



WHITE MOUNTAIN APACHE TRIBE

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

Resolution No. 11-2013-213

(Authorizing Limited Waiver of Sovereign Immunity for Duration for Carbon Credits)

- WHEREAS,** the Tribal Council of the White Mountain Apache Tribe (“Tribe”) is entrusted by the Tribe’s Constitution, Article IV Section 1, 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 approved and entered into an Emissions Reduction Purchase Agreement on July 16, 2012 (“ERPA”); and
- WHEREAS,** as part of ERPA, the Tribe agreed to develop an Improved Forestry Management Project (“Project”) to generate California Carbon Credits Offsets under the California Air Resources Board (“CARB”) Compliance Offset Protocol, U.S. Forest Projects, dated October 20, 2011 (“Protocol”) and pursuant to the cap-and-trade program authorized by the California Global Warming Solutions Act of 2006 (“California Program”); and
- WHEREAS,** critical to the agreement was the protection of party rights, remedies, and other protections typically expected by parties entering into an agreement with potentially great rewards, but risks as well. For this reason, the Council authorized a limited waiver of sovereign immunity (“Limited Waiver”). Exhibit 5 of the ERPA which is a Limited Waiver provides as follows:

The White Mountain Apache Tribe hereby expressly waives any and all defenses based upon tribal sovereign immunity from suit with respect to any action in law or equity commenced by the State of California, Air Resources Board to enforce the obligations of the Tribe with respect to its participation in the Cap-and-Trade Program, for the duration required in the Compliance Offset Protocol for U.S. Forest Projects (adopted October 20, 2011), and irrespective of the form of relief sought, whether monetary or otherwise, including the submission or replacement, as applicable, of valid ARB offset credits or other approved compliance instruments as required by the Cap-and-Trade Program, including in sections 95983(c) and 95985. The White Mountain Apache Tribe, for purposes of this limited waiver, shall be treated in the same manner as a California public entity under California Government Code sections 818 and 818.8. The Tribe consents to jurisdiction and

venue in the courts of the State of California. The Tribe does not waive any aspect of its sovereign immunity with respect to actions by third parties; and

WHEREAS, in order to ensure all proper protections are in place, the Council has been asked by CARB to clarify whether such Limited Waiver is for the duration of the Project. Without a firm limited waiver, the project could be delayed or terminated entirely; and

WHEREAS, after discussing and deliberating the benefits of continuing to pursue recognition of the Tribe's Carbon Credits, the Tribal Council finds it in the best interest of the Tribe to continue participating in the Carbon Credits project and for this reason shall agree to authorize a limited waiver of sovereign immunity for the duration of this project for the purposes described herein.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Limited Waiver language in Exhibit A (see below) is reaffirmed and shall apply for the entire Project Life, which is defined under the Protocol as the period of time between offset project commencement and a period of 100 years following the issuance of any CARB or registry offset credit for greenhouse gas reductions or greenhouse gas removal enhancements achieved by an offset project.

Authorized Limited Waiver Language is as follows:

The White Mountain Apache Tribe hereby expressly waives any and all defenses based upon tribal sovereign immunity from suit with respect to any action in law or equity commenced by the State of California, Air Resources Board to enforce the obligations of the Tribe with respect to its participation in the Cap-and-Trade Program, for the duration required in the Compliance Offset Protocol for U.S. Forest Projects (adopted October 20, 2011), and irrespective of the form of relief sought, whether monetary or otherwise, including the submission or replacement, as applicable, of valid ARB offset credits or other approved compliance instruments as required by the Cap-and-Trade Program, including in sections 95983(c) and 95985. The White Mountain Apache Tribe, for purposes of this limited waiver, shall be treated in the same manner as a California public entity under California Government Code sections 818 and 818.8. The Tribe consents to jurisdiction and venue in the courts of the State of California. The Tribe does not waive any aspect of its sovereign immunity with respect to actions by third parties.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby grants the Tribal Chairman the authority to do whatever else is necessary in working with CARB to move this project along, provided that such requirements are within the parameters of the authority granted under this resolution.

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 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 **NOVEMBER 1, 2013** duly adopted by a vote of **SIX** 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), (b), (f), (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

11/18/13

Date



Mariddie J. Craig, Secretary

11/06/2013

Date