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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**
11

12 ANTELOPE VALLEY GROUNDWATER
13 CASES

14 Included Actions:

15 Los Angeles County Waterworks District No. 40
16 v. Diamond Farming Co., Superior Court of
California, County of Los Angeles, Case No. BC
325201;

17 Los Angeles County Waterworks District No. 40
18 v. Diamond Farming Co., Superior Court of
19 California, County of Kern, Case No. S-1500-CV-
254-348;

20 Wm. Bolthouse Farms, Inc. v. City of Lancaster,
21 Diamond Farming Co. v. Lancaster, Diamond
22 Farming Co. v. Palmdale Water Dist., Superior
23 Court of California, County of Riverside, Case
No. RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

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

**OBJECTION OF GRANITE
CONSTRUCTION COMPANY TO
AMENDED [PROPOSED]
STATEMENT OF PARTIAL
DECISION FOR PHASE IV TRIAL
AND PROPOSED STATEMENT OF
PARTIAL DECISION**

[CCP 634; CRC, Rule 3.1590]

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25 **I. OBJECTION**

26 COMES NOW GRANITE CONSTRUCTION COMPANY ("Granite") and objects to
27 the Amended [Proposed] Statement of Partial Decision for Phase IV ("Amended Proposed
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1 SOD”) posted to the Court’s website on June 17, 2013 by Los Angeles County Waterworks
2 District No. 40 on the grounds that the proposed SOD does not accurately reflect the trial
3 proceedings with respect to Granite or the agreement reached with Jeffrey V. Dunn regarding
4 the content of the proposed Statement of Decision as it relates to Granite.

5 **II. DECLARATION OF ROBERT G. KUHS**

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7 I, ROBERT G. KUHS, declare as follows:

8 1. I am an attorney duly admitted to practice before all courts of the State of
9 California, and counsel of record for Granite.

10 2. On May 30, 2013, during the Phase 4 Trial, all parties who participated in the
11 Phase 4 Trial, with the exception of the Wood Class, stipulated that Granite produced 400 acre
12 feet of groundwater from the aquifer in 2011 and 2012.

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14 3. Granite introduced the Declaration of William Taylor in Lieu of Testimony at
15 Phase 4 Trial, and the Declaration of Steven McCracken in Lieu of Testimony at Phase 4 Trial
16 as exhibits 4-Granite-1 and 4-Granite-2, respectively. The declarations were admitted into
17 evidence without objection.

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19 4. Taken together, the declarations establish that Granite operates its Littlerock
20 Quarry, a sand and gravel extraction and rock processing facility asphaltic concrete batch plant
21 and ready mix plant located on the alluvial fan of Littlerock Creek.

22 5. Granite pumps groundwater from three wells located at the Littlerock Quarry
23 and uses the water for dust control, to wash and process sand and aggregates and for limited
24 domestic use. The three groundwater wells located at the Littlerock Quarry are not metered.
25 Steve McCracken, a civil engineer and Granite’s Manager of Construction Materials for
26 Granite’s Southern California and Central California Regions, used two independent methods
27 to calculate the amount of water produced at the Littlerock Quarry. First, Mr. McCracken
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1 estimated groundwater use as a function of water consumed during production, water used for
2 dust control, pond evaporation, and pond infiltration and system leakage. Using this
3 methodology, Mr. McCracken estimated that Granite produced 417.8 acre feet of water in 2011
4 and 423.3 acre feet of water in 2012 at its Littlerock Quarry. (McCracken, Decl., ¶¶ 4, 5.)

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6 6. As an alternate means of estimating groundwater production, Mr. McCracken
7 calculated the theoretical daily capacity of the pumps multiplied by hours of operation and
8 estimated that Granite pumped 471 acre feet of water from its Littlerock Facility in 2011 and
9 2012, respectively. (McCracken Decl., ¶ 6.)

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11 7. Granite also owns 145 acres of land in the Big Rock area of Antelope Valley on
12 which its Big Rock Quarry is located. The Big Rock Quarry is permitted, but not operational.
13 Granite produces groundwater from one well to maintain landscaping consisting of 30-foot
14 wide strip of oleanders, junipers, and other vegetation around the perimeter of the property. Mr.
15 McCracken estimated that Granite applied 16 acre feet of water per year for 2011 and 2012 for
16 landscaping maintenance. (McCracken Decl., ¶ 7.)

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18 8. Mr. McCracken concluded that Granite's total groundwater production in the
19 AVAA for 2011 and 2012 is estimated as follows:

20 **2011 433.8**

21 **2012 439.3**

22 (McCracken, Decl., ¶ 8.)

23
24 9. No party offered any contrary evidence regarding Granite's groundwater
25 production for years 2011 and 2012. (See *In re Marriage of Mix* (1975) 14 Cal.3d 604, 609 [the
26 testimony of a single credible witness constitutes substantial evidence.])

27 10. The PWS did not dispute groundwater production at the Big Rock Quarry but
28 did dispute production at the Littlerock Quarry. Granite and the Public Water Suppliers reached

1 a stipulation whereby Granite agreed to install a meter for each of its wells at its Littlerock
2 Creek Quarry within 30 days after the Phase 4 Trial to measure groundwater production for a
3 period of one year. At the conclusion of the one year period, Granite and the Public Water
4 Suppliers would compare meter readings against Granite's 2011 and 2012 product volumes to
5 estimate Granite's groundwater use in 2011 and 2012 and report the findings to the Court if
6 such findings differed materially from the stipulated 400 acre feet per year.

8 11. On June 12, 2013, Mr. Dunn provided me with a draft Proposed Statement of
9 Decision to review with respect to the language regarding Granite. Later that same day, I
10 provided Mr. Dunn with revisions to his Proposed Statement of Decision, a copy of which is
11 attached hereto as **Exhibit A**. By email dated June 13, 2013, Mr. Dunn responded: "The
12 changes are good."

14 12. Nevertheless, on June 14, 2013, Mr. Dunn posted a Proposed Statement of
15 Decision which failed to incorporate the changes requested by Granite and agreed upon by Mr.
16 Dunn. By email dated June 15, 2013, I advised Mr. Dunn that the Proposed Statement of
17 Decision did not reflect Granite's revisions as agreed. Mr. Dunn apologized and agreed to post
18 a revised Statement of Decision incorporating Granite's requested changes. A true and correct
19 copy of the email string is attached as **Exhibit B**.

21 13. On June 17, 2013, Mr. Dunn posted the Amended Proposed SOD, but again
22 failed to include the revisions requested by Granite as previously agreed. Granite's Proposed
23 Statement of Decision, attached as Exhibit A, differs from the Public Water Suppliers'
24 Amended Proposed SOD in several material respects. First, the PWS's Amended Proposed
25 SOD states that the "court finds that the evidence presented in the Phase 4 Trial supports each
26 parties' 2011 and 2012 groundwater production amount as stated herein, **except for Granite**
27 **Construction Company for the reasons that follows.**" (P. 4, lines 16-18. bold added) Granite
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1 asked that the bolded language be stricken based on its understanding that the Court intended to
2 make findings with respect to all of the evidence presented, including Granite's groundwater
3 production, subject only to possible future revisions based upon Granite's meter readings.

4 14. Secondly, the PWS's Proposed Amended SOD states that Granite will install "a
5 meter for each of its wells within 30 days after the Phase 4 Trial." This language is not
6 consistent with the stipulation. The groundwater production at Granite's Big Rock Quarry was
7 not disputed or substantial. Thus, Granite agreed to install a meter for each of its wells located
8 at its Littlerock Quarry only, not its Big Rock Quarry.

9 15. Based on the foregoing, Granite respectfully requests that the Court adopt the
10 Proposed Statement of Decision for Phase 4 Trial attached hereto as Exhibit A which Granite
11 believes accurately reflects the evidence before the Court, and agreement of the parties.

12 Dated: June 20, 2013

KUHS & PARKER

13 By 
14 Robert G. Kuhs, Attorney for Granite
15 Construction Company

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