| 1   | Michael Duane Davis, SBN 093678<br>Marlene Allen-Hammarlund, SBN 126418  |   |  |
|---|--|---|--|
| 2   | GRESHAM SAVAGE NOLAN &<br>TILDEN, A Professional Corporation   |   |  |
| 3   | 3750 University Avenue, Suite 250<br>Riverside, CA 92501-3335  |   |  |
| 4   | Telephone: (951) 684-2171<br>Facsimile: (951) 684-2150   |   |  |
| 5   | Attorneys for Cross-Defendants,  |   |  |
| 6   | Service Rock Products Corporation, as successor-<br>in-interest to Owl Properties, Inc.; Sheep Creek   |   |  |
| 7   |  |   |  |
| 8   | the A. C. Warnack Trust  | L C C C C C C C C C C C C C C C C C C C   |  |
| 9   |  |   |  |
| 10  | SUPERIOR COURT OF THE STATE OF CALIFORNIA  |   |  |
| 11  | IN AND FOR THE COUNTY OF LOS ANGELES   |   |  |
| 12  | Coordination Proceeding<br>Special Title (Rule 1550(b))  | <ul><li>Judicial Council Coordination</li><li>Proceeding No. 4408</li></ul>                   |  |
| 13  | ANTELOPE VALLEY GROUNDWATER  | ) Santa Clara Case No. 1-05-CV-049053   |  |
| 14  | CASES  | <ul> <li>Assigned to the Honorable Jack Komar</li> <li>Department 17</li> </ul>               |  |
| 15  | Including Actions:   | ) CASE MANAGEMENT CONFERENCE  |  |
| 16  | Los Angeles County Waterworks District No.<br>40 v. Diamond Farming Co.  | STATEMENT BY SERVICE ROCK<br>PRODUCTS CORPORATION, as   |  |
| 17  | Superior Court of California, County of Los<br>Angeles, Case No. BC 325 201  | <ul> <li>successor-in-interest to Owl Properties,</li> <li>Inc., SHEEP CREEK WATER</li> </ul> |  |
| 18  | Los Angeles County Waterworks District No.   | ) COMPANY, INC., ANTELOPE VALLEY<br>) AGGREGATE, INC., and A. C.                              |  |
| 19  | 40 v. Diamond Farming Co.<br>Superior Court of California, County of Kern,   | ) WARNACK as Trustee of the A. C.<br>) Warnack Trust  |  |
| 20  | Case No. S-1500-CV-254-348   |   |  |
| 21  | Wm. Bolthouse Farms, Inc. v. City of Lancaster   | Date: May 22, 2008<br>Time: 9:00 AM   |  |
| 22  | Diamond Farming Co. v. City of Lancaster<br>Diamond Farming Co. v. Palmdale Water Dist.  | ) Dept.: 1  |  |
| 23  | Superior Court of California, County of<br>Riverside, consolidated actions, Case Nos. RIC  |   |  |
| 24  | <u>353 840, RIC 344 436, RIC 344 668</u>   |   |  |
| 25  | AND RELATED ACTIONS.   |   |  |
| 26  | ······································   |   |  |
| 27  | ///  |   |  |
| 28  | -1-  |   |  |
| AVAGE<br>ILDEN<br>IRPORATION<br>E., SUITE 250<br>2501-3335<br>171 | CASE MANAGEMENT CONFERENCE STATEMENT BY SERVICE ROCK PRODUCTS CORPORATION,<br>SHEEP CREEK WATER COMPANY, INC.; ANTELOPE VALLEY AGGREGATE, INC.;<br>AND A. C. WARNACK AS TRUSTEE OF THE A. C. WARNACK TRUST |   |  |

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SERVICE ROCK PRODUCTS CORPORATION, as successor-in-interest to Owl Properties, Inc. ("Service Rock"), SHEEP CREEK WATER COMPANY, INC. ("Sheep Creek"), ANTELOPE VALLEY AGGREGATE, INC. ("A.V. Aggregate"), and A. C. WARNACK AS TRUSTEE OF THE A. C. WARNACK TRUST ("Warnack"), submit the 4 following statement in advance of the May 22, 2008 Case Management Conference. 5

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## **GENERAL STATEMENTS OF POSITION**

Preliminarily, Service Rock, Sheep Creek, A.V. Aggregate and Warnack believe that the 8 underlying premise is that trial should be planned and conducted so as to facilitate the 9 development of the most workable long-term physical solution for the greater Antelope Valley 10 Groundwater Basin ("Basin") and each of the individual aquifers or sub-basins ("Sub-Basins"), 11 whether hydrologically interconnected or separate and distinct aquifer units. 12

## PHASING AND SEQUENCING

With that underlying premise in mind, Service Rock, Sheep Creek, A.V. Aggregate and 15 Warnack are generally in agreement with the United States Department of Justice, A.V. United 16 Mutual Group, the Public Water Suppliers, and the Antelope Valley Groundwater Agreement 17 Association, that the trial should be phased and that the issues should be sequenced so as to 18 maximize the logical consideration of the major issues before the Court, while minimizing 19 duplication and the expenditure of unnecessary costs. 20

Service Rock, Sheep Creek, A.V. Aggregate and Warnack are also in agreement that the 21 commencement of each phase of the trial should be scheduled to occur when the parties and the 22 experts are prepared to present the Court with the most accurate and usable information available 23 24 concerning:

Physical Characteristics: the physical characteristics and nature of the Basin as a 25 1. whole, including appropriate adjustments to the external boundaries tentatively set in Phase I, 26 and the existence, physical characteristics, nature and interrelationships of the Sub-Basins. 27

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<u>Hydrology</u>: whether the Basin and each of the Sub-Basins is in "overdraft"; and
 the long-term sustainable yield of the Basin and each of the Sub-Basins, including that from the
 average annual natural recharge, conservation, importation, recycling and other sources.

3. <u>Water Rights and Usage</u>: the existence, quantity and relative priority of all
categorical and individual water rights, including the issue of prescription and the prescription
period; and whether any categorical or individual use has failed to meet the reasonable and
beneficial use requirements of Article X Section 2 of the *California Constitution*.

8 Service Rock, Sheep Creek, A.V. Aggregate and Warnack, however, disagree that the 9 certification of the small producers class should proceed concurrently with the next phase of 10 trial. One of the principal reasons that this Court required the "dormant overlyers" or 11 "unexercised producers" and "small producers" classes was jurisdictional. Not requiring the 12 "small producers" class to be certified before the commencement of the next phase of trial, 13 would place that jurisdictional element at material risk.

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#### GENERAL EXPERTICE

Service Rock, Sheep Creek, A.V. Aggregate and Warnack have had high hopes that the 16 Technical Committee would be committed and able to arrive at specific, justifiable and unbiased 17 determinations concerning the Physical Characteristics and Hydrology of the Basin and Sub-18 Basins. It is becoming increasingly apparent, however, that that may not occur; and that, even if 19 20 it does, many of the parties will have lost confidence in that committee. Service Rock, Sheep Creek, A.V. Aggregate and Warnack suggests that, just as the Public Water Suppliers advocate, 21 each party's expert witness be designated pursuant to Code of Civil Procedure Section 2034.260, 22 the Technical Committee be STRONGLY ENCOURAGED to present a "position paper" or a 23 summary of the Technical Committee's determinations to the parties as soon as reasonably 24 practical, so that each of the parties can make fair, educated determinations of whether they need 25 to engage their own experts and on what issues, thereby avoiding the unnecessary incurrence of 26 27 expense.

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### DISCOVERY

Service Rock, Sheep Creek, A.V. Aggregate and Warnack suggest that the stay on discovery be lifted as to the issues to be addressed in the next phase, as each phase is brought to trial; and that any party be permitted, on motion, to request to conduct additional discovery.

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## COMMENCEMENT OF THE PHYSICAL CHARACTERISTICS PHASE

Service Rock, Sheep Creek, A.V. Aggregate and Warnack suggest that the Physical
Characteristics phase of the trial be scheduled to commence in the November – December 2008
timeframe. Though this adjudication has been around for a long time, there is little, if any,
indication that the Basin will suffer greater injury over the next year or two; and, proceeding
with care and reasonable expediency through trial should minimize the likelihood of successful
unnecessary post-trial proceedings and appeals.

### FACILITATION

Service Rock, Sheep Creek, A.V. Aggregate and Warnack are actively involved in the facilitation process, which is being coordinated by Bill Dendy. Though it is not suggested that trial be delayed while the parties work with Mr. Dendy toward the development of a physical solution, it is suggested that the pre-trial process be planned and implemented so as not to impede or interfere with the facilitation process.

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21 Dated: May 21, 2008.

GRESHAM SAVAGE NOLAN & TILDEN, A Professional Corporation

By:

Michael Duane Davis Marlene L. Allen-Hammarlund Attorneys for Cross-Defendants, Service Rock Products Corporation, as successor-in-interest to Owl Properties, Inc.; Sheep Creek Water Company, Inc.; Antelope Valley Aggregate, Inc.; and A. C. Warnack as Trustee of the A. C. Warnack Trust

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| 1   | PROOF OF SERVICE<br>STATE OF CALIFORNIA, COUNTY OF RIVERSIDE   |
|---|--|
| 3<br>4  | Re: ANTELOPE VALLEY GROUNDWATER CASES<br>Los Angeles County Superior Court Judicial Council Coordinated<br>Proceedings No. 4408; Santa Clara County Superior Court Case No. 1-05-CV-049053   |
| 5<br>6  | I am employed in the County of Riverside, State of California. I am over the age of 18 years and not a party to the within action; my business address is: 3750 University Avenue, Suite 250, Riverside, CA 92501-3335.  |
| 7<br>8  | On May 21, 2008, I served the foregoing document(s) described as CASE<br>MANAGEMENT CONFERENCE STATEMENT BY SERVICE ROCK PRODUCTS<br>CORPORATION, as successor-in-interest to Owl Properties, Inc., SHEEP CREEK<br>WATER COMPANY, INC., ANTELOPE VALLEY AGGREGATE, INC., and A. C. |
| 9<br>10   | WARNACK as Trustee of the A. C. Warnack Trust on the interested parties in this action<br>in the following manner:   |
| 11  | (X) <b>BY ELECTRONIC SERVICE</b> – I posted the document(s) listed above to the Santa Clara County Superior Court website, <u>http://www.scefiling.org</u> , in the action of the Antelope Valley Groundwater Cases,   |
| 12  | I declare under penalty of perjury under the laws of the State of California that the  |
| 14  | foregoing is true and correct.   |
| 15  | Executed on May 21, 2008, at Riverside, California.  |
| 16  | Jeri Gallagher<br>TERI D. GALLAGHER  |
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| Gresham Savage<br>Nolan & Tilden  | -1-  |
| A PROFESSIONAL CORPORATION<br>3750 UNIVERSITY AVE., SUITE 250<br>RIVERSIDE, CA 92501-3335<br>(951) 684-2171 | PROOF OF SERVICE   |