

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

**WHEREAS,** the Tribe and the U.S. Geological Survey on December 21, 1998 entered into an Intergovernmental Agreement for the maintenance of stream gaging stations within the reservation; and

**WHEREAS,** the Agreement provides that the parties shall meet on an annual basis to review and evaluate the status of the Intergovernmental Agreement; and

**WHEREAS,** representatives from the Tribe met last week with representatives of the U.S. Geological Survey and following that meeting the Tribal Council is advised that the Agreement has been functioning well during the past calendar year; and

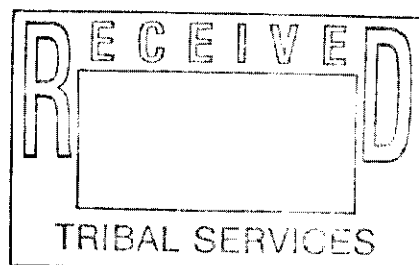
**WHEREAS,** the Tribal Council is advised that the representatives agreed to several modifications to the Agreement to give better clarification to the roles and responsibilities of the respective parties; and

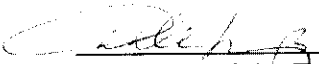
**WHEREAS,** the Tribal Council has reviewed and agrees with the proposed modifications to the Agreement.

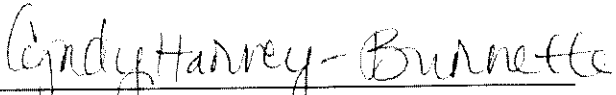
**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the amended and modified Intergovernmental Agreement between the White Mountain Apache Tribe and the United States Geological Survey for stream gaging access permits and technical assistance in the form and content attached hereto.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes and directs the Tribal Chairman, or in his absence the Vice-Chairman, to sign and execute the attached Intergovernmental Agreement.

The foregoing resolution was on December 29, 1999 duly adopted by a vote of six for and one against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (b), (e), (f), (h), (i), (j), (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 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

*Intergovernmental Agreement*

*Between the*

*White Mountain Apache Tribe*

*and the*

*U.S. Geological Survey*

*for Stream-gaging Access Permit*

*and*

*Technical Assistance*

# ***Intergovernmental Agreement Between the White Mountain Apache Tribe and the U.S. Geological Survey for Stream-gaging Access Permit and Technical Assistance***

## **I. PURPOSE**

The White Mountain Apache Tribe, a Federally recognized Indian Tribe, organized pursuant to the Indian Reorganization Act of 1934 (25 U.S.C. § 476) [the Tribe] and the U.S. Geological Survey [the Survey] enter into this Intergovernmental Agreement [IGA] to allow the Survey limited legal access on the Tribe's Fort Apache Indian Reservation [Reservation] to carry out specific stream gaging activities permitted by the Tribe and to facilitate technical assistance to the Tribe when requested by the Tribe.

## **II. AUTHORITY FOR IGA**

- (a) Pursuant to Article IV Section 1 of the Tribal Constitution, the Tribal Council, in addition to all powers vested in the Tribe through its inherent sovereignty or by existing law, has the power to negotiate, make and perform contracts and agreements with the United States. Article IV, §§ 1(b),(e),(f),(h),(i),(j),(m),(n),(q),(t),(u).
- (b) Pursuant to 43 U.S.C. § 31, and such annual appropriation acts as are enacted into law, the Survey is authorized to investigate water resources within the United States (including gaging the streams and determining the water supply of the United States), and enter into cooperative (joint) funding of Survey scientific investigations.

## **III. GUIDING PRINCIPLES & PRECEPTS**

- (a) The Tribe and the Survey recognize the potential for a mutually beneficial cooperative relationship. The Survey seeks to continue to operate six (6) stream gaging stations [the stations] on the Tribe's Reservation (see listing in Appendix A) to obtain data useful to the Survey, the Tribe, and others. The Tribe may request from the Survey technical assistance and scientific data for the benefit of the Tribe.

- (b) The Survey agrees that it must, and by entering into this IGA does, request Tribal permission for access to the Reservation for the purposes of maintaining the stations or obtaining, directly or remotely (i.e. satellite), any hydrological or meteorological information from the stations. This Agreement, subject to its termination clause, constitutes Tribal permission for Survey employees to enter Tribal lands for the purposes of operating and maintaining the stream gages listed in Appendix A; and for providing technical or educational assistance to Tribal staff at the Tribe's request. Additionally, unless otherwise provided herein, the Survey agrees to provide notice of specific site visits on Tribal lands at least 14 days prior to such intended access. No other personnel, including representatives from any cooperating agencies, either private or public, may enter the Reservation whether or not with Survey personnel, without specific written Tribal authorization.
- (c) The United States has certain trust responsibilities to the Tribe in regard to Tribal trust assets, which include the Tribe's land and water resources. The Department of the Interior's [Department] policy regarding its trust responsibilities is contained in 512 Departmental Manual [DM] 2.1 *et seq.* ("*Departmental Responsibilities for Indian Trust Resources*"). The Survey is committed to working with the Tribe on a Government to Government basis in recognition of the trust responsibilities contained in 512 DM 2.1 *et seq.* and the Survey's "*Policy on Employee Responsibility Towards American Indians and Alaska Natives*" (August 14, 1995) (U.S. Geological Survey Manual 500.4). The Survey is further committed to a Government to Government relationship with the Tribe as required in various Executive Orders.
- (d) The Survey acknowledges that Tribal permission pursuant to this Access Agreement is necessary in order to continue its annual funding agreement for the stations with the Arizona Department of Water Resources [DWR], as any such agreement provides funding for the stations for the purpose of collecting information at the stations. The Tribe is a "cooperator" with the Survey for purposes of this IGA, because the Tribe has made invaluable in-kind contributions for the stations.

#### **IV. PARTIES RESPECTIVE RIGHTS NOT PREEMPTED**

This IGA does not, in any manner, preempt or modify the respective rights and responsibilities of either party. Based upon the above provisions which shall be considered as guiding principles in the interpretation of this Agreement, the

parties hereby agree to the following provisions:

#### **A. EXCHANGE OF TECHNICAL EXPERTISE**

Upon the request of the Tribe, the Survey will, to the extent allowed by fiscal and staffing constraints and within its mission, help identify and share technical expertise and offer personnel training opportunities to the Tribe to assist in the Tribe's monitoring of its water resources. Examples of such technical assistance that may be requested by the Tribe and offered by the Survey include, but are not limited to:

- (1) Training of Tribal staff in scientific and computer-based methods related to water resources monitoring through internships, cooperative appointments, and training courses at Tribal and/or Survey locations;
- (2) Technical assistance in developing and implementing Tribal Quality Assurance protocols for the Tribe's water resources monitoring programs;
- (3) Acquisition of equipment for Tribal water monitoring and testing (*e.g.*, through donations of surplus equipment, or other assistance with the purchasing of new equipment) to the extent authorized by law;
- (4) Technical assistance regarding developing and upgrading the Tribal cartographic database, including access to digital elevation and quadrangle maps, where available.
- (5) Sharing of personnel pursuant to the Inter-Governmental Personnel Act by Inter-Personnel Agreements (IPAs) and other appropriate means.

If a cooperative activity under this section is anticipated to incur costs in excess of the amounts customarily budgeted for such activity, the Tribe may be responsible for those costs. Any such costs must be discussed and agreed to in writing by the Tribe prior to the Tribe being held responsible to pay for such costs.

#### **B. COMMUNICATION**

Close communication and careful implementation of this IGA will ensure that issues are resolved promptly and productively. Unless otherwise provided herein or in writing, communication between the Tribe and the Survey shall be made through the following offices:

- (1) The Survey's primary contact with the Tribe shall be the Tribal Hydrologist at the Tribal Headquarters in Whiteriver, Arizona.

- (2) The Tribe's primary contact with the Survey shall be the Survey's Water Resources Division District Chief at the Survey's District Office in Tucson, Arizona.

### C. INFORMATION

Pursuant to this IGA, the Survey is hereby authorized to collect and release only that information directly obtained by the Survey through the operation of the Survey's stream gaging stations identified in Appendix A of this IGA. All data acquisition under this agreement shall be performed by the Survey except as may be specifically authorized by the Tribe. No third party to this agreement shall be a depository of original records produced pursuant to this agreement. All other information provided to the Survey by the Tribe relating to the Tribe's water resources, regardless of the location of that information, shall be deemed proprietary and confidential and shall not be released without prior written approval from the Tribe.

### D. CONSULTATION/LIMITED ENTRY ONTO TRIBAL LANDS

- (1) **Consultation:** In accordance with 512 DM 2.1 *et seq.*, the Survey shall consult with the Tribe prior to commencing Survey activities or proposed activities that affect Tribal trust resources, which include, but are not limited to, the Tribe's water resources. Such consultation shall include, among other things, ensuring that the Tribe has sufficient notice and opportunity to meaningfully participate in all meetings, discussions, and other communications regarding the Survey's stream monitoring activities on the Reservation, and that the Tribe be invited to participate in, and be a party to, the negotiation of any agreement entered into by the Survey with third parties related to such on-reservation activities in accordance with 512 DM 2.1 *et seq.* (or any amendments). The Survey shall also consult with the Tribe whenever any of its off-reservation activities may affect Tribal trust resources.
- (2) **Access:** Each time the Survey requires physical access to the Reservation, the Survey shall request such access in a letter to the Tribal Hydrologist with copies to the Tribal Chairman and the Tribal Legal Department. The request shall include the reasons for the Survey's need for access, and shall be sent by the Survey no later than fourteen (14) days before the date of desired access. The Tribal Hydrologist will respond in writing to the Survey's request and otherwise coordinate access on terms acceptable to the Tribe. If the Tribe has not responded within seven (7) days, the Survey may contact the Tribal Hydrology and Water Resources Program by fax to

request Tribal permission for access.

The Survey may require emergency physical access to the stations based on unexpected or potential flood events or equipment malfunction. In the event that emergency entry is necessary based on these conditions, the 14 day notice requirement as set forth above is not required, and the Survey may access the stations. In such instance, the Survey shall provide notice of emergency entry to the Tribe either prior to such entry (either in person or by telephone/fax), at the time of such entry (in person), or immediately after such entry (either in person or by telephone/fax).

The Survey may be unable to comply with the 14 day notice requirement as set forth above in the event of a prolonged power/phone outage. If telephone/fax communications are not possible due to prolonged power/phone outages, the 14 day notice provision as set forth above is not required, and the Survey may access the stations. The Survey shall provide notice of such entry to the Tribe either at the time of such entry (in person), or as soon as possible after such entry (either in person or by telephone/fax).

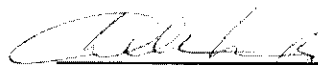
- (3) **Joint Funding Agreement for Water Resources Investigations:** The Survey has entered into a joint funding agreement for water resources investigations with DWR for the purpose of maintaining stream gaging stations on the Fort Apache Indian Reservation. The Tribe was not a signatory to any of the joint funding agreements for the stations prior to December 21, 1998. Attached hereto as Appendix B is the form for joint funding agreement pertaining to stream gaging stations on the Reservation which shall be utilized in any future joint funding agreement between the Survey and DWR. The Tribe hereby approves the form and content of the agreement found at Appendix B. Any and all revisions to the form will be submitted to the Tribe for its review and written approval on an annual basis, and the Tribe shall receive a signed copy of the agreement subsequent to any revisions. If the Tribe does not approve any subsequent revisions to the form, access to the Reservation pursuant to this IGA shall terminate at the end of the period covered by any approved form, until such time as a revised form is approved in writing by the Tribe. In the event of a funding lag, conditions of the preexisting funding agreement apply until the new agreement is signed, but shall not extend past December 31.

#### **E. ANNUAL REVIEW, MODIFICATION AND TERMINATION**

Representatives from the Survey and the Tribe will meet at least once per year to evaluate the status of this IGA. If mutually agreed to by the Tribe and the Survey, this IGA may be modified in writing as needed. This IGA may be terminated by either the Survey or the Tribe without cause with 30 days written notice by certified mail. In the event that this IGA is terminated, the Survey: 1) may access and retrieve all non-permanent fixtures, equipment and property related to this IGA; 2) subject to Tribal written consent, remove and/or modify the stations in order to ensure that all appropriate safety precautions have been taken; and, 3) remove all fixtures permanent or otherwise, and as nearly as possible restore the area at the stations to the same state and condition existing prior to the installation of the stations and appurtenances, if so directed by the Tribe. In the event that the Tribe directs the Survey to leave the stations or any appurtenances on the Reservation, and to the extent that the Survey has complied with the directions of the Tribe, the Tribe shall execute an appropriate release for the benefit of the United States and the Tribe shall be responsible for all subsequent claims for alleged loss, injuries, or damages to persons or property arising from the stations or its appurtenances pursuant to the Tribal Tort Claims Act, as applicable.

#### **F. APPROVAL AND EXECUTION**

Entered into this 21<sup>st</sup> day of December 1998 on the Fort Apache Indian Reservation of the White Mountain Apache Tribe, and revised on the 29<sup>th</sup> day of December 1999.



**Dallas Massey, Sr., Chairman  
White Mountain Apache Tribe**

**Barbara J. Ryan, Associate Director  
U. S. Geological Survey**