

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

- WHEREAS,** the Tribal Council is advised that Judge Allen Minker conducted a status hearing on settlement negotiations in the Little Colorado River Adjudication in St. Johns on September 27, 1996; and
- WHEREAS,** on said date, Judge Minker provided an opportunity for all of the parties in the Little Colorado River Adjudication to inform the Court on progress in their effort to achieve a comprehensive settlement of the adjudication, including the claims of Indian Tribes and federal agencies; and
- WHEREAS,** during the hearing, the question of whether the State Land Department could agree to limit future ground water development on state trust lands was discussed and the National Park Service and other federal agencies expressed disappointment that state parties and the Department of Water Resources were not participating in an informal study group of federal and tribal representatives to study ground water supply and movement in the basin; and
- WHEREAS,** Judge Minker expressed his concern that negotiations not be delayed by a lengthy ground water study and that the parties should be in a position to understand their claims and must negotiate on the basis of existing information; and
- WHEREAS,** Judge Minker also discussed with William H. Veeder, the Tribe's water rights attorney, the Tribe's Motion to Dismiss the entire Little Colorado River Adjudication on the grounds that technical studies to date demonstrate that the Coconino Aquifer, which underlies the Tribe's Reservation, extends into both the Gila River and Little Colorado River Adjudications and that the Little Colorado River Adjudication Court does not have jurisdiction over the entire aquifer; and
- WHEREAS,** Judge Minker postponed until after the May 2, 1997 status conference, the Tribe's Motion to Dismiss for Want of Jurisdiction and urged water rights attorney William H. Veeder and Tribal Attorney Robert C. Brauchli to advise the Tribal Council of what took place at the status hearing on September 27, 1996 and to communicate his concern and message to the Council to reconsider its earlier decision not to participate in the settlement negotiations and to notify Judge Nelson of the outcome of its deliberations; and

Resolution No. 09-96-224

- WHEREAS,** the Tribal Council has convened a special session this date to review with Special Water Rights Counsel William H. Veeder and Tribal Attorney Robert C. Brauchli, the proceedings that took place during the status hearing on negotiations in the Little Colorado River Adjudication and to consider Judge Minker's recommendation that the Council reconsider its earlier decision not to participate in settlement negotiations; and
- WHEREAS,** the Tribal Council and its predecessors have been intensively involved with water rights issues, especially since the 1959 Battle of Hawley Lake and the late 1960s when the Salt River Project proposed to the Tribal Council that it limit all of its rights and claims to the Salt River and its tributaries to 36,000 acre feet of surplus water to be obtained from vegetation manipulation and not in stream flow; and
- WHEREAS,** the Tribal Council is well aware of the State of Arizona's concerted campaign since 1912 to usurp and seize for its own benefit and that of the Salt River Reclamation Project, the aboriginal water rights of the White Mountain Apache Tribe to the Salt River and its tributaries, which arise within the aboriginal domain of the White Mountain Apache Tribe, said land having been occupied by the White Mountain Apache Tribe since time immemorial; and
- WHEREAS,** the Tribe's reservation overlies two aquifers, the Coconino and the McNary/Pinetop/Lakeside volcanic aquifer, each of which underlies lands which are partly within the surface water jurisdictional boundaries of both the Little Colorado River Adjudication and the Gila River Adjudication and both of these aquifers are connected as ground water sources to surface water flows involved in the Gila River Adjudication; and
- WHEREAS,** both aquifers are currently being exploited by non-Indian, private and corporate ground water pumpers, via wells located within the Little Colorado River surface water basin; and
- WHEREAS,** the State of Arizona Department of Water Resources and State Land Department has taken the position that there are unlimited quantities of ground water from the Coconino Aquifer and that there is little or no interest in regulating ground water use or otherwise managing ground water in the Little Colorado River Basin north of the Mogollon Rim, and therefore, the Tribal Council has reason to believe that total unfettered pumping of ground water from the Coconino Aquifer with resulting cones of depression will continue and will eventually impact upon the Tribe's own ground water from

Resolution No. 09-96-224

the Coconino Aquifer and will diminish springs and surface water on the Reservation which depend upon the Coconino Aquifer as their source, thereby causing irreparable damage to the Tribe's forests, riparian areas, plants and animals which depend thereon; and

WHEREAS, without protection from present and future unregulated ground water pumping by non-Indian corporate and individual pumpers in the Little Colorado River basin, the White Mountain Apache people will cease to exist and said pumping will despoil the entire Salt River Watershed of which the Fort Apache Indian Reservation comprises over 60%; and

WHEREAS, any water settlement negotiations must necessarily include regulation of ground water pumping north of the Mogollon Rim within the Little Colorado River Basin and without court insistence upon an appropriate ground water inventory and study, the White Mountain Apache Tribe's aboriginal rights to its homeland and the waters lying within that homeland will be irreparably damaged and threatened; and

WHEREAS, the Tribal Council is not impressed with recent efforts of the State of Arizona Legislature to thwart the ongoing judicial proceedings by tailoring new legislation to protect and enhance non-Indian water rights at the expense of Indian and Tribal water rights, and therefore, has little faith that its aboriginal rights to ground water and its preservation as a distinct people will be protected in settlement negotiations which to date have ignored ground water management and overpumping issues; and

WHEREAS, the Tribal Council on December 12, 1994 adopted Resolution No. 12-94-364 which identified and asserted the aboriginal rights of the White Mountain Apache Tribe within the Fort Apache Indian Reservation, the remaining remnant of its once vast ancestral homeland; and

WHEREAS, said Resolution directed the Tribal Chairman and Special Water Rights Counsel William H. Veeder to take whatever steps were necessary to bring the issues set forth in the Resolution to the attention of the Attorney General of the United States, the Attorney General of the State of Arizona and other appropriate officials of the Trustee United States; and

WHEREAS, Said aboriginal rights include the Tribe's rights to the Coconino and Pinetop/Lakeside/McNary Volcanic Aquifer which underlie its reservation and which are being extensively pumped without restraint by off-reservation corporate and individual non-tribal entities; and

Resolution No. 09-96-224

WHEREAS, The Tribal Council on February 21, 1995 adopted Resolution 02-95-074 reaffirming Resolution 12-94-364 in its entirety; and

WHEREAS, the Tribal Council concludes after a lengthy and careful consideration of the technical evidence available to date and the most current geological and hydrologic data available, that continued unfettered pumping of ground water from the Coconino Aquifer, north of the Fort Apache Indian Reservation threatens the future existence of the Tribe and the lands and waters which comprise the Fort Apache Indian Reservation; and

WHEREAS, the Tribal Council is opposed to participating in any settlement negotiations in the Little Colorado River Adjudication especially in view of the reluctance of the Court to consider the issues of aboriginal ground water and the effect of unfettered pumping of ground water on the Tribe's aboriginal water rights, which are prior and paramount to any off-reservation rights.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby reaffirms Resolution 12-94-364 and Resolution 02-95-074 in their entirety.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby directs Special Water Rights Counsel William H. Veeder to notify the Honorable Michael C. Nelson, in his capacity as settlement judge of the Little Colorado River Adjudication, that the White Mountain Apache Tribal Council has considered Judge Minker's recommendation and declines to participate in the settlement negotiations without a requirement by the Court and parties that said settlement negotiations allow sufficient time to study the impact of ground water pumping in the Little Colorado River Basin on the aboriginal ground water rights of the White Mountain Apache Tribe and further that said settlement negotiations contemplate regulation of ground water pumping by non-Indian corporate and non-corporate entities in the Little Colorado River Basin, including those lands held in trust by the State Land Department.

BE IT FURTHER RESOLVED by the Tribal Council that it directs Special Water Rights Counsel William H. Veeder to proceed forthwith and to take whatever steps are necessary to protect the Tribe's aboriginal rights to the Coconino Aquifer and Pinetop/Lakeside/McNary Volcanic Aquifer and to so advise Judge Minker and the State Supreme Court in the Gila River Adjudication of the Tribal Council's position in this matter.

Resolution No. 09-96-224

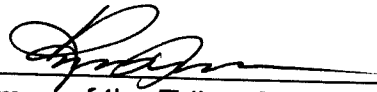
BE IT FURTHER RESOLVED by the Tribal Council that it is willing to entertain and participate in settlement negotiations in respect to the Little Colorado River Adjudication if and when the State of Arizona and the Secretary of Interior and its legal representative, the Department of Justice, are willing and able to guarantee protection of the Tribe's priceless aboriginal water rights, surface and subsurface, and to implement measures to prevent further unregulated pumping of ground water north of the Mogollon Rim, which presently threatens the very existence of the White Mountain Apache Tribe.

The foregoing resolution was on September 30, 1996, duly adopted by a vote of ten 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), (f), (i), (s), (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).

RECEIVED

OCT 31 1996

FORT APACHE INDIAN AGEN
WHITERIVER, ARIZONA



Chairman of the Tribal Council



Secretary of the Tribal Council