



Resolution No. 05-2006-178

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

(Authorizing Short Term Exceedance Permit to the Fort Apache Timber Company to Dredge Silt and Debris from Manmade Diversion Channel and Pond; authorizing development of short term and long term plan to increase water flow to FATCO; and authorizing administrative paid leave to laid off FATCO employees)

WHEREAS, pursuant to Chapter 3, Section 3.1 (M) of the Environmental Code of the White Mountain Apache Tribe, the Environmental Protection Office ("EPO"), with consent from the Tribal Council, may authorize short-term activities that may cause temporary violations of the water quality standards if the White Mountain Apache Tribe determines such activities are necessary to accommodate legitimate uses of emergencies or to protect public health and welfare; and

WHEREAS, the Code provides further that a short term exceedance will only be allowed for activities that are not likely to cause permanent or long-term impairment of beneficial uses, but that such authorization shall not be granted for activities which could result in the adverse impact on any species designated as sensitive by the Tribe; and

WHEREAS, the Code provides further that the EPO shall specify the degree of variance, the time limit and restoration procedures where applicable; and

WHEREAS, Resolution No. 08-96-182 prescribes a Tribal Plan and Project Review ("TPPR") process to provide a mechanism for full tribal control over natural resources related project planning and management decisions and to ensure that decisions are integrated and coordinated fully within the expressed policies and directives of the Tribal Council; and

WHEREAS, the Fort Apache Timber Company ("FATCO") is not able to draw enough water from the North Fork of the White River essential for the use of its boilers and to maintain fire protection; and

WHEREAS, without the use of the boilers, FATCO has ceased operation, and laid off employees as a result, until water can once again be supplied to boilers; and

WHEREAS, the water for FATCO is diverted from the White River, enters a man-made diversion channel and empties into a man-made pond, from which water is pumped to the boilers; and

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- WHEREAS**, silt and debris has entered the man-made pond and the man-made diversion channel, restricting the flow of water to FATCO's water pumps; and
- WHEREAS**, following through with the complete TPR process would cause delay and would likely result in short-term closure of FATCO; and
- WHEREAS**, FATCO management has represented the impact on water quality from dredging as negligible or minimal; and
- WHEREAS**, EPO, relying on representations made by the management of FATCO, finds that short-term dredging of the manmade channel and pond will not likely cause permanent or long-term impairment of beneficial uses; and
- WHEREAS**, EPO is willing to issue a Short-Term Exceedance permit pursuant to the White Mountain Apache Tribe's Water Quality Protection Code, such that the permit will grant FATCO the authority to enter into the man-made diversion channel and man-made pond and excavate soil and debris from the waterway; and
- WHEREAS**, the Legal Department has provided an initial opinion that a Short-Term Exceedance permit may be issued, subject to the representations by FATCO that dredging will only provide a negligible, negative impact on water quality, but requires additional time to research the implications and legal requirements that may exist under the Clean Water Act and 40 Code of Federal Regulations; and
- WHEREAS**, the Tribal Council finds it in the best interest of the Tribe for EPO to issue a Short-Term Exceedance permit because the current reality of FATCO's shut down threatens future employment for tribal members, compromises critical revenues for the tribe, and is therefore a threat to the public welfare of the White Mountain Apache Tribe.

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

1. The Tribe's Environmental Protection Office is hereby authorized to issue a Short-Term Exceedance permit pursuant to the White Mountain Apache Tribe's Water Quality Protection Code, for a period of thirty days starting on May 31, 2006, such that the permit will grant FATCO the authority to enter into the man-made diversion channel and man-made pond and excavate soil and debris from the waterway utilizing tribal equipment, personnel and funds.
2. The Tribe's EPO shall monitor any short-term dredging by FATCO of the man-made channel and pond.

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

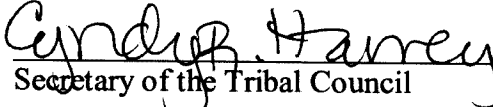
1. FATCO must place the silt and debris removed from the man-made channel and pond onto the land adjacent to the man-made channel and pond.
2. FATCO must not do any dredging of silt or debris at the diversion point, meaning the area where water from the White River is diverted into the man-made channel.
3. FATCO may only dredge the man-made channel and pond to the extent that is necessary to ensure continuous, adequate, and long-term flow to the water pumps that supply water for cooling the boilers.

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

1. The Tribal Plan and Project Review process is waived for the short-term dredging of FATCO's manmade channel and pond.
2. The Legal Department is hereby directed to research the implications and legal requirements that may exist under the Clean Water Act and 40 Code of Federal Regulations for a more complete dredging of the White River by FATCO.
3. The Tribe's Division of Natural Resources and the Department of Land Operations are directed to provide technical assistance to FATCO to develop a short term and long term plan necessary to maintain a stable supply of water to FATCO for its operations, and they shall report back to the Tribal Council as soon as possible with their recommendations.
4. The FATCO employees laid off due to the unexpected shut down of the sawmill shall receive administrative paid leave, not to exceed 40 hours per employee, effective May 30, 2006.

The foregoing resolution was on May 30, 2006, duly adopted by a vote of SEVEN for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (f), (i), (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