



WHITE MOUNTAIN APACHE TRIBE
A Sovereign Tribal Nation

(Approving Transfer of an Additional \$2 Million of Carbon Credit Funds into a Separate Rural Water System Account, Separating Federal from Tribal Funds; Assigning Staffing and Line authority in Grants & Contracts Department for Administration of Accounts for Completion of Viability Assessment, EIS, and Other Requirements to Obtain a Record of Decision for the Rural Water System Project)

WHEREAS, The Constitution of the White Mountain Apache Tribe (“Tribe”) of the Fort Apache Indian Reservation (“Constitution”) provides, at Article IV, Section 1(f) that the Tribal Council (“Council”) shall exercise the power “To protect and preserve the...water rights of the Tribe...”; and

WHEREAS, The Tribe continues to work cooperatively with the Bureau of Reclamation (“Reclamation”) to:

- (1) Carry out the planning, engineering, design and NEPA requirements for the "Miner Flat Project" as defined in the Rural Water System Loan Authorization Act ("WMAT Loan Authorization Act") (Pub. L. 110-390, 122 Stat. 4191);
- (2) Implement the White Mountain Apache Tribe Water Rights Quantification Act (“Act”) of 2010, (Pub. L. 111-291, Title III, 124 Stat. 3073); and
- (3) Support a Record of Decision (“ROD”) by the Secretary of the Interior (“Secretary”) for construction of the Rural Water System Project (“RWS Project”), which includes the Miner Flat Dam (“MFD”), an expanded treatment plant, and a 55-mile pipeline from the MFD to Cibecue and communities in-between; and

WHEREAS, The final component required before the Environmental Impact Statement (“EIS”) can proceed, is for the MFD design to progress to a 30% design level, both of which (EIS and 30% design) must occur before the Secretary will issue a ROD; and

WHEREAS, While the expanded treatment plant and the pipeline have both reached the required 30% design completion, the MFD design has not. This is the final component necessary before proceeding with the Environmental Impact Statement (“EIS”), which must occur before the Secretary will issue the ROD; and

WHEREAS, The Act provides that it is repealed if the Secretary is unable to publish a Statement of Findings for the ROD by April 30, 2023. Therefore, time is of the essence in completion of the 30% MFD design and the EIS; and

WHEREAS, By Resolution No. 04-2019-68 the Council authorized Brando Pusher, P.E., the former RWS Project Manager, the Tribe’s Attorney General, and their respective legal and technical consultants, to negotiate a contract with the engineering firm of HDR Inc., to become the Engineer of Record (“EOR”), to complete the 30% design for the MFD in

order to obtain a ROD from the Secretary of the Interior, achieve the enforceability of the Act, and to enable construction of the RWS Project; and said contract has been signed; and

WHEREAS, As described in Resolution No. 04-2019-68, additional costs have been incurred to investigate the MFD site, which have exhausted WMAT Loan Authorization Act funds; and

WHEREAS, The Tribe has contributed and set aside substantial Tribal funds to date, and must continue to do so to obtain the ROD before the Enforceability Date deadline of the Act; and

WHEREAS, The Tribe's Water Rights Team for the RWS Project, has prepared and presented to the Council, this day, a revised Scope of Work, Schedule, and Budget for HDR Inc., and other consultants and contractors, which increases the cost needed to complete the required Viability Assessment component by approximately \$2 million because of additional drilling and testing agreed upon by Reclamation, the Tribe's Water Rights Team, the Consulting Review Board ("CRB"), and HDR; and

WHEREAS, Towards the goal of achieving 30% design, the Tribe previously allocated \$3 million pursuant to Resolution 02-2019-33 and \$2 million pursuant to Resolution 08-2019-162. At this time, an additional \$2.0 million must be set aside to complete the necessary "Viability Assessment" for drilling and testing results analysis, to update the seepage model to match drilling and testing results, for unknowns related to Reclamation's review of the foregoing, and for transition to proceed with the 30% design; and

WHEREAS, Council understands that an unknown amount of additional funds will be required to complete 30% design of MFD in amounts now unknown until the Viability Assessment is completed and agreement with Reclamation on finalizing 30% design has been reached; and

WHEREAS, Negotiations with Reclamation for a new 638 Self-Determination Cooperative Agreement to complete the Viability Assessment, 30% design for the MFD, and the EIS to obtain a Record of Decision (ROD) have disclosed the need for separate bank accounts for Tribal and Reclamation funds so that accounting for Tribal funds expended to complete the MFD 30% design and other pre-ROD-related tasks can be clearly identified as "allowable" using federal financial management and accounting procedures in the same manner as Reclamation funds. After the ROD is published and congressionally authorized construction funds in the Act are available, the Tribe will request reimbursement for the following categories of Tribal funding (totaling \$7 million as authorized by this resolution) that were spent in furtherance of the MFD 30% design and EIS for the WMAT RWS:

- (1) Expended before September 30, 2018, the end of the old 638 contract;
- (2) Expended after September 30, 2018, and to the start of the new 638 contract on an unknown date in 2020, as pre-award costs in the new 638 contract; and

(3) Expended during the term of the new 638 contract initiated in 2020; and

WHEREAS, The Council understands the critical importance that completion that the RWS Project and the enforceability of the WMAT Water Rights Quantification Act will have for future generations of the Tribe, and therefore finds that it is in the best interests of the tribe and its members to allocate an additional \$2 million to be set aside in a separate RWS Project account, in addition to the \$5 million previously set aside by the Tribal Council in a separate RWS Project account, to complete the critical Viability Assessment and to transition into completion of the 30% design for the MFD.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs the Tribe's Grants and Contracts Department to fully coordinate with the Tribal Water Rights Team, Reclamation's 638 Cooperative Agreement contract compliance staff, and specifically with the Project Manager for the RWS Project, in accordance with the authority of the Project Manager outlined in Tribal Council Resolution 01-2020-07, for the purpose of establishing separate accounts and payment procedures, including assignment of accounting codes for the RWS Project that will satisfy Reclamation requirements for tracking "allowable costs" in support of future reimbursement of all Tribal funds (as outlined below and totaling \$7 million) from construction funds authorized in the Tribal Water Rights Quantification Act 2010 when the Act becomes enforceable.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs deposits by the Tribal Treasurer of carbon credit funds in increments of \$1 million into a separate RWS Project account until the \$5 million previously authorized pursuant to Resolution 02-2019-33 (\$3 million) and Resolution 08-2019-162 (\$2 million), and the additional \$2 million authorized by this Resolution are transferred and deposited, which shall occur not later than September 30, 2020, and totaling \$7.0 million to be maintained by the Tribe's Grants and Contracts Department for the purpose of completing the Viability Assessment and advancing the 30% design for the MFD.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that for the purposes of (1) making payments to the Engineer of Record (HDR), EIS consultant (Leidos), and other contracted RWS Project consultants as specified in the respective contracts, and (2) fully accounting of all income and expenses, it hereby directs the Tribal Treasurer to immediately delegate payment (check writing) authority and RWS Project account management to the Tribe's Grants & Contracts Department, specifically, Sandy Thompson or her designee, provided that the Grants & Contracts Department produce monthly financial statements for the Treasurer and RWS Project Manager with all income and expense activity, financial information, records, and reports, required by federal guidelines to track: (1) the \$7 million in Tribal funding; and (2) any new funding available in the new 638 cooperative Agreement with Reclamation relating to the RWS Project.

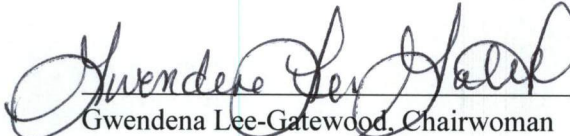
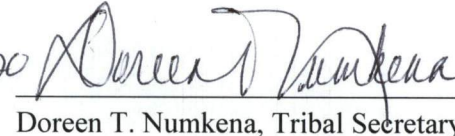
BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs the Tribal Treasurer to confirm by written memorandum to the Chairwoman, Vice Chairman, Tribal Council, and WMAT Attorney General, that a separate RWS Project account has been created in the WMAT Grants and Contracts Department, and that carbon credit funds totaling \$7 million have been deposited into said account no later than September 30, 2020.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that Tribal Chairwoman Gwendena Lee Gatewood, and in her absence, the Vice Chairman, are hereby authorized and directed to carry out and otherwise enforce the purposes of this Resolution.

Resolution No. 03-2020-59

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

The foregoing resolution was on **MARCH 16, 2020** duly adopted by a vote of **NINE** 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).

	<u>3/17/2020</u>		<u>3/17/2020</u>
Gwendena Lee-Gatewood, Chairwoman	Date	Doreen T. Numkena, Tribal Secretary	Date