

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

**(Approving Agreement and Addendum for Lofer South Timber Sale)**

- WHEREAS,** pursuant to Article IV, Sections 1(b) and (i) of the Constitution of the White Mountain Apache Tribe, the Tribal Council has the authority to negotiate, make and perform contracts and agreements of every description, and to manage all economic affairs and enterprises of the Tribe including tribal lands, timber, sawmills and other activities; and
- WHEREAS,** the Superintendent of the Fort Apache Agency ("Agency"), acting on behalf of the U.S. Department of Interior, Bureau of Indian Affairs ("Bureau"), has requested that the Tribal Council approve the Bureau's proposed Agreement for the Lofer South Timber Sale (the "Agreement" or "Sale"), as attached and incorporated by this reference; and
- WHEREAS,** the Agreement proposed by the Bureau would authorize a multi-product sale of timber between the Tribe and the sawmill enterprise, the Fort Apache Timber Company ("FATCO"), that includes roundwood, and is a major departure by the Bureau from the past practices and policy for commercial timber harvesting; and
- WHEREAS,** FATCO does not have a market for roundwood at this time, although FATCO has been in negotiations with two companies possibly interested in purchasing roundwood within the next three years; and
- WHEREAS,** pursuant to the National Indian Forest Resource Management Act ("NIFRMA"), 25 U.S.C. §3101 *et seq.*, and accompanying regulations (25 CFR §163.1), the United States, as the Tribe's Trustee, acting through its principal agent, the U.S. Department of Interior, has a trust responsibility for Forest Land Management, which includes forestation, thinning, tree improvement activities, and the use of silvicultural treatments to restore or increase growth and yield to the full productive capacity of the forest; and
- WHEREAS,** the roundwood harvest proposed by the Bureau is a part of the thinning treatment of the forest and as such is a trust responsibility of the United States; and
- WHEREAS,** FATCO has requested of the Bureau that the roundwood harvest not occur until such time as FATCO determines that a profitable market for roundwood exists for FATCO; and
- WHEREAS,** the Bureau advises the Tribal Council that the Bureau would agree to a modification to the Tribe's P.L. 93-638 (25 U.S.C. §450 *et seq.*) Forest Development Thinning Contract with the Bureau in which the Bureau shall assume full financial responsibility for any roundwood harvesting under the proposed Agreement and the Bureau acknowledges that the modification be a condition for roundwood harvesting

given the absence of a market and considering the economic costs to the Tribe of harvesting roundwood at this time; and

**WHEREAS,** the Bureau further represents to the Tribal Council that the Sale is based upon sound silvicultural and economic principles as required by NIFRMA and that there will not be any negative, long-term biological, economic or environmental impacts on the Tribe's saw log supply within the Lofer Sale area; and

**WHEREAS,** the Bureau's proposed Agreement contains ten references to a "2005-2014 Forest Management Plan" or "FMP" within a section entitled, "Forest Officer's Report", implying that the Bureau's 2005-2014 FMP has been approved or not opposed by the Tribe; and

**WHEREAS,** pursuant to Resolution No. 03-2005-52, reaffirmed herein, the Tribe has not approved or disapproved the 2005-2014 Forest Management Plan, and accordingly by executing the Agreement or the Addendum to the Sale, the Tribe does not accept, approve or condone the FMP; and

**WHEREAS,** the Bureau further represents to the Tribal Council that the proposed reduction in the basal area of the Lofer South to approximately 40 square feet per acre ("sfpa") shall not affect the overall basal area average set for the entire forest within the exterior boundaries of the Fort Apache Indian Reservation under the prior 1991-2000 FMP of 60 sfpa for pine and over 80 sfpa for mixed conifer; and

**WHEREAS,** the Lofer South Timber Sale is identified in the Bureau's Annual Allowable Cut Schedule for 2005 as set for approval in September, 2005, leaving very little time for any harvest this year and in addition, the Bureau has also identified in the FMP Seven-Mile and Lone Pine timber sales that will not be ready for approval until mid-summer 2006 and into 2007; and

**WHEREAS,** according to FATCO's analysis, the Annual Allowable Cut as scheduled by the Bureau will not be available for harvest as projected, resulting in the following management issues:

1. In order for FATCO to receive its wood volume from the proposed AAC, FATCO would have to increase its own logging volume harvest schedules in the remaining Maverick IV and the Lofer South sales units because there are no other sales available after the third quarter of this year;
2. There exists a need for more than one logging operator in the Lofer Timber Sale and Maverick IV timber sales, creating increased truck traffic, which will present safety and logistical problems within these sales units for the next two years;

3. No other timber sales have been provided by the Bureau on a timely basis and therefore, it should be noted that projected timber volumes for 2005 and 2006 may be jeopardized by lack of planning and the potential of weather-related conditions that may result in a temporary shutdown of the Tribe's sawmill; and
4. Both Seven-Mile and Lone Pine contain a heavy mix of small diameter and roundwood material that will not provide an even flow of sawlogs to properly supply the sawmill on an economic basis; and

**WHEREAS,** the Agreement has been reviewed by the Tribal Forester, the management and Board of Directors of the Fort Apache Timber Company, and the Tribal Attorney who collectively recommend that the Agreement be executed with an Addendum to the Agreement for the Lofer South Sale (the "Addendum") in the form and content as attached and incorporated by this reference; and

**WHEREAS,** based on representations by the Bureau to the Tribe and the Tribe's own declaration, the Tribe's approval of the Sale and Addendum does not constitute either an undertaking by the Tribe of the trust responsibilities of the United States to the Tribe or a waiver thereof; and


**WHEREAS,** the Tribal Council finds and concludes that approval of the Lofer South Sale Agreement and the Addendum are in the best interests of the White Mountain Apache Tribe.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that:

1. The Agreement for the Lofer South Timber Sale, between FATCO and the White Mountain Apache Tribe proposed and requested by the U.S. Department of Interior, as attached and incorporated by this reference, is hereby approved, subject to execution of the Addendum by the Bureau of Indian Affairs, as attached and incorporated by this reference.
2. By agreeing to the Sale, the Tribe is not undertaking or waiving any of the United States' trust responsibilities for Indian Forest Land Management as provided in NIFRMA.
3. The Fort Apache Timber Company retains the right of first refusal to harvest and market roundwood material and shall act as the agent to identify and propose future markets or projects for approval by the Tribal Council.

4. A modification to the Tribe's P.L. 93-638 (25 U.S.C. §450 *et seq.*) Forest Development Thinning contract with the Bureau in which the Bureau shall assume full financial responsibility for any roundwood harvesting is hereby requested.
5. Resolution No. 03-2005-52 is hereby reaffirmed and the Tribal Council hereby declares that by agreeing to the Sale, the Tribe does not accept, approve or condone the 2005-2014 Forest Management Plan or waive any prior objections thereto.
6. The Bureau of Indian Affairs Regional Forester is hereby requested to: (i) immediately review the Bureau's Forestry Program at the Fort Apache Agency; (ii) determine whether the initial three years of the Bureau's proposed FMP provide a reasonable management regime to provide the necessary wood stock for the FATCO enterprise operation; (iii) determine whether it is necessary to provide additional manpower to complete the sales process in a timely manner; and (iv) accordingly report the foregoing to the Tribal Council at its next regularly scheduled meeting.
7. The Chairman, or in his absence the Vice-Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this resolution.

The foregoing resolution was on JULY 20, 2005 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), (b), (c), (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 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

ACTING   
Secretary of the Tribal Council

## ADDENDUM TO LOFER SOUTH TIMBER SALE AGREEMENT

This Addendum shall apply to and become part of the attached Lofer South Timber Sale dated \_\_\_\_\_ (the "Agreement") by and between the White Mountain Apache Tribe and the Fort Apache Timber Company as recommended and proposed by the U.S. Department of Interior. The Agreement is hereby amended by the addition of the following provisions thereto, which shall be deemed incorporated therein and made a part of the Agreement and supercedes any provision in the Agreement in conflict therewith:

1. Definition. Roundwood is defined as non-commercial timber material of 5 inches to 11.9 inches in diameter at outside bark and at breast height.
2. Lofer South Timber Sale. The parties acknowledge that the Lofer South Timber Sale is the first multi-product sale undertaken within the exterior boundaries of the Fort Apache Indian Reservation. The parties agree that only commercial trees within the prescription shall be for sale and harvested. The Bureau represents to the Tribe that the Sale is based upon sound silvicultural and economic principles as required under the National Indian Forest Resource Management Act ("NIFRMA"), 25 U.S.C. §3101 *et seq.*, and accompanying regulations (25 CFR 163), and that there will not be any adverse, long-term biological, economic or environmental impacts on the Tribe's saw log supply within the Lofer Sale area. By agreeing to the Sale, the parties agree that the Tribe is not undertaking any trust responsibilities of the United States, through its Agency, the U.S. Department of Interior for Indian Forest Land Management.
3. Optional Harvesting of Roundwood.
  - A. The parties agree that: (i) roundwood has a negative stumpage value; (ii) markets do not exist as of the Effective Date of this Agreement to permit roundwood to have a positive stumpage value; (iii) the Tribe would require a financial subsidy for any harvesting of roundwood; and (iv) removal or decking (storage) of roundwood is not feasible without a market.
  - B. The parties agree that the Tribe may elect not to harvest roundwood and that the harvesting of roundwood shall occur only upon: (i) a determination by Fort Apache Timber Company that a profitable market for roundwood exists; and (ii) written notice from the Tribe to the U.S. Department of Interior Bureau of Indian Affairs ("Bureau") to proceed with roundwood harvesting.
4. Conditions for Harvesting of Roundwood. In the event that the Tribe provides the Bureau with a written notice to proceed with a roundwood harvest, the Bureau shall subsidize the entire harvesting of roundwood on the Lofer South Timber Sale according to the following:
  - A. The Tribe shall propose a modification to the Tribe's P.L. 93-638 (25 U.S.C. §450 *et seq.*) Forestry Contract to the Bureau in which the Bureau shall assume full financial responsibility for roundwood harvesting.
  - B. In the event that the Secretary of Interior does not agree to a P.L. 93-638 contract modification for the purposes stated in this paragraph, the Agreement shall have no force and effect, and the timber sale shall be considered terminated.
  - C. Roundwood shall be weighed at a certified scale and delivered to a mutually

identified site or sites.

- D. Payment to the subcontractor(s) shall be on a per green ton basis in accordance with the terms and conditions of the P.L. 93-638 contract.
- E. The Bureau shall be responsible for the treatment of slash generated by the harvest of roundwood.
- F. FATCO shall evaluate its Plan of Operations with respect to multi-product sales, and the Tribe and the Bureau shall assist FATCO as may be required.
- G. All standard provisions found in Parts A and B, and any Supplemental Provisions thereto, along with Best Management Practices and federal law, shall be adhered to by the Bureau for the harvest and transportation of any roundwood and treatment of any slash.
- H. Subcontractors shall perform the harvesting work for roundwood, including, but not limited to, the following:
  - (1) Felling, bunching and slash
  - (2) Skidding (Stump to landing)
  - (3) Processing (Whole tree chipping)
  - (4) Transportation (Hauling from Sale site to point of sale)
  - (5) Timely re-seeding and treat the harvested areas with native grasses to achieve optimal growth results.
  - (6) Road opening and closure, including spurs
  - (7) Site closure, including water barring, skid trails, smoothing pits and final blading.

5. Paragraph B9.2.

A. The following two sentences are stricken in their entirety from paragraph B9.2 of the Agreement:

- (1) "FATCO shall burn slash in such a manner at such times at (sic) the Officer in Charge may direct"; and
- (2) "Whenever FATCO allows fire to run through slash, except in compliance with the instructions of the Officer in Charge, FATCO may be require to lop and scatter, or repile and reburn the slash."

B. FATCO agrees to be responsible for commercial slash disposal.

6. Forest Management Plan. The parties agree that all references to the "2005-2014 Forest Management Plan" or "FMP" within the Forest Officer's Report refer to a plan that the Tribe has not approved or disapproved pursuant to Resolution of the White Mountain

Apache Tribal Council No. 03-2005-52. By executing this Addendum or the Agreement, the Tribe does not accept, approve or support the FMP.

7. Basal Area. The Bureau further represents that the proposed reduction in the basal area of Lofer South to an average of approximately 40 square feet per acre ("SFPA") shall not affect the overall basal area average set for the entire forest within the exterior boundaries of the Fort Apache Indian Reservation under the prior 1991-2000 FMP of 60 SFPA for pine and over 80 SFPA for mixed conifer.
8. TPPR. Pursuant to Resolution Nos. 08-96-182 and 02-2003-25, the parties agree that the Sale is subject to the Tribal Plan and Project Review ("TPPR"), as filed by the Bureau on May 31, 2005.
9. Environmental Impact Statement and Biological Assessment. Pursuant to the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*, as amended), 40 CFR §1500 *et seq.* and the 25 CFR §163.35, the Secretary agrees to undertake an environmental impact statement and a biological assessment of the Sale and its impact on the Lofer South area, and undertake a Section 7 consultation with the U.S. Fish and Wildlife Service pursuant to the Endangered Species Act of 1973 (P.L. 93-205, 87 Stat. 884, 16 U.S.C. § 1536(a)(2); 50 CFR §§402.10, 402.12).
10. All other provisions of the Agreement not inconsistent with this Addendum shall be deemed in full force and effect.

**U.S. DEPARTMENT OF INTERIOR**

**WHITE MOUNTAIN APACHE TRIBE**

By: \_\_\_\_\_

Superintendent  
Fort Apache Agency  
Bureau of Indian Affairs

(Date)



Dallas Massey, Sr.  
Chairman

(Date)

**FORT APACHE TIMBER COMPANY**

By: \_\_\_\_\_

Reno Johnson, Sr.  
Chairman of the Board

(Date)