

8-23-96
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August 26 1996

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

WHEREAS, the Tribal Council on August 7, 1996 adopted Resolution No. 08-96-179 which in summary gave ninety (90) day notice of the termination of the Mill Refuse Purchase Agreement between the White Mountain Apache Tribe d/b/a Fort Apache Timber Company [FATCO] and J.R. Hall & Sons Trucking, Inc., for the purchase and removal of all residual products or by-products from the Whiteriver and Cibecue Mill sites, such as shavings, bark, new sawdust, old sawdust and slabs, and hogged products; and

WHEREAS, said resolution further directed that the FATCO General Manager execute a Mill Refuse Purchase Agreement as requested by tribal member Holyan Lee, and a copy of Mr. Lee's request is attached and incorporated by reference herein; provided, however, that the 90 day notice of termination would commence August 7, 1996 and not May 8, 1996, as requested; and

WHEREAS, the Tribal Council this date has met with the FATCO Board of Directors and the FATCO Board advises the Tribal Council that, in its view, Resolution No. 80-10, adopted January 2, 1980, which approved the Plan of Operations for the Fort Apache Timber Company, conflicts with Resolution No. 08-96-179 because Resolution No. 80-10 and the Plan of Operations approved thereby requires, amongst other things: (1) that FATCO be managed to earn a net profit and to economically and efficiently manufacture lumber or other timber products at a profit while providing employment opportunities for members of the Tribe, (2) that all general business management and operational policies and procedures of the company will be determined by a Board of five members, (3) that the Board will have full authority to act for and on behalf of the Tribe and all phases of the company's operations, (4) that the Manager shall be responsible to the Board of Directors for the efficient operation of all phases of the company and shall be responsible to the Board for all company property, (5) that the Manager of the Company shall be responsible for and have complete authority for employing, directing, training and discharging of all employees of the company, including contractors, and (6) that the Board of Directors shall execute all logging contracts; and

WHEREAS, the Board of Directors explains to the Tribal Council that under the Plan of Operation as summarized above, Resolution No. 08-96-179 is in conflict therewith because the Tribal Council has acted in a managerial capacity in place of the Board of Directors; and

- WHEREAS,** the Tribal Council and Board of Directors is advised by the Tribal Legal Department that the Tribal Council has the constitutional right to override the Board of Directors, but that technically the Plan of Operation should be so amended to provide for such override and that Resolution No. 08-96-179, although in conflict with the Plan of Operations, could be taken out of conflict with Resolution No. 80-10 by adopting another resolution or amendment to the Plan of Operation to allow for a Council override of FATCO Board decision; and
- WHEREAS,** Resolution No. 08-96-179 is also of concern to the FATCO Board because it could be interpreted to grant Mr. Holyan Lee an exclusive Mill Refuse Purchase Agreement with FATCO which would prevent other tribal members and others from exercising their right to submit bids which could develop a higher value or return to FATCO for the refuse products listed in the Mill Refuse Purchase Agreement, such as shavings, bark, new and old sawdust, slabs and hogged products; and
- WHEREAS,** the FATCO Board also expresses its concern that Resolution No. 08-96-179 could be interpreted to provide Mr. Holyan Lee an exclusive contract that would prevent FATCO from locating future markets to purchase its mill refuse products and by-products which would not be in the best interest of the sawmill; and
- WHEREAS,** the existing Agreement with J.R. Hall Trucking, Inc. provides that, if FATCO develops an alternative use or market for any amount or all of the refuse products or by-products, that develops a higher value or return to FATCO than established by the Agreement with Hall, that Hall would have the opportunity to match that value within 30 days of written notification by FATCO, and if Hall failed to match the new value or to notify FATCO of its intent, the Agreement could be terminated without further notice; and
- WHEREAS,** the FATCO Board of Directors and Tribal Council is of the view that 260 tribal employees depend upon the profitability of FATCO and that FATCO must be operated as a business operation to obtain the highest profitability and return for the benefit of not only the FATCO sawmill employees but all tribal members as FATCO stumpage payments and profitability are critical to the financial integrity and well-being of the Tribe and for the funding of all governmental services to thousands of tribal members; and
- WHEREAS,** for all of the foregoing reasons and in order to assure that there is equal opportunity for all tribal members with the wherewithal and means to enter into a mill refuse purchase agreement and to avoid further disputes over the interpretation as to whether or not Resolution No. 08-96-179 granted an exclusive right for an indefinite period of time to Mr. Lee, the Tribal Council concludes that Resolution No. 08-96-179 should be rescinded in its entirety and that the matter of negotiating mill refuse

purchase agreements be returned to the FATCO Board of Directors for further review and action; and

WHEREAS, rescission of Resolution No. 08-96-179 is designed to create equal opportunities for all tribal members and others who have an interest in submitting bids for the various mill refuse products and by-products under the terms of the existing Mill Refuse Purchase Agreement with J.R. Hall Trucking, Inc., which allows FATCO to receive bids that develop a higher value or return to FATCO than established by the Mill Refuse Purchase Agreement with J.R. Hall Trucking, Inc., and rescission of Resolution No. 08-96-179 thereby provides an open door for any interested tribal member or other party to submit a bid that could earn a higher value for FATCO which, if unmet by the current buyer, would result in termination of that agreement or portion of the Refuse Purchase Agreement within 30 days; and

WHEREAS, the foregoing procedure ensures a fair market and fair opportunity for tribal members and others to submit bids, thereby increasing the profits of FATCO for the benefit of all tribal members.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby rescinds Resolution No. 08-96-179 in its entirety.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby directs the FATCO Board of Directors to provide every courtesy, encouragement and assistance to tribal members and others, but with specific emphasis on tribal preference and tribal members, to submit bids for the purchase of shavings, bark, new and old sawdust, slabs, and hogged products so as to provide FATCO with the highest value and return for said products and by-products.

BE IT FURTHER RESOLVED by the Tribal Council that it urges the FATCO Board of Directors to meet with tribal member Holyan Lee, and any other tribal member and to encourage said members to submit bids for purchase of mill refuse products and by-products.

BE IT FURTHER RESOLVED by the Tribal Council that the FATCO Board of Directors be guided by the Plan of Operations for FATCO and the goals, tribal preference, and tribal opportunity provisions set forth therein.


Resolution No. 08-96-195


The foregoing resolution was on August 19, 1996 duly adopted by a vote of four for and two against, and three abstentions by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (b), (i), (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).

RECEIVED

AUG 26 1996

**FORT APACHE INDIAN AGENCY
WHITERIVER, ARIZONA**


Chairman of the Tribal Council


Secretary of the Tribal Council