THE TRIAL OF THE CENTURY:

Lux v. Haggin and the Conflict Over Water Rights in Late Nineteenth-Century California

by Jeff R. Bremer

In the late 1870s a titanic legal struggle developed in the southernmost region of California's agricultural heartland, the San Joaquin Valley. Two mutually exclusive doctrines of water law, one allowing for irrigation, appropriationism, and the other denying this right, riparianism, clashed in the courtrooms, the legislatures, and the farmlands of California. Most Californians at the time believed that the court case that pitted these two doctrines against each other, *Lux v. Haggin*, would decide the fate of California's future economic development. This article examines the causes and consequences of *Lux v. Haggin*, summarizes the legal contest itself, and evaluates the role of the major participants: the land baron and "cattle king" of California, Henry Miller, and his opponent, James Haggin, an equally wealthy lawyer, investor, and land speculator.

Many historians have examined aspects of the *Lux v. Haggin* case, but usually only in a paragraph or a couple of pages. There have been but two detailed examinations of the case, one by historian Donald Pisani, in his excellent work *From The Family Farm to Agribusiness: The Irrigation Crusade in California and the West*, and the other by law professor Eric T. Freyfogle in his article "*Lux v. Haggin* and the Common Law Burdens of Modern Water Law." Pisani devotes a forty-page chapter to an analysis of the case. Freyfogle's article is an exhaustive evaluation of the significance of the case in terms of its importance for twentieth-century water law and property rights. This essay seeks to provide a concise, focused evaluation of the trial and its

importance, as well as additional biographical material on its key participants.[1]

Henry Miller had anchored his nearly half-million acre empire in the southern San Joaquin Valley by the middle of the 1870s. A German immigrant, he arrived in California in September 1850, by way of New York and the Panamanian isthmus, with only six dollars in his pocket. But more importantly, he came with an impressive knowledge of the cattle and butchering business, gained from years of youthful apprenticeship in Wurtemberg (in present-day southwest Germany) and three years of butchering in New York. He also had an insatiable lust for land and wealth, and the determination, cunning, and ruthlessness to achieve his goals.[2]

Upon arrival in San Francisco, Miller put his skills and tireless energy to work, as an employee for other butcher shops. A devastating 1851 fire destroyed much of the city and leveled the playing field for entrepreneurs such as Miller. He quickly set up his own shop, woke before dawn in search of the best cattle, and earned loyal customers and an enviable reputation as one of the best butchers in the city. Miller sold cattle, sheep, and hogs, and reinvested every cent in his small, one-story shop. Little by little his business increased, as his immaculate shop and fine meats impressed discriminating San Franciscans. In 1853 Miller purchased the first herd of cattle driven into the city from outside the Bay area. He made $10,000 on this venture and his business boomed, as his reputation spread and his capital accumulated. As meat demand soared, Miller decided to expand his business and buy his own land and cattle outside the city. In 1857 he purchased 8,835 acres of land and 7,500 cattle in the San Joaquin Valley. Here he met his future partner, Charles Lux, a fellow butcher, and they established the firm of Miller and Lux.[3]

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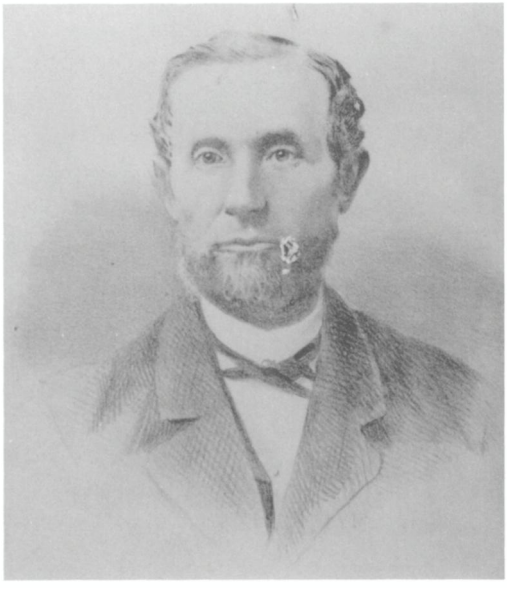
[1]Donald J. Pisani, *From the Family Farm to Agribusiness: The Irrigation Crusade in California and the West, 1850–1931* (Berkeley and Los Angeles: University of California Press, 1984); Eric T. Freyfogle, "*Lux v. Haggin* and the Common Law Burdens of Modern Water Law," *University of Colorado Law Review*, 57 (Spring 1986).

[2]Edward Treadwell, *The Cattle King: A Dramatized Biography* (Fresno, CA: A-1 Publishers, 1933), pp. 3-17; dictation of Henry Miller, pp. 1-7, H.H. Bancroft Collection, Bancroft Library, University of California, Berkeley; Hubert H. Bancroft, *The Chronicles of the Builders of the Commonwealth* (8 vols., San Francisco: The History Company Publishers, 1892), III: 373-374; Jeff R. Bremer, "To Water the Valley: The San Joaquin and Kings River Canal and Irrigation Company, 1866–1875" (Master's Thesis, California State University, Bakersfield, 1995), pp. 3-12. Also see "Biographical Sketch of Charles Lux," H.H. Bancroft Collection.

[3]Treadwell, *Cattle King*, pp. 24-54; Henry Miller Dictation, pp. 7-14; Bancroft, *Chronicles of the Builders*, III: 374-376. Robert Glass Cleland, *Cattle on a Thousand Hills* (San Marino, CA: Huntington Library, 1963), p. 310; William Lawrence, "Henry Miller and the San Joaquin Valley" (Master's Thesis, University of California, Berkeley, 1933), p. 43.



Henry Miller (left), sometime in the 1880s. Miller's suit against James Haggin began the decade-long legal battle. Charles Lux (right), Miller's partner. *Courtesy of the California State Library.*

Miller and Lux became legendary in late nineteenth-century California for their single-minded pursuit of profit, cheap land, cattle, and more land. The two men were accused of vicious, monopolistic crimes of land-grabbing and water-hoarding, as they built a massive empire in the San Francisco area and along the precious rivers of the arid San Joaquin Valley. In 1860 the firm owned only a few thousand acres. But California was a paradise for those who did not allow ethics to interfere with business. In a single day in 1869, in Visalia, Miller entered into title for six entire townships totaling just under 140,000 acres. Miller and Lux consistently abused and defiled the Swamp and Overflow Land Act and the Desert Land Act, by claiming land as "swamp" that was dry and by claiming land as desert that was fertile. They also forced Mexican land-owners off their ranchos by making loans, compounded monthly, during years of drought and taking mortgages as collateral. When the loan could not be repaid, the land was lost in foreclosure to the firm. In 1870 Miller and Lux owned somewhere

between 328,000 and 450,000 acres in California and began to expand their land-holdings south, into Kern County, at the lower end of the San Joaquin Valley.[4]

As Henry Miller expanded his land-holdings southwards, he collided with men as wealthy and determined as himself. A man by the unlikely name of James Ben Ali Haggin challenged Miller for control of the Kern River and touched off a battle that had immense implications for the state of California. Haggin, his partner, Lloyd Tevis, and their political boss and henchman, William Carr, clashed for a decade with Miller. Their fight resulted in one of the most important water cases decided in the nineteenth-century American West.

The Kern River, the second longest river in the state after the Sacramento, begins at the junction of a number of streams and creeks in the vicinity of Mount Whitney. The river falls between 10,000 and 12,000 feet, in a series of cascades, through wild, rocky canyons, which alternated with small, green valleys. It runs southwards from its source in a long, narrow trench between some of the highest summits in the United States until it bends westward, plunging through a virtually inaccessible canyon, and heads toward the bleak, arid valley south and west of Bakersfield. When the Kern reached the San Joaquin Valley it followed a westward course and eventually meandered into two shallow lakes, the Kern and the Buena Vista, which rested against the eastern foothills of the coastal mountains. When the river flooded, it covered much of the delta between Bakersfield and the two lakes, twenty miles to the south.[5]

A twelve-mile long slough connected the two lakes. Huge swamps full of mud, stagnant water, reeds, tules, and grasses surrounded the two small lakes and the Kern River. These swamp lands abounded with the inch-thick tules, which grew in the shallow water, often to a ten-foot height and provided fine forage for livestock. Henry Miller brought his cattle, sheep, and hogs to feed in this area and his ownership of such riparian

[4]Lawrence, "Henry Miller," pp. 54, 61. William Lawrence interviewed over one hundred people for his thesis, including many former Miller and Lux employees and foremen. Treadwell, *The Cattle King*, pp. 60. Gerald D. Nash, "The California State Land Office, 1858-1898," *Huntington Library Quarterly*, 27 (August 1964): 348; Ellen Liebman, *California Farmland: A History of Large Agricultural Landholdings* (Towota, NJ: Rowman & Allanheld, 1983), p. 23. Nash, citing an 1872 California legislative report, writes that Miller and Lux owned 328,000 acres, while Liebman has demonstrated that the firm owned 450,000 acres. This author supports Liebman's arguments, based upon his own research .

[5]Thelma B. Miller, *History of Kern County, California* (2 vols., Chicago, IL: S. J. Clarke Publishing Company, 1929), I: 308-309; *Kern County Weekly Courier*, May 13, 1880; *Kern County Californian*, February 14, 1885.

property—land adjoining a waterway— along the Buena Vista Slough precipitated the great water war between the two greatest land monopolists in California.[6]

As Miller and Lux purchased large portions of California's most valuable riparian real estate and began to acquire land in Kern County, so did James Ben Ali Haggin. Miller and Lux purchased their first lands in Kern County in the early 1870s, along the fifty-mile long slough that connected the lakes at the south end of the valley with Tulare Lake. Much of the land Miller owned along the slough he acquired through abusing the provisions of the Swamp Land Act of 1850, which strictly limited the amount of land any individual could purchase to 320 acres. Miller purchased his swamp land in the Montgomery Grant, named for one of several speculators who agreed to reclaim land and build a navigable canal linking San Francisco with Kern County. When Montgomery and his allies did not raise the necessary capital to complete the project, they sold their rights to two other men, who then convinced the state legislature to release them from Montgomery's construction obligations. They then obtained patent to nearly 90,000 acres and sold portions of the grant to cattlemen such as Henry Miller.[7]

Miller and Lux bought 39,750 acres of swamp land in Kern County and purchased another 40,000 acres throughout the San Joaquin Valley. The two cattlemen used the swamp lands not only for feed for their livestock, but also for water diversions. From 1873 to 1875 Miller and other cattlemen pastured 40,000 cattle and large numbers of hogs and sheep in the area along Buena Vista Slough. These huge herds of animals also grazed on pub-

[6]Miller, *History of Kern County, I: 309*; *Kern County Weekly Courier, May 13*, 1880; *History of Fresno County, California, With Illustrations Descriptive of Its Scenery, Farms, Residences, Public Buildings, Factories, Hotels, Business Houses, Schools, Churches and Mines, From Original Drawings, With Biographical Sketches* (San Francisco: Wallace W. Elliot & Company Publishers, 1882), p. *139*; *History of Kern County, California With Illustrations Descriptive of Its Scenery, Farms, Residences, Public Buildings, Factories, Hotels, Business Houses, Schools, Churches and Mines, From Original Drawings, With Biographical Sketches* (San Francisco: Wallace W. Elliot & Company Publishers, 1883), p. 175. Together the two antagonists owned over six-hundred square miles of prime Kern County farmland. Eric T. Freyfogle, "*Lux v. Haggin* and the Common Law Burdens of Modern Water Law," p. 486.

[7]Wallace Morgan, *History of Kern County, California* (Los Angeles: The Historic Record Company, 1914), p. 57; Norman Berg, A *History of the Kern County Land Company*, 32nd Annual Publication of the Kern County Historical Society (Bakersfield: Kern County Historical Society, 1971), pp. 1-3. In addition to the requirement that no person could buy more than 320 acres, each buyer was to file an affidavit that he had not purchased any other swamp land which would bring his total to more than the maximum. The purchaser also had to claim that he wished to settle or reclaim the swamp land. Lax administration of this law allowed engrossers such as Miller to amass vast tracts of riparian land along California's waterways. Paul W. Gates, "Public Land Disposal in California," *Agricultural History*, 49 (January 1975): 162.

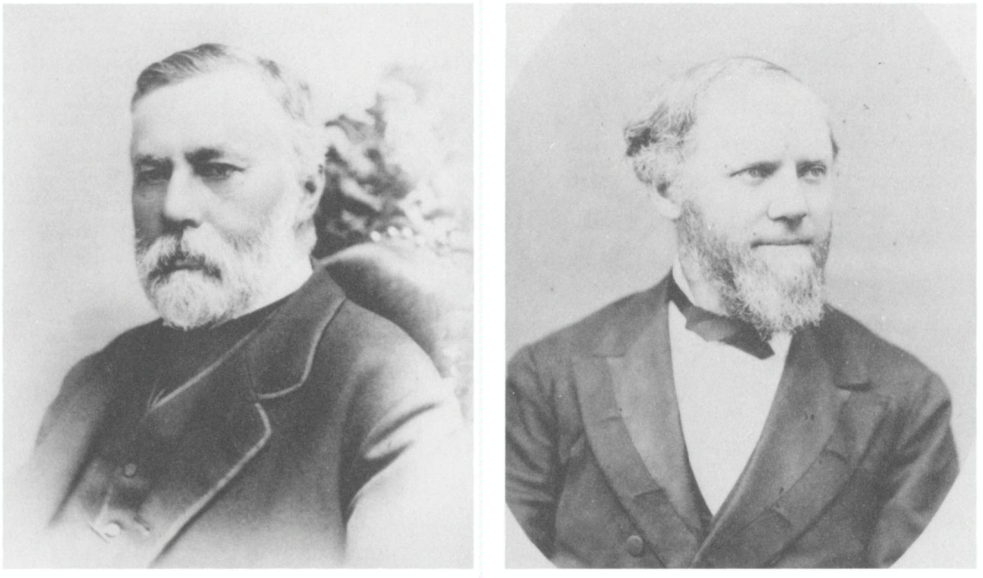
lic lands near the swamps and rivers. Miller and Lux joined with other cattlemen in the Kern Valley Water Company and built two canals to drain the swamps and store water for irrigation of the reclaimed land. They began to fence their lands and grew alfalfa for their stock.[8]

Haggin acquired his first acreage in Kern County in 1873 by purchasing the 52,000-acre Gates Ranch. In the following years he bought large tracts of land to the southwest and northwest of Bakersfield. William Carr, serving as Haggin's land agent in the county, acquired odd sections of railroad land north of the Kern River and had dummy entrymen file on the even sections. By early 1876 Haggin owned 100,000 acres in Kern County. The biggest block of Haggin's land was obtained through violating the Desert Land Act, passed in 1877. This act allowed settlers to purchase 640 acres of land for $1.25 an acre if the claimant irrigated the land within three years. Haggin and Carr claimed more than 100,000 acres of land in April 1877, using dummy entrymen once again. They did not pay filing fees for these lands and their great land seizure took quarter sections from legitimate settlers. Much of Haggin's "desert" land actually included swamp and overflow areas and already had easy access to water or forage. However, the majority of the land claimed was barren. In these areas a short, yellow stubble of grass covered the land. No trees lived in this monotonous, almost perfectly level desert landscape. In some places salt and alkali crusted the ground, giving the appearance of a snowfall. The soil in these areas contained so much alkaline that it crunched under a man's foot, as if a thin sheet of ice covered the ground. Haggin planned to reclaim these lands once he had the necessary water for irrigation.[9]

Haggin quickly put his men to work plowing his land and preparing the virgin soil for cultivation. His laborers dug ditches for irrigation, built fences, planted grain and alfalfa and readied the pastures for the thousands of cattle that were brought into the area. Haggin planned to create the

[8]M. Catherine Miller, "Law and Entrepreneurship in California: Miller and Lux and California Water Law, 1879-1928" (Ph.D. Dissertation, University of California, San Diego, 1982), pp. 39-41; Morgan, *History of Kern County*, pp. 77, 99; William Harland Boyd, *A California Middle Border: The Kern River Country, 1772–1880* (Richardson TX: Havilah Press, 1972), p. 104.

[9]San Francisco *Chronicle*, October 19, 1877; William H. Brewer, Up *and Down California in 1860-1864. The Journal of William H. Brewer, Professor of Agriculture in the Sheffield Scientific School from 1864 to 1903* (Berkeley and Los Angeles: University of California Press, 1966), pp. 378-383, 511-513. Pisani, *From the Family Farm to Agribusiness*, pp. 195-196; Paul W. Gates, *History of Public Land Law Development* (Washington, D.C.: United States Government Printing Office, 1968), pp. 638-643; Boyd, *A California Middle Border, p. 99*; Berg, *A History of the Kern County Land Company*, pp. 5-7.



James B. Haggin (left), land monopolist and opponent of Miller and Lux in the court case. Lloyd Tevis (right), Haggin's partner. *Courtesy of the California State Library.*

"greatest stock ranch in the state" and began canal construction in 1875. Miller looked upon this new competitor with alarm and suspicion.[10]

James Ben Ali Haggin was nearly the antithesis of Henry Miller, but they both shared an obsessive quest for land and wealth. Haggin came from a prominent Kentucky family with high social standing and completed coursework at Centre College in his home state. He practiced law in Kentucky, Mississippi, and Louisiana, but left New Orleans when gold was discovered in California. In 1851 he became a legal partner, and eventually a brother-in-law of Lloyd Tevis. The two men later gave up the legal profession in search of greater wealth. Working with Senator George Hearst, they invested in the Anaconda copper mine and Wells, Fargo & Company. In the 1850s and 1860s Hearst, Haggin, and Tevis owned the largest gold and silver mines in the country. Lloyd Tevis became president of Wells, Fargo & Company, as well as a president of the Southern Pacific Railroad. In 1880, the new president, James Garfield, considered him for the post of Secretary of Treasury. As the Southern Pacific built its way southwards into

[10]Boyd, A *California Middle Border*, *pp*. 99-101.

Kern County in the early 1870s, Haggin, Tevis, and Carr followed, seeking new arenas in which to build their empires.[11]

Before working as Haggin's land agent, William B. Carr had worked as a lobbyist for the Southern Pacific Railroad in Sacramento. According to the San Francisco *Chronicle*, Carr was the most influential of many spoilsmen in Sacramento who had "brought the civil service of the country into disrepute and almost driven decent men out of politics." He had the political power to designate public officials, dictate their votes and make laws, the paper claimed. Historian Donald Pisani described Carr as "the most powerful man in California politics during the late 1870s and 1880s." Carr had migrated to California during the gold rush and had made huge profits in the construction of mining ditches and levees. He eventually made important political and business connections in San Francisco and Sacramento where he met his future employers. Carr originally visited Kern County in 1874 to survey the area for himself and expand his own land-holdings and interests, but found greater profits and opportunities working for Haggin and Tevis. He was aggressive, crude, determined, and flamboyant and a perfect match for his more reticent employers who rarely left the comforts of San Francisco. Carr made an excellent political boss, land agent, and henchman.[12]

As soon as Carr arrived in Kern County, he began to acquire a controlling interest in the irrigation companies that had locations on the Kern River. In 1873 independent farmers controlled the six major canals on the Kern. Five thousand acres of land were irrigated. Few of these companies were corporations under state law and when they filed for incorporation, at Carr's urging, he bought up a controlling interest in their stock. He then outlined to the farmers and ditch owners the advantages that he provided in terms of financing, engineering, and management. He promised assistance in the construction of canals, headgates, and weirs, in exchange for the sale of the companies to Haggin. Carr assured the farmers that their land would soar in value with the establishment of a consolidated, competent canal system. As Carr bought control of the various ditch companies, he also received

[11]Los Angeles *Daily Times*, July 20, 1880; San Francisco *Chronicle*, July 19, 1880; Alonzo Phelps, *Contemporary Biography of California's Representative Men* (San Francisco: A.L. Bancroft and Company, 1881), pp. 27-31, 325-329; Miller, "Law and Entrepreneurship," pp. 39-41; Berg, *A History of the Kern County Land Company*, pp. 16-17; *National Cyclopedia of American Biography* (New York: James L. White & Company, 1926), 19: 213-214.

[12]San Francisco *Chronicle*, May 10, 22, 1877; Pisani, *From the Family Farm*, p. 193; Berg, *Kern County Land Company*, pp. 16-17; Morgan, *History of Kern County*, p. 80.

control of the rights to the water of the Kern River. But one thing was certain: as Carr's control over the water in the Kern increased, it was an obvious and inescapable fact that conflict with Henry Miller loomed.[13]

By 1875 Carr had twelve canals under construction to take water out of the Kern River. These ditches began a few miles east of Bakersfield and forked from the river at intervals for fifteen miles, to a point midway between the city and Miller's land downriver. At the height of the activity, a Bakersfield journalist estimated that one thousand men worked on the various carefully engineered canal projects. Carr planned to divert water for both the city and for agricultural irrigation. One of these canals, named the Calloway, had only three miles of its length built, as the company was unable to purchase the necessary railroad land to complete it. Haggin and Carr bought the necessary land and continued the canal again in June 1877. By 1879 the canal ran thirty miles and was capable of irrigating 70,000 acres.[14]

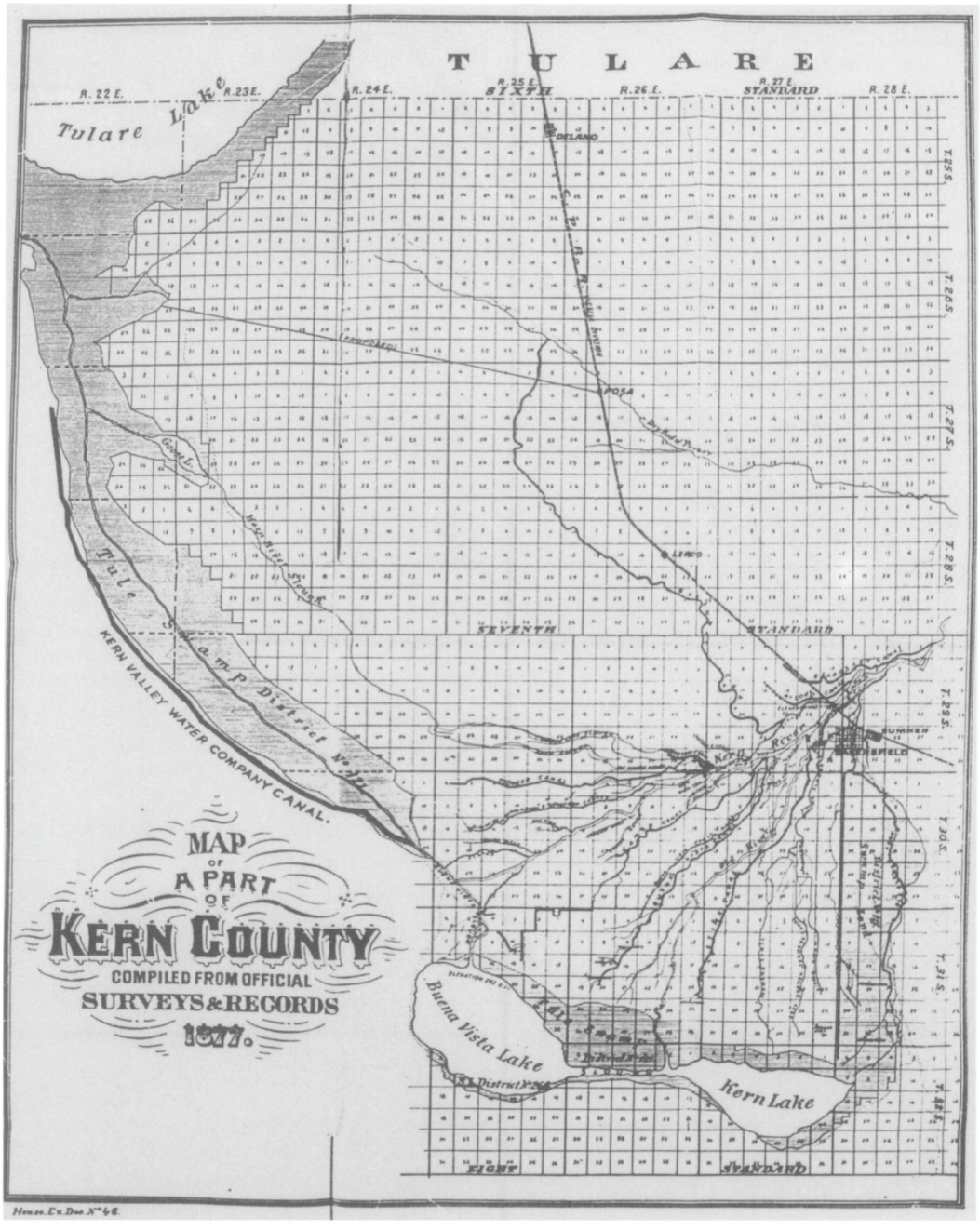
In May 1875, Haggin and Carr claimed far more water than the Kern had ever carried. In the fall of 1877, they built a diversion dam to take water from the river. This dam, allegedly costing $20,000, was not the simple, short-term, brush and sand dam as the local farmers had built before, but a permanent one intended to divert the entire Kern River to irrigate Haggin's land northwest of Bakersfield. Cattlemen and farmers below the dam screamed in protest, Henry Miller the most prominent among them. This diversion provoked the *Lux v. Haggin* suit.[15]

Ironically, Miller and Haggin had the same economic goals in mind. Both men wanted to create vast cattle ranches and used irrigation as a tool to provide water for their herds. Both men committed themselves to canal building and the cultivation of crops, such as alfalfa, for their animals. Both rented thousands of acres of their lands to settlers, though they did not want a long-term agricultural peopling of the valley. Miller and Haggin also planned further great land acquisitions in the future. Though Haggin rented large portions of his land-holdings to settlers, he never subdivided his land

[13]Morgan, *History of Kern County*, pp. 85-86; Pisani, *From the Family Farm*, pp. 197-198.

[14]Boyd, *A California Middle Border*, pp. 101-102; Pisani, *From the Family Farm*, pp. 198-200; Miller, "Law and Entrepreneurship," p. 43; *Kern County Californian*, February, 14, 1885.

[15]Haggin and Carr claimed 3,000 cubic feet per second, about three times more than the river had ever carried, according to Donald Pisani. Pisani, *From the Family Farm*, pp. 198-201. Morgan, *History of Kern County*, p. 83.



A Map of Western Kern County, surveyed in 1877. Published by U.S. Public Lands Commission in 1880. *Courtesy of the California State Library*.

for sale as he regularly claimed. Haggin planned to raise alfalfa and grains for his animals but never produced labor intensive market crops that would encourage settlers to emigrate.[16]

As Carr dammed the Kern River and diverted water into the Calloway Canal, another vicious drought hit California. Little rain fell in 1876 and even less in 1877. The combination of diversion and drought proved disastrous for the cattlemen on the Kern Delta. Miller's newly-planted alfalfa fields dried up, as did the tule swamps on which his herds depended for forage. The sloughs, small creeks, and streams through which the remnants of the Kern flowed became green, slimy sinks of foul water. Listless cattle fell into the mud holes and had to be dragged out by vaqueros. Some of the mud holes, so contaminated with alkali, stripped the cattle's hides away from their legs when they were pulled out of the muck. The Kern and Buena Vista Lakes slowly evaporated. Finally, the sloughs became barren and devoid of any moisture. Great cracks appeared in the former watercourses, "down which a walking stick could be thrust its entire length." Thirsty cattle crowded about the mud slicks and their carcasses piled up on the newly desert land. Their bones bleached white in the scorching sun.[17]

The loss to the cattlemen was devastating. Sixteen thousand of their cattle died, mostly from the herds of Miller and Lux, and thousands of acres of crops failed. Miller was apoplectic. He attributed the severity of the drought to Haggin and Carr alone. Miller and other riparian owners downstream from the Calloway Canal asked Haggin and Carr to compromise. The riparian owners offered the upstream appropriators seventy-five percent of the river's flow if they would allow the remainder to reach the Buena Vista Slough. Haggin and Carr, confident that they could defend their rights in court, refused. Miller and Lux, along with seven other riparian owners, filed suit against Haggin on May 12, 1879, and demanded that the diversions be halted. The suit named James Ben Ali Haggin, his land and water company, and over a hundred others as defendants. Seventy-eight other suits against upstream water appropriationists were also filed, with the same intent. The first of these cases to go to court was *Lux v. Haggin*. That Charles Lux's name

[16]See the *Kern County Californian*, May 20, 1880, "Statement of J.B. Haggin;" Freyfogle, "*Lux v. Haggin* and the Common Law Burdens," p. 493; Pisani, *From the Family Farm*, p. 203.

[17]Miller, *History of Kern County*, pp. 294-295; Morgan, *History of Kern County*, p. 88; *Kern County Californian*, February 14, 1885.

became enshrined in California history with Haggin's offended Miller, a man not known for his modesty.[18]

The *Lux v. Haggin* case represented two contending legal doctrines. The first, the riparian doctrine, had its foundation in English common law. The riparian doctrine gave owners of land adjoining a watercourse exclusive rights to that water. These rights were given solely because the water flowed adjacent to the land and constituted part of the rights inherent in such land ownership. The riparian doctrine viewed a stream as an integral part of the land through which it flowed and gave such an owner the right to use the water for "domestic" or "natural" purposes. Each owner of riparian rights had title to the undiminished and unpolluted flow of the watercourse. Riparian rights could not be lost through nonuse. Furthermore, one riparian user could not gain greater priority over other riparian users, for the rights were coequal. The riparian doctrine did not allow users to "substantially" divert the streams for uses such as irrigation. Any such diversion, such as by Haggin, was a violation of riparian rights, for it decreased the flow of water for those downstream.[19]

California's arid climate contradicted with the doctrine of riparian rights. English common law presented no problem as long as the environment that the law ruled had as much rainfall as England. But this doctrine was utterly unsuited for California's arid climate. Few landowners were riparian owners and most land adjacent to streams and rivers, such as that owned by Miller and Haggin, fell under the monopoly of a select few. This limited the use of irrigation to only riparian owners, who could flood their lands or divert some of their water, like Miller, but excluded non-riparian owners. Haggin knew this and attempted to flail Henry Miller with the water monopolist label and ally himself with the poor, aggrieved farmers that he supposedly represented.[20]

The doctrine of prior appropriation allowed water to be claimed, just as mineral rights could be claimed by anyone who put it to beneficial use and

[18]Pisani, *From the Family Farm*, p. 208; Miller, "Law and Entrepreneurship," pp. 44-45; Herbert G. Comfort, *Where Rolls the Kern* (Moorpark, CA: The Enterprise Press, 1934), p. 154; *Kern County Californian*, May 22, 1879.

[19]Gordon R. Miller, "Shaping California Water Law, 1781 to 1928," *Southern California Quarterly*, 60 (Spring 1973): 19; *Kern County Californian*, April 9, 1881; Gordon R. Miller, "Riparian Rights and the Control of Water in California, 1879–1928: The Relationship Between an Agricultural Enterprise and Legal Change" *Agricultural History*, 59 (January 1985): 1; Freyfogle, "*Lux v. Haggin* and the Common Law Burdens," p. 490.

[20]Freyfogle, "*Lux v. Haggin*," pp. 490-491.

filed the proper notices. Appropriators wanted the right to use water free of restrictions, whether they be of time, place or quantity. Prior appropriation divorced water from attachment to land, and many argued this doctrine as the only rational choice for economic development in an arid environment. However, the California state constitution took neither side and recognized both doctrines. The constitution accepted English common law and had written both prior appropriation and riparian rights into statutory law. *Lux v. Haggin* decided the future of California's law of water rights, and thus set the stage for the development of the state for the remainder of the century and into the next.[21]

When the case eventually moved to trial in Kern County Superior Court in early 1881, it took on an apocalyptic tone and passions ran high as the legal battle began. Miller's opponents argued that a victory by the cattlemen threatened any Christian farmer who believed in fair play and liberty. The contest pitted "civilization" (Haggin and appropriation) against "semi-barbarism" (Miller). A victory by Henry Miller meant the "ruin of the entire valley, its relegation to the condition of a desert and the complete destruction of all improvements and other property interests." Riparianism was a "pernicious and antiquated doctrine." Appropriationism, however, meant "increased development of every part of the State, increased immigration and increased prosperity."[22]

Henry Miller did nothing but raise cattle, protested the *Kern County Californian*. He did not add wealth to the state and kept immigration out by monopolizing land and water. Miller blocked cultivation and settlement and let the rivers run to waste. The rivers were but "the drinking resorts of cattle," declared the *Californian*. The land had prospered with the advent of irrigation and immigration, the paper claimed. When the farmers attempted to get their fair share of the water, they clashed with the "cattle king," who then tried to cripple the state's agriculture by monopolizing the state's water. The *Californian*, and most other papers, ignored the fact that the impending battle occurred not between two doctrines, but between two water monopolists. Regardless of who won the case, the small farmer lost.[23]

[21]Miller, "Law and Entrepreneurship," p. 31; Miller, "Riparian Rights and the Control of Water in California," p. 1; Freyfogle, "*Lux* v. *Haggin*," pp. 491–492.

[22]*Kern County Californian*, April 9, 16, 1881, November 1, 1884, March 14, September 13, 1885; Fresno *Expositor*, February 23, September 10, 1884.

[23]*Kern County Californian*, March 14, 1885; San Francisco *Chronicle*, April 16, *1881*.

In such a charged atmosphere, the trial began on Friday, April 15, 1881. Superior Court Judge Benjamin Brundage, a land agent and lawyer who had supported Haggin and Carr in their defense against allegations of abuse of the Desert Land Act, presided. The cattlemen lined up behind Miller. The farmers, many of whom were defendants in the other water suits or customers or tenants of Haggin, allied themselves with the appropriationists. Two factors accounted for the delay in the case: 1880 had been a very wet year, and both sides had struggled to avoid flooding in their fields, and Miller and the other riparian owners had attempted to win a hearing in the San Francisco federal court.[24]

Both sides purchased the best—and most expensive— legal talent available. Haggin's team of lawyers did not try to challenge the doctrine of riparian rights, but instead attempted to prove that Miller and Lux did not qualify as riparian owners. The case centered on the question of whether the Buena Vista Slough actually qualified as a natural watercourse and as a channel of the Kern River. Miller's opponents contended that it did not and, therefore, the cattlemen were not riparian owners. Haggin's team, including his son Louis, spent most of the seven weeks of the trial hammering home the point that the Buena Vista Slough was not a part of the river at all. If they could prove this, Miller stood to lose his case and the value of his land and improvements. To win, Henry Miller simply had to prove that his land was actually riparian.[25]

Both sides brought in surveyors, engineers, cattlemen, farmers, and other residents to testify. Everybody who might have known anything even remotely pertinent about the Kern River, or any other river for that matter, testified. The plaintiffs, Miller and Lux and their allies, produced a large and detailed map showing their lands along the Kern River. The *Kern County Californian* sarcastically noted that this map afforded, "an ocular demonstration of the justice of the plaintiffs case so clear and perfect." Miller's lawyers then read the papers and deeds demonstrating his title to the lands along the Buena Vista Slough. The defense forced a county surveyor to admit the map's fragmentary nature. The defense also grilled Miller's engineer, S.W. Wible, as to the state of the dried swamps. The prosecution called Carr for cross-examination, but there is no record of his testimony. Miller's lawyers introduced photographs of the river and their

[24]*Kern County Californian*, March 25, 1882; Miller, "Riparian Rights," pp. 45–46.
[25]Miller, "Riparian Rights," p. 46.

client's land late in the second week, and the prosecution closed its case shortly thereafter.[26]

The defense began its work in the third week. They brought in maps and charts of their own and they attempted to discredit the prosecution's legitimacy as any well-paid legal staff would. Haggin's men introduced their own surveyors, engineers, and residents. Witnesses testified to the fact that the Buena Vista Slough was not a "continuous or connected channel." The defense emphasized the point that, often, during dry years, the water in the slough reversed itself and flowed from Tulare Lake southwards, or that the watercourse completely dried up. They argued that the slough was not a part of the Kern River, but simply an outlet for overflow water during wet years. The defense called Colonel George Mendell, of the United States Engineer Corps, who testified that the two lakes evaporated more water than they received from the river, and therefore did not discharge water into the slough. An assistant state engineer repeated Mendell's testimony and confirmed that the Buena Vista Slough in no way qualified as a natural watercourse, since it flowed in opposite directions, according to the swamps' whims.[27]

And so the case dragged on, with claim and counter-claim, statement and counter-statement. The two head engineers for each side sat through days of cross-examination. The *Kern County Californian* reported the case as "dry, tedious business" with "a great deal of sameness in the testimony." Miller's attorney insinuated that the defense instructed their witnesses as to what their testimony should be. One attorney, John Garber, carried a potato in his pocket for luck and shook it at witnesses as he questioned them. The county sheriff spent his days fetching redwood shingles, and possibly potatoes, for the attorneys to whittle while they sat in boredom. Charles Lux, "a very reluctant witness," testified that he had authorized operations to reclaim the Buena Vista Swamp and make it into dry land. The defense seized upon this as a violation of riparian rights—because Miller and Lux interrupted the stream's natural course—and attacked them for complain-

[26]*Kern County Californian*, April 23, 30, 1881; Morgan, *History of Kern County*, p. 98.

[27]*Kern County Californian*, April 23, May 7, 14, 21, 1881. The Alexander Commission had been asked to evaluate the potential for the irrigation of millions of acres in the San Joaquin Valley. Alexander, B.S., Davidson, George, Mendell, George H., *Report of the Board of Commissioners on the Irrigation of The San Joaquin, Tulare, And Sacramento Valleys of the State of California* (Washington, D.C.: Government Printing Office, 1874). Miller's involvement in one of the first canal and irrigation companies in California had helped to spur the commission's investigation. See the author's M.A. thesis, "To Water the Valley," for a summary of Miller's involvement in this enterprise.

ing about dry swamps when they had attempted to do it themselves. The defense also claimed that Haggin and Carr, who owned land adjacent to the Kern River, were themselves riparian owners, and had a right to divert water for irrigation. Haggin, probably even more reluctant than Lux, showed up and made a rather neutral impression upon the court. By May 21, after almost six weeks of testimony, about a hundred witnesses had been heard.[28]

Forty-nine days later, on Thursday, June 2, 1881, the presentation of evidence came to an end in Kern County. Judge Brundage then moved the trial to San Francisco to hear final arguments from the attorneys, who found the city much more comfortable than the blistering heat of Bakersfield. In the last week of statements, Brundage had disallowed the introduction of evidence pertaining to the ownership of some Miller and Lux lands. These patents and "certificates of purchase from the State" were brought to Judge Brundage's attention to demonstrate that Miller and Lux owned property along the Buena Vista Slough prior to the construction of the Calloway Canal in 1875. Haggin's lawyers claimed that since Miller and Lux did not receive formal title to the land in question until after the construction of the Calloway Canal began in 1875, and had not questioned Haggin's right to divert water until the drought struck in 1879, that the cattlemen had given Haggin "tacit legal acceptance of the diversion."[29]

Judge Brundage issued his decision on November 3, 1881, and ruled in favor of Haggin and Carr. He denied that Miller and Lux had provided sufficient evidence to prove their riparian claims. The Kern River, he concluded, did not flow through the Buena Vista Swamp. Therefore, Miller and Lux did not have riparian rights because no watercourse existed adjacent to their lands. He declared that the diversion of the Calloway Canal was proper and prior in time to Miller and Lux's acquisition of land. Brundage completely sided with the appropriationists and accepted their ideology of irrigation and economic growth. Without such diversion, he asserted, profitable and productive lands became worthless. Miller and Lux immediately filed an appeal.[30]

[28]*Kern County Californian*, May 21, 28, 1881; Morgan, *History of Kern County*, pp. 103-104; Pisani, *From the Family Farm*, p. 210.

[29]*Kern County Californian*, June 4, 11, 1881; Pisani, *From the Family Farm*, p. 210; Morgan, *History of Kern County*, p. 104.

[30]Judge Brundage's decision was published in a supplement to the November 5, 1881 issue of the *Kern County Californian*; San Francisco *Chronicle*, November 4, 1881; Miller, "Law and Entrepreneurship," pp. 47-48. Pisani, *From the Family Farm*, pp. 211-212.

The lawyers for the two cattlemen argued that Brundage's decision incorporated a number of factual and legal errors, including the refusal to admit the certificates of purchase that "proved" that their lands had been acquired before Haggin had made his first water claim. It was on the issue of evidence, not a question of riparian rights, that the State Supreme Court heard the case on appeal.[31]

The California Supreme Court heard the case in 1883 and 1884. As the court was deciding *Lux v. Haggin*, based upon a challenge during a devastating drought, the Kern River began to climb its banks. Heavy rains and snowfall during the winter of 1883-84 had increased the river's flow to such a point that Miller and his opponents engaged in desperate attempt to prevent the swollen river from overflowing its banks and flooding their lands. Haggin had reclaimed much of the beds of the Kern and Buena Vista Lakes, to the south of the river, and built a canal to carry off any excess water that bypassed his upstream irrigation canals. He constructed levees to protect his new lands. On the north side of the river Miller and Lux had reclaimed lands, also protected with levees. As the river rose, through April and into May, it was "a most absorbing question as to whether the waters would break on Miller's side or on Haggin's.[32]

On May 17, 1884, Haggin's levees broke. In a few hours a hole forty-feet wide opened, and a huge torrent of brown water rushed through. Haggin's lands, reclaimed at great expense, began to flood. Carr brought in his superintendents and foremen from around the county to halt the flood, and teams of workmen with sandbags attempted to rescue Haggin's land. Henry Miller and his lead attorney showed up soon after the levee burst. Miller could not find a reason to object to the repair of Haggin's levee, but his lawyer, R.E. Houghton, who had recently fought James Ben Ali Haggin in Superior Court, was equal to the task.[33]

Miller and Lux owned forty acres of land in the middle of Haggin's thousands of acres. Houghton had Miller immediately claim that he was entitled to the right to have the river flow unhindered through and over his land. According to historian Wallace Morgan, Miller strode up to the break in the levee, where Haggin's men frantically worked, demanded that the work cease and offered Haggin's engineer a cigar. When the two men returned

[31]Miller, "Law and Entrepreneurship," p. 48.
[32]Morgan, *History of Kern County*, pp. 104-105; Comfort, *Where Rolls the Kern*, pp. 154-155.
[33]Morgan, *History of Kern County*, pp. 105.

from the river, Houghton rushed to Superior Court in San Francisco and requested an injunction from Judge John Hunt to halt Haggin's repair work. Houghton protested that Haggin was "endeavoring to restrain" the river from flowing over Miller's land and that this restraint "greatly" damaged Miller because "large quantities" of tules and reeds did not receive the necessary irrigation. The injunction was granted.[34]

Haggin's attorneys had the injunction dismissed by another judge (Judge Hunt had gone fishing) and Carr ordered five hundred men to report to work on the levee. Houghton then managed to have another landowner, with a smaller piece of property near Miller's land, request another injunction to halt the repair of the levee. A Napa County judge granted one. Houghton rushed back to the swollen river with orders to halt William Carr. He arrived just as Carr's men hauled the last sandbags into place. Carr read the court order slowly and stalled for time. Haggin's engineer then read it, slowly, and stalled for more time. Finally, just as the gap closed, Carr ordered his men to cease working. Haggin and Carr had apparently won.[35]

Then the levee broke again, and Miller's forty acres, and Haggin's thousands, flooded to a depth of fifteen feet. It took more than a month before the dam was repaired. The lake bed became a lake again and it did not completely dry for over a year. But Houghton did not stop at merely submerging a few thousand acres of his opponents' land. He had William Carr brought before the Napa County judge for contempt of court. The judge let Carr off with a mild warning. Judge Hunt, back from his fishing trip, was less forgiving and fined Carr and his engineer a thousand dollars each.[36]

In late 1883, and through the summer of 1884, the State Supreme Court listened to the arguments of the two opposing water lords. Both sides once again presented the same basic arguments. On October 27, 1884, the court issued its ruling in a brief, four-to-three resolution, favoring Miller and Lux. The majority of the court asserted the fact that riparian rights had never been overturned in California and that earlier decisions recognizing prior appropriation in mining cases did not apply to the case in question. The issue in the case was whether Haggin and Carr had diverted water before or after Miller and Lux had received title to their lands. The purchase certificates that Brundage had refused were admissible, the Supreme Court

[34]Ibid., p. 105.
[35]Ibid., pp. 105-107.
[36]Ibid., pp. 107-108.

wrote. On this question of evidence the court overturned the previous decision.[37]

However, the three dissenting judges insisted that prior appropriation qualified as state law. Riparian rights only belonged to those owning Mexican land grants and were abrogated by provisions written into the California state constitution, they argued. Because of the immense controversy the *Lux v. Haggin* case aroused, and the possible senility of a judge, the court agreed to rehear the case.[38]

From 1884, until the final decision by the Supreme Court in 1886, irrigationists and small farmers attempted to block the court through public outcry and legislation. Two large and noisy irrigation conventions took place, one in Riverside in May 1884, and another in Fresno December 1885. At both conventions delegates bitterly attacked riparianism as a repulsive and dangerous doctrine. But the proposed legislation produced by this public outcry was the most important outcome of the two conventions. A comprehensive package of water legislation, known as the "Fresno Bills," passed the Assembly in early 1885 by a four-to-one margin. This package included bills that limited riparian diversions, affirmed all existing appropriative claims, allowed appropriators to condemn riparian diversions, and proposed irrigation districts to administer water distribution.[39]

The Assembly bills ran into stiff opposition in the state Senate in 1885. An alliance of senators that represented hydraulic mining and riparian interests blocked the Fresno bills. One of the three senators leading the fight against the legislation had strong ties to Miller and Lux. Inexperienced anti-riparian senators waited too long to introduce their bills, lost precious time, and had their legislation buried in a flood of opposing bills. Furthermore, senators felt that the Supreme Court might reverse itself and rule in favor of Haggin. None of the Fresno bills passed the Senate and the controversy continued to boil.[40]

In the end, it was the State Supreme Court that finally answered the question of riparian rights. The encyclopedic April 26, 1886 decision, ruled in

[37]Miller, "Law and Entrepreneurship," pp. 49-50, 60; Pisani, *From the Family Farm*, pp. 213-214; Freyfogle, "Lux v. *Haggin*," p. 494; *Kern County Californian*, November 1, 1884.

[38]Miller, "Law and Entrepreneurship," p. 50; Pisani, *From the Family Farm*, pp. 214-21 5.

[39]Pisani, *From the Family Farm*, pp. 217-222.

[40]Ibid., pp. 222-225. The *Kern County Californian*, March 21, 1885, attacked the legislature as a "misrepresentative body" whose irrigation bills had been "defeated by the means of coin paid to its members by the millionaire land monopolists." Also see Los Angeles *Daily Times*, March 3, 4, 1885.

favor of Miller and Lux. The court rejected Haggin's attempt to reconsider and rewrite California water law. Its decision ran almost 200 pages and remains the longest opinion ever issued by the court. The length of the decision resulted, in part, from the court's attempt to answer criticism of the riparian doctrine and to a review of the history of water law in California, England, and Mexico. Once again the Supreme Court had overturned the lower court decision based on the simple matter of evidence. The justices based the defense of riparian rights upon their prior defense of private property rights. The court's innate conservatism in dealing with such issues also helped to decide the question.[41]

The court dismissed Haggin's arguments that riparian rights were hostile to the public good and economic development. They found that the water rights of a riparian owner counted as property rights and, therefore, had to be protected. Stable property rights best promoted the economic growth of the state, and riparian rights were vested property rights that the court could not abolish or diminish. Furthermore, property rights, once vested, could not be taken away without compensation. "The court was, in short, a conservator and a protector, not a social engineer." The court supported riparian rights simply because they were part of the common law. Once common law created a property right, the right demanded and deserved protection.[42]

The court argued that nonuse of a water right did not destroy riparian rights. Haggin's claim that Miller had forfeited his right to the Kern River water by not protesting Haggin's construction of the Calloway Canal in 1875 was invalid. Use of water also did not create riparian rights. Proving or disproving that a watercourse existed, with its attendant rights, was immaterial. Any diminution of the flow of water over a riparian owner's lands without consent represented an "actionable injury." The court did not completely reject the doctrine of appropriationism, but simply confined it to public lands. Once riparian lands fell into private hands, no appropriation

[41]As of 1986. Freyfogle, "*Lux v. Haggin*," pp. 504-507; *Kern County Californian*, May 1, 1886. The San Francisco *Chronicle*, April 27, 1886, attacked the court for not allowing their decisions to be governed by their environment. The "great English judges, whose decisions constitute the body of the old common law . . . would never have tried to enforce in the tropic rules which were applicable to the arctic circle; nor would they, in a country whose agricultural product depends upon the use of all the water, that can be got, have insisted upon rules which were right and proper in countries where there was more water than was wanted."

[42]Freyfogle, "*Lux v. Haggin*," pp. 507–520; Miller, "Riparian Rights and the Control of Water in California," p. 5; Pisani, *From the Family Farm*, pp. 227-229. But at least the California Supreme Court was intent upon the protection of property rights. For a negative appraisal of the consequences of commercial growth and development on property rights in the East see, Morton Horowitz, *The Transformation of American Law, 1790-1860* (New Haven: Yale University Press, 1977).

could be made upstream because such a diversion diminished the flow of the riparian owner's property right to that water. An upstream appropriation could only occur when all the riparian lands along the watercourse were owned by the state and no private riparian owners existed. Therefore, the point in time at which an appropriator began to divert water was critical. Thus, an appropriator had superior rights only if he began using water before the riparian owner acquired his property.[43]

The decision provoked another uproar. Carr, aided by screaming, protesting farmers, helped to organize an anti-riparian convention in San Francisco in May 1886, and again pressured the state government to act against the court's ruling. Carr then toured the state and convinced a bare majority of state senators—and a vast majority of state assemblymen—to sign a petition that urged Governor George Stoneman to call a special session of the legislature to rewrite the state's water laws. Reinforced by a massive number of mint julips and other drinks, the governor, in an advanced state of intoxication, signed the executive order to convene the legislature on July 20.[44]

The special session was a squalid affair. Votes were reportedly bought and sold for outrageous prices. The opposing sides poured vast sums of money into the capitol to influence legislators. Newspapers throughout the state condemned the special session and its political shenanigans. Carr's men reportedly paid $300 to each assemblyman who voted for the constitutional amendment abolishing riparian rights and another $600 if the amendment passed the Senate. Miller confided to a friend during the special session that "plenty of money makes a good politician." The anti-riparian bills passed the Assembly but stalled in the Senate again. The failure of the bills occurred, in part, because the irrigation forces attempted to reorganize the state Supreme Court, a transparent attack upon the judiciary. The appropriationists hoped that a reconstructed court would overturn *Lux v. Haggin*. William Carr and Governor Stoneman justified the plan on the grounds that several of the justices had been incapacitated by illness, and even "mental incompetence," and that the court was underpaid. The bill to remake the court reduced the number of judges from seven to five and doubled their salary. Negative editorial and public reaction to the plan, combined with

[43]Miller, "Shaping California Water Law," pp. 18-27; Miller, "Law and Entrepreneurship," pp. 55-57; Norris Hundley, Jr., *The Great Thirst: Californians and Water, 1770s-1990s* (Berkeley and Los Angeles: The University of California Press, 1992), p. 95.

[44]Pisani, *From The Family Farm*, pp. 230-232; Morgan, *History of Kern County*, p. 108; Berg, *Kern County Land Company*, p. 14.

wagon loads of Miller's money, helped to destroy the chances to overturn the court's riparian ruling in the legislature. The legislature adjourned on September 12 without having achieved much of anything besides filling its pockets and discrediting its reputation. It was also during July, at the start of the regular session, that Henry Miller inflicted his revenge for the 1881 Superior Court ruling and defeated Judge Brundage's re-election effort.[45]

After all had been said and done, after millions of dollars had been squandered, after two sessions of the California legislature, and after a decade of legal warfare, the two combatants were punchdrunk with exhaustion. Henry Miller and James Ben Ali Haggin ratified their truce on July 28, 1888, and divided the waters of the Kern River between themselves. Thirty-one ditch companies and fifty-eight individuals signed the Miller-Haggin agreement. The contract recognized that both sides had vested riparian and appropriation rights, but supported neither. It gave the parties of the first part, represented by Miller, one-third of the water of the Kern River during the months of March to August of each year. The parties of the second part, represented by Haggin, had access to all the remainder. The agreement provided for the measurement and delivery of the water and for construction of a reservoir at Buena Vista Lake. Surplus water not used by Haggin had to be stored in the reservoir for Miller and Lux's use. Both sides planned to work together in construction, repair and maintenance of the reservoir and the necessary levees and canals to carry the river's water. Haggin and Miller and their respective allies agreed to equally join suit against anyone who attempted to divert water. The two opponents also agreed to dismiss any pending suits.[46]

Such an agreement was almost anticlimactic. But the dispute over access to the waters of California did not end with the Miller-Haggin agreement of 1888. *Lux v. Haggin* had serious consequences not only for California, but for the entire American West. Of the seventeen states in the arid half of the continental United States, west of the ninety-fifth meridian, nine followed California's lead in retaining the riparian doctrine in a modified form. This

[45]The Los Angeles *Daily Times*, March 17, 1887, in an article entitled "Carr's Coin," described a suit against William B. Carr by one of his men. Apparently, Carr's employee, A.J. Rhodes, paid $680 to influence various legislators, and sued Carr to gain repayment. At the end of his life Henry Miller estimated that he had amassed $100,000,000 in property and spent $25,000,000 on legal fees. Lawrence, "Henry Miller and the San Joaquin Valley," p. 64; Pisani, *From the Family Farm*, pp. 234-242; Morgan, *History of Kern County*, p. 109; Berg, *A History of the Kern County Land Company*, p. 14.

[46]"Contract and Agreement between Henry Miller and others of the first part and James B. Haggin and others of the second part, July 28, 1888;" Morgan, *History of Kern County*, pp. 109-110; Treadwell, *The Cattle King*, pp. 93–94; Miller, "Law and Entrepreneurship," p. 68.

ensured continued judicial conflict over water rights for decades to come in these states. The unpopularity *of Lux v. Haggin* also helped to provide support for the passage of the Wright Irrigation Act of 1887, which authorized the formation of irrigation districts to distribute water to non-riparian lands. The Wright Act allowed the condemnation of riparian rights through eminent domain and worked fairly successfully as an irrigation enterprise. This act helped to eventually break the riparian water monopoly and develop California's agriculture by bringing more land into usage.[47]

Lux v. Haggin was not the death knell for California's agriculture, as has been claimed by its most polemical critics. In the years following the decision, the population and agriculture of the San Joaquin Valley increased dramatically. By 1900 there were 2,500,000 irrigated acres in California. Another 1,500,000 acres were added in the next twenty years. A majority of this acreage was actually irrigated using appropriative rights. However, as the courts reinforced riparian rights in the forty years following 1886, there was less water for a continually increasing population. The failure of the California Supreme Court to reconsider the viability of its water laws in the 1880s was a hindrance to legislative action to correct the problem of water scarcity. Legal historian Eric T. Freyfogle has called the Lux decision a "narrow, parochial vision . . . fundamentally ill-suited to the needs of California." Historian Donald Pisani, on the other hand, has called such judgments "unfair" and correctly noted that both riparian and appropriative doctrines promoted monopoly. As long as monopolists such as Miller and Haggin dominated the political and economic environment of California, only concentrated action by the federal government could break such unregulated power.[48]

[47]These states were Kansas, Montana, Nebraska, North Dakota, South Dakota, Oregon, Texas, Washington, and Oklahoma. Pisani, *From the Family Farm*, p. 248. Hundley, in *The Great Thirst*, p. 95, has found only eight states (not including Montana) that adopted the "California Doctrine." Regardless, this legal mixture was of decisive importance in advancing the competing water law systems found in Western states. Miller, "Shaping California Water Law," pp. 24-25, 34.

[48]See Carey McWilliams for a condemnation of Miller and Lux and the riparian doctrine. Carey McWilliams, *Factories in the Fields: The Story of Migratory Farm Labor in California* (Boston, MA: Little, Brown and Company, 1939), p. 33. Also see Miller, "Shaping California Water Law," pp. 24-25, 34; Pisani, *From the Family Farm*, pp. 245-249; Freyfogle, "*Lux v. Haggin*," pp. 523-525. See the author's thesis "To Water the Valley" for a discussion of the problems of federal intervention in the lassiez-faire economic environment of the late nineteenth-century and early twentieth-century United States. Henry Miller lived until 1916 and died with land holdings in excess of one million acres. Carr died in 1897, Tevis in 1899, and Haggin in 1914. Haggin and Tevis founded the Kern County Land Company in 1890, whose acreage eventually exceeded even Miller's empire. Phelps, *Contemporary Biography of California's Representative Men*, pp. *27-31, 325-329; The National Cyclopedia of American Biography, 19:* 213-214; San Francisco *Chronicle, August 22*, 1954. In 1890, the Kern County Land Company owned over 375,000 acres in Kern County alone. Miller, "Law and Entrepreneurship," p. 70.

However, such intervention proved difficult and controversial, as governmental action often promoted monopoly as often as it combated it. The legacy of the American West is not the ideal articulated by Frederick Jackson Turner. The legacy is one of a never-ending battle between powerful, often monopolistic, forces of aristocratic capitalism as first demonstrated over one hundred years ago in *Lux v. Haggin*. Legal questions of land monopolization and access to water still plague California, as do vicious battles between entrenched interests over political and economic power.[49]

[49]For a further analysis of these questions see Donald Worster, *Rivers of Empire: Water, Aridity, and the Growth of the American West* (New York: Pantheon Books, 1985), and Marc Reisner, *Cadillac Desert: The American West and Its Disappearing Water* (New York: Viking Penguin Inc., 1986).