



# WHITE MOUNTAIN APACHE TRIBE

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

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## **Resolution No. 01-2013-15**

**(Authorizing WMCRS to Complete Fence Work Funded by the NRCS)**

- WHEREAS,** the Tribal Council of the White Mountain Apache Tribe (“Tribe”) is entrusted by the Tribe’s Constitution to act in all matters that concern the welfare of the Tribe, to manage all economic affairs and enterprises of the Tribe, and to regulate subordinate organizations for economic and other purposes; and
- WHEREAS,** in an effort to assist Tribal Livestock Associations, the Tribe has 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 55,244 ft. (10.46 miles) of fence was funded under NRCS’ Environmental Quality Incentive Program (EQIP 2008 7494571108K); and
- WHEREAS,** the NRCS does not require EQIP projects to be awarded in a competitive bidding process because contracts awarded under EQIP are on a per foot of fence rate – meaning the same price is paid regardless of who completes the work; and
- WHEREAS,** White Mountain Conservation & Restoration Services (WMCRS), a tribally owned business, owned by Richard Di Valentino Jr.; and
- WHEREAS,** Richard Di Valentino Jr. is an employee of the Tribe and currently serves as the program manager of the Land Operations Department, a department which programs are contracted pursuant to P.L. 93-638; and
- WHEREAS,** as the program manager of the Land Operations Department, Richard Di Valentino is responsible for the Range Management Program which assists livestock associations in applying for EQIP funded projects; 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 Di Valentino's interest in the contract would be transparent to the Tribal Council; and

whether the contract was fair to the Tribe; and

whether the contract would interfere with Richard Di Valentino's performance of duties as program manager of the Land Operations Department; and

whether an approval by a majority vote of the members of the Tribal Council would 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 able to complete the project because the funds are 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 project being completed sooner and provide an opportunity for a Tribal member owned business; 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. The agreement is fair to the tribe, all work will be closely monitored by the NRCS 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 the 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 of the White Mountain Apache Tribe that it hereby authorizes the Tribe to enter into an agreement with WMCRS for the purpose of completing the fence work 55,244 ft. (10.46 miles) in accordance with NRCS fence specifications and at NRCS payment rates.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby orders the Tribe's Grants & Contracts Office to establish an account and monitor the progress of the EQIP Contract (EQIP 2008 7494571108K) to ensure that funds are properly administered.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby shall assume responsibility and administer the NRCS contract to avoid any potential conflicts of interest and shall be granted authority to sign and oversee the agreement and requests for payment submitted by WMCRS for the duration of this project.

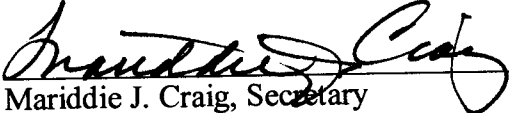
**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby Resolution and subsequent agreement(s) shall not, in any manner, preempt or modify the respective rights and responsibilities of either party.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that 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 JANUARY 2, 2013 duly adopted by a vote of FIVE for, ONE against and ZERO abstentions 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 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).

  
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Ronnie Lupe, Chairman

1-29-13  
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Date

  
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Mariddie J. Craig, Secretary

01/25/2013  
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Date