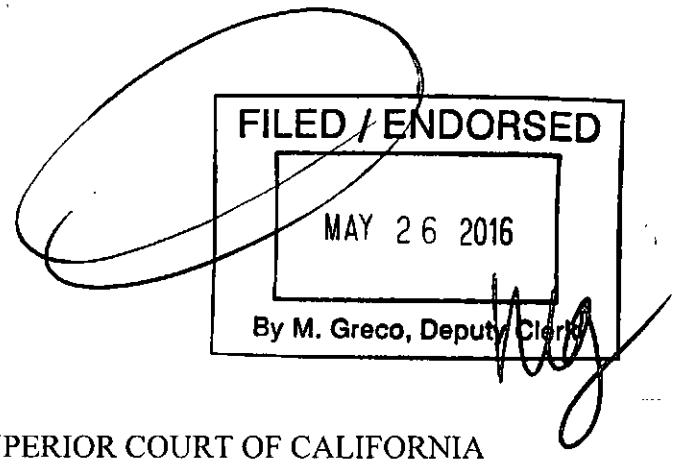

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

MODESTO IRRIGATION DISTRICT, Plaintiff v. HEATHER ROBINSON TANAKA, STATE WATER RESOURCES CONTROL BOARD and DOES 1 through 10, inclusive, Defendants.	Case Number: 34-2011-00112886 **FINAL STATEMENT OF DECISION**

The court held a bench trial in this matter on September 14, 15, 16, 17, 21, 22 and 23, 2015. Plaintiff Modesto Irrigation District was represented at trial by attorneys Tim O'Laughlin and Valerie C. Kincaid. Defendant Heather Robinson Tanaka was represented by attorneys John Herrick, S. Dean Ruiz, and Heather Rubino. At the close of trial, the parties proposed presenting closing arguments through simultaneous briefing. The court agreed that closing briefs would help the court sort through the extensive factual record presented at trial. It ordered both sides to file closing argument briefs on November 13, 2015 and reply briefs on November 23, 2015.

Neither party requested a statement of decision at trial. The court chose to issue a combined tentative decision and proposed statement of decision because of the complexity of the record and the legal issues in this case. That tentative decision was filed on February 22, 2016.

The court on its own motion set the matter for further hearing on March 11, 2016. Both parties filed their responses to the tentative decision on March 8, 2016. Ms. Tanaka presented her response as objections while MID called its document a "reply" to the tentative decision. Both of these responses have been reviewed by the court.

The court held a further hearing on March 11, 2016. MID was represented by Ms. Kincaid at the hearing, and Ms. Tanaka was represented by Mr. Ruiz, Mr. Herrick, and Ms. Rubino. The court heard argument and took this matter under submission in order to prepare a final statement of decision.

THE PLEADINGS

The complaint in this action, filed on October 24, 2011 by plaintiff Modesto Irrigation District ("MID"), alleges that defendant Heather Robinson Tanaka is illegally diverting water from the Middle River and onto land she owns on Roberts Island, an island in the Sacramento-San Joaquin Delta. MID seeks a declaration that Tanaka's property, also known as parcel 131-310-02, does not have a riparian right attached to it by virtue of having been severed from other property that it contiguous to the Middle River, as well as a declaration that the defendant does not hold an appropriative right or any "other" water right. (Comp. for Dec. & Inj. Relief, filed 10/24/11, First, Second and Third Causes of Action.) MID seeks injunctive relief on the grounds that defendant's diversions of water are a trespass and nuisance and constitute an unreasonable use of water.[1] (*Id.*, Fourth and Fifth Causes of Action.)

Tanaka filed an answer generally denying the allegations of the complaint and asserting various affirmative defenses on May 10, 2012.

[1] The complaint also alleges that defendant State Water Resources Control Board violated the public trust in failing to prevent the defendant from making this illegal diversion. The board's motion for summary judgment was granted by Department 54 of this court on December 13, 2013. The board did not appear at trial.

LEGAL STANDARD

As the party claiming entitlement to water, Ms. Tanaka bears the burden of proof. (*California Water Service Co. v. Edward Diebotham & Son, Inc.* (1964) 224 Cal.App.2d 715, 737.) In an action between two diverters that both assert a right to water, "[t]he burden of proof is on the prior appropriator . . . to show by a preponderance of evidence, every element of the right claimed by him." (*Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist.* (1935) 3 Cal.2d 489, 548.) The burden then shifts to the other claimant to prove entitlement to water. (*Ibid.*)

In this case, Tanaka does not challenge MID's water rights.[2] Therefore, this decision will discuss only her rights.

MID asserts in its closing trial brief that "[c]ircumstantial evidence is not sufficient to establish a water right." (MID's Closing Trial Br. At p. 4, citing *In re: Lloyd L. Phelps, et al.*, State Water Board Order WR 2004-004 at 24-27 (Feb. 19, 2004).) The court has reviewed the administrative decision imposing civil penalties in *Phelps* as well as the Court of Appeal's decision in *Phelps v. State Water Resources Control Bd.* (2007) 157 Cal.App.4th 89, the writ action challenging that decision. Neither the administrative decision nor the appellate court decision states an evidentiary rule that circumstantial evidence cannot assist Ms. Tanaka in meeting her burden here. Moreover, both MID and Ms. Tanaka appear to have relied on a degree of circumstantial evidence, especially in the testimony given by their historian-experts.

STIPULATED FACTS

The parties filed a stipulation with the court at the start of trial as to certain facts, evidentiary issues and trial procedures. (Stipulation of Fact for Trial, filed Sept. 15, 2015 ("Stipulation").) "[T]he parcel which is the subject of this action is comprised of approximately 106 acres on the Middle Division of Roberts Island within the San Joaquin Delta located in San

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[2] MID submitted evidence that it diverts water pursuant to valid water rights. (Exh. 109; see also *Meridian, Ltd. v. City and County of San Francisco* (1939) 13 Cal.2d 424, 431-438.)

Joaquin County . . . . ." (Stipulation, p. 2, ¶ 1.) "The Property consists of a home in which Heather Robinson Tanaka and her family reside, a grain mill, and farmland." (*Id.*, p. 2, ¶ 4.) The property was purchased by I.N. Robinson in 1890 from a group of land speculators, including James Stewart. (*Id.*, p. 2, ¶ 1.) I.N. Robinson was the father of I.N. Robinson, Jr., also known as "Newt," and the great-grandfather of Tanaka.[3] (*Id.*, p. 2, ¶¶ 1, 3.)

The parties stipulated that the title for the property was properly established in land surveyor Michael L. Quartaroli's report. (*Id.*, p. 2, ¶ 2.) These chain of title documents were marked as Exhibit 3 and admitted at trial.

The parties stipulated that Newt Robinson and several other landowners established the Woods-Robinson Vasquez irrigation system in 1925. (*Id.*, p.3, ¶ 6.) "The system, known as 'WRV'[,] has a single point of diversion on the Middle River and delivers water to the Property and several other adjacent parcels comprising a total of approximately 1,350 acres. The WRV ditch runs along inland drive which borders the Property." (*Ibid.*)

DISCUSSION

A. Tanaka's Riparian Claims to Divert Water

Ms. Tanaka's first argument is that her parcel has a riparian right to water from multiple watercourses, including the Middle River. "Riparian rights are special rights to make use of water in a waterway adjoining the owner's property." (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1237, fn. 7 (citation omitted).) Riparian rights "are usufructory only, and while conferring the legal right to use the water that is superior to all other users, confer no right of private ownership in public waters." (*Ibid.* (citation omitted))

> It is well settled that the extent of lands having riparian status is determined by 3 criteria: [¶] 1. The land in question must [generally] be contiguous to or about on the stream . . . . [¶] 2.The riparian right extends only to the smallest tract held

[3] I.N. Robinson, Jr. will be referred to herein as "Newt Robinson" in order to distinguish him from his father.

> under one title in the chain of title leading to the present owner. . . . [¶] 3. The land, in order to be riparian, must be within the watershed of the stream."

(*Rancho Santa Margarita v. Vail* (1938) 11 Cal.2d 501, 528-529 (citations omitted).) Ms. Tanaka makes four main arguments in support of a finding that her property has riparian rights: (1) a claim that her property, though not bordering the river, was originally part of a large property with riparian rights which were transferred by deed to her great-grandfather, I.N. Robinson; (2) a claim that the Tanaka parcel was contiguous to Duck Slough before the slough was filled in; (3) a claim that the Woods-Robinson-Vasquez Canal was a modification to or substitution for Duck Slough and therefore retained the characteristics of a natural watercourse; and (4) a claim that the canal should be held to be a natural watercourse. These four arguments will be discussed in turn.

1. Tanaka's Argument That Deed Language Preserved Riparian Rights for Her Parcel

Tanaka contends that her land has a riparian right to water from the Middle River, even though it is not longer contiguous to that watercourse, because of language in the deed conveying title to I.N. Robinson. As noted above, the parties have stipulated to the chain of title. That chain of title shows a patent from the State of California to J.P. Whitney (Exh. 3, pp. 13-15), a deed from Whitney to Morton C. Fisher (Exh. 3, pp. 36-38), a deed from Fisher to Stewart, Bunten and King (Exh. 3, pp. 52-55), and a deed to from Stewart, et al. to I.N. Robinson in 1890. (Exh. 3, p. 72.)

It is undisputed that the Tanaka parcel began as part of a larger piece of land that was contiguous to Middle River. MID does not appear to dispute Tanaka's point that the patent to Whitney from the State of California created initial riparian rights for the entire piece. (Tanaka Post-Trial Br. at p. 2; see also *Rindge v. Crags Land Co.* (1922) 56 Cal.App. 247, 252.) The question is whether I.N. Robinson's purchase of a piece of that larger property *not* contiguous to

the Middle River severed the riparian water rights from the land.

Both sides cite the California Supreme Court's decision in *Hudson v. Dailey* (1909) 156 Cal. 617, in arguing about whether the Tanaka parcel has riparian rights to Middle River. In that decision, the Court stated:

> A subsequent conveyance by one of the original owners, of a part of the tract not abutting upon the creek, would not carry any riparian or other right in the creek, unless it was so provided in the conveyance, or unless the circumstances were such as to show that parties so intended, or were such as to raise an estoppel. If the tract conveyed was not contiguous, had never received water from the creek, and there were no ditches leading from the creek to it at the time of the conveyance, nor other conditions indicating an intention that it should continue to have the riparian right, notwithstanding its want of access to the stream, the mere fact that it was a part of the rancho to which the riparian right had extended while the ownership was continuous from it to the banks of the stream, would not preserve that right to the severed tract. The severance under such circumstances would cut off such tract from the riparian right.

(*Id.* at pp. 624-625, citing *Anaheim W. W. Co. v. Fuller* (1907) 150 Cal. 331.) MID cites *Hudson* for the principle that a riparian right ceases to exist when a piece of land is separated from its physical connection to a watercourse. Tanaka cites it for the proposition that riparian rights exist if provided in the conveyance or if circumstances indicate that the parties intended the land to maintain riparian rights.

Tanaka argues that the all of the deeds transferring the property from the original owner to the time when it was physically separated from the Middle River contained the following phrase describing what was being conveyed: "Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof." (Exh. 3 at pp. 37, 54 and 72.) She argues that this catch-all phrase means that the grantor was passing all rights, including riparian ones, to the grantee.

Tanaka's argument must be rejected for several reasons. First, MID is correct that,

insofar as Tanaka is trying to argue against the presumption of severance of riparian rights, her argument is contrary to the law. (See *Phelps v. State Water Resources Control Board* (2007) 157 Cal.App.4th 89, 116, citing *Anaheim Union Water Co. v. Fuller* (1907) 150 Cal. 327, 331 ["Where the owner of a riparian tract conveys away a noncontiguous portion of the tract by a deed that is silent as to riparian rights, the conveyed parcel is forever deprived of its riparian status."].)

Second, the appellate court in *Murphy Slough Assn. v. Avila* (1972) 27 Cal.App.3d 649, 655, held that a deed that conveyed a strip of land including "the tenements, hereditaments and appurtenances there-unto" and the ". . . reversions, . . . remainders, rents, issues and profits thereof" –language very similar to the deeds at issue here – was nevertheless held to be "*patently silent* as to riparian rights." (*Id.* at p. 655 (emphasis added).)

Third, Tanaka's argument that the words "appurtenance," "appurtenant," "hereditament," and "tenement" are broad enough to include riparian rights simply fails to persuade. (Tanaka Post-Trial Br. at pp. 4:15 – 5:26.) Tanaka characterizes these words as encompassing everything benefitting the land or of a "'permanent nature' associated with the land. (*Id.* at p. 5:23-24) While Tanaka cites some cases in which these words are used to describe a water right attached to the land, she does not identify any cases where similar words used as a reservation of rights in any kind of document conveying land had the effect of preserving riparian rights.

Tanaka also attempts to argue that the parties' intent to retain riparian rights can be inferred from the circumstances of Robinson's 1890 purchase of the property. She points out that Robinson was a farmer, not a reclamation district like the grantee in *Murphy Slough.* She notes that the property was actively farmed since at least 1881 and that water is essential to farming. She further notes that irrigation as a supplement to rainfall is essential in California. Finally, she points out the absence of any reason to think that the financiers who sold the property to Robinson intended to strip the riparian rights away from the land.

At first blush, these sound like common sense points. After all, what farmer in his or her right mind would fail to secure riparian rights in a property purchase? Everyone knows that water is the lifeblood of agriculture. However, MID is correct in stating that Tanaka's argument turns the presumption of severance on its head. If Tanaka's position were the law, then an unpredictable number of owners of noncontiguous, agricultural properties would be empowered to claim riparian rights simply based on the theory that, at one time, their properties were contiguous to watercourses. At the time that I.N. Robinson bought the property, farming was the leading industry in California.[4] So, under Tanaka's theory, almost anyone who bought a rural property that was detached from a larger property bordering a watercourse would be able to claim a riparian right. Such a position appears simply contrary to the longstanding law in this area. For these reasons, the court cannot accept Tanaka's position that she has a riparian right based on deed language.[5]

2. Tanaka's Claim to Obtain Riparian Rights Through Duck Slough.

Tanaka's second riparian argument could be entitled "The Battle of Duck Slough," albeit a battle fought by expert-historians armed with ancient maps and newspaper articles. In a nutshell, Tanaka claims her property obtained riparian water rights through Duck Slough because the property was contiguous to that slough when I.N. Robinson bought it in 1890 and remained contiguous to the slough well into the twentieth century. Tanaka's expert historian, Dr. Douglas Littlefield, testified that "Duck Slough always reached the Tanaka-Robinson parcel . . . from the

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[4] Agriculture surpassed mining in 1879 as the leading element of the California economy and remained in first position "well into the twentieth century." (Kevin Starr, California: A History (Modern Library 2007) p. 110.)

[5] The apparently common sense argument also fails to consider that some farming activities do not necessarily need access to a surface water source. Indeed, Newt Robinson's own recollections talk about how in the early years of farming his property he was "absolutely dependent on the rainfall each year." (Exh. 97, p. 5; see also Exh. 211, Letter from Newt Robinson, p. 7 (stating that, "At that time, in history, there was no irrigation – just rain from the heavens.".)

early 1850s when the Tanaka-Robinson parcel was not a separate piece of property up through 1926 when Mr. [Newt] Robinson filled it in." (RT 435:11-15.) MID's expert historian, Dr. Anthony Miltenberger, claims that the slough did not reach the property because it never extended south of the Honker Mound and was filled in at some time between 1876 and 1911. (RT 73:5-18.) MID characterizes the evidence that Duck Slough reached the Tanaka property as "shockingly minimal." (MID Closing Br. at p. 19.) It states: "Throughout the trial, Tanaka and her experts referenced Duck Slough, pointed to unlabeled lines on maps and called them Duck Slough, and generally opined about the extent to which Duck Slough may have existed." (*Id.*)

Even though the evidence is far from crystal clear, the court finds that Tanaka has proven by a preponderance of evidence that Duck Slough was contiguous to her property at least until 1926. In other words, Tanaka has proven to the court simply that it is *more likely that not* that a slough existed in that area during that timeframe. The court appreciates MID's critique of Tanaka's evidence but it reaches this conclusion keeping in mind the difficulties of proving the existence or nonexistence of a fairly small geographic feature in the late nineteenth and early twentieth centuries. This is a mere slough, not the mighty Sacramento River. Asked to define a slough, Dr. Miltenberger said: "The definitions that I've seen at least in the historical records seem to vary. It seems that [it] is a stream of sorts, but other people have used it in the context of just being a low, swampy area that has some running water on it." (RT 31:4-8.) Given the limited nature of a slough, it is hardly surprising that Tanaka and her experts were forced to point at sometimes unnamed lines on historic maps to make their case.

In finding that Duck Slough was contiguous to the Tanaka parcel, the court relies significantly on the trial testimony in *Nelson v. Robinson.* This case, which led to two published

court of appeal decisions,[6] was a dispute between the Robinsons and their neighbors, the Nelsons, over water that was allegedly seeping out of the unlined WRV Canal and inundating the Nelsons' property. Newt Robinson testified that when he first came to the property there was a slough on it that he used for pre-flooding of his bean crop in 1926 and 1927. (Exh. 205, pp. 5-6.) His neighbor, Erwin Nelson gave similar testimony:

> Q: Were there any sloughs upon the Robinson land at that time?
> A. Right near, at the side of their irrigation ditch there is a slough known as Duck Slough, before they filled it in.
> Q. And what was the size and extent of that slough?
> A. Well, that varied. I would say that that slough was all the way from 50 to 75 foot wide, if it was measured.
> Q. And depth?
> A. It varied, I would say, from 1 to 3 foot deep, 3 foot and a half.
> Q. And how long was it?
> A. Well, it extended from the Middle River, years ago – well, as far as I can remember it went pretty near to the Santa Fe Railroad tracks.

(Exh. 204 at p. 2.) The court finds this testimony particularly persuasive because Mr. Nelson had no particular reason to be biased either for or against finding the existence of Duck Slough; his lawsuit was alleging harm caused by the WRV Canal. Thus, the court agrees with Tanaka that Duck Slough was contiguous to her property before it was filled in.

However, finding that Duck Slough was contiguous to the Tanaka property does not establish a riparian right to surface water. The evidence at trial established that a levee built on the Middle River in 1869 severed any physical connection between the Middle River and any stream near the High Ridge Level. (RT at p. 352 (Test. Of Dr. Littlefield.) There was no evidence of a facility that would allow water to flow into Duck Slough from the Burns Cutoff. Notably, there was a lack of clear evidence that Duck Slough carried surface water. The evidence at trial indicated that the slough was probably a depression in the land fill with seepage

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[6] The court of appeal's review of the original trial court decision is found in *Nelson v. Robinson* (1941) 47 Cal.App.2d 520. After reversal and remand, the second decision was rendered five years later. *Nelson v. Robinson* (1946) 73 Cal.App.2d 263.

from groundwater.

3. Tanaka's Claim the WRV Canal Was a Substitution for Duck Slough and Thus Retained the Characteristics of a Natural Watercourse.

Tanaka further contends that her property has riparian rights because the WRV Canal was a modification to and substitution for Duck Slough, and therefore retained the characteristics of a natural watercourse. Because the court finds that Duck Slough did not carry surface water to the Tanaka property, this argument could be summarily rejected. The court will nevertheless address it.

A finding that the WRV Canal retains the characteristics of Duck Slough is essential to a finding of riparian rights because "[o]rdinarily riparian rights attach only to a natural water course, and not to an artificial channel such as a canal which is used to carry water from a stream." (Scott Slater, California Water Law and Policy, § 3.09(1)(a)(i), p. 3-25 (updated through Dec. 2015).) However, the California Supreme Court recognized an exception to this general rule in *Chowchilla Farms Inc. v. Martin* (1933) 219 Cal.1. The Court was asked to consider whether an artificial watercourse could, by long continued use, become a natural watercourse to which riparian rights attach. (*Id.* at pp. 11-12.) After reviewing cases from other states as well as treatises, the Court held:

> From the foregoing authorities we feel warranted in holding that a watercourse, although originally constructed artificially, may from the circumstances under which it originated and by long-continued use and acquiescence by persons interested therein become and be held to be a natural watercourse, and that riparian owners thereon and those affected thereby may have all the rights to the waters therein that they would have in a natural stream or watercourse.

(*Id.* at p. 18.)

Tanaka contends that the WRV Canal should be considered to be a modification of Duck Slough and thus a natural watercourse because it has been used for 90 years and tracks generally the same alignment as Duck Slough. MID argues that the canal has only

one attribute of a natural watercourse found in *Chowchilla* – longevity of use. MID contends that the canal is not dedicated to public use, does not have a natural flow (since its water is pumped out of Middle River) and does not have a dirt bottom.[7] (MID Reply at pp. 5-6.)

This question appears to be a close call. The court is inclined to agree with MID that the WRV Canal cannot be said to be a modification of Duck Slough. Rather, the canal was Newt Robinson's brainchild to better irrigate his property and his neighbors' land. It does not appear to have been conceived as an effort to improve the flow of water through the slough. Also, the testimony quoted earlier from *Nelson v. Robinson* appears to indicate that the slough existed, at least for a few years after the WRV Canal was built. This fact further undermines any argument that the WRV Canal was a modification of Duck Slough.

4. Tanaka's Claim that the WRV Canal is a Natural Watercourse.

The court rejects this contention for the same reasons that it rejected the claim that the canal was a substitution for Duck Slough. In addition, the court agrees with MID that the canal is not dedicated to public use and does not have a natural flow.

B. Tanaka's Overlying Rights Claim

Tanaka also claims overlying water rights that allow her to divert directly from the banks of the Middle River because the Middle River is interconnected to near surface water flowing underneath her property. At trial, Tanaka presented evidence from William L. Halligan, a geologist and hydrogeologist, who compared the qualities of the shallow groundwater on her property with the qualities of the water in the Middle River. Perhaps not surprisingly, he found a

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[7] It would seem that the dirt bottom should not be considered as a factor against finding the canal to be a natural watercourse since the concrete lining of the canal was apparently a response to the litigation in *Nelson v. Robinson.* If the court is incorrect in this understanding, the parties may wish to point out any clarifying evidence in the record.

direct connection. (Exh. 4, p. 11.) Very candidly, Tanaka then asks whether she should be entitled to take water directly from the banks of the Middle River (as she is doing through the WRV Canal) since no one disputes her overlying right to use the groundwater under her land. (Tanaka Br. at p. 27.) Essentially, she is stating that taking water out of the canal instead pumping groundwater is just changing the point of diversion of the same water.

MID does not appear to dispute the facts presented in Halligan's testimony. However, MID cites *Anaheim Water Co. v. Fuller* (1907) 150 Cal. 327, as authority for rejecting this argument. Specifically, it cites the Court's statement that land with access to the "underground flow" of a steam "does not carry the right to divert water from the surface stream, conduct or transport it across intervening land to the tract thus separated from such surface stream, and there apply it to use on the latter to the injury of lands which abut upon the proper banks of the stream . . . ." (*Id.* at p. 333.)

Tanaka believes that *Anaheim* can be distinguished because no other land is "injured" from her diversion of water from Middle River. The court disagrees. In the zero-sum game that is California's water supply system, one party's use of water is inevitably another party's "injury." Thus, the court must reject the overlying rights claim based on *Anaheim*.

C.Tanaka's Salvage Rights Argument

Next, Tanaka argues that she has a "salvage" right to divert water 607.5 acre feet of water from the Middle River and other water sources. She reasons that the removal of the native vegetation that had existed on the Tanaka parcel before the reclamation of the issue led to a savings of water. Tanaka's expert, Terry Prichard, an agronomist and former employee of UC Agricultural Extension, testified that the native vegetation on the property before it was reclaimed used more water than the farming activities that subsequently occurred on the land.

MID criticizes Prichard's opinions as insufficiently supported by facts, but MID's main objection to Tanaka's salvage water argument is a legal one. MID asserts that "[s]alvage water

cannot be the basis for establishing a water right." (MID Reply Closing Br. at p.8.) The court agrees with MID. The legal authorities cited appear to establish that salvage water is water saved by someone with a water right. One recent case defined "salvaged water" as "water that is saved from waste as when winter floodwaters are dammed and held in a reservoir. As is the case with return flows, a priority right to salvaged water belongs to the one who made it available." (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 304.) A treatise similarly defines it as "water that has been saved from waste through a party's intervention . . . ." (Scott Slater, California Water Law and Policy, § 7.03, p. 7-10 (updated through Dec. 2015).) However, these authorities and the others cited by the parties do not suggest that a water right can be gained through "salvage" simply by removing native vegetation and claiming, more than a century later,[8] the right to the water that such native vegetation will no longer use. It appears to the court that Tanaka simply has no legal basis to make her salvage water argument.

D. Tanaka's Pre-1914 Rights Claim

Tanaka asserts that she possesses a pre-1914 water right that entitles her to divert water. "Appropriative rights initiated prior to the 1913 amendment [to the Water Commission Act] . . . are commonly referred to as 'pre-1914 rights.'" (*Phelps v. SWRCB, supra*, 157 Cal.App.4th 89, 118, quoting *People v. Murrison* (2002) 101 Cal.App.4th 349, 359, fn. 6.) Thus, while a permit system was created for water rights going forward, administered by what is now the State Water Resources Control Board, existing rights were "'grandfathered' in under the act." *(Pleasant Valley Canal Co. v. Borror* (1998) 61 Cal.App.4th 742, 754.)

Tanaka argues that she has a pre-1914 water right based on usage of water on the property by her predecessors. Unfortunately, the evidence does not support her theory. She cites, for example, a Stockton Chamber of Commerce maps from 1910 and 1915 (Exhs. 189,

[8] The court is not aware of any evidence that anyone claimed a right to salvage water related to the Tanaka parcel at *any time* before the instant trial. If the court is incorrect, the parties may wish to address it at a hearing.

190) but there is no foundation laid to show that they are accurate as to the exact use of water on the Tanaka parcel. Rather, they are plainly intended to promote the Stockton area as rich, productive farmland. Newt Robinson, Tanaka's grandfather, took over farming operations on the property in approximately 1920. However, Newt Robinson filed documents with state regulators in which he claimed only riparian rights, electing not to check the boxes in which he would have claimed a pre-1914 right. (Exhs. 104, 105.) Although Mr. Prichard gave testimony about the amount of water needed to irrigate certain crops, this evidence fails to help Tanaka establish the pre-1914 right that she seeks.

E. The Laches Argument

Tanaka's last argument is that MID's action should be barred from the doctrine of laches. While it is true that MID is challenging a use of water on the Tanaka parcel that has been ongoing for decades, the court does not see how Tanaka has suffered an injury if the court concludes that the water diversion was illegal.

CONCLUSION

The court rules in favor of Modesto Irrigation District and against the defendant Heather Robinson Tanaka. Counsel for Modesto Irrigation District is directed to prepare a proposed judgment in accordance with the Rules of Court and submit it to the court.

Dated: May 26, 2016

CHRISTOPHER E. KRUEGER
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Shaber Sacramento County Courthouse
720 – Ninth Street
Sacramento CA 95814

Case Title:	**MODESTO IRRIGATION DISTRICT ,** **Plaintiff,** **V** **HEATHER ROBINSON TANAKA, STATE WATER RESOURCES CONTROL BOARD AND DOES 1 through10, inclusive,** **Defendants.**
CLERK'S CERTIFICATE OF SERVICE BY MAIL	**CASE NUMBER** **34-2011-00112886**

I certify that I am not a party to this cause. I certify that a true copy of the attached, clerk's certificate of service by mail and ***FINAL STATEMENT OF DECISION*, 05/26/16,** was mailed following standard court practices in a sealed envelope with postage fully prepared, addressed as indicated below. The mailing and the certification occurred at Sacramento, California, on 05/26/2016.

TIMOTHY AINSWORTH, Clerk of the Court, by M. Greco, 05/26/2016 , Deputy
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