

San Carlos - one of the tribes of Arizona

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS

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CONSTITUTION AND BY-LAWS OF THE
SAN CARLOS APACHE TRIBE
ARIZONA

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APPROVED JANUARY 17, 1936



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CONSTITUTION AND BY-LAWS OF THE SAN CARLOS APACHE TRIBE OF ARIZONA

We, the Apache Indians of the San Carlos Reservation, wish to make use of the right of self-government and have herewith laid down, in the form of a constitution, our resolutions thereon, to be accepted and confirmed by a general tribal vote, so anybody may know how all of our internal affairs shall be carried out.

ARTICLE I.—STATEMENT OF PURPOSE

We want the United States Government to continue among us for some time such establishments as health and educational service, a superintendent, advisory officers, and other such connecting links with the Federal Government. In our relation to it, a relation similar to that which a town or a county has to State and Federal Governments, our own internal affairs shall be managed, in so far as such management does not conflict with the laws of the United States, by a governing body which shall be known as the Council of the San Carlos Apache Tribe.

ARTICLE II.—TERRITORY

The jurisdiction of the council and courts of the San Carlos Apache Tribe shall extend to the land now comprised within the San Carlos Reservation and to such other land as may be added thereto, except such portions of the reservation as may have passed out of Indian ownership.

ARTICLE III—MEMBERSHIP

The membership of the San Carlos Apache Tribe shall consist, in the first place, of all persons duly enrolled on the 1934 census roll of the tribe. Secondly, all children of resident members shall be entitled to membership; and all children of nonresident members shall be entitled to membership when such children shall have resided on the San Carlos Reservation at least six months. Finally, the council shall have power to pass ordinances, subject to the approval of the Secretary of the Interior or his authorized representative, covering the adoption of new members. No person shall be adopted into the San Carlos Apache Tribe unless he has resided upon the reservation for a probationary period not to exceed five years, the period to be fixed by the tribal council.

ARTICLE IV—ORGANIZATION

SECTION I. *Composition of the tribal council.*—The council shall be composed of seven members to be chosen as follows: Indians affiliated with the Tonto section shall elect one member. Indians affiliated with the Mojave section shall elect one member. Indians resident within the Bylas District and not affiliated with either section shall

elect two members. Indians resident within the Peridot District, the Gilson Wash District, the Seven Mile Wash District, and not affiliated with either section, shall each elect one member. The seven members of the council so elected shall choose from among their own number a chairman of the council. It shall be the duty of the council, from time to time, to propose by-laws amending the foregoing number and distribution according to the growth of population.

SEC. II. *First election.*—The first election of the council shall be called by the Secretary of the Interior within sixty days after the adoption and ratification of this constitution.

SEC. III. *Term of council members.*—Members of the council shall take office on the first Tuesday of the first month after their election. Their term of office commencing on that day shall continue for two years, or until their successors are elected.

ARTICLE V—POWERS OF THE COUNCIL

SECTION I. *Representation of tribe.*—The council shall have authority to represent and speak for the San Carlos Apache Indians. It shall act in all matters that concern the welfare of the tribe, and shall make decisions in this regard that do not go beyond the limits set by this constitution.

SEC. II. *Legal counsel.*—The council shall have the power to employ legal counsel for the protection and advancement of the rights of the tribe and its members, the choice of the counsel and the fixing of fees to be subject to the approval of the Secretary of the Interior.

SEC. III. *Conservation of assets.*—The council shall have the power to prevent the disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe. Any grant or lease of any portion of the reservation or the granting of any rights as to the use of land or the granting or relinquishment of any water rights of the Indians of this reservation, is hereby expressly and exclusively withheld to the Indians of this reservation and must be approved by a three-quarter majority of the tribal votes cast on the matter after it has been approved and recommended by the council at least thirty days prior to the time set for the tribal vote on the matter duly called for that purpose. The total vote cast on the matter must represent at least three-fifths of the total eligible voters. The tribal council shall, however, have the power to issue revocable permits for not to exceed five acres of land for commercial purposes, for a period not to exceed three years by an affirmative vote of three-fourths of the members of the tribal council.

SEC. IV. *Expenditures.*—The council shall have power to approve or disapprove expenditures from the tribal fund, authorized by the Secretary of the Interior, for any project beneficial to the community. For the allowance of expenditures from the tribal fund in excess of five thousand dollars, other than expenditure for regular support purposes, permission must be granted by a vote of the qualified voters of the tribe in a special election called for that purpose. A two-thirds majority of the aggregate votes cast at such an election shall be required to authorize such expenditures.

SEC. V. *Financial recommendations.*—The council shall have the power to advise the Secretary of the Interior or his authorized repre-

sentative upon all appropriation estimates of Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and Congress, and to make a prompt recommendation to the Secretary of the Interior, his representative, or to the proper committees of Congress with respect to all such estimates and appropriations.

SEC. VI. *Tribal herd.*—The council shall have the power by appropriate resolutions or ordinances subject to review by the Secretary of the Interior, to manage the tribal herd, particularly with regard to the selling of steers, the purchasing of fresh stock, the distribution of the increase to the Indians as individual cattle owners, and the protection of the herd and the range against encroachments.

SEC. VII. *Appointments.*—The council shall have the power to select subordinate boards, tribal officials, and tribal employees not otherwise provided for in this Constitution and to prescribe their tenure and duties.

SEC. VIII. *Voluntary associations.*—The council shall have the power to pass ordinances, subject to review by the Secretary of the Interior, covering the activities of voluntary associations consisting of members of the tribe organized for purposes of cooperation or other purposes and to enforce the observance of such ordinances.

SEC. IX. *Trespass.*—The council shall have power to provide by ordinances for the removal or exclusion from the reservation of any non-members whose presence may be injurious to members of the tribe. This power shall not extend to the removal or exclusion of Government officials or other persons now occupying reservation lands under lawful authority, and in all cases this power may be exercised only with the approval of the Secretary of the Interior.

SEC. X. *General welfare.*—The council shall have power to regulate the conduct of members of the tribe and to protect the public peace, safety, morals, and welfare of the reservation through the promulgation and enforcement of ordinances, subject to review by the Secretary of the Interior, to effectuate these purposes.

SEC. XI. *Inheritance.*—The council shall have the power to prescribe rules of inheritance, subject to review by the Secretary of the Interior.

SEC. XII. *Domestic relations.*—The council shall have the power to regulate the domestic relations of members of the tribe, but all marriages in the future shall be in accordance with the State laws.

SEC. XIII. *Guardians.*—The council shall have the power to provide by ordinance for the appointment of guardians for minors and mental incompetents, subject to review by the Secretary of the Interior.

SEC. XIV. *Procedure.*—The council shall have the power to regulate its own procedure by ordinance or resolution.

SEC. XV. *Future powers.*—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 government.

SEC. XVI. *Reserved powers.*—The foregoing enumeration of powers shall not be construed to limit the powers of the San Carlos Apache Tribe, but all powers of local government not expressly entrusted to the tribal council by this constitution shall be reserved to the people of the San Carlos Apache Tribe, and such powers may be exercised

through the adoption of appropriate bylaws or constitutional amendments.

SEC. XVII. *Review by Secretary.*—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, who shall, within ten days thereafter, 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, 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 tribal council of such rescission.

If the superintendent shall refuse to approve any resolution or ordinance submitted to him, within ten days after its enactment, he shall advise the tribal 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 date of its enactment, approve the same in writing, whereupon the said ordinance or resolution shall become effective.

ARTICLE VI—RIGHTS OF MEMBERS

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.

ARTICLES VII—ELECTIONS

SECTION I. *Qualifications of voters.*—Voters to be qualified shall be members of the tribe, male or female, over twenty-one years of age.

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

SEC. III. *Voting places.*—The voting places shall be: One at San Carlos at the agency, and another at Bylas; others to be established by the council at whatever places a long distance from the voting points just named where a large number of tribal voters may be at work and have difficulty in going to either of those two places.

SEC. IV. *Candidates.*—Names of candidates nominated by the districts or sections for their councilmen shall be posted for a period of at least thirty days prior to election.

SEC. V. *Nominations.*—Nominations shall be made at mass meetings of the respective districts and sections. Each district or section shall nominate at least two candidates for each position.

SEC. VI. *Manner of voting.*—All elections shall be by 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.

SEC. VII. *Special elections.*—Special elections shall be held as herebefore provided, and notice of them shall be given as in the case of general or regular elections.

ARTICLE VIII—REMOVAL FROM OFFICE

SEC. I. *Forfeiture of office.*—If a member of the council fails or refuses to attend two regular meetings in succession, if not too sick to attend or otherwise prevented by circumstances 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. II. *Removal from office.*—If a member of the council shall fail in the performance of the duties assigned to him, his recall from office shall be a matter to be taken up by the council. The council may by unanimous vote, after affording the accused member a fair opportunity to be heard in his own defense, remove such member; or the council may, by a majority vote, after affording a similar opportunity to be heard in his own defense, require such member to stand for reelection in a special election of the district or section which he represents.

SEC. III. *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 IX—RESERVATION LAND

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 by-laws which may be adopted on this subject, provided the rights of all members of the tribe be not violated.

ARTICLE X—AMENDMENTS

This constitution and by-laws 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 30 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 presentation of a petition signed by one-third ($\frac{1}{3}$) of the qualified voters, members of the tribe.

BY-LAWS OF THE SAN CARLOS APACHE TRIBE OF ARIZONA

ARTICLE I—DUTIES OF OFFICERS

SECTION I. *Chairman of 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 laid upon him or given him specifically by the council or by a general meeting of the tribe. He shall vote only in case of a tie.

SEC. II. *Secretary and custodian.*—A recording secretary is to be chosen by the council out of the council members if there is among them a person able to perform the secretary's duties. If this is not the case, then the council may elect for secretary a person from outside

it. If a council member is able to perform common secretarial duties but not to conduct more difficult secretarial business, then he may have a competent assistant from outside the council. As long as the tribe is given, by the United States Government, such help as referred to in article I, in health and educational service, a superintendent, and other advisory officials, the Federal Government may be represented at the council meetings by a delegate without vote and such a delegate may be selected by the council to serve as secretary. To such a secretary or other employee of the United States Government selected by the council shall be entrusted, for the time heretofore referred to, for safekeeping in the agency, the records, and other books, documents, and related valuable papers of the council and the tribe. Such custodian shall be responsible for the safekeeping of such papers and shall give access to such papers to the council chairman and the council secretary. The secretary shall send out notices of election and special meetings at the discretion of the council or its chairman, and perform the other clerical duties laid upon him by the council.

ARTICLE II—QUALIFICATIONS OF COUNCILMEN

No member of the tribe shall be qualified to be a member of the council who is not a person twenty-five years of age, and a resident of the district or a member of the section which he is to represent. 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.

ARTICLE III—MEETINGS OF THE COUNCIL

SECTION I. *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 by-laws and the management of the tribal and reservation affairs as well as the rules for the conduct of their own body.

SEC. II. *Regular meetings.*—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. and all its meetings shall be public to the Indians and the United States Government representatives and may be attended by guests welcome to the council. In case the time of the regular council meeting on the first Tuesday of each month should conflict with a national or State election, the meeting shall be held on the following Wednesday.

SEC. III. *Special meetings.*—The chairman of the council shall call a special meeting of the council upon the request of two or more other councilmen, upon request of a section or a district, if at least one-third of its voting members request it, also upon request of the superintendent, and in every case reasonable advance notice of such special meeting shall be served upon every member of the council and the superintendent.

SEC. IV. *Conduct of business.*—In the conduct of business, recognized rules of order shall apply. Voting at the council meeting may be by word of mouth, but at the discretion of the chairman or upon the request of any two members of the council or of the representative of the United States Government, a secret vote shall be taken.

SEC. V. *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 a majority of the members are present. In the absence of the chairman, the remaining members of the council may elect a temporary chairman.

SEC. VI. *Restriction of voting in the council*.—In any matter coming before the council which involves the Indian office 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 I. 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 section or district.

ARTICLE V—LAW AND ORDER

SECTION I. It shall be the duty of the council to provide through the necessary by-laws or ordinances for the establishment of a tribal court upon the reservation.

SEC. II. 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 by-laws of the tribe.

SEC. III. 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. IV. The duties, jurisdiction, and procedure of this court shall be more fully set forth by by-laws or ordinances.

SEC. V. The judges of this court shall be appointed by the tribal council, subject to the approval by the Secretary of the Interior.

SEC. VI. 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 function. Members of the police force shall be selected by the council, subject to the approval by the Secretary of the Interior.

ARTICLE VI—SOCIAL WELFARE

It is the resolution of the voting community of this reservation that a system of levying an income tax, and possibly other auxiliary methods, be established for the creation and maintenance of a fund wherewith to prepare for the support by the tribe of those of its members that may elsewhere be destitute in old age, or that in earlier life may not be able to earn their livelihood by their own work. How this provision is best to be set in operation shall be considered by the council, in conjunction with competent advisors, and shall be laid down as a by-law, subject to approval by the tribal vote.

ARTICLE VII—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 probation periods, and shall advise with the superintendent in the matter of their being given permanent positions as civil service employees on the reservation.

SEC. II. In case of complaint or charges by a member of the tribe against any civil service officers or employees, the council, when deeming action necessary, shall observe the requirements of right, equity, and law, so that the accused have ample opportunity to hear and answer complaints or charges. Specific and incriminating charges must be sustained by written statements sworn to before a justice of the peace or other person authorized to take affidavits. In transmitting such charges and complaints to the Commissioner of Indian Affairs, it shall state its conclusions and recommendations concerning the action to be taken.

ARTICLE VIII—DEPARTMENTAL REGULATIONS

All rules and regulations of the Department of the Interior which are not in conflict with this constitution shall continue in force until modified or abolished by the Secretary of the Interior or by future amendments to this constitution.

ARTICLE IX—ADOPTION

After the constitution has been thoroughly discussed in group meetings and a representative general meeting, it shall be made public by being posted for thirty days at the proposed voting places and other convenient public places on the reservation, with the notice that on the day terminating this said period a general election shall be held for the purpose of the proposed adoption of this constitution and by-laws. If this constitution and by-laws shall be approved by a majority of the qualified voters of the San Carlos Apache Tribe voting at this election, and if at least thirty percent of the qualified voters of the tribe vote therein, the constitution and by-laws so adopted shall be forwarded to the Secretary of the Interior for approval and shall be effective from and after the date of such approval.

CERTIFICATION OF ADOPTION

We, the undersigned members of the tribal council members of the canvassing board of election at San Carlos Agency and superintendent of the San Carlos Reservation hereby certify that we personally were present and have canvassed the votes as cast under date of October 19, 1935, by the San Carlos Apache Tribe in connection with vote as to acceptance of the attached constitution.

We certify that as a result of this canvass, we found as follows:

	Yes	No	Spotted
Total voting population, 1,512.			
Roundup Camp.....	48	1	-----
Spur Camp.....	4	None	-----
San Carlos Agency.....	400	8	3
Bylas.....	110	None	-----
Absentee.....	28	1	-----
Total reservation.....	562	9	3
Total absentee.....	28	1	-----
Total votes cast, 603.			

VICTOR KINDELAY,
Chairman of Business Committee.
 DONALD MCINTOSH, Sr.,
 CHARLES KITCHEYAN,
 HENRY CHINN,
Judges and Tellers.

JAMES B. KITCH,
Superintendent.

I, Harold L. Ickes, the 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 constitution and by-laws of the Apache Indians of the San Carlos Reservation.

All rules and regulations heretofore promulgated by the Interior Department or by the Office of Indian Affairs, so far as they may be incompatible with any of the provisions of the said constitution and by-laws are hereby declared inapplicable to the Apache Indians of the San Carlos Reservation.

All officers and employees of the Interior Department are ordered to abide by the provisions of the said constitution and by-laws.

Approval recommended January 9, 1936.

JOHN COLLIER,
Commissioner of Indian Affairs.

CHARLES WEST,
Acting Secretary of the Interior.
 [SEAL]

WASHINGTON, D. C., January 17, 1936.

