

RESOLUTION NO. 44-13

COUNCIL OF THE CHEROKEE NATION

A RESOLUTION AUTHORIZING THE LIMITED WAIVER OF SOVEREIGN IMMUNITY OF THE CHEROKEE NATION IN CONNECTION WITH THE WIND ENERGY EVALUATION LEASES AND WIND RESOURCE LEASES TO CHILOCCO WIND FARM, LLC

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 Tribe with a historic and continual government-to-government relationship with the United States of America; and

WHEREAS, the Principal Chief and/or his designee have negotiated arrangements with Chilocco Wind Farm, LLC relating to the entering of Wind Energy Evaluation Leases and Wind Resource Leases; and

WHEREAS, in connection with the leasing of Cherokee Nation's land and the development of the wind farm on tribal land, it is necessary that the Principal Chief and/or his designee negotiate as necessary a limited waiver of sovereign immunity of the Cherokee Nation;

BE IT RESOLVED BY THE CHEROKEE NATION that the Council recognizes that, in order to obtain the debt and equity funding necessary to fund a major infrastructure project, on the land, it is necessary to grant a limited waiver of sovereign immunity with respect to the Cherokee Nation so that Chilocco Wind Farm, LLC, may maintain causes of action against the Cherokee Nation in the event of default by the Cherokee Nation under the terms of the leases;

BE IT FURTHER RESOLVED that the Council further recognizes that the remedy available as a result of a waiver of sovereign immunity must be carefully and strictly defined, and therefore desires to establish herein the provisions that must be expressly set forth in the Leases;

BE IT FURTHER RESOLVED that for the sole purpose of allowing for enforcement of the terms of the above referenced documents, the Cherokee Nation agrees to a limited waiver of sovereign immunity, only if all of the following conditions are met:

- (1) The entity seeking to bring suit against the Nation is Chilocco Wind Farm, LLC, or its successors or assigns, and
- (2) The claim is for breach of contract and seeks access to the property for the development, construction, use and operation as limited to and allowed in the leases through equitable remedies, and
- (3) That any action can only be brought in the United States District Court for the Northern District of Oklahoma, and

(4) The claim shall not include claims for monetary damages or any lien or encumbrance upon tribal property or recovery from any elected officials, officers, or employees of the Cherokee Nation for monetary damages, punitive or exemplary damages, court costs or attorney fees;

(5) The waiver is conditioned upon a development fee at closing (within the Wind Development Agreement) of \$200,000 upon approval of the leases by the BIA and the waiver by Cimarron Power Ventures of the consultation fee, subject to any desired fee approved by the Tribal Council.

BE IT FURTHER RESOLVED that nothing herein shall be construed as a waiver of immunity from suit seeking punitive damages or any other form of damages from any party whatsoever, or as a waiver extended for the benefit of any entity, person, partnership, or firm whatsoever, other than Chilocco Wind Farm, LLC, or its successor or assign, as a party to the above referenced documents for enforcement of said leases;

BE IT FURTHER RESOLVED that this waiver shall not be construed to authorize any action or claim against the Nation sounding in tort or any other type of claim or recovery not expressly authorized herein including claims for monetary damages or any lien or encumbrance upon tribal property, for which purposes the Cherokee Nation's sovereign immunity is and shall be reserved;

BE IT FURTHER RESOLVED that the authorization of the Principal Chief to waive immunity from suit is limited to suits that meet all of the following requirements: (a) suit is filed in the United States District Court for the Northern District of Oklahoma; and (b) suit is filed by Chilocco Wind Farm, LLC, or its successor or assign, to enforce the leases;

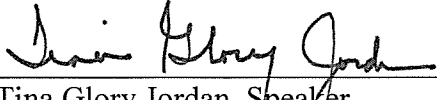
BE IT FURTHER RESOLVED that this waiver shall not allow recovery from any elected officials, officers or employees of the Cherokee Nation for monetary damages, punitive or exemplary damages, court costs, attorney fees or any other damages whatsoever;

BE IT FURTHER RESOLVED that the Cherokee Nation elects to expressly waive the sovereign immunity of the Cherokee Nation as it applies to the Wind Energy Evaluation Leases and the Wind Resource Leases and hereby authorizes the Principal Chief to negotiate and execute these leases containing limited waivers of sovereign immunity within the parameters set out herein;

BE IT FURTHER RESOLVED that this Resolution shall in no manner or in any respect operate or be construed to operate to waive or otherwise diminish the sovereign immunity of the Cherokee Nation, except as to allow certain actions against the Cherokee Nation as provided herein.

CERTIFICATION

The foregoing resolution was adopted by the Council of the Cherokee Nation at a duly called meeting on the 13th day of May, 2013, having 16 members present, constituting a quorum, by the vote of 14 yea; 2 nay; 0 abstaining.

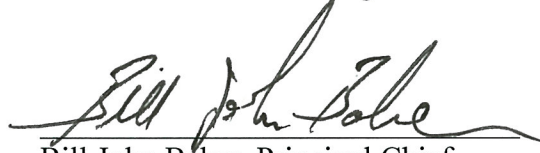

Tina Glory Jordan, Speaker
Council of the Cherokee Nation

ATTEST:



Jodie Fishinhawk, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 16 day of May, 2013.



Bill John Baker, Principal Chief
Cherokee Nation

ATTEST:



S. Joe Crittenden, Deputy Principal Chief
Cherokee Nation

**ADMINISTRATIVE
CLEARANCE**

Dept/Program:

Elizabeth Odeh 3/13/13
Signature/Initial Date

Executive Director:

[Signature]
Signature/Initial Date

Treasurer: (Required:
Grants/Contracts/Budgets)

Signature/Initial Date

Government Resources:

Signature/Initial Date

Administration Approval:

[Signature]
Signature/Initial Date

LEGISLATIVE CLEARANCE:

Legal & Legislative Coordinator:

[Signature] 3/13/13
Signature/Initial Date

Standing Committee & Date:

[Signature] 3/28/13

Chairperson:

[Signature]
Signature/Initial Date

Returned to Presenter:

Date

**Cherokee Nation
Act/Resolution Proposal Form**

Act Resolution

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SOVEREIGN IMMUNITY OF THE CHEROKEE NATION IN
CONNECTION WITH THE WIND ENERGY EVALUATION
LEASES AND WIND RESOURCE LEASES TO CHILOCCO
WIND FARM, LLC**

DEPARTMENT CONTACT: _____

RESOLUTION PRESENTER: _____

COUNCIL SPONSOR: _____ Chuck Hoskin, Jr.

NARRATIVE:

The purpose of this resolution is to authorize the Principal Chief to negotiate, if necessary, Wind Energy Evaluation Leases and Wind Resource Leases for the Chilocco Wind Farm Project, which may include a waiver of sovereign immunity. This resolution provides perimeters for authorization of the waiver.