

Final Decision in *Modesto Irrigation District v. Heather Robinson Tanaka* clarifies bases of riparian claims in the Delta

On May 7, 2020, the Third District Court of Appeal (Court) handed down a long-awaited [decision](#) in *Modesto Irrigation District v. Heather Robinson Tanaka*. The Court reversed a lower court's determination that the defendant-appellant (Tanaka) lacked water rights sufficient to irrigate her agricultural property on Roberts Island within the Delta. On August 18, 2020, the California Supreme Court denied Modesto Irrigation District's petition for review and its request to "depublish" the decision (Case S262781). Thus, the Court's decision has become the final, presidential resolution of the case.

The Court's decision is important because it provides clarifying guidance regarding the factors to be evaluated in determining whether riparian rights associated with a large riparian parcel are either severed or retained when the larger parcel is subdivided such that a smaller parcel loses direct physical contiguity to a watercourse.

In the *Tanaka* case, the critical subdivision occurred in 1890, and the grant deed does not expressly refer to riparian water rights. According to the Court, "Our task has been described as placing ourselves in the position of the contracting parties in order to ascertain their intent at the time of the grant. We must, therefore, place ourselves in 1890 in the shoes of [Tanaka's predecessor-in-interest] and the mortgage holders when they executed the grant deed to the farm." [citations and some internal punctuation omitted.] After examining (i) the language of the deed, (ii) the contemporaneous meanings of terms that have since fallen out of use, and (iii) evidence in the historical record before the lower court, the Court concluded: "Both [the express language of the deed and the extrinsic evidence] reflect a clear intention that the farmer retains his riparian rights."

The Court goes on to say, "We are mindful of the somewhat precarious nature of riparian rights of land that is no longer contiguous to a watercourse. But the cases universally echo the same basic principle that the intention of the parties govern (sic)."