



State Water Resources Control Board



Linda S. Adams
Agency Secretary

Office of Enforcement
1001 I Street • Sacramento, California 95814 • (916) 341-5277
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
Fax (916) 341-5284 • <http://www.waterboards.ca.gov>

Edmund G. Brown Jr
Governor

July 27, 2011

Attn: CSC - Lawyers Incorporating Service
TREA Wilshire Rodeo, LLC
2730 GATEWAY OAKS DR., SUITE 100
SACRAMENTO, CA 95833

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
CLAIM NO.
7003 0500 0003 1325 1794

COMPLAINT NO. OE-2011-0018 FOR MANDATORY MINIMUM PENALTY AGAINST TREA WILSHIRE RODEO, LLC, WILSHIRE RODEO PLAZA "RODEO BUILDING," 131 RODEO DRIVE, BEVERLY HILLS, CA 90212. (ORDER NO. R4-2003-0111, NPDES PERMIT NO. CAG994004, CI NO. 6679)

To the Agent for Service of Process:

Enclosed is Complaint No. OE-2011-0018 for Mandatory Minimum Penalty in the amount of \$252,000.00 against TREA Wilshire Rodeo, LLC (hereinafter Permittee) for violating waste discharge requirements contained in Regional Board Order No. R4-2008-0032 and for submitting its discharge monitoring reports more than 30 days after the required deadline. Also enclosed is a copy of the State Water Resources Control Board (State Water Board) Notice of Public Hearing to Consider an Administrative Civil Liability Complaint.

Unless waived, a hearing before a Hearing Officer of the State Water Board will be held on this Complaint pursuant to California Water Code Sections 13323(c) and 183. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to Complaint No. OE-2011-0018 and return it to the Office of Enforcement by **5:00 p.m. on August 26, 2011**. If we do not receive the waiver and full payment of the mandatory minimum penalty by August 26, 2011, this matter will be heard before a State Water Board Hearing Officer. An agenda containing the date, time, and location of the hearing will be mailed to you at least 10 days prior to the hearing date.

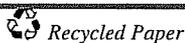
If you have any questions regarding this matter, please contact Mr. Jarrod Ramsey-Lewis at (916) 341-6984.

Sincerely,

Reed Sato
Director, Office of Enforcement
State Water Resources Control Board

Enclosures

California Environmental Protection Agency



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

Attn: Agent for Service of Process
TREA Wilshire Rodeo, LLC

- 2 -

July 27, 2011

cc: [via CERTIFIED MAIL RETURN RECEIPT REQUESTED
CLAIM NO. 7003 0500 0003 1325 1787]

Ms. Diana Chang
TREA Wilshire Rodeo, LLC
c/o CB Richard Ellis
Wilshire Rodeo Plaza
9536 Wilshire Boulevard
Beverly Hills, CA 90212

[via email only]

Mr. Tim Lane, REA, Civil-Environmental-Survey Group, Inc. tim@ces-groupline.com
Ms. Ann Carroll, Office of Enforcement, State Water Resources Control Board
Ms. Mayumi Okamoto, Office of Enforcement, State Water Resources Control Board
Mr. Jarrod Ramsey-Lewis, State Water Resources Control Board
Mr. Tim Regan, Office of Chief Counsel, State Water Resources Control Board
Mr. Phil Wyels, Office of Chief Counsel, State Water Resources Control

California Environmental Protection Agency



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Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

1 REED SATO, Director (SBN 87685)
2 MAYUMI OKAMOTO, Staff Counsel (SBN 253243)
3 ANN K. B. CARROLL, Staff Counsel (SBN 240452)
4 Office of Enforcement
5 State Water Resources Control Board
6 1001 I Street, 16th Floor
7 Sacramento, California 95814
8 Telephone: 916-322-3227
9 Fax: 916-341-5896
10 E-mail: acarroll@waterboards.ca.gov

11 Attorneys for the Prosecution Team

12 **STATE OF CALIFORNIA**
13 **STATE WATER RESOURCES CONTROL BOARD**

14 **In the matter of:**) **Complaint No. OE-2011-0018**
15) **Mandatory Minimum Penalty**
16) **for**
17) **Violation of California Water Code § 13376**
18) **and**
19) **ORDER NO. R4-2008-0032**
20) **(NPDES No. CAG994004)**
21 **TREA Wilshire Rodeo, LLC**)
22)
23)
24)
25)
26)
27)
28)
29)
30)
31)
32)
33 **131 RODEO DRIVE,**
34 **BEVERLY HILLS, CA 90212**

35 This Complaint to assess the mandatory minimum penalty pursuant to California Water Code (CWC)
36 Section 13385(h) and CWC Section 13385.1 is issued to TREA Wilshire Rodeo, LLC (hereinafter
37 Permittee) based on a finding of violations of waste discharge requirements prescribed in Order No. R4-
38 2008-0032, NPDES PERMIT NO. CAG994004, CI NO. 6679)

39 **The Director of the Office of Enforcement of the State Water Resources Control Board (State**
40 **Water Board) finds the following:**

- 41 1. The Permittee operates the groundwater dewatering system for the Wilshire Rodeo Plaza, Rodeo
42 Building (Facility) located at 131 South Rodeo Drive¹, Beverly Hills, CA 90212. The Permittee
43 discharges groundwater seepage collected from the Rodeo Building to a storm water collection

44 ¹ Assessor's Parcel No. 4328-027-021.

1 system (Latitude 34° 03' 58" North, Longitude 118° 24' 02" West) that flows into Ballona
2 Creek, a navigable water of the United States. The discharged groundwater may contain
3 pollutants, which can degrade water quality and impact beneficial uses of water, and which are
4 defined as wastes under the Porter-Cologne Water Quality Control Act (CWC Section 13000 et
5 seq.).
6

7 2. On June 5, 2008 the Regional Water Quality Control Board, Los Angeles Region (Regional
8 Water Board) adopted Order No. R4-2008-0032 (NPDES No. CAG994004) NPDES Permit and
9 General Waste Discharge Requirements for the discharge of groundwater from construction and
10 project dewatering to surface waters. On November 3, 2008, the Regional Water Board's
11 Executive Officer issued a Fact Sheet and Monitoring and Reporting Program to the Permittee
12 authorizing coverage under Order No. R4-2003-0111 for discharges from the facility
13

14 3. Order No. R4-2008-0032 (Effluent Limitations V.1.a.i.) contains effluent limitations for,
15 methylene blue active substances (MBAS), settleable solids, total suspended solids
16 (TSS), and turbidity:
17

18 Constituent	19 Unit of Measure	20 Discharge Limitations (Daily Maximum)	21 Discharge Limitations (Monthly Average)
22 MBAS	23 mg/L	24 0.5	25 ---
26 Settleable Solids	27 ml/L	28 0.3	29 0.1
30 TSS	31 mg/L	32 150	50
Turbidity	NTU	150	50

33 4. Seven (7) effluent limit violations of Order No. R4-2008-0032 were noted in the Permittee's self-
34 monitoring report for the fourth quarter of 2008 and first and second quarters of 2009. The
35 violations are specifically identified in Exhibit "A" to this Complaint. Exhibit "A" is attached
36 hereto and incorporated by reference.
37

38 ///

39 ///

40 ///

41 ///

1 5. The Monitoring and Reporting Program CI 6679 requires the Permittee to submit monitoring
2 reports to the Regional Board by the dates in the following schedule:

<u>Reporting Period</u>	<u>Report Due</u> (Order No. R4-2008-0032) Attach. E.B.3 – Table 2
January – March	May 15
April – June	August 14
July – September	November 14
October – December	February 14

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4
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6
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8
9 6. The Permittee failed to timely submit five (5) quarterly discharge monitoring reports required
10 pursuant to Order No. R4-2008-0032 as identified in Exhibit A to the Complaint. Exhibit A is
11 attached hereto and incorporated herein by reference.

12
13 7. Staff has determined the following (1) the Permittee has not previously received a complaint or a
14 notice of violation for the failure to timely file its discharge monitoring reports or other notice of
15 the obligation to file a discharge monitoring report; (2) discharges from the Permittee's Facility
16 violated effluent limitations during the fourth quarter of 2008 and the first and second quarter of
17 2009, but not during the third and fourth quarters of 2009; (3) Staff notified the Permittee via e-
18 mail on July 15, 2011 that the Permittee had not filed discharge monitoring reports for the
19 second, third, and fourth quarters of 2008; and the first, second, third, and fourth quarters of
20 2009; and (4) the Permittee submitted the discharge monitoring reports for the second, third, and
21 fourth quarters of 2008; and the first, second, third, and fourth quarters of 2009 to Staff on July
22 25, 2011.

23
24 8. Based on the foregoing, the violations identified in the attached Exhibit A for the fourth quarter
25 of 2008 and the first and second quarter of 2009 are assessed a MMP pursuant to CWC Section
26 13385.1(a)(1) and the violations for the third and fourth quarters of 2009 are assessed a MMP
27 pursuant to CWC Section 13385.1(b). These late reporting violations constitute a total of eighty
28 (80) serious violations subject to mandatory minimum penalties.

29
30 9. Any discharge containing pollutants violating the effluent limitations set in the waste discharge
31 requirements is prohibited by CWC Section 13376.

32 ///

1 10. CWC Section 13385(h) requires the Water Boards to assess a mandatory minimum penalty of
2 three thousand dollars (\$3,000) for each serious violation. Pursuant to CWC Section 13385(h)(2)
3 “a serious violation is defined as any waste discharge that violates the effluent limitations
4 contained in the applicable waste discharge requirements for a Group II pollutant by 20 percent
5 or more, or for a Group I pollutant by 40 percent or more. Appendix A of Part 123.45 of Title 40
6 of the Code of Federal Regulations specifies the Group I and II pollutants.”

7
8 11. CWC Section 13385.1(a)(1) requires the Water Boards to assess a mandatory minimum penalty
9 of three thousand dollars (\$3,000) for a “serious violation” defined by that section as “a failure to
10 file a discharge monitoring report required pursuant to Section 13323 for each complete period
11 of 30 days following the deadline for submitting the report, if the report is designed to ensure
12 compliance limitations contained in waste discharge requirements that contain effluent
13 limitations. This section applies to violations occurring on or after January 2004.

14
15 12. For each delinquent required report, CWC Section 13385.1(b) requires that a mandatory
16 minimum penalty shall be assessed pursuant to CWC Section 13385(h) only for each delinquent
17 report that is not timely filed if both of the following conditions are met:

- 18 a.) The Permittee did not on any occasion previously receive, from the State Water Board or
19 Regional Water Board, a complaint to impose liability pursuant to CWC Section 13385
20 subdivisions (b) and (c) for a failure to timely file a discharge monitoring report; a notice
21 of violation for a failure to timely file a discharge monitoring report; or a notice of the
22 obligation to file a discharge monitoring report; and
23 b.) The discharges during the period or periods covered by the discharge monitoring report
24 do not violate the subject waste discharge requirements

25
26 Furthermore, the new provision in CWC Section 13385.1 subdivision (b) shall only apply if:

- 27 a.) The discharger files a discharge monitoring report that had not previously been filed
28 *within 30 days after receiving written notice*, including notice transmitted by electronic
29 email, from the state or regional board concerning the failure to timely file the report,
30 and
31 b.) The discharger pays all penalties assessed under this new manner within 30 days after an
32 order is issued by the state or regional board.

1 13. The maximum amount of discretionary administrative civil liability assessable pursuant to CWC
2 Section 13385 for each day of violation is \$10,000 per day of violation plus \$10 times the
3 number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
4

5 **YOU ARE HEREBY GIVEN NOTICE THAT:**
6

7 14. The Director of the State Water Board Office of Enforcement proposes that the Permittee be
8 assessed a mandatory minimum penalty in the amount of \$252,000.00 for the violations cited in
9 Exhibit "A." Refer to Exhibit "A" for the calculation of the amount of mandatory minimum
10 penalty.
11

12 15. The Permittee may waive the right to a hearing and pay the recommended administrative civil
13 liability. Should the Permittee choose to waive its right to a hearing, an authorized agent must
14 sign the waiver form attached to this Complaint and return it to the State Water Board by 5:00
15 p.m. on August 26, 2011. If the hearing is waived, a check in the amount of \$252,000.00 (payable
16 to the State Water Pollution Cleanup and Abatement Account) must be received by the State
17 Water Board by 5:00 p.m. on August 26, 2011.
18

19 16. If the State Water Board does not receive a waiver and full payment of the recommended penalty
20 by August 26, 2011, the Complaint will be heard before the State Water Board Hearing Officer
21 pursuant to California Water Code Sections 13323(c) and 183. The Notice of Public Hearing
22 contains that date, time, location, and specific procedures of the scheduled hearing of this matter.
23

24 17. If a hearing on this matter is held, the State Water Board will consider whether to affirm, reject,
25 or modify (i.e. increase the proposed civil liability above the mandatory minimum) the proposed
26 civil liability, or whether to refer the matter to the Attorney General for assessment of judicial
27 civil liability.
28

29 18. There are no statutes of limitation that apply to administrative proceedings. The statutes of
30 limitation that refer to "actions" and "special proceedings" and are contained in the California
31 Code of Civil Procedure apply to judicial proceedings, not administrative proceeding. See *City of*
32

1 *Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal.
2 Procedure (4th ed. 1996) Actions, Section 405(2), p. 510.)
3

4 19. Notwithstanding the issuance of this Complaint, the State Water Board and/or the Regional
5 Board shall retain the authority to assess additional penalties for violations of the requirements of
6 the Permittee's waste discharge requirements for which penalties have not yet been assessed or
7 for violations that may subsequently occur.
8

9 20. This enforcement action is exempt from the provisions of the California Environmental Quality
10 Act, California Public Resources Code Section 21000 et seq., in accordance with California
11 Code of Regulations, Title 14, Section 15321.
12

13 21. Regulations of the United States Environmental Protection Agency require public notification of
14 any proposed settlement of the civil liability occasioned by violation of the Clean Water Act
15 including NPDES permit violations. Accordingly, interested persons will be given 30 days to
16 comment on any proposed settlement of this Complaint.
17

18
19 

20 _____
21 Reed Sato
22 Director, Office of Enforcement
23 State Water Resources Control Board
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7/27/11

Date

Report Violations Requiring Mandatory Minimum Penalties

#	Violation Number	Report Description	Report Due Date	Received/Current Date	Days Late	30-day Late Periods	Violation Count, per CWC 13385.1(b)	Mandatory Penalty
1	See Attached	4Q08 DMR	2/14/2009	7/25/2011	891	29	n/a	\$87,000
2	See Attached	1Q09 DMR	5/15/2009	7/25/2011	801	26	n/a	\$78,000
3	See Attached	2Q09 DMR	8/14/2009	7/25/2011	710	23	n/a	\$69,000
4	905210	3Q09 DMR	11/14/2009	7/25/2011	618	n/a	1	\$3,000
5	905211	4Q09 DMR	2/14/2010	7/25/2011	526	n/a	1	\$3,000

11/3/2008 = Date coverage issued under R4-2008-0032

Total Penalty: \$240,000

MANDATORY PENALTY ADMINISTRATIVE CIVIL LIABILITY
 Wilshire Rodeo Plaza "Rodeo Building"
 CI # 6679
 EXHIBIT 'A'

Violation Number	Violation Date*	Constituent	Pollutant Group	Exempted from MMP?	Limitation Period	Limit	Result/Average	Units	% Over Limit	Date 180 Days Prior	Effluent Violations in Past 180 Days**	Serious*** Violation?	Exempted from MMP?	Mandatory Fine?	Penalty
1	905480 11/30/08	TSS monthly average	I	No	Monthly	50	65	mg/L	30	6/3/08	0	No	No	No	\$0
2	905483 11/30/08	Turbidity monthly average	OEV	No	Monthly	50	137	NTU	174	6/3/08	2	No	No	No	\$0
3	905471 3/23/09	MBAS daily max	I	No	Daily	0.5	0.609	mg/L	22	9/24/08	3	No	No	No	\$0
4	905488 6/30/09	TSS daily max	I	No	Daily	150	712	mg/L	375	1/1/09	2	Yes	No	Yes	\$3,000
5	905490 6/30/09	TSS monthly average	I	No	Monthly	50	712	mg/L	1324	1/1/09	3	Yes	No	Yes	\$3,000
6	905482 6/30/09	Settleable Solids daily max	I	No	Daily	0.3	3.20	ml/L	967	1/1/09	4	Yes	No	Yes	\$3,000
7	905493 6/30/09	Settleable Solids monthly average	I	No	Monthly	0.1	3.20	ml/L	3100	1/1/09	5	Yes	No	Yes	\$3,000

Total Penalty: \$12,000

* Violation occurs on sample date or last date of averaging period.
 ** Includes violations occurring on 'day zero' of the past 180 days.
 *** For Group I pollutants, a violation is serious when the limitation for the parameter of concern is exceeded by more than 40%.
 For Group II pollutants, a violation is serious when the limitation for the parameter of concern is exceeded by more than 20%.

Violation period ending the last day of June 2009

Group I Violations Subject to MMPs:	18	Group I Violations Assessed MMP:	4
Group II Violations Subject to MMPs:	0	Group II Violations Assessed MMP:	0
Other Effluent Violations Subject to MMPs:	1	Other Effluent Violations Assessed MMP:	0
Total Violations Subject to MMPs:	19	Total Violations Assessed MMP:	4
Violations Exempt from MMPs:	0		
Total Effluent Violations:	7		

Mandatory Minimum Penalty = (4 Serious Violations + 0 Non-Serious Violations) x \$3,000 = \$12,000

WAIVER FORM

FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. OE-2011-0018

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent TREA Wilshire Rodeo, LLC (hereinafter "Permittee") in connection with Administrative Civil Liability Complaint No. OE-2011-0018 (hereinafter the "Complaint"). I am informed that California Water Code Section 13323, subdivision (c), states that, "any hearing shall be before the state board, or before a member of the state board in accordance with Section 183, and shall be conducted not later than 90 days after the party has been served [with the complaint]."

(Check here if the Permittee waives the hearing requirement and will pay the recommended liability.)

- a. I hereby waive any right the Permittee may have to a hearing before the State Water Resources Control Board Hearing Officer.
- b. I certify that the Permittee will remit payment for the civil liability imposed in the amount of **\$252,000.00** by check that references "ACL Complaint No. OE-2011-0018" made payable to the "*State Water Pollution Cleanup and Abatement Account*". Payment must be received by the State Water Board by August 26, 2011 or this matter will be placed on the State Water Board's agenda for a hearing as initially proposed in the Complaint.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period expires. Should the State Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Director of the State Water Board Office of Enforcement may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the State Water Board, and that the State Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Permittee having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Permittee to further enforcement, including additional civil liability.

(Print Name and Title)

(Signature)

(Date)

**HEARING OF THE
STATE WATER RESOURCES CONTROL BOARD**

1001 "I" Street
P.O. Box 100
Sacramento, California 95814
(916) 341-5272

ACLC No. OE-2011-0018

NOTICE OF PUBLIC HEARING

TO CONSIDER AN ADMINISTRATIVE CIVIL LIABILITY

<u>DISCHARGER</u>	<u>DISCHARGE LOCATION</u>	<u>RECEIVING WATERS</u>
TREA Wilshire Rodeo, LLC	131 SOUTH RODEO DRIVE, BEVERLY HILLS, CA 90212	Ballona Creek

Administrative Civil Liability Complaint ("ACLC") No. OE-2011-0018 alleges that TREA Wilshire Rodeo, LLC (Permittee) violated waste discharge requirements contained in Regional Board Order No. R4-2008-0032 by failing to comply with effluent limits and reporting requirements. As stated in the ACLC, State Water Board staff, represented by the State Water Board Staff Prosecution Team (Prosecution Team), recommends that a penalty of \$252,000.00 be assessed against TREA Wilshire Rodeo, LLC for these violations.

Pursuant to Water Code Section 13323(c) and Section 183, a member of the State Water Board will convene a hearing to hear evidence, determine facts, and to propose a recommendation to the State Water Board about resolution of the ACLC.

This notice sets forth procedures and outlines the process to be used at this hearing.

I. HEARING DATE AND LOCATION

Date: October 19-20, 2011
Time: 10:00 A.M.
Place: 320 W. 4th Street
Los Angeles, CA 90013
* Room location TBD

II. AVAILABILITY OF DOCUMENTS

The ACLC and other documents concerning the subject of the ACLC are available for inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. at the following address:

California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Arrangements for file review and/or copies of the documents may be made by calling Mr. Hugh Marley of the Los Angeles Regional Board at (213) 620-6375. Comments received, the Prosecution Team's proposed Hearing Report and Order, and other subsequent relevant documents will be available as they are received or generated.

The entire file will become a part of the administrative record of this proceeding, irrespective of whether individual documents are specifically referenced during the hearing or contained in the Hearing binder. However, the entire file might not be present at the hearing. Should any parties or interested persons desire that the Prosecution Team bring to the hearing any particular documents that are not included in the Hearing binder, they must submit a written or electronic request to the Case Manager of the Prosecution (identified in Section V below) so that it is received by **5:00 p.m. on October 1, 2011**. The request must identify the documents with enough specificity for the Prosecution Team to locate them. (Documents in the Hearing binder will be present at the hearing.)

III. NATURE OF HEARING

This will be a formal adjudicative hearing pursuant to Section 648 et seq. of Title 23 of the California Code of Regulations. Chapter 5 of the California Administrative Procedure Act (commencing with Section 11500 of the Government Code) relating to formal adjudicative hearings does not apply to adjudicative hearings before the State Water Board, except as otherwise specified in the above-referenced regulations.

IV. PARTIES TO THE HEARING

The following are the parties to this proceeding:

1. TREA Wilshire Rodeo, LLC
2. State Water Board Staff Prosecution Team

All other persons who wish to participate in the hearing as a designated party shall request party status by submitting a written or electronic request to the Legal Advisor to the Hearing Officer identified in Section VIII below so that it is received by **5:00 p.m. on August 4, 2011**. All requests for designation as a party shall include the name, phone number, and email address of the person who is designated to receive notices about this proceeding. The request shall include a statement explaining why the party or parties designated above do not adequately represent the person's interest. The requesting party will be notified before the hearing whether the request is granted. All parties will be notified if other persons are so designated.

V. COMMUNICATIONS WITH THE PROSECUTION TEAM

The California Administrative Procedure Act requires the State Water Board to separate prosecutorial and adjudicative functions in matters that are prosecutorial in nature. A Prosecution Team, comprised of the State Water Board enforcement and other staff, will serve as the complainant in the proceedings and is a designated party. The Case Manager over this matter, who will coordinate the efforts of the Prosecution Team, is Jarrod Ramsey-Lewis, Water Resources Control Engineer from the State Water Board. Ann Carroll Staff Counsel from the State Water Board's Office of Enforcement will advise the Prosecution Team prior to and at the hearing. Neither Ms. Carroll nor the members of the Prosecution Team will be advising the State Water Board in this matter or have engaged in any substantive conversations regarding the issues involved in this proceeding with any of the Board Members or the advisors to the Hearing Officer (identified below).

Any communication with the Prosecution Team prior to the hearing should be directed to the Case Manager:

Jarrold Ramsey-Lewis, PE
RCE No. 66497
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
(916) 341-6984
JRamsey-Lewis@Waterboards.ca.gov

VI. PUBLIC COMMENTS AND SUBMITTAL OF EVIDENCE

A. Submittals By Parties.

Not later than **September 12, 2011**, the Prosecution Team will send the parties a preliminary Hearing binder containing the most pertinent documents related to this proceeding and a PowerPoint presentation, which summarizes the evidence and testimony that the Prosecution Team will present and rely upon at the hearing.

TREA Wilshire Rodeo, LLC is required to submit:

- 1) Any additional documents or evidence TREA Wilshire Rodeo, LLC wants the Hearing Officer to consider,
- 2) A summary of any legal and technical arguments and testimony TREA Wilshire Rodeo, LLC intends to present, and
- 3) A statement regarding how much time TREA Wilshire Rodeo, LLC needs to present the case

to the attention of the Case Manager of the Prosecution Team (as identified above) and other designated parties so that it is received by **5:00 p.m. on September 21, 2011**. All documentation listed above must be received by the deadline, or it may be excluded from consideration by the Hearing Officer. The Prosecution Team shall have the right to present additional evidence in rebuttal of matters submitted by any other party.

The Prosecution Team will send to the Hearing Officer and the parties a final Hearing binder no later than **October 11, 2011**. An agenda containing the date, time, and location of the hearing will be mailed to TREA Wilshire Rodeo, LLC at least 10 days prior to the hearing date.

B. Submittals By Interested Persons.

Persons who are not designated as parties, above, that wish to comment upon or object to the proposed ACLC, or submit evidence for the Hearing Officer to consider, are invited to submit them in writing to the Prosecution Team (as identified above). To be evaluated and responded to by the Prosecution Team, included in the final Hearing binder, and fully considered by the Hearing Officer in advance of the hearing, any such written materials must be received by **5:00 p.m. on August 26, 2011**. If possible, please submit written comments in Word format electronically to the Case Manager. Interested persons should be aware the State Water Board is entitled to settle this matter without further notice, and therefore a timely submittal by this date may be the only opportunity to comment upon the subject of this ACLC. If the hearing

proceeds as scheduled, the Hearing Officer will also receive oral comments from any person during the hearing (see below).

VII. HEARING PROCEDURES

Adjudicative proceedings before the Hearing Officer generally will be conducted in the following order:

- Opening statement by Hearing Officer
- Administration of oath to persons who intend to testify
- Prosecution Team presentation
- Discharger presentation
- Designated parties' presentation (if applicable)
- Interested persons' comments
- Prosecution Team rebuttal
- Questions from Hearing Officer
- Deliberations (in open or closed session)
- Announcement of recommendation to the State Water Board

While this is a formal administrative proceeding, the Hearing Officer does not generally require the cross-examination of witness, or other procedures not specified in this notice, that might typically be expected of parties in a courtroom.

Parties will be advised by the Hearing Officer after the receipt of public comments, but prior to the date of the hearing, of the amount of time each party will be allocated for presentations. That decision will be based upon the complexity and the number of issues under consideration, the extent to which the parties have coordinated, the number of parties and interested persons anticipated, and the time available for the hearing. The parties should contact the Case Manager by **5:00 p.m. on September 21, 2011** to state how much time they believe is necessary for their presentations (see Section VI. A above). It is the State Water Board's intent that reasonable requests be accommodated.

Interested persons are invited to attend the hearing and present oral comments. Interested persons may be limited to approximately five (5) minutes each, for their presentations, in the discretion of the Hearing Officer, depending on the number of persons wishing to be heard. Persons with similar concerns or opinions are encouraged to choose one representative to speak.

For accuracy of the record, all important testimony should be in writing, and delivered as set forth above. All written materials must be received by the deadlines identified in Section VI.A. and VI.B., above, or it may be excluded from consideration by the Hearing Officer. The Hearing Officer will include in the administrative record written transcriptions of oral testimony or comments made at the hearing.

VIII. COMMUNICATIONS WITH THE HEARING OFFICER

A. Ex Parte Communications Prohibited.

As an adjudicative proceeding, State Water Board members and their advisors may not discuss the subject of this hearing with any person, except during the public hearing itself, except in the limited circumstances and manner described in this notice. **Any communications to the State Water Board, Hearing Officer, or Hearing Officer Advisors before the hearing must also be copied to the Prosecution Team and other Party(ies), as identified above.**

B. Hearing Officer Advisors.

The Hearing Officer will be advised before and during the hearing by a technical advisor, Tim Regan, Senior Staff Counsel, and/or Phil Wyels, Assistant Chief Counsel. None of these individuals has exercised any authority or discretion over the Prosecution Team, or advised them with respect to this matter.

C. Objections to manner of hearing and resolution of any other issues.

1. Parties or interested persons with procedural requests different from or outside of the scope of this notice should contact the Case Manager at any time, who will try to accommodate the requests. Agreements between a party and the Prosecution Team will generally be accepted by the Hearing Officer as stipulations.
2. Objections to (a) any procedure to be used or not used during this hearing, (b) any documents or other evidence submitted by the Prosecution Team, or (c) any other matter set forth in this notice, must be submitted in writing by **5:00 p.m. on September 21, 2011** to the Legal Advisor to the Hearing Officer:

Tim Regan
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814
(916) 341-5172
TRegan@Waterboards.ca.gov

Untimely objections will be deemed waived. Procedural objections about the matters contained in this notice will not be entertained at the hearing. Further, except as otherwise stipulated, any procedure not specified in this hearing notice will be deemed waived pursuant to Section 648(d) of Title 23 of the California Code of Regulations, unless a timely objection is filed.

3. Any issues outside the scope of those described in Section C.2, above, that cannot be resolved by stipulation shall be brought to the attention of the Legal Advisor to the Hearing Officer, as set forth in Section C.2, by **5:00 p.m. on September 21, 2011** if possible, and if not possible, then at the earliest possible time with an explanation about why the issue could not have been raised sooner.

IX. QUESTIONS ABOUT NOTICE

Questions about notice may be directed to the Case Manager of the Prosecution Team, or the Legal Advisor to the Hearing Officer as described above.

Date: July 27, 2011