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9 MICHAEL HERBERT

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

13 Coordination Proceeding
14 Special Title (Rule 1550(b))

15 **ANTELOPE VALLEY GROUNDWATER**
16 **CASES**

17 Including Consolidated Actions:

18 Los Angeles County Waterworks District No.
19 40 v. Diamond Farming Co.; Superior Court of
20 California, County of Los Angeles, Case No.
21 BC325201;

22 Los Angeles County Waterworks District No.
23 40 v. Diamond Farming Co.; Superior Court of
24 California County of Kern, Case No. S-1500-
25 CV-254348;

26 Wm. Bolthouse Farms, Inc. v. City of
27 Lancaster; Diamond Farming Co. v. City of
28 Lancaster; Diamond Farming Co. v. Palmdale
Water Dist.; Superior Court of California,
County of Riverside, consolidated actions,
Case Nos. RIC 353840, RIC 344436, RIC
344668;

AND RELATED ACTIONS.

Judicial Council Coordination Proceeding No.
4408

Santa Clara Case No. 1-05-CV-049053
Assigned to the Honorable Jack Komar
Department 17C

**NOTICE OF MOTION AND MOTION TO
INTERVENE IN JUDGMENT;**

**MEMORANDUM OF POINTS AND
AUTHORITIES;**

**DECLARATIONS OF MICHAEL HERBERT,
AND JOHN J. SCHATZ IN SUPPORT
THEREOF**

Hearing Date:
Date: September 29, 2020
Time: 9:00 AM
Judge: Hon. Jack Komar

[Hearing to be conducted by Courtcall]

1 TO THE HONORABLE JACK KOMAR, JUDGE OF THE SUPERIOR COURT, ALL
2 INTERESTED PARTIES, ALL PERSONS REQUESTING NOTICE, AND THEIR RESPECTIVE
3 ATTORNEYS OF RECORD:

4 PLEASE TAKE NOTICE that on September 29, 2020 at 9:00 AM Moving Party MICHAEL
5 HERBERT will and does move the Court for an order granting him leave to intervene in this Action
6 and thereby become a Party to the December 23, 2015 Judgment and Physical Solution (“Judgment”)
7 in the above-captioned Antelope Valley Groundwater Adjudication.

8 The general grounds for granting this Motion are as follows:

9 1. Section 20.9 of the Judgment provides that “[a]ny Person who is not a Party or
10 successor to a Party and who proposes to . . . acquire a Production Right . . . is required to seek to
11 become a Party subject to this Judgment through noticed motion to intervene in this Judgment prior
12 to commencing Production.” This language applies to Movant because he is not presently a named
13 Party, and he seeks to acquire Production Rights.

14 2. Movant has entered into a separate but related agreement to acquire Production Rights
15 from a Party to this Action:

16 i. One acre-foot of Permanent Production Right from Jeffrey and Nancee Siebert to
17 Michael Herbert;

18 3. The Watermaster Engineer has confirmed that no Material Injury will result to the Basin
19 from this transaction provided Mr. Herbert extracts and uses the water on the parcels identified in the
20 Transfer Request, and that a Material Injury analysis will be conducted only if a new point of
21 extraction is identified for the transfer;

22 4. The Antelope Valley Watermaster Board has unanimously approved this transaction,
23 and has required Movant to intervene and become a Party to the Judgment; and

24 5. The Watermaster has stipulated to entry of an Order granting this Motion to Intervene.

25 6. In addition to the above-noted reasons and procedures that were anticipated and
26 incorporated into the Judgment itself, all of the requirements for both mandatory *and* permissive
27 intervention (as set forth in Code of Civil Procedure Section 387) are also present in this case;
28 thereby providing triplicate cause to grant this Motion to Intervene.

1 This Motion is based on the Declarations of Michael Herbert and John Schatz, and the
2 Memorandum of Point and Authorities, all of which are attached hereto; the Judgment itself (which
3 specifically authorizes the filing of this Motion); all other pleadings and documents filed in this
4 Action; together with any additional evidence and legal argument which may be presented at or prior
5 to the hearing of this Motion.

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7 Respectfully submitted,

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9 By: *John J. Schatz*
10 _____
11 JOHN J. SCHATZ
12 Attorney for Movant
13 MICHAEL HERBERT

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 This Motion stems from a routine agreement for the transfer of Production Rights¹ which has
4 been approved by the Watermaster, subject to the Movant intervening into this Action and becoming
5 a Party to the Judgment.

6 This Motion is filed pursuant to Section 20.9 of the Judgment, which specifies that “[a]ny
7 Person who is not a Party or successor to a Party and *who proposes to . . . acquire a Production*
8 *Right . . . is required to seek to become a Party subject to this Judgment through a noticed motion to*
9 *intervene in this Judgment prior to commencing Production.*” The foregoing language is applicable
10 in the instant case because Michael Herbert proposes to “acquire a Production Right,” thereby placing
11 him into the category of persons specifically expected to intervene into this Action, and thereby
12 become a Party bound by the Judgment.

13 **II. STATEMENT OF FACTS**

14 On December 23, 2015, this Court entered Judgment in the Antelope Valley Groundwater
15 Cases; Judicial Coordination Proceeding No. 4408. The Judgment incorporates by reference the
16 “Physical Solution” which sets forth the factual and procedural history of this case, and a
17 comprehensive ruling for allocation and administration of water and water rights in the Antelope
18 Valley. The Court adopted the Physical Solution “as the Court’s own physical solution” and declared
19 that it is binding upon all parties as part of the Judgment.

20 Jeffrey and Nancee Siebert are Parties to the December 15, 2015 Judgment, with 105 acre-feet
21 of Production Rights. On July 22, 2020, the Siebert’s entered into an agreement with Michael
22 Herbert to permanently transfer one acre-foot of Production Rights. As provided in Watermaster
23 Resolution No. R 20-21, the one (1) acre-foot permanent Production Right transfer shall be of no
24 force or effect until Movant has successfully intervened as a Party to the Judgment.

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27 ¹ All capitalized terms in this Motion and supporting documents have the same meaning as those set forth in the
28 Judgment and/or the Physical Solution.

1 **III. LEGAL ARGUMENT**

2 **A. The Judgment Specifically Provides for Intervention by Parties Who Propose to**
3 **Acquire a Production Right.**

4 When the Physical Solution was drafted and adopted, the Court anticipated that it would
5 inevitably be necessary to include additional persons as named Parties to the Judgment. The Court
6 therefore provided the mechanism to achieve this result, via Section 20.9 of the Judgment, which
7 provides as follows:

8 **20.9 Intervention After Judgment.** Any person who is not a Party or successor to a Party
9 and *who proposes to . . . acquire a Production Right . . .* is required to seek to become
10 a party subject to this Judgment through a noticed motion to intervene in this
11 Judgment prior to commencing Production. Prior to filing such a motion, a
12 proposed intervenor shall consult with the Watermaster Engineer and seek the
13 Watermaster’s stipulation to the proposed intervention. . . . Thereafter, if approved
14 by the Court, such intervenor shall be a Party bound by this Judgment.” (*Emphasis*
15 *added*).

16 The foregoing language is applicable in the instant case because Michael Herbert proposes to
17 “acquire a Production Right” thereby placing him into the category of persons specifically expected
18 to intervene into this Action, and thereby become a Party bound by the Judgment. In accordance with
19 Section 20.9 of the Judgment, the Watermaster has conditioned approval of the transfer application
20 on Michael Herbert’s intervention as a Party to the Judgment.

21 Intervention is proper under Section 20.9 of the Judgment because the Watermaster Board has
22 approved the subject transaction, and the transaction causes no Material Injury. Additionally, the
23 Watermaster emailed notice of the Transfer Request to all Parties and other interested persons, and
24 posted said Request on its website and bulletin board, and no Party nor any member of the public
25 objected thereto.

26 Since Movant is one of the exact categories of person that the Court and all Parties expected to
27 intervene, and his proposed transaction is proper and has been approved by the Watermaster, Movant
28 respectfully requests that this Court enter an order granting this motion to intervene.

B. Intervention is Necessary and Appropriate Under C.C.P. Section 387.

Michael Herbert’s intervention is also necessary and appropriate under *California Code of Civil Procedure* Section 387. Section 387 provides that a Court *shall* permit a nonparty to intervene in an action or proceeding when that party claims an interest relating to the property that is the subject of the action, when the disposition of the action may impair or impede that person’s ability to protect that interest, and when that interest is not adequately represented by an existing party. A Court *may* also permit intervention upon timely application by a nonparty that has an interest in the subject matter of the litigation that may be affected, when the intervention will not enlarge the issues in the litigation, and when the reasons for the intervention outweigh any opposition by the parties presently in the action. (Cal Code Civ. Proc. § 387 subd. (d); *US Ecology, Inc. v. State of California* (2001) 92 Cal App.4th 113, 139; *Timberidge Enterprises Inc. v. City of Santa Rosa* (1978) 86 Cal.App.3d 873, 881.)

In the instant case, both of the above tests are satisfied. Mandatory intervention is applicable because: (i) Movant claims an interest in the water Production Rights which are the subject of the Transfer Request; (ii) intervention is presently deemed necessary by the Watermaster for the Movant to transfer, own, and/or use the Production Rights; and (iii) no current party represents the interests of the Movant.

Permissive intervention is also applicable because: (i) Movant claims an interest in the water Production Rights which are the subject of the Transfer Request; (ii) intervention will not enlarge, alter, impair, nor in any way affect the issues in the litigation (since the litigation is entirely resolved); and (iii) the reasons for intervention are to comply with the Judgment (which specifically contemplates that new parties would intervene), and to comply with conditions required by the Watermaster (that Movant intervene).

The intervention statute is designed to promote fairness and to ensure maximum involvement by all responsible, interested, and affected parties. *Mary R. v. B. & R. Corp.* (1983) 149 Cal. App. 3d 308, 314. The statute “should be liberally construed in favor of intervention.” *Lindelli v. Town of San Anselmo* (2006) 139 Cal.App.4th 1499, 1505. The Judgment, which controls, recognizes these principles through Section 20.9, which expressly provide for intervention *after* entry of the Judgment

1 in order to account for persons who “propose to . . . acquire a Production Right” after the date of the
2 Judgment.

3 **C. Movant Has Complied with the Requirements of the Judgment.**

4 As required by Section 20.9 of the Judgment, Movant has consulted with the Watermaster
5 Engineer and obtained the Watermaster’s stipulation to Movant’s proposed intervention. Movant has
6 also presented evidence that he proposes to “acquire a Production Right” which is precisely one of
7 the categories of persons contemplated to intervene into the action and become a “Party” to the
8 Judgment. Lastly, Movant has properly and duly served this Motion in accordance with Section 20.7
9 of the Judgment by e-filing on the Court’s website.

10 **IV. PRAYER**

11 Movant respectfully requests that this Court grant his Motion to intervene and thereby become
12 a Party bound by the Judgment, pursuant to Section 20.9 of the Judgment.

13
14 Respectfully submitted,

15
16 By: *John J. Schatz*

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18 JOHN J. SCHATZ
19 Attorney for Movant
20 MICHAEL HERBERT
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JOHN SCHATZ
Attorney at Law
P.O. Box 7775
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DECLARATION OF MICHAEL HERBERT

I, MICHAEL HERBERT, declare as follows:

1. I have an ownership interest in AV Hemp Co. LLC which owns a parcel of land in the Central Antelope Valley Subarea, identified as APN 3374-003-006 in Resolution No. R-20-21 and the accompanying Transfer Request Form.

2. On July 22, 2020, I entered into an agreement to buy and permanently transfer one (1) acre-foot of Production Rights from Jeffrey and Nance Siebert. As listed in that agreement, the original parcel APN is 3256-018-001 and the parcel water is transferred to APN 3374-003-006.

3. My intention is to pump water from a well located on APN 3374-003-006 for use on the surrounding parcels. My extraction and use of water from APN 3374-003-006 will strictly adhere to those parcels specifically identified in the Transfer Request Form. Should I intend to use the water elsewhere, I will file a New Point of Extraction application or a subsequent Transfer application and understand that a Material Injury analysis must be completed before the water can be produced.

4. In accordance with Section 20.9 of the Judgment, the Watermaster has conditioned approval of this Transfer Request on my intervention as a Party to the Judgment. I agree to and hereby seek to intervene as a named Party, bound by the Judgment.

Executed on August 11, 2020, at Upland, California.

Michael Herbert

MICHAEL HERBERT

JOHN SCHATZ
Attorney at Law
P.O. Box 7775
Laguna Niguel, CA 92607-7775

DECLARATION OF JOHN J. SCHATZ

I, JOHN J. SCHATZ, declare as follows:

1. I am an attorney at law duly licensed to practice before this Court, and as such, I am the attorney for Movant MICHAEL HERBERT in this action. I have personal knowledge of the matters set forth herein, and if called as a witness, I could competently testify thereto.

2. On July 22, 2020 Mr. Herbert entered into an agreement to buy and permanently transfer one (1) acre-foot of Production Rights from Jeffrey and Nancee Siebert. As listed in that agreement, the original parcel APN is 3256-018-001 and the parcel water is transferred to APN 3374-003-006.

3. Full and proper notice of a Transfer Request was provided to all Parties via: (i) email from the Watermaster to all Parties that have provided an email address, plus all non-parties that have requested notice of applications and proceedings; (ii) posting the July 22, 2020 Watermaster Board of Directors Meeting Agenda Packet, which included the subject Transfer Request, on the Watermaster website; and (iii) posting the Watermaster Board of Directors Agenda on the bulletin board in the lobby of the Watermaster offices. ***No objections to this Transfer Request were filed by any Party to the Adjudication, nor by any other member of the public.*** A true and correct copy of the July 22, 2020 Board of Directors Meeting Agenda is attached hereto as “Exhibit A.”

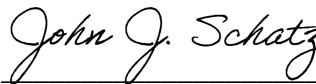
4. I attended the July 22, 2020 Watermaster Board meeting via telephone conference call. After a thorough discussion and consideration of the matter, I personally heard that the foregoing Transfer Request was considered and ***unanimously approved by the Watermaster Board*** by adoption of *Resolution No. R-20-21, Approving Applications For Transfers Pursuant To The Terms Of The Judgment With Specified Conditions; Attached Exhibit A.* A true and correct copy of Resolution No. R-20-21 signed by the Chairman of the Board is attached hereto as “Exhibit B”

5. In accordance with Section 20.9 of the Judgment, as provided in Watermaster Resolution No. R-20-21, Watermaster has conditioned approval of the transfer application on Michael Herbert’s intervention as a Party to the Judgment. Mr. Herbert has agreed to intervene as a Party to the Judgment.

1 6. In accordance with Judgment Section 20.9, I have consulted with Watermaster General
2 Counsel Craig Parton to seek Watermaster’s stipulation to the proposed intervention. In an August
3 10, 2020 email, Craig Parton informed me that I have his authority to represent to the Court that *the*
4 *Watermaster does hereby stipulate to entry of an Order granting MICHAEL HERBERT leave to*
5 *intervene in this Action.* Mr. Parton also instructed me to prepare this Declaration, and thereby
6 inform this Court that he does stipulate, on behalf of the Watermaster, to entry of an order granting
7 MICHAEL HERBERT leave to intervene in this Action, and thereby become a named Party to the
8 Judgment herein. *Mr. Parton informed me that my Declaration to this effect, as an Officer of the*
9 *Court, is sufficient to constitute the Watermaster’s Stipulation to the relief requested herein.*

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

12
13 Executed on August 11, 2020, at Laguna Niguel, California.

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8 Attorney for Moving Party
9 MICHAEL HERBERT

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

13 Coordination Proceeding
14 Special Title (Rule 1550(b))

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16 **CASES**

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344668;

AND RELATED ACTIONS.

Judicial Council Coordination Proceeding No.
4408

Santa Clara Case No. 1-05-CV-049053
Assigned to the Honorable Jack Komar
Department 17C

[Proposed]
ORDER GRANTING MICHAEL HERBERT
LEAVE TO INTERVENE AND BECOME A
PARTY TO THE JUDGMENT AND
PHYSICAL SOLUTION

Hearing Date:
Date: September 29, 2020
Time: 9:00 AM
Judge: Hon. Jack Komar

[Hearing to be conducted by Courtcall]

1 TO ALL INTERESTED PARTIES, ALL PERSONS REQUESTING NOTICE, AND THEIR
2 RESPECTIVE ATTORNEYS OF RECORD:

3 The Motion of MICHAEL HERBERT for an order granting him leave to intervene in this
4 Action and thereby become a Party to the December 23, 2015 Judgment and Physical Solution
5 (“Judgment”) in the above-captioned Antelope Valley Groundwater Adjudication was heard by this
6 Court via Courtcall on September 29, 2020 at 9:00 a.m.

7 Movant MICHAEL HERBERT appeared via his attorney, John Schatz. Other appearances, if
8 any, were noted on the Court record.

9 The Court, having read and considered the Motion and all supporting Declarations, and the
10 Memorandum of Points and Authorities attached thereto, and any additional evidence and legal
11 argument presented by other parties prior to or at the hearing, and good cause appearing therefore;

12 IT IS HEREBY ORDERED that the Motion is GRANTED. MICHAEL HERBERT is hereby
13 granted leave to intervene in this Action, and is hereby deemed a Party to the December 23, 2015
14 Judgment and Physical Solution (“Judgment”).

15 NOTICE OF THIS ORDER shall be provided to all Parties via posting on the Antelope Valley
16 Watermaster website via the Glo Trans Electronic Document Management system.

17
18 **SO ORDERED.**

19
20 Dated: _____

21 HONORABLE JACK KOMAR
22 JUDGE OF THE SUPERIOR COURT
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