

# **EXHIBIT AA**

## Robert G. Kuhs

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**From:** Ted Chester <tchester@smilandlaw.com>  
**Sent:** Thursday, November 20, 2014 2:31 PM  
**To:** Dubois, James (ENRD); Robert G. Kuhs  
**Subject:** RE: Antelope Valley Groundwater Adjudication: Draft of Judgment/Physical Solution November 18, 2014

Jim and Robert,

Here are my initial thoughts for possible language for a court-approved stipulation. I realize it is important that the other settling parties are satisfied. This probably needs to be a topic for tomorrow's meeting. I would appreciate your thoughts.

"The proposed settlement provides for an allocation of a specific quantity of production rights to be jointly owned by two settling parties: Granite Construction Company and Little Rock Sand and Gravel, Inc. (a part of the Lane Family). Joint ownership is not desired by either Granite or Little Rock. However, although significant efforts have been made, Granite and Little Rock have been unable to reach agreement to subdivide the production rights allocation between them.

Granite and Little Rock intend to agree to the settlement and the Judgment and Physical Solution by executing the Stipulation, but they wish to preserve their ability to litigate (including determination by alternate dispute resolution) all issues concerning the proper division of the allocated production rights between them.

By executing the Stipulation, neither Granite nor Little Rock will be precluded from seeking a judicial determination of the proper division of the production rights allocation between them, provided, that that all claims and issues litigated and decided between them will not affect or otherwise be binding on any of the other settling parties."

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**From:** Dubois, James (ENRD) [mailto:James.Dubois@usdoj.gov]  
**Sent:** Thursday, November 20, 2014 7:44 AM  
**To:** Ted Chester  
**Subject:** Re: Antelope Valley Groundwater Adjudication: Draft of Judgment/Physical Solution November 18, 2014

That's fine. I just thought it best to start with just expressing my concern to you, so that you understand what I anticipate from others on Exhibit 4. No problem sharing it with Robert, and I suggest you sound others too.

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**From:** Ted Chester [mailto:tchester@smilandlaw.com]  
**Sent:** Wednesday, November 19, 2014 09:20 PM Eastern Standard Time  
**To:** Dubois, James (ENRD)  
**Cc:** Robert G. Kuhs (rgkuhs@kuhsparkerlaw.com) <rgkuhs@kuhsparkerlaw.com>  
**Subject:** RE: Antelope Valley Groundwater Adjudication: Draft of Judgment/Physical Solution November 18, 2014

Jim,  
Thanks. I am sharing this with Robert. I will also be discussing it with my client.  
Ted

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**From:** Dubois, James (ENRD) [mailto:James.Dubois@usdoj.gov]  
**Sent:** Wednesday, November 19, 2014 4:55 PM  
**To:** Ted Chester

**Cc:** Leininger, Lee (ENRD)

**Subject:** RE: Antelope Valley Groundwater Adjudication: Draft of Judgment/Physical Solution November 18, 2014

Ted:

I am concerned about what you are proposing here. Perhaps I am getting paranoid, but isn't there some risk that under the Tehachapi-Cummings v. Armstrong case, that this morphs into a determination of the correlative rights in equity – which might require trying the respective rights of all overlying parties? And if Lane and/or Granite do not like the trial court ruling you propose, and take the issue of Exhibit 4 allocations up on appeal, won't that force everyone to come along to protect their interests? That seems to present additional risk to everyone. I am not sure how you sign the stipulation – which includes Exhibit 4 – and then ask for a reopening of Exhibit 4 without creating that risk, and I don't see others being willing to allow Exhibit 4 to be "reopened" for anyone. There is a good deal of paranoia about locking in Exhibit 4 as a fait accompli for the Court, and inviting the camel to stick its nose into the tent may get a great deal of pushback.

It seems to me that the only way that a "non-settlement settlement" possibly works is if the Granite/Little Rock amount is lumped in a single line item with both claimants as the "owner" subject to resolution of the relative share to be determined by a separate action. Maybe you could persuade the Judge to do it in this proceeding, but I have some doubts. Of course I don't know how Robert would look at that sort of proposal. But if the two of you were going to go down that path, you would have to structure this to isolate the dispute to the two parties and create no risk for the others on Exhibit 4.

Jim

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**From:** Ted Chester [<mailto:tchester@smilandlaw.com>]

**Sent:** Tuesday, November 18, 2014 12:58 PM

**To:** Dubois, James (ENRD)

**Subject:** RE: Antelope Valley Groundwater Adjudication: Draft of Judgment/Physical Solution November 18, 2014

Jim

Granite Construction Company and Little Rock Sand and Gravel, Inc. (part of the Lane Family) have not reached agreement with respect to division of the 360 acre feet of Overlying Production Rights allocated to them jointly on Exhibit 4 of the proposed Judgment and Physical Solution. If Granite and Lane do not reach agreement by Friday, November 21, 2014 (the date the settling parties have informally set for finalization of the settlement documents), then I plan to recommend that the Lane Family sign the Stipulation (as finally agreed to by the settling parties' counsel), and also request the Court to determine the division of the 360 acre feet between Granite and Lane. I am preparing to file a Case Management Statement which will make this request and also set forth a proposed schedule for the Court to hear this limited issue. If the matter is handled this way, then I cannot see how the disagreement between Granite and Lane, or the Court's resolution of it, would adversely impact any of the other settling parties.

I welcome any thoughts you might have.

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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**From:** Dubois, James (ENRD) [<mailto:James.Dubois@usdoj.gov>]

**Sent:** Tuesday, November 18, 2014 10:26 AM

**To:** Scott Kuney; Wendy Wang; 'Tom Bunn'; 'Daphne Borromeo Hall'; 'Casey, Ed'; 'jtootle@calwater.com'; 'jgoldsmith@kmtg.com'; 'franksatalino@sbcglobal.net'; 'lmcclhaney@bmblawoffice.com'; 'DEvertz@murphyevertz.com'; 'BJoyce@lebeauthelen.com'; 'mike@mclachlanlaw.com'; 'bbrunick@bmblawoffice.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 Dunn; 'marilyn.levin@doj.ca.gov'; 'rmyers@clifford-brownlaw.com'; Eric Garner; 'mfife@bhfs.com'; 'Jmarkman@rwglaw.com'; 'jim@mcmurtreyhartsock.com'; 'JHughes@KleinLaw.com'; 'Richard Zimmer ([RZimmer@clifford-brownlaw.com](mailto:RZimmer@clifford-brownlaw.com))'; Arnold K. Graham

**Cc:** Leininger, Lee (ENRD); Oyarzo Edwin ([edwin.oyarzo@us.af.mil](mailto:edwin.oyarzo@us.af.mil)); SEIDEL, WARREN A NH-04 USAF AFMC 412 TW/JA

**Subject:** RE: Antelope Valley Groundwater Adjudication: Draft of Judgment/Physical Solution November 18, 2014

Colleagues:

Attached is a revised draft of the Judgment and Physical Solution in Redline noting all changes since the November 10 CLEAN draft. There is also a CLEAN draft with a November 18 Watermark. Please suggest additional changes IF ANY, on the CLEAN draft. I can send a WORD version if needed.

I have **NOT** added the notice provision at this point, since it still seems to be up for debate. If that is the last issue we need to resolve, I will be quite pleased.

I will try to get out the Stipulation and Exhibits later today.

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](mailto:james.dubois@usdoj.gov)