



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

(Authorizing WMCRS to Complete Fence Work Funded by NRCS)

WHEREAS, in an effort to assist Tribal Livestock Associations, the Tribe applied for funding from the Natural Resources Conservation Service (NRCS) to replace barbed wire fences within certain Livestock Range Units; and

WHEREAS, in 2011 the construction costs for a total of 44,081 ft. (8.35 miles) of fence was funded under NRCS' Environmental Quality Incentive Program (EQIP 2008 7494571108I); and

WHEREAS, NRCS does not require EQIP fencing projects be awarded in a competitive bidding process; and

WHEREAS, NRCS does not require a competitive bid process because contracts awarded under EQIP are on a per foot of fence rate – meaning the same price is paid regardless of the contractor completing the work; and

WHEREAS, White Mountain Conservation & Restoration Services (WMCRS) is owned and operated by tribal member Richard DiValentino; and

WHEREAS, Richard DiValentino is an employee of the White Mountain Apache Tribe and currently serves as the Director of the Range Management Program, a program contracted pursuant to P.L. 93-638; and

WHEREAS, as the Director of the Range Management Program Richard DiValentino is responsible for identifying a contractor to complete the EQIP fencing project; and

WHEREAS, Richard DiValentino came before the Tribal Council to discuss the possibility of WMCRS being awarded the contract for the EQIP fencing project in accordance with NRCS fence specifications and at NRCS payment rates; and

WHEREAS, the Grants and Contracts Department, members of the Tribal Council and auditors for the Tribe have expressed concern that the award of an EQIP contract to WMCRS creates a conflict of interest; and

WHEREAS, several factors were considered regarding the issue of conflict of interest including:

whether Richard DiValentino's interest in the contract would be transparent to the Tribal Council; and

whether the contract was fair to the Tribe; and

Resolution No. 06-2011-129

whether the contract would interfere with Richard DiValentino's performance of duties as the Director of the Range Management Program; and

whether an approval by a majority vote of the members of the Tribal Council could constitute an effective waiver of the potential conflict of interest; and

whether community members would view the award of the project to WMCRS negatively; and

WHEREAS, the Tribe is not in able to complete the project because the funds are being provided on a reimbursement basis; and

WHEREAS, WMCRS is a financially sound company that is able to complete the project on a reimbursement basis; and

WHEREAS, if a conflict or potential conflict of interest does exist by awarding WMCRS the EQIP project, the Tribal Council as the governing body has the authority to waive such a conflict or potential conflict of interest; and

WHEREAS, waiving the potential conflict of interest would result in the EQIP fencing project being completed sooner and provide an opportunity for a Tribal member entrepreneur; and

WHEREAS, the Tribal Council finds it in the best interest of the Tribe to waive any conflict or potential conflict of interest for the purpose of completing the project sooner and to encourage tribal member entrepreneurship; and

WHEREAS, the agreement is fair to the Tribe, all work will be closely monitored and all transactions pursuant to the contract will be transparent.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby supports effort to assist Tribal Livestock Associations in acquiring funding from the NRCS to construct fences needed for the management of livestock.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby authorizes the Tribe to enter into an agreement with WMCRS for the purpose of completing the fence work 44,081 ft. (8.35 miles) in accordance with NRCS fence specifications and at NRCS payment rates.

BE IT FURTHER RESOLVED by the Tribal Council that the Tribe's Grants & Contracts Office is ordered to establish an account and monitor the progress of the 2011 EQIP Contract (EQIP 2008 7494571108I) to ensure that funds are properly administered.

BE IT FURTHER RESOLVED by the Tribal Council that the Chairman's Office shall assume responsibility and administer the NRCS contract to avoid any potential conflicts of interest and shall be granted authority to sign and oversee all sub-agreements and requests for payment submitted by WMCRS for the duration of this project.

Resolution No. 06-2011-129

BE IT FURTHER RESOLVED by the Tribal Council that this Resolution and subsequent agreement(s) shall not, in any manner, preempt or modify the respective rights and responsibilities of either party.

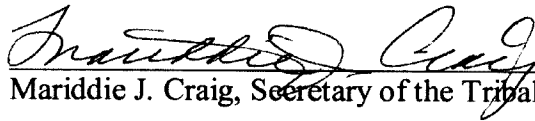
BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall govern.

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

The foregoing resolution was on **JUNE 9, 2011** duly adopted by a vote of **SIX** for and **TWO** against by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (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).



Ronnie Lupe, Chairman of the Tribal Council



Mariddie J. Craig, Secretary of the Tribal Council