

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

10/17/03

- WHEREAS,** the White Mountain Apache Tribe has beneficial title, equivalent to fee simple absolute, to over 1.6 million acres within its once much larger aboriginal territory in the east central highlands of the State of Arizona; and
- WHEREAS,** the Tribe has retained actual, exclusive, use and occupancy of its aboriginal land within the boundaries of the present day Fort Apache Indian Reservation, without exception, reservation, or limitation since time immemorial; and
- WHEREAS,** the Tribe has an unbroken chain of title to its aboriginal lands and has vested property rights therein, including reserved rights to the use of waters that underlie, border and traverse its lands which have never been extinguished by the United States and which are prior and paramount to all rights to the use of water in the Gila River drainage, of which the Salt River is the major affluent; and
- WHEREAS,** except for a small portion of the Tribe's Reservation lands that drains to the Little Colorado River basin, virtually the entire Reservation drains to the Salt River; and
- WHEREAS,** the headwaters and major tributaries of the Salt River arise upon the Tribe's aboriginal lands, specifically the north fork of the White River and the east fork of the White River, which merge at Fort Apache to form the White River, which in turn converges with the Black River to form the Salt River, the Tribe's southern most boundary and the northern boundary of the San Carlos Apache Reservation; and
- WHEREAS,** the headwater tributaries of the Salt River as listed above, in addition to Carrizo, Cibecue and Canyon Creeks, derive tributary baseflow from the Coconino Aquifer which underlies the northern portion of the Reservation throughout its full extent and further underlies the aboriginal territory north of the Fort Apache Indian Reservation; and said aquifer constitutes a tributary source of surface water of the White Mountain Apache Tribe, which in combination with other sources of surface water and groundwater is hereinafter referenced as "Salt River System water"; and
- WHEREAS,** the Tribe has prepared a water rights claim to Salt River System water with a priority date of time immemorial in the amount of 260,000 acre feet of diversion annually, the major component of which is to irrigate 49,800 acres of practicably irrigable acreage (PIA), less than three percent (3%) of the Tribe's Reservation lands, with a water duty of 5.3 acre feet to the acre; and
- WHEREAS,** in addition to claims based on PIA, the Tribe has claimed reserved water rights to Salt River System water to meet its projected population to the year 2100, an estimated

102,000 persons, and for municipal, industrial and commercial water needs and uses; and

WHEREAS, the Tribe's aboriginal, retained, vested and reserved property rights to the use of water on its lands for all beneficial uses, whether for livestock, agriculture or to pursue the "arts of civilization", has been recognized and confirmed by the U.S. Supreme Court in Winters v. United States, 207 U.S. 564, 576 (1908) and Arizona v. California, 373 U.S. 546, 599-601 (1966) and is an axiom of Federal common law and policy; and

WHEREAS, although the Tribe has not formally intervened as a party in the Gila River or Little Colorado River General Stream Adjudications now pending in the Maricopa and Apache County Superior Courts, respectively, the United States has filed a claim in both General Stream Adjudications as the Tribe's Trustee for approximately 175,000 acre feet of Salt River System water with a time immemorial priority date and has asserted as well in both proceedings the Tribe's aboriginal and paramount rights to the transbasin aquifer sources necessary to sustain the base flow of the springs and streams on the Tribe's Reservation, all of which are components of Salt River System water; and

WHEREAS, the reserved water rights claims filed by the United States as Trustee for the White Mountain Apache Tribe specifically acknowledge and confirm the Tribe's unbroken chain of aboriginal title and time immemorial priority rights to the base flow of the springs and streams and the surface waters contributed by rain fall and snow melt runoff on the Tribe's Reservation; and

WHEREAS, the United States, in written policy, officially acknowledges and recognizes that Indian water rights are vested property rights for which the United States has a trust responsibility, with the United States holding legal title to such water in trust for the benefit of the Indian people; and

WHEREAS, the Tribe is aware of the Arizona State Governor's Water Management Commission Report dated November 19, 2000, entitled "Availability, Reliability and Utilization of Renewable Supplies", which summarizes the water supply and projected water demands for the Phoenix Active Management Area [AMA] through the year 2025; and

WHEREAS, in said Water Management Commission Report, the Arizona Department of Water Resources and the U.S. Bureau of Reclamation estimate the total amount of water available for CAP on a long term average to be 1,298,000 acre feet annually, and that shortages can be expected 38% of the years and that shortages could run continuously for up to twenty years; and

WHEREAS, the total water supply to the Phoenix AMA, including Salt River System water, CAP water, effluent and over-pumped groundwater underlying the Salt River Valley, is projected at 2,618,923 acre feet annually, to be fully consumed by demand within the Phoenix AMA which is estimated to range from 2,400,000 to 2,900,000 acre feet

annually, with a mid range demand level of 2,624,844 acre feet annually by year 2025; and

WHEREAS, based on previously underestimated population growth, the projected population for Maricopa County for the year 2025 in the Water Management Commission Report may be underestimated as well; and

WHEREAS, the Tribal Council is gravely concerned that pressures of water supply and future demand for the Phoenix AMA will prejudice any State Court, including the Arizona Supreme Court, in the adjudication of the Tribe's water rights in the W 1 proceeding as the White Mountain Apache Tribe is the only Indian Tribe that can significantly impact the future water supply of the Salt River to downstream uses in the Phoenix AMA; and

WHEREAS, the Water Management Commission Report does not contemplate any depletion of the Salt River flow upstream by the White Mountain Apache Tribe, thereby exacerbating political pressure on the White Mountain Apache Tribe and on the Courts to deprive the Tribe of any future use of water in accordance with the Tribe's reserved water rights claims to divert 260,000 acre feet annually or pursuant to the United States' claim of 175,000 acre feet annually formally filed by the United States as Trustee for the White Mountain Apache Tribe in both the Gila River and Little Colorado River General Stream Adjudications; and

WHEREAS, the Arizona Water Settlement Act, S. 437 (H.R. 855) would require the reallocation of approximately 200,000 acre feet of non-Indian CAP agriculture water to settle the claims of the Gila River Indian Community (GRIC) by allocating 102,000 acre feet to the GRIC, and would allocate 28,000 acre feet to satisfy the Southern Arizona Water Rights Settlement Act of 1982, leaving approximately 65,000 acre feet of non-Indian CAP agriculture water to settle all remaining Indian reserved water rights claims in the State of Arizona; and

WHEREAS, according to the Department of Interior, unquantified, but remaining Indian reserved water rights claims in Arizona amount to twenty-five times more than the 65,000 acre feet remaining pursuant to S. 437 to settle Indian reserved water rights claims, including the claims of the White Mountain Apache Tribe; and

WHEREAS, the reallocation of non-Indian CAP agriculture water is based on a presumption that there will be little or no diversion or depletion of the Salt River upstream by the White Mountain Apache Tribe even though the Tribe has prior and paramount rights to the use of water for the Salt River System; and

WHEREAS, certain provisions of S. 437 may pose a threat to the Tribe's reserved water rights, specifically paragraph 28.1.4 of the Gila River Indian Community Agreement which will be ratified by S. 437 which provides in applicable part that the GRIC and the United States "reserve and retain the right to challenge or object to any claim for use of water

by or on behalf of the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona”; and

WHEREAS, although paragraph 28.1.4 may be interpreted by its proponents to only refer to the United States in its capacity as Trustee for the Gila River Indian Community’s Salt River claims of 3,500 acre feet, the White Mountain Apache Tribe’s reserved water rights have not been excluded by name in S. 437 in a manner satisfactory to the Tribe; further, that said right to oppose the White Mountain Apache Tribe’s use of water reserved by the United States or the GRIC is not only prejudicial to the Tribe’s vested property rights but creates an irreconcilable conflict of interest in the United States, which as the Tribe’s Trustee, has filed a claim of 175,000 acre feet in the W-1, Gila River General Stream Adjudication with a priority date of time immemorial for the White Mountain Apache Tribe; and

WHEREAS, such irreconcilable conflicts of interests may lead to a breach of trust on the part of the United States in its advocacy of the Tribe’s reserved water rights, a priceless trust asset and resource; and

WHEREAS, the failure of the United States, as Trustee for the White Mountain Apache Tribe, to preserve, protect and to exclude the reserved water rights of the White Mountain Apache Tribe may constitute a breach of trust which will prejudice and damage the Tribe’s water rights claims in the State Court General Stream Adjudications as well as politically; and

WHEREAS, the term “United States” in S. 437 is undefined so that waivers by the United States in S. 437 remain subject to broad interpretation and may include a waiver of any rights the United States could have raised on behalf of the White Mountain Apache Tribe; and

WHEREAS S. 437 appears to “grandfather” in, confirm, and otherwise legislatively ratify existing uses of the Salt River and its tributaries without the benefit of establishing the rights to do so in an *inter sese*, adjudicatory proceeding, to determine and quantify the reserved water rights of the White Mountain Apache Tribe, *vis-a-vis*, downstream junior water users, thereby removing from the General Stream Adjudication a necessary requirement for McCarran amendment jurisdiction in the State Court, violating the Separation of Powers Doctrine, and prejudicing the vested property rights of the White Mountain Apache Tribe; and

WHEREAS, the Tribal Council of the White Mountain Apache Tribe concludes that it would be in the best interests of the White Mountain Apache Tribe to authorize and direct Tribal Chairman, Dallas Massey, Sr., to submit Senate testimony opposing S. 437 unless and until the reserved water rights of the White Mountain Apache Tribe are specifically named and protected by explicit and express exclusionary language, and that S. 437 sufficiently anticipate depletion of the Salt River by the White Mountain Apache Tribe to the extent of its Salt River System claims of 260,000 acre feet diversion annually and corresponding depletion.

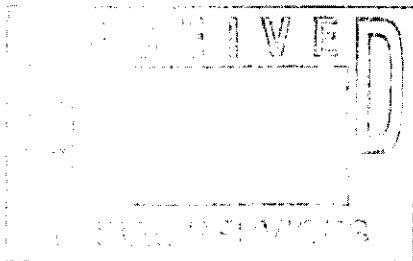
BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby opposes S. 437 (H.R. 855), known as the Arizona Water Settlement Act - Central Arizona Project Settlement Act of 2003, to the extent it prejudices the reserved water rights of the Tribe as set forth in this Resolution.


BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby opposes S.437 (H.R.855) for the reason, amongst others, that the legislation as proposed confirms water rights of the Salt River Project to waters of the Salt River System that are junior and adverse to the claims of the White Mountain Apache Tribe and the claims of the United States on behalf of the White Mountain Apache Tribe, thereby circumventing an *inter sese* determination of the Salt River Project rights and those of other downstream water users to the most valuable water supply in the State of Arizona.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes and directs Tribal Chairman, Dallas Massey, Sr., to file testimony on behalf of the Tribe, outlining the Tribe's objections to S. 437 and its request that S. 437 expressly name and exclude the reserved water rights claims of the White Mountain Apache Tribe in the Act itself.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that a copy of this Resolution be distributed to the Arizona Congressional Delegation, and to the principal agent of the Tribe's Trustee, the Secretary of the Interior, Gale Norton, and to such other officials in the Department of Justice and Department of Interior as necessary and appropriate who are charged with the trust obligation to protect the vested property and reserved rights of the White Mountain Apache Tribe to the use of water in the Salt River System with a request that they meet with the Tribal Council to discuss what action the Tribe's Trustee is willing to take to preserve and protect the Tribe's priceless reserved water rights.

The foregoing resolution was on September 23, 2003, duly adopted by a vote of 8 for and 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), (i), (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