

BILL LOCKYER
Attorney General

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State of California
DEPARTMENT OF JUSTICE



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E-Mail: Deborah.Fletcher@doj.ca.gov

November 21, 2006

John Robertus, Executive Officer
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92124-1324

John Richards, Staff Counsel
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

2006 NOV 22 P 12:46
SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD

RE: William P. Johnson, et al. v. Regional Water Quality Control Board-San Diego, et al.
San Diego Superior Court Case No. GIC 815227

Gentlemen:

Enclosed are: (1) a copy of the fully executed settlement agreement; and, (2) a conformed copy of the dismissal with prejudice in *Johnson, et al. v. Regional Water Quality Control Board-San Diego, et al.* Our file is now closed.

Sincerely,

DEBORAH M. FLETCHER
Deputy Attorney General

For BILL LOCKYER
Attorney General

Enclosures

CONFIDENTIAL – ATTORNEY CLIENT PRIVILEGE
DO NOT PLACE IN PUBLIC FILE

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



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 **COPY**

November 21, 2006

Craig M. Collins
COLLINS LAW FIRM
AON Center
707 Wilshire Boulevard, Ste .4880
Los Angeles, CA 90017

RE: *Johnson, et al. v. Regional Water Quality Control Board-San Diego, et al.*
San Diego Superior Court Case No. GIC 815227

Dear Mr. Collins:

Enclosed are: (1) a copy of the fully executed settlement agreement; and, (2) a conformed copy of the dismissal with prejudice in *Johnson, et al. v. Regional Water Quality Control Board-San Diego, et al.*

Thank you for your assistance in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah M. Fletcher", written over the word "Sincerely,".

DEBORAH M. FLETCHER
Deputy Attorney General

For BILL LOCKYER
Attorney General

Enclosures

cc: John H. Robertus
John Richards

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Deborah M. Fletcher (State Bar # 70847) Office of the California Attorney General 110 West A Street, 11th Floor San Diego, CA 92101 ATTORNEY FOR (Name): Respondent Regional Water Quality Control Bd.	TELEPHONE NO.: (619) 645-2070 FAX NO.: (619) 645-2581	FOR COURT USE ONLY FILED CIVIL BUSINESS OFFICE 10 CENTRAL DIVISION 2006 NOV 15 2 58 PM 3:45 SUPERIOR COURT SAN DIEGO COUNTY, CA
Insert name of court and name of judicial district and branch court, if any: SUPERIOR COURT OF CALIFORNIA, SAN DIEGO COUNTY		
PLAINTIFF/PETITIONER: WILLIAM P. JOHNSON, et al.		
DEFENDANT/RESPONDENT: REGIONAL WATER QUALITY CONTROL BOARD-SAN DIEGO		
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): PETITION FOR WRIT OF MANDATE, COMPLAINT FOR DAMAGES		CASE NUMBER: GIC 815227

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -

1. TO THE CLERK: Please dismiss this action as follows:
- a. (1) With prejudice (2) Without prejudice
- b. (1) Complaint (2) Petition
 (3) Cross-complaint filed by (name):
 (4) Cross-complaint filed by (name):
 (5) Entire action of all parties and all causes of action
 (6) Other (specify):*

on (date):
on (date):

Date: **Nov. 13, 2006**

CRAIG M. COLLINS *



(SIGNATURE)

Attorney or party without attorney for:

- Plaintiff/Petitioner Defendant/Respondent
 Cross-complainant

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)
 * If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

2. TO THE CLERK: Consent to the above dismissal is hereby given.**
 Date:

 (SIGNATURE)

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)
 ** If a cross-complaint or Response (Family Law) seeking affirmative relief is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (f) or (j).

Attorney or party without attorney for:

- Plaintiff/Petitioner Defendant/Respondent
 Cross-complainant

(To be completed by clerk)

3. Dismissal entered as requested on (date): **NOV 15 2006**
4. Dismissal entered on (date): _____ as to only (name): _____
5. Dismissal not entered as requested for the following reasons (specify): _____
6. a. Attorney or party without attorney notified on (date): **NOV 15 2006**
 b. Attorney or party without attorney not notified. Filing party failed to provide
 a copy to conform means to return conformed copy

Date: **NOV 15 2006** Clerk, by **R.S. Vela**, Deputy

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release of All Claims ("Agreement"), is made and entered into by WILLIAM P. JOHNSON and VAIL LAKE USA, LLC (individually and collectively referred to as "JOHNSON"), and the REGIONAL WATER QUALITY CONTROL BOARD-SAN DIEGO REGION ("REGIONAL BOARD"). JOHNSON and the REGIONAL BOARD are sometimes collectively referred to in this Agreement as the "Parties" or separately as a "Party." The Parties are entering into this Agreement based on their collective desire to resolve those claims between JOHNSON and the REGIONAL BOARD described and identified in Paragraphs A, B, C, and D below.

RECITALS

The undersigned Parties execute this Agreement with reference to and in contemplation of the following facts:

A. The REGIONAL BOARD is a public entity established within the California Environmental Protection Agency. Pursuant to Water Code section 13200, subdivision (f) the REGIONAL BOARD has jurisdiction over discharges of waste that could affect the quality of the waters of the state within the San Diego Region, pursuant to California's Porter-Cologne Water Quality Control Act (California Water Code § 13000, et seq.). Vail Lake and the surrounding area are within the San Diego Region.

B. Commencing in or about July 1999, JOHNSON conducted certain activities on a 132-acre parcel of real property located adjacent to Vail Lake in Riverside County, California. ("The Project.") In February 2000, the REGIONAL BOARD requested JOHNSON file a Notice of Intent and to design and implement a Storm Water Pollution Prevention Plan ("SWPPP") under the state's General Construction Storm Water Permit, which the REGIONAL BOARD alleged was required as a result of JOHNSON's activities.

C. 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 the Project: (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 the 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).

D. 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 damages.

E. 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.

F. The Parties desire to enter into this Agreement in order to fully and finally settle and resolve of all claims which have, or might be made, by reason of the matter described above, including, but not limited to, the injuries and damages alleged in the Action, Case No. 815227, for the period commencing July 7, 1999 through and including the date this Agreement is approved by the REGIONAL BOARD. None of the Parties are admitting 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.

G. Each Party is willing to enter into this Agreement only upon the assurance that the other Party is willing to comply with its obligations, but the REGIONAL BOARD's willingness and ability to enter into the Agreement is conditioned upon approval of the Agreement at a public meeting. If such approval has not occurred by ~~October 31, 2006~~, this Agreement will be null and void and of no further force and effect.
November 30, 2006

H. JOHNSON acknowledges that the REGIONAL BOARD enters into this Agreement on behalf of itself, and not on behalf of any other department, agency, or entity of the State of California. This Agreement is binding only upon the REGIONAL BOARD, and does not and cannot bind or inure to the benefit of any other department, agency, or entity of the State of California.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the Parties hereto agree as follows:

AGREEMENT

1. **Settlement of Claims.** This Settlement Agreement is intended to be a full and complete settlement of the disputes enumerated in this Agreement between the Parties, and only for the time period between July 7, 1999 and the date this Agreement is approved by the REGIONAL BOARD. If such approval has not occurred by ~~October 31, 2006~~, this Agreement will be null and void and of no further force and effect. *November 30, 2006, wcy*

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, including approval by the REGIONAL BOARD at a public meeting.

3. **Withdrawal of ACL by REGIONAL BOARD.** Within 5 days of the dismissal of the Action by JOHNSON, and in compliance with the Writ of Mandate issued by the Court as described in Paragraph E above, the REGIONAL BOARD will rescind the ACL order.

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.** Except for those obligations expressly set forth in subdivision (c) below, the REGIONAL BOARD, for itself and its past and present agents, related entities, employees, fiduciaries, attorneys, successors, assigns, affiliates, directors, officers, members, representatives, successors and assigns, hereby forever releases, waives, and discharges, JOHNSON and its past and present agents, related entities and each of them 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.** Except for those obligations expressly set forth in subdivision (c) below, WILLIAM P. JOHNSON and VAIL LAKE USA, LLC, for themselves and their respective past and present agents, related entities, employees, fiduciaries, attorneys, successors, assigns, affiliates, directors, officers, members, representatives, and heirs, hereby forever release, waive, discharge, and hold harmless the REGIONAL BOARD and its past and present agents, related entities, employees, subsidiaries, shareholders, partners, fiduciaries, attorneys, successors, assigns, affiliates, directors, officers, members and representatives and each of them from any and all causes of action, actions, liabilities, demands, obligations, costs, expenses, damages, rights, debts, judgments, contracts, attorneys' fees, losses or claims, of any nature whatsoever, whether known, unknown, suspected, unsuspected, fixed, contingent, liquidated, unliquidated, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, arising under federal, state, local, or common law which relate in any way to the Regional Board's actions related the issuance of ACL Order described in Paragraph C above, 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 the date the Board of Directors of the REGIONAL BOARD approves this Agreement.

(c) **Reserved Claims.** Notwithstanding any other provision of this Agreement, nothing in this Agreement is intended to release the Parties from their obligations under this Agreement, the REGIONAL BOARD'S continued obligations to regulate and monitor the Project and/or VAIL LAKE in its entirety, or the obligations of any other state department, agency, or entity to regulate and monitor the Project and/or VAIL LAKE in its entirety.

5. **No Third Party Benefits.** This Agreement is made for the sole benefit of the Parties, and no other person or entity shall have any rights or remedies under or by reason of this Agreement unless otherwise expressly provided for herein.

6. **Entire Agreement.** This Agreement constitutes the entire understanding between the Parties as to the subject matter hereof and may not be modified, amended or terminated except by written agreement signed by the Parties.

7. **Approvals, Consents, Waivers.** No approval, acceptance or consent of a Party required by any provision of this Agreement, nor any waiver of any required approval, acceptance, consent or condition, shall be deemed to have occurred until set forth in writing, signed by the Party, and delivered to the other Party. Any consent or approval by a Party in any single instance shall not be deemed to be or construed to be consent or approval in any like matter arising at a subsequent date.

8. **Cooperation/Documentation.** The Parties will, at their own cost and expense, execute such other instruments, documents, information and data as may be reasonably necessary for the purposes of and to effectuate the terms of this Agreement.

9. **Assignment.** Subject only to the express restrictions contained in this Agreement, all of the rights, duties and obligations contained in this Agreement shall inure to the benefit of and be binding upon the Parties, and their successors and assigns.

10. **Attorneys' Fees.** Each Party shall bear its own costs and attorneys' fees, and any other expenses, related to all matters subject to resolution by this Agreement, including such costs, fees, and expenses incurred for administrative proceedings, litigation, and mediation. If any Party brings an action to enforce the terms of this Agreement or to declare rights hereunder, the prevailing Party in such action shall be entitled to its reasonable attorneys' fees and costs to be paid by the losing Party as awarded by the court or arbitrator.

11. **Headings.** Headings herein are used for convenience of reference only and do not define or limit the scope of provisions of this Agreement.

12. **Agreement as Defense.** This Agreement may be pleaded as a full and complete defense and may be used as the basis for an injunction against any action, suit or proceeding which may be prosecuted, instituted or attempted by any Party in breach thereof.

13. **Severability.** If any provision of this Agreement, or part thereof, is held invalid, void or voidable as against public policy or otherwise, the invalidity shall not affect other provisions, or parts thereof, which may be given effect without the invalid provision or part. To this extent, the provisions, and parts thereof, of this Agreement are declared to be severable.

14. **No Admission of Liability.** This Agreement embodies a compromise of claims and shall not be used or construed as an admission of liability or fault for any purpose.

15. **Reliance.** Each Party declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other Party, or of any agent or attorney of any other Party. Each Party represents to each other Party that it has reviewed each term of this Agreement with its counsel and that it shall never dispute the validity of this Agreement on the ground that it did not have advice of its counsel.

16. **Controlling Law and Venue.** This Agreement is being made and delivered and is intended to be performed in the State of California, and the execution, validity, construction, and performance of this Agreement shall be construed and enforced in accordance with the laws of California. This Agreement shall be deemed made and entered into in San Diego County, which shall be the exclusive venue for any action relating to this Agreement.

17. **Warranties of Authority and Against Prior Assignment.** Each person who signs this Agreement on behalf of a Party warrants and represents to every other Party that he or she has the authority to make this Agreement on behalf of the Party for which he or she signs. Each of the Parties to this Agreement represents and warrants that it is the sole and exclusive owner of the rights, claims and causes of action herein released and that it has not heretofore assigned or transferred or purported to assign or transfer to any other person or entity any obligations, rights, claims, or causes of action herein released.

18. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed an original, but which together shall constitute the agreement of the Parties when each Party has signed a counterpart.

19. **Integration.** This is an integrated agreement. The terms of this Agreement are contractual, and not merely a recital. This Agreement supersedes all prior representations and agreements, if any, between the Parties or their legal counsel regarding its subject matter.

20. **Knowing, Free and Voluntary Making.** The parties have read the Agreement, and acknowledge that they know and fully understand its contents. The Parties acknowledge that they have fully discussed this Agreement with their respective attorneys and fully understand the consequences of this Agreement. The Parties have relied and are relying solely upon their own judgment, belief and knowledge of the nature, extent, effect and consequences relating to this Agreement and/or upon the advice of their own legal counsel concerning the legal and income tax consequences of this Agreement. The Parties will execute the Agreement freely and voluntarily.

21. **Notices.** Notices concerning this Agreement shall be sent by certified mail to the following addresses. Any party may notify the other parties of a change of notice address by letter sent by certified mail. **For the Regional Board:**

Mr. John H. Robertus
Executive Officer
Regional Water Quality Control
Board, San Diego Region
9771 Clairemont Mesa Boulevard, Suite A
Sacramento, California 95812 **With a copy to:**

John W. Richards, Esq.
Office of Chief Counsel
State Water Resources Control Board
Post Office Box 100
Sacramento, California 95812
For Johnson:

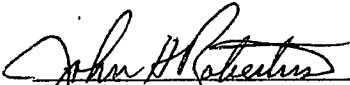
William Johnson
P.O. Box 1955
Rancho Santa Fe, CA 92067 **With a copy to:**

Craig M. Collins
BLUM COLLINS, LLP
AON Center
707 Wilshire Boulevard, Ste .4880
Los Angeles, CA 90017

The undersigned, on the dates and at the place set forth below, subscribe their hands to and acknowledge their assent to and agreement with the terms and conditions set forth in this Agreement.

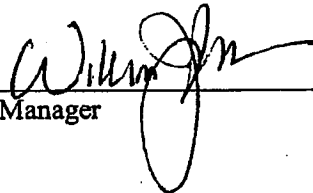
Dated: 11, 9, 2006

CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD, SAN DIEGO REGION

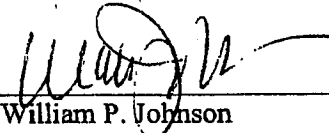
By: 
John H. Robertus
Executive Officer

Dated: 9/10, 2006

VAIL LAKE USA, LLC
A California Limited Liability Company


By: 
Its: Manager

Dated: 9/10, 2006



William P. Johnson

Approved as to form:

Bill Lockyer
Attorney General of the State of California

By: 
Deborah M. Fletcher
Deputy Attorney General
Attorneys for California Regional Water
Quality Control Board, San Diego Region

COLLINS LAW FIRM

By: 
Craig M. Collins
Attorneys for William P. Johnson and
Vail Lake USA, LLC