



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

**(Authorizing Appellate Litigation of *White Mountain Apache Tribe v. Valinda Jo Elliott*,
White Mountain Apache Tribal Court Case No. C-03-97, as Appealed to the U.S. Court of
Appeals for the Ninth Circuit)**

WHEREAS, pursuant to Article IV, Section 1(a) of the Constitution of the White Mountain Apache Tribe, *inter alia*, the Tribal Council has the authority to represent the Tribe and act in all matters that concern the welfare of the Tribe; and

WHEREAS, on June 11, 2003, the White Mountain Apache Tribe did file a complaint in the White Mountain Apache Tribal Court against Valinda Jo Elliott for certain damages relating to the Rodeo-Chediski fire of June 2002, entitled *White Mountain Apache Tribe v. Valinda Jo Elliott* (White Mountain Apache Tribal Court Case No. C-03-97), for which Ms. Elliott filed a Motion to Dismiss that was denied by Order of the Tribal Court, and which Order was appealed by Ms. Elliott to the Tribal Court of Appeals, which held that the appeal was interlocutory and unallowable under the Tribal Court's Rules of Civil and Appellate Procedure;

WHEREAS, on December 27, 2006, following denial of her motion to dismiss the Tribe's Tribal Court complaint, Ms. Elliott filed for injunctive and declaratory relief against the Tribe and the Tribal Court in the U.S. District Court for the District of Arizona (*Elliott v. WMAT et al.*, Case No. 05-CV-04240-PCT-MHM);

WHEREAS, in the U.S. District Court's Order of December 7, 2006, Judge Mary Murguia held, *inter alia*, that "Plaintiff [Ms. Elliott] has failed to exhaust her tribal remedies prior to bringing the instant suit [in federal District Court]," which left a debatable question or colorable claim as to the propriety of Tribal Court jurisdiction over Ms. Elliott, exemplifying her obligation to exhaust tribal remedies prior to bringing the instant suit, and the District Court did not find any applicable exception justifying Ms. Elliott's failure to exhaust (*See, Id.*, Order of Dismissal, at 12); and

WHEREAS, the District Court's Order in effect returned the matter back to the White Mountain Apache Tribal Court; and

WHEREAS, yet on January 17, 2007, Ms. Elliott appealed the Order of the United States District Court for the District of Arizona to the U.S. Court of Appeals for the Ninth Circuit (Ct. App. Case No. 07-15041), which in effect stays the matter in Tribal Court; and

WHEREAS, since February, 2007, the parties did attempt to settle the matter, but were unable to reach a settlement; and

WHEREAS, Ms. Elliott's Appellate Brief is now due January 15, 2008, and the Tribe's Response is due February 15, 2007; and

WHEREAS, the issue in this case is whether a Tribal Court may assert jurisdiction over a non-Indian who commits a tortious act of trespass on tribal trust lands and consequential damages thereto; and

WHEREAS, the Tribal Attorney has this day briefed the Tribal Council that this case has enormous, far reaching implications on the Tribe's ability to regulate wildlife and outdoor recreation within the exterior boundaries of the Fort Apache Indian Reservation, and for the sovereignty of the White Mountain Apache Tribe and all other tribes throughout the United States, and this day requests authority to continue the litigation and consult with other attorneys as may be required; and

WHEREAS, the Tribal Council finds that all necessary and appropriate measures need to be undertaken by the Tribe's Legal Department in order to litigate the appeal, and that such litigation is in the best interest of the Tribe and the protection of its sovereignty.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that:

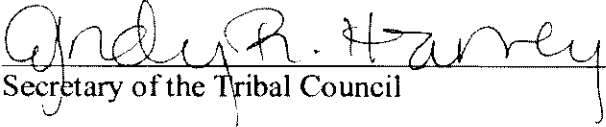
1. The Tribal Attorney is hereby directed to undertake any and all necessary action to litigate Ms. Elliott's appeal before the U.S. Court of Appeals for the Ninth Circuit.
2. The Legal Department is further authorized to consult with other attorneys on this matter, by contract or otherwise, utilize any other legal resources as may be appropriate and required, and report to the Tribal Council on the progress of any and all motions filed on behalf of the Tribe.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Chairman, or in his absence, the Vice Chairwoman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

The foregoing resolution was on January 14, 2008, duly adopted by a vote of EIGHT for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (b), (f), (h), (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