



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Approving Amendment of the Contract of the Engineer of Record for Miner Flat Dam, HDR, to Complete 30% Design of the Rural Water System Project)

- WHEREAS,** The Constitution of the White Mountain Apache Tribe (“Tribe” or “WMAT”) of the Fort Apache Indian Reservation provides, at Article IV, Section 1(i) that the Tribal Council (“Council”) shall exercise the power, “To manage all economic affairs and enterprises of the Tribe...”; and
- WHEREAS,** In 2010, Congress passed the White Mountain Apache Tribe Water Rights Quantification Act (Pub. L. 111-291, Title III, 124 Stat. 3073) (“Act”), which settled the Tribe’s water right claims against the federal government and a number of Arizona state parties, and provided federal funding to construct the WMAT Rural Water System; and
- WHEREAS,** A condition of enforceability of the Act is the issuance of a Record of Decision (“ROD”) by the Secretary of the Interior, along with a statement of findings published in the Federal Register in order for the funding in the Act for the construction of the RWS Project and funding for the design and other pre-construction work for the RWS Project to be released; and
- WHEREAS,** In order to reach the “Enforceability Date”, 30% design of the water treatment plant, pipeline to Cibecue, and Miner Flat Dam must be completed, in addition to completing an Environmental Impact Statement (“EIS”); and
- WHEREAS,** The Tribe completed the 30% design of both the water treatment plant and pipeline in 2015, and the EIS is scheduled for completion in the April-June 2023 timeframe; however, 30% design of the Miner Flat Dam is not yet complete and a contract amendment with the Engineer of Record, HDR, is required to complete the necessary work; and
- WHEREAS,** P.L. 117-342, (January 5, 2023), “To amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 [Title III, P.L. 111-291] to modify the enforceability date for certain provisions, and for other purposes”, extended the Enforceability Date to December 31, 2027, and substituted \$541 million for \$11 million to increase funding necessary to complete all elements of the WMAT rural water system (“RWS”), including the construction of Miner Flat Dam; and
- WHEREAS,** The Enforceability Date takes effect at any time prior to December 31, 2027, as specified in Section 309 (d) of the Quantification Act, as set forth below, and 30% design of Miner Flat Dam is necessary for section 309 (d)(1)(D) for the Secretary to issue a Record of Decision approving the construction of the WMAT RWS:

309 (d) ENFORCEABILITY DATE.—

(1) *IN GENERAL.*—*This section takes effect on the date on which the Secretary publishes in the Federal Register a statement of findings that—*

- (A) (i) to the extent that the Agreement conflicts with this title, the Agreement has been revised through an amendment to eliminate the conflict; and*
- (ii) the Agreement, as so revised, has been executed by the Secretary, the Tribe, and the Governor of the State;*

(B) the Secretary has fulfilled the requirements of sections 305 and 306;

(C) the amount made available under section 312(a) has been deposited in the White Mountain Apache Tribe Water Rights Settlement subaccount;

(D) the State funds described in subparagraph 13.3 of the Agreement have been deposited in the White Mountain Apache Tribe Water Rights Settlement Subaccount;

(E) the Secretary has issued a record of decision approving the construction of the WMAT rural water system in a configuration substantially similar to that described in section 307;

(F) the judgments and decrees substantially in the form of those attached to the Agreement as exhibits 12.9.6.1 and 12.9.6.2 have been approved by the respective trial courts; and

(G) the waivers and releases authorized and set forth in subsection (a) have been executed by the Tribe and the Secretary.

WHEREAS, The Tribal Council passed Resolutions 06-2021-119 and 06-2020-163 allocating a total of \$13 million for the completion of 30% design of Miner Flat Dam with HDR, the Engineer of Record (“EOR”). HDR has since modified the budget for a contract modification (Exhibit 1), developed in cooperation with WMAT and totaling \$15,187,400, including, among other things, new work reviewed by Reclamation to add a flood hydrology update to Reclamation’s previous determination and additional drilling and site characterization, which requires additional WMAT funding in the amount of \$2,187,000, the difference between the HDR budget for 30% design and the amount allocation by the WMAT Tribal Council; and

WHEREAS, In 2022, the White Mountain Apache Tribe was allocated \$109 million funds pursuant to Division G of the TITLE I—INDIAN WATER RIGHTS SETTLEMENT COMPLETION FUND, P.L. 117-58, “Infrastructure Investment and Jobs Act,” enacted November 15, 2021, and known generally as the Bilateral Infrastructure Law (“BIL”) for the purpose, among other things:

....shall be used by the Secretary of the Interior for transfers to funds or accounts authorized to receive discretionary appropriations, or to satisfy other obligations identified by the Secretary of the Interior, under an Indian water settlement

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approved and authorized by an Act of Congress before the date of enactment of this Act....

The Secretary of the Interior shall have the discretion to determine the sequence and timing of transfers from the Fund under subsection (c) in order to substantially complete the eligible Indian water settlements as expeditiously as practicable.

and;

WHEREAS, The Chairman, the Office of the Attorney General, and the WMAT Water Rights Team are currently working with Interior officials to determine the amount to be made available and the amount to be applied to 30% design of Miner Flat Dam and for other WMAT RWS planning and design activities and the eligible amount that will be applied to the \$2,187,000 needed to fully fund 30% design of Miner Flat Dam by HDR; and

WHEREAS, The Council recognizes the urgent need to complete the WMAT RWS in order to provide water to its members and residents of the Fort Apache Indian Reservation while also recognizing the necessity of completing the requirements for the Secretary to issue a ROD and to reach the enforceability date and obtain access to funding necessary to construct the WMAT RWS, and thus finds that the modification of the contract with HDR to conclude 30% design of Miner Flat Dam is in the best interests of the Tribe and its members.

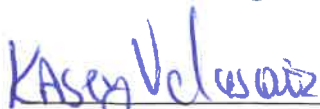
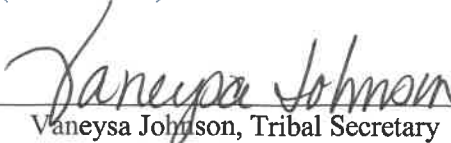
BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves an additional allocation of funding of \$2,187,000, bringing the total of WMAT funding for 30% design of Miner Flat Dam from \$13,000,000 to \$15,187,400.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves a contract amendment with HDR and authorizes the Chairman and WMAT water rights team to negotiate final contract provisions and for the Chairman to execute all necessary documents.

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 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 JANUARY 31, 2023 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 November 10, 2021, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

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|  | <u>2-2-23</u> |  | <u>2/2/2023</u> |
| Kasey Velasquez, Chairman | Date | Vaneysa Johnson, Tribal Secretary | Date |