

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

- WHEREAS,** the State of Arizona has been granted rights of way within the Fort Apache Indian Reservation to establish and maintain state roads, which link together the state highway system and which are beneficial to the State's livelihood; and
- WHEREAS,** to date, there are 127 roadway miles for use and control by the State of Arizona, located on rights of way granted on the Tribe's land; and
- WHEREAS,** the State of Arizona pays for the maintenance of the state road system, in part, through revenues collected from a motor vehicle fuel excise tax of 18 cents imposed upon each gallon of fuel sold within the state; and
- WHEREAS,** the White Mountain Apache Tribe is a major retail vendor of motor vehicle fuel within the Reservation, at tribal owned and operated fuel stations; and
- WHEREAS,** each gallon of gasoline sold on the Reservation is assessed the 18 cent per gallon state excise tax; and
- WHEREAS,** under State of Arizona law, the fuel tax revenues are awarded to the State Highway Fund, for maintenance and law enforcement, and to Arizona counties and incorporated cities for road related purposes; and
- WHEREAS,** as a sovereign government, the White Mountain Apache Tribe receives no portion of the fuel tax revenues, which, by design of the state law, are funneled to State of Arizona instrumentalities, even though a sizable amount of state fuel tax revenues are withdrawn from the Reservation each year; and
- WHEREAS,** the Tribe and the Bureau of Indian Affairs, without benefit of the state fuel tax monies, maintain more than 6,300 roadway miles within the Reservation, compared to the 127 roadway miles maintained by the State of Arizona; and
- WHEREAS,** each gallon of gasoline used to traverse these tribal and federal roads generates additional tax revenues for the State of Arizona, which are not used to support the costs of maintaining these roads; and

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- WHEREAS**, many state road construction projects undertaken on the state roads within the Reservation, including the current work at the junction of Highway 260 and Highway 73 in Hon-Dah, are funded by federal money which is secured by the cooperative efforts of the Tribe and the B.I.A.; and
- WHEREAS**, for the foregoing reasons, the return of Arizona fuel tax revenues to the Reservation is very small in proportion to the taxes collected on this Reservation; and
- WHEREAS**, in an effort to address the gross inequity in the current collection and distribution of fuel tax revenues, the Tribe has sought a revenue sharing agreement with the State to provide a fair and equitable funding to the Tribe for its road related needs and expenses; however, to date, no such agreement has been reached; and
- WHEREAS**, by authority of the Constitution of the White Mountain Apache Tribe, the Tribal Council is empowered to levy and collect taxes; and
- WHEREAS**, if the Tribe were to impose and collect a tribal tax upon fuel sold within the Reservation, in a competitive market, such a tax, if added to the state tax, would result in a double tax, rendering the fuel unmarketable; and
- WHEREAS**, the Tribe has held discussions with Navajo Nation Oil and Gas Company, a fuel distributor wholly owned by the Navajo Nation, which has resulted in a proposed agreement to purchase fuel for retail sale on the Fort Apache Indian Reservation; and
- WHEREAS**, it is the determination of the parties to this agreement that the fuel purchased by the Tribe would not be lawfully subject to the State of Arizona fuel excise tax, or any other state tax; and
- WHEREAS**, the Tribe does not intend to reduce its retail fuel prices by reason of the absence of a state tax, but instead intends to enact its own fuel excise tax on fuel received from Navajo Nation Oil and Gas Company; and
- WHEREAS**, the tribal tax rate would be lower than the equivalent state tax rate, due to the higher costs incurred in this transaction; and
- WHEREAS**, the proceeds from the tax would be dedicated to roadway related expenses and purposes, including law enforcement; and
- WHEREAS**, to record the shipment and delivery of such fuel purchases, the Tribe would adopt a fuel manifest, detailing all pertinent information concerning the delivery of motor vehicle fuel to the Reservation, and which shall accompany the shipment of such

fuel, to regulate the delivery of such fuel and to be available to any government agency to verify the contents of such shipment, while in transit; and

WHEREAS, it is concluded that the orderly administration and taxation of such fuel shipments to the Reservation shall promote the Tribe's essential governmental need to maintain safe and functional roadways within the Reservation.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the execution of a contract between the Tribe and Navajo Nation Oil and Gas Company for the purchase of motor vehicle fuel for use and retail sale by the Tribe within the Fort Apache Indian Reservation.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the execution of a contract between the Tribe and Giant Industries Arizona, Inc., for the delivery of fuel purchased from Navajo Nation Oil and Gas in Window Rock, Arizona, to the Fort Apache Indian Reservation.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it authorizes a limited waiver of the Tribe's sovereign immunity, to allow, if necessary an action in the courts of the White Mountain Apache Tribe by Navajo Nation Oil and Gas Company for the sole and limited purpose to recover monies lawfully due, unpaid and owing by the Tribe to Navajo Nation Oil and Gas Company pursuant to the contract provisions governing payment for the fuel.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs the Tribal Council Secretary to post proposed amendment to the Tribal Tax Code, attached to this Resolution and incorporated herein, in each District for ten days as required by the Constitution.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that the provisions of the attached amendment shall be enforced immediately, by Resolution of the Tribal Council, pending enactment of the provisions into law.

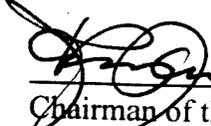
BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that nothing in this Resolution or proposed amendment shall be deemed to have any effect on the application or exemption thereof, of any federal fuel excise tax to the fuel covered under this Resolution, nor shall this Resolution be deemed to preclude purchases from other fuel distributors which may be subject to the State of Arizona fuel excise tax.

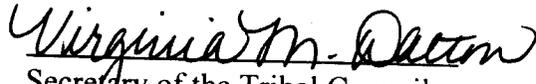
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BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby delegates to the Tribal Chairman, or in his absence the Vice-Chairman, full authority to enter into all documents necessary to carry out the intent of this Resolution.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe 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 White Mountain Apache Tribe.

The foregoing resolution was on October 3, 1996, duly adopted by a vote of six 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 Tribal Constitution, including Article IV, Sections 1(a), (b), (h), (i), (o), (s), (t) and (u) of the Constitution of the Tribe, ratified by the Tribe on 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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