Robert G. Kuhs, SBN 160291
Bernard C. Barmann, Jr., SBN 149890
Kuhs & Parker
P. O. Box 2205
1200 Truxtun Avenue, Suite 200
Bakersfield, CA 93303
Telephone: (661) 322-4004
Facsimile: (661) 322-2906
E-Mail: bbarmann@kuhsparkerlaw.com

Attorneys for Granite Construction Company

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES - CENTRAL DISTRICT

ANTELOPE VALLEY GROUNDWATER CASES

INCLUDED ACTIONS:
Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., Superior Court of California, County of Los Angeles, Case No. BC 325201;

Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., Superior Court of California, County of Kern, Case No. S-1500-CV-254348;

Wm. Bolthouse Farms, Inc. v. City of Lancaster, Diamond Farming Co. v. Lancaster, Diamond Farming Co. v. Palmdale Water Dist., Superior Court of California, County of Riverside, Case No. RIC 353840, RIC 344436, RIC 344668

Rebecca Lee Willis v. Los Angeles County Waterworks District No. 40
Superior Court of California, County of Los Angeles, Case No. BC 364553

Wood v. A.V. Materials, Inc., et al., Superior Court of California, County of Los Angeles, Case No. BC 509546

Little Rock Sand and Gravel, Inc. v. Granite Construction Co., Superior Court of California, County of Los Angeles, North Judicial District, Case No. MC026932

Judicial Council Coordination No. 4408

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

MEMORANDUM IN SUPPORT OF MOTION BY GRANITE CONSTRUCTION COMPANY TO INTERPRET AND ENFORCE THE JUDGMENT AND TO PARTITION THE EXHIBIT 4 "Granite Construction Company (Little Rock Sand and Gravel, Inc.)" PRODUCTION RIGHT

[Notice of Motion; Appendix filed concurrently herewith]

Date: June 20, 2018
Time: 9:00 a.m.
Dept: 222

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Exhibit 4 to the Judgment and Physical Solution (**Judgment**) entered in the Antelope Valley Groundwater Cases allocates a 234 acre feet (**AF**) Production Right as follows:

Producer Name	Pre-Rampdown Production	Overlying Production Rights	Percentage Share of Adjusted Native Safe Yield
Granite Construction Company (Little Rock Sand and Gravel, Inc.)	400.00	234.00	0.331%

The threshold issue for the Court to decide is whether Little Rock Sand and Gravel, Inc., (**LS&G**) is a "Stipulating Party" under the Stipulation for Entry of Judgment and Physical Solution (**Stipulation**).[1] LS&G's signatory George Lane testified that he did not intend LS&G to be bound by the Exhibit 4 allocation, did not even read the Stipulation, and was uncertain whether he had authorized LS&G's counsel to enter into the Stipulation or submit LS&G's signatures. If the Court determines that LS&G is not a Stipulating Party, the Court should find that Granite is entitled to the entire 234 AF Production Right. If LS&G is deemed a Stipulating Party, then it is bound by *all* the terms of the Stipulation and Judgment.

If the Court determines LS&G is a Stipulating Party, the second issue for the Court is how Exhibit 4 should be interpreted. Granite submits that Granite and LS&G are equal cotenants to the 234 AF Production Right because (1) the Stipulation provides that the Judgment "is a determination of all rights to Produce and store Groundwater in the Basin" and "resolves all disputes in this Action among the Stipulating Parties," (2) there was no allocation agreement between Granite and LS&G (LS&G disavowed the parties' oral agreement), and (3) Exhibit 4 is the only agreement regarding the joint allocation of the 234 AF. LS&G contends that the entire 234 AF Production Right granted jointly to "Granite Construction Company (Little Rock Sand and Gravel, Inc.)" is exclusively LS&G's.

LS&G filed an action to quiet title to the 234 AF as of the date the Judgment was entered. LS&G is not entitled to such relief. First, LS&G does not seek an order interpreting or enforcing

[1] Capitalized terms not defined herein have the same meanings as in the Stipulation and Judgment. All referenced Exhibits are contained in the concurrently-filed Appendix.

the Judgment, but instead seeks to amend the Judgment (by deleting Granite from the Exhibit 4 joint allocation), which the Court lacks jurisdiction to do. Second, the Judgment resolved and quieted title to all groundwater claims *inter se*. LS&G may not re-litigate its claims to appurtenant, correlative groundwater rights. Third, LS&G is not entitled to any production rights because (1) LS&G does not own two of the four parcels of land described in its Verified First Amended Complaint (**FAC**), (2) there is no evidence in the record to support an allocation to LS&G, and (3) LS&G has no reasonable beneficial need for the water, whereas Granite has and continues putting the entire Production Right to reasonable beneficial use. Fourth, all equities favor Granite. LS&G's conduct in this matter shows bad faith and unclean hands. LS&G reneged on an oral allocation with Granite after all other parties had left the bargaining table, then changed its position regarding how the 234 AF should be allocated. Even absent a finding of bad faith, LS&G is judicially estopped to deny that the parties are equal cotenants to the 234 AF. Finally, awarding Granite less than half of the 234 AF would put Granite at a competitive disadvantage with other rock producers in the AVAA.

Granite seeks: (1) a determination whether LS&G is a "Stipulating Party" under the Stipulation and Judgment; if LS&G is a "Stipulating Party," (2) a declaration that Granite and LS&G each have a 50% undivided interest in the 234 AF Production Right granted jointly to "Granite Construction Company (Little Rock Sand and Gravel, Inc.)," and (3) an order partitioning the 234 AF equally, 117 AF to Granite and 117 AF to LS&G.[2]

II. STATEMENT OF FACTS

A. The Parties And Their Interests In The Antelope Valley.

1. Granite's Littlerock And Big Rock Quarries.

Granite owns about 217 acres of land within the AVAA. (Declaration of William Taylor ("Taylor Decl."), ¶ 6.). Granite owns and operates two separate rock, sand and gravel quarries within the AVAA known as the Littlerock Quarry and Big Rock Quarry. (*Id.*, ¶ 7.)

[2] The parties agree that any Production Right allocated to LS&G remains available for Granite's use during the remaining term of the lease.

a) Granite's Littlerock Quarry

Granite operates its Littlerock Quarry on land it owns in fee and on land that Granite has leased from LS&G since 1987 (**Leased Property**). (Taylor Decl., ¶¶ 8-10, Ex. B.) Under the lease, Granite has the exclusive right to develop and use the water resources on and under the Leased Property. Granite installed, owns and operates three groundwater production wells on the Leased Property to support its quarry operations. (Taylor Decl., ¶ 8.)

(1) Granite's expansion of its Littlerock Quarry to land Granite owns in fee.

In 2008 Granite purchased about 67 acres immediately adjacent to the Leased Property for expansion of Granite's Littlerock Quarry. In April 2010, Granite and LS&G amended the Lease, extending its term to April 30, 2021, with options to extend the Lease until April 30, 2041. (Taylor Decl., ¶ 9.) In 2011 Granite obtained a Conditional Use Permit and amended its Mining and Reclamation Plan to include 55 of Granite's 67 acres. (Taylor Decl., ¶ 10.) Since at least January 2013 Granite has operated the Littlerock Quarry as an integrated unit. (Taylor Decl., ¶ 10.)

(2) Leased Property is "played out" and Granite is mining its own land.

The Leased Property has no independent use for water. The commercially-viable rock deposits on the Leased Property were substantially depleted by 2015. (Taylor Decl., ¶ 11; Lane Depo., pp. 74-75 (Ex. K).) The Leased Property is essentially an empty pit, zoned as (QR) Quarry and Reclamation, and its future use will be open space wildlife habitat, recreational and/or flood control basin. (Taylor Decl., ¶ 11.) Granite is mining its own adjacent property and processing the aggregate on the Leased Property, using water to process Granite's rock and sand materials ("aggregates"). Granite will continue to use the wells and water produced therefrom to support quarry operations and control dust while mining Granite's adjacent property into the foreseeable future. (Taylor Decl., ¶ 12.)

b) Granite's Big Rock Quarry.

Granite's Big Rock Quarry consists of about 145 acres of land Granite owns in fee. (Taylor Decl., ¶ 7.) Granite has obtained a Surface Mining Permit and will begin commercial shipment of aggregates from the Big Rock Quarry as it phases out mining operations at the

Littlerock Quarry, at which time Granite plans to operate a sand and gravel extraction and processing facility, asphalt concrete batch plant and concrete ready-mix plant on the site. (Supplemental Declaration of William Taylor (Supp. Taylor Decl.), ¶ 5.)

2. LS&G's Two (Not Four) Parcels.

LS&G alleges that it owns four parcels of real property within the AVAA, identified in the Verified FAC as Parcels 1-4. (FAC, ¶ 1.) Those four parcels are the Leased Property that are the played-out portion of Granite's Littlerock Quarry. LS&G admitted in discovery in the add-on case that it never owned (and as of the date the Judgment was entered did not own) two of the four parcels. (Supplemental Declaration of Robert G. Kuhs ("Supp. Kuhs Decl."), ¶¶ 8-10 & Ex. N; Lane Depo., pp. 51-53, 65-67 (Ex. K).)

B. <u>The Road To Settlement And Entry Of Judgment</u>.

1. Phase 4 Trial On Water Production And Use.

During the Phase 4 trial, Granite introduced evidence of its pumping and water use during years 2011 and 2012 at the Littlerock Quarry. (Supp. Kuhs Decl., ¶ 4.) LS&G did not introduce any independent evidence of water use. (*Ibid.*)

2. Stay Of Phase 5 Trial Leads To Global Settlement On Allocation.

After this Court suspended the Phase 5 Trial to allow for global settlement discussions, more than 40 lawyers representing more than 100 parties, including counsel for Granite and LS&G, spent several weeks negotiating the substantive framework for the settlement and water allocation among the various parties. (Decls. of Messrs. Kuhs, McLachlan, Joyce, Hughes, Zimmer.) Granite negotiated a water supply of 234 AF for Granite's Littlerock Quarry.

a) Granite and LS&G allocate the 234 AF.

The Court is already familiar with the facts of the parties' discussions regarding allocating the 234 AF and Granite's belief that the parties reached an oral allocation agreement. Rather than repeat those facts here, Granite incorporates herein by reference the previously-filed Declarations of Messrs. Kuhs, McLachlan, Joyce, Hughes, and Zimmer, copies of which are included in the concurrently-filed Appendix.

b) Parties report to the Court agreement on allocation.

On March 31, 2014, Mr. Chester and counsel for Granite advised the larger group of settling parties that Granite and LS&G had reached an agreement on allocation. Four days later on April 4, 2014, the settling parties orally advised the Court that all settling parties had reached a global settlement on allocation and would need several weeks to draft the physical solution. (See Kuhs Decl., Ex. C, Minute Order.)

3. LS&G Reneges On The Agreed Allocation.

The Court is also already familiar with the facts of the parties' post-settlement discussions in which LS&G sought to renegotiate the agreed allocation, as set forth in the previously-filed declarations of Messrs. Kuhs, Zimmer, Hughes, Joyce, and McLachlan. On December 31, 2014, LS&G filed a CMC Statement claiming that there was a dispute between Granite and LS&G with respect to allocation of water for Granite's Littlerock Quarry. Neither the Stipulation nor the Judgment reserved any disputes between Granite and LS&G for post-judgment proceedings.

4. Granite and LS&G Submit Signatures.

On January 15, 2015, Granite's counsel notified the Stipulating Parties' counsel by email that Granite had signed the Stipulation; later the same day LS&G's counsel Mr. Chester emailed the Stipulating Parties indicating that LS&G had signed as well. (Supp. Kuhs Decl., ¶ 5 & Ex. L.) On or about February 20, 2015, Mr. Chester submitted to counsel for the United States his and his clients' signatures, including LS&G's. (Kuhs Decl., ¶ 16; Supp. Kuhs Decl., ¶ 6.) The United States filed the Stipulation on March 4, 2015 as Doc # 9624. (See Ex. H.)

5. Prove-Up Trial.

The Prove-Up Trial commenced on October 14, 2015. Granite had already proved up its water use and land ownership. On December 23, 2015, the Court signed a Statement of Decision and Judgment. Neither Mr. Chester nor LS&G offered evidence during the Prove-Up Trial or objected in any way to the Statement of Decision or Judgment.

C. Summary Of Stipulation, Judgment And Court's Reserved Jurisdiction

1. The Stipulation And Judgment Resolved And Quieted Title To All Groundwater Claims In The AVAA *Inter Se*.

The Court's Statement of Decision includes a finding that the AV Cases are a "comprehensive adjudication of the Basin's groundwater rights under the McCarran Amendment (43 U.S.C. §666) and California Law." (Statement of Decision, pp. 2-3.) The Court signed the Judgment on December 23, 2015, approving the Stipulation and adopting the Judgment and Physical Solution.[3] Paragraph 2 of the Stipulation provides: "*The Judgment is a determination of all rights to Produce and store Groundwater in the Basin.*" and "*The Judgment resolves all disputes in this Action among the Stipulating Parties.*" (Exs. H & R.)

2. Exhibit 4 To The Judgment Contains The Agreed Allocations Of Overlying Production Rights To Specified Parties.

The Judgment allocates Overlying Production Rights to identified *Producers* including Granite (not to particular parcels of land as LS&G alleges).[4] Based upon Granite's ownership of land and its beneficial use of water to control dust and process its aggregate, the settling parties, including LS&G, collectively agreed to a 234 AF Overlying Production Right to Producer "Granite Construction Company (Little Rock Sand and Gravel, Inc.)."

D. LS&G's Post-Judgment Motion To Reduce Granite's Allocation To Zero.

On January 31, 2016, following entry of judgment, LS&G and other "Lane Family" entities moved for an order declaring that 100% of the 234 AF should be taken from Granite and given to LS&G. In its reply brief, LS&G unequivocally stated that the parties had not agreed to any allocation of the 234 AF. (Lane Family's Reply, dated March 14, 2016 (Ex. O).) In its order denying the motion without prejudice the Court noted that "[t]he dispute between Granite and Lane is a dispute that is limited by the stipulation and judgment," and that the Judgment

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[3] A copy of the relevant portions of the Judgment, including the Judgment and Physical Solution and Exhibit 4 thereto, is attached to the Appendix as Exhibit Q and incorporated herein.

[4] A copy of Exhibit 4 to the Judgment and Physical Solution is attached to the Second Amended Stipulation for Entry of Judgment and Physical Solution (see Exhibit R hereto) and is included in Exhibit A to the Judgment (see Ex. Q).

"provides that both Granite and Lane have an interest in the water allocated to those parties but with no determination as to amounts other than 234 acre feet a year to 'Granite (Little Rock Sand and Gravel).'" (Order After Hearing On March 21, 2016 (Ex. P).)

E. LS&G'S Action To Quiet Title To Appurtenant Groundwater Rights.

1. LS&G's Complaint To Quiet Title To Groundwater Rights And Request For Declaratory Relief.

In March 2017, LS&G filed a complaint in Los Angeles County Superior Court, Case No. MC026932. LS&G's Verified First Amended Complaint (Ex. S) alleges that LS&G owns four parcels of land and appurtenant overlying groundwater rights and seeks a determination that as of December 28, 2015 (the date the Judgment was entered), the 234 AF Production Right allocated jointly to "Granite Construction Company (Little Rock Sand and Gravel, Inc.)" belongs exclusively to LS&G and not to Granite. (FAC, ¶¶ 1, 25-26, 30-31.)

2. Granite's Defenses To Quiet Title Action.

Granite filed an Answer in the add-on case. (Ex. T.) Granite's Answer asserts as defenses, among other things, that: (1) the parties' rights with respect to groundwater are governed by the Stipulation and the Judgment; (2) LS&G is estopped to assert any claim for relief against Granite with respect to the matters alleged in the FAC; (3) LS&G has waived its rights to the claims and relief it seeks by virtue of its conduct; (4) by entering into the Stipulation, as a matter of law LS&G waived all overlying *appurtenant* groundwater rights and accepted the terms of the Judgment; (5) LS&G's action seeks to amend the Judgment in the absence of all parties to the AV Cases, including the Stipulating Parties; Granite would be prejudiced by such litigation because of the risk of inconsistent results and the cost of multiple adjudications; (6) each purported cause of action will be barred on res judicata grounds when the Judgment becomes final; and (7) any attempt by LS&G to relitigate appurtenant groundwater rights would be an unlawful attempt to split a single cause of action.

III. ARGUMENT

A. As A Threshold Matter The Court Must Decide Whether LS&G Is A Non-Settling Party Or Is Bound By The Stipulation And Judgment.

George Lane, LS&G's signatory to the Stipulation, testified that LS&G "absolutely" did not intend to be bound by all the Stipulation's terms, particularly the Exhibit 4 allocation. First, Mr. Lane did not even read the Stipulation before signing it:

> Q. Okay. Looking at Paragraph 2B of the stipulation, did you understand when -- that you signed the stipulation on behalf of each of the entities and trusts that the judgment, which was attached as Exhibit 1, resolved all disputes in the action among the stipulating parties?
> **A. No.**
> Q. You didn't have that understanding?
> **A. No.**
> Q. Okay.
> **A. Probably didn't even read it.**
>
> * * *
>
> Q. You signed an agreement approving of an allocation to everybody in the basin that was using water; correct?
> **A. I did not read the agreement, and I've said that earlier**. (Depo. of G. Lane, p. 61:8-19; p. 106:18-22; Ex. K.)

Second, he was uncertain whether he had authorized counsel to bind LS&G to the Stipulation:

> Q. And did you give Mr. Chester the authority to file your signature with the court?
> **A. I don't remember.**
> Q. Did you give Mr. Chester authority to sign this document?
> **A. I don't remember.**
>
> * * *
>
> Q. Well, let me go at it this way: Is there any doubt in your mind that you didn't give Mr. Chester authority?
> **A. I don't remember.**
> Q. You have no recollection one way or the other of giving your lawyer authority to enter into this stipulation?
> **A. That's correct.**
> (Depo. of G. Lane, p. 44:20 – p.45:11)

Most significantly, Mr. Lane did not intend LS&G to be bound by the Exhibit 4 allocation:

> Q. So reading Paragraph Number 1, was it your understanding when you signed this stipulation that you were agreeing to entry of the proposed judgment and physical solution that's attached to Exhibit 1?
>
> **A. That would be correct as to the physical solution, not the allocation.**
> Q. So you -- you understand that the allocation is part of the judgment and physical solution?
> **A. No, absolutely -- absolutely not.**

* * *

Q. Why do you believe that you're not bound by the allocation?

A. Through the years, I've been told if we had objected, that would affect the physical solution as far as allocation. We have dealt with Granite either directly or through our attorney, and we did not agree to the physical solution. And that would be – that would be resolved afterwards, but the physical solution – those were important. The allocation would come later.

* * *

Q. Okay. And so when you signed this stipulation, you were not agreeing to the allocation?

A. Absolutely not.

* * *

Q. Okay. Do you recall making any notations next to your signature that you were limiting your acceptance of the settlement to carve out this allocation with Granite?

A. No.

Q. Okay. Did you give your lawyer any special instructions when you submitted your signature that you were only signing on to parts of the judgment and not others?

A. Yes. (Depo. of G. Lane, p. 45:15-23; p. 46:6-15; p. 47:10-12; 49:5-14.)

Based on Mr. Lane's testimony, the Court should find that LS&G is not a "Stipulating Party" since there apparently was no meeting of the minds between LS&G and the more than one hundred Stipulating Parties. If the Court so finds, then Granite is entitled to the entire 234 AF Exhibit 4 Production Right, and the Court need not consider any further issues.

B. If The Court Determines That LS&G Is Bound By The Stipulation And Judgment, Then Granite And LS&G Are Equal Cotenants To 234 AF.

1. The Stipulation And Judgment Should Be Interpreted Like A Contract.

A consent judgment is interpreted according to the rules governing contract interpretation. (*Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, 471.) Thus, "parol evidence is not admissible to change the legal effect of a judgment or the record of it in any material respect." (*Kirkpatrick v. Harvey* (1942) 51 Cal.App.2d 170, 173; accord *Cottom v. Bennett* (1963) 214 Cal.App.2d 709, 716.) Unless the interpretation of a judgment turns on the credibility of extrinsic evidence, the matter is a question of law. (*California Assn. of Professional Scientists v. Schwarzenegger* (2006) 137 Cal.App.4th 371, 382.)

"The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties." (*People v. Shelton* (2006) 37 Cal.4th 759, 767; *Powerine Oil Co., Inc. v. Superior Court* (2005) 37 Cal.4th 377, 390; see also Civ. Code, § 1636.) Such intent "is to be

ascertained from the writing alone, if possible." (Civ. Code, § 1639.) "Where contractual language is clear and explicit, it governs." (*Powerine Oil*, 45 Cal.4th at p. 1018; see also Civ. Code, § 1638.) "The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." (Civ. Code § 1641.)

> In the construction of a statute or instrument, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all. (Code Civ. Proc. § 1858.)

Since LS&G has disavowed the parties' prejudgment oral allocation agreement, and the only agreement regarding the 234 AF is the signed Stipulation and Judgment, the Court must interpret Exhibit 4 based on the four-corners of the documents, giving meaning to all their terms. To do otherwise and purport to adjudicate already adjudicated rights would exceed this Court's retained jurisdiction.

2. LS&G Repudiated The Oral Agreement To Allocate Water Reached During Global Settlement Discussions.

During the global settlement discussions in March 2014, the parties agreed on an allocation of the 234 AF. LS&G refused to honor that deal but, when faced with going to trial or signing the Stipulation, nonetheless signed the Stipulation. LS&G conclusively repudiated the oral agreement in 2016 when it filed the motion seeking all 234 AF for itself.

3. Because Exhibit 4 Is The Only Agreement Regarding The 234 AF, Granite And LS&G Are Equal Cotenants To 234 AF Of Water.

Exhibit 4 is the only agreement regarding how Granite and LS&G hold the 234 AF. Significantly, LS&G's counsel, in his email transmitting LS&G's signatures to counsel for the United States, acknowledged that the Exhibit 4 allocation is a "joint allocation to Granite and Little Rock." (Supp. Kuhs Del., ¶ 6 & Ex. N.) This Court previously acknowledged that both Granite and LS&G have an interest in the 234 AF production right. (Order After Hearing, p. 3 (Ex. P).) Since LS&G disavowed any agreement allocating the 234 AF under Exhibit 4, as a matter of law Granite and LS&G are cotenants to 234 AF of water. "Every interest created in favor of several persons in their own right is an interest in common," unless acquired in a way

not involved here. (Civ. Code, § 686.) Tenants in common under an instrument silent as to their respective shares are presumed to take equally. (*Caito v. United California Bank* (1978) 20 Cal.3d 694, 705; citing *Anderson v. Broadwell* (1931) 119 Cal.App 150, 153 [where several grantees are named in a deed and their respective interests are not set forth therein, it will be presumed that each takes an equal interest].) Since LS&G refused to stand by the allocation reached in March 2014, the law presumes that Granite and LS&G have equal shares of the 234 AF of water. This is the only fair, logical, legal conclusion to this ongoing internecine dispute. Any other ruling would effectively amend the Judgment and would not reflect any mutually-expressed intention of the parties.[5]

C. The Court Cannot Grant The Relief LS&G Seeks.

1. The Court Reserved Jurisdiction To Interpret, Enforce, Administer Or Carry Out The Judgment, Not To Alter Or Amend The Judgment.

The Court reserved jurisdiction as set forth in Section 6.5 to "interpret, enforce, administer or carry out" the Judgment, but not to further adjudicate the rights of Stipulating Parties or alter the terms of the Judgment or the Stipulation. Thus, the Court has no jurisdiction to amend the Judgement or further adjudicate the water rights of the stipulating parties.[6]

2. The Stipulation Settled All Claims To Groundwater Among All Stipulating Parties.

Paragraph 2b of the Stipulation provides: "The judgment resolves all disputes in this Action among the Stipulating Parties." Granting LS&G's relief would not give effect to paragraph 2b.

Granite settled its claims to groundwater with all Stipulating Parties and the Stipulating Parties allocated water to Granite for its Littlerock Quarry based on Granite's status as a fee owner with a current and future beneficial need for water, not based solely on its status as a tenant of LS&G. (See e.g., Decls. of Kuhs, Zimmer, Joyce, McLachlan and Hughes.) Granite as

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[5] It arguably would be reasonable to interpret Exhibit 4 as entitling Granite to more than 50% since Granite is listed first, i.e., primary, while LS&G appears second and only in a parenthetical.

[6] The Judgment cannot be amended for another fundamental reason—the pending appeals. (Code Civ. Proc., § 916, subd. (a); *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 198.)

a fee owner resolved all prescription claims by the Public Water Suppliers and all claims by and among all settling overlying land owners, including LS&G. Forcing Granite to re-litigate its correlative rights to groundwater for its Littlerock Quarry with LS&G would strip Granite of the benefit of its bargain with all other Stipulating Parties. And if the Court were to grant LS&G's requested relief and change Granite's allocation to anything other than an equal joint interest in the 234 AF, it would void the Judgment ab initio. (Stipulation, ¶ 4.)

3. LS&G Is Not Entitled To Re-Litigate Its Correlative Rights.

Having elected to enter into the Stipulation, LS&G may not assert its pre-Judgment overlying rights and must accept all terms of the Judgment. First, the water rights in the AVAA are no longer appurtenant. (See Judgment, Art. 16 (rights transferable); see also *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1256, fn 17 [parties to a physical solution waive all existing groundwater rights].) Second, LS&G may not choose which terms of the Stipulation or Judgment it accepts. In *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1256, at footnote 17, the Supreme Court made clear that where a party desires "to participate in the [physical solution], it must, for this purpose, refrain from asserting its existing water rights and it **must accept all of the terms** of the [physical solution] judgment . . ." (Emphasis added.)[7] If LS&G did not wish to be bound by the allocation as stated on Exhibit 4, it had a clear choice: either continue to litigate, or settle and accept all of the Stipulation's terms, including the Exhibit 4 allocation. Having chosen the latter, LS&G has waived any right to further litigate correlative appurtenant groundwater rights.

D. <u>The Equities Overwhelmingly Favor Granite</u>.

1. LS&G's Claims Are Barred By Its Bad Faith And Unclean Hands.

"He who comes into equity must come with clean hands." (*Kelly v. Central P. R. Co.* (1888) 74 Cal. 557, 562.) The equitable doctrine of unclean hands applies when a plaintiff has

[7] Civil Code section 1589 also prohibits LS&G from blowing hot and cold with regard to the Stipulation and Judgment: "voluntary acceptance of the benefits of a transaction is equivalent to a consent of all the obligations arising from it, so far as the facts are known, or ought to be known, by the person accepting." (See also Civil Code § 3521 ["He who takes the benefit must bear the burden."].)

acted in bad faith or inequitably in the matter in which the plaintiff seeks relief. (*Precision Co. v. Automotive Co.* (1945) 324 U.S. 806, 814–15; *General Elec. Co. v. Superior Court* (1955) 45 Cal.2d 897, 899–900; 13 Witkin, Summary of Cal. Law (11th ed. 2017) Equity, § 9, p. 283.) "[U]nclean hands may be a complete defense to legal as well as equitable causes of action." (*Ibid*; see also *Mendoza v. Ruesga* (2008) 169 Cal.App.4th 270, 279.)

LS&G does not come to this Court with clean hands; it has acted in bad faith and inequitably in negotiating with Granite and entering into the Stipulation. During the global settlement discussions, LS&G led Granite and all other Stipulating Parties to believe that LS&G and Granite had an agreement to an allocation of the 234 AF. Several months after the global settlement discussions concluded and the settling parties reported the settlement to the Court, LS&G dramatically changed its position, asserting that the entire 234 AF allocation belongs to LS&G. Although LS&G advised the Court that it had a dispute with Granite, it did nothing to resolve the matter. Instead, after Granite had submitted its signatures, LS&G signed the Stipulation acknowledging that Granite had a "joint" Production Right and allowed the Court to enter Judgment. Afterward, LS&G filed its post-judgment motion seeking all 234 AF for itself, which the Court denied, noting that both Granite and LS&G have an interest in the water.

2. LS&G Is Estopped To Deny Granite's Entitlement To 50% Of The 234 AF.

The doctrine of judicial estoppel bars LS&G from claiming that the parties hold the 234 AF in any manner other than as equal cotenants, as stated on Exhibit 4. "'Judicial estoppel precludes a party from gaining an advantage by taking one position and then seeking a second advantage by taking an incompatible position.'" (*Aguilar v. Lerner* (2004) 32 Cal.4th 974, 986, quoting *People ex rel. Sneddon v. Torch Energy Services, Inc.* (2002) 102 Cal.App.4th 181, 189.) "'The doctrine's dual goals are to maintain the integrity of the judicial system and to protect parties from opponents' unfair strategies.'" (*Ibid.*)

LS&G seeks to take two different positions in this matter. First, LS&G signed the Stipulation, thus taking the position that LS&G was a Stipulating Party that agreed to all the terms of the Stipulation and Judgment, including the allocations on Exhibit 4. The Court, relying

on LS&G's signatures on the Stipulation, adopted LS&G's first position, that the entire case had been resolved as between all Stipulating Parties, and entered Judgment. Now LS&G seeks to deny that the parties are bound by the allocation as stated on Exhibit 4, and seeks to re-litigate the parties' pre-Judgment appurtenant, correlative, groundwater rights.

3. The Equities Overwhelmingly Favor Granite.[8]

In contrast to LS&G's shifting positions, Granite has remained steady and conducted itself in good faith. At all times after the parties agreed to an allocation in March 2014 until LS&G filed the add-on case in March 2017, Granite stood by that agreement. Granite never agreed to accept less than the agreed allocation, and LS&G knew all along that Granite would not accept less than the agreed allocation. In court proceedings, Granite established its reasonable and beneficial use for the water, whereas LS&G has no reasonable and beneficial use for the water on its land since its land is no longer suitable for mining use or any other use requiring groundwater. Granite agreed to allocations to all other parties to the Stipulation, including other clients of LS&G's counsel, such as Mr. Burrows, believing that LS&G and Granite had reached an agreement that would provide sufficient water for Granite's needs. Now LS&G seeks a declaration that Granite is entitled to nothing, i.e., 0 of the 234 AF.

Additionally, LS&G now asks the Court to force Granite to litigate or renegotiate its correlative rights in a vacuum without all other stake holders present. Granite is not just LS&G's tenant as LS&G contends. Granite is also a landowner that had correlative rights of its own, independent of any rights associated with the Leased Property. Granite should not be forced to re-litigate or negotiate its correlative rights with only LS&G sitting at the table.

Also, to the extent Granite is awarded less than half of the 234 AF allocation, Granite will be at a further competitive disadvantage with other rock producers in the area, particularly those awarded water rights in the Judgment. (Supp. Taylor Decl., ¶ 7.) For example, Littlerock

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[8] Public policy also favors granting Granite the water for which it has a reasonable and beneficial use. "Public interest requires that there be the greatest number of beneficial uses which the supply can yield, and water may be appropriated for beneficial uses subject to the rights of those who have a lawful priority." (*Pasadena v. Alhambra* (1949) 33 Cal.2d 908, 925.)

Aggregate Co., Inc. and Holliday Rock Co., Inc., received a 151 AF allocation, and Vulcan Materials Co. and related entities received a 260 AF allocation. Granite did not intend to enter into a settlement that would give those rock producers a competitive advantage.

4. LS&G Should Not Be Awarded Any Production Right.

a) LS&G does not own all of the leased land.

Contrary to LS&G's verified allegations in its FAC, LS&G does not own two of the four parcels leased to Granite. Thus, LS&G never had overlying rights that may have been associated with those two parcels and is not entitled to a Production Right based on those two parcels.

b) LS&G has no reasonable and beneficial need for the water.

Since the rock deposits on LS&G's land are depleted, Granite, not LS&G, has, and at the time of settlement had, the current (and future) reasonable and beneficial need for water. (*Tehachapi-Cummings County Water District v. Armstrong* (1975) 49 Cal.App.3d 992, 1001 [when quantity of water is insufficient, the "proportionate share of each owner is predicated not on its past use over a specified period of time, . . . **but solely on his current reasonable and beneficial need for water**." (Emphasis added)] (quoted with approval in *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1253); Cal. Cons. art. X, § 2; *In re Waters of Long Valley Creek Stream Sys.* (1979) 25 Cal.3d 339, 351 [right to water, or to its use or flow, shall be limited to reasonable beneficial uses].) LS&G has no need for water at the Littlerock Quarry, nor is there any evidence in the record to the contrary. Accordingly, LS&G has no valid claim to any water rights based on its ownership of land.

IV. CONCLUSION

For the foregoing reasons, the Court should grant the relief requested in Granite's motion.

Dated: April 13, 2018

KUHS & PARKER

By _____
Bernard C. Barmann, Jr., Attorneys for
Granite Construction Company

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF KERN

I, Valerie Hanners, declare:

I am employed in the County of Kern, State of California. I am over the age of 18 and am not a party to the within action; my business address is Kuhs & Parker, 1200 Truxtun Avenue, Suite 200, Bakersfield, California 93301.

On April 13, 2018, I caused the foregoing document(s) described as **MEMORANDUM IN SUPPORT OF MOTION BY GRANITE CONSTRUCTION COMPANY TO INTERPRET AND ENFORCE THE JUDGMENT AND TO PARTITION THE EXHIBIT 4 "Granite Construction Company (Little Rock Sand and Gravel, Inc.)" PRODUCTION RIGHT** to be served on the parties in this action, as follows:

All Parties in the Antelope Valley Groundwater Cases
(Electronic service via Glortrans)

X (BY ELECTRONIC SERVICE) by serving the document(s) listed above via Antelope Valley Watermaster Electronic Document Service – (www.avwatermaster.org) c/o Glotrans, to all parties appearing on the electronic service list for the Antelope Valley Groundwater case. Electronic service is complete at the time of transmission. My electronic notification email address is vhanners@kuhsparkerlaw.com

___ (BY U.S. MAIL) on April 13, 2018, at Bakersfield, California, pursuant to C.C.P. section 1013(a), I:

___ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

___ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is place for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

___ (BY EMAIL TRANSMISSION) on April 13, 2018, at approximately p.m. to:

___ (BY FACSIMILE TRANSMISSION) on April 13, 2018 at approximately ____ p.m., pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was 661/322-2906. A transmission report (copy attached hereto) was properly issued by the sending facsimile machine, and the transmission was reported as completed and without error.

___ (BY PERSONAL SERVICE) on April 13, 2018 pursuant to C.C.P. section 1011, I caused such envelope to be delivered by hand personally to the addressee(s):

___ (BY OVERNIGHT COURIER) on April 13, 2018 pursuant to C.C.P. section 1013I(d), I caused such envelope with delivery fees fully prepared to be sent by Federal Express to **Theodore A. Chester, Jr. at Musick, Peeler & Garrett, LLP**.

___ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that the foregoing was executed on April 13, 2018, in Bakersfield, California.

Valerie Hanners