

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

**(Protection of Tribe's Aboriginal, Time Immemorial,
Reserved Water Rights)**

- WHEREAS,** the White Mountain Apache Tribe has beneficial title, equivalent to fee simple absolute, to over 1.6 million acres of land within its once much larger aboriginal territory in the east central highlands of what is now known as the State of Arizona; and
- WHEREAS,** is it not disputed, and cannot be disputed, that the Tribe has occupied and continues to hold an unbroken chain of aboriginal title to all of the land included in the present day Fort Apache Indian Reservation, said land having been historically occupied and possessed by the White Mountain Apache Tribe from time immemorial, as found by the Indian Claims Commission and the United States Court of Federal Claims; and
- WHEREAS,** the Tribe has retained all property and other rights not expressly ceded to the Federal government or extinguished by the United States; and
- WHEREAS,** the Tribe has actually, exclusively, and continuously occupied and used its lands and natural resources therein, including water embraced by said lands, from time immemorial, and evidentiary proof of such historical use has been established without question before the Indian Claims Commission, U.S. Court of Federal Claims, other courts of the United States, and the Executive and legislative branches of the United States Government; and
- WHEREAS,** substantial historical records confirm that the White Mountain Apache Tribe were known as the "Agricultural Apaches," and that the Tribe has historically used water for agricultural and other purposes from time immemorial, and therefore possesses an aboriginal priority right, in addition to any other reserved right to the use of waters that underlie, traverse and border its lands, for domestic, agricultural, commercial, recreational and other uses to fulfill the permanent homeland purpose of the Fort Apache Indian Reservation; and
- WHEREAS,** today, as in time immemorial, Apache people pray with the sacramental waters that emerge from our many springs, streams, and rivers within our homeland; water, and the places where it is found, gives us wisdom, *igoya' i bee goz'aa*, only *Ni'* in our Apache language can express our relationship to water; and

WHEREAS, the Tribe's 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 White Mountain Apache Tribe; and

WHEREAS, the Tribal Council of the White Mountain Apache Tribe has the sworn and sacred duty under the Tribe's Constitution and by virtue of the Tribe's inherent sovereign powers of self-government, to protect and preserve the wildlife, plant life, forests, and natural resources and to assert and protect the Tribe's aboriginal and otherwise reserved rights to the use of water that borders, traverses, and underlies the Tribe's Fort Apache Indian Reservation; and

WHEREAS, the Tribal Council has consistently acted to assert, protect, and preserve its time immemorial rights to the use of water on Tribal lands before the Congress of the United States, the Secretary of the Interior, and before state and federal courts; and

WHEREAS, Tribal leaders before establishment of the Fort Apache Indian Reservation in 1871, negotiated the boundaries of the to-be-established White Mountain Apache Indian Reservation, as it was to be known at that time, with representatives of the United States Army and United States government and said negotiations specifically included the northern boundary of the Tribe's reservation, known to all prior to 1871 as the Watershed Divide or the south edge of Black Mesa, so as to preserve and protect the Tribe's aboriginal use of water from the springs and streams south of the watershed divide; and

WHEREAS, beginning in the early days of the reservation, after the Federal Government's Bureau of Reclamation's Salt River Project was built, the Tribe's trustee, the United States, deliberately and intentionally suppressed large scale water development for agricultural purposes on the White Mountain Apache Tribe's reservation, including water storage facilities, and through a continuing policy of neglect, effectively curtailed water use development within the Tribe's reservation with the exception of non-consumptive recreational lakes after 1959; and

WHEREAS, the inherent conflicts of interest within the Departments of Interior and Justice is a direct consequence of competition for water from the Salt River System between the Bureau of Reclamation's Salt River Project, constructed for the benefit of downstream water users, and the exercise by the White Mountain Apache Tribe of its aboriginal and reserved water use rights to the Salt River System; and

WHEREAS, in 1959, the Tribe was compelled to take aggressive action to protect its right to divert water from Trout Creek for the construction of Hawley Lake, a project which was opposed in the Arizona state court by the Salt River Project on behalf of downstream water users; and

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- WHEREAS**, the resolve of the Tribal Council and the people of the White Mountain Apache Tribe resulted in the successful completion of not only Hawley Lake, but many other recreational lakes within the Tribe's reservation lands; and
- WHEREAS**, following "The Battle of Hawley Lake", attempts were made by downstream water users to settle the Tribe's water rights between 1959 through the 1960's, including the promotion by those interests of ill-advised efforts to produce water run-off from Tribal lands for the benefit of downstream water users, but the settlement terms were deemed unacceptable by the Tribal Council and were summarily rejected ; and
- WHEREAS**, commencing in 1979, for reasons stated in this Resolution, the Tribe pursued litigation in the Federal Courts and by Special Appearance in State of Arizona courts, to oppose the state court's purported McCarran Amendment jurisdiction in the Little Colorado River and Gila River General Stream Adjudications; and
- WHEREAS**, the Tribal Council opposed forced legal representation by the United States of the Tribe's water rights, and further challenged the jurisdiction of the state courts to adjudicate its water rights, publically condemned the conflicts of interest existing within the Departments of Interior and Justice that threatened to conspire to deprive the Tribe of its priceless water rights, and argued that the failure of the state courts to include all of the sources of the Salt River and Little Colorado River systems, including tributary groundwater and particularly, the Coconino Aquifer, was fatal to the state court's claimed McCarran Amendment jurisdiction ; and
- WHEREAS**, the Tribe exhausted federal court litigation against the United States for conflicts of interest without relief from said courts; and
- WHEREAS**, in 1999, the Arizona Supreme Court recognized that groundwater was a reserved water right, if surface water was not sufficient or adequate to satisfy an Indian reservation's purpose; and
- WHEREAS**, the Tribe accordingly negotiated and jointly drafted with the BIA and Department of Justice, an amendment to the 1985 water rights claim that had been filed by the United States for the Tribe in its capacity as trustee of the Tribe's water rights, to include the Tribe's aboriginal and reserved water use claims to the Transbasin Coconino and other aquifers that provide the base flow of the Tribe's reservation springs and streams; and
- WHEREAS**, in view of the Arizona Supreme Court opinion issued November 21, 2001, on the quantification of Indian reserved water rights, and passage by Congress of the Arizona Water Settlement Act of 2004, the Tribal Council, continuing the historic efforts to protect the aboriginal and reserved water use rights of the White Mountain Apache Tribe, adopted Resolution 01-2004-03, seeking the appointment by the Secretary of the Interior, principal agent of the Tribe's trustee, the United States, of a Federal Negotiating Team to cooperate with the Tribe and concur in the protection and

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assertion of the Tribe's water use rights to both the Little Colorado River and Salt River Systems, and sources thereof; and

WHEREAS, the Tribe's action was seconded by Senator Kyl and the Secretary of Interior thereafter appointed a Federal Negotiation Team; and

WHEREAS, as directed by the Tribal Council, meetings have been held with the Federal Negotiating Team beginning January 28, 2005, for the purpose of exchanging information between the Tribe's Trustee, the United States, and the Tribe, with the goal of obtaining the concurrence and support of the Tribe's trustee (1) that the Tribe has the aboriginal and reserved right to deplete the Salt River System of up to 90,000 acre feet of water annually for domestic, commercial, industrial, agricultural, recreational and other Homeland purposes; and (2) for legislation that would authorize the appropriation of sufficient funds to build facilities to develop the Tribe's aboriginal and reserved water use rights; and

WHEREAS, in view of the inevitability that the Tribe's water use rights will be quantified with or without the Tribe's appearance or participation as a party in the Little Colorado River and Gila River General Stream Adjudications, now pending in the state courts, the Tribal Council recognizes the imperative need to continue its concerted efforts in 2006, and thereafter as necessary, to protect and assert the water rights of the White Mountain Apache Tribe; and

WHEREAS, continuation of the Tribal Council's efforts on behalf of the people of the White Mountain Apache Tribe to assert and protect the aboriginal and reserved water use rights of the Tribe necessitate exchange, discussion and other proactive and progressive steps to equitably resolve with dignity the Tribe's water use rights issues with the Federal Negotiating Team, the Salt River Project, downstream irrigation districts, cities and towns in the Phoenix Valley, as well as with other Indian Tribes that may compete with the Tribe for the use of water in the Little Colorado River and Salt River Systems.

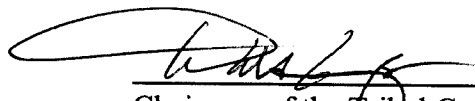
BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby declares and affirms the Tribal Council's historical and ongoing policy to protect, assert and develop the priceless, aboriginal, and otherwise reserved water use rights of the White Mountain Apache Tribe, and to that end, declares and affirms its intention to continue pursuit of a dignified and equitable resolution of its aboriginal and reserved water use claims through all necessary and progressive steps with all necessary entities, including the Federal Negotiating Team, the Secretary of Interior, Departments and Agencies of the United States, the United States Congress, the State of Arizona, and downstream water users.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby authorizes and directs the Tribal Chairman, to (1) take all necessary steps with special counsel for water rights, experts and Tribal staff assigned to water rights, to set schedules and agenda for upcoming sessions with all

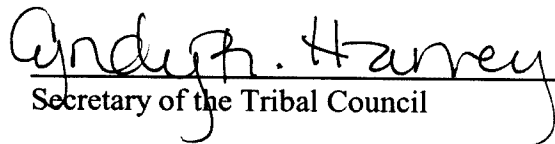
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entities early in the coming year; (2) establish a task force of members of the Tribal Council that desire to participate in all upcoming sessions; and (3) to report status thereof to the full Tribal Council on not less than a quarterly basis.

The foregoing resolution was on **DECEMBER 13, 2005**, duly adopted by a vote of **FIVE** 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)(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