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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

ANTELOPE VALLEY GROUNDWATER CASES

INCLUDED ACTIONS:
Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., Superior Court of California, County of Los Angeles, Case No. BC325201;

Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., Superior Court of California, County of Kern, Case No. S-1500-CV-254348;

Wm. Bolthouse Farms, Inc. v. City of Lancaster, Diamond Farming Co. v. Lancaster, Diamond Farming Co. v. Palmdale Water Dist., Superior Court of California, County of Riverside, Case Nos. RIC 353840, RIC 344436, RIC 344668;

Rebecca Lee Willis v. Los Angeles County Waterworks District No. 40
Superior Court of California, County of Los Angeles, Case No. BC364553;

Wood v. A.V. Materials, Inc., et al. v. Superior Court of California, County of Los Angeles, Case No. BC 509546; and

Little Rock Sand and Gravel, Inc. v. Granite Construction Co., Superior Court of California, County of Los Angeles, Case No. MC026932

Judicial Counsel Coordination No. 4408

Santa Clara Case No. 1-05-CV-049053
Assigned to Honorable Jack Komar

OPENING BRIEF OF LITTLE ROCK SAND AND GRAVEL, INC. RE TITLE TO GROUNDWATER ALLOCATION ARISING FROM LITTLE ROCK SAND AND GRAVEL'S LAND AND GRANTED UNDER JUDGMENT AND PHYSICAL SOLUTION

[*Declarations of George M. Lane, Theodore A. Chester, Jr. and Stephen R. Isbell; and Request for Judicial Notice filed concurrently herewith*]

DATE: June 20, 2018
TIME: 9:00
DEPT: To be determined

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TO THE HONORABLE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Little Rock Sand and Gravel, Inc. ("Little Rock") hereby submits this Opening Brief regarding the dispute between it and its tenant, Granite Construction Company ("GCC"), over ownership of the 234 acre-feet annual groundwater allocation granted to "Granite Construction Company (Little Rock Sand and Gravel, Inc.)" under the Judgment and Physical Solution entered in the Antelope Valley Groundwater Cases ("AVG Cases"). The hearing on the dispute that is the subject of this Opening Brief is scheduled for 9:00 a.m. on June 20, 2018 in a courtroom to be determined.

I. INTRODUCTION

This Opening Brief concerns a dispute between landowner and lessor, Little Rock, and its tenant, GCC, over who, between them, owns fee title to an allocation of groundwater rights awarded under the Judgment and Physical Solution (the "Judgment") entered in the AVG Cases and that was based on historical groundwater pumping from land owned by Little Rock and related, family-owned entities. While Little Rock does not dispute GCC's leasehold right to pump and use groundwater from the leased land under the parties' lease, GCC may not expand that temporary right to permanent title and thereby strip Little Rock of its overlying water rights.

From 1987 to date, there has only been one agreement between landowner Little Rock and tenant GCC regarding the right to pump and use groundwater from the land that Little Rock leases to GCC (the "Leased Land"). That agreement is the "LEASE" dated April 8, 1987 (hereafter, the "Lease"), which provides that, for the term of the Lease, GCC may use all of Little Rock's underground water rights occurring in or appurtenant to the Leased Land.

In contravention of the Lease, GCC is attempting to take title to Little Rock's overlying water rights in the Leased Land through the litigation and negotiations in the AVG Cases. Despite those efforts, Little Rock has consistently acted to protect its overlying water rights in the Leased Land and never agreed to release any portion thereof.

While the Judgment was ultimately entered in the AVG Cases on the parties' Stipulation for Entry of Judgment and Physical Solution (the "Stipulation"), neither the Stipulation nor the

Judgment deprive Little Rock of its overlying groundwater rights in favor of GCC. Rather, in allocating an annual 234 acre-feet of groundwater (the "Allocation") to "Granite Construction Company (Little Rock Sand and Gravel, Inc.)," the Stipulation, Judgment and Court left title to the Allocation "undetermined." Accordingly, the Lease remains the only agreement that defines Little Rock's and GCC's respective groundwater rights associated with the Leased Land.

For these primary reasons and the others raised below, Little Rock respectfully requests a ruling from the Court that, pursuant to its ownership of the Leased Land and the terms of the Lease, it holds exclusive title to the Allocation and that GCC has no interest therein except for the temporary leasehold right expressly set forth in the Lease.

II. STATEMENT OF RELEVANT FACTS

A. Little Rock's And Related Entities' Ownership Of The Leased Land

The Lane Family, which wholly owns and operates Little Rock (Declaration of George M. Lane in Support of Little Rock's Opening Brief ("Lane Decl."), ¶¶ 1 and 4; Request for Judicial Notice in Support of Little Rock's Opening Brief ("RJN"), Exs. 13 and 14), has owned the Leased Land (or portions thereof) for nearly 70 years. Frank and Yvonne Lane first acquired some of the parcels that compose the Leased Land in 1951. Over the years, the parcels have been held in various capacities, including in family trusts and through family-owned entities like Little Rock. After the passing of Frank and Yvonne Lane, George Lane, their son, took ownership and control of the Lease Land through his family trust, Little Rock and another family-owned corporation, Monte Vista Building Sites Inc. ("Monte Vista"). (Lane Decl., ¶¶ 4-13; RJN, Exs. 1-16.)

The Leased Land is approximately 236 acres and made up of five contiguous parcels located in the Little Rock area of the Antelope Valley. (Lane Decl., ¶ 8 and Ex. A; Declaration of Stephen R. Isbell in Support of Little Rock's Opening Brief ("Isbell Decl."), ¶ 12 and Ex. G, Ex. 4 thereto.) As shown on the map (hereafter, the "Map") of the Leased Land (see Lane Decl., Ex. A; and Isbell Decl., Ex. G, Ex. 4 thereto), the five parcels are identified for this brief as follows:

- "Parcel A" is the northern-most parcel of the Leased Land, is identified on the Map by the handwritten "A", has Assessor's Parcel Number ("APN") 3050-022-010 and is owned by Little Rock (Lane Decl., 9-13 and Ex. A; RJN, Ex. 2);

- "Parcel B" is directly south of Parcel A, is identified on the Map by the handwritten "B", has APN 3050-022-014 and is owned by Little Rock (Lane Decl., 9-13 and Ex. A; RJN, Ex. 2);
- "Parcel C" is south of Parcel B along the eastern border the Leased Land, is identified on the Map by the handwritten "C", has APN 3050-010-006 and is owned by Little Rock (Lane Decl., 9-13 and Ex. A; RJN, Ex. 4);
- "Parcel D" is also south of Parcel B, shaped like an "L", is identified on the Map by the handwritten "D", has APN 3050-010-016 and is owned by the George and Charlene Lane Family Trust, Dated December 19, 2007 (Lane Decl., 9-13 and Ex. A; RJN, Ex. 9); and
- "Parcel E" is the southern-most parcel of the Leased Land, is identified on the Map by the handwritten "E", has APN 3050-028-015 and is owned by Monte Vista. (Lane Decl., 9-13 and Ex. A; RJN, Ex. 12.)

B. The Lease To GCC

On or about April 8, 1987, Little Rock and GCC entered into the Lease, by which Little Rock agreed to lease the Leased Land to GCC pursuant to the terms therein. (Lane Decl., ¶ 14 and Ex. B, § 1.)

In recognition of GCC's intent to mine the Leased Land and use surface and groundwater therefrom in its mining operation, the Lease includes the following terms:

> 1. Grant of Lease
>
> Lessor hereby grants to Lessee the right to enter into and exercise possession and control of the property, and **during the term of this Lease** to remain in possession and control thereof, and to explore, develop, mine, operate and use the property and any surface or underground water or water rights occurring therein or appurtenant thereto, and to mine, extract and remove from the property any quarry products, stone, rock, sand, and aggregate …
>
> 3. Operations
>
> 3.1 **During the term of this Lease**, Lessee shall have the right to explore, mine and develop the property, and to extract Leased Materials from the property by means of open pit mining operations …

> 3.2 **During the term of this Lease**, Lessor grants to Lessee such water rights as Lessor has to the surface and underground water located upon and under the leased premises. Lessee shall have the right to use all existing water sources presently located upon the leased premises (both above and below ground). Lessee, at its expense, shall have the right to develop such further water sources as it may deem necessary or convenient for the operation of its business; provided, however, that Lessee shall avoid wasting water."
>
> 15. Use of Leased Premises
>
> It is recognized and understood by and between the parties hereto that Lessee intends to use the premises herein leased, as and for a rock, sand and gravel quarrying operation and the outside sale of same, and the production, sale and dispatching of ready-mixed concrete and asphaltic concrete, a construction office, shop and yard, and for no other purpose, and it is with this understanding that Lessor is willing to Lease the aforesaid property to Lessee. In the event that Lessee decides to change the nature of its business, Lessee will first obtain the written consent of Lessor.

(Lane Decl., ¶¶ 15-16 and Ex. B, §§ 1, 3.1, 3.2 and 15 (emphasis added in bold).)

Section 4 of the Lease provides that the initial term thereof was three years with GCC having options to renew or extend the term for additional terms. GCC has exercised options to renew and extend the Lease, such that it is currently scheduled to expire on or about April 8, 2021, but GCC has additional, unexercised options available to extend the term of the Lease to April 30, 2041. (Lane Decl., ¶¶ 17-18 and Ex. B, § 4.)

In anticipation of the Lease, on or about April 6, 1987, Little Rock entered into leases of Parcel D from Frank and Yvonne Lane and Parcel E from Monte Vista so that it could sublease those parcels to GCC along with its lease of Parcels A, B and C. (Lane Decl., ¶ 19 and Exs. C and D.) Like the Lease with GCC, Little Rock's leases of Parcels D and E provide:

> During the term of this Lease, Lessor grants to Lessee such water rights as Lessor has to the surface and underground water located upon and under the leased premises.

(Lane Decl., ¶ 20, Ex. C, § "SIX", p. 4, and Ex. D., § "SIX", p. 4.)

C. GCC's Possession Of The Leased Land And Operation Of A Mine Thereon

From around April 1987 to date, GCC has occupied the Leased Land and operated a mine thereon. (Lane Decl., ¶ 21 and Ex. B.) For use in its mining operation, GCC installed three groundwater wells on the Leased Land. (Id.; RJN, Ex. 19, ¶¶ 3 and 6, and Ex. 21, ¶¶ 3 and 5.)

The primary well was installed on Little Rock's Parcel C at or near GCC's rock plant, which is also on Parcel C and where GCC processes the material it mines from the Leased Land. (The location of the well installed on Parcel C is identified on the Map by the handwritten "1" and shall be referred to hereafter as "Pump 1.") (Lane Decl., ¶¶ 22-23 and Ex. A; Isbell Decl., ¶¶ 6-10 and Exs. A-G; Declaration of Theodore A. Chester in Support of Opening Brief ("Chester, Decl."), Ex. A, 38:15-20; RJN, Ex. 19, ¶¶ 3-6, and Ex. 21, ¶¶ 3-5.) The other two wells were installed on Parcel E . (The locations of the two wells installed on Parcel E are respectively identified on the Map by the handwritten "2" and "3". The well located in the northwest corner of Parcel E and identified by the "2" shall be referred to hereafter as "Pump 2", and the well located on the south-southeast portion of Parcel E and identified by the "3" shall be referred to hereafter as "Pump 3".)[1] (Id.)

Of the three groundwater wells, GCC annually pumped a substantial majority of groundwater from Pump 1. GCC's evidence submitted in the AVG Cases shows that it annually pumped an estimated 342 acre-feet from Pump 1, 129 acre-feet from Pump 2 and 0 acre-feet from Pump 3. (RJN, Ex. 19, ¶ 6, and Ex. 21, ¶ 5.)

Additionally, all of the water produced from Pumps 1 and 2 was used on the Leased Land and primarily in the processing of mined material at the rock plant on Little Rock's Parcel C. GCC's own evidence was that it annually pumped 471 acre-feet from the Leased Land and that only 103 of those acre-feet were used for "dust control" on the Leased Land with the remainder (i.e., 368 acre-feet) used for processing mined material at the rock plant on Parcel C. (RJN, Ex. 21, ¶¶ 4-5.)

D. GCC's Real Property Holdings In The Antelope Valley

GCC claims to own two separate lands in the Antelope Valley. One is located adjacent to the Leased Land, south of Parcel E (hereafter, the "Adjacent Land"), and the other is in the Big

[1] There was a fourth well on the Leased Land near its northern border on Parcel A and identified on the Map by the handwritten "4." That well was not used during the relevant time, and thus, will not be discussed here. (Lane Decl., ¶ 23, fn. 1, and Ex. A; Isbell Decl., Ex. G, Ex. 4 thereto.)

Rock area of the Antelope Valley (hereafter, the "Big Rock Land"). (RJN, Ex. 18, ¶ 3-4 and Ex. A thereto; RJN, Ex. 19, ¶ 7; RJN, Ex. 21, ¶ 6; RJN, Ex. 29, ¶¶ 7 and 9.)

In 2008, GCC acquired the Adjacent Land (which totals approximately 55.5 acres) with the intent to mine it after the Leased Land no longer produces commercially viable material, while continuing to pump water from the wells on the Leased Land and process the mined material at the rock plant on Parcel C of the Leased Land. (Chester Decl., Ex. A, 38:15-20; Ex. RJN, Ex. 21, ¶¶ 3-5; RJN, Ex. 29, ¶¶ 8-13.) Notably, GCC admits that there is no groundwater source on the Adjacent Land, and as of March 2016, GCC had yet to begin mining that land. (RJN, Ex. 18, ¶¶ 3-5 and Ex. A thereto, items 6-10; RJN, Ex. 29, ¶¶ 8-12.)

The Big Rock Land (approximately 145 acres) is not adjacent to the Leased Land. As of March 2016, GCC was not mining the Big Rock Land. (RJN, Ex. 18, ¶¶ 3-5 and Ex. A thereto, items 11-12; RJN, Ex. 21, ¶ 6; RJN, Ex. 29, ¶ 7.) According its own evidence, GCC annually pumped 16 acre-feet of groundwater from a well on the Big Rock land to maintain a strip of landscaping around its perimeter. (RJN, Ex. 21, ¶ 6.)

E. The Antelope Valley Groundwater Cases

1. Initiation of the Proceedings

As described in greater detail in the Judgment, the AVG Cases were initiated between 1999 and 2008 by the filing of numerous lawsuits regarding groundwater rights in the Antelope Valley. After the first lawsuits were consolidated, Los Angeles County Waterworks District No. 40, in 2004, initiated a "general Groundwater adjudication for the Antelope Valley Ground Water Basin …seeking declaratory and injunctive relief and an adjudication of the rights to all Groundwater within the Antelope Valley Groundwater Basin." In June 2005, the Judicial Counsel of California coordinated all of these "Antelope Valley Groundwater Cases" and assigned them to the Santa Clara County Superior Court and the Honorable Judge Jack Komar. Thereafter, several other actions were filed between 2006 and 2008 and made part of the AVG Cases. (See Judgment at RJN, Ex. 26, §§ 1.1-1.3.)

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As shown in the Court's records of the AVG Cases, Little Rock joined the AVG Cases by filing an answer on December 13, 2011, and GCC appeared by filing an answer on February 28, 2012.

2. Phased Trials

The Court separated the trial of the AVG Cases into phases, only four of which were tried by the time the Judgment was entered in December 2015. In Phase 1, the Court determined the geographical boundaries of the area adjudicated in the action, defined as the "Basin"; in Phase 2, the Court found that all areas within the Basin are a single, connected aquifer; in Phase 3 the Court decided that the Basin was in a state of "overdraft" and that its safe yield is 110,000 acre-feet per year; and in Phase 4, the parties put on evidence of the amount of groundwater they extracted from the Basin in 2011 and 2012, and based thereon, the Court made findings of the parties' respective groundwater production for those years. (See Judgment at RJN, Ex. 26, § 1.5.)

It was in the Phase 4 trial that the subject dispute between Little Rock and GCC first arose. GCC submitted the Declaration of William Taylor in Lieu of Deposition Testimony for Phase 4 Trial, which stated, "Granite claims an overlying right to groundwater for the property listed in Exhibit A", which list included the five parcels that compose the Leased Land. (RJN, Ex. 18, ¶ 3 and Ex. A thereto, items 1-5 (emphasis added); RJN, Exs. 2, 4, 9 and 12.) In support of its claim to Little Rock's overlying water rights, GCC also submitted the Declaration of Steve McCracken in Lieu of Testimony at Phase IV Trial, which estimated that, in 2011 and 2012, GCC pumped 417.8 and 423.3 acre-feet of groundwater, respectively, from the Leased Land. The McCracken Declaration further broke down GCC's groundwater production on the Leased Land by stating that GCC annually produces an estimated 342 acre-feet of groundwater from Pump 1 (located on Parcel C), 129 acre-feet of groundwater from Pump 2 (located on Parcel E) and 0 acre-feet of groundwater from Pump 3 (located on Parcel E). (RJN, Ex. 19, ¶¶ 3-6; Lane Decl., ¶¶ 22-23, and Ex. A; Isbell Decl., ¶¶ 6-11 and Exs. A-G.)

At the Phase 4 trial, on May 30, 2013, Little Rock's former counsel, James Lewis, Esq., brought this dispute to the Court's attention. When the Court asked GCC to introduce evidence of its historic pumping from the Basin, Mr. Lewis, on behalf of Little Rock, stated,

> … on the Master Stipulation, on page 3, line 8, where it says "Granite Construction Company," I would just request that "Little Rock Sand and Gravel" be added to that line as well as my client, Little Rock Sand and Gravel, is the owner of that property.
> …
> Granite Construction Company is pumping under a lease on my client's property.

In response, the Court stated, "How about if we just put in parenthesis then your client's name, which is Little Rock?" To which Mr. Lewis agreed. (RJN, Ex. 17, 8:10-9:21.)

Following the Phase 4 trial, the Court found that, in both 2011 and 2012, "Granite Construction Company (Little Rock Sand and Gravel, Inc.)" pumped 400 acre-feet of groundwater from the Basin. (RJN, Ex. 20, 2:7-9, 3:15-16.) Notably, GCC's evidence admitted that no groundwater was pumped from the Adjacent Land (RJN, Ex. 18, ¶ 3 and Ex. A thereto, items 6-10), and the Court did not find that GCC pumped any water from that land. (RJN, Ex. 20.) Additionally, despite GCC putting on evidence that it annually pumped 16 acre-feet of groundwater from the Big Rock Land (RJN, Ex. 19, ¶ 7), the Court did not find that GCC pumped any groundwater from the Big Rock Land in 2011 or 2012. (RJN, Ex. 20.)

3. Failed Negotiations between Little Rock and GCC, the Stipulation, the Judgment and Little Rock's Post-Judgment Motion

In March 2014, counsel for many of the parties in the AVG Cases met for global settlement negotiations. In connection with those discussions, Exhibit 4 to the Proposed Judgment was negotiated and drafted, which included the line item designation established in the Phase 4 trial, "Granite Construction Company (Little Rock Sand and Gravel, Inc.)", and provided that the annual allocation for that line item would be 234 acre-feet (defined above as the "Allocation"). (Chester Decl., ¶¶ 8-10; RJN, Ex. 26, Ex. 4 thereto, p. 2.)

Despite agreeing to the amount of the Allocation and the allocations for all of the other parties listed in Exhibit 4, Little Rock never reached an agreement with GCC as to whom, between them, owns fee title to the Allocation or any portion thereof. In addition to discussing resolution at the March 2014 meetings, Little Rock, GCC and their respective counsel had further discussions

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between May 2014 and January 2016 trying, without success, to resolve the dispute between them over the Allocation. (Lane Decl., ¶¶ 26-42 and Exs. E-H; Chester Decl., ¶¶ 11-31 and Exs. B-I.)

According to GCC's counsel, Robert Kuhs, Esq., at some point in the negotiations, he asked Little Rock's counsel, Theodore A. Chester, Jr., Esq., for a "fair offer" of water allocation between the two parties. After an offer and counter-offers, the parties reached an impasse regarding who, between them, should bear the risk of future reductions in the Allocation and who would have the benefit of future increases. According to Mr. Kuhs, Little Rock's counsel said that he would check with Little Rock and advise. (RJN, Ex. 30, ¶ 7.)

In emails in May 2014, Little Rock's counsel wrote to GCC's counsel, "I have not heard from you regarding the Granite/Lane proposal. We should nail that down", and "... if we can't settle, we will have to have the court decide the issue." (Chester Decl., ¶ 13 and Ex. B.) Similarly, on September 3, 2014, Mr. Chester wrote to Mr. Kuhs, "Over the last several months our respective clients ... have attempted to resolve the matter in which they are to be allocated Overlying Production Rights on Exhibit 4 to the Proposed [Stipulation and Judgment]. ... Little Rock has made two offers ... However, both of Little Rock's offers have been rejected by Granite." (Chester Decl., ¶ 14 and Ex. C, p. 1, ¶¶ 2 (emphasis added).)

The exchanges between counsel continued in late-November 2014 when Mr. Chester sent an email to Mr. Kuhs and James Dubois, Esq., counsel for the United States, regarding the line item designations for the allocations to be set forth in Exhibit 4 of the proposed Judgment, "... I would ask that it be kept the same as what currently exists, i.e., 'Granite Construction Company (Little Rock Sand and Gravel Inc.)' I don't think any words should be added (or subtracted) that might suggest the parties have reached any particular understanding with respect to the manner in which title is held." GCC's counsel responded, "No objection." (Chester Decl., ¶ 15 and Ex. D (emphasis added).)

In December 2014, Mr. Kuhs sent correspondence to Mr. Chester that admitted that no agreement had been reached between Little Rock and GCC regarding title to the Allocation. On December 1, 2014, Mr. Kuhs wrote to Mr. Chester, "Granite offered to reduce its allocation at Littlerock to 95/139 with no conditions. ... Please advise whether the 95/139 split is acceptable,

…" (Chester Decl., ¶ 16 and Ex. E (emphasis added).) And on December 10, 2014, he wrote to Little Rock's counsel, "You advised that you would need to talk with your client further, and that is where the discussion left off." (Chester Decl., ¶ 17 and Ex. F, p. 4, ¶ 3 (emphasis added).)

Like its counsel, Little Rock sent correspondence to GCC in failed attempts to resolve the dispute. In a letter dated November 22, 2014, George Lane, President of Little Rock, wrote to the President of GCC, James Roberts, "We're concerned that Granite is attempting to move part of our water rights … The attorneys are attempting to settle this but have not been successful so far." (Lane Decl., ¶ 31 and Ex. E.) Then, on December 1, 2014, Mr. Lane wrote in a letter to GCC, "It was and remains my hope that this matter can be resolved amongst the principals in the near future …" (Lane Decl., ¶ 32 and Ex. F.) Again in January 2015, Mr. Lane sent two letters to GCC, the first of which, dated January 13, 2015, stated, "… we are concerned that there may be no genuine interest on Granite's part in resolving this matter. … We wish to resolve this matter" (Lane Decl., ¶ 33 and Ex. G), and in the second, dated January 26, 2015, Little Rock's President wrote, "At this point our disagreement remains unresolved. … This means that our respective companies will execute the overall stipulation to settle the water adjudication, but that the ultimate subdivision of the jointly allocated water right will have to await future determination." (Lane Decl., ¶ 34 and Ex. H (emphasis added).)

Consistent with its communications to the parties, Little Rock maintained with the Court that the disagreement regarding title to the Allocation was not resolved. On December 31, 2014, Little Rock filed a Case Management Conference Statement ("CMC Statement") that informed,

> There exists a dispute between the Lane Family and Granite, and no other parties, with respect to title to water rights associated with the leased property that would be adjudicated in this case. The Lane Family would seek title to the adjudicated rights as land owner (the water rights would remain subject to Granite's use for the term of the lease). The Lane Family understands that Granite seeks separate conflicting title in its own name. The Lane Family has made a number of attempts to resolve this two-party dispute, but, to date, those attempts have failed.
>
> The Lane Family is prepared to stipulate to entry of the proposed judgment that has been negotiated by and among the settling parties. By doing so the Lane Family would be settling with all other Stipulating Parties, provided, however, that the issue of title to water rights allocated under the proposed judgment as between the Lane Family and Granite

> would remain undecided. The Lane Family would seek to have this remaining two-party dispute decided by the Court or by an alternative approach, including mediation.

(Chester Decl., ¶¶ 21-22; RJN, Ex. 22 (emphasis added).)

In recognition of the dispute outlined in Little Rock's CMC Statement, the Court issued a Minute Order on January 7, 2015, that stated, "There remains an outstanding issue between two parties, namely the Lane Family … and Granite Construction Company …, which the Court reserved for further discussion …" (Chester Decl., ¶¶ 23; RJN, Ex. 23 (emphasis added).)

Due to the fact that Little Rock and GCC had not reached an agreement and as foreshadowed in Little Rock's CMC Statement, on February 20, 2015, Little Rock submitted its signature to the Stipulation to the other parties with the reservation that title to the Allocation "remains unresolved" and that it "will be addressed and resolved at a later time." (Chester Decl., ¶¶ 25-26 and Ex. I.) The fully executed Stipulation was later filed with the Court on March 4, 2015. (RJN, Ex. 25.)

Counsel's correspondence picked up again in an email exchange dated September 26, 2015, wherein Mr. Chester and Mr. Kuhs wrote each other the following:

> Mr. Chester: "… the issue regarding title to the water rights associated with the land leased to Granite by Little Rock Sand and Gravel, Inc. remains reserved and undetermined, …"
>
> Mr. Kuhs: "The Stipulation resolves all claims … I thought this issue had been put to bed, …"
>
> Mr. Chester: "I don't know how or why you thought this was 'put to bed.' The court's January 7, 2015 minute order specifically reserved it."
>
> Mr. Kuhs: "I recall the court's minute order. And then one week later you delivered your clients [*sic*] signatures to the stipulation, resolving all claims to groundwater."
>
> Mr. Chester: "Both of our clients are shown for a single line item. The issue of title was not resolved."

(Chester Decl., ¶ 18 and Ex. G (emphasis added).)

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To keep the Court aware that the dispute had not resolved, on October 6, 2015, Little Rock filed a Supplemental CMC Statement that "confirm[ed] that the issues concerning the Lane Family and Granite Construction Company, two settling parties, remain 'reserved for further discussions …' in accordance with the Court's January 7, 2015 Minute Order." (Chester Decl., ¶ 24; RJN, Ex. 24.)

On December 23, 2015, the Judgment was entered pursuant to the parties' Stipulation. (RJN, Ex. 26.) Section 3.3 of the Physical Solution attached as Exhibit A to the Judgment states, "The Court's rulings and judgments in this case, including the Safe Yield determination, form the basis for this Judgment", and Section 3.4 provides, "The Physical Solution set forth in this Judgment: (1) is a fair and reasonable allocation of Groundwater rights in the Basin after giving due consideration to water rights priorities … and (4) is a remedy that gives due consideration to applicable common law rights and priorities to use Basin water and storage without substantially impairing such rights." Additionally, Section 5.1.1 provides that the parties listed in Exhibit 4 thereto have "Overlying Production Rights", and Section 7.4 states that the Judgment takes "into account water rights priorities." (RJN, Ex. 26, Ex. A thereto, §§ 3.3, 3.4, 5.1.1 and 7.4.)

Similarly, also on December 23, 2015, the Court issued a Statement of Decision that provided that "unexercised overlying rights … are not entitled to an allocation in the Physical Solution." (RJN, Ex. 27, p. 14.)

As discussed above, Exhibit 4 of the Physical Solution to the Judgment grants the Allocation (i.e., 234 acre-feet annually) to "Granite Construction Company (Little Rock Sand and Gravel, Inc.)." Exhibit 4 also allocated "Granite Construction Company (Big Rock Facility)" 126 acre-feet. (RJN, Ex. 26, Ex. A thereto, Ex. 4 thereto, p. 2.)

In Little Rock's final attempt to settle the parties' dispute before requesting a resolution from the Court, Mr. Chester wrote to Mr. Kuhs on January 27, 2016, "My client intends to seek a judicial determination of the issue that exists between our clients concerning ownership of 234 [acre-feet] Overlying Production Right set forth on Exhibit 4 of the Judgment. … You may recall my client's most recent proposal … My client remains willing to settle on this basis. ... If I don't hear from you by 1pm on Friday, January 29, my client's proposal expires and I will proceed

accordingly." (Chester Decl., ¶ 19 and Ex. H (emphasis added).) Mr. Chester never received a response to this email from Mr. Kuhs, and as such, Little Rock's settlement offer was revoked on January 29, 2016. (Chester Decl., ¶ 20 and Ex. H.)

Accordingly, on or about January 31, 2016, the Lane Family Entities filed a Motion for Post-Judgment Supplemental Order, which requested an order declaring that Little Rock owns the Allocation and that GCC only has a leasehold interest therein pursuant to the Lease. After full briefing and a hearing, the Court denied the motion without prejudice and instructed the parties that it needed "competent evidence" to rule on the issue. (Chester Decl., ¶¶ 27-28; RJN, Ex. 28.)

To date, Little Rock has not reached an agreement or obtained a resolution from the Court regarding who, between it and GCC, owns fee title to the Allocation. (Lane Decl., ¶¶ 26-42 and Exs. E-H; Chester Decl., ¶¶ 11-31 and Exs. B-I.)

F. Little Rock's Separate Action On The Lease And Its Coordination With The Antelope Valley Groundwater Cases

In March 2017, Little Rock filed an action against GCC in the Los Angeles County Superior Court, Antelope Valley Courthouse, Case No. MC026932 (the "Lease Action"), which sought a judgment for quiet title and declaratory relief that Little Rock owns fee title to the Allocation and that GCC has no interest therein except as provided in the Lease.[2] In July 2017, GCC filed an application to coordinate the Lease Action with the AVG Cases on the ground that the Lease Action seeks an order interpreting, modifying or enforcing the Judgment, which, under the Judgment, is within this Court's jurisdiction. The Court granted GCC's application in October 2017. (Isbell Decl., ¶¶ 4-5; Chester Decl., ¶¶ 29-30.)

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[2] Little Rock's Complaint and First Amended Complaint mistakenly alleged that Little Rock owns four parcels of land that compose the Leased Land. However, as shown above, the Leased Land is composed of five parcels, three of which are owned by Little Rock, with the other two owned by Lane family entities. (Lane Decl., ¶ 41.)

III. ARGUMENT

A. Little Rock's Overlying Water Rights In The Leased Land Have Priority Over Any Claim That GCC Has To The Same

Overlying water rights arise from and are appurtenant to ownership of land and allow the owner to take water from underneath the land for use on its land. *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1240 ("*Barstow*"); *Pasadena v. Alhambra* (1949) 33 Cal.2d 908, 925 ("*Pasadena*"). An overlying right directly benefits and may only be exercised to benefit the overlying land. *Barstow, supra*, 23 Cal.4th at p. 1240. In short, overlying water rights are exercised where a landowner takes water from beneath its land and uses the water on its land.

In cases such as this, with an over-drafted basin and the implementation of a physical solution, "overlying use is paramount," and in implementing a physical solution, the court cannot ignore the priority rights of the parties and "may neither change priorities among the water rights holders nor eliminate vested rights without first considering them in relation to the reasonable use doctrine." *Barstow, supra*, 23 Cal.4th at pp. 1243 and 1250. See also, *Id.*, at p. 1248 - "we have never endorsed a pure equitable apportionment that completely disregards overlying owners' existing legal rights"; and *Id.*, at p. 1252 - it is error to order a physical solution that does "not attempt to determine the priority of water rights", as such an approach "elevates the rights of … those producing without any claim of right to the same status as the rights of … overlying owners."

Here, Little Rock is the owner of three of the five parcels of the Leased Land, including Parcel C, from which GCC historically extracted roughly 70% of the total amount of groundwater it extracted from the Basin, including its extractions from the Adjacent Land (0 acre-feet) and the Big Rock Land (16 acre-feet). (GCC's evidence at the Phase 4 trial was that Pump 1 on Parcel C annually produced an estimated 342 acre-feet of the 487 acre-feet of groundwater that GCC claims to have historically produced from the Basin. (RJN, Ex. 19, ¶¶ 6-7.)) Moreover, GCC used 368 of the 471 acre-feet pumped from the Leased Land at the rock plant on Little Rock's Parcel C, with the small remainder used for "dust control" on the Leased Land, including Little Rock's Parcels A, B and C. (RJN, Ex. 19, ¶¶ 5-6; RJN, Ex. 21, ¶¶ 4-5.)

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The other parcel on the Leased Land from which GCC produced groundwater, Parcel E, is owned by Lane Family entity Monte Vista, leased to Little Rock and subleased to GCC. GCC submitted evidence that it annually pumped an estimated 129 acre-feet of groundwater from Pump 2 on Parcel E, which is approximately 26% of its annual production, and again, all of that water was used on the Leased Land, with the substantial majority used on Little Rock's land, whether at the rock plant on Parcel C or for dust control on Parcels A, B and C. (RJN, Ex. 19, ¶¶ 5-6; RJN, Ex. 21, ¶¶ 4-5; Chester Decl., Ex. A, 38:15-20.)

Under the well-established authorities cited above, Little Rock, as the owner of Parcels A, B and C, owns the overlying water rights appurtenant to those parcels, Monte Vista owns the overlying water rights to Parcel E, the Lane Family Trust owns the overlying water rights to Parcel D, and tenant/subtenant, GCC, holds no overlying rights arising from the Leased Land. More importantly, as shown above by the amount of groundwater used on Parcels A, B and C, those overlying rights were exercised on and for the benefit of Little Rock's land.

As a tenant that has been expressly permitted by the terms of the Lease to pump and use groundwater from and on the Leased Land, GCC has no claim of right to the overlying water rights appurtenant to the Leased Land, including, in particular, Little Rock's land. Thus, the Judgment and Physical Solution must give Little Rock's overlying water rights priority over GCC's claim to the same. *Barstow, supra*, 23 Cal.4th at pp. 1243 and 1250.

Furthermore, GCC cannot gain title to water rights appurtenant to the Leased Land through its permissive use of the same under the Lease (*Fryer v. Fryer* (1944) 63 Cal.App.2d 343, 346 and 348 ("*Fryer*")), and similarly, GCC, as a tenant, cannot acquire any estate or interest adverse to its lessor, Little Rock. *Swartzbaugh v. Sampson* (1936) 11 Cal.App.2d 451, 462 ("*Swartzbaugh*"); *Storrow v. Green* (1918) 39 Cal.App. 123, 126-127 ("*Storrow*"). Indeed, as a tenant, GCC is estopped from denying Little Rock's title. California *Evidence Code* § 624; Miller & Starr, *California Real Estate 2d* § 18:49.

Likewise, under California law, GCC's anticipated argument that its extraction and use of groundwater on the Leased Land should be considered its own "beneficial use," such that it should be granted all (or even some) of the Allocation, is meritless. As a lessee of the right to use the

overlying water rights appurtenant to the Lease Land, GCC's production of groundwater from the Leased Land and its use of the same thereon, including, primarily on Little Rock's Parcels A, B and C, is legally attributable to the lessor, Little Rock. See California *Code of Civil Procedure* ("*CCP*") § 326 ("the possession of the tenant is deemed the possession of the landlord"); See also, Miller & Starr, *California Real Estate 2d* § 18:48 ("the possession of the tenant is considered the possession of the landlord for all purposes"). Similarly, production and use of water from the Leased Land by the tenant, GCC, is legally considered Little Rock's "beneficial use," as the rental of water is a beneficial use. *Joerger v. Pacific Gas & Electric Co.* (1929) 207 Cal. 8, 34.

To the extent that the Court treats the Lease Action and these papers as a request for an interpretation, modification or enforcement of the Judgment (as argued by GCC in its application to coordinate the Lease Action with the AVG Cases), the Court must recognize the foregoing in making its decision regarding this dispute, because in addition to the well-established law cited above, the Judgment expressly requires it. In awarding "Overlying Production Rights," the Judgment requires "consideration [of] water rights priorities[,] ... common law rights and priorities to use Basin water," the "Court's rulings and judgments in the case." (See Judgment, §§ 3.3, 3.4, 5.1.1 and 7.4.) With Little Rock, the landowner, having undeniable priority over its tenant, GCC, to the overlying water rights appurtenant to the Leased Land, and GCC being legally unable to acquire property rights in the Leased Land adverse to Little Rock, the Court, in interpreting the Judgment and deciding this dispute, must find that, between the two of them, Little Rock holds title to the Allocation. To decide otherwise, would ignore the express terms of the Judgment and California law, both of which require consideration and maintenance of overlying owners' existing water rights and their priority over others, like GCC, that have no claim of right.

This outcome should not be altered, because Little Rock only owns three of the five parcels that compose the Leased Land. First, as discussed above, GCC, as tenant, is estopped from denying Little Rock's title and cannot obtain title adverse to Little Rock. California *Evidence Code* § 624; Miller & Starr, *California Real Estate 2d* § 18:49. Second, as shown above and not repeated at length here, the overlying water rights associated with the Leased Land were primarily used on and for the benefit of Little Rock's Parcels A, B and C, such that the water produced from the Leased

Land was used primarily in exercise of Little Rock's overlying water rights. *Barstow, supra*, 23 Cal.4th at p. 1240; *Pasadena, supra*, 33 Cal.2d at p. 925.

Additionally, Monte Vista, like Little Rock, is a Lane Family entity, and it was not allocated any groundwater rights under the Judgment despite evidence that 129 acre-feet was annually extracted from its Parcel E and a portion thereof was used for dust control on its land. The lack of an allocation to Monte Vista is in stark contrast to the 126 acre-feet windfall allocation granted to "Granite Construction Company (Big Rock Facility)", despite evidence of annual extractions of only 16 acre-feet from the Big Rock Land and the Court's Phase 4 trial findings that did not find that GCC historically pumped any water from the Big Rock Land. As GCC has already been awarded a sizable allocation despite failing to prove that it extracted any groundwater from its land or used it thereon, the fact that Little Rock owns three of the five parcels that the compose the Leased Land, with the other two being owned by Lane Family entities, should not negatively affect Little Rock's priority to the Allocation over GCC. Rather, these facts (including that Monte Vista is a Lane Family entity like Little Rock and was deprived of any allocation under the Judgment) support awarding title to the entire Allocation to Little Rock, except to the extent that it is temporarily rented to GCC under the Lease.

Likewise, Little Rock's title to the Allocation or any portion thereof should not be shifted to GCC, merely because GCC owns the Adjacent Land and plans to incorporate it into its mining operation on the Leased Land. As between GCC and Little Rock, GCC's ownership of the Adjacent Land is irrelevant, because, as a tenant leasing Little Rock's water rights, GCC cannot acquire title to water rights arising from the Leased Land that are adverse to Little Rock. *Fryer, supra*, 63 Cal.App.2d at pp. 346 and 348; *Swartzbaugh, supra*, 11 Cal.App.2d at p. 462; *Storrow, supra*, 39 Cal.App. at pp. 126-127. Furthermore, by stating, "unexercised overlying rights … are not entitled to an allocation in the Physical Solution", the Court's December 23, 2015 Statement of Decision precludes any allocation to GCC for the Adjacent Land, because GCC has never produced any groundwater from a source on that land nor has it shown that it used any groundwater thereon.

Based on the foregoing, including that, under California law and the express terms of the Judgment, Little Rock has priority over GCC to the Allocation, the Court should find that title to

the entire Allocation belongs to Little Rock, subject only to GCC's temporary leasehold interest therein under the Lease.

B. The Lease Is The Only Agreement That Defines Little Rock's And GCC's Respective Water Rights Arising From The Leased Land

1. The Lease is a contract between Little Rock and GCC that defines their respective rights and obligations to pump and use groundwater from the Leased Land.

A contract is an agreement that creates an obligation to do or not do a certain thing and that is enforceable by a civil action. California *Civil Code* ("*Civ. Code*") §§ 1427, 1428 and 1549. To create a contract, there must be "(1) parties capable of contracting; (2) their consent; (3) a lawful object; and (4) sufficient cause or consideration." *Civ. Code* § 1550.

There is no dispute that the Lease is a contract between Little Rock and GCC. First, both parties are California corporations and, thus, are capable of contracting. *Corporations Code* § 207(g). Second, the parties' consent to enter into the Lease and be bound by its terms is evidenced by their mutual execution of the Lease. *Civ. Code* §§ 1565 and 1581. Third, leasing of real property and water rights associated therewith is a lawful object (*Civ. Code* §§ 1595 and 1667), and fourth, the parties agreed to exchange consideration, with Little Rock giving GCC possession of the Leased Land and certain rights associated therewith as set forth in the Lease, and GCC agreeing to, among other things, pay Little Rock rent in accordance with Section 6 of the Lease. (Lane Decl., Ex. B, §§ 1, 3, 4 and 6.) *Civ. Code* § 1605.

The Lease created obligations between Little Rock and GCC regarding, among others, the production and use of groundwater from and on the Leased Land. In short, as expressed in Sections 1, 3.1, 3.2 and 15 of the Lease (quoted above), Little Rock is obligated, for the term of the Lease, to allow GCC to use all rights to "underground water" "occurring []in or appurtenant []to" the Leased Land, and GCC is obligated to not use the groundwater rights associated with the Leased Land except during the term of the Lease and in connection with its operation of the mining operation on the Leased Land. As the Lease is not set to expire until April 2021, GCC remains bound by these contractual obligations.

2. Despite being executed by Little Rock and GCC, the Stipulation and Judgment thereon do not contain an agreement regarding who, between them, owns the Allocation.

A stipulation is a contract (*Los Angeles City School Dist. of Los Angeles County v. Landier Management Co.* (1960) 177 Cal.App.2d 744, 750-751 ("*Los Angeles City School Dist.*"), and Little Rock submits that the Stipulation is a contract that meets the requirements of *Civ. Code* section 1550. However, of the many terms to which the parties agreed by executing the Stipulation, it does not include an agreement regarding who, between the Little Rock and GCC, owns the Allocation. Rather, the Stipulation leaves this issue undetermined.

As the Stipulation is a contract, the interpretation of its terms is governed by the rules of contract construction. *Los Angeles City School Dist., supra*, 177 Cal.App.2d at pp. 750-751, citing *Palmer v. City of Long Beach* (1948) 33 Cal.2d 134, 142, and *Jackson v. Puget Sound Lumber Co.* (1898) 123 Cal. 97, 100. Accordingly, the Stipulation must be objectively interpreted to give effect to the mutual intent of the parties. *Civ. Code* §§ 1636 and 1641; *Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632, *as modified (January 7, 1999)* ("*Winograd*"). "The question is what the parties' objective manifestations of agreement or objective expressions of intent would lead a reasonable person to believe. (See, e.g., *Meyer v. Benko* (1976) 55 Cal.App.3d 937, 942–943 [127 Cal.Rptr. 846]; 1 Witkin, Summary of Cal. Law (9th ed. 1987) Contracts § 684 et seq.)" *Winograd, supra*, 68 Cal.App.4th at p. 632.

Where the terms of a contract are ambiguous (i.e., reasonably susceptible to differing interpretations (*Scheenstra v. California Dairies, Inc.* (2013) 213 Cal.App.4th 370, 389)), the Court may review the circumstances under which the agreement was made and the matter to which it relates to understand parties' intent and better interpret the contract language. *Civ. Code* §§ 1647, 1649 and 1860; *First National Bank of Redlands v. Bowers* (1903) 141 Cal. 253, 261; *Payne v. Commercial National Bank of Los Angeles* (1917) 177 Cal. 68, 72; 1 Witkin, *Summary 11th Contracts* § 771 (2017).

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Here, both the language of the Stipulation and extrinsic evidence prove that, in entering into the Stipulation, Little Rock and GCC never agreed who owns the Allocation. Unlike the Stipulation, that issue is conclusively resolved in the Lease.

First, the terms of the Judgment and Stipulation thereto indicate that the parties agreed to not decide who, between Little Rock and GCC, hold title to the Allocation. By awarding the Allocation to "Granite Construction Company (Little Rock Sand and Gravel, Inc.)" in a single line item on Exhibit 4 to the Physical Solution, the terms of Judgment, which are expressly "agree[d] to" and "incorporated" into the Stipulation (see RJN, Ex. 25, ¶ 1), show that there was no agreement of who owns the Allocation. The inclusion of both parties in a single line item designation indicates that the parties agreed that there is no agreement regarding title to the Allocation. Likewise, the inclusion of both parties in the single line item without a term that divides specific portions of the Allocation between them indicates that the parties did not even agree to a split of the Allocation. For instance, the line item designation does not state that Little Rock shall have 75% of the Allocation and GCC shall have the remaining 25%.

Second, if the Court decides to examine extrinsic evidence to resolve any ambiguity on this issue, the unfruitful negotiations between Little Rock and GCC, Little Rock's actions in the AVG Cases, the conditional submission of Little Rock's signature to the Stipulation and Little Rock's actions following the execution of the Stipulation all prove that there was never an agreement regarding ownership of the Allocation.

At the Phase 4 trial, when GCC was putting on evidence of its past groundwater production, Little Rock's counsel informed the Court that GCC's pumping history was based on groundwater that was pumped from the Leased Land under the Lease and thereby informed the Court and all parties to the action that Little Rock maintains that it owns all groundwater rights associated with and/or arising from the Leased Land. In response, the Court ordered that, with respect to the Leased Land, GCC and Little Rock would be collectively referred to "Granite Construction Company (Little Rock Sand and Gravel, Inc.)."

From May 2014 to January 2016, Little Rock and GCC and their respective counsel had discussions and exchanged correspondence in unsuccessful efforts to settle their disagreement over

ownership of the Allocation. These communications definitively show that, despite their efforts, the parties never agreed to who owns the Allocation or any portion thereof. Included within these communications was an email dated February 20, 2015, by which Little Rock submitted its signature to the Stipulation. In that email, Little Rock made clear to GCC and all of the other parties that there was still a "dispute … with respect to title to water rights associated with the leased property" and that, by executing the Stipulation, Little Rock was "settling with all other Stipulating Parties, provided, however, that the issue of title to water rights … as between [it] and Granite would remain undecided" and subsequently decided by the Court or an alternative method.

Similarly, Little Rock submitted two CMC Statements to the Court, one dated December 31, 2014 (before the execution of the Stipulation) and the other October 6, 2015 (after the execution of the Stipulation), that reasserted to the parties and the Court that the issue of title to the Allocation, as between Little Rock and GCC, remained unresolved and "reserved for further discussion." The Court's January 7, 2015 Minute Order recognized the existence of this dispute.

Following the failure to resolve this dispute between themselves, Little Rock has made two attempts to have the Court decide the issue, which, again, indicates the absence of an agreement regarding title to the Allocation. First, Little Rock filed a post-judgment motion that requested a supplemental order determining who owns the Allocation, which the Court denied without prejudice, and second, Little Rock filed the Lease Action, which was coordinated with the AVG Cases and is now proceeding on these papers.

Should GCC argue, as it has done in the past, that Little Rock "orally" agreed to split the Allocation with GCC, Little Rock submits that (1) it has never reached such an agreement (Lane Decl., ¶¶ 26-42 and Exs E-H; Chester Decl., ¶¶ 11-31 and Exs. B-I), and (2) without a signed writing, there can be no such agreement. To the extent an agreement regarding ownership of the Allocation is a "settlement," it is required to be in writing (*CCP* § 664.6; *J.B.B. Investment Partners, Ltd. v. Fair* (2014) 232 Cal.App.4th 974, 985), and as the Allocation is a water right, which is real property interest, an agreement regarding or affecting title to the Allocation must be in writing. *Civ. Code* § 1624; *CCP* § 1971.

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The foregoing facts establish that, despite the execution of the Stipulation, there has never been an agreement regarding title to the Allocation. Accordingly, the Lease remains the only agreement that defines Little Rock's and GCC's respective rights to pump and use groundwater from the Leased Land, and it is definitive that GCC only temporarily leases the overlying water rights associated with the Leased Land for the term of the Lease and thereafter, those rights revert back to Little Rock.

C. The Facts Entitle Little Rock To An Order Quieting Title And Declaring That It Is The Fee Owner Of The Allocation And That GCC Only Has A Leasehold Interest In The Allocation

By the Lease Action, Little Rock alleged claims for Quiet Title and Declaratory Relief against GCC and prayed for a judgment that declared that Little Rock holds fee title to the Allocation and GCC only has a leasehold interest therein pursuant to the Lease. To the extent that the Court resolves this dispute pursuant to those claims (as opposed to a request for interpretation, modification and/or enforcement of the Judgment), Little Rock is equally entitled to an order declaring that it is the sole owner of the Allocation and that GCC has a leasehold interest therein under the terms of the Lease.

An action for quiet title is proper when, like here, two or more parties have adverse claims to the same property. The purpose of such an action is to eliminate adverse claims and establish, perfect or "quiet" title to the subject property. *Peterson v. Gibbs* (1905) 147 Cal. 1, 5; *Lechuza Villas West v. California Coastal Commission* (1997) 60 Cal.App.4th 218, 242.

Quiet title actions are proper for resolving adverse claims to groundwater rights. In such a case, the claimant has the burden of proof to show the elements of the claimed right. "The only evidence needed to prove an overlying right is evidence of title to the overlying land." Once that is met, the burden shifts to the party claiming prescriptive rights to show the validity of that claim. *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 298; *Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist.* (1935) 3 Cal.2d 489, 547-548 ("*Tulare*").

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Similarly, overlying owners have the right to declaratory relief of their water rights. *Tehachapi-Cummings County Water Dist. v. Armstrong* (1975) 49 Cal.App.3d 992, 998, *citing Tulare, supra*, 3 Cal.2d at pp. 525, 529-530. In this regard, *Civ. Code* section 1060 states:

> Any person interested ... under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, … may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an … action … for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties … and the court may make a binding declaration of these rights or duties, whether or not further relief is … claimed at the time. The declaration … shall have the force of a final judgment. …

The facts discussed above, which need not be repeated at length here, establish that Little Rock is entitled to an order quieting title to the Allocation in its favor and declaring that it holds fee title to the Allocation and that GCC only has a leasehold interest in the Allocation.

Little Rock has proven that it owns three of the five parcels of land that compose the Leased Land, specifically, Parcels A, B and C. It has also shown that GCC, under the permission granted in the Lease, has historically pumped 342 acre-feet of groundwater from Pump 1 on Parcel C, with an annual total of 471 acre-feet extracted from sources on the Leased Land, and most importantly, nearly all of the water pumped from the Leased Land was used by GCC at the rock plant on Little Rock's Parcel C, with the remainder used for dust control on the Leased Land, including Little Rock's Parcels A, B and C. Under the California authorities discussed above, GCC's pumping of water from the Leased Land and use of the same on Little Rock's land is an exercise of Little Rock's overlying water rights.

Moreover, the 342 acre-feet that GCC annually pumped from Parcel C and the 368 acre-feet annually used at the rock plant on Parcel C (which amounts do not even include the acre-feet of water used for dust control on Parcels A, B and C) are both more than 100 acre-feet greater than 234 acre-feet Allocation granted in the Judgment, such that confirming Little Rock's title to the entire Allocation is equitable and supported by the facts.

Additionally, GCC cannot show a prescriptive claim to the Allocation, because it extracted water from the Leased Land and used it on the Leased Land under the temporary permission

granted to it by Little Rock under the Lease. See *Fryer v. Fryer* (1944) 63 Cal.App.2d 343, 346 and 348 – one cannot gain title to water rights permissive use of such rights; also see *Swartzbaugh, supra,* 11 Cal.App.2d at p. 462, and *Storrow, supra*, 39 Cal.App. at pp. 126-127 – a tenant cannot acquire any estate or interest adverse to its lessor.

Accordingly, Little Rock has proven its overlying water rights arising from the Leased Land, and GCC can show nothing more than a leasehold interest in the same, which is currently scheduled to expire and revert to Little Rock in April 2021. Therefore, Little Rock has proven its entitlement to an order quieting title to the Allocation in its favor and declaring that it holds fee title to the Allocation subject only to the express terms of the Lease providing for GCC's permissive use of the Allocation during the term of the Lease.

IV. CONCLUSION

Based on the foregoing, Little Rock respectfully requests that the Court, whether by interpretation, modification and/or enforcement of the Judgment or by ruling on Little Rock's claims for Quiet Title and Declaratory Relief, order that Little Rock holds fee title to the Allocation and that GCC has no rights, title or interest therein except to the extent granted to it under the express terms and conditions of the Lease.

DATED: April 13, 2018

MUSICK, PEELER & GARRETT LLP

By: _____

Theodore A. Chester, Jr.
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PROOF OF SERVICE

Antelope Valley Groundwater Cases
Santa Clara County Case No. 1-05-CV-049053
Judicial Council Coordination ("JCCP") No. 4408
California Court of Appeal, Fourth District, Division Two, Case No. E065512

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is Musick Peeler & Garrett LLP, 650 Town Center Drive, Suite 1200, Costa Mesa, CA 92626-1925.

On April 13, 2018, I served the foregoing document described as: **OPENING BRIEF OF LITTLE ROCK SAND AND GRAVEL, INC. RE TITLE TO GROUNDWATER ALLOCATION ARISING FROM LITTLE ROCK SAND AND GRAVEL'S LAND AND GRANTED UNDER JUDGMENT AND PHYSICAL SOLUTION** on the interested parties in this action by posting the document listed above to the http://www.avwatermaster.org website in regard to the Antelope Valley Groundwater Adjudication matter, pursuant to the Electronic Filing and Service Standing Order of Judge Komar and through the OneLegal website (www.onelegal.com).

The file transmission was reported as complete to all parties appearing on the http://www.avwatermaster.org electronic service list and (www.onelegal.com)for the Antelope Valley Groundwater Cases, Case No. 2005-1-CV-049053; JCCP 4408.

☒ **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the address listed below and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Musick, Peeler & Garrett LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed 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. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Costa Mesa, California.

Attorneys for Granite Construction Company:
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 13, 2018, at Costa Mesa, California.

/s/ Judy Jacobs
Judy Jacobs