Exhibit E

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Via email and U.S. Mail
Theodore A. Chester, Jr.
Smiland Chester LLP
601 West 5th Street, Suite 1100
Los Angeles, CA 90071

Re: Antelope Valley Groundwater Cases
Judicial Council Coordination Proceeding No. 4408
CONFIDENTIAL SETTLEMENT COMMUNICATION

Dear Mr. Chester:

This letter is in response to your letter of September 3, 2014, Mr. Lane's letter of November 22, 2014, and our numerous intervening communications regarding the allocation of groundwater production rights to Granite Construction Company (Granite) and Littlerock Sand & Gravel, Inc (LS&G) in the Antelope Valley Groundwater Basin (Basin). We hope that on reflection of the points raised in this letter LS&G will agree to support the allocation of water agreed to on March 31, 2014, and be part of the global settlement in what has been a long and very expensive adjudication.

A. LEASE HISTORY

By way of background, in 1987 LS&G leased approximately 236 acres of land (Leased Property) to Granite for operation of Granite's Little Rock Quarry. Granite subsequently installed three groundwater production wells on site to support its quarry operations. In 2008 Granite purchased about 48 acres of land immediately adjacent to the Leased Property. In April 2010 Granite and LS&G amended the lease by extending the term to April 30, 2021, with options to extend the lease until April 30, 2041. In 2011 Granite amended its Surface Mining and Reclamation Plan to include Granite's adjacent property.

Section 3.2 of the lease provides that Granite has a right to use all water rights associated with the Leased Property. The lease is silent as to who may claim the pumping history in the context of a groundwater adjudication. Since 1987, Granite has produced and beneficially used essentially all of the water produced from the three wells that Granite installed on the Leased Property for its quarry operations.

B. ANTELOPE VALLEY ADJUDICATION

In 1999 two corporate farming operations filed actions to quiet title to their respective groundwater rights in the Antelope Valley. In 2004 Los Angeles County Waterworks District No. 40 (WD40) initiated a general groundwater adjudication, seeking a judicial determination of the respective rights of *all* parties to produce groundwater from the Basin. In 2007 WD40, joined by a number of other public water suppliers (Public Water Suppliers), filed a cross-complaint in the coordinated proceeding requesting a general adjudication of the groundwater rights within the Basin and asserting prescriptive rights to a portion of the Basin's water supply.

In December 2011 LS&G filed its answer to the Public Water Suppliers' amended cross-complaint, asserting overlying rights to produce groundwater from the Basin. Granite filed its answer to the amended cross-complaint in February, 2012 also asserting overlying rights to produce groundwater from the Basin. Neither Granite nor LS&G filed cross-complaints, and neither party asserted prescriptive rights to groundwater.

Contrary to statements made in the letters and at various times by Mr. Lane and yourself, Granite has *never* claimed ownership of any water rights associated with the Leased Property. These unfortunate assertions appear to be based on a mistaken understanding of California Water Law and the settlement history.

C. CALIFORNIA WATER LAW BASICS

California courts typically classify water rights in an underground basin as overlying, appropriative, or prescriptive. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1240.) In this adjudication, only the Public Water Suppliers have asserted appropriative and prescriptive rights to the Basin groundwater. Thus, as between Granite, LS&G and the thousands of other parties in these actions, only overlying rights are at issue.

An overlying right is appurtenant to the land. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 278.) The owner of the land has the right to take the water from the ground underneath for use on his or her land within the Basin or the watershed. (1 Slater, California Water Law and Policy (2014) § 3.09[5], p. 3-33.) So long as a party owns land overlying the Basin, there is no requirement that the water be extracted from any particular parcel. (*Id.* at § 3.13, p. 3-44.)

Here, both Granite and Lane own land within the Basin, and therefore own overlying water rights, unless lost by prescription. As a basis for LS&G claiming the entire Little Rock allocation, your letter argues that Granite may have lost its water rights to its adjacent lands through non-use. This argument is misplaced. First, LS&G did not allege prescription against Granite. Second, the settlement resolves the Public Water Suppliers' prescription claims. Third, absent prescription, overlying rights cannot be lost by non-use or disuse. (*Wright v. Goleta Water District* (1985) 174 Cal.App.3d 74, 84.) Finally, no California Court has ever held that an unexercised overlying right can be lost by prescription.

The safe yield of the Basin is the "maximum amount of water that could be extracted annually, year after year, without eventually depleting the underground basin." (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 214.) When total extractions exceed the safe yield, the Basin is said to be in overdraft. (*Id.* at p. 280.) On July 13, 2011 Judge Komar issued a Statement of Decision following the Phase 3 Trial determining that the Basin is currently in overdraft. We now turn to the rules for allocating limited water resources in an over-drafted basin.

Foundationally, article X, section 2 of the California Constitution limits all water rights in the State to "to reasonable and beneficial uses." (*City of Barstow, supra,* 23 Cal.4th at p. 1241.) When the safe yield is insufficient to satisfy the reasonable and beneficial needs of all users, the rights of all overlying landowners are said to be *correlative.* (*City of Santa Maria, supra,* 211 Cal.App.4th 266, 279.) That is, each overlying owner is limited to their "proportionate fair share of the total amount available based upon [their] reasonable need[s]." (*City of Barstow, surpa,* 23 Cal.4th at p. 1253, citing *Tehachapi-Cummings County Water Dist. v. Armstrong* (1975) 49 Cal.App.3d 992, 1001 (*Armstrong*).) Importantly, because an overlying right is correlative, it is "defined in relation to other overlying water right holders in the basin." (*City of Barstow, supra,* 23 Cal.4th, at 1253.) In *Armstrong*, the court said that the "proportionate share of each owner is predicated not on its 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**." (Emphasis added.) The *Armstrong* court further stated, "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 of these and many other considerations must enter into the solution of the problem." (*Id.* at p. 1001-1002.)

Thus, both Granite and LS&G have correlative groundwater rights. The quantity of water that each may produce from its overlying land depends on an in-depth examination of the *Armstrong* factors in relation to not only Granite and LS&G, but every other overlying rights holder in the Basin. Both Granite and LS&G own land, but only Granite has a reasonable and beneficial need for water at the Little Rock Quarry, now, and for the foreseeable future.

D. SETTLEMENT PROCESS

The Antelope Valley Groundwater Basin is the largest basin ever adjudicated in the State of California. The Basin itself encompasses approximately 1,390 square miles. The action includes over 4,000 parties as well as 60,000-70,000 members of the Willis Non-Pumper Class, and about 3,200 members of the Woods Small Pumper Class, and also claims by Edwards Air Force Base to a Federal Reserve Right, dozens of mutual water companies, major agricultural interests and other competing users. Correlative rights must be measured in the context of *all* of these competing claims. (*Armstrong, supra,* 49 Cal.App.3d at p. 992.)

There have been at least three failed attempts at a global settlement, including nearly two years of mediation before Justice Ronald Robbie. The current settlement effort began more than

one year ago through the concerted efforts of counsel for Palmdale Water District, the Wood Class, the United States, the Cities of Lancaster and Rosamond, and my office as counsel for Granite and Tejon Ranchorp (Tejon). In February 2014, the Court suspended the Phase 5 Trial on Federal Reserve Rights and Right to Return Flow of Imported Water, and ordered the parties into settlement discussions at the offices of Best, Best & Krieger in Los Angeles, California.

Over the next several weeks more than 40 lawyers negotiated the substantive framework for a settlement and water allocation among the various parties. That settlement framework includes beneficial terms only available in the context of a global settlement, including (1) a fixed production right to a specified quantity of water, (2) the right to transfer a production right, and (3) the right to carry over unused production from year-to-year. As an aside, the carry over right was originally limited to 4 years, but, largely through the efforts of William Taylor on behalf of Granite, virtually all parties to the settlement will have the right to carry over any unused production indefinitely.

On March 31, 2014, lawyers representing more than 100 individual parties met at the Los Angeles offices of Best, Best & Krieger for continued settlement negotiations. You were present on behalf of your clients (1) LS&G, (2) Bruce Burrows and 300 A 40 H, LLC, (3) Landinv, Inc., (4) Frank and Yvonne Lane 1993 Family Trust, (5) George and Charlene Lane Family Trust, (6) A.V. Materials, Inc., (7) Littlerock Aggregate Co. and Holliday Rock Co., Inc., and (8) Monte Vista Building Sites, Inc. I was present on behalf of Granite and Tejon. The parties agreed upon a correlative allocation of the Basin's native safe yield as reflected in Exhibits 3 and 4 of the draft Stipulation for Entry of Judgment and Physical Solution (Judgment). The discussions were spirited and confrontational, and encompassed historic use and most, if not all, of the *Armstrong* factors including land ownership, current beneficial needs, and in some cases good old fashioned "horse trading." Your client Mr. Burrows was one of the more prominent benefactors of the horse trading.

The parties agreed to allocate 126 acre feet (AF) to Granite for its Big Rock Quarry. The parties also agreed to allocate approximately 234 AF to Granite's Little Rock Quarry. You and I had several hallway discussions regarding allocation of the Little Rock Quarry supply between Granite and LS&G. I asked you to make Granite a fair offer. In response, you proposed to split the allocation: 90 AF for Granite and 144 AF for LS&G. I countered at 100 AF for Granite, 134 AF for LS&G. After some discussion and conversation with our respective clients, you stated that LS&G would agree to a 100/134 AF split provided that Granite agreed to absorb any future reduction in the water allocation. I responded that Granite would bear the risk of any future reductions, but should likewise receive the benefit of any future increased allocation. You advised that you would need to talk with your client further, and that is where the discussion left off. Over the next five months, we participated in drafting the proposed Judgment.

Exhibit 4 to the Judgment currently provides in relevant part:

Claimant Name	Overlying Production Right Acre-Feet
Burrows/300 A40 H LLC	295
Granite Construction Company: Big Rock Facility	126
Granite Construction Company: Little Rock Facility (Little Rock Sand & Gravel Inc.)	234
G. Lane Family (Frank and Yvonne Lane 1993 Family Trust, Little Rock Sand and Gravel, Inc., George and Charlene Lane Family Trust) [Does not include water pumped on land leased to Granite Construction]	773
Landiny Inc.	969
Littlerock Aggregate Co., Holliday Rock Co., Inc.	151

In August, you began to make suggestions that Mr. Lane was no longer content with the 100/134 allocation split. I repeatedly advised you that the allocation was arrived at after days of negotiations with all parties to the adjudication and that Granite was not willing to reopen negotiations, save and accept for the issue of who bears the risk of future change. Quite simply, Granite (and other parties such as Grimmway and Bolthouse) would not have agreed to give your other clients the generous allocations currently shown on Exhibit 4 if we had known that Mr. Lane was going to retreat from his March 31, 2014 position and challenge the minimal 100 acre-feet allocated to Granite for its Little Rock Quarry.

Mr. Lane argues that in every instance of leased ground in the adjudication, the production right went to the landlord, not the tenant. Again, the statement is not accurate. By way of example, Sheldon Blum, Trustee (Blum) owns about 150 acres within the Basin. Blum leased its ground to Bolthouse Farms (Bolthouse) for several years during which Bolthouse grew onions. Blum claims that because Bolthouse irrigated crops on Blum land, Blum is entitled to a production right in excess of 500 AF. Blum had no beneficial use for water before or after it leased ground to Bolthouse. Under the current Judgment Blum is allocated zero.

More recently, we met with our respective clients on August 19th, 2014 at Mr. Lane's Lancaster office. During that conversation, Mr. Lane suggested, for the first time, that the entire 234 allocation belongs to the Lane Family and that Granite was trying to "steal his water." That, of course, is not legally or factually accurate. Legally, the water does not belong the Mr. Lane, it belongs to the State. Factually, both parties have correlative rights to use the groundwater. As between the two, Granite has the current reasonable and beneficial need for all the water. Indeed, any allocation to LS&G for the Little Rock Quarry would seem to violate article X, section 2 of the Constitution. Nevertheless, the parties agreed on an allocation of 100/134, which is very favorable to LS&G. Thus, when LS&G retreats from its prior agreed allocation, offers Granite a zero allocation, and then attempts to lay claim to Granite's Big Rock water allocation as well, it appears that it is Mr. Lane, not Granite, who is attempting to steal a water supply. If Mr. Lane

wants more water, we suggest that you either reallocate that water supply allocated to your other clients, or invite all of the other parties back to the bargaining table.

E. CONCLUSION

In closing, Granite, like Mr. Lane, values the parties' long standing relationship. Allocating correlative rights to groundwater is far from an exact science and involves a substantial amount of give and take among all stakeholders. Granite does not desire to take any rights from LS&G, and fully expects that LS&G will not attempt take any rights from Granite. In the end, both parties have overlying correlative rights in the Basin. Since Granite, not LS&G, is putting the entire water production at the Little Rock Quarry to beneficial use, Granite could justifiably claim the entire 234 AF allocation. Granite has not done so. Quite the opposite. Out of respect for the long standing relationship, Granite offered LS&G roughly 57 percent of the 234 AF allocated under the settlement; terms which Granite considers to be more than reasonable given LS&G's complete lack of current beneficial use.

Although settlement documents have yet to be signed, Granite intends to stand by the handshake allocation reached between Granite and all other settling parties on March 31, 2014, giving Granite a modest 226 AF total production right from the Basin. Please advise whether you and LS&G will do the same.

Very truly yours,

Robert G. Kuhs

RGK/lel

cc: Jim Roberts, CEO Granite Construction Company
William Taylor, Resource Development Manager