



# WHITE MOUNTAIN APACHE TRIBE

*A Sovereign Nation Exercising Self-Governance  
Over the Fort Apache Indian Reservation*

## **TRIBAL RESOLUTION 05-2012-25**

### **( Recognizing Tribal Chairman's Authority to Make Temporary Emergency Appointments, Responsibly Manage Key Personnel and Conduct Day-to-Day Administrative Duties on Behalf of the Tribe )**

**WHEREAS,** on this day, the Tribal Council ("Council") of the White Mountain Apache Tribe ("Tribe") is determined to resolve the question over so-called "Executive Authority" that has plagued the Tribal Council ("Council") for decades and has led to bitter disputes over authority between various majority-led Councils and the Office of the Tribal Chairman ("Chairman"); and

**WHEREAS,** despite never being mentioned in the Tribal Constitution ("Constitution") or Ordinances, the phrase "Executive Authority" has become a source of much consternation among Tribal representatives. The Honorable Judge Vicente addressed the phrase in Holden v. Massey in an effort to resolve a controversy arising under the Tribe's *former* Personnel Policies and Procedures. Although the judge addressed the matter delicately, the mere mention of "Executive Authority," coupled with a legal opinion issued by a former Tribal Attorney that likened the Tribal Council to a Board of Directors, has led to confusion over the Tribe's Government framework as established under the Constitution adopted by the Tribe; and

**WHEREAS,** the phrase "Executive Authority" has become a nuisance to Tribal members and employees alike as the term is defined and redefined every time a majority shift in power occurs within the Tribal Council, without recognizing the fact that the phrase was eliminated from the Tribe's Personnel Policies in 2005. The instability that results from such power shifts has created a business environment that discourages talented and qualified individuals from applying for managerial positions; and

**WHEREAS,** the Tribe has also become subject to unnecessary political firings when power shifts occur within the Council. This form of government administration has led to a highly polarized and divided government and has encouraged political animosity borne out through political retaliation, rule by intimidation and fear, acts resembling extortion and bribery have become common place, and nepotism has become the rule rather than the rare exception. As a result of the atmosphere that such instability has fostered, the government has become highly susceptible to mob rule, political tampering, and subtle corruption and unethical behavior that relies on the failed ideology, "you are either with us or against us"; and

**WHEREAS,** historically, the Tribal majority council leader has been afforded great latitude in defining the Chairman's role, otherwise inaccurately referred to as "Executive Authority." In instances where the Chairman has secured majority Council support, a broad reading of the Chairman's Constitutional authority has been employed which effectively grants the Chairman unfettered discretion in carrying out the duties of his office, while majority led Councils adverse to the Chairman's policy decisions have sought to cripple and undermine the Chairman's role on behalf of the Tribe; and

**WHEREAS,** to address this problem the Tribal Council desires to better define powers that are typically required and used by the Chairman in conducting daily administrative duties on behalf of Tribe, while reserving for the Tribal Council such powers that it wishes to retain; and

**WHEREAS,** the Tribal Council recognizes that the phrase was manufactured by former attorneys and it has become synonymous with weakening or strengthening the Chairman's office. The Council also acknowledges that the phrase has done more harm than good to our Tribe's Business operations, more so than any other policy issue that the Tribe has had to resolve in recent years; and

**WHEREAS,** the Tribal Council finds it in the best interest of the Tribe to recognize the Chairman's authority to responsibly manage key personnel, such as Directors, Supervisors, and Managers that oversee Tribal Departments and Agencies of the Tribe, and to conduct the day-to-day operations of the Tribe subject to any Constitutional constraints.

**WHEREAS,** the Tribal Council further finds it in the best interest of the Tribe to officially recognize the Chairman's authority to include the signing of all official documents required to conduct the day to day administrative functions of the Tribe, to sign contracts valued under \$100,000.00 and all grants that do not require matching or in-kind funds on behalf of the Tribe. The Chairman should use his discretion in managing key personnel and key political appointments, and should make temporary emergency appointments of "Acting" Directors or Supervisors in the event that a vacancy exists and the Tribal Council has not filled. The Council reserves the right to replace the emergency appointment with a permanent employee as subject to Tribal Law and Policies; and

**WHEREAS,** the Tribal Council further finds it in the best interest of the Tribe to reserve its right to hire CEOs, Directors, and Managers of the Tribe's Enterprises, including but not limited to the Hon-Dah Casino, Sunrise Ski Resort, and FATCO.

**WHEREAS,** the Tribal Council further recognizes the pitfalls that arise when Tribal Council and Chairpersons are allowed to interfere with the daily business operations of the Tribe and should resolve that from this day forward, the Council and Chairman agree to maintain a hands-off policy, without exception, over administrative staff below the Director, Manager, and Supervisory levels. The Tribal Council is fully confident that the Personnel Director and Tribal Directors, Managers, and Supervisors can handle internal disputes, grievances and impose disciplinary action where necessary.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby delegates and recognizes the Chairman's authority to make temporary emergency appointments in the event of vacancies, manage key personnel, including Directors, Supervisors, and Managers of Tribal Departments and Agencies, and the Chairman shall continue to conduct all day-to-day operations of the Tribe to ensure that the Tribe runs smoothly and effectively.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby reserves the right to hire and fire CEOs, Directors, and Managers of the Tribe's Enterprises, including but not limited to the Hon-Dah Casino, Sunrise Ski Resort, and FATCO.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the Chairman, could at his discretion, impose disciplinary action over Tribal Directors who violate the Personnel Policies or are involved in misconduct of any kind and that the Tribal Council may review the matter at a regularly scheduled Council meeting for a final determination on the matter.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that the Personnel Director in conjunction with Directors, Managers, and Supervisors, have the sole authority and discretion in managing their staff and that the Tribal Council and Chairman shall no longer allow petitions from government employees below the level of Director, Manager, or Supervisor to address their employment disputes, unless they arise pursuant to the Tribe's Personnel Policies. If a manager fails to perform his or her duties to the satisfaction of the Tribal Council, they shall solely be held accountable for such failures and in the event of termination, the Personnel Department shall advertise the vacant position so that the Tribe is able to hire the most qualified candidate for the job.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby rescinds any prior language in Resolutions attempting to address the issue of "Executive Authority" or that defines "Key Personnel" or any other subject matter that directly contradicts the intent of the Tribal Council in passing this Resolution.

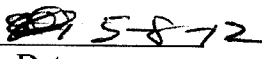
**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall supersede and govern over the conflicting subject matter.


**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances or Federal Laws, this Resolution shall be declared null and void and of have no legal effect. This Resolution shall not be subject to Judicial Interpretation, only the Tribal Attorney, with the assistance of the Tribal Council Secretary, may opine on Tribal Council intent and the meaning of the language as used herein.

**BE IT FINALLY RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the Chairman, or in his absence, the Acting Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution. In the event that the Chairman fails to delegate signatory authority to an Acting Chairman, the Vice-Chairman may sign provided that the Tribal Secretary and a Tribal Attorney attest to the veracity of the subject matter of this Resolution.

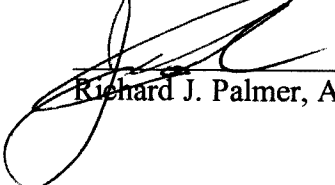
The foregoing resolution was on MAY 4, 2012 duly adopted by a vote of FIVE for and TWO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (b),(f), (i), (k), (s), (t) and (u) of the Tribal Constitution, ratified by the 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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Ronnie Lups, Chairman

  
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Date

  
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Mariddie J. Craig, Secretary

05-08-2012  
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Date

  
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Richard J. Palmer, Attorney

5/8/12  
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Date