



Resolution No. 09-2005-258

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

(Approving Agreement of September 14, 2005, for Lofer South Timber Sale)

- WHEREAS**, pursuant to Article IV, Section 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**, by Resolution No. 07-2005-204, the Tribal Council did approve an agreement and addendum for the Lofer South Timber Sale, which was multi-product based by including round wood; 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 of September 14, 2005, for the Lofer South Timber Sale (the "Agreement" or "Sale"), as attached and incorporated by this reference, to replace the agreement previously proposed and approved by Resolution No. 07-2005-204; and
- WHEREAS**, while round wood has been removed by the Bureau from the proposed September 14th Agreement, the concerns expressed under Resolution No. 07-2005-204 remain and are incorporated herein; and
- WHEREAS**, the Bureau has prepared a unit synopsis of the proposed Sale, as attached and incorporated by this reference; 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 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

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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 51.5 square feet per acre 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 BA for pine and over 80 BA for mixed conifer; and

WHEREAS, the Agreement has been prepared by the Bureau without a unit specific residual value appraisal, instead the Sale is included in the formal annual reappraisal for Stumpage Valuation for the Fort Apache Timber Company ("FATCO"); and

WHEREAS, the 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

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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 round wood material that will not provide an even flow of saw logs to properly supply the sawmill on an economic basis; and

WHEREAS, based on representations by the Bureau to the Tribe and the Tribe's own declaration, the Tribe's approval of the Sale, the Agreement or Addendum does not constitute either an undertaking any of 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 Sale Agreement is 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. Resolution No. 07-2005-204 is hereby superseded.
2. The Agreement for the Lofer South Timber Sale of all species of timber, between FATCO and the White Mountain Apache Tribe proposed and requested by the U.S. Department of Interior on September 14, 2005, as attached and incorporated by this reference, is hereby conditionally approved, for an estimated net volume of 25.9 million board feet at a stumpage valuation rate to be negotiated by the Chairman of the Tribe and FATCO.
3. The Chairman, or in his absence the Vice-Chairman, is hereby authorized to negotiate a stumpage valuation rate with FATCO, and execute any and all documents necessary to effectuate the intent of this Resolution and to administer the Sale.

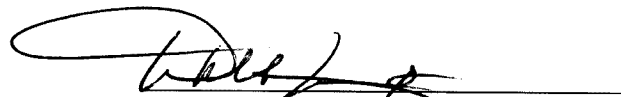
BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that approval of the Lofer South Timber Sale Agreement is conditional upon the following:

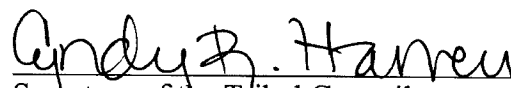
1. By agreeing to the Sale, the Tribe is not undertaking or waiving any of the United States' trust responsibilities for Indian Forest Land Management as provided in NIFRMA.
2. Resolution No. 03-2005-52 is hereby reaffirmed and the Tribal Council hereby declares that by agreeing to the Sale, the Tribe does not accept, approve or condone the 2005-2014 Forest Management Plan or waive any prior objections thereto.
3. The Bureau of Indian Affairs Regional Forester is hereby directed to:
 - a. immediately review the Bureau's Forestry Program at the Fort Apache Agency:

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- b. 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;
- c. determine whether it is necessary to provide additional manpower to complete the sales process in a timely manner;
- d. determine whether FATCO would have to increase its own logging volume harvest schedules in the remaining Maverick IV and the Lofer South Timber Sales units because there are no other sales available after the third quarter of this year;
- e. determine whether increased truck traffic in the Lofer South Timber Sale and Maverick IV Sale areas will present safety and logistical problems within these sales units for the next two years;
- f. determine whether projected timber volumes for 2005 and 2006 may be jeopardized by lack of planning by the Bureau and the potential of weather-related conditions that may result in a temporary shutdown of the Tribe's sawmill;
- g. determine whether there will be an even flow of sawlogs to properly supply the sawmill on an economic basis, given the fact that both Seven-Mile and Lone Pine Timber Sales areas contain a heavy mix of sawmill diameter and round wood material;
- h. accordingly, provide a written report on the foregoing to the Tribal Council at its next regularly scheduled meeting.

The foregoing resolution was on September 14, 2005, duly adopted by a vote of FOUR for and TWO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (b), (c), (f), (g), (h), (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


Secretary of the Tribal Council