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Monte Vista Building Sites, Inc., and A.V. Materials, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

Coordination Proceeding Special Title  
(Rule 1550 (b))

Judicial Council Coordination No. 4408  
[Assigned to Hon. Jack Komar; Dept 17]

**ANTELOPE VALLEY GROUNDWATER  
CASES**

Santa Clara Case No.: 1-05-CV-049053

Included **CONSOLIDATED** Actions:

**LANE FAMILY'S NOTICE OF MOTION  
AND MOTION FOR POST-JUDGMENT  
SUPPLEMENTAL ORDER;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**  
[Declaration of Theodore A. Chester, Jr. and  
Exhibits Thereto Filed Concurrently  
Herewith]; and [Proposed] Order Lodged  
Concurrently Herewith]

Los Angeles County Waterworks District No.  
40 vs. Diamond Farming Company  
Los Angeles Superior Court Case No.  
BC325201

Los Angeles County Waterworks District No.  
40 vs. Diamond Farming Company  
Kern County Superior Court Case No. S-1500-  
CV-254348 NFT

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

Diamond Farming Company vs. City of  
Lancaster Riverside County Superior Court  
Lead Case No. RIC 344436 [Consolidated w/  
Case Nos. 344668 & 353840]

Willis v. Los Angeles County Waterworks  
District No. 40; Los Angeles Superior Court  
Case No. BC 364553

Wood v. Los Angeles County Waterworks  
District No. 40; Los Angeles Superior Court  
Case No. BC 391869

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**NOTICE OF MOTION AND MOTION**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on March 21, 2016, at 1:30 p.m., or as soon thereafter as the court may permit, cross-defendants Little Rock Sand and Gravel, Inc., The George and Charlene Lane Family Trust, The Frank and Yvonne Lane 1993 Family Trust, Monte Vista Building Sites, Inc., and A.V. Materials, Inc. (collectively, the "Lane Family") will move this court for an order declaring that certain water rights allocated under the Judgment, entered herein on December 28, 2015, are owned in fee by Little Rock Sand and Gravel, Inc., and that a Leasehold interest therein is owned by Granite Construction Company. This motion is made pursuant to the court's direction set forth in its January 7, 2015 minute order, pursuant to paragraph 6.5 of the Judgment, and pursuant to the Court's inherent powers regarding its judgments. This motion is supported by this Notice and the accompanying Memorandum of Points and Authorities and Declaration of Theodore A. Chester, Jr., and all other matters the court deems just and appropriate.

Dated: January 31, 2016

SMILAND CHESTER ALDEN LLP

By



Theodore A. Chester, Jr.

Attorneys for Little Rock Sand and Gravel, Inc.; The George and Charlene Lane Family Trust; The Frank and Yvonne Lane 1993 Family Trust; Monte Vista Building Sites, Inc., and A.V. Materials, Inc.

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1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                                   **Introduction**

3                   This motion concerns a single rights allocation provision set forth in the recently entered  
4 judgment. The provision awards the rights to two entities, the lessor and lessee of property  
5 where groundwater was pumped and used. However, the judgment does not address how the  
6 rights are owned as between those two entities. This issue of *inter se* ownership was specifically  
7 reserved by the Court to be resolved after final approval and entry of the judgment. The Court,  
8 under its inherent powers, and under the jurisdiction retention provisions of the judgment, has the  
9 jurisdiction to resolve this issue. The moving parties seek the Court's determination that the  
10 lessor owns fee title to, and the lessee owns a leasehold interest in, the subject water rights.

11                                   **Facts**

12                   The Lane Family, through its family entities, Little Rock Sand & Gravel, Inc., Monte  
13 Vista Building Sites, Inc., and The Frank and Yvonne Lane 1993 Family Trust, owns  
14 approximately 240 acres of contiguous land in the Antelope Valley in Los Angeles County  
15 within the Antelope Valley Area of Adjudication (the "Leased Property"). Chester Decl. ¶ 2  
16 (Ex. 1, p. 41).<sup>1</sup> The Lane Family has owned and operated Antelope Valley land, including land  
17 for quarrying, farming and ranching, since the 1930's.<sup>2</sup> Chester Decl. ¶ 2. In 1987, the Lane  
18 Family, through its corporation Little Rock Sand & Gravel, Inc. ("Little Rock"), leased the  
19 Leased Property to Granite (the "Lease"). *Id.* at p. 42, 127-159. The initial Lease Agreement is  
20 dated April 8, 1987. *Id.* at 127-159. The parties entered into a First Amendment to Lease in  
21 April 2010. *Id.* at 118-120. The initial term of the Lease was three years, but it allowed Granite

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23  
24 <sup>1</sup> Attached to the concurrently filed Declaration of Theodore A. Chester, Jr. are excerpts of trial  
25 exhibits that were filed and entered as evidence in the Phase 4 and Phase 6 trials in this case,  
26 excerpts of transcripts of proceedings in this case, and documents posted on the Court's online  
27 website [www.scefiling.org](http://www.scefiling.org).

28 <sup>2</sup> The Lane Family owns other lands within the Antelope Valley which are not at issue in this  
motion. Under the settlement and judgment the Lane Family's other Antelope Valley lands  
receive significantly reduced production allocations. Additionally, some of the Lane Family's  
lands receive zero allocations, although it is anticipated that water will be needed for such lands  
in the near future.

1 to extend the Lease for additional terms. Granite has exercised extensions so that currently the  
2 extended term of the Lease runs to April 30, 2021. *Id.* at 117. Additional unexercised  
3 extensions are available which would allow Granite to extend the term of the Lease Agreement  
4 to April 30, 2041. *Id.* at 118.

5 The Leased Property is a rock, sand and gravel quarry. Section 1 of the Lease provides  
6 that Granite is granted use and possession of the property and "any . . . underground water or  
7 water rights occurring therein or appurtenant thereto." *Id.* at 127.

8 Section 3.2 of the Lease provides:

9 "During the term of this Lease, Lessor grants to Lessee such water rights as  
10 Lessor has to the surface and underground water located upon and under the  
11 leased premises. Lessee shall have the right to use all existing water sources  
12 presently located upon the leased premises (both above ground and below  
13 ground). Lessee, at its expense, shall have the right to develop further such water  
sources as it may deem necessary or convenient for the operation of its business;  
provided, however, that Lessee shall avoid wasting water." *Id.* at 128-129.

14 Since about the beginning of the Lease in 1987, Granite's quarrying operations on the  
15 Leased Property have utilized groundwater pumped from three wells located on the Leased  
16 Property. Chester Decl. ¶¶ 3, 4, 5, 6, 7, and 8. At all relevant times, Granite mined aggregate  
17 from the Leased Property *Id.*, processed the mined materials at a "rock plant" located on the  
18 Leased Property *Id.*, and utilized a pond located on the Leased Property into which water from  
19 the three wells was pumped and from which water was used for operations on the Leased  
20 Property. *Id.* For the years 2000-2007 Granite produced and used the following amounts (acre-  
21 feet) of groundwater on the Leased Property<sup>3</sup>:

<u>Year</u>	<u>Groundwater (AF)</u>
2000	440
2001	446
2002	453
2003	456
2004	469
2005	520
2006	527
2007	537

28  
<sup>3</sup> Chester Decl. ¶¶ 6, 7, 8.

1  
2 In Phase 4 of the case, the Court determined the quantities of groundwater pumped by the  
3 parties for the years 2011 and 2012. The Court's phase 4 decision sets forth the amount of  
4 pumping for those years (400 AF for each of 2011 and 2012), and in the decision identified the  
5 "Claimants" to include "**Granite Construction Company (Little Rock Sand and Gravel,**  
6 **Inc.)**." Chester Decl. ¶ 8. The Court and Mr. James Lewis, attorney for the Lane Family,  
7 arrived at that designation as follows:

8 MR. LEWIS: GRANITE CONSTRUCTION IS PUMPING ON MY  
9 CLIENT'S PROPERTY.

10 THE COURT: WELL, I THINK MY CONCERN HERE IS ONLY WHO IS  
11 CLAIMING PUMPING FOR THE YEAR 2011 AND 2012. YOUR CLIENT MAY  
12 OWN THE LAND, BUT IT'S NOT DOING THE ACTUAL PUMPING AS I  
13 UNDERSTAND IT; IS THAT RIGHT?

14 MR. LEWIS: GRANITE CONSTRUCTION COMPANY IS PUMPING UNDER  
15 A LEASE ON MY CLIENT'S PROPERTY.

16 THE COURT: I UNDERSTAND THAT. WELL, HOW ABOUT IF WE JUST  
17 PUT IN PARENTHESIS THEN YOUR CLIENT'S NAME, WHICH IS LITTLE  
18 ROCK?" Trial Tr. 8-9 (May 30, 2013). Chester Decl. ¶ 9.

19 In accordance with that discussion, the Court's Phase 4 decision identifies "**Granite**  
20 **Construction Company (Little Rock Sand and Gravel, Inc.)**)" as the claimant for the 2011-  
21 2012 pumping amounts therein determined by the Court. Chester Decl. ¶ 8.

22 After entry of the Phase 4 decision, most of the parties in the case engaged in extensive  
23 settlement discussions and agreed to present to the Court by stipulation a Proposed Judgment and  
24 Physical Solution ("Physical Solution").

25 Paragraph 5 of the Physical Solution quantifies certain parties' "Pre-Rampdown  
26 Production" and "Overlying Production Rights," and Exhibit 4 (page 2) of the Physical Solution  
27 identifies "**Granite Construction Company (Little Rock Sand and Gravel, Inc.)**" as a right  
28 holder of those rights under the Physical Solution. Chester Decl. ¶ 10. This identification is the  
same as that discussed by the Court in Phase 4 Trial proceedings and as listed by the Court in the  
Phase 4 decision.

1 George Lane, on behalf of the Lane Family and its entities, including Little Rock, signed  
2 the Stipulation for Entry of Judgment and Physical Solution on December 24, 2014. Chester  
3 Decl. ¶ 11. In a December 31, 2014 Case Management Conference Statement, the Lane Family  
4 informed the Court:

5 “There exists a dispute between the Lane Family and Granite, and no other  
6 parties, with respect to title to water rights associated with the leased property that  
7 would be adjudicated in this case. The Lane Family would seek title to the  
8 adjudicated rights as land owner (the water rights would remain subject to  
9 Granite’s use for the term of lease). The Lane Family understands that Granite  
10 seeks separate conflicting title in its own name . . .

11 The Lane Family is prepared to stipulate to entry of the proposed  
12 judgment that has been negotiated by and among the settling parties. By doing so  
13 the Lane Family would be settling with all other Stipulating Parties, provided,  
14 however, that the issue of title to water rights allocated under the proposed  
15 judgment as between the Lane Family and Granite would remain undecided. The  
16 Lane Family would seek to have this remaining two-party dispute decided by the  
17 Court or by an alternate approach, including mediation.

18 The Court’s November 4, 2014 Case Management Order sets forth a  
19 schedule for determining disputed matters, and the Lane Family would ask that its  
20 two-party dispute with Granite be included therein.” Chester Decl. ¶ 12.

21 In response to the Lane Family’s Statement, the Court’s January 7, 2015 Minute Order  
22 provides: “There remains an outstanding issue between two parties, namely the Lane Family . . .  
23 and Granite Construction Company . . . which the Court reserved for further discussion after the  
24 ruling on the Final Approval Hearing of the Wood Class Settlement.” Chester Decl. ¶ 13. In its  
25 August 3, 2015 Minute Order the Court indicated that final approval of the Wood Class  
26 Settlement would not occur until the “global settlement [is] adjudicated.” Chester Decl. ¶ 14. In  
27 an October 6, 2015 Case Management Conference Statement, the Lane Family confirmed to the  
28 Court that the issues between the Lane Family and Granite remain “reserved” until after final

1 approval to the Physical Solution in accordance with the Court's January 7, 2015 Minute Order.  
2 Chester Decl. ¶ 15.

3 The Sixth and final phase of trial concluded on November 4, 2015. The Court's  
4 Statement of Decision was issued and on December 23, 2015. Doc #11019. The final judgment  
5 in this case was entered on December 28, 2015 (the "Judgment"). Doc #11021.

6 Pursuant to paragraph 2 of the Judgment, the Court adopted the Physical Solution which  
7 was incorporated into and made a part of the Judgment. Exhibit 4 (page 2) of the Physical  
8 Solution as incorporated into the Judgment was unchanged from that which was presented to the  
9 Court. It continues to identify "**Granite Construction Company (Little Rock Sand and**  
10 **Gravel, Inc.**") as a right holder. Accordingly, there continues to be an unresolved issue between  
11 Little Rock and Granite regarding title to the Pre-Rampdown Production and Overlying  
12 Production Rights allocated under the Judgment and Physical Solution.

13 **Argument**

14 **I. THIS MOTION IS BROUGHT AT THE DIRECTION OF THE COURT AND**  
15 **THE COURT HAS RESERVED JURISDICTION TO HEAR THIS MOTION**

16 The Court's January 7, 2015 Minute Order "reserved" the determination of the  
17 Granite/Lane ownership issue until final approval of the global settlement. Now that the  
18 Judgment has been entered, and the Physical Solution incorporated therein, it is time to resolve  
19 this issue.

20 The Court has the inherent power to interpret language of a judgment. *Russell v.*  
21 *Superior Court*, 252 Cal.App.2d 1, 7-8 (1962). Here, the language of Exhibit 4 of the Physical  
22 Solution awards a single right to two entities, but does not determine title between them. The  
23 January 7, 2015 Minute Order made it clear that the Court contemplated that it would, if  
24 necessary, make this determination, and reserved the issue until after final approval. The Court  
25 would do so in accordance with its inherent power.

26 In addition to the inherent power of the Court, Section 6.5 of the Judgment expressly  
27 allows the Court to address this issue. First, Section 6.5 expressly retains and reserves full  
28 jurisdiction to "interpret, enforce, administer or carry out" the Judgment. Here, the Lane Family

1 seeks a necessary judicial declaration regarding ownership of the rights awarded in a single line-  
2 item in Exhibit 4 of the Judgment.

3 Second, Section 6.5 reserves jurisdiction to “provide for such other matters as are not  
4 contemplated by this Judgment and which might occur in the future, and which if not provided  
5 for would defeat the purpose of this Judgment.” In *Central and West Basin Water*  
6 *Replenishment Dist. v. Southern Cal. Water Co.*, 109 Cal.App.4th 891, 903 (2003) the court held  
7 that a nearly identical reservation provision was “broad” and “expansive.” It explained that  
8 expansive retention of jurisdiction is desirable in cases involving water rights. *Id.* (Citing, *City*  
9 *of Pasadena v. City of Alhambra*, 33 Cal.2d 908, 937 (1949); *City of L.A. v. City of Glendale*, 23  
10 Cal.3d 68, 81 (1943)).

11 In this case, the Judgment does not resolve the issue between lessor and lessee of the  
12 ownership of the water rights associated with the Lane Family’s land. Instead, the issue was  
13 intentionally left open and the issue reserved for later determination. In this respect title to such  
14 water rights remains clouded. The Court’s determination would inform the parties with respect  
15 to their businesses going forward, and would avoid future problems and disputes, especially in  
16 light to the fact that there are substantial public interests involved. *City of L.A.*, 23 Cal.2d at 81.

17 **II. THE COURT SHOULD DECLARE THAT LITTLE ROCK IS THE FEE**  
18 **OWNER OF, AND THAT GRANITE (SUBJECT TO THE TERMS OF**  
19 **THE LEASE AGREEMENT) HAS A LEASEHOLD INTEREST IN, THE**  
**SUBJECT WATER RIGHT**

20 Paragraph 5.1.1 of the Judgment provides that the “Parties listed in Exhibit 4 . . . have  
21 Overlying Production Rights,” and notes that Exhibit 4 sets forth for each Party the “Pre-  
22 Rampdown Production,” “Production Right,” and “percentage of the Production from the  
23 Adjusted Native Safe Yield.” Paragraph 5.1.1.1 provides that the “Parties listed in Exhibit 4  
24 have the right to Produce Groundwater, on an annual basis, up to their Overlying Production  
25 Right set forth in Exhibit 4 for each Party.”

26 Exhibit 4 (page 2) of the Judgment has the following line-item which is at issue herein: It  
27 lists “Granite Construction Company (Little Rock Sand and Gravel, Inc.)” as the Party, and  
28 “234.00” as the “Overlying Production Rights” (it also shows the Pre-Rampdown Production and  
applicable percentage).

1 The line-item lists two Parties but is silent as to which Party owns fee title, and which  
2 Party owns a leasehold interest in the listed Overlying Production Right. Because the water  
3 rights are part and parcel of, and appurtenant to, the Leased Property, and because Granite is  
4 estopped from claiming title to the water rights, the Lane Family seeks the Court's determination  
5 that Little Rock is the fee owner of, and Granite owns a leasehold interest under the Lease in, the  
6 listed Overlying Production Right (and Pre-Rampdown Production).

7 **A. The Water Right Is Part and Parcel of, and Appurtenant to, the Leased**  
8 **Property**

9 An overlying water right is the right to take water from underneath the land for use on the  
10 land within the basin or watershed; the right is based on the ownership of the land and is  
11 appurtenant thereto. *City of Barstow v. Mojave Water Agency*, 23 Cal.4th 1224, 1240 (2000).  
12 See, *Burr v. MacLay Rancho Water Co.*, 154 Cal. 428, 439 (Cal. 1908) (an overlying right to  
13 groundwater is "part and parcel of the land"); *Hanson v. McCue*, 42 Cal. 303, 309 (1871)  
14 ("Water filtrating or percolating in the soil belongs to the owner of the freehold--like the rocks  
15 and minerals found there"); *Rank v. Krug*, 90 Fed.Supp. 773, 787 (S.D. Cal. 1950)(rights to use  
16 groundwater are "part and parcel of the land," and as such are real property); *Pasadena v.*  
17 *Alhambra*, 33 Cal.2d 908, 925 (1949) (an overlying right "is based on ownership of the land and  
18 is appurtenant thereto").

19 Here, the subject adjudicated water right is part and parcel of, and appurtenant to, the  
20 Leased Property owned by the Lane Family. As long as the Lease remains in force, Granite may  
21 pump groundwater and use the water right for use on the Leased Property. However, upon  
22 termination of the Lease the water right as part of the Leased Property reverts to the Lane Family  
23 as owner. *Miller & Starr*, Calif. Real Estate 2d § 18.48.

24 **B. Granite is Estopped from Claiming Title to the Water Right**

25 A tenant is estopped to deny the title of his landlord. Cal. Evid. Code § 624; *Miller &*  
26 *Starr*, Calif. Real Estate 2d § 18:49. The estoppel continues as long as the tenant continues in  
27 possession. *Id.* The theory of this rule is that the tenant has been entrusted with possession by  
28 the landlord and cannot justly dispute the validity of the landlord's title without first restoring  
possession to the landlord. 12 Witkin Summary (10th ed.) Real Property § 607. See

1 *Swartzbaugh v. Sampson*, 11 Cal.App.2d 451, 462 (1936) (“a lessee in possession of real  
2 property under a lease cannot dispute his landlord’s title nor can he hold adversely to him while  
3 holding under the lease.”); *Tewksburg v. Magraff*, 33 Cal. 237, 244 (1867) (“To allow a party to  
4 obtain possession by entering under a lease, and then to disclaim, either before or after the  
5 expiration of the term, would be to encourage the very fraud and chicanery which the estoppel  
6 was designed to prevent.”); *Harvey v. Murick*, 268 Cal.App.2d 213, 215 (1968) (Tenant in  
7 possession may not dispute landlord’s title).

8 A corollary of this rule is that during the term of a lease “the possession of the tenant is  
9 considered the possession of the landlord for all purposes.” *Miller & Starr, Calif. Real Estate* 2d  
10 §18:48; *California Code of Civil Procedure* § 326 (“the possession of the tenant is deemed the  
11 possession of the landlord”); *San Juan Gold Co. v. San Juan Ridge Mutual Water Assn*, 34  
12 Cal.App.2d 159 (1935) (lessee of dam and water distribution system could not establish  
13 conflicting title).

14 The facts here are undisputed. Granite is, and has been since 1987, in possession of the  
15 Leased Property pursuant to the terms of the Lease. Section 3.2 of the Lease specifically grants  
16 to the lessee the use of lessor’s overlying groundwater rights “during the term” of the Lease.  
17 Section 3.2 thereby contemplated that Granite would use and exercise lessor’s overlying  
18 groundwater rights in connection with Granite’s quarry operations on the Leased Property. And,  
19 since 1987, for more than 25 years, that is exactly what happened. Granite exercised the lessor’s  
20 overlying groundwater rights by pumping groundwater from three wells located on the property  
21 for use by Granite in its quarry operations on the property. It is undisputed that since 2000, by  
22 exercise of the overlying groundwater rights appurtenant to the Leased Property, Granite  
23 produced at least 400 acre-feet per year. This pumping history strongly supports the  
24 establishment, quantification and adjudication of the lessor’s (*i.e.*, the Lane Family’s) overlying  
25 right. However, Granite’s pumping activity, as authorized and permitted under the Lease, cannot  
26 be used to support a separate right owned in fee by Granite. As set forth above, Granite is  
27 estopped from claiming that its exercise of the lessor’s overlying right somehow supports a  
28 conflicting right owned by Granite.

//

1 **Conclusion**

2 For the foregoing reasons, the Lane Family respectfully requests that the Court grant this  
3 motion.

4 Dated: January 31, 2016

Smiland Chester Alden LLP

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7 Theodore A. Chester, Jr.  
8 Attorneys for Cross Defendants  
9 Little Rock Sand and Gravel, Inc., The  
10 George and Charlene Lane Family Trust,  
11 The Frank and Yvonne Lane 1993 Family  
12 Trust, Monte Vista Building Sites, Inc., and  
13 A.V. Materials, Inc.  
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**PROOF OF SERVICE**

STATE OF CALIFORNIA     )  
                                      )  
COUNTY OF LOS ANGELES   )

I, Felicia Herbstreith am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 140 South Lake Avenue, Suite 274, Pasadena, California 91101.

On January 31, 2016, I served the foregoing document described as: **LANE FAMILY'S NOTICE OF MOTION AND MOTION FOR POST-JUDGMENT SUPPLEMENTAL ORDER; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on the interested parties in this action by posting the document listed above to the Santa Clara County Superior website in regard to the Antelope Valley Groundwater Adjudication matter, pursuant to the Electronic Filing and Service Standing Order of Judge Komar.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **January 31, 2016**, at Pasadena, California.

  
Felicia Herbstreith