

Committee: Resource Committee
Date: 03-01-11 Committee Date: 03-14-11

Author: Susan Work
Sponsor: Cara Cowan Watts

RESOLUTION NO. 22-11

COUNCIL OF THE CHEROKEE NATION

A RESOLUTION APPROVING THE CLEARY LAW GROUP, P.C., SPECIAL COUNSEL ENGAGEMENT AGREEMENT RELATED TO TAR CREEK NATURAL RESOURCE DAMAGES ASSESSMENT

WHEREAS, the Cherokee Nation since time immemorial has exercised the sovereign rights of self-government in behalf of the Cherokee people; and

WHEREAS, the Cherokee Nation is a federally recognized Indian Nation with a historic and continual government to government relationship with the United States of America; and

WHEREAS, the Cherokee Nation lacks available funding for legal representation required to more adequately participate in the natural resource damage assessment and other activities related to Tar Creek Superfund Site restoration and response; and

WHEREAS, the Cherokee Nation desires to work with other tribal natural resource trustees impacted by Tar Creek Superfund Site hazardous substances releases through an Agreement Concerning the Cooperation and Coordination Among the Tar Creek Trustee Council Indian Tribes approved by the Council of the Cherokee Nation; and

WHEREAS, one purpose of the Agreement among the Tar Creek Trustee Council Indian Tribes is to authorize a single tribe to apply for, receive and administer on behalf of all party tribes joint funding for legal representation in the natural resource damage assessment and other activities related to Tar Creek Superfund Site restoration and response; and

WHEREAS, the Agreement among the Tar Creek Trustee Council Indian Tribes designates the Ottawa Tribe of Oklahoma to act on behalf of all party tribes in applying for and administering such funding for their joint legal representation in the natural resource damage assessment and other activities related to Tar Creek Superfund Site restoration and response; and

WHEREAS, the Tar Creek Trustee Council Indian Tribes have recommended to their respective tribal officials that The Cleary Law Group, P.C. jointly represent the Tar Creek Trustee Council Indian Tribes in matters pertaining to the Tar Creek Superfund Site, assisted by the law firm of Shannon D. Work, P.C. through subcontract with The Cleary Law Group, P.C.; and

WHEREAS, paragraph 23 of the attached Special Counsel Engagement Agreement with The Cleary Law Group, P.C. contains the following limited waiver of sovereign immunity:

The Tribe expressly consents to a limited waiver of its sovereign immunity from suit by the Firm, subject to all other conditions and limitations of this paragraph, only for the sole purpose of the Firm's specific enforcement of any obligations of the Tribe (i) to pay fees for services in accordance with paragraphs 10 and 13 of this Agreement and (ii) to reimburse expenses in accordance with paragraphs 11 and 13 of this Agreement. This consent to a limited waiver of sovereign immunity applies only to such suit brought by the Firm in the Tribe's Courts or in a United States Court in Oklahoma possessing jurisdiction over such specific enforcement action, and shall not authorize the Firm's suit for recovery of any damages or attorneys fees incurred in enforcement of this Agreement. The source of payment for any judgment requiring payment of fees for services in such contract enforcement action shall be limited to federal funds granted by the Department as described in paragraph 3.A of this Agreement. The source of payment for any judgment against the Tribe for reimbursement of expenses shall be limited to any federal funds granted to the Tribe by the Department and designated for the reimbursement of such expenses unless no such federal funds are available, in which case the source of payment shall be tribal non-trust funds, subject to the limitations of paragraph 11.

BE IT RESOLVED BY THE CHEROKEE NATION, that the Council of the Cherokee Nation does hereby approve the law firm of The Cleary Law Group, P.C. to represent the Cherokee Nation jointly with the other Tar Creek Trustee Council Indian Tribes in matters pertaining to the Tar Creek Superfund Site and does further hereby approve the law firm of Shannon D. Work, P.C. to represent the Cherokee Nation jointly with the other Tar Creek Trustee Council Indian Tribes through subcontract with The Cleary Law Group, P.C. in matters pertaining to the Tar Creek Superfund Site; and

BE IT FURTHER RESOLVED BY THE CHEROKEE NATION, that the Council of the Cherokee Nation approves the limited waiver of sovereign immunity contained in paragraph 23 of the attached Special Counsel Engagement Agreement with The Cleary Law Group, P.C., and authorizes the Principal Chief or his designee to sign said attached Agreement; and

BE IT FURTHER RESOLVED BY THE CHEROKEE NATION, that, as stated in paragraph 2 of the attached Agreement, the attached Agreement shall become effective only upon (i) the signed execution of the Agreement by the Cleary Law Group, P.C., and the Tribe's respective authorized officials, and (ii) the signed execution by the respective authorized officials of each of the other six member tribes comprising the Tar Creek Trustee Council Indian Tribes of separate agreements containing terms identical to the terms of this Agreement; and

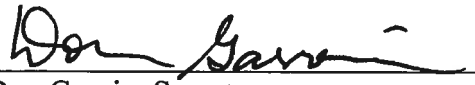
BE IT FINALLY RESOLVED BY THE CHEROKEE NATION, that, with the exception of paragraphs 10, 11, and 13 (which concern payment of fees and expenses) and with the exception of paragraph 23 (which concerns the limited waiver of sovereign immunity) of the said Agreement between the Cherokee Nation and the Cleary Law Group, P.C., the Principal Chief is authorized to approve, without further Council action, any amendments to said Agreement as deemed necessary and appropriate.

CERTIFICATION

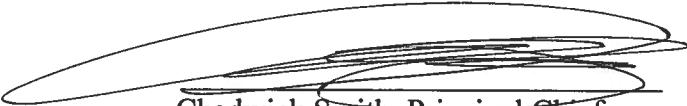
The foregoing resolution was adopted by the Council of the Cherokee Nation at a duly called meeting on the 14th day of March, 2011, having 17 members present, constituting a quorum, by the vote of 17 yea; 0 nay; 0 abstaining.


Meredith A. Frailey, Speaker
Council of the Cherokee Nation

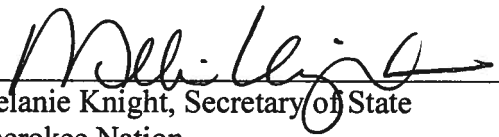
ATTEST:


Don Garvin, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 21st day of March, 2011.


Chadwick Smith, Principal Chief
Cherokee Nation

ATTEST:


Melanie Knight, Secretary of State
Cherokee Nation

ADMINISTRATIVE CLEARANCE:

Program/Project Manager:

[Signature] 2/24/11
Signature Date

Department Director:

[Signature] 2/24/11
Signature Date

Group Leader:

[Signature] 02/24/11
Signature Date

Finance Approval (if needed):

Signature Date

Government Resources Group:

Signature Date

Administration Approval:

[Signature]
Signature Date

LEGISLATIVE CLEARANCE

Legislative Aide:

[Signature] 3/1/11
Signature/Initial Date

Standing Committee:

[Signature]

3-14-11

Next Meeting Date

Chairperson:

[Signature]
Signature/Initial Date

Returned to Presenter: _____
Date

**Cherokee Nation
Act/Resolution Proposal Form**

Act

Resolution

TITLE: A RESOLUTION APPROVING THE CLEARY LAW GROUP, P.C., SPECIAL COUNSEL ENGAGEMENT AGREEMENT RELATED TO TAR CREEK NATURAL RESOURCE DAMAGES ASSESSMENT

Department Contact: Nancy John

Resolution Presenter: Tom Elkins

Council Sponsor: Cara Cowan-Watts

NARRATIVE:

(See Attached Outline for Information Needed)

The purpose of this resolution is to approve an agreement with the Cleary Law Group, P.C. to represent the Cherokee Nation and the Tar Creek Trustee Council Indian Tribes (TTCIT) in matters pertaining to the Tar Creek Superfund Site. The resolution would also approve the limited waiver of sovereign immunity contained in the Special Counsel Engagement Agreement and authorize the Principal Chief or his designee to enter into the agreement.

(NOTE: The seven tribes pursuing the establishment of the TTCIT and impacted by the Tar Creek Superfund site include: Cherokee Nation, Eastern Shawnee Tribe, Miami Tribe, Ottawa Tribe, Seneca-Cayuga Tribe, Wyandotte Nation and Peoria Tribe. The Ottawa Tribe currently serves as the Lead Administrative Tribe for the Tar Creek Trustee Council and has agreed to continue serving in the same capacity with the formation of the TTCIT.)