

## STATE OF CALIFORNIA

## STATE WATER RESOURCES CONTROL BOARD

In re: Draft Order 2009-00XX-DWR ) TESTIMONY OF SCOTT LANDON  
 ) BLAKE  
 Woods Irrigation Company )  
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I am Scott Landon Blake, P.O. Box 844, Stockton, California 95201. I am a licensed land surveyor in the State of California and I have worked in the Sacramento/San Joaquin Delta (Delta) Islands for the last 8 years. This work has included topographic, hydrographic, geodetic, and boundary surveys in support of flood control, drainage, and irrigation. In my role as a project land surveyor I support the District Engineers for numerous reclamation districts in the Delta. The engineering firm of Kjeldsen, Sinnock, and Neudeck, Inc., of which I am an employee, is the engineer for Reclamation District 524, which encompasses the area of concern, and adjoining Reclamation District No. 17, and Union Island Reclamation Districts 1 and 2. I am very familiar with the aspects of real property boundary surveying in this area of the Delta. A statement of my qualifications is submitted as a separate exhibit.

When retained for this matter, I was informed that one of the issues in is whether there is evidence to support a conclusion that a riparian rights exist for parcels of land within the Woods Irrigation Company ("WIC") service area. My expertise does not allow me to draw a legal conclusion. However, I have been instructed to examine:

1. whether any property had/has a surface connection to a waterway;
2. if there were any previous interruption to that connection;
3. if any facilities connected a property to a waterway before any surface connection was lost;
4. or if any agreement or other documents indicate that an ability to receive water existed before any surface connection was lost.

From such facts, I am informed conclusions can be drawn as to the existence or preservation of a riparian right. Similarly, I am informed such connections and the actual use of water may indicate if a pre-1914 right exists. My testimony therefore address the issues

As my testimony will show, all of the lands within the WIC service area as of 1911 were either abutting one or more waterways, or were already connected to existing irrigation canals or interior island sloughs when they were included in certain 1911 agreements; which agreements created, if not maintained an ability to get water to the property.

My inquiry started with a review of the San Joaquin County Assessor maps from 1876 to 1919. The maps are kept at/by the San Joaquin County Historical Society located at Micke

Grove Park. Missing from these records are some of the maps for the years 1878, 1879, 1909, and 1910. The maps are included within WIC Exhibit 4, which is the testimony of Chris Neudeck. However, the information contained on the missing maps can be determined from prior and subsequent years, or from a search of San Joaquin County Recorder records where deeds and other documents are kept. In instances when such other efforts were necessary I will so note. We did not secure chain of title records for all the landowners within WIC because those landowners are not parties to these proceedings.

In order to set a reference point against which to compare other maps and exhibits, I start with WIC Exhibit 6A which is a 2006 map of the boundary of the WIC service area. For reference, The WIC service area can generally be described as most of Middle Roberts Island in San Joaquin County, bordered partially by Inland Drive on the west and northwest, Howard Road on the south (though there are some lands on the south side of Howard Road), and the Sant Fe Rail Road on the north. The eastern boundary approaches the San Joaquin River, but does not abut it.

WIC Exhibit 6B is the Patent from the State of California to J.P. Whitney dated November 24, 1876. As we will see, this patent covers all of the lands within the WIC service area. This exhibit was prepared directly from the patent. The second page of this exhibit is the Patent itself.

Next is WIC Exhibit 6C which is a map showing the transfer from J.P. Whitney to M.C. Fisher dated January 17, 1887. Generally, the lands owned by Fisher include all of Middle Roberts Island, and thus include all of the lands currently within the service area of WIC. This exhibit was also prepared from the deed. Again, the second page of the exhibit is the deed itself.

WIC Exhibit 6D is a map of the lands transferred by M.C. Fisher to James Reid Stewart, James C. Bunten, and James King (or "Stewart et. al.) dated march 15, 1877. This exhibit was prepared directly from the deed. As before, the lands include all the lands within the current service area of WIC, and the deed itself is included.

WIC Exhibit 6E shows the property sold by Stewart et. al. to A.C. Blossom by way of deed dated November 16, 1889. This deed transferred only a portion of the Stewart et. al. property. Mr. Blossom's was abutting at least two interior island sloughs as we shall see later (and as set forth in other WIC testimony) which also connected it to Middle River and possibly Burns Cut-off. This transfer separated the Blossom land from other surface connections to the main channels Middle River, Burns Cut-off, San Joaquin River, and Duck Slough. As can be seen, the lands owned by Stewart et. al. After the conveyance to Blossom maintained a surface connection to those main channels.

In 1891-2, Stewart et. al. transferred portions of his lands to J.N. and E.W.S. Woods (who were brothers) as shown on WIC Exhibit 6F. This exhibit was prepared from the Assessor maps. These Woods Bros.' lands are contiguous to and abut Middle River, and include the current diversion point for WIC. I find no time when these Woods Bros.' lands were not connected to Middle River. WIC Exhibit 6G shows the lands still owned by Stewart et. al. in

1891-2. This exhibit was also prepared from the Assessor maps. The exact year is not given because the Assessor's information in any year could result from a change in ownership which occurred in the last year, but after that year's information was mapped. For our purposes, it does not affect my conclusions. As we can see, the Stewart et. al. lands continue to abut Duck Slough, Burns Cut-off, and interior island sloughs as set forth hereinafter..

WIC Exhibit 6H is a map prepared by me from the Assessor maps for the year 1893. As of that year, Stewart et. al. have sold all of their lands (as relevant to this proceeding). Previously they sold some land to Blossom, some land to the Woods Bros., and some land to Blossom and Woods Bros. held jointly by those parties. This exhibit shows the land owned by Woods Bros. in orange, the lands owned by Blossom in turquoise, and the lands owned jointly in yellow. As we can see all of the lands now owned by the Woods Bros. either by themselves or jointly with Mr. Blossom were connected to one or more main channel both before the transfers and after. The one exception is the jointly owned parcel in Section 19 of Township 1 North Range 6 East. As explained below, this parcel abutted at least one interior island slough.

This mix of ownerships continued until December 13, 1902 when Mr. Blossom sold his lands and interests in lands to the Woods Bros. WIC Exhibit 6I shows the resulting ownership of the relevant lands; the Woods Bros. owning all those lands which would be in the service area of the WIC in 1911. As we can see, at this time, the Woods Bros. lands have always retained a connection to the surrounding waterways; being one or more connections to Duck Slough, Middle River, and/or Burns Cut-off. The basic ownership of the Woods Bros. lands remains unchanged from this point until J.N. Woods dies and the lands are split up. The only caveats to this conclusion being the original Blossom land and the parcel in Section 19 (referenced above) which I will now address.

In addition to reviewing the work done by Mr. Moore, I have also examined various maps available for the area. WIC Exhibit 6J is a map entitled "Lands of Woods Bros. and Reclamation District No. 524." This map was in the records of WIC and a copy was also in the possession of a local farmer. Although we cannot find a date on this map, we have concluded it was produced sometime during 1908-1910 for the following reasons. First, it refers to the lands of the "Woods Bros." J.N. Woods died on December 4, 1906 which means the joint ownership of the lands ended sometime after his death. The decree of distribution of J.N. Woods estate is dated December 28, 1909.

Second, we can examine the names of the other surrounding landowners to determine the date of the Assessor's map which most closely reflects the names on this map. To the upper right (northeast) of the Woods lands we see two parcels labeled as being owned by "Est. J.D. Peters." The 1908 Assessor's map shows the owner of these same parcels as "J.D. Peters." The 1911 Assessor's map shows the owner of these parcels as "Genevieve F.P. Six." Recall, we are missing the 1909 and 1910 maps for Township 1 North Range 6 East.

Therefore, the reference to "Est. of J.D. Peters" must mean the map was made after J.D. Peters was listed as owner in 1908, but before Genevieve F. P. Six owned the Peters property in 1911. The reference to the Woods Bros. lands probably means it was before J.N. Woods estate was finalized/distributed. in December 1909.

Clearly marked on this map are features I identify as irrigation and drainage canals/ditches. I note that in many areas on the canals/ditches we see the reference to "Gate." Based on my investigations associated with this matter, I have concluded that such references can only mean some sort of gate for controlling water for irrigation and/or drainage. At the northern end of the middle canal/ditch I note the reference to "dams" at least three times. Based on my investigations associated with this matter, I conclude these too indicate the control of water for irrigation and/or drainage purposes. I also note that all of the lines I have identified as canals/ditches originate at the location of the WIC diversion. From this I conclude that most of the lands with the WIC service area were being provided with water as of 1908-1910.

This map is also revealing because of the sinuous, or curved lines which I have identified as canal/ditches. As you can see, in the approximate middle of the map we see a long sinuous line that begins at the WIC diversion, and then snakes its way almost to the top of the map. Along the way, there are numerous "gates." As also concluded by Mr. Moore in his testimony, this is not only an interior island slough, but still being used as a source of irrigation water as of 1908-1910. We can see that this slough runs directly from Middle River through the property purchased by Mr. Blossom from Stewart et. al. [The Blossom property in question was a contiguous parcel straddling the north-south line between Sections 25 and 36 of Township 1 North Range 5 East and Sections 30 and 31 of Township 1 North Range 6 East.] Thus, I conclude the Blossom property later owned by Woods Bros. was abutting a slough which connected to Middle River (and possibly Burns Cut-off) at the time Stewart et. al. sold it to Blossom, and up through at least 1908-1910. The same appears to be true for the parcel in Section 19 of Township 1 North Range 6 East which was jointly owned by Blossom and the Woods Bros.

WIC Exhibit 6K is a map entitled "San Joaquin Delta" dated July 1914, and produced by Hendersen and Billwiller, Civil and Hydraulic Engineers. This map was recently located in the San Joaquin County Surveyor's Office. As pages two and three of this exhibit, I have included an enlargement of the "Legend" and a portion of the map around the WIC diversion.

The map shows "Canals, Ditches and Small Sloughs" as a dotted line and "Channels, Rivers, Sloughs and Cuts" as two solid lines. This map shows dotted lines in all the same locations as the previous map, and in a few other locations. These lines indicate that an extensive system of canals or ditches provided water to the area within the WIC service area from not only 1914, but confirms my conclusions regarding the earlier map that this system existed at least as early as 1908-1910.

The enlargement of the diversion area clearly shows that an interior island slough in the area continues to exist and be used. This slough runs from the WIC diversion in a northeasterly direction. We see a bridge over the slough, and a number of dotted lines (canals/ditches) coming off of it. The southwesterly end of this slough reaches to Middle River. At that time, the slough was apparently being filled by the flood gate, and/or pumps.

I have personally visited the WIC diversion and observed an old flood gate structure made of brick. This structure goes through the levee, not over it, and we can still see the mechanism used to regulate the water into the slough.

As a frame of reference, I am including WIC Exhibit L which shows a triangular parcel between this slough and the road (Howard Road). That parcel is the Mark and Valla Dunkel property which is the subject of another CDO hearing before this Board. The evidence shows the Dunkel property was abutting this original interior island slough from at least the time of the 1908-1910 map.

WIC Exhibit 6M is a 1941 map entitled "Map of the Lands Served by the Woods Irrigation Co." I show this map for two reasons. First, it again confirms that the WIC irrigation canals on the 1908-1910 map are indeed such. Second, I note that at the upper end of the sinuous line previously discussed, there is a reference to "old slough." Again, this confirms that at least one of irrigation canals/ditches which runs through the old Blossom property was indeed a slough.

To better see this, I have prepared WIC Exhibit 6N which shows all of these canals/ditches from the 1908-1910 map and the 1914 map.

As presented by other witnesses, the Woods Bros. lands were divided after the death of J.N. Woods. The western portion of these lands became E.W.S. Woods', while the eastern portion went to J.N. Woods heirs, Jesse L. Wilhoit and Mary L. Douglas. I am informed that in 1909, these parties incorporated WIC. Thereafter, they executed a number of agreements in 1911, two of which obligated WIC to provide water to the lands. These agreements thus created (if not maintained) an ability to provide water to all of the lands within the WIC. These agreements are attached hereto as WIC Exhibit 6O and WIC Exhibit 6P.

WIC Exhibit 6Q and WIC Exhibit 6R are my mapping of the lands specified in those agreements.

In summary, all of the lands within the service area of WIC as of the 1911 agreements are either:

1. Currently abutting an existing waterway;
2. Abutted a main channel or interior island slough at the time the canals and ditches which predate the 1911 agreements were in existence; and/or
3. Abutted a main channel or interior island slough at the time the 1911 agreements secured the land the ability to get water from the WIC system;

Most of the lands fall into more than one of these situations. Given the criteria I referenced at the beginning of my testimony, I conclude the lands within the WIC service area as of 1911 maintained an uninterrupted connection to a waterway, either directly, or through facilities such as canals or ditches, or by way of an agreement to supply the land with water.

Finally, is WIC Exhibit 6S which shows the current WIC service areas as well the 1911 service areas. The Turquoise line is the boundary of the lands described in the two 1911 agreement for which WIC agreed to furnish water. The yellow line is the 2006 boundary of the WIC service area for irrigation water, with the hatched area being those lands receiving only drainage services.