



*HENRY MILLER'S 40 ACRES, AN INJUNCTION, AN ELECTION, AND THE HAGGIN AND MILLER & LUX WATER AGREEMENT...*

This material is quoted directly from the History of Kern County, by Wallace Melvin Morgan, publisher in 1913. Page numbers are indicated following the quotes.

“W. B. Carr, the generalissimo of the Haggin forces.... Fat, aggressive, determined, absolutely unabashed, with bull-dog courage and endurance, he was a typical political boss of the larger and more perfect type. Frequently and fervently cursed and hated, he could walk into a saloon in a hostile ward and in ten minutes have enough sworn allies to insure the victory of his candidates. If a delegation of angry farmers in the days of the bitter water troubles came after Carr with the intention of puncturing him with bullets or stringing him up to a high-branching cottonwood, he met them with an outstretched hand and slaps on their backs and sent them away wreathed in smiles of hope and assurance. Moreover, Carr had the valuable instinct that showed him to a nicety when it was necessary to dispense good coin and valuable favors and when mere promises would suffice. Carr was a finished performer and a skillful tutor, and later actors on the Kern County stage sat at his feet and learned to do politics in the scientific, metropolitan style.” [Page 100]

“Walter James figured in the water disputes, in court and out, mainly as an expert witness....It is difficult to say whether Walter James in his long record in Kern County shines more as an engineer or as a diplomat, but he is hard to out-class in either capacity.” [Page 100]

“The great water suit, known by the title “Lux versus Haggin ....marks an epoch, also, in the history of irrigation in the State of California.” [Page 102]

“The defendants claimed that they were entitled by right of appropriation to divert the waters from the river for purposes of irrigation, to develop water power, and for domestic and other purposes. It was a contest, in short, between riparian rights and the right of appropriation.

In addition to setting forth the rights of the plaintiffs the complaint alleged that the defendants, by diverting the water in their canals had rendered the lands of the plaintiffs dry and barren to such an extent that their cattle had neither grass to eat nor water to drink.

The papers in the suit were drawn in San Francisco and sent here to be filed in the Superior Court on September 2, 1880. On the morning of April 15, 1881, the trial began with Judge B. Brundage on the bench and a formidable array of counsel for both parties before the bar. Louis Haggin was in charge of the case for the defendant, and was assisted by John Garber and George Flournoy, Sr., father of the present Justice of the Peace of the sixth township of Kern County. Hall McAllister was nominally the chief counsel for Lux, but R.E. Houghton, then a comparatively young attorney, was the active man and really the one who outlined and carried on the campaign.” [Page 103]

“In the meantime, if the local papers were not doing much in the way of reporting the trial they were sparing no effort to prove what the judgment of the court should be. Despite all efforts to put him out of business, Julius Chester was still editing the Southern Californian, and was presenting through its columns the contentions of the riparianists as represented by Miller & Lux. The Californian, owned by A.C. Maude and edited by Richard Hudnut, was doing no less valiant service for Haggin. But the choicest language of which these masters were possessed they saved for rhetorically pummeling each other.

The last witness, was heard on June 2, 1881, and all the testimony, when it was written up, made a stack of paper four feet high. For the convenience of the lawyers the court consented to hear the arguments in San Francisco. The speech-making began on June 20th, and on November 3rd, Judge Brundage rendered his decision in favor of Haggin, which was to the effect that the appropriators were entitled to the water of the river as against the riparian owners, represented by Lux. Of course Miller & Lux appealed to the Supreme Court, and forthwith in Kern County there began a fierce political campaign to re-elect Judge Brundage on the one hand and to defeat him on the other.” [Page 104]



The Calloway headgate on the Kern River.

“Early in these proceedings Henry Miller arrived with R. E. Houghton. Having a suit in the Supreme Court in which their contention was that they were entitled to have the full flow of the river run over, through and upon their lands at all times, Miller and his attorney were hardly in a position to object to Haggin’s men repairing a break in their levee that would tend to throw the full force of the stream over on Miller & Lux. But Houghton was fully equal to the emergency. It happened that Miller owned forty acres of land in the bed of Buena Vista lake (surrounded by the Haggin sections) and Miller set up the claim that he was entitled to have the river flow unhindered over, through and upon his land, also.

Miller strode up to the break in the levee where Walter James was superintending the driving of the piles. “What are you doing here? What are you doing here?” he demanded.

“I’m just carrying out my instructions,” drawled Walter James in his imperturbable manner. “We thought we’d put a few piles in here, because we may want to build a bridge across, or something.”

“Well, I don’t want you to stop my water. I don’t want you to stop my water. Do you understand? I don’t want you to stop my water,” shouted Miller. “Have a cigar, Mr. James.”

So soon as the train could take him back to San Fran-

cisco, Houghton went to Judge Hunt of the Superior Court, and on a petition setting forth that Miller was the owner of a piece of land, to wit, forty acres, etc., and that whereas when the waters of Kern River were allowed to flow over it unhindered, etc., large quantities of tules and other plants and grasses valuable for feed grew thereon, and whereas on Haggin had a force of men at work with piles, a pile driver, brush, etc., Endeavoring to restrain the said water from flowing over Miller’s said land, etc., and whereas Miller would be greatly damaged, etc., etc., an injunction was duly secured.

By the time the injunction was served the ends of the levee were pretty well protected with sand bags, and most of the piling had been driven, but the water was flowing through the break almost as rapidly as ever.” **[Page 105]**

“Sheriff Coons handed the injunction to Carr and explained its purport, but Carr had to read the document, and his glasses were over in the tent. He went to the tent, got his glasses, sat down and read the injunction and the complaint which accompanied it. All the while Wible was enjoining haste. When Carr finished studying the order of the court he desired James to read it, and James read it, quite as slowly and carefully as Carr had done. Wible stormed over to where Dave Coffee was rushing in the sand bags with redoubled haste and energy, and commanded him to desist in the name of the law. But Coffee knew nothing of law or injunctions and he kept right on shoving the sand bags down to the men who were building them, now, just above the surface of the yellow water. Finally Carr sauntered back from the tent, saw that the gap in the levee was closed and the bags of sand rose clear and dry above the surface, and held up his hand as a signal of submission to the court’s decree.

But one thing had not been done. James had buried logs, or “dead men” on the upper side of the levee and had attached to them loops of cable ready to slip over the tops of the piling to help them carry the great weight of the water pressing on the narrow dam. But these loops of cable had not been adjusted, and the upper ends of the piling were without support. For a little while the piles and the wall of sand bags stood, and then, as the water lowered on the outer side, they leaned

---

and swayed; the sand-bag wall splashed out of sight, the broken piles bobbed merrily to the surface, and the yellow flood leaped through the breach once more to spread over section after section of Haggin's reclaimed swamp land, and "undiminished in quantity and unimpaired in quality," flowed over, through and upon Miller's forty acres of Buena Vista lake bottom until it was covered a dozen or fifteen feet in depth and it remained covered until the wild geese came and went and went and came again." [Page 107]

"It took until October 27, 1884, for the Supreme Court to reach a final decision, and the remittitur was not filed in this County until May 28, 1886, but not to make the story long, the Supreme Justices, or a majority of them, found that Judge Brundage had committed an error in not allowing certain testimony on the part of the defense that would have made but little difference, probably, in the main issue. But accompanying their order was a most important expression of opinion to the effect that the English common law respecting riparian rights governed the use of water in the State of California. In other words, as the Chester and Hudnut literary bureaus soon after made the whole state aware, the owner of the land on the banks of a natural water course was entitled to have all the waters of the stream flow over and through his land, undiminished in quantity and unimpaired in quality. That meant that nobody could take water out of a stream in an irrigating ditch and spread it over his lands, for if he did so, certainly he could not restore it again to its natural channel, undiminished and unimpaired, or either.

Carr did more. He went to work quietly among the members of the state legislature and before Miller's men knew what was going on he had the signatures of about two-thirds of them appended to a petition asking the governor to call a special session of the legislature and virtually pledging themselves to enact into law the measures framed at the two irrigation conventions.

Armed with this petition and reinforced by a stalwart bunch of his friends from Kern County and elsewhere, Carr met Governor Stoneman at a hotel in San Francisco. Everybody had a good time, and the governor, who was a veteran of the Union army, distinguished and endeared himself in the eyes of Carr's southern followers by consuming without a quiver more mint juleps than any man in the crowd from below the Mason and Dixon line could carry off. Before the evening was over the call for the special session of the legislature was signed.

This was in July, 1886, but meantime Kern County had gone through another political campaign (the hottest

and most vindictive, perhaps, which was ever waged in the valley) in which the issue turned on the election of the Superior Judge before whom the great water suit should come for re-trial. Brundage, of course, was supported by Haggin & Carr forces, and all of Miller's strength was thrown behind Judge Arick. The latter was victorious by the scant majority of four votes." [Page 108]

"The extra session of the legislature convened in August, 1886, and with the din of a state-wide battle in their ears, the members of the assembly passed the irrigation bills as per schedule. But the Senate balked. It would not defeat the bills nor would it pass them, and on September 11, 1886, the legislature adjourned with the question of water legislation immersed a thousand fathoms deep in status quo.

...Henry Miller made the important discovery and confided it to a friend that "plenty of money makes a good politician."

...The big suit fell to Judge Arick to try, but he granted a petition for a change of venue to Tulare County, which the Supreme Court sustained, and there the case lay until all the points involved in the contest were settled and the satisfaction of both parties by the celebrated Miler-Haggin agreement.

...the agreement provides that the parties of the first part, represented by Miller, shall have one-third of all the waters of the river during the months of March, April, May, June, July, and August, each year, and that the parties of the second part, represented by Haggin, should have all the remainder.

It provides for the measurement and delivery of the water, and for the construction of the Buena Vista Lake Reservoir, covering approximately thirty-six sections of land. The two parties join in this undertaking, sharing equally the expense of construction, repair, and maintenance. The two parties also share equally the expense of building the levees necessary to carry the water of the river from the second point to measurement to the reservoir, and of building an outlet canal from Buena Vista Lake to the Kern Valley Water Company's canal...The agreement is made a perpetual covenant, running with all the land owned or claimed by any of the parties within the territory described in the contract." [Pages 109 - 110]

*The photo of the Calloway headgate is from the Kern County Museum Photo Collection and used with their permission.*