



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Approving Amendment of the Contracts of the RWS Consultants to Complete 30% of Miner Flat Dam and Final Designs of the Rural Water System Project)

- WHEREAS,** The Constitution of the White Mountain Apache Tribe (“Tribe”) of the Fort Apache Indian Reservation (“Constitution”) provides, at Article IV, Section 1(a) that the Tribal Council (“Council”) shall exercise the power “[t]o represent the tribe and act in all matters that concern the welfare of the Tribe, and to make decisions not inconsistent with or contrary to this constitution”; and
- WHEREAS,** In 2010, Congress passed the White Mountain Apache Tribe Water Rights Quantification Act (Pub. L. 111-291, Title III, 124 Stat. 3073) (“Act”), which settled the Tribe’s water right claims against the federal government and a number of Arizona state parties, and provided federal funding to construct the WMAT Rural Water System; and
- WHEREAS,** A condition of enforceability of the Act is the issuance of a Record of Decision (“ROD”) by the Secretary of the Interior, along with a statement of findings published in the Federal Register in order for the funding in the Act for the construction of the RWS Project and funding for the design and other pre-construction work for the RWS Project to be released; and
- WHEREAS,** P.L. 117-342, (January 5, 2023), “To amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 [Title III, P.L. 111-291] to modify the enforceability date for certain provisions, and for other purposes”, extended the Enforceability Date to December 31, 2027, and substituted \$541 million for \$11 million to increase funding necessary to complete all elements of the WMAT rural water system (“RWS”), including the construction of Miner Flat Dam; and
- WHEREAS,** The Enforceability Date takes effect at any time prior to December 31, 2027, as specified in Section 309 (d) of the Quantification Act, as set forth below, and 30% design of Miner Flat Dam is necessary for section 309 (d) (1) (D) for the Secretary to issue a Record of Decision approving the construction of the WMAT RWS:

309 (d) ENFORCEABILITY DATE.—

(1) IN GENERAL.—This section takes effect on the date on which the Secretary publishes in the Federal Register a statement of findings that—

(A) (i) to the extent that the Agreement conflicts with this title, the Agreement has been revised through an amendment to eliminate the conflict; and

(ii) the Agreement, as so revised, has been executed by the Secretary, the Tribe, and the Governor of the State;

(B) the Secretary has fulfilled the requirements of sections 305 and 306;

Resolution No. 09-2023-203

- (C) the amount made available under section 312(a) has been deposited in the White Mountain Apache Tribe Water Rights Settlement subaccount;*
- (D) the State funds described in subparagraph 13.3 of the Agreement have been deposited in the White Mountain Apache Tribe Water Rights Settlement Subaccount;*
- (E) the Secretary has issued a record of decision approving the construction of the WMAT rural water system in a configuration substantially similar to that described in section 307;*
- (F) the judgments and decrees substantially in the form of those attached to the Agreement as exhibits 12.9.6.1 and 12.9.6.2 have been approved by the respective trial courts; and*
- (G) the waivers and releases authorized and set forth in subsection (a) have been executed by the Tribe and the Secretary.*

WHEREAS, Implementation of the Act requires NEPA-related investigations resulting in a Final EIS and 30% design of the features of the White Mountain Apache Tribe Rural Water System (“WMAT RWS”), including Miner Flat Dam, pipelines and related facilities from Whiteriver to Cibecue, and a new water treatment as prerequisites to a Record of Decision (“ROD”); and

WHEREAS, The Tribe completed the 30% design of both the water treatment plant and pipeline in 2015, and the EIS is scheduled for completion in the 2024 timeframe; however, 30% design of the Miner Flat Dam is not yet complete. A contract amendment with the Engineer of Record, HDR, was entered into in January 2023 pursuant to Resolution No. 01-2023-26; however, contract amendments for the other RWS consultants are also required to complete the necessary work to reach the Date of Enforceability; and

WHEREAS, The Consulting Review Board (Dr. William Dershowitz, Dr. Donald Bruce, and Mr. Richard Humphries) and Laurel Lacher are required to support 30% and Final designs of Miner Flat Dam. Services of Thomas Watson and KeAloha Douma, members of the WMAT project team, are required to support 30% design of Miner Flat Dam, the analyses leading to the Final EIS, and final design of the WMAT RWS; and

WHEREAS, Budgets of the aforementioned Consultants are included in the proposed new P.L. 93-638 contract between WMAT and the Bureau of Reclamation to complete 30% design of Miner Flat Dam; and

WHEREAS, The contracts of each consultant requires modification to extend the contracts through the date of enforceability of December 31, 2027 and to approve the budget of \$1,657,706.00, as presented in the RWS budget of Attachment A, which will be included in the P.L. 93-638 contract between WMAT and the Bureau of Reclamation.

WHEREAS, The Chairman, Vice-Chairman, the Office of the Attorney General, and the WMAT Water Rights Team are currently working with Interior officials to secure appropriations for the congressionally authorized increase in funding for the Tribe’s Rural Water System, which will be applied to 30% design of Miner Flat Dam and for Final Design of the WMAT RWS; and

Resolution No. 09-2023-203

WHEREAS, The Council recognizes the urgent need to complete the WMAT Rural Water System in order to provide water to its members and residents of the Fort Apache Indian Reservation while also recognizing the necessity of completing the requirements for the Secretary of the Interior to issue a Record of Decision and to reach the enforceability date and obtain access to the congressionally authorized funding necessary to construct the WMAT RWS, and thus finds that the modification of the contracts with the Tribe's RWS consultants to conclude 30% and design of Miner Flat Dam and Final design of the WMAT Rural Water System is in the best interests of the Tribe and its members.

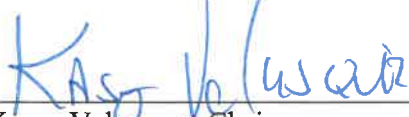
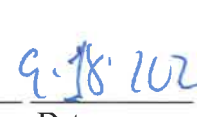
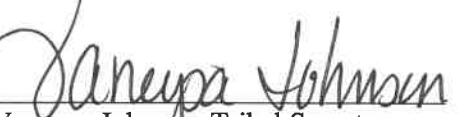

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves amending the contracts of the WMAT Rural Water System Consultants, namely: Geosystems; Geofractal; Richard Humphries; LEIDOS; Lacher Hydrological Consulting; Watson Engineering; and Douma Law, PLLC, in accordance with the RWS budget attached and incorporated herein by reference.

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 Chairman, or in his 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 SEPTEMBER 13, 2023 duly adopted by a vote of EIGHT for, ZERO against, and ZERO 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 November 10, 2021, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

			
Kasey Velasquez, Chairman	Date	Vaneysa Johnson, Tribal Secretary	Date