

11/13/93

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

WHEREAS, the Arizona Department of Transportation has requested permission to buy and use one or more of the cinder pits which exist on the Fort Apache Indian reservation in order for ADOT to have adequate supplies of cinders, most of which are for use on state highways on or near the northeastern portion of the Reservation; and

WHEREAS, the Bureau of Indian Affairs suggests that the cinder pits at Kinney Mountain, west of McNary, and Blue Mountain, south of Haystack Cienega, be utilized to provide ADOT with cinders and to clean up and ensure that the pits are made safe; and

WHEREAS, the Tribal Council of the White Mountain Apache Tribe agrees to authorize ADOT to use the cinder pits at Kinney Mountain and Blue Mountain under the supervision of the Bureau of Indian Affairs and in compliance with the following guidelines;

- 1) ADOT shall pay an annually appraised fair market price per cubic yard for all cinder pits;
- 2) ADOT shall submit monthly records of all cinders screened by location to the Bureau of Indian Affairs, Fort Apache Agency;
- 3) ADOT shall be restricted to use of the established pits;
- 4) trees planted in an around the Kinney Mountain site shall not be damaged or removed;
- 5) the BIA will coordinate removal of any trees from the existing pits, where removal is necessary;
- 6) ADOT shall be allowed to screen and stockpile cinders and cinders from other locations within the pit areas in order to provide better service on state highways; and
- 7) slopes at both pits shall be cut so as to ensure safety to the public; and

WHEREAS, ADOT shall pay an annually appraised fair market price for each yard of cinders which is screened from the pits and shall report monthly to the BIA, who will monitor removal to ensure accurate reporting and payment; and

WHEREAS, both pits will be closed to recreational use due to the inherent danger in dual use of the pits.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the use of Kinney Mountain and Blue Mountain cinder pits by ADOT and the sale of cinders at an annually determined fair market price to ADOT.

BE IT FURTHER RESOLVED by the Tribal Council that the BIA is hereby directed to supervise and monitor ADOT's use of Kinney Mountain and Blue Mountain cinder pits and shall insure that ADOT complies with the conditions imposed by this resolution and attached permit.

BE IT FURTHER RESOLVED by the Tribal Council that the Chairman is hereby authorized to execute the attached revocable cinder permit authorizing ADOT's use and purchase of cinders from Kinney Mountain and Blue Mountain cinder pits.

The foregoing resolution was on November 4, 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 (i) of the Amended Constitution and By-Laws 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

Acting


Secretary of the Tribal Council

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REVOCABLE CINDER PERMIT

The White Mountain Apache Tribe, hereinafter the Tribe, by authority of its revised Constitution and Bylaws, hereby grants permission to the Arizona Department of Transportation, Highways Division, hereinafter ADOT, to enter upon and occupy the following described lands on the Fort Apache Indian Reservation pursuant to the terms and conditions set forth herein.

1. **Legal Description:** This permit shall be for the following described cinder pits, consisting of 180 acres, more or less:

T8N, R23E, SEC 24, NE $\frac{1}{4}$, NW $\frac{1}{4}$, known as the Kinney Mountain Cinder Pit, which was established in approximately 1918; and

T8N, R24E, SEC 22, NW $\frac{1}{4}$, SW $\frac{1}{4}$, known as the Blue Mountain Cinder Pit, established in 1920.

2. **Term:** This permit shall take effect and begin on June 1, 1993, and shall expire May 31, 1997. Provided, however, that this permit may be renewed for an additional term at the sole discretion of the Tribe.
3. **Use of Land:** In consideration of this permission, ADOT agrees to use the lands for the purpose of producing, processing, and storing cinders under the supervision of the Bureau of Indian Affairs and in compliance with the following guidelines.
 - 1) ADOT shall pay an annually appraised fair market price per cubic yard for all cinders screened from the cinder pits and will start at .50 cents per cubic yard in 1993;
 - 2) ADOT shall submit monthly records of all cinders screened by location to the Bureau of Indian Affairs, Fort Apache Agency, P.O. Box 560, Whiteriver, Arizona 85941;
 - 3) ADOT shall be restricted to use of the established pits as mentioned herein.
 - 4) trees planted in and around Kinney Mountain site shall not be damaged or removed;
 - 5) the BIA will coordinate removal of any trees from the existing pits, where removal is necessary;

- 6) ADOT shall be allowed to screen and stockpile cinders and cinders from other locations within the pit areas in order to provide better service on state highways; and
- 7) the slopes at both pits shall be cut so as to ensure safety to the public.

4. **Minimum Royalty; Accounting; Payment:**

- A. ADOT shall pay the Treasurer of the Tribe, on the date of execution of this Agreement or within thirty (30) days thereof, the sum of Ten Thousand Dollars (\$10,000) as annual minimum royalty for cinders, it being understood and agreed that said sum shall be a credit at the rate of fifty cents (\$.50) per cubic yard for all cinders which are screened from the pits the first year of this permit and the annually appraised rate for each subsequent year of the permit.
 - B. When the amount due for cinders screened hereunder, calculated at the current rate per cubic yard, shall exceed the minimum royalty payment provided in section 4 A. above, each of the monthly statements required by Section 4 C. shall be accompanied by a check payable to the White Mountain Apache tribe for the amount due for cinders.
 - C. ADOT shall, not later than thirty (30) days after each month this permit is in effect, submit to the Tribe and the BIA, a statement of the cubic yards of cinders screened from each pit and a calculation of the amount due the Tribe for cinders screened during said period. BIA shall monitor the removal of cinders to ensure accurate reporting and payment.
 - D. ADOT's accounts associated with the permit shall at all times be available and open to inspection by any duly authorized agent or officer of the Tribe or Bureau of Indian Affairs during the entire term of this permit and for six (6) months thereafter.
5. **Public Liability Insurance:** ADOT shall furnish the Tribe proof of Public Liability Insurance in the amount of \$100,000/\$300,000 for personal injury and \$300,000 for property damage. ADOT, as a material part of the consideration for this permit, hereby waives all claims against the Tribe and the United States Government and agrees to hold the Tribe and United States Government free and harmless from liability for all claims for any loss, damage, injury, or death arising from the use of the premises by ADOT, their employees or subcontractors together with all costs and expenses in connection therewith.
6. **Prevention of Damage:** ADOT shall conduct all operations in this permit with due regard for preventing unnecessary damages to vegetation, timber, soil, roads, bridges,


cattleguards, fences and other improvements and on termination of operations under this permit, shall make provisions for conservation and protection of the property and leave all of the areas on which ADOT has worked in a condition that will not be hazardous to life or limb, and will be to the satisfaction of the Tribe. Back slopes in the pits will be cut to safe angles as designated by the BIA and all ADOT property will be removed, including trash.

7. **Instrument Not a Lease:** It is further understood and agreed that this instrument is not a lease and is not to be construed as granting any leasehold interest or right in or to the land described herein, but is merely a temporary permit, terminable and revocable in the discretion of the White Mountain Apache Tribe, at any time, and in any event shall not extend beyond May 31, 1997.
8. **Improvements:** It is further agreed by and between the parties hereto that ADOT may place improvements upon the land covered in this permit and, except as provided hereinafter, remove the same within thirty days after the termination of ADOT's occupancy, provided that upon failure of ADOT to remove the structures or improvements within the designated time period, they shall become the property of the Tribe; except that the Tribe may refuse to accept the property within thirty days after the expiration of the time period allowed ADOT for removal of the property, and may require ADOT to remove the same at ADOT's sole cost and expense, and in such event, or in the event ADOT elects to remove the property within the designated time period, ADOT shall, at its sole cost and expense, restore the land to its original natural state. The term "restore" as used herein shall include, but not necessarily be limited to, the filling in of excavations, the spreading of top soil over the area, and the reseeding of the area as specified by the Tribe.
9. **Waste; Salt Storage:** ADOT shall commit no waste on the premises, and the premises shall not be used for storage of salt or other minerals or petroleum products which are damaging to trees or other natural growth of the area. At the termination of the permit ADOT shall leave the premises in a clean and sanitary condition.
10. **Federal Trust Responsibility:** Nothing contained in this permit shall operate to delay or prevent a termination of the Federal trust responsibilities with respect to the land during the term of this permit; however, such termination shall not serve to abrogate this permit. In the event of such termination, all powers, duties, or other functions of the Secretary of the Interior or its authorized representative shall terminate, and the responsibility for enforcing compliance with the covenants of this permit shall be assumed by the Tribe, or its successors.
11. **Compliance with Laws:** ADOT further agrees that it will comply will all federal, state and tribal laws and regulations now or hereafter in force and will not use or permit to be used any part of said premises for any unlawful conduct or purpose

whatsoever.

12. **Cancellation of Use:** It is further understood and agreed that in the event this permit is cancelled, prior to its expiration, through any failure or default on the part of ADOT, the advance payments made shall become the property of the Tribe.
13. **Termination:** This permit shall terminate upon the breach of any of the conditions herein, or at the discretion of the White Mountain Apache Tribe.
14. **Jurisdiction:** The Tribal Court of the White Mountain Apache Tribe shall have jurisdiction over any claims against the White Mountain Apache Tribe arising from this permit.
15. **Indian Preference:** ADOT agrees to give employment preference to qualified tribal members for work arising from this permit.

White Mountain Apache Tribe



Ronnie Lupe, Tribal Chairman
pursuant to Resolution No. 11-93-304

Edwin Kane, Tribal Treasurer

Ben Nuvamsa, Superintendent
Fort Apache Agency
Bureau of Indian Affairs

contracts:adot.prm

**Arizona Department of
Transportation,
Highways Division**

By _____

Title: _____