

2-25-1873

Letter from the Secretary of the Interior, relative to the claim of Probst and Kirchner for depredations, in 1869, by Navajo Indians

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



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

Recommended Citation

H.R. Exec. Doc. No. 231 42nd Congress, 3rd Sess. (1873)

This House Executive 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.

PROBST AND KIRCHNER.

L E T T E R

FROM

THE SECRETARY OF THE INTERIOR,

RELATIVE TO

The claim of Probst and Kirchner for depredations, in 1869, by Navajo Indians.

FEBRUARY 25, 1873.—Referred to the Committee of Claims and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington City, February 21, 1873.

SIR: In compliance with the terms of the seventh section of the act approved May 29, 1872, entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian titles, for the year ending June 30, 1873, and for other purposes," I have the honor to transmit herewith the claim of Probst and Kirchner for compensation on account of depredations committed by Navajo Indians.

A letter (copy inclosed) dated the 17th day of February, 1873, from the Commissioner of Indian Affairs, reporting the nature, character, and amount of said claim, is accompanied by the evidence presented in support thereof, and shows the action taken by that officer, under the rules and regulations prescribed by this Department for the investigation of such claims; all which is respectfully submitted for the consideration of Congress, as contemplated by said seventh section of the act aforesaid.

Very respectfully, your obedient servant,

C. DELANO,
Secretary.

The Hon. SPEAKER of the House of Representatives.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., February 17, 1873.

SIR: This Office on the 21st May, 1870, reported to the Department a claim of Probst and Kirchner, on account of a depredation alleged to

have been committed upon their property by Navajo Indians, in December, 1869. On the 14th June, 1870, the claim was returned by the Department to this Office, with directions that the agent for the Navajoes be instructed to further investigate the matter, and report the result of said investigation, in order that the Department may decide the case without detriment to the rights or interests of the claimants or the Indians.

I have now the honor to submit the claim with a further report from the agent of the Navajoes under date of August 31, 1870. The Navajoes in council have again asserted that they know nothing and can learn nothing concerning the depredations.

The claim is for \$2,800, the value of seventy head of beef-cattle, valued at \$40 each, which were driven off from the herd of claimants on the 9th December, 1869, at a point about five leagues from Tierra Amarilla, New Mexico Territory.

This Office, in its report above referred to, expressed the opinion that the fact of the depredation appeared to be sustained, but that evidence was insufficient as to the cattle being worth \$40 per head, and now would express further opinion that, if it be assumed that the claimants lost precisely the number of cattle stated, for it may be questioned that they did lose seventy head, as the affiants in the case do not say that they knew their herd to consist of a definite number, nor that a count of the same was made after the depredation which showed the difference to be seventy, the claimants would be fully indemnified for their loss by the payment of \$1,400, or \$20 per head for said cattle, and it is recommended that the claim be allowed for this amount.

Very respectfully, your obedient servant,

H. R. CLUM,
Acting Commissioner.

Hon. C. DELANO,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Office of Indian Affairs, Washington, D. C., June 16, 1870.

SIR: Under the instruction of the Department of the Interior, as you will see by the inclosed copy of letter of the Secretary, dated the 14th of June, 1870, you are requested to forward the claim herewith of Messrs. Probst and Kirchner to the agent of the Navajoes for re-investigation and report.

Very respectfully, your obedient servant,

W. F. CADY,
Acting Commissioner.

Major WM. CLINTON, U. S. A.,
Superintendent Indian Affairs, Santa Fé, New Mexico.

[Indorsements.]

DEPARTMENT OF THE INTERIOR,
Office of Indian Affairs, Washington, D. C., June 16, 1870.

W. F. CADY, *Acting Commissioner:*

Under instruction of the Department of the Interior, of June 14, 1870, (copy inclosed,) returns claim of Probst and Kirchner to agent for Navajoes, for re-investigation and report.

OFFICE SUPERINTENDENT OF INDIAN AFFAIRS,
Santa Fé, New Mexico, June 27, 1870.

Respectfully referred to Captain F. T. Bennett, United States Army, agent for Navajoes, whose attention is called to the remarks of the honorable Secretary of the Interior.

Captain Bennett will use every endeavor to obtain from the Indians any additional evidence they may be able to give and report same through this Office.

These papers to be returned with report.

WM. CLINTON,
Major U. S. A., Superintendent Indian Affairs.

UNITED STATES NAVAJO INDIAN AGENCY,
Fort Defiance, New Mexico, August 31, 1870.

Respectfully returned to Major William Clinton, United States Army, superintendent of Indian affairs, Territory of New Mexico, Santa Fé, New Mexico, with the information that I have again called a council of chiefs and head-men of the Navajo nation, and have again presented this claim to them, and have had them make inquiry among all of their people, and they claim that they know nothing nor can they learn anything in regard to this depredation. And they also say that they are convinced that if the depredation had been committed by the Navajoes that they would know it. They positively refuse to acknowledge the claim.

F. T. BENNETT,
Captain United States Army, Agent for Navajoes.

OFFICE SUPERINTENDENT OF INDIAN AFFAIRS,
Santa Fé, New Mexico, September 6, 1870.

Respectfully forwarded to the honorable Commissioner of Indian Affairs.

WM. CLINTON,
Major U. S. Army, Superintendent of Indian Affairs for New Mexico.

CLAIM OF PROBST AND KIRCHNER.

TERRITORY OF NEW MEXICO,
County of Santa Fé:

To the Hon. William Clinton, Superintendent of Indian Affairs for the Territory of New Mexico:

Your petitioners, Charles Probst and August Kirchner, loyal citizens of the United States of America, residents of the city and county of Santa Fé, Territory of New Mexico, would respectfully state to you that, on the 9th day of December, A. D. 1869, at a place called and known as El Bado de Abajo, about five leagues from Tierra Amarilla, in the county of Rio Arriba, Territory aforesaid, between 2 and 3 o'clock in the afternoon of said day, a party of Navajo Indians, numbering about seventeen, belonging to the Navajo tribe, then at amity with the United States, made an attack upon the herd of beef-cattle belonging to your petitioners, and took and run off seventy head of said cattle, averaging from five to six years old, of the value of \$40 per head, making the sum of \$2,800; and that, in consequence of the small number of herders and the great distance to the nearest settlement where aid

could be procured, it was impossible to prevent said robbery or to recapture said stock.

Your petitioners would further state that they have never recaptured any of the said cattle, nor received from any source whatsoever any payment or indemnity for the same. Nor have your petitioners, in person or by their agent or attorney, sought or attempted to obtain any private revenge or satisfaction from said Indians for or on account of said loss of said property.

Your petitioners herewith furnish the proof in support of the facts stated herein, and ask that payment for said property be made to them out of the annuities or gratifications due, or to become due, or payable to said Indians by the Government of the United States, in conformity with the acts of Congress, in such cases made and provided, relative to property stolen from citizens of the United States by Indians at peace with the Government.

Your petitioners would further state that they are under a contract with chief commissary of New Mexico to supply the post or troops at Santa Fé with beef, and have executed heavy bonds for the filling of said contract, and in order to comply therewith it is necessary to keep on hand a good supply of fine, merchantable beef-cattle.

CHAS. PROBST.

AUGUST KIRCHNER.

TERRITORY OF NEW MEXICO,

County of Santa Fé:

Personally appeared before me, the undersigned, clerk of the United States district court for the first judicial district of the Territory of New Mexico, Charles Probst and August Kirchner, to me personally known to be the same persons who signed the foregoing petition; that they signed the same in my presence after the same had been read to them by me and upon their oaths state that the matters and things therein stated are true in substance and fact, so far as stated of their knowledge, and so far as stated from the information of others they believe to be true; and that said affiants are men of truth and integrity, and loyal citizens of the United States; and that I have no interest in said claim, or in the final result thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 3d day of February, A. D. 1870.

[SEAL.]

WM. BREEDEN, *Clerk.*

TERRITORY OF NEW MEXICO,

County of Santa Fé:

This day personally appeared before me, the undersigned, clerk of the United States district court for the first judicial district of the Territory of New Mexico, George Tafoya and José Silvestre Mestas, and upon their oath state that they are acquainted with Charles Probst and August Kirchner, residents of the city and county of Santa Fé, Territory aforesaid; that on the 9th day of December, A. D. 1869, between the hours of 2 and 3 of the afternoon of said day, at a place called and known as El Bado de Abajo, about five leagues from Tierra Amarilla, in the county of Rio Arriba, Territory aforesaid, a party of about seventeen Navajo Indians attacked a herd of beef-cattle of the said Charles Probst and August Kirchner, and run off seventy head of said cattle; that said cattle were worth at that time, to the best of their judgment and belief, \$40 per head; that said Indians were seen by said affiants at the time they made the attack upon said herd of cattle; and that

they saw them run off said stock; that they followed said Indians for about two leagues, and know them to be Navajo Indians; and that they were then at amity with the United States; and that said affiants had not mistreated said Indians, or given them any cause for committing such outrage. Said affiants further state that, on account of the great number of said Indians, and the small number of herders having charge of said cattle, said robbery could not be prevented, nor said property be recaptured. Said affiants further state that they have no interest, directly or indirectly, in the above claim or in the final result thereof, and only state the facts as they know them to be.

his
GEORGE + TAFOYA.
mark.
JOSÉ SILVESTRE MESTAS.

Witnesses:

M. A. BREEDEN.
W. H. BROWN.

TERRITORY OF NEW MEXICO,
County of Santa Fé:

Personally appeared before me, William Breedon, clerk of the United States district court for the first judicial district of said Territory, George Tafoya and José Silvestre Mestas, to me known as the persons who signed the foregoing declaration; that they signed the same in my presence, after it had been read and translated to them and understood by them, and being duly sworn upon their oaths, state that the matters and things in said declaration contained are true in substance and fact.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 3d day of February, A. D. 1870.

[SEAL.]

WM. BREEDEN, *Clerk.*

[Indorsements.]

OFFICE SUPERINTENDENT OF INDIAN AFFAIRS,
Santa Fé, New Mexico, February 3, 1870.

Respectfully referred to Captain F. T. Bennett, United States Army, agent for Navajo Indians, for investigation and report.

These papers will be returned with report.

WM. CLINTON,
Major United States Army, Superintendent of Indian Affairs.

UNITED STATES NAVAJO INDIAN AGENCY,
Fort Defiance, New Mexico, April 26, 1870.

Respectfully returned to Major William Clinton, United States Army, superintendent of Indian affairs, Territory of New Mexico, Santa Fé, New Mexico, with the information that I have called a council of the principal chiefs and head-men of the Navajo Indians, and carefully examined them, and had them make inquiry of their people in regard to the within claim. They say they know nothing, nor can they learn anything in regard to the claim. I have no other means of getting information here.

F. T. BENNETT,
Captain United States Army, Agent for Navajoes.

OFFICE SUPERINTENDENT OF INDIAN AFFAIRS,
Santa Fé, New Mexico, May 3, 1870.

Respectfully forwarded to the honorable Commissioner of Indian Affairs.

WM. CLINTON,
*Major United States Army, Superintendent of
 Indian Affairs for New Mexico.*

Yo, Andres A. Martinez, juez de paz del precinto No. 16, Territorio de Nueva Mejico, del condado del Rio Arriba, por la presente doy parte de las siguientes deprecaciones indios, habiendo ocurrido dentro de este precinto para el mes que fina de Diciembre 9 de 1869.

Dia del mes.	Nombres de hombres, mugeres ó criaturas matados, heridos ó cautivados, ó de otro modo danados, y como.	ANIMALES MATADOS Ó LLEVADOS.					VALOR.		Nombre del propietario.	Por qué tribu de Indios.
		Caballos.	Reces.	Ovejas.	Cabras.	Otros animales.	Pesos.	Cents.		
			70			Uebadas	\$2,800		Probst, Kirchner	Por los Nabajoos.

Pongase aquí cualquier otro crimen, mal proceder ó traspaso, cometido por Indios—su naturaleza y la cantidad del daño sostenido.

Yo, Andres A. Martinez, juez de paz en y por el precinto No. 16, del condado del Rio Arriba, certifico sobre mi honor y bajo mi firma oficial, que el antecedente informe es correcto.

ANDRES A. MARTINEZ,
Juez de Paz del Precinto No. 16.

[Indorsement.]

Depredaciones indias. Informe de Andres Abelino Martinez, juez de paz del precinto No. 16 del condado del Rio Arriba, en Territorio de Nueva Mejico, en el mes de Diciembre 9 de 1869.