



# Council of the Cherokee Nation

Cherokee Nation Tribal  
Council  
17763 S. Muskogee Ave.  
Tahlequah, OK 74464

## Legislation Text

File #: 17-090, Version: 1

### **A RESOLUTION AUTHORIZING A GRANT OF EASEMENT FOR A TRANSMISSION LINE RIGHT-OF-WAY TO PLAINS AND EASTERN CLEAN LINE OKLAHOMA LLC, ACROSS THE ARKANSAS RIVER AND GRANTING A LIMITED CONSENT TO BE SUED**

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

**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;

**WHEREAS**, Plains and Eastern Clean Line Oklahoma LLC, requests a Transmission line easement across the Arkansas River located on land held in trust by the United States for the benefit of the Cherokee Nation within the NW¼ of Section 2, Township 12 North, Range 20 East, Muskogee County, Oklahoma, as more specifically described in the legal description and survey attached hereto;

**WHEREAS**, the Principal Chief has determined that it is advantageous for the Cherokee Nation to grant the transmission line easement described above and has negotiated terms for a Transmission Line Right-of-Way Agreement (“Agreement”), that includes a limited consent to be sued as set forth in the terms of the Agreement; and

**WHEREAS**, the Cherokee Nation will be compensated in excess of fair market/appraised value for the grant of easement for right-of-way as set forth in *Title 25 CFR §169.114* and requests a waiver of all bonding pursuant to *Title 25 CFR § 169.103*, having determined that a waiver of such bonds, or other alternative form of security, is in the best interest of the tribe.

**BE IT RESOLVED BY THE CHEROKEE NATION**, that the Principal Chief of Cherokee Nation, and/or his authorized designee, is hereby authorized to enter into the above described grant of easement for right-of-way, with bond being waived, in accordance with *25 CFR § 169* and the *Bureau of Indian Affairs Policy and Procedure* for the grant of easement for right-of-way of land owned by the Cherokee Nation and held in trust by the United States of America for the benefit of the Cherokee Nation.

**BE IT FURTHER RESOLVED** that the Council recognizes that the remedy available as a result of a consent to be sued must be carefully and strictly defined, and therefore desires to establish herein the provisions that must be expressly set forth in the Transmission Line Right-of-Way Agreement.

**BE IT FURTHER RESOLVED** that for the sole purpose of allowing the enforcement of the Transmission Line Right-of-Way Agreement, and only for the purposes and time period set forth therein, the Cherokee Nation agrees to grant a limited consent to be sued, only if all of the following conditions are met:

- (1) The entity seeking to bring suit against the Nation is Plains and Eastern Clean Line Oklahoma, LLC, or its successors or assigns as set forth in the Right-of-way agreement,

- (2) The claim is for breach of contract and seeks only equitable relief or actual damages resulting from the Nation's noncompliance with the Transmission Line Right-of-Way Agreement, and
- (3) That any action must be brought in the United States District Court for the Eastern District of Oklahoma or the courts of the Cherokee Nation.

**BE IT FURTHER RESOLVED** that nothing herein shall be construed as a waiver of immunity from suit seeking punitive damages from any party whatsoever, or as a waiver extended for the benefit of any entity, person, partnership, or firm whatsoever, other than the party having such rights pursuant to the terms of the Transmission Line Right-of-Way Agreement and only for enforcement of the terms of Transmission Line Right-of-Way Agreement.

**BE IT FURTHER RESOLVED** that this consent to suit 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, for which purposes the Cherokee Nation's sovereign immunity is and shall be expressly reserved.

**BE IT FURTHER RESOLVED** that this consent to suit shall not allow recovery from any elected official, officer, or employee of the Cherokee Nation of any monetary damages, punitive or exemplary damages, court costs, attorney's fees or any other damages whatsoever.

**BE IT FURTHER RESOLVED** that the Cherokee Nation elects to expressly consent to suit as it applies to the Transmission Line Right-of-Way Agreement and hereby authorizes the Principal Chief to negotiate and execute the Transmission Line Right-of-Way Agreement, and such other documents as may be appropriate to facilitate this grant of easement for right-of-way provided for herein.

**BE IT FUTHER 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.