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

10
11 ANTELOPE VALLEY GROUNDWATER
12 CASES

13 Included Actions:

14 Los Angeles County Waterworks District No. 40
v. Diamond Farming Co., Superior Court of
California, County of Los Angeles, Case No. BC
15 325201;

16 Los Angeles County Waterworks District No. 40
17 v. Diamond Farming Co., Superior Court of
California, County of Kern, Case No. S-1500-CV-
18 254-348;

19 Wm. Bolthouse Farms, Inc. v. City of Lancaster,
20 Diamond Farming Co. v. Lancaster, Diamond
Farming Co. v. Palmdale Water Dist., Superior
21 Court of California, County of Riverside, Case
22 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

**DECLARATION OF ROBERT G.
KUHS IN OPPOSITION TO LANE
FAMILY'S MOTION FOR POST
JUDGMENT SUPPLEMENTAL
ORDER RE GRANITE
CONSTRUCTION COMPANY
[WITH APPENDIX OF EXHIBITS]**

Date: March 21, 2016

Time: 1:30 p.m.

Dept.: TBA

Court: San Jose Superior Court
191 N. First Street
San Jose, CA 95113

23
24
25 I, ROBERT G. KUHS, declare as follows:

26 1. I am an attorney at law licensed to practice in all courts of the State of California
27 and an attorney with Kuhs & Parker, counsel for Granite Construction Company (**Granite**) in
28 this proceeding.

1 2. If called as a witness I could and would competently testify to the facts set forth
2 herein.

3 **A. Global Settlement Discussions**

4 3. In February 2014, the Court suspended the Phase 5 trial on Federal Reserve
5 Rights and Right to Return Flow of Imported Water, and permitted the parties to participate in
6 global settlement discussions at the offices of Best, Best & Krieger (**BBK**) in Los Angeles,
7 California. Over the next several weeks, I, along with more than 40 lawyers, participated in
8 negotiating the substantive framework for the current global settlement and water allocation
9 among the various parties.
10

11 4. On or about March 31, 2014, lawyers representing more than 100 parties met at
12 the BBK offices for continued settlement negotiations. I was present for my clients Tejon
13 Ranchcorp and Granite. Richard G. Zimmer was present for his clients Bolthouse Properties,
14 LLC and Wm. Bolthouse Farms, Inc. Bob Joyce was present for his clients as well.
15

16 5. Ted Chester was also present representing his clients (1) Littlerock Sand &
17 Gravel, Inc. (**LS&G**), (2) Landinv, Inc., Frank and Yvonne Lane 1993 Trust, (3) George and
18 Charlene Lane Family Trust, (4) A.V. Materials, Inc., (5) Littlerock Aggregate Co., (6) Holliday
19 Rock Co., Inc., (7) Monte Vista Building Sites, Inc., and (8) Bruce Burrows/300 A 40 H, LLC.
20

21 6. During the settlement discussions, Granite negotiated a water supply of 126 AF
22 for its Big Rock Quarry and 234 AF for Granite's Little Rock Quarry. During the session,
23 LS&G's counsel, Ted Chester, approached me to discuss allocation of the water supply between
24 LS&G and Granite. Mr. Chester argued that LS&G was the owner of the Leased Property on
25 which water production had historically occurred. I, in turn, argued that Granite also owned
26 property as part of Granite's Little Rock Quarry, and that Granite was the party putting the water
27 to beneficial use, that the Leased Property was essentially "played out" of deposits, and that on a
28

1 going-forward basis the future mining would occur on Granite's Adjacent Property. I also
2 pointed out the holding in *Tehachapi-Cummings County Water Dist. v. Armstrong* (1975) 49
3 Cal.App.3d 992, 1001, wherein the Court said that the "proportionate share of each owner is
4 predicated not on its past use over a specified period of time, nor on the time he commenced
5 pumping, but solely on his current reasonable and beneficial need for water." I also spoke to Mr.
6 Chester about the water allocations for Mr. Chester's several other clients including Bruce
7 Burrows. Mr. Chester was very concerned about whether he could obtain an allocation of water
8 for Mr. Burrows following the Phase 4 trial during which Mr. Burrow could not produce any
9 credible evidence of water use on his peach orchard and stipulated to pumping only 100 AF in
10 2011 and 2012.
11

12
13 7. During settlement negotiations I, as well as Bob Joyce, counsel for Grimmway,
14 told Mr. Chester that Granite and Grimmway would not support an allocation of water to Mr.
15 Burrows or agree on an allocation of water to Mr. Chester's other clients, unless the parties also
16 reached a global settlement including the allocation between Granite and LS&G. Following this
17 dialogue, I asked Mr. Chester to make Granite a "fair offer" of water allocation between the
18 parties. In response, Mr. Chester offered to allocate 90 AF to Granite and 144 AF to LS&G. I
19 countered at 100 AF for Granite and 134 AF for LS&G. After some discussion, Mr. Chester
20 stated that LS&G would agree to the 100/134 AF split between Granite and LS&G but that
21 Granite should bear the risk of any further reduction on Exhibit 4, the spreadsheet showing the
22 allocation of productions rights to the adjusted native yield. I responded that Granite would bear
23 the risk of future reductions, but should likewise receive the benefit of any future increased
24 allocation, should that occur. Mr. Chester stated that he would check with his client and advise.
25
26 Mr. Chester and I then advised the several members of the larger group of settling parties that
27
28

1 Granite and LS&G had agreed on an allocation which also resulted in an agreed allocation to Mr.
2 Chester's other clients. In fact Mr. Burrow received a very generous 295 AF.

3 8. Four days later on April 4, 2014, the parties orally advised the Court that all
4 parties had reached a global settlement on allocation and would need several weeks to draft the
5 physical solution. (**Exhibit. C**, Minute Order, Docket No. 8932.)
6

7 **B. LS&G Attempts to Renege on The Agreed Allocation.**

8 9. Nearly five months later, in August, 2014, while the parties were drafting the
9 physical solution, Mr. Chester began to make suggestions that LS&G was no longer content with
10 the 100/134 AF allocation. I repeatedly advised Mr. Chester that the correlative allocation was
11 arrived at after weeks of negotiations with all stipulating parties and that Granite was not willing
12 to reopen negotiations on the correlative allocation of the Basin's native safe yield and, that to do
13 so, would require reopening negotiations for all stipulating parties, including Mr. Chester's other
14 clients, and not simply Granite and LS&G. I also advised Mr. Chester that Granite and other
15 parties such as Grimmway and Bolthouse would not have agreed to give Mr. Chester's other
16 clients the generous allocations shown on Exhibit 4 if the parties had known that LS&G would
17 attempt to renege on the agreed allocation reached on March 31, 2014.
18
19

20 10. On August 19, 2014, I and Granite's representative William Taylor met face-to-
21 face with Mr. Chester, Mr. Lane and other LS&G representatives in Lancaster. During that
22 meeting, Mr. Lane accused Granite of trying to "steal" his water and stated that the entire 234 AF
23 allocation to Little Rock Quarry belongs to the Lane Family and that Granite was entitled to
24 zero. Later during the meeting Mr. Lane "offered" to "give" Granite 34 AF of the 234 AF foot
25 allocation. I advised Mr. Lane that it was not his water to give. Rather, the water supply was
26 allocated to Granite by the stipulating parties. LS&G and the other Lane entities could choose to
27 be a part of that settlement, or not.
28

1 11. Attached as **Exhibit D** is a true and correct copy of a September 3, 2014, letter
2 from Ted Chester to me wherein Mr. Chester was again trying to renegotiate the 100/134 AF
3 allocation.

4 12. Attached as **Exhibit E** is a true and correct copy of my December 10, 2014, letter
5 sent in response to Mr. Chester's September 3, 2014, letter, wherein I indicated that Granite
6 intended to stand by the 100/134 allocation reached between the parties on March 31, 2014.

7 13. Attached as **Exhibit F** is a true and correct copy of a December 17, 2014, letter
8 sent by Mr. Chester to me responding to my prior letter.

9 14. On December 31, 2014, LS&G filed a CMC Statement stating that there was a
10 dispute between Granite and Lane with respect to allocation of water for Granite's Little Rock
11 Quarry. The Court's Minute Order of January 7, 2015, a true and correct copy of which is
12 attached as **Exhibit G**, reflects that the Court reserved the issue for "further discussion" after the
13 ruling on the Final Approval Hearing of the Wood Class Settlement" which the Court set for
14 June 1, 2015.

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16
17 **C. LS&G Signs the Stipulation for Entry of Judgment**

18 15. Following the January 7, 2015, hearing, I, as well as other counsel, including Mr.
19 McLachlan, Bob Joyce and others, made it clear in several phone conversations with Ted Chester
20 that his clients could not be part of the global settlement and simultaneously reserve issues for
21 further litigation between Granite and LS&G.

22 16. On or about February 20, 2015, on the eve of the deadline to submit signatures,
23 Mr. Chester submitted to counsel for the United States his signature to the Stipulation for Entry
24 of Judgment and Physical Solution, as well as those of his clients, including LS&G. In so doing,
25 LS&G bound itself to the terms of the Stipulation and Judgment and waived any right to litigate
26 any dispute with the stipulating parties, including Granite.
27
28

1 17. On March 4, 2015, the United States filed the Stipulation with the Court as Doc. #
2 9624, a true and correct copy of which (with some signatures excluded) is attached as **Exhibit H**.

3 18. Following submission of the Stipulation the Court held numerous Case
4 Management Conferences, including March 26, 2016; May 5, 2015; May 15, 2015; July 10,
5 2015; July 16, 2015; September 4, 2015, and September 21, 2015. According to my notes and
6 recollection neither Mr. Chester nor LS&G raised the Granite/Lane dispute again in open court.
7

8 19. On or about September 26, 2015, I sent a draft declaration to Mr. Chester to
9 review in preparation for the prove-up trial. In a response email Mr. Chester asserted that the
10 dispute between Granite and LS&G remained unresolved. I advised Mr. Chester that the
11 Stipulation resolved all disputes between all parties, including the Granite/LS&G dispute. I
12 forwarded the email to Michael McLachlan, who likewise told Mr. Chester that the Stipulation
13 was dispositive. Mr. McLachlan went on to inform Mr. Chester that pursuit of the dispute would
14 be a violation of the Stipulation, and that if Mr. Chester did not drop the issue, Mr. McLachlan
15 would file a motion to have LS&G deemed a non-stipulator. A true and correct copy of the
16 email exchange is attached as **Exhibit I**.
17

18 20. Eight months following the Stipulation, on October 6, 2015, at 4:33 p.m. Mr.
19 Chester filed a CMC Statement on the eve of the October 7, 2015 CMC claiming that the
20 Granite/Lane dispute was still alive and well. However, Mr. Chester made no mention of the
21 dispute in open court nor did he ask for any issues relating to the so-called Granite/Lane dispute
22 to be set for trial.
23

24 21. The Prove-Up Trial commenced on October 14, 2015. Closing arguments
25 occurred on November 3 and 4, 2015, at which time the Court announced its Oral Tentative
26 Decision. On December 23, 2015, following the hearing on objections to the Proposed Judgment
27 and Statement of Decision, the Court signed the Statement of Decision and Judgment. Neither
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1 Mr. Chester, nor LS&G, attempted to put on evidence during the Prove-Up Trial or objected in
2 any way to the Statement of Decision or Judgment.

3 22. On January 27, 2016, I received an email from Mr. Chester wherein Mr. Chester
4 offered to allocate Granite a mere 70 AF of the total 234 AF for Granite's Little Rock Quarry, a
5 true and correct copy of which is attached as **Exhibit J**. Then, on January 31, 2016, after
6 Judgment was entered, Lane filed the instant motion.
7

8 23. In summary, Granite and LS&G agreed to an allocation of 100 AF to Granite for
9 Granite's Little Rock Quarry on March 31, 2014. Since that time, LS&G has tried in a variety of
10 ways to coerce Granite into a smaller allocation. Granite has steadfastly refused to decrease or
11 increase its requested allocation in deference to the global settlement and the Stipulation.
12 Granite would not have Stipulated to a zero allocation as request now by LS&G. Nor would
13 Granite have agreed to the allocations on Exhibit 4 to Mr. Chester's other clients had we known
14 that LS&G would attempt to renege on the March 31, 2014 allocation.
15

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct.
18

19 Executed this 8th day of March, 2016, at Bakersfield, California.
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21 
22 Robert G. Kuhs

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