



**Town of Mammoth Lakes**

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September 20, 2018

Honorable Mark Magit  
Presiding Judge  
Superior Court of California  
Mono County  
PO Box 1037  
Mammoth Lakes, CA 93546

RE: Town of Mammoth Lakes Response to the Final Report of the 2017-2018 Mono County Grand Jury

Honorable Judge Magit:

I am pleased to provide responses to the 2017-2018 Grand Jury report, which included two matters related to the Town of Mammoth Lakes, and one which was described as pertaining to the Town but which is not truly a Town issue. The Mammoth Lakes Town Council discussed the Grand Jury report on September 19, 2018 and authorized these responses. Each matter is addressed below.

**Investigation #1 - Town of Mammoth Lakes: Mammoth Lakes Tourism**

**Findings:**

- The Grand Jury found at least one instance of inaccurate public noticing of MLT Board meetings and as such a violation of the Brown Act.
- The MLT Board has not adopted requirements for its members to receive either Brown Act or Ethics Training.
- Based on our inquiries and interview of the Board Chairman regarding the negotiations for air service, it was represented in the interview, that there is now a better definition of the responsibilities and expenditure authority of key MLT Staff, based on recently adopted guidelines. However, there still appears to be a lack of transparency and communication between the Executive Director, the Board and the public at large. It was represented that the Board is not provided any information regarding the actual contract.
- Although not involved in the contract or negotiation of the contract to secure air service to Mammoth Lakes, MLT has committed to subsidizing those services on behalf of the Town. The actual negotiations are performed by Mammoth Mountain Ski Area, a private company.

The Town of Mammoth Lakes can only agree in part with the Findings. As an independent 501(c)(6) organization Mammoth Lakes Tourism (MLT) is not a department or division of the Town of Mammoth Lakes. The Town does provide funding to MLT through a separate contract for services and the two entities work closely together on tourism/visitor related projects, programs, marketing, promotions etc. The primary sources of funding for MLT do flow through the Town. This includes a Town allocation of a portion of Transient Occupancy Tax (TOT) revenues and a pass through of Tourism Business Improvement District (TBID) revenues, less administrative costs. Due to the legal separation of the Town and MLT, the Town cannot speak with authority to the findings made by the Grand Jury. A Town Council Member does sit on the MLT Board of Directors and that member has received training in the Brown Act. The Town is not a party to the air service negotiations or contracts and cannot speak to the third and fourth findings.

**Recommendations:**

- That all staff and Board members of MLT be required to receive regular Brown Act and Ethics training.
- That the Executive Director provide written updates to all MLT Board members on a monthly basis, or more often as circumstances dictate, of ongoing negotiations, decisions and issues.
- In addition to the MLT Executive Director, that at least one Board member be involved in any negotiation that would result in a financial obligation above \$10,000 to MLT, even if MLT is not a signatory to said agreement.
- Any action that results in a financial obligation by MLT, based on a contract negotiated by others, must include a copy of said contract as part of the public record.

The Town is not aware of any legal requirement for the MLT Board and staff to receive Brown Act training or ethics training. However, the Town concurs with this recommendation. Section 3.5.4 of the Town's current contract for services with MLT requires such training, and the Town requested that MLT staff and Board members attend the Brown Act and ethics training session hosted by the Town in August of this year. A number of staff and Board members did attend. The Town is requiring that those not in attendance take the online training offered through the Fair Political Practices Commission (FPPC).

The Town is not in a position either to agree or disagree with the remaining recommendations. MLT is a separate legal entity from the Town, and the Town does not control MLT's operating or reporting policies. However, the Town does support the concept of regular reporting on staff actions and providing proper documentation of agreements and financial obligations that are subject to being public records. The Town also supports transparency and good corporate governance on the part of MLT. It is the Town's understanding that the current MLT Board either has implemented or is in the process of implementing a set of operational policies that assist in addressing the remaining recommendations made by the Grand Jury. Please see the attached response to the recommendations from Mammoth Lakes Tourism.

**Investigation #4 - Town of Mammoth Lakes Franchise Agreement with AmeriGas**  
**Final Report by Grand Jury Investigative Committee**

**Findings:**

The Franchise Agreement was adopted to provide monetary, safety, and aesthetic benefits to the citizens of the Town of Mammoth Lakes. As representation for its citizens, Town staff was entrusted with oversight and administration of the Agreement. Several Articles of the agreement have not been maintained, resulting in adverse financial and safety impacts and misrepresentations to the citizens of the Town.

**The Town of Mammoth Lakes has not:**

- Verified nor audited AmeriGas's financial records to determine the accuracy of the 2% franchise fee, nor has TOML maintained on an annual basis a record of the methods of calculation of the franchise fee.
- Ensured that the access fee imposed for pipeline use, and adjusted every 3 years, is the same for all suppliers who access the pipeline and that the fee shall not exceed the cost AmeriGas attributes to its own use.
- Reviewed and/or verified the Capital Recovery Analysis (CRA) to justify the continued charge of 32 cents per gallon. The CRA was levied to offset Rock Creek Energy's initial costs of system construction and maintenance.
- Ensured that AmeriGas submit an Emergency Response Plan on an annual basis.
- Required AmeriGas to provide updated as-built plans for utility lines they acquired during their purchase of the infrastructure.
- Required AmeriGas to annually submit changes to plans and/or reports of their inventory of facilities to the Town Engineer.
- Considered whether the Agreement has unfairly had an impact on competition for propane services, or whether the Agreement has had a negative impact on consumer interests.

**Recommendations:**

Based upon our review of the Agreement and information gathered for this investigation, the Grand Jury recommends the following:

- The Town audit AmeriGas to ensure the proper calculation of the 2% franchise fee.
- The Town notice and hold the appropriate hearing(s) to determine whether to re-negotiate or modify the Franchise Agreement, on terms designed to protect the Town's citizens from a disruption of adequate propane service including noticing of rate changes.
- The Town take provisions to ensure the health and safety of the citizens of Mammoth Lakes, and the various properties within or adjacent to the Town's jurisdictions and/or any other authorized remedies along with promoting competition.
- The TOML shall monitor and enforce all terms of the Franchise Agreement as outlined in the findings above for better fiscal management
- The TOML Accounts Payable / Finance Department shall refine its record keeping system so as to better monitor invoices, bills and contracts to ensure that it acts in the best interest of the businesses, residents and property owners within the town of Mammoth Lakes.

## **Responses to Grand Jury Findings and Recommendations**

**Finding #1** – The Town agrees in part with this finding. While the Town has not performed an audit of the calculations during the last few years, the Town has established an expected budget process that confirms total revenue. With no variance to this revenue stream, staff had a degree of confidence in the revenue calculation.

**Recommendation #1** – The Town agrees to proceed with an audit of AmeriGas to confirm the proper calculation of the 2% franchise fee. The Town may contract with an outside entity to perform the audit. The Town expects to have the audit completed by February 2019.

**Finding #2** – The Town agrees with this finding. The contract states the agreed upon charge of \$.32 per gallon at the time of contract (5/26/2004). This rate was to be charged to all suppliers using the backbone system. Furthermore, this transport fee was to be adjusted once each three years based on two-thirds of the inflation rate realized in the consumer price index since last adjustment. The Town has not been actively monitoring the franchise agreement and corresponding elements.

**Recommendation #2** – The Town agrees to proceed with an audit of AmeriGas to confirm the cost of maintaining the system backbone as originally performed during initial contract phase. This would be completed as a part of the audit in Recommendation #1. The Town may contract with an outside entity to perform the audit. The Town expects to have the audit completed by February 2019.

**Finding #3** - The Town agrees with this finding. The agreement calls for an emergency response plan to be developed in form of and meeting the requirements of Federal and State law and the Mammoth Lakes Fire Protection District and be submitted to the Town on an annual basis. While some work was initiated for the purpose, it has not been completed to our satisfaction, as the Town staff's efforts to elicit an appropriate response from AmeriGas have not been successful. The Town has not been actively monitoring the franchise agreement and corresponding elements in as aggressive a manner that is apparently necessary.

**Recommendation #3** – The Town will work with AmeriGas and Mammoth Lakes Fire Protection District to ensure a viable emergency response plan is submitted and will require an annual update to the plan to accommodate any changes to Federal and State laws or infrastructure maps. The Town has established communication with AmeriGas Assistant Area Director to establish quarterly meetings between AmeriGas, the Town, and Mammoth Lakes Fire Protection District. These meetings may begin as soon as fall 2018.

**Finding #4** – The Town does not agree with this finding. The Town is unable to determine if AmeriGas provided updated as-built plans for utility lines they acquired during their purchase of the infrastructure. According to the contract, these plans were to be submitted by the Grantee after the completion of permitted work. Since this requirement would have occurred in 2004, we are unable to determine if it was satisfied. Since it was part of the newly minted agreement and a requirement to sign off on completion of the permit, the Town assumes it was completed. The Town does note that regular updates to as-built plans have not been provided to our satisfaction in recent years.

**Finding #5** - The Town agrees in part with this finding. There is no requirement in the franchise agreement for the Grantee to annually submit changes to plans and/or reports of their inventory of facilities to the Town Engineer. As noted above, Town staff has been working to get regular updates to as-built plans, which have not been provided to our satisfaction in recent years. Town staff's efforts to elicit an appropriate response from AmeriGas have not been successful. The Town has established communication with AmeriGas Assistant Area Director to establish quarterly meetings between AmeriGas and the Town to resolve these discrepancies.

**Finding #6** - The Town agrees in part with this finding. The Town has previously acknowledged under Finding #2 that it has not monitored the charges imposed by AmeriGas on other suppliers who may utilize the system backbone. The Town also contends that the nature of this franchise agreement and its requirements has a positive benefit to the town and other franchisees to utilize one system and prevent redundancy in our underground systems.

**Recommendation #5** - The Town does not agree with the recommendation on record keeping. The report of missing invoices by the Grand Jury was inaccurate. Town staff reviewed all invoices provided to the Grand Jury in response to the request. Staff believes the table provided in the Grand Jury report was intended as a comparison of billing rates and not as indicator of missing invoices. In review of the data provided to the Grand Jury, staff found invoices for the blank spaces on the table but those invoices had no usage and no charge rate.

#### **Investigation #5 - Town of Mammoth Lakes Propane Billings**

##### **Findings:**

- Discrepancies in the monthly rate charges were noted between various sites. For example, in 12/2017 TOML rates varied from \$1.94 to \$5.02 per gallon between the four sites.
- The TOML has not maintained complete records of its monthly bills.
- The TOML does not appear to have a negotiated contract for rates for its propane purchases.
- The TOML has shown no evidence of its actions to internally review, dispute, audit or negotiate propane rates.
- The TOML has not been acting in the best interests of its citizens due to its lack of fiscal oversight

##### **Recommendations:**

- The TOML proceed to negotiate its propane rates with all available propane providers.
- The TOML Accounts Payable Department shall refine its record keeping system so as to better monitor invoices, bills and contracts to ensure that it acts in the best interest of the businesses, residents and property owners within the town of Mammoth Lakes.

#### **Responses to Grand Jury Findings and Recommendations**

**Finding #1, #3, #4, #5** – The Town agrees with this findings. The accounts of the Town were set up at different times as changes in the Town facilities occurred. There was no coordination of a

single billing or negotiated rate for AmeriGas for these facilities resulting in different rates. There was no coordinated negotiated contract for each entity providing the best possible rate across the board for Town facilities. The Town has combined these findings in response, as they are all interrelated.

**Recommendation #1** – The Town agrees with this recommendation. The Town has since had a conversation with AmeriGas Assistant Area Director and begun the process of setting a negotiated rate plan for all Town facilities. The Town expects to have these rates in place prior to winter and will review and approve each invoice according to the negotiated rate.

**Finding #2** – The Town does not agree with the findings on inaccurate record keeping. Please see comments under Investigation #4, Recommendation #5 as they pertain to this finding as well.

**Recommendation #2** - The Town does not agree with the recommendation on record keeping. The report of missing invoices by the Grand Jury was inaccurate. Town staff reviewed all invoices provided to the Grand Jury in response to the request. Staff believes the table provided in the Grand Jury report was intended as a comparison of billing rates and not as indicator of missing invoices. In review of the data provided to the Grand Jury, staff found invoices for the blank spaces on the table but those invoices had no usage and no charge rate.

I want to thank the Grand Jury for the work they provide our community. Their efforts add to the overall improvement of local government and provide an important oversight function for our residents.

Thank you to the Court for the assistance and guidance that is provided to the Grand Jury.

Sincerely,



Daniel C. Holler  
Town Manager

CC: Town Council  
Town Clerk  
Town Attorney  
Mammoth Lakes Tourism



## Attachment from Mammoth Lakes Tourism



### Responses to the Mono County Grand Jury Report Findings and Recommendations

#### Recommendation #1

That all staff and Board members of MLT be required to receive regular Brown Act and Ethics training.

**Response:** Mammoth Lakes Tourism Board of Directors will participate in Brown Act and Ethics training offered by the Town of Mammoth Lakes. Board members participated in the Ethics Training provided by the Town of Mammoth Lakes on August 15, 2018 and those unable to attend have the ability to comply in an online course to receive a certificate of completion.

#### Recommendation #2

That the Executive Director provide written updates to all MLT Board members on a monthly basis, or more often as circumstances dictate, of ongoing negotiations, decisions and issues.

**Response:** This is standard information provided during monthly board meetings

#### Recommendation #3

In addition to the MLT Executive Director, that at least one Board member be involved in any negotiation that would result in a financial obligation above \$10,000 to MLT, even if MLT is not a signatory to said agreement.

**Response:** A policy is now in place whereas a member of the executive committee of the Mammoth Lakes Tourism board (primarily the board chair or treasurer) signs off on all contracts of \$25,000 or more.

#### Recommendation #4

Any action that results in a financial obligation by MLT, based on a contract negotiated by others, must include a copy of said contract as part of the public record.

**Response:** Copies of any contracts that include Mammoth Lakes Tourism, negotiated by others, will be made available as part of monthly board meeting minutes posted to [www.VisitMammoth.com/mlt-board](http://www.VisitMammoth.com/mlt-board)