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Attorneys for Granite Construction Company

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES - CENTRAL DISTRICT

ANTELOPE VALLEY GROUNDWATER CASES

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

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

Wm. Bolthouse Farms, Inc. v. City of Lancaster, Diamond Farming Co. v. Lancaster, Diamond Farming Co. v. Palmdale Water Dist., Superior Court of California, County of Riverside, Case 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

OPPOSITION OF GRANITE CONSTRUCTION COMPANY TO LANE FAMILY MOTION FOR POST-JUDGMENT SUPPLEMENTAL ORDER RE GRANITE CONSTRUCTION COMPANY

[Declarations of Robert G. Kuhs, William Taylor, Richard Zimmer, Joseph D. Hughes, Bob Joyce, and Mike McLachlan filed concurrently herewith]

Date: March 21, 2016
Time: 1:30 p.m.
Dept.: TBA
Court: San Jose Superior Court
191 N. First Street
San Jose, CA 95113

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

State Statutes

Other Authorities

I. INTRODUCTION

The cross-defendants Little Rock Sand and Gravel, Inc. (**LS&G**), The George and Charlene Family Trust, Frank and Yvonne Lane 1993 Family Trust, Monte Vista Building Site, Inc. and AV Materials, Inc. (collectively "**Lane**")[1] filed their post-judgment motion for an order declaring that 100% of the water rights allocated to Granite Construction Company (**Granite**) pursuant to the Stipulation for Entry of Judgment and Physical Solution (**Stipulation**) entered as a Judgment on December 28, 2015 (**Judgment**), should be taken from Granite and allocated to LS&G on the basis that LS&G, not Granite, is the fee owner of the ground underlying Granite's Little Rock Quarry. The premise of the motion is false. Lane intentionally conceals from the Court that Granite, in addition to leasing land from LS&G, owns more than 55 acres in fee immediately adjacent to the LS&G property, that Granite's Little Rock Quarry is comprised of both Granite's adjacent property and property leased to Granite, and that the parties to the global settlement (**stipulating parties**) allocated water to Granite as a result of its fee interest and not as a result of its leasehold interest.

The motion should be denied since (a) Lane's landlord/tenant argument is based entirely on the false premise that LS&G is the sole owner of land underlying Granite's Little Rock Quarry, (b) the relief requested is barred by the express terms of the Stipulation, and Lane cannot unilaterally accept the benefits, but not the burdens, of the Stipulation and Judgment, (c) the Court may interpret and enforce the Judgment, but has no jurisdiction to alter it, and (d) extrinsic evidence proves that LS&G and Granite orally agreed to allocate the water 100 acre-feet (**AF**) to Granite, 134 AF to LS&G during the global settlement discussions. Several months later, LS&G's principal, George Lane, attempted to renege on the agreed-upon allocation but Granite steadfastly held to the agreed allocation. Pursuant to paragraph 2b of the Stipulation and by operation of law, Lane waived all remaining disputes and is estopped from litigating settled claims or otherwise attacking the Judgment. Any claimed ambiguity in the Judgment is due

[1] The George and Charlene Family Trust, Frank and Yvonne Lane 1993 Family Trust, Monte Vista Building Site, Inc. and AV Materials, Inc. have no privity of estate or contract with Granite, and thus no direct interest in the dispute. As explained below, however, these related entities are benefactors of LS&G's sharp dealings, and their rights under the Judgment are at risk.

solely to LS&G's refusal to abide by its oral agreement and to break out the water allocation for Little Rock Quarry prior to entry of Judgment. Granite and LS&G are now equal cotenants to the 234 AF allocation.

We begin with a statement of the relevant facts, then address Lane's landlord/tenant arguments, followed by a discussion of the Court's post-judgment jurisdiction.

II. STATEMENT OF FACTS

A. Granite's Big Rock and Little Rock Quarries.

Granite owns about 217 acres of real property within the Antelope Valley Area of Adjudication (**AVAA**) identified in Exhibit A to the Declaration of William Taylor as Parcels 6, 7, 8, 9, 10, 11, 12 and 13.

Granite owns and operates two separate rock, sand and gravel quarries within the AVAA known as the Big Rock Quarry and Little Rock Quarry. The Big Rock Quarry consists of about 145 acres of land owned by Granite in fee with an estimated water demand of about 230 acre feet per year. (Taylor Decl., ¶ 7.)

In 1987, Granite leased approximately 236 acres of land (**Leased Property**) from LS&G for establishment and operation of Granite's Little Rock Quarry located on the alluvial fan of Littlerock Creek within the AVAA. (Taylor Decl., ¶¶ 8, 9, Ex. B.) Section 3.2 of the lease gives Granite the exclusive right to develop and use the water resources on and under the Leased Property, and Section 23 gives Granite a right of first refusal, to purchase the Leased Property. Granite owns and operates three groundwater production wells on the Leased Property to support its quarry operations. (Taylor Decl., ¶ 8.)

In 2008 Granite purchased about 55.5 acres of land in fee (**Granite Adjacent Property**) immediately adjacent to the Leased Property and an additional 12.3 acres across the highway. Granite purchased the Granite Adjacent Property, in part, because the commercially viable deposits on the Leased Property were nearing depletion. In April of 2010, Granite and LS&G amended the Lease by extending its term to April 30, 2021, with options to extend the Lease until April 30, 2041. (Taylor Decl., ¶ 9.)

Also beginning in 2010, Granite began the process of amending its Surface Mining and Reclamation Plan to include Granite's Adjacent Property. (Taylor, Decl., ¶ 10.) While the amendment was being processed, Lane appeared in the Adjudication by answer on December 13, 2011, and Granite appeared by answer on February 28, 2012. The Amended Reclamation Plan was approved and since at least January 2013 Granite has operated the Little Rock Quarry as an integrated unit. (Taylor Decl., ¶ 10.)

The commercially viable deposits on the Leased Property were substantially depleted in 2015. Granite is currently reconfiguring the Little Rock Quarry to begin mining deposits on Granite's Adjacent Property and will continue to use the wells and water produced therefrom to support quarry operations and dust control while mining Granite's Adjacent Property into the foreseeable future. (Taylor Decl., ¶ 12.)

B. Phase 4 Evidence.

The Phase 4 Trial began on May 28, 2013, during which Granite introduced evidence of its pumping and water use during years 2011 and 2012 at the Little Rock Quarry. LS&G did not introduce any independent evidence of water use on the Leased Property.

C. Granite and LS&G Agreed to 100/134 AF Allocation During Global Settlement Negotiations.

On February 19, 2014, the Court suspended the Phase 5 Trial on Federal Reserve Rights and Right to Return Flow from Imported Water, so that the parties could participate in global settlement discussions at the offices of Best, Best & Krieger (**BBK**) in Los Angeles, California. Over the next several weeks, more than 40 lawyers participated in negotiating the substantive framework for the current settlement and water allocation among the various parties, including counsel for Granite and Lane. (Decls., Kuhs, Zimmer, Hughes, Joyce, McLachlan ¶ 3.)

On or about March 31, 2014, lawyers representing more than 100 parties met at the BBK offices for continued settlement negotiations. Robert G. Kuhs was present representing Tejon Ranchcorp and Granite. Ted Chester was also present representing the Lane entities and also Bruce Burrows and 300 A 40 H LLC. (Decls., Kuhs, Zimmer, Hughes, Joyce, McLachlan ¶ 4.)

During the settlement discussions, Granite negotiated a water supply of 126 AF for its Big Rock Quarry and 234 AF for Granite's Little Rock Quarry. During the session, Lane's

counsel, Ted Chester, approached Granite's counsel to discuss allocation of the water supply between LS&G and Granite. Mr. Chester argued that LS&G was the owner of the Leased Property on which water production had historically occurred. Counsel for Granite, in turn, argued that Granite was the party putting the water to reasonable beneficial use, that the Leased Property was essentially "played out" of deposits, and that on a going-forward basis the future mining activities would occur on Granite's Adjacent Property. Granite's counsel also pointed out the holding in *Tehachapi-Cummings County Water Dist. v. Armstrong* (*Armstrong*) (1975) 49 Cal.App.3d 992, 1001, wherein 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.) Counsel for Granite also spoke to Mr. Chester about the water allocations for Mr. Chester's several other clients, and specifically Bruce Burrows. (Kuhs Decl., ¶ 6.)

The Court will recall that during the Phase 4 trial Mr. Burrows submitted evidence of alleged water use in 2011 and 2012 on his peach orchard. That evidence, however, was impeached (no pun intended) by pictures showing that the water distribution facilities for the peach orchard were not operational, and that the peach trees were dead! During settlement negotiations counsel for Granite as well as Bob Joyce, counsel for Grimmway, told Mr. Chester that Granite and Grimmway would not support an allocation of water to Mr. Burrows or the allocation of water to Mr. Chester's other clients, unless the parties also resolved all allocations of water including the allocation between Granite and LS&G. (Kuhs Decl., ¶ 7; Joyce Decl., ¶ 6.) Following this dialogue, counsel for Granite asked Mr. Chester to make Granite a "fair offer" of water allocation between the parties. In response, Mr. Chester offered to allocate 90 AF to Granite and 144 AF to LS&G. Counsel for Granite countered at 100 AF for Granite and 134 AF for LS&G. After some discussion, Mr. Chester stated that George Lane on behalf of LS&G would agree to the 100/134 AF split between Granite and LS&G but that Granite should bear the risk of any further reduction on Exhibit 4, the spreadsheet showing the allocation of productions rights to the adjusted native yield. Counsel for Granite responded that Granite would bear the risk of future reductions, but should likewise receive the benefit of any future increased

allocation, should that occur. Mr. Chester stated that he would check with his client and advise.[2] (Kuhs Decl., ¶ 7.)

Mr. Chester and counsel for Granite then advised the larger group of settling parties that Granite and LS&G had reached an agreement on allocation which also resulted in an agreed allocation to Mr. Chester's other clients. Four days later on April 4, 2014, the parties orally advised the Court that all parties had reached a global settlement on allocation and would need several weeks to draft the physical solution. (See Kuhs Decl., Ex. C, Minute Order.)

D. LS&G Attempts to Renege on The Agreed Allocation.

Nearly five months later, in August, 2014, Mr. Chester began to make suggestions that LS&G was no longer content with the 100/134 AF allocation. Counsel for Granite repeatedly advised Mr. Chester that the correlative allocation was arrived at after weeks of negotiations with all stipulating parties and that Granite was not willing to reopen negotiations on the correlative allocation of the Basin's native safe yield and, that to do so, would require reopening negotiations for all stipulating parties, including Mr. Chester's other clients, and not simply Granite and LS&G. Counsel for Granite also advised Mr. Chester that Granite and other parties such as Grimmway and Bolthouse would not have agreed to give Mr. Chester's other clients the generous allocations shown on Exhibit 4 if the parties had known that Mr. Lane would attempt to renege on the agreed allocation reached on March 31, 2014. (Kuhs Decl., ¶ 9.) Those allocations are:

Ted Chester Clients Exhibit 4 Allocation	
Claimant Name	Production Right
Burrows/300 A40 H LLC	295
G. Lane Family (Frank and Yvonne Lane 1993 Trust, Littlerock Sand & Gravel, Inc., George Lane Family Trust [Does not Include water pumped on land lease to Granite Construction]	773
Landinv Inc.	969
Littlerock Aggregate Co., Holliday Rock Co. Inc.	151
Total	2188

[2] The risk of future reductions to Exhibit 4 became a moot point because all active parties agreed to the global settlement and allocations on Exhibit 4, and because Section 5.1.10 of the Judgment addresses production by non-stipulating parties outside of Exhibit 4.

On August 19, 2014, Granite representatives met face-to-face with Mr. Chester and LS&G representatives in Lancaster. During that meeting, Mr. Lane suggested, for the first time, that the entire 234 AF allocation to Little Rock Quarry belongs to the Lane Family and that Granite was entitled to zero! Later during the meeting Mr. Lane "offered" to "give" Granite 34 AF of the 234 AF foot allocation. Granite advised that it was not Mr. Lane's water to give. The water supply was allocated to Granite by the stipulating parties and that LS&G and Lane could choose to be a part of that settlement, or not. (Kuhs Decl., ¶ 10.)

On December 31, 2014, LS&G filed a CMC Statement claiming that there was a dispute between Granite and Lane with respect to allocation of water for Granite's Little Rock Quarry. The Court's Minute Order of January 7, 2015, reflects that the Court reserved the issue for "further *discussion*" after the ruling on the Final Approval Hearing of the Wood Class Settlement" which the Court set for June 1, 2015. (Kuhs Decl., Ex. G.)

E. LS&G Signs Stipulation for Entry of Judgment, Waiving its Rights to Litigate All Disputes Among the Stipulating Parties, Including Granite.

Behind the scenes, Mr. Chester was being told by Mr. McLachlan, counsel for the Small Pumper Class, Bob Joyce, counsel for Grimmway, and other counsel that his clients could not be part of the global settlement unless and until LS&G resolved its dispute with Granite over the allocation for the Little Rock Quarry. On or about February 20, 2015, on the eve of the deadline to submit signatures, Mr. Chester submitted to counsel for the United States his signature to the Stipulation for Entry of Judgment and Physical Solution, as well as those of his clients, including LS&G. (Kuhs Decl., ¶ 16.) In so doing, LS&G bound itself to the terms of the Stipulation and Judgment and waived any right to litigate any dispute with the stipulating parties, including Granite.

The United States filed the Stipulation on March 4, 2015 as Doc # 9624. (See Ex. H.) The Court held numerous hearings and case management conferences over the next eight months, but the dispute was never again discussed with the Court. Eight months later on October 6, 2015 on the eve of the October 7, 2015 CMC, Lane filed a CMC Statement claiming that the Granite/Lane dispute was still alive and well. LS&G did not raise the issue in Court. The Prove-Up Trial commenced on October 14, 2015. Closing arguments occurred on November 3 and 4,

2015, at which time the Court announced its Oral Tentative Decision. On December 23, 2015, following the hearing on objections to the Proposed Judgment and Statement of Decision, the Court signed the Statement of Decision and Judgment. Neither Mr. Chester, nor LS&G, attempted to put on evidence during the Prove-Up Trial or objected in any way to the Statement of Decision or Judgment. Then, on January 31, 2016, after Judgment was entered, Lane filed the instant motion. The motion should be denied for the reasons set forth below.

III. ARGUMENT

A. Lane's Landlord/Tenant Argument is a Red Herring Based on the False Premise That LS&G is the Sole Owner of Land Underlying Granite's Little Rock Quarry.

> "*There is nothing more horrible than the murder of a beautiful theory by a brutal gang of facts.*" Francois La Rochefoucauld

Lane seeks a post-settlement, post-judgment, post-notice-of-appeal adjudication of water rights. The basis of Lane's motion is summarized in the opening paragraph:

> "The moving parties seek the Court's determination that the lessor owns fee title to, and the lessee owns a leasehold interest in, the subject water rights." (Motion, p. 1, lines 9-10.)

Thus, Lane argues that LS&G should be declared the owner of all 234 AF of water allocated to Granite's Little Rock Quarry since (a) LS&G owns the property and Granite is merely a tenant, (b) the water right is appurtenant to LS&G's land, and (c) Granite is estopped to deny its landlord's title. (Motion, pp. 7-8.) Each of these meritless arguments rests on the false premise that Granite is merely a tenant, and not a fee interest owner. Lane knows better, but attempts to mislead this Court anyway. As established by the Phase 4 and Phase 6 evidence, and set forth in the Declaration of William Taylor filed concurrently herewith, Granite is fee owner of more than 55 acres of land annexed to, and part of, Granite's Little Rock Quarry. Pursuant to the Stipulation, Granite resolved all claims to prescription by and between Granite and the Public Water Suppliers. Since the mineral deposits on LS&G's land are essentially depleted, Granite, not LS&G, has and at the time of settlement had, the current (and future) reasonable and beneficial need for water. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1253, ["When the water is insufficient, overlying owners are limited to their 'proportionate fair share of the total amount available based upon [their] reasonable need[s].' (*Tehachapi-Cummings County Water District v. Armstrong*

(1975) 49 Cal.App.3d 992, 1001."] Lane has no need for water at the Little Rock Quarry, nor is there any evidence in the record to the contrary.[3] The stipulating parties allocated water to Granite for its Little Rock Quarry, not as a tenant, but as a fee interest owner in land with the current and future beneficial need for water. (See e.g., Decls. of Kuhs, Zimmer, Joyce, McLachlan and Hughes.)[4]

Next, Lane argues that the water rights are appurtenant to the Leased Property and therefore owned by Lane. Again, this argument is based on the false premise that Granite is a mere tenant, and fails for that reason alone. Further, upon entry of the Judgment, the water rights in the AVAA are no longer appurtenant, but freely transferable. (See Judgment, Art. 16; see also *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1256, fn 17 [a party who elects to participate in a physical solution waives all existing groundwater rights and accepts the terms of the physical solution.].)

Next, Lane complains that the language in Exhibit 4 awards the water right to two entities, but does not determine title between them. (Motion, p. 1, lines 4-5; p. 5, lines 21-22; p. 7, lines 1-2.) First, the problem complained of is of LS&G's own creation. Over the course of the last two years, Granite has stood by the allocation agreed to in March of 2014 and offered to segregate out the allocations on Exhibit 4 on that basis. LS&G refused, but, when faced with going to trial or signing the Stipulation, nonetheless signed the Stipulation. Second, there is no unresolved issue and therefor no real "problem." Under Exhibit 4, Granite and Lane are co-tenants to 234 AF of water, end of story. "When two or more persons take as tenants in common under a instrument silent as to their respective shares, a presumption arises their shares are

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[3] Indeed, the empty pit will have a post-mining use designation is open space wildlife habitat, recreational and/or flood coastal. (Taylor Decl, ¶ 11.)

[4] Lane may argue that LS&G is entitled to the entire allocation since all of the water was pumped from LS&G's land. While factually, that is true, Granite, as a fee interest owner 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.) Thus, in negotiating the allocation, Granite argued that the law permits Granite to exercise its overlying rights to the Granite Adjacent Land by pumping on the Leased Property.

equal." (*Caito v. United California Bank* (1978) 20 Cal.3d 694, 705.) Thus, if Lane will not stand by the allocation reached in March of 2014, then the presumption is that Granite and LS&G have equal shares of the 234 AF of water 117/117 AF each. The Court should deny the motion or, alternatively, issue an order confirming that Granite and LS&G are equal cotenants, provided that LS&G's water continues to remain available to Granite under the Lease.[5]

B. Lane's Motion is Barred by the Express Terms of the Stipulation, the Judgment and the Limits of the Court's Jurisdiction.

The relief Lane requests by motion is not authorized by the Judgment or the law. Lane seeks an adjudication of the water rights as between LS&G and Granite post-Stipulation, post-Judgment, post-notice-of-appeal and without any operative pleading that would support declaratory relief.

1. The Stipulation and Judgment Bar Lane's Motion for Declaratory Relief.

Lane repeatedly argues that the Court reserved the allocation of water between Granite and LS&G for later "adjudication." (See Motion, p. 1, lines 6-7; p. 5, lines 16, 23-24, p. 6, line 13.) That claim is patently false. The Court's January 7, 2015, Minute Order reserved the issue for "further discussion" after the ruling on final approval of the Woods Class settlement, which the Court set for hearing on June 1, 2015. After the status conference, however, Lane's counsel was told repeatedly by counsel for Granite, the Small Pumper Class, Grimmway and other counsel, that LS&G had a choice to make; either sign the Stipulation for global settlement, resolving "all disputes in this Action among the stipulating parties" or continue to litigate and face an eminent prescription and prove-up trial. (See Ex. H, ¶ 2b.) In other words, the stipulating parties refused to allow Lane to have it both ways; either settle, or litigate. In the face of those objections, on or about February 20, 2015, Mr. Chester submitted his signature, along with that of the Lane Parties, to the Stipulation to counsel for the United Stated, and the Stipulation was filed with the Court on March 4, 2015. Paragraph 2b of the Stipulation provides:

> **"The judgment resolves all disputes in this Action among the Stipulating Parties."**

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[5] Since Granite, not LS&G, is putting the entire water production at the Little Rock Quarry to beneficial use, Granite could rightfully claim the entire 234 AF allocation. Granite has not done so, however, out of respect for the Stipulation and Judgment. The 100/134 AF allocation is more than generous to LS&G given LS&G's total lack of current beneficial use.

Paragraph 5 provides:

> "The Stipulating Parties will cooperate in good faith and take any and all necessary and appropriate action to support the Judgment until such time as this Judgment is entered by the Court, and appeals, if any, are final . . .."

Thus, not only is Lane barred from bringing the instant motion, but Lane is in breach of paragraph 5 of the Stipulation for failing to support the Judgment.

Lane may argue that it did both, settle all disputes and reserve the dispute with Granite. That argument is meritless. The very purpose of the global settlement was to resolve all disputes with all stipulating parties. Lane simply had no authority or ability to unilaterally change the terms of the Stipulation and global settlement. In *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1256, at footnote 17, the Supreme Court made clear that where a party desires "to participate in the [physical solution], it must, for this purpose, refrain from asserting its existing water rights and it **must accept all of the terms** of the [physical solution] judgment . . ." (Emphasis added.) Having chosen to participate in the Stipulation and Judgment, LS&G must refrain from asserting its overlying rights and accept all of the terms of the Judgment.

Civil Code section 1589 also prohibits Lane from blowing hot and cold and provides that "voluntary acceptance of the benefits of a transaction is equivalent to a consent of all the obligations arising from it, so far as the facts are known, or ought to be known, by the person accepting." (See also Civil Code § 3521, "He who takes the benefit must bear the burden.") In *Neet v. Holmes* (1944) 25 Cal.2d 447, 457-458, the Supreme Court stated: ". . . [A] party to a contract who wishes to rescind cannot play fast and loose. He cannot conduct himself so as to derive all possible benefit from the transaction and then claim the right to rescind. The right to rescind may be waived. [Citations.] It is waived by recognition of the existence of the contract after the right to rescind was created. [Citation.] Waiver of a right to rescind will be presumed against a party who, having full knowledge of the circumstances which would warrant him in rescinding, nevertheless accepts and retains the benefits accruing to him under the contract. [Citation]"

Here, LS&G knew of Granite's position on water allocation and that of the other stipulating parties, and nevertheless executed the Stipulation and caused Judgment to be entered.

LS&G had a clear choice; either continue to litigate, or settle and accept the burdens and benefits of the Stipulation. Having chosen the latter, LS&G has waived any opportunity to further litigate its water rights.

2. The Court Does Not Have Jurisdiction to Alter the Stipulation and Judgment.

Next, Lane argues that the Court has authority to alter the Judgment by motion under the continuing jurisdiction provision found in Section 6.5 of the Judgment which reads as follows:

> "The court retains and reserves full jurisdiction, power and authority for the purpose of enabling the court, upon a motion of a Party or Parties noticed in accordance with a notice procedures of Paragraph 20.6 hereof, to make such further or supplemental order or directions as may be necessary or appropriate to **interpret, enforce, administer or carry out this Judgment** and to provide for other matters as are not contemplated by this Judgment and which might occur in the future, and which if not provided for would defeat the purpose of this Judgment." (Emphasis added.)

Lane's reliance on Section 6.5 is misplaced for several reasons. Section 6.5, by its express terms, may only be used to "interpret, enforce, administer or carry out" the Judgment and does not give the Court jurisdiction to further adjudicate the rights of stipulating parties or alter the terms of the Judgment or the Stipulating Parties' settlement. In fact, altering the terms of Exhibit 4 to the Judgment would, under paragraph 4 of the Stipulation, void the Judgment *ab initio*.

Section 6.5 was modeled after Code of Civil Procedure section 664.6 which provides

> ". . . if parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement."

A judge hearing a section 664.6 motion may receive evidence, determine disputed facts and enter the terms of a settlement agreement as a judgment. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (Rutter Group 2015) ¶¶ 12:975 to 12:979.5, pp. 128-130; *Fiore v. Alvord* (1985) 182 Cal.App.3d 561 [court may interpret terms of settlement agreement]). Where a settlement agreement is ambiguous, the court is required to consider extrinsic evidence of the parties' intent. (*Steller v. Sears, Roebuck & Co.* (2010) 189 Cal.App.4th 175, 183.) However,

nothing in Section 664.6 authorizes a judge to create the material terms of a settlement, as opposed to deciding what terms the parties themselves have previously agreed upon. (*J.B.B. Investment Partners, Ltd. v. Fair* (2014) 232 Cal.App.4th 974, 984; *Weddington Production, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810.) Thus, although the Court may interpret and enforce the Judgment, the Court has no jurisdiction to grant the relief Lane requests by motion or otherwise.

The Judgment cannot be amended for another fundamental reason. On February 19 and 20, 2016, the Willis Class, Phelan Pinion Hills CSD, Ritter and Tapia filed notices of appeal. Code of Civil Procedure section 916, subdivision (a) stays proceedings in the trial court pending appeal and states in relevant part that "[e]xcept as [otherwise] provided . . ., the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter not affected by the judgment or order." ["[S]ection 916, as a matter of logic and policy, divests the trial court of jurisdiction over the subject matter on appeal--i.e., jurisdiction in its fundamental sense. [Citation] The purpose of the automatic stay under section 916 is to preserve 'the status quo until the appeal is decided' [citation], by maintaining 'the rights of the parties in the same condition they were before the order was made' [citation]. Otherwise, the trial court could render the 'appeal futile by altering the appealed judgment or order by conducting other proceedings that may affect it.' [Citation]".) (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 198.) The Court has no jurisdiction to further adjudicate the water rights of the stipulating parties.

3. Altering the Judgment Will Jeopardize the Global Settlement.

The stipulating parties, including Lane, agreed that:

> "The provisions of the Judgment [including Exhibit 4] are related, dependent and not severable. Each and every term of the Judgment is material to the Stipulating Parties agreement. If the Court does not approve the Judgment as presented . . .then the Stipulation is *void ab initio*." (Stipulation, ¶ 4.)

The Court has the jurisdiction to interpret and enforce the Judgment, but cannot alter the Judgment. As Lane acknowledges, Exhibit 4 allocation 234 AF to both Granite and LS&G.

Absent an agreement, the law presumes that Granite and LS&G are equal co-tenants. If the Court were to grant Lane's motion and change Granite's allocation to zero, it would void the Judgment, throw away years of effort, and result in continued harm to the Basin. The motion should be denied.

IV. CONCLUSION

On February 19, 2014, after more than 15 years of litigation, more than 40 lawyers representing over 100 parties went into a room, and after weeks of difficult negotiations emerged with a landmark settlement allocating the water rights in the AVAA. It took nearly one year to finish drafting the Judgment and Physical Solution. During that year only one party attempted to avoid the agreed upon allocation - LS&G.

Whether viewed as sharp dealing, or psuedo clever lawyering, Lane asks this Court to give LS&G the entire water supply for Granite's Little Rock Quarry and give Granite zero. Doing so would void the Judgment. Granite did not, and would not, enter into a Stipulation that allocated zero water to Granite for Granite's Little Rock Quarry, or 35 AF, or even 75 AF. Granite agreed to an allocation of 100 AF, and has never strayed from that position.

This Court should deny Lane's ill-conceived motion because it is factually flawed, barred by the Stipulation, the Judgment, the notice of appeal, and the law, and most of all because it is simply wrong. If LS&G admits to the 100/134 AF allocation, then the Court should enter an order confirming that allocation. If LS&G denies the agreement in any way, shape or form, then the Court should find that Granite and LS&G are presumptively equal cotenants to the 234 AF on Exhibit 4. In either case the order should confirm that Granite has a continued right to use LS&G's allocation under the lease.

Dated: March 8, 2016

KUHS & PARKER

By _____
Robert G. Kuhs, Attorney for Granite Construction Company