

**TESTIMONY OF RONNIE LUPE, TRIBAL CHAIRMAN  
THE WHITE MOUNTAIN APACHE TRIBE  
FORT APACHE INDIAN RESERVATION, ARIZONA  
SENATE COMMITTEE ON INDIAN AFFAIRS  
Dirksen Senate Office Building, Room 628  
(S. 3128, White Mountain Apache Tribe Rural Water System Loan Authorization Act)**

**September 11, 2008**

**To:** The Honorable Byron L. Dorgan, Chairman  
Senate Committee on Indian Affairs

**Subject:** S. 3128, White Mountain Apache Tribe Rural Water System Loan  
Authorization Act

**Introduction**

The White Mountain Apache Tribe and its Tribal Council thank Senator Dorgan for the invitation to appear and testify today before the Senate Committee on Indian Affairs in support of S. 3128, the White Mountain Apache Tribe Rural Water System Loan Authorization Act.

**Tribe's Winters Doctrine Water Rights**

The White Mountain Apache Tribe has beneficial title to 1.66 million acres of land in the east central highlands of the State of Arizona. The Tribe's Fort Apache Indian Reservation was established by Executive Order in 1871, from the aboriginal lands of our ancestors. We have retained actual, exclusive, use and occupancy of our aboriginal lands, within the boundaries designated by the Executive Orders dated November 9, 1871 and December 14, 1872, without exception, reservation, or limitation since time immemorial. The Tribe's vested property rights, including its aboriginal and other federal reserved rights to the use of water, often referred to as Winters Doctrine Water Rights, that underlie, border and traverse its lands, have never been extinguished by the United States and are prior and paramount to all rights to the use of water in the Gila River drainage, of which the Salt River is a major source.

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

Except for a small portion of the Reservation that drains to the Little Colorado River Basin, virtually the entire Reservation drains to the Salt River. The headwaters and tributaries of the Salt River arise on the Tribe's Reservation. *See attached General Overview Map.* The Salt River tributaries that arise on our reservation are the principal sources of water for the Tribe, the downstream Cities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale and Tempe; the Salt River Project and the Roosevelt Water Conservation District, among other parties to the Gila River and Little Colorado Adjudication Proceedings.

## **Gila River and Little Colorado River Adjudication Proceedings**

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

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

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

## **Quantification and Settlement Agreement**

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

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

I am pleased to report to the Senate Committee on Indian Affairs that a water rights quantification agreement, which was respectfully negotiated amongst all parties, has been virtually concluded and is only awaiting formal approval by the parties' respective governing bodies.

## **Quantification of Water Rights Establishes Certainty**

The Tribe's sizable and senior water rights claims in the pending Gila River and Little Colorado River Adjudication Proceedings have generated considerable uncertainty

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

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

The Tribe and Reservation residents are in great need of a long-term solution to meet drinking water requirements. Currently the Tribe is served by the Miner Flat Well Field. Well production has fallen sharply and is in irreversible decline. Over the last 8 years, well production has fallen by 50%, and replacement wells draw from the same source aquifer that is being exhausted. The Tribe experiences chronic summer drinking water shortages. There is no prospect for groundwater recovery. The quality of the existing sources threatens the health of our membership and other Reservation residents, including the IHS Regional Hospital and State and BIA schools. The only viable solution is replacement of failing groundwater with surface water from the North Fork of the White River and implementation of the WMAT Rural Water System.

### **Cornerstone of WMAT Quantification Act and Settlement Agreement.**

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

### **S. 3128-An Important Step Forward**

The White Mountain Apache Tribe Rural Water System Loan Authorization Act (S. 3128), conceived and sponsored by Senator Kyl, is an important and essential step. The introduction and implementation of the WMAT Water Rights Quantification Act and the Settlement Agreement between the White Mountain Apache Tribe and downstream parties will soon follow.

S. 3128 provides for a \$9.8 million federal loan to the Tribe for preconstruction planning, design and engineering, and environmental compliance for the White Mountain Apache Rural Water System, including regulation of water supplies on the North Fork of the White River. As provided in S. 3128, the loan is to be repaid by the Tribe.

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

The White Mountain Apache Tribe appreciates this Hearing and support by this Committee of S. 3128, and the commitment of Senator Kyl to advance this bill and the Quantification Act to the Congress in its current session.

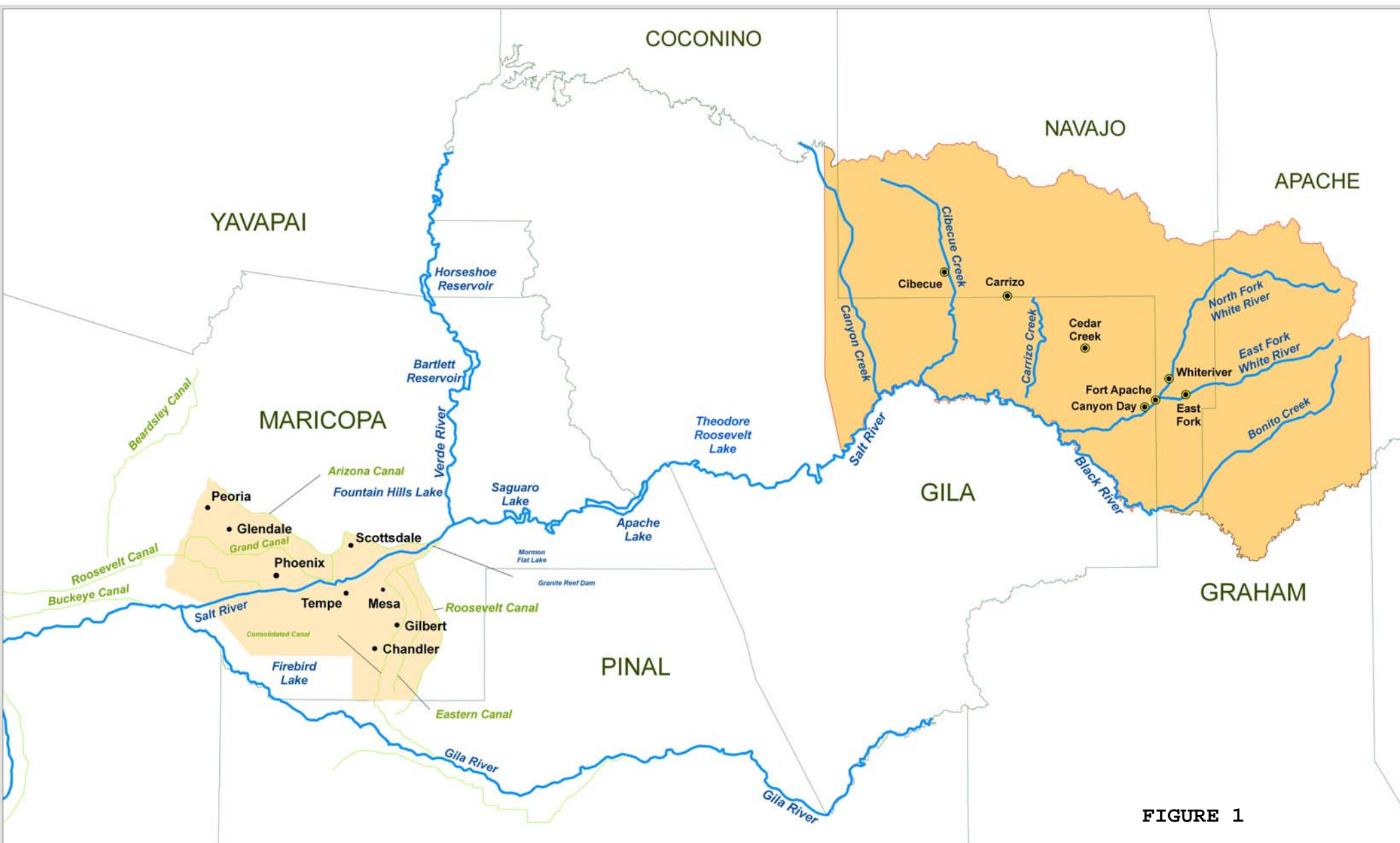


FIGURE 1

## Map Legend

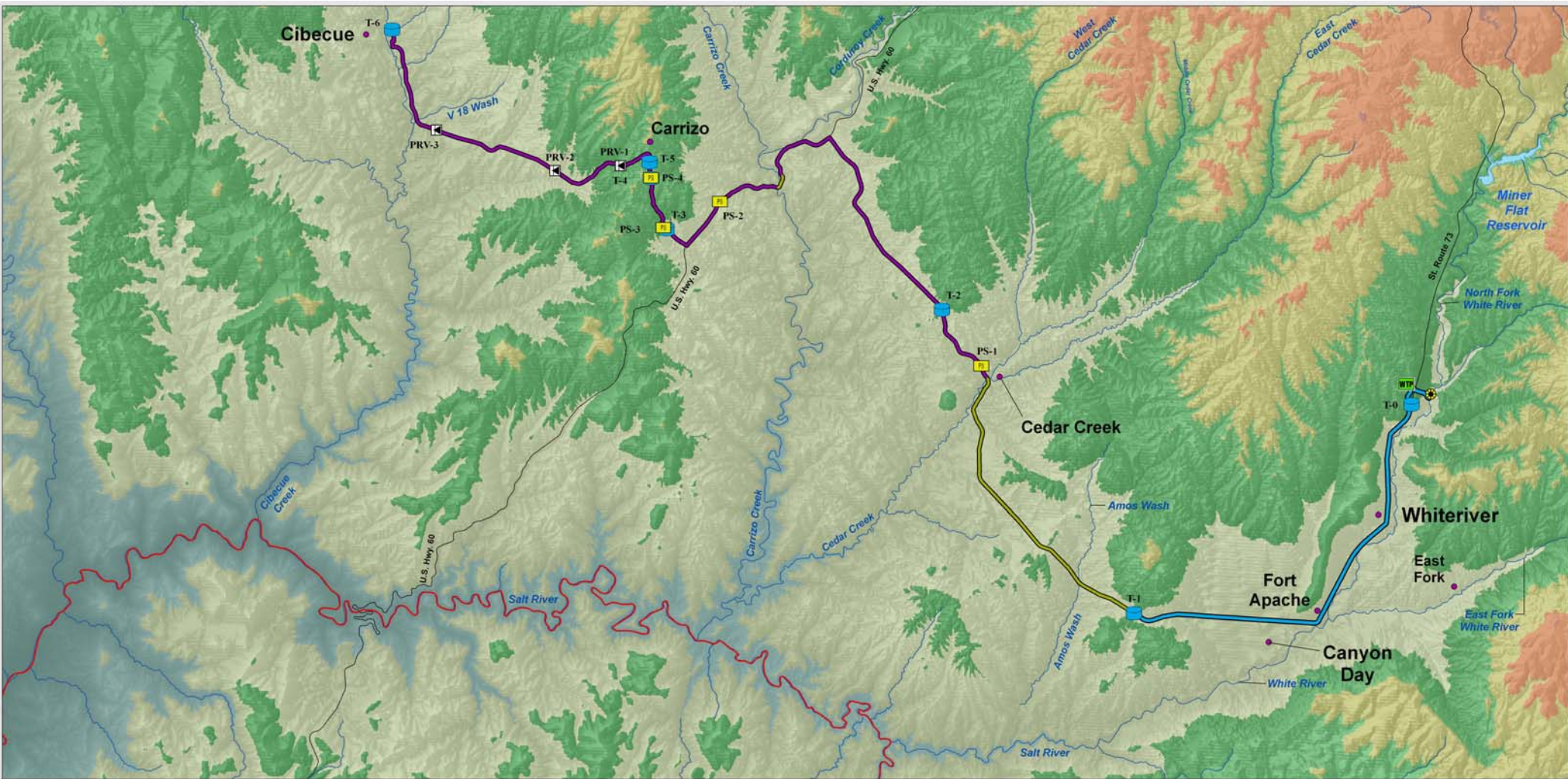
- Arizona State Boundary
- Reservation Boundary
- County Boundary
- Canal
- Salt River Project Service Area
- Lake
- Stream
- City (Population 50,000+)
- Towns (Reservation)



## REGIONAL STREAMFLOW SCHEMATIC

WHITE MOUNTAIN APACHE TRIBE





**Map Legend**

- |                      |              |              |
|----------------------|--------------|--------------|
| Reservation Boundary | 12" Pipeline | Pump Station |
| Road                 | 14" Pipeline | Diversion    |
| Stream               | 20" Pipeline | PRV          |
| City/Town            | WTP          |              |
|                      | Reservoir    |              |



**WHITE MOUNTAIN APACHE  
MUNICIPAL, RURAL & INDUSTRIAL  
WATER SYSTEM**

**PIPELINE LOCATION MAP**

**FIGURE 2**