



*Please address inquiries or comments to the Town Manager's office at (760) 934-8989, extension 223.*

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## **Frequently Asked Questions regarding the judgment awarded to Mammoth Lakes Land Acquisition (MLLA), AB 506 Mediation, and Chapter 9 Bankruptcy Protection**

### **MLLA Judgment and Negotiations**

- **Why is there a judgment, and what is the amount?**

In 1997, the Town entered into a Development Agreement (“DA”) with Terrance Ballas (“Developer”) to construct residential units, retail, hangars and other structural improvements near the Mammoth Yosemite Airport. The Developer subsequently transferred development rights for the residential (hotel/condominium) portion of the DA to Mammoth Lakes Land Acquisition (“MLLA”).

In 2006, MLLA sued the Town for breach of contract over their portion of the DA. As a result of a jury trial, in 2008 MLLA was awarded a \$30 million judgment against the Town. While the Town appealed the judgment several times, those appeals were ultimately unsuccessful. After the latest appeal in November 2010, the Town requested review by the California Supreme Court. That request was denied in March 2011. The Town, therefore, has exhausted its options to appeal the judgment.

The amount of the judgment, in the meantime, has grown to over \$42 million. This amount includes nearly \$2.4 million in MLLA attorney’s fees that were previously awarded by the trial court, MLLA attorney’s fees incurred as a result of the various appeals, other related MLLA costs, as well as post-judgment interest at 7% as established by law.

- **Has the Town Attempted to Settle with MLLA?**

After the State Supreme Court declined to hear the Town’s appeal in late March 2011, the Town and MLLA promptly met and established a process to exchange information and begin settlement discussions.

On April 18, 2011, representatives of the Town and MLLA, along with their respective legal counsel, held their first meeting, and initiated a collaborative process in pursuit of a settlement. What followed that meeting, through the months of May, June, July, August and September 2011, was a review of the Town’s financials and related details by MLLA. Volumes of information were provided to MLLA in response to their questions and requests, and several meetings were held between the Town’s and MLLA’s representatives to collectively review the provided information, and answer any of MLLA’s follow up questions. During these meetings, possible components of a settlement, and the Town’s ability to pay, were also reviewed and discussed. The Town was always mindful of its need

to protect the public service interests and functions of the Town while seeking to reach an agreement with MLLA.

After completing their review of the Town's finances, in early October 2011, MLLA presented to the Town their first proposal on paying the judgment. The Town responded to MLLA on October 5, 2011, and received a counter-proposal from MLLA on November 16, 2011. The Town Council discussed MLLA's counter-proposal in a closed session on November 30, 2011, and responded with its own counter-proposal #2 on December 1, 2011. MLLA rejected the Town's December 1, 2011 settlement proposal, and MLLA responded with another counter-proposal on December 14, 2011, demanding a much higher payment amount from the Town.

In January 2012, while the parties continued to negotiate and while the Town was in the midst of reviewing and revising its financial projections for the current and upcoming fiscal years, it became clear that, due to various macroeconomic pressures, a dry 2011/2012 winter season, and other specific challenges arising from retiree costs, health insurance, general liability and workers compensation insurance premiums, and compensation increases for the Town's workforce covered by collective bargaining agreements, the Town was in need of a global and comprehensive restructuring plan. The Town notified MLLA of this need to effectuate a global restructuring plan on January 19, 2012, and informed MLLA that it anticipated presenting MLLA with a new settlement proposal in line with that draft restructuring plan. For that reason, the Town requested that the standstill period the parties had agreed to that was set to end on February 1, 2012, be extended.

Rather than agree to an extension of the Standstill Period and await the Town's global restructuring plan for further discussion, MLLA instead chose to file a petition with the State Court on February 2, 2012 (the day after the Standstill Period expired) seeking a writ of mandate demanding the Town to pay the full \$43 million judgment. On March 23, 2012, the Mono County Superior Court entered a writ of mandate. Also in February 2012, the Town began to prepare for the AB 506 mediation with its major creditors (described below). The mediation formally commenced on April 30, 2012. The town repeatedly asked MLLA to participate in the process so that a consensual resolution could be negotiated; MLLA refused every time.

- **I understand that there are investors in the MLLA Judgment, and that they are seeking to profit from this action. Is that true?**

On February 2, 2012, MLLA filed with the State court a "Certificate of Interested Entities or Persons", which states: "Mammoth Lakes Land Acquisition, LLC is a limited liability corporation, which has sixteen members. Currently, only two of these members, C. Ray Johnson and Mammoth Opportunity Fund-1, LLC own 10 percent or more of [MLLA]. There are no other entities or persons having a direct ownership interest of 10 percent or more in [MLLA]."

- **It has been reported by the local media that the Town could impose a special assessment on properties within the Town to help pay for the judgment. I also have heard that MLLA could seek a lien against all properties within the Town. Is this really possible?**

Neither the Town nor MLLA could impose or force the Town to impose, through court order, an assessment or lien on any Town property. MLLA does not have the legal ability to seize the Town's assets or any public or private properties in the Town. Indeed, if the Town wanted to levy a tax or an assessment, such a levy would require voter approval in a municipal election.

- **I have heard of a writ of mandate issued by the State Court in MLLA's favor. What would such a writ enable MLLA to do? Would it secure MLLA's judgment with a lien or an assessment?**

On February 2, 2012 (the day after the last Standstill Period between the Town and MLLA expired), MLLA requested a court order from the Mono County Superior Court seeking a full payment on its \$43 million judgment. On March 23, 2012, the Court issued the mandate that commanded the Town to: "(i) immediately take steps to obtain funds to satisfy the judgment; (ii) include in all current and future budgets provision to provide funds in an amount sufficient to pay satisfy [sic] the judgment; and (iii) pay to the Hot Creek Developers the amount of \$42,186,032.24, with additional interest accrued by law until the time of payment, by June 30, 2012, the end of the 2011-2012 fiscal year." The court order also provided that "[i]f the Town believes payment of this amount by the end of the 2011-12 fiscal year is an unreasonable hardship, the Town should move this Court for permission to pay the amounts owed in equal annual installments over the course of 10 years with the required interest under Cal. Gov't Code § 970.6."

The State Court cannot order a lien on public or private property in the Town, nor can it order any assessment. The court order does not make MLLA's judgment secured. It is simply an order to pay.

### **AB 506 Mediation**

- **I understand that there was a mediation with the Town's creditors. When did it happen, and what was the outcome?**

Because the Town knew it could not pay the full judgment amount, which currently stands at over \$42 million, and facing an underlying financial issue presenting itself in an annual budget shortfall of nearly \$3 million (15% of the operating budget), the Town initiated a mediation process with its major creditors, in accordance with section 53760.3 of the California Government Code. Various creditors of the Town were invited to, and ultimately participated in, the 60-day mediation that concluded on June 29, 2012. MLLA was invited to join the mediation on six different occasions. Every time, they refused. As described above, MLLA also obtained, on March 23, 2012, a State court order for the Town to pay to MLLA the entire judgment amount of over \$42 million.

The goal of the Town had been to achieve a feasible, consensual out-of-court resolution that permitted the Town to treat its creditors fairly while continuing to provide essential programs and services. The Town had viewed Chapter 9 bankruptcy as a last resort to be used only after other potentially feasible means of resolving the Town's financial situation had been

fully explored. Regrettably, the existence of the State court mandate to pay the full amount of the MLLA judgment and MLLA's repeated refusal to participate in the mediation left no other option to the Town but to ultimately file for Chapter 9 protection.

## **Chapter 9 Bankruptcy Protection**

- **What exactly is Chapter 9 bankruptcy?**

Chapter 9 of the Bankruptcy Code is designed to enable a local governmental entity that is either generally not paying its debts as they become due or is unable to pay its debts as they come due to continue to provide essential programs and services to its residents while presenting a plan to adjust its debts. A Federal Bankruptcy Judge presides over a chapter 9 case.

- **Why did the Town file for chapter 9 bankruptcy protection?**

The Town is not able to balance its budget, much less make payment to existing creditors (including MLLA), without a global restructuring. With the assistance of a well-respected financial firm, FTI Capital Advisors, the Town has been able to develop the Restructuring Plan that balances the Town's budget and makes available \$6 million in total, over a ten-year period, to finance the Town's debts, chiefly the MLLA judgment. The Town initiated and properly conducted a 60-day mediation process with 16 other parties, to discuss and attempt to agree on the Restructuring Plan. MLLA was invited to join the mediation on six different occasions. Every time, they refused.

The mediation venue was an ideal setting for MLLA to talk with a distinguished mediator, peer creditors, and the Town. But because MLLA steadfastly refused to participate in the mediation, the Town had no choice but to commence the Chapter 9 case, where MLLA must come and appear and articulate whatever its story is about how the Town is able to satisfy in full claims that exceed twice the Town's annual discretionary budget.

- **Now that the Town filed for Chapter 9 bankruptcy protection, what does that entail for vendors who do business with the Town? Will all vendor contracts be renegotiated?**

Upon the filing of a Chapter 9 bankruptcy case, an injunction, or "automatic stay," goes into effect. This "automatic stay" prohibits any creditor from taking any action against the Town or its property without first obtaining relief from the stay by the Bankruptcy Court. For trade creditors, this automatic stay enjoins any attempt by such creditor to collect on pre-petition obligations owed by the Town. Those pre-petition obligations would be dealt with and paid in accordance with the Town's Plan of Adjustment that would have to be approved by the Bankruptcy Court.

The Bankruptcy Code also provides relatively clear guidelines with respect to creditors that have ongoing contracts with the Town. Generally, the Town has the ability to either assume or reject any "executory" contracts (i.e., contracts that have material unperformed obligations on both sides). The Town may also negotiate with certain creditors in order to modify and assume such contracts.

Finally, because Chapter 9 bankruptcy only protects the Town against debts that arose before the date the bankruptcy petition was filed, any contracts that are awarded after a Chapter 9 filing would not be affected. As such, all vendors that provide services or goods to the Town

post-petition (i.e. after July 3, 2012) will be paid for such services and goods in full in the ordinary course of business.

- **I heard the Town has to qualify for Bankruptcy, is this true?**

Yes, it is true. And the Town is confident that we qualify. We did not make a decision to file for chapter 9 bankruptcy protection lightly.

The Town is plainly insolvent because it is unable to pay the \$43 million judgment to MLLA, pursuant to a State mandate order that MLLA drafted and which became effective June 30, 2012. \$43 million is more than twice the Town's annual discretionary budget of \$16 million. And, given the significant sacrifices that the Town's various partners will have to make just to balance the baseline \$2.8 million shortfall and create a surplus of approximately \$500,000 per year to partially satisfy unsecured claims, it is inconceivable that the Town could pay the full judgment over a ten-year period, which would cost some \$6 million annually.

The Town has negotiated in good faith during mediation in which it asked people all around Town for sacrifices, so that creditors including MLLA could receive partial payment on its judgment. However, MLLA repeatedly refused to participate and to discuss its views of why the Town could pay more. Because of MLLA's refusal, the Town had no choice but to commence the Chapter 9 case, where MLLA must come and appear and articulate whatever its story is about how the Town is able to satisfy in full claims that exceed twice the Town's annual discretionary budget.

- **If we qualify for bankruptcy, what is the proposed process? What happens next?**

The Town filed for Chapter 9 bankruptcy protection on July 3, 2012. A Bankruptcy Judge will be assigned, and he/she will have an initial hearing with the Town and its key representatives. Additional hearings and communications will take place after that, mainly to present evidence supporting the Town's position, and the Town's plan of debt adjustment. Ultimately, the Town is hopeful to emerge from bankruptcy within months.

- **How long will we be in Bankruptcy?**

The Town will ask the bankruptcy court to process its Chapter 9 case efficiently and as quickly as possible. The Town has limited financial resources and cannot afford a long drawn-out case. If the case lasts too long, it will significantly reduce the Town's available funds, necessarily reducing recoveries to the Town's unsecured creditors.

- **Can the creditors or judge take our assets? Will we be taxed?**

Neither creditors nor the judge could take the Town's or its residents' assets, nor could they impose or force the Town to impose, through court order, an assessment or lien on any Town property. MLLA does not have the legal ability to seize the Town's assets or any public or private properties in the Town. And if the Town wanted to levy a tax or an assessment, such a levy would require voter approval in a municipal election.

- **Does filing for bankruptcy mean we won't have to pay our judgment?**

No, it does not. Chapter 9 bankruptcy process allows the Town to seek approval for a plan of debt adjustment, which the Town could afford to implement and which could sustain the test of time.

The Town has developed and made public, in May 2012, a Restructuring Plan that reduces many services and asks the Town's employees and the majority of its vendors and contractors to take substantial cuts in payment. Negotiations concerning the Restructuring Plan took place in the context of the neutral evaluation process established by the California Government Code (the AB 506 mediation), and concluded on June 29, 2012. The Town has already implemented the cuts it proposed during mediation, in effect breaching many existing contracts. However, based on agreements reached with many of its creditors, these contract breaches will be cured in new agreements, contingent upon either (a) a settlement with MLLA or (b) a Chapter 9 plan confirmation. The Town's creditors and employees were willing to make their concessions as part of a global resolution of the Town's financial challenges; their agreements were not made without reservations, their concessions are part of a global restructuring that would let the Town move forward in a fiscally responsible manner.

As the Town acts in keeping with these agreements and as they are ultimately consummated, the Town will be able not only to overcome its structural fiscal issues, reflected in the annual budget shortfall, but also free up approximately \$500,000 a year that can be used to pay its creditors, including MLLA, over the next 10 years, or to obtain a bond supported by that same payment stream, the proceeds of which will be paid to creditors, including MLLA.

- **What does bankruptcy mean to service delivery?**

While the Town proceeds with its Chapter 9 bankruptcy case, it will remain open for business as usual, with the support from other governmental agencies:

- The Police and Fire Departments, along with other safety partners such as paramedics and Sheriff's office, will provide high levels of response and care;
- Road, parks, and airport maintenance services will continue as scheduled;
- Town Office business hours and service delivery will continue as usual without interruption of services;
- Community services and providers such as Mammoth Hospital, Mammoth Community Water District, and Mono County are separate from the Town and are not impacted.

- **Will there be any impact on payments to retirees, or the employees' deferred compensation?**

The Town does not intend to modify contractual pension or deferred compensation payments.

- **I own property in Mammoth Lakes. What does the bankruptcy mean to property values?**

We do not anticipate that the Chapter 9 bankruptcy process by itself will impact property values in the Town. There are a number of factors that affect real estate values. The majority of the factors are separate from the Town, including the natural environment, Mammoth Mountain Ski Area, recreational opportunities, special events, and property protection provided by the Mammoth Lakes Fire Protection District. Nevertheless, we will seek to emerge from bankruptcy very quickly, and move on as a community and destination resort.

- **How will the bankruptcy impact the police department and affect public safety in Town?**

The Town's Restructuring Plan, which was approved as part of the Fiscal Year 2012 -2013 budget on June 20, 2012, includes minimal impact to public safety, mainly thanks to the concessions of the Police Officers' Association, who reduced their compensation by 16%. Those concessions made it possible to maintain the high level of customer service and quick response time that the Town's residents and visitors have come to appreciate from our Police Department. Unfortunately, a traffic enforcement officer position had to be eliminated in the budget and the Restructuring Plan. This will lead to less traffic enforcement, but should have minimal impact on the public safety response time. Once the plan of adjustment is confirmed through the chapter 9 bankruptcy process, there will be no further changes to the Town's budget.

- **Where can I get additional information?**

You can contact the Town Manager's office at 760-934-8989, extension 223, or send an e-mail to [mllasettlement@ci.mammoth-lakes.ca.us](mailto:mllasettlement@ci.mammoth-lakes.ca.us). If you call with, or otherwise submit a question that has not yet been included in this document, we will add a question and a response for everyone's benefit.