



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board

San Diego Region



Arnold Schwarzenegger
Governor

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NOTICE OF PROPOSED SETTLEMENT AND RELEASE OF ALL CLAIMS OF ADMINISTRATIVE CIVIL LIABILITY

WILLIAM P. JOHNSON, an individual, and VAIL LAKE USA, LLC, a California limited liability company v. REGIONAL WATER QUALITY CONTROL BOARD - SAN DIEGO, a State of California board and DOES 1-50; Case No. GIC815227, Superior Court of the State of California for the County of San Diego; Petition for Writ of Mandate and Complaint for Damages in regards to Administrative Civil Liability Order No. R9-2002-0027.

On November 8, 2006, the California Regional Water Quality Control Board, San Diego Region (Regional Board) will consider a settlement of litigation against William P. Johnson, an individual, and Vail Lake USA, LLC (individually and collectively referred to as "JOHNSON") based on a Settlement Agreement negotiated by the Office of California Attorney General representing the Regional Board. The settlement resolves all claims which have been made for the period commencing July 7, 1999 through and including the date this Agreement is approved by the Regional Board.

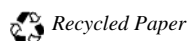
The Regional Board will accept comments on the proposed settlement until November 8, 2006. A copy of the settlement Agreement is available for review on the Regional Board's Web site (www.waterboards.ca.gov/sandiego) or by request.

BACKGROUND

On February 13, 2002, following a public hearing, the REGIONAL BOARD issued an administrative civil liability order ("ACL Order") under Water Code section 13385 against JOHNSON in the total amount of \$422,200.00. This liability was based upon allegations of two separate violations pertaining to activities on a 132-acre parcel of real property located adjacent to Vail Lake in Riverside County, California, commenced by Johnson beginning July 1999: (1) liability in the amount of \$360,000.00 for 600 days for failure to file a Notice of Intent from July 7, 1999 to February 26, 2001; and (2) liability in the amount of \$62,200.00 for failure to provide a required technical report and information at \$100 per day, commencing from the date the report and information were due (May 31, 2000) until the date of the hearing (February 13, 2002).

On April 25, 2003, JOHNSON filed an action naming the Regional Board and the State Water Resources Control Board as defendants and respondents, entitled *William P. Johnson, et al. v. Regional Water Quality Control Board-San Diego, etc., et al.*, San Diego Superior Court Case No. 815227 ("the Action.") The Action included a Petition for Writ of Mandate challenging the ACL, and six additional causes of action for

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damages. The State Water Resources Control Board demurred to the Action, and was subsequently dismissed from the Action with prejudice. Upon stipulation of the parties, the court bifurcated the Action's first cause of action seeking a petition for a writ of administrative mandate. On September 30, 2005, the Court granted JOHNSON's petition for a writ of administrative mandate.

The Regional Board, in closed session, authorized its Executive Officer and the Office of the Attorney General to undertake negotiations with JOHNSON for an agreement that would settle and resolve all potential liability for past storm water discharges resulting from construction activities and preserve the State's authority and discretion to regulate of unauthorized storm water discharges from active construction sites and to take enforcement action for any violations of state or federal laws, regulations, plans, polices, or orders. JOHNSON has approved the proposed settlement.

TERMS OF PROPOSED SETTLEMENT

Neither party admits the sufficiency of any claims, allegations, assertions, contentions, or positions of any other party, nor the sufficiency of any defenses to any such claims, allegations, assertions, contentions or positions. The terms and conditions of this Agreement are not to be construed as an admission of liability on the part of any Party and this settlement is a resolution of disputed claims.

1. **Settlement of Claims.** This Settlement Agreement is intended to be a full and complete settlement of the disputes between the Parties for the time period between July 7, 1999 and November 8, 2006.
2. **Dismissal of Superior Court Action by JOHNSON.** JOHNSON will dismiss, with prejudice, the Action filed in the Superior Court of the State of California, County of San Diego, Case No. GIC 815227 within fifteen (15) days of approval of this Agreement by all Parties.
3. **Withdrawal of ACL by Regional Board.** The Regional Board will rescind the ACL order within 5 days of the dismissal of the Action by JOHNSON, and in compliance with the Writ of Mandate issued by the Court.
4. **Mutual and General Releases.** The following releases shall become effective upon the approval of the Regional Board of this Agreement.
 - (a) **Release of JOHNSON.** JOHNSON shall be released from potential civil liability for violations under the Regional Board's jurisdiction and arising out of JOHNSON's activities at Vail Lake between July 7, 1999 and the date this Agreement is approved by the Board of Directors of the Regional Board.
 - (b) **JOHNSON's Release of the Regional Board.** The Regional Board shall be forever released from any and all causes of action related to the issuance of ACL Order or the exercise of the Regional Board's jurisdiction

over JOHNSON's activities at Vail Lake for the period commencing July 7, 1999 through and including November 8, 2006.

Other provisions of the Settlement Agreement preserve the authorities and obligations of the Regional Board and other organizations to regulate and monitor the Project and/or Vail Lake in its entirety.

CONTACT

Please direct comments on the proposed settlement to the Regional Board at:

9174 Sky Park Court, Suite 100, San Diego, CA 92124, Attention: John H. Robertus, Executive Officer.

Requests for copies of the Settlement Agreement should be directed to: Lori Costa at the above address or telephone (858) 467-2357