

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

- WHEREAS, the Supreme Court of the United States, on May 29, 1990, issued a decision that a non-member Indian may not be criminally prosecuted by a Tribe of the reservation where he committed a crime if he was not enrolled in the tribe where the crime was committed; and
- WHEREAS, the Supreme Court's decision will create a situation whereby non-member Indians committing criminal violations on the Fort Apache Indian Reservation cannot be prosecuted by the Tribe in Tribal Court; and
- WHEREAS, there were approximately 193 non-member Indian arrests on the Fort Apache Indian Reservation during the period January 1, 1989 - May 31, 1990; and
- WHEREAS, it is not clear whether or not the State of Arizona would have jurisdiction to prosecute non-member Indians for committing crimes on the Fort Apache Indian Reservation, and further, it is not clear whether or not the United States Attorney's Office could prosecute non-member Indians for misdemeanor offenses such as domestic violence, driving while intoxicated, and other similar offenses, pursuant to 18 USC Section 1152; and
- WHEREAS, Dr. Eddie Brown, Assistant Secretary of the Interior, has issued a directive to area directors to appoint CFR magistrates to handle non-member Indian offenders and to appoint current tribal court judges on reservations as CFR magistrates; and
- WHEREAS, courts of Indian offenses may exercise jurisdiction over any Indian committing a crime on a reservation, regardless of whether said Indian offender is enrolled or not, or is a member or not, of the Indian tribe where the offense takes place; and

- WHEREAS, until such time as Congressional legislation is introduced to provide for Tribal Court jurisdiction over non-member Indians, the Tribal Council of the White Mountain Apache Tribe is advised that it may make application to the Phoenix Area Director of the Bureau of Indian Affairs to have its tribal judges appointed as CFR magistrates and to have the Tribal court designated as a Court of Indian offenses in those matters where a non-member Indian is prosecuted; and
- WHEREAS, in order to preserve enforcement of tribal law and custom, and there being no adequate substitute under federal or state law, the Tribal Council concludes that tribal judges, Kay Lewis and George Garland, should be appointed as CFR judges in order to secure jurisdiction over non-member Indians committing criminal offenses on the Fort Apache Indian Reservation; and
- WHEREAS, pursuant to 25 CFR, Section 11.3(d), a person eligible to serve as judge of a Court of Indian Offenses must be a member of the Tribe under the jurisdiction of said court; and
- WHEREAS, judges Kay Lewis and George Garland are enrolled members of the White Mountain Apache Tribe and therefore satisfy that requirement; and
- WHEREAS, the Tribal Council concludes that it would be in the best interest of the Tribe to request the Phoenix Area Director of the Bureau of Indian Affairs to appoint Judge Kay Lewis and Judge George Garland as CFR magistrates until such time as a legislative solution can be obtained to extend jurisdiction over non-member Indians; and
- WHEREAS, the Tribal Council is advised that additional funding in the approximate amount of \$150,000.00 annually will be necessary to implement a CFR court system including but not limited to payment for a public defender, prosecuting attorney, appellate transcripts, administrative/clerical expenses for required separate record keeping, per diem for a CFR appellate panel, and food and lodging costs for non-member Indian prisoners.

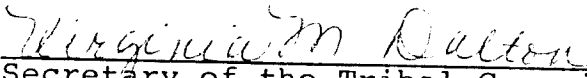
BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe, that it hereby requests Phoenix Area Director, Wilson Barber, to appoint Judge Kay Lewis and Judge George Garland as CFR magistrates, pursuant to 25 CFR Section 11.1, et. seq.

BE IT FURTHER RESOLVED by the Tribal Council that it requests that the Assistant Secretary and Area Director process this request as an emergency matter in order to preserve law and order on the Fort Apache Indian Reservation.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby requests Bureau of Indian Affairs funding in the approximate amount of \$150,000.00 annually to implement the CFR court system on the Fort Apache Indian Reservation.

The foregoing resolution was on July 3, 1990, duly adopted by a vote of NINE 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, i & s) 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

JUL - 8 1990