

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

- WHEREAS,** the White Mountain Apache Tribe has occupied the White Mountains in what is now known as the State of Arizona since time immemorial; and
- WHEREAS,** the people of the White Mountain Apache Tribe as did other American Indian tribes in what is now known as the United States of America, lived in balance with nature, now referred by some as ecosystems; and
- WHEREAS,** since the arrival of Europeans to the North American Continent, some native animal species such as the buffalo, once numbering in excess of 40 million animals, almost became extinct because of wanton killing and destruction of their habitat by non-Indians in the name of Manifest Destiny; and
- WHEREAS,** likewise, millions of acres of forests, prairies and wetlands have been destroyed; and
- WHEREAS,** the importation by Europeans of foreign trees, plants, birds, fish and animals into what is now known as the United States of America displaced native animals, birds, trees, plants and fish and changed the ecology thereof forever; and
- WHEREAS,** the importation of foreign domestic species, such as cattle, to the Southwest generally and to Arizona specifically, and their overgrazing by non-Indians resulted in the destruction and ongoing erosion of millions of acres of once fertile grasslands including those of the White Mountain Apache Tribe; and
- WHEREAS,** the State of Arizona's ecology has been and continues to be irretrievably and irreversibly damaged and altered by non-Indian "civilization"; and
- WHEREAS,** the Great Lakes, rivers, harbors, bays, shorelines and coastal waters of the United

States have been consummately polluted and overfished, not by American Indians but by non-Indians to the extent that in some cases fish, waterfowl and other animal and plant species have all but vanished from certain coastal areas, lakes and rivers of the United States; and

WHEREAS, the White Mountain Apache Tribe presently resides on the 1.6 million acre Fort Apache Indian Reservation, a remnant of its once vast aboriginal lands; and

WHEREAS, since the Fort Apache Indian Reservation was created by Executive Order in 1871, the White Mountain Apache Tribe has suffered grievous land losses from erosion, due, in part, to overgrazing of its once fertile grasslands by non-Indian cattle permittees, and has also suffered by overcutting of its timber by the Bureau of Indian Affairs as a direct result of the negligence and, in some cases, intent of the Tribe's trustee, the United States of America, acting through its principal agent, the Bureau of Indian Affairs; and

WHEREAS, the Bureau of Indian Affairs as late as the 1930's did not anticipate the survival of the Apache People and therefore permitted and even encouraged the wanton overcutting of the Tribe's forests for the benefit of non-Indian sawmill owners and during the 1960's increased the annual allowable cut ("AAC") of the Tribe's forests for the purpose of increasing Salt River water flow to Phoenix from tribal lands which comprise sixty percent (60%) of the Salt River watershed; and

WHEREAS, since 1912, as part of an overall program to commit the life-sustaining waters of the Salt River and its tributaries, which arise on the Tribe's sacred White Mountain, to the Salt River Project, the Department of Interior has been responsible for the destruction of thousands of cottonwoods and other riparian vegetation along tribal streams which are tributaries of the Salt River, in order to increase the flow of tribal reserved waters to the Phoenix Valley and Salt River Project; and

WHEREAS, the federal government in an attempt to reverse environmental catastrophes created by past unrestricted development has enacted a variety of environmental laws and regulations such as the Environmental Protection Act, Clean Water Act, Safe Drinking Water Act, Clean Air Act, and the Endangered Species Act to name a few; and

WHEREAS, well-intentioned environmental groups whose members often reside in areas where native animals, plant species, forests and prairies, have been virtually eliminated,

or from which American Indians have been removed, have initiated aggressive efforts, including litigation, and have acted in concert with the Ecological Services Branch of the United States Fish and Wildlife Service to assert non-Indian jurisdiction and management over Indian lands, by declaring "Critical Habitat" thereon without tribal consent in violation of American Indian tribal rights, tribal sovereignty and Federal Indian law principles; and

WHEREAS, Indian reservations, because they have not been extensively populated or developed by non-Indians, frequently remain the last refuge of plant and animal species which have been exterminated or virtually eliminated by non-Indians outside reservations for the sake of non-Indian economic or recreational development; and

WHEREAS, the Apache trout was threatened with extinction due to the importation by the United States Fish and Wildlife Service of foreign trout species into reservation waters; and

WHEREAS, the White Mountain Apache Tribe's inherent respect for plant and animal life was the moving force in saving the once-endangered Apache trout from extinction; and

WHEREAS, as late as 1954 the United States Fish and Wildlife Service introduced Northern pike into some of the waters of the Fort Apache Indian Reservation, which if not contained could threaten certain trout populations on the Reservation; and

WHEREAS, the White Mountain Apache Tribe has earned a national reputation for its wildlife management and protection program; and

WHEREAS, many species of animals and plants which are proposed as threatened or endangered off Reservation have thrived on the Fort Apache Indian Reservation due to the management programs, culture and philosophy of the White Mountain Apache Tribe; and

WHEREAS, the Tribe has also initiated a reduction in the annual allowable cut of its forests in order to restore and preserve ecological harmony on its lands and has prohibited destructive broadcast burning of tribal forest lands by the Bureau of Indian Affairs, a practice which was destructive to certain plants, herbs and new forest growth; and

WHEREAS, the White mountain Apache Tribe established a recovery plan for the Apache

trout, a conservation plan for the Mexican spotted owl and provides protection for the Arizona willow; and

WHEREAS, the Tribe has a Forest Management Plan that continues the application of uneven-aged forest management and provides substantial mitigation measures for wildlife throughout its forests, woodlands and riparian areas; and

WHEREAS, the conservation ethic of the White Mountain Apache Tribe is reflected in maintaining twenty-five percent (25%) of the forest in wilderness, reserve, virgin, buffer and riparian areas; and

WHEREAS, in recognition of the growing complexities of conflicting wants and needs, the White Mountain Apache Tribe is on the threshold of embarking on a Reservation-wide integrated resource management plan that will give added emphasis to the protection and enhancement of all animal and plant species; and

WHEREAS, tribal members, tribal biologists, botanists, foresters, soil scientists, and hydrologists employed or under contract by the White Mountain Apache Tribe possess knowledge of the Tribe's Reservation far superior to that of federal and state agencies or environmental organizations and are best able to manage the lands, fauna, flora and waters of the Tribe's Reservation to ensure ecological maintenance and stability for all such species; and

WHEREAS, the White Mountain Apache Tribe has established wilderness areas, reserved areas and special permit areas to conserve lands, forests, plants and animals and has established strict limitations on the taking of such animals and plants; and

WHEREAS, the United States of America and the White Mountain Apache Tribe have a government to government relationship; and

WHEREAS, the United States and its principal agent, the Bureau of Indian Affairs, is the trustee for the White Mountain Apache Tribe and said trust responsibilities must be carried out in accordance with the highest fiduciary standards by the United States to ensure perpetuation of the Tribe's Reservation as a self-sustaining homeland for the White Mountain Apache Tribe; and

WHEREAS, the United States Fish and Wildlife Service within the last five (5) years has by administrative fiat adopted the position that the Endangered Species Act applies to tribes and their lands, has knowingly ignored the government-to-government

and trust relationship between tribes and the United States Government, and has violated well established legal principles of tribal sovereignty over wildlife, plants, water, timber and grazing lands within tribal lands and lands subject to treaty rights; and

WHEREAS, the United States Fish and Wildlife Service continues to ignore the unique status of Indian lands, the political relationship of tribes to the United States government and has sought to condemn without tribal consultation and despite tribal opposition, millions of acres of Indian land and reserved water rights through the administrative rulemaking process by declaring Indian lands Critical Habitat for selected threatened or endangered species; and

WHEREAS, the United States Fish and Wildlife Service has sought in the past to introduce experimental populations of different species into the Fort Apache Indian Reservation only to declare such experimental population introduction areas as Critical Habitat later on, and is now, despite tribal opposition, creating fisheries for such species as the loach minnow, squaw fish, and razorback sucker, on the Fort Apache Indian Reservation without due process, thereby imposing an involuntary servitude upon the ancestral homeland and reserved waters of the White Mountain Apache Tribe in denigration of the private property rights of the Tribe; and

WHEREAS, the condemnation of and imposition of an involuntary servitude upon the lands and reserved waters of the White Mountain Apache Tribe constitutes a breach of the trust obligations of the United States to the White Mountain Apache Tribe, constitutes an involuntary servitude upon, seizure and wrongful taking of the Tribe's reserved water rights and riparian lands and threatens to deprive the people of the White Mountain Apache Tribe sufficient water for the Tribe's use, development and self-sufficiency; and

WHEREAS, the trustee United States of America has not provided funding to tribes to effectively participate in the Endangered Species Act rulemaking process placing tribes at a great disadvantage with the consequence that tribal lands are being included as Critical Habitat contrary to biological necessity and in violation of tribal sovereignty over tribal lands; and

WHEREAS, the White Mountain Apache Tribe opposes the application of the Threatened and Endangered Species Act to the Tribe and its lands on the grounds that unrestricted application of the Endangered Species Act by the United States Fish and Wildlife

Service and by private non-Indian organizations denigrates and violates the inherent sovereign rights of the White Mountain Apache Tribe and other American Indian tribes over their lands and reserved waters; and

WHEREAS, the Tribal Council condemns the hypocrisy of a suggestion made by a staff member of the Ecological Services Branch of the United States Fish and Wildlife Service that the Apache People stop moving to the town of Whiteriver in order to maintain adequate water levels for the loach minnow, while Salt River Project communities in the Phoenix Valley squander thousands of acre feet of water annually through use of flood irrigation, swimming pools, agriculture, golf courses, artificial lakes and other attempts to transform the desert valley into a non-desert environment; and

WHEREAS, over the years, the United States Geological Survey, the United States Fish and Wildlife Service, the Army Corps of Engineers and other federal agencies have trespassed upon the Reservation lands of the White Mountain Apache Tribe and have obtained information regarding plants, animals, streams, air and water quality and are now attempting to utilize that information against the Tribe to establish without tribal consent non-Indian jurisdiction and hegemony over tribal lands through the use of the critical habitat rule process of the Endangered Species Act; and

WHEREAS, the Tribal Council of the White Mountain Apache Tribe concludes that with certain exceptions, all federal and state agencies, private associations and individuals must be denied future access to the Fort Apache Indian Reservation, for the purpose of conducting any studies of animal or plant life, minerals, forests, rivers, air and water quality, without the express written consent of the White Mountain Apache Tribe through its Tribal Council or Chairman; and

WHEREAS, the Tribal Council further concludes that a Natural Resources Department must be created to apply the direction provided by the Natural Resource Committee and Endangered Species Subcommittee to ensure that management of the environment on the Reservation includes preservation and enhancement of the natural beauty and value of plant and animal species that thrive on the Reservation and to ensure appropriate water and air quality; and

WHEREAS, said Department will review all requests to enter the Reservation to conduct any ecosystem related work or study thereof and said review will include a determination of legal, engineering, planning, environmental, biological and

economic impacts prior to granting any request to conduct said work or studies;
and

WHEREAS, the Tribal Council concludes that authority should be granted to the Tribal Chairman to establish said department as soon as possible.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby opposes the gross application of the Endangered Species Act and critical habitat rulemaking process to the White Mountain Apache Tribe and its lands as an unlawful encroachment upon and violation of the White Mountain Apache Tribe's inherent sovereignty and as a breach of the trustee United States' fiduciary duty to the White Mountain Apache Tribe.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby prohibits the United States Fish and Wildlife Service, federal and state agencies, or any private association or individual from conducting any studies or collecting any samples of animal or plant life, minerals, air or water quality, or any studies or sample collection relating to the land, fauna and flora of the Reservation or distributing natural resource information thereof without the express consent of the Tribal Council or Tribal Chairman.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby prohibits the distribution of any scientific data collection materials and information to the Ecological Services Branch of the United States Fish and Wildlife Service, other federal agencies and the State of Arizona as it relates to the Fort Apache Indian Reservation and the Endangered Species Act, except to the extent that the Tribal Council or Tribal Chairman determines that such information may (1) aid the Tribe in its Treatment As A State (TAS) application under the National Environmental Protection Act, (2) assist the development of Miner Flat Dam, (3) facilitate a self-determination contract to administer the Endangered Species Act if the Act is found applicable, (4) assist the Tribe in a court of law or administrative proceeding, and (5) protect tribal interests and assist in the defense of the Tribe's inherent sovereignty and right of self-government over its land and reserved waters.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby authorizes the Tribal Chairman to establish guidelines for the review of any and all requests for the conduct of any scientific studies of Reservation lands, forest and rivers, air or water quality, or collection of animal or plant life and mineral samples on the Fort

Apache Indian Reservation.

BE IT FURTHER RESOLVED by the Tribal Council that the Ecological Services Branch of the United States Fish and Wildlife Service, other federal agencies and the State of Arizona, with the exception of the Arizona Fishery Resources Office of the United States Fish and Wildlife Service, Pinetop, Arizona, and the Williams Creek and Alchesay Fish Hatcheries, and then only as said offices conduct fish stocking and related hatchery business on the Fort Apache Indian Reservation and the Apache trout recovery program, are hereby prohibited from entering the Fort Apache Indian Reservation and conducting any studies or sample collection of any kind until further notice and then only with the written consent and authorization of the Tribal Chairman or Tribal Council.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby authorizes and directs Tribal Chairman Ronnie Lupe to provide a copy of this Resolution to Secretary Bruce Babbitt, Assistant Secretary Ada Deer, Mollie Beattie, Director of the U.S. Fish and Wildlife Service, the Arizona Congressional Delegation, and such members of Congress as are appropriate.


BE IT FURTHER RESOLVED by the Tribal Council that it directs the Tribal Planning Department to prepare a plan and budget for the establishment of a Natural Resources Department for the White Mountain Apache Tribe.

The foregoing resolution was on **February 24, 1994** 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 the White Mountain Apache Tribe Constitution, including Article IV, Section 1 (a), (c), (e), (f), (g), (h), (i), (m), (n), (q), (t), and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).


Chairman of the Tribal Council

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Secretary of the Tribal Council

FORT APACHE INDIAN AGENCY
WASHINGTON, D.C.