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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 STEPHEN R.
ISBELL IN SUPPORT OF REPLY TO
OPPOSITION TO 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 27, 2018

TIME: 9:00

DEPT: 222

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DECLARATION OF STEPHEN R. ISBELL

I, STEPHEN R. ISBELL, hereby declare as follows:

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

2. I am one of the attorneys of record for Little Rock Sand and Gravel, Inc. (“Little Rock”) in the above-entitled, coordinated litigation known as the Antelope Valley Groundwater Cases (“AVG Cases”).

3. I submit this declaration in support of Little Rock’s concurrently-filed Reply to Opposition to Opening Brief re Title to Groundwater Allocation Arising from Little Rock’s Land and Granted under Judgment and Physical Solution.

4. In litigating the dispute that is the subject of Little Rock’s concurrently-filed Reply and its previously filed Opening Brief (i.e., the dispute over title to the groundwater production right granted to “Granite Construction Company (Little Rock Sand and Gravel, Inc.)” by the stipulated Judgment and Physical Solution entered in the Antelope Valley Groundwater Cases), I met and conferred with counsel for Granite Construction Company (“GCC”), Bernard Barmann, Esq., by telephone on January 16, 2018, regarding the Case Management Conference scheduled for January 31, 2018.

5. During that telephone conference, Mr. Barmann and I agreed to try the subject dispute “on the papers” as oppose to by a trial with live witness testimony. Mr. Barmann and I also agreed to a proposed briefing schedule and hearing date to present to the Court at the CMC, which was as follows: opening briefs due April 13, 2018; oppositions due May 11, 2018; replies due June 8, 2018; and hearing date of June 20, 2018 or the last week of June 2018.

6. During that conference, we did not agree to or even discuss a page limit for the parties’ briefs or that the parties’ papers would be filed as noticed motions.

7. Shortly after my telephone conference with Mr. Barmann, I prepared Little Rock’s Case Management Conference Statement for filing with the Court the next day, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by this reference. In

1 Section 19. B. of the Case Management Conference Statement, I drafted the proposed briefing
2 schedule to which I believed the parties agreed, which stated, “The parties agreed to the following
3 briefing schedule:

4 Opening Briefs: April 13, 2018
5 Oppositions: May 11, 2018
6 Replies: June 8, 2018
7 Hearing: June 20, 2018 (or last week of June 2018)”

8 8. On January 31, 2018, I appeared telephonically at the Case Management
9 Conference, in which the parties proposed to the Court trying this dispute “on the papers” with the
10 above-described briefing and hearing schedule, which the Court accepted and ordered. While I
11 asked the Court whether live testimony would be permitted at the hearing, which the Court did not
12 decide, there was no discussion with or order from the Court that the parties’ papers were subject
13 to a page limit or had to be filed as noticed motions.

14 9. Based on my agreement with Mr. Barmann and the discussion and order at the Case
15 Management Conference, I believed that it was the intent of the parties and the Court to try this
16 dispute “on the papers” in accordance with the above-listed briefing schedule and with the parties’
17 briefs and supporting evidence setting forth all of the material facts, law and argument.
18 Additionally, given the voluminous material facts, I did not believe that the parties’ could fully
19 brief their respective sides of the dispute in the 15 pages permitted for noticed motions under
20 California *Rules of Court*, Rule 3.1113(d).

21 10. As the parties proposed the briefing schedule and both appeared at the Case
22 Management Conference such that they each had notice, I did not believe that a notice motion was
23 agreed to or required. Similarly, the briefing schedule to which the parties agreed also did not
24 indicate the need to file noticed motions, as it is not in compliance with the filing schedule for
25 noticed motions required by *Code of Civil Procedure* section 1005(b).

26 11. Based on my above-described understanding of the parties’ agreed upon briefing
27 and hearing schedule, I prepared and timely filed Little Rock’s “Opening Brief” on April 13, 2018.

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I declare under penalty of perjury that the foregoing is true and correct. This Declaration is executed this 7th day of May 2018 at Costa Mesa, California.



STEPHEN R. ISBELL

EXHIBIT “A”

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Theodore A. Chester, Jr. (SBN 105405) Stephen R. Isbell (SBN 74234) MUSICK, PEELER & GARRETT, LLP 650 Town Center Dr., Ste. 1200 Costa Mesa, CA 92626-1925 TELEPHONE NO: (714) 668-2400 FAX NO (Optional): (714) 668-2490 E-MAIL ADDRESS (Optional) t.chester@mpglaw.com; s.isbell@mpglaw.com ATTORNEY FOR (Name): Plaintiff LITTLE ROCK SAND AND GRAVEL, INC.	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: Central District	
PLAINTIFF/PETITIONER: LITTLE ROCK SAND AND GRAVEL, INC., a California corporation DEFENDANT/RESPONDENT: GRANITE CONSTRUCTION COMPANY, a California corporation	
CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)	CASE NUMBER: 1-05-cv-049053 / MC026932
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: January 31, 2018 Time: 9:00 a.m. Dept.: Judge Komar Div.: Room: Address of court (if different from the address above): <input checked="" type="checkbox"/> Notice of Intent to Appear by Telephone, by (name): Stephen R. Isbell	

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** (answer one):
 - a. This statement is submitted by party (name): Little Rock Sand and Gravel, Inc.
 - b. This statement is submitted jointly by parties (names):

2. **Complaint and cross-complaint** (to be answered by plaintiffs and cross-complainants only)
 - a. The complaint was filed on (date): March 6, 2017
 - b. The cross-complaint, if any, was filed on (date):

3. **Service** (to be answered by plaintiffs and cross-complainants only)
 - a. All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
 - b. The following parties named in the complaint or cross-complaint
 - (1) have not been served (specify names and explain why not):
 - (2) have been served but have not appeared and have not been dismissed (specify names):
 - (3) have had a default entered against them (specify names):
 - c. The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):

4. **Description of case**
 - a. Type of case in complaint cross-complaint (Describe, including causes of action):
 Quiet Title; Declaratory Relief

PLAINTIFF/PETITIONER: LITTLE ROCK SAND AND GRAVEL, INC., a California corporation DEFENDANT/RESPONDENT: GRANITE CONSTRUCTION COMPANY, a California corporation	CASE NUMBER 1-05-cv-049053 / MC0269
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4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

(If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request a jury trial a nonjury trial. (If more than one party, provide the name of each party requesting a jury trial):

6. Trial date

- a. The trial has been set for (date):
- b. No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):
- c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):
 March 5-23, 2018 (trial) April 1-8, 2018 (vacation)
 June 22-25, 2018 (vacation)

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

- a. days (specify number): one day oral argument following briefing.
- b. hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial by the attorney or party listed in the caption by the following:

- a. Attorney:
- b. Firm:
- c. Address:
- d. Telephone number:
- e. E-mail address:
- f. Fax number:
- g. Party represented:

Additional representation is described in Attachment 8.

9. Preference

This case is entitled to preference (specify code section):

10. Alternative dispute resolution (ADR)

- a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.
 - (1) For parties represented by counsel: Counsel has has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.
 - (2) For self-represented parties: Party has has not reviewed the ADR information package identified in rule 3.221.
- b. **Referral to judicial arbitration or civil action mediation** (if available).
 - (1) This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.
 - (2) Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
 - (3) This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. (specify exemption):

PLAINTIFF/PETITIONER: LITTLE ROCK SAND AND GRAVEL, INC., a California corporation DEFENDANT/RESPONDENT: GRANITE CONSTRUCTION COMPANY, a California corporation	CASE NUMBER 1-05-cv-049053 / MC026932
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10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete mediation by (<i>date</i>): <input type="checkbox"/> Mediation completed on (<i>date</i>):
(2) Settlement conference	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete settlement conference by (<i>date</i>): <input type="checkbox"/> Settlement conference completed on (<i>date</i>):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete neutral evaluation by (<i>date</i>): <input type="checkbox"/> Neutral evaluation completed on (<i>date</i>):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete judicial arbitration by (<i>date</i>): <input type="checkbox"/> Judicial arbitration completed on (<i>date</i>):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete private arbitration by (<i>date</i>): <input type="checkbox"/> Private arbitration completed on (<i>date</i>):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete ADR session by (<i>date</i>): <input type="checkbox"/> ADR completed on (<i>date</i>):

PLAINTIFF/PETITIONER: LITTLE ROCK SAND AND GRAVEL, INC., a California corporation DEFENDANT/RESPONDENT: GRANITE CONSTRUCTION COMPANY, a California corporation	CASE NUMBER: 1-05-cv-049053 / MC0269
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11. Insurance

- a. Insurance carrier, if any, for party filing this statement (name):
- b. Reservation of rights: Yes No
- c. Coverage issues will significantly affect resolution of this case (explain):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

- Bankruptcy Other (specify):

Status:

13. Related cases, consolidation, and coordination

- a. There are companion, underlying, or related cases.
 - (1) Name of case:
 - (2) Name of court:
 - (3) Case number:
 - (4) Status:
- Additional cases are described in Attachment 13a.
- b. A motion to consolidate coordinate will be filed by (name party):

14. Bifurcation

- The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

15. Other motions

- The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):
 Potential discovery motions.

16. Discovery

- a. The party or parties have completed all discovery.
- b. The following discovery will be completed by the date specified (describe all anticipated discovery):

<u>Party</u>	<u>Description</u>	<u>Date</u>
Plaintiff Little Rock Sand and Gravel, Inc.	Written discovery	January 31, 2018
Plaintiff Little Rock Sand and Gravel, Inc.	Depositions	January 31, 2018

- c. The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (specify):

PLAINTIFF/PETITIONER: LITTLE ROCK SAND AND GRAVEL, INC., a California corporation	CASE NUMBER.
DEFENDANT/RESPONDENT: GRANITE CONSTRUCTION COMPANY, a California corporation	1-05-cv-049053 / MC026932

17. Economic litigation

- a. This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

18. Other issues

- a. The party or parties request that the following additional matters be considered or determined at the case management conference (specify): On September 21, 2017, this action was coordinated with the Antelope Valley Groundwater cases (Lead Case: Santa Clara Case No. 1-05-cv-049053) and now proceeds before Hon. Jack Komar.

19. Meet and confer

- a. The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify): The parties agreed to the following briefing schedule:
 Opening Briefs: April 13, 2018
 Oppositions: May 11, 2018
 Replies: June 8, 2018
 Hearing: June 20, 2018 (or last week of June 2018)

20. Total number of pages attached (if any): one

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: January 17, 2018

Stephen R. Isbell
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY)

 (TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached.

ATTACHMENT 4b to Case Management Statement

Little Rock Sand and Gravel, Inc. vs. Granite Construction Company Case No. MC026932

Defendant Granite Construction Company (“Defendant”) leases from Plaintiff Little Rock Sand and Gravel, Inc. (“Plaintiff”) a property located in the Antelope Valley (the “Property”). Under the lease and for the term thereof, Defendant is entitled to, among other things, exercise Plaintiff’s overlying groundwater rights that are appurtenant to the Property and use such groundwater exclusively on the Property. Plaintiff, as the owner of the Property, and Defendant, as the occupier of the Property, were made parties to a consolidation of lawsuits known as the Antelope Valley Groundwater Cases (Santa Clara County Superior Court Case No. 1-05-CV-049053), which concerned the allocation of groundwater between the various owners and occupiers of parcels of real property located above a groundwater basin in the Antelope Valley. A judgment was entered in the Groundwater Cases that identified the Property as “Granite Construction Company (Little Rock Sand and Gravel, Inc.)” and allocated it overlying production rights of 234 acre-feet of groundwater per year (the “Allocated Groundwater”). Defendant intends to pump and use all of the Allocated Groundwater indefinitely, including after the expiration of the Lease in April 2021 and on land other than the Property (including land owned by Defendant). Defendant’s intentions in this regard violate the terms of the lease and Plaintiff’s water rights that run with the Property. Accordingly, Plaintiff seeks a judgment (1) quieting title to all of the Allocated Groundwater and (2) for declaratory relief that Plaintiff is the sole owner of all rights, title and interest in the Allocated Water and that Defendant has no rights, title or interest to the Allocated Groundwater except to the extent that Plaintiff granted Defendant limited rights thereto under the express terms of the lease.

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, One Wilshire Boulevard, Suite 2000, Los Angeles, CA 90017-3383.

9 On June 8, 2018, I served the foregoing document described as: **DECLARATION OF**
10 **STEPHEN R. ISBELL IN SUPPORT OF REPLY TO OPPOSITION TO OPENING BRIEF**
11 **OF LITTLE ROCK SAND AND GRAVEL, INC. RE TITLE TO GROUNDWATER**
12 **ALLOCATION ARISING FROM LITTLE ROCK SAND AND GRAVEL’S LAND AND**
13 **GRANTED UNDER JUDGMENT AND PHYSICAL SOLUTION** on the interested parties in
14 this action by posting the document listed above to the <http://www.avwatermaster.org> website in
15 regard to the Antelope Valley Groundwater Adjudication matter, pursuant to the Electronic Filing
16 and Service Standing Order of Judge Komar and through the OneLegal website
17 (www.onelegal.com).

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

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

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 June 8, 2018, at Los Angeles, California.

/s/ Felicia L. Herbstreith

Felicia L. Herbstreith