



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

SEP 09 2011

The Honorable S. Joe Crittenden  
Acting Principal Chief, The Cherokee Nation  
P.O. Box 948  
Tahlequah, Oklahoma 74465-0948

Dear Chief Crittenden:

We have followed the news of the upcoming election for Principal Chief with interest and growing concern. I write to advise you that the Department of the Interior (Department) has serious concerns about the legality of the Cherokee Nation's actions with respect to the Cherokee Freedmen, as well as the planned September 24, 2011, election.

On August 22, 2011, the Supreme Court of the Cherokee Nation issued its decision in the matter of the *Cherokee Nation Registrar v. Nash*, Case No. SC-2011-02. In this decision, the Court vacated and reversed the earlier decision of the Cherokee District Court, as well as the temporary injunction that maintained the citizenship of the Freedmen. We have carefully reviewed this most recent decision. I am compelled to advise you that the Department respectfully disagrees with the Court's observations regarding the meaning of the Treaty of 1866, between the United States of America and the Cherokee Nation (Nation), 14 Stat. 799, as well as the status of the March 3, 2007, amendment to the Cherokee Constitution.

The Cherokee Constitution ratified by the voters in June 1976 expressly provides that "[n]o amendment or new Constitution shall become effective without the approval of the President of the United States or his authorized representative," which is the Secretary of the Interior. The Department declined to approve the 2003 amendments of the 1976 Constitution, as evidenced by the August 30, 2006, letter from Associate Deputy Secretary James Cason to Principal Chief Chad Smith and the March 28, 2007, letter from Assistant Secretary – Indian Affairs (AS-IA) Carl Artman to Principal Chief Smith, copies of which are enclosed. Although on August 8, 2007, AS-IA Artman approved a June 23, 2007, amendment to the 1976 Constitution that removes the requirement for Secretarial approval of amendments, that decision is not retroactive. Thus, the decision of the Cherokee Nation Supreme Court appears to be premised on the misunderstanding that both the unapproved Constitution adopted in 2003, and the March 3, 2007, amendment that would make Freedmen ineligible for citizenship, are valid. The Department has never approved these amendments to the Cherokee Constitution as required by the Cherokee Constitution itself.

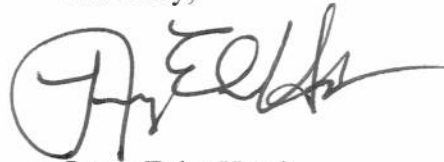
Furthermore, we understand that in 2010 the Nation adopted new election procedures which will govern the upcoming election for Principal Chief. Those procedures were never submitted to, nor approved by, the Secretary of the Interior or any designated Department of the Interior official as required by the Principal Chiefs Act, (Pub. L. 91-495, 84 Stat. 1091). Pursuant to the Principal

Chiefs Act, enacted by Congress in 1970, the Secretary is required to approve procedures for the selection of the Principal Chief of the Cherokee Nation.

We are concerned that the recent decision from the Cherokee Nation Supreme Court, together with 2010 election procedures that have not been approved by the Secretary of the Interior as required by the Principal Chiefs Act, will be the basis for denying Cherokee Freedmen citizenship and the right to vote in the upcoming election. The Department's position is, and has been, that the 1866 Treaty between the United States and the Cherokee Nation vested Cherokee Freedmen with rights of citizenship in the Nation, including the right of suffrage.

I urge you to consider carefully the Nation's next steps in proceeding with an election that does not comply with Federal law. The Department will not recognize any action taken by the Nation that is inconsistent with these principles and does not accord its Freedmen members full rights of citizenship. We stand ready to work with you to explore ways to honor and implement the Treaty.

Sincerely,

A handwritten signature in black ink, appearing to read 'Larry Echo Hawk', written in a cursive style.

Larry Echo Hawk  
Assistant Secretary – Indian Affairs

Enclosures