



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

**(Approving investigation of potential legislation to fund planning, engineering and design of  
White Mountain Apache Rural Water System)**

- WHEREAS,** the Tribal Council of the White Mountain Apache Tribe has the tribal constitutional duty to protect the priceless water use rights of the White Mountain Apache Tribe, which are presently vested property rights under reserved water rights doctrine also known as the Winters doctrine; and
- WHEREAS,** pursuant to its duty, the Tribal Council has historically, and aggressively asserted and protected the reserved water use rights of the White Mountain Apache Tribe to the surface and ground waters in the Salt River and Little Colorado River drainages and the Tribe's senior and paramount, aboriginal, otherwise reserved water use claims and rights to the base flow of the River, the source of which is the Trans-Basin Coconino and other aquifers; and
- WHEREAS,** the Tribal Council has had prepared under its direction, a comprehensive water use budget and Project Extension Report identifying the Tribe's water requirements for the next hundred years and beyond, and that said water budget and Project Extension Report were prepared to place the Tribe's trustee, the United States, and downstream water users in the Phoenix Valley on notice of the Water Use Claims of the White Mountain Apache Tribe, and assert the Tribe's reserved water rights as defined in the Tribe's water budget and Project Extension Report as a continuation of efforts by the Tribe to assert, protect, and to develop its water use rights from the construction downstream Salt River Project at the beginning of the 20<sup>th</sup> century, int 1950s during the Tribe's successful struggle to build Hawley Lake and other recreation Lakes, and its assertion of its water rights after 1979 in the Arizona state courts (by special appearance without submitting to that court's jurisdiction), Federal District Courts, Federal Appellate Courts, and in the Court of Federal Claims; and
- WHEREAS,** since formal appointment, at the request of the Tribal Council, of a Federal Negotiation Team by the Secretary of the Interior to assist the Tribe in protection and assertion of its reserved water use rights, the Tribal Council had a series of meetings with Federal Negotiation Team, the Salt River Project (SRP), and the Phoenix Valley Cities, as well as other water uses in the Little Colorado River and Gila River General Stream Adjudications for the purpose of reaching an equitable and dignified water rights agreement which would recognize the reserved water use rights of the Tribe as well as provide Federal funding to develop its water use rights; and
- WHEREAS,** the Tribal Council has presented to the Federal Negotiating Team and to the Salt River Project, the Tribe's proposed water use budget and Project Extension Report, and the Federal Negotiating Team and Salt River Project has acknowledged receipt thereof and has commented on the Tribe's proposed water budget and Project Extension Report; and

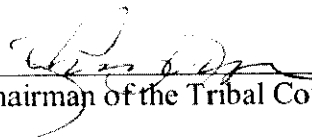
**Resolution No. 05-2008-109**


- WHEREAS,** the cornerstone of the Tribe's Project Extension Report is construction of the White Mountain Apache Tribe Rural Water System comprised of the Miner Flat Dam and associated domestic water supply components as set forth in the Project Extension Report dated February 2007 (Miner Flat Project); and
- WHEREAS,** the Federal Negotiation Team, Salt River Project, and the Phoenix Valley cities have acknowledged the need for the Tribe's proposed Rural Water System described herein and in the Project Extension Report; and
- WHEREAS,** actual construction of the proposed Miner Flat Project currently depends on Federal funding, Federal legislation, and execution of a Settlement Agreement that would quantify, confirm, and decree the reserved water use rights) White Mountain Apache Tribe which could take up to two more years to complete; and
- WHEREAS,** it would be highly beneficial to the Tribe if the planning, engineering, and designing of the Miner Flat Project would be funded and completed so that if and when a Settlement Agreement is finalized, all of the planning, engineering and design would already be in place so that construction could begin immediately; and
- WHEREAS,** the Tribal Council has reviewed this date, a draft of potential legislation for a Federal loan to the Tribe for the planning, engineering, and design phase of the Miner Flat Project; and
- WHEREAS,** the proposed Federal loan to the Tribe in the amount of \$9.8 million dollars would be without interest and would be entirely paid over a term of 10 years from funds made available to the Tribe from the Lower Colorado River Development Fund; and
- WHEREAS,** the Tribal Council is advised by the Tribe's water rights attorney that it will not be required for the Tribe to sign or commit to a Settlement Agreement condition for the introduction of the proposed Federal legislation to future planning, engineering, and easing of the Miner Flat Project, that there is no guarantee that the proposed legislation will actually be introduced, but that it is only being considered and explored as a possible method to fund the planning, engineering and design phase of the Project, and if it is successful, it may become a method to ultimately fund construction of the Miner Flat Project; and
- WHEREAS,** the Tribal Council concludes that it would be the best interest of the White Mountain Apache Tribe to investigate potential legislation for Federal funding for the planning, engineering and design phase of the Miner Flat Project in the general form and content attached to this resolution with the full understanding that doing so does not commit the Tribe to any particular settlement quantification of its water rights, but that the Tribe is nevertheless committed to continuing its ongoing and good-faith discussions with downstream water users for an honorable quantification and determination of its reserved water rights.

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**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the pursuit of potential Federal legislation in the general form and content attached hereto for funding the planning, engineering, and design phase of the Tribe's proposed Miner Flat Project with the understanding that pursuit of this potential funding legislation is without any condition in regards to the quantification and determination of the reserved water use rights of the White Mountain Apache Tribe.

The foregoing resolution was on May 16, 2008, duly adopted by a vote of SEVEN for, ZERO against, and ONE abstention by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (b), (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).

  
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Chairman of the Tribal Council

  
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Secretary of the Tribal Council