
State Water Resources Control Board

October 15, 2014

Mr. Jose Angel
Colorado River Basin Regional
Water Quality Control Board
73-720 Fred Waring Drive, Suite 100
Palm Desert, California 92260

Dear Mr. Angel:

REQUEST REGARDING NATIONAL BEEF CALIFORNIA, L.P. AND ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R7-2014-0041

I received your October 2, 2014 letter requesting that the State Water Resources Control Board (State Water Board) prosecute National Beef California, L.P.¹ (NBC) for pass-through and interference violations at the City of Brawley's wastewater treatment plant. In your letter, you state that you issued Administrative Civil Liability Complaint R7-2014-0041 on April 13, 2014, against NBC alleging violations of federal pretreatment standards on pass-through and interference, but that you are withdrawing that complaint to avoid the appearance of bias and to ensure that the case is reviewed on the merits, without the distraction of alleged due process issues. You requested that the State Water Board review the matter on its own motion pursuant to Water Code sections 183, 13320, and all applicable law.

The State Water Board has the authority to review any action or failure to act by a Regional Water Quality Control Board on its own motion pursuant to Water Code section 13320. The petition or own motion review process, however, does not appear to be the best vehicle to adjudicate in the first instance an administrative civil liability complaint involving allegations related to federal pretreatment standards. Instead, Water Code section 13385, subdivision (c) authorizes the State Water Board to impose an administrative civil liability pursuant to article 2.5 (commencing with section 13323) of the Water Code.

Accordingly, it would be more appropriate for any prosecution and State Water Board adjudication of the matter to occur pursuant to Water Code section 13323, et seq. As the Executive Director of the State Water Board, I have the authority to issue a complaint to assess administrative civil liabilities pursuant to Water Code section 13323, subdivision (c). On July 21,

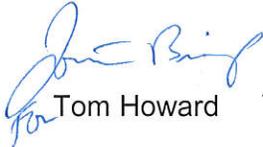
¹ Although the subject line of your October 2, 2014 letter refers to National Beef Company, Inc., based on the reference to National Beef California, L.P. in the body of your letter and the motion to dismiss attached to your letter, I have assumed that National Beef California, L.P. is the entity that Administrative Civil Liability Complaint R7-2014-0041 was issued against.

2010, this authority was delegated to the Director of the Office of Enforcement, whom I have copied on this letter.² A copy of this delegation is enclosed.

If the Director of the Office of Enforcement opts to prosecute this matter and issues a complaint to assess administrative civil liabilities, the State Water Board will make one or more board members available to oversee the adjudicative proceeding, conduct any necessary evidentiary hearings, and conduct any needed investigation. (See Wat. Code, § 183.) Any final action by the State Water Board would be in accordance with Water Code section 183.

Although the original paper copy of your letter was marked confidential, you sent courtesy copies to a number of people listed at the end of your letter. I am sending a courtesy copy of this letter to everyone that was copied on your letter. If there is a regional water board webpage associated with this matter or a broader service list that should receive this letter, please post or distribute it accordingly.

Sincerely,



Tom Howard

Enclosure: Delegation of Authority to Issue Administrative Civil Liability Complaints Pursuant to Water Code Section 13323, Subdivision (c)

cc: continued to next page

² I also received a letter from Parthenia B. Evans and Perry L. Glantz of Stinson Leonard Street LLP, dated October 9, 2014, that addresses the alleged substantive defects in Administrative Civil Liability Complaint R7-2014-0041 issued against NBC, and a letter from Gideon Kracov, dated October 13, 2014, urging the State Water Board to pursue an administrative liability complaint against NBC. To the extent that these letters address whether NBC might be liable for any violations of the Clean Water Act, they are more appropriately directed to the Director of the Office of Enforcement.

cc: Continued

Mr. Cris Carrigan, SWRCB **[via email only]**
Director of the Officer of Enforcement
cris.carrigan@waterboards.ca.gov

Colorado River Basin Regional Water Quality
Control Board members **[via email only]**

Ms. Lori Okun, OCC, SWRCB **[via email only]**
Assistant Chief Counsel
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Mr. Robert E. Perdue **[via email only]**
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Ms. AnnaKathryn Benedict **[via email only]**
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Mr. Tom Vandenberg **[via email only]**
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Mr. Perry Glantz **[via email only]**
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Mr. Andre Monette **[via email only]**
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Mr. Parthenia B. Evans **[via email only]**
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Mr. Gideon Kracov **[via email only]**
gk@gideonlaw.net



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

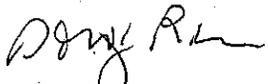
Executive Office

Charles R. Hoppin, Chairman
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Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
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Arnold Schwarzenegger
Governor

TO: Reed Sato, Director
Office of Enforcement

FROM: 
Dorothy Rice, Executive Director
EXECUTIVE OFFICE

DATE: ~~2001~~ 2 1 2010

SUBJECT: DELEGATION OF AUTHORITY TO ISSUE ADMINISTRATIVE
CIVIL LIABILITY COMPLAINTS PURSUANT TO WATER CODE SECTION
13323, SUBDIVISION (c)

This delegation is made under the authority of Water Code section 7 which provides:

Whenever a power is granted to, or a duty is imposed upon, a public officer, the power may be exercised or the duty may be performed by a deputy of the officer, or by a person authorized, pursuant to law, by the officer, unless this code expressly provides otherwise.

The Executive Director has the authority, pursuant to Water Code section 13323, subdivision (c), to issue a complaint to assess administrative civil liabilities.

In order to maintain the separation of functions between prosecutorial and advisory functions in administrative civil liability proceedings before the State Water Resources Control Board, and to permit the Executive Director to act as an advisor to the State Water Resources Control Board and its individual members acting as hearing officers pursuant to Water Code section 183 in such proceedings, I hereby delegate this authority under Water Code section 13323(c) to the Director of the Office of Enforcement.

This delegation is effective until rescinded.

cc: State Water Resources Control Board Members
Michael A.M. Lauffer, Chief Counsel, State Water Board
Philip Wyels, Assistant Chief Counsel, State Water Board