

Ronald O. Nichols
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Mammoth Community Water District
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Mammoth Lakes, CA 93546
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July 2, 2012

Mr. Ronald O. Nichols
General Manager
Department of Water and Power
City of Los Angeles
111 North Hope Street
Los Angeles, CA 90012-2607

Re: Mammoth Creek Water Issues

Dear Mr. Nichols:

Thank you for your June 22 letter. The Mammoth Community Water District Board has reviewed and considered it, and welcomes the opportunity to have constructive discussions with you, which we hope will lead to a resolution of the outstanding litigation between us. Our sincere hope is that there can be a collaborative meeting of the minds and that we can find a solution that suits the needs of all parties.

You have raised a number of important issues in your letter. We thought it best to provide you with our perspective on those matters because we feel it will help us achieve our mutual goal, a settlement of our differences, if you are informed of the lens through which we see this matter. The following paragraphs respond to key aspects of your letter.

A. Los Angeles Department of Water and Power's Threat to the Community's Water Supply

In your letter, you state that the Los Angeles Department of Water and Power ("LADWP") is not seeking to deny our community with a water supply from Mammoth Creek. However, and unfortunately, statements in LADWP correspondence to Mammoth Community Water District ("Mammoth") and in allegations in the complaints filed by LADWP against Mammoth are contrary to your welcomed assurance. For example,

- a. In its November 3, 2010 letter commenting on the EIR for the proposed fishery bypass flow requirements, LADWP states at page 2: "The District has based all of

their current and future operations on water that belongs to senior water right holders, including LADWP's riparian and pre-1914 appropriated rights."

- b. At page 3 of that same letter, LADWP states: "Respectfully, because the SWRCB has no jurisdiction over pre-1914 appropriated water rights, they had no right to award the District its two post-1914 licenses 1947, 1957 and the permit in 1978. The SWRCB may have given away a portion of the City's water rights."
- c. In paragraph 3 of its petition challenging Mammoth's EIR on the proposed fishery bypass flow requirements, LADWP alleges: "The Project is fundamentally flawed because it is based on water rights that the District does not have. Specifically, the Project is entirely dependent and built upon a series of water right permits and licenses improperly granted to the District by the SWRCB, ... and therefore the District does not have any rights to the water that is purportedly the basis of the Project."
- d. In paragraph 5 of the same petition, LADWP alleges: "Here, the Project is based on specified water rights that the District does not have."
- e. In its petition challenging Mammoth's 2010 Urban Water Management Plan ("UWMP"), LADWP alleges at paragraph 6 as follows: "The District's UWMP is fundamentally flawed because it failed to adequately disclose and assess the reliability of its water source. Specifically, the UWMP fails to disclose and assess the reliability of the District use of Mammoth Creek and Lake Mary surface water, which LADWP is informed and believes accounts for between 31 to 67 percent of the District's total water supply. The UWMP is based on alleged water rights to these sources that the District simply does not have."
- f. LADWP also alleges in that same paragraph 6: "Therefore the District does not have valid rights to the water that is purportedly the only source of surface water relied upon in the UWMP."
- g. In its November 17, 2011 comment letter on Mammoth's Urban Water Management Plan, LADWP states in referring to Mammoth's surface water rights, "..., they were issued on a temporary basis and are no longer valid."

I am sure that you would agree from a review of the above that it is not unreasonable for me and the other Mammoth Board members to infer that LADWP is seeking to put a stop to Mammoth's surface water diversions.

B. The Water Right Claims of LADWP and Mammoth

You state that LADWP has senior water rights on Mammoth Creek due to its 1905 claim of right, and that the District's water rights position is "groundless."

The outcome of an adjudication of the water right claims of LADWP and Mammoth is not as black and white as LADWP appears to believe. The date of initiation of any claim would be just one criterion evaluated in an adjudication. It certainly would not be the only one; and it will not be the controlling one. In an adjudication, there would be an analysis of the hydrology of Mammoth Creek, Hot Creek, the Owens River and their tributaries. This would be necessary to determine the amount of water available for appropriation and instream beneficial uses. There would be an identification of the various claimants to the waters of these water courses; and their rates and amounts of diversion, seasons of diversion, purposes of use and places of use would be ascertained. Issues of historical use, non-use, forfeiture, and waste and unreasonable use and unreasonable method of use would be weighed. The needs of instream beneficial uses would be established. The relative superiority of the various claims would be determined considering issues of preference of use, area of origin, and public trust, public interest and other pertinent considerations. No one can predict with any certainty what determinations would emerge from such a comprehensive adjudication.

Over the last few decades, some water right principles that seemed inviolate have been fundamentally altered by the courts. LADWP's own water right licenses in the Mono Lake Basin, which were thought to be vested, were made subject to public trust considerations. It had been long held that riparian rights generally could be exercised at any time at the expense of existing appropriators. In the Long Valley Creek adjudication, the landowner, Ramelli, found out that his unexercised riparian rights could be subordinated to existing exercised appropriative rights.

C. The History of LADWP's Objections to Mammoth's Surface Water Diversions

In your letter, you state that, "For a decade, LADWP has expressed its concerns to MCWD regarding diversions from Mammoth Creek..." You should know that LADWP's November 3, 2010 comment letter on the Mammoth Creek EIR was the first time in 60 years that LADWP questioned the validity of Mammoth's surface water rights. To be sure, from 2000 and until the November 2010 letter, LADWP submitted comment letters on Mammoth's environmental documents expressing concerns about new terms for Mammoth's water right permit concerning revised fishery bypass flow requirements and their compliance point. However, to be clear, such comment letters never questioned or objected to Mammoth's diversions or to the very existence of our three appropriative water rights which were issued by the State in 1949, 1958 and 1978 without any objection from LADWP.

D. Expansion of Mammoth's Surface Water Supply

With respect to Mammoth's utilization of its surface water supply, you imply that Mammoth is planning to expand its diversions by 50%. Mammoth is not pursuing any increase in its diversion rights. Its current rights cap its diversions at 2,760 acre-feet per year subject to several conditions. Mammoth is not seeking to lift that cap. Mammoth did divert 2,450 acre-feet in 1984; and its diversions have exceeded 2,000 acre-feet nine times since 1983. Its diversion amount in any one year is subject to many factors and conditions. In Mammoth's UWMP, it is stated at page 4-3 as follows:

Therefore, although the District's licenses and permits allow up to a maximum annual surface water diversion of 2,760 ac-ft, actual diversions are typically well below this due to the combined influence of natural variability in the Mammoth Basin snowpack runoff quantity and timing, limited storage to manage the variable runoff, mismatch between seasonal trends in supply availability and community water demands, and compliance with the minimum fishery bypass flow requirements.

This year, a fairly dry year, Mammoth may be able to divert only about 900 acre-feet because of the existing fishery bypass flow requirements. Under the proposed bypass flow requirements that amount probably would be less because of a proposed new bypass flow requirement providing that Mammoth would not be able to divert if Creek flows fell below 4 cfs at the LADWP gage at Highway 395. This new requirement is an element of the fishery bypass flow requirements contained in the 2010 agreement among the California Department of Fish and Game, California Trout and Mammoth, whose implementation is presently being stymied by LADWP's CEQA litigation.

E. Chance Ranch Riparian Rights

In footnote 1 of your June 22 letter, you state that LADWP's Chance Ranch riparian rights are senior to Mammoth's rights. You should know that pursuant to a settlement agreement between Mammoth and the Chance Family in July of 1967, prior to LADWP's purchase of the Ranch, the Chance Family agreed to subordinate its riparian water rights to Mammoth's rights under its water right Permit 11463 (now License 12593).

F. Water Rates

Near the end of your letter, you compare monthly water bills in our respective service areas. Such comparisons are misleading and do not produce useful information. As you know, we both cannot charge our customers more than the cost of the service provided. What it costs to deliver water to our customers bears no relationship to what it costs to deliver water to your customers. The many diverse and complex factors that determine water rates include the use and cost of imported wholesale water supply, the mix of local supplies (groundwater, surface water, recycled water) and their relative costs, the utility's rate structure design (tiers, fixed charges, differing customer classes), how asset replacement costs are accounted for, and operating cost variables such as labor and electrical utility charges. Mammoth's rates are designed to meet best water industry practices, as reflected in our recently adopted 5-year rate schedule, and provide for equitable rates to recover our full cost of service. Therefore, looking at the amounts of our respective average customer monthly water bills truly is an "apples to oranges" comparison, as I am sure you can appreciate. Finally, with respect to the make-up of Mammoth's customer base, 40% of the households are classified as low income.

I hope that the above is helpful to you. It is intended to provide you with our views on the matter and hopefully with a better understanding of our respective positions, it will improve our ability to reach a mutually satisfactory resolution. We believe a workable solution is

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possible, if all parties act transparently and in good faith. It should focus on improvements that maximize the efficient and sustainable use of the water resources of the Owens River watershed that serve our respective communities. We jointly should explore available funding sources that could enhance the benefits of any such watershed improvements. We have instructed our General Manager to contact you to schedule a meeting as soon as possible so that we can begin a journey which ends with a resolution that respects both of our interests.

Sincerely,



Tom Smith
President, Board of Directors

By: T.G.C.
BOARD V.P.