out to the Departments of Interior and Justice that shutdowns of transbasin diversions from Blue Ridge Reservoir into the Verde River and from Show Low Lake into Forestdale Creek and the Salt River System to replace water pumped from the White Mountain Apache Tribe's Black River by Phelps Dodge, proposals now under discussion as a means of resolving conflicting claims in the Little Colorado River Basin, would further reduce water supplies available in the Salt River Basin to satisfy the prior and superior claims of the White Mountain Apache Tribe and other downstream, junior appropriators thereby increasing pressure on Arizona Courts to find against the Trustee's claim for the White Mountain Apache Tribe and increasing pressure on the White Mountain Apache Tribe not to divert or consume any water within the Salt River Basin embraced by a subsequent decree of its water rights; and

**WHEREAS,** the Tribal Council further concludes that its Trustee, the United States of America, has taken upon the responsibility, and therefore the liability of protecting the Tribe's priceless water resources, an irreplaceable trust asset, by the filing of its claim, amongst all other actions by the Trustee, and that the conduct of the Trustee United States relative to the protection of those rights must be in accordance with the highest fiduciary standards; further, that full title to the use of the water resources aforescribed resides in the White Mountain Apache Tribe and the Tribal Council must be advised by its Trustee, in writing and by definitive action, of the Trustee's intent to protect the Tribe's reserved water rights so that the Tribal Council may define separate, perhaps supplemental, measures of its own to protect its water resources and reserved water rights in the event that its Trustee abandons or underperforms its efforts to preserve and protect the Tribe's water resources.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that compelled by reasons of self-preservation, the recent opinion of the Arizona Supreme Court respecting groundwater and the recent acceleration of State Court proceedings in the Little Colorado River and Gila River general stream adjudications, the White Mountain Apache Tribe must be fully informed of the intentions of the Trustee United States in respect to issues discussed in this Resolution and therefore requests a response by September 30, 2000 to the following questions:

1. Will the Trustee United States file a motion to dismiss the Little Colorado River and Gila River general stream adjudications for failure to include the transbasin Coconino and other aquifers?
2. Will the Trustee United States amend claims it filed on behalf of the White Mountain Apache Tribe in the Little Colorado River and Gila River general stream adjudication to include claims to rights of the Tribe in the transbasin Coconino and other aquifers that underlie the Reservation and which supply the valuable,

dependable base flow of the Tribe's springs and streams within the Tribe's Reservation?

3. Will the Trustee United States oppose any Federal Court complaint for declaratory and other relief filed by the White Mountain Apache Tribe against ground water pumpers north of the Reservation in the Little Colorado River Basin, the Apache County and Maricopa County Superior Courts, and other appropriate parties, for lack of jurisdiction under the McCarran Amendment for failure to include the transbasin Coconino and Pinetop-Lakeside Aquifers in their respective adjudications?
4. Will the Trustee United States support a Federal Court action filed by the White Mountain Apache Tribe or alternatively, an action filed in the State Courts challenging the jurisdiction of the State Courts under the McCarran Amendment for failure to include the transbasin Coconino and Pinetop-Lakeside Aquifers?
5. What steps will the Trustee United States take on behalf of the White Mountain Apache Tribe to overcome adverse policy declarations of the Bureau of Reclamation in the CAP reallocation which provide neither a practical nor equitable reallocation of CAP water in conjunction with the success of the claim of the United States on behalf of the Tribe and the future use of Salt River water by the Tribe?
6. Will the Trustee United States amend the practical irrigable acreage claim filed in both State Court proceedings, purportedly on behalf of the White Mountain Apache Tribe, to the extent that the White Mountain Apache Tribe has specified where said PIA claims are inadequate and understated and where evaporative losses and secretarial power sites are overstated or otherwise erroneous?
7. Will the Trustee United States take steps, including legislation, to develop an account from which revenues from hydroelectric power made possible by the federal investment in Roosevelt Dam and other downstream dams can be deposited to fund development of the Tribe's water development plans for the Fort Apache Indian Reservation?
8. Will the Trustee United States oppose any proposed settlement in the Little Colorado River Basin that does not include assertion of the prior and paramount aboriginal rights, from time immemorial, of the White Mountain Apache Tribe to the transbasin Coconino and Pinetop-Lakeside Aquifers to the extent those sources of water constitute the base flow of the springs and streams within the Tribe's Reservation?
9. What steps will the Trustee United States take to ensure that the waters imported

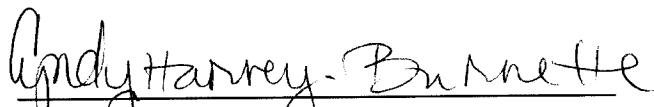
to the Fort Apache Indian Reservation and to off-Reservation tributaries of the Salt River as replacement for the diversion of the Tribe's waters on the Black River by Phelps Dodge are not diminished or alternatively that Phelps Dodge will terminate it diversions of the Tribe's water?

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby advises Secretary of Interior Bruce Babbitt and Attorney General Janet Reno and their designated representatives that it is willing to meet at any time prior to September 30, 2000 for a definitive response to the foregoing questions.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby reaffirms its commitment to the preservation and protection of the Tribe's reserved water rights, without which it cannot survive, and petitions the Trustee United States to respond fairly and honorably to the questions presented herein.

The foregoing resolution was on July 10, 2000, duly adopted by a vote of ten (10) for and zero (0) 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