



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Approving the Posting of Ordinance No. 280, Adding Chapter Eleven to the Government Code of the White Mountain Apache Tribe)

WHEREAS, pursuant to Article IV, Section 1(q) of the Tribal Constitution, the Tribal Council may enact ordinances that concern the welfare of the Tribe, to manage all economic affairs and enterprises of the Tribe, and to regulate subordinate organizations for economic and other purposes; and

WHEREAS, the Attorney General and Tribal Treasurer have this day proposed a revision to the Government Code by adding Chapter Eleven, Permanent Carbon Credit Trust Fund, as set forth in Ordinance No. 280 attached hereto and incorporated herein; and

WHEREAS, pursuant to Article XV of the Constitution of the White Mountain Apache Tribe, the proposed addition shall be posted in each district for at least ten (10) days before final action by the Council; and

WHEREAS, the Council has reviewed Ordinance No. 280 carefully, and considered the recommendations and the implications thereof in great detail and finds the posting of Ordinance No. 280 to be in the best interest of the Tribe.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that proposed Ordinance No. 280 attached hereto, which adds Chapter Eleven, Permanent Carbon Credit Trust Fund to the Government Code, is hereby recommended for posting by the Tribal Council.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe, as follows:

1. The Tribal Council Secretary is hereby authorized and directed to post this resolution and Ordinance No. 280, in each district for at least ten (10) days before final action by the Council. In addition, notices of the proposed ordinance shall be sent in the form of a press release to KNNB-FM and the Apache Scout.
2. Any and all comments concerning Ordinance No. 280 proposed herein may be sent to the attention of the Tribal Council Secretary, White Mountain Apache Tribe, P. O. Box 700, Whiteriver, AZ 85941.
3. Upon completion of the posting period, the Tribal Council Secretary is further directed to submit proof of posting to the Tribal Council as well as the Attorney General's Office

Resolution No. 11-2015-220

Ordinance No.280

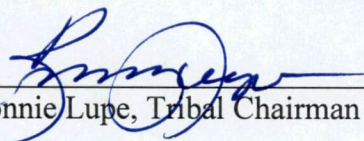
and to report any public comments to the Tribal Council, and schedule a meeting thereof for final action.

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 any material facts concerning the issues presented are later found to be false, this Resolution shall be deemed null and void and have no legal effect.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Chairman, or in his absence, the Vice-Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

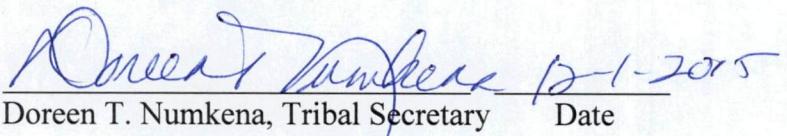
The foregoing resolution was on **NOVEMBER 4, 2015** duly adopted by a vote of **TEN** for, **ZERO** against, and **ZERO** abstentions by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it under the enumerated powers listed in Article IV, Section 1 of the WMAT Constitution, so ratified on September 30, 1993, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).



Ronnie Lupe, Tribal Chairman

11/23/15

Date



Doreen T. Numkena, Tribal Secretary

12-1-2015

Date

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

BE IT ENACTED BY THE COUNCIL OF THE WHITE MOUNTAIN APACHE TRIBE Ordinance No. 280, amending the White Mountain Apache Government Code by adding Chapter Eleven as follows:

**CHAPTER ELEVEN
PERMANENT CARBON CREDIT TRUST FUND**

[NOTE: Chapter Eleven was derived from Ordinance No. 280, enacted December ____, 2015.]

SECTION 11.1 PURPOSE

The White Mountain Apache Tribal Council wishes to establish a permanent and dependable source of revenue into the future and to enable the White Mountain Apache Tribe to become less dependent on outside sources for income, and to protect the Tribe against potential adverse circumstances which may result if those California Carbon Credits Program carbon credits are invalidated, reversed or otherwise put at risk any time within the next one hundred (100) years. Accordingly, a permanent carbon credit trust fund is established as protection and security for the Tribe and its future generations.

SECTION 11.2 AUTHORITY TO ESTABLISH PERMANENT CARBON CREDIT TRUST FUND

A. Article V, Section 1 of the Amended Constitution and Bylaws of the White Mountain Apache Tribe provides that, in addition to all powers vested in the White Mountain Apache Tribal Council by existing law, the White Mountain Apache Tribal Council shall exercise certain enumerated powers conferred by Section 16 of the Act of June 18, 1934 (48 Stat. 984) as amended, which shall not be construed, pursuant to Article V, Section 1(u) of the Constitution, to limit the powers of the White Mountain Apache Tribe.

B. Article V, Section 1(a), (b), (h), (i) and (k) collectively provide in pertinent part that the Tribal Council shall represent the Tribe and act in all matters that concern the welfare of the Tribe, negotiate, make and perform contracts and agreements of every description, regulate the uses and disposition of Tribal property, manage all economic affairs and enterprises of the Tribe, appropriate Tribal funds for Tribal purposes and to expend such funds in accordance with an annual budget approved by the Secretary of the Interior.

SECTION 11.3 **DEFINITIONS**

A. **“California Carbon Credits Program”** means the California Global Warming Solutions Act of 2006 and amendments thereto as well as regulations of the California Air Resources Board and its successor agencies relating to carbon offset credits, and compliance offset protocols for U.S. forest projects, or successor guidance and requirements.

B. **“Carbon Credit Funds”** means those monies received by the Tribe pursuant to the Transaction Documents, less all transaction-related costs, that are deposited into the White Mountain Apache Tribe Permanent Carbon Credit Trust Fund. The Tribal Treasurer shall certify the initial amount of Carbon Credit Funds deposited within the Carbon Credits Permanent Trust Fund within ninety (90) days of initial deposit.

C. **“Compliance Account Income”** shall consist of all interest and earnings generated by the Compliance Account Principal.

D. **“Compliance Account Principal”** shall consist of all contributions made to the Compliance Account pursuant to this Chapter, increases to the Compliance Account from capitalized earnings, interest and fees, plus any additional contributions to the Compliance Account from any other source.

E. **“Fiscal Year”** means the fiscal year of the Tribe beginning on October 1 and ending on September 30 of the following year.

F. **“Fund”** means the White Mountain Apache Tribe Permanent Carbon Credit Trust Fund established by this Ordinance. The Fund shall consist of a Compliance Account and a Primary Account.

G. **“Primary Account Principal”** shall consist of all contributions made to the Primary Account pursuant to this Chapter, interest and fees, plus any additional contributions to the Primary Account from any other source.

H. **“Primary Account Income”** shall consist of all interest and earnings generated by the Primary Account Principal.

I. **“Project”** means all activities related to the Tribe’s participation in the California Carbon Credits Program and compliance with the Transaction Documents.

J. **“Transaction Documents”** means those documents entered into by the Tribe which evidence the sale of California Air Resource Board Offset Credits (“Credits”) issued pursuant to the California Carbon Credits Program. The Tribal Attorney General shall certify the name, date, and scope of Transaction Documents within ninety (90) days of a sale of related Credits.

SECTION 11.4 ESTABLISHMENT

There is established the "White Mountain Apache Tribe Permanent Carbon Credit Trust Fund" (hereinafter the "Fund"). The Fund shall consist of a Compliance Account and a Primary Account. Carbon Credit Funds shall be deposited into the Fund. Additional monies may be added to the Fund at any time. Any money deposited into the Fund, plus Compliance Account Income and Primary Account Income, shall thereafter be used only as provided in this Chapter.

SECTION 11.5 INITIAL AND SUBSEQUENT DEPOSIT OF FUNDS BY TRIBAL TREASURER

- A. The Tribal Treasurer shall deposit all Carbon Credit Funds into the Fund.
- B. The Treasurer of the White Mountain Apache Tribe shall transfer an initial amount of eleven million dollars (\$11,000,000.00) into the Compliance Account.
- C. The individual depositories designated to hold the Carbon Credit Funds shall be subject to the approval of the Tribal Treasurer and the Tribal Council.
- D. It is the policy of the Tribe to maintain Fund balances in accordance with sound business practices.

SECTION 11.6 INVESTMENT OF THE FUND

The Tribal Council shall invest all amounts deposited in the Fund as soon as is reasonably practicable in accordance with the following limitations:

A. **Investment Policy.** The Tribal Council, with input from the Tribal Treasurer, shall adopt a comprehensive Investment Policy for investment of the Carbon Credit Funds within six (6) months of the initial deposit of Carbon Credit Funds into the Fund. The Investment Policy may be amended from time to time by the Tribal Council upon advice from the Tribal Treasurer. The Carbon Credit Funds must be invested in accordance with the Investment Policy. Prior to the adoption of an Investment Policy the Tribal Treasurer shall determine how to invest the Carbon Credit Funds.

B. **Advice Regarding Investments.** Prior to investment, the Tribal Treasurer may consult with an independent investment advisor to ascertain the risk profile of the Fund in order to set aside appropriate amounts of funds to cover any reasonably foreseeable risk of invalidation or reversal of Credits, violation of the California Carbon Credits Program, or breach of the Transaction Documents. The Tribal Treasurer shall consult with the Tribal Forestry Department and the Tribal Attorney General to understand the risk of invalidation or reversal of Credits. Annually, the Tribal Treasurer, Tribal Forestry Department, and Tribal Attorney General shall jointly conduct an annual risk analysis and, if appropriate, recommend amendments to the

Investment Policy to account for any increased or decreased risks and to ensure protection of Compliance Account Principal and Primary Account Principal.

C. **Long Term Goals.** The purpose of the Primary Account is to provide a stable long term stream of revenue to the Tribe. The purpose of the Compliance Account is to limit the financial liability of the Tribe in the event the Tribe is unable to comply with the requirements of the California Carbon Credits Program or the Transaction Documents. The Fund shall be invested in accordance with the degree of care exercised by reasonable and prudent managers of large investments seeking growth of principal in excess of inflation with a commensurate degree of safety. Management of the investments may be delegated by written contract to other parties recommended by the Tribal Treasurer and approved by a majority vote of the Tribal Council. The Tribal Treasurer may review the budgeting, appropriation, investment, and management of all funds and make recommendations to the Tribal Council.

SECTION 11.7 EXPENDITURE OF FUND PRINCIPAL

Compliance Account Principal and Primary Account Principal shall not be expended except as provided in this Ordinance. All amounts within the Fund shall be transferred to the general fund of the Tribe at the earlier of the expiration of the existence of California Carbon Credits Program or one hundred (100) years from the enactment date of this Ordinance.

SECTION 11.8 PERMITTED EXPENDITURES

No Compliance Account or Primary Account Principal or Income shall be expended except as set forth herein.

A. **Compliance Account.** Permitted expenditures from the Compliance Account shall include:

1. **Compliance and Risk Mitigation Costs.** Compliance Account Income and Compliance Account Principal may be expended on all costs of compliance with the Project, inclusive of professional and legal fees and costs for monitoring, reporting and verification of the Project. The Tribe shall endeavor to set aside sufficient funds to mitigate the risk of invalidation or reversal of Credits, violation of the California Carbon Credits Program, or breach of the Transaction Documents. Compliance and risk mitigation costs shall be determined, in consultation with the Tribal Treasurer, by either the Tribal Attorney General or the Tribal Forestry Department.

2. **Dispute Costs.** Compliance Account Income and Compliance Account Principal may be expended on all costs of litigation or other legal disputes related to the Project, as approved by the Tribal Treasurer and a two-thirds (2/3) vote of all members of the Tribal Council.

3. **Imminent Default.** In the event of an imminent default of the Transaction Documents or discontinuance of the Project, the Compliance Account Income and Compliance Account Principal may be used, in that order, to satisfy the terms of the Transaction Documents or bring the Tribe into compliance with the Project, as approved by the Tribal Treasurer and a two-thirds (2/3) vote of all members of the Tribal Council.

B. **Primary Account.** Permitted expenditures from the Primary Account shall include:

1. **Permitted Compliance Account Expenditures.** Primary Account Income and Primary Account Principal may be used for all expenses permitted under Section 11.8(A) of this Chapter. Such expenditures from the Primary Account must comply with the same voting requirements applicable to expenditures from the Compliance Account.

2. **Excess Interest.** At the end of each Fiscal Year, the Tribe may receive a distribution in an amount no greater than the extent to which the Primary Account Income generated during that Fiscal Year exceeds two percent (2%) of the Primary Account Principal. This distribution must be approved by the Tribal Treasurer and a two-thirds (2/3) vote of all members of the Tribal Council. For example, if the Primary Account Principal earns six percent (6%) in Primary Account Income over the previous Fiscal Year, then the Tribal Treasurer and Tribal Council may approve the distribution from the Primary Account of an amount no greater than four percent (4%) in Primary Account Income to the Tribe and the remaining two percent (2%).

3. **Debt Obligations.** Primary Account Income earned after January 1, 2016 may be pledged, assigned, or otherwise used as security or collateral, in whole or in part, for credit or debt obligations extended to the Tribe as may be required from time to time. Any credit or debt accommodation seeking to utilize such Primary Account Interest shall require the recommendation of the Tribe's Treasurer and a 2/3 majority vote of the Tribal Council.

4. **Fund Expenses.** All expenses directly associated with the administration and management of the Fund shall be paid from the Primary Account, as approved by the Tribal Treasurer. Such expenses include investment advisor fees, investment management fees, brokerage commissions, custodial fees and expenses, other transactions expenses, accounting, professional and legal fees, audit costs and other related expenses.

5. **Transaction Costs.** All costs and fees, including accounting, professional and legal fees, contemplated within or related to the Transaction Documents, as approved by the Tribal Treasurer and a two-thirds (2/3) vote of all members of the Tribal Council.

6. **WMATCO, LLC Reserve.** Fund two million dollars (\$2,000,000) for obligations of the Tribe related to the operations of WMATCO, LLC.

7. **Medical Bills.** Within twelve (12) months of the initial deposit of monies in to the Fund, all outstanding medical bills (as of such date) of Tribal employees whose bills have not been paid pursuant to the Tribe's 638 contract with the federal government.

8. **Master Plan.** Within twelve (12) months of the initial deposit of monies in to the Fund, an amount sufficient to fund a master plan in an amount determined by the Tribal Council.

9. **New projects.** In the event of subsequent deposit of monies from future Carbon Credit Funds into the Fund, the Tribe may designate new permitted expenditures, as approved by the Tribal Treasurer and a two-thirds (2/3) vote of all members of the Tribal Council, provided that amount spent on such new projects shall not exceed the amount of future Carbon Credit Funds actually deposited into the Fund.

SECTION 11.9 SITUS OF THE FUND

The construction and validity of the Fund established herein shall be governed by the laws of the White Mountain Apache Tribe and such federal laws as may be applicable.

SECTION 11.10 AMENDMENTS AND REPEAL

This Ordinance shall not be amended or repealed except by referendum pursuant to Article VIII of the Amended Constitution and Bylaws of the White Mountain Apache Tribe.

SECTION 11.11 SAVINGS CLAUSE

In the event any provision of this Ordinance is determined to be unlawful or invalid for any reason, the remaining provisions shall continue to be valid and in full force and effect.