

RESOLUTION NO. 108 -24
OF THE GOVERNING BODY OF THE
YAVAPAI-APACHE NATION

A Resolution Approving the Yavapai-Apache Nation Water Rights Settlement Agreement and Providing a Limited Waiver of the Nation's Sovereign Immunity

Constitutional Authority

WHEREAS, In approving the Yavapai-Apache Nation Water Rights Settlement Agreement (“Settlement Agreement”) through adoption of this Resolution, the Yavapai-Apache Tribal Council (“Council”), the Nation’s Governing Body, acts under authority granted the Council under the Constitution of the Yavapai-Apache Nation (“Constitution”) as follows:

- A. The Yavapai-Apache Tribal Council is authorized to represent the Yavapai-Apache Nation (“Nation”) and act on all matters that concern the health and welfare of the Nation, and to make decisions not inconsistent with or contrary to the Constitution of the Yavapai-Apache Nation as provided by Article V(a) of the Constitution; and
- B. The Council, as the legislative body of the Nation, is authorized to take any and all actions necessary and proper for the exercise of its Constitutional powers and duties, including those powers and duties not enumerated, and all other powers and duties now or hereafter delegated to the Tribal Council, or vested in the Tribal Council through its inherent sovereignty, as provided by Article V (w) of the Constitution; and
- C. The Council is authorized to enact laws, ordinances, and resolutions incidental to the exercise of its legislative powers as provided by Article V (v) of the Constitution; and
- D. The Council is authorized to manage all tribal economic affairs and enterprises of the Nation and to appropriate and regulate the use of tribal funds, as provided by Article V (i) and (k), respectively, of the Constitution; and
- E. The Council is authorized to negotiate with Federal, State, and local governments as provided by Article V (b) of the Constitution; and
- F. Article XIII of the Nation’s Constitution vests exclusive authority in the Tribal Council to provide express waivers of the Nation’s Sovereign Immunity from unconsented lawsuits.

The Nation’s Historic Homeland and Water Rights Within The Verde River Watershed

WHEREAS, The Council makes the following findings of fact concerning the Nation’s homeland and attendant rights to water in the Verde River Watershed:

- A. The Yavapai-Apache Nation consists of two distinct cultural groups, the *Yavepé*, and the *Dilzhe’*Apache, whose ancestral homeland comprised much of central and southern Arizona, including the Verde River Valley of central Arizona, since time immemorial.

- B. The Yavapai and Apache people love the land, have an abiding connection to their homeland, and a spiritual and cultural responsibility to care for the land and its resources.
- C. The Yavapai and Apache people understand that water is a holy part of life and is to be revered and protected. Water, particularly flowing water, is intertwined with the physical and spiritual wellbeing and survival of the people. The Nation's spiritual sustenance is tied to the waters of the Verde River, which is known to the Yavapé as *Hatayakehela* ("big river"), and to the Dilzhe' as *Tú ńlįńnichoh* ("big water flowing").
- D. Through the cultural and religious practices of the people, water sustains not only the people, but also the plants and animals that enrich the Nation's lands and our world.
- E. The land and water of the Nation are bound together as essential elements of the Nation's Homeland and the social and spiritual fabric of the Nation's people. Land without water cannot provide the physical, spiritual, social, cultural, and economic vitality necessary for the wellbeing of the Yavapai and Apache people.
- F. During the last half of the 19th century, our Yavapai and Apache people experienced a complete loss of our land and water resources as a result of the failed policies of the United States during the so-called Apache Wars. In 1875, the United States, acting through its military, forcibly removed our Yavapai and Apache people from our Homeland in the Verde Valley to the San Carlos Apache Reservation where our grandparents and great-grandparents were held as prisoners of war for a generation. The cultural, spiritual, and economic harms wrought by this removal were devastating and the effects continue to reverberate to this day.
- G. Since the early 1900's our Yavapai and Apache people have returned to our Homeland in the Verde Valley and worked with the United States to slowly reestablish and rebuild the Nation's Homeland.
- H. Settlement of the Nation's Water rights claims through approval of the Yavapai-Apache Water Rights Settlement Agreement and enactment by the United States Congress of legislation approving the Agreement will go a long way toward redressing the harms visited on our Yavapai and Apache people through the failed federal policies of the past.

The Yavapai-Apache Nation Water Rights Settlement Agreement

WHEREAS, Legal proceedings to determine the nature and extent of the Nation's rights to water within the Verde River Watershed are pending in the Gila River Adjudication and the Nation has been a party to these proceedings since the mid-1980's; and

WHEREAS, The Yavapai-Apache Nation Water Rights Settlement Agreement is entered into among the United States of America; the State of Arizona; the Yavapai-Apache Nation; the Salt River Project Agricultural Improvement and Power District ("SRP"); the Salt River Valley Water

Users' Association; the Central Arizona Water Conservation District; the Town of Camp Verde; the Town of Clarkdale; and the City of Cottonwood; and

WHEREAS, The Council has reviewed the Yavapai-Apache Nation Water Rights Settlement Agreement with the Nation's Chairwoman, Attorney General and Water Rights Counsel and finds that the Agreement will secure certain rights and benefits to the Nation and its people, and in particular the Agreement will:

- A. Fully and finally legally settle and define the Nation's rights to water within the Verde River Watershed;
- B. Define water rights allocated to the Nation's Reservation Lands, Trust Lands, After-Acquired Trust Lands, and Fee Lands, owned by the Nation prior to the Enforceability Date;
- C. Provide for the Nation's future acquisition of water rights;
- D. Provide for the Nation's use of effluent on or off the Reservation;
- E. Provide for the construction and use of water impoundments by the Nation;
- F. Provide water for irrigation of the Nation's farmlands;
- G. Provide for the construction of infrastructure for the importation of a permanent surface water supply to the Nation;
- H. Provide for the delivery to the Nation of the Nation's 1,200 acre-feet of Central Arizona Project water by Exchange;
- I. Provide for the construction of water treatment and delivery infrastructure on the Nation's Reservation;
- J. Provide the Nation a right to maintain defined levels of instream flow in the Verde River;
- K. Require a waiver by the Nation of certain water rights and claims for water, and damages associated with the loss of water, against the United States and the State parties from time immemorial through the Enforceability Date as defined in the Settlement Agreement; and
- L. Protect the water rights claims of the United States for the Dinah Hood Allotment, and any Allottees, and their ability to pursue these water rights claims in the Gila River Adjudication.

WHEREAS, The Council has determined that approval of the Yavapai-Apache Nation Water Rights Settlement Agreement is in the Nation's best interest; and

NOW THEREFORE BE IT RESOLVED that the Yavapai-Apache Tribal Council, in Council assembled, at which a quorum is present, hereby takes the following actions:

A. Approval of Settlement Agreement

The Council hereby approves the Yavapai-Apache Nation Water Rights Settlement Agreement in the form of or substantially similar to the form of **Exhibit A** attached to this resolution, subject to the authority granted the Chairwoman and the Attorney General to make non-substantive, technical, corrective, and conforming changes to the Agreement as set forth hereinbelow.

B. Limited Waiver of the Nation's Sovereign Immunity

- 1) In accordance with the Council's authority under Article XIII(a) of the Nation's Constitution, the Council hereby approves, grants, and consents to a limited waiver of the Nation's sovereign immunity to unconsented lawsuits for the limited and exclusive purpose of allowing the Yavapai-Apache Nation to be joined as a party in actions brought by a party to the Yavapai-Apache Nation Water Rights Settlement Agreement, or by any landowner

or water user in the Gila River Watershed, before a court of competent jurisdiction seeking interpretation or enforcement of (a) the Yavapai-Apache Nation Water Rights Settlement Agreement, including the exhibits to the Agreement; (b) the federal legislation authorizing, ratifying, and confirming the Settlement Agreement (the “Federal Act”); and (c) the Gila River Decree.

- 2) The scope of this limited waiver of the Nation’s sovereign immunity shall not be construed to include claims for money damages, court costs, or attorney’s fees, *except* for claims brought by a party to the YAN-SRP Water Delivery and Use Agreement, and the YAN-SRP Exchange Agreement (both Agreements as defined in the Settlement Agreement), for unpaid contractual monetary obligations owed by the Nation to SRP or its successor under said agreements as compensatory damages, including court costs and attorney’s fees.
- 3) This limited waiver of the Nation’s sovereign immunity shall not extend to permitting any monetary judgments or awards against individual tribal officials and agents acting within the scope of their authority in the exercise of their duties to the Nation. In the event that any tribal officials are found by a court of competent jurisdiction to have acted beyond the scope of their authority, injunctive relief shall be the only remedy available against said officials. In no case shall the Nation’s officials be personally liable for the monetary obligations of the Nation arising under actions brought pursuant to this waiver or otherwise.
- 4) This limited waiver and consent are granted solely for purposes of enforcing the Settlement Agreement, including the exhibits to the Agreement, the Act, and the Decree, and except as otherwise set forth herein, shall not extend to any other transactions, subjects, or third-party claims, other than the claims of the parties specified in this waiver. This limited waiver of the Nation’s sovereign immunity shall in no case be construed to encompass a waiver and consent for any claim, suit, arbitration or other judicial proceeding seeking consequential, special, or punitive damages (collectively referred to as “Excluded Damages”) under any circumstances, whether in tort or contract or under any other legal theory, all of which Excluded Damages are hereby specifically excluded as being beyond the scope of the limited waiver of the Nation’s sovereign immunity established by this resolution.
- 5) This limited waiver of the Nation’s sovereign immunity shall be construed consistent with the waiver of the Nation’s sovereign immunity as set forth in the Federal Act, which shall be no broader than the waiver granted by this resolution.
- 6) For purposes of Subparagraphs 14.6.1 and 14.6.2 of the Settlement Agreement, this limited waiver of the Nation’s sovereign immunity shall become effective on the date of enactment of the Federal Act. For all other provisions of the Settlement Act, this limited waiver of the Nation’s sovereign immunity shall become effective upon the Enforceability Date as defined under the Settlement Agreement.

BE IT FURTHER RESOLVED that when the Settlement Agreement and the Federal legislation are final, and Enforceability, as defined under the Settlement Agreement, has been achieved, the Council shall adopt a resolution acknowledging final enforceability and declaring the Settlement Agreement and the Federal Act to be a law of the Yavapai-Apache Nation.

BE IT FURTHER RESOLVED that the Council directs and authorizes the Chairwoman to sign the Settlement Agreement and any related documents and exhibits on behalf of the Nation. In the event that the Nation and the Parties to the Settlement Agreement find it necessary to make, non-substantive, technical,

corrective, and conforming changes to the Agreement during the Congressional hearing and approval processes, the Council hereby delegates to the Chairwoman, including her successor, together with the Nation's Attorney General, authority to approve any such changes and the Chairwoman, or her successor, shall execute the same on behalf of the Nation.


BE IT FINALLY RESOLVED that the Chairwoman, and Vice-Chairman, or either of them, including their successors, are hereby authorized to take such further action as deemed necessary to carry out the intent and purposes of this resolution.

CERTIFICATION


I hereby certify that the foregoing resolution was adopted by an affirmative vote of the Tribal Council, with a quorum in attendance, presented for approval on June 26 2024, by a vote of 7 7 in favor, 0 opposed and 0 abstaining, pursuant to the authority contained under the Constitution of the Yavapai-Apache Nation as cited above.


Tanya Lewis, Chairwoman

ATTEST:


Karla Reimer, Council Secretary

Approved as to Form:


Office of the Attorney General
Anthony S. Canty, Attorney General