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STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION

In the matter of:

ADMINISTRATIVE CIVIL LIABILITY
COMPLAINT R7-2014-0041 ISSUED TO
NATIONAL BEEF CALIFORNIA, LP,
OWNER/OPERATOR
WASTEWATER TREATMENT FACILITY
CITY OF BRAWLEY-IMPERIAL COUNTY

PROSECUTION TEAM'S
SUBMISSION OF EVIDENCE
AND POLICY STATEMENTS

In accordance with the Hearing Procedures for the above-referenced matter, "Submission of Evidence and Policy Statements" section, the Colorado River Basin Water Board Prosecution Team hereby submits its legal and technical arguments. This submission is made in conjunction with Administrative Civil Liability Complaint R7-2014-0041 (Complaint) issued by the Prosecution Team on April 11, 2014.

BACKGROUND

The Complaint involves the National Beef California (NBC) facilities located in the city of Brawley, California. From June 2006, when NBC acquired the facilities, through May 23, 2014, when NBC closed the facilities, NBC operated a slaughterhouse. The facilities included an onsite wastewater treatment facility that provided wastewater treatment services for the slaughterhouse. Wastewater from the slaughterhouse was discharged to (1) areal groundwater through unlined ponds and (2) the city of Brawley Wastewater Treatment Plant (WWTP). The city of Brawley WWTP is a publicly owned treatment works (POTW), as defined in Title 40 Code of Federal Regulations (40 CFR) section 403.3, subdivision (q). The city of Brawley WWTP is regulated by the Colorado River Basin Water Board pursuant to Board Order R7-2010-0022 (NPDES Permit No. CA0104523), as amended by Special Board Order R7-2014-0009.

1 Since it began operating the slaughterhouse in mid-2006, NBC has been the main source of the
2 following pollutants introduced into the city of Brawley WWTP: ammonia, BOD, TSS, and bacteria.
3 Self-monitoring records and other data provided by the city of Brawley demonstrate that NBC has
4 discharged these pollutants into the city of Brawley's WWTP in concentrations and amounts (lbs/day) that
5 had the reasonable potential to cause Pass Through and/or interference with the city of Brawley's WWTP.
6 As a result, NBC was, at a minimum, a cause of violations of the city of Brawley's NPDES permit
7 (including an increase in the magnitude or duration of a violation). The city of Brawley WWTP
8 discharges its effluent into the New River, a "Waters of the U.S." The New River is listed as an impaired
9 water body pursuant to federal Clean Water Act (CWA) section 303(d) (33 U.S.C. § 1313(d)). It is so
10 listed because, among other impairments, the New River is impaired by toxicity.

11 The Colorado River Basin Water Board's Prosecution Team seeks penalties in the amount of
12 \$3.75 million for NBC's violations of the federal National Pretreatment Standards General Prohibition
13 against an Industrial User (such as NBC) introducing into a POTW any pollutant(s) which cause Pass
14 Through or Interference. This General Prohibition is set forth in 40 CFR section 403.5, subdivision (a)(1).

15 TECHNICAL ARGUMENT/ANALYSIS

16 Prior to issuing the Complaint, Colorado River Basin Water Board staff reviewed influent and
17 effluent ammonia and toxicity data for the city of Brawley WWTP for the period of May 2001 through
18 December 2012 (the "reviewing period"). Staff also reviewed BOD, TSS, and bacterial data and the
19 various Board Waste Discharge Requirements that have been in effect for the city of Brawley WWTP for
20 the reviewing period. The review was focused on ammonia and toxicity because the city has been in
21 chronic violation of its NPDES permit for ammonia and toxicity. The city has also violated its BOD,
22 TSS, and bacteria limits, but not as severely or frequently as ammonia and toxicity.

23 Under normal circumstances, when an NPDES Discharger is required to develop a Pretreatment
24 Program pursuant to 40 CFR Part 403, the NPDES Discharger (a.k.a. "Control Authority") needs to
25 establish the appropriate Maximum Allowable Headworks Loadings (MAHLs) for each constituent of
26 concern (COC) to prevent Pass Through and Interference and to control sludge quality at its POTW.
27 Allowable Headworks Loadings (AHLs) for each COC are calculated based on the most stringent
28 environmental criteria (e.g., receiving water limitation as opposed to effluent limitation); and based on the
29 WWTP's flow rates, design criteria, key unit processes, and the removal efficiency of those processes.
30 The most stringent of the calculated AHLs for a particular constituent is chosen as the MAHL for that
particular constituent. This calculation must be done for each COC. Then, the MAHL for each COC
serves as a basis for establishing the Maximum Allowable Industrial Loading (MAIL) for each COC.

1 The MAIL becomes the maximum pollutant loading the POTW can receive from controllable
2 sources—namely industrial users (IUs) or any other user the Control Authority decides to regulate. The
3 MAIL for a particular constituent is calculated by subtracting from the MAHL the total loading
4 contribution from uncontrolled sources, hauled wastes, plus growth allowance. The MAHL is further
5 adjusted by a factor of safety that can be as low as 10 percent, but in most cases is 20 percent.¹ MAHLs
6 and MAILs are quantitative limits and make the determination of Pass Through and Interference a fairly
7 straight forward arithmetic comparison. For example, if the City had established the MAHL for ammonia
8 for its WWTP at 1000 lb/day, and the incoming ammonia loading into the headworks exceeded the
9 MAHL, then the typical result would be that the incoming load would cause Pass Through and
10 Interference. Also, if the City only had one IU for which it had established an ammonia MAIL of 100
11 lbs/day, and if the IU discharged ammonia at a greater rate than 100 lbs/day, this typically would result in
12 Pass Through and Interference. On the other hand, if the City had more than one IU for which it had
13 established MAILs, and if one of the IUs exceeded its MAIL, this could, but does not necessarily mean
14 that it would, result in Pass Through and Interference. It would depend on the magnitude of the
15 exceedance. Regardless, this would also typically trigger a response from the Control Authority (e.g.,
16 some type of enforcement against the IU).

17 In this case, for the reviewing period, the city never established MAHLs and MAILs in
18 accordance with 40 CFR Part 403. Consequently, to determine Pass Through and Interference and to
19 identify their source(s) one needs to rely on the water quality standard for each COC (e.g., ammonia
20 receiving water limitation), the city's NPDES Permit limitations, and on the empirical evidence available
21 for the city's POTW and its IUs. In other words, based on available monitoring data, one needs to
22 evaluate: (1) the actual performance and NPDES compliance history of the POTW, (2) the contribution of
23 COCs (in this case ammonia, TSS, BOD, and bacteria) from the city's controllable and uncontrollable
24 sources, (3) any documented POTW upset that can be linked directly to an IU's discharge, (4) typical
25 removal efficiency of the main unit processes at the POTW, and (5) the overall POTW removal efficiency
26 (and/or treatment inhibition).

27 Based on the self-monitoring reports provided by the city of Brawley, monitoring data collected
28 by the city to develop and implement its Pretreatment Program, and monitoring data collected by the city
29 about the character of the discharge from the slaughterhouse into the city POTW, Colorado River Basin
30 Water Board staff determined that NBC's facility has been the main source of ammonia into the city of
31 Brawley WWTP since NBC began operating the slaughterhouse in mid-2006 and has discharged this
32 pollutant into the WWTP in concentrations and amounts that had the reasonable potential to cause and

¹ *Local Limit Development Guidance*, USEPA 833-R-04-002A, July 2004.

1 likely did cause Pass Through and/or Interference with the city of Brawley WWTP that resulted in
2 violations of the city's NPDES permit. Moreover, based on the above-mentioned data, Colorado River
3 Basin Water Board staff determined that NBC's slaughterhouse also discharged into the POTW slugs of
4 TSS and BOD in concentrations and amounts that had the reasonable potential to cause and likely did
5 cause or contribute to Pass Through and/or Interference with the city of Brawley WWTP that resulted in
6 violations of the city's NPDES permit for these pollutants and for bacteria. Pages 9-14 of the Complaint
7 and accompanying referenced attachments details those violations.

8 LEGAL BASIS

9 NBC is classified as an "Industrial User," as defined in 40 CFR section 403.3, subdivision (j),
10 because it is a source of "indirect discharge," which is defined in section 403.3, subdivision (i) as "the
11 introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b),(c)
12 or (d) of the Clean Water Act." NBC is also considered a "Significant Industrial User," as defined in 30
13 CFR section 403.3, subdivision (v)(1)(ii).

14 The Colorado River Basin Water Board can directly enforce pretreatment standards against
15 industrial users and categorical industrial users. They can impose administrative liability for violations of
16 pretreatment standards as violations of Clean Water Act section 307 under Water Code section 13385,
17 subdivisions (a)(5), (b) & (c).

18 Such violations include causing or contributing to violations of pass through and/or inference, as
19 defined on pages 4-5 of the Complaint.

20 To obtain the penalty set forth in the Complaint, the Prosecution Team multiplied the number of
21 violations (375) by the statutory maximum of \$10,000 per violation, as set forth in California Water Code
22 section 13385, and applied the relevant portions of the State Water Resources Control Board's Water
23 Quality Enforcement Policy. This resulted in a penalty of \$3,750,000.

24 In addition to calculating the maximum administrative civil liability that may be imposed under
25 Water Code section 13385, the Enforcement Policy requires that the minimum liability for non-mandatory
26 minimum penalties imposed must be at least 10 percent higher than the economic benefit or savings the
27 Discharger received resulting from the violations. In this case, the Prosecution Team calculated economic
28 benefit to be \$11,933,724. Accounting for the Enforcement Policy's required 10% surcharge, the
29 minimum liability that was required to be assessed for these violations is \$13,127,096. Consequently, the
30 calculated economic benefit plus 10% value was much greater than the statutory maximum. This is due in
large part to NBC's decision to cease operations at the slaughterhouse, thereby causing all costs associated
with compliance to be categorized as "avoided costs" as opposed to "delayed costs." Because the
economic benefit of non-compliance exceeds the maximum statutory administrative civil liability of

1 \$3,750,000, the statutory limit becomes the minimum liability that must be imposed by the Colorado
2 River Basin Water Board pursuant to the Enforcement Policy and Water Code section 13385 for the
3 violations set forth in the Complaint.

4 CONCLUSION

5 Based on the Prosecution Team's evidence submitted in accordance with the Hearing Procedures
6 specified for this enforcement action, the Complaint, including all attachments, relevant testimony and
7 additional submissions, the Prosecution Team respectfully requests the Colorado River Basin Water
8 Board to impose a penalty of \$3,750,000 against National Beef California for the violations set forth
9 above and in the Complaint.

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11 Anna Kathryn Benedict
12 Senior Staff Attorney
13 On Behalf of the Prosecution Team
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