

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

Rangeland Mismanagement

- WHEREAS, in exchange for giving the United States sole right to extinguish its aboriginal title, the United States agreed to protect the White Mountain Apache Tribe pursuant to what has come to be known as its "Trust Responsibility" because of the prior exchange between the sovereign Apache Nation and the United States; and
- WHEREAS, this Trust Responsibility is a judicially recognized legal duty with the distinctive obligation incumbent upon the United States to carry out its trust obligations, which must of necessity be self-imposed; and
- WHEREAS, not only is there a public trust to citizens of the United States that their government keep its word, but there is a trust obligation to the obligee, White Mountain Apache Tribe; and
- WHEREAS, the United States has charged itself with moral obligations of the highest responsibility and trust and is held as trustee to not simply honesty alone but to the punctilio of an honor the most sensitive, as the standard of behavior; and
- WHEREAS, when this trust has been breached, the courts have found such a breach to constitute an abuse of discretion; and
- WHEREAS, it follows, therefore, the major responsibility of the federal government should be to act for and protect Indian tribes from intrusion upon their tribal sovereignty, to protect tribal resources from outside interests, including the federal government; and to fully vigorously, and without reservation, support tribal efforts to develop their own resources in order to perpetuate reservations as tribal homelands and to achieve the federal-tribal goals of self-sufficiency; and
- WHEREAS, as part and parcel of this obligation, the United States Government has taken upon itself through its principal agent, the Secretary of the Interior, and its subordinate department, the Bureau of Indian Affairs the responsibility of managing rangeland within the exterior boundaries of the Fort Apache Indian Reservation; and
- WHEREAS, there exists an enormous amount of documentary evidence which proves that the United States as trustee breached its duty in the years commencing 1870, the year the Fort Apache Indian Reservation was created, to the present day, in the area of rangeland management; and
- WHEREAS, historical research conducted by tribal consultants and massive documentation obtained by the same demonstrates that the United States tolerated trespass by literally thousands of non-Indian cattle, sheep,

and horses upon the rangeland of the Fort Apache Indian Reservation which has resulted in a shocking level of erosion and reduction of range, which will cost untold millions of dollars to rehabilitate over the next 20 years; and

WHEREAS, this continuing breach of its trust responsibilities has never been rectified by the United States; and

WHEREAS, the Tribal Council has determined that the former claims attorneys, Weissbrodt and Weissbrodt, did not develop any documentation or conduct any studies of the extent of erosion on the Fort Apache Indian Reservation, the consequences of livestock trespass, or the amount of money necessary to rehabilitate the range and to protect the washing away of tribal natural resources except to the extent that grazing permit fees were reduced; and

WHEREAS, the Tribal Council concludes that the amount of grazing fees and the reduction thereof is insignificant compared with the number of non-permit trespassing livestock and the shocking results of erosion from over-grazing tolerated by the United States Government; and

WHEREAS, the Tribal Council has by previous resolution authorized the expenditure of considerable amounts of money for soil and conservation experts to conduct extensive erosion studies as to the extent of the erosion on the rangeland of the Fort Apache Indian Reservation and to discern and isolate the cause of said erosion; and

WHEREAS, the preliminary findings of the soil engineers employed by contract by the Tribe indicates that the over-grazing and trespass by non-Indian cattle, horses and sheep tolerated and in some cases encouraged by the United States as trustee for the Tribe, occurred extensively between 1870 and the early 1900's and remained uncorrected although remedial measures were available; and

WHEREAS, the Tribal Council has been advised that further study and investigations as to the background respecting the trespass upon Reservation grazing lands, the analysis of the erosion resulting therefrom, damages caused by the mismanagement by the Bureau of Indian Affairs of its trust responsibility for tribal resources and the development, documentation, and presentation of the following: (1) economic analysis of the above-listed damages; (2) a range restoration concept, associated timetable, and money costs; and (3) a range utilization plan and analysis of its economic impact on the Reservation; is necessary to the Tribe's claims in Docket 22-H now before the United States Claims Court in the case entitled White Mountain Apache Tribe v. the United States of America; and

WHEREAS, the firm of Morrison & Maierle has been conducting soil erosion studies and the Tribal Council concludes that they should continue these studies in the areas afore-described in order to further the Tribe's claims in Docket 22-H now before the U.S. Claims Court; and

WHEREAS, the Tribal Council has been advised that such a study of rangeland erosion and cost of rehabilitation will take approximately one year to complete and present to the U.S. Claims Court and the United States Government as part of the Tribe's claims in 22-H; and

WHEREAS, the Tribal Council directs that the Claims Court be immediately advised as to the Tribal Council's decision to proceed forthwith to seek monetary damages for the mismanagement of tribal grazing lands and for all necessary costs of restoration of tribal natural resources, including the elimination of soil erosion; and that funds required to support this course of action are to be provided as follows: (1) expert witness funds previously made available in the amount of approximately \$71,000 on contingency reimbursable basis to assist tribes in the prosecution of their claims against the United States Government; and (2) the remaining fund requirements shall be included in the Tribal FY 1983-84 Operating Budget (Account 01-07), up to a total amount of \$122,000.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the firm of Morrison & Maierle be directed to proceed forthwith to complete its investigations as to the background respecting trespass upon Reservation grazing lands; the analysis of the erosion resulting therefrom; damages caused by the mismanagement by the BIA of its trust responsibility for the tribal resources; and the development, documentation, and presentation of the following: (1) economic analysis of the above-listed damages; (2) a range restoration concept associated timetable, and money costs; and (3) a range utilization plan and analysis of its economic impact on the Reservation.

BE IT FURTHER RESOLVED that the above is in accordance with the tribal decision to advise the U.S. Claims Court that it will proceed forthwith to seek monetary damages for the mismanagement of tribal grazing lands and for all necessary restoration of tribal natural resources, including the elimination of soil erosion; and that the funds required to support this course of action be provided as follows: (1) expert witness funds from a revolving fund provided by the United States on a contingency-reimbursable basis to assist tribes in the prosecution of their claims cases under the Indian Claims Commission Act of 1946; and (2) any remaining fund requirement to be included in the Tribal FY 1983-84 operating budget (Account 01-07), up to a total amount (1 plus 2) of \$122,000.00

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby requests that the U.S. Claims Court hold and abate the Tribe's claims in Docket 22-H until the rangeland study is completed.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby respectfully advises the U.S. Claims Court that the one year abeyance is not for purposes of delay or hinderance but is necessary in order to conclude the soil erosion studies of rangeland mismanagement necessary for the prosecution of the Tribe's claims against the United States Government for breach of its fiduciary duty to preserve the tribal rangelands and homeland; and further, that despite the retention of the Tribe's cases for some 30 years by the former claims attorneys, Weissbrodt and Weissbrodt, no such erosion studies of the depth contemplated and now continuing have been conducted by those former claims attorneys.

BE IT FURTHER RESOLVED by the Tribal Council that it respectfully advises the U.S. Claims Court that in the area of mismanagement of tribal funds known as the Accounting Claim, the Tribal Council has directed that this claim be prosecuted as quickly as possible and that negotiations

continue with the United States Government with the hope of resolving that aspect of the claims case prior to one year and further assures the U.S. Claims Court that the accounting claims and the timber claims will not be held in abeyance but will be vigorously pursued by the Tribal Council; further, that tribal funds have been appropriated to pursue the timber claims mismanagement cases and the accounting aspect of the Tribe's claims.

The foregoing resolution was on April 7, 1983, 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, Section 1 (a,d,f,i, & u) of the Amended Constitution and Bylaws 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

ACTING   
Secretary of the Tribal Council