

## Did You Know....

By Clem Dougherty

[Editor's Note: Clem continues to provide us with information in his series on San Francisco.]

Did you know..... that the partnership Miller and Lux, the subject of last month's Did You Know article in the Clarion, played an important role in a major California Supreme Court case deciding water rights in California? Yes it's true. Our story begins with the weather in England. As you know, England is a country where it rains frequently all year long. As a result water is available for domestic and business use all year long. Based on natural conditions, there arose in England a legal doctrine called "riparianism" whereby those properties adjacent to a river had a legal right to use water from the river as long as they did not interfere with the rights of other riparian users. As to those properties away from the banks of the river, those properties got their water from the plentiful ground sources away from the river and had no need to use water from the river. Whether next to a river or not, there was plenty of water for everybody. Thus, riparianism limiting the use of river water to properties adjacent to the river became part of the English Common Law.

Similarly, rain also occurs all year long in that part of the United States east of the Mississippi River. Thus, riparianism took hold in the eastern United States as well. So when the English settled the original colonies on the East Coast and later spread to the entire eastern part of the United States from the Atlantic coast to the Mississippi River, the doctrine of riparianism as part of the English common law became the standard for deciding water rights to rivers in the eastern United States.

However, in that land west of the Mississippi River, rain does not occur all year long. That part of the United States is semi-arid. As a result, ground sources were insufficient to meet the needs of properties away from the river. Those properties away from the river also needed to use water from the river. Thus, there

arose in the West, and particularly in California, a doctrine called the “right of prior appropriation” meaning those persons first using the water of the river to irrigate lands away from the river had the prior right to do so even to the detriment of later riparian users.

When the members of the first Legislature met in San Jose in the winter/spring of 1849/1850, they passed a law declaring the English Common Law as the basic law of the state. That included the doctrine of riparianism. Unwittingly, they set the stage for one of the biggest court battles in the history of the state. That battle took place over the doctrine of riparianism vs. the doctrine of the right of prior appropriation. The case was *Lux v. Haggin* found in official California Supreme Court decisions at 69C255. The principal parties were Charles Lux and Henry Miller versus James Ben Ali Haggin et al.

In the last edition of the *Clarion* we saw how millionaires Henry Miller and Charles Lux acquired a cattle empire centered in San Francisco and including properties in California, Nevada, and Oregon. Within that empire were 50 miles of property along the Kern River in the southern San Joaquin Valley purchased by Miller and Lux with an eye toward acquiring riparian rights. James Ben Ali Haggin was also a millionaire investor and owned over a million acres in California, Arizona, and New Mexico including properties here in Sacramento County (Haggin Oaks). Haggin was also the founder of the Kern County Land and Water Company controlling over 400,000 acres in Kern County. Haggin’s Kern County properties included vast tracts of land away from the Kern River irrigated by canals carrying water from the Kern River drawn upstream from the riparian lands owned by Miller and Lux. Haggin relied on the right of prior appropriation even though he started drawing water from the Kern River after Miller and Lux acquired their riparian rights. In 1879 Lux and Miller filed a lawsuit against Haggin to stop Haggin from drawing water from the Kern River. The battle took on a social dimension with Lux and Miller being looked upon as the wealthy few who could afford to acquire land adjacent to rivers while the majority

of small farmers had to settle on lands away from the rivers. Thus Haggin became the champion of the small farmers. The legal battle went all the way up to the California Supreme Court which at last held that riparian rights prevailed over appropriative rights. Although not as sweeping as riparian owners later claimed, the decision was widely seen as a victory for riparian rights over appropriative rights whether acquired prior to, or subsequent to, riparian users. Lux and Miller had prevailed over James Ali Ben Haggin et al. The wealthy few had prevailed over the not-so-wealthy majority. By virtue of a court order, river water was limited to those properties adjacent to the river.



### **Crop Irrigation in California**

The Lux vs. Haggin decision of the California Supreme Court outraged the small farmers of California. They prevailed upon the Legislature to pass the Wright Irrigation Act of 1887 that authorized landowners, both riparian and inland, to create irrigation districts by a simple majority vote of landowners within the district. The irrigation districts were to be governed by boards

of directors with the power to acquire land and riparian rights and, if necessary, to employ eminent domain (condemnation) to do so. The directors also had the power to construct canals, culverts and ditches so as to transfer water from rivers to inland properties. By virtue of legislative action authorizing the creation of irrigation districts, river water could now be diverted to inland properties. So many small farmers now took advantage of the new law during the 1880s-1890s that California now led the nation in irrigated agriculture.

California's agriculture focused first on the raising of cattle during the 1860s and, when the cattle market ended due to a drought during the late 1860s, the farmers switched to growing wheat as a dry farming product during the 1870s-1880s. Then, when the wheat market in the Mid-West began to replace California as the nation's bread basket during the 1880s-1890s, *Lux vs. Haggin* and the Wright Irrigation Act came into play just as California's farmers needed to switch from wheat to fruit trees and vegetable crops requiring large amounts of irrigated water away from rivers. Thus *Lux vs. Haggin* and the Wright Irrigation Act of 1887 played a crucial role in the development of California's agriculture.

Today, as California has evolved from a primarily agricultural state to an increasingly urban / suburban state, former irrigation districts have changed their official names from "irrigation districts" to "water districts." For instance, the present day Carmichael Water District started as the Carmichael Irrigation District. The District apparently changed its name to reflect the changing nature of the district from agricultural uses to urban / suburban uses. And as a local example of how *Lux Vs. Haggin* and the Wright Irrigation Act of 1887 continue to the present time, the Carmichael Water District, lying on the banks of the American River, draws 84% of its water from the American River and provides that water to 38,354 district customers, most of whom reside inland on properties away from the river. Historical action is not a "dead" subject existing only in the past, but continues in the future to impact our present lives in an ever

evolving way.

(Sources: Hundley, Jr., Norris, *The Great Thirst*, pp. 91-105; Rawls and Bean, , *California, An Interpretive History*, 9<sup>th</sup> ed., pp. 202-204;209-210; Treadwell, Edward F., *The Cattle King*, pp.78-94; Carmichael Water District, 2015 Consumer Confidence Report,p.1 )