

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

In the matter of:	)	
	)	
<b>Trea Wilshire Rodeo, LLC;</b>	)	Order No WQ-2013-0052-EXEC
<b>Complaint No. OE-2011-0018</b>	)	SETTLEMENT AGREEMENT AND
<b>For Administrative Civil</b>	)	STIPULATION FOR ENTRY OF
<b>Liability</b>	)	ADMINISTRATIVE CIVIL LIABILITY
	)	ORDER

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**SECTION I: INTRODUCTION**

This Order on Stipulation and Settlement Agreement (“Order”) is entered into by and between the Enforcement Staff of the State Water Resources Control Board (“Enforcement Staff”) and Trea Wilshire Rodeo, LLC (“Discharger” or “Settling Respondent”) (Collectively referred to as “Parties”) and is presented to the State Water Board. The Enforcement Staff has alleged violations against the Settling Respondent as set forth in Complaint No.OE-2011-0018, dated July 27, 2011 (“Complaint”) for adoption as an Order by settlement pursuant to California Government Code section 11415.60 (Stipulated Order).

**SECTION II: RECITALS**

1. The Settling Respondent operates the groundwater dewatering system for the Wilshire Rodeo Plaza, Rodeo Building located at 131 South Rodeo Drive, Beverly Hills, CA 90212. The Settling Respondent discharged groundwater seepage collected from the Rodeo Building to a storm water collection system that flows into Ballona Creek, a navigable water of the United States.
2. On June 5, 2008 the Regional Water Quality Control Board, Los Angeles Region (Regional Water Board) adopted Order No. R4-2008-0032 (NPDES No. CAG994004), which serves as a National Pollutant Discharge Elimination System (NPDES) Permit and as General Waste Discharge Requirements for the discharge of groundwater from construction and project dewatering to surface waters. On November 3, 2008, the Regional Water Board’s Executive Officer issued a Fact Sheet and Monitoring and Reporting Program to the Permittee authorizing coverage under Order No. R4-2008-0032 for discharges from the facility.
3. The Monitoring and Reporting Program CI 6679 requires the Permittee to submit monitoring reports to the Regional Board by the dates in the following schedule:

Reporting Period

Report Due  
(Order No. R4-2008-0032)

Attach. E.B.3 – Table 2

January – March  
April – June  
July – September  
October – December

May 15  
August 14  
November 14  
February 14

The Permittee allegedly failed to timely submit two (2) quarterly discharge monitoring reports required pursuant to Order No. R4-2008-0032 as identified in Exhibit A to the Order.

4. Based on the foregoing, the violations identified in the attached Exhibit A for the fourth quarter of 2008 and the first quarter of 2009 are assessed a MMP pursuant to CWC Section 13385.1(a)(1). These late reporting violations allegedly constitute a total of fifty-five (55) serious violations subject to mandatory minimum penalties.

5. On or about July 27, 2011, the Director of the Office of Enforcement (Director) of the State Water Resources Control Board (State Water Board) issued Administrative Civil Liability Complaint No. OE-2011-0018 (Complaint) against the Discharger for Mandatory Minimum Penalties in the amount of \$252,000. The Complaint alleged seven (7) effluent limit violations and eighty (80) serious reporting violations subject to mandatory minimum penalties.

6. Since the issuance of the Complaint, the seven (7) alleged effluent limit violations of the Order were found to be in error and twenty five (25) of the serious reporting violations were found to be in error. As a result, with this Stipulated Order, the State Water Board is hereby dismissing, with prejudice, these seven (7) effluent limit violations and twenty five (25) serious reporting violations.

7. CWC Section 13385.1(a)(1) requires the Water Boards to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for a "serious violation" defined by that section as "a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations. This paragraph applies only to violations that occur on or after January 1, 2004."

8. Discharger denied all allegations in the Complaint and does not admit any fault.

9. The Parties have engaged in settlement negotiations and agree to settle the proposed administrative civil liability recommended in the Complaint without administrative proceedings or civil litigation, and by presenting this Stipulated Order to the State Water Board, or its delegee, for adoption as an order pursuant to Government Code section 11415.60. The Enforcement Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills its requirement to impose mandatory penalties under the California Water Code. No further action is warranted concerning the specific violations alleged in the Complaint except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

10. To resolve by consent and without further administrative proceedings, the Parties have agreed to the imposition of penalties for violations set forth in Complaint No.OE-2011-0018 in the amount of ONE HUNDRED SIXTY FIVE THOUSAND DOLLARS (\$165,000).

### **SECTION III: STIPULATIONS**

The Parties hereby stipulate to the following:

11. **INCORPORATION OF RECITALS:** The terms and agreements set forth in Section II Recitals are incorporated herein as a part of these Stipulations.

12. **ADMINISTRATIVE CIVIL LIABILITY AND COSTS OF ENFORCEMENT:** Trea Wilshire Rodeo, LLC hereby agrees to the imposition of administrative civil liability totaling ONE HUNDRED SIXTY FIVE THOUSAND DOLLARS (\$165,000). Within thirty (30) days of issuance of this Stipulated Order by the Executive Officer, Trea Wilshire Rodeo, LLC agrees to remit by check ONE HUNDRED SIXTY FIVE THOUSAND DOLLARS (\$165,000) payable to the *SWRCB State Water Pollution Cleanup and Abatement Account*, and shall indicate on the check the number of this Stipulated Order. Trea Wilshire Rodeo, LLC shall send the original signed check to the State Water Resources Control Board, Division of Administrative Services, Accounting Branch 1001 I Street, 18<sup>th</sup> Floor, Sacramento, California 95814, and shall send a copy to Anna Kathryn Benedict, Office of Enforcement, 1001 I Street, 16<sup>th</sup> Floor, Sacramento, California 95814.

13. **PARTY CONTACTS FOR COMMUNICATIONS RELATED TO THIS STIPULATION AND ORDER:**

**For the State Water Board**

Anna Kathryn Benedict, State Counsel  
Office of Enforcement  
1001 I Street, 16<sup>th</sup> Floor

**For the Discharger:**

TREA Wilshire Rodeo, LLC  
c/o TIAA-CREF  
4675 MacArthur Court, Suite  
1100

P.O. Box 100  
Sacramento, CA 95812  
[AnnaKathryn.Benedict@waterboards.ca.gov](mailto:AnnaKathryn.Benedict@waterboards.ca.gov)

Newport Beach, CA 92660  
Attn: Erik Sobek

With a copy to:  
Daniel L. Goodkin  
Goodkin & Lynch, LLP  
1875 Century Park East,  
Suite 1860  
Los Angeles, CA 90067

**14. ATTORNEYS' FEES AND COSTS:** Each Party shall bear all of their own attorneys' fees and costs arising from the matters set forth herein.

**15. MATTERS COVERED BY THIS STIPULATED ORDER:** Upon adoption by the State Water Resources Control Board, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in Complaint number OE-2011-0018, or which could have been asserted based on the specific facts alleged in Complaint number OE-2011-0018, against Trea Wilshire Rodeo, LLC. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability in accordance with Paragraph 12.

**16. COMPLIANCE WITH APPLICABLE LAWS:** Trea Wilshire Rodeo, LLC understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that violations of the type alleged in the Complaint occurring after the filing of the Complaint, subject to the conditions of Paragraph 4, may subject Trea Wilshire Rodeo, LLC to further enforcement, including additional administrative civil liability.

**17. COVENANT NOT TO SUE:** Upon the effective date of this Stipulated Order, each party hereto shall and does release, discharge and covenant not to sue or pursue any civil or administrative claims against each other party hereto; including its officers, agents, directors, employees, contractors, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or causes of action, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to the Complaint (the "Claims").

**18. GENERAL RELEASE:** Each party understands that this is a general release and acknowledges that by signing this Agreement it intends to, and does, WAIVE any and all claims related to or connected with the Claims which it now has or in the future may have against the other party, pursuant to and under the terms of Section 1542 of the Civil Code of the State of California.

**19. AS TO THE RELEASED CLAIMS, THE PARTIES SPECIFICALLY WAIVE THE BENEFIT OF THE PROVISIONS OF SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA AND SIMILAR LAWS OF ALL OTHER STATES, TERRITORIES OF THE UNITED STATES AND OTHER JURISDICTIONS. SECTION 1542 OF THE CALIFORNIA CIVIL CODE PROVIDES:**

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor."

**20. PUBLIC NOTICE:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the State Water Board, or its delegee. The Prosecution Staff will promptly notify the Discharger of any comments received during the 30-day public review period and will immediately communicate those comments to the Discharger. The Discharger agrees that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order. If significant new information is received during the 30-day public review and comment period that reasonably affects presenting this Stipulated Order to the State Water Board, or its delegee, for adoption, the Director of the Office of Enforcement may unilaterally declare this Stipulated Order void and decide not to present it to the State Water Board, or its delegee.

**21. PUBLICITY:**

- a. Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree or adjust the procedure as necessary or advisable under the circumstances.
- b. No Waiver of Right to Enforce:** The failure of the Prosecution Staff to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Staff to enforce such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.

- c. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. Trea Wilshire Rodeo, LLC is represented by counsel in this matter.
- d. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be signed in writing by the Parties and approved by the Parties.

**22. IF ORDER DOES NOT TAKE EFFECT:** In the event that this Stipulated Order does not take effect, the Parties acknowledge that they expect to proceed with issuance of the ACL Complaint, unless the parties agree otherwise. The Parties agree that all oral and written statements and agreement made during the course of settlement discussions will not be admissible as evidence in the hearing. Notwithstanding objections on the admissibility of settlement discussions as evidence in a hearing, the Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- a. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

**23. FUTURE ENFORCEMENT ACTIONS:** In settling this matter, Trea Wilshire Rodeo, LLC recognizes that in the event of any future enforcement actions by the State Water Board or the Regional Water Board, this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13385(e) or Water Code section 13327. This is subject to any defense, if any, by Trea Wilshire Rodeo, LLC.

**24. WAIVER OF HEARING:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the State Water Board prior to the adoption of the Stipulated Order.

**25. WAIVER OF RIGHT TO APPEAL:** Trea Wilshire Rodeo, LLC hereby waives its right to petition the State Water Board to review this Stipulated Order, and to appeal it to a California Superior Court and/or any California appellate level court.

**26. EFFECT OF STIPULATED ORDER:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Enforcement Staff or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.

**27. WATER BOARDS NOT LIABLE:** Neither the State Water Board members nor the State Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Trea Wilshire Rodeo, LLC, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this stipulated Order, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Trea Wilshire Rodeo, LLC, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

**28. AUTHORITY TO ENTER STIPULATED ORDER:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of Trea Wilshire Rodeo, LLC and to bind the entity on whose behalf he or she executes the Order.

**29. INTEGRATION:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.

**30. CERTIFICATION:** Whenever this Stipulated Order requires certification by Trea Wilshire Rodeo, LLC, such certification shall be provided by an employee of Trea Wilshire Rodeo, LLC at a managerial level. Each certification shall read as follows:

To the best of my knowledge, based on information and belief and after reasonable investigation, I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

**31. NO THIRD PARTY BENEFICIARIES:** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.

**32. EFFECTIVE DATE:** This Stipulated Order shall be effective and binding on the Parties upon the date the State Water Board, or its delegee, enters the Order.

**33. COUNTERPART SIGNATURES:** This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

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

1. The Parties believe that settlement of this matter is in the best interest of the People of the State. Therefore, to settle the Complaint, Trea Wilshire Rodeo, LLC hereby agrees to comply with the terms and conditions of this Order.
2. The terms of the forgoing stipulation are fully incorporated herein and made part of this Order.
3. This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
4. This is an action to enforce the laws and regulations administered by the State Water Board. The State Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2) Title 14, of the California Code of Regulations.
5. The Parties agree that the State Water Board has subject matter jurisdiction over the matters alleged in the complaint and personal jurisdiction over the Parties to this Stipulated Order.
6. The State Water Board is authorized to refer this matter directly to the Attorney General for enforcement if Trea Wilshire Rodeo, LLC fails to perform any of its obligations under the Stipulated Order.
7. Fulfillment of the Trea Wilshire Rodeo, LLC's obligations under the Stipulated Order constitutes full and final satisfaction of any and all liability for each claim in the Complaint in accordance with the terms of the Stipulated Order.

**IT IS HEREBY STIPULATED:**

**State Water Resources Control Board Enforcement Staff**

By: \_\_\_\_\_

  
Cris Carrigan  
Director

Date: \_\_\_\_\_

7/15/13



By: \_\_\_\_\_  
Anna Kathryn Benedict  
Counsel to the Enforcement Staff

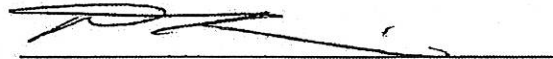
Date: \_\_\_\_\_

**TREA Wilshire Rodeo, LLC**

By: \_\_\_\_\_  
TIAA-CREF  
Its: Managing Member  
By: Erik Sobek  
Its: Director, Asset Management

Date: \_\_\_\_\_

Approved as to form:

  
\_\_\_\_\_  
Daniel Goodkin  
Attorney -Trea Wilshire Rodeo, LLC

By: Anna Kathryn Benedict  
Anna Kathryn Benedict  
Counsel to the Enforcement Staff

Date: 7/15/13

TREA Wilshire Rodeo, LLC  
By: Erik Sobek  
TIAA-CREF  
Its: Managing Member  
By: Erik Sobek  
Its: Director, Asset Management


Date: 7/11/13

Approved as to form:

Daniel Goodkin  
Attorney -Trea Wilshire Rodeo, LLC

MANDATORY MINIMUM PENALTY ADMINISTRATIVE CIVIL LIABILITY						
TREA Wilshire, LLC - Rodeo Building						
CI No. 6679						
Exhibit A						
<b>Report Violations Requiring Mandatory Minimum Penalties</b>						
#	Report Description	Report Due Date	Received/Current Date	Days Late	30- day Late Periods	Mandatory Penalty
1	4Q08 DMR	2/14/2009	7/25/2011	891	29	\$87,000
2	1Q09 DMR	5/15/2009	7/25/2011	801	26	\$78,000
<b>Total Penalty:</b>						<b>\$165,000</b>

Pursuant to CWC section 13323 and Government Code section 11415.60, IT IS  
HEREBY ORDERED on behalf of the State Water Resources Control Board.

  
\_\_\_\_\_  
Thomas Howard  
Executive Director

Date: 7/16/13