

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

WHEREAS, the Tribal Council in Resolution 10-2002-270 and in prior Resolution 06-2002-128 approved a loan in the principal amount of \$917,487.00 between the Tribe and the United States Department of Agriculture Rural Development Agency for the purpose of partial funding for the Hondah - McNary Wastewater System; and

WHEREAS, based upon the funding through the loan as well as the grant funds from USDA and additional funds contributed by other parties, including the White Mountain Apache Housing Authority, construction has proceeded to develop a modern drinking water and wastewater system for the Hondah - McNary communities; and

WHEREAS, during the course of the construction the contractor has encountered unanticipated rock which has greatly increased the cost of the earth moving work for the installation of the sewer and wastewater system; and

WHEREAS, following the calculation of the additional costs, all the parties to the project have met and agreed upon a cost-sharing structure, based upon the original cost-sharing formula, to accommodate the additional cost necessary to bring this important project to completion; and

WHEREAS, as part of its obligation for the cost of the new system, the Tribe has been awarded additional funds in the amount of \$266,465.00 from U.S. RDA in grant form and \$325,680.00 from U.S. RDA in loan form; and

WHEREAS, the Tribal Council has been briefed on this issue and is requested to authorize the increase of the original loan from \$917,487.00 to the new amount of \$1,243,167.00 for its share of the completion of the project; and

WHEREAS, the Tribal Council concludes that this project is essential for the welfare of the Tribe, especially in the region of Hondah - McNary and its residents, and recognizes that the increased loan amount represents only a portion of the additional funding which has been made available by all parties to pay for the increased excavation and installation costs.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes an increase in the loan to the United States Department of Agriculture Rural Development Agency for the Hondah - McNary Phase 1 Wastewater Improvement Project from the original amount of \$917,487.00 to the new amount of \$1,243,167.00, at a rate not to exceed 4.75% all other terms and conditions from the original resolution 10-2002-270 and 06-2002-128 remaining the same provided that the Tribal Chairman, with the assistance of Tribal staff, as directed to negotiate for a lower interest rate, if possible.

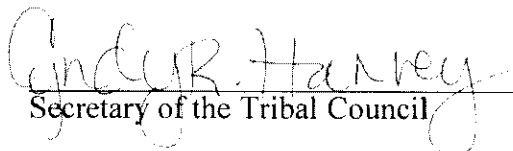
BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby guarantees repayment of the additional loan amount with the full faith and credit of the White Mountain Apache Tribe and hereby pledges the revenues generated by Phase 1 of the Hondah Regional Water System toward repayment of this loan.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the Tribal Chairman or in his absence the Vice-Chairman to complete all documents necessary to carry out the intent of this resolution.

The foregoing resolution was on January 29, 2003 duly adopted by a vote of nine 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), (h), (j), (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

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

Hon-Dah/McNary Phase 1 Wastewater Improvement Project

WHEREAS, the Tribal Council in Resolution 06-2002-128 approved the long-term financing with United States Department of Agriculture Rural Development Agency for the Hon-Dah/McNary Sewer and Water Project Phase 1; and

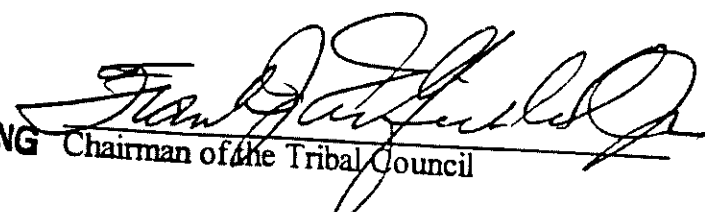
WHEREAS, the White Mountain Apache Tribal Council has been advised that the USDA Rural Development Agency has funding available in the total amount of \$1,667,987.00, consisting of a grant in the amount of \$750,500.00 and a forty (40) year loan at a 4.75% interest rate in the amount of \$917,487.00, which the White Mountain Apache Tribe wishes to obtain and utilize for the construction of Phase 1 of the Hon-Dah Regional Wastewater Improvement Project to serve the Hon-Dah/McNary communities; and

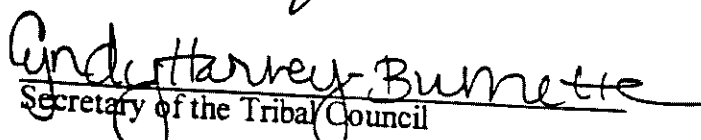
WHEREAS, the Tribal Council wishes to comply with the funding requirements for this grant/loan, one of which is to pledge certain security for the repayment of the loan portion, and another of which is to provide a statement from the Tribal government body evidencing the Tribe's intention to fully repay the loan and to guarantee its repayment with the full faith and credit of the White Mountain Apache Tribe; and

WHEREAS, it has been determined by the Tribal Council to pledge as partial security for the loan the revenues generated by Phase 1 of the Hon-Dah Regional Wastewater System and to provide the requested governing body statement.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby guarantees repayment of the Rural Development loan in a maximum principal amount of \$917,487.00, with the full faith and credit of the White Mountain Apache Tribe and as further security for the payment of the loan does hereby pledge the revenues generated by Phase 1 of the Hon-Dah Regional Water System toward repayment of this loan.

The foregoing resolution was on October 4, 2002 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 Article IV, Section 1 (a), (b), (h), (j), (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).


ACTING Chairman of the Tribal Council


Secretary of the Tribal Council

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

WHEREAS, by Resolution No. 02-2000-61, the Tribal Council authorized applications to be submitted to the U.S. Department of Agriculture, Rural Development Agency for financial assistance in constructing the Hon-Dah Water and Wastewater Systems; and

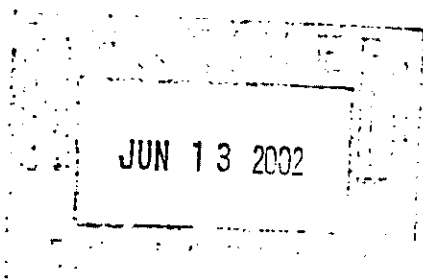
WHEREAS, the U.S. Department of Agriculture, Rural Development Agency, has provided a Letter of Conditions in response to the Tribe's application for financial assistance for the Hon-Dah Regional Wastewater System and has offered to provide the Tribe with a grant of \$750,500.00 and a loan of \$917,487.00 for financing Phase I of said project; and

WHEREAS, the U.S. Department of Agriculture, Rural Development Agency, has provided a Letter of Conditions in response to the Tribe's application for financial assistance for the Hon-Dah Regional Water Improvement Project and has offered to provide the Tribe with a grant of \$337,500.00 and a loan of \$412,500.00 for financing Phase I of said project; and

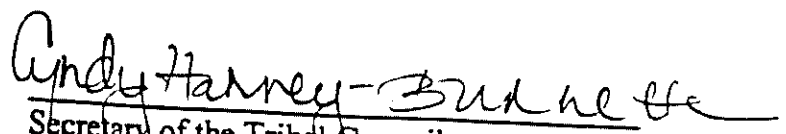
WHEREAS, additional funding for both projects may be available from U.S. Department of Agriculture, Rural Development Agency this year or next year for Phase 2 of each of the two projects.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the Tribal Chairman to execute and complete all documents and actions necessary for the Tribe to obtain the financing outlined above and also to apply for and obtain similar financing for Phase 2 of the Hon-Dah Regional Wastewater and Water Improvement Projects, if funding becomes available.

The foregoing resolution was on June 6, 2002 duly adopted by a vote of FIVE 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), (c), (h), (i), (j), (k), (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

December 18, 2002

Mr. Clay Van Deren
USDA - RD
51 West Vista, Suite 5
Holbrook, AZ 85941

Dear Mr. Van Deren:

This letter relates to our project for the Hon Dah Regional Wastewater Treatment Facility, Project No. EA 14-02.

During construction of the project, more rock has been encountered than was anticipated. Since this was discovered, all the rock that may be encountered has been uncovered and measured, with the results outlined hereafter in this letter.

Anytime an earthmoving project is undertaken where rock is present, there is risk of significant overrun. The rock is underground and not visible until the ground is opened up. In this instance, thirty-one test borings were scattered over the site to try to account for the rock. It turns out that at this location, the volcanic rock occurs in ridges and fingers and does not occur with uniformity predictable from the borings.

The cost of moving rock on this job is 8.6 times more expensive than earth moving, which is typically the case. With that multiplier, even though the unanticipated rock only amounts to about 15% of the total excavation, the cost of the change is significant.

It should also be pointed out that three sites were investigated for this project, which included all the rational locations that would serve the need for the project. Borings before the choice of sites was made showed that the two alternative sites had more rock to deal with than the site decided on. The site selected was the best of the three, both from the standpoint of the rock and from the standpoint of environmental and cultural issues.

If we had known about the rock before the project was bid, the rock quantity would have been larger and the total price would have been higher. We might have been able to decide not to proceed when the bids came in. But then we would have been left with all the needs of the project unmet. The point is, it is not likely the project could be built on this site for much less than the cost we are facing now, given the existence of the rock.

We face higher cost because the rock is there, not because it was discovered after the earthwork began.

The price bid for rock is \$43 per cubic yard. We believe this is a fair price for this type of malpais rock.

The bid quantity of rock was 1000 cubic yards, which represented about double the amount of rock anticipated from the borings to be encountered. As of now, 4358 cubic yards of rock have been excavated. The remaining rock that is within the earthwork prism has been uncovered and measured. Attached is a sketch of the work. This shows the location of this remaining rock in green and red.

The rock shown in red will be left in place and not excavated. Instead, the wetland will be narrowed to two trenches instead of four across this area, then completed as four trenches beyond it. The engineers say this reduction in wetland surface area will have very little impact on the capacity of the project. It is estimated that an additional construction cost of \$20,000 will be incurred in making this change.

The rock shown in green, will add an additional 15,750 cubic yards when excavated.

In summary, the rock for the project is as follow:

Rock excavated to date:	4,358 c.y.
Rock shown in green:	15,750 c.y.
Total rock:	20,108 c.y.
Less amount in bid schedule:	1,000 c.y.
Amount of rock overrun:	19,108 c.y.

A summary of the cost of this rock overrun is as follows:

Cost of additional rock: 19,108 c.y. @ \$43	= \$821,644.00
Cost of bypassing other rock:	= 20,000.00
Total additional construction	= \$841,644.00
TERO fee @ 1%	= 8,416.44
Bus. Lic. fee @ 3%	= 25,249.32
Project administration fee @ 2%	= 16,832.88
TOTAL COST OVERRUN	= \$892,142.64

We believe that continuing on this basis is the only way we can finish the project without impacting the design capacity of the project unduly. Because of the great need for the project, this would be preferable.

The Chairman has authorized me to submit this letter of request to RD to fund this cost overrun in the total amount of \$892,142.64. We request that the grant portion be as much as possible, up to 100% of the cost of the overrun, but not less than the 45% grant made for the balance of the project.

The contractor is fully occupied this week getting the liner in the first pond. At the end of this week, he will take a Christmas break until January 6, 2003.

The only alternative we see to completion on the basis outlined, is to reduce the design capacity of the project by reducing the area of wetlands and making one fermentation pit smaller. While doing so is possible, the redesign will take some time.

We hope to avoid a conflict with the contractor because of any delay on our part directing him what to do. For this reason, your prompt consideration of the request would be greatly appreciated. In addition, your suggestions would be appreciated as to what level of funding might be feasible if the requested level cannot be met.

Thank you for your attention to this request.

Sincerely,

John S. Bereman
Tribal Engineer

Xc: Dallas Massey. Sr.
Mike Stover