

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

ORDER WR 2013-0008-EXEC

In the Matter of Permit 17332
(Application 25368)

Mammoth Community Water District

**ORDER APPROVING PETITION FOR EXTENSION OF TIME
AND PETITIONS FOR CHANGE
AND ENDING REPORTING UNDER
CEASE AND DESIST ORDER NO. 9P**

SOURCES: Lake Mary and Mammoth Creek

COUNTY: Mono

BY THE BOARD:

1. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued Permit 17332 to Mammoth County Water District (now known as Mammoth Community Water District) (District) on June 1, 1978 pursuant to Application 25368. The permit authorizes direct diversion of 3 cubic feet per second and storage of 660 acre-feet per annum in Lake Mary. The water sources for this right are Lake Mary and Mammoth Creek.
2. The permit requires that the water be applied to municipal use by December 1, 1988. Three time extensions have been approved for this water right, extending the time to complete construction to December 31, 1990 and the time to complete full beneficial use to December 31, 1991.
3. Cease and Desist Order No. 9P, issued August 29, 1991, established an interim bypass flow schedule for Permit 17332 which would remain in place until a permanent bypass flow schedule is established.
4. On December 17, 1991, the District filed a time extension petition on Permit 17332. The petition requests a ten-year extension of time.
5. On December 23, 1991, the District submitted a petition to change the fishery bypass flow requirements applicable to diversions under Permit 17332. The place of measurement would be a gage on Mammoth Creek near Old Mammoth Road.
6. On January 2, 1992, the District filed a change petition to add Mill City Tract, Mammoth Pack Station, Twin Lakes Campground, Art Gallery on Lake Mary Road, Tamarack Lodge, Twin Lakes Store, cabins and garage, Sherwin Creek Campground, Sierra Meadows and US Forest Service (USFS) Pack Office, Shady Rest Campground and Visitor Center, and High Sierra Recreational Camp. The petition indicates that these are fully developed places of use.

7. The time extension and change petitions on Permit 17332 were noticed January 8, 1992. Acceptable protests were filed by Department of Fish and Game, California Sportfishing Protection Alliance, California Trout, Valentine Eastern Sierra Reserve Natural Reserve System, and Hot Creek Ranch, Inc.
8. On January 20, 1994, the State Water Board entered Cease and Desist Order No. 9P.2 which directed, among other things, that the District comply with the bypass flow requirements specified as a condition of Permit 17332. Following a court challenge by the District, the Superior Court for Mono County entered a writ of mandate dated October 21, 1996, which directs the State Water Board to amend the permit condition related to bypass flows and incorporate the flows proposed by the District and its consultants.
9. Order WR 97-01, which amends Order No. 9P.2, established new interim fishery bypass flow requirements applicable to water diversions under Permit 17332. These are the same bypass flows as directed by the Mono County Superior Court in its October 21, 1996 Peremptory Writ of Mandate.
10. On July 19, 2001, the District petitioned to change the place of use for Permit 17332. The petitioned additions to the place of use are Mill City Tract, Tamarack Lodge, Sierra Meadows and USFS Pack Offices, Shady Rest Park, Mammoth Creek Park, Mammoth Mountain Ski Area, and YMCA of Metropolitan Los Angeles. The petition indicates that these are all existing users of water, whose current water supply does not meet safe drinking water standards. The District also petitioned to change the fishery bypass flow schedule and other requirements related to Permit 17332 in a petition submitted on September 28, 2001.
11. On December 19, 2003, the District petitioned to change the place of use for Permit 17332. The petitioned additions to the place of use are Mill City Tract Cabins, Tamarack Lodge, Sierra Meadows and USFS Pack Offices, Shady Rest Park, Mammoth Creek Park, Mammoth Mountain Ski Area, YMCA of Metropolitan Los Angeles, Twin Lakes Campground, Twin Lakes Art Gallery, Mammoth Lakes Pack Station and Sherwin Creek Campground. The petition indicates that these are all existing users of water whose current water supply does not meet safe drinking water standards.
12. On June 14, 2006, the District petitioned to further modify the conditions associated with District Resolution No. 02-14-78-02 which was incorporated by reference in the permit. The District petitioned to include the fishery bypass flow schedule required by the Superior Court and by the State Water Board in Order WR 97-01 as the permanent bypass flow schedule. The District also requested the place of measurement for such flow schedule be at the Old Mammoth Road Gage, which is the same measurement location approved by the Superior Court and the State Water Board in Order WR 97-01. The bypass flow schedule has been in effect since 1997. The change petition was not noticed. (CCR § 795.)
13. The 1992 place of use change petition noticed in 1992 was modified somewhat in 2001, 2003 and 2006. However, the later revisions primarily serve persons or entities that previously diverted and used water under another basis of right; use under the original right of such persons having been discontinued, there will be no net change in return flows. Due to poor map quality, in 2012 Division staff requested submittal of a new place of use map. On July 10, 2012, a revised petition map was submitted. The revised petition map reflects the existing District service area, and incorporates the areas identified in the petitions. The 2001, 2003 and 2006 change petitions were not noticed. (CCR § 795.)

14. The State Water Board may grant an extension of time within which to commence or complete construction work or apply water to beneficial use upon a showing of good cause. (Wat. Code, § 1398.) Permittee must show that (1) due diligence has been exercised; (2) failure to comply with previous time requirements has been occasioned by obstacles which could not be reasonably avoided; and (3) satisfactory progress will be made if an extension of time is granted. Lack of finances, occupation with other work, physical disability, and other conditions incident to the person and not to the enterprise will not generally be accepted as good cause for delay. Municipalities may acquire and hold rights for existing and future uses (Wat. Code §106.5) and are afforded some latitude in putting water to beneficial use, because they must be able to plan for, and meet, the needs of their existing and future citizens (SWRCB Order WR 2000-13, pp. 12-13). These rules apply to the District, because it supplies water to the citizens of the Town of Mammoth Lakes, for municipal purposes.
15. Permittee has shown that due diligence has been exercised. Permittee expended over \$877,000 in its water system infrastructure between 1989 and 1995.
16. Permittee has shown that failure to comply with previous time requirements has been occasioned by obstacles that could not be reasonably avoided. Permittee had to upgrade the water mains, storage tank and water treatment plant in order to make further beneficial use of water. Permittee accomplished these tasks from 2002 through 2004. (IS/MND, pp. 12, 14.)
17. Permittee has shown that satisfactory progress will be made if a time extension is granted. During the initial portion of the extension (1995 through the present), Permittee expended \$2.275 million to complete improvements to the water supply facilities needed to utilize additional water under the permit.
18. For these reasons and because permittee provides municipal water supplies to a community that will have some growth in the future, permittee has shown good cause for the time extension.
19. Permittee has shown that the change in place of use will not operate to the injury of any lawful user of water (see 2010 Draft Environmental Impact Report (EIR) analysis of instream flows), good cause has been shown for the change, and the change petitions do not constitute the initiation of new rights. Permittee has shown that the fishery bypass flow schedule and other changes to the conditions associated with District Resolution No. 02-14-78-02 will not have adverse environmental effects on the hydrology or biology of Mammoth Creek (see also EIR analysis of impacts to hydrology and biology).
20. On May 19, 2011, the District certified an EIR (SCH No. 1997032082) for the time extension and change petitions in order to comply with the California Environmental Quality Act. On December 2, 2011, the District approved the Proposed Project described in the EIR. The State Water Board has considered the environmental document and any proposed changes incorporated into the project or required as a condition of approval to avoid significant effects to the environment.

The District provided the following additional environmental information in support of its petition to change the place of use: Snowcreek Master Plan EIR, Trails System Master Plan EIR, Turner Propane Project Decision Memo categorical exemption, and 2005 General Plan EIR.

Any mitigation measures based on the environmental documents have been included in the amended permit. The State Water Board will file a Notice of Determination within five days from the issuance of this order.

21. On November 9, 2012, the Division circulated the proposed amended permit to the protestants and required the protestants to inform the Division by December 9 if they wished to maintain their protests. The protestants were informed that unless comments were provided, the protests would be considered dismissed. No comments were received. The protests are dismissed.
22. The permit conditions relating to the continuing authority and water quality objectives of the State Water Board should be added or updated to conform to California Code of Regulations, title 23, section 780, subdivisions (a) & (b).
23. Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A condition should be placed in the permit making the District aware of obligations resulting from these acts.
24. A term has been added to require measurement of water diverted under the permit to comply with Water Code section 1605.
25. No further action is required under Cease and Desist Order No. 9P.2, including the required monitoring and reporting. However, compliance reporting related to the conditions of Permit 17332 is a continuing obligation. The District shall annually report its ongoing compliance with the water right permit conditions in the annual electronic report it submits to the Division.

NOW, THEREFORE, IT IS ORDERED THAT THE STATE WATER BOARD HEREBY APPROVES THE PETITIONS FOR EXTENSION OF TIME AND CHANGE, AND FINDS THAT NO FURTHER ACTION IS REQUIRED UNDER CEASE AND DESIST ORDER NO. 9P.2. THE ATTACHED AMENDED PERMIT, WHICH INCORPORATES THE PETITIONED MODIFICATIONS, IS ISSUED.

STATE WATER RESOURCES CONTROL BOARD



Thomas Howard
Executive Director

Dated: **JAN 30 2013**

Attachments