CHEROKEE NATION

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

Chad "Corntassel" Smith
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Principal Chief

Joe Grayson
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Deputy Principal Chief

August 19, 2004

Lieutenant General Robert B. Flowers, Commanding, Executive Office.
Headquarters US Army Corps of Engineers
441 G. Street, NW
Washington, D.C. 20314-1000
Telephone (202) 761-0660

Re: Assignment of Water Storage Contract for Tenkiller Reservoir, Oklahoma, to Cherokee Nation

Dear Lieutenant General Flowers:

The Cherokee Nation is requesting your assistance in resolving an issue involving the Tulsa District Office and an alleged "policy" of the U.S. Army Corps of Engineers (COE). The District Office's position appears to signal a major reversal in the federal government's policy [1] to engage in government to government relations with tribes and respect tribal sovereignty.

Enclosed you will find copies of previous correspondence on this issue. To summarize, on March 8, 2004, Sequoyah Fuels wrote a letter to the Tulsa District office of the U.S. Army Corps of Engineers (COE) requesting assignment to the Cherokee Nation of Contract No. DACW56-70-C-0083 for Tenkiller Ferry Reservoir water storage. On March 23, 2004, Larry D. Hogue responded on behalf of the COE stating that "...policy on transferring or entering into a water storage contract is that the entity obtaining the storage must have a valid water right from the appropriate state agency...". The Cherokee Nation wrote back on April 20, 2004, asserting water rights that pre-existed statehood. There has been no response to our letter from the Tulsa District Office.

The delay in approving this assignment is detrimental to the people (both tribal and non-tribal citizens) in this region of Oklahoma, as any delay hampers economic growth. This water is needed now, and the continued uncertainty must be resolved so the Cherokee Nation can move forward, in cooperation with other interested parties, to insure progress in distributing drinking water to those in need.

See, e.g., Department of Defense American Indian and Alaska Native Policy dated October 20, 1998.

Not only does Cherokee Nation wish to obtain prompt resolution of this matter, but there are also others with valid state water permits and important conservation interests who have an interest in seeing this issue clearly and immediately resolved. .

We have reached a basic understanding as to the beneficial uses of this water with the Sequoyah County Water Association and the Oklahoma Department of Wildlife Conservation. We want to work with Sequoyah County Water Association to distribute this water where it is needed most by people in rural areas. We also intend to work with the Oklahoma Department of Wildlife Conservation to ensure the continued health of an important downstream trout fishery that is a major tourist attraction. Our combined efforts will ensure that this water provides the greatest benefit to this region.

Cherokee Nation requests a meeting to discuss this further. Please contact Ms. Casey Ross- Petherick at the Cherokee Nation Washington Office, telephone number (202)393-7007, to schedule a meeting at your earliest convenience.

Respectfully Yours,

Chadwick Smith
Principal Chief

cc: The Honorable Brad Carson
U.S. House of Representatives
317 Cannon House Office Building
Washington, D.C. 20515

The Honorable John Sullivan
U.S. House of Representatives
114 Cannon House Office Building
Washington, D.C. 20515

The Honorable Don Nickles
133 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Jim Inhofe
453 Russell Senate Office Building
Washington, D.C. 20510

Ross Swimmer, Special Trustee
Office of Special Trustee for American Indians
Department of Interior
1849 C. Street, NW
Washington, D.C. 20240

The Honorable Aurene Martin, Deputy Assistant Secretary- Indian Affairs
Bureau of Indian Affairs
1849 C Street NW
MS: 4141-MIB
Washington, DC 20240

Colonel Robert L. Suthard, Jr.
Tulsa District U.S. Army Corps of Engineers
1645 S. 101st East Avenue
Tulsa, OK 74128-4609

John Ellis, President
Sequoyah Fuels Corporation
P.O. Box 610
Gore, OK 74435

Ralph Bird, CEO and Chairman of the Board
Sequoyah Fuels
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Garner Garrison, President, Board of Directors
Sequoyah County Water Association
PO Box 627
Sallisaw, OK 94955-0627

Jim Burroughs, NE Region Fisheries Supervisor
Oklahoma Department of Wildlife Conservation
Rt 1, Box 75B
Porter, OK 74454

Kim Erickson, Chief Fisheries Division
Oklahoma Department of Wildlife Conservation
P.O. Box 53465
Oklahoma City, OK 73152-3465

Casey Ross-Petherick, Legislative Officer
Cherokee Nation Washington Office
126 C. Street, NW
Washington, D.C. 20001

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Chad "Corntassel" Smith
Principal Chief

Joe Grayson, Jr.
Deputy Principal Chief

April 20, 2004

Colonel Robert L. Suthard, Jr.
Tulsa District
U.S. Army Corps of Engineers
1645 S. 101st East Ave.
Tulsa, OK 74128-4609

Dear Colonel:

On March 8, 2004, Sequoyah Fuels Corporation (SFC) sent you a written notice of SFC's intent to assign their water storage contract for 14,000 acre-feet in Lake Tenkiller to the Cherokee Nation. The Cherokee Nation later received a copy of a response to SFC dated March 23, 2004, from Larry D. Hogue, Chief of Planning, Environmental and Regulatory Division in the Corps of Engineers (COE) Tulsa District office. Mr. Hogue states that COE "...*policy* on transferring or entering into a water storage contract is that the entity obtaining the storage *must have a valid water right from the appropriate state agency* for the full amount of storage being transferred or contracted" (emphasis added).

The Cherokee Nation has water rights that existed before Oklahoma became a state. These water rights were established under federal laws and treaties, and they were unaffected by statehood. The Cherokee Nation's water rights are not now, nor have they ever been, subject to any state law. Therefore, any COE "policy" that requires a state-issued water right can not be applied to the Cherokee Nation.

The Cherokee Nation did not consent to the impoundment of water in Lake Tenkiller. The Cherokee Nation has not, to date, demanded compensation for past use of the Cherokee Nation's waters or compensation for damage to the Cherokee Nation's resources, culture and heritage caused by unauthorized alterations of the Illinois River, Barren Fork and other tributaries. The COE should not attempt to place inappropriate restrictions on the Cherokee Nation's use of this water.

We understand that other entities, such as the City of Sallisaw, may wish to use this water for certain areas and/or purposes. However, the Cherokee Nation as a sovereign government has the authority and resolve to make sure this water is used in an equitable way - one that achieves maximum benefit to the Cherokee Nation's members, Oklahoma citizens and local communities while still respecting the need to accommodate downstream needs related to fish, wildlife and tourism.

The Cherokee Nation has an exemplary history that demonstrates its strong commitment to serving people in this region. There are pressing needs for this water. Please prepare the paperwork necessary to finalize SFC's assignment of the storage contract to the Cherokee Nation as soon as possible.

If you need any additional information, please do not hesitate to call Julian Fite at (918) 456-0671 extension 2239, or Jeannine Hale at extension 2786.

Yours Truly,

Chad Smith, Principal Chief

cc: The Honorable Brad Carson
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317 Cannon House Office Building
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The Honorable Aurene Martin, Deputy Assistant Secretary- Indian Affairs
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