

California sup. 1863

Edw. F. Beale

San Francisco Nov. 28. 52

Transmit copy correspondence
with Agent M. Lee, concerning
the relative positions of ^{sup.} and
Agent. Was suspended
Mr. M. Lee, for in-
directness (in spirit) Ask
Dep^y to decide on the matter.

Recd - 3 Jan 53
Answered 18 Jan 53

3. Contd.

Office Supt. Ind. aff.
San Francisco Nov. 28th 62

Sir,

Enclosed herewith you will find a correspondence between Agt. Mc Kee, and myself, relative to our position towards each other. The Dept. will please decide which is right. On my first arrival here I became convinced that whether Mr. McKee did well or ill as an Indian Agent still the feeling, which is common to the whole country of a distrust in the sagacity, in relation to Indian matters of the previous officers here was so strong that anything they did would be looked at with suspicion. I also felt that on a variety of accounts, the position of Agent was not one in which he could do himself or the Department justice - in fact that he was not calculated at all for the office. - Never the less having heard of his relationship to Mr. Secretary Stuart (to whom I am under great obligations,) I hesitated to ask the Department to replace him by some one better adapted to the duties of Agent, though I felt that after the receipt of General Hitchcock's letter, and the many expressions to the same effect, which I constantly heard from others, it was almost a duty to do so. I was determined however to defer it as long as possible, and as I did not think there was much to be done in the middle district I ordered him to Nevada City. - But knowing that the Appropriation

by Congress, was but a very small one, for the accomplishment of the object, and knowing also that travelling was enormously expensive in this country, I ordered him not to travel in his district, unless imperatively called on to do so, to prevent hostilities. The information I directed him to collect, was designed for Mr. Schoolcraft's book, and as Agt. Mc Kee does not speak either the Indian or Spanish language, I did not see that he could do a great deal better by going personally among the Indians, than by talking to Mr. Storm and others residing at or near Nevada from whose intimate knowledge of Indians, he could have derived more information than by travelling.

Well sir in the school I have been brought up in it is never thought necessary to explain the reasons for orders given, but on this occasion I did tell Mr. Mc Kee, why I wished him not to travel. Here is the quotation.

"As the appropriation has not been large, you will not decrease it by travelling within your district, unless imperatively called upon to do so to prevent hostilities." This was clear enough one would think. In a short time I received a letter from Agt. Mc Kee, desiring me to place more money to his credit to defray travelling expenses, as he had projected a tour among the Indians, which would be expensive requiring, companions, interpreters, &c, and also informing that in disobedience to my order just quoted he had been travelling. I then wrote him, a letter from which this is a quotation.

"I reiterate in this letter my previous instructions

tions. You will remain at Nevada, and acquaint me from there of any necessity, which you may suppose renders travelling on your part necessary, asking my consent before leaving." And in reply I have his letter which I lay before you.

Now sir I am engaged here in a great work, and I feel myself perfectly equal to its accomplishment, and I also feel that obedience to my orders whether explained, or unexplained, to my subordinates is one of the first changes which they will have to submit to. I believe that I know my position here fully, and my subordinates must learn theirs; if the Agent of a district has equal powers with myself or takes it upon himself to disobey my orders, the Department should sustain me by his removal, I am placed here - am in reality, though not in title, as you desired I should be Assistant Commissioner.

To my discretion, and judgement, the Govt. has left the responsible duty of bringing out from chaos into which they had been thrown by previous officers our Indian Affairs in this State, it is a very responsible position, and many a sleepless night, and anxious day attests my appreciation of this fact. A few extracts from Mr. Mc Kee's letter and I shall leave this matter in your hands.

"From this, and the general tone of your letters to me since your arrival in this country I discover there exists a wide discrepancy between our understanding of our respective privileges, duties, and responsibilities as Agents of the Federal Government, which

MS. A. 9. 2. 53 (163)

"Should be explained, and reconciled if possible"
 You will see from this quotation, that one of us mistakes his position, the only cooperation I expect from Mr. McNe being a strict and implicit obedience to my instructions, if it were not intended that this should be so, and that there should be that difference in our position, of direction on my part, and obedience on his. I presume the office of Superintendent of Indⁿ Aff^s of California would never have been created.

California, 1853
 B 143

In another part of this letter he claims by virtue of a letter from Department the same power which he held as Commissioner and following his argument if I regarded it, I should find myself a subordinate in almost everything to him. he being authorized to make Treaties without consulting me, whilst I am forbidden to do so at all. This is the extract to which I refer.

You are aware I presume that I came out to this country originally as one of the Commissioners with plenary powers, and instructions to treat with the Indian tribes, and make arrangements, for their settlement, and improvement. Besides my per diem I was to be allowed mileage from Washington to California, and actual travelling expenses from place to place, where duty might call me in any part of the State (See McNe's Report 1850). By the act of Congress approved 27th Feb'y 1851 the office of Commissioner, was abrogated, but the Department, under date of 12th April, 1851, ordered me the following instructions. "By the law you will perceive that your office and

functions as Commissioners are abrogated & annulled about the negotiations, in which you are engaged, are not thereby to be suspended, as immediately, on receipt of this communication you will enter upon ^{the duties of} your appointments, as agents of this Department, and as such are designated to negotiate with the Indians in Cal^o which you will do under the instructions here before given you as Commissioners"

Now Sir, if these powers are still to remain with the agts & I have no such powers, you will see at once the improbability of my ever carrying out the views of the Gov^t. by reducing our affairs here to anything like system. - a little further on, and he tells me the following.

The law creating the office of Superintendent, in this State, confers unusual, and very important powers, but if my recollection serves, neither gives the power of negotiating treaties with the Indians exclusively to the Superintendent, nor in any way interferes with the powers conferred upon the three principal agents (late Commissioners) by instructions of the President. The power to negotiate or treat, is by law restricted to such ^{officers &} agents of the Indian Department, as the President of the United States, may designate for that purpose"

Why this is the assumption of a great deal more power than I possess myself. that of making Treaties, and if I am in no way to interfere with the powers conferred upon him previously, how am I to outline, and erect an entire new system of policy, which

he may or may not please to follow. In another part of his letter he finds fault, with my appointment of him to a single district of the State, claiming that he is still really an Agent for the whole State at large, although my orders in relation to the district to which he is appointed, came from myself. It is true I did not inform him of your orders to me. I presume such a step would have been unnecessary in your opinion. On the next page he says:

"Any expense incurred by the Agents of the Government, in travelling among the tribes to gather information bearing upon this great object, would be chargeable upon the fund itself."

If this was allowed, and the different offices of the Department in this country, were permitted to draw on the fund appropriated by Congress, and to contract liabilities of which I would be ignorant, the administration of Indian Affairs in this country would soon become as complicated, and embarrassed as I found them.

Mr. Mc Kee claims the right of knowing that orders are issued by "competent legal authority", I do not admit his right to know anything farther than that I hold a commission from the President as Sup^t Int^l aff^s nor would it be possible I should administer the duties of my office properly, if my subordinates are allowed the right to question the legality of my orders.

By the following extracts you will see that in suspending him from duty until your

decision is heard I have acted with a proper consideration of my position.

"The powers of a Superintendent to control, and direct the official conduct of an Agent or Sub-Agent located amongst a particular tribe with limited, and specified duties, on the Atlantic side of the continent, are clearly laid down, and essential to his office, but wholly inapplicable as I conceive to the service on this coast, where there are as yet no Sub-agents and the three principal agents appointed for the whole State, clothed with the powers of Commissioners or Ambassadors."

When I came to this country I did not recognize in Mr. Mc Kee an "Ambassador", nor did I look upon him in any other light, than that which the Department had presented him, an Indian Agent, subject to my orders. There is no necessity for a "friendly understanding" between Mr. Mc Kee and myself, our intercourse must ever be entirely official; and now Sir it is for you to say, whether I must add to a position, the most embarrassing, the most harassing, and the most thankless, that of receiving, under the sanction of the Department, such letters as the one I have laid before you. My position in this country is subordinate to, but in duty corresponds, with yours at Washington, and I ask you Sir if such a letter from an Agent to yourself, would be permitted to pass unapproved.

Hon. L. Lea.
Com^r Ind^l aff^s
Washington D.C.

Very Respectly
Your Obedt Serv^t
E. F. Beale
Sup^t Int^l aff^s

(Copy)

Head Quarters Pacif Division
San Francisco Sept 21 1852

Sir,

I have just received your communication of this date, requesting such information as I may be able to furnish you likely to be of service in the execution of your duties as Supt. Ind^y aff^s in this country, and asking transportation for Agent R. McKee with the troops about to proceed to the Northern Counties of the State.

Our duties will necessarily have much influence upon each other, and it will afford me the greatest pleasure to furnish you any information I may chance to have which may promise to be useful. In regard to Agt. McKee I regret to say, but do so from a sense of duty, that his presence with the troops will not in my opinion be productive of any advantage to the public. Information to some extent, and rumors to a much greater extent have impaired my confidence in Col McKees usefulness as a public agent, and I do not hesitate to request that he may not be directed to accompany the troops. In saying this I do not aim to control your independent action, but am quite willing to bear all the responsibility of the opinion, I give above, which has in view only the public interests.

To E. F. Beale

Very Respectfully Your Obedt Servant

Supt. of Ind^y aff^s San Francisco (Signed) E. A. Hitchcock

I certify that the above is a correct copy of the original
in my possession — E. F. Beale Supt Ind^y aff^s

Extract from letter of P. M. Kee Indian
Agent to E. J. Peale Supt. Indⁿ. of^o Nevada Nov^r 22/52

I had been here but very few days, before I received from a dozen different persons, almost as many different accounts, about the Indians - their number - location - finally, unfriendly disposition, towards the whites, and that of the whites towards them - quarrelling among themselves and with the Chinese &c. &c. so that as stated in my first letter, it was utterly impossible to arrive at any satisfactory conclusion, except by visiting the different sections of the country in person, and supposing the information to be really desirable, & important, and that my instructions so required, I immediately addressed myself to the laborious work, as it would necessarily involve additional expense, I suggested that provision be made therefore, in the usual way, and was not a little surprised on my return from the Guba by the receipt of your letter refusing to order the transfer of the funds in very positive terms, and preemptorily ordering me, to remain at Nevada, and not leave the city, without first asking your consent! From this and the general tone of your letters to me since your arrival in this country, I discover there exists a wide discrepancy, between our understanding of our respective privileges, duties, and responsibilities as Agents of the Federal Government, which should be explained, and reconciled - if possible - in order to a cordial, and useful co-operation in the discharge of our important, public duties. I propose therefore with perfect deference to your important and responsible position, as well as with the most friendly intentions, personally, to submit for your consideration, a few remarks, explanatory of my

understanding of my position.

You are aware I presume that I came out to this country, originally as one of three Indian Commissioners - with plenary powers, and instructions, to treat with the Indian tribes, and make arrangements for their settlement, and improvement. Besides my per diem, I was to be allowed mileage from Washington to California, and actual travelling expenses from place to place, where duty might call me in any part of the state (See Mr. Sec's Report 1850). By the act of congress approved "27th Feb'y 1851. - The office of commissioners was abrogated; but the Department under date of 12th April 51. sent me the following instructions. -

"By the Law you will perceive that your office, and functions, as Commissioners are abrogated & annulled, but the negotiations, in which you are engaged, are not thereby to be suspended, as immediately on receipt of this communication, you will enter upon the duties of your appointment as Agents of this Department, and as such are designated to negotiate, with the Indians in California, which you will do under the instructions heretofore given you as commissioners.

In several of my despatches to Washington. I urged the passage of a Law creating the office of Sup^t of Indⁿ Affairs for this State and under date of 29th of March 1852. was advised by the Department of your appointment to that office was directed to report to you in person on your arrival at San Francisco, as to expenditures of public money - liabilities incurred &c, in order to your reporting &c, also that thenceforward my official correspondence with the Department should be conducted through your office & all accounts sub-

-mitted for preliminary examination there before
transmission to Washington. Subsequently - say
on the 17th may - the Department - instructed me to
forward my accounts as Disbursing Agent & direct
Which has been done - The Law creating the of-
-fice of Superintendent in this state, confers unusu-
-al and very important powers, but if my recolle-
-tion serves, neither gives the power of negotiating
treaties with the Indians, exclusively to the Su-
-perintendent - nor in any way interferes with
the powers, conferred upon the three principal agents
(late Commissioners) by instructions of the Presi-
-dent. The power to negotiate or treat is by law, res-
-tricted to such officers & agents of the Indian Dept
as the President of the U. S. may designate for that
purpose - Now if the President has with reason
from the three principal agents, the powers originally
conferred, and "designated you as the sole repository
thereof in California, or if by your instructions
you are authorized to suspend the exercise of their
powers in that regard, and without consultation,
without their advice, concurrence, or co operation
in any way, take upon yourself the entire con-
-trol, and management of all of our Indian
affairs, in all parts of the state, do all the think-
-ing, and planning necessary to preserve peace
among the tribes, and as between them, and the
whites, leaving the agents, without power, influence
discretion, or responsibility, except as mere execu-
tors of the superintendents will and orders, then
I can only say that for one I have not so under-
-stood the matter, of the existence of such in-
-structions I have not been apprised, and am
consequently curious to know if they have been
issued - if such are extant, I have all along

been laboring under mistake and misapprehension. The extract sent me on the 13th Sept. I am aware speaks of your conferring with the agents and obtaining from them information that would "enable you to give them appropriate instructions for carrying out your plans for future operations". This I suppose had reference 1st to the proper division and distribution of the relief fund, and 2nd to the character of their negotiations with the tribes when the proper time should arrive for renewing them.

In the present anomalous state of Indian affairs in California, growing out of the systematic opposition of the State authorities & politicians to the entire policy recommended by the Commissioners in their Treaties, I should deem any present attempt on the part of the Agents to resume, or renew negotiations with the Tribes as premature and wholly inexpedient; indeed I am quite at a loss as to what new course of policy can be adopted with any reasonable prospect of benefiting the Indians, & at the same time satisfying the importunity of the miners, and settlers upon the frontiers. For one I have been waiting for light to break in, either by suggestions from the Supt., or formal instructions from Washington. If however all responsibility touching these grave questions, is by virtue of your more recent instructions, taken off my shoulders & my official duties reduced to the more executive routine of a resident-agent in the Atlantic States I shall cheerfully acquiesce in the arrangements, as it will at once relieve the embarrassment of my present position.

You are also aware I presume that the temporary districting of the State by the Commissioners in May, 57 was disapproved by the

Department, and although for convenience, the Agents have ever since acted, with reference to that division, they are still really agents for the whole state at large unless formal districts have been established (unknown to me) by the late Congress, or some recent authority from the Dep^t of the Interior. If in this I am not mistaken, you will appreciate the surprise with which I read your promptory order not to travel, in the region, among the tribes or even to leave the city, without first asking your consent! In my judgement a restriction of this kind, even were you fully authorized to issue the order, would be highly impolitic. The Indians in this mountain region, have had promises made them which you know have not been, and cannot be fulfilled, they are consequently disappointed, and dissatisfied, and although peaceable at present, there is no telling how long they may remain so, if not visited and encouraged to hope that some thing will be done for them, after a while. They cannot understand the circumstances which have combined to annul, and postpone the fulfillment of the "bargains," the white people made with them in '51 & '52. Now, as I understand the matter it was for the very purpose of keeping the tribes in good humor, keeping them from utter despair of ever receiving, a compensation for their fisheries, hunting, & Acorn grounds wrested from their possession by the whites, that Congress voted \$100,000 to be expended for their relief. Part of this sum should surely be allotted to the Indians of these Northern Counties, not only because they have generally been friendly and in some cases useful to the whites - but to encourage them to remain so. Any expense incurred by

the Agents of the Government in travelling among the tribes to gather information bearing upon this great object, would be chargeable upon the fund itself and as it is really munificent in amount, it is abundantly able to bear the few hundred dollars involved. This is my view & you will give it no more "attention than it merits"

I am fully sensible of the importance, and necessity which exists in every department of the public service, for due subordination & obedience of orders, and while I remain in the service of the Indian Department, will endeavor to discharge every duty incident to my office, but I claim the right of knowing that "Orders" are issued by competent legal authority & do not contravene other orders, previously issued by the head of the Dept. -

As remarked in my letter of the 16th you have doubtless discovered the absolute inapplicability of many of the Regulations of the War Department (published 1837-47) to the existing state of the Indian Service on this coast, & the necessity for a revision of the same or the making of a new code with especial reference to local - The powers of a Supt. to ^{control} direct the official conduct of an agent or sub agent located amongst a particular tribe, with limited and specified duties, on the Atlantic side of the continent, are clearly laid down, and essential to his office but wholly inapplicable as I conceive, to the service on this coast where there are as yet, no sub agents, and the three principal agents appointed for the whole state clothed with the powers of Commissioners or Ambassadors - Until this whole matter can be

reviewed, and a new system agreed on, and sent
down from the authorities at Washington, we must
get along in this state, I suppose, on the principle
of comity, accommodation, and the exercise of
our best judgement, and exertions for the public
good. I have written you thus freely with
a single desire to elicit, a correct and friendly
understanding, as to our relative positions and
duties, and if on any point I am in error, will
with pleasure be set right.

Very Respectfully
Your Obedt Servt

Richard M. Lee.

I certify the above is a correct extract of the
original in my possession.

E. F. Beale

Sup^t. Ins^t. Off^{ce}

Office Sup^t Ind^s affs
San Francisco Nov 30th 1852

Sir,

Your letter of the 22nd of Nov^r has been received, and its subjects duly considered. The very decided opinion you express of your independent rights and powers as an Indian Agent, extending even to the making of Treaties with Indians, without advice, or instructions from this office, are deemed to be very extraordinary, and as the exercise of such functions, could not fail to add greatly to the embarrassments already pressing heavily upon me, in the exercise of my duties, and as I have no time for extensive discussion upon that and other only less important claims set-up by you. I find myself called upon in order to retain a proper control of the Indian Affairs in this country, to exercise the authority conferred upon me by the 3rd paragraph of Revised Regulations No 111. "Office Copy Indian Lawst^e".

You will therefore consider your duties as Indian Agent, suspended until the decision of the Commissioner is heard in relation to the case.

Pedrick McHlee Esq
Ind^s Agent
Nevada City
Cal.

Very Respectly
Your Obed^t Serv^t
E. F. Peale
Sup^t Ind^s affs