



WHITE MOUNTAIN APACHE TRIBE

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

Resolution No. 05-2013-109

(Approving Special Counsel Contract for Robert C. Brauchli)

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, the Tribal Council on June 17, 2010, adopted Resolution No. 06-2010-182 approving a three (3) year Special Counsel Contract for Robert C. Brauchli, attorney at law, and said Special Counsel Contract will expire on June 6, 2013; and

WHEREAS, Special Counsel Robert C. Brauchli provides legal representation to the Tribe in the areas of water rights and related natural resource issues, breach of trust claims against the United States, the Tribe's claim to approximately 16,000 acres of land erroneously surveyed outside the Tribe's 1871 Executive Order Reservation's northern boundary by the federal government, the Phelps Dodge/Freeport McMoRan Black River diversion dam trespass claim, federal appeals, such as the Valinda Jo Elliott Tribal Court jurisdiction case, and other legal matters as from time to time requested by the Tribe's Legal Department, and by the Tribal Chairman on behalf of the Tribe; and

WHEREAS, attorney Robert C. Brauchli has provided legal representation to the White Mountain Apache Tribe since November 1980, first as Tribal Attorney and since 1998, as Special Counsel; and

WHEREAS, as Special Counsel, Mr. Brauchli represented the White Mountain Apache Tribe in the negotiation and drafting of the 2009 White Mountain Apache Tribe Water Rights Quantification Agreement and subsequently, the White Mountain Apache Tribe Water Rights Quantification Act of 2010, and has continued to represent the Tribe to satisfy the enforceability requirements of Section 409(d)(1) of the WMAT Water Rights Act, including amongst other requirements, negotiation of an amendment to the 2009 Quantification Agreement to conform it to the 2010 Water Rights Act; and

WHEREAS, amendments have been made to the 2009 WMAT Water Rights Quantification Agreement to conform it to the WMAT Water Rights Act of 2010, and has been approved by the Tribal Council and all of the other settling parties, with the exception of the Secretary of Interior, acting on behalf of the United States, but review by the

Secretary of the Amended and Restated Quantification Agreement is now underway and her approval is expected in the near future; and

WHEREAS, the Tribal Council is advised by Special Counsel Robert C. Brauchli that as soon as the Secretary approves and signs the Amended and Restated Quantification Agreement, the Tribe any other settling parties must file a petition in the Arizona state courts in both the Little Colorado River and the Gila River general stream adjudications for approval of the Amended and Restated Quantification Agreement pursuant to those courts' McCarran Amendment jurisdiction, and that the court approval process may take approximately eighteen (18) months, assuming there are no objections to the Quantification Agreement from any of the claimants in both general stream adjudications; and

WHEREAS, Special Counsel Robert C. Brauchli also provides legal representation to the WMAT in regard to the Self-Determination Act Contract between the Bureau of Reclamation and the Tribe for the design and construction of the Miner Flat Rural Water System Project, and in regards to the Environmental Impact Statement(EIS) pertaining thereto, and approval of the design and the EIS by the Secretary of the Interior is a critical precondition for enforceability of the WMAT Water Rights Act of 2010; and

WHEREAS, legal work assigned to Robert C. Brauchli as described in this resolution is necessary for the implementation and enforceability of the WMAT Water Rights Act of 2010; and

WHEREAS, the Tribal Council has concluded that continued representation of the WMAT by Mr. Brauchli is in the best interests of the White Mountain Apache Tribe at this time; and

WHEREAS, Mr. Brauchli advises the Tribal Council that, subject to Tribal Council approval, he is willing to, and wishes to provide legal representation to the White Mountain Apache Tribe as described herein pursuant to the terms of the proposed Special Counsel Attorney Contract attached and incorporated by reference herein; and

WHEREAS, the Tribal Council concludes that the Special Counsel Contract should be approved by the Council for a three (3) year term, subject to the thirty (30) day termination provision therein, so that Mr. Brauchli may continue to provide legal advice and representation to the Tribe on the matters identified in this Resolution and on such other matters that may be assigned from time to time by the Tribe through the Tribal Chairman; and

WHEREAS, the Tribal Council, as a priority of the Tribe, requires strict performance of the payment provisions in the Special Counsel Contract to enable Mr. Brauchli to perform the legal services required therein for the benefit of the Tribe and its members without financial constraint.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the Special Counsel Contract, in the form and content attached to this resolution and incorporated by reference herein, between the White Mountain Apache Tribe and Robert C. Brauchli, attorney at law, for the term June 6, 2013 through June 6, 2016, subject to the thirty (30) day termination provision therein, and hereby authorizes and directs the Tribal Chairman, and in his

absence, the Vice Chairman, to sign and execute the Special Counsel Contract between the White Mountain Apache Tribe and Robert C. Brauchli, attorney at law, for the purposes contained therein.

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 MAY 16, 2013 duly adopted by a vote of SEVEN for, ZERO 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), (i), (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 Lupe, Chairman

6/21/13
Date



Mariddie J. Craig, Secretary

06/21/2013
Date

SPECIAL COUNSEL CONTRACT

This Special Counsel Contract is made and entered into with an effective date of June 7, 2013, at Whiteriver, Arizona, by and between the White Mountain Apache Tribe ("Tribe") of the Fort Apache Indian Reservation, Whiteriver, Arizona, by and through its Tribal Chairman Ronnie Lupe, and the Law Office of Robert C. Brauchli P.C., by and through Robert C. Brauchli, Attorney at Law, ("Special Counsel"), Tucson, Arizona.

WITNESSETH:

WHEREAS, the White Mountain Apache Tribe ("Tribe"), under the authority vested therein, and acting through its Tribal Council, adopted Resolution No. 05-2013-109 on the 16th day of May, 2013, attached and incorporated by reference herein, which authorizes a contract to employ Robert C. Brauchli, doing business as the Law Office of Robert C. Brauchli P.C., as Special Legal Counsel for the Tribe, ("Special Counsel"), in the matters hereinafter described; and

WHEREAS, Robert C. Brauchli wishes to serve as Special Counsel for the Tribe in the matters described herein pursuant to the terms of this Special Counsel Contract.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, it is agreed as follows:

1. It shall be the duty of Robert C. Brauchli, as Special Counsel, to act and serve as legal representative for and on behalf of the Tribe: (a) in legal matters before any courts or tribunals, Tribal, national, state or local departments, agencies, committees and legislative bodies, dealing with or relating to water rights and related natural resource issues;(b) to advise the Tribal Attorney, other contract attorneys, and the Tribal Legal Department as needed or as requested by the Tribal Chairman; and (c) upon request of the Tribal Chairman, to act and serve as legal counsel for the Tribe in Tribal, national, state and local matters, including legislative, departmental, agency or committee affairs, which affect any interests of the Tribe. Special Counsel duties shall not be deemed to include General Counsel or Tribal Attorney duties otherwise provided for by the Tribe.
2. Special Counsel, in the performance of the duties required under this Attorney Contract, shall be subject to the supervision and direction of the Tribal Council of the Tribe, acting by and through the Tribal Chairman.

3. Special Counsel, subject to the prior written approval of the Tribal Council, acting by and through the Tribal Chairman, may employ for work hereunder such law clerks, attorney or attorneys as he may select; provided that the Tribe is not to owe any additional compensation by reason of such employment, without the prior written approval of the Tribal Chairman.
4. In consideration of the legal services to be rendered, Special Counsel shall receive as legal fees, compensation at the rate of \$225.00 per hour through June 6, 2016. Special Counsel shall receive as legal fees, compensation for actual travel time, portal to portal, in the performance of legal services required under this Contract, at the rate of \$150.00 per hour, not to exceed \$600.00 in any one day; provided, that all sums billable hereunder for legal fees, excluding expenses, shall not exceed in payment, the amount of Thirty Thousand Dollars (\$30,000.00) in any one calendar month, without the prior written approval of the Tribal Chairman.
5. Special Counsel shall submit to the Tribe through the WMAT Legal Department a Statement of Legal Services and Expenses ("Statement") describing the legal services and reimbursable expenses for which payment and reimbursement is sought for time spent on, including, but not limited to, legal research, factual investigations, trial preparation or negotiations of any kind, appearances before judicial, congressional, legislative, or other tribunals, the Tribal Council, Tribal Committees, and Commissions and others as necessary for the performance of Special Counsel's duties under this Contract. Special Counsel may send the Statement to the WMAT Legal Department by e-mail.
6. Payment by the Tribe of Special Counsel's Statement of Legal Services and Expenses shall be made to Special Counsel within ten (10) business days from receipt thereof by the Tribal Legal Department. It is understood by the Tribe that time is of the essence under this paragraph. If payment as required by this paragraph and by Tribal Council Resolution No. 05-2013-109, is not received, Special Counsel has the option to stop legal work and representation of the Tribe until payment is made, or may terminate this Special Counsel Contract with thirty (30) days written notice to the Tribe as provided in Paragraph 12 of the Special Counsel Contract, and withdraw from further representation of the Tribe. If this Special Counsel Contract shall be so terminated, Special Counsel shall be paid for legal fees and expenses due up to and including the date of termination.

7. Although not required to advance expenses for the Tribe incurred in the performance of his legal services for the Tribe, if Special Counsel advances expenses for the Tribe, he shall be reimbursed, upon the presentation of receipts therefore, for all such necessary and reasonable expenses including travel by plane, train, rental car or use of personal car(as provided in paragraph 8), lodging and food, postage, long distance telephone calls, faxes, telegrams, copying and computer copy costs, court costs, court reporting services, depositions and transcriptions of tapes, exhibits, maps, blueprinting, and any reproduction, printing, title searches and like expenses; but not including expenses such as office rent, utilities and secretarial services.
8. It is mutually agreed that in the event that Special Counsel should use his own vehicle in the performance of his duties under this Attorney Contract, he shall be compensated for the use of said vehicle at such mileage rate as is annually established by the Internal Revenue Service for business mileage, but not less than 56.5 cents per mile, the IRS 2013 Rate.
9. Any expenses incurred by Special Counsel shall not be payable hereunder by the Tribe in excess of Thirty Thousand Dollars (\$30,000.00) per annum, unless additional amounts are authorized in writing by the Tribal Chairman. Except in emergency situations, advance approval shall be obtained for such additional amounts. Payment of compensation and reimbursement of expenses incurred by Special Counsel pursuant to this Attorney Contract shall be made only upon submission of itemized billings to the Tribe; provided that necessary and reasonable filing fees, bond, or related costs payable to a court or other tribunals in advance of initiating or defending the position of the Tribe before such entity, may be paid through Special Counsel's trust or general account, as the case may be, without such prior approval even if it exceeds the Thirty Thousand Dollars (\$30,000.00) per annum limit.
10. It is understood and agreed that the compensation for legal services specified in Paragraph (4) of this Attorney Contract constitutes compensation for Special Counsel's services involved in the prosecution, litigation, negotiation, research, briefing, and verbal or written representation of the Tribe or appearance in Congressional, Tribal, State or Federal hearings, tribunals and courts, and travel within or without Arizona, or other places outside Tucson, Arizona, on behalf of the Tribe, unless otherwise directed by the Tribe.

11. No assignment of the obligation of this Special Counsel Contract, in whole or in part, shall be made without the prior written approval of the Tribal Council by and through the Tribal Chairman. No assignment or encumbrance of any interest in the compensation to be paid under this Special Counsel Contract shall be made, without such consent; provided, that if such assignment or encumbrance of any interest in the compensation to be paid is made in violation of the provisions of this paragraph, the Attorney Contract may be terminated at the option of the Tribe, and no attorney having any interest in the Attorney Contract or other fee provided herein shall be entitled to any compensation whatsoever for any services rendered or expenses incurred subsequent to the date of such termination. This paragraph does not prohibit Special Counsel from hiring law clerks at his own expense from time to time to conduct legal research.
12. This Special Counsel Contract may be terminated by either party by giving thirty (30) days written notice to the other party. If this Special Counsel Contract shall be so terminated, Special Counsel shall be paid for legal fees and expenses due up to and including the date of termination.
13. Special Counsel shall render to the Tribe a written report of the legal services rendered to the Tribe at such times as may be requested by the Tribe. Other than reports on the status of matters assigned to Special Counsel, the Statements of Legal Services and Expenses submitted by Special Counsel during the duration of this Special Counsel Contract shall satisfy this requirement.
14. This Special Counsel Contract shall be in effect for a period of three (3) years commencing June 7, 2013 and shall continue until June 6, 2016, unless terminated earlier as provided herein.

DATED this _____ day of June, 2013.

WHITE MOUNTAIN APACHE TRIBE

By: _____
Ronnie Lupe, Chairman of the Tribal Council
P.O. Box 1150
Whiteriver, AZ 85941
Tel. (928)338-2504
FAX (928) 338-1514

Attest: _____
Mariddie J. Craig
Secretary of the Tribal Council

SPECIAL COUNSEL

By: _____
Robert C. Brauchli, Attorney
P.O. Box 64607
Tucson, Arizona 85728
Tel. (520) 299-8300
Fax (520) 299-8302
Email: rcbrauchli@rbrauchlilaw.com

CERTIFICATION

The Attorney undersigned below avows that he is a fully licensed member in good standing of the State Bar of Arizona, and to the best of his knowledge no disciplinary proceedings have been instituted against him by any bar association of any jurisdiction of the United States or its territories which are pending and/or unresolved and he has not been disbarred or suspended from the practice of law in any jurisdiction in the United States or its territories.

Date: _____

Robert C. Brauchli
Attorney at Law
P. O. Box 64607
Tucson, Arizona 85728