



# WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

**(Supporting an Extension of the Enforceability Date of the WMAT Water Rights Quantification Act of 2010, Approving Amendments to Emergency Provisions in WMAT Procurement Policies, and Authorizing HDR Inc., as Engineer of Record for the RWS Miner Flat Dam Project)**

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**WHEREAS,** the White Mountain Apache Tribe (WMAT) is presently negotiating a new Pub. L. 93-638 Cooperative Agreement with the Bureau of Reclamation (BOR or Reclamation), to carry out the planning, engineering, and design of 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,** the WMAT and Reclamation have been working together for several years on implementing the White Mountain Apache Tribe Water Rights Quantification Act (Act) of 2010, (Pub. L. 111-291, Title III, 124 Stat. 3073), specifically, in regards to the planning, engineering and design of, and environmental compliance for, the WMAT Rural Water System Project (RWS Project), a cornerstone of the Act, to support a Record of Decision (ROD) by the Secretary of the Interior for construction of the RWS Project; and

**WHEREAS,** a condition of enforceability of the Act, which would release mandatory funding in the Act for construction of the RWS Project, and repayment of funding for design and other pre-construction work for the RWS Project provided by the WMAT Loan Authorization Act, is the issuance by the Department of Interior of a ROD for the RWS Project, and publication by the Secretary of a statement of findings in the Federal Register authorizing construction; and

**WHEREAS,** the Act states that if the Secretary is unable to publish a statement of findings by April 30, 2021, the Act is repealed; and

**WHEREAS,** the water treatment plant and pipeline components of the RWS have been designed to approximately a 30% level which will support the required environmental compliance review, but the 30% milestone has not yet been achieved for the Miner Flat Dam (Dam) and therefore the Environmental Impact Statement (EIS) for the entire RWS Project has been delayed; additionally, the previous 638 contract between the WMAT and Reclamation (R19AV93002) expired on September 30, 2018; and

**WHEREAS,** the Dam is the final component of the RWS yet to progress to a 30% design level, and is essential for the EIS to go forward, but certain unexpected increases in the cost of planning, engineering, and issues pertaining to the 30% design of the dam site have delayed progress for approximately 36 months due to investigating those issues, including the development of a three-dimensional seepage model; and

**WHEREAS,** critical to reaching a ROD is the resolution of key technical issues in regards to the Dam site and design that have been identified by Reclamation, WMAT, Consulting Review Board (CRB), engineering consultants Gannett-Fleming (GF), the former Engineer of Record (EOR), and HDR Inc., (HDR), and those technical issues must be resolved; and

- WHEREAS,** the WMAT, CRB, Reclamation, GF, and HDR, have since November 2016, coordinated efforts to define a path forward in designing the Dam in order to proceed with the EIS and ultimately the ROD, and such work has included meetings, conferences, development of an extensive three-dimensional seepage model, and supplemental field investigations, all of which have resulted in additional costs to the point that WMAT Loan Authorization Act funds have been exhausted; and Reclamation and the WMAT have sought funding from other sources, including the Tribe's own funds, and Reclamation's Native American Program to offset these costs; and
- WHEREAS,** WMAT has received a letter from Reclamation that currently anticipates that reimbursement of any Reclamation funding From the Native American Program will occur when mandatory funds from the Act are available at enforceability; and
- WHEREAS,** the WMAT has also contributed substantial Tribal Funds, and will continue to do so, in order for the RWS Project to achieve the ROD, and the WMAT anticipates that it will likewise make inquiries for reimbursement from the Act when mandatory funds are available at enforceability; and
- WHEREAS,** at a meeting at Reclamation offices in Glendale, Arizona, on April 2-3, 2019, Reclamation, WMAT, and CRB, discussed the rapidly approaching April 30, 2021 statutory deadline for completion of the conditions of enforceability in the Act, including the ROD, which leaves little time to complete the required work to complete the required EIS and obtain a ROD, and the time constraint has been further complicated by the recent withdrawal of the Engineer of Record, Gannett Fleming, from the RWS Project, thereby creating an urgent need to find a replacement EOR and to redefine the scope of work for the EOR, which must be done immediately, and on an emergency basis, because of the impending Enforceability Date of the Act, the mandatory funding and the enforceability of the quantification of the Tribe's priceless reserved water rights that is at stake, and because of the ever increasing severity of drinking water shortages on the Fort Apache Indian Reservation; and
- WHEREAS,** the WMAT Procurement Policies currently provides, amongst other things, in Section 5.6, that the Tribal Chairwoman may make or authorize others to make an emergency procurement if there exists a threat to the public health, welfare, or safety, but that the maximum amount that can be contracted under said emergency provision shall not exceed \$100,000; and
- WHEREAS,** replacement of the Engineer of Record for the RWS Project and completion of the 30% design for the Miner Flat Dam is estimated by the Tribe's consultants to cost approximately \$3 million, and because of that amount and the special and unique circumstances regarding the recent withdrawal of Gannett Fleming as the EOR, the impending deadline of Enforceability of the Act, and other urgent considerations, the Tribal Council concludes that the Tribe's Procurement Policies must be amended accordingly to address this emergency situation in the form and content attached to this Resolution as Section 5.6.1, entitled "Emergency Procurement Authorization by Tribal Council"; and
- WHEREAS,** HDR Inc., an engineering firm, had been previously selected by the Tribe in 2012 as one of the top 3 engineering firms to design the Miner Flat Dam and went through the previous RFP/RFQ process, was shortlisted for similar or related scope of work, has been known to the WMAT based on past or ongoing services related to the RWS Project, i.e., supplemental field investigations of the Dam Site and preparation of the three-dimensional seepage model, and that outcome of an open procurement pursuant to Section 3.1 of the Procurement Policy would likely result in HDR Inc., being selected under that provision; and

**WHEREAS,** the circumstances listed 1 through 10, justifying the emergency procurement authorization under the proposed amendment to the Procurement Policies, Section 5.6.1, will be satisfied if HDR Inc., is selected as the replacement Engineer of Record to complete the 30% design of the Miner Flat Dam; and

**WHEREAS,** the Tribal Council further concludes that due to the impending Enforceability Date of April 30, 2021, and based upon the recommendation of the WMAT Water Rights Team, the CRB, and Reclamation, a 4-year extension of the Enforceability Date of the Act is required to ensure completion of the 30% design of the Dam and the EIS for the RWS Project.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby approves an amendment to the WMAT Procurement Policies with the addition of Section 5.6.1, entitled "Emergency Procurement Authorization by Tribal Council" in the form and content attached to this Resolution and incorporated by reference herein, effective this date, April 23, 2019.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it is hereby authorizes and directs the WMAT Attorney General Office to coordinate with the WMAT RWS Project General Manager Brando Pusher, PE, Special Counsel for the WMAT's water rights, and the WMAT's water rights consultants, to negotiate a contract, budget, schedule, and qualified team with HDR Inc., to complete the 30% design for the Miner Flat Dam as the Engineer of Record (EOR), pursuant to the provisions of Section 5.6.1 of the WMAT Procurement Policies, as amended.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the Tribal Chairwoman Gwendena Lee Gatewood, and in her absence, the Vice Chairman, are hereby authorized and directed to execute a contract with HDR Inc., as the EOR for the RWS Project, specifically, for the 30% design of the Miner Flat Dam, and to execute any and all documents necessary to effectuate the appointment of HDR Inc., as such.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby approves and requests a 4 year extension of the Enforceability Date of the White Mountain Apache Tribe Water Rights Quantification Act of 2010 from April 30, 2021 to April 30, 2025, and authorizes the Tribal Chairwoman Gwendena Lee Gatewood, and in her absence, the Vice Chairman, to take whatever Congressional or other action is required in order to obtain the requested extension of the Enforceability Date.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the Chairwoman, or in her absence, the Vice-Chairman, are hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

The foregoing resolution was on **APRIL 23, 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).

 04/26/19  4/26/19  
Gwendena Lee-Gatewood, Chairwoman      Date      Doreen T. Numkena, Tribal Secretary      Date