

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

**TRIBAL COUNCIL'S RESOLUTION DIRECTING RECOVERY OF 16,090 ACRES  
OF TRIBAL LANDS WITH DAMAGES BY CONGRESSIONAL ACTION<sup>1</sup>**

**BACKGROUND**

WHEREAS, the White Mountain Apache Tribe defended its ancient tribal homeland with great courage and persistence, resulting in the United States Trustee agreeing to end the Apache War if the Tribe would enter upon and remain on the White Mountain Apache Indian Reservation as described in the Executive Orders of November 9, 1871, and December 14, 1872, and the Congressional Act of June 7, 1897<sup>2</sup>; and

WHEREAS, the above mentioned Executive Orders and the 1897 Act of Congress established the Northern Boundary of the Tribe's Fort Apache Indian Reservation, as a segment of the crest of the watershed divide between the Salt River Drainage and that of the Little Colorado River, a readily recognized and easily discerned natural monument described in the Executive Orders as:

...Starting at the point of intersection of the boundary between New Mexico and Arizona with the south edge of the Black Mesa, and following the southern edge of the Black Mesa to a point due North of Sombrero or Plumoso Butte....,

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<sup>1</sup> Note: References in the Resolution are to documents and conclusions, unless otherwise specified, in the Affidavit of Elmer M. Clark, Tribe's Professional Surveyor, dated September 10, 1992, and filed with the Tribal Council on August 4, 1993.

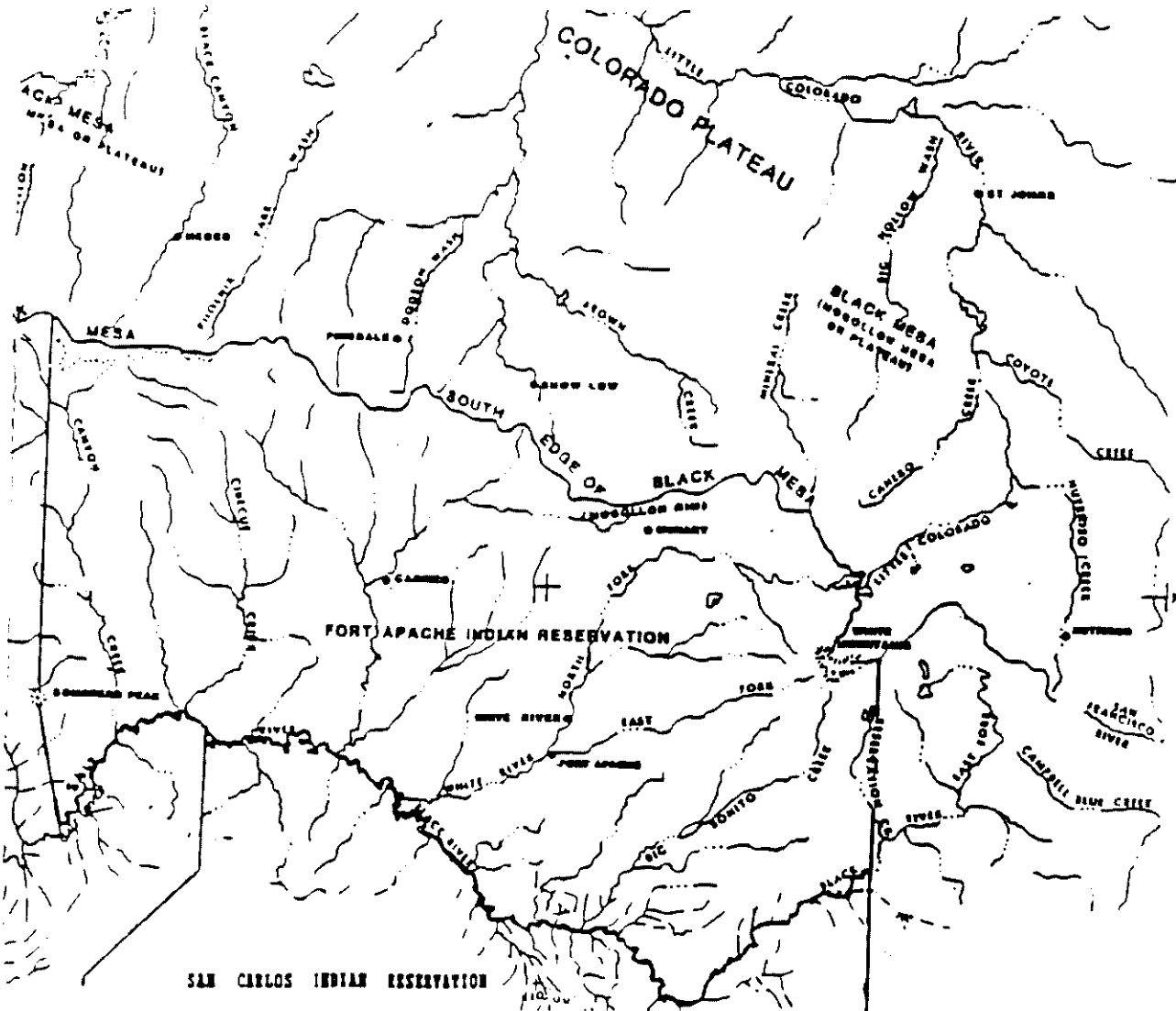
<sup>2</sup> Mr. Clark's Affidavit, pgs. A-1 -4, Major Roberts letter of January 31, 1870, setting forth a description of the Northern Boundary of the Tribe's Reservation; President Grant's Executive Order, November 9, 1871, p. A-4; President Grant's Executive Order of December 14, 1872, p. A-5; Congressional Enactment of June 7, 1897, providing "That a separate agency is hereby created to cover and have jurisdiction over all of that portion of the White Mountain...Indian Reservation to be known as the Fort Apache Reservation, with headquarters at Fort Apache," 30 Stat. 64.

as graphically displayed on the following page; and

**WRONGFUL EXCLUSION OF 16,090 ACRES OF TRIBE'S RESERVATION BY TRUSTEE'S ERRONEOUS SURVEY**

WHEREAS, the United States Trustee for the White Mountain Apache Tribe, in the year 1887, directed United States Deputy Surveyor Wallace to conduct a survey of the Northern

**FORT APACHE INDIAN RESERVATION**



Boundary of the White Mountain Indian Reservation,<sup>3</sup> from the point of intersection with the southern edge of the Black Mesa with the boundary between New Mexico and Arizona following the trend of the south edge of Black Mesa, to a point due North of Sombrero, or Plumoso Butte;<sup>4</sup> and

WHEREAS, the Tribal Council finds as a fact that Wallace was mandated to establish, with precision, on the "...south edge of the Black Mesa...the northeast corner of the Reservation, for the initial point to survey the North Boundary..." from which Wallace was further required to "...run in a Westerly direction following the Southern edge of the Black Mesa, as near as practicable, to a point due North of Sombrero or Plumoso Butte, at which point you will establish the Northwest corner of the reservation...";<sup>5</sup> and

WHEREAS, the Wallace instructions required that Wallace establish the "Northwest corner" with the same precision required in establishing the Northeast corner of the Reservation by requiring Wallace "[f]or the purpose of determining a point due North of Sombrero or Plumoso Butte..." to establish "...a temporary flag line, commencing at Sombrero, or Plumoso Butte, extending it North to a point on the South edge of the Black Mesa, where you will establish the Northwest corner of the reservation";<sup>6</sup> and

WHEREAS, the Tribal Council, in its efforts to take corrective action respecting the erroneous Wallace Survey which excluded from Tribe's Reservation 16,090 acres--12,000 acres of which were highly valuable ponderosa pine forests--considered with care, the Memorandum dated June 15, 1966, entitled "North boundary of the Fort Apache Indian Reservation," prepared by the then Lands

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<sup>3</sup> Mr. Clark's Affidavit, Appendix F1-9.

<sup>4</sup> *Ibid.*, pgs. 6, et seq.; p. 8, et seq., Wallace Instruction, Appendix F-1-3, et seq.

<sup>5</sup> *Ibid.*, Mr. Clark's Affidavit.

<sup>6</sup> *Ibid.* F-4.

Operations Officer, Bureau of Indian Affairs, Fort Apache, Arizona, W.S. Glidden;<sup>7</sup> and

WHEREAS, Glidden had personal knowledge respecting the drastic departure from the watershed divide by Wallace, declared in the June 15, 1966 Memorandum, that the instructions given to Wallace expressed an "...intent that the entire north boundary of the Fort Apache Indian Reservation be accurately placed on the hydrologic divide between the Little Colorado River and the Salt River Drainages." Wallace, nevertheless, failed to follow the divide evidencing, in Glidden's terms "...gross inaccuracies, and with little, if any, attention to the watershed divide";<sup>8</sup> and

WHEREAS, the Glidden Report summarizes in these specific details, the magnitude of the errors made by Wallace in failing to survey the watershed divide between the Little Colorado and the Salt River Drainages:

From mile post 41 to mile post 97.5, the [Wallace] survey line adheres very closely to the watershed divide. However, beginning approximately at mile post 97.5 the greatest discrepancy imaginable starts. From that point to the northwest corner of the Reservation, a distance of approximately 22 miles, the surveyed line is on the actual divide for a distance of less than one half of a mile, and diverges as much as three miles;<sup>9</sup> and

WHEREAS, Mr. Clark, in his affidavit, confirms with specific documentation the statements by Glidden that it was the intendment of the Tribe and the Army in their negotiated settlement of the war and the creation of Tribe's Reservation that the "Northern Line" of the Reservation would "run along the divide between the waters of the Little Colorado and White River, [the White River is the major tributary of the Salt River]...";<sup>10</sup> and

WHEREAS, Mr. Clark further agreed with the Glidden statement that for a very substantial portion of his survey, Wallace

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<sup>7</sup> *Ibid.*, E-11-12.

<sup>8</sup> *Ibid.*

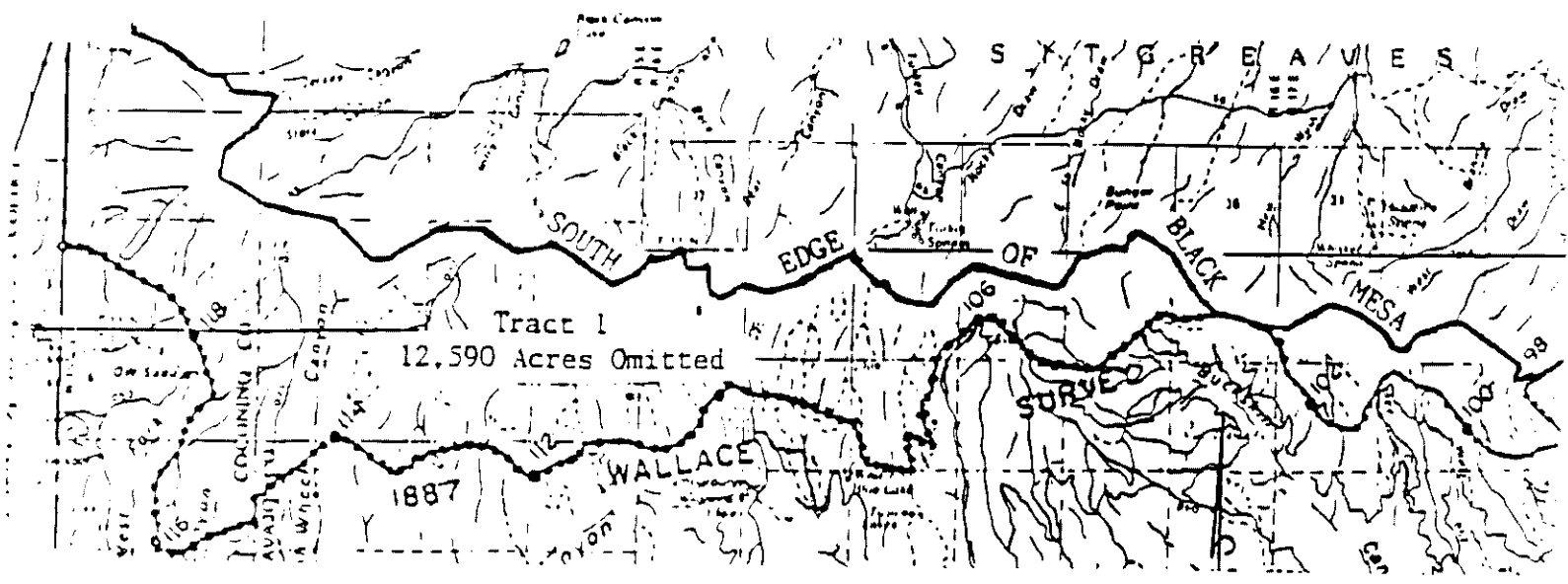
<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*, E-9-10.

adhered to the instructions given to him to survey the south edge of the Black Mesa, which is the watershed divide between the Salt and Little Colorado Rivers. Mr. Clark, with full documentation, confirmed the conclusions expressed by BIA official Glidden that after mile post 97.5 the survey departs from the watershed divide violating the instructions given to Wallace;<sup>11</sup> and

WHEREAS, Mr. Clark further refers to surveys conducted subsequent to the Wallace survey in which the U.S. Deputy Surveyor Wright, in 1906, confirms the fact that Wallace followed the divide between the Little Colorado and Salt River to a point where the Wallace "...line leaves the divide and cuts across points of ridges, just south of the divide, as much as three full miles";<sup>12</sup>

WHEREAS, Mr. Clark, as directed, made an on-the-ground investigation of the very substantial area of Tribe's lands excluded by the departure of Wallace from the watershed divide for a distance of 22 miles, 12,590 acres, and has prepared a map set forth immediately below, which graphically displays a substantial portion of Tribe's lands which were wrongfully excluded from Tribe's Reservation by the Wallace Survey;<sup>13</sup> and



<sup>11</sup> *Ibid.*, pgs. 7, 8, et seq.

<sup>12</sup> *Ibid.*, p. 10, et seq.

<sup>13</sup> Mr. Clark's Affidavit, p. 15.

WHEREAS, Mr. Clark's map not only displays the departure from "the south edge of the Black Mesa," which Wallace was employed to survey, he likewise establishes that, in clear violation of the explicit instructions given to Wallace, there was a total failure on the part of Wallace to establish the northwest corner of the Tribe's Reservation at a point on "the south edge of the Black Mesa," due North of Sombrero or Plumoso Butte, as described by the Executive Orders of 1871 and 1872,<sup>14</sup> justifying a rejection of the survey of the Northern Boundary of the Tribe's Reservation, by Wallace, and accepted by the General Land Office; and

WHEREAS, Mr. Clark established the fact that the Wallace Survey, in addition to excluding the 12,590 acres, likewise excluded an additional 3500 acres of land along the Northern Boundary of the Fort Apache Indian Reservation by failing to follow the watershed divide between the Salt River and the Little Colorado River Drainages, clearly establishing that the erroneous Wallace exclusions total 16,090 acres to which reference has been made above;<sup>15</sup> and

WHEREAS, the Tribal Council finds that the 16,090 acres are comprised of highly valuable ponderosa forests and grazing lands, situated in the Sitgreaves and Apache National Forests, and are administered by the United States Forest Service which has harvested Tribe's forest lands by subjecting them to three separate cuttings, and has likewise granted grazing permits to livestock operators and has received and retained substantial income from the harvest of Tribe's ponderosa pine forests and from the grazing fees paid by non-Indian livestock owners; and

**AGENTS OF UNITED STATES TRUSTEE OCCUPYING THE 16,090 ACRES  
RESIST TRIBE'S CLAIMS FOR POSSESSION**

WHEREAS, the Tribal Council finds that the Tribe has consistently asserted that the Northern Boundary of Tribe's Fort Apache Indian Reservation is the well-defined watershed divide between the Salt River and the Little Colorado River Drainages and has repeatedly attempted to obtain recognition by the Department of the Interior of that

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<sup>14</sup> *Ibid.*

<sup>15</sup> Mr. Clark's Affidavit, commentary pgs. 44-47, with maps graphically displaying the areas in addition to the 12,590 acres which were excluded.

obvious fact, has, nevertheless, been confronted with a memorandum dated June 12, 1967, from the Office of the Solicitor, prepared by Richmond F. Allan, Associate Solicitor Indian Affairs,<sup>16</sup> which, contrary to both fact and law, sustained the erroneous Wallace survey, and, in so doing has effectively deprived the Tribe of 16,090 acres of land, 12,590 acres of which are highly valuable ponderosa pine forests and the balance of which are excellent grazing lands, with the attendant loss to the Tribe of substantial income for a period in excess of 100 years; and

WHEREAS, the most notable aspect of the Solicitor's Memorandum is that it fails to cite any legal authority or precedent for the totally erroneous concepts which it has adopted predicated upon, it is believed, misstatements of facts including but not limited to the unsupported declaration that "...the Wallace Survey and the field notes indicate that the country was exceedingly mountainous and broken along the whole line of survey,"<sup>17</sup> which, as subsequently reviewed, is erroneous in that the watershed is highly accessible and readily defined-, and WHEREAS, the Solicitor's Opinion is markedly dependent upon the erroneous conclusion of fact that the south edge of the Black Mesa can be differentiated from the well known and easily established watershed divide between the Salt and Little Colorado River Drainages, by declaring that:

The south edge of the mesa would certainly not coincide with the crown of the mesa [which it most certainly does]. It would necessarily be a line to the south of the highest elevation of the mesa [which is most assuredly contrary to conclusive facts];<sup>18</sup> and

WHEREAS, Mr. Clark, in his affidavit, has effectively demonstrated and graphically displayed that the watershed divide between the Salt River and the Little Colorado River, the south edge of the Black Mesa, and the Mogollon Rim are a single physical phenomenon, a natural monument utilized by the United States to establish the Northern Boundary of the Fort Apache Indian Reservation, all as explicitly stated in the Executive Orders of 1871 and 1872, which established a segment of the south edge of the Black Mesa as the Northern Boundary of Tribe's

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<sup>16</sup> Mr. Clark's Affidavit, Appendix B, p. 1-6.

<sup>17</sup> Mr. Clark's Affidavit, p. 20, *et seq.*

<sup>18</sup> Mr. Clark's Affidavit, p. 14, *et seq.*; p. 18, *et seq.*

Reservation, refuting totally the erroneous concepts upon which the Solicitor's Opinion of June 12, 1967 is predicated;<sup>19</sup> and

WHEREAS, the Tribal Council finds that in the settlement of the case of *White Mountain Apache Tribe v. United States*, before the Indian Claims Commission, Case No. 22-D,<sup>20</sup> the Tribe received payment for the taking by the United States of all of Tribe's lands "...outside the ... White Mountain Apache Reservation, established by the Executive Orders of November 9, 1871 and December 14, 1872..." the Northern Boundary of which is the "south edge of the Black Mesa..... with the result that the Tribe was never paid for the 16,090 acres situated south of the Northern Boundary as described by the Executive Orders which lands are now occupied and utilized by the United States Forest Service, to the irreparable and continuing damage of the Tribe; and

WHEREAS, irrespective of the drastic consequences and Tribe's unvarying efforts to have the clearly erroneous Wallace survey corrected and to present the matter to the courts for judicial disposition, it has been effectively denied any remedy either in the Department of Interior or in the courts; and

WHEREAS, the Tribal Council finds as a fact that the Tribe obtained a specific ruling by the United States Board of Geographic Names, declaring that the Mogollon Rim "...forms, in part, the divide between the Little Colorado River and Salt River drainage areas..." as it pertains to the Northern Boundary of Tribe's Reservation. Further, the United States Geological Survey has officially stated to the White Mountain Apache Tribe that "...the historic relationship between the names 'Mogollon Rim' and 'South edge of Black Mesa' is well defined";<sup>21</sup> and

**TITLE TO 16,090 ACRES WRONGFULLY EXCLUDED FROM THE RESERVATION  
CONTINUES TO RESIDE IN THE TRIBE**

WHEREAS, the Tribal Council has been advised by its Special Counsel, predicated upon numerous decisions of the Supreme Court and other authorities, that when the

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<sup>19</sup> *Ibid.*, p. 18 and documentation.

<sup>20</sup> 21 Ind.Cl.Comm. 189. 197 (1969). [Emphasis supplied.]

<sup>21</sup> Mr. Clark's Affidavit, Appendix E-21; E-22.



Executive Orders of 1871 and 1872 expressly declared that the Northern Boundary of the Fort Apache Indian Reservation would be a specific segment of the watershed divide between the Salt and Little Colorado Rivers -- which is a readily defined and easily discerned natural monument -- that specific segment of the south edge of the Black Mesa became the permanent and unvarying Northern Boundary of Tribe's Reservation, and could not be and was not changed by the erroneous Wallace survey, and remains today the Northern Boundary of the Fort Apache Indian Reservation;<sup>22</sup> and

WHEREAS, the Tribal Council necessarily rejects, as clearly erroneous and wholly without merit, the opinion dated June 12, 1967, by the Solicitor's Office of the Department of the Interior, which, having distorted the facts and without reference to a single authority or precedent, declares that the Wallace survey -- which departs from the watershed divide by as much as three miles and for a distance in excess of twenty miles -- is not grossly in error.<sup>23</sup>

**CONGRESSIONAL ASSISTANCE REQUIRED TO RECOVER POSSESSION OF LANDS  
EXCLUDED FROM TRIBE'S RESERVATION AND DAMAGES ATTRIBUTABLE TO  
TRUSTEE'S ERRONEOUS BOUNDARY**

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that having exhausted all reasonable avenues -- both administratively and in the Courts -- for the recovery of the 16,090 acres of land wrongfully excluded from the Reservation and the damages experienced by the Tribe due to that exclusion, it hereby directs Chairman Ronnie Lupe, forthwith, to prepare proposed legislation and seek to have it adopted by the Congress of the United States, restoring to the Tribe the possession of the 16,090 acres wrongfully occupied by the United States Forest Service, title to which has always resided in the Tribe, and to recover all damages with interest suffered by the Tribe due to the erroneous Wallace survey.

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<sup>22</sup> Mr. Clark's Affidavit, p. 5; Appendix E-21-24.

<sup>23</sup> *Ibid.*, Appendix B-1; See also Mr. Clark's chronicle of numerous errors and misstatements contained in the Solicitor's Opinion, June 12, 1967, pgs. 14, et seq.

The foregoing resolution was on August 04, 1993, duly adopted by a vote of eight for and zero against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article VII, Section 1 (a) (f) (h) (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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SEP 13 1993

TRIBE

*[Signature]*  
Chairman of the Tribal Council

*[Signature]*  
Secretary of the Tribal Council