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10 Service Rock Products Corporation, as successor-
11 in-interest to Owl Properties, Inc., and Sheep
12 Creek Water Company, Inc.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF LOS ANGELES**

15 Coordination Proceeding
16 Special Title (Rule 1550(b))

) Judicial Council Coordination
) Proceeding No. 4408

17 **ANTELOPE VALLEY GROUNDWATER**
18 **CASES**

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

19 Including Actions:

20 Los Angeles County Waterworks District No.
21 40 v. Diamond Farming Co.
22 Superior Court of California, County of Los
23 Angeles, Case No. BC 325 201

) **CASE MANAGEMENT STATEMENT**
) **AND [PROPOSED] ORDER FOR PHASE**
) **II TRIAL BY CROSS-DEFENDANTS,**
) **SERVICE ROCK PRODUCTS**
) **CORPORATION AND SHEEP CREEK**
) **WATER COMPANY**

24 Los Angeles County Waterworks District No.
25 40 v. Diamond Farming Co.
26 Superior Court of California, County of Kern,
27 Case No. S-1500-CV-254-348

) DATE: August 11 2008
) TIME: 9:00 a.m.
) DEPT.: LASC Dept. 1
) TENT. TRIAL DATE: October 6, 2008

28 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
353 840, RIC 344 436, RIC 344 668

AND RELATED ACTIONS.

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1 **CASE MANAGEMENT STATEMENT**

2 Cross-Defendants, Service Rock Products Corporation (“Service Rock”) and Sheep
3 Creek Water Company (“Sheep Creek”), submit that the Court should consider the following
4 before issuing any Case Management Order (“Order”) for Phase II of Trial that is presently set to
5 commence on October 6, 2008 (“Phase II”).
6

7 **1. JURISDICTION.**

8 **a. Scope of Jurisdiction.** In order for the Court to achieve the stated purpose
9 of these Judicial Council Coordinated proceedings, effecting a general groundwater adjudication
10 (“Adjudication”) of the greater Antelope Valley Groundwater Basin (“Basin”), the Court needs
11 to have both “subject matter” and *in personam / in rem* jurisdiction (the Court could either have
12 jurisdiction over the real property or the persons having rights, title and recognizable interests in
13 the properties in the Basin). Should the cases proceed to trial on any substantive issue in the
14 absence of complete subject matter and *in personam / in rem* jurisdiction, the Adjudication could
15 be subject to challenge on jurisdictional grounds, including failure to satisfy the requirements of
16 the McCarran Act. While complete jurisdiction was neither required nor possible for the
17 October 10 – 12, 2006 Phase I of Trial (“Phase I”), that is not the case for Phase II.

18 **b. In Personam / In Rem Jurisdiction.**

19 **i. Identification of Necessary and Proper Parties.** The extent of *in*
20 *personam / in rem* jurisdiction was not knowable prior to Phase I, in which the Court established
21 the “jurisdictional boundaries” of the Antelope Valley area that would be the subject of a general
22 groundwater adjudication of the Basin. Once that determination had been made, it was possible
23 for the Plaintiffs and Cross-Complainants to identify every parcel of property within the then
24 established jurisdictional boundaries of the Basin, and the ownership of each of those parcels.

25 **ii. Directive to Identify, Name and Serve Necessary and Proper Parties.**
26 Accordingly, following Phase I, the Court directed the Plaintiffs and Cross-Complainants to
27 identify, name and effect service on all persons and entities who are necessary and proper parties
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1 to their case. Notwithstanding that directive, the Plaintiffs and Cross-Complainants have,
2 admittedly, not yet identified, named and effected service on all necessary and proper parties.

3 **iii. Defendant Classes.** In order to achieve *in personam* jurisdiction over a
4 large portion of the as yet unidentified, unnamed and un-served necessary and proper parties, the
5 Court decided to utilize “defendants’ classes.” After much consideration, the Court settled on
6 two (2) defendants’ classes, one (1) whose members would have the right or potential right to
7 produce due to their status as overlyers, but have not done so (the “Dormant Overlyers Class¹”),
8 and the other whose members produce relatively small quantities of water annually from their
9 overlying property (the “Small Producers Class²”). Though the Dormant Overlyers Class has
10 been certified, there are potential problems with the class “as certified,” as a consequence of
11 which requests are pending to modify the criteria for membership in the Dormant Overlyers
12 Class. The Court has yet to certify the Small Producers Class, and there is a substantial
13 disagreement amongst the parties regarding some of the potential criteria for membership in that
14 class, including the extent of production and whether members can be served by public or mutual
15 water providers. Furthermore, potential class members have the right to “opt out” of both classes
16 and independently appear before the Court. Accordingly, though the Court will have affected
17 jurisdiction over thousands of necessary and proper parties once the Dormant Overlyers Class
18 and the Small Producers Class have been finally certified (and opting out parties are properly
19 before the Court), that process must be complete before commencing to Phase II, in order for the
20 Court to have *in personam* jurisdiction over the parties who could be members of those
21 defendant classes.

22 **iv. Remaining Unnamed and Un-served Necessary and Proper Parties.**
23 As mentioned above, some of the members of the two (2) defendants’ classes may opt out of
24 their respective classes. Further, there are unnamed and un-served persons and entities that are
25 not within the definitions of either the Dormant Overlyers Class or the Small Producers Class.
26 Accordingly, certification of the Dormant Overlyers Class and the Small Producers Class will
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28 ¹ *Rebecca Lee Willis, et al. v. Los Angeles County Waterworks District No. 40, et al*, LASC Case No. BC364553.

² *Richard A. Wood, et al. v. Los Angeles County Waterworks District No. 40*, LASC Case No. BC391869.

1 not result in the Court having *in personam* jurisdiction over all of the necessary and proper
2 parties.

3 **v. Right of Necessary and Proper Parties to Participate in Phase II.** The
4 rights and interests of every necessary and proper party will likely be affected by the Court’s
5 determination of whether the Basin is comprised of “sub-basins” or “sub-areas” or “management
6 zones,” and the physical characteristics and hydrology of the Basin and “sub-basins” or “sub-
7 areas,” if any. As a consequence, each has the right to participate in the process by which the
8 Court will make that determination. It is, therefore, absolutely essential that the Court have
9 proper *in personam* / *in rem* jurisdiction over all necessary and proper parties before
10 commencing Phase II. Since the Court does not yet have complete *in personam* / *in rem*
11 jurisdiction, Phase II cannot be safely commenced.

12 **c. Subject Matter Jurisdiction.**

13 **i. “Adjudication of the Basin” is the Subject Matter.** The widely
14 recognized purpose of the Judicial Council Coordinated cases (“Cases”) is the Adjudication of
15 the Basin. In order for that purpose to be accomplished, the Court needs to have complete
16 subject matter jurisdiction. Simply stated, that means that at least one (1) of the causes of action
17 in each of the Cases needs to permit a remedy or relief of the “adjudication” of the Basin as the
18 Court defined it in Phase I; and, that each necessary and proper party must be a party to one (1)
19 of the Cases in which at least one (1) of the causes of action permits the remedy or relief of the
20 “adjudication” of the Basin as the Court defined it in Phase I. Regrettably, it appears that
21 neither is the case at present.

22 **ii. The “Coordinated” Cases.** In its September 27, 2005 *Order*, the Court
23 ordered the “coordination” of the then existing cases [*Los Angeles County Waterworks District*
24 *No. 40 v. Diamond Farming Co., et al*, LASC Case No. BC 325 201; *Los Angeles County*
25 *Waterworks District No. 40 v. Diamond Farming Co., et al*, KCSC Case No. S-1500-CV-254-
26 348; and *Wm. Bolthouse Farms, Inc. v. City of Lancaster, Diamond Farming Co. v. City of*
27 *Lancaster*, and *Diamond Farming Co. v. Palmdale Water District*, RCSC Consolidated Actions
28 RIC 353 840, RIC 344 436 and RIC 344, 668] under the umbrella of “Judicial Council

1 Coordination Proceeding No. 4408.” When the Court issued its April 13, 2007 *Order Granting*
2 *Petition for Coordination of Add-On Case* [in re the Dormant Overlyers Class], the Court again
3 “... ORDERED that the *Willis* case [] be coordinated as an add-on case with the previously
4 coordinated *Antelope Valley Groundwater Cases*, J.C.C.P. 4408.” The Court has indicated that
5 the Small Producers Class case will also be coordinated under the umbrella of “Judicial Council
6 Coordination Proceeding No. 4408.”

7 iii. **The “Coordinated” Cases are Technically Separate and Independent**
8 **of Each Other.** Though the Court could have ordered the Cases “coordinated,” “consolidated
9 for trial only” or “completely consolidated,” the Court only ordered the Cases “coordinated” as a
10 Judicial Council Coordinated Proceeding. No order for consolidation was issued.

11 In order for the Court to have ordered consolidation, the Court would have had to find
12 that each of the consolidated actions have common questions of law or fact³ and that the causes
13 of action in the add-in cases contain causes of action in which the Court was requested to
14 adjudicate the Basin characteristics and develop a physical solution for the Basin. Unless a court
15 orders actions completely consolidated, the cases remain separate and independent actions, and a
16 party’s appearance in one (1) is not an appearance in the other because there is no merger of the
17 separate actions.⁴ “Coordinated” cases are managed and tried together to promote judicial
18 efficiency, accommodate the convenience of the parties, witnesses and counsel, promote the ends
19 of justice and avoid duplicative and inconsistent rulings, orders and judgments.⁵ However,
20 neither *Code of Civil Procedure* §§ 404 through 404.9, nor *California Rules of Court*, Rules
21 3.501 through 3.550 permit the entry of a judgment granting a remedy not permitted for a stated
22 cause of action.

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26 _____
27 ³ *California Code of Civil Procedure* § 1048(a).
28 ⁴ See *Sanchez v. Superior Court*, 250 Cal. Rptr. 787 (Cal. Dist. Ct. App. 1988). See also 4 Witkin, Cal. Proc. 4th,
Plead, § 316, et seq.
⁵ *California Code of Civil Procedure* § 404.1.

1 iv. **The Members of the Dormant Overlyers Class and the suggested**
2 **Members of the Small Producers Class are not Parties to any Cause of Action in which the**
3 **Court has been requested to Adjudicate the Basin Characteristics and Develop a Physical**
4 **Solution for the Basin.** *Los Angeles County Waterworks District No. 40 v. Diamond Farming*
5 *Co., et al*, LASC Case No. BC 325 201 purports to request that the Court determine the extent of
6 the Basin⁶ and achieve *in personam* jurisdiction over the persons and entities having right, title or
7 interest in and to the real properties within the Basin⁷; contains causes of action in which the
8 Court is requested to determine prescriptive rights to waters of the Basin,⁸ appropriative rights to
9 waters of the Basin⁹, and priorities to and characteristics of those rights¹⁰; and requests that the
10 Court adjudicate the Basin characteristics and develop a physical solution for the Basin¹¹. None
11 of the parties to the Dormant Overlyers Class or the Small Producers Class were made parties to
12 LASC Case No. BC 325 201; and except for the “public water providers,” none of the other
13 parties were made parties to either of the defendant class actions. Further, none of the causes of
14 action to the Dormant Overlyers Class or the Small Producers Class cases request that the Court
15 adjudicate the Basin and develop a physical solution for the Basin. The Dormant Overlyers
16 Class complaint only seeks relief such as orders for inverse condemnation and that the public
17 water purveyors cannot prescribe against their dormant overlying rights¹²; the Small Producers
18 Class proposed complaint is virtually identical¹³; and the public water purveyors did not cross-
19 complain seeking the adjudication of the Basin and the development of a physical solution for
20 the Basin. Simply stated, the Dormant Overlyers Class members are not parties (and the Small

21 _____
22 ⁶ Eighth Cause of Action – Boundaries of the Basin.

23 ⁷ See Paragraph 11.

24 ⁸ First Cause of Action for Declaratory Relief – Prescriptive Rights.

25 ⁹ Second Cause of Action for Declaratory Relief – Appropriative Rights.

26 ¹⁰ Fourth Cause of Action for Declaratory Relief – Municipal Priority, Fifth Cause of Action for Declaratory Relief
27 – Storage of Imported Water, Sixth Cause of Action for Declaratory Relief – Recapture of Return Flows, Seventh
28 Cause of Action – Unreasonable Use of Water.

¹¹ Third Cause of Action for Declaratory Relief – Physical Solution.

¹² The “Willis” complaint contains causes of action for Declaratory Relief (of only their claimed overlying rights),
Quiet Title, Damages (for taking by inverse condemnation of their water, under State and Federal law), Public and
Private Nuisance, Trespass, Conversion and Injunctive Relief.

¹³ The “Wood” complaint contains causes of action for Declaratory Relief (of only their claimed overlying rights),
Quiet Title, Damages (for taking by inverse condemnation of their water, under State and Federal law), Public and
Private Nuisance, Trespass, Conversion, Violation of 42 U.S.C. § 1983 and Injunctive Relief.

1 Producers Class members are not proposed to be parties) to any cause of action in which the
2 Court has been requested to adjudicate the Basin characteristics and develop a physical solution
3 for the Basin.

4
5 **2. PHASE II OF TRIAL**

6 **a. Sub-Basins.**

7 **i. Claims that Sub-Basins Exist.** A number of parties (including Tejon
8 Ranch Corp. and Ana Verde LLC) have expressed their intent to assert the existence of sub-
9 basins, which have their own separate source of supply and which are hydrologically separate
10 and distinct from the remainder of the Basin.

11 **ii. Impact of the Existence of Sub-Basins on Total Supply.** To the extent
12 that the Court finds the existence of sub-basins, the supply to the sub-basin(s) could not also
13 constitute part of the supply to the balance of the Basin. Consequently, a finding that sub-basins
14 exist would necessarily result in a finding that the total supply available to the balance of the
15 Basin has been accordingly diminished.

16 **iii. The Existence of Sub-Basins must be Determined Before the Court**
17 **Determines other Physical Characteristics and Hydrology of the Basin.** If the Court
18 determines that sub-basins exist, the characteristics and hydrology of each sub-basin would need
19 to be determined separately. Not only would the supply to a sub-basin not constitute part of the
20 supply to the remainder of the Basin, but “physical characteristics,” “safe yield” and the
21 existence, extent and duration of “overdraft,” if any, would necessarily have to be determined on
22 a sub-basin vis-à-vis remainder of the Basin basis.

23 **b. Sub-Areas or Management Zones.** Even if the Court were to determine that
24 there are no hydrologically separate and distinct “sub-basins,” the possibility remains that there
25 are portions of the Basin that are sufficiently dissimilar or unique from the rest of the Basin that
26 warrant them being identified as “sub-areas” or “management zones.” In such an event, the Court
27 would likely need to determine the physical characteristics and/or hydrologic issues of those sub-
28 areas or management zones vis-à-vis the remainder of the Basin. Sheep Creek intends to request

1 that the Court find that a portion of the extreme far southeastern portion of the Basin, has a
2 sufficient hydrologic disconnect from the balance of the Basin, to warrant its treatment as a
3 separate management zone.

4 c. **Remaining Physical Characteristics and Hydrology.** After the Court has
5 determined whether “sub-basins” exist, and whether there are any “sub-areas” or “management
6 zones” that require separate analysis, the Court should proceed with the analysis of the physical
7 characteristics and hydrology of the Basin, and any judicially recognized “sub-basins,” “sub-
8 areas” and “management zones.” The analysis of physical characteristics should result in a
9 determination of the “safe yield” for the Basin, and each judicially recognized “sub-basin,” “sub-
10 area” and “management zone”; and whether the Basin, and each judicially recognized “sub-
11 basin,” “sub-area” and “management zone” is in a condition of overdraft.

12
13 **3. PRE-TRIAL SCHEDULING ISSUES.**

14 a. **The Cases must be At Issue.** Service Rock and Sheep Creek submit that the
15 Court should not order the commencement of Phase II until it has complete *in personam / in rem*
16 and subject matter jurisdiction, meaning that the case must be “at issue” for the Phase II Trial to
17 commence. Service Rock and Sheep Creek anticipate joining in the Ex Parte Application of the
18 Small Producers (Wood) Class for the Continuance of the Trial.

19 b. **Location.** The Phase II Trial should take place in Los Angeles County, not in
20 Santa Clara. The costs of requiring the numerous defendants and cross-defendants to participate
21 in a trial in Santa Clara would be prohibitive.

22 c. **Pre-Phase II Trial Orders.** In general, Service Rock and Sheep Creek do not
23 disagree with the relative scheduling of pre-Phase II Trial activities, as set forth in the
24 “[Proposed] Case Management Order for Phase 2 Trial” submitted by a number of the non-class
25 defendants, though the period of time between Phase IIA (regarding the determination of
26 whether there are or are not “sub-basins” or “management zones”) should be expanded
27 considerably to permit the parties to acquire the relevant information and adequately prepare for
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Phase IIB (regarding “overdraft,” “safe yield” and related issues). Further, the scheduling of those dates should not occur until after the Court has ensured that the Cases are truly “at issue.”

Dated: August 6, 2008.

Respectfully Submitted,

GRESHAM SAVAGE NOLAN & TILDEN,
a Professional Corporation

By: 
Michael Duane Davis
Attorneys for Service Rock Products
Corporation and Sheep Creek Water Company

1 **[PROPOSED] CASE MANAGEMENT ORDER**

2 **1. JURISDICTION.**

3 **i. In Personam Jurisdiction.** Counsel for the Plaintiffs and Cross-
4 Complainants to each of the coordinated cases shall immediately identify, name and effect
5 service on all persons and entities who are necessary and proper parties to their case.

6 **ii. Subject Matter Jurisdiction.** Counsel for the Plaintiffs and Cross-
7 Complainants in the cases coordinated pursuant to the September 27, 2005 Order [*Los Angeles*
8 *County Waterworks District No. 40 v. Diamond Farming Co., et al*, LASC Case No. BC 325
9 201; *Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., et al*, KCSC
10 Case No. S-1500-CV-254-348; and *Wm. Bolthouse Farms, Inc. v. City of Lancaster, Diamond*
11 *Farming Co. v. City of Lancaster*, and *Diamond Farming Co. v. Palmdale Water District*, RCSC
12 Consolidated Actions RIC 353 840, RIC 344 436 and RIC 344, 668] shall meet and confer with
13 counsel for the Dormant Overlyers Class [*Rebecca Lee Willis, et al. v. Los Angeles County*
14 *Waterworks District No. 40, et al*, LASC Case No. BC364553] and for the Small Producers
15 Class [*Richard A. Wood, et al. v. Los Angeles County Waterworks District No. 40*, LASC Case
16 No. BC391869] with regard to the establishment of subject matter jurisdiction respecting
17 adjudicate the Basin characteristics and development of a physical solution for the Basin over all
18 necessary and proper parties; and present the Court with a recommended resolution within thirty
19 (30) days. Activity in all coordinated cases, except for that required for the establishment of *in*
20 *personam* and subject matter jurisdiction shall be abated pending the establishment of such.

21 **iii. Certification of Classes.** Counsel for the Dormant Overlyers Class
22 and the Small Producers Class shall proceed with the class certification process.

23 **iv. At Issue.** The Court will set a further Case Management Conference
24 within thirty (30) days of the coordinated Cases being “at issue.”

25 **2. PHASE II OF TRIAL.**

26 **a. Sub-Phasing.** Phase II shall be conducted in two (2) sub-phases, the first
27 of which will address the existence of “sub-basins,” “sub-areas” and “management zones”; and
28 the second of which will address the “physical characteristics,” “safe yield” and the existence,

1 extent and duration of "overdraft," of the Basin, and, if any, of "sub-basins," "sub-areas" and
2 "management zones."

3 **b. Location.** The Phase II Trial will take place in Los Angeles County, so that the
4 costs of participation by the numerous parties will not be rendered prohibitive.

5 **c. Further Pre-Phase II Trial Orders.** Additional orders respecting Phase II will
6 be made at the further Case Management Conference to be set when the coordinated Cases are
7 "at issue."

8 Dated: August _____, 2008.

9 _____
10 **HONORABLE JACK KOMAR**

1 **PROOF OF SERVICE**
2 **STATE OF CALIFORNIA, COUNTY OF RIVERSIDE**

3 Re: *ANTELOPE VALLEY GROUNDWATER CASES*
4 Los Angeles County Superior Court Judicial Council Coordinated
5 Proceedings No. 4408; Santa Clara County Superior Court Case No. 1-05-CV-049053

6 I am employed in the County of Riverside, State of California. I am over the age of 18
7 years and not a party to the within action; my business address is: 3750 University Avenue,
8 Suite 250, Riverside, CA 92501-3335.

9 On August 6, 2008, I served the foregoing document(s) described as **CASE**
10 **MANAGEMENT STATEMENT AND [PROPOSED] ORDER FOR PHASE II TRIAL**
11 **BY CROSS-DEFENDANTS, SERVICE ROCK PRODUCTS CORPORATION AND**
12 **SHEEP CREEK WATER COMPANY** on the interested parties in this action in the
13 following manner:

14 (X) **BY ELECTRONIC SERVICE** – I posted the document(s) listed above to the
15 Santa Clara County Superior Court website, <http://www.scefiling.org>, in the action of the
16 Antelope Valley Groundwater Cases,

17 (X) **BY MAIL** - I served a true copy of the document(s) listed above in a sealed
18 envelope and placed for collection and mailing following the usual business practice of the
19 Firm. I am "readily familiar" with the Firm's practice of collection and processing
20 correspondence for mailing. Under that practice, it would be deposited with the United States
21 Postal Service with postage thereon fully prepaid at Riverside, California, on the same day in
22 the ordinary course of business, addressed as follows:

23 Honorable Jack Komar
24 Santa Clara County Superior Court
25 191 North First Street, Dept. 17C
26 San Jose, CA 95113

27 Superior Court of California **[Original Documents to be filed at this location]**
28 County of Los Angeles
Stanley Mosk Courthouse, Dept. 1, Room 534
111 North Hill Street
Los Angeles, CA 90012

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

Executed on August 6, 2008, at Riverside, California.


TERI D. GALLAGHER