



# WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

## **(Authorizing and Approving a Set-Aside Tribal Fund in the Amount of \$3 Million to Complete the Planning, Engineering, and Design of the Rural Water System)**

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- WHEREAS,** the White Mountain Apache Tribe (WMAT) is presently negotiating a new Pub. L. 93-638 contract with the Bureau of Reclamation because the previous 638 five-year contract expired, in order to complete the planning, engineering, 30% design, and environmental impact statement (EIS) for the "Miner Flat Project" as that Project is defined in the Rural Water System Loan Authorization Act ("WMAT Loan Authorization Act") (Pub. L. 110-390, 122 Stat. 4191); and
- WHEREAS,** because of certain unexpected increases in the cost of planning, engineering, and design of the Miner Flat Dam Project, specifically the dam and storage reservoir, the funds remaining and available in the WMAT Loan Authorization Act are inadequate for the WMAT to complete the 30% design and the EIS for the WMAT Rural Water System (RWS); and
- WHEREAS,** WMAT RWS Project Manager Brando Pusher, P.E., advises the Tribal Council that the White Mountain Apache Tribe has a shortfall in funding in the approximate amount of \$2,904,766 due to seepage and design flaws, to complete the 30% design and the EIS for the RWS, as estimated and itemized in the attached WMAT RWS Funding Budget for FY 2019-2021, incorporated by reference herein; and
- WHEREAS,** WMAT RWS Project Manager Brando Pusher, P.E., further advises the Tribal Council that his office and the WMAT Water Rights Team is actively working with the Bureau of Reclamation to obtain the maximum amount of funding from Reclamation to complete the 30% design and the EIS for the RWS, but that even if the Bureau of Reclamation contributes \$366,000 with carryover funds from last year, and appropriates an additional \$366,000 in the coming fiscal year, the RWS account will still underfunded in the approximate amount of \$2,904,766 to complete the 30% design and the EIS for the RWS, and completion of said design and the EIS is required before the Secretary of the Interior can publish a Record of Decision (ROD) approving the release of federal funds authorized by the White Mountain Apache Water Rights Quantification Act of 2010 (Pub. L. 111-291, Title III, 124 Stat. 3073) (WMAT Water Quantification Act), for construction of the RWS; and
- WHEREAS,** the deadline for enforceability of the WMAT Water Quantification Act is April 30, 2021, after which all federal funding will revert to the United States treasury, and the Act will expire and become null and void, and therefore the ROD must be published by the Secretary of the Interior before the deadline; and



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**WHEREAS,** the potential impact from climate change and the current long-term drought in the State of Arizona will impact future generations of the White Mountain Apache Tribe unless a dependable, modern, well-engineered, and soundly constructed RWS, is constructed on the White Mountain Apache Homeland for the storage and delivery of drinking water; and

**WHEREAS,** the RWS once constructed, will have the capacity to provide a safe and reliable source of drinking water for the majority of members of the White Mountain Apache Tribe for many years, and the actions of the Tribal Council today will determine the well-being of future generations of the White Mountain Apache People and their Homeland; and

**WHEREAS,** the Tribal Council is aware that once the WMAT Water Quantification Act becomes enforceable, after publication of the ROD by the Secretary, construction funds will be released by the Secretary to construct the Miner Flat Dam and reservoir, treatment plant and pipeline system, which will serve several communities in the Greater Whiteriver Area, Fort Apache, Canyon Day, Cedar Creek, Carrizo, and Cibecue; and

**WHEREAS,** the WMAT Water Rights Team, recommends that the Tribal Council at the appropriate time, request the Secretary of the Interior, Bureau of Reclamation, and as necessary, the Arizona congressional delegation, after the WMAT Water Quantification Act becomes enforceable and construction funds are released, that the White Mountain Apache Tribe be reimbursed in the amount of the tribal funds authorized by this Resolution, and the Tribal Council is advised that there is no guarantee that any such reimbursement request will be granted; and

**WHEREAS,** the WMAT Water Rights Team recommends to the Tribal Council that it set aside tribal funds in the approximate amount of \$3 million as described in the attached RWS budget, and to allow for contingencies, so that the 30% design and EIS for the RWS can be completed in sufficient time for the Secretary to publish a ROD allowing the release of funds authorized by the WMAT Water Quantification Act before the April 30, 2021, deadline for enforceability of the Act; and

**WHEREAS,** the Tribal Council recognizes its constitutional obligation to protect, preserve and develop the water rights of the White Mountain Apache people, now and for future generations, and concludes that completion of the 30% design and the EIS for the RWS is the highest priority for the White Mountain Apache Tribe.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby approves, authorizes, and directs Tribal Chairwoman Gwendena Lee-Gatewood, and in her absence, the Vice Chairman, to meet with the Tribal Treasurer for the purpose of establishing a special RWS account in the amount of \$3 million to be funded in quarterly increments of \$1 million from the Carbon Fund, and which may only be used for the completion of the 30% design and EIS for the RWS in accordance with the attached RWS FY 2019-21 budget estimate, incorporated by reference herein.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it is hereby authorizes and directs the WMAT Attorney General to assist in the coordination of the Office of the Chairwoman, the Tribal Treasurer, RWS Project Manager, Brando Pusher, PE., Special Counsel for the WMAT's Water Rights, and the WMAT's water rights consultants, as necessary, to carry out the



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purpose of this resolution, and the proper execution of any and all consultant contracts described in the attached RWS FY 2019-21 budget estimate.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that RWS Project Manager Brando Pusher, P.E., shall administer any Pub. L. 93-638 contract(s), consultant contracts, or modifications thereof, with the Tribe's various consultants and the Bureau of Reclamation, authorized by this resolution.

**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 any material facts concerning the issues presented are later found to be false, this Resolution shall be deemed null and void and have no legal effect.

**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 Chairwoman, or in her 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 **FEBRUARY 20, 2019** duly adopted by a vote of **TEN** for, **ZERO** against, and **ONE** abstentions by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it under the enumerated powers listed in Article IV, Section 1 of the WMAT Constitution, so ratified on September 30, 1993, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

 4/16/19  4/16-19  
Gwendena Lee Gatewood, Tribal Chairwoman Date Doreen T. Numkena, Tribal Secretary Date