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10 **IN THE UNITED STATES DISTRICT COURT**
11 **DISTRICT OF ARIZONA**

12 **CENTER FOR BIOLOGICAL**
13 **DIVERSITY; and**

14 **MARICOPA AUDUBON SOCIETY,**

15 **Plaintiffs,**

16 **vs.**

17 **DIRK KEMPTHORN, Secretary of the**
18 **Interior, U.S. Department of Interior;**
19 **and**

20 **DALE HALL, Director, U.S. Fish and**
21 **Wildlife Service**

22 **Defendants.**

No. CV07-0038 PHX-MHM

AMICI CURIAE BRIEF OF THE
APACHE TRIBES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

23 The San Carlos Apache Tribe, Yavapai-Apache Nation, and Tonto Apache Tribe
24 (collectively, "Apache Tribes" or "Tribes") submit this Amici Curiae Brief in support of the
25 Motion for Summary Judgment (Docket 28) filed by Plaintiffs, Center for Biological Diversity
26 and Maricopa Audubon Society ("Plaintiffs") on August 17, 2007. The Apache Tribes urge the
27 Court to grant Plaintiffs' Motion for Summary Judgment in its entirety, and to declare that the
28 negative 90-day finding issued by the United States Fish and Wildlife Service ("USFWS") on
Plaintiffs' petition to list the Desert Eagle¹ was arbitrary, capricious, an abuse of discretion and

¹While the Apache Tribes concur with Plaintiffs that the Desert Eagle is a distinct population segment ("DPS") requiring protection under the Endangered Species Act, for the Apache People, the "Desert Eagle" or "Bald Eagle" has always been called "*ti cháá cho*." The term "Eagle" is the English term for a sacred name given to the Eagle by the Creator. Thus, when translated to English, its is capitalized as a formal name or "Eagle."

1 otherwise not in accordance with the Endangered Species Act.

2 The Apache Tribes do not, however, reiterate here the arguments already presented by the
3 parties to this suit on summary judgment. Rather, the Tribes file this Amici Curiae Brief in an
4 effort to explain the fundamental importance of the continued existence of the Desert Eagle to the
5 Apache Tribes and to discuss the traditional knowledge of the Apache Tribes pertaining to the
6 presence of the Desert Eagle in Arizona, as well Tribal knowledge gained from the Tribes'
7 current activities to monitor and protect the Desert Eagle and its habitat on Tribal lands and
8 throughout Arizona. This knowledge would have been highly relevant to the USFWS had it
9 performed a proper status review of the population and provided a meaningful opportunity for
10 input and comment regarding Plaintiffs' petition as required by the Endangered Species Act.

11 **A. The Apache Tribes**

12 As discussed more fully below, the Apache Tribes have always known of the existence of
13 Eagle and their nests along rivers and have understood that the Desert Eagle is closely associated
14 with the water. Traditionally, Apaches treat water with great respect as a sacred gift of the
15 Creator and the living blood of the Earth and all of its life forms. This respect involves keeping
16 our rivers and springs as natural and healthy as possible. The Tribes follow traditional guidelines
17 to preserve the natural health of rivers and springs on their Reservations, including those areas
18 where Eagle nests are found.

19 The San Carlos Apache Tribe resides on a Reservation exceeding 1.8 million acres in
20 three counties in eastern Arizona. The Reservation is located within a much larger aboriginal
21 territory of the San Carlos Apache Tribe. The San Carlos Apache Reservation is surrounded on
22 three sides by lands administered by the National Forest and Bureau of Land Management. The
23 Gila River bisects the center of the Reservation. The Black and Salt Rivers combine to make the
24 northern boundary of the Reservation, which is also the *southern* boundary of the White
25 Mountain Apache Reservation.

26 The Tonto Apache Tribe is located on an 85-acre Reservation on the crest of the
27 watershed which drains to the Verde and Salt Rivers, immediately south of Payson, Arizona and
28

1 along the Mogollon Rim. Their Reservation is within the larger aboriginal territory of the Tonto
2 Apache. The Tonto Apache Tribe gained Federal recognition as a Tribe on October 6, 1972, after
3 years of struggling with the Tonto National Forest, which, despite being named after the Tonto
4 Apache, challenged the Tribe's right to exist within its aboriginal lands. The Tonto Apache Tribe
5 has approximately 125 members. While the land base of the current Tonto Apache Reservation is
6 quite small, the local home territories of the Tonto Apache were once found throughout the upper
7 Little Colorado River and Clear Creek, as well as *inter alia*, the Salt River, the East Verde River,
8 Tonto Creek, Cherry Creek, Fossil Creek, Verde River, East and West Clear Creek, Beaver
9 Creek, Oak Creek, Sycamore Creek, and Rio de Flag.

10 The Yavapai-Apache Reservation is comprised of approximately 1,821 acres located on
11 several parcels of land in the upper and middle Verde River Valley in Central Arizona. The
12 Nation has a total population of approximately 2,072 members, with about 1,700 Tribal members
13 residing on the Reservation. Although generally referred to as the "Camp Verde" Reservation,
14 parcels of land are located near Clarkdale, Middle Verde, Camp Verde, Rimrock and at the I-17
15 interchange for the Montezuma Castle National Monument. The Yavapai and Apache People
16 have occupied all of the territory on and around these Reservation parcels since time immemorial.
17 The Verde River runs generally south through central Arizona to the Salt River, and directly
18 through certain Tribal lands of the Nation.

19 **B. The Importance of the Desert Eagle to the Apache Tribes**

20 Although the Bald Eagle was recognized as America's national symbol some 250 years
21 ago, the Desert Eagle or *li cháá cho* has continued to be held sacred by the Apache Tribes as a
22 fundamental and irreplaceable part of the Apache religion, tradition, and culture, and that of other
23 Native American Tribes, since time immemorial.²

24
25 ²See e.g., National Congress of American Indians, Resolution No. ECWS-07-004,
26 attached here as Exhibit A (opposing the USFWS' proposal to delist the Bald Eagle in the lower
27 48 States); Inter Tribal Council of Arizona, Resolution 0711, Support for Government-to-
28 Government Tribal Consultation for Proposed Rules Dealing with the Management and
Protection of the Desert Nesting Bald Eagle in Arizona, attached here as Exhibit B ("The
protection and continued survival of the Bald Eagle is of the utmost importance to all tribes and
Indian peoples across the United States, including here in Arizona, where the Desert Nesting

1 Even though the Apache Tribes live on small parcels of land today, the aboriginal
2 Homeland of the Apache Tribes was once vast, covering many millions of acres throughout the
3 Southwest and the Republic of Mexico.³ The Homeland of the Apache People has always been
4 shared with the *Ii cháá cho* (Desert Eagle), and the Apache People and the Eagle both share a
5 common purpose to protect what they were given at Creation. The respect shown by the Apache
6 for the Desert Eagle is a barometer of the respect all Apaches share for their Homeland, and by
7 extension for themselves.

8 For the Apache, every creation of God is given a particular area to exist in this World.
9 The Apache say “*Bii Ké Ye*” or its Homeland. The Apache know that the Desert Eagle has its
10 own “Homeland” over which it is sovereign, just like the Apache People. The Eagle is to be
11 respected and protected. In the Apache tradition and culture *Ii cháá cho* are to live where they
12 have always lived, and still live today. The Eagles function to live harmoniously within this
13 environment and they are given a spiritual duty to do so. The Apache People have the same
14 responsibilities.

15 The *Ii cháá cho* is specifically honored in Apache songs and prayers, and the feathers of
16 the Desert Eagle are used in Apache ceremonies and carry prayers to the Universe. Apaches do
17 not capture or harm Eagles for their feathers. The feathers are given to the Apaches by the
18 Eagles, as both Beings exist together as sovereigns within their land. For the Apaches, feathers
19 from Eagles that have been harmed or killed have no power. Disrespecting Eagles can result in
20 full or partial paralysis or a number of physical and mental illnesses for Apache People. There
21 are also other negative consequences for those who harm the Desert Eagle or its Homeland.

22 The importance of the Desert Eagle and its continued health and existence within its own
23

24 Bald Eagle has been an irreplaceable part of our culture and ceremonies since time
25 immemorial.”); *see also United States v. Dion*, 476 U.S. 734 775-76 (1986) (discussing the
26 general significance of the Bald Eagle to Native Americans); *United States v. Hugs*, 318 F.3d
27 919, 920-21 (9th Cir. 2003); *United States v. Hardman*, 297 F.3d 1116 (10th Cir. 2002);
Presidential Memorandum, dated April 29, 1994, 59 Fed. Reg. 22953 (observing that Eagle
feathers hold a “sacred place in Native American culture and religious practice . . .”).

28 ³In addition to their Reservation lands, the Apache Tribes have over the years reacquired
by purchase many thousand of acres of land located within their larger aboriginal Homeland.

1 Homeland cannot be overstated. The health of the Apache People is tied directly to the health of
2 the natural world, and the relationship of all beings in the natural world to each other. The Desert
3 Eagle is a fundamental and critical part of this complex relationship. The Eagle is sacred and
4 holy to the Apache Tribes, and in the traditional teachings and cultural practices of the Apache,
5 the continued existence of the Desert Eagle in Arizona is essential to the fabric of the Apache
6 Peoples' identity, community health, and well being. The loss of *li cháá cho* is not a mere point
7 of academic or scientific concern for the Apache Tribes. The loss of *li cháá cho* to the Apache
8 would irreparably shatter the Apache Tribes' relationship to the natural World, resulting in
9 devastating consequences for the Apache People and the Earth.

10 **C. The Apache Tribes Exercise Jurisdiction over Desert Eagles and their Habitat**

11 The fragile status of the Desert Eagle, and the aggressive attack on their habitat and
12 Homeland in Arizona is well known to the Apaches. While there remain no more than 39
13 breeding pairs of the Desert Eagles in Arizona, the Homeland for the Desert Eagle continues to be
14 degraded, and in some cases completely destroyed, by commercial and residential construction,
15 water development, utility construction, mining, road building, contamination and other
16 activities.⁴ Today, some of the few remaining Desert Eagles in Arizona are found on or near
17 Apache Tribal lands. In the legal sense, these Eagles are under the "jurisdiction" of the Apache
18 Tribes.⁵

19 The Desert Eagle and its habitat is under the constant watch and protection of the Apache
20 Tribes. The Apache Tribes are expressly charged under their Tribal Constitutions with the

22 ⁴According to the Draft Post-delisting Monitoring Plan published by the USFWS under
23 Section 4(g)(1) of the Endangered Species Act, **all** of the occupied Desert Eagle nesting sites in
24 Arizona could be destroyed, without triggering a "detectable" change in occupied Bald Eagle
25 nests on the 25 percent *national* scale set by the Plan. See Apache Tribes' Comments to the U.S.
26 Fish and Wildlife Service's Draft Post-delisting Monitoring Plan for the Bald Eagle at 7, dated
27 October 9, 2007, attached as Exhibit C.

28 ⁵See, e.g., Indian Reorganization Act of 1934, 25 U.S.C. § 461 *et. seq.* (voicing
Congressional recognition of the reserved powers of Indian tribes over their lands and resources);
New Mexico v. Mescalero Apache Tribe, 462 U.S. 324, 336, 103 S. Ct. 2378 (1983) (holding that
under Apache Treaty of 1852 and the Indian Reorganization Act of 1934, 25 U.S.C. § 476 "[i]t is
beyond a doubt that the Tribe lawfully exercises substantial control over the lands and resources
of its reservation, including its wildlife.").

1 responsibility and authority to manage and regulate all wildlife and habitat found within their
2 Reservations.⁶ This includes Desert Eagles and their habitat.⁷

3 Desert Eagles nest, forage, and fledge on the San Carlos Apache Reservation at and
4 around San Carlos Reservoir located on the Gila River and at Talkalai lake, located upstream on
5 the San Carlos River. In addition, Desert Eagles are found along the Verde River as it flows
6 through parts of the Yavapai-Apache Reservation, as well as on the East Verde and other streams
7 flowing near the Tonto Apache Tribe.

8 The San Carlos Apache Tribe maintains a Recreation and Wildlife Department which
9 employees rangers whose primary responsibility is to protect the wildlife and habitat found
10 throughout the more than 1.8 million acres of the San Carlos Apache Reservation. The Recreation
11 and Wildlife Department also has a field staff which includes a wildlife biologist and other
12 wildlife personnel who (among other responsibilities) monitor the Desert Eagles and their habitat
13 on the San Carlos Reservation, including at sites located on the cliffs above Coolidge Dam at the
14 San Carlos Reservoir, as well as sites found along the San Carlos River near San Carlos
15 Reservoir, and upstream at Talkali Lake.

16 In an effort to enhance protections for the Desert Eagle on the Reservation, the San Carlos
17 Recreation and Wildlife Department installs and maintains protective fencing and other barriers at
18 various nesting locations on the San Carlos and Gila Rivers during periods of the year critical to
19 the Desert Eagle's breeding, nesting, and fledging cycle. The San Carlos Apache Tribe also
20 contributes funds to the Arizona Game and Fish Department's Arizona Bald Eagle Nestwatch
21 Program which stations trained nestwatchers at breeding areas throughout the State, including on
22 the San Carlos Reservation, in order to protect and monitor the breeding activity of the Desert
23

24 ⁶ See *Amended Constitution and Bylaws of the San Carlos Apache Tribe, effective*
25 *February 24, 1954*, Article V, Section (f), attached here as Exhibit D (vesting in the Tribal
26 Council the powers "to protect and preserve the wildlife and natural resources of the Tribe . . ." and to "veto" the wrongful disposition of Tribal property and resources); *see also Amended*
27 *Constitution of the Tonto Apache Tribe, effective May 22, 1995*, Article VII, Sections 2(h), 2(I), 2(n), 2(o), and 2(q), attached here as Exhibit E; *Constitution of the Yavapai-Apache Nation, effective April 13, 1992*, Article V, Sections (b), (f), (h), (l), and (m), Exhibit F, attached.

28 ⁷ *Id.*

1 Eagle in Arizona.

2 While the Reservation of the Tonto Apache Tribe does not have all of the necessary
3 habitat for the Desert Eagle on its 85 acres, the Tribe is vigilant and active in its efforts to protect
4 the Desert Eagle in Arizona and within its aboriginal Homeland. The Tonto Apache Tribe is a
5 supporting member and participant in the Southwestern Bald Eagle Management Committee,
6 which includes other Native American Tribes in Arizona, including the San Carlos Apache Tribe,
7 as well as other governmental departments and agencies, such as the U.S. Fish and Wildlife
8 Service, Arizona Department of Game and Fish, Arizona State Parks, and others.

9 Like the Tonto Apache Tribe, the lands of the Yavapai-Apache Reservation are nowhere
10 near as extensive as the Nation's vast aboriginal Homeland. Nevertheless, the Nation has
11 designated a Riparian Conservation Corridor along the Verde River as it runs through portions of
12 the Yavapai-Apache Reservation. The Conservation Corridor is intended to protect and preserve
13 the Verde River and its riparian habitat for the Desert Eagle and other species.⁸ The width of the
14 Conservation Corridor extends to both sides of the Verde River, beginning at the center of the
15 River and extending outward for 300 lateral feet on either side of the Verde.⁹

16 Within the Corridor, construction, livestock, grazing and other activities are limited or
17 prohibited, and the physical and biological features essential to native wildlife species, like the
18 Desert Eagle, are expressly protected. The Nation also has pledged to cooperate with the USFWS
19 regarding the Nation's activities along the Verde River in order to protect from harm the habitat
20 and species found in this important riparian area.

21 The efforts of the San Carlos Apache Tribe, the Tonto Apache Tribe, and the Yavapai-
22 Apache Nation to protect and preserve the Desert Eagle and its habitat on Tribal lands is but *one*
23 important piece to a larger solution for the long term protection of the Desert Eagle in Arizona.
24 Without meaningful protections for the Desert Eagle and its habitat under the Endangered Species

25
26 ⁸Resolution No. 46-2006 of the Governing Body of the Yavapai-Apache Nation, A
27 Resolution Confirming and Declaring a Riparian Conservation Corridor and Management Plan
for the Verde River, Exhibit G, attached.

28 ⁹*Id.*

1 Act, the continued pressure for development, water use, and degradation in Arizona will almost
2 certainly result in the loss of the Desert Eagle throughout its range in the near future.¹⁰ This loss
3 would be catastrophic and irreparable.

4 **D. The USFWS' Failure to Perform the Mandatory Status Review Required by**
5 **the Endangered Species Act Deprived the Apache Tribes of an Opportunity to**
6 **Provide Valuable Information to the USFWS Regarding the Desert Eagle**

7 As explained above, the Apache Tribes have always known of the *li cháá cho* in the
8 Southwest. The Apache Tribes currently exercise jurisdiction over a significant percentage of the
9 remaining habitat for the Desert Eagle in Arizona on their Tribal lands. If the Desert Eagle or *li*
10 *cháá cho* ceases to exist in Arizona, or if the Eagles are harmed or leave their traditional breeding,
11 feeding, and foraging areas (their Homeland) on and near Apache Tribal lands, there would be no
12 way to repair the damage to the Apache People. In this regard, the Apache Tribes are, at
13 minimum, “interested parties” under the Endangered Species Act who should have been notified
14 by the USFWS as part of a proper status review of Plaintiffs’ listing petition. *See* 16 U.S.C. §§
15 1532(16) & 1533(b)(3)(A); 50 C.F.R. § 424.15(c).

16 The USFWS’ failure to solicit information from and consult with the Tribes is also
17 inconsistent with the United States’ trust responsibility to the Apache Tribes, and this failure
18 violates, among other things, the spirit and/or letter of numerous Secretarial Orders, Presidential
19 Memoranda, and the Department of Interior’s own manual.¹¹

20 ¹⁰While the USFWS justified its decision to *delist* the Bald Eagle in the lower 48 States
21 under the Endangered Species Act in part on the continued protections for the Bald Eagle under
22 the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668 *et seq.*, almost simultaneous with
23 making its delisting announcement, the USFWS began efforts to promulgate new regulations
24 allowing for the issuance of permits for the “take” of Bald Eagles despite the Bald and Golden
Eagle Protection Act, where the presence of Bald Eagles and their nests are deemed in the way of
commercial and residential construction, water development, utility construction, mining, road
building, and other activities. *See* Authorizations Under the Bald and Golden Eagle Protection
Act for Take of Eagles, 72 Fed. Reg. 37346, 37372 (July 9, 2007).

25 ¹¹*See, e.g.*, Secretarial Order No. 13175 (November 6, 2000) (requiring all agencies,
26 bureaus, and offices within the Department of the Interior to identify potential effects of
27 Departmental activities upon Indian trust resources and mandating meaningful consultation with
28 Tribes where activities directly or indirectly affect such resources); Secretarial Order No. 3206
(June 1997) (actions taken under the authority of the Endangered Species Act and implementing
regulations that may affect Indian tribes and its government-to-government relationship should be
carried out in consultation with the affected tribe to harmonize such actions with the Federal trust

1 Moreover, the failure of the USFWS to follow the listing and notification process required
2 by the Endangered Species Act also deprived the USFWS of an important opportunity to receive
3 a wealth of highly relevant information regarding the Desert Eagle which has been maintained
4 and preserved in the traditional knowledge of the Apache People for as long as may be recalled.
5 The USFWS could obtain this vital, unique, and necessary information from no other source but
6 the Apache Tribes. Such knowledge includes (among other things) specific information pertaining
7 to the Desert Eagle's range, its habitats and foraging activities, as well as its nesting and foraging
8 locations within the Apache Tribes' aboriginal lands. There can be little doubt that the Tribes'
9 ancient knowledge of the Desert Eagle in Arizona (had it been solicited according to a proper
10 status review by the USFWS) would have contributed to the scientific understanding of the Desert
11 Eagle as a distinct population segment requiring protection under the Endangered Species Act.

12 Finally, because a significant portion of the remaining habitat for the Desert Eagle is
13 found today on or near Tribal lands, the Apache Tribes and certain of their Tribal departments
14 have gathered scientific information regarding the *current* status of the Desert Eagle which would
15 have been highly relevant to the USFWS had it performed a proper status review of Plaintiffs'
16 petition. Such information includes, but is not limited to, data on nests and nesting locations,
17 foraging and other habits, and breeding activities. The failure of the USFWS to solicit this
18 information from interested parties, particularly the Apache Tribes (and other Native American
19 Tribes, Nations, and Communities in Arizona and elsewhere) violated, *inter alia*, the Endangered
20 Species Act. This renders the USFWS' decision on Plaintiffs' listing petition invalid as Plaintiffs
21 have correctly outlined in their Motion for Summary Judgment.¹²

23 responsibility); Presidential Memorandum of April 29, 1994, titled "Government-to-Government
24 Relations with Native American Tribal Governments" (also requiring proper consultation with
25 Indian tribes to the greatest extent practicable prior to taking any actions that affect such tribes);
26 Department Manual, 512 DM 2.1 (discussing and embodying these same requirements in the
27 Department Manual).

28 ¹²These actions also stand in stark contrast with USFWS' past public assurances in its
final delisting decision for the Bald Eagle, in which the USFWS promised: "We will continue to
work with the States, tribes, and conservation organizations in [the Southwest] region [to]
continue to conserve the Bald Eagle in the Southwestern United States." 72 Fed. Reg. 37372.

1
2 **E. Conclusion**

3 *Ii cháá cho* is fundamental to the natural World, and its loss (which is essential to the
4 fragile fabric of the natural World) would be irreparable. Accordingly, the Apache Tribes urge
5 the Court to grant Plaintiffs' Motion for Summary Judgment in its entirety, and to declare that the
6 negative 90-day finding issued by the United States Fish and Wildlife Service on Plaintiffs'
7 petition to list the Desert Eagle was arbitrary, capricious, an abuse of discretion and otherwise not
8 in accordance with the Endangered Species Act.

9 RESPECTFULLY SUBMITTED this 29th day of January, 2008.

10 **THE SPARKS LAW FIRM, P.C.**

11 By s/Susan B. Montgomery
12 Joe P. Sparks
13 Susan B. Montgomery
14 Robyn L. Interpreter
Attorneys for Amici Curiae, Apache Tribes

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on this 29th day of January, 2008, I electronically transmitted the foregoing
17 document to the Clerk's Office using the ECF System for filing and transmittal of a Notice of
18 Electronic Filing to the following ECF registrants:

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27 By s/Susan B. Montgomery
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LIST OF EXHIBITS

- | | |
|-----------|--|
| Exhibit A | The National Congress of American Indians, Resolution #ECWS-07-004 |
| Exhibit B | Inter Tribal Council of Arizona, Resolution 0711, Support for Government-to-Government Tribal Consultation for Proposed Rules Dealing with the Management and Protection of the Desert Nesting Bald Eagle in Arizona |
| Exhibit C | Apache Tribes' Comments to the U.S. Fish and Wildlife Service's Draft Post-delisting Monitoring Plan for the Bald Eagle |
| Exhibit D | <i>Amended Constitution and Bylaws of the San Carlos Apache Tribe, effective February 24, 1954</i> |
| Exhibit E | <i>Amended Constitution of the Tonto Apache Tribe, effective May 22, 1995</i> |
| Exhibit F | <i>Constitution of the Yavapai-Apache Nation, effective April 13, 1992</i> |
| Exhibit G | Resolution No. 46-2006 of the Governing Body of the Yavapai-Apache Nation, A Resolution Confirming and Declaring a Riparian Conservation Corridor and Management Plan for the Verde River |

Exhibit A



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ECWS-07-004

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TITLE: Opposing Endangered Species Act De-listing of the Bald Eagle Resolution

EXECUTIVE COMMITTEE

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Ohkay Owingah
(Pueblo of San Juan)

FIRST VICE-PRESIDENT
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WESTERN
Kathleen Kitcheyan
San Carlos Apache

EXECUTIVE DIRECTOR
Jacqueline Johnson
Tlingit

NCAI HEADQUARTERS
1301 Connecticut Avenue, NW
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Washington, DC 20036
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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the U.S. Department of the Interior Fish and Wildlife Service is mandated to make a decision whether to remove (de-list) the bald eagle from the Endangered Species Act by June 29, 2007; and

WHEREAS, the bald eagle holds a very integral and sacred position with Native Americans and Native American communities; and has become a National symbol for the United States; and

WHEREAS, the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act of 1918 will continue to provide protection to the bald eagle, but not the extent that the Endangered Species Act does, primarily in the area of habitat protection; and

WHEREAS, the number of bald eagles has significantly increased since first being placed on the Endangered Species List, resulting in a 1995 downgrade in status from "endangered" but still within the protection of the Endangered Species Act; and

WHEREAS, delisting the bald eagle will result in a decrease in protection currently provided by federal agencies that are mandated to carry out the intent of the Endangered Species Act through management and adequate personnel; and

WHEREAS, the Endangered Species Act requires the U.S. Fish and Wildlife Services within the Department of the Interior to only monitor, not manage the eagle population for five years after delisting occurs; and

25295

NCAI 2007 Winter Session**Resolution ECWS-07-004**

WHEREAS, Secretarial Order 3206 American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act ("Order") ...clarifies the responsibilities of the component agencies, bureaus and offices of the Department of the Interior and the Department of Commerce (Departments), when actions taken under authority of the Act and associated implementing regulations affect, or may affect, Indian lands, tribal trust resources, or the exercise of American Indian tribal rights, as defined in this Order; and

WHEREAS, Section 5, Responsibilities, Principle 4 of the Order requires the Departments of Interior and Commerce to take into consideration "...the impacts of their actions and policies under the Act on Indian use of listed species for cultural and religious purposes.. "; and


WHEREAS, Native Americans and Native American tribes have voiced their opposition to de-listing to various federal agencies.

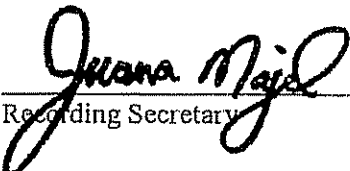
NOW THEREFORE BE IT RESOLVED, that the NCAI strongly opposes the removing of the bald eagle from within the protections of the Endangered Species Act through de-listing.

NOW THEREFORE BE IT FURTHER RESOLVED, that the NCAI recommends that the Department of the Interior, through the Fish and Wildlife Services, uphold the spirit and intent of Secretarial Order 3206.

CERTIFICATION

The foregoing resolution was referred during the 2007 Executive Council Winter Session of the National Congress of American Indians, held at the Wyndham Washington and Convention Center, to the Executive Committee for consideration and was adopted by the Executive Committee on March 19, 2007 with a quorum present.



President**ATTEST:**

Recording Secretary

Exhibit B



INTER TRIBAL COUNCIL of ARIZONA

RESOLUTION 0711

MEMBER TRIBES

AK-CHIN INDIAN COMMUNITY
COCOPIA TRIBE
COLORADO RIVER INDIAN TRIBES
FORT McDOWELL YAVAPAI NATION
FORT MOJAVE TRIBE
GILA RIVER INDIAN COMMUNITY
HAVASUPAI TRIBE
HOPI TRIBE
HUALAPAI TRIBE
KAIBAB-PAIUTE TRIBE
PASCUA YAGUI TRIBE
PUEBLO OF ZUNI
QUECHAN TRIBE
SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY
SAN CARLOS APACHE TRIBE
TOHONO O'ODHAM NATION
TONTON APACHE TRIBE
WHITE MOUNTAIN APACHE TRIBE
YAVAPAI APACHE NATION
YAVAPAI PRESCOTT INDIAN TRIBE

Support for Government-to-Government Tribal Consultation for Proposed Rules Dealing with the Management and Protection of the Desert Nesting Bald Eagle in Arizona

- WHEREAS,** The Inter Tribal Council of Arizona (ITCA), an organization of twenty tribal governments in Arizona, provides a forum for tribal governments to advocate for national, regional and specific tribal concerns and to join in united action to address those concerns; and
- WHEREAS,** The member Tribes of the Inter Tribal Council of Arizona have the authority to act to further their collective interests as sovereign tribal governments; and
- WHEREAS,** On July 9, 2007, the US Fish and Wildlife Service announced its intent to remove the Bald Eagle as a listed species under the Endangered Species Act, thereby eliminating the longstanding and critical protections for the Bald Eagle and its Habitat in Arizona and throughout the United States;
- WHEREAS,** On June 5, 2007, The US Fish and Wildlife Service then published notice in the Federal Register of its intent to issue a new proposed rule that would greatly reduce the only remaining protections for the Bald Eagle after its delisting under the Endangered Species Act, which are now found in the Bald and Golden Eagle Protection Act;
- WHEREAS,** Under the new rule proposed by the US Fish and Wildlife Service in the June 5, 2007, Federal Register, the US Fish and Wildlife Service proposes to issue permits under the Bald and Golden Eagle Protection Act for the "take" or harm of Bald (and Golden) Eagles, where the continued protection of these Eagles and their habitat stands in the way of a broad spectrum of public or private interest including, among other things, utility infrastructure development and maintenance, road construction, operation of airports, commercial or residential construction or recreation use; and
- WHEREAS,** The US Fish and Wildlife Service also determined in the proposed rule, "Authorizations Under the Bald and Gold Eagle Protection Act for Take of Eagles", that they need not engage in a government-to-government tribal consultation process because the rules "would not interfere with Tribe's ability to manage themselves or their funds", and

WHEREAS, The protection and continued survival of the Bald Eagle is of the utmost importance to all Tribes and Indian peoples across the United States, including here in Arizona, where the Desert Nesting Bald Eagle has been an irreplaceable part of our culture and ceremonies since time immemorial; and

WHEREAS, The Federal government has acknowledged in the Bald and Golden Eagle Protection Act the fundamental religious and cultural importance of the Bald Eagle to Indian Tribes in the United States, including to the member Tribes of the Inter Tribal Council of Arizona.

NOW THEREFORE BE IT RESOLVED THAT, The Tribes in Arizona re-affirm their opposition to the decision of the US Fish and Wildlife Service to de-list the Bald Eagle and remove it from the crucial protections of the Endangered Species Act, especially here in Arizona where increased pressures from development and water use will have profoundly adverse consequences for the fragile population of Desert-Nesting Bald Eagles and the continued sustainability of their riparian habitat which is necessary for the survival and continued recovery of this important bird; and

BE IT FURTHER RESOLVED THAT, The Tribes in Arizona do not consider the mere publication of notice in the Federal Register sufficient to fulfill the obligations of the Secretary and the US Fish and Wildlife Service to engage in meaningful and formal consultation as is required by, *inter alia*, the United States' Trust responsibility to the Tribes, and numerous federal laws, executive orders, and other legal requirements; and

BE IT FURTHER RESOLVED THAT, The Tribes in Arizona are entitled to and hereby request a government-to-government tribal consultation with appropriate officials of the Department of Interior and US Fish and Wildlife Service regarding the new proposed rule for the take of the Bald (and Golden) Eagle under the Bald and Golden Eagle Protection Act; and

BE IT FINALLY RESOLVED THAT, The President of ITCA shall forward the foregoing resolution to the Department of Interior and the US Fish and Wildlife Service, Congress, and any other agency and institution as deemed appropriate of the Council's request for a government-to-government tribal consultation regarding the protection and management of the Bald Eagle.

CERTIFICATION

The foregoing resolution was presented and duly adopted at a meeting of the Inter Tribal Council of Arizona on **July 19, 2007**, where a quorum was present.



Jamie Fullmer
President, Inter Tribal Council of Arizona
Chairman, Yavapai Apache Nation

Exhibit C

THE SPARKS LAW FIRM, P. C.



Attorneys

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October 9, 2007

***Via Facsimile (309) 757-5807, and
U.S. Mail, Return Receipt Requested***
7006 0100 0004 6614 4166
Bald Eagle Draft PDM Plan Comments
U.S. Fish and Wildlife Service
Rock Island Field Office
1511 47th Avenue
Moline, Illinois 61265

***Via Facsimile (703) 358-2269, and
U.S. Mail, Return Receipt Requested***
7006 0100 0004 6614 4173
Ms. Hope Grey
Information Collection Clearance Officer
U.S. Fish and Wildlife Service
MS 222-ARLSQ
4401 Fairfax Drive
Arlington, VA 22203

***Re: Apache Tribes' Comments to the U.S. Fish and Wildlife Service's Draft
Post-delisting Monitoring Plan for the Bald Eagle***

Dear U.S. Fish and Wildlife Officials:

This Firm serves as Special Counsel to the San Carlos Apache Tribe, Yavapai-Apache Nation, and Tonto Apache Tribe ("Apache Tribes" or "Tribes") on natural resource, environmental, and other special projects. The following comments are submitted on behalf of the Apache Tribes to the Draft Post-delisting Monitoring Plan ("draft PDM Plan" or "Plan") for the Bald Eagle in the lower 48 states.

While the Apache Tribes are providing comments to the draft PDM Plan, the Tribes continue to protest the decision by the Secretary of Interior to delist the Bald Eagle in the lower 48 states, particularly in Arizona, where the bald eagle is clearly a distinct population segment which remains on the brink of extinction.¹

¹The Tribes agree with the vast majority of independent scientists and scholars (including, at one time, scientists for the USFWS) who understand that the unique Southwest population of the bald eagle, known as the "desert nesting bald eagle" or "desert eagle", is a distinct population segment that requires continued protection under the Endangered Species Act. While this population should not

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Nevertheless, the draft PDM Plan fails to meet the Secretary of Interior's mandatory obligation under 16 U.S.C. § 1533(g) to implement a system to monitor effectively the post-delisting status of the bald eagle. As explained below, the draft PDM Plan should be substantially revised in order to ensure, *inter alia*, that the post-delisting status of the bald eagle is effectively monitored by the USFWS, regardless of the extent of voluntary participation from USFWS monitoring partners, and that monitoring activities and protocols take into account the status of the bald eagle's continued recovery on a local and regional basis, as well as on a national scale.

A. The Cultural and Religious Significance of the Bald Eagle to the Apache

In comments provided to the USFWS by the Apache Tribes on September 4, 2007, regarding the proposal by the USFWS to issue "take" permits under the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668 *et seq.* ("BGEPA"), the Tribes discussed the fundamental role of the bald eagle in the practice of the Apache Religion and culture. These comments are incorporated here in their entirety, and will not be repeated in detail here.

Briefly stated, in the religious teachings and cultural practices of the Apache, the continued existence of the bald eagle in Arizona is so paramount to the fabric of the Apache People, that its importance cannot be overstated. The bald eagle is sacred and holy to the Apache. It is honored in Apache songs and prayers. The feathers of the bald eagle are used in Apache ceremonies and carry prayers to the universe. Bald eagles are never captured or harmed for their feathers. The feathers are given to the Apaches by the eagles. If the bald eagle ceases to exist in Arizona, or should they leave their traditional breeding, feeding and foraging sites on and near Apache Tribal lands, there would be no way to repair the damage to the Tribes. However, as discussed in greater detail below, the sampling scale and other monitoring measures contained in the draft PDM Plan fail to take into account the importance of the continued existence of a bald eagle population in Arizona, both as a scientific matter and as a religious and cultural matter for the Apache Tribes as well as other Tribes, Bands and Communities in the State. Sadly, the Plan appears to contemplate the complete loss of breeding bald eagles in Arizona, as well as in other local and regional areas, so long as larger populations of bald

have been removed from the protections of the Endangered Species Act in the first instance (and is entitled to separate listing), this failure is compounded by the draft PDM Plan, which offers **no** special monitoring requirements for this distinct population segment, and which, according to its stated goal to detect a 25 percent change in occupied eagle nests on a **national** scale at 5 year intervals, would allow for the **complete** loss of all occupied bald eagle nests in Arizona without triggering the detection and investigation requirements of the Plan. This point is discussed further below.

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eagles remain elsewhere in the lower 48 states. This is morally wrong, and violates the Endangered Species Act, among other federal laws.

B. The USFWS Has Failed to Meaningfully Consult with the Apache Tribes about the Draft PDM Plan, and the Role of Tribal Governments in Post-delisting Monitoring is Not Adequately Acknowledged or Defined in the Plan

The USFWS has not consulted with the Apache Tribes on the draft PDM Plan, despite the existence of significant number of occupied bald eagle nests on Apache Tribal lands and USFWS' knowledge of the importance of the bald eagle to Apache religion and culture. It is well known that there exists less than 48 breeding pairs of bald eagles in Arizona. Indeed, the fragile state of bald eagles in Arizona and the aggressive attack on their habitat is well documented.

Apache Tribal lands are home to some of the few breeding pairs of bald eagles in Arizona. Bald eagles also nest, forage, and fledge at and around San Carlos Lake on the San Carlos Apache Reservation, and at Talkalai lake, located upstream on the San Carlos River. In addition, San Carlos Lake (located on the Gila River) is often home to a large population of wintering bald eagles as well. Up to 50 wintering eagles have been observed at this Lake in a single period. The Verde River, the East Verde and other streams on and/or flowing through or near Apache Tribal lands also support bald eagles. These bald eagles and their habitat are under the jurisdiction of the Apache Tribes and are protected by the Tribes.

The Apache Tribes are expressly charged under their Tribal Constitutions with the responsibility to manage and regulate all wildlife and habitat found within their Reservations. This includes bald eagles and their habitat. *See Amended Constitution and Bylaws of the San Carlos Apache Tribe*, effective February 24, 1954, Article V, Section (f) (vesting in the Tribal Council the powers "to protect and preserve the wildlife and natural resources of the Tribe . . ." and to veto the wrongful disposition of Tribal property and resources); *San Carlos Apache Tribe, Wildlife and*

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Recreation Code at Section 3, Adopted by Tribal Ordinance 76-1.² Similar provisions are found in the Constitutions for the Tonto Apache Tribe and the Yavapai-Apache Nation.³

Despite the sacred importance of the bald eagle to the Apache Tribes, and the Tribes' continued jurisdiction over some of the few remaining bald eagles and habitat in Arizona, the USFWS has failed to make any meaningful effort to consult with the Apache Tribes on the draft PDM Plan, and while the Plan invites the participation and cooperation of the States to implement certain of the bald eagle monitoring requirements, the Plan does little to acknowledge or define the role of Tribal governments in the post-delisting monitoring process. Once again, this stands in stark contrast to the USFWS promise embodied in its final delisting decision, where the USFWS assured, "[w]e will continue to work with the States, tribes, and conservation organizations in [the Southwest] region [to] continue to conserve the bald eagle in the Southwestern United States."⁴

This failure is also inconsistent with the United States' trust responsibility to the Apache Tribes, and violates, among other things, the spirit and/or letter of numerous Secretarial Orders, Presidential Memoranda, and the Department of Interior's own manual.⁵ The Apache Tribes plainly have an

²See also Indian Reorganization Act of 1934, 25 U.S.C. § 461 *et. seq.* (voicing Congressional recognition of the reserved powers of Indian tribes over their lands and resources); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 336, 103 S. Ct. 2378 (1983) (holding that under Apache Treaty of 1852 and the Indian Reorganization Act of 1934, 25 U.S.C. § 476, "[i]t is beyond a doubt that the Tribe lawfully exercises substantial control over the lands and resources of its reservation, including its wildlife.")

³See *Amended Constitution of the Tonto Apache Tribe*, effective May 22, 1995, Article VII, Sections 2(h), 2(I), 2(n), 2(o), and 2(q); *Constitution of the Yavapai-Apache Nation*, effective April 13, 1992, Article V, Sections (b), (f), (h), (l), and (m).

⁴72 Fed. Reg. 37372.

⁵See, e.g., Secretarial Order No. 3175 (November 8, 1999) (requiring all agencies, bureaus, and offices within the Department of the Interior to identify potential effects of Departmental activities upon Indian trust resources and mandating meaningful consultation with Tribes where activities directly or indirectly affect such resources); Secretarial Order No. 3206 (June 1997) (actions taken under the authority of the Endangered Species Act and implementing regulations that may affect Indian tribes and its government-to-government relationship should be carried out in consultation with the affected tribe to harmonize such actions with the Federal trust responsibility); Presidential Memorandum of April 29, 1994, titled "Government-to-Government Relations with Native American Tribal Governments" (also requiring proper consultation with Indian tribes to the greatest extent practicable prior to taking any

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important stake in the continued existence and recovery of the bald eagle in Arizona. The USFWS should consult with the Apache Tribes and other Native American Tribes, Bands, and Communities in Arizona regarding the draft PDM Plan, and any Plan ultimately developed should (at a minimum) include clear requirements for the inclusion of the Apache Tribes and other Native American Tribes, Bands, and Communities in the monitoring process.

C. The Draft Post-delisting Monitoring Plan Fails to Comply with the Mandatory Monitoring Requirements of Section 4(g) of the Endangered Species Act

Section 4(g) of the Endangered Species Act mandates that the Secretary implement a system to **monitor effectively** for not less than five years the status of all species removed from the protections of the Endangered Species Act.⁶ In addition, the Secretary is required to make “prompt” use of the authority under the Act to “prevent a significant risk to the well being of any such recovered species.”⁷ The draft PDM Plan fails to meet these requirements. Some examples of these failures are discussed below:

1. The Success of the Draft PDM Plan Cannot Hinge on the Voluntary Efforts of States and other Cooperating Partners

The Secretary is charged under Section 4(g)(1) with the obligation to monitor effectively the post-delisting status of the bald eagle. This duty is mandatory. Although Section 4(g)(1) requires that the Secretary cooperate with States in conducting post-delisting monitoring activities, the Secretary cannot condition the ultimate success of the USFWS post-delisting monitoring activities on the voluntary efforts of States and other cooperating partners.

While the efforts of states and other partners (including Tribal partners) to monitor, collect data, and protect occupied nesting sites play an important role in the long term recovery of bald eagles in the lower 48 states (including in Arizona), under the Endangered Species Act, the **ultimate responsibility** to provide for adequate monitoring of the bald eagle population post-delisting falls on the Secretary under Section 4(g)(1)-(2). However, under the draft PDM Plan, the USFWS proposes to fulfill its **mandatory**

actions that affect such tribes); Department Manual, 512 DM 2 1 (discussing and embodying these same requirements in the Department Manual).

⁶See 16 U.S.C. § 1533(g)(1).

⁷See 16 U.S.C. § 1533(g)(2).

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monitoring responsibilities through the **voluntary** participation of states and other partners, mainly as a result of the “continuation of State monitoring activities conducted by the States over the past 20 years.”⁸ In this regard, the USFWS proposes to merely “report the national results while working with the States to collate and analyze the data.”⁹ This limited role of the USFWS in post-delisting monitoring fails to comply with the requirements of the Endangered Species Act.

There is little doubt that the efforts of states and others to monitor the status of the bald eagle in Arizona, and across the United States, has and should continue to play an important role in any post-delisting monitoring plan. The draft PDM Plan cannot, however, abdicate the statutory responsibilities of the Secretary to **ensure** that successful monitoring of bald eagles takes place, regardless of the extent of voluntary activities undertaken by others. The Plan fails on this key point. Indeed, the USFWS acknowledges that the overall success of the Plan and sampling efforts under the Plan “. . . will depend upon the extent of State participation and/or funding available at the time.”¹⁰ This is insufficient to meet the Secretary’s obligation under Section 4(g).¹¹

Now more than ever, states, private organizations, and other USFWS partners are facing increased demands on their budget and other resources. While funding may be available **today** to participate in the monitoring efforts called for by the draft PDM Plan, future funding is not guaranteed by any means.¹² The Plan wholly fails to outline any plan on the part of USFWS to provide for ongoing

⁸Plan at 3

⁹*Id.*; *see also* Plan at 5 (discussing intent of USFWS to merely “facilitate” existing efforts by states and others and to “standardize data collection protocols.”).

¹⁰*Id.*; *see also* Plan at 5 (“The successful implementation of this Plan relies on a large number of existing bald eagle monitoring efforts designed and implemented by States, other Federal agencies, non-governmental organizations, and individuals.”); Plan at 6 (Admitting that achieving Plan goals “depends on how many partners participate in the surveys.”).

¹¹The USFWS explains that it “anticipates” that the combined efforts of the USFWS, the states, and other partners will provide the necessary resources to implement the Plan. The Secretary has a mandatory duty under the Endangered Species Act. His mere “anticipation” or hope for success is insufficient to meet this obligation.

¹²Relying on continued funding of state monitoring efforts, particularly in Arizona, places the proverbial fox in the position of guarding the hen house. The insatiable desire for continued growth and development in Arizona are well known. The truth is that funding for monitoring activities for the bald eagle, whose presence along key riparian and other areas could presumably stand in the way

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monitoring of bald eagles over the 20 year Plan period, should the voluntary efforts of states and other partners fail to fulfill the mandatory monitoring requirements of the Endangered Species Act. In fact, a decrease in monitoring efforts has already been realized, as reported in the draft PDM Plan, which acknowledges that “[s]ince the Service’s 1999 publication of the proposal to delist the bald eagle, many States have reduced their monitoring efforts.”¹³

Thus, should efforts, funding, and/or participation in the voluntary monitoring of the bald eagle continue to drop off, as appears to be the current trend, the Secretary is not relieved of his mandatory obligation to monitor the bald eagle post-delisting. The draft PDM Plan fails to outline how the Secretary intends to meet this obligation.

2. The Focus of the Draft PDM Plan on a “National Scale” Would Provide for the Complete Loss of all Breeding Bald Eagles in Arizona Without “Triggering” the Investigation Requirements of the Plan

The USFWS explains that the “goal” of the draft PDM Plan “... is to be able to detect a 25 percent change in occupied bald eagle nests on a **national scale** at 5 years, with an 80 percent chance of detecting a 25 percent or greater difference between 5 year intervals.”¹⁴ The USFWS justifies its use of a national scale for post-delisting monitoring efforts because such an approach is deemed to be the most “cost-effective.” Specifically, the Plan provides:

Because the goal of this Plan is to detect changes in the number of occupied bald eagle nests in the contiguous 48 states, **the 48 States as a whole is the study area**. It is believed that **sampling at this scale will be the most cost-effective approach**.¹⁵

The use of a **national scale** as the basis for meeting the Secretary’s post-delisting monitoring obligations is wholly incompatible with the very purpose of the Endangered Species Act (the conservation and

of continued growth and development, is likely to be treated with limited importance once the delisting process is completed through the adoption of a post-delisting monitoring plan.

¹³Plan at 4-5.

¹⁴Plan at 3 (emphasis added); *see also* Plan at 6 (explaining that the goal of the plan is to “estimate [versus identify] changes in number of occupied bald eagle nests in the contiguous 48 States on a **national scale**.”) (emphasis added).

¹⁵Plan at 10 (emphasis added).

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recovery of the species) as well as the specific requirements of Section 4(g). In fact, given the fragile state of bald eagles in Arizona, under the goal as articulated in the current draft PDM Plan, **all** of the occupied bald eagle nesting sites in Arizona could be destroyed, without triggering a “detectible” change in occupied bald eagle nests on a national scale. Use of a 25 percent national trigger for investigation and follow up, also ignores the importance of the continued survival and recovery of the distinct population segment of the “desert nesting bald eagle” in Arizona – a distinct population segment that requires continued protection under the Endangered Species Act.

As explained above, the bald eagle is sacred to the Apache Tribes and is fundamental to the practice of the Tribes’ religion and culture. The loss of the bald eagle in Arizona would be devastating, regardless of the continued existence of the bald eagle on a “national scale.” Furthermore, under the current “national scale” approach, other regions throughout the United States could lose small, but important, occupied bald eagle nests, while the decline is not deemed “detectible” on a national scale. Indeed, the USFWS acknowledges that the purpose of the Plan is to “emphasize areas of greatest eagle abundance.”¹⁶ This emphasis could result in a substantial loss of other smaller important occupied bald eagle nesting sites throughout wide regions of the United States, before “detection” and investigation is required under the Plan (so long as several areas are found to continue to exist in the lower 48 states). This is incompatible with the Endangered Species Act.

3. The Draft PDM Plan Fails to Establish a Clear Level for Immediate Investigation and Follow-up if Declines in Occupied Bald Eagle Nests are Observed at Levels Below 25 Percent

As noted above, the draft PDM Plan anticipates that if “declines are detected, particularly those equal or exceeding the goal, the Service’s Bald Eagle Monitoring Team in conjunction with the States will investigate causes of these declines . . .”¹⁷ The Plan also contemplates that the Team will review bald eagle information on a “continuous basis”, and, should information “indicate declines” are occurring in between “sample intervals”, the Team will investigate the cause of these declines.¹⁸

While the Bald Eagle Monitoring Team will investigate “declines” of occupied bald eagle nests on a national scale that equal or exceeds 25 percent, the Plan also appears to contemplate that the Team

¹⁶Plan at 6.

¹⁷Plan at 3

¹⁸Plan at 13.

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will not await a 25 percent decline, but rather, may investigate declines at levels **below** 25 percent at some point.¹⁹ The Plan fails, however, to explain this important concept, and it does not set bench marks for investigation where a decline is noted at levels less than 25 percent, particularly where declines on a regional or statewide basis are sudden, severe or pervasive. The Plan should set benchmarks for investigating observed declines below the 25 percent level. Such benchmarks are likely to be particularly important if a downward decline in occupied nests are observed in between the five year monitoring intervals, or where contaminants or habitat loss on a local or regional basis triggers a rapid decline in nesting bald eagles that threatens to become more wide spread if ignored. These serious shortcomings in the Plan should be addressed.

The draft PDM Plan also fails to adequately outline the basis for the original **baseline** of occupied bald eagle nests for purposes of calculating a 25 percent decline on a national level. Presumably, an initial baseline will be established based upon the total number of occupied bald eagle nests detected prior to finalizing the post-delisting monitoring plan. Assuming this to be true, the Plan fails to explain if the “baseline” for occupied bald eagle nests will continue to be adjusted upward every five years, to account for the long term recovery of the species (thereby increasing the baseline for measuring a 25 percent decline based upon newly adjusted occupied nest numbers), or if the **original baseline** will continue to be used to calculate decline over the entire 20 year Plan period, meaning that long term and continued recovery of the bald eagle is not anticipated by the USFWS and will not be reflected in the monitoring efforts under the Plan. This point should be corrected to allow for the recovery of the species.

4. The Plan Cannot Track the Breeding Population Status of the Bald Eagle in the Lower 48 States Without Monitoring Causal Factors Such as Habitat Modification or Disturbance

The USFWS explains that the draft PDM Plan is not intended to monitor causal factors such as habitat modification or disturbance as defined under the Bald and Golden Eagle Protection Act, but rather is intended to track only the “breeding population status” of the bald eagle during the 20 year Plan

¹⁹Also problematic is the focus of the Plan on occupied bald eagle nests as the primary indicator for bald eagle population. The Plan fails to consider **nest productivity** as it relates to total population. Thus, under the Plan, some of the most productive nests or nesting areas could be lost, while the total number of occupied nests remained roughly the same. While this would lead to a population decline, it would not be detectable under the Plan as written.

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period.²⁰ The USFWS acknowledges that local breeding populations of bald eagles “may be affected” by changes to the quantity and quality of habitat.²¹ However, under the Plan, the Bald Eagle Management Team is only required to “accept and review data indicating significant changes in habitat across the contiguous States”, but the receipt of such data cannot, by itself, trigger further investigation.²² In this regard, the Team is required by the Plan to investigate habitat loss as a “possible cause” of nest occupancy decline only if “trends in occupancy **significantly decline over broad geographic areas**”²³ This violates the Endangered Species Act.

Section 4(g) of the Act mandates that the Secretary “effectively monitor” the status of the bald eagle post-delisting, and that the Secretary take prompt action to “prevent a significant risk to the well being of any such recovered species.” The USFWS understands that habitat loss presents one of the most significant risks to the well being of the bald eagle in the lower 48 States, particularly here in Arizona. Nevertheless, the draft PDM Plan expressly denies any obligation or intent on the part of the USFWS to monitor or take action due to habitat loss or other causal factors alone.

By the time the USFWS determines to “investigate” a 25 percent decline nationally in occupied bald eagle nests, the habitat destruction that may have resulted in the decline will be complete, making the chance of continued nest occupation in the destroyed area very unlikely.²⁴ This is particularly true in Arizona, where the State of the desert nesting bald eagle is already fragile, and the loss of even a fraction of the remaining riparian and other habitat for the bald eagle will threaten the continued existence and recovery of the bald eagle in Arizona.

²⁰See Plan at 5.

²¹See Plan at 15.

²²See Plan at 5, 15.

²³Plan at 15.

²⁴Similarly, the proposal by the USFWS to maintain a contaminants data base for investigative purposes, without trigger points for action by the Bald Eagle Management Team, also is unlikely to “catch” potential threats to the bald eagle until well after the fact. The Plan should be revised to provide a protocol for identifying and correlating adverse patterns or trends related to contaminants at the earliest opportunity, before such trends result in national population declines at or above 25 percent.

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Contrary to the suggestion of the USFWS found in the Plan, the Secretary and the USFWS are not relieved of their mandatory monitoring and other obligations under Section 4(g) of the ESA by the purported protections found in the Bald and Golden Eagle Protection Act. Indeed, the USFWS has recently proposed to issue new permit regulations, *inter alia*, to authorize the "take" of bald eagles under the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668 *et seq*, where the continued survival and protection of bald eagles, as well as their nests and habitat stands in the way of construction and growth, and the exhaustion of water resources necessary to serve such growth. This is particularly true in Arizona. It is ironic that the USFWS would rely on the purported protections for habitat found in the BGEPA, while at the very same time, proposing to issue permits for the take (including disturbance) of bald eagles and their habitat for a virtually unlimited range of reasons. This approach should be revised in favor of real protections and monitoring requirements.

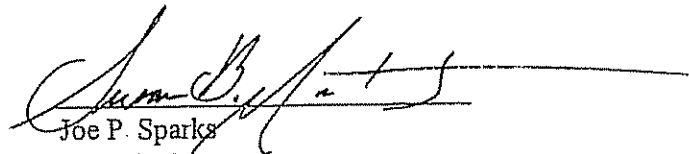
D. Conclusion

The importance of the continued existence of bald eagles in Arizona to the religion and traditional and cultural practices of the San Carlos Apache Tribe, the Yavapai-Apache Nation, and the Tonto Apache Tribe cannot be overstated. The draft PDM Plan offers little meaningful protection for the bald eagle in the lower 48 States, most particularly in Arizona, where the desert nesting bald eagle is a distinct population segment that remains on the brink of extinction. The Plan should be revised to comply with the requirements of the Section 4(g); the USFWS should formally consult with affected Indian Tribes, Nations, Bands and Communities in Arizona regarding the plan, including the Apache Tribes; and any post-delisting monitoring plan should include specific provisions for Tribal involvement and participation.

Please direct all further communications on this and any related matter involving bald eagles to the Chairman, Vice-Chairman and Tribal Council of the Apache Tribes **through this Firm** as Special Counsel for the Tribes.

Yours Truly,

THE SPARKS LAW FIRM, P.C.



Joe P. Sparks
Susan B. Montgomery
Robyn L. Interpreter
Attorneys for the Apache Tribes

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SBM/sm

cc: W. Nosie, Chairman, San Carlos Apache Tribe
D. Reede, Vice-Chairman
Tribal Council Members

J. Fullmer, Chairman, Yavapai-Apache Nation
D. Kwail, Vice-Chairman
Tribal Council Members

I. Smith, Chairman, Tonto Apache Tribe
David K. Davis, Vice-Chairman
Tribal Council Members

Exhibit D

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

+

AMENDED
CONSTITUTION AND BYLAWS
OF THE
SAN CARLOS APACHE TRIBE
OF ARIZONA

+

EFFECTIVE FEBRUARY 24, 1954



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1957

AMENDED
CONSTITUTION AND BYLAWS
OF THE

SAN CARLOS APACHE TRIBE OF ARIZONA

The Constitution and Bylaws of the San Carlos Apache Tribe of the San Carlos Reservation, Arizona, is amended as follows:

PREAMBLE

We, the people of the San Carlos Apache Tribe of the San Carlos Reservation, Arizona, in order to exercise the duties and responsibilities of a representative tribal government, do ordain this Constitution and Bylaws.

ARTICLE I—STATEMENT OF PURPOSE

SECTION 1. In our relation to the United States Government, a relation similar to that which a town or a county has to State and Federal governments, our own internal affairs shall be managed, insofar as such management does not conflict with the laws of the United States, by a governing body which shall be known as the San Carlos Council.

ARTICLE II—TERRITORY

SECTION 1. The authority of the San Carlos Apache Tribe shall extend to all of the territory within the boundaries of the San Carlos Reservation and to all lands which may be acquired for the Tribe or which the Tribe may acquire for itself.

ARTICLE III—MEMBERSHIP

SECTION 1. The membership of the San Carlos Apache Tribe shall consist of:

(a) All persons who are members of the Tribe on the date when this revised constitution is finally approved.

(b) All children of one-fourth or more San Carlos Apache Indian blood who are born to resident members, and all children of one-fourth or more San Carlos Apache blood born to non-resident members if such non-resident members declare their intention of maintaining membership in the Tribe. The method of declaring intention of membership shall be determined by ordinance of the Council.

(c) The Council shall have the power to pass ordinances, subject to review by the Secretary of the Interior or his authorized representative, governing future membership, loss of membership, and the adoption of members by the San Carlos Apache Tribe.

ARTICLE IV—GOVERNING BODY

SECTION 1. The governing body of the San Carlos Apache Tribe shall be known as the San Carlos Council and shall consist of a chairman, vice-chairman and nine members to be chosen as follows:

- Chairman, by popular vote of the Tribe;
- Vice-Chairman, by popular vote of the Tribe;
- Three members, by popular vote of the Bylas District;
- Two members, by popular vote of the Gilson District;
- Two members, by popular vote of the Peridot District;
- Two members, by popular vote of the Seven Mile District.

SEC. 2. *Districts Defined.* For purposes of voting and representation on the Council, the districts shall be defined as follows:

BYLAS DISTRICT shall include all members living in the entire Bylas Community;

GILSON DISTRICT shall include all members living on Gilson Wash west and south of Quarry Wash and north of the Farm Station;

PERIDOT DISTRICT shall include all members living in the community south of the Farm Station and on both sides of the San Carlos River;

SEVEN MILE DISTRICT shall include all members living within the area east of the Quarry Wash and north of the point where the Quarry Wash runs into the San Carlos River.

SEC. 3. *Organization of Council.* The Council shall choose, either from within its own membership or from the outside, a secretary, a treasurer, and such other officers as it may consider necessary.

SEC. 4. The Council, from time to time, may by ordinance change the foregoing number and distribution according to the growth of population.

SEC. 5. *First Election.* The first election of councilmen under this amended constitution and bylaws shall be held on the next regular election date following the adoption and ratification of the amended constitution and bylaws. In the first election the candidate in each district receiving the highest number of votes shall hold office for four years. The other candidates elected shall hold office for two years. In each regular election thereafter one candidate shall be elected from each district and shall hold office for a term of four years, except in the Bylaws District which shall elect two candidates at every other election, such candidates to hold office for four years.

SEC. 6. *Term of Council Members.* Members of the Council shall

take office on the first Tuesday of the first month after their election.

SEC. 7. *Council Chairman and Vice-Chairman.* The Chairman and Vice-Chairman of the Tribal Council shall be elected for a term of four years by popular vote of the Tribe. Candidates for such office shall possess the qualifications required of candidates for Council membership, as set forth in Article II of the Bylaws, except as to residence. The candidates for Chairman and Vice-Chairman need only be residents of the San Carlos Reservation. Such elections shall be held under the same rules as the election for council members and the Chairman and Vice-Chairman of the Tribal Council shall take office on the same day that the council members take office.

ARTICLE V—POWERS OF THE COUNCIL

SECTION 1. The San Carlos Council shall have the following powers:

(a) To 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 Bylaws or the Constitution and Statutes of the United States;

(b) To negotiate and make contracts with the Federal, State and local governments;

(c) To advise the Secretary of the Interior or his representative on all activities that may affect the San Carlos Reservation, and on all appropriation estimates and Federal projects for the benefit of the Tribe before such estimates and projects are submitted to the Bureau of the Budget and to Congress;

(d) To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior, so long as such approval is required by Federal law;

(e) To veto the sale, disposition, lease or encumbrance of tribal lands, interest in lands, tribal funds or other tribal assets that may be authorized by any agency or employee of the government;

(f) To protect and preserve the wildlife and natural resources of the Tribe; to regulate hunting and fishing on the reservation;

(g) To cultivate Indian arts, crafts and cultures;

(h) To administer charity;

(i) To regulate the uses and disposition of tribal property and funds, provided, that any grant or lease of any portion of the Reservation for grazing purposes or relinquishment of any water rights on the Reservation must be authorized by a two-thirds majority of tribal votes cast in an election called by the tribal council for that purpose and, provided further, that the total vote cast shall be not less than three-fifths of the total eligible voters;

(j) To manage all tribal economic affairs and enterprises in accordance with the terms of the Corporate Charter of the Tribe;

(k) To levy and collect taxes;

(l) To appropriate tribal funds for public purposes;

(m) To enact ordinances, subject to review by the Secretary of the Interior, establishing and governing tribal courts and law enforcement on the Reservation; regulating domestic relations of members of the Tribe, but all marriages shall be in accordance with State laws; providing for appointment of guardians for minors and mental incompetents; regulating the inheritance of real and personal property of members of the Tribe within the Reservation; and providing for the removal or exclusion from the Reservation of any non-member of the Tribe whose presence may be injurious to the people of the Reservation;

(n) To enact ordinances governing the activities of voluntary associations consisting of members of the Tribe organized for purposes of cooperation or other purposes;

(o) To regulate its own procedures; to appoint subordinate committees, commissions, boards, tribal officials and employees not otherwise provided for in this Constitution and Bylaws, and to prescribe their salaries, tenure and duties; to charter and to regulate subordinate organizations for economic and other purposes;

(p) The Council may exercise such further powers as may be delegated to the San Carlos Apache Tribe by the Secretary of the Interior or by any other qualified official or agency of the Government;

(q) The foregoing enumeration of powers shall not be construed to limit the powers of the San Carlos Apache Tribe, and such powers may be exercised through the adoption of bylaws or constitutional amendments.

ARTICLE VI—REVIEW BY THE SECRETARY

SECTION 1. Any resolution or ordinance which, by the terms of this constitution, is subject to review by the Secretary of the Interior, shall be presented to the Superintendent of the Reservation within six days after the passage by the Council. The Superintendent shall, within six days after its receipt, approve or disapprove the same.

If the Superintendent shall approve any ordinance or resolution, it shall thereupon become effective, but the Superintendent shall transmit a copy of the same, bearing his endorsement and the date his signature was affixed thereto, to the Secretary of the Interior, who may, within 90 days from the date of enactment, rescind the said ordinance or resolution for any cause, by notifying the council of such rescission. If the Secretary shall fail to act within the 90-day period, the ordi-

nance or resolution shall remain in effect as of the date of the Superintendent's approval.

If the Superintendent shall refuse to approve any resolution or ordinance submitted to him, within six days after its receipt, he shall advise the Council of his reasons therefor. If these reasons appear to the tribal council insufficient, it may, by a majority vote, refer the ordinance or resolution to the Secretary of the Interior, who may, within 90 days from the reenactment date approve the same in writing, whereupon the said ordinance or resolution shall become effective.

ARTICLE VII—RIGHTS OF MEMBERS

SECTION. 1. All members of the San Carlos Apache Reservation shall be accorded equal political rights and equal opportunities to participate in the economic resources and activities of the tribe, and no person shall be denied freedom of conscience, speech, association or assembly or the right to petition for the redress of grievances.

ARTICLE VIII—ELECTIONS

SECTION 1. *Regular Elections.* Regular elections to vote for councilmen shall be held every two years on the first Tuesday in April. Regular elections to vote for Chairman and Vice-Chairman shall be held every four years on the first Tuesday in April.

Amend.
I

SEC. 2. *Special Elections.* Special elections shall be held upon call by the Tribal Council as provided in Article IX, and notice of them shall be given as in the case of general or regular elections.

SEC. 3. *Notice.* All elections shall be announced by special notice posted at least thirty days before the election at the voting places and other convenient public places.

SEC. 4. The voting places shall be: one at San Carlos Agency and another at Bylas and others as may be established by the Council.

SEC. 5. *Candidates.* Names of candidates nominated by the districts for their councilmen shall be posted for a period of at least twenty days prior to election.

SEC. 6. *Nomination of Chairman and Vice-Chairman.* At least twenty days before nominations of candidates for council membership are made at district meetings, not more than four candidates nor less than two for each office of Chairman and Vice-Chairman shall be nominated at a general mass meeting called for that purpose.

SEC. 7. *Nomination of Council Members.* Nominations shall be made at mass meetings of the respective districts for the office of councilman. Each district shall nominate at least four candidates for each position of councilman.

SEC. 8. *Manner of Voting.* All elections shall be by written ballot.

The council shall have power to prescribe ordinances governing the casting and canvassing of ballots, the manner of conducting district meetings for nomination, and other necessary details of election procedures covering elections of councilmen and officers and referendum elections.

ARTICLE IX—REMOVAL FROM OFFICE

SECTION 1. *Forfeiture of Office.* If a Chairman or Vice-Chairman or member of the Council fails or refuses to attend two regular meetings in succession unless excused due to illness or other causes for which he cannot be held responsible, or shall be convicted of a felony or of a misdemeanor involving moral integrity, his office shall be forfeited, and a special election called by the Council shall be held to replace him.

SEC. 2. *Removal from Office.* If a Chairman or Vice-Chairman or member of the Council shall fail in the performance of the duties assigned to him, he may be subject to recall. The Council may by a two-thirds vote, after affording the accused member a fair opportunity to be heard in his own defense, require such member to stand for reelection of the district which he represents.

SEC. 3. *Resignation and Replacement.* Any councilman resigning or by death taken out of his office shall be replaced only by a special election in the respective district.

ARTICLE X—RESERVATION LAND

SECTION. 1. The reservation land shall as a whole remain tribal property and shall not be divided by allotment of any parts to individuals or groups of individuals as private property that could be sold at will; but assignment of land for private use may be made by the council in conformity with ordinances which may be adopted on this subject, provided, that the rights of all members of the tribe be not violated.

ARTICLE XI—REFERENDUM

SECTION 1. Upon a petition of at least fifty percent of the eligible voters of the Tribe, or upon the request of the majority of the members of the Tribal Council, any enacted or proposed ordinance or resolution of the Tribal Council shall be submitted by the Council to a popular referendum and the vote of the majority of the qualified voters in such referendum shall decide whether the ordinance or resolution shall thereafter be in effect and subject to Secretarial review where such review is required: Provided, that one-half or more of the eligible voters shall vote in such referendum.

ARTICLE XII—AMENDMENTS

SECTION 1. This Constitution and Bylaws may be amended by a majority vote of the qualified voters of the Tribe voting at an election called for that purpose by the Secretary of the Interior, provided, that at least thirty percent of those entitled to vote shall vote in such election; but no amendment shall become effective until it shall have been approved by the Secretary of the Interior.

It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment at the request of the Council, or upon receipt of a petition signed by one-third of the qualified voters of the Tribe.

BYLAWS OF THE SAN CARLOS APACHE TRIBE OF ARIZONA

ARTICLE I—DUTIES OF OFFICERS

SECTION 1. *Chairman of the Council.* The Chairman of the Council shall preside over all meetings of the Council, shall perform all duties of a Chairman and exercise any authority given him specifically by the Council or by a general meeting of the Tribe. The Chairman shall have power to vote.

SEC. 2. *Vice-Chairman.* In the absence of the regular Chairman the Vice-Chairman shall preside and shall have all powers, privileges and duties of the Chairman. He shall have power to vote at any meeting.

SEC. 3. *Secretary.* The secretary shall conduct all tribal correspondence and it shall be his duty to submit promptly to the Superintendent of the jurisdiction and other appropriate offices of the Bureau of Indian Affairs, copies of all minutes of regular and special meetings of the Council.

SEC. 4. *Treasurer.* (a) The Treasurer shall accept, receipt for, keep and safeguard all funds in the custody of the Council. He shall deposit all such funds as directed by the San Carlos Council and shall keep an accurate record of such funds and shall report on all receipts and expenditures and the amount and nature of all funds in his custody to the Council at regular meetings and at such other times as requested by the Council. He shall not pay or otherwise disburse any funds in custody of the Council except when properly authorized to do so by the Council.

(b) The books and records of the treasurer shall be audited at least once a year by a competent auditor employed by the Council, and at such other times as the Council may direct.

(c) The treasurer shall be required to give a surety bond satisfactory to the Council and the Commissioner of Indian Affairs or his authorized representative.

(d) The treasurer shall be present at all meetings of the Council unless prevented by circumstances beyond his control.

(e) All checks shall be signed by the treasurer and shall be countersigned by the Chairman of the Council, or in his absence by some other officer designated by the Council.

ARTICLE II—QUALIFICATIONS OF COUNCILMEN

SECTION 1. Any member of the Tribe who is not employed by the Federal or State government, who has reached the age of twenty-five years, who is a resident of the district which he is to represent, and who is able to read and write, shall be qualified to be a candidate for election to the Council. No person who has been convicted of a felony, or who within the last year preceding the election has been convicted of a misdemeanor involving moral integrity shall be eligible to hold office in the Council. The following misdemeanors and no others shall be considered misdemeanors involving moral integrity: adultery, bribery, embezzlement, extortion, fraud, forgery, misbranding, perjury and theft.

ARTICLE III—MEETINGS OF THE COUNCIL

SECTION 1. *First Meeting.* At the first meeting of the Council after a regular election, the Council shall see that all members have a correct and clear understanding of the Constitution and Bylaws and the management of the tribal and reservation affairs, as well as the rules for the conduct of their own body.

SEC. 2. *Regular Meeting.* The Council shall meet officially on regular meeting dates which shall be on the first Tuesday in each month at nine o'clock a. m. In case the time of the regular Council meeting on the first Tuesday of each month should conflict with a national, state or tribal election, or shall fall on a holiday, the meeting shall be held on the following Wednesday.

SEC. 3. *Special Meetings.* Special meetings of the Council may be called by the Chairman, or the Chairman shall call a special meeting upon written request of three or more members of the Council.

SEC. 4. *Conduct of Business.* In the conduct of business, recognized rules of order shall apply. Voting at the Council meeting may be by voice, but at the discretion of the Chairman or upon the request of any two members of the Council a secret vote shall be taken.

SEC. 5. *Quorum.* Matters of business for the Council shall be decided by a majority vote. A quorum (a number competent to transact

business) of the Council shall be constituted if six or more members are present.

SEC. 8. *Restriction of voting in the Council.* In any matter coming before the Council which involves the Indian Bureau or any person or company, no member of the Council that may be permanently connected with the party so involved shall be permitted to vote without the special consent of the remaining members of the Council.

ARTICLE IV—MEETINGS OF THE TRIBE

SECTION 1. The Council shall from time to time call meetings of all voters of the Tribe to lay before them such matters as may come before such a general meeting. A general meeting of the Tribe shall be called upon request of a majority of the qualified voters of any district.

ARTICLE V—LAW AND ORDER

SECTION 1. It shall be the duty of the Council to provide through the necessary bylaws or ordinances for the establishment of a tribal court upon the reservation.

SEC. 2. This court shall have jurisdiction of such petty offenses, not falling within the exclusive jurisdiction of the Federal or State courts, as may be enumerated in the ordinances or bylaws of the Tribe.

SEC. 3. This court shall have jurisdiction over all disputes between Indians on the reservation, and over such disputes between Indians and non-Indians as may be brought before the court by stipulation.

SEC. 4. The duties, jurisdiction, and procedure of this court shall be more fully set forth by bylaws or ordinances.

SEC. 5. The judges of this court shall be appointed by the Tribal Council.

SEC. 6. It shall be the duty of the Council to establish by ordinances a tribal police force. Such ordinances shall outline in detail the authority and duties of such tribal police force and the manner in which such police force shall be selected by the Council.

ARTICLE VI—FEDERAL EMPLOYEES

SECTION 1. The Council shall request the Superintendent to furnish it with the names of all civil service probationers or temporary employees under civil service regulations on the San Carlos Reservation that are nearing the end of their probationary periods, and shall advise with the Superintendent in the matter of their being given permanent positions as civil service employees on the Reservation.

ARTICLE VII—ADOPTION

SECTION 1. This revised Constitution and Bylaws, when adopted by a majority vote of the qualified voters of the San Carlos Apache Tribe of the San Carlos Reservation, voting at a special election called by the Secretary of the Interior, in which at least thirty percent of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his approval, and shall be in force from the date of such approval.

CERTIFICATION OF ADOPTION

Pursuant to an order approved December 15, 1953, by the Assistant Secretary of the Interior, the foregoing amended Constitution and Bylaws of the San Carlos Apache Tribe was submitted for adoption to the qualified voters of the San Carlos Apache Tribe and was on February 23 and 24, 1954, duly ratified by a vote of 405 for, and 402 against, in an election in which at least 30 percent of a total of 1,606 eligible voters cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

JESS J. STEVENS

Acting Chairman, San Carlos Tribal Council

ROBERT KEY

Acting Secretary, San Carlos Tribal Council

THOMAS H. DODGE

Superintendent, San Carlos Agency

APPROVAL

I, Douglas McKay, Secretary of the Interior of the United States of America, by virtue of the authority granted me by the Act of June 18, 1934, (48 Stat. 984), as amended, do hereby approve the attached amended Constitution and Bylaws of the San Carlos Apache Tribe of the San Carlos Reservation, Arizona, to be effective as of February 24, 1954, the date of the ratification election.

Approval recommended:

GLENN L. EMMONS

Commissioner of Indian Affairs

DOUGLAS MCKAY

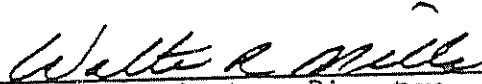
Secretary of the Interior

[SEAL]

WASHINGTON, D. C., April 19, 1954.

APPROVAL

I, Walter R. Mills, Acting Phoenix Area Director, Bureau of Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and redelegated to me by 10 BIAM 3.1, do hereby approve the foregoing Amendment I to the Amended Constitution and Bylaws of the San Carlos Apache Tribe of Arizona; provided that nothing in this approval shall be construed as authorizing any action under the Amended Constitution and Bylaws that would be contrary to Federal Law.



Acting Phoenix Area Director
Bureau of Indian Affairs

Phoenix, Arizona

Date: 11 APR 1984

AMENDMENT
AMENDED CONSTITUTION AND BYLAWS
OF THE
SAN CARLOS APACHE TRIBE
OF ARIZONA

Amendment I

Section 1, Regular Elections of Article VIII, ELECTIONS, shall be amended in its entirety to read as follows:

ARTICLE VIII - ELECTIONS

SECTION 1. A. Regular Elections. Regular elections to vote for councilmen shall be held every two years on the first Tuesday in November. Regular elections to vote for Chairman and Vice-Chairman shall be held every four years on the first Tuesday in November.

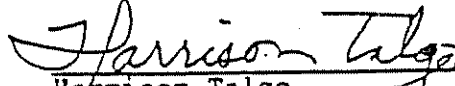
B. Persons elected to the offices of Chairman, Vice-Chairman and Tribal Council during the 1980 and 1982 general elections or any person elected to fill a vacancy in such office shall serve an additional seven months in their respective offices from the first Tuesday in May in the last year of each term of office up to the first Tuesday in December. Those parts of Article IV, Sections 5 and 7 of the San Carlos Apache Amended Constitution, which specify terms of four years for Chairman, Vice-Chairman and Council members shall be suspended as to those terms of office modified by this Amendment, but for all succeeding terms of office shall remain in full force and effect.

CERTIFICATE OF RESULTS OF ELECTION

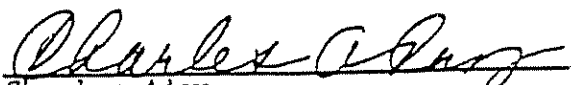
Pursuant to a Secretarial election authorized by James H. Stevens, Phoenix Area Director, on January 30, 1984, the attached Amendment I to the Amended Constitution and Bylaws of the San Carlos Apache Tribe of Arizona was submitted to the qualified voters of the Tribe and on March 6, 1984, was duly adopted/~~rejected~~ by a vote of 590 for, (number) and 534 against, and 20 cast ballots found spoiled (number) or mutilated in an election in which at least thirty percent (30%) of the 2295 members entitled to vote, cast their ballots in (number) accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).



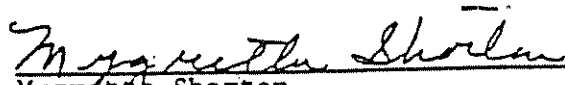
George E. Keller, Chairman
General Secretarial Election Board



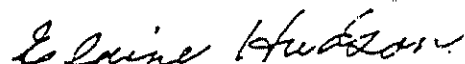
Harrison Talgo
Election Board Member




Charles Aday
Election Board Member



Mygratta Shorten
Election Board Member



Elaine Hudson
Election Board Member



Carol Alden
Election Board Member

DATE: 3/6/84

Exhibit E



Tonto Apache Tribe

Tonto Apache Reservation #30
Payson, Arizona 85541
Telephone
(520) 474-5000 or (520) 474-2068
Fax: (520) 474-9125

CONSTITUTION OF THE TONTTO APACHE TRIBE

We, the members of the Tonto Apache Tribe accept and establish this Constitution for the people of this Tribe, in order to affirm our sovereign powers of self-government, to preserve, protect and build upon our unique and distinctive culture and traditions, to conserve our resources, to establish a responsive form of government, to provide for the free expression of our people, to promote the rights, education and welfare of the present and future generations of our people. This Constitution when duly adopted and approved shall supersede the Constitution of the Tonto Apache Tribe of Payson, Arizona, ratified by the voting members of the Tonto Apache Tribe and approved on January 21, 1980, by the Commission of Indian Affairs, William E. Hallett, by the authority granted to the Secretary of the Interior under Section 16 of the Indian Reorganization Act of June 18, 1934. (48 Stat. 984) as amended.

ARTICLE I - NAME

The name of the Tribe shall be the "TONTTO APACHE TRIBE," hereinafter referred to as the "Tribe."

ARTICLE II - TRIBAL TERRITORY

The authority of the Tonto Apache Tribe shall extend to all of the territory within the Tonto Apache Indian Reservation, as established by the Act of Congress, October 6, 1972, P.L. 92-470, 86 Stat. 783, and held in trust for the Tribe by the United States Government, and to all lands which may be hereafter acquired by or set aside for the use of the Tribe. Tribal land held in trust for the tribe shall not be sold, assigned, conveyed or mortgaged, or otherwise encumbered except with the approval of the Tribal Council and as provided by Federal and tribal law. Tribal land shall not be allotted to individual members of the Tribe, but may be leased to members of the Tribe and other persons in accordance with tribal and Federal law. Tribal territory in this article includes that described as Indian country such as streets, roadways, streams, air space and all lands and improvements under control of the Tribe.

ARTICLE III - MEMBERSHIP

Section 1. The Membership of the Tribe shall consist of:

- (a) All persons who qualified for and were accepted into membership in the Tonto Apache Tribe under the membership requirements contained in Article III of the original Constitution of the Tonto Apache Tribe approved by the Commissioner of Indian Affairs on January 20, 1980.
- (b) All lineal descendant of members of the Tribe who possesses at least one-fourth (1/4) degree of Tonto Apache Blood.

Section 2. Adoption. Persons of at least one-sixteenth (1/16) degree Tonto Apache Indian blood who do not otherwise meet the requisites of Section 1 of Article III may be adopted into the Tribe pursuant to an election as provided for in Section 4 of this Article.

Section 3. No person shall be a member of the Tribe who is enrolled with any other federally recognized Indian tribe, band or group unless such person shall first relinquish membership therein.

Section 4. Relinquishments. Any member may voluntarily relinquish their Tonto Apache tribal membership, however, he or she may reapply for membership back into the Tonto Apache Tribe after a two (2) year waiting period through adoption pursuant to an election as set forth in Section 4 of this Article.

Section 5. An election required under this Article may be called by a majority of the Tribal Council and shall be called by the Tribal Council upon the presentation of a petition requesting such an election signed by at least one-half (1/2) of the eligible voters of the Tribe. A person shall be adopted into the Tribe by a majority vote of the eligible voters, voting in favor of the petition for adoption. At least fifty percent (50%) of the eligible voters must vote in this election in order for the adoption to be valid. Notice for the purpose of this section shall be posted no less than ten (10) days and shall be made pursuant to the rules, regulations, or ordinances governing special elections for the Tribe.

Section 6. The Tribal Council may prescribe rules, regulations or ordinances consistent with this Constitution, that may effect the governing of future membership, adoption into membership, loss of membership, enrollment procedures, and shall maintain a current roll of the Tribal members.

ARTICLE IV - GOVERNING BODY

Section 1. The governing body of the Tribe shall be known as the Tonto Apache Tribal Council, hereinafter referred to as the "Tribal Council."

Section 2. The Tribal Council shall consist of five (5) voting members: (a) a Chairman, (b) a Vice-Chairman, and (c) three (3) Council members.

Section 3. The Tribal Council may hire a Tribal Secretary and Treasurer from within its Tribal Council membership or outside its Tribal Council membership.

Section 4. The terms of office for Tribal Council shall be four (4) years for the Chairman and Vice-Chairman and two (2) years for the other three (3) Council members, or until their successors are duly elected and seated. Officials appointed by the Tribal Council shall serve at the sufferance of the Tribal Council prescribing their salaries, fees, tenure, duties policies and procedures.

Section 5. Duties of Tribal Council Officials.

- (a) Chairman of the Tribal Council. The Chairman of Tribal Council shall preside over all meetings of the Tribal Council, shall perform all duties of a chairman and exercise any authority given specifically by the Tribal Council or by a general meeting of the Tribe. The Chairman shall have power to vote.
- (b) The Vice-Chairman shall assist the Chairman when requested to do so, and in the absence of the Chairman, shall have the powers and be subject to the responsibilities of the Chairman.
- (c) Secretary. The Secretary shall prepare all tribal correspondence and shall keep accurate records concerning the meetings and business of the Tribe and Tribal Council.
- (d) Treasurer.
 - (1) The Treasurer shall accept, receipt for, keep and safeguard all funds in the custody of the Tribal Council and shall deposit all such funds as directed by the Tribal Council. The Treasurer shall keep an accurate record of such funds and shall report on all receipts and expenditures and the amount and nature of all funds of the Tribe to the Tribal Council at regular meetings and at such other times as requested by the Tribal Council. The Treasurer shall not pay or otherwise disburse any funds in custody of the Tribe except when properly authorized to do so by the Tribal Council.

- (2) The books and records of the Tribe shall be audited at least once a year by a competent auditor authorized by the Tribal Council, and at such other times as the Tribal Council may direct.
- (3) The Treasurer, and other persons who are responsible for Tribal funds or funds in the custody of the Tribe, shall be bonded by a surety bond purchased by the Tribe.
- (4) The Treasurer shall be present at all meetings of the Tribal Council unless otherwise excused by the Chairman.
- (5) All checks shall be signed by the Chairman and shall be countersigned by a member of the Tribal Council, or their designee, or in the absence of the Chairman, other council members designated by the Tribal Council.

Section 6. Tribal Council Meetings. Regular meetings of the Tribal Council shall be held on a date designated by the Chairperson within the first ten days of each month. Special meetings of the Tribal Council may be held at the call of the Chairman or Tribal Council. All meetings shall be held at the Tribal Administration Building unless otherwise noted in the notice of the meeting. A quorum at any meeting of the Tribal Council shall consist of three (3) voting members of the Tribal Council.

Section 7. General Tribal Meetings. There shall be an annual general meeting of the Tribe on the second Saturday of May each year at 10:00 a.m. in the Tribal Administration Building. It shall be the duty of the Chairman at this meeting to make a report of all activities of the Tribal Council throughout the past year and to outline proposed plans for the coming year for the benefit of the Tribe. Special general meetings of the Tribe may be called by the Chairman of the Tribal Council upon posting notice five (5) days in advance of the meeting date, or by written notice to the Tribal Council signed by fifty per cent (50%) of the voting members of the Tribe stating the purpose of the meeting, and the posting of five (5) days notice in advance of the meeting. A quorum at any general tribal meeting shall consist of fifteen (15) voting members.

Section 8. Quorum. A quorum shall consist of three (3) or more Tribal Council members. A quorum is required at all meetings in order to conduct official business of the Tribal Council.

ARTICLE V - ELECTIONS

Section 1. Qualifications of Candidates for Tribal Council.

- (a) The rights to run for an hold office in the tribal government shall be afforded only to tribal members possessing at least one-fourth degree Tonto Apache blood as reflected in Section 1(a) of Article III. Adopted members of the Tonto Apache Tribe shall not be eligible for Tribal Council office, as reflected in Article III Section 1 (a).
- (b) A Tribal member must be thirty (30) years of age or older to qualify for the office of Chairman or Vice-Chairman, and eighteen (18) years of age or older to qualify as other members of the Council.
- (c) Candidates for Tribal Council shall have physically resided on the Reservation, or land controlled by the Tribe, or within (10) ten miles of the Reservation, for at least one (1) year immediately preceding the election.
- (d) Any person who has been convicted of a felony, or who within the last year preceding the election has been convicted of a misdemeanor shall not be entitled to run for or hold office on the Tribal Council.
- (e) The Tribal Council shall make the final decision on whether a candidate meets these qualifications.

Section 2. Qualifications of Voters.

- (a) All enrolled tribal members eighteen (18) years of age or older are eligible voters in all elections.

Section 3. Nominations.

- (a) Any tribal members who meets the qualifications of Section 1 of this Article, whose name is submitted on a petition signed by at least five percent (5%) of the eligible voters of the Tribe, shall be as nominee for the office indicated by the petition

- (b) Nomination petitions must be received by the Election Board Chairman through the Tribal Secretary no earlier than thirty (30) days nor later than fifteen (15) days before the election during regular Tribal business hours.
- (c) The names of all qualified candidates shall be posted in at least ~~two~~ (2) public places on tribal land at least ten (10) days prior to the election.
- (d) An eligible voter may sign only one (1) nomination petition for the office of Chairman and one (1) petition for the office of Vice-Chairman.
- (e) An eligible voter may sign one (1) nomination petition for each remaining council position to be elected for each election.
- (f) Signatures of persons in violation of subsection (d) and (e) of this section shall be declared void in determining the validity of a nomination.
- (g) There shall be not write-in candidates for Tribal Council membership including positions of the Chairman and Vice-Chairman.

Section 4. Election Procedures.

- (a) All elections shall be by secret written ballot.
- (b) The Tribal Council shall enact an ordinance governing the conduct of elections. Such ordinance shall be consistent with this Constitution and shall include, but not be limited to, the following provisions:

- Nomination of Candidates
- Secret Ballots
- Absentee-Ballots
- Absentee Voting
- Settlement of Election Disputes
- Handling of Petitions
- Conduct of Referendum, Initiative and Recall Elections

- (c) A quorum of the Tribal Council shall be assembled in open meeting, and shall, within twenty-four (24) hours after closing of the polls, receive the locked ballot boxes, the unused ballots, spoiled and the rejected ballots, the tally sheet, and the abstract of the votes. The abstract shall be read aloud to the public. Upon determining the highest number of votes for each office or tribal position, the Tribal Council shall certify the results and shall declare those receiving the highest number of votes to be the winners of the election.

Section 6. Regular Elections

- (a) Regular elections shall be held annually on the second Saturday in June.
- (b) At the first regular election, a Chairman and Vice-Chairman shall be elected for terms of four (4) years, one (1) Council member shall be elected for a term of one (1) year; and two (2) Council members shall be elected for term of two (2) years. Thereafter, the Chairman and Vice-Chairman shall be elected for terms of four (4) years and other Council members shall be elected for terms of two (2) years in the regular elections and may be elected for successive terms. Special elections shall be called to fill unexpired terms of vacant positions.
- (c) Should the Tribal Council fail to call a regular election, or in case a regular election has not been held, the Superintendent, Truxton Canon Agency, is authorized to conduct such election.

ARTICLE VI - VACANCIES AND REMOVAL FROM OFFICE

Section 1. Vacancies. If any member of the Tribal Council dies, resigns, or is removed from office by the Tribal Council, or is recalled, the Tribal Council shall declare that position vacant. Within thirty (30) days after a Tribal Council position is declared vacant, the Tribal Council shall call and hold a special election to elect a successor to fill the unexpired term. If, however, the next regular election is less than sixty (60) days from the day the Tribal Council position is declared vacant, that position shall be filled by a majority vote by the Tribal Council until the regular election is held.

Section 2. Removal. Any member of the Tribal Council shall be removed from office by a majority vote of all the remaining members of the Tribal Council if, in their opinion, he is guilty of gross misconduct or gross neglect of duty, or for the following:

- (1) Failure to attend three (3) regular or special meetings consecutively, absent good cause as defined by ordinance which shall include provisions for leave for the following reasons: Sickness, vacation, death in the immediate family, failure to receive adequate notice of the meeting.
- (2) Conviction by any tribal, Federal, or State court of any of the following offenses:
 - (a) A felony; (b) any sex related offense; (c) child abuse; (d) disorderly conduct; any offense involving the use of alcohol, drugs, or controlled substance; (e) converting tribal property or monies without authorization through the omission or misrepresentation of facts; and (f) contempt of court.
- (3) Removal. Due process is required in all removals. The Tribal Council member in question shall be afforded full due process including a written statement of the charges, the right to respond to charges and the right to present witnesses and other evidence in his/her defense.
- (4) The decision of the Tribal Council shall be final and shall be appealable to the Tribal Court only if a claim is that the tribal Constitution has been violated or due process rights are not afforded. A council member removed from office must wait ten (10) years from the date of removal to run for office.

Section 3. Recall.

- (a) Any elected member of the Tribal Council shall be recalled from office by a majority vote of the eligible voters voting in a special election in which at least fifty percent (50%) of the eligible voters have voted.
- (b) The Tribal Council within ten (10) days shall call and hold a recall election upon a written petition to the Tribal Council and signed by at least fifty percent (50%) of the eligible voters.
- (c) A separate petition for recall shall be drawn for each elected Council Member to be considered for recall.
- (d) If a recall election is successful, the position shall be declared vacant by the Tribal Council and a special election shall be held to fill the vacancy. If the recall election fails, no petition may be submitted for recall of the same member for a period of six (6) months. No petition may be submitted for the recall or any member within three (3) months before the expiration of the member's term.

ARTICLE VII - POWERS OF THE GOVERNING BODY

Section 1. The Tribal Council shall exercise all powers of the Tribe, subject to any limitation imposed by this Constitution or laws of the United States applicable to Indian Tribes; Provided, That, the actions of the Tribal Council shall be subject to approval by the Secretary of the Interior where such approval is required by Federal law, or by virtue of the fact that the United States holds property in trust for the use of the Tribe.

Section 2. The following tribal powers shall be exercised by the Tribal Council.

- (a) To adopt regulations, ordinances, bylaws, and rules of procedure to govern the duties, responsibilities, conduct and procedures of the Tribal Council.
- (b) To negotiate, make and perform contracts and agreements of any description not inconsistent with law or this Constitution, with any person, association, partnership, corporation, municipality, country, local government, county, state, the United States, or other Indian tribe, band or community.
- (c) To seek, make application and accept grants, aid or donations from any acceptable source.
- (d) To manage and appropriate tribal funds for tribal purposes and expend such funds in accordance with an annual budget approved by the Tribal Council; and to manage and administer any other funds or property within the control of the Tribe for the benefit of the Tribe and its members.
- (e) To enact ordinances, including, but not limited to: civil actions, crimes law enforcement, zoning, businesses, signs, land use, environmental quality and protection, inheritance, probate and administration of personal estates, domestic relations, protection of minors and mental incompetents, including the appointment of guardians and custodial care and adoption, and sale and use of alcoholic beverages.
- (f) To enact appropriate ordinances to remove or exclude from the jurisdiction of the Tribe any non member of the Tribe whose presence may be undesirable or injurious to the members of the Tribe.
- (g) To enact ordinances governing the activities of voluntary associations consisting of members of the Tribe organized for purposes of cooperation or other purposes.
- (h) To appoint subordinate committees, commissions, boards, authorities, advisory or otherwise, tribal officials and employees not otherwise provided for in this Constitution, and to regulate subordinate organizations for economic and other

economic and other purposes. To manage, protect and preserve all lands, minerals, water, wildlife and other natural resources held by the Tribe.

- (i) To manage, protect and preserve all lands, minerals, water, wildlife and other natural resources held by the Tribe.
- (j) To initiate, regulate and administer development projects owned by or with in the jurisdiction of the Tribe.
- (k) To levy and collect taxes, tolls and licenses upon those living or visiting, purchasing or doing business within the jurisdiction of the Tribe.
- (l) To encumber, mortgage, lease, permit, sell, assign, manage or provide for the management of tribal lands, interest in such land or other such tribal assets, to purchase or otherwise acquire lands or interests in lands within or without the Reservation; and to regulate the use and disposition of tribal property of all kinds; Provided, that the powers enumerated in this subsection shall be subject to the provisions of Article II of this Constitution.
- (m) To encourage and foster arts, crafts, traditions, language and culture of the Tribe.
- (n) To advise, consult and negotiate with Federal, State or local government, and other persons, on all activities which may affect the Tribe.
- (o) To advise the Secretary of the Interior and other agencies or representatives of the Federal Government with regard to all appropriation estimates of Federal projects or programs affecting, or for the benefit of Indians, the Tribe or its members, prior to the submission of such estimates to the Office of Management and Budget and Congress.
- (p) To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior, as long as such approval is required by Federal law
- (q) To veto the sale, disposition, lease or encumbrance of tribal lands interest in lands, or other tribal assets.
- (r) To charter private or public corporations for profit or not for profit, and to enact ordinances governing the operation and conduct of such corporations.
- (s) To issue appropriate bonds in accordance with tribal law and laws of the United States.

- (t) To own, purchase or sell any kind of property, real, personal or intangible, not otherwise prohibited by law.
- (u) To conduct, on or off the Reservation, any and all activity or business not otherwise prohibited by law.
- (v) To establish and operate a judicial system as a court of record.
- (w) To exercise jurisdiction over all persons and activities within tribal territory, except where such jurisdiction has been specifically restricted or preempted by Federal law.
- (x) To exercise, as to non-members, all other sovereign powers of the Tribe, whether or not enumerated in this Constitution, subject only to limitations on these powers expressly imposed by Federal law.
- (y) To employ accountants and consultants.
- (z) To determine all terms and conditions of employment for all persons employed by the Tribe through the adoption of appropriate ordinances.
- (aa) To enact laws and ordinances for conducting and regulating elections.
- (bb) To enact laws and ordinances governing the enrollment and adoption of members and the relinquishment and loss of membership consistent with Article III of this Constitution.
- (cc) To provide for, appoint, or provide for the appointment of, and prescribe the duties and powers of committees, boards, officers and agents; to establish and regulate subordinate organizations for business purposes; Provided. That no such committee, board, officer, agent or organizations shall exercise powers of the Tonto Apache Tribe unless they are expressly delegated by the Tribal Council.

ARTICLE VIII - BILL OF RIGHTS

- Section 1. All members of the Tribe shall enjoy equal rights of life, liberty and the pursuit of happiness.
- Section 2. The Tribe, in exercising its powers of self-government, shall not.
- (a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people to peaceably assemble and to petition for redress of grievances.

- (b) Violate the right of the people to be secure in their persons houses, papers and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the person or thing to be seized.
- (c) Subject any person for the same offense to be twice put in jeopardy.
- (d) Compel any person in any criminal case to be witness against himself.
- (e) Take any private property for a public use without due process of law and just compensation.
- (f) Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and, at his own expense, to have the assistance of counsel for his defense.
- (g) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments.
- (h) Deny to any person subject to its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.
- (i) Pass any bill of attainder or ex post facto law.
- (j) Deny to any person accused of an offense punishable by imprisonment, the right, upon request, to a trial by a jury of not less than six (6) person, or as prescribed in the Indian Civil Rights Act.

ARTICLE IX - POPULAR PARTICIPATION IN GOVERNMENT

Section 1. INITIATIVE. Upon the Tribal Council's receipt of a petition in writing of at least thirty percent (30%) of the eligible voters of the Tribe, any ordinance or resolution shall be submitted by the Tribal Council within thirty (30) days to an election of eligible voters who shall, by majority vote, in such election, decide whether the ordinances or resolution shall thereafter be in effect; Provided, That at least thirty percent (30%) of the eligible voters shall vote in such election.

Section 2. REFERENDUM. Upon the request of the majority of the members of the Tribal Council, any enacted ordinance or resolution of the Tribal Council shall be submitted by the Tribal Council to a popular referendum of the eligible voters. The eligible voters shall, by majority vote, in such referendum, decide whether the ordinance or resolution shall thereafter be in effect; Provided, That at least thirty percent (30%) of the eligible voters shall vote in such referendum.

ARTICLE X - AMENDMENTS

This Constitution may be amended by a majority vote of the qualified voters of the Tribe voting in an election authorized and conducted by the Secretary of the Interior, in which at least thirty percent (30%) of those entitled to vote shall vote, but no amendment shall become effective until it shall have been approved by the Secretary of the Interior, so long as the Secretary's approval is required by Federal law. The Secretary of the Interior shall authorize such election upon receipt of a written petition of at least one-third (1/3) of the eligible voters of the Tribe or a resolution of the Tribal Council adopted by an affirmative vote of majority of all Tribal Council members.

ARTICLE XI - RESERVED POWERS

Powers enumerated in this Constitution are not exclusive and the remaining sovereign powers of the Tribe are reserved for the members of the Tribe who may exercise such powers by popular referendum under the provisions of Article IX, Section 1.

ARTICLE XII - SAVING CLAUSE

All enactments of the Tribe adopted before the effective date of this Constitution shall continue in effect to the extent that they are consistent with this revised Constitution.

ARTICLE XIII - SEVERABILITY

If any provision of this Constitution shall, in the future, be declared invalid by a court of competent jurisdiction, the invalid provisions shall be severed and the remaining provisions shall remain in full force and effect.

ARTICLE XIV - ADOPTION

This Constitution, when adopted by a majority vote of the qualified voters of the Tribe, voting at a special election authorized by the Secretary of the Interior, in which at least thirty percent (30%) of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his approval, and shall be in force from the date of such approval.

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This Constitution may be amended by a majority vote of the qualified voters of the Tribe voting in an election authorized and conducted by the Secretary of the Interior, in which at least thirty percent (30%) of those entitled to vote shall vote, but no amendment shall become effective until it shall have been approved by the Secretary of the Interior, so long as the Secretary's approval is required by Federal law. The Secretary of the Interior shall authorize such election upon receipt of a written petition of at least one-third (1/3) of the eligible voters of the Tribe or a resolution of the Tribal Council adopted by an affirmative vote of a majority of all Tribal Council members.

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ARTICLE XIII - SEVERABILITY

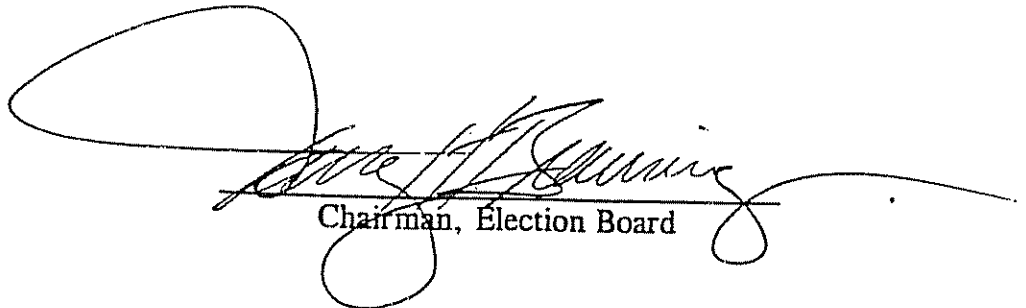
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ARTICLE XIV - ADOPTION

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CERTIFICATE OF RESULTS OF ELECTION

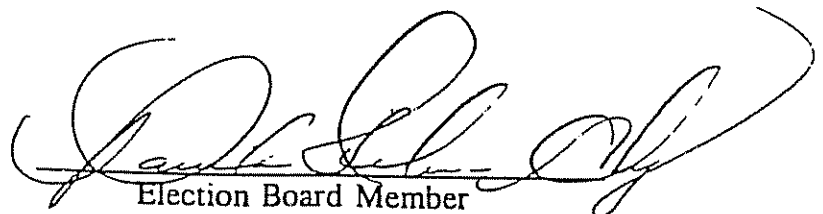
Pursuant to a Secretarial election authorized by the Deputy Commissioner of Indian Affairs on January 30, 1995, the foregoing Constitution of the Tonto Apache Tribe, Arizona, was submitted to the registered voters of the Tonto Apache Tribe and on April 29, 1995, was duly adopted/~~rejected~~ by a vote of 15 (number) for, and 03 (number) against, and 0 (number) cast ballots found spoiled or mutilated, in an election in which at least thirty percent (30%) of the 31 (number) members registered to vote cast their ballot in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended.



Chairman, Election Board



Election Board Member



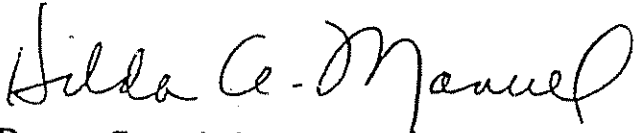
Election Board Member

Election Board Member

Date: MAY 02 1995

APPROVAL

I, Hilda Manuel, Deputy Commissioner of Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and delegated to me by 230 D. M. 2.4, do hereby approve the Constitution of the Tonto Apache Tribe. The Constitution is effective as of this date, PROVIDED, That nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.


Deputy Commissioner of Indian Affairs

Washington, D. C.

Date: MAY 22 1995



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

RECEIVED JUN 8 1995



IN REPLY REFER TO:

Tribal Government Services - TR
MS 2611 MIB

MAY 22 1995

THROUGH: PHOENIX AREA DIRECTOR

Mr. Danny Breuninger
Superintendent, Truxton Canon Agency
Bureau of Indian Affairs
P.O. Box 37
Valentine, Arizona 86437



Dear Mr. Breuninger:

We have received the results of the election held on April 29, 1995, by the qualified voters of the Tonto Apache Tribe (Tribe). The election was called in accordance with an order issued on January 30, 1995, by the Acting Deputy Commissioner of Indian Affairs, which permitted the qualified voters of the Tribe to vote on the adoption or rejection of the proposed constitution.

As evidenced by the completed Certificate of Results of Election, the Constitution of the Tonto Apache Tribe was duly adopted by a vote of 15 for and 3 against in an election in which fifty-eight percent (58%) of the 31 members registered and entitled to vote cast their ballots.

The Constitution of the Tonto Apache Tribe is hereby approved pursuant to the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and delegated to me by 230 D.M. 2.4. Please deliver the enclosed original document to the Tribe.

Sincerely,

Deputy Commissioner of Indian Affairs

Enclosure

cc: Area Director, Phoenix
Superintendent, Truxton Canon Agency
Assistant Solicitor, Tribal Government & Alaska, MIB6456
Chief, Branch of Tribal Enrollment
Regional Solicitor, Phoenix

Exhibit F

CONSTITUTION OF THE YAVAPAI-APACHE NATION

PREAMBLE

We the people of the Yavapai-Apache Nation, also called the Yavapai-Apache Tribe, of the Verde Valley, Arizona, do hereby adopt this constitution in order to:

- o promote the common welfare of our Tribe,
- o protect our people, land and natural resources now and in the future,
- o acquire additional lands for the benefit of the Tribe,
- o protect our Indian heritage including our religion, customs, and language,
- o preserve, secure and exercise all the inherent sovereign rights and powers of an Indian tribe.

This constitution shall supersede the Constitution and By-laws of the Yavapai-Apache Indian Community, Arizona, adopted October 24, 1936, and approved by the Secretary of the Interior on February 12, 1937, as amended June 21, 1947 and approved August 15, 1947, and shall govern the Yavapai-Apache Tribe from its effective date.

ARTICLE I - JURISDICTION

The jurisdiction of the Yavapai-Apache Tribe shall extend to all lands within the boundaries of the Camp Verde Indian Reservation and to any and all lands held by the Tribe, trust allotments located outside the reservation boundaries to the extent permitted by federal law, and to any additional lands acquired by the Tribe or by the United States for the benefit of the Tribe, except where expressly prohibited by federal law. It is hereby declared that the title to these lands includes but is not limited to all the surface rights, subsurface rights, tenements, hereditaments, all water rights and all accretions. Except as prohibited by federal law, the Yavapai-Apache Tribe shall have jurisdiction over all persons, property, lands, water, air space, resources and all activities occurring within the boundaries of the reservation or on other lands within the jurisdiction of the Tribe, notwithstanding the issuance of any right-of-way. Nothing in this Article shall be construed to limit the ability of the Tribe to exercise its jurisdiction based upon its inherent sovereignty as an Indian Tribe.

ARTICLE II - MEMBERSHIP

Section 1. Requirements. The membership of the Yavapai-Apache Tribe shall consist of the following:

- (a) All persons of Indian blood whose names appear on the official census roll as of April 1, 1934, with the supplement thereto of January 1, 1936.
- (b) All children born to any member who are one fourth (1/4) or more Indian blood.
- (c) All persons who are one fourth (1/4) or more Yavapai-Apache Indian blood.
- (d) All persons who qualified for and were accepted into membership under the membership requirements contained in the Constitution and By-laws of the Yavapai-Apache Indian Community, Arizona, adopted October 24, 1936, and approved by the Secretary of the Interior on February 12, 1937, as amended on June 21, 1947, and approved August 5, 1947.

Section 2. Adoption.

- (a) The Tribal Council shall have the power to pass ordinances covering the adoption of new members, Provided, That all persons adopted under this section shall meet at a minimum the following requirements:
 - (1) must have resided on the reservation for at least one (1) year, and
 - (2) must be Indian, and
 - (3) must be a person in good standing within the community.
- (b) Except as provided in Section 2 (c), persons who meet the criteria listed in Article II, Section 2 (a) (1-3) are not automatically entitled to become members of the Tribe. The Tribal Council shall have sole discretion in determining whether a person shall be adopted into the Tribe. Denials of petitions for adoption shall not be appealable to Tribal Court.
- (c) Spouses of tribal members and children adopted by tribal members as officially established by Tribal Court order, who meet the criteria listed in Article II, Section 2 (a) (1-3), shall be eligible for adoption into the Tribe. Denials of petitions for membership of persons seeking to be adopted under this section shall be executed in writing and may be appealed to the Tribal Court. The Tribal Court shall overturn the Tribal Council's decision only when such decision is arbitrary and capricious.

Section 3. Proof of Paternity or Maternity. Proof of paternity or maternity for purposes of tribal membership shall be established through the Tribal Court but only when such proof is requested by the Tribal Council.

Section 4. No Dual Enrollment. No person who is an enrolled member of another Indian Tribe shall be eligible for membership in the Yavapai-Apache Tribe. Any person who is denied membership in the Yavapai-Apache Tribe based upon a finding that the person in question is an enrolled member of another Indian tribe shall have the right to appeal that finding to the Tribal Court which shall have jurisdiction over these matters.

Section 5. Admission Procedures. The Tribal Council shall have the power to pass an ordinance to implement and enforce the membership sections listed in this constitution. Applicants denied admission may appeal to the Tribal Court except when prohibited by this constitution.

ARTICLE III - ORGANIZATION OF THE GOVERNMENT

Section 1. Three Branches of Government. The Yavapai-Apache government shall be divided into three (3) separate and independent branches of government: the Legislature, the Judiciary and the Executive Department. No person or group of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except as this constitution may otherwise expressly direct or permit.

ARTICLE IV - THE TRIBAL COUNCIL

Section 1. Legislative Body. The legislative body of the Yavapai-Apache Tribe shall be known as the Yavapai-Apache Tribal Council and shall consist of nine (9) members which includes the Chairperson and Vice Chairperson. All members of the Tribal Council shall have the power to vote.

Section 2. Terms of Office. The terms of office for all Tribal Council members including the Chairperson and Vice Chairperson shall be three (3) years. All Tribal Council members shall be eligible to serve two (2) consecutive terms, whether full or partial terms. At the completion of his second (2nd) consecutive term, a council member shall not be eligible to run for reelection or be eligible to fill a vacancy until a period of one (1) year has elapsed. The limitation on serving on the Tribal Council for longer than two (2) consecutive terms shall not be applied retroactively but shall commence from the date of final approval of this constitution.

Section 3. Selection of Secretary and Treasurer. The Tribal Council shall choose a Secretary and a Treasurer from within or without the tribal membership, Provided, That officials elected from outside the Tribal Council membership shall have no vote in the Tribal Council.

Section 4. Meetings of the Council.

- (a) A regular meeting of the Tribal Council shall be held once a month on a date designated by the Chairperson.
- (b) The Chairperson or any three or more members of the Tribal Council may, by written notice, call special meetings of the Tribal Council.

Section 5. Quorum. Six (6) or more members of the Tribal Council shall constitute a quorum at any regular or special meeting. A quorum is required at all meetings in order to conduct official business of the Tribal Council. Proxy voting shall be prohibited.

Section 6. Removal.

- (a) The Tribal Council may suspend or remove a council member for the following reasons so long as the actions in question take place during the council member's term of office:
 - (1) Failure to attend three (3) regular or special meetings consecutively absent good cause as defined by ordinance which shall include provisions for leave for the following reasons: sickness, vacation, death in the immediate family, failure to receive adequate notice of the meeting.
 - (2) Final conviction by any Tribal, Federal, or State Court of any of the following offenses:
 - (A) a felony,
 - (B) any sex related crime,
 - (C) drunk and disorderly conduct or its equivalent,
 - (D) three (3) misdemeanors while serving on the Tribal Council,
 - (E) contempt of court.
 - (3) Gross neglect of duty or gross misconduct.

- (b) A Tribal Council member appealing a conviction of an offense listed in Article IV, Section 7(a) (2) (A-E) shall be suspended pending the outcome of the final appeal.
- (c) A Tribal Council member suspended or removed under Article IV, Section 7(a) (1) or (2) shall be by majority vote of the Tribal Council. A Tribal Council member suspended or removed under Article IV, Section 7 (a) (3) shall be by a vote of at least seven (7) members of the Tribal Council.

Section 7. Recall.

- (a) Any member of the Yavapai-Apache Tribe of voting age shall have the power to initiate recall proceedings against a Tribal Council member by filing with the Election Board a written statement in one-hundred (100) words or less giving specific reasons why the Tribal Council member in question should be recalled.
- (b) All recall proceedings subsequent to the filing of a recall petition shall be administered by the Election Board. The Tribal Council shall not have jurisdiction over recall proceedings and it shall not exercise its authority to remove members of the Election Board in such a way as to impede a recall proceeding.
- (c) The Election Board shall issue official petition forms to the petitioners who shall have sixty (60) days to collect the signatures from thirty-five (35) percent of the eligible voters of the Tribe.
- (d) Each eligible voter of the Tribe shall have the right, exercisable freely and without constraint or coercion of any kind, to participate in proceedings for the recall of any elected tribal official.
- (e) Individual petitions shall be circulated for each Tribal Council member who is subject to recall.
- (f) The Election Board shall verify the signatures on a recall petition within ten (10) days of receipt of a recall petition. The person subject to recall may file a written response to the charges alleged in the petition in accordance with the applicable provisions of the recall ordinance. The written response must be mailed to the voters along with the notices of the recall election but only when such notices are required to be mailed to the voters.

- (g) A recall meeting shall be held in accordance with the provisions of the recall ordinance. A recall meeting shall be considered a special election and shall be conducted in accordance with all applicable provisions of this constitution and appropriate ordinances. The ballots used at the recall meeting shall state the reasons for the recall and any response by the person subject to recall. A majority vote of the eligible voters attending the recall meeting shall determine the success or failure of the recall petition(s); Provided, That at least thirty-five (35) percent of the eligible voters actually vote at the recall meeting. The Election Board shall certify the election results.
- (h) The results of the recall election shall be final. The Tribal Court shall have exclusive jurisdiction to hear any challenge to the recall election or to hear any complaint against the Election Board or its members based upon its conduct of the recall proceeding. Any challenge or complaint shall be filed in a timely manner as established by ordinance. The Tribal Court shall hear and decide the challenge to the recall election within thirty (30) days of the date the complaint is filed.
- (i) A Tribal Council member who is successfully recalled must wait one (1) year before being eligible to run for office again or to be appointed to fill a vacancy.

Section 8. Conflict of Interest. Any Tribal Council member who may have a direct personal or financial interest in any matter before the Tribal Council not similarly shared by all members of the Tribal Council shall not vote on such matter without the consent of the remaining members of the Tribal Council. Failure to reveal a conflict of interest may constitute a violation of Article IV, Section 7 (a) (3).

Section 9. Code of Ethics. The Tribal Council shall have the power to adopt a Code of Ethics governing the conduct of tribal officials. The Code of Ethics may include disciplinary procedures, subject to section 7 of this Article, so long as the tribal official in question is afforded full due process rights.

ARTICLE V - POWERS OF THE TRIBAL COUNCIL

The Tribal Council shall have all legislative powers vested in the Yavapai-Apache Tribe through its inherent sovereignty and shall, in accordance with established practices of the Tribe and subject to the express limitations contained in this constitution and the applicable laws of the United States, have the following powers:

- (a) To represent the Tribe and act in all matters that concern the health and welfare of the Tribe, and to make decisions not inconsistent with or contrary to this constitution;
- (b) To negotiate with Federal, State and local governments;
- (c) To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior, but only so long as such approval is required by federal law;
- (d) To regulate its own procedures;
- (e) To regulate the use and disposition of all land within the jurisdiction of the Tribe, including but not limited to the enactment of ordinances providing for the manner of making, holding and revoking assignments of tribal lands and interests therein;
- (f) To veto any sale, disposition, lease or encumbrance of tribal lands, interests in lands, or other tribal assets without the formal consent of the Tribe;
- (g) To request the Secretary of the Interior to confer trust or reservation status on lands reserved for, granted to or purchased by the Tribe;
- (h) To advise the Secretary of the Interior or his representative on all activities that may affect the Yavapai-Apache Tribe, and on all appropriation estimates and federal projects for the benefit of the Tribe before such estimates and projects are submitted to the Office of Management and Budget and to Congress;
- (i) To manage all tribal economic affairs and enterprises;
- (j) To levy and collect taxes, duties, fees and assessments;
- (k) To appropriate and regulate the use of tribal funds;
- (l) To regulate hunting, fishing, trapping, camping, recreation, hiking and all other related activities on lands within the jurisdiction of the Tribe;
- (m) To enact ordinances regulating animals which are in the control of persons within the jurisdiction of the Tribe;
- (n) To regulate domestic relations of persons within the jurisdiction of the Tribe;

- (o) To enact codes and ordinances governing law enforcement on lands within the jurisdiction of the Tribe;
- (p) To appoint subordinate committees, commissions, boards, tribal officials and employees not otherwise provided for in this constitution, and to prescribe their compensation, tenure, duties, policies and procedures;
- (q) To determine all terms and conditions of employment for all persons employed by the Tribe through the adoption of appropriate ordinances and subject to Article VII of this constitution;
- (r) To issue and to regulate motor vehicle license plates;
- (s) To accept grants and donations from any person, organization, State or the United States;
- (t) To enact ordinances providing for the removal or exclusion of any non-member of the Tribe for cause, and to prescribe conditions upon which non-members may remain within the territory of the Tribe, Provided, That all actions of exclusion or removal shall be done by filing an action in Tribal Court;
- (u) To exercise civil jurisdiction over all tribal members and any non-member of the Tribe to the extent permitted by federal law;
- (v) To enact laws, ordinances and resolutions necessary or incidental to the exercise of its legislative powers;
- (w) To take any and all actions necessary and proper for the exercise of the foregoing powers and duties, including those powers and duties not enumerated above, and all other powers and duties now or hereafter delegated to the Tribal Council, or vested in the Tribal Council through its inherent sovereignty.

ARTICLE IV - THE JUDICIARY

Section 1. The Judiciary. The judicial power of the Yavapai-Apache Tribe shall be vested in the judiciary which shall consist of a Tribal Court and a Court of Appeals and other lower courts as deemed necessary by the Tribal Council.

Section 2. Jurisdiction of the Court. The tribal courts shall exercise jurisdiction over all cases and controversies, whether civil or criminal in nature, within the jurisdiction of the Tribe, in law and equity, that arise under this document, the laws of the Tribe, by virtue of the Tribe's inherent sovereignty, or which are vested in the tribal courts by federal law.

Section 3. Power of the Courts. The Yavapai-Apache judiciary shall have the power to:

- (a) Interpret, construe and apply the laws of, or applicable to, the Yavapai-Apache Tribe;
- (b) Declare the laws of the Yavapai-Apache Tribe void if such laws are not in agreement with this constitution;
- (c) Issue injunctions, attachments, writs of mandamus, quo warranto, review, certiorari and prohibition, and to issue writs of habeas corpus to any part of the Yavapai-Apache Tribe upon petition by, or on behalf of, any person held in actual custody;
- (d) Establish court procedures for the Yavapai-Apache judiciary except that the Tribal Council may by ordinance alter such procedures consistent with this constitution.

Section 4. Composition of the Court. The Yavapai-Apache Tribal Court shall be composed of one Chief Judge and such Associate Judges as may be determined necessary by the Tribal Council.

Section 5. Appointment of Judges. The Tribal Council shall appoint three (3) Appellate Judges, one (1) Chief Judge and as many Associate Judge(s) as deemed necessary. Should a vacancy occur through death, resignation, or otherwise, for the position Appellate Judge(s), Chief Judge, or Associate Judge(s), the Tribal Council shall appoint a person or persons to fill such vacancy or vacancies.

Section 6. Term of Office. The Chief Judge of the Tribal Court, and any Associate Judge(s), shall hold office for a period of two (2) years. The Chief Judge of the Court of Appeals shall hold office for three (3) years. The remaining two (2) Appellate Judges shall hold office for two (2) years. All Judges shall remain in office for the duration of their term unless sooner removed under Section 11 or by reason of abandonment of the office. All Judges shall be eligible for re-appointment.

Section 7. Court of Appeals. The Yavapai-Apache Tribal Court of Appeals shall consist of one or more Judges selected in sequential order from a list of available Court of Appeals Judges. The Court of Appeals shall always consist of an odd number of Judges. No Judge shall sit on a Court of Appeals if he presided over the original proceedings or if disqualified under Section 10.

Section 8. Qualifications of Judges. The qualifications for tribal Judges shall be established by ordinance enacted by the Tribal Council, but no additional requirements may be added during the tenure of a Judge already in office, unless the additions or changes exempt the present Judges during their term.

Section 9. Compensation. The Judge(s) shall receive for their services reasonable compensation. The Tribal Council shall not diminish the compensation of a Tribal Judge during his term in office.

Section 10. Disqualification to Act. No Judge shall be qualified to act in any case wherein he has any direct interest or wherein any relatives by marriage or blood in the first degree is a party.

Section 11. Removal of Judges.

(a) Any Judge of the Yavapai-Apache Tribal Court may be suspended, dismissed or removed by the Tribal Council for any of the following reasons:

1. conviction of a felony in any Tribal, federal or State Court;
2. conviction of any two (2) misdemeanors in any Tribal, federal or State Court;
3. performing his official duties while under the influence of alcoholic beverages;
4. failure to disqualify himself under Article VI, Section 10;
5. unnecessary and repeated lengthy delays in hearing and adjudicating matters filed in Tribal Court;
6. violating Article VIII, Section 17 of this constitution;
7. for good cause by at least seven (7) members of the Tribal Council.

- (b) A Judge shall be given full and fair opportunity to reply to any and all charges for which he may be suspended, dismissed or removed from judicial office.
- (c) A Judge suspended, dismissed or removed under Article VI, Section 11(a) (1-6) may appeal directly to the Tribal Court of Appeals which shall have jurisdiction over such matters. Removal of a Judge under Article VI, Section 11(a) (7) shall be determined solely by the Tribal Council.

Section 12. Right to Appeal. Any party to a civil action, or a defendant in a criminal action, who is dissatisfied with the judgment or verdict may appeal therefrom to the Yavapai-Apache Tribal Court of Appeals. All matters of law and procedure may be decided by the Court of Appeals. Findings of fact shall be made by the Trial Court and shall be reviewable only when arbitrary or capricious.

Section 13. Court Rules. The duties and procedures of the tribal court system, and all other court matters not enumerated in this section of the constitution, shall be established by the Yavapai-Apache judiciary, except that the Tribal Council may by ordinance alter such procedures consistent with this constitution.

Section 14. Revised Law and Order Code. Within twelve (12) months after the adoption this constitution, the Tribal Council shall revise and update the tribal law and order code. The law and order code shall be reviewed by the Tribal Council every two (2) years thereafter.

ARTICLE VII - THE EXECUTIVE DEPARTMENT

Section 1. Executives. The Executive Department shall consist of the Chairperson, Vice Chairperson, Secretary and Treasurer of the Tribal Council and such other persons as the Tribal Council or their designee may find necessary for the administration of tribal business. The Chairperson shall be in charge of the Executive Department in accordance with Section 2 of this Article.

Section 2. Duties.

- (a) The Chairperson shall make all decisions regarding personnel within the Executive Department, Provided, That decisions regarding departmental directors shall also need the concurrence of the Tribal Council.
- (b) The Executive Department shall oversee the administration of tribal business and shall exercise those authorities delegated to it by the Tribal Council unless otherwise provided in this constitution.

ARTICLE VIII - ELECTIONS

Section 1. Nominations. Any enrolled member of the Yavapai-Apache Tribe may nominate himself as a candidate for Tribal Council by submitting his name, along with twenty-five (25) signatures from tribal members, to the Election Board. All other procedures of nomination including timeframes, official nomination forms, and verification of signatures, shall be conducted in accordance with an ordinance adopted by the Tribal Council.

Section 2. Election Board. The Tribal Council shall appoint an Election Board to conduct all elections including all special elections.

Section 3. Qualifications for Office.

- (a) Any member of the Yavapai-Apache Tribe shall be eligible to run for tribal office if he:
 - (1) is at least twenty-five (25) years of age, and
 - (2) is a resident of the reservation for at least two (2) years or has resided within ten (10) miles of any lands within the jurisdiction of the Tribe for at least two (2) years, and
 - (3) has no misdemeanor convictions within the last five (5) years or felony convictions within the last fifteen (15) years, and
 - (4) has a high school degree or its equivalent, or has sufficient experience for a position on the Tribal Council.
- (b) The requirement of sufficient experience shall be demonstrated to the Election Board. The Election Board shall base its decision on the experience of the prospective candidate relevant to the duties of the Tribal Council.
- (c) If the Election Board decides that a prospective candidate does not have sufficient experience it shall do so in writing giving specific reasons for its decision. An adverse decision by the Election Board may be appealed to the Tribal Court.

Section 4. Primary Elections.

- (a) In any general election where three (3) or more candidates are seeking the position of Chairperson, or the position of Vice Chairperson, there shall be a primary election held at least forty-five (45) days before the annual general election. A person may not run for both positions of Chairperson and Vice Chairperson in the primary election. A primary election shall not be held for other council member positions but shall be limited to the positions of Chairperson and Vice Chairperson. The primary election shall narrow the list of candidates for Chairperson or Vice Chairperson down to two (2) candidates who shall be the candidates in the annual general election. A primary which results in a tie between two (2) or more candidates shall be decided in the general election. Candidates eliminated during the primary election may still seek the position of council member, Provided, That no new nomination petition shall be necessary.
- (b) Incumbent Tribal Council members who are not up for reelection may run in the primary election for the position of Chairperson or Vice Chairperson without resigning their Tribal Council member seat. Incumbent Tribal Council members who run successfully in the primary shall resign their Tribal Council member seat within three (3) days of the certification of the primary election results and the resulting vacancy shall be filled in the upcoming annual general election.

Section 5. General Elections. Annual general elections to vote for upcoming vacancies on the Tribal Council shall be held on the third Saturday of September.

Section 6. Special Elections. Special elections shall be held when called for by the Tribal Council, by this constitution, or by the voters as provided in this constitution or appropriate ordinances. In all special elections, adequate notice shall be given to the voters.

Section 7. The First Election. The first election of Tribal Council members under this constitution shall be held on the third Saturday of September 1992. All nine (9) Tribal Council positions shall be declared vacant for purposes of the first election. All candidates for these positions shall indicate during their nomination whether they wish to serve as Chairperson, Vice Chairperson, or council member. A candidate may run for one (1), two (2), or all three (3) positions but may only be elected to fill one (1) position. The person receiving the highest number of votes for Chairperson shall serve for three (3) years. The person receiving the highest number of votes for Vice Chairperson shall

serve for three (3) years. The person receiving the highest number of votes for council member shall serve for three (3) years. The persons receiving the second (2nd), third (3rd) and fourth (4th) highest number of votes for council member shall serve for two (2) years. The persons receiving the fifth (5th), sixth (6th) and seventh (7th) highest number of votes for council member shall serve for one (1) year. In all general elections thereafter, the terms of all positions on the Tribal Council shall be three (3) years. There shall be no primary election for purposes of the first election. All other sections of the Constitution not inconsistent with this section shall be applicable to the first election.

Section 8. Eligible Voters. All tribal members who are eighteen (18) years of age or older on the date of any tribal election shall be eligible to vote in the election.

Section 9. Voter Registration. There shall be a voter registration requirement for all members of the Tribe. All members of the Tribe must complete a voter registration form at any time before voting in any general or special election which is held after the adoption of this constitution. All original voter registration forms shall be kept in a secure location. A copy of all voter registration forms shall be kept in an alternate secure location. Once a completed voter registration form is on file with the Tribe, a voter is entitled to vote in all subsequent general and special elections.

Section 10. Selection of Chairperson and Vice Chairperson. The voters shall select the Chairperson and Vice Chairperson during the general election when those positions become vacant and in accordance with an election ordinance adopted by the Tribal Council.

Section 11. Voting District. Voting districts may be established by the Tribal Council.

Section 12. Secret Ballot. All elections, including special elections, shall be conducted by secret written ballot.

Section 13. Absentee Voting. Absentee voting may be permitted by ordinance adopted by the Tribal Council.

Section 14. Election Results. The candidates receiving the highest number of votes for the available positions shall be declared the winners for those positions. The Election Board shall certify all election results within three (3) days of the date of the election.

Section 15. Tie Votes. In case of a tie between one or more candidates, a run-off election shall be held until the tie is broken.

Section 16. Oath of Office. The oath of office for newly elected Tribal Council members shall be administered within thirty (30) days after the Election Board certifies the election results.

Section 17. Challenges to Election Results. Any member of the Yavapai-Apache Tribe may file a challenge to the election results by filing a suit in Tribal Court within ten (10) days after the Election Board certifies the election results. The Tribal Court shall hear and decide election cases within thirty (30) days after the Election Board certifies the election results, except where the party challenging the results requests additional time which may be granted at the discretion of the Tribal Court, Provided, That only one thirty (30) day extension of time may be granted. If the Tribal Court invalidates the election results, the Court shall order that a new election be held as soon as possible.

Section 18. Vacancies. The Tribal Council shall call a special election to fill a vacancy unless six (6) months or less remain in the term of office for the vacant position, in which case the position shall remain vacant until the next election. All persons elected to fill a vacant position shall fill out the term of the person whom he is replacing.

Section 19. Election Ordinance. The Tribal Council shall have the power to adopt ordinances covering all necessary details of the election procedures for both general and special elections.

ARTICLE IX - BILL OF RIGHTS

The Yavapai-Apache Tribe, in exercising its powers of self-government shall not:

- (a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peacefully to assemble and to petition for a redress of grievances;
- (b) Violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, nor issue warrants but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- (c) Subject any person for the same offense to be twice put in jeopardy;
- (d) Compel any person in any criminal case to be a witness against himself;

- (e) Take any private property for public use without just compensation;
- (f) Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;
- (g) Require excessive bail, impose excessive fines, or inflict cruel and unusual punishment;
- (h) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
- (i) Pass any bill of attainder or ex post facto laws; and
- (j) Deny any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six (6) persons.

ARTICLE X - DUTIES OF THE OFFICERS

The duties of the Chairperson, Vice Chairperson, Secretary and Treasurer shall be established by ordinance enacted by the Tribal Council.

ARTICLE XI - LAND

Section 1. No Allotments. All lands within the jurisdiction of the Tribe shall remain tribal property and shall not be divided by allotment in any way whatsoever to individuals, groups of individuals, or any other entity.

Section 2. Assignments. Assignment of tribal land for private use may be made by the Tribal Council in conformity with ordinances which may be adopted on this subject, Provided, That assignments shall be used for the purpose assigned and once granted shall not be revoked absent good cause. Title to the assigned lands shall not vest in the assignee.

ARTICLE XII - MEETINGS OF THE TRIBE

The Tribal Council may from time to time call general meetings of all the voters of the Tribe to identify and discuss important tribal matters. A minimum of one (1) general meeting shall be held each year.

ARTICLE XIII - SOVEREIGN IMMUNITY

- (a) The Yavapai-Apache Tribe hereby declares that, in exercising self-determination and its sovereign powers to the fullest extent, the Tribe is immune from suit except to the extent that the Tribal Council expressly waives sovereign immunity, or as provided by this constitution.
- (b) No tribal employee or Tribal Council member acting within the scope of his duties or authority is subject to suit.

ARTICLE XIV - REFERENDUM AND INITIATIVE

Upon petition of at least twenty-five (25) percent of the eligible voters of the Tribe; or upon request of the majority of the members of the Tribal Council, any enacted or proposed ordinance, resolution or other official action of the Tribal Council shall be submitted by the Tribal Council to popular initiative or referendum and the vote of the majority of the qualified voters in such initiative or referendum shall decide whether the ordinance, resolution or other official action shall thereafter be in effect, Provided, That twenty-five (25) percent or more of the eligible voters shall vote in such initiative or referendum. Official petition forms shall be issued by the Tribal Secretary and shall be circulated and completed within one-hundred-twenty (120) days of the date of issuance. The Secretary shall notify the petitioners in writing of the number of required signatures for a valid petition. The Tribal Council must act within thirty (30) days of receipt of a valid petition and must schedule an election on the proposed petition within ninety (90) days thereafter.

ARTICLE XV - ORDINANCES AND RESOLUTIONS

Section 1. Ordinances. All final decisions on matters of permanent interest shall be embodied in ordinances. Such enactments shall be available for inspection by members of the Tribe during normal business hours.

Section 2. Resolutions. All final decisions on matters of temporary interest where a formal expression is needed shall be embodied in a resolution, noted in the minutes, and shall be available for inspection by members of the Tribe during normal business hours.

Section 3. Form. All ordinances and resolutions shall be dated and numbered, shall cite the appropriate constitutional authority, and shall include a certificate showing the presence of a quorum and the number of members voting for and against the proposed enactment.

Section 4. Review. The Tribal Council shall submit tribal laws and enactments to the Secretary of the Interior for his review, comment and approval only when required to do so by federal law.

ARTICLE XVI - AMENDMENTS

This Constitution may be amended by a majority vote of the qualified voters of the Tribe voting at an election called for that purpose by the Secretary of the Interior, Provided, That at least thirty (30) percent of those entitled to vote shall vote in such election; but no amendment shall become effective until approved by the Secretary of the Interior or until deemed approved by the Secretary of the Interior by operation of law. If the voters adopt the amendment(s), the Secretary of the Interior shall approve such amendment(s) within forty-five (45) days after the election unless the amendment(s) are contrary to applicable law. It shall be the duty of the Secretary of the Interior to call and hold an election on any proposed amendment at the request of the Tribal Council, or upon presentation of a petition signed by thirty (30) percent of the qualified voters of the Tribe.

ARTICLE XVII - SAVINGS CLAUSE

All enactments of the Tribe adopted before the effective date of this constitution shall continue in effect to the extent that they are consistent with this constitution.

ARTICLE XVIII - SEVERABILITY

If any provision of this constitution shall in the future be declared invalid by a court of competent jurisdiction, the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

ARTICLE XIX - ADOPTION OF CONSTITUTION

This constitution, when adopted by a majority vote of the registered voters of the Yavapai-Apache Tribe of the Camp Verde Indian Reservation, Arizona, voting at a special election authorized by the Secretary of the Interior in which at least thirty (30) percent of those registered in accordance with Secretarial regulations to vote shall vote, shall be submitted to the Secretary of the Interior for his approval and, if approved by the Secretary of the Interior or by operation of law, shall be effective from the date of such approval.

CERTIFICATE OF RESULTS OF ELECTION

Pursuant to a Secretarial election authorized by Denise Homer, Actg. on January 28, 1992 the forgoing Constitution of the Yavapai-Apache Nation was submitted to the registered voters of the Yavapai-Apache Indian Community and on March 7, 1992, was duly adopted/rejected by a vote of 86 for, and 6 against, and 1 cast ballots found spoiled or mutilated, in an election in which at least thirty percent (30%) of the 157 members registered to vote cast their ballot in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended.


Chairman, Election Board


Election Board Member


Election Board Member

Date: March 7, 1992

CERTIFICATE OF APPROVAL

I, Denise Homer, Director, Office of Tribal Services, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and delegated to me by 230 D.M. 2.4, do hereby approve the Constitution of the Yavapai-Apache Nation. It is effective as of this date; Provided, That nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.



SE:18

Director, Office of Tribal Services

Washington, D.C.

Date: APR 13 1992



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240



IN REPLY REFER TO:

Tribal Government Services - TR
2612 MS/MIB

APR 13 1992

THROUGH: PHOENIX AREA DIRECTOR

Mr. Danny Brueninger
Superintendent, Truxton Canon Agency
Bureau of Indian Affairs
P.O. Box 37
Valentine, Arizona 86437

Dear Mr. Brueninger:

We have received the results of the election held on March 7, 1992, by the qualified voters of the Yavapai-Apache Indian Community. The election was called in accordance with an order issued on December 4, 1991, by the Acting Director, Office of Tribal Services, and reissued on January 28, 1992, which permitted the qualified voters of the Yavapai-Apache Indian Community to vote on the adoption or rejection of a revised constitution.

As evidenced by the completed Certificate of Results of Election, the Constitution of the Yavapai-Apache Nation was duly adopted by a vote of 86 for and six against in an election in which at least 30 percent of the 157 members registered and entitled to vote cast their ballots.

The Constitution of the Yavapai-Apache Nation is hereby approved pursuant to the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and delegated to me by 230 D.M. 2.4. Please deliver the enclosed approved original document to the tribe.

Sincerely,

Acting Director, Office of Tribal Services

Enclosure



United States Department of the Interior

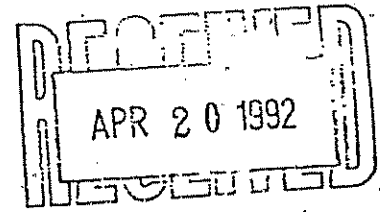
BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240



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APR 14 1992



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Sincerely,

S/ DENISE HOMER

Director, Office of Tribal Services

Enclosure

cc: Area Director, Phoenix
Superintendent, Truxton Canon
Chairman, Yavapai-Apache Tribal Council
Assistant Solicitor, Tribal Govt. & Alaska, MIB-6456
Chief, Branch of Tribal Enrollment

Exhibit G

11 359P
RECEIVED
7/5/08

RESOLUTION NO. 46-2006
OF THE GOVERNING BODY OF THE
YAVAPAI-APACHE NATION

COPY

A Resolution Confirming and Declaring
a Riparian Conservation Corridor and Management
Plan for the Verde River

- WHEREAS: the Yavapai-Apache Nation ("Nation") is a federally-recognized Indian Nation organized pursuant to Section 16 of the Indian Reorganization Act of 1934; and
- WHEREAS: the Tribal Council of the Yavapai-Apache Nation is vested under the Nation's Constitution to represent the Nation and to act in all matters that concern the health and welfare of the Nation, and is charged to protect the land and resources of the Nation; and
- WHEREAS: the Tribal Council of the Yavapai-Apache Nation is vested under Article V(e) of the Nation's Constitution to regulate the use and disposition of all land within the jurisdiction of the Tribe, and under Article V(l) of the Constitution to regulate hunting, fishing, trapping, camping, recreation, hiking and all other related activities on lands within the jurisdiction of the Nation; and
- WHEREAS: the Tribal Council of the Yavapai-Apache Nation finds that it in the best interest of the Nation to formally declare and confirm certain land use restrictions and management plan goals along the Verde River in order to continue to protect the traditional and cultural practices of the Nation, and to preserve those physical and biological features found within the riparian corridor of the Verde River which are essential to native wildlife species, including species listed as endangered or threatened by the federal government under the Endangered Species Act, such as the federally listed spikedace and loach minnow.

NOW THEREFORE BE IT RESOLVED that, in order to continue protect habitat within the riparian corridor of the Verde River from development or degradation, and to preserve the traditional and cultural practices of the Nation, the Tribal Council of the Yavapai-Apache Nation formally declares and confirms a riparian conservation corridor on the undeveloped Reservation lands on both sides of the Verde River, beginning at the center of the River and extending outward for three hundred (300) lateral feet on either side of the bankfull stage of the Verde River

BE IT FURTHER RESOLVED that within this riparian conservation corridor, stocking of non-native fishes shall be prohibited, and livestock, grazing, construction and other activities shall be minimized to assure that no net loss of habitat for federally listed species such as the spikedace and loach minnow shall occur, and that no permanent modification of habitat essential to listed species is allowed;

BE IT FURTHER RESOLVED that the Nation will take all reasonable steps to coordinate with the United States Fish and Wildlife Service regarding recreational activities (such as camping and fishing), habitat restoration activities (such as re-vegetation or controlled fires), or other significant activities within the riparian corridor, where such activities may adversely impact habitat essential to the conservation and/or recovery of federally listed species, including the spikedace and loach minnow;

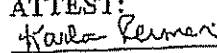
BE IT FURTHER RESOLVED that within funding limitations, and subject to confidentiality guidelines established by the Nation, the Nation will coordinate with the United States Fish and Wildlife Service to monitor habitat within the riparian conservation corridor for the presence of federally listed species such as the spikedace and loach minnow, including performing surveys, and to conduct research or other activities pertaining to or for the benefit of federally listed species or their habitat; and

BE IT FINALLY RESOLVED that the Yavapai-Apache Land and Water Committee shall implement the management plan goals described in this Resolution in order to protect the habitat within the riparian conservation corridor, and shall cause a certified copy of this Resolution to be delivered to all Departments of the Nation or other entities of the Nation, as the Land and Water Committee may deem appropriate.

CERTIFICATION

I hereby certify that the foregoing resolution was adopted at a Special Tribal Council Meeting with a quorum present by an affirmative vote of the Tribal Council, presented for approval on June 15, 2006, by a vote of 8 in favor, 0 opposed and 0 abstaining, pursuant to the authority contained under the Constitution of the Yavapai-Apache Nation.


Jamie Fullmer, Chairman

ATTEST:

Karla Reimer, Council Secretary