

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

WHEREAS, the Inter-government Agreement (IGA) between the White Mountain Apache Tribe and the U.S. Geological Survey [the Survey] reviewed annually and evaluated, the first IGA having been approved on December 21, 1998; and

WHEREAS, in 2003, Tribal staff, with the Tribal Chairman's approval, negotiated an agreement with the Survey whereby the Survey agrees to pay a permit fee of \$1,500 per stream-flow gaging station, which may be paid in cash or in-kind services of equal or greater value, for the five gaging stations it operates on Tribal lands; and

WHEREAS, the Tribal Hydrology & Water Resources Program, with direct support from the Tribal Water Rights Team, requested and received technical services from the Survey to undertake the complex and untried installation of ADAPS and INGRESS II stream-flow data processing software on the Tribe's own SUN Workstation computer and to train Tribal staff in the operation of this software for the purpose of allowing the Tribe to process its own stream-flow data in a manner consistent with the national standard for same which will enhance the evidentiary value of the Tribe's data for water rights purposes; and

WHEREAS, the cost incurred by the Survey for this technical support service which included hands-on training for Tribal staff in Whiteriver and in USGS offices as well as computer repair and installation of S-Plus software on the Tribal computer, was \$7,600 - or \$100 more than the annual permit fee cost for FY 2003; and

WHEREAS, the flood-warning stations installed by the Survey during the Rodeo-Chediski Fire continue to provide crucial information to the Tribe and the National Weather Service in its ongoing effort to make accurate flood-warning predictions for the area affected by the Rodeo-Chediski Fire; and

WHEREAS, BAER funding provides for the continued operation and maintenance by the Survey of these three flood-warning systems for up to three years, after which time the stations will revert to Tribal responsibility; and

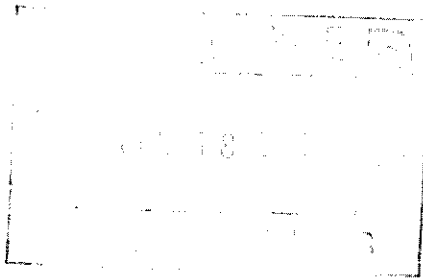
WHEREAS, information gained by monitoring flow and water quality at the lower Carrizo Creek station and flow at the other three flood-warning stations within the Rodeo-Chediski Fire area is important to the Tribe's goal of ensuring restoration to these damaged watersheds and their sensitive wetland areas as well as providing important flood-forecasting information to the Tribe and the National Weather Service.


BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the renewal of the annual Inter-government Agreement between the Tribe and the U.S. Geological Survey as amended for 2004 in Attachment A incorporated by reference herein.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Tribal Hydrology & Water Resources Program is authorized to continue working with the U.S. Geological Survey to collect water quality data at Carrizo Creek in accordance with EPA grant funding related to the Rodeo-Chediski Fire.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the Tribal Chairman, and in his absence, the Vice Chairman, to sign any documents necessary to implement the actions authorized by this resolution.

The foregoing resolution was on JUNE 3, 2004 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), (b), (c), (f), (i), (j), (k), (s), (t), and (u) of the Constitution of the Tribe, ratified by the Tribe 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).




Chairman of the Tribal Council


Secretary of the Tribal Council

Intergovernmental Agreement

Between the

White Mountain Apache Tribe

and the

U.S. Geological Survey

for Stream-gaging Access Permit

and

Technical Assistance

Intergovernmental Agreement Between the White Mountain Apache Tribe and the U.S. Geological Survey for Stream-gaging Access Permit and Technical Assistance

I. PURPOSE

The White Mountain Apache Tribe, a Federally recognized Indian Tribe, organized pursuant to the Indian Reorganization Act of 1934 (25 U.S.C. § 476) [the Tribe] and the U.S. Geological Survey [the Survey] enter into this Intergovernmental Agreement [IGA] to allow the Survey limited legal access on the Tribe's Fort Apache Indian Reservation [Reservation] to carry out specific stream gaging activities permitted by the Tribe and to facilitate technical assistance to the Tribe when requested by the Tribe.

II. AUTHORITY FOR IGA

- (a) Pursuant to Article IV Section 1 of the Tribal Constitution, the Tribal Council, in addition to all powers vested in the Tribe through its inherent sovereignty or by existing law, has the power to negotiate, make and perform contracts and agreements with the United States. Article IV, §§ 1(b),(e),(f),(h),(i),(j),(m),(n),(q),(t),(u).
- (b) Pursuant to 43 U.S.C. § 31, and such annual appropriation acts as are enacted into law, the Survey is authorized to investigate water resources within the United States (including gaging the streams and determining the water supply of the United States), and enter into cooperative (joint) funding of Survey scientific investigations.

III. GUIDING PRINCIPLES & PRECEPTS

- (a) The Tribe and the Survey recognize the potential for a mutually beneficial cooperative relationship. The Survey seeks to continue to operate six (6) stream gaging stations [the stations] on the Tribe's Reservation (see listing in Appendix A) to obtain data useful to the Survey, the Tribe, and others. The Tribe may request from the Survey technical assistance and scientific data for the benefit of the Tribe.

- (b) The Survey agrees that it must, and by entering into this IGA does, request Tribal permission for access to the Reservation for the purposes of maintaining the stations or obtaining, directly or remotely (i.e. satellite), any hydrological or meteorological information from the stations. This Agreement, subject to its termination clause, constitutes Tribal permission for Survey employees to enter Tribal lands for the purposes of operating and maintaining the stream gages listed in Appendix A; and for providing technical or educational assistance to Tribal staff at the Tribe's request. Additionally, unless otherwise provided herein, the Survey agrees to provide notice of specific site visits on Tribal lands at least 14 days prior to such intended access. No other personnel, including representatives from any cooperating agencies, either private or public, may enter the Reservation whether or not with Survey personnel, without specific written Tribal authorization.
- (c) The United States has certain trust responsibilities to the Tribe in regard to Tribal trust assets, which include the Tribe's land and water resources. The Department of the Interior's [Department] policy regarding its trust responsibilities is contained in 512 Departmental Manual [DM] 2.1 *et seq.* ("*Departmental Responsibilities for Indian Trust Resources*"). The Survey is committed to working with the Tribe on a Government to Government basis in recognition of the trust responsibilities contained in 512 DM 2.1 *et seq.* and the Survey's "*Policy on Employee Responsibility Towards American Indians and Alaska Natives*" (August 14, 1995) (U.S. Geological Survey Manual 500.4). The Survey is further committed to a Government to Government relationship with the Tribe as required in various Executive Orders.
- (d) The Survey acknowledges that Tribal permission pursuant to this Access Agreement is necessary in order to continue its annual funding agreement for the stations with the Arizona Department of Water Resources [DWR], as any such agreement provides funding for the stations for the purpose of collecting information at the stations. The Tribe is a "cooperator" with the Survey for purposes of this IGA, because the Tribe has made invaluable in-kind contributions for the stations.

IV. PARTIES RESPECTIVE RIGHTS NOT PREEMPTED

This IGA does not, in any manner, preempt or modify the respective rights and responsibilities of either party. Based upon the above provisions which shall be considered as guiding principles in the interpretation of this Agreement, the

parties hereby agree to the following provisions:

A. EXCHANGE OF TECHNICAL EXPERTISE

Upon the request of the Tribe, the Survey will, to the extent allowed by fiscal and staffing constraints and within its mission, help identify and share technical expertise and offer personnel training opportunities to the Tribe to assist in the Tribe's monitoring of its water resources. Examples of such technical assistance that may be requested by the Tribe and offered by the Survey include, but are not limited to:

- (1) Training of Tribal staff in scientific and computer-based methods related to water resources monitoring, including the development and maintenance of the Tribe's own ADAPS system, through internships, cooperative appointments, and training courses or individual training at Tribal and/or Survey locations;
- (2) Technical assistance in developing and implementing Tribal Quality Assurance protocols for the Tribe's water resources monitoring programs;
- (3) Acquisition of equipment for Tribal water monitoring and testing (*e.g.*, through donations of surplus equipment, or other assistance with the purchasing of new equipment) to the extent authorized by law;
- (4) Technical assistance regarding developing and upgrading the Tribal cartographic database, including access to digital elevation and quadrangle maps, where available.
- (5) Sharing of personnel pursuant to the Inter-Governmental Personnel Act by Inter-Personnel Agreements (IPAs) and other appropriate means.

If a cooperative activity under this section is anticipated to incur costs in excess of the amounts customarily budgeted for such activity, the Tribe may be responsible for those costs. Any such costs must be discussed and agreed to in writing by the Tribe prior to the Tribe being held responsible to pay for such costs.

B. COMMUNICATION

Close communication and careful implementation of this IGA will ensure that issues are resolved promptly and productively. Unless otherwise provided herein or in writing, communication between the Tribe and the Survey shall be made through the following offices:

- (1) The Survey's primary contact with the Tribe shall be the Tribal Hydrologist at the Tribal Headquarters in Whiteriver, Arizona, or his/her designee.
- (2) The Tribe's primary contact with the Survey shall be the Survey's Water Resources Division District Chief at the Survey's District Office in Tucson, Arizona.

C. INFORMATION

Pursuant to this IGA, the Survey is hereby authorized to collect and release only that information directly obtained by the Survey through the operation of the Survey's stream gaging stations identified in Appendix A of this IGA. All data acquisition under this agreement shall be performed by the Survey except as may be specifically authorized by the Tribe. Only the Tribe and the Survey shall be depositories of original records produced pursuant to this agreement. All other information provided to the Survey by the Tribe relating to the Tribe's water resources, regardless of the location of that information, shall be deemed proprietary and confidential and shall not be released without prior written approval from the Tribe.

D. CONSULTATION/LIMITED ENTRY ONTO TRIBAL LANDS

- (1) **Consultation:** In accordance with 512 DM 2.1 *et seq.*, the Survey shall consult with the Tribe prior to commencing Survey activities or proposed activities that affect Tribal trust resources, which include, but are not limited to, the Tribe's water resources. Such consultation shall include, among other things, ensuring that the Tribe has sufficient notice and opportunity to meaningfully participate in all meetings, discussions, and other communications regarding the Survey's stream monitoring activities on the Reservation, and that the Tribe be invited to participate in, and be a party to, the negotiation of any agreement entered into by the Survey with third parties related to such on-reservation activities in accordance with 512 DM 2.1 *et seq.* (or any amendments). The Survey shall also consult with the Tribe whenever any of its off-reservation activities may affect Tribal trust resources.
- (2) **Access:** Each time the Survey requires physical access to the Reservation, the Survey shall request such access in a letter to the Tribal Hydrologist with copies to the Tribal Chairman and the Tribal Legal Department. The request shall include the reasons for the Survey's need for access, and shall be sent by the Survey no later than fourteen (14) days before the date of

desired access. The Tribal Hydrologist will respond in writing to the Survey's request and otherwise coordinate access on terms acceptable to the Tribe. If the Tribe has not responded within seven (7) days, the Survey may contact the Tribal Hydrology and Water Resources Program by fax to request Tribal permission for access.

The Survey may require emergency physical access to the stations based on unexpected or potential flood events or equipment malfunction. In the event that emergency entry is necessary based on these conditions, the 14 day notice requirement as set forth above is not required, and the Survey may access the stations. In such instance, the Survey shall provide notice of emergency entry to the Tribe either prior to such entry (either in person or by telephone/fax), at the time of such entry (in person), or immediately after such entry (either in person or by telephone/fax).

The Survey may be unable to comply with the 14 day notice requirement as set forth above in the event of a prolonged power/phone outage. If telephone/fax communications are not possible due to prolonged power/phone outages, the 14 day notice provision as set forth above is not required, and the Survey may access the stations. The Survey shall provide notice of such entry to the Tribe either at the time of such entry (in person), or as soon as possible after such entry (either in person or by telephone/fax).

- (3) **Joint Funding Agreement for Water Resources Investigations:** The Survey has entered into a joint funding agreement for water resources investigations with DWR for the purpose of maintaining stream gaging stations on the Fort Apache Indian Reservation. The Tribe was not a signatory to any of the joint funding agreements for the stations prior to December 21, 1998. Attached hereto as Appendix B is the form for joint funding agreement pertaining to stream gaging stations on the Reservation which shall be utilized in any future joint funding agreement between the Survey and DWR. The Tribe hereby approves the form and content of the agreement found at Appendix B. Any and all revisions to the form will be submitted to the Tribe for its review and written approval on an annual basis, and the Tribe shall receive a signed copy of the agreement subsequent to any revisions. If the Tribe does not approve any subsequent revisions to the form, access to the Reservation pursuant to this IGA shall terminate at the end of the period covered by any approved form, until such time as a revised form is approved in writing by the Tribe. In the event of a funding lag, conditions of the preexisting funding agreement apply until the new agreement is signed, but shall not extend past December 31.

E. ANNUAL REVIEW, MODIFICATION AND TERMINATION

Representatives from the Survey and the Tribe will meet at least once per year to evaluate the status of this IGA. If mutually agreed to by the Tribe and the Survey, this IGA may be modified in writing as needed. This IGA may be terminated by either the Survey or the Tribe without cause with 30 days written notice by certified mail. In the event that this IGA is terminated, the Survey: 1) may access and retrieve all non-permanent fixtures, equipment and property related to this IGA; 2) subject to Tribal written consent, remove and/or modify the stations in order to ensure that all appropriate safety precautions have been taken; and, 3) remove all fixtures permanent or otherwise, and as nearly as possible restore the area at the stations to the same state and condition existing prior to the installation of the stations and appurtenances, if so directed by the Tribe. In the event that the Tribe directs the Survey to leave the stations or any appurtenances on the Reservation, and to the extent that the Survey has complied with the directions of the Tribe, the Tribe shall execute an appropriate release for the benefit of the United States and the Tribe shall be responsible for all subsequent claims for alleged loss, injuries, or damages to persons or property arising from the stations or its appurtenances pursuant to the Tribal Tort Claims Act, as applicable.

F. APPROVAL AND EXECUTION

First entered into on the 21st day of December 1998 on the Fort Apache Indian Reservation of the White Mountain Apache Tribe, and revised on the 20th day of May, 2004.

**Dallas Massey, Sr., Chairman
White Mountain Apache Tribe**

**Charles Groat, Director
U. S. Geological Survey**

Appendix A

*Intergovernmental Agreement between the U.S. Geological Survey
and the White Mountain Apache Tribe*

Stream-gaging Stations Operated by the U.S. Geological Survey on the Fort Apache Indian Reservation

U.S. Geological Survey Station Identification Number	Name of Stream-gaging Station
Station No. 09490500	Black River near Fort Apache
Station No. 09492400	East Fork White River near Fort Apache
Station No. 09494000	White River near Fort Apache
Station No. 09497500	Salt River near Chrysotile
Station No. 09497800	Cibecue Creek near Chrysotile
Station No. 09496500	Carrizo Creek near Show Low

Terms of Operation: The Survey agrees to pay the Tribe an annual permit fee of \$1500 per station for five of the six stations listed above. Salt River near Chrysotile is not included in the permit fee because the station lies on San Carlos Apache lands, with only one anchor for the station's cableway located on the Fort Apache Indian Reservation. Payment to the Tribe may come in the form of cash or services as long as both parties agree. The Survey will publish all data from the above-listed stations in its annual report, "Water Resources Data, Arizona," and provide real-time data to the Arizona DWR's Flood Warning Office.

Streamgaging Stations Operated by the White Mountain Apache Tribe Under 3-year Maintenance Contract with US Geological Survey

US Geological Survey Station I.D. Number	Name of Streamgaging Station
Station No. 09494200	Carrizo Creek near Cibecue
Station No. 09497700	Cibecue Creek near Overgaard
Station No. 09495800	Corduoy Creek near Show Low

Terms of Operation: Maintenance contracts are subject to annual review. During the term of the

Streamgaging Stations Operated by the White Mountain Apache Tribe

Number	Name
09489200	Pacheta Creek at Maverick, AZ
09489600	Bonito Creek at Y-40 near Whiteriver, AZ
09491000	North Fork White River near McNary, AZ
09491500	North Fork White River at Lower Log, near HonDah, AZ
09494500	Corduoy Creek above Forestdale near Show Low, AZ
09495500	Forestdale Creek near Show Low, AZ

contracts, the Survey will publish all data for the stations in the US Geological Survey report "Water Resources Data, Arizona," and provide real-time data to the Arizona DWR's Flood Warning Office. Upon termination of the contract, all data collection and maintenance responsibilities will revert to the Tribe's Hydrology & Water Resources Program, and data will no longer be publicly available.

Appendix B
U.S. Department of the Interior
Joint Funding Agreement Agreement No. 4
for
WATER RESOURCES INVESTIGATIONS

THIS AGREEMENT is entered into as of the day provided in 2(d) below pursuant to 28 U.S.C. 2671, 43 U.S.C. 31, 50, 1332, 1340 and P.L. 100-202, Geological Survey Manual 205.13.1 and 500.1 by the **GEOLOGICAL SURVEY, UNITED STATES DEPARTMENT OF THE INTERIOR**, (Survey), party of the first part, and pursuant to A.R.S. 45-103, 104, 105, 11-952, 35-214, 38-511, and 41-621 by the **ARIZONA DEPARTMENT OF WATER RESOURCES (DWR)**, party of the second part.

1. The parties hereto agree that subject to the availability of appropriations and in accordance with their respective authorities and the IGA of __[insert date]__ between the U.S. Geological Survey (U.S. Department of the Interior) and the White Mountain Apache Tribe, which is attached and incorporated by reference herein, there shall be maintained in cooperation an investigation, including the collection, publication, and dissemination of hydrologic data and interpretive studies, of the water resources of the Salt River drainage basin, Arizona, on the Fort Apache Indian Reservation of the White Mountain Apache Tribe as tabulated and described in the Scope of Services, attachment 1, hereinafter called the program, which by this reference is made a part hereof.

The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program.

- (a) \$ _____ by the Survey during the period starting on the effective date provided in 2(d) below to __[insert date]__.
 - (b) \$ _____ by DWR during the period starting on the effective date provided in 2(d) below to _[insert date]__.
 - (c) Second part of this agreement will be funded by monies received by DWR from other sources for the purpose of this agreement.
 - (d) This agreement will not become effective until filed with the Secretary of State.
3. The costs of this program shall be paid by either party in conformity with the laws and regulations respectively governing each party.

4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the Survey, subject to the conditions outlined in the IGA of __[insert date]__ between the U.S. Geological

Survey (U.S. Department of the Interior) and the White Mountain Apache Tribe attached and incorporated by reference herein.

5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the Survey to insure the required standards of accuracy subject to modification by mutual agreement. Copies of any such mutual agreements shall be provided to the White Mountain Apache Tribe.
6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this agreement upon 60 days written notice to the other party.
7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party. Upon request, copies of the original records will be provided to the White Mountain Apache Tribe.
8. The maps, records or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records or reports normally will be published by the Survey. However, DWR reserves the right to publish the results of this program and, if already published by the Survey shall, upon request, be furnished by the Survey, at cost, impressions suitable for purposes or reproduction similar to that for which the original copy was prepared. The maps, records or reports published by either party shall contain a statement of the cooperative relations between parties. This paragraph is subject to the conditions pertaining to data outlined in the IGA of __[insert date]____ between the U.S. Geological Survey (U.S. Department of the Interior) and the White Mountain Apache Tribe.
9. Billing for this agreement will be rendered quarterly. Payments of bills are due within 60 days after the billing date. If not paid by the due date, interest will be charged at the current Treasury rate for each 30 day period, or portion thereof, that the payment is delayed beyond the due date. (31 U.S.C. § 3717; Comptroller General File B-212222, August 23, 1983).
10. The parties further agree to be bound by the following:
 - (a) This agreement may not be assigned by either party or its right title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of the other party.
 - (b) Work performed under this agreement shall be limited to the extent of money available and performed within the span of time stated in 2a and b above, for the performance of the terms identified in the Scope of Service (attachment 1) and no liability on account

thereof shall be incurred by either party beyond monies available for the purpose thereof.

Both parties hereby agree to be bound by all applicable State and Federal laws and Tribal laws when present on the Fort Apache Indian Reservation. Nothing in this agreement shall grant access to DWR to enter onto the Fort Apache Indian Reservation for any purpose related to the IGA or the stations without written consent of the White Mountain Apache Tribe.

11. In the event of termination as provided in paragraph 6, 10b, or 17:

- (a) The performing party shall stop work as specified in the notice of termination and immediately notify all subcontractors in writing to do the same, or continue such work at its own expense.
- (b) The performing party shall be paid the agreement price for all services and items completed. In addition, the performing party shall be paid its reasonable actual costs for work in progress as determined by generally accepted accounting principles and practices.
- (c) The performing party will prepare and submit a concluding report, summarizing work program accomplishments at the time of termination.

12.

- (a) All books, accounts, reports, files and other records relating to this Agreement shall be subject at all reasonable times to inspection and audit by both parties for five years after completion of this Agreement. Such records shall be produced at a mutually agreeable location. If an audit is underway at the completion of this Agreement, the parties shall retain all books, records and supporting documents until resolution of the final audit.
- (b) In the case of an audit exception, the responsible party will reimburse the exception amounts determined through the audit.

13. All written notices required by this agreement shall be submitted to:

Arizona Department of Water Resources
Attn: Administrative Services Contract Specialist
500 N. 3rd St
Phoenix, AZ 85004-3903

U.S. Geological Survey, WRD
Attn: District Chief
520 N. Park Ave., Suite 221
Tucson, AZ 85719

14.

- (a) The Survey will submit itemized quarterly invoices for work accomplished to the Department's Project Director. The invoices will be mailed to the Department on the

billing date listed on the invoice.

- (b) The Department's Project Director shall, within 20 days following the date of the invoice, either approve and submit the invoice to the Accounting Office of the Division of Administration of the Department, or contact the appropriate Survey counterpart to resolve any disputes.
- (c) Payments made by either party to the other party are conditioned upon receipt of applicable, accurate and complete reports. Payments of approved invoices shall be made within 60 days of the date of the invoice to avoid interest penalties charged by the United States for delinquent payments. Notwithstanding the provisions of paragraph 9, payment of the quarterly final bill shall not be made until successful completion of projects terminating in the agreement period.
- (d) Interest shall be charged only on the correct amount due on the claim. If an invoice is disputed, interest will not accrue on any portion of the billed amount which is not correct and due.

15.

- (a) Any liability of the United States resulting from negligence of its employees shall be governed by the Federal Tort Claims Act (28 U.S.C. 2671, et seq.).
- (b) Any liability of the State of Arizona resulting from any negligence of its employees shall be governed by Arizona's self-insurance statute A.R.S. 41-621.

16. Pursuant to the IGA dated __[insert date]__, incorporated by reference herein, the White Mountain Apache Tribe has provided the U.S. Geological Survey with conditional access to the streamflow gaging stations that are located on Tribal lands. Each visit shall be prearranged with Tribal representatives and authorization for U.S. Geological Survey employees to service the gages must be received in writing. At the discretion of the Tribe, Tribal employees shall oversee these trips and shall receive instruction on stream-gaging techniques. Under this arrangement no other personnel, including representatives of any cooperating agencies, may visit these gages at any time without specific written Tribal authorization.

17. Amendments to this agreement shall be in writing and signed by both parties.

18. This agreement may be canceled in accordance with A.R.S. 38-511.

ARIZONA DEPARTMENT OF WATER RESOURCES

BY _____

**U.S. GEOLOGICAL SURVEY
U.S. DEPARTMENT OF INTERIOR
BY**

**APPROVED AS TO FORM BY:
WHITE MOUNTAIN APACHE TRIBE**

Dallas Massey, Sr., Tribal Chairman