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9 40AA Water Holdings LLC, a Delaware limited
10 liability company

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**

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

Judicial Council Coordination
Proceeding No. 4408

15 ANTELOPE VALLEY GROUNDWATER
16 CASES

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

17 Including Consolidated Actions:

**MEMORANDUM OF POINTS AND
18 AUTHORITIES IN SUPPORT OF
19 NOTICE OF MOTION AND
20 MOTION TO INTERVENE IN
21 JUDGMENT**

22 Los Angeles County Waterworks District
23 No. 40 v. Diamond Farming Co.; Superior
24 Court of California, County of Los Angeles,
25 Case No. BC391869;

(Filed concurrently with the Notice of
Motion and Motion to Intervene In
Judgment; Declarations of Veena P.
Beglinger and Theodore A. Chester, Jr.
in support of Motion to Intervene; and
[Proposed] Order)

26 Los Angeles County Waterworks District
27 No. 40 v. Diamond Farming Co.; Superior
28 Court of California, County of Kern, Case
No. S-1500-CV-254348;

Hearing Date: To Be Set By The Court
Time: To Be Set By The Court
Judge: Hon. Jack Komar

Wm. Bolthouse Farms, Inc. v. City of
Lancaster; Diamond Farming Co. v. City of
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;

[Hearing to be conducted by CourtCall]

AND RELATED ACTIONS.

1 **I. INTRODUCTION**

2 This Motion stems from a routine agreement for the transfer of Production Rights
3 and Carry Over water rights.¹ The transfer of one (1) acre-foot of Permanent Production
4 Rights and two hundred twenty (220) acre-feet of Carry Over water rights (“Water
5 Rights”) from Burrows/300 A 40 H, LLC to 40AA Water Holdings LLC has been
6 approved by the Watermaster, subject to 40AA Water Holdings LLC, a Delaware limited
7 liability company, intervening into this Action and becoming a Party to the Judgment.

8 This Motion is filed pursuant to Section 20.9 of the Judgment, which specifies that
9 [a]ny Person who is not a Party or successor to a Party and *who proposes to ... acquire a*
10 *Production Right ...* is required to seek to become a Party subject to this Judgment
11 through a noticed motion to intervene in this Judgment prior to commencing Production.”
12 The foregoing language is applicable in the instant case, because 40AA Water Holdings
13 LLC, a Delaware limited liability company, proposes to “acquire a Production Right”;
14 thereby placing it neatly into the category of persons that were specifically expected to
15 intervene into this Action, and thereby become one of the Parties bound by the Judgment.

16 **II. STATEMENT OF FACTS**

17 **A. Identity of the Parties.**

18 40AA Water Holdings LLC, a Delaware limited liability company, was formed on
19 March 8, 2022 as a holding company for the Water Rights for a solar project overlying a
20 portion of the Antelope Valley Groundwater Basin.

21 Burrows/300 A 40 H, LLC (the seller of the Water Rights that are the subject of
22 this Motion) is Bruce Burrows, an individual, who owned land overlying a portion of the
23 Antelope Valley Groundwater Basin and 300 A 40 H, LLC, a California limited liability
24 company, of which Bruce Burrows is the sole manager, and which owned land overlying a
25 portion of the Antelope Valley Groundwater Basin. Both Bruce Burrows and 300 A 40 H,
26 LLC, (collectively, “Burrows”) are Parties to the Judgment. On Exhibit 4 of the
27

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

1 Judgment, the Court listed “Burrows/300 A 40 H, LLC” as a “Producer” owning 295.00
2 acre-feet of “Overlying Production Rights” as specified in Paragraph 5.1.1 of the
3 Judgment (“Production Rights”).

4 **B. Procedural Background.**

5 On December 28, 2015, this Court entered Judgment in the Antelope Valley
6 Groundwater Cases; Judicial Council Coordination Proceeding No. 4480. The Judgment
7 incorporates by reference the “Physical Solution”; which sets forth the factual and
8 procedural history of this case, and a comprehensive ruling for allocation and
9 administration of water and water rights in the Antelope Valley. The Court adopted the
10 Physical Solution “as the Court’s own physical solution” and declared that it is binding
11 upon all Parties as part of the Judgment.

12 By virtue of being Parties to the lawsuit, Bruce Burrows and 300 A 40 H, LLC
13 were jointly awarded the 295.00 acre-feet of Production Rights. The Production Rights
14 relate to groundwater production that occurred with respect to two properties: (1) Los
15 Angeles APN: 3275-007-013 (previous APN: 3275-007-010) (the “First Property”) which
16 land totals approximately 160 acres, and (2) Los Angeles APNS: 3275-002-001, 007, 008,
17 010, 012, 015, 016, 017, 018, 019, and 020 (the “Second Property”) which land totals
18 approximately 160 acres. Pursuant to Section 15.3 of the Judgment, Burrows/300 A 40 H,
19 LLC may Carry Over the unproduced portion of its Production Rights for up to ten (10)
20 years. According to the Antelope Valley Watermaster Engineer and the draft 2021
21 Annual Report, Burrows/300 A 40 H, LLC currently owns 1,770 Carry Over water rights.
22 Pursuant to Section 5.1.1.3 of the Judgment, said Overlying Production Rights may be
23 transferred pursuant to the provisions of Paragraph 16 of the Judgment. Pursuant to
24 Section 15.3 of the Judgment, said Carry Over water may be transferred.

25 **C. Factual Background.**

26 On April 4, 2022, Bruce Burrows and 300 A 40 H, LLC as seller and 40AA Water
27 Holdings LLC, a Delaware limited liability company as buyer entered into an
28 “Adjudicated Water Rights Purchase Agreement” pursuant to which Bruce Burrows and

1 300 A 40 H, LLC agreed to sell to 40AA Water Holdings LLC one (1) acre-foot of
2 Permanent Production Rights and two hundred twenty (220) area-feet of Carry Over water
3 rights.

4 On April 14, 2022, Bruce Burrows and 300 A 40 H, LLC as seller and 40AA
5 Water Holdings LLC as buyer also executed and tendered a joint “Transfer Request
6 Form” to the Antelope Valley Watermaster, requesting its approval of the proposed
7 transaction (“Transfer Request”).

8 During the course of its standard due diligence, the Watermaster and its Engineer
9 confirmed that Bruce Burrows and 300 A 40 H, LLC possesses the right to use or
10 permanently transfer at least one (1) acre-foot of Permanent Water Rights and two
11 hundred twenty (220) acre-feet of Carry Over water rights, and that Bruce Burrows and
12 300 A 40 H, LLC possess power and standing to transfer said Permanent Water Rights to
13 40AA Water Holdings LLC.

14 Full and proper notice of the foregoing Transfer Request was provided to all
15 Parties via (i) the Watermaster’s posting the Watermaster Board Agenda, which included
16 the subject Transfer Request, on the Watermaster website; and (ii) posting the
17 Watermaster Board Agenda on the bulletin board in the lobby of the Watermaster offices.
18 ***No objections to this Transfer Request were filed by any Party to the Adjudication, nor***
19 ***by any other member of the public.***

20 On May 25, 2022, at its regular monthly meeting, the foregoing Transfer Request
21 was considered and ***unanimously approved by the Watermaster Board.*** Accordingly, the
22 Watermaster unanimously adopted *Resolution No. R-22-30, Approving Application for*
23 *Transfer Pursuant to the Terms of the Judgment with Specified Conditions.* Among other
24 things, the Resolution states that the Watermaster Engineer determined in its analysis that:
25 (i) Burrows/300 A 40 H, LLC currently own one (1) acre-foot of Permanent Production
26 Rights and two hundred twenty (220) acre-feet of Carry Over water rights which are
27 available for use or transfer; (ii) Burrows/300 A 40 H, LLC possesses the right and power
28 to transfer the Production Rights and Carry Over water rights; and (iii) the transfer of

1 Production Rights results in no Material Injury to the Basin.

2 As a condition of final approval, the Watermaster also required that 40AA Water
3 Holdings LLC intervene as a Party to the Judgment. 40AA Water Holdings LLC has
4 agreed to intervene as a Party to the Judgment.

5 Prior to filing this Motion, counsel for Burrows consulted with the General
6 Counsel for the Watermaster and sought and procured the Watermaster's stipulation to
7 this proposed intervention.

8 40AA Water Holdings LLC therefore filed the instant Motion to Intervene in the
9 Judgment. As noted above, *the Watermaster has stipulated to 40AA Water Holdings*
10 *LLC's intervention into the Judgment.*

11 III. LEGAL ARGUMENT

12 A. The Judgment Specifically Provides for Intervention by Parties Who 13 Propose to Acquire a Production Right.

14 When the Physical Solution was drafted and adopted, the Court anticipated that it
15 would inevitably be necessary to include additional persons as named Parties to the
16 Judgment. The Court therefore provided the mechanism to achieve this result, via Section
17 20.9 of the Judgment, which provides as follows:

18 **20.9 Intervention After Judgment.** Any person who is not a Party or
19 successor to a Party and *who proposes to ... acquire a Production Right ...*
20 is requested to seek to become a Party subject to this Judgment through a
21 noticed motion to intervene in this Judgment prior to commencing
22 Production. Prior to filing such a motion, a proposed intervenor shall consult
with the Watermaster Engineer and seek the Watermaster's stipulation to the
proposed intervention. ... Thereafter, if approved by the Court, such
intervenor shall be a Party bound by this Judgment." (*Emphasis added.*)

23 The foregoing language is applicable in the instant case, because 40AA Water
24 Holdings LLC proposes to "acquire a Production Right"; thereby placing it precisely into
25 the category of persons that were specifically expected to intervene into this Action, and
26 thereby become a Party bound by the Judgment.

27 Intervention is proper under Section 20.9 of the Judgment, because the
28 Watermaster Board has approved the subject transaction, the transaction causes no

1 Material Injury, and the Watermaster has stipulated to the proposed intervention.

2 Since 40AA Water Holdings LLC is one of the exact categories of persons that the
3 Court and all Parties expected to intervene, and its proposed transaction is proper, and has
4 been properly noticed and approved by the Watermaster, 40AA Water Holdings LLC
5 respectfully requests that this Court enter an order granting this motion to intervene.

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

7 The intervention is also necessary and appropriate under *California Code of Civil*
8 *Procedure* Section 387. Section 387 provides that a Court *shall* permit a nonparty to
9 intervene in an action or proceeding when that party claims an interest relating to the
10 property that is the subject of the action, when the disposition of the action may impair or
11 impede that person's ability to protect that interest, and when that interest is not
12 adequately represented by an existing party. A Court *may* also permit intervention upon
13 timely application by nonparty that has an interest in the subject matter of the litigation
14 that may be affected, when the intervention will not enlarge the issues in the litigation and
15 when the reasons for the intervention outweigh any opposition by the parties presently in
16 the action. (Cal Code Civ. Proc. § 387 subd. (d); *US Ecology, Inc. v. State of California*
17 (2001) 92 Cal.App.4th 113, 139; *Timberidge Enterprises Inc. v. City of Santa Rosa* (1978)
18 86 Cal.App.3d 873, 881.)

19 In the instant case, both of the above tests are satisfied. Mandatory intervention is
20 applicable because: (i) 40AA Water Holdings LLC claims an interest in the water
21 Production Rights which are the subject of the Transfer Request; (ii) intervention is
22 presently deemed necessary by the Watermaster for the Parties to transfer, own, and/or
23 use the Production Rights; and (iii) no current Party to the Judgment represents the
24 interests of the 40AA Water Holdings LLC.

25 Permissive intervention is also applicable because: (i) 40AA Water Holdings LLC
26 claims an interest in the Production Right and Carry Over water rights which are the
27 subject of the Transfer Request; (ii) intervention will not enlarge, alter, impair, nor in any
28 way affect the issues in the litigation (since the litigation is entirely resolved); and (iii) the

1 reasons for intervention are to comply with the Judgment (which specifically
2 contemplates that new parties would intervene), and to comply with conditions required
3 by the Watermaster (that 40AA Water Holdings LLC intervene).

4 The intervention statute is designed to promote fairness and to ensure maximum
5 involvement by all responsible, interested in affected Parties. *Mary R. v. B. & R. Corp.*
6 (1983) 149 Cal.App.3d 308, 314. The statute “should be liberally construed in favor of
7 intervention.” *Lindelli v. Town of San Anselmo* (2006) 139 Cal.App.4th 1499, 1505. The
8 Judgment, which controls, recognizes these principles through Section 20.9, which
9 expressly provide for intervention *after* entry of the Judgment in order to account for
10 persons who “proposed to ... acquire a Production Right” after the date of the Judgment.

11 **C. 40AA Water Holdings LLC Has Complied with the Requirements of**
12 **the Judgment.**


13 As required by Section 20.9 of the Judgment, 40AA Water Holdings LLC has
14 consulted with the Watermaster Engineer and the Watermaster’s stipulation to 40AA
15 Water Holdings LLC’s proposed intervention was obtained. 40AA Water Holdings LLC
16 has also presented evidence that it proposes to “acquire a Production Right”; which is
17 precisely one of the categories of persons contemplated to intervene into the action and
18 become a “Party” to the Judgment by e-filing on the Court’s website.

19 **IV. PRAYER**

20 40AA Water Holdings LLC respectfully requests that this Court grant its Motion to
21 intervene and thereby become a Party bound by the Judgment, pursuant to Section 20.9 of
22 the Judgment.

23 DATED: July 12, 2022

COX, CASTLE & NICHOLSON LLP

24
25 By: 
26 Kenneth B. Bley
27 Attorneys for Intervenor
28 40AA Water Holdings LLC, a
Delaware limited liability company