



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

**(Approving reallocation of BIA water rights grants funds to employ ENTRIX for restitution assessment for Black River trespass claims)**


- WHEREAS,** the Tribal Council of the White Mountain Apache Tribe has received an offer of settlement from Freeport-McMoRan Copper & Gold Inc., ("FCX"), formerly known as Phelps Dodge, to settle any and all claims that the White Mountain Apache Tribe may have against it for utilizing water from the Black River, the riverbed, bank, and lands of the WMAT for a diversion dam constructed by Phelps Dodge which allowed Phelps Dodge to back up, pump, and transport water from the Black River for its mining operations in Morenci; and
- WHEREAS,** the initial offer of settlement FCX was dated August 22, 2008 and special counsel for the Tribe, Robert Brauchli, requested further clarification from FCX of its legal defenses to any claims by the Tribe; and thereafter, a portion of the legal research conducted by FCX in defense of its use of water from the Black River and land of the White Mountain Apache Tribe was received on or about October 8, 2008; and
- WHEREAS,** special counsel has conducted further legal research and analysis of the Tribe's claim against FCX, as well as against the Tribe's trustee, the United States, for allowing the alleged trespass, and advises the Tribal Council of the need for a qualified expert witness economist to conduct an analysis of just compensation, net benefit, and highest and best use of the land and water at issue in the trespass claims; and
- WHEREAS,** special counsel recommends to the Tribal Council that the Tribe's water rights economics expert, ENTRIX, Inc., be retained by the Tribe pursuant to a professional services agreement to conduct the economic analysis to support a counteroffer by the Tribe to be presented to FCX; and
- WHEREAS,** the Tribal Council is advised by the Tribal Hydrologist, Cheryl Pailzote, and special counsel, Robert Brauchli, that there are existing BIA water rights grant funds that may be reallocated to pay ENTRIX the estimated \$15,000 for its economic analysis of the Black River trespass claim which special counsel has requested ENTRIX to complete within 30 days after the Tribal Council grants approval of a professional service agreement for the analysis; and
- WHEREAS,** the Tribal Council concludes that it would be in the best interests of the White Mountain Apache Tribe to employ ENTRIX, Inc., to complete an economic analysis of just compensation, net benefit, and the highest and best use of the water and land at the FCX Black River diversion to determine an appropriate settlement counteroffer to present to FCX, and to prepare a similar damage and restitution claim against the United States.

**Resolution No. 01-2009-14**

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the reallocation of \$15,000 of BIA water rights grant funds and a professional service agreement with ENTRIX, Inc., for that amount, to perform the economic analysis described in this resolution

The foregoing resolution was on January 14, 2009, duly adopted by a vote of EIGHT 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), (b), (f), (h), (i), (k) where he is foreclosed as they must be closed land here (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