

29670-1898

Copy.

DEPARTMENT OF THE INTERIOR,

U. S. INDIAN SERVICE,

Navajo Agency,

Fort Defiance, Arizona, June 28, 1898.

The Commissioner of Indian Affairs,

Washington, D.C.

Sir:

I respectfully forward copies of a letter and inclosure just received from Mr. Elwin E. Rogers, the Farmer at Tuba City, Arizona. The inclosure is a writ of injunction directed to me, as Agent for the Navajos, and to certain Indians who are cultivating farms on the Moen-copi Wash within the limits of the Moqui Indian Reservation, and it orders the destruction of a dam built across a tributary - wholly within the Moqui reservation, - of the Moen-copi Wash. I am also summoned to appear before the District Court of the Fourth Judicial District of Arizona, out of which the writ issues to answer to the complaint attached to the writ by the 7th day of July, next.

I can readily establish the fact that the Indians irrigated their farms from the Moen-copi Wash long before the Mormons came into that vicinity and that they are therefore justly entitled to all the waters of that water-course as original appropriators. Be-

sides, the Moqui reservation was set apart for these Indians by an Executive Order on December 16, 1882, and I presume that the free enjoyment of the water was included and that they cannot be deprived of the right to the water by any Territorial court. As it will be necessary for me to appear at the final hearing of the complaint to prevent the court from awarding the water to the Mormons and thus further complicate matters, I request that the U.S. Attorney be directed, by telegraph, to appear for me at the date fixed in the summons, July 7, 1898, and request a postponement of the hearing for at least thirty days to enable me to arrange for the attendance of witnesses. I also request instructions as to the course for me to pursue in the case.

Mr. Rogers' letter recounts the treatment he has received for carrying out the orders of the Department to put the allottees in possession of the lands allotted to them. It appears to me that this whole proceeding is an attempt to interfere with a United States officer, -- myself, as Mr. Rogers was only the instrument in the performance of his duty. There ought certainly to be some way of punishing this, and I trust that the machinery of the Government will be put into operation to effect it without delay; as matters now stand, the Government is ignored so far as compliance with its decisions relating to these Indians are concerned. Mr. Nebeker was notified last August that the Department had allotted

these lands to the Indians and that he must not attempt to molest the allottees in the quiet enjoyment of their property. If he considered that he was injured by this action of the Department he should have laid his case before the Department at once; but he has waited until the Indians were ready to put in their crops, some nine months, and then he calls upon the county officials to assist him in resisting the carrying out of the Department's decision, and these officials have promptly responded, the County Attorney being his counsel. Mr. Rogers does not state in his letter, what I have learned from another source, that the Justice of the Peace before whom he was tried sentenced him to pay a fine of \$800 and to be imprisoned for six months. It is to be hoped that he may be represented by competent and faithful counsel when his case comes up before the District Court, on appeal, in August, and that the expense he has been put to may be made good. I am informed that a warrant has been issued for my arrest, as principal. What am I to do if the sheriff should serve a warrant upon me? I request an answer to this question by telegraph.

I inclose a newspaper sent to me by Mr. Rogers with a marked article and marginal notes made by Mr. Rogers.

The report made to the Department of Justice by the United States Attorney with reference to the expulsion of Navajos from

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a part of Coconino county, - a copy of which was referred to me by your letter of January 18, 1898, - was so evidently intended to screen the perpetrators of that outrage that I do not think he can safely be entrusted with the conduct of any of the cases to be tried, and I request that the Department of Justice be asked to substitute another counsellor.

Very respectfully,

Constant Williams,

Major 17th Infantry,

Acting Agent.

3 Inclosures.