

OPPOSITION  
OF THE WHITE MOUNTAIN APACHE TRIBE  
FORT APACHE INDIAN RESERVATION  
WHITERIVER, ARIZONA  
TO THE PROPOSED LEGISLATIVE SETTLEMENT OF THE  
SALT RIVER WATER RIGHTS IN THE LOWER SALT RIVER VALLEY  
S 2153 HR 4102

INTRODUCTION

WHEREAS, the White Mountain Apache Tribe of the Fort Apache Indian Reservation, Whiteriver, Arizona, acting by and through its Tribal Council, has intensively reviewed the proposed legislation pending before Congress, HR 4102 and S 2153, "To provide for the Settlement of the Water Rights Claims of the Salt River Pima-Maricopa Indian Community in Maricopa County, Arizona, and for Other Purposes"; and

WHEREAS, the proposed Legislation and the "Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement" are a legislative resolution of highly controversial legal issues in pending litigation including but not limited to the Salt River General Water Rights Adjudication W-1 Proceedings in the Arizona State Court involving numerous contractual arrangements, judicial decrees, and legislative enactments, which necessarily impact adversely upon the claims of the White Mountain Apache Tribe in and to the waters of the Salt River and its tributaries to which this Resolution pertains.

THE SALT RIVER --  
LIFEBLOOD OF THE WHITE MOUNTAIN APACHE TRIBE

WHEREAS, the Salt River and numerous tributaries of that stream have their sources on the Fort Apache Indian Reservation, as more particularly displayed on the map attached to this resolution, and the water from those streams is literally the lifeblood of the White Mountain Apache Tribe upon which the economic development of the White Mountain Apache Tribe now and in the future is keyed; and

WHEREAS, the White Mountain Apache Tribe from time immemorial has occupied the lands comprising the Fort Apache Indian Reservation of Arizona and has used the waters of the Salt River for agriculture and other purposes long prior to the intrusion of the non-Indian into the homeland of the Apaches; and

WHEREAS, the Supreme Court, in enunciating and applying the Winters Doctrine, guaranteed to the White Mountain Apache Tribe that the Tribe would have an adequate supply of water "essential to the life of the Indian people" to meet their present and future water requirements and to provide the White Mountain Apache Tribe a permanent economically viable home and abiding place; and

WHEREAS, the White Mountain Apache Tribe is seeking to establish a viable diversified economy based upon multiple uses of its natural resources including but not limited to a sound agricultural economy all of which uses are wholly dependent upon the waters of the Salt River, without which the White Mountain Apache Tribe cannot survive and continue its way of life now and in the future.

THE UNITED STATES OF AMERICA AS TRUSTEE FOR  
THE WHITE MOUNTAIN APACHE TRIBE COVENANTED TO  
THE TRIBE IN PERPETUITY ITS RESERVATION AND RESOURCES

WHEREAS, the White Mountain Apache Tribe in 1871 agreed to end the Apache War predicated upon the covenant of the United States of America that, in exchange for peace, the Tribe's title to the lands comprising the then White Mountain Apache Indian Reservation was fully recognized; and

WHEREAS, the United States of America as Trustee for the White Mountain Apache Tribe has a legal, equitable and moral obligation to preserve, protect and vigorously defend and assist in the development of the Tribes natural resources.

SUCCESSIVE SECRETARIES OF THE INTERIOR ATTEMPTED  
ILLEGALLY TO COMMIT ALL OF THE WHITE MOUNTAIN  
APACHE TRIBE'S SALT RIVER RIGHTS TO THE LOWER  
SALT RIVER VALLEY USERS

WHEREAS, the Secretary of the Department of the Interior, Donald P. Hodel, his predecessors and subordinates, hereafter referred to as the Secretary of the Interior, without the knowledge, consent, acquiescence, or agreement of the White Mountain Apache Tribe, attempted illegally to commit all of the Salt River water, to the Salt River Federal Reclamation Project in complete disregard of the White Mountain Apache Tribe's entitlement to the Winter's Doctrine reserved rights to water in the Salt River Drainage; and

WHEREAS, thereafter without the knowledge, consent, acquiescence, or agreement of the White Mountain Apache Tribe, the Secretary of the Interior entered into contracts with the Salt River Valley Water Users' Association providing for the distribution of all of the Salt River water, both the natural flow and the surplus water impounded in Roosevelt Dam, to the non-Indian water users and acknowledged title to all of the rights to the use of the Salt River water in those users within the service area of the Salt River Federal Reclamation Project; and

WHEREAS, the Attorney General of the United States, appearing on behalf of the Secretary of the Interior as an intervening plaintiff in the case of Hurley v. Abbot, et al., in the Superior Court of Maricopa County in the then Territory of Arizona, purportedly submitted the United States of America to the jurisdiction of that court and participated in the entry of the Kent Decree purporting to adjudicate to the water users within the service area of the Salt River Federal Reclamation Project all of the rights to the natural flow of the Salt River and the rights to all of the waters impounded and to be impounded in the Roosevelt Dam and Reservoir and including but not limited to the water artificially induced to flow away from the White Mountain Apache Tribe's reservation.

WHEREAS, the proposed Legislative Settlement of the Lower Salt River Water Rights constitutes Congressional affirmation, ratification, and interpretation of highly complex contracts, agreements and decrees effectively consummating the intentional violations by the Secretary of the Interior of the White Mountain Apache Tribe's life-sustaining Salt River rights; and

WHEREAS, Congressional approval of this Secretarial misconduct necessitates the White Mountain Apache Tribe's vigorous objections to the proposed legislative settlement.

THE WHITE MOUNTAIN APACHE TRIBE'S RESERVATION  
MISMANAGED TO ENHANCE SALT RIVER FLOW  
AWAY FROM THE RESERVATION

WHEREAS, the proposed Legislative Settlement of the Lower Salt River Rights constitutes an affirmation of actions of the Secretary of the Interior who has at all times administered the Fort Apache Indian Reservation for the purpose of delivering the maximum quantity of waters naturally available in the Salt River and arising on the Fort Apache Indian Reservation to the Salt River Federal Reclamation Project; and

WHEREAS, as part of the program of the Secretary of the Interior artificially to maximize the flow of water away from the Reservation, the Secretary has forced the White Mountain Apache Tribe to overcut its forest to the point of destruction which has resulted in economic disaster for the Tribe by reason of the fact that the entire present-day economy of the White Mountain Apache Tribe is dependent upon its forest products industry; and

WHEREAS, the Secretary of the Interior further to enhance the flow of Salt River water away from the Reservation, intentionally destroyed the Tribe's once fine grazing lands through a system of grazing permits to non-Indians whose livestock entered upon and overgrazed the Reservation, resulting in sheet and gully erosion that is today literally washing away the Fort Apache Indian Reservation.

THE LEGISLATIVE SETTLEMENT OF THE LOWER SALT RIVER  
RIGHTS PURPORTS TO APPROVE SECRETARIAL MISCONDUCT FROM  
WHICH THE WHITE MOUNTAIN APACHE TRIBE IS  
SEEKING JUDICIAL RELIEF

Pending Litigation Challenging  
Secretarial Misconduct Must  
Be Finally Resolved

WHEREAS, the White Mountain Apache Tribe has expended its funds and efforts seeking a judicial resolution of the Tribe's controversy with the Secretary of Interior respecting the mismanagement of its Reservation; and

WHEREAS, the White Mountain Apache Tribe asserts that the Legislative Settlement is an effort to bypass a judicial resolution of the Secretarial violations of the Tribes rights and constitutes an abridgment of the Tribe's vested rights and its right to judicial process in preserving and protecting its invaluable resources; and

WHEREAS, the Legislative affirmance of the misconduct of the Secretary of the Interior will likewise preclude the White Mountain Apache Tribe from being heard respecting the intentional suppression of Salt River water resource development on the Reservation to the continuing irreparable damage of the White Mountain Apache Tribe; and

WHEREAS, the White Mountain Apache Tribe declares that the enactment of the Legislative Settlement of the Lower Salt River Rights through Legislative approval of the Kent Decree, and other contractual arrangements for apportioning the total water supply of the Salt River will effectively preclude the White Mountain Apache Tribe's invoking judicial power to resolve these critical issues; (1) Secretarial seizure of the Tribe's Salt River rights; (2) the Secretarial suppression of water resource and other developments on the Fort Apache Indian Reservation; (3) the intentional destruction of the Tribe's forests and grazing lands; and (4) the Secretarial discrimination against the White Mountain Apache Tribe through the subsidization of non-Indian water users.

Unconscionable State Court Water  
Rights Litigation Exacerbated  
by this Legislation

WHEREAS, attorneys for the Department of Justice over the protests of the White Mountain Apache Tribe have filed purportedly on behalf of the Tribe a water rights claim in Arizona State Court General Water Rights Adjudication W-1 Proceedings and who purport to represent the United States as Trustee for the Tribe are by this Legislative Settlement being precluded from objecting to, disputing or challenging on behalf of the White Mountain Apache Tribe the adverse claims of parties to the Salt River Agreement; and

WHEREAS, the Legislative Settlement, if adopted by Congress, will result in the apportionment of the waters of the Salt River among the principal adversaries of the White Mountain Apache Tribe: the Salt River Valley Water Users' Association, the Roosevelt Irrigation District, numerous water conservation and irrigation districts, and the major cities in the State of Arizona, thus precluding any possibility of the White Mountain Apache Tribe having its prior and paramount reserved Salt River rights to the use of water judicially adjudicated as those rights relate to the claims of its principal adversaries to the short supply of Salt River water; and

WHEREAS, the Legislative Settlement will result in the purported piecemealing of the rights of all the Salt River claims among the parties to the Agreement in direct contradiction of the concepts giving rise to the W-1 Proceedings which had as its alleged objective, adjudicating inter sese all of the rights to the use of water in the Salt River.

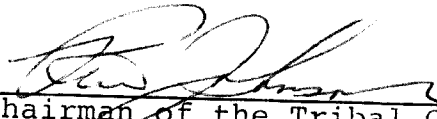
NOW, THEREFORE, BE IT RESOLVED that the White Mountain Apache Tribe vehemently opposes the Legislative Settlement of the Lower Salt River Water Rights as an unjust, immoral, discriminatory and totally confiscatory action stemming from the grave threat that the legislation poses to our survival as a People, the total abrogation of our all important prior and paramount Salt River water rights and the destruction of our natural resources, which has been the result of the illegal Secretarial seizure of the Salt River water which arises on our ancient tribal homeland and the destruction of which will ensue if Congress participates in and endorses this legislation.

BE IT FURTHER RESOLVED that the White Mountain Apache Tribe urgently petitions the Congress of the United States to fulfill its obligations as Trustee of the White Mountain Apache Tribe by rejecting the Legislative Settlement of the Lower Salt River Water Rights as being violative not only of the Tribe's prior and paramount rights in the Salt River, but equally violative of this Nation's commitment and legal obligation to provide a permanent home and abiding place for the White Mountain Apache Tribe.

BE IT FINALLY RESOLVED that the White Mountain Apache Tribe petitions the Congress of the United States to refrain from further consideration of the proposed legislative settlement of the Lower Salt River Water Rights until the White Mountain Apache Tribe is afforded an opportunity fully to be heard before the appropriate Congressional Committees regarding the clear legislative invasion of the powers of the judiciary to hear and adjudicate Tribe's charges against the Secretary of the Interior and to have Tribe's prior and paramount rights to the waters of the Salt River declared adjudged and determined by a court having the breadth of jurisdiction which can resolve all of the controversies pertaining to Tribe's reserved rights which rights are vital to the very survival of the White Mountain Apache Tribe.

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The foregoing resolution was on May 11, 1988, duly adopted by a vote of TEN for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1(a),(f) 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

  
Secretary of the Tribal Council

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MAY 23 1988

APACHE TRIBAL COUNCIL  
WHITE MOUNTAIN APACHE TRIBE