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13 Attorneys for LITTLE ROCK SAND AND GRAVEL, INC.

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

16 **ANTELOPE VALLEY GROUNDWATER**
17 **CASES**

18 **INCLUDED ACTIONS:**

19 Los Angeles County Waterworks District No.
20 40 v. Diamond Farming Co., Superior Court of
21 California, County of Los Angeles, Case No.
22 BC325201;

23 Los Angeles County Waterworks District No.
24 40 v. Diamond Farming Co., Superior Court of
25 California, County of Kern, Case No. S-1500-
26 CV-254348;

27 Wm. Bolthouse Farms, Inc. v. City of
28 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

**DECLARATION OF THEODORE A.
CHESTER IN SUPPORT OF 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**

DATE: June 20, 2018

TIME: 9:00

DEPT: To be determined

1 **DECLARATION OF THEODORE A. CHESTER**

2 I, THEODORE A. CHESTER, hereby declare as follows:

3 1. I am an attorney at law licensed to practice in the State of California and a member
4 in good standing with the Bar of this Court. I have personal knowledge of the following facts, and
5 if called as a witness, I could and would testify competently thereto.

6 2. I am one of the attorneys of record for, among other parties, Little Rock Sand and
7 Gravel, Inc. ("Little Rock"), Monte Vista Building Sites Inc. ("Monte Vista") and the George and
8 Charlene Lane Family Trust, Dated December 19, 2007 (the "Lane Family Trust"), each of which
9 is a party to the above-entitled, coordinated litigation known as the Antelope Valley Groundwater
10 Cases ("AVG Cases"). Hereafter, Little Rock, Monte Vista and the Lane Family Trust will
11 sometimes be collectively referred to as the "Lane Family Entities."

12 3. I submit this declaration in support of Little Rock's Opening Brief re Title to
13 Groundwater Allocation Arising from Little Rock's Land and Granted under Judgment and
14 Physical Solution (the "Opening Brief").

15 4. In or around early-March 2014, I substituted in as counsel for the Lane Family
16 Entities in place of James Lewis, Esq.

17 5. Prior to my substitution as counsel for the Lane Family Entities, I was involved in
18 the AVG Cases as counsel for other parties to the case, including Landinv, Inc., and Bruce
19 Burrows.

20 6. As counsel for the Lane Family Entities and my other clients in the AVG Cases, I
21 received copies of the below-listed documents that were filed and served in the AVG Cases and of
22 which Little Rock requests the Court to take judicial notice in support of its Opening Brief. True
23 and correct copies of each of the following documents (or the relevant portions thereof) are
24 attached to Little Rock's Request for Judicial Notice ("RJN") as Exhibits 17 through 31 and
25 incorporated herein by this reference:

- 26 • Court reporter's transcript of May 30, 2013 hearing during the Phase 4 Trial of the
27 AVG Cases (RJN, Exhibit 17);

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- Declaration of William Taylor in Lieu of Deposition Testimony for Phase 4 Trial, filed in the AVG Cases by Granite Construction Company (“GCC”) and dated January 31, 2013 (RJN, Exhibit 18);
- Declaration of Steven McCracken in Lieu of Testimony at Phase IV Trial, filed in the AVG Cases by GCC and dated May 29, 2013 (RJN, Exhibit 19);
- Amended Statement of Partial Decision for Phase IV Trial With Party Name Corrections, entered by the Court in the AVG Cases on June 29, 2013 (RJN, Exhibit 20);
- Declaration of Steven McCracken in Lieu of Testimony at Phase 6 Trial, filed in the AVG Cases by GCC and dated September 28, 2015 (RJN, Exhibit 21);
- Joinder in Case Management Conference Statement and Supplemental Case Management Conference Statement of the Lane Family, filed in the AVG Cases by the Lane Family Entities on December 31, 2014 (RJN, Exhibit 22);
- Minute Order issued by the Court in the AVG Cases on or about January 7, 2015 (RJN, Exhibit 23);
- Supplemental Case Management Statement filed in the AVG Cases by the Lane Family Entities on October 6, 2015 (RJN, Exhibit 24);
- Stipulation for Entry of Judgment and Physical Solution, filed in the AVG Cases on March 4, 2015 (RJN, Exhibit 25);
- Judgment and Physical Solution, entered by the Court in the AVG Cases on December 23, 2015 (RJN, Exhibit 26);
- Statement of Decision, issued by the Court in the AVG Cases on December 23, 2015 (RJN, Exhibit 27);
- The Lane Family Entities’ Motion for Post-Judgment Supplemental Order, filed in the AVG Cases on or about January 31, 2016 (RJN, Exhibit 28);
- Declaration of William Taylor in Opposition to Lane Family’s Motion for Post Judgment Supplemental Order re Granite Construction Company, filed in the AVG Cases by GCC and dated March 7, 2016 (RJN, Exhibit 29);

- 1 • Declaration of Robert G. Kuhs in Opposition to Lane Family’s Motion for Post
2 Judgment Supplemental Order re Granite Construction Company, filed in the AVG
3 Cases by GCC and dated March 8, 2016 (RJN, Exhibit 30); and
- 4 • Order After Hearing on March 21, 2016 re Motion by Lane for Post-Judgment
5 Supplemental Order issued by the Court in AVG Cases on March 29, 2016 (RJN,
6 Exhibit 31).

7 7. Additionally, in connection with my involvement in the AVG Cases, I received a
8 copy of the transcript of the May 9, 2013 deposition of William Taylor, which was taken in the
9 AVG Cases by Little Rock’s former counsel, Mr. Lewis. A true and correct copy of the relevant
10 portions of the transcript of the May 9, 2013 deposition of William Taylor is attached hereto as
11 Exhibit A and incorporated herein by this reference.

12 8. In late-March 2014, shortly after my representation of the Lane Family Entities
13 commenced in this case, many of the parties’ counsel gathered for global settlement discussions at
14 the Los Angeles office of Best Best & Kreiger LLP. GCC’s counsel, Robert Kuhs, Esq., and I
15 were both in attendance at those meetings.

16 9. In connection with those discussions, the parties drafted the Proposed Judgment
17 and Physical Solution to which the parties would ultimately stipulate. Exhibit 4 to the Proposed
18 Judgment and Physical Solution, which listed the parties to receive groundwater allocations under
19 the Judgment, contained a line item designation for “Granite Construction Company (Little Rock
20 Sand and Gravel, Inc.)”. That designation, as shown by Exhibit 19 to the RJN, was first
21 established by the Court during the Phase 4 Trial on May 30, 2013, when Little Rock’s counsel at
22 the time, Mr. Lewis, raised the fact that GCC was attempting to prove its historical groundwater
23 production by offering evidence of the groundwater it annually pumped from land that Little Rock
24 leases to GCC (the “Leased Land”) and used on the Leased Land. See RJN, Exhibit 19, 8:10-9:21.

25 10. During the global settlement discussions, it was also agreed that the line item for
26 “Granite Construction Company (Little Rock Sand and Gravel, Inc.)” would be given an annual
27 allocation of 234 acre-feet (the “Allocation”) under the Proposed Judgment and Physical Solution.
28 The amount of the Allocation was based on and a fraction of the 400 acre-feet that the Court found

1 at the Phase 4 Trial that GCC pumped from the Leased Land in both 2011 and 2012. (See RJN,
2 Exhibit 22, 2:15-16.)

3 11. Additionally, during the global settlement discussions, GCC's counsel, Mr. Kuhs,
4 and I had conversations regarding the possible subdivision of the Allocation between Little Rock
5 and GCC. Those discussions and subsequent communications between us never resulted in an
6 agreement between Little Rock and GCC regarding who holds title to the Allocation or any
7 portion thereof.

8 12. Following the global settlement meetings and in a continuation of our efforts to
9 resolve the dispute between GCC and Little Rock, Mr. Kuhs and I exchanged correspondence
10 from May 2014 through January 2016. Some of the correspondence discussed below and attached
11 as Exhibits hereto were previously submitted to the Court, and they are discussed herein and
12 attached hereto for the sole purpose of showing that Little Rock and GCC never reached an
13 agreement regarding the Allocation and not for any other purpose that might be privileged.

14 13. On May 21 and 23, 2014, I exchanged email correspondence with Mr. Kuhs
15 regarding a potential resolution. A true and correct copy of the email chain between Mr. Kuhs and
16 me dated May 21 and 23, 2014 is attached hereto as Exhibit B and incorporated herein by this
17 reference. Those emails show that, as of May 23, 2014, Little Rock and GCC had not reached an
18 agreement as to title to the Allocation.

19 14. Similarly, on September 3, 2014, I sent a letter to Mr. Kuhs that stated, "Over the
20 last several months our respective clients ... have attempted to resolve the matter in which they are
21 to be allocated Overlying Production Rights on Exhibit 4 to the Proposed [Stipulation and
22 Judgment]. ... Little Rock has made two offers ... However, both of Little Rock's offers have
23 been rejected by Granite." A true and correct copy of my September 3, 2014 letter to Mr. Kuhs is
24 attached hereto as Exhibit C and incorporated herein by this reference.

25 15. On November 25, 2014, I sent an email to Mr. Kuhs and James Dubois, Esq.,
26 counsel for the United States in the AVG Cases, regarding the line items for the groundwater
27 allocations to be set forth in Exhibit 4 of the proposed Judgment and Physical Solution, and Mr.
28 Kuhs sent a response to that email on the same date. A true and correct copy of the November 25,

1 2014, email chain between Mr. Kuhs, Mr. Dubois and me is attached hereto as Exhibit D and
2 incorporated herein by this reference. In that email chain, I wrote, "... I would ask that it [i.e., the
3 line item,] be kept the same as what currently exists, i.e., 'Granite Construction Company (Little
4 Rock Sand and Gravel Inc.)' I don't think any words should be added (or subtracted) that might
5 suggest the parties have reached any particular understanding with respect to the manner in which
6 title is held." In response, Mr. Kuhs, GCC's counsel, responded, "No objection."

7 16. On December 1, 2014, Mr. Kuhs sent me an email that stated in part, "Granite
8 offered to reduce its allocation at Littlerock to 95/139 with no conditions. ... Please advise
9 whether the 95/139 split is acceptable, ..." A true and correct copy the December 1, 2014 email
10 that I received from Mr. Kuhs is attached hereto as Exhibit E and incorporated herein by this
11 reference.

12 17. Mr. Kuhs sent me another letter dated December 10, 2014. A true and correct copy
13 of Mr. Kuhs' December 10, 2014 letter is attached hereto as Exhibit F and incorporated herein by
14 this reference. In his letter, Mr. Kuhs indicated that, as of December 10, 2014, Little Rock and
15 Granite had not yet made an agreement regarding the Allocation, by stating, "You advised that
16 you would need to talk with your client further, and that is where the discussion left off." See
17 Exhibit D, p. 4, last paragraph.

18 18. On September 26, 2015, Mr. Kuhs and I, again, exchanged emails regarding the
19 unresolved issue over who, between Little Rock and GCC, owns title to the Allocation. A true
20 and correct copy of the September 26, 2015 email chain between Mr. Kuhs and me is attached
21 hereto as Exhibit G and incorporated herein by this reference. Throughout that exchange of
22 emails, I maintained that Little Rock and GCC had not reached a resolution of their dispute over
23 title to the Allocation.

24 19. Finally, on January 27, 2016, I sent an email to Mr. Kuhs that stated, "My client
25 intends to seek a judicial determination of the issue that exists between our clients concerning
26 ownership of 234 [acre-feet] Overlying Production Right set forth on Exhibit 4 of the Judgment.
27 ... You may recall my client's most recent proposal ... My client remains willing to settle on this
28 basis. ... If I don't hear from you by 1pm on Friday, January 29, my client's proposal expires and

1 I will proceed accordingly.” A true and correct copy of my January 27, 2016 email to Mr. Kuhs is
2 attached hereto as Exhibit H and incorporated herein by this reference.

3 20. I never received a response from Mr. Kuhs to my January 27, 2016 email.
4 Accordingly, the settlement offer made in that email was revoked on January 29, 2016, and as of
5 that date, Little Rock and GCC had not reached an agreement regarding title to the Allocation.

6 21. In addition to the correspondence with GCC’s counsel that consistently shows that
7 there was never an agreement between GCC and Little Rock regarding title to the Allocation, I, on
8 behalf of the Lane Family Entities, kept the Court informed that the parties had not reached an
9 agreement.

10 22. On December 31, 2014, I filed with the Court a document titled, Joinder in Case
11 Management Conference Statement and Supplemental Case Management Conference Statement
12 of the Lane Family, that I prepared on behalf of the Lane Family Entities, including Little Rock,
13 which informed the Court of the lack of a resolution between Little Rock and GCC as follows:

14 There exists a dispute between the Lane Family and Granite, and
15 no other parties, with respect to title to water rights associated with the
16 leased property that would be adjudicated in this case. The Lane Family
17 would seek title to the adjudicated rights as land owner (the water rights
18 would remain subject to Granite’s use for the term of the lease). The Lane
19 Family understands that Granite seeks separate conflicting title in its own
20 name. The Lane Family has made a number of attempts to resolve this
21 two-party dispute, but, to date, those attempts have failed.

22 The Lane Family is prepared to stipulate to entry of the proposed
23 judgment that has been negotiated by and among the settling parties. By
24 doing so the Lane Family would be settling with all other Stipulating
25 Parties, provided, however, that the issue of title to water rights allocated
26 under the proposed judgment as between the Lane Family and Granite
27 would remain undecided. The Lane Family would seek to have this
28 remaining two-party dispute decided by the Court or by an alternative
approach, including mediation.

24 As noted above, a true and correct copy of the December 31, 2014 Joinder in Case Management
25 Conference Statement and Supplemental Case Management Conference Statement of the Lane
26 Family is attached to the concurrently-filed RJN as Exhibit 22 and incorporated herein by this
27 reference.

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1 23. On January 7, 2015, the Court issued a Minute Order that recognized that the
2 dispute described in the Lane Family Entities' December 31, 2014 Case Management Conference
3 Statement was unresolved by stating, "There remains an outstanding issue between two parties,
4 namely the Lane Family ... and Granite Construction Company ..., which the Court reserved for
5 further discussion ..." As noted above, true and correct copy of the Court's January 7, 2015
6 Minute Order is attached to the concurrently-filed RJN as Exhibit 23 and incorporated herein by
7 this reference.

8 24. Additionally, on October 6, 2015, I filed a Supplemental Case Management
9 Statement that I prepared on behalf of the Lane Family Entities to keep the Court informed that
10 Little Rock and GCC still had not reached an agreement regarding title to the Allocation and that
11 their dispute over that issue remained "'reserved for further discussions ...' in accordance with the
12 Court's January 7, 2015 Minute Order." As noted above, a true and correct copy of the October 6,
13 2015 Supplemental Case Management Statement is attached to the concurrently-filed RJN as
14 Exhibit 24 and incorporated herein by this reference.

15 25. During the unfruitful attempts to resolve the dispute with GCC's counsel discussed
16 above, I submitted Little Rock's signature to the Stipulation for Entry of Judgment and Physical
17 Solution (the "Stipulation") to the other parties in the AVG Cases by email on February 20, 2015.
18 A true and correct copy of my February 20, 2015 email, by which I submitted Little Rock's
19 signature to the Stipulation, is attached hereto as Exhibit I and incorporated herein by this
20 reference. (To avoid unnecessarily giving the Court duplicate documents, Exhibit H to this
21 Declaration does not include a copy of the Stipulation.)

22 26. In my February 20, 2015 email, I informed all parties, just as I had previously
23 informed GCC's counsel and the Court, that Little Rock's signature to the Stipulation was
24 submitted with the reservation that the dispute between Little Rock and GCC over title to the
25 Allocation "remain[ed] unresolved" and "will be addressed and resolved at a later time." See
26 Exhibit I.

27 27. Due to the fact that Little Rock and GCC were unable to resolve their dispute as of
28 the end of January 2016, I filed a Motion for Post-Judgment Supplemental Order with the Court

1 on or about January 31, 2016, that requested an order declaring that Little Rock owns the
2 Allocation and that GCC only has a leasehold interest therein pursuant to the parties' Lease. As
3 noted above, a true and correct copy of the Motion for Post-Judgment Supplemental Order is
4 attached to the concurrently-filed RJN as Exhibit 28 and incorporated herein by this reference.

5 28. After full briefing and a hearing, on March 29, 2016, the Court issued an "Order
6 After Hearing on March 21, 2016" regarding the Motion for Post-Judgment Supplemental Order.
7 A true and correct copy of the Court's Order After Hearing on March 21, 2016 is attached to the
8 concurrently-filed RJN as Exhibit 32 and incorporated herein by this reference. In that Order, the
9 Court denied the Lane Family's Motion for Post-Judgment Supplemental Order without prejudice
10 and instructed the parties that it needed "competent evidence" to decide the dispute between Little
11 Rock and GCC over title to the Allocation.

12 29. Subsequently, in March 2017, Little Rock filed an action against GCC in the Los
13 Angeles County Superior Court, Antelope Valley Courthouse, Case No. MC026932 (the "Lease
14 Action"). By that action, Little Rock sought resolution of the dispute with GCC over title to the
15 Allocation by seeking a judgment for quiet title and declaratory relief that Little Rock owns fee
16 title to the Allocation and that GCC has no interest therein except as provided in the parties' real
17 property Lease.

18 30. In July 2017, GCC filed an application to coordinate the Lease Action with the
19 AVG Cases on the ground that the Lease Action seeks an order interpreting, modifying or
20 enforcing the Judgment and Physical Solution. The Court granted GCC's application in October
21 2017.

22 31. To date, despite the numerous discussions between the parties and requests for a
23 Court resolution of the subject dispute, Little Rock has not reached an agreement with GCC
24 regarding who, between them, holds title to the Allocation or any portion thereof.

25 32. Due to the parties' inability to reach an agreement and the coordination of the
26 Lease Action with the AVG Cases, Little Rock, by the concurrently-filed Opening Brief,
27 respectfully requests the Court to resolve this dispute by issuing an order that Little Rock is the

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1 owner of fee title to the Allocation and that GCC only has a leasehold interest therein pursuant to
2 the parties' real property Lease.

3 I declare under penalty of perjury that the foregoing is true and correct. This Declaration is
4 executed this 12th day of April 2018 at Los Angeles, California.

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7 THEODORE A. CHESTER

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EXHIBIT “A”

EXHIBIT “A”

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT
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4 -----
5 ANTELOPE VALLEY GROUNDWATER)
6 CASES) Judicial Council
7 Included Actions:) Coordination
8) Proceeding No.
9 Los Angeles County Waterworks) 4408
10 District No. 40 v. Diamond)
11 Farming Co. Superior Court of)
12 California, County of)
13 Los Angeles, Case No. BC325201;)
14)
15 Los Angeles County Waterworks)
16 District No. 40 v. Diamond)
17 Farming Co. Superior Court of)
18 California, County of Kern, Case)
19 No. S-1500-CV-254-348;)
20)
21 Wm. Bolthouse Farms v. City of)
22 Lancaster)
23 Diamond Farms Co. v. City of)
24 Lancaster)
25 Diamond Farms Co. v. Palmdale)
Water District Superior Court of)
California, County of Riverside,)
consolidated actions Case Nos.)
RIC353840, RIC344436, RIC344668.)

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19 DEPOSITION OF WILLIAM TAYLOR
20 Los Angeles, California
21 Thursday, May 9, 2013
22 Volume I

23 Reported by:
24 CLAUDIA REYES
25 CSR No. 12812
Job No: 1664078
PAGES 1 - 62

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT
3

4 -----
5 ANTELOPE VALLEY GROUNDWATER)
6 CASES) Judicial Council
7 Included Actions:) Coordination
8) Proceeding No.
9 Los Angeles County Waterworks) 4408
10 District No. 40 v. Diamond)
11 Farming Co. Superior Court of)
12 California, County of)
13 Los Angeles, Case No. BC325201;)
14)
15 Los Angeles County Waterworks)
16 District No. 40 v. Diamond)
17 Farming Co. Superior Court of)
18 California, County of Kern, Case)
19 No. S-1500-CV-254-348;)
20)
21 Wm. Bolthouse Farms v. City of)
22 Lancaster)
23 Diamond Farms Co. v. City of)
24 Lancaster)
25 Diamond Farms Co. v. Palmdale)
Water District Superior Court of)
California, County of Riverside,)
consolidated actions Case Nos.)
RIC353840, RIC344436, RIC344668.)

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19 Deposition of WILLIAM TAYLOR, Volume I, at
20 707 Wilshire Boulevard, 35th Floor, Los Angeles,
21 California, beginning at 1:59 p.m. and ending at
22 3:33 p.m., on Thursday, May 9, 2013, before CLAUDIA
23 REYES, Certified Shorthand Reporter Number 12812.
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APPEARANCES:

For the Cross-Defendants Littlerock Sand & Gravel:

TAYLOR RING

BY: JAMES W. LEWIS, ESQ.

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Los Angeles, California 90024

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I N D E X

WITNESS		EXAMINATION
William Taylor	By Mr. Lewis	5

QUESTIONS INSTRUCTED NOT TO ANSWER

PAGE	LINE
52	15

EXHIBITS

NUMBER	DESCRIPTION	IDENTIFIED
Exhibit 1	Four-page document entitled "Declaration of William Taylor in Lieu of Deposition Testimony for Phase 4 Trial"	9
Exhibit 2	11-page document entitled "Granite Construction Company's Response to Discovery Order For Phase 4 Trial"	42
Exhibit 3	Four-page document entitled "Notice of Errata Re Granite Construction Company's Response to Discovery Order For Phase 4 Trial"	55

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Los Angeles, California; Thursday, May 9, 2013

1:59 p.m.

WILLIAM TAYLOR,

having been administered an oath, was examined and testified as follows:

EXAMINATION

BY MR. LEWIS:

Q Can you please state and spell your full name.

A Bill Taylor -- William Taylor, excuse me, W-I-L-L-I-A-M, T-A-Y-L-O-R.

Q All right. Have you ever had your deposition taken before?

A No.

Q And did you review any documents in preparation for your deposition today?

A Yes.

Q Okay. What did you look at?

A My previously submitted declaration.

Q Anything else?

A No.

Q Did you review the exhibits to your declaration?

A Yes.

1 A Yes, I will.

2 Q Okay. Great. If I can direct your attention
3 to Exhibit A of your declaration.

4 A Yes.

5 Q Numbers 1 through 5 of your declaration,
6 there's, for instance, APN numbers next to each number
7 going down one, two, three, four, five. And then under
8 Title Owner on Exhibit A next to numbers 1 through 5 is
9 Littlerock Sand & Gravel, Inc.

10 Q Is it your understanding that those particular
11 APN numbers are real properties that Granite leases
12 from Littlerock Sand & Gravel?

13 A Yes.

14 Q And do you have an understanding that
15 Littlerock Sand & Gravel owns those properties that are
16 listed in numbers 1 through 5 to Exhibit A?

17 A Yes.

18 Q And then if I can direct your attention to
19 numbers 6 through 10 on Exhibit A. Is it your
20 understanding that the real properties who's APN
21 numbers are listed in numbers 6 through 10 on Exhibit A
22 are owned by Granite Construction?

23 A Yes.

24 Q Okay. Do you know approximately -- well,
25 strike that.

1 year that mining operations will start on parcel
2 numbers 6 through 10 will start in 2014?

3 A Can you repeat the question. I missed the
4 beginning.

5 Q Sure. Let me rephrase it.

6 What is your understanding as to why Granite
7 plans on starting mining operations on parcel numbers 6
8 through 10 in 2014?

9 A Operational constraints and market demand.

10 Q And to the best of your knowledge, has all of
11 the mining at the Littlerock Quarry been conducted to
12 date on the properties owned by Littlerock Sand &
13 Gravel?

14 A Yes.

15 Q And to the best of your knowledge, has all of
16 the aggregate-processing activities at the Littlerock
17 Quarry to date, have those occurred on the
18 Littlerock-Sand-&-Gravel-owned properties that are
19 identified as parcels 1 through 5?

20 A Yes.

21 Q And currently, it's my understanding that --
22 well, strike that.

23 And the pond that is used in processing
24 aggregate, is that located on the parcels are that
25 identified as 1 through 5 on Exhibit A?

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C E R T I F I C A T E

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify;

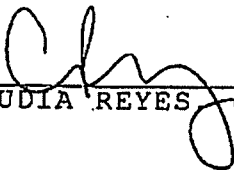
That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were administered an oath; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given.

Further, that if the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, review of the transcript [] was [] was not requested.

I further certify I am neither financially interested in the action nor a relative or employee or any attorney or any party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: May 20, 2013



CLAUDIA REYES C.S.R. 12812

EXHIBIT “B”

EXHIBIT “B”

Ted Chester

From: Robert G. Kuhs [rgkuhs@kuhsparserlaw.com]
Sent: Friday, May 23, 2014 9:52 PM
To: Ted Chester
Subject: Re: Antelope Valley Matters

Ted, since we don't have a year worth of data yet, wondering if we should err on the high side?

Sent from my iPhone

On May 23, 2014, at 7:26 PM, "Ted Chester" <tchester@smilandlaw.com> wrote:

Thanks

Sent from my iPhone

On May 23, 2014, at 3:57 PM, "Robert G. Kuhs" <rgkuhs@kuhsparserlaw.com> wrote:

Ted: 400 a/f is our best estimate at present.

<image001.jpg>

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From: Ted Chester [mailto:tchester@smilandlaw.com]
Sent: Friday, May 23, 2014 3:19 PM
To: Robert G. Kuhs
Subject: RE: Antelope Valley Matters

Robert

As indicated by Judge Komar in today's CMC hearing, some form of evidentiary prove up will be needed for the settling parties. I need basic support for pumping for Pivot #3 for all years it operated. On March 14 I provided you with a summary sheet (which your client provided to my client) and which you partially confirmed. But I need the data that supports that summary sheet. In your March 14 email you suggested that Burrows seek this data via discovery procedures. I did not want to do that because we have been, and continue to be, engaged in cooperative settlement negotiations. However, if you still think that is what Burrows should do in order to get the information, I will notice Mr. Atkinson's deposition. Please let me know by next Tuesday.

With respect to Granite/Lane, I will draft a settlement agreement consistent with what I proposed several weeks ago. Obviously, if we can't settle, we will have to have the court decide this issue.

Finally, can you answer my third question below?

Thanks.

From: Robert G. Kuhs [<mailto:rgkuhs@kuhsparkerlaw.com>]
Sent: Wednesday, May 21, 2014 9:48 AM
To: Ted Chester
Subject: RE: Antelope Valley Matters

Ted, I'm short on time this week. What is the urgency on the Burrows information, and what exactly are you looking for?

Robert

<image001.jpg>

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From: Ted Chester [<mailto:tchester@smilandlaw.com>]
Sent: Wednesday, May 21, 2014 6:03 AM
To: Robert G. Kuhs
Subject: Antelope Valley Matters

Robert

I have three quick requests:

One, please provide me with the Burrows information before the CMC on Friday.

Two, I have not heard from you regarding the Granite/Lane proposal. We should nail this down.

Third, George Lane intends to file an annual 2013 report of pumping for the Granite site. Can you confirm 400 af (the 2012 number) or was there some change from last year?

Thanks

Ted

Theodore A. Chester, Jr.
Smiland Chester LLP
601 West 5th Street, Suite 1100
Los Angeles, CA 90071
Phone: 213-891-1010
Cell: 626-676-5718
Fax: 213-891-1414

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EXHIBIT “C”

EXHIBIT “C”

09-08-14 22:55 RCVD

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Theodore A. Chester, Jr.

Email: tchester@smilandlaw.com

September 3, 2014

Robert G. Kuhs
Kuhs & Parker
Old Church Plaza
1200 Truxtun Avenue, Suite 200
Bakersfield, California

Re: Antelope Valley Groundwater Cases
Little Rock Sand and Gravel, Inc./Granite Construction Company

Dear Robert,

This is a confidential settlement communication and, accordingly, is privileged and inadmissible.

Over the last several months our respective clients, as between themselves, have attempted to resolve the manner in which they are to be allocated Overlying Production Rights on Exhibit 4 to the Proposed Stipulated Interlocutory Judgment and Physical Solution. Currently, the line-item on Exhibit 4 reads: "Granite Construction Company (Little Rock Sand and Gravel, Inc.)"; Pre-Rampdown Production 400.00 af; and Overlying Production Rights 360.00 af. Little Rock has made two offers to separate this line-item into two entries, one for Little Rock and one for Granite. However, both of Little Rock's offers have been rejected by Granite.

In this letter I set forth a brief description of my understanding of the facts and law relating to the ownership of groundwater rights as between Little Rock and Granite. Because time is short, it is hoped that this letter will assist our respective clients in resolving this impasse.

Among its landholdings, the Lane Family, through its corporation, Little Rock, owns approximately 240 acres of contiguous land in the Antelope Valley in Los Angeles County (the "Leased Property"). The Lane Family has owned and operated land, including land for

Robert G. Kuhs
Kuhs & Parker
September 3, 2014
Page 2

quarrying, farming and ranching, since the 1930's. In 1987, Little Rock leased the Leased Property to Granite (the "Lease").¹

The Leased Property is a rock, sand and gravel quarry. Section 1 of the Lease provides that Granite use the property and any surface or underground water or water rights occurring therein or appurtenant thereto, to mine, extract and process quarry materials.

Section 3.2 of the Lease provides that during the Lease term, Lessor grants to Lessee "such water rights as Lessor has to . . . underground water located . . . under the leased premises."

Section 15 limits the use of the Leased Property to quarrying activities "and for no other purpose."

Section 26 of the Lease contains an anti-assignment provision.

In 2008 Granite purchased about 48 acres of land ("Granite's Adjacent Property") adjacent to the Leased Property. In 2011 Granite amended its Mining and Reclamation Plan to include Granite's Adjacent Property.

Additionally, Granite owns about 140 acres in the Big Rock wash area of Antelope Valley (about 9 miles east of the Leased Property) ("Big Rock Property").

Since the beginning of the Lease in 1987, Granite's quarrying operations on the Leased Property have utilized groundwater pumped from three wells located on the Leased Property. For the years 2000-2007 and 2011-2012, Granite produced in excess of 400 acre-feet per year from the wells located on the Leased Property to conduct its quarrying operations on the Leased Property. Granite 12/21/12 Discovery Responses.²

At least through May 2013, Granite had not conducted any quarrying operations on Granite's Adjacent Property, and Granite had not used any water on Granite's Adjacent Property, except, beginning in 2011, water applied by water truck for minimal dust suppression. May 9, 2013 W. Taylor Depo. 54:8. Similarly, Granite has not conducted quarrying operations on its Big Rock Property. *Id.* at 11:6. Operations at the Big Rock Property are limited until operations at the Leased Property are terminated. *Id.* at 12:17.

¹ The initial Lease Agreement is dated April 8, 1987. The parties entered into a First Amendment to Lease in April 2010. The initial term of the Lease was three years, but it allowed Granite to extend the Lease for additional terms. Granite has exercised extensions so that currently the extended term of the Lease runs to April 30, 2021. Additional unexercised extensions are available under the Lease Agreement.

² It is assumed that Granite produced similar amounts of groundwater for the years 2008-2010 and 2013-2014, but that information has not been produced.

Both Little Rock and Granite are parties to the *Antelope Valley Groundwater Cases*. The groundwater case was initiated among several parties in 1999, and became a general basin adjudication proceeding in 2004. The case involves multiple parties' claims to groundwater in the Antelope Valley. Certain public water suppliers have asserted prescription claims, the federal government has asserted federal reserve rights, and landowners (including certain defined classes) have asserted overlying water rights. In the first three phases of the case the court determined the geographical boundaries of the basin to be adjudicated, the hydraulic connection within the basin, and that the basin is in a state of overdraft with a safe yield of 110,000 acre-feet per year.

In Phase IV of the case, the court determined the quantities of groundwater pumped by the parties for the years 2011 and 2012. The court's phase IV decision sets forth 400 acre-feet pumping for each of 2011 and 2012 for "Granite Construction Company (Little Rock Sand and Gravel, Inc.)."³ Since entry of the Phase IV decision, most of the parties in the case have engaged in extensive settlement discussions, and, except for a few outstanding issues, have agreed to a proposed Stipulated Interlocutory Judgment and Physical Solution that, if approved by the court, would settle the case among the settling parties. The court could thereafter try issues relating to non-settling parties.

Section 5 of the Proposed Judgment quantifies certain parties' Overlying Production Rights, and lists on Exhibit 4 for each Overlying Production Right: 1) the Pre-Rampdown Production, 2) the Production Right, and 3) the percentage of the Production from the Adjusted Native Safe Yield. Exhibit 4 shows "Granite Construction Company (Little Rock Sand and Gravel, Inc.)" as a single line-item "party," and sets forth 400.00 acre-feet as its "Pre-Rampdown Production," 360.00 acre-feet as its "overlying Production Right," and 0.617% as its "Percentage Share of Water Available to Overlying Rights."

Exhibit 4 of the Proposed Judgment was an extensively negotiated document. The bases of the allocations included the parties' 2011-2012 pumping, credits for prior year pumping (if 2011-2012 pumping was significantly lower than prior years), the individual circumstances of particular landowners, and across-the-board reductions to fit all rights within the maximum (58,341.60 acre-feet) allowed. In the negotiation sessions, the 360 acre-feet right assigned to "Granite Construction Company (Little Rock Sand and Gravel, Inc.)" was composed of 234 acre-feet attributable to the operations on the Leased Property (based generally on 2011-2012 pumping) and 126 acre-feet attributable to Granite's Big Rock Property (not based on 2011-2012 pumping). The allocation to the Leased Property is supported by available documentation showing prior and current groundwater use on the Leased Property. Except for some documents produced in discovery indicating pumping of about 16 acre-feet per year, documentation supporting the allocation to Granite's Big Rock Property has not been made available in the settlement meetings or otherwise.

³ The court reserved jurisdiction to amend the 2011-12 numbers based on subsequent meter readings.

Section 5.1.1.4 of the Proposed Judgment provides that the Overlying Production Rights are subject to Pro-Rata Reduction or Increase only pursuant to Paragraph 19.5.9, which relates to an increase or reduction of the Native Safe Yield.

It is possible that the court may attempt to adjust the Production Rights in connection with its approval of the Proposed Judgment, or thereafter, and that such adjustment could result in the reduction or increase of a party's Production Right.

In the groundwater case, by settlement or trial, it is expected that the court will ultimately determine the parties' title to water rights and then provide injunctive relief (or a "physical solution") to prevent wrongful interference with, or improper or excessive use of, the groundwater basin.

In the case, generally, the landowners assert overlying water rights and the Public Water Suppliers assert prescriptive water rights. An overlying water right is the right to take water from underneath the land for use on the land within the basin or watershed; the right is based on the ownership of the land and is appurtenant thereto. *City of Barstow v. Mojave Water Agency*, 23 Cal.4th 1224, 1240 (2000).

A prescriptive right in groundwater requires proof of the same elements required to prove a prescriptive right in any other type of property: a continuous five years of use that is actual, open, and under claim of right. *City of Santa Maria v. Adam*, 211 Cal.App.4th 266, 291 (2012).

As against a claim of prescription, overlying owners retain their rights by pumping during the 5-year prescription period (*i.e.*, "self help"). *Barstow*, 23 Cal.4th at 1253. Thus, the historical quantity of pumping by an overlying landowner is relevant to support a defense to a prescriptive attack upon the overlying owner's groundwater right.

However, as between overlying owners, as co-equal or correlative right owners, when there is insufficient water in the basin, overlying owners are limited to their "proportionate fair share of the total amount available based upon [their] reasonable need[s]." *Id.* In *Tehachapi-Cummings City Water District v. Armstrong*, 49 Cal.App.3d 992, 1001-05 (1975), the court said that the "proportionate share of each owner is predicated not on his past use over a specified period of time, nor on the time he commenced pumping, but solely on his current reasonable and beneficial need for water." The court continued, "many factors are to be considered in determining each owner's proportionate share: the amount of water available, the extent of ownership in the basin, the nature of the projected use . . . all these and many other considerations must enter into the solution of the problem." *Id.* See *Katz v. Walkinshaw*, 141 Cal. 116, 136 (1903) ("Disputes between overlying landowners, concerning water for use on the land, to which they have an equal right, in cases where the supply is insufficient for all, are to be settled by giving to each a fair and just proportion."); *State v. Schoendorf*, 2002 Cal.App. Unpub. LEXIS 1060 (May 10, 2002) (As between neighbors, an overlying right "does not permit a landowner to trespass onto a neighbor's land" and pump water from the neighbor's well).

If a party makes no use of groundwater on his own land, or elsewhere, "he should not be allowed to enjoin its use by another who draws it out or intercepts it, or to whom it may go by percolation." *Katz*, 141 Cal. 116.

As between landlord and tenant, unless the lease otherwise addresses the subject, a tenant is estopped to deny the title of his landlord as long as he remains in possession as a tenant. Evid. Code § 624; *Miller & Starr* 2d § 18:49.

In the instant matter, both Little Rock and Granite are claiming overlying groundwater rights. Little Rock's claim relates to the overlying groundwater rights appurtenant to the Leased Property. Granite's claim relates to the overlying groundwater rights appurtenant to Granite's Adjacent Property. Granite is also claiming an overlying right appurtenant to Granite's Big Rock Property.

With respect to Little Rock's overlying claim, the history of pumping on the Leased Property supports a "self-help" defense to the Public Water Suppliers' prescription claims. Although Granite actually pumped the groundwater, the pumping was done from wells located on the Leased Property, and the water was used on the Leased Property. Additionally, the historical water use on the Leased Property supports the Little Rock's correlative claim to groundwater, providing strong evidence of the current reasonable and beneficial needs for water upon the Leased Property. In this regard, Granite was exercising the overlying right appurtenant to the Leased Property that was granted to Granite under Section 3.2 of the Lease. Granite was exercising Little Rock's overlying right, and Granite is estopped from denying Little Rock's title to such overlying right. We are not aware of any case law that credits a tenant, separate from the landlord, with pumping performed on leased premises.

On the other hand, there is no, or very limited, history of pumping or use of groundwater on Granite's Adjacent Property and Granite's Big Rock Property. Thus, Granite's self-help defense to prescription is likely limited.⁴ Additionally, the lack of pumping history, and lack of evidence of past operations, on these two properties could negatively impact Granite's proof of a reasonable and beneficial need for water among correlative overlying landowners. However, it is recognized that Granite may be able to demonstrate need by other evidence, *i.e.*, its plans to operate its Adjacent and Big Rock Properties, but such evidence has not yet been made available.

It is hoped that your client will reconsider its rejection of Little Rock's most recent offer. If this issue is not resolved promptly, then the other settling parties' interests will potentially be impacted. They will need to be put on notice that our respective clients may not be able to join

⁴ If Granite's predecessors pumped groundwater, and such pumping can be documented, then Granite may be able to establish self-help. To date, no such documentation has been made available.

Robert G. Kuhs
Kuks & Parker
September 3, 2014
Page 6

the proposed settlement, and may be forced to litigate the factual and legal issues relating to their claimed water rights. In this connection, I hope to hear from you by early next week before it becomes necessary to alert the other settling parties.

Very truly yours,

A handwritten signature in cursive script that reads "Ted Chester" with a stylized flourish at the end.

Theodore A. Chester

EXHIBIT “D”

EXHIBIT “D”

Ted Chester

From: Robert G. Kuhs [rgkuhs@kuhsparkerlaw.com]
Sent: Tuesday, November 25, 2014 8:21 PM
To: Ted Chester
Cc: Dubois, James (ENRD) (James.Dubois@usdoj.gov)
Subject: Re: Granite Exhibit 4 Allocation

No objection.

Sent from my iPhone

On Nov 25, 2014, at 7:19 PM, Ted Chester <tchester@smilandlaw.com> wrote:

Jim

In the second entry, I would ask that it be kept the same as what currently exists, i.e., "Granite Construction Company (Little Rock Sand & 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.

Ted

From: Robert G. Kuhs [mailto:rgkuhs@kuhsparkerlaw.com]
Sent: Tuesday, November 25, 2014 5:52 PM
To: Dubois, James (ENRD) (James.Dubois@usdoj.gov)
Cc: Ted Chester
Subject: Granite Exhibit 4 Allocation

Jim: In follow-up to our call, please break out the Big Rock water as follows:

Claimant Name	Pre-Rampdown Production	Overlying Production Right	Percentage Share
Granite Construction Company: Big Rock Facility	126	126	(Calculate)
Granite Construction Company: Littlerock Facility (Little Rock Sand & Gravel Inc.)	400	234	(Calculate)

Robert G. Kuhs

<image001.jpg>

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EXHIBIT “E”

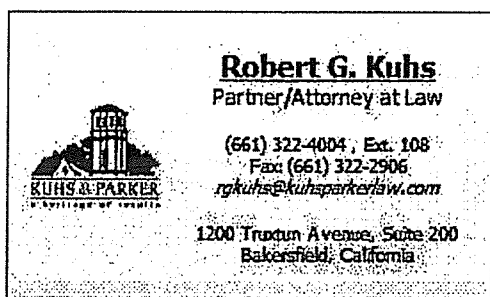
EXHIBIT “E”

Ted Chester

From: Robert G. Kuhs [rgkuhs@kuhsparserlaw.com]
Sent: Monday, December 01, 2014 9:00 AM
To: Ted Chester
Cc: Taylor, William
Subject: Antelope Valley Groundwater Settlement Granite/Lane

Ted: I discussed Mr. Lane's letter with Granite's representatives. Granite will provide a written response. I do not, however, anticipate that the response will change Granite's settlement position. When we last spoke, Granite offered to reduced its allocation at Littlerock to 95/139 with no conditions. 95 acre-feet is the absolute minimum that Granite is willing to accept. Please advise whether the 95/139 split is acceptable, so that we can move forward with the global settlement.

Robert Kuhs



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EXHIBIT “F”

EXHIBIT “F”

ROBERT G. KUHS
BERNARD C. BARMANN, JR.*
*Also admitted in the District of Columbia
RYAN S. YOUNG

OF COUNSEL

JAMES R. PARKER, JR.
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OUR FILE NO.

December 10, 2014

919.39

Via email and U.S. Mail

Theodore A. Chester, Jr.
Smiland Chester LLP
601 West 5th Street, Suite 1100
Los Angeles, CA 90071

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

Dear Mr. Chester:

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

A. LEASE HISTORY

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

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

B. ANTELOPE VALLEY ADJUDICATION

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

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

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

C. CALIFORNIA WATER LAW BASICS

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

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

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

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

Foundationally, article X, section 2 of the California Constitution limits all water rights in the State to “to reasonable and beneficial uses.” (*City of Barstow, supra*, 23 Cal.4th at p. 1241.) When the safe yield is insufficient to satisfy the reasonable and beneficial needs of all users, the rights of all overlying landowners are said to be *correlative*. (*City of Santa Maria, supra*, 211 Cal.App.4th 266, 279.) That is, each overlying owner is limited to their “proportionate fair share of the total amount available based upon [their] reasonable need[s].” (*City of Barstow, supra*, 23 Cal.4th at p. 1253, citing *Tehachapi-Cummings County Water Dist. v. Armstrong* (1975) 49 Cal.App.3d 992, 1001 (*Armstrong*)). Importantly, because an overlying right is correlative, it is “defined in relation to other overlying water right holders in the basin.” (*City of Barstow, supra*, 23 Cal.4th, at 1253.) In *Armstrong*, the court said that the “proportionate share of each owner is predicated not on its past use over a specified period of time, nor on the time he commenced pumping, but solely on his **current reasonable and beneficial need for water.**” (Emphasis added.) The *Armstrong* court further stated, “many factors are to be considered in determining each owner’s proportionate share: the amount of water available, the extent of ownership in the basin, the nature of the projected use . . . all of these and many other considerations must enter into the solution of the problem.” (*Id.* at p. 1001-1002.)

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

D. SETTLEMENT PROCESS

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

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

Theodore A. Chester, Jr.
December 10, 2014
Page 4

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

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

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

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

Exhibit 4 to the Judgment currently provides in relevant part:

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

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

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

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

Theodore A. Chester, Jr.
December 10, 2014
Page 6

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

E. CONCLUSION

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

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

Very truly yours,



Robert G. Kuhs

RGK/lel

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

EXHIBIT “G”

EXHIBIT “G”

Robert G. Kuhs

From: Mike McLachlan <mike@mclachlan-law.com>
Sent: Sunday, September 27, 2015 7:12 AM
To: Robert G. Kuhs; Ted Chester
Cc: Taylor, William
Subject: RE: Draft Granite Declaration

Ted,

I have weighed in on this before and my position remains the same. The Stipulation is dispositive. If Little Rock intends to pursue this issue, it is clearly challenging Exhibit 4 and is in violation of the Stipulation. You can assume that if you pursue this in Court tomorrow, I will be standing up to make a motion that Little Rock be deemed a non-stipulator. I assume you are prepared they to fight the prescription claim and to prove up your client's water right in full.

I also assume that you have advised all of your other clients of this situation and have attempted to obtain a written waiver of the obvious conflict of interest that arises when counsel for a non-stipulating party attempts to attack a motion for judgment in which he is simultaneously representing other interested signatories. As we saw many years ago with the conflict situation involving the cadre of Lemieux firm clients, a third party does have standing to raise the conflict of interest issue. I hope that you are not planning on pursuing this strategy yourself, and have instead secured other counsel for Little Rock, but your e-mail does not address this. If you are planning to litigate this issue yourself, you should also expect me to rise and move for your exclusion based upon the conflict of interest.

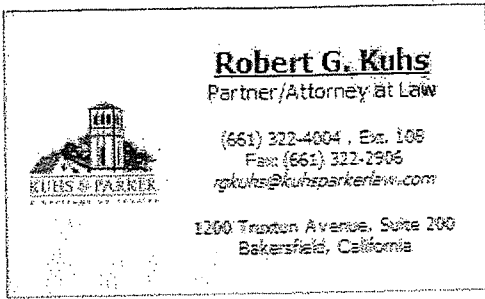
Mike McLachlan

Law Offices of Michael D. McLachlan, APC
44 Hermosa Avenue
Hermosa Beach, CA 90254
Office: 310-954-8270
Fax: 310-954-8271

From: Robert G. Kuhs [mailto:rgkuhs@kuhsparkerlaw.com]
Sent: Saturday, September 26, 2015 4:45 PM
To: Ted Chester
Cc: Mike McLachlan; Taylor, William
Subject: RE: Draft Granite Declaration

Ted: The Stipulation that you and your client signed states in paragraph 2b: "The Judgment resolves all disputes in this Action among the Stipulating Parties." The language could not be any more clear. If your client no longer desires to be a Settling Party, then I suggest you alert the other parties. Granite has relied on the signature of you and your client to the Stipulation.

Robert Kuhs



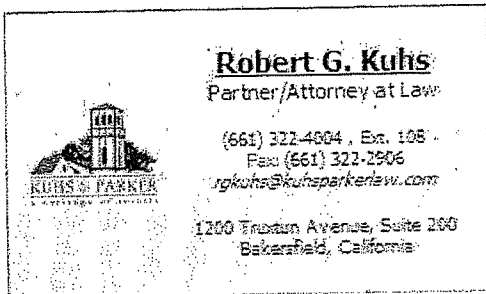
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From: Ted Chester [<mailto:tchester@smilandlaw.com>]
Sent: Saturday, September 26, 2015 4:38 PM
To: Robert G. Kuhs <rgkuhs@kuhsparkerlaw.com>
Subject: RE: Draft Granite Declaration

Both of our clients are shown for a single line item. The issue of title was not resolved.

From: Robert G. Kuhs [<mailto:rgkuhs@kuhsparkerlaw.com>]
Sent: Saturday, September 26, 2015 4:34 PM
To: Ted Chester
Subject: RE: Draft Granite Declaration

Ted: I recall the court's minute order. And then one week later you delivered your clients signatures to the stipulation, resolving all claims to groundwater.



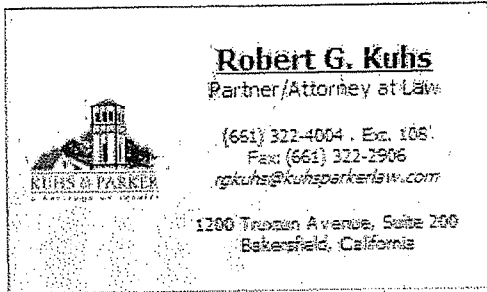
NOTICE: This communication and any accompanying documents are confidential and privileged. If you receive this transmission in error, please delete immediately. Unauthorized disclosure, copying, or distribution, of this communication is strictly prohibited.

From: Ted Chester [<mailto:tchester@smilandlaw.com>]
Sent: Saturday, September 26, 2015 4:17 PM
To: Robert G. Kuhs <rgkuhs@kuhsparkerlaw.com>
Subject: RE: Draft Granite Declaration

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.

From: Robert G. Kuhs [mailto:rgkuhs@kuhsparkerlaw.com]
Sent: Saturday, September 26, 2015 4:12 PM
To: Ted Chester
Subject: RE: Draft Granite Declaration

Ted, I and others disagree with your last statement. The Stipulation resolves all claims with respect to Groundwater in the AVAA and the Settling Parties have agreed to cooperate with respect to proving-up the Proposed Judgment and Physical Solution. I thought this had been put to bed, but if you think it is still an issue, then I suggest we alert the other parties.



NOTICE: This communication and any accompanying documents are confidential and privileged. If you receive this transmission in error, please delete immediately. Unauthorized disclosure, copying, or distribution, of this communication is strictly prohibited.

From: Ted Chester [mailto:tchester@smilandlaw.com]
Sent: Saturday, September 26, 2015 4:07 PM
To: Robert G. Kuhs <rgkuhs@kuhsparkerlaw.com>
Subject: RE: Draft Granite Declaration

Robert,

I don't have any comments regarding the McCracken Declaration, except to note that there is a May 2013 date on page 5 which appears to be a typo. I will send it to George Lane for his review, but I may not hear back until Monday. As you know, 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, and my client reserves to right to question the statements made in the declaration in the event the issue is not ultimately resolved by settlement between our respective clients.

Ted

Theodore A. Chester, Jr.
Smiland Chester Alden LLP
140 South Lake Avenue, Suite 274
Pasadena, CA 91101
Phone: 213-891-1010
Cell: 626-676-5718
Fax: 213-891-1414

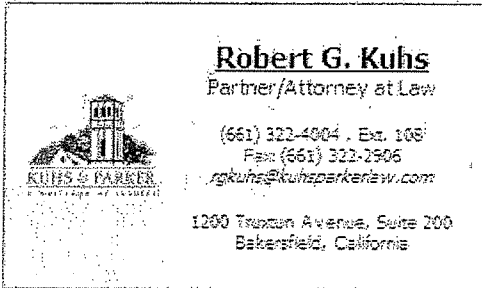
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EXHIBIT “H”

EXHIBIT “H”

Robert G. Kuhs

From: Robert G. Kuhs
Sent: Thursday, February 25, 2016 9:57 PM
To: Robert G. Kuhs
Subject: FW: Granite/Little Rock Sand and Gravel



NOTICE: This communication and any accompanying documents are confidential and privileged. If you receive this transmission in error, please delete immediately. Unauthorized disclosure, copying, or distribution, of this communication is strictly prohibited.

From: Ted Chester [mailto:tchester@smilandlaw.com]
Sent: Wednesday, January 27, 2016 4:22 PM
To: Robert G. Kuhs <rgkuhs@kuhsparkerlaw.com>
Subject: Granite/Little Rock Sand and Gravel

Robert,

This is a confidential and privileged settlement communication.

My client intends to seek a judicial determination of the issue that exists between our clients concerning ownership of 234 AFY Overlying Production Right set forth on Exhibit 4 of the Judgment. I believe that before he hears the motion Judge Komar will want to know that our clients have exhausted their settlement attempts. You may recall that my client's most recent proposal was that fee ownership of the right be split 70 AFY to Granite and 164 AFY to Little Rock. The Exhibit 4 "Pre-Rampdown Production" and "Percentage Share of Adjusted Native Safe Yield" numbers would be proportionally adjusted. Also, Granite would be entitled to use Little Rock's 164 AFY on the Leased Property while the Lease remains in force. My client remains willing to settle on this basis. If your client agrees, then a settlement agreement should be prepared. If your client does not agree, then I will inform the court that we intend to proceed with our motion. Please let me know your client's decision. If I don't hear from you by 1pm on Friday, January 29, my client's proposal expires and I will proceed accordingly.

Ted

Theodore A. Chester, Jr.
Smiland Chester Alden LLP
140 South Lake Avenue, Suite 274
Pasadena, CA 91101
Phone: 213-891-1010
Cell: 626-676-5718
Fax: 213-891-1414

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EXHIBIT “I”

EXHIBIT “I”

Ted Chester

From: Ted Chester
Sent: Friday, February 20, 2015 4:25 PM
To: 'Dubois, James (ENRD)'
Subject: RE: Antelope Valley Adjudication: Draft Judgment and Stipulation
Attachments: Signature Pg (Executed) to Stip & Physical Solution-George Lane.pdf; Signature Pg (Executed) to Stip & Physical Solution-Radia.pdf; Signature Pg (Executed) to Stip & Physical Solution-Burrows.pdf

Jim,

Attached are the signature pages for my clients: Landinv, Inc.; Bruce Burrows; 300 A 40 H, LLC; The George and Charlene Lane Family Trust; The Frank and Yvonne Lane 1993 Family Trust; Little Rock Sand and Gravel, Inc.; Monte Vista Building Sites, Inc.; and A.V. Materials, Inc. I understand that these signature pages will be held in trust/escrow pursuant to your email below. Also, the signature of Little Rock Sand and Gravel, Inc. is provided with the understanding that the subdivision of the joint allocation to Granite and Little Rock shown on Ex. 4 of the proposed judgment remains unresolved, and such subdivision will be addressed and resolved at a later time.

Ted

From: Dubois, James (ENRD) [<mailto:James.Dubois@usdoj.gov>]
Sent: Tuesday, February 17, 2015 3:55 PM
To: 'Daphne Borrromeo Hall'; 'Casey, Ed'; 'jtootle@calwater.com'; 'jgoldsmith@kmtg.com'; 'franksatalino@sbcglobal.net'; 'lmcclhaney@bmblawoffice.com'; 'DEvertz@murphyvertz.com'; 'TomBunn@lagerlof.com'; 'BJoyce@lebeauthelen.com'; 'mike@mclachlanlaw.com'; 'Brady, Andrew'; 'wsloan@mofo.com'; 'jgreen@grimmway.com'; 'cms@eslawfirm.com'; 'keith@Lemieux-Oneill.com'; 'Brad@charltonweeks.com'; 'erenwick@hanmor.com'; 'wcarlson@herumcrabtree.com'; 'ajr@bkslawfirm.com'; 'RSB@bkslawfirm.com'; 'jlewis@walshdelaney.com'; 'Rusinek, Walter E.'; 'Wwellen@counsel.lacounty.gov'; 'Michael.Davis@greshamsavage.com'; 'rgkuhs@kuhsparkerlaw.com'; 'noah.goldenkrasner@doj.ca.gov'; Ted Chester; 'Jeffrey V. Dunn (jeffrey.dunn@bbklaw.com)'; 'marilyn.levin@doj.ca.gov'; 'rmyers@clifford-brownlaw.com'; 'eric.garner@bbklaw.com'; 'mfife@bhfs.com'; Scott Kune; Wendy Wang (Wendy.Wang@bbklaw.com); Jmarkman@rwqlaw.com; jim@mcmurtreyhartsock.com; JHughes@KleinLaw.com; 'Richard Zimmer (RZimmer@clifford-brownlaw.com)'; Arnold K. Graham; bbrunick@bmklawplc.com; OYARZO, EDWIN M GS-14 USAF HAF AFCEC/AFLOA-JACE-WR; Seidel, Warren Civ USAF AFMC 412 TW/JA
Cc: Leininger, Lee (ENRD); Himebaugh, Laurie (ENRD); Dubois, James (ENRD)
Subject: Antelope Valley Adjudication: Draft Judgment and Stipulation
Importance: High

Colleagues:

Attached please find a spreadsheet showing the parties from whom I have received an actual PDF signature, as opposed to mere assurance that a signature is in hand. Please make sure that everyone who will be signing the stipulation is included on the spreadsheet for tracking purposes. If you think someone has been inadvertently omitted, please let me know. If you think someone should be removed let me know.

Given that we have assured the Court that we will be filing Stipulations on the 26th of this month, I propose the following:

- 1) Those who have signed stipulations, please send me a pdf of the signature(s) as soon as possible. **SINCE MIKE MCLACHLAN WILL BE FILING THE STIPULATION WITH HIS MOTION FOR APPROVAL OF THE CLASS SETTLEMENT, AND MIKE WILL BE UNAVAILABLE AFTER MIDMORNING ON 2/26, ALL SIGNATURES NEED TO BE SENT TO THE THREE ADDRESSES IN THE CC LINE BY COB ON FEBRUARY 25TH.**

- 2) We will “escrow” the signatures and compile a complete document to provide to Mike. That package will include the Stipulation, signature pages and the December 10, 2014 version of the Judgment that folks have been getting approval for. If we don’t close on the 26th, nothing will be done with the signatures we receive.
- 3) NOTHING will be filed on the 26th, or sent to Mike for filing, unless the U.S., Waterworks 40 and the Small Pumper Class have all signed the stipulation. We understand that without these major players we do not really have any “deal”. The United States’ approval is still in process, but those with authority are aware of the deadlines we are working with and I expect we will be able to meet the deadline.
- 4) We will keep track of signatures received and send out an update on Monday, February 23rd. Feel free to lean on anyone who has not provided a signature.
- 5) At the close of business on the 25th we will send out the status of signatures and try to address any issue that have arisen.
- 6) Assuming completion, we will send the entire package to Mike and the rest of the parties early on the 26th. They will all become exhibits to Mike’s motion.

Jim

James J. DuBois
U.S. Department of Justice
Environment & Natural Resources Division
999 18th Street
South Terrace - Suite 370
Denver, CO 80202
Phone: (303) 844-1375
FAX: (303) 844-1350
E-mail: james.dubois@usdoj.gov

1 **PROOF OF SERVICE**

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

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

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

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

20 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
21 persons at the address listed below and placed the envelope for collection and mailing,
22 following our ordinary business practices. I am readily familiar with the practice of
23 Musick, Peeler & Garrett LLP for collecting and processing correspondence for mailing.
24 On the same day that correspondence is placed for collection and mailing, it is deposited in
25 the ordinary course of business with the United States Postal Service, in a sealed envelope
26 with postage fully prepaid. I am a resident or employed in the county where the mailing
27 occurred. The envelope was placed in the mail at Costa Mesa, California.

28 Attorneys for Granite Construction Company:
Robert G. Kuhs
Bernard C. Barmann, Jr.
Kuhs & Parker
1200 Truxtun Ave., Ste. 200
P.O. Box 2205
Bakersfield, CA 93303

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

1098432.1

DECLARATION OF THEODORE A. CHESTER IN SUPPORT OF 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