

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

- WHEREAS,** the White Mountain Apache Tribe, having defended its ancient Tribal homeland with unmatched courage, the United States Army sought peacefully to end the Apache War and assured the Apache Tribe of a permanent home and abiding place within the area occupied by the Tribe from time immemorial; and
- WHEREAS,** Vincent Colyer of the Board of Indian Commissioners, United States of America, on September 5, 1871, recognized the Tribe's desire for peace with honor and recommended that there be created the White Mountain Apache Indian Reservation encompassing a substantial portion of the Tribe's ancient homeland, including the source of the Salt River and tributaries of that stream; and
- WHEREAS,** pursuant to the recommendation of Vincent Colyer, President Grant created by Executive Order dated November 9, 1871, and December 14, 1872, the White Mountain Apache Indian Reservation; and
- WHEREAS,** for a full quarter of century, the White Mountain Apache Tribe occupied its Reservation as established by the Executive Orders of 1871 and 1872, and, to render that Reservation habitable, the White Mountain Apache Tribe exercised its reserved rights to the use of water in the Salt River and its tributaries. Thereafter, the Congress of the United States, by an Act date June 7, 1897, (30 Stat. 54) declared that: "...all that portion of the White Mountain...Reservation lying north of the Salt...River, to be known as the Fort Apache Reservation, with headquarters at Fort Apache, Arizona, "which area is graphically displayed below with particular reference to the source of the Salt River and numerous tributaries of that stream encompassed within the Reservation, as established by the Congress; and
- WHEREAS,** there was retained by and for the White Mountain Apache Tribe title to the reserved rights to the use of water in the Salt River and the tributaries to that stream sufficient to provide for the Tribe's present and future water requirements for all purposes and those rights were exempted from acquisition control, regulation or adjudication by the State of Arizona or anyone claiming under the State; and

WHEREAS, the White Mountain Apache Tribe has successfully defended and preserved its invaluable reserved Salt River rights to the use of water against the attempted seizure of those rights by the non-Indian Salt River users, and the Secretary of the Interior, who attempted illegally to seize and to commit the Tribe's reserved Salt River rights to the non-Indian Salt River Federal Reclamation Project, constructed and highly subsidized by the United States for the benefit of the non-Indian water users, including but not limited to the payment of substantial income derived from the generation of hydroelectric power through the use of Salt River water to which the Tribe is legally entitled; and

WHEREAS, the Tribe has been successful in retaining to date its reserved Salt River rights against various attempts to seize and take those rights, it has, nevertheless, been repeatedly thwarted over a period of 92 years from establishing a sound economy by the development and beneficial use of Tribe's Salt River reserved rights and thereby achieving for its members the degree of self-sufficiency with financial independence so avidly desired by the Tribe; and

WHEREAS, the failure of the Trustee United States, to assist the Tribe--as it has vastly aided the non-Indian Salt River water users through the multi-million dollar highly subsidized Salt River Federal Reclamation Project--has resulted in economic stagnation and rampant unemployment throughout the Reservation with upwards of 60 percent of the Tribal members being without regular employment, resulting in the attendant all-pervasive poverty, cultural decay, and suppression of individual and tribal achievement imperatively required on the Reservation; and

WHEREAS, for eleven (11) years, the White Mountain Apache Tribe has procured funding from the Congress of the United States pursuant to which Miner Flat Dam on the North Fork of the White River should have been undertaken by the Tribe whose efforts to construct that dam with its hydropower plants have been repeatedly frustrated by an obdurate and entrenched bureaucracy, which has prevented the construction of that dam irrespective of Congressional approval and appropriations for those purposes; and

- WHEREAS,** the immediate construction of both Miner Flat Dam and Canyon Day Irrigation Project would result in the employment of many members of the White Mountain Apache Tribe, thus eliminating to a marked degree the disastrous consequences that the Tribe is now experiencing due to the lack of employment within the Reservation; and
- WHEREAS,** the Tribe has presently available to it, \$3,300,000.00 which should be forthwith expended in undertaking the construction and development of Miner Flat Dam and its hydropower unit to the end that the Tribe will commence the full exercise of its reserved Salt River rights, thereby establishing a greatly needed economic base for now and in the future; and
- WHEREAS,** it has been found as a fact and declared as a matter of law that the agents of the United States Trustee, knowingly and intentionally mismanaged the Tribe's once fine rangelands, and by permitting those lands to be grossly overgrazed by non-Indian livestock owners to the point where those lands were virtually destroyed; and
- WHEREAS,** the overgrazing of Tribe's rangelands not only destroyed the highly valuable natural forage so vital to the Tribe's livestock industry, but the overgrazing by the Trustee of Tribe's lands resulted in accelerated erosion which is today literally washing away Tribe's Reservation with the resultant decline in productivity of both Tribe's grazing and agricultural lands so vital to the Tribe's economic development; and
- WHEREAS,** the Trustee permitted the cutting of the Tribe's once magnificent ponderosa forest far in excess of the sustained-yield principles, resulting in the virtual clearcutting of certain forest areas within the Tribe's Reservation and the general decline in productivity of the Tribe's forests; and
- WHEREAS,** the Trustee, with full knowledge of the disaster experienced by the Tribe, due to the overcutting of Tribe's forest, has failed to take corrective action by a program of replanting the Tribe's forests and otherwise with the result that in the foreseeable future the Tribe's income from its forest's industry will be sharply diminished with the resultant economic disaster to the Tribe; and

WHEREAS, those who formulated the Constitution of the United States being fully aware of the illegal seizure of the properties of the Native American Tribes and their memberships by the states and their non-Indian constituencies provided in the Constitution that the Federal Government would have the predominate power and authority in the administration of Indian Affairs exempting the Tribes' and their properties from state control and jurisdiction; and

WHEREAS, the Supreme Court and lower courts, being fully cognizant that the Tribes occupying Reservation in the arid and semi-arid West have at all times an adequate supply of water for all purposes now and in the future, adjudged and adjudicated that title resided in the Tribes to the Reserved Winters Doctrine Rights to the use of water and that those were immune and exempted from state law, regulation, control, and jurisdiction; and

WHEREAS, irrespective of the reserved Winter's Doctrine Rights and the immunity from State control and regulation, the states and their non-Indian water users, acting frequently in concert with the Secretary of the Interior, have knowingly and intentionally joined in that illegal seizure and suppression of the Tribe's reserved rights; and

WHEREAS, the then Senator McCarren and like-minded other politicians aggressively resented the immunity of the United States of America and the immunity of the Tribes from state court jurisdiction involving the adjudication of rights to the use of water offered an amendment to the Department of Justice Appropriation Act of 1952, which among other things, provided that the United States of America waived its immunity from suit "(1) for the adjudication of rights to the use of water of a river system or other sources, or (2) for the administration of such rights, where it appears that the United States is the owner...of water rights...and the United States is a necessary party to such suit" (43 U.S.C. 666), that act having been interpreted by the courts as including the reserved rights to the use of water of the Native American Tribes; and

WHEREAS, the waiver of the United States of its immunity from suit respecting rights to the use of water has resulted in vigorous attacks upon the reserved Winters Doctrine rights of Indian Tribes with the result that the basic principles of the reserved rights doctrine have been sharply diminished by state courts both as to the Tribes' legal entitlement to water and the extent and nature of those rights; and

WHEREAS, the Department of Justice, over the unvarying protests of the White Mountain Apache Tribe, forced its rejected representation upon the Tribe and purportedly but illegally appeared on behalf of the Tribe in that State Court's W-1 General Adjudication Proceedings and fraudulently filed on behalf of the Tribe a claim to reserved rights to the use of water in the Salt River and its tributaries constricting the Tribe's claim to water to one-third of that which the Tribe is legally entitled and, moreover, constricted the duty of water for the purpose of agriculture with the result that the Tribe's maximum diversion and use of water for each acre of land is sufficient only to raise apples, grapes, and similar crops as distinguished from the feed crops--alfalfa, for example--imperatively required for the Tribe's livestock industry so basic to the Tribe's economy; and

WHEREAS, the present, gravely depressed economic condition and the quality of life within the Tribe's Reservation can no longer be tolerated, those conditions being directly attributable to the unvarying policy of the Secretary of the Interior to manage the Tribe's Reservation primarily as a source of Salt River water for the benefit of the downstream, non-Indian water users and the application of the McCarran Amendment to the White Mountain Apache Tribe has compounded the disastrous consequences of the Secretarial policies of managing Tribe's Reservation for the benefit of the non-Indian water users; and

WHEREAS, it has been the policy of the Secretary of the Interior, since at least 1903, to suppress all water resource development within the Reservation that might interfere with the non-Indian Salt River water users, which policy has resulted in the obdurate refusal of the Trustee over a period of eleven (11) years to permit the Tribe to proceed with the development of the Miner Flat Dam and the Canyon Day Irrigation Project, all of which has convinced the White Mountain Apache Tribe that recourse to the Congress of the United States is the only possible remedy if the Tribe is to survive and develop its economic resources, including its reserved Salt River rights; and

BE IT RESOLVED by the Tribal Council that the White Mountain Apache Tribe shall forthwith develop in detail a legislative program including a request for financial assistance to be presented to the Congress of the United States in which there will be reviewed in detail the destruction over the last 100 years of Tribe's grazing resources, the overcutting of Tribe's forests, the accelerated erosion that is literally washing away the Tribe's Reservation, and the imperative need for the Tribe forthwith to commence the exercise of its invaluable Salt River rights by the construction of Miner Flat Dam and Canyon Day Irrigation Project as the initial step in a program of economic development throughout the Reservation.

BE IT FURTHER RESOLVED by the Tribal Council that the Congress of the United States be requested to permit the White Mountain Apache Tribe to participate in the proceeds derived from the operation of the hydroelectric system throughout the Salt River drainage by reason of the fact that the Tribe's Reservation is the principal source of Salt River water and for the past 100 years the Tribe has been systematically denied any benefits from those water resources, while the non-Indian Salt River water users have vastly prospered due to being heavily subsidized by the Congress of the United States in the construction and operation of the Salt River Federal Reclamation Project and other Salt River development independent from that Project.

BE IT FURTHER RESOLVED by the Tribal Council that the Congress of the United States be requested to assist the White Mountain Apache Tribe in the development of a program to restore and rehabilitate Tribe's once fine grazing lands and aggressively to support the Tribe in its efforts to arrest the ongoing accelerated erosion that is rapidly destroying substantial areas of Tribe's Reservation which can only be described as a disaster of major proportions.

BE IT FURTHER RESOLVED by the Tribal Council that the Congress authorize funding for a broad program of forest management which will include the replanting of large areas of the Tribe's forest which were overcut by agents of the United States Trustee and will assist the Tribe effectively to maintain the Tribe's existing forests on a sustained-yield basis; and otherwise to establish a forestry program which will continue through the years to assure the Tribe of income now and in the future from its forests on a sustained-yield basis.

BE IT FURTHER RESOLVED by the Tribal Council that a request be presented to Congress of the United States to exempt the Tribe from the application of the so-called McCarran Amendment, 43 U.S.C. 666, thus preventing the State of Arizona, its courts and its agencies from undertaking to control, regulate and to adjudicate and quantify Tribe's invaluable reserved Salt River rights which, up to this date, have not been exercised by the Tribe due to the broad misconduct of the Trustee United States in greatly favoring the non-Indian Salt River water users while suppressing and discriminating against the Tribe's development of its reserved Salt River rights.

BE IT FURTHER RESOLVED by the Tribal Council that the laws of the State of Arizona, as interpreted and applied by the Supreme Court of Arizona, are harshly biased against the White Mountain Apache Tribe whose Reservation is the principal source of Salt River water and will be forced by reason of the Arizona laws to release to the downstream groundwater users who depend upon the Salt River water arising on Tribe's Reservation to maintain the levels of groundwater in the Lower Valley of the Salt River irrespective of the fact that those users of the Salt River water are not subject to the jurisdiction of the State Court W-1 Adjudication Proceedings.

BE IT FURTHER RESOLVED by the Tribal Council that the very existence, both economically and culturally, of the White Mountain Apache Tribe is gravely imperiled by the representation of the Department of Justice which has been forced upon the Tribe over its unvarying objections in the State Court W-1 water rights adjudication proceedings which can have no result other than the further disastrous depletion of Tribe's reserved Salt River rights and the total destruction of the Tribe's sovereign capacity to manage its own affairs independent from the Department of Justice and other federal and state agencies.

BE IT FURTHER RESOLVED by the Tribal Council that Chairman Ronnie Lupe is hereby authorized to take all necessary steps to have formulated a broad legislative program to be presented to the Congress of the United States as set forth in this Resolution with the objective of preserving fully the Tribe's sovereign powers and to maintain its independence and economic integrity as they are threatened by the ongoing State Court W-1 Water Rights Proceedings; to proceed with the program to restore and rehabilitate Tribe's forests and grazing lands; to proceed expeditiously with the construction of Miner Flat Dam and Canyon Day Irrigation Project; and fully and effectively to carry out the mandate of this Resolution.

The foregoing resolution was on August 04, 1993, duly adopted by a vote of seven 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) (i) (t) (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).

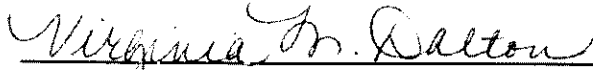
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FORT APACHE INDIAN AGENCY
WHITE MOUNTAIN APACHE TRIBE



Chairman of the Tribal Council



Secretary of the Tribal Council