

In the District Court of the Fourth Judicial District, of the Territory of Arizona, in and for the County of Coconino.

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Joseph H. Lee, J. A. Allen, W. J. Hunt,
D. Brinkerhoff, Fred Tanner,
Lehi Howard, A. B. Randal, Rial
Allen, John Tanner, and R. E.
Powell

Plaintiffs,

vs.

Constant Williams, as Agent for the
Navajo Tribe of Indians, Laugh-
ing Singer, Sam, Interpreter, and
Old Borey, Navajo Indians,

Defendants.

C O M P L A I N T.

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Plaintiffs allege

1.

That plaintiffs are each and all residents of Coconino County Arizona, that the defendant Constant Williams, as agent or acting agent for the Navajo tribe of Indians, is a resident of Apache County, Arizona, and that the defendants Laughing Singer, Sam, Interpreter, and Old Borey are each Navajo Indians, residents of Coconino County, Arizona, and are under the control, authority, management and direction of the said Constant Williams as agent for the said Indians, and the tribe of which they are members. That the said Constant Williams is the duly appointed, qualified and acting agent of the said tribe, under and by virtue of the laws of the United States.

11.

That in the year 1875 the settlers of what is now known as Tuba City, in the said Coconino County, formed a community for the purpose of farming and irrigating the lands in and around the said

Tuba City, of which said settlers the above named plaintiffs are the successors in interest. That said lands were then, and they are now, unsurveyed public lands of the United States, not within the limits of any Indian reservation, nor within the limits of any tract or parcel of land not open to settlement under the land laws of the United States. That for the purpose of securing a supply of water sufficient to irrigate the lands then and theretofore settled upon by them the said settlers impounded the water of Moen Copi Wash, a stream of water flowing through and upon the lands so settled upon; no part of the waters of which said Moen Copi Wash had been then or theretofore claimed or appropriated by said defendants or either of them, or by any other person or persons whomsoever. That in impounding the said waters the said settlers built dams across the said Moen Copi Wash at various points thereon, constructed reservoirs, headworks and flumes, and built a complete system of canals and irrigating ditches from the said reservoirs and points of diversion to, over and upon the lands so settled upon by them as aforesaid, and enlarged, extended and improved them from time to time thereby appropriating all of the waters of the said Moen Copi Wash, amounting to about one hundred and fifty inches of water.

111.

That the said settlers then used, and they and the plaintiffs, their successors, in interest, ever since have used all of the waters so appropriated in the irrigation of their several farms to and upon which the said water is conducted by means of the canals and irrigating ditches aforesaid; for watering stock; for domestic and other useful and beneficial purposes; that all of said water is necessarily used for the purposes above mentioned and during certain

seasons of the year the same is not adequate, even by the most careful and economical use thereof to meet the requirements above specified. That plaintiffs, some of whom shared in the original appropriation of said waters, and the others as successors in interest of said original appropriation, now own in common the right to all of the waters in the irrigation of their lands, for stock, domestic and other useful and beneficial purposes.

IV.

That the waters of the said Moen Copi Wash are very largely supplied by one of its several tributaries, called and known as Togus Jay, from which source nearly one-half of the waters of the said wash flow. That the defendants, on or about the 15th day of April, 1898, commenced the construction of a dam across said Togus Jay at a point about nine miles east of Tuba City, and ever since that time have continued, and still continue the construction of said dam, and have diverted, and still continue wrongfully and unlawfully to divert all of the water of said Togus Jay, from the use of plaintiffs' said dam and reservoir, to plaintiffs' great damage and irreparable injury. That the said Navajo Indians herein named have, in the construction of the said dam and the diversion of the said water from plaintiffs, acted under the direction, control and authority of the said defendant Constant Williams, Agent as aforesaid.

V.

That the plaintiffs now have under cultivation and solely dependent for irrigation upon the waters of the said Moen Copi Wash about seven hundred acres of land, upon which large crops of grain, hay, corn and vegetables are growing, and upon which orchards consisting of a great number of fruit trees in bearing are standing,

upon which said crops and orchards the plaintiffs are entirely dependent for subsistence. That the value of said crops is now and for several years last past has been not less than ten thousand dollars annually; that the months during which said crops and orchards most urgently require irrigation are April, May, June, July and August; that by reason of the diversion of the water of Togus Jay from plaintiffs as aforesaid by defendants, their crops have been and are now being greatly injured, for that the said diversion by defendants, is depriving plaintiffs of about one-third of the water usually heretofore flowing to their said dam in Moen Copi Wash, whereby their said crops are not receiving the amount of water necessary for their irrigation, and in consequence thereof are drying up, withering and spoiling. That unless defendants are immediately restrained and enjoined from further diverting the said water, and interfering with the free and exclusive use thereof by plaintiffs, and are compelled forthwith to remove their said dam across the said Togus Jay, plaintiffs will not be able to sufficiently irrigate their said crops and orchards, and will entirely lose a great part thereof and will be deprived of their subsistence, and they and their families will suffer great hardship and be irreparably injured, that heavy damages will thereby be sustained by plaintiffs, incapable of any adequate measurement in an action of law.

vi.
That each of the plaintiffs have built and established homes upon the lands so cultivated by them as aforesaid, and in the construction and establishment of the same have expended many years of labor and large sums of money. That they have each reared families, are each paying taxes for the support of a public school in their community, for the support and maintenance of all of which

they are entirely dependent upon such crops as they are now and have been able to raise upon their said lands irrigated as aforesaid by the said waters of Moen Copi Wash. That if the defendants are permitted to continue to wrongfully divert the waters of said Togus Jay, plaintiffs will be compelled, on account of the failure of their said crops, to abandon their said homes and farms, and will entirely lose and be compelled to sacrifice the fruits of many years of toil and industry.

VII.

That plaintiffs and their said grantors have, ever since the said year of 1875, enjoyed the exclusive and peaceful use of all the waters of the said Moen Copi Wash, and that neither of the said defendants, or any person or persons claiming under them, or any persons whomsoever, ever made any use or appropriation of the same or any part thereof prior to the said appropriation of plaintiffs and their grantors.

Therefore plaintiffs pray judgment against said defendants:

1st. That a temporary writ of injunction be issued out of this Court, restraining the defendants and each of them, together with their Agents, employes, and all persons whomsoever acting under the control, employment, direction or authority of them and each of them from building any dam or other obstruction whatsoever across the said Moen Copi Wash, or the said Togus Jay, or any tributary of the said Moen Copi Wash or from in any manner interfering with plaintiffs free and exclusive use of the waters of the said wash or any tributary thereof; and that defendants and each of them be forthwith compelled to remove from such wash or any tributary thereof any dam or obstruction that they may have already caused to be built thereon.

2d. That at the final hearing of this suit the said injunction be made perpetual; that plaintiffs and their grantors be decreed to be the prior appropriators and entitled to the exclusive use and enjoyment of all the waters of the said Moon Copi Wash, including the tributaries thereto; and

3d. For costs of suit and for general relief.

(signed) E.S.Clark,

Attorney for Plaintiffs.

Territory of Arizona,)
County of Coconino,) SS.

Ashton Nebecker, first having been duly sworn, on his oath says, I am agent for the above named plaintiffs in the prosecution of the said action, and make this affidavit for and on behalf of the said plaintiffs; I have read the foregoing complaint, and know the contents thereof, and the same is true of my own knowledge, save and except as to those matters therein alleged upon information and belief, and as to those matters, I believe it to be true.

(signed) Ashton Nebecker
Agent for Plaintiffs.

Subscribed and sworn to before me this 2 day of June, A.D., 1898

My commission expires February 6, 1901.

(signed) T.E.Pulliam,
Notary Public.

SEAL.