

RESOLUTION OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION

- WHEREAS, the White Mountain Apache Tribe is committed to the protection of its natural resources, particularly water, for present and future uses, and
- WHEREAS, the White Mountain Apache Tribe has undertaken an extensive program involving the utilization, conservation, preservation and protection of its invaluable rights to the use of water in the Salt River and its tributaries which arise upon, traverse, border and underlie the Fort Apache Indian Reservation, and
- WHEREAS, as an essential part of this program, the White Mountain Apache Tribe has undertaken a comprehensive Water Quality Management Planning Program under Section 208 of the Clean Water Act, with funds from the Environmental Protection Agency to develop mechanisms to protect the quality of these waters of the Fort Apache Indian Reservation for the use of the White Mountain Apache people, and
- WHEREAS, funds available from the Environmental Protection Agency for the initial 208 Water Quality Management Planning process will be expended by March 30, 1982, and
- WHEREAS, only about one third of the Workprogram originally drawn up and adopted by the Tribe as its goals for the utilization of 208 funds can be completed by that time, and
- WHEREAS, the White Mountain Tribe in Resolution 81-139 has declared its need for additional funds to establish water quality standards and a water quality monitoring program for the Fort Apache Indian Reservation, and
- WHEREAS, the White Mountain Apache Tribe, in Resolution 81-166 requested that a water quality Ordinance be drawn up to set and enforce standards for wastewater dischargers on the Reservation, and
- WHEREAS, the above ordinance has been prepared and requires a Tribal Agency to carry out its provisions, and
- WHEREAS, the White Mountain Apache Tribe has expressed its interest in the development of a Comprehensive Water Code analogous to the one currently being prepared by the Navajo Nation, and
- WHEREAS, in Resolution 81-167 the White Mountain Apache Tribe expressed its support for the search for funds from sources other than the Environmental Protection Agency for the implementation of the above aims, and
- WHEREAS, the Administrative Manager, the Citizen's Advisory Group to the Water Quality Management Planning Department, the Tribal Planner, the Water Rights Attorney and the Tribal Attorney have expressed strong support for this effort, and

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FORT APACHE INDIAN
AGENCY
WHITERIVER, ARIZ.

WHEREAS, it is understood that such funds might be available from the trustee United States from fiscal 1981 funds as well as fiscal 1982 and 1983, and

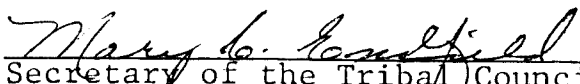
WHEREAS, the effective request for such funds requires the immediate support of the White Mountain Apache Tribal Council.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Tribal Council take all steps necessary and direct its Director of the Water Quality Management Planning Department to submit a proposal to The Trustee United States acting through the Bureau of Indian Affairs within the next two weeks to secure funds for the development of a three year comprehensive water quality management planning, implementation and training program at an estimated cost of \$100,000 per year for three years.

The foregoing resolution was on August 6, 1981 duly adopted by a vote of 6 for and 0 against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (i) of the Amended Constitution and By-Laws of the Tribe, ratified by the Tribe June 27, 1958 and approved by the Secretary of the Interior May 29, 1958, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).



Acting Chairman of the Tribal Council



Secretary of the Tribal Council

PROPOSED
ORDINANCE OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION

BE IT ENACTED by the Tribal Council of The White Mountain Apache Tribe,
regularly assembled, August 5, 1981, that Water Quality Standards
be set for the waters of The Fort Apache Indian Reservation.

WHITE MOUNTAIN APACHE WATER QUALITY ORDINANCE

SECTION I. PURPOSE AND INTENT

The purpose of this Water Quality Ordinance is to protect the human and natural resources of the White Mountain Apache Tribe on the Fort Apache Indian Reservation for present and future uses, consistent with the Tribe's goals of economic and social self-sufficiency, the protection of its resources for future development and the protection of the health of Reservation residents.

The intent of this Ordinance is to protect Reservation residents and visitors from the harmful effects of polluted water on their health and welfare. The effective implementation of this ordinance will improve the quality of Reservation waters, increase the number of safe uses for it and increase the productive life of its land and people. Responsible protection of Reservation water quality will enhance Tribal health, water development prospects and water rights claims.

SECTION II. DEFINITIONS

A. AGENCY - means the Tribal agency designated by the Tribal Council and approved by the United States Environmental Protection Agency Administrator as having responsibility for enforcing Tribal laws relating to environmental protection and the abatement of pollution and herein named White Mountain Apache Water and Natural Resources Protection Agency.

B. ADMINISTRATOR - means The Administrator of the White Mountain Apache Water and Natural Resources Agency and The Administrator of this Ordinance.

C. PERSON - means an individual, corporation, partnership, community, association, legal representative or any organized group of persons.

D. POLLUTANT - means any waste discharged into water including dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, petroleum products or other non-biodegradable materials, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste.

E. WATERS - means waters of the Reservation including any river, lake, tank, dry wash, spring, aquifer or ground water source.

F. EFFLUENT LIMITATION - means any restriction established by the Administrator on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged from point or identifiable non-point sources into the waters of the Reservation.

G. DISCHARGE OR DISCHARGE OF A POLLUTANT.- means any addition of any pollutant to the waters of the Reservation.

H. DISCHARGER - means the owner of record, the lessee, sublessee, mortgagee in possession, or any person responsible for the discharge of any pollutant to the waters of the Reservation.

I. POLLUTION - means the human - made or human - induced alteration of the chemical, physical, biological and radiological integrity of water.

J. TOXIC POLLUTANT - means those pollutants or combinations of pollutants, including disease - causing agents, which after discharge or exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions or physical deformations in such organisms or their offspring.

K. POINT SOURCE - means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft from which pollutants are or may be discharged.

L. NON-POINT SOURCE - means any discernible discharge of pollutants, without apparent conveyance including return flows from agriculture, silviculture, livestock production, construction activities and septic tanks.

M. BIOLOGICAL MONITORING - means the determination of the effects on aquatic life, including the accumulation of pollutants in the tissue, in receiving waters due to the discharge of pollutants by appropriate techniques and procedures and at appropriate frequencies and locations as determined by the Administrator.

N. SCHEDULE OF COMPLIANCE - means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation or other limitation, prohibition or standard.

O. INDUSTRIAL USER - means any industry identified by the Administrator as a significant waste producer.

P. PUBLIC COMMUNITY WASTEWATER DISPOSAL SYSTEM - means any wastewater disposal system which serves two or more homes and is neither Commercial or Industrial.

Q. COMMERCIAL WASTEWATER DISPOSAL SYSTEM - means any such system serving more than 5 people, not a home or industry, such as schools, hospitals, and businesses.

R. INDUSTRIAL WASTEWATER DISPOSAL SYSTEM - means any such system which serves an industry and is not individual, public or commercial.

SECTION III. SCOPE OF ORDINANCE

Any person who discharges waste water or pollutants into any surface or ground waters within the boundaries of the Fort Apache Indian Reservation must receive a valid permit from the Administrator of the Agency and do so within the application period. The permit will define the effluent limits within which the discharge may legally continue.

Effluent limits will be determined by the Administrator based on the best available information as to levels of pollutants which minimize risks to the health and welfare of human residents and aquatic life under current and future uses of the water. Effluent limits will be based on Water Quality Criteria developed and updated by the United States Environmental Protection Agency. These Criteria may be amended from time to time by the Tribal Council on the advice of the Administrator. Current Criteria will be published as a part of this Ordinance and hereby named Water Quality Standards and Criteria for The Fort Apache Indian Reservation.

A. APPLICATION PROCEDURE

1. All point source dischargers within The Fort Apache Indian Reservation must apply to The Administrator of the Agency within thirty days (30) of the adoption of this Ordinance, or of the initiation of or increase in a discharge, or upon notification by the Administrator.

2. The receipt of the Application will be acknowledged by The Administrator within ten days (10) of receipt.

3. A Permit specifying legal effluent limits and a schedule of compliance will be drawn up by the Administrator and delivered to the discharger within sixty (60) days.

4. The Permit will be accepted and signed by the Discharger within 60 days of receipt and will thereupon become a Valid Permit for a period of three years provided there is no significant change in the quantity or quality of the discharge during this period. If the Discharger or The Administrator identifies a significant change in the discharge, a Permit Amendment must be applied for and received according to the same schedules listed above.

B. PERMIT FEES

All dischargers will pay an application fee and a discharge fee according to the following schedule to be updated annually October 1. Discharge fees will be stated in the Permit.

1. Application Fee ..

Public Community Wastewater Disposal System	\$200.00
Commercial Wastewater Disposal System	\$300.00
Industrial Wastewater Disposal System	\$500.00

2. Discharge Fee

Annual discharge fee based on quantity and quality of discharge and severity of pollutants contributed to waters of the Reservation.

C. MONITORING

1. Each discharger is required to monitor the quality of its effluent along critical parameters on a regular basis, as defined in its Permit, and submit copies of its results to the Administrator of the Agency for the Tribe. This water quality sampling and testing will be done under the authority and with the approval of the Agency Administrator for the Tribe by laboratory technicians trained in the required techniques and with access to appropriate equipment.

D. CRITERIA FOR PERMIT ISSUANCE

1. Public health and safety
2. Cost-effectiveness to the Tribe of compliance with EPA Standards.
3. Ability of the Tribe and its Agency to enforce permit conditions.

SECTION IV. EXEMPTIONS

This Ordinance shall be applicable to all dischargers, regardless of legal status, located within the boundaries of the Fort Apache Indian Reservation.

SECTION V. ENFORCEMENT AUTHORITY

This Ordinance shall be administered and enforced by the White Mountain Apache Water and Natural Resources Agency. The Agency shall have the authority to:

1. Issue rules, regulations and guidelines to implement the water quality criteria imposed by this ordinance.
2. Hold hearings, subpoena witnesses and documents and require dischargers to submit reports.
3. Issue Permit Applications and Permits.
4. Collect fees and levy fines for lateness or non-compliance.
5. Enter a discharger's premises to perform its duties including identification, inspection and sampling of the discharge.
6. Issue emergency warnings or orders to prevent or dissipate imminent hazards to life, health or safety of any person or any Reservation waste disposal system whenever in the judgement of the Administrator it appears that a waste discharge is a serious immediate threat to life, health or property.

SECTION VI. SANCTIONS FOR NON-COMPLIANCE

A. Any discharger who fails to comply with this Ordinance or with the terms of their Permit shall be subject to sanctions which shall include but not be limited to:

1. For not applying for a Permit:
 - a. Fines: Application cost plus 10% additional for every past due.
 - b. After 6 months of non-compliance and non-payment:
The Administrator may recommend to the Tribal Council.
 - 1) Termination of Enterprise Manager or of Enterprise;
 - 2) Termination of Permit or Contract to operate on Reservation.
2. For not complying with Permit requirements
 - a. Fines: Up to \$1,000 per day after a warning period, specified by the Administrator.
 - b. Termination of Manager, Enterprise or of Permit to operate on Reservation.
3. For not paying fines: Termination

B. Dischargers are prohibited from withholding required reports or from disciplining any employee or other person who submits the information or from restricting appropriate entry by the Administrator.

C. Disposition of Enforcement Funds: Funds collected for failure to comply with this Ordinance will be added to the Tribal Treasury in a Fund for Water and Natural Resource Protection for the use of the Agency in accomplishing its aims.

SECTION VII. WATER AND NATURAL RESOURCES PROTECTION BOARD

A. There is hereby created a Water and Natural Resources Protection Board which shall be composed of (5) five voting members appointed for two year terms by the Tribal Council, except that the first Board shall have two one year appointees. Members or Ex-officio members will include:

From the Whiteriver Indian Health Service:
The Environmental Engineer and Sanitarian

From the Fort Apache Agency, Bureau of Indian Affairs:
The Facilities Manager

From the White Mountain Apache Tribal Government:
The Utility Authority Manager
The Agency Administrator

B. The functions of the Board will be to:

1. Advise the Administrator in all aspects of water and natural resource protection and administration.
2. Hear appeals of dischargers or citizens and recommend action to the Administrator and/or the Tribal Council.
3. Hear and inform the public on all aspects of water and natural resource protections policy and practices.

SECTION VIII. SEPARABILITY

If any provision of this ordinance or the application thereof is held invalid, the remainder shall not be affected.

SECTION IX. FUNDING

Funds for the operation of the Agency herein created will be acquired from:

1. Fees and fines levied,
 2. Contract funds from the Bureau of Indian Affairs,
 3. Grant funds from other sources and
 4. Tribal government budget.
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