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Superior Court of California
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MAY 17 2017

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County of Los Angeles

MAY 17 2017

Sherri R. Carter, Executive Officer/Clerk
By Patricia Aranda, Deputy

NORTH DISTRICT

Attorney for Defendant Granite Construction Company

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES
10 NORTH JUDICIAL DISTRICT – ANTELOPE VALLEY COURTHOUSE

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

Plaintiff,

13 vs.

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

Defendants.

Case No.: MC026932

**VERIFIED ANSWER TO FIRST
AMENDED COMPLAINT**

Complaint Filed: March 6, 2017
Trial Date: None Set

18 The defendant GRANITE CONSTRUCTION COMPANY, (“Defendant”), in answer to
19 plaintiff LITTLE ROCK SAND AND GRAVEL, INC.’s (“Plaintiff”) Verified First Amended
20 Complaint dated April 10, 2017, admits, denies and alleges as follows:

- 21 1. Defendant lacks sufficient information and belief to admit or deny the allegations
22 in Paragraphs 1, 4, 25, 26, 27, and 30 and on that basis, denies each and every allegation therein.
- 23 2. Defendant admits the allegations in Paragraphs 2, 15, 16, and 17.
- 24 3. Defendant denies each and every allegation in Paragraphs 5, 6, 21 and 23.
- 25 4. Answering Paragraph 3, Defendant admits that it entered into a lease of the Little
26 Rock Property on or about April 8, 1987, with Plaintiff (hereafter, “Lease”); however, Defendant
27 denies every other allegation set forth in Paragraph 3.
- 28

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

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

7 a. The seventeen-year procedural history of the ongoing Antelope Valley
8 Groundwater Cases is described in the Judgment and Physical Solution
9 adopted by the court in the Antelope Valley Groundwater Cases (“Judgment
10 and Physical Solution”). The first complaint in what would become known as
11 the Antelope Valley Groundwater Cases was filed in October 1999. Other
12 actions were filed in 2000 and 2001 and consolidated with the first action. In
13 2004, Los Angeles County Waterworks District No. 40 initiated a general
14 groundwater adjudication for the Antelope Valley Ground Water Basin by
15 filing identical complaints for declaratory and injunctive relief in the Los
16 Angeles and Kern County Superior Courts alleging prescriptive claims and
17 seeking a judicial determination as to all rights to groundwater in the Antelope
18 Valley Groundwater Basin (“Basin”). All of the cases were later consolidated
19 and coordinated as Judicial Council Coordination Proceeding No. 4408 and
20 assigned as the Antelope Valley Groundwater Cases to the Santa Clara
21 County Superior Court, Hon. Jack Komar. The Antelope Valley Groundwater
22 Cases involve hundreds of parties, including Plaintiff, Defendant, the State of
23 California and the United States, as well as two classes representing about
24 69,000 members.

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

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

1 amended Exhibit 4 to the Judgment and Physical Solution (“Exhibit 4”) and
2 Plaintiff’s and Defendant’s signatures, is attached hereto as **Exhibit B** and
3 incorporated herein by reference.

- 4 i. On October 6, 2015 Plaintiff, after signing the Stipulation for Entry of
5 Judgment and Physical Solution, but before entry of judgment, again asserted
6 a claim to all or a portion of Defendant’s Production Rights shown in Exhibit
7 4.
- 8 j. On December 23, 2015, following a lengthy prove-up trial in which
9 Defendant established its historic and beneficial use of water, the court issued
10 a written Statement of Decision that contains a finding that the Antelope
11 Valley Groundwater Cases are a “comprehensive adjudication of all
12 groundwater rights in the Basin.” A copy of the Statement of Decision is
13 attached as **Exhibit C** and incorporated herein by reference. Specifically, the
14 court found:

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

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

1 Exhibit 4 should be taken from Defendant and given to Plaintiff, the same
2 relief Plaintiff seeks in the First Amended Complaint. The court denied the
3 motion. A true and correct copy of the Order After Hearing on March 21,
4 2016, is attached hereto as **Exhibit E**.

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

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

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

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

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

12 q. Paragraph 5.1.1.3 provides, “Overlying Production Rights may be transferred
13 pursuant to the provisions of Paragraph 16 of this Judgment.” The parties may
14 also change the point of groundwater extraction pursuant to Paragraph 17 of
15 the Judgment.

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

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

22 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.
26 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
28 provides that Defendant shall have two additional options of renewing or extending the Lease for

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

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

13 9. Answering Paragraphs 22 and 28, Defendant hereby incorporates by reference the
14 allegations and denials contained in answer to Paragraphs 1 through 27 of the First Amended
15 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.

19 **FIRST AFFIRMATIVE DEFENSE**

20 (Jurisdiction)

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

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SECOND AFFIRMATIVE DEFENSE

(Another Action Pending)

12. The consolidated and coordinated Antelope Valley Groundwater Cases is another action pending between the same parties on the same causes of action. (Civ. Proc. Code § 430.10(c).) Accordingly, Plaintiff may not maintain this action in this court, and instead must consolidate or coordinate this action with the Antelope Valley Groundwater Cases before proceeding further.

THIRD AFFIRMATIVE DEFENSE

(California Constitution Article X, Section 2)

13. Plaintiff is barred from asserting any rights to groundwater associated with its Little Rock Property because at the time Judgment was entered, and at all times subsequent thereto, the Plaintiff has not put the water to any reasonable and beneficial use, which violates Article X, section 2 of the California Constitution.

FOURTH AFFIRMATIVE DEFENSE

(Effect of Stipulation For Entry Of Judgment And Physical Solution and Judgment)

14. The Parties' rights with respect to groundwater in the Antelope Valley Groundwater Basin are governed by the parties' stipulation for entry of judgment and physical solution, the Judgment and Physical Solution adopted by the court in the Antelope Valley Groundwater Cases and the Judgment entered in those cases.

FIFTH AFFIRMATIVE DEFENSE

(Estoppel)

15. Plaintiff is estopped, by its conduct, representations, admissions and omissions, to assert any claim for relief against Defendant with respect to the matters alleged in the First Amended Complaint.

1 acre-feet of Overlying Production Rights identified on Exhibit 4 as belonging to "Granite
2 Construction Company (Little Rock Sand and Gravel, Inc.)"

3 4. That the Granite recover its cost of suit herein incurred; and

4 5. For such other and further relief that the court deems just and proper.

5 DATED: May 16, 2017

KUHS & PARKER

6
7 By 

Bernard C. Barman, Jr.
Attorneys for Plaintiff Granite
Construction Company

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