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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-254348;

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 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. BC 364553

Wood v. A.V. Materials, Inc., et al., Superior Court of California, County of Los Angeles, Case No. BC 509546

Little Rock Sand and Gravel, Inc. v. Granite Construction Co., Superior Court of California, County of Los Angeles, North Judicial District, Case No. MC026932

Judicial Council Coordination No. 4408

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

OPPOSITION TO "OPENING BRIEF" OF LITTLE ROCK SAND AND GRAVEL, INC. RE TITLE TO GROUNDWATER ALLOCATION

Date: June 20, 2018
Time: 9:00 a.m.
Dept.: 222

[Supporting Declaration of Robert G. Kuhs filed concurrently herewith]

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I. INTRODUCTION

Despite Little Rock Sand and Gravel, Inc.'s ("**LS&G**") convoluted arguments regarding the parties' pre-judgment claims, resolution of this dispute is simple and straightforward. The Court's jurisdiction and duty is to interpret the Judgment, i.e., the Exhibit 4 Production Right allocated to "Granite Construction Company (Little Rock Sand and Gravel, Inc.)." The undisputed evidence, including the declarations of Messers McLachlan, Hughes, Zimmer, Joyce and Kuhs, and the February 20, 2015, email admission from Ted Chester to counsel for the United States that the allocation is "joint," establishes that the Exhibit 4 allocation to Granite Construction Co. ("**Granite**") and LS&G is simply that, "joint." LS&G has offered no extrinsic evidence to aid in interpreting the Exhibit 4 joint allocation. The law creates a presumption that Granite and LS&G are equal cotenants to the 234 acre-feet (AF). (Civ. Code § 686; *Caito v. United California Bank* (1978) 20 Cal.3d 694, 705.) LS&G has offered no evidence to overcome the presumption. Therefore, Granite and LS&G share the 234 AF Production Right equally. Any other result would constitute an impermissible amendment to the Judgment.

Not surprisingly, LS&G once again frames this dispute as a landlord/tenant dispute. But this is not a landlord/tenant issue. Granite is a landowner Stipulating Party that the Court found has a reasonable and beneficial use for water and established its overlying right. Granite does not claim water rights associated with land it leases from LS&G (the "**Leased Property**"). And the lease has absolutely no bearing on LS&G's latest post-judgment water grab. Nor do the parties' pre-judgment water rights have any bearing on the stipulated Exhibit 4 allocation since the parties waived their overlying rights when they signed the Stipulation for Entry of Judgment and Physical Solution ("**Stipulation**") and accepted the Judgment and Physical Solution's terms. Rather, since LS&G reneged on an oral division of the 234 AF, Granite and LS&G share the negotiated Exhibit 4 Production Right equally—unless, of course, this Court finds LS&G is a non-stipulating party, in which case LS&G is entitled to nothing.

LS&G's claim that it put all Stipulating Parties on notice of the conditional nature of its signature is untrue and irrelevant. In any case, LS&G could not unilaterally alter the terms of the Stipulation or Judgment. In fact, LS&G's own evidence establishes that LS&G did not have any

agreement with the Stipulating Parties or with the Court to condition its acceptance of the Stipulation and Judgment on a post-judgment trial of the Exhibit 4 Production Rights. Additionally, correspondence among counsel negotiating the Stipulation, including Mr. Chester, show that the Stipulating Parties rejected LS&G's proposals to allocate the entire 234 AF to LS&G and, after that proposal was rejected, to reserve this dispute in the Stipulation.

The rest of LS&G's brief is a hodgepodge of inconsistent arguments, incorrectly cited legal authorities, and misquoted evidence. For example:

- LS&G seeks to quiet title to an Exhibit 4 Production Right as of the very same day this Court entered judgment quieting title to all water rights in the Antelope Valley.
- LS&G claims ownership of a post-judgment Production Right based on arguments regarding the parties' pre-judgment water rights, not the Judgment or Stipulation.
- LS&G claims overlying appurtenant water rights based on LS&G's status as a tenant but argues that Granite has no water rights because it is also a tenant.
- LS&G claims a priority water right following a judgment in which LS&G stipulated that all rights (except the Federal Reserve right) are of equal priority.
- LS&G seeks rights under the Judgment but claims not be bound by the Judgment because its signature was "conditional."
- LS&G seeks rights under the Judgment but has not filed a motion, as the Judgment requires to invoke the Court's reserved jurisdiction.
- LS&G claims that the Court's rulings in its Statement of Decision regarding the Willis Class apply to Granite, even though Granite is not a Willis Class member.
- LS&G claims a right to water without providing a scintilla of evidence of any current or future beneficial need for water.

The simple uncontroverted fact is that on March 31, 2014, Granite and LS&G reached a handshake agreement (the "**Agreement**") on how to divide the 234 AF during the global settlement process, advised counsel for the other parties present that they had reached such an agreement, and the parties then advised the Court of the global settlement. Several months later, LS&G sought to renege on the Agreement and, in a series of letters to Granite's CEO, attempted

to extract a higher allocation. It is as if LS&G had ulterior motives and a separate plan for achieving them. Regardless of LS&G's motivations or tactics, the bottom line is that LS&G signed a stipulation it had no intention of honoring, claimed it had an unresolved dispute with Granite, then stood idly by while Judgment was entered, and now seeks to invoke this Court's equity to adjudicate a pre-judgment water dispute post-judgment. Equity should not save LS&G from its own untrustworthy dealings, dilatory tactics and the express terms of the Stipulation it signed.

Below, we begin with a discussion of Granite's water rights before the Judgment and its negotiations for its Production Rights. Next we ask the Court to address two preliminary matters before it considers the merits of LS&G's Opening Brief—namely, that LS&G's Opening Brief is procedurally defective in the absence of a motion and that LS&G has confirmed that it did not intend to be a Stipulating Party. Turning to the merits, we then address the false premises upon which LS&G's position is based. Lastly, we set forth Granite's position that the parties hold the Exhibit 4 allocation jointly and equally.

II. STATEMENT OF FACTS REGARDING GRANITE'S RIGHTS

A. Granite Owns Land In The AVAA, Including Land Adjacent To The Leased Property That Is Part Of Granite's Littlerock Quarry.

Granite is a landowner Stipulating Party that negotiated overlying Production Rights under the Judgment and Physical Solution ("**Judgment**") as stated on Exhibit 4. As described in detail in the Memorandum in support of Granite's pending motion to interpret and enforce the Judgment ("**Granite's Motion**"), Granite owns about 217 acres of land within the AVAA, including about 67 acres immediately adjacent to Leased Property. (See Memorandum in Support of Motion by Granite ("**Memo**"), Apr 13, 2018, pp. 2-3.) In 2011, Granite amended its mining and reclamation plan for its Littlerock Quarry to include 55 acres of Granite's adjacent land. At the Littlerock Quarry, Granite is mining its own property, using water for dust control and to process Granite's rock and sand materials ("aggregates"). Granite will continue to use the wells and water produced therefrom to support mining operations on Granite's land and processing operations on the Leased Property into the foreseeable future. (*Ibid.*) Thus, at the time

of the global settlement negotiations, Granite had overlying water rights associated with land that is part of its Littlerock Quarry in addition to overlying rights associated with the 145 acres on which it operates its Big Rock Quarry.

The Court in part found in its Statement of Decision that Granite and "each stipulating Landowner Party" has "proven their respective land ownership or other appropriate interest in the Basin and reasonable use and established their overlying right." (Statement of Decision, p. 10, ll. 14-16.)

B. Granite Negotiated With All Other Stipulating Parties For Allocations Of Overlying Production Rights To Granite Based On Granite's Land Ownership And Its Current and Future Need For Groundwater.

When Granite negotiated the 234 AF allocation for Granite's Littlerock Quarry with the other Stipulating Parties, Granite's status was as a landowner, producer, and user of water in the AVAA with a then-current and future need for groundwater to support its operations at two quarries. During the Phase 4 Trial Granite submitted evidence of its pumping and water use at both its Littlerock Quarry and Big Rock Quarry during the years 2011 and 2012, which showed pumping at Littlerock Quarry of more than 400 AF per year in 2011 and 2012 and approximately 16 AF per year at its Big Rock Quarry for landscape maintenance during the same two years. As noted in the Supplemental Declaration of William Taylor, Granite continues to operate the Littlerock Quarry and will transition operations to the Big Rock Quarry over time as it phases out mining at Littlerock. Thus, Granite's need for water for its operations in the Antelope Valley for the foreseeable future will remain relatively constant at more than 400 AF per year.

Granite's negotiated Exhibit 4 allocations for its Big Rock and Littlerock Quarries were not based strictly on the individual 2011-2012 pumping histories at the two locations.[1] Instead, Granite negotiated allocations based on Granite's ownership of land with a current and future need for water, its status as an economic driver in the community, and based on the relative

[1] Granite originally had a single allocation listed on Exhibit 4 as of March 31, 2014, but broke out the allocation for the Big Rock Quarry when the dispute with LS&G arose and LS&G asserted it was also entitled to Granite's entire allocation, including the portion negotiated for the Big Rock Quarry. (Kuhs Opp. Decl., ¶¶ 4-5, 13.)

needs of the other Stipulating Parties.[2] Thus, although Granite's 2011-2012 pumping history at Big Rock was relatively small (about 16 AF/year) since mining operations had not yet commenced there, Granite negotiated a Production Right of 126 AF for Big Rock and 234 AF for Granite's Littlerock Quarry.

C. Granite Gave Up Valuable Consideration As A Landowner In Exchange For The Stipulation With All Other Stipulating Parties, Including The Public Water Suppliers, The United States And Other Landowners.

In agreeing to the Stipulation, Granite gave up, among other things, its right to challenge the prescription claims of the Public Water Suppliers ("**PWS**"), the Federal Reserve Right and the quantities of the correlative rights claims of other landowners.[3] Granite had compiled evidence regarding the PWS's pumping history and could have made compelling arguments against their entitlement to prescriptive rights as against Granite as well as regarding the quantification of their prescriptive rights. And some of the stipulating landowner parties had questionable claims. For example, Mr. Burrows—another client of Ted Chester, LS&G's counsel—submitted evidence of alleged water use in 2011 and 2012 on his orchard of dead peach trees with non-operational water distribution facilities. According to the Phase 4 finding, Mr. Burrows pumped only a stipulated 100 AF per year. In exchange for the terms of the Stipulation and Judgment, Granite and other Stipulating Parties agreed to the allocation to Mr. Burrows of 295 AF. Granite also gave up the right to contest the Judgment under which overlying water rights are no longer correlative, but instead are now quantified and transferrable. Granite agreed to permanent transferrable rights only as part of the Judgment providing the corresponding Production Rights.

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[2] This is consistent with the court's holding in *Tehachapi-Cummings County Water Dist. v. Armstrong* (1975) 49 Cal.App.3d 992, 1001, wherein 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**." (emphasis added; accord Cal. Const., art. XIV, § 3; Littleworth and Garner, California Water (1995) p. 52.)

[3] Granite's counsel participated extensively in the Phase 5 Trial.

III. PRELIMINARY MATTERS

There are two significant issues that the Court should address before considering the merits of LS&G's arguments: (A) LS&G's Opening Brief was filed without a motion, and (B) LS&G's conditional signature means that LS&G is not a Stipulating Party.

A. LS&G's "Opening Brief" Filed Without A Motion Is Procedurally Defective.

LS&G is not entitled to the relief prayed for in its First Amended complaint filed in the add-on action ("**FAC**") because LS&G has not filed a motion with the Court. In Section 6.5 of the Judgment, the Court reserved jurisdiction "for the purpose of enabling the Court, ***upon a motion of a Party or Parties*** . . . to make such further or supplemental order or directions as may be necessary or appropriate to interpret, enforce, administer or carry out" the Judgment. (Emphasis added.) Thus, Granite and LS&G stipulated, and the Court ordered, that "the issues and disputes between [Granite] and [LS&G] . . . raised in the pleadings filed in the add-on case shall be resolved by law and motion practice pursuant to Paragraph 6.5 of the Judgment and Physical Solution entered in the AV Cases." (Stipulation and Order for Management of Post-Judgment Dispute, Oct 9, 2017, ¶ 1.) On January 31, 2018, the Court set a briefing schedule and hearing date for *motions* in the add-on case, including an April 13, 2018, deadline for filing *motions* and supporting papers. (Notice of Ruling, Feb 7, 2018.) Accordingly, in the absence of a noticed motion by LS&G, the Court lacks jurisdiction to grant LS&G relief.

The lack of a motion for specified relief and the basis therefor violates due process and also creates uncertainty regarding the relief and basis for the relief LS&G seeks. On the one hand, in its FAC, LS&G seeks to "quiet title" to the joint 234 AF Production Right as of the date the Judgment was entered. (FAC, ¶ 25.) As discussed in Granite's Motion, an order "quieting title" to the joint Production Right in LS&G's name alone would amend the Judgment, which the Court lacks jurisdiction to do. On the other hand, based on its "Opening Brief," LS&G seeks to "quiet title" to a post-Judgment Production Right based on facts supporting LS&G's claims to pre-judgment correlative overlying water rights. LS&G's claims must fail because this Court

lacks jurisdiction to grant such relief, however, because such claims are merged with the Judgment which already quieted title to all pre-judgment water rights in the basin.[4]

B. LS&G Confirms The "Conditional Submission" Of Its Signature To The Stipulation, Meaning LS&G Is Not A Stipulating Party.

Granite's Memo sets forth the facts and evidence showing that LS&G is not a Stipulating Party. (Memo, pp. 8-9.) Most significantly, LS&G principal George Lane testified in deposition that LS&G "absolutely" did not intend to be bound by all the Stipulation's terms, particularly the Exhibit 4 allocation. (*Ibid.*) LS&G's Opening Brief confirms that LS&G did not intend to be a Stipulating Party and should be removed from Exhibit 4.

1. "Conditional" Is How LS&G Characterizes Its Submission Of Its Signature To The Stipulation.

Consistent with Mr. Lane's non-committal approach to the Stipulation, in its Opening Brief LS&G confirms that LS&G's signature to the Stipulation was "conditional." (Opening Brief ("**Op. Br.**"), p. 20, l. 17.) LS&G says it "submitted its signature to the Stipulation . . . with the reservation that title to the Allocation 'remains unresolved' and that it 'will be addressed and resolved at a later time.'" (*Id.* at p. 11, ll. 9-11; see Declaration of Ted Chester ("**Chester Decl.**"), ¶¶ 25-26 and Ex. I.) In schoolyard terms, LS&G claims it had its fingers crossed behind its back.[5]

Consistent with its lack of good faith, LS&G's claim that it informed "all parties" of its attempted unilateral reservation is false. Its counsel sent the email containing the reservation *only to counsel for the United States*, and not to Granite or any other Stipulating Party. Mr. Chester, in his declaration in support of LS&G's Opening Brief, falsely states that in his "February 20, 2015 email, by which [he] submitted Little Rock's signature to the Stipulation," a copy of which is attached to his declaration as Exhibit I, he "informed all parties" of Little Rock's purported "reservation." (Chester Decl., ¶¶ 25-26.) As is plain from Exhibit I to Mr. Chester's declaration,

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[4] Had LS&G filed a motion, it would have been limited to a 15 page brief. (Cal. Rules of Court, rule 3.1113(d).) LS&G's Opening Brief is 24 pages, which the Court may refuse to consider due to its length. (Rules 3.1113(d), (g) & 3.1300(d).) Granite, however, is compelled to respond.

[5] LS&G's equivocal "conditional" view of the Stipulation is akin to LS&G's position regarding the parties' pre-Judgment Agreement, i.e., that LS&G's agreement to the division was conditional and therefore not binding.

however, he sent that email only to James Dubois, counsel for the United States. A later email from the United States to the Stipulating Parties indicated that LS&G had signed the Stipulation but did not mention the conditional submission of LS&G's signature. (Declaration of Robert G. Kuhs in Support of Opposition to Op. Br., ("**Kuhs Opp. Decl.**"), ¶ 18 & Ex. HH.)

2. LS&G Is Either Fully Bound By The Stipulation Or Is Not A Stipulating Party.

A fundamental purpose of the Stipulation was to settle all disputes and end all litigation among the Stipulating Parties regarding water rights in the Basin. The Stipulation provides in pertinent part:

> a. The Judgment is a determination of all rights to Produce and store Groundwater in the Basin.
>
> b. The Judgment resolves all disputes in this Action among the Stipulating Parties.

(Stipulation, p. 1.) These stipulated facts constitute judicial admissions and are therefore conclusive both as to the global determination of groundwater rights and absence of dispute, including the determination of LS&G and Granite's groundwater rights and the absence of dispute as between Granite and LS&G. (See *Barsegian v. Kessler & Kessler* (2013) 215 Cal.App.4th 446, 452 ["Facts to which adverse parties stipulate are judicially admitted" and "[are] therefore conclusive."].)

LS&G's claim that it unilaterally reserved an issue for future litigation with another landowner Stipulating Party is both contrary to these express provisions and a legal impossibility. A party to a stipulation for entry of judgment may not unilaterally reserve issues for post-judgment litigation. (*Ellena v. State of California* (1977) 69 Cal.App.3d 245, 260 [An exception to the normal res judicata effect of a stipulated judgment "requires that an otherwise included issue be withdrawn by an express reservation."].)[6] A stipulation "results in a judicial admission removing issues from the case." (*In re Marriage of Hahn* (1990) 224 Cal.App.3d 1236, 1239, citing 1 Witkin, Cal. Evidence (5th ed. 2012) Hearsay, § 101, p. 925 and cases cited

[6] The *Ellena* court held that a stipulated judgment in condemnation precluded later litigation by the landowner for severance damages because there was no express language in the stipulation withdrawing the severance damage issue from the scope of the stipulated judgment. (*Ibid.*).

therein.) "A stipulated judgment is as conclusive as to the matters in issue it determines as a judgment after trial." (*Sargon Enterprises, Inc. v. University of Southern California* (2013) 215 Cal.App.4th 1495, 1507 [holding that because the stipulated judgment there did not reserve any issues for further determination the judgment was final on all issues before the court].) Here, neither the Stipulation nor the Judgment expressly reserved LS&G's claimed Exhibit 4 dispute for post-judgment litigation.

Before considering granting LS&G any relief, the Court should decide whether LS&G is a Stipulating Party bound by all the terms of the Stipulation and Judgment. If LS&G is a Stipulating Party, it may not accept the benefits—including provisions in the Physical Solution that are only available by stipulation such as the right to transfer Production Rights and the right to Carry Over rights from year to year—while selectively rejecting certain of the burdens, such as the joint allocation to landowners Granite and LS&G. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1256, fn. 17 [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)];[7] Civ.

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[7] In *Barstow,* the California Supreme Court addressed the rights of the so-called Cardozo appellants and Jess Ranch appellants in the Mojave Basin. Jess Ranch pumped over 18,000 AF of water per year to support its trout raising operations and ancillary agricultural property. (*Id.* at p. 1239.) The stipulating parties there contested the amount of water Jess Ranch put to beneficial use. The trial court concluded that for purposes of Jess Ranch's joining the stipulated physical solution, it would calculate the consumptive amount used annually at 7,480 AF, substantially less than the amount Jess Ranch produced. On appeal, Jess Ranch argued that it wished to participate in the physical solution but contended that it had been prevented from doing so because its annual production rights were not calculated on the same basis as other producers. (*Id.* at p. 1254.) The Court of Appeal agreed with Jess Ranch and the Supreme Court reversed, finding that the trial court did not abuse its discretion as to Jess Ranch. (*Id.* at p. 1256.) Jess Ranch then argued that if the Supreme Court reversed the Court of Appeal judgment, it must, on remand, require the trial court to consider water priorities under the physical solution and judgment. (*Id.* at p. 1256, fn. 17.) The Supreme Court rejected the argument stating:

> As the Court of Appeal observed, the physical solution 'establishes a system of water regulation for the stipulating parties that is independent of their water rights, if any, under traditional application of riparian, overlying or appropriative priorities. **Since Jess Ranch seeks to participate in the system established by the [physical solution], it must waive its existing water rights in order to do so. Thus, the question of whether it has existing rights is irrelevant for this purpose. If Jess Ranch desires to participate in the [physical solution], it must, for this purpose, refrain from asserting its existing water rights and it must**

Code § 1589 ["A 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, to the person accepting."]; see also § 3521 ["He who takes the benefit must bear the burden."].

Here, the Court must reject LS&G's argument that it may "conditionally" accept portions of the Stipulation and Judgment while reserving its right to assert and litigate its pre-judgment water rights. Like the Jess Ranch appellants in *Barstow*, if LS&G seeks to participate in the Judgment and Physical Solution, it must waive its pre-judgment water rights and "accept all of the terms" of the Judgment and Physical Solution applicable to all stipulating parties.

IV. ARGUMENT ON THE MERITS

A. LS&G's Position Is Based On Several False Premises.

LS&G uses its Opening Brief to construct a straw man—that Granite contends that it is entitled to water rights that are associated only with the Leased Property—and then spends many pages attacking its straw man. Granite does not claim water rights associated with the Leased Property. Meanwhile, LS&G's position that it is entitled to all 234 AF of the joint allocation to "Granite Construction Company (Little Rock Sand & Gravel, Inc.)" is based on several false premises, including misleading uses of ellipses to distort the meaning of the Stipulation, Judgment and Statement of Decision. LS&G's false premises include: (i) the joint Exhibit 4 allocation is an allocation only to the Leased Property; (ii) Granite did not claim or possess overlying water rights associated with Granite's own land; (iii) LS&G is entitled to Production Rights as a tenant on two of the four leased parcels; (iv) the pre-judgment lease between LS&G and Granite trumps the Judgment and Production Right allocation to Granite; (v) the other Stipulating Parties intended to grant the 234 AF solely to LS&G; (vi) the allocations in Exhibit 4 were based solely on the Stipulating Parties' land ownership and pumping histories; (vii) LS&G has water rights of a higher "priority" than Granite; and (viii) Granite is member of the Non-Pumper Class ("**Willis Class**"), or should be treated as one.

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accept all of the terms of the [physical solution] judgment that are applicable to all stipulating parties."

(*Ibid.*, emphasis added.)

1. The Exhibit 4 Allocation To "Granite Construction Company (Little Rock Sand & Gravel, Inc.)" Is An Allocation To The Identified Producers, Not To Specific Property As LS&G Contends.

The thrust of LS&G's position is that the allocation to Producer "Granite Construction Company (Little Rock Sand and Gravel, Inc.)" belongs entirely to LS&G because the allocation was to the Leased Property. (Op. Br., p. 1, ll. 14-15; see FAC, ¶ 20.) LS&G's position is obviously a false premise since the Judgment grants Overlying Production Rights to identified *Producers*, not property. Exhibit 4 lists Overlying Production Rights by "Producer Name" organized alphabetically. If the Stipulating Parties' intent was to allocate water to LS&G as a landowner, there was no reason to list "Granite Construction Company" first and without parenthesis around Granite.

2. Granite Claimed Overlying Rights To Groundwater For Its Own Land Included In The Littlerock Quarry Independent Of Any Rights Associated With The Leased Property.

LS&G's contention that the allocation belongs to LS&G alone is based on another false premise: that Granite only claimed water rights associated with the Leased Property and did not claim water rights for Granite's own land associated with the Littlerock Quarry. As set forth in Granite's Memo, Granite owns several parcels, including 67 acres of land adjacent to the Leased Property, 55 of which are part of Granite's Littlerock Quarry. (See Memo, pp. 2-3.) As owner of that land at the time of the global settlement discussions and entry of Judgment, Granite had correlative, overlying water rights independent of the Leased Property.

In an apparent effort to mislead the Court into believing that Granite claimed only overlying rights for the Leased Property, in its Opening Brief LS&G states that during the Phase 4 trial Granite claimed an overlying right for the Leased Property but omits that Granite claimed water rights for Granite's own land:

> GCC submitted the Declaration of William Taylor in Lieu of Deposition Testimony for Phase 4 Trial, which stated, "Granite claims an overlying right to groundwater for the property listed in Exhibit A", which list included the five parcels that compose the Leased Land. . . .

(Op. Br., p. 7, ll. 14-16.) What LS&G does not tell the Court is that the Exhibit A referenced in Mr. Taylor's declaration also lists the five parcels Granite owns associated with the Littlerock Quarry, two Granite parcels associated with Granite's Big Rock Quarry and a local headquarters

parcel. (LS&G's Request for Judicial Notice, Ex. 18, Ex. A thereto.) Granite expressly claimed overlying groundwater rights for its own property.

Granite is not merely LS&G's tenant, and LS&G's argument that a tenant using only a landlord's water rights does not acquire the landlord's water rights is misplaced. As noted above, Granite does not claim LS&G's water rights or water rights derivative of the Leased Property. At the time of the global settlement discussions, Granite had water rights associated with its own land other than the Leased Property and signed the stipulation in its capacity as a landowner. And, as noted above the Court found in its Statement of Decision that Granite had proven its reasonable use of water and had established its overlying rights.

LS&G argues that Granite's "ownership of the Adjacent Land is irrelevant, because, as a tenant leasing Little Rock's water rights, [Granite] cannot acquire title to water rights arising from the Leased Land that are adverse to Little Rock," citing *Fryer v. Fryer* (1944) 63 Cal.App.2d 343, 346, 348; *Swartzbaugh v. Sampson* (1936) 11 Cal.App.2d 451, 462 and *Storrow v. Green* (1918) 39 Cal.App. 123, 126-27. (Op. Br., p. 15, ll. 19-25; p. 17, ll. 17-23.) LS&G's reliance on these cases is misplaced for several reasons. First, Granite is not claiming water rights associated with the Leased Property. Second, none of the authorities cited are on point. *Fryer*, concerned alleged prescriptive rights to a water well.[8] Here by contrast, Granite is not

[8] Sara Fryer owned lots 1, 2, 3 and 4 of Tract 2154. (63 Cal.App.2d at p. 344.) For about 30 years prior thereto, the defendants, who were Mrs. Fryer's sons, were the owners of lot 6 of the same tract. In order to secure a loan, defendants needed evidence of water rights appurtenant to lot 6. In support of the loan, Mrs. Fryer executed an agreement reciting that the well located on lot 2 would be maintained to deliver water to lot 6. (*Id.* at p. 345.) The agreement further provided that it might be cancelled after the mortgage had been fully paid. (*Id.* at p. 345-46.) Mrs. Fryer subsequently conveyed lots 1, 2, 3 and 4 to her three other children who later cancelled the water supply contract after the mortgage had been paid. When a controversy regarding the well arose, the owner of lot 2 sued for declaratory relief to stop defendants from using water from the well on lot 2 to irrigate lot 6. In response, the defendants asserted a prescriptive right to use the water developed on lot 2 for irrigation of lot 6. (*Id.* at p. 346.) The court of appeal affirmed the trial court's ruling against defendants on their claim of prescription, holding that defendants could gain no right to the well by prescription since their prior use was by permission under the written agreement. Defendants also argued they had established a right to use water from the well on lot 2 to irrigate lot 6 under the correlative rights doctrine. The court acknowledged that the defendants had a right to develop and use water from a common pool under their land but since the agreement had been terminated, defendants had no right to continue taking water from the well on lot 2 for irrigation on lot 6. (*Id.* at p. 348.)

asserting prescriptive rights against LS&G. *Swartzbaugh* is not remotely on point as that case arose out of a co-tenant's baseless fear of losing her interest in leased premises to another lessee by prescription. The court of appeal recited the general rule that a lessee in possession of real property cannot hold adversely to the landlord while under the lease. (11 Cal.App.2d at p. 462.)[9] Again, these are not our facts. LS&G's reliance on *Storrow* is also misplaced as it involved claims of adverse use.[10] In summary, neither *Fryer*, *Swartzbaugh*, nor *Storrow* hold, as LS&G suggests, that Granite's ownership of Adjacent Land is irrelevant to resolution of Granite's water rights.

3. Because Granite's Land Overlies the Basin, There Is No Legal Requirement That Granite Extract Water from Its Own Property.

LS&G argues that since Granite extracted water from the Leased Property, the Exhibit 4 Production Right must belong exclusively to LS&G. (Op. Br., p. 15, l. 14 to p. 16, l. 8.) To the contrary, it is well-settled that so long as a property owner's property overlies the basin, there is no legal requirement that the method of extraction or diversion be located on a specific parcel. (1 Slater, California Water Law and Policy (2017) § 3.13[1][b], p. 3-45.) Thus, an overlying water right holder may extract groundwater from other land overlying the basin provided no

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[9] In *Swartzbaugh*, one co-tenant brought an action to cancel two leases executed by her co-tenant giving lessee exclusive possession of the leased property for an extended period of time without plaintiff's consent. The appellate court affirmed the trial court's granting of defendant's non-suit, holding that where one tenant leases common property to a stranger to title the other tenants in common cannot cancel the lease or recover exclusive possession of the entire property. (*Id.* at p. 461.) The appellant had expressed a fear that she may lose her interest in the leased premises to the tenant by prescription.

[10] In *Storrow*, the plaintiff brought an action for a decree that the plaintiff possessed an interest in a right-of-way in and over a strip of land and to enjoin defendant from interfering with plaintiff's use and enjoyment. (39 Cal.App. at p. 124.) Defendant responded that he had acquired all of plaintiff's interest in the right-of-way by adverse use. (*Id.* at p. 125.) The trial court entered judgment for plaintiff finding that the adverse use had not been for the period prescribed by statute and the appellate court affirmed.

intervening land owner is harmed. (*Id.* at § 3.13[3], p. 3-47; Hutchins, The California Law of Water Rights (1956) p. 475.)[11]

Here, LS&G confuses the existence of an overlying water right with the means and location of diversion. It is undisputed that prior to entry of Judgment both Granite and LS&G owned land overlying the Basin and thus both held overlying groundwater rights. Is it also undisputed that Granite installed and operated the means of extraction, i.e., the groundwater wells and used the water to process its aggregates. However, since the means of extraction is mere plumbing and not a part of the groundwater right (1 Rogers & Nichols, Water for California (1967) § 251, p. 360, citing *Garvey Water Co. v. Huntington Land & Improv. Co.* (1908) 154 Cal. 232, 241-42) neither ownership of the wells nor place of extraction resolves the issue before the court. The only relevance of pumping history was to establish self-help and defeat claims of prescription (since overlying rights may be reduced only by prescription). Here, however, all Stipulating Parties, including Granite resolved the PWSs' claims of prescription by the Stipulation and resulting Judgment.[12]

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[11] In *Burr v. Maclay Rancho Water Co.* (1908) 154 Cal. 428, 433 the Court considered the meaning of language in several deeds reserving all "artesian water that may be developed on said land" overlying a common groundwater supply. In defining the overlying right, the Court held that so long as the overlying water was used on parcels overlying the basin, the point of diversion did not have to be on a specific overlying parcel. The Court reasoned that the common supply of the correlative right and the fact that the point of diversion did not result in injury to another water right holder:

> Plaintiff's respective blocks of land are all situated over the basin in question and each block is entitled to sufficient water from the basin for the necessary use thereon. **The taking of it all by means of wells on one lot, instead of boring wells on each and obtaining for each the necessary water from its own well, would be a mere technical** and wholly unsubstantial departure from the terms of the reservation, unless some special injury results from the location of the respective wells.

(*Id.* at p. 434, emphasis added.) A party with an appropriative right may also change the place of extraction, provided others are not injured by the change. (*City of San Bernardino v. City of Riverside* (1921) 186 Cal. 7, 28-29; *Barton v. Riverside W.Co.* (1909) 155 Cal. 509, 517.)

[12] Indeed, if the point of extraction was the *sine quo non* of overlying rights, as LS&G argues, LS&G could only claim water rights on one parcel. (Declaration of George M. Lane, ¶¶ 11-12, 23 [Of the 3 parcels LS&G does own, A, B and C, there is a water well only on Parcel C.])

4. LS&G Does Not Own All Of The Leased Property; LS&G Is A Tenant Subleasing Two Of The Four Parcels Alleged In The Complaint.

LS&G alleges in its *Verified* First Amended Complaint that "at all relevant times herein mentioned" LS&G "was and is the owner" of four parcels identified as Parcels 1 through 4 and defined as the "Little Rock Property." (FAC, ¶ 1.) Those verified allegations are *false* and "Little Rock Property" is a misnomer. As LS&G admits in its Opening Brief and in discovery, LS&G does not own and has never owned two of the parcels that comprise the Leased Property. (Op. Br., pp. 2-3; see also Supplemental Declaration of Robert G. Kuhs ("**Supp. Kuhs Decl.**"), ¶¶ 8-10 & Ex. N; Lane Depo., pp. 51-53, 65-67 (Ex. K).) Thus, to support its 13th-hour water grab LS&G now suggests that all these legal entities are the alter ego of George Lane.[13]

5. The Lease For The Leased Property Does Not Bear On The Production Right In The Judgment.

LS&G argues that the lease for the Leased Property is the only agreement governing Granite's and LS&G's water rights pertaining to Granite's Littlerock Quarry. (Op. Br., p. 18, ll. 3-28.) This is a false premise for at least four reasons. First, the lease does not address the water rights that were appurtenant to Granite's own land. Second, as noted above, the 234 AF Production Right was not allocated to the Leased Property and Granite does not claim water rights associated with the Leased Property. Third, the stipulated Judgment is an agreement (the only one) governing Granite's and LS&G's respective water rights in the AVAA. Fourth, the lease predates the adjudication and does not address the adjudication or the parties' rights under the Judgment. The lease was initially entered into in 1987 while the first complaint in the consolidated cases was filed in 1999. Although the lease was amended in 2010 to extend the term, neither the lease nor the amendments address which party gets credit in the adjudication for the pumping or use of groundwater or how the parties are to divide any allocation that may be granted pursuant to the adjudication.[14]

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[13] LS&G goes for far as to argue that "Lane Family entity" Monte Vista (also Mr. Chester's client) was "deprived of any allocation under the Judgment," and that the remedy for counsel's negligence is to transfer Granite's Production Right to Monte Vista. (Op. Br., p. 17, ll. 3-16.)

[14] Granite is not denying LS&G's title to the lands LS&G owns. LS&G has admitted that it owns only two of the four parcels that Granite leases from LS&G. Nor is Granite seeking to void LS&G's rights to water, to the extent LS&G has such rights.

6. The Stipulating Parties Intended To Give Granite Production Rights For Use In Connection With Its Little Rock Quarry And Did Not Intend To Allocate All 234 AF To LS&G.

As confirmed by counsel for several of the Stipulating Parties in declarations filed in opposition to LS&G's prior post-Judgment motion (copies attached to the Appendix accompanying Granite's Motion), based upon Granite's ownership of land and its beneficial use of water on that land independent of the Leased Property, as well as Granite's beneficial use of water at the Littlerock Quarry, the Stipulating Parties collectively agreed to allocate Production Rights to Granite as stated on Exhibit 4. There is absolutely no evidence that the Stipulating Parties intended to allocate all 234 AF of the Production Right to LS&G.

7. The Exhibit 4 Allocations Were The Product Of Negotiations That Took Into Account Many Factors, Including Current And Future Need For Water, Not Just Past Pumping History And Land Ownership.

The Stipulating Parties agreed to the Exhibit 4 allocations following a long negotiation process involving hundreds of parties. In negotiating the various allocations of Production Rights, the parties took into account a myriad of factors pertaining to each producer and user of water, including, primarily, their current and future need for water. The Phase 4 production quantities were merely a starting point for negotiations. If the parties had agreed to base the allocations solely on the 2011-2012 pumping histories there would have been no need for negotiations. The 2011-2012 pumping data was not representative for many producers. Thus, each Producer received an agreed allocation based on each Producer's ability to negotiate with the other Settling Parties. In the words of counsel for AGWA, Mr. Fife, actual pumping numbers were only a factor, and Exhibit 4 was not based on any formula, it was a product of negotiations:

> While [Phase IV discovery] was partially relevant for the Exhibit 4 negotiations, there was a lot of information available to everyone about everyone that we developed through the Robie proctoscope process and elsewhere. Even then, actual pumping numbers were only one part of the equation, to the extent that 'equation' is even a relevant word -- personally I think 'fist fight' would be a better description.

(M. Fife email to J. Dubois and R. Kuhs, Dec. 18, 2014 (Kuhs Opp. Decl., ¶ 17 & Ex. GG.)

That Exhibit 4 is the product of negotiations not an equation is illustrated by the allocation to Granite for its Big Rock Quarry and many other producers.[15] Although Granite had pumped only about 16 AF per year at its Big Rock Quarry in 2011 and 2012, based on Granite's overall need for water to support its operations in the Antelope Valley and Granite's plans to transition operations from Littlerock to Big Rock over time in compliance with mining permit conditions, Granite was able to negotiate a 126 AF allocation for its Big Rock Quarry and a 234 AF allocation for its Littlerock Quarry. LS&G's claims were also taken into account in the negotiations, thus resulting in a joint allocation of 234 AF. If LS&G wished for the allocation to be stated differently, it was incumbent on LS&G to negotiate a different stipulated allocation, litigate its dispute with Granite before Judgment was entered, or withdraw its conditional signature. Having accepted the Judgment as written, LS&G is bound by its terms. To hold otherwise would jeopardize the certainty the Judgement created for all parties.

8. Granite's Production Rights Are Of Equal Priority To LS&G's.

A theme of LS&G's Opening Brief is that its water rights are of a higher "priority" than Granite's. (See Op. Br., p. 12, ll. 9-15; pp. 14-17.) LS&G's references to "priority" reflect a misunderstanding of water law and the Judgment. Before the Judgment, Granite and LS&G were overlying owners with correlative rights of equal priority. (See *Barstow,* supra, 23 Cal.4th 1224, 1240 ["One with overlying rights has rights superior to that of other persons who lack legal priority, but is nonetheless restricted to a reasonable beneficial use."]; *Pasadena v. Alhambra* (1949) 33 Cal.2d 908, 925.)[16] After the Judgment, Granite and LS&G hold Production Rights of equal priority, as Section 5.1 of the Judgment expressly states: "all the Production Rights established by this Judgment are of equal priority, except the Federal Reserved Water Right . . . , and with the reservation of the Small Pumper Class Members' right to claim a priority under

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[15] See, e.g., Exhibit 4 allocations to Sheldon Blum, Burrows/300 A 40 H LLC, County Sanitation District, Sunrise Ranch, LLC, Van Dam Family, Copa De Oro Land Company, Healy, Rosamond Ranch.

[16] LS&G's reliance on *Barstow* and *Pasadena* to support its priority argument is misplaced because in both cases the discussions of priorities concerned the relative priorities of different classes of water rights, i.e., overlying, appropriative and prescriptive. Here, both Granite and LS&G held overlying water rights, which have equal priority.

Water Code section 106." (Judgment and Physical Solution, p. 15, ll. 23-26.) The Judgment is dispositive.

9. Granite Is A Landowner Stipulating Party And Not A Member Of The Willis Class As LS&G Misleadingly Suggests.

Employing an intentionally misleading use of ellipses, LS&G argues that the Court's December 23, 2105 Statement of Decision precludes any allocation to Granite. (Op.Br., p. 17, ll. 23-26.) To the contrary, the portion of the Court's Statement of Decision that LS&G quotes, on page 14, explicitly refers to the Willis Class not to Granite. LS&G intentionally omitted the phrase "*of the Willis Class*" in the middle of the quotation and replaced those words with ellipses. Granite is absolutely not a member of the Willis Class. Granite is a Stipulating Party and an overlying landowner that has exercised its overlying rights, both at its Big Rock Quarry and at the Littlerock Quarry.

Additionally, LS&G's assertion that Granite has not shown that it has used any groundwater on its land is false. As explained in the Declarations of William Taylor previously submitted to the Court in opposition to LS&G's prior post-judgment motion and in support of Granite's pending motion, LS&G's land at the Littlerock Quarry is "played out" and Granite is currently mining its own land, which operations require water, including for dust control.[17]

B. Given LS&G's Conduct And The Inequity Of Its Plea, Equity Is The Last Thing LS&G Should Seek To Invoke.

A judicial declaration that LS&G holds title to all 234 AF of the Production Right allocated jointly to "Granite Construction Company (Little Rock Sand & Gravel, Inc.)" would be fundamentally inequitable for many reasons.

[17] See Declaration of William Taylor in Opposition to Lane Family's Motion for Post Judgment Supplemental Order Re Granite Construction Company, ¶¶ 12-13; Supplemental Declaration of William Taylor in Support of Motion By Granite Construction Company to Interpret and Enforce the Judgment and to Partition the Exhibit 4 "Granite Construction Company (Little Rock Sand And Gravel, Inc.)" Production Right, ¶ 5.)

1. Granting LS&G's Requested Relief Would Retroactively Void Granite's Overlying Water Rights Associated With Its Adjacent Land and Provide A Windfall To LS&G.

As discussed above and in Granite's Motion, Granite is an overlying landowner of 67 acres adjacent to the Leased Property, 55 acres of which is part of the Littlerock Quarry and is actively being mined with a need for water. A declaration that LS&G is the owner of all 234 AF of Production Rights would effectively void Granite's pre-judgment overlying rights and post-Judgment Production Rights. Such a declaration would relegate Granite, with respect to those overlying rights, to the same status as a party that failed to appear in the coordinated actions. Such a result would be remarkably inequitable given Granite's active and good faith participation in the litigation and global settlement negotiations and its support of the Judgment.

2. LS&G's Position Would Deprive Granite Of The Benefit Of Its Bargain With The Other Stipulating Parties.

Granite negotiated the 234 AF allocation with all Stipulating Parties, and granted those parties rights in exchange. By entering into the Stipulation, Granite settled all claims of all Stipulating Parties, compromising Granite's rights in exchange for the benefits of the Stipulation and Judgment. (See Stipulation, ¶ 2b.) As noted above, Granite settled its claims to groundwater with all Stipulating Parties and the Stipulating Parties allocated water to Granite for its Littlerock Quarry based on Granite's status as a fee owner with a current and future beneficial need for water. (See section II, supra.) Granite as a fee owner resolved all prescription claims by the Public Water Suppliers and all claims by and among all settling overlying land owners, including LS&G. Allowing LS&G to retroactively re-litigate its pre-judgment correlative rights or post-Judgment Production Rights for Granite's Littlerock Quarry would strip Granite of the benefit of its bargain with all other Stipulating Parties.

By asking the Court to declare that the 234 AF belongs exclusively to LS&G, LS&G is inviting the Court to effectively void the Judgment and reopen negotiations among all Stipulating Parties or, at a minimum, with all other clients of Ted Chester, LS&G's counsel.

3. LS&G's Position Would Leave Granite With Insufficient Water For Its Operations In The AVAA.

Granite signed the Stipulation believing it had reached an agreement that would provide sufficient water for Granite's needs. If LS&G is granted all 234 AF and Granite 0, as LS&G requests, Granite will not have sufficient water for its operations in the Antelope Valley which violates public policy (see e.g., *Barstow, Supra,* ["public interest requires that there be the greatest number of beneficial uses which the supply can yield…"] Granite needs water for both its Littlerock Quarry and, going forward, for its Big Rock Quarry as it transitions its operations from Littlerock to Big Rock. The 126 AF allocated in Exhibit 4 for Big Rock is grossly insufficient for Granite's operations. (See Supp. Taylor Decl., ¶ 7.)

4. LS&G Would End Up With A Windfall That It Can Only Monetize—234 AF Of Water For Which It Has No Reasonable And Beneficial Use Or Need.

As discussed in Granite's Motion, LS&G has no reasonable and beneficial use for any of the 234 AF of Production Rights. The Leased Property is a played out empty pit and has no future water need. Any water allocated to LS&G will not be used on the Leased Property, but instead will likely be monetized and transferred to other water users. In short, this is a transparent water grab.

5. LS&G Would Be Rewarded For Its Failure To Negotiate With Granite In Good Faith, Its "Conditional Submittal" Of Its Signature To The Stipulation, And Its Refusal To Support The Judgment And Honor Its Plain Terms.

LS&G's lack of good faith is well-documented. From leading the other settling parties to believe that Granite and LS&G had agreed on an allocation as between them so that the group reported the global settlement to the Court, to LS&G later reneging on the Agreement, and from its "conditional submittal" of its signature on the Stipulation to its Opening Brief in connection with the present matter, LS&G at all times has conducted itself inequitably.

As discussed in the Declaration of Robert G. Kuhs in Opposition the Lane Family's Motion ("**Kuhs Decl.**"), LS&G first offered to divide the 234 AF as 90 AF to Granite and 144 AF to LS&G, without conditions. (Kuhs Decl., Mar 8, 2016, ¶ 7.) When Granite countered with a slightly higher allocation to Granite, LS&G agreed to Granite's proposed division of the 234 AF but asked Granite to assume the risk of any reduction in the allocation, a risk that never

materialized. Granite agreed to accept the risk and asked LS&G to allow Granite also to have the benefit of any future increase (which also did not materialize). (*Ibid.*) Thus, while Mr. Chester correctly noted in his declaration replying to Mr. Kuhs's declaration that the parties did not have a "final agreement," Mr. Chester did not dispute that the parties had agreed on how they would divide the allocation if it remained at 234 AF. [18]

On March 31, 2014, counsel for Granite and LS&G informed the other settling parties that Granite and LS&G had reached an agreement as to an allocation of the 234 AF, and on April 4, 2014, the settling parties announced a global settlement to the Court.[19] LS&G did not at that time speak up and claim it had not reached an agreement with Granite. Later, LS&G reneged on the agreed division of the 234 AF.

When LS&G suggested that the stipulating parties leave an opening in the Stipulation to allow LS&G to litigate its dispute with Granite, Mr. McLachlan, counsel for Richard Wood and the Small Pumper Class, in an email exchange on November 24, 2014, "made it clear to Mr. Chester that . . . Mr. O'Leary [counsel for the United States] and [Mr. McLachlan] were not willing to leave Exhibit 4 open to future litigation." (Declaration of M. McLachlan, ¶ 8.) When LS&G later submitted its signature to the Stipulation, in an email Mr. Chester sent only to counsel for the United States, LS&G attempted unilaterally to reserve a dispute with Granite for

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[18] Although the parties had not agreed on which party would bear the risk of a decrease or have the benefit of an increase in the allocation, the parties agreed on how they would divide the 234 AF. Since the allocation was not later decreased or increased the remaining issue became moot.

[19] Mr. Chester in his reply declaration claims that he personally made no statement to anyone about Granite and LS&G having reached an agreement and notes that counsel for the other Settling Parties in their declarations do not state "that they heard me or Robert Kuhs state that we had reached an agreement." (Reply Declaration of Ted Chester, ¶ 8.) To the contrary, Mr. McLachlan specifically recalls "As a necessary part of the allocation settlement between the stipulating parties, Ted Chester and Robert Kuhs reached an agreed allocation of the 234 acre-feet as between Granite, with Granite retaining 100 acre-feet and LS&G receiving the balance." (Declaration of M. McLachlan, ¶ 6.) Mr. Chester also ignores that numerous other counsel all declare that Mr. Kuhs and Mr. Chester had reached an agreed allocation, a statement they could not make had they not been informed of such an agreement. (Declarations of Zimmer, Joyce, Hughes.)

future litigation, none of the Stipulating Parties agreed that LS&G could reserve for later litigation a dispute with another Stipulating Party or submit its signature conditionally.

Significantly, although the Court on January 7, 2015, had reserved the Granite/LS&G dispute "for further discussion after ruling on the Final Approval Hearing of the Wood Class Settlement," at no time after submitting its signature to counsel for the U.S. on February 20, 2015, until the Lane Family filed their post-judgment motion on January 31, 2016, did LS&G submit a dispute with Granite for resolution by the Court.[20] LS&G was fully aware of Granite's position at the time Judgment was entered. Only after Judgment was entered did LS&G spring to life claiming it had reserved a pre-judgment dispute for post-judgment resolution.

C. If The Court Concludes That There Was No Agreement Between The Parties On Allocating The 234 AF, Then The Parties Hold The 234 AF Jointly And Equally.

1. There Was An Oral And Handshake Agreement To Allocate the 234 AF.

In opposing the Lane Family's prior motion seeking 100% of the jointly-allocated 234 AF, Granite set forth the facts and supporting evidence showing that the parties had decided how to allocate the 234 AF as long as it remained 234 AF. (Opposition of Granite, Mar 8, 2016; Declarations of R. Kuhs, M. McLachlan, B. Joyce, J. Hughes and R. Zimmer) The only unresolved question was which party would bear the risk of further pre-judgment adjustments to Exhibit 4. As to the 234 AF, however, it is undisputed that the parties were in agreement on the quantities of their respective shares.

2. However, If The Court Concludes That There Was No Other Agreement, Then The Parties Are Joint Tenants With Equal Shares Of The 234 AF.

As set forth in Granite's Memo, if LS&G is not bound by the parties' handshake agreement of allocation, then the only fair, logical, and legal conclusion is that Granite and LS&G hold equal shares of the 234 AF. (Memo, pp. 9-11.) This is because the Stipulation and Judgment must be interpreted like a contract, and Exhibit 4 is the only agreement regarding the

[20] Although LS&G filed a CMC Statement on October 6, 2015 (on the eve of an October 7, 2015, case management conference) claiming that the Granite/Lane dispute was alive and well, LS&G did not speak up at the case management conference or at any time thereafter to request judicial resolution of the dispute. Instead, LS&G remained silent about the dispute through the final prove-up trial and allowed the Court to enter Judgment based on the Stipulation.

234 AF. A consent judgment is interpreted according to the rules governing contract interpretation. (*Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, 471.) Thus, "parol evidence is not admissible to change the legal effect of a judgment or the record of it in any material respect." (*Kirkpatrick v. Harvey* (1942) 51 Cal.App.2d 170, 173; accord *Cottom v. Bennett* (1963) 214 Cal.App.2d 709, 716.) "'[T]he primary object of all interpretation is to ascertain and carry out the intention of the parties.'" (*City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 238 (*City of Manhattan Beach*).) To ascertain the intent of the parties, the court must first resort to the language of the contract itself. (*Rancho Pauma Mutual Water Co. v. Yuima Municipal Water Dist.* (2015) 239 Cal.App.4th 109, 115.)

Contemporaneous communications among counsel negotiating the written terms of the Stipulation, including Messrs. Chester, Kuhs and McLachlan and counsel for other parties, establish (i) that the Stipulating Parties rejected LS&G's proposal to reserve its dispute with Granite for post-judgment litigation (ii) that Mr. Chester admitted in multiple settlement communications that the Exhibit 4 allocation to Granite and LS&G was joint, and (iii) that the Stipulating Parties intended the allocation to be joint, not solely to LS&G. (See Kuhs Opp. Decl., ¶¶ 3-18 & Exs. U-HH.)

Should the Court determine the allocation to "Granite Construction Company (Little Rock Sand & Gravel, Inc.)" is joint,[21] because the Judgment is otherwise silent as to the parties' respective shares, and because there is no extrinsic evidence of any other intended division, then as a matter of law Granite and LS&G are equal cotenants. (Civ. Code § 686 ["Every interest created in favor of several persons in their own right is an interest in common," unless acquired in a way not involved here.]; *Caito v. United California Bank* (1978) 20 Cal.3d 694, 705; "When two or more persons take as tenants in common under an instrument silent as to their respective

[21] It would be reasonable to interpret Exhibit 4 as providing that the allocation is to Granite, since Granite is listed first, i.e., primary, while LS&G appears second and only in a parenthetical to identify the place of extraction. This is particularly reasonable when read in conjunction with the line above on Exhibit 4 listing the allocation to "Granite Construction Company (Big Rock Facility)." It would be more reasonable, however, to conclude that the allocation at issue is joint. It would be unreasonable, however, to conclude that the parties intended the allocation is to LS&G alone.

shares, a presumption arises their shares are equal."

LS&G claims that it is entitled to all 234 AF of the Production Right based solely on LS&G's ownership of two of the four parcels that constitute the Leased Property, including the pre-Judgment correlative water rights that once were appurtenant to those three parcels. But the Judgment brought comprehensive change to water rights in the AVAA. Upon entry of the Judgment, overlying appurtenant correlative rights were extinguished and replaced by quantified, transferrable Production Rights. (See Judgment, art. 16 [rights transferable, no longer appurtenant]; see also *Barstow,* supra, 23 Cal.4th at 1256, fn 17 [parties to a physical solution waive all existing groundwater rights].) Thus, the Stipulating Parties, including LS&G, may not assert their pre-judgment overlying rights against any other party (see *ibid*), as LS&G is attempting to do here.

V. CONCLUSION

For the foregoing reasons, the Court should deny LS&G the relief it seeks.

Dated: May 11, 2018

KUHS & PARKER

By_____
Bernard C. Barmann, Jr., Attorneys for
Granite Construction Company

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF KERN

I, Valerie Hanners, declare:

I am employed in the County of Kern, State of California. I am over the age of 18 and am not a party to the within action; my business address is Kuhs & Parker, 1200 Truxtun Avenue, Suite 200, Bakersfield, California 93301.

On May 11, 2018, I caused the foregoing document(s) described as **OPPOSITION TO "OPENING BRIEF" OF LITTLE ROCK SAND AND GRAVEL, INC. RE TITLE TO GROUNDWATER ALLOCATION** to be served on the parties in this action, as follows:

All Parties in the Antelope Valley Groundwater Cases
(Electronic service via Glotrans)

X (BY ELECTRONIC SERVICE) by serving the document(s) listed above via Antelope Valley Watermaster Electronic Document Service – (www.avwatermaster.org) c/o Glotrans, to all parties appearing on the electronic service list for the Antelope Valley Groundwater case. Electronic service is complete at the time of transmission. My electronic notification email address is vhanners@kuhsparkerlaw.com

___ (BY U.S. MAIL) on May 11, 2018, at Bakersfield, California, pursuant to C.C.P. section 1013(a), I:
___ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
___ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is place for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

___ (BY EMAIL TRANSMISSION) on May 11, 2018, at approximately p.m. to:

___ (BY FACSIMILE TRANSMISSION) on May 11, 2018 at approximately ____ p.m., pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was 661/322-2906. A transmission report (copy attached hereto) was properly issued by the sending facsimile machine, and the transmission was reported as completed and without error.

___ (BY PERSONAL SERVICE) on May 11, 2018 pursuant to C.C.P. section 1011, I caused such envelope to be delivered by hand personally to the addressee(s):

___ (BY OVERNIGHT COURIER) on May 11, 2018 pursuant to C.C.P. section 1013I(d), I caused such envelope with delivery fees fully prepared to be sent by Federal Express to **Theodore A. Chester, Jr. at Musick, Peeler & Garrett, LLP**.

___ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that the foregoing was executed on May 11, 2018, in Bakersfield, California.

Valerie Hanners