

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

- WHEREAS**, the White Mountain Apache Tribe of the Fort Apache Indian Reservation ("Tribe") is the owner of all waters of the Fort Apache Indian Reservation ("Reservation"); and
- WHEREAS**, "Waters of the Reservation" include, but are not limited to, all waters located upon or bordering the Reservation, whether flowing or stationary, whether above or below the surface of the ground, and whether diffused or contained within a defined water course or water body of any kind which water belong to the Tribe through its aboriginal rights, claim and title; and
- WHEREAS**, the Tribal Council has recently been advised that the State of Arizona has been significantly participating in the issuance of NPDES permits, which are federal permits authorizing the discharge of pollutants to surface waters of the Reservation and has developed water quality standards ("WQS") which both the State and U.S. EPA utilize as applicable WQS on the Fort Apache Indian Reservation; and
- WHEREAS**, the Tribal Council is advised that the U.S. EPA provides funding to the State of Arizona which the state utilizes to employ a person who is charged with drafting NPDES permits and working with NPDES permit applicants, and that EPA has utilized that state resource for the issuance of permits, compliance monitoring and other regulatory activities relating to the Fort Apache Indian Reservation; and
- WHEREAS**, past permits, and at least one currently proposed permit, require the permittee, Williams Creek National Fish Hatchery, to submit monthly water discharge monitoring reports to the State of Arizona in order for the state to monitor the permittee's compliance with the NPDES permit; and
- WHEREAS**, the Tribal Council vehemently objects to such practices, requirements and assertions of authority as unlawful, immoral, and without any basis in law, equity, or other consideration; and

WHEREAS, the U.S. EPA adopted an "EPA Policy for the Administration Environmental Programs on Indian Reservations," which policy was recently reaffirmed by EPA Administrator Carol Browner at 59 Federal Register 38460 (1994), and which provides in part that:

1. THE AGENCY STANDS READY TO WORK DIRECTLY WITH INDIAN TRIBAL GOVERNMENTS ON A ONE-TO-ONE BASIS (THE "GOVERNMENT-TO-GOVERNMENT" RELATIONSHIP), RATHER THAN AS SUBDIVISIONS OF OTHER GOVERNMENT;
2. THE AGENCY WILL RECOGNIZE TRIBAL GOVERNMENTS AS THE PRIMARY PARTIES FOR SETTING STANDARD, MAKING ENVIRONMENTAL POLICY DECISIONS AND MANAGING PROGRAMS FOR RESERVATION, CONSISTENT WITH AGENCY STANDARDS AND REGULATION;
3. THE AGENCY WILL TAKE AFFIRMATIVE STEPS TO ENCOURAGE AND ASSIST TRIBES IN ASSUMING REGULATORY AND PROGRAM MANAGEMENT RESPONSIBILITY FOR RESERVATION LANDS;

and

WHEREAS, the White Mountain Apache Tribe is the best and most appropriate caretaker of the lands and waters of the Fort Apache Indian Reservation; and

WHEREAS, the White Mountain Apache Tribe has generally established a good and strong working relationship with the U.S. EPA and desires that this intergovernmental relationship continue to work for the benefit of the Tribe, the Reservation and other populace, and the U.S. EPA; and

WHEREAS, the government which sets WQS for reservation surface waters control the future water quality of the Reservation, significantly controls economic, social and other development as well as the uses of Reservation waters; and

WHEREAS, the Tribal Council recognizes that it has the inherent sovereign authority to develop WQS for Reservation waters which would be enforceable with or without the approval of the Federal Government; and

WHEREAS, the Tribal Council recognizes that it is necessary for the protection of the Reservation populace and tribal health and welfare, economic security, political integrity, religious freedom and other tribal interests that it establish WQS for all water of the Reservation; and

WHEREAS, the Tribal Council chooses to submit tribal WQS to the U.S. EPA for its review and approval in order to undertake regulatory activities on the Reservation which the Federal Government otherwise asserts that it is required to undertake and appears to have shared with the State of Arizona; and

WHEREAS, such approval and federal recognition of tribal WQS will provide a means whereby the Tribe will better be able to assert its authority over and care for the lands and waters of the Fort Apache Indian Reservation and will serve to pre-empt the utilization of state WQS for any purposes on the Fort Apache Indian Reservation; and

WHEREAS, the U.S. EPA approval of tribal WQS for the Fort Apache Indian Reservation will also provide the Tribe with federal Clean Water Act, Section 401 "certification authority" through the assertion of which the Tribe will be able to certify, deny or condition any federally issued permit to discharge pollutants into surface waters of the Reservation where such discharge would otherwise, in the Tribe's opinion, violate Reservation WQS.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby condemns and opposes any implication, suggestion, or assertion that Arizona State WQS are applicable to any waters of the Reservation.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby condemns and opposes any state participation in the issuance of NPDES permits, compliance monitoring, and any other de facto or actual regulatory activities as they may relate to the Fort Apache Indian Reservation, regardless of whether such activity is asserted to be "on behalf" of U.S. EPA.

BE IT FURTHER RESOLVED by the Tribal Council that it calls upon the U.S. EPA to immediately cease utilizing state personnel and resources for issuing permits, regulating activities, undertaking compliance monitoring, and for all other purposes as they may relate to activities or projects undertaken on the Fort Apache Indian Reservation.

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BE IT FURTHER RESOLVED by the Tribal Council that it calls upon U.S. EPA to comply with its 1984 Indian Policy and that it immediately begin, and henceforth continue, to work directly with the White Mountain Apache Tribe on a one-to-one basis, rather than as a subdivision of a state; that it recognize the White Mountain Apache Tribe as the primary party for setting standards, making environmental policy decisions and managing programs for the Reservation; and that it take affirmative steps to encourage and assist the White Mountain Apache Tribe in assuming regulatory and program management responsibility for reservation lands, including the development of Tribal WQS, the issuance of NPDES permits on the Fort Apache Indian Reservation and for other purposes.

BE IT FURTHER RESOLVED by the Tribal Council that it directs the Tribal Legal Department and the Environmental Planning Office to, as quickly as possible, prepare and submit an application to U.S. EPA for "tribal authorization" (formerly "Treatment as a State") for the development and recognition of Tribal Water Quality Standards for the surface waters of the Fort Apache Indian Reservation.


BE IT FURTHER RESOLVED by the Tribal Council that it directs the Tribal Legal Department and the Environmental Planning Office to, as quickly as possible, develop proposed WQS in the form of a proposed Tribal Ordinance for surface waters of the Fort Apache Indian Reservation, which proposed Ordinance shall, after Tribal Council review and approval, be submitted to the U.S. EPA for its review and approval.

BE IT FURTHER RESOLVED by the Tribal Council that the acts and deeds of the members of the Tribal Council necessary to carry out the intent and purpose of this resolution be, and the same are hereby ratified, confirmed and adopted as the acts and deeds of the Tribe.

The foregoing resolution was on August 03, 1995, 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 IV, Section 1 (a), (b), (f), (h), (s), (t) and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).



Chairman of the Tribal Council



Secretary of the Tribal Council

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