



WHITE MOUNTAIN APACHE TRIBE

*A Sovereign Nation Exercising Self-Governance
Over the Fort Apache Indian Reservation*

Resolution No. 10-2012-157B

(Resolution of the Apache Tribes of Arizona, New Mexico, and Oklahoma Regarding the “Fiduciary Exception” to the Attorney-Client Privilege)

WHEREAS, the Jicarilla Apache Nation, the Mescalero Apache Tribe, the White Mountain Apache Tribe, the San Carlos Apache Tribe, the Yavapai-Apache Nation, the Tonto Apache Tribe, and the Fort Sill Apache Tribe (the “Seven Apache Tribes”) are federally-recognized Indian Tribes, located in Arizona, New Mexico, and Oklahoma, whose inherent powers of self-government have been recognized by the United States; and

WHEREAS, the United States Government holds billions of dollars in assets in trust for the Seven Apache tribes and other Indian tribes and individuals, and manages those assets as trustee; and

WHEREAS, Indian tribes and individuals, like beneficiaries of private trusts, depend on their trustee to manage their assets faithfully and competently; and

WHEREAS, Indian tribes and individuals should have the same rights and remedies as private trust beneficiaries with respect to the management of their trust assets; and

WHEREAS, it is established law that a private trust beneficiary is entitled to know about communications between its trustee and an attorney regarding management of its trust assets; and

WHEREAS, the “fiduciary exception” to the attorney-client privilege prevents a private trustee from withholding from the beneficiary any communications the trustee has with an attorney concerning management of the trust assets; and

WHEREAS, Indians should not be denied the benefit of the “fiduciary exception” and given less information than beneficiaries of private trusts about how their assets have been managed by their trustee; and

WHEREAS, the Supreme Court decision in *United States v. Jicarilla Apache Nation*, 131 S.Ct. 2313 (2011), ruled that the fiduciary exception” does not apply to the United States Government, and that the Government can withhold from Indian beneficiaries information about how their trust assets have been managed; and

BE IT RESOLVED that the Seven Apache Tribes petition and urge the Congress to enact legislation that overrules the Supreme Court decision in *United States v. Jicarilla Apache Nation*, 131 S.Ct. 2313 (2011), and gives Indians the same right as beneficiaries of private trusts to obtain all relevant information about the management of their trust assets.

BE IT FURTHER RESOLVED that the Seven Apache Tribes petition and urge Congress to amend 25 U.S.C. § 162a(d) to add a new subsection (9) which states that the proper discharge by the Secretary of the Interior of the trust responsibilities of the United States includes "Providing Indian tribes, upon request, with any documents relating to the Secretary's management of the tribe's trust funds and natural resources except for attorney and attorney-directed work product relating to litigation or potential litigation between the United States and a tribe or individual Indian.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall supersede and govern over the conflicting subject matter.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances or Federal Laws, this Resolution shall be declared null and void and have no legal effect.

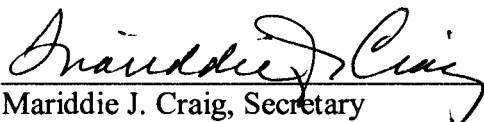
BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Chairman, or in his absence, the Acting Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution. In the event that the Chairman fails to delegate signatory authority to an Acting Chairman, the Vice-Chairman may sign.

The foregoing resolution was on **OCTOBER 3, 2012** duly adopted by a vote of **NINE** 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), (i), (k), (s), (t) and (u) of the Tribal Constitution, 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 Luye, Chairman

11/28/12
Date



Mariddie J. Craig, Secretary

12/03/2012
Date