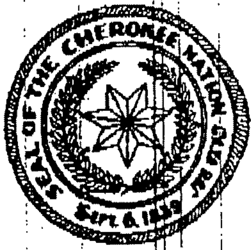


CHEROKEE NATION

P.O. Box 948
Tahlequah, OK 74465-0948
918-456-0671

Chad "Corntassel" Smith
Principal Chief

Hastings Shade
Deputy Principal Chief

July 14, 2003

Ms. Jeannette Hanna
Regional Director
Eastern Oklahoma Regional Office
P.O. Box 8002
Muskogee, Ok. 74401-6206

Re: Cherokee Nation Election of May 24, 2003

Dear Ms. Hanna:

This is in response to your letter apparently misdated June 11, 2003 concerning matters related to our election of May 24, 2003 that was received by fax on Friday, July 11, at 4:00 PM.

The matters addressed in your letter concern the fundamental rights of Cherokee self-government. Therefore, the Department of the Interior should speak as one voice and respond to the concerns of the Cherokee Nation. Accordingly, I have requested this matter of importance be immediately elevated to the Secretary for resolution.

For the record, I view this exchange of correspondence to be a precursor to a final decision for the Department and therefore, reserve all of the Cherokee Nation's right to appeal in any legal forum, if the decision is adverse to the interest of the Nation.

In this age of self-determination and self-governance, I am shocked to find the contents and tone of your letter to be both patronizing and very paternalistic. It appears that some officials in your Department desire to return to the era of "bureaucratic imperialism." In *Harjo v. Kleppe (1976)*, this is how the Court characterized the Department's actions over the affairs of the Five Nations for the majority of the 20th Century, and specifically referred to the interference in the election of the Principal Chief.

> *"During the period immediately following the approval of the Five Tribes Act, the Interior Department behaved as though it had been successful in its efforts to prevent the enactment of § 28 and the Congressional changes made in its draft of § 6. The available evidence clearly reveals a pattern of action on the part of the Department and its Bureau of Indian Affairs designed to prevent any tribal resistance to the Department's methods of administering those Indian affairs delegated to it by Congress. This*

> *attitude, which can only be characterized as bureaucratic imperialism, manifested itself in deliberate attempts to frustrate, debilitate, and generally prevent from functioning the tribal governments expressly preserved by § 28 of the Act."*
> (*Harjo v. Kleppe (1976)*)

I would suggest that your attorneys review the above, consider the required canons of construction, and measure your proposed actions against solemn pronouncements of self-determination policy by the Congress and President that your agency appears to ignore.

It is my hope that a satisfactory resolution of these matters can be had. If not, we will seek a resolution in the courts as we have since the 1830's in order to obtain justice and right. I am saddened that the Department would hold hostage the Cherokee citizens' mandate to manage their own affairs. We have faithfully conducted our election under the terms of the Constitution of the Cherokee Nation and have honored our part of the government-to-government and trust relationships with the United States. We ask the Department of Interior to do the same.

I will address the specifics of your misdated letter paragraph by paragraph, as enumerated, which follows:

1. **Page 1, Paragraph 1**, you state, "The Region is aware of no requirement that the Department of the Interior certify the election as to Council representatives."

Response: The notice to your office and transmittal of the certification by the Election Commission of the results of the elected officers, i.e. the Principal Chief and Council members, was not for the purpose of requesting Departmental certification. The Department does not run Cherokee elections nor supervise them. The purpose of the notice was for recognition of leadership on a government-to-government basis with the United States.

It is a fact that the Cherokee people have decided their leadership and approved a constitutional amendment on May 24, 2003 by a democratic process in accordance with Cherokee law. On July 26, 2003 they will vote on a new constitution and for two remaining run-off races to complete this democratic process. It is neither for the Department's determination nor discretion to second-guess the most basic fundamental principle of self-governance. See *Wheeler v. Swimmer, 1987* and *Nero v. Cherokee Nation and the United States, 1989.*

I strongly recommend the Department of Interior adhere to the admonition of the US Court of Appeals for the Tenth Circuit in *Nero,*

> *"Indian Tribes have a right to self-government, and the Federal government encourages tribes to exercise that right. Consequently, while the Department may be required by statute or tribal law to act in*

intratribal matters, it should act so as to avoid any unnecessary interference with a tribe's right to self-government."

2. Page 1, **Paragraph 2,** states that, "the Nation has been advised on two occasions regarding the requirements of the Principal Chief's Act of October 22, 1970." You advise further that the procedures for electing the Principal Chiefs of Five Tribes must be approved by the Secretary and cite *Seminole v. Norton, 2001* as your justification and state the Nation was asked to submit its current election laws and procedures for approval.

In paragraph 3, you reference the "May 31, 2003" letter of Pat Ragsdale, Director of Government Resources, who responded in my behalf to your request that the Cherokee Nation submit its election laws for your approval. You state, "Please advise whether the referral was intended to constitute the extent of the Cherokee Nation's correspondence regarding the issue. Further you state, "It does appear that such review and approval is necessary before the Department can recognize the results of the May 24, 2003, election as it pertains to the office of the Principal Chief."

Response: As to your interpretation of the *Seminole* case's relevance to the Cherokee Nation, our Cherokee governmental relationship is distinguished from the Seminole relationship, as is our culture, traditions and history. The Cherokee Nation's Constitutional history dates back to the first Constitution of 1827, the Constitution of 1839, and the current Constitution that was pre-approved by the Secretary in 1975 and ratified by the Cherokee voters in 1976. The 1976 Constitution has been amended at least twice with the approval of the Secretary.

The *Seminole* decision concerns approval of Constitutional amendments. The Cherokee Nation has consistently complied with that requirement since 1975. The Secretary has exercised any responsibility under the 1970 Act by approving the Constitution in 1975 and the procedures set forth within the Cherokee Constitution. For over a quarter of a century, the Department has never to our knowledge required nor suggested that Cherokee Nation submit its internal election procedures for Departmental approval. Furthermore, the Department has recognized the elections of the Principal Chiefs of the Cherokee Nation without approving the internal laws governing such elections. The Nation has conducted six such elections:

1999 – Chadwick "Corntassel" Smith
1995 – Joe Byrd
1991 – Wilma P. Mankiller
1987 – Wilma P. Mankiller
1983 – Ross O. Swimmer
1979 – Ross O. Swimmer

In *Swimmer*, referenced above, the Court said,

> *"The right to conduct an election without federal interference is essential to the exercise of the right to self-government."*

Cherokee and Seminole history is similar as far as the treatment and perfidy of the federal government during the Treaty period, however, it is different in the formations and development of our constitutional governments. I am dismayed by the inference that the Department may withhold the recognition of the Principal Chief's office in order to require submission to your demands.

Mr. Ragsdale's response was dated and delivered on May 13th not May 31st as stated in your letter. (The May 13th letter is attached). Mr. Ragsdale's letter was intended to be a courteous response to your personal request of me for information prior to the election. His response is a summary of the position of the Cherokee Nation. I note neither you nor your Department bothered to respond prior to the May 24 election. I also note that Mr. Ragsdale inquired of you and your office if the Department had a position to the contrary prior to the May 24th election and he was advised by you that there was no response from Washington.

I also wish to point out that we have had no direct government-to-government discussions on the issues to exchange our views. The brief phone conversations by me with Assistant Secretary Martin and you have revealed little. It is my understanding, based upon our conversations, that Departmental attorneys are directing this course of action.

I reaffirm the Nation's previous answer, and I state for the record that the Nation has much more in response to what appears to be a demand that we compromise our rights of self-governance.

3. Page 1, Paragraph 4, states it is presumed that we request that the Department approve the amendment voted on and approved by the Cherokee voters on May 24th, as currently required by the Cherokee Constitution.

Response: The voters of the Cherokee Nation have spoken representing the will of the Cherokee Nation. We seek federal approval and fulfillment of the Department's previous commitment. If it is needed, your presumption is correct and Mr. Ragsdale has already delivered to you a detailed "Special Report" on the process leading up to the election and has enclosed documentation of the Constitutional Convention, voter education, the relevant resolutions, acts, and the election law governing the process. (The election act is not submitted for your approval but is submitted for your reference only to facilitate your review.)

4. Page 2, Paragraph 1, references Assistant Secretary McCaleb's willingness to approve the amendment, but adds, "...if proper procedures were followed by the Nation."

Response: As stated earlier, the Special Report delivered to your office last Friday provides you with comprehensive documentation as to procedural compliance with the Constitution and laws of the Nation as well as the involvement and education of the citizens of the Cherokee Nation regarding the referendums in question.

What former Assistant Secretary McCaleb actually wrote in his letter of April 23, 2002, was,

> *"We have no objection to the referendum as proposed and I am prepared to approve the amendment deleting the requirement for Federal approval of future amendments. Until it is repealed or amended, the Act of October 22, 1970 will, however, still apply."*
> (Exactly quoted)

I note Secretary McCaleb also acknowledged in this letter of April 23rd that a previous letter dated March 15, 2002 with an entirely different message had been sent out by unauthorized use of his autopen signature and that the letter dated March 15th was of no validity or effect and should be disregarded. It appears that now that the former Assistant Secretary is retired that there are others at work to rewrite policy determinations.

5. Page 2, paragraph 2, states, *"if the Cherokee Nation's presentation to the Cherokee voters is premised upon the amendment that the voters adopted on May 24, 2003, it is premature at this time."*

Response: The Cherokee Nation relied on the Department's word expressed by Former Assistant Secretary McCaleb, and has conducted an election in the good faith belief that the Department would keep its commitment regarding the amendment which was recently approved by an overwhelming majority of Cherokee voters.

Do you intend to break the previous commitment made by the Assistant Secretary on behalf of the Department?

The democratic process that has been followed, accompanied with numerous public announcements, forums and process leading up and to the election has not been a secret, and the Department has not been excluded from the process. This has been an expense to the Cherokee Nation of over several hundred thousand dollars.

The documentation demonstrating that the Nation has exercised due diligence and good faith is contained in the referenced report. Please review the documentation.

The Department should not break the previous commitment made by the Assistant Secretary on behalf of the Department.

6. Page 2, paragraph 3, you provide a copy of a letter from Velie and Velie, Attorneys at Law dated June 10, 2003 to Ms. Aurene Martin, Acting Assistant Secretary of Indian

Affairs. It alleges violations of the Treaty with the Cherokee Nation and requests the BIA hold the Cherokee Nation election of May 24, 2003 to be held invalid.

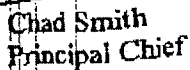
Response: Prior to making our comments on the allegations made by the law firm, we have some preliminary questions.

- Have the Velie clients exhausted all of the tribal and/or federal administrative remedies?
- If so, please provide the records for our review.
- If not, why should they not be required to do so?

Conclusion

It appears that this issue is about to be decided by the Assistant Secretary or the Secretary. Therefore, we request the decision and dialogue between the Nation and the Department be elevated to the Washington, D.C. level in the interest of seeking resolution and determining public policy on a timely basis. We regret that it appears that you have been chosen to state the bidding of other officials in the Department who appear to have a bias against the self-governmental rights of the Cherokee Nation. We believe it in the best interest of the Nation to hear one Departmental voice and deal with one decision maker to protect our interests and preserve our right to resolve this matter in the courts if it becomes necessary.

Sincerely,



Chad Smith
Principal Chief

Attachments:

(1) May 13, 2003 letter from Pat Ragsdale, Director, Government Resources, Cherokee Nation to Jeanette Hanna, Director, USBIA, Eastern Oklahoma Region

cc: Honorable Aurene Martin, Acting Assistant Secretary - Indian Affairs
Honorable Stephen Griles, Deputy Secretary, US Department of Interior
Honorable Gale A. Norton, Secretary