

University of Oklahoma College of Law

## University of Oklahoma College of Law Digital Commons

---

American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899

---

6-2-1870

**Letter of the Secretary of the Interior to the Chairman of the Committee on Indian Affairs, communicating amendments to the Cherokee Treaty concluded July 9, 1868.**

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>



Part of the [Indian and Aboriginal Law Commons](#)

---

### Recommended Citation

S. Misc. Doc. No. 148, 41st Cong., 2nd Sess. (1870)

This Senate Miscellaneous Document is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact [darinfox@ou.edu](mailto:darinfox@ou.edu).

LETTER  
OF THE  
SECRETARY OF THE INTERIOR  
TO THE  
CHAIRMAN OF THE COMMITTEE ON INDIAN AFFAIRS,  
COMMUNICATING

*Amendments to the Cherokee treaty concluded July 9, 1868.*

---

JUNE 2, 1870.—Ordered to be printed, to accompany the treaty with the Cherokee Indians.

---

DEPARTMENT OF THE INTERIOR,  
*Washington, D. C., June 2, 1870.*

SIR: I have the honor to transmit herewith, for the consideration and constitutional action of the Senate, amendments proposed to the Cherokee treaty concluded July 9, 1868, now pending before that body.

The amendments meet the approval of the Cherokee delegation now in this city, and I respectfully commend the subject to the favorable consideration of the Committee on Indian Affairs of the United States Senate.

Very respectfully, your obedient servant,

J. D. COX,  
*Secretary.*

Hon. JAMES HARLAN,  
*Chairman Senate Committee on Indian Affairs.*

---

*Proposed amendments to the Cherokee treaty, concluded July 9, 1868, pending before the Senate.*

Strike out all after article 1, to and including article 21, and insert the following, viz:

ARTICLE II.

The Cherokee Indians hereby cede and relinquish to the United States all claim, right, title, and interest in and to all lands claimed by them west of the 96th meridian of longitude west from Greenwich, and south of the 37th parallel of north latitude, and also all claim, right, title, and interest in and to any lands in the State of Kansas, except the tract known as the "Cherokee Neutral Lands," in Southeastern Kansas, comprising 799,614.13 acres, which are now being disposed of under the provisions of the 17th article of the Cherokee treaty of July 19, 1866, and also relinquish to the United States all claim to or for any lands in Arkansas, or in States east of the Mississippi River, and all claims or demands of the Cherokee nation against the United States, except so far as the same are recognized in this treaty, or other existing treaties now

in force, and, in consideration of the foregoing cessions and relinquishment, the United States agree to pay to said Indians the sum of three and a half millions of dollars: *Provided*, That the lands hereby ceded, which are not within the boundaries of any State or Territory of the United States now organized, shall be and remain part of the Indian Territory, and be devoted to the occupancy of such Indians and Indian tribes in process of civilization as the government of the United States may locate thereon: *And provided further*, That there is hereby granted to such Cherokee citizens as have made or owned improvements, and were *bona fide* residents in that body of Cherokee lands in Kansas known as the "Cherokee strip" on the 9th day of July, 1868, one hundred and sixty acres of land each, to include their improvements, for which land, on sufficient proof of the facts, the Secretary of the Interior shall cause patents to be issued in fee simple to the parties entitled, respectively.

#### ARTICLE III.

It is further stipulated by the parties hereto that of the amount of three and a half millions of dollars to be paid to said Indians, according to the provision of the preceding article, the sum of five hundred thousand dollars shall be set apart, and from which there shall be made to said Indians in the Cherokee nation west of the Mississippi River a *per capita* payment of two hundred and fifty thousand dollars, (\$250,000,) said payment to be made under the direction of the Secretary of the Interior; and the remainder of said sum, two hundred and fifty thousand dollars, (\$250,000,) or so much thereof as may be necessary, shall be applied, on requisition of the Cherokee national council, or any duly authorized delegation thereof, with the approval of the Secretary of the Interior, to the payment of the obligations of the Cherokee nation; and such amount as may remain of said sum, after paying the said obligations, shall be applied by the national council of the Cherokee nation, with the approval of the Secretary of the Interior, to the establishment of an orphan asylum in said nation, and the said asylum shall be devoted to the protection and care of all orphan children of the Cherokee nation, without regard to color or previous condition of life; and the remaining three millions of dollars to be paid to said Indians, according to the provisions of the second article of this treaty, shall be invested by the Secretary of the Interior in United States registered stock, at their current value, and the interest on said stock shall be paid semi-annually, on the order of the Cherokee Indians, for the following purposes, to wit: 35 per cent. for the support of common schools of said Indians and for educational purposes for their benefit, 15 per cent. for the orphan fund, and 50 per cent. for general purposes, including reasonable salaries of district officers and the establishment of an institution for the care of the destitute, aged, and infirm of the Cherokee nation, without regard to color or previous condition of life.

#### ARTICLE IV.

Whereas there have been conflicts of jurisdiction between the courts of the United States adjacent to the Indian territory and those of the Cherokee Indians, growing out of the dispute as to who are and who are not Cherokee Indians as contemplated by the thirteenth article of the Cherokee treaty of 1866, therefore it is agreed as follows:

1. That all persons legally resident in the Cherokee country as citizens thereof, having Cherokee blood in their veins, shall be deemed to be Cherokee Indians.

2. That all white persons who have married, or who may hereafter marry, Cherokees, or who have been made, according to the laws and constitution of the Cherokee nation, or may hereafter be made, Cherokees by act of the Cherokee council, and have settled or may hereafter settle, according to law, in the Cherokee country, as Cherokee Indians, shall be held to be Cherokee citizens as contemplated in said thirteenth article of said Cherokee treaty of 1866, so long as they shall remain residents in said country.

3. That all colored people who, by the fourth and ninth articles of the said treaty of 1866, have been invested with "all the rights of native-born Cherokees," shall be held to be Cherokee citizens, and within the contemplation of the said thirteenth article of the said treaty of 1866.

4. That all Indians that have been, or that may be, adopted as Cherokee citizens, by virtue of treaty stipulation between the United States and the Cherokee nation, or by act of the Cherokee national council, shall be deemed Cherokee citizens.

#### ARTICLE V.

Full faith and credit shall be given by the United States to the public acts, records, and the judicial proceedings of the Cherokee Indians, and such acts, records, and proceedings shall be authenticated according to the laws of said Indians, and have the same effect as similar acts, records, and proceedings have between the States and Territories of the Union. And whereas, by article 1 of this treaty, it is declared that all party distinctions heretofore existing among the Cherokee Indians are abolished, and shall forever cease, therefore, it is hereby stipulated and agreed that the courts of the Cherokees shall have exclusive and original jurisdiction of all causes, civil and criminal, arising between Cherokee citizens within the limits of the Cherokee country, and that so much of the seventh article of the treaty of 1866 as vests such jurisdiction in the courts of the United States is hereby abrogated. And a general amnesty is hereby agreed upon, and a full pardon granted to all citizens of the Cherokee nation for all crimes and misdemeanors committed between and among themselves, as well as between them and citizens of the United States, up to the date of the ratification of this treaty.

#### ARTICLE VI.

Any Cherokees who may, at the date of the ratification of this treaty, be residing on the lands west of the 96th meridian of longitude west from Greenwich, and south of the 37th parallel of north latitude, ceded to the United States by the 2d article hereof, shall be permitted to retain possession and occupancy of the lands improved by them, and when it shall become practicable to do so, by the extension of the public surveys, such Cherokees who may then be remaining upon said lands shall be entitled to select and have patented to them, in fee simple, a quantity of land equal to one hundred and sixty acres for each Cherokee, whose right of selection shall be paramount to that of all other persons under any treaties or laws whatsoever, the patent to issue to heads of families where there are such, and to the individuals separately who may not belong to families.

#### ARTICLE VII.

It is hereby agreed and stipulated that whenever any Cherokees now resident in States east of the Mississippi River, or in any of the States or

Territories west of that river, shall remove to and permanently settle in the Cherokee country, according to the constitution and laws of the Cherokee Indians, and treaties between the same and the United States, they shall be held to be Cherokee citizens, and entitled to all the rights, privileges, and immunities as such.

#### ARTICLE VIII.

The country bounded as follows shall hereafter constitute and be known as the Cherokee country, viz: Commencing at a point on the 37th parallel of north latitude, where the 96th meridian of longitude west from Greenwich crosses the same, running thence south to the northern boundary of the Creek country; thence, following the line of the Creek country as the same has been surveyed, east and south to the Canadian river; thence down the Canadian river, on the north bank thereof, to its junction with the Arkansas river, thence down the Arkansas river, in the main channel thereof, to the western boundary of the State of Arkansas; thence north with said western boundary, and that of the State of Missouri, to a point on the latter where the southern line of the land of the Senecas touches the same; thence west with said southern line of the Senecas to the Neosho river, and across said river; thence up the west bank of the Neosho river to a point where the 37th parallel crosses the same; thence west on said parallel to the place of beginning: *Provided*, That the lines herein indicated as the boundary lines of the Cherokee nation be correctly surveyed, and marked with conspicuous and permanent landmarks as early as practicable, at the expense of the United States: *And provided further*, That no Indians, except Cherokees, shall be settled in the country herein reserved to the Cherokees, except by the consent of the Cherokee national council.

#### ARTICLE IX.

It is further agreed that any lands within the limits of the Cherokee country, the boundaries of which are given in the preceding article, which are now or may hereafter be occupied and used by the United States for military purposes, shall, when the same shall cease to be so occupied and used, revert to the Cherokee nation.

#### ARTICLE X.

The United States reaffirm all obligations arising out of treaty stipulations and legislative acts of the government with regard to the Cherokee nation and individuals thereof, except as the same are relinquished in this treaty, and do guarantee a compliance with all legal obligations of each of the States of the Union toward said Cherokee nation, and the individuals thereof.

WASHINGTON, D. C., May 16, 1870.

SIR: Your communication of the 14th instant, transmitting certain amendments proposed by yourself and the honorable Secretary of the Interior, to our pending treaty, negotiated July 9, 1868, for our consideration and suggestions, has been received. In reply we would respectfully state, that we have carefully examined these amendments, and while in their main features they meet with our approval, we wish to make the following suggestions thereto, viz:

1. At the conclusion of article 2 of said amendments, add another

proviso, as follows: "*And provided further*, That such Cherokee citizens as have made or owned improvements on that body of Cherokee lands in Kansas, known as the 'Cherokee strip,' be allowed each to reserve 160 acres of land, to include the respective sites of their said improvements, for which, on sufficient proof of the facts in the premises, the Secretary of the Interior shall cause patents to issue from the General Land Office of the United States."

2. In article 3, strike out so much of lines 6, 7, 8, and 9 as we have marked in brackets, and insert: "In the Cherokee nation west of the Mississippi River a *per capita* payment of two hundred and fifty thousand dollars, (\$250,000.)"

Also strike out all of said article 3, embraced in lines 11, 12, 13, 14, 15, 16, 17, 18, and 19, included in brackets, and insert in lieu thereof: "Two hundred and fifty thousand dollars, (\$250,000,) or so much thereof as may be necessary, shall be applied, on requisition of the Cherokee national council, or any duly authorized delegation thereof, with the approval of the Secretary of the Interior, to the payment of the obligations of the Cherokee nation, and such amount as may remain of said sum, after paying the said obligations, shall be applied by the national council of the Cherokee nation, with the approval of the Secretary of the Interior, to the establishment of an orphan asylum in said nation," and the said asylum shall be devoted to the protection and care of all orphan children of the Cherokee nation, without any regard to color or previous condition of life.

3. At the conclusion of article 4, add the following: "And fourth. That all Indians that have been or that may be adopted as Cherokee citizens by virtue of treaty stipulations between the United States and the Cherokee nation, or by act of the Cherokee national council, shall be deemed Cherokee citizens."

4. At the conclusion of article 5, add the following: "And a general amnesty is hereby agreed upon, and a full pardon granted to all the citizens of the Cherokee nation for all crimes and misdemeanors committed between and among themselves as well as between them and citizens of the United States, up to the date of the ratification of this treaty."

5. In line 15, article 8, strike out all after the word "boundary" and before the word "where," in line 16, and insert the words: "and that of the State of Missouri to a point on the latter."

Also, at the conclusion of said 8th article, add the following proviso: "*Provided*, That the lines herein indicated as the boundary lines of the Cherokee nation be correctly surveyed and marked with conspicuous and permanent landmarks as early as practicable, at the expense of the United States, as provided for by the 21st article of the treaty of July 19, 1866, between the United States and the Cherokee nation:" *And provided further*, That no Indians, except Cherokees, shall be settled in the country herein reserved to the Cherokees, except by the consent of the Cherokee national council.

6. Strike out all of article 9, and let the subject of this article remain as provided for by the 20th article of the treaty of July 19, 1866, between the United States and the Cherokee nation.

7. We would also respectfully suggest an additional article in reference to the military post at Fort Gibson, as follows:

#### ARTICLE ———.

It is hereby understood that the twelve sections of lands included within the military reservation at Fort Gibson, as surveyed since the

late war, are occupied only for military purposes, and that the title of the same is vested in the Cherokee nation, and whenever the said military post at Fort Gibson shall have been abandoned, the said lands shall revert to the Cherokee nation. And it is further agreed, that the sum of twenty thousand dollars, (\$20,000,) or so much thereof as may be necessary, shall be paid by the United States to meet the claims of Cherokee citizens for damages and losses sustained in the late establishment of said post at Fort Gibson, by which the property of said citizens has been taken, without any compensation to them, said claims to be adjudicated by the United States Cherokee agent, and paid out of the treasury of the United States, on the approval of the Secretary of the Interior.

Our reasons for insisting upon the adoption of this additional article in regard to Fort Gibson, &c., are briefly as follows:

1. By the ninth article of the Cherokee treaty of 1828, the post at Fort Gibson was allowed to reserve twelve sections of land for military purposes.

2. By the third article of our treaty of 1835, it was provided further, that on the abandonment of said post, that the same, with the said lands, would revert to the Cherokee nation.

3. In 1857, the United States abandoned said post, and the Cherokee nation took possession of the same, &c., as provided, and established on its site an incorporated town, the lots of which were sold to Cherokee citizens. (See Cherokee Statutes, 1866, pp. 93 and 94.)

4. Since the war, the United States re-established the said post at Fort Gibson, occupying its former site in part, and laying off and occupying, without any authority of law or treaty, an area of twelve sections of lands, and in so doing took from and deprived our citizens of their improvements and property, without any compensation to them, which action of the United States government, according to the said third article of our treaty of 1835, constitutes against said government a just claim in favor of the said Cherokee citizens for the losses and damages they have thus incurred.

5. Hence the necessity of this proposed additional article to carry out the provisions of these treaties, and to protect our citizens in their "private rights," and our nation in its said twelve sections of land.

We have also made annotations, or suggestions, (in pencil,) on pages five and six of your amendments, to which we would also invite your attention. Trusting that our suggestions will meet with your approval and that of the honorable Secretary of the Interior, and be incorporated in your amendments, herewith returned for your information, and that by the kind assistance of both of you our pending negotiation with your government will be brought to a speedy and favorable termination to all parties interested,

We have the honor to be, with great respect, your obedient servants and friends,

LEWIS DOWNING,  
Principal Chief Cherokee Nation.  
W. P. ADAIR,  
SAM'L SMITH,  
C. N. VANN,  
J. P. DAVIS,  
ARCHIE SCRAPER,  
Cherokee Delegation.

Hon. E. S. PARKER,  
Commissioner of Indian Affairs.

WASHINGTON, D. C., May 18, 1870.

SIR: The reasons why we have suggested to your article five of proposed amendments to our pending treaty an additional provision for a general amnesty and pardon, are as follows: That the first article of our pending treaty abolishes all distinction among the Cherokees, created by the fourth, fifth, sixth, and seventh articles of our treaty of 1866. In pursuance of this abolishment of distinction, your said fifth amendment provides, also, to do away with the jurisdiction of the United States court, which, by said treaty of 1866, was to have jurisdiction of all causes; civil and criminal, between citizens west and south of the Grand and Arkansas Rivers, and other Cherokees east and north of these rivers. Therefore, should this distinction cease, and the jurisdiction of said United States court be removed, it will naturally follow that all crimes and misdemeanors committed and not adjudicated by said court will remain unadjudicated, and hence the *necessity* of a general pardon. Moreover, there are many persons residing in our nation who are citizens thereof, that are charged with offenses over which both the courts of the United States and those of the Cherokee nation claim jurisdiction, and are thus at *conflict* in respect to the matter, and, as the object of this pending treaty is to settle everything upon a *peace basis*, we hold that a general amnesty is necessary. This course has always been pursued by your government in making treaties with the Indians, and is the only one by which the object desired can be attained. It is warranted and has a *precedent* in the second article of our treaty of 6th of August, 1846, and in the second article of our treaty of July 19, 1866, from which it will be at once seen that the *principle* and *object* applies not only to *political* offenses, but to all others, and means the establishment of friendly relations between all parties concerned upon a *peace basis*, with an *oblivion* of the past.

I have the honor to be, very truly, your obedient servant,

W. P. ADAIR,

Chairman Cherokee Delegation.

Hon. E. S. PARKER,

Commissioner of Indian Affairs.

---

WASHINGTON, D. C., May 21, 1870.

SIR: In addition to the suggestions we have already made, giving our reasons for an *amnesty* provision in our pending treaty, we would state further, that the honorable Indian Committee of the United States Senate has admitted the necessity and propriety of such a provision. Should all distinction among the Cherokees be abolished, as contemplated, (and as we sincerely hope for,) by our pending treaty, it will follow as an unavoidable sequence that all contingencies hitherto resulting from that distinction will also be abolished or done away with, so that parties charged with offenses *within the scope* of that distinction will, by its abolishment, be *virtually* acquitted or *remain untried*, since they cannot be subject to the special jurisdiction of the United States court in our country for such offenses, as that jurisdiction by our pending treaty is to be abolished, hence the necessity of a *pardoning* provision to comply with the new order of things among our people contemplated by our pending treaty. We think, also, that in view of the conflict of jurisdiction between the courts of our country and those of the United States over offenses between our citizens and those of the United States, and



the consequent bad state of feeling between the parties that has thus been created, that it is highly expedient and necessary that an amnesty and an *oblivion* of the past be agreed upon and fixed up to date between our people and yours as a *peace measure*, as it is our duty and desire to cultivate happy relations with your government and people. But should this last-named idea not meet with your views, we ask respectfully to *insist* that our pending treaty contain a provision for a general amnesty with oblivion of the past for all offenses and misdemeanors committed up to date among our own people, as a measure to establish peace among them.

In this connection we would state (what is apparent by reference to the first article of our pending treaty) that one of our first objects in negotiating this treaty, was to do away with all party feuds and distinctions among our people, and to rub out and forget the past in that particular, in order to promote our future prosperity and civilization. Our past history has taught us that dissensions and party feuds, and the *remembrance of past wrongs*, only have a tendency to mar our happiness and retard our civilization. For precedents to sustain your action in carrying out our views, we will refer you to the second article of our treaty of 1846 and the second article of our treaty of 1866 with your government, as we have previously done.

Trusting that you will sustain our views and amend our pending treaty, as requested, we have the honor to be, very respectfully and truly, your obedient servants and friends,

LEWIS DOWNING,  
*Principal Chief Cherokee Nation.*

W. P. ADAIR,  
SAMUEL SMITH,  
C. N. VANN,  
ARCHIE SCRAPER,  
J. P. DAVIS,  
*Cherokee Delegation.*

Hon. J. D. Cox,  
*Secretary of the Interior.*

(Through Hon. E. S. Parker, Commissioner of Indian Affairs.)