

Chapter 4

## The Years of Trial

Paradise Valley weathered the transition from cattle raising to “sodbusting” without the range war popularized in song and film of the “Old West,” but the change from dry farming to irrigation was not so easy. Interrelated fiscal and legal problems, each feeding on the other, were to plague the Modesto Irrigation District for the next decade and a half.

Except for a single incident reported by the *Modesto Evening News* of June 7, 1889, in which a Modesto Irrigation District attorney “implanted a blow on Judge Schell’s nasal organ which caused the claret to flow,” there was no record of violence such as was experienced in other areas during California’s early days of irrigation development.

Lines were drawn between the pro-irrigationists, generally small farmers and city folk whose economic health depended upon an expanding agricultural base, and their opponents, primarily the larger farmers producing vast quantities of grain in traditional ways. Intense battles between the two factions were waged in the courts and by the ballot boxes.

The large wheat farmers liked things as they were. They needed no other reason to oppose change.

Professor Elwood Mead, in a comprehensive report on irrigation in California – U. S. Department of Agricultural Bulletin 100, published in 1901 – commented on this aversion to change:

Men pride themselves on great undertakings and on doing what they undertake on a large scale. Wheat can be grown that way...It is an industry freed from detail...It has none of the petty incidents that go with the management of chickens and pigs, where cows are to be milked, and butter and eggs marketed, where each month has its duties, and where there is no time when something does not need attention.

This sort of farming comes with high-priced land and a dense population, but it does not appeal to the imagination like the plowing of fields so large that turning a single furrow requires a day’s journey, or the cultivation of the ground with steam plows and harrows which require five mule teams to operate them. The cutting, thrashing and sacking of grain in a single operation is spectacular as well as effective. In this respect, it resembles the range cattle business in its best days...

The cowboy on horseback was an aristocrat; the irrigator on foot was groveling wretch. In cowboy land, the irrigation ditch has always been regarded with disfavor because it is the badge and symbol of a despised occupation.

The same feeling, but in a less degree, has prevailed in the wheat-growing districts of California for much the same reason.

That Mead's evaluation of the aversion to change was especially true in Paradise Valley was confirmed personally by George Stoddard, who was deeply involved in the development of irrigation in the Modesto area from his arrival here in 1885. Stoddard, who served first as collector and then as treasurer of the MID from 1894 until 1943, made the observation in a 1942 interview with Benjamin Franklin Rhodes, Jr., who was then preparing a University of California doctoral thesis.

After the March 7, 1887, signing of Assemblyman Wright's California Irrigation Districts Act, the organizers of the Modesto Irrigation District moved quickly, but opponents moved even greater speed.

On April 25<sup>th</sup>, organizers circulated a petition calling for formation of the district. Seventy-three property owners endorsed the proposal. However, 11 days earlier before any formal move was made to create a district, opponents were in the field petitioning against the idea. One hundred six people, representing farms from eight to 3,720 acres in size that averaged between 400 and 500 acres per farm, signed the opposing petition dated April 14, 1887. The largest farm was that of Christopher Columbus Baker, who was to lead the opposition for nearly 15 years, even while serving 11 years on the district's board of directors.

Baker and another person whose name was to become synonymous with litigation in opposition to the district, William Tregea, were prominent in the formal hearings held before the Stanislaus County Board of Supervisors. Tregea, a Modesto harness maker whose trade allied him closely with owners of large farms, apparently foresaw the strong support which city voters would give to formation of the district. He thus made a strong appeal for its exclusion on the ground that city property would not benefit from irrigation as required for inclusion by the Wright Act. Countering Tregea's contention was a formal request from the Modesto Town Council that the city be included. This issue was to become the basis for litigation which ultimately reached the U. S. Supreme Court.

Baker and other opponents contended further that increased taxes would create unfair burdens without matching benefits and offered a rather novel contention that people with mortgaged property were not true "freeholders" as specified by the Wright Act. Thus, their names should be stricken from the

organizing petition. To have done so would have invalidated the petition because many irrigation supporters were living on and farming mortgaged land.

These arguments and a challenge to the basic constitutionality of the Wright Act were to be the foundation for lawsuits which would not be resolved until after the turn of the century.

After four days of hearings and a field trip to view the area proposed for inclusion in the Modesto Irrigation District, the county supervisors, in spite of the vigorous opposition, called for an election on July 9, 1887.

Tregea's fears proved all too valid. Overwhelming support by the people of Modesto carried the election with a favorable vote of 700 to 156, far exceeding the required two-thirds majority. In creating divisions for the election of directors to serve the proposed district, much of the town of Modesto had been assigned to Division 3. There, the vote was 526 to 25 in favor of formation. However, in the Empire division the vote was 42 to 33 against the proposal and in the farming area north of Dry Creek the vote was an almost unanimous 37 to 5 opposition. Outside the Modesto area, the vote in favor of establishing the district was 174 to 131, far short of the required two-thirds.

Not missing any opportunities to upset organization of the district in case it were to receive voter approval, opponents put their own slate of candidates on the ballot. Two were elected, J. W. Davison from Empire and E. H. Gatlin from the Dry Creek area. Baker, who sought the directorship in the Paradise area south and west of Modesto, lost to irrigation advocate W. H. Finley, 45 to 24. Eight years later Baker's son-in-law, W. W. Carter, unseated Finley, and Baker was elected to the board in 1897 when the foes of irrigation took control.

Modesto banker and rancher Robert McHenry was the only candidate the opposition did not contest and he became the district's first president. A. G. Carver, the sailor turned farmer who was an early advocate of irrigation, was the fifth member of the district's first board.

In the contest for district treasurer, Tregea accumulated 156 votes against 697 for the successful Isaac Perkins; 522 of Perkins' votes came from Modesto. Tregea carried the Dry Creek and Empire divisions, as did G. T. Hughes and C. M. Beckwith in unsuccessful bids for the posts of assessor and collector, respectively.

On July 23<sup>rd</sup>, the newly-elected Modesto Irrigation District Board of Directors, without a home of its own, met for the first time in the offices of the First National Bank, of which McHenry was president. The directors set about the novel and difficult task of organizing an irrigation district, an effort never before attempted. It was complicated by a lack of experience and a total lack of funds.

At the same time, opponents convened to plan their strategy for destroying the district.

A loose organization was formed under the leadership of Baker, a native of Kentucky who at the age of 19 had driven an ox team west during the rush of 1849 and settled on the Tuolumne River west of the present sight of Modesto, not to seek gold but to raise sheep.

In the wheat boom that followed, Baker grew grain on upland property, but continued to raise cattle and sheep on riverbottom land, some of which flooded frequently. Baker at one point charged: "Here they are charging me a high tax for land that is under water. Do you think I want irrigation for the frogs down in those swamp lands and ponds?"

The first challenge came in September 1888 when the Modesto district levied its first property tax of 33 1/3 cents per \$100 assessed valuation to raise \$13,000 for operation of the district, including the planning of the canal system.

Tregea paid his taxes under protest and promptly sued MID Collector T. O. Owens for recovery of his \$63.16 on the contention that the assessment had been made illegally without benefit of an election as required.

The Stanislaus County Superior Court upheld the validity of the irrigation district's tax. Four years later, the California State Supreme Court reversed that decision, holding that the Wright Act was so written that elections were required before tax assessments could be collected.

As a practical matter, putting the assessments to a vote would appear to have been a foregone conclusion in view of the overwhelming support City of Modesto voters gave to creation of the district and subsequent passage of bond issues. It was the first opportunity, though, for the opponents to take the matter to the courts.

The California Supreme Court in 1892 ordered a new trial in the case, but by that time Tregea and associates were so involved in a much more serious legal challenge to the basic constitutionality of the

Wright Act that they failed to follow through and a new trial was never held. The case and its subsequent decision proved to be a major hindrance to the district, however.

While awaiting the decision, the district continued to levy tax assessments without the benefit of elections. More and more property owners paid their taxes under protest, or flatly refused to pay at all. After the Supreme Court ruling, the practice took a substantial jump.

By that time, Baker and his colleagues in opposition had organized formally as the Defense Association, claiming to represent owners of 70,000 of the 108,000 acres originally included within the district boundaries. In effect, these were the 156 people who originally had voted against the district's creation.

The opponents took to the courts at every opportunity. Suits were so numerous in those early years of the Modesto district that George T. McCabe, in preparing a 1920 Modesto Board of Trade history of Stanislaus County, wrote, "When one spoke of irrigation, he usually meant litigation."

Defense Association attorneys won injunction against the sale of property for delinquent taxes. Finally in 1895 Stanislaus County Superior Judge W. O. Minor, himself a delinquent taxpayer, issued a blanket restraining order forbidding the district from selling any tax-delinquent lands until the *Tregea vs. Modesto Irrigation District* suit and another basic challenge to the Wright Act, *Bradley vs. Fallbrook Irrigation District*, were decided by the U.S. Supreme Court.

As a result of the state Supreme Court's 1892 ruling, Judge Minor's injunction and the depression which hit the nation in 1893 and 1894, the delinquent tax roll for 1895 accounted for \$41,300 of the total \$50,648 MID assessment.

Delinquent taxpayers that year and the next included three members of the MID Board of Directors, the irrigation district's attorney, the newly-elected MID assessor, the prime contractor on building La Grange Dam and canals, R.W. Gorrill, and, most notably, the MID treasurer, G.R. Stoddard.

In the interim, Collector Owens refused to turn over to the board of directors any of the funds which had been paid under protest. He feared that if the money were spent, he might personally be liable for repayment should the courts sustain the opposition.

This refusal to release funds was behind the earlier-mentioned altercation between MID attorney

C. A. Stonesifer and Judge O. W. Schell. Stonesifer alleged that Owens was committing a felony by withholding funds. Judge Schell disagreed, whereupon, according to the *Modesto Daily Evening News*, the attorney called the judge a liar and attacked him.

The most significant case of all, which went all the way to the U. S. Supreme Court, was one started by the district itself.

Throughout the state in the early days of irrigation district operations, it proved impossible to sell bonds because of the uncertainty of the constitutional validity of the fledgling districts and their yet-to-be established fiscal stability. In March 1889 the first in a series of legislative amendments to the Wright Act provided for judicial confirmation of proceedings through which individual districts were established and their bonds issued.

The Modesto Irrigation District initiated proceedings on July 31, 1889, to validate its organization and subsequent bond issues. On the same day the district reissued and sold \$400,000 of the \$800,000 in bonds voted a year-and-a half earlier but never sold for a lack of buyers. Opponents, represented by Tregea, intervened to fight the validation. Tregea, challenged the constitutionality of the Wright Act, the procedures followed in the bond election and the inclusion of Modesto land as part of the district.

In November, after hearing the case over a period of two months, Superior Judge Minor's decision promptly appealed by Tregea.

It wasn't until March 19, 1891, that the California Supreme Court upheld Judge Minor's decision which, as far as that court as concerned, put to rest all the issues raised by the opponents.

While much of the state court decision was devoted to technical issues such as whether proper notice had been given for the Superior Court hearings, the Supreme Court specifically addressed each of Tregea's arguments. In a decision written by Chief Justice W. H. Beatty, the high court pointed out that three years earlier it had ruled that the Wright Act was constitutional and that irrigation districts were public entities with the right of assessment and condemnation. This decision had been handed down when the Turlock Irrigation District brought a friendly validation suit against its own secretary, R. M. Williams.

As to the question of whether the city should have been included in the district, the California Supreme Court declared in its 1891 *Modesto Irrigation District vs. Tregea* decision:

Such as has been the intention of the Legislature, as is clearly apparent, and it being equally clear and notorious as a matter of fact that there are cities not only benefited by irrigation, but actually have in profitable use extensive systems for irrigating land within their corporate limits, it cannot be denied that the Supervisors of Stanislaus County had the power to determine that the lands comprising the City of Modesto would be benefited by irrigation and might be included in an irrigation district.

The court went on to point out that the law provides that each property owner and taxpayer is Entitled to his fair share of the water and if the land were not fit for cultivation because the taxpayer had built a shop on it, that was his problem. He still had to pay the taxes.

This was a total victory for the district, but it did not deter Tregua and his colleagues as they appealed to the federal courts, where initially they received a favorable decision at the appellate level.

The U.S. Supreme Court ruled in both the Fallbrook and Tregua cases November 16, 1896: The decisions once again upheld the validity of the Wright Act and of the irrigation districts created under it.

Of special note in the federal Supreme Court hearings on the Tregua case was the involvement of San Francisco Judge James A. Waymire, who has been called the “Savior of the Turlock Irrigation District.” Judge Waymire held a substantial number of TID bonds and when the Turlock canal contractor defaulted, Judge Waymire took over the contract and saw that the work was completed with the backing of his personal funds.

In the City of Turlock’s lively book about the development of the Turlock’s lively book about the development of the Turlock region, *Streams In a Thirsty Land*, Helen Hohenthal quotes Judge Waymire about his involvement in the development of irrigation in Stanislaus County:

By 1894, strong opposition to the Wright Law developed and many lawsuits attacking the constitutionality of the law, the validity of the districts and their bonds were brought. To make matters worse, a great wave of financial depression swept over the world, so affecting values that even wheat could not be sold for a time in California...Throughout the state, all irrigation construction ceased and the Wright Law seemed doomed. Firmly believing in the soundness of the policy and its ultimate triumph, I determined to make an effort to vindicate the principles embodied in the law by making a success of at least one district. As I held some of the Turlock bonds and had induced others to buy, I naturally turned to that district. ©

Judge Waymire had invested heavily in time and money in insuring the success of the Turlock Irrigation District when the United States Circuit Court in ruling on the Tregua case declared the Wright Act unconstitutional and the bonds issued under the law invalid.

Miss Hohenthal recounts what happened next:

Judge Waymire studied the federal court's decision carefully and decided to carry the case to the United States Supreme Court where he hoped to receive a favorable decision. The bondholders of the different districts raised the money to pay the expenses of the case, leaving to Judge Waymire the choice of legal counsel. And well did he choose them.

To handle the case at Washington, he chose Hon. John M. Dillon of New York, ex-judge of the United States Circuit Court, and Hon. A. H. Rhodes, ex-chief justice of California. Before the case went to trial, Judge Waymire had, in the course of a friendly visit with Associate Supreme Court Justice Field, at the justice's own suggestion, discussed the case with him. He suggested that Judge Waymire also secure the counsel of Joseph H. Choate, prominent New York lawyer. Justice Field, in recommending Choate, said the latter "had a pleasing way of presenting his cases and the judges like to hear him."

(It should be noted here that when the decision was issued, Justice Field's was one of two dissenting votes. Chief Justice Melville W. Fuller's was the other.)

Waymire wired Choate, but found he had already been retained by George H. Maxwell, leader of the opposition, for the sum of \$10,000. The next step of the story is best related by Judge Waymire himself:

"It seemed highly important to find a match for the eminent New Yorker. Finally, I thought of Hon. Benjamin Harrison, ex-President of the United States. He was the equal of any man as a lawyer, his personality would certainly be as interesting and impressive as that of Mr. Choate, and the fact he had appointed three of the judges would do no harm. Fortunately, I had a personal acquaintance with the general. A letter explaining the nature of the case and offering a retainer met with a favorable response." ©

Also deeply involved in the case before the Supreme Court was the author of the basic law, C. C. Wright, often referred to as the "Father of Irrigation Districts."

The basic issue decided by the highest court of the land was that the use of water for irrigation was a public use and as such the districts had the right to levy assessments.

The U.S. Supreme Court decision should have ended the district's troubles, but that was not to be.

No sooner had the Supreme Court ruled in favor of the Modesto district and the Wright Act than the anti-irrigationists attacked from another direction: a scheme to sell to private sources not only the Modesto district but also the Turlock Irrigation District.

The idea was to give the bondholders all the completed works, including La Grange Dam and canals, and acquired right-of-way in exchange for the release of the bonds. A decade of hassle had taken its toll and even supporters of irrigation considered the idea worthy of investigation.



Barely a month after the Supreme Court decision, a taxpayers' meeting was held to advance the sale proposal. A committee of Frank A. Cressey, James Johnson, J. W. Davidson, Hiram Hughson and Baker was named to explore with the bondholders their reaction to the proposal. Cressey, Johnson and Davidson were pro-irrigation, the others well established foes.

Contractor Gorrill, who had received a substantial number of bonds in exchange for construction work on La Grange Dam and MID canals, replied that the bondholders were receptive to the suggestion. He stipulated, however, that all debts other than the bonds must be paid before any transaction was consummated and each district must guarantee that a minimum of 15,000 acres would accept water at a price of \$2.50 per acre per year.

The 15,000-acre guarantee proved to be the stumble block. This constituted more than 20 percent of all of the Modesto Irrigation District where farmers, once burned by a decade of waiting for water that never came, were not willing to guarantee anything further.

As Cressey, acting as secretary of the committee, wrote Gorrill on January 5, 1897: "The land is not in a condition to receive the water and at present our farmers are in such a condition financially that they have not the necessary funds to put it in shape to receive the waters."

Although Cressey indicated a willingness to continue discussions, there apparently was no great enthusiasm on the part of the farmers to follow through on the terms set forth by the bondholders nor interest of the bondholders to compromise on these terms.

Shortly thereafter, the opponents of irrigation took even more direct action. Apathy caused by years of waiting for water with none in sight caused low-voter turnouts at district elections; anti-irrigationists capitalized on it to capture control of the board of directors.

The district's leading foe, Baker, won a seat on the board in the February 1897 election, joining his son-in-law, W. W. Carter, who had been elected two years earlier. With anti-irrigationists B. P. Hogin elected to represent the Empire district in 1897, the opposition now had a majority. The two surviving irrigationists were F. C. Davis, who was elected to represent the Modesto division, and Cressey.

The board refused to take any action toward completing the canal network, to levy taxes or to do anything positive. Carter, who believed in irrigation when not under his father-in-law's influence, and

Cressey resigned. This permitted the Stanislaus County Board of Supervisors to fill the vacancies.

Appointed were two ardent anti-irrigationists from the Defense Association, L. A. Finney and John Adams.

The Defense Association was in complete control then and, starting in 1897, all operations came to a halt. Such was the disdain the board had for the district that in October of that year it rented out the front part of its offices for a barber-shop!

For the years 1897, 1898, 1899 and 1900, no tax assessments were levied. Under the terms of the irrigation law, the Stanislaus County Board of Supervisors was required to levy taxes if the district board failed to do so. By a 4-1 vote, the supervisors, who had appointed two ardent anti-irrigationists to the MID board, refused to make the assessment, using the same argument as did the foes of irrigation serving on the irrigation board; that the Wright Act was unconstitutional and the Modesto district was not formed legally.

Irrigation supporters hoped the supervisors refusal would force the bondholders to act to collect their interest. That proved to be the case in 1899. George Herring of England was chosen to represent the bondholders so that the matter could be tried in the federal courts. In June the following year, the U. S. Circuit Court in San Francisco ordered the district to pay Herring \$17,921.25 in interest due.

Still the MID board refused to levy taxes.

Too impatient to let the district die a slow death by fiscal strangulation, the anti-irrigation board on May 3, 1898 urged the start of new legal proceedings to dissolve the district. R. J. McKimmon, an ardent opponent of irrigation who had served on the MID board from 1890 to 1895, brought suit to accomplish this.

With Davis, the only irrigationist remaining on the board, voting against the resolution, the board of directors voted not to defend itself in the case.

Judge James E. Prewitt, assigned to the Stanislaus court from Placer County to hear the matter, ruled in favor of dissolution of the district, stating that he was doing so only to bring the matter to a final California Supreme Court resolution as soon as possible. The higher court ruling favoring the continuation of the district did not come, however, until 1902. By that time, the opponents had gone too far in their efforts to kill the district and had lost control of its board.

The end of the opposition's control came in 1901.

In 1900, the Stanislaus County Board of Trade, composed primarily of Modesto businessmen, was formed to fight for irrigation.

There were no provisions for the recall of elected officials in those days, but an attempt was made to have the courts remove Baker as an MID director. A civil “accusation” suit was filed in the Stanislaus County Superior Court by J. F. Kerr, supported by a long list of pro-irrigationists. Baker, as a member of the MID Board of Directors, was accused of “corruptly” refusing to act on any of the pressing matters facing the district. The action was dismissed, not on the issues but on the technicality that the suit was not properly taken.

The beginning of the end came January 2, 1901, when the lone irrigation supporter remaining on the board, Modesto’s Director Davis, moved to call the regular election for that year. His motion died for lack of a second.

Ten days later, irrigation supporter R. C. Bailey asked the Stanislaus County Superior Court to mandate the calling of an election. Judge William G. Lorigan of Santa Clara County was brought in to hear the case.

The Defense Association attorneys, Judge Van R. Patterson of San Francisco and C. W. Eastin of Modesto, were prepared to wage a long delaying action, but Judge Lorigan set the trial for the following Saturday morning, January 19<sup>th</sup>, with the declaration that it would be completed that very day. By 4 o’clock that afternoon, the trial was over. Judge Lorigan ordered the MID board to meet the following Monday and schedule the regular February election. After a heated debate, the MID board complied with the order and called the election.

On February 6, 1901, the back of the opposition was broken. Three new directors, all strong supporters of completing the system and moving forward with the operation of the district, were elected. T. K. Beard defeated anti-irrigationist A. F. Underwood, 24 to 11, in Division 1. Underwood was so angered by the development that he sold his land for \$20 an acre and moved to Santa Cruz, according to historian Sol Elias. W. R. High defeated Adams, 271 to 32, in Division 2. Davis was not opposed in his bid for re-election and Baker was re-elected by a narrow margin of 25 to 23. Finney’s term had another two years to run.

Finney remained on the board until 1907 and Baker until 1908, but their days of opposition were over and the district moved ahead to completion and the delivery of water that had been promised so many years earlier.