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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

13 ANTELOPE VALLEY GROUNDWATER  
14 CASES

15 Included Actions:

16 Los Angeles County Waterworks District No. 40  
17 v. Diamond Farming Co., Superior Court of  
18 California, County of Los Angeles, Case No. BC  
19 325201;

20 Los Angeles County Waterworks District No. 40  
21 v. Diamond Farming Co., Superior Court of  
22 California, County of Kern, Case No. S-1500-CV-  
23 254-348;

24 Wm. Bolthouse Farms, Inc. v. City of Lancaster,  
25 Diamond Farming Co. v. Lancaster, Diamond  
26 Farming Co. v. Palmdale Water Dist., Superior  
27 Court of California, County of Riverside, Case  
28 No. RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

Santa Clara Case No. 1-05-CV-049053  
Assigned to Hon. Jack Komar

**PHASE 6 TRIAL BRIEF OF  
GRANITE CONSTRUCTION  
COMPANY**

Phase 6 Trial Date: September 28, 2015  
Time: 10:00 a.m.

Dept.: 1

Judge: Hon. Jack Komar

GRANITE CONSTRUCTION COMPANY (**Granite**) submits the following Trial Brief  
for the Phase 6 Trial.

1 **A. Granite is a Settling Party.**

2 Granite is a party to the Stipulation for Entry of Judgment and Physical Solution  
3 **(Stipulation)** and has settled all claims *inter se* among all parties to the Stipulation **(Settling**  
4 **Parties)**.

5 **B. Witnesses.**

6 Granite may call one or more of the following witnesses at trial:

- 7
- 8 1. Dan Flory, AVEK General Manager who is expected to testify to the sale and  
9 delivery of imported water.
  - 10 2. Steven McCracken, Manager of Construction Materials for Granite who may be  
11 called to testify to Granite's reasonable and beneficial use of water.  
12

13 Granite may also call or rely upon one or more of the following expert witnesses:

- 14 3. Robert Wagner, P.E. who is expected to testify to the reasonable and beneficial  
15 use of water within the AVAA.
- 16 4. Charles W. Binder, who is expected to testify in support of the Proposed  
17 Judgment and Physical Solution.  
18

19 **C. Granite is an Overlying Landowner Within the AVAA.**

20 Granite owns about 197 acres of land within the Antelope Valley Area of Adjudication  
21 **(AVAA)** and leases an additional 231 acres from Littlerock Sand and Gravel, Inc (collectively,  
22 **Property)**.

23 **D. Granite Has an Overlying Right to Produce Groundwater.**

24 As an overlying landowner Granite has the right to produce and use groundwater within  
25 the AVAA. The amount of groundwater produced from the Property for years 2000 through  
26 2007, 2011 and 2012 is summarized as follows:  
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<u>Year</u>	<u>Amount in Acre Feet</u>
2000	440
2001	446
2002	453
2003	456
2004	469
2005	520
2006	527
2007	537
2011	400
2012	400

**E. Granite's Uses Water Beneficially.**

The groundwater produced from the Property was used for sand and gravel extraction, rock processing, dust control, ready mix, landscaping and domestic use.

**F. Prior Evidence.**

On December 21, 2012 Granite posted its response to the Discovery Order for Phase 4 Trial (Court Document No. 5513) showing, among other things, Granite's property within the AVAA, the amount of groundwater produced from the Property during years 2000 through 2007, 2011 and 2012, and the uses to which that groundwater was put. During the Phase 4 trial Granite offered and the Court admitted the declarations of William Taylor (**Granite-1**) and Steven McCracken (**Granite-2**) during the Phase 4 Trial establishing Granite's property ownership and the amount of water produced from the Property and the use to which that groundwater was put during years 2011 and 2012. The Court found in the Phase 4 Trial that Granite pumped groundwater for use on its Property in the amount of 400 acre feet for years 2011 and 2012. Granite will rely on this evidence for the Phase 6 Trial, absent a direction from the Court, because that evidence has already been received by the Court without objection.

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2 **G. Granite Has the Right to Return Flows from Imported Water.**

3 Granite has a contract with AVEK for the delivery of State Project Water. AVEK, and  
4 the other Settling Parties, have agreed that Granite has the right to produce the return flows from  
5 imported water delivered through AVEK to Granite in future years. (See Section 5.2.2 and  
6 Exhibit 8 to Proposed Judgment.)  
7

8 **H. Reservation Of Rights.**

9 The Herculean efforts of all Settling Parties to achieve the Stipulation cannot be  
10 understated. The Stipulation is the end result of 15 years of litigation, years of negotiation  
11 involving thousands of man hours, truck loads of paper, and even some hurt feelings along the  
12 way. The AVAA itself is vast, comprising more than one million acres, and tens of thousands of  
13 acres of dormant lands. The varying interests of the water users competing for a very limited  
14 supply of water runs the full gamut of water rights and includes the United States' claim to a  
15 Federal Reserve Right, Tejon's claim to Rancho Rights, the Public Water Suppliers' prescriptive  
16 claims, the Sanitation Districts' claims to recycled water, claims to return flows from imported  
17 water, overlying water uses for agriculture, industry, mining and schools, domestic use for  
18 mutual water companies, the Wood Class's various claims, and even water for some well  
19 deserving ducks. The proposed Judgment and Physical Solution seeks to balance all of these  
20 competing interests with an end goal of maximizing water use within the Basin, while achieving  
21 water balance and arresting subsidence. The balance achieved is precarious.  
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25 The Settling Parties, upon execution of the Stipulation, have agreed not to challenge the  
26 claims of each other Settling Party *inter se*. Each Settling Party has agreed that if the Judgment  
27 and Physical Solution is not approved by the Court as presented, the Stipulation will be void and  
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1 each Settling Party will return to litigation and then be free to conduct additional discovery,  
2 declare and depose expert witnesses, and contest any and all claims of any other party including,  
3 without limitation, (1) claims of prescription, and the right to a jury trial, (2) the Federal Reserve  
4 Right, (3) claims to return flows from imported water, and (4) any other issues not resolved in  
5 prior phases of trial. Granite specifically reserves all of these rights should the Judgment not be  
6 approved as presented.  
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8           Although the Willis Class has decried this as a "dynamite provision" designed to blow-up  
9 the settlement, the Stipulation actually serves a more necessary and simplistic purpose - that is to  
10 achieve a settlement among more than 140 parties, where no settlement was previously possible.  
11 The Stipulation achieves a balance that had eluded the parties and several well-respected  
12 mediators, including Justice Robie, for years. The Stipulation makes sure that each Settling  
13 Party, no matter how small or how large, is assured that it will received the benefit of a very  
14 complicated bargain, while protecting the Basin for the benefit of all.  
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16 **I.     Conclusion.**

17           Granite respectfully requests that the Court find and decree that:  
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- 19           1.     Granite has overlying groundwater rights within the AVAA;
- 20           2.     Granite's water use is reasonable and beneficial;
- 21           3.     Granite has a right to produce return flows from imported water consistent with  
22 the Judgment and Physical Solution;
- 23           4.     The proposed Judgment and Physical Solution is a fair and reasonable allocation  
24 of the water resources of the AVAA and will benefit and balance the Basin over time and is  
25 approved and adopted by the Court as presented; and  
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5. For costs of suit.

Dated: September 25, 2015

KUHS & PARKER

By /s/  
Robert G. Kuhs, Attorney for Granite  
Construction Company