

7-1-1968

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Recommended Citation

Rasch, Philip J.. "The Tularosa Ditch War." *New Mexico Historical Review* 43, 3 (1968).
<https://digitalrepository.unm.edu/nmhr/vol43/iss3/5>

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THE TULAROSA DITCH WAR

PHILIP J. RASCH

ABOUT SIX in the afternoon on Thursday, April 28, 1881, Deputy Sheriff Bob Olinger escorted some prisoners from the county courthouse at Lincoln, New Mexico, across the street to Lilly's restaurant for dinner. They had barely been seated when shots were heard. "The Kid has tried to escape and Bell has shot him!" exclaimed the officer. He sprang up and ran back across the street. As he entered the courthouse yard, Billy the Kid discharged a double-barreled shotgun into his head and breast, killing him almost instantly. So much every school boy knows. But who were these prisoners and why were they in custody at the time? Although these men have been neglected in the numerous descriptions of the Kid's famous escape, they are of considerable interest.

The roots of their trouble lay deep in the soil of the Territory. In his perceptive *Sky Determines*, Ross Calvin argues that in New Mexico until recently climate controlled the direction of man's activities and pursuits.¹ Nowhere has this been better exemplified than in the region of the White Sands and the small towns which border their eastern marches. One of these is the now quiet village of Tularosa. Mexicans settled the site in 1858, but were driven back by the Indians. They returned permanently in 1860 and the locale was platted by U.S. Government surveyors in 1862. The only water supply was the Tularosa River, which originated from several large springs near the settlement. The colonists immediately began the construction of canals, ditches, and dams to collect the water and distribute it.² This brought on clashes with the Mescalero Apache. In 1866 the Legislature passed an act pro-

viding that the settlers' rights to the land and water should be protected against the Indians and all other claimants. When Dr. Joseph H. Blazer, George W. Nesmith, and George H. Abbott purchased the old sawmill in Tularosa Canyon, known as La Maquina, in 1868, they had to agree that all water taken to run the mill would be turned back into the stream.

The first serious trouble seems to have occurred in May 1873. Andrew J. Wilson and some other farmers built several dams across the river. These were destroyed by a party from Tularosa led by Felipe Bernal and José Marcos. Wilson and his friends attempted to repair the dams and were again assaulted by the villagers. Lawrence G. Murphy and Company, Dr. Blazer, "Representing the People of the Tularosa Valley," and U. S. Commissioner William Brady petitioned Captain C. H. McKibbin, 15th Infantry, Commanding Fort Stanton, for aid and protection. The captain immediately informed Alcalde Perfecto Armijo that he held him personally responsible for not preventing these outbreaks, and warned that he would not tolerate mob action against quiet, law-abiding citizens, many of whom had faithfully served their government as soldiers. He added that he was dispatching Second Lieutenant John W. Wilkinson, 8th Cavalry, and five men to the scene to uphold the civil law, and if necessary would send every available man at the post to support him.

Wilkinson dispersed several small groups of dam-breakers on May 29, but was then attacked by a large gang, who killed one of his horses and wounded the one he was riding. The troopers returned the fire, killing one Mexican. Badly outnumbered, they then fell back to Blazer's mill, where they were joined by twelve or fourteen Americans. The combined party took up defensive positions and sent a courier to Fort Stanton for reinforcements. Shortly the building was surrounded by a mob of Mexicans. When the defenders refused to surrender, the Mexicans began firing. About half an hour later Captain McKibbin and Captain James F. Randlett, 8th Cavalry, were seen approaching with D Troop, 8th Cavalry. The besiegers then dispersed.³

Captain McKibbin proceeded to Tularosa, where the parish priest forbade him to enter the town. When the officer observed that something like forty men were posted to defend it, he warned the priest to remove the non-combatants, as he intended to enter by force if necessary. He threatened to hang the priest if fired upon. When they saw a piece of artillery being wheeled into position, the people thought better of the matter and the troops spent the night in the village without incident. Later, McKibbin admitted that his threat had probably been a breach of law, but justified it on the grounds that only the fear of personal punishment had kept the priest from inciting another riot.⁴ The Grand Jury took a less charitable view of his action. After an investigation of the affair they charged that the captain's conduct was "wholly unwarranted, not to say outrageous," accused him of interfering with purely civil matters with which the Army had no proper concern, and demanded that there be no repetitions of his "unwarranted and tyrannical conduct."⁵ There is no evidence that McKibbin's superiors took any notice of their report.

More trouble occurred in 1879, when new settlers took so much water from the river that not even a quantity sufficient for drinking purposes reached the village. The situation was tense for a time, but appears to have quieted down without another armed conflict.⁶

That came in 1881, when employees on the James West ranch, about five miles from Tularosa, began using more water than the villagers were willing to allow. On April 18 they sent Deputy Sheriff Cruz Padilla to serve papers on the men working there. The deputy found John Copeland⁷ and a Mexican boy in the fields. Backed by some co-workers, they refused to submit to arrest, contending that since they were in Lincoln County and the deputy was from Doña Ana County, he had no jurisdiction. Padilla had little respect for such legal niceties. He returned to Tularosa, obtained the assistance of Martin Gonzales, Olojino Alijo, and Ruperto Pais, and again went to the ranch. The posse found Charles Wall and Alexander Nunnely working near the

acequia, informed them that they were under arrest and would be taken, dead or alive. When Wall turned to flee, they opened fire, inflicting two flesh wounds. Wall and Nunnelly returned the fire. Copeland, Marejildo Torres, and Augustin A. Balos came to their assistance, with the result that the posse was liquidated in their tracks.⁸

When news of the massacre reached Tularosa, a party of over twenty men set out for the scene. Justice of the Peace Victor Duran was said to have ordered that no arrests be made, but that the men using the water were to be shot down.⁹ On the morning of April 19 forty or fifty Mexicans came up to Dr. Blazer's and demanded the surrender of the Nunnelly party. Blazer informed them that the men had already surrendered to Deputy Sheriff William L. Goodlett, of Lincoln County, and that they would be examined the following day. Threats were uttered against the mill owner, but the mob finally contented itself with going to West's ranch, destroying his flood gates, and breaking into and robbing his house. Duran notified Blazer that he would be held in the sum of \$200,000 for his actions, as he "had resisted the arm of the law." The justice also proclaimed that he would arrest Second Lieutenant M. W. Day, 9th Cavalry, and some of his men for having violated a city ordinance by entering Tularosa under arms. Day was standing by to defend the post office at South Fork—which he described as "a pair of letter scales and a key." In view of the feeling against all Americans, he declined to be arrested or to permit any of his men to be.¹⁰

Goodlett took his prisoners to Las Cruces, where Judge Warren Bristol fixed bail at \$1,000 each.¹¹ That same day they departed for Lincoln. According to Siringo, their confinement there was little more than nominal.¹² Sheriff Pat Garrett permitted the men to wear their pistols and to use the jail primarily as sleeping quarters. Nunnelly was appointed a trusty and was outside the courthouse when Olinger ran up. He called out to the deputy, "The Kid has killed Bell!" Bob's last words were to answer: "Yes, and he has killed me too."¹³

Among the numerous arms the Kid took was a Winchester. When the trusty complained that it was his gun, the Kid answered, "I don't want your gun, Nunnelly," and selected another. When one of the other prisoners objected that this was his weapon, Billy put it back and took a third rifle.¹⁴

The Kid ordered Godfrey Gauss and Nunnelly to saddle a horse for him. The latter objected, saying, "Don't you think that will have something to do with my trial next month—I am up for murder." The outlaw answered, "Well, you can tell them that I made you do it."¹⁵

After the Kid's sensational escape, the prisoners apparently were transferred to the Fort Stanton guardhouse, for Acting Assistant Surgeon Francis H. Atkins protested to the Post Adjutant that the civilian prisoners had not been given a chance to bathe and change clothes, and had become infected with lice, which he feared might spread to the military prisoners.¹⁶ The men were then turned back to the county authorities.

At the August term of court the Grand Jury, under foreman James J. Dolan, found true bills charging the accused with murder in the fifth degree.¹⁷ The outcome is not known, because the district court record books were taken from Carrizozo a few years ago and have not been returned. The fact that there is no entry in the court register and cost book suggests that the charges may have been dismissed. Moreover, we can follow Wall's activities during the next few years as boss herder for John Poe, John H. Riley, and Max Goldenberg.¹⁸

The same Grand Jury found true bills against Dionicio Guiles, Theodosio Carrillo, Juan Isidro Galvan, Juan Sanches, Epifanio Padillo, Ysabel Lopez, Julian Guerra, Bencislado Dominguez, Jose Maria Lopez, Sedero Bargas, Toribio Bargas, Calletano Carrillo, Jose Morales, Juan Lopez, Gregorio Veras, Marcus Chavez, Cruz Viagran, Perfecto Tellis, Juan Miraval, Jose Zamora, and Jose Delfin on charges of assault with intent to commit murder, larceny from a dwelling house, housebreaking, riot, and malicious mischief.¹⁹ These cases were transferred to Doña Ana County on a

change of venue. Delfin died, but the others were tried at the April 1882 term of court. Albert J. Fountain appeared as counsel for the defense and succeeded in getting the charges dismissed. This seems to have been the end of attempts to settle rights to the Tularosa waters by gunfire.

NOTES

1. Ross Calvin, *Sky Determines*, Revised edition (Albuquerque, 1934), p. 1.
2. *History of New Mexico, Its Resources and People*, 2 vols. (Los Angeles, 1907), vol. 2, p. 823.
3. C. M. McKibbin to A. A. A. General, District of New Mexico, May 29, 1873, and accompanying papers. National Archives, Record Group 98 (hereinafter cited as NA-RG), District of New Mexico.
4. C. McKibbin to A. A. A. General, Dist. of New Mexico, June 13, 1873. NA-RG 98.
5. Daniel Freitze, Foreman of the Grand Jury, to Warren Bristol. NA-RG 98.
6. *Santa Fe Weekly New Mexican*, June 14, 1879.
7. This John Copeland was a Negro man who had recently been discharged as a private, Company A, 9th Cavalry. He is not to be confused with the former Lincoln County sheriff of the same name.
8. *Santa Fe Daily New Mexican*, April 24, 1881; *Las Vegas Daily Optic*, April 26, 1881. The spelling of most of the names in the contemporary accounts varies from document to document. Balos, for instance, appears as Davalos and Dabodas. The writer despairs of determining which versions are correct.
9. *Santa Fe Daily New Mexican*, May 15, 1881.
10. M. W. Day to Post Adjutant, Fort Stanton, April 21, 1881. Record of the United States Army Commands, Fort Stanton, New Mexico. Document File 1881-1882, National Archives.
11. *Santa Fe Daily New Mexican*, June 3, 1881.
12. Charles Siringo, *Riata and Spurs* (New York, 1927), pp. 103-05.
13. *Alamogordo News*, June 11, 1936.
14. Los Angeles Westerners *Branding Iron*, No. 55, December 1960.

15. *Alamogordo News*, June 25, 1936.
16. Francis H. Atkins to Post Adjutant, Fort Stanton. Record of the U.S. Army Commands, Fort Stanton.
17. Causes 385-388, inclusive, Lincoln County. [With regard to "murder in the fifth degree," the Editor consulted the Research Librarian at UNM Law School, who found in the *Revised Statutes of New Mexico*, 1865, chapter 51, section 3, p. 318: "The killing of another human being, by the act, procurement or omission of another, when such killing shall not be made according to the provisions of this chapter, is either justifiable or excusable homicide, or murder in the third, fourth or fifth degree."]
18. *Albuquerque Morning Journal*, Feb. 27, 1883; *Las Cruces Rio Grande Republican*, April 18 and May 2, 1885.
19. Causes 412-422, inclusive, Lincoln County; renumbered 740-749, Doña Ana County.