

SETTLEMENT AGREEMENT

This Settlement Agreement is made on the Effective Date between the following Parties: the Colorado Natural Resources Trustees (Trustees), the Water Quality Control Division (WQCD) of the Colorado Department of Public Health and Environment, the Division of Parks and Wildlife (CPW) of the Department of Natural Resources (collectively, the State), and the Vail Corporation d/b/a Vail Mountain (Vail Mountain).

I. INTRODUCTION

1. From September 17 to September 20, 2021, Vail Mountain released water from its snowmaking system into Mill Creek and Gore Creek.

2. The State alleges this Release, as defined in more detail below, violated provisions of the federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (CERCLA), the Colorado Water Quality Control Act, § 25-8-101, C.R.S. *et seq.* (WQCA), the Colorado Wildlife Code, § 33-1-101, C.R.S. *et seq.*, and regulations implementing these statutes.

3. The Trustees allege claims for natural resources damages pursuant to CERCLA for the Release, which the Trustees allege contained hazardous substances.

4. WQCD alleges the Release was an unpermitted discharge of pollutants into state waters which violated 5 C.C.R. 1002-31 § 31.11(1), § 25-8-501(1), C.R.S. and 5 C.C.R. 1002-61, § 61.3(1)(a).

5. CPW alleges the Release caused impacts to fish for which Vail Mountain is liable under § 33-6-110(1), C.R.S.

6. Vail Mountain does not admit to any of the factual or legal allegations made by the State herein, and any action undertaken by Vail Mountain pursuant to this Settlement Agreement shall not constitute evidence of fault by Vail Mountain with respect to the Release. Vail Mountain expressly reserves its rights to deny any of the State's factual or legal determinations or defend itself in any other third-party proceeding relating to the information identified in this Settlement Agreement.

7. The Parties want to resolve all claims the State could bring against Vail Mountain, its officers, directors, employees, representatives, and affiliates arising from or related to the Release.

8. The Parties therefore agree as follows:

II. PARTIES BOUND

9. This Settlement Agreement is binding upon the Trustees, WQCD, CPW and upon Vail Mountain and its successors and assigns. Any change in ownership or corporate or other

legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Vail Mountain under this Settlement Agreement.

III. DEFINITIONS

10. Whenever terms listed below are used in this Settlement Agreement, the following definitions shall apply solely for purposes of this Settlement Agreement:

“CDPHE” shall mean the Colorado Department of Public Health and Environment;

“CPW” shall mean the Division of Parks and Wildlife within DNR;

“DNR” shall mean the Colorado Department of Natural Resources;

“Natural Resource” or “Natural Resources” shall mean land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the State;

“Natural Resource Damages” shall mean any and all damages and costs, for purposes of CERCLA §§ 107(f)(1) and 107(a)(4)(C) to “Natural Resources” as defined in CERCLA § 101(16), and for purposes of the Clean Water Act § 311((f)(4) or (f)(5), 33 U.S.C. § 1321(f)(4) or (f) (5), including any and all damages, costs, expenses and interest that may be recovered by a Natural Resource Trustee pursuant to 43 C.F.R. § 11.15, and any and all damages and costs under similar State laws, including common law claims, for Natural Resources;

“Parties” shall mean Vail Mountain, the Trustees, WQCD and CPW;

“Release” shall mean Vail Mountain’s release of water from its snowmaking system into Mill Creek and Gore Creek, beginning at approximately 3:00pm on September 17, 2021, and ending at approximately 10:15am on September 20, 2021. Provided, however, nothing herein shall be interpreted to regulate Vail Mountain’s diversion, carriage, or exchange of raw water pursuant to § 25-8-503(5), C.R.S. as a point source discharge of pollution under the Colorado Water Quality Control Act.

“Restoration Project” shall mean a project to restore natural resources in the Gore Creek basin;

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral;

“Settlement Agreement” shall mean this Settlement Agreement;

“State” shall mean the State of Colorado acting through the Trustees, WQCD and CPW;

“Trustees” shall mean the Executive Director of CDPHE, the Executive Director of DNR and the Attorney General of the state of Colorado;

“Vail Mountain” shall mean The Vail Corporation;

“WQCD” shall mean the Water Quality Control Division within CDPHE.

IV. COMPLIANCE REQUIREMENTS

11. Vail Mountain shall pay the State two-hundred and seventy-five thousand dollars (\$275,000) as specified below. Payment shall be made in accordance with Section VII (Payments):

- A. \$248,660 in satisfaction of the Trustees’ claim, CPW’s claim, and an 80% portion of the WQCD penalty; and
- B. \$26,340 in satisfaction of the remaining 20% of the WQCD penalty.

12. The State shall distribute the settlement funds by depositing:

- A. \$248,660 to a CDPHE natural resource damages fund custodial account to be used solely and entirely on a Restoration Project implemented in the Gore Creek basin; and
- B. \$26,340 to Colorado’s Water Quality Improvement Fund.

V. EFFECT OF SETTLEMENT

13. The obligations set forth herein are based on the State’s police and regulatory authority. Enforcement of these obligations is not stayed by a petition in bankruptcy. Vail Mountain agrees that the payments set forth in this Settlement Agreement are not in compensation of actual pecuniary loss.

14. Compliance with this Settlement Agreement resolves all violations alleged by the State. This Settlement Agreement does not grant any release of liability for any violations not specifically described herein. This Settlement Agreement resolves all of the State’s outstanding demands, notices of violation, and compliance advisories pertaining to the Release issued prior to the Effective Date.

15. Upon making full payment under Sections IV (Compliance Requirements) and VII (Payments), the Settlement Agreement will unconditionally release and forever discharge Vail Mountain, its officers, directors, employees, representatives, and affiliates from all Trustees, WQCD, and CPW claims, costs, damages, actions, causes of action, liabilities, and penalties arising from or related to the Release and all other allegations set forth in the WQCD Notice of Violation/Cease and Desist Order (IO-220516-1) (**Exhibit 1**).

VI. COVENANTS BY THE STATE

16. The State covenants not to sue or to take administrative action against Vail Mountain for the violations alleged herein related to the Release and all other allegations set forth in the WQCD Notice of Violation/Cease and Desist Order (IO-220516-1) (**Exhibit 1**). These covenants are conditioned upon the complete and satisfactory performance by Vail Mountain of their obligations under this Settlement Agreement. These covenants extend only to

Vail Mountain and its officers, directors, employees, representatives, and affiliates, and do not extend to any other person. The State represents and warrants that it is unaware of any other claims related to the Release or any instrumentalities or agencies of the State that now have any rights to proceed against Vail Mountain for any claims, costs, damages, actions, causes of action, liabilities, and penalties arising from or related to the Release and all other allegations set forth in the WQCD Notice of Violation/Cease and Desist Order (IO-220516-1).

VII. PAYMENTS

17. Payments under this Settlement Agreement shall be made within thirty (30) days of the Effective Date as follows :

A. \$26,340 in satisfaction of 20% of the WQCD penalty, by official bank check made payable to the Colorado Department of Public Health and Environment, directed to:

Kelly Morgan, Clean Water Compliance & Enforcement Section Manager
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246
kelly.morgan@state.co.us

B. \$248,660 in satisfaction of the Trustees' claim, CPW's claim, and an 80% portion of the WQCD penalty by electronic funds transfer via ACH to:

Bank Name: Wells Fargo
Bank Address: 1675 Broadway, Suite 2700, Denver, CO 80202
Account Name: Treasurer State of Colorado
Account Number: 4120280912
ABA for Wires & ACHs: 121000248
Type of Account: Checking
Include on memo line: For HMWMD CDPHE Vail NRD

VIII. EFFECTIVE DATE

18. This Settlement Agreement shall take effect on the date it is signed by the State Controller or his or her delegate.

IX. INTEGRATION

20. This Settlement Agreement constitutes the final, complete, and exclusive agreement and understanding among the Parties. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

X. SIGNATORIES

21. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind such Party to this document.

XI. COSTS

22. Each Party shall bear its own costs and attorneys' fees in the claims resolved by this Settlement Agreement.

XII. GOVERNING LAW

23. This Settlement Agreement is entered in Colorado and shall be governed by the laws of the State of Colorado.

XIII. HEADINGS

24. The headings used in this Agreement are used only for the convenience of the Parties. As such, headings shall not be construed or interpreted as having any legal effect whatsoever on the terms of this Agreement or as altering or modifying those terms in any way.

XIV. ADDITIONAL ASSURANCES

25. This Agreement is intended to be self-operative. Notwithstanding the foregoing, the Parties agree that, at the reasonable request of any Party, they shall execute any further documents or instruments reasonably necessary to effectuate the transactions contemplated by this Agreement.

XV. SEVERABILITY

26. If any provision of this Agreement should be declared to be unenforceable, with the exception Vail Mountain's payment obligations as set forth under Sections IV and VII, then the remaining provisions of this Agreement shall retain their full legal force and effect and continue to be binding upon the Parties.

XVI. EXECUTION IN COUNTERPARTS OR BY FACSIMILE OR BY EMAIL

27. This Agreement may be executed in counterparts or with signatures obtained via facsimile transmission or email, each of which shall have full force and effect upon execution by all Parties to this Agreement.

XVII. AMENDMENT

28. This Agreement may not be amended except in a writing setting forth such amendment and executed by all Parties.


FOR THE VAIL CORPORATION:

Date: _____

[TITLE]


FOR THE COLORADO NATURAL RESOURCES TRUSTEES:

Date: 8.19.23




Phil Weiser
Colorado Attorney General

Date: 8/14/23



Trisha Oeth
Director of Environmental Health and Protection
Colorado Department of Public Health and
Environment

Date: 8.14.23



Ginny Brannon
Director of Reclamation, Mining and Safety Division
Colorado Department of Natural Resources

FOR THE COLORADO WATER QUALITY CONTROL DIVISION:

Date: _____

Nathan Moore, Clean Water Program Manager

FOR THE COLORADO DIVISION OF PARKS AND WILDLIFE

Date: _____

Jeff Davis
Director, CPW

COLORADO STATE CONTROLLER

Date: _____

Robert Jaros or Designee State Controller