

**Testimony of Ronnie Lupe
Tribal Chairman White Mountain Apache Tribe
Fort Apache Indian Reservation
Whiteriver, Arizona**

**Hearing before the House Natural Resources Committee, Subcommittee on Water
and Power
1324 Longworth House Office Building**

**(H.R. 6754: White Mountain Apache Tribe Rural Water System Loan
Authorization Act)**

September 25, 2008

Chairwoman Napolitano, Ranking Member McMorris Rogers, and members of the Subcommittee:

My name is Ronnie Lupe. I am the elected Tribal Chairman of the White Mountain Apache Tribe. I thank the Subcommittee for the invitation to appear and testify today in support of H.R. 6754, the White Mountain Apache Tribe Rural Water System Loan Authorization Act.

Fort Apache Indian Reservation.

The White Mountain Apache Tribe, numbering approximately 15,000 members, has beneficial title to 1.66 million acres of land on the Fort Apache Indian Reservation and is located in the east central highlands of the State of Arizona, about 200 miles northeast of the city of Phoenix. Our Tribe's Reservation was established by Executive Order in 1871, from within the aboriginal lands of our ancestors. We have retained actual, exclusive, use and occupancy of our aboriginal lands within the Reservation boundaries designated by the Executive Orders dated November 9, 1871 and December 14, 1872, without exception, reservation, or limitation since time immemorial.

My Tribe's vested property rights, including its aboriginal and other federal reserved rights to the use of water that underlie, border and traverse our lands, often referred to as Winters Doctrine Water Rights, have never been extinguished by the United States and are prior and paramount to all rights to the use of water in the Gila River drainage, of which the Salt River is a major source.

The Tribe's Reservation-Source of the Salt River and its Tributaries.

Except for a small portion of our Reservation that drains to the Little Colorado River Basin, virtually our entire Reservation drains to the Salt River and eventually the Phoenix Valley. The headwaters and tributaries of the Salt River arise on the Tribe's Reservation as can readily be seen in the attached *General Overview Map*. The Salt River tributaries that arise on our Reservation are the principal sources of water for the Tribe, the downstream Cities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale and Tempe; the Salt River Project and the Roosevelt Water

Conservation District, among other parties to the Gila River and Little Colorado Adjudication Proceedings.

Gila River and Little Colorado River Adjudication Proceedings.

In 1985, the United States in its capacity as the Tribe's Trustee, filed a claim in the name of the White Mountain Apache Tribe to approximately 175,000 acre feet of water from the headwaters of the Salt River System. This claim is now pending in the Gila River Adjudication Proceedings in the Maricopa County Superior Court, State of Arizona. It also filed claims for the Tribe in its capacity as trustee for the Tribe in the Little Colorado River Adjudication Proceedings now pending in the Apache County Superior Court, State of Arizona.

The United States amended its water rights filings for the Tribe in the Little Colorado River and the Gila River General Stream Adjudications in September 2000, to assert the Tribe's aboriginal and federal reserved rights to the transbasin aquifer sources necessary to sustain the base flow of the springs and streams on the Tribe's Reservation.

The claims filed by the United States specifically recognize the Tribe's unbroken chain of aboriginal title and time immemorial priority rights to the base flow of the springs and streams as well as surface water contributed by rainfall and snowfall runoff on our Reservation.

Water Rights Quantification and Settlement Agreement.

For decades, the White Mountain Apache Tribe has asserted its rights to preserve, protect, and develop its aboriginal and federally reserved water rights. As late as the 1950s, a physical confrontation became imminent when the Tribe began to develop outdoor recreation lakes on its Reservation trust lands by utilizing water from streams on the Reservation. This activity was considered a threat to water supplies in the Salt River system by downstream water users in the Phoenix Valley and was vigorously opposed. This is just one example of a litany of water right controversies involving the White Mountain Apache Tribe and the Salt River Valley water users from 1898 throughout the 20th century, but that is all the past.

More recently, with the appointment of a Federal Negotiating Team by the Secretary of the Interior in 2004, we have met and negotiated in good faith with the downstream water users and claimants in both the Gila River and Little Colorado River Adjudication Proceedings to reach an honorable, dignified, and equitable quantification and settlement of our Tribe's reserved water rights.

I am pleased to report to this Subcommittee that a water rights quantification agreement, which was respectfully negotiated amongst all parties, has been virtually concluded and is only awaiting formal approval by the parties' respective governing bodies. Anticipating finality by the parties, our Senator, Jon Kyl, introduced last week Senate Bill 3473, the White Mountain Apache Tribe Water Rights Quantification Act of 2008.

Quantification of Water Rights Establishes Certainty for all Parties.

Will The Tribe's sizable and senior water rights claims in the pending Gila River and Little Colorado River Adjudication Proceedings have generated considerable uncertainty regarding the availability of Salt River water supplies currently used by the downstream Salt River Project, which serves the Phoenix Valley Communities. As many as 3.5 million people depend in large part upon the water sources that arise on our Fort Apache Indian Reservation and which the White Mountain Apache Tribe has made claims to sufficient water to meet our present and future needs. The WMAT Water Rights Quantification Act and Settlement Agreement will resolve uncertainties among all of the parties and claimants in both the Gila River and Little Colorado River Basins.

Drinking Water Shortages Threaten Immediate Health, Safety and Welfare of Reservation Residents.

Our Tribe and Reservation residents are in urgent need of a long-term solution to meet drinking water requirements. Currently the Tribe is served by the Miner Flat Well Field. Well production has fallen sharply and is in irreversible decline. Over the past 8 years, well production has fallen by 50%, and replacement wells draw from the same source aquifer that is being exhausted. For example, pumping rates were 2800 gpm in 1999. It has fallen to 1500 gpm and will be less than 1000 gpm within 5 years, whereas current needs are at least 2300gpm. The Tribe experiences chronic summer drinking water shortages. There is no prospect for groundwater recovery. The quality of the existing sources threatens the health of our membership and other Reservation residents, including the IHS Regional Hospital and State and BIA schools. The only viable solution is replacement of failing groundwater with surface water from the North Fork of the White River and implementation of the WMAT Rural Water System.

There is no prospect of locating new productive wells because we have very limited groundwater on our reservation. A great deal of money has been spent searching for groundwater, but only dry holes result. Hydrogeologists tell us that the Reservation groundwater discharges to our many springs and rivers. In short, we are in urgent need of a safe and reliable drinking water system on our land which can only be resolved by a small storage reservoir.

Reservation Drinking Water System-Cornerstone of WMAT Water Rights Settlement.

The WMAT Rural Water System, including the Miner Flat Dam Storage Facility, water treatment plant, and pipeline to our principal communities is the cornerstone of the WMAT Water Rights Quantification Act and Settlement Agreement. The Quantification Act and Settlement Agreement will confirm the Tribe's and other settling parties' water rights without prolonged, protracted and expensive litigation that could last for decades. The Miner Flat Project will replace the failing well system and enable the Tribe to construct a secure, safe and dependable drinking water supply for the current 15,000 White Mountain Apache Tribal members and residents living on our Reservation and will meet our drinking water needs for decades to come. *See attached Miner Flat Reservoir and Pipeline Location Map.*

H.R. 6754-Will Reduce Construction Costs.

H.R. 6754, sponsored by the Hon. Ed Pastor is an important and essential step toward meeting my Tribe's urgent drinking water needs and implementation of the WMAT Water Rights Quantification Act and the Settlement Agreement between the White Mountain Apache Tribe and downstream parties. Its Senate counterpart is S. 3128, the White Mountain Apache Tribe Rural Water System Loan Authorization Act sponsored by Senator Kyl.

H.R. 6754 provides for a \$9.8 million federal loan to the Tribe for preconstruction planning, design and engineering, and environmental compliance for the White Mountain Apache Rural Water System, including regulation of water supplies on the North Fork of the White River. As provided in HR 6754, the loan is to be repaid by the Tribe.

Funding for planning, design and engineering now will save up to 15 million dollars in construction inflation costs by allowing the Tribe to commence construction following ratification by Congress of the larger WMAT Water Rights Quantification Act and Settlement Agreement. The Quantification Act will authorize the construction funding and the means to repay our loan. It will permit a construction start as many as two years ahead of any timetable that does not provide for advance planning and design.

The White Mountain Apache Tribe appreciates the support of this Subcommittee and the commitment of the Hon. Ed Pastor to advance this bill in the House on behalf of the settling parties.