STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2009-00XX-DWR

In the Matter of Application 31652
Rainmaker Water Services

ORDER APPROVING ISSUANCE OF PERMIT

SOURCE: Mint Canyon Creek (Subterranean Stream) tributary to Santa Clara River

COUNTY: Los Angeles

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

WHEREAS:

1. Application 31652 was filed with the State Water Resources Control Board (State Water Board) on February 23, 2007. The Applicant seeks an appropriative right to divert 0.061 cubic foot per second (cfs), not to exceed 45 acre-feet per annum (afa) from its existing well. The application was filed as a result of investigation of a December 21, 2006 complaint filed by Sleepy Valley Water Company (Sleepy Valley). The well was likely drilled in the 1950s and has an estimated depth of 100 feet. The pump is set at 62 feet below grade.

2. The following information was obtained from the November 28, 2007 Complaint Investigation Report (Complaint Report). Sleepy Valley asserted that there is 270 acre-feet (af) of natural recharge to Mint Canyon and 25 af of wastewater return. Sleepy Valley has two wells that were installed in the 1920s. There are no known records of the construction details of these wells, nor a log of the geologic materials encountered during the drilling. However, the "main" well is about 120 feet deep and the other well is about 60 feet deep. Neither well has a sanitary seal. A third, but apparently unused, well was installed in 1961 about 500 feet from the other two wells and a driller's report was filed for this well. The main well is the primary water supply.

   The Applicant provided four lines of evidence that diversion from his well of 45 afa will not impact Sleepy Valley's diversion even during drought years. These include: (1) a 1981 report by James Montgomery (Montgomery Report) entitled "Ground Water Resource Study Agua Dulce and Mint Canyon Los Angeles County: Phase 1 Mint Canyon Hydro-geologic Investigation"; (2) further refinement of the results of the Montgomery Report by Earth Resources Inc. (ERI) based on updated information; (3) the results of a 24 hour pumping test conducted on Applicant's well; and (4) the location and construction of Sleepy Valley's main well.

   The first two lines of evidence calculate; using various methods and assumptions, the total estimated annual recharge to the local groundwater basin. With respect to water availability, if recharge exceeds discharge (i.e. groundwater extractions) groundwater is, theoretically, available for appropriation without overdrafting the aquifer. Montgomery calculated an average annual

natural (excludes wastewater return flow) recharge of 270 af for the Mint Canyon area. Using a more conservative method, ERI calculated average annual natural recharge to be 263 af. According to ERI, the current population in the basin that relies on groundwater is about 780 persons. Using 200 gallons per day (gpd) per person, this amounts to a total annual consumptive use of 175 af and therefore, an annual surplus of 88 af. Adding a wastewater return of 50 gpd per person to the recharge calculation increases the recharge by an additional 44 af, resulting in a surplus of 132 af.

The groundwater "basin" behaves like a very slow surface stream. As such, recharge does not remain in the basin very long and the basin needs to be continually fed by precipitation in order for groundwater levels to remain high. This leads to the other two lines of evidence regarding water availability: (a) results of a pumping test and (b) Sleepy Valley's well configuration. The 24-hour pumping test conducted in August 2006 on the Applicant's well resulted in a maximum drawdown of 5 feet and the stabilized drawdown of about 4'4". There was no drawdown in any of the other wells monitored. Once the pump was shut off, the Applicant's well returned to static water level is less than 1 hour. The Sleepy Valley well was not affected during the test. The results of the pumping test are consistent with a well drawing from a very permeable aquifer (alluvium), a high groundwater velocity, and a steep groundwater gradient. The results are also consistent with the Applicant's assertion that pumping Respondent's well at a "safe yield" does not impact Sleepy Valley's wells.

The report found that the Sleepy Valley well is installed, at least partly, in underlying granitic bedrock because a 1961 pumping test gave results more typical of the underlying non water-bearing rock units. During the 2004 drought, Sleepy Valley's well did not supply sufficient water for its customers. The report states that the Applicant cannot be held responsible for the inability of Sleepy Valley's well to supply sufficient water during drought conditions, except to the extent that the Applicant's operation is causing the poor performance. Sleepy Valley did not provide any information to support the allegation that the Applicant's pumping resulted in inadequate performance of the Sleepy Valley well. Given the history of the Sleepy Valley wells (age, likely partial installation in non-water bearing units, etc.), such an argument needs more supporting data to link cause to effect.

The Sleepy Valley well is located downstream of the confluence of two subsurface channels, one oriented east-west in which Applicant's well is installed and another oriented northwest-southeast. As such, the Applicant believes that the Sleepy Valley receives significant additional recharge from the northwest-southeast channel thereby reducing, or even nullifying, any potential impact of pumping the Applicant's well.

The weight of the evidence indicates that the Applicant's proposed diversion will likely not impact Sleepy Valley. The water right issue at hand is not the ability of Sleepy Valley's well(s) to capture groundwater but the potential harmful effect that the Applicant might have on the availability of groundwater for Sleepy Valley well(s) to capture. A bypass condition was developed to satisfy the prior right of Sleepy Valley under Permit 21196 (Application 31208). When operating under the bypass condition, the Applicant will be extracting 12 to 22 percent of the total volume flowing through the cross-section between groundwater levels of 12 and 55 feet below grade. This calculation is based on demand averaged over a year. The report evaluated effects on instantaneous summertime demand and determined that the Applicant's operation has only a minimal effect on the total volume of water available to Sleepy Valley.

3. The application was noticed on July 18, 2007. The following protests were filed: (a) Friends of the Santa Clara River, (b) Santa Clarita Organization for Planning and the Environment, and (c) Sleepy Valley.

4. Protests (a) and (b) were cancelled by letter dated May 5, 2009, with the understanding that a condition would be included in the permit to cease pumping when the static water level at the well is 55 feet or more below ground surface.

5. Protest (c) of Sleepy Valley is based on potential injury to prior rights. The protest form states that the protest may be dismissed if: (a) a static water level is established for the Sleepy Valley well, below which the Applicant must cease diversions, (b) weekly reports of the Applicant's static well level and total volume pumped are produced, (c) Sleepy Valley has access to conduct independent water level measurements at the Applicant's well, and (d) the Applicant formally acknowledges the prior right of Sleepy Valley.

6. On May 5, 2009, the Division provided proposed permit conditions to Sleepy Valley. The conditions: (a) establish a static water level of 55 feet below ground surface below which Rainmaker will stop pumping, (b) provide water level reporting criteria, and (c) acknowledge the prior right held by Sleepy Valley under Permit 21196 (Application 31652). Sleepy Valley did not provide any supporting documentation for its proposal that there be a guaranteed minimum water level in the Sleepy Valley main well or Rainmaker must cease diversions. Also, this issue was considered in the Complaint Report and the Division has concluded that the proposal to guarantee water levels at the Sleepy Valley main well is not necessary for protection of prior rights. The Division's letter informed Sleepy Valley that it appears the protest has been adequately addressed in the protest dismissal conditions. The Division's records do not support a finding of injury to Sleepy Valley if the project is operated in accordance with the conditions.

   Sleepy Valley was required, pursuant to Water Code section 1334, to provide documentation showing the circumstances when injury would occur, after taking into consideration the proposed protest resolution terms. The Division informed Sleepy Valley that it was expected to provide technical data not previously considered in the Division's April 1, 2008 complaint dismissal letter. Failure to provide the requested documentation would result in protest cancellation pursuant to Water Code section 1335.

7. On May 27, 2009, the Division received Sleepy Valley's response. The response, prepared by geologist Robert R. Curry, estimates the water available to be 206 af within the total alluvial aquifer at the Sleepy Valley well. The estimate is based on a reduced watershed area of about six square miles, as compared to the 19.2 square miles used by ERI. The reduced area is based, partially, on Dr. Curry's conclusion that the Spade Canyon joins the Mint Canyon alluvium downstream from the areas accessed by Sleepy Valley and the Applicant's well and does not contribute to the Sleepy Valley supply well. The watershed plot was not provided to the Division. Evidence to support the conclusion that Spade Canyon joins Mint Canyon downstream of the wells was not provided. Because Dr. Curry maintains that 206 af is available, he also takes issue with the calculated "minimum safe yield" water level of 55 feet below ground surface. Absent supporting documentation, the Division will not utilize the 206 af estimated basin yield as the basis for determining the availability of unappropriated water.

   Dr. Curry also states that the permeability of the shallow alluvium is unreasonably low, and was chosen by ERI to demonstrate that even with lower aquifer permeability, enough water will bypass the Applicant's well site to supply the needs of Sleepy Valley. The permeability is likely two to three orders of magnitude greater than stated. Numeric data or other supporting documentation for this comment was not provided. Therefore, no further evaluation of the permeability issue will be undertaken.

   Dr. Curry states that Sleepy Valley objects to the proposed 55-foot cutoff level for the Applicant's diversions. Based on his review, he believes that Sleepy Valley experienced a well production problem when the Applicant's well level was 23 feet below ground surface in 2004. Supporting documentation was not provided. Well performance issues, impacts to adjacent wells, drought

impacts and other issues were evaluated in the 2007 Complaint Report. The Division's May 5 letter advised the protestant that technical data must accompany any submittal.

8. On June 8, 2009, the Applicant provided the GIS version of the watershed boundary of the Mint Canyon watershed and adjacent watersheds that was prepared by the U.S. Department of Agriculture (USDA), National Cartography and Geospatial Center, in cooperation with the U.S. Geological Survey, U.S. Forest Service, NOAA Fisheries, U.S. Bureau of Land Management, U.S. Bureau of Reclamation, U.S. Corps of Engineers, and other agencies. The Applicant also supplied another copy of his map showing the watershed boundary. The June 8 email indicates that these boundaries are nearly identical. This information confirms that the watershed area is approximately 19.2 square miles, as reported by ERI. The Applicant also provided maps to document that Spade Canyon joins the Mint Canyon alluvium upstream of the Sleepy Valley wells.

9. Only the Applicant has provided evidence confirming the watershed area and the permeability of the alluvium. This information was used to develop the showing of the availability of unappropriated water found in the November 28, 2007 Complaint Report. There is unappropriated water available to serve Application 31652.

10. The Sleepy Valley protest is cancelled based on failure to provide information reasonably necessary to determine if the proposed appropriation would result in injury to the protestant's exercise of its water right. (Wat. Code § 1335.) The permit conditions identified in the Division's May 5, 2009 letter as being protective of Sleepy Valley's prior right shall be included in the permit. These permit conditions require the Applicant to cease pumping when the static water level at the well is 55 feet or more below ground surface, monitor groundwater levels, and also require the Applicant to specifically recognize Sleepy Valley's prior right.

11. The water will be diverted and used without injury to any lawful user of water.

12. The water will be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses. On October 11, 2008, the Department of Fish and Game (DFG) issued a Streambed Alteration Agreement (Agreement). On page 2 of the Agreement, DFG finds the following:

    Water will be diverted from the stream at a rate of 40,173 gallons per day (gpd) for 365 days per year. Under these circumstances, the subsurface flow at the site is estimated to range from 329,400 gpd, to a low of 182,070 gpd. Pumping will cease when the subsurface water elevation drops to 55 feet. It is at this time that an estimated 182,070 gpd will remain in the system. The downstream flows reach the surface at a point where the aquifer narrows and then return to subsurface a few hundred meters downstream, where the aquifer widens again. This area of perennial surface flows is composed of a maximum 80,000 gpd subsurface component. Therefore, under "stop pumping" conditions at the Ramey site (182,070 gpd), a surface flow component of at least 77,570 gpd will remain in the system at the area of surface flows. This project will not substantially impact any vegetation.

13. The intended use is beneficial. The Applicant requests a right to continue directly diverting 0.061 cfs for domestic use. The Applicant operates a water tank trucking facility and provides water to domestic users throughout the watershed.

14. The Los Angeles County (County) Planning Department circulated an Initial Study/Negative Declaration (ND) on March 30, 2005 (SCH #2005081009) for the Conditional Use Permit (CUP) for the operation and maintenance of a water distribution and sales facility. In the CUP, the applicant requests to use an existing well, two 10,000-gallon water storage tanks, and three 3,800-gallon tanker trucks for supplying water for sale to existing residents. The County determined that a Mitigated Negative Declaration (MND) should be issued. Therefore, on

June 13, 2007, the County circulated an Initial Study/MND. The County Board of Supervisors approved the MND on February 3, 2009. The County filed a Notice of Determination (NOD) with the County Clerk on February 4, 2009. The State Water Board has issued a NOD for this project.

The following mitigation measures have been identified for this project:

Permittee shall cease diversion when the static water level at the well is 55 feet or more below ground surface. Pumping will not resume until the water level rebounds to at least 50 feet below ground level.

Permittee shall maintain a continuous log of water-well depth measurements performed at least every other week from June 1 through October 31 of each year and every month from November 1 through May 31 of each year. In addition, the total number of gallons pumped each day will be monitored and recorded. The well-water depth measurements and daily gallons pumped shall be entered into a log kept on site and shall be provided to the Division of Water Rights (Division) with the annual Progress Report by Permittee. Upon ten days of telephone, email or written notice, the log may be required to be submitted to the Division at any time.

NOW, THEREFORE, IT IS ORDERED THAT A PERMIT IS ISSUED FOR APPLICATION 31652, subject to the conditions of the enclosed permit.

STATE WATER RESOURCES CONTROL BOARD

Victoria A. Whitney
Deputy Director for Water Rights

Dated: JUN 24 2009

Enclosure: Permit 21239

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21239

Application **31652** of

Rainmaker Water Services
c/o Roy Ramey
33297 Wagon Wheel Road
Agua Dulce, CA 91390

filed on **February 23, 2007**, has been approved by the State Water Resources Control Board (State Water Board) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source: **Mint Canyon Creek (subterranean stream)**

Tributary to: **Santa Clara River**

within the County of **Los Angeles**

2. Location of point of diversion (POD)

By California Coordinate System of 1983 in Zone **5**	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
North 2,008,092 feet and East 6,453,254 feet	**NW¼ of NW¼**	**21**	**5N**	**14W**	**SB**

3. Purpose of use	4. Place of use	Section	Township	Range	Base and Meridian	Acres
Domestic		**5-11, 14-23, 26-35**	**5N**	**13W**	**SB**	
		2-3, 9-17, 19-35	**5N**	**14W**	**SB**	
		35-36	**5N**	**15W**	**SB**	
		2-4	**4N**	**13W**	**SB**	
		4, 5, 6, 8	**4N**	**14W**	**SB**	
		1, 2, 11, 12	**4N**	**15W**	**SB**	

The place of use is shown on map filed with the State Water Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **0.061 cubic feet per second** to be diverted from **January 1 to December 31** of each year. The maximum amount diverted under this permit shall not exceed **45** acre-feet per year.

(0000005A)

6. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by **December 31, 2019**.

(0000009)

7. During the season specified in this permit, the total quantity and rate of water diverted and used under this permit and under permittee's claimed existing right for the place of use specified in the permit shall not exceed the quantity and rate of diversion and use specified in this permit. If the permittee's claimed existing right is quantified at some later date as a result of an adjudication or other legally binding proceeding, the quantity and rate of diversion and use allowed under this permit shall be the net of the face value of the permit less the amounts of water available under the existing right.

   Permittee shall forfeit all rights under this permit if permittee transfers all or any part of the claimed existing right for the place of use covered by this permit to another place of use without the prior approval of the State Water Resources Control Board.

   Permittee shall take and use water under the existing right claimed by permittee only in accordance with law.

(0000021B)

8. Permittee shall cease diversion when the static water level at the well is 55 feet or more below ground surface. Pumping will not resume until the water level rebounds to at least 50 feet below ground level.

(0180400)

9. Permittee shall maintain a continuous log of water-well depth measurements performed at least every other week from June 1 through October 31 of each year and every month from November 1 through May 31 of each year. In addition, the total number of gallons pumped each day will be monitored and recorded. The well-water depth measurements and daily gallons pumped shall be entered into a log kept on site and shall be provided to the Division of Water Rights (Division) with

the annual Progress Report by Permittee. Upon 10 days of telephone, email or written notice, the log may be required to be submitted to the Division at any time.

(0110300)

10. This permit is specifically subject to the prior right of Sleepy Valley Water Company under appropriation issued pursuant to Application 31208.

(00000T)

ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

A. The amount authorized for appropriation may be reduced in the license if investigation warrants.

(0000006)

B. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board (State Water Board) until a license is issued.

(0000010)

C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit.

(0000011)

D. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the permittee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

F. This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 - 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

G. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code Section 1605.

(0000015)

H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the State Department of Fish and Game and the permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the permittee. If a stream or lake agreement is not necessary for this permitted project, the permittee shall provide the Division of Water Rights a copy of a waiver signed by the State Department of Fish and Game.

(0000063)

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This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD

Victoria A. Whitney

Victoria A. Whitney
Deputy Director for Water Rights

Dated: JUN 24 2009