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2	Robert G. Kuhs, SBN 160291 Bernard C. Barmann, Jr., SBN 149890 RECE	IVEN				
3	Bernard C. Barmann, Jr., SBN 149890 <b>RECE</b> KUHS & PARKER P. O. Box 2205 1200 Truxtun Avenue, Suite 200	rt of California As Anceles Conformed COPY ORIGINAL FILED Superior Court of California Court of California				
4	1200 Truxtun Avenue, Suite 200 Bakersfield, CA 93303 Telephone: (661) 322-4004	2017				
5	Facsimile: (661) 322-2906	MAY 1 7 2017				
6	E-Mail: <u>rgkuhs@kuhsparkerlaw.com</u> <u>bbarmann@kuhsparkerlaw.com</u>	STRICT By Patricia Aranda, Deputy				
	Attorney for Defendant Granite Construction Co	ompany				
	SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES					
	NORTH JUDICIAL DISTRICT – AN					
	LITTLE ROCK SAND AND GRAVEL, INC., a California corporation,	Case No.: MC026932				
	Plaintiff,	VERIFIED ANSWER TO FIRST AMENDED COMPLAINT				
	VS.					
	GRANITE CONSTRUCTION COMPANY, a California corporation; and DOES 1 through 50, inclusive,					
	Defendants.	Complaint Filed: March 6, 2017 Trial Date: None Set				
		ION COMPANY, ("Defendant"), in answer to				
	plaintiff LITTLE ROCK SAND AND GRAVEL, INC.'s ("Plaintiff") Verified First Amended					
	Complaint dated April 10, 2017, admits, denies a	und alleges as follows:				
	1. Defendant lacks sufficient information and belief to admit or deny the allegations					
	in Paragraphs 1, 4, 25, 26, 27, and 30 and on that basis, denies each and every allegation therein.					
	2. Defendant admits the allegations i	n Paragraphs 2, 15, 16, and 17.				
	3. Defendant denies each and every a	allegation in Paragraphs 5, 6, 21 and 23.				
	4. Answering Paragraph 3, Defendant admits that it entered into a lease of the Little Rock Property on or about April 8, 1987, with Plaintiff (hereafter, "Lease"); however, Defendant denies every other allegation set forth in Paragraph 3.					
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VERIFIED ANSWER TO FIRST AMENDED COMPLAINT

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5. Answering Paragraphs 7, 10, 11, 12 and 13, Defendant admits that on or about April 8, 1987, Defendant and Plaintiff entered into the Lease, which is a written contract entitled "LEASE," a redacted copy of which is attached to the First Amended Complaint as Exhibit A; Defendant alleges that the Lease speaks for itself; except as expressly admitted, Defendant denies each and every remaining allegation therein.

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a.

Answering Paragraphs 18, 19, 20, 24 and 29, Defendant alleges as follows:

The seventeen-year procedural history of the ongoing Antelope Valley Groundwater Cases is described in the Judgment and Physical Solution adopted by the court in the Antelope Valley Groundwater Cases ("Judgment and Physical Solution"). The first complaint in what would become known as the Antelope Valley Groundwater Cases was filed in October 1999. Other actions were filed in 2000 and 2001 and consolidated with the first action. In 2004, Los Angeles County Waterworks District No. 40 initiated a general groundwater adjudication for the Antelope Valley Ground Water Basin by filing identical complaints for declaratory and injunctive relief in the Los Angeles and Kern County Superior Courts alleging prescriptive claims and seeking a judicial determination as to all rights to groundwater in the Antelope Valley Groundwater Basin ("Basin"). All of the cases were later consolidated and coordinated as Judicial Council Coordination Proceeding No. 4408 and assigned as the Antelope Valley Groundwater Cases to the Santa Clara County Superior Court, Hon. Jack Komar. The Antelope Valley Groundwater Cases involve hundreds of parties, including Plaintiff, Defendant, the State of California and the United States, as well as two classes representing about 69,000 members.

b. Plaintiff answered the complaint and all cross-complaints filed in the Antelope Valley Groundwater Cases by an answer dated December 13, 2011, alleging, among other things, that Plaintiff owned certain parcels located in the Antelope Valley, including the Little Rock Property leased to Defendant.

1 On March 12, 2012, Defendant answered the complaint and all crossc. 2 complaints alleging, among other things, overlying groundwater rights. d. During the Phase 4 Trial in the Antelope Valley Groundwater Cases, which 3 commenced on or about May 28, 2013, Defendant introduced evidence of its 4 ownership of land and water use within the Basin and the Court made Phase 4 5 6 findings based upon such evidence. 7 On March 31, 2014, nearly every party in the Antelope Valley Groundwater e Cases, including the Plaintiff and Defendant, reached an agreed upon 8 allocation of the Native Safe Yield of the Basin as set forth in a spread sheet 9 that would later become Exhibit 4 to the Judgment and Physical Solution. 10 Over the next several months the settling parties, including Plaintiff and 11 12 Defendant, participated in drafting the settlement documents. On August 19, 2014, Plaintiff indicated that it wanted some or all of 13 f. 1.4 Defendant's water allocation. g. Plaintiff, prior to signing the Stipulation for Entry of Judgment and Physical 15 Solution, again made claims to Defendant's Exhibit 4 allocation in several 16 filings with the court, raising the same claim raised in the First Amended 17 18 Complaint. After years of failed mediations, the parties to the Antelope Valley 19 Groundwater Cases, including Plaintiff and Defendant, reached a settlement 20 and entered into the Stipulation for Entry of Judgment and Physical Solution 21 ("Stipulation"). Plaintiff submitted its signatures on or about February 20, 22 2015, and the Stipulation was filed by the United States with the court on 23 March 4, 2015, as Doc # 9624. A copy of the Stipulation (without its 24 exhibits), along with Plaintiff's and Defendant's signatures is attached hereto 25 as Exhibit A, and incorporated herein by reference. The Stipulation was 26 amended twice before being adopted by the court. A copy of the Second 27 Amended Stipulation for Entry of Judgment and Physical Solution, with an 28

amended Exhibit 4 to the Judgment and Physical Solution ("Exhibit 4") and Plaintiff's and Defendant's signatures, is attached hereto as **Exhibit B** and incorporated herein by reference.

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 On October 6, 2015 Plaintiff, after signing the Stipulation for Entry of Judgment and Physical Solution, but before entry of judgment, again asserted a claim to all or a portion of Defendant's Production Rights shown in Exhibit

On December 23, 2015, following a lengthy prove-up trial in which Defendant established its historic and beneficial use of water, the court issued a written Statement of Decision that contains a finding that the Antelope Valley Groundwater Cases are a "comprehensive adjudication of all groundwater rights in the Basin." A copy of the Statement of Decision is attached as **Exhibit C** and incorporated herein by reference. Specifically, the court found:

"The Court finds that these coordinated and consolidated cases are a comprehensive adjudication of the Basin's groundwater rights under the McCarran Amendment (43 U.S.C. §666) and California Law. In order to effect jurisdiction over the United States under the McCarran Amendment, a comprehensive or general adjudication must involve all claims to water from a given source. [Citations omitted] Here, all potential claimants to Basin groundwater have been joined." (Statement of Decision, pp. 2-3.)

k. The court entered judgment on December 23, 2015, approving the Stipulation for Entry of Judgement and adopting the Physical Solution. A copy of the Judgment, including Exhibit A thereto (and excluding Exhibits B-D thereto) is attached hereto as Exhibit D, and incorporated herein by reference. An appeal of the Judgment is now pending before the Fifth District Court of Appeal.

 On January 31, 2016, following entry of judgment in the Antelope Valley Groundwater Cases, Plaintiff filed a motion for an order declaring that 100% of the water rights allocated to Defendant for its Little Rock Quarry on Exhibit 4 should be taken from Defendant and given to Plaintiff, the same relief Plaintiff seeks in the First Amended Complaint. The court denied the motion. A true and correct copy of the Order After Hearing on March 21, 2016, is attached hereto as **Exhibit E**.

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m. The Antelope Valley Groundwater Cases are an *inter se* adjudication of all claims to the rights to produce groundwater from the Antelope Valley Groundwater Basin alleged between and among all parties, including Plaintiff and Defendant in this action. The Judgment entered in the Antelope Valley Groundwater Cases is a determination of all rights to produce and store groundwater in the basin and the Judgment resolves all disputes in the action among the Stipulating Parties, including Plaintiff and Defendant.

The Judgment and Physical Solution allocates Overlying Production Rights to n. identified Parties including Defendant, not to particular parcels of land. Paragraph 5.1.1 of the Judgment and Physical Solution provides, "The Parties listed in Exhibit 4, attached hereto and incorporated herein by reference, have Overlying Production Rights." A copy of Exhibit 4 to the Judgment and Physical Solution is attached to the Second Amended Stipulation for Entry of Judgement and Physical Solution (see Exhibit B hereto) and is included in Exhibit A to the Judgment (see Exhibit D hereto). Exhibit 4 sets forth the Overlying Production Rights by "Producer Name" organized alphabetically. Based upon Defendant's ownership of land in the Antelope Valley and its beneficial use of water on that land independent of the Little Rock Property, as well as Defendant's beneficial use of water at the Little Rock Quarry, the parties participating in the settlement of the Antelope Valley Groundwater Cases, including Plaintiff, collectively agreed to a total allocation of 360 acrefeet of Overlying Production Rights to producer "Granite Construction Company" as set forth in Exhibit 4 as follows: 126 acre-feet in Overlying Production Rights belonging to producer "Granite Construction Company

.....

(Big Rock Facility)" and 234 acre feet in Overlying Production Rights belonging to producer "Granite Construction Company (Little Rock Sand and Gravel, Inc.)."

o. Paragraph 5.1.1.1 provides that, "The Parties listed on Exhibit 4 have the right to Produce Groundwater, on an annual basis, up to their Overlying Production Right as set forth in Exhibit 4 for each Party. Each Party's Overlying Production Right is subject to the following conditions and limitations:" which are listed in Paragraphs 5.5.1.2 through 5.5.1.4.

Paragraph 5.1.1.2 provides that, "the Parties listed on Exhibit 4 have the right to Produce their Overlying Production Right for use on land they own or lease and without the need for Watermaster approval."

Paragraph 5.1.1.3 provides, "Overlying Production Rights may be transferred a. pursuant to the provisions of Paragraph 16 of this Judgment." The parties may also change the point of groundwater extraction pursuant to Paragraph 17 of the Judgment.

The 234 acre-feet allocated to Defendant were not allocated to the Little Rock r. Property or to Plaintiff, and does not belong to Plaintiff.

By entering into the Stipulation for Entry of Judgment and Physical Solution in the Antelope Valley Groundwater Cases, as a matter of law Plaintiff waived all overlying *appurtenant* groundwater rights and accepted the terms of the Judgment and Physical Solution.

7. Answering Paragraphs 8 and 9, Defendant admits that the term of the Lease was 23 originally for three years with Defendant having options of renewing or extending the Lease for 24 four successive, additional terms, and that the first renewal term was for five years, the second 25 renewal term was for six years, and the third and fourth renewal terms were for ten years each. Defendant alleges that in 2010 the Parties entered into a First Amendment to Lease, a redacted 27 copy of which is attached to the First Amended Complaint as part of Exhibit A thereto, which provides that Defendant shall have two additional options of renewing or extending the Lease for

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successive additional terms; those fifth and sixth renewal terms are ten years each. Defendant alleges that it has exercised each of the first four options to renew and extend the lease, such that the current term is currently scheduled to expire on or about April 30, 2021. Defendant denies that the Lease is currently scheduled to expire in 2021 and alleges that Defendant has the option of renewing and extending the Lease for two successive additional terms which would renew and extend the Lease term to April 30, 2041.

8. Answering Paragraph 14, Defendant alleges that it has operated a quarry on the
 Plaintiff's property beginning in 1987, and that in 2008 Granite purchased the Adjacent Land
 and subsequently obtained a conditional use permit and amended its Mining and Reclamation
 Plan in 2011 with the knowledge and consent of the Plaintiff to include Granite's Adjacent Land
 within quarry operations; except as the foregoing allegations admit the allegations contained in
 Paragraph 14, Defendant denies each and every allegation contained therein.

9. Answering Paragraphs 22 and 28, Defendant hereby incorporates by reference the
 allegations and denials contained in answer to Paragraphs 1 through 27 of the First Amended
 Complaint.

16 10. Answering Paragraph 31, Defendant alleges that the Lease speaks for itself.
 17 Defendant lacks sufficient information and belief to admit the remaining allegations in this
 18 Paragraph and on that basis denies them.

## FIRST AFFIRMATIVE DEFENSE

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# (Jurisdiction)

11. This Court, where the Complaint was filed, lacks jurisdiction of the subject matter
of the causes of action alleged in the First Amended Complaint because by stipulation of the
parties and order of the court, the court in the Antelope Valley Groundwater Cases expressly
reserved "full jurisdiction, power and authority to interpret, enforce, administer or carry out this
Judgment." (See Exhibit D, Judgement and Physical Solution, pp. 28-29, §6.5.), and due to the
pending appeals. (Civ. Proc. Code § 430.10(a).)

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1	SECOND AFFIRMATIVE DEFENSE
. 2	(Another Action Pending)
. 3	12. The consolidated and coordinated Antelope Valley Groundwater Cases is another
4	action pending between the same parties on the same causes of action. (Civ. Proc. Code §
5	430.10(c).) Accordingly, Plaintiff may not maintain this action in this court, and instead must
б	consolidate or coordinate this action with the Antelope Valley Groundwater Cases before
7	proceeding further.
8	THIRD AFFIRMATIVE DEFENSE
9	(California Constitution Article X, Section 2)
10	13. Plaintiff is barred from asserting any rights to groundwater associated with its
11	Little Rock Property because at the time Judgment was entered, and at all times subsequent
12	thereto, the Plaintiff has not put the water to any reasonable and beneficial use, which violates
13	Article X, section 2 of the California Constitution.
14	FOURTH AFFIRMATIVE DEFENSE
15	(Effect of Stipulation For Entry Of Judgment And Physical Solution and Judgment)
. 16	14. The Parties' rights with respect to groundwater in the Antelope Valley
17	Groundwater Basin are governed by the parties' stipulation for entry of judgment and physical
18	solution, the Judgment and Physical Solution adopted by the court in the Antelope Valley
19	Groundwater Cases and the Judgment entered in those cases.
20	FIFTH AFFIRMATIVE DEFENSE
. 21	(Estoppel)
22	15. Plaintiff is estopped, by its conduct, representations, admissions and omissions, to
23	assert any claim for relief against Defendant with respect to the matters alleged in the First
24	Amended Complaint.
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	1	SIXTH AFFIRMATIVE DEFENSE
	2	(Waiver)
	3	16. Plaintiff has waived its rights to the claims, causes of action and relief sought in
	4.	the complaint by virtue of its acts, failures to act, conduct, representations, admissions and the
	5	like.
-	6	SEVENTH AFFIRMATIVE DEFENSE
	7	(Failure to Join Necessary Parties)
	8	17. Plaintiff's action seeks to interpret, modify or enforce the Judgment in the
v	9	Antelope Valley Groundwater Cases in the absence of all parties to the Antelope Valley Ground
	10	Water Cases. Defendant would be prejudiced by litigation involving its rights under that
ч	11	Judgment to which other parties to the Judgment are not a party because of the risk of
	12	inconsistent results and the cost of multiple adjudications. Accordingly, this action is barred due
	13	to the absence of the other parties to the Antelope Valley Groundwater Cases.
	14	EIGHTH AFFIRMATIVE DEFENSE
	15	(Unjust Enrichment)
	16	18. Plaintiff will be unjustly enriched if found to be the owner of any of the Overlying
	17	Production Rights belonging to Defendant.
	18	NINTH AFFIRMATIVE DEFENSE
	19	(Statute of Limitations)
	20	19. The First Amended Complaint, and each purported cause of action therein
	21	contained, is barred by the applicable statute of limitations including, without limitation, Code of
	22	Civil Procedure sections 318, 319, 337, 338(a), 338(b), 338(d), 338(g), 339 and 343.
	23	TENTH AFFIRMATIVE DEFENSE
	24	(Laches)
	25	20. Plaintiff is barred from recovering the relief sought based on the doctrine of
	26	laches.
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		9 VERIFIED ANSWER TO FIRST AMENDED COMPLAINT

#### ELEVENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

21. The First Amended Complaint, and each purported cause of action therein alleged, is barred by the Plaintiff's unclean hands.

#### **TWELFTH AFFIRMATIVE DEFENSE**

(Unconscionability)

22. No relief may be obtained under the First Amended Complaint by Plaintiff by reason of section 1670.5 of the Civil Code, the statutory and common law prohibitions on enforcement of unconscionable contracts, the prohibition on receipt of benefits accruing through unconscionable conduct, and the unconscionability of Plaintiff's acts and claims.

### THIRTEENTH AFFIRMATIVE DEFENSE

(Res Judicata)

23. The First Amended Complaint, and each purported cause of action therein
contained, will be barred on res judicata principles when the judgment entered December 23,
2015, in the Antelope Valley Cases becomes final. Further, any attempt by Plaintiff to relitigate
appurtenant groundwater rights in this case would be an unlawful attempt to split a single cause
of action.

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WHEREFORE, Granite prays for judgment as follows:

1. That Plaintiff take nothing by way of its First Amended Complaint;

2. A declaration and determination that Granite is the sole owner of the 234 acre-feet of Overlying Production Rights identified on Exhibit 4 as belonging to "Granite Construction Company (Little Rock Sand and Gravel, Inc.)" in the Judgment and Physical Solution adopted in the Antelope Valley Groundwater Cases or, at a minimum, 50/50 with Plaintiff.

3. That Plaintiff has no right, title or interest in the 234 acre-feet of Overlying
Production Rights identified on Exhibit 4 as belonging to "Granite Construction Company (Little
Rock Sand and Gravel, Inc.)" in the Judgment and Physical Solution adopted in the Antelope
Valley Groundwater Cases or, at a maximum, only a 50 percent right, title, or interest in the 234

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acre-feet	of Overlying	Production	Rights ic	lentified on Ex	hibit 4 as belong	ging to "Gra
Construction Company (Little Rock Sand and Gravel, Inc.)"						
4.	. That the	e Granite re	cover its	cost of suit her	ein incurred; an	d
5. For such other and further relief that the court deems just and proper					nd proper.	
DATED:	May 16, 201	7		KUHS & PA	RKER	
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		-		By Bernard C Attorneys Construct	2. Barmann, <del>Jr</del> . for Plaintiff Gr ion Company	anite
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1	PROOF OF SERVICE
2	STATE OF CALIFORNIA, COUNTY OF KERN
3	I, Valerie Hanners, am and was at the time of the service hereunder mentioned, over the age of eighteen (18) years, and not a party to the within cause. My business address is 1200
4	Truxtun Avenue, Suite 200, Bakersfield, California 93301.
5	On, May 16, 2017, I served the below listed document(s) titled as: VERIFIED ANSWER TO FIRST AMENDED COMPLAINT on the interested parties in this action, as
6	listed below:
7	Theodore A. Chester, Jr.
8	Musick, Peeler & Garrett, LLP One Wilshire Boulevard, Suite 2000
9	Los Angeles, CA 90017-3383
10	(BY U.S. MAIL) on May 16, 2017, at Bakersfield, California, pursuant to C.C.P. section 1013(a), I:
11 12	deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
13	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
14	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.
15	(BY EMAIL TRANSMISSION) on May 16, 2017, at approximately p.m. to:
16	
17 18	(BY FACSIMILE TRANSMISSION) on May 16, 2017 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
19	reported as completed and without error.
20 21	(BY PERSONAL SERVICE) on May 16, 2017 pursuant to C.C.P. section 1011, I caused such envelope to be delivered by hand personally to the addressee(s):
22	<u>X</u> (BY OVERNIGHT COURIER) on May 16, 2017 pursuant to C.C.P. section 1013I(d), I caused such envelope with delivery fees fully prepared to be sent by Federal European to
23	caused such envelope with delivery fees fully prepared to be sent by Federal Express to <b>Theodore A. Chester, Jr. at Musick, Peeler &amp; Garrett, LLP</b> .
24	Executed on May 16, 2017, at Bakersfield, California.
25	X (STATE) I declare under penalty of perjury under the laws of the State of California that
26	X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
27 28	(FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.
	Valerie Hanners

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