

RESOLUTION

of the

WHITE MOUNTAIN APACHE TRIBE,
Fort Apache Indian Reservation,
Whiteriver, Arizona

EXPOSING THE FRAUD, SHAM AND CHICANERY
BEING PRACTICED UPON THE WHITE MOUNTAIN APACHE TRIBE
BY WILLIAM FRENCH SMITH, ATTORNEY GENERAL OF THE UNITED STATES,

AND A DEMAND BY THE WHITE MOUNTAIN APACHE TRIBE
THAT IMMEDIATE CORRECTIVE ACTION BE TAKEN
TO PROTECT THE TRIBE'S INVALUABLE AND LIFE-SUSTAINING
RIGHTS TO THE USE OF WATER
IN THE SALT RIVER AND ITS TRIBUTARIES

2 December 1981

Chairman Ronnie Lupe
White Mountain Apache Tribe
Fort Apache Indian Reservation
Whiteriver, Arizona 85941

VIOLATION BY WILLIAM FRENCH SMITH, ATTORNEY GENERAL,
OF THE CONSTITUTIONAL, CIVIL AND HUMAN RIGHTS
OF THE WHITE MOUNTAIN APACHE TRIBE

The January 4, 1982 Filing

WHEREAS, William French Smith, Attorney General, chief law officer of the United States of America, wholly without authority, illegally and with the sole objective of intentionally violating the invaluable and life-sustaining rights to the use of water in the Salt River and its tributaries of the White Mountain Apache Tribe, has announced, over the repeated objections of the White Mountain Apache Tribe, that, on January 4, 1982, that officer will, acting through the Department of Justice, file in the Superior Court of Maricopa County, State of Arizona, a "pleading," purporting to be the claim of the Tribe in and to rights to the use of water in the Salt River and its tributaries; and

WHEREAS, William French Smith, Attorney General, knows or most assuredly should know that the Superior Court of Maricopa County, State of Arizona, lacks jurisdiction over (a) the United States of America, (b) the White Mountain Apache Tribe and (c) the Tribe's invaluable rights to the use of water in the Salt River and its tributaries, by reason of the fact that neither the United States of America nor the White Mountain Apache Tribe has waived its sovereign immunity from suit or the immunity of their respective rights in the Salt River and its tributaries under the undisputed facts and principles of law, which prevail; and

WHEREAS, William French Smith, Attorney General, has been named a defendant in a proceeding now pending before the United States Court of Appeals for the District of Columbia Circuit, which is entitled White Mountain Apache Tribe, Appellant, vs. William French Smith, Attorney General, and James G. Watt, Secretary of the United States Department of Interior, No. 81-1944, in which the White Mountain Apache Tribe seeks to have resolved, among other issues, the question of the power, authority and propriety of William French Smith, Attorney General, to file the aforesaid "pleading" in the Superior Court of Maricopa County, by reason of the fact, among other things, that the Superior Court of Maricopa County lacks jurisdiction over the United States, the Tribe and the Tribe's Salt River Rights; and

WHEREAS, the Attorney General not only is fully cognizant of the fact that the Superior Court of Maricopa County, State of Arizona, lacks jurisdiction over the Tribe and its rights to the use of water, the Attorney General is likewise fully aware of the fact that the aforesaid proceeding against the Attorney General and the Secretary of Interior has now been set for argument by the United States Court of Appeals for the District of Columbia Circuit in the forthcoming session in February and March of 1982,

and that the issue of the Attorney General's authority to represent the White Mountain Apache Tribe over the Tribe's repeated and vigorous rejection of the Attorney General's representation in the Maricopa County Court can and should be resolved antecedent to any filing respecting the Tribe's Salt River rights by the Attorney General in the Maricopa County Court; and

WHEREAS, William French Smith, Attorney General, or his subordinates have reasonable alternatives that can be taken in lieu of filing a "pleading" with the Maricopa County Court; yet, the Attorney General and his staff have adamantly refused to consider any alternative to the arbitrary, capricious, illegal and unauthorized filing on January 4, 1982, as presently contemplated by that official and his subordinates; and

WHEREAS, it is an established practice acceptable to all courts, pursuant to which the Attorney General could, as an alternative to making the illegal and unauthorized filing,

- (1) respectfully suggest to the presiding Judge of the Maricopa County Court, without submitting to jurisdiction, that, due to the adamant refusal of the White Mountain Apache Tribe to be represented by the Attorney General in the proceedings pending in the Maricopa County Court and due to the fact that the issue of the authority of the Attorney General to make the filing is before the United States Court of Appeals for the District of Columbia Circuit and that a decision respecting the power and authority of the Attorney General could be expected within a reasonable time and that because of the present posture of the proceedings, the court could enter an order extending the time for filing beyond the January 4, 1982 date, which the court has established; and
- (2) respectfully bring to the court's attention, if the presiding Judge of the Maricopa County Court refused to extend the date for filing from January 4, 1982, that the court was without authority and that any order which it might enter, including a default judgment against the White Mountain Apache Tribe, would be null and void and of no force and effect by reason of the court's lack of jurisdiction; 1/ and

1/ Arizona Department of Economic Security v. Holland, 120 Ariz. 371, 586 216, 217 (1978): "When a judgment is void for lack of jurisdiction, the court has no discretion to refuse to vacate the judgment."

International Glass & Mirror, Inc. v. Banco Ganadero Y Agricola, S.A., 25 Ariz. App. 604, 545 P.2d 452, 453 (1976): "The record clearly reflects that appellant was not given the requisite notice

WHEREAS, rather than being amenable to reason and adopting the alternatives suggested, the subordinate in the Department of Justice immediately responsible for the matter has explicitly stated that a filing would be made January 4, 1982, knowing full well the opposition of the White Mountain Apache Tribe to the filing and likewise knowing that the Maricopa County Court does not have jurisdiction, all as explicitly stated above.

FRAUD, SHAM, CHICANERY PRACTICED BY ATTORNEY GENERAL
UPON THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA,
THE SUPERIOR COURT OF MARICOPA COUNTY AND THE WHITE MOUNTAIN APACHE TRIBE

WHEREAS, the White Mountain Apache Tribe has repeatedly and explicitly advised the Attorney General and the United States District Court for the District of Columbia that it rejects representation by the Attorney General in any of the proceedings involving the Tribe's Salt River rights and that the White Mountain Apache Tribe would not be bound by any of the actions of the Attorney General by reason of the all-pervasive conflicts of interest, in which that officer is immersed, all as will be reviewed; and

WHEREAS, the Attorney General, engaging in fraud, sham and chicanery, has advised the United States District Court for the District of Columbia that:

... the Attorney General and the United States are not representing the White Mountain Apache Tribe. We are not purporting to. We are not trying to force unwanted representation upon the tribe. 2/

WHEREAS, the Attorney General continued to mislead the United States District Court for the District of Columbia by stating in writing that:

... it should be absolutely clear that the Attorney General in filing the notice [with the Maricopa County Court]... will not be forcing unwanted legal representation upon the Tribe. ***

1/ (cont'd)

and therefore the default judgment entered against it was void."

Wright and Miller, Federal Practice And Procedure, Vol. 10, §2695, at p. 325: "The principal basis for an attack on a default judgment under Rule 60(b)(4) asserts that it is void for lack of jurisdiction."

2/ Transcript of Record, May 28, 1981, in the case of White Mountain Apache Tribe vs. William French Smith, Attorney General, et al., Civil No. 81-1205, p. 8, lns. 8-11.

The United States has a seperate [sic] legal title to the water rights of the tribe. The tribe has the beneficial title to those rights. Hence, they Attorney General will not be representing the tribe in an attorney-client relationship in any sense. 3/

WHEREAS, continuing grossly to misrepresent the status occupied by the Attorney General in regard to the White Mountain Apache Tribe, that official filed with the Maricopa County Court, on June 2, 1981, the statement which, among other things, included this misrepresentation:

The United States will file claims for the Indian Reservations [including the White Mountain Apache Indian Reservation] listed for the United States' legal interest as a trustee of the water rights of the respective reservations. The Indian Tribes have seperate [sic] equitable interests in the water rights of their reservations. 4/

WHEREAS, it is an elemental proposition of law that the legal title of the United States, trustee, and the equitable title of the Tribe's to the Salt River rights are inseparable; 5/ and

WHEREAS, for the Attorney General to represent that his actions would not be binding upon the Tribe, is a fraud not only upon the Tribe, but on the Courts in which those representations are made.

CONFLICTS OF INTEREST PERMEATE ALL ATTORNEY GENERAL'S ACTIVITIES
PERTAINING TO SALT RIVER RIGHTS OF WHITE MOUNTAIN APACHE TRIBE

WHEREAS, irreconcilable and intolerable conflicts of interest are purportedly represented by William French Smith, Attorney General, in regard to

3/ Memorandum in Opposition, filed May 27, 1981, by the Attorney General p. 8, lns. 8-25.

4/ In Re: General Adjudication of the Rights to Use Water in the Salt River Watershed above Granite Reef Dam, Excluding the Verde River Tributary, No. W-1, "Response of the United States. . ." filed June 2, 1981, at p.3. (Emphasis supplied)

5/ See, Heckman v. United States, 224 U.S. 413, 446 (1912).

the litigation in the Superior Court of Maricopa County, Arizona, in which the Attorney General, over the objections of the White Mountain Apache Tribe, seeks to file a pleading pertaining to the Tribe's rights to the use of water in the Salt River. Simultaneously and incredibly, the Attorney General represents the Secretary of Interior's interests in the Salt River Federal Reclamation Project, constructed by that official and administered by an agent of the Secretary, which agent initiated the proceedings against the White Mountain Apache Tribe and, in the initial filing with the Maricopa County Court, asserts, as against the White Mountain Apache Tribe, that the Secretarial Salt River Federal Reclamation Project claims all of the waters in the Salt River adversely to the claims of the White Mountain Apache Tribe; and

WHEREAS, the Attorney General likewise represents the Secretary of the Interior in regard to the claimed rights to the use of water for the now abuilding Central Arizona Federal Reclamation Project, for which the Secretary of Interior claims large quantities of water, all of which claims are adversely asserted against the White Mountain Apache Tribe by the Secretary of the Interior; and

WHEREAS, the Attorney General cannot deny his irreconcilable conflict of interest by reason of his statement made to the state court setting forth those conflicting claims which are as follows:

Federal Agencies

United States Department of the Interior

1. Bureau of Land Management
2. Water and Power Resources Service
3. National Park Service
4. Fish and Wildlife Service

Department of the Defense

1. United States Air Force
2. United States Army

Department of Agriculture

1. National Forest Service

Indian Reservations

1. San Carlos Apache Indian Reservation
2. White Mountain Apache Indian Reservation
3. Tonto Apache Indian Reservation

4. Ft. McDowell Indian Reservation
5. Yavapai - Prescott Indian Reservation
6. Salt River Indian Reservation
7. Gila River Indian Reservation
8. Gila Bend Papago Reservation
9. Ak-Chin Pima-Maricopa Indian Reservation
10. Camp Verde Indian Reservation 6/

WHEREAS, it is abundantly manifest that William French Smith, Attorney General, engages in unprofessional, immoral and duplicitous actions, fraudulent in character, when he insists that he can represent the White Mountain Apache Tribe's rights in the Salt River, while simultaneously representing numerous claims that are adverse to the interests of the Tribe, including but not limited to Indian reservations whose rights are likewise adverse to those of the White Mountain Apache Tribe; and

WHEREAS, William French Smith, Attorney General, seeks to sacrifice the Tribe's rights in the Salt River for the benefit of the Secretarial claims for the vast federal reclamation projects; the powerful, political constituents, who not only guide the Secretary of Interior and that official's administration, but likewise control the conduct of William French Smith, Attorney General, in the course that official will follow in disposing of the conflicting claims to which reference is made immediately above.

False, Fraudulent And Fictitious Claim To Be Filed By
Attorney General Over The Protests Of The White
Mountain Apache Tribe

WHEREAS, William French Smith, Attorney General, seeks, by that official's forced representation upon the Tribe, to seize and confiscate the rights to the use of water of the White Mountain Apache Tribe for the benefit of the above-mentioned non-Indian projects and uses and has grossly misrepresented to the United States District Court for the District of Columbia and to the Superior Court of Maricopa County the nature and character of the rights to the use of water of the White Mountain Apache Tribe; and

WHEREAS, the White Mountain Apache Tribe is informed and believes that the filing to be made by Attorney General William French Smith on or before January 4, 1982, will fall far short of the actual rights to the use of water

6/ In Re: General Adjudication of the Rights to Use Water in the Salt River Watershed Above Granite Reef Dam, Excluding the Verde River Tributary, No. W-1, "Response of the United States..." filed June 2, 1981, at p. 2.

in the Salt River and its tributaries, to which the Tribe is entitled, all to the irreparable and continuing damage of the White Mountain Apache Tribe.

NOW, THEREFORE BE IT RESOLVED THAT THE WHITE MOUNTAIN APACHE TRIBE PETITIONS President Reagan to intervene on behalf of the White Mountain Apache Tribe, as President of the United States of America, and to exercise his authority as the Chief Executive of this Nation to direct William French Smith, Attorney General, to refrain from making any filing involving the rights to the use of water in the Salt River claimed by the White Mountain Apache Tribe and to take no further action in regard to the Tribe's rights to the use of water until the case of White Mountain Apache Tribe vs. William French Smith, Attorney General, and James G. Watt, Secretary of the United States Department of Interior, Civil No. 81-1944, has been concluded by a court of last resort; and

BE IT FURTHER RESOLVED THAT that appropriate committees of the Congress of the United States, both in the Senate and the House of Representatives, investigate the conduct of William French Smith, Attorney General, in regard to his illegal and unauthorized efforts to force his unwanted and rejected representation upon the White Mountain Apache Tribe who has consistently and adamantly refused to be represented by William French Smith, Attorney General, by reason, among others, that his activities in regard to the Salt River are completely immersed and totally permeated with conflicts of interest, all as set forth above; and

BE IT FURTHER RESOLVED THAT Secretary of the United States Department of Interior, James G. Watt, specifically request William French Smith, Attorney General, to refrain from taking any action in regard to the Tribe's rights to the use of water until after the aforesaid litigation, now pending in the United States Court of Appeals for the District of Columbia Circuit, is resolved and finally concluded by a court of last resolve; and

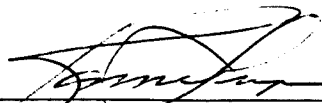
BE IT FURTHER RESOLVED THAT James G. Watt, Secretary of the United States Department of Interior, refrain from supplying any information to William French Smith, Attorney General, for the purpose of the Attorney General preparing and submitting to the Maricopa County Court a claim on behalf of the White Mountain Apache Tribe; and


BE IT FURTHER RESOLVED THAT the Chairman Ronnie Lupe is directed to take any and all action requisite, both in and out of court, to implement this Resolution and to protect and preserve the invaluable rights to the use of water of the White Mountain Apache Tribe in the Salt River and its tributaries.

The foregoing resolution was on December 2, 1981, duly adopted by a vote of 10 for and 0 against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Sections (a, f, h, i, & u) 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 on May 29, 1958, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

RECEIVED
DEC 11 1981

FORT APACHE INDIAN
AGENCY
MOUNTAIN APACHE


Chairman of the Tribal Council


Secretary of the Tribal Council