

Agency

Resolution No. 84-261

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

WHEREAS, The Tribal Council is advised that the proposed amendment to the Claims Attorney Contract (Symbol H50C1420-Contract No. 4134) with William H. Veeder, Attorney at Law, has been disapproved by the Area Director of the Phoenix Office for the Bureau of Indian Affairs; and,

WHEREAS, the Acting Area Director, in disapproving the proposed amendment to the Claims Attorney Contract, relied on Paragraph 7.3.C of the Indian Affairs Manual 83 which states that the compensation or fee of an Attorney in a Claims Contract, providing for a fixed fee must be fully justified; and that in his opinion, the proposed amendment did not reveal such a justification for payment of an hourly rate; and,

WHEREAS, the Area Office has invited the Tribal Council to resubmit the amendment to the contract with reasons which would satisfy the "fully justified" requirement of Paragraph 7.3.C of the Indian Affairs Manual 83 so that William H. Veeder may be paid an hourly rate or fixed fee, rather than a fee contingent upon a recovery; and,

WHEREAS, the Tribal Council has by previous Resolutions 84-203 and 84-120, provided reasons justifying payment of an hourly rate for Mr. Veeder's services rather than payment based upon a contingency fee, but in the interests of insuring continued representation of the Tribe in 22-H, now pending before the United States Claims Court, it hereby resubmits and reiterates the basis for the amendment to the Claims Attorney Contract and hereby advises the Bureau of Indian Affairs that its decision to pay Mr. Veeder on an hourly rate rather than on a contingency fee arrangement is based upon the following reasons set forth in chronological order:

22-H, now pending before the U.S. Claims Court, was filed in 1951 by the law firm of Weissbrodt & Weissbrodt pursuant to a contingency fee contract. Little progress was made in the case until 1970, when the United States was

required to provide a full accounting for the dispersement and receipt of Tribal funds from 1871 to 1951. The report prepared by the G.S.A. was woefully inadequate and the Claims Attorneys filed objections to the adequacy of the report. A new report was required to be prepared by the United States and this report was completed in 1975.

The Claims Attorneys filed additional exceptions or objections to the 1975 G.S.A. report and a brief hearing of four or five days was held in 1978 as to the propriety of certain dispersements made of Tribal funds known as IMPL funds. The matter of the exceptions to the dispersement of IMPL funds was to be briefed by the parties, but settlement negotiations were entered into between the Justice Department and Weissbrodt & Weissbrodt.

The Tribal Council's review of the work performed by the firm of Weissbrodt & Weissbrodt indicates that the vast majority of their time was spent preparing exceptions to the 1970 and 1975 G.S.A. accounting reports. Sometime in early 1980, the firm of Weissbrodt & Weissbrodt, retained a Timber Expert and a Grazing Expert, who provided them with a brief preliminary 11-page report as to the potential claims against the United States for mismanagement of the Tribe's Timber and Grazing property. These reports were used solely for negotiating purposes. Shortly thereafter, an offer of settlement was exchanged by the Justice Department with Weissbrodt & Weissbrodt, who presented the offer of settlement and a position advocating acceptance of the settlement in December 1980 before the Tribal Council in Whiteriver.

The Tribal Council was extremely concerned as to the fairness of the settlement and the basis pursuant to which the

amount of 13 million dollars was arrived at by the Justice Department and Weissbrodt & Weissbrodt. Based upon the offer of settlement made by the Justice Department of 13 million dollars, the Attorneys' fees would amount to 1.3 million dollars as provided by the Claims Attorney Contract for a 10% contingency fee.

The Tribe, being cognizant of pending Water Rights litigation was concerned about the effect a settlement with 22-H would have on the Tribes' water rights, and called upon William H. Veeder, to review the offer of settlement in respect to the Tribes' claims for the damage to its range land, timber land and water rights. A thorough review of the offer of settlement by Mr. Veeder, the Tribal Attorney and expert consultants employed by the Tribe for that purpose, indicated that little or no data of an evidentiary character was ever prepared in respect to the Tribes' claims against the United States Government for property mismanagement of its timber, grazing land and water rights. It appeared for all practical purposes that these claims had been abandoned or left fallow by the former Claims Attorney, Weissbrodt & Weissbrodt.

After protracted negotiations, review investigation, and correspondence with the law firm of Weissbrodt & Weissbrodt, it became apparent to the Tribal Council that they were not being adequately represented and that the Claims Attorneys had in fact, ill-prepared and in fact, abandoned the natural resource mismanagement claims despite indications from the timber and grazing experts employed by Weissbrodt & Weissbrodt, that preliminary investigation indicated a rather large claim against the United States for property mismanagement in those two areas.

Attorney William H. Veeder, having been employed by the Tribe as its' Water Rights Specialist, had previously conducted, with a team of experts exhaustive studies, as to the mismanagement of the Tribes' water rights, and had conducted some research as to grazing land and timber stand problems on the reservation and was therefore, in a unique position to be thoroughly knowledgeable about that aspect of the Tribes' claims against the United States Government. Thoroughly disenchanted and suspicious of the motives of the former Claims Attorneys, Weissbrodt & Weissbrodt, and their advocacy of the obviously unfair settlement, the Tribal Council eventually passed Resolution No. 81-74 dated April 1, 1981, which recited their efforts to clarify Paragraph 6 of the Settlement offer which would effectively dispose of all rights, claims and demands which the Tribe had asserted or could have asserted against the United States. The Resolution concluded with a finding that the Tribal Claims Attorneys, Weissbrodt & Weissbrodt, had misled the Tribal Council as to the scope of the offsets and scope of the settlement and further resolved to terminate the contract with the Tribal Claims Attorney.

Numerous exchanges occurred between the Tribe and the Justice Department as well as members of Congress and the Secretary of the Interior as to the nature, magnitude and degree of damage that had been inflicted upon Tribal grazing lands and timber and also to seek clarification of Paragraph 6 of the Settlement offer. Eventually the termination of the Weissbrodt Contract was accomplished and the law firm of Weissbrodt & Weissbrodt voluntarily withdrew as Attorneys of record. Thereafter, Resolution No. 81-224 dated September 21, 1981, directed General Counsel, Robert C. Brauchli, to enter his appearance in Docket 22-H

and to prepare a contract as substitute Claims Attorney. This was accomplished on October 6, 1981. In the meantime, Robert Brauchli continued to investigate the basis for the offer of settlement of 13 million dollars offered by the Justice Department and had extensive conversations and meetings with the former Claims Attorney, Weissbrodt & Weissbrodt, the Justice Department and consulting experts. On March 23, 1982 an Affidavit of Appointment and Notice of Appearance was made by Robert C. Brauchli in the U.S. Court of Claims representing the Tribe in 22-H. The offer of settlement was still open at this time and investigation of the basis for the settlement was still progressing. Meanwhile, extensive soil fieldwork study, as well as preliminary background investigation in respect to potential timber claims indicated that the law firm of Weissbrodt & Weissbrodt had in fact, abandoned a viable claim worth millions of dollars to the White Mountain Apache Tribe. The contract entered into between the Tribe and Robert C. Brauchli as the substitute Claims Attorney, waived all Attorneys' Fees except for the sum of \$1.00 and no hourly payment was provided for in addition to the retainer paid pursuant to his General Counsel Contract.

It became extremely apparent that the representation of the Tribe required a Washington based attorney who had extensive experience in natural resource litigation as well as an intimate knowledge of the Tribes' water rights claims. This fact gave rise to a Resolution passed by the Tribal Council that Mr. William H. Veeder be substituted as Claims Attorney for the Tribe and that Mr. Brauchli remain as Associate Counsel of record. On or about November of 1983, William H. Veeder agreed to be substituted as Chief

Counsel of record representing the Tribe in 22-H and waived all of his attorneys' fees under the contingency fee provision. The contract was executed October 19, 1983 and Mr. Veeder made his appearance in November, 1983. Resolution No. 83-296, passed October 19, 1983, authorized the contract. Mr. Veeder immediately organized a highly qualified team of experts who embarked upon a concerted, intensive effort to prepare in considerable detail, the Tribes' property mismanagement claims against the United States in the areas of erosion, misuse of the Tribes' water rights, range overgrazing and soil depletion and mismanagement of the Tribes' timber stand on the reservation. The experts retained by Mr. Veeder verified that little or no preparation had ever been done on these extremely valuable claims and that the damage was extensive. Nevertheless, the presiding judge over the claims case, as well as the Justice Department acting in tandem, continued to coerce the Tribe to accept the settlement of 13 million dollars, which was woefully inadequate to compensate the Tribe for over 100 years of gross mismanagement of the reservation trust property by the Bureau of Indian Affairs and the Secretary of the Interior.

Mr. Veeder, being a sole practitioner, has found it necessary to utilize and draw upon his personal savings in order to keep his office open and to continue his representation of the White Mountain Apache Tribe in 22-H. Mr. Veeder has performed literally hundreds and hundreds of hours of legal work and has not been paid since October 1983 for legal services rendered for the Tribe in 22-H. Travel expenses, office overhead, and providing attorney services without fee, are threatening to force Mr. Veeder to literally give up his representation of the Tribes' invaluable claims now pending in Docket 22-H. No other

attorney has the knowledge, experience in natural resource law and water rights to properly coordinate the preparation and presentation of the Tribes' claims in Docket 22-H now pending before the U.S. Claims Court as well as the all important water rights case now pending in U.S. District Court for the District of Arizona entitled, White Mountain Apache Tribe v. United States of America, Secretary Clark, et al., CIV 83-2045 PHX CAM. In summary, the services of Mr. Veeder are absolutely indispensable to the successful prosecution of the Tribes' claims in both the water rights litigation now pending and in the Tribes' claims case now pending in Docket 22-H, as both actions arise from the same evidentiary facts of deliberate and negligent mismanagement.

The proposed amendment to the contract would provide for the payment of attorneys' fees at a fixed fee rate to Mr. Veeder from October 1983 for the duration of the contract, which the Tribal Council desires to be for a period of three (3) years, subject to renewal. A limit of \$5,000.00 per month, at the rate of \$80.00 per hour is proposed. If Mr. Veeder provided \$5,000.00 worth of legal services every month for a period of three years, the sum would only be \$180,000.00 for the three-year contract. On the other hand, if the Tribe is forced to retain new Counsel because Mr. Veeder will be forced to close his office or cease his representation of the Tribe because of the great financial losses he has suffered for prosecuting the Tribes' claims in 22-H without pay for the last eight (8) months, the Tribe will be forced to retain Counsel at a contingency fee arrangement and even assuming that it obtains a final award in the amount of the grossly inadequate offered sum of 13 million dollars, the attorneys' fees would still be 1.3 million dollars far exceeding the \$180,000.00 paid on the proposed

contract. Moreover, the Tribe has already invested over \$300,000.00 in expert witnesses who are preparing scientific data in support of the Tribes' property mismanagement claims and the Tribes' Tribal Fund mismanagement claims. It is highly doubtful whether or not this team of experts would be able to work with another attorney lacking the background Mr. Veeder has in natural resource litigation.

Presently, the Tribal Council is advised that the Tribes' case is ready for presentation at the trial now set for October, 1984. More has been accomplished in the nine months that Mr. Veeder has been assigned to the case than the former Claims Attorneys, Weissbrodt & Weissbrodt did for 31 years. Moreover, the Tribe is facing an imminent court date in October 1984, and the court has stated that no continuances will be granted. It would be absolutely impossible for a new attorney to take over the task at this time. The trial itself is anticipated to last 90 days. It is impossible for Mr. Veeder, being a sole practitioner, to sustain himself without pay for a year. Finally, the thousands of hours of preparation completed by the Tribes' experts hired by Mr. Veeder and the year of work that they have discussed with him, constitute at least in part, an attorney's work product which is not discoverable nor available to any new attorney who may be substituted on the case. The Tribal Council further concludes that it would be a violation of the fiduciary duty of the Bureau of Indian Affairs not to permit the Tribe to pay Mr. Veeder the hourly rate of \$80.00 per hour with a ceiling of \$5,000.00 for any one month for a three-year contract, in that disapproval of this proposed amendment will literally destroy any chance of the Tribe successfully prosecuting and presenting its' claims in the U.S.

Claims Court in October, 1984. The Tribal Council further advises the Bureau of Indian Affairs that it objects to the obvious conflict of interest whereby the Secretary of the Interior, whose attorneys and experts are opposing the Tribe, be in the position to approve or disapprove the proposed payment and claims attorney contract for Mr. William H. Veeder. It is obvious that because Mr. Veeder has been successfully representing the Tribe in the preparation of their all important Tribal claims, that it would not be in the best interests of the Bureau of Indian Affairs or the Justice Department to have Mr. Veeder continue representing the White Mountain Apache Tribe. Therefore, the Tribal Council requests that Mr. Veeder's contract, providing for an hourly rate or fixed fee, be approved immediately retroactive to October 5, 1983 and that the Bureau and the Justice Department cease to interfere with the attorney/client relationship of the Tribe in the prosecution of its' all important claims; and,

WHEREAS, based on the foregoing reasons, the Tribal Council believes that the fixed fee rate of pay is fully justified under the unique circumstances of this case.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the amendment to the Claims Attorney Contract between the White Mountain Apache Tribe and William H. Veeder, Attorney at Law, Symbol H50C1420, Contract No. 4134, in the form attached to this resolution which is incorporated by reference herein.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby directs the Tribal Chairman, or in his absence the Vice-Chairman, to execute the amendment to the Claims Attorney Contract for William H. Veeder in the form attached to this resolution.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby directs that the effective date of this amendment shall be October 5, 1983 to September 30, 1986, that Mr. Veeder be paid at the hourly rate of \$80.00 per hour with a maximum payment of \$5,000.00 per month retroactive to October 5, 1983, the same rate to continue until September 30, 1986, and that the contract be subject to renewal at the option of the Tribal Council and agreement of terms between the Tribe and Mr. Veeder.

The foregoing resolution was on August 16, 1984 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 () 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)

Lyle C. [Signature]
ACTING Chairman of the Tribal Council

Mary C. [Signature]
Secretary of the Tribal Council

Resolution No. 84-261

AMENDMENT TO CLAIMS ATTORNEY CONTRACT

Symbol No. H50C1420

Contract No. 4134

U.S. Claims Court

Claims Docket No. 22-H

AMENDMENT TO CLAIMS ATTORNEY CONTRACT
BETWEEN
THE WHITE MOUNTAIN APACHE TRIBE
AND
WILLIAM H. VEEDER, ATTORNEY AT LAW

This is an Amendment to the Claims Attorney Contract entered into between the White Mountain Apache Tribe (Tribe) and William H. Veeder, Attorney at Law, (Attorney) on October 5th, 1983.

This Amendment shall relate back to October 5, 1983, the commencement date of the Claims Attorney Contract. The remuneration permitted to be paid to the Attorney pursuant to this Amendment shall be retroactive to October 5, 1983.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, and as set forth in the Claims Attorney Contract made and entered into October 5, 1983, said Contract is amended as follows:

(1) Paragraph 6 of the Claims Attorney Contract entered into on October 5, 1983 is hereby rescinded and is

amended to read as follows: "(6) It is agreed that the Attorney shall be paid a fixed fee for his legal services in Docket 22-H at the rate of \$80.00 per hour. Said fees shall not exceed the sum of \$5,000.00 for any one month for the term of this Contract nor shall the fees exceed in the aggregate ten percent of any final recovery. Attorney further waives any claim of attorney fees for any final recovery awarded to the Tribe in Docket 22-H as result of any court order, act of Congress or settlement."

(2) Paragraph 13 of the Claims Attorney Contract entered into October 5, 1983 between the Tribe and the Attorney shall be amended to read as follows:

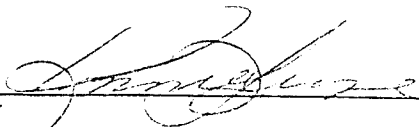
"13. Subject to the approval by the Secretary of the Interior or his authorized representative, it is further agreed that this contract shall be effective for three years, commencing October 5, 1983 and shall continue until September 30, 1986, except that with the consent of the Tribe and the Attorney, subject to the approval of the Secretary of the Interior or his authorized representative, the term of this contract may be extended for additional periods of three years each."

(3) All other provisions of the Claims Attorney Contract entered into on October 5, 1983, between the Tribe and the Attorney, except as expressly provided herein, shall remain in full force and effect.

This Amendment is authorized by Tribal Council Resolution No. 84-261, attached hereto.

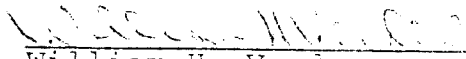
EXECUTED this 17th of August, 1984.

WHITE MOUNTAIN APACHE TRIBE:




by
Ronnie Lupe, Chairman
White Mountain Apache Tribal
Council

ATTORNEY:



William H. Veeder
Attorney at Law

ATTEST:



Mary C. Endfield, Secretary
White Mountain Apache
Tribal Council

APPROVED:

Secretary of the Interior

by Area Director Bureau
of Indian Affairs