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8 a California corporation

9 **SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES**

10 **NORTH JUDICIAL DISTRICT – ANTELOPE VALLEY COURTHOUSE**

11 LITTLE ROCK SAND AND GRAVEL, INC.,
12 a California corporation,

13 Plaintiff,

14 v.

15 GRANITE CONSTRUCTION COMPANY, a
16 California corporation; and DOES 1 through
50, inclusive,

17 Defendants.

CASE NO. MC026932

**VERIFIED FIRST AMENDED
COMPLAINT FOR:**

- 1. QUIET TITLE; and
- 2. DECLARATORY RELIEF

Assigned to: Hon. Brian C. Yep
Dept: A-14

Complaint Filed: March 6, 2017

18 **GENERAL ALLEGATIONS**

19
20 1. At all times herein mentioned, Plaintiff LITTLE ROCK SAND AND GRAVEL,
21 INC., a California corporation (“LITTLE ROCK”), was and is doing business in the County of
22 Los Angeles, State of California. Additionally, at all times mentioned herein, Plaintiff LITTLE
23 ROCK was and is the owner and lessor of parcels of real property (the “Little Rock Property”)
24 located in the City of Palmdale in the Antelope Valley region of the County of Los Angeles, State
25 of California, with the following legal description:

26 PARCEL 1: The northwest quarter of the northwest quarter of Section 11,
27 Township 5 North, Range 11 West, S.B.B.M., in the County of Los Angeles,
28 State of California.
EXCEPT THEREFROM the east 30 feet.

COPY

1 PARCEL 2: The southwest quarter of the northwest quarter of Section 11,
2 Township 5 North, Range 11 West, S.B.B.M., in the County of Los Angeles,
3 State of California.

4 EXCEPT THEREFROM the east 30 feet of, the north 100 feet thereof.

5 PARCEL 3: The west half of the southwest quarter of Section 11, Township 5
6 North, Range 11 West, S.B.B.M., in the County of Los Angeles, State of
7 California.

8 PARCEL 4: The north half of the northwest quarter of Section 14, Township 5
9 North, Range 11 West, S.B.B.M., in the County of Los Angeles, State of
10 California.

11 EXCEPT THEREFROM that portion lying southwesterly of Highway 138.

12 2. At all times herein mentioned, Defendant GRANITE CONSTRUCTION
13 COMPANY, a California corporation ("GRANITE"), was and is leasing and occupying the Little
14 Rock Property. Additionally, at all times mentioned herein, Defendant GRANITE was and is
15 doing business in the County of Los Angeles, State of California.

16 3. The Little Rock Property is the subject of the contract sued upon herein and was
17 entered into and to be performed in the County of Los Angeles, State of California.

18 4. The true names and capacities, whether individual, corporate, associate or
19 otherwise, of Defendants sued herein as DOES 1 through 50, and each of them, are unknown to
20 Plaintiff LITTLE ROCK at this time. Therefore, Plaintiff LITTLE ROCK sues said Defendants
21 by such fictitious names. Plaintiff LITTLE ROCK will seek leave of Court to amend this
22 Complaint to show the true names and capacities of these Defendants when the same have been
23 ascertained. Plaintiff LITTLE ROCK is informed and believes and thereon alleges that such
24 fictitiously named Defendants are liable to Plaintiff LITTLE ROCK for the facts and
25 circumstances herein alleged.

26 5. Plaintiff LITTLE ROCK is informed and believes and thereon alleges that, at all
27 times relevant to the matters alleged in this Complaint, Defendants, and each of them, were acting
28 as the agents, employees, alter egos and/or representatives of each other, and were acting within
29 the course and scope of their agency and employment with the full knowledge, consent,
30 permission, authorization and ratification, either express or implied, of each of the other
31 Defendants in performing the acts alleged herein.

1 6. Plaintiff LITTLE ROCK, as the owner of the Little Rock Property, owns all of the
2 water rights that run with the Little Rock Property. Included within those water rights is Plaintiff
3 LITTLE ROCK's general overlying right to pump the groundwater located beneath the Little
4 Rock Property and use that groundwater on the Little Rock Property.

5 7. On or about April 8, 1987, Plaintiff LITTLE ROCK entered into a written contract
6 entitled "LEASE" (hereafter, the "Lease") with Defendant GRANITE. A true and correct copy of
7 the Lease is attached hereto as Exhibit "A" and incorporated herein by this reference. Under and
8 subject to the terms of the Lease, Plaintiff LITTLE ROCK agreed to lease possession and control
9 of the Little Rock Property to Defendant GRANITE in exchange for, among other things,
10 Defendant GRANITE's promise to pay Plaintiff LITTLE ROCK rent in the amounts specifically
11 set forth in the Lease.

12 8. Pursuant to Section 4 of the Lease, the term thereof was originally for three years
13 with Defendant GRANITE having options of renewing or extending the Lease for four
14 successive, additional terms. The first renewal term was for five years, the second renewal term
15 was for six years, and the third and fourth renewal terms were for ten years each.

16 9. Defendant GRANITE has exercised each of the four options to renew and
17 extended the Lease such that the Lease is currently schedule to expire on or about April 8, 2021.

18 10. Pursuant to Section 1 of the Lease, Plaintiff LITTLE ROCK granted Defendant
19 GRANITE "the right to enter into and exercise possession and control of the [Little Rock
20 P]roperty, and during the term of this Lease to remain in possession and control thereof, and to
21 explore, develop, mine, operate and use the [Little Rock P]roperty and any surface or
22 underground water or water rights occurring therein or appurtenant thereto, and to mine, extract
23 and remove from the [Little Rock P]roperty any quarry products, stone, rock, sand, and aggregate
24 (hereinafter the 'Leased Materials')..." (Emphasis added.)

25 11. Under Section 3.1 of the Lease, Defendant GRANITE, during the term of the
26 Lease, has "the right to explore, mine and develop the [Little Rock P]roperty, and to extract
27 Leased Materials from the [Little Rock P]roperty by means of open pit mining operations ..."

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1 12. Pursuant to Section 3.2 of the Lease, Plaintiff LITTLE ROCK granted Defendant
2 GRANITE, during the term of the Lease, “such water rights as [Plaintiff LITTLE ROCK] has to
3 the surface and underground water located upon and under the [Little Rock Property]. [Defendant
4 GRANITE] shall have the right to use all existing water sources presently located upon the [Little
5 Rock Property] (both above ground and below ground).”

6 13. Finally, Section 15 of the Lease states, “It is recognized and understood by and
7 between the parties hereto that [Defendant GRANITE] intends to use the [Little Rock Property]
8 herein leased, as and for a rock, sand and gravel quarrying operation and the outside sale of same,
9 and the production, sale and dispatching of ready-mixed concrete and asphaltic concrete, a
10 construction office, shop and yard, and for no other purpose, and it is with this understanding that
11 [Plaintiff LITTLE ROCK] is willing to Lease the aforesaid [Little Rock P]roperty to [Defendant
12 GRANITE]. In the event that [Defendant GRANITE] decides to change the nature of its
13 business, [Defendant GRANITE] will first obtain the written consent of [Plaintiff LITTLE
14 ROCK].”

15 14. Since the beginning of the Lease in April 1987, Defendant GRANITE has operated
16 a quarry on the Little Rock Property, and in connection with that operation and pursuant to the
17 terms of the Lease, Defendant GRANITE has used groundwater pumped from three wells located
18 on the Little Rock Property.

19 15. Plaintiff is informed and believes and thereon alleges that, in 2008, Defendant
20 GRANITE purchased approximately 48 acres of land (the “Adjacent Land”) adjacent to the Little
21 Rock Property.

22 16. Plaintiff is informed and believes and thereon alleges that Defendant GRANITE
23 owns another parcel of real property that is located in the Antelope Valley but is not adjacent to
24 the Little Rock Property. That real property is known as Big Rock (the “Big Rock Property”).

25 17. In or about 2004, a lawsuit was filed in Los Angeles County Superior Court that,
26 when consolidated with other similar lawsuits filed in Los Angeles County and other venues in
27 California, became known as the Antelope Valley Groundwater Cases (the “Groundwater

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1 Cases”), which cases were assigned Santa Clara County Superior Court Case No. 1-05-CV-
2 049053.

3 18. The Groundwater Cases concerned, among other things, the allocation of
4 groundwater between the various owners and occupiers of parcels of real property located above a
5 certain groundwater basin in the Antelope Valley.

6 19. The Little Rock Property is located in the area of the groundwater basin that was
7 the subject of the Groundwater Cases. Plaintiff LITTLE ROCK, as owner of the Little Rock
8 Property, and Defendant GRANITE, as lessee of the Little Rock Property, were made parties to
9 the Groundwater Cases, because the adjudication of that case determined the annual allocation of
10 groundwater to the Little Rock Property.

11 20. A Judgment was entered in the Groundwater Cases on or about December 28,
12 2015, which, at Exhibit 4 of Exhibit A of the Judgment, identified the Little Rock Property as
13 “Granite Construction Company (Little Rock Sand and Gravel, Inc.)” and allocated it overlying
14 production rights of 234 acre-feet of groundwater per year (the “Allocated Groundwater”). A true
15 and correct copy of the pertinent portions of the Judgment entered in the Groundwater Cases is
16 attached hereto as Exhibit “B” and incorporated herein by this reference.

17 21. Based on its dealings and communications with Defendant GRANITE, Plaintiff
18 LITTLE ROCK is informed and believes and thereon alleges that Defendant GRANITE intends
19 to pump and use all of the Allocated Groundwater indefinitely, including after the expiration of
20 the Lease in April 2021. Additionally, Plaintiff LITTLE ROCK is informed and believes and
21 thereon alleges that Defendant GRANITE intends to use all of the Allocated Groundwater to
22 operate quarries and/or mines located outside of the Little Rock Property, including quarries
23 and/or mines on the Adjacent Property and Big Rock Property. Defendant GRANITE’s
24 intentions in this regard violates the terms of the Lease and Plaintiff LITTLE ROCK’s water
25 rights that run with the Little Rock Property.

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1 **FIRST CAUSE OF ACTION**

2 **(Quiet Title against Defendants GRANITE and DOES 1 through 50, inclusive)**

3 22. Plaintiff LITTLE ROCK realleges and incorporates herein by reference as though
4 set forth in full paragraphs 1 through 21, inclusive, of the General Allegations.

5 23. Plaintiff LITTLE ROCK, as owner of the Little Rock Property, is the sole owner of
6 the Allocated Groundwater, because such allocation runs with the Little Rock Property. Pursuant
7 to the Lease and only for the term thereof, Plaintiff LITTLE ROCK leased to Defendant
8 GRANITE, along with possession and control of the Little Rock Property, Plaintiff LITTLE
9 ROCK's water rights associated with the Little Rock Property, including its rights to pump and
10 use the Allocated Groundwater on the Little Rock Property.

11 24. Plaintiff LITTLE ROCK is informed and believes and thereon alleges that
12 Defendants GRANITE and DOES 1 through 50, inclusive, and each of them, claim some right,
13 title and interest in the Allocated Groundwater that (a) is greater than Plaintiff LITTLE ROCK's
14 right, title and interest in the Allocated Groundwater and (b) is greater than Defendant
15 GRANITE's leasehold rights to Allocated Groundwater as expressly set forth in the Lease.
16 Specifically, Plaintiff LITTLE ROCK is informed and believes and thereon alleges that
17 Defendants GRANITE and DOES 1 through 50, inclusive, and each of them, claim right, title
18 and/or interest to pump and use all of the Allocated Groundwater indefinitely and beyond the
19 expiration of the Lease and to use said groundwater on real property outside of the Little Rock
20 Property, including the Adjacent Property and the Big Rock Property.

21 25. Plaintiff LITTLE ROCK desires a judicial determination under the provisions of
22 California *Code of Civil Procedure* sections 760.010 through 765.060, inclusive, that, since
23 December 28, 2015 (i.e., the date of the entry of the Judgment in the Groundwater Cases), Plaintiff
24 LITTLE ROCK, as the owner of the Little Rock Property, is the sole owner of all rights to the
25 Allocated Groundwater.

26 26. Plaintiff LITTLE ROCK further desires a judicial determination under the
27 provisions of California *Code of Civil Procedure* sections 760.010 through 765.060, inclusive,
28 that, since December 28, 2015 (i.e., the date of the entry of the Judgment in the Groundwater

1 Cases), Defendants GRANITE and DOES 1 through 50, inclusive, and each of them, have no
2 right, title or interest in the Allocated Groundwater except to the extent expressly set forth in the
3 Lease, which rights under the Lease are currently scheduled to expire in April 2021.

4 27. Plaintiff LITTLE ROCK desires these judicial determinations as of December 28,
5 2015, because that is the date on which Defendants GRANITE and DOES 1 through 50, inclusive,
6 and each of them, based on the Groundwater Cases Judgment, claimed water rights appurtenant to
7 the Little Rock Property beyond those provided by the Lease.

8 **SECOND CAUSE OF ACTION**

9 **(Declaratory Relief against Defendants GRANITE and DOES 1 through 50, inclusive)**

10 28. Plaintiff LITTLE ROCK realleges and incorporates herein by reference as though
11 set forth in full paragraphs 1 through 21, inclusive, of the General Allegations and paragraphs 23
12 through 27, inclusive, of the First Cause of Action.

13 29. Plaintiff LITTLE ROCK is informed and believes and thereon alleges that an actual
14 and justiciable controversy has arisen and presently exists between Plaintiff LITTLE ROCK and
15 Defendants GRANITE and DOES 1 through 50, inclusive, and each of them, regarding their
16 respective rights, title and interest to the Allocated Groundwater. On one hand, Plaintiff LITTLE
17 ROCK contends that it, as the sole owner of the Little Rock Property, has all rights, title and
18 interest to the Allocated Groundwater except to the extent that it leased those rights to Defendant
19 GRANITE subject to the express conditions set forth in the Lease. On the other hand, Plaintiff
20 LITTLE ROCK is informed and believes and thereon alleges that Defendants GRANITE and
21 DOES 1 through 50, inclusive, and each of them, contend that they have all rights, title and
22 interest to all of the Allocated Groundwater on an indefinite basis, including beyond the term of
23 the Lease (which presently expires in April 2021), which claimed rights, title and interest include
24 the right to use the Allocated Groundwater on real property outside of the Little Rock Property in
25 violation of the conditions of the Lease.

26 30. Accordingly, a judicial determination is necessary and appropriate at this time so
27 that the parties can ascertain their respective rights, title and interests in the Allocated
28 Groundwater. Plaintiff LITTLE ROCK respectfully requests that this Court to order, adjudge and

1 decree at law and in equity that (a) Plaintiff LITTLE ROCK is the sole owner of all rights, title
2 and interest in and to the Allocated Groundwater, and (b) Defendants GRANITE and DOES 1
3 through 50, inclusive, and each of them, have no rights, title or interest to the Allocated
4 Groundwater except to the extent that Plaintiff LITTLE ROCK granted said Defendants rights to
5 the Allocated Groundwater under the express terms and conditions of the Lease.

6 31. The Lease provides that, in the event Plaintiff LITTLE ROCK commences a legal
7 action or proceeding to enforce the terms of the Lease, including a declaratory relief action,
8 Plaintiff LITTLE ROCK shall be entitled to recover its attorneys' fees and costs of suit incurred
9 therein. Due to the above-described dispute, Plaintiff LITTLE ROCK has retained the services of
10 Musick, Peeler & Garrett, LLP and will incur legal fees and costs of suit in the prosecution of this
11 action. The exact amount of these fees and costs will be established at the time of trial or by
12 subsequent motion.

13 **WHEREFORE**, Plaintiff LITTLE ROCK prays for judgment against Defendants
14 GRANITE and DOES 1 through 50, inclusive, and each of them, as set forth below:

15 **ON THE FIRST CAUSE OF ACTION**

16 (Against Defendants GRANITE and DOES 1 through 50)

17 1. For judgment of this Court against Defendants GRANITE and DOES 1 through 50,
18 inclusive, and each of them, pursuant to the provisions of California *Code of Civil Procedure*
19 sections 760.010 through 765.060, inclusive, ordering, adjudging and decreeing that since
20 December 28, 2015:

21 A. Plaintiff LITTLE ROCK, as the owner of the Little Rock Property, is the
22 sole owner of all rights to the Allocated Groundwater; and

23 B. Defendants GRANITE and DOES 1 through 50, inclusive, and each of
24 them, have no right, title or interest in the Allocated Groundwater except to
25 the extent expressly granted and set forth in the Lease;

26 2. For judgment of this Court quieting title to the Allocated Groundwater in Plaintiff
27 LITTLE ROCK, as the owner of the Little Rock Property, and as against Defendants GRANITE
28 and DOES 1 through 50, inclusive, and each of them, and as against all persons claiming any

1 right, title or interest in the Allocated Groundwater through and under any of such Defendants, as
2 alleged herein;

3 **ON THE SECOND CAUSE OF ACTION**

4 (Against Defendants GRANITE and DOES 1 through 50)

5 3. For judgment of this Court declaring the following:

- 6 A. Plaintiff LITTLE ROCK is the sole owner of all rights, title and interest in
7 and to the Allocated Groundwater; and
8 B. Defendants GRANITE and DOES 1 through 50, inclusive, and each of
9 them, have no rights, title or interest to the Allocated Groundwater except to
10 the extent that Plaintiff LITTLE ROCK granted Defendant GRANITE
11 leasehold rights to the Allocated Groundwater under the express terms and
12 conditions of the Lease;

13 4. For attorneys' fees and costs according to proof at trial or by subsequent motion;

14 **ON ALL CAUSES OF ACTION**

15 5. For attorneys' fees and costs of suit incurred herein; and

16 6. For such other and further relief as the Court may deem just and proper.

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18 DATED: April 10, 2017

MUSICK, PEELER & GARRETT LLP

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20
21 By: 

Theodore A. Chester, Jr.

Steven Casselberry

Stephen R. Isbell

Attorneys for Plaintiff LITTLE ROCK SAND
AND GRAVEL, INC., a California corporation