California Regional Water Quality Control Board
San Diego Region

Winston H. Hickox
Secretary for Environmental Protection

Internet Address: http://www.swrcb.ca.gov/rwqcb9/
9771 Clairemont Mesa Boulevard, Suite A, San Diego, California 92124-1324
Phone (858) 467-2952 • FAX (858) 571-6972

Gray Davis
Governor

15 August 2001

William P. Johnson
Vail Lake, LLC
29400 Rancho California Road
Temecula, California 92591

Amended Complaint No. 2001-188 for Administrative Civil Liability Against William P. Johnson and Vail Lake, LLC, Noncompliance with California Water Code Sections 13267, 13376 and 13383, and State Board Order No. 99-08-DWQ

Notice of Formal Public Hearing

Enclosed find Amended Complaint No. 2001-188 for Administrative Civil Liability against William P. Johnson and Vail Lake, LLC for failure to submit a Notice of Intent and failure to submit a technical report. At your request, a formal public hearing before the California Regional Water Quality Control Board, San Diego Region (Regional Board), has been scheduled for 14 September 2001. The meeting will begin at 9 a.m. at the Rancho California Water District, District Board Room, located at 42135 Winchester Road, Temecula, California. During the hearing you will have the opportunity to address the Regional Board and contest the allegations and imposition of civil liability. I have also attached the Regional Board's hearing procedures.

You may choose to waive your right to a hearing, if you accept liability in the amount recommended. Be aware that if you waive your right to a public hearing before the Regional Board, you must sign and return the enclosed waiver form with a cashier's check for the amount of civil liability proposed in the complaint. The cashier's check must be made payable to the State Water Resources Control Board and mailed to the Regional Board, 9771 Clairemont Mesa Boulevard, Suite A, San Diego, California 92124. Waiver of the hearing constitutes admission of the violations alleged in the complaint and acceptance of the assessment of civil liability in the amount proposed in the complaint.

If the hearing is held, testimony from you and comments from interested parties may be considered by the Regional Board in determining the amount of civil liability to assess. Following the hearing, the Regional Board may impose the proposed civil liability, impose an amount other than that proposed, revoke the complaint and refer the matter to the Attorney General for judicial assessment of civil liability (with higher maximum liabilities for each violation), or dismiss the complaint without imposing liability.

Please contact me if you have any questions concerning this matter at (858) 467-2952.

Respectfully,

for

JOHN H. ROBERTUS
Executive Officer

ALC:mja:ftm

Enclosures:
1. Amended Complaint No. 2001-188
2. Waiver form, William P. Johnson
3. Waiver form, Vail Lake, LLC
4. Regional Board Hearing Procedures

Copies to:
1. Deanna Cummings, US Army Corps of Engineers
2. Terri Dickerson, CA Department of Fish & Game
3. Steve Fuller, US Environmental Protection Agency, Region IX
4. Christopher Hans, Executive Office, County of Riverside
5. Tom Huetteman, US Environmental Protection Agency, Region IX
6. Csaba Ko
7. Karen Marzek, US Army Corps of Engineers
8. Paul Singarella, Esq., Latham & Watkins
9. Doreen Statdlander, US Fish & Wildlife Service

File: 10-3015165.02

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

IN THE MATTER OF:	)	AMENDED
	)	COMPLAINT NO. 2001-188
WILLIAM P. JOHNSON	)	FOR
VAIL LAKE, LLC	)	ADMINISTRATIVE CIVIL LIABILITY
NONCOMPLIANCE WITH CALIFORNIA	)	
WATER CODE §§ 13267, 13376 AND 13383,	)	15 AUGUST 2001
AND STATE BOARD ORDER NO. 99-08-	)	
DWQ	)	

WILLIAM P. JOHNSON AND VAIL LAKE, LLC ARE HEREBY GIVEN NOTICE THAT:

1. William P. Johnson and Vail Lake, LLC are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (Regional Board) may impose civil liability under section 13385 of the California Water Code (CWC).

ALLEGATIONS

2. **Failure to File Notice of Intent**
William P. Johnson and Vail Lake, LLC failed to file a Notice of Intent (NOI) for coverage under California State Water Resources Control Board (State Board) Order No. 99-08-DWQ, *NPDES General Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity* prior to the commencement of construction activity at the Vail Lake site on 07 July 1999 as required by CWC section 13376, Order No. 99-08-DWQ section C.1, and 40 Code of Federal Regulations Parts 122, 123, and 124. The State Board received a NOI for the Vail Lake site (WDID No. 9 33S315165) on 01 March 2001, 600 days late.

3. **Failure to Submit Technical Report**
William P. Johnson and Vail Lake, LLC failed to submit a technical report on 31 May 2000 as required by the Regional Board pursuant to CWC sections 13267 and 13383. A technical report has not been received by the Regional Board as of the date of this Complaint, 440 days late.

PROPOSED CIVIL LIABILITY

4. Based on consideration of the factors listed in § 13385 of the California Water Code, civil liability should be imposed on William P. Johnson and Vail Lake, LLC for all violations alleged herein, calculated as follows:

    1. Failure to File Notice of Intent
    $600 per day for 600 days = $360,000

2. Failure to Submit Technical Report
   $100 per day for 440 days = $44,000

Dated this 15th day of August, 2001

for

John H. Robertus
Executive Officer

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WAIVER OF PUBLIC HEARING FORM
FOR
AMENDED COMPLAINT NO. 2001-188
WILLIAM P. JOHNSON
VAIL LAKE, LLC
NONCOMPLIANCE WITH
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
WATER QUALITY ORDER NO. 99-08-DWQ
AND
CALIFORNIA WATER CODE SECTIONS 13376, 13383 & 13385

I, William P. Johnson agree to waive my right to a hearing before the California Regional Water Quality Control Board, San Diego Region with regard to the violations alleged in Amended Complaint No. 2001-188 and to remit payment of the civil liability imposed. I understand that regulations of the U.S. Environmental Protection Agency require public participation in any proposed settlement of civil liability occasioned by violation of requirements implementing NPDES regulations or laws pertaining to the discharge of pollutants to waters of the United States. Accordingly, interested persons will be given 30-days to comment on the amount of civil liability proposed in Amended Complaint No. 2001-188. Based on the comments received, the Regional Board may refuse to accept the amount of civil liability proposed in this complaint, and may hold a public hearing on this complaint. If a hearing is held, comments from interested parties at the hearing may be considered by the Regional Board in determining the amount of civil liability to assess. Following the hearing, the Regional Board may impose an amount of civil liability other than that proposed in this complaint or may revoke the complaint and refer the matter to the Attorney General for judicial assessment of civil liability (with higher maximum liabilities for each violation). I have enclosed a cashier's check made payable to the State Water Resources Control Board in the amount of the civil liability proposed in paragraph 4 of Amended Complaint No. 2001-188. I understand that execution of this Waiver constitutes acceptance of liability in the amount proposed by the Executive Officer in Amended Complaint No. 2001-188 for the violations alleged therein. I further understand that I am giving up my right to be heard and to argue against the violations in this complaint, against the imposition of civil liability for such violations, or against the amount of civil liability proposed therein.

Signature: _____

Printed Name: _____

Position/Title: _____

Agency/Company: _____

Date of Signature: _____

WAIVER OF PUBLIC HEARING FORM
FOR
<u>AMENDED</u> COMPLAINT NO. 2001-188
WILLIAM P. JOHNSON
VAIL LAKE, LLC
NONCOMPLIANCE WITH
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
WATER QUALITY ORDER NO. 99-08-DWQ
AND
CALIFORNIA WATER CODE SECTIONS 13376, 13383 & 13385

As the designated administrative officer of Vail Lake, LLC, I agree to waive the right of Vail Lake, LLC to a hearing before the California Regional Water Quality Control Board, San Diego Region with regard to the violations alleged in Amended Complaint No. 2001-188 and to remit payment of the civil liability imposed. I understand that regulations of the U.S. Environmental Protection Agency require public participation in any proposed settlement of civil liability occasioned by violation of requirements implementing NPDES regulations or laws pertaining to the discharge of pollutants to waters of the United States. Accordingly, interested persons will be given 30-days to comment on the amount of civil liability proposed in Amended Complaint No. 2001-188. Based on the comments received, the Regional Board may refuse to accept the amount of civil liability proposed in this complaint, and may hold a public hearing on this complaint. If a hearing is held, comments from interested parties at the hearing may be considered by the Regional Board in determining the amount of civil liability to assess. Following the hearing, the Regional Board may impose an amount of civil liability other than that proposed in this complaint or may revoke the complaint and refer the matter to the Attorney General for judicial assessment of civil liability (with higher maximum liabilities for each violation). I have enclosed a cashier's check made payable to the State Water Resources Control Board in the amount of the civil liability proposed in paragraph 4 of Amended Complaint No. 2001-188. I understand that execution of this Waiver constitutes acceptance of liability in the amount proposed by the Executive Officer in Amended Complaint No. 2001-188 for the violations alleged therein. I further understand that I am giving up my right to be heard and to argue against the violations in this complaint, against the imposition of civil liability for such violations, or against the amount of civil liability proposed therein.

Signature: _____

Printed Name: _____

Position/Title: _____

Agency/Company: _____

Date of Signature: _____

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REGIONAL BOARD
HEARING PROCEDURES

Hearings before the San Diego Regional Board are not conducted pursuant to Chapter 5 of the California Administrative Procedure Act, commencing with Section 11500 of the Government Code. Regulations governing the procedures of the regional boards are codified in Chapter 1.5, commencing with Section 647, of the State Water Resources Control Board regulations in Division 3 of Title 23 of the California Code of Regulations.

Testimony and comments presented at hearings need not conform to the technical rules of evidence provided that the testimony and comments are reasonably relevant to the issues before the Board. Testimony or comments that are not reasonably relevant, or that are repetitious, will be excluded. Cross-examination may be allowed by the Chairman as necessary for the Board to evaluate the credibility of factual evidence or the opinions of experts. Video-taped testimony by witnesses who are not present at the hearing will not be accepted unless such testimony was subject to cross-examination by all designated parties[1].

Pursuant to Government Code § 11445.20, the Board will use an informal hearing procedure, which does not include the right of cross-examination. Failure to make a timely objection to the use of an informal procedure, in accord with the directions below, will constitute consent to the informal hearing (See Title 23, California Code of Regulations, Section 648.7). Even with a timely objection, an informal procedure may be used under the circumstances identified in Government Code § 11445.20 (a) (b) or (d).

For formal hearings, designated parties must submit witness testimony prior to the hearing date. During the formal hearing, witnesses will be allowed a limited time to orally summarize the pertinent points of their testimony. Designated parties requesting a formal hearing must submit twenty (20) copies of the following information to the Regional Board. This information must be received in the Regional Board's Office no later than 5 p.m. on Wednesday 29 August 2001:

- Witness testimony;
- The name of each proposed witness and the order in which witnesses will be called;
- A description/summary of what each witness' testimony is intended to prove; and,
- Identification of material factual issues in the dispute.

When a hearing is conducted using formal procedures, participants will be determined to be either "designated parties" or other "interested persons." Only designated parties will have the right to cross-examine witnesses. Interested persons do not have a right to cross-examination, but may ask the Regional Board to clarify testimony.
Designated parties automatically include the Regional Board and any person to whom an order is addressed (i.e., the Discharger(s)). All other persons wishing to testify or provide comments at a formal hearing are interested persons. An interested person may request status as a designated

[1] This does not preclude the use of videotape to present graphic images, provided that the person who took the videotape is available for questioning; this is intended to apply to spoken testimony of witnesses who are not available for cross-examination at the hearing.

party for purposes of the formal hearing. A request must be received in the Regional Board's Office no later than 5 p.m. on Wednesday 29 August 2001. The request must explain the basis for status as a designated party and, in particular, how the person is directly affected by the possible actions of the Regional Board.

For any hearing (formal or informal) the Chair will allocate time for each party to present testimony and comments and to question other parties if appropriate. Interested parties will generally be given three (3) minutes for their comments. Where speakers can be grouped by affiliation or interest, such groups will be asked to select a spokesperson. The Chair may allocate additional time for rebuttal or for a closing statement. Time may be limited due to the number of persons wishing to speak on an item, or the number of items on the Board's agenda, or for other reasons.

All persons testifying must state their name, address, affiliation, and whether they have taken the oath before testifying. The order of testimony for hearings generally will be as follows, unless modified by the Regional Board Chair:

- Testimony* of Regional Board staff
- Testimony* of discharger
- Testimony* of other designated parties
- Testimony* of interested persons
- Closing statement by designated parties other than discharger
- Closing statement by discharger
- Closing statement by staff
- Recommendation by Executive Officer (as appropriate)
- Close public hearing
- Deliberation and voting by Regional Board

*includes cross examination if formal hearing

Closing statements shall be for the purpose of summarization and rebuttal, and are not to be used to introduce new evidence or testimony, or to restate direct testimony. After considering evidence, testimony, and comments, the Regional Board may choose to adopt an order regarding a proposed agenda item. All Regional Board files, exhibits, and agenda material pertaining to items on the agenda are made a part of the record. Persons wishing to introduce item exhibits (i.e., maps, charts, photographs) must leave them with the Regional Board's Executive Assistant and must provide sufficient copies for distribution to the Regional Board, designated parties, and interested persons. Photographs or slides of large exhibits are acceptable.