

Chapter 3

## Dreams Become Reality

*We have the climate; we have the soil of a first class country; but, for the want of that water which runs to waste at our very doors, and which a little sagacity and industry could make pour itself over our rich earth, we are living in a comparative desert, and are becoming notorious for our poverty.*

This was the November 3, 1871, editorial comment of John Dillard Spencer, publisher of the *Stanislaus County News* and one of the strongest proponents of irrigating the lands of Paradise Valley. He was describing the Stanislaus scene and dilemma of the day.

In reality, Stanislaus County already was ascending to recognition as California's king of wheat, a most profitable crop. However, the vagaries of weather would force many smaller farmers to consider diversification for better, more profitable crops. That could be accomplished only through the development of a workable irrigation system.

Irrigation was not invented in California, nor for that matter in America. Irrigation had been practiced for thousands of years. The Tigris and Euphrates Rivers in the Middle East and the Nile in Egypt had been diverted by ancient people to water fields. Greek and Roman empires developed irrigation systems.

Evidence has been found of irrigation systems dating to prehistoric times in Arizona's Salt River Valley, which is the location of an early U. S. Bureau of Reclamation irrigation development, the 250,000-acre Salt River Project.

When Spanish explorers first entered the Pacific Southwest in 1545 they found Indians irrigating in the Rio Grande Valley as they apparently had done for generations. Missionary priests coming to the New World appreciated the value of irrigation and located missions close to sources of water. In 1771 Father Junipero Serra relocated Mission Monterey to take advantage of a better source of irrigation water. That same year, Mission San Jose dammed a river to divert water for crops. It is said that within hours

after the Mormons arrived at Salt Lake in 1847, they were digging irrigation ditches. The State of Utah in 1865 became the first in the nation to enact irrigation district laws, although they were used very little.

Early California settlers and gold miners dug ditches to water small fields, run sluice boxes and serve hydraulic mining operations. But these were individual efforts.

The potential for larger systems was evident, however.

Only six months after Stanislaus County was created, Silas Wilcox issued his first official report as county surveyor: "The plains in this county could be irrigated by taking water from the rivers running through it as the foot of the mountains by means of canals." He went on to say, however, the idea was not "expedient" because of the "great expense," an insufficient number of consumers and the belief that windmills would provide sufficient water for this purpose. These convictions were held by some farmers for the rest of the 19<sup>th</sup> century.

The first irrigation systems to be developed in California were privately owned, starting with James Moore's Ditches diverting Cache Creek water to Yolo County farms. Established in 1856, this small beginning was to become nearly a century later the Yolo County Flood Control and Water Conservation District, formed in 1951. During the late 1850s and 1860s, several water companies were created, many of those in Central California utilizing abandoned mining ditches.

In the 1860s irrigation pioneer Will Green devised a canal system to serve the Colusa area from the Sacramento River. The estimated \$350,000 cost was beyond the ability of the local community, so the plan was turned over to the state Legislature for consideration. By the time that body revised the plan, the scheme involved a 100-foot-wide navigation canal costing nearly \$12 million. The idea was abandoned in 1866 as too grandiose.

It would be a German immigrant who arrived in San Francisco in 1851 with only \$5 in his pocket who was to develop San Joaquin Valley's largest privately-owned irrigation works. A butcher by training, Henry Miller followed his trade rather than search for gold. Within a year, he owned shops in San Francisco and soon was acquiring his own supply of livestock for his retail and wholesale business. In the mid-1850s he rode through Pacheco Pass to the San Joaquin Valley and promptly purchased the 9,000-acre Santa Rita Ranch near Los Banos and 7,500 head of cattle.

Ultimately, he and his partner, Charles Lux, were to own 400,000 acres stretching for more than 100 miles along the San Joaquin River from where Highway 99 today crosses it north of Fresno to the vicinity of Crows Landing in Stanislaus County. The partnership also owned 70,000 acres on the Kern River in the vicinity of Crows Landing in Stanislaus County. The partnership also owned 70,000 acres on the Kern River in the vicinity of Tulare Lake and vast holdings elsewhere in Northern California. Pasture was the sole use of the land until the droughts of the 1860s when Miller, the dominant partner, turned to irrigation to raise feed for stockpiling.

In 1871 the San Joaquin and Kings River Canal Company was organized. When the San Francisco speculators behind the project found themselves in over their heads, Miller and Lux, who controlled the San Joaquin River's riparian water rights, bought the company at a small fraction of the original investment in works already constructed. Miller was the driving force behind completion of a canal 45 feet wide, four feet deep and 75 miles long, extending from a diversion point near Firebaugh to Orestimba Creek, four miles south of Patterson. It was from this project that Stanislaus County farmers received their first canal water to irrigate 10,000 acres in the vicinity of Crows Landing.

Although Miller & Lux Company operations would give impetus to the irrigation district movement a decade later, the presence of this canal caused the failure of California's first serious proposal for public ownership of an irrigation system where the land would own and control the water it used.

In the spring of 1875, 50 Grange delegates representing counties from Fresno to Contra Costa met in the western Stanislaus community of Grayson for a two-day convention to discuss ways of irrigating lands west of the San Joaquin River.

Out of this meeting came legislation signed April 3, 1876, by Governor William Irwin that created the West Side Irrigation District, designed to construct a canal from Tulare Lake to Antioch, a distance of 187.5 miles. Engineering studies proved the \$4.3 million project would provide water for more than 340,000 acres. A new concept in irrigation development which would be fundamental to the success of future irrigation district proposals was introduced. All water rights would be inseparable from the lands to be irrigated.

Directors were chosen and taxes approved by the electorate. But on the day in May 1876 that the governor and other dignitaries were celebrating establishment of the district in a major festival held in the

Town of Grayson, the California District Court declared the authorizing legislation to be unconstitutional because it permitted the condemnation of Miller & Lux's San Joaquin and Kings River Canal Company system that extended through the area to be served by the new district.

Although the West Side Irrigation District failed two years before Miller & Lux's canal reached its southern terminus in 1878, the concept of marrying the rights to water with ownership of the land through the establishment of a public district prevailed. This concept became a key element in the subsequent Wright Act, under which the Modesto Irrigation District was created more than a decade later.

While west side farmers were trying their hand at developing a publicly-owned irrigation district, on the east side of Stanislaus County the owner of a private dam and canal system was trying to win government support and subsidy for completing an extensive irrigation system served by the Tuolumne River.

In 1852 a group of San Francisco financiers constructed a dam for hydraulic mining diversions near La Grange. The sturdy structure had withstood many floods, including the disastrous 1861-62 runoffs which devastated much of Northern California.

M. A. Wheaton, a San Francisco lawyer, subsequently acquired full title to the dam and adjacent ditches. As mining waned, he created the Tuolumne Water Company for irrigation diversions. Wheaton's plan envisioned 200 miles of main and branch canals extending down both sides of the Tuolumne River to the San Joaquin. The scope of the project was far beyond Wheaton's willingness to finance and he conceived a scheme whereby Stanislaus County would subsidize the private corporation by issuing \$300,000 in bonds as a loan to the company.

In February 1872 Senator T. L. Keys of Stanislaus County submitted a Senate bill based on this plan, "An Act for the Encouragement of Irrigation." Upon introduction of his bill, Senator Keys presented petitions signed by 130 supporters. In a rather unusual turn of events, he also presented the Senate with another petition signed by 400 opponents who feared higher taxes would result and objected to the county subsidizing a private company.

The *Stanislaus News*, an outspoken advocate of public irrigation systems, editorialized against Wheaton's plan because government "should not depart from the purpose for which it was created" and making the county a "banker" for a private corporation was not a proper purpose of government.

The bill received little or no consideration.

For the next five years, irrigation was discussed. Meetings were held, but nothing positive was accomplished. Severe droughts in the late 1860s had demonstrated the need for irrigation in Paradise Valley. During the 1870s, however, farmer enthusiasm for the idea rose and fell in direct relation to the dryness or wetness of the rainy season.

In a letter to the Stanislaus Weekly News, published July 7, 1876, Wheaton again proposed the creation of a private stock company to purchase the dam and its canals, offering to sell “for just what it has cost me, which is not a tithe of its actual value.” Again he suggested the shareholders in the company be limited solely to owners of land to be served and that each be allowed to acquire only as many shares as the number of acres of land owned, adding, “Land which has no stock subscribed for it shall have no water.”

A drive to raise volunteer funds to achieve this goal began early in 1877. Involved were many community leaders, such as rancher and banker Robert McHenry and others who subsequently played vital roles in the ultimate establishment and operation of the Modesto Irrigation District.

William H. Hall, who had completed the West Side Irrigation District engineering surveys the previous year, was hired. Hall submitted a most enthusiastic report at an April 4, 1877, meeting presided over by A. G. Carver, a sailor from Maine who abandoned the sea to search for gold, then in 1868 turned to farming. Carver later was to serve as president of the MID Board of Directors.

Hall’s proposal again embodied the concept of bringing “the land and the water together in joint ownership,” which he first had advanced for the ill-fated West Side Irrigation District. The corporation was organized, to be activated when 40,000 shares – one per acre – were pledged. The goal was never reached. No more than 1,300 shares were signed.

In 1878 the Legislature authorized the creation of a Modesto Irrigation District, a quasipublic landowners’ corporation to be subsidized by the county. This proposal contained, for the first time, provisions, for the sale of surplus water to generate electrical power. Apathy prevailed once more and the corporation was never formed.

As the years passed, the pressure for irrigation continued. Various proposals were submitted to the Legislature while farmers close enough to the rivers dug their own private ditches. Stanislaus County reports of 1881 show there were 26 miles of irrigation ditches in operation.

Then in 1886 Miller & Lux re-entered the picture.

When California joined the Union, its Constitution was based on English common law, which included riparian water rights. In brief, these provided that the owner of land bordering a stream had a right to use the water of that stream. State courts subsequently confirmed that this right included use of the water for irrigation. Gold miners did not accept this rule. Instead, they simply posted notices “appropriating” the water for sluices and hydraulic mining, a practice approved in 1872 by the Legislature. Thus, California law possessed two conflicting approaches to the use of natural flowing water, one constitutional and one legislative.

James B. Haggin owned thousands of acres of land between Bakersfield and Tulare Lake, but he held no riparian water rights. He built a canal and “appropriated” his irrigation water from the Kern River.

As riparian owners along the Kern River, Miller & Lux sued to block the diversions. The Kern County court decided in favor of Haggin, finding that the lack of rainfall demanded that water be taken away from riparian lands if the rest of the region was to be developed. The California State Supreme Court reversed this decision in 1886, upholding Miller & Lux’s riparian rights.

This meant that if Paradise Valley farmers not adjacent to the rivers ever were to get water, some public system had to be developed.

In fact, the Miller & Lux decision caused such consternation among farming communities throughout the state that Governor George Stoneman called a special session of the Legislature early in the summer of 1886. Some of the Supreme Court justices were accused of incompetence, but nothing was done.

Hall, by now the state engineer, published several reports attacking the riparian laws as unsuited to the environment of the West and opposed to the public welfare. Once again, he urged the development of a system by which the land and the water rights could be married, as he had advocated in earlier reports.

It was this climate that the state legislative election of 1886 was held. Both political parties in Stanislaus County were dedicated to the cause of irrigation. C. C. Wright, a La Grange schoolteacher who had become a most successful self-taught lawyer and served as district attorney, accepted the Democratic Party nomination for state assemblyman. His sole purpose was to achieve the enactment of a workable irrigation district law. This was his only campaign promise and he was elected by a substantial majority.

On January 11, 1887, Wright introduced a bill to authorize the creation of irrigation districts. These would be subdivisions of the State of California much as are counties and school, fire and other special districts. Boards of directors chosen by popular election would have the power to assess and tax all property within the district. One major difference between irrigation districts and the other special-purpose agencies was in the apportionment of the divisions from which each director would be elected. They were divided not only by population, but also by area. This departure of the "one-man, one-vote" doctrine has been upheld by the courts as recently as 1967.

In those days, the Legislature moved with considerably more speed than at present and the proposal was given unanimous approval by the Assembly on February 18. The state Senate took immediate action, amending the bill to strengthen the declaration that the use of water for irrigation is a public purpose and to safeguard existing rights on streams. The bill passed the Senate February 25<sup>th</sup> without a dissenting vote. On the following day the Assembly concurred in the amendments.

Miller & Lux and Haggin, still battling in the courts, united in a last-ditch effort to obtain a veto. In spite of the unanimous vote in both houses of the Legislature, Governor Washington Bartlett was wavering. Veto demands by Miller & Lux, Haggin and other "water monopolists," as they were labeled by *the San Francisco Chronicle*, were self-defeating. The governor was convinced such vigorous opposition from these people meant the bill must have substantial merit. He signed it on March 7, 1887.

Wright, who was 38 at the time, returned home to be met by a large, enthusiastic crowd which escorted him to his home with "pomp and ceremony." Although Wright was to practice law in Modesto for eight more years before moving to Los Angeles, the Iowa native did not seek state office again. He served one term for a single purpose, a good irrigation law, which he had achieved. In later years, attorney Wright defended the act in the United States Supreme Court.

With passage of the Wright Act, the stage finally was set for the development of successful publicly-owned irrigation districts. It also was set for legal and political battles which were to plague the Modesto district for a decade and a half.