

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION**

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R7-2014-0041
ISSUED TO
NATIONAL BEEF CALIFORNIA, LP, OWNER/OPERATOR
WASTEWATER TREATMENT FACILITY
City of Brawley-Imperial County

NATIONAL BEEF CALIFORNIA, LP, IS HEREBY GIVEN NOTICE THAT:

1. National Beef California, LP (Discharger or NBC), a wholly-owned subsidiary of National Beef Packing Company, LLC (headquartered in Kansas City, Missouri), which in turn is a subsidiary of Leucadia National Corporation, owns and operates a slaughterhouse located at 57 Shank Road, Brawley, CA 92227. The slaughterhouse (Facility) has an onsite wastewater treatment facility (NBC WWTF) that provides wastewater treatment and disposal services for the slaughterhouse. Wastewater from the slaughterhouse is discharged to (1) areal groundwater through unlined ponds and (2) and the city of Brawley Wastewater Treatment Plant (WWTP). **Attachment A**,¹ incorporated herein and made part of this Complaint by reference, shows the location of the slaughterhouse.
2. The Discharger estimated the rate of discharge to groundwater at approximately 12,800 gallons per day. Up to 1.625 million gallons per day (mgd) from the NBC WWTF are discharged into the Brawley municipal wastewater collection system for further treatment and disposal at the Brawley WWTP.
3. The Brawley WWTP is a “publicly owned treatment works” (POTW), as defined in Title 40 Code of Federal Regulations (40 CFR) section 403.3. The POTW consists of the WWTP and associated sewage collection system and infrastructure, which provide sewage collection and treatment services to city residents, and commercial and industrial businesses. The discharge from the Brawley WWTP is governed by Waste Discharge Requirements Order R7-2010-0022 (National Pollutant Discharge Elimination System (NPDES) Permit No. CA0104523) and Cease and Desist Order R7-2008-0008, as amended by Special Board Orders R7-2008-0069 and R7-2010-0003.
4. The Brawley WWTP discharges its effluent into the New River via Discharge Point 001, which is tributary to the Salton Sea. The New River and the Salton Sea are waters of the United States and both are listed as impaired waters pursuant to federal Clean Water Act (CWA) Section 303(d) (33 U.S.C. Section 1313(d)). The entire stretch of the New River in the U.S. is listed in the California 303(d) List because, among other impairments, the New River is impaired by toxicity. On March 20, 2014, the California Regional Water Quality Control Board (Colorado River Basin Water Board) adopted Resolution R7-2014-0025, which approved proposed revisions to the Clean Water Act section 303(d) List of

¹ All attachments identified in this Complaint are incorporated herein and made a part of this Complaint by reference.

impaired water bodies in the Colorado River Basin Region. The revisions included, in relevant part, ammonia as an impairing pollutant for the New River.

5. NBC is an "Industrial User," as defined in 40 CFR Section 403.3(j), because it is a source of "indirect discharge," which is defined in Section 403.3(i) as "the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the [Clean Water] Act." Moreover, NBC is a "Significant Industrial User," as defined in 40 CFR Section 403.3(v)(1)(ii) because such an Industrial User: "discharges an average of 25,000 gallons per day or more of process wastewater to the POTW; contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW Treatment plant; or is designated as such by the Control Authority [here, the city of Brawley] on the basis that the Industrial User has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement...." NBC satisfies each of these independent criteria for meeting the definition of "Significant Industrial User."
6. The Discharger is alleged to have violated the federal National Pretreatment Standards of 40 CFR Section 403.5, which prohibit an Industrial User from introducing into a POTW any pollutant(s) which cause "Pass Through"² or "Interference" with the POTW regardless of whether the Industrial User is subject to other National Pretreatment Standards or any national, State, or local pretreatment requirements.
7. Specifically, the Discharger introduced pollutants, including Ammonia, Total Suspended Solids (TSS), Biochemical Oxygen Demand (BOD), and bacteria, into the Brawley WWTP in alleged violation of the National Pretreatment Standards discharge prohibition set forth in 40 CFR Section 403.5 by causing chronic and significant Pass Through and/or Interference with the Brawley WWTP. As a result, the Colorado River Basin Water Board may impose civil liability for this alleged violation pursuant to California Water Code (CWC) Section 13385.
8. CWC Section 13323 authorizes the Executive Officer of the Colorado River Basin Water Board to issue this Administrative Civil Liability Complaint (Complaint), and CWC section 7 authorizes the Executive Officer to delegate these powers and duties to the Assistant Executive Officer. By memo dated October 2, 2006, the Board's Executive Officer expressly delegated to the Assistant Executive Officer the authority to take any enforcement actions the Executive Officer is authorized under the law to take. Therefore, the Board's Assistant Executive Officer has been delegated the authority to issue this Complaint.

² Terms in quotations are defined by reference later in the Complaint.

OVERVIEW OF DISCHARGER'S OPERATIONS, ON-SITE WWTF, AND DISCHARGE

9. Brawley Beef, LLC, formerly known as B.P. Joint Ventures, LLC, built and began operating the Facility in October 2001. The Discharger's parent company, National Beef Packing Company, LLC, bought the Facility from Brawley Beef, LLC, on June 2, 2006, and has been operating it through its wholly-owned subsidiary, National Beef California, ever since then.
10. The Discharger's slaughterhouse processes an average of 2300 cattle per day. NBC's products include boxed beef, ground beef, hides (a closed loop system and no tanning is involved), and other beef and beef by-products. These operations currently generate approximately 1.62 mgd of wastewater.
11. The NBC WWTF consists of two dissolved air flotation (DAF) units, an anaerobic digester (pond 1), an aerobic activated sludge pond (pond 2), a clarifier, a polishing pond (pond 3), a suspended air flotation (SAF) unit, and a belt press. All three on-site ponds are unlined. There is also an unlined storm water pond on-site that is not considered part of the WWTF.
12. The two DAF units remove fats, oils and grease (FOG) and settleable solids from the Facility's wastewater generated. The wastewater then flows to the anaerobic digester for removal of organic material. The anaerobic digester is a covered unit that generates biogas that is used to power boilers at the Facility. Wastewater then flows to the aerobic pond where activated sludge further removes organic material. The aerobic pond is equipped with return activated sludge (RAS) and waste activated sludge (WAS) systems. From the aerobic pond wastewater flows to the clarifier where RAS is re-circulated and WAS is removed. Wastewater then flows to the polishing pond where it is piped to the SAF unit. The SAF is used for final clarification by removing skimmed solids. Skimmed solids are pumped to the filter press for final thickening. Filter press permeate is returned to the SAF unit. Pretreated water from the SAF unit is discharged to the Brawley municipal wastewater collection system. A diagram of this process treatment train is shown in **Attachment B**.
13. The Brawley WWTP consists of three Biolac® activated sludge treatment units equipped with diffusers, three secondary clarifiers, an activated sludge pumping station, a UV disinfection structure, a sludge thickening unit, a sludge holding tank, a centrifuge sludge dewatering unit, and a solar greenhouse sludge drying structure. The Brawley WWTP has treatment capacity for 5.9 mgd. Upgrades to the Brawley WWTP were completed and officially commissioned by the city of Brawley in March 2012. Since that time, the city of Brawley has been in substantial compliance with its NPDES permit.

REGULATORY CONTEXT

14. CWA section 307(b)(1) directs the U.S. Environmental Protection Agency (USEPA) Administrator to "publish proposed regulations establishing pretreatment standards for the introduction of pollutants into treatment works . . . which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works." These pretreatment regulatory

standards were promulgated by the USEPA Administrator and are set forth in 40 CFR part 403.

15. 40 CFR part 403 establishes General Pretreatment Regulations to prevent “Pass Through” and “Interference,” and provides that these pretreatment regulations are applicable to Industrial Users regardless of whether the Control Authority (e.g., city of Brawley) has an approved Pretreatment Program. Specifically, 40 CFR section 403.5(a)(1) establishes the following general prohibition:

“A User may not introduce into a POTW any pollutant(s) which cause Pass Through or Interference. These general prohibitions and the specific prohibitions in paragraph (b) of this section [403.5] apply to each User introducing pollutants into a POTW whether or not the User is subject to other National Pretreatment Standards or any national, State, or local Pretreatment Requirements.”

16. “Pass Through” is defined as “a Discharge which exits a POTW into United States waters in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).” [40 CFR section 403.3(p).]
17. “Interference” means “a Discharge which, alone or in conjunction with a discharge or discharges from other sources, both: (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and (2) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.” [40 CFR section 403.3(k).]
18. A “Slug” is defined as “any Discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, local limits or Permit conditions....” [40 CFR section 403.8 (f)(2)(vi).]
19. The Water Quality Control Plan for the Colorado River Basin Region of California (Basin Plan), which was adopted on November 17, 1993, and amended on November 16, 2012, designates the beneficial uses of ground and surface waters in the Region. The Basin Plan designates the following beneficial uses of waters in the New River:

- a. Fresh Water Replenishment of the Salton Sea (FRSH)
 - b. Water Contact Recreation (REC I)
 - c. Non-Contact Water Recreation (REC II)
 - d. Warm Water Habitat (WARM)
 - e. Wildlife Habitat (WILD)
 - f. Preservation of Rare, Endangered or Threatened Species (RARE)
20. Beginning in October 2001, when the slaughterhouse operations commenced, and continuing through July 2011, the city of Brawley has violated its effluent limitations set forth in the NPDES permits in effect during that time period for ammonia, toxicity, TSS, BOD, and bacteria. Especially significant exceedances were reported for both ammonia and toxicity during this period. Based on these reported violations, the pollutants of concern for the purposes of Pass Through and Interference in this Complaint are ammonia, toxicity, nitrogen, BOD, TSS, and bacteria.
 21. On May 11, 2011, the Colorado River Basin Water Board staff requested NBC to file a Report of Waste Discharge (ROWD) and apply for Waste Discharge Requirements for the discharge to and from the unlined ponds to areal groundwater. The Discharger was pro-active and responsive to the request. On June 30, 2011, Board staff received the ROWD from NBC, which was dated June 23, 2011. Because the ROWD was incomplete, however, on January 26, 2012, Board staff requested NBC to provide additional information to complete the ROWD, which was received on May 29, 2012. On November 27, 2012, Board staff requested additional information, which was provided on December 19, 2012, to complete the ROWD.
 22. On June 19, 2013, Colorado River Basin Water Board staff and Board counsel met with NBC corporate officers, its General Counsel, Special Counsel, and local staff to discuss regulatory matters at the Facility. During the meeting, NBC presented a proposal to make upgrades and improvements at the WWTF, including providing a higher and more reliable level of wastewater treatment to comply with the city of Brawley's proposed Pretreatment Program and to address Board staff concerns about the unlined impoundments and the potential groundwater pollution and nuisance conditions that could result.
 23. On June 27, 2013, pursuant to CWC Section 13267, the Colorado River Basin Water Board issued a Technical Order against NBC. The Order required NBC to conduct a groundwater investigation to determine whether the discharge to the unlined ponds adversely impacted groundwater and, if so, the extent of that impact. The Order also required NBC to properly characterize its wastewater for regulatory purposes.
 24. The Discharger has cooperated with Colorado River Basin Water Board staff regarding the Technical Order. The Discharger installed eleven on-site groundwater monitoring wells. It submitted the results of its groundwater investigation and wastewater characterization in a report titled "Groundwater Study Wastewater Pre-treatment System," dated September 27, 2013, and prepared by its consultant, HR Green, Inc. Colorado River Basin Water Board staff reviewed the report and found that the wastewater discharged to the unlined ponds not only adversely impacted groundwater, but it also has caused concentrations of BOD and Nitrate to increase in areal groundwater when compared to background

concentrations, albeit the increase appeared to be confined to the immediate vicinity of the ponds.

25. Based on the groundwater investigation and wastewater characterization, the Colorado River Basin Water Board notified NBC in a letter, dated January 31, 2014, that Pond 1 will be regulated pursuant to Title 27 of the California Code of Regulations (CCR), and that Ponds 2 and 3 will be regulated under Division 7, Chapter 4, Article 4 [commencing with Section 13260] of the California Water Code (CWC). The letter also noted that Ponds 2 and 3 do not require a liner at this time, but recommended compaction of existing clay materials at the next regularly scheduled maintenance following installment of the new Pond 1. Further, the letter explained that all three ponds must be included in the groundwater monitoring program. Finally, the letter requested the Discharger to provide additional technical specifications for the proposed upgrades and improvements to the ponds so that Waste Discharge Requirements could be drafted for all three ponds in one Board Order.
26. On January 31, 2014, the Discharger notified the Colorado River Basin Water Board staff that it intends to close the Facility on April 4, 2014, when it would cease all slaughterhouse operations and cease the discharge of wastes at and from the Facility. Written official notification to the Colorado River Basin Water Board was submitted in a letter dated February 4, 2014. The Discharger also informed Colorado River Basin Water Board staff that it intends to retain its plant as a viable asset (i.e., keep a level of maintenance on the slaughterhouse building) in case there are opportunities to sell it for a similar or alternate business. By letter dated March 14, 2014, NBC notified the Colorado River Basin Water Board that it now plans to cease slaughterhouse operations on May 23, 2014, to provide local cattlemen with an opportunity to deal with their current inventory of cattle.
27. On March 20, 2014, the Colorado River Basin Water Board adopted Cleanup and Abatement Order R7-2014-0038, which, in relevant part, directs the Discharger to close its ponds pursuant to state regulations in accordance with a time schedule.

CONTROLLABLE INDUSTRIAL SOURCES OF PASS THROUGH AND INTERFERENCE

28. The city of Brawley has two significant industrial users (SIUs): NBC and Pioneers Memorial Hospital (PMH). To develop its Pretreatment Program, in 2013 the city of Brawley collected, among other pollutants of concern, ammonia monitoring data to characterize the loading from its residential, commercial, and industrial sources into the Brawley WWTP. Based on the data and flow discharged by its residential, commercial, and industrial sources, the city of Brawley calculated the ammonia load into its WWTP was approximately 1,818 lbs/day, with the following breakdown by sources:³

³ *City of Brawley Local Limits Study*, Appendix IV, Loading Summary, December 2013. The Local Limits Study is incorporated herein and made a part of this Complaint by reference.

Source	Ammonia Load (lbs/day)
Residential	414
Commercial	36
Uncontrolled	451
Controlled [Industrial Sources]	1212

29. Pollutants of concern discharged by PMH are organic substances, such as pharmaceuticals, radionuclides, solvents, and disinfectants,⁴ but not the pollutants of ammonia, BOD, TSS, or total nitrogen. In addition, self-monitoring reports submitted by the city of Brawley, pursuant to its NPDES Permit requirements, and monitoring data provided by the city of Brawley to the Colorado River Basin Water Board regarding the nature and character of PMH's discharge, show that the ammonia loading from PMH into the Brawley POTW has been less than 1 percent of the total load into the POTW. Therefore, these data demonstrate that PMH has never been a significant source of ammonia and/or other pollutants of concern that have caused the city of Brawley to violate its NPDES Permit.
30. In contrast, the city of Brawley's self-monitoring reports, monitoring data provided by the city of Brawley to the Colorado River Basin Water Board about the character of NBC's discharge into the POTW, and data submitted by NBC indicate that the slaughterhouse has been the main controllable source of ammonia into the Brawley WWTP since October 2001, when the Discharger's predecessor company, the former Brawley Beef, LLC, commenced operations, through December 2012. **Attachment C** shows the historic ammonia load from the Discharger's slaughterhouse into the POTW. **Attachments D** and **E** show the average monthly and daily ammonia load discharged by the Brawley WWTP respectively, before and after the slaughterhouse went into operations.
31. As shown by **Attachment C**, the Discharger has discharged ammonia loads into the Brawley WWTP as high as 1122 lbs/day (see reported data for June 20, 2012). Since the slaughterhouse began discharging into the Brawley WWTP, in October 2001 through 2012, the ammonia load discharged from the slaughterhouse WWTF into the Brawley POTW has been significant and, at times, has amounted to up 70 percent of the ammonia load into the Brawley WWTP.
32. Colorado River Basin Water Board monitoring records and city of Brawley data indicate that NBC has also discharged wastewater with extremely high concentrations of BOD and TSS. Records show that as recently as 2012, the organic loading from the slaughterhouse, based on BOD and TSS data, consumed even as much as 80 percent of the Brawley WWTP's treatment capacity. In light of these data, in 2010 the city of Brawley started assessing penalties against NBC based on an ordinance the City adopted in 2001.

⁴ *City of Brawley Local Limits Study*, p. 8, December 2013.

33. Self-monitoring data provided by the city of Brawley indicate that prior to when the slaughterhouse began discharging into the Brawley WWTP, the WWTP was already dealing with ammonia loads in the 300 to 500 lbs/day range from its residential and commercial users. That amount of ammonia loading was already causing the city of Brawley noncompliance problems (i.e., acute and chronic toxicity) with its NPDES permit because the Brawley WWTP at that time lacked the ability to remove ammonia. After the slaughterhouse went into operation in October 2001, the ammonia effluent concentrations and, more importantly, the ammonia load discharged into the Brawley WWTP and into the New River, increased significantly (it essentially doubled and in some months and days tripled for discharges to the New River), the latter shown by **Attachments D and E**.
34. Based on the foregoing, the Discharger's Facility has been a main source of ammonia, BOD, TSS, and bacteria into the Brawley WWTP and has discharged these pollutants into the WWTP in concentrations and amounts (lbs/day) that had the reasonable potential to cause Pass Through and/or Interference with the Brawley WWTP.
35. The city of Brawley has also cited the Discharger on multiple different occasions for alleged slug discharges, which have been characterized by high concentrations of TSS and Chemical Oxygen Demand (COD). For example, by letter dated January 14, 2013, the city of Brawley cited the Discharger for four (4) slug discharges that occurred in November 2012, for five (5) slug discharges that occurred in December 2012, and for two (2) slug discharges that had already occurred in January 2013. Further, based on TSS results for daily composite effluent samples collected from the NBC WWTF, the Discharger has discharged into the Brawley WWTP slug loads of TSS with concentrations as high as 8,114 mg/L, which equate to 55,935 lb/day of TSS into the Brawley WWTP. This TSS load was approximately more than four times greater than the typical Brawley WWTP's incoming TSS load, which was estimated by the city of Brawley at 12,570 lbs/day pursuant to the development of its Pretreatment Program.⁵ **Attachment F**, which is based on monitoring data for the discharge from the NBC WWTF, shows additional slug discharges from the NBC WWTF into the Brawley POTW. **Attachment G**, also based on the same monitoring data, shows the overall average monthly BOD and TSS load from the NBC WWTF into the Brawley POTW.

ALLEGED VIOLATIONS OF PASS THROUGH AND/OR INTERFERENCE

36. As previously discussed in Administrative Civil Liability Complaint R7-2013-0028 issued to the city of Brawley on February 28, 2013, incorporated herein and made a part of this Complaint by reference, prior to the city of Brawley's new and upgraded WWTP being officially commissioned in March 2012, the city of Brawley operated various wastewater treatment facilities, whose main unit treatment process was ponds (mainly facultative ponds). The city of Brawley wastewater treatment facilities lacked the ability to reliably reduce ammonia to non-toxic levels. While undoubtedly some of the total nitrogen, and therefore, some ammonia too, were removed by the Brawley WWTP through the removal of

⁵ City of Brawley Local Limits Study, Table 3.5, p. 23, December 2013.

sludge from the city ponds and by incidental nitrogen gasification, the amount of ammonia that NBC was discharging overloaded the WWTP to the extent that the net amount of ammonia removed from the wastewater discharged by the city of Brawley was insignificant. **Attachment H** shows the Brawley WWTP ammonia influent and effluent concentrations and the net ammonia percent removal at the WWTP. The data in **Attachment H** indicate that from May 2001 through July 2011, the net removal of ammonia at the Brawley WWTP was not significant. Moreover, the TSS slugs discharged by NBC into the Brawley WWTP only made the city of Brawley's compliance problems worse.

37. Because the wastewater treatment facilities that the city of Brawley owned and operated during the time period NBC discharged to its system (June 2, 2006 to present) were not at all effective to deal with the incoming ammonia load from NBC, the city of Brawley violated:
 - a. Its average monthly concentration effluent limit for ammonia contained in WDRs Order R7-2005-0021 (Effluent Limitations and Discharge Specifications IV.A.1.b) on 21 different months (see **Attachment D** for 2/2007 to 11/2008);
 - b. Its maximum daily concentration effluent limit for ammonia contained in WDRs Order R7-2005-0021 (Effluent Limitations and Discharge Specifications IV.A.1.b) on 92 different occasions (see **Attachment E** for 2/7/2007 through 11/17/2008);
 - c. Its average monthly mass effluent limit for ammonia contained in WDRs Order R7-2005-0021 (Effluent Limitations and Discharge Specifications IV.A.1.b) on 21 different months (see **Attachment D** for 2/2007 to 11/2008); and
 - d. Its maximum daily mass effluent limit for ammonia contained in WDRs Order R7-2005-0021 (Effluent Limitations and Discharge Specifications IV.A.1.b) on 92 different occasions (see **Attachment E** for 2/7/2007 through 11/17/2008).
38. As shown in **Attachment I**, the City of Brawley also violated its NPDES Permit BOD, TSS, and bacteria effluent limits 59 times as follows:
 - a. Its Average Monthly BOD effluent limits contained in WDRs Order R7-2005-0021 (Effluent Limitation IV.A.2.b): one time on 4/30/2010;
 - b. Its Average Monthly and Average Weekly BOD effluent limits contained in WDRs Order R7-2010-0022 (Effluent Limitation IV.A.1.a): on three and seven different occasions, respectively;
 - c. Its Average Monthly and Average Weekly TSS effluent limits contained in WDRs Order R7-2010-0022 (Effluent Limitation IV.A.1.a): on 5/30/2012 and 5/7/2012, respectively;
 - d. Its Maximum Fecal Coliform effluent limit contained in WDRs Order R7-2010-0022 (Effluent Limitation IV.A.1.d) on three different occasions;
 - e. Its Maximum Enterococci effluent limit contained in WDRs Order R7-2005-0021 (Effluent Limitation IV.A.1.e): one time on 5/10/2010;

- f. Its Maximum and Geometric Mean Enterococci effluent limits contained in WDRs Order R7-2010-0022 (Effluent Limitation IV.A.1.d): on 24 and 5 different occasions, respectively;
 - g. Its Maximum and Geometric Mean E. Coli effluent limits contained in WDRs Order R7-2005-0021 (Effluent Limitation IV.A.1.e): on seven and two different occasions, respectively; and;
 - h. Its Maximum and Geometric Mean E. Coli effluent limits contained in WDRs Order R7-2010-0022 (Effluent Limitation (IV.A.1.d): on two different occasions each.
39. In 2001 and 2002, the city of Brawley conducted Toxicity Identification Evaluation (TIE) studies to determine the cause and source(s) of toxicity. It submitted the results of its study in reports dated July 2, 2001, and July 3, 2002. The 2001 TIE identified ammonia as the primary toxicant. The 2002 TIE found total and unionized ammonia as the source of all toxicity for Ceriodaphnia dubia and Pimephales promelas (fathead minnow).
40. At the Colorado River Basin Water Board's request, the city of Brawley prepared a Toxicity Reduction Evaluation (TRE) and submitted a copy of the evaluation to the Board on January 9, 2003. The TRE addressed optimization of the existing treatment system for ammonia reduction and it performed a comprehensive survey of the collection system and industrial or commercial businesses to determine the impact these businesses may have on the city of Brawley's treatment facilities. The optimization of the treatment system failed to achieve the intended results, however, as demonstrated by toxicity monitoring data for the city of Brawley. The data show that from January 2001 through July 2011 the Brawley WWTP effluent consistently exhibited chronic and acute toxicity. **Attachment J** summarizes the toxicity monitoring data. The toxicity problem was significantly exacerbated right after the slaughterhouse began discharging into the Brawley WWTP.
41. From June 2006, when NBC commenced discharging to the Brawley WWTP, through July 2011, the city of Brawley violated **90** times the Effluent Limitations and Receiving Water Limitations for acute and chronic toxicity prescribed in WDRs Orders R7-2005-0021 and R7-2010-0022. As shown in **Attachment J**, the breakdown of the violations is as follows:
- a. The city violated Effluent Limitations IV.A.1.g and Receiving Water Limitations V.A.1.j and V.A.1.k for acute and chronic toxicity of WDRs Order R7-2005-0021 **64** times for the period from June 2006 through May 2010 (see **Attachment J**); and
 - b. The city violated Effluent Limitations IV.A.1.c and Receiving Water Limitations V.A.10 and V.A.11 for acute and chronic toxicity of WDRs Order R7-2010-0022 **26** times for the period from June 2010 through July 2011 (see **Attachment J**).

42. Because the city of Brawley violated its NPDES Permit ammonia Effluent Limitations contained in WDRs Order R7-2005-0021 and its NPDES Permit Effluent Limitations and Receiving Water Limitations for acute and chronic toxicity contained in WDRs Orders R7-2005-0021 and R7-2010-0022, following NBC's commencement of discharges to the Brawley WWTP in June 2006, and because the discharge from NBC was a significant source of ammonia which caused and/or contributed to the violations and their magnitude and frequency, the discharge from NBC into the Brawley WWTP consistently caused Pass Through and/or Interference from June 2006 until approximately July 2011.
43. Monitoring data from the city of Brawley and from NBC also indicate that NBC did not start implementing effective measures to prevent Pass Through and/or Interference until early 2013, when performance data for the slaughterhouse WWTF show that for most of 2013 there was a significant decrease in the ammonia concentrations discharged by the slaughterhouse into the Brawley WWTP (see **Attachment C**). Colorado River Basin Water Board staff believes this improvement was due largely to better operation and maintenance of the NBC WWTF and repair/replacement of broken or inadequate WWTF infrastructure (e.g., pumps, aerators, valves, etc.).
44. From May 1, 2009, to May 31, 2011, NBC received 95 Notices of Violation from the city of Brawley related to its discharge of slaughterhouse pretreated wastes to the Brawley WWTP that failed to comply with applicable city standards to ensure that the discharge would not Pass Through or cause Interference with the Brawley WWTP treatment system. The Discharger, however, has known about its extremely high ammonia loading into the Brawley WWTP since as early as March 13, 2003, when it was cited by the city of Brawley for that high loading.
45. On June 20, 2011, NBC received from the city of Brawley an Order to Show Cause/Cease and Desist Order for discharging effluent to the Brawley WWTP, which did not comply with applicable city standards.
46. In response to the city of Brawley's citations and concerns about the elevated concentrations and slug discharges of ammonia, TSS, BOD, and COD into the Brawley WWTP, the Discharger attempted to improve the quality of its discharge into the Brawley WWTP by implementing short-term measures ever since it bought the Facility in June 2006. For example, it removed solids, which had accumulated in Pond 3 in June 2009 and January 2010, in an effort to increase the Pond's volume and ability to handle solids. It also made operational changes to its treatment system (e.g., adjusted the return activated sludge (RAS) and mixed liquor suspended solids for its aerobic pond) in December 2010; and it put into operation its Suspended Air Flootation (SAF) unit and belt filter press in May 2011. These efforts, and subsequent efforts it undertook through June 2012, were somewhat successful in improving the TSS and BOD quality of the discharge into the Brawley WWTP, but were not successful enough to ensure the discharge would not cause or contribute to Pass Through and/or Interference.
47. It was not until approximately on or about September 2012, when the Discharger contracted with its current consultant, HR Green, Inc., that it finally conducted a thorough assessment of its WWTF and discharges and came up with a sound proposal of WWTF upgrades and improvements to address the city of Brawley's

and Colorado River Basin Water Board staff's water quality concerns. The Discharger's hiring a Grade III certified WWTP Operator in March 2013 to supervise the operation and maintenance of the NBC WWTF, with a corresponding allocation of additional resources for O&M, was also a significant factor in improving the quality of discharge and curbing slug discharges from the NBC WWTF into the Brawley WWTP.

48. Based on the foregoing, the Discharger could have known since as early as 2002, based on the city of Brawley's TIEs conducted, and since as early as March 2003 when the Discharger's predecessor, Brawley Beef, LLC, was cited by the city of Brawley for discharging excessively high ammonia loads, that the slaughterhouse operations have been a significant source of pollutants of concern that have caused or contributed to Pass Through and/or Interference with the Brawley WWTP. Despite this actual or constructive knowledge, and despite the efforts taken by the Discharger to address the city of Brawley's and Colorado River Basin Water Board staff's concerns, the Discharger avoided timely implementing the necessary upgrades to its WWTF, following its acquisition of Brawley Beef, LLC, in June 2006, to prevent such Pass Through and/or Interference—upgrades and improvements that were recommended by the Discharger's consultant, HR Green, which included:
 1. Improving the existing DAFs with respect to aeration, floatables, settleable solids, and consistent operation;
 2. Installing a permanent dissolved oxygen probe in Pond 2;
 3. Adding four new TSS probes to control and alarm of TSS slugs;
 4. Automating Pond 3 level control to maintain a consistent drop over the weir;
 5. Automating slug diversion [automatically send slugs to onsite WWTF instead of the POTW];
 6. Dredging Pond 1;
 7. Converting Pond 1 into an anaerobic contact digester; and
 8. Adding a new clarifier.
49. Even as recently as September 2012, after the new Brawley WWTP was fully operational, the Discharger continued to discharge ammonia loads as high as 732 lbs/day (see **Attachment C**, 9/26/2012 entry), which posed a significant threat to cause Pass Through and Interference, because the city of Brawley's Pretreatment Program determined that the Maximum Allowable Industrial [Ammonia] Load into the WWTP headworks was only 720 lbs/day.⁶
50. Based on publicly available information, NBC is a subsidiary of National Beef Packing Company, LLC, which is headquartered in Kansas City, Missouri, and is one of the largest beef processing companies in the U.S., accounting for approximately 14.5 percent of all of the steer and heifer slaughter regulated by the U.S. Department of Agriculture. In December 2011, Leucadia National Corporation (LNC) acquired 78.9 percent of National Beef Packing Company, LLC. LNC has diversified holdings in its consolidated subsidiaries, which, besides National Beef

⁶ City of Brawley Local Limits Study, Table 6.1, p. 40, December 2013.

Packing Company, also include manufacturing, gaming entertainment, medical products development, and wine operations. For 2012, LNC reported its company shareholder's equity as \$6,767,268,000 and its total consolidated revenue and incomes as \$9,193,689,000.

WATER CODE SECTIONS WHICH PROVIDE FOR ASSESSMENT OF ADMINISTRATIVE CIVIL LIABILITY

51. CWC Section 13385(a)(5) states in relevant part: "A person who violates a requirement of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the federal Clean Water Act (33 U.S.C. Sec. 1311, 1316, 1317, 1318, 1341, or 1345), as amended shall be held liable civilly in accordance with this section."
52. CWC Section 13385(c)(1) provides that "[c]ivil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 [of the Porter-Cologne Water Quality Control Act] in an amount not to exceed the sum of both of the following:
 - (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.
 - (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons."
53. The violations set forth above relate to the introduction by NBC of pollutants that caused or contributed to Pass Through and/or Interference with the Brawley WWTP.

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

54. Pursuant to CWC Section 13385, subdivision (e), and Section 13327, in determining the amount of any civil liability, the Regional Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the dischargers are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require.
55. On November 17, 2009, the State Water Resources Control Board adopted Resolution 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code Section 13385, subdivision (e), and section 13327. The entire Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

56. The required factors set forth in CWC Section 13385, subdivision (e), and Section 13327, above, have been considered for the violations alleged herein using the discretionary penalty assessment methodology prescribed in the Enforcement Policy, as explained in detail in **Attachment K** (NBC ACLC Methodology) and **Attachment L** (Penalty Calculation).
57. Pursuant to CWC Section 13385, subdivisions (c)(1) and (2), and the Enforcement Policy, where there is a discharge the Prosecution Team may determine the amount of initial liability on a per day and per gallon basis. The Prosecution Team has information related to the Discharger's daily flow for 4-5 days each month beginning July 2008. For these days the Discharger could be subject to a maximum penalty of \$10 for each gallon over the first 1000 gallons discharged that is not cleaned up or susceptible to cleanup. Pursuant to the Enforcement Policy, effluent violations are generally only addressed on a per day basis, except where it is deemed appropriate to consider also assessing liability on a per gallon basis. Based on the available information, at this time the Prosecution Team has elected not to pursue also assessing liability on a per gallon basis. In light of the purported economic benefit derived from the Discharger's noncompliance, however, the Colorado River Basin Water Board may ultimately assess liability against the Discharger based on both factors.

MAXIMUM ADMINISTRATIVE CIVIL LIABILITY AVAILABLE TO THE REGIONAL BOARD

58. Pursuant to CWC Section 13385, the total maximum administrative civil liability that may be imposed only on the per day assessment basis being pursued at this time for the violations alleged in this Complaint is \$3,750,000.00.

MINIMUM ADMINISTRATIVE CIVIL LIABILITY THE REGIONAL BOARD MUST ASSESS

59. The Enforcement Policy requires that the minimum liability for non-mandatory minimum penalties, i.e., discretionary penalties, imposed must be at least 10 percent higher than the economic benefit or savings the Discharger received resulting from the violations so that the Discharger's liabilities are not construed as simply the cost of doing business, and so that the assessed liability provides a meaningful deterrent to future violations.
60. The economic benefit of non-compliance of the Discharger's violation of 40 CFR part 403 and CWC Section 13385, which is shown in **Attachment M**, is \$11,933,724. Accounting for the 10% markup, the minimum liability that must be assessed for the violations set forth in this complaint is \$13,127,096. Because the economic benefit of non-compliance exceeds the maximum statutory administrative civil liability of \$3,750,000, the statutory limit governs the liability that may be assessed.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

61. Based on consideration of the above facts, application of the penalty methodology, and the Discharger's Ability to Pay, the Assistant Executive Officer of the Colorado River Basin Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **\$3,750,000.00**.
62. Notwithstanding the issuance of this Complaint, the Colorado River Basin Water Board retains the authority to assess additional penalties for any violation of the Clean Water Act, its implementing regulations set forth in 40 CFR, and the Porter-Cologne Water Quality Control Act (commencing with Water Code Section 13000) and its implementing regulations not included in this Complaint for which penalties have not yet been assessed or for violations that may occur subsequent to the issuance of this Complaint.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

63. Issuance of this Complaint is an enforcement action and is, therefore, exempt from the California Environmental Quality Act (Pub. Resources Code Section 21000 et seq.), pursuant to title 14, California Code of Regulations, Section 15321, subsection (a)(2).

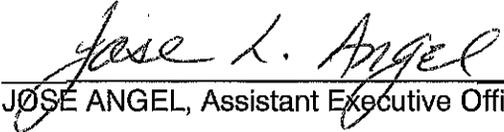
THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Colorado River Basin Water Board proposes that the Discharger be assessed:

A penalty of **\$3,750,000.00** for violation of CWC Section 13385 to recover the economic benefit the Discharger derived from noncompliance with the Clean Water Act, its implementing regulations set forth in 40 CFR, and the Porter-Cologne Water Quality Control Act (commencing with Water Code Section 13000) and its implementing regulations, as required by the Enforcement Policy.

2. CWC Section 13323(b) provides that the Regional Board shall conduct a hearing within 90 days after issuance of this Complaint. Such a hearing shall be held unless the Discharger chooses either of the following two options:
 - a. Waives the right to a Hearing before the Colorado River Basin Water Board and pays the proposed penalty of **\$3,750,000.00** in full; or
 - b. Waives the right to a Hearing before the Colorado River Basin Water Board on or before April 23, 2014 to engage the Board Prosecution Team in settlement discussions. Waiver of the right to a Hearing before the Board does not preclude the Board Prosecution Team from proceeding to hearing as set forth in the Hearing Procedures.
3. If a hearing on this matter is held, the Colorado River Basin Water Board will consider whether to affirm, reject or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

4. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.



JOSE ANGEL, Assistant Executive Officer, P.E.



Date