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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

11
12 **ANTELOPE VALLEY**
13 **GROUNDWATER CASES**

14 Included Actions:

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

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

19 Wm. Bolthouse Farms, Inc. v. City of
20 Lancaster, Diamond Farming Co. v. City of
Lancaster, Diamond Farming Co. v.
21 Palmdale Water Dist. Superior Court of
California, County of ,Riverside, Case Nos.
22 RIC 353 840, RIC 344 436, RIC 344 668

23 RICHARD WOOD, on behalf of himself
and all other similarly situated v. A.V.
24 Materials, Inc., et al., Superior Court of
California, County of Los Angeles, Case
25 No. BC509546

Judicial Council Coordination Proceeding
No. 4408

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

**RABBITBRUSH SOLAR, LLC AND US
SOLAR ASSETS, LLC'S EX PARTE
APPLICATION FOR LEAVE TO INTERVENE
IN JUDGMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
THEREOF**

[Filed concurrently herewith: Declaration of
Bradley J. Herrema; Declaration of Brett Martino;
[Proposed] Order]

[Submitted on the Pleadings]

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

2 PLEASE TAKE NOTICE that Rabbitbrush Solar, LLC (“Rabbitbrush”) and US Solar
3 Assets, LLC (“US Solar”) (collectively, “Intervenors”), will and hereby do apply *ex parte*,
4 pursuant to California Rules of Court, rule 3.1200 et seq., for an order from the Court granting
5 Rabbitbrush and US Solar leave to intervene in the above-captioned action and the December 23,
6 2015 Judgment and Physical Solution (“Judgment”) therein. This *Ex Parte* Application is made in
7 accordance with Section 20.9 of the Judgment and Section 387 of the Code of Civil Procedure.
8 The *Ex Parte* Application is submitted on the papers and Intervenors are informed that if any
9 party seeks to oppose the *Ex Parte* Application, they may do so by filing an opposition brief with
10 the Court.

11 The grounds for granting this *Ex Parte* Application are as follows:

12 1. As set forth in the Judgment, this Court retained continuing jurisdiction over the
13 Judgment and Physical Solution “to make such further supplemental orders or directions as may
14 be necessary or appropriate to interpret, enforce, administer or carry out this Judgment.”
15 (Judgment, § 6.5.)

16 2. Any entity that is not a Party to the Judgment and “who proposes to Produce
17 Groundwater from the Basin, to store water in the Basin, to acquire a Production Right or to
18 otherwise take actions that may affect the Basin’s Groundwater is required to seek to become a
19 Party subject to this Judgment through a noticed motion to intervene in this Judgment prior to
20 commencing Production. Prior to filing such a motion, a proposed intervenor shall consult with
21 Watermaster Engineer and seek the Watermaster’s stipulation to the proposed intervention.”
22 (Judgment, § 20.9.)

23 3. FS Land Holding Company, LLC (“FS Land Holding”) is currently a Party to the
24 Judgment and the successor-in-interest to certain Production Rights allocated under Exhibit 4 to
25 the Judgment. FS Land Holding is a part of the First Solar, Inc. organization, as are Rabbitbrush
26 and US Solar. As a part of an internal reorganization of First Solar, Inc., FS Land Holding
27 transferred these Production Rights, as well as all associated Carry Over water, to Rabbitbrush
28 and US Solar (each entity being allocated a portion of the rights individually). Pursuant to Section

1 16 of the Judgment, Watermaster approved the transfers on December 2, 2020, but conditioned
2 the transfers on the Intervenor’s intervention in the Judgment. Because neither Rabbitbrush nor
3 US Solar is currently a Party to the Judgment, the entities now respectfully request this Court
4 grant their interventions in order to exercise the rights transferred by FS Land Holding in
5 accordance with the provisions of the Judgment. (Declaration of Brett Martino (“Martino Decl.”),
6 ¶¶2-3.)

7 4. The requested interventions are proper because Rabbitbrush and US Solar have
8 complied with the terms of Section 20.9 of the Judgment. The entities conferred with
9 Watermaster Engineer and Watermaster counsel regarding the requested interventions.
10 Watermaster Engineer found that no Material Injury to the Basin would occur as a result of the
11 transfer of water rights from FS Land Holding to Rabbitbrush and US Solar. Watermaster
12 conditioned its approval of the transfers on Intervenor’s successful intervention into the action
13 and the Judgment. And, Watermaster counsel has informed Intervenor that Watermaster
14 stipulates to an order by this Court permitting Intervenor leave to intervene in the action and the
15 Judgment. (Declaration of Bradley J. Herrema (“Herrema Decl.”), ¶¶ 2-4.)

16 5. The requested interventions in the Judgment are also proper under California Code
17 of Civil Procedure section 387 because Intervenor own water rights subject to the Judgment,
18 because intervention is necessary to protect their interests in these water rights and their abilities
19 to produce groundwater in accordance with the Judgment, and because their interests are not
20 adequately represented by existing parties to the Judgment. (Martino Decl., ¶ 4.)

21 6. Finally, good cause exists to grant this application on an *ex parte* basis as First
22 Solar, Inc. seeks to complete an internal reorganization and the transfer between First Solar
23 entities of certain assets relating to current or future projects under development by Rabbitbrush
24 and US Solar by the end of the year, and currently, there are no remaining available dates this
25 year for the Court to hear a regularly noticed motion. (Herrema Decl., ¶ 5; Martino Decl., ¶¶ 2-3.)
26 Furthermore, pursuant to the Watermaster resolution approving the transfers, Watermaster
27 considers the transfers “of no force or effect” until the Intervenor have successfully intervened in
28 the action. Accordingly, until this Court grants this *Ex Parte* Application, Watermaster will not

1 consider the Intervenor's transfer requests as valid transfers.

2 This *Ex Parte* Application is based upon this Notice, the attached Memorandum of Points
3 and Authorities, the Declaration of Brett Martino and Bradley J. Herrema concurrently filed
4 herewith, all documents on file herein, and such other evidence and argument that may be
5 submitted at any hearing of this matter.

6 Contact information for Watermaster counsel is as follows:

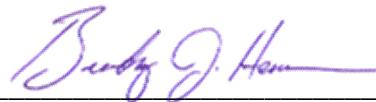
7 Craig Parton
8 Cameron Goodman
9 Price, Postel & Parma LLP
10 200 E. Carrillo Street, Suite 400
11 Santa Barbara, CA 93101
12 Tele: 805-962-0011
13 Email: cparton@ppplaw.com; cgoodman@ppplaw.com

14 On December 4, 2020, counsel for Rabbitbrush and US Solar notified all parties of this *Ex*
15 *Parte* Application via the case's e-filing service under Section 20.7 of the Judgment. (Herrema
16 Decl., ¶ 6.) Counsel for Rabbitbrush and US Solar is not informed of any opposition to this *Ex*
17 *Parte* Application, and no party objected to the transfers prior to or during Watermaster's
18 approval of the transfers. (*Id.* at ¶¶ 3, 6.) Rabbitbrush and US Solar have not previously applied to
19 the Court for this *ex parte* relief.

20 Dated: December 7, 2020

BROWNSTEIN HYATT FARBER SCHRECK, LLP

21 By:



22 BRADLEY J. HERREMA
23 CHRISTOPHER R. GUILLEN
24 Attorneys for RABBITBRUSH SOLAR, LLC and
25 US SOLAR ASSETS, LLC
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Rabbitbrush Solar, LLC (“Rabbitbrush”) and US Solar Assets, LLC (“US Solar”) (collectively, the “Intervenors”) file this *Ex Parte* Application to intervene in this action and the December 23, 2015 Judgment and Physical Solution (“Judgment”) therein pursuant to Section 20.9 of the Judgment in order to produce certain Production Rights and Carry Over water transferred to Intervenors by FS Land Holding Company, LLC (“FS Land Holding”).

FS Land Holding is the successor-in-interest to certain Production Rights allocated under Exhibit 4 to the Judgment. As part of an internal reorganization and transfer between First Solar, Inc. entities of certain assets relating to current or future projects under development by Intervenors, FS Land Holding has transferred all of its Production Rights and associated Carry Over water to Rabbitbrush and US Solar. Watermaster approved this transfer pursuant to Section 16 of the Judgment on December 2, 2020. However, Watermaster conditioned the transfer on Rabbitbrush and US Solar’s interventions in the Judgment. Accordingly, the Intervenors respectfully request the Court issue an order permitting Rabbitbrush and US Solar’s interventions into the Judgment pursuant to Section 20.9 of the Judgment in order for the two entities to exercise their water rights in accordance with the terms of the Judgment.

Additionally, this relief should be afforded on an *ex parte* basis as First Solar, Inc., FS Land Holding, Rabbitbrush, and US Solar seek to complete the internal reorganization and have these water right transfers be deemed effective by Watermaster by the end of the year, and there are currently no hearing dates remaining for a regularly noticed motion. No party objected to Watermaster’s approval of the transfers, and no party, other than the intervening parties, have an interest in the water rights. Further, per the Watermaster resolution approving the transfers, Watermaster will not consider the transfers of force and effect until this Court grants the requested interventions. In order to avoid any delay in the exercise of their rights, Intervenors respectfully seek an *ex parte* order permitting their interventions.

1 **II. STATEMENT OF FACTS**

2 FS Land Holding is the successor-in-interest to Production Rights allocated to LandInv,
3 Inc. and Rosamond Ranch, LP under the Judgment. (Declaration of Brett Martino (“Martino
4 Decl.”), ¶ 3.) FS Land Holding has previously exercised these rights for the construction and
5 operation of certain solar projects in the Antelope Valley Groundwater Basin developed under the
6 First Solar, Inc. entity structure. (*Ibid.*) As part of an internal reorganization and transfer between
7 First Solar, Inc. entities of certain assets relating to current or future projects under development
8 by Intervenors, FS Land Holding transferred these rights to Rabbitbrush and US Solar Assets.
9 (*Ibid.*) Rabbitbrush received 10 acre feet of FS Land Holding’s Production Rights and 300 acre-
10 feet of its accrued Carry Over water, while US Solar Assets received 724.44 acre-feet of FS Land
11 Holding’s Production Rights and the remainder of its Carry Over water. (*Ibid.*) Once the transfers
12 are deemed in effect by Watermaster, FS Land Holding will not retain any Production Rights or
13 Carry Over water under the Judgment. (*Ibid.*)

14 In accordance with Paragraph 16 of the Judgment and Section 13 of the Watermaster
15 Rules and Regulations, on November 16, 2020, FS Land Holding and the Intervenors submitted
16 the appropriate transfer applications to Watermaster. (Declaration of Bradley J. Herrema
17 (“Herrema Decl.”), ¶ 2, Ex. A.) After reviewing the applications, Watermaster Engineer found the
18 transfers’ potential to cause Material Injury to the Basin “negligible” and recommended approval
19 of the transfers. (*Ibid.*) Thereafter, on December 2, 2020, the Watermaster Board adopted
20 Resolution No. R-20-38, approving the transfers on the condition that each of the Intervenors
21 “file a motion to intervene as parties to the Judgment no later than thirty (30) days after the date
22 of this Resolution.” (*Id.* at ¶¶ 2-3, Ex. A.) And, on December 4, 2020, counsel for Watermaster
23 indicated Watermaster’s stipulation to the filing of this *Ex Parte* Application and an order by this
24 Court permitting Intervenors leave to intervene in the action and the Judgment. (*Id.* at ¶ 4, Ex. B.)

25 Finally, Intervenors request leave to intervene on an *ex parte* basis as they have been
26 informed that the Court does not have another available hearing date until next year, and First
27 Solar, Inc. aims to complete its internal reorganization of project-related assets and have these
28 water right transfers be deemed effective by Watermaster by the end of the calendar year.

1 (Herrema Decl., ¶ 5; Martino Decl., ¶¶ 2-3.) Similarly, Watermaster will not consider the
2 transfers by FS Land Holdings to Intervenors as of “force or effect” until intervention has been
3 granted by this Court. (Herrema Decl., ¶ 2, Ex. A.) Accordingly, in order for the Intervenors to
4 produce groundwater in accordance with the Judgment, intervention is necessary forthwith.

5 **III. GOOD CAUSE EXISTS TO GRANT THIS EX PARTE APPLICATION**

6 **A. Intervenors Have Complied with the Requirements of the Judgment**

7 Section 20.9 of the Judgment provides:

8
9 Any Person who is not a Party or successor to a Party and who
10 proposes to Produce Groundwater from the Basin, to store water in
11 the Basin, to acquire a Production Right or to otherwise take actions
12 that may affect the Basin’s Groundwater is required to seek to
13 become a Party subject to this Judgment through a noticed motion
14 to intervene in this Judgment prior to commencing Production.
15 Prior to filing such a motion, a proposed intervenor shall consult
16 with the Watermaster Engineer and seek the Watermaster’s
17 stipulation to the proposed intervention. A proposed intervenor’s
18 failure to consult with the Watermaster Engineer may be grounds
19 for denying the intervention motion. Thereafter, if approved by the
20 Court, such intervenor shall be a Party bound by this Judgment.

21 As required by Section 20.9 of the Judgment and Section 16 of the Watermaster Rules and
22 Regulations, Intervenors applied to and secured the approval of the Watermaster Engineer and
23 Watermaster for FS Land Holdings’ transfers to Rabbitbrush and US Solar Assets. The Engineer
24 and Watermaster made findings that Intervenors’ exercise of FS Land Holding’s rights would not
25 cause a Material Injury to the Basin, and that it is appropriate to allow Intervenors to intervene in
26 the Judgment. (Herrema Decl., ¶ 2, Ex. A.) And Watermaster counsel has informed Intervenors of
27 Watermaster’s stipulation to an order permitting Intervenors leave to intervene in the action and
28 the Judgment. (*Id.* at ¶ 4, Ex. B.)

24 **B. Intervention Is Necessary and Appropriate**

25 The requested interventions are also necessary and appropriate under Code of Civil
26 Procedure section 387. Section 387 provides that a court shall permit a nonparty to intervene
27 when a provision of law confers an unconditional right to intervene or if the nonparty claims an
28 interest relating to the property or transaction that is the subject of the action and the nonparty is

1 so situated that the disposition of the action may impair or impede the nonparty’s ability to
2 protect that interest, unless that nonparty’s interest is adequately represented by one or more of
3 the existing parties. Section 387 also permits a Court to allow intervention if the nonparty has an
4 interest in the matter in litigation.

5 Intervention is appropriate here under both the mandatory and permissive provisions in
6 Code of Civil Procedure section 387. Rabbitbrush and US Solar Assets request intervention in
7 order to protect their Production Rights allocated under the Judgment and to exercise those rights,
8 as well as their rights to Carry Over water, in accordance with the Judgment. The entities’
9 interests are not currently represented by any party to the action, as no other party has an interest
10 in their Production Rights or Carry Over water. Indeed, without the requested intervention, there
11 is no manner in which the Intervenors can assert and protect their rights under the Judgment
12 before this Court. (Martino Decl., ¶ 4.)

13 **C. Intervenors Will Face Irreparable Harm If Their Intervention Is Not Granted**
14 **on an *Ex Parte* Basis**

15 Finally, this request is made on an *ex parte* basis because First Solar, Inc. seeks to
16 conclude its reorganization of project-related assets and have these water right transfers be
17 deemed effective by Watermaster by the end of the year, and there are no remaining hearing dates
18 for a motion. (Herrema Decl., ¶ 5.) Further, until this Court grants the requested interventions,
19 Watermaster will consider the transfers of no force and effect. (*Id.*, at ¶ 2, Ex. A.) Accordingly, an
20 order from this Court permitting intervention is necessary in order for the Intervenors to exercise
21 their rights under the Judgment.

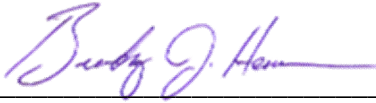
22 **IV. CONCLUSION**

23 For the reasons stated above, Rabbitbrush and US Solar Assets respectfully request this
24 Court grant this *Ex Parte* Application and permit the Intervenors leave to intervene into the action
25 and Judgment.

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Dated: December 7, 2020

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: 

BRADLEY J. HERREMA
CHRISTOPHER R. GUILLEN
Attorneys for RABBITBRUSH SOLAR, LLC and
US SOLAR ASSETS, LLC

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PROOF OF SERVICE
Antelope Valley Groundwater Cases
Santa Clara County Case No. 1-05-CV-049053
Judicial Council Coordination ("JCCP") No. 4408

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I, Ivy Capili, 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: Brownstein Hyatt Farber Schreck, LLP, 2049 Century Park East, Suite 3550, Los Angeles, California 90067.

On December 7, 2020, I electronically served the foregoing document described as:
RABBITBRUSH SOLAR, LLC AND US SOLAR ASSETS, LLC'S EX PARTE APPLICATION FOR LEAVE TO INTERVENE IN JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF on the interested parties in this action through the OneLegal website (www.onelegal.com) and pursuant to the Electronic Filing and Service Standing Order of Judge Komar.

The file transmission was reported as complete to all parties appearing on the www.scefiling.org electronic service list for the Antelope Valley Groundwater Cases, Case No. 2005-1-CV-049053; JCCP 4408.

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

Executed on December 7, 2020, at Los Angeles, California.



Ivy Capili