Exhibit D

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Robert G. Kuhs
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1200 Truxtun Avenue, Suite 200
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Re: Antelope Valley Groundwater Cases
Little Rock Sand and Gravel, Inc./Granite Construction Company

Dear Robert,

This is a confidential settlement communication and, accordingly, is privileged and inadmissible.

Over the last several months our respective clients, as between themselves, have attempted to resolve the manner in which they are to be allocated Overlying Production Rights on Exhibit 4 to the Proposed Stipulated Interlocutory Judgment and Physical Solution. Currently, the line-item on Exhibit 4 reads: "Granite Construction Company (Little Rock Sand and Gravel, Inc.)"; Pre-Rampdown Production 400.00 af; and Overlying Production Rights 360.00 af. Little Rock has made two offers to separate this line-item into two entries, one for Little Rock and one for Granite. However, both of Little Rock's offers have been rejected by Granite.

In this letter I set forth a brief description of my understanding of the facts and law relating to the ownership of groundwater rights as between Little Rock and Granite. Because time is short, it is hoped that this letter will assist our respective clients in resolving this impasse.

Among its landholdings, the Lane Family, through its corporation, Little Rock, owns approximately 240 acres of contiguous land in the Antelope Valley in Los Angeles County (the "Leased Property"). The Lane Family has owned and operated land, including land for

quarrying, farming and ranching, since the 1930's. In 1987, Little Rock leased the Leased Property to Granite (the "Lease").[1]

The Leased Property is a rock, sand and gravel quarry. Section 1 of the Lease provides that Granite use the property and any surface or underground water or water rights occurring therein or appurtenant thereto, to mine, extract and process quarry materials.

Section 3.2 of the Lease provides that during the Lease term, Lessor grants to Lessee "such water rights as Lessor has to . . . underground water located . . . under the leased premises."

Section 15 limits the use of the Leased Property to quarrying activities "and for no other purpose."

Section 26 of the Lease contains an anti-assignment provision.

In 2008 Granite purchased about 48 acres of land ("Granite's Adjacent Property") adjacent to the Leased Property. In 2011 Granite amended its Mining and Reclamation Plan to include Granite's Adjacent Property.

Additionally, Granite owns about 140 acres in the Big Rock wash area of Antelope Valley (about 9 miles east of the Leased Property) ("Big Rock Property").

Since the beginning of the Lease in 1987, Granite's quarrying operations on the Leased Property have utilized groundwater pumped from three wells located on the Leased Property. For the years 2000-2007 and 2011-2012, Granite produced in excess of 400 acre-feet per year from the wells located on the Leased Property to conduct its quarrying operations on the Leased Property. Granite 12/21/12 Discovery Responses.[2]

At least through May 2013, Granite had not conducted any quarrying operations on Granite's Adjacent Property, and Granite had not used any water on Granite's Adjacent Property, except, beginning in 2011, water applied by water truck for minimal dust suppression. May 9, 2013 W. Taylor Depo. 54:8. Similarly, Granite has not conducted quarrying operations on its Big Rock Property. *Id.* at 11:6. Operations at the Big Rock Property are limited until operations at the Leased Property are terminated. *Id.* at 12:17.

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[1] The initial Lease Agreement is dated April 8, 1987. The parties entered into a First Amendment to Lease in April 2010. The initial term of the Lease was three years, but it allowed Granite to extend the Lease for additional terms. Granite has exercised extensions so that currently the extended term of the Lease runs to April 30, 2021. Additional unexercised extensions are available under the Lease Agreement.

[2] It is assumed that Granite produced similar amounts of groundwater for the years 2008-2010 and 2013-2014, but that information has not been produced.

Both Little Rock and Granite are parties to the *Antelope Valley Groundwater Cases*. The groundwater case was initiated among several parties in 1999, and became a general basin adjudication proceeding in 2004. The case involves multiple parties' claims to groundwater in the Antelope Valley. Certain public water suppliers have asserted prescription claims, the federal government has asserted federal reserve rights, and landowners (including certain defined classes) have asserted overlying water rights. In the first three phases of the case the court determined the geographical boundaries of the basin to be adjudicated, the hydraulic connection within the basin, and that the basin is in a state of overdraft with a safe yield of 110,000 acre-feet per year.

In Phase IV of the case, the court determined the quantities of groundwater pumped by the parties for the years 2011 and 2012. The court's phase IV decision sets forth 400 acre-feet pumping for each of 2011 and 2012 for "Granite Construction Company (Little Rock Sand and Gravel, Inc.)."[3] Since entry of the Phase IV decision, most of the parties in the case have engaged in extensive settlement discussions, and, except for a few outstanding issues, have agreed to a proposed Stipulated Interlocutory Judgment and Physical Solution that, if approved by the court, would settle the case among the settling parties. The court could thereafter try issues relating to non-settling parties.

Section 5 of the Proposed Judgment quantifies certain parties' Overlying Production Rights, and lists on Exhibit 4 for each Overlying Production Right: 1) the Pre-Rampdown Production, 2) the Production Right, and 3) the percentage of the Production from the Adjusted Native Safe Yield. Exhibit 4 shows "Granite Construction Company (Little Rock Sand and Gravel, Inc.)" as a single line-item "party," and sets forth 400.00 acre-feet as its "Pre-Rampdown Production," 360.00 acre-feet as its "overlying Production Right," and 0.617% as its "Percentage Share of Water Available to Overlying Rights."

Exhibit 4 of the Proposed Judgment was an extensively negotiated document. The bases of the allocations included the parties' 2011-2012 pumping, credits for prior year pumping (if 2011-2012 pumping was significantly lower than prior years), the individual circumstances of particular landowners, and across-the-board reductions to fit all rights within the maximum (58,341.60 acre-feet) allowed. In the negotiation sessions, the 360 acre-feet right assigned to "Granite Construction Company (Little Rock Sand and Gravel, Inc.)" was composed of 234 acre-feet attributable to the operations on the Leased Property (based generally on 2011-2012 pumping) and 126 acre-feet attributable to Granite's Big Rock Property (not based on 2011-2012 pumping). The allocation to the Leased Property is supported by available documentation showing prior and current groundwater use on the Leased Property. Except for some documents produced in discovery indicating pumping of about 16 acre-feet per year, documentation supporting the allocation to Granite's Big Rock Property has not been made available in the settlement meetings or otherwise.

[3] The court reserved jurisdiction to amend the 2011-12 numbers based on subsequent meter readings.

Section 5.1.1.4 of the Proposed Judgment provides that the Overlying Production Rights are subject to Pro-Rata Reduction or Increase only pursuant to Paragraph 19.5.9, which relates to an increase or reduction of the Native Safe Yield.

It is possible that the court may attempt to adjust the Production Rights in connection with its approval of the Proposed Judgment, or thereafter, and that such adjustment could result in the reduction or increase of a party's Production Right.

In the groundwater case, by settlement or trial, it is expected that the court will ultimately determine the parties' title to water rights and then provide injunctive relief (or a "physical solution") to prevent wrongful interference with, or improper or excessive use of, the groundwater basin.

In the case, generally, the landowners assert overlying water rights and the Public Water Suppliers assert prescriptive water rights. An overlying water right is the right to take water from underneath the land for use on the land within the basin or watershed; the right is based on the ownership of the land and is appurtenant thereto. *City of Barstow v. Mojave Water Agency*, 23 Cal.4th 1224, 1240 (2000).

A prescriptive right in groundwater requires proof of the same elements required to prove a prescriptive right in any other type of property: a continuous five years of use that is actual, open, and under claim of right. *City of Santa Maria v. Adam*, 211 Cal.App.4th 266, 291 (2012).

As against a claim of prescription, overlying owners retain their rights by pumping during the 5-year prescription period (*i.e.*, "self help"). *Barstow*, 23 Cal.4th at 1253. Thus, the historical quantity of pumping by an overlying landowner is relevant to support a defense to a prescriptive attack upon the overlying owner's groundwater right.

However, as between overlying owners, as co-equal or correlative right owners, when there is insufficient water in the basin, overlying owners are limited to their "'proportionate fair share of the total amount available based upon [their] reasonable need[s].'" *Id.* In *Tehachapi-Cummings City Water District v. Armstrong*, 49 Cal.App.3d 992, 1001-05 (1975), the court said that the "proportionate share of each owner is predicated not on his past use over a specified period of time, nor on the time he commenced pumping, but solely on his current reasonable and beneficial need for water." The court continued, "many factors are to be considered in determining each owner's proportionate share: the amount of water available, the extent of ownership in the basin, the nature of the projected use . . . all these and many other considerations must enter into the solution of the problem." *Id.* See *Katz v. Walkinshaw*, 141 Cal. 116, 136 (1903) ("Disputes between overlying landowners, concerning water for use on the land, to which they have an equal right, in cases where the supply is insufficient for all, are to be settled by giving to each a fair and just proportion."); *State v. Schoendorf*, 2002 Cal.App. Unpub. LEXIS 1060 (May 10, 2002) (As between neighbors, an overlying right "does not permit a landowner to trespass onto a neighbor's land" and pump water from the neighbor's well).

If a party makes no use of groundwater on his own land, or elsewhere, "he should not be allowed to enjoin its use by another who draws it out or intercepts it, or to whom it may go by percolation." *Katz*, 141 Cal. 116.

As between landlord and tenant, unless the lease otherwise addresses the subject, a tenant is estopped to deny the title of his landlord as long as he remains in possession as a tenant. Evid. Code § 624; *Miller & Starr* 2d § 18:49.

In the instant matter, both Little Rock and Granite are claiming overlying groundwater rights. Little Rock's claim relates to the overlying groundwater rights appurtenant to the Leased Property. Granite's claim relates to the overlying groundwater rights appurtenant to Granite's Adjacent Property. Granite is also claiming an overlying right appurtenant to Granite's Big Rock Property.

With respect to Little Rock's overlying claim, the history of pumping on the Leased Property supports a "self-help" defense to the Public Water Suppliers' prescription claims. Although Granite actually pumped the groundwater, the pumping was done from wells located on the Leased Property, and the water was used on the Leased Property. Additionally, the historical water use on the Leased Property supports the Little Rock's correlative claim to groundwater, providing strong evidence of the current reasonable and beneficial needs for water upon the Leased Property. In this regard, Granite was exercising the overlying right appurtenant to the Leased Property that was granted to Granite under Section 3.2 of the Lease. Granite was exercising Little Rock's overlying right, and Granite is estopped from denying Little Rock's title to such overlying right. We are not aware of any case law that credits a tenant, separate from the landlord, with pumping performed on leased premises.

On the other hand, there is no, or very limited, history of pumping or use of groundwater on Granite's Adjacent Property and Granite's Big Rock Property. Thus, Granite's self-help defense to prescription is likely limited.[4] Additionally, the lack of pumping history, and lack of evidence of past operations, on these two properties could negatively impact Granite's proof of a reasonable and beneficial need for water among correlative overlying landowners. However, it is recognized that Granite may be able to demonstrate need by other evidence, *i.e.*, its plans to operate its Adjacent and Big Rock Properties, but such evidence has not yet been made available.

It is hoped that your client will reconsider its rejection of Little Rock's most recent offer. If this issue is not resolved promptly, then the other settling parties' interests will potentially be impacted. They will need to be put on notice that our respective clients may not be able to join

[4] If Granite's predecessors pumped groundwater, and such pumping can be documented, then Granite may be able to establish self-help. To date, no such documentation has been made available.

the proposed settlement, and may be forced to litigate the factual and legal issues relating to their claimed water rights. In this connection, I hope to hear from you by early next week before it becomes necessary to alert the other settling parties.

Very truly yours,

Ted Chester

Theodore A. Chester