



# WHITE MOUNTAIN APACHE TRIBE

## A Sovereign Tribal Nation

### (Supporting Increase in Federal Funding to Complete the White Mountain Apache Tribal Rural Water System Project)

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**WHEREAS,** The Constitution of the White Mountain Apache Tribe (“Tribe”) of the Fort Apache Indian Reservation (“Constitution”) provides, at Article IV, Section 1(a) that the Tribal Council (“Council”) shall exercise the power “[t]o represent the tribe and act in all matters that concern the welfare of the Tribe, and to make decisions not inconsistent with or contrary to this constitution”; and

**WHEREAS,** In 2010, Congress passed the White Mountain Apache Tribe Water Rights Quantification Act (the “Act”). (Pub. L. 111–291, Title III, 124 Stat. 3073), which authorized, among other things, \$222,046,000 (indexed to April 2021 dollars) in federal funding for the Tribe in consideration for the Tribe waiving its water related claims against the federal government and state parties; and

**WHEREAS,** This amount provided for in the Act includes funding for the construction of the White Mountain Apache Rural Water System (the “RWS Project”), which will provide a secure, safe and dependable, good quality, fresh water supply for the Tribe and its members and ensure a long-term and reliable water supply for the Tribe for current and future generations; and

**WHEREAS,** The RWS Project includes construction and operation of a dam, storage reservoir, pumping plant, treatment facilities, and a distribution system that would provide water on the Fort Apache Indian Reservation, including Whiteriver, Fort Apache, Canyon Day, Cedar Creek, Carrizo, and Cibecue; and

**WHEREAS,** A condition of enforceability of the Act, which would release funding in the Act for construction of the RWS Project, and repayment of funding for design and other pre-construction work for the RWS Project provided by the WMAT Loan Authorization Act, is the issuance by the Department of Interior of a Record of Decision (“ROD”) for the RWS Project, and publication by the Secretary of Interior of a statement of findings in the Federal Register authorizing construction; and

**WHEREAS,** The Tribe and the Bureau of Reclamation have been working together for several years on implementing the Act, specifically, in regards to the planning, engineering and design of, and environmental compliance for the RWS Project to support a ROD by the Secretary of the Interior for construction of the RWS Project; and

***Resolution No. 08-2021-171***

**WHEREAS,** Unexpected design and engineering issues associated with the RWS Project, specifically at Miner Flat Dam, have resulted in significant cost-overruns for necessary design features; and

**WHEREAS,** The Council has previously sought and successfully obtained two congressional amendments to the Act to address previous cost-overruns and the resulting delays in the required environmental review, including: (1) clarification on the WMAT Settlement Fund that \$78,500,000.00 (before indexing and \$112,000,000 with indexing through April 2021) in federal funds for “water-related economic development projects” may be used for the RWS Project (*See* Pub.L. 115-227); and (2) a two-year extension of the enforceability date of the Act to April 30, 2023 to ensure that the Secretary of the Interior has sufficient time to issue the required ROD and publish the relevant statement of findings for the RWS Project, despite the Tribe previously and still requesting a four-year extension via Resolution No. 04-2019-68 to extend the enforceability date to April 30, 2025; and

**WHEREAS,** Since the passage of the amendment to the Act authorized in Pub.L. 115, 227, the Tribe and its engineers have identified additional, necessary cost-overruns for the design features described above, which exceed the existing authorization for the RWS Project; and

**WHEREAS,** The authorized amount of the RWS Project is \$334,083,000, which is indexed for inflation and includes the amounts authorized to be appropriated in the Settlement Fund; however, the current estimates indicate that the cost-overrun of the RWS Project is approximately \$150,000,000 to \$250,000,000 beyond the current authorization in the Act; and

**WHEREAS,** Due to the fact that the completion of the Rural Water System Project is one of the Tribe’s highest priorities to ensure safe, reliable, and good quality drinking water for its people for generations to come, the Tribal Council concludes that an amendment to the Act is required to increase the federal funds authorized to ensure completion of the RWS Project and that seeking said amendment is in the best interest of the Tribe and its members.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby approves and requests a congressional amendment to the White Mountain Apache Tribe Water Rights Quantification Act to authorize the necessary funds to complete the Tribe’s Rural Water System Project.

**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 take whatever Congressional or other action is required to obtain the requested amendment.



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**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 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 the Chairwoman, or in her 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 **AUGUST 25, 2021** 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>8.26.21</u>		<u>8/26/2021</u>
Gwendena Lee-Gatewood, Chairwoman	Date	Doreen T. Numkena, Tribal Secretary	Date