

R E S O L U T I O N
OF THE WHITE MOUNTAIN APACHE TRIBE
FOR
PRESERVATION AND PROTECTION
OF THE WATER RIGHTS, LAND
AND
NATURAL RESOURCES
OF
THE WHITE MOUNTAIN APACHE TRIBE
PURSUANT TO P.L. 93-638

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FORT APACHE INDIAN
AGENCY

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RESOLUTION NO. 82-304

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

FOR

THE PRESERVATION AND PROTECTION

OF THE WATER RIGHTS, LAND, AND

NATURAL RESOURCES OF THE

WHITE MOUNTAIN APACHE TRIBE

PURSUANT TO PUBLIC LAW 93-638

- I. THE WHITE MOUNTAIN APACHE TRIBE POSSESSES THE RECOGNIZED INHERENT SOVEREIGN
RIGHT TO MANAGE AND ADMINISTER ITS ANCESTRAL LANDS:

WHEREAS, the Tribal Council of the White Mountain Apache Tribe as the Governing Body of the White Mountain Apache people possesses the inherent sovereign right to control, manage, administer and develop its water rights and resources of its ancestral lands upon which it has resided and occupied for several centuries, and

WHEREAS, the Indian Reorganization Act of 1934 and the Constitution of the White Mountain Apache Tribe adopted pursuant thereto recognizes and affirms tribal sovereignty over its ancestral lands, water rights and natural resources, and

WHEREAS, the Secretary of the Interior as the principal agent of the trustee United States has ratified and approved the Constitution and By-Laws of the White Mountain Apache Tribe thereby ratifying and bringing within the protection of the supremacy clause of the United States Constitution, the congressional policies, principles, purposes and goals set forth in the Indian Reorganization Act and the Constitution of the White Mountain Apache Tribe which reaffirmed the inherent sovereignty of the White Mountain Apache Tribe over its ancestral lands, water rights and natural resources, and

WHEREAS, the trustee United States acting through its principal agent, the Secretary of the Interior, is charged with the most exacting fiduciary standards in the performance of his responsibilities owing to the White Mountain Apache Tribe, and must exercise the highest degree of care, skill and diligence in the performance of his trust responsibilities solely for the benefit of the White Mountain Apache Tribe, and

11. THE TRUSTEE UNITED STATES ACTING THROUGH ITS PRINCIPAL AGENT, THE SECRETARY OF THE INTERIOR HAS FAILED TO FULFILL ITS TRUST OBLIGATIONS TO WHICH THE WHITE MOUNTAIN APACHE TRIBE IS ENTITLED DUE TO IRRECONCILABLE AND PERVASIVE CONFLICTS OF INTEREST:

WHEREAS, the Secretary of the Interior and his predecessors have failed to perform to the highest degree of care, skill and diligence in the performance of their trust responsibilities to the Tribe and have failed to act solely for the benefit of the Tribe because of irreconcilable conflicts of interest which pervade all aspects of the Secretary of the Interior's conduct respecting the Tribe's Salt River rights and the development of its water rights, and other natural resources, and

WHEREAS, the Secretary of the Interior has in the past and presently is continuing to attempt to diminish, limit, denigrate and violate the sovereign rights of the White Mountain Apache Tribe to water arising on the Tribe's ancestral lands for the benefit of the Salt River Federal Reclamation Project and the Central Arizona Federal Reclamation Project administered by the Secretary of the Interior, and

WHEREAS, due to pervasive conflicts of interests, the Secretary of the Interior has intentionally subverted the Tribe's interests in preference to and in favor of the Salt River Reclamation Project, and

WHEREAS, the loyalty and the preference accorded to the Federal Reclamation Project by the Secretary of the Interior has resulted in the mismanagement and intentional non-development of agriculture, irrigation, hydroelectric power, and the full implementation of municipal, industrial and recreational projects which would utilize the Salt River and its tributaries, on the reservation, and

WHEREAS, the White Mountain Apache Tribe has suffered irreparable harm and injury and continues to suffer irreparable harm and injury because of the intentional mismanagement and concerted effort on the part of the principal agent of the trustee United States, the Secretary of the Interior, to hinder, diminish, and denigrate the development of tribal projects which might utilize the water of the Salt River and its tributaries which rise within the exterior boundaries of the Fort Apache Indian Reservation and over which the White Mountain Apache Tribe claims all sovereignty and ownership, and

WHEREAS, as an example of misconduct and bad faith on the part of the Secretary of the Interior because of his divided loyalties to the Federal Reclamation Projects: Records indicate that the present day Canyon Day Farm was originally proposed by the Bureau of Indian Affairs of the Department of the Interior as far back as the 1920's but suffered absolutely no development whatsoever until such time as the Tribal Council

expended its own money and efforts to construct the first large scale irrigation project, in 1980, and

III. THE PRINCIPAL AGENT OF THE TRUSTEE UNITED STATES, THE SECRETARY OF THE INTERIOR HAS COMMITTED TRESPASS ON THE ANCESTRAL LANDS OF THE WHITE MOUNTAIN APACHE TRIBE FOR PURPOSES CONTRARY TO AND IN VIOLATION OF HIS TRUST OBLIGATION AND RESPONSIBILITIES:

WHEREAS, the Secretary of the Interior acting through the Bureau of Indian Affairs has trespassed upon the Fort Apache Indian Reservation for the purpose of obtaining evidence in derogation of the tribe's water rights to be used in an Arizona State Court proceeding which seeks to adjudicate water rights of the White Mountain Apache Tribe to the Salt River, against the will and consent of the White Mountain Apache Tribe, and

WHEREAS, the Tribal Council as a result of this trespass has by necessity in order to protect its water rights and ancestral lands initiated a tribal Exclusion and Removal Ordinance with a Section designated as "Protection of Natural Resources" providing that no federal or state agency or any person may trespass or come onto the Fort Apache Indian Reservation without the prior permission and consent of the Tribal Council for purposes of gathering any information of any nature which may foreseeably be utilized against the sovereign interests of the White Mountain Apache Tribe, and

IV. THE ARBITRARY, CAPRICIOUS, AND BAD FAITH CONDUCT ENGAGED IN BY THE SECRETARY OF THE INTERIOR HAS CONTINUED IN VIOLATION OF HIS TRUST OBLIGATIONS DESPITE REPEATED DEMANDS AND LITIGATION INITIATED TO STOP SUCH CONDUCT BY THE WHITE MOUNTAIN APACHE TRIBE:

WHEREAS, the Secretary of the Interior as principal agent of the trustee United States has violated the principles and fiduciary standards required of a fiduciary guardian by aligning himself with the Bureau of Reclamation against the Tribe's rights in the Salt River and has conducted himself in a manner that can be characterized as arbitrary, and capricious, and in bad faith toward the White Mountain Apache Tribe, and

WHEREAS, if left unchecked the conduct of the Secretary of the Interior acting in concert with the Attorney General of the United States will result in the confiscation of the rights of the White Mountain Apache Tribe to the Salt River and its tributaries, and

WHEREAS, the Tribal Council of the White Mountain Apache Tribe through numerous resolutions, letters, litigation, and pleas to the Congressional delegation has requested and demanded that the Secretary of the Interior

cease and to desist the violation of his trust obligation to which the Tribe is entitled, and

WHEREAS, despite repeated demands and appeals to the conscience and morality of the Secretary of the Interior, that officer, acting in concert with the Attorney General of the United States, has continued to violate his trust obligation and that of the United States to the White Mountain Apache Tribe to the Tribe's irreparable injury and damage, and

V. THE WHITE MOUNTAIN APACHE TRIBE HAS SUFFERED GRIEVOUSLY FROM THE LACK OF PERFORMANCE BY THE TRUSTEE:

WHEREAS, gross maladministration, non-feasance of duty, and the intentional non-development of the water rights and natural resources of the White Mountain Apache Tribe has resulted in untold millions of dollars of damage and irreparable injury to hundreds of thousands of acres of grazing land and farming land within the ancestral lands of the White Mountain Apache Tribe, and

WHEREAS, massive evidence of the trustee's mismanagement of the natural resources of the White Mountain Apache Tribe has been documented in the Tribe's lawsuit against the trustee United States now before the United States Court of Claims and known as Docket 22-H under the Indian Claims Commission Act of 1946, and

WHEREAS, it is admitted and not denied by the Bureau of Indian Affairs that the primary loyalties and responsibilities of the Bureau of Indian Affairs and its personnel are to the Secretary of the Interior whose interest and loyalties are diametrically opposed to that of the White Mountain Apache Tribe and its people, and

WHEREAS, the White Mountain Apache Tribe in order to protect its vital water rights and natural resources must be free to develop its resources without obstruction and hinderance by the Secretary of the Interior who cannot, because of the all pervasive nature of the irreconcilable conflicts of interest, conduct himself for the sole benefit of the White Mountain Apache Tribe, and

VI. PUBLIC LAW 93-638 MANDATES TRIBAL CONTROL AND MANAGEMENT OF ITS NATURAL RESOURCES THEREBY ELIMINATING SECRETARIAL CONFLICTS OF INTEREST WHICH HAS CAUSED IRREPARABLE HARM AND INJURY TO THE PEOPLE AND NATURAL RESOURCES OF THE WHITE MOUNTAIN APACHE TRIBE:

WHEREAS, the Congressional policy and purpose of Public Law 93-638 reads as follows:

DECLARATION OF POLICY

Sec. 3. (a) The Congress hereby recognizes the Obligation of the 88 Stat. 2203 United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of education as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

(b) The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.

(c) The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

WHEREAS, the White Mountain Apache Tribe possess the resources, experts, and knowledge to properly manage and develop its water rights and natural resources, and

WHEREAS, the White Mountain Apache Tribe possesses no conflict of interest which pervades the Secretary of the Interior's conduct toward the Tribe and the development of the Tribe's water rights and natural resources, and therefore can best preserve, administer, manage and develop the water rights and natural resources of the ancestral lands for the sole benefit of the people of the White Mountain Apache Tribe and its future generations, and

WHEREAS, the White Mountain Apache Tribe wishes to develop and administer its water rights and natural resources pursuant to a P.L. 93-638 Contract with the Department of the Interior and Bureau of Indian Affairs as an emergency corrective measure to halt, retard, and rehabilitate injury and damage to the lands, water and other natural resources of the ancestral lands of the White Mountain Apache Tribe.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that pursuant to Public Law 93-638 the White Mountain Apache Tribal Council hereby gives a public notice of its intent to fulfil its constitutional obligation to prevent further waste and non-development on the Fort Apache Indian Reservation, by requesting the transfer of all of the responsibility for the administration, development and management of its water rights and natural resources from the trustee United States to the White Mountain Apache Tribe pursuant to and in furtherance of the Congressional Declaration of Policy for the self-determination of Indian Tribes set forth in Public Law 93-638.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the proposal to transfer the administration, management and development of the tribe's water rights and natural resources is premised upon its inherent sovereign power over its ancestral lands, the Breach of the trust obligation to which the White Mountain Apache Tribe is entitled by the principal agents of the trustee United States, the impossibility of the trustee agent, the Secretary of the Interior fulfilling his trust duties and obligations to the people of the White Mountain Apache Tribe due to pervasive, irreconcilable conflicts of interest, and upon the trustee's failure to preserve, develop and protect the water rights and natural resources of the White Mountain Apache Tribe.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby acknowledges the invitation of Bureau of Indian Affairs Area Director Jim Stevens who when advised of the tribe's intent to submit a proposal in the form of P.L. 93-639 Contract for the return to tribal management of all of the tribe's natural resources; invited the Tribal Council to submit a proposal.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby directs that a fully developed P.L. 93-638 Proposal be drafted under the direction of the Tribal Chairman pursuant to which responsibility for preservation and management of the water rights and the natural resources of the reservation would be transferred to the complete control of the Tribal Council of the White Mountain Apache Tribe including but not limited to all lands, rights to the use of water, timber, minerals, fish and wildlife.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby reasserts the immutable obligation of the trustee United States of America acting through its principal agents the Secretary of the Interior and the Attorney General of the United States to act for the sole benefit of the White Mountain Apache Tribe and demands that the trustee United States unequivocally fulfill and continue to fulfill its obligation under the Constitution and assist the White Mountain Apache Tribe in conserving, preserving, protecting, and utilizing the Tribe's natural resources.

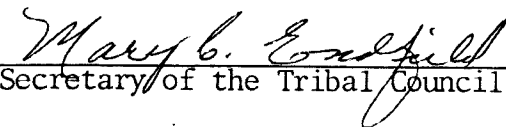
BE IT FURTHER RESOLVED by the Tribal Council that it reaffirms and reiterates that it is the trustee's obligation and duty to assist in the success of the P.L. 93-638 Contract for tribal administration of its natural resources and to protect and assist in the success of P.L. 93-638 Contract while it is still in its infancy.

BE IT FURTHER RESOLVED that the proposal by the Tribal Council to return to tribal management and administration its natural resources is not to be construed or considered in any way as an abrogation of the trustee United State's obligation to continue to fulfill its trust obligations to which the tribe is entitled.

The foregoing resolution was on December 16, 1982 duly adopted by a vote of 9 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 on May 29, 1958, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).



Chairman of the Tribal Council



Secretary of the Tribal Council